TARIFF ACT OF 1929

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

SEVENTY-FIRST CONGRESS

FIRST SESSION

ON

H. R. 2667

AN ACT TO PROVIDE REVENUE, TO REGULATE COMMERCE WITH FOREIGN COUNTRIES, TO ENCOURAGE THE INDUSTRIES OF THE UNITED STATES, TO PROTECT AMERICAN LABOR, AND FOR OTHER PURPOSES

VOLUME XVII

SPECIAL AND ADMINISTRATIVE PROVISIONS

JUNE 12 and 13, and JULY 15, 16, 17, and 18, 1929
(With Supplement)

INDEXED

Printed for the use of the Committee on Finance

UNITED STATES
GOVERNMENT PRINTING OFFICE
63310 WASHINGTON : 1929

COMMITTEE ON FINANCE

UNITED STATES SENATE

SEVENTY-FIRST CONGRESS, FIRST SESSION

REED SMOOT, Utah, *Chairman*

JAMES E. WATSON, Indiana.
DAVID A. REED, Pennsylvania.
SAMUEL M. SHORTRIDGE, California.
WALTER E. EDGE, New Jersey.
JAMES COUZENS, Michigan.
FRANK L. GREENE, Vermont.
CHARLES S. DENEEN, Illinois.
HENRY W. KEYES, New Hampshire.
HIRAM BINGHAM, Connecticut.
FREDERIC M. SACKETT, Kentucky.

FURNIFOLD McL. SIMMONS, North Carolina.
PAT HARRISON, Mississippi.
WILLIAM H. KING, Utah.
WALTER F. GEORGE, Georgia.
DAVID I. WALSH, Massachusetts.
ALBEN W. BARKLEY, Kentucky.
ELMER THOMAS, Oklahoma.
TOM CONNALLY, Texas.

ISAAC M. STEWART, *Clerk*

FOREWORD

Under authority of Senate Resolution 335, Seventieth Congress, second session, the United States Senate Finance Committee, for the purpose of investigating the effects of the operation of the tariff act of 1922 and the proposed readjustments as set out in House bill 2667, commenced general tariff hearings on June 13, 1929, pursuant to the following public notice authorized by the committee on June 7, 1929:

Dates of hearings and tariff subcommittees

Schedules	Date to commence	Subcommittees
		Subcommittee No. 1, room 212 Senate Office Building
1. Chemicals, oils, and paints.	June 14	Smoot, chairman, Reed, Edge, King, and Barkley.
2. Earths, earthenware, and glassware.	June 19	Edge, chairman, Smoot, Reed, King, and Barkley.
3. Metals and manufactures of.	June 26	Reed, chairman, Smoot, Edge, King, and Barkley.
		Subcommittee No. 2, room 312 Senate Office Building
6. Tobacco and manufactures of.	June 13	Shortridge, chairman, Smoot, Watson, Harrison, and Connally.
8. Spirits, wines, and other beverages.	June 14	Shortridge, chairman, Smoot, Watson, Harrison, and Connally.
7. Agricultural products and provisions.	June 17	Watson, chairman, Smoot, Shortridge, Harrison, and Connally.
5. Sugar, molasses, and manufactures of.	June 26	Smoot, chairman, Watson, Shortridge, Harrison, and Connally.
		Subcommittee No. 3, room 301 Senate Office Building
9. Cotton manufactures	June 14	Bingham, chairman, Greene, Sackett, Simmons, and George.
10. Flax, hemp, jute, and manufactures of.	June 19	Greene, chairman, Bingham, Sackett, Simmons, and George.
11. Wool and manufactures of.	June 24	Bingham, chairman, Greene, Sackett, Simmons, and George.
12. Silk and silk goods	July 1 (2 p. m.)	Sackett, chairman, Greene, Bingham, Simmons, and George.
13. Rayon manufactures	July 8	Sackett, chairman, Greene, Bingham, Simmons, and George.
		Subcommittee No. 4, room 412 Senate Office Building
14. Papers and books	June 13	Deneen, chairman, Couzens, Keyes, Walsh (Mass.), and Thomas (Okla.).
4. Wood and manufactures of.	June 17	Couzens, chairman, Deneen, Keyes, Walsh (Mass.), and Thomas (Okla.).
15. Sundries	June 25	Keyes, chairman, Couzens, Deneen, Walsh (Mass.), and Thomas (Okla.).

NOTE.—Hearings on "Valuation" will be conducted before the full committee June 12. All ..... will commence at 9.30 a. m. unless otherwise noted. Hearings on free list, administrative, and miscellaneous provisions will be conducted before full committee at the conclusion of the subcommittee hearings.

Stenographic reports were taken of all testimony presented to the committee. By direction of the committee all witnesses who appeared after the conclusion of the hearings on valuation were to be sworn.

The testimony presented, together with the briefs and other exhibits submitted, is grouped together as far as practical in the numerical order of the House bill, which has made necessary the abandoning of the sequence of the statements and the order of appearance.

In this consolidated volume, which includes briefs and data filed since the publication of the original print, the arrangement of the testimony has largely been preserved, while the new matter has been arranged by sections in the supplement at the end. The index has necessarily been revised to include this new matter.

The hearing on Valuation, which was held before the full committee June 12 and 13, and which was originally printed in a separate volume, has been incorporated in this revised edition of the hearings on Special and Administrative Provisions, of which it is logically a part, and will be found at the conclusion of the other testimony.

ISAAC M. STEWART, *Clerk.*

TARIFF ACT OF 1929

SPECIAL AND ADMINISTRATIVE PROVISIONS

MONDAY, JULY 15, 1929

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met pursuant to call at 9.30 a. m. in Room 312, Senate Office Building, Senator Reed Smoot (chairman) presiding.

The CHAIRMAN. The hour of 9 o'clock and 30 minutes having arrived the committee will come to order. To-day has been set apart for the consideration of special and administration provisions found on page 388 of the House bill, under title 4.

GENERAL STATEMENTS

STATEMENT OF CHESTER H. GRAY, WASHINGTON, D. C., REPRESENTING THE AMERICAN FARM BUREAU FEDERATION

(The witness was duly sworn by the chairman.)

Mr. GRAY. In appearing before you on the administrative and miscellaneous provisions I want to call attention to four topics; and I shall make an effort to be as brief as possible; if I could be uninterrupted I could finish all that I have to say in 15 minutes easily.

The CHAIRMAN. I hope that you will not be interrupted.

Mr. GRAY. The flexible provision, the Tariff Commission, the general proposition of our colonies, and milling in bond are the four administrative provisions which our membership in the Farm Bureau are interested in.

Taking up the flexible provision first, and referring to section 336 of the House bill where it is found, I wish to call attention briefly to our desire in the Farm Bureau that a flexible provision be retained in the forthcoming tariff law. Our membership in the Farm Bureau during the last two years has been more attracted to and interested in the flexible provisions than any other section that even might have included rates. The reason for that is this, Mr. Chairman and members of the committee: During the last two years the farmers have realized that some of their rates were not adequate, and to get the rates raised under the flexible provision, such as the 50 per cent limitation feature, we have been interested before the Tariff Commission in cases on these commodities: Wheat, corn, Swiss cheese,

cherries, maple sirup, maple sugar, butter, milk, cream, flaxseed, fresh tomatoes, canned tomatoes, tomato paste, onions, peppers, eggs, and egg products.

That shows the wide interest of our people in provisions raising the rates on their commodities; and that same indication is reflected now and was reflected over on the House side weeks ago in raising rates on agricultural products by revision. There are two methods, our membership is well cognizant, of rebuilding rates—the flexible method and the revision method; the first being by the Commission; the second being by Congress.

We must state that the flexible provision as in the act and, to a certain extent, as in the bill, does not allow that ease of changing the rates which we desire. In other words, instead of eliminating the flexible provision we want to make it really true to name—flexible in fact; and to make it flexible would like to have incorporated in the language of the bill that this committee reports, among other things, these ideas or devices——

Senator SHORTRIDGE. Addressing yourself to section 336 now?

Mr. GRAY. Yes, sir; section 336 which was section 315 in the act.

In section 315 of the act, and not so much so in section 336 of the bill, too much dependence in gaining flexibility is put upon cost of production. In other words, to get a flexible change in the rate up or down we have had to prove that the cost of production here and the cost of production abroad differed enough to justify a 50 or a 25 or any other percentage of increase or decrease within the 50 per cent limitation.

The fact of it is that it is difficult sometimes, even in our own country, to get the cost of production, although that is not superlatively difficult; and when we go to foreign countries and try to get their costs of production we are in an almost impossible condition.

We want a flexible provision to be so drawn that competitive conditions here and abroad shall be more of a determining factor whether the rate shall be up or down than merely cost of production. In other words, we want to relegate cost of production very largely down towards the end of the factors determining rates up or down and let competitive conditions be the yardstick as to whether a rate should be increased or should be decreased.

Senator REED. Will you describe what you mean by competitive conditions?

Mr. GRAY. Yes. Just merely to state in the law, Senator Reed, that competitive conditions should be the determinator or the yardstick would put the Tariff Commission and everybody else to interminable difficulty in interpreting that. Competitive conditions should be defined by some such language as is in our brief; and I will summarize it as follows:

When the foreign value plus the duty and transportation costs is lower than the domestic value of a like or similar domestic article plus transportation costs, there is one measure to ascertain whether you have competitive conditions.

Another is this. When the price to producers in the principal competing country plus the duty and transportation cost is lower than the cost to the domestic producers of a like or similar article, plus transportation cost.

A third measure, to answer your question, Senator Reed, is that when the stated price commonly known as the price including cost, insurance, and freight, of the imported article at the principal port of entry plus the duty is lower than the American selling price of a like or similar article plus transportation to that principal port of entry.

And there is a fourth yardstick which will be a determinator if you should incorporate some such language as this in the forthcoming act to show what are the competitive conditions; and that is, when the wholesale selling price of an imported article after payment of the duty is less than the wholesale selling price of a like or similar article in the domestic market at the same period of time.

Senator REED. You would allow the President to use his judgment if any one of those factors were present in regard to raising or lowering the duty?

Mr. GRAY. Any one of those would be an indicator of a competitive condition here and abroad; but not the President so much as the Tariff Commission would use any one, any two, or any three or four of those yardsticks to determine if and when competitive conditions exist.

Senator REED. Have you considered the constitutionality of that?

Mr. GRAY. Yes. In what way do you mean, though, Senator?

Senator REED. As to whether that is not a delegation of the constitutional power to tax that is given us by the Constitution.

Mr. GRAY. We are not advocating that the Congress of the United States, which by the Constitution is the revenue-raising body, shall surrender any of its constitutional powers; but we are advocating that as in the Interstate Commerce Commission where you have delegated to that commission the freight and passenger rate proposition subject to your review always, that you delegate in this instance the tariff-making rates to the Tariff Commission, subject to your review, the determining body, in each and every instance. Surrender nothing, but delegate an authority and a detail which the Congress of itself can not attend to.

The CHAIRMAN. You would not let the President, then, decide?

Mr. GRAY. Our position on the flexible provision is this, Senator Smoot, that instead of giving the President more power—and I will give this explanation now rather than putting it later in my plan as I intended to—rather than giving the President more power under the flexible provision, we would absolutely remove him and let the Tariff Commission be not only a fact-finding body, but the determining body, subject to the Congress, in these rates, just like the Interstate Commerce Commission is with regard to freight and passenger rates; like the Shipping Board is, or the Fleet Corporation, in maritime rates; like other governmental bodies have been in other instances, delegated by Congress as an agent to do a particular thing, subject to review by the determining body; that is, the Congress.

We want to take the President out of this picture absolutely, because it is physically impossible for a President of the United States to review accurately the many things which the Tariff Commission will lay on his desk if this flexible provision in this detail is carried forward, because the Tariff Commission being continued, as we have reason to expect it will be, in years to come will have many times as

much work under the flexible provision as it has had down to date; and the President can not give his personal attention to those things.

The Tariff Commission, if it should be made a determining body, subject to review by Congress, of course, as well as a fact-finding body, would have the same powers that these other Federal bodies have in regard to other rates.

Does that answer your question?

Senator SIMMONS. You would give them the sole control over rate-making as is given the Interstate Commerce Commission?

Mr. GRAY. A similar power and authority, yes, Senator Simmons.

Senator SIMMONS. Under that control of rates by the Interstate Commerce Commission we have the highest freight rates to-day that we have ever had in our history.

Mr. GRAY. Yes.

Senator SIMMONS. And, in a great many instances, the most unjust and discriminatory rates that ever were made?

Mr. GRAY. You are right.

Senator SIMMONS. And notwithstanding our experience in that particular, you would have us turn over to this commission the power to fix rates, giving them the same broad power and finality that is given to the Interstate Commerce Commission?

Mr. GRAY. Yes; but if the Tariff Commission, as is the case in your statement relative to the Interstate Commerce Commission, should become too much one-sided in its determinations and that one-sidedness is not corrected, the fault then lies with the determining body, which is the Congress of the United States.

Senator SIMMONS. Let me call your attention to another phase of the proposition. You would authorize them to investigate and determine which one of the several methods of testing competition should be selected, but you would require them always to make that comparison, for the purpose of determining whether competition is there or not, with the selling price in the United States?

Mr. GRAY. I believe that is true according to the summary I gave here a while ago.

Senator SIMMONS. Regardless of whether that selling price is a fair price or an extravagant and confiscatory or trust-controlled rate.

Mr. GRAY. May I offer this explanation before you finish your question, please? The matter of competition in making the American selling price might be our safeguard.

Senator SIMMONS. Do you not make the American selling price, without regard to whether it is a fair or just price to the American people, the absolute standard upon which you are to test this question of competition?

Mr. GRAY. The brief which we filed, Senator Simmons, in our first appearance before this committee on valuation, brought up this same question which you have in your inquiry of this moment. In that brief we, for the Farm Bureau, took a position in favor of the domestic basis of valuation which is, as defined then, to ascertain value on the domestic wholesale selling price.

Senator SIMMONS. But what I want to ask you is, do you want to give the commission at the same time you give them the power to fix the price of the foreign product, the power to determine whether the domestic price is a fair price?

Mr. GRAY. Yes.

Senator SIMMONS. Does your proposition involve that? They are to determine whether it is a fair and just price to the American people, a standard of price that ought to be maintained by the Government through legislation, price fixing?

Mr. GRAY. Some function of government must have the power, either the Congress itself, which it is now exercising in forming this revision, or some commission like the Tariff Commission must have the power and authority to find what the domestic value is. I do not see how you are going to get away from that in determining rates.

Senator SIMMONS. I understand that. You want them to find what the domestic selling price is, and I am insisting that if your proposition be adopted it should also provide that they should ascertain for the purpose of working out a solution of this problem whether the American selling price which they are trying to protect is a fair price to the American consumers. You have not included that in your statement of a little while ago.

Mr. GRAY. I would expect, Senator Simmons and gentlemen of the committee, that the language along this line, if the committee desires to go the way the Farm Bureau is recommending, would include some such terminology as to describe this American selling price or this domestic value to be a fair selling price or a fair value.

Senator SIMMONS. In other words, they should fix the price at which the American product should be sold?

Mr. GRAY. It would be merely an ascertainment of the price after competition fixed it.

Senator SIMMONS. And then it should determine what would be a fair American price?

Mr. GRAY. They should have that power and authority. But it is merely the ascertainment of the price after it has been fixed by competition.

I have referred in answering Senator Reed——

Senator SIMMONS. That would be about the broadest power that this Government has ever conferred upon a commission.

Mr. GRAY. No broader, I believe, than you have already conferred upon the Interstate Commerce Commission or upon the Shipping Board.

Senator SIMMONS. I think it is. But go ahead. I do not want to interrupt you too much.

Mr. GRAY. Owing to our two years experience with this flexible provision in many cases before the Tariff Commission, we want as many steps taken out of its flexibility as can be taken out by legislation, and we would rather go before a commission like the Tariff Commission, knowing that that commission is not only a research body, but a definitive body as well, subject to review by Congress, so that whenever we have made our case or failed to make it, the Tariff Commission has the determination in its own power——

Senator SIMMONS. Let me ask you another question.

Mr. GRAY. Let me conclude my thought, Senator.

Senator SIMMONS. Yes; certainly.

Mr. GRAY. Whereas, under the present system, if we have to go before the Tariff Commission, not only agricultural people but industrial as well, feeling that the commission makes recommendation to the President, the President not having time to study the proposition, and giving a determination in most cases identically in line with what

the commission reports, anyhow, it just adds another point of delay and brings in the political element much more than if we could have a non-partisan commission sitting upon these different questions.

Senator SIMMONS. Suppose, then, it be conceded that we would give the commission no broader powers than we have given to the Interstate Commerce Commission, I wish to ask you as a representative of the farmers, has the Interstate Commerce Commission worked out its freight rate proposition to the satisfaction of the farmers of this country?

Mr. GRAY. No.

Senator SIMMONS. In assessing the value of railroads have they made an assessment of value of railroads for the purpose of determining rates that is satisfactory to the farmers of this country?

Mr. GRAY. We are constrained to believe that the valuation of the railroads contains a lot of water—that is, their valuation is too high.

Senator SIMMONS. That is the result of the commission's work in fixing the valuation of railroads.

Now, in fixing the valuation of rates this same thing has happened, has it not, that has been very unsatisfactory to the farmers?

Mr. GRAY. That is very largely incident to the question of valuation.

Senator SIMMONS. But you are evading the question.

Mr. GRAY. No; I do not think so.

Senator SIMMONS. Has not the determination of rates or the fixing of the values upon which rates are to be based by the Interstate Commerce Commission been wholly unsatisfactory to the farming interests of this country?

Mr. GRAY. Not wholly, but to a great extent they have been unsatisfactory.

Senator SIMMONS. I will accept your qualification. To a very large extent?

Mr. GRAY. You are right.

Senator SIMMONS. That is, they are complaining that justice has not been done them, that justice has not been done the people of this country and that that system has not worked satisfactorily at all?

Mr. GRAY. But my query reflecting the thought of our membership as expressed in resolutions from 1922 down to and including 1928, not in rebuttal, but in connection with the discussion now going on, is, How much better would the rates have been handled if the President had been the determining factor and the Interstate Commerce Commission had been compelled to refer its own findings to the President? Would not the result have been the same? In other words, by the Tariff Commission acting under the flexible provision of the act of 1922, with the President being in the picture, has that been any safeguard in any way toward protection of the American people? Would it have been any safeguard in the Interstate Commerce Commission if the President had been the determinator rather than the Interstate Commerce Commission?

We think it would not have been a safeguard any more than to let the commission itself do this work. And then, frankly, as I said a while ago, gentlemen of the committee, if the Interstate Commerce Commission, if the Shipping Board, if the Tariff Commission run out of bounds in their determinations, the authority which created them,

the Congress of the United States, has full authority to step in at any time and by law correct the commission, revise its findings and set things on the right track. The Congress has not done that yet in the case of freight and passenger rates.

Senator BINGHAM. But we are doing it in the case of the tariff right now?

Mr. GRAY. You are doing it right now, and periodically it should be done, no doubt.

Senator BINGHAM. We can do it whenever we do not think the President has set the rates right. Wherein do you gain anything by taking out the representative of the people in the person of the President as a check on the commission, when the commission, like all other commissions, proceeds to get arbitrary?

Mr. GRAY. You gain this, Senator, if nothing more: You gain one step more toward flexibility, because you have to go only to the Tariff Commission to get your flexibility, if you prove your case, subject only to a review by Congress; whereas, leaving the President in, you lose weeks and months before the case can be finally determined, ordinarily, and just delay determination of whether a rate should go up or down, as the case may be, until sometimes the emergency or the condition which requires the increasing or lowering of the rate has gone by or has done its harm. You would gain speed; and parenthetically I should say you would also take the political phase out of a fact-finding and research work, which is the attitude that all of us take when we go before the Tariff Commission. We do not go there as politicians; we go there as men who have facts and research for the commission to determine upon, and you would take the political phase out of it very largely.

Senator BINGHAM. But if the people of the United States decide that they want a tariff for revenue only and elect a President that promises to give them that, and he comes into office, and can not do anything with the Tariff Commission, then where are you?

Mr. GRAY. The President, under the Myers case, decided by the Supreme Court a year ago, can do almost anything he wants to in remaking a Federal Board at any time without stating the cause or referring the matter to the Senate.

Senator BINGHAM. Then you are going to give the President power to make these rates anyway, because if the commission does not make them the way he wants them to——

Mr. GRAY. He has jurisdiction over every member of the commission.

Senator BINGHAM. Then I do not see that you gain anything by taking away from the President the power to review their decisions.

Mr. GRAY. We lodge in the Congress of the United States the supervisory and regulatory power behind and superlative to the power of the agent, the Tariff Commission; so that the Congress, by the Constitution, is the revenue-making body and does not delegate to any agent—the President of the United States, for instance—who ordinarily is considered to be of more importance than the Congress——

Senator BINGHAM. But you do not expect us to sit here every summer and revise the commission's decisions, do you?

Mr. GRAY. No. Our purpose, Senator Bingham and members of the committee, our purpose in advocating a truly flexible provision

is that Congress, less often in the future than the past, will need to tinker with the tariff; but it will be done gradually day by day as economic conditions change, either as they require increases or decreases; and Congress, if this provision is made truly flexible, will be less involved in tariff revision in the future than in the past.

Senator BINGHAM. Can you guarantee that this regulatory function that you are leaving to Congress will not have to be performed in the middle of the summer?

Mr. GRAY. No.

The CHAIRMAN. I think we all understand your position on this question.

Senator HARRISON. I am wondering if you have taken into consideration the fact that we have now given the President three secretaries where he formerly had but one.

The CHAIRMAN. That has a great deal to do with the administrative features of the bill.

Mr. GRAY. We do not know what the secretarial departmentalization at the White House will result in eventually, but at the present time, Senator Harrison, I can only surmise that it will not speed up the decisions of cases referred to the White House from the Tariff Commission.

The next thing we have for your consideration, not giving any more attention to the flexible provision, although there are several other details here that could be called to your attention, is the Tariff Commission.

The CHAIRMAN. You may put them in the record.

Mr. GRAY. If I may, in the brief; thank you.

The Tariff Commission. That subject has been covered partially in the colloquy that has just been had by members of the committee. We want a nonpartisan body of seven men drawing $12,000 salary each per year, subject to a term of office of length sufficient that when a man has experience by work incident to his position, the people of the United States can capitalize on that efficiency. In other words, referring to that last proposition, we do not like the provision of the House bill now lying before you which virtually legislates the commission out of a job.

In the Farm Bureau we never have taken a position on any proposition trying to legislate a member of a commission out of his position. We know, as I explained to Senator Bingham a while ago, that the President has complete control over all members of all commissions owing to a decision of the Supreme Court a couple of years ago; and I can not see, in view of that, why it is necessary now to adopt the language of the House bill which virtually requires the President to rebuild the Tariff Commission. We have men on that commission—and I am not speaking in a critical or in a commendatory way—we have men on that commission whose experience might be presumed to be valuable; and if there is going to be a change let it be gradual, at the termination of office or otherwise at the President's desire; but do not put it into the bill in such a way that he practically has to rebuild it.

Senator SHORTRIDGE. Could he not reappoint, under the bill as framed, or continue on any incumbents?

Mr. GRAY. He could retain, if he wanted to, any of the present incumbents.

That is all I have to say about the Tariff Commission.

Senator SIMMONS. In what sense do you use the phrase that the President has complete control of these commissions? Of course, he appoints them to office and the Senate confirms the appointment; but how does that give him complete control of them unless the act specially gives him control, which I think probably this act would do, with reference to the commission hereafter to be appointed? As I understand it, he would have the power not only to appoint but to remove at will, practically.

Mr. GRAY. The expression or term "complete control."

Senator SIMMONS. That does not apply to any other commission that I know of. Has he the power to remove arbitrarily a member of the Interstate Commerce Commission or any other commission? I would like you to explain what you mean when you say that the President has control of all of these commissions. That is a very broad term. It means probably their decision as well as their membership.

Mr. GRAY. In using the term "complete control" with reference to the President's power over a member of any commission at Washington, I am referring to the decision of the Supreme Court in what I believe is called the Myers case wherein it was contested relative to the authority of the President to remove a Federal employee whom the Senate had confirmed, without stating the cause; and the Supreme Court determined that the President had the power to remove, without stating the cause, a Federal appointee even though that appointee to get his position had to be confirmed by the Senate. In that way I am using the term "complete control" relative to the fact that the President, if he is displeased or becomes displeased with the policy of any commissioner on any commission, can remove him and appoint a successor, referring to the Senate, of course, the confirmation of the successor named, but not asking the Senate's consent in removing the old commissioner. That is what I mean by complete control.

Senator SIMMONS. You think that the power to remove carries with it the power to control?

Mr. GRAY. Yes; the power of removal in that way would carry with it the power of control.

Senator SIMMONS. This bill gives him the power to appoint, with the consent of the Senate, and then the power to remove without the consent of the Senate. You think that gives him complete control of the commission?

Mr. GRAY. The bill does not give that; the decision of the Supreme Court gives him that power.

Senator SIMMONS. I am talking about the Tariff Commission. He will have the power to appoint?

Mr. GRAY. Yes.

Senator SIMMONS. And the power to remove?

Mr. GRAY. Yes.

Senator SIMMONS. And that, you think, gives him control of the commission?

Mr. GRAY. It gives him control of the policies of any commission if he wants to exercise that control.

Senator SIMMONS. Is it your conclusion that by virtue of that control he can control the decisions of the board?

Mr. GRAY. Yes and no. He can control the decisions if they become so flagrant in his mind that he needs to rebuild the commission's personnel in order to get the decisions he desires. Just as Congress, in the freight rate proposition that we were speaking of a while ago, or in the tariff rates that we are speaking of now, if it finds that the Interstate Commerce Commission, or the Tariff Commission is flagrantly out of keeping, can control the commission by the exercise of congressional authority, so the President can control a commission in its decision by the power of removal and reappointment.

Senator SIMMONS. If your theory is correct, that would make those boards merely the agents of the President in carrying out a policy or plan.

Mr. GRAY. I think it so to be at present; and I am not sure but that they should be reflective of the administrative point of view.

Senator WALSH. Do you favor the removal of the 50 per cent limitation for the present?

Mr. GRAY. I was going to refer to that, Senator Walsh, and now I shall refer to it at your question. To make this truly flexible, we think the 50 per cent limitation should be eliminated. If it requires a 75 per cent adjustment up or down, make it.

Senator SACKETT. What would you say as to the free list?

Mr. GRAY. Transfer either to or from the free list or the dutiable list.

We want this thing flexible, Senator Sackett, in the truest sense of the word. You can see from my explanation that the membership of the Farm Bureau is pinning much of its future tariff hopes, in addition to what we get here in the revision, on our arguments before the Tariff Commission. If we can not make our case there, we will not get the decision our way, of course.

Senator BINGHAM. There would be quite a rush to get on the commission if they were made up the way you wanted them, would there not?

Mr. GRAY. How do you mean?

Senator BINGHAM. I mean, there would be a good many interests that would be particularly anxious to be represented on the commission.

Mr. GRAY. That has always been so, so far as I know.

Senator BINGHAM. That is one of the troubles with the commission form of government, is it not?

Mr. GRAY. That is a trouble with the commission form of government. I do not know that you can remedy that condition, Senator Bingham, by statutory regulation.

Senator CONNALLY. You do not think that in the contest for those places the Farm Bureau would ever get any of them, do you?

Mr. GRAY. It never has asked for one.

Senator CONNALLY. You say, though, that there would be a scramble for those places, and you have your hopes of influencing the commission with your arguments, and so forth. You really do not seriously think that they would put a farmer or a representative of the Farm Bureau on the Tariff Commission, do you?

Mr. GRAY. They might.

Senator CONNALLY. They might—that is true; they might.

Mr. GRAY. If the questions which the committee members want to ask relative to the Tariff Commission and the flexible provisions are finished, the next thing is the general approach to our colonies or dependencies or protectorates.

What I shall say has no relation to Hawaii and Alaska, because they are Territories and in the way of becoming States, are part of the revenue system of our Government, participate in the Federal aid that the Government is giving now for many enterprises, and so are integral parts of our consitutional Government. But when we refer to the Philippines, Porto Rico, and other island possessions we are on a different constitutional ground, so I am informed, which will permit us to levy on the products of these so-called colonies the same rates of duty in tariff matters which are applicable to the rest of the world; and our position is that commodities coming to us from the Philippines—and what I say relative to the Philippines applies to Porto Rico as well—should bear the same rates of duty that prevail in the bill applicable to the world.

Senator BINGHAM. When you use the word "colonies," do you have in mind the attitude of Great Britain toward her colonies in 1775?

Mr. GRAY. Somewhat of that historic significance attaches to our use of the word "colonies." Answering your question a little bit more fully, the farmers in the United States for whom I speak partially —others speak for other groups of agriculture—have come to believe that a tariff law adopted at the present time, even though the rates may be high on farm crops, if adopted at the same time that an era of colonization is initiated or continued, means very little to agriculture.

Senator BINGHAM. Do you consider Porto Rico to be a colony?

Mr. GRAY. Yes.

Senator BINGHAM. Where does Porto Rico buy most of her food?

Mr. GRAY. She raises most of it herself.

Senator BINGHAM. Where does she buy most of what she imports?

Mr. GRAY. From the United States.

Senator BINGHAM. Does that interest the farmers at all?

Mr. GRAY. To a certain extent. She makes a good market for a part of our commodities, of course.

Senator BINGHAM. What is the chief food of the ordinary citizen of Porto Rico in the interior, imported or domestic-raised?

Mr. GRAY. I imagine it would be flour. I am sure I do not know.

Senator BINGHAM. How much flour do they raise in Porto Rico?

Mr. GRAY. Very little—none.

Senator BINGHAM. None; and that is his chief food, you say?

Mr. GRAY. Yes.

Senator BINGHAM. And it comes from the United States?

Mr. GRAY. Yes; to a certain extent.

Senator BINGHAM. He imports most of his food from the United States?

Mr. GRAY. And he exports almost wholly agricultural commodities to the United States?

Senator BINGHAM. How much Porto Rican coffee do we use in the United States?

Mr. GRAY. We get most of our coffee from Brazil.

Senator BINGHAM. Yes; but that is not the question I asked you.

Mr. GRAY. I do not know. I can not give that figure.

Senator BINGHAM. Porto Rico's principal agricultural crop is coffee. Where does she send most of it? You say to the United States?

Mr. GRAY. I can not give you that figure. I do not know. We are interested in the Porto Rican situation very largely on the sugar basis.

Senator BINGHAM. As a matter of fact, she sells most of her coffee to Europe, to Spain and France.

Mr. GRAY. I was not informed about that. We are not interested in the exports of coffee so much, because they are not directly or even indirectly competitive with what we raise.

Senator BINGHAM. But you are interested in the food that is exported from here to Porto Rico?

Mr. GRAY. We are; and the question in that regard might be, would not Porto Rico, if established on her own economic foundation 10 years from now, be happier if our rates of duty were applied to her commodities, so that she will be constrained to develop her markets elsewhere than exclusively in the United States?

Senator BINGHAM. I see. Following out your former reference to the colonies of Great Britain, you are advocating independence for Porto Rico and the Philippines so that they may be on an absolutely independent economic basis, and not bother us in the tariff law?

Mr. GRAY. That would be preferable to the present condition.

Senator BINGHAM. Then you are for Porto Rican independence?

Mr. GRAY. We have no official position on that subject.

Senator BINGHAM. Do you not think it would be wise if you took one?

Mr. GRAY. I think this, Senator—that if this Congress, now writing a tariff bill, does not give different treatment to Philippine products than that which was given in the act of 1922, wherein Congress declared its absolute right to levy rates of duty against Philippine products and then excluded them all from the imposition of such duties, this winter, when many farm organizations get together in their own annual meetings, there will be a sort of a flood of resolutions in favor of Philippine independence.

Senator BARKLEY. Not based upon principle, but upon economics?

Mr. GRAY. Upon economics. Stating it briefly, if Congress does not settle this question of tariffs on crops from our colonies, whether those crops be directly or indirectly competitive to us, the farm organizations in self-defense, and in order to get the benefits from tariffs which we can not get much benefit from when stuff comes in duty-free from colonies, will this winter be required to advocate independence.

Senator BINGHAM. In other words, you would haul down the flag in Porto Rico and the Philippines rather than continue relations with them under the flag?

Mr. GRAY. It is not a question of hauling down the flag.

Senator BINGHAM. How are they going to get independence if we do not haul down the flag?

Mr. GRAY. It is a question of preserving the economic independence of the American farmer.

Senator BINGHAM. How are they going to get independence if we do not haul down the flag?

Senator SHORTRIDGE. That is merely a play upon words.

Mr. GRAY. We will retire from those countries as the governing body, not immediately but in time, so that they can take over their own authority as a full-fledged independent nation. This does not mean that this independence is going to transpire next year or next month. It may, as President Roosevelt said 25 years ago, take a generation to accomplish that. A generation has elapsed since he said that, and still the Philippines are not independent. It may take another generation to get them on their feet, where they can stand independently as a recognized nation of the world; but in the meantime are we going along coddling them, if I may use that expression, letting them have a preferential market in this Nation of ours, so that when they do want independence the economic severance will be so severe that they will not dare take the political one? In other words, are we going to give them our markets and not encourage them to develop markets all over the world, so that economically they will be denied the privilege of ever being politically independent?

Senator EDGE. That is about all that we have given them up to date, is it not—a little chance to do business with us?

Mr. GRAY. A little chance to do business with us?

Senator SHORTRIDGE. We have given them a great deal more than that.

Senator SIMMONS. Mr. Gray, you want us to apply to the Philippines the same duties that we apply to all countries?

Mr. GRAY. Yes.

Senator SIMMONS. With a view to restricting the importations to this country from the Philippines?

Mr. GRAY. Partially with that view, and partially, as I have just explained, so that they will develop other markets, and make it possible for them to secure political independence at some future date.

Senator SIMMONS. Do you not know that whenever they stop buying from us we will be rather disposed to get rid of them?

Mr. GRAY. That will hasten the development.

Senator SIMMONS. If we stop them from selling to us, we may stop them from buying from us; and I just want to ask you if you do not think, if we stop them from buying from us, we will want to get rid of them pretty soon?

Mr. GRAY. Perhaps, Senator Simmons——

Senator SIMMONS. Is not that practically the only reason why we are keeping them?

Mr. GRAY. I was going to say that perhaps the most forceful reason why we find an advocacy in our Nation for retaining the Philippines is that they make a good market for industrial products. Perhaps that is the most potent reason for retaining them—that they make an industrial market.

Senator SIMMONS. Mr. Gray is admitting, as I understand him, that the most potent reason why we retain them is because they buy from us, and yet he wants to put them in a position where they probably may not be able to sell to us because of our prohibitive tariff.

Senator SHORTRIDGE. They can buy anywhere to-day.

Senator SIMMONS. Of course they can buy anywhere; but when they stop buying from us we shall be very apt to feel like getting rid of them.

Senator SHORTRIDGE. Senator Simmons, you are familiar with the dispatches that passed between President McKinley and our commissioners in Paris when they were negotiating the Treaty of Paris with Spain.

Senator SIMMONS. My memory is not as good as yours.

Senator SHORTRIDGE. I am sure you know that President McKinley and our commissioners never agreed to that treaty, taking over jurisdiction of the Philippines, because of purely commercial reasons, or in order that we might sell to them or they sell to us. There were other great questions discussed and reasons given for entering into that treaty, quite apart from the commercial considerations.

Senator SIMMONS. Do you not think those are the only reasons we are holding them for now, after 30 years?

Senator SHORTRIDGE. I do not. I do not think that commerce is the reason.

Senator SIMMONS. Well, I disagree with you about that; and that is th end of that controversy.

Senator REED. Mr. Gray, do you class Porto Rico as in all respects on the same footing as the Philippines in this matter?

Mr. GRAY. No. There are differences between the legal or constitutional status of Porto Rico and the Philippines.

Senator REED. And under this bill there is a vast difference.

Mr. GRAY. Yes.

Senator REED. This bill puts a duty on imports into Porto Rico. It does not put any duty on imports into the Philippines.

Mr. GRAY. I know.

Senator REED. Porto Rico is part of the United States as much as one of the 48 States is; and it is our duty to legislate for the benefit of the farmers of Porto Rico just as much as it is for the benefit of the farmers of Hawaii or Florida or Virginia.

The CHAIRMAN. I disagree with you, Senator, that Porto Rico has exactly the same status as one of the States of the Union.

Senator REED. I did not say that. If I had, there would be more ground for disagreement.

Mr. GRAY. May I disagree kindly with Senator Reed, too? It is not even on the status of a territory.

Senator REED. It is part of the United States, and the Porto Ricans are American citizens, and as such they are entitled to our consideration like other American citizens.

Mr. GRAY. These things that I am referring to we may be in error about, because it is possible for anybody to be in error until some final judicial body passes upon them; but the Tariff Commission, and, if I am not mistaken, the Customs Court, have decided that for tariff matters Porto Rico is not a part of the United States, and that in revenue matters Porto Rico is not a part of the United States.

The CHAIRMAN. Did not the Attorney General make a decision to that effect?

Mr. GRAY. I could have cited the Attorney General as well.

Senator REED. The fact remains that this tariff bill applies to imports into Porto Rico.

Mr. GRAY. That is true.

Senator REED. That the Porto Ricans are American citizens, and, being American citizens, are as much entitled to our consideration as any other American citizens.

Mr. GRAY. Well, that is a point of view, of course.

Senator REED. Your point of view is the contrary, is it?

Senator BINGHAM. What is the difference between an American citizen who happens to live in Porto Rico and one who happens to live in Connecticut?

Mr. GRAY. In political rights, no difference at all, if he is an American citizen.

Senator BINGHAM. They are American citizens.

Mr. GRAY. Not for revenue matters and for tariff matters, according to the decisions which I have given to you, which decisions, I confess, may be overcome by a superior decision of the Supreme Court or of the Congress itself.

Senator BINGHAM. But what right have we to take away from the American citizens in Porto Rico any privileges that they now enjoy?

Mr. GRAY. I am not seeking to take them away; but I am denying that according to the decisions we have down to date on revenue and tariff matters a Porto Rican is an American citizen, or that the Porto Rican Government is a part of the Federal Government. I say that in revenue matters and in tariff matters the Porto Rican Government is not a part of the Federal Government.

Senator BINGHAM. Any more than Massachusetts or Virginia was a part of the British Government in 1770?

Mr. GRAY. Well, perhaps not as much as they were a part of the British Government at that time. They were taxed without representation; but the revenue system of the island of Porto Rico is not a part of the revenue system of the Federal Government. The revenue system of the Philippine Islands is not a part of the revenue system of the Federal Government. When you get to Hawaii and Alaska, you are on an entirely different foundation.

The Cuban reciprocity treaty comes in this sort of a consideration. I do not know what this committee or what this Congress can do about it. It is a separate instrumentality of Congress in the way of a treaty; but what I have said relative to letting crops and commodities come in duty-free, or at preferential rates, applies also to Cuba. Tobacco and sugar come in from Cuba of an agricultural nature. We raise lots of tobacco and sugar, the growers of which are desperately situated now, largely because of Cuban competition; and Cuba has a preferential rate, a preferential entry into our markets. To end this Cuban situation we advocate terminating that reciprocal trade agreement. A similar conclusion applies to the Philippines, which take in industrial imports 80 per cent from us, and sell to us in farm exports 95 per cent; so that we must advocate in regard to the Philippines that we farmers be not made to compete with the 95 per cent of Philippine exports which are agricultural.

Passing on, now, to the milling in bond provision, I shall finish: The House, by amendments from the floor, terminated the privilege of sending flour to Cuba under the preferential trade agreement unless such flour coming in in bond, mostly from Canada, should pay, when exported, a rate of duty equal to the preferential rate to the country to which the flour is being exported. It applies to Cuba, although Cuba is not named in the amendment.

Here is the situation: Canadian wheat comes into our mills and is ground in bond. Then this same Canadian wheat has the privilege of the trade preference with Cuba, the reduced rate; and it goes down

to Cuba as flour, and supplies the Cuban market very largely to the exclusion, of course, of American wheat and American flour. The House amendment requires this Canadian milled-in-bond flour, when shipped to Cuba, to pay a rate of duty equivalent to the decrease which Cuba has in a reciprocal trade agreement. That should be continued, in our estimation, in the Senate bill.

I have concluded.

(Mr. Gray submitted the following brief:)

BRIEF OF THE AMERICAN FARM BUREAU FEDERATION

The American Farm Bureau Federation submitted a lengthy brief to the Ways and Means Committee of the House of Representatives on February 25, 1929 in which various recommendations were made together with an extended analysis of the reasons for these changes.

In order to avoid unnecessary repetition of arguments and data, the attention of the Finance Committee is respectfully invited to the information submitted in this brief which is to be found on pages 9765-9783, Vol. XVI, Hearings on Tariff Readjustment, 1929, Ways and Means Committee, House of Representatives.

For the information of the committee, however, the recommendations of the American Farm Bureau Federation are summarized as follows:

THE FLEXIBLE PROVISION

The basic principles of the policy of the American Farm Bureau Federation concerning the flexible provision are set forth in the following resolutions:

Resolution of annual convention in 1922:

"*Resolved*, That the American Farm Bureau Federation favors the immediate and thorough investigation by the Tariff Commission of tariff rates on all imports, which the farmers buy, and an immediate reduction of excessive rates to such lower levels as shall only equal the differences in the cost of production here and abroad."

Resolution of annual convention in 1923:

"We believe that the making of tariff schedules is of such great importance that the United States no longer can afford to permit it to be subjected to political determination. We urge a vigorous, continuous study by the Tariff Commission with added authority to change schedules as changing conditions warrant."

Resolution of annual convention in 1925:

"We request the Tariff Commission to make a study immediately of the costs of frozen eggs, egg meats, and dried eggs in this country and in China, with a view to increasing the tariff the full 50 per cent allowed under the flexible provisions of the tariff law."

Resolution of annual convention in 1927:

"We recommend that the flexible provision be changed so that the United States Tariff Commission can be in a position more efficiently to serve agriculture in the cases before it * * * We commend the Tariff Commission for its studious attention to, and fair consideration of, the agricultural cases recently decided and now pending."

Resolution of annual convention in 1928:

"It is indispensably necessary that flexibility be provided in tariff rates no matter how accurately such rates may be estimated in the writing of the tariff act. Economic conditions change which require an elasticity which will permit corresponding changes in the rates of duty. There must be continuously in the Federal Government a tariff commission under the administration of which this elasticity can be secured. This commission should be nonpartisan and the members thereof should be appointed for such a term of years as will give continuity in the carrying our of the policies of our tariff laws and will secure eventually scientific and economic revision of tariff rates rather than revision of a political matter, which has been up to the present time too much in evidence."

Since the enactment of the flexible provision in the tariff act of 1922, representatives of the American Farm Bureau Federation have participated in 13 cases before the United States Tariff Commission under this provision, involving the following products: Wheat, corn, Swiss cheese, cherries, maple sirup, and maple sugar; butter, milk and cream, flaxseed, fresh tomatoes, canned tomatoes and tomato paste, onions, peppers, eggs and egg products. Participation in these cases has given an opportunity for first-hand observation of the operation of the

flexible provision in so far as it affects agriculture. In addition, a careful study has been made of the provisions of Section 315 as well as the operation of this section in actual practice.

The following conclusions and recommendations are respectfully submitted concerning the flexible provision:

(1) Flexibility in our tariff is necessary in order to make possible a stabilized protective system through adjustment of the rates upward and downward to meet rapidly changing conditions without necessitating a general tariff revision every time a few rates need adjustment.

(2) The principle of a flexible provision has justified its existence during the past seven years and should be continued.

(3) Various modifications to secure greater flexibility and to improve the operation of the flexible provision should be provided.

(4) Experience has shown that the existing language of section 315 is not sufficiently flexible because:

(a) Adjustments are confined mainly to ascertained differences in the cost of production, which are not always ascertainable and which are not always truly indicative of competitive conditions.

(b) The method of computing transportation costs is not defined but is left subject to administrative interpretation; the determination of this method often is the deciding factor as to whether an increase or a decrease is warranted.

(c) There is no authority for transferring articles to and from the free list.

(d) There is no definition of the term "like or similar article."

(e) The complicated, technical processes involved in carrying out the present cost of production formula results in long delays and tends to arouse foreign resentment.

(f) The 50 per cent limitation upon the power to change rates of duty is often inadequate to give proper protection.

5. Instead of being abolished, the flexible provision should be improved and strengthened.

6. Injurious competition should be the primary basis for adjustments through the flexible provision rather than ascertained differences in cost of production.

7. What constitutes injurious competition should be defined in the act and should include the following:

(a) When the foreign value plus the duty and transportation costs are lower than the domestic value of a like or similar domestic article plus transportation costs.

(b) When the price to producers in the principal competing country plus the duty and transportation costs is lower than the cost to the domestic producers of a like or similar article plus transportation costs.

(c) When the delivered price (commonly known as the price including cost, insurance, and freight) of the imported article at the principal port of entry for the article under consideration as ascertained by the commission from consular invoices and other sources of information, plus the duty, is lower than the American selling price of a like or similar domestic article plus the transportation and other charges to the same point.

(d) When the wholesale selling price of the imported article after payment of the duty is less than the wholesale selling price of a like or similar domestic article, in the same domestic market during the same period of time.

(e) When the cost of production of the article in the principal competing country plus the duty and transportation cost is less than the cost of production plus transportation costs of a like or similar article in the United States.

8. The method of computing transportation costs should be specified in the act and should be based on the cost of transporting the imported article and a like or similar domestic article from the principal competitive areas of production to the principal port of entry of the foreign article into the United States.

9. The 50 per cent limitation upon the power to change rates of duty should be eliminated and the rates adjusted to whatever extent is required to offset injurious competition.

10. Authority should be granted through the flexible provision to transfer articles to and from the free list following the ascertainment of appropriate information concerning injurious competition or the absence of injurious competition.

11. The President should be eliminated from the rate-changing powers under the flexible provision, in order to assure a more nonpartisan adjustment of rates and to eliminate delays which this procedure necessarily involves.

12. The term "like or similar" article should be definitely defined in the act. The definition provided in section 336 (g) (2) would make a bad situation worse

by making it increasingly easy for importers to block action through the technicality that the imported article is not like or similar to any domestic article. The following definition is suggested:

"For the purpose of this section an imported article shall be construed to be 'like or similar' to articles wholly or in part the growth or product of the United States whenever these articles are regarded in the usual trade channels as like or similar articles in the commonly accepted meaning of these terms, or whenever these articles are used for the same purpose; but differences in grade or quality of the imported article and the domestic article shall not be construed to prevent their comparison as 'like or similar' articles for the purposes of this section, provided due consideration is taken of differences in grade or quality, as these may be reflected in costs of production and prices."

13. The commission should be given specific authority to utilize for the purpose of the flexible provision information obtained from other agencies which in the judgment of the commission is of a reliable nature.

14. Cases instituted under the flexible provision should be required to be completed within not less than 12 months after the date of the filing of the first application for a change in the rate. Provision should be made that, wherever this is found to be impracticable, public notice should be given promptly to this effect together with the reasons therefor.

THE UNITED STATES TARIFF COMMISSION

The recommendations of the American Farm Bureau Federation concerning the United States Tariff Commission may be summarized as follows:

1. The membership on the commission should be increased to seven members in order to prevent time consuming dead locks and to promote administrative efficiency.

2. Inasmuch as the tariff is nation-wide in its importance and effect, regional representation should be provided upon the commission so that each section of the country will be represented by one commissioner from that region. (See suggested plan for regional representation, p. 9774, Hearings on Tariff Readjustment, 1929, Ways and Means Committee.)

3. Membership on the commission should be on a non-partisan rather than a bi-partisan basis, and emphasis should be placed upon qualifications to fulfill the duties of the office rather than upon partisan affiliations.

4. The salaries of the commissioners should be raised to $12,000 per annum, thus placing them on a parity with other government commissions.

5. These suggested changes with reference to the Tariff Commission should be instituted gradually and not in such manner as to legislate the present commission out of office and to make possible thereby a complete change in personnel. The House bill, H. R. 2667, does legislate the commission out of office and makes it necessary for the President to reorganize the entire commission.

THE PHILIPPINE ISLANDS AND OTHER INSULAR POSSESSIONS

The American Farm Bureau Federation recommends with respect to the Philippine Islands and other insular possessions that imports from that country be made dutiable at the same rates as imports from other countries. This policy is embodied in a resolution adopted by the annual convention of the American Farm Bureau Federation at Chicago, December 10, 1928, which is as follows:

"We urge that the situation regarding entry of sugar into the United States be brought to the attention of members of Congress without delay, and we respectfully ask them to use their best efforts to place a limit on the free entry of sugar from the Philippines and Porto Rico to a point which will guarantee reasonable protection to the United States sugar industry; and that the tariff rate against all foreign sugar be increased so as to give adequate protection to this great American enterprise."

The principal reasons for assessing full rates of duty on products from these insular possessions may be summarized as follows:

(1) Free entry of goods from the Philippines and other insular possessions to a large extent nullifies or impairs the effectiveness of duties on various products, principally sugar, coconut oil, and tobacco.

(2) Free trade with the Philippines is injurious to the American farmer because over 80 per cent of our exports to the Philippines consists of industrial products and 95 per cent of our imports from the Philippines consists of agricultural products.

(3) The principle of collecting a duty on the imports from the Philippines is already established in the act of 1922 in section 301 of Title III, but is rendered ineffective by exemptions which permit free entry. The following is quoted from section 301:

"That there shall be levied, collected, and paid upon all articles coming into the United States from the Philippine Islands, rates of duty which are required to be levied, collected, and paid upon like articles imported from foreign countries."

The tariff act of 1902 also provided for the collection of duties on imports from the Philippines, less a 25 per cent preferential rate.

(4) Declarations of various high officials of the United States Government, including President McKinley, Gen. Leonard Wood, former Governor General of the Philippines, and President Coolidge, give support to the expectation that the Philippine Islands are eventually to be given their independence and that they are not to be considered an integral part of the United States.

(5) The term "United States" as it has become established in usage in the courts and legislation does not include Porto Rico as a part. Revenue laws do not apply to Porto Rico. A United States court has ruled that—

"Porto Rico is a territory appurtenant and belonging to the United States but not a part of the United States within the revenue clauses of the Constitution."

Section 313 of the tariff act of 1922, which deals with the refund of duties, does not include Porto Rico, and section 315, which is the flexible provision, contains the added provision "or into any of its possessions," in addition to the words "United States," thus indicating that the latter term does not include the former.

For further information in support of the proposal to collect duties on imports from the Philippines, the attention of the committee is invited to pages 3049–3052, 9778–9780, Hearings on Tariff Readjustment, 1929, Ways and Means Committee, House of Representatives.

CUBAN RECIPROCAL TREATY

The American Farm Bureau Federation further recommends that the United States abrogate the Cuban reciprocity of 1902 whereby each country grants to the other a 20 per cent preferential reduction in the tariff rates below the rates accorded to the rest of the world. This recommendation is based on various considerations which may be summarized as follows:

(1) The treaty has failed to stimulate trade between the United States and Cuba as had been expected. This is shown by the fact that the increase in imports and exports between the United States and Cuba has been smaller than the increases in trade between the United States and many other Latin-American countries.

(2) American agriculture is injured rather than benefited by the prerferential duties between Cuba and the United States because approximately 95 per cent of our imports from Cuba are agricultural whereas only about 31 per cent of our exports to Cuba are agricultural. (See p. 175, Vol. II, U. S. Department of Commerce Yearbook, 1926.)

(3) The United States as a whole is a loser by virtue of this mutual reduction in duties because she purchases about one-half more than the amount of her exports to Cuba. The total value of our imports from Cuba in 1926 was $242,882,000 whereas the total value of our exports to Cuba was $160,052,000 (p. 175, Vol. II, U. S. Department of Commerce Yearbook, 1926).

The United States Tariff Commission has published a summary of its study of the effects of the Cuban reciprocity treaty of 1902 in the annual report of the commission for 1928 (see pp. 37–40).

For further information concerning the reasons for abrogating this treaty with Cuba, the attention of the Finance Committee is invited to the data contained on pages 3052–3055, Hearings on Tariff Readjustment, 1922, Ways and Means Committee, House of Representatives.

MILLING-IN-BOND PROVISION

By amendments approved on the floor of the House of Representatives a new paragraph was inserted in section 311, H. R. 2667 (see p. 359 of House bill), which reads as follows:

"No flour, manufactured in a bonded warehouse from wheat imported after 90 days after the date of the enactment of this act, shall be withdrawn from such warehouse for exportation without payment of a duty on such imported

wheat equal to any reduction in duty which by treaty will apply in respect of such flour in the country to which it is to be exported."

The effect of this amendment is to abolish the advantage which flour milled in bond from Canadian wheat in the United States has over 100 per cent American wheat flour when imported to Cuba.

Under the act of 1922, the milling-in-bond provision made it possible to import wheat into the United States from Canada, free of duty, to mill this foreign wheat into flour, to call it American flour, and when exported to Cuba, it received the same preferential reduction of 20 per cent in the Cuban tariff that 100 per cent American wheat flour received.

This situation gave flour milled from Canadian wheat an advantage over flour composed entirely of American wheat when shipped to the Cuban market, on account of the lower cost of production and lower price of the Canadian wheat as compared with the American wheat. In other words, Canadian wheat imported into the United States in bond for export to Cuba in the form of flour, not only escaped the 42 cents per bushel duty when entering the United States, but also got the benefit of the 20 per cent preferential rate upon entry into Cuba, which was intended for American products, and which it would not have received if imported directly from Canada to Cuba.

This amendment simply means that foreign grown wheat milled in bond in the United States and shipped to Cuba will no longer get the benefit of the 20 per cent preferential rate granted to American exports to Cuba, although it will still receive the advantage of admission free of duty into the United States. A period of 90 days after the date of the enactment of the new tariff act is allowed before this new provision takes effect.

This amendment does not prevent the importation of wheat from Canada free of duty under the milling in bond provision for reexport in the form of flour. It merely seeks to remove the disadvantage which 100 per cent American wheat flour suffers in competition with flour milled in bond from imported Canadian wheat and exported to Cuba.

It is hoped that the Senate Finance Committee and the Senate will give approval to this amendment adopted by the House of Representatives, and retain it in the new tariff act.

ELIMINATION OF DRAWBACK ON WHEAT

No rebates on imported wheat reexported in the form of flour will be given in the new tariff bill, H. R. 2667, if the amendments inserted on the floor of the House prevail.

In the act of 1922, there was a provision, section 313, whereby 99 per cent of the import duties on imported wheat were remitted as drawbacks provided that such wheat were mixed with not less than 30 per cent of domestic wheat and reexported in the form of flour or by-products. The provision in section 313 for the payment of drawbacks, which has been amended, reads as follows in the Act of 1922:

"SEC. 313. That upon the exportation of articles manufactured or produced in the United States with the use of imported merchandise the full amount of the duties paid upon the merchandise so used shall be refunded as drawback, less 1 per centum of such duties, except that such duties shall not be so refunded upon the exportation of flour or by-products produced from imported wheat unless an amount of wheat grown in the United States equal to not less than 30 per cent of the amount of such imported wheat has been mixed with such imported wheat."

As amended by the House bill this provision would read as follows:

"SEC. 313. Drawback and refunds: (a) Articles made from Imported Merchandise.—Upon the exportation of articles manufactured or produced in the United States with the use of imported merchandise, the full amount of the duties paid upon the merchandise so used shall be refunded as drawback, less 1 per centum of such duties, except that such duties shall not be so refunded upon the exportation of flour or by-products produced from wheat imported after 90 days after the date of the enactment of this act."

The effect of the amendments to this provision is to abolish the drawback privilege on wheat entirely after the lapse of a period of 90 days after the enactment of the tariff act.

Like the milling in bond provision, the drawback privilege placed American wheat at a disadvantage with Canadian wheat milled in the United States, when exported to Cuba, because the Canadian wheat, under the drawback privilege

paid no duty except 1 per cent and in addition when milled in the United States and exported in the form of flour to Cuba it received the same 20 per cent reduction in the duty which 100 per cent American wheat flour received. By thus escaping virtually all of the import duty and getting the benefit of the Cuban preferential which it would not have gotten if shipped directly from Canada to Cuba, the Canadian wheat, produced under lower cost conditions than American wheat, gained an advantage over American wheat which it would not have if this drawback provision were not in effect. The requirement for mixing with not less than 30 per cent of domestic wheat modifies but does not remedy this disadvantage to domestic producers.

We recommend that these amendments to the drawback provision which have been adopted by the House of Representatives, be approved and retained in the new tariff bill.

STATEMENT OF JOHN G. LERCH, NEW YORK CITY, REPRESENTING THE AMERICAN TARIFF LEAGUE

(The witness was duly sworn by the chairman of the committee.)

Senator SMOOT. Mr. Lerch, may I ask if you want all of these briefs printed?

Mr. LERCH. No; Senator. I just want them distributed. They are copies that you have there, Mr. Chairman. I would like to have them distributed now, if that may be done.

Senator KING. Is it the same matter you discussed before the committee previously?

Mr. LERCH. No, Senator, it is not. There is nothing old in it; it is all new.

Senator SHORTRIDGE. You desire to address yourself to what proposition?

Mr. LERCH. Generally to the administrative provisions.

For the purpose of convenience in taking up the subjects, I wish to discuss, I have divided them into three points, one which I have seen fit to term a bill of rights, another covering the valuation proceedings, which I covered more or less fully when the hearings were had on valuations, the third be[illegible]ovisions.

Senator SMOOT. Is it yo[illegible]hat is in this brief here?

Mr. LERCH. No, sir[illegible]tion

Senator SMOOT. T[illegible]ng the [illegible]ving it printed if you are g[illegible]what is

Mr. LERCH. I ar[illegible]ng to do [illegible]

Senator SMOOT. [illegible]e of the brief, we will [illegible]der the question, this [illegible]

Mr. LERCH. I [illegible]are other remarks no [illegible]ke, Mr. Chairman. [illegible]le.

Section 516 of [illegible]can tariff history recog[illegible]dity in competition wi[illegible]the appraisement and c[illegible]. For the first time the Am[illegible]ognized by this provision of s[illegible]otest the classification, the amoun[illegible]reappraisement on the value of the m[illegible]

That section 516 as written in [illegible]922, we believe, is a mere hollow gesture.

We believe now the time has come when the American manufacturer should be given a real remedy, when we should have more than a hollow gesture, when this section 516 and the kindred sections of the administrative provisions should be made effective, real remedies, when we should have an equal representation not only here before this committee when you make a rate, but in all the proceedings after that.

At the present time, as I said, section 516 is a beautiful work on paper; but that is all.

Senator SHORTRIDGE. Why? Come right to the point and point out what is wrong and what you ask.

Mr. LERCH. Section 516 at the present time says that although we have all the information necessary to the filing of a protest, for instance, we must make a written request upon the Secretary of the Treasury to give us that information.

Then, after we have gone through that red tape, we must use that information, write a complaint to the Secretary of the Treasury and go down there and be heard; and in due time, with no limitation on it whatever, when he gets around to it he makes up his mind and gives us a decision.

Then, when we get that decision, we may write him and ask him for information as to the liquidation, the number of the entry, and other facts which will permit us to file a protest. And because of that another six months have gone by.

In due time we file our protest, within 60 days of that information. And I have filed a number of them. It means that approximately a year, on an average, after entry is made, we get the privilege of appearing before the secretary.

Senator CONNALLY. Will you permit me to interrupt you? You keep talking about "we."

Mr. LERCH. The domestic interests. I represent the American Tariff League.

Senator CONNALLY. Who are they?

Mr. LERCH. All Americans.

Senator CONNALLY. Manufacturers?

Mr. LERCH. Yes, sir.

Senator CONNALLY. That is what I wanted to know. I wanted to know who the "we" are.

Mr. LERCH. I am appearing in the same capacity as I appeared before this committee previously, and my qualifications at that time were set upon the record in the valuation hearings. Therefore, I did not repeat them here.

Senator SHORTRIDGE. It takes you a year before you can file your protest?

Mr. LERCH. Before we get to the Secretary, Senator.

Senator SHORTRIDGE. What change do you suggest?

Mr. LERCH. It appears in my brief. On page 7 I made several suggestions, all of which are to the effect that if we already have the information which would permit us to file a protest there is no necessity to go through all of this red tape. If we do not have this information, then the Secretary, by the medium prescribed, shall give us the information which will permit us to file a protest or an appeal to reappraisement.

I have also included in my draft of that section a provision which will limit the Secretary upon a reappraisement, or, rather, upon a

complaint after value, to 90 days in his decision on that complaint, and, on the question of protest or classification, 60 days in order to decide it.

Now, gentlemen, I will give you a personal experience along that line.

Senator SHORTRIDGE. The purpose is to split up the proceeding?

Mr. LERCH. Yes, Senator, exactly, and to cut out red tape.

I will give you a personal experience. I filed such a complaint with the Secretary, and we went down and argued it. The importers elicited the assistance of the Spanish ambassador, who, through the State Department, got the Secretary of the Treasury to put it into a pigeon-hole, and there the thing remained for nine months, until we went down and sat around there and bedeviled the Treasury Department.

Now, that is permissible under the present section 516.

Senator WATSON. Is that an isolated instance or is it common practice?

Mr. LERCH. That is an isolated instance. I merely cite that to show what could be done under that language and what we seek to cure.

Senator SHORTRIDGE. Generally speaking, is there considerable delay in the operation of the law?

Mr. LERCH. I do not mean to say that there is delay in any one of these steps, but the necessity for these steps, which in many cases are purely red tape, make the delay, and the time is too long before we can ever get to a protest.

We all know the average length of time consumed in customs litigation between the filing of the protest and the final decision is 13 months.

Senator KING. You are not complaining against the honesty or the integrity of the Secretary of the Treasury?

Mr. LERCH. Not at all.

Senator KING. Or those under him?

Mr. LERCH. Not at all.

Senator KING. And they are proceeding in the usual way, and as rapidly as they deem it necessary?

Mr. LERCH. Exactly. What I mean to say is that I believe when Congress wrote section 516 of the present law they meant to give us a real remedy that would work expeditiously. But that has been construed to mean literal compliance, and every one of these steps as now outlined in section 516 is regarded by the court as a condition precedent to a valid protest.

Senator KING. I think you get along much quicker than some of the people in the West who have to deal with some of the departments.

Senator SMOOT. You think this change would hasten the final conclusion?

Mr. LERCH. No, sir. There are other changes outlined in my brief, where I changed the wording of the present section so as to say, "If the American manufacturer or producer does not have this information, then that provision shall apply," making it an alternative provision rather than a condition precedent to a valid protest. That is what I believe Congress meant when they wrote it.

Senator KING. I have no doubt, Mr. Chairman, these suggestions will be considered by the Treasury experts who are there, and they will give us their advice on them.

Senator REED. Just to make this clear, it has been suggested that I ask two or three questions to illustrate the difference in the conduct of a suit before the Customs Court when brought by an importer, and the same thing when brought by a manufacturer.

Mr. LERCH. At the present time when an importer brings a suit before the Customs Court he meets the Attorney General as his antagonist. The American manufacturer has no standing whatever in that litigation, although he holds the bag.

Senator EDGE. We heard just the contrary yesterday from Mr. Bevans, who complained that the American manufacturer had attorneys.

Mr. LERCH. He is talking about one provision of this law, section 516, where it relates to a valuation provision or reappraisement provision. There we are given the right to appear as a party in interest if we furnish the information which leads to the advance and the importer files an appeal to reappraisement.

In that one instance, which has never been used except in one or two rare instances in the six years it has been in the law, are we allowed to appear. We ask that we be allowed to appear right straight through.

But answering your question, Senator Reed, all that the American manufacturer can do when the importer files a protest is to literally sit at the coat tail of the Assistant Attorney General and whisper sweet nothings into his ear. That is all we are allowed to do, although the Assistant Attorney General can not prove a case unless he proves it with the cooperation of the American manufacturers. He calls upon them for assistance, but they have no standing whatever in the suit.

Senator REED. Has the manufacturer any right to bring suit in the Customs Court?

Mr. LERCH. Under section 516 of the present law we are given that right under certain limitations which I have just described. In that event, however, the importer is given a right to appear as a party in interest, and the practical working of that matter is that he take charge of the suit and the Assistant Attorney General backs out of the picture.

Now, all we ask is a fifty-fifty break. If he has that right to appear as a party in interest and takes away from the Government the conduct of that suit if it is a suit of the domestic interests against the Government, just as is his a suit when he asks for a lower rate against the Government, then we ask the same right.

Senator SHORTRIDGE. Are you not permitted to appear in the case?

Mr. LERCH. Not at all. We have no standing whatever except in that one isolated instance to which Senator Edge called attention. That has not been used because under the old system of appraising merchandise on foreign value an American manufacturer has no way of proving the selling price in the foreign country and, hence, can not avail himself of that remedy.

Senator REED. Would there be much increase in litigation or difficulty in other respects if the manufacturer were given the same right that the importer now has?

Mr. LERCH. I did not get the first part of that question, Senator.

Senator REED. Would there be much increase in litigation?

Mr. LERCH. It would not affect it one more case. The only difference would be that the party who really proves the case, instead of proving it around the circle, would cut directly across and prove it in court himself.

The actual operation to-day is that we prepare the witnesses in some cases, in those in which we are interested—not all, because, of course, the Attorney General is charged with that responsibility and is efficient in doing so. But in the cases in which we cooperate we furnish the witnesses, we acquaint them with all the facts, we do all we can to acquaint the Assistant Attorney General and his assistants with the facts, with the witnesses, and then he says, "Good-bye."

Senator SHORTRIDGE. What more do you want to do? You are there sitting side by side assisting in the trial of the case.

Senator REED. He wants to be allowed to speak.

Mr. LERCH. We want a position in that litigation, the same as the importer has in the case of appeal.

Senator SHORTRIDGE. Don't you sit there alongside of the attorney representing the Government, and do you not suggest to him the names of witnesses and the facts you indicated?

Mr. LERCH. Yes, sir.

Senator SHORTRIDGE. What more do you want to do—make a speech to the judge? What more do you want to do?

Mr. LERCH. Senator, we want to do just what the importers do when we file an appeal. He comes in and is allowed to appear by his attorney.

Senator WALSH of Massachusetts. He has a record standing, in other words?

Mr. LERCH. That is right.

Senator WALSH of Massachusetts. And the manufacturer does not have a record standing?

Mr. LERCH. Not at all.

Senator SHORTRIDGE. If you are there and the court hears you, what more do you want?

Senator KING. Let me see if I understand the situation. Take, for instance, land contests in the West. "A" contends that "B" ought not obtain title to a particular piece of land; he goes to the Government and makes complaint and says, "This man has not complied with the law. I think I ought to be entitled to it."

The Government thereupon institutes an investigation and the district attorney, representing the Government, may bring the suit in the Federal court. That man who has furnished the evidence sits there and aids the attorney, but the Government takes charge of the case. No one seeks to impeach the Government upon the ground it is not prosecuting the case fairly. And, of course, the man who is the defendant is permitted, as he ought to be, to have his attorney there, to contest the claim of the Government and the persons who initiated the proceeding. You have the same rights here as followed in substantially all Government litigation.

Mr. LERCH. That is true.

Senator SMOOT. You claim if the case was taken up by the Attorney General, and you, as a manufacturer, desired that case to be appealed but the Attorney General thought otherwise, the law ought to be written so that your wishes in that matter must be complied with?

Mr. LERCH. We believe that we should have a right in our own standing, separate and individually distinct from the Government of the Attorney General, the same as is now given us in Section 516-A.

Sentaor GEORGE. What rights are you going to assert?

Mr. LERCH. Our rights of a party in interest.

Senator GEORGE. What right would you assert? Just come down and talk facts. You want to assert the taxing power of the United States. You want to take charge of it?

Mr. LERCH. Not at all.

Senator GEORGE. You do not?

Mr. LERCH. No, sir.

Senator GEORGE. What do you want to do?

Senator SHORTRIDGE. The right of appeal, probably.

Mr. LERCH. The right to see that the record is complete.

Senator KING. You want to take charge of the litigation?

Mr. LERCH. No. In many cases there wouldn't ever be that; in other cases, if a witness were not properly cross-examined by the Government, in our opinion, we would cross-examine him.

Senator GEORGE. In other words, you would take charge of the litigation and take it out of the hands of the Government?.

Mr. LERCH. Not at all.

Senator GEORGE. You would have the right to do it.

Mr. LERCH. It would work out in practice, Senator, just exactly the way it works out now in practice.

Senator GEORGE. But I am trying to see what right you have to come in here and bring a case and use the Government against another one of your fellow citizens.

Mr. LERCH. I have no right now, nor has the importer.

Senator GEORGE. Why should you have any right?

Mr. LERCH. Why should the importer? Let me ask you this question——

Senator GEORGE. The importer has a direct interest; he has a direct porperty interest there to protect.

Mr. LERCH. So have we. Why are we here now?

Senator GEORGE. Oh no; you have not.

Mr. LERCH. Why are we here now?

Senator GEORGE. Oh, no, you haven't any such thing. You simply have the power of Government given to you as a privilege, but the Government is a party at interest, and you are not. You may be the beneficiary of the Government action. But you want to take charge of that litigation. Why not appoint the judges, why not just control the whole machinery, not merely have your right to take charge of the entire machinery?

Senator HARRISON. That is what the Tariff League would like to do, isn't it?

Senator GEORGE. Apparently so.

Mr. LERCH. Of course not. The fact of the matter is that to-day we are given this right to file the protest.

Senator GEORGE. I understand——

Mr. LERCH. May I finish my remarks?

Senator GEORGE. Yes, you may finish your answer.

Mr. LERCH. We are given a right to file a protest. Now, that is an action against the Government, isn't it, alleging that the Government has not acted properly in assessing this merchandise at too low

a rate? The importer has no interest in that any more than we have when he files a protest. It is an incidental interest. It is a suit against the Government. But you give him the right to go in there and conduct that proceeding.

Senator GEORGE. But you do not give him any right. You could not take his right away from him. You can not so frame this tariff act as to take away the property rights of an importer.

Mr. LERCH. He has no property right. He is given his property.

Senator GEORGE. But if you increase his duty you are taking away his property right.

Mr. LERCH. But if you lower it you are taking away property of the domestic interests also.

Senator GEORGE. No, you are not. You are not doing any such thing.

Mr. LERCH. Then, of course, the title of this act is wrongly stated.

Senator GEORGE. It doesn't make any difference about that. The Government here itself is imposing tariff duties. You have no more moral right to come in and take the Government's case than one individual income taxpayer has the right to come in and control the litigation and compel some other taxpayer to do something.

Mr. LERCH. We do not hope to take away the Government's case.

Senator GEORGE. That is tantamount to what you are proposing, if you want to come in when the Government does not proceed as you think proper, and take charge of the litigation.

Mr. LERCH. No; our rights are separate and distinct from that of Government, just the same as in the present litigation the importer's rights in a suit in the Customs Court are separate and distinct from the Government's.

Senator GEORGE. Yes, I understand that, but that is because it is given to you as a mere matter by the statute.

Senator BINGHAM. Do you want anything more than is already given you at the bottom of page 468? I refer now to the number of times when it is applicable, the nature of what is given you in these words:

> If the appraiser advances the entered value of merchandise upon the information furnished by the American manufacturer, producer, or wholesaler, and an appeal is taken by the consignee, such manufacturer, producer, or wholesaler shall have the right to appear and be heard as a party in interest, under such rules as the United States Customs Court may prescribe.

Mr. LERCH. That is literally what I have asked.

Senator BINGHAM. Do you want anything more than that? You want it in a greater number of cases?

Mr. LERCH. That is it.

Senator BINGHAM. The point being made against you, that you are trying to displace the Government, is not correct, because if that is true, then, the present law gives you the right to displace them.

Mr. LERCH. Exactly. I am not asking for the broadening of this right now had in section 516–A.

Senator BINGHAM. Do you mean broadening the right or broadening the application?

Mr. LERCH. That is right. It is not broadening the wording at all.

Senator SACKETT. To what extent do you want it broadened?

Mr. LERCH. That is limited now, Senator Sackett, to suits for value, and suits as to rates and amounts as well as value. Customs litigation is divided into two different parts.

Senator BINGHAM. If you think they made a mistake as to value you can now come in as a party in interest?

Mr. LERCH. Exactly.

Senator BINGHAM. But if you think they made a mistake as to rate you can not now come in?

Mr. LERCH. That is right.

Senator BINGHAM. That is all you are asking?

Mr. LERCH. Yes, sir.

Senator REED. Don't you make a further request? This is limited to the manufacturer who furnishes the information upon which the Government acts. If I correctly understood you, you want any interested manufacturer to have the right to intervene in any suit and be a party in interest in regard to value, or rates or classifications?

Mr. LERCH. Exactly. As to this value in section 516, I considered, when I answered Senator Bingham's question, that where we had furnished information it identifies us with the procedure and shows our interest. Now, I ask that where our interest is shown to the satisfaction of the court, under such rules as the court shall prescribe, we be allowed to intervene under the same wording as is here in the statute.

Senator REED. In that case a hundred manufacturers might intervene in one suit?

Mr. LERCH. No; the court would not countenance anything of that sort, of course.

Senator REED. If you want to make this a right to intervene, then each one of the hundred would have that right. You would limit it, would you, to the discretion of the court itself?

Mr. LERCH. The court now has the power to make all necessary rules governing its procedure and practices, and I brought myself squarely under that, as Congress did in the law of 1922 and in the provision read by Senator Bingham.

So that if 100 did intervene, the court would, of course, order that they should be represented only by one attorney, as is the case now in ordinary courts where an interpleader may be had.

Senator SIMMONS. Mr. Lerch, I should like to ask you one or two questions.

This is a proceeding to enforce a law of the United States; is it not?

Mr. LERCH. It is.

Senator SIMMONS. That proceeding must necessarily be instituted by the Government; must it not?

Mr. LERCH. No; it is always instituted by some one else. It is a proceeding against the Government.

Senator SIMMONS. Oh, I understand that the Government is the complainant.

Mr. LERCH. The Government is the party defendant.

Senator REED. On the contrary, it is always the defendant.

Mr. LERCH. Always the defendant. It is never the appellant or plaintiff.

Senator SIMMONS. The Government is the defendant?

Mr. LERCH. Always.

Senator SIMMONS. You want to be made a codefendant?
Mr. LERCH. A plaintiff.
Senator SIMMONS. You want to be made a plaintiff?
Mr. LERCH. Or a codefendant, as the case may be.
Senator SIMMONS. Then you want to be allowed to come into court and to assert your rights against the rights of the United States, as represented by its attorneys?
Mr. LERCH. Separately and distinctly from the United States.
Senator SIMMONS. The proceeding, however, is to enforce a law of the United States?
Mr. LERCH. It is hardly that. It is to determine, of course, whether the——
Senator SIMMONS. Well, you must determine what the law is before you can enforce it.
Mr. LERCH. It is to determine the correct administration of a law of the United States, I should say.
Senator SIMMONS. But here is what I wanted to get at: In this proceeding would your interest be divergent from the interest of the United States?
Mr. LERCH. No; it would run concurrently with that of the United States.
Senator SIMMONS. Then you would have two parties there representing the same interest?
Mr. LERCH. Exactly; as you do to-day, Senator.
Senator SIMMONS. Then you have two parties representing the same interest, one private and the other the Government. When the case is called, the Government and the private litigants have conflicting views with reference to it. The Government has one view with reference to it, and you have a different view with reference to it, putting you in direct conflict with the Government, which is represented by its attorney trying to enforce a Government law?
Mr. LERCH. Will you permit me to answer that, Senator Simmons?
Senator SIMMONS. Yes; I am asking you for the purpose of getting you to answer.
Mr. LERCH. All right. The American manufacturer——
Senator SIMMONS. If you will pardon me, my inquiry is directed to this: Is it seemly to have a controversy in court between an American citizen and the Government when the Government is trying to enforce its law? The American citizen's view about it might be opposite to the view of the Government with regard to the enforcement of a governmental law.
Mr. LERCH. Exactly.
Senator SIMMONS. And I wanted to ask you if that would not bring about great confusion in litigation.
Mr. LERCH. Now may I answer?
Senator SIMMONS. Yes.
Mr. LERCH. Under the act of 1922 you have just that, where an American manufacturer files a protest after having gone through the gamut, and he claims that a higher rate of duty should have been assessed, which is manifestly to the Government's interest. That is why this law is being passed—to see that the Government revenues are protected. That is why we filed that protest and asked for more duty, and the Government appeared as the defendant. The suit is

against the Government; but by the law of 1922 you permit the importer to come in in exactly the same status that I am now asking you to do.

Senator EDGE. That is what I was going to ask you. If the situation is reversed, and you make the complaint, and the Government is the defendant, do you mean to say that the importer then, with his attorney, is permitted to take part in the case?

Mr. LERCH. He not only takes part in the case, but he conducts the suit, and the Government backs out of the picture.

Senator EDGE. Why is not that exactly the same situation reversed?

Mr. LERCH. It is.

Senator GEORGE. He is the necessary party defendant; is he not?

Mr. LERCH. That is entirely a personal viewpoint, I take it, Senator?

Senator GEORGE. Who is the real defendant, if he is not the importer?

Senator REED. The Government.

Mr. LERCH. The Government is. I filed the suit against the Government.

Senator SHORTRIDGE. Nominally on the record it is so, Senator.

Senator GEORGE. No; the Government is not the real party.

Mr. LERCH. That is a difference of opinion.

Senator HARRISON. Who has to pay the increased tariff if the Government wins its suit?

Senator COUZENS. The importer, of course.

Senator GEORGE. He is the necessary party defendant.

Senator HARRISON. And he is the man affected.

Senator GEORGE. Of course he is.

Mr. LERCH. But who loses if the Government does not win the suit?

Senator COUZENS. Certainly not the manufacturer.

Mr. LERCH. The manufacturer pays for it and pays for it.

Senator COUZENS. No; he does not.

Mr. LERCH. He pays for it by increased competition, Senator Couzens.

Senator COUZENS. You might equally say that when a taxpayer sues the Government for a refund, every other citizen might interpose so as to protect his interest in not having to pay additional taxes. It is exactly the same situation.

Mr. LERCH. Of course if this were a revenue-producing statute only——

Senator COUZENS. Well, that is what it is.

Senator HARRISON. Is not that what it is?

Senator REED. Mr. Chairman, we are being wholly unfair with this witness. We fire questions at him and demand answers, and then do not permit him to answer any question fully. Senator Simmons asked him a question and made a point of getting a definite, responsive answer; and he has had six interruptions in his effort to give it.

The CHAIRMAN. Now you may answer the question of Senator Simmons.

Senator SHORTRIDGE. Explain it in plain words.

Senator SIMMONS. I do not want to argue with you. I should like to have an answer.

Mr. LERCH. I do not want to argue, either.

Senator SIMMONS. My question is directed to the complications that may arise.

Mr. LERCH. I should like to get on record clearly my answer to your question, and that is this:

Where the domestic manufacturer, under the right given under the law of 1922, filed a suit against the Government claiming a higher rate of duty, the importer did exercise his right to intervene. The Government backed out of that suit, or, rather, nominally appeared in that suit. The Government did not think that the case ought to be appealed when the manufacturer won his suit. The importer did think it should be appealed. There, a private interst—an importer—exercised his right to take the litigation out of the hands of the Government and appeal it to the highest court.

That is one instance, answering your question, Senator Simmons.

The CHAIRMAN. What do you want?

Mr. LERCH. I want just the same right—no greater and no less.

Senator SIMMONS. In other words, you might be in court insisting that a higher rate should be levied. The Government might be in court in the same proceeding insisting that a lower rate should be levied.

Mr. LERCH. Exactly.

Senator SIMMONS. That would necessarily bring about some conflict and confusion in that controversy, it seems to me.

Mr. LERCH. Well, of course it would not be a lower rate, Senator Simmons. We file a claim that a higher rate should obtain. We are actually protesting against the action of a collector.

Senator SIMMONS. Yes; but when you get into that suit, the Government, through its attorneys, may take the position that you are asking for too much.

Mr. LERCH. That is what they would. They are the defendant in the suit. That is their position in that suit.

Senator SHORTRIDGE. What you want, then, is the right to appeal it to the Court of Customs Appeals? That is all?

Mr. LERCH. We want the same right that the importer has in that kind of a litigation.

Senator SHORTRIDGE. There is nothing unseemly about that, Senator.

Senator SIMMONS. And when you go into the Customs Court, then you will have three parties to the proceeding—the Government, the importer, and the manufacturer.

Mr. LERCH. You will be in exactly the same position as you are now in common-law practice where there is an interpleader. That is all there is to it.

The CHAIRMAN. There is one explanation I should like to have you make for my own information.

It seems to me the only difference between the two cases is this: The importer owns the property himself. That is his property. He is assessed on that, and the assessment is paid by him. Therefore, he is directly interested in that property; whereas in your case you want the manufacturer to intervene and have him given the same right as the importer. Now, can you differentiate between the two? If so, I should like an explanation right now, because that is the only difference that I can see.

Senator REED. Before you answer that, let me suggest this:

If this were the ordinary tax statute, and had no other purpose than the raising of revenue, obviously Senator Couzens's suggestion would be right, that we can not permit every other taxpayer to come in and intervene.

Mr. LERCH. Exactly.

Senator REED. But it seems to me that it may take this out of the general rule when we remember that one purpose of this statute is the protection of American industry and American labor. Therefore, those people who are intended to be protected have a property right that is going to be affected by the decision that is almost as important as the immediate property right of the importer who is the taxpayer.

Mr. LERCH. That is our viewpoint. In other words, we come here, Senator Smoot, and we make our claims here. The importer comes here and answers them, and we are allowed to answer each other before your committee. We have some right here, or we would not be here—some property interest.

Senator SHORTRIDGE. You can not improve upon the statement of the matter as made by Senator Reed.

Mr. LERCH. I am sure I can not. I was merely seeking to develop it a little.

Senator GEORGE. Let me ask the witness this question:

In the case of a criminal homicide, where the Government prosecutes a defendant for the purpose of protecting society in general, has not any citizen some interest?—but he has not any right to go in and take charge of that litigation.

Mr. LERCH. True, because the prosecuting attorney represents the people—not one person. He represents all of them.

Senator GEORGE. But no private prosecutor can come in without his express consent.

Mr. LERCH. Of course he can not.

Senator GEORGE. Certainly not.

Senator KING. And you are permitted, Mr. Lerch, I am advised, to sit at his elbow, and you have sat at the elbow of the representative of the Government——

Mr. LERCH. Lots of times.

Senator KING (continuing). And you have brought your witnesses there in countless numbers from time to time, and you have participated, through the district attorney or through the representative of the Government, in the trial of the case. The only difference was that you did not talk out loud; but you talked to him, and directed the proceedings.

Mr. LERCH. Go a little further. I was the district attorney for six years, and tried literally thousands of those cases; so I know how impotent an American manufacturer is when he sits at my elbow and I try those cases, because there are 14 attorneys who try 70,000 cases a year.

Senator KING. That makes no difference.

Mr. LERCH. It is physically impossible for him to do it.

Senator KING. If the Government does not furnish sufficient help, that is the fault of the Government. You are impeaching the Government now.

Mr. LERCH. No; I am not.

Senator BINGHAM. Mr. Lerch, if you will pardon me, the charges that have just been made against you by two Senators sitting on your right apply with equal force to the law at the present time. In paragraph 516 (a) your rights as a manufacturer, in whose interest the bill is written in part—for the protection of American industry and American labor—are recognized as being important, and you are given the right to be heard as a party in interest.

Mr. LERCH. Exactly.

Senator BINHGAM. Therefore, if their position is correct, that ought to be stricken from the bill.

Mr. LERCH. Exactly.

Senator KING. Mr. Chairman, just one observation: If the Senator included me in the statement that any charge was made against the witness, he is absolutely mistaken. I made no charge. I was merely stating what the fact was; and he had a right to be there.

Senator BINGHAM. I beg the Senator's pardon; I did not mean that he was making any charge, but he was implying that there was something wrong in having the manufacturer's lawyer sit at the elbow of the Government attorney when the case was being tried.

Senator KING. There was no such implication whatever. That simply shows the lack of appreciation of the Senator's understanding of what was being said.

Senator BINGHAM. Very well.

Senator CONNALLY. May I ask you a question?

Mr. LERCH. Certainly.

Senator CONNALLY. I was very much impressed with the suggestion the Senator from Pennsylvania a moment ago.

We have an immigration law that was passed, of course, to protect the American laborer, as most laws are. Do you think that under that a labor union would have a right to have an attorney in the proceeding on the deportation or admission of aliens, and after the Department of Labor has made its decision they would have a right to go on independently with the appeal and litigate the matter?

Mr. LERCH. As I understood the Senator from Pennsylvania——

Senator CONNALLY. Just answer my question.

Mr. LERCH. I am trying to.

Senator CONNALLY. Go ahead.

Mr. LERCH. You asked me if I agreed with him.

Senator CONNALLY. No; I did not ask you anything of the sort. I said I was interested in his observation, and then I put this question to you—whether you thought that the immigration law ought to give a labor union, for instance, the right to have an attorney and make itself a party to deportation or admission proceedings, and that if the Department of Labor did not agree with it the labor union ought to be allowed to go on and have the right to litigate the matter independently?

Senator BINGHAM. We settled national origins a little earlier in the session.

Senator CONNALLY. I want an answer to my question.

Mr. LERCH. I will answer it.

Senator CONNALLY. All right.

Mr. LERCH. I can not possibly conceive that there is any property right or color of property right in the litigation you suggest. It is a private dispute between that individual and the Government of the

United States. It might well be that some labor union might have some interest in it. That I do not know. I do not know enough about it.

Senator CONNALLY. But you do think that we have by law given to a general manufacturer such a vested right in any importation of an article through the customs house as to give him the right to appear there as a party in interest and litigate that matter and take it out of the hands of the Government?

Mr. LERCH. I do not think it is a vested right, but I think there is no doubt that he should have that interest.

Senator CONNALLY. And if the Government and the private attorney disagree, then the private attorney ought to have the right to go ahead independently of the Government?

Mr. LERCH. Just as the importer's attorney does to-day.

Senator CONNALLY. You are predicating your right now upon the fact that Congress has been generous to you in the past and given you this right in one item, and now you want it in all items?

Mr. LERCH. We do not see that we have ever gotten anything in the past. You have given us some rights, and then when we get up to the administrative provisions you have closed the door and let the importer enforce his rights.

Senator CONNALLY. You have just said that you have it now, and you desire to extend it.

Mr. LERCH. We have it in that one isolated case.

Senator CONNALLY. This would greatly increase customs litigation, would it not?

Mr. LERCH. Not one case. I have been in this litigation 20 years, and I think I speak advisedly.

Senator CONNALLY. It would not increase the litigation one case?

Mr. LERCH. Not one case.

Senator CONNALLY. I do not see how you arrive at that conclusion.

Senator SACKETT. There is one thing that I should like to ask you. In this section, when the right is given it is limited to one man—that is, the man who furnishes the information in regard to the valuation.

Mr. LERCH. Yes.

Senator SACKETT. Whereas the position you take is to extend that to anybody who is interested. May you not get, in many of these cases, a whole raft of people, each of whom has a different point of view, because these various manufacturers may find different reasons when they are engaged in the same process of manufacture, and complicate the whole situation?

Mr. LERCH. I do not find enough of them, Senator, that are willing to pay a lawyer to have all those different views.

Senator SACKETT. I do not think that is responsive to the question.

Mr. LERCH. I will answer that, Senator Sackett, in this way—that when imported merchandise comes in here, it competes with an industry, not an individual; and that industry, through its representative, makes its appearance. It is not a lot of isolated individuals who come poking their noses into this thing.

Senator SACKETT. That may be true in many cases, and yet there may be many other cases where the isolated individuals will feel that they have a different reason, and want to be parties litigant as well.

Mr. LERCH. I should think, if there were that interest, domestic interests having cooperated with the Government for the 20 years that I have been in that service and personally conducting those suits for the Government, that I would have had knowledge of one of those; but we have never had such an experience.

Senator SACKETT. Because you have only got this one case of valuation, where it is limited to the man furnishing the information; so you could not have had.

Mr. LERCH. No; possibly I did not make myself clear. Domestic interests have always cooperated with the Government through the Assistant Attorney General. Now, if there were these divergent interests in their presentation of their interest to the Assistant Attorney General, it would have made itself felt before now; but they always appear at the door of the Assistant Attorney General through a representative who states the views of that industry.

Senator SACKETT. Is not that really what comes about from the very language of the statute, and when you remove that language of the statute you do open the door?

Mr. LERCH. I do not mean the application of paragraph 516 (a) that Senator Bingham read. I am talking now about the general practice, where they cooperate—not appear, but where they cooperate.

Senator SACKETT. While I am sympathetic with your viewpoint, I do think there ought to be something in the statute that would limit the possibility of increased litigation.

Mr. LERCH. I agree with you, of course, Senator. You have put that in when you say, "under such rules of procedure as the court itself shall prescribe." They are not going to permit such a practice as you have in mind. That would crowd their calendars to no avail whatever.

Senator EDGE. Mr. Lerch, you have continually referred to the fact that the importer was given exactly the same privilege when he was codefendant with the Government—when the proceedings were initiated by the manufacturer, in other words. That has appealed to me very strongly. While it does not necessarily settle the discussion, I should be interested to know in what relative proportion of times the importer is the codefendant with the Government as compared to a reversed condition. Is that a clear question?

Mr. LERCH. In every protest filed by a domestic manufacturer, the importer is the defendant.

Senator EDGE. The codefendant?

Mr. LERCH. He is the defendant. The Government backs out.

Senator EDGE. Oh, the Government backs out entirely?

Mr. LERCH. Exactly; and turns the litigation over to him.

Senator EDGE. That answers it.

Mr. LERCH. The Government never does anything in that matter except to enter a nominal appearance.

Senator EDGE. And your proposal is, when conditions are reversed, that you should have at least the same privilege?

Mr. LERCH. Exactly.

Senator REED. Mr. Lerch, I think we have your proposals pretty definitely; but I am a little concerned about the suggestion that Senator Sackett advanced. For example, that too many manufacturers having diverse views would come crowding in, or else that some organization devoted to keeping the tariff up to the top notch

would station lawyers down there who would intervene in every case. Would you get the substance of your proposal if it were limited to intervention by an American manufacturer only where permission of the court had been given, in the court's discretion?

Mr. LERCH. Absolutely.

Senator REED. So as to prevent trivial interference in every little case?

Mr. LERCH. That would satisfy me; and I make that request.

Senator SIMMONS. Now I want to see if I understand you.

If I understand your position, it is that if the Government gets into litigation with an importer with reference to the rate of duty, because that rate was imposed for the manufacturer's benefit, therefore the manufacturer has such an interest in that as entitles him to be made a party?

Mr. LERCH. That is the basis of my position.

Senator SIMMONS. You claim that your interest is in the fact that that rate was made for your benefit?

Mr. LERCH. Yes; and we have hundreds of thousands and millions of dollars invested dependent upon that rate.

Senator HARRISON. Let me ask you a question, Mr. Lerch: Were you in favor of the incorporation in the act of 1922 of the present provision allowing you to intervene?

Mr. LERCH. Yes; I was a Government attorney, and I was in favor of it.

Senator HARRISON. You were not with this Tariff League at that time?

Mr. LERCH. I was not.

Senator HARRISON. Did the Tariff League at that time champion that proposal?

Mr. LERCH. I do not know.

Senator HARRISON. You do not know whether they initiated the proposition?

Mr. LERCH. That I do not know. I do not believe they did.

Senator HARRISON. You do not know whether the suggestion first came from them?

Mr. LERCH. No; I do not.

Senator HARRISON. The Tariff League is composed of manufacturers all over the country?

Mr. LERCH. Exactly.

Senator HARRISON. It is maintained by taxing the different members of the league all over the country?

Mr. LERCH. It is maintained by membership fees.

Senator HARRISON. Will you put into the record the officers and the board of directors of your Tariff League?

Mr. LERCH. I will gladly do that. It is on the back of every Tariff Review.

Senator HARRISON. Yes; I have it here before me.

Mr. LERCH. If I had the names here I should be glad to read them into the record.

The CHAIRMAN. Let the Senator give them to the reporter now.

Senator HARRISON. I think the chairman of the committee knows them as well as I do.

The CHAIRMAN. Just about the same, and no more; but why not put them in the record?

Senator EDGE. Print them again. The Government can stand the expense.

Senator HARRISON. I think you stated that Mr. Grundy is not now the president of it?

Mr. LERCH. He is not.

Senator HARRISON. He is vice president of it now?

Mr. LERCH. Vice president.

One more suggestion as to section 501, which is on page 452 of your print. That is the importer's right to file a protest, or rather, an appeal to reappraisement.

I have suggested, due to my experience as a Government attorney in trying these cases and also cooperating with the Government since, that there have been many cases where it was impossible for the Government to prove its side of the case because of a lack of samples. When this litigation comes to trial it is at least six months after the importation. The goods have been delivered to the importer. They have gone into consumption. He appeals to reappraisement, or against the value, and then nobody has a sample of the merchandise. It is impossible for the Government to secure witnesses to show the value of the merchandise, because there are no samples.

I propose that on page 452, line 25, after the period, there be added the following sentence:

If the issue is such that the party defendant—

That is, the Government—

can not, in the absence of samples, adequately answer the appellant's case; upon demand therefor samples of the imported merchandise shall be produced, or the appeal dismissed.

That makes it a condition precedent, or, rather, a condition developing out of its necessity. Where they are not necessary in the suit, of course the appeal will not be dismissed.

As I stated in my appearance here, rather briefly, in answer to Senator George's question, we are unalterably opposed to section 402 (b), finality of appraiser's decision. That is the value section.

Senator COUZENS. That is all stated in the brief, though; is it not?

Mr. LERCH. Yes.

Senator REED. But, Mr. Lerch, is not an appeal given by section 501?

Mr. LERCH. To an importer.

Senator REED. Only to an importer?

Mr. LERCH. That is all. That relates only to an importer, as drawn now.

The CHAIRMAN. That is what he is complaining of.

Senator GEORGE. Has the importer the right to appeal the question of the proper basis of valuation?

Mr. LERCH. He has that in paragraph 501 now. This is a new provision of this law.

Senator GEORGE. Oh, yes; he has it in the existing law?

Mr. LERCH. Yes.

Senator GEORGE. I did not understand you.

Mr. LERCH. In that respect, at least, I am in accord with my friends the importers. They object to this section 402 (b) just as strenuously as I do.

The CHAIRMAN. Your brief gives the reasons why?

Mr. LERCH. Yes.

Now as to section 514, on page 465: That is the importer's right to protest. As to that, we ask the right to appear there by the addition of a sentence; and we also ask that, read in conjunction with this section, section 518 be amended so as to strike out the provision for the amendment of an importer's right to protest, and put it back in section 514, where it was originally, in the way it was originally.

I do that for this reason: The Hawley bill takes off all time limit as to when a protest may be amended. Under the tariff act of 1922 it might be amended at any time before the first docket call. We think that is a fair and just rule—before the first docket call. Otherwise, an importer might file a protest making a fictitious claim; the Government would come in prepared to try that case on that claim; and then, in the middle of the procedure, the importer might make known his rightful claim, or the one that he relies on, and the Government stand there holding the bag. So I suggest that the right to make the amendment up to the first docket call be retained in this law.

Senator SHORTRIDGE. Who fixes the date of the calling of the docket?

Mr. LERCH. The court sets that.

Senator KING. Suppose something developed during the trial—as frequently develops in the trial of civil causes—which would warrant, in the interest of justice, an emendation: Then would you deny that?

Mr. LERCH. I most assuredly would. We have operated for a hundred years without it.

Senator KING. You have answered my question.

Mr. LERCH. Until 1922, and then we extended the right, in 1922, up to the first docket call. This is not like the ordinary suit at law, where we have a complaint and an answer, and all the rest—rejoinder and surrejoinder—until we reach an issue. Here, an importer sits down and writes a letter to the collector saying, "I object to the rate that you have assessed, and claim that paragraph 452 is the right paragraph." That is all the pleading there is in this case. Now, if he is allowed to say, "I object," and paragraph 452 is the right paragraph, for instance, and he says, "321," and then amends his protest in the middle of the trial to say "452," where does the Government get off, with its witnesses sitting in court to prove the other section?

Senator SHORTRIDGE. You want to limit his right to amend?

Mr. LERCH. Before trial.

Senator SHORTRIDGE. And require amendment before trial?

Mr. LERCH. Exactly.

Senator SHORTRIDGE. That is what you want.

Mr. LERCH. Now, I have suggested that the language be put in section 515 for an American manufacturer's protest.

Senator SIMMONS. Protest about what, now?

Mr. LERCH. Against the assessment of duty by the collector or the Government.

Senator SIMMONS. That is the thing we were talking about a little while ago?

Mr. LERCH. That is the thing we were talking about a little while ago.

Senator SIMMONS. Since you have adverted to that, do you think the consumer, the man who actually has to pay this rate that they are quarreling over, has such an interest that he ought to be allowed to come in and intervene and assert that right?

Mr. LERCH. If he did to-day, Senator Simmons, he would be there all the time, because the importer charges him the high rate of duty against which he protests to the Government, and the merchandise has already gone into consumption; but he does not make any adjustment when the refund comes. He puts that in his pocket.

Senator SIMMONS. That was not the question I was asking you. You said, and you contended, and you rested your case upon the proposition that the manufacturer had a right to intervene because this particular tariff duty was levied for his benefit.

Mr. LERCH. Yes.

Senator SIMMONS. There is somebody in this country who has to pay that duty, and that somebody is the final consumer.

Mr. LERCH. Yes.

Senator SIMMONS. Has he not as much interest in that rate as the manufacturer has? And if the manufacturer, by reason of the fact that it was for his benefit, has the right to intervene, why has not the consumer, by reason of the fact that he has to pay it?

Mr. LERCH. I have no doubt that he has a very vital right, Senator Simmons.

Senator SIMMONS. And he has an interest of the same character as the other man, except, I think, probably a greater interest.

Mr. LERCH. But, while I have seen many cases won by the importers, I have never in my experience heard that it reduced the selling-price to the consumer.

Senator SIMMONS. Well, it might do it.

Mr. LERCH. It might. I do not know.

Senator SIMMONS. That is what the importer is insisting upon. He is insisting upon a lower rate. You are insisting upon a higher rate. The consumer who pays that rate, whether it is low or high, has as much interest in this controversy as anybody.

Mr. LERCH. I have no objection if this committee and Congress should see fit to permit the consumer to intervene. The more the consumers are there, the more assured we are that the right rate will be assessed.

Senator SIMMONS. I am not raising that question. I am simply asking you, in your opinion as a fair-minded man, if the interest of the manufacturer is a proper ground for interference as an interested party, would not any consumer in this country who buys that article and pays that duty have the same right, provided he desired to assert it?

Mr. LERCH. I think he has just as much interest, if that is the answer I should give. He has just as much interest, because he ultimately pays it, with interest.

Senator SIMMONS. That answers my question.

Senator REED. And if all that was subject to the control of the court, it could be done without any injustice, and probably greater justice?

Mr. LERCH. Exactly; and you would be more assured that the proper rate would be assessed in the end.

Senator SIMMONS. That would probably mean this: As the manufacturers are all associated together for the purpose of enforcing and protecting their interests and looking after litigation of this sort, it is probably the duty of the consumers to resort to the same device and scheme for the purpose of protecting their rights.

Senator SHORTRIDGE. That is logical.

Mr. LERCH. Now as to section 526, page 487, I desire to make just this observation:

That section, as now written, relates only to American trade-marks. It gives the right to exclude imported merchandise where a trade-mark is registered with the collector. I would suggest that there is no reason for discriminating between trade-marks and patent rights. I do not mean that a holder of a patent can exclude merchandise, but he should be given the information which will lead to the prosecution of a violator of his patent in the courts of the United States; and to that end I suggest the addition of this sentence:

The holder of patent rights under the laws of the United States shall, upon application to collectors of customs or the Secretary of the Treasury, receive such information of importations as will permit him to proceed against possible infringement of such rights.

Senator BINGHAM. Would not that lead to an enormous increase in correspondence and clerical work?

Mr. LERCH. I think not. That has been given now, Senator Bingham.

Senator SHORTRIDGE. In respect of trade-marks.

Senator SACKETT. Would you not have to limit that to litigated and determined patent rights?

Mr. LERCH. Of course as to those you do not need it.

Senator SACKETT. You want to exclude them?

Mr. LERCH. No; I do not want to exclude them, Senator. The suggestion I make refers to patents. The other thing is copyrights. I suggest that that remain as it is; but I suggest the additional sentence that the holder of an American patent can get information leading to the prosecution of an infringement of the patent if the collector has it. That is all there is to it. If he has not got it he says so, and that is the end of it; but we have had instances where the collector actually knew of the violation of a patent, but, because the law would not let him tell, he could not tell the holder of the American patent. But where a copyright is held, it is an embargo. We see no difference between the rights.

Senator SACKETT. My question was based on this thought: There are various infringements of a patent; and it is quite difficult to tell, sometimes, whether there is an infringement or not.

Mr. LERCH. Precisely; and that is the reason why we have left this——

Senator SACKETT. You leave it up to a collector to determine that, do you?

Mr. LERCH. No; we have left it to the courts to determine. The only thing is that the American manufacturer or the American holder of a patent may be put in contact with a violation, if the collector knows of one, or knows of what he believes to be a violation.

Senator HARRISON. Let me ask you this question: Is it one of the functions of the Tariff League to keep informed as to these importations, valuations, etc., and notify the membership, and they file the

complaint; or does the Tariff League, through its attorneys or agents, file it for them?

Mr. LERCH. I am the attorney for the Tariff League.

Senator HARRISON. So, then, you file it for them; do you?

Mr. LERCH. No. I have no interest whatever in importations, except as to the general statistics of importations. We have no interest whatever in the rate schedules. We do not interfere with them in any way. The only appearances we make here, and the only appearances we make as a body anywhere, are in the interest of a protective tariff, and we consider these administrative features as in the interest of a protective tariff.

Senator HARRISON. I do not think you got my question. Somebody must interplead for these manufacturers, or a particular manufacturer. Do you advise them when to do it, or is the Tariff League a clearing house?

Mr. LERCH. The Tariff League has nothing whatever to do with that.

Senator HARRISON. Nothing at all?

Mr. LERCH. I, as attorney representing the Bethlehem Steel Co., for instance, am now filing protests against every shipment that I can get my hands on of steel into this country where the department has ruled that it does not have to be marked in accordance with the law now. I do that by suggesting it——

Senator HARRISON. What is the number of employees employed by the Tariff League?

Mr. LERCH. I do not know. It is a small number—8 or 10, let us say.

Senator HARRISON. Eight or ten—that is all.

Senator KING. By the way, Mr. Lerch, may I ask you a question?

Mr. LERCH. Surely.

Senator KING. There is not an importation, no matter how infinitesimally small, that comes into the United States that the manufacturers of a similar product do not have a representative there and know immediately just what it is. Is not that true?

Mr. LERCH. I wish that were true. My practice would increase appreciably.

Senator KING. Is not that true?

Mr. LERCH. It is not the fact. The difficulty is in getting an American interest sufficiently worked up so that he will go in and intervene. That is where I get my living.

Senator KING. And does not the Department of Commerce have a representative there, and is not the Department of Commerce furnished with the manifests, or copies of them, or evidence of every product; and are there not in the Department of Commerce representatives of the respective manufacturing interests of the United States who obtain this information not only from the Department of Commerce but also from other sources?

Mr. LERCH. No. The Department of Commerce maintains a bureau of statistics in New York, and, because the Congress has not given it enough money, some domestic interests who are interested in vital statistics of that industry have put men there to cooperate to get that information, but that is all.

Senator EDGE. Mr. Lerch, continuing that line of inquiry, is there not a fairly well organized association of importers, represented yes-

terday by two very able lawyers, one of whom happened to be a resident of my own State?

Mr. LERCH. There is no question about it. They do just exactly the thing that the Senator here accused the American manufacturers of. I wish we could organize to the same extent; we would get better results.

Senator EDGE. It is entirely within the law, however, in each case.

Mr. LERCH. Exactly. I admire them for it, and wish we were with them.

As to the marking provision of the law, in section 304, page 329, I believe that section in the Hawley bill to be a much better section than the old section, except that they have left out two vital provisions of the old section; and that is, the old law required that the marking be done in legible English words, in a conspicuous place that shall not be covered or obscured by any subsequent attachments or arrangements.

That was in the law, but for some reason, possibly oversight, was left out of this provision.

We further suggest adding at the end:

Said marking, printing, or labeling shall be as nearly indelible and permanent as the nature of the article will permit.

We ask that that be put back into this law. The reasons for it are obvious.

Senator REED. What do you think of the constitutionality of allowing the Secretary of the Treasury to make whatever exceptions he pleases from that section without giving him any guide as to the nature of the exceptions to be made?

Mr. LERCH. I think that without question that is putting a rate-making power or discretion in the Secretary, inasmuch as the Court of Customs Appeals has held that section 304 is a rate section.

Senator REED. The present law of 1922 provides that only articles which are capable of being marked without injury shall be stamped. That gives some guide to the exercise of this discretion. But the Hawley bill as it comes to us gives no guide whatsoever. On its face it would require the marking of milk or perfume.

Mr. LERCH. The outside container, Senator?

Senator REED. No; it says that every article and its container shall be marked. So you would have to mark the milk and can as well, if you take this literally, which of course it is impossible to do.

Mr. LERCH. Exactly. You can not mark bulk articles.

Senator SHORTRIDGE. There must be some modification of that language.

Mr. LERCH. The old provision of the law of 1922 was satisfactory to our interests.

Senator REED. Would it not be more likely to stand the scrutiny of the courts if we put in that restriction as to its capability of being marked?

Mr. LERCH. With that in it, it has already stood the scrutiny of the courts and has been held to be constitutional and to present all the other requirements.

Senator REED. Then it would be wise to include it in the new bill?

Mr. LERCH. I think it would. In fact, if you leave it as it was before it would please us.

The CHAIRMAN. Then all interests are agreed upon that amendment.

Mr. LERCH. As to section 313, page 345. I question the advisability of amending it as the Hawley bill does. It says, "Merchandise not conforming to sample or specifications." That amends a provision of the Revised Statutes which has been carried right down to date which says that once merchandise has been withdrawn from custody you can not get any drawback or refund on it except through the proper procedure in court. You can not get any refund of duty or drawback. It is a safeguard of the Government revenue that has been found necessary for a century. While this might work a hardship, merchandise not conforming to sample or specifications, in some rare instances, I question whether it is of sufficient importance to disturb a protective measure that has lived for a hundred years.

For instance, it would be perfectly simple if I were an importer of flannels to being in six cases of flannels—that is all that need be on the invoice—at a certain value. I am also an exporter of cheap flannels to South America, let us say. I get six cases of imported fine high-grade flannels in my shop and I immediately knock the top off and put in cheap flannels which I am going to send to South America. Then I get a sample off the bolt of my good imported flannels and call up the collector of customs to send an inspector over there to look at the cheap stuff that I got that does not conform to sample. I want to send it to South America and get the duty back. There is no way you can identify that substitution of the cheap stuff for the good stuff, hence you could import high-grade flannels free of duty under that subterfuge.

Senator SACKETT. How would you close up that loophole?

Mr. LERCH. I would just take it out. This has never been in the law before, and I see no reason for it in the provision in the Hawley bill.

Senator THOMAS. What is that intended to protect against when inserted in the bill?

Mr. LERCH. The prevention of fraud. The Revised Statutes, in the customs penal provision, provide for the prevention of fraud. It was found necessary by Government officials almost a hundred years ago, and it has come down to date without modification, although there have been various attempts such as this to sort of soften it over the period of time. I have spoken about the amendment of entry. There is one more provision that I desire to call to the attention of the committee, and that is section 503 on page 455. This section, when read in conjunction with section 504 (c) on page 457, is the finest joker that we find in this bill. By section 503 the appraiser is required to make a return of value in 120 days. In other words, he can not return it if it is not returned in 120 days. There is no legal provision for his acting after that; he is functus officio.

Turn over to page 457 and you see what happens if he does not return it within 120 days. You have to liquidate the entry on the entered value. Let us see what can happen under that. I take an absurd illustration to prove it. There are many degrees of just oversight and other things that might lead to the same end; but suppose an importer with evil intentions wanted to make a lot of money on one shipment. He invoices his merchandise at one-fourth its true value and he goes to Jimmy, the examiner's clerk, we will

say, and he says, "Jimmy, I will go 50–50 with you on all the duty that I save. I have invoiced this stuff at one-fourth its value, and the duty is 80 per cent. I will save 80 per cent on three-fourths of its value and I will split it with you if you will take this invoice, when it comes to the examiner's desk, and put it down behind that radiator and lose it for 120 days."

That is all that need be done. No provision of the law would permit anybody to liquidate that entry at more than its entered value. That is the finest joker that I have found in the tariff bill.

Of course I have given you an illustration where there was fraud; but let us assume there is no fraud. There are hundreds of thousands of invoices handled at the port of New York every year. I do not know the exact figures, but they are tremendous; and frequently invoices are, through inadvertence, mislaid; they do not turn up for three months. Frequently a year passes and you have to institute a search for them. What happens in that case? No possible question of the value could be made. It is final by that provision of law.

So that I recommend that this provision, section 503, which is new in this law, be stricken out of the law. It never has been here before. The thing it seeks to do is now in the power of the Secretary of the Treasury to compel, and that is the hastening of appraisements. That is why he has been given special agents. That is why he is given power to fire an appraiser if he wants to. If he finds an appraiser at New York is taking too long a time he can investigate, find out why, and cure it. He has the power now, and there is no reason for changing the provisions of law in a way that would permit fraud.

Now, may it please the committee, I have treated of a number of other things in this brief which I have not specifically referred to because I did not want to take your time. I have touched only those that I considered most important, and I will ask the committee to give full consideration to each one of those that I have outlined in my brief.

I thank you.

Senator SIMMONS. Have you any information as to who suggested or permitted the insertion in the bill of the clause which you say constitutes the greatest joker you have ever known in the bill?

Mr. LERCH. No, I have not; I have not the slightest idea as to its origin. I can not find where it was advocated. The importers did suggest, I think, that some limit should be put on the time of appraisement, but I do not know of any suggestion of section 503 as it now appears in the bill. Where it came from I do not know.

The CHAIRMAN. You can find it in the House hearings. There were three or four witnesses who appeared in behalf of it.

Mr. LERCH. But they did not suggest this language.

Senator HARRISON. You do not mean to say that this is the only joker in this bill, do you?

Mr. LERCH. That is the only one I found.

Senator BINGHAM. What is the interest of the American Tariff League in regard to a protective tariff on articles which we do not raise or produce, such as bananas, for instance?

Mr. LERCH. I do not think we have the slightest interest.

Senator BINGHAM. Do you think that the principle which has been suggested here within the last two or three days, that because there is

a foreign article such as tapioca that some one liked better than cornstarch, that is a reason why we should place a protective tariff on something we can not raise?

Mr. LERCH. Speaking personally, only, inasmuch as the Tariff League does not go into rates, I have not quite brought myself to that.

Senator BINGHAM. Apart from rates, has the Tariff League ever gone into the question or principle of putting an embargo on something which is not produced in America for the sake of causing more home consumption?

Mr. LERCH. I think I may safely say they never have.

Senator SACKETT. You are under oath now. Have you seen any other jokers in this bill?

Mr. LERCH. No, sir; I have not. I have called to your attention—I say it under oath—everything that I have thought important for the consideration of the committee, leaving out only those things which have come to my attention which I thought were changes in wording and trivial in their effect.

Senator THOMAS. You said this was the choicest joker. What did you mean by that?

Mr. LERCH. Other tariff acts have had jokers in them.

Senator SHORTRIDGE. In using the word "joker" you are not imputing evil to any one?

Mr. LERCH. Not at all.

Senator SHORTRIDGE. It is a mere phrase that you have used to develop your thought?

Mr. LERCH. The most expressive term I could use to show its effect, only.

Senator REED. That is what Senator Harrison meant, too.

Senator SHORTRIDGE. You represent the Tariff League?

Mr. LERCH. Yes.

Senator SHORTRIDGE. The Tariff League is interested in the revenues of the Government, is it not?

Mr. LERCH. It is.

Senator SHORTRIDGE. And therefore it would be interested in a tariff, perhaps, on imports of articles the like of which we do not produce in America, might it not?

Mr. LERCH. The Tariff League is interested in any tariff which will give protection to American industry. That is its purpose.

Senator SHORTRIDGE. But to repeat the thought expressed in the case cited by the Senator——

Senator KING. You mean the bananas?

Senator SHORTRIDGE. Yes. If a tariff were imposed on that article whereby a very considerable revenue would come to the Government and it should be made to appear that it would not in any degree cause an increase in the price to the consumer of that fruit, yielding a revenue to the Government, your league would be interested in the matter, would it not?

Mr. LERCH. I think our league would back anything as a revenue-producing agency.

Senator EDGE. Who is going to demonstrate and prove that the imposition of the duty will not necessarily and naturally increase the price to the consumer?

Senator SHORTRIDGE. I am suggesting now that it would not increase the price of bananas.

Senator HARRISON. Does the Tariff League believe that the imposition of a tariff on catgut would produce more cats in this country?

Mr. LERCH. I do not believe we have ever been in session on that.

(Mr. Lerch submitted the following brief:)

BRIEF OF AMERICAN TARIFF LEAGUE

COMMITTEE ON FINANCE, *United States Senate,*
Washington, D. C.

GENTLEMEN: Supplementing our appearance before your committee under the administrative sections of the tariff law, we beg to file the following brief. For convenience of consideration we have separated our treatment of those administrative provisions in which we suggest changes into three divisions, to wit:

(1) A bill of rights for American producers, sections 501, 514, 515, 516, 518, and 526.

(2) The valuation provisions, section 402.

(3) Miscellaneous provisions, sections 304, 305, 313, 401, 448, 487, 503, 504, 518, and 521.

A BILL OF RIGHTS FOR AMERICAN PRODUCERS

Section 516 of the tariff act of 1922 for the first time in American tariff history recognized that the American producer of a commodity in competition with imported merchandise has an interest in the appraisement and classification of this imported merchandise. This recognition by the tariff act of 1922 of the American manufacturer's interest has worked out, however, to be little more than a hollow gesture. We believe the time has come when this apparent recognition of the American producer's interest in the facts of importation of merchandise with which he is in competition should be made something more than a gesture and that the provision in the act of 1922 recognizing the interest of the American producer should be so strengthened and extended as to create what might well be called a bill of rights for American producers.

We believe the enactment of such a bill of rights will carry out the intent of Congress in the passage of the tariff law, as this intent is stated in the preamble of the act. According to this, it is the intent of Congress among other things "to encourage the industries of the United States" and "to protect American labor." The entire consideration by the Congress of the dutiable schedules in the tariff act is in accordance with the Congressional intent as stated in the preamble and the enactment of the tariff rates is based upon a consideration of the degree of protection necessary to prevent the ruin of American industry and the unemployment of American labor by unfair competition in the markets of the United States from producers and labor in foreign countries with lower living standards, lower wages and lower costs generally than prevail in this country. This far, however, this Congressional intent to encourage American industries and to protect American labor stops with the rate schedules in the law and has not been carried over into the equally important administrative sections of the act.

We believe that the time has long since arrived when this "omission" on the part of Congress should be remedied by giving to the American producers a status in the administration of the tariff law which will enable them to cooperate with the Government in the administration of a law which expressly indicates its enactment for the purpose of encouraging American industry and protecting American labor. Without this status, and without this right to be recognized as a party at interest in any customs procedure relating to imported merchandise which is competitive with the products of American industry and labor, the protection granted the producers of this country by the Congress in the rate schedules of the tariff law becomes in many cases a wholly inadequate remedy.

All suits growing out of the application of the tariff law on imported merchandise are tried before the United States Customs Courts. Generally speaking, they are of two classes. In the first, the issue centers about either a reduction in rate or amount of duty or a lower value, under sections 501 and 514. Cases of this class, are brought by the importer, and in this litigation the domestic manufacturer or producer is not recognized and has no standing. The other

class of cases before the Customs Courts arise under section 516 (the American manufacturer's appeal or protest provision) and the issue concerns an increase in the rate, amount of duty or value. In this litigation, the importer by statute is given the right to intervene as a party litigant and in actual practice the conduct of the suit is turned over by the Government to the importer. In no respect do the two classes of cases differ in their conduct or the interest of the parties. Both are actions against the Government by an aggrieved party conducted before the same court under the same rules of practice and procedure and lead to the same kind of judgment. We can see no reason for the present unjust discrimination against the domestic manufacturer in this litigation which may result in the complete ruin of his business.

It is to be observed furthermore that in the enactment of the so-called flexible tariff provisions of the law of 1922, the Congress provided that in proceedings before the United States Tariff Commission necessary before a proclamation by the President changing a specified rate of duty, the commission "shall give reasonable opportunity to parties interested to be present, to produce evidence and to be heard." The procedure before the Tariff Commission under the authority of this section has included a public hearing at which all parties interested in or likely to be affected by a change in the rate of duty are given an opportunity to state their case either for or against the proposed rate change. That is to say, in the application for a reduction in the existing rate by an importer the American producer likely to be affected by such a reduction has the same status before the commission and the same right to present his case against the proposed reduction that the importer has to defend his application.

Likewise, in any application by any American producer for an increased rate of duty under the provisions of section 315 the importer is given every opportunity before the Tariff Commission to contest the proposed increase. A decision by the Customs Court in a classification or an appraisement proceeding is just as important to the American producer of the commodity affected as is a rate change by Presidential proclamation following a Tariff Commission proceeding. And this being so, there is therefore the same reason and justification for the participation by the American producer in a case before the Customs Court as there is for his appearance in a proceeding before the Tariff Commission.

A recognition of the American producer's interest in a Customs Court proceeding which will result in a change in the duty on an imported commodity which competes with the products of that domestic producer and a granting to this American producer of the right to appear as a party in interest in any such court proceeding is tantamount to the fulfillment of two of the primary purposes for which a tariff law is enacted. Anything short of this recognition by Congress of the American producer's interest and a granting to him of this right must inevitably result as it has in the past in cases without number in the complete or partial failure of the tariff law to encourage American industries and to protect American labor.

To accomplish these purposes and to provide American producers with a bill of rights, we strongly recommend to the committee the changes shown below in sections 501, 514, 515, 516, 518 and 526.

Section 501. Notice of appraisement—reappraisement: We suggest two amendments to this section, one at the end of each of the two paragraphs comprising it. On page 452, line 25, after the period, add the following sentences:

"If the issue is such that the party defendant can not, in the absence of samples, adequately answer the appellant's case, upon demand therefor, samples of the imported merchandise shall be produced or the appeal dismissed."

At the end of the section, on page 454, line 13, add the following sentence:

"In all proceedings instituted under this section an American manufacturer, producer, or wholesaler shall have the right to appear, to offer evidence, cross examine witnesses, and to be heard as a party in interest under such rules as the United States Customs Court and the United States Court of Customs and Patent Appeals may prescribe."

In the light of the discussion above the reason for the second of these two proposed amendments will be obvious and call for no further treatment here. In the case of the first of the suggested amendments, however, relating to the production of samples, the following explanation is in point.

Frequently months, if not years, elapse between the entry of imported merchandise and the actual trial in the Customs Court to determine its value. The nature and the composition of many commodities is all controlling in securing evidence of value. Without a sample of the merchandise in such a case, it would be impossible for the Government (the party defendant) or the domestic

interest to answer the case made by the importer. This happens frequently under the present procedure. The necessity, therefore, for the addition of a provision of this character to the rules of procedure before the Customs Court is obvious.

Inasmuch as in our recommendations to the committee on the subject of dutiable value, we shall urge the complete elimination of subsection (b) of section 402 in the Hawley bill relating to the finality of the appraiser's decision, we here recommend to the committee the elimination of the third bracket in section 501 beginning with the word "or" in line 8 of page 451 and ending with the word "Treasury)," on line 12 of this page.

Section 514. Protest against collectors' decisions: Under this section of the tariff act of 1922, any amendment by an importer of the protest giving rise to the issue before the court had to be made prior to the first docket call of this protest. The Hawley bill completely eliminates this time limitation and by the insertion of a provision in section 518, permits the amendment of a protest within the discretion of the court at any time before or during the presentation of the case. It would be difficult to exaggerate the possibilities for evil in these changes. If these changes are permitted to stand, extending the time during which a protest may be amended, an incomplete or misleading protest could be filed. In such an event the collector in reviewing his action on the protest, or the Assistant Attorney General in preparing and presenting the case, could not with any degree of accuracy determine the nature of the case the importer intended to make until the importer had actually presented the facts in open court. It would be possible in other words for the importer to file a protest claiming that the merchandise is dutiable under one paragraph at a given percentage, and on the basis of this protest the Government would prepare its presentation of the case. Then, shortly after the trial of the case got under way, the importer could move to amend his protest so that he claimed classification under an entirely different paragraph and an entirely different rate from those originally stated in his protest, leaving the Government "holding the bag."

We, therefore, recommend that the provision of section 514 of the tariff act of 1922 "under such rules as the Board of General Appraisers may prescribe, and in its discretion, a protest may be amended at any time prior to the first docket call thereof," be reinstated, and that the provision of section 518, "under such rules as the United States Customs Court may prescribe and in its discretion, the court may permit the amendment of a protest, appeal, or application for review" (H. R. 2667, p. 478, lines 12–15) be deleted or that the suggested time limit in the tariff act of 1922 which we have asked to be reinstated in section 514 be incorporated in the present provision for the amendment of entry in section 518.

Section 515. Protest against collectors' decisions: We recommend to the committee amendments to this section very similar to those suggested above for section 501 and for the same reasons outlined above. On page 467, line 14, following the word "law," we recommend the insertion of the following sentence:

"If the issue is such that the party defendant cannot, in the absence of samples adequately answer the protestant's case, upon demand therefor, samples of the imported merchandise shall be produced or the protest dismissed."

At the end of this section on line 20 of page 467 we recommend the addition of the following sentence:

"In all proceedings instituted under this section, an American manufacturer, producer, or wholesaler, shall have the right to appear, offer evidence, cross examine witnesses, and to be heard as a party in interest under such rules as the United States Customs Court and the United States Court of Customs and Patent Appeals may prescribe."

Section 516. Appeal or protest by American producers: Section 516 of the tariff act of 1922 was intended to give to the American producer the same right to a judicial review of the action of the appraiser and collector as has long been enjoyed by the importer. This remedy has, however, proved ineffective because of the time consumed in the compliance with the conditions prescribed by this section before a trial may be had. The Hawley bill, by its amendments has rendered this section even less effective than it has been, by prolonging almost indefinitely the time within which a protest may be filed. To date the courts have shown a tendency to require a literal compliance with all of the steps enumerated in section 516 before they will regard a valid protest as having been made. Even under these requirements, however, it was possible for an American producer to protest the first liquidation if the Secretary, acting on his complaint had

denied him the relief sought. However, under the new language of the Hawley bill, beginning at line 7 on page 470, if an American producer has complied with all of the requirements leading up to his complaint, and if the Secretary has made his decision, the producer must wait for the Secretary to publish his decision, then wait for another 30 days to elapse, and then wait for the liquidation of an entry made thereafter. Conservatively, this procedure will consume at least six months, at the end of which time the American producer will have reached the point of filing his protest. With the average time consumed in the adjudication of a customs case at the present time being approximately 13 months, it will be seen that it will be from one year and a half to two years after the American producer discovers that the collector is classifying imported merchandise at a ruinous rate before he can hope for a decision which may remedy the situation.

We believe that it was the intention of Congress in 1922 to make section 516 an effective remedy. This was not done, however, and to the end that this remedy my be made effective by the present revision of the act of 1922 we recommend to the committee that section 516 be revised as follows: At the beginning of section 516 on line 22 of page 467 after the word "Value.—" insert the following sentence:

"If requested by an American manufacturer, producer, or wholesaler, the Secretary of the Treasury shall furnish the appraised value of the imported merchandise of a class and kind manufactured, produced, or sold at wholesale by him."

On line 6 of page 468 after the word "imported" insert the following sentence:

"Action on this complaint shall be taken within 90 days."

To perfect the remedy intended by Section 516 as regards the classification of imported merchandise, we recommend certain changes in this provision which begins on line 11 of page 469 and continues through line 7 of page 472. These changes are shown in the complete redrafting of this provision which follows:

"(b) Classification. If requested by an American manufacturer, producer, or wholesaler, the Secretary of the Treasury shall furnish the classification of and the rate of duty, if any, imposed upon designated imported merchandise of a class or kind manufactured, produced, or sold at wholesale by him. If a manufacturer, producer, or wholesaler objects to the rate of duty imposed he may file a complaint with the Secretary of the Treasury setting forth the reasons for his objection. Within 60 days from the filing of such complaint the Secretary of the Treasury shall render his decision. If the Secretary decides that the classification of or rate of duty assessed upon the merchandise is not correct, he shall notify collectors of customs as to the proper classification and rate of duty and shall so inform such manufacturer, producer, or wholesaler, and such rate of duty shall be assessed upon all such merchandise imported or withdrawn from warehouse after 30 days after the date of such notice to the collectors. If the Secretary decides that the classification and rate of duty are correct, he shall so inform such manufacturer, producer, or wholesaler, and shall, under such regulations as he may prescribe, immediately cause publication to be made of his decision. If an American manufacturer, producer, or wholesaler, is dissatisfied with the decision of the Secretary and is not possessed of the necessary information as to the entry, the consignee, and the port of entry of the imported merchandise in which he is interested, he may request the Secretary to furnish him the necessary information upon which to file a protest and upon receipt of such request, the Secretary shall furnish him with information as to the entries, the consignees, and the ports of entry, together with the dates of liquidation as will enable him to protest the classification of, or the rate of duty imposed upon, the merchandise the subject of the request. Such manufacturer, producer, or wholesaler, may file within 60 days after receipt of notice of liquidation by the Secretary or a collector of customs, with the collector of the port where the imported merchandise was entered, a protest in writing setting forth a description of the merchandise and the classification and the rate of duty he believes proper, with the same effect as the protest of an importer, consignee, or agent, filed under the provisions of sections 514 and 515 of this act. Upon the filing of typical protests the collector shall notify the Secretary of the Treasury who shall order the suspension pending the final decision of the United States Customs Court, of the liquidation, at all ports, of all unliquidated entries of such merchandise imported or withdrawn from warehouse after the expiration of the 30 days after the publication of the Secretary's decision. All entries of such merchandise so imported or withdrawn shall be liquidated, or if already liquidated, shall, if necessary, be reliquidated, in conformity with such decision of the United States Customs Court. If, upon appeal to the Court of Customs and Patent Appeals, the decision of the United States Customs Court is reversed, the classification of the merchandise and the

rate of duty imposed thereon shall be in accordance with the decision of the Court of Customs and Patent Appeals, and any necessary reliquidation shall be made. The provisions of this subdivision shall apply only in the case of complaints filed after the effective date of this act."

Nothing in these amendments in any way affects the provisions of subdivisions (c) and (d) of section 516 in the Hawley bill, and we recommend their inclusion without change in section 516 revised as indicated above.

Section 526. Merchandise Bearing American Trade Marks. American Patent Rights: We recommend the addition of a new subdivision (d) to this section to read as follows, the need and purpose of which we believe to be manifest and obvious:

"The holder of patent rights under the laws of the United States shall upon application to collectors of customs or the Secretary of the Treasury receive such information of importations as will permit him to proceed against possible infringement of such rights."

VALUE

At the hearing before the Finance Committee on Valuation on June 12 and 13, 1929, the American Tariff League went on record in favor of the abandonment of foreign value as the primary basis for the assessment of ad valorem duties. Instead, therefore, of repeating here the evils and objections to the continued use of foreign value we refer to the testimony presented to the committee at its valuation hearing by Mr. John G. Lerch, representing the American Tariff League, which appears on pages 25–49 of the printed record on the valuation hearings, and to the printed statement embodying our recommendations and reasons for a change to United States value which appears on pages 21–25 of the valuation record. For purposes of reference, and for the record, we reprint here our proposed redraft of section 402, making United States value the primary basis of ad valorem duty assessment with American selling price and American cost of production the first and second alternatives:

Sec. 402. *Value.*—(*a*) For the purposes of this act the value of imported merchandise shall be—

(1) United States value.

(2) If the United States value can not be ascertained to the satisfaction of the appraising officers, then the American selling price of any similar or competitive merchandise manufactured or produced in the United States.

(3) If neither the United States value nor the American selling price can be ascertained to the satisfaction of the appraising officers, then the cost of production.

(*b*) The United States value of imported merchandise shall be the price at which such imported merchandise or imported merchandise closely resembling or competitive with the particular merchandise under appraisement, is freely offered for sale, packed ready for delivery, in the principal market of the United States to all purchasers, at the time of exportation of the imported merchandise in the usual wholesale quantities, and in the ordinary course of trade, with allowance of estimated duty at time of entry.

In determining value on the basis of merchandise closely resembling or competitive with the merchandise under appraisement, such adjustments may be made as are necessary to equalize differences.

(*c*) The American selling price of any similar or competitive merchandise manufactured or produced in the United States shall be the price, including the cost of all containers and coverings of whatever nature and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for delivery, at which such merchandise is freely offered for sale to all purchasers in the principal market of the United States, in the ordinary course of trade and in the usual wholesale quantities in such market, or the price that the manufacturer, producer, or owner would have received or was willing to receive for such merchandise when sold in the ordinary course of trade and in the usual wholesale quantities, at the time of exportation of the imported merchandise.

For the purposes of this subdivision (c) any imported merchandise provided for in this act shall be considered similar to or competitive with the domestic merchandise if such imported merchandise displaces domestic merchandise or accomplishes results substantially equal to those accomplished by the domestic merchandise when used in substantially the same manner.

In determining value on the basis of merchandise closely resembling or competitive with the merchandise under appraisement, such adjustments may be made as are necessary to equalize differences.

(*d*) For the purpose of this title the cost of production of imported merchandise shall be the sum of—

(1) The cost of materials of, and of fabrication, manipulation, or other process employed in manufacturing or producing such merchandise in the United States, at a time preceding the date of exportation of the particular merchandise under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business;

(2) The usual general expenses (not less than 10 per cent of such cost) in the case of such merchandise produced in the United States;

(3) The cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing such merchandise in condition, packed ready for shipment in the United States; and

(4) An addition for profit (not less than 8 per cent of the sum of the amounts found under paragraphs (1) and (2) of this subdivision) equal to the profit which ordinarily is added, in the case of merchandise of the same general character as the particular merchandise under consideration, by manufacturers or producers in the United States who are engaged in the production or manufacture of merchandise of the same class or kind.

With further reference to the valuation basis we desire to refer here to the provisions of section 402 as contained in the Hawley bill. This bill continues in force the present valuation system under which foreign value is the primary basis with export value, United States value, foreign cost of production and American selling price as alternatives to be used in the order enumerated. That the House recognized the evils and objections to the continued use of such a valuation system would appear to need no further proof than the fact that in section 642 the Hawley bill provides for an investigation by the President of the methods of valuation, "particularly with a view to determining the extent to which values in the United States may properly be used as a basis for the assessment of customs duties."

Although the Hawley bill provides in section 402 for the continuance of the present system of valuation, two outstanding amendments were made to section 402 which, in our opinion, are decidedly unwise and objectionable. In section 402 (b) the Hawley bill provides that a decision of the appraiser that foreign value or export value or both can not be satisfactorily obtained shall be final and conclusive in any administrative or judicial proceedings except only as to a review by the Secretary of the Treasury. By this provision the Hawley bill takes away from the Customs Court jurisdiction as to the basis of value applicable to a particular importation and provides instead an appeal to the Secretary of the Treasury from the appraiser's decision. In other words, the appraiser's justification for using foreign value or United States value or cost of production or any other valuation basis is not to be subject to a review of the court.

A somewhat similar procedure to this proposal existed prior to 1890 in the matter of classification of imported merchandise. The law at that time provided that an appeal from the action of the collector as to the proper rate of duty could be made to the Secretary of the Treasury. After years of experience this procedure proved to be so objectionable that the Board of General Appraisers, created in 1890, was given jurisdiction over such matters which had formerly been vested in the Secretary of the Treasury. This board in May, 1926 became the Customs Court, and the amendment in 402(b) of the Hawley bill to take away from the court jurisdiction as to the basis of value on which duties are to be assessed is, in a sense, therefore, a decidedly backward step and we recommend and urge upon the committee the elimination of this provision, thereby restoring to the Customs Court jurisdiction over the basis of value applicable to imported merchandise. The elimination of this provision will automatically require the deletion of the two references to it in section 504 (b). These are "or on request for review by the Secretary of the Treasury on basis of value," in lines 19 and 20 of page 453 and "or on such review by the Secretary of the Treasury," in lines 23 and 24 of page 456.

Section 402 as amended by the Hawley bill contains one other major objectionable feature in the amendment to subdivision (e) defining United States value. United States value has always been defined as the value or price of the imported article in the markets of the United States less certain statutory deductions, and has always been a definite and ascertainable figure. The new definition of United States value in the Hawley bill provides first, that if the selling price of the imported merchandise can not be ascertained, then an estimated value may be used, and second, this estimate may be based on the price of either imported merchandise or domestic merchandise comparable in con-

struction or use to the imported merchandise. Except for the limitation that this estimate shall be based on the price at which merchandise, domestic or imported, is offered for sale, the estimator is given the widest latitude in making his estimate. The objections to this new provision in the definition of United States value because of the indefiniteness, uncertainty and arbitrariness possible under it will immediately be obvious, and we, therefore, recommend the elimination of this estimate provision from any definition of United States value adopted by the committee.

It is to be noted further that this new definition of United States value, by permitting that value to be based on the price at which domestic merchandise is offered for sale will practically preclude the use of the American selling price as defined in subsection (g) of section 402.

Finally, the new definition of United States value in the Hawley bill calls for the determination of that value at the time of importation into the United States of the imported merchandise instead of at the time of exportation of the merchandise to the United States as has heretofore always been the case in every definition of dutiable value. The practical operation of this change by which the duty would be assessed on merchandise at the time of its importation into the United States will evitably mean the assessment of differing amounts of duty on merchandise costing the same in the country of origin and which left the country of origin on the same day but which was shipped to different ports in this country. One of these ports might be on the Atlantic seaboard and the other on the Pacific coast, and, if during the interval after the goods arrived at the Atlantic port and before the ship destined to the Pacific port arrived and unloaded its cargo the merchanside in question had advanced in price, the Pacific port importation would be subjected to a higher amount of duty than was levied on the consignment at the Atlantic port. To the extent that the tariff is a tax this would certainly be regarded as a geographical discrimination.

In conclusion, then, we recommend to the committee that unless our proposal or a similar plan, based upon facts all of which are ascertainable within the United States is adopted, that the definitions of value as they now appear in section 402 of the tariff act of 1922 be used exactly as they appear in that law.

INSPECTION OF EXPORTERS' BOOKS

Section 510 of the tariff act of 1922, eliminated in toto in the Hawley bill: This section was omitted from the Hawley bill because of the adoption of the new section of that bill, 402 (b), "Finality of appraisers' decision." (P. 391, line 4.) In the preceding discussion, we have fully considered and set forth our objections to this subdivision. We renew our objection to it and request its deletion. If our proposed new section 402, providing for bases of value having all of their facts within the United States, is adopted, there will be no further need for section 510 of the act of 1922. If, however, our proposed plan of value is not adopted, and "foreign value" or "export value" is retained in the law, there will be every need to retain this section.

While it has been applied in but few instances, it has been a tremendous aid in the administration of our customs laws, and we believe the ascertainment of foreign or export value would be impossible without it. In the event of the continued use of "foreign value" and/or "export value," we request the retention of section 510 of the tariff act of 1922.

MISCELLANEOUS PROVISIONS

Section 304, marking of imported articles: With the exception of two omissions, we believe that this section in the Hawley bill is an improvement over the section as it appeared in the tariff act of 1922. The Hawley bill has, however, omitted the very desirable provision of the law of 1922 that the marking be "indelible and permanent" and also that it be placed in such position on the imported article that it will "not be covered or obscured by any subsequent attachments or arrangements." These we think are essential for proper administration of this section.

It will also be noted that the Hawley bill has inserted at the end of subdivision (a) of this section after the provision permitting the Secretary to make regulations "and subject to such exceptions as may be made therein." We believe that this provision which places in the hands of the Secretary the arbitrary power to state which articles are to be marked and which need not be marked may result in serious injury to the domestic interests and a nullification of this section, if there should be a Secretary of the Treasury not in sympathy with the spirit of

the law. We therefore recommend that the following changes be made in the Hawley bill:

Amend subdivision (a) of section 304, as follows:

(a) Manner of marking: Every article imported into the United States, and its immediate container, and the package in which such article is imported, shall be marked, stamped, branded, or labeled, in legible English words, in a conspicuous place that shall not be covered or obscured by any subsequent attachments or arrangements, in such manner as to indicate the country of origin of such article, in accordance with such regulations as the Secretary of the Treasury may prescribe. Said marking, stamping, branding, or labeling shall be as nearly indelible and permanent as the nature of the article will permit.

Sections (b), (c), (d), and (e) to remain the same as contained in the Hawley bill.

Section 305, Immoral articles: We believe this section should prohibit matter containing any threat to take the life or inflict bodily harm to other officers of the United States as well as the President of the United States. We, therefore, suggest the insertion after the words "United States" in line 9, page 331, of H. R. 2667, "or other public officer."

Section 313, Drawback and refunds: We are in accord with this section as amended in the Hawley bill except for subdivision (c) "Merchandise not conforming to sample or specifications." This subdivision permits a refund of duty on merchandise withdrawn from customs custody if it does not conform to ample or specification. From the Revised Statutes to date, there has been a provision in the law prohibiting any refund of duty or abatement of duty after the merchandise has left Government custody. (Sec. 558, Hawley bill.) Any provision which modifies this Revised Statute opens wide the door to fraud. Under the operation of subdivision (c) of this section, an importer of high-grade merchandise might invoice it in such a manner as not specifically to describe his imported merchandise. Immediately upon receiving the shipment in his place of business, he may substitute inferior merchandise of the same description, present a claim to the Government, export it to a customer in a foreign country, and receive 99 per cent of the duty paid on the high-grade goods. A system of this kind if put in operation would permit of the importation of high-grade merchandise with the payment of but 1 per cent duty.

If our suggested amendment to this section is adopted, section 558 should be amended so as to strike out the words contained in line 17 of page 496 of H. R. 2667, "or not conforming to sample or specifications, on which a drawback of duties is expressly provided for by law."

Section 401, Definitions: As to the definitions of the words "Vessel" and "Vehicle" in subsections (a) and (b), we suggest that the wording of the act of 1922 be retained. The Ways and Means Committee in reporting the Hawley bill to the House, stated that the provision as to aircraft is no longer necessary inasmuch as the air commerce act of 1926 authorized the Secretary of the Treasury by regulations to apply any provision of the customs laws to aircraft. We can see no reason why all of the provisions of the customs laws should not relate to aircraft as well as to other craft. We do not believe that it should be left to a Government official to apply or omit the application of any of the customs laws to aircraft.

Section 448, Unlading: Subdivision (b) "Special Delivery Permit," of the Hawley bill is a new tariff provision. While there may be ample justification for the issuance of special permits of delivery prior to formal entry of perishable articles, we can see no reason for the inclusion in this provision "and other articles," and urge that these words be stricken from the Hawley bill, page 408, line 24. If this phrase is permitted to remain in this subdivision, it may admit of gross abuse inasmuch as it allows the issuance of a special permit on any imported merchandise. In the committee report to the House of Representatives, no explanation is given as to why "and other articles" was included in this subdivision, the only reason given for the adoption of this subdivision being to facilitate the handling of perishable articles.

Section 487, Value in entry—Amendment: We heartily indorse the new language of this section in the Hawley bill. We believe that it meets one of the greatest needs in the administrative provisions of the tariff act.

We can not, however, see any reason for a different treatment of coal-tar products, paragraphs 27 and 28, of this act, from that of all other products or paragraphs in the act. The Hawley bill as to coal-tar products reenacts the language of the act of 1922 with all of its objections. We urge that all of this section beginning with the word "except" in line 22, page 437 of the Hawley bill, be

deleted. This also includes the last sentence of the section giving the Secretary power to make regulations. This sentence is unnecessary as section 624 of this bill, giving to the Secretary general power to make regulations, applies with the same force to section 487 as to any other section of the law.

Section 503, time for appraiser's return: We believe that this section is an open invitation to fraud. From the report of the Ways and Means Committee of the House of Representatives, it will be seen that that committee was actuated by a principle of equity in the enactment of this section. We feel, however, that had the committee been fully advised of the possibility of fraud and manipulation under this section, the very slight inconvenience which it sought to remedy would have been overlooked. This section of the law operating in conjunction with (c) of section 504, would permit a dishonest importer to invoice and enter his merchandise at but a small percentage of its true value; secure, if possible, the cooperation of an examiner, or an examiner's clerk in the appraiser's office, to "misplace" the invoice for 121 days, when under the operation of these provisions of law the collector would be compelled by statute to liquidate the entry on the importer's entered value. No existing provision of law or proposed provision of law would permit the liquidation or reliquidation of this entry at any other value than the fraudulent entered value.

A provision of law which will by the mere loss or misplacement of an invoice permit gross fraud as to the revenue should be most heartily condemned. We have operated under the existing laws for more than a century and the need for an amendment of this character has never been sufficiently felt to warrant its consideration. The business of appraising imported merchandise is exceedingly difficult and complicated and in its performance we believe the appraiser should be left without restriction. We, therefore, most earnestly recommend that this section, page 455, lines 19 to 23, together with its correlated section 504 (c), page 457, lines 4 to 12, be entirely deleted from the law.

Section 504. Dutiable value: Suggested changes in subdivision (b) of this section have been enumerated in our discussion of section 402 of this brief and will not be repeated here.

The deletion of subdivision (c) of this section has been fully explained and recommendations in connection therewith made in our discussion of section 503 of this brief and will not be repeated here.

Subdivision (d), "Basis of Rate" apparently covers so closely the same material as subdivision (a), "General Rule" of this section that we feel quite confident there will be a conflict between them. Subdivision (a) would seem to cover all that is required and we see no reason for the inclusion of subdivision (d) and, therefore, recommend that it be deleted.

Section 518. United States Customs Court: We are advised that the United States Customs Court, directly or through the Bar Association, submitted a revised section to your committee which will transfer the fiscal affairs and administration of the court from the Treasury Department to the Department of Justice. We believe this transfer is highly desirable and indorse the wording of the new section as proposed on behalf of the United States Customs Court.

If the proposed section as it is submitted to your committee contains no limitation on the time for the amendment of the protest, appeal, or petition for review, we request the adoption of our proposal as set forth under our discussion of section 514 in this brief.

Section 521. Reliquidation on account of fraud: This section in the tariff act of 1922 was a reenactment of the revised statute in substantially the same wording. The Hawley bill has amended this section by deleting all of it except the following sentence:

"If the collector finds probable cause to believe there is fraud in the case, he may reliquidate an entry within two years after the date of liquidation or last reliquidation."

In all prior acts this section contained a provision "in the absence of fraud and in the absence of protest," which suspended the operation of the time limit during the pendency of a protest. Under the present wording of this section in the Hawley bill we have grave doubt whether, because of fraud, a collector would have the right to reliquidate an entry three years after its liquidation, even though the three years elapsing between the liquidation and the attempt to reliquidate were entirely consumed by the protest action. In other words, if a fraudulent entry was liquidated without discovery of the fraud by the collector,

an importer might file a protest, delay the action of the Customs Court for more than two years, and the collector would be powerless to reliquidate.

If any provision of the Hawley bill supplies this omission, we have not found it.

Respectfully submitted.

THE AMERICAN TARIFF LEAGUE,
By ARTHUR L. FAUBEL, *Secretary.*
JOHN G. LERCH, *Attorney.*

CITY OF WASHINGTON,
District of Columbia, ss:

Arthur L. Faubel and John G. Lerch personally appeared before me this 16th day of July, 1929, and swore to the truth of the statements made in this brief.

Sworn to before me,
[SEAL.]

CHARLES E. ALDEN,
Notary Public.

STATEMENT OF HERMAN A. METZ, NEW YORK CITY, REPRESENTING THE MERCHANTS' ASSOCIATION OF NEW YORK

(The witness was duly sworn by the chairman of the committee.)

Mr. METZ. Mr. Chairman and gentlemen: I appear before you as the representative of the Merchants' Association. I desire to discuss a very few of the administrative sections of the bill, and I shall try to do it very quickly.

The Merchants' Association is composed of 8,000 members. It is composed of merchants, manufacturers, and importers; so we do not represent any one class, and I am coming here not in an individual capacity but as a representative of that organization.

Senator SIMMONS. What was the organization? I did not catch the name.

Mr. METZ. The Merchants' Association of New York.

Senator SIMMONS. Is it a national association?

Mr. METZ. No, no—New York City. We have membership, however, of people who do business all over the country, naturally—importers, manufacturers, and business men in general. I mention that simply for the purpose of impressing upon you the fact that we do not represent any one kind of business, but want to represent the three parties at interest—the United States Government, the importer, and the consumer.

Senator SIMMONS. You certainly have taken on a big job.

Mr. METZ. We certainly have.

Senator EDGE. You do not mean to say that they are united on any one paragraph in the administrative features, do you?

Mr. METZ. I do not believe we are on any one thing; but we have a tariff committee, of which I have been a member for nearly 30 years, representing all kinds of interests, and that committee has discussed this situation and put it before the directors; and they have endorsed these things that I am bringing to you. I think they are pretty nearly unanimous; and I think you will agree that these things are done to facilitate matters and not to handicap any one.

The first is section 304—the marking of imported articles showing the country of origin.

Senator SHORTRIDGE. What position do you take in regard to that?

Mr. METZ. The phraseology of paragraph (b) in this section should be clarified so that the intent of Congress concerning penalties will be clearly apparent. Many who have read the section are uncertain as to whether or not it is intended that the additional duty—10 per cent of the value—is all that may be assessed for any violation or

group of violations in connection with a single importation, or whether it is intended that the additional duty shall be assessed for each failure to mark in connection with an importation. In other words, if an article and its immediate container are both unmarked, will the penalty be 10 per cent or 20 per cent—that is, 10 per cent for failing to mark the article, plus 10 per cent for failing to mark the immediate container?

In other words, the package may not be marked, but the individual article in there must be marked. Now, shall it be 10 per cent for the container and 10 per cent for the article, or 10 per cent for failure to mark? It is not quite clear in this paragraph; and if you can clarify that, I think it will help matters a great deal.

The CHAIRMAN. It says——

A duty of 10 per centum of the value of such article.

Of course that does not mean the container.

Mr. METZ. It is not quite clear. The penalty is prescribed for each failure to mark. Now, there are two failures to mark. The container is not marked, and the goods are not marked. We are penalized now if the package is not marked, and we are allowed to go to the appraisers' stores and mark each individual article in there and pass it in that way.

The CHAIRMAN. The law does not say "any article *and* its container." The wording is—

If at the time of importation any article *or* its container is not marked.

Mr. METZ. Well, it is an open question.

Senator HARRISON. All you want is for it to be clarified?

The CHAIRMAN. Yes. What you want is to be sure that it applies to the article itself?

Mr. METZ. To the article itself—that is all—that the article itself shall be marked, or the penalty imposed upon that.

Senator THOMAS of Oklahoma. Is your organization in favor of the principle of the marking law?

Mr. METZ. They do not oppose it. I think it ought to be done. It always has been done. There is no reason why it should not be done that I can see.

Senator REED. Some articles are not capable of being marked; are they?

Mr. METZ. Well, there are extremes. Take a cigar——

Senator REED. Take common pins: You can not mark the point of origin on every pin.

Mr. METZ. No; but you mark the package in that case.

Senator REED. The language of this provision would require it to be marked on the pin itself.

Mr. METZ. Take a cigar-label: The label is printed in Germany. The cigar is made here. The label must be stamped "Made in Germany." Very often the appraiser thinks the cigar is made in Germany, which is nonsense, of course; but that is the law, and you have got to carry out the law. Take little mirrors or vanity cases: The mirror is made in France, possibly, and brought over here, and the rest is made here. The mirror must be stamped "Made in France," and it signifies, possibly, that the entire article is made in France, which is not the case.

Those are things that occur all the time, that we can not get away from; but what you want to do is to have the article imported marked with the country of origin, which I do not see any objection to.

The CHAIRMAN. The law says that every package containing any imported article or articles shall be marked.

Mr. METZ. The package outside must be marked also—that is the trouble—and the article itself.

The CHAIRMAN. That is required to-day, under existing law.

Mr. METZ. Yes; every case is marked.

Senator EDGE. Have you any language prepared that will clarify this, Mr. Metz?

Mr. METZ. I think it is a matter of discretion with the appraiser. If it is clear that the package shall be marked, and the article, and if either one is not marked it is penalized, that is perfectly satisfactory; but there should not be a double penalty.

The CHAIRMAN. It seems to me that if only the package were required to be marked, the article could come in and be put up in American packages and be sold without any mark whatever.

Mr. METZ. There are a great many things, of course, that can not be marked. Take my own case, dyes: You can not mark dyes. You have got to mark the package, naturally.

The CHAIRMAN. You have never had any trouble about that?

Mr. METZ. No; but if there should be other things here—it is just a matter of clarification—if there should be small things that come in, fancy things, the case is marked.

Senator DENEEN. If the article can not be marked, the container should be.

Mr. METZ. Yes, sir.

Senator BARKLEY. Section (a) provides that—

> Every article imported into the United States, and its immediate container, and the package—

Must all three be marked?

Mr. METZ. Absolutely.

Senator BARKLEY. That is not in harmony with subsection (b), which uses the word "article."

Mr. METZ. That is the trouble. We do not know now whether there is a double penalty or not. That is all we are trying to get at. We do not object to marking.

The CHAIRMAN. We will consider it.

Mr. METZ. That idea is all I wanted to leave with you.

The next matter is section 402 (*b*)—the finality of the appraiser's decision.

The CHAIRMAN. Section 402 begins on page 390.

Senator SHORTRIDGE. What is the position you take, in a word, Mr. Metz?

Mr. METZ. The Merchants' Association was represented by Messrs. J. Crawford McCreery and Samuel Pearsall at the hearing before the Finance Committee on June 12 in order to protest vigorously against this paragraph. A separate brief on this subject was filed with the committee at that time. We should like to have you consider that brief—in other words, that there should be some appeal from a decision of that sort.

Senator SHORTRIDGE. As to what point?

Mr. METZ. As to the finality of the general finding.
Senator SHORTRIDGE. An appeal to the Customs Court?
Mr. METZ. Yes.
The CHAIRMAN. Proceed.
Mr. METZ. The next matter is section 484, subsection (h).
Senator SHORTRIDGE. That section begins on page 428.
The CHAIRMAN. Subsection (h) is on page 432, Mr. Metz.
Mr. METZ. These books are different.

We strongly approve the recommendation in this paragraph which stipulates that upon the production of a duplicate bill of lading, certified to be genuine by the issuing carrier, entry of merchandise shall be permitted. The reasons which have brought about the inclusion of this provision in the pending bill are well known, and do not need explanation.

However, the paragraph contains the following sentence:

> No merchandise so entered shall be released from customs custody except to such carrier.

It is feared that the inclusion of this sentence will greatly delay the delivery of public and warehouse packages so entered. The likelihood of improper delivery without this requirement is so remote as in our opinion to be practically nonexistent. It is hoped, therefore, that both in the interest of steamship and rail carriers, as well as in the interest of importers, this provision will be eliminated.

In other words, you can deliver only to the carrier. He should be relieved entirely of any responsibility for the owner. In other words, it is hardly thinkable that any one else but the consignee would bring that duplicate invoice to the customhouse. This way you deliver only to the carrier, and he does not want to be bothered with the shipment and handling of the goods. The man making the entry should get it; and I think if the carrier certifies that that man is the owner, that ought to be sufficient to have delivery go to the man who makes the entry, and not to the carrier only. That is the only point there.

Senator SHORTRIDGE. You are directing attention to the last sentence in that subsection?
Mr. METZ. Yes.
Senator REED. He would be liable to the real owner, then, if the goods were delivered to the wrong person. The carrier would not be; would he?
Mr. METZ. The carrier would not be; no; but he has to certify that the party named in the bill of lading is the real owner, and he would not do that unless he was sure of it.

In other words, this is the situation: Goods very often arrive here long before the bill of lading, or for some other reason we do not get it and have to make the entry. What is the result? The goods go to the general store; charges are imposed, and delay occurs. Now, with the duplicate bill of lading we can make the entry just the same, provided it is certified to by the carrier.

The CHAIRMAN. This same subject came up in 1922.
Mr. METZ. Yes; the same subject came up then.
The CHAIRMAN. I remember your speaking upon the same thing at that time. We will consider it again.
Mr. METZ. It is the same thing.

The next matter is section 485 (d)—the declaration.

The CHAIRMAN. That is on the same page, 432.

Mr. METZ. In other words the consignee "shall not be liable for any additional or increased duties," etc. We think it should read, "shall not be liable for any additional or increased duties, or as owner." In other words, he is not the owner.

The CHAIRMAN. Have you had any trouble with the existing law?

Mr. METZ. The words "or as owner" should be inserted after "increased duties" and before "if."

Senator EDGE. What paragraph?

Mr. METZ. Paragraph (d):

A consignee shall not be liable for any additional or increased duties, or as owner, if (1) he declares—

So and so. If he does not, he may be penalized as the owner, which is not the intent.

The CHAIRMAN. What is the next matter?

Mr. METZ. The next matter is section 487—value in entry.

The CHAIRMAN. Page 437. That is a new provision.

Mr. METZ. There have been some additions made there that it seems to us simply complicate matters, and make business for attorneys and for the Customs Court.

There has been no trouble at the present time by having this power to amend an entry allowed until the time that the entry comes before the appraiser. If you are going to put in there a requirement that it must be done before it comes to "the appraiser, assistant appraiser, examiner or examiner's clerk, or person acting as such appraiser, assistant appraiser, examiner or examiner's clerk," anybody who has an entry can say, "This has been before the appraiser." I have discussed it with the appraisers also, and they are entirely satisfied to leave it as it is. In sections 27 and 28, the dyestuffs section, it was eliminated by the judges themselves. I talked to Judge Fischer about it at the time. We can not possibly make entries of them without knowing what the value is going to be, and we have to amend them after they come in because of the American valuation clause.

The same thing happens all along the line. The moment the entry reaches the appraiser's stores, that settles it. Under the provision as you have it now, it is the appraiser or somebody acting for the appraiser. There is no appraiser in certain places. It would be just as safe as it is now as the other way, and it would give the importer a chance. There are many things as to which you can not make final entry until you know the conditions, and there is no way of finding out.

Senator SHORTRIDGE. Do you object to this whole suggested amendment?

Mr. METZ. I object to everything after "appraiser."

The CHAIRMAN. What you want is the existing law?

Mr. METZ. Practically as it is now. That is thoroughly satisfactory to the appraisers' department, and it has not worked a hardship on anyone, and it is a safe proposition to leave it that way. This way, you never know where it is going. It simply makes business for attorneys, and you have litigation that you have not got now.

Senator SIMMONS. Mr. Metz, did the department suggest these changes in the administrative provisions, or are they suggested by some members of the committee or some gentlemen coming before the committee?

Mr. METZ. They were suggested largely in the first place by the Customs Court. I think the judges to some extent suggested these changes; but the moment we spoke to them about it, they changed it. It was done at the behest of some customhouse brokers in New York in the first place, I am quite sure.

The next section is 503, "time for appraiser's return."

The CHAIRMAN. That is on page 545.

Senator WALSH of Massachusetts. That is a new section also, is it not?

Mr. METZ. There are some additions in there. I took that up with the appraiser a few days ago. There is no objection to the addition, giving him 120 days in which to make his return, and if he is further delayed, he can appeal to the Secretary of the Treasury. At the present time he has unlimited time. They want to limit that to 120 days, but there are certain conditions where the appraiser can not possibly make his return in that time. Take church goods, for instance, for the altars. You can not appraise a piece of statuary. You have to appraise the whole thing.

Take the case of machinery. I might cite a case at Hell Gate, N.Y., where there is work being done by a foreign contractor. He brings that machinery into the country. The appraiser can not appraise every piece. He has to wait until that machinery is installed to do the work. It may take two years.

Senator EDGE. This provides for an exception.

Mr. METZ. It provides for 120 days.

Senator EDGE. It provides that he may be given further time.

Mr. METZ. But there should be some limitation. There is no great objection to giving him 120 days more, probably, but there should not be unlimited time.

The CHAIRMAN. The Secretary has the power to grant an extension beyond 120 days.

Mr. METZ. Yes. If that is understood, that is all right.

Senator SHORTRIDGE. That is very plain.

Mr. METZ. If it is understood that he can come back and get the time he needs, that is satisfactory, but he should not have arbitrary power to delay it after that.

The next section is 504 (b), "Entries pending reappraisement." The words "after due diligence and inquiry on his part" should be omitted.

Senator WALSH, of Massachusetts. Why?

Mr. METZ. "And if it shall appear that such action of the importer on entry was taken in good faith—" He can not do more than make an entry in good faith. He can not inquire before the entry is made about values. He gets the entry and makes it in good faith. Why add the words "after due diligence and inquiry on his part"?

Senator WALSH, of Massachusetts. You want those words stricken out?

Mr. METZ. Yes.

Senator SHORTRIDGE. Why?

Mr. METZ. How can he prove it? He gets an invoice from abroad and makes his entry.

Senator SHORTRIDGE. That would imply diligence, perhaps.

Mr. METZ. That is a question. It is open to construction. It depends on how you feel about it. "In good faith" means in good faith. If you are going to say "after due diligence and inquiry on his part" how are you going to prove it?

Senator SHORTRIDGE. Those are elements of good faith.

Mr. METZ. It means more business for the attorneys and courts, and means a lot of trouble and delay in invoices. It really does no good there.

The next section is section 563, "Goods lost while in customs custody." We are entirely in favor of that section, and hope it will be maintained. There is some opposition to it, I understand, but the association is entirely in favor of that clause.

The CHAIRMAN. You approve that?

Mr. METZ. We approve it fully; yes, sir.

The CHAIRMAN. Go ahead.

Mr. METZ. Section 641, "Regulations for licensing customs house brokers."

The CHAIRMAN. That is page 539.

Mr. METZ. Section 641 of the pending bill gives the Secretary of the Treasury more complete control of customshouse brokers than he has at present. If there can be inaugurated a satisfactory system of appeal for a judicial review of the decision of the Secretary of the Treasury by a customshouse broker who is aggrieved by such a decision against him, that, in our opinion, would be very desirable. Such a plan should, however, in our judgment, provide against protracted delays by the court making the review. It is desirable that in some way the broker should be given an opportunity to appeal if he feels aggrieved, without protracting the thing forever.

Paragraph 1615, "American-made articles returned." The paragraph as at present worded continues the system of permitting the return duty free of American articles to the United States after they have been exported, provided they have not been advanced in value or improved in condition, if they are imported by or for the account of the person who exported them from the United States. The requirement that exported goods must be returned by or for the account of the person who exported them in order to secure duty exemption was put in the 1922 law to prevent the reimportation into the United States without the payment of duty of enormous quantities of war supplies by speculators.

Senator SACKETT. Can you go a little slower? It is very difficult to follow you.

Mr. METZ. The requirement was timely and necessary, although prior to that bill it had never appeared.

We believe that since that emergency has passed this proviso should be omitted from the law as a matter of fairness to American business, bankers, manufacturers, and so forth.

The CHAIRMAN. Have you had any trouble with it at all?

Mr. METZ. No one can bring them back but the exporter. There is this trouble: For instance, there is fault found with the goods. Somebody may be able to use those goods over here in exchange for

other goods sent over. The manufacturer or the exporter refuses to take them back. There is no way of bringing them back. Another man may be able to use those goods for another purpose, bring them in, and sell his goods in exchange. In this way they must remain over there unless the manufacturer himself brings them in.

The CHAIRMAN. Why do you ask the change in the law? Do you know of a single case——

Mr. METZ. At the present time no one can bring the goods back free except the exporter himself.

Senator GEORGE. Let me cite this instance, which came before our committee. It was the case of a maker of cotton bags for cement sold in Chile. Imports of nitrate of soda came in those bags. The importer would have to pay a duty on the bags, because they would not be received by the manufacturer.

Mr. METZ. Absolutely.

Senator GEORGE. In other words, he would not be able to compete. There would be a sales resistance that he would have to overcome in selling his goods in foreign markets for import into the United States. The American manufacturer of the bag could himself receive it back with its contents without a duty on the bag. But when the importer in Chile shipped it in to a customer in the United States, that customer would have to pay the tax on the bag. That was one case that was cited.

Mr. METZ. That is the case in general.

Senator BINGHAM. He would not have to pay the tax on the bag if the bag were made anywhere else except in the United States.

Senator GEORGE. That is true. It would come in as a container.

Senator REED. Another case that was brought before the metals subcommittee was the case of motor cars, several thousand of which could be sold to American consuls and diplomatic officers abroad, and American business men; but if they are bought, they have to pay a duty when those officers return to their homes in the United States.

Mr. METZ. Absolutely, unless the manufacturer himself brought them back.

Senator REED. If he sells them to the consul, the consul can not import them.

Mr. METZ. That is true.

Senator REED. Although the manufacturer could bring them back without duty.

Mr. METZ. That is a hardship. It was done at the time to prevent the bringing back by speculators of war goods sold abroad. That emergency has passed. We would recommend that that be dropped, and that American goods be brought back free of duty.

Senator EDGE. If you eliminate the paragraph, you would reach that result.

Mr. METZ. Practically.

Senator REED. You would leave the language "Articles the growth, produce, or manufacture of the United States, when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means"——

Mr. METZ. The language "by the exporter thereof" should be taken out. That is all I have along that line. I will take no more of your time.

(Mr. Metz submitted the following brief:)

THE MERCHANTS' ASSOCIATION OF NEW YORK

The Merchants' Association of New York recommends the changes outlined below in the various administrative sections of H. R. 2667 in the interest of the Government, domestic manufacturers, importers and merchants.

It should be understood that the Merchant's Association of New York with more than 8,000 members is an organization representing all business interests in the community and has all the functions of a modern chamber of commerce. The association maintains a permanent committee of experts in customs matters composed of domestic manufacturers, customs brokers, importers, and others, with an attorney as chairman. The recommendations of this committee have been reviewed and approved by the executive committee of the association. This statement is made in order that the Finance Committee will realize that our position in these matters is taken from the point of view of the fair and proper treatment of the three parties at interest—namely, the United States Government in the proper protection of its revenue from import duties, the domestic manufacturer from the point of view of the protection Congress intended him to receive and the importer desiring to conduct his business properly and effectively under the law, and not in the interest of any single business group.

The following, which are presented in numerical order rather than in the order of their importance, are recommended to the favorable consideration of the committee:

SECTION 304—MARKING OF IMPORTED ARTICLES TO SHOW COUNTRY OF ORIGIN

The phraseology of paragraph (b) in this section should be clarified so that the intent of Congress concerning penalties will be clearly apparent. Many who have read the section are uncertain as to whether or not it is intended that the additional duty (10 per cent of the value) is all that may be assessed for any violation or group of violations in connection with a single importation or whether it is intended that the additional duty shall be assessed for each failure to mark in connection with an importation. In other words, if an article and its immediate container are both unmarked will the penalty be 10 per cent or 20 per cent—i. e., 10 per cent for failing to mark the article plus 10 per cent for failing to mark the immediate container?

The Merchants' Association makes no recommendation regarding the penalty but believes that Congress should make its meaning clear enough to avoid needless litigation.

SECTION 402 (B)—FINALITY OF APPRAISER'S DECISION

The Merchants' Association was represented by Messrs. J. Crawford McCreery and Samuel Pearsall at the hearing before the Finance Committee on June 12, in order to protest vigorously against this paragraph. A separate brief on this subject was filed with the committee at that time.

SECTION 484 (B)—ENTRY ON DUPLICATE BILL OF LADING

The Merchants' Association strongly approves the recommendation in this paragraph which stipulates that upon the production of a duplicate bill of lading certified to be genuine by the issuing carrier entry of merchandise shall be permitted. The reasons which have brought about the inclusion of this provision in the pending bill are well known and do not need explanation.

However, the paragraph contains the following sentence:

"No merchandise so entered shall be released from customs custody except to such carrier * * *."

It is feared that the inclusion of this sentence will greatly delay the delivery of public and warehouse packages so entered. The likelihood of improper delivery without this requirement is so remote as, in our opinion, to be practically nonexistent. It is hoped, therefore, that, both in the interest of steamship and rail carriers, as well as in the interest of importers, this provision will be eliminated.

SECTION 485 (D)—DECLARATION

The phraseology of the first sentence in this section is incomplete and does not, we believe, satisfactorily represent the intent which Congress had in mind in drafting it. That sentence reads as follows:

"A consignee shall not be liable for any additional or increased duties if (1) he declares at the time of entry that he is not the actual owner of the merchandise, (2) he furnishes the name and address of such owner, and (3) within 90 days from

the date of entry he produces a declaration of such owner, conditioned that he will pay all additional or increased duties, etc."

The paragraph clearly intends to relieve the consignee from obligations as owner, provided he submits indisputable proof as to who the owner is and that the owner will pay additional or increased duties, etc. This association believes, therefore, that the first sentence should read as follows:

"A consignee shall not be liable for any additional or increased duties, or as owner, if (1) he declares * * *."

SECTION 487—VALUE IN ENTRY—AMENDMENT

The phraseology in this paragraph is designed to remedy a condition arising from a court interpretation of the current law which, beyond doubt, needs remedy. We believe, however, that the plan set up in section 487 as now worded is needlessly broad, to the material detriment of both the Government and the importer.

The phraseology of this section should be changed so as to permit amendment before the invoice comes under the observation of the appraiser, or the person acting as appraiser. This removes the words from the bill. The present bill would, from a practical point of view, prevent any amendment after entry, which is often desirable and proper and results in a satisfactory conclusion without litigation.

SECTION 503—TIME FOR APPRAISER'S RETURN

This section should be amended to provide that whenever the Secretary of the Treasury grants an extension of time to the appraiser he shall not grant an indefinite extension, but shall grant an extension say of not beyond an additional 120 days. If the section were so amended the appraiser would then have a total of 240 days, if necessary, to return the entry—i. e., a total of approximately eight months.

The present system of unlimited time for the appraisers' returns has produced unsatisfactory results and has caused various abuses to arise which should be prevented. If the bill is enacted in its present form the appraiser merely has to appeal to the Secretary of the Treasury, or to some subordinate in a routine manner, in order to secure an indefinite extension, thereby continuing present evils. No circumstances can be imagined where the appraiser should require more than eight months to return an entry, particularly in light of the fact that, if uncertain, he can authorize return at a value which will fully protect the Government, leaving the importer to appeal if he cares to do so.

SECTION 504 (B)—ENTRIES PENDING REAPPRAISEMENT

The words "after due diligence an inquiry on his part" (line 19) should be omitted in that such phraseology and such a requirement is out of place in this particular section and, moreover, the phrase is uncertain in its interpretation and will doubtless lead to protracted litigation. In other words the importer should be required to show that the action he has taken was in good faith, as the bill at present provides, and was his honest belief as to the facts that he should not be required to show "due diligence," whatever that may mean in a matter of this particular character.

SECTION 563—GOODS LOST WHILE IN CUSTOMS CUSTODY

We strongly indorse the provisions of this section of the bill as a matter of simple fairness and justice and hope it will be retained.

SECTION 641—REGULATIONS FOR LICENSING CUSTOMHOUSE BROKERS

The Merchants' Association approves the provisions of section 641 of the pending bill which give the Secretary of the Treasury more complete control of customhouse brokers than is true at present.

If there can be inaugurated a satisfactory system of appeal for a judicial review of the decision of the Secretary of the Treasury by a customhouse broker who is aggrieved by such a decision against him that, in our opinion, would be very desirable. Such a plan should, however, in our judgment, provide against protracted delays by the court making the review.

PARAGRAPH 1615—AMERICAN-MADE ARTICLES RETURNED

The paragraph as at present worded continues the system of permitting the return, duty free, of American articles to the United States after they have been exported, provided they have not been advanced in value or improved in condition, if they are imported by or for the account of the person who exported them from the United States. The requirement that exported goods must be returned by or for the account of the person who exported them in order to secure duty exemption was put in the 1922 law to prevent the reimportation into the United States without the payment of duty of enormous quantities of war supplies by speculators. The requirement was timely and necessary, although prior to that bill it had never appeared.

The Merchants' Association believes that since that emergency has passed this proviso should be omitted from the law as a matter of fairness to American business, bankers, manufacturers, etc. It often happens that individuals or organizations in the United States are compelled to assume ownership of exported merchandise which can best be disposed of in this country. Under current and proposed law full duty would have to be paid on such articles which, in our judgment, is entirely unfair. We trust that this war-time measure will not be dropped.

THE MERCHANTS' ASSOCIATION OF NEW YORK,
HUGH LYNCH, *Acting Secretary.*

STATEMENT OF OTTO FIX, NEW YORK CITY, REPRESENTING NATIONAL COUNCIL OF AMERICAN IMPORTERS AND TRADERS (INC.)

(The witness was duly sworn by the chairman.)

Mr. FIX. Mr. Chairman and gentlemen, I appear in behalf of the National Council of American Importers and Traders. I am taking up certain of the sections, and another member of the council will take up the others.

The first section of which I wish to speak is section 304, page 250.

Senator KING. I hope you have the same print we have, because it makes it very difficult to follow.

Mr. FIX. I have the Senate print. I refer to section 304——

Senator BINGHAM. That is page 329 of our print.

Mr. FIX. That section refers to the marking of imported articles.

Subsection (a) authorizes the Secretary of the Treasury to decide what articles are to be marked, and the manner of marking. We heartily approve of this delegation of authority.

Subsection (b) makes subject to a penalty the failure to properly mark the imported article and also the container.

Under section 302 of the existing law, such container is not subject to the additional duty, but the container must be marked before it is delivered to the consumer. Under subparagraph (b) the additional duties are to be imposed on a container, even though the article therein is marked. We think that the purpose of the law is fulfilled if the article is marked, because the consumer is informed of the country of origin when he buys the article, even though the container may not be marked.

Senator SHORTRIDGE. Suppose the article can not be marked? What then?

Mr. FIX. Then the question is this. In the case of bulk goods that are repacked and put into small containers, and in that form reach the consumer, if the committee desires to have the container marked in such a case, and not the container if the article is marked, then we suggest that a proviso be added to paragraph (b):

Provided, however, that the additional rate of duty herein provided shall not apply to a container not marked in accordance with law if the article contained therein is properly marked.

So that if——

The CHAIRMAN. You take the same position, Mr. Fix, as Mr. Metz did?

Mr. FIX. I take a little different position.

The CHAIRMAN. I understood that was what Mr. Metz desired.

Mr. FIX. It is practically the same position, but not quite. At the present time containers are not subject to the additional duty.

The CHAIRMAN. We will consider your proviso.

Senator WALSH, of Massachusetts. Are you going to file a brief?

Mr. FIX. Yes, sir.

Senator SACKETT. What do you want to do with milk when that comes in? The container would have to be marked. Would you apply the 10 per cent to the value of the container and the contents?

Mr. FIX. To the value of the article, according to the way this paragraph is written now. The penalty will be 10 per cent of the value of the milk, because the container is the article.

Senator BARKLEY. There are some commodities that are shipped in where the article might not be marked, where you would have to open the container to determine whether or not it was marked. Would that, in some cases, destroy the value of the article itself?

Mr. FIX. They would not open it unless they opened it under proper conditions, because there are certain articles which can only be opened under certain conditions.

The CHAIRMAN. I remember, back in 1922, I think, you called the attention of the committee to this matter, when you were in the Government service, and said that if the container was not marked, if they had a very costly container with very cheap goods in it, if the duty was not placed upon the container, then, of course, the great value of the article itself would come in here free. I did not quite catch your provision. Do I understand that you want to avoid that situation?

Mr. FIX. Oh, no. What we suggest is this, that the present practice be followed, which is not to impose additional duty in the case of the importation of a container not properly marked; but that that container shall not be released from customs custody until it is so properly marked, which is the present law. We do not want the imposition of an additional penalty because of the container not being marked.

Senator WALSH of Massachusetts. When the article is marked?

Mr. FIX. When the article is marked; because it serves no purpose, Senator.

The CHAIRMAN. You could not mark some of the contents. How would you mark, we will say, some French perfumery?

Mr. FIX. Then the proviso does not apply, because the proviso is limited to only such container as is not marked, that contains an article which is properly marked. Naturally, in the case of perfume, perfume can not be marked. The bottle containing the perfume must therefore be marked, and if it is not marked it is subject to the additional duty. We do not want double jeopardy, that is all.

Senator WALSH of Massachusetts. Is not that a matter of regulation?

Mr. FIX. Yes.

The next section I want to speak about is section 313.

Senator BARKLEY. Page 345.

Mr. FIX. I want to direct attention to paragraph (c), merchandise not conforming to sample or specifications.

The CHAIRMAN. That is on page 347.

Mr. FIX. We think that is very helpful legislation. We think, however, that 10 days is not sufficient to make the relief operative.

The CHAIRMAN. What would you suggest?

Mr. FIX. At least 30 days, because goods go forward to the ultimate consignees, and they may not be received within that time prescribed so we think that 30 days would not be excessive in which to permit the claim.

The next paragraph 481. Subparagraph 10 gives the right to the Secretary of the Treasury to require a statement on the invoice of any facts deemed necessary to a proper appraisement, examination, and classification of the imported appraisement, examination, and classification of the imported merchandise. Subsection (d) says "The Secretary of the Treasury may, by regulation, provide for such exceptions from or additions to the requirements of this section as he deems advisable."

Senator REED. Do you regard that as constitutional?

Mr. FIX. You will note that the Secretary has power, under paragraph 10 of subsection (a), to require all the information deemed necessary in the proper appraisement, examination, and classification of the merchandise. That is really all the information an invoice should contain. However, under subsection (d), he can ask for anything, and we think that section (d) ought to be stricken out, because he has all the power necessary under paragraph 10 of subsection (a).

Senator REED. That would allow the Secretary of the Treasury completely to repeal that section.

Mr. FIX. Absolutely.

The next one is section 484, "Entry of merchandise."

We request that the time within which an entry may be filed at the Customs House be extended from 48 to 72 hours.

Senator SHORTRIDGE. Why?

Mr. FIX. The reason being that at the present time—and I have had a great deal of experience in this connection—it is almost impossible to prepare an entry, and file it in time to avoid the general order charges that will become effective if we do not file the entry within the prescribed time. We recommend that the time be extended to 72 hours.

Senator SACKETT. Does that increase the time of free storage, or anything like that?

Mr. FIX. Oh, no. It is simply to permit the filing, or the preparation of the entry after a ship is in port, extending the time from 48 to 72 hours.

Senator SACKETT. Is that on the dock, or in the warehouse?

Mr. FIX. It is on the dock. At the present time, if we go to the steamship people and ask for an extension of general order time, they always grant it. They know the impossibility of preparing an entry within 48 hours. The papers may not arrive. Frequently a vessel is a day late by reason of a storm. We do not get the papers until our

goods are already in port 24 hours. It is impossible to prepare the entry within that time.

Senator REED. What is the penalty?

Mr. FIX. The goods are sent to general order. That involves the charges of cartage and storage charges for one month. It approximates $2 a case, and that is a tremendous amount when the shipment is large.

The CHAIRMAN. What is the Government going to do for space, if all those goods are going to remain longer than 48 hours? I have been up there, and they have been cluttered up so that you could hardly get through. If you add 24 hours to that we would have to have a great deal more room than we have to-day.

Mr. FIX. Senator, I am not asking for anything that has not been the practice for some time.

The CHAIRMAN. Have they given you as much as 72 hours?

Mr. FIX. By that I mean this. The general order time has been extended by the collector, frequently, as much as 48 hours.

Senator BINGHAM. That is still the law.

Senator EDGE. He can do that under existing law.

Mr. FIX. Very true, but the collector will not do it any more.

The CHAIRMAN. He will not do it when he can not do it.

Mr. FIX. He will extend the general order time if we can show that we have a consular invoice and a bill of lading; but, Senator, the very reason that we can not make the entry is because the papers have not as yet arrived.

Senator EDGE. Then he would extend it, would he not?

The CHAIRMAN. Do you mean that freight goes faster than mail?

Mr. FIX. No. It is sometimes due to the fact that a steamer has an accident, or it may be that the consular invoice was delayed by the consul, or missed the steamer. There are any number of reasons. It will not be used unless it must be used.

Senator EDGE. I do not see where you have any reason for making it arbitrary. The paragraph distinctly states, at the bottom of paragraph (a), that entry shall be made within 48 hours, unless the collector authorizes a longer time. Is it not perfectly proper to give the latitude to the collector, rather than to put in an arbitrary additional 24 hours, which would mean that every importer would naturally take advantage of it, and it would mean that the warehouses would be holding all these goods for an additional day.

Mr. FIX. Senator, no importer wants that additional time. If he has the paper he is anxious to move his goods very rapidly, and he will not take advantage of it. All he wants is not to have the danger of General Order charges, which are very serious.

Senator EDGE. Do you infer that the collector has changed his policy and is refusing to give this additional time?

Mr. FIX. He has within the last six months, at New York at least.

Senator SHORTRIDGE. What reason is assigned for it?

Senator SACKETT. Why has he changed it?

Senator SHORTRIDGE. You say he has changed. He had the power there to extend the time.

Mr. FIX. I really could not state his reason.

Senator SHORTRIDGE. The physical situation of affairs might have made it necessary in his judgment.

Mr. FIX. The physical situation is no different than it has been for many years.

The CHAIRMAN. But if you add 24 hours, it will be——

Senator COUZENS. We can decide that question later.

Mr. FIX. It is a hardship at the present time.

Senator WALSH of Massachusetts. Is that request general on the part of the importers?

Mr. FIX. Yes.

The CHAIRMAN. If we had more room, I admit that it would be very much better. You go there, and they are piling those goods up, sometimes, as high as a man can reach. It should not be done. But, under the circumstances there, if we add 24 hours to it, it will only add to the trouble that we have now.

Mr. FIX. Senator, the steamship companies do not object, and they are the only ones that are really involved in this. If it is a hardship, it is a hardship to the steamship company. At the present time an importer has no difficulty about obtaining additional time from the steamship company.

Senator WALSH of Massachusetts. All this is in his brief, Mr. Chairman.

Mr. FIX. Yes.

The next matter is subsection (e) of the same section, relating to statistical enumeration.

In view of the very great importance of accurate statistical information, for the benefit of Congress and the Tariff Commission, it is submitted that the present practice, which is continued in subparagraph (e), should be changed. It is now required, and will be under the proposed law, that the importer, at the time of entry, set forth the statistical information in the entry itself, and this forms the basis of the statistics compiled by the Department of Commerce.

Statistics compiled from a copy of the entry can not be accurate, either as to the value of the imported merchandise or as to the rate of duty, and this for the reason that the value used on entry may be changed by the appraiser, the United States Customs Court, and the United States Court of Customs and Patent Appeals, and that the rate of duty is not adopted by the collector until the entry is liquidated, and does not then become final for a period of 60 days thereafter, as within that time the importer has the right to protest to the United States Customs Court.

Speaking from a practical standpoint, the situation is this, that entries are usually prepared by a clerk, and the only information available to that clerk in making up the statistics is the description on the invoice, or the statistical enumeration as placed on the invoice by the foreign manufacturer. Statistics have been made from that sort of information. We believe that the information so prepared is not the sort of information that Congress should have, particularly when the rate of duty or the quantity of merchandise imported from any particular country is determined from those statistics.

We suggest that these statistics should be prepared by the Department of Commerce, and after the invoice has passed through the customhouse, so that the information will be absolutely correct.

Senator WALSH of Massachusetts. Have you an amendment to that effect?

Mr. FIX. Yes, sir. We offer an amendment.

The next is section 485, declaration. This section provides what should be shown in the entry and in the invoice, and what declara-

tions shall be made of such information. We want to direct the attention of this committee to the fact that if United States value is adopted it will require a change in the phraseology of this section.

Senator KING. But, if not, then no change is necessary?

Mr. FIX. No change is necessary.

Section 487, relating to amendment. We request that the present language with respect to amendment of entry, as contained in section 487 of the tariff act of 1922, be reenacted. The privilege of making an amendment of entry before the appraisement has actually begun is an equitable one for the reason that the importer must pay duty on the entered value if higher than the appraised value, and is subject to penalties if such entered value is lower than the appraised value, and we ask that permission to amend be continued until the appraiser has the invoice before him for appraisement. In other words, we would like the reenactment of the language of 1922.

Senator EDGE. You are practically in sympathy with Mr. Metz on that.

Mr. FIX. Yes.

Section 503 relates to the time for appraiser's return. Our recommendation in this case is somewhat different from the attitude of the Merchants' Association. We believe that there should be a time limit. We believe that when the appraiser has 120 days to determine what should be the appraised value, and consequently the amount of duty, that is sufficient, particularly, as added to that 120 days is 60 days, in which the collector can file an appeal for reappraisement if there is any question raised as to the correctness of the value. We think that 180 days, or six months, for an importer to wait to know what the actual duty is, is quite sufficient.

The CHAIRMAN. Mr. Metz was agreeable to 503, wherein it provides 120 days.

Senator REED. Mr. Metz wanted to limit the extension to an additional 120 days. Mr. Fix wants the addition to be not over 60. That is the difference.

Mr. FIX. Yes.

The CHAIRMAN. What is next?

Mr. FIX. Allowance for loss, section 563.

The CHAIRMAN. That is page 501.

Mr. FIX. We are in favor of the proposed allowance for duties on imported goods lost or stolen before delivery to the importer.

Senator KING. Do you approve Mr. Metz's position with respect to 563?

Mr. FIX. Yes; but we would like to have the language "while in the appraiser's stores" stricken out, in line 4.

The CHAIRMAN. That is line 16 of this print.

Mr. FIX. We would like to have the words "while in the appraiser's stores" stricken out. It will permit of the refunding of duties paid on goods lost or stolen.

The CHAIRMAN. No matter where?

Mr. FIX. No matter where. It is subject, naturally, to rules and regulations the Secretary may prescribe, so that we have to offer proof.

Senator EDGE. Does not that afford opportunity for a great deal of litigation? They might be stolen in carriage, or something of that kind—from a truck, or anything of that kind.

Mr. FIX. It might be limited to prior to importation.

Senator REED. If you made it "while in bonded warehouse or in appraiser's stores" that would be a little better.

Mr. FIX. Yes; while in transportation or while in appraiser's stores, or in appraiser's warehouse. At the present time we have cases coming in where there is a shortage. We can not prove where the shortage occurred. We receive the goods direct from the dock, but we can not have any refund of duty.

Senator SACKETT. Do you want to provide for a case falling off a wagon while being hauled from the warehouse too?

Mr. FIX. All we ask is that there be an allowance for shortage through theft prior to the importation of the merchandise, so that if goods are found short immediately after arrival the allowance can be made for the shortage, if we can offer sufficient proof to convince the collector of the fact.

The next section is 641, "Customshouse brokers."

The CHAIRMAN. That is page 539.

Senator KING. Do you approve Mr. Metz's position on this section?

Mr. FIX. I did not hear it. We recommend that this section authorize an appeal to a court of competent jurisdiction from a decision of the Secretary of the Treasury revoking a customs broker's license. It seems unfair to permit the revocation of a broker's license and, by such revocation, the destruction of the business which he may have built up by the expenditure of capital and energy, without his having the right to a review of the decision making such revocation.

The CHAIRMAN. Is there anything else?

Mr. FIX. Section 642, "Investigation of methods of valuation." We ask that the agency should be designated, and we suggest the United States Tariff Commission.

Senator SACKETT. Will you state again what you suggested about section 642?

Mr. FIX. Section 642 provides that Congress——

Senator WALSH, of Massachusetts. He wants the Tariff Commission designated as the agency for making the investigation.

Senator BINGHAM. You want to change the wording of the bill?

Mr. FIX. Yes, sir; we ask to have the United States Tariff Commission named in that section, rather than any agency.

Senator BINGHAM. What is the reason for that request? The Tariff Commission is busy now, and two or three years behind in its work. Sometimes the President wants a survey made right away. Why give them that additional job?

Mr. FIX. Senator, we feel that the Tariff Commission has had great experience on this question, and we think their experience should be availed of.

Senator SACKETT. It might delay it several years.

Senator BINGHAM. Would you want the customshouse brokers and importers to do it?

Mr. FIX. I hardly thought that that agency would be appointed, so we suggested that those men who have had long years of experience in this work be named.

STATEMENT OF JAMES W. BEVANS, NEW YORK CITY, REPRESENTING THE NATIONAL COUNCIL OF AMERICAN IMPORTERS AND TRADERS (INC.)

(The witness was duly sworn by the chairman of the committee.)

Senator WALSH of Massachusetts. You represent the National Council of Importers and Traders?

Mr. BEVANS. I represent the National Council of American Importers and Traders.

In considering these administrative features I have had the benefit of some personal contact and experience in customs, having spent 14 years in the Division of Customs of the Treasury Department, and for 4 years of that time having served as assistant chief, which is now the Deputy Commissioner of Customs.

I want to consider first section 332. I have special reference to subdivision (d), which is entitled "Information for President and Congress."

Senator SMOOT. (b) or (d)?

Mr. BEVANS. (d). Subsections or subdivisions 4 and 5 of subparagraph or subdivision (d) authorizes the Tariff Commission to first ascertain import costs of such representative articles so selected, and, fifth, to ascertain the growers', producers', or manufacturers' selling prices in the principal growing, producing, or manufacturing centers of the United States of the articles of the United States so selected.

The term "import cost," as used in subdivision 4, is defined under subparagraph E, subdivision 2, to be the freely offered price of the imported article in the ordinary course of trade, in the usual wholesale quantities, for exportation to the United States, including all necessary expenses, exclusive of customs, in bringing such articles to the United States.

We therefore have authority for the commission to ascertain selling prices in the United States of the domestic article, while as to the imported article, the selling price in the foreign country is to be ascertained, with an addition only of the expenses of bringing such article from such foreign country to the United States.

If, for the purposes of adjusting rates of duty, it is contemplated that a comparison is to be made between the landed cost of the imported article without duty, and the manufacturer's selling price in the United States of the domestic article, we submit that this is not a proper basis of comparison.

If the selling price of the domestic article is to be taken there should be added to the "import cost," as defined in subparagraph (e), subdivision (2), the usual general expenses and profit.

The foreign cost plus the necessary expenses of bringing the merchandise to the United States, general expenses, and profit (representative of the usual percentages based on the selling price of such imported merchandise in the United States), with the amount of duty which is to be determined, represents in its total the figure at which it must meet domestic competition.

Senator SMOOT. What suggestion do you make in paragraph (2)?

Mr. BEVANS. It is recommended that subparagraph (d)——

Senator SMOOT. You referred back to No. (2).

Mr. BEVANS. It is recommended that subparagraph (d) subdivision (4) of section 332 be amended to read as follows:

(4) Ascertain import costs and port costs as defined in subdivision (2) of this section, of such representative articles so selected.

You will note I have used a new term there "port costs." I shall define that in the definition under subdivision (e).

And that subdivision (e) be amended to read as follows:

(e) Definitions—when used in this subdivision and in subdivision (d)—
(1) The term "article" includes any commodity, whether grown, produced, fabricated, manufactured or manipulated.

There is no change there. (Continues reading:)

(2) The term "port cost" means the price at which an article is freely offered for sale in the ordinary course of trade in the usual wholesale quantities for exportation to the United States plus, when not included in such price, all necessary expenses, exclusive of customs duties, of bringing such imported articles to the United States.
(3) The term "import cost" means the price at which an article is freely offered for sale in the ordinary course of trade in the usual wholesale quantities for exportation to the United States, plus, when not included in such price, all necessary expenses, exclusive of customs duties, of bringing such imported article to the United States, and general expenses and profit representative of the usual percentages based on the selling price of the wholesaler to all purchasers in the principal markets of the United States, in the ordinary course of trade and in the usual wholesale quantities in such market.

Senator GEORGE. The change you recommend merely calls for additional information as one of the elements?

Mr. BEVANS. Yes, sir; additional information upon which a proper comparison can be made if you are comparing the selling price of the domestic article with the imported. There is no proper basis, in our opinion, for a determination between the comparison of the selling price in the United States of the domestic article and the import costs as defined in subdivision (e), which is merely the port cost; that is, laid down here without any of the additional expenses and overhead which are incurred on that article to the point of meeting the domestic article in competition in this market.

Senator WALSH of Massachusetts. The result would be an increase in what is known as import costs on various articles?

Mr. BEVANS. Yes, sir.

My proposed definition of "import cost" would be the same as the present definition of "import costs" with the addition of the general expenses and profit, which is a proper basis of comparison, in my opinion.

Now, gentlemen, I would like to turn to section 336, which is the so-called flexible provision. The title of it is "Equalization of Competitive Conditions."

Senator BINGHAM. What subsection?

Mr. BEVANS. I am considering first subparagraph (a), section 336.

We are opposed to the changing of rates of duty by the President, or by any other official or commission, as we believe that the fixing of rates of duty on imported merchandise should be done by Congress.

In order that Congress may have the proper information upon which to make the necessary adjustments of rates of duty we believe that the Tariff Commission, with the powers of investigation conferred upon it by section 332, is an important aid to Congress in determining what rates of duty shall be assessed on imported mer-

chandise, and that as a fact-finding commission it should be continued.

The present section 315 of the tariff act of 1922, delegates to the President the right to adjust rates of duty, within certain limitations, in order to equalize the differences in cost of production of articles wholly or in part the growth or product of the United States, and like or similar articles wholly or in part the growth or product of competing foreign countries.

That section was declared constitutional by the Supreme Court of the United States, in an opinion written April 9, 1928, in the case of J. W. Hampton, jr., Co., petitioner, *v.* United States, No. 242, October term, 1927, published in Treasury Decision 42706.

It is apparent from a reading of that decision that the constitutionality of section 315 was sustained because on its face said section authorizes the President to adjust a rate of duty, with a limit of 50 per cent, to meet a difference in foreign and domestic costs of production of an article—an arithmetical computation.

That is evidenced by a statement made by the Supreme Court, in its decision, that its conclusion is amply sustained in Field *v.* Clark (142 U. S. 649, 680), for the reason that the decision referred to (Field *v.* Clark) involved a case where Congress had definitely fixed rates of duty on certain articles, but provided that such rates should not be assessed unless foreign countries imposed duties or other exactions upon agricultural or other products of the United States.

Section 316 as proposed in H. R. 2667, empowers the President to change ad valorem rates of duty, with the same limitation of 50 per cent, not upon an ascertained difference between the foreign and domestic costs of production of an article but to equalize differences in conditions of competition.

It is obvious that the language in section 336 is much broader than that in the present section 315. While the difference between foreign and domestic costs of production are, at least in theory, definitely ascertainable, and the adjustment of a rate of duty to meet such differences a mere matter of computation, it is apparent that there may be many differences in conditions of competition that can not be reduced to money equivalents and that, therefore, any attempted adjustment of rates to meet such differences must necessarily be a matter of exercise of discretion on the part of the President.

While Congress may have provided a yardstick in the present section 315, by which the President may adjust ad valorem duties without the exercise of any discretion, certainly by the change in the language no definite measure whatever is provided, and the adjustment of a rate in such a case by the President is, in fact, the fixing of a rate according to his discretion. We believe that this is a function committed by the Constitution only to Congress.

Senator REED. Did you hear Mr. Gray's testimony?

Mr. BEVANS. Yes, sir.

Senator REED. He would add additional elements, any one of which at present might, in the discretion of the President or the Tariff Commission, be used to change the duty.

Mr. BEVANS. And even more adding to the doubt as to the constitutionality of the provisions.

Senator EDGE. How can you decide that until the Supreme Court passes upon it, as they have upon section 315?

Mr. BEVANS. The proposed section, we believe, is of doubtful constitutionality. Certainly the decision of the Supreme Court on section 315 would not be controlling, because you have entirely different language in this proposed section, and certainly much broader language.

Senator EDGE. I repeat you can not tell it is unconstitutional until the Supreme Court passes upon it.

Senator COUZENS. Everybody knows we tested section 315 and found it constitutional.

Mr. BEVANS. I can not forecast the decision of the Supreme Court upon any particular issue but it seems to me there are certain established law and principles of law that may lead us to form a pretty definite idea in our minds as to whether or not a given law is of doubtful constitutionality. Of course, if Congress proposes to enact a law for the purpose of having it tested out, that is a different matter.

Senator KING. You act upon the presumption that Senators and Congressmen have to respect their oaths and the law and try to enact a constitutional law?

Mr. BEVANS. Yes, sir; and there are some very good lawyers in the Senate.

Senator KING. And that same thing would apply to articles on the free list?

Mr. BEVANS. Yes.

Senator KING. It would apply to anybody?

Mr. BEVANS. Yes. In our opinion, Congress is solely authorized to levy taxes in the form of duties upon imported products, and not the President or any other body.

We recommend that the Tariff Commission report direct to Congress and that section 336 be eliminated from the proposed law. If this recommendation is adopted section 332 will necessarily require amendment.

If our recommendation is not adopted we urge that section 336 be redrawn for the reasons we have stated; that is, if we are going to have a flexible provision, if we are going to commit to the President the right to adjust rates, let us have something far more definite than to adjust them upon conditions of competition, a very doubtful, indefinite measure, in my opinion.

We recommend also, if section 336 is enacted into law, that there be an amendment of sub-divisions (1) and (2) of sub-paragraph (d).

Subparagraph (d) provides that the President, in ascertaining the differences in the conditions of competition between domestic articles and like or similar competitive imported articles, shall take into consideration, under subdivision (1):

the cost of production of the domestic article, or the price at which such article is freely offered for sale to all purchasers in the principal market or markets of the United States, in the ordinary course of trade and in the usual wholesale quantities in such markets.

And, under subdivision (2):

the cost of production of the imported article, or the price or value set forth in its invoice, or its import cost as defined in subparagraph (e) of section 332.

There again we have a comparison that may be adopted of the selling price of the domestic article with the port cost of the foreign article, and as I have stated in connection with section 332, we think is not a proper basis of comparison.

The proper basis of comparison would be, first, the cost of production of the domestic article with the cost of production of the imported article, and in the absence of such cost of production its port cost; second, the selling price of the domestic article in the markets of the United States, in the usual wholesale quantities and in the ordinary course of trade, with the import cost as we defined this term in our suggested amendment to subdivision (e) of section 332.

We, therefore, recommend that these definitions be amended accordingly.

Now, I also want to say something with respect to the definition of "similarity".

We also recommend that the definition of similarity in subdivision (2) of subparagraph (g) be changed, as the language used in the proposed subdivision is too broad. Under this proposed definition, we believe that it would be possible to compare articles which may differ very essentially in material, construction, and value.

The United States Court of Customs Appeals, now the United States Court of Customs and Patent Appeals, has defined "similarity" under our customs law, and I think the definition is a very apt one and can be very properly written into this act.

The definition is as follows:

An imported article shall be considered like or similar to and competitive with a domestic article, if such imported and domestic articles are made of approximately the same materials, are commercially interchangeable, and are adapted to substantially the same uses, and are so used.

The effective date of the President's proclamation is 30 days. We think that if section 336 is enacted into law that that 30 days should be changed to 90 days in order to exclude from the proclamation merchandise that is on order and transit from distant countries. It means that a rate may be changed by the President and merchandise that has been purchased already and is on the high seas will be caught with that high rate of duty. We think 90 days is a fairer limitation than 30 days.

Senator COUZENS. If the rate were reduced you would want a shorter length of time?

Mr. BEVANS. We may possibly [smilingly]. But we have not had very many reductions, except on paint brush handles and Bob White quails, which would not benefit us very much.

Senator HARRISON. What was that?

Mr. BEVANS. We have had some reduction on Bob White quail from Mexico, and I think on paint brushes from France.

Senator EDGE. The application has not been made to peanuts yet, has it?

Mr. BEVANS. I don't know. I have not been especially interested in peanuts since I was a boy.

Senator SMOOT. You would be in Bob White quails?

Mr. BEVANS. How is that?

Senator SMOOT. You would be interested in the quail, I suppose?

Mr. BEVANS. No, sir. But the Bob White quail and the paint brush handles——

Senator SMOOT. You were interested in those, too?

Mr. BEVANS. Not in the importation of them, no, Senator. Sometimes I eat quail, but not very often. But I was interested in noting in the published decisions the reduction of duty on Bob White quail.

Senator SMOOT. Of course, you are repeating what I have heard so often on the floor of the Senate.

Senator THOMAS of Oklahoma. Is it not a fact that the tariff was reduced on disinfectants also?

Mr. BEVANS. I really do not know, Senator. I have not followed the President's reductions of duty for the last six or eight months, or perhaps a little longer.

Senator KING. There have been four or five articles on which reductions were made, two of which have been asked by manufacturers in the United States.

Mr. BEVANS. I would now like to refer to section 337, unfair practices in import trade.

We think this section should be eliminated entirely from the proposed tariff act.

Senator REED. What section is that?

Mr. BEVANS. Unfair practices in import trade.

Senator KING. You mean the whole section?

Mr. BEVANS. Yes, sir, the whole section.

We recommend that this section be eliminated from the law. It is now being applied to the infringement of patents, as evidenced by the recent Bakelite case involving synthetic phenolic resin. In that case a temporary order was issued by the President, upon a complaint filed by the Bakelite Corporation, excluding from entry articles made of synthetic phenolic resin, which were alleged to infringe the patent rights of the Bakelite Corporation.

The Tariff Commission took jurisdiction of that case, and we had a trial before the Tariff Commission of a patent infringement case, with the introduction of evidence by experts to show the prior state of the patent art and the scope and validity of the claims as to the alleged infringement.

Objection was made to the jurisdiction of the commission at that time but the commission nevertheless decided that it was within the term "unfair competition." That issue is pending now before the United States Board of Customs Appeals.

Senator KING. Wouldn't that objection be met, pertaining merely to that one matter, if there was an exception made that where it involved an alleged infringement of a patent, then that question should be determined by the courts before the Tariff Commission or the President should act?

Mr. BEVANS. But every act of unfair competition has now an adequate remedy by a court of competent jurisdiction. Any manufacturer or dealer who complains of unfair competition on the part of any other dealer or manufacturer in the dressing up of a package of one to imitate the other or in the imitation of the trade-mark or in any other unfair acts, has his remedy in the United States courts, where the case can be properly tried, heard before judges who are trained in the law, and a proper decision can be rendered. And we see no reason why these questions of unfair competition should be committed to a commission.

Senator SHORTRIDGE. Has the present Court of Customs Appeals jurisdiction over such matters?

Mr. BEVANS. Section 337 now provides, or section 316 now provides, that upon a finding made by the Tariff Commission an

appeal may be taken to the Court of Customs Appeals in the same manner that an appeal would be taken from the United States Customs Court.

Just what that means we do not know. We do not know whether the appellate court has the right to review only the questions of law or whether it has the right to review the findings of fact made by the commission.

And, further, when we get through with it, according to the wording of the law, we think the President may ignore it all and act as he sees fit in the case, because he is not bound to follow either the decision of the court or the recommendation of the commission.

Senator SHORTRIDGE. Does this statute confer jurisdiction upon the Court of Customs Appeals, including the power to review the matters you are just discussing? The question is, Mr. Bevans, what is its jurisdiction, if fixed by the statute?

Mr. BEVANS. Its jurisdiction must be like that of the Tariff Commission. If in the Tariff Commission, in the first instance, there is a right to consider as an act of unfair competition an infringement of a patent, then the Court of Customs Appeals has the right to consider that finding upon appeal. So whatever may properly come under the present section 316 before the Tariff Commission may be properly reviewed by the Court of Appeals.

And it is our position, as I have stated, that there is no necessity for this section of the law, that there is an adequate remedy in the duly constituted courts where we have a proper trial of the case and a review. We can not properly try an infringement of patents, if the infringement is unfair competition, before the Tariff Commission. That is not the body that is qualified to try infringements of patents. We had 1,200 or more pages of patent experts' testimony before the Tariff Commission.

Senator SACKETT. Wouldn't that manner of doing it delay the relief of the American manufacturer for an indefinite period, and isn't this a quicker way of getting at it? And isn't the import a privilege, anyway?

Mr. BEVANS. The importation, as the Senator says, is a privilege.

Senator SACKETT. If you are importing an infringed trade-mark or an infringed patent right, this is the quickest way to get at it?

Mr. BEVANS. I think there would be very grave doubt as to its being the quickest way, because the Tariff Commission has to make its investigation, have its hearing, and an appeal may be taken to the Court of Patent Appeals. Then the matter goes to the President and the President considers it. Then the first importation that is excluded may be protested under the law. The law gives the importer the right to protest a decision of the collector of excluding any merchandise from entry, for any reason. It may be protested and carried on up through the courts, possibly to the Supreme Court of the United States. I believe you have as quick, and certainly as adequate, a remedy in the United States courts.

Now, may I finish this one section?

If the third section is to be reenacted, that part that is given the President the right to issue an order of embargo before investigation has been made, should be eliminated.

In the Bakelite case we had this situation. The Bakelite corporation preferred a complaint to the Tariff Commission in which it

alleged that certain of its patents were being infringed, not by any particular importers but by importers in general. And the Tariff Commission recommended to the President that a temporary embargo be issued. So overnight all merchandise in the various ports of our country was refused delivery upon the ground that it might infringe the Bakelite Corporation's patents.

In patent litigation when you go into a United States court and ask for a preliminary injunction—and that is all this embargo is—you can not get that to-day out of a United States court upon a patent unless that patent has been litigated before and there has been some finding of the court as to it validity.

Even at that, the complainant who is asking for that injunction has to put up a bond to cover the damages to the defendant in case there is no infringement and his case is dismissed.

But here we have a proposition where this injunction, this preliminary injunction, was issued and all of this merchandise was excluded.

There was a period of more than a year, I think, before the first patent expired.

If when we get through with this litigation the ultimate decision should be that the Tariff Commission had no jurisdiction over this complaint based wholly upon an infringement of a patent, or if it is a decision that there was no infringement of a patent, all that the Bakelite people can say is, "Well, we are sorry, gentlemen, we caused you the loss of thousands of dollars."

If the President is to be given the right to issue overnight, with no opportunity on the part of the importers who are concerned to meet it, a proclamation to bar this merchandise from entry into this country merely upon a complaint of somebody that it is unfair competition, then you should write into the law a provision requiring the complainant to put up a bond so that if the complaint is unfounded on final decision we will be able to collect in some measure the losses we have sustained by having had our merchandise excluded from entry.

Senator REED. In other words, you would make the proviso to let everybody import under bond pending the investigation?

Mr. BEVANS. I would require the domestic interest at the time of filing complaint to give a bond to indemnify all those whose merchandise is excluded in the event the complaint is found to be unfounded.

We can import under bond now. And our people have brought in some shipments under bond under this Bakelite embargo, but the bond is given that merchandise will be redelivered in the event the embargo is made final.

Manifestly the only purpose in putting up the bond was to get the merchandise and sell it. So if eventually it should be decided that this complaint is well founded and that it is within the jurisdiction of the Tariff Commission and the embargo should be made permanent, we are liable for the face of this bond, which, I think, is double the invoice value of the merchandise. It is not to be paid to the Bakelite Corporation but to be paid to the United States Government. So it is a serious situation.

Senator SACKETT. It is a very difficult measure of damages to collect on that bond?

Mr. BEVANS. I do not think we have any more difficulty in measuring the damages than we have in a patent infringement suit where a referee or a master is appointed to determine the damage. And while I am not so familiar with patent litigation as I was once, generally I think that the damages are measured by the profits that the complainant would have made had he not been prevented from selling by the infringement of the defendant.

Senator WALSH of Massachusetts. Is that all you have?

Mr. BEVANS. No, I have some other sections, but I understand the committee wishes to adjourn.

Senator SMOOT. No, I want you to get through.

Mr. BEVANS. I will now take up section 489, additional duties. The provision I am addressing myself to in this paragraph is that which requires the collector to seize merchandise if the appraised value exceeds the entered value by more than 100 per cent. In other words, the entry is considered to be presumptively fraudulent.

What happens is this: There may be many cases where the appraised value will exceed the entered value, which is due entirely to a change in the basis of appraisement. I might cite, for instance, dyestuffs or any article which may be dutiable under 27 and 28, where the basis of appraisement shifts from foreign value to the selling price in the United States of a similar competitive product. In every one of those cases it is necessary for the collector to make a technical seizure of the merchandise, for the importer to file an application with the Secretary of the Treasury, a petition rebutting the alleged presumption of fraud, and asking that his merchandise be released from seizure.

It is our opinion that there is no necessity for this provision, for the reason that we have two sections, 591 and 592, which provide specifically for fraudulent entries. One authorizes the seizure of the merchandise or a suit for forfeiture value and the other authorizes a criminal procedure for having guilty knowledge.

So as those two sections cover fully a case of this kind, I see no reason why every case should be regarded as presumptively fraudulent, and why this red tape should have to be resorted to.

Senator KING. It is your suggestion now that the entire section 489 with all of its provisions——

Mr. BEVANS. Only that provision which relates to the appraised value, if the appraised value exceeds the entered value by more than 100 per cent.

Senator KING. From there down to the end of the section your contention is that that should go out?

Mr. BEVANS. To the end, yes; down to "presumption of fraud by sufficient evidence."

Senator SHORTRIDGE. Is it difficult to overcome that presumption in a case where there is that vast difference?

Mr. BEVANS. Senator, it is not difficult to overcome that presumption, but it takes considerable time and puts into operation considerable of the Government's machinery, and, as I see it, does not accomplish any real purpose. You see, the collector, must technically seize the merchandise although he knows there is no fraud. If there were fraud he would have to proceed under section 591.

Senator SHORTRIDGE. That is the very point. Are there many instances where there would be that great difference in value and yet be perfectly honest?

Mr. BEVANS. Yes; there are quite a number of cases. Wherever there is a shift to the United States value, wherever there happens to be no open export or open foreign market value and the basis of appraisement goes to the United States value, there may be considerable advance there. But it is particularly true where you go to the American selling price.

Section 501, notice of reappraisement.

Senator KING. Section 501, I suppose you refer to?

Mr. BEVANS. Yes, sir; section 501.

In our brief on valuation we recommended against the adoption of the proposed finality of appraisement. If the provision in section 402 for finality of appraisement is eliminated, then it would be necessary to make some amendments in section 501; that is, the words "subject to the provisions of subdivision (b) of section 402 in this act relating to a review."

Senator SHORTRIDGE. "Relating to review of the appraiser's decision by the Secretary of the Treasury"?

Mr. BEVANS. Yes, sir. That should come out. And, of course, the "the" in front of the decision of the appraiser's should start a new sentence.

In the first part of the section we believe the present language should be used as to notice of appraisement, that is, that the collector shall give written notice of appraisement to the consignee, his agent or his attorney. That would eliminate all of the matter thereafter down to the provision that I have just asked be stricken out, that is, down to "subject to the provisions of subdivision (b)."

That has worked very satisfactorily and we believe it should be continued in its present form.

Now, there is an addition to this section "the value found by the appraiser shall be presumed to be the value of the merchandise, and the burden shall rest upon the party who challenges its correctness to prove otherwise."

Senator SHORTRIDGE. Is that in the law now?

Mr. BEVANS. No, sir. That has been inserted.

Senator WALSH of Massachusetts. Inserted by the House.

Mr. BEVANS. That has been inserted.

Senator SMOOT. Do you have reference to page 452?

Senator WALSH of Massachusetts. The last paragraph.

Mr. BEVANS. It is 256 on mine.

The value found by the appraiser shall be presumed to be the value of the merchandise, and the burden shall rest upon the party who challenges its correctness to prove otherwise.

That is new matter.

Under the present practice and under the proposed practice when an appeal is taken from the decision of the appraiser it goes before a single judge. And that is an appraisement de novo. There is, therefore, no reason, so far as I can see, why either one of the parties to that litigation should come in before the single judge for a new appraisal of merchandise with any greater presumption of correctness attaching to his action than to the case of the other party.

Senator SHORTRIDGE. The appraiser is a sworn officer, he is presumed to discharge his duties, and his findings ought to be given some weight.

Mr. BEVANS. They are given some weight. Here is the practice now as established by the appellate court. There is no greater presumption of correctness attaching to the appraiser's return than there is to the invoice price of the merchandise, which is presumed to be the price paid in the open markets of the foreign countries. But the importer taking the appeal is the moving party, and he must take the initiative. But as soon as he has introduced evidence which, while it may not be conclusive, is substantial evidence tending to show that the appraised value is incorrect, the burden shifts to the Government to dispute that evidence or to establish the correctness of the appraised value. That, I think, is as it should be.

Senator GEORGE. You do not mean to say he could simply go there and offer the invoice and overcome the prima facie case made by the finding of the appraiser?

Mr. BEVANS. He can go there and offer his invoice. His invoice, as a matter of fact, is already in the case.

Senator GEORGE. Not in the case as evidence?

Mr. BEVANS. If he supports that by going upon the stand and swearing that he bought his merchandise in the open market and that the price shown is the price actually paid, and that it was priced to him without any special concessions, that is sufficient to shift the burden to the Government to disprove the fact that that is the open price.

Senator SHORTRIDGE. Such a case is heard by one of the judges of the Customs Court, is it not?

Mr. BEVANS. Yes, sir; and then it is reviewed by three of the judges, and then by the Court of Customs and Patent Appeals.

Senator GEORGE. What is the provision to which you are objecting?

Mr. BEVANS. This provision says, "The burden shall rest upon the party who challenges its correctness to prove otherwise."

We say that there is no greater presumption of correctness, attaching to it than there is to the invoice value, and that the burden is upon the moving party to introduce substantial evidence to show that his value is correct. But he does not have to go beyond that point. There must be some reason why the appraiser advanced the price. It is not a secret. If the importer has produced evidence, which, while it may be met by evidence on the part of the appraiser, and while it may not be conclusive, yet it is substantial evidence that his entry value is correct, why shouldn't the Government then defend the value that it has advanced his goods to?

Senator REED. In every other tax law the Government's assessment is prima facie correct, and the burden is upon the man who has all the information at his finger tips to show that it is incorrect.

Mr. BEVANS. In the case of appraisement of merchandise we have quite a different situation.

Senator SIMMONS. Is that so, Senator, where the law provides for a de novo trial before the appellate court?

Mr. REED. Yes; I know it is so in the Income Tax case.

Senator SIMMONS. If the law provided for a review that would be true; but if it is de novo that means all of the fact that were in controversy in the lower court are likewise in controversy in the upper court.

Senator GEORGE. But this is a case of appeal.

Mr. BEVANS. No; this is not an appeal; it is called an appeal but it is a proceeding de novo. There used to be two such proceedings de

novo. The re-reappraisement which now no longer exists was another appraisement where you introduced the testimony all over again. But now you have the return of the appraiser, then you go before the single judge and introduce the testimony on both sides, and he finds a value, he appraises the merchandise. Then you appeal for a review to three judges, and you can introduce no further evidence. That is entirely a review. Then you can go to the Court of Customs Appeals on questions of law only.

Senator SMOOT. Wouldn't the Government of the United States be utterly helpless if this provision were out of the bill? This is virtually what they have been following in the years past, isn't it?

Mr. BEVANS. No, sir; I have just cited the practice as established by the Appellate Court.

And you have this situation: The appraiser may say "I don't know; I have no definite information that I can rely upon absolutely that this value is too low, but I think it is, and I am going to advance it 20 per cent.

Senator KING. Then he advances it?

Mr. BEVANS. He advances it, say, 20 per cent.

Senator SHORTRIDGE. Pardon me just a moment. I do not wish to delay the committee or the witness, but let me ask this question. This proposed section reads:

"The value found by the appraiser shall be presumed to be the value of the merchandise"—stopping there. The appraiser makes some inquiry, does he not?

Mr. BEVANS. He is supposed to do so.

Senator SHORTRIDGE. In the performance of his duty?

Mr. BEVANS. Yes, sir.

Senator SHORTRIDGE. In the performance of his duty he would make some inquiry?

Mr. BEVANS. Yes, sir.

Senator SHORTRIDGE. For the purpose of determining the value of the merchandise?

Mr. BEVANS. Yes, sir.

Senator SHORTRIDGE. Now, he is a sworn officer?

Mr. BEVANS. Yes, sir.

Senator SHORTRIDGE. Do you know whether he has the power to administer oaths in and about his inquiry to get at the true value of he merchandise?

Mr. BEVANS. I do not know definitely. I think he probably would have the right. I am not so sure about it.

Seantor SHORTRIDGE. If he had performed his duty honestly and with intelligence and makes a finding to which the importer objects, the importer may take that before the court, as I understand the procedure?

Mr. BEVANS. Yes; that is true.

Senator SHORTRIDGE. To the Customs Court, made up of several judges, but to be heard in the first instance by one of them?

Mr. BEVANS. Yes, sir.

Senator SHORTRIDGE. One division of that court?

Mr. BEVANS. Yes, sir.

Senator SHORTRIDGE. Is that right?

Mr. BEVANS. By a single judge first.

Senator SHORTRIDGE. A single judge, you say?

Mr. BEVANS. Yes, sir.

Senator SHORTRIDGE. You object to the finding of the appraiser being given any presumptive value?

Mr. BEVANS. Yes, sir. That is what I object to, and for this reason——

Senator SHORTRIDGE. Pardon me for just a moment, and then I will be glad to have your reasons.

Mr. BEVANS. Very well.

Senator SHORTRIDGE. It is suggested that this finding be presumptively correct.

Mr. BEVANS. Yes, sir.

Senator SHORTRIDGE. "And the burden shall rest upon the party who challenges its correctness to prove otherwise"?

Mr. BEVANS. Yes, sir.

Senator SHORTRIDGE. Well, you object to that procedure?

Mr. BEVANS. Yes; I do. And I will give you one illustration why I object to it.

Certain Chinese rugs were appraised by the appraiser upon a basis of United States value upon the theory that there was no open market, either for consumption in China or for export. He based that upon certain reports that he received from a Government investigating officer. We did not see those reports. We appealed for reappraisement.

When we came before the single judge, if we produced affidavits from manufacturers in China that they freely offered their goods for export, I think that thereupon the burden should have been upon the appraiser to show the evidence upon which he appraised the merchandise.

Now, we have produced substantial evidence in the form of affidavits, which is admissible in reappraisement cases. We have gone as far as we can, unless we bring manufacturers in person from China. The affidavit of the foreign manufacturer that he is selling, or is willing to sell, or is freely offering his goods at the price in the usual wholesale quantities, coupled with the fact that our invoice before the consul shows that to be the price paid, I think shifts any burden that might exist to the appraising officer.

Senator KING. Wouldn't that evidence have sufficient probative value to overcome the presumption which arose of the correction of the decision of the appraiser?. If it does not have sufficient probative value, and that presumption attaching to the accuracy and the validity of his appraisement is deemed superior to that proof which you say was offered in that particular case, then I think your contention is right. But it would seem to me, if I were a judge, it would seem to me that any judge would hold that if you offered those affidavits to which you referred that then that presumption of the correctness of the appraiser's report would be overcome, and then the burden would shift to the Government.

Mr. BEVANS. That is true.

Senator SHORTRIDGE. But it is not a conclusive presumption?

Mr. BEVANS. It says "shall prove the correctness of his case."

Senator SHORTRIDGE: Yes, by competent evidence.

Mr. BEVANS: But it must be conclusive.

Senator SHORTRIDGE: No, not at all.

Mr. BEVANS: That is how I read it. When you say a man must prove his case you mean beyond a reasonable doubt.

Senator REED: No, not at all.

Senator SHORTRIDGE: There is no such language here as "beyond a reasonable doubt."

Senator KING. It seems to me it all depends upon the interpretation placed upon that by the judge. If the judge holds that presumption has so much validity and so much strength as to overcome that prima facie case which you have made on the other side, then your contention is right.

Senator DENEEN. The language itself shows it. The other party must prove otherwise.

Mr. BEVANS. Then why insert it as new matter in this bill?

Senator DENEEN. Because the importer would know exactly. He is not required to bring his witnesses from foreign lands; he may use catalogues and reports and records and depositions.

Mr. BEVANS. What you have stated, Senator, is the present practice under the existing law. If there isn't some purpose in changing it, why put this in?

Senator KING. I was going to ask you if there has been any trouble with regard to that?

Mr. BEVANS. It is put in, I think, to meet the decision of the appellate court that there is no greater presumption of correctness attaching to the appraiser's return in an appraisement de novo than there is in the presumption of the correctness of the price paid in the open market, but that the importer taking the appeal must take the initiative and must introduce some substantial evidence which, while not conclusive, is substantial evidence that tends to support his entry value, whereupon it becomes conclusive unless the Government shows why it changed that entered value.

Senator SHORTRIDGE. If I understand you, I am surprised that any court would ever make any such ruling.

Senator CONNALLY. You mean it satisfies the judge, though; it has to satisfy the judge under the present law? He has to be satisfied that the appraiser's valuation is wrong before he changes it, does he not?

Mr. BEVANS. He has to be satisfied, yes.

Senator CONNALLY. Your position is that under the law the judge might decide it like he finds it to be, but with this provision he is more or less tied. Is that right?

Mr. BEVANS. Yes, sir. The next section that I would like to refer to is section 504, Dutiable Value. That has been referred to this morning by Colonel Metz, I think, but I would like to add a little something to that.

The provision that I want to discuss is this:

> And if it shall appear that such action of the importer on entry was taken in good faith, after due diligence and inquiry on his part, the collector shall liquidate the entry in accordance with the final appraisement.

This section is directed to what is called in practice duress entries. The appraiser makes an addition on an entry and an appeal for reappraisement is filed. Thereafter the importer may, on entries covering the same merchandise, add on each entry an amount equal to the advance made by the appraiser in what we call the test case. If the importer wins the test case, then the duress entries will be liquidated in accordance with the court's decision. If the importer

wins his test case it would seem to be of no particular purpose to have him file a statement with the collector that the additions he made on the duress entries were made after due diligence and inquiry on his part and in good faith.

The question is, What is the dutiable value of the merchandise? If the court has decided in the test case that the value he is contending for is the dutiable value of the merchandise and his duress entries should be liquidated accordingly, it makes no difference whether he made an inquiry at the start or not; the fact that his value is approved by the court of that should be sufficient.

This merely requires the writing of an additional letter to the collector after the importer has won his case, stating that "I proceeded with due diligence to make inquiry and my additions were made in good faith." Of course, if he has won his case they must have been made in good faith, because the court said he was right.

I believe that should be stricken out.

The CHAIRMAN. I do not see any real reason why it should be there, but proceed.

Mr. BEVANS. I would like to take up section 516, appeal or protest by American producers, which is a very important part of the administrative section.

We believe that if a domestic interest is to be permitted to come into a transaction between the Government and the taxpayer he should be limited at least to those cases involving a rate of duty. Under the present law and under this section if enacted it has been held by the Court of Customs Appeals that a domestic interest has the right to protest the question of whether or not certain merchandise has been properly marked with the country of origin, because an additional duty of 10 per cent attaches if it is not so marked; and the higher court has said it is a question of classification because the collector must decide whether the article is or is not marked in accordance with the law, and in doing so he is classifying the goods.

As a matter of fact, call it what you will, the additional 10 per cent is a penalty imposed for not complying with the marking provision of the law; and we submit that a domestic interest should not have any right to protest the question of whether or not importations comply with the law.

Senator SHORTRIDGE. Who would protest?

Mr. BEVANS. The collector has the right to determine whether the merchandise is properly marked——

Senator SHORTRIDGE. Certainly.

Mr. BEVANS. And the Treasury Department. A domestic interest is a taxpayer; and we believe, as a matter of fact, that no taxpayer should be permitted to come into any proceeding involving the collection of a tax by the Government from an importer, who is also a taxpayer. You might just as well provide in the income tax law that any citizen could challenge whether or not another citizen had correctly paid the amount of his income tax; and if the Commissioner of Internal Revenue decided that he had paid the proper amount, then that particular citizen could go into court and hale in the other taxpayer and try out the question of whether, in fact, he had paid his entire income tax under the law.

Subparagraph (b) provides that if the Secretary of the Treasury does not agree with the contention of the domestic manufacturer, producer, or wholesaler that the proper rate of duty is not being assessed, he shall publish his decision with a notice that all merchandise imported or withdrawn from warehouse after the expiration of 30 days from such publication will be subject to the decision of the United States Customs Court in event that a protest is filed by the domestic manufacturer, producer, or wholesaler, and if such a protest is filed the Secretary shall order the suspension at all ports of all unliquidated entries of such merchandise imported or withdrawn from warehouse after the expiration of 30 days from date of such publication, which unliquidated entries shall be reliquidated later under the decision of the court.

The effect of that is this. The collector of customs, who has authority in the first instance to decide the rate and amount of duty on a given importation, makes his decision. The domestic interest is not satisfied that the collector has made a proper decision, so he files a complaint with the Secretary of the Treasury. After investigation the Secretary of the Treasury decides that the collector of customs has assessed the correct rate. Therefore the importer has with him the collector of customs and the Treasury Department, the administrative office of the Government. This provides that the Secretary shall publish the decision that he has disagreed with the domestic interest, whereupon every importer in the United States of that particular merchandise is uncertain from that time forward whether or not the rate of duty he is paying, which has been decided by the collector and by the Treasury Department to be proper, will eventually be the rate determined by the court to be the correct rate.

The domestic interest may file protest within 30 days after the liquidation of the first entry. The liquidation of the first entry at the port of New York may be three or four or five months thereafter. Thereupon the Treasury Department suspends the liquidation of all entries throughout the United States on that class of merchandise——

Senator SHORTRIDGE. Pending the appeal?

Mr. BEVANS. Pending the determination of the appeal; yes. And it may be a year or possibly two years thereafter before the question is finally determined.

When the rate is determined the unliquidated entries at the various ports will be liquidated in accordance with the court's decision.

Inasmuch as the time of liquidation at the ports varies quite materially—at some ports it may be within 30 days; at other ports, for instance, at New York, it may be from three to six months or longer—I think a fair average is six months; so that when the Treasury Department's order suspending the liquidation is made, it may at the port of New York find a large number of entries unliquidated, while at the port of Chicago it may find a very small number unliquidated.

Senator SHORTRIDGE. If two appeals are pending, one in New York and one in Chicago, one may be decided before the other?

Mr. BEVENS. Well, it is not quite that, Senator. An appeal may be filed from the liquidation of an entry at the port of New York, whereupon as soon as that appeal is filed by the domestic interest the

Secretary orders the suspension of all unliquidated entries of merchandise made 30 days after the publication of his first decision stating that he does not agree with the claim of the domestic interest.

Senator SHORTRIDGE. It goes where, then—first, to the Customs Court?

Mr. BEVANS. First to the Customs Court; but at the time the liquidation is ordered suspended there may be a great many more entries at one port unliquidated than at another port, depending upon the speed with which the entries are liquidated. The final decision of the court will only catch unliquidated entries suspended under the secretary's order, so that at a port where the liquidations are within 30 days the importer will have all his entries liquidated but a comparatively few so that he will not be caught by the decision of the court which, if it should decide on a higher rate of duty, becomes retroactive, so to speak.

I would like to say that in our opinion Congress in its tariff provisions should provide that the rates of duty shall become effective equally against importations or withdrawals from warehouse at all ports, so that the imported merchandise will enter the commerce of the United States upon an equal basis. This provision, if enacted into law, will result in unequal taxation and give the right to a domestic interest, through the simple medium of filing protest, to make uncertain the rate of duty to be ultimately imposed. Upon the filing of the domestic interest's protest the importer will be compelled to increase his selling price by the amount of the higher duty sought.

What I mean by that is this, that all the domestic interest has to do is to file a protest claiming that the rate, instead of being 50 per cent should be 75 per cent, and immediately the Secretary will suspend the liquidation which is the final determination by the collector of the proper rate of duty at all ports throughout the United States. As it may take from one to two years to determine whether 50 per cent or 75 per cent is the correct rate, and during that time no importer could sell his goods in these markets without figuring on 75 per cent as the rate of duty, as it would be too great a hazard. The result is that if 75 per cent makes it impossible for him to import, his importations are stopped. So even if the domestic interest loses out in its protest and 50 per cent is ultimately decided to be the correct rate, he has accomplished his purpose and put the importer out of business.

Senator SHORTRIDGE. Do I understand you, then, to oppose the right of appeal to the court from the decision of the collector or the decision of the Secretary of the Treasury?

Mr. BEVANS. No. My proposal, Senator, is this, that if the collector has decided a certain rate to be correct and his decision has been affirmed by the Treasury Department, if that is changed upon the filing of a protest by the domestic interest, that change should not be put into effect except as to importations made on or after 30 days from the date of the decision of the court. The importer certainly in all fairness ought to feel that he is safe in bringing his goods into this country and selling them when he is paying the duty decided by the collector of customs and the Secretary of the Treasury to be the correct rate of duty.

Senator GEORGE. Is this right of protest by the domestic interest very widely used?

Mr. BEVANS. It has been used—of course, "widely" is rather a relative term—it has been used in a number of cases. I have in mind now the cellophane case which has just been finished. There have been a number of cases and very important cases.

The CHAIRMAN. Can you give us a few of the important ones? We will look them up.

Mr. BEVANS. Yes; if the chairman will permit me to cite those cases to you on a statement that I will make after I leave here. I can refer to them, but not definitely by T. D. numbers at the present time.

Senator WALSH. If the importer sells his goods on the theory that the decision may result in his paying the higher duty, the public are the losers, are they not?

Mr. BEVANS. They are, most decidedly.

Senator WALSH. And the importer gets very large bonuses?

Mr. BEVANS. Yes; but he has to incur the expenses of the litigation.

I just want to refer to one case that I am particularly familiar with, and that is the recently decided Cellophane case. Cellophane is this transparent material used principally for wrapping food products and candy. It looks like gelatin in sheets. For more than 10 years that merchandise has been classified at 25 per cent under a decision of the court. The Dupont Cellophane Co. protested to the Treasury Department that the rate of duty should be 60 per cent or 40 cents a pound under paragraph 31. The Treasury Department decided that the 25 per cent rate was the correct rate.

Some time thereafter a protest was filed. The case was tried in the lower court and a very extensive record was made. The question turned upon what was a compound, and there were at least 10 expert witnesses, four or five for each side. It finally got up to the higher court and that court decided it was dutiable at 40 cents a pound, which is the equivalent of about 50 per cent. The lower court decided first that it was dutiable at 60 per cent.

Immediately upon the decision of the lower court the collector at New York proceeded to liquidate the unliquidated entries at this higher rate, an advance from 25 per cent to 60 per cent on merchandise that had been imported seven and eight months before the decision of the court but the entries had not been liquidated because of the fact that the collector is that far behind in his liquidations of entries so that this importer under that decision, which will be reduced, now, from 60 per cent to 50 per cent——

Senator SHORTRIDGE. Forty, I thought you said.

Mr. BEVANS. Forty cents is the equivalent of 50 per cent—even under that the importer will be compelled to pay the Government on those entries that, had they been liquidated promptly, would have been settled—he will have to pay the Government about $30,000. As a matter of fact, with this 50 per cent duty the merchandise can not be imported and sold and would not have been inported.

So I say that the only fair proposition—if we are going to give the domestic interest this unusual right to intervene in a transaction which ought to be wholly and solely between the Government and the taxpayer, we certainly should give him the advantage of 30 days' notice after the final decision in the case is rendered by the court.

There is another provision in that section which relates to appraisement cases. There it is provided that when the domestic interest

supplies the appraiser with any information as to value upon which he advances the value of merchandise and an appeal is taken by the importer, the domestic interest furnishing such information may appear in court as a party in interest, which means that he may appear there with his attorney. Instead of being called by the Government attorney as a witness for the Government, having furnished the Government with the data or informatiou upon which the appraised value is predicated, he comes in there as a party in interest.

Senator SHORTRIDGE. He comes in as amicus curiæ, so to speak. I can go up to the Supreme Court of the United States and ask to be heard concerning a decision which they have rendered which I think affects others than the direct parties litigant. I may ask permission to file a brief——

Mr. BEVANS. Under certain limitations.

Senator SHORTRIDGE (continuing). In support of a petition for rehearing.

Mr. BEVANS. Under certain limitations.

Senator SHORTRIDGE. The court is more or less generous in allowing such brief to be filed.

Mr. BEVANS. Providing the attorneys of the actual parties to the cause have no objection.

Senator SHORTRIDGE. They can not object.

Mr. BEVANS. I think you will find that is one of the rules of the Supreme Court.

Senator SHORTRIDGE. They may have that rule, but very many courts have no such rule.

Mr. BEVANS. But this goes beyond that. You may come into court, under our practice, as amicus curiae and file a brief. Generally you are not permitted to participate in the argument—or if you are permitted to participate in the argument you are certainly never permitted to participate in the trial of the case, in the examination of witnesses.

Senator SHORTRIDGE. That may be.

Mr. BEVANS. This permits examination of witnesses. Why should an importer, when an appraiser has increased the value of his goods—it makes no difference where he got the information; he did not get it out of the air; he got it somewhere—why should the importer be compelled to go into a court and face the Government on the one side, with the Assistant Attorney General's office defending the increase in the amount of duty, and the domestic interest, who is the informer, so to speak, on the other, with his attorney, and both of them participating in the case? Certainly we ought to have sufficient confidence in the Assistant Attorney General's office in its ability to ably defend the Government.

Senator REED. Where is the provision making the informer a party?

Senator GEORGE. Page 468, line 21.

The CHAIRMAN. I think the witness' objection is with reference to page 471, line 14, which is in addition to the present law.

Senator REED. It begins on page 468, line 21.

Senator SHORTRIDGE. You are objecting to a third party, so to speak, being heard?

Mr. BEVANS. Not being heard, but to his appearing as a party in interest, which carries with it the right to examine witnesses.

Senator SHORTRIDGE. He must betray an interest; otherwise he would not be heard. He must show that he is a party in interest, in effect, before he can be heard.

Mr. BEVANS. He simply has to have the interest of an American manufacturer or producer.

Senator SHORTRIDGE. Certainly.

Mr. BEVANS. This is equivalent to my going down to the district attorney and informing him of a violation of some criminal statute by an individual, and then having the right to come into court with my attorney and prosecute—a most unusual proceeding.

Senator SHORTRIDGE. I do not want to prolong it, but let me say that recently the Supreme Court of the United States rendered a very far-reaching opinion which affected the whole tax system of California, as also Oregon. I was requested by our attorney general to ask the Supreme Court for permission to file a petition as amicus curiæ asking for a rehearing, and Oregon made the same request through Senator McNary. The Supreme Court granted the request.

As I understand it, this proposed law permits the American producer to really appear in a given case. Is not that all there is to it?

Mr. BEVANS. No; it is more than that. Under our present practice the Customs Court and the United States Customs Court of Appeals have been very liberal in granting requests to appear in a case as amicus curiae. That limits the right to the filing of a brief or sometimes to participating in the oral argument, but no court, so far as I know, has permitted anyone not properly a party to a proceeding not only to file a brief and participate in the oral argument, but to come into court with his attorney and proceed to adduce testimony, direct and rebuttal and cross-examination, and so forth. This will give the domestic interest the right to cross-examine my witnesses.

Senator SHORTRIDGE. What harm can come from it?

The CHAIRMAN. You did not say how many cases there were. Has there been more than one case?

Mr. BEVANS. Oh, yes, Senator. There have been a number of cases. The Cellophane case that I have mentioned was one. There was a case on sporting powder, which was another.

The CHAIRMAN. That is under paragraph (b). You are talking on paragraph (a). Paragraph (b) is the classification that I called attention to. There have been cases there.

Mr. BEVANS. There never have been any cases on value where the domestic interest has been permitted to come in as a party in interest, because we have not that language in the law to-day.

The CHAIRMAN. Yes, we have, just exactly the same in paragraph (b).

Mr. BEVANS. As a party in interest?

The CHAIRMAN. Yes. It provides that—

Whenever an American manufacturer, producer, or wholesaler believes that the appraised value of any imported merchandise of a class or kind manufactured, produced, or sold at wholesale by him is too low, he may file with the Secretary of the Treasury a complaint setting forth the value at which he believes the merchandise should be appraised and the facts upon which he bases his belief. he Secretary shall thereupon transmit a copy of such complaint,

And so forth.

Then, further down, it says:

If the appraiser advances the entered value of merchandise upon the information furnished by the American manufacturer, producer, or wholesaler, and an appeal is taken by the consignee, such manufacturer, producer, or wholesaler shall have the right to appear and to be heard as a party in interest, under such rules as the United States Customs Court may prescribe.

There has been only one case known under that. You have been talking about (a). I thought it applied to (b). There are a number of cases under (b), four or five as you stated.

Are you objecting here to the present law with regard to paragraph (a)?

Mr. BEVANS. Yes. I was in error, Senator, when I stated it was new language. I am objecting to the provision.

The CHAIRMAN. There is some new language in (b).

Mr. BEVANS. I am objecting to it on the ground that I have stated, that if the information is furnished by the domestic interest to the appraiser and the appraiser adopts that information and advances the goods and that becomes the appraised value and the importer files his appeal for reappraisal, the domestic interest can come into court as a witness and he does not need to come into court as a party in interest with his attorney, inasmuch as we have the Assistant Attorney General who is competent to try the case. It becomes the same as any other reappraisement case.

Senator HARRISON. When was that first incorporated in the law?

Mr. BEVANS. In the act of 1922.

The CHAIRMAN. I think that was the first.

Senator EDGE. Then you are not objecting to any amendment, but to the existing law?

Mr. BEVANS. To the existing law.

Senator GEORGE. I see that there is a provision made in section 517 for the assessment of damages or penalties for frivolous appeal, but it is a very negligible and mild penalty—not less than $5 nor more than $250.

Mr. BEVANS. I do not know that it has ever been applied; I have no knowledge of it.

The CHAIRMAN. Let us go on with this case. You have now had three hours. What is the next point?

Mr. BEVANS. Section 520. I simply want to approve, in behalf of the council, the change suggested in that section.

Section 521, reliquidation on account of fraud. There the collector has the right to reliquidate an entry within two years from the date of any liquidation or reliquidation if he finds probable cause to believe there is fraud in the case.

We object to the right of the collector to reliquidate within two years from the date of the last reliquidation. We believe that there should be some time when the liquidation becomes final. If the collector may reliquidate because he thinks there may have been some probable fraud, within two years from the date of the original liquidation, or a reliquidation it will be continued for an indefinite period of time. We think that the language in the present section should be adopted.

The CHAIRMAN. In the old law, or the way the House reports it?

Mr. BEVANS. The old law.

The CHAIRMAN. You want the old law?

Mr. BEVANS. Yes.

The CHAIRMAN. Proceed.

Mr. BEVANS. Section 623. We have a provision in 623 relating to bonds.

Senator SHORTRIDGE. Is that a new section?

Mr. BEVANS. Yes, sir. There is a provision in that section which provides that—

No condition in any such bond shall be held invalid on the ground that such condition is not specified in the law authorizing or requiring the taking of such bond.

We believe the Secretary should not be given authority to place any condition in the bond he may see fit, whether or not that condition is a necessary one, with respect to the purpose for which the bond is required. The language quoted makes the bond valid even if it contains a condition not required by law and is tantamount to giving the Secretary the authority to put in such a condition.

Senator GEORGE. On the theory that it becomes valid as a common law obligation.

Mr. BEVANS. Section 648, separability of provisions——

Senator SHORTRIDGE. What does that mean?

Senator REED. That the whole thing shall not be unconstitutional because part of it is.

Mr. BEVANS. It is provided in that section that—

If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Senator SHORTRIDGE. That is in every statute in nearly every State.

Senator GEORGE. It does not have to be in the statute.

Mr. BEVANS. As I read that, it would provide that if any part of this tariff act is held unconstitutional in a case involving one citizen, such unconstitutionality would be limited to that particular citizen, thereby rendering it necessary for another citizen to whom such provision of law is applied to again contest its validity.

Senator GEORGE. I think you are misinterpreting it.

Mr. BEVANS. It says:

If any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

Senator REED. You know that in codifications of the law that we pass or that State legislatures pass that clause has become customary.

Mr. BEVANS. Is there any objection to reenactment of the provision that was deemed sufficient to meet the situation by Congress in 1922, as follows:

If any clause, sentence, paragraph, or part of the title shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of said act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which such judgment shall have been rendered.

That is directed to the particular clause, irrespective of its application to one person or another person.

Senator KING. If there is a case carried to the court and any particular clause or section is declared to be unconstitutional and A is the party immediately affected in the controversy, the benefits derived

therefrom, that is, from the declaration that the law is unconstitutional, would affect all other subsequent cases. It would not only be stare decisis, but res judicata.

The CHAIRMAN. The language which you have just quoted was the form used in 1922, but this later form is used and has been used since that time.

Mr. BEVANS. May I have the privilege of filing a brief?

The CHAIRMAN. Do you want to file a brief besides your statement?

Mr. BEVANS. Yes, sir.

(Mr. Bevans submitted the following briefs:)

BRIEF OF THE NATIONAL COUNCIL OF AMERICAN IMPORTERS AND TRADERS (INC.)

Hon. REED SMOOT,
Chairman Committee on Finance,
Washington, D. C.:

The National Council of American Importers and Traders (Inc.), whose membership is composed of American wholesale and retail merchants located throughout the United States and who are either directly engaged in importing merchandise or deal in imported merchandise, has given careful consideration to the special provisions and the administrative provisions proposed in H. R. 2667, and desires to submit to your committee its recommendations thereon. The various sections are referred to in detail hereinafter:

Section 301: Philippine Islands.

Section 302: Porto Rico—Exemption from internal revenue taxes.

Section 303: Countervailing duties.

We have no recommendation to submit to your committee as to these three sections.

Section 304: Marking of imported articles.

We indorse the change in the existing law, as proposed in subparagraph (a), which commits to the Secretary of the Treasury the administration of the marking provision.

We do not indorse, however, the change proposed in subparagraph (b). Under the wording of this subparagraph, the duty of 10 per cent, which is in effect a penalty, will attach not only to the failure to properly mark the imported article, but also to the container.

An imported article which is properly marked to indicate the country of origin, indicates to the consumer the origin of such article and the purpose of the marking section is fulfilled. The marking of the container does not add to the information already conveyed.

We can see no reason for the imposition of penal duties because of failure to mark a container holding an article which is properly marked to indicate the country of origin. There are many articles impossible of marking because of their physical nature, which are not sold to the consumer in the imported container, such as sugar, olives in bulk, etc. The consumer can, therefore, not be informed as to the country of origin of such imported article. It would seem unnecessary that merchandise of this character should be subject to penalties because of failure to mark the container.

We recommend that subparagraph (b) be limited in its application to the assessment of an additional duty where the articles are not properly marked. We also suggest that some limitation be placed on the amount to be collected because of failure to mark an article to indicate the country of origin.

Articles of large value, which are imported not legally marked, must pay a very much higher penalty than articles of small value. We have knowledge of such penalty, in the case of a machine, amounting to as high as $170. This certainly is a very high penalty to pay for a minor violation of the tariff law, more especially as the failure to comply is in most instances due to ignorance of law on the part of the foreign manufacturer. The goods are not released from customs custody until they are properly marked, and the consumer is thus informed as to their origin. There is, therefore, no reason why more than a nominal penalty should be inflicted against the importer. We therefore recommend that the additional duty of 10 per cent be limited to an amount not exceeding $5 for each imported article which is not marked in accordance with the requirement of the law.

We also recommend that subdivision (b) be enacted in the following language:

"(b) Additional duties for failure to mark: If at the time of importation any article or its container is not marked, stamped, branded, or labeled in accordance with the requirements of this section, there shall be levied, collected, and paid on such article, unless exported under customs supervision, a duty of 10 per centum of the value of such article, in addition to any other duty imposed by law, or, if such article is free of duty, there shall be levied, collected, and paid a duty of 10 per centum of the value thereof: *Provided*, That the requirements of this subdivision shall not apply to containers not marked in accordance with subdivision (a) of this section if the contents of such container are marked, stamped, branded, or labeled, as provided by subdivision (a) of this section: *And provided further*, That in no case shall the additional duty herein provided exceed the sum of $5 for each imported not marked in accordance with subdivision (*a*) of this section."

Section 305: Immoral articles—importation prohibited.

Section 306: Cattle, sheep, swine, and meats—importation prohibited in certain cases.

Section 307: Convict-made goods—importation prohibited.

Section 308: Temporary free importation under bond for exportation.

Section 309: Supplies for certain vessels.

Section 310: Free importation of merchandise recovered from sunken and abandoned vessels.

Section 311: Bonded manufacturing warehouses.

Section 312: Bonded smelting warehouses.

We have no recommendations to make as to these sections.

Section 313: Drawbacks and refunds.

We have no recommendations to make as to this section, with the exception of subparagraph (c), which relates to "merchandise not conforming to samples or specifications." We heartily indorse the extension of the drawback privilege to imported merchandise which does not conform to sample or specifications, but we believe that the 10-day limitation gives insufficient time, for the reason that the imported merchandise is frequently shipped to the purchaser in the original packages direct from the pier, or train, or appraisers stores, and it is not possible for such purchaser to receive such goods and make an examination within 10 days. We believe that the time limit should be 30 days.

Section 314: Reimportation of tax-free exports.

Section 315: Effective date of rates of duty.

Section 316: Cuban reciprocity treaty not affected.

Section 317: Tobacco products—exportation free of duty or internal revenue tax.

Section 318: Emergencies.

We have no recommendations to make as to these sections.

PART II—UNITED STATES TARIFF COMMISSION

Section 330: Organization of the commission.

Section 331: General powers.

We have no recommendations to make.

Section 332: Investigations.

We have no recommendations with respect to subparagraphs (a), (b), and (c). Subparagraph (d), subdivisions (4) and (5), authorize the Tariff Commission to—

"(4) Ascertain import costs of such representative articles so selected;

"(5) Ascertain the grower's, producer's, or manufacturer's selling prices in the principal growing, producing, or manufacturing centers of the United States of the articles so selected."

The term "import costs" as used in subdivision (4) is defined under subparagraph (e), subdivision (2), to be the freely offered price of the imported article in the ordinary course of trade, in the usual wholesale quantities, for exportation to the United States, including all necessary expenses, exclusive of customs duty in bringing such imported article to the United States.

We, therefore, have authority for the commission to ascertain selling prices in the United States of the domestic article, while as to the imported article, the selling price in the foreign country is to be ascertained, with an addition only of the expenses of bringing such article from such foreign country to the United States.

If, for the purposes of adjusting rates of duty, it is contemplated that a comparison is to be made between the landed cost of the imported article, without duty, and the manufacturer's selling price in the United States of the domestic

article, we submit that this is not a proper basis of comparison. If the selling price of the domestic article is to be taken, there should be added to the "import cost" as defined in subparagraph (e), subdivision (2), the usual general expenses and profit.

The foreign cost plus the necessary expenses of bringing the merchandise to the United States, general expenses and profit (representative of the usual percentages based on the selling price of such imported merchandise in the United States), with the amount of duty which is to be determined, represents in its total the figure at which it must meet domestic competition.

It is recommended that subparagraph (d), subdivision (4) of section 332 be amended to read as follows:

"(4) Ascertain import costs and port costs as defined in subdivision (e) of this section, of such representative articles so selected."

And that subdivision (e) be amended to read as follows:

"(e) Definitions when used in this subdivision and in subdivision (d):

"(1) The term 'article' includes any commodity, whether grown, produced fabricated, manipulated, or manufactured.

"(2) The term 'port cost' means the price at which an article is freely offered for sale in the ordinary course of trade in the usual wholesale quantities for exportation to the United States, plus, when not included in such price, all necessary expenses, exclusive of customs duties, of bringing such imported articles to the United States.

"(3) The term 'import cost' means the price at which an article is freely offered for sale in the ordinary course of trade in the usual wholesale quantities for exportation to the United States, plus, where not included in such price, all necessary expenses, exclusive of customs duties, of bringing such imported article to the United States, and general expenses and profit representative of the usual percentages based on the selling price of the wholesaler to all purchasers in the principal market of the United States, in the ordinary course of trade, and in the usual wholesale quantities in such market."

Section 333: Testimony and production of papers.

Section 334: Cooperation with other agencies.

Section 335: Penalty for disclosing of trade secrets.

We have no recommendations to make as to these sections.

Section 336: Equalization of competitive conditions.

We are opposed to the changing of rates of duty by the President, or by any other official or commission, as we firmly believe that the fixing of rates of duty on imported merchandise should be done by Congress. In order that Congress may have the proper information upon which to make the necessary adjustments of rates of duty, we believe that the Tariff Commission, with the powers of investigation conferred upon it by section 332, is an important aid to Congress in determining what rates of duty shall be assessed on imported merchandise, and that as a fact-finding commission it should be continued.

The present section 315 of the tariff act of 1922 delegates to the President the right to adjust rates of duty, within certain limitations, in order to equalize the differences in cost of production of articles wholly or in part the growth or product of the United States, and like or similar articles wholly or in part the growth or product of competing foreign countries.

That section was declared constitutional by the Supreme Court of the United States, in an opinion written April 9, 1928, in the case of J. W. Hampton jr. Co., petitioner, v. United States, No. 242, October term, 1927, published in T. D. 42706.

It is apparent from a reading of that decision that the constitutionality of section 315 was sustained because on its face said section authorizes the President to adjust a rate of duty, with a limit of 50 per cent to meet a difference in foreign and domestic costs of production of an article—an arithmetical computation.

This is evidenced by a statement made by the Supreme Court, in its decision, that its conclusion is amply sustained in Field v. Clark (142 U. S. 649, 680), for the reason that the decision referred to (Field v. Clark), involved a case where Congress had definitely fixed rtes of duty on certain articles, but provided that such rates should not be assessed unless foreign countries imposed duties or other exactions upon agricultural or other products of the United States.

Section 316, as proposed in H. R. 2667, empowers the President to change ad valorem rates of duty, with the same limitation of 50 per cent, not upon an ascertained difference between the foreign and domestic costs of production of an article, but to equalize differences in conditions of competition.

It is obvious that the language in section 336 is much broader than that in the present section 315. While the differences between foreign and domestic

costs of production are, at least in theory, definitely ascertainable, and the adjustment of a rate of duty to meet such differences a mere matter of arithmetic, it is apparent that there may be many differences in conditions of competition that can not be reduced to money equivalents and that, therefore, any attempted adjustment of rates to meet such differences must necessarily be a matter of exercise of discretion on the part of the President.

While Congress may have provided a yardstick in the present section 315, by which the President may adjust ad valorem duties without the exercise of any discretion, certainly, by the change in the language, no definite measure whatever is provided, and the adjustment of a rate in such a case by the President is, in fact, the fixing of a rate according to his discretion. We believe that this is a function committed by the Constitution only to Congress.

The proposed section, we believe, is therefore of doubtful constitutionality.

Certainly the decision of the Supreme Court on the present section would not be controlling as to the proposed section 336, because of the change in language which greatly enlarges the scope of the authority conferred upon the President.

We recommend that the Tariff Commission report direct to Congress and that section 336 be eliminated from the proposed law. If this recommendation is adopted, section 332 will necessarily require amendment.

If our recommendation is not adopted, we urge that section 336 be redrawn for the reasons we have stated above.

We recommend also, if section 336 is enacted into law, that there be an amendment of subdivisions (1) and (2) of subparagraph (d).

Subparagraph (d) provides that the President, in ascertaining the differences in the conditions of competition between domestic articles and like or similar competitive imported articles, shall take into consideration, under subdivision (1):

"The cost of production of the domestic article, or the price at which such article is freely offered for sale to all purchasers in the principal market or markets of the United States, in the ordinary course of trade and in the usual wholesale quantities in such markets."

And, under sub-division (2):

"The cost of production of the imported article, or the price or value set forth in its invoice, or its import cost as defined in subparagraph (*e*) of Section 332."

Under the quoted matter, apparently the President may compare the price at which the domestic article is freely sold in the principal markets of the United States, with the price or value set forth in the invoice, or the import cost. There can be no proper comparison between the selling price of the domestic article and either the value set forth in the invoice, which is the price actually paid, or the import cost, which is defined in section 332 to be the landed cost exclusive of customs duty, for the reason that this is not the point at which the domestic and imported articles meet in competition.

The proper basis of comparison would be (1) the cost of production of the domestic article with the cost of production of the imported article, and in the absence of such cost of production with its port cost; (2) the selling price of the domestic article in the markets of the United States, in the usual wholesale quantities and in the ordinary course of trade, with the import cost of the imported article as we have defined this term in our suggested amendment to subdivision (e) of section 332.

We, therefore, recommend that subdivisions (1) and (2) of subparagraph (d) be worded as follows:

"(1) Cost of production of the domestic article, as compared with the cost of production of the imported article, and in the absence of such cost of production with its port cost, as defined in subparagraph (*e*) of section 332; or

"(2) The price at which the domestic article is freely offered for sale to all purchasers in the principal markets of the United States, in the ordinary course of trade and in the usual wholesale quantities in such markets, as compared with the import cost of the imported article as defined in subdivision (*e*) of section 332."

We also recommend that the definition of similarity in subdivision (2) of subparagraph (*g*) be changed, as the language used in the proposed subdivision is too broad. Under this proposed definition, we believe that it would be possible to compare articles which may differ very essentially in material, construction and value.

The United States Court of Customs Appeals in United States *v.* Irving Massin & Bros. (15 Ct. Cust. Appls. ——, T. D. 42714), provides a more definite

and fair rule for the determination of this question, and we recommend that it be adopted.

We, therefore, recommend that subdivision (2) of subparagraph (*g*) be enacted as follows:

"An imported article shall be considered like or similar to and competitive with a domestic article, if such imported and domestic articles are made of approximately the same materials, are commercially interchangeable, and are adapted to substantially the same uses, and are so used."

We also recommend that if section 336 is enacted into law, the effective date of the President's proclamation b) extended from 30 days as provided in subdivision (*c*) to 90 days in order to exclude from such proclamation merchandise already sold on order or which is in transit from distant foreign countries.

Section 337: Unfair practice in import trade.

We recommend that this section be eliminated from the law. It is now being applied to the infringement of patents, as evidenced by the recent Bakelite case (synthetic phenolic resin). In that case, a temporary order was issued by the President, upon a complaint filed by the Bakelite Corporation, excluding from entry articles made of synthetic phenolic resin which are alleged to infringe the patent rights of the Bakelite Corporation. (T. D. 41512.)

An infringement of a patent is a matter within the jurisdiction of United States courts, and the right of the Tariff Commission to entertain a complaint, based solely on an infringement of a patent, has been challenged and the case is now pending before the United States Court of Customs and Patent Appeals.

We believe that this section is not applicable to complaints of that character, but irrespective of this fact, we are of the opinion that there is no necessity for such legislation. A domestic manufacturer has an adequate remedy for all unfair acts of competition by an action in the United States courts.

If, however, the section is to be reenacted, that part of it giivng the President the right to issue an order of embargo before investigation has been made, should be eliminated, as it is unjust. In the Bakelite case, the temporary order was issued by the President upon the mere filing of a complaint on the part of the Bakelite Corporation with the Tariff Commission, and overnight importers of hundreds of different articles made of synthetic phenolic resin, had their importations stopped, and such as were already imported but not delivered were refused delivery.

If it should be finally determined, either that the right to issue such an embargo in the case involving infringement of a patent, was not within the power of the President, or that in fact there was no infringement, there is no way to recompense these importers for the losses they have sustained. A United States court, in a patent infringement suit, will not issue a preliminary injunction, unless the patent has been previously litigated and declared valid, and then only upon the giving of an adequate bond by the plaintiff to meet all damages which may be sustained by the defendant in event the suit is not successful.

If the President is to be given the right to make a temporary embargo, the domestic interest, on whose complaint such action is taken, should be compelled to give a bond to answer all damages to the importer, in event said complaint is shown to be unfounded, on final decision.

Section 338: Discrimination by foreign countries.

No recommendation.

Section 339: Reenactment of existing law.

No recommendations.

TITLE IV—ADMINISTRATIVE PROVISIONS

PART 1—DEFINITIONS

Sec. 401. Miscellaneous.

No recommendations.

Sec. 402. Valuation.

We oppose American valuation for the reasons so ably stated by Senator Smoot of the Committee on Finance, on the floor of the Senate, reported in the Congressional Record of April 24, 1922, page 6412, from which we quote the following:

"I am convinced of the wisdom of the decision reached by the committee on the subject of valuation. Nothing could be more disturbing to business conditions than a revolutionary change in the basis of valuation.

"If any doubt existed in my mind concerning the undesirability of the wholesale adoption of American valuation it was removed by the so-called Reynolds

investigation. This investigation, for which an appropriation of $100,000 was provided, was made by the Treasury Department to assist the Finance Committee in fixing tariff rates in case it was decided to base ad valorem duties on American valuation. The advocates of American valuation expected this investigation to demonstrate beyond doubt the desirability of their proposal. On the contrary, the facts brought out by this investigation demonstrated conclusively the inadvisability of breaking completely with the present practice of valuation in our customs service. It disclosed, as I have pointed out, wide fluctuation in importers' margins. It showed also that the value of imported articles in the American market fluctuated more widely than the value of articles in foreign markets. Manufacturers even who had first favored American valuation now hesitate to accept the Senate rates when converted to the American valuation basis. And well they may, for the Senate rates on foreign valuation offer them greater security than equivalent rates based on American values disclosed in the Reynolds investigation."

We attach a copy of the brief which we submitted in opposition to American valuation in 1922, together with a copy of the report made to the Finance Committee by Senator McCumber, and the complete statement of Senator Smoot, from which we have quoted, and also other matter having bearing upon this subject.

We are also opposed to the adoption of United States value, either in its present form, that proposed in paragraph (e), section 402 of H. R. 2667, or in any other form, as a major basis of valuation, for it presents the same difficulties, to a great extent, and is open to the same objections that have been expressed in connection with American valuation in the brief and in the statements of Senators McCumber and Smoot, to which we have referred.

Your chairman, Senator Smoot, reaffirmed the position taken by him in 1922, during the progress of the hearing before your committee on June 12 and 13 as follows:

"I have stated that I was absolutely opposed to it at that time, and I am absolutely opposed to it to-day."

The reasons given for your chairman's opposition to American valuation are, we think, sufficient answer to those who have appeared before your committee and advocated as a major method of appraisement the adoption of so-called United States valuation, and we desire, therefore, to emphasize these very cogent grounds of objection presented to the United States Senate in 1922:

1. The value of imported articles in the American market fluctuates more widely than the value of articles in the foreign markets.
2. There are wide fluctuations in importers' margins.
3. The inadvisability of breaking completely with the present practice of valuation in our customs service.
4. That rates based on foreign valuation offer domestic manufacturers greater security than equivalent rates based on American values.

As we have stated, all of these reasons may with equal force be urged in opposition to the adoption of United States value in any form as a major basis of appraisement, and in addition to these reasons, there are other very important grounds of objection, all of which we desire to present in detail to your committee.

CHANGE IN BASIS OF VALUATION PROPOSED BY AMERICAN TARIFF LEAGUE AND OTHERS AT SENATE FINANCE COMMITTEE HEARING

The so-called United States value basis of appraisement presented to your committee in behalf of the American Tariff League, and approved by others representing domestic interests, is not the United States value basis now provided in section 402 of the tariff act of 1922 as an alternative appraisement basis.

The Tariff League proposes that imported merchandise shall be appraised on its selling price in the United States, with a deduction for duty only. The ad valorem duty would, therefore, be assessed not only upon the foreign value of the imported article but upon the expenses of transporting such article to the United States—that is, insurance and freight—and also upon profits made in this country by the American importer, and his overhead expenses, a large proportion of which necessarily represents wages paid to American labor.

The United States value basis of appraisement now prescribed by law as an alternative method of appraisement is, in effect, a theoretical foreign value because it provides for the deduction from the selling price of the imported article in the United States of those factors which have been added to the purchase price of such article to fix such selling price. This method, however, does not result in the assessment of duty on the true foreign value, except in cases where the over-

head and profit are respectively less than 8 per cent, for the reason that under existing law the importer may not deduct actual overhead or actual profit beyond 8 per cent in each case. The dutiable value is naturally increased by such excess.

CHANGE IN METHOD OF DETERMINATION OF COST OF PRODUCTION PROPOSED IN THE BRIEF OF THE AMERICAN TARIFF LEAGUE—TARIFF READJUSTMENT, VOLUME 16, PAGE 10203

To show the extent to which the proponents of United States value have gone let us refer to the testimony of Mr. Lerch and the brief wherein is advocated as the definition of cost of production—the cost of production in the United States:

"(1) The cost of materials of, and of fabrication, manipulation, or other process employed in manufacturing or producing such merchandise in the United States, at a time preceding the date of exportation of the particular merchandise under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business."

Certainly nothing can be more unfair and ridiculous than to levy a duty on the cost of production in the United States when the sole purpose of a duty is to equalize the foreign and domestic costs.

UNITED STATES VALUE AS AN ALTERNATIVE

United States value, as now embodied in the tariff act as an alternative basis of appraisement, provides a means whereby appraising officers may have a check upon the entered value, as stated by Mr. Otto Fix in his testimony before your Committee, and it serves its intended function in cases where there is no freely offered foreign or export value upon which the ad valorem duties prescribed may be assessed.

The first witness representing the proponents of the United States value idea cited an instance of a French manufacturer who refused to sell any of his goods in France to the American trade, but made his sales here through his American house. Duty was paid on an extremely low factory price, the merchandise being rebilled to the customers here on a higher basis.

Under the tariff act of 1922 such merchandise would be assessed upon a United States valuation basis, due allowance being made for duty, freight, and insurance, expenses not exceeding 8 per cent, and profits not exceeding 8 per cent, if the New York house were bringing forward the goods as buyers, but in the event that they were bringing them forward upon a consignment or branch-house basis, the United States valuation basis plan, less duty, freight, and insurance, and a commission not in excess of 6 per cent, would be applied. No change in the present law is therefore required to catch the shipments made to branch houses or agents where the manufacturer abroad refuses to offer his goods in the open market.

REASONS URGED FOR ADOPTION OF CHANGE IN VALUE BASIS

The proponents of United States valuation and others who appeared before your committee advocating so-called United States value as a major method of appraisement, stated as reasons for the proposed change that:

1. It would prevent undervaluations.
2. The dutiable value of imported merchandise upon which to assess ad valorem duties could be ascertained with greater definiteness and certainty, because the selling price in this country would be taken as the basis rather than foreign or export price.
3. The Government would collect vastly more revenue.
4. The American manufacturer or producer would have increased protection.

We propose to discuss these grounds in detail, and believe that we can show to you committee that they are without any real basis, and that the alleged facts urged to support them are inaccurate and do not, in many instances, exist.

UNDERVALUATION

A great deal was said in the hearing before your committee on undervaluation, and reference was frequently made to the report of the Secretary of the Treasury for the year 1928, showing amounts collected as a result of undervaluations. Representatives of this council have stated, in testifying before the Ways and Means Committee of the House of Representatives, and before the Finance Committee of the United States Senate, that fraudulent undervaluations are negligible. We reaffirm that statement and submit to your committee that it can be verified by calling upon the officials of the Customs Bureau and the appraising officers at the port of New York.

A reference to "undervaluations" does not mean very much unless it is qualified by stating whether a fraudulent undervaluation is referred to, or merely technical "undervaluation" caused by an advance made by the appraiser over the entered value, regarding which there may be a legitimate difference of opinion but in which there is no fraud of any character present.

The representative of the American Tariff League, in his statement before this committee, stated that when he was a Government attorney in the Assistant Attorney General's office in charge of customs, "there were at least 15,000 cases a year brought on undervaluation." He knows that these cases were not instances of fraudulent undervaluation. Fraudulent undervaluation, under the existing law, involves a seizure of the merchandise, or a suit for forfeiture value, and neither of these proceedings would be handled by the Assistant Attorney General in charge of customs, or come within the jurisdiction of the United States Customs Court, before which tribunal that gentleman represented the Government. Fraudulent undervaluation would be handled by the United States District Attorney.

He referred in his testimony to the fact that as Government attorney he tried all cases arising under the American selling price value basis in the tariff act of 1922. By this he means importations under paragraphs 27 and 28 of the tariff act of 1922, which deal with coal-tar products. The value basis under which merchandise is assessed with duty under these two paragraphs is not provided as a method of appraisement under section 402, as the whole law with respect to the basis of value and the rates of duty covering goods classified under paragraphs 27 and 28 is contained in those paragraphs themselves.

The cases involved concerned, therefore, not the application of United States valuation, as proposed or as now existing, but for the most part the proposition of American valuation of a similar competitive product. In such cases, the foreign value or the export value, as indicated in the invoice and used upon entry, was seldom, if ever, challenged.

Reference was made at the hearing to the effect that the Secretary of the Treasury reported that during the year 1928 there were 28,030 seizures. This reference is to the table shown on page 144 of the annual report of the Secretary of the Treasury for the fiscal year ending June 30, 1928.

Turning to that report, it will be seen that of these 28,030 seizures, 21,059 were of vehicles used in transporting liquors and 168 for unlawful transactions in connection with narcotics. This 21,263 of the 28,030 seizures had no reference to the seizure of imported merchandise for undervaluation or for any evasion of the payment of customs duties. This leaves for the whole year 6,767 seizures, and while we have not before us the information, we know from our knowledge of customs that a large number of these seizures were undoubtedly of prohibited articles, such as obscene pictures or publications, and of articles brought in by passengers as baggage and not properly declared.

Inasmuch as the appraiser at the port of New York appraised, during the last year, merchandise covered by nearly 500,000 invoices, it will be seen that the seizures that may be properly assigned to fraud in connection with the invoicing or entry of dutiable merchandise were negligible.

On page 145 of the Report of the Secretary of the Treasury for 1928 there are mentioned under the caption "Undervaluations" various amounts reported as having been collected in undervaluation cases. An analysis of the cases discloses that a large part of the sums collected was not because of fraudulent undervaluations, and such amounts as were collected were incidental to a difference between the value contended for by the importer and that finally sustained, chiefly due to a change in the basis of valuation adopted, in which there was no fraud. The amounts referred to covered differences in duties not for a period of one year but usually for three or four years. These cases reported by the Secretary of the Treasury are discussed in detail in the appendix to this brief.

EXPORT VALUE

The proponents of United States valuation have stressed foreign value and the difficulty of ascertaining the same, as though it were the only basis now in use; this particularly in referring to the difficulty of ascertaining that foreign value. They willfully or otherwise failed to refer to the present export value which now occupies an important place in appraisements and which represents the price paid either by the importer or by others in this country purchasing similar merchandise. In ascertaining this value no investigation abroad is required. If there is any doubt as to the correctness of the entry when this basis of appraisement is used, Government investigating officers can readily make an investiga-

tion in this country not only of the books of the importer but of the records and accounts of competitive importers.

A CHANGE IN THE BASIS OF VALUATION NECESSITATES AN ADJUSTMENT OF THE AD VALOREM RATES OF DUTY

All of the witnesses who appeared before your committee, advocating the adoption of the so-called United States value basis of appraisement, admitted that it would be necessary to readjust the ad valorem rates of duty now predicated upon foreign market value.

The representative of the American Tariff League, however, asserted that the ad valorem rates based on foreign value would have to be reduced only to a very limited extent, and in explanation of this statement, he holds that "a very great proportion of the merchandise imported to-day is done on a commission basis of 1 to 5 per cent.

He evidently was referring to consigned merchandise, and any statement that the greater proportion of the merchandise imported to-day is consigned merchandise, is so totally contrary to the actual facts, which may be readily ascertained from the customs officials at Washington, and at the port of New York, and on its face is such an absurdity, that we think it need not be given very much attention. He further alleged that in 90 per cent of the invoices which he handled, the freight amounted to less than 1 per cent. We do not know what particular invoices he handled, but in the table which we give below, in which the actual freight is stated on a very wide variety of imported merchandise, it will be seen that freight ranges from one-third of 1 per cent to 107 per cent.

He also stated that 90 per cent of the ad valorem rates would not have to be changed if the United States value basis of appraisement were adopted. Certainly your committee will not be deceived by such loose statements as this, as it is obvious that a rate of duty based on the selling price of an American importer in the United States, which must necessarily include ocean and inland freight, insurance, general expenses and profits in this country, will yield a much greater amount of duty (and consequently is equivalent to a very heavy advance in the ad valorem rate), than the same rate of duty assessed upon the foreign or export value, which does not include freight overhead and profit.

He made the very astounding statement that "in a great majority of instances the selling price, in wholesale quantities, on the first turnover in this market of imported merchandise, is very little greater than the foreign value or export value." This statement is tantamount to an assertion that an American importer sells his imported merchandise for the exact price that he pays the foreign manufacturer, and contributes the amount expended by him in freights and in his overhead, as a gift to the buying public, and is engaged in business without profit and for pleasure only. Such a statement offends the intelligence.

It is obvious that a change in the basis of valuation necessitates a change in the rate of duty, unless the definition of United States value or United States selling price, provides for the deduction of all of the actual charges and usual profit included in the price at which the article is sold in this country, other than the foreign costs.

The United States selling price of an imported article is higher than the foreign value by the amount of charges for freight, insurance, general expenses, and profits. When the same rate of duty is levied on foreign value or export value as upon the domestic selling price, with limited or no deductions, the amount of duty computed on the basis of the United States selling price will necessarily be greater than that resulting from the application of such rate of duty to the foreign or export value only.

To convert the rate of duty now assessed on foreign valuation to the rate of duty to be levied on United States selling price (with limited or no deductions), necessitates a reduction in the rate to offset the increase in the dutiable value, due to the inclusion of expenses and profit.

All of the charges other than the foreign cost may vary, because under the dutiable schedules of the tariff act there are included in one paragraph, under one duty classification, a variety of articles different in value, carrying different freight and insurance charges, and in their sale in the United States, different general expenses and different profits, all depending upon many factors, including competition.

For the purpose of this discussion we will limit our analysis to the first cost incurred in the importation of merchandise after it leaves the factory of the foreign manufacturer, namely, that of inland and ocean freight, and we give below a table showing the percentage of the foreign value represented by inland and ocean freight charges in various lines of merchandise:

Percentage of foreign values represented by inland and ocean freight charges on various merchandise

Article No.	Article	Duty rate	Paragraph	Foreign cost	Case and packing	Total cost	Foreign inland freight	Ocean freight	Total freight	Total per cent freight to total cost
										Per ct.
9040/48/3	Roly poly	70 per cent	1513	$0.94 per dozen	$0.22 per dozen	$1.16 per dozen	$0.23 per dozen	$0.36 per dozen	$0.59 per dozen	51
6781/187	Pick birds	70 per cent	1513	$1.48 per dozen	$0.02 per dozen	$1.50 per dozen	$0.02 per dozen	$0.01 per dozen	$0.03 per dozen	2
45102/1	Wood nail brush	50 per cent	1506	$1.68 per gross		$1.68 per gross	Delivered	$0.25 per gross	$0.25 per gross	15
14120/359/5	Bone tooth-brush.	50 per cent	1506	$23 per gross	$0.16 per gross	$23.16 per gross	$0.14 per gross	$0.11 per gross	$0.25 per gross	1
227/30	Screw drivers	40 per cent	398	$1.80 per gross		$1.80 per gross	Delivered	$0.09 per gross	$0.09 per gross	5
258/80	Stillson wrenches	do	398	$1.78 per dozen		$1.78 per dozen	do	$0.03 per dozen	$0.03 per dozen	1¾
1674/365/3	Willow baskets	50 per cent	412	$2.60 per dozen	$0.24 per dozen	$2.84 per dozen	$0.13 per dozen	$0.62 per dozen	$0.75 per dozen	27
1674/3	Work baskets	do	412	$10.35 per dozen	$0.54 per dozen	$10.89 per dozen	$0.23 per dozen	$0.54 per dozen	$0.77 per dozen	7
2236/9000½/5	Alarm clocks	65 per cent and 55 cents each.	368	$0.43 per piece		$0.43 per piece	Delivered	$0.01 per piece	$0.01 per piece	2⅓
2684/29	Novelty clocks	do	368	$0.97 per piece		$0.97 per piece	do	½ cent per piece	½ cent per piece	½ of 1
195/4	Pocketknives	50 per cent and 2 cents each.	354	$2.40 per gross	$0.03 per gross	$2.43 per gross	$0.06 per gross	$0.02 per gross	$0.08 per gross	3⅓
17750/7240, etc	Earthenware jugs.	50 per cent and 10 cents per dozen.	211	$0.72 per dozen	$0.11 per dozen	$0.83 per dozen	$0.12 per dozen	$0.17 per dozen	$0.29 per dozen	35
2874/5608	Earthenware, 32-piece set.	do	211	$0.76 per dozen	$0.06 per dozen	$0.82 per dozen	$0.06 per dozen	$0.04 per dozen	$0.10 per dozen	12
1666/131/13528	China jugs	70 per cent and 10 cents per dozen.	212	$0.42 per dozen	$0.11 per dozen	$0.53 per dozen	$0.13 per dozen	$0.12 per dozen	$0.25 per dozen	47
7700/Roy 500/6485	China, 100-piece set.	do	212	$0.64 per piece	$0.04 per piece	$0.68 per piece	$0.01 per piece	$0.01 per piece	$0.02 per piece	3
14666/5000 Ex. 2	Glass goblets	60 per cent	218	$0.69 per piece	$0.02 per piece	$0.71 per piece	Delivered	$0.02 per piece	do	3
7701/5003	Glass bowls	do	218	$0.64 per dozen	$0.12 per dozen	$0.76 per dozen	$0.14 per dozen	$0.20 per dozen	$0.34 per dozen	43
Chinese	Willow furniture	do	410	$2.50 per piece		$2.50 per piece	$0.67 per piece	$1.58 per piece	$2.25 per piece	90
95030/121	Italian earthenware jugs.	50 per cent and 10 cents per dozen.	211	$0.306 per dozen	$0.23 per dozen	$0.536 per dozen	$0.13 per dozen	$0.44 per dozen	$0.57 per dozen	107
95693/asst	do	do	211	$14.40 per dozen	$0.76 per dozen	$15.16 per dozen	$0.64 per dozen	$1.03 per dozen	$1.67 per dozen	11
94246/asst	Alabaster statuary.	20 per cent	1547	$17.83 per piece	$1.06 per piece	$18.89 per piece	Delivered	$1.26 per piece	$1.26 per piece	6¾
3497/asst	Ivory/bronze statuary.	do	1547	$70.20 per piece	$1.12 per piece	$71.32 per piece	$0.42 per piece	$0.90 per piece	$1.32 per piece	1⅚

The first two items in the above tabulation are toys which are dutiable under paragraph 1513 of H. R. 2667 at 70 per cent ad valorem. The inland and ocean freight on the first item is 51 per cent of the foreign cost of such article and on the second item 2 per cent of its foreign cost. Your committee, if it changes the basis of valuation, will be confronted by the problem of how a rate which is considered fair when assessed on foreign valuation, is to be converted with exactness to the new basis. The increase in the dutiable value, if only inland and ocean freight becomes a part of such value, will very materially increase the amount of duty collected over what it would be if the 70 per cent ad valorem were assessed on the foreign valuation.

In the case of the toy subject to 2 per cent freight charges, 70 per cent based on foreign valuation would become 71.4 per cent and the amount of duty on the toy paying 51 per cent freight charges would be increased from 70 to 105.7 per cent. If your committee desires to reduce the rate on United States value in order to produce an equal amount of duty to that produced at 70 per cent on a foreign valuation, the rate of duty on the toy paying 2 per cent freight charges would be 68.5 per cent, and the rate of duty on the toy carrying 51 per cent freight charges would have to be reduced to 46.3 per cent. The 70 per cent now imposed on foreign valuation on the two toy items illustrated would range from 46.3 to 68.5 per cent solely because of difference in freight charges.

If it is decided to make the dutiable value the United States selling price, it is not alone necessary to take into consideration the percentages expended in transportation, which depends upon the value and bulk of the article, but also the general expenses incurred in the selling of the merchandise, and the profit included in such prices. The selling expenses, and particularly the profits, are controlled largely by competitive conditions. Some merchandise may be handled by foreign manufacturers' agents on a fixed commission which may vary from 1 to 10 per cent and even more.

By far the greater portion of merchandise brought into the United States is imported by American houses which buy and sell for their own risk and account. Such merchandise may be handled by merchants with large overhead, due to the manner in which it is displayed and marketed. The expenses incurred in the sale of imported merchandise by such houses will range from 12 to 20 per cent. Still other classes of merchadise are imported by jobbers, whose overhead may be 15 to 20 per cent.

Your committee in order to convert the rate of duty now based on foreign valuation to an equitable rate of duty to be assessed on United States selling price, must give consideration to all these various selling expenses. The matter is further complicated by the different profits realized on merchandise marketed by different houses.

Novelty goods necessarily have a greater mark-up than standard marchandise, and while they may both be included in the same dutiable paragraph under the same ad valorem rate of duty, the mark-up in the case of the standard goods, sold largely by manufacturers' agents may be 50 per cent, while the novelty goods are quite likely to require a mark-up of 5 per cent.

Your committee therefore must necessarily consider in converting the rate based on foreign valuation to an equitable rate on United States valuation:

1. Freight, ranging, as shown by the table from one-third of 1 per cent to 107 per cent.
2. Selling expenses from 1 to 33⅓ per cent.
3. Profits from 1 to 50 per cent.

All these varying percentages of charges on foreign cost form part of the United States selling price, and are not part of the foreign value.

There is, as your committee well knows, a price for a purchaser of small quantities, a price for a purchaser of average quantities, and a price for a purchaser of larger quantities; and in some instances there may be even special prices for special reasons, for instance, credit conditions also determine selling price. In adjusting the rates in order to make the same applicable to United States selling price, your committee would need to have information concerning these various prices, and determine the price to be taken as the basis for the computation of the new rates.

Instead, therefore, of it being a matter of only two weeks' work on the part of your committee, as stated by a representative of the American Tariff League, to make the adjustments of all of the ad valorem rates in the tariff act, to equitably apply under a United States value basis of appraisement, we are confident that it will be many months. In fact, we think it would take years to do it unless the rates were adjusted by some purely arbitary method and without consideration for equity.

DIFFICULTY OF PREPARING AN ENTRY UNDER UNITED STATES VALUE APPRAISEMENT BASIS

Under section 484 (par. 8) of H. R. 2667, entry of imported merchandise must be made at the customhouse within 48 hours (exclusive of Sundays and holidays) after the entry of the importing vessel. Under section 487, the importer may adjust his invoice value to the dutiable value as defined in section 402 at the time of entry. Section 489 imposes an additional duty, which is in fact a penalty, in the event the entered value is below the final appraised value.

At the present time an importer has an invoice which indicates the price paid, and this price is ordinarily the foreign market value. In the instances where the importer is advised either by the foreign seller or through his branch house or by the appraiser of a change in market price, amendment in value is made to conform therewith. Even under this apparently simple method there are many appraisements made in which the appraised value exceeds the entered value. These advances by the appraiser over the entered value may be due to differences in interpretation of the language defining value, as, for instance, "ordinary course of trade," "usual wholesale quantities," "freely offered for sale," or because of increases in foreign market prices by the time exportation takes place.

If the basis of value is changed from foreign value to United States value, invoices showing the price paid will become useless, except for the description of the contents of the packages and the quantity of the imported merchandise. Instead of the invoice price, the importer at the time of entry would be compelled to find and use in such entry the United States selling price. It will be very difficult for the importer to determine which of the selling prices, where there may be many, he must take as the basis for the entry of each imported item. All this would mean a tremendous amount of clerical work for the merchant who imports many different articles, as invoices may have from 10 to 200 pages, closely written, containing thousands of different items; it certainly would be impossible, within the time entry must be made at the customhouse, following the arrival of the vessel.

Due to competitive conditions, selling prices of imported articles in this country are constantly changing. There are no fixed United States selling prices for imported articles similar to prices fixed by certain domestic manufacturers. The importer computes his selling price from his foreign cost, charges incident to bringing the merchandise to the United States, selling expenses, and an estimated profit. A price thus computed becomes an offer for sale price, but because of competitive conditions such price is frequently changed, until at the end of the season the selling price may become even lower than the laid-down cost price of the imported article in the United States.

Chain stores and retail stores have no wholesale price, but they import large quantities of foreign merchandise. The prices at which these importers sell are the retail prices to the consumer. Many of the articles imported by these stores are of a novelty character, and in many instances the sale of the same is confined to themselves. Under the requirements of entry, these buyers are required to indicate the United States selling prices at wholesale, in the ordinary course of trade, in the principal markets of this country, and having done that, are upon entry required to make further calculations to bring such United States selling price back to United States valuation, either by the deduction of the duty only or by the deduction of duty and such other charges as Congress might enumerate.

If the dutiable value should be the United States selling price, it would of course be the selling price in this country of the imported article in the usual wholesale quantities, and these stores not selling at wholesale would be under the necessity of attempting to ascertain such wholesale prices from importers who may handle similar imported merchandise. As to such novelty goods which they may handle exclusively, there would be no wholesale selling price, and some arbitrary method would have to be devised by the appraiser to convert the retail price to a wholesale price.

We respectfully submit to your committee that the substitution of United States value for the present method of appraisement on foreign value will create such difficulties in the making of entries of imported merchandise that the piers and warehouses will be congested with such merchandise, and there will result long and vexatious delays in passing imports through our customs.

Another difficulty which suggests itself, if the basis of appraisement is changed to United States value, is that which will confront the buyer of an American house who goes abroad to buy in the foreign markets. The availability of foreign merchandise for sale in this country is largely a question of what the buyer estimates will be the probable retail price, or, if he is not selling at retail, the probable whole-

sale price of the article when imported into this country. He must have a knowledge of the amount of duty to be assessed upon a particular article when imported. At present the foreign sales price is the basis of his computation of the duty. A substitution of United States value would render it exceedingly difficult, if not impossible, for a buyer to estimate the cost of laying down the merchandise in this country, and consequently he could not with any degree of certainty estimate the price at which it would necessarily have to be sold either at wholesale or retail.

Another illustration which we would like to bring to the attention of your committee in the application of United States value as a major appraisement basis, is the chaos which would result in the appraisement of passengers' baggage. It is well known that during the rush season there may be as many as 2,000 passengers on a single trans-Atlantic liner. Under the present law, the passenger makes a declaration of articles purchased abroad and the value he declares is usually the price paid for such articles.

If the duty is to be assessed on United States valuation, the passenger's declaration of value would become useless even as a guide, and the appraiser would have to determine the probable United States selling price at wholesale of the many souvenirs, novelties, and other articles brought in by such passengers, in order that he might arrive at a dutiable value for the application of the ad valorem rates imposed by the tariff act.

UNITED STATES VALUE AS A MAJOR METHOD OF APPRAISEMENT WILL NOT ACCOMPLISH THE RESULTS CLAIMED BY ITS ADVOCATES

1. It will not prevent undervaluations.

Experience in this country thus far, indicates that no law can be enacted in such form that those inclined to dishonest methods can not circumvent or at least will not attempt to circumvent. We have already stated that there may be as many as five different selling prices in the United States of an imported article, and it is certainly well within the range of possibility, and we may say probability, that under such a value basis a dishonest person will attempt, and in many cases will succeed in having his goods appraised on the wrong wholesale selling price or on a falsely stated selling price.

2. The proponents of United States valuation assert that the dutiable value of imported merchandise would be ascertained with greater definiteness and certainty.

We think that this will not be the case. The United States appraiser would have to collect information as to the selling prices in this country of thousands upon thousands of imported articles, and as repeatedly explained, each article may have a number of different selling prices, and if the imported merchandise consisted of novelties not previously imported and sold in this country, he would necessarily have to ascertain the selling price of similar merchandise, if any existed. With selling prices varying in different parts of the United States, and the existence of a number of different selling prices for a single article, we believe that the appraising officer would have more difficulty in ascertaining the dutiable value with definiteness and certainty, than he now experiences in informing himself as to the market value in the foreign country, where the market is generally limited and the prices are subject to less fluctuation than in this country.

3. The proponents of United States valuation further represent that the Government would collect vastly more revenue.

If the ad valorem rates of duty were properly adjusted, and this means that necessarily they would have to be reduced if the basis of appraisement is changed to United States value, we believe that the Government would not collect any more revenue. In fact, it is our opinion that there would be less revenue collected, as the difficulties attending the making of an entry and the determination by the importing merchant as to the price at which he could sell an imported article, in order to realize a profit and not sustain a loss, would be insurmountable, and there would result a very decided decrease in our imports.

4. The proponents of United States valuation also alleged that the American manufacturer or producer would have increased protection.

If by this is meant, as stated in connection with (3) that the amount of duty would be increased by changing the basis of valuation without decreasing the ad valorem rates of duty now in effect, we will say that there would result in many cases an embargo, and if the American manufacturer or producer thinks an embargo would give him increased protection, this would undoubtedly be accomplished. If it is meant that he would be protected against undervaluation this contention has already been refuted.

We agree with Senator Smoot, that it is inadvisable to break completely with the present practice of valuation in our customs service, and to discard the information and knowledge obtained by the appraising officers throughout the United States in administering an appraisement system of nearly half a century.

THERE IS A PROVISION IN THE TARIFF ACT OF 1922 FOR UNITED STATES VALUATION BUT NOT AS A MAJOR BASIS OF APPRAISEMENT

In the testimony great stress was laid on the commission paid foreign manufacturers' agents in the United States, and the simple method by which the rate of duty assessed on foreign valuation could be accurately changed to a rate based on United States selling price. We assume from the statement of the proponents of United States value that they had in mind only one class of importers, namely, the agent who is directly responsible to the manufacturer and who operates in this country on small expenses. The invoice in such case is prepared by the manufacturer who has an interest in the profits made in the United States, and thus in the amount of duty paid.

The foreign manufacturer selling his merchandise only through his United States representative creates no market price for exportation to the United States, as in the case of merchandise which is freely sold to regular importers by many foreign manufacturers. Because of the absence of a foreign price, goods imported under such circumstances are to-day appraised on United States value with the deductions prescribed in Section 402 of the tariff act of 1922. Importers who buy merchandise in the open market at the freely offered for sale price, are confident that there is no need for United States value as a major method of appraisement.

We also desire to present to your committee our objections to section 402 as embodied in H. R. 2667.

UNITED STATES VALUE AS DEFINED IN PARAGRAPH (E) SECTION 402, H. R. 2667

Under existing law United States value is a basis of appraisement to be resorted to only when there does not exist either a foreign value or an export value. Ad valorem duties are assessed under the policy stated by Congress in section 315 of the tariff act of 1922, to be to equalize the differences in costs of production between imported articles and like or similar articles produced in this country, and they have been predicated on foreign costs.

An ad valorem duty fixed upon foreign value changes very materially when the value basis is changed; for example:

Foreign value		$1.00
Freight and insurance		.15
		1.15
Rate of duty 50 per cent on $1		.50
Landed cost		1.65
Gross profit (33⅓ per cent on landed cost, or 25 per cent on selling price)		.55
		2.20

competing with domestic article selling at same price.

United States value is the selling price in this country of the imported article, less a deduction for freight and insurance, general expenses not to exceed 8 per cent and profits not in excess of 8 per cent. So we would have:

Selling price		$2.20
Less 16 per cent (8 and 8 per cent)	.352	
	1.848	
Less freight and insurance		.15
		1.698
Duty 50 per cent (divide by 150)		1.132

This $1.132 becomes the dutiable basis and is 13.2 higher than the foreign value. By adopting United States value, the duty is increased from 50 to 63.2 per cent and this by reason of the fact that the statute limits the deduction for general expenses and profit to 8 per cent each.

Authority is given to the appraiser in the definition of United States value in the proposed act, H. R. 2667, to estimate a value, having regard for differences in quality and other differences, based on the price at which merchandise, whether domestic or imported, comparable in construction or use to the imported merchandise, is so offered for sale with allowance from such price for transportation costs, commission, if paid, or general expenses and profits, and for duty in the case of imported merchandise.

Under these broad powers, the appraiser may estimate the value of imported merchandise from the selling price of any article, whether domestic or imported, where similarity exists only to the extent of construction or use. "Construction" is an indefinite term and new in tariff legislation, and it may be interpreted to mean similar in form, or it may be held to require similarity in both material and method of manufacture. Similarity determined by "use" may permit the determination of value from an article of different material or produced by an entirely different method of manufacture. Comparability may thus be established by the appraiser between any articles, because of the alternative "or use," although the materials of which the articles are composed may be very dissimilar as, for instance, cotton and silk, brass and gold, cotton and leather gloves, etc.

In proceeding under the authority conferred, the appraiser must determine the difference in value between two articles. This would require a knowledge on the part of the appraiser of each and every process of manufacture and cost of material both in the United States and in foreign markets, if he is to intelligently perform the duties imposed upon him. And yet much is made of the alleged difficulty of the appraiser of determining foreign market value. There is substituted for an existing market price, an estimation of value. Whether that difference in value is to be determined from the difference in cost of production or from the difference in selling price is not specified in the bill.

Where the appraiser adopts the price of a domestic article as the basis of appraisement, the duty can not be deducted, so that such an appraisement is substantially American valuation, duty being predicated upon the selling price of a domestic article in the United States, with deductions only of freight and insurance, and 8 per cent for general expenses and 8 per cent for profit.

We have shown hereinbefore how United States value, where the selling price of the imported article is taken as the basis, increases an ad valorem rate of duty of 50 to 63⅔ per cent. We will now show what this rate will be increased to, if the price of a comparable domestic article is adopted.

Selling price of domestic article	$2.20
Less freight and insurance	.15
	2.05
Less 16 per cent (8 per cent and 8 per cent)	.352
Duty 50 per cent—$0.849	1.698

This $1.698 becomes the dutiable basis and is 69⅘ per cent higher than the price of the comparable foreign article.

Thus it will be seen that the appraiser and the Secretary of the Treasury may, under the proposed law, without judicial review, adopt methods of appraisement by which a duty of 50 per cent prescribed in the act may be increased to 63⅔ per cent or 84⅘ per cent.

IT IS RECOMMENDED THAT SECTION 402, TARIFF ACT OF 1922, WITH CERTAIN CHANGES, BE REENACTED

We submit that paragraph (e) should not be adopted, but that paragraph (d) of section 402 of the tariff act of 1922 should be reenacted with the following changes:

The maximum allowance of 8 per cent for general expenses and 8 per cent for profits should be omitted and instead thereof the following provision adopted to meet present business conditions:

"Or profit equal to the profit which ordinarily is realized in the case of merchandise of the same general character, and the actual general expenses on purchased goods."

United States values with the maximum deductions for general expenses and profit allowed, as has been shown, produces a higher result than foreign value. There is included in it the general expenses of the American importer in excess of the prescribed deductions. This excess of expense in the form of wages paid to American labor, rent, etc., incurred in the United States, becomes dutiable,

so that we have the anomaly of assessing duty on wages paid to American labor. The profits in excess of those allowed by law are part of the United States selling price. These profits are taxable under the income tax law and are thus doubly taxed.

We therefore, submit to your committee that section 402 of the tariff act of 1922, with the amendments we have recommended, should be reenacted in the following form:

"SEC. 402. *Value.*—(a) For the purpose of this act the value of imported merchandise shall be—

"(1) The foreign value or the export value, whichever is higher;

"(2) If neither the foreign value nor the export value, can be ascertained to the satisfaction of the appraising officers, then the United States value;

"(3) If neither the foreign value, the export value, nor the United States value can be ascertained to the satisfaction of the appraising officers, then the cost of production;

"(4) If there be any similar competitive article manufactured or produced in the United States of a class or kind upon which the President has made public a finding as provided in subdivision of section — of Title III of this act, then the American selling price of such article.

"(*b*) The foreign value of imported merchandise shall be the market value or the price at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, including the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

"(*c*) The export value of imported merchandise shall be the market value or the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States. If in the ordinary course of trade imported merchandise is shipped to the United States to an agent of the seller, or to the seller's branch house, pursuant to an order or an agreement to purchase (whether placed or entered into in the United States or in the foreign country), for delivery to the purchaser in the United States, and if the title to such merchandise remains in the seller until such delivery, then such merchandise shall not be deemed to be freely offered for sale in the principal markets of the country from which exported for exportation to the United States, within the meaning of this subdivision.

"(*d*) The United States value of imported merchandise shall be the price at which such or similar imported merchandise is freely offered for sale, packed ready for delivery, in the principal market of the United States to all purchasers, at the time of exportation of the imported merchandise, in the usual wholesale quantities and in the ordinary course of trade, with allowance made for duty, cost of transportation and insurance, and other necessary expenses from the place of shipment to the place of delivery, a commission not exceeding 10 per cent, if any has been paid or contracted to be paid on goods secured otherwise than by purchaser, or profits equal to the profits which ordinarily are realized in the case of merchandise of the same general character, and an allowance for actual general expenses on purchased goods.

"(*e*) For the purpose of this title the cost of production of imported merchandise shall be the sum of—

"(1) The cost of materials of, and of fabrication, manipulation, or other process employed in manufacturing or producing such or similar merchandise, at a time, preceding the date of exportation of the particular merchandise under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business;

"(2) The usual general expenses (not less than 10 per cent of such cost) in the case of such or similar merchandise;

"(3) The cost of all containers and coverings of whatever nature, and all other costs, charges and expenses incident to placing the particular merchandise under consideration in condition, packed ready for shipment to the United States; and

"(4) An addition for profit (not less than 8 per cent of the sum of the amounts found under paragraphs (1) and (2) of this subdivision) equal to the profit which ordinarily is added, in the case of merchandise of the same general character as the particular merchandise under consideration, by manufacturers or producers in the country of manufacture or production who are engaged in the production or manufacture of merchandise of the same class or kind.

"(f) The American selling price of any article manufactured or produced in the United States shall be the price, including the cost of all containers and coverings of whatever nature and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for delivery, at which such article is freely offered for sale to all purchasers in the principal market of the United States, in the ordinary course of trade and in the usual wholesale quantities in such market, or the price that the manufacturer, producer or owner would have received or was willing to receive for such merchandise when sold in the ordinary course of trade, and in the usual wholesale quantities, at the time of exportation of the imported article."

Section 501 should be amended by striking out the following matter contained in lines 20 to 23, inclusive, page 354, H. R. 2667:

"Subject to the provisions of subdivision (b) of section 402 of this act (relating to review of the appraiser's decision by the Secretary of the Treasury)."

And changing the word "the" in line 23, to "The."

PARAGRAPH (B) SECTION 402, FINALITY OF APPRAISER'S DECISION

Paragraph (b) of the proposed section 402, entitled "Finality of appraiser's decision," briefly stated, makes the basis of appraisement adopted by the appraising officers, whether foreign value, export value, or United States value, "final and conclusive" in any judicial proceeding, unless an appeal is taken to the Secretary of the Treasury, and the decision of this administrative officer, if such appeal is filed, likewise binding upon the courts.

This proposed section (402) if enacted into law will transfer to the Secretary of the Treasury the function now conferred upon the United States Customs Court of reviewing the questions of law involved in the appraisement of imported merchandise, and substitute for this judicial review an administrative finding which, it is provided, shall be binding upon the courts. In our opinion this will result in United States value, which, under existing and long continued law, is a basis of appraisement only permissible where no foreign or export values exist, becoming a major method of appraisement, and under the proposed definition of "United States value," this basis of appraisement in a large number of cases would be substantially the American valuation which was proposed in 1922 and rejected by Congress.

Under existing law and also under the proposed section 402, there are four methods of appraisement:

Foreign value, export value, United States value, and cost of production.

American selling price becomes the method of appraisement where the President has made a finding under what is known as the "flexible provision," section 315 of the present act, and section 336 of H. R. 2667.

We presume that the House bill contemplates that United States value is not to become a method of valuation when there exists either a foreign or an export value, but under the authority conferred on the appraiser, when he determines that neither the foreign nor the export value exists, appraisement will be based on United States value, as defined in paragraph (e) of the proposed section.

The determination of "value" involves two elements:

(a) That which is essentially a question of law, the method or basis of the value to be adopted, whether foreign value, export value, United States value, or cost of production.

(b) That which is essentially a question of fact, namely, whether the appraisal at a unit of value in a given currency is correctly determined.

The question of which of these values—foreign value, export value, United States value, or cost of production—shall be applied in a given case is a question of law now determined in the first instance by the appraiser, and on appeal, by a single justice of the United States Customs Court, and the decision of the single justice may be reviewed by three of the judges of that court sitting as one of the divisions of the court, and by the United States Court of Customs and Patent Appeals.

The proposed law deprives the United States Customs Court, and the United States Court of Customs and Patent Appeals, of the right to decide the question

of law, and transfers this function to the Secretary of the Treasury, whose decision is to be binding upon these courts, and leaves to the latter merely the determination of the question of fact, namely, an arithmetical determination. If the court can review the action of the appraiser in determining the question of fact—the arithmetical determination of the amount upon the basis adopted by the appraiser—why can not the court be permitted to review the action of the appraiser in determining the method used? If the court is competent to review the question of fact involved in his appraisement, why is it not logical to assume that such court is also competent to review and correct errors in the selection of the method of appraisement, as courts are organized and constituted to decide questions of law, and, as hereinbefore stated, the basis of appraisement is purely a question of law.

This is a most novel proposition and a reversal of the principles that underlie our form of government, namely, that the Executive shall administer, and the judiciary interpret the law.

The appraising officers, even in the days of merchant appraisers who were selected from the ranks of the importers, have been made independent of the Treasury Department, their decisions being subject to review only by the courts, and that independence is carried in theory into H. R. 2667, section 501. We believe that this independence should be maintained subject only to judicial review.

The importer will be deprived of the right to litigate an appraisement, based upon what he considers to be an erroneous interpretation of the law as to the proper basis of appraisement. Consequently, the judicial review by a tribunal independent of the administrative officers will be destroyed, and the system created by Congress and existing for so many years, will be discarded. Instead there will be substituted a mere administrative finding, with none of the sanctions and protections of a court trial, and the opportunity to correct an erroneous decision on facts which may be discovered subsequent to the decision of the Secretary of the Treasury.

Many reappraisement cases involving the question of the legality of the basis of appraisement have been tried at great length before a single justice, reviewed by the three judges and by the appellate court. Under the proposed law, these cases will be transferred for trial to the Customs Bureau of the Treasury Department. That bureau is not organized to hear witnesses and pass upon the admissibility of testimony. Is it contemplated that the bureau shall organize itself into a court? Certainly if it is to take over the functions of the United States Customs Court and the United States Court of Customs and Patent Appeals, it must be equipped and organized to properly perform such functions. If not, the importer will not receive a fair review of the appraiser's decision and he will be deprived of his day in court.

The appraiser might appraise on United States value and his action be approved by the Customs Bureau, and if the case reached the United States Customs Court on Appeal, under section 501, that court, even if it should appear conclusively that the wrong basis of appraisement had been adopted, and that there did exist a foreign or an export value, would be precluded from correcting the error and compelled to go through the humiliating act of sustaining an appraisement on a basis known by it to be erroneous and illegal.

Importers located at a distance from Washington will be caused serious delay and great expense, as now they are enabled to try their cases before a justice of the customs court on circuit. Under the proposed law, they would have to come to Washington with their witnesses from Chicago, St. Louis, New Orleans, San Francisco, Seattle, and other distant points, or attempt to rely on correspondence and it is not clear how the appraiser's action could be reviewed by mail.

Further, the proposed change in the law places in the appraiser and the Secretary of the Treasury the power to increase the ad valorem duties prescribed, certainly 50 per cent or more, to which must be added penalties, without judicial review, and this by adopting United States value as a major method of appraisement.

The Secretary does not distinguish between fraudulent and technical undervaluations, which undoubtedly has led to a misunderstanding of the situation. In the following we take up the items contained in the order of the Secretary of Treasury's report:

Rugs.—It is plainly stated that the $1,398,004 was collected as a result of additions made by importers. This being true, there was no undervaluation either technical or fraudulent. The importers added to their foreign values amounts sufficient to bring the prices actually paid by them up to the values decided by the appraiser as being the proper dutiable values on this class of merchandise. As a matter of fact, in many of these rug cases additions were made because the appraiser decided to appraise on a basis of United States value, rather than upon a foreign or export value, while a part of the extra duties came about as a result of the question as to whether certain foreign import duties or taxes, which would have been assessed, had the rugs remained in the country through which they passed in transit, were a part of the dutiable value.

Cotton velvets.—The statement made in connection with this merchandise shows that the so-called undervaluation was due to the difference between the price paid as the foreign market value, and the United States value basis of appraisement. It should be noted that the importer had sufficient confidence in his position that the price actually paid by him was the foreign market value, and that such merchandise was sold in the markets of Germany and, therefore, United States value could not be resorted to, to take his case through the United States Customs Court. Nothing is said in this report on velvets with respect to the velvet cases, of which there were a number, where the appraiser appraised on the United States value basis and the court decided, upon the evidence adduced at the trial of the cases, that the merchandise was freely offered for sale in Germany and, consequently, the appraiser was wrong in his basis of appraisement.

Embroideries and laces from China.—It is stated in connection with this merchandise that there was difficulty in ascertaining proper values, but notwithstanding this difficulty, the appraiser at New York induced the importers to voluntarily add to the prices paid for their merchandise, to equal what he considered a fair value. Certainly there can be no question of undervaluation in such a case.

Tie silks.—The report shows that the amount collected was due to a change in the basis of appraisement from foreign cost of production to United States value, and further, that the importers added to the foreign cost of production basis to make the United States value, and there was no undervaluation, therefore, either technical or fraudulent.

Panama hats.—Here it appears that there was a question as to the currency to be used as a basis of appraisement, and there was involved also the agent's commission of 10 per cent. The appraiser adopted purchases in United States currency as the export value, but there is no suggestion whatever of undervaluation in any form.

Ladies' hand bags.—Here the amount stated to have been collected was due to "diversified rates found applicable." The rate of duty, of course, has no application whatever to the question of undervaluation.

Artificial silk: yarn.—The question involved in connection with this merchandise was in part whether a bonus or discount allowed by the German manufacturer to the home customer was a part of the export value, and the cases, so it is stated, are pending in the Customs Court on appeal by the importer. There certainly is no question of fraudulent valuation involved.

Antiques.—The question of value is not involved in these cases, as cited, it being a matter of whether the merchandise is over 100 years old and entitled to free entry, or is not so old and is, therefore, dutiable. It is a question of classification.

Books.—Here it is stated that additions were made by the appraiser at New York on importations of books from England. We do not know what particular case is referred to, but there were cases involving books in which it was purely a question of law as to what was a wholesale quantity in England.

Cork board (cork insulation).—This is the first of the cases reported where it is charged that there was systematic undervaluation. The question involved was the principal market in Spain for similar merchandise, and it appears from the Secretary's statement that the importers will accept a higher valuation determined by the appraiser. This would mean that the importers will agree to a higher value. If there were any systematic undervaluations, which would appear to mean fraudulent undervaluations, these cases could not be handled properly by

an acceptance on the part of the importer of a higher value. The merchandise must necessarily be seized, or if it can not be located, a suit brought for forfeiture value, and the guilty parties punished by criminal proceedings.

In none of the cases cited by the Secretary of the Treasury on page 145 of his report, as a class, was there either criminal or civil action taken against the importer. We respectfully submit that if there had been any evidence of fraudulent undervaluation, it would have been the duty of the customs authorities to proceed under the provisions of section 591 and 592 of the tariff act of 1922, and such action would undoubtedly have been taken.

From the foregoing, we submit that the charges of undervaluation, either fall away entirely or become insignificant and negligible, as we have before contended. Certainly there would be no justification for a change from the present basis of appraisement, based upon such a ground, to an appraisement method which, by reason of the difficulties incident thereto, would present insurmountable obstacles in the making of entries by the great mass of honest importers. We believe it would prove to be an uncertain and unworkable method of appraisement, carrying with it at least an equal risk in the ascertainment of United States value as now exists in ascertaining foreign or export value.

PART II. REPORT ENTRY AND UNLOADING OF VESSELS AND VEHICLES

Sections 431 to 466, inclusive.
No recommendations.

PART III. ASCERTAINMENT, COLLECTION AND RECOVERY OF DUTIES

Section 481: Invoices, contents.

We wish to call the attention of the committee to the fact that if the value basis, upon which the ad valorem duties are assessed, is changed to United States valuation, section 481, as proposed, will have to be rewritten, as it will not be applicable to the new method of appraisement.

Considering this section as proposed, we believe that subparagraph (d) should be eliminated. This subparagraph authorizes the Secretary of the Treasury, by regulation, to provide for such exceptions from or additions to the requirements of the section, as he may deem advisable. In subdivision (10) of subparagraph (a), he is already authorized to require "any other facts deemed necessary to a proper appraisement, examination, and classification of the merchandise."

This authority is broad enough to enable the Secretary of the Treasury to make any requirements as to information to be contained in invoices of foreign merchandise which may be pertinent to the appraisement, examination, and classification of imported merchandise. Information or facts not pertinent to the appraisement, examination, and classification of merchandise, have no place in the invoice and it is therefore, submitted that subparagraph (d) is unnecessary and in fact would seem to render unnecessary the requirements in the other subdivisions of this section.

Section 482: Certified invoice.
No recommendations.
Section 483: Consignee as owner of merchandise.
No recommendations.
Section 484: Entry of merchandise.

We request that the time, within which an entry shall be made at the Customhouse, be extended from 48 to 72 hours. By reason of the present method of handling foreign mails, the importer does not receive mail containing the documents which he utilizes to make entry, for from 12 to 15 hours after arrival of the steamer.

If may be stated that if United States value is adopted as a major method of appraisement, a much greater time will be necessary, as an importer could not possibly make his entry within either 48 hours or 72 hours after arrival, if he had to enter on such valuation.

Subdivision (3) of subparagraph (b) provides that a bond should be given for the production of a certified invoice within six months. We believe that this period of time is too short, and that the Secretary of the Treasury should be given authority to extend such time for a further period of six months.

Subparagraph (c), statistical information: In view of the very great importance of accurate statistical information, for the benefit of Congress and the Tariff Commission, it is submitted that the present practice, which is continued in subparagraph (c), should be changed. It is now required, and will be under the proposed law, that the importer, at the time of entry, set forth the statistical

information of the entry itself, and this forms the basis of the statistics compiled by the Department of Commerce.

Statistics compiled from a copy of the entry can not be accurate, either as to the value of the imported merchandise, or as to the rate of duty, and this for the reason that the value used on entry may be changed by the appraiser, the United States Customs Court, and the United States Court of Customs and Patent Appeals, and that the rate of duty is not adopted by the collector until the entry is liquidated, and does not then become final for a period of 60 days thereafter, as within that time the importer has the right to protest to the United States Customs Court.

We believe that import statistics should be taken after the value and the rate of duty have become final by operation of law; that such information should be collected by the Department of Commerce under an appropriate system; and that these important statistics should not be based upon a classification of the merchandise by the importer at the time of entry.

Section 485. Declaration.

We have no recommendation to make, but desire to suggest to your committee that this section will necessarily have to be rewritten if there is a change in the value basis of appraisement to United States value.

Section 486: Administration of oaths.

No recommendations.

Section 487: Value in entry, amendment.

We request that the present language with respect to amendment of entry, as contained in section 487 of the tariff act of 1922, be adopted. The privilege of making an amendment of entry, before the appraisement has actually begun, is an equitable one, for the reason that an importer must pay duty on the entered value, if higher than the appraised value, and is subject to penalties if such entered value is lower than the appraised value.

Therefore, he should have the privilege of changing his entered value to accord with the information which he may receive subsequent to entry, and prior to appraisement. The section, as proposed in H. R. 2667, will very greatly curtail this privilege, for the reason that although no lawfully constituted appraising officer—that is, appraiser, assistant appraiser, or examiner—may have begun the appraisement of merchandise, a clerk may have seen the invoice, or may have laid out some of the merchandise for examination, and such action on his part would bar amendment.

The appraiser is the responsible appraising officer, and an importer should be permitted to amend his entry up to the time that such officer has officially considered the appraisement of the imported merchandise. We, therefore, suggest that the section be adopted in the following form:

"SEC. 487. Value in entry, amendment: The consignee, or his agent, may, at the time of entry, or at any time before the invoice or the merchandise has come under the observation of the Appraiser, for the purposes of appraisement, make, in the entry, such additions to or deductions from the cost or value given in the invoice, as in his opinion may raise or lower the same to the value of such merchandise."

Section 488: Appraisement of merchandise.

We have no recommendation to make.

Section 489: Additional duties.

This section, like section 489 of the tariff act of 1922, provides that if the appraised value exceeds the entered value by more than 100 per cent, such entry shall be presumptively fraudulent, and the collector shall seize the merchandise. We submit that there is no necessity for this provision. If the invoice or the entry is fraudulent, the merchandise may be forfeited, and the parties guilty of fraud may be punished by appropriate criminal proceedings. See sections 591 and 592, H. R. 2667.

As an example of the effect of this provision, we cite the case of an importation of dyestuffs, which are dutiable under American valuation. At the time of entry, the importer does not know that there is a comparable dye in the United States. Consequently, he enters his merchandise under United States value, as provided in paragraph 28, which would be a lower value. The appraiser ascertains that there is comparable merchandise in the United States and he raises the value to the American selling price of the domestic product. The advance may be over 100 per cent. The entry becomes presumptively fraudulent and automatically the Collector must seize the merchandise, if it has not been delivered from customs custody. The importer is compelled to rebut this so-called fraud.

The case must be taken up with the Customs Bureau in Washington, and that bureau necessarily decides that there is no fraud in the cited case. It subjects

the importer to trouble and expense, and it uselessly takes up the time of customs officials at the port where the entry is made, and in the Customs Bureau at Washington. The provision does not serve any real purpose, since, as stated, sections 591 and 592 fully cover the cases of fraudulent entry of merchandise.

We, therefore, recommend that the matter beginning on line 4, page 344 of H. R. 2667, with the words "if the appraised value," and ending on line 15, with the words "sufficient evidence," be omitted.

Section 490: General order.

We have no recommendations.

Section 491: Unclaimed merchandise.

No recommendations.

Section 492: Destruction of abandoned or forfeited merchandise.

Section 493: Proceeds of sale.

Section 494: Expenses of weighing and measuring.

Section 495: Partnership bond.

Section 496: Examination of baggage.

Section 497: Same—Penalties.

Section 498: Entry under regulations.

Section 499: Examination of merchandise.

Section 500: Duties of appraising officers.

We have no recommendations to make concerning these sections.

Section 501: Notice of appraisement—reappraisement.

In the brief on valuation (sec. 402), in which we oppose the proposed practice designated as "Finality of appraisement," we suggest that if this legislation is not adopted, and in lieu thereof, section 402 of the tariff act of 1922 is reenacted, the following matter should be stricken out:

"Subject to the provisions of subdivision (b) of section 402 of this act, relating to a review of the appraiser's decision by the Secretary of the Treasury."

and the word "the" in line 23, should be changed to "The."

We believe that the language in the present act should be used with respect to the written notice of appraisement to be given by the collector of customs. Therefore, the matter beginning with the word "if," line 15, page 354, and ending with the word "entry," line 20, should be eliminated.

We also recommend that the following matter on page 356 of H. R. 2667, be stricken out of the proposed section 501:

"The value found by the appraiser shall be presumed to be the value of the merchandise, and the burden shall rest upon the party, who challenges its correctness, to prove otherwise."

This section, as in the present law, provides for an appeal to reappraisement. Where such appeal is taken, the case comes before a single justice of the United States Customs Court, who finds the dutiable value of the imported merchandise involved. This proceeding before the single justice is an appraisement proceeding, and has always, within the contemplation of the law, constituted an appraisement de novo. This being the case, it is not fair and just that either of the parties to such new reappraisement, should come into the court with a presumption of correctness in his favor.

The United States Court of Customs and Patent Appeals has decided, and rightly, we think, that there is no greater presumption of correctness attaching to the appraiser's finding of value, than there is to the invoice value, which represents the price paid in the foreign market for the imported merchandise. However, as the importer is the moving party, the burden rests upon him to take the initiative in the proceeding before the single justice.

As the appellate court has decided, however, when the importer has introduced evidence, which, while it may not be conclusive, is of a substantial nature as tending to prove his contention, the burden shifts to the Government.

We think, therefore, that the practice, which has now become well established, and which can not possibly impose any hardship on the Government, inasmuch as in making an appraisement the appraising officer must have some evidence to support his return of value, should be adopted.

Section 502: Regulations for appraisement and classification.

No recommendations.

Section 503: Time for appraiser's return.

We approve the provision of a limit of time within which the appraiser shall make a return on an invoice, as importers should not be subjected to the uncertainty of approval of their entered values for long periods of time. However, we think that the Secretary of the Treasury should not be given authority to extend the time limit of 120 days, fixed by this section. It should be taken into consider-

ation that the collector of customs has 60 days, from the date of the appraiser's return, to file an appeal for reappraisement, so that with the 120-day limit provided in this section, and the 60-day appeal period of the collector, the importer may not know that his values are approved for a period of six months.

Section 504: Dutiable value.

Subparagraph (b) provides for additions under duress, where cases are pending on reappraisement or "re-reappraisement." The word "review" should be substituted for "re-reappraisement," as there is no such proceeding now as a "re-re-appraisement." We submit that the following matter should be stricken from this paragraph:

"and if it shall appear that such action of the importer, on entry, was taken in good faith, after due diligence and inquiry on his part."

We think that this provision, which is the same as in the existing law, is entirely unnecessary, and under the present practice, requires an application by the importer, who has been successful in a reappraisement case, to the collector of customs, asserting that he made his additions at the time of entry in good faith and after due diligence and inquiry on his part. If the test case has been decided in favor of the importer, why should it be necessary for him to state to the collector that his action was taken in good faith and after due diligence and inquiry? The question is, what is the proper value of the merchandise, and when the court has decided such value, duress entries should be liquidated in accordance with the court's decision, without the necessity of any statement of the character required.

Section 505: Payment of duties.

No recommendations.

Section 506: Allowance for abandonment and damage.

We believe that the time limit of 10 days, within which an importer may abandon his goods, is not sufficient. It may take several days before the importer gets possession of his merchandise, even where it is delivered to him from the pier, and he should have sufficient time to make the proper examination. In many instances merchandise is shipped direct from the appraiser's store or the pier to the purchaser and a 10 days' limit will not afford sufficient time for abandonment. We think that 20 days are not unreasonable. We, therefore, recommend that this limit be extended to 20 days.

Section 507: Tare and draft.

Section 508: Commingling of goods.

Section 509: Examination of importers and others.

Section 510: Penalty for refusal to give testimony.

Section 511: Inspection of importers' books.

Section 512: Deposit of duty receipts.

Section 513: Collector's immunity.

Section 514: Protest against collector's decisions.

Section 515: Same.

We have no recommendations to make.

Section 516: Appeal or protest by American producers.

Subparagraph (a): We believe that the right of protest, on the part of domestic producers, should be limited by definite language to cases involving classification of merchandise, and should not apply to cases where duties are imposed for failure to comply with some provision of the law, as, for instance, the marking section, which duties are in fact penalties.

The United States Court of Customs and Patent Appeals has held that a domestic producer has the right to protest, where the so-called duty at 10 per cent is not assessed for failure to mark an imported article.

We think that there should be inserted in subparagraph (a), a proviso to the effect that the right of protest on the part of the American manufacturer, producer, or wholesaler shall not apply to cases arising under section 304, or any case where a duty is imposed by reason of the failure to comply with some provision of the law relating to imported merchandise.

It is provided in subdivision (a), line 21, on page 468, to line 3, page 469, that "If the appraiser advance the entered value of merchandise upon the information furnished by the American manufacturer, producer, or wholesaler, and an appeal is taken by the consignee, such manufacturer, producer, or wholesaler shall have the right to appear and to be heard as a party in interest, under such rules as the United States Customs Court may prescribe."

This language is the same as that in the present law but we believe it should be eliminated. If the appraiser advances the value of the imported merchandise on information advanced by the domestic interest, the assistant attorney general

in charge of customs whose duty it is to defend the appraised value may call such domestic interest as a witness and there is no necessity for such domestic interest to be accorded the privilege of appearing as a party in interest with the right to be represented by attorney who may examine and cross-examine witnesses and thus perform the functions properly belonging to the assistant attorney general in charge of customs.

Subparagraph (b): Subparagraph (b) provides that if the Secretary of the Treasury does not agree with the contention of the domestic manufacturer, producer, or wholesaler, that the proper rate of duty is not being assessed, he shall publish his decision with a notice that all merchandise imported or withdrawn from warehouse, after the expiration of 30 days from such publication, will be subject to the decision of the United States Customs Court, in event that a protest is filed by the domestic manufacturer, producer, or wholesaler, and if such a protest is filed, the Secretary shall order the suspension at all ports of unliquidated entries of such merchandise imported or withdrawn from warehouse after the expiration of 30 days from the date of such publication of all unliquidated entries, which unliquidated entries will be liquidated in accordance with the decision to be rendered later by the court.

The effect of this proposed provision will be that where a complaint is made to the Secretary of the Treasury that the proper rate of duty is not being assessed and the Secretary, upon due consideration, decides that the merchandise is being properly classified, his decision sustaining the existing practice must be published.

Every importer in the United States of such merchandise will therefore be put in the position of not knowing what duty will be assessed on importations made by him for a long period of time after he has imported and sold such merchandise for the reason that, for instance, the port of New York entries are not liquidated for at least six months after importation, and we believe a fair average would be longer.

The domestic manufacturer, producer, or wholesaler may protest, and he has 30 days after the liquidation of any entry within which to file such protest. There may not be a liquidation of an entry covering the particular merchandise for 60 days or more after the Secretary's decision. If protest is filed within 30 days after such liquidation, this will make a period of 4 months. During this time the importer is in the uncertain position of not knowing whether the domestic manufacturer, producer, or wholesaler is in fact going to protest.

The time within which entries are liquidated varies at the different ports. At some ports entries will generally be liquidated within 30 days. Under this proposed provision an importer who imports at a port where his entries are liquidated within 30 days will have a very great advantage over one who is compelled to import at a port where liquidation does not take place until the lapse of six months or more, for the reason that if the domestic manufacturer files his protest 30 days after the first liquidation of an entry covering merchandise imported 30 days after the publication of the Secretary's decision, the Secretary's order under the proposed law suspending liquidation of all unliquidated entries would find more entries unliquidated at the first mentioned port, to which a change in classification under the decision of the court on such protest would be applicable, than at the last mentioned port.

It is submitted that where a collector of customs has classified merchandise under a certain paragraph of the tariff act, and upon the matter being brought to the attention of the Secretary of the Treasury, that officer has approved such classification, an importer should be assured that he may proceed in the matter of safety in importing merchandise under such classification. He should not be in the position of having the classification changed, and the change in classification made retroactive, as it is under the existing law, and would be under the proposed section.

We call attention to the recent case decided by the United States Customs Court, and affirmed by the United States Court of Customs and Patent Appeals, involving cellophane in sheets. For more than 10 years, under decisions of the court, these sheets were classified at 25 per cent. The Du Pont Cellophane Co. protested to the Treasury Department, claiming that the sheets should be assessed with duty at 60 per cent ad valorem, or at 40 cents a pound under another paragraph of the tariff act of 1922.

The Treasury Department affirmed the classification of 25 per cent, whereupon the Du Pont Co. filed a protest. This protest resulted in a decision by the lower court that the sheets were dutiable at 60 per cent ad valorem. The apellate court decided that such merchandise was dutiable at 40 cents a pound.

TAPESTRIES AND OTHER JACQUARD-WOVEN UPHOLSTERY CLOTHS

(Par. 909, tariff act of 1922)

The bulk of the upholstery fabrics imported into this country is composed of goods having a character of marked novelty. The trend of imports of this textile product to the United States during the past few years was more governed by the rapid and successful development in the movement promoting better homes, than by any other single factor. Very often price, as an element of sale, has secondary importance, for the Italian product is purchased for its style, the beautiful combination of colors, and the ingenious designs. Domestic furniture producers and other consuming industries have preferred certain types of this Italian fabric, as linen friezes, because these are not produced at all in this country. Furthermore, a large number of these fabrics imported from Italy are afterwards copied by domestic manufacturers, either in identical or in similar qualities, a fact which clearly proves that the existing duty offers to the domestic producers a more than ample protection.

The unsatisfactory situation existing in some branches of the domestic upholstery fabrics industry is mainly due to unbalanced conditions in the industry itself or in some lines of the American cotton and furniture industries. During the past few years the bulk of the domestic production of cotton tapestries was produced in Pennsylvania, chiefly in the Philadelphia district. More recently, however, a large number of firms have transferred their activities to the Southern States, where it seems that their cost of production is substantially lower. Competition from these southern mills is proving to be more detrimental to the old established factories around Philadelphia than the importing of foreign products.

In considering domestic and Italian costs for the production of these fabrics it is necessary to keep in mind that, while in Italy this industry is more or less on a limited family basis, in this country, on the contrary, it is carried out on the most economical and effective methods of mass production, which have been developed to the highest degree.

A careful and honest comparison between domestic and Italian costs would show very conclusively that the existing duty of 45 per cent ad valorem is more than sufficient to protect the domestic industry. The tariff revision bill passed by the House of Representatives (H. R. 2667, par. 909) has increased the existing duty to 55 per cent ad valorem.

The Finance Committee of the Senate is kindly prayed for a reconsideration of the matter so as to reach an equitable adjustment.

DEPARTMENT OF STATE,
Washington, July 11, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, I have the honor to inclose for your information a copy of a note from the Royal Italian ambassador, dated July 2, 1929, inclosing a memorandum in further reference to the effect of the tariff bill, as passed by the House of Representatives, on Italo-American trade.

I have the honor to be, sir,
Your obedient servant.

H. L. STIMSON.

ROYAL ITALIAN EMBASSY,
Washington, July 2, 1929.

Hon. HENRY L. STIMSON,
Secretary of State, Washington, D. C.

MY DEAR MR. SECRETARY: Herewith inclosed I am sending you a memorandum on the effects of the tariff bill, as passed by the House of Representatives, on the Italo-American trade.

I would be very grateful to you for the attention you would kindly give it and for the use you may deem it advisable to make of the information it contains.

Accept, my dear Mr. Secretary, the assurance of my highest consideration.

G. DE MARTINO,
Italian Ambassador.

REGIA AMBASCIATA D'ITALIA.
Ufficio Del Consigliere Commerciale.

SCHEDULE 14

LEATHER GLOVES

(Par. 1433 of the tariff act of 1922)

Paragraph 1433 of the present tariff levies the following duties on gloves:

Men's gloves not over 12 inches in length, $5 per dozen pairs; women's and children's gloves not over 12 inches in length, $4 per dozen pairs; for each inch in length in excess thereof, 50 cents per dozen pairs. Provided that, in addition thereto, on all of the foregoing there shall be the following cumulative duties: When lined with cotton, wool, or silk, $2.40 per dozen pairs; when lined with leather or fur, $4 per dozen pairs; when embroidered or embellished, 40 cents per dozen pairs: *Provided*, That all the foregoing shall pay a duty of not less than 50 per cent nor more than 70 per cent ad valorem: *Provided further*, That glove tranks, with or without the usual accompanying pieces, shall pay 75 per cent of the duty provided for the gloves in the fabrication of which they are suitable.

Gloves made wholly or in chief value of leather made from horse hides or pig skins, whether wholly or partly manufactured, 25 per cent ad valorem.

The high rates on men's gloves as well as the fact that this line of consumption is supplied chiefly by domestic production, which is an important American industry, have practically put out of the American market imported men's gloves, the importation of which did not reach 140,000 pairs in 1922 and scarcely surpassed this figure in 1927.

The less exorbitant rates on women's and children's gloves as well as the quality of lighter and finer leather from which they are made and the required labor in their finishing have maintained the importation of this line of wearing apparel, which the European manufacturers, prior to the enactment of prohibitive rates in 1922, supplied in the proportion of about four-fifths of the total consumption of the country.

Women's kid gloves are an actual necessity and in no sense a luxury, but the rates of duty now assessed on women's gloves, by adding greatly to the selling price, have made gloves almost a luxury and the cost unreasonably burdensome.

The American women need the imported lightweight kid glove by reason of its greater delicacy of texture, style, and finish. Being an essential part of her apparel, required for comfort and personal appearance, they can not be dispensed with, especially the imported glove, which is of superior style and finish.

These gloves, which are manufactured principally in France, Italy, Czechoslovakia, and Germany where the workmanship has, through generations and years of training, acquired the skill necessary for the making, and where the work is done mostly at home, could not be produced in this country, except

at a prohibitive price, which would put them beyond the reach of the average purchaser.

Thus, the advantages of careful making and convenient price are secured to consumers in this country. The importation of gloves in this country would otherwise be confronted with prohibitive prices. This explains why practically 95 per cent of the imported leather gloves in the United States are represented by women's and children's gloves.

Because of the lack of this condition, as well as of the required training and skill, the manufacture of these gloves, whenever attempted in this country, has been as unsuccessful as that of men's gloves has been successful, and what few women's and children's gloves are made in the United States, consist of novelties and specialties as are occasionally evolved by American glove makers, for temporary, rather than stable, demand.

Any attempt to establish the manufacture of women's and children's gloves in this country would meet with failure, even in the hypothesis that the rates of duty were prohibitively increased, as the conditions for this line of production are entirely lacking in this country, and no tariff, however high, could alter them. This, aside of the fact that excessive prices for such a necessity would be intolerable and certainly curtail the demand.

Domestic manufacturers to-day are making gloves of dipped leather, which do not in any way compete with the foreign light-weight brushed leather glove.

The new tariff bill passed by the House of Representatives (H. R. 2667, par. 1532) has substantially increased the existing high duties to really prohibitive levels.

The Finance Commission of the United States Senate is kindly prayed to reconsider the matter, so as to avoid such a serious setback to an important branch of Italy's trade with this country.

DEPARTMENT OF STATE,
Washington, July 15, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, I have the honor to inclose for your information a copy of a note from the Royal Italian Ambassador, dated July 2, 1929, transmitting a memorandum concerning the effects of the proposed changes in the tariff on Italo-American trade.

I have the honor to be, sir,
Your obedient servant,

H. L. STIMSON.

ROYAL ITALIAN EMBASSY,
Washington.

Hon. HENRY L. STIMSON,
Secretary of State, Washington, D. C.

MY DEAR MR. SECRETARY: Herewith inclosed I am sending you a memorandum on the effects of the tariff bill, as passed by the House of Representatives, on the Italo-American trade.

I would be very grateful to you for the attention you would kindly give it and for the use you may deem it advisable to make of the information it contains.

Accept, my dear Mr. Secretary, the assurance of my highest consideration.

G. DE MARTINO,
Italian Ambassador.

REGIA AMBASCIATA D'ITALIA WASHINGTON

In her trade relations with the United States, Italy has always experienced an unfavorable trade balance. While the United States has for years maintained an important place among the countries from which Italy imports a good deal, on the other hand, the sale of Italian products on the American market has met, mainly during the postwar period, with increasing difficulties. The bulk of demand for the Italian products consumed in the market of the United States still comes from the so-called Italo-American communities established in the largest cities of the Atlantic coast and the Middle West. This basic factor was responsible in the past for the continuous nervous fluctuations which have characterized Italian trade with this country since the beginning of this century, due to recurrent variations in the movement of Italian immigrants to and from this country. The adoption of the policy of restricted immigration by this country has had substantial effect on the volume and character of the Italian trade with the United States. The gradual falling off in the demand from the so-called Italian communities and the trade difficulties caused and connected with the postwar period have favored the concentration of this business in the hands of fewer but more experienced and responsible organizations of the highest type. This represents a very important and helpful factor, mainly in connection with the future development of trade relations between the two countries, for it favors the adoption of solid standards and creates a better understanding.

The following table, based upon the Italian official statistics (Ministero delle Finanze) shows the variation in the trade relations between the two countries during the past fifteen years:

Trade between Italy and the United States

[Values in thousands of paper lire]

Year	Exports from United States into Italy		Imports into United States from Italy		Excess of American exports	
	Values	Index No.	Values	Index No.	Values	Index No.
1913	522,722	100	267,892	100	254,830	100
1922	4,398,231	841	1,018,317	380	3,379,914	1,326
1923	4,619,493	884	1,512,524	564	3,106,959	1,219
1924	4,647,883	889	1,231,804	459	3,416,079	1,341
1925	6,174,816	1,181	1,887,826	704	4,286,990	1,682
1926	5,614,399	1,074	1,931,500	717	3,682,899	1,455
1927	3,958,378	758	1,644,818	614	2,313,560	908
1928	4,015,168	768	1,523,489	569	2,491,679	978

As the values reported in the table above are expressed in lire, they offer but a relative indication of the real situation, because during the period in question Italian currency registered wide fluctuations.

A more adequate picture of the present status of Italo-American trade, in comparison with the pre-war period, can be gathered from the following table, whose values are expressed in gold lire, at the average rate of gold in Italy, during the various years:

Trade between Italy and the United States

[Values in thousands of gold lire]

Year	Exports from United States to Italy	Imports to United States from Italy	Excess of American exports	Year	Exports from United States to Italy	Imports to United States from Italy	Excess of American exports
1913	522,722	267,882	254,840	1922	1,076,019	251,578	824,441
1915	1,655,659	268,205	1,287,454	1923	1,099,091	359,867	739,224
1916	2,916,725	269,208	2,647,517	1924	1,047,575	277,655	769,920
1917	4,005,809	182,398	4,823,411	1925	1,275,154	389,853	885,301
1918	4,442,130	113,184	4,328,946	1926	1,131,251	389,179	742,072
1919	4,414,314	382,340	4,031,974	1927	1,046,296	434,757	611,529
1920	2,929,617	305,802	2,523,815	1928	1,093,992	415,097	678,895

The trend shown in the preceding table is fully confirmed by the following tabulations, based upon statistics of the United States Census Bureau:

Trade between Italy and the United States

[Values in millions of dollars]

Year (average)	Exports from United States to Italy	Imports in United States from Italy	Excess of American exports	Year (average)	Exports from United States to Italy	Imports in United States from Italy	Excess of American exports
1910-1914	66	51	15	1925	205	102	103
1922	151	64	87	1926	157	103	54
1923	168	92	76	1927	132	109	23
1924	187	75	112	1928	102	102	60

From various points of view, the year 1928 may be considered as a representative period upon which to base a fair and sound estimate for the future trend of the trade between Italy and the United States.

During the last year this trade was carried on with the lira stabilized on the new gold level, thus eliminating all unfair competition resulting from currency inflation or depreciation. This is a very important factor to be reckoned with in considering the potential competitive power of the Italian products on the American market, for the stabilization of the lira on the new high level, while on one hand it has greatly increased costs in Italy, thus rendering more difficult the sale of Italian products in the United States, on the other it has facilitated the development of American exports to Italy. The percentage variations (based upon the statistics of the United States Census Bureau) in the trade relations between the two countries during 1928, in comparison with 1927, are the following: Increase in American exports to Italy, 23 per cent; decrease in Italian sales to the United States, 7 per cent.

In considering the nature of the Italian shipments to this country one observes that the bulk is represented by the following products:

(a) High-quality foodstuffs (cheese, olive oil, lemons, dried fruits, fresh fruits and vegetables in brine and olive oil, peeled tomatoes and tomato sauce, walnuts, chestnuts, etc.);

(b) Silk, artificial silk and high-grade textiles (linen, woolen, cotton), hemp;

(c) Hats of the best quality, well known the world over;

(d) Marble and its products;

(e) Raw hides and gloves.

The details and the trend of these imports (on a quantity basis), during the past years, is shown in the following table:

Most important Italian products exported in the United States

	1913	1927	1928
Cheese.....quintals..	122,308	136,586	169,068
Lemons.....do....	1,134,392	304,098	332,714
Dried fruits.....do....	97,741	98,635	103,023
Fresh fruits, vegetables preserved in brine and olive oil.....do....	52,130	25,085	35,080
Tomato sauce.....do....	207,383	512,546	431,386
Olive oil.....do....	85,760	248,509	88,232
Textiles of hemp, linen, and jute.....do....	23,410	61,026	80,930
Cotton textiles.....do....	1,625	4,215	3,747
Raw silk.....do....	10,640	1,954	3,212
Artificial silk and waste.....kilos..	26,006	3,217,616	2,083,300
Marble.....quintals..	115,509	701,331	131,865
Rawhides.....do....	20,453	44,646	40,839

The series of memorandums presented by this embassy to the State Department contained a detailed exposition of the present status of the most important Italian products imported in this country, with special reference to the degree of competition offered by them to similar domestic products. The un-

favorable repercussions from the increases contained in the tariff bill passed by the House of Representatives in reference to the Italian products were also carefully considered.

In the group of oils, it was pointed out that the total domestic production of olive oil represents but 1 per cent of the total domestic consumption, so that any duty imposed upon olive oil could be only intended as a revenue measure and could not reasonably be interpreted as a stimulant to an industry ever capable of meeting the Nation's consumption requirements. It was also clearly demonstrated that any differential in the duty between olive oil imported in barrels and that imported in small containers should be abolished, for such a differential would facilitate frauds and adulterations.

In the case of canned tomatoes and tomato paste it was pointed out that the consumption of the Italian product is limited to the demand for communities of Italian extraction, which have been accustomed to this Italian product, which has marked characteristics totally different from the domestic tomato. Furthermore, Italian tomatoes and tomato paste have always commanded a price substantially higher than the domestic product, a clear and important factor which demonstrates the nonexistence of competition between the two products. In the matter of tomato paste, it was also pointed out that a recent investigation carried out by the United States Tariff Commission has shown that cost of production of the Italian paste is somewhat higher than that for the similar domestic product; a fact which would justify a substantial reduction in the present level of duty.

With reference to cheese, a detailed description of the most important types of Italian exports into this country, was made in order to point out the marked differences between the Italian and the American product, which control different markets and have no relationship whatsoever in prices, or other sale conditions, the price of the Italian product being generally much higher than that for the best variety of American cheese. Italian cheese is mainly consumed by people of Italian extraction in this country, who have been accustomed to the peculiar flavor of this product, which to them represents a most necessary food, largely used in Italian cooking, for seasoning and as an integrant in the praparation of their meals.

Considering the imports of cherries, it was pointed out that Italy is the most important producer in the world and that even the United States Tariff Commission, in carrying out an investigation on the costs of production of cherries in Italy and in the United States, admitted the existence of marked differences between the American and the Italian cherry, which is much smaller and particularly acceptable to the confectionery and the ice cream trades, while the domestic product is generally used in the canning trade and for direct consumption.

The group of Italian textile products imported into this country includes woven silk fabrics, velvets, plushes and chenilles, high-grade tapestries and other jacquard woven upholstery cloths, drapery fabrics of novel design and construction, linen and high-grade woolen products of high quality, for which there is a steadily increasing demand in this country. There are, however, some other products, like Italian hemp, which represent an indispensable raw material for the American industry producing high-grade yarns and twines. In considering the alleged competition of the Italian artificial silk (rayon) it is pertinent to indicate the tremendous growth of the similar American industry, whose production has increased from 1,500,000 pounds in 1913 to 90,500,000 pounds in 1928, and an estimated production of 135,500,000 pounds during 1929. Besides, it is to be noted that most of the Italian rayon imported into this country is made of grades which have been found most suitable in mixtures with cotton textiles.

The merit and quality of the Italian fur-felt hats is well recognized the world over. The bulk of the imports into the United States is the production of a large, well-known Italian concern and is represented by hats paying a duty at the rate of $10 per dozen, a rate which should satisfy any plausible demand for adequate protection. The Italian fur-felt hat is not a competitive article, with the product of the American industry, it follows specific styles, possesses individuality, and has peculiar earmarks and characteristics, different from the ordinary run of domestic hats.

Italian marble is a high-grade product, considered the best in the world for specific sculptural and ornamental works. The marble quarries of Italy have been operated for centuries and their unique product is exported to every civilized country, Italian white marble (Carrara) for statuary, or the colored types,

in this or any other country. The same is true for certain types of monumental and building stones, such as Italian travertino. Marble manufactures are products of artistic conception and endeavor, offering, very often, educational benefit for the public in general. They should be considered as works of art and be assessed on the basis of duties intended only for revenue purposes.

Since the war the United States has enjoyed a privileged position in Italy's import trade. This was in part due to economic and political disorganization in other nations rich in raw materials and foodstuffs but mainly as a result of the rapid and effective Italian industrial development during the last decade. Somewhat different is the trend in the sale of Italian products on the American market. During 1909–1913 the Italian shipments to the United States represented about 12 per cent of the aggregate total Italian export trade; in 1927 they were a little more than 10 per cent.

Italian economic problems were carefully studied by the American Funding Commission in 1925 during the negotiations for the settlement of the Italian debt. Senator Reed Smoot, the distinguished chairman of that commission and now the able chairman of the Finance Committee of the Senate, made an admirable report to the Senate, in order to explain the equitable adjustment arrived at between the representatives of the two countries. This embassy feels it to be pertinent to call the attention of the State Department upon a few statements made by Senator Smoot, while describing the Italian economic situation and its possibilities for improving the existing conditions, so as to meet her new foreign obligations. Dealing with the problem of Italy's foreign trade he stated: "As I have already indicated and as everyone knows, Italy is almost totally lacking in natural resources. The country can not feed its present population, which is increasing at an alarming rate. Her total resources of coal are less than 200,000,000 tons, or much lower than a single year's production in this country.

"It is estimated that Italy has less than 40,000,000 tons of iron ore, which is again less than the annual production of iron ore in the United States. She has no copper or cotton and practically no oil. She does produce some silk. Her chief asset is her water power, which is being developed chiefly through the aid of foreign capital. It is only through her export of fruit and agriculture specialties and the development of her textile and manufacturing industries, importing raw materials, manufacturing them and shipping them abroad in competition with other nations of the world that Italy has been able to find means to purchase the food to feed her people and to buy the basic materials needed for her industries."

"Italy has never had a favorable trade balance. The permanent cause of her position is in her lack of raw materials and the necessity of importing a large amounts of food. The relations between exports and imports is to-day substantially as it was during the pre-war period. Imports are still greatly in excess of exports. Most of the imports consist of commodities essential to the operation of Italy's industries. Anything which makes it more difficult for Italy to provide the means to buy raw materials from the outside world impairs her capacity not only to make external payments on her obligations held abroad but also endangers her internal economic situation. Her industry must be maintained to enable her to live."

Dealing furthermore with Italy's balance of payments he clearly intimated that: "In its essence the problem resolves itself into Italy's ability to lay apart and save an annual surplus above its essential requirements and to transfer this surplus from Italy to the United States. Not only must there be a margin of saving within the country, but Italy's balance of international payments must be such that she can convert the necessary amounts into foreign currencies without endangering the stability of her own internal situation."

"Italy has to-day practically no assets abroad available for payment of her obligations. Nearly all her foreign investments were exhausted during the war paying for food and ammunitions. Such investments as she does have are more than counterbalanced by heavy foreign investments within Italy. She gained no substantial territory as a result of the war; no colonies with natural resources. She has remained as she was before the war, a debtor country."

"The two chief items to offset the adverse trade balance are remittances from Italian emigrants abroad and expenditures of foreign tourists in Italy. It is difficult to estimate exactly what these aggregate in any year. Emigrant remittances are probably in the neighborhood of $100,000,000. Foreign tourists' expenditures have been estimated at approximately the same figure. Without

these two important sources of income Italy would be unable to maintain its present position. While the Italian Commission raised no protest regarding our immigration policy, it is pointed out that restrictive immigration laws over a period of years would tend to reduce the emigrant remittances and also bring about a reduction in the exports of Italian products finding a natural market among Italians living abroad."

This reveals a situation in need of readjustments, particularly if considered in the light of the new obligations assumed by Italy toward this country, resulting from the war-debt settlement and for the repayment of the capital borrowed in the New York market.

A more satisfactory economic relation between the two countries would undoubtedly result from a gradual increase in Italian exports to this market. In the preceding remarks it has been noticed a distinct contrast in the nature of the goods exchanged between the two nations, viz, while the United States exports raw agricultural products, mineral and fuels, Italy sells to this country high grade quality products to satisfy the growing needs of the American people. Basically, the two trades are not competitive in character, on the contrary, they possess a marked degree of integration, to satisfy the demands and needs of two economic systems totally different. In considering the reasons responsible for the slow development of Italy's trade with this country, it is pertinent to note that in 1910–1914 about 50 per cent of Italian imports were free from duty, but in 1927 only 18.6 per cent; furthermore, the average rate paid by dutiable goods was somewhat higher than in the previous period.

After all, the products exported by Italy into the United States are mainly consumed by the so-called Italian communities, residing in this country; their price is generally higher than that of the corresponding domestic products and any increase in the tariff would hardly benefit the consumption of domestic goods, for there is no competition between the two groups of products.

The total imports from Italy to the United States hardly reach 2 per cent of the aggregate imports of the latter; such a small percentage would hardly justify any claim of unbearable competition. The prices of the Italian products are higher than the corresponding domestic products and offer no real competition whatsoever.

In short, it must be apparent that if the Congress of the United States adopts a new tariff act in the form in which it has passed the House of Representatives (so far, at least as relates to the products exported from Italy to the United States), the direct effect of this measure can but only diminish Italy's purchase of agricultural products and other raw materials, in this market, and consequently impair Italy's international economic position; and the direct result is likely to be a reduction in the standard of living of Italy, to some extent, and eventually a weakening of the economic relations between the two countries.

WASHINGTON, D. C., *July 1, 1929.*

DEPARTMENT OF STATE,
Washington, July 20, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: With reference to my letter of July 11, 1929, transmitting copy of a note from the Italian ambassador, dated June 25, 1929, inclosing two memoranda concerning the effects of the proposed tariff changes on Italo-American trade, I have the honor to inclose copy of a further note from the ambassador, dated July 16, 1929, calling attention to a clerical error in the memorandum dealing with Schedule 9. I have the honor to be, sir,

Your obedient servant,

WILBUR J. CARR,
Acting Secretary of State.

63310—29—VOL. 18, F C——9

ROYAL ITALIAN EMBASSY,
Washington, July 16, 1929.

MY DEAR MR. SECRETARY: I beg to refer to my letter of June 25 last, attached to which I sent you two memoranda dealing with the tariff bill as passed by the House of Representatives and beg to inform you that in the memorandum dealing with Schedule 9 (articles made of cotton or of which cotton is the component material of chief value) it has incurred a clerical error when in the second paragraph of the second page it was stated that the existing law (par. 921, tariff act of 1922) imposes a duty of 50 per cent instead of 40 per cent, as it is the case.

May I take this occasion for pointing out to you that the new duty proposed for the products in question (par, 906, H. R. 2667) represents the maximum increase contained in the House bill for all woolen or cotton products.

I will be very grateful to you if you will kindly call the above to the attention of the interested departments.

Accept, my dear Mr. Secretary, the assurances of my highest consideration.

G. DE MARTINO.

Hon. HENRY L. STIMSON,
Secretary of State, Washington, D. C.

JAPAN

DEPARTMENT OF STATE,
Washington, July 25, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: I have the honor at the oral request of the Japanese Ambassador to inclose for your information copies of memoranda prepared by Japanese merchants containing comments on the effect of the tariff law now being discussed by Congress on Japanese trade.

I have the honor to be, sir,
Your obedient servant,

H. L. STIMSON.

TRADE BETWEEN THE UNITED STATES AND JAPAN

[Statistics: From the Reports of the Department of Commerce of the United States]

Japan ranks the fourth among the nations to which the United States exports, and the second among the nations from which the United States imports.

The United States exports to Japan in 1927 amounted to $257,600,000, i. e., 5.3 per cent of the total United States exports and about 30 per cent of Japan's imports. The United States imports from Japan in 1927 amounted to $402,100,000, i. e., 9.6 per cent of the United States total imports and about 40 per cent of Japan's total exports.

The list of commodities traded between these two countries indicates plainly the fact that each country's exports consist mostly of the goods that the other is in need of. The exchange of American cotton with Japan raw silk is a striking instance. If the supply of one's demand from other's surplus is the ideal status of international commerce, it can truthfully be said that the foreign trade between these countries is the nearest approach to the perfect trade relations, and that any hindrance to the ready exchange of goods would be harmful to the economic life of both countries.

Further to illustrate this point, it is to be noted that raw materials imported from Japan are those needed by various American industries on account of their domestic production being insufficient or inconvenient. Of manufactured goods, some are articles of Japanese specialty and can not be feasibly produced in the United States, while others are inexpensive goods that yield no attractive return to American manufacturers but are much in popular demand by the consuming public, including farmers.

Japan's purchasing power is in a large measure derived from her exports, especially from that to the United States. Any decrease in her exports to the United States, therefore, can not but reduce her demand for American products—a situation not quite agreeable to the foreign trade of both countries.

THE EFFECT OF THE PROPOSED UNITED STATES TARIFF ON JAPAN

The proposed increase in the House tariff bill affects Japanese products of many varieties. Examination of a score or more of representative articles thus affected indicates advances of 5 per cent to 200 per cent. For instance, the addition of specific duty of 10 cents per dozen on china and earthenware results in an increase of 74 per cent on cups and saucers and 185 per cent on salt and pepper shakers; duty on lily bulbs is to be advanced from $2 to $6 per 1,000, an increase of 200 per cent; menthol will be assessed 75 cents per pound instead of the present rate of 50 cents, or an increase of 50 per cent; celluloid dolls and toys will be subject to a duty of 100 per cent higher than the present one; while canned clams are to be removed from free list and assessed at 35 per cent ad valorem.

Thus on a closer analysis it can be seen that several proposals have the effect of closing the American market to many Japanese products. This is particularly true with respect to inexpensive goods of more or less Japanese specialty, which in total value reach no large proportion of United States imports. Such advances seem neither to benefit the American industries nor add to the revenue of the United States. On the contrary, they appear to mean increased burden on large number of American consuming public, especially of smaller means.

Engaged in producing these articles, chiefly designed for export to the United States, there is a large number of workers throughout Japan. To them prohibitive American tariff spells loss of livelihood; to American labor no added employment.

Another feature to be considered is the proposed section 402. Were it enacted into law, administrative authorities would have an arbitrary power of determining the basis of valuation, subject to no judicial review. This would put importers in constant uncertainty as to the amount of duty and act as a hindrance to foreign trade.

The so-called "flexible provisions" in the proposed act, made more effective than those in the tariff act of 1922, would similarly place the trade—long-term contracts in particular—in uncertainty, and can not but hamper the free exchange of goods.

United States imports from Japan

[000 omitted]

		1927		1928	
		Quantity	Value	Quantity	Value
Tea	lbs.	26,403	$5,889	23,421	$5,250
Material for hats, bonnets of straw, etc	yds.	726,941	1,823	174,247	562
Hats of straw or fiber		4,034	1,674	918	431
Silk, raw	lbs.	61,796	334,160	64,111	318,123
Silk, fabrics	lbs.	1,982	7,855	2,039	6,724
Silk, wearing apparel			834		1,155
Decorated china and porcelain	doz.	4,973	3,662	5,400	3,377
Decorated earthenware	doz.	503	334	1,064	579
Crab meat	lbs.	8,699	3,703	12,889	4,600
United States total	lbs.	8,984	3,784	12,775	5,057
Rape oil	gals.	2,308	1,422		
United States total	gals.	2,547	1,570	2,250	1,504
Camphor-natural crude	lbs.	1,621	778		
United States total	lbs.	1,689	810	4,364	1,648
Refined	lbs.	1,480	822	1,176	593
Total United States exports to Japan			257,569		288,054
Total United States imports from Japan			402,105		384,346
Total excess of imports from Japan			144,536		96,292

Exports from the United States to Japan for 1927 and 1928

[Quantity and value in thousands—000 omitted]

Articles		1927		1928	
		Quantity	Value	Quantity	Value
EXPORT TO JAPAN					
Total			$257,570		$288,054
Cotton, raw	bales	1,437	122,912	1,225	129,272
Petroleum products:			20,862		21,200
Crude oil	barrels	1,633	1,905	2,066	2,254
Gas and fuel oil	do	4,419	4,032	5,114	4,228
Gasoline	do	356	2,788	738	4,780
Kerosene	do	1,608	8,013	998	5,600
Lubricating oil	do	259	2,896	248	2,804
Paraffin wax	pounds	6,701	390	14,154	760
Iron and steel products:			20,633		20,165
Merchant products	tons	278	17,099	407	18,155
Wood and wood products:			19,240		23,303
Douglas fir	feet	463,725	9,143	526,714	10,181
Cedar	do	202,678	4,657	365,483	6,640
Hemlock	do	165,496	3,323	200,729	4,009
Machinery and electrical equipment:			14,725		13,383
Electrical equipment			6,525		5,010
Automotive products:			9,041		8,491
Automobile and trucks	number	3	2,882	10	7,726
Wheat	bushels	4,114	5,339	5,700	7,023
Tobacco, leaf	pounds	9,991	4,289	15,441	5,622
Copper, refined	do	24,475	3,198	32,395	4,662
Ammonia sulphate	tons	31	1,467	24	1,064
Leather			2,109		2,192
Rubber manufactures			1,679		1,972
Automobile tires	number	156	916	219	1,500
Other			31,776		31,193

Japan's trade with the United States by principal commodities (Japan proper)

Commodity	Quantity				Value (thousands of dollars)			
	1913	1925	1926	1927	1913	1925	1926	1927
IMPORTS FROM THE UNITED STATES					60,617	272,913	320,504	319,394
Wheat, 1,000 bushels	4,827	6,260	7,182	5,751	4,700	10,498	11,918	8,707
Leather, 1,000 pounds	1,642	2,083	4,212	2,571	587	1,551	1,979	1,462
Cotton, raw, do	227,527	502,587	598,206	841,239	31,802	147,813	149,572	162,883
Wood					623	24,823	30,913	33,798
Petroleum, benzine, 1,000 barrels	7	182	312	255	63	2,200	3,790	2,615
Illuminating oil, do	824	557	516	664	3,752	4,045	4,095	7,047
Iron and steel, 1,000 pounds	112,275	270,701	350,550	371,485	3,168	12,313	14,381	15,082
Lead, do	447	7,480	27,554	44,202	16	540	1,829	2,542
Zinc, do	1,243	5,203	19,730	15,949	70	411	1,525	1,213
Machinery and parts					4,484	15,497	19,825	14,750
Automobiles and parts					241	3,787	6,175	7,597
Sulphate of ammonia, crude, tons		51,971	67,630	40,097		3,671	4,601	2,461
EXPORTS TO THE UNITED STATES					91,351	412,966	405,647	395,307
Food in tin and bottle					841	3,224	4,029	4,184
Tea, 1,000 pounds	28,473	21,267	18,762	17,774	4,381	5,025	4,764	4,096
Silk, raw, do	17,647	55,951	56,564	64,958	62,350	348,629	334,259	331,340
Silk, waste and floss, do	746	4,607	3,623	3,702	497	4,767	3,505	2,619
Silk tissues					2,567	8,634	12,375	8,624
Plaits for hat making, 1,000 bundles	18,589	7,947	9,488	7,819	3,352	1,493	1,772	1,365
Hats, caps, and bonnets					1,840	858	2,031	1,210
Pottery					1,550	4,934	6,572	5,805
Camphor, 1,000 pounds	660	1,974	1,798	2,069	215	1,303	1,150	1,078
Menthal crystals, do	55	306	427	324	837	2,959	2,890	1,170
Brushes					619	1,271	2,165	1,546

Japan's trade in merchandise with principal countries (Japan proper)

Country of origin of destination	General imports (thousands of dollars)				General exports (thousands of dollars)			
	1913	1925	1926	1927	1913	1925	1926	1927
Total	361,215	1,055,819	1,120,271	1,033,137	313,194	946,214	963,476	944,558
United States	60,617	272,913	320,504	310,394	91,351	412,966	405,647	395,307
Canada		15,239	30,123	26,393		8,552	11,604	12,991
Great Britain	60,779	93,281	80,233	72,666	16,277	24,508	28,033	30,788
France	2,887	13,698	11,586	12,948	29,826	24,154	19,984	25,623
Germany	33,869	50,815	68,428	62,202	6,503	4,861	3,831	5,031
Belgium	4,679	4,000	6,710	6,788	1,835	750	551	1,046
Italy	534	1,390	3,170	3,000	14,567	3,366	2,475	1,833
Switzerland	889	8,526	10,281	8,579	160	150	233	671
China	30,318	88,695	112,810	107,163	76,588	192,247	198,781	158,436
Kwantung Province	15,291	72,475	73,994	62,794	14,775	41,716	46,935	43,271
Hong Kong	641	195	672	758	16,650	30,217	24,961	31,541
British India	85,756	235,391	184,303	128,288	14,763	71,169	73,484	79,450
The Straits Settlements	2,578	15,187	18,788	17,007	5,022	18,429	19,554	17,380
Netherland East Indies	18,515	42,424	48,570	40,200	2,550	35,113	35,224	39,152
French Indo-China	12,231	19,995	11,554	15,730	523	1,653	2,925	2,875
Asiatic Russia	372	6,024	11,254	11,628	2,115	1,277	2,497	3,687
Philippine Islands	3,787	6,854	8,818	8,459	3,112	12,027	13,109	15,567
Australia	7,400	61,547	60,500	58,239	4,278	19,492	24,319	23,973
Egypt	3,537	13,392	15,059	11,670	679	10,369	10,884	13,752
Per cent of total:								
United States	16.8	25.8	28.6	30.0	29.2	43.6	42.1	41.9
Great Britain	16.8	8.8	7.2	7.0	5.2	2.6	2.9	3.3
Germany	9.4	4.8	6.1	6.0	2.1	.5	.4	.5
China	8.4	8.3	10.1	10.4	24.5	20.3	20.6	16.8
British India	23.7	22.3	16.5	12.4	4.7	7.5	7.6	8.4

Chemicals and Oils—United States Tariff Schedule No. 1—Principal Articles in Which Japan is Interested—Camphor Menthol

(Shigeji Tajima representing Japanese importers in New York, July, 1929)

NATURAL REFINED CAMPHOR

The United States import in 1927: Total, 1,387,443 pounds, $781,919; all from Japan.

Present duty, 6 cents per pound (par. 52). Proposed duty, no change.

Remarks: There is no actual production of natural camphor in the United States. Natural refined camphor is the only camphor recognized by the United States pharmacopeia for medicinal purpose. About 20 per cent of refined camphor imported into this country is distributed directly to the ultimate consumers; about 80 per cent is absorbed chiefly by pharmaceutical manufacturers who are using this gum as one of the raw materials for various medicinal preparations. A small percentage is used by film and pyroxolin plastics manufacturers.

Conclusions: (1) Refined camphor is not produced in the United States.

(2) Refined camphor is used for making medicine, duty on which is a tax on the sick.

(3) It is a raw material of United States industry that has very close relations with the Nation's well-being.

(4) The House passed the bill which provides the reduction in tariff on synthetic camphor from 6 cents to 1 cent per pound. If this reduction is to be made by reason of its being a raw material for pyroxolin plastics industry, the same theory might well apply to refined camphor, as about 80 per cent of refined camphor is being used as a raw material for medicines, films, and even pyroxolin plastics.

(5) Synthetic camphor is not being produced at present in the United States, but plans are under way to manufacture this material in the near future. There is no immediate prospect of producing natural camphor in this country.

MENTHOL

The United States import in 1927: Total, $1,331,987; from Japan, $1,141,825.
Proposed duty, 75 cents per pound (par. 52).
Present duty, 50 cents per pound (par. 52).
Increased by 50 per cent.

Remarks: American-grown peppermint leaves yield only a negligible percentage of menthol crystals even if extraordinary efforts and expenses are applied to the process, whereas years of experiment have proved the impossibility of growing the Japanese peppermint in this country on a commercially profitable basis.

Synthetic menthol is nothing more than a very poor imitation of the genuine and not allowed to be used for pharmaceutical and edible purposes. The United States draw the supply of menthol mostly from Japan. Menthol is used mostly by the manufacturers of medicinal preparations in the form of ointments, lotions, antiseptics, inhalating substances, and the like, and to a small extent by the manufacturers of candies.

Conclusions: (1) Menthol is not produced in this country on a commercial scale.

(2) Neither American peppermint nor synthetic menthol can be a substitute for the natural menthol.

(3) Menthol is a raw material of United States industry.

(4) Increased duty would not benefit domestic mint growers.

(5) Increased duty penalizes both manufacturers and consumers of this country. In most cases it is a tax on the sick.

EARTHS, EARTHENWARE, AND GLASSWARE

UNITED STATES TARIFF SCHEDULE 2, PRINCIPAL ARTICLES IN WHICH JAPAN IS INTERESTED. EARTHENWARE, CHINA, AND PORCELAIN

Earthenware, decorated and undecorated

	Total	From Japan
The United States, import for 1927:		
Table wares	$5,589,793	$334,417
Others	1,783,679	367,209
Proposed duty (par. No. 211)	10 cents per dozen pieces and 45 per cent ad valorem for the undecorated; 10 cents per dozen pieces and 50 per cent ad valorem for the decorated.	
Present duty (par. No. 211)	45 per cent ad valorem for the undecorated; 50 per cent ad valorem for the decorated.	
Increased by	10 cents per dozen (i. e., equivalent to 45 per cent—70 per cent increase).	

Remarks.—Facts which might be considered in connection with the proposed specific duty in addition to the present ad valorem duty affecting earthenware imported from Japan.

1. Earthenware imported from Japan is dissimilar both in decoration and in use to wares produced in United States and is not in any way competitive with domestic pottery.

2. The wares produced in United States are such wares as are usually termed "table and kitchenware," such articles as are ordinarily used in preparation and service of food and beverages in the home and are decorated usually in simple patterns such as borders and spray in decalcomania work.

3. Those articles imported from Japan are chiefly decorative in character and used for ornamental purposes. In the small portion of importation that consists of articles similar in use to the domestic articles, it will be found that the decoration employed is more elaborate and results in landed cost in United States, based on the present ad valorem duty (act of 1922) of 50 per cent, so high that the serious price competition is eliminated.

This fact is made evident by reference to the statistics compiled by the United States Government for 1927 (1927 record is taken because no figures for domestic production for 1928 are available).

	Japan	Domestic production
Table and kitchen ware	$334,417	$31,692,083—1.05 per cent

In this connection it may be further stated that a considerable portion of the importation from Japan which has been classified as tableware and included in the above amount is really fancy articles such as salt and pepper shakers, condiment sets, etc., which are dissimilar to the United States products.

4. The proposed specific duty of 10 cents per dozen pieces in addition to the existing ad valorem duty would only result in prohibiting the import without benefiting the domestic producers, as this class of merchandise is not manufactured in the United States. The compound duty of 50 per cent ad valorem and 10 cents per dozen pieces will make equivalent ad valorem duty ranging from 95 per cent to 120 per cent.

China and porcelain, decorated and undecorated

(Table, toilet and kitchen wares)

	Total	From Japan
The United States import in 1927:		
Undecorated	359,670	82,336
Decorated	10,497,615	3,662,178
Proposed duty (par. No. 212)	10 cents per dozen and 60 per cent ad valorem for the undecorated; 10 cents per dozen and 70 per cent ad valorem for the decorated.	
Present duty (par. No. 212)	60 per cent ad valorem for the undecorated; 70 per cent ad valorem for the decorated.	
Increased by	10 cents per dozen (equivalent to 85 to 145 per cent increase).	

Remarks.—Facts which might be considered in connection with the proposed specific duty in addition to the present ad valorem duty affecting china or porcelain, imported from Japan.

1. There is practically no china or porcelain tableware made in United States of class or kind ordinarily used in the private home. The implied exception being bone china or Belleek ware made by Lenox (Inc.), Trenton, N. J., which is of such high price as to prohibit its use in the home of the masses. There are one or two others who are making china tableware in small quantities but whose main products are hotel and restaurant china, entirely different from the home use tablewares.

2. In determining the extent of the competition due to the importation of chinaware from Japan, careful consideration should be given to the proper segregation of the ware which has been classified as tableware for statistical purpose. In this general classification has been included a great variety of highly decorated fancy china articles of a class or kind not made in the United States at all, and not included within a term of tableware as used in preparation and service of food and beverage in private homes. While this can not accurately be determined, it is fair a estimate to say that it constitutes fully 50 per cent or more of the total value of import and over 60 per cent of the volume counting by dozens.

If these percentages are applied to the total importation of chinaware from Japan it will be found that the actual amount of tableware comparable in use to domestic earthen tableware (as practically no china tableware is made in United States) would not exceed $1,800,000 out of the gross total $3,662,176 (1927).

In as much as there is no chinaware produced in the United States for use in ordinary homes, imported chinaware is necessary to supply the needs of people who desire something better than the simple decorated earthenware and who can not afford to buy bone china or Belleek ware produced by Lenox (Inc.).

3. Price competition. The present rate of 70 per cent (act of 1922) ad valorem makes a landed cost of Japanese china higher than the retail selling price of domestic earthen tableware. To increase the present rate of duty would only result in increasing the difference in the prices without any benefit to the domestic manufacturer but add burden on the purchasing public.

4. Effect of the proposed new rate of duty.—The proposed rate of 10 cents per dozen pieces in addition to the present 70 per cent ad valorem duty when applied to the smaller fancy articles erroneously tabulated as tableware, will increase the duty to an equivalent ad valorem ranging from 85 to 145 per cent. This would result in prohibiting the import for a large class of merchandise without any corresponding benefit to domestic industry as it is not produced in this country.

Coming now to its effect on tableware, which already has a higher landed cost than the selling price of domestic earthen tableware, the effect will be that the adding of 10 cents to every dozen pieces will mean, to the final consumer, through the retailer, by allowing for the usual profit for importers and retailers, a burden ranging from 20 to 24 cents per dozen.

AGRICULTURAL PRODUCTS AND PROVISIONS

UNITED STATES TARIFF SCHEDULE 7—PRINCIPAL ARTICLES IN WHICH JAPAN IS INTERESTED

Canned crabmeat

	Total	From Japan
The United States, import in 1927	$3,784,233	$3,703,158
Proposed duty (par. No. 721)	15 per cent ad valorem.	
Present tariff (par. No. 721)	15 per cent ad valorem.	

Remarks.—There is practically no crab meat canning industry to protect in the United States, and Japanese canned crab meat is not competing with American crab meat or other marine products. Moreover, the importation of foreign crab meat helps to conserve the supply of American crabs, which has been declining rapidly in past years.

An import duty on crab meat only increases the cost to American consumers, particularly in rural districts where wholesome sea foods are required at moderate cost.

The Japanese crab meat is wholesome, palatable, contains more albumen and is richer in nourishment, even compared with beef or pork. Furthermore, it is authoritatively stated that because of its high percentage of iodine contents the Japanese crab meat has a therapeutic value in cases of goiter, which disease is prevalent in localities where water and chief foods are deficient in iodine contents. In the interest of public health the use of Japanese crab meat might therefore be encouraged by placing it on the free list. It is an interesting fact that Japanese canned crab meat industry purchases all its machineries and tinplate from the United States.

Clams, canned

The United States, import in 1927:

	Total	From Japan
Pounds	1,171,400	Estimated pounds, 300,000
Approximate	$299,500	$150,000
Proposed duty (par. No. 721)	35 per cent ad valorem.	
Present duty (par. No. 1662)	Free.	
Increased by	35 per cent.	

Remarks—Specimens of Japanese clams.—These clams are entirely different from the domestic and are classified as follows:

(*a*) Hokki: About one-third of the importation of Japanese clams are Hokki, same being consumed among the Japanese population of Hawaii and at the Pacific coast due to its peculiar taste. There is no competition whatever with domestic clams.

(*b*) Hamaguri and Asari: These are consumed largely by the American people, but are rather different from the domestic variety.

Domestic supply of clams.—The supply of domestic clams is getting rather limited. It is reported that the clam beds in California are long exhausted and there is the same possibility for the other States. Unless domestic supply is supplemented by importation, the American beaches may soon be incapable of meeting the future demands of the public.

Food value.—Clams are one of the most valuable foods for human consumption because of the large percentage of iodine contained. Especially in the Middle West where there is a shortage of iodine in the water, canned clams are an important food item and within the means of the minimum wage earner. The Japanese canned clams are very sanitary, being packed by fine, up-to-date canning machinery (imported from the United States together with tinplate for the cans), under the strict inspection of the Government.

Since such shell foods as lobster, shrimp, oysters, etc., are on the free list, it would appear logical to leave clams in that same list.

Lily bulbs

	Total	From Japan
The United States import in 1927 (including tulip and narcissus)	$4,969,743	$755,415
Proposed duty (par. No. 751)	$6 per 1,000.	
Present duty (par. No. 751)	$2 per 1,000.	
Increased by	$4 per 1,000 (i. e. 200 per cent increase).	

Remarks.—Lily bulbs growing is peculiarily fitted to the Japanese on account of their horticultural skill and the mild climate of Japan. The Society of American Florists and Ornamental Horticulturists and the American Seed Trade Association, in order to serve the American public's interests, are understood to desire importation from Japan of lily bulbs which can not be commercially produced in the United States. They insist there should be no change in duty on such bulbs; while they think a change in duty on cut flowers may be desirable. For, if the United States discourage the importation of bulbs by raising duty, the neighboring countries advantageously importing the Japanese lily bulbs would produce cut flowers, and would destroy American horticultural industry in general.

Mushrooms

	Total	From Japan
The United States import in 1927	$2,034,678	$236,705
Proposed duty (par. No. 766)	60 per cent ad valorem.	
Present duty (par. No. 766)	45 per cent ad valorem.	
Increased by	15 per cent ad valorem.	

Remarks.—Japanese mushrooms are dried "Shiitake," a species altogether different from other mushrooms sold in the American market, and not produced in the United States. Their high nutritious value is specially noted by the discovery of Doctor Shiomi, of Japan, recently confirmed by Doctor McCollum of Johns Hopkins University, that they are rich in characteristic contents of erigosterol to produce vitamin D, an efficacious preventive of rickets. This fact will invite an increasing American demand of this important food for the prevention of the widely prevailing suffering from the disease in this country, though it has heretofore been primarily used only for special cuisine for the oriental populace. Moreover, as they are imported in a dried state, and not competitive with other fresh mushrooms, the duty on the dried mushrooms might reasonably be expected to be kept at the present rate or less for reasons of public health.

Dried beans

	Total	From Japan
The United States import in 1927	$3,009,973	$862,443
Proposed duty (par. No. 763)	2½ cents per pound.	
Present duty (par. No. 763)	1¾ cents per pound.	
Increased by	43 per cent.	

Remarks.—Japanese dried beans are of species not grown in the United States. They are, as are other imported beans, rich in protein and carbohydrates and form an inexpensive substitute for milk and meat. They are, therefore, consumed principally by the industrial workers and people of limited means. The total amount of imported beans retained for domestic consumption is insignificant when compared to the average production of dried, edible beans in the United States, because most of the imported dried beans are reexported to the West Indies and Central and South American countries as canned beans, which give a profitable industry to this country as well. Therefore it would be reasonable to lower rather than to raise the duty.

Dried peas

	Total	From Japan
The United States import in 1927	$818,050	$65,284
Proposed duty (par. 767)	1¾ cents per pound.	
Present duty (par. 767)	1 cent per pound.	
Increased by	75 per cent.	

Remarks.—Dried peas are nutritious food and are consumed by the industrial workers or the people of moderate means for inexpensiveness in getting a great victual value through them. This case is similar to that of dried beans.

COTTON MANUFACTURES

UNITED STATES TARIFF SCHEDULE 9—PRINCIPAL ARTICLES IN WHICH JAPAN IS INTERESTED

Cotton floor coverings

	Total	From Japan
The United States import in 1927	$1,027,391	$667,672
Proposed duty (par. No. 921)	55 per cent ad valorem for rag rugs commonly known as "hit and miss"; 45 per cent ad valorem for chenille rugs; 35 per cent ad valorem for all other cotton floor coverings.	
Present duty (par. No. 1022)	35 per cent ad valorem.	
Increased by	20 per cent on rag rugs commonly known as "hit and miss"; 10 per cent on chenille rugs.	

Remarks.—Rag rugs, commonly known as "hit and miss," and chenille rugs are both special products of Japan. They have been singled out for advance, while other cotton floor coverings remain at 35 per cent ad valorem. It would appear logical that they receive the same treatment as other floor coverings.

SILK AND SILK GOODS

UNITED STATES TARIFF SCHEDULE 12—PRINCIPAL ARTICLES IN WHICH JAPAN IS INTERESTED

Broad silks

	Total	From Japan
The United States import in 1927	$17,861,546	$7,855,792
Proposed duty (par. No. 1205)	55 per cent ad valorem.	
Present duty (par. No. 1205)	55 per cent ad valorem.	

Remarks. Facts which might be considered in connection with the movement for increasing the rate of duty on broad silks:

1. Silk fabrics imported from Japan consist of only such goods that are peculiarly fit to the Japanese weavers, looms, and the climatic conditions of the country, but are not well adaptable to the American manufacturing conditions and in no way compete with the domestic silk fabric.

2. Japanese habutai silk and pongee are popular among the consuming public of moderate means, particularly rural populations, for their practical uses, and habutais are required and preferred by numerous American industries on account of their charactistic constructions and nature.

3. The effect of the tariff act of 1922 has been such as to drive more than 65 per cent of importers out of business and to reduce the proportion of goods imported from Japan to the present level of about 1½ per cent of the total production of broad silks in America. The following statistics show the comparison in value of total importation of Japanese silks into the United States during the 10 years from 1918, with the total production of broad silks in America:

Year	Japanese imports	American production	Percentage	Year	Japanese imports	American production	Percentage
1918	[1] $10,896,720			1923	$12,026,765	$450,082,819	2.6
1919	26,012,691	$391,735,902	6.6	1924	8,450,120		
1920	28,050,665			1925	7,637,593	529,121,011	1.4
1921	17,987,083	341,056,757	5.2	1926	10,028,935		
1922	13,522,550			1927	7,855,792	485,615,404	1.6

[1] U. S. currency.

4. The tariff now in force has already proved to be high enough, while the suggested specific duty by some of the domestic manufacturers, if adopted, would establish a rate entirely inproportionate to the value of goods and would forbid their popular consumption.

5. It is reported that the American silk industry has been suffering from overproduction. It appears that less prosperous conditions of the domestic silk

industry is accountable much more for by overproduction and less efficient management in some cases, then the competition with the imported goods which were merely 4½ per cent of the domestic production in 1925 and may be less in later years.

Silk wearing apparel

	Total	From Japan
The United States import in 1927	$3,789,988	$572,187
Proposed duty (par. No. 1210)	65 per cent ad valorem.	
Present duty (par. No. 1210)	60 per cent ad valorem.	
Increased by	5 per cent.	

Remarks.—Imported silk-wearing apparel, being mostly of foreign originality, hardly reproducable in a true sense, is not competitive with American-made clothing. "Japanese coolie coats," in particular, are the products of Japanese craft and there is no industry of this kind in the United States requiring protection. The prevailing rate of duty is believed to be high enough.

SUNDRIES—TARIFF SCHEDULE 15—PRINCIPAL ARTICLES IN WHICH JAPAN IS INTERESTED

IMITATION PEARL

The United States import in 1927: Total, $2,086,684; from Japan, $1,179,526.
Proposed duty (par. No. 1503):
(*a*) For imitation solid pearl beads valued at not more than 5 cents per inch, 2 cents per inch and 20 per cent ad valorem.
(*b*) For valued at more than 5 cents per inch, 60 per cent ad valorem.
(*c*) For iridescent imitation solid pearl beads, valued at not more than 10 cents per inch, 4 cents per inch and 40 per cent ad valorem.
(*d*) For valued at more than 10 cents per inch, 60 per cent ad valorem.
(*e*) For beads composed in chief value of synthetic phenolic resin, 75 per cent ad valorem.
Present duty (par. No. 1403): 60 per cent ad valorem.
Increased by an equivalent of 85 to 105 per cent.
Remarks.—Japanese imitation pearls are chiefly for children and the poorer class of people. They are imported loosely strung and are clasped in America. Some of them are reworked in this country for export. About 5,000 people are engaged in this work around New York. The proposed specific duty will be a severe blow to the trade, especially in cheap grade. For example, the proposed duty on (*a*) imitation solid pearl beads valued at not more than 5 cents per inch, of 2 cents per inch and 20 per cent ad valorem would be equivalent to 145–165 per cent ad valorem. About 80 per cent of the imports from Japan would be affected thereby. The remaining 20 per cent of the import from Japan would be levied under the item marked (*c*) for iridescent imitation solid pearl beads, valued at not more than 10 cents per inch, at the proposed rate of 4 cents per inch and 40 per cent ad valorem which, would be practically equivalent to 85–120 per cent ad valorem duty. These examples will serve not only to show how the proposed advance will in effect work to the disadvantage of Japanese products, but also to indicate that it will destroy the popular American chain-store business in such goods. The proposed specific duty of 2 cents per inch itself will cost 30 cents for duty alone on lower grade beads of 15 inches. This proposed specific duty will drive Japanese manufacturing concerns out of existence, besides placing the numerous American chain stores in a position where it is no longer profitable for them to handle this business.

MATERIALS FOR HATS

The United States import in 1927: Total, $4,830,321; from Japan, $1,823,143.
Proposed duty (par. No. 1505 a):
For the materials not bleached, dyed, colored, or stained, 15 per cent ad valorem.
For the materials bleached, dyed, colored, or stained, 25 per cent ad valorem.
Present duty (par. No. 1406):
For the materials not bleached, etc., 15 per cent ad valorem.
For the materials bleached, etc., 20 per cent ad valorem.
Increased by no change for the materials not bleached, etc; 5 per cent on the materials bleached, etc.

Remarks.—According to available information these raw materials for hats are not produced in the United States. The kind of straw needed for this purpose does not grow in the United States owing to climatic conditions. Nor are there experienced workers for the curling in the manner demanded by fashion.

Hats, bonnets and hoods of straw, chip, grass, palm leaf, etc.

The United States import in 1927:	
Total not blocked or trimmed	$4,004,738
Blocked or trimmed	2,017,158
From Japan not blocked or trimmed	685,496
Blocked or trimmed	986,103

Proposed duty (par. No. 1505 (b)):

(1) 25 per cent ad valorem for not blocked or trimmed and not bleached, dyed, colored or stained.
(2) 25 cents per dozen and 25 per cent ad valorem for not blocked or trimmed if bleached, dyed, colored or stained.
(3) $4 per dozen and 50 per cent ad valorem for blocked or trimmed.
(4) $4 per dozen and 60 per cent ad valorem if sewed.
(5) 25 per cent ad valorem for any of the foregoing known as harvest hats, valued at less than $3 per dozen.

Present duty (par. 1406): 35 per cent ad valorem for not blocked or trimmed; 50 per cent ad valorem for blocked or trimmed; 25 per cent ad valorem for straw hats known as harvest hats, valued at less than $3 per dozen; 60 per cent ad valorem for all other hats, composed wholly or in chief value of any of the foregoing materials, whether wholly or partly manufactured, not blocked or blocked, not trimmed or trimmed, sewed.

Increased by $4 per dozen on the blocked or trimmed; $4 per dozen on the sewed (i. e. an equivalent of 160–200 per cent increase).

Remarks: Japanese straw hats are imported into this country for the popular demands of the public of smaller means. Japan can produce them more efficiently owing to the geographic advantage in growing the raw materials. They are entirely different from the American products in quality and not competitive. Most of the imports from Japan are to be classified under the item (3) or (4) and the proposed specific duty on both items would result in an increase equivalent to 160–200 per cent ad valorem.

Dolls and toys of celluloid

	Total	From Japan
The United States import in 1927:		
All kinds of dolls	$999,412	$122,577
All kinds of toys	3,598,258	220,633

Proposed duty (par. No. 1513).. For those having any movable member or part: 1 cent each and 60 per cent ad valorem.
For those not having any movable member or part: 1 cent each and 50 per cent ad valorem.
For parts of dolls and toys of celluloid: 1 cent each and 50 per cent ad valorem.

Present duty (par. No. 31)..... 60 per cent ad valorem.

Increased by an equivalent of 100 per cent at least on dolls, and more than 730 per cent in an extreme case on celluloid pins.

Remarks.—Japanese celluloid dolls and toys are made more economically by reason of local convenience in acquiring raw materials and they are mostly retailed in 5-and-10-cent trade in this country. Because of the smallness of margin, the proposed specific duty would remove these articles from such counters.

It appears reasonable that dolls and toys of celluloid be classified under the general item of dolls or toys at the rate of 7 per cent ad valorem without addition of specific duty.

Tooth brushes

	Total	From Japan
The United States import in 1927	$325,151	$248,373

Proposed duty (par. No. 1506)....2 cents each and 50 per cent ad valorem on tooth brushes of celluloid handles or backs (i. e. equivalent to 125 per cent ad valorem).
1 cent each and 50 per cent ad valorem on celluloid handles or backs for tooth brushes (i. e. equivalent to 106 per cent ad valorem).

Present duty (par. No. 31).....60 per cent ad valorem.

Increased by an equivalent of 65 per cent on celluloid brushes; an equivalent of 46 per cent on celluloid handles.

Remarks.—These brushes are of cheap grade and sold largely in chain and drug stores. The proposed specific duty will result in driving them entirely out of 10-cent range, particularly out of reach of children who are great users of inexpensive Japanese tooth brushes. The tooth brushes of celluloid handles or backs might reasonably be classified together with other tooth brushes at the the rate of 50 per cent ad valorem, without addition of specific duty.

Cotton wiping rag

	Total	From Japan
The United States, import in 1927	$1,622,722	$412,260
Proposed duty (par. No. 1555)	2 cents per pound.	
Present duty (par. No. 1550)	Free.	

Increased by 2 cents per pound, or equavalent to 33 per cent ad valorem.

Remarks.—These are cotton wastes used as wipers of all kinds of machinery and are of considerable importance to all engineering industries. The American production is insufficient to meet the demands. Therefore it would seem to be reasonable that they be kept on the free list, together with other cotton wastes.

MEXICO

DEPARTMENT OF STATE,
Washington, July 1, 1929.

Hon. REED SMOOT,
Chairman, Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, I have the honor to inclose for your information a copy, in translation, of a note from the chargé d'affaires ad interim of Mexico, concerning the proposed changes in the tariff and the effect thereof on certain Mexican agricultural products.

I have the honor to be, sir,
Your obedient servant.

H. L. STIMSON.

[Translation]

EMBASSY OF MEXICO,
Washington, D. C., June 20, 1929.

Hon. HENRY L. STIMSON,
Secretary of State, Washington, D. C.

Mr. SECRETARY: I have the honor to advise your excellency that my government is aware of the proposed law now awaiting the approval of the Congress of the United States, the object of which is to modify existing duties by increasing, among others, the import duties on cattle and certain specified agricultural products such as tomatoes, rice, chicory, and other vegetables.

As your excellency knows, in the commercial relations between the United States and Mexico, my country, figures prominently as an exporter of live cattle and the said agricultural products, occupying in so far as tomatoes are concerned first place as exporter of this product to the United States.

My government is of the opinion that the tariff duties which it is desired to place on the said agricultural products as well as on cattle

are of a prohibitive character, and should they become effective, will practically prevent the Mexican exportation of these commodities.

Furthermore, rendering difficult the exportation of the said commodities will have an untoward effect upon the Mexican national economic situation and, as a result, the purchasing power of Mexico as an importing country will be reduced greatly to the disadvantage of the export trade of the United States, since the large market which Mexico offers for the manufactured products of that country will be without any doubt greatly restricted. It is not inopportune to mention in this connection that according to export statistics of the United States, Mexico occupies third place among the countries of Latin America.

In accordance with instructions which I have received from my Government, I have the honor to appeal to your excellency, requesting your valuable aid to the end that the proposed increases in tariff will not affect the aforementioned Mexican export products. My Government will greatly appreciate the good offices of your excellency since should the proposed increases become effective, commerce between the two countries will suffer to a notable degree.

Accept, excellency, etc.,

P. CAMPOS ORTÍZ,
Chargé d'Affaires ad interim.

JULY 1, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, I have the honor to inclose for your information a copy, in translation, of a note from the Chargé d'Affaires ad interim of Mexico, concerning the proposed changes in the tariff and the effect thereof on certain Mexican agricultural products.

I have the honor to be, sir,
Your obedient servant,

H. L. STIMSON.

THE NETHERLANDS

DEPARTMENT OF STATE,
Washington, June 19, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, I have the honor to inclose for your information a copy of a note from the Netherland Legation, dated June 12, 1929, with inclosures thereto, regarding the possible effect which the new tariff bill may have upon Dutch-American trade relations.

I have the honor to be, sir,
You obedient servant,

J. REUBEN CLARK, Jr.,
Acting Secretary of State.

ROYAL NETHERLAND LEGATION,
Washington, D. C., June 12, 1929.

It was brought to the attention of Her Majesty's Government, that a new tariff bill, known as H. R. 2667, providing a revision of many rates in the tariff act of 1922, has been passed by the House of Representatives of the United States, introduced in the United States Senate and referred to its Committee on Finance.

Interested firms, trade associations, chambers of commerce have remarked that these new rates, if enacted, will hamper considerably the mutual trade relations between our two countries. That these relations are even more important to the American farms, factories, and mines than to the Netherland producers, is clearly shown by the fact that the "imports for consumption from the United States" into the Netherlands are nearly four times as high as the domestic exports from the Netherlands to the United States. On pages 458 and 459 of Commerce Yearbook, 1928, published by the United States Department of Commerce, statistical information is given with regard to the trade between the United States and the Netherlands.

From this tabulation it appears that imports for consumption from the United States during the years 1924–1927 inclusive had an average value of $106,345,000 per year, whereas the domestic exports from The Netherlands to the United States during the same period averaged $27,210,000 per year.

The American exports to The Netherlands consist largely of agricultural products, the majority of which are not subject to any duty whatever upon importation in The Netherlands. More than 60 per cent of the import value of American products enters free in The Netherlands, and the remainder is imposed with flat rates of 5 or 8 per cent ad valorem, respecticely, for semimanufactured products and manufactures, while on automobiles a duty is levied of 12 per cent ad valorem.

Under the tariff act of 1922 from 75 to 80 per cent of the value of domestic exports from The Netherlands to the United States are dutiable. This proportion will further be increased materially whenever hides and leather are taken from the free list, as is proposed in H. R. 2667, passed by the House of Representatives. Because of the fact that the rates in the American tariff act are partly specific, partly ad valorem, it is rather difficult to compute the average ad valorem duty on the imports.

However, experts of the United States Tariff Commission have computed the equivalent ad valorem rate on all imports for consumption, for several years, which computation is printed in the Congressional Record of May 24, 1929, pages 1901 and 1902.

It appears that the equivalent ad valorem rates on dutiable articles imported for consumption in the United States, during the years 1923–1928, inclusive, i. e., under the present tariff act of 1922, amounted to an average of 37.84 per cent. Under the tariff bill (H. R. 2667), as it passed the House of Representatives, these rates will still be increased.

So it will be found that on the one side relatively large exports take place of American products to the Netherlands with none or very low duties upon these articles, and on the other hand relatively small

exports of Netherland products to the United States with generally high duties upon those commodities.

Taking in account these facts, it will be easily understood that the American farmers and manufacturers have even a greater interest in maintaining and developing the trade relations between the United States and the Netherlands, than the Netherland producers.

In view of the importance of profitable trade relations between the two countries and wishing to promote the good will among nations in general and especially between the United States and Holland, the Royal Netherland Legation has the honor to recur to the kind intermediacy of the Department of State with the request to transmit the attached memoranda of N. V. Glasfabriek "Leerdam" and N. V. Kristalunie "Maastricht" of May 24, 1929, and N. V. de Groningsche Steenhandel of May 6, 1929, to the appropriate United States authorities.

The Royal Netherland Legation would feel greatly obliged if those authorities and especially the Senate Finance Committee would give to said memoranda all the attention the important subjects they refer to seem to deserve.

NOTE CONCERNING THE REVISION OF THE TARIFFS OF IMPORT-DUTIES OF THE UNITED STATES OF AMERICA

GENTLEMEN: We are doing business with clients in the United States of America for a long series of years and we had the experience that our products found their way into that country. Our clients were always highly satisfied with our shapes as well as with quality and finish and we therefore were of opinion that our deliveries to the United States of America supplied a want.

The proposed revision of the tariffs, however, which is also to include our table glassware, will in all probability make it very difficult for the American buyers to continue obtaining our articles.

As our products in general can be said to be much neater and as regards shape differ absolutely from the American manufacture, we beg to say that we don't think it desirable to increase the import duties on these products in such a way that they will become too dear for consumption in the United States of America.

There being great differences between the greater part of our glassware, as far as it is exported to the United States of America and the American home product, we may state that our products do not compete with the American home industry. And even if the cost of production of these articles in Holland should be somewhat less than the cost of production of similar articles in America, one must not forget that the American buyers have to pay in addition a rather high percentage for freight, so that the price delivered free on quay American harbour will on no account be less than the price for such articles, when they have been manufactured in the United States of America.

In connection with this we venture to insist energetically upon it that the tariffs for the said table glass will not be increased.

Trusting that you will comply with our request, we remain, gentlemen,

Yours faithfully,

N. V. GLASFABRIEK LEERDAM,
V. H. JEEKEL MIJNSSEN & CO.,
President Directeur.
N. V. KRISTALUNIE, *Maastricht.*

GRONINGEN, *May 6, 1929.*

To the Government of the United States of America, Washington.

DEAR SIRS: The undersigned, the N. V. de Groningsche Steenhandel, Groningen, Holland, representing the entire brick industry in the north of the Netherlands, beg to state:

That they import to the city of New York a small quantity of face bricks (about 5,000,000 or 6,000,000 a year) which quantity compared with the absorptive capacity of this city (about 1,000,000,000 a year) is in fact so small as to be

absolutely insignificant, whilst the entire importation has a worth of only about $150,000 a year.

That in the tariff readjustment 1929, "Hearings before the Committee on Ways and Means, House of Representatives, Schedule 2 and Schedule 15" arguments were mentioned which do not apply at all to Dutch face bricks,

That petitioners take the liberty of drawing your attention to these inaccuracies and refer to: Schedule 2, pages 692, 693, and 695, on which these erroneous statements are to be found. The wages paid on an average in Holland are $2.50 to $3.00 per day and the work time in Holland is 50 hours a week for the brickyards and in the United States of America 54 hours a week. The selling price for the face bricks sent by the undersigned to America is $11 per 1,000 at the factory. We have to add for selling expenses and carriage as follows: $1 freight to the Dutch port of Delfzyl, $7 freight from Delfzyl to New York, $1 warehousing in New York, and $4 selling expenses in New York, so that $24 per 1,000 is our cheapest price for delivery from the brickyard in New York.

The freight of $7 per 1,000 is the lowest freight rate ever paid for Groningen bricks, so that these bricks can not be imported as "ballast." (See Mr. Dickinson's question.)

Instead of being cheaper, Dutch bricks are dearer in New York than the American make, whilst the former are not so well-finished as the American ones.

That the undersigned are nevertheless able to export the bricks to New York, is due to the better quality. In order to prove this, official documents of the Columbia University, which tested the Groningen bricks at the request of the New York building policy, are available.

That the undersigned beg to refer to the aforesaid Schedule 15, pages 7469, 7470, and 7471. The assertion of Mr. Murphy that 50,000,000 tons of coal are required to burn 100,000,000 bricks must be an error; Mr. Murphy means 50,000 tons, that is, one thousand times fewer. Moreover the exportation of bricks to the interior, for example, Chicago, is quite out of the question on account of the high carriage. It is only possible to export bricks to New York, which will be clear if you take into consideration that from the price of $24 per 1,000 (in New York) $9 must be deducted on account of the freights; how would this be in Chicago?

That generally the objections to the importation of bricks refer to the importation of Belgian bricks and not to Dutch bricks.

That petitioners fear that you are confounding these two kinds of bricks.

That they believe that they have demonstrated that the importation of Dutch bricks is of no importance for the New York market, and that this importation does not in any case spoil the prices and that the undersigned therefore take the liberty of urging that no import duties be levied on Dutch face bricks.

Yours faithfully,

N. V. DE GRONINGSCHE STEENHANDEL.

DEPARTMENT OF STATE,
Washington, June 27, 1929.

Hon. REED SMOOT,
Chairman Committee on Finance, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign Governments to this Government touching tariff questions, I have the honor to inclose for your information copies of memoranda from the Netherlands Legation regarding the pending revision of the tariff bill and its possible effect on various products of the Netherlands entering the United States.

I have the honor to be, sir,
Your obedient servant,

H. L. STIMSON.

63310—29—VOL 18, F C——10

Referring to its note of June 12, 1929, No. 2134, the Royal Netherland Legation has the honor to submit to the kind consideration of the Department of State the following wishes of interested Dutch subjects, with regard to the pending tariff revisions. The bill, H. R. 2667, as passed by the House of Representatives, and as referred to the Committee on Finance of the United States Senate, provides for an increase in the duty on tulip bulbs from $2 per 1,000 to $6 per 1,000 (tariff act, par. 751).

This increase of 200 per cent, if enacted, is felt by the bulb growers and bulb exporters in the Netherlands as very detrimental to the exportation of tulip bulbs to the United States; this increase is looked upon by the above-mentioned interested producers and exporters as a special hardship imposed on the Netherland industry, because this commodity is practically only imported from the Netherlands.

The Royal Netherland Legation has the honor to inclose herewith a brief, drawn up at the request of the national organizations of bulb growers and bulb exporters in the Netherlands, stating their wishes with regard to a reconsideration, if possible, of the tariff rates on tulip bulbs.

The Royal Netherland Legation has the honor to recur to the kind intermediacy of the Department of State in order to transmit the inclosed brief to the appropriate United States authorities and to recommend it to their kind consideration, especially to the attention of the Senate Finance Committee.

WASHINGTON, D. C., *June 13, 1929.*

A BRIEF DRAWN UP AT THE REQUEST OF THE NATIONAL ORGANIZATIONS OF BULB GROWERS AND BULB EXPORTERS IN THE NETHERLANDS

Flower bulbs are one of the most important items among the commodities exported from the Netherlands to the United States. In 1928 the value of the bulbs exported from the Netherlands to the United States amounted to $3,500,000, which seems to be comparatively modest in relation to American imports but which is in fact of great importance when we consider that the total value of domestic exports from Holland to the United States amounts to about $27,000,000.

On account of sanitary embargoes and restrictions, importation of bulbs is already greatly handicapped; an increase of the duty on tulips from $2 to $6 per 1,000, provided in the House bill (H. R. 2667) would undoubtedly be very harmful to the bulb trade between the United States and the Netherlands, because tulips are by far the most important and most popular bulb species now being shipped to this country. It may be added that practically all the tulips imported in the United States come from the Netherlands.

It is common knowledge that in the Netherlands good land, suitable for bulb growing, is sold at very high prices. Land values are as high as $4,000 per acre. On this land more bulbs can be grown per acre than in the United States where on account of scarcity of labor a grower has to rely more or less on machinery and therefore rows of bulbs have to be plated wide apart. In the Netherlands, where almost all work is done by hand, the costs per acre are much higher, but so is the yield. The expenses per acre of tulips are approximately $700, and with a normal crop the yield of salable bulbs is 60,000 to 65,000.

Comparing the factors which enter in the costs of production, it is obvious that a duty of $2 per 1,000, as provided in the tariff act of 1922 is high enough to protect the American grower.

We feel over here strangely surprised that, considering the fact that in the United States so much is done through conferences and institutions to promote good understanding among nations for the benefit of international trade and commerce the duty on tulips, known all over the world as the most typical and popular product of the Netherlands, will be increased three times. Such a considerable increase creates the impression that practical exclusion of our bulbs from the American market is aimed at.

High rates on tulips will work a hardship on the American flower-loving public, on the American florist, who use millions of bulbs annually as raw material in the forcing industry, and on the Netherland growers, whereas American agriculture will not receive any appreciable relief from such protection.

Therefore, the Netherland growers and exporters of tulip bulbs beg to request the appropriate United States authorities to reconsider, if possible, the tariff rates on flower bulbs, especially on tulip bulbs, as written in paragraph 751 of the House bill (H. R. 2667), in order that this very important trade between the Netherlands and the United States will not be destroyed.

ROYAL NETHERLAND LEGATION,
Washington, D. C., June 14, 1929.

Referring to its note of June 12, 1929, No. 2134, the Royal Netherland Legation has the honor to recur to the kind intermediacy of the State Department in order to transmit the attached memorandum of the Vereeniging van Nederlandsche Oliefabrikanten (Association of Netherland Oil Crushers) with regard to the pending revision of the tariff act of 1922, to the appropriate United States authorities.

The legation would feel greatly obliged if these authorities, especially the Senate Finance Committee, would give to said memorandum all the attention it seems to deserve.

HAARLEM, *May 23, 1929.*

To the competent authorities of the United States of America, Washington.

DEAR SIRS: The undersigned, the Association of Dutch Seedcrushers, representing the whole of the linseed crushing industry of Holland, beg leave in connection with the proposed alteration of the tariffs, also for linseed oil, to bring the following before the notice of your Government.

The linseed-oil industry, in the United States as well as in Holland, crushes linseed, from which are obtained as products, linseed oil and linseed cake. The crusher in the United States has the advantage of being able to get a considerable part of his raw material from his own country, the Dutch crusher has to import nearly all linseed from the Argentine, from which country also America completes its requirements. The American industry is able to put off the linseed oil in its own country and exports 40 per cent of its linseed cakes, principally to Holland. On the contrary the Dutch crusher puts his cakes off in Holland and exports 70 per cent of his linseed oil.

The conversion cost of linseed in both countries does not show any difference worth mentioning. According to the report of the United States Tariff Commission of November, 1928, it amounted in 1926 for the United States of America to $6.65 per 2,000 pounds, and for Holland to $6.64. On the basis of these data the conclusion is allowed to be drawn that a protection of the American linseed-oil producer on the ground of higher conversion cost, can not be motivated.

It could be asked whether apart from that, there are circumstances which bring the American crusher in a less favorable position as compared with his Dutch colleague. This question is answered sharpest when ascertaining how is the position of both producers when delivering linseed oil in the United States (the cakes being sold by both in Holland and the raw material equally being imported from the Argentine). It may be taken for granted that they are able to buy their seed at the same price, which we shall fix at $X per short ton of 2,000 pounds, a price which has to be increased for America by the duty on seed on the basis o the new tariff of 56 cents per bushel, i. e., $20—and lowered by the drawback when exporting the cakes of one-fourth of $20—is $5. Consequently the linseed price in the United States of America is $X+$15. From this short ton are produced 650 pounds linseed oil and 1,350 pounds cake. The proceeds of that cake in Holland we shall fix in both cases at $Y. However the crusher in America has to pay the expenses of shipping the cake oversea, which according to the report of the United States Tariff Commission dated February 2, 1924, page 49 amount to $5.50 per ton or $3.71 per 1,350 pounds. On the contrary the Dutch crusher has to pay freight on linseed oil; according to the same report (page 36) this freight amounts to 8.667 cents per gallon, or $7.52 per 650 pounds.

Consequently these 650 pounds linseed oil crushed out of one short ton and delivered in the United States cost the American crusher the following:

Cost of linseed+conversion cost—proceeds of cakes in Holland+shipping expenses of the cakes, or expressed in figures:

$(X+15+6.25-Y+3.71)

or $(X-Y+25.36)

For the Dutch crusher these 650 pounds. oil cost:

Cost of linseed+conversion cost less the proceeds of the cakes+oil shipping expenses, or in figures:

$(X+6.64-Y+7.52)

or $(X-Y+14.16)

So there remains a difference in the favor of the Dutch crusher of $6.91 per 650 pounds. With an import duty of 1.73 cent per pounds, the basis of competition for both countries would be equalized. In fact the now existing duty is 3.3 cents per pound, consequently 1.57 per pound more, or $10.20 per 650 pounds. So the crusher in the United States of American has an advantage of $10.20 per short ton of linseed crushed.

In our calculation we have taken into account the now increased tariff on linseed. With the tariff of 40 cents per bushel which is still in force the advantage for the American manufacturer is still considerably higher, namely, $14.50 per short ton crushed.

In order to emphasize what an extraordinary large advantage the figure of $10.20 per short ton already means, we draw the attention to the fact that it is one and one-half times more than the total conversion cost and also that the most successful crusher would be extremely satisfied with a total profit of $2 per ton. The advantage which the American crusher is given by the tariff, consequently, is five times larger than the total profit of a well-paying factory.

The American crushers, where they believe to be able to motivate that the tariff on no account does mean a too high protection, in the first place refer to the much higher purchasing price of Argentine linseed. According to the report of November, 1928, this difference, as compared with Holland, in 1926 amounted even to $23.40 or deducting the import-duty, of $9.12 per ton. Yet even though it can be taken for granted that an industry enjoying a so excessive protection as the American linseed-oil industry, feels much less the necessity of buying at lowest possible prices than an industry like the Dutch, which is fighting for its existence under unfavorable circumstances, yet so large a difference in purchasing price is unaccountable. In that case the American crusher would have bought ne arly exclusively in periods of high prices, the Dutch manufacturer only in those of low prices. If—what the American crushers are arguing—it would be exact that the cause is to be found in the fact that the purchases of linseed oil are effected precisely in those periods, so that the crusher only then is able to cover his requirements of raw materials, it would follow also that the average price, which he makes for his oil, is considerably above the average market prices of linseed oil. Consequently the higher seed prices would be compensated completely by the higher oil prices.

Furthermore we beg to draw the attention to the fact that though theoreti cally the possibility can be admitted of so large differences in purchasing prices in a year of very considerable price fluctuations as was the case with 1926, even with the most unfavorable purchasing policy such a difference is not possible with more equal markets as at present.

The Dutch seed crushing industry has thought good to bring these facts before your notice. Even if it is the intention of your Government to grant the home industry such protection, that the importation of foreign linseed oil becomes practically impossible, an object which can be obtained by a much lower tariff, it seems to us not possible that a protection which goes so much farther should be the purpose of your Government. Seeing that the American crusher imports his linseed cakes in Holland free of duty and avails himself of this market for the greater part of the quantity available for export, the Dutch linseed oil industry believes to have the right to bring before the notice of your Government the fact that by means of the existing tariff, the American crushers are enjoying an entirely unjust protection and are competitors on the Dutch linseed cake market, which are strongly favored at the cost of the American linseed oil consumer.

We hope you will be so kind as to pay due attention to the above considerations and remain,

Yours truly,

VEREENIGING VAN NEDERLANDSCHE OLIEFABRIKANTEN

(Signatures illegible.)

ROYAL NETHERLAND LEGATION,
Washington, D. C., June 15, 1929.

Referring to its note of June 12, 1929, No. 2134, the Royal Netherland Legation has the honor to request the kind attention of the Department of State to the wishes, expressed by Netherland subjects, with regard to the pending tariff revision.

The manufacturers and exporters of strawboard in the Netherlands state that by change of the wording in paragraph 1402 (old 1302) of the tariff bill of 1929 the rate on strawboard, with a thickness of 0.009–0.010 inch, imported from the Netherlands for box-making purposes, will be increased from 10 to 30 per cent ad valorem.

In the above-mentioned paragraph it is provided that strawboard "less than twelve one-thousandths of 1 inch in thickness shall be deemed to be paper." In the tariff act of 1922 the demarcation line between strawboard and paper was 0.009 inch. In the report by the House Ways and Means Committee it is stated with regard to this change that this line of demarcation has been raised to conform more nearly to trade usage.

In the inclosed brief of Mr. Adrian Vuyck, representative of several Netherland strawboard manufacturers, it is when by a decision of the United States Court of Customs, that the trade term for board, made from straw pulp, which is 0.009 to 0.010 inch thick, is not strawpaper, but strawboard.

The Royal Netherland Legation has the honor to recur to the kind intermediacy of the State Department in order to transmit the inclosed brief of the Dutch Strawboard Mills Association and of Mr. Adrian Vuyck to the appropriate United States authorities.

The legation would feel greatly obliged if those authorities and especially the Senate Committee on Finance would give to these briefs all the attention they seem to deserve.

NEW YORK, N. Y., *May 22, 1929.*

SENATE FINANCE COMMITTEE,
Washington, D. C.

GENTLEMEN: We find that some of the assertions made in the statement of a witness, representing manufacturers of straw wrapping paper, offered before the Committee on Ways and Means and printed in the committee print of tariff readjustment, 1929, No. 31, February 13, 1929, pages 6155 and 6156, are erroneous or exaggerated, contradictory, and calculated to influence the committee to increase the duty on "$^{9}/_{1000}$ strawboard from 10 per cent ad valorem to 30 per cent ad valorem."

The stand taken by above witness is based on departmental instructions contained in T. D. 4224 and T. D. 46367.

In T. D. 4224 the collector of customs at the port of New York was advised that in the opinion of the department "sheets of straw are made from single layers of pulp made on the Fourdrinier machine and dutiable as wrapping paper or paper not specially provided for under paragraph 1309."

In T. D. 46367 the instructions were modified "that a sheet of straw pulp, even though a single layer and produced on the Fourdrinier machine, is commercially known in the United States as strawboard if exceeding $^{15}/_{1000}$ inch in thickness.

The stand on which above witness based his report was entirely upset in a decision rendered by the United States Customs Court, second division, before Justices Fischer, Waller, Tulson, April 25, 1929, in which it was held that $^{9}/_{1000}$-inch strawboard made directly from straw pulp and used chiefly if not exclusively in the manufacture of board containers is properly dutiable at but 10 per cent ad valorem under paragraph 1302 under the act of 1922 and not at the rate of 30 per cent ad valorem under paragraph 1309.

In the decision it was quoted that five of the plaintiff's seven witnesses testified that 9/1000-inch straw-board is uniformly recognized in the trade as strawboard; the remaining two witnesses, one a past and the other the present Government examiner of the merchandise, confining their testimony to showing a consistent classification of this merchandise for tariff purposes as strawboard, the former examiners' testimony covering a period of 25 years. In the decision is also mentioned that the Government witnesses testified that the term "straw paper" was more generally used but regarding this evidence the court states as follows: We specified that whatever probative force was attached to the oral testimony submitted by the Government was largely overcome by contradictory evidence contained in documentary proof in the form of contracts, catalogues, advertisements, etc., submitted by plaintiffs, particularly when such unsatisfactory oral proof is considered in connection with the fact that no attempt was made to show that the present merchandise would be excluded from the trade term "strawboard." On the record as a whole we found as facts:

1. That the merchandise consists of strawboard made directly from straw pulp.
2. That it measures 9/1000 inch in thickness.
3. That it is imported in rolls.
4. That it is chiefly if not exclusively used in making board containers.

The witness in presenting his statement, states that he represents manufacturers of straw wrapping paper on page 6155 of the above-named committee print.

However, in the third paragraph of page 6155, he states that "40 years ago this product was used as wrapping paper but during the next 10 years the industry was completely annihilated by wood-pulp papers." In other words, the witness states that they discontinued manufacturing straw wrapping paper. The witness further states in paragraph 3, page 6155 "that about 1900 the corrugated box was introduced which brought a new market for straw paper." This statement is incorrect as the material used in the manufacture of boxes has never been called straw paper between the period of 1900 to 1927 but has always been called strawboard, which was brought out in the testimony of the case before the customs court, where the Government could not substantiate with any satisfactory evidence that the material was known as straw paper during that period.

The witness further states, in paragraph 3, page 6155, "that the Holland manufacturers reported for duty purposes as strawboard in order to secure the 10 per cent duty rate on board. This was called before the attention of the Treasury Department and three years ago was corrected and classified as paper at 30 per cent duty rate." This statement of Mr. Carpenter's was made before the decision was rendered by the Customs Court and since the Customs Court contradicted the opinion of the Treasury Department, the statement of witness has become incorrect. His statement that three years ago the Treasury Department changed the duty rate was also erroneous, as T. D. 4224 was only issued May 19, 1927, and therefore one and three-fourths years ago at the time the witness made his statement. Moreover, the increased rate has only been paid under protest, and pending a decision by the Customs Court.

The witness further states on page 6155, third paragraph, "that there was between 10,000 to 15,000 tons imported in 1928." These figures are incorrect as according to statistics of the Netherlands Government; the tonnage exported during 1928 to the United States was 7,710 tons of strawboard. The witness continues: "This deprived the farmers of the sale of nearly 400,000 tons of straw valued at $350,000." This statement is exaggerated, as it takes 3 tons of straw to make 2 tons of strawboard, and therefore he should have said "This deprived the farmers of the sale of 10,280 tons of straw valued at less than $10,000.

On page 6155, fourth paragraph, the witness states that a ton of strawboard can be shipped to New York City for $3.75. This is incorrect as this rate only applied during the time of the rate war between the steamship companies during 1928, but now that conference rates apply, the rate is uniformly $4.85.

On page 6155, paragraph 7, above witness states that in Holland it costs to produce 1 ton of strawboard of 2,000 pounds approximately $29. To this add freight, 30 per cent duty, and insurance, which will make the cost approximately $43.50 per ton, f. o. b. New York, which is from $2 to $4 a ton under the domestic cost and delivery charges to New York City.

This statement is also erroneous as the above witness has figured the ocean freight too low by $1.10. He has also neglected to figure the inland freight from the mill to Rotterdam which is generally $2, and he has also overlooked to calculate the charge of $3 for trucking, a charge of $1 for financing, $3 to cover importer's expenses and profit and $4 for warehousing in order to give deliveries and service

equal to that of the association of witness, making a total of $14.10 which he has overlooked. All of this should have been figured in for the reason that members of the association of witness deliver strawboard to their customers sidings and bill them 30 days after arrival.

The entire statement of the witness has been prepared in such a way as to confuse straw wrapping paper and straw box board, although these are distinctly two different products used for two distinctly different purposes: (1) Straw wrapping paper being manufactured in thickness under 0.005 inch and being used for wrapping only; (2) strawboard being manufactured in caliper 0.009 inch and being used as box board only.

The fact should not be overlooked that even at the present time a mill in the Netherlands still makes both straw wrapping paper of which the greatest thickness is 0.005 inch, which is shipped to oriental markets, and strawboard especially made to be suitable for manufacturing boxes in a minimum caliper of 0.009 inch and a maximum caliper of 0.010 inch, no greater thickness being used for this purpose.

In his statement above witness has turned matters around entirely. Prior to 1927 the American manufacturers of 0.009-inch strawboard for making boxes had always called their material strawboard for corrugating and only during 1927 have some manufacturers started calling their product paper instead of board. It can not be denied, however, that this material is used not as a wrapper, but as a box board, to stiffen shipping containers, and is therefore 0.009-inch strawboard.

We also want to call your attention to the fact that duty of 30 per cent on 0.009-inch strawboard for box manufacturing is entirely out of line compared with import duties on other box board.

We refer you to paragraph 1413 of the tariff act of 1922 where test or container board of a bursting strength above 60 pounds per square inch by the Mullen or the Webb test are dutiable at 20 per cent ad valorum, which has been left unchanged by the Ways and Means Committee.

This product is a much more advanced type of box board and is more complicated to make than strawboard for corrugating. Strawboard for corrugating need not comply with any bursting tests and is made in a simpler way directly from the straw.

In view of the above, we urgently request that the dividing line between strawboard and straw paper be kept at 0.009 inch, this being the actual thinnest caliper in which strawboard for boxes is made in the Netherlands. To change the dividing line to 0.012 inch would mean that the standard article, strawboard, 0.009 to 0.010 inch for manufacturing boxes would be subject to an increase in duty from 10 per cent ad valorem to 30 per cent ad valorem, this being an increase in duty of 200 per cent.

Very truly,

ADRIAN VUYK.

SCHEDULE 3

PAPERS AND BOOKS

(No. 31, February 13, 1929; No. 32, February 14, 1929)

N. H. Carpenter, Coshocton, Ohio, representing manufacturers of straw wrapping paper, declares that the Dutch strawboard manufacturers report, merely for duty purposes, the thin strawboard—which is used by the corrugated box manufacturers, and which is demanded in the caliper of 0.009 inch—as "strawboard," in order to secure the 10 per cent duty rate on board (vide p. 6155, No. 31).

This is absolutely incorrect. The 0.009 inch strawboard (and certainly in America in the first place) has always been known as strawboard. It was called as such by all America strawboard manufactures. In proof hereof we have before us a booklet, titled "Gage List and Ream Weights" of the Box Board Manufacturers Association, Chicago, of June 1, 1920, which booklet states at first that, at that time, that association included 27 mills, whereas the last page of same indicates, under the heading "standard weight, thickness, etc., of corrugated strawboards," as caliper 0.008, 0.009, and 0.012 inch.

Only in 1927, when the American strawboard manufacturers urged a reclassification of the 0.009 inch strawboard, to the effect that this board should be considered to be paper, if it had been made on a Fourdrinier machine, which is fully contradictory to the provision of paragraph 1302 of the tariff act of 1922, these

people have tried for this purpose to have the name of paper adopted. This endeavor, however, has not been successful.

The American technical periodical, Paper Trade Journal, e. g., in its market reports, still regularly speaking of "strawboards rolls 0.009 inch." The periodical the Official Board Markets, Chicago, too makes mention of "strawboard 0.009 inch rolls" in its market quotations—at any rate until the end of 1927, and we have no reason to suppose that this will be otherwise now.

The tariff act of 1922, however, was clear enough as regards the question what was board and what paper, because paragraph 1302 of that act itself distinctly indicates, as the partition between paper and board, a thickness of 0.009 inch, i. e., anything that was thinner than 0.009 inch was considered to be paper. The 0.009 inch strawboard was consequently board, and was when being imported in accordance herewith always dutiable as board, at the rate of 10 per cent.

In 1927, the American strawboard manufacturers have succeeded in forming the idea with the American authorities that board of 0.009 inch and thicker made on a Fourdrinier machine was paper, and according hereto a Treasury decision, dated June 9, 1927, was issued stipulating in fact that all boards, of 0.009 inch and thicker, made on a Fourdrinier machine, were no boards but paper, and accordingly dutiable at the rate of 30 per cent.

The American strawboard manufacturers have insisted on this reclassification, as they evidently did not know any other way to carry through an increase of the import duty, and after they had beforehand officially (by the intermediary of the United States Treasury Department, customs, Paris) ascertained that in Holland the strawboard of 0.009 inch and thicker, too, was made on Fourdrinier machines.

The consequence of the aforesaid decision of June 9, 1927, was that even the thickest board manufactured on a Fourdrinier machine was still classified as paper.

This decision was altered in so far that it was provided by means of a new Treasury decision, dated September 12, 1927, that board made on a Fourdrinier machine of 0.015 inch and thicker would be considered to be board, and thinner than 0.015 inch to be paper.

This new limit had been taken entirely arbitrarily, and also fully in contradiction of the provision of paragraph 1302 of the tariff act again. It was in consequence hereof that the American and Dutch parties concerned have protested against this decision of September 12, 1927, and have brought about a test case in New York.

Now, the American strawboard manufacturers request to increase the dividing line between paper and board from 0.009 inch up to 0.012 inch.

Mr. Carpenter says (vide p. 6155, No. 31) that this is merely asked for the purpose that the Dutch strawboard manufacturers "can not take the position they attempted to recently, by calling their product 'board' instead of 'paper.'"

Mr. Henry D. Schmidt, York, Pa., representing the Paper Board Industries Association, says in connection with this point (vide p. 6114, No. 31):

"The Paper Board Industries Association is not requesting any increase in the tariff. They are only requesting a clarification of the phraseology of the section pertaining to paper board, so that it may be more readily understood by all," and further (vide p. 6117, No. 31), in reply to the question of Mr. Davenport, viz:

"In your request for raising the limit from 0.009 inch to 0.012 inch to make the distinction between that which shall be called paper and that which shall be called paper board, will that not add some additional protection?" the following:

"It was not intended to, sir, it was merely to make the phraseology of the act conform to the usual standards in the industry."

Both gentlemen, Mr. Carpenter as well as Mr. Schmidt, give an entirely wrong idea of the actual state of affairs. The usual standard in America has always been and is still that 0.009 inch strawboard is called board and not paper.

Though Mr. Schmidt says that the Paper Board Industries Association is not requesting any increase in the tariff, it is, nevertheless, remarkable that the transfer of the dividing line between paper and board from 0.009 inch to 0.012 inch exactly for the 0.0009 inch strawboards means an increase in the duty from 10 per cent up to 30 per cent ad valorem, a result, which the American manufacturers had succeeded to obtain already by the reclassification by tariff decision of 0.009 inch strawboard in 1927.

We, therefore, can not help thinking that the request of the American manufacturers to change the dividing line from 0.009 inch into 0.012 inch has much to do with the raise in the duty on the 0.009 inch strawboards as a result of such a change.

Anyhow, we must strongly object to the proposed change and insist on strawboards of 0.009 inch and thicker being deemed boards, thus leaving the dividing line as per paragraph 1302 of the tariff act of 1922.

This provision fully answers the existing situation, because, as we have remarked already, the strawboard 0.009 inch has, in America, always been known as strawboard.

In the meantime it appears to us that the American Paper and Pulp Association, the industry's central national association, are not only satisfied with the request of an increase of the dividing line between paper and board up to 0.012 inch, in order to prevent, upon the basis thereof, the import of the Dutch 0.009 inch strawboard, but they wish to secure, for this purpose, another guaranty still, as appears from the wording of the substitute of paragraph 1302 of the tariff act of 1922, suggested by them (vide p. 6070, No. 31). In this suggested substitute it is namely said that:

"*Provided*, That for the purposes of this act any of the foregoing less than 0.012 inch in thickness, or made on a Fourdrinier, Yankee, single cylinder, or similar paper machine, or a combination of such machines shall be deemed to be paper," whereas only boards manufactured on a multicylinder or wet machine will be dutiable at the rate of 10 per cent.

They, consequently, wish to attain in this way that all boards made on a Fourdrinier machine—confining ourselves to this type of machine, as the Dutch strawboard is made on same—will be named paper.

This is a standpoint that can not possibly be maintained. The consequence would, indeed, be that even the thickest strawboard, manufactured on a Fourdrinier machine, should be deemed to be paper for the purpose of the tariff act.

Moreover, Mr. E. W. Camp, Commissioner of Customs, Treasury Department, Washington, says in his letter, approved September 12, 1927, to the collector of customs, at New York, viz.:

"It appears, however, that this class of merchandise (strawboards), when exceeding 0.015 inch in thickness is known as strawboard whether made on a Fourdrinier machine or multicylinder machine."

In accordance herewith the decision of June 12, 1927, has been changed.

Hence it follows that what is proposed by the American Paper and Pulp Association in their substitute of paragraph 1302 of the tariff act with regard to the denomination of products made on a Fourdrinier machine or a multicylinder machine is not tenable.

In Holland all strawboards, even the thickest, are made on Fourdrinier machines, and in other countries of the European Continent, such as, e. g. Germany, too, this is the case, and not only as regards strawboards, but also many other sorts of boards.

It is also very illogical to call such board paper, and to reserve the name board exclusively for the products made on the multicylinder or wet machine, because strawboard made on a Fourdrinier machine and strawboard made on a multicylinder machine do not differ in regard to nature, quality, or suitability.

The American Paper and Pulp Association themselves do know this, too, but they have doubtless merely made their suggestion, as for the difference between strawboard from a multicylinder and a Fourdrinier machine, in order to still better hit the Dutch strawboard industry, as it is known to them—as we have outlined above already—that, in Holland, strawboards are only made on Fourdrinier machines.

By means of the double alteration of the respecting paragraph 1302 of the tariff act, namely, with regard to the dividing line as well as to the kind of machine, proposed by them, they not only wish to attain that the import of the Dutch 0.009-inch strawboards into America is rendered impossible, but the import of the Dutch strawboards in the thicker substances, too, so that the Dutch strawboards will then have entirely disappeared from the American market.

We, however, rely upon the common sense of the American legislator, that he will not agree to the unfair means, the American Paper and Pulp Association will now apparently use to secure their object, viz, exclusion of fair Dutch competition.

Consequently, we must strongly oppose the suggestions of the paper and pulp association, lead down in their substitute of paragraph 1302 of the tariff act of 1922, both as regards the dividing line between paper and board being put up from 0.009 inch to 0.012 inch, as well as making difference between boards made on a multicylinder machine and those made on a Fourdrinier machine, the more so as the suggestions of the American Paper and Pulp Association are, in fact, without any tenable basis.

In regard to the hearing of Mr. Carpenter, representing manufactures of straw wrapping paper, who had been charged with the defense of the alteration of the tariff, with respect to strawboards, as proposed by the American Paper and Pulp Association, we still wish to remark the following:

The aforenamed association has sent out a representative to Holland in order to orient himself with the Dutch strawboard manufacturers re the cost price of the 0.009-inch strawboard. This representative has had conferences with the board of the Dutch Strawboard Mills Association, during which he told that it was not the intention of the American Paper and Pulp Association at all, to take up an unfair attitude toward the Dutch strawboard manufacturers, and that, if we mentioned the cost price to him, this would doubtless be in the favor of our interests. We have complied with his request, and in consequence hereof, Mr. Carpenter can state that—

"It costs, to produce 1 ton of straw paper of 2,000 pounds, in Holland approximately $29."

Mr. Carpenter now pretends th at this cost price, calculated upon delivery f. o. b. New York City, duty paid, would be $2 to $4 per ton lower than the American cost price, on the basis of delivery to New York City, too.

This is an assertion, however, which has not been confirmed by anything.

We had pointed out to the representative of the American Paper and Pulp Association already that, if we stated our cost price, while the American party did not give a specification of the American cost price, the latter people would be in a position to make avail of our figure precisely in the way they desire.

Evidently this has, indeed, now happened already, not the least trouble having been taken in order to prove that the statement of Mr. Carpenter re the American cost price is, in fact, correct.

We, moreover, have still informed the representative of the American Paper and Pulp Association, that if, at the moment, some Dutch mills submitted low quotations in America, this was due to a special reason. In consequence of information received, we, namely, had the conviction that the pending test case in New York would turn out in our favor, so that the import duty on the 0.009-inch strawboard would be reduced again to 10 per cent. With a view to this outlook, perhaps, some mills did not like to lose the American connections for a certain period, thus running the risk that these had to be renewed later on again; contrary hereto, they preferred—it may be at some sacrifice—to maintain, at least a part of these connections.

Mr. Carpenter further mentions in his hearing some figures which are not entirely correct. He says that in 1928 between 10,000 and 15,000 tons of Dutch 0.009 inch strawboards have been imported in America. This figure is not correct. In 1928 the import amounted to about 8,000 tons of 2,000 pounds, in 1927 12,000 or 13,000 tons of 2,000 pounds, in 1926 about 10,000 tons, whereas, in the preceding years, the import was importantly less.

The highest import figure was, consequently, same as 1927, viz, about 12,000 or 13,000 tons.

Mr. Carpenter adds that "this deprived the farmer of the sale of nearly 400,000 tons of straw, valued at $350,000 to $400,000."

These figures are neither correct; perhaps 40,000 tons of straw at the value of $350,000 or $400,000 are meant, but, in the affirmative the figure of 40,000 tons is still too high by far, and must, as an average during the last three years, not be more than about 14,000 tons, as the yield of 1 ton of dry straw is about 70 per cent of pulp.

The value of about 14,000 tons of straw taken from the farm will, in America, probably not be more than about $120,000, so that the American farmer is only interested in the decrease of the import of Dutch strawboard into America to a very small extent.

THE DUTCH STRAWBOARD MILLS ASSOCIATION,
T. L. KONING, *President.*
A. J. SAUER, *Secretary.*

GRONINGEN, *March 20, 1929.*

ROYAL NETHERLAND LEGATION,
Washington, D. C.

No. 2222.

Pursuant to its notes of June 13, 1929, No. 2143, the Royal Netherland Legation has the honor to recur to the kind intermediacy of the Department of State in order to transmit the attached brief of the

New York Agency of the Holland Bulb Exporters Association, regarding the tariff rates on flower bulbs, to the appropriate United States authorities.

WASHINGTON, D. C., *June 15, 1929.*

HOLLAND BULB EXPORTERS ASSOCIATION,
(BOND VAN BLOEMBOLLENHANDELAREN, HAARLEM, HOLLAND),
109 Broad Street, New York, May 14, 1929.

SENATE FINANCE COMMITTEE,
Washington, D. C.

(Re Schedule 7 (par. 751), flower bulbs)

GENTLEMEN: We have noted that it is proposed to increase the duty on tulip bulbs and lily bulbs from $2 per 1,000 to $6 per 1,000, and on crocus bulbs from $1 to $2 per 1,000. These bulbs are not produced commercially in the United States and so far only a few governmental experiment stations and individuals have experimented in their cultivation. On the other hand, the florists in general throughout the United States consider an adequate supply of bulbs, particularly tulip bulbs, essential for the production of spring flowers, and it is for this reason that the Society of American Florists, comprising almost the entire florist trade, as well as other organizations, went on record as opposing any change in the rate of duty on these bulbs.

There has been no formal demand for an increase in the rate of duty on tulip bulbs and other bulbs, but correspondence has been received by members of the Ways and Means Committee from a few firms in the State of Oregon intimating that a higher rate of duty on bulbs would be a farm relief measure, as they could be used for crop diversification. Aside from the fact that the growing of flowering bulbs is a highly specialized profession requiring the greatest skill and expert knowledge, may it be stated that less than 20 square miles of select acreage in the Netherlands have so far been found adaptable to the cultivation of this product and that it has not been found practicable to use this same acreage for other purposes.

Comparisons are also drawn between the estimated cost of production of tulip bulbs in the United States and the average selling price in Holland. May it be stated that the average foreign selling price for imported tulip bulbs for the year 1928 was the equivalent already of the estimated domestic cost of production, and that because of crop conditions the average selling price in Holland for tulip bulbs is now more than $20 per 1,000, which is greatly in excess of the estimated cost of production of tulip bulbs in the United States.

The fact remains, however, that tulip bulbs and most of the other varieties of bulbs are not commercially produced in the United States, principally on account of adverse climatic conditions and any increase in duty on these bulbs will, therefore, mean a corresponding increase to the American florists in their production cost of these spring flowers.

It is because of the fact that flower bulbs, and especially tulip bulbs, are an important unfinished product to the American florists which only Holland produces that we respectfully petition that the prevailing rates of duty on these bulbs be retained.

Respectfully submitted.

HOLLAND BULB EXPORTERS ASSOCIATION.
HENRY HARBOSH.

ROYAL NETHERLAND LEGATION,
Washington, D. C.

No. 2224.

In continuation of its note of June 15, 1929, No. 2173, the Royal Netherland Legation has the honor to recur to the kind intermediacy of the Department of State in order to transmit the attached statement of the "N. V. Kwatta, Breda, The Netherlands," with regard to the pending revision of the tariff on cocoa and chocolate, to the appropriate United States authorities and to recommend this statement to their kind consideration.

WASHINGTON, D. C., *June 15, 1929.*

STATEMENT WITH REGARD TO PARAGRAPH 775 OF THE TARIFF BILL OF 1929

The "N. V. Kwatta," Breda, Netherlands, wishes to state that the total turnover of the cocoa and chocolate manufacturers in the United States during the first nine months of 1928 amounted to $122,000,000, while the imports during this same period amounted to only $1,286,000—i. e., 1.4 per cent of the United States production—and that in 1927 the total production of chocolate and cocoa in the United States was valued at $122,723,229, while the imports during that year amounted to $1,474,646—i. e., 1.2 per cent of the United States production.

Under those circumstances an increase of the tariff on cocoa and chocolate seems hardly necessary to protect the American manufacturer, whose production under the most favorable conditions could be increased by 1 per cent, if on account of a prohibitive tariff all foreign cocoa and chocolate would be excluded from the United States.

Therefore it is requested that, if possible, the appropriate United States authorities might reconsider the rates on cocoa and chocolate, as written in paragraph 775 of the House bill (H. R. 2667).

DEPARTMENT OF STATE,
Washington, July 11, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, I have the honor to inclose for your information a copy of note No. 1987 from the Royal Netherland Legation, dated June 24, 1929, together with its inclosure, regarding the rate of duty on diamonds exported from the Netherlands to the United States.

I have the honor to be, sir,
Your obedient servant,

H. L. STIMSON.

No. 1987.

ROYAL NETHERLAND LEGATION,
Washington, D. C.

With reference to its note of June 12, 1929, No. 2134, the Royal Netherland Legation has the honor to submit to the Department of State copy of a letter received from the General Jewellers Society, the Diamond Exchange, and the Association of Traders in Cut Diamonds, all of Amsterdam, the Netherlands, who are directly interested in the exportation of diamonds from the Netherlands to the United States.

The diamonds being the most important item among the commodities exported from the Netherlands to the United States, it is obvious that the Dutch exporters are greatly interested in the proceedings for the revision of the tariff act of 1922.

The Royal Netherland Legation has the honor to recur to the kind intermediacy of the Department of State in order to forward the attached letter to the appropriate United States authorities with the request that those authorities, especially the United States Senate Committee on Finance, give their kind attention to the contents of said brief.

WASHINGTON, D. C., *June 24, 1929.*

SIR: On behalf of the Netherlands exporters of diamonds we have the honor to request that you use your good offices to have the United States Department of State call the attention of the Committee on Finance of the United States Senate to the fact that since 1919 the imports into the United States of cut diamonds have decreased so that such imports are less than one-half of those of 1919. The following table shows the imports of diamonds from the Netherlands from 1919 to 1928, inclusive:

Imports of diamonds from the Netherlands

Year	Uncut		Cut but not set	
	Quantity, carats	Value	Quantity, carats	Value
1919	20,998	$1,337,775	434,340	$53,561,019
1920	1,146	40,189	198,477	31,024,241
1921	4,453	366,686		11,497,228
1922	12,650	491,985	166,817	17,096,666
1923	27,985	663,575	202,101	20,518,443
1924	26,170	538,019	216,048	21,216,569
1925	23,601	973,848	252,202	25,264,131
1926	52,528	1,454,897	266,789	27,079,149
1927	42,386	860,993	222,849	21,316,729
1928	61,222	1,034,587	216,018	21,552,171

It is our judgment that if the duty was reduced to 10 per cent upon cut diamonds and the rough diamonds were allowed free entry, in accordance with the petition made to the Ways and Means Committee of the House of Repersentatives on behalf of the importers of and dealers in diamonds, pearls, and precious stones of the United States of America (pp. 7457 to 7503, Tariff Readjustment Hearings, 1929), that our sales to the United States of cut diamonds would double and the United States would receive as much revenue under a 10 per cent duty as is now received under a 20 per cent duty.

In the Interest of the development of our trade in diamonds with the United States we respectfully urge you to use your good offices in placing our suggestions before the Department of State for transmittal to the Committee on Finance of the United States Senate, with such additional comments as you may desire to make.

Respectfully yours,

GENERAL JEWELLERS' SOCIETY, AMSTERDAM,
A. S. DRESDEN, *President.*
TH. I. GRUPPING, *Secretary.*
THE DIAMOND EXCHANGE,
A. DE PAAUW, *President,*
JACQ. OLMAN, *Secretary.*
ASSOCIATION OF TRADERS IN CUT DIAMONDS,
M. LAM, Jr., *President,*
E. HEILBUTT, *Secretary.*

AMSTERDAM, *June 5, 1929.*

DEPARTMENT OF STATE,
Washington, July 11, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, I have the honor to inclose for your information copy of a note from the Royal Netherland Legation, dated June 24, 1929, transmitting memoranda submitted by the growers of onions, peas, and beans in the Netherlands.

I have the honor to be, sir,
Your obedient servant,

H. L. STIMSON.

ROYAL NETHERLAND LEGATION,
Washington, D. C., June 24, 1929.

Referring to its note of June 12, 1929, No. 2134, the Royal Netherland Legation has the honor to request the kind attention of the appropriate United States authorities to the following wishes, expressed by interested Netherland subjects, with regard to the pending tariff revision.

The growers of onions, peas, and beans in the Netherlands state that the increase of duty on these commodities, as provided in the tariff bill of 1929 (H. R. 2667), will not be a measure for equalizing conditions of competition, but will practically close the American market for these products from the Netherlands.

The Royal Netherland legation has the honor to recur to the kind intermediacy of the Department of State in order to transmit the inclosed brief, drawn up at the request of the Netherland Growers' Association, to the appropriate United State authorities and to recommend it to their kind consideration, especially to the attention of the Senate Finance Committee.

The growers of peas and beans in the Netherlands, who export part of their crop as dried peas and beans to the United States of America, see that importation greatly hampered by the increase of the duty on dried peas and beans and split peas, as provided in the House bill (H. R. 2667).

In paragraph 763 the rate on dried beans has been increased from 1¾ to 2½ cents per pound. In paragraph 767 the rate on dried peas has been increased from 1 to 1¾ cents; on split peas from 1¼ to 2½ cents per pound. These changes represent increases of respectively 43, 75, and 100 per cent.

The duty on beans will hurt especially the imports of Java beans (*Vicia faba*), which are exported the last few years in considerable quantities from the Netherlands to the United States and which are practically not produced in the United States.

Although the Netherlands are not the most important country of origin with regard to imports of peas and beans in the United States, the interests of the Netherland growers are considered to be of such importance that a request is made to the appropriate United States authorities to reconsider, if possible, the rates on dried beans, peas, and split peas, in order that the products of the Netherlands will not be excluded entirely from the American market.

The onion growers of the Netherlands wish to state that a tariff of 2 cents per pound on onions virtually is an embargo on onions from their country.

The cost of production in the Netherlands may vary from 4 to 6 guilders per 100 kilos; the average price at the central markets is about $1 per 100 pounds; ocean freight from Rotterdam to New York amounts to approximately 40 to 45 cents per 100 pounds.

Netherland onions are of the strong type and can be compared with New York yellows. The seasonal average price for New York yellows at the New York market was, according to figures, published in the Report on Onions of the United States Tariff Commission to the President of the United States 1929, pages 28 and 29—

	Per 100 pounds
1925-26	$2.58
1926-27	2.30
1927-28	2.20

Taking into consideration the wholesale price of Netherland onions in Rotterdam and the ocean freight to New York, it is obvious that a duty of 1 cent per pound more than offsets the difference in cost of production or conditions of competition between onions from the Netherlands and from the United States, offered for sale at the New York market.

The onion growers in the Netherlands therefore have the honor to request the reconsideration, if possible, of the rate on onions, which has been fixed in the House bill at 2 cents per pound.

DEPARTMENT OF STATE,
Washington, July 12, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, I have the honor to inclose for your information a copy of a note from the Royal Netherland Legation, dated June 29, 1929, transmitting a brief of the Association of Dutch Seed Crushers, regarding the proposed duty on sesame oil.

I have the honor to be, sir,
Your obedient servant,

H. L. STIMSON.

ROYAL NETHERLAND LEGATION,
Washington, D. C.

Referring to its note of June 12, 1929, No. 2134, the Royal Netherland legation has the honor to recur to the kind intermediacy of the Department of State in order to transmit the attached brief of the Association of Dutch Seed Crushers, Haarlem (Holland), regarding the proposed duty on Sesame Oil, to the appropriate United States authorities.

The legation would feel greatly obliged if those authorities, especially the Senate Finance Committee, would give to the memorandum of "Vereeniging van Nederlandsche Oliefabrikanten" (Association of Dutch Seed Crushers) all the attention it seems to deserve.

WASHINGTON, D. C., *June 29, 1929.*

VEREENIGING VAN NEDERLANDSCHE OLIEFABRIKANTEN (ASSOCIATION OF DUTCH SEED CRUSHERS)

HAARLEM, *June 10, 1929.*
3, Nassauplein.

To the Senate Finance Committee, Washington.

GENTLEMEN: We beg to crave your kind indulgence in drawing your valued attention to the following observations in reference to the new tariff bill passed by your House of Representatives on the 28th of May, 1929.

In this bill we find, inter alia, that an import duty of 3 United States cents per pound would be levied on Sesame oil and it is this provision more especially that has prompted our present letter. We base our remarks on the supposition that in imposing a duty on Sesame oil it has not been the intention of your advisory authorities to prohibit its importation as in such a case our letter would naturally be irrelevant. On the contrary we venture to assume that the new tariff bill springs only from your desire to create for the American producer the possibility of successfully competing with European exporters in regard to a series of products in which such competition may seem difficult or at present, hardly possible.

In this respect Sesame oil occupies a special position seeing that, as far as we can gather from the statistics at our disposal, Sesame seed is neither produced in the United States nor imported in any appreciable quantities. It is, therefore, evident that the proposed duty can not be viewed in the light of a protective measure in the interests of American producers of Sesame oil, and the proposal to withdraw Sesame oil from the free list appears to us based rather on the said oil being regarded as competitive with vegetable oils produced in the United States and of cotton oil in particular. Whilst we hold that the correctness of such a view is open to serious doubt, it seems in theory, that a commodity which could be used as a substitute for another product may frequently invite competition against the latter, but such an idea in the present instance may safely be left outside practical considerations. There are two main reasons for this—

namely, the overwhelming proportion of the consumption of cotton oil in the United States in comparison with that of Sesame oil, and, the proportionate price level of the two commodities.

Proportionate consumption.—We beg to point out that the consumption of cotton oil in the United States during 1928 may well be put at 3,600,000 barrels (of 400 pounds each), whereas the imports of refined sesame oil during the same period amounted to 15,600 barrels, or 0.433 per cent of the consumption of refined cotton oil. In view of this negligible percentage it is entirely out of the question that refined sesame oil could have any depreciating influence on the price of refined cotton oil—in any case the effect, if any, must be infinitesimal.

If only for this reason, closing the American market to the import of sesame oil (for in practice a duty of 3 United States cents per pound is equivalent to a prohibitive decree) could not benefit in the slightest those American interests it was presumably intended to assist.

Proportionate price level.—In view of their respective prices sesame oil can not be said to have any competitive effect on the price of cotton oil. For the year 1928 the average price of refined cotton oil in the United States was 10.50 United States cents per pound. The average price at which refined sesame oil was imported from the Netherlands during the same year was 10.75 United States cents per pound c. i. f. Atlantic ports, to which latter price must be added landing charges, inland freight, etc. These figures show clearly that the import into the United States of sesame oil from the Netherlands can not possibly have influenced the price of American cotton oil to any perceptible degree.

This would apply even more strongly in the case of sesame oil imported from countries other than the Netherlands, as the major part of the sesame oil imported into the United States comes from Holland, in consequence of which we have almost complete records of the c. i. f. prices of refined sesame oil as they apply to the United States.

On the above grounds it seems apparent that the proposed import duty of 3 United States cents per pound on refined sesame oil would not benefit those American interests it was intended to protect.

The following table, taken from Russell's Review, mid-April, 1929, pages 11–13, will show how insignificant are the imports into the United States of sesame oil compared with other fats and oils.

Sesame oil, 6,239,000 pounds equivalent 15,600 barrels.
Peanut oil, 4,749,000 pounds.
Soya bean oil, 13,116,000 pounds.
Copra-oil equivalent (other than Philippine Islands). 84,561,000 pounds equivalent 211,400 barrels.
Copra-oil equivalent (from Philippine Islands). 241,077,000 pounds equivalent 602,600 barrels.
Coconut oil (from Philippine Islands), 290,637,000 pounds equivalent 726,600 barrels.
Palm kernel, 53,812,000 pounds equivalent 134,530 barrels.
Palm oil, 171,366,000 pounds equivalent 482,415 barrels.
Olive oil, 82,943,000 pounds.
Whale oil, 68,385,000 pounds equivalent 170,960 barrels.
Chinese wood or nut oil, 107,357,000 pounds.
Olive oil foots, 39,547,000 pounds equivalent 100,000 barrels.
Castor bean oil equivalent, 63,225,000 pounds.

The only result to be expected from the introduction of the proposed duty on imported sesame oil would be that a Dutch industry, extremely small from an American point of view, would be entirely deprived of its export trade to the United States. In view of the trifling status of sesame oil among American imports of edible oils and fats, we feel convinced that no American interest would benefit by the practical exclusion of Dutch sesame oil.

May we therefore pray that the pending tariff bill be amended in respect of sesame oil, to the effect either that the present duty-free entry be continued, or that a duty, if imposed, be so small that a fair chance remain to the Dutch industry of some outlet to the United States.

Your obedient servants,
(Signature illegible.)

DEPARTMENT OF STATE,
Washington, July 17, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, I have the honor to inclose for your information a copy of note No. 2527, dated July 5, 1929, from the Royal Netherland Legation, transmitting a brief of the General Norit Co., Amsterdam, The Netherlands, regarding the proposed duty on decolorizing (activated) carbon.

I have the honor to be, sir,
Your obedient servant,

H. L. STIMSON.

No. 2527.

ROYAL NETHERLAND LEGATION,
Washington, D. C., July 5, 1929.

Referring to its note of June 12, 1929, No. 2134, the Royal Netherland Legation has the honor to recur to the kind intermediacy of the Department of State in order to transmit the attached brief of the General Norit Co., Amsterdam, the Netherlands, regarding the proposed duty on decolorizing (activated) carbon, to the appropriate United States authorities.

The legation would feel greatly obliged if those authorities, especially the Senate Finance Committee, would give to the memorandum of the General Norit Co. all the attention it seems to deserve.

STATEMENT OF THE GENERAL NORIT CO. IN CONNECTION WITH THE PROPOSED INCREASE OF IMPORT DUTY ON DECOLORIZING (ACTIVATED) CARBON IN THE UNITED STATES

The proposal to increase the import duty on decolorizing (activated) carbon, being at present 20 per cent ad valorem, to 45 per cent ad valorem has been made on the request of the Darco Corporation, Wilmington, Del., one of the largest manufacturers of decolorizing carbon in the United States.

Prior to this request the Darco Corporation has filed an application before the United States Tariff Commission in order to obtain under authority of section 315 of the tariff act the maximum increase of 50 per cent in the present duty of 20 per cent ad valorem.

Following this request the United States Tariff Commission in August, 1928, ordered an investigation of the foreign domestic costs of production of decolorizing carbon. As Holland is "the principal competing country" while the General Norit Co. and her daughter company, the Purit Co., were practically the only Dutch producers, the investigation of the cost of production was made with these companies.

For this reason we were visited by the representative of the United States Tariff Commission—Mr. Percy W. Bidwell and his assistant, Mr. Marvin MacNeil—whom we gave every assistance in order to fix the actual cost of production of our decolorizing carbon. This investigation in connection with the cost of production has been completed and the figures sent to the president of the Tariff Commission in Washington.

We respectfully request that these data as compared with the available cost of production of the United States producers of decolorizing carbon be taken as a basis for considering the necessity of decreasing, maintaining, or increasing the present rate of duty.

In addition to the above we beg to submit the following:

(1) The Darco Corporation, who does not produce gas-mask carbons, stated that their plant without any material changes can serve for the manufacture of gas-mask carbon necessary in time of national emergency.

This statement is absolutely incorrect. The production of gas-mask carbon is a quite separate industry. There are two large gas absorbing carbon manufacturers in the United States. If Congress is of opinion that it is necessary to protect this industry we would suggest that a separate rate of duty be made for the granular gasmask carbon and the powdered decolorizing carbon.

(2) Decolorizing carbon is a powdered material in appearance much likely to ground charcoal.

It is used as a material for refining sugar, oils, glucose (corn sirup), chemicals, glycerine, etc.

The real importance of the decolorizing carbon business does not lie with the few producers who have but a limited investment and employ comparatively little labor, but rather with the large number of consumers of these carbons with millions of invested capital and with thousands of men employed.

(3) The General Norit Co. have been the pioneers with respect to the introduction of decolorizing carbon in the various industries. They have spent large amounts of money for this purpose also in the United States. Their eranings have for a greater part been absorbed by their efforts to make known and to introduce this relatively new product. It would not be fair to wipe away their product from the United States market by fixing an import duty which would make the price of their product too high for the consumers in the United States of America.

(4) The present rate of duty has enabled the American producers to enlarge enormously their production. Large consumers of decolorizing carbon have been taken away from the Norit Co. which proves that the United States producers are absolutely able to compete.

(5) Large quantities of United States made decolorizing carbon are exported to Europe as well as other oversea countries and sold to prices which can hardly be met by us.

(6) Each manufacturer of decolorizing carbon makes a product of specific properties in connection with rate of filtration, decolorizing power, purity, and other properties. By way of illustration we may mention that the General Norit Co. produces a special carbon for being used in connection with their patented kiln. This kiln is used in sugar factories for revivifying the spent Norit carbon. The American make of decolorizing carbon can not be used for this purpose.

We believe that the above is sufficient evidence to prove that the decolorizing carbon industry is amply and even unnecessarily protected by the present duty of 20 per cent ad valorem.

N. V. ALGEMEENE NORIT MAATSCHAPPIJ.

AMSTERDAM, *June 17, 1929.*

DEPARTMENT OF STATE,
Washington, July 20, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, I have the honor to inclose for your information copy of note No. 2613 from the Royal Netherland Legation, dated July 12, 1929, with its inclosure, a brief of the "N. V. Vereenigde Hollandsche Lucifersfabrieken, Ltd." (United Dutch Match Factories, Ltd.) Eindhoven, Holland, regarding the proposed duty on matches.

I have the honor to be, sir,
Your obedient servant,

WILBUR J. CARR,
Acting Secretary of State.

ROYAL NETHERLAND LEGATION,
Washington, D. C.

Referring to its note of June 12, 1929, No. 2134, the Royal Netherland Legation has the honor to recur to the kind intermediacy of the Department of State in order to transmit the attached brief of the "N. V. Vereenigde Hollandsche Lucifersfabrieken, Ltd." (United Dutch Match Factories, Ltd.) Eindhoven, Holland, regarding the proposed duty on matches, to the appropriate United States authorities.

The legation would feel greatly obliged if those authorities, especially the Senate Finance Committee, would give to the attached memorandum all the attention it seems to deserve.

Washington, D. C., July 12, 1929.

NAAMLOOZE VENNOOTSCHAP VEREENIGDE
HOLLANDSCHE LUCIFERSFABRIEKEN,
Eindhoven, June 20, 1929.

To the DEPARTMENT OF STATE,
Washington, D. C.

GENTLEMEN: The United Holland Match Factories (Vereenigde Hollandsche Lucifersfabrieken) located at Eindhoven, Netherlands, beg leave to put the following before you for your kind consideration.

In the proposal for tariff reform we find under paragraph 1517: "Matches friction or lucifers of all descriptions per gross of 144 boxes containing not more than 100 matches per box 11 cents per gross."

The present duty being 8 cents per gross, this proposed increase means that our matches would have to pay, calculated on the price at which we have to sell freight and insurance to New York paid by us, a duty ad valorem of 31½ per cent against the present rate of 23 per cent.

Considering that matches imported here from United States of America are subject to an ad valorem duty of 8 per cent only, the proposed higher duty would considerably raise the already existing very large difference against us and actually would make it prohibitive.

The quantities which we can sell to United States of America, although very important to us and essential for us to keep our works going, are exceedingly trifling when compared to the total consumption in United States of America, as the following figures show:

We shipped in 1926 304,700 gross boxes.
in 1927 396,250 gross boxes.
in 1928 317,500 gross boxes.

To this we may add, that we ship exclusively safety matches, so that our supplies, in themselves very trifling, do not even enter into competition with the class of matches principally consumed in your country.

We further beg to say that in a report of a committee instituted by our Government to examine economic conditions, it says:

"In Europe the scale of wages in Netherland is only surpassed by that of England and Scandinavia. That scale in other European countries is considerably lower than in Holland. In France and Belgium the difference is about 40 per cent; in Italy, Austria, Czechoslovakia, Poland, and the other Baltic States the wages are about one-half of these in Holland. In Germany they are nearing the Holland wages and in Switzerland they are on about the same level as here."

From this the evident conclusion can be drawn that the wages which we have to pay do not form a motive for excluding us from shipping to United States of America.

Allowing ourselves the liberty to put the above before you, we express the hope that they will induce you to leave the present rate of duty payable on importation in your country unchanged.

We are, gentlemen, yours, obediently,

N. V. VEREENIGDE HOLLANDSCHE LUCIFERSFABRIEKEN
(Signatures illegible),
Managing Directors.

DEPARTMENT OF STATE,
Washington, July 24, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, I have the honor to enclose for your information a copy of note No. 2354, dated July 11, 1929, from the Royal Netherland Legation, transmitting a memorandum, drawn on behalf of the Netherland Growers and Brokers of Sumatra and Java Vorstenland Tobacco, with regard to the duty on wrapper tobacco.

I have the honor to be, sir,
Your obedient servant,

HENRY L. STIMSON.

ROYAL NETHERLAND LEGATION,
Washington, D. C., July 11, 1929.

Referring to its note of June 12, 1929, No. 2134, the Royal Netherland Legation has the honor to transmit to the Department of State a memorandum, drawn on behalf of the Netherland Growers and Brokers of Sumatra and Java Vorstenland Tobacco, with regard to the duty on wrapper tobacco, as fixed in the tariff bill of 1929 (H. R. 2667).

It would be greatly appreciated that the Department of State forward the attached brief to the appropriate United States authorities with the request that due attention be given to the statements put forth in this brief.

MEMORANDUM ON BEHALF OF THE NETHERLAND GROWERS AND BROKERS OF SUMATRA AND JAVA VORSTENLANDEN TOBACCO

The raising of the duty on wrapper leaf tobacco from $2.10 to $2.50 per pound, as provided in the tariff bill of 1929 (H. R. 2667) has caused great consternation among the growers of Sumatra and Java Vorstenlanden tobacco as well as among the Dutch tobacco growers.

Although the subcommittee of the House Ways and Means Committee, which had charge of the tobacco schedule, after carefully studying the information and evidence given by United States Government Agencies and interested parties, decided to recommend that Schedule 6 (Tobacco and Manufactures of) be retained in the new tariff bill as it is now written in the tariff act of 1922, the House of Representatives at the very last minute acted in direct opposition to the report of the said subcommittee and increased the rates on wrapper tobacco by 40 cents per pound.

As indicated very clearly in the briefs, filed with the House Committee on Ways and Means and the Senate Finance Committee by the National Cigar Leaf Tobacco Association, the Sumatra leaf is an absolutely essential wrapper for the great bulk of the "nickel cigars," which form the backbone of the American cigar industry and which are being made and sold on a margin of small profit. The increase of the duty, as fixed by the House, would increase the cost of production by 80 cents per thousand, which is considered as absolutely prohibitory. Where Sumatra leaf is practically only used in the United States in the so-called nickel-cigar-industry, it is evident, that a ruining of this popular American industry would spell destruction of the American market for Sumatra wrapper tobacco.

Therefore the growers of Sumatra and Java Vorstenlanden tobacco, who are practically the only exporters of leaf tobacco for cigar wrappers into the United States, with the exception of a negligible quantity imported from Cuba for the wrapping of clear Havana cigars, feel greatly embarrassed by the proposed increase of duty, which if enacted, will be detrimental to their trade relations with the United States.

The growers and brokers, mentioned in the beginning of this brief, beg leave to request the appropriate United States authorities to take into consideration the adverse consequence which will be inflicted on the tobacco culture in Sumatra and Java, whenever the duty on wrapper tobacco, which already is very high and according to a computation by the United States Tariff Commission amounts to 98.65 per cent ad valorem, will be increased.

An increase of these rates, while being of very little advantage to very few corporations, will work great injury to the greatest majority of American tobacco growers, to the American cigar manufacturers, and especially to the Netherland growers and brokers of Sumatra and Java wrapper tobacco.

NORWAY

DEPARTMENT OF STATE,
Washington, June 15, 1929.

Hon. REED SMOOT,
Chairman Senate Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, I have the honor to inclose for your information a copy of a memorandum from the Norwegian Legation, dated June 1, 1929, calling attention to the effect on Norwegian-American trade of the proposed rates of duties in H. R. bill No. 2667.

I have the honor to be, sir,
Your obedient servant,

J. REUBEN CLARK, Jr.,
Acting Secretary of State.

NORWEGIAN LEGATION,
Washington, D. C., June 1, 1929.

MEMORANDUM

The Norwegian Legation has taken cognizance of the fact that the House of Representatives, in passing H. R. 2667, has increased the duty on stockfish and roe, which articles are of interest to the commercial relations between Norway and the United States. The legation is of the opinion that certain information regarding these articles might be of interest to the body of Congress to which the tariff bill has now been submitted, and it ventures to hope that there will be no objection against communicating the following observations to the American authorities now engaged in revising the new tariff bill, for their sympathetic consideration.

The subdivision, containing paragraph 717 (c), as it now reads after having passed the House, includes, it is believed, stockfish (dried and unsalted fish), which in the tariff act of 1922 is dutiable at 1¼ cents per pound and in the measure now passed by the House is made dutiable at 2½ cents per pound—an increase of 100 per cent.

This article is mainly consumed in the ordinary plain or poorer households in the Middle West and Northwest, the consumers consisting chiefly of farmers and people of Scandinavian extraction or descendancy. They are accustomed to the special dish which they prepare from stockfish in a way well known to them, and which con-

stitutes a cheap and nourishing as well as to their taste palatable form of food.

No American fishing interests can be said to suffer on account of the importation of this article from abroad. According to information at hand this kind of fish product is only produced in very insignificant quantities in Alaska (and nowhere else in the United States as far as it is known), where the climatic and other conditions do not favor the production of a stockfish of a kind corresponding to the Norwegian product. Available information discloses that the total production of stockfish in Alaska in 1926 was 175,415 pounds, in 1927, 31,836 pounds; and in 1928, 80,000 pounds. The importation from Norway to complete the demand was in 1926, 1,687,296 pounds and in 1927, 1,523,459 pounds. The effect of the proposed new duty would therefore it seems, only be to enhance the price of stockfish, which is hardly ever consumed by the richer classes, to the detriment of thousand ordinary households.

Paragraph 721 (d) as now passed by the House, reads as follows: "Caviar and other fish roe for food purposes: sturgeon, 30 per centum ad valorem, other 20 cents per pound."

A well-known importer in this country of fish products from Norway has made the following statement:

> The present duty on caviar, cod roe, and other fish roe for food purposes is 30 per cent ad valorem. The proposed duty of 20 cents per pound for caviar, except sturgeon, is absolutely prohibitive as far as the cheaper qualities of cod roe and other roe (and caviar) are concerned. Evidently, the duty proposed of 20 cents per pound, is intended to have specific reference to the more expensive caviar from Russia, which could possibly stand the 20 cents per pound duty, being that this expensive caviar must be classed as a luxury. However, if the 20 cents per pound duty is to also apply to the cheaper qualities of fish roes, it would mean the elimination of the importation of said commodities. For instance, cod roe, which we are importing to-day from Norway, is selling to the retail trade at 20 cents for 1-pound tins, the prevailing duty being included. If the 20 cents per pound duty should apply, the articles would become a luxury and would be unsalable in this country. The cod roe now imported from Norway is principally consumed by the Scandinavian population, principally of the middle class and the working class. The present duty of 30 per cent is, in my opinion, quite sufficient both as a protection to the domestic industry and as well as for revenue purposes. I do not know of any fish roe or caviar being produced, to any extent, in this country. Hence, there is, in my opinion, no reason for a prohibitive duty of 20 cents per pound.

As far as the legation is aware, only one producer in this country, who last year produced 7,251 pounds of fish roe, applied for protection, stating that the reason for the decline in the sales of his product is the dumping in the United States of salt-fish roe exported from Russia through Constantinople.

Norwegian cod roe is an article distinct from Russian caviar or the fish roe imported from the Black Sea. The importation of this kind of roe from Norway is so small that it can not possibly hurt any domestic industry, wherefore the restoration of the former duty of 30 per cent ad valorem for codfish roe would be justifiable. Any dumping of codfish roe from Norway is not known to ever have taken place in the United States.

DEPARTMENT OF STATE,
Washington, June 15, 1929.

Hon. REED SMOOT,
Chairman Senate Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, as also with important foreign press or other comment coming into the hands of the department, I have the honor to inclose for your information a copy of a note with inclosure thereto, dated June 4, 1929, with regard to the importation of Norwegian cheese into the United States. I have the honor to be, sir,

Your obedient servant,

J. REUBEN CLARK, Jr.,
Acting Secretary of State.

WASHINGTON, D. C., *June 4, 1929.*

The Norwegian Legation has the honor to apply for the kind assistance of the Department of State in order to obtain that the inclosed statement, contents of which emanate from Norwegian manufacturers and importers of cheese, be submitted to the American authorities now engaged in the revision of the tariff bill, for their consideration.

STATEMENT RELATING TO THE TYPICAL NORWEGIAN CHEESE GJETOST "GOT-CHEESE"

The total exports of cheese from Norway to the United States in 1927 was valued at $148,731.

This amount was for about two-thirds made up of the export of the typical Norwegian cheese "gjetost" (goat cheese), which is produced in no other country than Norway, and which is, almost exclusively, consumed by Norwegians and descendants of Norwegian immigrants in the United States. It is not conceivable that it would pay the American dairy industry to attempt to manufacture the small quantity of this Norwegian goat cheese which is annually consumed in the United States.

Norwegians have from childhood been brought up to eat their national cheese and are thus accustomed to the said kind of cheese, and it would be felt a hardship if the proposed increase in the tariff should be finally adopted. The Norwegian cheese manufacturers therefore respectfully request that a proviso be introduced in paragraph 710 whereby goat cheese be permitted to be imported under the present rate of duty.

DEPARTMENT OF STATE,
Washington, June 19, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, I have the honor to inclose for your information a copy of a memorandum from the Norwegian Legation, dated June 13, 1929, containing additional information regarding the customs duty on cod roe.

I have the honor to be, sir,

Your obedient servant,

J. REUBEN CLARK, Jr.,
Acting Secretary of State.

ROYAL NORWEGIAN LEGATION,
Washington, D. C., June 13, 1929.

MEMORANDUM

To the DEPARTMENT OF STATE,
Washington, D. C.

With reference to its memorandum of June 1, 1929, the Norwegian Legation begs leave to apply for the kind intermediary of the State Department, in order that the following additional information on the subject of the duty on cod roe, emanating from an importer of fish products from Norway, may kindly be transmitted to the American authorities now engaged in revising the tariff bill (H. R. 2667):

"According to the new rate Norwegian cod roe will be dutiable at 20 cents per pound, which would mean a duty of 40 cents a tin of 2 pounds. The duty on a 2-pound tin of Norwegian cod roe according to the present tariff, which is 30 per cent ad valorem, amounts to about 5¼ cents. From this it will be seen that, if the new rate on cod roe is passed, the new duty will make it impossible to sell this article on the market. The present value of a 2-pound tin of Norwegian cod roe is about Norwegian kroner 0.65, which is equivalent to 17 cents. You will see that the new duty is almost three times the value of the article."

DEPARTMENT OF STATE,
Washington, July 20, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, I have the honor to inclose for your information copy of a note from the Royal Norwegian Legation, dated July 13, 1929, transmitting a statement from manufacturers in Norway of safety-matches.

I have the honor to be, sir,
Your obedient servant,

WILBUR J. CARR,
Acting Secretary of State.

ROYAL NORWEGIAN LEGATION,
Washington, D. C., July 13, 1929.

The Norwegian Legation has the honor to request the State Department to kindly acquaint the Senate Finance Committee with the contents of the inclosed statement from manufacturers in Norway of safety matches.

STATEMENT MADE BY THE BRYN-HALDEN AND NITEDALS MATCH FACTORIES OF NORWAY

The present United States duty on matches of 8 cents per gross has had a very detrimental influence on our previous large export of matches to America, which will be seen from the following figures:

Quantity exported:

	Kilograms
1910	774, 700
1911	865, 900
1912	805, 600
1913	1, 039, 300
1923	1, 335, 078
1924	1, 031, 424
1925	843, 138
1926	521, 370
1927	464, 784
1928	467, 126

The present export, insignificant though it may seem, is a large percentage of our production. Should the rate of 20 cents per gross be finally adopted, and we be unable to find other markets for our production, one of our factories will have to close.

The Norwegian safety matches manufactured by us do not, as far as we are aware, compete with matches manufactured in the United States, which are of quite distinct type.

The American match manufacturers have stated that, on the average, they pay male operators $4 per diem and female operators $3 per diem.

The average earnings in 1928 at Norwegian match manufactories was for male operators, crowns 1.88 per hour, or $4 per diem and for female, crowns 1.08 per hour or $2.30 per diem. When the American manufacturers state that the wages we pay are exceedingly low—from 50 to 75 cents per day and as low as $20 per month for both male and female operators, this information is totally erroneous as far as Norway is concerned.

The total exports of safety matches to the United States is very small, compared to the American consumption and safety matches are sold in the United States at a price which is much higher than the price for American matches, wherefore American matches, when the price is taken into consideration, enjoy a very liberal protection.

PARAGUAY

LEGACIÓN DEL PARAGUAY,
Washington, D. C., July 13, 1929.

Hon. REED SMOOT,
Chairman Committee on Finance, United States Senate,
Washington, D. C.

MY DEAR SENATOR: In amplification of an earlier letter of this legation in reply to a former invitation from the committee over which you preside, I have the honor to offer a brief observation as to the status of Paraguayan exports under the existing United States tariff, which I take the liberty of setting out below.

According to Table V, Foreign Commerce and Navigation of the United States, calendar year of 1927, the percentage of imports entering the United States free of duty from the whole of South America was 85.5 per cent. In this connection, I should like to point out that the percentage of imports entering the United States free of duty from Paraguay was only 28.2, or very much smaller than that of any of the other South American countries except Uruguay, with a percentage of 27.3.

It is obvious, therefore, that my country is not by far as favorably situated respecting the United States market as eight of the other South American countries, this comparative disparity resulting largely from the present United States tariff treatment of quebracho extract.

I am pointing out this difference in treatment only on the assumption that I am complying in spirit with the former request of your committee for comment on the pending tariff revision.

I have the honor to remain, yours very cordially,

PABLO M. YNSFRAN,
Chargé d'Affaires.

PERSIA

DEPARTMENT OF STATE,
Washington, June 11, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, as also with important foreign press or other comment coming into the hands of the department, I have the honor to inclose for your information copies of two notes dated March 21 and June 3, 1929, respectively, from the Persian Minister at Washington concerning the rate of duty on oriental rugs proposed in the tariff bill now pending before Congress.

I have the honor to be, sir,
Your obedient servant,

H. L. STIMSON.

LEGATION IMPERIALE DE PERSE,
Washington, March 21, 1929.

YOUR EXCELLENCY: In view of the fact that the Congress Ways and Means Committee has in mind the revision of the tariff, the report of which I understand will shortly be presented to Congress for approval, I have the honor to draw the attention of your excellency to certain points relative to the trade between Persia and the United States which I hope will receive due consideration.

Your excellency is no doubt aware that the Imperial Persian Government attaches the utmost importance to the furtherance of its economic relations with the United States, and my special instructions are to give my special attention to the realization of this ardent mutual desire and while recognizing that the determination of the tariff rates is a domestic question; in order to promote the good relations between the two countries I feel it incumbent to draw the kind attention of your excellency to certain facts which might prove of value inasmuch as it represents the views of the Imperial Persian Government, and the consideration of which might also prove of mutual benefit.

I feel sure that your excellency will agree that the general principles underlying a protective tariff are:

(*a*) Protection of the home industry from unfair foreign competition.

(*b*) Elimination of the differences in the cost of production.

In view of the fact that the principal Persian export to the United States is carpets and rugs, I therefore, particularly desire to draw your excellency's attention to paragraph 1116 of the tariff act of 1922 which relates to this matter.

In 1927 the total American domestic production of wool rugs and carpets was 65,000,000 square yards at an average wholesale value of $2.45 per square yard. In the same year the average wholesale value per square yard of Persian carpets and rugs imported into the United States under paragraph 1116 of the 1922 tariff act was $8.37 to which should be added 20 per cent for shipping charges and at least 20 per cent for washing and dyeing expenses.

I would like to point out that the Persian rug is, as far as the United States market is concerned, not a manufactured, but a semi-manufactured article; in as much as after arriving in the United States, it has to pass through a finishing process that costs from 10 to 50 per cent of the original cost.

The finishing process of the imported oriental rugs constitutes in reality an American industry around New York which gives employment to more than 2,500 workmen with pay rolls of several million dollars per annum, apart from which as far back as 1926 there were between six and eight million dollars American capital invested in the Persian rug industry which is in itself a proof that the prosperity of the Persian rug industry is also of special concern to American investors.

By the above figures your excellency will note that the average wholesale price of Persian rugs imported under paragraph 1116 is almost four times more than the American-produced article.

The labor cost average, given by the Bureau of the Census on the total American production is 63 cents a square yard. Labor costs in China for rugs work out at $2.38 per square yard, and in Persia, where wages are higher, it works out considerably more.

It may therefore be seen that the cost of production of the Persian rug is considerably higher than the American-manufactured article.

I therefore venture to suggest to your excellency that the foregoing statements conclusively prove that Persian carpets and rugs imported into the United States under paragraph 1116 do not compete or conflict with the products of American looms.

It may not be out of place to furthermore draw your excellency's attention to the great facilities enjoyed by the American principal commodities exported to Persia which may be exemplified by the fact that automobiles which form America's largest export to Persia below $3,000 are on the free list, and when exceeding the above price only pay 10 per cent ad valorem.

The earnest desire of the Imperial Persian Government to extend its trade and future relations with the United States, which is best shown by the tariff facilities enjoyed by American exports, has led me to point out the above facts commending them to your excellency's kind attention, and while the Imperial Persian Government is convinced that the Government of the United States will give special consideration to such statements regarding the tariff as are based on facts rather than sentiment, it feels confident that due consideration

and attention to the data as presented here above, will considerably help to further mutual economic interests of the two countries which is the ardent desire of my Government, and which desire is I feel also shared by your excellency's Government.

In conclusion, I have further the honor to point out that in view of the above facts, which conclusively prove that Persian produced rugs are both of higher value and cost more to produce than the American manufactured article, the present 55 per cent ad valorem which does not differentiate between such rugs that do not compete or conflict with the produce of American looms, and those of the cheaper type of imported rugs which are wholly competitive, may be considered excessive, but without offering an expression of opinion, I commend the aforesaid statements to your excellency feeling assured they will receive due consideration.

Pray accept, sir, the renewed assurances of my highest consideration.

D. MEFTAH.

His Excellency FRANK B. KELLOGG,
Secretary of State, Washington, D. C.

LEGATION IMPERIALE DE PERSE,
Washington, June 3, 1929.

YOUR EXCELLENCY: Further to my note of March 21, 1929, addressed to the Hon. Frank B. Kellogg, which was an expression of the views of the Imperial Persian Government regarding certain points relative to the trade relations between Persia and the United States, in which I dwelt at length on the tariff relations between the two countries, giving particular attention to article 1116 of the tariff law of 1922, which deals with imported handmade carpets and rugs I have the honor to inform your excellency that it is with some disappointment that, on due consideration of the proposed revision of the said article in the new tariff bill as proposed by the House Ways and Means Committee, I noted a still further increase in the rates of duty on imported handmade carpets and rugs has been recommended.

As your excellency is undoubtedly aware, the present rate of duty on imported handmade carpets and rugs under the 1922 tariff is 55 per cent ad valorem. Now, however, I understand the House Ways and Means Committee has proposed to increase this duty by placing a specific rate of 50 cents a square foot, provided it is not less than 60 per cent ad valorem.

It is nearly three years that I have had the honor of representing the Imperial Persian Government in the United States, and during all this period it has been my sincere desire and earnest effort to further and extend the cordial relations between the two countries. During this period not only have relations been considerably developed between Persia and the United States, but there has also been more than a 100 per cent increase in American exports to Persia, chiefly because of the immense facilities the chief American exports, such as automobiles and machinery of a general description which are for the most part on the free list, or only pay a very low ad valorem duty enjoy under the Persian tariff.

Your excellency will therefore realize the reasons for the disappointment of the Imperial Persian Government on being informed of the

proposed increase in the rate of duty on imported handmade carpets and rugs which form Persia's largest export commodity to the United States, particularly as the Imperial Government felt convinced that due consideration would be given to the note of March 21, and that also some regard be given to the sincere practical demonstration of good will exhibited by the Imperial Persian Government which is best exemplified by the tariff facilities United States exports enjoy in Persia.

Though it is hardly necessary to bring further proof of the good will of the Imperial Persian Government toward the United States, yet it may not be out of place if I mention just another example of the desire of my Government to extend its relations with the United States which is shown by the fact that important contracts for purposes of railway construction have been given during the period under review to American business interests.

I hereby desire to draw your excellency's attention to the fact that the news of the proposed increase of duty on imported handmade carpets and rugs has not only caused the greatest disappointment to the Imperial Persian Government, but it has also resulted in grave concern and widespread consternation among the general public, especially the merchants, an important factor, which your excellency will realize the Imperial Government can not ignore. The rate of 55 per cent ad valorem under the 1922 tariff on an article which the United States statistics prove to be noncompetitive with the American domestic produced article, both as regards quality and value, was considered by public opinion in Persia as excessive, but the present proposed increase is viewed as prohibitive and disastrous.

Your excellency is no doubt aware that the total volume of oriental carpets imported into the United States from abroad is only 3¾ per cent of the total domestic production, and the proposal now to hinder still further the import of this article which forms only a negligible proportion of the total volume produced in the United States, is interpreted by public opinion as representing an embargo on the importation of the said article into the United States, and as being an expression of indifference by the United States Government toward the economic welfare of a country which only endeavors to still further develop the cordial relations at present existing. While the imports of oriental rugs have never in any year exceeded the above-mentioned proportion, yet, for more than a generation the domestic manufacturer has obtained all his inspirations as regards designs and coloring, from the oriental rugs, going so far as to even copying their trade names.

Being fully aware of the grave and embarrassing situation the placing into effect of this proposal might conceivably cause, and being desirous that nothing be done in any way to harm the present good relations existing between Persia and the United States, and in order to free my conscience, so as on my part, nothing should have been left undone to prevent a state of affairs which, no doubt, will inevitably result to the mutual detriment of both countries, I consider it essential, in the name of the Imperial Persian Government to draw the kind attention of your excellency to certain facts arising out of the report of the Ways and Means Committee which accompanies its recommendation on article 1116.

I do not intend to again go over the ground covered in my note of March 21, but will venture to analyze certain statements and facts in the report of the Ways and Means Committee which I sincerely hope will receive your excellency's special consideration.

The first paragraph of the committee's report states:

> From 1919 to 1928, imports of high-grade carpets and rugs increased from 447 490 square yards to 2,206,583 square yards, or approximately 400 per cent. Under the act of 1922 a large quantity of these rugs consisted of low-graded oriental rugs, valued at from 30 to 80 cents per square foot. These cheap, handmade rugs compete with the higher grades of American machine made rugs. The domestic production of carpets and rugs decreased from 83,242,462 square yards in 1923 to 65,501,819 yards in 1927, or 21 per cent.

First with regard to the increase from 1919 to 1928 in the imports of handmade carpets and rugs, while the figures quoted in the above paragraph are correct, your excellency will note the committee failed to give any opinion as to the possible reasons for the said increase. As you are undoubtedly aware, the reason for this increase is that in 1919 the war had just ended and the oriental rug industry had practically come to a standstill, both by the war itself, and also by the embargo placed on the importation of these rugs which was effective from April, 1918, until some time in the early part of 1919. Your excellency will therefore note that this industry had practically been prohibited both by war conditions and by proclamation of the President, and its recovery, therefore, between 1918 and 1925 was natural and normal and did not represent any real increase as compared with pre-war conditions. The figures since 1925 show there has been no increase in the export of oriental rugs to the United States while the year 1928 showed a decrease from the previous years.

The figures are as follows:

1926—2,428,163 square yards.
1927—2,437,632 square yards.
1928—2,230,434 square yards.

On the other hand the average values of the oriental rugs had increased from $5.39 per square yard in 1922, and $5.54 in 1923 up to $7.88 per square yard in 1927 and about $8.30 per square yard in 1928, showing that less and less of the lower priced competitive rugs are being imported. The next statement of the committee in the above paragraph that a large quantity of the rugs imported under the act of 1922 were low-grade orientals valued at from 30 cents to 80 cents per square foot, does not appear to be in conjunction with the facts as they exist. There are no oriental rugs at all imported into the United States as low as 30 cents per square foot; the very lowest imported oriental rug being 38 cents per square foot while there is nothing lower than 48 cents per square foot exported from Persia into the United States.

The next statement of the committee's report that the production of domestic rugs decreased from 1923 to 1927 while literally correct is in reality disingenuous, because 1923 was a peak year of over production. The figures for 1919 of domestic production were 52,173,092 square yards, for 1921, 52,905,663 square yards for 1923—83,242,463 square yards, falling off in 1925 to 72,100,609, and 1927, 65,658,740, being still larger than any year prior to 1923. Furthermore, since 1927 they have again increased, although exact Government figures are unavailable, and the manufacturers are all running to capacity.

Your excellency will no doubt note that the committee in its report took the years 1919 to 1928, as their basis of argument as regards oriental rugs, but were careful to take only the years 1923 to 1927 as regards domestic rugs, which fact in itself shows that no true comparison from such irrelative reasoning can be obtained. Should we take the years 1923 to 1927 as regards oriental rugs, we will note that there was only an increase of 292,000 square yards during the whole of that period. This negligible increase in the volume of oriental rug exports to the United States during the said period is only equal to 1⅔ per cent of the drop in the domestic production during the same period. There is, therefore, 98⅓ per cent decrease in domestic production which is not accounted for, proving conclusively that the small increase in the oriental rug exports to this country during this period under review has no relation and could not be conceivably connected with the decrease in the domestic production for the same period under consideration.

The next paragraph of the committee's report states:

> The duty under the act of 1922 is 55 per cent ad valorem. Because of the difficulty of ascertaining the foreign value of oriental rugs, particularly those of the lower grades, the committee proposes to change the form of the duty from a straight ad valorem to a specific duty with a minimum ad valorem rate. The proposed duty is 50 cents per square foot, but not less than 60 per cent ad valorem. The effect of this change will be considerably to increase the duty on competitive rugs—i. e., those valued at not more than 83⅓ cents per square foot, and to increase the duty on those valued at more than 83⅓ cents per square foot 5 per cent.

The above statement of the committee on Ways and Means, that because of the difficulty of ascertaining foreign values on oriental rugs, particularly those of lower grades, the committee proposes to change the form of duty, etc., is not corroborated by the conditions, because it is on the higher grade goods that this difficulty of ascertaining foreign values arises. The lower grade goods are largely common ordinary everyday quality on which values are easily ascertained. It is on the higher grade, and rarer qualities, that it is difficult to ascertian the correct value.

In the above statements I have attempted to point out as clearly and concisely as possible the views of the Imperial Persian Government both as regards the possible effects an increase in the rate of duty might have on Persian public opinion, as well as the statements of facts and figures which the House Ways and Means Committee mentioned in their report as a justification of the proposed increased duty.

In conclusion, I have the honor to point out to your excellency that the Imperial Government has spared no efforts in pointing out to the Government of the United States the probable effects an increase of duty on imported hand-made carpets and rugs might have on Persian-American relations, and I therefore earnestly hope the Government of the United States will not permit any premature action to hamper the Imperial Persian Government in its sincere desire to develop its economic relations with the United States by primarily affording American capital and business interests special privileges and consideration.

Pray accept, sir, the renewed assurances of my highest consideration.

D. MEFTAH.

His Excellency HENRY L. STIMSON,
Secretary of State.

DEPARTMENT OF STATE,
Washington, June 22, 1929.

HON. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, I have the honor to inclose for your information a copy of a dispatch from the American Legation at Teheran, with inclosures thereto, concerning the proposed increase in customs duty on Persian rugs and carpets entering the United States.

I have the honor to be, sir,
Your obedient servant,

H. L. STIMSON.

LEGATION OF THE UNITED STATES OF AMERICA,
Teheran, Persia, May 17, 1929.

The honorable the SECRETARY OF STATE,
Washington.

SIR: Supplementing the legation's dispatch No. 829 of May 14, 1929, I have the honor to transmit herewith copies of a note, No. 2521, dated May 16, 1929, from the Imperial Ministry of Foreign Affairs, and of my note, No. 363, of May 17, 1929, in reply thereto.

While I was calling at the Ministry of Foreign Affairs on May 15, the economic adviser of the foreign office, Mr. Noury Esfandiari, a first cousin of the Persian Secretary in Washington, asked me to come into his office to talk over "a very serious matter." He proceeded to enumerate the points made in the Persian note above mentioned. The argument was precisely the same as that used by His Highness Teymourtache, the substance of which I telegraphed the department on May 12. It can not be doubted that the foreign office economic adviser had instructions direct from Teymourtache; the department's telegram No. 17 of May 14, 1929, seemed to be so appropriate in this connection that it was therefore incorporated almost verbatim in my reply to the foreign office's note.

I have the honor to be, sir,
Your obedient servant,

DAVID WILLIAMSON,
Charge d'Affaires ad interim.

[Translation]

MINISTRY OF FOREIGN AFFAIRS,
DEPARTMENT OF ECONOMICS,
Ordibehesht 26, 1308 (May 16, 1929).

MR. WILLIAMSON,
American Chargé d'Affaires, Teheran.

Mr. CHARGÉ D'AFFAIRES: As you have been informed by the Director of Economics of the Ministry of Foreign Affairs in the course of verbal conversations, in accordance with the reports received the question of increasing the customs duties on rugs is being discussed by the authorities concerned in the United States of America. The receipt of this report has created much concern among the Persian

commercial institutions whose chief trade with the United States of America is rug exports. As you know, the customs duties now collected in the United States on Persian rugs is very exorbitant, and interested parties have repeatedly applied to the Government (requesting) action for reduction. You will, therefore, agree with me that an increase of the customs duties on rugs will doubtless distress the commercial circles of Persia.

The Persian Government hopes that the United States Government will take into consideration the extraordinary facilities which are afforded in Persia for the importation of American commodities, and will not only restrain increase of customs duties on rugs, but, like the Governments of France, Germany, and Belgium who have recently fulfilled the aims and designs of the Persian commercial circles, will take action for the reduction of the customs duties on rugs. I am sure you are alive to the fact that the adoption of a favorable decision in this connection will be of paramount importance at this (particular) juncture, when the negotiations for the conclusion of a new treaty have been started, and the Persian Government will be glad to see to it that the United States Government's agreeable disposition in this connection will prepare favorable ground for future negotiations.

I avail myself of this opportunity to renew the assurance of my high consideration.

MOHAMMAD ALI FARZIN.

TEHERAN, PERSIA, *May 17, 1929.*

His Excellency MIRZA MOHAMMAD ALI KHAN FARZIN,
Acting Minister for Foreign Affairs, Teheran.

EXCELLENCY: I have the honor to acknowledge the receipt of your excellency's note No. 2521, of May 16, 1929, concerning the proposed increased rate of duty on rugs and carpets entering the United States, incorporated in the new tariff bill now before the Congress of the United States.

I shall not fail to transmit, by the fastest available mail service, the communication to my Government for its information. But while awaiting its instructions I beg to suggest to your excellency that perhaps certain misapprehensions of the situation appear to have arisen in the minds of Persian rug exporters, which I would beg your excellency to rectify.

For example, the present rate of duty on rugs, which is characterized as exorbitant, has not hindered the importation of Persian rugs into the United States in ever-increasing quantities. Thus, the Persian Government's statistics show that in the year 1925–26 krans 57,113,858 worth of rugs were imported from Persia into the United States; that in 1926–27 the figures rose to krans 70,730,780; and that in 1927–28 the sum attained was krans 72,981,511.

Furthermore, I am in receipt of a telegram from my Government in this connection which states that the new tariff bill carries the provision that a duty of 50 cents per square foot shall be levied on rugs and carpets, provided that the duty shall not be less than 60 per cent ad valorem. It may be seen from this that the proposed new duty on rugs would, in effect, be no higher than 60 per cent ad valorem, whereas the present rate of duty levied upon Persian rugs entering the United States is 55 per cent ad valorem. It may be believed that

in itself this very small increase in the rate of duty would not prejudice Persia's extensive commerce in rugs with the United States, and that Persian commercial circles should not be concerned on that score.

Since, as your excellency is doubtless aware, tariff making in the United States is an exclusive prerogative of Congress, the executive branch of the Government is not in a position to effect a modification in any tariff rate proposed by Congress. I am pleased, however, to be able to assure your excellency that the Department of State has transmitted to the competent committee of Congress the views of the Persian Government regarding the proposed new tariff on rugs and carpets.

In conclusion I feel it needless to state to your excellency that the United States has no system of preferential tariff rates like that in force in certain European countries.

I avail myself of this opportunity to renew to your excellency the assurance of my highest consideration.

RUMANIA

DEPARTMENT OF STATE,
Washington, July 10, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, I have the honor to inclose for your information a copy of a note and aide-memoire from the minister of Rumania regarding the readjustment of the United States tariff and its effect on the importation of carpenters' glue in the United States.

I have the honor to be, sir,
Your obedient servant,

H. L. STIMSON.

LEGATIUNEA REGALA A ROMANIEI,
Washington, D. C., June 27, 1929.

Hon. HENRY L. STIMSON,
Secretary of State.

SIR: I have the honor to transmit to your excellency the inclosed aide-memoire regarding the proposed rate in the tariff law affecting the importation of carpenters' glue in the United States. I will be grateful if your excellency will be kind enough to submit it to the appropriate congressional committee for consideration.

Accept, sir, the renewed assurances of my highest consideration.

G. CRETZIANO.

AIDE-MEMOIRE

For the past several years, the Rumanian glue industry has exported to the United States a certain quantity of carpenters' glue. The present tariff on glue is 20 per cent ad valorem plus 7 cents on the pound, and the proposed new tariff would raise this rate to 25 per cent ad valorem plus 8 cents on the pound.

The American production of glue amounts to a little over 100,000,000 pounds a year, while the imported glue does not exceed 9,000,000 pounds, representing, therefore, less than 9 per cent of the home production. The foreign glue, especially that manufactured in Rumania is of a special make not made in the United States. In 1928, less glue was available in the United States than in previous years, which indicates that the American glue market relied to a certain extent on imports. The raising of the tariff rate, therefore, would work hardship not only on the foreign importer, but also on the American consumers.

SPAIN

DEPARTMENT OF STATE,
Washington, June 8, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, as also with important foreign press or other comment coming into the hands of the department, I have the honor to inclose for your information copies of a note, dated April 26, 1929, and the translation thereof, from the Spanish Minister for Foreign Affairs to the American ambassador at Madrid, concerning commercial relations between Spain and the United States and with particular reference to prospective tariff changes. There is also inclosed a copy of a letter under date of May 18, 1929, from the Secretary of the Treasury commenting on the Spanish note.

I have the honor to be, sir,
Your obedient servant,

H. L. STIMSON.

[Translation]

Presidency of the Council of Ministers; Secretariat General of Foreign Affairs

APRIL 26, 1929.

EXCELLENCY: The preoccupation which for some time has been felt by the Government of His Majesty with regard to the state of commercial relations between Spain and the United States is a fact which undoubtedly has not escaped Your Excellency. The obstacles to Spanish export trade arising from provisions, some of a customs nature and others which, without being specified, have restricted our imports into the United States, have been repeatedly pointed out to the Washington Government by His Majesty's Ambassador without, unfortunately, the action of Senor Padilla having produced the results that might legitimately have been expected; and, at one time grapes, at others garlic, onions, almonds, dried fruits, canned peppers, revolvers and recently cork products have been subjected to treatment other than that which in the opinion of His Majesty's Government they deserve.

It is not necessary to recall at this time the antecedents and circumstances of the legal status of customs relations between the two countries. The most-favored-nation régime is the basis thereof, and

the fact of the embargo formerly existing in North America against the importation of Argentine grapes having been raised, without similar treatment being accorded to grapes of Spanish origin notwithstanding reasons of an alleged sanitary nature therefor, shows that the favorable attitude which the Spanish authorities have always shown does not meet with equitable requital on the other side of the Atlantic.

The situation indicated would be, therefore, considerably aggravated should information coming from the United States be confirmed concerning the proposed customs tariff revision, a matter of great importance and one directed toward the increase of duties in classifications which principally interest Spain—a purpose which should it be confirmed, would increase the notable difference of the trade balance in the exchange of products between the two countries which, in 1927, was 254,000,000 pesetas, gold, in favor of the United States.

The export value of Spanish products to North America in the matter of cork manufactures shows an extraordinary difference as compared with other products, being 84,600,000 pesetas; followed by almonds, 16,000,000; olives, 15,500,000; olive oil in large containers, 12,000,000; chamois skins, 10,600,000; sheet cork, 10,400,000; besides copper ore, goatskins, mercury, rags, onions, filberts, peppers, olive oil in small containers, and canned vegetables and fish in smaller quantities although they exceed a million pesetas in value.

Your excellency will understand the great importance that the Government of His Majesty must ascribe to an increase of duties and the application of hindrances (I refer to the impost on cork stoppers) to an article which is of such signal importance in the list of Spanish exports to the United States, namely cork manufactures—a product genuinely Spanish, the manufacture of which in Spain has so legitimate a right to protection. The interest felt in the United States in the moving-picture industry which, according to the recent note of your excellency, the Washington Government considers for the sole reason of its important development and progress in the country, should be regarded with consideration by other nations, can not fundamentally be compared with the cork industry derived as it is from a national product of Spain.

The desire of His Majesty's Government is ever to follow unswervingly in its relations with the United States the policy of cordial freindship and approximation between the two nations. No action whatsoever taken by the Government over which I preside could be considered as a contradiction to this purpose. We want to continue in that purpose, but precisely for that reason I must recommend to your excellency that the attention of your Government be called to the problem as stated, since in view of a trade balance so unfavorable for Spain, as I have just pointed out, and aggravated by the series of restrictive measures and impediments to which I have also alluded it would be so difficult for His Majesty's Government to fail to take into consideration the importunities it is receiving not only from specially interested quarters, but from Spanish public opinion in general, that it would find itself obliged to proceed to the denouncement of the existing modus vivendi.

I avail myself of this opportunity to renew to your excellency the assurance of my highest consideration.

MARQUES DE ESTELLA.

THE SECRETARY OF THE TREASURY,
Washington, May 18, 1929.

The SECRETARY OF STATE.

DEAR SIR: Referring to Acting Secretary of State Clark's letter of May 4, 1929, with reference to a telegram under date of April 30, 1929, from the American Embassy at Madrid and requesting any comments that this department may care to make, the facts are that in all but one of the cases referred to the department has simply followed the decision of the courts or the orders of the President, which are binding upon it. The only exception was in the case of olives, in which the department did not adopt the court's classification but undertook to have a new case made, as it did not appear that the attention of the court had been directed to the provision in paragraph 744 of the tariff act imposing a duty upon dried ripe olives of 4 cents per pound.

The department is without authority to give Spanish imports any more favorable treatment than is given to imports from other countries, but if the importers of Spanish products feel that they are being discriminated against, they have, of course, the right to protest and to secure a determination of the questions at issue by our courts.

The rates of duty under the pending legislation to which reference is made in the telegram are, of course, not a matter within the jurisdiction of this department.

The following is a summary of the action taken by the department with reference to the several articles mentioned in the telegram above mentioned:

Grapes: The department in T. D. 41188 held that grapes imported in barrels, partly crushed during the voyage of importation, are dutiable under paragraph 806 of the tariff act of 1922 at 70 cents per gallon and $5 per proof gallon on the alcohol produced or producible therefrom and not at 25 cents per cubic foot under paragraph 742. In this decision the department followed the reasoning underlying the decision of the Court of Customs Appeals in T. D. 40942.

The embargo on Argentine and Spanish grapes to which reference is made in the telegram is a matter which the department of agriculture is handling under the plant quarantine law.

Onions: The Court of Customs Appeals held in T. D. 42808 that onions peeled and packed in brine for purpose of preservation for an indefinite period are dutiable as vegetables packed in brine, at 35 per cent ad valorem under paragraph 773 and not at 1 cent per pound, paragraph 768.

Under the authority of section 315 (a) of the tariff act of 1922 the President by proclamation dated December 22, 1928, published in T. D. 43109, increased the duty on onions from 1 cent to 1½ cents per pound.

Garlic: No decisions adverse to foreign interests have been issued on imports of garlic.

Almonds: In abstract 1264 the Customs Court held that shelled almonds, prepared and coated with sugar, packed in tins, are dutiable as confectionery at 40 per cent ad valorem under paragraph 505 of the tariff act and not as shelled almonds at 14 cents per pound under paragraph 754.

Dried fruits—olives: The department in T. D. 41903 directed assessment of duty at 4 cents per pound under paragraph 744 on

dried ripe olives of the kind held by the United States Court of Customs Appeals in T. D. 41482 to be dutiable at 35 per cent ad valorem under paragraph 749, in order that a new case might be prepared and passed upon by the courts. It does not appear that such subsequent case has yet been passed upon.

Pimientos—Spanish red peppers: In T. D. 41908 the Court of Customs Appeals sustained the decision of the Customs Court in T. D. 41688 and the decision of the department that canned Spanish pimientos are dutiable as whole pimientos under paragraph 779 at 6 cents per pound and not at 35 per cent ad valorem, as prepared vegetables, under paragraph 773.

Revolvers: By orders of the President issued June 3, 1924, and June 23, 1926, respectively (T. D. 40297 and 41655), under the authority contained in section 316 of the tariff act of 1922 certain kinds of revolvers manufactured in Spain were excluded from entry into the United States on the ground of unfair competition.

Corks: Following a decision of the Customs Court, October 5, 1928 (T. D. 42993) the department held in T. D. 43245 that all corks imported after February 25, 1929, would be required to be individually marked to indicate the country of origin.

Very truly yours,

A. W. MELLON,
Secretary of the Treasury.

DEPARTMENT OF STATE,
Washington, June 14, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with all representations made by foreign governments to this Government touching tariff questions, I have the honor to inclose for your information copies of three communications, two of which are in translation, dated May 20, and June 5, 1929, respectively, from the Royal Spanish Embassy with regard to American customs duties on Spanish products.

I have the honor to be, sir,
Your obedient servant,

J. REUBEN CLARK, Jr.,
Acting Secretary of State.

[Translation]

ROYAL SPANISH EMBASSY,
June 5, 1929.

HENRY L. STIMSON,
Secretary of State.

Mr. SECRETARY: I regret that I must once more have recourse to your excellency's good offices to intervene in favor of products of Spanish exportation to the United States, which are so menaced by the proposed customs tariff law. On some articles the increase in duty is so great that it will completely shut them out of this market, so important and so very desirable for us, for which reason I do not hesitate to renew my appeals to your excellency, sure that the great international spirit of your department will be able clearly to under-

stand the very intimate international connection which, with the passing of time and the advancement of civilization, matters which formerly were properly the private affairs of the interior economy of a country, domestic affairs, so to say, now have.

It is difficult to restrain the feelings of some of our agricultural producers, above all those who, for example, devote their activities and their efforts to raising onions, since they see that the market which in 1922 was attractive, due to the Fordney Act, which imposed an additional entry duty of one-half cent per pound (sic) is totally disappearing with the new tariff, which raises it to not less than two cents per pound, i. e., an increase of 150 per cent.

Onions for years came to the United States paying one-half cent, then the duty was increased; in December, 1928, by Presidential order, it was further increased 50 per cent more to a cent and a half per pound; the committee of the House of Representatives proposed an increase of a quarter of a cent more, against which the Spanish producers protested before my Government, requesting protection. But instead of being able to give them hope, favorable news for their most legitimate desires, we now find that through Congressional agreements the duty is to be still further increased, up to 2 cents per pound, which our onions must pay on entering North American territory.

The effect of this increase, following the already unwelcome one which had caused the protest, has been necessarily disagreeable to our agriculturists, who, with still greater reason, will persist in their demands for protection.

I avail myself, etc.

ALEJANDRO PADILLA.

[Translation]

ROYAL SPANISH EMBASSY,
Washington, May 20, 1929.

Hon. HENRY L. STIMSON,
Secretary of State.

Mr. SECRETARY: The projected law of customs tariffs which is being studied by the American Houses, very particularly affects products of Spanish origin which find an excellent market in the United States and which, if the increases, changes, and restrictions proposed in the text already made known, published the 9th instant under the serial number "H. R. 2667" by the House of Representatives are agreed to, will suffer such damages that it will be practically impossible for them to compete in this market, thereby aggravating the already hardly attractive position which the balance of trade with the United States shows for Spain which balance has reached the important figure of 254,509,812 gold pesetas, or about fifty-one million dollars, annual loss for our country.

Since agricultural products are the foundation of our exportations and since the projected law is concerned in great part with remedying and bettering the situation of the farmer in the United States, as it says textually in its preamble, it has been made more difficult to find an adequate solution which may give complete satisfaction to both parties. Nevertheless, I firmly believe that, with the valuable assistance of your excellency, the situation may be somewhat allevi-

ated, since the political importance which economic measures have in the world to-day is not unknown to your department.

All of which induces me to present to your excellency a brief résumé, more practical than technical, of the state of Spanish exportation to the United States, in order that it may reach the attention of the appropriate persons and be taken into consideration, with characteristic kindness and international spirit, in the final drafting of the new customs law. Our most important product is cork, since it alone constitutes fifty per cent of our total exportation. In the year 1923 only about thirty-seven million pesetos were shipped, while the value of this merchandise is now more than 100. Any additional charge laid on cork will have immediate effect on the total of Spanish exports to the United States; wherefore, principally, all attention must be devoted to securing for it a most privileged position.

As a first consideration, it should be pointed out that cork is not produced in this country, at least in important commercial quantities, therefore, no reason of protecting the national industry exists. As the second consideration, is one which is clearly explained by the simple fact that an important part of this industry is financed by North Americans, who labor with good return in the southern part of Spain.

Having considered these two points, it seems strange to find that, in certain items referring to cork, in changing the items marked ad valorem to specific, the increase is nothing less than 100 per cent, which, frankly, constitutes a prohibitive barrier. Add to that the constant difficulties encountered on the question of the mark of origin on stoppers, which has been the cause of so much correspondence with the Department of State, now under the worthy charge of your excellency, and the whole shows the difficult situation of the future of our most important product, which does not compete with any other American product.

Almonds, with or without shells, which occupy the second position on our list of exports, are increased by 2½ cents for the kernel, per pound, and three-quarters for those coming with shells. The consumption in the domestic American market is so great, the demand for this product made by the manufacturers of sweets is so great, that there is ample allowance for the sale under remunerative conditions of any which California produces without, for the present at least, there arising any fear of our competition. Granted, therefore, that the need for almonds exists, our almonds will probably not suffer very greatly from an additional tax, since it is the domestic consumer who will find himself obliged to pay the difference as long as it is almost an indispensable article, but precisely this reason argues more than any other for the maintenance of the previous rates, which are already high enough.

Spanish conserves, so well liked in the United States that many unscrupulous manufacturers have not hesitated to counterfeit their labels and marks or origin in order to make the public believe that the product manufactured here is the Spanish one, as I had the honor to bring to your excellency's attention not long ago by a note, find their duties perceptibly increased, the customs payment for canned pimentos being not less than 75 per cent greater, which excludes them from North America. Formerly, they paid 35 per cent, and that amount was a sufficiently great obstacle for them.

The pulp of fruit is one of the items most affected, since, formerly paying 25 per cent ad valorem, it now will have to pay 50 per cent, or an increase of 100 per cent. Nor can this embassy of His Majesty see North American competition for this product, especially for the canned pulp of apricots and oranges, since, according to our information, it is not produced within the territory of the Union.

Other conserves in general, particularly those of fish, also suffer an additional customs duty and innumerable sanitary difficulties, since it is also said that they contain noxious algæ.

The onion, a product of slight intrinsic value per pound, which formerly paid at the rate of 1 cent on appraisal, was recently raised 50 per cent by presidential proclamation, and now the payment of one-fouth cent more is proposed, which means that onions will pay 1¼ cents per pound, a very great amount if, as we said before, the original value of the merchandise is taken into consideration.

This brief résumé of the Spanish articles which are greatly prejudiced by the proposed change will clearly show your excellency that it does not affect less than 75 per cent of our total exports, while not meaning that those not mentioned will not suffer equally, without, in exchange, finding any equivalent compensation anywhere else.

The Spanish attitude toward North American products, of which so many are consumed in our country, has always been in perfect conformity with the most-favored-nation clause, endeavoring never to injure the exportation of the United States, which has allowed it to reach the place it occupies in our domestic market, where it holds a preeminent position.

I do not doubt that the well-grounded considerations which I have the honor to set before your excellency will make clearly visible the damage to be expected to Spanish exports from new and heavy duties which will result in driving from the North American market, so important and attractive for us, the products of a friendly nation, which has always shown consideration and attention to those of the United States, whether the two nations are bound by a treaty of commerce or by the extension of the present modus vivendi.

I avail myself of this opportunity, etc.

ALEJANDRO PADILLA.

SPAIN AND THE NEW TARIFF BILL

On August 1, 1906, the United States and Spain signed a commercial treaty, by which the United States gave to Spain the most-favored-nation clause, for the importation of raw tartars, wines, and artistic works, and Spain gave in turn the same treatment to all the American articles. In the year 1923 His Majesty's Government was obliged to abrogate this treaty because the United States, by a very respectable domestic reason (prohibition), had practically abolished all the privileges mentioned in the foregoing agreement. Notwithstanding that, Spain, moved by an especial consideration and as a friendly gesture toward the United States, granted by a royal decree the privileges of most favored nation, even without a commercial treaty in force. In May 25, 1927, by another royal decree, Spain extended to the United States the very especial and important concessions made to Germany, France, and Great Britain, by reciprocity in the treaties of commerce signed at that time. A few weeks later His Majesty's Government submitted to the United States Government a proposition offering the full grant, without reservations and for unlimited time, of the clause of most favored nation if the United States was willing to take off the embargo of our agricultural commodities and giving assurances that the tariff would not be increased for them. It was not possible to reach an agreement, and even then Spain granted to the

United States the most-favored-nation clause with unlimited time by royal decree of November 7, 1927, without receiving any especial compensation from the United States. At present both countries are economically united only by a modus vivendi, which can be denounced by any of the high contracting parties with 90 days' notice.

The principal motive of the abrogation by Spain of the commercial treaty was, in 1923, the unsatisfactory result of our commercial trade balance with the United States. This situation grew worse every day, and in 1927 Spain bought from the United States 467,000,000 gold pesetas, but only sold 211,000,000 gold pesetas, which shows a deficit for Spain of 255,000,000 of gold pesetas, approximately $50,000,000, a very important figure for our internal economy. And if that was so what will happen now with the increases proposed in the new tariff bill?

Cork is our most important export commodity to the United States, we sell about 100,000,000 gold pesetas yearly ($20,000,000) and we must bear in mind: (1) That Spain has practically the monopoly of the production of this article, that it does not have competition in the United States; (2) that it does not affect any branch of the American agriculture; (3) that is a commodity that American industrialists and manufacturers need in great quantities as raw material and that it is only coming from our country, and as fourth reason, and very important one for the American legislator, that at least 75 per cent of all the money invested in the Spanish cork industry is from American origin, and any blow given to our cork will indirectly hurt American interests. The increases are, therefore, not justified by any very valuable reason and notwithstanding it will pass to pay from 6 cents per pound for some kind of cork to 25 cents per pound, and for some other, 30 per cent ad valorem. Besides this, the taper corks have now to be individually marked "Made in Spain," when it has been always admitted that it was enough to have been marked in the bags or containers. Of course, this has nothing to do with the tariff, but it makes more difficult or nearly impossible to import taper corks on account of marking them individually.

Almonds, our second ranking commodity, do not really compete with the American ones, because they are from an extra fine type, and quite different of the national ones, and they are used for very different purposes, especially for making pastry and candies. The increase is from 14 cents per pound, for the unshelled almonds to 16½ cents per pound, and the shelled almonds from 4¾ cents per pound to 5½ cents.

Onions, of which we exported so many to the United States, they paid by th Fordney Act of 1922, ½ cent a pound, afterwards and owing to the always-increasing demand of the American agriculturists, they were put on a cent basi s duty per pound. In December, 1922, the President of the United States, Mr Coolidge, made use of his especial privilege by a proclamation, increasing the duty on a 50 per cent more, that is 1½ cents per pound. In the first proposal of the Committee on Ways and Means before the House, onions were supposed to pay 1¾ cents per pound, and now with the last modification and for the same reason of agricultural relief, they will pay 2 cents per pound, which means the tremendous increase of 150 per cent in duty in 7 years. Against that, the Spanish producers will surely protest vigorously, because they know very well that with this tax they will lose the American market, worth $3,000,000 or more, a year for Spain.

Leather was a quite good commodity for the Spanish exporter, owing to our cheap production costs and the free list in the United States; now, of course, we will suffer with the new duty and our five millions of dollars worth trade will be considerably reduced.

Canned goods of all different kinds, worth about $6,000,000 a year, they have now an increase of 25 per cent of the ad valorem price, but taking in consideration that the new tariff bill has a special disposition for fixing the prices ad valorem not in accoradnce with the cost in the country of origin, but in accordance with the production cost in the United States, and owing to the differences in wages, taxes, and industrial position between our two countries, the increase will not be of 25 per cent; it would be at least of 40 per cent, a figure equally prohibitive for our canned goods.

Guns (pistols or revolvers) are advantageously manufactured in Spain, especially the cheap ones under the $4 price, for the above-mentioned reasons. Now they will pay 75 cents more apiece over the $1.25 they already pay; that is, $2 duty a piece, and in addition 55 per cent ad valorem, $2.20 more. Summing up all these figures, we find that a $4 gun will pay $4.20 at the customs, bringing every pistol to a net price of $8.30, without any profit for the dealers, which means that the market price of our original Spanish $4 gun can not be less than $10. Such a high price will, of course, stop the sales and importations.

The increase of a cent per pound in olive oil afflicts a commodity of which Spain sells over $6,000,000 worth a year.

The pimentos, paying 55 per cent ad valorem now, they are increased in 75 per cent more, if we take the ad valorem price in Spain and in 122 per cent if we figure up the ad valorem price in the United States. With that we can not expect to sell any more pimentos in this market.

Fruit pulp is possibly the commodity which suffers the most of the whole proposed tariff. From paying 35 per cent ad valorem, they will pay now 50 per cent, 100 per cent increase if we take in consideration the ad valorem price in Spain and 125 per cent if we figure up the ad valorem price in the United States.

These are briefly stated the Spanish most punished commodities, others are affected, but not in such a bad way as the ones above. It unluckily happens that these are the principal Spanish exports to the United States, therefore, we can say that all the Spanish trade suffers a big increase in duty and if we make a vague calculation, we can state that the Spanish export trade to the United States will decrease in the same proportion of the increases of customs taxes upon Spanish articles. That is to say, from 25 to 35 per cent, and we find out that the average amount of this percentage will be, and Spain is afraid of that, no less than $50,000,000 a year, and putting together the other $50,000,000 which Spain was losing before all these years, we found a grand total of $100,000,000 (500,000,000 gold pesetas) trade balance against Spain. And it is very easy to understand that that is a very big figure for any country, even for the United States, the most rich and powerful market of the world, and much more so for Spain which is very far from having the commercial-strength and territorial means of the United States.

DEPARTMENT OF STATE,
Washington, July 15, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, I have the honor to inclose for your information a copy of a note, in translation, dated July 2, 1929, from the Spanish ambassador, with inclosure thereto, concerning the proposed changes in duty on cork.

I have the honor to be, sir,
Your obedient servant,

H. L. STIMSON.

[Translation]

ROYAL SPANISH EMBASSY,
Washington, July 2, 1929.

Hon. HENRY L. STIMSON,
Secretary of State.

Mr. SECRETARY: As a supplement to the note which under the number 80/16 I had the honor to address to your excellency on May 20 last, I herewith forward an extract from the changes in the customs tariff already approved by the House of Representatives, for cork, a purely Spanish product, which is without American domestic competition and on which our country has practically a monopoly in production.

As your excellency may see, the proposed increases are great enough to reduce the consumption of this article, Spain's principal export to the United States, since industry will try to find a cheaper substitute and the Spanish exporting business will thereby be markedly injured.

A great part of the items undergo an increase of 5 American cents per pound, a considerable amount if the original cost and the cheap-

ness of cork are taken into account; others go from 30 per cent ad valorem to 45 per cent ad valorem; and those least affected are increased 2½ cents. Another item, cork insulation, which used to pay ad valorem, will now pay 2¾ cents per cubic foot, which is likewise a considerable increase.

On account of all this, I take the liberty of requesting your excellency to be so good as to have the present comments forwarded to the appropriate authorities, the only purpose of which is to keep the American market for a product as important for Spain as cork.

I avail myself of this opportunity, etc.,

ALEJANDRO PADILLA.

ROYAL SPANISH EMBASSY, WASHINGTON

Comparison of rates

Item	Present	Proposed
Stoppers over ¾ inch	20 cents per pound	25 cents.
Disks over ¾6 inch	do	Do.
Washers over ¾6 inch	do	Do.
Composition washers over ¾6 inch	10 cents per pound	12½ cents.
Stoppers less than ¾ inch	25 cents per pound	31 cents.
Disks less than ¾6 inch	do	25 cents.
Washers less than ¾6 inch	do	Do.
Composition washers, etc., over ¾6 inch	12½ cents	12½ cents.
Composition cork in forms of slabsm blocks	6 cents	10 cents.
Composition cork in rods	10 cents per pound	
Cork insulation	30 per cent ad valorem.	2¾ cents per foot.
Cork paper	do	30 per cent ad valorem.
Cork items not otherwise specified	do	45 per cent ad valorem.
Granulated cork	25 per cent ad valorem.	
Granulated cork weighing not over 6 pounds per cubic foot uncompressed (cleaned, refined, purified).		3 cents per pound.
Granulated cork all other kinds and regranulated		1 cent per pound.
Cortile	30 per cent ad valorem.	
Cortile over ¾6 inch thick		6 cents per pound.
Corktile less than ¾6 inch thick		10 cents per pound.
Shell corks		75 cents per pound.
Penholders		$2 per pound.
Manufactures of composition or compressed finished or unfinished, not specially provided for.		10 cents per pound.
Pipe coverings, fittings, covers, lags coated or uncoated		5 cents per pound.

SWEDEN

DEPARTMENT OF STATE,
Washington, July 15, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign Governments to this Government touching tariff questions, I have the honor to inclose for your information a copy of a note, dated July 1, 1929, from the Swedish minister, transmitting a memorandum from the Swedish Iron Masters' Association, regarding the proposed changes in duty on hollow drill steel, alloy steel, and wire rods.

I have the honor to be, sir,
Your obedient servant,

H. L. STIMSON.

LEGATION OF SWEDEN,
Washington, D. C., July 1, 1929.

SIR: Acting upon instructions from my Government I have the honor to transmit herewith a memorandum prepared by the Swedish Iron Masters' Association (Jernkontoret), containing certain observations relative to the change in the rates of duty on hollow drill steel (par. 304), alloy steel (par. 305), and wire rods (par. 315), proposed by the House of Representatives in H. R. 2667.

I beg particularly to call your excellency's attention to the statement by the association that an increase in the duty on hollow drill steel would, in fact, be directed almost exclusively against Sweden, inasmuch as practically all the import into the United States of this article comes from Sweden.

With regard to the proposed duty on alloy steel, the association calls attention to the new phraseology of the proposed paragraph 305, which in the opinion of the association would wipe out the dividing line between alloyed and unalloyed steel and tend to make a decision on this point more or less arbitrary.

I should appreciate if through your excellency's good offices the views set forth in the attached memorandum could be brought to the notice of the Senate Finance Committee, and receive due consideration, when the duty on metals is to be decided by Congress.

With renewed assurances of my highest consideration, I have the honor to remain, sir,

Your most obedient servant,

W. BOSTROM.

LEGATION OF SWEDEN, *Washington, D. C.*

MEMORANDUM REGARDING INCREASE IN THE RATES OF DUTY ON IRON AND STEEL IMPORTED INTO THE UNITED STATES, AS PROPOSED BY THE HOUSE OF REPRESENTATIVES. (H. R. 2667).

Paragraph 304, Hollow bars and hollow drill steel: For hollow bars and hollow drill steel the proposed tariff act of 1929 levies an additional duty of 1.3 cents per pound. The present duty corresponds to about 25 per cent ad valorem. Should, therefore, the proposed increase become law, it would mean that hollow drill steel would have to pay a duty of more than 40 per cent ad valorem.

The above mentioned paragraph covers a vast field of different qualities of steel. The phraseology of the paragraph indicates that the underlying principle is to increase the rates in proportion to the value of the goods. Accordingly, an unmanufactured article, or a semifinished product, takes a lower rate of duty than a finished product, which latter has increased in value on account of the additional labor to which it has been subjected. It must be borne in mind that the Swedish hollow drill steel imported into the United States is a semifinished product, which is further manufactured in this country, where a great deal of labor is added to make it a finished product before it is offered for sale on the American market, resulting in the employment of many thousands of skilled American workmen. It seems, therefore, as if the assessment of the proposed additional duty on the semifinished product would not be in accordance with the principle which has governed the framing of the said paragraph, but that hollow drill steel instead should be subject to a lower rate of duty in conformity with other products of a semifinished character.

The hollow drill steel imported from Sweden is used on account of its superior drilling and enduring qualities. It is more uniform and more accurately rolled than any hollow drill steel made in the United States and it does not compete with the domestic hollow steel upon a cost basis, as it takes a higher price due to its better quality.

The proposed increase in the duty on hollow drill steel would, in effect, be equivalent to an embargo. Inasmuch as by far the main part of the hollow drill steel imported to the United States comes from Sweden, the increase would almost exclusively be directed against Sweden.

Paragraph 305. Low alloy steel: The Committee on Ways and Means in its report accompanying the proposed tariff act of 1929 made the statement that the provisions of the paragraph dealing with alloy steel products have been expanded to carry out the established policy of special tariff treatment for alloy steels so as to embrace the entire range of alloy materials and the products of which they are important components.

The present tariff law stipulates that an additional duty of 8 per cent shall be levied on steel containing more than 0.6 per cent of certain alloying elements, among others, vanadium, tungsten, molybdenum, and chromium. According to the proposed tariff act this percentage is to be reduced to 0.1 per cent for vanadium and 0.2 per cent for tungsten, molybdenum, and chromium, on which percentages the above-mentioned additional duty of 8 per cent ad valorem shall be paid. Aside from the assessment of higher rates of duty on alloy steels, the proposed change thus makes a drastic cut in the content of alloying elements subjecting the steel to additional duty.

The danger in fixing such a low percentage for alloying elements is that the distinction between alloyed and unalloyed steel would be extremely difficult to determine and might lead to arbitrary decisions. It occurs very often that small incidental amounts of alloying elements, which have got in there from the scrap, appear in the steel. According to the proposed wording of paragraph 305 such steel could inadvertently be classified as alloy steel, subject to the additional duty of 8 per cent.

In most countries the percentage of alloying elements is fixed at much higher figures than those proposed in the tariff act of 1929. In view of the international cooperation which is desired in this particular field, the proposed reduction is apt to make difficult such cooperation.

As in the case of hollow drill steel the import of Swedish alloy steels is due to their superior quality to steel made in other countries. The reason for this is the fact that purer raw materials are employed in Sweden. The Swedish steel does not compete upon a price basis with the domestic product.

Paragraph 315. Wire rods: Also with regard to this article it should be emphasized that the Swedish wire rods which have found their market in the United States have won this market on account of their higher quality. The total tonnage of wire rods shipped into the United States from Sweden last year was only approximately 6,000 tons, and under the present rates of duty the cost to the American manufacturers of wire is on the average one-third more than domestic rods of the same analysis. There is consequently no competition between Swedish wire rods and the domestic product, as far as prices are concerned.

The commercial relations between Sweden and the United States have long been firmly established and the exchange of commodities has been steadily growing to the benefit of both countries. The increase in the rates of duty proposed in the new tariff act will undoubtedly cause a considerable disturbance in the reciprocal flow of commodities.

THE SWEDISH IRON MASTERS' ASSOCIATION.

STOCKHOLM, *June, 1929.*

DEPARTMENT OF STATE,
Washington, July 16, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, I have the honor to inclose for your information a copy of a note from the Swedish Minister, dated July 1, 1929, transmitting a memorandum concerning the proposed changes in rates of duty on matches.

I have the honor to be, Sir,

H. L. STIMSON.

LEGATION OF SWEDEN,
Washington, D. C., July 1, 1929.

Hon. HENRY L. STIMSON,
Secretary of State, Washington, D. C.

SIR: Acting upon instruction from my Government I have the honor to transmit herewith a memorandum prepared by the Swedish Match Co. (Svenska Tandsticks Aktiebolaget), containing certain observations relative to the change in the rates of duty on matches (par. 1417) proposed by the House of Representatives in H. R. 2667.

I should appreciate if through your excellency's good offices the views set forth in the attached memorandum could be brought to the notice of the Senate Finance Committee and receive due consideration when the duty on matches is to be decided by Congress.

With renewed assurances of my highest consideration, I have the honor to remain, sir,

Your most obedient servant,

W. BOSTROM.

MEMORANDUM

EXPORTS OF MATCHES FROM SWEDEN TO THE UNITED STATES AND THE PROBABLE EFFECT OF AN INCREASE IN THE UNITED STATES IMPORT DUTY ON MATCHES

Classification used in the United States tariff act of 1922.—According to paragraph 1417 of the tariff act, matches imported into the United States are classified in the following three groups:

1. Matches of all descriptions packed in boxes containing more than 100 matches.
2. Matches of all descriptions imported otherwise than in boxes containing not more than 100 matches.
3. Wax matches, wind matches and all matches in books or folders or having a stained, dyed or colored stick or stem (in the following referred to as "fancy" matches).

Present and proposed import duties.—The import duties fixed in the tariff act of 1922 and in the tariff bill of 1929 are as follows:

1. For matches packed in boxes containing less than 100 matches: Present duty, 8 cents per gross of boxes; proposed duty: 20 cents per gross of boxes.
2. For matches packed in boxes containing more than 100 matches: Present duty, ¾ cent per 1,000 matches; proposed duty, 2 cents per 1,000 matches.
3. For the "fancy" matches: Present duty, 40 per cent ad valorem; proposed duty, 40 per cent ad valorem.

Volume of present imports of matches to the United States.—Almost all the matches imported into the United States are packed in boxes containing less than 100 matches. During the years 1924 to 1928, inclusive, the quantity imported from Sweden and other countries and the value of these import were as follows:

	Number of gross of boxes		Value	
	From Sweden	From other countries	From Sweden	From other countries
1924	2,133,013	3,140,751	$904,799	$1,233,509
1925	3,245,157	2,699,389	1,231,321	985,178
1926	3,554,432	2,297,974	1,298,328	824,945
1927	3,661,605	2,440,131	1,356,639	810,552
1928	2,368,050	3,195,977	1,013,774	1,076,694
Average for the 5 years	2,992,451	2,754,845	1,160,972	984,176

It will be noted that there are certain variations in the imports from year to year. These variations are due to the fluctuations of the stocks in the hands of the importers, wholesalers, and retailers, which stocks are generally very large

during periods when the price trend is upward, but quite small when the prices are declining. The real consumption of imported matches in the United States is, however, very steady and can be estimated at approximately 3,000,000 gross of boxes of Swedish matches per year, having a value of about $1,150,000, and 2,750,000 gross per year of matches from other countries, having a value of about $1,000,000.

Complete statistics of the manufacture of matches in the United States are not available, but the census of manufacturers for the year 1927 gives the total value of the domestic production of matches as $24,725,404. The total imports from Sweden thus only constitute 4.3 per cent of the total consumption of matches in the United States and the imports from other countries only constitute 3.7 per cent of the total consumption.

The total exports of matches from Sweden to the United States constitute 12.5 per cent of the total Swedish match exports, and the United States is one of the largest individual markets for Swedish matches.

Types of matches imported into the United States.—All the matches imported into the United States from Sweden are of the safety or strike-on-box type; that is, they only ignite against the specially prepared striking surfaces of the boxes. They are generally packed in so-called full-size boxes containing approximately 50 matches per box. A small quantity is packed in boxes containing 30 matches per box—the so-called vest-pocket size. Both kinds have square white sticks made of aspen wood and the boxes are made of thin wooden veneer.

The matches imported into the United States from other countries than Sweden are exactly the same type as the Swedish matches and we will in the following refer to this type as the foreign-type safety matches. No matches of this type are manufactured in the United States.

The chief types of matches manufactured in the United States are strike-anywhere matches and book matches. Strike-anywhere matches ignite by friction against any surface. They have round sticks made of white pine wood and are packed in boxes made of cardboard. A small part of these matches are packed in boxes with a contents of about 50 matches, but the largest part are packed in boxes with a contents of from 300 to 400 matches. The book matches are made of cardboard. Twenty such matches are inclosed in a printed cardboard cover.

Strike-anywhere and book matches constitute the bulk of the matches manufactured and consumed in the United States. There exists a small domestic manufacture of safety matches, which, however, are not of the same type as the foreign safety matches, but they have round sticks made of white pine and are packed in cardboard boxes.

The strike-anywhere matches and book matches used in the United States are manufactured exclusively within the country and there are no matches of these types imported either from Sweden or any other country

Competition between Swedish and domestic matches.—There is virtually no competition between the foreign type safety matches and the donestic types of matches. Swedish safety matches and other foreign safety matches are sold in the United States at considerably higher prices than any domestic matches and the public who buy them do so only because they prefer them to the domestic matches. The present wholesale prices of matches are as follows:

	Per 1,000 matches
Swedish safety matches (in boxes of 50 matches)	$0. 10
Domestic safety matches (in boxes of 50 matches)	.09
Domestic strike-anywhere matches (in boxes of 50 matches)	.076
Domestic strike-anywhere matches (in boxes of 400 matches)	.066
Domestic book matches (in books of 20 matches)	.087

The wholesale prices of both foreign matches and domestic matches have been subject to great fluctuations during the last few years. The attached chart [not suitable for reproduction] shows these prices for the years 1924 to 1928, inclusive. It will be noted that the fluctuations in the prices of foreign matches do not coincide with those of the domestic matches. It is, therefore, obvious that the two groups do not compete, but that the fluctuations in the prices of the foreign matches are due to conditions which have a bearing on these matches only, and that on the other hand the fluctuations in the prices of the domestic matches are due to conditions within the domestic match trade.

Reasons why foreign type safety matches are imported.—The safety matches were invented in Sweden and the manufacture of these matches was principally developed in that country. It was based on the use of the European aspen wood, which has certain properties which make it very suitable for the manufacture of matches, and which wood was furthermore available at a low cost.

The matches were made with square sticks and as the aspen wood was very suitable for the manufacture of veneer boxes, the Swedish manufacturers developed and perfected the type of box which is still used for the foreign type of safety matches. The manufacture of safety matches later spread to other European countries which had an adequate supply of aspen wood, and all the manufacturers in these countries made their matches and boxes of exactly the same type as the Swedish matches.

The foreign type of safety match has therefore become very well known, and a large part of the consumers in many countries, including the United States, have become so used to them that they prefer them to any other type of match.

The American aspen is, from a botanical point of view, closely related to the European aspen, but the properties of its wood are not the same and it can not be used advantageously for the manufacture of matches. The only wood available in the United States that can be obtained at a reasonable cost and that is suitable for matches is white pine. This wood, however, can only be used to make strike-anywhere matches or safety matches of the American type, but it can not be used for the manufacture of foreign-type safety matches. As long as there is a demand from a certain part of the public for matches of foreign type, such matches will therefore have to be imported from abroad.

Wages paid in the match factories in Sweden and the United States.—The average daily wages in the Swedish match factories are $2.75 for men and $1.60 for women. The match manufacturers in the United States state in their brief filed with the Ways and Means Committee of the House of Representatives that the average wages paid in their factories are $4 per day for men and $3 per day for women. About 50 per cent of the personnel in a match factory are men and 50 per cent women, and as the American labor must be at least as efficient as the Swedish labor, the labor cost in the United States could consequently not be more than 65 per cent higher than in Sweden.

Matches are essentially a [illegible] product and the cost of labor comprises a very small part [illegible] ing cost, approximately only 15 per cent. The so-[illegible] the total manufacturing cost plus the manu[illegible] at 10 per cent The labor cost would [illegible] foreign value.

If the purpose [illegible] duty were [illegible] r cost in the foreign country with [illegible] the Unit[illegible] tes [illegible] ould evidently be fixed at 65 per [illegible] ent, or [illegible] an 9 [illegible] the foreign value. The present [illegible] ty o[illegible] , howe[illegible] valent to about 20 per cent [illegible] oreign [illegible] pposed d[illegible] cents per gross would be [illegible] to abou[illegible] the fore[illegible]

Total manufacturing cost [illegible] the Uni[illegible] The chief raw material [illegible] the manu[illegible] wood used in the manu[illegible] ve nowadays and the co[illegible] he white pine used for [illegible] United Stat[illegible] e cost of the other raw [illegible] the total [illegible] furthermore, the averag[illegible] these raw [illegible] the sam[illegible] United States as it is in S[illegible] As already [illegible] of lab[illegible] iderably higher in the United States, but this i[illegible] balan[illegible] e higher cost of the aspen wo[illegible] pared [illegible] cost [illegible] the total manufacturing cost i[illegible] no[illegible] n the U[illegible] in Sweden.

We have ma[illegible] of the cost [illegible] ing matches in the United States, bo[illegible] imported [illegible] The list below shows this cost compare[illegible] ent [illegible] in Sweden. In these costs have been inclu[illegible] ng capital, and overhead expenses, and it has [illegible] the factory in the United States would use machine[illegible] and up-to-date and as suitable for the manufacture of matches of the respective types as the machinery used in the Swedish factories.

Country	Manufacturing cost	Freight and insurance	Import duty	Total cost
	Cents	*Cents*	*Cents*	*Cents*
Sweden (aspen sticks, wooden boxes)	38.8	3.6	8	50.4
United States (pine sticks, cardboard boxes)	38.1	.....	.....	38.1
United States (imported aspen sticks, boxes of imported wood)	46.7	.....	.....	46.7

It is obvious from these figures that an import duty on matches is not justified.

Probable effect of an increased import duty.—As mentioned above, there is no real competition between the foreign matches and the matches of domestic manufacture. The prices of one type have no relation to the prices of the other type but these prices move quite independently of each other. An increase in the import duty on matches and a resultant increase in the selling price of foreign matches would therefore have no effect on the selling price of the domestic matches and the situation of the domestic match manufacturers would not be improved by any such increase.

The present wholesale price in the United States for Swedish matches is 72 cents per gross, whereas the retail price is 10 cents per dozen, or $1.20 per gross. This retail price leaves a margin of only 40 per cent to be divided between the wholesaler and the retailer, and as matches are a product with a very low value per each unit sold, this margin must be considered as very small. If the import duty is increased it is therefore almost certain that the retailers will increase their price to the consumers. It is very likely that they would use this opportunity to increase their margin of profit at the same time, and it is therefore probable that even a slight increase in the import duty will result in an increase in the retail price from 10 to 15 cents per dozen.

The only effect of an increased duty would consequently be that the consumers of safety matches would have to pay a considerable higher price and that the wholesalers and retailers would have a larger margin of profit than before, but the domestic match makers would derive no advantage from the change.

Anomalies in the present and proposed tariffs.—The duty on matches packed in boxes containing more than 100 matches is fixed at a certain amount per 1,000 matches. The duty on matches packed in boxes containing less than 100 matches is fixed at a certain figure per gross of boxes without other regard to the contents than that it should not exceed 100 matches. Consequently, a box containing 10 matches takes the same duty as a box containing 100 matches. This is obviously inequitable, and it would seem that the present group consisting of matches packed in boxes containing less than 100 matches should be divided into several groups and that the duty should be fixed according to a graduated scale in proportion to the contents.

Another inequity in the present and proposed tariffs is that book matches are not considered as ordinary matches but are included in the "fancy" match group. Book matches are a comparatively new product, but at present they are sold in very large quantities and constitute as large a part of the match trade in the United States as safety matches. As the proportion between the foreign and domestic manufacturing costs for book matches is approximately the same as for other matches, there seems to be no reason why they should not be included in the same schedule as other matches.

Résumé.—1. Although the imports of matches from Sweden to the United States form only an insignificant part of the match consumption in the latter country, they are nevertheless of quite great importance to the Swedish match manufacturing industry.

2. The total exports of matches to the United States from other countries than Sweden are also inconsequential compared with the total consumption in the United States.

3. Imported safety matches are not of the same type as the matches of domestic manufacture and do not compete with the latter.

4. The users of Swedish safety matches buy these by choice, and these matches are sold at considerably higher prices than any other matches.

5. Matches of the foreign type can not be manufactured in the United States, for lack of suitable raw materials.

6. The labor cost is only a small part of the total manufacturing cost for matches

7. A comparison between the manufacturing cost of matches in Sweden and in the United States does not justify an increase in the present rates of duties.

8. The existing domestic match manufacturers would derive no advantage from an increase in the import duty.

9. An increase in the import duty over the present rate would probably cause a very great increase in the retail prices for foreign type safety matches.

10. The present and proposed tariff schedules contain certain anomalies which seem inequitable.

Respectfully submitted.

SVENSKA TANDSTICKS AKTIEBOLAGET,
IVAN KREUGER,
By T. ATTERBERG, *President.*

DEPARTMENT OF STATE,
Washington, July 5, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, I have the honor to inclose for your information a copy of a note, dated July 1, 1929, from the Swedish Minister, transmitting a memorandum from the Association of Swedish Granite Industries, concerning the proposed changes in rates of duty on rough granite.

I have the honor to be, sir,
Your obedient servant,

H. L. STIMSON.

LEGATION OF SWEDEN,
Washington, D. C., July 1, 1929.

Hon. HENRY L. STIMSON,
Secretary of State, etc., Washington, D. C.

SIR: Acting upon instructions from my Government I have the honor to transmit herewith a memorandum prepared by the Association of Swedish Granite Industries, containing certain observations relative to the change in the rates of duty on rough granite proposed by the House of Representatives in H. R. 2667.

I should appreciate if through your excellency's good offices the views set forth in the attached memorandum could be brought to the notice of the Senate Finance Committee and receive due consideration, when the duty on rough granite is to be decided by Congress.

With renewed assurances of my highest consideration,
I have the honor to remain, Sir,
Your most obedient servant,

W. BOSTROM.

MEMORANDUM REGARDING THE RATES OF DUTY ON ROUGH GRANITE—PAR. 235 (A)—PROPOSED BY THE HOUSE OF REPRESENTATIVES IN H. R. 2667

The duty on rough granite was 3 cents per cubic foot before the present duty of 15 cents per cubic foot went into effect by the tariff act of 1922. In the proposed tariff act of 1929 the rate for unmanufactured or rough granite is fixed at 25 cents per cubic foot.

Besides increasing the duty on rough granite from 15 to 25 cents, the wording of par. 235 (a) was changed in the proposed tariff act of 1929 as follows:

"Granite suitable for use as monumental, paving or building stone, not specially provided for, hewn, dressed, pointed, pitched, lined or polished, or otherwise manufactured, 60 per centum ad valorem; unmanufactured, or not dressed, pointed, pitched, lined, hewn or polished, 25 cents per cubic foot."

As a result of the proposed change the Swedish rough granite prepared for export in the usual way might be classified as manufactured and have to pay a duty of 60 per cent ad valorem, which would render exportation from Sweden impossible and be equivalent to an embargo on the importation to the United States of rough granite.

Foreign importations of rough granite to the United States constitute an infinitesimal fraction of local consumption. According to the figures published by the United States Tariff Commission the imports amount to 1½ per cent of domestic consumption.

The rough granite imported from Sweden is used mainly for ornamental purposes. No labor is performed on this rough granite at the point of the quarry other than to subject it to a sort of rough squaring, which is necessary in order to make the blocks suitable for shipping. Unless this squaring was done it would be practically impossible to ship the irregular pieces created by blasting. The squaring is also necessary to make the blocks measurable in order to meet the requirements of the American customs authorities in assessing the proper valuation of the article.

The process involved in squaring the blocks is an indispensable condition for their shipping and represents the lowest possible grade of preparation. Rough granite delivered in such blocks should under no circumstances be considered as partly manufactured. In the shape in which they are exported from Sweden they are not suitable for memorials or for monumental or building purposes.

The rough Swedish granite that thus enters the United States in a crude form has to be sawn, split, and hewn, as well as polished and carved, in the United States, a process which involves a great amount of work at the successive stages of manufacture. The granite is then usually delivered polished in order to meet the requirements of the customers. Aside from the rough squaring of the blocks all labor on the Swedish rough granite is consequently performed in the United States by American workmen.

By the insertion of the word "pitched" in par. 235 (a) as passed by the House of Representatives the difference between manufactured and unmanufactured granite has practically vanished. The said word has no clearly defined meaning in the trade, and the result is that the rough blocks which have been squared in order to make them suitable for shipment could be considered as "pitched" and, consequently, classified as manufactured granite, on which a duty of 60 per cent ad valorem shall be paid. This would mean that Swedish rough granite would be removed from the unmanufactured class and, as such, be subject to an import duty of 60 per cent ad valorem—an increase in the duty on rough granite of 1,500 per cent.

It should further be pointed out that the competition between imported Swedish granite and American granite is negligible. Approximately 50 per cent of the imported granite is Swedish black granite, which is used for monumental purposes by people of Jewish origin and faith, and for ornamental stone work for the beautification of modern American business buildings.

On account of the special and unusual quality of the Swedish granite the cost of it is, as a rule, greatly in excess of American granite and does not compete with American granite upon a cost basis.

The proposed duty on rough granite would practically mean an embargo on the importation of the article to the United States and would seriously affect the Swedish granite industry on account of its rather limited export facilities. This would, in turn, react unfavorably upon the trade balance between Sweden and the United States and tend to lessen the Swedish demand for American products.

ASSOCIATION OF SWEDISH GRANITE INDUSTRIES.

STOCKHOLM, *June, 1929.*

DEPARTMENT OF STATE,
Washington, July 18, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, I have the honor to inclose for your information a copy of a note from the Swedish Minister, dated July 1, 1929, transmitting a memorandum concerning the proposed increase in rates of duty on glassware.

I have the honor to be, sir,
Your obedient servant,

H. L. STIMSON.

LEGATION OF SWEDEN,
Washington, D. C., July 1, 1929.

SIR: Acting upon instructions from my Government I have the honor to transmit here, with a memorandum prepared by the Swedish Association of Glass Industries, containing certain observations relative to the change in the rates of duty on glassware proposed by the House of Representatives in H. R. 2667.

I should appreciate if through your excellency's good offices the views set forth in the attached memorandum could be brought to the notice of the Senate Finance Committee and receive due consideration when the duty on glassware is to be decided by Congress.

With renewed assurances of my highest consideration, I have the honor to remain, sir,

Your most obedient servant,

W. BOSTROM.

MEMORANDUM CONCERNING THE INCREASE IN THE RATES OF DUTY ON GLASSWARE PROPOSED BY THE HOUSE OF REPRESENTATIVES IN H. R. 2667

Of the total importations of glassware into the United States Sweden furnishes only 5.4 per cent. The kind of glass imported from Sweden is of a very high quality, requiring the application of highly skilled labor, and should not be confused with the cheaper grades of glassware imported from other countries. It might be added that the wages of the workmen employed in the Swedish glass industry are the highest of any paid in similar industry in any other European country.

The Swedish glass can not be manufactured in the United States for technical reasons, and consequently there is no competition between the imported Swedish glass and the American product. We therefore feel that an increase in the rates of duty on the kind of glassware imported from Sweden would be of no benefit whatever to the American glass industry.

SWEDISH ASSOCIATION OF GLASS INDUSTRIES.

STOCKHOLM, *June, 1929.*

SWITZERLAND

DEPARTMENT OF STATE,
Washington, June 18, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching on tariff matters, I have the honor to inclose for your information a copy of a note dated June 10, 1929, with inclosures thereto, from the minister of Switzerland with regard to American-Swiss trade and the proposed duties affecting certain Swiss products.

I have the honor to be, sir,

Your obedient servant,

J. REUBEN CLARK, Jr.,
Acting Secretary of State.

LEGATION OF SWITZERLAND,
Washington, D. C., June 10, 1929.

Hon. HENRY L. STIMSON,
Secretary of State, Washington, D. C.

SIR: It appears from the message of the President of the United States to Congress on the occasion of the opening of the present extra session that in determining changes in the tariff the broad interests of the country as a whole are to be taken into account, such interests including the trade relations of the United States with other countries. With reference to this view and acting upon instructions of the Swiss Federal Council, I beg leave to draw the kind attention of the American Government to the following circumstances:

Switzerland has made purchases in the United States in the year 1913 for 118,000,000 francs; in the year 1928 for 244,000,000 francs, and has exported to the United States merchandise in the value of 136,000,000 francs, in 1913, and 195,000,000 francs in 1928.

While before the war the trade balance was thus in favor of Switzerland, it is now at her disadvantage; furthermore, taking into account the depreciation of currency, the imports from the United States into Switzerland are considerably larger than before the war, while the exportation of Swiss products to the United States is below the pre-war level.

Per capita the Swiss population consume thirty times more American products than the American people consume Swiss merchandise.

This situation, already not very satisfactory for Switzerland, threatens to develop even more to her disadvantage should the tariff bill as now proposed in Congress become a law.

The bill in its present form contains enormous increases in duties affecting the two nationally and economically most important industries of Switzerland, to wit, the watch and the embroidery industries. The former provides the principal means of living for large districts of western and central Switzerland; the latter forms the main basis of existence for whole eastern Switzerland. Both industries participate in the exports to the United States to a high degree; both produce manufactures which are bought by the United States nearly exclusively in Switzerland. Of the total of imports of watches into the United States, Switzerland sends approximately 95 per cent, while her share in the importation of embroideries is over 60 per cent. The proposed increase in duties concerning these products would thus affect nearly exclusively Switzerland, injuring her industry very seriously.

It is not surprising, therefore, that the developments of this situation should be followed by the whole public opinion in Switzerland with deep concern. The people of Switzerland are in firm hope that the American authorities, fully aware of the necessities of world economics, prompted also by their wide understanding of the destinies of other nations, will see to it that provisions of the new bill, such as those alluded to, which are liable to disturb profoundly, though involuntarily, the present conditions, do not become law. As can be ascertained from the attached memoranda, submitted by the Swiss industries concerned, the American duties on watches and embroideries, even now very high, are increased in the new bill to an extent which would make them prohibitive, this in spite of the fact that the export of these goods already accuses an important regression

and continues to decrease. On the other side, and despite the importation of Swiss watches, the American watch-making industry has shown strong progress, enjoying an enviable prosperity. The Swiss costs of production, in particular the wages, being as a consequence of the sound currency among the highest in Europe, it seems scarcely possible, either, to allude to a "dumping" against which the American industry would have to seek protection in the form of prohibitive duties.

I venture to hope that the foregoing considerations may lead to a renewed and careful study of the question whether the tremendous increases proposed in the rates of duty concerning watches and embroideries, seriously impairing the Swiss national economy, are a real and unavoidable requisite for the safeguard of American general interests.

I avail myself of this opportunity to offer to you, sir, the renewed assurances of my highest consideration.

MARC PETER,
Minister of Switzerland.

MEMORANDUM CONCERNING THE DUTY ON WATCHES AS PROPOSED IN THE TARIFF BILL NOW BEFORE THE CONGRESS OF THE UNITED STATES. SUBMITTED BY THE SWISS WATCH INDUSTRY

The importation of Swiss watch-making products into the United States is a most important factor of the very active commercial exchange between the two countries; its maintenance is essential, therefore, to the good economic relations between Switzerland and America, for the development of which a normal balance of trade is highly desirable.

Unfortunately, the tariff revision which the Congress of the United States has undertaken appears to take a course justifying, in this respect, serious concern. Prompted by the doubtlessly legitimate desire to protect American industry, this revision, judging from the bill recently passed by the House of Representatives, seems to go beyond its purpose and, indeed, threatens to exclude almost entirely from the American market the Swiss watch-making industry, vital as it is for Switzerland.

The rates of duty applied to watchmaking products by the tariff now in force are extremely high already, they afford to the American manufacturers, considering the purpose of the law, a more than sufficient protection even now. It is difficult to conceive why, under such circumstances, the tariff bill should nevertheless propose enormous increases which, as the annexed chart shows, would run up to more than 500 per cent.

It is not only because of the high rates foreseen that the new duties threaten to stop almost completely the imports of the Swiss watch-making industry, but also because of the new method of computation to be applied. This method, based on the size of the movement and the number of jewels and adjustments, is extremely complicated, very difficult of application and may become, for the Swiss exportation, a cause of uncertainty and constant conflicts. Furthermore, the new duties, which, by their very nature, affect especially the elements necessary to the good construction, precision, and long life of the watches, tend to deprive the American public of the articles of superior quality to which it is accustomed.

As an illustration of the apparently excessive and abnormal character of the proposed duties, mention can be made, for instance, of the duty of $1 provided for each adjustment. This rate is, in itself, very high already, but in addition thereto every watch movement 1 inch or more in diameter and containing 15 or more jewels shall be considered to have at least three adjustments, even if it has none in fact. The additional duties affecting the jewels contained in the watches are quite as alarming; they amount to 20 cents for each jewel, while the average price of a jewel of high quality is 5 cents only and jewels, when imported separately, as for example by the American manufacturers, pay only 10 per cent ad valorem.

The application of quasiprohibitive duties is all the more difficult to understand as the American watch industry finds itself unable to satisfy the needs of the entire domestic market. Most of the Swiss watches differ in quality, as well as in kind, from the corresponding American products; this is especially the case with regard to the watch movements, their importation in great numbers contributing powerfully, in the meantime, to the development of the American manufacture of cases, bracelets, etc., destined to be assembled with the movements.

The Swiss watch industry tends thus to complete in a very useful way the domestic production, to the advantage of the consumer. The prosperity and very appreciable profits of the American watch industry are the best evidence of the fact that the protection sought for by the American Congress is already fully assured under the present tariff act.

The Swiss watch industry strongly hopes that the foregoing considerations may induce the American authorities concerned to undertake a complete revision of the proposed watch schedule, in the way of a simplification of the duty and a considerable reduction of the rates.

June, 1929.

Illustrating how the new schedules threaten to affect a group of representative popular watch movements

Movements	Present duty	Proposed duty				Proposed duty increase (percentage)
		Movements 9/10 of an inch or less	Movements more than 9/10 of an inch but not more than 9/10	Movements more than 9/10 of an inch but not more than 1 inch	Movements more than 1 1/2 inches but less than 1.77 inches	
						Per cent
6 jewels, 2 adjustments	$0.75	$4.75	$4.50	$4.00	.....	433-533
15 jewels, 4 adjustments	2.00	8.35	8.10	7.60	$7.10	255-317
17 jewels, 2 adjustments and temperature	3.50	8.75	8.50	8.00	7.50	114-150
Basic duty	.....	2.50	2.25	1.75	1.25	.....

MEMORANDUM CONCERNING THE NEW DUTIES ON EMBROIDERIES AND EMBROIDERED HANDKERCHIEFS PROPOSED IN PARAGRAPH 1530 OF THE TARIFF BILL, SUBMITTED BY THE SWISS EMBROIDERY INDUSTRY

Embroideries exported to United States of America, 1913, 52,000,000 francs (duty 60 per cent); 1921, 16,000,000 francs (duty 60 per cent); 1928, 2,000,000 francs (duty 75 per cent).

PROPOSED NEW DUTY 90 PER CENT

These figures show what strength the American embroidery industry has gained under the 60 per cent protection and that the 75 per cent have practically excluded the Swiss imports. The proposed 90 per cent will stop entirely the paltry import of about $400,000.

Embroidered handkerchiefs, present duty, 75 per cent, exported to United States of America, 1928, 7,000,000 francs inclusive of lace handkerchiefs; proposed new duty, 4 cents each handkerchief and 40 per cent.

The ad valorem equivalents of such compound duty for articles of which a very restricted import was still possible under the 75 per cent protection, are between 83 and 924 per cent, according to quality.

The best retail selling prices are: 5, 10, 15, 25, 50, and 75 cents. The 5 and 10 cent article is all domestic and the 50 and 75 cent goods are comparatively of little importance. The Swiss imports are mostly in the 25-cent goods, which are the backbone of the entire handkerchief business, but also in this category no foreign manufacturer can, under the present 75 per cent tariff, compete with any efficiently equipped producer in the United States where the imported and domestic products are identical in style, design, and workmanship. However, the imported handkerchiefs are quite different in so far as novelty ideas are concerned and are also superior in workmanship and finish and for these reasons alone they are being sold in the United States. If they were, through any advance of duties, excluded from the market, the domestic manufacturer would

lose a valuable source of inspiration and his mass production would only tend to discredit the machine-embroidered handkerchiefs in the eyes of the consumer.

The chief competition to the domestic embroidered handkerchief emanates not from Switzerland but from the hand-embroidered Porto Rican handkerchiefs, which enter the United States free of duty. It is a cottage industry, progressing rapidly and is supported to a large extent by the domestic handkerchief manufacturers themselves, who send the plain handkerchiefs to Porto Rico to be embroidered there and returned to the United States, the same manufacturers who plead the cause of American labor. The imports of such handkerchiefs from Porto Rico amounted in 1927, according to figures supplied by the Department of Commerce, to $1,236,821. This must exclude cost of cloth material and in many cases the final finishing and boxing charges, so that the total value of the finished product embroidered in and imported from Porto Rico would be about $3,700,000 as compared with $1,373,882 Swiss imports of embroidered and lace handkerchiefs together during the same period. This is the present underlying cause of the havoc wrought to the American industry of machine embroidered handkerchiefs, selling at the popular prices up to 25 cents inclusive.

Another important cause of the decline of the American machine embroidery industry lies in the abbreviation of ladies' wearing apparel, both outer and under, and in the fact that white underwear with embroidery is completely out of fashion. This has nothing to do with the import of embroidered handkerchiefs. The Swiss embroidery industry suffers probably more from this condition than the American. The number of hand-embroidery machines in Switzerland has been reduced from about 20,000 to 3,454 and of these only about 900 were pretty regularly working at the end of last year. The shuttle-embroidery machines have been reduced from about 6,000 to 2,751, only about half of these being now occupied. Even if, through excessive duties all machine-embroidered articles were entirely excluded from the American market, this would not help the American industry to any perceptible extent.

JUNE, 1929.

DEPARTMENT OF STATE,
Washington, July 6, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: With reference to a letter addressed to you on June 18, 1929, transmitting a copy of a note from the Minister of Switzerland with regard to American-Swiss trade and the proposed duties affecting certain Swiss products, I have the honor to inclose a further communication from the minister on this subject.

I have the honor to be, sir,
Your obedient servant,

W. J. CARR,
Acting Secretary of State.

LEGATION OF SWITZERLAND,
Washington, D. C., June 27, 1929.

Hon. HENRY L. STIMSON,
Secretary of State, Washington, D. C.

SIR: By note of the 10th instant I had the honor to draw your attention to the serious consequences which the revision of the American customs tariff, in case it should take place on the basis of the tariff bill now being considered by Congress, might have on the economic relations between Switzerland and the United States. On this occasion, I made special mention of the grave anxiety which the provisions of the tariff bill inspired to Swiss industries of capital importance such as the watch and embroidery industries. Memorandum submitted, by both industrial groups were attached to my note.

Numerous other Swiss manufacturers have, since then, appealed to the Swiss Federal Council, signaling their difficult situation in con-

nection with the tariff bill and requesting that it be brought to the knowledge of the American authorities.

Among the industries thus affected by the contemplated rate increases, the cotton manufacture is one of the most important. I am consequently instructed by my Government and beg to submit herewith a memorandum elaborated by the Swiss cotton manufacturers, with the request to kindly recommend its contents to the careful consideration of the American authorities especially concerned.

I have instruction, furthermore, to bring to your attention the following facts, interesting other Swiss industries, for which the new rates of duty are equally a matter of anxiety.

1. The increase of 10 per cent ad valorem, as foreseen in paragraph 1205 of the tariff bill for certain woven fabrics of silk would seriously affect the Swiss exportation of tie silks. The corresponding American industry does not seem to require additional protection; the conversion costs are, as a matter of fact, considerably higher in Switzerland than in any other other country, excepting the United States, and the present duty, in the conviction of the Swiss manufacturers, is already more than compensatory of the difference in the cost of production.

2. The rate of duty on ply spun silk yarn, advanced in paragraph 1202 of the new tariff bill from the present 45 per cent to 50 per cent ad valorem, is a cause of great concern to the Swiss spun sllk manufacturers. The high rates of the present tariff have already eliminated the importations of single yarns and provoked a considerable drop in importations of ply yarns; a new increase would prevent these importations, to the detriment of an important Swiss industry, and it would deprive, at the same time, American manufacturers of a needed material, most of which is not spun in the United States.

3. The new rates affecting rayon manufactures, foreseen in Schedule 13 of the tariff bill, are a cause of considerable uneasiness among the Swiss manufacturers of artificial silk; they view them with concern, as any increase of the already highly protective duties would vitally affect their industry.

4. The Swiss manufacturers of electricity meters and kindred instruments have also informed the Swiss Government of the alarming character of the increases in the rates concerning these products. Classified under paragraph 368 of the tariff bill, electricity meters, which at present are subject to a duty of 45 per cent ad valorem, would see, under the new bill, this duty reach the enormous rate of 118.4 per cent. The Swiss manufacturers are of the opinion that domestic manufacturers of electricity meters do not require any additional protection to that given them by the law of 1922, as the imported instruments are sold at an average of 50 to 100 per cent higher than the domestic product.

Thanking you in advance for the steps you will be kind enough to take with a view to bringing the above considerations, as well as the attached memorandum to the knowledge of the appropriate American authorities, I venture to hope that the information thus conveyed may lead to a renewed and careful study of the rates concerned.

I avail myself of this opportunity to offer to you, sir, the renewed assurances of my highest consideration.

MARC. PETER,
Minister of Switzerland.

MEMORANDUM CONCERNING THE NEW DUTIES ON COTTON MANUFACTURES PROPOSED IN SCHEDULE 9 (PARAGRAPHS 903, 904, AND 906). SUBMITTED BY THE SWISS COTTON MANUFACTURERS

Annual American production of cotton goods, 8,000,000,000 square yards; American export of cotton goods, 1927, 565,000,000 square yards; importation of cotton goods for 1927, 64,000,000 square yards. Therefore representing eight-tenths of 1 per cent of annual American production.

Importation from Switzerland for 1927: Batistes, organdies, 15,000,000 square yards; voiles, 900,000 square yards; dotted Swisses, 1,000,000 square yards; total, 17,000,000 square yards, or about one-fourth of total import. Present rate of duty, average 35 per cent; proposed new rate of duty, average 47½ per cent.

Value of Swiss imports of cotton goods, about $2,500,000, 1927.

1. Total importations less than eight-tenths of 1 per cent of annual American production.

Total importations into the United States in 1927 amounted to 64,000,000 square yards or less than eight-tenths of 1 per cent of the American production.

2. Importations from Switzerland confined to specialties only representing one-quarter of entire importations.

The statistics show that importations from Switzerland in fine cotton cloth represent one-quarter of the total importations in the United States of countable cotton cloth. These importations are almost confined entirely to specialties, like Swiss organdies, Swiss lawns, Swiss voiles, and dotted Swisses which have been manufactured in Switzerland over more than a century, and the byword "Swiss" has been kept in high esteem by the consumer and has always been regarded as a a guarantee for quality. There is hardly a woman in the United States who does not know and appreciate Swiss lawns or dotted Swisses, etc.

3. Disappearance of Swiss cotton specialties would be deplored by American consumer.

Inasmuch as importations from Switzerland are confined to just a few specialties, it is evident that these importations do not conflict with American production of cotton cloth. No doubt, the disappearance of Swiss lawns or dotted Swisses, etc., from the American market would be greatly deplored by the consumer.

4. The tariff of 1922 has effectively eliminated all importations of staple goods.

Statistics will show that the protection granted to the American manufacturer of cotton cloth in the tariff act of 1922 has proven to be very effective, eliminating staple goods entirely from importation into the United States.

5. Importations of cotton cloths negligible compared to enormous production in the United States.

As far as countable cotton cloth is concerned the importations are entirely limited to specialties or novelties and compared to the American production of 8,000,000,000 square yards per annum and an exportation of 565,000,000 square yards of American cotton goods, the importations from foreign sources of 64,000,000 square yards, must, therefore, be considered as negligible.

6. Importations of American raw cotton into Switzerland amounting to $6,000,000 annually.

In the year of 1927, Switzerland has imported $6,000,000 worth of American raw cotton. Most of these importations have been consumed by the Swiss cotton cloth manufacturers and a good portion was used in manufacturing these specialities, like dotted swisses, Swiss lawns, Swiss voiles, etc.

7. New proposed rates would increase average rate of duty from 35 per cent to 47½ per cent and more.

Under the Tariff Act of 1922, these importations of specialties from Switzerland, paid an average rate of duty of about 35 per cent ad valorem. The proposed new rates of duty will raise this average to beyond 47½ per cent ad valorem and items like dotted Swisses, for instance, would, under the proposed tariff, pay a rate of duty of 57½ per cent, in spite of the fact that there are no such hand looms in the United States of America to manufacture this kind of cloth.

8. Enforcement of new proposed rates would exclude Swiss specialties from the American market and would seriously affect importations of American raw cotton into Switzerland.

Should the proposed new rates be put in force, it would automatically exclude these specialties imported from Switzerland in the American market. This would be a serious blow to the Swiss manufacturers and also would curtail, to a serious extent, importations of American raw cotton into Switzerland.

TURKEY

DEPARTMENT OF STATE,
Washington, June 18, 1929.

HON. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with all representations made by foreign governments to this Government touching tariff questions, I have the honor to inclose for your information a copy of a note, in translation, dated April 23, 1929, from the Turkish ambassador, with which the ambassador transmitted a statement by the Turkish Chambers of Commerce concerning articles imported into the United States from Turkey.

I have the honor to be, sir,
Your obedient servant,

J. REUBEN CLARK, JR.,
Acting Secretary of State.

[Translation]

EMBASSY OF THE TURKISH REPUBLIC,
Washington, April 23, 1929.

HIS EXCELLENCY HENRY L. STIMSON,
Secretary of State.

EXCELLENCY: On the occasion of the revision of the customs tariff by Congress, I have the honor to submit to your gracious attention, for any pertinent purpose, a statement of the expositions furnished by the Turkish chambers of commerce with respect to articles imported from my country.

I beg you to accept, excellency, the assurance of my highest consideration.

A. MOUHTAR,
Ambassador of Turkey.

STATEMENT

The revision of the customs tariff, in the protectionist direction, suggests certain observations to Turkish exporters, for whom the chambers of commerce act as interpreter, being convinced that they are of interest to both Turkish production and that of the United States. In the last analysis, their thesis seems also to form part of a many-sided and complex question considered exclusively, if necessary, with respect to American interests. It is for this reason that these exporters believe it all the more advisable to submit their observations to the American legislator, as documentation intended to afford a wider perspective to his investigations.

The origin of the economic relations between the two countries goes back to the first half of the 17th century when, in particular, raw materials from New England were introduced into Turkey, and vice versa. This exchange has continued almost without interruption, varying in nature, according to the necessities of the times, chiefly characterized in our days by the industrialization of the United States, with all its international consequence. The question, accordingly, is one of protecting the development of time-honored relations which have already made the market of the two nations familiar through commercial activities, firmly established. Thus, just as the United States could not dispense with Turkish tobacco, for example, so Turkey could not do without American machines, without paralyzing the actuating force of these importations by measures which, in the very interest of the many advantages presumed from its maintenance, that motivation does not commend.

For, in case such negative intervention might supposedly profit such a class of productions in the United States, it would in principle be still much more prejudicial to economic relations between the two countries. Usually one less foreign article is one more obstacle to the common interest of the importer and of the exporter to spread, at the same time, the extent of their national prestige. In the Orient, this is even more true of the United States, the renown of which is augmented by these two rôles, since they are almost exclusively assumed by American nationals who are usually more enterprising.

Present and, even more, future circumstances deserve the care which should be mutually given this prestige, inasmuch as the natural wealth of Turkey may advantageously provide the United States with raw materials, without, however, injuring the development of native resources, and, on the contrary, American industry would find an extensive market in a young republic wherein radical reformatory measures urgently require the inception of a work of technical organization. This industry has too many advantages for it not to gain a privileged position in Turkey, with the power to extend toward the interior of Asia, if reciprocity of economic interests and the custom of commercial exchanges create a favorable atmosphere in the two countries. In such circumstances, it is all the more important to guard the growth of that industry since the latter has not yet been able to take the impetus of which it is capable in these slightly industralized regions, where technology is likely to be developed from one day to the next.

If one leaves these general views to get to the very bottom of the matter, it must be noticed that the importation of Turkish commodities is not of advantage for the original producers only, but also for the American intermediaries. Because American initiative, represented in Turkey by all kinds of prosperous firms, dispenses with the intervention of local merchants. It is often the only beneficiary of the progressive increase in prices from the costs of purchase on the spot to those of consumption in the United States. In this sense, it is accurate to say that every transfer of merchandise involves American interests in the greater degree. Furthermore, these same commodities are indispensable in transatlantic industry, such as the tobacco used in the manufacture of cigarettes, or figs used by makers of cakes and biscuits. In some cases the imported articles create a sort of semi-industry as, for example, the cleaning and washing of rugs after their importation.

But a still more forceful argument can be summoned, if it is considered that in view of the difference in their quality and use, these materials do not compete with native products, and that they are far from being able to injure them. Imports from Turkey consist principally in dried fruits, tobacco, wool and mohair, liquorice, entrails, dry hides, animal skins and rugs. Of these articles, tobacco, dried figs, and rugs are the only ones occupying an important position, such as merits the trouble of giving them attention and particularly in the case of the last two which, it appears, are the object of a controversy in commercial circles. In such spheres there is no serious complaint against the importation of tobacco the use of which by manufacturers together with the Virginia products is admitted as an axiom.

That is as it should be. But, therefore, this principle of industrial utilization ought likewise argue in favor of figs of Turkish origin, about whose competition the farmers of California are unexpectedly concerned. Besides the enormous advantage which the latter secure from the consumption of their fruits in the fresh state in the interior, and which already forms a powerful and exclusive impetus for their production of figs, they enjoy the benefit of a better market for their dried products. The price of these varies between 7½ and 15 cents, while the price of the same article coming from Turkey is from 13 to 22 cents a pound. If this difference of about one-third more does not keep out the foreign product, it is because it offers different qualities, which are due to peculiarities of soil and climate. Figs from Smyrna are, as a matter of fact, firmer, more savory, and have a thinner skin than those from California, only two species of which, furthermore, called Adriatic and Kalimirnia, may give rise to any thought of such parallel. Hence the necessity for factories concerned to use the Turkish product and to be interested in it to the point of wanting to assist it by their own means. Accordingly, and for that purpose, the National Biscuit Co., on its own account, sent some agriculturists and specialists into the Smyrna region last year. It would, therefore, be inexpedient to deprive American industry, through increased assessments, of such a useful product which local products can not replace, as in the case of Turkish tobacco [figs] falling in the same category, from the point of view of the manufacturer. As regards its direct consumption, there is only a

very small part so absorbed, the native products keeping it in check everywhere possible, because of the great difference in prices, which amount to from 15 to 22 cents for the former and always stay from 7½ to 15 cents for the latter. Another measure which is not less favorable to California is the agricultural law which, tolerating the presence of worms in dried fruits up to a certain percentage, must operate against such products in proportion to the distance they come (and) as the insects inevitably multiply with time.

These difficulties likewise having an effect on the ordinary consumption of figs imported from Turkey, it can be said that generally speaking they are material for manufacture or rare delicacies in comparison with the products of California with which they do not compete because of their different uses. The western cultivators were only recently delighted with the agricultural law, desiring the benefit for themselves in the conditions outlined above, but they were soon disappointed when they found that their own totals fell by 4,000,000 pounds in 1926–27 on account of its application. It is to be feared that at present an inordinate protectionist policy will only lead to a disillusionment of the same kind by disaccustoming the public to this fruit, through lack of savory qualities, or that it will only result in burdening the consumer, who in spite of everything is fond of the imported product.

These are considerations of a practical kind against which competitors would be in the wrong in invoking statistical data which are a mirage. Here are statistics in round figures, as drawn from American sources:

	General imports	Imports from Turkey	Native products
	Pounds	*Pounds*	*Pounds*
1925	46,000,000	21,740,000	19,200,000
1926	43,000,000	22,390,000	22,700,000
1927	31,000,000	18,470,000	24,000,000
1928	38,700,000	(1)	20,000,000

[1] Not yet determined.

At first view, it appears that native production increases in proportion as imports fall and vice versa. However, this comparison is far from being conclusive in favor of a protectionist system, since it involves no thought of correlation by a curve drawn according to increases and decreases. If from 1925 to 1926 the native growers seem to benefit by a surplus approximately equal to the loss to the importers, the former disposing of 3,000,000 more, the latter of 3,500,000 less, this equilibrium is quickly disturbed in the following years, the difference reaching from 1926 to 1927, 1,300,000 more and 12,000,000 less, respectively, and in 1927 to 1928, it reverses, being 4,000,000 less and 7,700,000 more. Strictly speaking, the only possible conclusion to be drawn from these capricious fluctuations in support of the foregoing statements is that the two classes of products do not fill the same need. It is further to be noted that figs of Turkish origin, forming about half of the general imports, increase together with the California products from 1925 to 1926. The abnormal deviation which occurred the following year is probably the result of putting the agricultural law into effect.

As regards rugs, the same observations apply to them with still more emphatic accuracy. The following tables refer to recent years:

	Total cost	Yards	Cost per yard
Domestic manufactures:			
1923	$199,480,623	83,242,663	$2.39
1925	188,902,890	72,100,609	2.62
1927	161,478,044	65,658,740	2.45
Imports:			
1923	11,882,294	2,144,818	5.54
1925	16,013,148	2,152,507	7.43
1927	19,218,785	2,437,632	7.88
Turkish imports:			
1927	2,788,400	384,600	7.26

Thus, the last year, the domestic manufacture, three times cheaper, was worth eight and produced twenty-seven times more, these two last coefficients having to be doubled for comparison with oriental rugs which represent about half of the general imports, and carried to fifty-eight times and two-hundred times more as regards rugs properly Turkish. Further, it is to be noted that the price per yard fixed for the imported articles is open to a substantial increase after importation through the addition of the expenses of cleaning and washing.

These considerable differences in favor of American manufacture clearly prove that it is, in the first place, too powerful to fear foreign competition and that, further, it fills a very different need. As a matter of fact, the two articles having nothing in common but their name—one being an article of necessity, the other being one of fancy, of luxury.

It may be noted here that the fall of one parallels the rise of the other. Nevertheless, the absence of proportion between this double movement excludes any possibility of an antinomy which might be brought up as a protectionist argument. A difference of about $10,000,000 and yards less appears between the figures for 1923 and 1925 and, between 1925 and 1927, $27,000,000 and 6,500,000 yards, it being understood that the figures are always declining. The corresponding increase in imports from 1923 to 1925 is only $4,000,000 without variation in the number of meters, and between 1925 and 1297, $3,000,000 and 385,000 yards. Thus 10,000,000 less as against 4,000,000 more and 27,000,000 less as against 3,000,000 more are figures which can not be bound by any relationship. If the appreciable decline of the American textile from year to year is further noted, it must be concluded that it is due to a condition of saturation explainable by the limitations of domestic use, always more completely satisfied, or to the competition of domestic products for the same use, such as linoleum or mats. In any case, oriental rugs are, comparatively speaking, objects of art which have nothing to do therewith.

URUGUAY

DEPARTMENT OF STATE,
Washington, June 18, 1929

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching on tariff matters, I have the honor to inclose for your information a copy of a note dated June 8, 1929, from the Minister of Uruguay, with regard to trade relations between the United States and Uruguay.

I have the honor to be, sir,
Your obedient servant,

J. REUBEN CLARK, Jr.,
Acting Secretary of State.

LEGACIÓN DEL URUGUAY,
Washington, D. C., June 8, 1929.

Hon. HENRY L. STIMSON,
Secretary of State, Washington.

MY DEAR MR. SECRETARY: With reference to our conversation on Thursday, and following your kind suggestion, I have the honor to inclose an "aide memoire," briefly stating the observations and facts mentioned in our meeting in connection with the projected tariff bill.

Thanking you for the interest in the matter, I remain, my dear Mr. Stimson, with my highest esteem,

Very sincerely yours,

J. VARELA.

LEGACIÓN DEL URUGUAY, WASHINGTON, D. C.

AIDE MEMOIRE

A notable result of the World War has been the increased trade intercourse between the United States and Latin America. From a place far below its competitors, the United States rose to first place in the goods imported by Uruguay. In 1927, Uruguay purchased in this country $25,060,001. In 1928 the amount of merchandise bought in the United States increased to $26,016,798, more than 25 per cent of all the Uruguayan imports, by far much more than in any competitive country.

A few items of goods purchased in the United States by Uruguay in 1928 follow:

	Number	Value
Tires, automobile casings	34,557	418,429
Cotton yarn not combed, pounds	1,004,617	347,591
Combed yarn, do	284,054	235,545
Hosiery, dozen	58,239	100,465
Wood:		
Southern pine, feet	23,000	899,010
Oak, do	2,711	250,628
Gasoline, barrels	405,875	3,136,142
Kerosene, do	180,732	1,313,730
Iron and steel, semimanufactured, pounds	9,686,780	400,968
Agricultural machinery, tractors	319	309,593
Automobiles:		
Motor trucks and busses	1,558	1,039,657
Passenger cars	5,665	3,764,455
Automobile parts		565,082

Uruguayan exports to the United States were $10,894,565, in 1927; and $11,737,009, in 1928. The result is highly unfavorable to Uruguay, the balance of trade against Uruguay being $14,279,789 in 1928. The invisible items, too, militate against Uruguay, which is still an interest paying country. Interest and sinking fund of the external debt, profits of foreign enterprises established in Uruguay, ocean freights, expenses of tourists abroad, remittances by immigrants resident in Uruguay, etc., bear heavily upon the Uruguayan debit. In large proportion, the above mentioned items constitute profits for the United States, where we have placed important loans and where are received the profits of the packing houses and other American concerns established in Uruguay.

It is said that international commerce is triangular, and Uruguay, therefore, may purchase here and sell its products elsewhere. The theory is attractive, perhaps true in certain instances; but it is not applicable to our situtation. Uruguay has intensified its efforts to increase the selling of its products in Europe and elsewhere, but the net result is an unfavorable balance of trade. The last published statistics in this country (Foreign Trade Series, No. 54, Uruguay, The Pan American Union, 1929) read as follows:

Total imports in Uruguay in 1927 (real values as distinguished from the tariff values)	$106,469,000
Total exports from Uruguay to foreign countries	96,418,000

Balance against Uruguay in its whole foreign trade more than 10,000,000 Uruguayan gold pesos (1 peso equal to 1.0342, par value United States currency) according to the figures published and as estimated by the Pan American Union.

The balance of payments as already stated is even more unfavorable, on account of the invisible factors referred to before.

In the circumstances, the great and rich market of the United States was naturally looked upon as promising. The interest of this country in an enlarged foreign commerce, owing to its gigantic production is self-evident. Therefore, the mutual advantages in promoting intercourse were so apparent that the future appeared very encouraging. The memorable visit of the Hon. Herbert Hoover to South America gave great impetus to the plans of increasing trade and intercourse for the mutual benefit. Other imponderables bear on the situation, but more trade will bring more friendship and closer relations.

The expansion of American civilization and standards in South America have been to the real advantage of the people concerned. It will bring prosperity

everywhere and the probability of enlarged markets for the products of the United States. Prosperous rich countries of unlimited possibilities may be very important customers in the near future. The dry numbers of present statistics do not reveal the whole truth. There are imponderables to be considered, the possibilities of to-morrow.

The projected tariff is not helpful. If the increased duties on wool, meats and hides are finally enacted, Uruguay will be forced, not as a deliberate decision, but as an inevitable result of its diminishing purchasing power, to curtail materially, its buying of automobiles, gasoline, agricultural machinery, lumber, iron, cotton, fruits, etc., in the United States.

It seems that the perspectives are similar in several other Latin American markets.

Any action that the department may take toward moderating the mentioned difficulties in trade intercourse, will represent a measure of constructive Pan-Americanism.

63310—29—VOL. 18, F C——14

SUPPLEMENT

ARGENTINE REPUBLIC

DEPARTMENT OF STATE,
Washington, August 20, 1929.

The Hon. REED SMOOT,
United States Senate.

MY DEAR SENATOR SMOOT: I inclose for your information a communication, dated July 12, 1929, from the Asociacion Nacional de Agricultura, of Buenos Aires, Argentine Republic, with regard to tariff. The Vice President has referred this communication to me with the suggestion that it should be sent to your committee through this department.

Sincerely yours,

HENRY L. STIMSON.

ASOCIACION NACIONAL DE AGRICULTURA,
SARMIENTO 385 DIRECCIÓN TELEFÓNICA Y TELEGRÁFICA "RETIRO 2507,"
Buenos Aires, of July 12th, 1929.

To the honorable Senate of the United States of America, Washington.

DEAR SIRS: The pending menace to world's economy, contained in the extraordinary rise of your country's tariffs, affects very seriously our farming produce.

Although our Government has not joined into the general protest, this doesn't mean that the population of our country is indifferent to your intentions.

We know that Argentine produce are responsible to a great extent for the disorder in prices ruling on the world's markets, as they were manipulated up to the present time by concerns, bar of any interest in their value and in an orderly marketing of same.

There is a strong movement spreading throughout our country aiming at a permanent orderly marketing of all produce.

Your President Hoover on the occasion of his visit here was informed of this, and that much more could be awaited in benefit of your own and our farmers from an organized marketing than from vexing high tariffs.

Your relief law, duly handled by able men, soon will find the way to distribute any surplus, where people in need, gladly will absorb same.

It struck our attention to know of big districts in China and Russia being close on to starvation, and on the other hand China wanting 100,000 kilometers of railways and everything else modern life requires.

These enormous fields for your active men's abilities offer the solution to what is preoccupying us all.

Please consider that the ill feeling all over the farming population will reflect itself in the very instant each individual has to decide on a purchase.

It is most important to you to know that other industrial countries are preparing to take advantage of what you are causing in a population, accustomed to use only American machinery, motors, trucks, and so on.

Let orderly marketing be the lead in your decisions and give world's economy a chance to settle in a friendly way difficulties of intercourse, instead of declaring an economical war by your tariff scheme.

Most sincerely,

JORGE TEWES,
President.

AUSTRIA

DEPARTMENT OF STATE,
Washington, August 22, 1929.

The Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, I inclose for your information a copy of note No. 1875/84, dated August 16, 1929, from the Austrian Legation concerning allegedly incorrect figures submitted to the Senate Finance Committee in support of a motion for higher paper tariffs.

Very truly yours,

J. P. COTTON,
Acting Secretary of State.

AUSTRIAN LEGATION,
Washington, D. C., August 16, 1929.

His Excellency Mr. HENRY L. STIMSON,
Secretary of State, Washington, D. C.

EXCELLENCY: The Association of Austrian Paper Manufacturers has through the Austrian Chambers of Commerce called the attention of this legation to certain allegedly incorrect figures submitted to the Senate Finance Committee in support of a motion for higher paper tariffs. The actual volume of domestic, (American), production is, according to the statement of said association, much higher than the figure appearing in the pertaining reports, while the actual amount of foreign imports into the United States is considerably lower than the figures submitted to the Ways and Means and Finance Committee.

Based on authentic figures the paper imports from foreign countries amount to merely 5 per cent of the output of domestic manufacture.

The advantage of lower costs of production in Europe, respectively Austria, is restricted to handmade and fancy paper, which is very little, if any, produced in this country, while the qualities chiefly manufactured in the United States in mass production can beat foreign competition not only in this country but even in the home markets of the said competitors.

It is the opinion of the Austrian paper manufacturers that the influx of foreign ware had a stimulating effect on the American paper industry and that a considerable raise of duties as proposed in the new bill would be hardship on foreign, respectively, Austrian exporters without benefiting American domestic industry.

I have the honor to bring the above-outlined representations of Austrian Paper Manufacturers to Your Excellency's attention for further discretionary use.

In doing so I wish to emphasize utter lack of intention of the part of this legation to interfere with internal legislative measures. I am fully aware of the fact that Congress can not be called upon to concern itself in interests of foreign manufacturers. But as the impression prevails, that no changes in the tariff are contemplated beyond those required for the protection of American interests, we feel such repre-

sentations may be accepted in good grace as additional information to be used in legislative deliberations.

Accept, Excellency, the renewed assurances of my highest consideration.

EDGAR PROCHNIK.

DEPARTMENT OF STATE,
Washington, August 30, 1929.

Hon. REED SMOOT,
Chairman, Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this Department with all representations made by foreign governments to this Government touching tariff questions, there is inclosed for your information a copy of note No. 1968/84, dated August 24, 1929, from the minister of Austria, submitting representations made by the Association of Austrian Paper Manufacturers.

Very truly yours,

W. R. CASTLE, Jr.,
Acting Secretary of State.

AUSTRIAN LEGATION,
Washington, D. C., August 24, 1929.

His Excellency, Mr. HENRY L. STIMSON,
Secretary of State, Washington, D. C.

EXCELLENCY: In pursuance of my note dated August 16, I have the honor to submit to Your Excellency more detailed representations raised by the Association of Austrian Paper Manufactures as to depositions made at the hearings before the Ways and Means Committee.

According to official import statistics of the year 1928 the volume of imports "papeteries," (this is the particular article chiefly concerned in Austrian paper exports), amounted to $740,000, while American production reached the total of $15,000,000 as conceded by manufacturers at the hearings, and of $18,000,000 according to statistics.

The proportion between import and home production is, therefore, 5 per cent, and not 10 per cent, as stated by Mr. White before the committee.

It is obvious that such a small percentage of importation, (in which Austria shares with 1½ per cent), can by no means endanger American papeteries industry, which produces also writing paper after Austrian and French pattern by machine in quantities enabling the exportation and competition of American-made Vienna and Paris paper in almost all foreign markets not excluding France and Austria.

The manufacturers of papeteries stated before the Ways and Means Committee that their articles are fancy—respectively luxury goods chiefly bought by women. Foreign imports, therefore, must increase the variety of selection and stimulate thereby the sales.

From these two last-mentioned viewpoints, Austrian imports had some beneficial effect on American paper trade.

The paper goods referred to in this note are chiefly handmade and, therefore, constitute an article which hardly falls into scope of domestic industrial expansion.

It is our sincere belief that an increase of duty on papeteries is in no way imperative in regard to adequate protection of the pertaining American industry, while it is apt to eliminate Austrian trade with the United States in this article, which although very modest, ($120,000 to $150,000), is almost a life question for the paper industry of Austria.

Your Excellency would greatly oblige me by bringing the aforesaid to the attention of the appropriate authorities.

Accept, Excellency, the renewed assurances of my highest consideration.

EDGAR PROCHNIK.

BELGIUM

DEPARTMENT OF STATE,
Washington, August 13, 1929.

Hon. REED SMOOT,
Chairman Finance Committee,
United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all communications with regard to the tariff received by this Government from foreign Governments, there is inclosed for your information a copy of a note, dated August 2, 1929, with inclosures, from the Belgian ambassador, the inclosures to this note being statements from Belgian manufacturers of commodities affected by the tariff.

Very truly yours,

J. P. COTTON,
Acting Secretary of State.

WASHINGTON, *August 2, 1929.*

The honorable the SECRETARY OF STATE,
Department of State, Washington.

SIR: Referring to my previous communications in regard to the proposed Hawley tariff bill, I beg to inclose herewith four statements from Belgian manufacturers which my Government has instructed me to forward to you for the consideration of your Government.

I avail myself of this opportunity, sir, to renew to Your Excellency the assurance of my highest consideration.

PRINCE DE LIGNE,
Belgian Ambassador.

USINES PETERS LACROIX S. A.

HAREN—VITRAUPHANIE—DECALCOMANIE

FRIDAY, JULY 12, 1929.

With reference to your letter of the 10th instant "Direction B. Section A. C. in reply to our lines of 3d ditto, we beg to confirm that we are in connection with the United States since several years for the sale of transparencies printed lithographically and called Belgian Signs.

Similar articles, of course, are made in the United States at lower prices and we had to make large sacrifices before we succeeded in getting our customers.

In spite of this, our prices remain still dearer than those of our American competitors, and when we get the preference it is only on account of our quality and finishing.

Our profit is thus very narrow, and if the new custom duty, which calls for 40 per cent ad valorem in not more than five printings and 50 per cent ad valorem over five, should be applied we would be not longer in a position to quote acceptable prices.

By the way, we beg to observe that while the American tariff requires 50 per cent ad valorem, similar articles can be imported into Belgium at 750 fr. per 100Ko which represents not more than 3 per cent ad valorem.

DIVISION CHROMOS-VITRAUX
Le Directeur

S. A. "CACAO-CHOCOLAT KIVOU"

105 CHEE DE LOUVAIN-VILVORDE.
Vilvorde, July 15, 1929.

The Belgian Chocolate and Confectionery Industry is doing a regular and interesting export trade with the United States of America. The articles that American buyers import from our market are particularly all fancy novelties in foil, the labor in America being too dear to afford manufacturing of them.

The big and important bulk trade of chocolate in the United States of America is exclusively in the hands of the American manufacturers, who have their factories organized and fitted in such a modern manner, that all competition from elsewhere is excluded.

At no time, during the last 10 years the importations of chocolate and cocoa have been more than 1 per cent of the value of chocolate and cocoa manufactured in the United States. In other words it has always been very trivial compared to domestic manufacture.

For us that small percentage of trade with the United States is very important and it is easily understood that if the duty should be increased from 17½ per cent to 40 per cent, as it is proposed in the new tariff law, such increase will have practically, as consequence to eliminate entirely the business.

There will not be any of the American chocolate manufacturers who will have an advantage of those facts, they are themselves in the impossibility to manufacture the articles that we are used to export to the United States. The only consequence will be that the American public will not find any of those articles, or that prices will be so high that it will be impossible to buy them.

We hope that these reasons may induce the authorities of the United States to make a serious reduction in the new proposed tariff of 40 per cent and if not maintaining the old 17½ per cent rate, to stay something closer to it.

S. A. CACAO-CHOCOLAT "KIVOU".

SUPPLEMENTARY NOTE OF MANUFACTURERS OF FLAX

Under the present tariff schedule, fabrics of flax weighing less than 4½ ounces to the square yard are subject to an import duty of 35 per cent ad valorem, (fabrics of flax of other categories being subject to still higher rates of duty).

According to the new paragraph 1011 of the proposed tariff bill, only fabric weighing less than 4 ounces per square yard will be subject to this lower rate.

Fabrics of flax weighing between 4 ounces and 4½ ounces to the square yard will, therefore, be taxed at the rate of 40 per cent under paragraph 1010 if their width exceeds 36 inches, or at the rate of 55 per cent under paragraph 1009 A if their width is less and the number of threads to the square inch is less than 100.

BELGIAN BRICKS

The first exportations of bricks from Belgium to the United States took place in the year 1925, and owing to the efforts of the Belgian producers Belgian bricks were soon well known on the New York market.

In 1926 the United States restrained the brick importation by compelling the exporters to put on every brick having the American size the mark of origin; this rule affected Belgium chiefly, her brick being of American size.

Today the new proposed tariff bill contemplates a duty of $1.25 per thousand bricks. There is no doubt that a $1.25 duty would completely stop Belgian exportations to the United States. The cost of a thousand bricks on docks in Antwerp amounts to about $4.30 or $4.65, and the freight per thousand is from $6 to $6.50, thus bringing the minimum cost on the New York docks, without any other charges or profit, to $10.30. At the present time it is possible to get

American bricks in New York at a cost of $10.50 or $11 in the same conditions as the Belgian bricks.

The Belgian brick industry should not, indeed, have complained if the duty was necessary in order to establish fair competition, but the reasons submitted to the Ways and Means Committee by the American industry were based on statements which seem to us misleading and erroneous. Among the reasons alleged were:

1. That the Belgian brick is made of cheap low-grade material.
2. That the Belgian exportations into the United States were practically unlimited, and could reach 87 per cent of the United States brick markets.
3. That the introduction of Belgian bricks causes a lack of work for a great number of American brickmakers.
4. That the cost of Belgian brick is small and prevents fair competition, and that this small cost is the result of cheap labor or of cheap transportations as ballast.
5. That price of Belgian bricks is from $1 to $1.50 cheaper than American bricks.
6. That for the above-mentioned reasons the Belgian exports affect the standard of life of American brickmakers and also the profits of brick manufacturers.

In response to the foregoing allegations the Belgian brickmakers state that—

1. The characterization of the Belgian brick as "a cheap low-grade material" was made at a meeting of the Ways and Means Committee on January 10, 1929. However, tests were made at the Columbia University in New York, and the result showed that the Belgian brick not only reached but far exceeded the specifications of the American Society for Testing Material for high-quality bricks.
2. The American brickmakers claim that the importations of Belgian bricks into the United States could reach 500,000,000 bricks. This statement does not take into consideration the capacity of production of the Belgian brickworks, nor does it take into consideration the fact that the Belgian brick manufacturers are able to reserve only a limited quantity of their production for the American market. The total importation of bricks received by the United States has been only a few hundred millions, in which the Belgian share was as follows:

	1924	1925	1926	1927	1928
Total output in the United States	7,159,000,000	7,562,000,000	7,520,000,000	7,627,000,000	
Consumption at New York	981,000,000	1,034,999,000	1,314,000,000	1,280,000,000	1,206,000,000
Importations of Belgian bricks		44,597,000	60,907,000	78,180,000	60,153,000
Percentage of total production, (per cent)		0.58	0.80	1.01	
Percentage of consumption, (per cent)		4.30	4.63	6.10	4.61

Average: 0.8 per cent of the total output of the United States; 4.93 per cent of the New York consumption, most of the Belgian brick being consumed in New York.

It has been said that the Belgian brick could reach, by waterway, 87 per cent of the American markets, and that it could be sold at a low price, preventing competition in such interior markets as Chicago, St. Louis, Minneapolis, and the great cities of the Central West. But freight rates which burden Belgian brick and which represent, in the case of New York, more than 50 per cent of the price, make such a prospect impossible, especially as the price of American bricks in other markets are inferior to the price of the Belgian bricks in New York.

In Chicago, the cost of American brick was, in 1926, around $8.72 a thousand. At such rates, the markets of Chicago, St. Louis, and Minneapolis are prohibited markets for the Belgian bricks. On the other hand, the limited quantity of Belgian bricks available for export to the United States does not make it possible to reach all American markets as the New York market alone, (where Belgian bricks amount to only 4.93 per cent of the local consumption), is capable of consuming with ease such additional Belgian bricks as may be available for export.

3. The importation of Belgian bricks does not take work away from American brickmakers. Indeed the 78,180,000 bricks imported in the United States in 1927 represents only the work of 260 men working 300 days. The average production of an American worker, being 1,000 bricks a day, we obtain

$$\frac{78,180,000}{1,000 \times 300} = 260$$

4. The cost of Belgian brick does not prevent competition. The cost per thousand Belgian bricks is not $7, as stated before the Ways and Means Committee, but $10.30, minimum—cost and freight. The cost of the Belgian brick is not the result of a small percentage of labor per thousand bricks. It was said that the cost of labor in Belgium amounted to between $0.78 and $1.14 per thousand bricks. Bu' the Belgian producers affirm that the making of bricks in Belgian factories requires an average of two days' labor at the rate of $1.50 per day, or $3 per 1,000 bricks.

It has been alleged, too, that bricks were imported as ballast. As a matter of fact in 1925 to 1927 the freight was $6.50 per 1,000 bricks, and $6 in 1928. This rate has been confirmed by the conference of the shipping lines of North America, to which the American lines belong.

5. As to the allegation that Belgian bricks are sold in the American market at a price from $1 to $1.50 lower than the American bricks, it appears from a statement of the Belgian exporters that 90 per cent of the total imports of brick into the United States was handled through the Fimacor Corporation of New York, and that although bricks were quoted on the New York market as low as $10.50 to $11 per thousand, the Fimacor Corporation consistently maintained a higher price and that no Belgian bricks were ever sold at as low prices as those above mentioned.

It was represented to the Ways and Means Committee that the importation of Belgian brick was the only cause of the low prices prevailing in the brick market. As a matter of fact, this situation is the direct result of the increased American production and of competition between American manufacturers.

6. The importations of Belgian bricks have not affected the standard of life of the American bricknakers; the statistics of the Department of Commerce show that the wages have increased, that the number of workers has also increased, and that the production has itself increased. The proposed measure voted by the House in the new tariff bill, i. e., a duty of $1.25, would prevent entirely the introduction of Belgian bricks into the United States. It means for Belgian producers the loss of a market of about 60,000,000 bricks of American size or about 100,000,000 bricks of the size called "boom." Those quantities of bricks represent more than 20,000,000 francs in the commercial budget of Belgium, a loss for brick factories, and shipping, also a danger for the Belgian market. It is to be noted that the Ways and Means Committee did not accept the representations of American producers, and instead of a duty of $5.25, as asked by certain American interests, put a duty of $1.25 per thousand bricks. The magazine Brick and Clay Record, volume 74, No. 11, May 21, 1929, quotes as follows Mr. Stoddard, manager of the Common Brick Manufacturers Association of America: "Hudson River brick manufacturers expressed themselves as satisfied with the $1.25 per 1,000 duty which is proposed by the Ways and Means Committee. While this rate is generally looked upon as very moderate protection, it is conceded that the main object after all is to get brick off the free list, so as to make it possible for the industry to properly defend itself against dumping under the flexible provisions."

It is evident that the "flexible tariff provisions" which they also seek would enable them eventually to obtain the rate which they desire.

DEPARTMENT OF STATE,
Washington, August 16, 1929.

The Hon. REED SMOOT,
Chairman, Finance Committee, United States Senate.

SIR: Pursuant to your request that you be furnished by this department with copies of all representations made by foreign governments to this Government touching tariff questions, there is inclosed for your information a copy of a note from the Belgian ambassador, dated August 8, 1929, inclosing two memoranda received by him from Belgian manufacturers in regard to the contemplated increase in duty on peas and stearic acid.

Very truly yours,

HENRY L. STIMSON.

I should like to file with the committee a table from the United States Tariff Commission's book, Colonial Tariff Policies, which shows the different types of duties which are assessed by other mother countries upon their colonies.

(The table referred to is as follows:)

TABLE 8.—*Colonies classified according to import tariff system*

[From Colonial Tariff Policies, United States Tariff Commission, 1922]

Countries	Assimilated	Preferential	Open door
Belgium			Belgian Congo.
France	Algeria, French Indo-China,[1] Tunis,[2] Madagascar, Reunion, Martinique, Guadeloupe, New Caledonia, French Guiana, Gaboon.	French West Africa, Senegal, Guinea, French Oceania, St. Pierre, and Miquelon.	French Morocco, French Somaliland, French West Africa, Dahomey, Ivory Coast, French India, French Equatorial Africa, New Hebrides.[3]
Germany (formerly).			German East Africa,[4] German Southwest Africa, Kamerun, Togo, German Samoa, New Guinea, Kiaochow (leased territory).
Great Britain		Dominions: Canada, Australia, New Zealand (Cook Islands),[5] South African Customs Union (Union of South Africa) Rhodesia[6] (Basutoland, Bechuanaland). Colonies: Trinidad, British Guiana, Jamaica and Caymans (Turks and Calcos), Barbados, Leeward Islands (Dominica, Montserrat), St. Christopher (Nevis), Virgin Islands, Antigua, Windward Islands (Grenada, St. Lucia, St. Vincent), British Honduras, Bahamas, Cyprus, Fiji.	British India[7] Newfoundland, under Australia (Papua, Norfolk Island). Colonies in Asia: Aden, Ceylon, Straits Settlements, Federated Malay States (Perak,[2] Selangor,[2] Negri Sembilan,[2] Pahang,[2] Protected Malay States (Johore, Kedah, Perlis, Kelantan, Trengganu), Hongkong Weihaiwei (leased territory). Colonies in Africa: Nigeria,[2] Gold Coast,[2] Sierra Leone,[2] Gambia,[2] British Somaliland, Kenya,[2] and Uganda, Zanzibar and Pemba, Nyasaland, Egypt, Anglo-Egyptian Sudan. Other colonies: Gibraltar, Malta, British North Borneo, Brunei, Sarawak, Tonga, Solomons, Gilbert and Ellice Islands, Mauritius, Seychelles, Falkland Islands, Bermuda, St. Helena.
Italy		Britrea Somalia,[1] Libia	Italian Northern Somaliland Rhodes.
Japan	Formosa or Taiwan, Saghalin, or Karafuto, Korea or Chosen.		Kwangtung (leased territory), Kiaochow (leased territory).
The Netherlands			Dutch East Indies, Curacao, Dutch Guiana.
Portugal		Mozambique,[1] Angola,[1] Cape Verde Islands,[1] Portuguese India, Timor, Sao Thome and Principo,[1] Portuguese Guinea.	Macao, Portuguese Congo.
Spain		Fernando Po,[1] Spanish Guinea, Rio de Oro.	Canary Islands, Spanish Morocco, Melilla and Ceuta.
United States	Porto Rico	Philippines, Virgin Islands, Guam.	American Samoa, Canal Zone.

[1] Differential export duties.
[2] One or two items of differential export duty.
[3] Anglo-French Condominium.
[4] Now named Tanganyika.
[5] In relation to New Zealand, the Cook Islands constitute an assimilated colony.
[6] Northeastern Rhodesia lies within the basin of the Congo and maintains the open door in accordance with the general act of the Conference of Berlin, 1885. The rest of Rhodesia has greater preferences than the other territories in the South African Customs Union.
[7] Formerly British East Africa.

Senator BINGHAM. Your theory is that if England had not bothered us by taxation when we were a colony, we would still be a part of England? Is that it?

Mr. HOLMAN. I did not mention anything about those relationships at all. All we are asking for is that this principle now be applied, since the failure to apply it bears rather heavily upon the farmers.

Senator SIMMONS. I understand that your contention is that as long as we retain the Philippines, and give them free access to the markets of this country, they become more particularly competitors of the farmer than any other class of our people?

Mr. HOLMAN. That appears to be the case.

Senator SIMMONS. And we are assembled here for the purpose of relieving the farmer?

Mr. HOLMAN. Yes, sir.

Senator SIMMONS. And therefore, you say, we ought to begin with the Philippine Islands?

Mr. HOLMAN. Yes, sir. The burden of carrying the Philippines to-day rests more heavily upon agriculture than any other single class in America.

Senator BINGHAM. Do you believe that the farmers as a whole, then, are in favor of Philippine independence immediately?

Mr. HOLMAN. The farmers ask for equality of competition. It is my judgment that if they fail to get it through the tariff, we are just at the beginning of the agricultural demand for the freedom of the Philippine Islands.

Senator BINGHAM. Is that a threat or a promise? [Laughter.]

Mr. HOLMAN. That is a prediction. [Laughter.]

I wish to thank the committee.

STATEMENT OF JOHN M. SWITZER, NEW YORK CITY, REPRESENTING THE PHILIPPINE [illegible] CHAMBER OF COMMERCE

(The witness was du[illegible] chai[illegible]mmittee.)

Mr. SWITZER. Mr. [illegible]tlemen [illegible]mittee, I appeared before the [illegible] Mes[illegible]ommitt[illegible]e sub-ject. I devoutly h[illegible]t the for[illegible]he a[illegible]ppine Islands might hav[illegible]elf befor[illegible]n on a vacation. I wa[illegible]egran[illegible]ived to-day. I am to[illegible]

The CHAIRMA[illegible]ed. Ju[illegible]hat you have alread[illegible]to ea[illegible]ht. [Laughter.]

Senator KING. [illegible]he ha[illegible]ha[illegible]ust have spoken to m[illegible]gue. [illegible]to me.

Mr. SWITZER. S[illegible]uble of th[illegible].

Senator KING. I [illegible]ore.

Mr. SWITZER. Yo[illegible]ne.

Senator KING. It is [illegible]une.

Mr. SWITZER. So far [illegible]rman, possibly I have met Senator [illegible]alf a minute; and I do not recall ever meeting [illegible]of this committee.

The CHAIRMAN. I forgot that you [illegible]on a vacation.

Mr. SWITZER. Thank you, sir.

Senator BARKLEY. Mr. Chairman, you would not want to make a public record of all the private conversations that have occurred on this tariff bill; would you?

The CHAIRMAN. If we had time, I should not object.

Mr. SWITZER. Mr. Chairman, you mentioned this afternoon the question of time; and I felt as though I might be doing a favor to this committee to say nothing but refer to the fact that I have made a statement before the Ways and Means Committee. A good deal has been said here this afternoon, I think quite rightly, about not duplicating. I have submitted an extensive brief before the Ways and Means Committee. It pretty well covers everything that I have to say. I do not know, in the name of the Lord, why I should take up your time here to duplicate that.

Senator KING. You are opposed, then, to treating the Philippine Islands as a conquered province for the purpose of imposing upon them duties and taxes and policies that are not applicable to Americans? Is that it?

Mr. SWITZER. Yes, Senator. I spent 20 years in the Philippine Islands. I went there with the first military expedition in 1898. I was in business there all those 20 years. I left there with the kindest feeling in the world toward those people. They deserve the kindest treatment at the hands of the American people; and to me it is perfectly shocking to have such proposals made as were made here this afternoon by the gentleman who preceded me.

Senator BINGHAM. What did you think of his ethical argument?

Mr. SWITZER. I did not think a damned thing of it [laughter]; and, Mr. Chairman, I am only taking your time now because of some of the remarks made by the gentleman who preceded me.

He spoke about the early tariff policy of the United States toward the Philippines proving that we have not intended free trade. If that early policy shows anything, it shows that that is not true.

Our treaty with Spain provided that for the first 10 years the merchandise and vessels of Spain should enter the Philippine Islands on the same conditions as those of the United States. Up to that time the principal imports into the Philippines came from Spain, because it was a Spanish country, and naturally they would continue that way for some years. If we had instituted free trade between the Philippines and the United States at that time, that meant free trade then between the Philippines and Spain. There would have been no revenue for the Philippines. For that reason, for the first 10 years of our occupancy of the Philippine Islands the United States paid full duty on its products going into the Philippines; but, to disprove the statement of the gentleman, your own Congress passed a bill charging products of the Philippines coming into the United States only 75 per cent of the regular duty, but we paid full duty on our products going into the Philippine Islands during that 10-year period. Does that look as though we did not want to have a policy that was helpful to the Philippines?

At the expiration of the 10 years, in 1909, free trade between the Philippines and the United States was provided for by Congress, the only exception being a limit of 300,000 tons of sugar and a limit on rice and a little something on tobacco. Of course, as to rice it was a joke, because never in the history of the Philippines, up to that time or since, was rice exported from that country; and the provision of a

limitation of 300,000 tons of sugar was put in there merely to ease the passage of the bill.

The CHAIRMAN. What did you say the reason was?

Mr. SWITZER. To ease the passage of the bill. Perhaps some objection was made at the time——

The CHAIRMAN. Oh, no! I was a member of the committee at that time.

Mr. SWITZER. Well, what it was I do not know. I assume that is true. I was over in the Philippines, trying to lay up a dollar.

Senator KING. Coming to the issue, what do you think ought to be done now?

Mr. SWITZER. Senator, will you pardon me just one second?

Senator KING. All right.

Mr. SWITZER. In 1913, under a Democratic administration—bless their souls for it!—they did away with all limitations; and that has been the policy of the United States since then.

In my brief before the Ways and Means Committee, gentlemen, I have quoted from the reports of your own committees back for over 25 years, showing that the avowed intention of both political parties was to treat the Philippines fairly, to treat them helpfully, to give them free trade.

The gentlemen who preceded me a minute ago said that if we make the Philippines prosperous they will not want independence. Gentlemen, do you propose to paralyze the industries of the Philippine Islands in order to pave the way to give them independence? That is the kind of independence he proposes to give them? Is that the policy of the United States toward those islands, and is that what we have been in the Islands over 25 years to do? I am ashamed to hear any man come before this committee and call such a policy as that "ethical"!

Senator EDGE. Can you answer this question for information? Is there any material difference, and if so what is it, between the section that referred to our treatment of the Philippine Islands under the Underwood bill and under the existing law and under the bill now under discussion?

Mr. SWITZER. Senator, I can not answer that, because I do not remember looking at that statute, but I doubt it.

Senator EDGE. Outside of the limitation in regard to sugar to which you have already referred, is there any material difference? You can answer "yes" or "no."

Mr. SWITZER. I do not know of any difference. I do not think there is any difference.

Senator EDGE. That is what I am trying to find out.

Mr. SWITZER. So far as I know there is not, Senator.

Mr. Chairman and gentlemen, the gentleman who preceded me also made what he graciously eventually called only a "prediction," not a "threat," of independence. It would appear to me that before the House committee, the restrictionists such as the gentleman who preceded me apparently lost hope of having any restriction placed on Philippine products. They have come to the conclusion, apparently, that there is something inconsistent about the American flag continuing over the Philippines and then putting a restriction on their products. Evidently they have read the reports which show the statements by the committees of Congress on this subject favoring

free trade between the Philippines and the United States. Now, Mr. Chairman, they have come to the conclusion, as I see it, that the country will not stand for restriction as long as our flag is there. Consequently, the next logical thing is for them to run to Philippine independence.

What a spectacle, gentlemen, to have men come before this committee and stultify the United States, stultify its 25 years of splendid work in the Philippine Islands, and scuttle our position over there, just for a few paltry dollars! We have had a splendid record in those islands. I spent 20 years there, and I am proud of that record; but I would be ashamed of it if this committee or Congress followed the advice of the gentleman who preceded me.

Senator SHORTRIDGE. What is your position?

Mr. SWITZER. My position, Senator, is that as long as we recognize our obligation to the Philippine Islands—and that obligation was clearly put by McKinley, and it has been put by several Presidents—our duty is to help those people get on their feet; and whether we are ever going to give them independence or whether we are not going to give them independence, our first duty now is to make them prosperous, to help them economically so that they can support that splendid superstructure which we planted there—the superstructure of modern civilization, of modern standards of living, modern education, modern sanitary conditions in those islands; and you can not support that standard by paralyzing them economically to-day with the restriction which this gentleman proposes.

The CHAIRMAN. Mr. Switzer, do you know the real feeling in the Philippine Islands among the natives as to the freedom of the Philippines? Take the Philippine people themselves.

Mr. SWITZER. Yes, Senator.

The CHAIRMAN. What is the sentiment among the Filipino people themselves?

Mr. SWITZER. Senator, that is a very broad question to ask, and I will do my best to answer it. You may think I am beating around the bush, but I am not.

Senator WALSH, of Massachusetts. I suppose no two persons would answer that question alike.

Mr. SWITZER. You are right, Senator.

Senator SHORTRIDGE. You said you knew.

Mr. SWITZER. Let me answer it this way, if you please. Those people, ever since we took them, have been asking for independence. If you had gone there, as I did in 1898, and if you had seen the conditions under which they had lived for 300 years, I am sure that you and I, and everyone of us here would also have been dubious of the sovereignty of anybody except ourselves. They had had such a hard deal for 300 years that it was naturally almost impossible for them to think that they could expect very much of a square deal from anybody.

The CHAIRMAN. They have had 25 years, now, and I am speaking of the feeling to-day.

Mr. SWITZER. Yes, Senator. If you please, I will come to that.

They have continued asking for independence. In the last year or two they have practically come around to 100 per cent faith in what America promised, and that America was going to fulfill it—a square deal. You have not heard very much about independence

in the Philippines in the last year or so, but whatever you heard was more or less, on principle, asking for what they had been asking for for 25 years.

Senator KING. Have you been there in the past year?

Mr. SWITZER. No; but I have talked with many Filipinos from there, and I have talked with a great many Americans from there.

The CHAIRMAN. In other words, so far as principle is concerned, they want independence?

Mr. SWITZER. Yes.

The CHAIRMAN. But they are praying that they do not get it?

Mr. SWITZER. Well, Senator, you are about right.

Senator SHORTRIDGE. You have not quite answered the Senator's question, as to the prevailing opinion, from the Zulu Islands, north.

Mr. SWITZER. The prevailing opinion is just about what the Senator himself has said.

Senator SHORTRIDGE. Whether they either do or do not want it.

Mr. SWITZER. They are asking for independence, but I dare say they just don't want it now. They have asked for it on principle. Some of my dear friends sitting around here right now—men I have known for nearly 30 years—are probably going to tell you that they want independence.

Senator SHORTRIDGE. Then, they would not expect free trade.

Mr. SWITZER. Of course not. But, on principle, they want independence, and eventually they do want independence.

Senator CONNALLY. Are you in favor of independence or not?

Mr. SWITZER. I am not in favor of independence, for the simple reason that economically they are not ready for it.

Senator REED. When will they be?

Mr. SWITZER. May I just say one word further along this line? They are not ready for it, Senator, because we set up over there a very splendid system of civilization—government, if you please—modern schools, modern roads, modern sanitation, and modern everything. That is an oasis of western civilization right in the midst of the Orient. You can not support that kind of a civilization; you can not support that kind of a standard, on the economic standards prevailing throughout the Orient.

The gentleman who preceded me proposes to knock the very economic props out from under them. He proposes to straightjacket them.

Senator CONNALLY. I am talking about you, now. I am not talking about the gentleman who preceded you.

Mr. SWITZER. I am saying, don't knock the props out from under them.

Senator CONNALLY. Don't give them freedom?

Mr. SWITZER. Don't give them their independence now, because they are not economically ready for it.

Senator BARKLEY. Are they politically ready for it?

Mr. SWITZER. I say politically, they probably are, but economically, God knows they are a long way from it.

Senator BARKLEY. Which should have the greater consideration, their political preparedness or their economic unpreparedness?

Mr. SWITZER. Senator, don't you believe—I do, at least—that we have arrived at a stage of civilization and government where you have

to have economic prosperity to have progress along pretty much any of your cultural lines?

Senator BARKLEY. You think the two things are intertwined, then, so as to be inseparable?

Mr. SWITZER. That is right, sir.

Senator SACKETT. You say they want independence on principle. Perhaps they want independence and free trade.

Mr. SWITZER. They can't expect both.

Senator SACKETT. Would not that give them both prosperity and independence?

Mr. SWITZER. Would independence and free trade give them prosperity? Probably, but restriction would be a calamity.

Senator SACKETT. Free trade with this country, I mean.

Mr. SWITZER. They could not have both independence and free trade. It would be a calamity to impose restrictions. The reason is, as I say, that we have set up there a western civilization. You can not support a western civilization on oriental economics.

Senator REED. Now, will you answer my question? When will they be economically capable of independence?

Mr. SWITZER. Well, Senator, that is a pretty tough question to answer, but I will answer it the best I can, in my humble way, by saying that certainly that time is quite a ways off. Take some of the sugar factories——

Senator KING. Give the time, and not the reasons.

Mr. SWITZER. I am trying to give him my argument. I will give him the answer afterwards. In the first place, we have a lot of sugar centrals, for example, over there. One of them was sold at auction the first day of May of this present year. Three or four more of them are in the hands of the banks. Now, it is going to take some years for those industries now established to really get on their feet, so that they will be strong enough to stand up and look for markets elsewhere than the United States.

The CHAIRMAN. Notwithstanding that, I have received a copy of a paper from the Philippines, just the other day, and they are starting a new sugar factory there. They have raised $500,000 capital.

Mr. SWITZER. I can well imagine, in certain districts——

The CHAIRMAN. No. They are going to take the district that has been raising rice, and——

Mr. SWITZER. I do not know where it is, Senator.

The CHAIRMAN. I can send down and get the paper if you want it.

Mr. SWITZER. I do not know about it.

The CHAIRMAN. It is an announcement in the Philippine paper.

Mr. SWITZER. Mr. Chairman and gentlemen, let me make one other observation. I am sorry to take so much of your time. I will be glad to quit any moment.

Senator SHORTRIDGE. You can not tell, as a matter of fact, can you, whether it will be 25 years, 50 years, or a hundred years?

Mr. SWITZER. No. But I should say to the Senator who asked me that question that perhaps we would be making just as much of a mistake to cut the props out from under those people short of 25 or 30 years, as we would have made had we taken the props out from under our American industries 10 or 15 or 20 years after you first put a tariff on to help them get on their feet in this country. It is the same principle.

Senator REED. Here is the situation, then. They want independence; at least their spokesman say they do. Our farmers want them to be independent; at least their spokesmen say they do. The Philippines are a source of military weakness, instead of an asset to us, and that situation, you say, has to go on indefinitely in the future until the sugar companies there are so prosperous that they do not any longer need us for a market. Is that what it comes to?

Mr. SWITZER. Senator, you are trying to put up a premise for me with which I can not agree, and that is that they are a menace to us from a military point of view.

Senator CONNALLY. He said a weakness.

Mr. SWITZER. I mean a weakness. I beg your pardon.

Senator KING. Theodore Roosevelt, in his last days, said they were a weakness, and many military men have said they were a weakness unless we fortified them. Even then, with the situation we have now, many of our greatest military and naval men would regard them as a source of weakness.

Mr. SWITZER. Senator, I dare say that President Roosevelt said many things with which you did not agree.

Senator KING. He said some things with which I do agree.

Mr. SWITZER. I am sure that is one of them with which I would not agree.

Senator KING. I agree with him, I think, better than I agree with you.

Senator HARRISON. You represent the Philippine-American Chamber of Commerce?

Mr. SWITZER. Yes.

Senator HARRISON. That is made up of big business interests of the United States in the Philippine Islands, is it not?

Mr. SWITZER. Of business interests primarily, but also of sentimental interests in the welfare of the islands.

Senator HARRISON. And the business people generally who have investments in the Philippine Islands are opposed to Philippine independence.

Mr. SWITZER. Yes; also others who know conditions there.

Senator HARRISON. You are expressing their viewpoint.

Mr. SWITZER. Yes.

Senator HARRISON. You do not want to challenge the sincerity of these so-called patriots of the Phillppines, who represent that they want their independence?

Mr. SWITZER. Not at all, Senator.

Senator CONNALLY. How long has it been since you were in the Philippines?

Mr. SWITZER. It has been about seven or eight years.

Senator CONNALLY. Have you any interests in the Philippines now?

Mr. SWITZER. I have some interests, yes. I have retired from business, but I have kept some of my interests over there.

Senator CONNALLY. Sugar?

Mr. SWITZER. I have some in sugar, and some in rubber.

Senator CONNALLY. Rubber and sugar.

Mr. SWITZER. Yes.

Senator CONNALLY. If they had independence we would have to put a tariff on rubber and sugar, would we not?

Mr. SWITZER. There is no tariff on rubber now anyway.

Senator CONNALLY. Well, we would have to put it on sugar.

Mr. SWITZER. Yes. Mr. Chairman, while the Senator has just asked me——

Senator BINGHAM. Do you think it is a crime for an American to invest money in the Philippines?

Mr. SWITZER. Senator, why should it be any more of a crime to invest money there than right here in our own country, under our own flag, at home?

The CHAIRMAN. Or any other country.

Mr. SWITZER. Or any other country.

Senator BARKLEY. Admitting that it is not a crime, do you think the fact that he has investments has anything to do with the opinion he expresses as to the relationship between the United States and the Philippines?

Mr. SWITZER. I hope not.

Senator CONNALLY. If it is not a crime, it is not a crime to ask witnesses what their interest is in matters pending before this or any other committee, is it?

Mr. SWITZER. No, Senator. You can ask me any question you please.

Senator EDGE. You have not answered Senator Reed's question yet. You are leading up to it.

Senator KING. Yes. He said about 25 years.

Senator EDGE. Do I understand, then, that your answer to Senator Reed's inquiry is that they would never be ready for absolute independence until they became financially independent through their own resources?

Mr. SWITZER. Well I should say reasonably so; yes.

Senator EDGE. That is what I thought you were leading up to.

Mr. SWITZER. Mr. Chairman and gentlemen, apropos of the question asked by the Senator at this end of the table, may I make this observation? Somebody asked me a question about Americans investing in the Philippines. I went there as a soldier. I stayed there 20 years. I invested practically everything I made in those 20 years in the Philippine Islands. That country, so far as American capital is concerned, is largely built up by the same kind of capital that I have put there. Men like myself went there during the war and stayed there in business afterwards. We went there as young men, with our careers still before us.

There is not any big capital in the Philippines. We are small fellows over there. I dare say that perhaps I shall be the only American business man appearing before this committee, and I am here almost by accident. We have not any lobby.

Senator WALSH of Massachusetts. Is there much Spanish money invested in the Philippines now?

Mr. SWITZER. Senator, I am glad you asked that question. You gentlemen are helping me make my speech by asking these questions.

Senator WALSH of Massachusetts. We do not want to prolong it too long.

Mr. SWITZER. That is all right. If you can stand it, I can.

I have heard a good deal lately, and since I wrote my brief, which I submitted to the Ways and Means Committee——

Senator WALSH of Massachusetts. Which, I notice, covers 20 pages.

Mr. SWITZER. Well, Senator, that is not all mine.

Senator WALSH of Massachusetts. It was very elaborate.

Mr. SWITZER. Some of it is a quotation from the Tariff Commission.

Senator SHORTRIDGE. Now, tell us about the Spanish investments.

Mr. SWITZER. I have heard a great deal since the hearings before the Ways and Means Committee about foreign capital being invested in the Philippines, especially in sugar. I have heard that German money was invested there, and so forth. Of course, so far as I am concerned, German money has as much right to go there as any other foreign money. But the facts are that 87 per cent of the lands devoted to sugar in the Philippines are owned by Filipinos, about 7 per cent by Spaniards, and about 6 per cent by Americans.

The CHAIRMAN. That is the land.

Mr. SWITZER. That is the land. Of the sugar centrals, the mills, about $40,000,000 is Filipino money, about $20,000,000 Spanish, and $20,000,000 American.

The CHAIRMAN. That is, Americans living in the Philippines?

Senator KING. Oh, no.

Mr. SWITZER. It is American money, whether they live in the Philippines or not.

The CHAIRMAN. Yes.

Mr. SWITZER. $40,000,000 Filipino; $20,000,000 American; $20,000,000 Spanish; and about half a million miscellaneous.

The CHAIRMAN. Then, the Spaniards produce more tons of sugar than 20 per cent of the production of the islands. In other words, their mills are larger.

Mr. SWITZER. I have not the figures, Senator, but I should not think so, judging from the amount of money invested in centrals.

The CHAIRMAN. We have all those figures.

Mr. SWITZER. Furthermore——

Senator KING. The Spanish investments, whatever they are, large or small, resulted from the fact that when we conquered the Philippine Islands the Spaniards were living there.

Mr. SWITZER. That is right.

Senator KING. Some of them continued to live there.

Mr. SWITZER. That is right.

Senator KING. We did not confiscate their property, and they continued to live there as good citizens, upholding and supporting the government which was established.

Mr. SWITZER. That is right.

Senator KING. So that they are Filipinos, in the sense that they are living there?

Mr. SWITZER. That is right.

Senator KING. The same as there are tens of thousands of Spaniards in Cuba, who accepted the situation and are Cubans.

Mr. SWITZER. That is correct.

Moreover, may I supplement what the Senator said. According to the treaty of Paris with Spain, as I recall it, the Spanish residents in the Philippine Islands had two alternatives: one, to become Philippine citizens, or remain Spanish citizens. They had no chance to become American citizens in the Philippine Islands, or they would have done so. Even to this day, they would have to come to the United States and live here the required number of years that any

immigrant must live here before he can become a citizen of this country.

Senator BINGHAM. Is it not true that if they were permitted to become American citizens, by far the greater proportion of that $20,000,000 you speak of as being invested in sugar centrals owned by Spanish subjects, would be to-day owned by American citizens?

Mr. SWITZER. Unquestionably.

The CHAIRMAN. The King of Spain is not going to become a citizen of the United States. That is one thing sure.

Mr. SWITZER. He has not much of an investment there, Senator.

The CHAIRMAN. Then, your reports are wrong.

Mr. SWITZER. He has some, I understand, but not much.

The CHAIRMAN. The new Spanish mill that is going up there is the best mill that there will be in the whole islands, a 5,000-ton cane capacity. My colleague was speaking of the mills that are there. They are still there, but there are other mills being erected by Spain.

Mr. SWITZER. But, Mr. Chairman and gentlemen of this committee, I hope I may be permitted to make this observation. There is $20,000,000 of Spanish and foreign money invested in sugar in the Philippine Islands. We have—and when I say "we" I mean Americans—Americans have invested something like $16,000,000,000 abroad. Are we going to make a howl about $20,000,000 of foreign money in the Philippines when we have 16 billions scattered around through other foreign countries?

The CHAIRMAN. A great deal of that is money loaned.

Mr. SWITZER. About two-thirds of it is invested in industry, Senator, and the rest of it is loaned.

Senator WALSH, of Massachusetts. Mr. Chairman, are we making much progress now?

Senator SHORTRIDGE. None whatever.

Senator WALSH of Massachusetts. I think the witness has covered the field very well.

Mr. SWITZER. Thank you, gentlemen. I am sorry to have taken your time.

STATEMENT OF HON. MANUEL ROXAS, SPEAKER OF THE HOUSE OF REPRESENTATIVES OF THE PHILIPPINE ISLANDS

(The witness was duly sworn by the chairman.)

Mr. ROXAS. Mr. Chairman and gentlemen of the committee, I am the speaker of the House of Representatives of the Philippine Islands and acting chairman of the legislative mission to the United States.

Senator WALSH of Massachusetts. Was your mission appointed for the purpose of attending these tariff hearings?

Mr. ROXAS. Yes, sir.

Senator WALSH of Massachusetts. How many are there on the mission?

Mr. ROXAS. By concurrent resolution the legislature of the Philippine Islands created a mission composed of the president of the senate, the speaker of the house of representatives, and the president pro tempore of the senate. The president of the senate is not now in the United States, but the other members are here. We were commissioned to appear before the committee of Congress to present the views of the legislature and of the Filipino people in relation to the

matters affecting American-Philippine tariff relations that have been brought up at this special session.

I am, therefore, appearing on behalf of the legislature of the Philippine Islands in connection with section 301 of the tariff bill as passed by the House of Representatives.

Before proceeding to express frankly the views of my people in relation to the proposed restriction of Philippine imports into the United States, I hope I may be allowed to say a few words in connection with certain statements that have just now been made here assailing the sincerity of the Filipinos in their demand for independence. It was asserted that this demand is merely "perfunctory;" that "so far as principle is concerned they want independence, but they are praying that they do not get it."

Mr. Chairman, the Filipinos are for independence, not only on principle, not only because it is a natural yearning of any people of any land, of every age in the world's development, to aspire to be free; but because we sincerely believe that only in freedom shall we be able to work out our own destiny.

It is by no means an aspiration spurred by an ignorant impulse. It is not only a matter of sentiment. It is the result of careful and thorough deliberation. We have given more than one evidence that our aspiration is real and sincere.

We fought Spain in many revolutions. We dared to fight even this great and powerful country—a losing fight—but we did it to show to the American people that we are men, made of flesh and blood just as yourselves, cherishing liberty just as you do, and ready to lay down our lives for it if necessary even as you did in the past. We love freedom, not because we are less grateful to the United States for what she has done in our country, nor because we are less appreciative of what America stands for in the world, but because—pardon me for saying it—we love our country more, and we love freedom more.

My father was a victim of the tyranny of Spain. I was an orphan before I was born. He was shot to death by the minions of a tyrannical empire. Every year, as the anniversary of his death approaches, I go to his grave and renew my sworn devotion to the freedom of my country. With full reverence to his memory I say to you now, Mr. Chairman, and to the members of this committee, and to all the American Congress, and to the people of this great Nation, and to the whole world, that the Filipinos want to be free. They want to manage their own affairs, as God gives them the right and the knowledge to manage those affairs.

Let me disabuse the mind of anybody here or outside this room, who believes that now or in the future, the Filipinos will ever abandon the aspiration for independence—if there be any such—Mr. Chairman, he is hopelessly mistaken.

In asking for independence, I believe we are not displeasing the American people for they themselves have strengthened our love for freedom. I myself, Mr. Chairman, learned my A B C's on the knees of an American soldier who went to my country, carrying the flag of freedom and independence that America waved when she declared war against Spain.

We have drunk deep from the fountain head of America's history and traditions replete with heroic struggles for liberty. We have

learned every lesson that you teach to your children in this country, to inspire their hearts and souls with a love of freedom and the maintenance of democratic institutions.

As the Filipinos grow in age and in experience, as more Filipinos are thus educated in our schools, their love for freedom increases. I cite myself as an example. I have not attended any school but the public schools established by America in my country. I do not believe there is any Filipino who can love America more than I do; who is more grateful to the United States for what she has done in my country; who has more faith in what America represents in the world. I do not believe there is any Filipino or any American who has more hopes of the mission of this nation with regard to the downtrodden peoples of all climes than I have.

And yet, Mr. Chairman, I declare here and now, I am heart and soul for Philippine independence.

The same is true with regard to the whole Filipino people. The Philippine Legislature, by unanimous vote, approves at every session, a petition for Philippine independence. If there exists the slightest doubt as to the sincerity of the Filipino people in their desire for the priceless boon of freedom, I would stake the liberty of my country on the outcome of a plebiscite or referendum on this question. If my people are so vain, so unpatriotic as to sell their birthright for whatever favors or bribes selfish interests may offer them—then they are not worthy of independence and I would be the last again to raise my voice for it.

I want to rest my case on that, Mr. Chairman. If Congress really wants to know what my people think of independence, let Congress authorize a plebiscite.

Senator WALSH of Massachusetts. I take it that your own position and that of your country is that the economic relations between the Philippine Islands and America, on all tariff questions, are inconsequential as compared to the question of independence.

Mr. ROXAS. Absolutely.

Senator WALSH of Massachusetts. If this committee could give you independence, you would walk out and not ask for any tariff?

Mr. ROXAS. Absolutely.

The CHAIRMAN. Have you any doubt, or have the Philippine leaders any doubt, that if they had their independence they could not raise taxes sufficient to maintain their government? Is there any doubt that they could not do it?

Mr. ROXAS. We have no doubt, Mr. Chairman.

I am not speaking merely inspired by optimism. We have studied this question profoundly. We who now feel the weight of responsibility of steering the cause and the destiny of our people have pondered over this question very seriously. While we may not be able to maintain such an expensive establishment as this country maintains, while we can not maintain a very large Army and Navy, we will be able to maintain a democratic government inspired by our own genius and ideas, and be able financially to support it.

Senator WALSH of Massachusetts. What percentage of your public officials administering all the departments of your government are Filipinos to-day?

Mr. ROXAS. All the officials in the Philippine Islands are Filipinos, with the exception of the governor general, who is an appointee of

the President; the vice governor general, the insular auditor, who corresponds to your Comptroller General; five members of the supreme court; and two or three American bureau chiefs who, on account of their length of service and demonstrated technical ability, have been retained in the government service, and a few judges.

Senator WALSH of Massachusetts. By the Philippine government?

Mr. ROXAS. By the Philippine government.

Senator WALSH of Massachusetts. All the heads of the health and school departments, and public welfare departments, are Filipinos?

Mr. ROXAS. The head of the bureau of education is an American. The head of the health bureau and of the public welfare office are Filipinos.

Senator WALSH of Massachusetts. Then, nearly 99 per cent are Filipinos?

Mr. ROXAS. I think it is more than 99 per cent. Outside of school teachers, I do not believe there are more than about 25 Americans now in the whole insular service.

Mr. Chairman, I will now discuss very briefly——

Senator SIMMONS. Let me ask you a question. Did you learn the beautiful and correct English that you have manifested in your speech here to-day in the schools in the Philippines?

Mr. ROXAS. In the Philippine Islands, Senator.

Senator SIMMONS. Or did you have some special training?

Mr. ROXAS. None, sir. As I have said, I was educated in the public schools of my country.

Senator SIMMONS. You attended only the ordinary schools?

Mr. ROXAS. Yes, sir.

Senator SIMMONS. And you had no special training outside?

Mr. ROXAS. No. I attended the University of the Philippines, also a government institution.

Now, gentlemen, there are some phases of this question which have not been touched upon in the discussion in the course of the hearings before the several subcommittees of the House and of the Senate. I shall confine my remarks to these phases of the controversy.

Article 301 of the House bill proposes to continue trade relations between the United States and the Philippine Islands which have existed since 1913. By virtue of these provisions reciprocal free trade now obtains between the United States and the Philippines, with the following exception: That whereas all manufactures of the United States are admitted to the Philippine Islands free of duty, only Philippine articles manufactured from materials the growth or product of the Philippine Islands or of the United States, or of both, of which do not contain foreign materials to the value of more than 20 per cent of their total value, are admitted free of duty into this country.

Free-trade relations between the United States and the Philippine Islands are a result of a development influenced principally by political and moral considerations. The historical facts bearing on the successive steps that had been adopted prior to the establishment of the present arrangements were fully set forth in the hearings before the Ways and Means Committee of the House of Representatives, and it is unnecessary to repeat them here, except to emphasize the fact that since the inception of American sovereignty over the Philip-

pine Islands, free trade was considered the "logical result" of the relationship thereby created.

This was clearly stated by the Ways and Means Committee of the House of Representatives in 1905. The Republican majority, speaking for the committee, said in its report:

> The only logical result from our possession of the Philippine Islands is free trade between the islands and the rest of the United States. It is definitely settled that we retain them until the people are prepared for self-government. * * * They are wards of the United States, a part of our common country, and are entitled to fair trade relations. It is now as much our "plain duty" to give them free trade as soon as practicable as it was in the case of Porto Rico.

On that occasion the minority stated the Democratic policy with regard to the Philippines in a substitute measure, providing:

> That all articles the growth and product of the Philippine Archipelago coming into the United States from the Philippine Archipelago shall hereafter be admitted free of duty.

In 1909, when free trade with certain restrictions was established between the United States and the Philippines, Senator Elihu Root, than whom no other statesman was better qualified to expound the Republican policy with regard to the Philippines, said in a speech in the Senate of the United States:

> Mr. President, we have some duties to the Filipinos. I am sure no member of this body really desires to bring about a separation between the Philippine Islands and the United States by making our administration of the government of those islands a failure, by making the guardianship of the United States the cause of injury rather than a benefit, the cause of disaster and poverty rather than of prosperity and growth.
>
> The die is cast, Mr. President, upon which we have the responsibility for the Philippine Islands. No action of ours can reverse it. The good faith, the good name, the honor of the American people are all pledged to lead the people of the islands on by paths of growing prosperity and capacity for government to the point where they will be capable of supporting and governing themselves.
>
> We can not fulfill that high duty by giving them money * * * Gifts of money tend to reduce the independence of individual character. We can not fulfill that duty by making the islands unsuccessful in business, by retarding and confining their industry. We can fulfill it only by giving to them the opportunities to grow in habits of industry, to grow in the building up of national price and national power, to grow in the accumulation of property and the diffusion of wealth, lying at the foundation of civilization. We can fulfill that duty only by making the people of the Philippines at once prosperous and intelligent.

That was the Republican policy.

And in 1913, when the Democratic Party came to power and all restrictions on the free importation of tobacco, sugar, and rice from the Philippines were eliminated, Mr. Underwood, financial leader and spokesman of the majority in the House of Representatives, thus defined the stand of his party on this question:

> The change in this paragraph of the bill is largely striking out the limitation on the importation of sugar, filler and cigar tobacco and wrapper tobacco * * * We may leave the limit where it is * * * but we would leave it where it is to the shame of every American citizen. We could not honestly face these dependent people who give us free trade in their markets if we close our doors to the only imports that they might possibly sent here * * * Because we do not want to stand and face that world in such a position as that and say (to the Filipinos) that "under our law we command you to open the door, so that American goods can flow into your country," because we have the power to do it, and then turn around and say to them that on the only thing that they can import, practically, into our country and make a market for we will close our doors and prevent them developing their trade. I say that no true-born American citizen who faces this question fairly and squarely and understands the situation will consent to that.

These pronouncements indicate the evident unanimity of policy pursued by both political parties as regards American-Philippine trade relations. Republicans and Democrats alike contributed their share of generous altruism in the treatment of the Philippines that has brought about the present reciprocal free-trade legislation. To this may be added that it was President Taft, first civil Governor of the Philippines, who initiated this policy, although it fell to the lot of President Wilson to carry it to full accomplishment.

Free trade between the United States and the Philippine Islands has in certain ways proven beneficial to the Philippines and has aided in the development of that country. But the advantages have not all been one sided. With increased production the Philippines has enlarged its purchasing power as a market for American farm products and manufactures.

A comprehensive exposition of the comparative advantages derived by either country from this relationship will be found in the memorandum which the Philippine delegation will submit to the committee.

A careful perusal of the facts and figures set forth in this memorandum will show that the invisible items in trade, particularly the benefits accruing to American shipping, banking, and insurance business, more than offset the small yearly balance in the value of exports and imports favorable to the Philippine Islands.

Philippine trade has greatly developed American merchant marine in the Pacific. It provides a valuable terminal in the Far East route and, with certainty of freight to and from that country, has placed American ships on an advantageous competitive basis as regards rates and service in that part of the world. Without the stimulus of free trade with the Philippines it is difficult to see how American shipping could have recovered from the slump where it fell at the close of the Spanish-American War.

It is also important to bear in mind that since the establishment of free trade United States exports to the Philippines have increased by a larger per centum than its imports from that country.

But now a movement is on foot seeking to disrupt this trade arrangement. The agitation, started two years ago, is now supported by elements too powerful and important in their influence to be ignored. And it comes at a time when the Philippine Islands have just about reached a point in their development when they are ready to participate in due measure in the reciprocal benefits which free trade affords.

Concretely, it has taken the form of a request that free sugar importation from the Philippines be limited to 500,000 tons, that a duty be imposed on coconut oil and other coconut products, that Manila hemp cordage be subjected to an import tax, and, generally, that Philippine imports competing in any way with American products be placed on a parity with articles coming from foreign countries.

The suggestion has also come from more radical quarters that the right of free entry of Philippine products into the United States be completely abrogated.

These propositions are coupled with no indication of any purpose to impose a corresponding restriction on American products entering the Philippines. Neither is there manifest any desire to consider Philippine interests alongside with American interests, or to square such proposals with the dictates of conscience and equity.

This agitation could not but seriously alarm the people of the Philippine Islands. It is even now producing the natural consequent stalemate in their development. It has set back their progress many years. It has brought home to the Filipino people in vivid colors a realization of their utterly precarious condition under their present relationship with the United States. It has raised serious doubts in the minds of many Filipinos as to whether, indeed, their country has not reached the maximum of economic growth under American sovereignty. The Philippine Islands are under the American flag. They are under American sovereignty by no action of their own but by the will and purpose of the American people. Any suggestion to discriminate against them or to deny to their people the equal protection which the American Constitution and the American flag afford, can not fail to wound their pride and make them despair of the future of their country.

The interests back of this discriminatory movement are too well known to require mention here. The reasons that have impelled them to take this action were fully set forth in the hearings before the Ways and Means Committee of the House of Representatives. They are predicated on the mistaken assumption that Philippine imports to the United States are competing or will compete disastrously with American products, forcing prices down to the injury of American labor and American industry.

That there is no ground for such apprehension was well shown in the course of said hearings by former Governor General Henry L. Stimson, now Secretary of State; by Hon. Pedro Guevara, resident commissioner of the Philippines; by the Philippine trade commissioner, Gen. Frank McIntyre, and by others imbued with a sense of fairness toward the Philippines.

The Ways and Means Committee of the House of Representatives, after a thorough and exhaustive study of the questions involved, disposed of all petitions tending to discriminate against Philippine imports, as follows:

> All amendments proposing to restrict in any way imports from the possessions of the United States by imposing limits as to kind, quality, values, and in any other way, were rejected.

It was hoped by the Filipino representatives that this action of the committee would dispose definitely of this agitation. However, they were greatly disappointed to find that the same was reproduced with increased determination and vigor in the hearings before several subcommittees of the Senate Finance Committee. No new facts were brought out, no new arguments advanced.

I shall not attempt to restate the arguments submitted by the representatives of Philippine interests before the House Ways and Means Committee.

In the brief that we are presenting before this committee there is included a brief summary of these arguments for your convenient perusal.

Proposals to discriminate against Philippine products entering the United States bring up, not merely economic questions but political questions. They involve not only the tariff but the political relationship between the United States and the Philippine Islands. They concern not only sugar and other industries but raise moral issues of tremendous import in the eyes of 13,000,000 Filipinos.

As has already been noted, Congress has assumed the exclusive power to regulate American-Filipino trade relations. In the exercise of that power Congress has established free trade between the United States and the Philippines, thereby protecting Philippine imports into this country in exchange for reciprocal protection which the Philippines accord to American exports to that country. This would seem a fair arrangement were it not for the fact that in the determination of American tariff policy American products and manufactures constitute the prime and only consideration. In other words, Philippine products receive protection in the United States, not of their own right or for their particular benefit, but only when by accident they happen to be in the same class or identical with American products receiving such protection, and then only to the extent that the American product requires that protection.

On the other hand, American manufactures entering the Philippine Islands receive the protection that they are accorded in this country, irrespective of the fact whether there are identical Filipino products requiring such protection or not. For example, American shoes and dairy farm products, cigarettes, textile goods, and automobiles are protected in the Philippines virtually to the same extent as they are protected in the United States. This in spite of the fact that the Philippines do not produce such articles. Machinery, especially agricultural machinery, affords another eloquent example.

The Philippines is an agricultural country, and if its interests were to be borne in mind, no import duty would be imposed on such articles, except for revenue only. And yet the Philippine Legislature, always scrupulous in the fulfillment of its moral obligations toward the United States with reference to the reciprocal free trade arrangement, has always maintained a high duty on iron and steel manufactures, as if there were such manufactures in the Philippines to protect.

Thus it is Congress and not the Philippine Legislature that determines what American goods should be protected in the Philippines and what that protection should be.

The Philippine Islands, in all these years, have lived up to what could reasonably be demanded of them—the duty to give effect to such protection. In only one instance did the Philippine Government give cause for complaint. That was with regard to the duty on tobacco wrappers. As is well known, the Philippines has been unable to produce tobacco wrappers of the desired quality. For many years past the Philippines had been importing wrappers from Sumatra. Representations were made by American tobacco interests to the effect that the Philippine duty on leaf tobacco wrapper was lower than the corresponding American duty, and it was alleged that this difference was unfair to American tobacco interests. Philippine tobacco manufacturers protested against the proposed increase in duty, alleging that it would raise the cost of production of Philippine cigars, a considerable quantity of which was being sold in Europe. This notwithstanding the Philippine Legislature raised the duty on tobacco wrappers to the amount fixed in the American tariff.

The result was as anticipated. Sumatra and Java wrappers unable to compete have been almost totally displaced by Connecticut tobacco wrappers.

Thus the Philippines protects American products when coming into competition with foreign articles, even to the extent of losing revenue and injuring important domestic industries.

But what is the situation of Philippine products in the United States? As has already been shown, Philippine products obtain protection only when they happen to be identified with American products.

Sugar is a typical example. Philippine sugar now enjoys protection in this market because Congress has seen fit to protect the American beet and cane sugar industries. The duty on sugar is raised or lowered with the interests of the continental domestic industry exclusively in view. Such is the undeniable fact. Now that we are sharing in that protection of sugar, the sugar interests tell us, "You should not share in this protection because you are competing with American products."

The CHAIRMAN. They do not say that. They say that up to 600,000 tons you can have this market.

Mr. ROXAS. Yes, Senator.

The CHAIRMAN. That is all they are saying.

Mr. ROXAS. But you know that the progress and development of a country, and the production of a country, is essentially an economic question. It is governed by economic laws.

The CHAIRMAN. Then, the statement that they can not produce any more sugar in the Philippines than they are producing now is not true, is it?

Mr. ROXAS. That is a matter of conjecture, Senator.

Mr. CHAIRMAN. What do you think?

Mr. ROXAS. I think there are no prospects of abnormal increase. If I had any capital, I would not invest it in the Philippine sugar industry.

The CHAIRMAN. Then you do not think it is going to grow at all?

Mr. ROXAS. Capitalists—careful and prudent as I think they should be—will not invest in the sugar industry.

The CHAIRMAN. What about the new district they are going to open up?

Mr. ROXAS. That was planned and construction was started before this movement to restrict Philippine sugar coming to the United States commenced.

The CHAIRMAN. Your papers give it as a new item.

Mr. ROXAS. My information is different.

Senator SHORTRIDGE. What island is that?

Mr. ROXAS. That is in the Island of Luzon.

This is what I would like to say, Senator. If you once impose a restriction on one Philippine commodity, you will have crippled Philippine progress forever, for there would be no capitalists who will invest money in the Philippine Islands on products which are protected in this market, for fear that once they have such products to market, a restriction will be imposed, cutting them off.

Senator EDGE. But, if you have independence, of course——

Mr. ROXAS. That is a different matter.

Senator EDGE. The matter of restriction would be a small matter. You would have a duty applying to all your products.

Mr. ROXAS. I want to make myself perfectly clear on that.

Senator EDGE. You speak of it crippling Philippine industries forever. I could not help making the suggestion that with independence, of course, the tariff duty, whatever it might be, on all your products, would be applicable, of course, would it not?

Mr. ROXAS. Absolutely.

Senator EDGE. But that would make no difference to you if you had independence?

Mr. ROXAS. No, sir, because I believe that sugar is the only Philippine article that needs this protection. With regard to copra, Philippine copra is on a competitive basis, and if we cannot sell Philippine coconut oil in this country we will sell it somewhere else, or export it as copra. Philippine tobacco can be placed on a competitive basis. I mean to say that sugar is now the only Philippine product that really enjoys the benefits of American-Philippine free trade. So, I say that if Congress really thinks that we should have our independence, as Congress has promised to grant it to us, the sooner you fix the date for that independence the better it will be for Americans and Filipinos alike.

Senator REED. Mr. Speaker, if this plebiscite you speak of were to include the Island of Mindanao, do you think that the vote would be in favor of independence?

Mr. ROXAS. Yes, sir. Of course, I am talking about men qualified to vote, Senator.

Senator REED. What limitations on the right to vote would you place?

Mr. ROXAS. The same limitations that are now imposed by our election laws.

Senator SHORTRIDGE. In a word, what are they?

Mr. ROXAS. You must be able to read and write, or own property.

Senator BINGHAM. How large a percentage of the people in the Islands can read and write?

Mr. ROXAS. Including children, Senator——

Senator BINGHAM. I mean those of voting age.

Mr. ROXAS. I suppose about 10 per cent of the population of the Philippines are voters. Of course, women do not vote in the Philippines. Ten per cent are qualified to vote, and I think about 95 per cent of that 10 per cent can read and write. They prepare their own ballots.

Senator KING. We have disarmed the tribes in Mindanao. It would seem simple justice to restore their arms before granting independence.

Mr. ROXAS. I think that it was a mistake to have deprived them of their arms.

Senator KING. What would be the result of restoring their arms before giving them independence?

Mr. ROXAS. If their arms were restored and we were allowed to govern that section of the country as we think it should be governed, as we demonstrated during the Harrison régime, there would not be any trouble

I would like to say that the Moros of Mindanao are like other Filipinos. The only difference is that they are Mohammedans and we are Christians. They are of the same stock and blood, and love their country as much as we do. But the trouble is that they are not understood, and those who go there to govern them do not understand

them. They go there with a prejudice, and very often misunderstandings occur. But when they are properly governed as ordinary men, as the record of the last few years shows, they act as ordinary men.

Senator KING. There are only about 800,000?

Mr. ROXAS. Four hundred thousand non-Christians in Mindanao.

Senator SHORTRIDGE. What is the population of Mindanao?

Mr. ROXAS. About one and a half million.

Senator SHORTRIDGE. Practically all Mohammedans?

Mr. ROXAS. No; about 400,000 Mohammedans, and about 400,000 pagans in the rest of the Archipelago.

Senator KING. About 12,000,000 inhabitants of the Philippines, and 800,000 to 1,000,000 are Mohammedans?

Mr. ROXAS. Nearly 13,000,000, and 800,000 non-Christians.

Senator KING. The Mohammedan population is less than a million?

Mr. ROXAS. We call them non-Christians.

Senator KING. I spoke improperly. I meant non-Christians. There are less than a million non-Christians?

Mr. ROXAS. Yes, sir.

Senator KING. How many of them attending school? My recollection is not quite accurate on that. I have not seen the figures for some time.

Mr. ROXAS. More than a million in the public schools now. And we can not build schools fast enough to accommodate the children who wish instruction.

Senator KING. Eighty per cent to 90 per cent of all the males 20 years of age and over own lands and farm the same?

Mr. ROXAS. Yes.

Senator KING. And raise crops thereon?

Mr. ROXAS. Yes, sir; they are land owners. In fact, that is a source of pride in the Philippine Islands, that they achieved that condition with the help of this country. We do not permit any corporation, however powerful or influential, to own more than 1,024 hectors of land, no matter what their business or occupation may be.

Senator REED. About 2,500 acres?

Mr. ROXAS. Yes, sir.

Senator KING. So you do not have the same problem that Mexico and some of the other islands have had?

Mr. ROXAS. We guarantee to every Filipino the right to own a homestead of almost 100 acres free. A free patent is issued to him after he can show that he has actually cultivated one-third of the land.

Senator BINGHAM. You had the agrarian problem before the United States took over the land?

Mr. ROXAS. Yes.

Senator BINGHAM. And you owe to the United States the fact that your lands are not in large holdings?

Mr. ROXAS. Yes, sir. That is why I say that Congress has helped us achieve this situation. Our first revolt against Spain was on account of the concentration of real estate in the hands of religious organizations.

Senator BINGHAM. It was shown very clearly in the discussion in the Senate that the agrarian problem that existed under the Spanish régime had been settled by Aguinaldo and his followers if there had been no intervention?

Mr. ROXAS. Yes, sir.

What I have said regarding sugar may be said as to Philippine cigars and Philippine coconut oil. They will be protected in this market only as long as Congress will deem wise to protect the corresponding American industries and while there are such industries to protect; otherwise, sugar, cigars, and coconut oil would be placed in the free list, even if such action might spell ruin to the Philippine Islands.

How about Philippine products unlike any that are produced in the United States? No matter how needful of protection they may be, they are left alone to struggle subject to hampering disadvantages in the open market with the rest of the world.

Let us take Manila hemp, for example. Not being produced in the United States, it enjoys no protection. As a consequence, hemp production in the Philippines is at a standstill, for its uses are limited, and in many respects it is being substituted by fiber of an inferior quality. The industry itself is fast becoming dwarfed and anemic. The monopoly of this fiber that was enjoyed by the Philippines has been lost, and Sumatra hemp is fast entering into competition with Manila hemp in the markets of the world. Hemp production in the Philippines could be increased without requiring new investments. And yet, production has been voluntarily cut down in view of reduced domand and prevailing low prices.

If Manila hemp were protected in the United States against Mexican sisal and other inferior fibers coming from other countries, the industry would receive its much needed stimulus and production would be greatly increased. If hemp were an American instead of a Philippine product it undoubtedly would have received such protection, and to an effective measure, many years ago.

Philippine copra is another instance. It is on a competitive basis in this country. If Philippine copra were an American product, a high tariff would be passed to protect it against copra coming from British Malaya and other tropical countries. However, as Amrican interests and not Philippine interests constitute the criterion, copra is in the free list. On the other hand coconut oil is protected. Why? Because there are coconut oil mills in the United States.

The plight of Philippine manufactures is no less somber. There are none now of any importance, for free entry of American products prevents their growth, at least in so far as commodities for local consumption are concerned. With regard to those that may be exported to the United States, the difficulties being encountered by the Philippine embroidery and shell button industries illustrate the serious handicaps under which they labor.

As has already been indicated, no Philippine manufacture containing foreign materials to the value of more than 20 per cent of its total value is admitted duty free into the United States. This provision prevents Philippine embroidery from using any but American manufactured cloth, either cotton, linen, or silk; while American embroideries may use French, Italian, Japanese, or Chinese silk or linen cloth. The disadvantage to Philippine embroidery is obvious, especially when it is considered that prevailing fashions have built up a demand for embroideries on imported rather than domestic fabrics. These

facts explain why the Philippine embroidery industry has been checked in its growth and development.

With reference to the shell button industry, it is important to note that mother-of-pearl shells enter the United States free of duty. This notwithstanding if the Philippines used foreign shells for button manufacture the article would be dutiable in the United States. This fact places Philippine buttons at a disadvantage on this market. For, while American button factories may purchase mother-of-pearl shells at the lowest prices obtainable in the open market, Philippine factories are limited to Philippine prices and Philippine shells. Moreover, American factories are not limited as to the best and most desired qualities of shells, while Philippine factories are circumscribed to what is found in that country. Notwithstanding this, a suggestion has come from American button factories that a duty be imposed on Philippine shell buttons.

Exactly the same conditions obtain with regard to the Philippine coconut industry. Copra is in the free list in the United States, while it is dutiable in the Philippines. Despite this fact Philippine oil mills can not crush imported copra, while American mills are not so restricted.

When the Filipinos stop to ponder over this situation, the outlook for their economic progress appears to them grim to the point of despondency. Their economic sinews crippled; their products discriminated against; market conditions unstable, depending on circumstances and events at the command of this country rather than their own; is it any wonder that the appeal of all Philippine governors general for economic development should have received cold and reluctant response?

Then bear in mind the indefiniteness of the status of the Philippine Islands and you will have the reasons for what many have taken as the Filipinos' unconcern for material progress, or the considerations which discourage investments in the Philippines and are forcing development to the dead level of stagnation.

And still this is not all. It does not seem enough that Philippine interests are ignored in the determination of the American tariff policy; that Philippine products obtain protection only when, and in so far as, they may assume identity with American protected products. A duty is to be imposed on all Philippine products which share the benefits of the American products. To this extent we are to be compelled to compete in the open markets of the world with other Oriental countries where costs of production and standards of living are lower than ours.

Philippine sugar has been singled out with intense fierceness in this attack. And sugar is the only Philippine article which really receives the benefit of the American tariff.

It is proposed that Philippine sugar should not be brought into this country free of duty beyond an amount which is even lower than our present production. It is claimed that Philippine sugar production is increasing rapidly and might displace American sugar in the American market.

The hearings before the Ways and Means Committee of the House of Representatives and the brief that we are submitting to this committee show that there is no reason for such fear. Our present production is only slightly over 8 per cent of your total consumption.

But even if there were such possibility, may I ask: Must the Filipinos understand that when their products, which receive protection only accidentally, begin to share in the benefits of such protection, that the same are to be considered as competing with American interests and excluded from the protected market of the United States? Must they understand that while they are under American sovereignty their products may be discriminated against and denied the equal protection of American laws? Such is the implication of the proposed restrictions. What would then be left of benefit on the part of the Philippines in their economic relationship with the United States? Nothing, indeed. Complete abrogation of free trade would be preferable. Let Congress impose a duty on any Philippine product or limit the amount that may be imported free of duty into the United States, and the conclusion is inevitable that it will be dangerous to engage in any production in the Philippine Islands, for there would be nothing to prevent Congress from taking the same action on any other commodity.

Under their present status the only salvation for the Filipinos lies in their freedom to develop their country in the way best suited to their interests, even if in so doing they come into competition with continental products or with those of other possessions and Territories of the United States.

The Philippines are entitled to this freedom of growth and development if America's professions and avowals of disinterestedness and altruism as regards those islands are to have any practical application.

The approval of the proposed restrictions would make the Philippines a domestic territory for one purpose, and foreign for another. It would make the Philippines a part of the United States, in so far as it is to her advantage to make it so; but a foreign country, outside of your tariff walls, when, in any way, real or imaginary, its interests may conflict with the interests of American producers, or even those of American investors in foreign lands.

Such a treatment would mean ruin to that helpless country. It would involve a reversal of America's traditional policy with regard to the Philippines and would embark this Nation upon a career of mercantilist exploitation of a dependent people.

But, as Root said:

> You have the power. By the fortune of war the supreme, the irresistible power of this great Nation has been set over the weak and distracted people of the Philippines. But the possession of power carries with it an obligation that rises above all considerations of trade, all considerations of particular and of selfish interests—an obligation that we must recognize. If we do not, dishonor is the name of America. Terrible and arbitrary power that we exercise over these poor people, and they are helpless! They must accept our words.
>
> I for one, sir, am not willing to vote for a bill which, in my judgment, secures this great and powerful Nation an undue advantage over the weak people of the Philippine Islands.
>
> I believe, sir, that we have now upon us a duty we can not escape, but must perform, and that we shall be engaged in the performance of that duty, doubtless with many protests and many expressions of dissatisfaction, but with fine, faithful, and loyal purpose on the part of the American people. I am not one of those, sir, who think that my country will be the worse for the great performance of this great act of unselfish altruism, which befits the mission of liberty and justice to the poor and the weak of the earth that is a part of our heritage from our fathers.

It is often stated that the Filipinos are inconsistent in their stand on the proposed restriction. It is alleged that if the Filipinos were

really desirous of the independence of their country that they would favor rather than oppose restriction, for restriction would compel them to place their industries on a competitive basis in the world market and thus minimize the resultant ruinous effects on their economic interests when independence is granted them.

If the Filipinos were convinced that restriction would really bring the goal of their aspirations closer, it would have their unqualified support, no matter how disastrous to some of their industries the immediate consequences may be. But, viewed in the light of recent events, it will be seen that absolutely the contrary would occur were the proposed restriction adopted. It would perpetuate the dependency of the Filipinos. Why? Because the benefits of the present trade relations, with restriction attached, would be evidently one-sided. America would derive all the benefits that the Philippine market has to offer, whereas Philippine products would be restricted to an inconsequential advantage in the American market. Restriction would bind the Philippines indefinitely to the United States by the ties of economic self-interest, the only justification which imperialistic nations, all through the ages, have found for the maintenance of colonies.

With restriction there would be an inclination on the part of interests doing business in the islands to maintain them permanently under their present status. But with unlimited free trade that influence would to a great degree be offset by agricultural and industrial interests in the United States against which the products of the Philippines are alleged to enter into competition. Why not say it frankly? With complete free trade, the aspirations of the Filipino people finds support among these interests, a support which will be lost to them if restrictions were established.

Nor is restriction by legislation necessary for the purpose of better preparing the Philippines to meet new market conditions in the event of independence. Production in the Philippines will always be governed by economic laws which in this case must take into account the possibilities of political changes.

Independence will find the Philippines in readiness to meet such changes unless, of course, the United States upon achieving this consummation of American policy should willfully desire to bring about the destruction of Philippine industries for which she had done so much to build up.

The policy of the United States with regard to the Philippines is well defined. Both political parties are committed to it. Congress has authoritatively sanctioned it. America has decided to grant the Philippines her independence. The only question left for Congress to determine is the question of time—the definite, certain time when that decision shall be carried out.

Action on this problem has been delayed, perhaps in the expectation that time and experience would show both to Americans and Filipinos that it is to their reciprocal advantage to continue the present relationship. Away back in 1907, ex-President Taft, then Secretary of War, expressed this hope in his address to the Filipino people on the occasion of the inauguration of the first Philippine elective assembly:

> The policy looks to the improvement of the people (the Filipinos) both industrially and in self-government capacity. As this policy of extending control continues it must logically reduce and finally end the sovereignty of

the United States in the islands, unless it shall seem wise to the American and the Filipino peoples, on account of mutually beneficial trade relations and possible advantage to the islands in their foreign relations, that the bond shall not be completely severed.

The events that have taken place since these words were uttered, the feeling that is now prevalent in several sections of this country in relation to free imports from the Philippines, and, on the other hand, the alarm, apprehension, and discouragement produced in the Philippines by the present agitation, can not but disappoint the most confirmed optimist that the hopes of Mr. Taft would ever be realized.

American and Filipino relations have reached a crucial point. Congress can no longer postpone the solution of the Philippine problem without exposing to irreparable and incalculable harm both American and Filipino interests. In fairness to both, it is now the privilege if not the duty of Congress to determine the date when Philippine independence is to come. This we desire the more because we feel that our welfare should not be achieved at the cost of what is considered an injury or menace to important elements of this country.

The Filipinos have achieved great progress under American sovereignty and are deeply indebted to the United States for that progress; yet they want to be free to work out their own destiny, to develop along the lines best fitted to their ultimate political status. In this respect I am confident that I speak for the entire Filipino people. We shall await your action with expectant hope. We trust the Congress will deal justly by us, prevent injury to our economic interests, and save us from the situation of futility and statemate which our present status imposes upon us. As you love freedom, so do we ask you to grant it to us. Do by us what you would want done by yourselves if you were Filipinos as you are Americans.

I thank you, gentlemen.

Senator SIMMONS. You said that you impose no duty in your country upon products from this country?

Mr. ROXAS. We do not. Not only that, Senator, if you will allow an interruption, it is the United States Congress that determines what products shall be protected in the Philippine Islands, because we grant those products the same degree of protection in our country that you grant them here.

Senator SIMMONS. That is the balance of the question I wished to ask you.

As to other nations you have the same protective system practically that we have in the United States?

Mr. ROXAS. Yes, sir; that is the way it is. For example, Senator, take agricultural machinery, which we need so badly in our country. We have a high tariff on agricultural machinery, just as you have in this country. We collect 10 per cent ad valorem on such machinery, though we need them badly.

Senator GEORGE. Do you make them?

Mr. ROXAS. We do not.

Senator BARKLEY. American agricultural machinery goes in free?

Mr. ROXAS. Yes, sir.

Senator BARKLEY. In competition with machinery from every other nation, which machinery is taxed?

Mr. ROXAS. Yes, sir.

Senator BARKLEY. To what extent does that give the American manufacturer of farm machinery an advantage over other countries?

Mr. ROXAS. American machinery has virtually excluded machinery from other parts of the world in the Philippine Islands.

Senator BARKLEY. Does that same situation hold true as to other American manufactures which are permitted to go in free in competition with others which are taxed?

Mr. ROXAS. Yes, sir; abour 70 per cent of all of our imports come from the United States.

Mr. Chairman, before closing I should like to ask permission to file the brief of the Philippine Delegation and this resolution of the Philippine Legislature.

Senator SMOOT. That may be done.

Senator KING. I want to ask you one question in view of the incidental reference to Spain. What interests have the Spanish people in the Philippine Islands? I do not mean those of Spanish origin who are residents there, but I mean those who live in Spain. What interests have they in the Philippine Islands?

Mr. ROXAS. There are some Spaniards who own stock in Spanish companies in the Philippines, who have retired from active participation in business and who now live in Spain. But they are very few. These are very old companies.

Senator WALSH of Massachusetts. Mostly in the cigar business?

Mr. ROXAS. Yes; cigar and sugar.

Senator KING. The Spanish holdings are very limited?

Mr. ROXAS. About 17 per cent of the total investment in sugar, not more than that.

Senator REED. I think the Filipino people are to be congratulated upon the spokesman for them.

Mr. ROXAS. Thank you very much, sir.

Senator SIMMONS. I think that is the unanimous sentiment of this committee.

Mr. ROXAS. Thank you.

(Mr. Roxas submitted the following resolution and brief:)

[Eighth Philippine Legislature, first session. H. Ct. R., No. 4. Concurrent Resolution No. 8]

Concurrent resolution conveying to the American Government and people the protest of the Philippine Legislature against any legislation tending to limit the free entry of Philippine sugar into the United States and asking for the rejection of any legislation in this sense

Whereas there is now in the United States a constantly growing agitation for the limiting of the free entry of Philippine sugar into that country and propositions in this sense were formally introduced in the United States Congress during its last session;

Whereas it would be unjust and very harmful to the interests of the Philippines if said free exchange were further restricted, as far as the Philippines are concerned, during the continuance of the present political relations between the two countries; Now, therefore, be it

Resolved by the House of Representatives, the Philippine Senate concurring, That the Philippine Legislature do, as it hereby does, convey to the Congress and people of the United States its most decided and energetic protest against any legislation tending to limit the free entry of Philippine sugar into the United States during the continuance of the present political relations between the two countries, and that the American Congress be, and the same hereby is, requested to reject any legislation in the sense mentioned.

Resolved further, That copies of this resolution be transmitted to the President, the Congress of the United States, and the Secretary of War, through the Resident Commissioners and the Governor General of the Philippine Islands.

Adopted, November 5, 1928.

Brief of the Philippine Delegation

The members of the Philippine delegation sent to the United States at the behest of the government and people of the Philippine Islands beg leave hereby to submit this brief in connection with section 301 of the pending tariff bill.

Great efforts were put forth before the Committee no Ways and Means of the House of Representatives to levy duty or to place a limit on Philippine products which could enter the United States free of duty. The House committee which made this controversy the subject of careful inquiry and of patient hearings, in submitting its report said:

"All amendments proposing to restrict in any way imports from the possessions of the United States by imposing limits as to kind, quality, values, or in any other way, were rejected."

It was hoped that this would settle the controversy and that it would not be necessary to impose on this committee by again meeting such unjustifiable requests and demands as had been made. The efforts have, however, been renewed although substantially no new facts or allegations were presented. Their renewal, before the Senate subcommittees compel us to set forth a reply. We shall avoid as much as possible a repetition of statements before the House Committee, confining the present statement to the enumeration of additional and other facts to demonstrate that the petitions and demands of those who are opposed to the present trade treatment of the Philippines are most unreasonable.

TRADE STATISTICS

Because it will be necessary to refer to the statistics of trade between the United States and the Philippines, the following abbreviated statement of the trade for 1928 giving principal items and the total of such trade is here set forth.

Principal articles imported into the Philippine Islands, 1928

	United States	Total
	Pesos	*Pesos*
Cotton goods	30,796,066	56,272,304
Iron and steel and manufactures thereof	31,591,570	40,296,562
Mineral oils	14,375,597	17,608,298
Meat and dairy products	7,439,568	13,346,159
Automobiles and accessories	13,022,346	13,292,723
Wheat flour	9,250,256	10,650,603
Silk and its manufactures	4,200,578	8,512,739
Paper and its manufactures	5,605,042	8,257,529
Tobacco products	6,010,912	6,202,070
Coal		5,183,153
Total imports	pesos..	269,313,796
From the United States	do....	168,717,000

Principal articles exported from the Philippine Islands, 1928

	United States	Total
	Pesos	*Pesos*
Sugar	91,382,465	95,085,879
Abaca, Manila hemp	19,054,090	53,197,212
Coconut oil	46,479,041	46,978,345
Copra	35,207,664	45,084,682
Desiccated coconut	7,436,537	7,447,171
Copra meal	717,707	5,777,274
Tobacco	8,768,293	17,142,873
Total exports	pesos..	310,109,092
To the United States	do...	232,415,288

The Philippines import from the United States 62 per cent of their total imports; 74 per cent of their total exports come to the United States

The foregoing is in Filipino pesos, 2 pesos being equal to 1 American dollar.

RÉSUMÉ OF CONTENTIONS

Likewise it may be well briefly to summarize the contentions made by those urging a limitation of the rights now enjoyed by the Philippine Islands under section 301 of the existing tariff law. These may be divided into two classes, the first represented by the American Farm Bureau Federation which contended for a total withdrawal of the rights now enjoyed by the Philippines in the American market, and the second, by the representatives of special interests who contended for such withdrawal in so far as the free entry of Philippine products affected their particular interests. The main points will now be briefly analyzed.

1. The representative of the Farm Bureau Federation contends that of the total imports into the United States amounting to approximately $116,000,000 last year "about $42,000,000 were imports which directly compete with products raised on * * * United States farms."

Granting for the sake of argument that this competition does exist the American Farm Bureau Federation admits that twelve-nineteenths of the total imports are not directly competitive. A more careful analysis will show that it would be more accurate to say that Philippine agricultural products coming into the United States do not compete with the products of the farmers of the United States and that the products of this temperate country and our tropical country "rather than being competitive and inimical are essentially supplementary and complementary." This fact will appear more obvious in the course of this brief.

It is further contended that "Philippine purchases in the United States are predominantly industrial and not farm products."

Those who previously appeared in defense of Philippine interest showed that Philippine purchases in the United States are well distributed, representing products alike of the farm and of the factory; "that the representative of the American Farm Bureau reached his conclusions by not taking as farm products tobacco and manufactures of cotton goods."

The implication that the agricultural interests of the United States have not derived commensurate benefits from the American-Philippine trade arrangement is not in accord with facts. During the last five years of Spanish regime in the islands, 1893–1897, of the average annual exports from the United States to the Philippines, valued at $135,207, $12,562 were agricultural and $122,645 were nonagricultural, or 9 per cent and 91 per cent, respectively. In 1927 the United States exported to the islands a total of $69,681,000 worth of merchandise, of which $25,141,000 were agricultural products and $44,540,000 nonagricultural, or 30 per cent and 70 per cent, respectively.

With the recent development of refrigeration, enabling the shipment of perishable products of American farms to the Philippines, the Filipinos will in all likelihood further increase their consumption of American agricultural products.

3. The third contention may be stated in these words: "It is not only the present but the potential competition which is a source of concern."

This fear was expressed referring principally to sugar.

The answer is that the development of the sugar industry in the Philippine Islands has in the past been slow, the cultivation of cane being predominantly in the hands of small Filipino owners of land or Filipino tenants of small holdings. Progress in the future will be slow. A showing of progress for a period has been made by the replacing of the old Muscovado mills by modern mills, an operation now practically completed. The principal interests alleging large profits in the Philippine sugar industry have shown their candid view of this statement by the offers which they have made to purchase six of the principal sugar centrals in the Philippine Islands. The offer was not the equivalent of one-third the cost of those centrals.

With reference to the contentions of special interests, it was alleged with respect to sugar that due to the stimulus of the free admission into the American market of Philippine sugar the Philippine Islands were rapidly becoming a single-crop country; that diversification should be insisted upon; and that the profits of producers of sugar in the Philippine Islands were enormous.

Taking these allegations in order, facts and figures submitted by those who appeared for the Philippines have shown: (*a*) That Philippine agriculture was more diversified than that of any of the other sugar-producing countries. That while sugar was approximately 80 per cent of Cuba's exports, 65 per cent of Hawaii's exports, and 60 per cent of Porto Rico's exports, sugar exports from the Philippine Islands had in no year since American occupation reached 35 per cent of its total, and in the year 1928 sugar constituted but 31 per cent of the exports from the islands.

Furthermore it was shown that of the land in the Philippine Islands devoted to the five principal crops, two-thirds of the area was devoted to rice and corn exclusively, for local consumption, and but one-third to the three principal export crops and in their order of importance these three were coconuts, manila hemp, and sugar cane; that the cultivation of sugar had at no time under American occupation attained the importance which it had during the Spanish Government in the Philippines when the exports had at times amounted to 50 per cent of the total exports from the islands; that the increase of production of sugar in the Philippine Islands during the American occupation of the islands had been less than in Porto Rico, than in Hawaii, or in Cuba; and that the increase of production in Cuba had been 13 times as much as in the Philippine Islands.

As to the alleged enormous profits in the production of sugar in the Philippine Islands it was shown that investments had varied from a total loss in the Mindoro Sugar Co. to marked success as in the San Carlos Milling Co. and other sugar mills which had not entered into the production of sugar cane but had confined themselves to milling the cane already produced; and that the agriculturist engaged in the production of sugar cane was and had been continuously in debt and that under present methods of culture and production per acre profits if any would be small.

Anent the allegation that there was no limit to the production of sugar in the Philippine Islands we answer that unlike conditions obtaining in other countries and territories supplying sugar to the American market, sugar production is being effectively restrained in the Philippines by the land laws, by the corporation laws, and by the immigration laws. The application of these or approximately similar restraints elsewhere would have effectively removed any danger of an over supply of sugar.

The further allegation that the Philippine sugar industry was controlled by foreigners particularly Spaniards is not true. That industry was more purely a local industry and a locally controlled industry than anywhere else in the tropics. The efforts of the Philippine Government has been directed continuously to making it such and these efforts had been fairly successful.

An analysis of the data already in the records of the hearings will show that the Philippines would never become under present conditions and laws the principal source of the American sugar supply or in fact of such a part of this supply as would be missed in any emergency, and that it is, therefore, idle to talk of the American supply being cut off in time of war.

It may be added that the shipment of copra, coconut oil, and sugar from the Philippine Islands was of the greatest help in maintaining the American Merchant Marine on the Pacific.

AMERICAN-PHILIPPINE TRADE RELATIONS

Section 301 of the existing tariff law which has been included in the pending tariff bill passed by the House of Representatives without change governs the trade relations of the United States with the Philippine Islands.

The substance of this is contained in the following provision "* * * all articles, the growth or product of or manufactured in the Philippine Islands from materials the growth or product of the Philippine Islands or of the United States, or of both, or which do not contain foreign materials to the value of more than 20 per cent of their total value, upon which no drawback of customs duties has been allowed therein, coming into the United States from the Philippine Islands shall hereafter be admitted free of duty: *Provided, however*, That in consideration of the exemptions aforesaid, all articles, the growth, product, or manufacture of the United States, upon which no drawback of customs duties has been allowed therein, shall be admitted to the Philippine Islands from the United States free of duty."

It will be observed that this provision is reciprocal except in the one respect that a Philippine product to enter the United States free of duty must not contain more than 20 per cent in value of foreign materials whereas a manufacture of the United States may enter the Philippine Islands free of duty though composed exclusively of foreign material.

The Committee on Ways and Means of the House in 1905 reporting a bill affecting the trade relations between the United States and the Islands said: "The only logical result from our possession of the Philippine Islands is free trade between the islands and the rest of the United States." The provision now discussed was enacted to put into effect this generally accepted American principle. The principle has now been in effect for 20 years. It accomplished concrete results. It has assisted in the economic upbuilding of the islands.

It has added to the American market the 8,000,000 people living in the Philippine Islands now increased to about 13,000,000. It has helped American agriculture, American industry, and American commerce.

WHAT ITS ADOPTION HAS MEANT TO AMERICAN TRADE

In 1908 the last year prior to the admission of American goods into the Philippines free of duty the total shipment of such goods to the Islands amounted to $5,101,836. In 1928 the total shipments of American goods to the Philippine Islands amounted to $84,358,500.

INVISIBLE ITEMS

There is a natural disposition to measure trade between two countries by customhouse reports; that is, by the total of the exports to and imports from the country. This gives but one of the factors and frequently it is not the controlling factor. Exports and imports into a country may be financed by the banks of one country or by the banks of the other. Products in transit are insured by the companies of one country or by companies of the other. Products are shipped in the steamers of one country or the steamers of the other country. The exporters and importers may to a large extent be citizens of one of the countries. In some cases the entire trade is controlled by the citizens of one of the countries. One of the countries is but the producer of the raw material which it exports. The other country not only produces the material that it exports but may put it through the various steps to prepare it for consumption. Thus in foreign trade between two countries one country may control financing, the shipping, the insurance of shipments both ways and may in addition export finished articles and in return receive raw materials for its factories or for consumption.

Again, capital is generally accumulated in the countries of the temperate zone and that the Tropics in general produce raw material for consumption and for export. The latter import the elaborated material for consumption which is represented by manufactures and prepared foods from temperate countries. The result of this is that the trade of a temperate country with a country in the Tropics usually means to the temperate country far more than does an equal volume of trade with other temperate countries in which manufacturing, shipping, banking, insurance may be on at least an equal footing. It is, therefore, essential to consider these elements in order properly to appreciate the value of this trade to the United States.

The total value of exports and imports may be easily determined but not so with the invisible items of foreign trade. The Department of Commerce, however, gives certain reasonably accurate statistics bearing on the important elements of shipping. The Philippines is the sixteenth in the order of importance of exterior markets for American products, Spain being the fifteenth. In 1928 there were cleared from the United States for Spain cargo vessels of a total tonnage of 608,893 net tons of which only 87,944 represented American tonnage. For the Philippine Islands there were cleared in 1928, 533,698 tons of which 402,160 were American. Thus American shipping in the trade with the Philippines is something more than five times the American shipping in the equivalent trade with Spain. This is fairly typical of the difference in value to the United States of trade with the Philippines and an equivalent volume in trade with a temperate country.

In considering, therefore, the Philippines as a market for American goods, it should be borne in mind that it is an American dominated market. The shipping, the banking, and the insurance are American and the character of goods imported are those for which the market is most valuable being elaborated goods ready for consumption.

It is accepted generally as axiomatic that for a temperate counry, trade with a tropical country is many times more desirable than an equal volume of trade with a temperate country. In 1925, when the present controversy was nonexistent, Philippine exports exceeded the imports by $29,000,000. Despite this large balance of trade in favor of the Philippines supplemented by the United States Army and Navy expenditures in the islands, such balance was found insufficient to meet the requirements of Philippine business for balances abroad.

THE CHARACTER OF IMPORTS

No less important than the control of the export and import trade is the character of articles sold. Continuing the comparison with Spain because it happens to be next in order as a purchaser of American goods, it will be observed

that in 1928 the total exports to Spain from the United States amounted to $86,613,191, of which raw cotton, the leading export article, amounted to $34,416,749.

The total American exports to the Philippine Islands that year were $84,385,500 none of which could be properly classified as crude or raw products. The leading American product exported to the islands was cotton manufactures, amounting to $15,398,035, which made the Philippine Islands the largest exterior market for United States cotton cloth. This illustrates fairly the difference in value of a foreign market in the temperate zone and the foreign market of approximately the same total value in the tropics. The temperate country buys the raw cotton; the tropical country buys the cotton cloth. What this difference means to the American factory and to American labor is evident.

In recent years Japan has increased more rapidly its purchase of American goods than has the Philippine Islands, but on a scrutiny of the nature of this trade it will be observed that Japan has been purchasing larger amounts of raw cotton for her cotton factories and with the product has taken away from the United States its market for cotton textiles in the Far East and has even invaded the Philippine Islands notwithstanding the degree of protection granted the American textiles in that market. As an export market the value of the Philippines to the United States is many times what may be indicated by the total of articles sold compared with the total in the general foreign market.

PHILIPPINE EXPORTS TO THE UNITED STATES

Possibly of greater importance to American trade than the exports to the Philippine Islands is the character of imports received from the islands. The total exports from the Philippine Islands to the United States in 1928 amounted to $116,207,644. Of this total the amount of $9,577,045 represented Manila hemp; $17,603,832, copra; and $23,239,520, coconut oil. Hemp is on the free list due to the fact that it is useful to the American factory and competes with no American product. Copra is also on the free list for a similar reason. Coconut oil was on the free list prior to 1922 but was then placed on the dutiable list to encourage the crushing of copra in the United States, but not because it was an article competing with an American product. A number of less important products of the Philippine Islands are likewise in the nondutiable list. It should be, in fact, observed that numerically most products of the Philippine Islands receive no special benefit in the American market.

It can not be too clearly stated that the United States tariff is drawn having in view the advantage of continental United States. There is no item in the tariff designed purely to protect a commodity produced in the Philippines. The advantage which the Philippine producer receives is incidental to the protection of some product of the United States. Many tropical products to which the Philippines is peculiarly adapted are not encouraged by the United States tariff.

It will be observed for example that the following articles are on the free list: Abaca, bananas, muguey, binding twine, cacao and cacao beans, coffee, coir and coir yarn, palm leaf fans, palm leaf, gums and resins (produced in the Philippine Islands), India rubber, oils, distilled or essential—for example, ylang-ylang mother of pearl, and shells, etc.—sago, starch and flour, tamarinds, tapioca and cassava, and vegetable wax. The major products in the Philippine Islands receiving benefit of the American market are sugar and tobacco and of the tobacco exported from the islands more than one-half in value is sent to countries other than the United States.

There is no desire to underrate the value to the Philippine people of the present trade relations with the United States. It is recognized that the free American market gives to them certain advantages. This does not, however, make the advantage to the United States the less. The present trade relations are in their advantages mutual and, therefore, all the more desirable.

UNITED STATES PARTICIPATION IN PHILIPPINE TRADE

In the five years prior to 1909 when American goods were first admitted into the Philippines free of duty the average annual imports of the Philippine Islands were $30,000,000 of which $5,000,000 came from the United States. One-sixth of the imports into the Philippine Islands came from the United States. During the same period our average annual exports were $32,000,000 of which $12,000,000 came to the United States. In other words, the United States purchased 38 per cent of the goods exported from the Philippine Islands. In the year 1928 the Philippine imports were $135,000,000 of which $84,000,000 came from the United

States. The Philippine exports amounted to $155,000,000 of which $116,000,000 came to the United States, that is, the United States sold to the Philippines 62 per cent of its imports and purchased 74 per cent of its exports. From selling the Philippines 16 per cent of its needs from abroad, the United States now sells 62 per cent of such requirements and from purchasing 38 per cent the United States now purchases 74 per cent of what it sells abroad. The percentage of America's sales to the Philippine Islands has increased due to the present trade relations by a larger percentage than has America's purchases from the islands. The American people participate under the present arrangement directly and in an increasing percentage in any increase in the purchasing power of the Philippine people.

Summarizing it should be noted that there is a direct advantage to the United States in its trade relations with the Philippine Islands arising from (a) the invisible items of trade, (b) the character of imports into the Islands, (c) the character of exports rom the islands, (d) the increased participation of the United States in any increase in the Philippine trade.

FOUNDATION OF DEMAND FOR CHANGE

Such being the case, why should there be the present demand for a modification of these trade relations in a manner adverse to the Philippine Islands?

A brief study of the allegations of those urging such change will demonstrate that they are based on a complete misunderstanding of the situation and on misinformation.

COCONUT OIL

In the hearings before the Committee on Ways and Means of the House this suggestion of change first appears in a table submitted by the Farm Bureau Federation. Referring to coconut oil, the Philippines is designated as the principal competing country and under recommendations it is stated that the "coconut palm industry in Florida has been virtually extinguished. Imported coconut oil competes with domestic butter lard and vegetable oils." This statement thus condensed was elaborated in subsequent briefs submitted on this subject.

The principal product of the coconut palm is the coconut. This is marketable as the fresh fruit, as copra which is the dried kernel, as desiccated coconut which is prepared from the fresh fruit, and as coconut oil which is prepared generally from the copra. The product of such coconut palms as have been grown in Florida is sold as fresh fruit.

No coconut from the Philippine Islands is sold as fresh fruit in the United States. Therefore, there is absolutely no direct or indirect competition between coconuts in the Philippine Islands and coconuts grown in Florida and Porto Rico. The implication, therefore, that by competition of Philippine coconut oil the "Coconut palm industry in Florida has been virtually extinguished" is positively ridiculous.

The further statement that "Imported coconut oil competes with domestic butter, lard and vegetable oils" does not permit of such precise reply mainly because it is a more general statement. Coconut oil and copra from which the oil is made together constitute a leading product of the Philippine Islands, in value varying with the year the first or second of the export products of the Islands. Does this coconut oil compete with the enumerated American products? In the Philippine Islands there is no indication of such a competition. The statistics of exports and imports make it clear that as the production of coconut oil and copra has increased in the Philippine Islands the imports of butter, lard and vegetable oils other than coconut oils have increased. In the United States the situation is somewhat less clear.

In the calendar year 1928 there was exported from the United States 759,722,195 pounds of lard valued at $98,700,668. There was exported 51,702,246 pounds of cottonseed oil valued at $4,656,725. During that period there was imported from the Philippine Islands 290,636,702 pounds of coconut oil valued at $23,061,377, and 370,881,394 pounds of copra valued at $6,230,050. It should be observed that the lard exported from the United States was valued at 13 cents per pound, cottonseed oil at 9 cents per pound, whereas the coconut oil imported from the Philippine Islands was valued at less than 8 cents per pound, whereas the coconut oil imported from the Philippine Islands is valued at less than 8 cents per pound. It should be further noted that the copra entering from the Philippine Islands was admitted free of duty just as was the copra from various foreign countries. The statistics alone as published by the Department of Com-

merce show that there is no real competition between coconut oil and lard and cottonseed oil. It is true that in certain articles there may be a certain amount of substitution but there is a greater emphasis on selection and the coconut oil is devoted to those purposes for which it is most suitable as is lard and cottonseed oil. If coconut oil could seriously replace lard and cottonseed oil, American foreign markets for those products would at existing prices absolutely disappear.

It is alleged in briefs on this subject that coconut oil competes with dairy products. It so happens that the Philippine Islands, the greatest producer of coconut oil for the American market, is the greatest purchaser of dairy products from the United States. This fact alone would seemingly dispose of such a contention.

However, when analyzed the main contention is that coconut oil is used very largely in the production of oleomargarine or nut margarine which may under certain conditions be used in lieu of butter. It may be so used. However, among the largest elements entering into these margarines are butter and milk which are dairy products. There is a grave question as to whether the production of oleomargarine is not one of the most essential aids to the dairy industry utilizing as it does a material part of the product of the dairy. It should further be noted that no butter of consequence is exported from the United States except to tropical countries all of which are producers of coconuts.

There is an obvious disposition in discussing dairy products to assume that the home market is everything and there is no necessity for a foreign market. But there is no country that has a prosperous dairy industry that does not have a considerable foreign market for its product and there is hardly a dairy country in which the manufacture of margarines is not a serious part of that industry. In certain countries this goes to the extent of the farmer consuming margarine and exporting butter.

It is doubtful if Congress could in the pending tariff bill do anything for the American dairy interests quite so helpful as was done when the Philippines, a nonproducer of dairy products, was made an exclusive market for American dairy products. That is one thing which the present trade relations brought about.

The Philippines purchases more products of the dairy from the United States than does any other country—and with every increase in its purchasing power the increase in its consumption of milk is most marked.

Though the effect on the farmer of coconut oil entering the United States free of duty from the Philippine Islands rather than copra entering free of duty is rather remote, the farm bureaus in their briefs have emphasized their opposition to the entry of coconut oil because it competes with the product of the American coconut oil mills.

There is, of course, competition between the coconut oil milled in the Philippine Islands and the coconut oil milled in the United States. The coconut oil mills in the islands were the result of the war. Over 40 such mills were constructed in the islands, and of these but 7 are now operating, and these not continuously throughout the year. This would indicate that the American oil mill had little to fear from the competition of the mills located in the Philippine Islands.

Theoretically the mill in the islands has a slight advantage but practically it is found to be otherwise. The commanding advantage which the mill in the United States has outside of the material advantage of financing is the fact that it may secure its copra from any producing country. The mill in the Philippine Islands if its oil is to be admitted free of duty into the United States must secure its copra in the Islands because of the 20 per cent limitation to which reference has heretofore been made in the present trade relations.

Futhermore, in the Philippine Islands copra is dutiable, and it is admitted into the United States free of duty. This advantage to the American mills is at all times great and may in conceivable emergencies become exceedingly great.

In 1928 the American mills received slightly less than three-fourths of their copra from the Philippine Islands and slightly more than one-fourth from British Malaya, Australia, British Oceania, French Oceania, and other countries. The advantage of securing their copra thus from the cheapest market is obvious. In the first four months of the current year the American mills received slightly more than one-half of their copra from the Philippine Islands and slightly less than one-half from the other sources.

In confirmation of the foregoing the Department of Commerce released for publication on July 6, 1929, the following in a radiogram from Trade Commissioner G. C. Howard, Manila: "Only two oil mills are operating intermittently, and it is expected that some mills will close down entirely next month."

SUGAR

Sugar is the leading American farm product of which the United States fails utterly to produce an adequate supply. In 1927 3,679,349 short tons of sugar were imported into the United States from foreign countries, and in 1928 3,272,445 tons. Obviously, therefore, there is no difficulty in giving to the local producer of sugar a price above the world price of sugar. So long as the home production continues inadequate, and it will continue inadequate indefinitely, the American producer can be given the benefit of the tariff.

At present practically all of the foreign sugar imported into the United States comes from Cuba. With Cuba the United States has a commercial convention and it is this convention that introduces into the American sugar situation the only complication which makes an understanding of the situation a little difficult.

This commercial convention was proclaimed December 17, 1903. In the calendar year 1904, the first year of the application of this convention the United States imported from Cuba 1,130,548 long tons of sugar and from other foreign countries 645,733 long tons.

Cuba was then unable to supply the needs of the American market for sugar. Under the terms of the convention other foreign sugar paid the full rate of duty provided by the tariff act of July 24, 1897 and sugar from Cuba paid 20 per cent less than the full rate of duty so provided. The American producer of sugar, therefore, received in 1904 for his sugar the price at which sugar could be obtained in the world market plus the full rate of duty. The Cuban producer received for his sugar the price at which sugar could be obtained in the world market plus 20 per cent of the rate of duty fixed in the tariff act of 1897. This was the theory on which the convention was based.

Such deviations from the prices thus generally established as was shown in quotations from time to time were due first to the drawback provisions of the several tariff acts which made full duty sugars more attractive to the American purchaser who contemplated the export of refined sugar or the products of the imported sugar and second to temporary market conditions which made certain sugar more or less available. The situation contemplated by the convention ceased to exist when Cuba produced an exportable surplus of sugar in excess of the needs of the American market and was forced to sell a considerable portion of this sugar in competition with unprivileged sugars in the world market. The calendar year 1910 practically marks the beginning of that situation. That year the United States consumed 3,350,365 long tons of sugar. Of this amount, 1,640,182 tons came from Cuba and but 72,393 tons from other foreign countries.

In the year 1913 Cuba exported 2,700,641 short tons of sugar of which the United States absorbed 2,229,730 short tons. That is, Cuba was forced to find a market for slightly less than 500,000 short tons of sugar outside of the United States. This meant that the price of Cuban sugar was reduced practically to the world price and that Cuba by a large increased production had lost practically in toto the benefit given to her sugar by the American Cuban Convention of 1903.

This situation is thus stated by the Cuban Ambassador in his letter of January 10, 1929, to the Secretary of State of the United States published in the hearings before the Committee on Ways and Means of the House:

"In synthesis, the different appreciation of the effects, whether beneficial or adverse of the reciprocity treaty of 1903, is confined to the fact that while the United States Tariff Commission believes that the increase in the exportations of sugar from Cuba to the United States is the essential point of the commercial treaty of 1903 entered into by the two countries, thereby resulting in the great profits to Cuba, my Government is of the opinion that it is necessary to look into the prices attained by our main product (sugar) and particularly into the benefit of the 20 per cent differential rate that, granted in the said treaty to Cuba, has after 1911 favored, almost constantly, the American consumer, for the Cuban producer sold his sugar to the United States at the very same price that was disposed of to other countries which have not granted Cuba preferential treatment, and, which consequently do not receive for their exports correlative advantages. Nor does my Government believe that it could be considered as a justification of the treaty the fact that Cuba has disposed of most of her sugar to the United States, for it is an undeniable fact that should there not have existed a commercial treaty with the United States and the subsequent differential, custom duty, Cuba would have sold likewise all her sugars within or outside the American market and at the very same price which she obtained from the United States, because all the large exporting countries of this product—as Santo Domingo, Peru, Czechoslovakia, etc.—have always been able to place

the whole of their production at a price similar to Cuba's. Java, save when she has of her own volition preferred to keep her sugars from one year to another, has also been able to dispose of her entire stock."

This situation which has resulted in Cuba selling her sugar to the United States at the world's market price has, of course, meant that the American producer of sugar has sold his sugar at the world price plus the duty on Cuban sugar and not plus the full duty imposed on other foreign sugars. It should be noted that this situation existed in 1913 when the total Cuban sugar which had to seek a market outside of the United States was less than 500,000 short tons. It is important to note this when considering the effect of the free admission of Philippine sugar into the United States.

This situation created by the overproduction of sugar in Cuba accounts for the change of the Cuban position with reference to the United States tariff on sugar. In the American-Cuban Commercial Convention of 1903 it was provided in article X: "It is hereby understood and agreed that in case of changes in the tariff of either country which deprive the other of the advantage which is represented by the percentages herein agreed upon, on the actual rates of the tariffs now in force, the country so deprived of this protection reserves the right to terminate its obligations under this convention after six months' notice to the other of its intention to arrest the operations thereof."

And again in Article VIII it was provided: "And no sugar, the product of any other foreign country, shall be admitted by treaty or convention into the United States, while this convention is in force, at a lower rate of duty than that provided by the tariff act of the United States approved July 24, 1897."

Both quotations evidence the fact that Cuba was opposed to any lowering of the United States duty on sugar during the existence of the convention. In other words Cuba anticipated that the price of her sugar would be 20 per cent of the American duty on sugar above the world price of sugar and that the higher this American duty was the greater would be the advantage of Cuban sugar over unprivileged sugars.

Later, however, when by overproduction Cuba had lost the advantage of this favored position she opposed an increase in the American tariff on sugar and that is her position to-day.

In what way would the free admission of Philippine sugar into the United States contribute to this situation, or affect the price of Cuban sugar or the price of sugar produced in the United States? The Cuban Ambassador in his letter quoted above says that Cuba had lost its favored position since 1911. Philippine sugar has been granted free admission into the United States without limit since 1913. The change in the Cuban situation, therefore, took place two years before the free admission without limit of Philippine sugar. Already the American producer of sugar in the United States was receiving for his sugar the Cuban price of sugar plus the duty on Cuban sugar. That is what he receives to-day. The change in the treatment of Philippine sugar has in no way changed his situation or affected the price of his product.

In the calendar year 1928 the United States imported from Cuba 3,240,000 short tons of sugar, and 575,000 short tons from the Philippine Islands. Had all of this sugar come from Cuba, Cuba would still have been forced to sell in the world market over 300,000 tons of sugar and the Philippine Islands would have been forced to sell 575,000 tons in the world market. Obviously the world price of sugar would have been unchanged and it is equally apparent that the Cuban price of sugar would have still remained the world price of sugar. And the American producer would still have received for his sugar the world price of sugar plus the duty paid by Cuban sugar on entering the American market.

The Monthly Summary of Foreign Commerce of the United States for April, 1929, the last available, shows the following:

Imports of sugar into the United States for the four months ending April 30 as compared to the four corresponding months of the last year:

	Pounds
Cuba:	
1928	2,683,067,701
1929	3,764,319,382
Increase	1,081,251,681
Philippine Islands:	
1928	514,478,828
1929	500,174,503
Decrease	14,304,325

Observe that the increase in the amount of sugar imported from Cuba for the four months under consideration in 1929 over 1928 was more than double the total amount of sugar brought in from the Philippine Islands during this period. The Department of Commerce has announced in its Commerce Reports for June 17, 1929, that sugar production in Cuba during the present season amounted to 5,135,000 long tons up to the end of May, the highest figures obtained in Cuban history. Cuba in one year increased its production of sugar by an amount greater than the total production of the Philippines in any year in its history. In view of these facts it is idle to talk of increasing production from the Philippine Islands. The facts are self-evident and the reiteration of misstatements can not obscure them.

The present statement shows that the rather direct advantages of the present trade relations between the United States and the Philippine Islands are not entirely on the side of the Filipino people. Although these relations were established and developed in consonance with the professed altruistic policy of the United States toward the Islands, the results have likewise been eminently beneficial to the American people.

In view of the foregoing, the Philippine delegation respectfully request that the Committee on Finance will reject all amendments proposing to restrict in any way imports from the Philippine Islands.

STATEMENT OF HON. SERGIO OSMENA, PRESIDENT PRO TEMPORE OF THE PHILIPPINE SENATE

(The witness was duly sworn by the chairman.)

Mr. OSMENA. Mr. Chairman and gentlemen of the committee, it is quite impossible for me to add anything new to the statements which have been made on the proposals to limit the amount of Philippine products that may enter the United States free of duty or to impose a duty on such products. For this reason I will ask the committee to give me permission to file a brief.

CHAIRMAN. That permission will be granted.

(Mr. Osmena submitted the following brief:)

BRIEF OF HON. SERGIO OSMENA, PRESIDENT PRO TEMPORE OF THE PHILIPPINE SENATE

After the statements made by the witnesses who have appeared before this committee in opposition to the proposed restriction of certain Philippine products which now enter free of duty into the United States or to impose a duty on all such products, especially the statement made by the Speaker of the House of Representatives of the Philippine Islands, with which I concur, nothing new can be said on this subject. I will be brief in my remarks and shall confine myself chiefly to the following:

First. The policy of the Philippine people is to foster the development of relatively small independent farmers and to prevent the concentration within a reasonable degree of immense estates such as are utilized for the cultivation of sugar more economically and in greater quantities in other tropical countries.

Second. Investments in the Philippine sugar are essentially local investments.

Third. The effect of a violation by the United States of its freely undertaken obligations to the Philippine Islands, on the sentiment of the Filipino people and on those who have been friendliest to the United States.

I am convinced that the suggestion that a limit should be placed on the amount of sugar which may be brought in from the Philippine Islands free of duty arises from a complete misunderstanding of the agricultural situation in the Philippine Islands and of the spirit of the Filipino people and particularly a misunderstanding of the depth of feeling of the people of the Philippine Islands against any tendency toward the monopolization of the land. I feel that, once the American people were made acquainted with the situation in the islands, the agitation to penalize Philippine sugar would end for all time.

It is not easy for an American who has not lived among the people of the Philippine Islands to visualize the agricultural situation there. It is even more difficult for those Americans who have seen in operation tropical sugar culture elsewhere—in Cuba, Porto Rico, or Hawaii, for example.

In the Philippines we have a population of nearly 13,000,000. We have in occupied farms 11,276,960 acres, of which 5,969,387 acres are in cultivation. This land is distributed in 1,955,276 farms, of which 1,520,026 are occupied by their owners.

The average size of the Philippine farm in 1903 was 8.57 acres and in 1918, 5.77 acres. The tendency, therefore, is to decrease rather than increase the size of the farm. The American who has seen the immense estates devoted to the cultivation of sugar in Cuba or even in Porto Rico has the greatest difficulty in understanding that the situation in the Philippines in widely different and that the difference is accentuated with time rather than lessened. Partly because of this situation to-day we have no sugar investment in the Philippine Islands owned by those in the United States who have invested alike in sugar development in Cuba, in Porto Rico, and in beet sugar in the United States. Almost without exception even the sugar centrals are owned by local capital.

It has been stated that the Philippine sugar properties were largely owned by nonresident Spaniards. This is not true. It is true that two of the Spanish companies operating in the Philippine Islands for 50 years or more are interested in certain sugar mills in the Philippine Islands, but the total of all Spanish investments and those of doubtful nationality is approximately 17 per cent of the investment in the sugar industry in the islands.

In the Official Census of the Republic of Cuba of 1919 it is stated: "According to certain data, considered as truthworthy, 27.4 per cent of this production was obtained from centrals, belonging to Cubans; 51.4 per cent from centrals, belonging to Americans; 13.9 per cent from properties belonging to Spaniards; 2.6 per cent from Cuban-American properties; 1.3 per cent from French properties; 2 per cent from English properties; and 1.4 per cent from properties belonging to citizens of other countries." Thirteen and nine tenths per cent of the Cuban sugar industry is greater than the entire Philippine sugar industry, so that when one argues for the protection of the American sugar investments in Cuba against the competition of Spanish sugar investments in the Philippine Islands he is either very disingenuous or quite ignorant of the conditions existing.

No doubt the Spanish investments in Cuba came about in much the same way as in the Philippine Islands.

The Filipino looks on these old Spanish investments in the Philippines as local investments and can not appreciate that they are not entitled to the full protection of the laws of the land. The Filipino appreciates that he could in no way more offend the spirit of the people of the United States than by endeavoring to injure foreign investments in the islands made in accordance with law and conducted by law-abiding persons.

It is a source of pride to those who have had some measure of responsibility for the government in the Philippine Islands to note that no difficulty of the Department of State of the United States has ever arisen from unfair treatment by Filipino officials or the Philippine government of foreigners resident in the islands. The spirit of our people is that the foreigner who conforms to law in the Philippine Islands shall receive every protection of the law. The Filipino appreciates that in a special manner the United States is committed by the treaty of Paris to protect Spanish subjects residing in the territory over which Spain ceded her sovereignty to the United States.

Furthermore, the Filipino appreciates the pride of the United States in her good name and the value of a good name in the fair treatment of foreign investments in her territory, if for no other reason than that she wishes her own foreign investments to be treated fairly. The foreign investments of the people of the United States are so great as to make negligible by comparison the investments of Spaniards and other foreigners in the Philippine Islands.

Briefly, the Spanish investments in the Philippine Islands, and particularly in sugar, are small when the history of the Philippine Islands is considered. They are small in comparison to similar investments in Cuba. However, were these investments larger than they are now, the Filipino people feel that the United States would not have the Philippine government discriminate in any way against them and would not itself discriminate against them.

The constant endeavor of the Philippine government during the period of commission government, as well as since the government has been more essentially a Filipino government, has been to develop in the islands a sugar industry differing completely from the industry existing in other tropical countries—an industry of moderate size and small farms, owned and occupied by residents—to establish modern mills which would be cooperatively owned by those cultivating

the sugar. This has made progress extremely slow. During the period of American occupation Cuba has increased her production of sugar thirteen times as much as has the Philippine Islands. Since the admission in 1913 of Philippine sugar without limitation as to quantity free of duty in the American market Cuba has increased her production eight times as much as has the Philippine Islands. This is the natural consequence of the different methods pursued.

It is by way of argument asserted that the Cuban method will be adopted in the Philippine Islands. Those who assert this, if the assertion is an honest opinion, fail utterly to recognize the spirit of the Filipino people, and fail to recognize the tendency in the Philippine Islands which is directly contrary to this.

The Filipino people do not object to other peoples following the methods that have been more successful in producing sugar in large quantities and economically, but the traditional Filipino method can not be departed from in the Philippine Islands.

The result of this is, first, the slowness of development and, second, small profit from production. The cooperatively owned mills in the islands are not paid for. The farmers are very generally in debt and must almost invariably secure loans on current crops or the crops can not be produced.

On the other hand, the Filipino method means a diversification in farming. Sugar is the most expensive crop to produce, and the small Filipino farmer must in general look to the other crops which are less expensive and which go more directly to family consumption.

Under the system in vogue there the Philippines can never become a single-crop country, and if it did the crop would not be sugar cane.

Area devoted to principal crops in the Philippine Islands

	Acres		Acres
Rice	4,465,260	Manila hemp	1,186,451
Coconuts	1,235,525	Sugar cane	586,492
Corn	1,387,294	Tobacco	207,490

The foregoing is the data for the year 1927, and when it is considered that the remaining land in farms in the Philippine Islands, amounting to 2,208,448 acres, is almost exclusively devoted to food crops for the people one sees the wide difference between development in the Philippines and that in Cuba, Porto Rico, and Hawaii, where the bulk of the cultivated land is in sugar cane. In other words, the free admission of Philippine sugar into the United States has not made of the Philippines a 1-crop or 2-crop country.

This is further evidenced by the exports from the islands. The census of the Philippine Islands for 1903 shows that in 1873, 58.24 per cent of the total value of exports from the Philippine Islands was sugar, in 1877, 53.77 per cent was sugar, and in a number of years sugar constituted more than 40 per cent of the total value of exports from the islands. Never since the American occupation of the islands has sugar amounted to as much as 35 per cent of the total exports.

Quite contrary, therefore, to the statements that have been freely made, the sugar industry in the Philippine Islands has not under American sovereignty at any time acquired the relative importance in the islands which it had during the Spanish régime.

The government in the Philippine Islands for its success depends to a large extent on the belief of the Philippine people in the protestations of the United States that its primary object in the Philippines was the welfare of the people of the Philippine Islands. These protestations run throughout all the State papers of the United States outlining its relation to the Philippines. Everyone is aware that the Filipino people have been from time to time warned by persons hostile to the United States or those who did not believe in the altruistic purposes of the United States to beware of these protestations. Any unfair treatment of the Philippine people by the United States at this or any other time would be held up by these enemies of the United States as a confirmation of their frequent warnings. The effect on the Filipino people of the resulting situation and the effect on those who have urged on the people of the islands faith in the good intentions of the United States may well be anticipated. The question naturally arises, therefore: Is the proposal to limit the sugar from the Philippine Islands that may enter the United States free of duty essentially unfair? There would seem to be no question of this.

The present trade relations were established by the Congress of the United States not on petition of the people of the Philippine Islands, but because, in the words of the Ways and Means Committee, "The only logical result from our possession of the Philippine Islands is free trade between the islands and the rest of the United States." However, I respectfully submit that this determination having been accepted in good faith by the Filipino people, there has been established a moral covenant which binds both parties and which can not be properly rescinded except by mutual consent.

The proponents of this limitation desire to withdraw from the Philippine Islands a right which it now has and to give nothing in return. At present all products of the United States enter the Philippine Islands free of duty. The only limit is the purchasing power of the Philippine people. It is not proposed that this treatment accorded American goods shall be modified or withdrawn except as the purchasing power of the Filipino people may be decreased by the proposal recommended. It is not proposed to give to the Philippine government any power by which it may recoup itself for the injury done to the Philippine Islands.

Fortunately for us, all those who from intimate contact or because of official responsibility know the situation have already expressed themselves clearly as to the immoral nature of the proposals discriminatory to the Philippine Islands. Public opinion in this country has condemned such proposals in no uncertain terms. A branch of this Congress has rejected them. The Philippine delegation is confident that this committee, after mature deliberation and study of the provisions of the tariff law affecting the Philippines, will not sanction anything which is inconsistent with the American conception of what is fair and just.

STATEMENT OF HON. RAFAEL R. ALUNAN, SECRETARY OF AGRICULTURE AND NATURAL RESOURCES OF THE PHILIPPINE ISLANDS

(The witness was duly sworn by the chairman.)

Mr. ALUNAN. Mr. Chairman and gentlemen of the committee, I simply ask permission to file a brief.

The CHAIRMAN. You shall have that permission. It will be printed.

(Mr. Alunan submitted the following brief:)

BRIEF OF HON. RAFAEL R. ALUNAN, SECRETARY OF AGRICULTURE AND NATURAL RESOURCES OF THE PHILIPPINE ISLANDS

I am here as representative of the Philippine government in connection with section 301 of the tariff bill as passed by the House of Representatives and which this committee now has under consideration. Taking cognizance of the great alarm that the present movement to restrict Philippine exportation of sugar to the United States is causing the sugar planters and the Filipino people in general, and realizing the disastrous results which any law embodying such limitation may have upon our sugar industry, the Philippine Council of State, presided over by the Governor General, has commissioned me, as secretary of agriculture and natural resources, to present to you our views on this question. I wish to thank you, gentlemen, for the privilege you are according me in permitting me to appear before you to-day.

It is not my purpose to discuss the policy implanted by your Government in my country during the past 30 years—much less to tell you what your Government should do in the Philippines in the years to come. Nor is it my intention to make an analysis of the sugar industries of continental United States, Hawaii, or Porto Rico, for the purpose of comparing them with the sugar industry of the Philippines. I will confine my remarks to the situation of our sugar industry as it exists to-day.

I arrived here after the hearings conducted by the Committee on Ways and Means of the House of Representatives had been concluded, but have read everything in the records relating to the Philippines. I was present during the entire hearings of the subcommittee on sugar of the Senate Finance Committee, and I heard all the testimony that referred to the islands. The arguments made

in support of the proposal to restrict the quantity of Philippine sugar that may come into the United States free of duty may be summed up as follows:

1. The Philippines has unlimited capacity for sugar production and thereby constitutes a menace to the United States beet and sugar cane industry.
2. The continental beet and sugar industry can not compete with the Philippines due to low wage paid the Filipino laborers.
3. The Philippine sugar industry is controlled by foreign interests, especially Spanish.
4. It is undesirable for the Philippines to rely on a single crop.

POTENTIALITY OF THE PHILIPPINE SUGAR INDUSTRY

The fear that the Philippine sugar industry possesses an unlimited capacity for sugar production, equaling that of Java or Cuba, is groundless. There are certain factors which contribute toward checking the development of the sugar industry in the Philippines. These are, among others, (1) lack of labor, (2) limited cane areas, (3) soil and climatic conditions, and (4) lack of capital.

1. *Lack of labor.*—Because of the immigration laws of the United States which have been extended to the Philippines, Chinese and other oriental laborers are barred, thereby closing to the islands the only possible source of cheap labor supply from the outside and making the Philippines dependent exclusively on Filipino labor. The tilling of the 9,500,000 acres of cultivated land in the Philippines with her population of about 13,000,000 depends on 1,383,500 men agricultural laborers, or an average of 7 acres per man. Even with the use of agricultural machinery becoming more general, increase in production would be negligible. Of the total acreage under cultivation only 586,500 acres are planted to sugar cane, the remainder being planted to rice, coconut, hemp, tobacco, corn, and other crops. The insufficient labor supply does not permit increase in one crop without corresponding decrease in the acreage of the others.

2. *Limited cane areas.*—The sugar industry in the Philippines is being carried on in sections of the country which have been devoted to cane production for more than a century. Experience has shown that only in these sections has any attempt to extend cane areas been profitable. As already stated by Mr. Welch before the Senate subcommittee on sugar, the experience of the Mindoro Sugar Co., with a big outlay of American capital and expert management which has undertaken to produce cane outside of the areas previously planted to that crop, shows beyond any doubt the improbability of increasing production in this manner. The result has been such a complete failure that it is almost certain that no other attempt along similar lines will be made.

The experience of the Pampanga Sugar Mills and the Calamba Sugar Estate, both capitalized by Americans, may also be cited in this connection. These companies started producing cane by administration in the same manner as the Mindoro Sugar Co. and they never made any profits until they subdivided their estates into small lots and distributed them among the Filipino planters.

3. *Soil and climate conditions.*—While Cuba and Java with practically uniform latitude can grow sugar cane in most of their acreage, the Philippines is far from being under such favorable conditions. The Philippine Archipelago, occupying 17 degrees of latitude, has such a variety of climatic conditions in the different sections that the growing of cane is possible only in certain localities. Father Coronas, chief, Meteorological Division, Philippine Weather Bureau, commenting upon this subject, says: "The different position of the islands which makes them or part of them more or less exposed to the general winds prevailing in the Philippines, both in winter and in summer, is the principal cause of our different kinds of climate in spite of the relatively small extension of the Archipelago from east to west, especially in Luzon."

In this connection, I would like to invite your attention to the charts prepared by the Philippine Weather Bureau showing the distribution of rainfall and the paths of typhoons in the Philippines. According to the weather bureau, there are four types of climate in the Philippines:

First type.—Two pronounced seasons, dry in winter and spring, and wet in summer and autumn.

Second type.—No dry season; with a very pronounced maximum rain period in winter.

Third type (Intermediate A).—No very pronounced maximum rain period; with a short dry season lasting only from one to three months.

Fourth type (Intermediate B).—No very pronounced maximum rain period and no dry season.

From practical experience, if climate were the only factor, areas having the third or fourth type of climate are preferred for cane culture. It is to be noted, however, that the sugar producing areas of Luzon and Mindoro are located along the paths of typhoons and have pronounced dry and wet seasons. This is the main reason for the lower yield obtained in these islands compared to that in Negros. It is also to be noted that the areas where climatic conditions are favorable to sugar cane growing are located in the southern islands, especially in Mindanao, where the lands are unpeopled and unsettled, rendering thereby unsuited for successful growing of sugar cane, as has been proven by experience.

I wish to add that ratooning in Cuba is universal and may be carried on for years. This is not the case in the Philippines where ratooning can not be generally practiced.

5. *Lack of capital.*—Capital has never been abundant in the islands. The amount invested in the Philippine centrifugal sugar industry is approximately $175,000,000 with an annual production of about 600,000 tons. To produce the 5,000,000 tons of sugar which has been predicted by a few overoptimists would require an additional investment of not less than one and a quarter billion dollars ($1,250,000,000). This enormous capital is beyond Philippine possibilities. In spite of the encouragement of the Federal as well as the Philippine Governments, very little outside capital has come to the islands due principally to the unsettled political status and the existing restrictive land and corporation laws. Moreover, the present agitation to limit Philippine free sugar importation into the United States has already discouraged further investment of capital into the Philippines. Even Mr. Love, the president of the United States Beet Sugar Association, has so testified before the subcommittee on sugar.

A few years ago when the price of sugar was around 5 cents per pound, which is over 1¼ cents higher than the current price, a New York concern sent representatives to the islands to negotiate the purchase of certain centrals. Even under such favorable conditions, these gentlemen offered only 33 cents for every dollar invested in the properties. This will give you an idea what American capitalists thought of investment in the Philippine sugar industry, even before this agitation.

The foregoing leads to the conclusion that if any increase in the production of sugar in the Philippines is to occur at all, the same will necessarily have to be limited, slow, and gradual. Any assertion to the effect that the Phillipine sugar industry will in a few years approximate the rapid increase attained in Cuba is without foundation. In 1895 the Philippines exported 336,075 long tons of sugar. All this quantity was produced by primitive mills, at best extracting only 55 per cent of the juice. In 1927, the exports were 544,579 long tons. If it is considered that the 1927 production was mostly from modern centrals employing efficient cane-crushing machinery extracting 92 per cent, besides using fertilizers, better methods of cultivation, the increase of 1927 over 1895 is insignificant.

The sugar exports from the Philippine Islands immediately after the implantation of American sovereignty have been used by some as a basis for comparsion with present production so as to show an enormous increase of 1,000 per cent (from 64,000 to 700,000 tons). This comparison is clearly misleading not only because production then was undoubtedly more than the sugar exports but also because of the well-known fact that for more than 10 years after 1896, the Philippines was the scene of several wars, revolutions and disturbances of public order which almost totally paralyzed the sugar industry. It was not until 1910 that the industry entered a period of decided recovery and only in 1922 did the islands reach the peak of exportation during the Spanish occupation.

As a matter of fact there was a greater area devoted to sugar cane cultivation in 1921 than in any year thereafter as may be noted from the following data compiled from official reports of the Philippine Bureau of Agriculture:

Area, production, and yield of sugar production in the Philippines for the years 1918–1927

Year	Area in acres	Production in short tons	Yield, short tons per acre	Year	Area in acres	Production in short tons	Yield, short tons per acre
1918	507,825	474,749	0.93	1923	560,642	475,329	0.84
1919	494,099	453,349	.92	1924	561,395	529,096	.94
1920	487,790	466,917	.95	1925	591,740	779,518	1.31
1921	596,373	589,443	.98	1926	572,885	607,367	1.04
1922	595,076	533,194	.88	1927	586,500	766,908	1.30

LABOR WAGES IN THE PHILIPPINES

The wages paid Filipino laborers have been taken as a basis for comparing the cost of production in the Philippines with that in the United States. It is asserted that while laborers in the United States receive $5 per day the Filipino laborers only get 50 cents. This comparison gives the impression that the cost of sugar production in the islands is but one-tenth of that in the United States, which is positively untrue and misleading.

In the first place, although it is true that the daily wage paid the Filipino agricultural laborer is only from 50 to 75 cents, it must be borne in mind that this amount is not the only compensation he receives, for the planter provides him and his family with a house and lot sufficient in size to enable them to raise vegetables, chickens, etc., for their own use. Moreover, the planter furnishes free transportation for the laborer and his family and extends credit advances to them.

In the second place, the Filipino laborer in the course of a day's work can not accomplish as much as the laborer in the United States because of the difference in physical constitution, climate, and environment. The former is by nature weaker physically than the latter, while the weather and environment in the Philippines do not permit of as intensive exertion of physical energy as in a temperate climate.

In the third place, the Filipino laborer does not have the advantage of mechanical implements which the American worker has. While the Filipino farmer still has to depend on his carabao and antiquated plow to work his field the American farmer labors with the help of tractors and other modern mechanical labor-saving devices.

The wage paid the Filipino laborer is not the only factor which determines the cost of production of the sugar industry of the Philippines. The yield per acre is another factor to be considered, for the cost of production may be high or low depending upon the tonnage of sugar produced per acre.

Even without taking into account the fact that a great majority of the sugar farmers in the Philippines are heavily indebted and therefore pay correspondingly heavy interests, this being one of the many important problems of our sugar industry, I can assure you that with the prevailing low prices of sugar, the farmers are losing instead of making profits. I may add that if the present situation continues, many of the centrals will have to close down for lack of cane supply to mill.

NATIONALITY OF PHILIPPINE SUGAR PRODUCERS

Disregarding facts, those who wish to see the abolition of the existing free trade relations between the United States and the islands, persistently argue that the Philippine sugar industry is controlled by foreign interests, especially by Spaniards and the "King of Spain." Nothing could be farther from the truth. The Philippine sugar industry is not controlled by Spanish subjects, much less by the "King of Spain." Capital invested in sugar mills is as follows: American-Filipino, 76 per cent; Spanish, 23 per cent; cosmopolitan, 1 per cent. Thirty per cent of the stock of the centrals classed as Spanish-controlled is in the hands of the Filipinos, so that the actual extent of Spanish interests in the Philippine sugar factories is only about 16 per cent. The nationality of the sugar-cane producers is as follows: American-Filipino, 93 per cent; Spanish, 7 per cent. Labor is 100 per cent Filipino.

The two principal sugar-producing Provinces of the Philippine Islands are Occidental Negros and Pampanga. The Philippine census of 1918 gives the ollowing with reference to the farms of those two provinces.

Occidental Negros

Total number of farms	13,700
Owned by Filipinos	13,694
Owned by Europeans	4
Owned by Asiatics	2

Pampanga

Total number of farms	28,112
Owned by Filipinos	28,110
Owned by Americans	1
Owned by Europeans	1

It may be stated that the Spanish interests now engaged in the sugar industry have been so engaged in the Philippines many years before American sovereignty.

DIVERSIFICATION OF CROPS

Proponents of Philippine restriction think they have discovered another argument in support of their contention by pointing out that restriction would result in the diversification of Philippine agriculture. The reply to this is that the Philippines has already diversified its industries to a greater extent than has any other country exporting sugar to the United States. The value of the principal exports of the islands for the calendar year 1928 is as follows:

Article	Value in U. S. currency	Per cent total exports
1. Coconut products	$52,641,236	34
2. Sugar	47,642,939	31
3. Hemp and other fibers	28,355,930	18
4. Tobacco	8,971,437	6
5. Hats, embroideries, cotton, and silk	7,882,930	5
6. Lumber and timber	3,126,501	2
7. Other articles	6,933,573	4
Total	155,054,546	100

Production of Manila hemp increases or diminishes in proportion to world demand and prices obtainable. The islands are among the largest producers of copra.

Moreover, of the principal staple crops of the islands in 1927, sugar cane ranks fifth and constitutes but 6 per cent of the total area cultivated, as evidenced by the following figures:

Crop	Area in acres	Per cent total area
1. Rice	4,465,317	47
2. Corn	1,387,315	14
3. Hemp and maguey	1,270,485	13
4. Coconuts	1,235,890	13
5. Sugar cane	580,500	6
6. Tobacco	207,492	2
7. Coffee, cacao, rubber, etc	432,432	5
Total	9,585,431	100

Besides increasing the volume of these exportable products, the Filipino farmer has increased the production of the main food staple—rice—a large percentage of which the Philippines had been importing for many years from neighboring countries. According to the Bureau of Agriculture, in 1910 the total rice production of the islands amounted to 18,859,090 sacks of 125 pounds. This production increased gradually to 47,780,000 sacks in 1926 and to 49,791,700 sacks in 1927, representing an increase of 164 per cent in 17 years. Correspondingly, the importation of rice decreased from 3,431,757 sacks in 1910 to only 211,502 sacks in 1927 or from 12 to 1 per cent of the total value of imports. The value of rice produced in the Philippines in 1927 was $100,158,210.

In 1910, there were 712,327 acres of land cultivated to corn which gave a production of 2,467,570 sacks valued at $4,361,870, as compared with 1,387,315 acres in 1927 with a production of 8,384,710 sacks valued at $17,487,735. In other words, the corn production in the islands increased 239 per cent in the past 17 years.

Before concluding, Mr. Chairman, permit me to invite the attention of the committee to a phase of the subject which has not been touched upon.

From the day the American flag was hoisted in the Philippines, American officials have carried on a systematic campaign to arouse the Filipinos to the importance of greater development of our natural resources. All Presidents since McKinley and all American governors general since Taft have stressed the need for economic development. In recent years the "develop your natural resources" campaign has been more intensified than ever.

Publicly and privately, America's officials in the islands and those in America who have connections in the Philippines have exhorted us to increase our endeavors

along economic lines. When Governor-General Davis announced, upon his arrival in Manila, a program of economic development, no new policy was expounded. Rather it was a logical working out of policies as formulated by the American Government from the inception of American occupation of the islands.

For the purpose of assisting us to develop our country economically, the Congress of the United States instituted free trade between the United States and the Philippines.

As a natural outcome, the inhabitants of the Philippines embarked upon the task of promoting the sugar industry. Modern mills were erected. Convinced that while the Philippines remains under the American flag its products would be placed on the same footing and accorded the same treatment as those of any possession, territory, or state of the United States, these pioneers invested in the sugar industry millions of dollars from their savings and from the mortgage of their properties. And now, gentlemen, may I ask: Is it just and fair that after practically inducing these American and Filipino investors to invest so many millions in the sugar industry and now that they are just beginning to recover their investments, limitation is to be meted out to them?

Mr. Chairman and gentlemen of the committee, these are the bare facts, these are the real conditions surrounding the sugar industry of the Philippines. I submit them to you for your consideration and action. The proposed restriction vitally affects the economic life and progress of the Philippines; not only sugar and coconut oil are at stake but the welfare and happiness of a people who have placed their trust in your sense of justice and generosity hang in the balance. I am confident that, as in the past, the same sentiments of fairness will guide you in deciding this controversy

STATEMENT OF HON. PEDRO GUEVARA, RESIDENT COMMISSIONER FROM THE PHILIPPINE ISLANDS

(The witness was duly sworn by the chairman.)

Mr. GUEVARA. Mr. Chairman, I simply want to ask permission to submit a brief for the record.

The CHAIRMAN. That permission is granted.

(Mr. Guevara submitted the following prepared statement:)

PREPARED STATEMENT OF HON. PEDRO GUEVARA, RESIDENT COMMISSIONER FROM THE PHILIPPINES TO THE UNITED STATES

MR. CHAIRMAN AND GENTLEMEN OF THE COMMITTEE:

The proposition now pending before this committee to curtail the existing free-trade relations between the United States and the Philippine Islands is worthy of serious consideration. The Philippine Islands are now under the American Flag. It is not now necessary to relate the circumstances under which the Philippine Islands came under the sovereignty of the United States. It is proper to recall, however, that when the United States took possession of the Philippines she announced to the world her motives and reasons for her action.

"We accepted," said President McKinley, "the Philippines from high duty in the interest of their inhabitants and for humanity and civilization." The President continued: "Our sacrifices were with these high motives. We want to improve the condition of the inhabitants securing them peace, liberty, and the pursuit of their highest good." Ex-President Taft in 1907 said that the United States should help develop industry, trade, and agriculture in the Philippine Islands.

Time seems to have demonstrated that a conflict of economic interests may occur between the United States and the Philippine Islands. It appears to some that above the moral obligation contracted by the United States to develop the Philippines both industrially and in self-governing capacity, American domestic interests should be protected. Before such a plan, so injurious to Philippine interests, is carried out we hope Congress will be just and fair enough to grant our country the realization of her ambition to be an independent nation, and be master of its own destiny.

The Filipinos are not unmindful that their association of 30 years with the United States has been beneficial and constructive and has led them to the unparalleled progress they have attained. Their economic situation has improved considerably. The Filipinos have been struggling within that period of time to

reach their long cherished aspiration to be independent. Through all those years they have not lost their faith in America. To my mind the time has come for a definite settlement of the political and economic situation of the Philippine Islands. The 13,000,000 inhabitants of the Philippines can not, in justice, be longer left in a position of uncertainty, hindering the political and economic progress to which they are entitled. While the Filipinos are aware that the American people have the power to do with the Philippines whatever they please it is unbelievable that they will take a course ignoring completely all political and economic principles or ethical standards which are the pride of their history and traditions.

It is unnecessary to discuss now whether the Philippines could produce enough sugar to meet the demands of the American market; nor is it necessary to consider whether Philippine coconut oil and hemp and other products may be competing with products grown in continental United States. It is not my purpose to discuss now this question for, in my opinion, it amounts to a discussion of whether the State of Utah raises products in competition with the Philippines or with the State of Michigan. I wish only to call the attention of the committee to the fact that the Philippines is under the jurisdiction of the United States like Utah, Michigan, or any other State of the Union. The State of Michigan, for instance, has no right to resent the fact that her sister State of Utah is producing more sugar than she does. Likewise, the inhabitants of Utah have the same right to enjoy the privilege of prosperity as that enjoyed by the inhabitants of Michigan. The inhabitants of the Philippine Islands are entitled to the same right, otherwise they would be the only oppressed people living under the American flag. Such a situation would certainly not be in accord with the ideals and principles of the American people.

The existing free-trade relations between the United States and the Philippine Islands have been beneficial to both countries. The Philippines is not only a profitable market for certain American products; it is also a valuable commercial base for the United States, considering her commercial interests in the Far East, which gives her a commanding position in that part of the world.

The following statistics show beyond question that the trade of the United States in Asia has increased at least 1,000 per cent since the occupation of the Philippines.

Value of United States exports with Asia and Oceania—Averages and per cent increases

[NOTE.—All figures in thousands of dollars; 000 omitted]

Year	Exports		10 years' yearly average	Per cent increase	Year	Exports		10 years' yearly average	Per cent increase
	Asia	Oceania				Asia	Oceania		
1888	19,584	14,580			1909	82,082	30,200		
1889	19,371	15,060			1910	77,694	34,057		
1890	20,279	16,343			1911	105,146	46,338		
1891	26,170	18,497			1912	141,198	48,200		
1892	20,309	18,612	38,415		1913	140,441	53,718	244,802	537
1893	17,017	11,046			1914	140,730	56,264		
1894	21,668	11,772			1915	139,226	53,009		
1895	18,134	12,997			1915 [1]	94,712	38,254		
1896	25,792	17,035			1916	387,735	82,797		
1897	39,370	22,558			1917	479,402	77,402		
1898	44,836	21,675			1918	498,477	104,519		
1899	48,764	29,471			1919	771,717	125,585		
1900	67,554	40,751			1920	871,579	171,605		
1901	53,418	31,365			1921	532,615	112,760		
1902	69,203	29,009	100,113	176	1922	448,970	101,945	737,544	1,763
1903	62,398	33,430			1923	511,498	146,423		
1904	64,984	28,018			1924	514,592	156,505		
1905	134,705	21,879			1925	486,892	189,490		
1906	110,911	29,682			1926	564,543	212,706		
1907	101,365	32,525			1927	559,605	193,714		
1908	113,247	35,327							

[1] Calendar years period July 1, 1915, to Dec. 31, 1927. Figures for Asia and Oceania taken from Stat. Abs. of the U. S., 1928.

Fiscal years July 1 to June 30, 1888 to 1915.

The proposed limitation on the amount of certain Philippine products that may enter the United States free of duty is clearly unfair and unjust. There is no suggestion whatsoever from those advocating such limitation that the Philippines be also permitted to limit and tax certain American products and merchandise now entering the Philippines duty free. The proposition carries no suggestion that the Philippine Islands may exercise a like right, or anything of a compensatory nature. They little realize that were such a tariff plan adopted, it would place the United States in the same position of Great Britain in her dealings with the thirteen American colonies which brought about their separation from the mother country. The Filipinos believe that when Congress decides this controversy its action will be fair and just.

STATEMENT OF HON. CAMILO OSIAS, RESIDENT COMMISSIONER, FROM THE PHILIPPINE ISLANDS

(The witness was duly sworn by the chairman.)

Mr. OSIAS. Mr. Chairman and gentlemen of the committee, I wish to express, on behalf of the Philippine delegation and the Filipino people, whom I have the honor to represent before the Government and the people of the United States, our deep appreciation for the courtesy and attention which have been extended to us in the course of this controversy. We are appreciative of the opportunity given us to reason with you on this question, which so vitally affects the interests of 13,000,000 inhabitants of the Philippines.

I shall try to avoid a repetition of the points which have already been adduced, either before this committee or the subcommittees of this Committee on Finance of the Senate, or the main points which are already covered adequately in the records of the Committee on Ways and Means of the House of Representatives.

I wish to begin by addressing myself, Mr. Chairman and gentlemen of the committee, to the proposals of the representatives of the cotton and dairy products interests who appeared before this committee yesterday and advocated the levying of duties on Philippine products.

It seems to me that a committee which has demonstrated its keen desire to seek the facts and the truth ought to have the situation very clearly in mind.

The cotton manufacturers from the United States occupy first place among the principal imports of the Philippine Islands from this country. Last year we imported over 24,300,000 pesos worth of cotton goods from this country, absolutely free of duty.

The meat and dairy products which we purchase from this country rank sixth among the principal imports of the Philippine Islands from the United States. The value of the meat and dairy products imported in 1927 was over 6,500,000 pesos. The records will show that the Philippines to-day is the best exterior market of the United States for its cotton products, and for its meat and dairy products.

It would seem to be economic shortsightedness on the part of the meat and dairy interests and the cotton interests to advocate a proposal which would cripple the very best customers that they have in the world.

The proposal here advanced is clearly a unilateral proposal. While the representatives of these interests are advocating the levying of duty upon Philippine products, there was not the remotest suggestion that this proposal be accompanied by a grant of power to the Filipino people to impose duties upon their products. That

any man should have the audacity to appear before a committee and advocate a proposal so clearly unfair, and attempt to justify it on ethical grounds is beyond my limited intelligence. The unfairness of a proposal so iniquitous, Mr. Chairman, must be apparent to the ordinary man, let alone a member of the highest legislative body of this enlightened land.

Now, Mr. Chairman, I desire to be permitted to speak briefly on section 301 of the tariff bill under consideration, which vitally affects the interests of our people and, I may add, affects likewise the interests of the United States, not alone in the Philippine Islands, but in the entire Orient. Our plea is that the provisions in section 301 of the pending tariff bill, and which already have been incorporated in the tariff acts of 1913 and 1922, be at least maintained while the United States flag waves over the islands.

The present law and the provisions of the pending bill are already disadvantageous to the Philippine Islands. The greater advantages are on the side of the United States. The trade arrangement now obtaining, and which has been in existence since 1913, has not been absolutely mutual or reciprocal.

In the first place, America is decidedly in an advantageous position, because, by our organic act, under which the Philippines has been governed since 1916, Congress has the exclusive power to legislate on matters affecting trade relations between America and the Philippines.

In the second place, that very same law reserves the power and the authority to Congress to annul the laws enacted by our Philippine Legislature. On top of these two decided positions of advantage on the part of this great, rich, and powerful country, there is still in the bill a clause which says "or which do not contain foreign materials to the value of more than 20 per centum of their total value." In other words, we have this 20 per cent qualification upon Philippine products that may be admitted free to this country, but there is no similar qualification, restriction or limitation on the kind or quality of American goods which may be sent free of duty to the Philippine Islands.

Now, if, in addition to all this, we should accede to the proposal further adding discriminatory provisions, it would be difficult, gentlemen, for a distant people in the Orient to understand how a country which came to the possession of those Pacific isles as a result of war, with its history of fairness and square dealing, ofttimes preached to the inhabitants of the Philippines, could take such a backward step. If there is any change that is to be made in the law, or in the pending bill, it should not be in the nature of including discriminatory provisions, but rather, to eliminate the clause "or which do not contain foreign materials to the value of more than 20 per cent of their total value," in so far as Philippine products are concerned, or include a similar proviso in so far as American products are concerned. That would make the bill absolutely equitable and just, and it would make it entirely mutual and reciprocal.

Senator SIMMONS. Let me ask you a question there.

Mr. OSIAS. With pleasure.

Senator SIMMONS. Do you manufacture, in the Philippines, any article the raw material of which is not produced in the islands?

Mr. OSIAS. Yes, sir. Some cigars that we manufacture make use of Sumatra wrapper, upon which a duty is imposed out of respect for the free trade arrangement with the United States, following the rates of this country.

Besides, we have the embroidery products referred to yesterday by Speaker Roxas.

Senator SIMMONS. Do you have to import the raw material out of which these embroidery products are made?

Mr. OSIAS. Yes, sir. We import the thread; and we import the linen and silk cloth.

Senator SIMMONS. Then, there is a large part of your manufactures which, under this provision, would have to pay a duty if imported into the United States.

Mr. OSIAS. Yes.

I wish now to take up the injustice of this proposed limitation, or tariff duty proposal, on Philippine products.

The United States, as I said at the outset, has all the power to regulate our trade relations. None of these proposals to levy duty on our products or to limit our exports to this country is accompanied by a suggestion of a similar grant of power and authority to our legislature.

Furthermore, we believe that an action on the part of the United States Congress in support of these proposals that have been advocated with respect to limitation or imposition of duties can not but affect America's fair name and America's honor and prestige in the eyes of the peoples of the world, especially the peoples of the Orient. If approved, it should be preceded by a grant, it seems to me, of complete autonomy to the Philippine Islands.

I would like now, in a few words, to touch upon the effect of this agitation upon American capital in the Philippine Islands. There has been in the past a disposition in certain quarters to place the blame upon the Filipinos for the failure of American capital to flow freely and in great amounts to the Philippines. The real reason for the reluctance of American capital to go to the Philippine Islands is due, first, and principally, to the uncertainty of the political status of the Philippine Islands. A second reason is this present movement tending to make unstable the situation of economic enterprises in my native land. It is hoped that the American people in the future will realize that they have themselves largely to blame if American capital will prove timid about going to the Philippines.

Senator KING. May I interrupt you to say that, speaking for myself, and myself alone, I think it is to the advantage ultimately of the Philippines that so little has gone, and I should be very glad if no further capital did go, because I want to see you freed from American control as speedily as possible. As was stated yesterday, the more American capital that goes there the more difficult it will be for you to free yourselves.

Mr. OSIAS. I am very happy to have the opinion of the Senator. I am rather inclined to agree with him, if I may speak frankly.

Senator SIMMONS. May I ask you if capital from other countries outside of America has invested in the Philippines, up to this time, to any considerable extent?

Mr. OSIAS. There have been some foreign investments, of course, Senator.

Senator SIMMONS. Yes, I understand that.

Mr. OSIAS. But they have been quite limited.

Senator SIMMONS. Most of the foreign investments come from American citizens?

Mr. OSIAS. Yes, sir; especially during the American occupation, that is true.

Senator WALSH of Massachusetts. Of course, Spain has invested a good deal of capital there.

Mr. OSIAS. Oh, yes; I must say that.

Senator WALSH of Massachusetts. That has continued from the old days, has it not?

Mr. OSIAS. Yes; but there is not much new capital.

Senator SIMMONS. Have the investments of Spain increased to any considerable extent?

Mr. OSIAS. Not to any considerable extent.

The CHAIRMAN. They are increasing right along, are they not?

Mr. OSIAS. There is a slight increase.

The CHAIRMAN. Just the same as any other increase.

Mr. OSIAS. I am very happy, Senator, that that question was asked, because it affords me an opportunity to say that I think that the Americans ought to be the last people to begrudge the investment of foreign capital in the Philippines, or any other place, in view of the fact that the records clearly show that since 1923 there has been an investment of American capital abroad at the rate of $2,000,000,000 annually, and to-day conservative estimates demonstrate that there are approximately $15,000,000,000 or $16,000,000,000 of American capital, exclusive of Government bonds, invested in industrial and other economic enterprises in foreign countries. However, these——

Senator EDGE. May I ask you whether these investments of foreign capital have proven a detriment or deterrent to the Philippines, whether they were investments of American capital or capital from any other sections of the world?

Mr. OSIAS. No; we make no contention to that effect, Senator, except that, as observed by Senator King—it may be by mere coincidence—the fact remains that the greatest opposition to our freedom has come from these interests that have invested in the Philippines.

Senator THOMAS, of Oklahoma. What is the attitude of other investors besides Americans toward your independence? Take Spanish investors, for example. Are they in favor of your independence, or in favor of continuing the present form of government?

Mr. OSIAS. Foreign interests and capitalists in the Philippine Islands have been very careful to observe the proprieties of international relations, and have not openly and avowedly expressed themselves one way or the other on this question. They are divided. There are some who are in favor of independence, and there are a few who are against independence. I think that is a fair statement of the situation, Senator.

Senator SIMMONS. Have not these American investments in your country greatly stimulated trade between America and the Philippines?

Mr. OSIAS. Yes, sir; they have.

Now, I would like to make mention of the recorded opposition to these discriminatory proposals affecting our trade relations.

The Philippine Legislature approved a concurrent resolution, a copy of which was filed by the Speaker of the Philippine House of

Representatives yesterday, against these proposals. On this particular controversy I am happy to be able to report to this committee that the Filipinos and the Americans resident in the Philippine Islands are united in opposing the proposed levy of duty on our products, or limitation on products that we export free of duty to the American market. The organs of public opinion in the Philippine Islands have been unanimous in their opposition. I have been pleased to note, during my brief stay in this country, that a great many of the organs of American public opinion have, on ethical and moral principles, opposed this proposition. The House of Representatives has, by its approval of the pending tariff bill, rejected these proposals.

Senator SIMMONS. Before you leave that, let me ask you another question with regard to which I have some curiosity. Do the plants or industries in your country operated by American citizens employ Filipino labor altogether?

Mr. OSIAS. Entirely. The exclusion acts of this country, in spirit and letter, are followed by the Philippine Islands, and I am glad to be able to add, Senator, that 100 per cent of the labor in the sugar industry particularly, which is the subject of a great deal of this controversy, is Filipino labor.

Senator SIMMONS. I would like to have you give us information as to the wage scale in those factories as compared with American wage scales.

Mr. OSIAS. The wage scale in the Philippine Islands ranges on the average from 50 to 75 cents.

Senator SIMMONS. A day?

Mr. OSIAS. A day. But this does not tell the whole story, Senator. The Filipino laborer, unlike other laborers, does not live exclusively on his wages. In the statement of the Hon. Rafael R. Alunan, our secretary of agriculture and natural resources, he shows that the laborer employed there enjoys other privileges. For example, besides his daily wage, the sugar centrals and those who contract labor, have to pay the transportation, not only of the Filipino laborers, but their families as well. The laborers and their families have to be provided with houses, plus a little piece of ground upon which they can raise some of their daily needs, such as vegetables, poultry, and the like.

Senator SIMMONS. Do they have to pay any rent for those houses?

Mr. OSIAS. No rent.

The CHAIRMAN. That is, to the mill. That is not where the cane is raised.

Senator SIMMONS. I am not talking about farming, now. I am talking about the manufacturing.

Mr. OSIAS. You were asking me, Senator, about the laborers.

Senator SIMMONS. Yes.

Mr. OSIAS. They do not pay for their houses. The Secretary of Agriculture is here and will bear me out on that question. He himself is a sugar man, and his arrangement is to that effect.

The CHAIRMAN. How long do they work during the grinding season?

Mr. ALUNAN. Eight hours a day.

The CHAIRMAN. I do not mean in hours. How many days do they work?

Mr. ALUNAN. From 120 to 150 days. Most of our laborers are permanent residents on our land.

The CHAIRMAN. Your grinding does not last 150 days?

Mr. ALUNAN. Yes, sir.

The CHAIRMAN. Do you mean one mill is grinding 150 days?

Mr. ALUNAN. From 120 to 150 days.

The CHAIRMAN. Why do you run 120 days? They do not do it here. Why do you do it there?

Mr. ALUNAN. That depends on the quantity of cane that comes to the mills.

The CHAIRMAN. You know what the cane is, and when it is harvested it is all ground as quickly as it is brought to the mills. These people are brought to the mills, just as they are here when we grind beets. They are brought there and taken care of while they are there.

Senator KING. Let us have a statement as to what the facts are.

Senator BINGHAM. Secretary Alunan is the manager of one of the largest plantations in the islands and has been in the sugar business all of his life.

Senator KING. He may know more about it than some of us Senators.

Senator SIMMONS. I asked the witness about conditions in his own country, and I think he ought to be allowed to state the conditions.

Mr. OSIAS. Those are the conditions, and they are corroborated by a man who knows whereof he speaks, a man who has been engaged in the sugar industry from his childhood, and whose grandparents have been engaged in that industry.

Senator WALSH of Massachusetts. Of course, that condition does not apply to the Filipinos who are employed in the cigar factories.

Mr. OSIAS. No.

Senator WALSH of Massachusetts. What are their wages?

Mr. OSIAS. Their wages run from 45 to 55 cents a day. I have here the data furnished by our Bureau of Labor, and if the gentlemen of the committee will permit me I would like to include these data as a part of my remarks at this point.

(The statement referred to is as follows:)

LABORERS' WAGES

Per day:	
Ordinary field laborers	$0.50–$0.75
Cane weighers and semiskilled laborers	.75–1.00
Tractor drivers	1.00–1.50
Electricians, machinists, and other skilled laborers	1.50–2.50
Per month:	
Accountants	200.00–300.00
Bookkeepers	100.00–200.00
Assistant bookkeepers	50.00–100.00
Chemists	200.00–400.00
Assistant chemists	100.00–200.00
Stenographers	50.00–100.00
Clerks	30.00–60.00

The CHAIRMAN. That shows your general laborers. What do the general laborers get, including seasonal laborers?

Mr. OSIAS. Ordinary field laborers, from 50 to 75 cents a day; cane weighers and semiskilled laborers, from 75 cents to a dollar a day; tractor drivers, from $1 to $1.50 a day; electricians, machinists and other skilled laborers, from $1.50 to $2.50 a day, and so forth. We have shown here the other types of employees.

Senator REED. That is in dollars, and not pesos?
Mr. OSIAS. Yes, sir. I have reduced it to dollars.
Senator SHORTRIDGE. That is in a factory or mill.
Mr. OSIAS. Yes, sir.
Senator WALSH of Massachusetts. The system of giving them homes and a plot of ground upon which to plant is confined to those Filipinos who are employed in the sugar industry.
Mr. OSIAS. Yes; and in some of the large plantations, such as the hemp plantations.
Senator WALSH of Massachusetts. Hemp also?
Mr. OSIAS. Yes. Also in some rice plantations.
Senator SIMMONS. You do not employ any labor outside of Filipino labor?
Mr. OSIAS. No, sir.
Senator SIMMONS. It is too far for the Mexicans to come down there?
Mr. OSIAS. Rather.
Senator EDGE. Does that standard of wages represent any increase in recent years?
Mr. OSIAS. Yes, sir. During the American occupation there has been a gradual upward tendency in this respect.
The CHAIRMAN. Then, the statement that was made by the manager of the largest Spanish sugar mill there to the Senator from Montana, wherein he said that the wage paid by his mill ran from 40 to 50 cents, was not true?
Mr. OSIAS. From 40 to 50 cents?
The CHAIRMAN. Yes.
Mr. OSIAS. I said that the average was from 50 to 75 cents.
The CHAIRMAN. When Senator Wheeler was over there he had an interview with the manager of the largest mill there, owned by Spaniards. I have the Philippine paper in which that interview was published. That manager told Senator Wheeler, when he was asked "what wages do you pay your employees here at the sugar plant," "from 40 to 50 cents a day." So, was he mistaken?
Mr. OSIAS. That confirms what I have just said, that the average runs from 50 to 75 cents.
The CHAIRMAN. He said from 40 to 50 cents.
Senator SIMMONS. Mr. Chairman, I submit that we ought to have Senator Wheeler here and let him make a statement about it.
The CHAIRMAN. Senator Wheeler has already made the statement, on the Floor of the Senate.
Senator SIMMONS. I have not heard it.
Mr. OSIAS. I am presenting the facts.
The CHAIRMAN. I have made the statement too, and have read it from the paper.
Mr. OSIAS. As I said a while ago, the Filipino laborer has indirect or invisible sources of wages which are not included in the mere amount received.
The CHAIRMAN. During the grinding season?
Mr. OSIAS. Yes.
Senator SIMMONS. Let me ask a question. The chairman says that this indirect assistance to which you refer, consisting largely of the use of houses and transportation, applies to the grinding season only. Does that apply to laborers in all the factories?

Mr. OSIAS. Not in all factories. The facts I am giving you, Senator, are applicable to laborers in general, including those centrals.

Senator SIMMONS. Including those?

Mr. OSIAS. Yes.

Senator SIMMONS. It is not confined to the grinding season?

Mr. OSIAS. It is not confined to the grinding season.

The CHAIRMAN. Do you mean to say that all laborers in the Philippine Islands are furnished houses in which to live?

Mr. OSIAS. Sir?

The CHAIRMAN. Are we to conclude from what you said that all laborers in the Philippine Islands are furnished houses in which to live?

Mr. OSIAS. No, sir.

The CHAIRMAN. That is just what you told the Senator.

Mr. OSIAS. No; I did not say that.

Senator WALSH of Massachusetts. He added "on plantations."

The CHAIRMAN. He did; but the Senator——

Senator WATSON. Explain what laborers in the Philippine Islands are furnished with homes.

Mr. OSIAS. Those laboring on the sugar plantations and other plantations. I said that in reply to the question of the gentleman on my right.

Senator WATSON. You evidently misapprehended the question of Senator Simmons, as to whether or not all laborers in the Philippine Islands are furnished houses.

Senator SIMMONS. I did not ask that. I said all laborers in factories—in all the factories.

The CHAIRMAN. He says they are not.

Senator SIMMONS. Do you mean that these laborers are given these advantages only when they work in sugar factories, or do you mean—

Mr. OSIAS. In sugar factories, and on other plantations——

Senator WALSH of Massachusetts. Such as hemp.

The CHAIRMAN. Do your cigar makers have their homes furnished them?

Mr. OSIAS. No, sir.

The CHAIRMAN. Certainly not. It is just during the season, in the grinding of sugar.

Mr. OSIAS. I do not think I made any statement that could be so construed.

Senator BINGHAM. Mr. Commissioner, where do the laborers live when the grinding season is not on?

Mr. OSIAS. They live in these houses.

Senator BINGHAM. The same houses?

Mr. OSIAS. Yes.

Senator BINGHAM. They do not pay any rent for them?

Mr. OSIAS. They do not pay any rent.

Senator BINGHAM. That is the point. The chairman stated that they lived there only during the grinding season.

Mr. OSIAS. No.

Senator BINGHAM. That is not correct?

Mr. OSIAS. That is not correct, because our greatest sugar centrals are in Negros. That is an island other than Luzon. A great many of the laborers come from islands other than Negros, so they have to

remain there, not only during the grinding season, but during the rest of the year.

The CHAIRMAN. What kind of houses do they live in?

Mr. OSIAS. Bamboo and nipa houses, others in wooden houses. I have pictures of them here.

Senator WATSON. What do they do the rest of the year?

Mr. OSIAS. They till this little plot of ground which I spoke of, and raise some of their foodstuffs, attend to the poultry, and the like.

Here is an illustration of one type of house provided for them [indicating]. There are several types of houses as you can see from these illustrations.

Senator BINGHAM. Mr. Commissioner, are most of the laborers who work in the fields raising sugar on small holdings, or are they on large holdings?

Mr. OSIAS. They are on small holdings, sir. The sugar farmers generally are small landowners.

Senator BINGHAM. Is the greatest part of the labor employed in the raising of sugar the labor in the factory or in the fields?

Mr. OSIAS. The employed labor is in the factories——

Senator BINGHAM. No. You did not understand my question. Of all the people who work in the raising of sugar, are there more in the fields or in the factories?

Mr. OSIAS. Mostly in the fields.

Senator BINGHAM. And, with respect to the fields, are most of them owned in small holdings?

Mr. OSIAS. In small holdings?

Senator BINGHAM. In other words, the largest part of the labor that goes into the raising of Philippine sugar is working on its own land?

Mr. OSIAS. Yes, sir.

Senator BINGHAM. All the year round?

Mr. OSIAS. Yes.

Senator KING. What proportion of the cane produced on the Philippine Islands is produced by men who own their own farms? Could you answer that?

Mr. ALUNAN. Of that cultivated by owners, 82 per cent is cultivated by Filipinos; 11 per cent by Spaniards; and 7 per cent by Americans. Of that cultivated by tenants, 91 per cent is cultivated by Filipinos; 4 per cent by Spaniards; and 5 per cent by Americans.

Senator KING. The point I am asking you is this. I think the question from Senator Bingham indicated it, or brought it out, but I was not quite clear as to your answer. Let me ask you: Do the Filipinos who own their own land—I am not speaking of the centrals—produce cane? And what proportion of the cane is produced by individual farmers or cane raisers?

Senator SHORTRIDGE. Owning their own land, Senator?

Senator KING. Yes; on their own land.

Mr. ALUNAN. One hundred per cent of the land belongs to the planters producing cane.

Senator KING. What proportion of the planters are what you would call individual owners, small owners?

Mr. ALUNAN. One hundred per cent of the planters are individual owners.

Senator BINGHAM. I do not think you understand the question.

Senator WALSH of Massachusetts. You mean in contradistinction to plantations?

Senator KING. Yes.

Mr. OSIAS. I think I can answer that question, Mr. Chairman and gentlemen of the committee, by stating bluntly that our social organization in the Philippine Islands is absolutely different from the organization in other sugar-producing countries. In other sugar-producing countries, such as Hawaii, Cuba and Porto Rico, the owners of the sugar centrals are also the owners of the plantations. That is not so in the Philippines.

Senator BINGHAM. Do not the centrals own any land? Do they not occasionally own a thousand acres of land or so?

Mr. ALUNAN. No.

Senator BINGHAM. Is all the sugar grown by private families, and not by the centrals?

Mr. ALUNAN. Not by the centrals.

The CHAIRMAN. Let me ask you a question. If that land is owned by the farmers, how is it then, that the sugar grinder furnishes the home for the man who owns the land and raises his cane?

Mr. ALUNAN. The sugar central furnishes homes to the laborers of the sugar central.

The CHAIRMAN. Does what?

Mr. ALUNAN. Furnishes houses to the laborers of the sugar central; and the farmers furnish houses to their laborers.

The CHAIRMAN. That is exactly what I said.

Senator BINGHAM. I do not think the members of the committee realize how very few people work in the centrals. As you go into a central you are always impressed by the fact that there are very few people working. It is mostly done by machinery.

How many people are employed in a large central?

Mr. ALUNAN. Not more than 200 or 300 people.

Senator BINGHAM. How many people are employed in growing the cane that is ground in that central?

Mr. ALUNAN. Between 10,000 and 15,000 people.

The CHAIRMAN. And those 10,000 or 15,000 people own their own land?

Mr. ALUNAN. No. Those are the laborers of the farmers or hacenderos.

The CHAIRMAN. The sugar company furnishes those laborers with homes, does it?

Mr. ALUNAN. Not the sugar company; the farmers.

The CHAIRMAN. That is quite a different thing.

Senator SIMMONS. This is what you mean, that the owner of the land upon which the cane is produced hires the labor to cultivate it.

Mr. ALUNAN. And furnishes a house free to the laborers.

Senator SIMMONS. That is exactly as I thought it was. The man who owns the land upon which the cane is grown hires these men, these Filipinos, and furnishes them a house free.

Mr. ALUNAN. Yes.

Senator SIMMONS. And pays them from 40 to 50 cents a day.

Mr. ALUNAN. From 50 to 75 cents.

Senator SIMMONS. When that cane gets to the mill, or the central, as you call it, then the owners of the central furnish the laborers employed in that mill with a home free.

Mr. ALUNAN. Yes, sir.

Senator SIMMONS. So that when a laborer is cultivating the cane, or when a laborer is helping in the conversion of the cane, he gets his house free.

Mr. ALUNAN. Yes.

The CHAIRMAN. How many laborers do you have around the mill?

Mr. ALUNAN. In a central, about 300 altogether.

The CHAIRMAN. That is, altogether.

Mr. ALUNAN. Yes, sir.

Senator KING. Is that one of the largest mills?

Mr. ALUNAN. 2,500 tons——

Senator KING. Is that one of the largest?

Mr. ALUNAN. One of the largest.

Senator BINGHAM. Of those 300, how many work in the fields?

Mr. ALUNAN. None of them work in the fields. They all work in the mill.

Senator BINGHAM. I want to ask Secretary Alunan another question before he sits down. How much more land is cultivated for sugar now than was cultivated in the last days of Spanish occupation?

Senator COUZENS. Mr. Chairman, we can not hear down here with the conversation going on.

Mr. OSIAS. I can say to you that I am prepared to answer that question by saying that from 1895 to 1928 there has been an increase in the acreage of land planted to sugar only in the amount of about 33,000 hectares. That is in a period of 33 years.

Senator BINGHAM. What is the total acreage in sugar?

Mr. OSIAS. The total acreage now? The total area, in acres, in 1927, was 586,500 acres.

Senator BINGHAM. 586,500.

Mr. OSIAS. Yes, sir.

Senator BINGHAM. That represents an increase of 33,000 hectares since the Spanish days?

Mr. OSIAS. Yes.

Senator BINGHAM. The production has just about trebled, has it not?

Mr. OSIAS. Doubled.

Senator BINGHAM. That is due, as I understand it—and you will correct me if I am wrong—to improved methods, and the abandonment of the Muscovado system of producing sugar, and the introduction of modern centrals?

Mr. OSIAS. Yes.

Senator BINGHAM. Also to improved methods of cultivating the soil?

Mr. OSIAS. Yes.

Senator BINGHAM. But the amount of land actually used for the growing of cane has increased a very small amount since Spanish days?

Mr. OSIAS. Yes.

The CHAIRMAN. You have also had a better class of cane, have you not?

Mr. OSIAS. Yes, we have better cane.

Mr. ALUNAN. We have better cane.

Senator SACKETT. What are your land laws there as to the ability to increase the amount of land put into sugar?

Mr. OSIAS. We have restricted land laws, by Congressional enactment. May I make that plain? They are laws enacted by Congress limiting the amount of land which a corporation may own, to 1,024 hectares, or 2,500 acres.

Senator BINGHAM. That is not the question the Senator asked. Senator Sackett asked you what laws you have restricting the use of land for the raising of cane. You have not any laws, have you, restricting the land to the raising of sugar cane?

Mr. OSIAS. No.

Senator SACKETT. You can increase that as much as you want.

Mr. OSIAS. Theoretically, yes.

Senator BINGHAM. Your laws merely prevent the acquisition by corporations of large tracts of land.

Mr. OSIAS. Yes.

Senator SACKETT. Then, all the increase that takes place will have to be practically by individual farmers.

Mr. OSIAS. Yes.

In further reference to the question asked by the Senator from Connecticut, I would like to say that in 1895, or before the American rule, the sugar production of the Philippines was over 376,000 tons. In 1928 it was 667,000 tons. There has been no appreciable increase in the acreage, as already brought out by the Senator from Connecticut. It has been due to the improved cane used, improved milling, and improved methods of agriculture. In olden times, when this peak of production I speak of was reached, we were using primitive mills, which used to extract only approximately 50 to 56 per cent of the juice, whereas to-day, by modern methods, we extract from 92 to 96 per cent of the juice. So, that explains, in large measure, the increase in the production of sugar in the Philippines, and the consequent increase in our exportation.

Senator SACKETT. That would indicate that there was not going to be much of an increase in the production from now on. If you are getting 96 per cent of the juice out of the planted area, and you can not increase the planted area except by individual ownership, that would indicate that there is not going to be much of an increase in production in the future.

Mr. OSIAS. That is our claim. I would like to take this occasion, Mr. Chairman and gentlemen of the committee, to answer one of the arguments adduced by our opponents, saying that they are doing us a favor by advocating this limitation of our exports, because they would thus encourage the diversification of crops. I would like to make it just as clear as I can possibly make it that Philippine agriculture to-day is more diversified than the agriculture in any of the other large sugar-producing countries of the world. Our acreage planted to rice in 1927 was about 4,500,000 acres; to Manila hemp, over 1,000,000 acres; to sugar, 586,000 acres; to coconuts, 1,236,000 acres; tobacco, 185,000 acres; and corn, 1,387,000 acres. So that there are several products which occupy a much greater acreage than sugar.

Senator THOMAS of Oklahoma. To what extent is fertilizer used in these various crops, in the production of the various crops?

Mr. OSIAS. Fertilizer is used to a greater extent in the production of sugar than in any other crop we produce. In the rice fields, what fertilization is used is largely through rotation of crops, that is, the

planting of beans when the land is not being used for the growing of rice.

Senator BINGHAM. Can you tell us what is the average holding of the man who raises sugar cane? How many hectares?

Mr. OSIAS. An average of 60 acres.

Senator BINGHAM. About 60 acres?

Mr. OSIAS. Yes, sir.

Senator BINGHAM. So that if you were to attempt to greatly increase your sugar production you would have to persuade a very large number of people to buy 60 acres of land and cultivate it.

Mr. OSIAS. Yes, sir. At this juncture I would like to refer the members of the Finance Committee to the testimony of Mr. Welch, presented before the subcommittee on sugar, which is on record. He is the head of a corporation that sought to develop sugar lands in Mindoro, virgin land where sugar had not theretofore been grown. He testified that he sank his millions there and it was a failure.

Senator KING. Mr. Osias, I have been told—and I ask for information—that the limit of land which is susceptible of the successful production of sugar in the Philippine Islands has about been reached. Is that true or otherwise?

Mr. OSIAS. I frankly would not like to corroborate that statement, because we want to rest our case, not on the argument that we have reached the dead level of our production. Gentlemen of the committee, I want to be very frank. Nobody can foretell it. I want to hide nothing from this committee. We do not want to say that there will not be a single ton of increase in the future, but I contend that the decision of this question should not be based on that proposition.

The data, by the way, which I am trying to avoid mentioning for the sake of brevity, are included in some of our briefs that have been filed.

The CHAIRMAN. You do not want to make the same mistake you made in 1909, when you said you never had more than 300,000 tons to ship into the United States, when the limit was put upon it? You do not want to make that mistake again, do you?

Mr. OSIAS. I do not acknowledge that we made that mistake. I would want to see the record where we are recorded as having made that mistake. I do not like to grant the assumption that we were mistaken then.

The CHAIRMAN. I was there, and helped to make the bill. There was no objection to the limitation of 300,000 tons.

Senator WALSH of Massachusetts. What proportion of the American consumption of sugar at the present time is from the Philippine Islands?

Mr. OSIAS. A little over 8 per cent.

Senator WALSH of Massachusetts. Has it been increasing in recent years? Has the percentage been increasing?

Mr. OSIAS. There has been a gradual increase. In 1927 we furnished slightly over 8 per cent of the total consumption.

Senator SHORTRIDGE. Answering the question of Senator King, there is other land which is susceptible of cultivation, and which may hereafter be cultivated?

Mr. OSIAS. Yes, sir.

Senator SHORTRIDGE. And devoted to the raising of sugar cane?

Mr. OSIAS. Yes.

But the statement of Secretary Alunan will show you the obstacles in the way of unduly increasing the production of sugar.

Now, if I might be permitted to do so, I would like to resume my testimony at the point where I left off when I was speaking of the opposition with respect to this proposal to restrict our exports. And I would like to take this opportunity to say that we are grateful that several chambers of commerce in this country have spontaneously adopted resolutions against restriction. The Philippine business men have gone on record by a formal resolution, approved last February.

In brief, the Philippine business men representing agricultural and industrial interests in convention assembled in Manila last February adopted this resolution, summarized under three points.

First, that the commercial relations between America and the Philippines should be founded upon the basis of free and mutual reciprocity.

Second, that whatever action may be taken by the United States Congress affecting the Philippines deviating from so elemental and fundamental principle of natural right would mean an act of injustice toward the Filipino people forcibly linked with its sovereignty; and,

Third, that the violation of rights so sacred which are inalienable to the Filipinos as a people can only have a justification through the absolute and complete liberation of the Filipino people.

I would like to call particular attention to this fact, Mr. Chairman, because there have been statements rather loosely made that we have ceased of late to advocate our freedom. But here you have Filipino business men, precisely at the time we were supposed to have ceased, approving resolutions not only against these proposed restrictions or the levying of duties on our products but I will file here the resolution they adopted on the 9th day of February, 1929, in favor of the liberation of the Philippines.

Senator SACKETT. How many people were present when that resolution was passed?

Mr. OSIAS. Approximately 500 or 600 representatives. Secretary of State Stimson, in a document, took particular pride to point to that convention as an achievement in the economic field.

Now, Mr. Chairman, and gentlemen of the committee, my appeal is that if we can not make this law more liberal or more truly reciprocal we, at least, maintain the provisions now in the pending bill as approved by the House of Representatives and as it is contained in this tariff act of the United States.

We believe that this is the only ethical position to take before the granting of Philippine independence, which America has solemnly promised, and which is so earnestly desired by the Filipinos.

Now, to close, I am going to say a few words to show the views of the Filipino people, wherein the real solution lies, and I want to be brief and clear and say that I think I reflect the views of my people. The tariff question is but a detail of a bigger, more fundamental question affecting American-Filipino relations. We will continue arguing this question of readjustment of relations, Mr. Chairman, with all the attendant vexations and provocations as long as America's promise of independence is unredeemed.

We recognize that this particular session of Congress has been called for specific purposes, purely economic and domestic, in nature, to grant farm relief and to readjust the tariff. But I trust, as a representative of the people of the islands, that after the disposal of these two pressing domestic questions, the tariff and agricultural relief, the genius and the talent of the United States Congress will be directed to the permanent, just, and final settlement of a problem which vitally affects 120,000,000 people of continental United States and 13,000,000 people of the Philippine Islands.

Mr. Chairman, I do not wish to detain you much longer, but I would like to be permitted now to make a few remarks in regard to the insinuations made yesterday before this committee, that the Filipinos appear to be insincere and hypocritical in expressing the desire for the freedom of their country.

I say that an accusation so ruthless is not merited by our people.

Our history shows the consistency and the continuity and the devotion of the Philippine people to this ideal of independence.

When Magellan and his forces invaded the Philippine Islands in the sixteenth century, the people of Mactan, even in those dark days, then demonstrated to the world their resistance against the imposition of foreign power unsolicited by them. The monument to Magellan which stands on the island of Mactan is not only a monument to the memory of an intrepid navigator but shows the devotion of our people to the ideal of freedom and independence. So all through the centuries of oppression, of misery, and of blood, Mr. Chairman, Philippine history shows that there is no insincerity, there is no hypocrisy in our demand for independence. That history speaks eloquently: We want independence.

During the period of cooperation with this liberating nation which followed, it can not possibly be justly said that our people voiced their desires for independence but in thier hearts nursed contrary desires.

I ask you, gentlemen of the committee, to be sponsors of the solution of this question after the disposal of these two domestic questions. And you will see, when you grant us our freedom, which America has so solemnly promised, that we will be among the happiest peoples of the world. You will then see a better demonstration of our appreciation and love for the coming of the Americans. We will then be more convinced than ever that America was indeed not a conquering nation but a liberating nation.

I say again, in reply to these unjustifiable accusations against us, Mr. Chairman: It can not be true that we say we want independence, but pray we will not get it. Sir, our country is too small for so great an infamy.

Mr. Chairman, I ask permission to file a brief supplementing my oral statement.

Senator SMOOT. I notice in this morning's Post, in an article sent out by the Associated Press referring to this same matter of which you are speaking, these words:

> Roxas object particularly to testimony by John M. Switzer, of New York, representing the Philippine-American Chamber of Commerce, that the Filipinos wanted independence as a principle but were praying they would not get it.

The way this is reported here I am given credit for the thought that this is the Philippine position, which, of course, is not the case.

Mr. OSIAS. On behalf of the Philippine delegation, I want to express our appreciation of Senator Smoot's disavowal of the sentiments attributed to him.

Senator SMOOT. That is what I did do.

(Mr. Osias submitted the following brief:)

BRIEF OF HON. CAMILO OSIAS, RESIDENT COMMISSIONER FROM THE PHILIPPINE ISLANDS

THE TARIFF PROVISIONS AFFECTING THE PHILIPPINES

Mr. Chairman and Gentlemen of the Committee, the portion of the tariff measure which is of greatest interest to the Philippine Islands is section 301, under Title III, which is as follows:

"There shall be levied, collected, and paid upon all articles coming into the United States from the Philippine Islands the rates of duty which are required to be levied, collected, and paid upon like articles imported from foreign countries: *Provided*, That all articles, the growth or product of or manufactured in the Philippine Islands from materials the growth or product of the Philippine Islands or of the United States, or of both, or which do not contain foreign materials to the value of more than 20 per centum of their total value, upon which no drawback of customs duties has been allowed therein, coming into the United States from the Philippine Islands shall hereafter be admitted free of duty: *Provided, however*, That in consideration of the exemptions aforesaid, all articles, the growth, product, or manufacture of the United States, upon which no drawback of customs duties has been allowed therein, shall be admitted to the Philippine Islands from the United States free of duty: *And provided further*, That the free admission, herein provided, of such articles, the growth, product, or manufacture of the United States, into the Philippine Islands, or of the growth, product, or manufacture, as hereinbefore defined, of the Philippine Islands into the United States, shall be conditioned upon the direct shipment thereof, under a through bill of lading, from the country of origin to the country of destination: *Provided*, That direct shipments shall include shipments in bond through foreign territory contiguous to the United States: *Provided, however*, That if such articles become unpacked while en route by accident, wreck, or other casualty, or so damaged as to necessitate their repacking, the same shall be admitted free of duty upon satisfactory proof that the unpacking occurred through accident or necessity and that the merchandise involved is the identical merchandise originally shipped from the United States or the Philippine Islands, as the case may be, and that its condition has not been changed except for such damage as may have been sustained: *And provided further*, That there shall be levied, collected, and paid, in the United States, upon articles, goods, wares, or merchandise coming into the United States from the Philippine Islands a tax equal to the internal-revenue tax imposed in the United States upon the like articles, goods, wares, or merchandise of domestic manufacture; such tax to be paid by internal-revenue stamp or stamps, to be provided by the Commissioner of Internal Revenue, and to be affixed in such manner and under such regulations as he, with the approval of the Secretary of the Treasury, shall prescribe; and such articles, goods, wares, or merchandise shipped from said islands to the United States shall be exempt from the payment of any tax imposed by the internal revenue laws of the Philippine Islands: *And provided further*, That there shall be levied, collected, and paid in the Philippine Islands, upon articles, goods, wares, or merchandise going into the Philippine Islands from the United States, a tax equal to the internal-revenue tax imposed in the Philippine Islands upon the like articles, goods, wares, or merchandise of Philippine Islands manufacture; such tax to be paid by internal-revenue stamps or otherwise, as provided by the laws of the Philippine Islands; and such articles, goods, wares, or merchandise going into the Philippine Islands from the United States shall be exempt from the payment of any tax imposed by the internal revenue laws of the United States: *And provided further*, That in addition to the customs taxes imposed in the Philippine Islands, there shall be levied, collected, and paid therein upon articles, goods, wares, or merchandise imported into the Philippine Islands from countries other than the United States the internal-revenue tax imposed by the Philippine Government on like articles manufactured and consumed in the Philippine Islands or shipped thereto for consumption therein from the United States: *And provided further*, That from and after the passage of this act all internal revenues collected in or for account

of the Philippine Islands shall accrue intact to the general government thereof and be paid into the insular treasury."

As a representative of the Philippine people, I respectfully ask that this section which embodies provisions already included in the tariff acts of 1913 and 1922 be at least continued while the American flag waves over the Philippine Islands

PROVISIONS MORE ADVANTAGEOUS TO THE UNITED STATES

While I am not here to present a particular complaint, I deem it my duty to invite the attention of the committee to the fact that these provisions, which have been in previous tariff acts and which are here reproduced, are really disadvantageous to the Philippines. It should be borne in mind that the organic act under which the Philippines has been governed since 1916, specifically provides that "the trade relations between the Islands and the United States shall continue to be governed exclusively by laws of the Congress of the United States." (Sec. 10.) In fact the Congress of the United States by the same law "reserves the power and authority to annul" all laws enacted by the Philippine Legislature. In addition to these positions of decided advantage on the part of the United States in American-Philippine tariff relations, the present measure places the Philippines in a position of further disadvantage because, in order that Philippine products may be admitted free to the American market, they must "not contain foreign material to the value of more than 20 per centum of their total value." No such qualification is placed upon American products admitted free to the Philippine Islands.

NATURE OF CHANGES, IF ANY, TO BE MADE

If there is any change to be made it should not be in the nature of further increasing the discriminatory provisions as advocated by those who are anxious to see duty levied or limitation placed upon Philippine exports to the United States. Rather it should consist of making the trade arrangement between the two countries absolutely reciprocal. In other words, since there is no provision that American articles to be admitted free to the Philippine market must "not contain foreign materials to the value of more than 20 per centum of their total value," this qualification with respect to Philippine products coming to the American market embodied in the clause "or which do not contain foreign materials to the value of more than 20 per centum of their total value" should be eliminated to make the law absolutely just and equitable.

LIMITATION OR DUTY UPON PHILIPPINE EXPORTS UNJUST

To accede to the demands of our adversaries to place a limitation upon the amount of Philippine sugar that may be admitted free or to levy duty upon other Philippine products, we contend, is eminently unfair, unethical, and unjust, and it is inconceivable how America, while retaining the Philippines, can take a step which would be a complete reversal of the policy she has announced from the beginning of American administration in the Philippine Islands. It can not fail to affect America's prestige in the eyes of the peoples of the world, especially those of the Orient. Frankly, we, the Filipinos, utterly fail to see justice in such a step unless it is preceded by a grant of complete tariff autonomy to the Philippines.

EFFECT OF AGITATION ON AMERICAN CAPITAL

I would like to take up at this juncture one effect of the proposals which are discriminatory to the Philippines. In the past there was a disposition from certain quarters, to blame the Filipinos because American capital was not flowing in great amounts to our country. With all due respect, but with the frankness which the circumstances demand, I would like to say that there can be no justification for so groundless a charge. In the first place the uncertainty of the political status of the Philippine Islands is in itself discouraging to capital. This uncertainty has been further accentuated by mere presentation of measures tending to make unstable the economic situation in the islands. The agitation to levy duty or place limitations upon Philippine products coming to this country while American goods of all kinds are poured into the Philippine market absolutely free and without limit will further tend to discourage the investment of legitimate capital in Philippine enterprises. Americans will have nobody but themselves to blame if in the future American capital will prove timid about going to the Philippines.

OPPOSITION OF PHILIPPINE LEGISLATURE, BUSINESS MEN, AND OTHERS

The Philippine Legislature has gone on record strongly against "any legislation tending to limit the free entry of Philippine sugar into the United States during the continuance of the present political relations between the two countries." Members of our legislature irrespective of parties took this stand in a formal resolution duly approved at the last session. Filipinos and Americans resident in the Philippines are united in their opposition to the movement calculated to deviate from America's policy and discriminate against Philippine trade. Several chambers of Commerce here and in the Philippines have likewise expressed their disapproval. Philippine organs of public opinion have voiced opposition. The House of Representatives of the American Congress by its approval of the present measure containing section 301 is on record as being categorically opposed. Filipino business men representing agricultural, commercial, and industrial enterprises in convention assembled unanimously resolved last February, to voice their sentiment in these words:

"1. That the commercial relations between America and the Philippines should be founded upon the basis of free and mutual reciprocity;

"2. That whatever action may be taken by the United States Congress affecting the Philippines deviating from so elemental and fundamental principle of natural right, would mean an act of injustice toward the Filipino people forcibly linked with its sovereignty; and

"3. That the violation of rights so sacred which are inalienable to the Filipinos as a people can only have justification through absolute and complete liberation of the Filipino people."

It is therefore hoped, and in all earnestness I petition that the Committee on Finance of the United States Senate shall at least maintain the provisions affecting the Philippine Islands in the present measure and continue the trade relations which have existed for years between the two countries while America's promise of emancipating us continues unredeemed. This, I contend, is the only fair and proper attitude to take while we are denied that free and independent existence which America so honorably promised and which my people so dearly covet.

RESOLUTION EXPRESSING THE SENTIMENTS OF THE FILIPINO BUSINESS MEN IN FAVOR OF THE LIBERATION OF THF PHILIPPINES

Whereas, it has been said repeatedly that only the politicians clamor for Philippine independence;

Whereas, this is the first time that the Filipino business men, as a body, have the opportunity to express their sentiments regarding this matter:

Therefore be it resolved to express, as it is hereby expressed, that the Filipino business men in national convention assembled, strongly favor the national aspiration for independence and are ready to cooperate in the common task for the liberation of the country.

Adopted unanimously in Manila this the 9th day of February of 1929.

Approved:

TEODORO R. YANGCO, *President.*

Attested:

PEDRO J. OCAMPO, *Secretary.*

STATEMENT OF VICENTE VILLAMIN, NEW YORK CITY, REPRESENTING PHILIPPINE INTERESTS

(The witness was duly sworn by the chairman of the committee.)

Mr. VILLAMIN. Mr. Chairman, dizzied by the touching, the tearful, the grandiloquent speech of Speaker Roxas, I trust that I may be permitted to proceed to the end of my brief statement without interruption to keep my train of thought from derailing.

Gentlemen, free trade exists between the United States and the Philippines. That is the culmination of a premeditated and deliberate American policy of tariff assimilation predicated upon a program of overseas commercial development and postulated upon the fact of American sovereignty in the Philippines.

Modification of the status quo is now being proposed in the form of limitation of imports from the Philippine Islands.

The question before us is this: Is the United States going to reverse her economic policy toward the Philippine Islands?

We are here to assist in the equitable determination of this question, which is so important and so vital to the Filipino people.

We conceive the constitutional lay-out of the question to be as follows:

The Congress of the United States has the absolute, the sovereign, and the plenary power to tax or to restrict the importation of goods from the Philippine Islands into this country. The reason for this is that the interstate commerce provision of the Constitution is not in operation in the Philippines due to the fact that the Constitution of the United States did not follow the flag thither.

The Congress of the United States has no constitutional power to restrict or to tax the exportation of American goods from the United States to the Philippines, or to any other country, for that matter.

Correlatively, the Philippine Government, under the organic act granted by the Government of the United States, has no authority to tax or to restrict the importation of American goods into the Philippine Islands.

From these premises it is deducible that the only way to bring about limitation by law is to effect a one-sided rearrangement of the commercial relations existing between the two countries, and that would be patently unjust and unfair. To have limitation on importations and exportations that would be operative on both countries the Philippines should be granted the treaty-making power, which obviously would be paradoxical in view of the political status of those insular possessions.

We conceive the politico-legislative layout of the question to be as follows:

In the treaty of Paris in 1898 the Congress of the United States enlarged its territorial jurisdiction to include 114,000 square miles of territory—among other territories, 5,000 miles across the Pacific, the Philippine Islands.

We concede that the first duty of an American Congressman is to his own congressional constituency, but we believe that the first duty of the Congress of the United States as a political entity acting organically is to all the constituencies under the American flag, irrespective of location. The flag flying over them eliminates State lines and territorial lines when it comes to basic national questions like the tariff which bears international connotations.

The question of tariff relationship between the United States and the Philippines partakes in a measure of international action and significance.

I wish to be permitted to say something about commodities. We especially refrained from discussing our ideas at the sugar hearings, if I may recall the fact to Chairman Smoot.

With regard to coconut oil—and I will be brief here—we wish to say the following:

It is true that coconut oil displaced cottonseed oil from the soap industry. But in doing so we sent them to a better field, to the field of edible industries where the cottonseed oil commands better prices and enjoys more stable conditions. In other words, we have kicked that commodity upstairs.

As to the alleged increasing use of coconut oil in the margarine industry, let me say that of all the oils utilized for food purposes only 1 per cent is coconut oil. If that is the kind of competition to be the subject of ruthless proscription on the part of the United States, then the tariff law is being grossly prostituted.

The exclusion of Philippine coconut oil would not mean the elimination of that product from the United States because what the Philippines could not send here would be supplied by the mills on the Pacific coast. That means that with free copra and a more efficient organization, the continental industry in the United States could offer a much more formidable competition if any there is, with cottonseed oil and dairy products than could the Philippine industry.

The limitation on manila rope has been suggested. But the representative of the Cordage Institute said before the subcommittee that in case Philippine rope competition becomes more severe they would move their machinery and plant to the Philippine Islands and make their rope there.

As I stated upon that occasion, I wish to anticipate our welcome to them in the Philippine Islands. That will help in carrying out the program of economic development of the Philippine Islands, which will be of great assistance and benefit to the Filipinos.

As to sugar, a well informed gentleman from the Philippines, Mr. Rafael Alunan, specialist on the subject, and much better informed than myself, will discuss the question latter in these hearings.

I now wish to devote my time to the proposal of Mr. Holman about collecting duties on Philippine products and returning the duties thus collected to the Philippine Treasury.

Mr. Chester Gray asked that Philippine products be placed upon strictly foreign basis. Mr. Holman, however—and these two gentlemen are maintaining, as we have observed, a Damon-and-Pythias relationship for the purpose of effecting a plan of antagonistic cooperation against certain Philippine products—has receded from that position by saying that the duties collected upon Philippine goods should be returned to the Philippine Government. Mr. Holman is more generous than Mr. Gray.

In the first place, that proposal is based upon the very false premise that we can import any of those tariff-protected products to the United States at all, if we have to pay the duty. If you take away the protection from our sugar, from our tobacco, from our coconut oil, from our dessicated coconut, and from other products, those industries would be crippled and disabled to produce with profit.

I wish to make a little correction right here to Speaker Roxas' statement—that sugar is the only protected product that would suffer. To mention only one product—cigars. Our cigars are protected by a duty of $4.50 per pound plus 25 per cent ad valorem. So if we have to pay the duty on the 5-cent Manila cigar, which must be the object of the yearning of Vice President Marshall when he was asked about the greatest need of this country, it could not be sold for less than 25 cents. It can not be sold at all unless we mesmerize the American smoker. That industry would be completely destroyed if placed on a full-duty basis. Going back to the Holman proposal; its second fallacy is this: If the Philippines want to continue the exportation of goods to the United States, what they can do is return to the producer and exporter that duty collected in the United

States, which the government of the Philippine Islands, I take it, will have authority to do. That would defeat absolutely and completely the intent of the Holman proposition.

I wish to assure the committee that in opposing the limitation on Philippine products, especially sugar, we are not preparing to embark upon a program of great expansion in the Philippine Islands. We are fighting for a principle.

The free trade has been mutually beneficial. Mr. Holman makes a big mistake in saying that free trade is based upon sentimental reasons only. The fact is it is based upon dollars-and-cents reciprocity.

Now, gentlemen, I wish to end my brief statement by saying that no new matter having been raised at these hearings by our adversaries which we have not successfully controverted before the House Ways and Means Committee, we hope that the action of the Ways and Means Committee in omitting any provision pertaining to the Philippines in the tariff act, approved by the House of Representatives, may be the forecast of the action to be taken by this committee and the Senate upon this great piece of legislation which will carry forever the honored name of the Senator from Utah, Mr. Smoot.

I wish to say in recapitulation that the proposal of limitation under the circumstances obtaining would be politically inconsistent and morally inartistic.

BRIEF OF THE UNITED STATES BEET SUGAR ASSOCIATION

LIMITATION OF DUTY-FREE IMPORTS FROM PHILIPPINES

To the Senate Finance Committee:

Consideration of some change in the trade relations between the Philippine Islands and the United States was urged repeatedly in testimony before your committee.

This need arises from the competition forced upon American producers in the United States market by the islands' products, particularly vegetable oils and sugar. In such competition the Americans here are at a disadvantage owing to the much lower costs in the islands. Philippine production of these commodities is increasing and the possibilities of expansion there are very great.

No question exists of the right of Congress to limit the duty-free entry of Philippine goods. Such action, in fact, would merely restore a provision that has appeared in previous tariff measures. This is fully set forth in our brief submitted to the House Ways and Means Committee, commencing on page 3331 of its printed hearings.

The question of moral obligation toward the Philippines is practically the only issue involved. There is no denying the fact that the Islands can produce vastly increased amounts of sugar. It becomes the duty of Congress to decide whether these unrestricted amounts shall enter the United States in competition with the domestic industry to the latter's detriment.

INDEPENDENCE OUR PLEDGE

Any discussion of moral obligation must take into account our declared policy toward the islands. This declaration—to grant them independence ultimately—completely distinguishes the status of the Philippines from that of Porto Rico and Hawaii. The Philippines are not an integral part of the United States. The island government itself holds this view. Out coastwise shipping laws are not applied to the Philippines, nor our prohibition enforcement acts. The islands merely desire to obtain the advantages of free trade with this Nation while preparing for independence.

It is unsound and unfair to permit the Philippines to develop great industries based upon economic advantages in free trade. Under independence the Island industries must pay tariff duties to enter this market. The way for the Filipinos to insure the success of political independence is to make themselves increasingly

independent of the United States economically. Continuation of the present course can only result in making the Filipinos increasingly dependent upon this country, with inevitable postponement of liberty.

When the islands are granted their freedom they will naturally be required to find new markets for a part of their sugar and other products which now come into the United States free of duty. They should consequently be preparing themselves for this eventuality. Inasmuch as the Filipinos do not seem willing to take this most sensible step by a voluntary limitation of competition with American producers in the United States market it is up to Congress to impose these limitations. By such action Congress would show good faith in its pledge to grant ultimate independence to the islands.

END FAVORITISM TO PHILIPPINES

The American policy to date has been unduly favorable to the Philippine sugar industry. It is time the islands were placed on a parity rather than in a preferred position over the domestic sugar industry. The most practical method, while independence is deferred, is to discourage the growth of increased competition from the Philippines based on free trade. Thus the consummation of their independence will be brought nearer in accordance with the American Government's pledge.

When the United States took possession of the islands the sugar production of the Philippines was 94,608 tons. In 1928 the production was 667,657 tons. Prior to 1902 full duty was assessed against all imports of Philippine sugar into this country. On March 8, 1902, by act of Congress, the rate of duty was reduced to 75 per cent of full duty. The tariff act of August 5, 1909, provided for admission duty free of not to exceed 300,000 gross tons of Philippine sugar in any one fiscal year.

On October 3, 1913, the Underwood Tariff Act repealed limitation. In 1913 the production of sugar in the Philippines was slightly over 400,000 tons. It is now approaching 700,000 tons. The American domestic industry, hampered by free and concessionary sugar imports, has enjoyed no such rate of growth.

WILL CONGRESS FOSTER ANOTHER CUBA

In Cuba the United States Congress has a sample of what the continued unfair encouragement to Philippine production may do to the American domestic sugar industry. We gave Cuba a 20 per cent preference in the United States market beginning in 1902. Her production in that year was less than 1,000,000 tons of sugar. In the season just closed Cuba made 5,200,000 long tons.

The Philippines can produce sugar as cheaply as can Cuba. With free trade favoring the marketing of the Philippine output in the United States the low costs there will induce American and foreign capital to pour into the islands for sugar exploitation.

Cuban overproduction is responsible for the plight of our industry to-day. Congress should guard against "another Cuba" in the Philippines. There, indeed, is a worse threat to our farm prosperity because Philippine imports enter duty free while Cuba pays some duty.

Cuba's difficulty to-day is overproduction of sugar, "putting all its eggs in one basket." Cuba is a one-crop country, the acknowledged worst type of agriculture. Would congress consign the Philippines to a like fate?

The Philippines are capable of greatly increased sugar production, as will be proven by undoubted authority below. If the United States by its tariff program encourages this to take place in the face of our intention to grant the Filipinos their independence the islands will thus be encouraged to commit agricultural and financial suicide. They will have built up a great sugar industry on a policy of free trade with the United States only to be placed, when independence is granted, on a duty-paying basis. The industry there could not withstand such a drastic change. It would be more foresighted to prevent such a calamity in the very beginning.

PHILIPPINE SUGAR FUTURE INDICATED

The late Governor General Leonard Wood, upon his return from the islands, gave an interview published in the Post-Intelligencer of Seattle, Wash., in which he stated:

"The Philippines will in the near future be, to a far greater extent than at present, the source of some of the world's most important raw materials—rubber and sugar, in addition to hemp, tobacco and copra. The islands produce less than 1,000,000 tons of sugar now, but we can produce 5,000,000 easily."

General Wood served in the Philippines many more years than Governor Stimson, now Secretary of State. General Wood knew the islands thoroughly. His opinion is not to be taken lightly. But leading Filipino authorities themselves uphold General Wood's estimate and give complete refutation to Secretary Stimson's testimony before the House Ways and Means Committee that sugar production in the islands is incapable of much expansion.

The Hon. Pedro Guevara, resident commissioner for the Philippines, now living in Washington, D. C., stated:

"The Philippine Islands, at the present time, have under cultivation for sugar a large area of land, and could fairly spare ample additional acreage for the same purpose. In a word, the possibilities of the Philippine Islands are such as to produce sufficient sugar to supply at least the major portion, if not the whole demand, of the American sugar market."

It is to be presumed that the official Filipino spokesman in the United States knows more about conditions in the islands than Secretary Stimson, who testified before the House Ways and Means Committee after a brief service on the islands.

Testimony on the great capacity of the islands for increased sugar production is almost endless, and coming from the Filipinos themselves who know best what their territory can do.

"Actually occupying the ninth place in the production of sugar these islands are destined to be one of the greatest sugar-producing countries of the world." This comes from Manila correspondence printed in the Louisiana Planter and Sugar Manufacturer March 16, 1929.

The Central and Planters' Sugar News of Manila, published by the Philippine Sugar Association, should know something about conditions in the islands. In May, 1924, this publication stated:

"Few countries in the world so potentially resourceful are so little developed as are the Philippines. The soil has barely been scratched by the plow, and another 10 years of development at the rate now being set by Philippine sugar producers will soon place us in a class with Java in so far as the annual production of sugar is concerned.

SUGAR DEVELOPMENT IN PHILIPPINES UNDER WAY

While Secretary Stimson and the spokesmen of the Philippine lobby in Washington were telling the House Ways and Means Committee that land laws, limited cane areas, and lack of labor were holding back Philippine sugar development that growth was under way in the islands. It is in progress to-day, and it will continue unrestricted with tremendous injury to the domestic sugar industry of the United States if Congress does not take steps to save the Filipinos from themselves and at the same time save the American sugar producers here at home.

Manila correspondence in Facts About Sugar of May 25, 1929, stated:

"It is reported that Central Cotabato (Inc.), which was organized several years ago to engage in agricultural, industrial, and business activities on the island of Mindanao, is about to proceed with the erection of a sugar central. The company was originally capitalized at $500,000, but at a recent meeting of the stockholders it was voted to increase this amount to $5,000,000 in order to provide funds necessary for the extensive development contemplated.

"Considerable progress has already been made by Central Cotabato and it has some 30,000 hectares of land, divided into 10 plots owned by subsidiary agricultural corporations.

"With sufficient capital to develop the lands and build a large-capacity sugar mill, it might easily become the largest sugar producer in the islands."

LAND LAWS NO BAR TO GROWTH OF PHILIPPINE SUGAR INDUSTRY

Secretary Stimson and the other Filipino advocates have stressed the claim that restrictive provisions in the laws of the islands limit to 2,500 acres the amount of public land which a corporation may acquire or hold. How can that claim stand in the face of the statement quoted above that one company alone has some 30,000 hectares of land tributary to its mill and that by subsidiary agricultural corporations all the land needed for a cane supply for a sugar mill of almost any proportions can be assured.

Moreover, there has just come to the United States Prof. J. Z. Valenzuela, of the University of the Philippines at Manila. He is quoted in the Denver (Colo.) Post of June 17, 1929, as saying:

"In the Philippines we had a law limiting ownership of land by corporations. By an amendment the legislature this year removed that limitation."

Whether or not this report is accurate does not matter, because there is evidence that the so-called restrictive land laws are no bar to the development of the Philippine sugar industry.

The Manila correspondence in Facts About Sugar, of May 25, 1929, gave direct testimony on this issue, as follows:

"There are beyond doubt many localities in the island suitable for sugar cane culture where labor is plentiful and land can be obtained at a fair valuation. The corporation laws recently enacted enable a corporation to own 1,024 hectares [1] of land and to develop additional lands under a homestaed arrangement, the corporation furnishing the capital for the home steaders and buying their crops."

"Under this law it is possible for a company to have 20,000 hectares under its control for the production or agricultural products, which the company can either resell or use to manufacture a finished product.

"One corporation has been formed under this law by Filipino capital, and it is felt in the islands that as soon as the political status is defined more American capital will enter the Philippines."

That there has been some significant change in the Philippine land laws can not be doubted from these reports. Here is another, in the Manila correspondence of May 4, 1929, published in the Louisiana Planter and Sugar Manufacturer of June 8, 1929:

"Fourteen thousand hectares of the public land on the island of Mindanao have been set aside by the Governor General, upon advice of the secretary of resources and agriculture, for a project which will grow pineapples. This project is the first one to come in under the recent change in the public land laws."

Incidentally, the same publication carries a report giving the net profits of the San Carlos Milling Co. in the Philippines, a sugar plant, as $666,220 on an estimated crop of 30,500 tons, or $21.84 per ton, for the season ended December 31, 1928. If true, this rate of profit is greater than anything known in the beet or cane sugar industry of continental United States for the year 1928.

LABOR SHORTAGE A MISNOMER

The Filipino spokesmen talk of a "lack of labor" in the face of the islands' dense population. Hawaii has no great difficulty finding in the Philippines ample labor for shipment to Hawaiian cane fields. Possibly, if the Philippine sugar cane planters paid as attractive wages as the laborers there are able to obtain in Hawaii, this so-called lack of labor would disappear. Certainly it is incomprehensible how surplus workers can find their way with comparative ease to Hawaii and still be unavailable for cane-field employment at home in the Philippines.

AMERICAN CAPITAL EAGER TO EXPLOIT CHEAP PHILIPPINE SUGAR

"Reports have recently appeared in the local press," states Manila correspondence in Facts About Sugar for May 25, 1929, "stating that interests in the United States with some $50,000,000 at their command are desirous of investing in the sugar industry in the Philippines, and the name of the Philippine Trust Co. is mentioned as having been instrumental in interesting prospective investors in certain proposed centrals."

Sugar can be produced in the Philippines at a cost comparing favorably with the lowest in the world. That fact alone is sufficient assurance the capital will flow into sugar production on the islands if Congress does not serve notice of its intention to grant the Filipinos their independence at an early date or limit the duty-free entry of these sugars into the United States.

Americans quite recently have been approached by financial interests seeking the development of Philippine sugar production. It is common knowledge in the sugar trade that postponement of independence or continuation of the Philippine's free trade advantage in the American market will result in a marked increase in American capital investments on the islands, particularly in sugar production.

With American capital will go American energy and efficiency. Legislation, if any in existence to-day restricts the islands' development, will be changed to fit the desires of the new capital, as has been done in Cuba. And after American capital has poured into the islands for another decade or two does anyone suppose that this will further Filipino independence? We will then have another per-

[1] A hectare equals 2.4[illegible] acres.

manent bar to the development of a domestic sugar industry in continental United States.

It is for these reasons that our association recommends that sugar in excess of 500,000 tons imported from the Philippine Islands be made dutiable. The Islands are entitled to justice and fair play, but we should not place the interests and welfare of the Filipinos above the interests of the people of the United States.

Respectfully submitted.

UNITED STATES BEET SUGAR ASSOCIATION,
By STEPHEN H. LORE, *President.*

BRIEF OF A. M. LOOMIS, WASHINGTON, D. C., REPRESENTING THE TARIFF DEFENSE COMMITTEE

To the SENATE FINANCE COMMITTEE.

GENTLEMEN: After seven years of detailed study and work on the problem presented by the continued and steadily increasing competition of foreign fats and oils in the domestic markets, the tariff defense committee representing domestic producers begs to submit the following statement:

We believe this competition (fats and oils) is the most serious foreign competition faced by American agriculture.

Adequate and effective tariffs on animal, marine, and vegetable fats and oils and oil bearing materials are needed to permit a fair and living price for American produced fats and oils and to foster the development of new vegetable oil industries in the United States.

Practically every farmer in the United States in an actual or potential producer of animal or vegetable oil and fat and will benefit by an effective tariff and will suffer in comparison unless such effective tariff is enacted. Producers of fish oils have an equally clear claim to your attention.

The competition of imported oils and fats in not only with domestic oils and fats of the same name, but generally with many different named but very similar commodities so that a completely harmonious schedule of duties is required. Such a schedule has been worked out and is presented to your committee in the general brief of Charles W. Holman and associates, which is hereby indorsed.

Coconut oil is now the dominant imported oil in the domestic markets. It competes pound for pound with most cottonseed oil and many other oils. Its price is declining, now down nearly to 6 cents per pound and the imports are steadily increasing. At this price of coconut oil any equity which the cotton farmer has had in his cottonseed has been destroyed, while the fish-oil industry and other domestic-oil industries of competitive character are equally endangered.

Any schedule which may be written will be useless, therefore, unless it contains effective duties against copra and coconut oil produced in the Philippine Islands. The beneficiaries of free Philippine coconut oil are the importers, the refiners and the soap makers. Filipino labor does not benefit thereby, and American producers are being ruined. The issue is not "our sacred duty to a subject people" nor "international good faith" but "our sacred duty to our own people" and "national good faith to agriculture." The issue is protection to the American producer of fats and oils or free raw material for the soap maker.

A tariff on coconut oil, with a 35 per cent differential in favor of the products of the Philippine Islands will not seriously endanger Filipino interests and will benefit every American farmer.

This is our brief on this subject.

For the committee:

A. W. LOOMIS.

COUNTERVAILING DUTIES

[Sec. 303]

STATEMENT OF HON. MARION DE VRIES, WASHINGTON, D. C., REPRESENTING THE TANNERS COUNCIL OF AMERICA

Mr. DE VRIES. The next section about which I wish to say a word, and after that word ask that my brief be printed in order to save the time of the committee, is section 303, paragraph 326.

The amendment which I have included in my brief for the consideration of the committee is an amendment which extends the provisions of section 303 to what the President may deem too high and unreasonable rates of duty.

At the present time paragraph 303 empowers the Secretary of the Treasury, when any foreign nation imposes a bounty or grant upon goods exported to the United States, to countervail that effect upon our commerce by determining a rate of duty which will equalize the same and proclaim the same, whereupon and whereafter that duty is assessed by the collector of customs. That provision of the law has been in our tariff laws since 1890.

My amendment which is suggested to the committee extends that power, in addition to bounties and grants, to whenever any foreign nation imposes upon the imports of the United States unusually high duties, such as the President may consider unreasonable, that the President may likewise countervail those rates of duty by ascertaining and proclaiming such a rate of duty as will equalize the same.

Senator SMOOT. That was your position in 1922, was it not, Judge?

Mr. DE VRIES. Yes, sir; it was.

I submit with this brief authorities of the United States Supreme Court supporting the same.

Senator KING. Then, if that view were sound and we imposed duties upon imports which other nations considered unreasonably high, what would you say as to the king or dictator or president having similar authority, without any opportunity for presentation of our views or countervailing the testimony which was offered in support of that measure?

Mr. DE VRIES. I assume in these matters, Senator King, that there is always opportunity of exchange of views between the different nations. That was true when France, in the recent difficulties with the United States, proposed to put into force and effect against the United States certain high rates of duty, her maximum provisions.

If I read the newspapers of to-day correctly, practically all European countries are gradually raising their rates of duty from day to day in anticipation of the rates of duty that might be enacted in this bill.

Senator REED. But before you leave this problem, Judge De Vries, I wish you would straighten me out on something that has troubled me. I can understand a tariff for revenue, and I can understand a protective tariff; but upon what theory of tariff making can we justify retaliatory duties that bear no relationship to the different costs of production?

Mr. DE VRIES. I assume, Senator Reed, it is upon the basis that it is such a regulation of commerce as will preserve the commerce of the United States.

Senator REED. I do not doubt the power of Congress to do it, but I would like to have your thought as to the wisdom and the moral justification for doing it. We do not need it to protect American labor. Is it a fair thing to the consumer?

Mr. DE VRIES. My thought, Senator Reed, is that these statutes are statutes in repose. They are statutes which give the President of the United States the power, when some other nation, as other nations seem to be preparing to do, are proceeding by their legislation to shut out our commerce from their markets, and, therefore, limit the markets of the United States—in a measure to retaliate and compel them to open their markets.

I assume also that if there is such a power in the Chief Executive of the United States it is preparedness in time of peace.

When foreign nations realize that if they put duties upon our exports such as will exclude us from their markets, that there is the power in the President of the United States to raise our duties as against their imports into the United States, they will be slow to do that, at least much slower than if the President of the United States were not equipped with such a retaliatory power.

I therefore regard it as a statute in repose. It is preparedness on the part of the United States in time of peace, just as much as we should be prepared in time of war. And the greatest instrument in opposition to war is preparedness.

Senator SMOOT. You said foreign countries were preparing to do this. Have you noticed the changes they have made in the duties in the last two years?

Mr. DE VRIES. I have; and particularly the last few weeks. I read every day in the papers that they are doing it. In fact that movement commenced and has been going on since 1925 or earlier.

Senator SMOOT. I go back two years; and I thought I knew what was going on in the way of tariffs in foreign countries, but from investigations it seems I knew very little of what was taking place.

Senator KING. Of course, you understand what took place in 1922?

Mr. DE VRIES. Yes.

Senator KING. In our tariff law?

Mr. DE VRIES. Yes.

Senator KING. And in the Payne-Aldrich tariff bill. We have not exhibited any particular concern in other countries when we have been drafting our tariff laws, have we?

Mr. DE VRIES. I do not think we should, Senator King.

Senator REED. Judge De Vries, I am not criticizing paragraph 303. Countervailing duties provided there are merely to take care of bounties in foreign countries, and that goes to the cost of production there. I am not criticizing, but I am wondering how we can say to the world that a protective tariff that equalizes production costs here and abroad is sound policy, a domestic question in which we will not tolerate foreign interference, and having said to the world that it is sound policy propose to punish them if they apply that policy in their domestic affairs.

Mr. DE VRIES. No, Senator Reed; I think the theory to be entirely different. I take it to be a defensive one, that when some particular nation starts in by an exceptionally high rate of duty that excludes this country from their markets and at the same time does not exclude all other countries from their markets, it is making an attack upon

the commerce of the United States, and that in defense of our commerce we should have in our statutes such a provision as will arm and equip the President of the United States to meet such emergencies.

Senator GEORGE. Have we not guarded against that by the "most-favored-nation" clause in our treaties?

Mr. DE VRIES. If they observe the "most-favored-nation" clause in our treaties they would not enact such legislation against us. And if they did not enact such legislation against us this statute is one of repose and would not be called into action.

Senator GEORGE. You do not actually enter into a tariff war, but you prepare for it?

Mr. DE VRIES. Exactly.

Senator KING. When you impose rates, some of which go several thousand per cent ad valorem, do you think we can call the other fellow black when perhaps they may think our pot is rather dark, too?

Mr. DE VRIES. I think those individual cases should have to be considered individually, Senator, when they arise.

Senator Barkley. If any nations have violated the "most-favored nation" clause in our treaties don't you think it is the duty of the State Department to protest against that and negotiate for settlement, rather than for Congress to enter into retaliatory measures by undertaking to use a club over them?

Mr. DE VRIES. I do. And I think if when the Secretary of State protests we have some power behind us in the statutes whereby the President can back up the protest, so that it amounts to more than a bluff, our representations will be apt to be more successful.

Senator BARKLEY. That is a restatement of the expression as to the soft language and the big stick.

Mr. DE VRIES. I believe so.

Senator SHORTRIDGE. A very wise maxim.

Senator SIMMONS. Do I understand you are proposing that the President be vested with the power and authority to determine when a rate is imposed by a foreign country upon importations from this country, the question of whether that rate is retaliatory?

Mr. DE VRIES. Yes, sir; whether or not it is too high or unjust and unreasonable.

Senator SIMMONS. You would not want to vest him with the power of simply determining the question of whether the foreign rate was too high unless it was intended to be retaliatory, would you?

Mr. DE VRIES. Unjust and unreasonable toward our commerce, Senator.

Senator SIMMONS. If you vest him with that power he would have the power to increase the American rate whenever he held that the foreign rate was too high?

Mr. DE VRIES. Yes.

Senator SIMMONS. The foreign country ought to be permitted to determine for itself whether its rate is too high or not; but if the foreign country deliberately, recklessly, and admittedly imposed a tariff for the purpose of retaliation, then there might be no difficulty about your proposition?

Mr. DE VRIES. Yes.

Senator SIMMONS. But how would the President ordinarily distinguish between a very high foreign rate and a retaliatory foreign rate?

Mr. DE VRIES. Well, I suppose the fact that it was so high that it excluded our commerce from that country and did not exclude the commerce of any other country or did not apply to the commerce of any other country.

Senator SIMMONS. Right here now we are imposing rates that are intended to be so high as to exclude the products of foreign countries. Would you say that that is a retaliatory rate?

Mr. DE VRIES. I am not prepared to accept the premise as you state it, Senator.

Senator SIMMONS. You do not think we are fixing any rates that will be prohibitive?

Mr. DE VRIES. I would not be prepared to say yes or no to that question.

Senator REED. Havy you seen the tariff on peanuts?

Mr. DE VRIES. No, sir; I have not.

Senator BARKLEY. Has any other country fixed a tariff rate with special reference to the products of the United States? In other words, has it designated our country as one against which these rates shall apply and excepted others?

Mr. DE VRIES. Not in words, but in fact I think that has been the case.

Senator BARKLEY. That may be a matter of interpretation.

Mr. DE VRIES. Yes.

Senator BARKLEY. If they fixed a tariff rate on some product that is produced only in the United States, and high enough to keep it out, that may be a situation which we would provide for in a bill we would pass relative to products produced only in some one country. But if we adopted the recommendations of all the witnesses who have appeared before this committee, we would certainly enact some rates that would be prohibitive.

Mr. DE VRIES. Yes.

Senator BARKLEY. But I am wondering whether any country has fixed a tariff law with special reference to the United States and its products, and, if so, what country that is.

Mr. DE VRIES. I think at one time the Argentine fixed rates of duty that excluded the California fruits. That is, that law did not affect other countries like ours.

Senator KING. Then we had duties on the importation of cattle from the Argentine that did not affect any other countries.

Senator SHORTRIDGE. She continues to import them.

Mr. DE VRIES. That might happen.

Senator KING. It seems to me your position means that it takes away from Congress the power to fix tariff rates and delegates it to the President, and leaves it open to any importer or domestic manufacturer, or, in fact, anybody, to go to the President of the United States and conduct a very active propaganda with the State Department to get the President to raise the rates upon everything, upon the ground of retaliation, and you are going to have a commercial war the effect of which nobody can forecast.

Mr. DE VRIES. I submit the paragraph for the consideration of the committee. I drafted it in what I think is constitutional form, if they want to consider it.

Senator SHORTRIDGE. What is the power of the President now under existing law with respect to this subject matter?

Mr. DE VRIES. He has none.
Senator SHORTRIDGE. He has none?
Mr. DE VRIES. No, sir.
Senator SHORTRIDGE. And you wish to arm him with power?
Mr. DE VRIES. Yes, sir.
(Mr. De Vries submitted the following brief:)

BRIEF OF HON. MARION DE VRIES, WASHINGTON, D. C., REPRESENTING THE TANNERS COUNCIL OF AMERICA

SUGGESTING A COUNTERVAILING POWER IN THE PRESIDENT AGAINST UNJUST, UNEQUAL, AND DISCRIMINATORY RATES AGAINST OUR COMMERCE BY ANY FOREIGN COUNTRY, AND SUBMITTING DRAFT OF SUCH A PROPOSED STATUTE

It is suggested that section 303 be amended by adding thereto the hereinafter stated amendment.

Section 303 provides that whenever any foreign country, dependency, Province, or other subdivision of government, person, partnership, association, cartel, or corporation pays or bestows, directly or indirectly, any bounty or grant upon the manufacture or production or export of any article manufactured or produced in such country and such article is dutiable under the provisions of the current tariff act, then upon the importation of any such article or merchandise into the United States, directly or indirectly, an additional duty shall thereupon be laid, after the same shall be ascertained, determined, and declared by the Secretary of the Treasury.

There are, particularly in the free list of the current act, several kindred provisions applicable solely to particular subjects-matter. Typical of these is that relating to cement, paragraph 1543. Therein is the proviso "That if any country, dependency, province, or other subdivision of government imposes a duty on such cement imported from the United States, an equal duty shall be imposed upon such cement coming into the United States from such country, dependency, province, or other subdivision of government."

It is estimated that there are 17 such provisions attendant upon different paragraphs of the current act. The economical principle supporting the same is a sound one. It is to the effect that if foreign countries attempt to exclude the merchandise of the United States from their markets, or any particular foreign country so does, a retaliatory power should be vested to equalize or compel relief from such situations. So far as section 303 is concerned, it leaves the estimation of the additional duty to be laid in the power of the Secretary of the Treasury. Necessarily there follows the power to determine when and in what measure the same shall be enforced. In the 17 individual instances there is no such power and the added duty automatically attaches.

It is respectfully submitted that the philosophy justifying such provisions with reference to any particular imported subject matter warrants a general provision applicable to all tariff entities.

It is further respectfully submitted that the appropriate and warranted retaliatory additional duty is not one which should be automatically fixed. For example, a 10 per cent duty upon importation into a particular foreign country will not be the equivalent to a 10 per cent duty, economically considered, laid upon the exports of that country when imported into the United States. The different costs of production and market values in the two countries so results. Furthermore, we have already found that these automatic provisions engender diplomatic difficulties. Unquestionably the right to lay such duties is a salutary and necessary provision for the protection of American commerce.

There should be vested in the President this power, when any nation adopts a rate of duty or other regulation of commerce by reason whereof a discrimination is had against him, or an embargo in effect accomplished, as to any particular commodity exported from the United States, to ascertain and proclaim an equivalent countervailing duty.

The following is suggested:

"PAR. —. That with a view to securing reciprocal trade and regulating the commerce of the United States with countries, dependencies, colonies, provinces, or other political subdivisions of government, producing and exporting to the United States any article or merchandise upon which a duty is imposed by the laws thereof and for these purposes, whenever and so often as the President shall

be satisfied that the Government of any country, dependency, colony, province, or other political subdivision thereof, imposes duties or other exactions upon like or similar products of the United States, which, in view of the duties imposed thereupon or free entry accorded when imported into the United States, he may deem to be higher and reciprocally unequal and unreasonable, he shall have the power, and it shall be his duty, to suspend by proclamation said provisions of the laws of the United States imposing the duties upon or according free entry to such articles or merchandise of such country, dependency, colony, province, or other political subdivision of government, when and for such time as he shall deem just, and in such cases and during such suspension, upon the importation of any such or similar article or merchandise into the United States whether the same is imported in the same condition as when exported from the country of exportation or has been changed in condition by manufacture or otherwise, and whether the same has been imported directly from the country of production or otherwise, duties shall be levied, collected, and paid upon such article or merchandise the product of such designated country, which shall by the President be ascertained and proclaimed to be equal to the duties or other exactions imposed thereunder when exported from the United States to such country, dependency, colony, province, or other political subdivision of government."

It will be noted that this paragraph follows 303 closely. The sole and only difference is that it is set in motion by a different state of trade regulations or laws found to exist in the particular foreign country. For the same reasons that 303 is constitutional and for the same reasons that 303 and reciprocity treaty rates do not violate any favored nation treaties, this provision in these particulars does no violence to either. There are in the current act approximately 17 different automatic similar provisions. For example, paragraph 1543 reads:

"PAR. 1543. Cement: Roman, Portland, and other hydraulic: *Provided*, That if any country, dependency, province, or other subdivision of government imposes a duty on such cement imported from the United States, an equal duty shall be imposed upon such cement coming into the United States from such country, dependency, province, or other subdivision of government."

It will readily occur, however, that such an automatically enforced rate under different trade conditions in different countries might not always operate equally upon all nations and might not in any case exactly measure the discriminatory effect upon our commerce by an offending nation.

The suggested provision meets all these objections, leaving the matter in the power of the Executive, first to admeasure the economic effects on the offending laws and then to proclaim the relevant equivalent. The suggested provision has its exact counterpart in the last part of section 3 of the tariff act of 1897, the Dingley Act. That provision reads:

"And it is further provided that with a view to secure reciprocal trade with countries producing the following articles, whenever and so often as the President shall be satisfied that the government of any country, or colony of such government, producing and exporting directly or indirectly to the United States coffee, tea, and tonquin, tonqua, or tonka beans, and vanilla beans, or any of such articles, imposes duties or other exactions upon the agricultural, manufactured, or other products of the United States, which, in view of the introduction of such coffee, tea, and tonquin, tonqua, or tonka beans, and vanilla beans, into the United States, as in this act hereinbefore provided for, he may deem to be reciprocally unequal and unreasonable, he shall have the power and it shall be his duty to suspend, by proclamation to that effect, the provisions of this Act relating to the free introduction of such coffee, tea, and tonquin, tonqua, or tonka beans, and vanilla beans, of the products of such country or colony, for such time as he shall deem just; and in such case and during such suspension duties shall be levied, collected, and paid upon coffee, tea, and tonquin, tonqua, or tonka beans, and vanilla beans, the products or exports, direct or indirect, from such designated country, as follows:

"On coffee, three cents per pound.

"On tea, 10 cents per pound.

"On tonquin, tonqua, or tonka beans, 50 cents per pound; vanilla beans, $2 per pound; vanilla beans commercially known as cuts, $1 per pound."

The sole and only difference is that the former was confined to a few enumerated and "any of such" articles with prescribed alternative articles and rates. Since the decision by the Supreme Court of the United States in the flexible tariff there is no longer question in that proper delegation of rate-making may be vested in the President. That very thing in exactly parallel section 303 of the current act has for years been enacted and reenacted by Congress and

exercised as to many foreign countries. Wherefore, assuredly not only is the suggested provision constitutional but does not violate the favored-nation clauses of our treaties.

Section 3 of the tariff act of October 1, 1890, vested a power in the President to take from the free list certain articles and place them upon the dutiable list, as against any nation imposing duties upon certain American articles which he deemed "reciprocally unequal and unreasonable." The provision was exercised by the President and assailed as an unconstitutional delegation of power. The Supreme Court of the United States in the case of Field *v.* Clark (143 U. S.) held this paragraph constitutional. It is significant that no claim was made that that paragraph ,which was exactly what is here suggested and provided by the 17 different provisions in the current act, was in violation of the favored-nation treaties.

Section 3 of the tariff act of 1897 empowered the President to negotiate reciprocity treaties. Thereunder many such giving special favors to special nations were negotiated. They were assailed in the courts as in violation of the so-called favored nation clauses in the treaties with several nations. It was uniformly held that, inasmuch as the statute upon its face treated all nations alike and prima facia offered similar treatment to all nations that alike treated with the United States, it was not a violation of the favored nation clauses. That was held by the United States Court of Customs Appeals in Shaw *v.* United States (1 Ct. Cust. Appls.) and in Bertram *v.* Robertson (122 U. S.) and Whitney *v.* Robertson (124 U. S.). It is equally significant that no nation has ever made protest that such provisions, being based upon a consideration and by their terms applicable to all such nations as put themselves within the statutory provision, all such being treated alike by the statutory provision, did not violate the favored nations clauses.

If we are to equip our Chief Executive with any retaliatory powers whatever to resist by preparedness or action present foreign threats this paragraph will so equip him. There is less likelihood of war if we are armed.

MARKING AND LABELING

[Par. 304]

STATEMENT OF THOMAS F. McMAHON, NEW YORK CITY, REPRESENTING THE UNITED TEXTILE WORKERS OF AMERICA

(The witness was duly sworn by the chairman of the committee.)

Mr. McMAHON. Mr. Chairman and gentlemen of the committee: I do not intend to take up much of your time. I am appearing here as president of the United Textile Workers of America, the only national textile organization in the United States affiliated with the American Federation of Labor.

It is our desire, speaking as I do for the workers engaged in the textile industry in particular reference to section 304, page 329, on marking, stamping, and branding, that the law of 1922 be applied more favorably to us. Through some misunderstanding before the Ways and Means Committee, it came out shorn of one very important part of the 1922 bill, which reads:

> That every article imported into the United States, which is capable of being marked, stamped, branded, or labeled, without injury, at the time of its manufacture or production, shall be marked, stamped, branded, or labeled, in legible English words, in a conspicuous place that shall not be covered or obscured by any subsequent attachments or arrangements, so as to indicate the country of origin.

The workers of three of the largest employers in the woven-cotton-label division of the textile industry are and have been in agreement through the international union on working conditions and wages for the past 14 or 15 years; and they are desirous that I should appear

before your committee and speak for them, and ask you to endeavor to place back in the 1929 bill the thought just expressed by myself that was contained in the 1922 bill.

The American labor movement is in full accord with its international unions when those international unions speak for themselves; and, without repeating, I fully indorse what has been said by Mr. Woll, who appeared a few moments ago before this committee.

I will submit a short brief on the section.

The CHAIRMAN. Is the present law relative to marking satisfactory to you?

Mr. MCMAHON. It is satisfactory.

The CHAIRMAN. And to your organization?

Mr. MCMAHON. Yes, sir. That is all I have to say.

The CHAIRMAN. Thank you.

(Mr. McMahon submitted the following brief:)

BRIEF OF THOMAS F. MCMAHON, PRESIDENT OF THE UNITED TEXTILE WORKERS OF AMERICA

COMMITTEE ON FINANCE,
United States Senate, Washington, D. C.

GENTLEMEN: As president of the United Textile Workers of America, I appear before your honorable committee for the purpose of presenting to you this brief in behalf of the workers of our organization engaged in the manufacture of cotton woven labels.

These workers unanimously agree with that part of the tariff act of 1922 under the caption: Title III, Special Provision, page 87, section 304 (a), reading "That every article imported into the United States, which is capable of being marked, stamped, branded, or labeled without injury, at the time of its manufacture or production, shall be marked, stamped, branded, or labeled, in legible English words, in a conspicious place that shall not be covered or obscured by any subsequent attachments or arrangements, so as to indicate the country of origin. Said marking, stamping, branding, or labeling shall be as nearly indelible and permanent as the nature of the article will permit."

In the 1929 tariff act the omitting of the following words: "in a conspicuous place that shall not be covered or obscured by any subsequent attachments or arrangements so as to indicate the country of origin," will, in our opinion, be very hurtful and detrimental to the interests and well-being of the workers engaged in the woven cotton label division of our textile industry.

We say with a great deal of pride that for the past 15 years we have had working agreements signed and sealed between the manufacturers of cotton woven label goods in the larger shops and the workers, through their international union. Hours of labor, working conditions, and wages are fair. We believe that if a loop hole is left open in the 1929 tariff act, such as we believe would exist if the above words are not placed in the 1929 act, our workers will be the sufferers.

Unemployment greater than now exists will take place, for the simple reason that importers will have opportunity to say to American consumers that places of origin of imported cotton woven labels can be turned in and sewed on garments or on whatever article they may be used upon.

We believe that your honorable committee is more interested in the welfare of American workers, and will give preference to their wishes, particularly when these wishes mean the continuation of American standards of living among the operatives engaged in the production of cotton woven labels. The wages of American workers in the cotton woven label division of our industry are well over twice as much as are the wages paid to the workers in European countries.

I am appearing before you, gentlemen, as the paid, elected representative of the organized textile workers of the United States, and acting under instructions of our general executive council; and am appearing before you to do what I can to protect the rights of these workers, and to make possible the continuation of the humane and harmonious conditions at present existing in the organized shops of the cotton woven label trade between employers and employees.

The executive officers of the United Textile Workers of America in their best judgment think that the elimination of the words quoted in this brief, will give

opportunity to importers and foreign manufacturers to dump on American shores the cheap products of Europe, and thus deprive our workers of employment.

The United Textile Workers of America is the only national textile organization affiliated with the American Federation of Labor. We therefore not only speak for the organized textile workers, but we believe we speak the sentiment of the vast majority of textile workers, organized and unorganized alike.

We therefore request your honorable committee to insert into the 1929 tariff act the words with which I opened this brief.

Respectfully submitted.

THOMAS F. MCMAHON,
International President United Textile Workers of America.

STATEMENT OF E. J. READING, NEW YORK CITY, REPRESENTING THE COTTON WOVEN LABEL MANUFACTURERS' DIVISION OF THE SILK ASSOCIATION OF AMERICA

(The witness was duly sworn by the chairman.)

The CHAIRMAN. Are you going to speak upon the same subject?

Mr. READING. I will speak on the same subject, Mr. Chairman; that is, cotton woven labels.

Senator KING. Whom do you represent?

Mr. READING. I represent those manufacturers members of the Silk Association who produce woven labels. I speak only on the subject of cotton labels. Mr. Cheney covers the entire silk schedule, including silk labels.

The CHAIRMAN. Mr. Cheney is not here.

Senator BINGHAM. He has already appeared before the subcommittee, Mr. Chairman.

Mr. READING. I am speaking merely on cotton labels. This marking law is a matter of vital importance to us. The rate of duty given us under the 1922 act was somewhat better than it is now proposed to give us under the new act——

The CHAIRMAN. I thought you were going to speak to the administrative features.

Mr. READING. I am merely explaining why this is so vital to us, that the rate of duty, Mr. Chairman, is not sufficient and we have to depend upon this marking law.

The CHAIRMAN. Do you want the marking law of 1922?

Mr. READING. We would like the 1922 law, section 304 and section 516, which enables it to be enforced, to be rewritten word for word.

The CHAIRMAN. You and Mr. McMahon are in accord?

Mr. READING. Positively.

The CHAIRMAN. Have you a brief, sir?

Mr. READING. Yes, sir.

The CHAIRMAN. I wish you would file your brief.

Mr. READING. I will.

(The brief referred to by the witness will be found at the end of his statement.)

If I may, I would like to answer a question of Senator Couzens. Senator Couzens asked me a question when I appeared before on the subject of corks and I was unable to answer; but I think this (submitting a sample to Senator Couzens) answers your question, Senator.

I have a letter here that is not incorporated in my brief. It was received too late. It is from the Ethelle Manufacturing Co. (Inc.), and I shall not read my letter to them but will be glad to file both

letters. It is addressed to the Silk Association of America (Inc.), 468 Fourth Avenue, New York City, attention of Mr. E. J. Reading——

Senator THOMAS. Where is the letter from?

Mr. READING. 1178 Broadway, New York City, addressed to the Silk Association, attention of E. J. Reading. It reads as follows:

This is in answer to your letter of July 10. You are right in your statement that we have been established 10 or 12 years as label importers and that we manufacture some cotton labels in this country.

Frankly, we prefer the low rate of duty on imported labels.

On account of the several courtesies that your organization has extended us, we will answer the questions that you ask.

We have found the marking law has hindered the sale of our foreign labels to some extent.

We, as well as other importers, are bringing in most of our labels in packages by parcel post below $100 in value, which is not included in the Government statistics.

We trust that our opinion as expressed above fully answers your letter.

The CHAIRMAN. What was your statement with reference to parcel post?

Mr. READING. You see, Senator, all packages less than $100 in value are not included in the statistics, and you can bring in anywhere from fifty to a hundred thousand cotton labels at a value of a little less than $100.

If I may I will file these letters.

(The letters referred to have been filed with the committee.)

Senator SACKETT. If you have this marking law you do not need very much duty to protect your industry, do you?

Mr. READING. But, Senator, we have asked to be transferred, as you know, from the cotton schedule, 50 per cent, to the sundry schedule, 90 per cent. If you give us both, under the 90 it will be gross, not net, because it is proposed to impose a duty of 37 per cent on the yarn. Under the 1922 schedule it is 30 per cent on the yarn. If you give us both 90 per cent and the marking law it will not make any difference.

Senator SACKETT. Which would you rather have?

Mr. READING. I do not know. We are asking for both.

Senator SACKETT. Suppose we give you the marking law?

Mr. READING. That will be very helpful.

But allow me to make just one more point, if I may, Mr. Chairman. We are not trying to get a prohibitive duty on these cotton labels. To do that you would have to give us at least 150 per cent, and if you did do that the European exporters of labels, no longer being able to export their labels, would export some of their looms to this country. We are not asking for a prohibitive rate of duty.

Just one more point. If we may we would like to suggest that the foreign valuation as a basis of fixing duties is not as satisfactory as some other form of valuation might be, particularly from the Government standpoint of collecting duties.

(Mr. Reading submitted the following brief:)

BRIEF OF THE WOVEN LABEL MANUFACTURERS' DIVISION, SILK ASSOCIATION OF AMERICA (INC.)

COMMITTEE ON FINANCE,
United States Senate, Washington, D. C.

GENTLEMEN: The cotton woven label industry needs all the protection which was given it under the 1922 tariff act, section 304 (Exhibit A). And, surely the American people should be afforded the right to know if they are buying an imported article, and, if so, the country of origin of that article. The 1922 act granted this privilege, but you will note on referring to Exhibit B that there is a marked change in the proposed act of 1929.

On cursory reading this new act seems satisfactory, but please note the omission of the clause requiring that the marking of the country of origin shall not be covered or obscured by subsequent attachments or arrangements. The requirement as to the marking of imported articles to indicate the country of origin or manufacture has been in the various tariff acts in some form, beginning with the act of 1890. For the first time domestic manufacturers were given the right under section 516 of the tariff act of 1922 to object to classification, etc., made by the collector on any imported merchandise of a class or kind manufactured by the protestant, and to litigate the same before the Board of General Appraisers (now United States Customs Court) and the Court of Customs Appeals.

Is it the intent of Congress to have the eventual consumer know the country of origin of an imported article? If so, the proposed act is valueless in that respect. For one thing, the new act stipulates that every article must be marked with the country of origin. This is obviously impossible. The proposed act also specifies that the Secretary of the Treasury shall prescribe the necessary regulations. You know, as we know, that the Secretary of the Treasury has not time personally to direct such matters; they are delegated tc customhouse employees, whose work brings them in contact with those who oppose us—namely the importers—not American manufacturers. Naturally, their decision is bound to be in favor of the importer.

Paragraph 304 in the 1922 act has proved satisfactory. To be sure, for a time it lead to some confusion but that has all been settled (see T. D. 40964) and to-day the act is working as Congress evidently intended it to. We are asking for the reenactment of section 304 as contained in the 1922 act. We should like to explain that this should cover, as it does in the 1922 act, not only every entire article that is capable of being marked but every individual article going to make up the entire article. For example, from the point of view of textile men, we should like to say that every label contained in a garment should be included in this category.

It has been said that a label marked "England," "Germany," "France," etc. might mislead the eventual purchaser and cause him to think that the garment had been made in that country. The Federal Trade Commission could certainly be depended upon for corrective measures. The object of a label is to convey particular information and there is no reason why it should not tell the truth and the whole truth. Let it say definitely and truthfully, as we have noticed on many labels, "German Label" or "Label Made in Germany," etc. If the law permits a small article like a label, whether it be printed or woven, to be omitted from the provisions of the law, it is but a short step to permit the garment itself to be excluded under this law. The American worker should be fully protected in this respect and will be if section 304 of the 1922 tariff is reenacted.

Respectfully submitted.

ALKAHN SILK LABEL CO. (INC.).
AMERICAN SILK LABEL MANUFACTURING CO.
ARTISTIC WEAVING CO.
CENTURY WOVEN LABEL CO. (INC.).
EMPIRE STATE SILK LABEL CO.
HERCULES WOVEN LABEL CO.
E. N. KLUGE WEAVING CO.
THE NATIONAL WOVEN LABEL CO.
PREMIER WOVEN LABEL C
G. REIS & BROTHER (INC.).
UNITED STATES WOVEN LABEL CO.
UNIVERSAL LABEL WEAVING CO.
WARNER WOVEN LABEL CO.

Attest:

E. J. READING,
Recording Secretary, Woven Label Manufacturers' Division, The Silk Association of America (Inc.), 468 Fourth Avenue, New York City.

EXHIBIT A

TARIFF ACT OF 1922

SEC. 304 (a). That every article imported into the United States, which is capable of being marked, stamped, branded, or labeled without injury, at the time of its manufacture or production, shall be marked, stamped, branded, or labeled, in legible English words, in a conspicuous place that shall not be covered or obscured by any subsequent attachments or arrangements, so as to indicate the country of origin. Said marking, stamping, branding, or labeling shall be as nearly indelible and permanent as the nature of the article will permit. Any such article held in customs custody shall not be delivered until so marked, stamped, branded or labeled, and until every such article of the importation which shall have been released from customs custody not so marked, stamped, branded, or labeled, shall be marked, stamped, branded, or labeled, in accordance with such rules and regulations as the Secretary of the Treasury may prescribe. Unless the article is exported under customs supervision, there shall be levied, collected, and paid upon every such article which at the time of importation is not so marked, stamped, branded or labeled, in addition to the regular duty imposed by law on such article, a duty of 10 per centum of the appraised value thereof, or if such article is free of duty there shall be levied, collected, and paid upon such article a duty of 10 per centum of the appraised value thereof.

Every package containing any imported article, or articles, shall be marked, stamped, branded, or labeled, in legible English words, so as to indicate clearly the country of origin. Any such package held in customs custody shall not be delivered unless so marked, stamped, branded, or labeled, and until every package of the importation which shall have been released from customs custody not so marked, stamped, branded or labeled shall be marked, stamped, branded or labeled in accordance with such rules and regulations as the Secretary of the Treasury may prescribe.

The Secretary of the Treasury shall prescribe the necessary rules and regulations to carry out the foregoing provisions.

(b) If any person shall fraudulently violate any of the provisions of this act relating to the marking, stamping, branding, or labeling of any imported articles or packages or shall fraudulently deface, destroy, remove, alter, or obliterate any such marks, stamps, brands, or labels with intent to conceal the information given by or contained in such marks, stamps, brands, or labels, he shall upon conviction be fined in any sum not exceeding $5,000, or be imprisoned for any time not exceeding one year, or both.

EXHIBIT B

Section 304, Marking of imported articles:

(a) *Manner of marking.*—Every article imported into the United States, and its immediate container, and the package in which such article is imported, shall be marked, stamped, branded, or labeled, in legible English words, in such manner as to indicate the country of origin of such article, in accordance with such regulations as the Secretary of the Treasury may prescribe and subject to such exceptions as may be made therein.

(b) *Additional duties for failure to mark.*—If at the time of importation any article or its container is not marked, stamped, branded, or labeled in accordance with the requirements of this section, there shall be levied, collected, and paid on such article, unless exported under customs supervision, a duty of 10 per cent of the value of such article, in addition to any other duty imposed by law, or, if such article is free of duty, there shall be levied, collected, and paid a duty of 10 per cent of the value thereof.

(c) *Delivery withheld until marked.*—No imported article or package held in customs custody shall be delivered until such article (and its container) or package and every other article (and its container) or package of the importation, whether or not released from customs custody, shall have been marked, stamped, branded, or labeled in accordance with the requirements of this section. Nothing in this subdivision shall be construed to relieve from the requirements of any provision of this act relating to the marking of particular articles or their containers.

(d) *Penalties.*—If any person shall, with intent to conceal the information given thereby or contained therein, deface, destroy, remove, alter, or obliterate any mark, stamp, brand, or label 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.

(e) *Effective date.*—This section shall take effect 60 days after the date of enactment of this act.

STATEMENT OF KARL D. LOOS, WASHINGTON, D. C., REPRESENTING THE CALIFORNIA WALNUT GROWERS' ASSOCIATION

(The witness was duly sworn by the chairman.)

Mr. Loos. Mr. Chairman and gentlemen of the committee, I appear on behalf of the California Walnut Growers' Association. We propose an amendment to section 304 for the purpose of extending the requirement of marking to goods after they have been imported and repacked when they are shipped in interstate commerce.

The Chairman. Who is going to remark them?

Mr. Loos. The packer, whoever repacks them and ships them in interstate commerce.

Senator King. Why do you desire them remarked at all after they have paid the duty and we know that they are in this country and have come in legitimately? Is it for the purpose of blacklisting the man that uses a foreign article?

Mr. Loos. No, sir. The purpose is to prevent deception of the retailer, primarily. The situation is this, Senator, in the case of California walnuts, which I think illustrates the situation of some of the other commodities, but that, of course, is the commodity that I am primarily interested in——

Senator Bingham. Is it the purpose to mark each walnut?

Mr. Loos. No, sir.

Senator Shortridge. If the gentleman from Connecticut could raise anything in that State other than wooden nutmegs that remark might be very apposite.

The Chairman. The walnuts come in from some foreign country; they are marked as they enter here, and when they reach this country then they are marked as an American product?

Mr. Loos. Yes.

The Chairman. Why do you not bring action against those who so mark them?

Mr. Loos. They are marked in this way, Mr. Chairman. The walnuts are shipped in bags, and when they are brought into this country, say, from China, through the port of San Francisco, the importer breaks the bags, puts them into new bags, and those bags are marked in this manner: "No. 1 Soft Shell" and "Walnuts," in great big letters; "Packed by John Doe & Co., San Francisco," all in small letters; "California" in big letters. The biggest letters on the sack are "Walnuts" and "California."

Senator Bingham. Do they do that in San Francisco?

Mr. Loos. Yes, sir. Technically there is no misstatement on the label; it is a true label. Therefore the Federal Trade Commission can not do anything about it; at least they say they can not. The Department of Agriculture can not do anything about it under the food and drugs act. They say they can not. That is the position they take.

We think that by a slight amendment to this law the importer could be required to label the sack in which he packs these imported walnuts with the country of origin, just as he is required to label the

sack in which they are imported. Then as those goods are shipped all over the country that information of the country of origin will be carried to the buyer.

The CHAIRMAN. What you want, then, is the country of origin marked upon any sack in which walnuts are repacked and distributed throughout the United States?

Mr. LOOS. Yes, sir. That is our proposal. And we submit a very short brief containing the language which we propose to accomplish that result.

Senator BINGHAM. Would that be equivalent to marking milk bottles? For instance, take milk imported in large cans, with the country of origin marked thereon, such as Mexico or Canada. The milk that comes over the border is immediately put into bottles that do not bear the mark of the country of origin. Should those bottles also be marked?

Mr. LOOS. Our proposal would not require that unless goods are shipped in interstate commerce. We make that limitation, on the theory that after the goods are imported and the original package is broken the jurisdiction of the Federal Government ceases unless the goods enter the channels of interstate commerce.

Senator BINGHAM. You would not mind these imported walnuts being sold in California?

Mr. LOOS. We have to rely on the State of California to take care of that situation.

We also suggest, Mr. Chairman, an amendment to section 304, paragraph (d), by adding to the paragraph as it is written in the House bill a provision for the enforcement of the marking provisions by direct proceeding against the goods rather than simply relying on a penalty against the individual, to enforce the marking requirement. It is provided in section 304 (d) that the intent of the individual prosecuted must be shown. He must be shown to have intended to conceal or deceive. To prove intent is very difficult. If you would provide for the enforcement of these marking requirements by a direct proceeding against the goods, a libel against the goods, as in the case of the pure food and drugs act or as in the case of the insecticides act and several other acts of Congress, then all that would have to be done would be to show that these were imported articles and that at the time of seizure they did not contain the information of foreign origin; and that would make, it seems to us, a much more effective means of enforcing this provision.

Senator SHORTRIDGE. As I understand it, the marking law is designed to prevent a fraud being worked upon the American consumer?

Mr. LOOS. Yes, Senator.

Senator SHORTRIDGE. And your desire, in respect of walnuts, is to prevent fraud?

Mr. LOOS. Yes, sir; that is exactly our object; and we have in the walnut industry experienced some very unscrupulous practices on the part of importers and wholesalers in passing off imported walnuts as California walnuts, and yet doing it in such a way that they are immune from any prosecution under any existing laws.

Senator BINGHAM. Can not the State of California make a law in Sacramento which would apply to this section in San Francisco?

Senator SHORTRIDGE. States scarcely have the power to make Federal laws, Senator. We are dealing with an interstate proposition now.

Mr. Loos. They could do it for any sales in California, but as soon as the goods were shipped in interstate commerce the laws of California would be inoperative.

Senator BINGHAM. But if they could not do it in California how would you ship them from California in interstate commerce?

Mr. Loos. I think that any enactment of that kind by California would be held unconstitutional. Of course California is not the only port in which these entries are made. They are made in the Northwest States; also the Atlantic Seaboard States.

I would like to add, Mr. Chairman, that since we have made this proposal to the Ways and Means Committee of the House of Representatives our proposal has been indorsed in principle by the following organizations:

California Lima Bean Growers Association, Oxnard, Calif.; Chamber of Commerce in the Lower Rio Grande Valley, San Benito, Tex.; the National Grange, L. J. Taber, Columbus, Ohio; Farmers National Grain Dealers Association, Omaha, Nebr., J. W. Shorthill; James E. Rice, of Cornell University, Department of Poultry Husbandry, Ithaca, N. Y.; S. Arthur Knapp, rice grower, Lake Charles, La.; W. J. Howey, citrus grower, Fla.; Manatee County Growers Association, Bradentown, Fla.

Senator CONNALLY. Is there any difference in the chemical composition of the Chinese nuts and those from California? Are they the same nuts?

Mr. Loos. There are differences in varieties.

Senator CONNALLY. Can you tell the difference by looking at them?

Mr. Loos. An expert can.

Senator BINGHAM. There is a difference in the taste, is there not?

Mr. Loos. Yes. The foreign walnuts are very inferior in quality. They have a large proportion of withered meats; and when foreign walnuts are sold as California walnuts it creates in the mind of the consumer a prejudice against California walnuts because they are inferior.

Senator CONNALLY. They do not misbrand these walnuts, do they?

Mr. Loos. No.

Senator CONNALLY. So why do you say "sold as California walnuts"? They are sold as walnuts, are they not?

Mr. Loos. This is the situation, Senator. The retailer is led to believe by this marking that they are California walnuts. Maybe nobody tells him that they are, but he sees "California" and "Walnuts" in large letters on the package and he jumps to the conclusion that they are California walnuts.

Senator SHORTRIDGE. In that sense they are misbranded, Senator Connally. They are palmed off as California walnuts.

Senator CONNALLY. Packed in California. Everybody knows that San Francisco is the main port on the Pacific for all Chinese imports, unless Seattle would deny it.

You get your tariff on them already, do you not?

Mr. Loos. Oh, yes.

Senator CONNALLY. This is simply another device to get more tariff?

Mr. Loos. No. This does not affect the amount of tariff.

Senator CONNALLY. It does give you another advantage in the trade, does it not?

Mr. Loos. Yes, sir. It is to prevent the imported walnuts taking what we believe to be an unfair advantage.

Senator CONNALLY. Why not make it a felony to import any walnuts?

Mr. Loos. Oh, no; we can not do that.

Senator BINGHAM. I do not see what is to prevent the California legislature from declaring that walnuts packed in the State of California, coming from a foreign country, must not be marked California walnuts, but as imported from a foreign country.

Mr. Loos. Perhaps that would be possible, but even that would not accomplish the purpose which we have in mind, which is to have imported walnuts show their country of origin.

Senator BINGHAM. The point is that you do not want to damage the reputation of the California walnut by having an inferior article in a bag on which the two largest words are "Walnuts" and "California"?

Mr. Loos. That is it.

Senator BINGHAM. You can prevent that being done in California; and if they are packed in some other State, then they can not bear the name "California" because they would not be packed in California, and you would protect the California walnut.

Mr. Loos. Senator, I do not believe we could uphold a law of that kind passed by the State of California. Even if we could, while that would eliminate the big point I have made, still there remains the other proposition that if this marking requirement is to mean anything in the case of goods which can not be marked directly on the articles themselves, then through whatever port they may be imported, the new package should be required to show the foreign origin of the goods contained in the package.

Senator COUZENS. I do not think anybody can object to that.

Mr. Loos. Thank you, Mr. Chairman.

(Mr. Loos submitted the following brief:)

BRIEF OF THE CALIFORNIA WALNUT GROWERS ASSOCIATION

To the COMMITTEE ON FINANCE,
United States Senate.

The California Walnut Growers Association respectfully recommends that section 304 (a) of the tariff bill, H. R. 2667, be amended to read as follows:

"(a) Manner of marking: Every article imported into the United States, and its immediate container, and the package in which such article is imported *and any containers or packages in which such articles after importation and with or without repacking are shipped in interstate commerce* shall be marked, stamped, branded, or labeled, in legible English words, in such manner as to indicate the country of origin of such article, in accordance with such regulations as the Secretary of the Treasury may prescribe and subject to such exceptions as may be made therein." (Proposed amendment in italics.)

The purpose of this amendment and the need for it are contained in statement of Hon. Phil D. Swing presented to the Ways and Means Committee and brief filed on behalf of the California Walnut Growers Association with that committee, said statement and brief being printed in Volume XVI of the hearings on Administrative and Miscellaneous Provisions, at pages 9943-9947.

It is also recommended that section 304 (d) of the bill be amended by adding thereto the following:

"If any imported article or its container is not marked, stamped, branded, or labeled in accordance with the requirements of this section and is being transported from one State, Territory, District, or insular possession to another for sale, or, having been transported, remains unloaded, unsold, or in the original unbroken packages in which transported in interstate or foreign commerce, such articles shall be liable to be proceeded against and seized for confiscation

by a process of libel for condemnation as provided in section 14 of Title 21 of the Code of the Laws of the United States."

The present provision of the bill provides only a personal penalty the enforcement of which requires proof of intent on the part of the individual prosecuted, to conceal the information of the foreign origin of the goods. Proof of intent is always difficult and this requirement is likely to impede the effective enforcement of the marking requirements, especially after the goods have left customs custody.

The proposed amendment provides a direct proceeding against the goods themselves and the only proof needed is to show the absence of the marking required by this section. No question of intent is involved. It would be a much more effective remedy for the enforcement of the marking requirements and would better insure the preservation of the mark after the goods have passed the customs officers.

The section of the United States Code referred to in the proposed amendment is contained in the food and drugs act where direct proceedings against the goods themselves have been an effective means of enforcement.

Respectfully submitted.

CALIFORNIA WALNUT GROWERS ASSOCIATION,
Los Angeles, Calif.

BRIEF OF GEORGE R. MEYERCORD, REPRESENTING THE LITHOGRAPHERS' NATIONAL ASSOCIATION (INC.)

THE PRESENT STATUTE AND THE PROPOSED AMENDMENT

Section 304 (a) of the tariff act of 1922 provides:

"That every article imported into the United States, which is capable of being marked, stamped, branded, or labeled, without injury, at the time of its manufacture or production, shall be marked, stamped, branded, or labeled, in legible English words, in a conspicuous place that shall not be covered or obscured by any subsequent attachments or arrangements, so as to indicate the country of origin. Said marking, stamping, branding, or labeling shall be as nearly indelible and permanent as the nature of the article will permit. Any such article held in customs custody shall not be delivered until so marked, stamped, branded, or labeled, and until every such article of the importation which shall have been released from customs custody not so marked, stamped, branded, or labeled, shall be marked, stamped, branded, or labeled, in accordance with such rules and regulations as the Secretary of the Treasury may prescribe. Unless the article is exported under customs supervision, there shall be levied, collected, and paid upon every such article which at the time of importation is not so marked, stamped, branded, or labeled, in addition to the regular duty imposed by law on such article a duty of 10 per centum of the appraised value thereof, or if such article is free of duty there shall be levied, collected, and paid upon such article a duty of 10 per centum of the appraised value thereof.

"Every package containing any imported article, or articles, shall be marked, stamped, branded, or labeled, in legible English words, so as to indicate clearly the country of origin. Any such package held in customs custody shall not be delivered unless so marked, stamped, branded, or labeled, and until every package of the importation which shall have been released from customs custody not so marked, stamped, branded, or labeled shall be marked, stamped, branded, or labeled, in accordance with such rules and regulations as the Secretary of the Treasury may prescribe.

"The Secretary of the Treasury shall prescribe the necessary rules and regulations to carry out the foregoing provisions."

The pending tariff legislation as passed by the House of Representatives contains the following provisions with reference to marking (sec. 304):

"(a) *Manner of marking.*—Every article imported into the United States, and its immediate container, and the package in which such article is imported, shall be marked, stamped, branded, or labeled, in legible English words, in such manner as to indicate the country of origin of such article, in accordance with such regulations as the Secretary of the Treasury may prescribe and subject to such exceptions as may be made therein.

"(b) *Additional duties for failure to mark.*—If at the time of importation any article or its container is not marked, stamped, branded, or labeled in accordance with the requirements of this section, there shall be levied, collected, and paid on such article, unless exported under customs supervision, a duty of 10 per

centum of the value of such article, in addition to any other duty imposed by law, or, if such article is free of duty, there shall be levied, collected, and paid a duty of 10 per centum of the value thereof.

"(c) *Delivery withheld until marked.*—No imported article or package held in customs custody shall be delivered until such article (and its container) or package and every other article (and its container) or package of the importation, whether or not released from customs custody, shall have been marked, stamped, branded, or labeled in accordance with the requirements of this section. Nothing in this subdivision shall be construed to relieve from the requirements of any provision of this act relating to the marking of particular articles or their containers.

"(d) *Penalties.*—If any person shall, with intent to conceal the information given thereby or contained therein, deface, destroy, remove, alter, or obliterate any mark, stamp, brand, or label 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.

"(e) *Effective date.*—This section shall take effect sixty days after the date of enactment of this act."

The act of July 24, 1897 required the marking of articles only where such articles were "usually or ordinarily marked."

The act of 1913 provided that "all" articles of a foreign manufacturer capable of being marked without injury should be marked.

The act of 1922 changed the word "all" to "every." The present act therefore shows the intention of Congress in the light of the experience under prior tariff laws to require that the ultimate consumer of every article imported shall be notified as to the country of origin in all cases where the article is capable of being marked without injury, and that the marking shall be of such character as shall preserve it until the article falls into the hands of the ultimate consumer.

Those who submit this brief are engaged in the business of manufacturing lithographed products and they are therefore chiefly interested in that class of merchandise. Cigar labels and bands are only one of the multitude of lithographed articles which are imported into the United States.

THE CANADIAN ACT AND REGULATIONS

The Canadian Laws and Regulations require that each individual label and cigar band shall bear the legend "Printed in U. S. A." In other words, the American manufacturer of these articles is required to meet the same conditions as to marking when exporting into Canada as they contend the importer of labels and bands into the United States should be required to comply with.

THE PURPOSE OF THE LAW

The purpose of such a law is not merely to inform the original purchaser, who may be a wholesaler or a manufacturer, that the article delivered was produced in a foreign country; the purpose of the law is to advise the ultimate consumer as to the country of origin. Very few imported articles come in singly in units of one or in packages containg only one unit.

Imported merchandise generally comes in packages containing more than a single unit—the original package being dealt in by the importer, and the units being separately sold by a retailer; or the original package being broken by a manufacturer, and the individual units becoming parts of further and more complicated units made and sold by the manufacturer. It is intended that the information shall be handed down to the ultimate consumer so that he may exercise his own choice in making his purchase, provided he has any choice as between articles manufactured in different countries.

The package may be dealt in by the importer, or the wholesaler, or the jobber, without the package being broken. The package, therefore, must be marked in order to provide the information as to the country of origin to those persons who, not breaking the package, would not be advised of the country of origin by the marking upon the article itself; and the other requirement, that every article shall be marked, is to provide the same information to the purchasers of the single article itself, where the original package has been broken and destroyed, and where, as a consequence, the marking of the package does not advise such an ultimate purchaser of the country of origin.

As was said in American Thermose Bottle Co. *v.* W. T. Grant Co., 279 Fed. 151, aff'd. 282 Fed. 426, with reference to the 1913 act:

"But customers have a right to indulge their tastes, feelings, whims, and even their unreasonable prejudices; a right to make their own choice as to American,

English, French, Japanese, or German goods, out of which they may not be cheated by any misbranding, positive or negative. It is no more a question of quality or economics than a man's right to select his own tailor."

It was after this decision, and presumably in the light of it, that Congress reaffirmed its prior position as to what the policy of this country should be in relation to this subject. The act of 1922 continued and emphasized the policy of the marking requirements.

The idea that it was the ultimate consumer who was to be advised as to the country of origin is indicated by the requirement that the marking shall not only be conspicuous, but shall not be covered or obscured by any subsequent attachments or arrangements.

There need be no confusion or deception where the imported article becomes a single element in a larger unit assembled by the domestic manufacturer. Using cigar bands as an illustration, there can be no obscurity in the meaning of the legend "Printed in Germany" upon a cigar band. The only thing on the cigar which could by any possibility be regarded as having been printed is the band itself.

The wording of the legend can be adapted to the article in each case so as to indicate clearly just what is meant.

The objections to the provisions of the House bill:

The proposed amendment provides merely that the article shall be marked in legible English words in such manner as to indicate the country of origin in accordance with such regulations as the Secretary of the Treasury may prescribe and subject to such exceptions as may be made in the regulations. This is not even expressly equivalent to a direct requirement that the article shall be marked, because it provides that it shall be marked in accordance with regulations to be established and subject to such exceptions as the regulations may provide for. It omits the requirement that articles capable of being marked shall be marked. It permits the marking in any place, conspicuous or obscure. The marking, if required by the regulations, must be legible when discovered, but it need not be in a place where it would be apparent from a casual inspection. The old provision that it shall be as nearly indelible and permanent as the nature of the article will permit is omitted. Under the amendment if it persisted long enough to continue throught the process of importation it might be held sufficient. The old provision that the marking should not be covered or obscured by any subsequent attachments or arrangements is entirely omitted.

The effect of all this is to delegate to the Secretary of the Treasury an absolute and unregulated discretion to provide the method of marking and the exceptions to be established.

Absolutely no rule or principle is laid down by which the Secretary is to be governed in making exceptions to the marking requirement. So far as the statute is concerned it would leave to the Secretary of the Treasury the power to act upon whim and caprice. When Congress legislates to the effect that articles shall be marked subject to regulations to be adopted, and subject to exceptions to be established by an executive officer of the Government, it is in effect the delegation of its own power to that officer.

It frequently happens that Congress legislates in relation to subjects which are of a complicated character and it authorizes the executive branch of the Government to adopt regulations for administering the law. But in such cases the rule or principle which is to guide the executive branch of the Government in formulating regulations is defined by the law. For example, under the old law it was provided: "The Secretary of the Treasury shall prescribe the necessary rules and regulations to carry out the foregoing provisions." This is vitally different. The old law provided that every article which could be marked should be marked and the marking was to be in a conspicuous place and it was not to be covered or obscured by subsequent attachments or arrangements and it was to be as nearly indelible or permanent as the nature of the article would permit. Congress could not legislate with reference to a million and one different articles and determine in advance the character and place of the marking with reference to each article. But it declared its purpose and it authorized the Secretary of the Treasury to make the "necessary" regulations "to carry out the foregoing provisions." Under the proposed law the article is not to be marked in a certain way and in a certain place, but it is to be marked "in accordance with such regulations" etc.; and only such articles shall be marked as shall not be excepted from the regulations by the Secretary of the Treasury. Congress does not declare that the exceptions are to be of that class of articles which could not be marked or which

would be injured or destroyed in the marking. It leaves the whole question to the arbitrary discretion of the Secretary.

In reviewing the regulations of the Secretary of the Treasury under the old law, a court was able to say whether or not the regulations were valid or invalid, depending entirely upon whether they carried out the purpose and intent of a law which expressly declared its intent and purpose. Under the new law Congress declares no intent or purpose but grants a power and leaves it to the Secretary to exercise it as he sees fit.

The effect of the proposed change in this law would be practically the same if the law were made to read:

"The Secretary of the Treasury is authorized to determine whether or not all articles should be marked so as to indicate the country of origin and, if any such articles are required to be marked, then the character and place of the marking." It may be argued that the Secretary of the Treasury can be presumed to deal fairly and carry out the purpose and intent of Congress. The answer to such an argument is that under our scheme of Government it is not intended that an executive officer shall exercise such legislative or quasi-legislative powers; and a further answer is that no matter how the intent of Congress was expressed in the former law, under the present law no legislative intent or purpose is described. The intent and purpose of the present law are clearly to transfer the whole subject matter of such a requirement to the Secretary of the Treasury and to effectuate, not the intent and purpose of Congress, but the intent and purpose of the Secretary of the Treasury. The net effect of the language of the bill is to repeal the old section, subject to such legislation as the Secretary of the Treasury may choose to adopt in the future.

It was said before the Ways and Means Committee of the House that whether or not an article should be marked was a question of judgment and not of legal interpretation. This is not true in the sense in which the language was used and it should not be true if the judgment to be exercised is not the judgment of the Congress. It is for the Congress to determine as a matter of its legislative judgment the question of what our national policy shall be as to marking imported articles. It is for Congress to legislate upon the principle and to define when and under what circumstances imported articles are to be marked. Such legislation must of necessity leave open to interpretation and administration the application of its provisions to a multitude of articles which could by no possibility be listed in the act. Such legislation must of necessity give to some administrative officer the power to adopt regulations. But the regulations so to be adopted must be in harmony with the policy declared by the law. Under the guise of granting to an executive officer the power to adopt regulations there should not be delegated to such an officer the right to legislate as to our national policy upon such a subject, and when, as in the bill as proposed by the House, it is required that every article imported shall be marked in accordance with such regulations as may be prescribed, "and subject to such exceptions as may be made therein" there is a complete delegation of the power of Congress in this respect.

The Secretary of the Treasury has not been told of any rule or principle in accordance with which he shall create the exceptions which he is authorized to make. Such exceptions are not to be created because the article is not capable of being marked or is capable of being marked. There is no principle declared to guide the Secretary in his classification. One Secretary of the Treasury might be in sympathy with the law as it exists today and create only those exceptions which are impliedly created by the present act. Another Secretary of the Treasury might feel that when Congress had wiped out the present law it intended to reverse its stand on the present policy.

The marking provisions of the present act should be retained in the new legislation. The country has done very well and there has been built up a body of regulations and decisions which make the administration of this particular section more simple as time goes on. Instances of individual hardship are negligible in number and in importance. The amendment as it appears in the House bill has been worded in such a way as to practically repeal the law with reference to marking if any Secretary of the Treasury, fully empowered to create such exceptions as he chose, were to be unsympathetic with the policy of Congress as announced in existing and previous legislation and were to exercise the uncontrolled discretion which the proposal apparently invests in him.

Respectfully submitted.

LITHOGRAPHERS' NATIONAL ASSOCIATION (INC.),
By GEO. R. MEYERCORD, *President*.

PRODUCTS OF FOREIGN CONVICT LABOR

[Sec. 307]

STATEMENT OF L. R. MASON, NEW YORK CITY, REPRESENTING THE PHOSPHATE INDUSTRY

(The witness was duly sworn by the chairman.)

Mr. MASON. Mr. Chairman and gentlemen of the committee, I appear for the phosphate industry of the United States with mines chiefly in Florida and in Tennessee, and in whose behalf I attempted to exclude phosphate rock mined in Morocco by convict labor, before the Treasury Department. I spent some six months in the effort and was unable to accomplish the purpose; the department finally holding that phosphate rock was not manufactured in the sense of section 307 of the tariff law of 1922, which is also section 307 of the bill as passed by the House.

The facts are, Mr. Chairman, that this measure was first brought into the tariff law in 1890, and the author of it was Mr. McKinley. He made perfectly clear in his report to the Congress that he intended to exclude all of the products of convict labor, whether of the mine or shop or field. It is also a fact that in the 39 years that have passed since that measure became a law it has never once been effective to accomplish the purpose that the Congress had in mind. Three times applications have been made to the Treasury of the United States to exclude convict-made products and three times they have been denied.

The CHAIRMAN. You and Mr. Woll take the same position?

Mr. MASON. Yes; we take exactly the same position.

Senator SHORTRIDGE. What was the reason for that ruling?

Mr. MASON. In the first place, Senator, of course the word "manufactured" applies only to products of the shop, and in the second place the word "manufactured" has a very technical meaning in the tariff law. It is construed very strictly in order to favor the importer who pays the tax.

Senator SHORTRIDGE. And they claimed that phosphate was not a manufactured article?

Mr. MASON. That is it, sir.

Senator SACKETT. Should it not apply to agriculture as well as mining?

Mr. MASON. That is what we propose. I have prepared a brief giving the proposed amendment which will apply to the mine, the shop, and the field.

Senator THOMAS. Would you read the amendment, please?

Mr. MASON. We desire to amend this section so that it will read as follows:

That all goods, wares, articles and merchandise and all materials thereof manufactured, mined, or produced——

Senator WALSH. Those are the three new words that you suggest, "mined or produced"?

Mr. MASON. Yes, sir.

Senator THOMAS. That is all I want.

Senator SACKETT. Does the word "produced" cover the growing crop?

Mr. MASON. I believe it does.

Senator SHORTRIDGE. Read the whole section into the record, please.

The CHAIRMAN. You have reference only to phosphate?

Senator SACKETT. I asked him if he wanted to include all products of agriculture, because he came before the Interstate Commerce Committee with reference to convict-made products, and agriculture has been brought into it.

The CHAIRMAN. We had better stop and think about that if we are going to go that far, because I know some of the States that are producing——

Senator REED. This is an embargo on convict-produced goods abroad.

Mr. MASON. That same statute in effect has been enacted within our own borders recently when a law was passed providing that convict-made goods should be excluded from intrastate commerce as well as interstate commerce, and the language there used——

Senator BARKLEY. It provided that when convict-made goods go into a State they are subject to the laws of the State.

Mr. MASON. That is what I meant to say.

Senator SHORTRIDGE. I would like to hear the amendment read as you propose it.

Mr. MASON (reading):

That all goods, wares, articles, and merchandise and all materials thereof manufactured, mined, or produced, directly or indirectly, wholly or in part, by convict, detained, or prison labor, or which have been transported or handled in transportation by such labor, and which if brought into the United States would come into competition with like products of the United States, produced in sufficient quantities to supply domestic needs, shall not be entitled to entry at any of the ports of the United States, and importation thereof is hereby prohibited. The Secretary of the Treasury is hereby authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision.

Senator REED. That would not cover rubber, because that is not produced in this country?

Mr. MASON. No; it would not cover any of those commodities which are not produced in this country.

Senator SHORTRIDGE. I do not know about that. What is a raw material? A tree standing in the forest is raw material, but anything ceases to be a raw material when the hand of man is put upon it to change it in any way. It then ceases to be a raw material.

Senator BARKLEY. That definition could not very well apply to minerals that come in as raw material out of which finished products are manufactured, because man has put his hand to them several times.

Senator SHORTRIDGE. I was referring to the broad language of the proposed section.

Senator DENEEN. What does the phrase "like products" mean? Does that refer back to like convict-labor products?

Mr. MASON. No. We had in mind like products to those produced in the United States. I see what you mean.

Senator KING. You are particularly aiming at some few hundred thousand pounds, perhaps a million or so, of phosphates which have come in recently and been used by the farmers for fertilizers notwithstanding the very large production in the United States, and you are trying to prohibit the farmers from getting this little competition

from abroad, upon the ground that the phosphate is produced in Morocco, in part, at least, by convict labor?

Mr. MASON. Senator, of course I do not accept the premise upon which your question is based. I am attempting, as I said at the outset—I represent the phosphate industry, and we did attempt to exclude these goods and we believe that if this amendment is adopted it will result in the exclusion of it in so far as convict labor is employed in the production of it; yes, sir.

Senator REED. It means an increase in the cost of that type of fertilizer here for the farmers?

Senator SHORTRIDGE. Not necessarily.

Mr. MASON. I do not know about that; it may be.

Senator BINGHAM. What do you care about it if it would not raise the price?

Mr. MASON. That is still another question. The point is this, Senator. I say I do not know whether it would raise the price or not. As I understand the facts, they are somewhat like this. If this French monopoly can get in here on this basis and destroy the American market, as I am informed they will do, then immediately they will put the price up here somewhere near where it is in Europe.

Senator SHORTRIDGE. You do not want convict-labor goods of any kind to be brought into competition with like goods manufactured or produced by free American labor?

Mr. MASON. That is right.

Senator WALSH. Even for the purpose of fertilizing farms?

Mr. MASON. That is correct.

Senator REED. I think I had better state the fact that it was brought out before the subcommittee that heard this that the domestic production of phosphate rock is something over 3,000,000 tons and that the imports in 1928 were 37,000 tons.

Senator SHORTRIDGE. This amendment is broad enough to cover many other things than phosphate rock.

(Mr. Mason submitted the following brief:)

BRIEF OF THE PHOSPHATE INDUSTRY

BRIEF IN SUPPORT OF PROPOSED AMENDMENT TO SECTION 307 OF THE TARIFF ACT OF 1922 RELATING TO THE EXCLUSION FROM THIS COUNTRY OF PRODUCTS OF CONVICT LABOR ABROAD

Section 307 of the administrative provisions of the tariff act of 1922 provides as follows:

"That all goods, wares, articles, and merchandise manufactured wholly or in part in any foreign country by convict labor shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision."

We desire to amend this section so it will read as follows:

"That all goods, wares, articles, and merchandise and all materials thereof manufactured, mined, or produced, directly or indirectly, wholly or in part, by convict, detained, or prison labor, or which have been transported or handled in transportation by such labor, and which if brought into the United States would come into competition with like products of the United States, produced in sufficient quantities to supply domestic needs, shall not be entitled to entry at any of the ports of the United States, and importation thereof is hereby prohibited. The Secretary of the Treasury is hereby authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision."

Application for amendment of section 307 was made to the Ways and Means Committee of the House and was denied.

Reasons for the change

Section 307 was first enacted in the tariff law of 1890. The record in Congress at that time clearly indicates the intent that under this provision all the products of convict labor, whether of the mine, the field, or the factory, should be excluded. But the wording of the section as it now stands is not effective to accomplish the intended result.

In its present form it has been invoked a number of times since 1890 to exclude convict-made goods, but invariably without success.

It has been construed by the Treasury Department to apply only to goods "manufactured," and this word has been given the narrowest possible meaning, so that the statute as it stands is of no practical effect.

It was finally held by the Treasury Department in 1928 not to exclude phosphate rock dug by convict labor employed by the French Government monopoly, the Office Cherifien des Phosphates in Morocco, on the ground that phosphate rock is not a manufactured article in the sense of the statute.

The statute, is therefore, ineffective to prevent competition between convict labor in Morocco and free labor in the phosphate industry in this country, which is threatening the very existence of the domestic industry.

Sound policy requires that all products of convict labor coming into competition with goods produced in this country, in sufficient quantities to supply domestic needs, should be excluded. Most of the civilized countries of the world have statutes effective to do this.

A Federal statute has recently been passed in this country, supplementary to State legislation, which will prevent any competition whatever between convict labor and free labor in the States, whether in the output of the field, the mine, or the factory.

The phosphate rock industry of the country, which is abundantly equipped to supply domestic needs in this essential plant food, is threatened with destruction by importations of phosphate rock produced by the O. C. P., the French Government monopoly operating in Morocco, employing convict and Arab labor at wages of from 26 cents to 52 cents a day.

Production by the O. C. P. in 1921 was 8,181 metric tons. In 1928 it was 1,337,100 metric tons. In the 12-month period beginning August, 1927, 31,395 tons were imported into the United States. We estimate that 200,000 tons would have been imported had it not been for the opposition of American producers under the antidumping law and under section 307, above referred to, which, as we have seen, has now been finally construed in such a way as to be ineffective to afford relief in the future to the phosphate rock industry, unless changed as we request.

The supply of the O. C. P. in French Morocco is practically unlimited, and continued importations of this convict-produced product can be made in sufficient quantities to destroy the domestic industry. Our proposed amendment will afford some relief.

The total quantity of phosphate rock sold or used by producers in the United States in 1927 was 3,166,002 long tons; valued at $11,234,863.

The quantity and value by States were as follows:

	Long tons	Value
Florida:		
Hard rock	131,254	$525,016
Land pebble	2,506,166	8,121,146
	2,637,420	8,646,162
Idaho: Western rock	45,260	259,403
Tennessee: Blue and brown rock	477,172	2,300,298
Wyoming: Western rock	6,250	29,000
	3,166,102	$11,234,863

A total of 3,500 employees were dependent on the industry, not counting those wholly or partly engaged in production of purchased power or the shipment of the product, whether by rail or water. On the table of the 1927 figures, the industry added to the revenue of the railroads by $5,000,000 and to the income of the coastwise vessel owners by $1,800,000.

We would welcome an opportunity to present proof to the committee of the facts herein set forth.

This brief is filed on behalf of the following companies, who appeared also before the Ways and Means Committee of the House, in support of this proposed amendment:

American Agricultural Chemical Co., New York, N. Y.; American Cyanamid Co., New York, N. Y.; Anaconda Copper Mining Co., New York, N. Y.; Armour Fertilizer Works, Chicago, Ill.; Atlas Fertilizer Co., Columbia, Tenn.; Baugh Chemical Co., Baltimore, Md.; J. Buttgenbach & Co., Dunnellon, Fla.; C. & J. Camp, Ocala, Fla.; Charleston Mining Co., Richmond, Va.; Coronet Phosphate Co., New York, N. Y.; Davison Chemical Co., Baltimore, Md.; Dunnellon Phosphate Mining Co., Dunnellon, Fla.; Federal Chemical Co., Louisville, Ky.; Hoover & Mason Phosphate Co., Chicago, Ill.; Independent Chemical Co., New York, N. Y.; International Agricultural Corporation, New York, N. Y.; Mutual Mining Co., Brunswick, Ga.; National Fertilizer Association, Washington, D. C.; Phosphate Mining Co., New York, N. Y.; F. S. Royster Guano Co., Norfolk, Va.; Ruhm Phosphate & Chemical Co., Mount Pleasant, Tenn.; Schuler & Webster, Columbia, Tenn.; Southern Agricultural Chemical Corporation, New York, N. Y.; Southern Phosphate Corporation, Baltimore, Md.; Swift & Co., Chicago, Ill.

LETTER FROM THE AMERICAN MINING CONGRESS, WASHINGTON, D. C.

JULY 18, 1929.

Mr. I. M. STEWART,
Clerk, Senate Committee on Finance,
Washington, D. C.

DEAR MR. STEWART: Our attention has been called to the matter of section 307 of H. R. 2667 prohibiting the importation of convict-made goods.

We are inclosing for the information of the committee copies of correspondence had with the Department of Commerce concerning this matter. The Canadian customs tariff prohibits goods manufactured or produced wholly or in part by prison labor and also prohibits the importation of goods manufactured or produced by any enterprise employing prison labor in any connection whatsoever.

We believe, therefore, that the request made by Mr. L. R. Mason, of New York, for an amendment of section 307 is reasonable and we trust the committee will see its way clear to make such change in this section as is necessary to prohibit the importation of commodities mined as well as manufactured by convict labor or by any enterprise employing convict labor. Such a change would be in accordance with the Canadian provision and also in accord with the interpretation of similar provisions in the laws of other governments included in the British Empire.

Very truly yours,

MCKINLEY W. KRIEGH, *Mineral Tariffs Division.*

DEPARTMENT OF COMMERCE,
BUREAU OF FOREIGN AND DOMESTIC COMMERCE,
Washington, June 6, 1929.

Mr. MCKINLEY W. KRIEGH,
American Mining Congress,
Washington, D. C.

DEAR SIR: In compliance with your request by telephone, we have prepared data relative to the prohibition of importation of prison-made articles.

Inclosed you will find the text of the appropriate section of the Australian customs act, 1901–1923. The gist of the New Zealand customs amendment act, 1921, fifth schedule (p. 58), is approximately the same as the section of the Australian customs act referred to above.

The Canadian customs tariff, Schedule C, has also been quoted in so far as it concerns goods produced by prison labor. In this connection, we might add that in general, a broad interpretation has been placed upon the construction

of these acts in order to include all goods manufactured by any company employing prison labor in any one of its factories or plants.

Our sources of information do not show that France, Italy, or Germany have any statutes whatsoever prohibiting the importation of goods manufactured by prison labor.

We trust that you will find this material satisfactory and sufficiently complete to answer your question. Should you need any additional information, please do not fail to call upon us.

Yours very truly,

C. J. JUNKIN, *Chief, Division of Commercial Laws.*

Australia.—Customs act, 1901–1923. Part IV, section 52: Following are prohibited imports, subsection (d): "Goods manufactured or produced wholly or in part by prison labor or which have been made within or in connection with any prison, gaol, or penitentiary."

United Kingdom.—In England the act of 1897 provides that "The importation of articles wholly made or made in part in prison is prohibited."

Union of South Africa.—"The importation of prison-made products into the Union from other countries is prohibited."

Canada.—Schedule C of the Canadian customs tariff: Prohibited goods, item 1206: "Goods manufactured or produced wholly or in part by prison labor, or which have been made within or in connection with any prison, jail, or penitentiary; also goods similar in character to those produced in such institutions when sold or offered for sale by any person, firm, or corporation having a contract for the manufacture of such articles in such institutions, or by any agent of such person, firm, or corporation, or when such goods were originally purchased from or transferred by any such contractor."

NOTE.—When concerns export goods to Canada which come within the above prohibition, collectors of customs are instructed as follows:

"The ——— company employ prison labor in the manufacture of the above articles (mentioned specifically), which are accordingly to be seized on importation into Canada, as such importations are prohibited under the customs tariff.

"———— ————, *Commissioner of Customs.*"

MILLING IN BOND; DRAWBACK

[Secs. 311 and 313]

STATEMENT OF W. C. HELM, REPRESENTING THE RUSSELL-MILLER MILLING CO., MINNEAPOLIS, MINN.

(The witness was duly sworn by the chairman.)

Senator EDGE. Mr. Chairman, may I suggest that if there are 16 witnesses scheduled for the same subject we might be able to concentrate.

The CHAIRMAN. We have got it concentrated, and there will be 7 who will speak out of the 16.

Senator EDGE. I appreciate the information.

Mr. HELM. Mr. Chairman and gentlemen, my position is that of vice president and general manager of Russell-Miller Milling Co., operating flour mills in Minneapolis, Buffalo, North Dakota, and Montana.

There are one or two underlying conditions affecting the grain and flour milling industry in this country and having a larger bearing upon the trade which would be affected by the measure before you, which it seems to us ought to be set out by a brief statement before the following speakers present their arguments. I shall try to be brief if you will indulge me a few moments.

Flour qualities vary, of course, as do other products of industry. These variations in flour qualities and values are due partly to the treatment of wheat, its preparation and treatment in the mill, partly to the separating of the flour into its various grades from top patent to

low grade; but the variations which affect the taste and demand for our product are also very greatly due to the price we pay for wheat. Certain factors have come into the marketing of wheat in recent years which have changed our problems, which have brought new problems to us to a very marked degree. I refer particularly to the testing of wheat for protein content.

Up to a few years ago the protein test was not used in connection with the marketing of wheat. Wheat was sold chiefly on its grade, coupled with the judgment of the buyer as to its general appearance and goodness. After it was bought mills used the gluten test as a prime factor in determining in advance the flour quality from the wheat.

Doubtless you all know that protein is the nitrogenous portion of the substance being analyzed. Gluten is closely allied to protein but not quite identical with it. Gluten is about 85 per cent of the same material as protein.

In the gluten test the elastic quality was quite as important as the quantity. Just as a rubber band which you use is worthless if it has become brittle, so an adequate quantity of gluten was not enough unless it possessed that elastic quality which enabled the loaf to rise under the expansive force of yeast and heat and finally set into a perfect loaf. The protein test takes no account of the gluten quality.

Suddenly about nine years ago grain dealers in the Southwest, Kansas particularly, began to offer wheat of a specified protein content The idea was immediately seized upon by the grain trade generally. Grain dealers in the Northwest followed the example and sent their samples of incoming cars of wheat to the commercial laboratories for protein test. If the test was disappointing they often forgot to mention that there was a protein test; but if the test was high a certificate was presented along with the sample of wheat and a very heavy premium was demanded for the car.

So that in practically a season's time we changed over from a condition of having paid 1 to 2 cents per bushel premium for wheat of a given grade that was known to come from localities that produced high-gluten strength to a condition of paying from 10 to 20 and sometimes 35 cents per bushel premium for wheat of a given grade over another car of the same grade.

I hope you will be interested in looking at a couple of samples of wheat which sold a few days ago on the Chicago Exchange, of exactly the same grade, practically the same specifications in every respect except as to protein content.

In the old days no buyer would have seen any more than a per cent difference in the value of these two samples. They sold one at 12 cents above the price of the July delivery option and the other at 30 cents above the daily price. There was at least 17 cents, paid for a single difference in protein.

Senator THOMAS. Which is the higher priced of the two samples submitted, A or B?

Mr. HELM. A.

Senator BINGHAM. How does the public make money back on that?

Mr. HELM. He sets the standard for his grade and at a certain protein content. If the average wheat comes near that standard he only has to buy a few cars of excess protein wheat at the big premiums

to tone up the majority of his purchases to his standard. It is only those of us who have built our business on extra strength of flours that have to pay a premium on all of our wheat; and that becomes a serious matter.

Senator SACKETT. Do you get a higher price for the extra-strength flour?

Mr. HELM. We must. A difference of 17 or 18 cents means 80 cents per barrel difference in the cost of our flour. I do not know that any mills would set their standard quite as high in strength as this sample B at 13.90 protein. It is not necessary in order for flours to work perfectly to contain quite as much protein as that.

The CHAIRMAN. Where is the high-protein flour sold?

Mr. HELM. In our domestic markets and in our export markets where we use Canadian wheat.

I do not wish to be understood as meaning that very much flour either in the domestic or export markets is made from wheat of as high a premium as that, but it ranges from medium high protein to considerably higher than the average.

Senator BINGHAM. Is this type of flour used in a particular form of articles, bread, or cake?

Mr. HELM. It is a strictly bread flour. Our softer wheats go into the manufacture of cake, pastries, and crackers.

Senator BINGHAM. Are the bakers who maintain a certain standard of loaf willing to pay an extra price for a certain standard of flour?

Mr. HELM. They require flour of quite high strength. They are not willing to pay any such premiums as would be reflected by the difference I have shown here, but they demand good flour.

Senator BINGHAM. If they are not willing to pay for it how can you afford to buy at that difference in price?

Mr. HELM. By using a moderate amount of extremely expensive wheat simply to tone up the general run of the crop to whatever our standard is.

Senator BINGHAM. You blend it in the mill?

Mr. HELM. Yes. In every mill the wheat is a mixture of many carloads, or wagonloads if it is a small mill, and one of the problems is to mix the wheat in the elevator and get a uniform day-to-day mixture.

I wanted to bring out the fact that protein of itself apart from the wheat which contains it has become a supply and demand commodity in this country. When we produce a starchy crop we have extreme premiums for protein. When we have a crop that runs to a better average the premiums are more moderate.

Senator BARKLEY. What is the process by which you determine the amount of protein?

Mr. HELM. The protein test is a comparatively easy chemical determination. The nitrogen of the wheat is extracted and weighed and multiplied by a constant, 5.7, agreed upon by the American Association of Cereal Chemists, and that fairly represents the total amount of protein in the sample. Any number of samples may be tested in a laboratory that has sufficient equipment, and so it is a practicable test for handling a thousand cars that come into a market on a given morning and may be done in time so that they may be put on sale the same day.

The gluten test is not practicable for the marketing of wheat.

Over in Canada some 540,000,000 bushels of wheat were produced last year, largely of one kind, running, as most Canadian crops do, to a very good average of protein. The wheat is sold entirely upon grade in Canada. If we buy Canadian wheat we have no access ordinarily to the cars that make up the lot, but the wheat is loaded out from the large elevators at Fort William and shipped to us as wheat of the grade we purchased, and we take what is delivered. A selection may be made farther west by the payment of a small premium, which is nominal, but it is not necessary to select wheat in Canada in our export trade for excess protein, because there is a sufficient amount of protein ordinarily in the Canadian crop for exacting flour buyers.

I wanted to point out that it is our high-protein wheat which must and does receive the greatest benefit from our tariff.

The CHAIRMAN. What percentage of the wheat that you consume is purchased from American farmers and what from Canadian farmers?

Mr. HELM. Every bushel of the wheat we use for our domestic trade is purchased from American farmers, all we can sell on the domestic market.

The CHAIRMAN. All the Canadian wheat is milled in bond, then?

Mr. HELM. Only; yes.

Senator SACKETT. Does the fact that the Canadian wheat contains this excess protein account at all for the difference in price at the Winnipeg and American markets?

Mr. HELM. I do not think I quite understand your question, Senator.

Senator SACKETT. Does the fact that the Canadian wheat contains this excess of protein account for the difference in the price at Winnipeg and the market in the States?

Mr. HELM. No. That tends to bring the Canadian price a little nearer to our price. Of course the tariff accounts for the difference in the price in the two countries.

Senator SACKETT. You are the first witness I have heard that said the tariff accounted for anything in the wheat price.

Mr. HELM. We fellows are very certain that without tariff protection we would have access to those hundreds of millions of bushels of choice wheat just over the line. There is nothing in the world but the tariff wall that can keep them out of our country.

Senator SACKETT. What effect do you think the tariff has on the American price of wheat?

Mr. HELM. Do you mean does the farmer or does the American seller of wheat receive 42 cents benefit from the tariff? If so, I would say no.

Senator SACKETT. What amount does he receive?

Mr. HELM. That is very variable. It depends largely, of course, upon the amount of wheat which we have as surplus for export. If we raise a very great crop our wheat goes down closer to the world's level, closer to the Canadian price. If we have not much surplus in a short crop our wheat rises under the tariff to a level very much above the world's level.

Senator SACKETT. As I understand you, in all cases the tariff is effective to some extent?

Mr. HELM. Absolutely; and it is most effective, of course, on wheat that can sell at the highest premium in this country. No. 1 Northern wheat in Canada is a better article than No. 1 Northern wheat in the States at the same protein content.

It would fully satisfy our requirements here if it were available to us.

Senator EDGE. Do I understand you to say what you purchase, is all purchased, milled in bond, and exported from the country?

Mr. HELM. Yes, sir; all the wheat we buy from Canada.

Senator EDGE. From Canada?

Mr. HELM. Yes.

Senator EDGE. It comes in in bond and is exported.

Mr. HELM. Yes, sir.

The CHAIRMAN. Perhaps you misunderstood my question, or else I misunderstood your answer. What percentage of American wheat is used in the flour that is manufactured for exportation while in bond? In the flour manufactured in bond, what percentage of American wheat is used?

Mr. HELM. I think none, at the present time. My company has milled at Buffalo five years, and has never mixed a bushel of American wheat with the Canadian.

The CHAIRMAN. I have a statement here from the Buffalo district, No. 9. In 1925 the foreign wheat was 10,255,003 bushels; American wheat, 3,473,497; used in the form of flour, in bushels, 889,479. The percentage of American wheat used in bonded flour warehouses was 29.8 per cent; in 1926 it was 14.22 per cent; in 1927 it was 30.61 per cent.

Mr. HELM. Yes.

The CHAIRMAN. That is, taking all the mills in the Buffalo district.

Mr. HELM. Yes. We are allowed, of course, to blend American wheat, but we are not doing it, ordinarily. American wheat is too expensive. It is worth more than the world level of prices.

Senator BARKLEY. What is the average difference between the price of wheat in the United States and Canada?

Mr. HELM. I do not think there is any answer to that question. It is so variable, depending upon the size of the crops and the conditions in other countries.

Senator BARKLEY. Did I understand you to say that the Canadian wheat ordinarily sells higher than American wheat?

Mr. HELM. No; the reverse.

Senator BARKLEY. I thought you said a short crop in the United States tended to bring the American price up to a level with the Canadian price.

Mr. HELM. No. A short crop tends to put us more above the Canadian level than we would be if we had a long crop.

The CHAIRMAN. They had a short crop here in 1923, and the tariff was effective almost to the full amount.

Mr. HELM. Yes.

The CHAIRMAN. That was in 1923.

Mr. HELM. I think so.

Senator REED. Mr. Helm, it would help some of us a great deal if we might know what you advocate.

Mr. HELM. The following witnesses will advocate a continuance of the present privileges, which have been given us at Buffalo, and I

concur with them fully, sir, in that. I believe you gentlemen are willing and glad to foster American industries if in doing so you do not harm any other interests in this country.

Senator REED. Is it true that the Canadian wheat which is milled in bond in the United States is exported very considerably to Cuba and there displaces an equal quantity of American flour which would otherwise be sold there?

Mr. HELM. In our opinion it does not displace one bushel of American wheat.

The CHAIRMAN. Why doesn't it?

Mr. HELM. I would like not to anticipate the arguments of the other gentlemen, but I will, of course, answer your question as best I can.

The CHAIRMAN. No. I will leave that to the other witnesses.

Mr. HELM. That is fully covered by the other witnesses.

The CHAIRMAN. I understand each one has been given a certain subject to handle before the committee, and I will leave it until the other witnesses come on.

Senator BINGHAM. Before the witness leaves the stand I would like to make sure I understood him—that if it were not for the 42 cents a bushel duty on wheat, the millers would probably purchase several hundred millions of bushels more of Canadian wheat for consumption in America than they do now?

Mr. HELM. It would open our markets to the entire Canadian crop. How much of it we would use to the exclusion of our own hundreds of millions of bushels, of course, no one can say. It would depend upon quality and price; but all of the wheat of North America, Canada and the United States, would, of course, then be on a price level, for equal quality. We in Minneapolis, for instance, would have access easily to the wheat grown in [illegible] the great wheat producing areas of Canada.

Senator BINGHAM. I[illegible] millers, there would be just that m[illegible] the United States in America.

Mr. HELM. Ye[illegible]

Senator EDGE[illegible] lower t[illegible] of the American produ[illegible]

Mr. HELM. [illegible]

Senator BAR[illegible] see tha[illegible] mber, there were 3,[illegible] bushels[illegible] 192 were 8,900,000; in [illegible] om Ja[illegible] 215,000 and then the 12 cen[illegible] t year duced to 679,000, and[illegible] u k much was imported p[illegible] riff on wheat? These [illegible] do not give [illegible] ears p[illegible]

Mr. HELM. No[illegible] an not [illegible] as to qu[illegible]

Senator BARKLE[illegible] re t[illegible] e flour p[illegible] n Minneapolis has decreased [illegible] 000,000 11,000,000, and that in Buffalo ha[illegible] y 10,000,000.

Mr. HELM. Yes.

Senator BARKLEY. What is [illegible] shift in the production of flour in those two places?

Mr. HELM. We used to be able to export our product from mills in the west and in the interior of the country. The trade has been

taken from us as Canada has increased her crops and her milling capacity until a mill located at a point like Minneapolis can hardly do any exporting, or very little of the old export business is still held by the mills there. We were obliged to go to Buffalo and build mills if we wanted to hold our export business and take advantage of the milling in bond. We can not bring Canadian wheat down to Minneapolis, or interior points, with long out-of-line hauls, and mill it for export.

Senator BARKLEY. These figures I quote you are not for exports, but for total production of flour at those two places.

Mr. HELM. I did not complete my answer, perhaps. In building mills at Buffalo, of course, we desired to be in a position to take better care of our eastern seaboard domestic business, and much capacity has been moved away from Minneapolis, or abandoned at Minneapolis, as the companies operating out there have built mills in Buffalo.

The CHAIRMAN. Is that all?

Mr. HELM. Yes.

Senator THOMAS. I want to ask a question. If the American wheat is inferior to the Canadian wheat, and if the tariff increases the price of American wheat, how can the milling interests produce flour in competition with the Canadian flour and sell it abroad?

Mr. HELM. I did not mean to imply that American wheat was inferior in its flour quality to Canadian wheat. That new country produces a very plump, beautiful kernel of wheat, and much of it averages somewhat better in value, in flour yield, than ours. It does not produce any better quality of flour than certain of our wheats. We have a very great range of quality in our wheats. We have hard spring wheat; we have hard winter wheat; we have a large amount of soft winter wheat, which is used in cracker and pastry manufacture, and does not go into bread consumption. We have a large amount of durum wheat, which has plenty of protein, but of a poor quality for bread making. It goes into other uses. But our choice hard bread wheats are comparable to the aggregate, or the preponderance of wheat grown in Canada.

Senator THOMAS of Oklahoma. What countries offer competition in the wheat and the flour to the American interests?

The CHAIRMAN. Senator Thomas, may I suggest that there are about seven witnesses, and each one is given a subject to handle. When that subject comes up, he is prepared to answer any questions in detail; and that is the way they would like to have their evidence submitted.

Mr. HELM. Thank you very much, gentlemen.

STATEMENT OF FRED J. LINGHAM, LOCKPORT, N. Y., REPRESENTING THE AMERICAN EXPORT MILLERS' PROTECTIVE ASSOCIATION

(The witness was duly sworn by the chairman.)

Mr. LINGHAM. Mr. Chairman, and gentlemen, I am president of the Federal Milling & Elevator Co. (Inc.), of Lockport, N. Y., and secretary and treasurer of the American Export Millers' Protective Association.

I am appearing here as a miller who does no exporting; but, notwithstanding that, we have a very keen interest in the export flour

business of the country, because if the exportation of flour from this country through milling in bond is diverted to Canada, it would naturally throw that much more milling capacity into that country and further demoralize our business.

As to the American Export Millers' Protective Association, it is an association of 175 mills. The large proportion of those mills also do no milling in bond, or no export business, but they have the same interest that we have to continue the exportation through milling in bond.

Senator WATSON. Do you use Canadian wheat at all?

Mr. LINGHAM. We do not now; no, sir. I might say that I am not a paid official of the association. I am simply giving my time to the association for the good of the industry. We are appearing here, of course, in connection with section 311. This section of the bill——

Senator EDGE. Section 311 is a proposed amendment provided by the House, apparently changing the present system of milling in bond and exporting to countries with a preferential. Is that the section?

Mr. LINGHAM. Yes.

Senator EDGE. Is that the proposed amendment you are going to discuss?

Mr. LINGHAM. That is the section.

Senator EDGE. If you will, in a few words, outline the difference between the present system and what will be brought about by the amendment, I think we can more intelligently follow your testimony. It is new to some of us.

Mr. LINGHAM. I will try to do that, Senator. This amendment to section 311 provides, in effect, that wheat imported from the foreign country—of course, in effect, from Canada—shall not be exported to Cuba. Cuba is not named, but that is the intent.

Senator EDGE. That is what it means.

Mr. LINGHAM. Yes; that is what it means—without the payment of a duty on the wheat equivalent to about 35 cents a barrel. That is the whole meaning of section 311.

Senator SACKETT. That is what you object to?

Mr. LINGHAM. Yes, sir. That is what we object to, Senator Sackett.

I might explain what manufacturing in bond is. Manufacturing in bond is the bringing into this country of raw material, or partially manufactured goods, into a bonded warehouse, bonded by the Federal Government, and there processing it and forwarding to a foreign country. That is manufacturing in bond.

Why is that needed? It is because, in any country that has a protective tariff, if the results are secured that are aimed at by the protective tariff, the raw material is put above a world level of price. When that is done, of course, the manufactured product could not be exported in competition with countries having the raw material at the lower price.

So, in order to provide for the use of labor and industry in this country, using this country as the country we are considering, it is provided that manufacturing in bond shall be allowed.

As to the Cuban reciprocity treaty, which is directly in connection with this section under discussion, it was signed by representatives of the two countries December 11, 1902. As stated in a proclama-

tion by President Roosevelt at the time, it was intended to facilitate their commercial intercourse—that is, Cuba and the United States—by improving the conditions of trade between the two countries. Article IV of the treaty reads, in effect, that certain articles—

being the product of the soil or industry of the United States, imported into Cuba, shall be admitted at a reduced rate of duty.

Schedule B of that article definitely names wheat flour to be admitted at a reduction of 30 per cent, which is about 35 cents per barrel.

The proponents of paragraph 311 have believed that if manufacturing in bond of flour for the Cuban market could be stopped they would get more Cuban business. That is why the bill is brought forward, of course. These millers have, at different times, brought the matter before various Washington bodies, including the Department of State. That department finally made a very careful investigation of the whole situation, and on March 7, 1928, issued a memorandum regarding the treatment accorded by Cuban authorities to flour manufactured in the United States from wheat grown in Canada. In other words, it specifically covered the problem we are now discussing. I will present a copy of that memorandum in full later.

First, the Department of State answered the claim of these millers that the treaty was working injury to their business by pointing out that the treaty between the United States and Cuba definitely read that the products of the soil or industry of the United States imported into Cuba should come in at the preferential of 30 per cent.

Then, answering the claim of these southwestern millers—it is really mostly the southwestern millers that have brought this forward—that their business in Cuba had been declining and had been taken over by mills in the United States located near the Canadian border, this memorandum stated—this was by the Department of State, but they, in turn, quoted the Department of Commerce—

The Department of Commerce has prepared a statistical table, a copy of which is attached hereto, containing pertinent information for the years 1922 to 1927, inclusive, and from which it appears that the increase during the last three years in the amount of flour shipped to Cuba by the mills in this country near the Canadian border has been accompanied by a much more marked decline in the amount shipped to Cuba by Canadian mills than by mills located in the Central and Southwestern portions of the States.

The department stated, in effect, that in their opinion, if the Cuban treaty had not been effective—

Direct shipments from Canada to Cuba would probably have tended to increase.

The memorandum referred to shows flour exports to Cuba through the principal United States ports and from Canada from 1922 to 1927. This memorandum shows that exports via the Gulf to Cuba declined 208,000 barrels from 1902 to 1927, but the memorandum of the Department of State points out that during the same period Canadian exports declined practically the same amount—namely, 179,000 barrels—and, as previously quoted, the State Department, after careful study, decided that if the Cuban preferential on flour manufactured in bond from Canadian wheat had not been effective the Canadian mills would have tended to secure an increase in that market.

So that we can understand the reasons for the foregoing, let me picture the situation that exists as to the growing of wheat.

Canada has developed very fast in the last few years as a wheat-growing country. Her production has reached the point where practically three-quarters of her average wheat crop must be exported. In other words, what she grows over her domestic consumption naturally must be exported, and this wheat is practically all what is known on the continent as premium wheat.

On the other hand, the United States exports only about one-quarter of her wheat crop, and frequently less than that, and then her exportable wheat is only of the grades and varieties not demanded by American mills for home consumption.

I will read a short quotation from the Bureau of Railway Economics, in their Bulletin No. 24. They quote from the United States Department of Commerce:

The export wheats of the United States are no longer representative of the crops. Our mills pick, first, the wheats that meet their requirements. It is safe to say that out of an average crop of 800,000,000 bushels of wheat, practically all the best wheat, No. 1 and most of No. 2 premium quality, would be required by the millers of the United States.

They mean, therefore, home consumption.

But there is always a surplus of semihard, semisoft wheat, and low grades, all of which do not meet the requirements of the American mills for home consumption.

They add:

The Canadian export wheat is representative of the entire prairie crop. This wheat is high in gluten, of good milling quality, with high water absorption, and good milling qualities.

The bulletin also says:

As the United States controls, on the average, less than 25 per cent of the international movement in wheat, it is obvious that the United States is not in a position to control the export price.

There is a limited amount of business done with Cuba by a few Minnesota mills, which have had brands established there for some years, but if present conditions continue, and the matter of premiums increases, as it may very probably, then those mills must gradually lose that market in competiton with Canadian wheat.

Senator SHORTRIDGE. What mills?

Mr. LINGHAM. The Minnesota mills. There are a few Minnesota mills that have a comparatively small business there.

Senator WALSH of Massachusetts. Does the climate of Cuba tend to make Canadian wheat preferable to domestic wheat?

Mr. LINGHAM. Senator Walsh, I have that very point covered.

Senator SHORTRIDGE. Why not answer it right now?

Mr. LINGHAM. Oh, it does; decidedly.

Senator SHORTRIDGE. That is the way to answer.

Mr. LINGHAM. Ninety-five per cent of the Canadian wheat crop is grown west of the Great Lakes. Some of that flows to the Pacific coast for export. The balance, of course, flows eastward, down the Great Lakes, or by the Canadian railroads east, and as it goes east the mills manufacturing in bond pick that wheat, or some of that wheat, from the stream, make it into flour, and forward it

Of course, the final action on 311 will simply decide whether that shall be continued.

I believe it is surprising to many to know that Canadian mills have been steadily increasing their export business as compared with the mills of the United States. In 1903 the United States flour exports were more than six times those of Canada. Last year they were about the same, including the wheat milled in bond; but if milling in bond had not been permitted, and in that way that flour business had been thrown over to the Canadian mills, then it is interesting to find that Canadian flour exports would have been just double those of the United States, within 1,000 bushels.

The CHAIRMAN. You do not have reference to the exportation of flour or wheat to Cuba, do you?

Mr. LINGHAM. No. That is covering the general export situation. That is a statement covering the general exportation.

The CHAIRMAN. Who makes that statement? Are you going to cover that, or some one else?

Mr. LINGHAM. That will be covered later. I might have left it out of my brief, because it is more of a general subject.

As to the Cuban baking conditions, the climatic conditions of that country make the use of strong glutinous flour especially desirable in the bakeries. A soft flour, in warm, humid weather, such as the Cuban climate, slacks down and becomes sticky. A stronger flour is needed in using bakery machinery than when the work is done by hand. This increased use of baking machinery in Cuba, as well as the natural change to stronger flour that would no doubt have come anyway, has increased the demand for the strong, glutinous flour in that market.

Going into a little further detail, because of some questions that were asked the previous witness, the wheats raised in this country range from the strong, glutinous wheat, of which there is only a comparatively small amount, to extremely soft wheat. It may seem strange, but at times the softest wheat brings a big premium over the strong wheat, and then another year exactly the reverse may be true. For instance, within three or four years, we have paid as high as 40 cents a bushel more for strong American spring wheat than the price at which we were buying the soft winter wheat. Then, within two years, we have, on the other hand, paid 40 cents a bushel premium for the soft wheat, and the softer it was, for this purpose, the higher the premium.

Senator WATSON. Now, tell us why?

Mr. LINGHAM. The soft wheat is used almost entirely, outside of a little home use—and soft wheat is used largely, even in the home—for pastry purposes, for making cake, pies, and crackers. You will understand, from the character of cake, that cake, to be good, must be brittle. It must break easily.

Senator WATSON. Do people eat more pie some years than they do other years?

Mr. LINGHAM. I have not any statistics on pies.

Senator WATSON. So that you would use more soft wheat some years than other years?

Mr. LINGHAM. The reason for that change in premium is entirely a matter of crop each year. Last year, for example, the soft winter wheat crop was very small, comparatively. It is very hard for a man

outside the baking industry to realize the wide difference in the characteristics of the soft winter wheat, as compared with the hard winter or the spring wheat.

Senator SACKETT. You do not mean to say that you paid 40 cents more for all soft wheat one year, and 40 cents more for all hard wheat the next year; but you mean to say that you paid that for the premium wheat of each of those grades, is that right?

Mr. LINGHAM. No, sir; I mean just what you said at first. One year we paid 40 cents a bushel more for strong spring wheat.

Senator SACKETT. You say "strong." How about the weak spring wheat? Did you pay more for that?

Mr. LINGHAM. Yes; but that year a matter of one per cent protein in spring wheat meant a difference of 30 cents a bushel.

Senator SACKETT. That is what I am getting at. It was not all of it.

Mr. LINGHAM. Oh, no; it was not all of it.

Senator SACKETT. It was that which was premium wheat, of that kind.

Mr. LINGHAM. Yes.

Senator SACKETT. And, of course, there was a small amount of it?

Mr. LINGHAM. Yes.

Senator SACKETT. So you paid a high rate for it?

Mr. LINGHAM. Yes.

Senator SACKETT. The following year there was a small amount of premium winter wheat?

Mr. LINGHAM. In winter wheat there is not such a wide range of premium. Practically what you said is true.

Senator SHORTRIDGE. What section are you talking about?

Mr. LINGHAM. Section 311.

I desire to explain the reason for the different quantities. Spring wheat is used practically altogether in bread making. You understand the characteristics of bread, and you must have more or less of a rubbery character. Spring wheat and hard winter wheat is used practically altogether for bread making purposes.

Senator COUZENS. I would like to understand what that has to do with the milling in bond business.

Mr. LINGHAM. I will come to it. That will come out. Cuba is very anxious that no steps be taken by the United States which would interfere with her buying this character of flour from American millers.

Senator SHORTRIDGE. But we are considering the American producer of wheat and the miller of wheat. Are you addressing yourself to section 311?

Mr. LINGHAM. Yes, sir.

Senator SHORTRIDGE. You are objecting to that provision found on lines 21 to 25 and on lines 1 and 2, page 341?

Mr. LINGHAM. I do not have the same copy that you have, Senator, so I can not answer that.

Senator CONNALLY. May I ask a question, Senator? I think it will save time.

Senator SHORTRIDGE. Certainly.

Senator CONNALLY. Under the present arrangement you buy Canadian wheat, mill it in Buffalo and export it anywhere in the world you want to without paying any duty, do you not?

Mr. LINGHAM. Yes.

Senator CONNALLY. However, this act proposes that whenever you export that to Cuba you shall pay the Government of the United States a rate that will equalize the reduced rate which you get into Cuba as against any other foreign country?

Mr. LINGHAM. That is the proposal.

Senator CONNALLY. When you are given the privilege of importing this wheat free and exporting it to foreign countries, in other words, when you come within the protection of the American tariff, why should you then get a preferential rate of 30 cents into Cuba, just like the millers of American flour get, whereas the Canadian who produces this wheat has to pay the full duty?

Mr. LINGHAM. Senator, the reason for our position is that we firmly believe from what we know of the situation——

Senator CONNALLY. That is the whole point, isn't it?

Mr. LINGHAM. Yes.

Senator CONNALLY. Then talk to that.

Mr. LINGHAM. That is we do not have that preferential over Canada it would divert that Canadian wheat to the Canadian mills.

Senator CONNALLY. You mean the millers now, not the wheat farmers, and unless the millers have that preference?

Mr. LINGHAM. Yes. Unless the American millers have the benefit of the 35 cents preferential we believe it would divert that Canadian wheat to the Canadian mills, because then Cuba would simply buy it from Canada instead of from this country.

Senator CONNALLY. On the other hand, wouldn't they simply buy more American wheat in Cuba with a 30-cent preference than they would of the Canadian wheat? Instead, Mr. Lingham, wouldn't it encourage the consumption of American grown wheat rather than the Canadian wheat milled in your mills?

Mr. LINGHAM. It would if the characteristics of the flour shipped there were more nearly the same.

Senator CONNALLY. If the Canadian flour is better flour and worth more, why shouldn't they pay more for it?

Mr. LINGHAM. Of course, the intent of the Cuban preferential was to give industry and agriculture a preference on imports into Cuba.

Now, in carrying out that policy we believe that under the present law American industry should have the benefit of the 35 cents per barrel over the Canadian miller.

Senator CONNALLY. But I want to know the reasons. I know how you feel about it.

Mr. LINGHAM. I will quote a cablegram from the president of the Cuban Bakers' Union. He says:

> Please do all you can in order to prevent passage Garber bill taxing spring-wheat flours milled in bond as these flours are preferred over the weaker types. We thank you in advance for your efforts in this connection.

And you understand, Senator, that the wheat that is exportable from this country is not all of our strong spring wheat.

Senator CONNALLY. You dilute the fine wheat, you cut it a little with sorry wheat, don't you?

Mr. LINGHAM. With what kind of wheat?

Senator CONNALLY. You say it is sorry wheat or lower grade.

Did you send a telegram to him, and was that a reply to your telegram?

Mr. LINGHAM. No, sir. I don't know why it came in.

Here is a cable from the president of the Cuban Bakers' Association:

Our attention has been called to the Garber bill and wish to ask you on behalf of the Cuban bakers to do the utmost to avoid its passage. This bill if passed will greatly harm the baking interests of Cuba due to the fact that strong flours are absolutely necessary on account of the characteristics of the bread consumed in this country. If the bill is passed we would have to import this kind of flour even though its origin is not from your country.

Senator WATSON. Mr. Lingham, instead of reading all of that I think you would save your own time as well as the time of the committee if you would just tell us what you want and why you want it.

Senator SHORTRIDGE. And file your brief. That would be better.

Senator WATSON. Yes; file the brief.

Senator SMOOT. All of these briefs will be available to the committee, and if you have any high points outside of the brief that you wish to present to the committee, that would be the better way of presenting it.

Mr. LINGHAM. In connection with this I think I should give a little picture of the condition of the milling industry. We need protection; we need help.

Senator SHORTRIDGE. Do you think you will get it by way of admitting this wheat from Canada to be converted into flour and then sold abroad without paying the tariff. Is that your position?

Mr. LINGHAM. Certainly. Yes, sir.

Senator SHORTRIDGE. I understand your position.

Now, you have a long brief there.

Mr. LINGHAM. This is not very long.

Senator SHORTRIDGE. Well, granted. But that is your position?

Mr. LINGHAM. Yes, sir; it is.

I will present a copy of a letter from W. L. Austin, chief statistican of the Department of Agriculture, which shows 37 per cent of the mills of the United States went out of business.

Senator SHORTRIDGE. Why?

Mr. LINGHAM. Because of the demoralized condition.

Senator SHORTRIDGE. That was not due to bringing in the wheat, was it? Was it due to bringing in or not bringing in wheat from Canada?

Mr. LINGHAM. No, sir. If it had not been for that, more of them would have gone out of business.

Senator SHORTRIDGE. You think so?

Mr. LINGHAM. Yes.

Senator SHORTRIDGE. Put it the other way. It is not proper for me to argue the case; and I am certainly not deciding it in my own mind. But tell us if this law were passed as suggested and you had to pay a tariff—indirectly, but a tariff—on Canadian wheat, what effect it would have upon the wheat grower of America, in your judgment. I am talking about the wheat grower now.

Mr. LINGHAM. I do not think it would help the wheat grower at all.

Senator SHORTRIDGE. What effect would it have upon you as a miller?

Mr. LINGHAM. It would have the effect that on about 700,000 barrels that have been exported to Cuba of this Canadian wheat that that capacity would be thrown into our domestic markets in direct competition.

Senator SHORTRIDGE. Then you think it would hurt you—using that phrase—as a miller?

Mr. LINGHAM. Very much.

Senator SHORTRIDGE. And you do not express any opinion as to whether or not it would benefit or injure the American wheat grower?

Mr. LINGHAM. Senator, because of the character of flour that Cuba wants I really do not believe it would mean the exportation of any more. When I say "any more" that is a fine point.

Senator SHORTRIDGE. You do not think it would create a greater demand here in the United States for American grown wheat?

Mr. LINGHAM. No, sir.

Senator SHORTRIDGE. You do not?

Mr. LINGHAM. No, sir.

Senator SHORTRIDGE. Certainly.

Mr. LINGHAM. I think they would certainly go to Canada and buy that character of flour there.

Senator SHORTRIDGE. Well, that is your guess.

Mr. LINGHAM. The Canadian mills have been very anxious that milling in bond be stopped, as you probably know, and I will present a copy of a petition which they presented in 1925 to the Dominion Government.

Senator SHORTRIDGE. It is in your brief?

Mr. LINGHAM. Yes.

Senator SHORTRIDGE. Well, we will read it, then. All of us will read it.

Mr. LINGHAM. It is pretty long.

Senator SHORTRIDGE. It was in 1925?

Mr. LINGHAM. Yes.

Senator SHORTRIDGE. Do they take the same position now?

Mr. LINGHAM. Oh, yes; sir.

Senator SHORTRIDGE. You understand what I mean now?

Mr. LINGHAM. Yes.

Senator SHORTRIDGE. The Canadian wheat growers would like to have this bill passed in its present form?

Mr. LINGHAM. Yes.

Senator SHORTRIDGE. And you are opposed to it?

Mr. LINGHAM. Yes.

Senator SHORTRIDGE. For the reasons which you have been giving?

Mr. LINGHAM. Yes, sir; I am.

In that connection I might quote some very short expressions from the Canadian press of recent date.

Senator SHORTRIDGE. They are always speaking for Canada, are they not?

Mr. LINGHAM. Yes.

Senator SHORTRIDGE. Of course they are. I do not take all that the Canadian papers say as being 100 per cent correct, nor all that the American papers say.

Mr. LINGHAM. They are still very anxious that this present bill be passed.

The Canadian Trade News, of Winnipeg, January 25, last, said:

It is a very interesting development that agricultural interests, together with some milling interests, in the United States are applying to Congress for the repeal of the milling in bond provisions of the customs law. The movement for repeal is based particularly on the situation in Cuba, where the United States enjoys a big tariff preference which gives its flour practical control of the market. Cuba, however, seems to prefer Canadian quality and makes a good market for the flour milled in bond, to the exclusion of corresponding amounts of the products of United States wheat, but the total takings of Cuba constitute only a fraction of what is milled in bond. Canada does not care on what ground the United States repeals existing provisions as long as it does repeal them.

The Montreal Standard of March 2, 1929, said:

An export tax duty would have two results.

I might say they petitioned the Canadian Government to put an export tax on wheat shipped over to this country for milling in bond.

Senator SHORTRIDGE. They wanted to control the market?

Mr. LINGHAM. Yes.

Senator SHORTRIDGE. That is the way to put it.

Mr. LINGHAM. Yes; they are very anxious to stop selling in bond in this country.

They say:

An export tax duty would have two results. It would result in added revenue to the Canadian people and it would have another result ten times more important than that, it would help the Canadian miller to beat his American rival.

The Canadian miller would get this wheat with no tax on it, and he could therefore mill his wheat at a certain price.

Senator SHORTRIDGE. There is no use reading all of those. That is the attitude of the Canadian press, I take it.

Mr. LINGHAM. I just want to show you the feeling up there.

Senator SHORTRIDGE. That is their position. I am trying to help you out in this case. Now, that is their position?

Mr. LINGHAM. Yes.

Senator SHORTRIDGE. It is not out of love for us but out of regard for their interests.

Mr. LINGHAM. Oh, certainly. They are looking at it entirely from their own interests. What we can not understand is why——

Senator SHORTRIDGE. We would play into their hands?

Mr. LINGHAM. That is just my point, Senator Shortridge.

The new tariff, I might say, does not propose any change in regard to manufacturing in bond with respect to any other commodity.

Before I finish I might say that the question has been raised as to the constitutionality or what would be the effect of an export tax. We can not pass upon that.

Senator SHORTRIDGE. But we can pass a law superseding an existing treaty?

Mr. LINGHAM. Yes; I suppose that could be done. I sincerely hope you will not do so, Senator.

That is all I have to present. However, I would ask permission to submit my brief.

Senator SMOOT. Very well.

Senator SHORTRIDGE. That is very clearly presented.

(Mr. Lingham submitted the following brief:)

BRIEF OF FRED J. LINGHAM, REPRESENTING THE AMERICAN EXPORT MILLERS' PROTECTIVE ASSOCIATION

I am appearing before your committee as a miller whose company does no export business. I am here because I realize that if there is any hindrance to the present method of milling Canadian wheat in bond for export to Cuba or other countries, the result can only be the throwing into our domestic market of that amount of milling capacity that is now occupied in handling that business.

Also, I am appearing as secretary-treasurer of the American Export Millers' Protective Association. I draw no salary from the organization, but have given my time to the work entriely for the good of the milling industry.

The organization has a membership of 175 milling companies, with mills located in 19 States from coast to coast.

The mills who are members of the organization export more than 70 per cent of all flour exported from all the mills of the country.

However, the much larger proportion of our association membership is composed of mills who do no export business, but are opposed to any interference with manufacturing in bond for Cuba or other markets.

Section 311 of tariff bill.—This section of the tariff bill as passed by the House reads in effect that flour manufactured in bond from imported wheat shall not be exported to Cuba without the payment of a duty on the wheat equivalent to about 35 cents per barrel on flour.

What is manufacturing in bond?—Manufacturing in bond is the manufacturing of goods, in a warehouse that has been bonded under our Federal laws, by bringing in raw material from a foreign country processing it and forwarding to a foreign country.

This is needed and provided for by our laws because of the fact that we are a country of tariff protection, and therefore many of our raw materials sell in our own country at a price above the world level.

Under such conditions, our Government has provided that several raw materials may be brought into the United States, from countries that must sell them in the world markets at prices under our protective prices, but with the provision that the goods manufactured from these raw materials shall be exported, or the duty paid on same.

Otherwise, it would be impossible for the American industry to compete in world markets with manufacturers having the low-priced raw materials at their doors.

This is of benefit to the people of the United States as it provides employment for labor and capital which might otherwise be idle.

Cuban reciprocity treaty.—The reciprocity treaty between the United States and Cuba was signed by representatives of the two countries December 11, 1902.

As stated in a proclamation by the President of the United States at that time, this treaty was concluded—

"To facilitate their commercial intercourse by improving the conditions of trade between the two countries."

Article 4 of the treaty reads, in effect, that certain articles "being the product of the soil or industry of the United States imported into Cuba shall be admitted" at a reduced rate of duty.

Schedule B of that article definitely names wheat flour, to be admitted at a reduction of 30 per cent (about 35 cents per barrel).

The proponents of paragraph 311, now under discussion, have believed that if milling in bond of Canadian wheat for exportation of the flour to Cuba were stopped, it would result in their securing more of the Cuban business.

These millers have at different times brought the matter before various Washington bodies, including our Department of State, with the result that the Department of State finally made a very careful investigation of the whole situation, and on March 7, 1928, issued a "Memorandum regarding the treatment accorded by Cuban authorities to flour manufactured in the United States from wheat grown in Canada." I present a copy of this memorandum as Exhibit A.

First, the Department of State answered the claim of these millers that the treaty was working injury to their business by pointing out that the treaty between the United States and Cuba definitely read that, "the products of the soil or industry of the United States imported into Cuba shall be admitted at the following respective reduction" (30 per cent), and pointing out that wheat flour was definitely named as stated above.

Answering the claim of the southwestern millers, that their business in Cuba had been declining, and had been taken over by mills in the United States located near the Canadian border, this memorandum stated, "the Department of Commerce has prepared a statistical table, a copy of which is attached hereto, containing pertinent information for the years 1922 to 1927, inclusive, and from which it appears that the increase during the last three years in the amount of flour shipped to Cuba by the mills in this country near the Canadian border has been accompanied by a much more marked decline in the amount shipped to Cuba by Canadian mills, than by mills located in the central and southwestern portions of the United States."

The Department of State added in effect that in their opinion if the Cuban treaty had not been effective, "direct shipments from Canada to Cuba would probably have tended to increase."

The memorandum referred to shows flour exports to Cuba through all principal United States ports and from Canada from 1922 to 1927.

This memorandum shows that exports via the Gulf to Cuba declined 208,000 barrels from 1922 to 1927, but the memorandum of the Department of State points out that during the same period Canadian exports declined practically the same amount, namely 179,000 barrels, and as previously quoted, the State Department, after careful study, decided that if the Cuban preferential on flour manufactured in bond from Canadian wheat had not been effective, Canadian mills would have tended to secure an increase in their Cuban business, rather than losing it to the United States as has developed.

Canadian and United States wheat production.—So that we may fully understand the reasons for the foregoing, let me picture the situation that exists.

To the north of the line that separates the United States and Canada there is the enormous wheat growing country of Canada which has developed to the point in the growing of wheat that it grows four times the amount of wheat that it consumes at home. In other words, under normal conditions Canada must export three-quarters of her wheat crop. This naturally must hold their wheat prices to whatever the world level of price may be.

This exported surplus is practically all of what is known on this continent as premium wheat because of its high protein.

On the other hand, the United States exports only about one-quarter of its wheat crop, and frequently less, and then only of the grades or varieties not demanded by American mills for domestic consumption.

I present as Exhibit B copy of a chart published by the Bureau of Railway Economics demonstrating the above facts.

Quality of wheat exported by the United States.—Also I present photostat copy of an article in Bulletin No. 24 of the Bureau of Railway Economics (Exhibit C). This quotes from a United States Department of Commerce bulletin as follows:

"The export wheats of the United States are no longer representative of the crop. Our mills pick first the wheats that meet their requirements. It is safe to say that, out of an average crop of 800,000,000 bushels of wheat, practically all the best wheat (number 1 and most of number 2 premium quality) would be required by the millers of the United States * * * but there is always a surplus of semihard, semisoft wheat and low grades, all of which do not meet the requirements of American mills * * * The Canadian export wheat is representative of the entire prairie crop. This wheat is high in gluten, of good quality, with high water absorption and good milling qualities."

This bulletin also says:

"As the United States controls on the average less than 25 per cent of the international movement, it is obvious that the United States is not in position to control the export price."

There is a limited amount of export flour business done with Cuba on a few Minnesota brands that have been established there for several years, but the amount is very limited, and if our United States wheat prices are to continue above the world level of prices for hard spring wheat then we must realize that this business will no doubt gradually be absorbed by flour made from Canadian wheat.

Transportation of the Canadian wheat crop for export.—Ninety-five per cent of the Canadian wheat crop is grown west of the Great Lakes. This is their exportable wheat.

Excepting the part that goes to the Pacific Coast, this export wheat moves to the Atlantic seaboard, either to Montreal or through United States ports.

As it moves east, part of it will be ground by Canadian or United States mills. The final action of Congress in regard to section 311 will decide whether the

grinding of that part of this wheat which is ground on the American continent shall be ground in Canadian mills or United States mills.

It is surprising to many to know that Canadian mills have been steadily taking over the export flour business formerly enjoyed by United States mills.

In 1908 United States flour exports were more than six times those of Canada.

Last year, if milling in bond had not been permitted, and thus thrown that business over to the Canadian mills, then Canadian flour exports would have been just double those of the United States.

Cuban baking conditions.—Referring particularly to the Cuban situation, the climatic conditions of that country make the use of strong glutinous flour especially needed in bakeries. A soft flour in warm humid weather, such as the Cuban climate, slacks down and becomes sticky. A stronger flour is needed in using bakery machinery than when the work is done by hand. The increased use of baking machinery in Cuba as well as the natural change to the stronger flour that would no doubt have come anyway, has increased the demand for a strong glutinous flour that will stand up under the conditions named.

Cuba wants flour made from Canadian wheat.—Cuba is very anxious that no steps shall be taken by the United States, that would interfere with her buying this character of flour from American millers. I present herewith a photostat copy of a cablegram (Exhibit D) from Mr. Jose Estruch, president of the Cuban Bakers Union, which reads:

"Please do all you can in order to prevent passage Garber bill taxing spring wheat flours milled in bond, as these flours are preferred over the weaker types."

Also I present copy of a cablegram from Mr. Secundino Lopez, president of the Cuban Bakers Association (Exhibit E) which reads:

"Our attention has been called to the Garber bill, and wish to ask you on behalf of the Cuban bakers to do the utmost to avoid its passage. This bill, if passed, will greatly harm the baking interests of Cuba, due to the fact that strong flours are absolutely necessary on account of the characteristics of the bread consumed in this country. If the bill is passed we will have to import this kind of flour, even though its origin is not from your country."

Conditions of the milling industry in the United States.—I present a copy of a letter (Exhibit F), dated June 12, 1929, from Mr. W. L. Austin, chief statistician, of the Department of Commerce, showing that between the years 1921 and 1927 over 37 per cent of the mills of the United States discontinued business.

In the writer's State, New York, of the 10 mills of about 500 to 1,000 barrels daily capacity each, that were in business at the end of the war, just half have discontinued business, because of the demoralized condition of the industry.

Would the farmer gain by restriction of manufacturing in bond as proposed by paragraph 311?—The enactment of paragraph 311 could only have the effect of transferring the milling of the strong flour demanded by the Cuban baker, from the American to the Canadian side of the line.

This would automatically transfer the corresponding production of mill feeds to Canada.

This in turn would of course reduce the amount of feed available to the American farmer, and provide him a smaller supply and also advance the cost to him on what he bought.

The Cuban baking industry wants the strong glutinous flour, such as made from Canadian wheat, and as shown by exhibits presented here today if they can not buy it from American mills who manufacture in bond, they will simply step across the Canadian border and buy it there.

Canadian mills are anxious that milling in bond be stopped.—The Canadian mills have been hoping for some years that a plan might be worked out by their own government, which would stop the milling of Canadian wheat in bond in the United States.

I present as Exhibit G photostat copy of pages of a formal petition presented by the Canadian millers in 1925 to the Dominion Government, requesting that some action be taken to stop milling in bond in the United States.

The first page of this petition pictures American mills busy grinding Canadian wheat in bond, with their own mills standing idle.

The petition points out that the loss to Canada through milling in bond by United States mills ran into some millions of dollars, through loss of wages, transportation, and to industry generally, and not only in the milling industry itself but in many related lines such as the manufacture of bags and other supplies.

In that connection the value of the cotton bags alone in which flour is shipped to Cuba runs from 30 cents to 35 cents per barrel, or over $200,000 on the flour shipped to Cuba made from wheat milled in bond.

If this flour were shipped by Canadian mills, as it largely would be if section 311 became effective, these bags would of course be bought from Canadian bag manufacturers rather than American manufacturers.

The position of the press of Canada.—The press of Canada has many articles on the subject.

I present as Exhibit H a photostat copy of an article in the Grain Trade News of Winnipeg, of January 25 last, reading in part as follows: The article is headed "For repeal of milling in bond":

"It is a very interesting development that agricultural interests, together with some milling interests in the United States are applying to Congress for the repeal of the milling in bond provisions of the customs law. * * * The movement for repeal is based particularly on the situation in Cuba, where the United States enjoys a big tariff preference which gives its flour practical control of the market. Cuba, however seems to prefer Canadian quality and makes a good market for the flour milled in bond * * * Canada does not care on what ground the United States repeals existing provisions as long as it does repeal them."

Section 311 provides in effect for an export duty on flour milled in bond from Canadian wheat. This would of course have the same effect as the export duty agitated for in Canada against wheat milled in bond in this country. The Montreal Standard of March 2 last (Exhibit I) had an article referring to their proposed export tax against American mills including the following:

"An export tax duty would have two results. It would result in added revenue to the Canadian people, and it would have another result ten time more important than that—it would help the Canadian miller to beat his American rival."

And we have the position here that the House bill has proposed placing a tax against this export flour to Cuba, or in other words doing just what the Canadian millers have been begging their own government to try to do.

The Canadian Milling and Grain Journal of June last had an article reading in part as follows. (Exhibit J):

"There is one tariff change Canada will gladly see Uncle Sam adopt. This is the proposed abolition of milling in transit drawback on Canadian wheat (meaning in bond of course). Canadian wheat is subjec to a 42 cent a bushel duty going into the States. But wheat purchased by American mills to be milled for export does not pay the tax. If the drawback is abolished the effect * * * will be a reduction in the quantity of Canadian hard wheat now brought into the United States for mixing purposes, but, on the other hand, Canadian flour may capture the markets now importing from the United States special patent flour.

The plan that has been proposed (in Canada) to beat this drawback has been or Canada to charge an export tax on such wheat equivalent to the bounty paid.

"If the new United States tariff abolishes the drawback, the need for a remedy will disappear. Canada would lose a small immediate market for wheat itself, but gain a large market for flour—obviously a beneficial exchange."

Gentlemen, we nonexporting millers, as well as the exporting millers, sincerely hope that you will not take any action that will lift export business that can only be done on a manufacturing-in-bond basis, over to our Canadian competitors. This would be of no benefit whatever to American agriculture and do a great harm to the milling industry which needs your help rather than the serious injury that would be done to it due to the passage of this bill.

The present milling capacity of the United States is more than double our domestic flour requirements.

The new tariff bill does not propose any change in manufacturing in bond, excepting as to the one commodity wheat flour, and this is notwithstanding the fact that there is probably no industry in the United States that has been more demoralized during the years since the war than the milling industry.

Respectfully submitted.

AMERICAN EXPORT MILLERS' PROTECTIVE ASSOCIATION,
By FRED J. LINGHAM, *Secretary-Treasurer.*

STATE OF NEW YORK, COUNTY OF NIAGARA, *ss:*

Personally appeared before me, Fred J. Lingham, and made oath that each and all of the above statements were true and correct to the best of his knowledge and belief.

Subscribed and sworn to before me, this 13th day of July, 1929, at Lockport, N. Y.

[SEAL.]

CHAS. A. BUDD,
Notary Public.

EXHIBIT A

THE DEPARTMENT OF STATE,
Washington, March 7, 1928.

Memorandum regarding the treatment accorded by Cuban Customs authorities to flour manufactured in the United States from wheat grown in Canada.

Many letters and telegrams regarding this matter have reached the department. Statements made in these communications indicate that the writers are either unaware of the fact that the treatment to be accorded is defined by treaty or they do not have clearly in mind the exact language of the pertinent treaty provision. It is contained in the commercial convention between the United States and Cuba, signed December 11, 1902, usually referred to as the reciprocity treaty, a copy of which is enclosed. The statement will be noted in Article IV that "the following articles of merchandise * * * being the product of the soil or industry of the United States imported into Cuba shall be admitted at the following respective reductions," wheat flour being the second commodity enumerated under Schedule B of the article. The actual wording, "soil or industry," necessitates an interpretation very different from that which would be necessary if the wording were "soil and industry," as the writers of some of the communications appear to think it is (or should have been, or was intended). The use of the expression "soil or industry," four other times in earlier articles of the treaty, once in a subsequent article and three times in the act of our Congress of December 17, 1903 giving its approval to the convention, is an unmistakable indication that this phrase was intentionally adopted and deliberately followed.

In view of the foregoing it is obvious that in the negotiation and ratification of the treaty it was not contemplated that the preferential treatment should be withheld from products of the industry of this country, the raw materials for the manufacture of which may be derived partially or wholly from abroad; and therefore that flour manufactured in the United States is unquestionably entitled to the preferential treatment provided in the treaty even though that flour may have been made wholly or partially from wheat grown outside of this country.

If the negotiators of the treaty had adopted and followed the phrase "soil and industry," or if the actual phrasing of the treaty should be interpreted, as of course it can not properly be, to have the same meaning, many products of the industry of the United States would have been, or would be, deprived of the preferential treatment hitherto accorded by the Cuban customs authorities, since in some cases part and in other cases nearly all of the raw materials entering into their manufacture are products of the soil of other countries; for example, practically all silk goods and rubber goods (the latter including automobile tires) and a considerable portion of woolen goods and of leather goods including boots and shoes. Many other instances might be enumerated.

In view of the reference by several inquirers to the fact that Canadian wheat imported in bond is used by certain millers in the manufacture of flour for the Cuban market, the statement is added that there is nothing now in this practice which, to the knowledge of the Department, has prevailed for several years. The manufacture in bond of imported commodities and their reexportation without the payment of duties is provided for by law and the practice is by no means confined to wheat flour.

Furthermore this department has no information that, as stated or implied in some communications, Canadian growers and shippers succeed in "having their flour admitted to Cuba under the preferential terms of this treaty"; and the department has received no communications from other than American interests protesting against the incorrect application of the provisions of the treaty. Neither is the department informed that flour manufactured in this country from Canadian wheat has been declared by exporters to be a product of the soil of the United States, as implied by some correspondents. The department is informed however that affidavits accompanying shipments of such flour do declare it to be a product of the industry of the United States, which is in accord with the treaty.

The comments made by several correspondents regarding the amounts of flour exported to Cuba during recent years by mills in the United States located near the Canadian border compared with that shipped to the same destination by mills located in other parts of the country have been noted. The Department of Commerce has prepared a statistical table, a copy of which is attached hereto, containing pertinent information for the years 1922 to 1927, inclusive, from which it appears that the increase during the last three years in the amount of flour shipped to Cuba by the mills in this country near the Canadian border has been

accompanied by a much more marked decline in the amounts shipped to Cuba by Canadian mills than by mills located in the central and southwestern portion of the United States. The inference would appear to be warranted that, had the recent Cuban requirement (that flour should not enjoy the preferential rates unless made from the products of the soil as well as of the industry of the United States) been permissible under the Treaty and therefore maintained, direct shipments from Canada to Cuba would probably have tended to increase more than shipments from the central and southwestern portions of the United States, assuming that the normal difference should prevail between the prices of wheat grown in Canada and the United States.

This treaty has been in effect for 25 years, during which period it has, except as stated below, been the constant practice of both Governments to give it the effect which the department considers proper. The only new elements in the situation is this recent requirement by the Cuban customs authorities that in order to enjoy the preferential treatment every shipment of flour from the United States must be accompanied by a sworn declaration attached to the invoice that it is the product of the soil of the United States, which contravened the treaty. A somewhat similar requirement made between three and four years ago was after a brief time withdrawn or so modified in practice as to accord with the treaty. From the test of the order No. 97, of January 27, 1928, which gave rise to the most recent Cuban practice, it appears that the earlier requirement had never actually been cancelled and was merely revived by the recent order with added injunctions requiring its enforcement.

The ambassador of the United States in Cuba was instructed to bring to the attention of the appropriate Cuban authorities the fact that this practice was inconsistent with the treaty; and he reported in a telegram of March 3 that new orders had been issued cancelling order No. 97 of January 28, 1928, and also the one of July 2, 1924, containing the earlier similar requirement. In a later telegram, dated March 6, 3. p. m., the ambassador reports that the flour which had recently been detained by the Cuban customs authorities because the importers declined to pay the full duties is being admitted with the benefit of the preferential rates, in accord with the treaty.

Flour exports to Cuba

[1,000 barrels]

[In barrels—000 omitted]

	New York	Baltimore	Florida	Mobile	New Orleans	Galveston	All others	Total United States	Canada	Total United States and Canada	Per cent of total from United States
January-December, 1922..	331	30	20	243	425	28	13	1,090	209	1,298	83.9
January-December, 1923..	348	12	41	194	426	58	11	1,090	235	1,325	82.2
January-December, 1924..	355	23	17	179	569	4	39	1,187	202	1,389	85.5
January-December, 1925..	417	.....	(1)	56	700	1	24	1,198	118	1,316	91.0
January-December, 1926..	531	.....	(1)	18	583	.....	15	1,146	142	1,288	89.0
January-December, 1927..	720	5	(1)	17	459	13	24	1,239	30	1,269	97.6

[1] Included in all other

Bureau of Foreign and Domestic Commerce, foodstuffs division.

STATEMENT OF JOHN PILLSBURY, REPRESENTING PILLSBURY FLOUR MILLS CO., MINNEAPOLIS, MINN.

(The witness was duly sworn by the chairman of the committee.)

Mr. PILLSBURY. I am also going to touch in my remarks upon any proposed changes which would in any way affect the tariff act of 1922 relating to the milling of wheat, either in bond or under the drawback privileges.

I am appearing here on behalf of a very large industry, and, of course, on behalf of my own company, who have been interested in

the export trade in flour for a great many years. In fact, our company has been in the milling business for 60 years, and in the export business for more than 50 years.

During that period of time I have been connected with the company for 29 years, since I left college, and I happen to be pretty closely in touch with the export features of the business during that length of time.

If I can give you as short a history of our efforts to be millers of American grown wheat I think it will be of interest.

The Pillsbury company and the leading companies who are interested in milling in bond in Buffalo originally were Minnesota companies. They certainly have not the slightest desire to be anywhere else. In other words, we have our plant investment in Minneapolis, and we certainly had enough capacity there to supply all of our trade, whether it was domestic or export.

We started to establish our trade on the very high quality hard spring wheat which was raised in large quantities, greater than the domestic demand, during the early days of the opening of the Northwest, which includes the States of North and South Dakota, Minnesota and Montana, with a very small amount of hard spring wheat raised in a few other places. We very energetically established the best foreign connections we could all over the world.

From that long association with these representatives, of course, we have established very valuable good will on our name and on our quality of products and the treatment of our customers, and so forth.

What I say regarding my own company applies also to several other companies whose history is very similar.

We discovered some years before the war that we were losing our export trade very rapidly. We found out we could not buy on a world basis wheat comparable with the wheat being raised in Canada in greatly increased production.

In other words, domestic requirements for this particular type of wheat were in excess of the supply to an extent, with a tariff protection, that it raised the price of wheat over a world basis.

Meanwhile Canada was increasing her production of wheat, so she had a tremendous surplus of a comparable type of hard spring wheat which we had been using since we started that had to be exported.

However, our company made no definite move toward building elsewhere than in Minneapolis until the war came on. Of course, you realize that immediately in 1914, when the war started, and later, when we went in, a very abnormal condition existed. That made any moves more or less unnecessary, because flour of any kind could be sold with the greatest ease. It was simply a question of who had flour or wheat to sell, and there was a demand for it all over.

Shortly after the close of the war we thought we could possibly retain part of our business by going to the Southwest and building or buying a plant there, which we did immediately after the war.

Senator SMOOT. Where was that located?

Mr. PILLSBURY. In Atchison, Kans.

We soon learned, however, that it was impossible to obtain any wheats there that would make the same type of flour that we had furnished for many years in the past, and it was absolutely necessary to either let our foreign trade practically all disappear or make a move to build a mill in Canada or buy an existing mill there.

However, we have been an American firm, and we were naturally interested in doing everything possible to continue our operations in this country.

We decided to buy a site at Buffalo, which we did, upon the theory that we were protected by laws which had been in existence, certainly before I was born and, I think, before the most of the members of this committee were born. We had several reasons for that. We could build a plant and mill in bond at Buffalo, and we would also have our operations for domestic trade situated east of Buffalo. So to-day our Buffalo plant handles our export business and our domestic business is tributary to Buffalo, which includes New York and all of New England and many parts of Pennsylvania, also down as far as Maryland.

I mention those facts because I want to show you what a struggle we had to secure our requirements for foreign trade from American wheat.

During the time we were building our plant at Buffalo conditions became extremely serious. This was after the war and we were returning to normal conditions. At that time we had nothing left to do but go up to Canada and make arrangements with Canadian mills, and under our supervision and under our brands to manufacture flour for us for a period of over two year, until our Buffalo mill could be in full operation.

We did that, and I think that is quite conclusive proof that we could not transfer that business to any of our existing mills in Minnesota or in Kansas.

In other words, the last thing a miller would do would be to go to somebody else to buy what he wanted to make himself.

The reasons for this, of course, are these: All of the wheats that this country raises that are suitable for that particular type of trade as explained by Mr. Helm yesterday, are consumed in our own country at a higher price than the world level.

I think all of you will realize that if we want to raise our prices of commodities in this country to a world level by the protection of the tariff—with which I am thoroughly in accord—those products can not be exported.

At the same time, this country does raise a large amount of wheat, something over 200,000,000 bushels, on the average, that is exported in the shape of wheat or flour; but they are types of wheat that the domestic consumption does not require.

The scarcity of the high protein wheats in this country varies according to crops. There have been times when our high protein wheat of comparable types has gone up so high, so much above the world price, that we have paid the full duty of 42 cents a bushel on small quantities of Canadian wheat brought into this country for domestic use until the parity of our prices got below the 42-cent premium.

There were other times when American farmers for similar wheat possibly only got a 10-cent premium. But the average premium for that class of wheat in this country is very excessive.

I can cite an unusual instance occurring last year. Several cars of wheat were moved from Oklahoma or the Panhandle of Texas—I am not sure as to just which section originated and produced it—and

arrived at Galveston before the quality of that wheat was appreciated. Those cars of wheat were worth so much money for domestic consumption that they were sent back all of the way from Galveston to Kansas City, and, as a matter of fact, I think one of them went up to Minneapolis.

That gives you an idea as to what the demand is at times for a very high type of wheat.

The low protein wheats in this country and durem wheats which are not suitable for bread making in this country are on a world basis and are exported. There is a very large amount of wheat exported from the Pacific coast that has a particular demand. It is very low protein wheat and there is a very large demand for it in the Orient.

Being interested in grinding American wheat, at the present time we are figuring on acquiring a plant in Oregon so that we can use our export facilities to assist in increasing the business on that particular American wheat.

There are many types of peculiar wheat that have certain peculiar qualities of which there is occasionally a shortage. Those will rise above a world price or to an absurd price for some particular use.

Practically every bushel of wheat exported from this country is the price of wheat that is selling on a world basis.

Senator WALSH of Massachusetts. What is the percentage of the American wheat produced in this country that sells on the world basis?

Mr. PILLSBURY. That is a pretty hard question to answer, Senator Walsh, because there may be a number of those soft wheats for which there are uses both in export and in this country, and then that price would be a parity.

Senator WALSH of Massachusetts. Can you approximate it?

Mr. PILLSBURY. Roughly speaking, 200,000,000 to 250,000,000 bushels of the crop of the United States that is exported per year out of a crop that runs anywhere, as you probably know, up to 650,000,000 and I think we had a crop almost up to 900,000,000 bushels.

Senator WALSH. I think you have said that there are certain kinds that sell in the world market and certain other kinds that do not?

Mr. PILLSBURY. That is correct.

Senator WALSH. Can you give it in percentages?

Mr. PILLSBURY. I think the only percentage I could give you, Senator, would be that the American market consumes all but about 200,000,000 to 250,000,000 bushels of the wheat grown in this country. The percentage varies with the size of our crop.

Senator BINGHAM. Is that the soft wheat?

Mr. PILLSBURY. Excepting durum. That is used for making macaroni and spaghetti. That is the type of protein that runs high in per cent and is quite valueless when it comes to using it for bread. It simply has not the right quality of gluten. Our durum crop is very largely exported, although the macaroni and spaghetti manufacturers in this country used something like 12,000,000 bushels last year out of a crop of nearly 50,000,000 bushels.

Senator BINGHAM. Where is it grown?

Mr. PILLSBURY. Almost entirely in North and South Dakota. There is some raised in the Southwest, but it has not been a success in that territory.

Senator WALSH. All the American wheat that is exported takes the world price, does it not?

Mr. PILLSBURY. Yes.

Senator WALSH. And there is comparable wheat produced in America with that which is exported that also takes the world price; is that true?

Mr. PILLSBURY. Maybe this would clear up the situation, Senator. It is to our advantage in our Buffalo mills to use any American wheat that we can use there, which at times has not been——

Senator WALSH. I am not asking what you are using; I am asking you, after having made the statement that certain kinds of wheat produced in America sell at the world price, what that percentage is of all the wheat produced in America.

Mr. PILLSBURY. I can give you the crop figures here. Out of a crop of 830,000,000 bushels there were 550,000,000 of that ground in this country of American wheat. Of that crop there were 120,000,000 bushels used for seed purposes for the next crop, but of such a poor quality that it was fed to cattle, that is, very much injured wheat, and so forth. Those figures I think exclude durum wheat. I can assure you, Senator, that any time that American wheat of a comparable type to the Canadian wheat can be used for export purposes it is grabbed very quickly.

Senator WALSH. What percentage is that?

Mr. PILLSBURY. Very small, infinitesimal.

Senator GEORGE. In other words, the bulk of the crop sold here or exported takes the world price?

Mr. PILLSBURY. Yes, sir.

Senator THOMAS. One year you spoke of there were 180,000,000 for export.

Mr. PILLSBURY. About 160,000,000 to 180,000,000.

The CHAIRMAN. Senator Walsh, we have the figures here for 1928.

Senator WALSH. It is not necessary to take the time, Senator; I just wanted the witness's opinion. I wanted it more in percentage than bushels. He has answered the question finally by saying it is a small amount.

Mr. PILLSBURY. These wheats are sold on a world basis with comparable wheats of every type. Durum wheat sells some years abroad at a higher price and sometimes lower because it is used over there for making macaroni and spaghetti. There is a shortage in this country almost every year of the highest class of durum which is used by our macaroni manufacturers, who make, by the way, a very superior grade of products of that type.

Senator BINGHAM. It sells for more than the world price?

Mr. PILLSBURY. At a tremendous premium over the world price, even for durum.

Senator BINGHAM. Then if our farmers would raise more of that type they would not have so much difficulty with the world price?

Mr. PILLSBURY. The trouble is, Senator, that they do not know when they plant their crop whether there is going to be a surplus of durum or a surplus of spring wheat; and in addition to that durum is worth so much more if nature happens to treat it correctly and it comes out a high type, but sometimes there are poor crops of durum and the wheat is a drug on the market and the farmers get a very poor return for it.

Senator EDGE. The new Farm Board will probably be able to help them out.

The CHAIRMAN. Can the wheat that is grown in Canada be raised in Kansas?

Mr. PILLSBURY. That particular kind can not be.

The CHAIRMAN. Can it be raised anywhere in the United States?

Mr. PILLSBURY. The only places that hard spring wheat in this country can be raised are in the northwestern Canadian Provinces, the States of Minnesota, South Dakota, North Dakota, and Montana, with a few thousand bushels lapping over into other States.

But I want to make this quite clear, that there are very fine, high protein types of wheat raised in Oklahoma, in the Panhandle of Texas and in Kansas. Those wheats have a slightly different quality of protein than the northwestern wheats but are not as much sought after by the foreign trade who have been now educated to use this very wonderful Canadian wheat. But those types, Senator, are not the types of wheat that any miller makes flour of for export, because they also sell away over the world price and they are much sought after by the bakers of this country.

The CHAIRMAN. I see there is about 17.27 per cent of that type of wheat raised in the United States.

Mr. PILLSBURY. It is pretty small, you see.

Senator THOMAS. Is there some one among your group that can prepare a statement showing the leading classes of wheat and the sections from whence they are produced and the uses to which they are put?

Mr. PILLSBURY. Yes, sir; that can be put into a brief which our people will file, if you so request.

Senator THOMAS. Will you see that that is done?

Mr. PILLSBURY. Yes, sir; with pleasure.

I want to mention another thing about the Cuban situation. There is no opposition, as far as I know, in this country to the general principle of milling in bond. I do not think any miller in the United States can be opposed to it, because it does not in any way interfere with his business for the reason that that wheat has either got to be grown in Canada and sent over in the shape of flour, or it can be diverted through Buffalo and the entire product must be exported. It makes no difference whatsoever if we should happen to put 15 or 20 per cent for a certain trade that will take a different type of flour, in that the whole product must be exported, and there is no chance of withdrawing for domestic consumption a particle of flour milled at Buffalo which contains Canadian wheat. In other words, the Government has very well protected the farmers, and I am in entire accord with that.

Senator WALSH. The Canadian Government, however, has made some move protesting the exportation of Canadian wheat to bonded mills in America, have they not?

Mr. PILLSBURY. They are making every possible move to try to put an export bounty on wheat milled in bond. They naturally want to transfer all of this business back to their own country.

Senator WALSH. How far have they gone?

Mr. PILLSBURY. They have gone so far as to take it up with the Parliament several times, but the opposition of the farmer vote,

who wants every market in the world available to his wheat, has so far been successful.

Senator WALSH. But there is a possibility of Canada preventing the exportation of Canadian wheat to this country to bonded mills?

Mr. PILLSBURY. That is always staring us in the face.

I want to bring out one other point. In this Cuban business there are some mills situated in the Southwest whose representatives I think will appear here—in fact, I know they are going to appear here—and they honestly believe that this preferential tariff which we get in Cuba on flour made from bonded wheat is to their detriment. But I want to make this statement. We own not only a mill at Atchison, but we have recently completed the largest mill in the State of Oklahoma. Enid, Okla., where we are, has as favorable conditions for export via the Gulf to Cuba and South America as any mill in Oklahoma or Texas. In fact, we investigated very carefully a mill at Galveston which was for sale last year, thinking there would possibly be a better rate structure from there, but the interstate rates apply on through shipments to such advantage that any mill located in Oklahoma or Texas is on the same basis for export. There are sometimes infinitesimal amounts of local wheat that can be bought a little cheaper at one point or the other, so we ought to be in the position that we desire to see all the American wheat we possibly can ship, go there. This proposed change in the situation under the House bill would simply mean that Cuba would then buy its particular type of flour from Canada that she is now buying from us.

This might be of interest to you. The Cuban imports of flour have been declining as a whole, so that the losses made by the Southwest are not as big a percentage as they are inclined to believe of the total imports into Cuba. According to the Department of Commerce figures, only 7 per cent of their imports from this country are what is called soft wheat flour—that soft winter wheat flour used largely for biscuits and pie crust, and so forth. Twenty-three per cent of their total imports is hard winter Southwestern wheat.

But I want to call particular attention to the fact that I am in position to give you definite knowledge that none of the 23 per cent is the high protein flour. It is the cheaper grades that are going to be exported anyway, and the preferential tariff to Cuba makes it easier for Cuba to take that flour. Seventy per cent of Cuba's imports are spring wheat flour which must be obtained from our bonded mills or from Canada.

I have no figures since 1923, but they are not materially different. I find even with the 35 cents advantage which an American bonded miller has over a Canadian miller in getting his flour into Cuba that nearly one fourth of this spring wheat business is still Canadian business.

I mention that, gentlemen, because it shows that Canada, with its advantage of milling Canadian wheat cheaper than we can under bond, is getting to-day, even with our preferential tariff in Cuba, quite a considerable percentage of that business.

The CHAIRMAN. In that connection I would like to have you explain why it is that the exports of wheat flour from the United States to Cuba by customs districts showed in 1923 that the mills in New Orleans and Galveston and Mobile shipped 696,320 barrels and in 1928 there was only 370,499 barrels shipped from that district; and

it also shows that the exportations in 1923 from New York were 360,726 barrels, while in 1928 there were 714,062 barrels. You see, New York has just about doubled, and New Orleans, Galveston, and Mobile mills have decreased about 45 per cent.

I would like to have you explain that.

Mr. PILLSBURY. I think I can, Senator. I will try to make it quite clear.

There are two factors always that work on a question of trade. One is the change in the desire of the customer for some article that he perhaps has not used before, and there is always a great variance in the world price of wheat of certain qualities. As I remember, 1923—I want to be corrected if I am wrong—was the year when this country raised a very large crop of wheat, and there was naturally more of our wheat to export. That would naturally play into the hands of people who were milling American wheat.

The CHAIRMAN. In 1924 and 1925 there were even larger shipments from New Orleans and Galveston.

Mr. PILLSBURY. I think it was explained yesterday that Cuba has a very damp, hot, moist climate. Home baking is decreasing in Cuba the way it is in this country. The bakers have been getting more and more familiar with the Canadian flour. Canadian flour, in a hot, damp climate, has the advantage, when the dough is made, of the dough rising and standing up under very adverse fermentation conditions, whereas a weak flour will just sink down as if it had the palsy; it is just no good; and the result is that the bakers in Cuba, like the bakers in this country, are making a very much superior loaf of bread than they were some years ago.

The CHAIRMAN. In other words, the flour shipped from New Orleans, Galveston, and Mobile contains none of the high protein wheat from Canada or from this country?

Mr. PILLSBURY. Of course I did not see the flour and I did not see the price at which it was sold, but I can say on general principles that it could not have been. If any of it went over it was infinitesimal. It was practically all of the cheap flour made out of the wheats that we ship. For instance, in the Southwest we can buy a 10½ to 11 protein wheat that is classified as a hard winter wheat. Our export trade demands a mixture of something like 13 per cent. The difference between 10½ or 11 and 13 per cent does not sound very big to you, but it represents an enormous difference in the value of the flour and its characteristics.

The CHAIRMAN. Where is the highest percentage of protein wheat raised?

Mr. PILLSBURY. The very highest percentage of protein wheat I suppose is raised in Canada. You see freight cars occasionally from Montana, other cars from North Dakota. I have seen cars from the Panhandle of Texas that contained wheat of unusually high protein content.

The CHAIRMAN. What was the highest?

Mr. PILLSBURY. It has been known to run 17 per cent.

Senator WALSH. This loss in business that Senator Smoot has pointed out, from Galveston and New Orleans, has occurred notwithstanding the fact that the ocean freight rates are lower from those points than from New York, showing a preference for the kind of flour that is produced in Buffalo?

Mr. PILLSBURY. I beg your pardon. You say the rates are lower from Galveston than they are from New York. That would even accentuate the Cuban demand for that flour.

Senator WALSH. That is the point I am making, that notwithstanding the fact that the rates are lower, they still go to the Buffalo market for their flour.

Mr. PILLSBURY. I have some figures here, Mr. Chairman, that might interest you. You have to take a series of years, really, to get figures of increases or decreases——

Senator BINGHAM. What is the distance from Galveston to Havana?

Mr. PILLSBURY. I am ashamed to say that I do not know, Senator.

Mr. MALLON. Senator, take a compass, put the center on Camaquey, which is practically the center of Cuba, and describe an arc, with the three important cities of Oklahoma City, Kansas City, and Buffalo, and you will find that Kansas City is the farther, Oklahoma City the nearer, and Buffalo almost midway between the two. It is practically a difference of 150 miles.

Senator BINGHAM. Is not New York City just about as near Havana?

Mr. MALLON. New York is nearer Santiago de Cuba than the other points.

Mr. PILLSBURY. I wanted to add, Senator Smoot, that from the years 1922 to 1927 the decrease in Cuban imports was 163,000 barrels. Canada lost 179,000 barrels. The Southwest gained 19,000 barrels, and all others 34,000 barrels.

Senator KING. You expect that Cuba will continue to be in the market for wheat for her people?

Mr. PILLSBURY. Cuba will continue to buy the types of wheat that she wants, regardless of any legislation we make here. It is not difficult for Cuba to buy her flour from Canada, but as you probably all know, Great Britain gives the Canadian mills a preferential tariff in all of her West Indian possessions, so it seems to me that the American mills have never received one iota of benefit from legislation with the exception of our preferential tariff in Cuba, to my knowledge.

Senator SACKETT. Does Canada foster in any way the trade with Cuba, through bounty or anything of that kind?

Mr. PILLSBURY. No, sir.

Senator SACKETT. Has there been an effort to do that sort of thing?

Mr. PILLSBURY. Not to my knowledge.

Senator SACKETT. Then the difference that is due to our preferential tariff is, according to your statement, merely the desire of Cuba to have a certain class of flour?

Mr. PILLSBURY. Yes, Senator. Cuba can buy that class of flour to-day from Canada.

Senator SACKETT. And they are willing to pay more for it than they are for our southwestern flour?

Mr. PILLSBURY. That is correct, sir.

Senator SACKETT. But they would not pay as much more for it as the difference in our arrangements——

Mr. PILLSBURY. I think I can make that a little bit clearer, Senator. Canada naturally will dump any flour she can to Cuba at very low cost, perhaps below cost. She has a disadvantage with bonded mills

in selling that type of flour to Cuba. That is the only place in the world that she has got a disadvantage.

It might be interesting to know that milling Canadian wheat in bond is at a disadvantage with the Canadian miller who is sending his flour in competition with us to Great Britain, Germany, or South Africa, the Gold Coast, or the Baltic, or any of the countries which we are doing business with.

The CHAIRMAN. In 1923 there was exported from Canada 252,647 barrels, whereas in 1927–28 there was only 82,804 to Cuba. In 1923 the domestic exports were 2,219,684 barrels. In 1928 it had risen to 4,392,601 barrels. In other words, the Americans had taken the trade away from Canada on that class of flour.

Mr. PILLSBURY. I am not sure that those figures are correct; but assuming they are, there should not be any disposition on the part of this committee to feel very sorry about that.

The CHAIRMAN. I am not feeling sorry about it. I wanted to get the whole picture so that if you wanted to discuss that question you could do so, because those questions will be asked.

Senator REED. You started to explain why you are at a disadvantage in grinding bonded wheat as compared with the Canadian mills in shipments to the Baltic or anywhere in the world. Why is that?

Mr. PILLSBURY. According to the Department of Commerce figures, the milling costs in Canada are lower than ours. Secondly, we have a charge which runs somewhere around 15 cents a barrel which is the cost of maintaining custom employees in bonded plants and the work of handling wheat in bond. We also pay full duty on practically all of the by-product feed which is produced in milling in bond, and that is turned into channels for the benefit of the farmers. That feed is all distributed. It is a tremendous benefit to the dairy farmers of Pennsylvania, New York, and New England, because it has to be sold here. You can not export bran; it is too bulky, and there has never been any way of properly compressing it so that it is worth anything.

I was going to bring that point up later, Senator Reed; but it is encouraging our industry, taking this manufacture away from Canada, turning manufactured products into the United States, employing American labor, paying taxes to the American Government, buying large quantities of sacks, including an enormous quantity of cotton sacks for the Cuban business—they buy practically all of their flour in cotton—in addition to that, the business we give the railroads is enormous. That would all go otherwise practically via the Welland Canal or the Canadian railroads to Canadian ports.

You can realize that if the milling of flour does not hurt our citizens—and I can prove it does not hurt the farmer—it certainly is of some benefit to the country at large and not only to the millers that are performing that service. If you remove the consumption of the product of our American farmers, gentlemen—and we are increasing consumption by keeping American labor employed—we will have to move to Canada if changes are made. You certainly realize that there are more people eating our products, more people that are making things for us of outside articles.

Here is a point that I want to bring out right here. You realize, gentlemen, that for our mills, accustomed to handling foreign trade,

having our agencies all established, we are in a position to grind American wheat for our export business if there is any possible chance of doing it. If those mills did not exist we would not be interested in the export business——

The CHAIRMAN. The reason I called your attention to it was that I wanted your explanation.

Mr. PILLSBURY. Some figures were read yesterday showing that American wheat had been ground in Buffalo. There are always exceptions in a small way to the rule, but practically that wheat was put in with a mixture of Canadian wheat to be shipped to certain countries that do not demand quite as good a flour as 100 per cent Canadian wheat. I am willing to state that 90 per cent of the number of bushels you read, something like 1,500,000 to 3,000,000 bushels a year would not have moved for export any other way. It was carried along by something that helped to move it out of the country.

Senator SACKETT. Do those additional costs that you have at Buffalo due to inability to export your feed make up the difference between the cost of milling flour in Canada and at Buffalo?

Mr. PILLSBURY. You mean, for Cuban consumption?

Senator SACKETT. Yes.

Mr. PILLSBURY. No; they give us an advantage in Cuba.

Senator SACKETT. What is, then, the selling price of Canadian flour milled in Cuba compared with your Buffalo flour? Do they sell at the same price?

Mr. PILLSBURY. Our selling price is made by the Canadians today. In other words, the Canadian sells as cheaply as he can and we meet his price.

Senator SACKETT. In other words, the Canadian miller absorbs from his profit the difference in cost of production between Canadian milled flour and your Buffalo milled flour?

Mr. PILLSBURY. He produces his flour, Senator, cheaper out of Canadian wheat than we do; but you might say that is his advantage to help meet the preferential tariff we get in Cuba.

Senator SACKETT. Whatever difference there is left he has to take out of his profit?

Mr. PILLSBURY. Yes, sir.

Senator SACKETT. How is it in regard to Southwestern wheat?

Mr. PILLSBURY. They are milling a different article.

Senator SACKETT. They do sell at the same price, approximately?

Mr. PILLSBURY. Ordinarily the southwestern flours sell at approximately the same.

Senator SACKETT. They have to make up that difference, also, out of their profits?

Mr. PILLSBURY. They really do not compete with southwestern flour. The southwestern flour that goes to Cuba is not a comparable type; it is a different type for different purposes.

Senator SACKETT. I understand that, but yet they sell there side by side and they sell at the same price?

Mr. PILLSBURY. Certainly.

Senator SACKETT. And whatever losses the Canadian has to accept has to come out of his profit?

Mr. PILLSBURY. Yes, sir.

Senator SACKETT. Even if he has to go down to cost?

Mr. PILLSBURY. He goes down to cost and below, I think, at times. But you can not stop the Canadian miller doing business with Cuba. If he wants to sell below cost that is something that we can not legislate against.

Senator SACKETT. I appreciate that.

Senator EDGE. Following up that question, without considering the southwestern miller or the Buffalo miller in any special class, if this amendment were adopted would the net volume of business, whether it is in the Southwest or in the Buffalo district, be increased or decreased?

Mr. PILLSBURY. To the American miller?

Senator EDGE. Yes.

Mr. PILLSBURY. It would be enormously decreased. There might be times, Senator, when for a week or two weeks or a month there would be a slight chance to slightly increase Southwestern shipments to Cuba. Take speculation, for example. Here we are with a surplus of actual wheat on hand to-day. The price is going up day by day. Why? Because there are speculators who think that six months from now there will not be a surplus.

Senator EDGE. In other words, the adoption of this amendment would terminate a business now in existence in some sections of our country?

Mr. PILLSBURY. That is correct, sir. We think we have got enough reputation to get enough merchants and keep a small percentage of them at a premium because of our name, but if you know the way bakers buy—they do not pay very much for the premium of a name; it is the analysis of the flour.

Senator BINGHAM. Can you not move to Canada and get the advantage of milling in Canada and the cheaper labor costs there, and then ship to Cuba?

Mr. PILLSBURY. We most certainly could, Senator, but we have got an investment in Buffalo of something like five or six million dollars which we invested in good faith under the laws of our country that have been in existence for years.

Senator BINGHAM. If you did move to Canada of course the laborers in your Buffalo mills would lose their jobs?

Mr. PILLSBURY. They would move to Canada. We would probably take our men right over the line and go to Port Colborne, just across the river—you can see it from Buffalo—and we would move over there.

We have had the Cuban advantage since 1902, which was long before the present export conditions that I outlined in the history of our business made it necessary to grind any Canadian flour.

Senator SACKETT. This amendment only goes to the Cuban matter.

Mr. PILLSBURY. It only affects a proportion of our export business that goes to Cuba, certainly.

Senator THOMAS. Are the millers united in opposition to this amendment?

Mr. PILLSBURY. No. I think the only millers that are in favor of the so-called amendment in the House—I think it is the Garner bill—I am not sure of the name of it—are the millers in the Southwest who I think quite honestly believe that they would be benefited to some extent if the present conditions were changed. Being a large owner of mills in the Southwest myself and being constantly

in touch with our agencies all over the world in order to know what we can get for flour, we are willing to swear on oath that the advantage that they think they would get would be practically nil.

Senator SACKETT. You do not think that your Southwest mill in Oklahoma would reap any advantage?

Mr. PILLSBURY. No. We certainly would like to export flour from Oklahoma. As I said before, we never made a move to grind bonded wheat until we were absolutely helpless, where we had to do it.

Senator SACKETT. Of course your interest in Buffalo is much larger than it is in Oklahoma, is it not?

Mr. PILLSBURY. Not so very much larger. We have a capacity in Oklahoma and Atchison, Kans., that is quite comparable to our Buffalo capacity.

Senator SACKETT. The interest in the amendment goes all through the soft winter wheat belt, does it not?

Mr. PILLSBURY. It does. You see history always means a change. Before the Southwest ever did any business in Cuba the Southeast used to do it. Then their flours became unsatisfactory for the purposes desired and the business moved some to Minnesota and the Southwest. We used to do a large Cuban business in Minneapolis when we were on a world basis on these same types of wheat; but when we got off the world basis Canada took the business away, and the Southwest has probably been injured in their business more, I think, by the fact that the Cubans have gradually gotten their taste or their appetite up to the use of this very high-class Canadian product.

Senator SACKETT. You have stated that the baking trade is taking away from home baking very largely.

Mr. PILLSBURY. Yes. The bakers themselves to-day make very excellent bread. You can remember the time when bakers' bread did not taste anything like that made at home, and that change is going on all over the world.

The CHAIRMAN. As I understood one of your answers to the Senator from Kentucky, you stated that this applied to Cuba. If I am not mistaken, the question now has been raised by Germany, under the favored-nation clause, whether it should not apply there as well. The matter is not settled and it may be a question in the future as to different countries with whom we have a favored-nation clause.

Mr. PILLSBURY. That would apply to everybody in this country.

The CHAIRMAN. As I understood you, in your answer to the Senator from Kentucky, you said that it would only apply to the Cuban flour.

Mr. PILLSBURY. If there is any chance of this country getting a preferential tariff from Germany it certainly might apply here——

The CHAIRMAN. The question is already raised.

Mr. PILLSBURY. I can tell you this, gentlemen, that while we are considering our tariff here, the countries abroad are not very much asleep. I think Germany is raising her tariff, or proposing to raise it, on American flour right at this time.

Senator HARRISON. Is not that natural?

Mr. PILLSBURY. Quite natural. I am not complaining of it.

Senator SIMMONS. Mr. Pillsbury, you told us that your export trade to a very large extent depended upon your getting this Canadian wheat under unreasonable conditions?

Mr. PILLSBURY. Yes, sir.

Senator SIMMONS. The product that you export is a mixture of Canadian wheat and American wheat, is it not?

Mr. PILLSBURY. Our principal business, and the principal business in Buffalo, is shipping brands that we have established years ago on this high protein spring wheat, so that you might say that the most of the flour shipped in Buffalo is exactly the same as Canadian. It is 100 per cent Canadian wheat.

Senator SIMMONS. There is very little American wheat mixed with it?

Mr. PILLSBURY. There are 1,000,000 to 3,000,000 bushels of wheat a year that are mixed in at the mills at Buffalo by certain ones where they do not demand quite as good a flour as the leading Pillsbury brands, for example.

Senator REED. You told us that your milling costs in Buffalo were higher than those in Canada, working on the same wheat, disregarding the amount you pay the bonded warehouse employees. Are your American mill costs higher?

Mr. PILLSBURY. According to the Department of Commerce, they are.

Senator REED. Why is that?

Mr. PILLSBURY. I think perhaps they run their mills with perhaps slightly cheaper labor or they have less taxes to pay or something; I do not know. The Department of Commerce indicates that the cost of milling is less in Canada than it is in this country.

The CHAIRMAN. Fifteen cents a barrel?

Mr. PILLSBURY. Fifteen cents a barrel.

Senator REED. But you do not know why that 15 cents difference exists?

Mr. PILLSBURY. No, Senator; but I know this, that the duty we pay on the by-product is 9 cents a barrel, and cost in the average size mill, under the requirements of your act, is around 15 cents a barrel. So I know there is a 20-cent difference with the sum of those two figures.

Senator REED. That is caused by legislation. But I understood you to say that your operations cost more in this country than the Canadian operations cost.

Mr. PILLSBURY. I have only the information that the chairman has, Senator.

Senator WALSH. Is your by-product mill feed?

Mr. PILLSBURY. Yes, sir.

Senator WALSH. What percentage of your business is the by-product business?

Mr. PILLSBURY. The so-called offals, generally speaking, constitute about 30 per cent.

Senator WALSH. What does that represent in bushels?

Mr. PILLSBURY. In 100 pounds of wheat there would be 70 pounds of flour and 30 pounds of by-product.

Senator WALSH. You sell that by-product to the farmers of New York, Pennsylvania, and New England, and on the eastern seaboard, wherever you can ship it from Buffalo?

Mr. PILLSBURY. Yes, sir.

Senator WALSH. What is the rate of tariff duty upon that?

Mr. PILLSBURY. Seven and a half per cent.

Senator WALSH. So all the farmers who buy that by-product must pay that duty to you?

Mr. PILLSBURY. They pay it through us. As a matter of fact, Senator, we ship a lot of by-products made out of domestic wheats into the same market where we pay no duty, but the price to the farmer is the same. We pay the duty, but our selling price is naturally what the market price is.

Senator SACKETT. What proportion of the Buffalo mill shipments go to Cuba?

Mr. PILLSBURY. About one-sixth of the total export of the bonded mill.

Senator BINGHAM. That includes everybody's mills?

Mr. PILLSBURY. It includes everybody.

Senator BINGHAM. Senator Sackett asked you with reference to the proportion of your Buffalo mills.

Mr. PILLSBURY. Of our total milling in Buffalo?

Senator BINGHAM. The output of your Buffalo mills.

Mr. PILLSBURY. We have a large domestic operation there. I could not give the total. Our exports may be away up one year and away down another.

Senator SACKETT. One-sixth of the total export of this flour that is milled in bond goes to Cuba?

Mr. PILLSBURY. Yes, sir.

Senator SACKETT. When you sell this by-product to the farmers you have absorbed that in the price of your flour, I suppose?

Mr. PILLSBURY. In the price of our flour?

Senator SACKETT. To everybody that you sell it to.

Mr. PILLSBURY. This duty we pay is on the resulting by-product of the Canadian wheat which has to be 100 per cent exported. Therefore we must add that duty. The by-product value reduces the amount of the duty——

Senator BINGHAM. With reference to this feed that you sell to the dairy farmers, of course you must sell a great deal that is from American wheat?

Mr. PILLSBURY. Yes, sir.

Senator BINGHAM. That sells at the same price, does it?

Mr. PILLSBURY. Exactly the same price.

Senator BINGHAM. It costs you different prices?

Mr. PILLSBURY. The Canadian miller sells his feed in his own country quite largely, although there are times when the Canadian miller is forced to also export more feed to our country, and that comes down from the same section as the by-product that we sell. But, generally speaking, the amount of that varies. The amount of the total is not large.

Senator SACKETT. But it does account for some of the difference in cost of production between the Canadian seller's price and your price?

Mr. PILLSBURY. Yes. We are at a disadvantage with the Canadian miller.

I want to be perfectly fair.

Senator SACKETT. I just want to get the fact. I am not criticizing you at all, but simply bringing out the fact that when you say the cost of production is lower in Canada than it is in your bonded mills,

the differences in the feed and the absorption of the tariff accounts for some of it?

Mr. PILLSBURY. Certainly.

The CHAIRMAN. Mr. Pillsbury, is there anything else you desire to say?

Mr. PILLSBURY. No. I have lots of other information, but I think I have taken enough of your time. Thank you very much.

STATEMENT OF W. L. HARVEY, REPRESENTING THE INTERNATIONAL MILL CO., MINNEAPOLIS, MINN.

(The witness was duly sworn by the chairman of the committee.)

Mr. HARVEY. I represent the International Milling Co. I can approach this subject from a little different angle, perhaps, than Mr. Pillsbury, owing to the fact that our company are Canadian millers in rather a large way as well as United States millers, though I think my conclusions will be the same as his.

Our constituent companies in the United States have been in business some of them 35 or 40 years—five mills in Minnesota and Iowa and the West, a mill at Buffalo, N. Y., and for 21 years we have had mills in Canada, beginning with a small mill and gradually increasing our capacity by building mills at various points, until at this time we are one of the three or four large Canadian producers.

On account of the growth of our Canadian export business it was necessary again to increase our capacity about four years ago; and we considered very carefully whether to build this additional capacity on the Canadian side of the line, as we had heretofore, or whether to build a mill at Buffalo, where, under the same roof, in another unit, we could make flour for the domestic trade and also take advantage of the milling-in-bond provisions which have existed in the United States tariffs for so many years, and in that way take care of our additional Canadian export business.

Instead of building a small domestic unit at Buffalo and a larger export unit on the Canadian side of the line, it seemed to us more economical and better to build the two units at Buffalo, even though there is a slight difference in favor of milling Canadian wheat in Canada for export.

Senator THOMAS of Oklahoma. Explain that difference, please.

Mr. HARVEY. I think Mr. Pillsbury has explained the difference to some extent—the duty that we pay on our feed, the cost of handling the matter in customs, and the fact that at many points in Canada labor is a little cheaper, and I think in general a little less labor is used. The difference, however, was not so important as not to be overcome, we thought, by the economies of having all our operations east of the Lakes in the one unit. That unit at Buffalo was finished about two years ago, and to date we have spent about two and a half million dollars on it; and our operations there have been, since we started, about 65 per cent export of flour produced in bond from Canadian wheat.

Senator BINGHAM. How much of that goes to Cuba?

Mr. HARVEY. Not as large a proportion as that of some of the other Buffalo mills; I should say not over 12 or 15 per cent. The greater part of our business has been developed in other directions. We operate this export capacity, this bonded capacity at Buffalo,

practically as a unit. It is practically pooled with our Canadian capacity. In figuring what flour we have to offer for future shipment we figure the total capacity available for export from both our Canadian and our bonded unit at Buffalo, and we make at Buffalo the same kind of flour from the same wheat under the same products-control and in the same way, so that the flours are absolutely interchangeable. We use the same brands of flour to quite an extent.

Senator REED. Does it cost you more to make it in Buffalo?

Mr. HARVEY. A trifle more, Senator.

Senator REED. Why?

Mr. HARVEY. A part of the additional cost is due to the duty that we pay on the feed in Buffalo; a part of it is due to the cost of the customs supervision; and a part is due to the fact that our general labor and milling costs are a trifle lower in Canada than they are in Buffalo.

Senator HARRISON. What do you mean by a "trifle"?

Mr. HARVEY. By "a trifle" I mean, according to our own records, about 10 cents a barrel. I had occasion to look up those figures a short time ago, and that was what our own records show. I believe the Federal Trade Commission shows 15 cents a barrel as a result of their investigations; and, of course, the costs would vary in different companies. Other companies may have a lower cost than we.

As I have said, those flours are absolutely interchangeable; and we can not tell, when we sell for future shipment, whether that flour that we sell for export will go from our Canadian mills or will go from our bonded unit at Buffalo. There are two exceptions to that. One exception is the British West Indies, where there is a preferential tariff between Canada and those islands which gives a preference of 60 cents per barrel to flour shipped from Canada to the British West Indies. The other is Cuba, where there is a preferential duty at the present time in favor of the American manufacturer.

Senator HARRISON. Do we ship much flour to the British West Indies?

Mr. HARVEY. Not now; practically none. That business has practically disappeared since this preference, which is only a matter of the last four or five years.

Senator BINGHAM. But you can ship flour from your Canadian mills and get the benefit of it?

Mr. HARVEY. Oh, yes. We participate in that business from our Canadian mills; and, conversely, we can not ship to Cuba from our Canadian mills on account of the Cuban preference.

Senator SACKETT. Some Canadian mills do ship to Cuba; do they not?

Mr. HARVEY. Yes.

Senator SACKETT. Why can not you, if they do?

Mr. HARVEY. Because we are unwilling to ship to Cuba on account of the preference to Cuba.

Senator SACKETT. It would cut down your profits to practically nothing if you did?

Mr. HARVEY. Exactly. There would be no occasion for doing it when we have the bonded unit at Buffalo as well as the Canadian mills.

Senator SACKETT. You think, then, that if this milling in bond were prohibited to Cuba, Canada would take the business?

Mr. HARVEY. I feel satisfied that Canadian flour or flour of Canadian origin, flour made of Canadian wheat, would continue to move to Cuba in at least the same volume that it is moving now, no matter what you do, no matter whether you adopt that section of the House bill as amended in the House or not.

Senator SACKETT. Would the Canadian flour take the place of what was eliminated from the Buffalo mills? That is the point.

Mr. HARVEY. I think it would.

Senator BINGHAM. In other words, it is a case where you believe that the Cuban bakers have learned to use a certain type of flour which suits them and their customers, and they will continue to use it no matter what we do?

Mr. HARVEY. Exactly. The only effect, so far as I can see, would be to allow the Canadian mills to come in there on an equal basis, in the same way that if they abrogated the preference which they have in the British West Indies we would be able, from our Buffalo bonded unit, to participate in that business along with them. That, I think, would be the only effect.

Senator THOMAS of Oklahoma. If the House provision should not be agreed to, it would result, would it not, in Cuba getting her wheat and flour at a cheaper rate?

Mr. HARVEY. I think it would.

I understand that in addition to this amendment made in the House, Senator Wheeler, of Montana, has given notice of an amendment to be offered to this bill in the Senate which would eliminate milling in bond entirely.

Senator BINGHAM. Do they raise the same kind of wheat in Montana that they do in Canada?

Mr. HARVEY. They do to some extent; yes. They raise a number of varieties of wheat in Montana, and some of them are comparable to the Canadian wheat.

Senator BINGHAM. Are the qualities of the Canadian wheat due to climatic and soil conditions, or to some other conditions?

Mr. HARVEY. We do not know, but we think they are largely due to climatic and soil conditions. Hard wheat has always been generally grown in northern localities, and we think that that is the case.

Senator HARRISON. All that the Wheeler amendment would do would be to put out of business these concerns that import their Canadian wheat and make flour out of it? Is not that so?

Mr. HARVEY. That is my judgment—that it would have no effect whatever so far as the American farmer or the American miller is concerned. I am aware that some of the millers in this country, located in the Southwest, believe differently; and I think they are honest in their opinion. I certainly give them credit for it. We have mills where we can grind southwestern wheat in this country. We have mills where we can grind northwestern spring wheat in this country; and if it were possible to continue that Cuban business we would participate in that business if this amendment were adopted; but I do not believe it would. I believe the only effect would be to divide the business with the Canadian miller—that is, in about the present volume that the wheat is moving.

Senator HARRISON. I understood from Mr. Pillsbury that if we stopped the importation of Canadian wheat into this country, and

this bond provision were repealed, we would lose a large part of this Canadian flour trade; that Canada would grab it back.

Mr. HARVEY. I do not see any other way out of it.

Senator BINGHAM. That is on account of the 42-cent duty on Canadian wheat; is it not?

Mr. HARVEY. Yes, sir. We would be exporting wheat of comparable grades from the United States now if the price were on a world basis.

Senator EDGE. I wish you would discuss the Wheeler amendment a little further. I should like to hear you discuss it.

Mr. HARVEY. I think I have explained enough of the way our operations are conducted at Buffalo to show you that the only result of the Wheeler amendment would be to injure an American industry. I will say in this connection, gentlemen of the committee, that one of the reasons why we hesitated in building that capacity—that bonded unit, at least—at Buffalo, was the agitation in Canada for an export duty on wheat to be exported to a country for milling in bond, meaning, of course, the United States. Being a Canadian miller as well as a United States miller, though we are of course an American company, we were very familiar with all that agitation; and at one time we were a little bit alarmed, because they seemed able to get the ear of the Canadian press in the eastern manufacturing sections and the Canadian financial papers, and they seemed to be making quite a bit of headway. But when they got to the Canadian Parliament, the balance of power, of course, was held by the western farmer; and the western farmer was not willing to do anything or see anything done which would hamper the free movement of his wheat in any direction or to any market.

So, after giving it full consideration, we decided that that possibility was rather remote, because it looked as though the balance of power would be held, so far as we could see, for generations by the farmers in that immense territory in the Canadian west which is capable of almost unlimited further development, capable of growing not merely five hundred millions of wheat, as they did last year, but a billion, a billion and a half, or any amount of wheat that the world requires, just as soon as they can get transportation to that territory and as soon as there is a demand in the world's markets for it.

I was talking to a Canadian miller friend of mine a short time ago—a man who had been quite active in trying to get this legislation through the Canadian Parliament, but, nevertheless, a good friend of mine—and I said to him, "Well, it looks as though our American Congress is going to give you the protection you have been after so far as your principal competitors in the bonded mills of the United States are concerned." He said, "Oh, no; nothing like that is going to happen. I have not believed in Santa Claus for a good many years." [Laughter.]

That seems to be the only effect of the adoption of the Wheeler amendment; it would be to play the Santa Claus to an industry in another country, and to give to them the protection which they clamored for from their own government, and which their own government has denied them.

Senator BINGHAM. Mr. Harvey, I should like to ask you about this question of flour. Do the American bakers demand as high a grade of flour as the Cuban bakers?

Mr. HARVEY. They demand a very high grade of flour, and that is the reason that to some extent the protective tariff is operating in this country—because the supply of that kind of flour is limited, and the price is bid up on that kind of flour in order to supply the demand from the American bakers.

Senator BINGHAM. Where is the kind of wheat grown in this country that supplies that demand?

Mr. HARVEY. The higher-protein wheat is grown not only in the northwestern United States—that is, Minnesota, the Dakotas, and Montana—but it is also grown in Kansas, Oklahoma, the panhandle of Texas, and to some extent, a lesser extent, in Nebraska.

Senator BINGHAM. If we were to do away with the 42-cent duty on wheat, which we have been told on the floor of the Senate a great many times did not amount to anything and did not help the farmer, would there not be a greater demand for Canadian wheat from the northwest region that grows that high-grade wheat?

Mr. HARVEY. The effect, of course, would be to pool the crops of the two countries, and to wipe out any differences existing on comparable wheats in the two countries, and naturally to lower the level of the premium which now has to be paid on the higher-protein wheats, because the supply would be so greatly increased.

Senator BINGHAM. Then is it correct to say that the bakers demanding that high-grade, high-protein wheat would be glad to see the 42-cent duty taken off, so that they could get that kind of wheat flour at a cheaper rate?

Mr. HARVEY. I should think they might, if they took a narrow view of it.

Senator WALSH of Massachusetts. So would the bread consumers of the country.

Mr. HARVEY. Yes; I think they might. On the other hand, if the bakers are willing to sacrifice some of their interests to the good of the country, and believe that the good of the country is best served by protecting and helping the agricultural interests, then I should say they were taking a broad view of it.

Senator BINGHAM. I have heard the statement made so many times that the 42-cents-a-bushel duty on wheat did not amount to anything, did not help the farmer, that I wondered why we should not take it off.

The CHAIRMAN. Perhaps the figures here when we did have free wheat will answer that question, Senator. In 1920, when we had free wheat, there were 35,712,035 bushels of wheat shipped into America from Canada, whereas in 1927——

Senator WALSH of Massachusetts. In there any dispute about that? Have we not always agreed that a certain group of wheat-producers benefited by this tariff? Is there any dispute between any of the members of the committee about that fact?

The CHAIRMAN. This is for the record only.

Senator WALSH of Massachusetts. I am referring to what the Senator suggests about the Democratic members of this committee saying that this is not a benefit to the farmer.

The CHAIRMAN. In 1926 there were 451,029 bushels of wheat shipped into America from Canada; in 1927, 21,299 bushels; and in 1928, 224,133 bushels.

Senator WALSH of Massachusetts. So far as I am concerned, there is no doubt whatever that the duty on wheat is a benefit to certain farmers raising wheat in certain States in this country, and operates decidedly to their advantage.

Senator HARRISON. Mr. Chairman, while you are putting that in the record, do you not think it advisable to put in the record also that following the proclamation of the President increasing the tariff on wheat, wheat went down 9 cents in the United States during the next week?

The CHAIRMAN. That was not on account of the tariff at all.

Senator HARRISON. Oh, of course not.

The CHAIRMAN. The Senator knows it was not.

Mr. HARVEY. The matter has been pretty well covered by Mr. Pillsbury, and I have added what I think I can; and I have no excuse for taking any more of your time unless some of the members of the committee or yourself have further questions to ask, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator CONNALLY. May I ask the witness one question?

The CHAIRMAN. Certainly.

Senator CONNALLY. A moment ago you stated to Senator Bingham that the Cuban bakers insist on getting the Canadian wheat.

Mr. HARVEY. I said, Senator, I think, or meant to say, that the Cuban bakers were educated to a type of high-protein wheat; not necessarily Canadian, but high-protein wheat.

Senator CONNALLY. Well, we have that? We produce that wheat here?

Mr. HARVEY. Yes, Senator; we produce it here.

Senator CONNALLY. So if the Cuban has just got to have that better wheat than our ordinary folks have, he could get that from the American millers out of American-grown wheat if you did not have this 20 per cent reduction on your Canadian wheat when you carry it to Cuba; could he not?

Mr. HARVEY. Senator, if the American miller could find any wheat in this country at a comparable price which would enable him——

Senator CONNALLY. This is better wheat; and of course you are not going to give the Cuban a better wheat than we folks here eat at home and not make him pay more for it; are you?

Mr. HARVEY. Certainly not; but I can only judge the future by the past on that, and I made the bald statement that I thought there would be no increase or no appreciable increase in the amount of wheat of American origin that would go to Cuba, no matter what was done with this amendment.

Senator CONNALLY. I know you did.

Mr. HARVEY. And I will amplify it a little further, if I may. Our own records show, and Mr. Henry has some figures which he will present, that for a period of several years past the price of a comparable wheat in the United States as compared with a comparable wheat in Canada was higher by an amount considerably greater than the Cuban preference; in other words, that if the preference were done away with the bakers in Cuba would still get flour of Canadian origin; and the only difference that I can see would be that they would get it more largely from Canadian millers, and less from the millers that are now supplying it under the preferential section of the treaty.

Senator CONNALLY. The upshot of the business is that you, by getting the milling-in-bond privilege, bring yourself within the American protective-tariff structure; do you not?

Mr. HARVEY. Yes, sir. It is an American industry.

Senator CONNALLY. When you ship that flour to a foreign country, you pay no import duty, of course, to the United States?

Mr. HARVEY. No.

Senator CONNALLY. But by bringing yourself within the American protective,tariff system you get the advantage in Cuba of the preferential right which the American product is supposed to get?

Mr. HARVEY. Yes, Senator.

Senator CONNALLY. And yet you are selling them, under that protective shield, Canadian wheat and not American wheat?

Mr. HARVEY. Yes, Senator.

Senator CONNALLY. And your mill gets that much edge over the Canadian mill?

Mr. HARVEY. Yes, Senator. It is true that that protects an American industry against a foreign industry.

Senator CONNALLY. And practically no other mills outside of Buffalo are benefited by this provision?

Mr. HARVEY. They can be.

Senator CONNALLY. I am talking about whether they are or not. Are they?

Mr. HARVEY. They are not benefited and they are not injured, Senator, so far as I can see.

Senator CONNALLY. I did not ask you about the injury. I asked you if it is not a fact that there are no other mills that are benefited, except in the area around Buffalo, by this preferential provision that you now enjoy?

Mr. HARVEY. That, I think, is true at the present time.

Senator HARRISON. Before you take your seat, Mr. Harvey, would you mind telling the committee whether your concern or Mr. Pillsbury's concern makes the best flour? [Laughter.]

Mr. HARVEY. I should be very glad to do so if Mr. Pillsbury were not here. [Laughter.]

STATEMENT OF FRANK S. HENRY, REPRESENTING WASHBURN-CROSBY CO. (INC.), BUFFALO, N. Y.

(The witness was duly sworn by the chairman.)

Mr. HENRY. I am president, Washburn-Crosby Co. (Inc.), Buffalo.

Mr. Chairman and gentlemen of the committee, I do not wish to repeat any of the testimony given in favor of the continuance of milling in bond with privilege of drawback that was given by the other witnesses who appeared to-day. But certain facts in connection with that matter were not expounded, and I would like the privilege of explaining this before being questioned, if I might suggest that, in order to save the time of the committee.

Stripped of all side issues, the only question before the committee is, shall the milling of wheat into the form of flour for export be conducted from the United States with flour manufactured in the United States mills or manufactured in Canada?

And in connection with that, if it is to be the case that the flour is to be manufactured in Canada and not manufactured in bond with

the privilege of drawback in the United States, both of which privileges are attacked in the bill as it passed the House in connection with sections 311 and 313, then are we to be denied that principle, which I understand is always incorporated in a protective policy, known as improvement trade? I will not take the time here to define that term, because you are all familiar with exactly what it means.

Improvement trade presupposes in its application of the tariff the administrative features that will put it into execution.

And the administrative features are covered by sections 311 and 313. One is a corollary of the other. You can not take one without taking the other.

The industries of the country, in order to be fully benefited by the principle of improvement trade, must have the opportunity of selecting under which section they shall operate. The thousands of articles that receive the benefit, and the very proper benefit of improvement trade, include or cover the inclusion of a small percentage only of imported raw material, and it is far more convenient for them to operate under section 313 with the privilege of drawback.

On the contrary, the American miller, in order to receive the benefit of the improvement trade principle, finds it beneficial to operate under section 311, and therefore his operations have been designated and commonly known as milling in bond.

The term "milling in bond" is, in a way, a misnomer, in that it directs the attention of the person hearing it or the person reading it from the term "manufacturing in bond," which is more commonly known to the country and which illustrates the operation of the protective tariff.

In the export of flour from this country there are three general divisions. In the past seven years our export flour trade has decreased from 1921 to 1928 approximately 5,000,000 barrels. At the same time the Canadian trade has increased 4,000,000 barrels.

It is manifest to me, and, I think, to other millers engaged in the trade—and I have been in the trade for nearly 40 years, and nearly all of that time connected with the export business—that we have simply shifted to Canada 4,000,000 barrels of our trade, and we are losing the balance of it.

It is merely a question of time when the enormous crop of Canadian wheat of high quality, as explained by preceding witnesses, will so act upon the market that we will be driven out entirely.

It therefore becomes essentially necessary to the protection and preservation of a very important industry that it should not be selected as one of the many industries or the industry of the country which comes under the improvement trade practice to be selected as a target.

I believe the title of the bill is to encourage industry. And it hardly seems that we should emulate the historic action of, I think it was, Napoleon, or some other famous character of history, to encourage the others. We don't want to occupy the position of that general. The milling trade would rather go along with the rest and fight in the ranks.

The value of the trade might be illustrated quickly by figures. The total exports of the United States in the form of flour are approximately $85,000,000, and that export divided into three general

divisions—$35,000,000 representing the operation of the so-called bonded mills, who are in the stream of 140,000,000 bushels of Canadian wheat bound for Europe and which must go to Europe as wheat unless it is tapped on its way, and such tapping without any detriment to the farmer of the United States, without any detriment to any citizen of the United States but to the benefit of the entire industry of the United States, and particularly the American industry, it can be tapped on its way and receive the benefit of the improvement trade, which we all understand, of course, to be a protection of American labor, transportation, banking, and all of those accessory operations; $35,000,000 of that trade, then, is received from the bonded mills.

On the Pacific coast we have a large export trade to the Orient, amounting to 3,700,000 barrels, approximating in value $25,000,000.

That trade at the present time, however, is threatened by Canadian competition of flour made from wheat of a similar character raised in the western part of Alberta. And that, as I say, represents about $25,000,000 of trade, leaving $25,000,000 for all other classes of export flour from the United States.

It would be necessary to take too much time to go into the details of what constitutes that remaining portion. You can not say that it is low grade flour; you can not say that it is made from low protein wheat, you can not say that it is made from poor wheat. It is what is left in the process of milling or farming that may go out as flour, flour produced from 4.6 bushels of wheat as a low protein flour, or it may go out as the wheat itself, or it may be merely that remnant of the lower grades which we call in our trade clears, first and second clears, that go out in flour but incorporated in all of our statistics back into terms of wheat by multiplying by 4.6 bushels, whereas not more than two bushels are taken for manufacturing it.

But for the purpose of our argument it is necessary to make a differentiation. But all that is left is practically 4,000,000 barrels of flour that is exported from all parts of the United States to all of the world.

It has taken us 52 years in our business to build up a foreign trade which we have developed in 80 countries and subdivisions. It has meant the development of an organization abroad which has dragged to foreign markets the wheat of America in the form of flour under trade-marks and established brands, as suggested this morning by Mr. Pillsbury in connection with his business.

The wheat going into such flour in a large number of those countries would never have left this country otherwise.

In our bonded operations the approximate quantity of wheat imported from Canada and receiving the benefit of the improvement trade practice approximates 15,000,000 bushels per year.

The amount of domestic wheat going out in addition to that, and by reason of the operation, and which could not go out under any other circumstances to foreign countires, is 3,000,000 bushels.

So by the operations we have benefited the American farmer by the ability to raise to the proper standards in certain markets his 3,000,000 bushels of low protein wheat by blending it with the higher protein wheat of Canada.

A mill in Buffalo manufacturing in bond might be compared with a mill on wheels. To-day it takes into its building Canadian wheat

in bond, grinds the wheat into flour and exports it in Canada. To-morrow it is brought over to the United States, and the very same mill uses United States wheat for making its flour for export. In that way we simply replace the Canadian labor and all of the value that would go to manufacturing accruing to Canada instead of the United States by manufacturing in bond.

It is possible for us to-day to buy in Canada bags under our marks, fill them with flour made by Canadian mills under our standards, and ship that flour, import it into this country free of duty and in bond, the same as wheat, load it into United States railroad cars in bond, take it to warehouses at the seaboard in bond, and do everything that we now do. But instead of doing it in Canada we do it in the United States and to the benefit of the American industry.

Senator SACKETT. If you bought that in Canada and got that flour and brought it in in bond, could you ship it to Cuba under the preferential duty?

Mr. HENRY. We can not receive the preferential duty into Cuba, but we would be able to manufacture it at a corresponding less cost than the Cuban preferential, by reason of the 15 cents per barrel manufacturing cost, 6 cents per barrel duty on the fee, and the other costs of customs practices and the benefits that are derived by the Canadian miller from the fact he can export his top patent and receive for it a higher price, the returns of which net him 12 cents a barrel, on the average, but sometimes it is 22. The whole combination makes 33 cents a barrel. That is why he is driving us to-day from the markets of the United Kingdom, Holland, and the European countries. Our trade is constantly decreasing.

Senator SACKETT. We are talking about the Cuban situation.

Mr. HENRY. We can not talk about that without bringing in the whole picture. With respect to the preference that is given to all American flour—and ours is American flour that is made from Canadian wheat or United States wheat—we want no preference over any other flour. We do not deny that preference to any other section. We have mills in the Southwest, and we would be delighted to have them operating upon flour manufactured to go into Cuba. But it is impossible.

It was stated by two other witnesses to-day, and one witness yesterday, one being Mr. Helm and the other Mr. Pillsbury, that the so-called high-protein wheat—and we try not to burden you with the technicalities concerning it—and high-quality wheat is grown in small quantities only in this country, that is, relatively small. It is grown in Kansas, it is grown in Oklahoma, it is grown in Texas. We have mills there in those sections. It is also grown in the Northwest, and we have mills there. But it goes entirely into domestic consumption, because it does not meet the world level of prices. You can not do an export flour business, regardless of any theory, unless you meet the world price.

None of that wheat is available for us to manufacture and ship in competition with the flour made from Canadian wheat, that is, into the Cuban or any other market.

Senator SACKETT. Doesn't some of it go in in competition?

Mr. HENRY. Not that type of flour; no, sir.

Senator SACKETT. Some other type of flour?

Mr. HENRY. The type of flour I was describing earlier, which I do not like to call low grade, but that is what it is. We ship there those types ourselves.

Senator SACKETT. What you bring in from Canadian wheat, then, displaces some of that?

Mr. HENRY. It does not. It does not compete with it in any shape or form.

It was said this morning by one of the witnesses, I think, that subsequent to the hearing before the Ways and Means Committee discussions were held in the Southwest and in the Northwest by millers with reference to the character of flour required in Cuba, and that several representatives of the southwestern mills visited Cuba and learned that they did not require this kind of flour at all.

Being southwestern millers ourselves, and being particularly interested in that matter, we did not consult the other millers down there, as it is not our custom to do so, but we sent a man down ourselves. I sent him down. It was one of the cereal chemists of the Southwest who stands about as high as anyone in that section. He spent several weeks down there and came back and told me that it was undoubtedly a fact; the Cuban baker became used to handling a flour made from high protein spring wheat and he demanded that, and we could not ship him high protein wheat from the Southwest even if we were on the world basis.

As a matter of fact, as the chairman said, there is a hurdle of $1.16 to jump. But we find it to be about $1.40 in our own mills. In other words, for the same type of flour, assuming it is the same type as the Canadian flour, it costs us $1.40 per barrel more to deliver it in Habana than it would cost delivered out of a bonded mill in Buffalo.

Senator KING. Mr. Henry, does your examination lead you to the conclusion that if it were not for the preferential advantage which we have in Cuba we would be driven out of the flour market in Cuba for these better products, even though we can produce as high grade wheat in the United States as is produced in Canada?

Mr. HENRY. We would be driven out.

Senator SACKETT. Of Cuba?

Mr. HENRY. We would be driven out unless we were able to go in there on the world level of prices and compete with the Canadians.

Senator WALSH of Massachusetts. I understand the figures to show that 7 per cent of the milling business at Buffalo goes to Cuba only. Is that right?

Mr. HENRY. That is approximately correct, yes, sir.

Senator WALSH of Massachusetts. I also understand that import 40 per cent to 42 per cent of Canadian wheat to the mills.

Mr. HENRY. Their approximate grinding of Canadian wheat in Buffalo is 42 per cent of the total; yes.

Senator WALSH of Massachusetts. And that you pay a duty?

Mr. HENRY. We pay no duty.

Senator WALSH of Massachusetts. You pay no duty?

Mr. HENRY. It is all ground in bond.

Senator WALSH of Massachusetts. It is all ground in bond?

Mr. HENRY. Yes.

Senator WALSH of Massachusetts. Is there any Canadian wheat imported and sold in the domestic market?

Mr. HENRY. Very seldom. We have imported some ourselves and paid the duty. I think we did last year.

Senator KING. What is the ratio of your domestic grinding for domestic consumption to your grinding for export?

Mr. HENRY. Do you refer to all of the mills?

Senator KING. In all of your mills in the United States.

Mr. HENRY. All of our mills in the United States?

Senator KING. Yes.

Mr. HENRY. In all of our mills in the United States the amount that we now export is about 14 per cent.

Senator SMOOT. That includes your oriental shipments?

Mr. HENRY. Everything; all over.

Senator KING. Of course, it is of advantage to the American farmer to secure as large an export as possible to all countries of the world?

Mr. HENRY. And to our advantage as well as his advantage. We are his largest customers; yes, sir.

Senator KING. And the greater the prestige of American millers because of their integrity, the fine character of their product, the greater number of our exports, the higher will be the credit of American manufacturers of all products?

Mr. HENRY. Absolutely.

Senator KING. In all parts of the world?

Mr. HENRY. Absolutely.

Senator KING. Therefore you become ambassadors for manufacturers as well as agriculturists, if you have a good name and carry good products?

Mr. HENRY. I thank you for using that expression, Senator, because it is one I would hesitate to use myself, but it is a correct term. And millers of the United States who have been exporting since the time of George Washington have a reputation in foreign markets under their brands which they have established by work on their part without any Federal assistance abroad and, therefore, they are truly ambassadors of American trade.

Senator WALSH of Massachusetts. Of the milling at Buffalo I understand 58 per cent is for domestic consumption and 42 per cent export?

Mr. HENRY. That is the general average throughout all of the plants there. The value of the investment in mills in bonding in Buffalo approximates $20,000,000. The value of their output is $35,000,000. The wage paid to nearly 1,000 men in all channels, abroad and at home, in the mills will run approximately a million and a half dollars a year; and of the cotton of this country there is taken out in export by reason of our operations cotton bags of a value of $1,400,000 to $1,500,000 a year which otherwise would go out of Canada.

Senator CONNALLY. Does Canada raise any cotton?

Mr. HENRY. I beg your pardon, Senator, but I did not understand your question.

Senator CONNALLY. These bags would still be of cotton, whether the wheat was raised in Canada or in the United States?

Mr. HENRY. Perhaps so, if they were able to get into those markets that we have been able to get into.

Senator CONNALLY. I do not see how it helps cotton.

Mr. HENRY. It does not hurt it any.

Senator CONNALLY. You were citing the fact that these 200,000 bags would go to Canada.

Mr. HENRY. I beg your pardon, Senator. I made no such assertion.

Senator CONNALLY. What was your assertion?

Mr. HENRY. It was to the effect that this export flour to the amount of $35,000,000 a year is contained in about $1,400,000 to $1,500,000 worth of cotton bags.

Senator CONNALLY. If it was any other kind of flour it would have to have a cotton bag, too, would it not?

Mr. HENRY. I presume it would, if it is the kind that requires the cotton.

Senator CONNALLY. What percentage of your exports go to Cuba?

Mr. HENRY. Of our exports?

Senator CONNALLY. Yes.

Mr. HENRY. Approximately 10 per cent.

Senator CONNALLY. What do you do with the other 90 per cent?

Mr. HENRY. We ship it to the other 79 countries and subdivisions of the world.

Senator CONNALLY. You compete successfully with Canada on that, do you not?

Mr. HENRY. Not successfully. We are losing all of the time.

Senator CONNALLY. You lose on the 90 per cent but make it up on the 10 per cent?

Mr. HENRY. No, sir.

Senator CONNALLY. If you are competing on 90 per cent in other countries with Canada why can't you do it in Cuba?

Mr. HENRY. We do not.

Senator CONNALLY. What do you do?

Mr. HENRY. We are gradually losing in our business. Our exportations dropped from 16,000,000 to 11,000,000, and Canada has increased from 6,000,000 to 11,000,000.

Senator WALSH of Massachusetts. Of the total flour exported from the United States since 1920 the percentage has decreased from 80 per cent United States production to 50 per cent. Is that true?

Mr. HENRY. I understand that those are the figures, Senator.

Senator WALSH of Massachusetts. The whole American?

Mr HENRY. Yes; the whole American.

Senator SACKETT. If it is only 10 per cent of the total exported to Cuba, then you would not want us to take your argument as to the investment in the Buffalo mills and the amount of labor as being destroyed because this thing applies only to 10 per cent?

Mr. HENRY. I was talking of the whole export trade.

Senator SACKETT. But this amendment affects only Cuba.

Mr. HENRY. I was speaking to both section 311 and 313. Section 311 deprives the miller or manufacturer of that privilege of drawback in its entirety.

Senator SACKETT. This particular amendment in this section does not affect your other export trade?

Mr. HENRY. It affects it in that we are not able to operate and secure a drawback. We can manufacture in bond. And, at the same time, notice was given as to an amendment to section 313 by which we would be denied the privilege.

Senator SACKETT. You are speaking of the whole amendment?
Mr. HENRY. Yes, the whole thing.
Senator SACKETT. I wanted to get it clear.
Senator CONNALLY. Did your company declare any dividend last year?
Mr. HENRY. My company, you say?
Senator CONNALLY. Yes.
Mr. HENRY. Yes.
Senator CONNALLY. I thought you said you were losing money all of the time on this 90 per cent of the export business?
Mr. HENRY. We might lose on 90 per cent of the export but gain on the domestic.
Senator CONNALLY. So you are exporting your wheat and selling it at a loss to the foreigners and making it up on the domestic?
Mr. HENRY. I did not say we were losing money; I said we were losing in volume of trade.
Senator CONNALLY. I thought you said you were losing money?
Mr. HENRY. You misunderstood me.
Senator WALSH of Massachusetts. I do not think he said that. He said volume of trade or business.
Senator CONNALLY. Then I misunderstood him.
Mr. HENRY. I would emphasize that the United States miller uses every bushel of United States grown wheat that it is possible for him to use.
Senator SMOOT. In other words, the statement you have already made about the trade is justified amply by the figures for 1919 as to exportations—26,449,881 barrels, and going down to 1928 there are 11,848,042.
Mr. HENRY. That is correct.
Senator SMOOT. Somebody has lost the trade.
Senator WALSH of Massachusetts. Is there a difference in the cost of labor at the Buffalo mills as compared with the Southwest?
Mr. HENRY. I am not familiar with that.
Senator WALSH of Massachusetts. You are not familiar with that?
Mr. HENRY. Yes; I think we pay higher wages at Buffalo than we do at the mills in the Southwest.
Senator WALSH. I thought you would know, having mills in both sections.
Mr. HENRY. Yes; we do. I do not know how it is in all the other plants.
In these operations we produce at Buffalo a very large quantity of feed. I do not like to go over that ground again. But the millers themselves pay the duty upon that, amounting to 6 cents a barrel, which really constitutes a cost. If we do not furnish the feed to the farmers of the East we deprive them of some 140,000 tons, I think it is. Well, it is 200,000 tons of mill feed.
We had expected to-day to have here Mr. Burritt, executive assistant, Cooperative G. L. F. Exchange—that is the Grange Farmers Exchange—but he left with me a letter which I would like to submit, if I may.
Senator KING. Does he speak for the Grange?
Mr. HENRY. Yes; he speaks for the Grange.
Senator KING. I would like to have it read, if there is no objection.

Mr. HENRY. This is dated Washington, July 15, 1929, addressed to Frank F. Henry, Hotel Willard, Washington, D. C.

DEAR MR. HENRY: In view of the fact that the Senate Finance Committee calendar was so full to-day that the question of milling in bond was not reached, and that I am unable to remain over for the hearing to-morrow, I would be glad if you would submit the following statement to the Senate Finance Committee on my behalf.

The Cooperative Grange League Federation Exchange, which I represent, is a cooperative purchasing agency buying feeding materials for and manufacturing approximately 400,000 tons of dairy and poultry feeds for 70,000 farmer-buyers in the New York milk sheds. As such, we are large buyers of wheat feeds in Buffalo.

We understand that the withdrawal of the milling in bond privilege will materially reduce the amount of wheat milled in Buffalo and hence the amount of the by-product mill feeds available in this market. If this understanding is correct as this market is the principal buying point for wheat mill feeds by eastern dairymen, approval of the proposal by the Senate would tend to increase the cost of dairy feed. The G. L. F. alone is buying feeds for one fourth of all the cows and poultry in the New York milk shed. We wish to call this large buying interest of eastern dairy farmers to the attention of the committee and to protest any action that will tend to increase farm production costs of such a large group of farm producers. This would be far from "farm relief."

Thanking you for presenting this point of view to the committee, I am,

Yours very truly,

M. C. BURRITT,
Executive Assistant, Cooperative G. L. F. Exchange, Ithaca, N. Y.

Senator WALSH of Massachusetts. Is it not a fact that the mill feed produced at the mills at Buffalo is not sufficient for the market in the East and that large amounts of mill feed is imported from Canada for New York and New England?

Mr. HENRY. It is a fact. The quantity will run over 100,000 tons per year.

Senator SACKETT. Can you say how it would increase?

Mr. HENRY. I beg your pardon, Senator?

Senator SACKETT. Can you say how much it would increase the feed bill? He says it would materially increase it, but he does not say how much.

Mr. HENRY. If we are cut off from making 200,000 tons of mill feed at Buffalo that is marketed in the East, and I assume there is no change in the value of feed from recent valuations, which is approximately $25 per ton at the frontier, and that there remains in the tariff a provision now which advances the duty on feed, curiously asked for by the farmer—he seems to want to really pay more for one of the manufactured products he purchases—the increased cost would be $2.50, and as a total that is approximately $500,000.

Senator SACKETT. At what does mill feed produced in this country sell in the New York milk shed?

Mr. HENRY. You see, it is delivered in bags which vary in weight, but on a bulk basis the various kinds of feed on the New York basis would be about $27.50.

Senator SACKETT. What does it sell at?

Mr. HENRY. It all sells at the same level. It is the competition.

Senator SACKETT. Then how will you lose, if it all sells at the same price? Isn't there enough American mill feed?

Mr. HENRY. There is not.

Senator SACKETT. It can not be found in this country?

Mr. HENRY. Not at the price the Canadian competition forces in the eastern market.

Senator KING. They are already importing 100,000 tons from Canada?

Mr. HENRY. Yes.

Senator WALSH of Massachusetts. What does the 7½ duty represent in ad valorem rate?

Mr. HENRY. Approximately $1.75 per ton. I would like permission, Mr. Chairman, to file a brief covering certain points.

Senator SMOOT. You shall have that privilege.

Mr. HENRY. This brief is presented under oath.

I would also like to submit, if I may, a certified copy of a resolution of the North Pacific Millers' Association, in which they express themselves in favor of the continuation of the milling in bond privilege under section 311. And they have already expressed themselves as very probable users of that within a short time in order to meet Canadian competition.

Senator SMOOT. It will be put into the record at this point.

(The resolution referred to is as follows:)

NORTH PACIFIC MILLERS' ASSOCIATION,
Tacoma, Wash., July 11, 1929.

Adopted by this association at its annual meeting, June 29, 1929:

Resolved, That this association go on record in favor of the continuation of the milling in bond privileges as now exist and oppose any changes;

That some one be delegated to represent this association at a meeting on July 15 before the Senate Finance Committee in Washington, D. C.

R. D. LYTLE, *Secretary.*

The above resolution was unanimously carried by a vote representing 37 flour mills located in the States of Washington, Oregon, and northern Idaho.

Attest:

R. D. LYTLE, *Secretary.*

Senator HARRISON. I am not very clear in my own mind about one proposition, and I would like to have it cleared up. What per cent of the hard spring wheat used in the Buffalo mill comes from the United States and what per cent from Canada?

Mr. HENRY. That would be very difficult to state. We call a mill a unit. A plant may be composed of two or three units. Some of those units may be grinding wheat originating in the Southwest for domestic, some in the Northwest, and some in bond. It would be very difficult to segregate those figures, and I do not think they are of record. But, as a general thing, the mills at Buffalo are spring-wheat mills. This is an approximation, but 58 per cent of their operations are on domestic spring wheat and 42 per cent on Canadian.

Senator SHORTRIDGE. Do you say that the Cuban consumers of bread demand a higher grade of bread than the American consumer?

Mr. HENRY. No, sir. I say that the Cuban consumers of flour, the bakers, now require for their purposes a higher grade of flour than formerly, and that grade of flour is comparable with the grade of flour that is now demanded by the citizens of the United States through the baker.

Senator SHORTRIDGE. Your contention being that we do not raise in sufficient quantity this high-grade wheat to be converted into the flour in question?

Mr. HENRY. The term "quality" as applied to flour or as applied to wheat is necessarily a relative term.

Senator SHORTRIDGE. Certainly it is.

Mr. HENRY. I would not say that a wheat of 13 per cent protein was necessarily of a higher quality than one of 12; but it is considered of greater service, and, therefore, may be termed of higher quality, as you have termed it, sir, by the bakers. And we do not raise enough of that wheat in this country to more than supply the domestic demand. The bread wheat supply in this country is very well balanced with the bread demand. And such of it as is produced, necessarily because of the great demand and relatively small supply—and it is produced practically throughout the United States, as described this morning by Mr. Pillsbury; it is not confined to any one section. That supply and demand law causes what we call a premium on the wheat, which may run up to 38 or 40 cents a bushel.

Senator SHORTRIDGE. The wheat that comes in from Canada does, of course, come into competition with some other American wheat?

Mr. HENRY. That wheat coming in from Canada and going through this country in bond——

Senator SHORTRIDGE. No matter where it goes; it comes into competition with American-grown wheat of the same type.

Mr. HENRY. Of the same type. But that American-grown wheat of the same type is so far above the world price that none of it escapes from this country.

Senator SHORTRIDGE. However, if none of this high-type wheat came in from Canada do you think we could increase our output?

Mr. HENRY. Not one bushel.

Senator SHORTRIDGE. Why not?

Mr. HENRY. Because of the price?

Senator SHORTRIDGE. Because of what?

Mr. HENRY. The price, the cost of the wheat.

Senator SHORTRIDGE. Does it cost more to raise that type of wheat?

Mr. HENRY. I am not familiar with the raising and am only familiar with what I have to pay for it. It would cost us to-day, for instance, at Buffalo—and I figured it out a few days ago—between 90 cents and $1 per barrel more to get the best type of United States spring wheat into the form of flour, which would be measured in terms of protein, than would the Canadian. As to our Southwestern mills it would cost $1.40 per barrel more if this law as amended is along the lines appearing in the bill before us.

Senator SHORTRIDGE. What is going to happen to your mills in Buffalo?

Mr. HENRY. Do you refer to the entire wiping out of the milling in bond?

Senator SHORTRIDGE. I refer to your business in Buffalo. What will happen to you, in your judgment?

Mr. HENRY. The business will all go to Canada.

Senator SHORTRIDGE. All what business?

Mr. HENRY. All of our export. Approximately 5,000,000 barrels of flour in all the mills of Buffalo go to export.

Senator SHORTRIDGE. You would continue to operate your mills, would you not?

Mr. HENRY. We would try to in the domestic market. We would try to get trade away from other mills in the domestic market, which would not increase the consumption of flour in the United States one pound or cause the grinding of one additional bushel of American

wheat. That is limited by the capacity of the American stomach for bread.

Senator WATSON. Hasn't the consumption gradually decreased?

Mr. HENRY. Yes.

Senator WATSON. How do you expect to recover that loss?

Mr. HENRY. We just expect to hold our own.

Senator SHORTRIDGE. You emphasized the decline in the foreign trade.

Mr. HENRY. Yes.

Senator SHORTRIDGE. Your losses, so to speak?

Mr. HENRY. Yes.

Senator SHORTRIDGE. In the volume of the foreign trade?

Mr. HENRY. Yes.

Senator SHORTRIDGE. That loss has been occurring under this bonded provision of our law.

Mr. HENRY. Yes. Had it not been for that it would have decreased 5,000,000 barrels more.

Senator SHORTRIDGE. But as to the immediate flour-milling business you think, and you state, that you would suffer by the change of the law?

Mr. HENRY. Absolutely, absolutely.

Senator SHORTRIDGE. You can not turn your attention to the manufacturing of American wheat into flour of the same grade?

Mr. HENRY. There is no market for it. The market is filled to-day.

Senator SHORTRIDGE. How much do you sell to Cuba?

Mr. HENRY. To Cuba, you say?

Senator SHORTRIDGE. Yes. How much do you?

Senator COUZENS. He said 10 per cent.

Mr. HENRY. Ten per cent of our output.

Senator SHORTRIDGE. A little earlier in your statement I understood you to say 7 per cent.

Mr. HENRY. Seven per cent of all the output of the Buffalo mills is sold in Cuba. I am speaking of my own company. We happen to sell a little more.

Senator SHORTRIDGE. Then the industry in Buffalo sells about 7 per cent to Cuba?

Mr. HENRY. Yes; 7 per cent.

Senator SHORTRIDGE. Suppose you lost all of that; would that materially affect your industry—that 7 per cent?

Mr. HENRY. It would certailny affect the industry 7 per cent.

Senator SMOOT. It would affect everythlng that is ground in Buffalo?

Mr. HENRY. Yes.

Senator SHORTRIDGE. And probably it has been stated, but I just wanted to get your judgment. You say that we can not raise any more of this type of wheat?

Mr. HENRY. Apparently not, as undoubtedly the farmer, because of the premium he receives for that wheat, is raising all that he can raise. We will buy all that we can get in the domestic market.

Senator SHORTRIDGE. Perhaps the price he has been getting has something to do with the increase or the decrease or the stationary amount of acreage.

Mr. HENRY. Well, as Mr. Pillsbury explained this morning, the conditions of Nature are such that when the seed is put into the ground it is a gamble as to what kind of wheat will be harvested.

Senator SHORTRIDGE. Whether or not it is possible to do so there are millions of acres of wheat land untilled in America.

Senator SMOOT. I have been wondering why the per capita consumption of wheat is declining right along. Since you were interested in this business, have you come to the conclusion or arrived at any reason why that consumption should decrease?

Mr. HENRY. There are many reasons. Perhaps the propaganda of certain uninformed persons who think that white flour is a bad article of diet has had something to do with it. Another reason would be the greater prosperity of the country, by which the standard of living has been raised, so that they eat more meat, vegetables and fruit. That might have an effect upon it. The general prosperity of the country does not reflect pleasantly upon the miller of white flour.

May I ask one thing further, that one of our witnessses who did not care to take up too much time of the committee, might have the privilege of filing a brief? I refer to Clarence M. Hardenburg.

Senator SMOOT. You shall have that privilege at this time.

(Mr. Henry submitted the following brief:)

BRIEF OF FRANK F. HENRY, PRESIDENT OF WASHBURN CROSBY CO. (INC.), BUFFALO, N. Y.

The subject we have to discuss is improvement trade defined by the United States Tariff Commission as "The free admission of materials or semimanufactured articles into the customs area of a country, with a view to subsequent reexportation in a more finished state, or the exportation of goods with free readmission in a more finished state later on." (P. 407, Dictionary of Tariff Information issued in 1924 by U. S. Tariff Commission, and applied in the tariff act of 1922 in secs. 311 and 313 of the same.) I am representing primarily Washburn Crosby Co. (Inc.), Buffalo, N. Y., and am authorized to speak for the American Export Millers Protective Association, which comprises in its membership 175 wheat-flour millers, with a daily capacity of nearly 300,000 barrels of flour and who operate their plants to an average percentage of their potential output which brings their yearly production to between 50 and 60 per cent of the total wheat-flour production of the United States. Certain millers, not members of this association, also favor the continuance of manufacturing flour in bond as shown in the following excerpt from the proceedings of a special meeting of the Southwestern Millers League held at Kansas City the fourth week of January, 1929, and published in the Southwestern Miller issue of January 22, 1929, as follows:

"FOR CONTINUATION OF MILLING IN BOND

"*Further resolved*, That the Southwestern Millers' League go on record as favoring the continuance of the present milling in bond regulations as will be necessarily amended by the passage of the Garber bill."

The total flour exports of the United States have declined from nearly 20,000,000 barrels in 1920 to slightly under 12,000,000 barrels in 1928.

These exports are from four sections of the United States, viz:

	In round figures
Pacific seaboard	3,800,000
Atlantic seaboard (bonded mills)	4,500,000
Southwest (via Gulf), Southeast (via Gulf and Atlantic)	3,700,000
	12,000,000

The export trade of the mills manufacturing in bond, therefore, is over 50 per cent of all exports east of the Rocky Mountains and its loss to Canada, which would surely ensue if proposed legislation becomes effective, would be a blow to our foreign trade and disastrous to the flour milling industry.

Further, the Pacific coast mills of the United States are now keenly feeling the effects of Canadian mill competition in their Oriental trade and to protect it, are planning to manufacture flour in bond.

The importance of improvement trade as applied to flour milling is shown in the following data:

Present investment in mill plants and operating capital engaged in manufacturing in bond (average)	$35,000,000.00
Annual value of exportations from these mills (average)	30,000,000.00
Annual salaries and wages paid by these mills in export operations only (average)	1,500,000.00

It is requested that we be given permission to file an additional brief at a later date should this be necessary.

From an industrial standpoint the miller is not interested in the duty upon wheat and its products excepting as such duty may aid the American farmer. With any duty having this result he is in full accord.

The wisdom of your committee and of the Congress will determine the construction of duties upon wheat and its products that will afford relief to the farmer. Obviously, a duty upon wheat is ineffective in aiding the farmer unless the duty upon flour is properly correlated with the wheat duty to prevent defeat of wheat protection.

A duty upon by-product, mill feeds, could hardly be considered as farm aid, being imported solely for farm consumption and its importation dutiable or duty free would have no influence upon the commensurate duty upon flour that would be necessary to protect the wheat duty.

The average importations of Canadian mill feed for the past seven years, as shown by the Canadian Year Book has been approximately 114,000 tons, but has been as high as 155,000 tons.

Wheat as raw material possesses no outstanding peculiarities that command either prestige or premium in world markets, but the same wheat shipped as flour under United States brands has an established foreign trade as demonstrated for many years by comparison of United States wheat and United States flour exports.

The term "representative" as used in this statement means a type of wheat or flour which is predominantly acceptable to purchasers in both our own and foreign markets, thus it may mean, as in Canada, that the largest per centage of the wheat crop is acceptable to the trade because of its high quality and gluten strength and therefore high quality wheat and its product flour is the representative wheat of Canada. In like manner the domestic buyer in the United States requires in his flour the use of wheat of domestic production which is of high quality and is the predominating portion of the United States wheat crop which is retained in this country for home consumption. In the domestic market then the representative wheat of the United States is high quality wheat and the so-called surplus production going for export is not representative wheat. Per contra in Canada, high quality wheat is representative in both its domestic and foreign trade in wheat and flour.

The United States Department of Commerce in one of its bulletins makes the following statements:

"The export wheats of the United States are no longer representative of the crop. Our mills pick first the wheats that meet their requirements. It is safe to say that out of an average crop of 800,000,000 bushels of wheat, practically all the best wheat (No. 1 and most of No. 2 of premium quality) would be required by the millers of the United States. * * * but there is always a surplus of semihard, semisoft wheats and low grades, or of wheats that do not meet the requirements of American mills. * * * The Canadian export wheat is representative of the entire prairie crop * * *. This wheat is high in gluten, of good quality with high water absorption and good milling qualities."

"Canada furnished about 39 per cent of the net exports; the United States, 23 per cent; Argentina, 18 per cent; Australia, 11 per cent; and other countries, 9 per cent. As the United States controls on the average less than 25 per cent of the international movement it is obvious that the United States is not in position to control the export price."

It is a long-standing principle that application of capital and labor to imported material for reexport as domestic merchandise is an addendum to industry of the country and if labor and capital were not so engaged they would be idle. This is improvement trade.

It is a common practice to nations to permit the importation of raw material or manufactured goods for use in whole or part in domestic manufacture and subsequent exportation without the payment of duty; in other words, in bond or upon payment of duty and refund of drawback upon proof of final exportation. Such goods subjected to manufacturing operations prior to reexportation are officially classed among United States exports as "Exports of domestic merchandise."

Canadian acreage increased 33 per cent and wheat production over 100 per cent from 263,000,000 to 533,000,000 bushels from 1922 to 1928, and its pressure in the world markets was correspondingly greater.

There continually flows through the United States down the Great Lakes to Buffalo, without payment of duty, a huge stream of wheat from Canada (137,000,000 bushels in the crop year 1927–28) seeking its way to the markets of the world. It passes through this country in bond, which is permitted under our tariff. This wheat is of very high quality, originating from the virgin lands of Canada which, unlike our own, are not exhausted by long years of croppage.

This wheat seeks sale in the great world's market at the world's price. It is always competitive. Its quality and bulk give it a representative position.

As far as the United States farmer is concerned, the mill manufacturing flour in bond is to all intents and purposes, located in Canada. It is like a mill on wheels. It may not continuously grind in bond, because it is privileged to grind domestic wheat for domestic consumption, and because of the character of the business, it prefers to use its capacity on domestic wheat and domestic flour. One then may imagine such a mill on wheels—when grinding United States wheat it is in the United States; when grinding Canadian wheat it is in Canada.

We may take Buffalo as an illustration of this comparison. An average yearly grind of imported wheat at Buffalo in recent manufacturing in bond operations, has been 15,000,000 bushels.

Following the comparison of mills on wheels, had this wheat been ground in Canada, the resulting flour could have been shipped in bond through Buffalo and the United States, to one of our ocean ports, held there in bond, and finally exported to a foreign market country, without the payment of any duty to the United States.

Still further, the millers operating in bond at Buffalo could have purchased sacks in Canada with their own mill brands thereon, had a Canadian mill manufactur the proper type of flour for filling these bags, and could have sent the flour forward in the same manner as just indicated without payment of duty.

It is obvious that if the flour thus shipped were the property of the Canadian miller, or the American miller, the transaction would not have benefited United States labor, industry, banking, or the large number of manufacturers furnishing articles to flour mills, notably $1,500,000 in value of bags made from our southern cotton, which is forced into the export market through carrying our flour.

With this flour mill wheeled into Buffalo and manufacturing in bond, the transaction would have been the same excepting that all of the value added by manufacture would have accrued to United States industry. Further, the miller manufacturing flour in bond at Buffalo would have paid our Government in duty about $300,000, or 6 cents per barrel on flour manufactured, because the feed taken therefrom would have been retained in the United States, there being no export market and the requirement being that full duty would have to be paid thereon.

Flour manufactured from Canadian wheat is strong, highly glutinous; it is demanded by foreign bake shops. Comparable flour can not be manufactured from United States wheat at competitive costs, as United States wheat of necessary character to make such flour is consumed at home at 20 cents to 30 cents per bushel above the Canadian or world level.

The average crop of United States wheat is about 830,000,000 bushels, disposed of as follows:

Ground in United States mills for domestic consumption	[1] 523, 000, 000
Ground in United States mills for export	[1] 40, 000, 000
Used for feed and seed	[1] 120, 000, 000
Durum wheat exported	40, 000, 000
Bread wheat exported	107, 000, 000
	830, 000, 000

[1] Includes durum wheat of which United States grows 70,000,000 bushels annually and which can not be used as bread wheat.

Capital, industry, and labor have located themselves beside the stream of Canadian wheat for the express purpose of dipping into it, manufacturing such wheat in bond into flour for export and much needed mill feeds for domestic consumption, thereby creating the added value of manufacture which in the last analysis is the best of the worth of our whole manufacturing industry.

American millers are now permitted to accomplish this purpose under sections 311 and 313 applicable to all the industries which will be presently mentioned. In the case of wheat, the by-products are of great domestic value and since they do not lend themselves to water transportation and can not be exported, they are allowed to be withdrawn for domestic consumption upon payment of the same duty as would apply were these by-products, mill feeds, imported from another country. The principle involved is similarly applied to many other commodities passing through this country and is in accordance with the policies and practice of other countries which desire to encourage their export trade and to place their industries and labor upon a competitive basis with the rest of the world.

Canada does not and can not secure any benefits of tariff protection on wheat because it is a heavy net wheat exporter and as the price of Canadian wheat is lower than the price of comparable United States wheat, obviously the latter can not compete with Canadian wheat in the markets of the world.

It is therefore increasingly difficult for the American miller to compete with the Canadian miller even with the use of the same raw materials ground in bond. This statement is supported by actual trade experience in the rising tide of Canadian exports and is substantiated by the differences in processing and cost. The Canadian miller having an advantage of about 33 cents per barrel of flour cost over a United States miller manufacturing in bond.

Under our bonding provisions all the flour produced must be exported. This product is commonly known as a straight flour, and if divided into different grades it nevertheless must be exported in its entirety. Whatever grade is shipped it has its counterpart in Canadian mill production, and it must meet prices of such a Canadian flour in the open foreign market.

The Canadian miller is not bound by the same restrictions. For instance, he may divide his flour which represents approximately 70 per cent of the raw material—that is, 100 pounds of wheat will produce approximately 70 pounds of flour. This flour may be divided into several grades as it may be in a United States bonded manufacturing mill, but the Canadian miller can take from the top of the flour produced from 100 pounds of wheat, 10, 20, and sometimes as high as 30 per cent, or expressed otherwise, 7, 14, or 21 pounds of what is known as the top grade of flour which he may and does sell in Canada or in preferred export markets at a premium price; that is, a higher price than obtainable for export straight flour which is the grade usually shipped abroad. The remaining 60, 80, or 70 per cent, or 63, 56, or 49 pounds he sells as a straight flour and such is the quality that the foreign trade at large will pay the same price for it as for an American exported bonded straight. The result is to give the Canadian miller an advantage which may run from 10 to 20 cents per barrel as against the United States bonded miller. This advantage is secured because the top quality flour, 10, 20, or 30 per cent out of each 100 pounds, is sold at a premium price and the flour remaining from the operation is sold at the export price which the bonded miller must meet. For the full 100 pounds therefore it will be clearly seen that the Canadian miller must receive more money from his operation even when selling in foreign markets at the same price as the bonded miller. It is the common practice of Canadian millers to use a portion of this additional return as a reduction in cost on the exported flour resulting from the operation. This lower cost factor applied to the Canadian export flour will vary in individual cases, but so far as can be ascertained approximately it is about 12 cents per barrel.

In the operation cited, i. e., the grinding of 100 pounds of wheat from which 70 pounds of flour is produced, there are likewise produced, 30 pounds of by-product or mill feed. Upon this the American miller must pay full duty; but the Canadian miller from his export operations, as shown in our brief, produces approximately 400,000 tons, for 75 per cent of which he finds a market in his own country. He therefore exports only 25 per cent of his by-product or mill feed, so that the Canadian miller's manufacturing cost due to the duty upon feed is only one-quarter that of the United States bonded miller. At the present rate of duty this disadvantage costs the American bonded miller approximately 6 cents per barrel more than the Canadian, disregarding higher feed prices in Canada than in the United States which frequently prevail.

If we sum up the advantages of the Canadian miller over the United States bonded miller to-day we find 15 cents per barrel in manufacture, approximately 12 cents per barrel from sale of a portion of his product in his own market (such sale is impossible for a United States miller grinding Canadian wheat in bond) and 6 cents in his feed, a total advantage of 33 cents per barrel. Under such circumstances how can we expect to retain the export trade of the United States? It is only the superior merchandising methods of American millers that has permitted them thus far to partially hold ground in the foreign markets, combined with the trade-mark value of their long established brands.

At present wheat enters this country for three purposes:

1. Domestic consumption.
2. For passage through the country to export in the original condition.
3. For passage through the country to export subject to manipulation, processing or finishing.

Under a protective tariff the Government classes these as follows:

1. Duty paid imports.
2. Reexports (exported foreign merchandise).
3. Exports of domestic merchandise.

From the classification of the Department of Commerce, it is impossible to segregate domestic merchandise containing domestic material from domestic merchandise containing imported materials. For administrative purposes goods are permitted to pass through the country in bond or duty may be levied and remitted upon proof of export.

The finished article of commerce has three forms of value:

1. *Material.*—From air, soil, or from the earth under the soil. Elemental materials few of which are consumable as produced. Most depend upon subsequent acts of processing.
2. *Capital.*—Employed in the processing of raw materials.
3. *Labor.*—Employed in the processing of materials. Included in the added value of manufacture are the items of transportation, fuel, light, and power.

Through the nations of the world it is not held to lie within the functions of a tariff to collect duties on foreign goods entering a country for purposes other than domestic consumption within that country. Tariffs are designed basically to afford protection to home production and their tendency is to raise prices in the domestic market. Nearly every nation recognizes and applies the principle of improvement trade.

The tariff act of 1922 provides in section 311 for manufacture in bonded warehouses, duty free, of imported materials for use in whole or part in the production of goods to be transported in bond and exported from the United States. The operations are conducted under strict regulations prescribed by the Treasury Department. In section 313 it is provided that articles manufactured from dutiable and duty paid imported materials may upon proof of exportation receive as drawback 99 per cent of the duty paid.

Among the large number of industries operating under one or the other of the administrative provisions of this tariff act are flour milling and manufacturers of some 20 or more products such as aluminum, medicines, white lead and lead products, foil, cigarettes, steel, automobiles, lubricating oils, candy and canned fruits, bags, typewriter ribbons, typewriter carbon, corn products, artificial silk piece goods, hosiery, photo dry plates, motor generators, paper-makers felts, preserved butter, clothing, railroad cars, and beef.

The amount of imported wheat coming entirely from Canada milled in bond in the United States has varied from approximately 9,000,000 bushels in the fiscal year ending June 30, 1923, to 13,000,000 bushels in the fiscal year ending in 1927, and an estimated grind of 17,000,000 bushels during the current fiscal year, a fair statement of annual use being about 15,000,000 bushels.

The miller appears before your committee to-day with the request that the privilege of manufacturing in bond as it pertains to wheat should not be withdrawn or made more rigorous. He contends that if it is a sound principle as applied to so many articles it is likewise sound for wheat.

The factors of disadvantage of the United States miller as compared with the Canadian miller are now placed before your committee for consideration and such action as your wisdom may dictate.

The privilege of manufacturing in bond which has been continuously used by wheat flour millers since 1905 is of great importance to the milling industry, as without it the United States would immediately lose about 40 per cent of its entire export flour trade. When the administrative features of the tariff bill permitting manufacturing in bond without payment of duty, or manufacturing

duty-paid raw material with privilege of drawback, are applied to wheat or wheat flour and compared with the vast number of industries using one or the other of these privileges which have been justified in the practice of every progressive country of the world for centuries, we submit that the issue of manufacturing flour in bond is a small one to the country at large and that the segregation of one industry from all others and denying it the benefits of this well reasoned and long established custom would be denying a principle of great value to American industry and American labor, and be discrimination, benefiting no one but injuring all.

In good faith and compelled by the changing conditions in export flour trade, United States millers have made large investments in plants to be operated in bond in an effort to hold their foreign trade in flour. Why should they be subjected to the great loss this proposed legislation would entail and our trade or mills be driven to Canada?

The Canadian Milling and Grain Journal of June, 1929, contained the following:

MILLING IN TRANSIT

"There is one tariff change Canada will gladly see Uncle Sam adopt. This is the proposed abolition of the milling-in-transit drawback on Canadian wheat. Canadian wheat is subject to a 42-cent-a-bushel duty going into the States. * * *

"The plan that has been proposed to meet this drawback has been for Canada to charge an export tax on such wheat equivalent to the bounty paid. If the new United States tariff abolishes the drawback the need for a remedy will disappear. Canada would lose a small immediate market for wheat itself but gain a large market for flour—obviously a beneficial exchange."

Photostatic copy of this statement is presented.

Wheat of domestic origin consumed in this country commands a higher price than the world price. We can not expect to raise the price in the domestic market above the world price and sell it in the world market. One conception denies the other. We can not have our cake and eat it too. To sell our goods in the world market we must be competitive. Behind the tariff wall our prices are not competitive.

It has been observed in the trade press and elsewhere that considerable confusion exists in the quantity of wheat entering the United States in bond, as to whether it is exported or used in the United States mills for grinding flour. As just stated, the quantity actually consumed by bonded mills approximates 15,000,000 bushels annually, a very insignificant proportion of the United States wheat crop. The quantity ground in bond rises and falls as our home-grown wheats may vary in quantity and quality, for in these bonded mills there is used in the manufacture of flour for export to certain markets the greatest amount possible of wheat of domestic production.

The lay mind is apt to think of the wheat crop in terms of one quality. This is not true. We may raise numerous kinds of wheat in the United States. It is a matter of fact that while we produce a total crop in excess of our total needs, placing us in a net export position, it is nevertheless true that the quantity of wheat of the type required for bread is almost in balance with our bread needs. In other words, we are not exporters of representative types of bread wheat. Our exports are very largely Durum and nondescript varieties of wheat which can not be used in the manufacture of flour satisfying the American standard of bread production.

This surplus is exported necessarily at the world's price. It is not comparable with the Canadian types and quality as proven by trade preference.

If we shut off 15,000,000 bushels of wheat from Canada it has been argued that we would grind an equivalent amount of domestic wheat in its place. Such a reply does not recognize the important factor of quality or the still more important one of price. We can not replace with United States wheat one bushel of Canadian wheat displaced by legislation.

We can not grind United States wheats comparable with Canada because they are already required and used in the domestic market and command a high premium price. We could not be competitive.

If we should grind lower types of wheat of cheaper cost we would have an inferior quality flour which could not compete with the Canadian flour. Our position would simply be an impossible one.

Any argument that we could force foreigners to pay a higher price for a lower quality does not hold good in trade. No farmer would expect to sell his poorer

potatoes at a premium over his better potatoes, which is exactly the situation involved.

Should there be any withdrawal of the milling in bond privilege itself or an increase to the miller in cost of operation under this administrative section the grinding of United States wheat would not increase one bushel. The amount ground now is limited to a declining domestic consumption and flour exports from United States wheat are principally of the grades of flour which the American consumer does not purchase. There might be a shifting in the plants where the present domestic grinding occurs, but this would be purely a sectional matter involving loss to the industry as a whole from strongly competitive factors that would be developed and without impression upon the quantity of home grown wheat ground in American mills or the price thereof, excepting a downward influence on prices.

Without manufacturing in bond it would have been impossible for United States mills to have retained in the foreign commerce of this country that portion of our export trade represented by flour milled in bond. For many years milling in bond has naturally centered at the lower ports of the Great Lakes, where there has been an increase in the exports of flour so produced from approximately 500,000 barrels to 4,500,000 barrels, covering a period of 24 years. The growth of this operation has been very rapid in the past four years, as other mills have been compelled to either abandon to Canada their export flour trade, or to establish mills in the line of flow of Canadian wheat through the United States to Europe. They have taken the latter alternative and an increasing number of mills in various parts of the country are finding themselves forced to follow the same procedure at points as remote, for instance, as Seattle and Tacoma on the Pacific coast and Richmond, Va., on the Atlantic coast.

That industry and the public at large would suffer in a diminution of American export trade is self evident. The release of this capacity in the milling industry, designed specifically for export trade, would be equivalent to the erection of additional domestic capacity in an industry which is already overextended, with a subsequent loss to the consumer. Three million five hundred thousand to four million barrels—17,000,000 to 18,000,000 bushels—is not a large factor in the agricultural picture, but it is of enormous moment, as it affects industry and the interest of the consumer in the price he pays.

We maintain there is nothing to be gained in handicapping an American industry as would be the case were the milling in bond privilege abrogated. We would be playing into the hands of foreign competitors whose attitude is well illustrated in their press under such notices as that which appeared in the Winnipeg Grain Trade News of January 25, 1929, wherein it is stated that "Canada does not care on what ground the United States repeals existing provisions as long as it does repeal them." A photostatic copy of this statement is presented.

The movement of nearly 150,000,000 bushels of Canadian wheat over our transportation lines and through our lake and seaboard ports affords to us very valuable traffic, while opening to Canada a most attractive outlet for its exports. Canada is now the leading factor in world wheat markets. With cheap lands, cheap labor and increasing production she is gradually absorbing the export flour trade of the United States. The average total wheat exports from Canada has increased from 61,000,000 bushels in the pre-war years to 280,000,000 bushels in the last fiscal year and while 60 per cent of this movement in prewar years was through American ports, it is now about 48.5 per cent and naturally every effort of Canada is toward providing facilities and rate structures which will permit handling more and more of their wheat over their own transportation lines and through their own ports.

The continuation of milling in bond, under most favorable relations, would mean the retention of much of this traffic for United States carriers in the form of export flour.

The world movement of flour in 1920–21 was 28,000,000 barrels, which increased in 1927–28 to 34,000,000 barrels. In the first mentioned year the United States exported 21,000,000 barrels, in 1928 12,000,000 barrels.

The United States wheat crop in 1920 was 823,000,000 bushels and exports 17,00,0000 barrels and in 1928 903,000,000 bushels and exports 12,000,000 barrels.

The Canadian wheat crop in 1920 was 263,000,000 bushels and flour exports from that crop 6,000,000 barrels. In 1928 this crop was 533,000,000 bushels and exports nearly 11,000,000 barrels. In other words, we have lost 5,000,000 barrels and Canada has increased nearly 5,000,000 barrels in flour exports in the past seven years.

Since the distribution of export flour is world-wide, it becomes necessary to note changes in the largest foreign markets to emphasize the change in export flour movement. In doing this we find that Canadian exports in Europe and the Mediterranean were 2,500,000 barrels more in the past eight years, to the United Kingdom 600,000 barrels more, to the Southern Hemisphere and the West Indies 700,000 barrels more. This accounts for 4,000,000 barrels of the increase in Canadian exports and likewise shows approximately where the United States export flour trade was lost.

As there is naturally a relation between wheat crops and flour exports because of price effects, it should be stated that from a crop of 833,000,000 bushels in 1920 the United States exported 21,000,000 barrels of flour and from a crop of 903,000,000 bushels in 1928 a little under 12,000,000 barrels.

An important fact is that post war exports from the United States of flour made from wheat grown in this country via Atlantic ports has steadily decreased since 1900 from 6,500,000 to 2,250,000 barrels, excluding Pacific coast.

European milling has greatly increased, notably in the United Kingdom, Denmark, and Sweden, with corresponding increased flour production. These mills as well as the Canadian mills are capturing the flour trade of United States mills with cheap wheat from Canada, the Argentine and Australia.

At the last appearance of the United States millers before your committee in 1921, a prediction was made by Mr. James F. Bell as to the growth of foreign competition, which, under the most favorable conditions of manufacturing flour in bond would be harder and harder to overcome. The data shows that his prediction was absolutely correct. Without milling in bond I venture to say that our exports would now have declined to less than 9,000,000 barrels annually.

It is only due to the wise administrative provisions of the tariff act of 1922, permitting the manufacture of flour in bond from Canadian wheat that it has been possible for us to retain over 4,000,000 barrels of United States export flour trade, which otherwise would have gone to Canada.

As briefly as possible there has been here reviewed the successful operation and anticipated benefits of the administrative provisions of the present tariff act, which has wisely preserved an important part of a great industry, secured to the farmer full benefit in a duty on wheat and duly rewarded the public transportation and labor.

On an equal basis of opportunity, not privilege, with other wheat-producing countries, the American miller can furnish flour to domestic trade at a minimum margin between producer and consumer and also successfully compete in world markets, but it is no less essential now than in 1921 that there should be a foreign outlet for United States flour if its mills are to operate efficiently and economically, thus maintaining the narrow operating margins which have marked the history of the industry.

To partially meet Canadian competition it might be wise to reduce the cost of manufacturing flour in bond by lowering the duty upon wheat mill feeds, to the benefit of the farmer and the great dairy interests.

It is further desirable that the regulations should permit withdrawal of flour from bonded manufacturing warehouses for domestic consumption, in the discretion of the Treasury Department, and upon payment of the full duty applicable to imported flour.

STATE OF NEW YORK,
County of Erie, City of Buffalo, ss:

Frank F. Henry, being first duly sworn, deposes and says that the foregoing statements are true to the best of his knowledge and belief.

FRANK F. HENRY.

Subscribed and sworn to before me this 13th day of July, 1929.

[SEAL.] J. C. MCCABE, *Notary Public.*

STATEMENT OF HON. JAMES G. STRONG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF KANSAS

Senator WATSON. You represent a district in Kansas in the House?
Mr. STRONG. The best district in Kansas, the fifth district.
Senator WATSON. And what is it you want to say?

Mr. STRONG. I want to direct the attention of the committee to section 311 of the bill, in regard to the milling in bond proposition.

Under the provisions of this section the mills along the Canadian border bring in Canadian wheat and mill it in bond, and when it is shipped and exported from the country they are relieved from the payment of the duty of 42 cents a bushel.

Under our treaty with Cuba we have a preferential duty amounting to 35 cents a barrel on American flour. These mills that have been milling in bond bring in the wheat from Canada, mill it in bond, and escape the duty of 42 cents. The mills that bring in the wheat from Canada and by milling it in bond escape the duty of 42 cents then call the wheat when manufactured into flour American flour and they ship it to Cuba and get a drawback there of 35 cents a barrel. So they rob the American wheat grower and the American miller of his Cuban market by the use of the Canadian wheat, on which they pay no duty.

In the House bill there was inserted a clause as follows:

> No flour, manufactured in a bonded manufacturing warehouse from wheat imported after ninety days after the date of the enactment of this act, shall be withdrawn from such warehouse for exportation without payment of a duty on such imported wheat equal to any reduction in duty which by treaty will apply in respect of such flour in the country to which it is to be exported.

That is, if they bring in the Canadian wheat and are relieved of the duty and they export it to Cuba, they have to pay a duty equal to the preferential duty in Cuba.

Senator WATSON. You want that kept in?

Mr. STRONG. Yes, sir. If it would be possible to eliminate the 90 days, I can not understand why it should not be done. We had a contest in the House on several votes and put it 90 days.

Senator CONNALLY. Will that do the work?

Mr. STRONG. That will do the work inasmuch as it does not rob us of the Cuban market.

STATEMENT OF E. H. HOGUELAND, KANSAS CITY, MO., REPRESENTING THE SOUTHWESTERN MILLERS' LEAGUE AND THE SOUTHWEST COOPERATIVE WHEAT GROWERS' ASSOCIATION OF KANSAS

(The witness was duly sworn by the chairman of the committee.)

Mr. HOGUELAND. I am president of the Southwestern Millers' League, Kansas City, Mo.

The Southwestern Millers' League, which I represent in this proceeding, is an organization of all the important flour millers of the States of Kansas, Oklahoma, Texas, Nebraska, Colorado, and western Missouri, with the exception of Washburn-Crosby, Pillsbury, and the Commander-Larrabee Companies, which were members of our organization until last January, when they withdrew because of our determined fight for the amendment to section 311. I am appearing also on behalf of the Southwest Cooperative Wheat Growers' Association of Kansas, an association of more than 10,000 wheat growers of Kansas, who are likewise vitally interested in the proposed amendment to section 311 as incorporated in the third paragraph thereof.

We are heartily in favor of the principle embodied in this particular amendment, but we believe it does not go far enough; and our investigation has revealed this fact:

That through the years flour has been brought from Canada into the United States, there processed—by that, I mean, bleached or blended—and shipped out under the free milling-in-bond privileges for export. We feel that the flour brought from Canada should be given the same treatment as the wheat which is milled at Buffalo into flour and later exported.

Senator HARRISON. How would that help the southwestern people?

Mr. HOGUELAND. If you will permit me, I will come to that a little later.

Senator HARRISON. All right.

Mr. HOGUELAND. I think I can show you very definitely how it will help us.

The amendment as enacted by the House also contains one objectionable feature, and that is a 90-day limitation which goes to the importation of the wheat. The amendment reads, in substance, like this:

That no flour milled in a bonded manufacturing warehouse from wheat imported after 90 days after the passage of the act shall be withdrawn from the warehouse for exportation without the payment of a duty equal to that in the country to which the flour may move.

We contend that under that 90-day limitation our good friends at Buffalo could continue to use wheat which has accumulated there for the last year, and in all probability the tariff will not become effective until some time in the latter part of the year; they could assemble much of the 1929 wheat crop and move it out as they pleased after the act became effective, and defeat the prupose of the act on much of the flour that they might ship to Cuba for the next year or more.

Senator EDGE. How long have they had this privilege?

Mr. HOGUELAND. This particular privilege was incorporated in the tariff act of 1922; and I believe, so far as the milling in bond is concerned, it went back to the beginning of milling in bond, many, many years ago.

Senator EDGE. Many, many years ago; and now you are objecting to giving them an additional 90 days? Is that it?

Mr. HOGUELAND. I will point out later, Senator, that prior to 1921 the Canadians shipped no flour into Cuba of any consequential character.

We offer this revision of the third paragraph of section 311:

> No flour manufactured, processed or handled in a bonded manufacturing warehouse from wheat and/or flour imported into the United States shall be withdrawn from such warehouse for exportation without the payment of a duty on such imported wheat and/or flour equal to any reduction in duty which by treaty will apply in respect of such flour in the country to which it is to be exported.

We believe that that revision would be better than the present amendment to section 311.

In addition to the organizations that I represent, I will say that the House bill or the amendment as incorporated in the third paragraph of section 311 has been indorsed already by the American Farm Bureau Federation, through Chester H. Gray, who appeared before you the first of the week, by the American Farm Congress, by the Southwest Co-Operative Wheat Growers' Association, by the Oklahoma Wheat Growers' Association, the Union Wheat Exchange of Oklahoma, the Farmers' National Grain Dealers' Association of the

United States, the National Soft Wheat Millers' Association of Nashville, Tenn., with members in Michigan, Illinois, Indiana, Ohio, Tennessee, Virginia, Kentucky, North Carolina, Missouri, Georgia, West Virginia, and the District of Columbia.

The Michigan Millers' Association have gone on record in favor of it, the Southeastern Millers' Association, the Southern Illinois Millers' Association, and the league that I represent, the Southwestern Millers' League, representing the mills of six States, the Nebraska Millers' Association, and the Oklahoma Millers' Association; and when the matter was before the House Congressman Burtness of North Dakota appeared on behalf of the interests of his State, as did Congressman Garber of Oklahoma, Congressman Strong of Kansas, and other Representatives.

Let us consider for a moment the opposition to this amendment. I might say that it is simply the "Big Five." By that I mean Washburn-Crosby, which is commonly called General Mills to-day, the Pillsbury Flour Mills Co., the International Milling Co., the Commander-Larrabee Co., the Russell Miller Milling Co., and their child, the American Export Millers' Protective Association. Those five mills own, operate, and control 37,200 barrels capacity at Buffalo out of a total Buffalo capacity of 40,900 barrels daily. In other words, the "Big Five" control more than 91 per cent of the Buffalo capacity.

These five companies own, control, and operate more than 62 mills throughout the United States. The General Mills Co. has more than 30. It had 30 at the end of the year, and since then has acquired some other companies. The Commander-Larrabee Co. owns something like 14, Pillsbury 10, International 6, and the Russell-Miller Co. 2, or a total of 62 up to the first of the year.

I think as I proceed I shall be able to show why those companies, which derive such a marked benefit at Buffalo, are not concerned about the situation elsewhere.

The wheat imported into the United States for milling in bond from Canada has been increased by leaps and bounds. According to the Department of Commerce records for the year ending June 30, 1922, we imported 6,000,000 bushels from Canada. This had increased to 16,000,000 bushels in 1928 and for the year ended June 30, 1929, had reached the sum of 21,500,000 bushels of wheat imported from Canada for milling in bond. The duty was paid on only 75,000 bushels in 1929, showing how effective the 42-cent duty had been.

Senator THOMAS of Oklahoma. Do you mean 1929 or 1928?

Mr. HOGUELAND. 1929—that is, the year ended June 30, 1929.

It might be claimed that Buffalo does not profit chiefly by this favoritism. The records of the Department of Commerce show that they receive almost 99 per cent of the wheat imported. I want to offer as an exhibit a report of the Department of Commerce under date of July 8, 1929, showing the importations of wheat from Canada to the United States for milling in bond.

Senator SHORTRIDGE. During what period is that?

Mr. HOGUELAND. That is for the last year ended June 30, 1929, as well as the year 1928.

(The report referred to on preceding page is as follows:)

Imports of wheat from Canada into the principal northern border ports during the week ending June 29, 1929

[Department of Commerce Bureau of Foreign and Domestic Commerce, Washington, July 5, 1929]

[In thousands of bushels]

Wheat	Week ending			July 1, 1928, to June 29, 1929[1]	July 1, 1927, to June 30, 1928
	June 29, 1929	June 30, 1929	June 22, 1929		
Imports for consumption duty paid	.....	15	.....	73	144
Imports into bonded mills for grinding into flour for export	362	320	216	21,520	15,610
Total	362	335	216	21,593	15,754

[1] Corrected to May 31, 1929, to include all ports.

Senator EDGE. If this amendment were adopted, would any of the southwestern mills or any other milling interest in this country have a chance at this business?

Mr. HOGUELAND. We certainly would.

Senator EDGE. You will develop that?

Mr. HOGUELAND. I am going to develop that very fully. I asked the Department of Commerce about 10 days ago to give me information showing how much of the wheat imported into the United States moved to and through Buffalo; and they reported that for the 11 months July 1, 1927, to May 26, 1928, the Buffalo mills received 14,271,215 bushels, and the Ohio mills 65,785 bushels, out of a total of 14,337,000 bushels imported during that 11-month period. In other words, in that year the Buffalo mills received 99½ per cent of the Canadian wheat imported into the United States for milling in bond.

For the year July 1, 1928, to May 25, 1929, the Buffalo mills received 19,456,640 bushels, and the Ohio mills 392,360 bushels, out of a total of 19,849,000 bushels. In other words, last year the Buffalo mills received more than 98 per cent of the total wheat from Canada imported into the United States for milling in bond.

It may be interesting to note that in the 11 months ended May 26, 1928, the duty was paid on only 11,497 bushels of wheat imported, while during the 11 months ended May 25, 1929, the duty was paid on 73,255 bushels of wheat imported, showing the effectiveness of the 42-cent duty.

I now offer a letter from the Chief of the Division of Statistics, Department of Commerce, giving in detail the statistics which I have summarized.

(The letter referred to is as follows:)

DEPARTMENT OF COMMERCE,
Washington, June 21, 1929.

The SOUTHWESTERN MILLERS' LEAGUE,
Kansas City, Mo.

GENTLEMEN: In reply to your letter of June 17 in regard to imports of wheat into the United States, please be informed as follows:

	July 1, 1927, to May 26, 1928	July 1, 1928, to May 25, 1929
Wheat imported into bonded mills for grinding into flour for export:	*Bushels*	*Bushels*
Buffalo	14,271,215	19,456,640
Ohio	65,785	392,360
Wheat imported and paying duty:		
New York	210	3,064
Washington	30	6,162
Dakota	6,355	7,070
Minnesota	4	5,808
Duluth	4,708	50,636
Other	190	515
Total	11,497	73,255

Very truly yours,

J. HOHN,
Chief, Division of Statistics.

Mr. HOGUELAND. I also ask permission to file the report of the Department of Commerce under date of May 29, 1929, showing the total movement of imports of wheat from Canada into the principal northern border ports for the week ending May 25, 1929, which carries a cumulative statement for this year and last year.

The CHAIRMAN. Of course they are all in the House record.

Mr. HOGUELAND. They are not up to date, Senator.

The CHAIRMAN. They are up to date as far as the Commerce Department could get them.

Mr. HOGUELAND. I was instrumental in filing some of those, but they are not as late as these.

The CHAIRMAN. That is all right; I am not going to object to having them put in again.

(The report above referred to is as follows:)

DEPARTMENT OF COMMERCE,
BUREAU OF FOREIGN AND DOMESTIC COMMERCE,
Washington, May 29, 1929.

Imports of wheat from Canada into the principal northern border ports during the week ending May 25, 1929

[In thousands of bushels]

Wheat	Week ending—			July 1, 1928, to May 25, 1929 [1]	July 1, 1927, to May 26, 1928
	May 25, 1929	May 26, 1928	May 18, 1929		
Imports for consumption duty paid				74	11
Imports into bonded mills for grinding flour for export	455	697	398	19,849	14,337
Total	455	697	398	19,923	14,348

[1] Corrected to Apr. 30, 1929, to include all ports.

Mr. HOGUELAND. The present tariff act, that of 1922, as modified by President Coolidge, names a 42-cent duty on wheat imported into the United States. It names a corresponding duty of $1.04 per hundred pounds, or $2.04, on flour imported into the United States.

Under the Cuban tariff Cuba levies a normal duty of $1.30 per 100 kilos, which is the equivalent of $1.16 per barrel of flour, if the flour is brought in from countries that have no reciprocal trade treaties.

Under our reciprocal trade treaty with Cuba we obtain a reduction or a preference of 20 per cent, which is equivalent to 35 cents per barrel on the flour, or 7.6 cents a bushel on wheat, figuring that there are 4.6 bushels of wheat used in producing a barrel of flour.

It may be interesting to the committee to know the effect of the reciprocal trade treaty between Cuba and the United States; and in just a work I want to summarize what Chairman Marvin reported.

He shows in his report that for the five years 1923 to 1927, inclusive, the 20 per cent preferential duty allowed on Cuban sugar amounted to $165,068,758. The preferential duty on flour from the United States to Cuba in the same five years amounted to $2,051,000; and of that $830,900 went to the mills at Buffalo, apparently.

The question has been asked whether or not the mills at Buffalo have increased their flour trade in Cuba. The statistics of the Department of Commerce show that they have increased very rapidly. The Buffalo mills, because of their geographical location export almost exclusively through the port of New York. On the other hand, the mills of the Southwest and the southeastern territory are obliged to export through the ports of New Orleans, Mobile, and Galveston.

The figures that were available to us were not segregated for Galveston alone; but it is interesting to observe that in 1922 there moved through the port of New York flour exports to Cuba aggregating 331,000 barrels. This did not increase very much until the year 1925, when it jumped to 417,000 barrels; and the year 1925 was the year that the Buffalo mills increased their production about 50 per cent. But in the year 1928 the movement of flour through the port of New York to Cuba had increased to 731,000 barrels, or an increase of 121 per cent over 1922.

When we turn to the movements through Mobile and New Orleans, we find that in 1922 the Southeast and the Southwest shipped 608,000 barrels to Cuba, and maintained about the same ratio until 1925, when we reached the peak, 756,000. Since then there has been a constant decline; and in 1928 we dropped to 362,000 barrels, or only 53 per cent of the 1922 movement.

Senator WALSH of Massachusetts. Can you give us, briefly, the reason for that decline in the last two years?

Mr. HOGUELAND. For the Southwest? Yes. Our Buffalo competitors have been taking the business rapidly from us.

Senator WALSH of Massachusetts. Unfair competition?

Mr. HOGUELAND. No; because of the preference that they enjoy of 35 cents, with the ability to buy cheaper wheat and mill it under the free milling-in-bond privilege, and an advantage in freight rates which approximates 28½ cents a barrel, which I will point to later. All those things combined have made it possible for the Buffalo mills

constantly to quote from 25 cents to 50 cents and sometimes a dollar a barrel less than the millers of the Southwest have been able to quote.

Senator EDGE. But there is no difference in the law?

Mr. HOGUELAND. Absolutely none. It is just a change in competitive conditions which they have properly taken advantage of.

The CHAIRMAN. Would not the Canadians do the same thing if it were not allowed to be milled here in bond?

Mr. HOGUELAND. I will come to that. I will show that the Canadians have been wiped off the map.

The CHAIRMAN. That the Canadians would be wiped off the map?

Mr. HOGUELAND. They have already dropped off from 200,000 to less than [illegible]0,000.

The CHAIRMAN. What I mean is this: If the American miller were not allowed to mill that flour in bond, if that privilege were taken away from him, would they not go across the river and do the same thing?

Mr. HOGUELAND. Our judgment is not.

The CHAIRMAN. My judgment is that they would.

Mr. HOGUELAND. Our judgment is that the mills of the Southwest and the Southeast would be able to obtain an increasing amount, as they did have five years ago.

The CHAIRMAN. You would be at the same disadvantage here as to freight rates that you are talking about; and everything that you have said here, if there is a disadvantage to you, of course would then be an advantage to Canada.

Mr. HOGUELAND. But if you place the Buffalo mills 35 cents higher in the duties that they pay, you would enable the southwestern and the southeastern millers of the country more nearly to compete on an equitable basis for this flour trade than they are able to do to-day.

The CHAIRMAN. You can get all of the high-protein wheat that you want, can you?

Mr. HOGUELAND. We certainly can.

The CHAIRMAN. Where would you get it?

Mr. HOGUELAND. From Kansas, Oklahoma, and the panhandle of Texas. These gentlemen representing the Buffalo mills come every year into Kansas City and the Southwest and buy millions of bushels of our high-protein wheat and ship it to Minneapolis for milling for the domestic trade. When they say that we have not got the high-protein wheat it is mere piffle, because we have it. We have millions of bushels of it. We have a surplus of it; and the mills of the Southwest have no difficulty in obtaining what they need for milling purposes. The northwestern mills reach down there every year. This year they have bought already in the Kansas City market many hundreds of cars of this high-protein wheat which we say is the finest in the world. No State in the Union and no country in the world raises any better or finer wheat than Kansas, Oklahoma, and Texas.

Senator BINGHAM. Is not that wheat protected by a 42-cents-a-bushel duty?

Mr. HOGUELAND. It is.

Senator BINGHAM. Therefore, if it had to compete on equal terms in Cuba, the Cuban would naturally prefer flour from a wheat that had not paid the 42-cent duty or had the benefit of it?

Mr. HOGUELAND. Certainly; but this flour that is milled at Buffalo from the Canadian wheat pays no duty, and in addition thereto gets a remission of 35 cents granted to the United States miller.

Senator BINGHAM. Which is the only way in which they can compete with Canada?

Mr. HOGUELAND. We think not. Mr. Helm on the stand yesterday stated frankly that at Minneapolis he paid 18 to 30 cents premium over the July option for the wheat he bought a few days before, and he said the wheat purchased of Canada is of a common kind, and they buy it on grade, and practically no premium is paid therefor. Therefore those fellows at Buffalo are in a position to buy the finest kind of wheat for milling with practically no premium, and at a decided advantage under the American miller.

Senator BINGHAM. They do not sell it in the domestic market?

Mr. HOGUELAND. They can not, because they then must pay the 42 cents duty.

Senator SACKETT. Does not this whole performance of milling in bond repeal the American tariff as to Cuban shipments?

Mr. HOGUELAND. Absolutely. It waves it aside entirely. The members of the league I represent in the six States furnished me statistics showing their movements of flour to Cuba for the years 1921 to 1928, inclusive. I want to read only one or two of those.

In 1921, the year prior to the present tariff act, we shipped 272,642 barrels of flour to Cuba.

Senator BINGHAM. Just a minute. How long has it been the theory that when we put a tariff on an article it was to enable us to sell more of that article in foreign countries?

Mr. HOGUELAND. I did not catch the first part of your question.

Senator BINGHAM. How long has it been the theory that when we put a tariff on an article it was in order to enable us to sell that article in foreign countries? The Senator from Kentucky, seconded by the Senator from Massachusetts, is very keen about the fact that this repeals the American tariff—this Cuban preferential—so I am asking you, how long has it been the theory that we put a tariff on an article in order to enable us to sell a similar article in foreign countries?

Mr. HOGUELAND. I would assume, without definite knowlege, that it runs back many years, almost since the beginning of the protective tariff.

Senator BINGHAM. This is the first time I have ever heard that theory.

Mr. HOGUELAND. The shipments from the Southwest dropped from 272,642 barrels in 1921 to 186,708 barrels in 1925. That was the year the Buffalo people increased their production by 50 per cent, and they have been increasing since. In 1928 our shipments to Cuba had dropped to 149,097 barrels.

Take the month of May 1921. A report published in Havana, Cuba, shows that the five Buffalo mills obtained practically 51 per cent of the shipments into Cuba. We have examined the records of the Department of Commerce to find out how much flour moved from Canada to Cuba through the years, and I find that in 1917 only 3,458 barrels moved from Canada. We shipped practically a little less than 1,000,000 barrels that year—928,000, to be exact.

In 1918 and 1919 Canada did not report a single barrel to Cuba. We shipped 1,409,000 barrels to Cuba in 1919.

In 1920 the Canadian mills shipped 91,000 barrels; in 1921, 38,000 barrels. It was not until 1922 that the Canadian mills shipped very much—209,000 barrels. That increased until 1923, when it was 237,000, and has constanly declined until the year 1928, when the movement of Canadian flour to Cuba was only 34,000 barrels.

Those figures show, of course, that the Buffalo mills have not only driven the southwestern millers largely out of Cuba, but they have almost completely eliminated the Canadian mills.

Mr. Helm, in his statement yesterday, referred to the premiums that they paid in Minneapolis for high-protien wheat. It is true—and he frankly admitted—that premiums are likewise paid in the Southwest, and throughout the country generally, for the higher grades of wheat.

He also made the statement that the Canadian crop is sold on grade, which means that the Buffalo mills have access to an unlimited quantity of high protein wheat without any substantial premium over the world price.

Mr. Helm also made the statement that no tariff duty on wheat would give the United States millers access to great quantities of cheap wheat from Canada. It is our contention that the very milling in bond privilege gives the Buffalo millers that very access to great quantities of cheap wheat upon which they pay no duty whatsoever.

Turning to the freight rate advantage, to-day the normal freight rate from Buffalo to Cuba is 46 cents per 100 pounds, or 90 cents per barrel. Taking Kansas City as typical of the Southwest, the freight rate from Kansas City to Cuba is 60.5 cents, or equivalent to $1.185 a barrel. That means that under the normal freight rates Buffalo has a freight rate advantage of 14½ cents per 100 pounds, which is equivalent to 28½ cents a barrel of flour.

Senator SACKETT. What about the distance?

Mr. HOGUELAND. The distance is probably in favor of Kansas City.

Senator WALSH of Massachusetts. The rates from Cuba to New York, I understand, vary a good deal, depending upon the amount of business that is passing between the two places.

Mr. HOGUELAND. That is the ship rates.

Senator WALSH of Massachusetts. Yes.

Mr. HOGUELAND. But the boat rates from New York and from New Orleans, Mobile, and Galveston to Cuba are all the same—30 cents—although our distance is perhaps less than half the distance from New York to Cuba. We pay the 30 cent rate.

Senator BINGHAM. You mean the distance from Galveston to Havana is less than half the distance from New York to Havana?

Mr. HOGUELAND. I would guess approximately a half.

Senator BINGHAM. Look on the map.

Mr. HOGUELAND. Be that as it may, of course, the boat rates are not made with much regard to distance. Rail rates are made with some slight regard to distance.

Senator BINGHAM. I was just referring to your statement about distance, which was made without much regard to geography.

Senator SACKETT. The rail rates are made with regard to distance, divided at the Ohio River, however. They are higher south of the river than they are north of the river.

Mr. HOGUELAND. They are divided at the Ohio River going south, and the Mississippi River going east, generally.

Senator SACKETT. They are higher for the southwestern territory than they are for the northwestern territory.

Mr. HOGUELAND. That is true. From Oklahoma City to Cuba the current rate is 64 cents per hundred pounds, as against 46 cents from Buffalo; and as you go south into Texas they are not much different. At Amarillo, Tex., the rate is 63 cents, as against 46 cents from Buffalo. Wichita, Kans., was 74 cents to Cuba. Those rates temporarily have been changed, due to the emergency rates that were put in by voluntary act of the carriers at the request of the President some time in July, but they expire with the 30th of September.

Senator SACKETT. There is quite a heavy charge on the southwestern producer, is there not?

Mr. HOGUELAND. In the way of transportation?

Senator SACKETT. Yes.

Mr. HOGUELAND. We rather think so.

Senator SACKETT. Compared with the East and Northeast.

Mr. HOGUELAND. Of course, that entire matter is now before the Interstate Commerce Commission, and we hope it will be settled in the next 60 or 90 days.

I would like to point out briefly the advantages Buffalo enjoys, as we see them.

First, she has the cheaper Canadian wheat and access to unlimited quantities of it, and the Buffalo miller naturally saves the premium. If Mr. Helm's statement is correct, that is between 18 and 30 cents a bushel, and he said 18 cents would be equivalent to 80 cents per barrel.

It is not true that he pays it on all, but he pays it on part. He saves that by buying his wheat in Canada.

In the second place, Buffalo enjoys much cheaper transportation costs. The cost, Buffalo versus Canada, is at least 14½ cents per hundred pounds, or 28½ cents per barrel, in favor of Buffalo.

In the third place the Buffalo mills are permitted to enjoy this preferential duty of 35 cents, which we think is unfair, and which the House bill, if enacted into law, would correct.

Mr. Lingham, representing the American Export Millers Protective Association, made the statement that the Cubans insist upon strong Canadian wheat flour. The figures I have quoted previously show that prior to 1922 our mills sold practically all of Cuba's flour consumption, and that none moved from Canada in 1918 or 1919, and little in 1922 and 1923.

Our millers, within the last five or six months, have sent representatives to Cuba to call on the Cuban trade and to ascertain whether there is anything to this claim that the Cuban baker and the buyer of flour prefers the Canadian flour. We have been assured by many bakers and buyers of flour in Cuba that the only thing they are concerned with is the price of the flour, and that if the southwestern or southeastern miller can deliver a similar grade of flour for anything like a comparable price to that quoted by Buffalo, we have a chance to get the business.

Our millers are so confident of that that they permitted the three big mills, Washburn-Crosby, Pillsbury, and Commander Larabee, to

withdraw from the league, because the balance of the membership stood unanimously in favor of this particular legislation.

Senator SIMMONS. Is this your contention, that if the Buffalo mills, using this wheat in bond, are deprived of the benefit of this preferential tariff given by the United States to Cuba, they will lose their business?

Mr. HOGUELAND. I think not. Our people do not believe it. We believe that——

Senator SIMMONS. If they do lose it, your contention is that they will not lose it to Canada, but lose it to you?

Mr. HOGUELAND. They will certainly give us a far better chance to recover the business.

Senator SIMMONS. And you will be able to accommodate this business, and you will accommodate it, with American-grown wheat, whereas they are accommodating it with Canadian-grown wheat.

Mr. HOGUELAND. Yes.

Senator SIMMONS. That is your contention, is it?

Mr. HOGUELAND. We would enable the United States farmer to sell more wheat in the United States, and the mills of the United States to sell more flour in a market like Cuba, and any other country that might have a preferential duty.

Senator SIMMONS. I take it that in strongly urging that the Buffalo mills be denied this preferential tariff, you think that they would lose their monopoly, so to speak, of the Cuban trade?

Mr. HOGUELAND. It would bring them closer to the Canadian basis to-day.

Senator SIMMONS. And you would get that?

Mr. HOGUELAND. We would get a fair share of it. We do not think for a moment, of course, that we could sell every bag of flour that is sold in Cuba, or any other country. But we do know, as surely as the sun rises, that we can increase our sales. The fact of the matter is that since this agitation started we have been able to increase slightly, but we are holding on with the idea that this will be remedied, and that we will be placed on a more equitable basis compared with those competitors.

Senator SIMMONS. Your contention is that if this amendment forces the Buffalo mills to go over in Canada, you will capture the trade with Cuba that they are now enjoying.

Mr. HOGUELAND. We do not think for a moment that it is going to force the Buffalo mills to go to Canada.

Senator SIMMONS. They say it will. But if it should do that, your contention is that they would lose that trade, but you would practically get it.

Mr. HOGUELAND. We think that is true, but I think you misunderstood the statements made by these Buffalo millers. I think that particular thought was directed to entire elimination of the milling in bond privilege, which, of course, would happen.

Senator SIMMONS. I am speaking about the milling in bond. They would lose their milling in bond business, and have to go over to Canada. I am asking you if your contention is, if that should happen, if they should lose their milling in bond business and be forced to go to Canada, that Canada would get the Cuban trade which the Buffalo mills now enjoy; or is it your belief that that business would inure to the benefit of the Southwestern millers?

Mr. HOGUELAND. It is our firm conviction, Senator, that the Southwestern and the Southeastern millers combined—and we are both competing in that same general region for business—would be able to recover much of the business we have lost. We could not hope to get 100 per cent of it, but when you bring that price level up 35 cents higher for us than we are able to obtain to-day, and by virtue of the elimination of the 35 cent preference, we would be just that much better able to compete with the man on the other side of the Canadian border.

The CHAIRMAN. How are you going to do that when there will be the 35 cent differential you speak of now, and also the freight rate of 80 cents, which would be $1.05 a barrel? How are you going to keep your trade, with that disadvantage, which you have already admitted?

Mr. HOGUELAND. We did get some business, Senator. We have had about 150,000 barrels, and we are not going to give it up.

The CHAIRMAN. Certainly.

Mr. HOGUELAND. We may have to absorb a loss, as many of the mills are doing.

The CHAIRMAN. You will not give it up unless Canada drives you out.

Mr. HOGUELAND. If we can have our price level brought up 35 cents, which represents about the normal difference that the bakers tell is quoted in Cuba between the Buffalo flours made from Canadian wheat and the Southwestern flours made from Southwestern wheat, we will then be in a position to compete more actively for that business.

The CHAIRMAN. I can not see how you are going to compete, with $1.15 against you.

Mr. HOGUELAND. It will not amount to that.

The CHAIRMAN. I took your own figures for that.

Senator SACKETT. You are selling 300,000 barrels now, are you not?

Mr. HOGUELAND. One hundred and fifty thousand last year.

Senator SACKETT. If you can compete on that, and get 35 cents more, you can come pretty nearly competing on the balance of it.

Mr. HOGUELAND. That is exactly the point. We have been able to hold at least half our trade, and we will recover the balance of it, and even more, if we can have the preference enjoyed by the Buffalo mills eliminated.

Senator SACKETT. Is not the effect of the present system to give to the Canadian wheat farmer the privilege of the Cuban reciprocity treaty with the United States?

Mr. HOGUELAND. In substance, yes. It does not give it to the Canadian farmer. It gives it to the Buffalo miller.

Senator SACKETT. The farmer would not sell the wheat unless it was milled.

Mr. HOGUELAND. That is true. To that extent it does.

Senator SACKETT. To that extent it gives them the benefit of a United States treaty.

Mr. HOGUELAND. Yes.

Senator CONNALLY. If it is wrong to let Canadian wheat come in here and be milled by these millers and sold to our own people, what is the difference between that and giving that wheat the benefit of this preferential market, except in degree?

Mr. HOGUELAND. We can not see any.

Senator CONNALLY. Is there any difference in principle, except that one is 20 cents and the other 40 cents?

Mr. HOGUELAND. One is 32 cents and the other will be 7.6 cents.

It has been the statement of the men who preceded me that the proposed amendment removing this Cuban preference would drive the flour business to Canada.

The only change that would come about, Canadian mills versus the Buffalo mills, would be this. To-day the Canadian mills are paying $1.16 a barrel to the Cuban Government as duty on the flour that they send from Canada to Cuba direct. To-day the Buffalo mills are paying 81 cents to the Cuban Government, getting the 35 cents reduction, and under this proposal the Buffalo mills would pay an additional 35 cents a barrel to the United States Government, which would mean that the Buffalo mills would then pay $1.16 a barrel on the flour that they have milled at Buffalo from Canadian grown wheat, when the flour is shipped to Cuba, and it would mean exactly the same situation that they have to-day so far as Canada is concerned, and nobody believes very seriously that these Buffalo mills would see one barrel of flour go from Buffalo to Canada under those conditions.

What are the advantages of the third paragraph of section 311? The first would be to permit the United States millers to compete for the Cuban flour trade on a more equitable basis.

The second would be to increase the markets for Uniyed States grown wheat; and in the third place, the farmers would share in the advantages of additional markets.

The opposition to this particular amendment has been voiced not only by the five large mills at Buffalo, but by the so-called American Export Millers Protective Association, and I want to deal with that for just a moment.

That organization came into being after Judge Garber's bill was introduced into the House, seeking to accomplish the purpose of this particular amendment. It has, as its president Mr. F. F. Henry, who will follow me. He is identified with the Washburn-Crosby Milling Co., at Buffalo.

Mr. J. F. Bell, president of General Mills (Inc.), at Minneapolis, is on the board of directors. Mr. R. N. Bishop, president of the Sperry Flour Co., of San Francisco, Calif., one of the companies recently acquired by the General Mills, is also on the board.

Mr. W. L. Harvey, president of the International Milling Co., of Minneapolis, is on the Board. Mr. A. C. Loring, president of the Fillsbury Flour Mills Co., of Minneapolis, Minn., is a member of the board; and Mr. W. C. Smith, vice president of the Larabee Flour Mills Co., of Kansas City, is on the board. In other words, out of 11 directors, six of them are identified with the "Big Five."

At the outset I asked the privilege of submitting a proposed revision. The thought has occurred to us——

The CHAIRMAN. That is a proposed amendment to the House provision?

Mr. HOGUELAND. Yes; a revision of paragraph 3.

The CHAIRMAN. You put it in the record.

Mr. HOGUELAND. Yes, but I have this further observation to make. In the original suggestion we eliminated the time limit. It may be that the time limit of 90 days is thought proper; and if it is, that limit should run against the movement of the flour from the warehouse rather than the importation of the wheat. I am offering a suggested revision in case the 90-day provision is found proper, which I will file.

(The statement referred to is as follows:)

If 90 days' time is required, the following paragraph should be substituted for the third paragraph of section 311 of H. R. 2667:

"No flour manufactured, processed or handled in a bonded manufacturing warehouse from wheat and/or flour imported into the United States shall be withdrawn from such warehouse after 90 days after the date of the enactment of this act for exportation without the payment of a duty on such imported wheat and/or flour equal to any reduction in duty which by treaty will apply in respect of such flour in the country to which it is to be exported."

Mr. HOGUELAND. I ask permission to file a brief, which will cover in more detail the points I have raised.

In conclusion I want to say this, that the millers and the wheat growers of the Southwest have carefully investigated this situation through the last five or six years. They have been dealing with it through the Department of State and through the Cuban Government, and, as I pointed out in my brief, a ruling was obtained from the Cuban Government some years ago that eliminated this preferential duty, and then it was restored by interpretation of Secretary of State Kellogg. But through the last five or six years this has been a very serious question with the millers and the wheat growers of the Southwest. We feel that the House bill strikes at the heart of the matter. The phraseology may properly be changed. We think that our suggested amendment is better than the language incorporated in paragraph 3 of section 311, and we trust that this committee can see its way clear to recommend, in the bill that you submit to the Senate, the revision as proposed by us. If that is done, a corresponding change must, of course, be made in paragraph 313, which deals with the drawback.

I thank you.

Senator SIMMONS. Let me ask you one question. I think I understand you, but I want to know if I do. If these millers using Canadian wheat shall be denied the benefit of the preferential rate with Cuba, do you contend that, without using any Canadian wheat, but using only the wheats produced in the United States, we could hold the Cuban trade upon the flours we can furnish them, as against Canada?

Mr. HOGUELAND. Do you mean the Buffalo mills using northwestern wheat?

Senator SIMMONS. I mean eliminating them altogether; let them go to the other country, and bring no Canadian wheat here at all. Do you mean to say that our mills, using American-raised wheat, could hold the Cuban market, by virtue of this preferential against Canadian competition?

Mr. HOGUELAND. We certainly think we could to-day. We held it against Canadian competition down to 1923, I think it was. The figures I read into the record will show when Canada did not ship a barrel in 1918 and 1919, and only a very small amount in the subsequent years. In the last year the Canadian movement has dropped

to around 30,000 barrels. Canada has lost about two-thirds to three-quarters of her flour trade in Cuba. We are confident that the millers in the Southwest can recover—under the premise you make, we would be able to share that with the millers of the Southeast and the other parts of the United States, to the extent of 100 per cent.

The CHAIRMAN. She has lost her Cuban business to American millers.

Mr. HOGUELAND. To the Buffalo millers.

The CHAIRMAN. American manufacturers of flour.

Mr. HOGUELAND. That is right.

The CHAIRMAN. If they move over on the Canadian side, then you will see their business pick up in Canada.

Mr. HOGUELAND. We do not think so, because they have the 35 cents to hurdle, and we would like to have the chances.

The CHAIRMAN. You have a hurdle of about $1.16.

Mr. HOGUELAND. Yes; and we are hurdling part of it now, and we are willing to take our chances if we can have an even break.

Senator SHORTRIDGE. Permit me to ask one or two questions. Do you claim that we can raise a high type of high-grade wheat?

Mr. HOGUELAND. I do not claim we can. I claim we do.

Senator SHORTRIDGE. I think we can, too. We have good mills.

Mr. HOGUELAND. The best in the world.

Senator SHORTRIDGE. And we have men who can operate those mills.

Mr. HOGUELAND. We have been proud of the men in the Southwest who have been operating our mills. Some of them have been stolen by the northwestern mills, which shows their ability to operate.

Senator SHORTRIDGE. To sum up your argument or contention, your claim is that if this House bill be passed, perhaps modified in phraseology, it would result in the buying of more American raised wheat.

Mr. HOGUELAND. Absolutely. There is no doubt about it in our minds.

Senator SHORTRIDGE. In that sense, your argument would be that that would be helpful or beneficial to the American raiser or farmer.

Mr. HOGUELAND. The American wheat producer. It would enlarge his market just to the extent that we can sell 1,000, 10,000, or 1,000,000 barrels more of flour. It would amplify his market.

Senator SHORTRIDGE. And, with all respect for others, the argument that we can not or do not raise this high grade wheat has little merit.

Mr. HOGUELAND. The best answer to that is that our "Big Five" friends come to Kansas and the Southwest every year and buy millions and millions of bushels of good, high protein wheat, to blend with their Northwestern wheat.

Senator SHORTRIDGE. If this law were changed as suggested, we will say, the Buffalo millers could find wheat here in America of the type we have in mind?

Mr. HOGUELAND. They certainly can. We will ship them our wheat from the Southwest, and be glad to do it. They do buy some now, but not much.

Senator SHORTRIDGE. They would buy more in all probability, would they not?

Mr. HOGUELAND. Very likely.

Senator HARRISON. Can you tell us why it is that they can not raise a high grade of wheat in California?

Senator SACKETT. They have not greenhouses enough to go around. (Laughter.)

Senator SHORTRIDGE. I do not wish to introduce that modest and retiring State into the record here and now, touching our wheat production.

Mr. HOGUELAND. They raise lots of wheat in California.

Senator SHORTRIDGE. But we can raise the finest wheat that is grown on earth.

Mr. HOGUELAND. We surely do.

(Mr. Hogueland submitted the following brief:)

BRIEF OF THE SOUTHWEST CO-OPERATIVE WHEAT GROWERS' ASSOCIATION AND THE SOUTHWESTERN MILLERS' LEAGUE

The wheat growers and flour millers of the United States, and particularly those located in the southwest, heartily approve of the principle embodied in the third paragraph of section 311 of H. R. No. 2667, as passed by the House of Representatives, and which reads as follows:

"No flour, manufactured in a bonded manufacturing warehouse from wheat imported after 90 days after the date of the enactment of this act, shall be withdrawn from such warehouse for exportation without payment of a duty on such imported wheat equal to any reduction in duty which by treaty will apply in respect of such flour in the country to which it is to be exported."

For a number of years a few millers located in Buffalo, N. Y., and a few other minor points, have enjoyed the privilege of importing large quantities of wheat from Canada into the United States under the milling in bond privileges authorized in section 311 of the tariff act of 1922, without the payment of any duty whatever, and have exported the flour and other products milled from such wheat to various countries.

The report of the Bureau of Foreign and Domestic Commerce of the Department of Commerce on July 8, 1929, shows that during the year July 1, 1928, to June 29, 1929, 21,520,000 bushels of wheat were imported from Canada into bonded mills for grinding into flour for export, and during the corresponding year from July 1, 1927, to June 30, 1928, 15,610,000 bushels were so imported.

Not only are mills in northern New York being permitted to import wheat from Canada without the payment of any duty whatever when the products are exported, but they are also able to secure the benefit of preferential duties extended by countries like Cuba under reciprocal trade treaties which provide for reductions in duties on the products of the soil or industry of the United States when imported into such countries.

The third paragraph of section 311 was sponsored in the House by the wheat growers and millers of the United States who feel that it is an injustice to them to permit the importation of Canadian wheat into the United States without the payment of any duty whatever when intended for export, and in addition thereto accord the products made from such wheat the same privileges when exported to countries like Cuba as are extended to the products milled from wheat grown in the United States and exported to those countries.

The matter was brought to the attention of the House of Representatives by H. R. No. 16346, commonly known as the Garber bill, which had for its object the correction of the present injustice.

Under our tariff act of 1922, as modified by President Coolidge on the 7th day of March, 1924, the duty on wheat imported into the United States for consumption in this country is 42 cents per bushel of 60 pounds. The corresponding duty on flour is $1.04 per hundred pounds, or $2.04 per barrel of 196 pounds.

Section 311 of the tariff act of 1922 permits the importation of wheat from Canada and other countries into the United States for milling in bond without the payment of any duty whatever when the product is intended for export.

The present duty on wheat imported into Cuba is 40 cents per hundred kilos. If the wheat is imported from the United States into Cuba there is a reduction of 20 per cent, making the net duty on wheat imported from the United States

into Cuba 32 cents per hundred kilos, or approximately 8.7 cents per bushel of 60 pounds.

The Cuban Government assesses a regular duty of $1.30 per hundred kilos on flour, or 220.5 pounds, which is equivalent to $1.16 per barrel of 196 pounds. If the flour is imported from the United States into Cuba there is a reduction of 30 per cent, or 39 cents per hundred kilos, which is equivalent to 35 cents per barrel. The net duty on flour imported into Cuba from the United States becomes 91 cents per hundred kilos, or approximately 81 cents per barrel of 196 pounds.

The reductions in the Cuban duties are authorized in the treaty of commercial reciprocity concluded between the United States and the Republic of Cuba on December 11, 1902.

The effect of the free milling in bond privilege authorized by section 311 of the tariff act of 1922 and the interpretation of the reciprocal trade treaty with Cuba have been to permit millers located in Buffalo, N. Y., and one or two other minor points, the privilege of bringing Canadian wheat into the United States to be milled in bond for export without the payment of any duty whatever, and when the flour is exported to Cuba and other countries with which we may have reciprocal trade treaties they obtain a reduction of 35 cents per barrel, which is equivalent to 7.6 cents per bushel, in the duties paid to the Cuban Government.

The wheat producers and millers of the southwest have contended for years that it is not fair to give flour milled in the United States from Canadian wheat benefit of the reductions provided for in the reciprocal trade agreement with Cuba.

The United States produces a large surplus of wheat which must be exported in competition with that grown in Canada and other countries, and obviously the wheat imported into the United States from Canada for milling displaces an equal amount of wheat grown in the United States, to the serious injury and damage of both the wheat grower and miller of the United States.

In 1926 and 1927 this question was called to the attention of the Cuban Government and a ruling was made that flour produced in the United States from Canadian wheat should pay the regular duty into Cuba, and was not entitled to the reduction of 30 per cent allowed under the Cuban tariff.

Later Secretary of State Kellogg ruled that under the wording of the treaty between the United States and Cuba flour milled in the United States from Canadian wheat is entitled to the reduction in the Cuban tariff, because the flour is the product of an industry of the United States. The Cuban ruling was then rescinded.

The flour movement from Buffalo to Cuba is largely through the port of New York, while that from the Southwest and the Southeast is through the Gulf ports to Cuba. The following table shows the flour exports from the United States to Cuba through the various ports, from 1922 to 1928, inclusive:

Flour exports from United States to Cuba, by ports

[1,000 barrels]

Year	New York	Virginia	New Orleans	Mobile	Total, N. O., & Mobile	All other	Total, all ports
1922	331	(1)	425	243	668	91	1,090
1923	348	(1)	426	194	620	[2] 122	1,090
1924	355	(1)	569	179	748	84	1,187
1925	417	21	700	56	756	4	1,198
1926	532	2	584	17	601	11	1,146
1927	722	5	461	15	476	36	1,239
1928	731	3	355	7	362	44	1,140

[1] Included in all other.
[2] Including 57,000 from Galveston.

Authority: U. S. Department of Commerce.

The foregoing table shows that the flour movement through New York to Cuba has increased from 331,000 barrels in 1922 to 731,000 barrels in 1928, or an increase of 121 per cent over 1922.

The shipments from the Southwest and the Southeast, which move entirely through the Gulf ports, declined from 668,000 barrels in 1922 to 362,000 barrels in 1928, the shipments in 1928 being only 53 per cent of those made in 1922.

Flour receipts in Cuba are reported by Agencias Unidas of Havana, Cuba, and their reports indicate a rapid increase in the business secured by the five companies that have large Buffalo mills.

The following table shows the flour imports into Cuba for the years 1926 to 1928, inclusive:

Flour imports into Cuba

From	1926	1927	1928
Commander Milling Co.	11,080	82,455	97,884
International Milling Co.	23,339	20,412	63,700
Pillsbury Flour Mills Co.	85,482	94,487	145,560
Russell-Miller Milling Co.	6,030	28,400	31,802
Washburn-Crosby Co.	203,331	190,603	230,456
Total	329,262	416,357	569,402
Oklahoma and Texas	88,785	89,730	56,415
Kansas and Nebraska	66,435	50,045	68,550
Central States	46,800	41,065	71,990
Unknown via Gulf	406,863	247,355	121,215
Total	580,883	378,195	318,170

The Cuban people consume approximately 1,200,000 barrels of flour per year, and until the last two or three years secured a very substantial portion of their flour supply from the mills of southwestern and southeastern parts of the United States. On account of the many advantages enjoyed by Buffalo, mills at that point have rapidly increased their shipments of flour to Cuba, while those in the Southwest and Southeast have declined correspondingly.

The flour shipments to Cuba from the five companies operating Buffalo mills, and which shipments move almost entirely through Atlantic ports, increased from 329,262 barrels in 1926, to 569,402 barrels in 1928, or an increase of 73 per cent. During the same period the shipments from the Southwest and the Southeast declined from 580,883 barrels in 1926 to 318,170 barrels in 1928, the 1928 shipments being only a trifle more than half of those of 1926.

The following table shows the flour shipments that have been made by members of the Southwestern Millers' League to Cuba from 1921 to 1928, inclusive, and indicates a loss of nearly 50 per cent:

Flour shipments made by members of the Southwestern Millers' League to Cuba:

	Barrels
1921	272,642
1922	253,025
1923	256,364
1924	237,583
1925	186,708
1926	206,848
1927	158,980
1928	149,097

The Buffalo mills have not only taken a large part of the business of the southwestern mills, but they have likewise practically eliminated the Canadian mills from Cuba. The following table shows a marked decline in flour exports from Canada to Cuba in the last few years:

Flour from Canada to Cuba:	Barrels
1922	209,000
1923	237,000
1924	203,000
1925	119,000
1926	143,000
1927	29,000
1928	34,000

The mills at Buffalo increased their capacity nearly 50 per cent in 1925, and since that time they have taken a substantial portion of the Cuban trade from

the mills of the Southwest. The following table shows the Buffalo flour output since 1921 to date:

Buffalo flour output:	Barrels
1921	6, 693, 255
1922	6, 708, 827
1923	6, 462, 571
1924	6, 988, 609
1925	9, 458, 142
1926	9, 671, 829
1927	10, 032, 000
1928	10, 060, 029

The mills at Buffalo have operated at practically 100 per cent of their capacity for a number of years. This far exceeds the experience of mills of any other section of the United States, and is only possible because of the great advantages enjoyed by Buffalo.

The following table gives the wheat imports from Canada into the United States for milling in bond from 1921–22 to date:

Canadian wheat imported into the United States for milling in bond

Year ending June 30—	Bushels
1921–2	6, 172, 837
1922–3	9, 280, 787
1923–4	13, 904, 737
1924–5	5, 814, 115
1925–6	15, 021, 000
1926–6	13, 268, 000
1927–8	15, 610, 000
1928–9	21, 520, 000

The Buffalo mills not only have a decided advantage in their proximity to the enormous Canadian wheat crop, but they have a very marked advantage in transportation costs from Buffalo to Cuba compared with those from the southwest to Cuba. The regular rail and water rate on flour from Buffalo to Habana, Cuba, is 46 cents per hundred pounds, or 90 cents per barrel, while the normal rail and water rate from Kansas City to Habana is 60.5 cents per hundred pounds, or $1.18½ per barrel of flour. The normal transportation charges on flour from Buffalo to Cuba are approximately 28.5 cents per barrel less than from Kansas City to Cuba. At the present time lower emergency export rates are available but these expire September 30, 1929. The emergency rate from Buffalo to Cuba is 42.67 cents per hundred pounds, while that from Kansas City to Cuba is 49 cents per hundred pounds.

When the question of amending section 311 of the tariff act was before the Ways and Means Committee of the House of Representatives the Buffalo mills argued that if Congress enacted the legislation desired by the millers and wheat growers of the Southwest it would merely drive the Cuban flour buyers to Canada. Several of the mills of the Southwest have had representatives in Cuba investigating conditions during the past five or six months and they unanimously report that the elimination of the 35 cents preference on flour milled at Buffalo from Canadian wheat would permit the southwestern millers to regain their lost trade in Cuba. The proposed legislation would simply place the Buffalo mills on a parity with their Canadian competitors and they would still continue to enjoy marked advantages in transportation and other costs.

The chief objection to the third paragraph of section 311 and the corresponding change in section 313 of H. R. No. 2667 will of course come from the five companies that own the principal mills at Buffalo and enjoy the special privileges that have been allowed under section 311 of the tariff act of 1922 in conjunction with the benefits obtained under the privileges of the reciprocal treaty with Cuba and other countries having similar arrangements.

Shortly after the Garber bill was introduced in the House of Representatives the big five organized the so-called American Export Millers' Protective Association for the express purpose of defeating the Garber bill. The chief officers and directors of the American Export Millers' Protective Association are officers of the five big companies who enjoy the free milling in bond privileges at Buffalo. It is fair to say that all of the wheat growers and 95 per cent of all independent millers in the United States are in favor of the proposed legislation.

It may be claimed that Buffalo is not the chief recipient of the advantages under the free-milling-in-bond privileges, but figures furnished by the Bureau of Foreign and Domestic Commerce of the Department of Commerce indicate that Buffalo is the only center of the United States which is importing any substantial amount of wheat into bonded mills for grinding into flour for export. The following statement shows the imports of wheat into the United States from July 1, 1927, to May 26, 1928, and for a similar period in the previous year, which was furnished by the Bureau of Foreign and Domestic Commerce of the Department of Commerce, under date of June 21, 1929:

Wheat imports into United States

	July 1, 1927, to May 26, 1928	July 1, 1928, to May 25, 1929
Wheat imported into bonded mills for grinding into flour for export:	*Bushels*	*Bushels*
Buffalo	14,271,215	19,456,640
Ohio	65,785	392,360
Wheat imported and paying duty:		
New York	210	3,064
Washington	30	6,162
Dakota	6,355	7,070
Minnesota	4	5,808
Duluth	4,708	50,636
Other	190	515
Total	11,497	73,255

The regular report issued by the Bureau of Foreign and Domestic Commerce of the Department of Commerce, under date of May 29, 1929, shows that the imports of wheat from Canada into the principal northern border points, for the period July 1, 1928, to May 25, 1929, aggregated 19,849,000 bushels into bonded mills for grinding flour for export. The preceding table shows that out of a total of 19,849,000 bushels of wheat imported into bonded mills for the period in question, Buffalo received 19,456,640 bushels. In other words, only 392,360 bushels, an insignificant amount, moved to points in Ohio. Therefore it will be seen that Buffalo received practically 98 per cent of all of the imports of wheat from Canada during the period in question.

The Southwest Co-Operative Wheat Growers' Association is an organization of 10,000 wheat growers located in the States of Kansas and Colorado, who produced approximately 10,000,000 bushels of wheat in the year 1928, which they marketed in the United States and through export channels.

The Southwestern Millers' League is an association of flour millers of Kansas, Nebraska, western Missouri, Colorado, Oklahoma, and Texas, and has as its members practically all of the flour mills in the States named, except certain companies with Buffalo connections.

The members of the Southwestern Millers' League produce annually approximately 22,500,000 barrels of flour which must be marketed in the United States and for export. To produce this flour the mills require something like 103,500,000 bushels of wheat.

The third paragraph of section 311 provides that no flour manufactured in a bonded warehouse from wheat imported after 90 days after the passage of the act shall be withdrawn for exportation without the payment of an import duty.

The way the present limitation is worded the Buffalo millers could avail themselves of the present free privileges for a year or more after the passage of the act because the wheat that has been imported prior to the time this particular clause becomes effective could be withdrawn without the payment of any duty. We do not feel that there is any justification for a time limitation.

During the years some flour has been imported into the United States and blended or bleached in mills in the United States and we understand without the payment of any duty. There is no good reason why this practice should be continued without the payment of the same duty on Canadian flour as would obtain on Canadian wheat milled in the United States when the flour is exported to countries like Cuba.

The present discrimination against our wheat growers and millers should be removed by at least providing that flour made in the United States from Cana-

dian wheat and exported to countries like Cuba shall pay a duty on the imported wheat equal to any reduction in duty which by treaty will apply in respect to such flour in the country to which it is to be exported.

On behalf of the wheat growers and millers of the Southwest we respectfully urge the adoption of the following paragraph in lieu of the third paragraph in section 311 of H. R. No. 2667:

"No flour manufactured, processed, or handled in a bonded manufacturing warehouse from wheat and/or flour imported into the United States shall be withdrawn from such warehouse for exportation without the payment of a duty on such imported wheat and/or flour equal to any reduction in duty which by treaty will apply in respect of such flour in the country to which it is to be exported."

The time limit provided in paragraph (a) of section 313 should be eliminated to make it harmonize with the proposed revision of the third paragraph of section 311.

Respectfully submitted.

THE SOUTHWEST COOPERATIVE WHEAT GROWERS' ASSOCIATION,
By JOHN VESECKY, *President.*
THE SOUTHWESTERN MILLERS' LEAGUE,
By E. H. HOGUELAND, *President.*

KANSAS CITY, MO., *July 18, 1929.*

SUPPLEMENTAL BRIEF ON BEHALF OF THE SOUTHWEST COOPERATIVE WHEAT GROWERS' ASSOCIATION AND THE SOUTHWESTERN MILLERS' LEAGUE

During the course of my testimony in support of the third paragraph of section 311 the chairman remarked that he did not see how the southwestern mills could recover much of the Cuban flour trade in view of the handicaps under which they operate. This conclusion was probably due to my failure to make clear to the committee that the mills of our section of the country are not obliged to pay the high premiums on good protein wheat that the Minneapolis millers frequently pay. I stressed the point that the Buffalo millers are able to buy in Canada all the good milling wheat they need with little or no premium compared with Minneapolis, and perhaps left the impression that millers of the Southwest pay premiums similar to those paid by Minneapolis for good milling wheat. Such a conclusion is not correct.

I have to-day examined the Kansas City Grain Market Review for Saturday, July 13, 1929, and find that 12½ per cent protein wheat, which is generally used by our millers to produce a flour highly satisfactory to bakers in the United States and certainly good enough for the Cuban trade, sold in Kansas City on that date at a premium of from 1¾ cents to 3½ cents over July compared with premiums of 12 cents and 30 cents over July referred to by Mr. Helm. The Kansas City July was $1.23⅜ on Saturday, while the price paid for the 12½ per cent protein wheat in Kansas City on the same day was from $1.25¼ to $1.27 per bushel.

The interior mills in Kansas usually operate on the Kansas City basis.

As 4.6 bushels of wheat are required to make a barrel of flour, the premiums would amount to from 8.6 cents to 16.7 cents per barrel of flour.

The mills in Oklahoma and Texas generally buy their wheat on an export basis and their premiums are usually less than in Kansas and at Kansas City because the exporter pays no premium for protein.

The Minneapolis millers buying wheat in Kansas City and the Southwest must not only pay the premiums prevailing there but in addition must pay 8 cents per 100 pounds additional freight charges for the out-of-line haul from Kansas City via Minneapolis to Chicago. The proportional rate from Kansas City to Chicago is 17½ cents per 100 pounds, and the Minneapolis millers pay 25½ cents per 100 pounds for the haul from Kansas City to Chicago via Minneapolis, where the wheat is blended with the weaker wheats and milled, and the flour shipped to Chicago for eastern points.

The 8 cents out-of-line haul charge means an additional premium of 4.8 cents per bushel which the Minneapolis millers must pay over the premiums prevailing at Kansas City.

In spite of the premiums, the Minneapolis millers buy millions of bushels of good milling wheat in the Southwest every year and ship same to Minneapolis. It must be borne in mind, however, that they use only a small per cent of the high

protein wheat in their milling mixture; it usually does not exceed 20 per cent to 30 per cent, depending on the strength of the northwestern wheat.

The important fact is that the Southwest usually has a large production of high-protein wheat which is desirable for milling purposes. Frequently, the entire Kansas, Oklahoma, and Texas crops are high in protein.

While we have no reliable data on operating costs in Buffalo and the southwest it is not likely that there is any substantial difference where the plants are operated to the same per cent of capacity.

When we consider the present basis of premiums at Kansas City, which is generally followed by interior mills in Kansas, and the normal transportation advantage of 28½ cents per barrel which Buffalo enjoys, we find that Kansas City's handicap ranges from 37.1 cents to 45.2 cents and not one dollar which would obtain if the premium applicable at Minneapolis were used.

If we use the emergency export rates that are in effect today, but expire September 30, Buffalo pays 42.67 cents to Cuba, while Kansas City pays 49 cents per hundred pounds, or 6.33 cents per hundred, or 12.41 cents per barrel advantage in favor of Buffalo. The transportation and premium disadvantages against Kansas City would on Saturday's basis range from 21.01 cents per barrel of flour to 29.11 cents per barrel, depending on whether the high or low premium basis were used.

Removal of the 35 cents preferential duty from Buffalo would place southwestern mills on a basis to compete very favorably with Buffalo and Canada.

Our millers find that the normal prices in Cuba quoted by the Buffalo millers range from 25 cents to 50 cents, and occasionally as much as 75 cents per barrel under the prices generally quoted by southwestern millers to the trade in Cuba.

Mr. G. G. Sohlberg, president of the Acme Milling Co., of Oklahoma City, Okla., testified before the Ways and Means Committee that his company has agents in Cuba and they report that his prices are usually about 35 cents per barrel out of line.

Mr. Sohlberg also testified that the quality and strength of the wheat raised in Oklahoma, Texas, and Kansas compares very favorably with that raised in Canada (pp. 10067–10068 of House Record).

Prices in Cuba that our millers are constantly asked to meet are those made by the Buffalo mills; we rarely ever hear of a quotation made by a Canadian mill, which goes to show that the Buffalo millers are the real competition in Cuba.

When this matter was before the Ways and Means Committee in February, 1929, Mr. C. M. Hardenbergh, who was then president of the Southwestern Milling Co., of Kansas City, testified that the elimination of the 35 cent preferential duty from Buffalo would help the mills of the Southwest and would also help the American wheat grower, and should be done for the benefit of those two industries. (Pp. 10065–10066 of House Record.)

Since Mr. Hardenbergh testified he has become associated with the Commander-Larabee Co., of Minneapolis, and the right was reserved for him to file brief on this matter. It will be interesting to see whether he has changed his views since he has left the southwest.

I was asked about the distances from the Gulf and from New York to Cuba. The distance from New Orleans to Habana, Cuba, is 601 nautical miles, while from New York the distance is 1,186 nautical miles; from Galveston the distance to Habana is 769 nautical miles.

During the hearing the statement was made by one or more of the witnesses for Buffalo that while our flour exports have been declining Canada's flour exports have been increasing in about the same proportion, leaving the inference that Canadian mills have been taking our export flour trade.

The following table shows that while Canada's flour production increased in 1928 over 1927 it was less than that of 1924 and only slightly in excess of that of 1923 and 1926.

On the other hand the flour exports from Canada in 1928 were actually less than in 1923 and 1924 and only slightly greater than those of 1925 and 1926.

These figures do not warrant any conclusion that Canada has absorbed any appreciable portion of our export flour trade.

Canadian flour production and flour exports from 1922 to 1928, inclusive

Calendar year	Flour production [1]	Flour exports [2]
1922	18,055,010	9,483,000
1923	19,075,814	11,196,000
1924	21,076,783	11,476,000
1925	17,769,360	10,316,000
1926	19,056,162	10,457,000
1927	17,686,764	9,262,000
1928	19,752,707	10,737,000

[1] Authority: Agricultural Branch, Dominion Bureau of Statistics.
[2] Authority: Northwestern Miller Almanacks

The record shows that in 1922 millers shipping flour to Cuba through New Orleans and Mobile exported 668,000 barrels but this dropped to 362,000 barrels in 1928. Buffalo has increased from 331,000 barrels in 1922 to 731,000 because of the 35-cent preferential duty and other advantages.

The wheat producers and millers of the Southwest and the Southeast are confident they can recover much of the Cuban trade they formerly enjoyed if the House amendment is approved. To-day the Canadian wheat farmers and the Buffalo millers enjoy the principal benefit of the Cuban preferential duty.

Every effort is being made to aid the farmer. This is another place where the United States wheat farmer can be helped. If you make it possible for the millers of the United States to compete on more nearly even terms with Buffalo, then the increased volume of flour business that they secure will mean an increased demand for wheat grown in the United States, and obviously the farmer of this country, rather than the farmer of Canada, would gain thereby.

This legislation, if adopted, would, in our opinion, mean an increased demand for from 1,000,000 to 2,000,000 bushels of United States grown wheat. We already have a surplus and Congress should do everything in its power to help the farmer enlarge the markets for his products. Increasing our flour demand in Cuba as indicated would mean increasing our feed production by from 18,000,000 pounds to 36,000,000 pounds which would be available for eastern buyers along with a substantial portion of our surplus which now goes east.

Farm organizations throughout the country, as well as independent milling companies, are supporting the House amendment to section 311 because they feel that it will afford them another market in which they can dispose of some of their surplus wheat which has since 1925 been going more and more to Canada through the preferential accorded Buffalo mills, to which they are not entitled under the spirit of the treaty with Cuba.

We respectfully urge you to carefully consider this matter in the light of probable assistance to the producer of wheat in the United States, and feel confident that you will approve our proposed revision of the House amendment.

Respectfully submitted.

SOUTHWEST CO-OPERATIVE WHEAT GROWERS' ASSOCIATION.
SOUTHWESTERN MILLERS' LEAGUE,
By E. H. HOGUELAND.

Subscribed and sworn to before me this 18th day of July, 1929.

[SEAL.] CHARLES F. HAMPER, *Notary.*

Commission expires November 28, 1932.

STATEMENT OF S. H. ROGERS, WASHINGTON, D. C., TELEGRAM FROM W. H. STROWD, REPRESENTING SOFT WHEAT MILLERS

(The witness was duly sworn by the chairman.)

Mr. ROGERS. I have here a brief telegram that I would like to read before you adjourn.

The CHAIRMAN. Very well.

Mr. ROGERS. I am going to testify only to the extent of reading this telegram from Doctor Strowd.

The CHAIRMAN. Just read it, Mr. Rogers.

Mr. ROGERS. This is from W. H. Strowd, secretary——

The CHAIRMAN. Mr. Rogers, are you going to offer that now as your testimony?

Mr. ROGERS. Yes, sir.

(Mr. Rogers read the following telegram:)

RICHMOND, VA., *July 15, 1929.*

S. H. ROGERS,
Wilkins Rogers Milling Co.:

Regret it will be impossible for me to be in Washington to-morrow. Please present plea in behalf of Millers Associations named later in this message for legislation which would prevent United States flour milled from Canadian wheat from enjoying the preferential duty. Also, ask Senate Finance Committee to grant me permission to file supporting brief in behalf of and as duly authorized representative of National Soft Wheat Millers Association and Michigan Miller Association and Southern Illinois Millers Association and Southeastern Millers Association and St. Louis Millers Club and Central and Southwestern Missouri Millers Association. This brief will be mailed from Nashville, Tenn., not later than Saturday, July 20. Wire me there.

W. H. STROWD, *Secretary.*

Soft wheat millers of Tennessee, Ohio, Michigan, Kentucky, Missouri, North Carolina, Illinois, District of Columbia, Indiana, Georgia, Virginia, West Virginia.

The CHAIRMAN. You must telegraph to him and tell him that his brief must be here day after to-morrow. We have to get these hearings printed. We are behind now, and we have to begin to consider the bill. You telegraph to him and say that he must get his brief here by day after to-morrow, so that it may be printed in the record.

Mr. ROGERS. Then, I have permission to wire him that it will be accepted if received here Friday?

The CHAIRMAN. Yes.

Mr. ROGERS. I will wire him right away.

Senator SACKETT. Does it have to be sworn to?

The CHAIRMAN. Yes. We will want him to swear to it.

Mr. ROGERS. I will cover that.

(The following telegram was subsequently submitted:)

NASHVILLE, TENN., *July 19, 1929.*

FINANCE COMMITTEE, *United States Senate:*

W. H. Strowd has taken oath before a properly qualified notary in my presence that the following brief is true and correct to the best of his knowledge and belief: "W. H. Strowd being duly sworn, states he applied for permission to file sworn statement before Senate Finance Committee in behalf of restricting Cuban preferential duty to flour milled in the United States from wheat grown in the United States to be mailed from Nashville not later than Friday. He returned to his office this morning to find that statement must be in Washington not later than today, therefore, he is asking Assistant United States District Attorney Davenport here to wire statement for him and has taken oath before said District Attorney as duly authorized representative of the National Soft Wheat Millers Association, The Southeastern Millers Association, The Saint Louis Millers Club, The Michigan Millers Association, Central Missouri Millers Association, Southwestern Missouri Millers Association, and Southern Illinois Millers Association. These associations have as members a great majority if not all of the leading millers of Indiana, Illinois, Michigan, Missouri, Kentucky, Tennessee, and representative millers in Ohio, West Virginia, North Carolina, Georgia, and District of Columbia.

"It is respectfully urged that the Senate concur in the proposed revision of the third paragraph of section 311 of H. R. 2667, or at least the alternative proposal offered in the event your committee feels that ninety days time is required. We concur heartily in the position taken by the Southwestern Millers League and the

Southwestern Cooperative Wheat Growers Association. According to the Northwestern Miller for January, 1911, millers who belonged to the National Soft Wheat Millers Association exported 62,763 barrels of flour; nonmember mills in the same territory exported 50,755; total, 113,518. Our member mills which exported to Cuba approximately 62,000 barrels in 1910 exported only 10,309 barrels as an annual average of the last three years, while Buffalo mills showed a tremendous gain. If the proposed amendment is enacted into law it is reasonable to believe that the United States farmer and United States miller grinding domestic wheat will recover substantial portion of their business, at least under favorable conditions. That the Buffalo millers grinding wheat in bond can compete in foreign markets with Canada is proved by the statistics contained in the Northwestern Miller Almanac, published April 4, 1928.

"During the five pre-war years 1910 to 1914 the average flour exports from the United States were 10,600,000 barrels. During the five years 1923-27, inclusive, the annual average was 13,300,000. Excluding gains in Cuban business the gains in exports for the United States in the last period over the first period was, in round numbers, 2,000,000 barrels of flour. Furthermore, in 1924 the United States exported 17,200,000 barrels of flour, the largest exports of any year except 1918-20, which was the war and postwar rehabilitation period, yet it was also in 1924 that Canada had her largest exports. These figures demonstrate conclusively that Buffalo mills grinding in bond are able to compete with Canada without the preferential duty and their real opposition to the bill is the near monopoly which they hold on export business to Cuba so far as the rest of the United States is concerned, and furthermore they hold this through a special privilege which favors a few millers and Canadian farmers against the great majority of the millers and United States wheat growers. We ask no special privilege—we merely ask for justice and equity."

MILTON DAVENPORT,
Assistant United States District Attorney.

STATEMENT OF HON. FREDERICK STEIWER, UNITED STATES SENATOR FROM OREGON

[Drawback, sec. 313]

Senator STEIWER. Mr. Chairman and gentlemen, I merely wish to call the committee's attention to an administrative question with respect to the virgin wool industry. This question was called to the attention of Chairman Hawley, of the Ways and Means Committee, but too late for them to give it consideration before the House committee.

Senator BINGHAM. What paragraph is it, Senator?

Senator STEIWER. It relates to the general drawback features, Mr. Chairman. I think it is section 313.

Senator BINGHAM. Section 313. It is an administrative feature.

Senator STEIWER. Yes. The matter is presented in a letter written by the assistant secretary of the Jensen Knitting Mills of Portland, Oreg. These mills are a very responsible organization and are highly esteemed by us in the West because they are one of our thriving, progressive industries, and also they are one of the purchasers of, or part of our market for, virgin wool. They are a specialty organization making bathing suits that are used all over the Nation; and they export them.

The question they wanted to present arises out of their export business. In connection with their export business they used both domestic and foreign wools; and in their attempts to collect under the general drawback features of the tariff they are obliged to keep their looms free. That is to say, when they use domestic wools they can not use foreign wools, and when they use foreign wools they do not use the domestic wools.

As a matter of fact, they blend the wools under certain conditions, because some wools will better lend themselves to certain colors than others; and the bathing suits, as you know, have stripes in them and are multicolored. They, therefore, are defeated in attempting to collect the drawbacks in very many cases, and in this foreign business which they are carrying out with some degree of success, they meet the very severe competition of the markets of the Old World and they feel that if they could collect their drawback as it has been intended by the law to a full 99 per cent that they can further extend their operations in the foreign field and make good in this world competition. This is a very desirable thing from everybody's standpoint.

Senator SIMMONS. What is the difficulty about the segregation that would be necessary? In that case there is a certain quantity of wool that is imported and entitled to a drawback if they use it for exports, or use it in manufacturing goods they export.

Senator STEIWER. Yes.

Senator SIMMONS. Here is an article in which they propose to blend cotton and wool?

Senator STEIWER. No; not cotton and wool.

Senator SIMMONS. Well, that does not make any difference.

Senator STEIWER. They blend domestic wool and foreign wool.

Senator SIMMONS. Well, let us say they blend domestic wool and foreign wool, but it would not make any difference whether it was cotton or wool, they blend it. Why can they not definitely ascertain and report the amount of foreign wool that went into the production of the article in the blending process?

Senator STEIWER. There is no way to identify wools. They are more or less comparable in quality and fineness except at the Treasury they keep a record and could be advised of just what material is being used. Under the present Treasury regulations the construction they put upon the existing law, and I understand, although I am not well advised about this, I understand also under this section 313 as it exists the Treasury does not regard it as possible to co-mingle the wools.. I do not pretend to know the solution of that matter.

Senator SIMMONS. It seems to me the manufacturer ought to know just how much of each kind of wool enters into the manufacture of a particular article.

Senator STEIWER. He does know in bulk, over the period of the manufacturing season. He does know exactly; and if there were absolute integrity manufacturing house in America no doubt it could be handled upon certificate or something of that kind; and that, indeed may be the solution of the matter.

In the letter which I have in my hand there is a proposal made by this company for the consideration of the Treasury Department for a basis of co-mingling other materials and the keeping of separate records. It is thought, however, that the law will have to be amended before that may be done.

Now, may I say, gentlemen, that I do not pose as an expert upon administrative features of the tariff law, although I am very much interested in it. I merely wanted to call the committee's attention to it; and I would like, if possible, Senator, to have the letter printed in the record and then the whole matter be referred to the experts of the Treasury Department for their advice to the committee to

see if a workable scheme could not be arranged to protect the Treasury Department and at the same time permit this house to carry out a very proper business procedure.

I will say that at this time they are compelled to keep their stocks separate or to keep separate records in their accounting system, which amounts, therefore, to running two businesses as one. It is a very costly operation and it results even then, because of the necessity for blending, in their loss of drawback under certain conditions, and their inability to invade the foreign fields, which they could otherwise successfully invade. I know that the committee will be sympathetic, and hope the committee will permit me to have those letters incorporated into the record and referred to the Treasury Department.

Senator BINGHAM. They will be referred to the Tariff Commission and incorporated in the record. The Chair would suggest to the Senator from Oregon that as this is an administrative measure and, under the rules of the committee should be heard by the full Committee, it might be well for you to appear before the full Committee at the close of the subcommittee hearings.

Senator STEIWER. I had that in mind, Mr. Chairman, but I am obliged to go west next week and I may not be able to do that. Possibly I might submit it to the committee by letter or something of the kind, but the matter will be called to the attention of the committee. Practically the same kind of question was presented by the canners in their use of sugar where the canned product was exported. I am sure the general committee will have the matter presented to them very fully in that case and I think it will be worth your most serious consideration.

Senator SIMMONS. Mr. Chairman, I suggest that this subcommittee refer this question to the Tariff Commission for their views about it and ask them to report so that the full committee may have the information they furnish before it.

Senator BINGHAM. Very well, Senator; that will be done.

(The letters submitted by Senator Steiwer are as follows):

COMMITTEE ON WAYS AND MEANS,
HOUSE OF REPRESENTATIVES,
Washington, D. C., June 15, 1929.

Hon. FREDERICK STEIWER,
United States Senate, Washington, D. C.

MY DEAR SENATOR STEIWER: I am inclosing a copy of a letter from Mr. H. L. German, assistant secretary of the Jantzen Knitting Mills at Portland, Oreg, addressed to the Secretary of the Treasury under date of May 24, 1929.

As I understand, this company desires an extension of the drawback privilege so as to include a refund of the wool used by them in making woolen swimming suits for exportation. I have just received the following telegram from Mr. German:

"Our difficulty under present law almost exactly same as canners. We are required to remove from our knitting machines all yarns from domestic wool, thus having only imported wool in our machines. Imported wool is used exclusively on white and some pastel colors and both import and domestic wool in medium and dark colors. Striped garments or two, three, and four color garments contain both import and domestic wool. Present law renders impractical the maintenance of identity of imported wool used in garments for export. Your assistance in securing suggested amendment to section 313 B will be greatly appreciated."

I have advised the company that any amendment to the tariff bill must be made in the Senate and that I am transmitting to you this proposal for your consideration.

With best wishes, I am, truly yours,

W. C. HAWLEY.

MAY 24, 1929.

Hon. ANDREW MELLON,
Secretary of the Treasury, Washington, D. C.

DEAR SIR: As manufacturers of wool swimming suits we have developed in foreign countries a market for our product which has reached considerable proportions.

As you know, most of the foreign countries impose a duty on goods imported from the United States. In order to meet competition in these countries successfully, it is necessary for us to reduce our costs to a minimum. In pursuit of this purpose we made application and were granted a permit to manufacture suits for export from import duty-paid wool under drawback regulations. Our experience during this past year has shown that compliance with some of the requirements under our present Treasury decision makes it unprofitable to us. It is with the thought that you may be able to help us in this matter that we are addressing this communication to you.

Under the present regulations, as we understand them, it is necessary for us to manufacture the suits for export entirely separate from the suits intended for our local sales, in order that the identity of each individual suit manufactured from import duty-paid wool be maintained. It is also necessary to keep two separate stocks of finished merchandise, which materially increases our investment. In fact, it resolves itself into a matter of running two businesses, one within the other, which presents, from a manufacturing and stockkeeping standpoint, a very difficult problem.

Because of the rapid changes, both in style and color, of swimming costumes, the merchandise carry-over at the end of the year must be depreciated in value and sold under another brand. Since we have no market established for this merchandise in foreign countries, it is necessary for us to dispose of any carry-over within the United States. This, of course, makes it impossible for us to secure drawback.

The duty imposed on our merchandise exported to Australia was so heavy that it was necessary for us, in order to enter that market, to build a factory there. We are now operating a factory in Sydney, Australia. This factory is making good progress and is building up an excellent business. Naturally, we are interested in industrial development in our own country, and we should like to manufacture merchandise for other foreign countries in the United States. It now appears that if we are unable to operate under drawback regulations, eventually we shall be obliged to establish a factory in some European country. In fact, Mr. J. A. Zehntbauer, president of our company, is now in Germany investigating the advisability of such a course.

An apparent solution to the problem would be the granting of an amendment to our present Treasury decision permitting us to operate on the following plan:

First. To file with the Revenue Department certificates of delivery of all yarn received by us. Separate certificates would be filed for yarn manufactured from import duty-paid wool and that manufactured from domestic wool.

Second. To render at the end of our manufacturing period a certificate of manufacture showing the quantity of each kind of yarn put into work during the period with quantity in process at the end of the period and a detail list of the finished production.

Third. To operate on a schedule and file intents as we are now doing.

Fourth. To combine and intermingle our finished suits manufactured from import duty-paid wool and those manufactured from domestic wool, they being identical in fineness of texture and weight. This would obviate the necessity of carrying two separate stocks with a resultant loss to us at the end of the period.

We see no possibility of a loss to the Revenue Department under this plan because our drawback claim, due to unaccountable waste, could never quite equal the total duty paid. It would simplify the matter for us to such an extent that it would probably obviate the necessity of manufacturing our suits in some foreign country.

Please consider this an application for an amendment to Treasury Decision No. 42316-B permitting us to manufacture under drawback regulations on the plan outlined briefly above.

Trusting that our application may be acted upon favorably, we are,

Yours very truly,

JANTZEN KNITTING MILLS,
H. L. GERMAN, *Assistant Secretary.*

BRIEF OF HARPER AND HARPER, ESQS., SAN FRANCISCO, CALIF.

[Drawback, sec. 313]

Hon. REED SMOOT,
Chairman Finance Committee of the United States Senate,
Washington, D. C.

DEAR SIR: We beg to submit the following memorandum on the proposed changes in the tariff law contained in section 313 of the new tariff bill:

The Honorable Mr. Hawley, chairman of the Committee on Ways and Means, in reporting to the House of Representatives the amendment to section 313 proposed by that committee, referred to the proposed amendment to the law which permitted the substitution for drawback purposes in the case of sugar and nonferrous metals as follows:

"Provision has been made for substitution for drawback purposes in the case of sugar and nonferrous metals. The inconvenience and difficulties encountered by manufacturers and producers who use these two classes of merchandise in identifying the imported merchandise in the completed article has resulted in the abandonment of many just claims for drawback. In any case it has been necessary for such manufacturers or producers to go to great expense and inconvenience in establishing their claims."

We wish to express our hearty approval of the amendment, and can state that those importers on the Pacific coast with whom we have discussed the subject are unanimously in favor of it. The only query that suggests itself in this connection is whether it would not be possible to extend the principle to include the case of other commodities than sugar and nonferrous metals. The encouragement of the United States export trade redounds as much to the advantage of American industry as protection of the home market. The arguments which support the proposed extension of drawback privileges in the cases of sugar and nonferrous metals apply also to other commodities. The expenses of keeping records and the inconveniences in producing satisfactory proofs are not limited to any commodity.

Therefore it is respectfully suggested that your committee indorse the principle proposed by the Committee on Ways and Means of the House of Representatives and consider the possibility of extending its operation to other commodities.

Yours respectfully,

LAWRENCE A. HARPER.

LETTER FROM THE BLACK HARDWARE CO., GALVESTON, TEX.

[Drawback, sec. 313]

June 4, 1929.

Hon. MORRIS SHEPPARD,
United States Senate, Washington, D. C.

MY DEAR SENATOR: Thinking it might reach Congressman Briggs before the House completed the passage of the tariff bill, I wrote him about a proposition in which we are greatly interested, and upon his suggestion I am taking it up with you.

Our subsidiary company, the Texas Nail & Wire Manufacturing Co., Galveston, Tex., have been importing raw material commercially known as wire rod, manufacturing this rod into barb wire. Under the existing tariff law the duty on this type of wire rod used for this purpose is three tenths of 1 cent per pound. We can manufacture this wire into barb wire for export and secure a drawback of 99 per cent of the duty paid, under what is known as the drawback privilege in the existing tariff law. I do not understand that there is any change in the new bill affecting that condition. However, in view of the fact that the principle of the new tariff bill is supposed to be of aid to the farmers and appreciating that condition, I believe it would be impracticable to ask for any duty applicable to barb wire importations which are now on the free list. However, the foreign barb wire is offered on this market at the present time at $6 per ton lower than the prevailing price of American made barb wire. There is a considerable quantity being imported through the Texas ports. While it is not a particularly large tonnage, it is sufficient to affect the prices that the buyers are willing to pay for American made wire.

It has occurred to me that possibly an amendment to the tariff bill might be had whereby the duty paid by ourselves and other importers might be rebated on such quantities of the imported rod which is manufactured into barb wire. That situation would be of benefit to the farmers through the reduction of $6 in cost which would be reflected in the selling price of American made barb wire, manufactured from imported raw material. In other words, it seems unfair that the American manufacturer is assessed a duty of $6 per ton, when the finished material made of the same raw material is allowed to enter duty free.

Our plant at Galveston employs from 100 to 200 men; one-half of the output of that plant, or one-half of the labor, is employed in the manufacture of barb wire and we find considerable difficulty in operating successfully under these conditions on account of the competition of foreign barb wire. I do not know that a similar proposition has ever been suggested, but I do know that being at the port in immediate competition with these importations free of duty and Texas being practically our only market, that it affects us more seriously than any other manufacturer that I know of.

I would be glad to receive your reaction to the proposition so as to know whether there is any possibility of such an amendment being successfully introduced. I am also writing Senator Tom Connally on this matter, as I understand he is a member of the Finance Committee which has the bill under consideration.

Yours very truly,

BLACK HARDWARE CO.,
HARRY A. BLACK, *President.*

SMELTING IN BOND

[Sec. 312]

STATEMENT OF JAMES L. GERRY, REPRESENTING THE AMERICAN SMELTING & REFINING CO., NEW YORK CITY

(The witness was duly sworn by the chairman.)

Mr. GERRY. Senator Thomas is not able to be here, and I am appearing in his place (referring to Charles S. Thomas).

I appear as counsel for the American Smelting & Refining Co., of New York City. I desire to call your attention, first, to the provisions of paragraph 392 of the dutiable schedule. In that paragraph there were certain amendments written in by the House which provided that the duty should not be applied to lead content in copper, gold, silver ores, or copper mats.

Having called your attention to that paragraph, I desire to call the attention of the committee to section 312 which is in the administrative provisions, and my purpose is to see to it that the provisions of section 312 are amended so as to provide that the irrecoverable metals shall likewise be taken care of in the administrative provisions.

The theory of that, of course, is that if the gold ore or silver ore or copper ore should carry a certain percentage of lead, and that lead is irrecoverable, that upon the withdrawal for consumption of the gold or the silver or the copper we should not be mulcted in damages to the extent of the duty which would be otherwise chargeable on the lead which is not recovered.

Senator KING. As I understand you, if you imported from Mexico, for instance, a ton of ore, the principal content of which was silver, but it contained some lead, and the assay showed, as an illustration, that there was 40 per cent lead——

Mr. GERRY. That would be pretty high, Senator.

Senator KING. I know, but just for illustration—assuming that you only recovered 35 per cent, you would have to pay the duty upon that which you imported, and then when you lose 5 per cent in treating it, you want credit for that?

Mr. GERRY. That is right. The theory is, broadly, that from the very early days of the Government, going back to the decision of Marshall in Brown verses Merrill, in which the doctrine was that the importation was not complete until the merchandise was withdrawn from the custody of the Government. And in the Mariot case the Supreme Court held that merchandise was not dutiable until it came in to become part of the commerce of the country. The Customs Court of Appeals has held in 13 Customs Court of Appeals that where merchandise was partially destroyed and what was left of it was exported, duties would not be collected on the part which was destroyed. This is merely an application of that general doctrine of law.

The CHAIRMAN. You are opposed to the House amendment in paragraph 392?

Mr. GERRY. We just wish to have written into 312 the amendment that was written into 392; and I have prepared a form of amendment for that paragraph which I will submit.

The CHAIRMAN. Section 312 now is exactly the same as the existing law. Did you want it changed?

Mr. GERRY. As 312 appears it is the existing law without change.

Senator WALSH. You want the change?

Mr. GERRY. Yes.

The CHAIRMAN. You want the corresponding amendment as provided there?

Mr. GERRY. Yes, sir.

(Mr. Gerry submitted the following proposed amendments:)

PROPOSED AMENDMENT TO SECTION 312, TITLE III; SPECIAL PROVISIONS, PART I, MISCELLANEOUS, H. R. 2667

(1) Line 19, page 262, after the word "without," insert: "appraisement or the exaction and the."

(2) Line 20, page 262, after the word "both," insert: "or otherwise manipulated or manufactured."

(3) Line 22 page 262, after the word "sum," insert: "in lieu of and."

(4) Line 3, page 263, after the word "title," insert: "or exportation with benefit of drawback."

(5) Line 4, page 263, after the word "metal," insert: "in any form."

(6) Line 5, page 263, after the word "both," insert: "manipulation or manufacture."

(7) Line 7, page 263, after the word "made," insert: "for unrecovered metals and."

(8) Line 9, page 263, after the word "producible," insert: "as above described."

(9) Line 9, page 263, after the word "thereof," insert: "or a quantity of the same kind of metal equal to the aforesaid metal producible or any portion thereof."

(10) Line 13, page 263, after the word "of" strike out the following: "the duties chargeable against an equivalent amount or ores or crude metals from which said metal would be producible in their condition as imported," and substitute therefor the following: "the charge or charges against the bond applicable to or covering the producible metal only in its condition as imported, or the payment of duties on a quantity of the same kind of metal equal to the quantity of metal produced from the dutiable metal contained in the ores and crude metals imported at the rate of duty chargeable in the condition at the time of its importation on the particular kind of dutiable metal used to produce the metal withdrawn:"

(11) Line 4, page 264, after the word "warehouse," insert: "or withdrawal for payment of duties and exportation with benefit of drawback."

(12) Line 6, page 264 after the word "metal," insert: "in any form."
(13) Line 8, page 264, after the word "both," insert: "manipulation or manufacture."
(14) Line 10, page 264, after the word "of" insert: "the unrecovered metals and."
(15) Line 12, page 264, after the word "Treasury," add: "*Provided*, That the phrase ores and crude metals shall be construed to mean any goods, wares, or merchandise susceptible to being refined or smelted and refined: *And provided further*, That the privileges accorded and authorized by sections 311 and 562 shall be included in those accorded and authorized bonded smelters by this section."

ARGUMENT

I. This amendment reflects existing administrative practice. All ores and crude metals transferred to a bonded smelter are either free of duty, or subject to specific duties, and, obviously, merchandise free of duty or upon which specific duties only are imposed, can not possibly be the subject matter of "appraisement," because the act of appraisement is the ascertainment of the dutiable value of imported merchandise.

II. This amendment is proposed first because the manipulation of ores, fluedust, furnace products, etc., are merely processes preparatory to smelting and refining. For instance, a copper ore containing sulphur may be roasted; a zinc ore may be concentrated; or an ore containing both zinc and lead may be subjected to concentration processes which separate the zinc from the lead. There is absolutely no justifiable reason for compelling the smelter to perform these operations in a separate bonded plant and then transfer the product under bond to a bonded smelting or refining warehouse, as is required by the Treasury Department at the present time.

With reference to the proposition of manufacture, it is evident that a pig of refined lead is a manufactured article. The department has authorized the cancellation of the charge against the bond when the refined lead was exported in the form of sheets; but has denied an application when the refined lead was exported in the form of a shot. At the same time the department has authorized the transfer of the refined lead to a bonded manufacturing warehouse where it can be converted into sheets or shot or what not—without let or hindrance.

III. The third amendment is proposed for the reason that when imported ores and crude metals are carried into a bonded smelter they are smelted along with other ores and crude metals, of either domestic or foreign origin, and hence their identity is absolutely lost and destroyed. A lien for duties can only attach to the actual article imported. The smelting and refining of imported ores at once destroys the lien for duties, and the charge against the bond takes the place of this lien. Duties are assessed on imported merchandise. If imported materials are used in the manufacture of an article in the United States, the resultant article is a product of the United States; hence duties cease, and the charge against the bond is substituted therefor.

IV. This amendment is a mere extension of the privilege of exporting with benefit of drawback from bond, which is accorded and authorized under section 557. In this section (312), there is provision that the producible metal may be transferred to a customs warehouse. If transferred to a customs warehouse, it may be exported with benefit of drawback under section 557. To say that one can not export direct from a bonded smelter, with benefit of drawback, after the payment of duties, and to compel the transfer to a customs warehouse where this privilege can be exercised, would seem to involve a degree of particularity which Congress did not contemplate.

V. This amendment "in any form," which appears here and likewise in line 6, page 264, is to cover refined lead whether in pigs, sheet, shot, or white-lead, etc. (See amendment No. 2.)

VI. See amendment No. 2 (supra).

VII. This amendment is proposed for the purpose of carrying into the administrative provision of the law, the amendments inserted in paragraphs 392 and 394—that duty shall not be applied to the lead contained in copper, gold, or silver ores, or copper mattes unless actually recovered; nor to the zinc contained in lead or copper ores, unless actually recovered.

VIII, IX, X. These amendments all look for relief from the imposition of duty on a nonexisting thing—or on merchandise which is not imported; that is, merchandise which is destroyed in bond by authorization of the Government, and as is authorized by section 557, line 23, page 391; sections 562 and 563. See

Chief Justice Marshall's decision in Brown *v.* Maryland (12 Wheaton, 419); Marriott *v.* Brune (9 How. 619, p. 631); United States *v.* Field (14 Ct. Cust. Appls. 406); United States *v.* Estate of Boshell (14 Ct. Cust. Appls. 273); and Casazza & Bro. *v.* United States (13 Ct. Cust. Appls. 627). If the lead in the copper ore, or the gold or the silver ore, is wholly destroyed in the recovery of the copper, or the gold, or the silver, then the attempted imposition of duty on the lead not recovered is, in effect, the imposition of duty on a copper ore, or a gold ore, or a silver ore, contrary to the will and intent of Congress, which has placed these ores on the free list.

XI. See amendment No. 4 (supra).

XII. See amendment No. 5.

XIII. See amendment No. 2.

XIV. See amendments Nos. 8, 9, and 10.

XV. This proposition is the definite extension to a bonded smelter of the privileges of smelting and refining in bond a furnace product, such as flue-dust or copper matte, which might be claimed to be neither an ore on the one hand, nor a crude metal on the other; and secondly, that the privileges and benefits accorded merchandise entered under any provision of bond, shall be accorded to merchandise entered under section 312. (See Tariff Readjustment, Administrative and Miscellaneous Provisions, pp. 10081–10083).

Section 312, Bonded smelting warehouses: The works of manufacturers engaged in smelting or refining, or both, of ores and crude metals, may, upon the giving of satisfactory bonds, be designated as bonded smelting warehouses. Ores or crude metals may be removed from the vessel or other vehicle in which imported, or from a bonded warehouse, into a bonded smelting warehouse without (1) appraisement or the exaction and the payment of duties thereon, and there smelted or refined, or both, (2) or otherwise manipulated or manufactured, together with ores or crude metals of home or foreign production: *Provided*, That the bonds shall be charged with a sum (3) in lieu of and equal in amount to the regular duties which would have been payable on such ores and crude metals if entered for consumption at the time of their importation, and the several charges against such bonds shall be canceled upon the exportation or delivery to a bonded manufacturing warehouse established under the preceding section of this title (4) or exportation with benefit of drawback, of a quantity of the same kind of metal (5) in any form equal to the quantity of metal producible from the smelting or refining, or both, (6) manipulation or manufacture of the dutiable metal contained in such ores or crude metals, due allowance being made (7) for unrecovered metals *and* of the smelter wastage as ascertained from time to time by the Secretary of the Treasury: *Provided further*, That the said metals so producible (8) as above described or any portion thereof, (9) or a quantity of the same kind of metal equal to the aforesaid metal producible or any portion thereof may be withdrawn for domestic consumption or transferred to a bonded customs warehouse and withdrawn therefrom and the several charges against the bonds canceled upon the payment of (10) [the duties chargeable against an equivalent amount of ores or crude metals from which said metal would be producible in their condition as imported:] *the charge or charges against the bond applicable to or covering the producible metal only in its condition as imported, or the payment of duties on a qauntity of the same kind of metal equal to the quantity of metal produced from the dutiable metal contained in the ores and crude metals imported at the rate of duty chargeable in the condition at the time of its importation on the particular kind of dutiable metal used to produce the metal withdrawn: Provided further*, That on the arrival of the ores and crude metals at such establishments they shall be sampled and assayed according to commercial methods under the supervision of Government officers: *Provided further*, That all labor performed and services rendered pursuant to this section shall be under the supervision of an officer of the customs, to be appointed by the Secretary of the Treasury and at the expense of the manufacturer: *Provided further*, That all regulations for the carrying out of this section shall be prescribed by the Secretary of the Treasury: *And provided further*, That the several charges against the bonds of any smelting warehouse established under the provisions of this section may be canceled upon the exportation or transfer to a bonded manufacturing warehouse, (11) *or withdrawal for payment of duties and exportation with benefit of drawback* from any other bonded smelting warehouse established under this section of a quantity of the same kind of metal, (12) *in any form*, in excess of that covered by open bonds, equal to the amount of metal producible from the smelting or refining, or both, (13) *manipulation or manufacture*, of the dutiable metal contained in the imported ores and crude metals, due allowance being made of (14) *the unrecovered metals and* the smelter wastage as

ascertained from time to time by the Secretary of the Treasury. (15) *Provided that the phrase ores and crude metals shall be construed to mean any goods, wares or merchandise susceptible of being refined or smelted and refined. And provided further, That the privileges accorded and authorized by sections 311 and 562 shall be included in those accorded and authorized bonded smelters by this section.*

UNITED STATES TARIFF COMMISSION

[Secs. 330-336]

STATEMENT OF JAMES A. EMERY, WASHINGTON, D. C., REPRESENTING THE NATIONAL ASSOCIATION OF MANUFACTURERS

(The witness was duly sworn by the chairman.)

Mr. EMERY. I am counsel for the National Association of Manufacturers and the associations included in the list filed by Mr. Edgerton, being some 74 National, State, and local organizations of manufacturers.

To save the time of the committee, Mr. Chairman, if I may I will proceed directly to the propositions involved here, asking the permission of the committee to file with it a brief which enters into some detail as to the history of the legislation, the discussion of various cases to which I shall allude——

The CHAIRMAN. Your request will be granted.

Mr. EMERY. The associations which I represent, Mr. Chairman, desire to press upon your attention their approval of sections 330 to 336, inclusive, of the House bill. In substance, for the purpose of argument, sections 330 to 335 provide for the reorganization of the Tariff Commission. With the exception of section 330, the remaining provisions are substantially similar to those of the present law, comprising sections 701 to 709, inclusive, of the revenue act of 1916.

For the purpose of this discussion, the chief differences between the above provisions of the bill and the present law are as follows: The law provides for a commission of six members, serving ultimate terms of 12 years, at an annual salary of $7,500. They are appointed by the President, with the advice and consent of the Senate and, not more than three of the commissioners "shall be members of the same political party." Any commissioner "may be removed by the President for inefficiency, neglect of duty or malfeasance in office."

By the terms of the bill, the commission is to consist of seven members, appointed with the advice and consent of the Senate for ultimate terms of seven years, each of the present members to continue until his successor takes office. The commissioner's salary is to be $12,000 per year. Instead of the provision of the law, that not more than three commissioners "shall be members of the same political party," the bill provides that each commissioner shall, "in the judgment of the President, be possessed of qualifications requisite for developing expert knowledge of tariff problems and efficiency in administering the provisions" of the law.

Senator KING. That would mean that he may appoint all of them of one political party or of no political party, and may remove them two days after he appointed them, without giving any reason. Is not that true?

Mr. EMERY. I do not think so; but if you will permit me I intend to discuss that when I reach that point.

The bill states no cause for the removal of commissioners by the President, but his power in that respect has been recently determined by the Supreme Court of the United States in the case of Myers v. U. S., 272 U. S. 52. The substantial difference between the flexible provisions of the present law and the pending proposals are:

1. In the formula by which the President, with the aid of the commission, is to make rate adjustments.

2. In the elements which the President is to take into consideration in the application of the formula.

3. In the application of the ad valorem duties as an alternative to specific rate adjustment.

There are other minor changes and incidental definitions complimentary to these proposals but not essential to the purpose of this discussion.

The issues raised by the above provisions of the House bill involve important questions of law and policy, which we submit are expressed in the following propositions:

I. May Congress confer upon the President, under the power to levy duties upon imports and regulate foreign commerce, the authority to adjust statutory tariff rates, with the aid of a tariff commission, in conformity with the policy proposed to be established by section 336 of the pending House bill? (Being the so-called flexible tariff provisions, H. R. 2667.)

II. Ought the public policy proposed by the bill to be adopted?

III. Ought the Tariff Commission to be reorganized in the manner proposed by section 330 of the pending House bill?

We discuss the questions of constitutional power involved first because the principal objections have been raised on this score and there appears to exist no little confusion with respect to the issues involved and the judicial and legislative precedents at hand.

May Congress confer upon the President, under the power to levy duties upon imports and regulate foreign commerce, the authority to adjust statutory tariff rates, with the aid of a Tariff Commission, in conformity with the policy proposed to be established by section 336 of the pending House bill?

I want to call the committee's attention at this point to the fact that both the present tariff law of 1922 and the pending House bill are not only measures for the collection of revenue by the levy of duties upon imports, but they are also regulations of foreign commerce. Many of the sections of both the law and the bill are intended primarily to be regulations of commerce; and the taxing power is ample for that purpose. I think it quite impossible, Mr. Chairman, to discuss these proposals without remembering that at all times the measure before us is both a revenue measure and a regulation of foreign commerce.

The main proposition that I have stated may be resolved into four statements of law:

(A) Congress may, and frequently has validly authorized executive officers, boards, and commissions to ascertain and apply facts to give effect to a preordained congressional policy. Within the limits of such policy Congress may confer unreviewable discretion upon its executive agents in the accomplishment of its purpose.

(B) From the beginning of the Government, Congress has pursued such a policy in the field of tariff legislation.

(C) The "flexible" and other provisions of the tariff act of 1922 represent such a policy and have been judicially sustained.

(D) Section 336 of the pending House bill conforms fully to judicial and legislative precedent. It lays down a clear and intelligible rule as definite and workable as those employed to direct executive action in the past and similar action in the present law, and is a valid exercise of congressional power.

Take the first proposition. Congress may and frequently has validly authorized executive officers, boards, and commissions to ascertain and apply facts to give effect to a preordained congressional policy. Within the limits of such policy Congress may confer unquestioned discretion upon its executive agents in the accomplishment of its purpose.

The general principle under which authority may be delegated by the Congress to executive agencies has been the frequent subject of judicial consideration. Three short, simple, definite statements of the law have been referred to with frequent approval by the Supreme Court of the United States during the past 30 years. They represent two cases from the State of Pennsylvania and one from the State of Ohio——

Senator GEORGE. If you will pardon me. I doubt if any man would take any issue with your first proposition. The last one is the important one.

Mr. EMERY. It is necessary to state these fundamental principles of law to note their application to the pending bill; and the quotations are very short. The first one is from the case of Moers *v.* Reading, 21 Pennsylvania 202:

> Half the statutes on our books are in the alternative dependent on the discretion of some person or persons to whom is confided the duty of determining whether the proper occasion exists for executing them. But it can not be said that the exercise of such discretion is the making of the law.

The second is from Locke's Appeal, 72 Pennsylvania 491:

> The legislature can not delegate its power to make a law, but it can make a law to delegate a power to determine some facts or state of things upon which the law makes, or intends to make, its own action depend. To deny this would be to stop the wheels of government. There are many things upon which wise and useful legislation must depend which can not be known to the law-making power, and must therefore be a subject of inquiry and determination outside the halls of legislation.

The court said further in the same case that the Constitution grants the power to legislate, but it can not confer it; and it said further that to assert that the law is less a law because it has to depend upon a future event is to rob the legislature of the power to act absolutely for the public welfare whenever a law is passed relating to a state of affairs not yet developed. Says the court:

> God breathes into his creature the powers of judgment and discretion and then declares to him His law: "As you determine your act, so shall be the consequences." The law is active and operates only when man determines. Does man or God make the law?

Finally, from the Cincinnati, Wilmington & Zanesville Railroad Company *v.* Clinton County Commissioners, 1 Ohio State 88, in which case the court said:

> The true distinction is between the delegation of power to make the law which necessarily involves a discretion as to what it shall be and conferring authority

or discretion as to its execution to be exercised under and in pursuance of the law. The first can not be done; to the latter no valid objection can be made.

These cases are cited with frequent approval by the Supreme Court, at least five times in the last 40 years, especially Field *v.* Clark, 143 U. S. 649; United States *v.* Grimaud, 220 U. S. 505; Hampton, Jr., & Co. *v.* U. S. 276, 394; being the cases in which section 315 of the flexible provision was sustained by the Supreme Court.

In pursuance of these principles the power of Congress has been sustained to authorize the President of the United States, upon a finding of fact that the neutral commerce of the United States was being violated, to proclaim or revive a commercial regulation. In re Brig *Aurora*, 7 Cranch, 382). The President is authorized, by the act of 1795, to declare the exigency of fact upon which the militia may be called into the service of the United States. (Luther *v.* Borden, 7 Howard, 1; Martin *v.* Mott, 12 Wheat., 19).

The Secretary of the Treasury is authorized to ascertain and proclaim the conversion value of various coins. (Cramer *v.* Arthur 102 U. S. 612.) The Secretary of War was authorized to determine as a fact whether or not the Brooklyn Bridge was an obstruction to commerce. (Miller *v.* Mayor of New York, 109 U. S. 385.) It was made unlawful to sell oleomargarine except when branded in accordance with regulations prescribed by the Secretary of the Treasury. (In re Kollock, 165 U. S. 526.) The Secretary of the Treasury was authorized to determine whether or not a Japanese immigrant was illegally in the country, and deport him. (The Japanese Immigrant Case, 189 U. S. 86.) The Secretary of the Treasury was authorized to establish standards for the admission of tea into the United States, to select samples of the same, determine their similarity to the standards established, and admit or deny entrance to such tea. (Buttfield *v.* Stranahan, 192 U. S. 470.) The Congress authorized the miners in each mining district, on the public lands of the United States, to make local regulations governing location, etc., not inconsistent with the laws of the United States, (Jackson *v.* Roby, 109 U. S., 440). Congress authorized a State legislature to make similar provisions with respect to mining locations on public lands of the United States, saying with reference to the case previous cited:

> Now if Congress has power to delegate to a body of miners the making of additional regulations respecting locations, it can not be doubted that it has equal power to delegate similar authority to a State legislature. (Butte City Water Co. *v.* Baker, 196 U. S. 119.)

The Secretary of War was authorized to determine under the act of March 3, 1899, whether or not bridges obstructed navigable streams, to require the alteration of such bridges when causing obstructions, and making the violation of the Secretary's direction punishable by a fine of $5,000. Each month's delay in observing such mandate constituted an additional offense. Union Bridge Co. *v.* U. S., 204 U. S. 364; Monongahela Bridge Co. *v.* U. S., 216 U. S. 177; Hannibal Bridge Co. *v.* U. S., 221 U. S. 194.

The Interstate Commerce Commission is authorized to fix standards for drawbars for railway cars.

Congress declared its policy with respect to grazing on the public lands, and authorized the Secretary of Agriculture to make regulations thereunder, a violation of which becomes punishable by fine

and imprisonment, and the power was sustained in U. S. *v.* Grimaud, 220 U. S. 506, the court saying:

> But when Congress had legislated and indicated its will, it could give to those who were to act under such general provisions "power to fill up the details."

The Alien Property Custodian is given all the powers of a common law trustee under the trading with the enemy act, October 6, 1917, and his power was sustained under the direction of the President to do anything necessary to administer the enemy property of which he was trustee.

> The determination of the terms of sales of enemy properties in the light of the facts and conditions from time to time arising in the progress of war was not the making of a law; it was the application of the general rule laid down by the act. (United States *v.* The Chemical Foundation (Inc.), 272 U. S. 1.)

The Secretary of War may be authorized to determine the character and modification of all harbor improvements with respect to their effect upon the navigability of a Federal waterway. (Chicago Drainage Canal cases, United States Supreme Court, January 14, 1929.)

The doctrine of all the delegations of authority involved in these cases is summed up by the Supreme Court in Monongahela Bridge Co. *v.* U. S., 216 U. S. 193:

> A denial to Congress of authority under the Constitution to delegate to an executive department or officer the power to determine some fact or some state of things upon which the enforcement of its enactment may depend would often render it impossible or impracticable to conduct the public business and to successfully carry on the operations of government.

From the beginning of [illegible] Congress has pursued such a policy in the field [illegible]

The tariff act of 178[illegible] by the First Congress. Immedi[illegible] a syste[illegible] praisement of imported goods[illegible] ion of d[illegible] into effect and developed in[illegible] present day.

Beginning wi[illegible] found for the appoin[illegible] the [illegible] market value of impor[illegible] edure was provided, [illegible] es to determine the [illegible] kets," the "places of [illegible] tion," an[illegible] he wholes[illegible] ces at which imported [illegible] were offe[illegible] the mar[illegible] expor-tation. All thes[illegible] were f[illegible] ons of[illegible] sers in the way they tho[illegible] t. [illegible] oms[illegible], referring to this pract[illegible] could b[illegible] of pro-cedure or scientific[illegible] such appr[illegible] (Hampton *v.* U. S., U. S. Ct. Cus[illegible] s laid down a policy and executive [illegible] upon which it was made effective, and wer[illegible], and their judg-ment held to be conclusive, exce[illegible] errors of law intervened. (Stairs *v.* Peaslee, 18 Howard 521; Hilton *v.* Merritt, 110 U. S., 97; Passavant *v.* U. S., 148 U. S., 214.)

The administration of the whole tariff system of the United States has rested on the power of Congress to vest customs officers with the

authority to determine "facts or states of things" upon the determination of which the will of Congress is made effective.

Throughout our whole history the Congress has furthermore empowered the President to determine all sorts of questions of fact with respect to the tariff policy of foreign countries in order to make its own policy effective, and, in executing this policy, has conferred upon the Executive a broad discretion in the ascertainment "of facts and states of things" upon which to make its policy effective.

The following statutes enacted between 1815 and 1909 all represent instances in which the tariff policy of Congress or its regulation of foreign commerce was made dependent upon findings of fact by the President. I shall not read these. I want to put them in the record. There are 16 of them, running from 1815 to 1909. It will be perceived that authority to repeal or modify duties or suspend them was constantly conferred in such terms as "whenever the President shall be satisfied," whenever he shall "deem the same expedient," or when he shall "receive satisfactory information" or "evidence."

(Mr. Emery submitted the following list of legislative precedents:)

LEGISLATIVE PRECEDENTS

Under the following acts of Congress the Executive was authorized to act with respect to tariff rates under the conditions indicated in each case, in order to regulate the foreign commerce of the United States:

March 3, 1815: Provided for repeal of discriminating duties on foreign vessels and goods imported therein "whenever the President of the United States shall be satisfied" that the discriminating or countervailing duties of the foreign nation, so far as they operate to the disadvantage of the United States, have been abolished.

March 3, 1821: Authorized the President, "should he deem the same expedient," to suspend temporarily the operation of an act imposing tonnage duties on French ships in the event of the consummation of certain treaties between France and the United States.

May 6, 1822: Contained same authorization as act of March 3, 1821.

January 7, 1824: Authorized the President to suspend discriminatory duties of tonnage and impost with respect to vessels of any foreign nation and merchandise imported in same "upon satisfactory evidence" that no discriminating duties were levied by said foreign nation.

April 20, 1826: Authorized the President by proclamation to suspend an act of Congress upon a finding that equality of treatment was not being reciprocated in the ports of the Republic of Colombia.

May 9, 1828: Accorded equal treatment to French vessels laden with merchandise of certain islands so long as the Government of France should permit the exportation of such merchandise in American vessels, but provided that if the President of the United States should "receive satisfactory information" that the privileges allowed American vessels had been revoked or annulled he might suspend the operation of this act.

May 29, 1830: Authorized the President when he should "receive satisfactory evidence" that Great Britain would open the ports in certain of her colonial possessions to vessels of the United States and accord them certain privileges, to issue his proclamation declaring that he had received such evidence; and thereupon the ports of the United States should be opened to British vessels coming from such colonial possessions on the same terms as were accorded American vessels.

July 13, 1832: Authorized the President whenever he should "be satisfied" that the discriminating or countervailing duties of tonnage levied by any foreign nation had been abolished, to direct that the tonnage duties on the vessels of such nation should cease to be levied in the ports of the United States.

June 1, 1842: Extended privileges to French vessels coming from certain French colonial possessions but provided that these privileges might be withdrawn by proclamation of the President if he should "receive satisfactory information" that similar privileges extended to American vessels in the French colonies had been revoked or annulled.

March 3, 1845: Extended certain privileges to French vessels coming from certain French colonial possessions but provided that this act should not take effect until the President should have "received satisfactory information" that similar privileges were accorded American vessels by France; and further authorized the President to suspend the privileges extended by this act whenever the privileges of American vessels should be revoked or annulled.

August 5, 1854: Provided that the President of the United States might suspend the duties on numerous articles imported in the United States from certain sources when he should "receive satisfactory evidence" that the parliaments of Great Britain, Canada, New Brunswick, Nova Scotia, and Prince Edward Island had passed laws to give effect to the provisions of a treaty between the United States and Great Britain. Authorized also extension of the privilege of free entry to these goods imported from Newfoundland when the legislature thereof should pass certain laws and the President of the United States should declare that he had "satisfactory evidence" that the said Province had consented to have the provisions of the treaty extended to it.

March 1, 1873: Authorized the President to suspend certain rights of shipping upon the St. Lawrence, the Great Lakes, and connecting rivers which had been extended to British vessels in case the Dominion of Canada should at any time deprive the citizens of the United States of the use of canals in Canada on terms of equality with the inhabitants of the Dominion; or in case any export or other duty should continue to be levied by Canada on lumber or timber floated down the St. John River.

July 24, 1897: Authorized the President to suspend in part the operation of certain laws so that foreign vessels from a country imposing "partial" discriminating tonnage duties upon American vessels or American merchandise may enjoy in our ports the identical privileges which the same class of American vessels and merchandise may enjoy in said foreign country.

August 5, 1909: This act established a minimum tariff on imported goods and in addition a maximum tariff which was determined by the addition of 25 per centum ad valorem to the minimum tariff, and authorized the President when he should "be satisfied" that any foreign country imposed no restrictions, charges, exactions, or other burdens of a discriminatory nature upon importations from the United States, and paid [illegible] or imposed no export duty or prohibition upon the exp[illegible]ited States which "unduly discriminated" again[illegible]; and that such foreign country accorded "[illegible] importations from the United States, t[illegible] under the terms of the minimum t[illegible] States.

He was further auth[illegible] "be s[illegible] nditions which led to the issua[illegible] ong[illegible] issue a proclamation to t[illegible] the p[illegible] f the maximum tariff sho[illegible]

It was also provi[illegible] whenever [illegible] ntry pa[illegible] wed directly or indirect[illegible] xportatio[illegible] mer-chandise which was[illegible] be levied and paid u[illegible] ited States an additiona[illegible] nt, "however the same [illegible] ties or grants were to be[illegible] ed and de[illegible] etary of th[illegible] ury.

Mr. EMERY. In [illegible] brated [illegible] Clark [illegible]. S. 649)—which was a[illegible] her[illegible] atute [illegible] issue which authorized th[illegible] nd th[illegible] er[illegible] ertain commodities whenev[illegible] shall [illegible] hat the countries exporting su[illegible] es were im[illegible] ons upon American products whi[illegible] be reciprocally unequal and unreason[illegible] uch free entry for such time as "he shall dee[illegible] such period fixed rates of duty become effective upon the imported articles hitherto admitted free. The power then exercised by the Congress was attacked upon the same grounds upon which criticism is directed

against the pending "flexible provisions," but the authority of Congress was fully sustained.

It must not be forgotten that in the Field case and throughout the statutory levy of duties upon imports, as in the pending bill, the Congress is not alone taxing imports for revenue purposes, but employing the taxing power for the purpose of regulating foreign commerce.

One of the most striking instances, of this, of which I could bring a great many to your attention, and I have in the brief, is, for instance, that of Russell *v.* Williams (106 U. S. 623). I go back to these old cases to show how old the practice is. That is 1871 or 1872. In this instance, the tariff act of March 3, 1865, provided an additional ad valorem duty of 10 per cent upon all commodities the growth or product of countries east of the Cape of Good Hope, when exported from countries west of the Cape of Good Hope. In the instant case the commodity involved was Chinese tea exported from England to the United States. The court, sustaining the levy of the additional duty, declared the plain purpose of Congress to be the stimulation of the direct exportation from Oriental countries of their commodities in American ships, and the import duty levied was "a regulation of commerce."

It is thus perceived from legislative and judicial practice that since the beginning of the nation Congress has habitually reposed in administrative officers, and especially the President, large discretion in the finding of various facts and "states of things," upon the ascertainment of which the tariff policy of Congress or its regulation of foreign commerce was made effective.

The "flexible" and other provision of the Tariff Act of 1922 represent such a policy and have been judicially sustained.

The "flexible" provisions of the tariff act of 1922 were attacked by the J. W. Hampton jr. Co. in a proceeding carried to the Supreme Court of the United States. The plaintiff had made an importation into New York of barium dioxide on which the collector assessed a dutiable rate of 6 cents per pound. The statutory rate fixed by the tariff act was 4 cents per pound, the additional 2 cents having been fixed by proclamation of the President, May 19, 1924, under section 315 (the "flexible" provision) of the tariff act of 1922. The plaintiff raised two questions:

First, that section 315—

is a delegation to the President of the legislative power, which by Article I, section 1, of the Constitution, is vested in Congress, the power being that declared in section 8 of Article I, that the Congress shall have power to lay and collect taxes, duties, imposts, and excises.

A second objection is that as section 315 was enacted with the avowed intent and for the purpose of protecting the industries of the United States, it is invalid because the Constitution gives power to lay such taxes only for revenue. (Hampton *v.* United States, 276 U. S. 394.)

The court overruled both objections, unanimously sustaining the validity of section 315. In the course of its discussion the court met clearly and fully a chief objection made to the pending bill, which differs from section 315 of the law only in the formula of administrative rate adjustment provided.

I want to read just a paragraph of its opinion, because not only of the principle of law there stated, but because of the analogy

which the court employs and which must run through this entire argument.

The court said:

It is conceded by counsel that Congress may use executive officers in the application and enforcement of a policy declared in law by Congress and authorize such officers in the application of the congressional declaration to enforce it by regulation equivalent to law. But it is said that this never has been permitted to be done where Congress has exercised the power to levy taxes and fix customs duties. The authorities make no such distinction. The same principle that permits Congress to exercise its rate-making power in interstate commerce by declaring the rule which shall prevail in the legislative fixing of rates, and enables it to remit to a rate-making body created in accordance with its provisions the fixing of such rates, justifies a similar provision for the fixing of customs duties on imported merchandise. If Congress shall lay down by legislative act an intelligible principle to which the person or body authorized to fix such rates is directed to conform, such legislative action is not a forbidden delegation of legislative power. If it is thought wise to vary the customs duties according to changing conditions of production at home and abroad, it may authorize the Chief Executive to carry out this purpose, with the advisory assistance of a tariff commission appointed under congressional authority.

Your attention is particularly directed to the analogy made by the court between the rate-making authority delegated by Congress in the field of transportation to the Interstate Commerce Commission, and in the field of the tariff to the President, aided by a Tariff Commission. It illustrated its thought by two citations which greatly assist in the clarification of the fundamental principles of law involved. Reverting to the case of Interstate Commerce Commission *v.* Goodrich Transit Co. (224 U. S. 194–214), involving the authority of the Interstate Commerce Commission to establish methods of carrier accounting, it said:

The Congress may not delegate its purely legislative power to a commission, but, having laid down the general rules of action under which a commission shall proceed, it may require of that commission the application of such rules to particular situations and the investigation of facts, with a view to making orders in a particular matter within the rules laid down by the Congress.

It then quoted with approval from State *v.* Chicago, Milwaukee & St. Paul R. R. (38 Minn. 301), in which the learned judge expounded the principle through which a State legislature confers upon a public service commission the power to fix railway rates:

If such a power is to be exercised at all, it can only be satisfactorily done by a board or commission, constantly in session, whose time is exclusively given to the subject, and who, after investigation of the facts, can fix rates with reference to the peculiar circumstances of each road, and each particular kind of business, and who can change or modify these rates to suit the ever-varying conditions of traffic. * * * Our legislature has gone a step further than most others, and vested our commission with full power to determine what rates are equal and reasonable in each particular case. Whether this was wise or not is not for us to say; but in doing so we can not see that they have transcended their constitutional authority. They have not delegated to the commission any authority or discretion as to what the law shall be—which would not be allowable—but have merely conferred upon it an authority and discretion, to be exercised in the execution of the law, and under and in pursuance of it, which is entirely permissible. The legislature itself has passed upon the expediency of the law, and what it shall be. The commission is intrusted with no authority or discretion upon these questions.

See also the language of Justice Miller and Bradley in the same case in this court, 134 U. S. 418, 459, 461, 464.

In meeting the second contention of the appellants in the Hampton case, the court likewise sustained the authority of Congress to fix rates of duty or provide for their adjustment so that "they shall encourage the industries of this country in the competition with producers in other countries in the sale of goods in this country."

We furthermore direct the attention of the committee to the character of the authority conferred upon the President by sections 316 and 317 of the tariff act of 1922, which is continued substantially without change as sections 337 and 338 of H. R. 2667, the House tariff bill.

Senator WATSON. How many times have the flexible provisions of the existing law been called in question and adjudicated?

Mr. EMERY. Adjudicated? Once in the Supreme Court of the United States.

Senator WATSON. Just the one time?

Mr. EMERY. In the Hampton case; yes, sir. The two fundamental questions there raised were then decided.

Senator HARRISON. Was that a unanimous opinion?

Mr. EMERY. Yes, sir.

We want to direct your attention to the character of the power conferred on the President by sections 316 and 317 of the present law, that of 1922, which is continued substantially without change as sections 337 and 338 of the pending bill. To these sections of the law and the bill no objection has been made by representatives of either party during the course of debate. Yet we submit that they confer upon the President the same kind, but a larger measure of authority than is conveyed by section 315 of the law, or the proposed section 336 of the bill.

These sections (316 and 317, act of 1922; 337 and 338, H. R. 2667) provide for the protection of the commerce of the United States against unfair practices in import trade and discrimination against such commerce by foreign countries. In each instance the Tariff Commission is directed, by investigations, to assist the President in the enforcement of these sections. By section 316, unfair methods of foreign competition and unfair acts of importation which, among other things, have a tendency or effect to destroy or substantially injure an economically operated American industry, are made unlawful. Whenever the existence of such methods "shall be established to the satisfaction of the President" he may exclude the articles concerned in such acts from entry without any right of appeal, subject to the executive right to revoke the order when in the President's judgment the condition no longer exists.

That is conferring upon the President of the United States the power to select articles, such articles as in his opinion are made the subject of unfair competition from foreign countries, and to exclude those articles from entry—in other words, issue an embargo against them, and stop their commerce altogether—a far larger power than the power of modifying a duty.

Senator WATSON. Has that power been exercised by the President in any instance?

Mr. EMERY. I do not know whether it has under this act. It has many times in the past.

Senator WATSON. Not under the present act?

Mr. EMERY. I do not know of an instance in which it has been exercised since 1922; but it has been exercised many times in the past 100 years.

Under section 317, act of 1922 (section 338 of the bill, H. R. 2667), whenever the President "shall find it to be a fact" that any foreign country imposes unreasonable charges or exactions on commodities of the United States in transit or reexportation from any country, or discriminates in fact against our commerce by law, or any regulation, so as to place our commerce at a disadvantage with that of any other country, he may proclaim:

> Such new or additional rate or rates of duty as he shall determine will offset such burden or disadvantage, not to exceed 50 per cent ad valorem or its equivalent, on any products of, or on articles imported in a vessel of, such foreign country.

If, after such action by the President, the discriminations continue, the President, "if he deems it consistent with the interests of the United States," may exclude from entry the products of the offending country, "or such articles imported in its vessels as he shall deem consistent with the public interests." This tremendous power is extended to include its application to offset benefits which any third country may derive from the discriminations practiced directly by another country. Thus you have granted to the President, under those sections, the power to remove articles from the free list and place a duty upon them, to place an ad valorem duty of 50 per cent upon them, to select the articles which may be made the subject of the imposition of such duty for the purpose of protecting the commerce of the United States against discrimination by another country.

Senator SHORTRIDGE. That power is exercised under existing law, is it?

Mr. EMERY. Under existing law; and it is a power he has exercised, Senator Shortridge, many times for more than a hundred years, as I shall presently show you; and it was placed in the law of 1922 and is placed again in this bill without any disagreement upon the part of members of either party in any debate upon this measure.

We submit to the committee that these provisions, to which no objection is made, rest upon the same fundamental principles of law as those applied to the flexible tariff in the pending bill, save that the authority vested in the Executive is far greater, for it permits him not only to select, in his discretion, the commodities to which new or additional duties shall be applied, but to proclaim an embargo against any or all offending nations or other countries benefiting by their acts, and to forfeit all foreign goods which may be imported contrary to these provisions; and he may suspend, revoke, or supplement any action which he takes. Indeed, it is difficult to conceive a larger authority vested in the Executive by the Congress for the finding of facts or "a state of things" in which wide discretion is to be exercised in making the policy of Congress effective. Yet in these instances the power to modify or levy a new duty on imports, objected to for a more limited application through the flexible tariff, is employed for the regulation of foreign commerce in the interest of the producers of the United States through Executive action under congressional direction.

In the face of these conceded and repeated grants of extensive authority, what becomes of the continuing objection that the Congress is now asked to surrender its tariff-making and taxing power to the Executive? The pending bill is not a surrender of Congressional authority, but a standing assertion of its power effectively to regulate foreign commerce by a method through which the Executive becomes, as he has been throughout the history of tariff administration, its agent to execute its will, employing such discretion as in the judgment of Congress is essential to effectuate its policy.

Section 336 of the pending House bill conforms fully to judicial and legislative precedent. It lays down a clear and intelligible rule, as definite and workable as those employed to direct Executive action in the past and similar action in the present law, and is a valid exercise of congressional power.

In sequence to the preceding argument, what, then, is the essential legal difference between the grant of authority by the Congress to the Executive contained in section 315 of the act of 1922, paragraphs (a), (b), and (c), and the proposal contained in section 336, (a), (b) and (d), of the House bill, H. R. 2667?

Senator WATSON. Mr. Emery, my attention has been called by the expert from the commission to the fact that on the third day of June, 1924, the President issued an order of exclusion on the subject of revolvers, and on the 28th of April, 1926, manila rope and boltrope. The order of exclusion was issued by the President under the provisions of the existing law.

Mr. EMERY. I was not aware, Senator, that he had acted under it. Of course I knew that the power had been frequently exerted in the past.

The difference lies substantially in a change in the formula of rate-adjustment proposed, and the circumstances which the President is directed to take into consideration in applying the formula.

By the present law, in order to make the policy of Congress effective, the President is authorized to equalize, by limited rate-adjustment, the difference between foreign and domestic costs of production respecting specific articles. By the bill, section 336 (a), the President is directed to equalize "the difference in conditions of competition in the principal market or markets of the United States between domestic articles and like or similar competitive imported articles" within a limitation of 50 per cent. If such specific rate change does not equalize such differences, he makes a finding to that effect, and may proclaim an ad valorem rate of duty based upon the American selling price of a like or similar domestic article, but in such instance he may not decrease the rate more than 50 per cent, nor increase it at all. In applying the principle of competitive equalization directed, the President is to take into consideration, in so far as he finds it practicable and applicable—

(1) Costs of production of the domestic article, or the price at which such article is freely offered for sale to all purchasers in the principal market of the United States, in the ordinary course of trade, and in the usual wholesale quantities in such market; and

(2) Costs of production of the imported article, or the price or value set forth in its invoice, or its import cost as defined in subdivision (e) of section 332; and

(3) Other costs of the domestic article and of imported article (in so far as not considered under paragraphs (1) or (2)), including (A) the cost of all containers and coverings of whatever nature and other charges and expenses incident to placing the article in condition packed ready for delivery, and (B) costs of transportation; and

(4) Advantages granted to a foreign producer by a government, person, partnership, corporation, or association in a foreign country.

The reason for the suggested change of the formula for rate adjustment is to be found in the President's Message to the Special Session April 16, 1929, when he said:

> The formula upon which the commission must now act often requires that years be consumed in reaching conclusions where it should require only months. Its very purpose is defeated by delays. I believe a formula can be found that will insure a rapid and accurate determination of needed changes in rates.

Senator EDGE. Mr. Emery, right there, is it not true also that it was almost legally impossible to secure the actual facts as required by section 315?

Mr. EMERY. I am just going to call attention to that, Senator.

"Costs of production," whether foreign or domestic, as the sole determination of adjustment, have been found in the vast majority of cases to be substantially unascertainable. This branch of argument, however, belongs to the discussion of policy rather than the law involved, and is referred to here merely to indicate the reason for the change.

I am calling attention to some of the evidence in that regard, Senator Edge.

Senator EDGE. I did not wish to anticipate you, but I had that thought in my mind. I am glad to know that you are going to cover it.

Mr. EMERY. Yes, sir.

In view of the right of Congress to confer authority for rate-adjustment upon the Executive, with the aid of a Tariff Commission, and the fact that it has, throughout our history, called upon him to discharge such duties, it remains only to determine whether or not the formula suggested by the House bill is as clear and intelligible a rule and as definite and workable as those employed to direct Executive action in the past and held to be a valid exercise of Congressional authority.

The proposal presented states a method of adjustment which is the very essence of the protective policy. It is to secure, where investigation discloses the statutory rate does not, the necessary adjustment within the fixed limitation which will equalize the difference in conditions of competition between foreign and domestic producers in the principal markets of the United States. In investigation for this purpose the Congress provides for the employment of various factors which may, inter alia, be given consideration by the President in arriving at the result.

If it be objected, as it has been by some, that it is impossible to ascertain the difference in conditions of competition with scientific accuracy or precision, it may be answered that this is not the legislative result sought. As was said by the Supreme Court in the Hampton case, referring to the difference in foreign and domestic costs of production, "it may be that it is difficult to fix with exact-

ness this difference, but the difference which is sought in the statute is perfectly clear and perfectly intelligible." (Hampton *v.* U. S., 276 U. S., 393.) The same objection was made to the power given the Secretary of the Treasury involving the conversion of foreign currency, to which the Supreme Court then replied: "The Government gets at the truth as near as it can and proclaims it." (Cramer *v.* Arthur, 102 U. S., 617.)

It can not be contended that "the principal market or markets of the United States" can not be ascertained, for these have been frequently fixed with respect to various commodities, while the factors chiefly to be had in mind in determining the difference in conditions of competition are set forth in subdivision (d) of section 336 with clarity.

But let us compare the definition of authority here conferred upon the Executive with many which Congress has employed in the past, and which have been sustained. In addition, let us examine the legislative precedents acquiesced in by Congress, the Executive, and the courts over long periods of time:

In the statute reviewed in Field *v.* Clark (143 U. S., 649), the President was empowered to remove commodities from the free to the dutiable list when "he was satisfied" that duties had been imposed by foreign nations upon American exports which "he may deem to be reciprocally unequal and unreasonable." In that instance the President was without the aid and continuing investigation of a Tariff Commission, and the law enumerated no elements which the President was to employ in arriving at his conclusions.

We have previously called the committee's attention to a whole series of statutes in which various tariff duties were to be modified, suspended, or put into force "when the President was satisfied" of a state of things. The Congress has constantly authorized the Secretary of the Treasury to levy additional duties upon imported goods whenever any foreign country or any person, corporation, or cartel gives any aid, bonus, subsidy, or advantage to the foreign producer; and this exercise of discretion in determining the value of any such aids or grants has been fully sustained. (Nicholas & Co. *v.* U. S., 249 U. S., 34.) In all these instances the executive officer is called upon—as the Supreme Court of Pennsylvania said, with the frequent approval of the Supreme Court of the United States—to exercise his judgment with respect to the determination of "some fact or state of things upon which the law makes, or intends to make, its own action depend." (Locke's Appeal, 72 Penn., 491.)

Congress may, if it wishes, make the finding of fact by an executive officer nonreviewable, as it did that of the Secretary of the Treasury in immigration cases. Of this, the Supreme Court said:

> But on the other hand the final determination of the facts may be entrusted by Congress to executive officers, and in such case as in all others in which a statute gives a discretionary power to an officer, to be executed by him upon his own opinion of certain facts, he is made the sole and exclusive judge of the existence of those facts, and no other tribunal, unless expressly authorized by law to do so, is at liberty to examine or controvert the sufficiency of the evidence on which he acted. (Mishamura Ekiu *v.* U. S., 142 U. S., 651.)

Upon Congress alone has been conferred the power to levy duties upon imports. There is no reservation as to the way in which it shall exercise its power, nor the agency which it shall employ, nor

the method by which it shall direct that agency to act. As was said by Chief Justice Marshall in McCulloch v. Maryland (4 Wheat. 315):

> We think the sound construction of the Constitution must allow to the National Legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people.

To the objection that the power sought to be conferred upon the President of the United States by section 336 of the House bill represents a distinct innovation, or is greater in character and extent than any hitherto authorized or proposed, we answer that the power given to the first Presidents of the United States by its first Congresses represented not only incomparably larger authority but greater discretion in its exercise and was granted in more general terms than is proposed by section 336 of the House bill.

By the act of June 4, 1794, President Washington was empowered to place an embargo on all shipping within the ports of the United States "whenever in his opinion the public safety shall so require." The regulation under which he acted authorized him to continue or revoke his orders "whenever he shall think proper."

Senator WATSON. Was that a war-time or peace-time regulation?

Mr. EMERY. It was a peace-time regulation; but it was on account of the disturbed condition of Europe in the Napoleonic wars by which the commerce of the United States was being discriminated against and suffered interruptions; and this was done to compel other nations to observe the neutrality of the commerce of the United States.

By the nonintercourse acts of 1798 and 1799—these, too, are in peace time—President Adams was directed to suspend the restraints and prohibitions controlling intercourse with France, "if he deemed it expedient and consistent with the interests of the United States," and "revoke such order whenever in his opinion the interests of the United States shall require." By the nonimportation act of 1806 the entry of enumerated commodities from Great Britain or her colonies was forbidden; and while the operation of the act was suspended until July 1, 1807, the President was authorized to suspend it still further "if, in his judgment, the public interest should require it." This legislation received the approval of and was administered by Thomas Jefferson.

Thus, Congress after Congress, contemporary with the adoption of the Constitution, authorized the first President, who presided over the Constitutional Convention, and his immediate successors, among the very founders of the Republic, to halt all commerce within his discretion, to suspend or make effective the operation of duties, and to modify within the Executive discretion the rule of Congress in order effectively to protect and regulate the threatened commerce of the young nation. Here, indeed, is a contemporary construction of constitutional delegations of authority by Congress to the President for the levy of import duties and the regulation of foreign commerce which caused the Supreme Court of the United States to say, having these very principles of law under consideration:

> If the decision in the case of brig *Aurora* had never been rendered, the practical construction of the Constitution, as given by so many acts of Congress and embracing almost the entire period of our national existence, should not be overruled unless upon a conviction that such legislation was clearly incompatible with the supreme law of the land. (Field *v.* Clark, 142 U. S. 691.)

What, then, is Congress proposing to do by section 336 of the pending House bill? It directs the President, with the aid of a tariff commission, to ascertain in a given instance whether or not the statutory tariff rate equalizes the conditions of competition between the American and foreign producer in the principal markets of the United States. It writes into the law an effective and practical formula which is the very essence of the protective theory and the last forward step in making it continuously effective, directed to a condition which every business man investigates, studies, and must himself find to remain successfully in business. The Tariff Commission having ascertained the facts in a given instance, the President may, within a limitation of 50 per cent, increase or decrease the rate necessary to adjust the situation found to the declared congressional policy.

Senator WATSON. Are you asking to have that 50 per cent increased?

Mr. EMERY. No, sir; we are supporting the provisions of the House bill. It provides a clear and definite direction for obtaining ascertainable facts. It is not the delegation of power to make a law; for Congress determines what the law shall be, and confers discretion only as to its execution. It presents neither a new principle of law nor a new policy in legislation. The principle at issue has been employed under the direction of Congress from the administration of Washington to that of Hoover, and has been developed under a steady flow of legislative and judicial precedent.

Senator WALSH of Massachusetts. Would you put a limit on the time within which the President should act after he gets a report from the Tariff Commission?

Mr. EMERY. That is a matter of practical legislation, Senator, upon which I think Congress could well express itself if it has any reason to believe that there is undue delay.

Senator WALSH of Massachusetts. Since these flexible provisions have been in operation, Presidents have been known to hold these reports two or three years, and even longer, without action. Do you not think that the business interests of the country have a right to get action by the President after the report comes in, either confirming or rejecting it?

Mr. EMERY. I do. I am very much impressed with the fact that the present President of the United States, in his message to the Congress, based his recommendations for the progressive improvement of the Tariff Commission upon the necessity for getting more rapid action. It is his desire to have it.

Senator WALSH of Massachusetts. You would not object to some limitation on the time within which the President can act upon a report?

Mr. EMERY. Not at all. I think anything that can expedite action within reasonable limits—because the Executive has his own duties to perform—within reasonable limits, would not be objectionable.

Finally, while Congress may not and must not delegate the power to make a law, or levy a tax, or regulate foreign trade, it may and has made many a law to delegate the power to find facts upon the ascertainment of which a rule laid down by the Congress becomes effective. To deny this power would subvert every principle of

authority upon which the appraisement, imposition, and collection of tariff duties has rested from the beginning of our Government. To fail to employ executive agents under this principle would have made and will make practical legislation in our complex economic life impossible.

Wherefore, we respectfully submit that the provisions of section 336 of H. R. 2667 (the House tariff bill) are clearly within the authority of Congress, and subject to no valid constitutional objection.

Ought the policy proposed by section 336, H. R. 2667, to be adopted?

Assuming the constitutionality of section 336 (H. R. 2667), the question remains, Ought the policy proposed to receive the sanction of Congress? That is, ought a flexible tariff to be maintained? Ought the basis of rate adjustment to be changed from the equalization of foreign and domestic costs of production to the equalization of conditions of foreign and domestic competitions in the principal American markets?

The President declared in his message of April 16:

> Seven years of experience have proved the principle of flexible tariff to be practical, and in the long view a most important principle to maintain.

That statement is supported by daily industrial experience, and the fact that the principal competing nations are providing themselves with efficient means of tariff investigation and adjustment.

The economic necessity for flexibility in rate adjustment rests upon the incontrovertible fact that we live in a period of rapid and not infrequently revolutionary industrial change. The discoveries and applications of science, the march of invention, improvement in process, organization, and administrative methods, and the fluctuations of foreign policy, all make it necessary that a means of limited rate adjustment shall be at the service of the American producer if we are to make continuously effective the application of the protective policy.

During the past half century our tariff has been adjusted by the Congress on an average of once in every six years; but within such a period it is a matter of experience that economic changes take place far greater in their influence upon our business and social life than those which marked a period of 50 years in the nineteenth century. It is within the decade since the Great War that the American chemical industry has practically come into existence on a great scale. But older and, indeed, the most stable industries are witness to extraordinary change. Our system of steam-railroad transportation is commonly regarded as one of our most settled industries; yet within a few months the president of the Baltimore & Ohio Railroad—one of the most authoritative of transportation executives—pointing to the development of the competition of the bus and motor-truck on hard-surfaced highways, declared "he must learn the railroad business all over again."

Our tariff structure comprehends some 15 schedules and nearly 3,000 rates. Neither rates nor schedules are independent of one another. Their complex, interdependent relationship is as intimate as that of the infinite forms of production, distribution, and service to which they relate.

The many revisions of the tariff are invincible proof of recognized necessity for adjustment. But such adjustment must be made by special legislation or by an authorized administrative method. Congress long since abandoned an endeavor to deal with the vast, sensitive, and delicate structure of transportation rates, which it turned over to the Interstate Commerce Commission under a working rule expressing its policy. The daily experience of the business world, constantly struggling to adapt itself to the changing circumstances of domestic and world trade, calls for a similar facility to know the facts of tariff operation and apply impartially accurately ascertained information to the tariff schedules which play so vast a part in maintaining our world trade, our domestic market, and the high social level of our national life. Dynamic industry can not live under a static tariff.

All about us is the evidence that other nations are providing the means of accurate rate adjustment and thus securing the most efficient means of commercial defense and attack.

The chief of our Division of Foreign Tariffs in the United States Department of Commerce declared in January, 1929:

> The past decade or so has seen considerable change in the methods of tariff making in many countries, as well as in the tariff policy and trade-control measures themselves. * * * One of the most significant developments in governmental mechanism since the war in the field of tariffs has been the tendency to create special commissions, boards, or committees to carry on the necessary investigations for the Government and otherwise assist executive, cabinets, or legislatures in making their decisions on these problems. (Annals Am. Academy Pol. and Social Sciences, Jan., 1929.)

The British Commonwealths have moved rapidly in this regard. The Australian tariff board makes its recommendations to the Minister of Trade and Customs covering the necessity for new, increased, or reduced duties, and he may not take action until the receipt of their report. Canada, in 1926, appointed an advisory board on tariff and taxation to advise the Minister of Finance on the above subjects and related matters. The Irish Free State maintains a tariff commission, reporting on all cases referred to it by the Minister of Finance concerning the modification, abolition, or removal of customs duties or the importation of goods. Great Britain, through a board of trade, whose president is a cabinet officer, appoints committees of inquiry on application of particular industries for "safeguarding" or protection, and orders may be made after consideration by the board of trade and treasury, through a parliamentary bill which the cabinet officer, being a member of the cabinet, presents in their name.

Senator WALSH of Massachusetts. Have any of these ministers power to change rates?

Mr. EMERY. No; but the legislative authority is supreme in Great Britain, and there the cabinet officer puts it through the council.

Senator KING. His recommendation is based upon the policy of the party in power?

Mr. EMERY. Yes.

Senator KING. And becomes, then, a legislative act.

Mr. EMERY. There is a permanent statute in Great Britain under which they are acting in these so-called safeguardings of industry; but it is an application of the protective principle to such British industries as can demonstrate the need for it.

Senator HARRISON. To whom do they report, in most instances, in the various countries to which you refer?

Mr. EMERY. They report to various executive officers mostly.

Senator HARRISON. For instance, in Ireland?

Mr. EMERY. To the Minister of Finance, who is a cabinet officer.

Senator HARRISON. And in Canada to whom do they report?

Mr. EMERY. In Canada, to the Minister of Finance.

Senator WALSH of Massachusetts. And in Australia the same?

Mr. EMERY. In Australia the same.

Spain maintains a permanent tariff commission, as does Argentina; while in Cuba the tariff commission reports directly to the President, who has full power to revise the customs tariff.

The formula proposed in the pending bill, the equalization of conditions of foreign and domestic competition in the American market, is proposed to replace the formula of the present law, the difference between foreign and domestic costs of production. Data with respect to foreign and domestic costs of production are in a great majority of instances substantially unobtainable, or, where they can be had even approximately, involve great delay. The cost of production is not a standardized thing. It is commonly recognized that it varies in the same industry with respect to the same commodities at different times, in different places, and under different circumstances. The comparative data for foreign production-costs confront the same difficulties, in addition to our inability to compel such information as is available. This situation is well expressed in three statements, one by Professor Jastrow, the economic representative of the German manufacturers, and by two published reports of American officials in France.

Professor Jastrow made this statement to the agents of the Tariff Commission at a meeting arranged for them with German manufacturers in 1921:

> It is suggested that German production costs should be ascertained in order to base American tariff rates thereon. I have followed during the last twenty or thirty years the efforts of the German manufacturer to determine accurately the cost of production of the articles he manufactures, and I have failed to find that any one of them has yet discovered a method by which he could exactly establish his production-costs. As we in Germany do not know our cost of production, what reasons has the United States for hoping to determine our cost of production which we do not know ourselves? I should like to know something about the methods which the United States may employ to be able to bring this about.

Then the agent of the Tariff Commission in France, who went there, wrote on December 4, 1922, speaking of the French authorities and manufacturers:

> They are opposed to and will undoubtedly obstruct as much as possible any investigations which the commission may desire to make in France. They have informed me that the French Government itself has never been able to pass even a census law which would go beyond verifying the number of establishments and workers therein, and that even for fiscal purposes French officials have difficulties in getting at the books of manufacturers and merchants. That it would, therefore, establish a very dangerous precedent to grant the right to a foreign official to vertify costs of production in France * * *. However, to facilitate the work of the Tariff Commission the Government and the National Association would endeavor to supply the commission with all information of a general character, so that it would be spared the trouble of making a research for statistics distributed throughout numerous publications.

And, finally, the American consul at Marseilles reported, under date of November 15, 1922:

At a meeting held by French manufacturers on this subject—

That is, the ascertainment of production costs—

at Paris on October 21, 1922, the principal speaker took the attitude that production costs can not well be set forth by French manufacturers. He said: "There can be no question of hunting out or revealing their costs of production. The diversity of conditions within any industry is such that investigations of this kind could not give results of practical utility" * * *. The meeting * * * agreed with the foregoing attitude, and decided to collect information showing merely the proportions in which production has become more expensive in France since before the war. Even these data, which can aid the Tariff Commission very little in seeking to render section 315 operative, are to be revised and interpreted by the French Ministry of Commerce before they are made available. * * * They have always resented investigations by American agents into their costs of production; and it is very doubtful whether such investigations, if made without their genuine cooperation, will yield results conforming to the necessities of the Tariff Commission under the rigid terms of the act. It is to be recognized that there is some reason in their argument that it is impossible to establish any stable average for production costs in many industries.

Senator WALSH of Massachusetts. Is it not true that the Tariff Commission here has had a great deal of difficulty in determining the production costs in many American industries?

Mr. EMERY. Yes; because the industries have the same difficulty in determining it themselves.

Senator EDGE. Referring to the statement of the consul in France, is it not true that in 1927 the French Government officially denied entry to the representatives of our customs authorities?

Mr. EMERY. I am informed that many representations have been made to the State Department from time to time and objections made to any pursuit of these inquiries.

The CHAIRMAN. They went further than objections, Mr. Emery. They absolutely prohibited it.

Senator EDGE. We actually withdrew the agents, I think.

The CHAIRMAN. And we have not any agents there. We can not get any information in any way, shape, or form.

Senator KING. There is some evidence before one of the subcommittees to the contrary—that is, that we can get evidence.

The CHAIRMAN. They could not get it if they had no agents there, could they?—and they have none.

Mr. EMERY. The new formula proposed is the very crux of our industrial policy. It can be intelligently applied upon facts as definitely ascertainable as those which Congress has employed for its own conclusions. It expresses a "state of things" continuously investigated and ascertained by every business concern facing foreign competition, as an unavoidable condition for its own success. It is found by every American business man, as I have said, as a condition of his continuing in business. The protection of American production in all its forms, of our wage-earners, our social levels, our domestic market, the very foundations of our national prosperity rest upon the equalization of foreign and domestic competitive conditions in the American market.

We therefore submit that the policy proposed by section 336, H. R. 2667, ought to be adopted.

Ought the Tariff Commission to be reorganized in the manner proposed by section 330 of the pending House bill?

By section 330 it is proposed to give the President the authority to reorganize the commission, compose it of seven, instead of six, members, reduce the terms of office from 12 to 7 years, increase the compensation from $7,500 to $12,000 per annum, and, instead of the qualification that not more than three of the commissioners "shall be members of the same political party," provide that each commissioner shall, "in the judgment of the President, be possessed of qualifications requisite for developing expert knowledge of tariff problems and efficiency in administering the provisions" of the law.

The authority given to the President to reorganize the Tariff Commission is but a recognition of the power of Executive removal upheld by the Supreme Court in Myers *v.* United States (272 U. S. 52). The provision for a seventh member is a practical proposal to prevent deadlocks, although the record of the commission shows that of 165 reports and surveys made between 1922 and February 25, 1929, 147 were unanimous, and but 18 showed dissent, which compares favorably with the proceedings of judicial bodies.

It is submitted that the increase in compensation suggested is deserved by the character of the obligation imposed, special knowledge and qualification required, and will retain or attract the high order of talent desired. We believe a longer term of office expedient, for the independence of the commission from partisan consideration is vitally important. We do not assume, and practical men can not, that men will deal with the subject of the tariff without prepossessions or opinions, nor do judges do so in the discharge of their high legal duties. But the qualifications required by the present law emphasize political affiliations, while those of the proposed bill emphasize the special qualifications of the commissioner for the impartial investigation and ascertainment of facts.

The Republican Party, by the frequent statement of its executives, and by its responsibility for the enactment of the flexible provisions of the act of 1922, has given its steady support, as does its party leader, the President, now, to the continuance of the flexible provisions and a progressive development of the commission itself. The Democratic Party, by its platform, and announcement of its executives and presidential candidates, has equally committed itself to the continuance of the flexible provision and an attempt to secure an independent, nonpartisan commission.

The Democratic platform of 1928 declared for:

> (c) Abolition of log-rolling and restoration of the Wilson conception of a fact-finding Tariff Commission, quasijudicial and free from the Executive domination which has destroyed the usefulness of the present commission.

The Wilson conception of a Tariff Commission was set forth in a communication from Woodrow Wilson to the Hon. Claude Kitchin, then chairman of the Ways and Means Committee of the House, January 24, 1916. In the course of his letter, President Wilson said:

> What we would need would be, above all things else, a board (tariff board) as much as possible free from any strong prepossession in favor of any political policy and capable of looking at the whole economic situation of the country with a dispassionate and disinterested scrutiny.

After further discussion of the functions such a board could discharge, he continued:

I have gone into these particulars because I felt that they would make clearer than I could make it in general phrases my idea of the field of unpartisan inquiry within which such a commission could render a useful and perhaps indispensable service to the country.

The last presidential candidate of the Democratic Party, the Hon. Alfred Smith, elucidating its tariff planks, declared:

In the belief that provision for a bipartisan tariff commission promotes rather than eliminates politics, I would ask Congress to give me authority to appoint a commission of five members from among the best qualified in the country to deal with the problem, irrespective of party affiliations, with a salary sufficiently large to induce them to devote themselves exclusively to this important work. I would consider it my duty to see that this commission was left absolutely free to perform the important duties imposed upon it by law without the slightest suggestion or interference from outside agencies, official or otherwise.

(Speech, Louisville, Ky., October 13, 1928.)

I assume that when Governor Smith was referring to his desire to leave that commission free to perform its duties under the law, he meant free to perform its duties under the flexible tariff as it was the law, and no criticism was voiced to it by any man on the platform, nor by any man on the platform in the course of the campaign.

No one believes that "politics" can be eliminated from tariff policy. But it can be limited within its appropriate sphere. Under the bill political responsibility to the electorate remains where it always has been, in the American Congress, for the declaration of the tariff policy, and in the President for the proclamation, if the facts found make it necessary, of an adjusted rate. Partisan politics expresses itself where it should under our system, through its legislative and executive representatives. The bill recognizes that it ought not to operate, where it has no business to be, in the ascertainment of ecenomic facts.

Wherefore we respectfully submit that section 330 should receive the approval of this honorable committee and the Congress as a practical means of assuring a highly qualified, expert semijudicial tariff commission, expected to be independent in the study of the operation of our tariff system and in the ascertainment of facts upon which the Executive is to predicate administrative rate adjustment.

Senator WALSH of Massachusetts. Have not the most unsatisfactory members of the Tariff Commission in the past been the members of that commission who had no preconceived views on the tariff?

Mr. EMERY. I thought, Senator, that the general criticism had been that they all have too stiffly and too obstinately held preconceived conceptions.

Senator WALSH of Massachusetts. I thought that both parties were rather critical and dissatisfied with the members of the commission who did not have any preconceived views; that the man who had Republican views was satisfactory to the Republicans, and the man who had decided Democratic views was satisfactory to the Democrats, but that the man who did not have preconceived views pleased neither side.

Mr. EMERY. The bill proposes to lay down a policy for the commission to pursue, and the success of the commission is going to depend entirely upon the character of the men appointed and the independence that is given to it.

It has taken 40 years and 35 statutes to develop the Interstate Commerce Commission into an independent commission regulating transportation. It is not too much to hope that in the course of a reasonable experiment, under safeguards, the Tariff Commission may develop the same independence, according to the quality of the men proposed, in the discharge of its important duties, when once the people of the United States understand and realize that the function of the commission is the finding of facts, and not the determination of policy.

There are just two amendments I would like to suggest for the consideration of the committee, Mr. Chairman. One is an amendment to subsection (d) of section 336, and that is as to the time when a proclamation of the President is to become effective. It is definitely fixed there, and is under the law, as 30 days from the time of the President's proclamation. I want to suggest, for the consideration of the committee, a change of that to not more than 30 days from the time the President's proclamation is made, because there may very often be reasons why the time within which a rate adjustment should be put into effect would be shorter.

Senator SHORTRIDGE. Some gentlemen have suggested a longer period, advancing certain reasons for their view, in applying a changed rate. They have suggested that it might apply to merchandise en route, or merchandise purchased under a given rate, or as of the time of a given tariff rate, wherefore they have suggested—I think one witness suggested 90 days.

Mr. EMERY. I was suggesting some flexibility in the application of the time within which it went into operation, because there are circumstances, according to the character of the commodity——

Senator SHORTRIDGE. You suggested not less than 30 days.

Mr. EMERY. I suggested not less than 30 days, because 30 days has been the law for so long that the committee might not be willing to consider a longer extension. If it were, there is no reason why it should not. I do not think that the law ought to go into effect on a day definite. There ought to be some flexibility within which it should become effective, rather than to fix it, under all circumstances, on the same day.

Senator SHORTRIDGE. I see the force of your language now, which I did not fully grasp.

The CHAIRMAN. What change would you suggest?

Mr. EMERY. I suggest this, Mr. Chairman, that it be made flexible; that is, that it be within a fixed limit of days, to be determined in the discretion of the committee, 30 days, 45 days, or 50 days—whatever the commercial evidence before you is as to what time ought fairly to be allowed for the application of the new rate.

Senator SHORTRIDGE. You would not leave the time discretionary with the President or the commission?

Mr. EMERY. No.

Senator SHORTRIDGE. With the President, for example?

Mr. EMERY. You might do that.

Senator WATSON. You said you had another suggestion. What was it?

Mr. EMERY. The other was that with respect to rates which may be made by the present Congress in the pending bill, I think this com-

mittee should consider whether or not it would provide, in any legislation on the subject of rate adjustment, that the rates made in the pending bill shall not be the subject of petition or action by the President and the Tariff Commission until, say, six months or one year after they become effective. That guarantees against any attempt to procure a rapid change of rates without proper investigation; and if this Congress acts upon rates, it is to be assumed that, having carefully examined the facts itself and determined the rates that ought now to go into effect, they ought to remain in effect until there is opportunity to determine the character of their operation.

Senator KING. You would want a few days of peace?

Mr. EMERY. I think there ought to be some proper opportunity for inquiry, so that there would be petitions filed, say, under the law, immediately after the act became operative, and before one could determine what the effect of the operation would be.

Senator CONNALLY. May I ask the witness one question?

The CHAIRMAN. Certainly, Senator.

Senator CONNALLY. Judge Emery, you cited a number of countries that had some device similar to the Tariff Commission as to reporting on rates. Cuba, however, is the only one of those countries that gave the executive the power to put those rates into effect, is it not?

Mr. EMERY. I think so.

Senator CONNALLY. In all the other countries they reported to the minister, and he then had to introduce the bill and pass it through the parliament.

Mr. EMERY. In most of the other countries, Senator, the sovereignty resides in the legislative and not in the executive branch.

Senator CONNALLY. The sovereignty here now, in fixing taxes, is in Congress, unless we give it to the President, but in all those countries the minister has to introduce a legislative bill and pass it through, does he not?

Mr. EMERY. No; I think in Australia rates are made effective directly through the operation of the commissioner's order.

Senator CONNALLY. Are you sure about that?

Mr. EMERY. I think so. I am not so sure about the Canadian situation.

Senator CONNALLY. In England they have to pass a bill through.

Mr. EMERY. England is a government by a committee of Parliament.

Senator CONNALLY. I understand, but it has an executive.

Mr. EMERY. It acts very rapidly.

Senator CONNALLY. Canada has a Governor General, just as England has a King. Of course, the minister is the Government, in fact.

Mr. EMERY. I was referring to the British practice. I say the Government of Great Britain is a government by a committee of Parliament.

Senator CONNALLY. In fact; but in name the King governs. You agree with the President, do you not, in reference to this matter?

Mr. EMERY. Yes.

Senator CONNALLY. You also agree that the tariff adjustment ought to be limited to a very few schedules, do you?

Mr. EMERY. I am not discussing rates, Senator.

Senator CONNALLY. I am asking your views as to rates.

Mr. EMERY. I have no views on rates.
Senator CONNALLY. You have no views on rates at all?
Mr. EMERY. I am not in position to express, on behalf of men who have many views, and any view on rates.

FLEXIBLE TARIFF

[Sec. 336]

STATEMENT OF HON. MARION DE VRIES, WASHINGTON, D. C., REPRESENTING THE TANNERS COUNCIL OF AMERICA

Mr. DE VRIES. The next subject to which I wish to direct attention is section 336, at page 369. That is the flexible tariff.
Senator SHORTRIDGE. What section is that?
Mr. DE VRIES. Section 336, page 369, flexible tariff.
What I have to say with reference to that section touches upon its constitutionality and wisdom.
There is printed in the Hearings before the Committee on Ways and Means, Vol. XVI, pages 10122 to 10171, inclusive, Tariff Readjustment, 1929, a brief prepared with great care assembling numerous pertinent statutes and decisions which I am sure will be found to contain ample legal authority in support of the constitutionality of a flexible tariff, the duty laid by which is in the exact terms of that employed in section 336 of the House bill, to-wit, "differences in conditions of competition in the principal markets of the United States" of competitive foreign and domestic products.
It is respectfully suggested that the student of this most important subject examine the precedents and authorities therein fully and with care. It is essentially the brief presented to the United States Senate in support of section 315 as introduced in the Senate in 1922, and to an extent the foundation of that presented in the Supreme Court of the United States, in Hampton & Co. *v.* United States (276 U. S. 394), wherein the constitutionality of section 315 of the act of 1922 was upheld. It is confidently predicted that no legal objection has ever been raised against the constitutionality of a properly phrased flexible tariff, such as section 315, the current law, which is not fully and completely answered by the assembled authorities in that presentation.
It should be borne in mind that the yardstick of measurement, as is conveniently termed the delegated facts to be found by the President, determinative and in limitation of his actions, the subject of that brief is precisely the language of section 336, H. R. 2667, to wit:

> The differences in conditions of competition in the principal markets of the United States between similar domestic and foreign products.

It is not intended here to repeat matters therein stated, but to briefly analyze the constitutional requirements of such legislation, and, in the light thereof, attempt answer of some of the criticisms that have been made against the constitutionality and the wisdom of section 336.
In passing, I desire to state that in my opinion section 336 in some particulars is inadvisedly drawn. It purports to paraphrase in the main section 315 of the act of 1922, which has been held constitu-

tional by the Supreme Court of the United States, but in some unnecessary particulars departs from the phraseology of that section to such an extent that at least such a serious question as to its constitutionality is presented as will invite litigation. These matters, however are easy of remedy by employment in so far as possible of the language of section 315.

The integral framework of a flexible tariff founds its constitutionality upon a few simple well recognized principles of well established constitutional law affecting the delegation by the Congress of its particular prescribed powers. They are as follows:

The Constitution itself recognizes two classes of powers vested in Congress, one class of which can be delegated and the other class of which can not be delegated. The former is the power to make the the law. The latter the power to execute the law.

The power to lay import duties can not be delegated, nor is the same delegated by the flexible tariff. The Congress itself, in both section 315 and section 336, lays the duty. The levy thereof is expressed in a state of facts. The determination of that state of facts alone, a purely administration function, in execution of the congressionally exercised levy of the duties, is delegated to the President.

Senator REED. Is that true when an article is transferred from the free list to the dutiable list?

Mr. DE VRIES: That is one of the means of carrying it into effect.

The Congress lays the duty when it prescribes that the amount thereof shall be the difference in the conditions of competition between foreign and domestic goods of a similar character in the principal markets of the United States.

Having thus levied duties in a state or condition of facts, it delegates to the President the administrative function in execution of that exercised legislative power of finding the facts made by Congress determinative of the duty laid. There is no discretion—there is no legislative function—vested in the President; there is purely and simply a fact-finding function, nothing more, nothing less.

The key words in that particular are the words "so shown" or "shown by," or the like. A close examination will disclose that the President can adopt no finding in his discretion but only those findings "shown by" the prescribed facts subject of his investigations.

Nor in adopting the means for the equalization of the differences so found, though discretion therein is constitutionally permissible, can he under section 315 exercise any discretion.

These different means are set out in the act as the change of rates or of classifications or of bases of appraisement, etc.

Under section 315 the President has no discretion as to which of these he will adopt, having ascertained a certain difference, but he must adopt that one or more of the same which are "shown by" his investigation, and the difference thus found, necessary and sufficient to equalize that difference. These distinctions, while technical, go to the very foundation of the constitutionality of this provision and render it invulnerable to legal attack.

The authority for these distinctions rests not alone in the decisions but also in the language of the Constitution itself. Thus Article I, section 8, subsection (1), says:

The Congress shall have power to lay and collect taxes, duties, etc.

Having exercised this power, as in these provisions of law, by laying the tax in a state of facts as stated, Congress then proceeds under subparagraph 18 of said Article I, section 8, which empowers Congress, having once exercised its power to lay and having laid a tax, to "make all laws which shall be necessary for the carrying into execution of the foregoing powers." Thereby the Constitution vests full, complete, and unrestrained authority in the Congress to make all laws which it may deem necessary and proper in execution of an exercised power of the levying and collection of duties thereinbefore confided to it as a legislative power.

In the light of these general principles, let us take a comprehensive view of the tariff legislation of the Congress from the foundation of the Government. I speak now, of course, solely of the general principles of legislation.

Commencing with the tariff act of 1789 and concluding with the instant law, Congress has in part laid its import duties by providing in the dutiable provisions ad valorem and specific rates. But that is not a complete levy of duty. That would be wholly and completely insufficient and incomplete were it not for the administrative provisions.

The Congress then proceeds in its administrative provisions in completion of its levies by providing a basis therefor, in terms of prescribed facts, such as weights, measures, count of threads, market values and costs of production, and then prescribes that these shall be determined by a delegatee of Congress.

As to these provisions that delegatee is an officer of the customs who determines certain facts, to wit, the measurement, weights, count of threads, and the other data the bases of the specific duties.

The ad valorem rates of duty standing alone are also incomplete. They are complete when Congress prescribes the bases thereof, such as market values, costs of production, etc., leaving the finding of these facts to a delegatee of Congress, to wit, an appraising officer, who must find these prescribed facts by ascertaining the foreign market value or the home market value or the costs of production of the particular merchandise upon which the rate of duty is predicated by Congress, as prescribed in the administrative provisions of the act.

It has been said by eminent critics of the flexible tariff that the delegation of a power to determine our import duties as therein provided was previously unheard of in the legislation of the Congress of the United States or any parliament of the world.

It is respectfully submitted that if these contentions are correct, there never has been a constitutional tariff act adopted by the Congress of the United States, for the reason that there never has been an import duty laid by the Congress of the United States, an integral and necessary part of which levy was not expressed in terms of a prescribed state of facts, the ascertainment of which in order that the amount of duty laid might be ascertained, was delegated to some delegatee of Congress.

So that, if the flexible tariff is unconstitutional, every tariff since the foundation of the Government for the same reason, has been and the current act is unconstitutional.

An integral and necessary statutory part of the Congressional levy of every ad valorem and, at least the greater portion of the specific duties of all our import tariff acts, has been and is, in the terms of a

state of facts, the ascertainment of which has been delegated by Congress to some designated official of the Government.

Section 315 of the current act and section 336 of the House bill do simply that and no more.

Throughout the whole bill Congress so lays all its duties, and, then, adopting identically the same principle of legislation, by section 336 levies a fixed duty in terms of prescribed facts amendatory thereof upon all specified imports, effective and conditioned upon the President finding and proclaiming the facts thus made determinative of the duties thus laid by the Congress.

The identical constitutional principle supports all. If the one is unconstitutional, all are, for an integral and necessary part of the levy of each is rested in a prescribed state of facts.

The foregoing conclusion is subject to the single consideration, which presents to my mind the only debatable issue here presented, and this is, Are the facts the ascertainment of which is delegated to the President by section 336 "certain and ascertainable"?

The facts delegated to an appraising officer by our tariff laws from 1789 to date for ascertainment were "market values," "actual sales prices," "cost of production," and the like, as determinative of the duties laid.

Those in section 336 are "the differences in conditions of competition in the principal markets of the United States, of like foreign and domestic products."

The delegated facts to be found by the delegatees in all such cases have come in the law to be conveniently referred to as the "yardstick of measurement."

Let us analyze the prescribed facts to be found by the President, or yardstick of measurement under section 336, "the differences in conditions of competition in the principal markets of the United States" between articles of foreign production competing therein with similar articles of American production.

It would seem that the necessary implication, if not mandate of statute, requiring investigation and determination of conditions in the "markets" of the United States, clearly directs such as to market values or sales prices.

All must know that such foreign competition is manifested solely by wholesale prices. But it is manifest that the yardstick of measurement of such duties to be determined could not be based solely upon the differences between relative sales prices in our markets of domestic and similar foreign products, unqualified, because the foreign product sells up as closely as possible, sometimes for more than the domestic production, according to the relative qualities of the products and the particular market demands.

Such could be made the yardstick of measurement by use of a statutory spreader, such as confining each, the foreign and domestic market value, to a certain percentage of profit over cost of production. After all, these "differences in conditions of competition" of foreign and domestic products in our markets mean nothing more nor less than taking as a standard relative wholesale market sales prices in our markets and working back therefrom and thereupon to and including the cost of production of each, ascertaining and equalizing the several conditions constituting or making these differences. Necessarily they include, and include only for the purposes of import

duties, those factors constituting the actual cost of the foreign competing product laid down in our markets. It seems trite to say that such relative conditions consist solely of cost of production plus costs of transportation plus influencing imposts and regulations.

Now, this section 332 (d) and section 315 (c) either do or should prescribe precisely what conditions or factors the President shall take into consideration in this determination. If the legal construction of these enumerations is ex industria a statutory limitation upon the President in such investigations, they should and can easily be so made. In that view this act should not be characterized as the flexible but the inflexible tariff; for not only is the delegation of facts to be found "certain and ascertainable," but they are or should be expressly enumerated and prescribed by the statute itself.

That the two provisions of the act—that prescribing the yardstick of measurement, to wit, "the differences in conditions of competition," and the therein prescribed enumerations which the President must take into consideration, the one limiting and expanding the other—must be read together, is settled by the decision of the Supreme Court in the Hampton case. Indeed, section 336 further in detail limits and defines the President's authorized factors of investigation and determination by further precisely defining and limiting in subdivisions (d) and (g) what competitive trade conditions or facts the President shall take into consideration. Indeed, that point is settled in many other court decisions.

In our studies of the constitutionality of this section 336, this is a most important consideration, for thereby it inevitably follows that the Hampton case has impliedly upheld the constitutionality of this very yardstick of measurement or delegated power. Thus, the Supreme Court, in construing and upholding section 315 in the Hampton case, read the therein prescribed yardstick of measurement, "differences in costs of production of like domestic and foreign articles," in connection with subsection (c) thereof, defining and enumerating what conditions or factors should be taken into consideration by the President, construing the two as a whole, the definition of his powers. Accordingly, while the definition of the yardstick of measure standing alone in that section extended only to costs of production at the plants in this and the foreign countries, the court, by virtue of this provision defining the President's factors of investigation, read and declared the act to mean costs of production delivered in the markets of the United States—exactly what this section 336 provides, and nothing more.

Now, when we compare the two sections, 315 and 336, it will be found that their definitions are essentially legally the same; for while section 315 makes "costs of production" the yardstick of measurement, the definition of factors of investigation therein, subsection (c), included "conditions of production" and "advantages or disadvantages in competition." Section 336 simply reverses this order of definition and limitations, and adopts essentially the language of the combined definitions of section 315. Since, therefore, the Supreme Court has held the ensemble of these provisions of section 315 constitutional, that decision is an authority that essentially the same ensemble of powers in section 336 is constitutional. There seems no escape from that legal conclusion.

Essentially the sole difference in the two sections is that section 315 implied that the President should first find costs of production, and then work up to and including American market competitive sales prices; whereas section 336 implies that the President may commence with American market sales and invoice prices, and work back to and including costs of production; each factor of each estimation being statutorily defined, even to the factors of the costs of production which he may adopt being statutorily limited and defined.

Wherefore, it is respectively submitted that this is not a flexible but an inflexible delegation of purely and solely administrative powers to be performed by the President in execution of a congressional levy of duties, legislatively complete, determined, and fixed.

Now, it is charged that this yardstick of measurement is not certain; that it is uncertain; that it is nebulous; that it is incapable of ascertainment. The precise thing prescribed should be held in mind. It is the difference in conditions of competitions in the markets of the United States of an article the product of a foreign country with a similar article produced in the United States. More concretely stated, it is the conditions constituting the differences in wholesale competitive prices in our markets.

It is respectfully submitted that this is the precise problem which every successful merchant who engages in business in competition with imports into our markets must and does meet every day. Who of our successful merchants of the United States, dealing in such classes of goods, can not tell you the different factors of competition of the imported goods which are meeting his in the markets of the United States? Who of those merchants can not tell you within a fraction of correctness the foreign costs delivered in our markets, and the cost of production and delivery of his own goods in the same markets, the amount of import duties, the transportation costs, insurance—indeed, every factor entering into the different conditions of competition by the foreign product with his? Such is a matter of everyday knowledge of every successful merchant in his line in the United States. To say that the President of the United States, assisted by the Tariff Commission and its numerous members, can not ascertain these differences, is not to be entertained. It is something that every successful merchant of the United States in his line today knows, figures upon, and must conduct his business upon, in order to be successful. Every item thereof he can express in tangible figures, absolutely certain and easily ascertainable.

Commencing at page 10142, Volume XVI, of the hearings before the Ways and Means Committee, in the aforesaid brief, there are set forth numerous statutes of the United States and decisions construing the same wherein is employed a yardstick of measurement, or "facts which were to determine the executive acts" in execution of many Federal statutes, illustrative of and authority for the constitutional latitude permissible of such. A repetition of the same will not here be indulged. The attention thereto, however, of the student of the subject is commended. Suffice it here to say that perhaps the most uncertain and intangible such was that upheld by the Supreme Court of the United States in the great case of Field *v.* Clark, 143 U.S. 649. That case, reviewed and reaffirmed time and again by the Supreme Court, is always referred to as the guide in such determinations. The statute construed was section 3 of the tariff

act of 1890. Therein, in order to suspend certain articles on our free list and put into force and effect certain fixed rates, the President was to weigh the effect upon our commerce of our free-list provisions, then weigh the effect upon the commerce of a foreign country prescribing rates of duty upon our exports generally thereto, balance the two in his own mind, ascertain if, in view of our free concessions, these foreign duties were "unequal and unreasonable" in their effect upon our commerce between the two countries, and, so determining these respective influences upon said trade and commerce "unequal and unreasonable," suspend our free list, and put into effect certain prescribed duties.

Necessarily thereunder the President was compelled, in order to determine equality as prescribed by the statute, after ascertaining the relative effects upon commerce, to translate the same into the terms of the rates of duties to be put into effect. That is to say, this was necessarily involved before he could proclaim that the ascertained effects upon commerce were exactly equalized by the prescribed duties put into effect by his proclamation.

Then followed the Hepburn Interstate Commerce Act of 1906, wherein the Interstate Commerce Commission is required to fix such railroad rates as it shall deem "just and reasonable." There are numerous like statutes in the various States. The constitutionality thereof upon the ground that this yardstick of measurement is indefinite and uncertain of ascertainment has never been held by any court, though indirectly its constitutionality has been upheld by the Supreme Court of the United States. It stands and has for years stood unchallenged.

The early embargo statutes, many of which are cited in the said brief, were by statute to be put into force and effect by the President upon the finding by him that the "public interest should so require," or that some foreign act "violated the neutral commerce of the United States."

Section 303 of the current tariff act, a law since 1897, delegates to the Secretary of the Treasury the power to fix and determine a rate of duty equal to the effect upon our commerce of bounties and grants by any foreign country, and to estimate and proclaim a rate of duty equivalent to that effect upon the imports of such country into the United States.

Conspicuous among such statutes prescribing an exceedingly indefinite state of facts to be ascertained by the President, conditioned upon the exercise of tremendous powers over our commerce, and requiring him to translate commercial effects in ratio of duty, was section 805 of the revenue act of 1916. Therein the President was required to examine the laws, regulations or practices" of foreign nations as to their effect upon our commerce; and if thereby he "be satisfied" that exportations thereto from this country were "prevented or restricted," he was authorized and empowered to "prohibit or restrict" the importation of like "or other * * * products" into this country "as in his opinion the public interests may require." This paragraph is essentially the language of paragraph 317 of the current act. It is respectfully submitted, therefore, that there are numerous statutory precedents, many of which have been reviewed and sustained in principle at least by the Supreme Court of the United States, wherein the facts to be ascertained by the President

determinative of a remedy to be applied or findings conditioned upon his putting into force and effect some statute of national import are far broader, far more certain, far more difficult of ascertainment than the state of facts set forth in section 336, wherein the statute expressly sets forth in great detail the factors of trade to be ascertained by the President in his determinations—facts readily in the possession of every successful competing merchant of our country.

It is respectfully submitted that the prescribed "differences in conditions of competition in the markets of the United States" of a kind or class of articles, domestic and foreign, competing therein, are indefinitely more certain and ascertainable than what is a just and reasonable railroad rate from San Francisco to Chicago.

The yardstick of measurement being "certain and ascertainable," as is this, that and that alone determines the act constitutional, whether or not the other enumerated powers of or limitations upon the President, are binding upon him or are exclusive of the things he may take into consideration. The wisdom of the latter and that they should be exclusive, however, is apparent.

But it is charged that by this legislation Congress surrenders its taxing power unto the President. As has been pointed out, Congress, in principle at least, no more here surrenders its taxing power to the President than it has from the foundation of the Government to numerous appraising officers at the different ports throughout the United States, to whom is delegated in every tariff act the function of finally ascertaining the amount of duties laid by Congress by finding the Congressionally prescribed facts. Since the days of Blackstone it has been settled that no Congress can surrender the constitutional taxing or any legislative function of that body. It seems trite to say that no Congress can at any time nullify any act of the President under the flexible tariff or any other act of Congress, repeal or suspend any power so granted.

So that in effect this is an interim more than a permanent power. Certainly it is not an irrevocable power. World conditions render it absolutely necessary in order to cope with the ever-changing commercial conditions and widespread national activities of foreign nations in order at any time properly to defend our own commerce and markets.

In an excellent recent address by Dr. Henry Chalmers, Chief of the Division of Foreign Tariffs, United States Department of Commerce, it is stated:

> In the newness of our own experience in tariff making with the assistance of a special tariff body, it is probably little realized that the device of vesting in a body outside the legislative some degree of authority in connection with the modification of duties or other measures of trade control is found fairly widely abroad. Reviewing the experience of different foreign countries with the delegation of tariff authority, there appear to be three quite distinct functions with which administrative or executive tariff bodies may be charged. For convenience in identification, these might be termed "tariff-adjusting bodies," "tariff-making bodies," and "tariff-recommending bodies."
>
> The first type is being illustrated by the experience of various European countries during the postwar years. It consisted of authority vested in a ministerial commission or administrative body for making prompt adjustments in the established duties on imports under changing conditions, in the effort to keep the existing scheme of trade control functioning at about its original purpose and effect. The second type of arrangement is most commonly found in Latin America. In many of these countries it has become the fixed practice for the tariff making or changing function to be vested in the President or one of his

ministries, including the authority to change the tariff policy toward a particular product or industry. These administrative decrees become law upon the date set by the issuing official, without requiring approval of the national legislature. The third type is best illustrated by the system growing up in the major British areas, and to some extent also on the continent of Europe.

Nevertheless, the recommended rates of duties by the Chancellor of the Exchequer of Great Britain, the Canadian Minister of Finance, and the Minister of Trade and Customs of Australia, become effective upon recommendation thereof to their respective Parliaments, and so continue until rejected by Parliament.

Can it be said that our Congress can not safely delegate to our President powers readily granted by many foreign nations to their less important officials?

It ought to be sufficient to justify and vindicate the existence and continuance of a flexible tariff to recall to the committee that in the last 50 years we have had but seven reenactments of our tariff laws. The average life of a United States tariff act during the last 50 years has been 6½ years. It runs from 3 years, the life of the tariff act of 1894, to 12 years, the life of the tariff act of 1897. The current act has already been in existence 6 and unquestionably will live to the age of 7 years. Without the flexible tariff there has been and is no power in any authority or official of the United States during these long interims to change a rate or amount of duty to meet an emergency or an economic or commercial necessity without complete action by the Congress of the United States.

In conclusion of the constitutional phase of this presentation, I wish to state that if we adhere to the claimed doctrine that Congress can not delegate any of its constitutional functions in the laying of a duty, there will be no rest for its Members after adjournment. Article I, section 8, subsection 1, of the Constitution so requiring, reads: "The Congress shall have power to lay and collect taxes, duties," etc. Indisputably, if Congress can not delegate any of its functions in "laying" duties, it can not in "collecting" the duties laid, both being coordinate powers limited by identical constitutional limitations. If Congress can not delegate any part of laying the tax, it can not in collecting the tax. So, having laid the tax by this act, that reasoning requires Congress as a whole to proceed from port to port, hat in hand, collecting the duties laid; for that equally is a function it can not delegate to any of its Members, committees, the President, or another.

Such is the position into which the strict construction, unobservant of the cognate provisions of the Constitution, leads. The truth is that the tremendous present and certain future development and ramifications of our national foreign and domestic trade mandatorily require the wise legislator to accept, follow, and applaud those great and far-sighted decisions of the Supreme Court amply supporting the Congress in legislation necessary to adequate governmental functions under our tremendous national progress. To that end, in this situation we need but abide the decision of that court, numerously but most appositely stated in Butterfield *v.* Stranahan (192 U. S., 470–496), where, speaking of a like delegated import taxing power, the court said:

Congress legislated on the subject as far as was reasonably practicable, and from the necessities of the case was compelled to leave the executive officials the duty of bringing about the result pointed out by the statute. To deny the power

of Congress to delegate such a duty would, in effect, amount to declaring that the plenary power vested in Congress to regulate foreign commerce could not be efficiently exerted.

If it be true that our President, whatever his politics or economic beliefs, can not be trusted to execute this completely legislated impost or duty statute, what a sad commentary upon the confidence in the future American Presidents held by the framers of our Constitution. While the Constitution vests in the President the tremendous powers of convening and in cases proroguing Congress, the great power of Commander in Chief of the Army and Navy, repelling national assault, in cases of invading foreign lands, and of removing at will vast armies of public officials and of vetoing the will of Congress, yet we can not in this modern day safely entrust him with the power of increasing or decreasing the duties upon imports after a studied report of the Tariff Commission has shown that the defense of our labor and industries in particular cases so mandatorily requires.

In conclusion, it may well be stated that the reports of the hearings of the committees of Congress, including this, demonstrate that in the last analysis the one ascertainment always sought for the basis of duties is relative costs of production. They are the only sound bases for our protective duties. They are the only fair bases in the interests of our valuable and voluminous import trade. Owing, however, to the natural and growing tendency of foreign producers and countries to resent and refuse inquiry into their costs by personal investigations abroad, that situation and the securing of accurate foreign costs is becoming a matter of our first and great concern in our tariff making.

It is, therefore, suggested that it is of prime importance that the Congress write into the flexible tariff a provision authorizing and directing the commission, after a tentative survey based on American selling prices of foreign and domestic products and invoice prices of foreign products, and allowing appropriate deductions, to declare tentative costs of production and estimated profits, with due and ample notice to all parties concerned that unless such are disproved under oath and appropriate cross-examination, such may be adopted for duty purposes. Thereby, vexatious interference in foreign and domestic industry may be avoided, and the proceedings of the commission be greatly simplified and expedited. This need not involve abandonment of the commission's corrective personal investigations where advisable, necessary, or practicable. If, however, the committees of and the Congress thus predicate tariff legislation effectively, why not its delegatee, with the added security of corroborative inquests within its plenary powers?

It is finally respectfully suggested that the logic and constitutional law which support the flexible tariff in any degree likewise so do with the 50 per cent limitation removed and the added power to include goods upon the free list. If it is wise legislation for any part of the thereby shown deficiencies of existing law, it is for all such so disclosed.

Senator REED. Judge De Vries, would you think that Congress had the power to pass an income tax to be levied at such rates as the President might find necessary to pay governmental expenses?

Mr. DE VRIES. No, sir.

Senator REED. Would not that be the same thing?

Mr. DE VRIES. No, sir.

Senator REED. You furnish a yardstick there.

Senator GEORGE. Would that not be a question of fact?

Mr. DE VRIES. No. I think if the Congress should pass an income tax saying that it should be discovered from certain facts set out by the Congress, and then delegate to the income-tax division the power to find those facts, that would be constitutional.

Senator REED. That is just what I mean. Suppose that we passed an income tax law saying that the amount should be such as was necessary to supply all of the appropriations made by Congress, leaving it to the President to ascertain the rates that would produce that amount of money: That is a question of fact.

Senator COUZENS. May I point out to the Senator that that is just what they did do in the excess-profits tax, where they fixed a yardstick of the average number of people engaged in like industry, and fixed the rate that the corporation should pay. They did just exactly that thing in the excess-profits tax.

Senator REED. They left a very important factor of the tax for executive determination; yes; but I am just going the whole way, and supposing that we levied a tax charging such amount as would equal the appropriations of the Congress.

Mr. DE VRIES. If that should be deemed a certain and ascertainable yardstick of measurement, that would be true.

The trouble would be, there being but one state of facts to which to apply the yardstick of measurement, and that the estimated public revenue need, that that single state of facts could no be translated by the President in the several different income-tax rates and applied to the several different subjects of income taxation without the exercise of a discretion by the President as to the apportionment or actual tax levied or rate fixed upon the several different subjects of such taxation. Such an authorized discretion would be in the actual levy of the tax upon each such subject and not in its ascertainment after levy and would consequently render it unconstitutional. In the flexible tariff there is a different state of facts to be ascertained as the basis of each different rate of duty, hence no discretion in the President in its ascertainment.

Senator GEORGE. Judge, let me ask you this question. Are there not some facts that are essentially within the legislative power, though they are facts; and are there not other classes of facts that fall properly and legitimately within the administrative or the executive branch, or the agency to which the power to find those facts is delegated? Did you give consideration to that thought, if it be worthy of consideration, in your brief, in which I am very much interested?

Mr. DE VRIES. Yes.

Senator GEORGE. I am very much interested in your brief.

Mr. DE VRIES. I think in the brief filed before the Ways and Means Committee, Senator, you will find that subject discussed.

Senator GEORGE. I think that is an essential fact to be kept in mind, that there are some facts that lie so peculiarly within the legislative power—you can not say they are not within the field of facts; you can not brush them aside and say that they are not facts after all—but they lie so peculiarly within the legislative power that they are not to be confused with those ordinary facts that come within the purview of an administrative agency.

Mr. DE VRIES. That is true if those facts are on integral part necessary to the completion of the statute itself; but the statute itself being once completed, then you can delegate the means of finding that, even in the discretion of the delegate.

Senator KING. I suggest, Judge, that if the view which you have advocated here to-day were carried into effect, as I interpret your position, it would mean that the President of the United States, through the instrumentality which might be set up—to wit, the Tariff Commission—would be constantly beseeched by the interests of the United States seeking the exclusion of any competition and seeking larger duties, so that there would be no certainty whatever in the tariff duties.

Today the application would be made for changes; representations would be made, lobbyists would be employed, able lawyers like yourself would appear; and the Tariff Commission or the President would have all of their time engaged in listening to the thousand applications which would constantly be made for changes in the existing rates. There would be no certainty no continuity. No one could make provision for the future, to say nothing of the legal question involved of transferring to the executive branch of the Government powers which I believe belong to the Congress of the United States. You would go a long way toward consolidating the power of the Executive, and depriving Congress of its legislative function.

Mr. DE VRIES. I think in that, Senator, we lose sight of the fact that this act has a section—section 315—which definitely defines the full limitation upon which the President can proceed. Under this act he can not do anything more than take the cost of production in a foreign country, and add to that freights delivered in the markets of the United States. If he goes any further than that, he violates his oath of office. That is section 315.

Senator GEORGE. If he were confined merely to that there would not be so much difficulty, it seems to me.

Mr. DE VRIES. That is my interpretation of it, Senator.

Senator GEORGE. I know that is the construction you put upon it. If that were the construction given it by the courts, then, based upon that construction, I could very well see how they would hold the tax to be valid.

Mr. DE VRIES. That was the logic of the construction of the Supreme Court in the Hampton case as I read it, of the existing flexible tariff.

Senator REED. Why, then, amend section 315 at all? Why not reenact it?

Mr. DE VRIES. I do not see that we make any progress, Senator, except this, which could be adopted by a rule of the President—that, they can commence with American sales prices, invoice prices, and work back; and I think they could have done that under section 315.

Senator REED. The Attorney General has ruled that invoice prices are evidence of foreign production costs.

Mr. DE VRIES. You are quite right.

Senator WATSON. Judge, do you hold that Congress can delegate to the President the authority to take an article off the free list and put it on the dutiable list?

Mr. DE VRIES. I will submit with my brief a provision to that effect.

Senator WATSON. Do you believe that?

Mr. DE VRIES. Certainly it can be done. I would predicate it upon a finding by the President—that whenever the President shall find that an industry in the United States covered by a free-list provision is being destroyed or likely to be destroyed, upon the promulgation of that fact that thereupon the subject matter covered by that provision of the free list should become subject to the active provisions of the flexible tariff.

Senator WATSON. Then, as a condition precedent to that, you assume a protective-tariff policy?

Mr. DE VRIES. Yes.

Senator WATSON. Now, let us suppose that in the next campaign the tariff should be the issue—the straight, square issue—and that the people should vote against the tariff, and send to the Senate and House of Representatives a body of gentlemen (you can call them free traders, revenue-tariff men, or what not) opposed to the tariff; and let us suppose that they should pass an anti-tariff law. We would still have a protective-tariff President, and he might veto it. But, now, in the face of the expressed will of the people, and in the face of the explicit will of Congress, the President might take all the articles that they would put on the free list, or that are on the free list in the existing law, and place them on a protective-tariff list.

Mr. DE VRIES. He could if he made the finding of which I speak; but I do not assume, Senator Watson, that any President of the United States who has before him a fixed statute to follow is going to violate his oath of office.

Senator WATSON. He would not have a fixed statute to follow.

Mr. DE VRIES. The existing one—do you assume that this is repealed?

Senator WATSON. No; it could not be repealed, because he would veto it; but in the face of the expressed will of the people and the expressed will of Congress, which will be a free-trade will, we will say for the sake of the term, he could put all of these articles on the protected list.

Mr. DE VRIES. Not and follow the existing law.

Senator WATSON. Because he would follow a protective-tariff theory as against the expressed will of the people.

Mr. DE VRIES. No.

Senator WATSON. You presuppose, do you not, that this is a protective-tariff Government, and that we can not have free trade, no matter what the people may say about it, if we have a protective-tariff President?

Mr. DE VRIES. No; I do not go beyond statutory law on the statute books, Senator Watson; and I do not assume that any man who is ever elected President of the United States because of some political theory is going to violate the express law or go beyond its limitations.

Senator WATSON. Yes; but you do proceed upon the theory, evidently, antecedent and precedent to your entire proposition, that this is a protective-tariff country, and that the President of the United States, when he finds that an industry is about to be injured, notwithstanding the fact that the Congress of the United States has expressly said that there should be no tariff on that, can take this action. It is not a question that is involved in a protective propo-

sition or in any article that is on the protected list. It is an entirely different measure, as I see it, of value and of tariff rate. But I think your proposition is not sound in that respect.

Mr. DE VRIES. That would depend upon the repealing force and effect of whatever new law Congress would pass upon that subject, and whether or not it repealed the existing law.

Senator REED. Judge, let us take a practical illustration. Does your suggested paragraph take into account the possible insignificance or inefficiency of the domestic industry that is about to be destroyed?

Mr. DE VRIES. Not as I read it. I think as I drafted it originally, though, it must be a substantial industry.

Senator REED. As a practical illustration, take bananas. Forty or fifty million bunches are imported into the United States each year. Last year my recollection is that there were about 5,000 bunches grown at one spot in the State of Florida. As this reads, it would be the President's bounden duty under his oath to put up a protective tariff on that importation so as to equalize the production costs in Central America and in Florida; would it not?

Mr. DE VRIES. You can limit that, Senator Reed, by providing in that provision that it must be a substantial industry in the United States, and such language as would avoid that conclusion.

Senator REED. But you do not have that in your proposed section?

Mr. DE VRIES. I think I did as I originally drew it and as I will submit it to the committee.

Senator GEORGE. Judge, applying Senator Reed's suggestion to paragraph 336 (a)—

> In order to put into force and effect the policy of Congress by this act intended, the President shall investigate the differences in conditions of competition in the principal market or markets of the United States between domestic articles and like or similar competitive imported articles—

and so forth. Would not the very matter suggested by Senator Reed be, and might it not become, a very material element of competition—the efficiency or inefficiency of our production?

Mr. DE VRIES. Yes.

Senator GEORGE. And could you go back simply under this statute to what you say is the yardstick—the difference in cost of production?

Mr. DE VRIES. Yes; and that would be the full limitation of that.

Senator SHORTRIDGE. Your contention is that if Congress could now write into the law those terms, we can, by appropriate language, vest the President with the ascertainment of those facts which would bring about the same result?

Mr. DE VRIES. Yes. Of course, you can put such limitations around the right of the President to take goods from the free list as would meet all emergencies.

Senator REED. I think one of the important functions that Congress performs is the weighing of such intangibles as inefficiency and insignificance of the domestic industry, and I doubt whether it is practicable to transfer that discretion to the President or to a Tariff Commission.

Senator GEORGE. And yet those are facts.

Senator REED. They are facts all right.

Senator WATSON. On the question of free trade Congress, the legislative authority, has the right to originate legislation of this character. It squarely says that an article shall be on the free list.

There is no question involved of the cost of production at home and abroad. It arbitrarily says it shall be on the free list. Now, when it puts an article on the protected list, the idea is to put on your yardstick by which you measure the relative costs of conversion in this country and that country.

Mr. DE VRIES. Yes.

Senator WATSON. And of course the Tariff Commission may say, "Well, you have not laid your yardstick right. You put on 20 per cent when it ought to be 40 per cent." I can understand then why the President should have the authority; but when the legislative authority squarely says, "This article shall be on the free list," what right then has any other authority in the world to say it shall be on the portected list?

Mr. DE VRIES. Only when the legislative authority says it can be taken off on certain prescribed conditions; because we have a lot of things on the free list that ought to be taken off, that this Congress itself is here taking off. It is taking many articles from the free list and putting them on the dutiable list. Other such meritorious instances unquestionably will from time to time arise. It will subserve the purposes of protection of American industries if we have a plenary power in the President to give immediate attention to such worthy cases.

Senator SHORTRIDGE. Ah, but, with respect, Senator Watson overlooks this in your argument: Granted that a given article is to be and is on the free list, the suggested power given to the President is to change that upon the ascertainment of certain facts.

Senator GEORGE. Senator Watson goes farther, and he says that power to ascertain that resides only in the Congress; and I think he is essentially correct.

Senator WATSON. That is right.

Senator SHORTRIDGE. I think you can delegate a vast power to ascertain facts, as the argument here has demonstrated, and as the Supreme Court, I think, has held.

Senator GEORGE. I think so, too; but I do not think it applies to a fact of that kind, because I think that is a matter of legislative determination.

Mr. DE VRIES. The Supreme Court has held in the Head Money cases that what Congress determines to be necessary under subsection 18 of section 8 of Article I of the Constitution, authorizing Congress "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers," is not reviewable.

Senator SHORTRIDGE. That is my thought for the moment—that under that broad power to pass any law "necessary and proper for carrying into execution the foregoing powers" we may provide that a President or a Tariff Commission or an appraiser or other officer may determine a fact which will result, if it be so, in the taking of an article from the free list and imposing a tariff on it.

Senator GEORGE. Judge De Vries, you made special mention of the enumeration of the power of Congress to lay and collect taxes. Following out the same line that we have suggested to you, the collection is necessarily an administrative function, whereas the laying is necessarily legislative in character and nature.

Mr. DE VRIES. Yes. The distinction the Senator suggests is sound and illustrated by different duties of Congress to "levy" a

tax and "collect" the same. Perhaps I should have made more clear that I do not mean to suggest that it is unconstitutional for Congress to delegate as it does the power to collect the tax. That is purely an administrative duty. To lay a tax is purely a "legislative duty." The former may, the latter may not, be delegated. It is my contention that Congress has legislatively laid the tax by adopting therefor a state of facts. My suggestion as to the collection of the tax was in illustration of what I deem the logical consequence of the arguments made against the flexible tariff, to wit, that these enumerated powers can not in whole or in part be delegated. That part of the legislation in the levy of a tax which is related to the fixing of the tax can not be delegated. That part which relates to the ascertainment of the exact amount or the execution thereof can be delegated. The latter is all that is delegated to the President by the flexible tariff.

Senator GEORGE. That is the thought I had in mind.

Mr. DE VRIES. I think there is something to that.

Senator KING. I take it that there will be some discussion of this matter on the floor of the Senate, and therefore that we might well pretermit such discussion now.

Mr. DE VRIES. May I file a memorandum on one or two other paragraphs?

The CHAIRMAN. Hand it to the reporter.

Senator SIMMONS. I should like to ask you just one question. According to your argument, it would be entirely constitutional and legal for the Congress to abolish all tariff laws and confer upon the President plenary power to fix rates, prescribing, of course, a rule upon which those rates should be based?

Mr. DE VRIES. Yes, sir; if Congress wished to do that, Senator.

Senator SIMMONS. You think that can be done?

Mr. DE VRIES. If they fix a definite yardstick of measurement, and say each rate shall be equal to this. That is precisely what Congress has done in the Hepburn Act with reference to railroad rates.

Senator SIMMONS. Would you advise that as a wise policy on the part of the Government?

Mr. DE VRIES. No; I would not, sir.

Senator SIMMONS. If that policy were pursued, assuming that the President would perform according to his best judgment his constitutional duties, would it not be substituting the judgment and the wisdom of one man in the levying of these taxes that rest upon the whole body of the people of the country, instead of resting it in the duly elected representatives of the people?

Mr. DE VRIES. I do not think so.

Senator SIMMONS. Therefore you would think it was very unwise to pursue a policy of that sort?

Mr. DE VRIES. Yes.

Senator SIMMONS. You think it is very wise, after the Congress has put a duty on an article, to give the President plenary power to apply a rule and increase the rates fixed by Congress to the extent of 50 per cent?

Mr. DE VRIES. If Congress fixes exactly some facts or state of facts that shall control the President in fixing that rate.

The CHAIRMAN. All right, Judge; thank you.

STATEMENT OF HON. CHARLES A. EATON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

(The witness was duly sworn by the chairman.)

Mr. EATON. In this statement I desire to call to the attention of your honorable committee certain new and unique conditions under which this and future tariff legislation must be effected as reasons why we should have the flexible provisions contained in the present bill. And I desire to show why in my opinion the solution of these new problems will have to begin, at least, in the method of administering the tariff act.

In order that there may be no misunderstanding of my personal position, I wish to go on record as a firm believer in the principle of the protective tariff, and also as an equally firm believer in the fact that our protective tariff policy has been one of the chief safeguards of our national prosperity and progress.

At the same time I recognize that economic conditions rapidly change and this must involve corresponding changes in the administration of any tariff which functions successfully. For instance, we now have and have had for some time a very high tariff on manganese ore. The records show that the tariff paid on the importation of manganese ore for use in our steel industries is greater than the total value of the manganese ore produced and used in the steel industries in this country. This condition in my judgment demands that the tariff be taken off or greatly reduced on manganese ore. On the other hand the pottery industry in this country is being subjected to such competition from abroad that in the last year the importation of pottery for domestic uses amounted practically to the same as the total output of our home industries. The reason American potteries can not successfully compete with foreign competition lies in the wide spread of wage levels in that industry as between America and other countries. Under these conditions I am strongly for not only an increased tariff on pottery, but a change in the administration of the tariff which will make it possible to have an American valuation of pottery imports.

The changed economic conditions under which the present tariff law must be enacted and enforced seem to me self-evident.

First, we are making a tariff for the first time in our history as a great creditor nation. It is one thing to put up a tariff wall against people to whom we owe money. It is an altogether different thing to put up the same tariff wall against people who owe us money. We have invested in foreign countries or have owing to us by foreign governments enough billions to pay off our national debt and leave a tidy balance.

The second condition which is not as new as the other, but is becoming increasingly important as affecting our tariff legislation is the absolute necessity that our industries are under to find foreign markets. We have in our industries and agriculture at least a 25 per cent productive capacity above the normal demand in our home markets. This shoves us out into the world whether we like it or not.

The third new condition under which the present tariff law must be enacted and operated lies at the very center of the economic structure of modern civilization. It is common to every country and involves the future of all nations and races.

The new condition is the urgent necessity under which all industrial communities lie of finding some way to absorb at a profit the mass production of their industries. In other words the great central problem of our economic civilization is now consumption, not production, the elevation of the consuming power of the masses of men, so that the vast output of organized industry can find a market.

We have an agricultural problem because the people of this country can not consume the great surplus output of our agricultural industries. We have a new emphasis upon our foreign trade because the people of the United States do not and can not consume the whole output of our manufacturing industries. Of course the exception to this is found in commodities which this country can not produce and which must be imported, but the general principle remains the same.

No tariff can function successfully which ignores the problem of consuming power here and abroad. We have in the United States solved the problem of a high mass consuming power more successfully than any society in the world. We have done this by reversing the industrial principle which has obtained from time immemorial in all industrial countries, namely, that low wages mean low cost of production and commercial prosperity can only exist by sweating the laborer. Pay low and sell high has been the prevailing principle. Here in America especially in recent years the leaders in our great industries have discovered that this principle is inherently false. They have adopted its exact opposite.

Pay high wages and sell at a low price is the principle upon which the American industries are now operating with such amazing success. In the administration of our new tariff law we find ourselves faced with these two principles, one operating in most of the outside world, the other operating here. Whether we like it or not this fact will determine the success or failure of our entire tariff legislation. And it is this world-wide condition which I am anxious to have considered in the administrative sections of our present tariff act.

Let us take two illustrations, one Canada, our neighbor on the north, the other Czechoslovakia, one of the most enterprising and progressive communities in the Old World.

The facts which I am placing before you in these two illustrations show clearly that an inflexible tariff which ignores the consuming power of foreign countries can result only in economic confusion, and loss, and a vast increase of ill will, which will react unfavorably upon our home industries.

In the year 1928 the United States exported commodities to the value of $5,128,809,279. In the same year we imported commodities to the value of $4,491,120,064. Of these exports North America took $1,322,882,238, while North America during the same year sent us imports amounting to $960,263,601.

In the year 1928 we exported to Canada commodities to the value of $916,155,506. In the same year 1928 Canada sold us commodities amounting to $488,999,157. Roughly this was about one-half of what we sold to Canada.

In the year 1928 we exported to South America goods to the value of $480,696,126, while we imported from South America goods to the value of $569,507,024. That is, we bought from South America around $90,000,000 more than we sold them, while we bought from Canada about half as much as we sold the Canadians.

A still more striking fact in the total trade in and out of this country during 1928 is that Canada bought from the United States more dollars worth of commodities than all the rest of the North and South American continents and the West Indian Islands, including the Bermudas, put together. Canada is our best customer, buying from us in 1928 more value in dollars than any other nation in the world.

The question arises why can Canada with 10,000,000 or more people become the largest consumer of the output of the industries of the United States in the world, outside of our own country? The answer is that the wage level in Canada approximate ours, which gives the masses of the Canadian people the highest consuming power or buying power in the world, outside the United States.

It is idle to deny that the provisions of the tariff bill which you are now considering more injuriously affect Canada than probably any other country in the world, with the possible exception of Cuba. And Canada has a population of about 10,000,000, while Czechoslovakia has about 13,000,000 or 14,000,000—and that is what I think is the very worst feature of this bill.

Senator HARRISON. What was that statement?

Mr. EATON. The provisions of this tariff will affect Canada more injuriously than any other country in the world, and yet Canada is our best customer.

Senator HARRISON. But when you alluded to Cuba you stated "that is the worst feature of this bill." Do you refer to sugar?

Mr. EATON. Yes, sir. And, as you know, we have a sort of protection over Cuba, Cuba is a baby of ours; and Canada is our best customer. And yet the bill promises to hit these people the hardest of any two nations in the world—which, if enacted into law, would not evidence a high grade of statesmanship.

Now let us turn to Czechoslovakia: In 1928 we exported to Czechoslovakia a total of $5,340,709; over $2,000,000 less than we exported to Czechoslovakia in 1927. In the year 1928 Czechoslovakia sold to the United States commodities valued at $36,800,185; over $5,000,000 more than Czechoslovakia sold us in 1927.

These figures indicate that Czechoslovakia is selling us every year a larger proportion than she buys from us. While her exports to the United States are increasing rapidly, her imports from the United States are decreasing rapidly. Placing these figures side by side we discover that Canada is our best customer and Czechoslovakia takes its place among our worst customers. The tariff bill which you are now considering, if it is put through as an inflexible proposition, will penalize our best customer and reward our worst. In business such a procedure would amount to the acme of stupidity. In politics I can not conceive how it can possibly be described as statesmanship.

A few years ago Czechoslovakia sent some of her bright young men to this country to learn the shoe business. They learned it. They went back and introduced American methods, American management, American machinery, and some American money into the shoe business in Czechoslovakia. As a result five years ago their country exported to the United States 447 pairs of shoes. Last year they exported to the United States over a million and a half pairs.

If you lay an inflexible tariff, say, of 20 per cent in this legislation against the importation of boots and shoes, you will stop Canada

from exporting to this country any of the products of its shoe factories, because the wage level in Canadian shoe factories approximates the wage level in American shoe factories and a 20 per cent addition to the cost of production shuts them out entirely from the American market.

Senator SHORTRIDGE. Did Canada export to us shoes to any considerable extent?

Mr. EATON. She exported to us some shoes, but not to any large extent. I have forgotten the exact figures.

Senator SHORTRIDGE. Canada would not be greatly affected by a tariff on shoes then?

Mr. EATON. No, sir; that would merely be one more pin prick.

Senator SHORTRIDGE. You were comparing her with Czechoslovakia and I wanted to know the relative amount.

Mr. EATON. As I recall the figures, although I have not them with me, I think Canada sent in here something like a million dollars worth of shoes.

Senator SHORTRIDGE. I see.

Mr. EATON. In the case of Czechoslovakia an inflexible tariff of 20 per cent against boots and shoes amounts simply to a slight discount. The reason for this is found in the low wage level paid by Czechoslovakia. The highest skilled labor in Czechoslovakia, established by agreement of metal workers in 1928, is 12½ cents per hour or $6 a week for a 48-hour week. The level of wage rates varies downward in various other industries in Czechoslovakia, and upward to as high as $10.35 a week for pattern makers. This is relieved, however, by a very generous provision that they have for a bonus or insurance against old age. After a worker has been engaged for a certain length of time in the business he receives $3 a year as a bonus over and above these wages, which ought to put him on easy street.

In view of these irrefutable facts it seems to me self-evident that the only workable tariff is one that will lay a light tax upon imports from a country like Canada, which has approximately the American wage level, and a heavy import tax upon countries like Czechoslovakia where they sweat their laborers so outrageously.

Senator SHORTRIDGE. Could that be done under the Constitution?

Mr. EATON. We are acting under our Constitution, of course, and I do not know.

Senator SHORTRIDGE. Certainly; and I mean our Constitution.

Mr. EATON. I should say so.

Senator SHORTRIDGE. I do not know, and am merely asking your opinion.

Mr. EATON. I could not answer. I could not tell you about the Constitution.

Senator SHORTRIDGE. My inquiry is: Could we lay a tariff imposing a certain rate on imports from one country and then a different rate on the same kind of goods coming from another or different country?

Mr. EATON. You can do that by way of a reciprocal treaty, can you not?

Senator SHORTRIDGE. Well, I am merely asking you the question.

Mr. EATON. That is the only way out of it that I know of.

Senator SHORTRIDGE. All right.

Mr. EATON. There is this proposition that came to my attention the other day: Canada has a reciprocal treaty with Czechoslovakia and Canada manufactures electric lamps. The other day a representative of Czechoslovakia came to the Canadian manufacturers and said: Why do you manufacture lamps? Let us manufacture them and sell them to you at about one-half the cost in Canada and you close your factories. There must be some——

Senator SHORTRIDGE (interposing). You can enter into reciprocal treaties, of course.

Mr. EATON. That is what I say. And in view of the situation I should say——

Senator SHORTRIDGE (interposing). Yes, I see what you refer to.

Mr. EATON. The high wages in Canada make possible that country's absorption of more of our exports than any other country in the world. The low wage in Czechoslovakia is the reason why our exports to that country are falling off so rapidly while their exports to the United States are rapidly becoming a menace, especially to our boot and shoe industry. The point of this illustration is that from now on we must make our tariff legislation with reference to the buying power of the different foreign countries. And this buying power, we will find, is determined mainly by the wage level paid in industry and agriculture. And this wage level will be determined in some measure at least by the amount of mechanical power, electrical or steam, per capita used by the various nations.

This idea is just now receiving a very concrete and important recognition. Mr. Henry Ford is building an immense plant for the production of automobiles near London, England. In this plant and in others which he proposes in other countries he has announced that he will pay the same wage level that he is paying in his American plant at Dearborn, Mich. And his reason for this decision is that he wishes to demonstrate to these various countries that prosperity depends upon the widespread buying power among the masses of men and that this buying power can only come about by the payment of high wages coupled with cheap cost of production.

In laying these proposals before your honorable committee, I recognize the difficulties involved in their consideration and application. We have had through the public press announcements made by way of protests against our proposed tariff legislation coming from more than a score of nations. In making the protests these nations are acting strictly within their rights and are possibly discharging their duty. We also representing the American people, have the right while it is also our duty to protect our own interests and our own people by appropriate legislation.

Senator SHORTRIDGE. But we must protect our own interests.

Mr. EATON. Yes; we must protect our own interests as we represent the American people. We have not only the right but have imposed upon us the duty to protect their interests. That is what we are here for.

Senator SHORTRIDGE. That is our first consideration.

Mr. EATON. Yes; and if we do not do it we do not come back.

Senator SHORTRIDGE. That is right.

Mr. EATON. When we have given full recognition to these rights and duties, the fact remains that we have drifted suddenly into a new era marked by new relationships between the peoples of the world.

Isolation, national or individual, is now practically impossible. Every nation is in instant and hourly contact with every other nation. No thought, no movement of any importance can be liberated in any portion of the earth that does not become the common property of mankind overnight.

Especially is it true that economic problems are world problems. Our agricultural problem is a world problem. The finding of a market for the world's surplus of wheat and other agricultural commodities will never be finally solved until the agricultural producers of the world learn to cooperate for this purpose. We will never find in the future full safety and protection for our industries and our labor until we find some way of helping the other nations of the world to achieve the same buying power that the masses of men in our country have achieved through the highest wage level known in history. In this legislation we must protect not only our own home markets for our own people, but also our foreign markets for our own people. We can only do this by devising some plan whereby we shall encourage and increase trade with all countries that have an increasingly high buying power among the masses of their citizens and at the same time discourage trade with countries that have too low a buying power due to a starveling wage system.

In the solution of a world problem so unique, so urgent, so vital we can in this legislation only make a tentative beginning. But we can and we ought to make a beginning. We are setting out upon an uncharted way and must learn by experience. The main thing is to make a start.

I would, therefore, respectfully suggest that your honorable committee give consideration to the embodiment in this bill, in addition to the flexible provisions already contained in it, of a provision calling upon our Department of Commerce and our Tariff Commission to make a study of the whole problem of the tariff from the point of view of the comparative buying power among the nations so that we may have facts on which in the near future we may base appropriate legislation.

Senator HARRISON. What good does it do to ask the Tariff Commission to investigate the facts, like the case of sugar, I might suggest, when they report that they will stand for a tariff of 1.53 in order to equalize the difference, and then the House wants to raise it to 2.40?

Mr. EATON. Well, time and study may work changes, I should suggest.

Senator SHORTRIDGE. The Tariff Commission are not the legislative power, however.

Mr. EATON. No; they are simply the agent of the legislative body, and the legislative body is here to act upon their recommendations as they may see fit.

Senator HARRISON. Can you understand why Congress wants to raise the rate on sugar to 2.40 when the Tariff Commission in a nonpartisan report says the difference between the cost of production here and abroad cannot go over 1.86?

Mr. EATON. That is due in my judgment to two reasons: First, to a lack of faith in the Tariff Commission; and, second, to a very strong faith in the power of the voters.

Senator HARRISON. A desire to get something for their constituents.

Senator SHORTRIDGE. To help Louisiana, for instance.

Mr. EATON. Yes; Louisiana wants protection for their sugar, of course.

Senator SIMMONS. But is that any reason why they should get any more?

Mr. EATON. They have been so slow in asking for it in Louisiana that it may be a good thing to give them very serious consideration.

Senator HARRISON. But they have been very fast in Utah in asking for it?

Mr. EATON. Yes. But can any American stop them from asking for that which they think they should have?

The CHAIRMAN. Every man who comes before the committee has the right to give to the committee his views, and that is the purpose of these hearings. But we are now on the administrative features. We will discuss that difference at the proper time.

Senator SHORTRIDGE. Mr. Congressman, you said we should make a start. We made a start 140 years ago on this very subject. You know that, don't you?

Mr. EATON. Yes; but we have not got very far from the starting point as yet.

Senator SHORTRIDGE. We have got to the point where we are the most prosperous nation in the world.

Mr. EATON. Yes; and I am very anxious that we should continue in that position. Unless we do we blot out of the sky the only star of hope that there is in the world. And my idea is that if we continue in that position we will demonstrate to the rest of the world that it is possible for society to be prosperous, and that other nations will study the reasons and causes of our prosperity, and that our experience and our example will help them to come up to us.

Senator SHORTRIDGE. Certainly.

Mr. EATON. This legislation may take the form of reciprocal treaties with different countries, making it possible to lay a lighter tariff against a country like Canada than is laid against low wage countries. Or it may take the form of delegating authority to the President of the United States acting on the advice of the Tariff Commission to raise or lower tariff schedules within certain limits and upon certain acknowledged conditions and facts.

I recognize the full force of the arguments against the flexible provisions in the bill as it came from the House, but I do not feel that these arguments are valid. The Congress is charged with the supreme duty of effecting legislation for the protection and advancement and guaranteeing the rights of all the people of this Nation. From the beginning the Congress has not only passed laws, but has set up machinery for the administration of these laws and we must recognize that in economic legislation administration is more than half of the problem. A bad law wisely administered is often as good or better than a good law badly administered.

The Congress alone has the power to lay taxation upon the people. But it also has the power to set up machinery for the collection of these taxes. This is true of the income tax. It is true in various other branches of our complex administrative system. Congress has the power and it is its duty to regulate transportation. In the exer-

cise of this power it creates a commission for the administration of the regulatory laws which it enacts. I can not see any surrendering of authority or rights on the part of Congress by establishing helpful principles of administration in the pending tariff law which will make it possible to administer that law in view of the actual economic conditions with which it must deal. And chief among these conditions I place the buying power of the people of the world.

Here in America we are credited with an annual wealth production or national income of some $90,000,000,000, the equivalent of $750 income per capita. As proof that this annual production of wealth is enormous we have seen deposited by over 50,000,000 of our people nearly $30,000,000,000 in the savings institutions of this country. We have in force over $96,000,000,000 of life insurance held by 65,000,000 of our people.

If the 120,000,000 of American people can absorb, say, $60,000,000,000 of the annual output of $90,000,000,000 of wealth, what would happen to this country and to the world, if the same purchasing power were to be enjoyed by, say, half of the remaining population or 1,000,000,000 of people throughout the world? Such a condition would mean the annual absorption by purchase of over $700,000,000,000 worth of commodities annually which would mean a high level of comfort and happiness and safety and economic independence and abundance of labor for everybody everywhere all the same.

I want to see the present tariff legislation make a beginning in ushering in this golden age, not only for the masses of men in our own country, but throughout the world.

Senator HARRISON. If I understand your remarks, you are of opinion that this bill if enacted into law would strike a blow at Canada, which you say is our best customer, and that therefore it is liable to curtail our trade with Canada?

Mr. EATON. Yes.

Senator HARRISON. And in your opinion there are other discrepancies in the bill?

Mr. EATON. Will you permit me to say, not intentionally, but an inflexible tariff that places exactly the same tax on our best customer that it does on our worst customer, must inevitably discriminate against our best customer and in favor of our worst customer.

The CHAIRMAN. What are we going to do with the favored nation clause under your proposition?

Mr. EATON. That is a very difficult and serious question, I think. That is probably the rock that we will——

The CHAIRMAN. That we will smash on, I take it you intended to say.

Mr. EATON. Yes; that we will smash on if we smash at all. I agree with you.

Senator SHORTRIDGE. You regard the mining industry as important, do you not?

Mr. EATON. Yes, sir; very important.

Senator SHORTRIDGE. Still you do not want a tariff on manganese?

Mr. EATON. My reason for that is not a lack of regard for the mining industry, but the fact that the manganese industry in the last few years in this country has only produced 5 per cent of the total manganese used in our industries.

Senator SHORTRIDGE. Is there any reason for that situation?

Mr. EATON. It can not be on account of a lack of a tariff, because they have a high tariff on manganese.

The CHAIRMAN. Well, is there any tariff on manganese ore?

Mr. EATON. Haven't they any?

The CHAIRMAN. No. They want to put a tariff on ore containing over 30 per cent, but all the balance comes in free. The result is that the foreigner just mixes his ores so that they can come in with less than 30 per cent, and therefore they do not pay any duty.

Mr. EATON. Well, that is good.

Senator SHORTRIDGE. That may be a reason why we do not develop our industries?

Mr. EATON. Yes, but you must remember that——

The CHAIRMAN. But let us not now get on to the question of rates. We are taking up the administrative features.

Mr. EATON. Let this flexible provision of our legislation take cognizance of our buying power over here.

Senator HARRISON. As I understand it, you voted for this bill in the House, but you want us to remedy it over here?

Representative EATON. We thought that you would either remedy it or make it worse.

Senator HARRISON. I am afraid we will make it worse.

STATEMENT OF JOHN D. MILLER, REPRESENTING NATIONAL COOPERATIVE MILK PRODUCERS ASSOCIATION

(The witness was duly sworn by the chairman of the committee.)

Senator SMOOT. This is with reference to section 336.

Mr. MILLER. Mr. Chairman and gentlemen of the committee, I appear here to discuss the flexible provisions of the House bill.

The flexible provisions of the act of 1922 were discussed by us before the Ways and Means Committee of the House and will not be repeated here.

Senator WALSH of Massachusetts. Do you oppose the House provisions?

Mr. MILLER. In part, Senator.

As to section 330, which refers to the organization of the Tariff Commission, we approve of changing the number from six to seven. That tends to avoid delays which in the past have been very serious because the members were equally divided in opinion.

We approve the omission of the bipartisan provision, for this also tends to delay and causes controversies, that otherwise would be waged in the Halls of Congress, to be waged in the Tariff Commission.

We are not in accord with that much of the organization of the commission that prescribes a 7-year term, but suggest that every incoming President, immediately after his inauguration, should have the power to appoint four of the seven members of the Tariff Commission. We would suggest that he have the power to change the entire seven but for the fact that it might unduly delay cases pending at that time.

The relation of the Tariff Commission to the President is not comparable with the relation of any other governmental commission to the President. In no small way, in no uncertain way, the Tariff Commission is the advisor of the President.

If I recall correctly, I think Chief Justice Taft, in the Hampton case, used that term—advisor. And we submit to you that it will tend to the dispatch of business, that it will tend to locate responsibility; for we must always remember that upon the reports of the Tariff Commission the President is to discharge heavy and delicate responsibilities, and he should have the advice of a commission of which he appointed at least a majority.

Any evils, either actual or theoretical, that might flow from a lack of continuity of policy are, in our judgment, outweighed by having the majority of the commission at all times in accord with the policies of the President, which policies presumably have been approved by the people in the election of the President.

We approve of the abandonment of production costs, foreign and domestic, being the measure of tariff changes. It has not worked well in the past.

It is extremely doubtful if it can work well in the future.

If by any chance, however, the Senate is of the opinion that it is wise to adhere to the general principle of costs of production, then we still think that the present provision of the act of 1922 should be rewritten, with particular reference to that part of the provisions that makes the difference in costs of production in the principal competing country the costs that are to be compared with ours in determining the measure of tariff rates.

The Tariff Commission has held, and probably correctly, that under this statute the principal competing country is that country from whence the largest quantities of a given product are imported into this country. But while that country may be the principal competing country in that sense, it may not be the country of the most harmful competition.

We have that fully illustrated. Our federation has been before the Tariff Commission at different times. I think we have had cases pending before the Tariff Commission within a little over two months after the Act of 1922 became effective, and ending only with the present proclamation of the President raising the tariff rates on whole milk and cream.

In our investigations in that case as to butter we found that while Denmark was the principal competing country, as measured by the quantities of imports, New Zealand was the country of the most destructive competition.

Therefore, if the Senate believes that the cost of production should continue to be the measure, we urge with all emphasis that that should be so written as to protect American farmers against that country that is the most harmful competitor.

However, we are in accord with the abandonment of the rule as to cost of production and would rather put it upon the basis of differences in competitive conditions.

It may be that the provision as written in the House bill could be rewritten, perhaps, and improved. I have no suggestions to make as to that but the general principle of differences in competitive conditions should be the measure of the changes of tariff rates rather than the differences in costs of production.

Senator WALSH of Massachusetts. What point would you fix for determining that—New York or Chicago or San Francisco?

Senator KING. Or New Orleans?

Mr. MILLER. The difference in competitive conditions. I do not know that I would be prepared to answer that question as to just where.

Senator WALSH of Massachusetts. It makes a great deal of difference, does it not?

Mr. MILLER. It may make some difference; that is true, Senator. Nevertheless, it will probably be found that except as to transportation charges the differences may not be so great between the different markets.

Senator WALSH of Massachusetts. Would you eliminate the transportation charges?

Mr. MILLER. No, sir.

Senator WALSH of Massachusetts. Practically all of these requests involve the item of transportation charges. And you agree with that?

Mr. MILLER. Yes, sir.

Senator KING. Your observations, as I interpret them, have forced the conviction upon me—perhaps I am in error, and that is why I am inquiring—that you are seeking absolute prohibition or an embargo upon imports.

Mr. MILLER. No, sir.

Senator KING. It seems to me logically the argument you are making would lead to that conclusion.

Mr. MILLER. Oh, no; and for this reason, Senator. The costs of production as one measure is one thing, but when we come to apply differences in competitive conditions there may be factors in our domestic markets not reflected in the actual selling prices of the commodities themselves.

Senator COUZENS. Will you name some of those factors?

Mr. MILLER. I will be delighted to do so. But, Senator, that is harmful competition. The one I would mention here and which in its general application is perhaps subject to a large number of ways of application is the intensity of sales pressure.

Everyone engaged in commerce knows that if the producer or manufacturer of a commodity wants to introduce that commodity into any market or to enlarge his sales in that market that more frequently they do it by intensive sales pressure than they do by price cutting, because by price cutting when they have obtained a market, then they will have the labor of convincing the consuming public who are consumers of that commodity that they should bring their prices up again. Therefore, it is intensive sales pressure.

I want home producers to have an opportunity to meet it and I want the President to be in position to protect our own people against them.

Senator WALSH of Massachusetts. That is just the argument which the domestic producers of shingles urged, saying that the intensive sales program of the Canadian shingle mill people have taken the market away from them. Do you think that we should consider that as a factor in fixing the duty on shingles?

Mr. MILLER. I am not at all acquainted with the merits of the shingle controversy. But as a general proposition I think that the President should be at liberty to consider it; yes, sir.

Senator SMOOT. Mr. Miller, in all of the cases that you have had before the Tariff Commission, the basis upon which they recom-

mended the increases on farm products to the President has been in conformity with your views, with the single exception, perhaps, of casein; and isn't it the question of casein that you are directing your remarks to now, and the decision of the Tariff Commission?

Mr. MILLER. In reply to that, Mr. Chairman, I will say that my remarks apply more generally.

Senator SMOOT. But isn't that the particular case that you have in mind, and the only one?

Mr. MILLER. I expected to touch upon that in discussing the 50 per cent limitation, but I would just as lief discuss it now.

I do not recall any of the cases where the tariff rates on dairy products have been raised where they could not have been raised more, and should have been raised more, if it had not been for the 50 per cent limitation.

Senator SMOOT. Well, that is the law——

Mr. MILLER. That is the law. And that is one provision as to which we would ask to have the law changed.

Senator SMOOT. But that is not what you were speaking on; you were speaking as to comparative costs. Instead of comparative costs you now want not the principal competing country but you want it upon another basis. I was wondering why you made that suggestion. In all of the cases that have been before the Tariff Commission, if I am correct, there has been no complaint based upon the present law basis with the exception of the casein case.

Mr. MILLER. I do not think that is entirely accurate, Senator, for this reason: As I now recall it, in the butter case, in which the President proclaimed a change of rates from 8 cents to 12 cents, the evidence before the Tariff Commission—and possibly the Tariff Commission so found—showed that the protection against New Zealand should have been 19 cents.

Senator SMOOT. That is because of the 50 per cent limitation?

Mr. MILLER. That is because of the 50 per cent limitation.

Senator SMOOT. The question as to the principal market never arose in the butter question, until perhaps you made the statement to-day, that I have ever heard of.

Mr. MILLER. I did not understand you, Senator.

Senator SMOOT. The first time I ever heard of that suggestion was when you said to-day you wanted a change in the basis of comparison.

Senator WATSON. As to the principal market.

Mr. MILLER. If the cost of production basis is to be continued as the basis. Oh, yes, we are very urgent as to that.

Senator WALSH of Massachusetts. He also wants the limitation of 50 per cent removed, Mr. Chairman. Mr. Miller, to what do you want that limitation of 50 per cent changed?

Mr. MILLER. We would like to suggest about a 75 per cent limitation and to consider that in connection with a subsequent section of this flexible provision that gives the President the power to change the basis of valuation.

Senator SIMMONS. A little while ago you said that you favored the conditions of competition as the yardstick instead of the costs of production here and abroad, if I am correct. Now, what I would like to have you state definitely to the committee is this: In applying that measurement what costs you would refer to with reference to the domestic article and with reference to the imported article, that is to

say, would you take the wholesale selling price of the imported article in the American market and compare it with the wholesale selling price of the domestic article in the American market?

Mr. MILLER. Yes, I think, as a method of comparison of selling prices.

Senator SIMMONS. That would simply be a difference between the selling price of the foreign article at wholesale and the selling price of the American article of like character at wholesale?

Mr. MILLER. Yes.

Senator SIMMONS. And then you added that this intense drive for business was a material factor.

Mr. MILLER. Most material.

Senator SIMMONS. Well, that intensive drive has grown up out of the fact that the price of staple manufactured products in this country are pretty well stabilized and uniform throughout the country, and it is now a competition not as to price—I am talking about domestic articles now—but it is a competition for customers; and the fact that it has ceased to be a competition in prices and becomes a competition for customers is responsible for this intensive movement about which you speak, is it not?

Mr. MILLER. I would not say so entirely, no, sir. In fact, I think that notwithstanding the many and increasing combinations there are many factors in which there is still a large measure of competition in this country.

Senator SIMMONS. That is, you say that there are many American producers of staple articles who sell that particular product at one price and there are many who sell it at another price that is not a stable price. Now, suppose it be so that we have a market here without any price fixing at all and the competition is as to who shall sell at the lowest rate or the cheapest rate, and that is the competition; wouldn't you have more difficulty under those circumstances in applying your differences in cost of production? You might have one difference in cost of production as to one section of the business and an entirely different basis of competition as to another.

Mr. MILLER. I am afraid I am not catching your question, Senator.

Senator SIMMONS. Well, I can not make it plain while this conversation is going on right around me.

I say, Mr. Miller, assuming there is no price fixing in this country by combination or by association or by agreement, that every merchant or manufacturer is selling for the best price he can get, and therefore they are selling at different prices throughout the country, if that situation existed, wouldn't that make it exceeding difficult to apply your rule of difference in conditions of competition?

Mr. MILLER. I would not think so.

Senator SIMMONS. You would not?

Mr. MILLER. No, sir.

Senator SIMMONS. Then suppose the price of the imported article varied—that is, the importers were in a sharp conflict for customers and they were cutting prices to get the customers and that the domestic producers were doing the same thing. Wouldn't that create a condition where you could not stabilize the conditions of competition? I just want to hear you on that.

Mr. MILLER. I would say, Senator, if domestic manufacturers in competition with each other insist upon cutting their own throats, it is a matter in which Congress should not intervene; but they should be protected against foreigners coming here and doing that.

Senator SIMMONS. That is your answer, is it?

Mr. MILLER. Yes.

Senator KING. Aren't you seeking to accomplish this result—to secure a monopoly of the domestic market and then to commit to the President of the United States practically the control of our tariff rates?

Mr. MILLER. No, sir.

Senator KING. By giving him the opportunity through this Tariff Commission to establish such bases as they see fit for the purpose of determining whether you shall apply not a 50 per cent increase but a 75 per cent increase?

Mr. MILLER. Yes.

Senator KING. So you are seeking really, are you not, to apply an embargo upon products from abroad?

Mr. MILLER. No, sir.

Senator KING. You spoke about the intensiveness of sale pressure. Do you find any such intensiveness from importers as you have, for instance, as between Mr. Ford and the General Motors, and between thousands of our American manufacturers and producers who are pushing with a great deal of avidity the sales of their products throughout the United States?

Mr. MILLER. I can not answer that question.

Senator SIMMONS. My whole question of a moment ago was predicated upon the apprehension that I had that if this rule were adopted we would have price fixing all along the line in this country, and I thought perhaps it was aimed at that object.

Mr. MILLER. No, sir.

Senator SIMMONS. To establish a regular price for things here in the American market.

Mr. MILLER. No, sir.

Senator SIMMONS. That, of course, can not be done unless you practically keep the foreigner out.

Mr. MILLER. Any tariff rate established, of course, influences prices. If it did not, I fail to see how a protective tariff measure could be protective in any great sense. It must influence prices, but is not a price-fixation measure.

Referring again for just a moment to the fact that if the Senate concludes to adhere to the cost of production rule, then we do hope you will give serious consideration to our suggestion that that should extend to the country of most harmful competition and not be restricted to the one country that happens to be the principal competing country.

The next is the provision giving to the President the power to change the basis of valuation.

I will confess that I am at a loss to discuss that because of the lack of definite information.

In such opportunities as I have had to read the hearings before the various committees I have as yet seen nothing spread upon the record to show what that would mean as to the effect upon the tariff rates actually paid. Presumably, however, in the absence of such

definite information I would say that a change to the basis of American selling prices would mean an advance, an increase in the tariff rates actually paid. This seems to be the view taken by the House, because if the President does change the basis of valuation he is prohibited from also increasing the ad valorem rate.

Senator SMOOT. Are you opposed to that?

Mr. MILLER. To that provision?

Senator SMOOT. Are you and your association opposed to that?

Mr. MILLER. Yes, sir. We feel this way about it, Mr. Chairman, that any change, either upward or downward, in the rate actually paid should be by a change in the rate itself and should not be obscured in a proclamation that simply changes the basis of valuation. Indeed, it is difficult for us to see how Congress, with any degree of accuracy, can establish ad valorem rates itself without knowing the valuation upon which those rates are to be computed. We think that that is one subject that should not be delegated to the President, that Congress should establish the basis of valuation for all ad valorem rates.

Senator SIMMONS. And there ought to be one basis?

Mr. MILLER. How is that?

Senator SIMMONS. There ought to be one basis or one yardstick, and not several?

Mr. MILLER. Possibly so, Senator. In the application of this rule to the tariff rates actually established in the House bill—of course, I am referring to the ad valorem rates—the manufacturers or producers of all articles that have been given ad valorem rates have their choice of proceeding in two ways to try to have the tariff rates actually paid raised. One is by asking to have the ad valorem rate itself increased. The other is by having the basis of valuation changed.

When we come to apply that rule to the articles given ad valorem rates in the House bill we find that on agricultural products—at least, this is the report given to me by an accountant whom I requested to check it—106 agricultural products are given ad valorem rates and 2,151 articles manufactured in other industries are given other ad valorem rates.

In other words, they have 20 opportunities to our 1 to obtain increased rates by the mere change of the basis of valuation. And if they have 20 strikes to our 1 it is pretty safe guess that they will make 20 hits to our 1.

Mr. Chairman and gentlemen, I thank you for your courteous consideration.

Senator COUZENS. There is one more question I would like to ask. In recommending the competitive conditions as the basis for determining the rate, rather than the cost of production, you said there were a number of factors outside of the cost, but you named but one, and that was the factor of intensive selling. Have you any other factors in mind?

Mr. MILLER. There are various factors, of course, the sum of all of which makes the competitive relations.

Senator COUZENS. That is what I wanted to know—how many there are and what they are.

Mr. MILLER. Costs of production and sales pressure.

Senator COUZENS. You want the competition conditions considered, you say; you do not want costs of production?

Mr. MILLER. We do not want costs of production as the measure of changes, but they should always be considered when ascertaining the competitive conditions and the differences in them.

Senator COUZENS. I want to understand that. But you said there were factors outside of the costs of production.

Mr. MILLER. The one, the intensive sales pressure, is the one I had in mind. But that can be split up in a variety of ways.

Senator COUZENS. Have you in mind any others at this moment?

Mr. MILLER. No, sir.

Senator COUZENS. That is all I have to ask.

Senator SMOOT. Of course, you understand the power granted to change the basis of valuation is only in cases where the costs can not be ascertained through the President or any agency of the President or the Tariff Commission itself?

Mr. MILLER. Yes, sir.

Senator SMOOT. That is the only chance of changing the basis of valuation.

Mr. MILLER. I do not understand it just that way. It is where the President finds that he can not equalize the differences in competition otherwise. Isn't that the rating of the statute?

I think it is.

Senator SMOOT. Is that all you wish to say?

Mr. MILLER. Yes, Mr. Chairman.

Senator SMOOT. Thank you, Mr. Miller.

STATEMENT OF JOHN E. EDGERTON, NEW YORK CITY, REPRESENTING THE NATIONAL ASSOCIATION OF MAUFACTURERS

(The witness was duly sworn by the chairman.)

Mr. EDGERTON. I am appearing for Mr. H. L. Derby in his absence, the president of the National Association of Manufacturers.

Mr. Chairman and gentlemen, to conserve the time of this committee I shall only make a very brief statement and then yield all of the time which you have so kindly allowed the National Association of Manufacturers to our general counsel, Mr. James A. Emery, who will present our position in support of the flexible provisions of the pending bill.

I wish to say, first, that the National Association of Manufacturers does not represent a group or sectional interest. Its constituency is representative of all trades, of all sections, and of all sides of manufacturers. We are, therefore, not interested as an organization in schedules and rates. We are interested as an organization only in the administrative features of this bill.

There are 74 other associations of manufacturers, trade, State, and local, who, acting independently, have authorized us to represent them on this occasion in support of these provisions of the bill. Those 74 organizations are listed on this paper, and I wish to file the list with the committee.

The CHAIRMAN. You may do so. It will be inserted in the record.

(The list referred to is as follows:)

National Association of Manufacturers, John E. Edgerton, president, New York, N. Y.

American Jewelers Protective Association, Arthur Lorsch, New York City.

American Macaroni Manufacturing Association, T. M. Toomey, Mount Vernon, N. Y.
American Supply and Machinery Manufacturers Association, R. K. Hanson, Pittsburgh, Pa.
Armco Culvert Manufacturers Association, M. F. Shelt, Middletown, Ohio.
Associated Wooden Ware Manufacturers, George Butterfield, Fitchburg, Mass.
Associated Flower and Fancy Feather Association, John M. Meehan, New York City.
Association of Manufacturers of Wood Working Machinery, C. Conrades, Washington, D. C.
Coach Lace Institute, H. S. Blake, secretary, Trinity Court Building, New York, N. Y.
Cold Finished Steel Bar Institute, H. S. Blake, secretary, Trinity Court Building, New York, N. Y.
Commercial Lock Washer Stat. Bureau, H. S. Blake, secretary, Trinity Court Building, New York, N. Y.
Converters Association, Samuel M. Fisher, New York City.
Glazed & Fancy Paper Manufacturers Association, L. I. Houghton, Springfield, Mass.
Graphic Arts Organization, F. M. Leonard, New York City.
Heating & Piping Contractors National Association, Henry B. Combers, New York City.
Manufacturing Chemists Association of the United States, J. I. Tierney, Washington, D. C.
Master Builders Association, Boston, Mass.
Master Dyers Association, Dan F. Waters, Philadelphia, Pa.
National Association of Dyers and Cleaners, Paul C. Trimble, Silver Spring, Md.
National Sand & Gravel Association, V. P. Ahearn, secretary, Washington, D. C.
Natinonal Machine Tool Builders Association, E. F. du Brul, Cincinnati, Ohio.
Paperboard Industries Association, G. R. Browder, Chicago, Ill.
Plyboard Manufacturers Association, M. Wulpi, commissioner, Chicago, Ill.
Silk Dyers Association of America, Paterson, N. J.
Southern Appalachian Coal Operators Association, R. E. Howe, Knoxville, Tenn.
Steel Warehouse Institute, H. S. Blake, secretary, Trinity Court Building, New York, N. Y.
The Drill and Reamer Society, Herbert S. Blake, New York City.
The National Fertilizer Association, Charles J. Brand, secretary, Washington, D. C.
The Piano Crafters' Guild (Inc.), B. H. Janssen, president, New York City.
The Tap and Die Institute, H. S. Blake, secretary, Trinity Court Building, New York, N. Y.
Webbing Manufacturers Exchange, H. S. Blake, secretary, Trinity Court Building, New York, N. Y.
Associated Industries of Alabama, L. Sevier, president, Birmingham, Ala.
Associated Industries of Arkansas (Inc.), J. B. Carter, secretary, Pine Bluff.
The Manufacturers Association of Connecticut (Inc.), E. Kent Hubbard, president, Hartford.
Associated Industries of Kentucky, C. C. Ousley, secretary, Louisville.
Associated Industries of Maine, Benjamin F. Cleaves, secretary, Portland.
Associated Industries of Massachusetts, Orra L. Stone, secretary, Boston.
Asociated Industries of Rhode Island, J. A. Rogers, secretary, Providence.
Associated Industries of Vermont, E. L. Olney, Rutland.
Associated Industries of Florida, Wilkie J. Schell, President, Jacksonville.
California Manufacturers' Association, Fred Boegle, secretary, Oakland.
Colorado Manufacturers' & Merchants' Association, E. G. Dawson, secretary, Denver.
Iowa Manufacturers' Association, Edw. A. Kimball, manager, Des Moines.
Louisiana Manufacturer's Association, George Long, President, New Orleans.
Manufacturers' & Employers' Association, of South Dakota, M. A. Miller, secretary, Sioux Falls.
Nebraska Manufacturers' Association, O. F. Zumwinkel, secretary, Lincoln.
New Hampshire Manufacturers' Association Geo. C. Carter, secretary, Manchester.

New York Lumber Trade Association, New York City.
Ohio Manufacturers' Association, L. B. Webster, secretary, Columbus.
Oklahoma Cottonseed Crushers' Association, Oklahoma City.
Tennessee Manufacturers' Association, C. C. Gilbert, secretary, Nashville, Tenn.
Texas State Mfgrs'., Association, G. M. Knebel, V. P., San Antonio, Tex.
Typothetae of Philadelphia.
The Employers' Association of Fort Wayne.
Employers' Association of North Jersey.
Merchants' and Manufacturers' Association of Toledo, Ohio.
Associated Industries of Seattle.
Manufacturers' Association of Lancaster, Pa.
Wisconsin Manufacturers' Association, G. F. Kull, secretary, Madison.
The Manufacturers' Association of Meridan, (Inc.), W. J. Wilcox, secretary, Meriden, Conn.
Virginia Brick Manufacturers' Association.
East Side Employers' Association, East St. Louis, Ill.
Employers' Association of Jackson, Mich.
Industrial Association of Perth Amboy, N. J.
Industrial Association of Santa Clara County, Calif.
Industrial Association of Utica, N. Y.
Manufacturers' Association of Bridgeport, Conn.
Manufacturers' Association of Jamestown, N. Y.
Manufacturers' Association of Poughkeepsie, N. Y.
Manufacturers' Association of Syracuse, N. Y.
Manufacturers' Association of Wilmington, Del.
Metal Manufacturers' Association of Philadelphia.
Newton Industrial Association, Newton, Iowa.
The Employers' Association of Alliance, Ohio.
The Employers' Association of Portsmouth, Ohio.
Manufacturers' Association of Bridgeport, Conn., Alpheus Winter, manager.

Senator KING. May I ask, somewhat facetiously, if you indorse the view expressed by an eminent manufacturer a number of years ago when one of the bills was under consideration, "We do not care for the rates if we can get what we want through the administrative features?"

Mr. EDGERTON. Speaking as an organization, I can say that that is our view. Of course our organization, made up in part of all of the trades, of all the sections, has seemingly conflicting interests, and with regard to opinions about rates, we can take no part in those discussions whatever. We are interested only in preserving the protection of American industry, and we believe that the flexible provisions of this bill are essential to the preservation of the protective principle in the tariff.

Senator SIMMONS. What do you think would be its effect upon rates? Would it increase rates or lower rates or keep them stable?

Mr. EDGERTON. I think that it will sometimes increase them and sometimes lower them.

Senator SIMMONS. But more times increase them?

Mr. EDGERTON. I do not know about that.

Senator SHORTRIDGE. It depends upon who is President.

Senator COUZENS. Do you prefer the flexible feature being left to the President or to the Tariff Commission?

Mr. EDGERTON. We prefer that it be left just as it is stated in the pending bill.

Senator KING. As reported by the House?

Mr. EDGERTON. As reported by the House.

BRIEF OF THE NATIONAL RETAIL DRY GOODS ASSOCIATION

[Including finality of appraiser's decision, sec. 402 (b), and United States value, sec. 402 (e)]

FINANCE COMMITTEE,
United States Senate.

GENTLEMEN: This brief expressing the position of the National Retail Dry Goods Association in regard to the proposed tariff bill now being considered by your committee is filed in response to the privilege afforded by the Finance Committee of the United States Senate that those interested in or affected by the proposed tariff bill make their views known.

EXPLANATORY STATEMENT

The National Retail Dry Goods Association is a voluntary, nonprofit organization, incorporated under the laws of New York State and consisting of some 2,500 leading retail dry goods and department stores throughout the United States. The aims and purposes of this association are indicated by the following statement of its "objects" as they appear in its by-laws:

"SEC. 2. The purposes of this association shall be to foster the retail store trades, including dry goods, department, and specialty stores, and the interest and well-being of those engaged therein; to reform abuses relative thereto; to secure freedom from unjust and unlawful exactions; to diffuse information as to matters of interest to the retail dry goods, department, and specialty store trades; to procure, where desirable, uniformity and certainty in the customs and usages of the retail dry goods, department, and specialty store trades and interests related thereto; to promote greater cooperation among retail dry goods, department, and specialty stores; to foster the interchange of ideas and systems; to consider and concentrate opinion upon questions affecting the financial, commercial, and other interests of the members; and to promote more friendly intercourse among business men engaged in the retail dry goods, department, and specialty stores trades and between them and those dealing with them."

That the National Retail Dry Goods Association is truly representative of the retail dry goods and department store trade may be inferred from the fact that its members are the progressive retail concerns in any given community, and that it includes as members stores of all sizes whose annual volume of transactions ranges in size from $30,000 up to and in excess of $85,000,000, and the aggregate volume of whose business amounts to approximately $4,000,000,000 a year, a business which requires the services of and provides employment for upwards of 500,000 working people.

It should be clearly understood that stores referred to as "member stores" are distinct and separately owned enterprises over which the National Retail Dry Goods Association exercises no power of coercion or control in any sense or degree through ownership or in any other manner, but which operate their own enterprises in a wholly independent and competitive manner. The National Retail Dry Goods Association does not import or purchase merchandise for its members either here or abroad nor in any way dictate, suggest, or exchange prices. The association is simply a medium for aiding in the development of better distributive methods and for the fostering of the retail dry goods craft as outlined in the foregoing excerpt from its by-laws.

THE ASSOCIATION'S INTEREST IN AMERICAN PRODUCTS

It is worthy of note furthermore that of the entire membership of the Association a very small proportion only do any direct importing, and that as a matter of fact more than 95 per cent of the merchandise sold in member stores is of American manufacture purchased in home markets.

As proof of the keen interest of the association and its members in promoting domestic production and in creating consumer demand for domestic goods, reference is here made to a campaign which the National Retail Dry Goods Association initiated and conducted in 1924-25 which included the following activities:

1. The week of February 7 to 14, 1925, was designated as "Made in U. S. A. Week."
2. The association supplied member stores with a selling plan for domestic manufactured merchandise for each day of the week.
3. It supplied member stores with a number of typical headlines for "Made in U. S. A." advertisements to be used in local papers in the hundreds of communities where these stores are doing business.

4. It supplied member stores with a series of "Made in U. S. A." editorials for publication in connection with their advertisements setting forth the objects of "Made in U. S. A. Week."

5. It encouraged and helped member stores to plan effective window and interior displays featuring American made products.

As an outgrowth of this campaign to promote "Made in U. S. A." products the National Retail Dry Goods Association prepared a pamphlet entitled "A Tribute to American Industries—Promotion Plans with Reading References and Historical Data for a Campaign of Recognition to American Made Goods." This pamphlet was widely distributed by the National Retail Dry Goods Association and it is generally used by retailers throughout the United States as a source of information regarding the promotion of American made products.

THE ASSOCIATION FAVORS ADEQUATE PROTECTION FOR AMERICAN INDUSTRY

It is therefore obvious from the organization and activities of the National Retail Dry Goods Association that it is interested in and advocates an adequate tariff as well as other measures which will serve to promote the prosperity of American industry, to the end that American labor may be fully and profitably employed and that the consuming power of the American people upon which the prosperity of the Nation depends shall be maintained and increased.

It does not seem necessary at this time to call specific attention to the repeated instances in the past where the National Retail Dry Goods Association has gone on record in support of the American system of protection to industry, nor is it the purpose of the National Retail Dry Goods Association at this time to enter into a discussion of the adequacy of rates.

SCOPE OF BRIEF

The scope of this brief is confined to the administrative provisions contained in sections 336 and 402 B and 402 E entitled "Equalization of Competitive Conditions," "Finality of Appraiser's Decision," and "United States Value," respectively.

The opposition to the administrative provisions contained in these sections comes from a body of American merchants, large and small, whose interests are undeniably here in the United States, and who are keenly conscious that their prosperity and well-being are inextricably interwoven with the prosperity and welfare of the American people and who depend on the one hand upon American manufacturers for the great bulk of the commodities in which they deal, and on the other hand upon the maintenance and increase of the consumer purchasing power of the Nation for their very existence.

SECTION 402 B. FINALITY OF APPRAISER'S DECISION

The American merchants, owners of 2,500 stores, comprising the membership of the National Retail Dry Goods Association, are unalterably opposed to section 402–B of the proposed tariff bill which provides that "any decision of the appraiser that the foreign value or export value, or both, can not be satisfactorily ascertained shall be final and conclusive upon all parties in any administrative or judicial proceedings," and further provides for no appeal from the decision of the appraiser as to the valuation basis other than a review by the Secretary of the Treasury, whose decision by this section will be "final and conclusive upon all parties in any administrative or judicial proceedings, and the value of the merchandise is to be determined in accordance therewith."

We are opposed to the administrative provisions mentioned above for the following reasons:

1. *Affords no opportunity for judicial review.*—Under tariff laws since 1890 we had the right of judicial review of the decisions of appraisers in the matter of valuation. Under the Fordney-McCumber Act the decision of the appraiser as to basis of valuation was subject to review by a justice of the United States Customs Court and his decision was reviewable by three judges of that court, sitting as one of the divisions of the court, and by the United States Court of Customs and Patent Appeals.

Under the tariff bill now being considered by your committee no appeal to the courts as to the method of appraisement is permitted; in fact, no full review other than that of an administrative official is possible, the courts being limited to a purely mathematical calculation, regardless of whether they agree with the findings of the law or not.

This provision is contrary to the principles upon which our Government is founded, namely, that the executive branch of our Government shall administer the laws but that the judicial branch of our Government shall interpret the laws.

2. *It deprives the taxpayer of his day in court.*—This provision gives to the Secretary of the Treasury, who is an administrative officer of our Government, supreme judicial as well as executive authority in the administration of the tariff. It very definitely affords no review before any judicial body in the event of error being made on the subject of basis of value.

3. *Danger of error of appraiser's decision.*—There is always present the likelihood that serious error may be made by local port appraisers in arriving at decisions in regard to the basis of valuation of imported commodities. It is unreasonable to expect, no matter how carefully the personnel of the customs division is selected and trained, that such errors will very frequently occur when one stops to consider the enormous quantity of merchandise which passes annually through our ports of entry. In view of the conditions under which port appraisers labor, it would be humanly impossible, even for those who are most scrupulously conscientious in the discharge of their duties, not to be liable to the commission of such errors.

It can hardly be expected, when errors on the part of port appraisers occur in determining the valuation basis are submitted for review by the Secretary of the Treasury, as provided for in section 402–B, that such review shall be other than perfunctory and *pro forma*.

There is also ever present the possibility, and in fact the probability, of difference in opinions on the part of local port appraisers regarding the valuation basis of similar shipments of merchandise in different ports. For example, appraisers in the port of New York may assess ad valorem duties on the basis of foreign valuation, while appraisers in the ports of Boston, Philadelphia, New Orleans, or San Francisco, or in fact at any other port of entry in the United States, may assess duties on the basis of United States value on the same merchandise. Such discrepancies, which are very likely to occur in the decisions of appraisers in different ports, are most certain to result in confusion, embarrassment, and discrimination to merchants handling merchandise for resale to the ultimate consumer. The retailer selling merchandise which has been admitted on the basis of foreign valuation can sell that merchandise more cheaply to the American public than his fellow merchants whose shipment has been valued on the basis of United States value and who thus has been penalized by having his shipment valued on United States value.

Because of the general practice of American merchants of purchasing merchandise for resale to their customers in the large wholesale markets of our country, such as New York, Chicago, St. Louis, etc., it is very probable that competitive merchants in the same city may be carrying the same lines of merchandise at widely ranging retail prices because the merchandise has been imported on a different basis of valuation. Due to competitive conditions in the field of retailing to-day the merchant who has been so unfortunate as to have purchased a line of merchandise landed in this country on the basis of United States value at the arbitrary discretion of the appraisers, and hence has paid more for that line of merchandise than his competitor who has purchased a similar line which was admitted on the basis of foreign valuation, must command a higher retail price for his merchandise with resultant higher cost to the consuming public. Such a condition is most certain to result in confusion, embarrassment, and discrimination, not only to merchants but also to the American consuming public.

4. *Opportunity for misunderstanding and uncertainty on the part of merchants in purchasing abroad.*—It may be asked why merchants of this country are so interested in continuing to deal in foreign-made goods if they constitute so small a part of their total sales, as pointed out elsewhere in this brief. In this connection it may be said that merchants are the purchasing agents for their communities and it is their principal function to serve the legitimate, wide-spread and varying demands of their customers. There has always been and always will be a demand for the novelties of foreign goods by the people of any nation and the merchant who fails to search the markets of the world to satisfy his consuming public fails to function as it is our conception he should function. Moreover, it is a well-known fact that those engaged in production and distribution recognize that many imported products are not in competition to any degree with American-made merchandise. It has come to be a wide-spread practice that merchants in searching foreign markets for new and novel merchandise quite frequently are instrumental in introducing to the American consuming public some article of merchandise which has heretofore been unknown in domestic markets. After this merchandise has passed through a pioneering

stage and after a consumer demand has been developed by our merchants, new domestic industries are set up, thereby opening new avenues for the employment of American labor.

Furthermore, in many cases where this has happened, American manufacturers through their ingenuity and their facilities for machine production have been able to turn out such products at prices lower than those originally necessary in selling similar foreign products in this country; in fact, at prices so low that the foreign hand-made product can no longer compete in our markets. This has resulted in making it possible for the great mass of American consumers to purchase many lines of merchandise at considerable savings when these lines have been produced in domestic factories and workshops. Merchants, therefore, feel that they are not only serving the consuming public of this country by offering for sale foreign goods in their stores, but are encouraging the development of domestic manufacture and further advancing the culture of the American people.

The foregoing statement is made in order that the members of your committee may have a proper conception of the function of the retail merchant of this country in relation to his duty of serving the consumer. He can not hope to perform this function in the future to the full extent that he has in the past if it will be necessary for him to labor under the handicap which section 402–B of this bill, relating to finality of decision of appraiser with appeal to the Secretary of the Treasury only, most certainly imposes upon him in purchasing merchandise abroad to serve the wants of his customers.

A merchant when buying abroad will never know, under the above-mentioned provision of section 402–B, with any degree of certainty upon what basis of valuation his merchandise will be admitted to this country. If in the event that he purchases in the expectation that it will be admitted on the basis of foreign valuation, when as a matter of fact duties are finally levied on the basis of United States value at the arbitrary discretion of port appraisers, it will very frequently happen that the merchandise will be unsalable in this country because of the unexpected increase in landed cost with resultant increase in retail selling price. The confusion and uncertainty which these conditions will bring about will result most certainly in unbusinesslike methods of merchandising and will prove costly to the American retail distributor because of the risk he will incur and the handicap under which he will labor in his desire to meet properly the demands of his consuming public.

5. Will raise the cost of living to the American consumer.—If there is any widespread change from the foreign-valuation basis of levying ad valorem duties to the basis of United States value, this will result in almost every instance in an increase in duties of 50 per cent or more. It follows naturally that the landed cost of merchandise on the basis of United States value will be materially increased with the result that this increase in cost will be reflected in the selling price of importer, jobber, wholesaler, and retailer. Such increase can not be avoided in the selling prices of these various factors in our distributive system if they are to continue to sell merchandise without loss. Hence the American consumer in the final analysis will pay a higher price for any merchandise upon which duties have been levied on United States value, whether it be a necessity or a luxury, than he would pay if the basis of valuation were the foreign value. Any widespread divergence from the foreign-valuation basis of levying ad valorem duties is most certain to increase the cost of living to the American public.

Furthermore, we do not think it is presuming too much to state that there is a very strong likelihood that if under these conditions the price of imported merchandise to the American consumer be substantially increased by levying duties on the basis of the United States value, that American manufacturers of certain lines will find an incentive and encouragement to raise the price of similar domestic manufactured products, with the inevitable result that the cost of living will be even more universally increased.

6. *Promotes bureaucratic government.*—That provision of section 402–B of this bill which provides for review by the Secretary of the Treasury only of the decision of the appraiser on the subject of basis of valuation tends most decidedly to set up governmental bureaucracy in Washington. May we ask your indulgence if we repeat here what we have pointed out elsewhere in this brief, that the Treasury Department is an administrative division of our Government, and that it is contrary to the very principles upon which this Republic of ours was established that an administrative officer or department should exercise judicial powers. This involves the danger, the fear of which is so widely prevalent, that bureaucratic government may usurp autocratic powers which would

tend to destroy the very fabric upon which our governmental institutions are founded.

7. *Inconvenience to citizens of all sections of the country.*—Section 402–B provides that "Upon any such request (for review by the Secretary of the Treasury of the decision of the appraiser as to base of value) the Secretary of the Treasury shall, after reasonable notice and opportunity to be heard has been afforded the consignee or his agent, affirm, modify, or reverse the decision of the appraiser," etc.

Under this provision it is not unreasonable to presume that citizens residing in all sections of the country would find it necessary to come to Washington in order to present adequately their cases before the United States Treasury Department, which would result in delay, and great expense as well as the impracticability of having witnesses appear at such hearings. To the retailer such delays would indeed prove very costly. Seasonal merchandise may be the subject of controversy and it very often happens that if such merchandise is withheld from sale for even a period of one month it depreciates in value and may even become unsalable. Furthermore, it is not apparent how a merchant could satisfactorily present his case through the medium of the mail to the Treasury Department and expect to do justice to the position he has taken, any more than one could conceive of even a minor case being tried in our courts through correspondence.

8. *Question of constitutionality of section 402–B.*—The further fact that an administrative official is clothed with final jurisdiction on the question of determination of the basis upon which the value is to be determined and the duty computed, and the consignee is thereby deprived of his right to a judicial determination of the matter of basis of value seriously raises the question as to whether this provision is in contravention to that portion of the fifth amendment to the Constitution of the United States, which provides that "No person shall * * * be deprived of * * * property, without due process of law."

9. *Danger of United States value for levying ad valorem duties becoming widespread and even universal.*—Under the provision of section 402–B of the proposed tariff bill there is a great element of danger in leaving to the arbitrary discretion of port appraisers such an important feature of tariff administration as determining the basis of valuation without appeal to a judicial body. The basis of valuation of our tariff laws is the foundation of our entire tariff structure. This association, as stated elsewhere in this brief, is unalterably opposed to changing from the basis of foreign valuation as the method of computing ad valorem duties to United States value. The tariff bill now being considered by your committee offers unlimited possibilities for the widespread extension of the use of United States value as the basis of levying duties on many commodities. In fact, we are of the opinion that this is an insidious method of securing the general adoption of the United States value as a basis of assessing duties by administrative decision rather than by the deliberate action of Congress.

It will be readily admitted by all that if the same ad valorem rate of duties is applied that the amount of the duty will be materially increased when assessed upon the United States value basis rather than the foreign-valuation basis. As a matter of fact, duties will probably be increased at least 50 per cent if assessed upon the basis of United States value. If the practice of assessing ad valorem duties upon the basis of United States value becomes widespread, it will result in substantial concealed increases on all commodities, and we reiterate that these increases will not be due to any legislative action of the Congress of the United States but rather will be brought about by the arbitrary and unreviewed decision of port appraisers subject only to the review of an administrative department of our Government.

SECTION 402 E. UNITED STATES VALUE

Our association is opposed to section 402–E of the present tariff bill defining "United States value", for the following reasons:

1. *Practically impossible for appraisers to determine similarity.*—This section reads, "The United States value of imported merchandise shall be: "1. The price at which such or similar imported merchandise is freely offered for sale."

It can readily be seen that appraisers will have great difficulty in determining just what may be regarded as imported or domestic merchandise similar to the shipment which is being appraised at the time. In order to do this satisfactorily and with equal justice to the Government and the consignee, appraisers would have to be equipped with authoritative information concerning almost an unlimited number of lines of merchandise. Method of construction, form, style, quality of workmanship, material contents, varying manufacturing processes, adaptability for different uses are all factors which would have to be taken into

consideration in determining the similarity or nonsimilarity of two items of merchandise. To expect appraisers to be well versed in information of this character, even regarding a limited number of lines of merchandise, is asking something which is almost humanly impossible. In these days of scientific development when combinations of textiles and synthetic materials are being used in the production of merchandise it is impossible even for the experienced professional buyer to ascertain with any degree of certainty the material content of merchandise without resorting to scientific laboratory tests. Yet the material content of merchandise would be a most important factor in determining its similarity or nonsimilarity to other merchandise.

2. *Not possible to determine principal market in many cases.*—In section 402-E there appears the phrase "in the principal market of the United States."

In a great industrial and commercial country such as ours, appraisers will experience difficulty in determining what may be regarded as the principal market for any one commodity. Authorities on marketing themselves would have difficulty in definitely stating that any one city should rightfully be regarded as the principal market for many lines of merchandise. As a matter of fact, the framers of section 336-A of the present tariff bill, entitled "Change of Classification of Duties," recognize the fact that there may be more than one principal market for any given commodity when they use the phrase "in the principal market or markets of the United States."

3. *Price and uncertain factor.*—Furthermore, the matter of price at which such or similar imported merchandise is offered for sale in the principal market will be by no means a constant factor, but will fluctuate in accordance with local economic conditions. Even such an uncertain element as weather is a condition which enters into the demand for style merchandise such as wearing apparel and causes prices to rise and fall rapidly in accordance with consumer demand. It is readily conceded by economists of note that a high degree of competition exists between various domestic markets in our country. This condition was recognized in section 336-A of this bill, entitled "Change of Classification of Duties," which contains the provision that "The President shall investigate the difference in conditions of competition in the principal market or markets of the United States." It is an economic fact that competition is a prime factor affecting the fluctuation of prices. The subject of price is a vital factor which can not be ignored or minimized as it is the basis on which United States value of imported merchandise must be determined.

4. *Duties may be greatly increased by discretion delegated to appraisers.*—There is contained in section 402-E the provision, "If such or similar imported merchandise is not so offered for sale in the United States, then an estimated value, having regard for differences in quality and other differences, etc., based on the price of this merchandise, whether domestic or imported, comparable in construction or use, to the imported merchandise is so offered for sale."

This provision leaves to the option of the appraiser whether or not estimated value shall be predicated on domestic or imported merchandise. It is evident that the arbitrary choice of the appraiser will make a substantial difference in arriving at an estimated value with the result that ad valorem duties, based on such an estimated value, will be high or low at his discretion. When the bill now before your committee was being debated in the House of Representatives, a Member of Congress said:

"The bill is, after all, a protective-tariff measure, and if it errs at all the error is on the side of protection."

If it becomes recognized and conceded that it is the intent of Congress that the present tariff bill is intended to afford a high degree of protection, then customs officials and appraisers will, whenever there is an element of doubt, be sure to resolve that doubt by resorting to a higher estimated value and basis of valuation. Such instances will offer innumerable opportunities for appraisers and agents of the Treasury Department, an administrative branch of our Government, to raise tariff duties arbitrarily at their own discretion and without any opportunity for judicial review by a judicial tribunal even though an injustice has been done.

5. *Diplomacy can solve such difficulties as exist in determining foreign values.*—Proponents of "United States value" as the basis for assessing ad valorem duties allege that investigations in foreign countries have been hampered because of actual or threatened international difficulties. As a matter of fact, whatever difficulties of this nature where encountered in foreign countries were confined almost solely to France. In March of this year an official communication was received from the French Government by the United States Secretary of State to the effect that France is most desirous of resuming former customs relations. Since there is a possibility that such difficulties as have existed in the past may

be overcome through the mutual cooperation of both France and the United States, it is reasonable to believe that similar difficulties, which may arise in the future between our country and other nations, can also be solved through international negotiations.

SECTION 336. EQUALIZATION OF COMPETITIVE CONDITIONS

Section 336 introduces into our policy of assessing duties an entirely new element in the history of American tariff legislation by providing as an administrative rather than as a legislative measure, that the President in his discretion with the aid of the Tariff Commission may determine whether or not there is an inequality in competitive conditions as between the imports to this country and our own domestic manufactured goods.

This is an attempted determination by theory rather than of fact and vests in the Executive, with reliance largely upon the advice of an administrative division of the government, a discretionary power to fix duties, which power has heretofore been zealously guarded as the sole prerogative of Congress.

Under the authority delegated by this section, the President is empowered to change the basis of valuation from the foreign or export value to the American selling price, and the President is further authorized to proclaim such ad valorem rate or rates of duty based upon such proclaimed American selling price as in his judgment are shown by an investigation to be necessary to equalize such differences in competition.

It is further provided, however, that "in no case shall the total decrease of such rates of duty exceed 50 per centum of the rates expressly fixed by statute." In the case of a change of base, however, with limitation of decrease to 50 per cent, there may be and no doubt would be in many cases an actual increase in the amount of duty in dollars and cents in excess of 50 per cent.

In addition, the clause, "in no case shall the total decrease of such rates of duty exceed 50 per centum of the rates expressly fixed by statute," does not impose upon the executive the Congressional direction nor the duty to decrease by any percentage the existing rate of duty, even though the Executive may in his discretion have changed the base from foreign to domestic base of valuation.

Our association questions the wisdom of that provision of section 336 of this tariff bill which grants the President of the United States, an executive officer of our Government, the power under certain conditions to proclaim the American selling price as the basis for assessing ad valorem rates of duties on imported commodities. We believe that the Congress of the United States should not delegate this authority to any executive officer of our Government, but rather that the subject of basis of valuation of tariff legislation should always be a matter of legislative rather than executive order. It is entirely possible that some time in our future history, this power, invested in the President by the present bill, may be used to place an embargo on the importation of merchandise not authorized by the Congress and in so doing any President would be exercising authority which is legally granted to him under this bill.

American selling price is virtually the American valuation plan of assessing ad valorem duties. The American valuation plan was carefully considered by the Senate at the time of the passage of the Fordney-McCumber Act in 1922 and was almost unanimously rejected then.

At that time an eminent Government official and an outstanding authority on tariff legislation and administration said in referring to an exhaustive investigation made as to the possibility and practicability of obtaining real American prices on imported products in the market:

"The advocates of American valuation expected this investigation to demonstrate beyond doubt the desirability of this proposal. On the contrary, the facts brought out by this investigation demonstrated conclusively the inadvisability of breaking completely with the present practic of valuation in our customs service."

The same tariff authority further stated:

"The second plan, that of assessing ad valorem duties on the American selling price of the imported articles, was abandoned largely because of the unstable basis for assessing duties growing out of the importers' profits when selling in the American markets."

We are opposed to any widespread adoption of the American selling price as a basis of valuation for the following reasons:

1. It would be contrary to the interests of the American consuming public.
2. It would substantially raise prices on all commodities thereby raising the cost of living without compensatory advantages to a majority of the American people.
3. It would add to the difficulties already encountered in executing our tariff laws.

4. It would add to the Government expense of tariff administration.
5. It would seriously injure American export trade.
6. It would destroy the comparability of all statistical data with regard to volume of imports.
7. It would result in serious disturbance to American business.
8. It would bring about a chaotic state of confusion and uncertainty on the part of American merchants in buying in the markets of the world in order to meet the needs of the American consumer.

WOULD INJURE OUR FOREIGN TRADE

If United States value be substituted for foreign value or export value for a large number of commodities which we purchase abroad, this change in base will result in a virtual embargo in many instances, because the price at which these commodities can be sold in American markets would be prohibitive. We are convinced that any wide-spread change in base from foreign valuation would be injurious to the foreign trade of the United States. It has been rightfully stated, "We can not hope to sell, where we are not willing to buy." Foreign nations lacking gold with which to buy our products can trade with the United States only so long as we are willing to accept in payment a certain amount of their products. If foreign goods are excluded from the American markets because of a prohibitive tariff, American goods will undoubtedly be shut out of foreign markets by the adoption of retaliatory measures which will result in the reduced purchasing of our exports.

In 1924 the export value of semimanufactured and manufactured products from the United States was $2,198,720,000; in 1928 the export value of semimanufactured and manufactured products from the United States amounted to $2,975,898,000, or an increase of 35 per cent during that period of time. These figures do not include manufactured foodstuffs, crude foodstuffs, crude materials, nor agricultural products, which have been exported from the United States during this period. They do point out very clearly, however, that the volume of export business has increased to the point where it is an essential factor in the commercial life of our Nation.

As further proof of the growth of sales of American-made products in foreign countries and of the ever growing importance of our export trade, the Hon. Robert P. Lamont, Secretary of Commerce, stated on April 1, 1929, that our exports during the months of January and February, 1929, increased in volume $151,000,000, or 20 per cent over the volume of the corresponding months of 1928. As a matter of fact, the total volume of exports from the United States to foreign countries during the first two months of 1929 was $916,000,000, as compared with $764,500,000 during the corresponding two months of 1928, the largest ever exported during the first two months of any year, except during the war years and those immediately following, when prices were far higher.

Secretary Lamont further stated at that time:

"The most notable point is that this gain in exports was not at all due to abnormal conditions, such as exceptionally large export of some crude product or exceptional advance in prices of major commodities.

"It was primarily the result of immense exports of advanced manufactured goods. The class of finished manufactures accounted for a gain of $109,000,000 out of the total increase of $151,000,000. Exports of finished manufactures were valued at $432,000,000, or over one-third more than in the corresponding months of 1928. These are commodities the exportation of which depends upon the efficiency of American industry and skill and the energy of American exporters.

"The biggest item of finished manufactures and also the one which shows the greatest gain is that of automobiles, trucks, and other products of the automotive industry. These were exported to the value of $105,400,000, or at a rate of more than $650,000,000 annually, as compared with the total of $500,000,000 in 1928.

"A few commodities outside of this group of finished manufactures also show marked increases as compared with 1928. Corn exports during the two months were nearly four times greater in value than during the same period of last year, and, in fact, were equal to four-fifths of the total for all twelve months of 1928. Corn during most recent years has not been an important export, but the present conditions are peculiar.

"Our export of apples during these two months has been three times as great as in the corresponding period the year before. This gain is partly due to the fact that the apple crop of 1927 was small, while that of 1928 was somewhat above normal, but it also reflects a growing popularity of American apples in European markets."

The following items are taken from a table made public by the Secretary of Commerce, showing the increases in the value of exports in millions of dollars for some of the principal commodities exported during the months of January and February, 1929, as compared with exports for the same months in 1928. It should be especially noted that Secretary Lamont pointed out in making public these figures that the bulk of the increases shown are due to shipment of larger quantities and not to advance in prices.

	1928	1929
Automobiles, parts, etc.	$66,000,000	$105,400,000
Corn	5,400,000	20,500,000
Fruits and preparations	17,700,000	27,800,000
Apples	3,700,000	11,100,000
Refined oils (largely gasoline, etc.)	68,400,000	77,200,000
Copper	28,100,000	35,500,000
Cotton, unmanufactured	141,800,000	149,000,000
Agricultural machinery	15,900,000	23,000,000
Steel-mill products	12,100,000	18,100,000
Iron and steel manufactures	13,300,000	19,200,000
Cotton manufactures	15,600,000	20,700,000
Electrical machinery	13,200,000	17,100,000
Iron and steel advanced	12,200,000	15,900,000
Automobile casings	4,700,000	7,000,000

Careful consideration should be given to the fact that due to improved management methods, the most modern machinery and the development of mass production, the productive capacity of the United States, it is estimated, has been increased in the last decade to a degree that at the present time this capacity is 25 per cent in excess of the consumptive capacity of our country. It is readily admitted by leading United States industrialists and economists that our export business has become a vital necessity to the continued prosperity of our country, and anything which would seriously interfere with the capacity of foreign countries to purchase our exportable surplus would react adversely against American industry and therefore should be avoided.

RETALIATORY MEASURES BEING CONSIDERED BY OTHER COUNTRIES

Already reports are being received from many quarters of intimations of reprisals of one sort or another if a tariff bill is enacted by the United States which would result in the exclusion of the products of other countries from our markets.

While no one can question the right of our country to enact tariff legislation without interference from foreign nations, nevertheless it is interesting to note that some of the leading nations of the world with whom we trade have already expressed their opinions as to how the tariff bill now being considered may affect the economic life of their countries with a resulting effect upon American industries and our export trade, and injustice to American labor and the American farmer. We feel these facts should be brought officially to the attention of the Senate Finance Committee. There seems no doubt but that it is a matter of chief concern to the present administration that the United States promote and maintain friendly relations with the other nations of the world. This position on the part of our present administration has been universally commended by leading industrialists, merchants, bankers, and economists in our country.

Canada intimates that any tariff legislation which would set up a tariff barrier would make it impossible for her to cooperate with us in the construction of the St. Lawrence waterways. The Great Lakes—St. Lawrence waterways is an important part of President Hoover's farm relief program. It is believed that the development of this route would to a considerable extent prove an offset to the 10-cent differential in favor of Canadian over United States export wheat.

An eminent member of the Canadian Parliament, addressing the annual meeting of the Chamber of Commerce of the United States of America in May of this year, pointed out that Canada now is the largest foreign customer of the United States, purchasing last year a total of $826,000,000 of American products, while selling the United States but $493,000,000 in Canadian products. At that time he intimated that it would be necessary for Canada to adopt appropriate measures to adjust its economic life to meet the new conditions which the tariff adjustments of other countries impose upon her.

A cablegram, dated June 5, brought news from Paris that at their annual meeting the presidents of French chambers of commerce representing 500 chambers voiced their protest against the tariff bill now being considered and called

upon the French Government to take every measure to place the French tariff on a retaliatory basis.

These representatives of French industrial and commercial institutions have also called upon Belgium and other European countries "whose economic future is endangered by the present American tariff bill, which constitutes an insurmountable wall to the majority of European-produced merchandise" to oppose the inordinate increases provided for in the bill before your committee.

Advices have already been received from Argentina stating, "People in the United States should understand that insurmountable tariff walls erected against our products will inevitably diminish our purchasing power. The present tariff outlook is anything but cheerful." It has furthermore been reported that Argentina is seriously considering an embargo on American motor cars.

Representatives of the Government of Bermuda have already voiced their protest against the pending tariff bill to the United States Department of State. They have pointed out that "Bermuda's large imports from the United States greatly exceed the value of Bermuda vegetables imported by the United States." Any circumstances tending to reduce the purchasing power of the Bermuda growers, as an increase in the duty on vegetables most assuredly will, must have an adverse effect on the volume of American agricultural and other products imported by that country, particularly upon those articles for the use of Bermuda vegetable growers.

Dispatches from Berlin recall the fact that the Dawes committee, and also the agent for reparations in his memorandum of October, 1927, held that tariffs may be an obstacle to transfers, as they tend to check German export trade. If tariffs of other countries check exports, they will also retard imports into Germany. If tariffs are reduced, German imports as well as exports will grow. This is shown in practice by the results of the recent Franco-German commercial treaty. The treaty reduced import duties, and many countries enjoying most-favored-nation treatment benefited. The result was not only an increased export of German goods, but also an increase in imports.

On March 22, the United States Department of State received a communication from the Government of Persia protesting against a tariff bill that would destroy the friendly commercial relations between the new and old world.

Press dispatches indicate that through diplomatic channels our Government is receiving official communications from other nations setting forth the adverse effects which the tariff bill, now being considered by your committee, will have upon the economic life of these countries and protesting against the inordinate increases provided for in this bill, as well as the concealed increases which will result from any widespread change in base of levying ad valorem duties.

ALLEGED UNDERVALUATIONS HAVE BEEN VERY MUCH EXAGGERATED

One of the principal arguments of those desirous of bringing about a change in base for leving ad valorem duties from foreign valuation to United States value or the American selling price has always been that there is serious undervaluation in the invoices of goods imported. This argument was made much of in the discussion of the 1922 tariff law and the contention that it was a very prevalent practice was thoroughly considered by this association. It was found upon actual investigation at that time the number of appeals from the values contained in the invoices or arrived at by the appraiser had been greatly exaggerated. It was further found that a large number of these appeals did not represent questions of undervaluation but other matters having to do with details of getting the goods through the customhouses. In fact, information coming from authoritative sources indicates that less than one-tenth of 1 per cent of entries are intentionally undervalued. And as further evidence it has been held by the courts in the decisions of thousands of cases that these undervaluations were manifest clerical errors.

It very frequently happens that what may appear as an attempt at undervaluation is in reality a lower price on foreign merchandise caused by a change in market conditions abroad; or through the intimate knowledge of the buyer of foreign markets and market conditions which enables him to secure merchandise at lower prices than one not so well informed; or lower prices may be obtained because a large quantity order is placed; or American merchants possessed of keen business foresight and knowledge of merchandise trends may place orders in dull seasons and hence obtain a lower price from manufacturers whose industries are thus kept in active operation than they could hope to obtain while their industries are being operated at a peak load. These practices are not peculiar to purchasing in foreign markets but are resorted to every day in the ordinary

course of trading in our domestic markets and are regarded as ethical, businesslike, and legal.

Our association does not believe that any radical or widespread change in the basis of valuation will serve as a panacea for attempts at undervaluation. It is hardly necessary for us to go on record in this brief as condemning without reservation any and every attempt which may be made to undervalue a shipment for the purpose of defrauding the Government of revenue to which it is entitled under the law. We believe that deliberate cases of undervaluation can be reduced to a minimum as far as it is humanly possible to do so if all cases of intentional undervaluation are vigorously prosecuted by our Government and severe penalties imposed upon the guilty parties.

CONCLUSION

In view of the considerations set forth in this brief, the National Retail Dry Goods Association respectfully and urgently petitions the members of the Finance Committee of the United States Senate to so modify section 402–B of the tariff bill now under consideration as to provide for judicial review of the decision of the appraiser as to basis of valuation to the end that the basis of valuation may not be arbitrarily determined by the Secretary of the Treasury, an administrative officer of our Government. Unless this provision is modified the fundamental principles upon which our Government has been founded will be threatened because legislation will appear upon our statute books granting to the executive branch of our Government the right to interpret and execute the law without affording American citizens any redress before a judicial body.

May we point out again to the members of your committee that section 402–B of the tariff bill now being considered gives the Secretary of the Treasury not only supreme judicial but also executive authority in the administration of the tariff. Furthermore, we question the constitutionality of this section wherein property rights of American citizens are involved without affording any redress in the courts. Moreover, it tends to set up governmental bureaucracy in Washington which may usurp autocratic powers in interpreting and administering tariff legislation, and which will be a source of expense, delay, and inconvenience to citizens residing in all sections of our country, if all appeals from appraiser's decisions as to basis must come before the Treasury Department at Washington and not before judges of the United States Customs Court as now provided for as to matters of valuation.

It is especially worthy of note than any widespread change from the foreign valuation basis of levying duties will increase the landed cost of merchandise with the inevitable result that the cost of living to the American public will be substantially increased for reasons appearing elsewhere in this brief.

We should like again to remind the members of your committee of the opportunities afforded by section 402–E for differences of opinions of appraisers in different ports in determining the basis of valuation with the result that such differences will most certainly lead to confusion, embarrassment, and discrimination among merchants and will prove costly to the consuming public.

We need hardly point out the ever present danger of error on the part of appraisers in their attempts to determine the proper basis of valuation no matter how scrupulous and conscientious they may endeavor to be in the discharge of their duties. It is humanly impossible that appraisers, no matter how carefully selected and trained, should be equipped with adequate and authoritative information to enable them to estimate values and determine the comparability of similar foreign or domestic merchandise for thousands of items of merchandise. In this connection it is significant that something like 8,000 commodities or groups of commodities are enumerated in the Fordney-McCumber Act, but in many cases these commodities when examined in the actual schedule are split into a considerable number of subclasses, and even these subclasses themselves are split into many items so that it would be physically impossible for appraisers to render opinions which must be based upon form, style, quality of workmanship, manufacturing process, variability of uses, and material contents in trying to determine the similarity of merchandise in connection with setting a basis of valuation. The liability of error without due redress in the courts is so obvious that it seems unnecessary to stress this point further.

We wish to voice our opposition to that provision of section 336 of the tariff bill which delegates to the President of the United States the power, under certain conditions, to change rates of duties and to adopt American selling price as the basis of valuation by proclamation. This provision gives to an executive officer of our Government the power to alter at his discretion the entire basis of valuation, which is the very foundation upon which duties are levied. We feel

that any radical changes in valuation basis should be made the subject of legislation by the Congress of the United States and not as the result of recommendations of an administrative body to an executive without judicial review thereof.

Finally, we should like to direct the attention of the members of your committee to the fact that for more than 100 years foreign value has been the accepted basis of levying duties. Under that basis it has been possible for the people of this country, beginning with practically no pursuits other than the tilling of the soil, to develop in the face of the competition of the established industries of Europe to the point where American industries to-day dominate the world. Foreign valuation to-day affords that same ample degree of protection and possibility of operation that it has during the many years of the industrial and commercial growth of our country. Why, then, imperil the well-being of the people by experimenting with a new basis of value, the effects of which are most certain to be detrimental to the commercial life of our Nation, and which will very likely tend to destroy the harmonious trade relations which we as a Nation enjoy to-day with other countries of the world; and, further, by substituting confusion for certainty will seriously disturb our domestic industries, imperil the employment of American labor, and impair the prosperity which we now enjoy.

Respectfully submitted.

PHILIP LEBOUTILLIER,
Chairman Tariff Committee,
National Retail Dry Goods Association.

NEW YORK, N. Y., *June 11, 1929.*

FINALITY OF APPRAISER'S DECISIONS

[Sec. 402 (b)]

BRIEF OF G. W. R. WALLACE, REPRESENTING CARSON PIRIE SCOTT & CO., CHICAGO, ILL., AND OTHERS

It is proposed in H. R. 2667, in the readjustment of the present tariff law, to amend section 402 so as to remove certain alleged difficulties, the main one being the inability of the Treasury Department to check up evidence presented to the United States Customs Court in the form and manner provided for by Congress in the enactment of the tariff act of 1922.

The proposed correction is an attempt to take away from importers a right granted to them nearly 40 years ago, when it was found that the Secretary of the Treasury was unable to handle the situation, this right being an appeal to an independent body, viz: The Board of United States General Appraisers and now the United States Customs Court for the determination of all questions arising from the assessment of duty on imports. The Congress in the years since 1890 has from time to time expressed its approval of the Board of General Appraisers by increasing its powers, so that it eventually became a Federal court.

It is difficult to understand any good reason for clothing the Secretary of the Treasury with the plenary power provided for in this section and to take from the Custom Court the jurisdiction it now has to hear and determine questions of value in all respects.

What will be the effect of the proposed revision on the business of the merchant, a business which has brought and, under equitable conditions, will continue to bring an annual revenue of upwards of $600,000,000 into the Treasury of the United States?

I

(A) It is manifest that costs can not be ascertained unless each element thereof is an assured factor. Uncertainty in any one element makes it impossible to figure either costs or selling prices. The duty is an important element of cost of imported merchandise, and the basis of value upon which duty is to be assessed must be as certain as the rate of duty in order to permit the merchant to know what the cost and hence the selling price is to be. Uncertainty, therefore, in the basis of dutiable value, renders advance figuring of accurate landed costs an impossibility. This will result in a serious curtailment of imports, and hence a lessening of revenue to the Government.

(B) Another serious handicap to the merchant will be the unavoidable delay, under the proposed provision, in arriving at the proper appraisement. The merchant has his merchandise but can do nothing with it until the basis of dutiable

value is determined. If it is sold on the basis of his entered value and it is afterward appraised on the United States value, a serious loss is incurred; if it is held until after appraisement the season may be over and it becomes unsalable.

(C) Wholesale merchant purchasing and selling or contracting to sell before importation would face a serious loss if the merchandise were held dutiable at the United States value at the time of importation. This uncertainty of duty value basis would lead to either grave losses or abandonment of importation.

(D) Statutes of this kind are prohibitive rather than protective. The rate of duty may be a reasonable one, but the basis of value may easily be prohibitive.

II

(A) It is presumed that the proposed rates of duty are based on an analysis of previous importations (under foreign value bases) and are designed to afford better protection to American industry, but the application of such rates so evolved to United States value results in raising the amount of duty far beyond that contemplated.

(B) The definition of United States value in the proposed section 402 permits the assessment of duty on an estimated value based on comparable merchandise with due allowances for quality, etc., and permits a deduction for duty on a similar imported article but not on a domestic article. If the domestic article has not an amount equivalent to the duty included in its price what is the purpose of the duty? In other words, the domestic article will only be sold at a price which contains the duty on the competitive imported article, and if the appraiser accepts the domestic article as a criterion, the merchant would, in effect, be required to pay duty on the duty or its equivalent. This, again, is injustice.

(C) The appraisement under the above definition of United States vaiue will in many instances, lead to seizure and to serious penalties, miscalled "additional duties," briefly to "presumptive fraud," entailing further expense and delay in obtaining remission and mitigation, and finally to curtailing or stopping importation.

III

(A) The placing in the hands of the local appraiser the initiative of alleging or finding that an article of imported merchandise has no foreign or export value is giving to that individual a dangerous power resulting, perhaps, in one determination at one port and a different one at others. The right of reviewing this action is given to the Secretary of the Treasury, and his decision is final.

(B) Where do the local appraisers get the information necessary for them to determine whether or not an article has a foreign or export value? The answer is plain. Information received by a local appraiser comes from the Treasury Department, so that the decision to assess duty on the United States value instead of the foreign or export value, comes primarily from the Treasury Department and the only review of this astion is by the Treasury Department itself; so that the Treasury Department originates the case and then decides it. The merchant has no remedy, no opportunity to submit his case to an unbiased tribunal, and his only recousre is to stop importing.

(C) An organization, supervised by a special agent of the Treasury Department, known as the Customs Information Exchange, was created for the purpose of disseminating information to all the appraising officers in the United States. This Customs Information Exchange has its headquarters at the port of New York, and receives most, if not all, of its information from the appraiser at New York, and it is well known that any customs question presented to the Treasury Department in Washington is also referred to the appraiser at New York, and the practice at that port is usually followed. Hence it will be true that all controversies regarding the basis of value will in effect be originated and decided by the appraiser at New York.

(D) The appraiser at Chicago receives either upon inquiry, or as a matter of routine, information with regard to dutiable status of imported merchandise from the Customs Information Exchange. In the event that the appraiser at Chicago receives information from this source that merchandise shipped from abroad has neither a foreign nor export value, and the United States value should be applied, he will presumably appraise accordingly. The merchant's only recourse will be to file, within 10 days, his request for a review by the Secretary of the Treasury, and the merchant in the meantime must procure such evidence of foreign or export value as he may be able to find. The merchant has only his own transaction to rely upon, and hence he will be compelled to make inquiry both abroad and in the United States. This evidence will be sent or taken to Washington, or held until representatives of the Secretary of the Treasury may

visit Chicago, causing in either case a serious delay and expense. The Secretary of the Treasury will receive the evidence submitted and according to practice will refer it to the appraiser at New York, who will report back to the Secretary, and as usual whatever the appraiser at New York reports will be adopted.

(E) A merchant at Chicago will be subjected to the expense and delay incident to this involved procedure and will finally have his case decided, practically, by the same authority that originated the case. Chicago merchants will hesitate to import through Chicago, but will rather clear their goods at New York, the source and arbiter of all customs matters, to their loss and inconvenience.

(F) In the event that there be even a gesture of giving to the merchant an opportunity to present his case without going to Washington, some sort of a tribunal or commission will have to be organized to visit the various ports and to receive the evidence, written and oral, to be presented. This commission or board can only be empowered to make an advisory finding, as this proposed law gives to the Secretary of the Treasury alone the power of decision.

(G) There will then be in existence the United States Customs Court to hear and determine questions of rates of duty and another anomalous commission to take testimony as to value. This is a clear waste of money, time, and effort, the only result of which would be the hampering of legitimate business by a series of unwarranted and arbitrary proceedings, expensive alike to the Government and taxpayer.

IV

(A) It is difficult to understand the necessity for any change in section 402 as it now exists, in view of the provision in section 642 (proposed) requesting the President to cause a survey to be made of bases for the valuation of imported merchandise for the assessment of customs duties. Why make so radical a change as contemplated in the proposed section 402, before the survey is made, when it will involve so many complications, prohibitions? No merchant can feel that he is being fairly or honestly treated in the presence of a statute of this character, and importers are, after all, taxpayers and are entitled at least to a just consideration.

(B) The Congress itself, under the leadership of William McKinley, created an independent tribunal, for the very purpose of allowing both sides of customs questions to be presented and determined, and in order to avoid the "one-sided" arrangement existing before 1890. The various Congresses since that time have approved and strengthened the original tribunal, notably in the Dingley tariff of 1897 and the Payne-Aldrich Act of 1909, and the act changing the name of the Board of General Appraisers to that of the United States Customs Court to comport with the powers already conferred upon the board.

(C) This section 402 nullifies the progressive steps taken since 1890, and takes away from the tax-paying importer his right or privilege of presenting his case before an impartial, fair-minded, and able judicial body, in brief, "his day in court."

(D) It was found by Mr. McKinley and his colleagues that the old method of leaving in the hands of the Secretary of the Treasury the decision of the vital factors of the proper rates of duty and values was unjust and un-American, did not comport with the protective tariff idea, a purely American policy, and was contrary to the basic principles of our Government, because it resulted in depriving a taxpayer of his property without due process of law.

(E) This proposed section can and may be so applied either to place a practical prohibition on imports, or to defeat the protective policy of this country. It is dependent for its functioning upon the individual beliefs of its executor, and is, therefore, unsound.

(F) Inasmuch as this section seeks to deprive the taxpayer of his day in court and to take his property without due process of law, it is of doubtful constitutionality.

V

For the reasons noted we respectfully urge that this proposed section be not approved by Congress.

Respectfully submitted.

G. W. R. WALLACE,
For CARSON PIRIE SCOTT & CO., *Chicago, Ill.*
MANDEL BROTHERS (INC.), *Chicago, Ill.*
CHAS. A. STEVENS & BROS., *Chicago, Ill.*
THE BOSTON STORE OF CHICAGO (INC.), *Chicago, Ill.*
WIEBOLDT STORES (INC.), *Chicago, Ill.*
ED. SCHUSTER & CO. (INC.), *Milwaukee, Wis.*

BRIEF OF THE CHICAGO ASSOCIATION OF COMMERCE

STATEMENT IN OPPOSITION TO SECTION 402 OF TARIFF BILL H. R. 2667

The importers whose names are affixed hereto earnestly urge that section 402 of the pending tariff bill, H. R. 2667, be not enacted into law, and in support of such petition respectfully submit the following:

I

The proposed removal of jurisdiction from the United States Customs Court to the Treasury Department to consider appeals from the decisions of appraisers on questions of fact will work great and undue hardship on importers. The chief justification advanced by those advocating such change is the difficulty encountered at the present time by the Treasury Department in checking up evidence presented to the Customs Court.

The amount of duty to be imposed in the individual case depends upon the existence of certain facts. The facility with which such facts may be proved will not be augmented by a transfer of jurisdiction for determination thereof from the Customs Court to the Treasury Department. It would, however, result in giving the Treasury Department power to arbitrarily dispose of such questions without ascertaining all the facts. If this should be done, the importer would be without recourse. This, we assert, is contrary to all precepts of American justice and fair play.

II

The plenary power given to appraisers under section 402 to determine whether or not there is a foreign, export, or United States value, with no appeal from such decision other than to the Treasury Department, is believed to be fraught with grave consequences.

It is a matter of common knowledge that in the first instance appraisers obtain their information as to the existence of a foreign, export, or domestic value from the Treasury Department. If an importer disputes the correctness of such information, under the proposed law he has the right to appeal from the decision of the appraiser to the Treasury Department, whence the information originated. Thus we have the anomalous situation of a dispute of facts between parties being decided by one of said parties with no recourse or right of appeal on the part of the other.

It is submitted that such procedure amounts to a deprivation of property without due process of law and is therefore unconstitutional.

III

An importer must know what the cost of imported goods will be at final destination in order to intelligently and profitably sell such goods. Uncertainty as to the amount of the import duty means uncertainty as to the total cost of the goods. If sale is made on the basis of what is known to be the correct duty, under the law, and later an appraiser, because of lack of knowledge of all the facts, holds that a higher duty should be assessed, the importer will meet with heavy financial loss.

If Congress determines that duty in a certain amount should be assessed against a particular article in order to protect domestic production, it is only fair that the amount of that duty should be certain. Any other basis can but drive the importer from the field.

IV

It is not the purpose of the importers filing this statement to controvert the propriety of the underlying principle of the proposed tariff. It is believed, however, that the administrative provisions contained in section 402 will have the ultimate effect of excluding from the commerce of our country a large amount of foreign products with no attending benefits to domestic manufacturers and labor. This because of the uncertainty as to the amount of the import duty in a very large number of cases which must necessarily result from application of the formulae prescribed in the manner set forth in section 402.

V

For the reasons outlined above it is urged that section 402 be not enacted into law.

Respectfully submitted.

THE CHICAGO ASSOCIATION OF COMMERCE,
On behalf of J. W. Allen & Co., Berghoff Import Co., Blum's (Inc.), Bordo Products Co. (Inc.), Boston Store of Chicago (Inc.), J. E. Bradstreet & Son, Brazilian & Colombian Coffee Co., Carson, Pirie, Scott & Co., Maurice N. Damon, Alfred Decker & Cohn (Inc.), James B. Downing & Co., Chicago, Ill.; Ely & Walker Dry Goods Co., St. Louis, Mo.; European Importing Corporation, Chicago, Ill.; Famous-Barr Co., St. Louis, Mo.; Marshall Field & Co., Chicago, Ill., Chas. Flach Brokerage Co., St. Louis, Mo.; Habicht, Braun & Co., Hydeman & Lassner, Illinois Nut Products Co., International Forwarding Co., H. S. Jacobi (Inc.), S. Karpen Bros., Kraft Phoenix Cheese Co., J. P. Lawrie Import Co., Lochner & Alexander (Inc.), Franklin MacVeagh & Co., Mandel Bros., Morris Mann & Reilly (Inc.), Maras Importing Co., Messcher Brokerage Co., Chicago, Ill., Mexican American Hat Co., Meyer Brothers Drug Co., St. Louis, Mo.; Millard Supply Co., Chicago, Ill.; Nugents, St. Louis, Mo.; Pandaleon Bros., Pitkin & Brooks, Damon Raike & Co., Reid, Murdoch & Co., Chicago, Ill.; Rice Stix Dry Goods Co., G. S. Robins & Co., Rothschild Bros. Hat Co., St. Louis, Mo.; Ed. Schuster & Co., Milwaukee, Wis.; Scruggs-Vandevoort-Barney Dry Goods Co., St. Louis, Mo.; John Sexton & Co., G. W. Sheldon & Co., Sokol & Co., Sprague, Warner & Co., Chas. A. Stevens & Bros., Chicago, Ill.; Stix, Baer & Fuller Co., St. Louis, Mo.; United Fig & Date Co., Montgomery Ward & Co., Wieboldt Stores (Inc)., Wurm Bros. Co., Chicago, Ill.

LETTER FROM THE SAN FRANCISCO CHAMBER OF COMMERCE

[Including sec. 501]

WASHINGTON, D. C., *July 22, 1929.*

Hon. REED SMOOT,
Chairman Senate Finance Committee,
Washington, D. C.

DEAR SENATOR SMOOT: I have the honor to hand you herewith original letter from the San Francisco Chamber of Commerce indicating action taken by the board of directors opposing the proposed amendment of section 402, involving also section 501, of the administrative section of the tariff act of 1922.

I trust you will bring this letter to the attention of the committee, and that it will be found possible to have it printed in the published hearings as a brief from this chamber.

Sincerely yours,

C. B. DODDS.

SAN FRANCISCO CHAMBER OF COMMERCE,
451 California Street, July 19, 1929.

Mr. C. B. DODDS,
1221 National Press Building, Washington, D. C.

DEAR Mr. DODDS: This letter is written to inform you that the board of directors of the San Francisco Chamber of Commerce, at its meeting on July 18, 1929, went on record as being opposed to the proposed amendment of section 402, involving also section 501, of the administrative provisions of the tariff act of 1922, which would provide for sole review by the Secretary of the Treasury of questions involving basis of value for levying duties on imported merchandise.

Opposition to this proposed amendment is voiced by the board of directors of the San Francisco Chamber of Commerce for the following reasons:

(1) The amendment is repugnant to importers because appeal to a judicial body is denied in cases involving foreign and export bases of value. Review in these two instances is restricted solely to the Secretary of the Treasury, who thus becomes judge of acts by his subordinates—hence judge of his own acts.

(2) The proposed procedure substitutes, in cases involving foreign and export bases of value, administrative procedure for judicial procedure, thus eliminating time-honored judicial safeguards, such as the right to an unbiased hearing.

(3) In cases involving foreign and export bases of value, the proposed amendment affords no opportunity for correction of errors of procedure on the part of the Treasury Department by appeal or other method of review.

(4) The proposed amendment, in so far as it restricts to the Secretary of the Treasury review of cases involving foreign and export bases of value, is contrary to the spirit of American institutions, in denying suitors their day in court, and tends toward bureaucracy and concentration of power.

(5) In cases involving foreign and export bases of value, the proposed amendment provides for procedure in Washington, D. C., at great inconvenience to importers at distant points, particularly at Pacific coast points, instead of the present practice of holding sessions of the Customs Court at convenient intervals at the port of entry.

The board of directors of the San Francisco Chamber of Commerce recommends that the present method of ascertaining value of imported merchandise as provided for in section 402 of the tariff act of 1922, be retained.

In accordance with this action by the board of directors, we ask that you inform the Senate Finance Committee and California congressional Representatives of the board's opposition to the above-mentioned proposed amendment and reasons for that opposition.

Very truly yours,

SAN FRANCISCO CHAMBER OF COMMERCE,
WM. L. MONTGOMERY,
Assistant Department Manager, Foreign Trade Department.

EXTRA COMPENSATION

[Sec. 451]

STATEMENT OF W. H. BOND, BOSTON, MASS., REPRESENTING THE NATIONAL ASSOCIATION OF CUSTOMS INSPECTORS

(The witness was duly sworn by the chairman.)

The CHAIRMAN. You may proceed, Mr. Bond.

Mr. BOND. I wish to speak on section 451, "Extra compensation."

Mr. Chairman and gentlemen of the committee, I appear on behalf of the National Association of Inspectors of Customs and, of course, in opposition to the proposition made here yesterday by representatives of the transportation companies, principally the railroad companies, who are advocating the inclusion of a subsection or an amendment to section 451.

Section 451 provides the means whereby inspectors of customs and some other customs employees are paid for overtime services which they render beyond eight hours a day. This applies, of course, to all transportation companies, and the railroads seek exemption from those charges, claiming that it is an unnecessary and unjust burden upon them and should be eliminated or that the Government should pay it or that some other remedy should be given to them.

These employees of the Government are opposed to and have been opposed ever since—after a great deal of work we secured the enactment of this legislation to this exemption.

I have made some brief notes of the points which I wish to cover. I am going to try to be as brief as I possibly can, but this is rather an interesting subject and I anticipate that there will be numerous questions asked as to the details of the business with which, of course, the members of the committee are not familiar.

Senator SHORTRIDGE. Are inspectors under civil service?

Mr. BOND. They certainly are, Senator.

Senator SHORTRIDGE. How many hours do they work?

Mr. BOND. Eight hours a day. Our hours are from 8 until 5. When we work overtime we are paid.

Senator SHORTRIDGE. Double or extra pay.

Mr. BOND. Double time for overtime.

Senator SHORTRIDGE. Whom do you want to pay you?

Mr. BOND. The interested parties who are accommodated by our work. We prefer that the Government should not pay us.

Colonel Thom and the other representatives of the transportation companies have made repeated and lengthy references, verbally, both here and before the Ways and Means Committee and in their various briefs, to the danger and undesirability of payment to customs officers by private parties. They have invoked Revised Statute 1790 and some other Revised Statutes as a bar to the continuance of the present practice.

Every one who gives a moment's serious thought to this matter can readily see that Revised Statute 1790 and other statutes have reference to and are intended to prevent what is commonly called graft, or the taking of tips or rewards for illegal or unjustified actions. It needs only a casual but intelligent reading of those statutes to see that it is intended to refer solely to unjustified and illegal actions on the part of Government officers. They have no reference to authorized reimbursement to the Government for payments to officers for ordinary services. The fear of impropriety expressed by these railroad attorneys can have little foundation if it is considered that in all the history of the customs service since 1789 there has never been one breath or hint of scandal or dishonesty in this respect.

The CHAIRMAN. You speak only of the railroads. What about the bridges?

Mr. BOND. The same statement that I make refers to all transportation companies, with this to be borne in mind, that the bridges are not subject to this law by decision in the Davidson case.

The CHAIRMAN. But they still have a fear of it?

Mr. BOND. They say they have, but I do not know any reason why they should have any fear of it. There is no reason for it.

The CHAIRMAN. What about ferryboats?

Mr. BOND. The ferryboats are now paying overtime only for Sundays and holidays. They pay no week-day overtime, because in those companies, as I will explain a little later, the men work in 8-hour shifts.

Senator KING. Is that true of Mr. Mills's company at Detroit?

Mr. BOND. It is true of all the ferry companies; yes, sir.

Senator KING. That they are not paid except on Sundays and holidays?

Mr. BOND. That is all.

Senator KING. The impression I obtained from his testimony yesterday was that they had been constantly paying for all kinds of overtime.

Mr. BOND. About three or four years ago I wrote you quite a long letter which I trust you read carefully and in which I pointed out that the impression that you would get from the testimony of these various transportation companies was bound to be erroneous, because we have proved repeatedly that the statements that they have made are very largely, almost entirely, absolute misstatements of fact.

Senator KING. So the suit which was brought by the gentleman who testified yesterday, which went to the Supreme Court of the United States, and the injunction which, as I understood him, was supported by the Supreme Court of the United States, was not well founded?

Mr. BOND. The one which went to the Supreme Court of the United States was a railroad case, the Soo Line case. The only case in which the ferry companies have been involved is the Detroit & Sarnia Ferry Co. The Davidson case was a case which was not appealed to the Supreme Court. The only case that I have in mind at the present moment which went to the Supreme Court was the Soo Line case in which all the railroads participated.

Senator SHORTRIDGE. If customs inspectors are paid for overtime, why are you concerned as to who pays them?

Mr. BOND. If you will be patient with me, Senator, I will come to that particular point a little later, because I want to elaborate on that just a little bit.

Senator SHORTRIDGE. I do not care to hear you elaborate on it. I just want to know why, if you get paid, you are concerned as to whether the Government pays you directly or whether the railroads pay you indirectly through the Government. Why are you concerned about it?

Mr. BOND. Because there is a double purpose about overtime. One is to compensate the customs officers for their overtime and the other is to act as a deterrent upon overtime; and I will explain in what manner they base that. If this deterrent legislation were not on the statute books the overtime which it would be necessary for the inspectors and others to work would probably be three or four times what it is now.

Senator SHORTRIDGE. You work eight hours, and then another man comes on and works eight hours—

Mr. BOND. You can not do that, sir, except in some cases.

Senator SHORTRIDGE. Pardon me, but I wanted to come right to the point if I could.

Mr. BOND. There are quite a number of points which refer to that particular feature, and I will explain that in full.

The CHAIRMAN. You stated that the statements made by the witnesses giving testimony before you appeared on this same subject made statements that were not true.

Mr. BOND. Not yesterday, Senator, but on previous occasions. One statement I am going to speak on in just a moment was not true; but I was referred to previous statements which I referred to in my letter to Senator King.

The CHAIRMAN. Each witness swore that he would tell the truth, the whole truth and nothing but the truth.

Mr. BOND. I will show you in a moment that it is evident that they have a misconception of the facts, anyway.

The CHAIRMAN. I want you to give the name.

Mr. BOND. The principle of reimbursement for overtime is accepted and is a practice that is widespread. You heard yesterday one of the witnesses—I think it was Mr. Pillsbury—speaking of the customs expense in connection with milling in bond. Every Government bonded warehouse has a Government civil service storekeeper in charge whose entire compensation, including overtime, is paid by

the owners of the warehouse. No suggestion is made that that should be eliminated. We have many inspectors in Canada who are placed there for the accommodation of the railroad companies, and when the railroad companies ask to have them placed in Canada or to ride into Canada to do their work to save delay at the border, they offer to reimburse the Government their salaries and they pay the men the entire salaries.

I can tell you one instance at Depot Harbor, Ontario, where we have an inspector stationed at the eastern end of Georgian Bay where lake traffic is transferred to and fro from cars to boats, and a few years ago our inspector stationed at Depot Harbor had his entire compensation paid by the railroad company operating through that port. But this is only during a certain season of the year when the Lakes are open.

Seated at the tables with him in the office were Canadian inspectors. During that time of the year it is necessary for them to work very long hours. The railroad was paying to the Canadian customs officer seated in the same office with him there overtime, which was considerable, of course, at that time of the year. Our man sitting there doing the same work for the United States Government—the railroad refused to pay any overtime to him because he was an American.

I came to the department down here and protested about it, and the department instructed the collector of the district of Vermont, under whom the inspector works, to refuse to render this service unless he was treated on the same basis as the Canadian inspectors and paid his overtime.

We have many inspectors in Canada, as I say, who were put there for the accommodation of the railroads, and their entire compensation is paid.

There are sections of the tariff act in addition to section 451 making specific provision for the reimbursement of the regular salaries of customs officers by vessel owners and others where vessels move from one port to another to continue their operations. It is an almost inescapable provision.

This section 451 and other sections provide for the issuance of a permit or the filing of a bond by the transportation companies to guarantee the Government against loss of its revenue and to guarantee the payment of customs officers' salaries. This permit is issued in the case of vessels in each particular instance; in the case of other transportation companies for a certain period of time. For instance, the railroad which operates at the place where I am stationed has a permit that covers six months of their operation. They simply notify the inspectors when work is to be performed and the inspector has no control over the matter at all, and at the end of the month the inspector renders his voucher or bill to the Government, the Government collects the pay from the transportation company, and pays it to the inspector. There is absolutely no direct dealing between the two.

The transportation companies have again repeated yesterday incorrect statements—this is the instance I spoke of—regarding the history of the application of the overtime laws. It was stated here yesterday, as it has been stated before, that overtime compensation had its

inception through the act of February 13, 1911, and that it did not apply to the railroads even then, or until 1922.

You will notice in the hearings before the House committee that this statement is made—I am reading from a brief of the railroad, the same statement that was made here verbally—

> This wise governmental policy was departed from in 1911 when Congress, at the request of the owners of vessels entering American ports, passed a law authorizing payment of overtime for customs inspectors. In 1920 an act was passed providing for payment by vessel owners for overtime of customs inspectors for services in connection with the examination of baggage. These acts did not apply to railroads.

The brief goes on to say that in 1922 Congress passed a tariff act which has been construed to be broad enough to include railroads as well as vessels, and that—

> this latter act was passed without any notice to the railroads and, consequently, without affording them an opportunity to be heard.

Is it not a singular thing that if the first notice that the railroads had was in 1922 that they were subject to overtime, that in 1921 and in January, 1922, there were three hearings before the Senate Committee on Commerce at all of which I was present and at all of which there were representatives of transportation companies present in the effort to have its application to them repealed? If they did not know anything about it before 1922, why did they introduce bills in 1921 and have three hearings before the Senate Commerce Committee to have the provisions of the act of 1920 repealed so that they would not apply to them?

There is a misstatement of fact which has been repeatedly spoken of.

I want to give you in just as few words as I possibly can a very brief history of the overtime legislation. It is necessary for you to have that, otherwise you can not understand the thing.

In 1789 when the first customs legislation was enacted, there was no provision for the payment of overtime to customs officers either by the Government or by transportation or vessel owners or anybody else; but the practice continued from 1789, and you can appreciate, of course, that the methods of doing business in a commercial way were very different than from what they are now. They were sailing vessels then, and there was very little hurry. Nobody anticipated the rush of business that has taken place since. That continued up until 1873.

In 1871 Congress appointed a special committee to investigate the matter of customs overtime because the vessels had been desirous of working during overtime periods in getting out their cargoes, and they made private arrangements with the inspectors. They would say to an inspector, "We would like to work tonight. Will you look after us all right?" And the inspector would say, "Yes. It will cost you $10" or $20 or $50; or whatever money he happened to be in need of at that time, I presume he told them he wanted. But there was nothing regular about it. They paid him direct.

In any large body of men you will find some who will take advantage of opportunities for irregularity. It was desirable that that should be done away with.

This committee reported in 1872 or 1873. The resultant act was passed in 1873, which was the first overtime act and provided for

the payment of this overtime by vessel owners to the collector under established regular rates and to be paid by him to the inspectors.

Under the act of 1873 we proceeded for quite a long time. But, mind you, this act of 1873 referred only to the discharge of cargoes. It became necessary, after a lapse of some years, that overtime should be worked in connection with the lading of vessels as well as the unlading of vessels, because we were beginning to export large quantities of merchandise and it was necessary to work these shifts at night.

One of our inspectors from the port of Boston came down here and did some work in connection with the passage of the law with the department and with Members of Congress, and on June 30, 1906, an amendment was passed to this law. It first passed the House and then came over to the Senate, and the Senate amended the law as it was passed by the House. The Senate amended it to include this lading, and they also, at the request of the railroad companies, made a further amendment to it. This amendment was for the purpose of giving the same privilege—and the word "privilege" is used in it—to the railroad companies as was already extended to the steamship companies both as to lading and to unlading.

I have here somewhere a copy of the conferees' report which was unanimously adopted in both Senate and House and which said that it was necessary that the same privilege of lading and unlading of railroad cars—and those very words are used—"railroad cars"—should be extended. That is the purpose of making that amendment.

So that although the railroads' representatives tell you that this did not apply to them until 1922, on June 30, 1906, that privilege was extended to them as well as to the steamship companies; and since 1906 I have myself worked hundreds of times at night and on Sundays and holidays, overtime, and been paid for it by the railroad companies at the port of Boston. That has applied to every port. This did not apply to passengers' baggage.

In 1911 the law was reenacted and kind of put into a little better shape, and provided for Sundays and holidays. The previous ones had only applied to nights.

That went along for nine years. In 1919 conditions in regard to passengers' baggage had become so onerous on the inspectors that they absolutely could not stand it any longer. I have worked all day on Sunday from 7 o'clock in the morning until midnight without one cent of extra compensation—the most disagreeable work any inspector could possibly do.

We had a bill introduced by Senator Calder and he worked very hard to get that bill through. It was manifestly an unjust condition because this work was done for the accommodation of the steamship companies. President Raymond of the American Steamship Owners Association kindly wrote to the Committee and stated that the steamship companies had no objection to the payment of overtime; they were perfectly willing to pay this money for the accommodation it was to them. The effect of this was to decrease the day from one of 10 hours, 7 a. m. to 6 p. m. with unlimited extensions without pay, to one of 8 hours from 8 a. m. to 5 p. m., and it was also extended to cover passengers' baggage as well as cargo.

There is where its application began to hurt the railroad companies. It applied to them previously, but only as to freight, the same

as it did to vessels. But after 1922 it began to bite them a little bit because it referred to passengers' baggage.

In 1922 the last tariff act was passed, and all of the various acts in relation to the administration of the tariff were codified into the administrative section of the tariff act, and sections 1, 2, 3, and 4 of the act of 1911 were repealed and reenacted in various sections of the administrative act.

Section 5 of the act of February 13, 1911, which had been amended by the act of February 7, 1920, was not repealed. That was left in existence as amended; and section 451 refers to that in so many words by saying it provides for the payment in accordance with the provisions of section 5 of the act entitled "An act to provide for the lading and unlading of vessels at night." and so forth, as amended, this being the act of February 7, 1920.

That is in brief a history of overtime legislation up to date.

Much reference has been made in the testimony here to the regularity of railroad-train schedules, and Senator Reed made the remark yesterday that he acknowledged the liability of the Government to provide continuous and regular customs supervision for such service, that is, regular scheduled service without cost to the carriers. We contend that if that is desirable—and we neither admit nor deny it; that is not for us to say—no change in the law is needed to make it possible. As a matter of fact, it is already being done, as will presently be explained.

Considerable, however, of the passenger-train service is not on regular schedule, and what reference has been made here by the attorneys for the railroad companies has been altogether in regard to passenger-train service. You did not hear one of them say yesterday anything about service on freight trains. All their references were to passenger trains. This law, gentlemen, applies to freight service just as well as it does to anything else. Most of the overtime is on freight service, which is certainly decidedly irregular, as everybody knows. But even at that, in some of these places continuous service is important in freight service, such as at Detroit and Buffalo and other places of that nature where business is continually going on all the time. These men work in 8-hour shifts, three shifts during the 24 hours, and no overtime in such circumstances as that is charged against the railroad companies.

In relation to that particular thing I want to call your attention to a statement which I have from the port of St. Paul to show you something of the difficulties under which inspectors are employed, to show you the reference at least is to railroad-freight service.

At the port of St. Paul, where there are some inspectors stationed, they bring cars of cattle down from Canada. They come into South St. Paul. There is the necessity of getting those cars in there at night. The cars have to be shifted into the railroad yards before the inspector can perform his duty. You never can tell how much overtime or how long a period the inspector has got to be there. I have a little schedule carrying over some days of the months of March and April, where the overtime varies from 6 a. m. to 8 p. m., 5 p. m to 11 p. m., 5 p. m. to 3 a. m., 5 p. m. to 1 a. m. It varies all through. You can not tell anything about it at all as to how long it is going to take.

The letter says that on May 18 the Northern Pacific Railroad advised that they had 12 cars expected to arrive at 8 p. m., which did arrive at 9.05 p. m., one hour and five minutes late.

The letter gives several other illustrations, some of which are more exaggerated than that.

Freight service is decidedly irregular. The same thing applies to railroad freight trains crossing the border. There is one station out in the Canadian Northwest where one inspector is stationed. The last train which is scheduled to cross the border is scheduled to cross about quarter past five. Under the terms of this law an inspector must work at least one hour after 5 o'clock before he gets any overtime. He has to make a present to the transportation company of an hour or 59 minutes before he can get any overtime. He has about 20 minutes' work on the border, and then he is through. Ordinarily he will finish at half past 5 and he is giving the railroad company half an hour and does not get any overtime for it. The train is late. There is only one thing to do, and that is to stay there and wait for the train to arrive, and sometimes it is 9 or 10 o'clock when it arrives. How utterly absurd it would be for the railroad company to establish another man there to take his place at 5 o'clock, for another 8 hours, when there is not anything scheduled to keep another man there, to do 15 or 20 minutes' work. The railroad company has to pay engineers and firemen and the trainmen on that train, even though it is their fault that the train is late. They have got to pay them overtime. Why should they not pay the inspector when the train is scheduled to arrive there at a certain time and it is an accommodation to them to have him stay there?

Senator KING. Your contention is, in a word, if I may interrupt you—and the reason I am doing it is that I am compelled to go to a hearing before a subcommittee——

Mr. BOND. I noticed that, Senator, and I regret it exceedingly, because I know that you were very much interested in this matter.

Senator KING. I am, very much; but your contention is that the law, by and large, has worked in a satisfactory way and has not been an injustice to the railroad companies or to the ferry companies?

Mr. BOND. We certainly contend that, Senator.

Senator KING. And they have derived great advantages; that if they are late and can not cross the border because of their delay, it is a great advantage to have the opportunity to cross the border by reason of having the inspector there and having the benefit of inspection?

Mr. BOND. Certainly, it is.

Senator KING. And you think it would be unjust—at least, I would deduce that from your remarks—to impose that burden upon the Government?

Mr. BOND. I certainly do.

Senator KING. I am inclined to think that you are right.

Mr. BOND. I will tell you why it is an unfair thing to impose it on the Government. How large a percentage do you suppose of the people of the United States travel into Canada? Do you suppose there is 1 per cent of the 120,000,000 people of this country who go into Canada during the year? I would not think so.

Senator KING. Mr. Chairman, there is a subcommittee meeting on petroleum. I am on that committee, and must go.

(Senator King withdrew from the hearing room.)

Mr. BOND. If 99 per cent never go into Canada, why should they be taxed to maintain special service and accommodation for the 1 per cent who do go? If they want to get service at the border, why not let them pay it through the railroads for the accommodation they get? That is one reason why.

The railroads talk a great deal about regular train schedules and its interest to the public rather than to them, but their illustrations are all drawn from the passenger service, as I remarked a moment ago, and they compare it to an automobile. They say it is more similar to that than it is to steamships.

When this law was being enacted the chief of the division of customs was with us in the Commerce Committee room, writing this law to make it agree with the desires of the members of the Senate Commerce Committee. We anticipated some trouble in this respect, and I want to remind you of what Mr. Woll, of the American Federation of Labor, testified here the other day in relation to the importation of post cards, where they were sent in such small quantities, individual cards, that it was impossible to collect any duty upon them.

The same situation applies to automobiles at a port on the Canadian border. There may be five or six hundred cross there in a day. How is it possible for us to collect any overtime from each one of those? It would only be a fraction of a cent from each one of them. It is impossible to do that. There is no sense in comparing this to automobile service.

It was said that the shifting of this expense to the shoulders of the Government and the general public would make no substantial increase in Government expenses. Leaving aside the consideration of which I spoke a minute ago as to whether the entire public should take upon its shoulders the expense of the accommodation of a very small proportion of the people who ever go into Canada, it should be stated that the figures given are nowhere equal to what the expense would be even under present operations to furnish men enough along the frontier.

I do not like to dispute any figures which are officially given by the department, as these appear to have been, but if you just stop and think a minute of the multitude of ports along the frontier, the multitude of seaports in this country to which bonded merchandise is shipped, and the number of men who would have to be put on to take care of the overtime which is now worked, and you can readily see that the estimate given is absurd; and not only that but just as soon as you take the load off the shoulders of the railroad companies that overtime is going to be multiplied perhaps three or four times. We know that from the history of the thing before. Just as soon as this law went into effect and it was found that it applied to railroad companies, the schedules along the Canadian frontier were immediately changed so that the trains should arrive during daylight hours, just as the Canadian Pacific Railway did. They made their plea in the name of the Puget Sound Navigation Co., which was another falsity. They scheduled their ships running from Vancouver and Victoria down to Seattle so that they would arrive in Seattle during the night and so they would arrive in Vancouver during the day. Why? Because they had to pay Canadian

officers overtime and they did not have to pay the Yankees any overtime. So they had their ships arrive in Seattle at night when this law was passed, and they found they had to pay overtime on both ends of it.

The Canadian Pacific were at their wits' end to know how to get those ships to arrive so that they would not have to pay any overtime. They had to pay during six months $6,300 overtime to inspectors at Seattle. They raised their fare 25 cents each on the round trip. On the down trip, one half of it, in six months they collected an additional $30,000 at 25 cents per passenger. We do not know what they collected on the up trip, because we do not know how many passengers went north. They paid $6,700 to us and put $23,000 in their pocket and then came down to the Commerce Committee to get the law amended so that they could keep it all.

There is no question that if this load is lifted from them and provision is made for the Government to pay this overtime it would enormously increase the load which is already upon the shoulders of Uncle Sam.

Several hesitating and doubtful statements were made here yesterday as to payment by the railroads to Canadian inspectors. You noticed that when that question was asked each of the witnesses disclaimed a knowledge as to the absolute conditions. I have never been a Canadian inspector, but the Canadian inspectors, in response to inquiries made by me, told me that the Canadian railroads pay overtime, and bridges and tunnels and transportation companies generally pay overtime to the Canadian inspectors. The rates are lower than ours, but they pay it to them.

I might instance right here that the president of one of the largest railroad companies in Canada, in conference with one of our representatives within a comparatively short time, made this statement:

> I feel quite in sympathy with your pos tion. We pay overtime to the C nadian inspectors, and I can not see any reason why we should not pay it to American inspectors.

That is a statement made by one of the most prominent railroad men in Canada.

The amendment as proposed in the House bill, or the amendment reported—it was not in the bill when it was passed; the committee amendment cut it out—is so comprehensive as to include situations to which the railroads do not refer and dare not refer, because if they did they would destroy their case or their argument with reference to passenger-train service at the Canadian border; but if this subsection which they got into it when the bill was first reported and which they asked you to reinsert—if that were included it would not only apply to the thing they are arguing for—railroad passenger service at the frontier—but it would apply to all this freight service which I have shown you is so irregular. It would reach down from Boston to New York, Philadelphia, and New Orleans and all the seaports and every interior port in the country, because its application is stated in respect of all service rendered after the effective date of this act in connection with railroad trains, ferryboats, international bridges, and tunnels.

I will describe just as briefly as possible the way this railroad overtime takes place at the port of Boston. I am what is known as a station inspector. I have charge of one section of the port of

Boston. Under my direction there are about a dozen inspectors, weighers, laborers, and so forth, in East Boston. I receive from the custom house the first of every month what is known as a preliminary permit, which is the same as is used for each vessel except that it is a monthly form. Along about 5 o'clock in the afternoon, perhaps quarter of 5, the railroad foreman may come into my office and say, "Mr. Bond, we want to load certain merchandise in cars to-night." "All right, sir; we will have an inspector there to supervise the loading." "We have some cars of merchandise from Canada to go into one of these ships, and we want to do that to-night."

It is an accommodation to them to do this work at night. I assign an inspector in that particular case from my own office who handles that particular kind of work, and he stays there and supervises the loading or unloading of the railroad cars.

Many times that permit is returned by me at the expiration of the month without one single entry on it. In my particular district that is true in most cases. It is very rare that we have anything. At the district known as the Army base and one or two of the other districts they do a great deal more railroad overtime, and they will have perhaps four or five or maybe half a dozen entries on that monthly permit during that month, solely and purely for the accommodation of the railroad company. That is of no interest to the Government to establish men there. It would be impossible and impracticable to establish another shift of men there who perhaps for a month or two might not have anything to do. Why should the Government pay any overtime?

But beyond all that, why should the inspector be obliged to do that work for nothing, as we have had to do for years? Somebody must pay our overtime, in all decency and justice. Why should it not be those for whose profit and convenience this work is done?

Senator WALSH. Is it a fact that the Ways and Means Committee reported the House amendment requested by the executives of the railroads and that that amendment was taken out on the floor of the House?

Mr. BOND. The amendment which was suggested by the railroad companies does not read exactly like that. That is, I never saw any amendment which read like that until it came out in the bill.

When this was reported I presented a brief and argument to the Ways and Means Committee arguing against this, the lack of necessity for it, and when this came out I came down and protested. I did not suppose my protest would have any effect, but somebody's protest evidently did, because when the bill was passed by the House a committee amendment eliminated that.

Senator WALSH. Did not the executives of the railroads or their representatives claim that the Treasury Department recommended the change they proposed?

Mr. BOND. They did.

Senator WALSH. What is their attitude now?

Mr. BOND. Senator Walsh, I do not think I would be justified in answering that question. I have no authority to answer that.

Senator WALSH. I was wondering if they had changed their attitude and that resulted in the change in the law.

Mr. BOND. I know that some of the officials in the Treasury Department are opposed to the payment of overtime by private interests. I also think they do not have a clear conception of the thing, because I had an interview recently with one of the very high officials of the Treasury Department. He wanted to know all about it. I had a 2-hour conference with him, and when I got through he had a real understanding of the matter, and he said to me, "I am in thorough sympathy with your position."

Senator WALSH. Is that one who had a different opinion recently?

Mr. BOND. He must have had, because he had a hand in preparing this amendment.

I want to say just a word in relation to this steamship rule, too. The situation at the seaboard is precisely the same as it is in regard to the railroads. A representative of the steamship company or head stevedore will go to the inspector just before 5 o'clock and say, "We are going to work the ship to-night, discharging cargo."

He reports to me and I tell him which one of the men will take care of it. I try to keep it as even as I can so that one man will not earn a large amount of overtime and another man will not receive any. It has to be a man who is there during the day and is in charge of that cargo to continue that work at night. You understand there is a distinct difference between a policeman that you can put on three 8-hour shifts and an executive like an inspector of customs who takes charge of a steamship with perhaps 10,000 tons of cargo and perhaps 1,800 or 2,000 permits as to each one of which he must see that the conditions are complied with. He is an executive of a great deal of importance to the Government. He has got to see that everything that the Government wants is complied with. It can not be a mere matter of taking a man off and putting someone else on.

Most of you gentlemen have been abroad. Just imagine that you came in on a ship and you were on the dock at New York having your baggage examined—nowadays Congressmen and Senators have their baggage examined. It is not necessary to say what has given rise to this, but it is done, and it is done for everybody else. Suppose the ship docks at 2 or 3 o'clock in the afternoon and the job runs until 10 o'clock at night. At 5 o'clock, when the day ends, there are 150 inspectors scattered around that dock examining baggage. The gong rings at 5 o'clock and everybody stops work. They are not going to work overtime. One man is right in the middle of an examination of trunks, and another man takes his place. That other man does not know what the first one has been doing. The rest of you have got to wait.

How utterly absurd anything of that kind is! It can not be done; it is an absolute impossibility.

We have instructions from the department, issued within a very recent time—you probably know the occasion which gave rise to it—in which our attention is called to the existing regulations which have been existing for a long time with regard to the passage of the baggage of diplomats without examination, and what is known in New York as immediate attention orders and what we call in Boston "expediting." It is the same thing. It applies only as it relieves the passenger from waiting in line, but it does not excuse him.

Senator HARRISON. There has been a great falling off in the travel of Congressmen and Senators, has there not?

Mr. BOND. I do not know, Senator. We do not get many Congressmen running through the port of Boston. They seem to prefer the port of New York. We offer them better facilities in the port of Boston than are offered in any other port of the country. I wish you would try it.

Senator WALSH of Massachusetts. We have not embarrassed them in Boston, either, have we?

Mr. BOND. Not at all.

Senator SACKETT. How many inspectors are you working out of your office?

Mr. BOND. I have charge of the whole district. I have two other inspectors in my office and there are 10 others on the district, 12 all together, on various affairs.

Senator SACKETT. Have you a record of the overtime paid those men in the last six months?

Mr. BOND. No; but I can give you a pretty good guess. In the port of Boston we do not make any attempt to keep a record of the amount of overtime earned by the inspectors throughout the whole port.

In the case of the 12 inspectors on my district, I keep them even as far as I can. If there are two men equally qualified to do the same work, I will have the one work who has the least amount of overtime earned.

Senator SACKETT. You have a record of that; have you not?

Mr. BOND. No; but I can give you an estimate that the amount earned during the year on my district, the East Boston district, would be perhaps between $250 and $300.

Senator SACKETT. Have you not got a record somewhere of what each one of them received in the way of overtime?

Mr. BOND. Of course I keep that record in my office all the time—the earnings of each individual that is on my district—but they are constantly being changed.

Senator SACKETT. Can you make that up, and file it here as a part of your testimony?

Mr. BOND. Oh, yes. I can give you a record of the earnings of every inspector in the port of Boston, which would be more valuable to you.

Senator SACKETT. I think it would; yes.

Senator WALSH of Massachusetts. I imagine the record from the port of Boston would be much lower than from the port of New York.

Mr. BOND. Oh, yes.

Senator WALSH of Massachusetts. Very much lower.

Senator SACKETT. I just wanted to get the distribution as between individuals.

Mr. BOND. In New York they keep it, as nearly as they can, absolutely level amongst all the inspectors in the port. There is so much of it there that they are really obliged to do that in order to prevent an inspector working himself to death. I have one instance in mind where one inspector earned $175 in one month.

Senator SACKETT. I just wanted to get the figures for your office.

Mr. BOND. At the port of Boston I think our average would be about $300; but I should be very glad to furnish that.

Senator SACKETT. Please furnish it, divided between individuals, as part of your testimony.

Mr. BOND. Yes; I shall be very glad to furnish that.

Now, in order to prove the contention that I make—I am going to get through very soon, Senators—in order to prove the contention that I make this is unnecessary, I have to read to you a proviso in the act of February 7, 1920.

When this act of 1920, which we got through the Senate and House, came up, it passed the Senate, went to the House for concurrence, and they amended it. Congressman Martin of Louisiana called the attention of the committee to the fact that this bill provided for a day from 8 to 5. He said, "Our business in New Orleans is done from 7 to 4. If this bill goes into effect as you have it, it will be necessary to penalize the steamship companies and transportation companies in New Orleans for working an hour during the morning. We will have to pay half a day's pay to the inspectors in the morning, while they quit an hour earlier. They will be through before 5 o'clock at night;" and he suggested that a change be made in that, and Mr. Treadway asked me if I had any objection, and I said I did not.

This reads:

Provided further, that in those ports where customary working hours are other than those hereinabove mentioned, the collector of customs is vested with authority to regulate the hours of customs employees so as to agree with prevailing working hours in said ports, but nothing contained in this proviso shall be construed in any manner to affect or alter the length of a working-day for customs employees or the overtime pay herein fixed.

That was intended to apply to the port of New Orleans, to correct the situation which would prevail there if our language went through. But when this thing went into effect it was readily found that we were up against a peculiar situation on the Canadian frontier which we did not foresee; and the department construed, and we assented to it, that this should be applied to the Canadian frontier; that the department was at liberty to construe he usual working hours at a port like Detroit as 24 hours a day. Consequently, they could put these men on in three 8-hour shifts without violating this provision. That would make necessary the payment only where a man had to work seven days a week; he would be paid for that extra day; but during the 24 hours of any week-day it would be unnecessary to pay him anything, because a sensible and liberal interpretation of that clause, primarily intended for New Orleans, could easily be applied there.

Under the present law, with that proviso in it, all the free accommodation which is practicable and desirable can be given to the railroads on one condition, and that is that you gentlemen, the Congress of the United States, will give the department, the Bureau of Customs, an appropriation large enough so that they can hire the men necessary to put on these extra shifts of men. If you do not do that, of course they can not do it.

Some months ago—I can not remember just how long ago; it may have been a year ago—certain railroad executives, headed by the colonel who was here yesterday, had a conference with the Assistant Secretary of the Treasury in regard to this matter. I had been

promised the privilege of being present during that conference, but somebody put something over on me, and I was not notified of it until after it was all over. The Assistant Secretary told these gentlemen in so many words, "It is my purpose to extend the continuous customs supervision at ports along the Canadian frontier whenever it is practicable, and as fast as funds are available." That is what they wanted. They wanted the law changed to compel the immediate adoption of it; but the general said, "We will do it as fast as funds are available." Well, if you gentlemen do not give him the funds, of course he can not do it very fast; but he is extending that just as fast as he possibly can.

After this conference was over I went up and had a personal conference with Colonel Thom. I found that the colonel was not as familiar with the overtime situation as he ought to be if he is going to represent the railroads in a case of this kind; and it was necessary for me to spend a couple of hours explaining the situation to him. I told him that there was absolutely no necessity of any change in the law; that all they were entitled to could be added under the existing law; and that is what they ought to have, and if the department could get enough money to extend this service they would get all the service they were entitled to free; but I said, "There are certain conditions and certain places where overtime is absolutely unavoidable."

There are men who, for the railroad's accommodation, go into Canada; they go in at Vanceboro, for instance, to St. John, ride a train into Canada, leave about 8.30 in the morning, and are due back about 10 o'clock at night. I do not give you the exact time, because I have forgotten, but that is approximate. How are you going to prevent that man working overtime? When the eight hours are up, are you going to leave him at the Canadian frontier, or in Canada, and let him walk home? Is his day going to finish there? He is working his way back on that train after working in St. John the greater part of the day. He has got to continue his work, and he is perhaps 12 or 14 hours in doing his work. He is entitled to overtime pay for working in that way.

There are other cases like the one I mentioned in the Canadian Northwest where it is absolutely unavoidable. Colonel Thom asked me how much of that there was, and I honestly and earnestly endeavored to find out. I corresponded with every port on the Canadian frontier of which I had any knowledge, and the greater part of them sent me statements as to the conditions of work, and what would take place in the event that a continuous service was maintained—that is, what would be unavoidable—but I confessed to Colonel Thom afterwards that after a complete and careful study of those records I was just as much at sea as I was before. I could only say that it would be a comparatively small amount, but I could not give any estimate which would be honest, because it might be very wide of the mark.

Senator WALSH of Massachusetts. The extent of the work on the part of inspectors on the Canadian border, particularly around Detroit, has increased a good deal in recent years, has it not?

Mr. BOND. Why, yes; I should certainly say that was true. Of course, you take certain places up there, and we have, and have had

for a long time, men on duty 24 hours a day. The passenger traffic coming down through Vermont and northern New York, largely coming down from Montreal, is tremendous. One of the Senators remarked yesterday that the ferry companies' expense for overtime ought to be pretty largely made up in the increased traffic since 1920 in Canada, and I have no doubt that may be true.

Estimates were made yesterday as to the expense to the ferry companies and these others as to the cost of operation where they had to pay the railroad overtime. I do not know whether the estimates the representatives of the ferry companies made are correct or not, but I should like to call your attention to this:

I am sorry I have not available a copy of the record of hearings before the Senate Commerce Committee. It is out of print, and the only two copies that I had I filed with the Ways and Means Committee with my brief to them; but this is a paragraph out of a letter which I wrote to the chairman of the Commerce Committee in reply to a brief filed by them.

This is the Port Huron & Sarnia Ferry Co., operating between Port Huron, Mich., and Sarnia, Ontario. They filed a brief there, following an appearance which I had, and they made a statement in regard to the number of passengers from whom they derived revenue.

Senator SHORTRIDGE. When—as of what time?

Mr. BOND. This letter that I wrote was in November, 1921. Their brief was filed shortly before, between July and November, 1921. As I say, I have not that volume available here. I sent over for it, but I have not it.

Senator SHORTRIDGE. That would throw very little light on the present situation.

Mr. BOND. This was in 1921.

Senator SHORTRIDGE. That was some years ago?

Mr. BOND. But the figures given are so absurd that it really would not make much difference when it was—the figures given to show the revenue that the ferry company had. If you read their brief just as it read, you would get the idea that that was their entire revenue, although the statement they made was entirely true.

Here is my answer:

The statements made regarding the volume of traffic, while true so far as they go, are wilfully misleading, as only a part of the figures are given. It might readily be assumed from the brief that the travel at Detroit and Port Huron was limited to, respectively—

This related to two companies—

3,944 and 472 passengers for the year 1920, which is, of course, absurd.

From the reading of the brief, you would say that in Detroit they collected fares from 3,944 passengers, and in Port Huron from 472 passengers. The brief is in this record here. I can not take the time to find it now.

The information furnished to me from those places and taken from the companies' official reports to the immigration authorities, is that the Detroit & Windsor Ferry Co. brought into the United States in 1920 in excess of five and one-half million persons, (5,500,000), about equally divided between United States citizens and aliens. At Port Huron, during 1920, 403,197 persons arrived in the United States via the ferry, and during the first nine months of 1921 327,982 have arrived, a considerably higher average. Of these a majority are

aliens. The figures given by the attorney are only for the aliens on whom a head tax is paid. In order to ascertain who may be admitted and who must pay a head tax all these passengers must be questioned by the immigration inspectors, as may be readily understood, and all baggage and effects, no matter by whom brought, is subject to examination by the customs inspectors and, if required, the payment of duty. There are a very large number of aliens, residents of "border cities" who make frequent trips into the United States for business purposes, shopping, or amusement.

If these persons satisfy the inspectors that they are coming for only a few hours stay they are admitted without payment of head tax, and there are also a considerable number of rejected aliens. The attorney for the company classes as aliens only those who pay a head tax as permanent residents or under aliens' visitors certificates for a stay of not over six months, which is, of course, only a small part of the traffic. If, therefore, the attorney desires to make a true statement of the revenues derived from passengers who are subject to immigration and customs examination, instead of being $197.20 at Detroit and $47.20 at Port Huron, the figures should be $275,000 at Detroit and $40,319.70 at Port Huron, without regard to the revenue from the vehicles carried or for passengers going in the opposite direction. It may be interesting to note that during the one month of June, 1921, the Port Huron & Sarnia Ferry Co. handled in the neighborhood of 85,000 passengers at 10 cents each and 4,000 automobiles at 50 cents each (in both directions); figures which have a decidedly different appearance from anything given in the brief of the ferry companies.

Senator SHORTRIDGE. That is still 1920, is it?

Mr. BOND. 1920; yes, sir.

Senator SHORTRIDGE. That may have some argumentative effect; but what are the facts now?

Mr. BOND. The ferry companies give the figures of the revenue at Detroit as $197.20, and at Port Huron as $47.20.

Senator BINGHAM. Is that daily or yearly?

Mr. BOND. This is a year. The figures should be $275,000 at Detroit and $40,319.70 at Port Huron, although from their brief you would readily assume that the other figures were the sole revenue they had; but they took the figures of the number of aliens upon whom head tax was paid—permanent entrants into the United States upon whom the head tax of $8 was paid—and they gave that as their entrants into this country, assuming that those are the only ones from whom they collected any money in fares. Of course everybody knows that 999 out of 1,000 passengers on the ferry are simply coming over for the day and going back. They do not collect any head tax on them at all.

Senator SACKETT. If the Government were going to pay overtime in place of these railroads, would it be cheaper to put on separate shifts in the customs service?

Mr. BOND. Do you mean on the frontier?

Senator SACKETT. No; generally.

Mr. BOND. You could not do it at the seaports. It would be impossible, because you would have hundreds of men who would be on duty with absolutely nothing to do; and not only that, but the men working in the daytime can not turn over their work to other inspectors at night.

Senator SACKETT. Then take it at the frontier.

Mr. BOND. At the frontier there are some situations where it can be worked in three 8-hour shifts; and in those situations it is worked at the present time in three 8-hour shifts where the department has money to put those men on.

Senator SACKETT. I am asking you generally whether it would be cheaper to pay overtime or to put on 8-hour shifts—which would cost the Government less?

Mr. BOND. Whether the Government's expense for extra men would be less than the railroads' expense for overtime?

Senator SACKETT. If the Government were to pay for them.

Mr. BOND. I think it is virtually certain that the expense to the Government for extra shifts of men to cover this work would be enormously greater than anything that is paid by the railroads or would be paid by the Government.

Here is a paragraph in a letter here, from—well, I can not say just where this comes from:

> The amount of overtime paid by railroad and ferry companies in this district—

That is, district No. 30, Seattle—

> to customs employees for the calendar year 1928 was $12,926.27. To offset this amount the Government would be required to appoint approximately 25 inspectors at a minimum cost of $52,500.

But, of course, when we receive the generous increase in pay which we know Congress is going to give us this coming winter, that is going to be measurably larger.

Now, gentlemen, that is the argument which I have; and I want to close by making this statement:

We now have a law which it took years to get. As head of this organization, and as preceded by other heads of the organization, we worked very hard to secure something which turned out to be a practical proclamation of emancipation for us. It made life worth living; and if it had not been for the kindness of heart of you gentlemen and your predecessors who got an understanding of conditions, and pitied us for the way in which we had to work, we never would have had conditions of employment such as they are.

The railroads and ferries talk to you about what they have to fear. What they have to fear is what? Nothing but a small percentage of increase in expense to them. What have we to fear? We have to fear working our very life's-blood out for the benefit of these people, because even if we were paid by the Government for this thing, the demands for overtime would be so great that we could not work 8 hours a day. It would be impossible. Many of us would have to work long periods of time.

It is not agreeable to me—and I have done it hundreds of times—to work all day, and to work all night, and be back again at 7 o'clock in the morning on the job, and work all that day, and again the next night, or half the night. It is not agreeable to do that. I have a right to my life at home, and I want to enjoy it; and I do not want to shorten my life by a decade or two in the service of somebody who is simply trying to save some expenses to a transportation company.

It is my belief that under the terms of the bill as it is now—it is my knowledge, in fact, that under the terms of the bill as it is to-day, the present law—all the free accommodation to which the railroads or any transportation company is entitled can be had, provided you gentlemen give the department the money so that they can do it. Where they are not entitled to it, where it is manifestly in the interest of the railroad companies to have special accommodation at night and

on Sundays and holidays, they ought to pay that bill; and it is not so large but that they can stand it; and even if it were, there is no reason for putting it on to us.

If you put this thing in here, what is the result? No provision is made for anybody to pay it. This simply says it shall not apply to the railroads. It would probably take several years to get anything through—that is our experience—which would make any further provision for this. It needs a lot of investigation as to what is best. In the meantime, what are the inspectors going to do? The inspectors are going to have to do the work. They are obliged to do it; they take an oath to do it; and they will do just the same as we used to do in Boston and New York and the other ports before the act of 1920 went into effect.

I have reported to the pier at 7 o'clock in the morning and waited all day at the pier, unable to go away even for lunch, because a fog kept the ship down the harbor, and we did not know when it was coming in. It might come in within 10 minutes; it might be at the end of the pier, and we could not see it, and would not know anything about it. I worked there one Christmas day from 7 o'clock in the morning until half-past 11 at night. After making an engagement to be at home with my family in the afternoon, I worked there all that day. It was the result of that day's work that caused me to sit down at my desk and write the terms of the Act of 1920. I was so filled with disgust and indignation that I was impelled to do something to help the inspectors who were suffering every day and every night as I was doing.

I have a statement here, which I am not going to take your time to read, showing the hours worked by the inspectors in the port of New York in May, 1919, and 1920, for the accommodation of the steamship companies in the examination of passengers' baggage after hours; and unless I had documentary proof you would find it difficult to believe that any human beings could stand the work that they had to do, such as they did on the maiden trip of the *Mauretania*. You will remember there was quite a hullaballoo over that beautiful ship coming in there. She docked at 11 o'clock at night on her maiden trip. The inspectors worked until 4 o'clock in the morning. Nobody ever said "Thank you" to them, even. They were back on their regular job at 7 o'clock in the morning. That was taking place, although not quite so long at night, but lasting until 1 or 2 o'clock in the morning, day after day, day after day, 175 or 180 inspectors on one job.

Senator BINGHAM. Is anybody proposing to take away overtime from the inspectors?

Mr. BOND. That is what it says in that proviso which was put into the House bill as it relates to railroads. Nobody has said anything about steamship companies yet.

Senator BINGHAM. Is there not a law that forbids them to work more than eight hours a day?

Mr. BOND. No, sir. An inspector of customs and any other customs employee is on duty 24 hours a day, except as provided by laws such as our overtime law. I work many Sundays that I do not get any compensation for, because it is in the interest of the Government. There are six of us station inspectors at the port of Boston. Every

sixth Sunday one of us has charge of the port. We do not get any compensation. It is in nobody's interest but the Government's. We do not get any extra pay for that. We do that every sixth Sunday. There are many other cases where the discharging inspectors—not station inspectors—have to work, because on Sundays work is generally suspended, and places have to be covered by inspectors who get nothing for it. We are on duty whenever we are wanted.

Senator SHORTRIDGE. Mr. Bond, what are the average wages of these inspectors?

Mr. BOND. Senator——

Senator SHORTRIDGE. If you can answer in a word, please tell me. If not——

Mr. BOND. I can answer it in perhaps two words—two or three.

Senator SHORTRIDGE. All right; two or three.

Mr. BOND. You passed an act a year ago——

Senator SHORTRIDGE. I do not care anything about that. What are the average wages? That is my question. Answer it if you can.

Mr. BOND. I have got to tell you how that act reads.

Senator SHORTRIDGE. I do not care how it reads.

Mr. BOND. From $2,100 to $3,300 is provided in the law.

Senator SHORTRIDGE. That is your answer.

Mr. BOND. No; that is not the answer. The average wage of that range would be $2,700; and the number of men, although 30 or 40 years in the service, who get the average is so limited that I can almost count it on my fingers. The average wage of the inspectors in the port of Boston would be about $2,400.

Senator SHORTRIDGE. That is your answer?

Mr. BOND. All over the country, I can not say offhand what it is; but it would be perhaps $2,500 all over the country.

The CHAIRMAN. Is that all, Mr. Bond?

Mr. BOND. Unless some of the Senators have something to ask me, I think I have said all that I ought to.

The CHAIRMAN. You have covered the matter very thoroughly.

STATEMENT OF STUART K. BRANDON, OF NEW YORK CITY, REPRESENTING THE NATIONAL CUSTOMS SERVICE ASSOCIATION

(The witness was duly sworn by the chairman of the committee.)

Mr. BRANDON. Mr. Chairman and members of the committee, I am addressing you in behalf of the National Customs Service Association, which includes all branches—inspectors, weighers, and all branches of the service—of these men who are collecting the revenue for you.

The CHAIRMAN. In other words, you take the same position that Mr. Bond did?

Mr. BRANDON. I am going to be very brief, as Mr. Bond has covered the matter very fully, but there are one or two points that he has not brought out.

I want to say at the beginning that we take the position that we are opposed to this amendment because it means customs men working without pay on overtime. There is no legislation here now that allows any pay if this bill is amended pertaining to railroads.

In direct answer to the inquiry of Senator Shortridge, I want to say that our position is that we do not attempt to say whether the Government or the railroads should pay. This committee can decide as to whether the Government should pay, or the railroads; but our experience is that every time we have approached the problem of adequate pay to the customs men—who require a high grade of intelligence to collect this revenue under the tariff rates which you gentlemen have worked so hard to fix, and they zealously guard your interests and the interests of the Government in collecting the revenue—there is always a terrific battle to increase their pay or to help them, and they confuse these customs men and put them on the same basis with other parts of the Government service.

I do not want to go into the discussion of that, more than simply to say, for instance, that in the Immigration Service there is automatic promotion. In three years they get $2,500. As was pointed out by Mr. Bond at the conclusion of his talk, we had a terrific battle in the last session to try to get adequate compensation for these customs men, and the result was that we had a bill under which not a man that I can find out gets the maximum, which is, I think, $3,600; and the average pay around the Port of New York, for example, is $2,900.

Senator SHORTRIDGE. That is what I wanted. I asked the question for certain reasons. I know of those controversies.

Mr. BRANDON. If you amend this bill as proposed, you are going to have a situation where the men are going to work overtime for those railroads, and you can not pay them; there is no law providing that you can pay them for that time. If there were legislation in effect now under which the Government could pay these men for overtime, perhaps I would not be here, because, frankly, we are not interested in whether the Government is paying it or whether the railroad is paying it; but I am interested in these hard-working men.

The CHAIRMAN. Do you think the railroads ought to be relieved of that?

Mr. BRANDON. I do not—I do not; and I say this to you: The proposal that is brought here——

Senator WALSH of Massachusetts. Will you call our attention to the proposal which you say makes this change in the practice?

Mr. BRANDON. The proposal in the House bill——

Senator SHORTRIDGE. It is a suggested amendment?

Mr. BRANDON. It is a suggested amendment. There is nothing in the House bill.

Senator WALSH of Massachusetts. The other witness stated that as the bill now stands they will be deprived of extra pay for overtime.

The CHAIRMAN. No; he meant if the amendment is agreed to.

Senator WALSH of Massachusetts. I thought he meant as the bill came from the House, and I could not find it.

Mr. BRANDON. No. Section 5 of the act of March 11, 1913, I think it was, provides that there shall be extra compensation, and it also provides that the maximum is 2½ days. Even that section is now being taken advantage of by the railroads in Philadelphia, for instance. They will call for inspectors to come on duty from 5 until 12 o'clock. They found out, when they were computing what they

paid the Government, that they paid two days' overtime from 5 to 12, so they promptly told the inspectors they wanted them on duty all night, because they found that for 2½ days' overtime they could keep them through the night from 5 o'clock.

Now, then, as far as the customs man is concerned, from 2 o'clock on he got no compensation if, perchance, the collector should assign a man that was working overtime. Two and a half days' pay is the maximum overtime that he can get. Five o'clock is his time; and working from 5 to 2 is 9 hours, or it could be 10 hours, which is the equivalent of the 2½ days, which is the maximum pay he could get. The rest of the time he has to work all night without any extra pay for it.

Senator SHORTRIDGE. Do I understand that under the act of February 13, 1911, as amended, there is no provision for the payment of overtime?

Mr. BRANDON. No; that act was carried right on.

Senator SHORTRIDGE. Proceed.

Mr. BRANDON. That act was carried right on; so that the only provision now, Senator, for the payment of overtime is the provision which provides that these vehicles must obtain a special license, and in order to do that they must pay the compensation of the Customs Service men for the required services; and the customs men's pay is not on a per diem basis, but it is upon an annual basis. Now then, the collectors of customs being on an annual basis, they can—and I will not take the time to read numerous letters here—they can, if requirements make it necessary, make them work seven days a week, and all kinds of hours.

The vast majority of that overtime work would come about by reason of these special services rendered to those vehicles. There are some conditions that we can not remedy now. We are unable to suggest how to remedy them.

Senator SHORTRIDGE. But they get paid for the overtime; do they not?

Mr. BRANDON. They get paid for it by the railroads now.

Senator SHORTRIDGE. I merely want to know how the inspectors are treated.

Mr. BRANDON. If the railroads do not pay them, no one can pay them.

We have a condition that we can not remedy now. Take the men up on the Maine border, where there are roads and automobiles, etc., coming in all the time. Those men work all kinds of hours, and there is no provision in the law to compensate them for that overtime. All they get is their salary.

Now, gentlemen, it seems to me that this proposal on behalf of the railroads is an attempt to revive an issue that has been pending 15 years in Congress, and it is an attempt to get the Senate to reverse the position which it took in its conferees' report in 1906, when it said to the House:

> The conferees' report recommends that the House recede from its disagreement to the amendments of the Senate and agree to the same. The bill provides for the unloading of vessels in the nighttime carrying imported goods under certain provisions contained in the bill. The amendments of the Senate extend this privilege and these provisions to other vehicles than vessels, with the intention of including the unlading of imported merchandise from freight

cars. These amendments render it necessary also to provide for the lading, as well as the unlading, of vessels or other vehicles in the nighttime. The extension of this privilege to those importing goods in cars carries with it the necessity of the provision for the lading as well as of the unlading in the nighttime.

The House adopted that recommendation, and that is section 451 which you have before you. The railroads tried in the House at this session for the proposal that they are now presenting to the Senate, and they were unsuccessful. Though the committee reported——

Senator WALSH of Massachusetts. I thought they got a favorable report from the committee.

Mr. BRANDON. But then it was amended on the floor.

Senator WALSH of Massachusetts. Now they are trying to have the amendment put into the bill here?

Mr. BRANDON. Now they are trying to have it put into the bill here.

Senator WALSH of Massachusetts. And you are opposed to it?

Mr. BRANDON. Yes, sir.

Senator HARRISON. I got the impression yesterday from Colonel Thom that all the interests that were concerned in this matter were going to get together and agree upon something.

Mr. BRANDON. Yes; but it can not be done.

Senator HARRISON. I see now that it can not be done; and it seems to me that this is a rehash. I think the issue is very plain now. I do not suppose there are any members of this committee who want to take overtime pay from these men.

Mr. BRANDON. That is what you will do if this proposal is enacted into law.

Senator HARRISON. Personally, I think the railroads ought to pay it.

The CHAIRMAN. Senator, I think you are wrong in regard to the position taken by Colonel Thom. They were going to get together on the bill-of-lading question.

Mr. BRANDON. Yes; it was the bill-of-lading question, not on this question.

The CHAIRMAN. That is what he said they were going to get together on.

Mr. BRANDON. Now I want to point out this to you:

In my opinion, this proposal by the railroads, as I say, is simply to get the Senate—which had determined the matter after due consideration, and had the House abide by it—to reverse their position, so that they can get special privileges free.

The CHAIRMAN. Do I understand your position to be that the railroads should be put upon the same level as the steamship companies?

Mr. BRANDON. Yes; I see no distinction.

As you said a moment ago, Senator Shortridge, the question is, What are the conditions now? We are not interested in 1920. When we come to the argument, I listened in vain yesterday to hear any one tell you of a condition that is existing to-day that was not existing at the time this conferees' report went into effect.

Just see how absurd their arguments are when they say they want this amendment put in here! They talk about the public interests. I could go on and discuss that for a long time. Mr. Pillsbury, in

talking yesterday, said that he paid 15 cents a barrel customs charges. I have not investigated as to the amount; but every bonded warehouse has a storekeeper that those people pay for. There are 80 of them in New York. I say that the bill of 1917 is simply a bill to prevent gratuities being given to customs men, and to prevent Government officers working under the direction of private interests.

These officers never work under the direction of private interests. They work under the direction of the Government; and if this matter of public interest is any argument, that would apply to these millers, it would apply to the steamships, it would apply all down the line. Until you enact legislation which will pay these men, you surely do not want them to work for nothing.

They speak of stopping trains. Well, the customs regulations provide that those trains shall stop; but the Secretary of the Treasury, in his good judgment, in the interest of the public and at the request of the railroads, sends the men up, as I can show you by reading numerous letters, on a freight train, perhaps, to go up to a place so that they can work those trains before they get to the border. Certainly that is a privilege.

Now, take a freight train: If they do not unlade them immediately—as I have letters to show, but I do not want to burden you with reading them—they would have to be switched in the yards, and extra crews would have to be employed when they are working overtime. That is a special privilege. The railroads would pay their own men, and they do pay their own men, for all their overtime.

The CHAIRMAN. You agree, do you not, with Mr. Bond in everything he said on this subject?

Mr. BRANDON. Yes; I do agree with Mr. Bond in everything he said, but I want to go a little further than Mr. Bond in this one thing:

Mr. Bond has argued that the Government should pay. I want to say that I do not care. That is for you gentlemen to decide. You are expending the money; but I say I am interested in my men getting their pay.

The CHAIRMAN. I did not understand that Mr. Bond asked the Government to pay them.

Senator HARRISON. Mr. Bond said the railroads ought to pay them.

The CHAIRMAN. He said the railroads ought to pay them.

Mr. BRANDON. But he said the railroads and the Government could not pay them.

Senator WALSH of Massachusetts. You do not care who pays them?

Mr. BRANDON. I do not care who pays them, just so they get the pay.

I want to read you one letter before I close.

Senator BINGHAM. Certainly there is not anybody on this committee who is going to make you work overtime without getting any pay for it. Why use up the time of this committee, when we are trying to get through a long schedule, in trying to prove to the committee something that we already believe?

Mr. BRANDON. Then, Senator, if I may just impress one point on you, as long as you have not the legislation to pay these men, let this bill rest as it is, because the Secretary of the Treasury can regulate isolated instances as they come along.

Thank you.

STATEMENT OF A. P. THOM, WASHINGTON, D. C., REPRESENTING THE ASSOCIATION OF RAILWAY EXECUTIVES

Mr. THOM. The other subject to which I wish to call attention is section 451 of the present law; what ought to be section 451 of the House bill.

Senator WATSON. It is; page 410 of our print.

Mr. THOM. It relates to the payment of customs overtime at border points.

At the present time the law has grown to require the payment of customs overtime by rail carriers at border points. For a great number of years the requirement as to the payment of any overtime in connection with the introduction of merchandise from abroad was confined to vessels moving by water, and that was done at the instance of the vessel owners, to subserve a very real interest which they had in the promptness of the unlading of their ships. The matter of demurrage on a delayed ship is a very important matter—so important that the owners of the ships were willing, if the Government would allow their inspectors to work overtime, to assume the duty of the payment for that extra time. In that condition of the law it did not apply to railroads at all, but there was a change made in the law, as I will show you in a few moments, by which the word "vehicle" was substituted.

Senator HARRISON. When was this—in 1922?

Mr. THOM. I think it was; and the use of that word "vehicle" brought in the railroads at border points as well as the ships.

We have had this matter up also with the Treasury Department. We have submitted to the Treasury Department the impropriety of requiring the payment of any part of the compensation of a Government customs authority by any private party.

Senator HARRISON. Has it operated?

Mr. THOM. The Secretary agrees with that view, as I will show you.

Senator HARRISON. Has this section about which you complain operated?

Mr. THOM. Oh, yes. In the first place, I have prepared a little memorandum on this subject which will probably express it more briefly than if I were to attempt to discuss it discursively.

The general policy of the Government is that no official or employee shall receive pay from any private source in connection with his official service. (Act of March 3, 1917, ch. 163, sec. 1, 39 Stat. 1106.)

Customs officials especially are forbidden to receive such payment. (Rev. Stat., sec. 1790; International Railway Co. *v.* Davidson, 257 U. S. 515.)

Section 1790 of the Revised Statutes is especially significant, and is as follows:

No officer or clerk whose duty it is to make payments on account of the salary or wages of any officer or person employed in connection with the customs or the Internal Revenue Service shall make any payment to any officer or person so employed on account of services rendered, or of salary, unless such officer or person so to be paid has made and subscribed an oath that, during the period for which he is to receive pay, neither he, nor any member of his family, has received, either personally or by the intervention of another party, any money or compensation of any description whatever, nor any promises for the same, either directly or indirectly, for services rendered or to be rendered, or acts performed or to be performed, in connection with the customs or internal revenue; or has purchased, for like services or acts, from any importer, if affiant is connected with the customs, or manufacturer, if affiant is connected with the Internal Revenue Service, consignee, agent, or custom-house broker, or other person whomsoever, any merchandise at less than regular retail market prices therefor.

Senator REED. Who pays this overtime—the United States?

Mr. THOM. No; the railroads.

Senator REED. The railroads pay it to the men?

Mr. THOM. You mean, how is it actually passed to the men?

Senator REED. Yes.

Mr. THOM. I can not tell you that. The railroads have to make it good. The railroads pay it to the collector and he pays it to the men.

Senator REED. So the railroad does not pay the individual employee?

Mr. THOM. It does pay the individual employee, but it does not hand him the money.

Senator KING. It is paid to the Government and then the Government pays it.

Mr. THOM. Yes. This wise governmental policy was departed from in 1911 when Congress, at the request of the owners of vessels entering American ports, passed a law authorizing payment for overtime of customs inspectors by the owners of these vessels. This act applied to cargo only. In 1920 an act was passed providing for payment by vessel owners for the overtime of customs inspectors for services in connection with the examination of baggage. These acts did not apply to railroads. In 1922 Congress passed a tariff act in which it changed the words "other conveyances" in the previous act to the word "vehicles," and this has been construed to be broad enough to include railroads as well as vessels.

Senator HARRISON. Was there any objection made at that time by the carriers?

Mr. THOM. It was done without our knowledge and without any opportunity to be heard.

Senator HARRISON. They "joked" it in there?

Mr. THOM. I do not know.

This latter act was passed without any notice to the railroads and consequently without affording them any opportunity to be heard.

There is a marked difference between the inspection service to vessels and the inspection service in connection with traffic moving by rail across the border.

Vessels do not move on any given schedule. There is no certainty as to when they will arrive. It is not possible therefore, to make the assignment of inspectors with confidence as to the hours in which

they will be called upon to perform the services. Moreover, the delay to vessels while in port is a matter of great expense to their owners, and these owners are willing to pay for quick service by the Government inspectors so that demurrage may be reduced and delays avoided.

Senator WATSON. How long has this been the law, Mr. Thom?

Mr. THOM. Since 1922.

Senator WATSON. How has it worked ill?

Mr. THOM. What is that?

Senator WATSON. What is the matter with the actual operation of it?

Mr. THOM. It makes the railroads pay for Government service.

Senator REED. Mr. Thom, I think that the whole committee sees the unfairness of requiring the payment of overtime for customs inspectors or immigration inspectors, or any other Government employees in regularly scheduled operation.

Mr. THOM. Yes.

Senator REED. But I think the committee also sees that it is entirely fair to make a vessel owner pay for the privilege of getting an examination made in the middle of the night in order that he may disembark his passengers and start his unloading of cargo.

Mr. THOM. I am glad to hear you say that. I am not appearing for the vessel owners. They are not making any objection.

Senator REED. What I want you to direct yourself to, if you will, without too much interruption, is this: Is not that the line of distinction Congress ought to draw?

Mr. THOM. That is my idea.

Senator REED. Not between railroads and vessels. Your ferries up there at Detroit come in on schedule time, and we know they are going to come, and we know we are going to need inspectors there; so it is fair that we should have them.

Mr. THOM. Yes.

Senator REED. If those ferries came in every month, or every three months, and decided that, as a special favor to themselves, they wanted to unload all of a sudden, it would be fair to make them pay for it.

Mr. THOM. I quite agree with you, Senator, and we are advocating the inclusion with the railroads of the ferries.

Senator REED. Is not that the practical distinction?

Mr. THOM. I think it is.

Senator REED. To differentiate between regularly scheduled operation and that which is not.

Mr. THOM. That is what we are advocating, and that is the principle underlying what we say.

Senator COUZENS. You have covered that now, have you not?

Mr. THOM. What I have is very brief, and if you will let me finish, it will not take much of your time, Senator.

It was at the instance of the vessel owners, and to serve a distinctly private interest, that the law was passed authorizing the payment of overtime by vessel owners to United States customs inspectors.

There is no such private interest in respect to the railroads. The public interest requires that railroad trains shall move on definite schedules and without delays at border points. In other words, it is

unthinkable that the public interest would permit a railroad train to be held up overnight at a border point in order that it might be inspected in the daytime. Inasmuch as this public interest controls the movement of trains, there is no private interest of the railroad companies comparable with the private interest of the vessel owners in respect to the avoidance of delays. The inspection service, so far as the railroads are concerned, is not affected with a private interest as it is in the case of vessels, and there is not the same equitable basis for a requirement that the railroads pay for part of the Government service as might be claimed in respect to Government service rendered to vessels. There is no reason, in respect to the railroads, for departing from the wise governmental policy of not permitting private interests to pay a part of the compensation of Government officials.

The parallel between traffic by railroad across the border and traffic by motor vehicles across the border is much closer than the parallel between traffic by railroad and traffic by vessels; and yet there is no overtime payment for customs inspectors required of the motor-vehicle owners on the highways.

In view of the fact that railroads run for the most part on fixed schedules, it is practicable to divide the hours of the customs inspectors so that there will be 8-hour shifts, or so that assignments may be made for definite hours within which the service is to be rendered.

Senator KING. Mr. Thom, is that true with respect to freight trains? Do they run on schedule?

Mr. THOM. That is generally so, yes, sir. Generally they run on schedule. Of course, there may be extras, but that can be ascertained and provision can be made for that.

At other hours, because it is known no trains will be run within these hours, no service would be required. This ability to rearrange the hours of the customs inspectors in respect to railroads would enable the Government to pay for the services of its own officers without any very substantial increase in the Government's present expense—at least with no such increase as would justify a departure from the wise policy of not permitting customs officers to be paid by private interests.

It is worthy of the consideration of the Government whether, if such overtime is paid to customs inspectors in connection with their services on the railroads, it will not be confronted with similar claims for postal clerks, postal inspectors, immigration inspectors, medical inspectors of the Public Health Service, inspectors of the Bureau of Animal Industry, and employees of the Prohibition Unit. In fact, as to immigration inspectors and other immigration employees, Representative LaGuardia at the second session of the 69th Congress introduced a bill (H. R. 15338) providing for extra compensation for these officials.

Senator REED. I have introduced such a bill in this Congress already.

Mr. THOM. So, there is the danger of its spreading.

The payment to Government inspectors of overtime under the present law is already onerous. It, however, only covers incoming traffic from foreign countries. The roads are now threatened with similar exactions made by Canada in respect to traffic moving from the United States into Canada. This additional requirement would,

of course, very largely increase the financial burden on the railroads. It is to the interest of the public that traffic shall move at the lowest rates compatible with adequate and efficient service, and it is accordingly to the public interest that no unnecessary or unjustified expense be put upon the railroads, to be by them in turn and of necessity put upon the traffic which they carry, or to be reflected in impaired service. This consideration affords an additional reason why there should be no departure, as to the railroads, from the wise policy of the Government to refuse to permit private interests to pay compensation to Government officials—especially customs officials.

The customs laws were framed when the business of the country was conducted during daylight hours, but the commerce of the country is now on a 24-hour basis. Inspection is necessary to protect the revenues of the United States by preventing smuggling. In all fairness and justice, a particular interest such as the railroads should not be asked to bear a financial burden for service that is not of interest to them or that they can not control, but is of direct interest to and for the protection of the citizens of the United States at large. The cost should be met through the means of general taxation in the same manner as funds are raised for the proper conduct of all other departments of the Government.

9. This subject has been presented to the Secretary of the Treasury in substantially the same form as that presented in this memorandum. In response to this submission Hon. A. W. Mellon, Secretary of the Treasury, under date of January 4, 1927, addressed a letter to Mr. G. F. Snyder, legal representative of a number of the railroads involved, a copy of which is hereto attached, which concluded with the following paragraph:

> Considering the general Government policy that private interests should not pay for governmental services and also considering the modern conditions in connection with the movement of railroad passenger and freight trains at night I am of the opinion that the Customs Service should be in a position to furnish 24-hour service, including such service on Sundays and holidays, to the railroads crossing the international borders and that the railroads should not be compelled to pay for the services so rendered by the Government employees.

And on April 9, 1928, the Hon. Ogden Mills, Acting Secretary of the Treasury, addressed a letter to the chairman of the House Committee, as follows:

> DEAR MR. CHAIRMAN: I have your letter of the 21st ultimo, transmitting a copy of H. R. 12103, a bill to amend section 561 of the tariff act of 1922. The proposed amendment is to abolish the payment of extra compensation to customs employees in connection with overtime service rendered in connection with traffic by railroad trains arriving from contiguous foreign territory.
>
> Under the terms of the proposed legislation trains carrying imported merchandise into the United States from contiguous foreign territory, or exporting certain classes of merchandise to contiguous foreign territory, would be exempt from the payment of extra compensation for overtime services, whereas trains carrying bonded merchandise arriving from places other than contiguous foreign territory would be compelled to pay extra compensation for these services. Although the merchandise may be of the same character in both instances, the operation of the proposed legislation would result in a discrimination against railroad companies carrying bonded merchandise arriving at the seaports and destined to interior points. Also customs officers and employees would be required to perform identical services at some ports without extra compensation, whereas at other ports overtime would be allowed. This situation would seriously affect the morale of the service and is objectionable. If it is the intent of the proposed legislation to exempt railroad trains from the payment

of the extra compensation for overtime services, it is my opinion that the law should be specific in this respect. The language contained in the proposed legislation is controversial and would, I believe, result in considerable confusion. It is suggested, therefore, that the proposed legislation be amended by striking out all after the word "by," in line 12, and the word "territory," in line 13, on page 2, and inserting in lieu thereof the following: "ferries and railroad trains."

Senator WATSON. How is that?

Mr. THOM. He suggested that the word "railroads" be stricken out and "ferries and railroads" be put in.

Senator SHORTRIDGE. That was a special bill that was introduced?

Mr. THOM. Yes; that was a special bill. (Continuing:)

Considering the general policy of the Government that private interests should not pay for governmental services, and also considering the general conditions in connection with the movement of railroad passenger and freight trains at night, it is my opinion that the Customs Service should be in a position to render a 24-hour service, including such services on Sundays and holidays, to railroads and ferries, and that such transportation companies should not be compelled to pay for the services as rendered by the Government employees. To provide this service by the Government would require 142 additional employees, at a total cost of $288,650.

It may be added that the Director of the Bureau of the Budget advised that the proposed legislation is not in conflict with the financial program of the President.

That was presented to the House.

Senator SMOOT. Is that all, Mr. Thom?

Mr. THOM. No, sir; not quite.

And provisions to cover the suggestions were inserted in the House bill with this comment in their report—I am reading from page 170 of the House report:

Under the present law customs employees are entitled to extra compensation for overtime services rendered in connection with the lading or unlading of vessels or vehicles on Sundays or holidays, or at night. Your committee recommends that the provisions of law authorizing this extra compensation should not apply in respect of services rendered in connection with railroad trains or ferryboats, or international bridges or tunnels.

The general policy of the Government undoubtedly is that private interests should not pay for governmental services. Furthermore, vessels engaged in foreign trade do not generally move on any given schedule nor with any certainty as to the time of their arrival. Consequently it is impossible to make assignment of customs officers with any confidence as to the time during which they will be called upon to serve. The delay to vessels while in port is a matter of great expense to their owners and these owners are willing to pay for extra services by Government officials in order to avoid delay and reduce demurrage. On the other hand, railroad trains and ferries move on definite schedules, and traffic over bridges and through tunnels is more or less continuous. Private interests are not involved in connection with the movement of such transportation facilities to the same extent as in connection with vessels. It is rather the public interest that requires dispatch in such cases. Your committee, therefore, believes that, considering the policy of the Government against payment for governmental services by private interests and the general conditions in connection with the movement of trains, ferryboats, and vehicular traffic, the customs service should be prepared to render a 24-hour service and Sunday and holiday service to these transportation facilities, without requiring payment therefor by private parties.

Appropriate provision was made in the House bill to cover that, but by a motion on the floor, without any debate and without any reason being given, that was struck out. That is the reason for our appearing before you now, so as to bring the matter afresh to your atten-

tion and ask you to insert what the House reported upon favorably but afterwards excluded.

It may be, Mr. Chairman, that there may be some argument submitted here to which I would like to file a brief note in reply, and I ask the privilege of doing that, if such an argument is made.

Senator REED. Mr. Thom, if your last scheduled train was due to pass through the frontier at 11 o'clock at night and you decided to send down a special freight at 4 o'clock in the morning, is it fair to the men concerned or to the Government that you should rout them all out of their beds to come and make that inspection in order to accommodate you and let that special go through?

Mr. THOM. It depends upon whether that special accommodates the public more than it does the railroad. If it was a mere matter of private interest, that would be one thing.

Senator REED. You can not put that into a law.

Mr. THOM. I know you can not.

Senator REED. But might we not very well provide free service for regularly scheduled daily trains?

Mr. THOM. I think so.

Senator REED. If railroad trains or ferryboats, or international bridge or transoceanic liners wanted to come in at other times, at the middle of the night, and rout you out of bed, they should pay for the privilege.

Mr. THOM. Your suggestion is that where there is a regularly scheduled train, night or day, the Government should pay for that inspection?

Senator REED. Yes; they should have men stationed there.

Mr. THOM. But where there is an exceptional condition introduced by a special train that that ought to receive special consideration?

Senator REED. Precisely.

Mr. THOM. That is your suggestion, and it seems to me it has merit.

Senator SACKETT. What would you do with busses on the highways?

Senator REED. If a bridge is open or a highway is open 24 hours a day it is the Government's duty to have men stationed there. That is the way I look at it.

Mr. THOM. There is a great deal to be said in favor of that.

In the case with me is Mr. Snyder, who seems to think the Secretary of the Treasury said there should be 24-hour service. I do not understand you to say anything to the contrary to that.

Senator REED. This responsibility is ours, not his.

Mr. THOM. But I am referring to my friend.

Your suggestion covers a 24-hour service for scheduled trains?

Senator REED. Yes.

Mr. THOM. That is the point I wished to make.

Senator REED. Precisely.

Mr. THOM. But if at any time, day or night, in that 24-hour period there are extra trains, creating an unexpected condition, you think that ought to be provided for specially?

Senator REED. Precisely, if it necessitates the payment of overtime by the Government to these men.

Mr. THOM. It seems to me in that case there is a great deal of merit in your suggestion.

Mr. Snyder is here representing some of these railroads that have special service across the international frontier, and he may take an entirely different view on that matter, but I am saying that there seems to be merit in what you say.

Now, Mr. Snyder, have you any objection to that?

Mr. SNYDER. No.

Mr. THOM. He does not dissent from that either.

(Mr. Thom subsequently submitted the following memorandum:)

WASHINGTON, D. C., *July 22, 1929.*

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate,
Washington, D. C.

DEAR MR. CHAIRMAN: When I appeared before your committee Wednesday July 17, to request an amendment to section 451 relieving the railroads from payment of customs overtime, I was given permission to file a brief if I should desire to do so.

It seems to me that the history of customs legislation and the past application of the laws are not determinative of the question here involved. The question is, shall the Government or shall private interests pay Government employees; and if the latter, to what extent.

Perhaps the whole matter can be settled without further discussion if all parties in interest can agree upon an amendment to the law.

When the amendment was pending before the House, Mr. W. H. Bond, president of the National Association of United States Customs Inspectors, sent to the members of the Ways and Means Committee a memorandum (copy attached hereto) in which he said:

"However, it is possible and easy to accomplish all that is asked in the railroads' brief or that is referred to in the committee's report: That is, the free and unhampered traffic across the frontiers according to schedule and without expense to the transportation companies; and at the same time to safeguard the interests of the Government's employees and insure them the same humane conditions of employment enjoyed by employees in private industry.

"The enactment of subsection to section 451 is quite agreeable to the inspectors if it does accomplish that and does not bring down upon them the onerous and discreditable conditions prevailing before the overtime law of 1920 became effective. To that end, it is respectfully suggested that in place of the language now in the bill the following should be substituted:

"'SEC. 451: (b) Railroad passenger trains, ferryboats, and passenger traffic over bridges or through tunnels entering the United States from contiguous foreign territory shall not be subject, at such places of entry, to the overtime provisions of this section; provided, however, that customs supervision shall be so maintained at such places that no customs officer or employee shall be required to be on duty more than 48 hours in any one week.'"

If your committee believes that compensation for exceptional and special service should be paid by carriers, I respectfully submit that the amendment proposed by Mr. Bond might be acceptable if three changes are made in it. These changes would appear to be in accord with the views indicated by Senator Reed at the hearing.

It is suggested that the word "passengers" in the first and second lines of the amendment proposed by Mr. Bond be stricken out and that in the first line the word "and" be inserted after the word "trains" and that the words "running on regular schedule" be inserted after the word "ferryboats," so that it shall read as follows:

"SEC. 451 (b). Railroad trains and ferry boats running on regular schedule, and traffic over bridges or through tunnels entering the United States from contiguous foreign territory shall not be subject, at such places of entry, to the overtime provisions of this section: *Provided, however,* That customs supervision shall be so maintained at such places that no customs officer or employee shall be required to be on duty more than 48 hours in any one week."

If I understood Senator Reed correctly, he suggested that the Government should pay its own employees for services in connection with freight and passenger trains running on regular schedule, but that the carriers should pay for unexpected, exceptional and special services in connection with trains not run-

ning on regular schedules. Of course, there is no reason why regularly scheduled freight trains should be treated differently from regularly scheduled passenger trains, and the amendment above proposed avoids this.

The amendment with the three changes, here suggested, would be acceptable to the railroads, if the committee takes the position that Government employees should be paid by the carriers for any part of their services to the Government. In my testimony before the committee I expressed my views on this question and quoted the views of the Secretary of the Treasury. I shall not take your time by further elaboration. However, the committee may be interested in a letter written by Henry H. Curran, immigration commissioner of the port of New York, when a bill proposing similar compensation to immigration employees was under consideration five years ago. The following is quoted from a letter written to Representative Albert Johnson by Mr. Curran under date of February 19, 1925:

"* * * This proposal came up a year ago, was rejected by your committee, and did not pass.

"The measure is just as vicious now as it was then. The adoption of it would be a body blow to good administration of the Immigration Service at this port.

"I am responsible for such administration, and I beg that Congress will not disrupt a good machine by injecting this indefensible innovation.

"As a general proposition, immigration officials must deal at arms' length with steamship companies. The interests of these companies and our country's policy of thorough examination and limitation of immigration are directly contrary to each other. Government employees must be paid by the United States Government and not by the outside commercial concerns with whom they deal, such as steamship companies. No man can serve two masters. There would arise a distinct temptation to employees to devote special interest to late examination, so that they would receive their overtime pay. Furthermore, such late examination is bad examination, because conditions do not permit thorough inspection." * * *

The amendment proposed by Mr. Bond to provide service only at the border at the expense of the Government will, I am informed, diminish by two-thirds the cost to the Government as estimated by the Treasury Department. I am advised that the survey conducted by the department resulted in the conclusion that to provide 24-hour service for railroads would require 142 additional employees at a total cost of $288,650 and that about a third of this amount would be required at the border and about two-thirds at points elsewhere than at the frontier—mostly at the piers in the New York district. Of course, these services at seaboard points, in connection with the lading and unlading of trains at the piers, could justly be ranked more as special services than as scheduled services. Mr. Bond's amendment, it will be noted, deals only with trains, etc., entering "from contiguous foreign territory" and not with practices at other points.

In answer to a question Mr. Bond stated that the cost to the government in providing 24 hour service by eight hour shifts would be much greater than the overtime now paid by the railroads. A few figures will show that this is not true. If the average pay of a customs employee is $8 for an 8-hour day, the overtime paid by the railroads for eight hours nights, Sundays, and holidays is $16 additional. The Government would not be required to pay such exorbitant rates, but would arrange eight hour shifts to meet traffic conditions. At some points 24-hour service would not be required. The Treasury Department can quickly give an estimate of the cost of furnishing service only along the Canadian border.

Overtime does not shorten the hours of employees. It merely permits them to receive more pay for the hours worked. Nor does overtime discourage inspection nights, Sundays, and holidays. I do not know of the schedule of a single freight or passenger train that has been changed to avoid overtime. Public demand and traffic conditions control the movement of trains, and this also is one reason why customs inspection is for the benefit of the people rather than for the carriers.

Mr. Bond's statement filed with the Ways and Means Committee reads in part as follows (Hearings, Vol. XVI, p. 10285):

"* * * Customs officers render no service whatever to transportation companies either by day or by night. Their service is entirely to the Govern-

ment, and they are performing the duties prescribed by law and departmental regulations relating to the importation of merchandise, and no others. * * * This is most important, for there appears to be a widespread impression that the customs officers are, during those extra hours, doing something for the railroads, whereas the exact opposite is the case. * * *"

This statement emphasizes the soundness of the view that, as the services are to the Government, the Government should pay for them.

Answering a question of Senator Walsh, Mr. Bond testified that the very Treasury officials who helped draft the amendment inserted by the Ways and Means Committee had changed their attitude after he had talked to them and no longer favored the amendment.

If by this statement Mr. Bond intended to be understood as stating that the Treasury officials referred to had changed their attitude in respect to who should pay for the overtime, I am advised that he is utterly mistaken. According to my information, which the committee can readily verify, the Treasury officials still adhere to their attitude that the Government should provide for the payment of its own inspectors, but that the change should not deprive the men of payment for overtime, such payment, however, to be made by the Government and not by the carriers. It is difficult to conclude that an attitude so deliberately taken and so clearly expressed by both the Secretary of the Treasury and afterwards by the Assistant Secretary, while acting as Secretary, could have been altered in any informal way and I am assued that no such alteration has been made.

It will be remembered that the language of the Secretary on this subject was as follows:

"Considering the general Government policy that private interest should not pay for governmental services and also considering the modern conditions in connection with the movement of railroad passenger and freight trains at night, I am of the opinion that the Customs Service should be in a position to furnish 24-hour service, including such service on Sundays and holidays, to the railroads crossing the international border, and that the railroads should not be compelled to pay for the services so rendered by the Government employees."

The expression of the Hon. Ogden Mills, Assistant Secretary, then acting as Secretary of the Treasury, was in exactly the same terms except that he added: "To provide this service by the Government would require 142 additional employees at a total cost of $288,650. It may be added that the director of the Bureau of the Budget advises that the proposed legislation is not in conflict with the financial program of the President."

Senators seemed interested in ascertaining the fact whether the railroads paid the customs employees directly or indirectly. The employee makes up his statement of overtime which is in turn submitted to the railroad officials by the collector. In most cases the railroad official approves a duplicate copy and later the employee gets his money via the collector. The money is not covered into the Treasury of the United States and the employee is not reimbursed by the Government, unless the collector may be so considered. While the inspector thus does not receive his pay directly from the hands of the railroad, he knows its source and is subjected to the temptation, in making his inspections, to remain on good terms with the person from whom his pay actually comes and who can, perhaps, affect his interests favorably or adversely. In any event, the question of where the money comes from does not affect the main question of whether the Government or the railroads should pay for services to the Government.

There seems to be lack of information as to the pay received by Canadian employees. The only overtime for which the railroads pay the Canadian employees is work performed by Canadian customs officers on Sundays, and the rate for such overtime is 60 cents an hour with a minimum of two hours. The men are paid only for the time they work and not for waiting time as in the United States. All overtime, other than that for Sunday services, is paid by the Canadian Government at the rate of 50 cents an hour.

However, Mr. Signor, who represented the Niagara Falls International Bridge Co. testified that his company had been threatened with exaction of payments at the Canadian end of the bridge but that the Canadian authorities withdrew their demand when they found that the company was not paying at the United States end. This bears out our statement that Canadian employees will demand that they be placed on an equality with those on this side of the border.

As stated before the committee the burden is now sufficiently onerous, but if extended to other classes of Government employees, and if similar compensation is demanded by Canadian employees, the expense will be serious. The question is one of policy which should be determined at this time.

Respectfully submitted.

ALFRED P. THOM,
General Counsel, Association of Railway Executives.

STATEMENT OF DEAN LUCKING, REPRESENTING THE WALKERVILLE & DETROIT FERRY CO., DETROIT, MICH.

(The witness was duly sworn by the chairman.)

Mr. LUCKING. Mr. Chairman and gentlemen, I want to take only two or three minutes, as I must leave to-night; but I know that Mr. Bond will say something in the morning that I would like to answer, so I will answer right now the argument that he advanced here just a few moments ago.

The CHAIRMAN. If you want to wait until to-morrow morning, you may.

Mr. LUCKING. I would rather speak for two or three minutes now and then go home.

What was presented before this committee was presented to the House, and then very much to our surprise the House provision, 451 (b) was eliminated and striken out just before the bill was passed. I suppose that was on Mr. Bond's brief. I can not conceive of any other reason. There was no other opposition except the inspectors'. The inspectors made the claim that the customs administration could change this law, could just put on 8-hour shifts; and it would not cost us anything and that justice could be done.

We have been struggling for upwards of five years to have what we think is right, and apparently we have no other recourse than to appeal to this committee right now to change the law.

Senator KING. You represent a ferry company?

Mr. LUCKING. I represent the Walkerville & Detroit Ferry Co., which is a little less prosperous than the Windsor Ferry. It has been with great difficulty that we have kept our ferry going in past years. The last two or three years it has been more successful. If the Canadian Government should file suit against the American Government, as it is threatening to do, and we are affected in connection with the payment of overtime, I do not know how our ferry will operate.

That is our proposition. We have no other recourse than to ask the active help of Congress in changing this law, because Mr. Bond may tell you that the features of the law are such that the department itself can remedy this situation. I earnestly submit that the past usage has been such that we will not have any success on that line. In fact, I called up the commissioner's office this morning and got no assurances of any help whatsoever. They just put it right up to Congress. So I am leaving the matter here with Congress.

Senator REED. Do your boats run on schedule?

Mr. LUCKING. Yes; absolutely, Senator. All that is required is that the men work six days a week, eight hours per day, whatever their shifts may be.

The CHAIRMAN. Do you run all night?

Mr. LUCKING. No; from 5 or 6 in the morning until about 11 at night.

(Mr. Lucking subsequently submitted the following memorandum:)

DETROIT, MICH., *July 20, 1929.*

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate,
Washington, D. C.

DEAR SIR: Having been advised that Finance Committee granted ferry companies opportunity to file memorandum on customs overtime matter, we desire to emphasize that congressional legislation seems indispensable to remedy the situation that was called to the attention of your committee Wednesday last. Our boats run on regular schedules, constantly unloading passengers and vehicles, but requiring continuous customs inspections service in manner similar to a road or bridge or tunnel, and now that we face competition from bridge and tunnel companies, which pay no overtime whatsoever, we ask relief from payment of the large sums mentioned at the hearing. The injustice is patent which requires ferries to pay overtime and fails to have the same requirement from competing bridge and tunnel companies.

We have made years of effort to have the commissioners of customs issue administrative order abolishing overtime payments, but with no success. Accordingly, we have no alternative but to ask Congress to correct this practice that constantly threatens our very existence. Furthermore, as the hearing disclosed, there is the constant temptation, while the customs overtime law is in force, for not only other departments of our Government but for the Canadian Government as well to impose similar exactions.

It is striking that American ferry companies, owning American-built boats and paying American income taxes are treated more considerably by the Canadian Government than by their own Government. The reason that started the practice, namely, that shippers docking at unusual times and requiring unusual services of men already tired by a day's labor should pay for such services does not apply to our situation, and we respectfully submit that this should be recognized by our Congress as well as by Canada.

Yours very truly,

WILSON W. MILLS,
For Windsor & Detroit Ferry Co.
DEAN LUCKING,
For Walkerville & Detroit Ferry Co.

STATEMENT OF WILSON W. MILLS, DETROIT, MICH., REPRESENTING THE DETROIT AND WINDSOR FERRY CO.

(The witness was duly sworn by the chairman.)

Mr. MILLS. Mr. Chairman and members of the committee, in view of Senator Reed's statement of a few moments ago as to his view as to the attitude of the committee, I will be able to cut down what I had to say to a very few remarks.

I am appearing on behalf of the Detroit and Windsor Ferry Co., which operates continuous service across the Detroit River to Windsor.

There are two items only about which I wish to speak—first, as to the injustice, as I see it, of the present law.

We are soon to be placed in competition with an international bridge and also a tunnel, both running to Ontario from Detroit.

As the present law stands the ferry company has to pay overtime to the customs employees. The overtime amounts to a very considerable sum per year.

Senator COUZENS. How much?

Mr. MILLS. In our case, Senator Couzens, the Detroit and Windsor Ferry Co. paid $13,575 overtime at Detroit.

As I say, we will be in direct competition with the bridge and the tunnel. Under the present law, as construed by the Supreme Court of the United States in International Railway Co. *v.* Davison, 257 U. S. 514, the tunnel company and the bridge company will not have to pay any overtime at all. The act provides that the overtime shall be paid by the vessel or other conveyance.

The Government made the claim in this International Bridge Co. case that a tunnel—or, in that case, a bridge, though, in my opinion, a tunnel would be the same—was another conveyance.

Senator SHORTRIDGE. The law uses the word "vehicle."

Mr. MILLS. Vessel or other conveyance.

Senator REED. They might take so many cents from every motor car that passes.

Mr. MILLS. They might. But under the wording, which was "vessel or other conveyance," the Supreme Court held at that time that a bridge company was not a vessel or other conveyance and exempted them from the payment of overtime. The Government had to bear that themselves.

I ask is it fair to the Detroit & Windsor Ferry Co. and to the other ferry companies in Detroit, which will be in direct competition with a bridge and tunnel, to impose upon our company the burden of payment of overtime to the customs employees and not impose the same burden upon the owner of the bridge or the owner of the tunnel?

Senator REED. Your boats run on regular schedule?

Mr. MILLS. Six-minute schedule, day and night, at all times. They carry between 15,000,000 and 20,000,000 people across the river every year.

The only other item which to me illustrates the injustice of the present act arises at Sault Ste. Marie, Mich., where there is a ferry across the Ste. Marie River to Ontario.

The ferry company up there pays the customs overtime as long as it runs. However, about three months of the year the Ste. Marie River is frozen pretty solidly and automobiles and foot passengers come across on the ice. At that time the ferry company has nothing to do with the overtime compensation and the Government has to make its own arrangements for it.

As soon as the river opens up and the ferry company up there can furnish heat and light and office space and warmth and everything else, and when they can direct the traffic right in front of them, then, as an incident to that, the ferry company has to assume this burden of the overtime compensation, which, to my mind, is absolutely wrong.

In view of Senator Reed's remark I have nothing further to say except to ask your permission, Mr. Chairman, to file a communication from the Inland Water Lines Association, dated July 9, 1929, and also a clipping from the Washington Post of July 15 relative to the stranding of a large number of automobiles in Windsor over the 14th when the customs and immigration men refused to work because they felt they did not have sufficient notice of work.

(The clipping referred to is as follows:)

TOURISTS STRANDED BY OFFICIALS' ACT

OCCUPANTS OF 200 CARS STAY IN CANADA OVERNIGHT AS AGENTS QUIT FOR DAY

WINDSOR, ONTARIO, July 14.—Occupants of more than 200 automobiles from the United States were forced to remain in Canada last night because, it was charged, American immigration and customs officials would not work overtime without four hours of written notice.

The visitors staged a demonstration when the Detroit and Windsor ferry halted its service for the night. Horns in the line of automobiles extending for several blocks were blown despite attempts of police to stop the disturbance. Most of the stranded tourists slept in their cars and many went to the police with protests.

Officials of the ferry said to-day that they were willing to continue to operate boats until all of the United States cars had been taken to Detroit. They charged, however, that American immigration and customs officials declined to serve overtime without four hours' written notice.

Police have recommended that all-night ferry service be maintained during the tourist season.

Senator KING. Did I not have some correspondence with regard to this matter, and I offered a bill to cover it?

Mr. MILLS. You did, and very kindly so. We had considerable correspondence. We also had considerable correspondence with Senator Reed regarding the same bill in the Immigration Service, which is now pending in the Immigration Committee of the Senate.

Senator REED. I think the things should be handled in the same way.

Mr. MILLS. Absolutely.

The overtime payments would practically put us out of business, if we had to pay the immigration overtime, because there are so many more immigration inspectors than customs inspectors.

I also wish to call attention to the fact that your bill—and I am unalterably opposed to the principle of the carrier paying any portion of the overtime—discriminates against us. If the analogy of the Supreme Court decision carries into your bill, as I believe it does. The tunnel company and the bridge company are exempt from paying this immigration overtime and our company will have to pay it.

Senator REED. I realize that. The form of the bill is not final by any means.

(Mr. Mills subsequently submitted the following memorandum and brief:)

DETROIT, *July 20, 1929.*

HON. REED SMOOT,
Senate Committee on Finance,
Senate Building, Washington, D. C.

DEAR SENATOR SMOOT: Will you be good enough to consider this letter and make it a part of the record of the hearings of the Senate Committee on Finance regarding customs overtime. I may still be considered as being under oath.

I understand it was stated to the committee that no amendment was needed to the present customs overtime act and that the commissioner only needed additional appropriation to render 24-hour service so that the ferry carrier would not bear any portion of the cost thereof. This statement in and of itself is probably correct but there are two practical matters to be considered: First, we have been endeavoring to have the Commissioner of Customs take care of this matter of overtime since 1924. He has taken care of it as to week days but it has not been taken care of as to Sundays and holidays. If it were

done by an appropriation, an appropriation would be necessary every two years—why not cover it in the act itself and put the burden of paying overtime where, in my opinion, it belongs, directly upon the Government and not upon the 24-hour carrier. I think the theory of putting the charge on the carrier, even if by administrative order and by appropriation, the actual cost is borne by the Government, is wrong because as was said at the hearings, the railroads, ferry, bridge, and tunnel companies are rendering 24-hour service and the cost for that should be placed directly where it belongs, that is, upon the Government.

Yours respectfully,

WILSON W. MILLS.

BRIEF OF THE INLAND WATER LINES ASSOCIATION, CLEVELAND, OHIO

To the Members of Congress, Washington, D. C.

GENTLEMEN: We respectfully call your attention to one feature of proposed legislation now before your body, and request your earnest consideration thereof.

The Inland Water Lines Association has as members most of the passenger and package freight-carrying ships along the Great Lakes, some of whom trade to Canada, and are therefore dealing with customs, immigration, and naturalization employees.

Sections 449, 450, and 451 of the tariff act as passed by the House and now before the Senate Finance Committee embody the proposition of not handling goods, wares, merchandise, or passengers on nights, Sundays, or holidays, except under special permit, and then that the owner of the ship transporting shall pay all overtime of customs officials when working during these periods.

There has also been introduced in Congress H. R. 3309, providing for payment of similar overtime to immigration and naturalization employees.

We respectfully submit that where lines are operating on a regular schedule provision should be made by the Government to take care of the pay of its officials without calling on owners of steamers furnishing such service. We can see where in some isolated case a ship comes in unexpectedly and is not a regular trader, and she wants to be unloaded or loaded for her own convenience to save the delay of nights, Sundays, or holidays, she should pay for such service when men are detailed down to her in order to save the delay to her; but a different situation obtains when a regular line of ships is running on regular schedule and probably operating night and day, as well as Sundays and holidays, carrying passengers, such as our ships, and when the traffic is for the benefit of the traveling public and the service is demanded by such traveling public. Under such circumstances it is not an isolated case, occurring rarely and only at intervals when the ship wants the service for her own convenience, but is a regularly established route, running on regular schedule and serving constantly, and the traveling public must be served nights, Sundays, and holidays, as well as any other time.

When this is the situation, it seems to us that the Government should make a provision for two or three or whatever watches are necessary to maintain the service, especially when it is to carry out the Government's regulations in reference to customs, immigration and naturalization, and it is for the purpose of enforcing its own laws that these men must be on the job. Take a ferry company, for instance, serving practically constantly, probably with more people traveling on nights, Sundays, and holidays than at any other time, it would seem that there would be no valid reason why the Government should not make provision for its customs, immigration and naturalization officials on the job, without the necessity of the owner of the particular steamboat line constantly paying overtime.

Take as an illustration one of our members, the Detroit and Windsor Ferry Co., operating, as the name indicates, a large fleet of ferries between Detroit, Mich., and Windsor, Canada. The traffic is heavy at practically all times, but is heaviest evenings, Sundays, and holidays. The service is furnished the year around by the finest kind of ferry steamers, at a fare of only a nickel.

The present law provides for overtime for customs employees, but contains a provision "that in those ports where customs working hours are other than those hereinabove mentioned the Collector of Customs is vested with authority to regulate the hours of customs employees so as to agree with prevailing working hours in said ports," and at Detroit the Collector of Customs has ruled under this authority that overtime only applies to Sundays and legal holidays. The overtime amount is two full days' pay for every eight hours.

Twenty-four customs officers are employed on Sundays and holidays, and in 1928 the cost to the ferry company for overtime, for just Sundays and legal holidays, was $13,575.92.

Fifty United States immigration inspectors are employed at the Detroit terminal of the ferry company, and if the bill passes in reference to overtime as to them, and it is restricted to Sundays and holidays the same as now prevails in the Customs Service, the average rate paid for eight hours' overtime is $12.05. Fifty men would mean $602.50 for every eight hours. There are 59 Sundays and holidays, so that the overtime for one 8-hour shift would be 59 by $602.50, or $35,547.50 overtime per year. The proposed bill as to immigration and naturalization employees vests no authority in anybody to determine what is overtime, such as now prevails as to customs, so that it will have to be assumed that from 5 o'clock p. m. to 8 o'clock a. m. would be considered as overtime, and if all of this time, which we might refer to as nights, is figured in with Sundays and holidays, it would just simply abolish the business, as no ferry company could operate and pay this excessive overtime.

We understand that no such overtime is paid to customs employees at international bridges nor at tunnels, and we respectfully ask, why discriminate against steamboat companies that are operating on regular schedules both as to time and route and rendering constant service. They are practically the same as a bridge or tunnel connecting the same points, and in fact both bridges and tunnels are now projected across the Detroit River between Detroit and Windsor, so that the ferry company will have to meet such competition.

Canadian customs employees were formerly paid overtime for Sundays, and the transportation companies were called on to pay this overtime, but this was abolished June 30, 1927, and it was done voluntarily by the Canadian Government, so that the transportation companies are no longer called upon to pay any overtime in Canada, and this is also true as to the Canadian immigration employees.

We have a long border between ourselves and Canada and presumptively at least, customs employees, immigration employees and naturalization employees are or should be constantly on watch along this border for the enforcement of the Government's laws. Who pays their overtime, and is it fair to make a steamboat company pay such overtime when it concentrates this traffic all at one point, furnishing accommodations to the various governmental employees, making it easy and convenient for them to carry out their duties, when apparently no other method or means of transportation is saddled with such expense?

We respectfully submit that the Government should make such provision as is necessary for three watches of eight hours each, if that is necessary, to look after the enforcement of its own laws, and should pay for the same where a steamboat company is operating on regular route and schedule so that the service is always at the same places and at the same hours.

Very truly yours,

INLAND WATER LINES ASSOCIATION,
By F. L. LECKIE, *Secretary.*

STATEMENT OF BASIL ROBILLARD, REPRESENTING THE INTERNATIONAL RAILWAY CO., NIAGARA FALLS, N. Y.

[Including sec. 401 (b) and sec. 454]

(The witness was duly sworn by the chairman of the committee.)

Mr. ROBILLARD. Mr. Chairman and gentlemen of the committee, I represent the International Railway Co., the owner of two bridges at Niagara Falls, N. Y.

The compensation for overtime, while not handed in money by the carrier to the employee, is handed to the employee by the collector pursuant to a bill, so the employee makes up the bill for his overtime and which under the provisions he knowns will be handed to the carrier. It is almost as direct as it can be without the actual transmission of the money.

We operate two bridges at Niagara Falls. I do not want to put these pictures into the record, but I have them here for the members

of the committee. They are two short bridges, about a thousand feet in length, a part of the Gorge Railway and the International Railway System at Niagara Falls.

Those bridges are open 24 hours a day the year round.

Prior to 1920 continuously we have had 24-hour service upon those bridges by customs officers and immigration officers.

In 1920 Mr. Bond, the head of the Customs Employees Union, drew a bill which was introduced by Senator Calder, which provided that a special license to unlade should be procured by persons who were maintaining transportation systems, and in order to get that special license from the Collector of Customs for unlading cargoes and passengers we were called upon to pay salaries of customs officers at overtime rate on Sundays and holidays and at night; we were required to put up a bond of $50,000. It went to $100,000, I think.

Upon advice the International Railway Co. declined to pay it because it was not a carrier; it ran a bridge with trolleys on it.

The collector threatened to close the bridge and, I think, set July 1 as the date when he would put a guard and a gate there and let no one come into the country unless we paid double time for night service and double time for Sundays and holidays, and, as I read the bill, quadruple time for night service on Sundays and holidays.

That item of expense for these two bridges would run $41,971 a year for customs alone.

If Senator Reed's bill putting the immigration upon the same favorable terms were put in it would add about $67,000, because their salaries are larger and there are a greater number of men, running the item to $109,657 a year for overtime salaries to the customs and immigration officers.

We got an injunction and went to the Supreme Court of the United States, and our position was sustained and the injunction was made final.

Thereupon, in 1922, before the Committee on Commerce of the Senate, hearings were held upon a similar customs bill, a bill similar to the customs clause contained in section 415 (b). As this bill was reported to the House that subsection was struck out, as has been said here.

In 1922, as Judge Thom has said, the tariff act was amended so that the word "conveyance," which the Supreme Court said did not include a bridge, was changed to "vehicle," and the terms of the unlading statute include passengers.

Thereupon we found ourselves again threatened by the collector of customs, who said nobody would be able to get off of those cars, and he would close them out unless we got the special license for overtime salaries.

We got another injunction, and that is pending now in the Supreme Court, and has been for five years. We got it below. The appeal has not been argued.

But there are amendments in this bill which I am convinced face me with another injunction action and another threat if the bill goes through with the amendments as they are put in here in sections 401 and 454. I do not have the page reference.

Senator SMOOT. You mean 451?

Mr. ROBILLARD. I mean 401, the section on definitions.

Senator BINGHAM. That is page 388.

Mr. ROBILLARD. Those have been slipped in.

Senator SHORTRIDGE. I would not use that word.

Mr. ROBILLARD. I do not mean to use any phrase which would cast any aspersion upon the persons who sponsored it. But those are there and they caused me trouble. You will understand that, because I have already had two lawsuits.

The decision of the district court in the last injunction case, which I will file with the committee, held that this amendment of 1922 did not put this tremendous burden upon these two bridges, because the definition of "vehicle," while it was "any conveyance on land or air, including aircraft," was evidently intended by the Congress to permit control of hydroplanes.

And the court also decided that the unlading provisions had nothing to do with passengers. By section 454 the unlading provisions now have to do with passengers.

So those changes in the law make me feel pretty sure that I will be faced again with a threat by the collector at Buffalo to close the bridges and the possibility of more litigation.

The difficulty is that the phrases which have been used, while they are possibly phrases of common acceptance, have not been judicially determined, and are to a certain extent indefinite.

Senator SMOOT. How can you construe the words "but does include aircraft" in any way connected with the description of carriage or other conveyance as provided in the existing law?

Mr. ROBILLARD. If you please, Mr. Chairman, when we went to the district court and sought our second injunction it did include aircraft. That was the only change in definition. The definition had been changed to include aircraft.

The district court thereupon said, "This change in definition is not for the purpose of including railway trolley cars upon an international bridge but merely to include hydroplanes." And we find ourselves faced with a possible interpretation of the proposed changes to directly place this large burden upon international bridges open 24 hours a day.

Senator REED. Do they run on regular schedule?

Mr. ROBILLARD. They run right on the bridge where passengers pass in and out 24 hours a day. So the man is there, and he inspects as the trolley car goes by.

Senator SMOOT. Do they run on regular schedule?

Mr. ROBILLARD. Yes, sir.

Senator SMOOT. This is what the House says with regard to aircraft [reading]:

> Aircraft have been excluded from the definitions of "vessel" and "vehicle" in view of the provisions of the air commerce act of 1926, authorizing the Secretary of the Treasury by regulations to apply any provisions of the customs laws to aircraft.

Mr. ROBILLARD. Yes; that is quite correct. That is the reason that change has been made from the House standpoint. But I am trying to have the committee realize that I will be faced again by a threat to close these bridges upon the idea that Congress has again changed the law so that this word "vehicle," the word "aircraft" having been excluded, does mean the little trolley cars on the International Bridge.

Senator REED. If we provide for free service for all the time, a bridge is regularly opened, or trains or ferryboats come in regularly scheduled, or what not, that will take care of you, will it not?

Mr. ROBILLARD. If you provide for free service.

In the act of February 11, 1920, you provided that the Secretary of the Treasury shall fix certain compensations.

In relation to customs acts in the past the phrase "the Secretary of the Treasury shall fix compensation" for appraisers at Boston, at Philadelphia, special agents of the Treasury or temporary laborers has meant shall fix and pay, of course. It was not just a question of fixing. But it should be specifically provided here that this service shall be paid for by the Government, when operated on a regular schedule, or, as we operate, 24 hours a day, whether the service is rendered at night, on Sundays or on holidays, so long as we accommodate the traveling public there that way—and the men are there on 8-hour shifts, as they have always been. They do 8-hour tricks of duty, with relief men, who give them one day off a week, as I understand it.

But I ask, if I can get it, for a definite provision in the bill. We have been having statutory constructions on this thing for nine years.

Senator SHORTRIDGE. What did the court decide a bridge was?

Mr. ROBILLARD. That it was not a vehicle.

Senator REED. That a trolley car was——

Mr. ROBILLARD. They decided a trolley car on a bridge was not a vehicle.

The court will have a chance again, if this goes through as it is without the section 451 (b), to say that a trolley car is not a vehicle, and we will have to pay because we have trolley cars, whereas the bridge next to ours there does not have trolley cars and does not have to pay.

Senator SACKETT. Do you mean to say a trolley car on a bridge is an aircraft?

Mr. ROBILLARD. No, sir.

Senator SHORTRIDGE. In your case you represented a bridge, did you; that is, in the case mentioned?

Mr. ROBILLARD. We had a bridge with a trolley car on it.

Senator SHORTRIDGE. Owned by the same company?

Mr. ROBILLARD. Yes, sir. It is a part of the circuitous trolley-car system which displays the Falls.

Senator SMOOT. I think we understand exactly what you want then.

Senator SACKETT. How much did you say the charge was that would be put on your bridges?

Mr. ROBILLARD. If we got the maximum of the act, if we got the thing as demanded, under the present service we would be called upon for customs officers to pay $41,971 a year.

Senator SACKETT. How much benefit has the prohibition law done to you to offset that?

Senator REED. What do the Canadians do?

Mr. ROBILLARD. Our records show that we pay the Canadian Government $20 a month for customs service. That is a fee for customs inspection. And we do not pay them any overtime. That is my information from our records.

Senator SHORTRIDGE. $20 per day?

Mr. ROBILLARD. $20 per month, or $120 a year, as a sort of fee for having the customs officers at the bridges.

Senator SMOOT. How much overtime do they have?

Mr. ROBILLARD. No more than we have.

Senator SMOOT. Do they pay the overtime?

Mr. ROBILLARD. They pay the men their salaries for 8-hour tricks of duty. Work at night is not overtime. It is a night trick of duty. And they pay night duty as they would pay day duty. And for holiday and Sunday duty they pay as they would pay one day during the week.

Senator SHORTRIDGE. If I understand it, we have inspectors there during the 24 hours.

Mr. ROBILLARD. And always have had.

Senator SHORTRIDGE. But during a certain number of hours your company was called upon to contribute to the expense?

Mr. ROBILLARD. Not at the usual cost, but sometimes at double and sometimes at four times the usual expense of the salaries.

Senator KING. Do we have a greater number of employees there than the Canadians have?

Mr. ROBILLARD. I should say not. I should say that it is about the same. The Canadian immigration requirement is not so strict as ours. The Canadian customs is as strict, or more strict. And I should say they have more men in customs but possibly not so many in immigration.

May I also have the privilege of filing some resolutions relating to this matter, Mr. Chairman?

Senator SMOOT. Yes; you may do so.

(The resolutions referred to are as follows:)

FROM MINUTES OF ADJOURNED MEETING OF THE BOARD OF DIRECTORS OF THE NIAGARA FALLS CHAMBER OF COMMERCE, TUESDAY, JANUARY 17, 1922, AT 12.15 P. M.

RESOLUTION RE CLOSING OF BRIDGES

Whereas, it has been brought to the attention of the board of directors of the Niagara Falls Chamber of Commerce that a controversy has arisen between the United States Government and the owners of two public toll bridges between Niagara Falls, New York, and Niagara Falls, Canada, and the owners of a nearby bridge connecting Lewiston, New York, and Queenston, Ontario, which for more than a score of years have been maintained for the use of the traveling public at reasonable rates of fare both days and nights and on Sundays and holidays, and

Whereas, the adjoining cities of Niagara Falls, New York, and Niagara Falls, Ontario, are visited by hundreds of thousands of tourists annually for the purpose of viewing the Falls of Niagara, all of whom must pass to and fro over the said bridges for the full enjoyment of this great natural spectacle and the citizens of the two cities and vicinities have enjoyed for many years the uninterrupted means of intercourse which the said bridges have afforded, and

Whereas, it is our understanding that further legislation has been introduced in the present Congress to require the bridge owners together with railroads and other instrumentalities of commerce to pay the salaries of immigration officers, inspectors and other Federal employees at overtime rates for Sunday, holiday, and night service. As the said bridges are continuously open twenty-four hours in each day for traffic, inspectors at both the customs and immigration offices have heretofore been detailed for duty in three eight-hour shifts a day. This furnishes a unique situation in international commerce which differs from that of either water or rail carriers whose arrival at international ports

is an incident of long transportation, as these international bridges serve as a continuous conduit for thousands of persons across the international border, only, and

Whereas, the owners of the bridges have stated to this board that they will be compelled by the imposition of such burdens to close the bridges to traffic at night, on Sundays and holidays in order to avoid the payment of salaries amounting to many thousands of dollars a year to Government employees as such added expense is not justified by the revenue received upon the bridges. Now therefore be it

Resolved, That the chamber of commerce of the city of Niagara Falls deprecates and deplores the attempt through existing and proposed legislation to charge upon private owners the expenses of the general Government of the United States for the collection of its revenues and the inspection of persons desiring to enter the United States and any action by the Government which might lead to the closing of these international bridges on Sundays, holidays, and at night, and be it further

Resolved, That this chamber of commerce respectfully recommends to the Congress of the United States, its constituent bodies and their committees, that the public international toll bridges in the city of Niagara Falls and its vicinity be exempted, as public international highways are, from any part of the expenses of the general Government by way of overtime salaries of inspectors, collectors, or other Government employees, particularly because the owners of the public toll bridges maintain a means of access across the international border continuously and not merely as an incident to longer transportation and because the burden to be imposed is entirely out of proportion to the revenue received by the bridge owners of ten cents (10¢) per person per round trip upon said bridges, inasmuch as the bridge owners have declared their intention upon the imposition of any such burden to close their bridges in order to avoid payment of the same, which is not justified by the revenue which they obtain, and be it further

Resolved, That this chamber of commerce respectfully recommends that sufficient employees of customs and immigration services be appointed so that no inspector, matron, interpreter, or other employee shall be obliged to work more than six in any seven days except in emergencies, and that in the event of emergencies the United States Government pay to its employees a reasonable rate of additional pay for overtime services.

I hereby certify that the above is a true copy of the minutes of the board of directors of the Niagara Falls Chamber of Commerce of Tuesday, January 17, 1922.

R. D. HOUSE,
Secretary, Niagara Falls Chamber of Commerce.

Signed in my presence this 15th day of July, 1929.

MAE W. MCGRAW,
Notary Public.

BRIDGES BETWEEN NIAGARA FALLS, NEW YORK, AND VICINITY AND CANADA

From the minutes of the council at a regular meeting held June 16, 1922.

Meeting called to order by Mayor Thompson at 8.07 o'clock p. m.

Present: Councilmen Chase, Heffelfinger, Jenss, and Woodbury, and Mayor Thompson—5.

Absent: None.

Upon motion of Councilman Jenss the minutes of the last meeting were approved as printed in the official proceedings.

RESOLUTIONS

By Councilman Jenss: Whereas, there have been maintained for many years between this city and its vicinity and the city of Niagara Falls, Ontario, and its vicinity three public toll bridges, furnishing the only convenient means of access on foot and by vehicle other than by railroad train to and from the adjacent portions of the Dominion of Canada, and

Whereas the owners of those bridges have furnished such means of access day and night and on Sundays and holidays for many years at rates of fare which have not been unreasonable and by means adequately built and adequately maintained for the security of the public, and

Whereas these public toll bridges are used on Sundays and holidays and at night by many of the citizens of this community and its vicinity for passage to Canada and from Canada and by many inhabitants of the adjacent portions of the Dominion of Canada who visit this community and vicinity to patronize its commercial institutions and its places of amusement, and

Whereas thereby the spirit of free interchange of commerce, the spirit of international comity and of friendship between the two nations on either side of the border and between the two cities of Niagara Falls, which comprises a joint population of more than 60,000 people, has been promoted to the lasting good of both communities; and

Whereas by the interpretations of certain existing legislation by the collector of customs of this district and by the introduction of new legislation in the present Congress, it is proposed to charge upon the operation of said bridges, the salaries at double time rate for Sunday and holiday services and at night of customs officers, immigration officers, inspectors, interpreters, matrons, and public health officers at an expense of thousands of dollars per year; and

Whereas the owners of said bridges have declared that thereby they will be compelled to close the bridges on Sundays and holidays and at night and have expressed their intention so to close the bridges in the event of the imposition of such burdens upon them: Now therefore be it

Resolved by this City Council of Niagara Falls in regular session assembled this 16th day of January, 1922, That this council deprecates and deplores any attempt to charge upon private individuals and corporations the expenses of the general government incurred in the collection of revenues and the inspection of immigrants; and be it further

Resolved, That it is the unanimous consensus of opinion of this council that the said bridges for the promotion of this community and vicinity and for the promotion of international comity shall be and remain open on Sundays and holidays and at night; and be it further

Resolved, That this council advocates and recommends to the Congress of the United States, its bodies and committees, that the public toll bridges at the city of Niagara Falls, N. Y., and its vicinity be exempt from the burdens of paying customs officers' salaries or immigration officers' salaries as contemplated or otherwise, and be permitted to conduct the business of furnishing access across the Niagara River in this vicinity free and unhampered as they have for many years; and be it further

Resolved, That it is the sense of this council, and they recommend to the Congress of the United States, its constituent bodies and committees, that not only shall no further liability for the salaries of Government employees, or other Government charges, be placed upon said international bridge owners but that the present interpretation of the statutes which place upon said bridge owners charges for customs officers' salaries for overtime services be eliminated by an adequate amendment of the statutes to exempt such bridge owners from paying for such services, or any part of them; and be it further

Resolved, That the mayor and corporation counsel of this city be and they hereby are authorized and directed to attend before the subcommittee of the United States Senate on Commerce at a hearing thereof to be held January 19, 1922, at 10.30 o'clock in the morning to the end that these views shall be adequately placed before said subcommittee that said bridge owners shall be relieved of any additional burdens by way of Federal officers' salaries, and that said bridges shall remain open for the passage of the public as heretofore.

Yeas: Councilmen Chase, Heffelfinger, Jenss, and Woodbury, and Mayor Thompson—5.

Nays: None.

Adopted.

STATE OF NEW YORK,
County of Niagara, City of Niagara Falls, ss:

I, George J. Rickert, city clerk of the city of Niagara Falls, N. Y., do hereby certify that I have compared the annexed copies of the proceedings of the Council of the City of Niagara Falls, N. Y., relating to the bridges between Niagara Falls, N. Y., and vicinity and Canada with the originals thereof on file in this office and that the same are true copies of said originals.

In witness whereof I have hereunto set my hand and seal this 15th day of July, 1929.

[SEAL.] GEO. J. RICKERT, *City Clerk.*

Mr. ROBILLARD. I will also submit the decision of the court. (The decision referred to is as follows:)

DISTRICT COURT OF THE UNITED STATES, WESTERN DISTRICT OF NEW YORK

International Railway Co. against Fred A. Bradley, as collector of customs of the ninth customs district of the United States, etc., et al.

Chon, Chormann & Franchot (Basil Robillard, Esq., of counsel), Niagara Falls, N. Y., for plaintiff.

William J. Donovan, United States attorney, Buffalo, N. Y., for defendant.

Action for injunction:

HAZEL, *District Judge:* The sole question involved herein, as appears by the pleadings and supporting affidavits upon which the case was heard, is whether the tariff act of 1922, section 450–451, changed or modified the act of 1920, amending section 5 of the act of February 13, 1911, so as to require plaintiff, as licensee, to pay customs officials for their work on Sundays and holidays at the international toll bridge extending across Niagara River at Niagara Falls, N. Y., in the operation of trolley cars carrying passengers from Canada across the toll bridge. The International Ry. Co. *v.* Davidson (257 U. S. 506) the Supreme Court decided that the acts of 1911–20, authorizing special permits for lading and unlading of vessels and other conveyances, and empowering the Secretary of the Treasury to fix compensation of officials for their work on Sundays and holidays, to be paid by the licensee, did not apply to plaintiff nor to the operation of its passenger trolley line of cars; and that the amendment relating to overtime work by customs officials and payment of extra compensation in connection with lading or unlading of cargo or examination of passengers' baggage did not apply to arrivals from Canada on plaintiff's trolley cars.

Prior to 1911 vessels arriving at a port of entry would not be unloaded until daytime because of the absence of customs inspectors. The Act of Feb. 3, 1911, authorized lading or unlading cargo at night but required special license so to do from the Secretary of the Treasury, and a bond holding the United States harmless from losses and liabilities on account thereof. The Secretary of the Treasury was authorized to fix a reasonable rate of extra compensation for night work to inspectors "in connection with the lading or unlading of the cargo at night," to be paid by the licensee. There was no mention of passengers' baggage or payment to the examining inspector for overtime work on Sundays and holidays. In the year 1920, however, extra compensation for performing services in connection with lading or unlading the cargo or examining passengers' baggage was included but the provisions were apparently limited to cargo-carrying vessels to the exclusion of vessels transporting passengers. They were enacted presumably because of the pecuniary benefits derived by vessels arriving from foreign ports and places to whom inspection and unloading at night, Sundays and holidays was a saving of time and expense, and for this reason no doubt payment by them to customs inspectors for overtime work was required. No such benefits and advantages are obtained by plaintiff in the operation of its trolley cars, no merchandise being brought in by them, and the examination of passengers and their baggage being in the main simply a governmental service.

The Supreme Court, in the Davidson case, decided that the statutory requirement of "entry of vessels and due report of other conveyances" did not disclose an intention to make it applicable either to toll bridges or the running thereon of a line of passenger trolley cars. The learned court proceeded to say that Congress had created two distinct systems for the examination of articles coming from foreign countries; one dailing with merchandise, and the other with passengers' baggage and personal effects; that sections 2799 to 2802 inclusive deal with articles from foreign ports and places while other provisions dealt with articles coming from contiguous countries.

The tariff act of 1922, providing for the issuance of a special license, reads as follows:

"SEC. 450. SAME SUNDAYS AND HOLIDAYS: No merchandise, baggage, or passengers arriving in the United States from any foreign port or place, and no bonded merchandise or baggage being transported from one port to another, shall be unladen from the carrying vessel on Sunday, a holiday, or at night, except under special license granted by the collector under such regulations as the Secretary of the Treasury may prescribe.

"SEC. 451. SAME BOND: Before any such special license to unlade shall be granted, the master, owner, or agent of such vessel or vehicle shall be required to give a bond in a penal sum to be fixed by the collector conditioned to indemnify the United States for any loss or liability which might occur or be occasioned by reason of the granting of such special license and to pay the compensation and expenses of the customs officers and employees whose services are required in connection with such unlading at night or on Sundays or a holiday in accordance with the provisions of section 5 of the act entitled 'An act to provide for the lading or unlading of vessels at night, the preliminary entry of vessels, and for other purposes,' approved February 13, 1911, as amended. In lieu of such bond the owner or agent of any vessel or vehicle or line of vessels or vehicles may execute a bond in a penal sum to be fixed by the Secretary of the Treasury to cover and include the issuance of special licenses for the unlading of vessels or vehicles belonging to such line for a period of one year from the date thereof."

The scope of these sections, in my opinion, does not include the arrival of baggage or passengers on trolley cars from a contiguous country. There is no perceivable intention in the language employed to change or modify the existing law, unless the definition of the word "vehicle" (sec. 401) imparts a broadening effect and one that will include trolley cars arriving from a contiguous country. The definition in terms includes "every description of carriage or other contrivance used or capable of being used as a means of transportation on land or through the air." Notwithstanding this broad definition, it is necessary to ascertain from the action of the committee of both Houses as to the legislative intention.

To require payment by plaintiff of extra compensation for work on Sundays and holidays would be in the nature of a tax, and hence the rule obtains that a taxing provision does not accomplish any purpose other than that specifically mentioned. The discussions in committee made no reference to the Davidson case or the case of Mellon *v.* M. St. P. & S. Rd. (285 Fed. 982), which had decided prior to the tariff act of 1922 that the act of 1920, amending the act of 1911, did not apply to railroad trains arriving from a contiguous country. The purpose of the enactments was, I think, to revise and codify the administrative provisions specifically relating to customs laws, without intending to give them such broadening effect as to include arrivals by trains or cars from an adjacent country. The word "vehicle," it is true, was an enlargement of the House bill of the word "vessel," but it was used to include arrivals by sea of hydroplanes or other air craft arriving from a foreign port or place. If Congress had intended to include trolley cars it no doubt would, in view of the Davidson case, have used clear and definite language to express its intention. The distinction between arrivals of vessels from a foreign port or place and from foreign contiguous country has long been recognized in the administration of customs law. Different manifests, entries, reports, licenses, and penalties apply to the different systems. The difference between sections 433 and 459, which provide for reports of arrivals, is marked. The first applies to arrival of a vessel from any foreign port or place which is allowed 24 hours to make report of her arrival to the customs officer, while section 459 relating to arrivals from a contiguous country, requires making an immediate report to him on entry.

Other provisions bearing upon this point make it clear that these two systems of collecting customs are governed and controlled by different statutory provisions. The adjudications and arguments advanced by the Government in opposition to this view have been examined by me but I am nevertheless persuaded that sections 450–451, under consideration, merely apply to arrivals by sea and not to arrivals of trolley cars from a contiguous country. This conclusion is supported, I think, by Senate document No. 187, which contained an amendment to the effect that all vessels or vehicles or merchandise imported therein coming into the United States from a contiguous country should be subject to the same provisions of law relating to arrivals by sea, but this proposed amendment was not accepted by the Senate and the House receded.

My conclusion is that the tariff act in question has not so modified or changed the prior act as to include a requirement that plaintiff give a bond as a condition of obtaining a special license to discharge its passengers and their baggage on Sundays, holidays, or at night.

Under the stipulation of the parties a final decree for permanent injunction may be entered as prayed without further proof.

JOHN R. HAZEL, *D. J.*

DECEMBER 20, 1923.

Mr. ROBILLARD. May I ask that if the House amendment to section 451 (b) is used to make this more definite that its terms be extended to street railway cars, interurban cars, and bus lines?

(Mr. Robillard subsequently submitted the following brief:)

BRIEF OF THE INTERNATIONAL RAILWAY COMPANY

For the proper consideration of the proposed section 451 it is essential that the committee have before it section 5 of the act entitled "An Act to Provide for the Lading or Unlading of Vessels at Night, the Preliminary Entry of Vessels, and for Other Purposes," approved February 13, 1911, as amended, which is referred to in section 451. It is as follows:

"SEC. 5. COMPENSATION FOR OVERTIME SERVICES; BOARDING OFFICERS MAY ADMINISTER OATHS; FIXING WORKING HOURS: The Secretary of the Treasury shall fix a reasonable rate of extra compensation for overtime services of inspectors, storekeepers, weighers, and other customs officers and employees who may be required to remain on duty between the hours of 5 o'clock postmeridian and 8 o'clock antemeridian, or on Sundays or holidays, to perform services in connection with the lading or unlading of cargo, or the lading of cargo or merchandise for transportation in bond or for exportation in bond or for exportation with benefit of drawback, or in connection with the receiving or delivery of cargo on or from the wharf or in connection with the unlading, receiving, or examination of passengers' baggage, such rates to be fixed on the basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond 5 o'clock postmeridian (but not to exceed two and one-half days' pay for the full period from 5 o'clock postmeridian to 8 o'clock antemeridian), and two additional days' pay for Sunday or holiday duty. The said extra compensation shall be paid by the master, owner, agent, or consignee of such vessel or other conveyance whenever such special license or permit for immediate lading or unlading or for lading or unlading at night or on Sundays or holidays shall be granted to the collector of customs who shall pay the same to the several customs officers and employees entitled thereto according to the rates fixed therefor by the Secretary of the Treasury; *Provided*, That such extra compensation shall be paid if such officers or employees have been ordered to report for duty and have so reported, whether the actual lading, unlading, receiving, delivery, or examination takes place or not. Customs officers acting as boarding officers and any customs officer who may be designated for that purpose by the collector of customs are hereby authorized to administer the oath or affirmation herein provided for, and such boarding officers shall be allowed extra compensation for services in boarding vessels at night or on Sundays or holidays at the rates prescribed by the Secretary of the Treasury as herein provided; the said extra compensation to be paid by the master, owner, agent, or consignee of such vessel; *Provided further*, That in those ports where customary working hours are other than those hereinabove mentioned, the collector of customs is vested with authority to regulate the hours of customs employees so as to agree with prevailing working hours in said ports, but nothing contained in this proviso shall be construed in any manner to affect or alter the length of a working day for customs employees or the overtime pay herein fixed."

The foregoing is the section as amended by the act of February 11, 1920, which enlarged the provision to relate to the examination of passengers' baggage not provided for in the original act of February 13, 1911, and also made the provisions of the section applicable to "other conveyances" as well as vessels.

The Committee of Ways and Means of the House of Representatives reported the proposed tariff act of 1929, with the following amendment appended to Section 451 as subdivision (b) thereof:

"(b) RAILROADS AND FERRIES: The provisions of section 5 of such act of February 13, 1911, as amended, relating to extra compensation, shall not apply in respect of services rendered after the effective date of this act in connection with railroad trains, ferryboats, or international bridges or tunnels. Any bond required to be given on account of a special license shall not be conditioned to pay the compensation and expenses of customs officers and employees assigned

to duty in connection with railroad trains, ferryboats, or international bridges or tunnels."

International Railway Co. which operates a line of street railway cars across two bridges between Niagara Falls, N. Y., and Niagara Falls, Ontario, asks that the amendment included in subdivision (b) be adopted and recommended to the Senate by the Committee on Finance with the insertion after the words "railroad trains" of the words "street railways, interurban cars, busses" so that the exemption will apply to street railways, busses, and cars which cross the bridges or operate through the tunnels on regular schedule.

The bridges of the International Railway Co. at Niagara Falls, N. Y., are open for 24 hours a day and the street railway cars and busses which cross these bridges operate throughout the day and night upon regular schedule. The men in charge of collecting customs duties and inspecting immigrants upon the bridges inspect the passengers upon the street cars and busses as well as the pedestrians and occupants of automobiles which cross the bridges in the regular course at the stations and facilities provided by the International Railway Co. at the bridgeheads.

The bridges have been open for traffic and the trolley cars and busses have operated through the day and most of the night every day of the year, and three 8-hour shifts of customs officers have been stationed at the bridgeheads for the purpose of inspecting and collecting customs revenue for many years. When the act of February 11, 1920, was passed the Collector of Customs at the instigation of the Union of Customs Inspectors threatened to close the bridges of the International Railway Co. unless the railway company would give a bond in the sum of $50,000 and agree to pay at double time rate the salaries of the inspectors stationed upon the bridge after 5 o'clock at night and before 8 o'clock in the morning and at any time on a Sunday or holiday. From this arose the injunction action brought by International Railway Co. against Davidson, as collector, which (contrary to the statement made by Mr. Bond for the customs officers upon the hearing) was finally decided by the United States Supreme Court which unanimously granted the injunction prayed for. *International Railway Company* v. *Davidson*, 257 U. S. 560.

The Circuit Court of Appeals of the District of Columbia also decided that the act did not apply to railroads. *Mellon* v. *Minneapolis, St. Paul & Sault Ste. Marie R. R.*, 285 Fed., 982.

A copy of the bond which the collector endeavored to compel the International Railway Co. to sign as bridge owner is annexed to this brief, marked "A." It will be noted that this bond required the bridge owner to pay the expense of the customs employees at the bridgehead and their regular salary, as well as their overtime salary. It also required the bridge owner to protect and save harmless the United States from losses and liabilities by reason of the travel of persons upon the bridge at night or on Sundays or holidays.

At present 10 men work on the Falls View Bridge and 6 men on the Lewiston-Queenston Bridge, as follows:

7 a. m. to 3 p. m., Falls View, 1 man; 8 a. m. to 4 p. m., Falls View, 3 men, Lewiston, 2 men; 3 p. m. to 11 p. m., Falls View, 1 man; 4 p. m. to 12 p. m., Falls View, 3 men, Lewiston, 2 men; 12 p. m. to 8 a. m., Falls View, 1 man, Lewiston, 1 man; relief, Falls View, 1 man, Lewiston, 1 man.

Under the original requirements of the collector the fixed rate of employment and the salaries payable by the bridge owner for night and Sunday and holiday service would be as follows:

Falls View Bridge, Sundays and holidays, daytime	$4,488
Falls View Bridge, Sundays and holidays, nighttime	5,856
Falls View Bridge, week days, night service	14,251
Lewiston Bridge, Sundays and holidays, daytime	3,120
Lewiston Bridge, Sundays and holidays, night service	4,392
Lewiston Bridge, night service and week days	9,684
Total	41,791

This is for customs officers alone. If the bill presented by Senator Reed is adopted, extending a similar charge for the services of immigration officers, an amount approximating $68,000 additional would have to be added, because immigration officers receive a higher scale of pay and there are several more of them employed upon each bridgehead. We estimate the total expense for immigration and customs officers' salaries in accordance with the original re-

quirement of the collector of customs at $109,477 per year charged upon two bridges which are less than a thousand feet in length and which are open 24 hours a day throughout the year.

These bridges are continually used by people who work on one side of the Niagara River and live on the other. Many of them go to work before 8 o'clock in the morning; most of them return to their homes after 5 o'clock at night. The bridges are the only means of communication between the two sides of the river.

The following list of commutation books sold during the past year indicates the extent of this use:

Falls View Bridge:	
July, 1928	2,062
August, 1928	2,207
September, 1928	2,143
October, 1928	2,207
November, 1928	2,101
December, 1928	2,187
January, 1929	1,753
February, 1929	1,936
March, 1929	2,135
April, 1929	2,290
May, 1929	2,438
June, 1929	2,384
Total	25,843
Lewiston-Queenston Bridge:	
July, 1928	413
August, 1928	387
September, 1928	250
October, 1928	187
November, 1928	143
December, 1928	132
January, 1929	110
February, 1929	89
March, 1929	152
April, 1929	180
May, 1929	255
June, 1929	412
Total	2,710
Total, both bridges	28,553

The rate of fare upon the bridges are low as demonstrated by the following tariff:

One-way fare:	
Pedestrians	$0.05
Passenger in private vehicle	.05
Passenger in taxicab	.10
Taxicabs and drivers	Free.
Passenger in street car	.10
Automobile, wagon, motor cycle, with or without side car, including driver	.25
Motor truck, 2 tons or under, including driver	.35
Auto and trailer, motor truck, over 2 tons, bus, including driver	.50
1 person on horseback	.20
Extra horses	.10
Each head of stock, driver	.10
Children under 5 years	Free.
Commutation tickets:	
40-trip—	
American	2.00
Canadian	2.05
60-trip—	
American	1.50
Canadian	1.55

A recent attempt to raise these fares met with such decided opposition that it was abandoned.

The customs officers and immigration officers seek to have the overtime paid by private interests because they realize that the Government would not pay any such overtime salaries, particularly when the salaries are paid for shifts of duty eight hours in length, no part of which is overtime but some of which is rendered at night or on Sundays or holidays. This is apparent from Mr. Bond's statement to Senator Fernald upon the hearing before the Committee on Commerce of the United States Senate January 19, 1922, as set forth at page 134 of the minutes of that hearing covering Senate bills 1504, 1774, and 2189, a copy of which minutes are annexed marked "B." Upon that hearing Mr. Bond considerably modified what he said would be the demands of customs officers against the bridge owner. He said there would be no charges for night service but only for Sunday and holiday service. However, the demands which were actually made by the collector were for both Sunday and holiday and night service. The owner of an adjacent bridge who endeavored to pay to the collector in cash the salaries of the men for Sundays and holiday services at overtime rates was informed by the collector that if he was going to pay cash for Sunday and holiday service he would have to pay cash for night service at overtime rates as well.

Mr. Bond, for the Customs Officers' Union, adopts a reassuring attitude and informs the committee that under the present statute no charges will be made for night duty but only for Sunday and holiday service, because the night duty will "conform to the customary working hours at the port," under the proviso contained in the fifth section of the statute of February 11, 1920.

This proviso has always been in the statute but in spite of it, as we have related, demands were made by the collector of customs for the payment of double salaries for night service to customs officers by the owner of the bridge in addition to the salaries which the customs officers were already receiving for the 8-hour tricks of duty which they were working at night. His present reassurances which are but repetitions of the assurances which he gave before the Senate Committee on Commerce are of little comfort therefore to the bridge owner as facts have demonstrated that the customs officers have seized every opportunity to compel the bridge owner to pay them extra compensation because their services are rendered nights, Sundays, or on holidays.

Under the terms of the act of February 11, 1920, it is plain that if any charge can be made against the bridge company it would include overtime rates for the salaries of customs officers for night service, for service on Sundays and on holidays, and from the peculiar phraseology of the act "and two additional days' pay for Sunday and holiday duty" following the provision for overtime, the collector might claim to be justified in exacting pay for Sunday night service at four times the usual rate, being double pay for overtime "and two additional days' pay for Sunday and holiday duty."

The Supreme Court having decided that a bridge was not a vessel or a conveyance in the Davidson case, new trouble arose upon the passage of the tariff act of 1922, which changed the word "conveyance" to "vehicle" and defined "vehicle" as "every description of carriage or any contrivance used or capable of being used as a means of transportation on land or through the air." As soon as these changes went into effect new demands were made by a new collector of customs at the instance of the customs officers' union with threats to close down trolley and over vehicular service across the bridge, if not the bridge itself, on Sundays, holidays, and nights. A new action for injunction was started, and in that case the lower court, following the Davidson case, held that the amendments to the tariff act of 1922, were not so broad as to permit the inclusion of trolley cars or a bridge in the terms of the act. A copy of the opinion of Judge Hazel in the case was filed with the stenographer upon the hearing.

The decision was based upon the contention that the tariff act of 1922 in its administrative provisions was merely a codification and not a revision of the law; therefore the extension of the definition of the word "vehicle" and the change of the word "conveyance" to "vehicle" did not serve to charge bridge owners with the salaries of customs men at double time rate for night service for the examination of passengers on trolley cars and persons traveling in vehicles upon the bridge. The cases brought by the Port Huron & Sarnia Ferry Co. and the case of the railroads against the Secretary of the Treasury were otherwise decided, based upon the changes in the statute, and both the ferry

companies and the railroads have since been paying overtime salaries to customs officers who work at night.

The proposed changes in the definition of the word "vehicle" in section 401 of the proposed act and the addition of section 454 and the amendment to section 459 applying the requirements for special permits for unlading to passengers, will give the Customs Inspectors Union another opportunity to compel the collector of customs to demand that pay of the customs officers a overtime rates be undertaken by the bridge owners under penalty of closing the bridges. This will give rise to a third litigation and other attempts to construe the statute. It can be obviated only by the express inclusion in the statute of a provision that where twenty-four hour service is being rendered to bridges, street railways, buses or other similar carriers operated upon schedule no overtime shall be charged to the owner of the facility for the service of customs officers at night or on Sundays or holidays.

From Mr. Bond's admissions upon this hearing as well as upon the hearing before the Senate Committee on Commerce that he does not want the services paid for by the Government but prefers that it be paid by the owner of the facility, it is apparent that the customs inspectors prefer to receive pay at double time rate for tricks of duty at night and on Sundays and holidays and at quadruple pay for tricks of duty at night on Sundays and holidays to any allowance which the Government will give them for service on Sundays or at night which will undoubtedly be at their usual rate of pay for day work with one day off a week—the system now in force at the bridgehead. There is little question that if an inspector of customs gets the opportunity through amendments of the statute in general terms without a specific exemption to the bridges he will do everything in his power to compel the bridge owners to pay him an additional $24 for every Sunday night of service in addition to the $6 dollars which the Government pays him.

We believe that the committee is convinced that the Government should pay for Government inspection for the collection of Government excises and duties in a case where the amount of service can reasonably be anticipated and 24-hour inspection service in 8-hour tricks established to take care of it. We earnestly request that the Senate shall now take the position that the requirement upon the owners of facilities and the exemptions to those owners should be in express terms and carry out that position by the addition of subdivision (*b*) to section 451 as the bill was reported to the House by the Ways and Means Committee.

As to Canadian customs inspection and immigration inspection it was stated by Mr. Bond that the facilities were all paying overtime salaries to Canadian customs and immigration officers. As it was stated on behalf of the International Railway Company at the hearing, it was formerly the custom to pay to the Canadian Government the sum of $20 per month or $120 per year as a free for customs inspection at bridgeheads and no overtime salaries or other compensation to customs officers for Sunday, holiday or night service was paid by the bridge owner. Upon further investigation it is found that even the payment of $120 a year for customs inspection and immigration inspection flat fee has been eliminated and the International Railway Company pays no fee or charge whatsoever to the Canadian Government or to the Canadian customs officers either for customs inspection or for compensation or reimbursement for services rendered at night, Sundays, holidays or any other time.

Mr. Bond for the Customs Inspectors Union suggested to the Committee of Ways and Means of the House and the Members of the House of Representatives an alternative amendment to section 451 (*b*) exempting trains, ferryboats, passenger traffic over bridges and through tunnels with an express provision that customs supervision shall be so maintained at such places that no customs officer or employee shall be required to be on duty more than 48 hours in any one week. This would be perfectly satisfactory from thestandpoint of the bridge company but we feel in duty bound to call the attention of the committee to the fact that so far as railroads are concerned it would call for the substitution of 8-hour shifts for all customs inspection service, when the payment of a reasonable overtime rate for actual overtime service (not merely night, Sunday or holiday shifts of duty) would be much less onerous. The proposed amendment is an obvious attempt to make it appear that the Government must necessarily pay for a largely increased customs service in 8-hour shifts for the

inspection of railroads, when in many cases a small amount of overtime service at a reasonable rate would cover the requirements.

So far as the bridge companies are concerned the amendment would be satisfactory if expanded to include trolley cars, interurban cars and buses, all of which operate over the bridges, but some clear definite statement of the intention that the exorbitant requirements of the overtime act shall not apply to facilities open throughout the day and night is necessary to protect the bridge companies from another attempt by the Customs Inspectors Union to extort salaries at double and quadruple rates for night and Sunday and holiday tricks of duty.

Respectfully submitted.

INTERNATIONAL RAILWAY COMPANY,
Buffalo, New York.
By BASIL ROBILLARD, *Attorney.*

EXHIBIT A

CARRIER'S BOND FOR TRANSPORTATION OF MERCHANDISE IN CUSTOMS CUSTODY AND FOR THE LANDING AND UNLOADING OF MERCHANDISE UNDER THE ACT OF FEBRUARY 13, 1911, AND OTHER ACTS, INCLUDING SECTION 450 OF THE ACT OF SEPTEMBER 21, 1922

Know all men by these presents, That we ——— ———, as principal, and ——— ———, of ———, and ——— ———, of ———, as suret , are held and firmly bound unto the United States of America in the sum of one hundred thousand dollars, for the payment of which we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Witness our hands and seals this —— day of ———, 192 .

Whereas the above-bounden principal has been designated as a common carrier for the transportation of merchandise in bond:

Now, therefore, the condition of this obligation is such that if the above-bounden principal shall faithfully observe and comply with the laws of the United States and regulations of the Treasury Department pertaining to the transportation, safe delivery, and lading or unlading of goods, wares, and merchandise, and baggage, under sections 3000, 3001, 3005, and 3006 of the Revised Statutes, the act of June 10, 1880, the provisions of the act approved February 13, 1911, and any other act or acts including section 450 of the act of September 21, 1922, relating thereto in effect on the dates of lading, transportation, unlading, and delivery, and under such regulations as may have been or may hereafter be promulgated by the Secretary of the Treasury, and shall pay the necessary expense of such locks, seals, and other fastenings as may be prescribed and required by the Secretary of the Treasury for securing the custody and safe transportation of such merchandise in such cars, vessels, vehicles, safes, trunks, or pouches as may be authorized and used by it for that purpose; and shall also pay the expense of such customs employees as the Secretary of the Treasury, at his discretion, may cause to be stationed at points along the route of such carrier, or upon any car, vessel, or other vehicle (such expense to include the salary as well as the actual necessary traveling expenses of such employees) in such manner as may be directed by the Secretary of the Treasury; and shall pay the extra compensation provided for by the said act of February 13, 1911, or any other act or acts in effect at the time of such service, and the regulations issued in pursuance thereof, to be paid to customs employees in connection with the lading or unlading of bonded merchandise at night or on Sundays or holidays; and shall use only such means of conveyance for transportation as may be authorized by the Secretary of the Treasury; and shall safely cart, lighter, or otherwise transport such goods, wares, merchandise, and baggage if such operation is performed by the said carrier; and shall, without delay, transport, safely keep while in the stations, buildings, rooms, or warehouses of such carrier, and make prompt report by delivery of the manifest which shall accompany the merchandise and make safe delivery of all goods, wares, and merchandise, and baggage, as described in each and every entry or manifest, and in each receipt therefor executed by said principal or its agent, delivered to said principal for transportation under the provisions of the aforesaid laws, or any of them, to the collector or other proper officer of the customs to whom the merchandise is consigned in the

manifest, in the manner required by law and regulations aforesaid, or in default of such transportation, report, and delivery, shall pay to the United States as liquidated damages an amount equal to the value of the nondutiable merchandise not so transported, reported, and delivered, the damages on any one shipment not to exceed $25; and shall pay an amount equal to the duties on dutiable merchandise not so transported, reported, and delivered, provided that when delivery shall have been made of any bonded merchandise to the ultimate consignee or owner, without permit or release having been issued by the collector or other proper officer of the customs, shall pay in each case, in addition to the amounts above specified, a sum equal to 25 per cent of the said duties; and shall pay any internal revenue taxes or other taxes accruing to the United States on the merchandise, together with all costs, charges, and expenses caused by the failure to make such transportation, report, and delivery, and shall also protect and save harmless the United States from any and all losses and liabilities which may occur or be occasioned by reason of the granting of a special license to lade and unlade bonded merchandise at night or on Sundays and holidays, and also from any loss or damage resulting from fraud or negligence on the part of any officer, agent, or other person employed by the above-bounden principal, then this obligation to be null and void; otherwise to remain in full force and virtue.

Signed, sealed, and delivered in presence of—

——— ———, ——— ——— [SEAL.]
——— ———, ——— ——— [SEAL.]
——— ———, ——— ——— [SEAL.]
——— ———, ——— ——— [SEAL.]

The rate of premium charged for this bond is $—— per thousand. The total amount of premium charged is $—— per annum.

(Signature of agent representing bonding company)

Internal revenue stamps must be affixed by bonding company to all receipts for annual premiums paid on this bond, TD 2825.

EXHIBIT B

EXTRACT FROM HEARINGS BEFORE SENATE COMMERCE COMMITTEE ENTITLED, "OVERTIME PAY OF CUSTOMS AND IMMIGRATION EMPLOYEES," DATED JUNE 16 AND JULY 7, 1921, AND JANUARY 10, 1922 (PP. 134–135)

Senator FERNALD. There seems to be no objection either by the railroads or the bridge or ferry companies about the charge that is to be made. That is a detail that can be worked out, I think, by the committee in some bill. But what objection have you to these charges being paid by the Government?

Mr. BOND. That is just exactly what the chairman of the Commerce Committee asked me. The reason I object to that is because I know the department won't pay them. Now, if I go to work at 5 o'clock at night and work until 8 o'clock in the morning, I get $13.12, which is the charge for working all night long. The Government won't pay me $13.12 for working that time. I don't know what they will do, but I know they won't do that, because they can't.

Senator FERNALD. So that your real objection is that the Government would economize some in these charges?

Mr. BOND. Where is the Government going to get the money to pay this? The appropriation for the expense of collecting the revenue from customs, part of the Treasury appropriation bill, has been passed for $11,300,000, and there isn't money enough in that to pay decent salaries to the men for the daytime. You gentlemen know that you will not increase that appropriation. I came down here two years ago and tried and failed to get $200,000 added to this appropriation so that the inspectors could get the salaries authorized by the act of March 4, 1909. We were supposed to get that increase 13 years ago, but we didn't get it, and we haven't got it yet, and we can't get it, for the appropriation isn't large enough. If, therefore, they can not pay adequate salaries for the daytime out of the appropriation how are they going to pay a large amount of money for overtime?

STATEMENT OF CHARLES SIGNOR, REPRESENTING THE NIAGARA FALLS INTERNATIONAL BRIDGE CO., ALBION, N. Y.

[Including sec. 401 (b)]

(The witness was duly sworn by the chairman.)

Mr. SIGNOR. I will be very brief, Mr. Chairman and Senators. There are only two things I want to say, because I think you have the matter in mind already, and there is not very much that I could add to it.

The bridge that I represent is similarly situated to the one which Mr. Robillard represents, except that our bridge has no trolley cars running over it. We are concerned with automobiles and pedestrians coming over there.

I do not think the law as passed by the House would apply to our bridge, but we are very much interested in this proposition because, as is shown by the history that has been cited here, the tendency of these bills is to bring in additional entities. They have brought in the steamships and the railroads. If they add trolley cars we do not know where they will end.

There is one other matter that I think may be of considerable interest to the committee in this regard, and that is that if we add to it this overtime, we figure that it would cost us about $30,000 a year at the American end of the bridge for the customs inspection. If we add the emigrants the amount would be so prohibitive that we could not operate our bridge on Sundays, holidays or after 5 o'clock at night.

Senator KING. I am interested to know why it would cost that much, when the other witness said that they only paid Canada $120 a year.

Mr. SIGNOR. While I am not conversant with that, I understand that in Canada they work their men on three 8-hour shifts and pay them their regular salary. I do not know that, but that is what I believe. I am advised that some time ago the matter was taken up with the Canadian Government at Ottawa in reference to bridges because the customs officials over on the Canadian side were interested in seeing if they could not be paid through by private enterprises, and after conferences had over there the Canadian Government for the time, at least, adopted the policy that they understood was being adopted over here, that the Government should pay its own employees and that they should not make the charge against us.

I am also assured that in all practical possibility that if similar legislation were ever enacted requiring us to pay overtime such as this, we would also have to pay it over on the Canadian side. The result, I believe, so far as our bridge is concerned, is that if we had to pay the American customs we would not be paying regular wages. We would be paying two days' pay for an 8-hour shift. Every extra 8-hour shift that came on we would have to pay two days' pay per man. We could not operate our bridge on Sundays, holidays or after 5 o'clock at night.

Our bridge runs from one business section in Niagara Falls, N. Y., to another business section in Niagara Falls, Ontario. The social life there is as intimate as it is in any friendly community, but I believe it would mean that if the International company were under

the same necessity as we, shutting up our bridge from 5 o'clock in the evening until 8 o'clock the next morning, no one could get across Niagara River because it is not navigable at that point.

I do not think the bill as proposed would apply to traffic over our bridge, but we are earnestly interested in its because we can see the tendency, at least, as far as some of the persons that are in favor of the bill as it passed the House are concerned, to continue these things until private enterprise will have to be paying all of that service; and as far as our company is concerned, it would be absolutely prohibitive.

The CHAIRMAN. You have not paid anything so far?

Mr. SIGNOR. No, sir. But we had to go to court to prevent paying.

EQUIPMENT AND REPAIRS OF VESSELS

[Sec. 466]

STATEMENT OF IRA A. CAMPBELL, NEW YORK CITY, REPRESENTING THE AMERICAN STEAMSHIP OWNERS' ASSOCIATION, THE PACIFIC-AMERICAN STEAMSHIP OWNERS' ASSOCIATION, AND THE SHIP OWNERS' ASSOCIATION OF THE PACIFIC COAST

(The witness was duly sworn by the chairman of the committee.)

Mr. CAMPBELL. Mr. Chairman and Senators: I appear for the American Steamship Owners' Association, the Pacific-American Steamship Owners' Association, and the Ship Owners' Association of the Pacific Coast.

The members of these associations comprise substantially all of the owners of American ships engaged in foreign trade; and I appear in support of the amendments made to section 466 of the tariff act of 1922 by the House.

Senator WALSH of Massachusetts. Do Mr. Hunter and Mr. Smith, who are to follow you, support the same position?

Mr. CAMPBELL. No; I think they take the opposite view.

Senator SHORTRIDGE. You are in favor, as I understand, of this proposed amendment?

Mr. CAMPBELL. I am in favor of the proposed amendment.

Senator SHORTRIDGE. All right; and there are those who oppose it?

Mr. CAMPBELL. And they represent shipbuilders who are opposed to it.

Senator SHORTRIDGE. American shipbuilders.

The CHAIRMAN. Mr. Campbell, we have all this in the House hearings. You appeared before the House committee?

Mr. CAMPBELL. Yes; I did.

The CHAIRMAN. Is there anything else that you want to say that you did not say there?

Mr. CAMPBELL. Well, no, if I may file my memorandum with the committee, and say one or two words in addition.

Senator HARRISON. This is a controversy between domestic shipbuilders or repair men and foreign interests?

Mr. CAMPBELL. No; this is a controversy between American shipowners and American ship repairers. If I may just state briefly what the controversy is, I will not take very much of your time.

The act of 1922 provided for a duty of 50 per cent on the cost of any repairs made on an American ship in a foreign shipyard, but contained a proviso for a refund of the repairs on certain conditions; and the condition was this:

If the owner or master of such vessel, however, furnishes good and sufficient evidence that such vessel, while in the regular course of her voyage, was compelled, by stress of weather or other casualty, to put into such foreign port and purchase such equipments, or make such repairs, to secure the safety of the vessel to enable her to reach her port of destination, then the Secretary of the Treasury is authorized to remit or refund such duties.

We appeared before the Ways and Means Committee and advocated an enlargement upon the exemption; and the bill as passed by the House contained this exemption and this modification, among other things:

That such equipment or parts thereof——

Senator SHORTRIDGE. Is that subdivision (1) of section 3115?

Mr. CAMPBELL. Yes; subdivision (1) of section 3115, on page 420:

(1) That such equipment or parts thereof or repair parts or materials were purchased, or that such expenses of repairs were incurred, in a foreign country, in order to maintain such vessel in a seaworthy condition, or to repair damages suffered or to replace equipment damaged or worn out during the voyage, or to maintain such vessel in a sanitary and proper condition for the carriage of cargo or passengers.

Then the refund shall be made.

I will compare the two.

Senator SIMMONS. Would not that include practically every case of repairs abroad?

Mr. CAMPBELL. No; It would not, sir. It omits certain things, if I may analyze just what we are asking for. Then you will see what it covers.

Now if I may go back——

Senator HARRISON. It does liberalize, though, the right to repair in foreign ports?

Mr. CAMPBELL. Briefly, it does this:

Under the Act of 1922 you could only get the refund if the repairs were made necessary by casualty or stress of weather, and such repairs were necessary in order that the vessel might reach her port of destination. The amendment that we seek is to enlarge upon that, so that any repairs made to the vessel for the purpose of restoring her to a seaworthy condition may be exempt from duty. That is to say, the vessel may get into an unseaworthy condition on the voyage from causes other than stress of weather or casualty, and require repairs to put her in a safe condition so that she can go on and complete her voyage. Now, we say that the shipowner is in duty bound to make and will make repairs in foreign ports to put his vessel and keep his vessel in a seaworthy condition for the completion of the voyage, however that unseaworthiness arose, or what the cause of it was.

Senator BARKLEY. In other words, if the ship wears out on its way over, you want the right to fix it up over there, and not pay a duty on it when it comes back?

Mr. CAMPBELL. Yes; but you must remember this: The law, under severe penalties, requires every American ship to leave port in a seaworthy condition.

Senator SHORTRIDGE. Apply it, right there, to Singapore, and tell us what might happen.

Mr. CAMPBELL. The ship leaves San Francisco in a perfectly seaworthy condition; but on that voyage there may be concealed parts of the machinery, which the exercise of due diligence can not reveal, which wear out, which break upon the voyage, and have to be repaired if the vessel is to be kept in a seaworthy condition.

Senator SHORTRIDGE. What is the law now? The law now limits it to what?

Mr. CAMPBELL. Casualty or stress of weather.

Senator SHORTRIDGE. Casualty? What would that include? Has that been interpreted?

Mr. CAMPBELL. Yes; casualty will not include repairs that are made necessary by the wear and tear upon the vessel, but they must be due to something extraordinary or accidental.

Senator BARKLEY. To what extent would this provision induce shipowners to neglect repairs in home ports that they may take advantage of it in foreign ports?

Mr. CAMPBELL. Not at all, because the shipowner under those circumstances opens himself to untold liabilities. If a shipowner sends his ship to sea in that condition, he not only opens himself to liability for damage, but he will defeat himself in his right to the present limitation of liability. He opens himself to criminal penalties.

Senator COUZENS. As a matter of fact, do you not get this work done abroad cheaper than you do in this country?

Mr. CAMPBELL. Yes; certainly you do.

Senator COUZENS. Then when you pay duty that equalizes it, so that it does not make any difference whether you get it repaired here or abroad?

Mr. CAMPBELL. Certainly. The 50 per cent duty, I suppose, substantially equalizes it.

Senator COUZENS. Then what difference does it make? Why should you get a refund?

Mr. CAMPBELL. They do not want the duty. This act was never passed in 1922 by the ship repairers for the purpose of collecting revenues for the Government.

Senator COUZENS. It was for the purpose of having the work done in this country, was it not?

Mr. CAMPBELL. This act was passed for the purpose of trying to force the shipowners to have this work done in this country by imposing upon them the penalty of the duty.

Senator COUZENS. After you have paid the duty, you are no worse off than if you had the work done in this country?

Mr. CAMPBELL. That is probably true.

Senator COUZENS. Then why should you urge a rebate?

Mr. CAMPBELL. I do not think it is fair to say to the shipowner, engaged in competition, as he is, with the foreign trade, that "where you are compelled to make a repair in the foreign port for the purpose of keeping your ship in a seaworthy condition, you must pay

a duty upon that repair unless it is caused by the stress of weather or other casualty."

Senator COUZENS. Assume that it was not bad enough, but that you could come back to an American port and have the work done. You would be no worse off than if you did that.

Mr. CAMPBELL. That is true.

Senator COUZENS. Then, I do not see the purpose of a rebate.

Mr. CAMPBELL. If a repair was of that kind, it would not be necessary to the seaworthiness of the vessel.

Senator COUZENS. Assuming that all you say is true, I am interested in having the ship as safe as possible, as safe as it is humanly possible to make it.

Mr. CAMPBELL. We all are.

Senator COUZENS. You may have the work done in a foreign country?

Mr. CAMPBELL. Yes.

Senator COUZENS. Then you are not penalized in any way, as compared with what you would pay if you had the work done in the home port.

Mr. CAMPBELL. That is perfectly true.

Senator WALSH of Massachusetts. Would not the repair bill in the foreign port often be more than what you would have to pay in this country?

Mr. CAMPBELL. You can not judge that.

Senator COUZENS. The tariff is for the purpose of equalizing it.

Senator HARRISON. Mr. Campbell, you represent the Steamship Owners Association?

Mr. CAMPBELL. Yes.

Senator HARRISON. Not the repairers?

Mr. CAMPBELL. Not the repairers.

Senator HARRISON. Are there any foreign interests interested in the American Steamship Owners Association?

Mr. CAMPBELL. Not a cent.

Senator HARRISON. You represent them as a lawyer?

Mr. CAMPBELL. Yes.

Senator HARRISON. Do you represent any foreign interests at all in ship building?

Mr. CAMPBELL. As a lawyer?

Senator HARRISON. Yes.

Mr. CAMPBELL. Yes. I will take cases from any foreign shipowner, as an admiralty lawyer.

Senator HARRISON. You do represent others that way?

Mr. CAMPBELL. Yes. We are constantly employed that way.

Senator SIMMONS. I remember this act, which you now want amended, very well. The Government imposed, broadly, a duty upon repairs made in foreign ports. Then it provided certain exceptions. Now, if you add to those exceptions to the extent that your amendment proposes, I would like to have you tell the committee what kind of repairs abroad would not be covered by your exceptions.

Mr. CAMPBELL. There are cases with ships where there are annually large overhauls and repairs. They come in certain periods. If they could make the repairs abroad, we will say, a ship in Puget Sound could slip over to Vancouver and have this annual overhaul,

going through the ship and fixing up this, and fixing up that, and do it cheaper than they could in an American yard. That is not what we are seeking the right to do at all.

Senator SIMMONS. Is not that the only instance where they would have to pay the duty? The only instance in which they would have to pay the duty, if your amendment is added to the exemptions already allowed by the law, would be where a shipowner deliberately takes his ship to a foreign port for the purpose of having it repaired.

Mr. CAMPBELL. Under the present law? No, sir; that is not true.

Senator SIMMONS. No; not under the present law, but under the present law as proposed to be amended by you. The only case I can conceive of in which the shipowner would have to pay this duty levied would be where he deliberately takes his ship abroad for the purpose of making repairs.

Mr. CAMPBELL. It does not seem to me that you could place that interpretation upon this statement. Let me read it to you:

That such equipment or parts thereof or repair parts or materials were purchased, or that such expenses of repairs were incurred, in a foreign country, in order to maintain such vessel in a seaworthy condition, or to repair damages suffered or to replace equipment damaged or worn out during the voyage, or to maintain such vessel in a sanitary and proper condition for the carriage of cargo or passengers; * * *.

Senator BARKLEY. Are not all repairs for that purpose?

Mr. CAMPBELL. Yes.

Let me address myself to the last part of it:

* * * to maintain such vessel in a sanitary and proper condition for the carriage of cargo or passengers; * * *.

In a recent case, which was decided by the United States Court of Customs and Patent Appeals, they held subject to the duty the cost of painting ships in foreign ports, where foreign labor was used to paint the ships. The evidence before that court showed that in order to keep a ship up in proper condition this painting had to be done about every two or three months. There was testimony there to show that the vessel needs her hull and superstructure repainted every two or three months in order to maintain the vessel in a clean, presentable, and sanitary condition. We had to pay duty upon that work.

We will take ships running to the Philippine Islands, for instance. They go out with fuel oil in their tanks. They bring back vegetable oil. In order to carry vegetable oil they have to clean these tanks. It is probably the dirtiest job, and most disagreeable job that can be conceived of to clean out the bottoms of these ships after they have carried fuel oil. In order to have that vessel so that she can carry on this trade it is necessary to hire shore labor, specially qualified for it. We had to pay a duty upon that work in order to fit that ship to carry that cargo. We say that is unfair. It is a detriment to the working of American ships.

Senator BARKLEY. Why, under the present law, would anybody interpret "repairs" to mean the cleaning out of a tank, cleaning out the sediment and settlement of fuel oil in order to make it a proper receptacle for vegetable oil?

Mr. CAMPBELL. They do not, Senator. We have to pay the duty because that character of work does not come within the scope of that language.

Senator BARKLEY. It does not add anything to the ship. It does not put anything in the ship. It is not a repair. It is simply cleaning out the refuse of one cargo in order to make it fit for another.

Senator BINGHAM. It seems as though that is just an arbitrary decision by some bureaucrat who wanted to find some way of collecting a little additional revenue. Certainly that work could not possibly be done in this country in any case.

Mr. CAMPBELL. No.

Senator BINGHAM. If you would draw your amendment so as to cover a case of that kind, I, for one, should be in favor of it. But when you draw it so wide open "to maintain such vessel in a sanitary and proper condition for the carriage of cargo or passengers," you can take a ship from here to England and decide that it is not in sanitary condition and that you have to have all new sanitary fixtures. You could put them in over there without paying any duty on them, the way this is drawn, and I should be opposed to it. But if you could draw it so as to take care of the case you mention, to prevent any foolish interpretation of the law, I should be in favor of it.

The CHAIRMAN. I would like to ask the witness if he has ever paid a duty upon the work of cleaning out the oil from a tank, the oil of which cargo was loaded into that tank in the United States?

Mr. CAMPBELL. The Dollar Line, which is one of the lines operating to the Philippines, informed me—I have not myself paid it, of course—that they are required to pay a duty upon the labor used to clean out their fuel tanks after they have discharged their fuel oil, so as to get all the petroleum out, so that it will not contaminate the vegetable oil, in order that they may use that space to bring the vegetable oil back to this country.

The CHAIRMAN. We will take that up.

Senator SIMMONS. Do you take any such Treasury ruling as that to be justified by any language in the present law?

Mr. CAMPBELL. I think it is wrong, but what can you do? When they make the ruling you have to pay the duty, that is all.

Senator SHORTRIDGE. When was that ruling made?

Senator WALSH of Massachusetts. He said he heard that such a ruling was made, from Mr. Dollar, of the Dollar Steamship Line, but he had no personal knowledge of it. Mr. Dollar told him.

Mr. CAMPBELL. Another thing——

The CHAIRMAN. Mr. Witness, may I ask you whether that case has ever been taken to court?

Mr. CAMPBELL. I do not think so.

The CHAIRMAN. Why don't you take it to court?

Mr. CAMPBELL. I am not the counsel.

The CHAIRMAN. They have not imposed it upon you?

Mr. CAMPBELL. I do not know why they have not.

The CHAIRMAN. It seems to me the Treasury made a very foolish ruling; and they did make it.

Mr. CAMPBELL. Take this situation, for example. Supposing that the ship is a passenger vessel, and she gets into heavy weather, and

the deck furniture is damaged, and ought to be replaced in order to keep her up as a first-class passenger ship; the rooms are washed out, which does happen, so that if you are going to keep her in a fit and proper condition for passengers you have to have that work done, and you do it in a foreign port, because it happens on the voyage——

The CHAIRMAN. If we put in an amendment to take care of that kind of a situation, will that be satisfactory?

Senator BINGHAM. That is covered by the "stress of weather or other casualty."

Mr. CAMPBELL. But the law, Senator, goes further than that. Even then, it must be paid. The duties will be refunded if it can be shown that the repaired vessel, while in the regular course of voyage, was compelled, by stress of weather or other casualty, to put into a foreign port and purchase such equipments or make such repairs to secure the safety of the vessel to enable her to reach her port of destination.

Senator BINGHAM. It says "or other casualty."

Mr. CAMPBELL (reading). "* * * and purchase such equipments, or make such repairs, to secure the safety of the vessel to enable her to reach her port of destination."

They say that kind of work is not necessary to put her in condition to reach her port of destination, and therefore they will assess duty on that.

Senator SHORTRIDGE. What kind of work might be regarded as necessary to maintain the vessel in a sanitary and proper condition for the carriage of cargo or passengers? What kind of incidental work might be required?

Mr. CAMPBELL. We will take a cargo ship, for example. One thing is cleaning the hold of the ship. Take, for example, the Dollar ships. The Dollar ships are running in service around the world. They are never free. Those holds have to be cleaned, and repairs made to them when they are free of cargo, and that work has to be done at a time when there is opportunity. There may not be any opportunity when that ship is in the port of New York, on this side, to reach this particular cargo. There may not be opportunity in San Francisco. That hold may be free of cargo when she happens to be in Hong Kong or some place like that. It is necessary to clean those holds, to scrape the rust off them, and perhaps to make some minor repairs to a rivet, or bracket, or something of that sort.

Senator SHORTRIDGE. Take a broken chair.

Mr. CAMPBELL. Yes. That is equipment. It may be broken on the voyage, or it may be washed overboard on the voyage. These ships get into seas where frequently the decks are swept, and that stuff is swept off.

Senator SHORTRIDGE. That would be a causalty, would it not?

Mr. CAMPBELL. As the Senator pointed out, the test is not solely that of a casualty. The test is a casualty which requires a repair so as to put the ship in safe condition to reach her destination.

The CHAIRMAN. Those are all minor questions. I think, of course, the Treasury Department has gone a long way in making such rulings. These are minor questions. These are not the ones in which you are interested. Let us get down to what you want. You want

the privilege of making repairs on the boat. These minor questions, and the rulings of the Department, I think, are very immaterial. I think they were made very foolishly, but your position is that you want the privilege or making any kind of a repair upon the boat that is necessary.

Mr. CAMPBELL. Exactly. I do not want you to relieve the American ship owners from paying a duty upon repairs that can be just as well made in the United States as they can be made abroad.

Senator SIMMONS. Let me ask you, if your amendment is adopted, whether you think there will be much repairing of vessels on the American shores.

Mr. CAMPBELL. Yes; I do, Senator.

Senator SIMMONS. I do not agree with you.

Senator BINGHAM. This amendment gives you the right to replace equipment worn out during the voyage.

Mr. CAMPBELL. Yes.

Senator BINGHAM. You start from San Francisco or Singapore. That is a long voyage, and you see that some equipment is likely to be worn out. If you can put that equipment on in Singapore and bring it back without paying a duty on it, of course, you are going to do it. You are going to wear it out in the voyage between San Francisco and Singapore, and are going to do the work there. If you should limit it to the second part, where such equipment or parts thereof are produced in the United States, and the labor is done by residents of the United States or by members of the crew, that would seem more reasonable.

Mr. CAMBPELL. That is, to meet a special situation.

Senator BINGHAM. A special situation; but the way you have drawn it, you leave it wide open, to replace any equipment that happens to be damaged or worn out during the voyage.

Mr. CAMPBELL. Would you grant this? I am willing to have that put in the bill, provided the shipowner exercises every diligence to make his ship seaworthy and put her in a fit and proper state for the carriage of cargo or passengers.

Senator SACKETT. If you get that work done cheaper abroad than you can get it done here, why should you not pay the duty? You are no worse off than if you had it done here. I think Senator Couzens hit the nail on the head with respect to your amendment.

Mr. CAMPBELL. For the reason that American ships are working under a handicap in the foreign trade. This applies only to the——

Senator SACKETT. We tried to help that in the shipping act.

Mr. CAMPBELL. But you have helped a comparatively few of those ships. Some of those ships you have given these mail contracts to, but there are a vast number of American ships plying in the foreign trade that are not getting any aid.

Senator SACKETT. They are getting aid in the loans for construction and that sort of thing.

Mr. CAMPBELL. But to a comparatively small extent.

Senator SACKETT. If you do not like the law, we will take it back.

Senator BINGHAM. What you are really asking for is for a little additional help to the merchant marine, as opposed to the shipbuilding industry.

Mr. CAMPBELL. To put it briefly, what we want is this. We do not want the right to go out and make repairs on our ships in foreign ports where they can be just as well made in the United States ports. We want to be held to the exercise of the highest degree of diligence to put our ships in seaworthy and sanitary condition when they sail from these ports. If, on the voyage, things happen which require repairs to be made to put the ship in seaworthy condition, if we have to do things on the voyage to keep the ships in fit and proper condition for the carriage of cargo, or to keep them up in their appearance, such as painting, and things like that, we say we ought to be permitted to do that work, because it is necessary to be done, and we will do it, without being penalized with the duty, because we are working under a very severe handicap. While you have passed the mail contract act, which helps certain ships in certain trades, there is a vast fleet of American ships which do not receive the benefit of that act, and which are working under conditions that are a severe handicap. You are putting on us an additional burden, which is increasing the cost of operation, because we have to make these repairs, and we are going to make the repairs. American shipowners will not comply with the spirit of that act if they take their ships to sea in an unseaworthy condition when they should be put in seaworthy condition. Furthermore, they are going to keep their ships up to the highest standards, keep them painted and in good condition, even if they have to pay that duty, and are penalized.

Senator WALSH of Massachusetts. Is the rate of 50 per cent too high?

Mr. CAMPBELL. Yes; it is too high. Any duty is too high, because we are under the handicap of these excessive costs. It is not a revenue measure. It is an attempt to force us to do these things here when we have to do them abroad.

Senator SIMMONS. No. It is the result of a policy deliberately adopted by the United States to force, as far as possible, the building of ships in America.

Mr. CAMPBELL. That is right.

Senator SIMMONS. And the repairing of ships in America.

Mr. CAMPBELL. That is right.

Senator SIMMONS. We do not want to fritter away that right by making the provisions with reference to repairs ineffective.

Mr. CAMPBELL. I do not ask you to do that.

Senator BARKLEY. Your position, if I understand it, is that, assuming that every ship is inspected with the same diligence and care that a prudent ship owner would require before his ship leaves the American port, if, on the voyage, something is discovered that could not be discovered by any reasonable inspection, which makes necessary a repair in a foreign port, you do not want to pay duty on it.

Mr. CAMPBELL. Precisely.

Senator SACKETT. If I take my automobile abroad and it breaks down and I have repairs made over there, I have to pay duty on them.

Mr. CAMPBELL. Certainly.

Senator SACKETT. So should you on the ship.

Mr. CAMPBELL. But you are not operating that automobile in competition with the lower wages in foreign countries, the lower costs of foreign ships, and you are not using it to promote American trade in foreign countries.

Senator SACKETT. I might be.

Mr. CAMPBELL. You might between here and Canada, but, generally speaking, that is not true.

(Mr. Campbell submitted the following brief:)

BRIEF OF IRA A. CAMPBELL

I appear on behalf of the American Steamship Owners' Association, Pacific American Steamship Owners' Association, and Shipowners' Association of the Pacific Coast, whose members own substantially all of the privately-owned American ships.

On behalf of those associations and their members, I respectfully ask this committee to retain in the tariff bill under consideration, the amendments to section 466 of the tariff act of 1922, amending sections 3114 and 3115 of the revised statutes.

Generally speaking, these sections are concerned with duties on repairs made in foreign ports on American vessels, and to materials and equipment used in connection therewith.

Section 466 of the tariff act of 1922 amended said section 3114 so as to provide for a duty of 50 per cent on the cost of equipment purchased, or repair parts or materials used, or the expenses of repairs made, in the foreign country, on a vessel documented under the laws of the United States and engaged in foreign or coasting trade.

Section 466 also amended said section 3115 so as to provide that if the owner or master of such vessel furnished good and sufficient evidence that such vessel, while in the regular course of the voyage, was compelled, by stress of weather or other casualty, to put into such foreign port and purchase such equipments, or make such repairs, to secure the safety of the vessel to enable her to reach her port of destination, then the Secretary of the Treasury was authorized to remit or refund such duties, etc.

The tariff bill of 1929, as passed by the House, again amended section 3114 by adding thereto the proviso:

"For the purposes of this section, compensation paid to members of the regular crew of such vessel in connection with the installation of any such equipments or any part thereof, or the making of repairs, in a foreign country, shall not be included in the cost of such equipment or part thereof, or of such repairs."

It also amended section 3115 so as to provide that if the owner or master of such vessel furnishes good and sufficient evidence—

"(1) That such equipment or parts thereof or repair parts or materials were purchased, or that such expenses of repairs were incurred, in a foreign country, in order to maintain such vessel in a seaworthy condition, or to repair damages suffered or to replace equipment damaged or worn out during the voyage, or to maintain such vessel in a sanitary and proper condition for the carriage of cargo or passengers; or

"(2) That such equipments or parts thereof or repair parts or materials, were manufactured or produced in the United States, and the labor necessary to install such equipments or to make such repairs was performed by residents of the United States, or by members of the regular crew of such vessel."

then the Secretary of the Treasury is authorized to remit or refund such duties, etc.

These amendments embody, in substance, recommenedations made to the Ways and Means Committee by the associations I represent, and it is in support of such amendments, with one or two suggestions for slight changes, that I appear before your committee.

The differences between the provisions of the tariff act of 1922 and the tariff bill of 1929, as passed by the House, are substantially the following:

The tariff act of 1922 imposed a duty of 50 per cent on the cost of all repairs made upon American vessels in foreign ports, including materials used in connection therewith, but provided that such duties were to be refunded if it could be shown that the repaired vessel, while in the regular course of her

voyage, was compelled by stress of weather or other casualty to put into a foreign port and purchase equipment or make repairs to secure the safety of the vessel to enable her to reach her port of destination.

The tariff bill of 1929 imposes a similar duty of 50 per cent, but enlarges upon the conditions on which a refund of the duties can be obtained. That is to say, the bill under consideration by your committee provides that such refund may be had if such equipment or repair parts or materials were purchased or such expenses of repairs were incurred in a foreign country in order to maintain such vessel in a seaworthy condition, or to repair damages suffered or to replace equipment damaged or worn out during the voyage, or to maintain such vessel in a sanitary and proper condition for the carriage of cargo or passengers.

Reduced to its essentials, the question before this committee is as to whether the owner of an American ship shall be exempted from such duties only when the vessel, while in the regular course of her voyage, was compelled by stress of weather or other casualty to put into the foreign port and purchase such equipment or make repairs to secure the safety of the vessel to enable her to reach her port of destination, or shall the conditions of exemption be broadened so that the owner shall be entitled to the exemption if the equipment or repair parts or materials were required to be purchased or the repairs to be made in a foreign country to maintain the vessel in a seaworthy condition, or to repair damages suffered or to replace equipment damaged or worn out during the voyage, or to maintain the vessel in a sanitary and proper condition for the carriage of cargo or passengers?

The provision in the tariff act of 1922 was not passed for the purpose of raising revenue. This is self-evident from the fact that the average amount of duty per annum collected during the past seven years was slightly under $186,000. The duty was embodied in the act at the instance of certain ship repairers so as to "dissuade" American ship owners from making repairs in foreign ports except where stress of weather or other casualty was such as to compel the vessel to put into a foreign port to make the repairs to secure her safety to enable her to reach her port of destination. The dissuasion was through the threat of the penalty of the duty.

Obviously, there is a great mass of repairs required to be made to ships to maintain them in a seaworthy and proper condition, other than repairs of damage caused by a stress of weather or other casualty during the regular course of the voyage.

Repairs to ships generally fall into three classes:

1. Those necessary to maintain a vessel in seaworthy condition.

2. Those necessary to replace damaged or worn-out parts or equipment which should at all times be maintained in good order and condition, so as to keep a vessel up to a proper standard.

3. The work and repairs which constitute the ordinary upkeep of vessels, the usual voyage work and repairs, so called, so that the vessel shall at all times be fit and proper for the carriage of passengers and cargo.

Everyone must concede that repairs are necessary to maintain a vessel in seaworthy condition and should be made at the first opportunity after unseaworthiness develops, whether it be caused by casualty or wear and tear. In fact, the act of 1922 in part recognizes this necessity, but then inconsistently attempts to prevent them being made by restricting the repairs to those necessitated by stress of weather or other casualty suffered in the regular course of the voyage.

A vessel may leave an American port perfectly seaworthy, so far as due diligence can make her so, and yet get into an unseaworthy condition from ordinary wear and tear not attributable to stress of weather or casualty. Manifestly, a vessel that gets into an unseaworthy condition, whatever may be the cause, should be restored to a thoroughly seaworthy condition before she is again used for the transportation of cargo or passengers.

Who dares to say that she shall not be made seaworthy? Shall the word go round the world that American ships are not to be made seaworthy in foreign ports unless the unseaworthiness has been caused by stress of weather or other casualty? Of course, nothing of that kind will ever happen, for American shipowners will repair their ships when necessary, and no foreign Government will knowingly permit an American ship to leave port unseaworthy, any more than the American Government will permit a foreign vessel to leave an American

port unseaworthy. But what the American shipowner objects to is being penalized by a duty, if he makes repairs under those circumstances.

Furthermore, if the vessel is not made seaworthy, the owner subjects himself to the danger of great liability for losses, which may work his ruin and possibly result in criminal penalties.

The fact is that these repairs must be made, whether abroad or at home. If they are made abroad, then the duty may be assessed upon their costs under existing law; but the object which the opponents of the amendment seek would be defeated by the making of the repairs, for they seek a law which will force the making of the repairs in American shipyards, except when they may be caused by stress of weather or other casualty.

To put it another way, every American vessel is subject to governmental inspection and to close supervision by underwriter's surveyors. She not only is presumed to be, but is required to be, in a thoroughly seaworthy condition when she leaves port. That is why Congress recently passed the load line bill.

If an American vessel gets into an unseaworthy condition, however it may be caused, and repairs are necessary in a foreign port to restore her to a seaworthy condition, they must be made and will be made, duty or no duty. But why try to prevent it by a penalty in form of a duty?

What American shipowners seek is simply an enlargement of the exemption so as to permit them to keep their vessels in thorough seaworthy and sanitary conditions, fit for the carriage of passengers and cargo, without being penalized by duties, if to accomplish that purpose, it is necessary to purchase equipment or materials or make repairs in foreign ports.

American shipowners can not understand why anyone should insist that repairs shall be made abroad under these circumstances, and that if made abroad they, the owners, shall be subject to the penalty of the duty.

The other effect of the proposed amendment is to give the shipowner an exemption from the duty if the equipment, repair parts, and material are purchased or the expenses of repairs are incurred in a foreign country, to repair damages suffered or to replace equipment damaged or worn out during the voyage, or to maintain the vessel in a sanitary and proper condition for the carriage of cargo or passengers.

In short, this part of the proposed amendment simply provides that the owner shall be exempt from the duty if he can show that the expenditures were made to keep his vessel in a sanitary and proper condition for the carriage of cargo and passengers.

It should be obvious that American shipowners can not successfully meet foreign competition and induce passengers to travel and merchants to ship upon their vessels unless they are kept up to a high standard of efficiency. Opposition to change in the law simply means that if the opponents are to have their way, the worn-out equipment required to be purchased and the repairs to be made abroad, to keep American ships in sanitary and fit condition, shall be deferred and not made until the vessels reach American ports.

For example, if it becomes necessary to paint or clean an American ship in a foreign port in order that she may be rendered fit for the carriage of cargo, or that her appearance may be kept up, so that passengers and shippers will patronize her, the opponents of the amendment would not have it done, but, in effect, insist that the vessel be allowed to go on in a run-down appearance, until an American port is reached, unless the work can be done by the crew. For, as I have said, our opponents are not advocating the duty for the purpose of raising money, but for the express purpose of penalizing the owner so that he will not have the work done except in an American port.

American ships are instruments for the development of foreign trade. To be most effective, they should be kept up to a high standard of efficiency and appearance at all times. To do this they should be painted and scraped as and when opportunity offers, and this work should not necessarily be held up until the ship returns to an American port on pain of a penalty. Such work is usually done by the crew, but frequently it is advisable and necessary to call in shore labor so as not to delay the vessel. Then, too, it is frequently necessary to clean cargo compartments which have carried cargo or fuel oil, so as to fit them for the carriage of other kinds of cargo. Shore labor is usually required if the ship is not to be delayed.

Parts of a ship may be broken or damaged on a voyage, and it is advisable to repair or replace them at the first opportunity, so as to keep the ship up to her standard of efficiency and appearance. Merchants like to use and people

like to travel on ships which appear and are in perfect condition. Insurance rates are thereby kept down.

Crews can not always be worked efficiently for upkeep purposes, for the law requires them to be divided equally into watches, so that all can not be worked in the daytime, and upkeep work can not be done at night. Then, too, some ships are never free of cargo. Cargo goes in for the next voyage or leg of a voyage, as cargo is discharged from the last voyage or part of a voyage. To drive this work as fast as possible is good management, because it means a quick turn around and efficient operation.

Obviously the fewer days a vessel can be kept in port and the more days she can be kept at sea, the greater will be her earning capacity and the more efficient her operation.

All these factors are parts of a successful operation of a merchant marine. To have such an American merchant marine capable of carrying a fair share of American foreign trade is all that American shipowners seek. Shipowners believe that the proposed amendments will help accomplish these results, and that they will not in any respect operate to the hurt or damage of American shipbuilders or repairers. The increased business which will come to such repairers from a successful American merchant marine will offset many times any losses which may be suffered through these upkeep repairs being made abroad.

What American shipowners desire is not to make major repairs in foreign ports because of cheaper cost of labor and material, but the right to do these things as and when necessary to keep their ships up to the highest standard of efficiency, and to keep them at sea as much as possible and in port only when obviously necessary. This is all that the amendments embodied in the tariff bill now before your committee permit.

Under such an act, no American shipowner will be able to send his ship to a foreign port simply for the purpose of making repairs duty free, at lower costs than in American shipyards.

There are two changes in the bill as passed by the House which our associations would like to see made.

The first is the deletion from section 3114 of the words "or a vessel intended to be employed in such a trade." The reason for this is that these words might be interpreted as meaning that the duty should be assessed upon repairs made in a foreign port to a foreign flag vessel which was intended to go under charter to an American citizen for use in the foreign trade of the United States. The words referred to are so general in character that it may be argued that they are susceptible of such construction, if a strict interpretation is to be placed upon them, whereas it is quite certain that no one contemplated that duties should be paid the United States upon repairs to foreign flag ships made in foreign ports. What is sought by the bill is to impose such duty upon American flag vessels (that is, vessels documented under the laws of the United States) unless such repairs come within the exemptions of the bill, and this is fully accomplished by imposing such duties on "vessels documented under the laws of the United States." In other words, unless the bill specifically intends to attempt to impose duties upon foreign flag vessels for repairs made in foreign ports, the words which we would like to have deleted are superfluous. Their deletion is recommended for the sake of clarity.

Another change which our associations are desirous of having made is that embodied in an amendment proposed to H. R. 2667, introduced by Senator Fletcher on June 4, and referred to your committee.

The proposal is to amend section 466 by inserting on page 326, line 17, after the word "country" the following:

"*Provided*, That if the owner or master of such vessel makes claim under section 3115 herein, he may give a bond in double the amount of the cost of such repairs, with good and sufficient security, conditioned on the payment of said duty upon the decision of the Secretary of the Treasury respecting the merit of such claim and ascertainment of the amount that should be refunded or remitted, in case the duty was paid, and the amount of the duty which should be collected, thereupon the latter amount shall be promptly paid and said bond canceled."

The principal effect of the amendment is to provide that an owner may, in the first instance, bond against the duty, so that if it should ultimately be determined that the repairs, etc., came within the exemption, no duty would be assessed.

Under the bill as now drawn the duty must first be paid and a refund made if the exemptions apply.

It seems to our associations that it would simplify procedure and reduce administrative costs to the Government if the direct exemption was substituted for the refund. The same documentary and other evidence will be required of the shipowner before he can obtain the benefit of the exemption, as is now provided for as the basis for the refund. The ultimate result, therefore, would be the same, so far as the shipowners' liability is concerned, but the suggested change will simplify procedure and reduce costs.

STATEMENT OF HENRY C. HUNTER, NEW YORK CITY, REPRESENTING THE NATIONAL COUNCIL OF AMERICAN SHIPBUILDERS

(The witness was duly sworn by the chairman.)

Senator BINGHAM. I would like to ask, before you get started, whether you have any objection to some of these things you have just heard discussed, such as their ability to clean a ship out at foreign ports and bring it in without paying any duty on that labor.

Mr. HUNTER. I have the criticism of the decision that would construe the act to apply to the cleaning of a ship. It seems to me that it is part of the cost of operation of the ship, rather than the cost of any repairs or replacements to the ship.

Senator BINGHAM. In other words, you have no objection to that?

Mr. HUNTER. No. We think the criticism may apply to the improper presentation of the question to the Customs Department.

Senator BARKLEY. You are taking the same position the previous witness took on this whole subject.

Mr. HUNTER. So far as cleaning the tanks to make the ship available for other cargo is concerned.

Senator BARKLEY. You are against his general proposition?

Mr. HUNTER. Yes.

Senator WALSH, of Massachusetts. He is against the House amendment.

Mr. HUNTER. I shall be very brief.

The National Council of American Shipbuilders is composed of the principal shipbuilding and ship repairing companies and companies engaged in manufacturing marine equipment and accessories, in the United States. Included in its membership are New York and New Jersey Dry Dock Association whose members operate shipyards in the Port of New York, and Pacific Coast Dry Dock Association whose members operate like yards on the Pacific Coast. The members of the National Council are seriously interested in the preservation of the protection afforded their industry by section 3114 United States Revised Statutes which is embodied in secion 466 of the tariff act of 1922 as amended by that section of the act.

In substance section 3114 imposes an ad valorem duty of 50 per cent. on the cost of equipment purchased in foreign countries for vessels documented under the laws of the United States and on the expenses of repairs made to such vessels in foreign countries.

Section 3115 provides for the remission of such duties when it becomes necessary for a vessel, by stress of weather or other casualty, to purchase such equipment or to make such repairs in a foreign country.

The intent and effect of this legislation, as is apparent, is to insure that repairs to American vessels are made in American yards, and

that American, rather than foreign, marine equipment is installed in such vessels, while, at the same time, affording an opportunity to make repairs or to purchase equipment in foreign countries, due to emergencies without penalizing the owners of American vessels.

Senator BINGHAM. As I understand it, you have no objection to their doing what is now allowed under the act in case of emergency.

Mr. HUNTER. As it exists now.

Senator BINGHAM. I would like to ask, with respect to these two amendments, one and two, in section 3115, whether you have any objection to the second part.

Mr. HUNTER. We approve the second part.

Senator BINGHAM. You are in favor of that?

Mr. HUNTER. Yes.

Senator BINGHAM. You are opposed to the first part, which lays the thing wide open.

Mr. HUNTER. Yes.

Senator BINGHAM. Do you not think the committee is already sold on the proposition?

Mr. HUNTER. I think it is very essential for you to listen to me on an analysis of subsection 1.

You might be interested to know that this principle of protecting the ship-repairing industry against the competition of foreign shipyards has been the established policy of the United States for more than half a century.

In 1866 Congress enacted the present section 3114 which has been on the statute books for more than half a century. As originally enacted the section imposed a 50 per cent ad valorem duty on the expense of repairs made to, and on the cost of equipment purchased for, vessels enrolled and licensed under the laws of the United States to engage in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States.

Senator WALSH, of Massachusetts. Mr. Hunter, all you are reading now is in the House brief.

Mr. HUNTER. Not what I am going to present now.

The Tariff Act of 1922 amended the section by striking out the words "on the northern, northeastern, and northwestern frontiers of the United States" and thereby applied the section to all vessels documented under the laws of the United States to engage in the foreign or coasting trade.

The House amendment to section 3114 reads as follows:

> For the purposes of this section, compensation paid to members of the regular crew of such vessel in connection with the installation of any such equipments or any part thereof, or the making of repairs, in a foreign country, shall not be included in the cost of such equipment, or part thereof, or of such repairs.

We approve of that amendment, but it is unnecessary to insert it in section 3114, because it is covered in subsection 2 of the amendment to section 3115, which reads:

> That such equipments or parts thereof or repair parts, or materials, were manufactured or produced in the United States, and the labor necessary to install such equipments or to make such repairs was performed by residents of the United States, or by members of the regular crew of such vessel.

I want to discuss briefly section 3115, as amended, and particularly subsection 1. As the act exists at the present time the repairs and

the installation of equipment are limited to those that are required on the regular course of voyage of the vessel.

Senator SHORTRIDGE. By reason of stress of weather or other casualty.

Mr. HUNTER. Yes.

Provision is made in section 3115, as it exists in the present tariff act, for the remission of duty on expenses of repairs or on the cost of equipment made necessary by "stress of weather or other casualty." It should be noted that the terms "stress of weather" and "casualty" are comprehensive. The courts have interpreted "stress of weather" to include many and varied conditions, such as the action of winds, waves, ice, freezing, heat, and tides. "Casualty" means an unavoidable accident, an event not to be foreseen or guarded against.

Certainly replacements or repairs made "to repair damages suffered, or to replace equipment damaged * * * during the voyage" contained in subsection 1 of the amendments are well within the exemptions of the existing law and the amendment in this respect is unnecessary and superfluous.

In general there is no complaint to making emergency repairs or purchasing emergency equipment, in a foreign country, without the payment of a duty thereon. The present law in its terms and in actual application satisfactorily attains this end, to which domestic shipyards raise no objection. No amendment of section 3115 is necessary to provide for such an exemption.

The proposed amendment of section 3115 by subsection 2 and the application of the definitions of the terms "stress of weather" or "other casualty," relieve the owner of a vessel from any unreasonable imposition of the duty arising out of conditions over which he has no control, or which he could not have foreseen at the time his vessel left her home port, without impairing the obligation imposed on him by the navigation laws of the United States that he shall maintain his vessel in a seaworthy condition.

The proposed amendment of section 3115 by subsection 1 is objectionable in so far as it excludes from the payment of duty such equipment, or parts thereof or repair parts, or materials purchased or such expenses or repairs incurred, in a foreign country, in order to maintain a vessel "in a seaworthy condition" or "in a sanitary and proper condition for the carriage of cargo and passengers."

Manifestly a standard is here set up which does not permit of exact application owing to the general character of the language. It could be claimed, and disproof would be difficult, if not impossible, that practically any repair made or equipment purchased met the requirements that are set forth in the amendment. And it is difficult to see how the officers charged with the enforcement of the tariff bill could do other than accept the averment of the operator of a vessel at its face value, inasmuch as opportunity would be largely, if not entirely, lacking to test its accuracy; and since, indeed, almost any purchase of equipment or the performance of any repairs could be construed as necessary to render a vessel "seaworthy" or to maintain her "in a sanitary and proper condition."

Senator SACKETT. Suppose, Mr. Witness, that by stress of weather cabins were injured. That is not covered by the old act at all.

Mr. HUNTER. It arises out of a casualty.

Senator SACKETT. But it is not necessary to put those cabins back in condition to get her to her own port. It does not make her unseaworthy, but it does make her uncomfortable for the passengers.

Mr. HUNTER. That is a possible construction to put on it.

Senator SACKETT. Ought that not to be covered in some way, so that those repairs could be made?

Senator SHORTRIDGE. The law permits that now, Senator.

Senator SACKETT. No.

Senator SHORTRIDGE. That would be a casualty.

Senator SACKETT. But it permits only repairs to be made to secure the safety of the vessel, to enable her to reach her port of destination.

Senator SHORTRIDGE. Even so——

Senator SACKETT. It seems to me, if you leave that last clause out of the old act, it would cover the situation.

Senator COUZENS. I can not see any objection to them paying a duty on even that, so long as they get the advantage of the cheaper purchase abroad.

Senator SACKETT. I do not see any real reason.

Senator WALSH of Massachusetts. So long as the difference in the cost of labor is 50 per cent.

Senator SACKETT. He can do it on parts that render her unseaworthy, but he can not do it on the rest of it.

Senator COUZENS. He can if he pays the duty.

Senator SACKETT. He ought to pay the duty on all of it.

Mr. HUNTER. Here is the principal objection:

The attention of the committee is directed to the fact that the exemption from the payment of the duty contained in section 3115, as amended by the tariff act of 1922 is confined to the cost of equipment purchased for, or expenses of repairs made to, a vessel in a foreign country "during the regular course of her voyage"; or, in other words, the exemption applies to the cost of equipment or of repairs made necessary by emergencies of a voyage.

An examination of the amendment of section 3115 by subsection 2 disclosed that the exemption from the payment of the duty applies not only to the cost incurred in a foreign country "to repair damages suffered or to replace equipment damaged or worn out during the voyage"; but applies also, without reference to a voyage of a vessel to the cost incurred in a foreign country for equipment or repairs "necessary to maintain her in a seaworthy condition" or "to maintain her in a sanitary and proper condition for the carriage of cargo or passengers."

Thus it appears that a possible and probable construction of this amendment would permit the owner of a vessel, whose voyage ended in a foreign port, to tie her up in such a port for an indefinite period of time and have extensive repairs made to her, the expense of which would be exempt from the payment of the duty imposed by section 3114.

That this is not an unreasonable interpretation of this provision is confirmed by a statement relating to this amendment, which appears

in the report of the House Committee on Ways and Means and which reads as follows:

> It sometimes occurs that the owner of a vessel finds it desirable to put her up for the winter, or to place her in dry dock in near-by foreign territory. In such cases American parts and equipment are readily available, and may be easily installed by American labor.

The amendment, however, exempts from the duty the cost of equipments purchased for, or the expenses of repairs made to an American vessel while she is in any foreign country, and not while she is in a near-by foreign country, to maintain her in a seaworthy condition.

Senator BARKLEY. Do you object to permitting the shipowner to make such repairs as will keep her in seaworthy condition abroad?

Mr. HUNTER. Yes.

Senator BARKLEY. And being exempt from duty?

Mr. HUNTER. Yes.

Senator BARKLEY. Do you object to such repairs in a case where the damage is suffered, or for the purpose of replacing equipment damaged or worn out during the voyage? Do you object to that, too?

Mr. HUNTER. We object to the general language of that.

Senator BARKLEY. That is not so general as to parts worn out.

Mr. HUNTER. That is caused by a casualty, or stress of weather——

Senator BARKLEY. Suppose that by the most minute inspection of a ship in the home port it would be impossible to discover a break in a shaft, or something of the kind, of a character that might break or become useless on the way over. Do you object to allowing the ship to repair that in any foreign port, although it is necessary to repair it in order that it may be safe and seaworthy?

Mr. HUNTER. One could do it under the present law.

Senator BARKLEY. Not unless it is caused by stress of weather.

Mr. HUNTER. Or other casualty.

Senator COUZENS. That is a casualty. It is an accident.

Senator BINGHAM. A break in the shaft.

Senator BARKLEY. If it was broken before it left, and nobody could discover it, the casualty did not occur on this particular voyage, but may have occurred on some other voyage. Do you object to allowing that to be done?

Mr. HUNTER. We object to it; yes.

Senator BINGHAM. Under the present law it says "to make such repairs in order to secure the safety of the vessel." You do not object to that?

Mr. HUNTER. We do not object to that, if it is due to casualty or due to stress of weather.

Senator BARKLEY. "The safety of the vessel, to enable her to reach her port of destination." You did not read it all. That is what it says.

Senator COUZENS. If the crank shaft broke, that would be an accident?

Senator BARKLEY. If it broke in the middle of the sea on the way over, it would probably be a casualty; but if it had been gradually breaking during two or three voyages, and could not be discovered until it cracked in two, it might not be a casualty on this particular voyage.

Senator COUZENS. It would be a casualty when it broke?

Mr. HUNTER. This amendment opens the door to repairs of all kinds.

Senator BARKLEY. I agree that the language is probably too broad.

Senator COUZENS. I think we have the point. You are just taking up the time of the committee.

Senator CONNALLY. Do you do a good deal of repairing for foreign ships?

Mr. HUNTER. Very little. All the foreign ships coming into American ports, almost without exception, use the repair yards for emergency repairs. They make their permanent and expensive repairs in the home port, due to the fact that the labor is from 50 to 100 per cent lower.

Senator CONNALLY. You do get the emergency work.

Mr. HUNTER. Very little.

Senator CONNALLY. If we limit this to emergency work abroad, will it not amount to very little?

Mr. HUNTER. Absolutely, under the present act.

Senator CONNALLY. There is very little done abroad on American ships.

Mr. HUNTER. Due to this duty, we get protection.

Senator CONNALLY. But even with the protection, there is very little of it done abroad.

Mr. HUNTER. Comparatively little.

Senator BARKLEY. Do these foreign vessels that have repairs done in this country pay a duty when they return to the home port?

Mr. HUNTER. Probably.

Senator WALSH of Massachusetts. The previous witness said their own country imposed a duty.

Senator BARKLEY. So that you are in favor of allowing the foreign vessels to have the advantage which they enjoy, of cheaper labor and cheaper repairs, in competition with American ships, to the extent of not allowing American ships to have ordinary repairs made in foreign countries without paying this duty?

Mr. HUNTER. We are in favor of the protection, which is the principle of our tariff, for our home shipyards.

Senator BARKLEY. What is the difference between protecting a ship repairer and shipowner? Where is the difference? Which group of selfishness are we to give the greater consideration to in the writing of the tariff bill?

Mr. HUNTER. You are supposed to act impartially. At the present time the shipowner enjoys a very substantial help under the Jones-White Act.

Senator BARKLEY. And yet they maintain that they can not operate American ships in competition with foreign vessels, even under that act. There is no evidence that our merchant marine is increasing very rapidly.

Mr. HUNTER. They are buying vessels at a very small price.

Senator BARKLEY. They bought some from the Government.

Senator BINGHAM. Is it not true that the principal object of the protective tariff is to protect the American standard of living and to protect American laboring men against competition of cheap foreign labor?

Mr. HUNTER. That is the principle.

Senator BINGHAM. Rather than to protect the owner, or those who invest in stocks in an enterprise.

Senator BARKLEY. He understands the theory, of course, under which it is established.

(Mr. Hunter submitted the following brief:)

BRIEF OF THE NATIONAL COUNCIL OF AMERICAN SHIPBUILDERS

STATEMENT IN OPPOSITION TO THE AMENDMENTS BY THE TARIFF BILL OF SECTIONS 3114 AND 3115, UNITED STATES REVISED STATUTES, INCLUDED IN SECTION 466 OF THE TARIFF ACT OF 1922, OF WHICH SECTION 3114 IMPOSES AN AD VALOREM DUTY OF 50 PER CENT ON THE COST OF EQUIPMENT PURCHASED FOR, AND ON THE EXPENSES OF REPAIRS MADE TO, VESSELS OF AMERICAN REGISTRY IN FOREIGN COUNTRIES

The National Council of American Shipbuilders is composed of the principal shipbuilding and ship repairing companies engaged in manufacturing marine equipment and accessories in the United States. Included in its membership are New York and New Jersey Dry Dock Association, whose members operate shipyards in the port of New York, and Pacific Coast Dry Dock Association, whose members operate like yards on the Pacific coast. The members of the National Council are seriously interested in the preservation of the protection afforded their industry by section 3114, United States Revised Statutes, which is embodied in section 466 of the tariff act of 1922 as amended by that section of the act.

In substance section 3114 imposes an ad valorem duty of 50 per cent on the cost of equipment purchased in foreign countries for vessels documented under the laws of the United States and on the expenses of repairs made to such vessels in foreign countries.

Section 3115 provides for the remission of such duties when it becomes necessary for a vessel, by stress of weather or other casualty, to purchase such equipment or to make such repairs in a foreign country.

The intent and effect of this legislation, as is apparent, is to insure that repairs to American vessels are made in American yards, and that American, rather than foreign, marine equipment is installed in such vessels, while, at the same time, affording an opportunity to make repairs or to purchase equipment in foreign countries, due to emergencies without penalizing the owners of American vessels.

Whether considered as a means of furthering the interests of an American industry or as a means of protecting American labor employed in shipyards, the continuance of the protection afforded by section 3114 is amply justified by existing conditions.

Domestic shipyards pay higher wages to their employees than foreign shipyards pay, and charge higher rates than foreign shipyards to dry dock vessels because of the greater cost of construction and operation of domestic than foreign dry docks. Many foreign dry docks have been constructed and are operated by national or municipal governments and are available at low rates for use by foreign ship repairers, who are relieved of the expense of their construction and maintenance. The same higher labor cost to repair vessels in the United States than in foreign countries is involved in the greater cost to manufacture marine equipment in domestic than in foreign manufacturing plants.

Section 3114 is the only protection enjoyed by domestic shipyards against the competition of foreign shipyards to repair and to provide equipment for vessels documented under the laws of the United States.

The principle of protecting the ship repairing industry against the competition of foreign shipyards has been an established policy of the United States for more than half a century. In 1866 Congress enacted the present section 3114 which has been on the statute books for more than half a century. As originally enacted the section imposed a 50 per cent ad valorem duty on the expense of repairs made to, and on the cost of equipment purchased for, vessels enrolled and licensed under the laws of the United States to engage in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States.

The tariff act of 1922 amended the section by striking out the words "on the northern, northeastern, and northwestern frontiers of the United States" and thereby applied the section to all vessels documented under the laws of the United States to engage in the foreign or coasting trade.

AMENDMENTS OF SECTIONS 3114 AND 3115, UNITED STATES REVISED STATUTES, BY TARIFF BILL

Section 3114, as amended by the tariff bill, is as follows (matter italicized is new):

"SEC. 3114. The equipments, or any part thereof, including boats purchased for, or the repair parts or materials to be used, or the expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or a vessel intended to be employed in such trade, shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty of 50 per cent on the cost thereof in such foreign country; and if the owner or master of such vessel shall wilfully and knowingly neglect or fail to report, make entry, and pay duties as herein required, such vessel, with her tackle, apparel, and furniture, shall be seized and forfeited. *For the purposes of this section, compensation paid to members of the regular crew of such vessel in connection with the instal ation of any such equipments or any part thereof, or the making of repairs, in a foreign country, shall not be included in the cost of such equipment or part thereof, or of such repairs.*"

This amendment is unnecessary because the same object is accomplished by the proposed amendment to section 3115.

Section 3115, as amended by the tariff bill, is as follows (matter italicized is new; matter in brackets is old law to be omitted):

"SEC. 3115. If the owner or master of such [vessel, however, furnishes] *vessel furnishes* good and sufficient [evidence that such vessel, while in the regular course of her voyage, was compelled, by stress of weather or other casualty, to put into such foreign port and purchase such equipments, or make such repairs, to secure the safety of the vessel to enable her to reach her port of destination,] evidence—

"(1) *That such equipment or parts thereof or repair parts, or materials were purchased, or that such expenses of repair , were incurred, in a foreign country, in order to maintain such vessel in a seaworthy condition, or to repair damages suffered or to replace equipment damaged or worn out during the voyage, or to maintain such vessel in a sanitary and proper condition for the carriage of cargo or passengers; or*

"(2) *That such equipments or parts thereof or repair parts or materials, were manufactured or produced in the United States, and the labor necessary to install such equipments or to make such repairs was performed by residents of the United States, or by members of the regular crew of such vessel,*

then the Secretary of the Treasury is authorized to remit or refund such duties, and such vessel shall not be liable to forfeiture, and no license or enrollment and license, or renewal of either, shall hereafter be issued to any such vessel until the collector to whom application is made for the same shall be satisfied, from the oath of the owner or master, that all such equipments and repairs made within the year immediately preceding such application have been duly accounted for under the provisions of this and the preceding sections, and the duties accruing thereon duly paid; and if such owner or master shall refuse to take such oath, or take it falsely, the vessel shall be seized and forfeited."

The council approves of the amendment contained in subsection 2.

The council is opposed to subsection 1.

Provision is made in section 3115, as it exists in the present tariff act, for the remission of duty on expenses of repairs or on cost of equipment made necessary *by "stress of weather or other casualty."* It should be noted that the terms "stress of weather" and "casualty" are comprehensive. The courts have interpreted "stress of weather" to include many and varied conditions such as the action of winds, waves, ice, freezing, heat, and tides. "Casualty" means an unavoidable accident, an event not to be foreseen or guarded against. (New Standard Dictionary of the English Language.)

Certainly replacements or repairs made *"to repair damages suffered, or to replace equipment damaged * * * during the voyage"* contained in sub-

section 1 of the amendments are well within the exemptions of the existing law and the amendment in this respect is unnecessary and superfluous.

In general there is no complaint to making emergency repairs or purchasing emergency equipment, in a foreign country, without the payment of a duty thereon. The present law in its terms and in actual application satisfactorily attains this end, to which domestic shipyards raise no objection. No amendment of section 3115 is necessary to provide for such an exemption.

The proposed amendment of section 3115 by subsection 2 and the application of the definitions of the terms "stress of weather" or "other casualty," relieve the owner of a vessel from any unreasonable imposition of the duty arising out of conditions over which he has no control, or which he could not have foreseen, at the time his vessel left her home port, without impairing the obligation imposed on him by the navigation laws of the United States that he shall maintain his vessel in a seaworthy condition.

The proposed amendment of section 3115 by subsection 1 is objectionable in so far as it excludes from the payment of duty *such equipment, or parts thereof or repair parts, or materials purchased or such expenses or repairs incurred, in a foreign country, in order to maintain a vessel "in a seaworthy condition" or "in a sanitary and proper condition for the carriage of cargo and passengers."*

Manifestly a standard is here set up which does not permit of exact application owing to the general character of the language. It could be claimed, and disproof would be difficult, if not impossible, that practically and repair made or equipment purchased met the requirements that are set forth in the amendment. And it is difficult to see how the officers charged with the enforcement of the tariff bill could do other than accept the averment of the operator of a vessel at its face value, inasmuch as opportunity would be largely, if not entirely, lacking to test its accuracy; and since, indeed, almost any purchase of equipment or the performance of any repairs could be construed as necessary to render a vessel "seaworthy" or to maintain her "in a sanitary and proper condition."

Another objection that may be lodged against this provision is that it is an inducement to unscrupulous owners to allow their vessels to depart from domestic ports in an unseaworthy condition so that they may be made seaworthy in a foreign country at a lower cost.

By the proposed amendment, repairs performed or equipment purchased abroad are to be duty free, if such expense be incurred "to replace equipment * * * worn out during the voyage." Again, it may be pointed out that this language of subsection 1 and its entire language are so general; and opportunity of the officers, who would be appointed to administer the tariff bill, to determine the facts would be so small; the whole transaction transpiring in a foreign country, and hence not permitting of the ascertainment of any exact factual information; that the amendments here in question are practically equivalent to a remission of duty on all repairs performed or equipments purchased abroad.

Attention of the committee is directed to the fact that the exemption from the payment of the duty contained in section 3115, as amended by the tariff act of 1922, is confined to the cost of equipment purchased for, or expenses of repairs made to, a vessel in a foreign country, "*during the regular course of her voyage*," or, in other words, the exemption applies to the cost of equipment or of repairs made necessary by emergencies of a voyage.

An examination of the amendment of section 3115 by subsection 2 discloses that the exemption from the payment of the duty applies not only to the cost incurred, in a foreign country, "to repair damages suffered or to replace equipment damaged or worn out during the voyage," but applies also, without reference to a voyage of a vessel, to the cost incurred in a foreign country for equipment or repairs "necessary to maintain her in a seaworthy condition" or "to maintain her in a sanitary and proper condition for the carriage of cargo or passengers."

Thus it appears that a possible and probable construction of this amendment would permit the owner of a vessel whose voyage ended in a foreign port to tie her up in such a port for an indefinite period of time and have extensive repairs made to her, the expense of which would be exempt from the payment of the duty imposed by section 3114.

That this is not an unreasonable interpretation of this provision is confirmed by a statement relating to this amendment, which appears in the report

of the House Committee on Ways and Means, and wh'ch reads as follows: "It sometimes occurs that the owner of a vessel finds it desirable to put her up for the winter, or to place her in dry dock in near-by foreign territory. In such cases American parts and equipment are readily available and may be eas ly installed by American labor."

The amendment, however, exempts from the duty the cost of equipments purchased for, or the expenses of repairs made to, an American vessel while she is in any foreign country, and not while she is in a near-by foreign country, to maintain her in a seaworthy condition or in a sanitary and proper condit on, nor does the amendment require that, in order to maintain her in such a condition and to relieve the owner of the duty, the equipment shall be of American manufacture, or that such equipment shall be installed or that the repairs shall be made by American labor. In so far as the amendment applies, the owner may employ foreign labor and install equipments manufactured in foreign countries while the vessel is in any foreign country and still be exempt from the duty imposed by section 3114 on the cost of such labor or equipments, which he probably would do on account of lower wages in foreign countries and the lower cost of foreign-manufactured equ pments. In conclusion I repeat that the language of the amendment is so general and so indefinite and subject to such broad interpretations that it substantially repeals the protection which section 3114 intends to provide domestic shipyards against the competition of foreign sb pyards to repair vessels documented under the laws of the United States.

The National Council of American Shipbuilders recommends that section 3114, United States Revised Statutes, be reenacted as amended by the tariff act of 1922.

The council recommends also that section 3115, United States Revised Statutes, be reenacted with the amendment included in subsection 2 of the amendments proposed by the House Ways and Means Committee, but excluding therefrom subsection 1 of such amendments and in other respects.

Upon the adoption of these recommendations sections 3114 and 3115 would read as follows:

(Matter italicized is new.)

"SEC. 3114. The equipments, or any part thereof, including boats purchased for, or the repair parts or materials to be used, or the expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or a vessel intended to be employed in such trade, shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty of 50 per centum on the cost thereof in such foreign country; and if the owner or master of such vessel shall wilfully and knowingly neglect or fail to report, make entry, and pay duties as herein required, such vessel, with her tackle, apparel, and furniture, shall be seized and forfeited.

"SEC. 3115. If the owner or master of such vessel, however, furnishes good and sufficient evidence that such vessel, while in the regular course of her voyage, was compelled, by stress of weather or other casualty, to purchase such equipments, or make such repairs *in a foreign country*, to secure the safety of the vessel to enable her to reach her port of destination; *or that such equipments or parts thereof or repair parts or materials, were manufactured or produced in the United States, and the labor necessary to install such equipments or to make such repairs was performed by residents of the United States, or by members of the regular crew of such vessel*, then the Secretary of the Treasury is authorized to remit or refund such duties, and such vessel shall not be liable to forfeiture, and no license or enrollment and license or renewal of either, shall hereafter be issued to any such vessel until the collector to whom application is made for the same shall be satisfied, from the oath of the owner or master, that all such equipments and repairs made within the year immediately preceding such application have been duly accounted for under the provisions of this and the preceding sections, and the duties accruing thereon duly paid; and if such owner or master shall refuse to take such oath, or take it falsely, the vessel shall be seized and forfeited."

May 18, 1929.

NATIONAL COUNCIL OF AMERICAN SHIPBUILDERS,
11 Broadway, New York City.
NEW YORK & NEW JERSEY DRY DOCK ASSOCIATION,
50 Broadway, New York City.
PACIFIC COAST DRY DOCK ASSOCIATION,
Balfour Building, San Francisco, Calif.

SUPPLEMENTARY STATEMENT, INCLUDING A SCHEDULE OF COMPARATIVE WAGES AND DRY DOCKING CHARGES OF DOMESTIC AND OF FOREIGN SHIPYARDS

THE IMPORTANCE OF THE SHIP-REPAIRING INDUSTRY

As a factor of the merchant marine.—Shipyards within which vessels may be repaired are as necessary for the establishment and maintenance of an adequate and self-contained merchant marine as those equipped only to build vessels.

As a factor of national defenses.—During the World War shipyards with facilities to repair vessels were required to repair and recondition many naval vessels and vessels of the War Department. This experience demonstrated that, during a war, such shipyards are auxiliaries of navy yards, and, as such, are indispensable factors of national defense.

As an industry.—For present purposes the shipyards in the United States may be divided into two classes. One class includes yards engaged not only in constructing vessels, but also in repairing them, which constitutes a substantial part of the total work that they perform. All of the shipyards of this class, with one or two exceptions, have depended for their existence almost exclusively on the work of repairing and reconditioning vessels during the depression that has prevailed in shipbuilding for the past few years.

The other class includes shipyards which have dry docks and additional facilities and equipment and which are used exclusively to repair and to recondition vessels.

In the United States more workmen are employed in the work of repairing and reconditioning vessels than are employed in constructing new vessels; and a larger amount of capital is invested in plants and equipment to repair and recondition vessels than in plants and equipment to construct new vessels.

As a public utility.—The shipbuilding and ship-repairing companies have spent large sums of money in establishing shipyards equipped with dry docks and modern mechanical facilities and manned with staffs of technical engineers and corps of experienced mechanics that enable them to repair or recondition vessels of all types. It is no exaggeration to say that the facilities of such private shipyards are as essential to the commerce of a seaport as its piers, wharves, or railroad terminals.

THE DISADVANTAGES UNDER WHICH DOMESTIC SHIPYARDS COMPETE WITH FOREIGN SHIPYARDS FOR REPAIRING VESSELS OF AMERICAN REGISTRY

Wages.—It costs more in the United States than in any foreign country to repair a vessel or to provide it with equipment. The differential in cost is due primarily to the higher wages paid in private shipyards and manufacturing plants in the United States than are paid in similar industrial establishments in foreign countries.

Attached hereto and designated "Exhibit B" is a schedule of the comparative wages paid by domestic and foreign shipyards.

The difference in wages disclosed by Exhibit A is, of course, established by the fact that wage scales of domestic shipyards are really set, not by the shipyards themselves but by protected industries, and are necessary by reason of the superior living conditions that prevail in the United States.

Congress sought to overcome the disadvantage that an American-built vessel encounters when competing with a foreign-built vessel due to higher labor cost in domestic than in foreign shipyards by enacting the merchant marine act of 1928. But this act contains no direct aid to ship repairers or manufacturers of marine equipment.

Investigation of customs entries during 1927 and 1928 discloses that of the total value of expenses of repairs and of equipment incurred for vessels of American registry, in foreign countries, subject to the duty of 50 per cent, from 43 to 56 per cent of such expenses were incurred in Asiatic ports. This is a striking illustration of the effect of a low foreign wage as an inducement for American shipowners to purchase their equipment or to make their repairs in countries where the lowest wages prevail.

Dry-docking charges.—Charges for dry docking vessels in the United States are greater than similar charges in foreign countries. The extent of these differentials in charges is statistically set forth in a schedule hereto attached and designated "Exhibit A."

Marine equipment.—The higher wages involved in the greater cost of repairing a vessel in the United States than in foreign countries is the same element that contributes to make the cost of manufacturing marine equipment greater in domestic than in foreign industrial plants.

COMPARISON OF DRY DOCKING RATES OF PRINCIPAL FOREIGN AND UNITED STATES PORTS

In many of the foreign ports the base rates for dry docking vary as the tonnage of the vessels increases. A 6,000 gross ton vessel is used as an example for the comparison. The dry docking rates are based on 24 hours for the first day, and 24 hours each lay day thereafter, and are computed from information furnished by the American Consular Service and by ship repair companies in the United States.

The rate of exchange used is shown after each foreign country.

	Docking	Lay days
Great Britain and Ireland:		
Belfast	$297.81	$78.83
Bristol	283.35	152.07
Hull	385.64	182.48
Newcastle-on-Tyne	279.81	182.48
London	316.30	199.53
(Pound Sterling, $4.86.)		
Japan:		
Yokohama	626.89	285.95
Kobe	609.12	169.20
(Yen, $0.47.)		
Sweden:		
Stockholm	481.80	120.00
Goteborg	670.00	128.64
Malmo	281.40	128.64
(Krona, $0.268.)		
Norway:		
Oslo	405.65	353.78
(Krone, $0.266.)		
Spain:		
Bilbao	339.32	128.52
(Peseta, $0.17.)		
Germany:		
Hamburg	486.63	133.82
(Rates given in pounds by American consul, $4.86.)		
Belgium:		
Antwerp	252.98	128.44
(Franc, $0.028.)		
Italy:		
Leghorn	291.95	128.38
Palermo	675.96	235.80
Naples	124.45	62.23
Genoa	248.90	189.95
Trieste	275.10	137.55
(Lire, $0.052.)		
France:		
Calais	223.15	37.98
Cherbourg	344.76	21.45
(Franc, $0.039.)		
China:		
Shanghai	576.00	230.04
(Tae cent, $0.0062).		
Average per port	383.95	155.26
United States of America:		
Boston	720.00	600.00
Philadelphia	600.00	480.00
Baltimore	720.00	600.00
Newport News	600.00	480.00
Jacksonville	720.00	600.00
Mobile	960.00	840.00
New Orleans	960.00	840.00
San Francisco	600.00	600.00
Total for eight ports	5,880.00	5,040.00
Average per port	735.00	630.00

Average dry-docking charge for first day based on use of dry dock for 24 hours by a vessel of 6,000 gross tons:

22 listed foreign ports $383.95
Rate per gross ton, 6.4 cents.

8 listed United States ports 735.00
Rate per gross ton, 12.25 cents.

Average dry-docking charge for each lay day based on use of dry dock for 24 hours by a vessel of 6,000 gross tons:

22 listed foreign ports $155.26
Rate per gross ton, 2.58 cents.
8 listed United States ports 630.00
Rate per gross ton, 10.5 cents.

In listing the United States ports New York has not been included, because of its abnormal low current rates. During the World War this port increased its dry dock and repair facilities enormously to repair and recondition the large number of ships sent into the port. When normal conditions returned, the competition of these yards for the comparatively small amount of work reduced their dry dock rates to 5 cents per gross ton, both for docking and lay days, which is far below the cost of the operation of a dry dock.

If the port of New York is included, which has a docking rate of $300 and a lay day rate of $300 for a 6,000 gross ton vessel, then the average charge for the United States ports would be as follows:

Dry-docking charge $686.67
Rate per gross ton, 11.44 cents.
Lay-day charge 593.33
Rate per gross ton, 9.89 cents.

Comparative average hourly wages of first-class mechanics employed in repairing vessels in shipyards of the United States and of foreign countries

[The following schedule is based on information received through the American Consular Service of each of the foreign countries and from shipbuilding and ship-repair companies of the United States]

Trade	United States	Average several ports, 1928, Great Britain and Ireland	1927, (Kobe) Japan	1927, Goteborg, Sweden	1927, Norway	1927, Spain	Average several ports, 1928, Germany	1929, Antwerp, Belgium	Average 2 ports, 1927, Italy	Average 2 ports, 1928, France	China
Acetylene burner	$0.72	$0.454	$0.353	.....	$0.323	$0.212	$0.202	$0.202	.....	$0.144	$0.10
Boiler maker	.75	.443	.353	$0.356	.332	.233	.202	.202	$0.172	.146	.05
Boiler-maker helper	.49	.268	.176	.308	.259	.191	.181	.171	.152	.127	.025
Carpenter, ship	.78	.325	.317	.373	.309	.255	.202	.208	.....	.146	.10
Caulker, iron	.72	.436	.282	.381	.337	.201	.202	.202	.164	.150	.05
Chipper, iron	.68	.436	.282	.....	.308	.....	.202	.202	.169	.150	.05
Coppersmith	.83	.344	.252	.381	.311	.225	.202	.202	.173	.155	.14
Coppersmith helper	.50	.233	.176	.306	.244	.191	.167	.171	.123	.116	.03
Driller	.64	.396	.282	.....	.294	.201	.202	.202	.161	.145	.075
Electrician	.77	.335	.317	.402	.455	.233	.202	.202	.188	.146	.09
Electrician helper	.48	.238	.176	.311	.244	.191	.181	.171	.123	.105	.03
Joiner	.76	.328	.317	.367	.314	.212	.202	.208	.....	.146	.10
Laborer	.43	.226	.212	.324	.278	.176	.167	.160	.143	.129	.039
Machinist, inside	.78	.324	.282	.394	.316	.255	.202	.....	.....	.143	.15
Machinist helper, inside	.48	.224	.176	.....	.259	.191	.....	.....	.....	.101	.03
Machinist, outside	.77	.324	.282	.394	.306	.255	.202	.....	.....	.128	.15
Machinist helper, outside	.47	.224	.176	.....	.259	.191	.....	.....	.....	.105	.03
Pattern maker	.86	.349	.317	.375	.299	.255	.202	.208	.166	.194	.03
Pipe fitter	.75	.344	.247	.383	.306	.223	.202	.202	.164	.153	.125
Pipe-fitter helper	.48	.245	.141	.316	.262	.191	.167	.171	.127	.101	.05
Plumber	.77	.343	.282	.383	.319	.223	.202	.....	.164	.140	.14
Plumber helper	.48	.232	.176	.316	.278	.191	.....	.....	.127	.097	.05
Riveter	.73	.427	.282	.381	.328	.318	.202	.202	.....	.145	.05
Riveter, heater	.45	.217	.247	.....	.222	.180	.....	.088	.....	.117	.015
Riveter, holder-on	.51	.379	.176	.381	.304	.180	.....	.....	.....	.127	.025
Riveter, passer-boy	.39	.078	.247	.....	.163	.102	.....	.....	.....	.097	.015
Sheet-metal worker	.76	.328	.282	.....	.338	.255	.202	.202	.180	.143	.14
Sheet-metal helper	.48	.226	.176	.....	.245	.....	.181	.171	.132	.101	.03
Ship fitter	.77	.393	.317	.381	.327	.223	.202	.208	.....	.153	.05
Ship-fitter helper	.48	.245	.176	.322	.244	.201	.167	.171	.....	.101	.025
Tinsmith	.76	.331	.247	.....	.319	.223	.202	.202	.....	.140	.14
Tinsmith helper	.48	.237	.141	.....	.244	.191	.....	.171	.....	.097	.03
Welder, acetylene	.77	.454	.353	.383	.327	.212	.202	.204	.202	.144	.10
Welder, electric	.81	.468	.353	.383	.....	.223	.202	.204	.204	.181	.10
Wood caulker	.76	.325	.247	.....	.286	.255	.202	.208	.....	.146	.125

STATEMENT OF H. G. SMITH, NEW YORK CITY, REPRESENTING THE NATIONAL COUNCIL OF AMERICAN SHIPBUILDERS

(The witness was duly sworn by the chairman.)

The CHAIRMAN. Mr. Smith, you are to speak upon the same paragraph.

Mr. SMITH. I will be extremely brief. I would say nothing except that I can possibly make a little clearer the objection of the American Shipbuilders and the National Council of American Shipbuilders to the amendment, particularly as to section 1, or No. 1 of section 3115.

It seems to us that the meat in that proposed amendment is contained in two clauses, one of which reads:

"In order to maintain such vessel in a seaworthy condition," and so forth.

It seems to us that is now fully covered under the existing law. With respect to casualty, or damages, if damages result, we have no objection to the existing law as it applies to the repair of a casualty, or to damages.

The second clause reads:

To maintain such vessel in a sanitary and proper condition for the carriage of cargo or passengers.

I defy anybody to define exactly what that means. Our objection to it is that this amendment would allow it to wide open to the performance of repairs of an extensive nature abroad.

Senator COUZENS. We got that point awhile ago, while Mr. Hunter was talking.

Senator BINGHAM. Have you heard any good arguments in favor of that?

Mr. SMITH. I have not.

The only other statement I want to make is this: It seems to me, that if the Congress thinks it is right and proper that we should have an American built, American owned Merchant Marine, and they enacted legislation to that effect last year, it is quite proper that we should have an American repaired merchant marine as well.

The council has modified very slightly the existing law, to which it would have no objection. I would like to file a copy of that for the record.

The CHAIRMAN. As a proposed amendment?

Mr. SMITH. As a proposed amendment.

(The matter referred to is as follows:)

SEC. 3114. The equipments, or any part thereof, including boats purchased for, or the repair parts or materials to be used, or the expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or a vessel intended to be employed in such trade, shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty of 50 per centum on the cost thereof in such foreign country; and if the owner or master of such vessel shall willfully and knowingly neglect or fail to report, make entry, and pay duties as herein required, such vessel, with her tackle, apparel, and furniture, shall be seized and forfeited.

SEC. 3115. If the owner or master of such vessel, however, furnishes good and sufficient evidence that such vessel, while in the regular course of her voyage, was compelled, by stress of weather or other casualty, to purchase such equipments, or make such repairs, in a foreign country, to secure the safety of the vessel to enable her to reach her port of destination; or that such equipments or parts thereof or repair parts or materials, were manufactured or produced in the

United States, and the labor necessary to install such equipments or to make such repairs was performed by residents of the United States, or by members of the regular crew of such vessel, then the Secretary of the Treasury is authorized to remit or refund such duties, and such vessel shall not be liable to forfeiture, and no license or enrollment and license or renewal of either, shall hereafter be issued to any such vessel until the collector to whom application is made for the same shall be satisfied, from the oath of the owner or master, that all such equipments and repairs made within the year immediately preceding such application have been duly accounted for under the provisions of this and the preceding sections, and the duties accruing thereon duly paid; and if such owner or master shall refuse to take such oath, or take it falsely, the vessel shall be seized and forfeited.

STATEMENT OF JOHN NICHOLSON, COUNSEL TO COMMITTEE ON LEGISLATION, UNITED STATES SHIPPING BOARD

(The witness was duly sworn by the chairman.)

Mr. NICHOLSON. I am counsel to the committee on legislation of the United States Shipping Board. Mr. Chairman, I shall be very brief. I am present at the request of the chairman of the United States Shipping Board. Our view is this, that the proposed change in the law is unwise, with respect to paragraph 1 of section 3115.

We are entirely in sympathy with the problems both of the ship men and of the shipyards. Weighing their respective problems, we are opposed, nevertheless, to the change which is here proposed in the present law. The existing law seems fair in its provisions.

The CHAIRMAN. What about paragraph 2?

Senator CONNALLY. You mean as proposed in this bill, or as proposed by these gentlemen?

Mr. NICHOLSON. I mean as proposed in the House bill.

Senator SHORTRIDGE. Subdivision 1 of section 3115.

Mr. NICHOLSON. Subdivision 1 of section 3115?

The CHAIRMAN. What about subdivision 2?

Mr. NICHOLSON. We think that subdivision 2 is reasonable, and may, therefore, properly be adopted.

Mr. Chairman, that is all.

MEMORANDUM SUBMITTED BY HON. DUNCAN U. FLETCHER, UNITED STATES SENATOR FROM THE STATE OF FLORIDA

[H. R. 2667, Seventy-first Congress, first session]

Amendment intended to be proposed by Mr. Fletcher to the bill (H. R. 2667) to provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, to protect American labor, and for other purposes, viz:

On page 326, line 17, after the word "country," insert the following: "*Provided*, That if the owner or master of such vessel makes claim under section 3115 herein, he may give a bond in double the amount of the cost of such repairs, with good and sufficient security, conditioned on the payment of said duty upon the decision of the Secretary of the Treasury respecting the merit of such claim and ascertainment of the amount that should be refunded or remitted, in case the duty was paid, and the amount of the duty which should be collected, thereupon the latter amount shall be promptly paid and said bond canceled."

The reason for this amendment is stated in the editorial from the Nautical Gazette, hereto attached, of June 1, 1929, pages 630 and 631:

DUTY ON REPAIRS

There is yet no meeting of the minds between shipowners and shipbuilders in respect to duties on repairs done in foreign ports. The pending tariff bill includes amendments of sections 3114 and 3115 of the 1922 act. The sections at present provide for the payment upon arrival at the first United States port of a 50 per

cent ad valorem duty on any repairs made in a foreign country. The payment is mandatory. The latter section provides for remission of such duty if the owner or master furnishes sufficient evidence that such vessel "was compelled by stress of weather or other casualty to put into such foreign port and purchase such equipments or make such repairs to secure the safety of the vessel to enable her to reach her port of destination."

The proposed amendment to section 3114 would provide that "compensation paid to members of the regular crew of such vessel in connection with the installation of any such equipments or any part thereof, or the making of repairs, in a foreign country, shall not be included in the cost of such equipment or part thereof, or of such repairs."

The proposed amendment to section 3115 would provide that "If the owner or master of such vessel furnishes good and sufficient evidence—

"(1) That such equipment or parts thereof or repair parts or materials were purchased, or that such expenses of repairs were incurred, in a foreign country, in order to maintain such vessel in a seaworthy condition, or to repair damages suffered or to replace equipment damaged or worn out during the voyage, or to maintain such vessel in a sanitary and proper condition for the carriage of cargo or passengers;

"(2) That such equipments or parts thereof or repair parts or materials were manufactured or produced in the United States, and the labor necessary to install such equipments or to make such repairs was performed by residents of the United States or by members of the regular crew of such vessel, then the Secretary of the Treasury is authorized to remit or refund such duties. * * *"

The courses pursued by the shipowners and the ship repairers seem widely divergent mainly because each does not fully understand the position or conditions affecting the other. Shipowners believe that the ship repairers are entitled to tariff protection to prevent materials being purchased or repairs being done abroad which can be done in the United States. But they know what a burden the present law, which excepts only stress of weather repairs, puts upon the operation of American ships in competitive foreign trades. They wish to see an amendment which will allow a more practical administration of the general intent of the law. In other words, there are repairs which must be done at foreign ports and which are liable to duty at present. The owners are not trying to fix it so they can do any sort of repairs, or make replacements, or do reconditioning jobs, or overhauls, or conversions. As a matter of fact, most owners prefer to do repairs in American ports where they can devote their close attention to all the details, to police the work, and to effect the repairs at the cheapest possible price. Chief engineers are not students of the cost of repairs. Anyone having had to do with repair requisitions knows of the diplomatic duels which almost constantly occur between the chief and the superintendent. Repairs at foreign ports are bugaboos to many owners, unless the captain, chief, or agent is well versed in the economics of repairs.

The shipbuilders or repairers, on the other hand, fully appreciate all the different kinds of repairs, and in connection with the recent dispute over the proposed tariff amendments their whole objection seems to be based upon a suspicion that owners will try to take unfair advantage of a greater freedom in phraseology.

We are rather surprised that one phase in the practical working of the law which constitutes a real handicap has not been stressed, and that no suggestion has been made to obviate this handicap by amending the administration of even the present law. We mean the mandatory payment of the duty. There seems to be no reason why this should be essential. Why not allow the owner to furnish a bond to cover the amount of the duty, and then only when it is determined definitely that the vessel is not exempt from the payment of the duty provide for the prompt payment? While the principle of the present law is to protect American yards and allow temporary emergency repairs to be done at foreign ports without penalizing shipowners, nevertheless the mandatory payment of the duty on any repairs, coupled with the burden resting on the owner of proving that the repairs were necessary for a seaworthy certificate, and the work and expense required in the red tape of inducing the Government to refund the money, work as a real handicap to American shipowners in foreign trade. From the writer's own experience an example may be cited: A ship in ballast and one day away from her foreign port of destination was caught in a 2-day gale of head winds. Her superstructure, funnel, and lifeboats were damaged. Her port of destination was the nearest port and also the port of refuge. Survey required temporary repairs in order to obtain seaworthy certificate. Permanent (and further or more complete) repairs were allowed to go over until

her return to a United States port. The 50 per cent duty on the repairs was paid. The permanent repairs were also made. After many months of effort, red tape, special agents, etc., a refund was obtained. Besides being out of pocket the amount of the duty, the loss of interest, collection fees, and all expenses totaled about 20 per cent of the amount of the duty. Who will say that this did not constitute a handicap to the operation of this American ship? And as long as no other financial compensations are granted to offset this particular kind of handicap, who will deny that it will not continue to constitute a handicap?

We heartily advocate the protection of American shipyards. But it is about time to realize that American shipyards can not be protected unless American ships are protected. Shipyards are entirely dependent upon ships. Successful American built, owned and repaired ships mean successful shipyards. The principle of tariff for revenue only has long ago been discarded by both political parties. The intent of the protective tariff was to foster the development of home industries to supply our domestic needs. How successful have been the results is shown by the fact that the quantity production in most instances has reduced the production costs to a point lower than the costs of similar products of other countries, so that we can now compete with them in world markets. The same results can not be obtained in the shipbuilding industry.

That shipping is international in character, that American shipping has been more hampered than helped by tariff aid to other American industry, that American shipping needs protection but that on account of the impracticabilities of tariff application the only method of protection is by government financial aid in recognition of national service rendered, all seem to have been to large extent realized by Congress by the token of the passage of the Jones-White bill. As we believe in protection of American shipyards, so do we believe that American shipping must be protected. And to the very extent American shipyards are protected by a means which tends to burden shipping, American shipping must be protected. It is a matter of degree.

ENTRY OF MERCHANDISE—BILLS OF LADING

[Sec. 484]

STATEMENT OF A. P. THOM, WASHINGTON, D. C., REPRESENTING THE ASSOCIATION OF RAILWAY EXECUTIVES

(The witness was duly sworn by the chairman.)

Mr. THOM. Mr Chairman and gentlemen of the committee, there are two of the administrative sections of this act to which I would like to call attention.

Senator BINGHAM. Mr. Chairman, it is impossible to hear anything.

Mr. THOM. I say, there are two of the administrative provisions of the present law to which I would like to invite the attention of the committee.

The first one of these is section 484 of the present law, which deals with the method of making entry of imported merchandise.

The CHAIRMAN. That is page 428. What subsection do you desire to speak to?

Mr. THOM. Particularly to subsection (c) of that section 484, which relates to the entry of merchandise imported into this country.

The present method requires the production of the bill of lading before the entry can be made. That, in practical operation, has been found to be very burdensome. The provision of the law has been construed by the collectors as requiring not only the production of the bill of lading but of the surrender to them of the bill of lading, so that all evidence in respect to the shipment is taken into the hands of the Government and away from the carriers.

This matter has been the subject of consideration by a committee of the agents of the carriers; by "carriers," I mean the rail carriers—by the agents of the shippers at seaboard points; by the collectors of customs at the seaboard points, and by these committees with the customs authorities in the administrative branch of the Government here in Washington.

It was at first sought to find a way of dealing with the subject by a regulation of the Treasury, but that was not thought possible by the Treasury Department. At the same time, the difficulties to which I am about to allude, I think I may say, are fully recognized by the Treasury authorities, and they are as anxious as we are to find a solution of the method of making the entry that will properly protect the interests of the Government, and also the convenience of the shipping public and the carriers.

Representations on this subject were made to the House Committee by representatives of the San Francisco Chamber of Commerce, and effort was made in the bill as reported by the House Committee to meet the difficulties.

The general method adopted by the House Committee was to permit the entry to be made, not only on the original bill of lading, but on a duplicate of it.

The CHAIRMAN. The amendment on page 430 provides, does it not, for the duplicate bill of lading?

Mr. THOM. I say, that is the method which the House suggested.

The CHAIRMAN. Yes.

Mr. THOM. The power to make the entry not only upon the original bill of lading, but also the power to make it upon a duplicate bill of lading.

But that, upon consideration of the commercial interests involved, has been found impracticable, and in no way furnishing a solution of the difficulty.

These bills of lading are sometimes in foreign languages. They are very elaborate in their provisions. The difficulty of obtaining a duplicate of the bills of lading is very great; so great that this provision of the House has been rejected by the opinion of those people who have to get under the provisions of the law.

The CHAIRMAN. In many cases, however, it could be administered, could it not, to the advantage not only of the Government, but the shipper himself?

Mr. THOM. That may help, but there are certain fundamental considerations affecting this matter which I believe are sound in themselves, and which I hope will address themselves to the approval of this committee.

One is that the only interest of the Government in respect to this matter of the customs is to collect the amounts due the Government on the importation of any merchandise. The Government ought not to have any responsibility in respect to delivery, because that is a carrier responsibility; nor ought it to have anything to do with the bill of lading, except in so far as is necessary to furnish it with the evidence of the authority of the person offering to make the entry—in fact, to make the entry. The Government has nothing to do with the carrier obligation or with the carrier duty. It has nothing to do with the evidence of shipment except in so far as it may be necessary

to protect the governmental interests of collection. It should have nothing to do, in any event, with delivery. That ought to be put upon the carrier in pursuance of its contract of carriage.

Without going into any detail, Mr. Chairman, what I wish this committee to do is to refer this matter that I am speaking of to its technical advisors for the purpose of bringing into it a suggestion as to how this matter should be handled.

Senator WATSON. What is your suggestion, Mr. Thom?

Mr. THOM. We are to have a meeting of our committee next Monday for the purpose of passing upon a suggestion which I have here, and therefore the suggestion that I make here has not yet been authorized by the committee of the carriers which I represent. One of this committee will come from Seattle, another from Boston, another from Jersey City, and another from St. Paul.

Senator HARRISON. You are going to incorporate that suggestion in the record?

Mr. THOM. I am going to bring it to this committee as soon as it is approved.

Senator HARRISON. Not until it is approved?

Mr. THOM. I would rather not, but I can give you the ideas which are running through our minds about it.

Senator SHORTRIDGE. I would be glad if you would do that.

Senator KING. Mr. Thom, the committee, as a body, may take a recess within a day or two, and the majority members would have the advantage of it, but the minority would not. I think you ought to submit it so that we may learn something about it.

Mr. THOM. I will submit it with the reservation to which I have alluded.

The CHAIRMAN. You shall have it as soon as it is received.

Senator HARRISON. Mr. Thom has been here long enough to know that the minority Members are not going to have any voice in making this law.

Senator SHORTRIDGE. Mr. Thom, what you are going to suggest is in lieu of subdivision 3, if I understand you correctly?

Mr. THOM. I am going to suggest an alternative method.

The CHAIRMAN. Mr. Thom, have you been in conference with Mr. Alvord on this subject?

Mr. THOM. Yes.

The CHAIRMAN. Mr. Alvord, I know, is preparing a proposed amendment to this provision.

Mr. THOM. I know he is, and that was my reason for not wanting to bring it in prematurely, but I am perfectly willing to present the ideas that are now running through our minds with respect to it.

Senator SIMMONS. Mr. Chairman, why insist upon Mr. Thom reading this memorandum he has prepared until he has submitted it to his clients?

The CHAIRMAN. I do not ask him to do it.

Senator SIMMONS. I would suggest, if this committee is adjourned when his committee has acted, that he send to each member of the committee a memorandum of what they desire.

Mr. THOM. I can do that, but perhaps I can make the matter a little more definite if I should tell you what we have tentatively under consideration.

Senator SACKETT. You have aroused our curiosity.

Mr. THOM. If you will turn to the present law, after the word "merchandise" in the third line from the top——

The CHAIRMAN. You are reading from an entirely different bill.

Mr. THOM. I am talking about the law.

Senator SHORTRIDGE. What section are you talking about?

Mr. THOM. I am talking about the old law.

Senator HARRISON. What subdivision are you reading from?

Mr. THOM. Subdivision (a). After the word "merchandise" insert "or the person authorized to make such entry under paragraph (h) of this section," and substitute for paragraph (h) of the House bill the following paragraph:

(h) The collector shall permit entry to be made of merchandise without the production of a bill of lading by a person certified by the carrier charged with the duty of delivery as

(1) The consignee named in the straight bill of lading covering such merchandise,

(2) The holder of an order notify bill covering the same,

(3) As having filed bond with the carrier conditioned upon saving it harmless for the delivery of merchandise in the absence of a bill of lading, or

(4) As being a person to whom the carrier is willing to assume the responsibility of making delivery without bond.

The collector shall permit the carrier to withdraw bills of lading coming into his possession under paragraph (c) of this section if the carrier shall thereafter deliver to the collector such a certificate as is herein provided for.

Such entry shall be made in the manner and subject to the requirements so far as applicable prescribed in this section or in the regulations promulgated in respect thereto by the Secretary of the Treasury, except that such person shall make such entry in his own name.

No merchandise so entered which shall have come into the custody of the collector shall be released from customs custody except to such carrier, but the person so making entry shall be liable for the payment of all additional and increased duties on such merchandise except as provided in section 485 (d).

The object of that is to preserve in its integrity the present method of making entry, but to provide an alternative method by which, when a responsible party comes with a certificate from the carrier that he comes under one or the other of these four heads, then that party be allowed to make the entry, and that party become responsible to the Government for any increased or additional duties, except as he may be permitted to relieve himself, as already provided in section 485 (d).

We are seeking here simply a practical and convenient method of doing business. We recognize the point made by the Treasury Department, that no one ought to be allowed to make entry which would jeopardize the interests of the Government if additional duties are imposed, or if it is found that an increased amount is due, and that there ought to be some responsibility in respect to the person who shall make this entry; so we provide responsibility as set out in this suggestion (which, as I say, is tentative only) by requiring the carrier to make a certificate that such a person comes within one or the other of these descriptive heads.

You will observe also that while the great majority of shipments under "order notify" bills of lading, or under straight bills of lading, remain in the custody of the carrier, there are some instances in which the customs authorities take possession of the goods.

In our opinion there ought to be no responsibility upon that collector for making proper delivery. He ought to be charged with no duties in respect to making delivery, but his duty will be completely performed after the customs dues have been paid, when he returns the merchandise back to the carrier, and let the carrier assume the duty of making proper delivery.

Under the present system there have been a great many cases in which liabilities where, under a just system of law, there should be no liability imposed upon the collector, have been imposed, and where he has been held liable for misdeliveries. We think that he ought not to be sujected to that. We think that is a carrier responsibility, and that when the Government has gotten its dues, if it has any goods in its custody, they should be given back to the carrier to be delivered under the contract of carriage. And if he has not received any goods into his custody, then, of course, the carrier will make the delivery in due course.

But I call your attention to these considerations, as I hope, interesting you to see that these administrative provisions are improved so that the just interests of the Government may be protected and, at the same time, commerce may be accomodated and facilitated.

Senator KING. Just a question. Does not the present law work more disadvantageously to the Government than it does to the carrier or to the consignee?

Mr. THOM. I think it works both ways, Senator. The present law imposes a liability upon the collector which he ought not to bear. That is on the Government side. On the carriers' side, the carrier has no evidence whatever on which to make delivery of "order notify" bills of lading. They are in the custody of the Government, which does not want them.

Senator KING. Then, the present system makes for some delay in proper delivery to the consignee?

Mr. THOM. Yes.

Senator KING. And the plan which you suggest would relieve the Government—that is to say, the collector—of liability, and relieve the railroad companies, or the carriers, from liability which, perhaps, attaches to them now, and effectuate delivery much quicker.

Mr. THOM. I do not think it would relieve the carrier of any responsibility. It would merely facilitate the performance of the duty of the carrier. It would reimpose upon the carrier all obligations to carry out the contract of carriage.

So that we are not here seeking to relieve the carrier of any obligations. We are here, perhaps, to increase the obligations of the carrier to the legitimate point of enabling it to perform its contract of carriage.

Senator KING. You are not seeking to exculpate yourself from liability by obtaining delivery to a consignee, perhaps, who may not have all of the indicia of ownership, or the right to accept the property?

Mr. THOM. We would have to make delivery to him. We would be clothed with the obligation to make delivery to him.

Senator HARRISON. It seems to me that is a technical matter that everbody is going to agree on provided they can work out a plan.

Mr. THOM. I think so.

The CHAIRMAN. That is what I have stated.
Senator KING. Is that all?
Mr. THOM. That is all on that point. I merely wanted the committee, as I say, to consult its technical experts, to see if there is not some way by which commerce can be facilitated in this very important matter, which now is full of difficulties and embarrassments in the transaction of business. That is one of the subjects.

AMENDMENT OF VALUE IN ENTRY

[Sec. 487]

BRIEF OF F. B. VANDEGRIFT & CO., PHILADELPHIA, PA.

COMMITTEE ON FINANCE,
United States Senate, Washington, D. C.

SIRS: In re H. R. 2667, section 487 (Value in entry—amendment), Assistant Secretary Mills, before the Ways and Means Committee (Tariff Ready Adjustment, 1929), states:

"The existing law allows an entry to be amended at any time before the invoice or the merchandise comes under the observation of the appraiser. This has been construed by the court to mean the appraiser himself, and not an assistant appraiser or examiner. * * * To carry out the evident intent of Congress, it is recommended that no amendment of an entry be allowed after the merchandise or invoice has come under the observation of an examiner, assistant appraiser, or any other officer for the purpose of ascertaining value."

The Assistant Secretary has been misinformed as to the intent of Congress, as the decision of the United States Court of Customs Appeals in the MacMillan case was decided after the passage of the tariff act of 1922.

The United States General Appraisers (now the United States Customs Court) decided on June 30, 1922, that an invoice had come under the observation of the appraiser when it was received at the appraiser's office, whether it had received the ocular examination of the appraiser or not. (T. D. 39189, G. A. 8553.)

This decision was appealed by MacMillan Co., and on March 17, 1923 the United States Court of Customs Appeals reversed the lower court (T. D. 39536, suit No. 2203).

While the appeal was pending in the United States Court of Customs Appeals the Sixty-seventh Congress was preparing the present tariff bill, and the Senate amended section 487; the conference report was submitted to Congress on September 12, 1922, in which amendment 1916 reads:

"Amendment No. 1916: The Senate amendment restores a provision omitted in the House bill, authorizing the consignee to make corrections in his entry at any time before the invoice or the merchandise has come under the observation of the appraiser for the purposes of appraisement. This is reenactment with a slight change of paragraph 1, section 3, of the act of 1913. This paragraph, however, has recently been construed as not giving the privilege to make corrections after the documents have been delivered to the appraiser, and the Senate amendment extends the privilege by the addition of the phrase "for the purpose of appraisement," in accordance with the intent of the original paragraph and a long-standing practice; and the House recedes."

You will see from the above that the present practice is not based on the ruling of the United States Court of Customs Appeals, but on the intention of Congress, as expressed by the conference committee, which did not approve of the decision of the Board of General Appraisers.

The present practice should be continued. It gives the importer a chance to correct any errors, and reduces litigation. The Government does not lose in revenue, as many importers voluntarily advance their invoices on information from the appraising officer, while, on the other hand, the appraising officer would not make the advance without sufficient legal evidence to warrant the addition.

When the appraiser makes an advance in value, the importer appeals for reappraisement, and a trial is had before a single justice, and an appeal from the latter's decision to a court of three justices.

If the importer loses his case he usually files a petition for the remission of the penal duty, and another trail is had before the court to determine if the petition

should be granted. All this litigation is cut out if the importer voluntarily amends his entered value, and the Goverment gets all the duty legally due.

The appraisers at the various ports, doing business every day with the same importers and brokers, are able to judge whether the importer in making entry at a certain value intended to defraud the Government, and where this is not the case the importer should be given a chance to amend his entered value.

We hear a great deal of talk about enormous undervaluations, and the public is given the impression that importers are a group of aliens conspiring to defraud the Government and undersell the domestic manufacturer. As a matter of fact, a majority of the importers are domestic manufacturers and are entitled to fair treatment from their Government. Because several importers have taken advantage of the law, this is no reason why the many other importers should be subjected to fines, litigation, and attorneys fees when they are striving to pay the Government the legal duty.

Part of our business is devoted to customs litigation, and in filing this memorandum we are talking against our own interests, but we would prefer to earn our fees from a source other than that based on penal duties assessed on honest merchants, and our only purpose in filing this statement is to secure justice for these merchants.

Respectfully,

F. B. VANDEGRIFT & Co.

ADDITIONAL DUTIES

[Sec. 489]

BRIEF OF THE ASSOCIATION OF THE CUSTOMS BAR

COMMITTEE ON FINANCE,
United States Senate, Washington, D. C.:

The Association of the Customs Bar is an incorporated body numbering among its membership practically all of the attorneys throughout the United States who are engaged in active practice in customs matters before the United States Court of Customs and Patent Appeals and the United States Customs Court. One of its objectives is to maintain and improve the standards and methods of practice under the Federal laws relating to the customs and revenue and for this purpose its committee on practice, procedure, and legislation, which presents this brief with the approval of the board of directors of the association, is charged with the duty of cooperating with Federal authorities in the promotion of beneficial reforms or changes in procedure which may tend to facilitate the administration of justice.

The association cooperated with the Tariff Commission in the codification and revision of the customs administrative laws which was embodied in the tariff act of 1922. That code has in the main worked well and has simplified and expedited administration and procedure. It could doubtless be further perfected, and numerous suggestions have been made at the hearings on the pending bill.

It is not the purpose of this memorandum to review the merits or demerits of the proposals that have already been made. The committee merely desires at this time to suggest two changes in procedure which seem to be called for by elementary justice.

I

REMISSION OF ADDITIONAL DUTIES, SECTION 489, H. R. 2667

The imposition of additional duties in case the appraised value exceeds the value declared in the entry has been a feature of our customs law for 60 years or more. Up to 1922 the law provided that these additional duties should not be remitted except in an extremely limited class of cases arising from manifest clerical error. The statutes previous ot 1922 worked unbelievable hardships upon innocent citizens.

The Tariff Commission in its report to the Committee on Ways and Means under date of August 26, 1918, dealing with the proposed revision and codification of the customs administrative laws, called attention to the prevailing dissatisfaction with this provision arising from the facts that it was applied automatically and without regard to any evidence of the importer's guilt or innocence,

that it contained no provision for relief from innocent errors, such as errors due to oversight or to ignorance concerning fluctuations in market value, and that hardships frequently resulted against which the importer found it difficult to guard.

The commission observed that "the need of some amendment to remedy such conditions has long been universally recognized," and suggested a modification of the law so as to permit relief by way of remission or mitigation of the additional duties by the Secretary of the Treasury in all cases of proved good faith. (See Appendix.)

These recommendations of the Tariff Commission were in a measure carried out in the tariff act of 1922, which for the first time provided for remission of additional duties. Section 489 of that act permits such remission upon a finding by the Board of General Appraisers (now the United States Customs Court) that entry at less than the appraised value "was without any intention to defraud the revenue of the United States or to conceal or misrepresent the facts of the case or to deceive the appraiser as to the value of the merchandise." This provision has been carried into section 489 of the pending bill (H. R. 2667).

While it might seem that the language employed was broad enough to enable the courts to give comprehensive relief, in actual practice it is believed that it falls far short of accomplishing the remedial purposes intended by Congress.

The statute places upon the importer the burden of proving absence of intent to defraud, conceal, misrepresent, or deceive. To sustain the burden of establishing by legal evidence a negative so broad is practically impossible. It requires that the evidence shall exclude all of the numberless possible hypotheses of guilty intention.

Even in the cases where relief has been given it is very doubtful if the importer has met the requirements of this negative rule carried to its logical extent. The courts must take liberties with the letter of the law in order to make it effective at all.

The importer's unsupported declaration of innocence will not save him unless supported by corroborative facts existing in the transaction itself. The importer's past record for honesty and integrity is of little value. Often the importer has nothing but his consciousness that he has not intended to defraud the Government and is technically in the wrong only through inadvertence or ignorance. The facts corroborative of this innocent state of mind do not exist in the transaction and he can not create them. Furthermore, corroborative facts are far more apt to exist in the case of the importer of large transactions and wide connections than in the case of the small importer of limited foreign connections or one who makes single importation and has had no previous customs experience. The statutory rule thus favors the large rather than the small importer.

If it may be assumed that Congress intended to carry out the purpose expressed by the Tariff Commission in 1918 then it would seem that the objectives of the statute might be fairly stated as follows: (*a*) The importer who has been guilty of fraudulent intent or willful negligence in making his entry shall not have remission of additional duties. (*b*) The importer who is free from fraudulent intent or whose negligence, if any, was not willful may have remission of such duties.

As stated above, the most serious defect in the present statute is that it makes proof of absence of fraudulent intent extremely difficult because it prescribes an inelastic rule of evidence binding on the courts. One method of ameliorating this would be to give the courts wider discretion in dealing with the facts before them.

A further objection to the statute in its present form is that reputable importers are discouraged from availing themselves of its provision owing to the difficulties we have described. Attorneys have been obliged to advise their clients that moral certainty of innocent intent was not enough without corroborative facts and that if by chance such corroborative facts did not exist the remedy would fail and the importer be publicly stigmatized as a fraudulent undervaluer. In justice to the courts it should be said that they carefully avoid an affirmative finding of fraud on the part of the petitioner unless the facts warrant it, but it is unfortunately true that a finding to the effect that petitioner has failed to sustain his burden of proving absence of fraud carries an implication as damaging for practical purposes as an affirmative finding of fraud.

In the judgment of this committee the statute should also allow mitigation as well as remission of additional duties. There are cases in which the facts might justify the imposition of some penalty where the exaction of the full liability

would be a punishment disproportionate to the offense. It will be noted that in its recommendations of 1918 the Tariff Commission suggested provision for mitigation as well as remission of penalty.

It is an anomalous situation that a person whose merchandise has been seized or who has incurred a fine or penalty under those provisions of the law which directly penalize frauds on the revenue may apply to the Secretary of the Treasury for all of the relief which we have suggested as desirable in the case of remission of additional duties and the Secretary of the Treasury is given full authority to grant such relief. Thus, section 618 of the pending bill proposes to reenact the existing provision in that respect and provides that—

"* * * the Secretary of the Treasury, * * * if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such fine, penalty, or forfeiture, may remit or mitigate the same upon such terms and conditions as he deems reasonable and just, or order discontinuance of any prosecution relating thereto."

The foregoing is a humane statute which recognizes the necessity of tempering the drastic nature of customs penalties in a proper case. It gives very broad discretion to the Secretary of the Treasury to remit or mitigate a penalty where it was incurred (*a*) without willful negligence or (*b*) without intention to defraud or (*c*) where such mitigating circumstances exist as to justify the remission or mitigation.

Remission proceedings under section 618 above quoted relate to a class of cases distinctly recognized in practice as "fraud cases." The facts in additional duty cases, under section 489, rarely warrant their treatment as though tainted with fraud. Even where the appraised value exceeds the entered value by more than 100 per cent and the entry is declared to be presumptively fraudulent and the merchandise required to be seized, the Secretary of the Treasury, in the great majority of cases, orders the release of the merchandise upon the ground that the presumption of fraud has been rebutted. This is of course due to the wide discretion permitted to the Secretary of the Treasury in the appraisement of the facts under section 618.

We accordingly respectfully submit that the statutory grounds for remission of additional duties should not be more onerous than those prescribed for remission or mitigation of penalties in fraud cases, properly so regarded, and that the discretion of the customs courts in dealing with the former should at least be as wide as the discretion of the Secretary of the Treasury in dealing with the latter.

To this end we suggest that the remission clause in section 489 be amended by incorporating in it the language which defines the Secretary's authority for remission of penalties under section 618. Thus amended the clause in section 489 might read as follows (new matter italics, deleted matter in brackets):

Such additional duties shall not be construed to be penal and shall not be remitted nor payment thereof in any way avoided, except in case of a clerical error, upon the order of the Secretary of the Treasury, or *except that* in any case [upon the finding of] the United States Customs Court, upon a petition filed at any time after final appraisement and before the expiration of sixty days after liquidation [and supported by satisfactory evidence under such rules as the court may prescribe, that the entry of the merchandise at a less value than that returned upon final appraisement was without any intention to defraud the revenue of the United States or to conceal or misrepresent the facts of the case or to deceive the appraiser as to the value of the merchandise], *if it finds that such additional duties were incurred without wilful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission or mitigation of such additional duties, may remit or mitigate the same upon such terms and conditions as it deems reasonable and just and order the collector or person acting as such to liquidate or reliquidate the entry accordingly.* * * *.

Upon the making of such order [or findings] *by the Secretary of the Treasury or the United States Customs Court,* the additional duties shall be remitted or refunded, wholly or in part, and the entry shall be liquidated or reliquidated accordingly.

It might be argued that the remission or mitigation of additional duties, like the remission or mitigation of penalties under section 618, is an executive function, akin to the pardoning power, and should be exercised by the Secretary of the Treasury. Probably the only reason why the Secretary of the Treasury has not had this power in the past is that the additional duty provision has commanded that "such additional duties shall not be construed to be penal and shall

not be remitted nor payment thereof in any way avoided." This clause reflects the harsh policy from which Congress departed in 1922 upon the recommendation of the Tariff Commission.

If it should be desired to give the Secretary of the Treasury power to remit or mitigate additional duties, as advised in the Tariff Commission's report of 1918, it could be accomplished by striking from H. R. 2667, as passed by the House and referred to the Committee on Finance, the sentence beginning on line 16 of page 343 and ending on line 4 of page 344 and the sentence beginning on line 16 and ending on line 19 of page 344, and inserting in lieu thereof, beginning on line 16 of page 343, the following:

"Such additional duties shall not be remitted except by the Secretary of the Treasury as provided in section 618 of this act."

II

LIABILITY FOR ADDITIONAL DUTIES UNDER EXTENSION OF TIME FOR APPRAISER'S RETURN SECTION 503, H. R. 2667

It is proposed that after the word "necessary" on line 24, the following provisos be added:

"*Provided*, That the importer shall be notified in writing by the appraiser of any such extension of time, and *Provided further*, That no additional duties under section 489 of this act shall be levied, collected or paid upon entries of the same merchandise made on the same basis of value by the same importer, agent or consignee after such extension of time as been granted."

Under the act of 1922, it has become somewhat the custom of appraising officers to hold entries of merchandise without appraisement for a considerable lapse of time during which time investigations are being made or completed either in foreign countries or in the United States by Treasury agents and others for the purpose of obtaining information upon which the appraising officer can determine what the dutiable value of merchandise is. In some cases, appraisements have been withheld for nearly a year.

Under these circumstances, importers who were importing the same type of merchandise, being compelled by law to make entry thereof within 48 hours of arrival, would continue to make entry of merchandise arriving after an initial shipment at the same value, it being impossible to obtain from the appraising officer any information in regard thereto. The custom has been in such cases that the appraising officers would withhold action upon subsequent entries and then when the desired information has been obtained, would allow the importer to withdraw his entries and amend them to conform to the tentative value given him by the appraiser, in which case, if he desired to avail himself of this information, he could obviate the possibility of the assessment of additional duties on such entries against him.

This section is new legislation. In the basis for a report to accompany the proposed tariff act of 1929, dated May 7, 1929, filed by the Committee on Ways and Means, the following statement was made with reference to section 503:

"Under existing law there is no prescribed time within which the appraiser must report the value of the merchandise to the collector. Although in most cases appraisers have been prompt in making their returns it frequently occurs that invoices are held by the appraisers for months and sometimes for over a year. This results in embarassment to the importer, not only as to the particular shipment but also as to future shipments inasmuch as it can not be known at what value the merchandise subsequently imported should be entered. It was developed at the hearings before your committee that the practice in such cases has been for the importer to make entry and immediately ask to have the invoice recalled for purposes of amendment in the entry, and that such a practice results in a congestion of recalled invoices upon which no action has been taken by the appraiser."

The basic reason for section 503 is the embarassment to the importer, not only as to a particular shipment, but also as to future shipments, inasmuch as the importer can not proceed with certainty in the fixing of a price for the disposal of his merchandise.

Under the amendment to section 487 in the proposed new bill, however, it is provided that amendments of entry may be made at any time before the invoice of merchandise or any part thereof has come under the observation of the "appraiser, assistant appraiser, examiner, or examiner's clerk, or person acting as such appraiser, assistant appraiser, examiner, or examiner's clerk, for the purpose of examination or appraisement of the merchandise." This is a change from the

provisions of the tariff act of 1922, which provided that such amendments could be made before the merchandise came to the observation of the appraiser.

It is apparent, therefore, that under the language of section 487 it would be practically impossible to give an importer the opportunity of entering his merchandise at a value which would preclude the possibility of the assessment of additional duties under section 489 against him.

Of course, in the case where the appraiser has actually appraised the merchandise on an invoice under the provisions of section 489, the importer is allowed to make so-called duress entries at the value fixed by the appraiser which avoids any possibility of additional duties. The amendment to section 503 above set forth is for the purpose of allowing an importer to make entry of his merchandise in cases where the Secretary of the Treasury granted an extension of time to make appraisement in the same manner as if there had been an initial appraisement to which the importer could refer in making the so-called duress entry.

Respectfully submitted.

THOMAS M. LANE, *Chairman*,
GEORGE J. PUCKHAFER,
JOHN R. RAFTER,
JOHN FRANCIS STRAUSS,
SAMUEL M. RICHARDSON,
Committee on Practice Procedure and Legislation of the Association of the Customs Bar.

(Address communications to the chairman, at 165 Broadway, New York City.)

APPENDIX

REPORT OF TARIFF COMMISSION ON REMISSION OF ADDITIONAL DUTIES

The Tariff Commission in its report to the Committee on Ways and Means under date of August 26, 1918, dealing with the proposed revision and codification of the Customs Administrative Laws, said (pp. 18–19):

"*Undervaluation.*—The greatest cause of dissatisfaction in the administration of the customs laws as they now stand is the provision imposing additional duties in cases of undervaluation. These duties, under existing law, accrue whenever merchandise is entered by the importer at a value less than that finally fixed by the appraiser. They are applied automatically, and without regard to any evidence of the importer's guilt or innocence, at the rate of 1 per cent of the total appraised value for each 1 per cent that such appraised value exceeds the value declared in the entry. (See sec. 90.) Under existing statutes the only relief that can be granted, whatever the reason for the entry of an importation at less than the value found by the appraiser to be the true market value, is for 'manifest clerical errors.' That term has been judicially interpreted to include such errors, only as are apparent upon the face of the entry papers. Many innocent errors however, are not of a clerical nature. They are commonly due to oversight in transferring items from the invoice to the entry or to ignorance concerning fluctuations in market value between the time of purchase and the date of exportation. Under the law as it has been and is, every importer is required to state in his entry the foreign market value at the time of exportation. Importers of merchandise obtained by purchase frequently know little or nothing about the foreign market value other than the price paid by themselves for the goods Hardships frequently result against which the importer finds it difficult to guard.

"Recent examples will serve to illustrate the difficulties. An American mercantile agency, unable because of the war to buy in this country methylene blue for use in making carbon paper, ordered three cases through an agent in Switzerland. The goods arrived before an invoice was received, and entry was made upon a pro forma invoice at 3.75 francs per kilogram, which, from the information in a cablegram and letter from the foreign agent, was thought to be the correct value. The invoice subsequently received showed the value to be 35 francs per kilogram, at which the merchandise was appraised. As the error was not manifest on the face of the entry papers, relief could not be granted, and additional duties amounting to 75 per cent of the appraised value were collected. In another instance, just before the outbreak of the war, a large shipment of goods was loaded on a vessel at Rotterdam. Because of unforeseen shipping conditions, a delay of about three months in forwarding the goods ensued. In the meantime the market value of the particular kind of merchandise advanced approximately 100 per cent, and of this increase in foreign market value the importer knew nothing when making his entry. As duty had to be taken on the value at the time of

exportation, which is the date of clearance of the vessel from the foreign port, the importer, although blameless, was compelled to pay an additional 75 per cent.

"The need of some amendment to remedy such conditions has long been universally recognized; the only doubt has been how far the amendment should go. One suggestion has been to abolish the additional duties altogether, leaving importers guilty of actual fraud to be punished according to the statutory provisions for such cases—by fine or imprisonment, or loss of their merchandise or its value. The view of the majority of those consulted is that the provision for additional duties should be retained, because of its deterrent effect on slack and fraudulent importers, but should be modified so as to permit relief in all cases of proved good faith. This method has been adopted in the draft, which provides in effect, that, on a finding by the Secretary of the Treasury that the undervaluation of merchandise on entry, shown by the final appraisement, was without intent to defraud the revenue, or to conceal or misrepresent facts, or to deceive the appraiser, the additional duties may be remitted or mitigated. (See sec. 90.)"

The commission accordingly recommended the following provision for the remission of additional duties (see report, p. 109):

"Such additional duties shall not be remitted nor payment thereof in any way avoided, except upon the order of the Secretary of the Treasury finding that the entry of the merchandise at a less value than that returned upon final appraisement was without any intention to defraud the revenue of the United States or to conceal or misrepresent the facts of the case or to deceive the appraiser as to the actual market value of the merchandise. Upon the making of such finding the Secretary of the Treasury shall remit or mitigate such additional duties as in his opinion the merits of the case and the ends of justice may warrant and he is hereby authorized to order liquidation or reliquidation of such entry and to refund the additional duties accordingly."

PROCEEDS OF SALE

[Sec. 493]

STATEMENT OF A. B. HARRINGTON, REPRESENTING THE REPUBLIC STORAGE CO., NEW YORK CITY AND THE WAREHOUSEMEN'S ASSOCIATION OF THE PORT OF NEW YORK

(The witness was duly sworn by the chairman of the committee.)

Mr. HARRINGTON. I am here representing the Warehousemen's Association of the Port of New York.

Senator SMOOT. That is, on the proceeds of sale?

Mr. HARRINGTON. Yes, sir. And I would like to present a short amendment to section 493 and ask that this section be amended, adding the following provision at the end:

If the proceeds of such sale should not be sufficient to pay the cartage, storage, and labor charges, they will be paid from the appropriation for collecting the revenue from customs.

My reason for that is that so-called general order merchandise comes into the port of New York and is sent to a warehouse and the warehouse has to hold if for a year. At the end of that time, if entry has not been made for the goods, they are ordered down to the seizure room of the United States Customs. That is about six months later.

About six months subsequent to that you receive from the Government the proceeds of the sale.

Senator SMOOT. Your brief covers all of that, does it not?

Mr. HARRINGTON. Not entirely; no, sir.

If we send down 500 packages each one is auctioned off separately. If the first one auctioned off is auctioned for $50 and our charges on

if are $10 they pay us our $10, reimbursing us for the cartage we have paid, the storage and labor.

If the next package auctioned off brings $2 and our charges are $10, they take the $2 for the expenses of the sale and we get nothing.

So our appeal is that we should be paid in full for our charges.

Senator SMOOT. No matter whether it is an increase or a decrease?

Mr. HARRINGTON. Yes, sir. They have a huge surplus from these sales which goes to the Government.

Mr. Holt, of the Bush Terminal, was here yesterday, but had to return to New York last night.

On his behalf I ask leave to submit this affidavit.

Senator SMOOT. That may be done.

(The affidavit referred to is as follows:)

CITY OF WASHINGTON,
District of Columbia, ss:

Harper A. Holt, being first duly sworn deposes and says that I reside at Brooklyn, N. Y., and I am attorney for and secretary of the Bush Terminal Co., which is one of the largest warehouse companies in the port of New York.

I appeared to-day before the full Committee on Finance of the United States Senate prepared to discuss the suggested amendment to section 493 of H. R. 1, concerning the payment of storage charges on general order merchandise; because other witnesses occupied the entire day I was crowded out and am compelled to return to New York this afternoon, for which reason I am submitting this in affidavit form to take the place of oral testimony.

It is a matter of general knowledge and common experience among customs bonded warehousemen and it is well recognized among Government revenue officials that the present method of disposing of unclaimed merchandise which has been stored in general order and constructively abandoned to the Government is wholly unfair in its operation. Unless some necessary changes are made, abuses will inevitably creep into the procedure which in the end will militate against the Government and may have a far-reaching effect upon the present careful method of caring for such merchandise. The engagement of facilities for the storage of unclaimed goods is at the instance of the Government officials, and merchandise deposited in customs bonded warehouses under general order is so deposited in order that the goods may be safeguarded and the Government protected in the collection of the duties due upon the goods. The customs law has long provided that bonded warehouses located at various points in the ports of entry shall be designated as the general order warehouses for the adjacent district. The privilege of a customs bond for warehouse space is extended only to such warehouses as will accept a general order designation. It will thus be seen that the warehouse has no choice as to what goods it will accept.

The prompt storage of unclaimed merchandise in conveniently located warehouses is of great importance and the absence of such facilities will result in immediate congestion of piers and wharfs or necessitate the erection and maintenance of Government warehouses. The operation of general order warehouses by the Government is neither feasible nor advisable. The movement of general order merchandise has no constant volume but fluctuates radically in volume. No definite storage requirements for general order merchandise could possibly be anticipated.

The bonded warehouseman performs therefore a service necessary to commerce and essential to proper administration of the customs law. In accepting merchandise for storage, the warehouse is the custodian for the Government, and is under Government control and supervision.

The expense of cartage, labor, and storage is normally borne by the importer. The rates of charge for general order storage, labor, and cartage, are fixed by the Treasury Department and the bonded warehouseman has no freedom to assess any other than the prescribed charge. It is the custom at the Port of New York for the bonded warehouseman to advance the cartage charges on each lot to the general order cartman when the latter deposits the genral order merchandise at the warehouse. So the bonded warehouseman is placed in the position of not only incurring for the account of the Government, the expense of caring for and handling the goods, but he also must advance cartage charges. At present when such merchandise is sold pursuant to law (which is incorporated in the pro-

posed bill as section 493), the warehouseman is reimbursed for his advance to the general order cartman and is paid his storage and labor charges out of the proceeds of sale, after the government has deducted the expenses of sale, but only if the proceeds of sale are sufficient to meet these items. However, should the proceeds be insufficient to meet these items the warehouseman loses not only the charges to which he is entitled for the care of the goods, but loses also the sums advanced to the cartman. Inasmuch as the service is rendered at the instance of and for the benefit of the Government and without any choice on the part of the warehouseman, at rates fixed by the Treasury Department, it would seem most appropriate that the Government, rather than the warehouseman should bear the burden.

The proprietary of a change in the procedure becomes all the more apparent from the fact that huge sums are realized every year by the Government as surplus from the sale of some lots, whereas the bonded warehouses sustain considerable losses from the other lots in the same sales. These monies are covered into the Treasury and remain there. In the course of the past years this accumulated fund has reached a stupendous total, far more than would be required to make up the deficiencies.

The change in the procedure that I recommend, as per annexed proposed amendment to the act, has ample precedent in the other Government departments; for instance, in the case of United States Marshals storing merchandise in their official possession invariably warehouse and cartage charges are paid in full by the Government. So too, where vessels are taken into custody by United States officials wharfage charges are always paid by the Government. Under the national prohibition act charges for the storage of vehicles of which possession is taken by the Government are always paid.

There is no reason apparent to me why customs bonded warehouses should be the only class discriminated against.

I am chairman of the committee on bonded warehouses of the American Warehousemens Association and that association proposes to your committee that section 493, H. R. 1, be amended by adding the following provisions at the end:

"If the proceeds of such sale should not be sufficient to pay the cartage, storage and labor charges, they will be paid from the appropriation for collecting the revenue from customs."

HARVEY A. HOLT.

Subscribed and sworn to before me this 17th day of July A. D., 1929.

RUTH C. ROWE, *Notary Pulic.*

My commission expires January 22, 1931.

Senator WALSH of Massachusetts. Mr. Harrington, you wish to present your brief?

Mr. HARRINGTON. Yes, Senator; I do.

(Mr. Harrington submitted the following brief:)

BRIEF OF THE REPUBLIC STORAGE CO., NEW YORK CITY

Under the laws and regulations, the handling of general-order merchandise is substantially as follows:

Merchandise arriving at the Port of New York, and other ports of entry, which is not entered within 48 hours is ordered sent to bonded warehouses. This order is called the "General order" and the merchandise is called "General-order merchandise." The warehouses are selected by the Government, and, in effect, are agents of the Government to handle this merchandise. Warehouses receiving this merchandise must pay the trucking charges to the warehouse at an approved rate.

If, within a year from the time the goods reach the warehouse, there is no permit issued, the merchandise is then sent to the seizure room for sale. If the sale price is not sufficient to pay the cost of advertising and trucking to the seizure room, the warehouse receives nothing for the year's storage of the merchandise. If another package is sold for more than all the charges, the surplus is turned over to the Government Treasury.

Section 493 of the tariff act of 1922 provides as follows:

"SEC. 493. PROCEEDS OF SALE: The surplus of the proceeds of sales under section 491 of this act, after the payment of storage charges, expenses, duties, and the satisfaction of any lien for freight, charges, or contribution in general

average, shall be deposited by the collector in the Treasury of the United States, if claim therefor shall not be filed with the collector within 10 days from the date of sale, and the sale of such merchandise shall exonerate the master of any vessel in which the merchandise was imported from all claims of the owner thereof, who shall, nevertheless, on due proof of his interest, be entitled to receive from the Treasury the amount of any surplus of the proceeds of sale."

It is respectfully urged that section 493 be amended by adding the following provision at the end:

"If the proceeds of such sale should not be sufficient to pay the cartage, storage, and labor charges they will be paid from the appropriation for collecting the revenue from customs."

In this connection, it should be borne in mind that the warehousemen have no choice in the matter, but must take in the "General order" merchandise brought by the "General order" truckmen, and, as stated before, the warehouseman must pay the trucking charges. He must also pay labor charges and store the goods in many instances, for a year without ever receiving 1 cent in return for storage, or for labor or for the cartage, the latter representing an actual cash disbursement.

The trucking is awarded each year to a contractor after competitive bids are submitted. He hauls the public-store merchandise to the public stores and is paid for that by the Government. In sumbitting his bid for the job, he knows that he will not only have that work, but he will also have the "General order" hauling. He also knows that in a lot of the "General order" haulings from the warehouse to the seizure room, he may never be paid and, therefore, he must submit a bid for all of the work, including the hauling to the public stores, which he thinks will protect him.

This is a matter of administration and is entirely wrong. It is obvious that he is bidding partly on an uncertainty and it may also be a temptation to try to make up in some other way, and even to dishonesty. The same applies to the warehouseman. If he can not collect his legitimate charges for storage, labor, and trucking to the warehouse he may be tempted to make up in some way to the detriment of the service.

It seems only fair that the warehouses picked by the Government and thus made a part of the Customs Service should be protected for the amount of the charges for storage, labor, and cartage. Without question when sections 491 and 493 were first written, and there has been practically no change in the wording for years and years, it was the idea of Congress that there would be a surplus with which to pay these charges. Experience has shown that a warehouse may lose as much as $10,000 a year in these items and the item is manifestly one that should be taken care of if there is no surplus from the sales.

Respectfully submitted.

FAY, RUBIN & GALLATIN, Esq.,
233 Broadway, New York City.
ROYAL T. MCKENNA, Esq.,
Smith Building, Washington, D. C.
On behalf of Republic Storage Co.,
541 West Thirty-fourth Street, New York City.

PROTEST AGAINST COLLECTOR'S DECISIONS

[Secs. 514–515]

STATMENT OF HON. MARION DE VRIES, WASHINGTON, D. C., REPRESENTING THE TANNERS COUNCIL OF AMERICA

Mr. DE VRIES. The next paragraph to which I wish to ask the attention of the committee momentarily is section 514 or 515—either one. It is a subject which has been discussed.

Senator KING. Paragraph or section?

Mr. DE VRIES. Section. That is page 466.

Senator SMOOT. Did you file a brief on section 315?

Mr. De VRIES. No, not yet.

Senator SMOOT. Will you?

Mr. DE VRIES. I will in just a minute. I am passing that over for just a minute.

That is the amendment discussed this morning and this afternoon—the right of the American manufacturer or producer to appear in protest cases.

I am not going to occupy the attention of the committee with an argument upon that subject. However, I am going to ask the committee that I be permitted to submit a proposed amendment which will put the matter into concrete form, to which they may add or from which they may subtract, should they make up their minds to adopt it.

Senator REED. This is not 516?

Mr. DE VRIES. No; it is the importers' protest, Senator Reed. Section 516 is the American manufacturers' protest. 515 is the importers' protest.

Senator REED. From your long experience on the Customs Court what can you say about the wisdom of giving any person interested the right to intervene in the discretion of the court?

Mr. DE VRIES. I think it should be granted, Senator. Since my retirement from the bench I have had quite considerable experience in appearing before that court in the interests of certain American manufacturers; and while the staff of the Assistant Attorney General, Mr. Lawrence, is one that is as complete and as efficient as it can be, it seems to me there can be no question in the minds of Congress that with the tremendous amount of work they have to perform, with but 14 members of that staff, half of them traveling throughout the United States, at different ports during that time, they can not master the intricacies of every kind and class of American business appearing before that court and desiring to offer testimony affecting dutiable rates in the tariff act?

Senator REED. Then you think this intervention, always subject to the control of the court, would be of assistance to the court itself?

Mr. DE VRIES. It would be, and to the Government.

I am simply going to read a paragraph which I have drawn for that purpose:

Provided, That upon motion approved by the United States Customs Court, a division or justice thereof, to whom is assigned any such protest for hearing, any American manufacturer, producer, or wholesaler—

If you want to add to that "the consumer or any other interested party," you may so add.

Provided, That upon motion approved by the United States Customs Court, a division or justice thereof, to whom is assigned any such protest for hearing, any American manufacturer, producer, or wholesaler, of like or a similar kind or class of merchandise to that the subject of such protest, shall have the right to intervene in such proceeding, to be present, produce witnesses, cross examine all witnesses in the case and be heard thereupon, subject to the control and direction, by rule or otherwise, of the said court, division or justice thereof and the provisions of 516 (d) of this act, with equal rights and limitations of appeal as by law provided from any decision therein rendered.

Subdivision 516-B of the act is a provision in the manufacturers' protest right which denies the intervening parties the right to inspect private papers and invoices without the consent of the opposing party.

Senator SMOOT. Then why wouldn't it be better to take 515 and 516 and write the whole thing in one section?

Mr. DE VRIES. That might be possible.

Senator SMOOT. It seems to me there is a duplication in the section and it would be much better to have it in one section.

Mr. DE VRIES. It could be drawn in one section.

May I offer the brief supporting that?

Senator SMOOT. Yes.

Mr. DE VRIES. The attention of the committee has been taken up for a couple of hours on the subject, just discussed, and I will not enlarge upon it.

In the view, however, that the importer's protest is directed to the collector, by whom it is sent up to the court for trial, and that the requested intervention is addressed to the court after the protest reaches the same, it would be difficult if not impossible to embrace both rights in one section. It is, therefore, suggested that it should be inserted in the law as requested.

I would like, however, to add one thought, which is that the issue presented when an importer protests against the rate of duty assessed by the collector is not solely an issue whether or not there should be refunded to the importer the claimed excess of duties paid, but there is equally involved the greater issue of whether or not that rate of duty laid for the protection of the domestic producer of such goods shall remain as the rate assessed upon the particular importation or shall be reduced as to all future importations. In that issue, this bill being framed for protection particularly rather than for revenue, the domestic manufacturer or producer has a vital interest in its maintenance and should be given the right to appear and defend that interest in court. This suggested amendment effects that right.

(Mr. De Vries submitted the following brief:)

BRIEF OF HON. MARION DE VRIES, REPRESENTING THE TANNERS COUNCIL OF AMERICA

The following amendment is suggested:

Amend section 514–515 by adding at the end thereof the following:

"*Provided.* That upon motion approved by the United States Customs Court, a division or justice thereof, to whom is assigned any such protest for hearing, any American manufacturer, producer, or wholesaler, of like or a similar kind or class of merchandise to that the subject of such protest, shall have the right to intervene in such proceeding, to be present, produce witnesses, cross-examine all witnesses in the case and be heard thereupon, subject to the control and direction, by rule or otherwise, of the said court, division, or justice thereof and the provisions of 516 (d) of this act, with equal rights and limitations of appeal as by law provided from any decision therein rendered."

The sole difference effected by this amendment from the present practice is that whereas at present the American manufacturer or producer presents his case through the Assistant Attorney General, whereas this amendment permits direct presentation of his case subject to control of the court.

There is the importer's right to protest directly provided by section 514 of the customs administrative act. There is the manufacturer's right to protest after first making an appeal to the Secretary of the Treasury under section 516. What I have above stated is that this manufactuser's right to protest does not and should not relate to any instant importation, though that is now being litigated in the courts. Through such exercise and construction it could not be used as an instrumentality to mulct the importer if the decision does not apply to nor raise

the duties to be paid upon the particular importation nor upon any importation until after due notice of final decision by the courts.

In the manufacturer's protest the importer is by law made a party. He appears in court with his counsel and witnesses. The Government counsel likewise appears, and ofttimes cross-examines the witnesses of both parties. In the manufacturer's protest cases both the importer and the manufacturer have the right to appeal to the courts of last resort.

In cases of importers' protest, though every manufacturer is interested in the rate of duty, the manufacturer has no legal right to appear or be heard on an appeal. What is here asked is the right, with permission of the court. What I have stated to be a "guarded right" of the manufacturer is to appear with his counsel and witnesses, put in testimony, to be heard, and appeal. Those are exactly the rights the importer now has in all manufacturers' protests. What is here asked is the same right for the manufacturer. It is the ordinary right to intervene. This right exists in every court of the land where a party has a direct interest as a manufacturer has in every rate of duty in this tariff act, which is for the protection of the American producer as well as for the revenues of the Government.

The present procedure is for the American manufacturer, with his counsel, to appear, present his witnesses to Government counsel, and through him put in his testimony. This is an unnecessarily circuitous route of trial. It throws a tremendous burden upon the Government attorneys. The testimony of Mr. Lockett shows the tremendous amount of work before the United States Customs Court. It is respectfully submitted that no force can possibly undertake that work so well as the independent appearance by the American manufacturer by intervention and the speedy introduction of the testimony of his own witnesses through his own counsel, thoroughly skilled in the intricacies of his business. That is the fixed legal right of the importer. It is a physical impossibility, with the tremendous number of trials before the United States Customs Court, for any corps of public officials to acquaint themselves with the intricacies of every line of American manufacture and production so as to introduce the testimony in these contested cases.

It must be borne in mind that the Assistant Attorney General in charge of customs has but 14 deputies. It must be further borne in mind that the hearings in protest cases are not alone conducted in New York, but at every principal port in the United States at fixed and frequent intervals. By reason thereof a considerable number of his deputies are on the road attending protest cases at distant points. When they arrive at these ports, necessarily they have but a short time in which to prepare the Government's cases. It is a physical impossibility for them or any other force to throroughly acquaint themselves with the details of manufacture and production of every industry in the United States and attend before this court sitting in New York and at the different ports of the United States in thousands of cases per year. It is ridiculous so to assume.

The presentation of the manufacturers' interests in these cases requires not alone a legal knowledge of customs law but a direct knowledge of the manufacture and production of every industry of the United States. It would make tremendously for the expedition of the service as well as for the completeness of presentation and accurate and fully informed decision if the manufacturers' cases could be developed and cross-examination be had by those skilled in the line of business, ready to meet technical testimony in opposition of which no single force of attorneys such as the very limited force of the Government counsel can possibly possess or momentarily acquire according to the issues of every case arising.

It must be borne in mind that the importers of the country are represented by more than 100 skilled attorneys, making that a specialty in their line, and when they appear in their protest cases they appear with specially equipped counsel who have made the study of their cases the work of days. Is it fair or just that there should be put upon the Government the burden of fighting this tremendous force? Is it fair or just to put upon the Government the financial and other burdens of defending in the courts the manufacturers' right? The importers are to a large extent American citizens. They are accorded rights under this act as well as the manufacturers and producers. If the burden is put upon them to present their cases, the privilege should be allowed manufacturers to present theirs.

My proposition means a vast assistance to the Government counsel and his force; it means an economy of time; it means that it gives the American manufacturer the right to intervene to protect his own interests where they are directly

at stake in all cases. In no other courts of the land is the citizen vested with a statutory or other right vital to his business and the prosperity of the Nation and denied the right to assert or defend that right when assailed in court.

APPEAL OR PROTEST BY AMERICAN PRODUCERS

[Sec. 516]

STATEMENT OF F. R. MARSHALL, SALT LAKE CITY, UTAH, REPRESENTING THE NATIONAL WOOL GROWERS' ASSOCIATION

[Including importation of diseased cattle, sec. 306]

(The witness was duly sworn by the chairman.)

Mr. MARSHALL. I represent the National Wool Growers' Association.

I just wish first to say, Mr. Chairman, that our association and our industry indorse section 306 and approve it as in the House bill. Section 306 is on page 334. It is in relation to the prohibition of imports of meat and livestock from countries having foot and mouth disease. I do not understand that there is any objection to it.

On page 469, at the end of section 516, line 10, it is suggested to add to that section:

The provisions of this section shall also apply to the appraisal or estimating of the clean content of dutiable imported wools.

We are in favor of the general statements made in connection with that paragraph by Mr. Lerch.

The CHAIRMAN. And you are opposed to what Mr. Bevans said about it?

Mr. MARSHALL. I am opposed to everything I heard him say. I did not hear it all.

That recommendation arises out of the plan that was adopted in 1922 for the first time when you placed a wool duty on the clean content basis. The experience and working of the officials in handling that has not been satisfactory in part, and so far as they have been unable or have failed for any reason to properly assess the clean content duty there has thereby been a loop hole in the obtaining of the protection which the wool duty was intended and expected to give.

This question was discussed as an administrative question, Mr. Chairman, before the Ways and Means Committee. They asked us to take it up as administrative at that time, and as a result of that presentation there was included in the House bill a special provision at the end of paragraph 1104, which appears on page 195, these four lines:

He (referring to the Secretary of the Treasury) is further authorized to display, in the customhouses of the United States, or elsewhere, numbered, but not otherwise identifiable, samples of imported wool and hair, to which are attached data as to clean content and other pertinent facts, for the information of the trade and of customs officers.

We consider that attempted meeting of the situation as wholly inadequate. We were permitted to discuss this administrative question along with that paragraph before the subcommittee, and I am not going to repeat anything that we said there, except that we consider that provision wholly inadequate to meet the situation which we have under consideration.

The CHAIRMAN. Have you a suggested amendment?

Mr. MARSHALL. Yes, sir. At the time when we discussed that Senator Sackett suggested that we get from the Tariff Commission language to cover that, and we have done so. I have sent it to his office. I can put it into the record here if necessary.

The CHAIRMAN. Put it into the record.

Mr. MARSHALL. This is the language the Tariff Commission has furnished us for that purpose. It is an amendment to Schedule 11, H. R. 2667, paragraph 1101, to be inserted on page 149, beginning on line 14, to provide for actual scouring tests to determine the shrinkage of wool:

(5) Clean content shall be the scoured, bone-dry weight, plus thirteen and three-fourths per cent for moisture regain, and with proper allowance for vegetable matter in the wool, to be determined by the scouring of samples of each lot or bale of imported dutiable wools to be drawn and scoured under methods and regulations prescribed by the Secretary of the Treasury.

Paragraph (5) will then become paragraph (6) as follows:

(6) The Official Standards of the United States for grades of wool as established by the Secretary of Agriculture on June 18, 1926, pursuant to law, shall be the standards for determining the grade of wools.

If the language which we suggest is incorporated at that place we would have little or no interest in section 516. In the event that that language or similar language should not be placed anywhere in the bill to protect the wool grower in connection with the appraisal of the clean content of imported wools, then our only remaining recourse would be such action as we might take under section 516, and we do not understand that 516 as it now stands or as proposed to be amended by any of the witnesses here would be applicable to clean content of wool without the language added to it which we have suggested.

The CHAIRMAN. You have suggested that language on page 469?

Mr. MARSHALL. Yes. If 1104 is adjusted as we recommend, we would not have any interest in that, but that is a safeguard. We should have a chance as producers to protect our interests where necessary.

This wool schedule also creates some new classes in wools, Mr. Chairman, and in watching the proper administration of them, if they are retained by the Senate we would then have a direct interest in paragraph (b) of section 516 which I think is adequate for our requirements as it stands.

BRIEF OF HARPER & HARPER, ESQS., SAN FRANCISCO, CALIF.

[Classification]

Hon. REED SMOOT,
Chairman Finance Committee of the United States Senate,
Washington, D. C.

DEAR SIR: We beg to submit the following memorandum on the proposed changes in the tariff law contained in section 516 of the new tariff bill:

Of great importance from the standpoint of the importer is the provision in section 516 which permits American manufacturers to protest the classification of merchandise.

The theory of the law is admirable. American manufacturers are entitled to protect their own interests if the collector should have misinterpreted the law and made a mistake in the classification of an imported article; but the provision should not be permitted to operate so as to injure importers who have in the past imported merchandise in reliance upon the classification of the collector

and the decisions of the Treasury Department and who have sold their merchandise at a figure which could cover only the duty originally assessed by the collector. Under the law as it now stands, American importers may be assessed increased duties upon past importations which have long since gone into consumption. American manufacturers may protest the rate of duty assessed by the collector within 60 days after the liquidation of the entry, and for various reasons connected with customs administrative practice entries may not be liquidated until a year or more after the importation is made into this country.

The desirable features of the law may be retained by providing that American manufacturers may lodge protests which will affect the classification of commodities in future but which will not raise the duties previously assessed upon past importations. Such a provision will safeguard legitimate rights of the American manufacturer while depriving him of an opportunity to use section 516 as a weapon of blackmail to force American merchants to purchase domestic products, instead of importing them from abroad, by the threat of protesting past importations and thereby causing loss which might be ruinous to his business.

Yours respectfully,

LAWRENCE A. HARPER.

UNITED STATES CUSTOMS COURT

[Sec. 518]

STATEMENT OF HON. MARION DE VRIES, WASHINGTON, D. C.

(The witness was duly sworn by the chairman of the committee.)

Mr. DE VRIES. With reference to section 518, page 514, Mr. Chairman, I appear as the friend of the United States Customs Court.

On the other paragraphs about which I shall have something to say, sections 303, 515, and 336, I appear as a representative of the several groups of the Tanners Council of America.

As to section 518, after a brief statement of the purposes for which I appear with reference to this section, I ask to submit a brief in which is contained the several suggestions which we would like to have incorporated in that paragraph.

Senator SMOOT. You speak now of section 518?

Mr. DE VRIES. Yes; section 518, page 474.

Senator SMOOT. Four hundred and seventy-seven.

Mr. DE VRIES. By special act of Congress, passed after the enactment of the tariff law of 1922, the name of the Board of General Appraisers was changed to that of the United States Customs Court. No other provision was passed with reference to the transfer of the clerical force under the jurisdiction of the court from the jurisdiction of the Treasury Department to the Department of Justice.

When the current act was introduced in the House it contained a provision changing the name of the court back to the Board of General Appraisers, but upon the floor of the House an amendment was passed changing that name back to the United States Customs Court.

As a result of these several provisions there is much of the phraseology of the paragraph which refers to the General Appraisers instead of the United States Customs Court.

These suggestions of changes I have set forth in the brief. I will not enumerate them. They are very numerous.

It still remains that the clerical force of this court is under the jurisdiction of the Treasury Department. And the Treasury De-

partment has requested, and it is desirable, that they be transferred to the Department of Justice, which has jurisdiction of all the clerical forces of the different courts.

It is also a suggestion that there be a marshal appointed for this court, an amendment as to which is contained in the amendments which I shall submit.

With that explanation I shall ask that my brief upon the subject be printed as part of this record.

Senator SMOOT. That brief covers the whole question?

Mr. DE VRIES. Yes; the whole question, and gives the completed paragraph as it will appear after all of these amendments are incorporated within it.

(Mr. De Vries submitted the following brief:)

BRIEF OF HON. MARION DE VRIES, WASHINGTON, D. C.

The following amendments are suggested:

1. To conform this section to the changes made by law of the name of the United States Customs Court from that of Board of General Appraisers.

2. To provide for the complete transfer of the clerical force of said court from the Treasury to the Department of Justice. It is understood that there are no objections thereto by either said department, and this transfer conforms said court and the status of its employees with that of all other courts of the United States.

Section 518.—On page 374, line 17, after the words "known as the" add "chief judge and," so as to read "be known as the chief judge and judges."

On page 375, line 18, substitute a period for the semi-colon after the word "judge," and strike out the words "and until any such;" strike out all of lines 19, 20, 21, 22, 23, and 24, and on line 25 strike out the word "three."

On page 375, lines 16, 18, and twice in line 21, and on page 376, line 22, strike out the word "presiding" and substitute therefor "chief."

As provided in the House bill there would be four presiding judges; one over the entire body, and one for each of the three divisions. This would lead to confusion.

On page 376, line 18, and on page 377, line 4, strike out the word "deciding" and insert in lieu thereof the word "determining."

On page 377, twice in line 6, strike out the word "deciding" and substitute therefor the word "determining."

On page 377, lines 16 and 17, strike out the words "member of the Board of General Appraisers" and insert in lieu thereof "as a General Appraiser of merchandise."

The change provides the correct title.

On page 378, line 3, add the following:

"All functions of the Secretary of the Treasury with respect to the appointment and fixing of the compensation of the clerks and other employees of the United States Customs Court, and with respect to the official records, papers, office equipment, and other property of such court, are hereby transferred to the Attorney General. All unexpended amounts allotted from any appropriation for collecting the revenue from customs, available for expenditure by the Secretary of the Treasury for the payment of the salaries of the chief judge and judges of the United States Customs Court, including judges retired under the provisions of section 518 of the tariff act of 1922, and for the expenses of operation of the United States Customs Court are hereby transferred to the Department of Justice for the same purposes for which such allotments were made."

"The chief judge, or the judge who is senior as to the date of his commission acting in his absence, shall have control of the fiscal affairs and of the officers and clerical force of the court and make, under civil service rules, all appointments, promotions, or orders affecting such officers and clerical force, subject to the approval of the Department of Justice. The clerical force shall consist of a clerk of the court, an assistant clerk, nine secretaries, one to each judge, not to exceed nine court reporters, a marshal, one or more deputy marshals, not to exceed eight messengers, and such clerical force as may be required. *Provided, however,* That nothing in this act shall be construed so as to reduce the salary of any officer or employee provided for herein, now serving, or to deprive

such officer or employee of any status, benefits, or protection now enjoyed pursuant to the civil service laws and regulations or laws regulating the classified service of the United States."

"MARSHAL—DUTIES.—It shall be the duty of the marshal of the United States Customs Court to attend the sessions of said court, either in person or by deputy, when sitting in New York, and to execute, whenever directed to do so by the court or any judge thereof, all precepts directed to him and issued under authority of the United States; and he shall have power to command all necessary assistance in the execution of his duty.

It shall be the duty of the marshal of the United States Customs Court to pay, under regulations prescribed by the Attorney General, the salaries of the chief judge and judges of the United States Customs Court, the salaries of retired judges of said court, and of all other officials and employees of said court whose salaries shall be paid through the disbursing officer of the Department of Justice. The marshal of the court shall also pay, upon vouchers properly executed, all traveling and other expenses of the court authorized by law. The marshal of said court, before entering upon the duties of his office, shall give a bond in such form as may be approved by the Attorney General, and in such sum as may be prescribed and approved by the Secretary of the Treasury. The accounts of the marshal of the United States Customs Court shall be settled by the proper accounting officers of the United States in the same way as the accounts of other disbursing agents and officers of the Government are settled.

This transfer was suggested by the Treasury Department and the court agreed to it.

So that as amended said section will read:

Section 518. The United States Customs Court shall continue as now constituted, except that the chief justice and the associate justices of such court now in office and their successors shall hereafter be known as the Chief Judge and Judges of such court. All vacancies in such court shall be filled by appointment by the President, by and with the advice and consent of the Senate. Not more than five of the judges of such court shall be appointed from the same political party and each of such judges shall receive a salary of $10,000 a year. They shall not engage in any other business, vocation, or employment, and shall hold their office during good behavior. The offices of such court shall be at the port of New York. The court and each judge thereof shall have and possess all the powers of a district court of the United States for preserving order, compelling the attendance of witnesses and the production of evidence, and in punishment for contempt. The court shall have power to establish from time to time such rules of evidence, practice, and procedure, not inconsistent with law, as may be deemed necessary for the conduct of its proceedings, in securing uniformity in its decisions and in the proceedings and decisions of the judges thereof, and for the production, care, and custody of samples and of the records of such court. Under such rules as the United States Customs Court may prescribe, and in its discretion, the court may permit the amendment of a protest, appeal, or application for review at any time prior to the first calendar call thereof. One of the judges of such court, designated for that purpose by the President of the United States, shall act as Chief Judge, and in his absence the judge then present who is senior as to the date of his commission shall act as Chief Judge.

The chief judge, or the acting chief judge, may at any time before trial, under the rules of the court, assign or reassign any case for hearing or determination, or both, and shall designate a judge or division of three judges and such clerical assistants as may be necessary to proceed to any port within the jurisdiction of the United States for the purpose of hearing or of hearing and determining cases assigned for hearing at such port, and shall cause to be prepared and promulgated dockets therefor. Judges of the court, stenographic clerks, and Government counsel shall each be allowed and paid his necessary expenses of travel and his reasonable expenses, not to exceed $10 per day in the case of the judges of the court and Government counsel, and $8 per day in the case of stenographic clerks, actually incurred for maintenance while absent from New York on official business. The judges of said court shall be divided into three divisions of three judges each for the purpose of hearing and determining appeals for the review of reappraisements of merchandise, and of hearing and determining protests against decisions of collectors. A division of three judges or a single judge shall have power to order an analysis of imported merchandise and reports thereon by laboratories or bureaus of the United States. The chief judge shall assign three judges to each of said divisions and shall designate one of such three judges to preside. The chief judge of the court shall be competent to sit as a

judge of any division or to assign one or two other judges to any of such divisions in the absence or disability of any one or two judges of such division. A majority of the judges of any division shall have full power to hear and determine all cases and questions arising therein or assigned thereto.

A division of the court determining a case or a single judge determining an appeal for a reappraisement may, upon the motion of either party made within 30 days next after determination, grant a rehearing or retrial of such case when in the opinion of such division or single judge the ends of justice so require.

The judges of the United States Customs Court are hereby exempted from so much of section 1790 of the Revised Statutes as relates to their salaries.

When any judge of the United States Customs Court resigns his office after having held a commission as judge or justice of such court or as a General Appraiser of merchandise at least 10 years continuously, or otherwise, and having attained the age of 70 years, he shall, during the residue of his natural life, receive the salary which is payable to a judge of such court at the time of his resignation. Any such judge, who is qualified to resign under the foregoing provisions, may retire, upon the salary of which he is then in receipt, from regular active service as a judge of such court, and upon such retirement the President may appoint a successor; but such retired judge may, with his consent, be assigned by the chief judge of such court to serve upon such court, and while so serving shall have all the powers of a judge of such court.

All functions of the Secretary of the Treasury with respect to the appointment and fixing of the compensation of the clerks and other employees of the United States Customs Court, and with respect to the official records, papers, office equipment, and other property of such court, are hereby transferred to the Attorney General. All unexpended amounts allotted from any appropriation for collecting the revenue from customs, available for expenditure by the Secretary of the Treasury for the payment of the salaries of the chief judge and judges of the United States Customs Court, including judges retired under the provisions of section 518 of the tariff act of 1922, and for the expenses of operation of the United States Customs Court are hereby transferred to the Department of Justice, to be available for expenditure by the Department of Justice for the same purposes for which such allottments were made.

The chief judge, or the judge who is senior as to the date of his commission acting in his absence, shall have control of the fiscal affairs and of the officers and clerical force of the court, and make, under civil service rules, all appointments, promotions, or orders affecting such officers and clerical force, subject to the approval of the Department of Justice. The clerical force shall consist of a clerk of the court, an assistant clerk, nine secretaries, one to each judge, not to exceed nine court reporters, a marshal, one or more deputy marshals, not to exceed eight messengers, and such clerical force as may be required. *Provided, however:* That nothing in this act shall be construed so as to reduce the salary of any officer or employee provided for herein, now serving, or to deprive such officer or employee of any status, benefits, or protection now enjoyed pursuant to the civil service laws and regulations or laws regulating the classified service of the United States.

It shall be the duty of the marshal of the United States Customs Court to attend the sessions of said court, either in person or by deputy, when sitting in New York, and to execute, whenever directed to do so by the court or any judge thereof, all precepts directed to him and issued under authority of the United States; and he shall have power to command all necessary assistance in the execution of his duty.

It shall be the duty of the marshal of the United States Customs Court to pay, under regulations prescribed by the Attorney General, the salaries of the chief judge and judges of the United States Customs Court, the salaries of retired judges of said court, and of all other officials and employees of said court whose salaries shall be paid through the disbursing officer of the Department of Justice. The marshal of the court shall also pay, upon vouchers properly executed, all traveling and other expenses of the court authorized by law. The marshal of said court, before entering upon the duties of his office, shall give a bond in such form as may be approved by the Attorney General, and in such sum as may be prescribed and approved by the Secretary of the Treasury. The accounts of the marshal of the United States Customs Court shall be settled by the proper accounting officers of the United States in the same way as the accounts of other disbursing agents and officers of the Government are settled.

LACK OF MANIFEST—PENALTIES

[Sec. 584]

STATEMENT OF H. B. WALKER, NEW YORK CITY, REPRESENTING THE AMERICAN STEAMSHIP OWNERS ASSOCIATION, PACIFIC AMERICAN STEAMSHIP ASSOCIATION, SHIP OWNERS ASSOCIATION OF THE PACIFIC COAST, AND OTHERS

(The witness was duly sworn by the chairman of the committee.)

Mr. WALKER. The brief is not certified.

Senator SMOOT. Have it certified and put it into the record.

Senator WALSH of Massachusetts. Whom do you represent, Mr. Walker?

Mr. WALKER. President, American Steamship Owners Association. I am here representing the American Steamship Owners Association, Pacific American Steamship Association, Ship Owners Association of the Pacific Coast, and others, in opposition to the proposed amendment to section 584 of the tariff act of 1922.

Senator SMOOT. You are filing a brief for that purpose?

Mr. WALKER. Yes, sir.

Senator SMOOT. That may be done.

(Mr. Walker submitted the following brief:)

BRIEF ON BEHALF OF AMERICAN STEAMSHIP OWNERS ASSOCIATION, PACIFIC AMERICAN STEAMSHIP ASSOCIATION, SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST, AND VARIOUS INDEPENDENT COMMON CARRIERS

The interests above enumerated respectfully protest to Congress the change proposed in section 584 of the tariff act of 1922 whereby the vessels of common carriers would be made liable to a penalty of $25 for each and every ounce of smoking opium found unmanifested on board such vessels regardless of whether the owner or master were privy or consented to such violation and in support of their protest, submit the following:

CHANGE PROPOSED

Section 584 of the existing tariff act provides in effect that the master shall be subject to a penalty of $25 for each and every ounce of smoking opium that is found unmanifested on board his vessel. Provision is also made that the vessel shall be liable for the penalty against the master. Section 594 of the existing law, however, provides that the vessels of common carriers being used as such shall not be liable for penalties in the absence of connivance or complicity on the part of the owner or master of the vessel. The result under the present law is that when smoking opium is found on board unmanifested, a penalty of $25 for every ounce is assessed against the master. If the vessel is not a common carrier she herself is liable for this fine, but if she is a common carrier the penalty may only be collected from the master.

In the tariff bill as passed by the House, it is proposed that vessels shall be made liable for this penalty regardless of whether they are being operated as common carriers and regardless of whether or not the violation occurs with the knowledge or consent of the owner or the master.

POSITION OF THE CARRIERS

Let us consider at the outset the position of common carriers operating vessels under the American flag, in whom Congress is particularly interested in view of the expressed purpose to have a merchant marine. All officers of vessels under the American flag must be citizens of the United States and must be licensed by the Steamboat Inspection Service. Before the master can receive his license he must prove to the Steamboat Inspection Service that in addition to his com-

petency, his "habits of life and character are such as warrant the belief that he can be safely entrusted with the duties and responsibilities of the station for which he makes application;" the mates must establish to the satisfaction of the Steamboat Inspection Service that in addition to their competency they are of "good character;" and all engineers must comply with the same moral qualifications as persons applying for license as masters, according to the Navigation Laws of the United States. (P. 37, Navigation Laws.)

The operators of vessels to-day are for the most part corporations and must of necessity rely almost entirely upon the licensed personnel of their vessels for compliance with all laws of the United States. Persons employed in these capacities have, as explained above, a virtual attestation of their good character and competency by the Government of the United States in that they possess licenses the issuance of which is dependent upon those attributes. Because of the duties devolving upon such officers and the valuable investment they control, the transportation companies endeavor to corroborate by their own investigations the character of their employees, and to obtain the best men available.

When a transportation company has employed the best of a class of men selected for them by the Government, whose qualifications and characters are admittedly good and are verified by personal examination, when those men are instructed that they must take all possible precautions to prevent the coming on board of contraband merchandise, when the licensed officers are further instructed that when the vessels are en route they shall conduct periodical searches of the vessel in an effort to discover contraband merchandise that may have gotten on board, when notices are posted throughout the ship warning of the consequences of trying to smuggle merchandise, and when rewards are offered to any persons giving information as to the presence on board of narcotics and other contraband, it seems obvious that the owners of the vessel have done everything possible to prevent smuggling. What more could they do? Such efforts are made in practically every instance.

In addition to the foregoing, some of the companies employ shore guards to assist the ship's crew to keep a lookout for contraband merchandise at the ship and shore ends of gangplanks while the vessel is loading and discharging cargo in foreign ports, and special representatives have been employed to do nothing but conduct searches of the ship en route between foreign countries and the United States.

A number of the companies have from time to time avdised the department of the precautions they are taking and stated that if the department could make any suggestions as to further precautions the company would be glad to have them. No such suggestions were made.

Every licensed officer in the American merchant marine knows that it is part of his duties to prevent smuggling. As they are more familiar with the vessels and their operation than the employees and officers of the companies on shore, this problem might well be left to them without instructions from the owners; but it is general practice for the companies to advise the officers of their vessels of violations on other vessels and make suggestions designed to prevent the recurrence of such incidents.

It must be remembered, however, that practical problems of steamship operation make it very difficult to prevent the bringing on board of contraband. When cargo is being loaded and discharged at foreign ports there are a great many stevedores in and around the vessel and while guards are stationed to keep an eye upon these men, and while the officers of the vessels maintain a similar look-out, nevertheless it may be that opium is sometimes brought on board by them. No means have yet been devised for loading and discharging except by stevedores.

Just how contraband opium finds its way on board the vessels is a problem that has caused the Treasury officials and the transportation companies a great deal of concern. In practically no case is there reliable information or evidence of the manner in which the opium found its way on board the vessel. Many surmises have been made as to how this possibly could be accomplished. In some cases it was thought that persons traveling as passengers were in collusion with members of the crew, had the contraband merchandise in their personal luggage, and afterwards transferred it to hiding places in various parts of the vessel. In other cases, the facts create the suspicion that the contraband evidently found its way on board the vessel by the means of persons coming on board in foreign ports, such as stevedores, supply men, etc.

Some of the places in which opium has been found concealed in varying quantities through searches, informers, accident, etc., are: In cans, packed and labeled

in the same manner as merchandise of a reputable business house; hidden in an unused ventilating pipe; stowed under a cargo of lumber, in a camphor-wood chest belonging to one of the passengers; sewed in a jacket especially prepared for that purpose and stowed in a sail locker; concealed in the air tanks of a lifeboat (the tank had been cut and the cuts concealed by the regular woodwork that held the tanks in place); concealed in the ceiling of a passageway, in the false bottom of a trunk; concealed in the double wall between the laundry and refrigerator; in the double wall behind the settee in the dining salon; concealed in an ice box in a barrel of meat scraps; concealed in the carcass of meat; hidden in an unused portion of the ship underneath the anchor chain locker.

Sometimes the officers of the vessels detect opium and other narcotics as they are attempted to be brought on board and at times discovery is made by the searches conducted en route. Occasionally the vessel's officers do not discover the contraband and it is found by the customs searching squads due to their greater ability, tips, accident, etc.; sometimes we know that narcotics must come in on vessels undetected by anyone.

An interesting illustration of the foregoing is a case where the ship's officers did not detect opium either when the ship was being laden or when several searches were conducted en route. The customs officials had apparently been informed opium was on board and a searching squad spent the better part of 10 days going over the vessel thoroughly but were unsuccessful. Very early the morning after the searching squad left the watchman looking after the pipe line through which the vessel was being fueled noticed two burlap bags being shoved into the sea through one of the after portholes. At first he gave this no thought, thinking that some one was disposing of refuse, but upon reflection he concluded the bags were too carefully done up for this to be the case. He became suspicious and notified the customs officials. The slip was dragged, the two bags recovered, and it was found they contained smoking opium. This is just an illustration of an incident in which the diligence of both the ship's officers and the customs officials failed to find opium that was later detected by pure accident.

In a Honolulu case recently a large quantity of opium was packed and shipped as other importable merchandise. It had the proper customs papers and was discharged by the vessel, later being discovered by the Treasury officials.

Those familiar with cases in which unmanifested narcotics are found on vessels believe—although it is difficult to prove—that the contraband is moved from one hiding place on board to another, and that sometimes as the vessel nears port is is moved to a place from which attempts will be made to land it. These considerations account for the customs searching squads sometimes finding narcotics in places that have been searched on several occasions by the ship's officers, although more frequently this is due to advices the Government receives from informers.

CARRIERS' POSITION SAME AS GOVERNMENT'S

Sometimes the question is propounded, "If the customs squad could find this contraband, why could not the ship's officers?" Sufficient answer to this question often is that the particular place in which the opium was found had been searched on several occasions, and it was not then there. The Government also is more fortunate in receiving tips than the transportation companies. In other cases of this kind it seems permissible to answer a question with a question, and therefore the reply is:

"We do not know; why is it that the customs searching squads do not discover some of the other contraband we know must be getting by."

Along the line of the foregoing, any exhaustive explanation by the carriers might smack of self-justification or excuse, and adoption of the explanation of the Government officials is, therefore, preferred. In a hearing on February 11, 1929, before the House Committee on the Judiciary on H. R. 16874 and 16875, the following statements were made by persons familiar with the problems of smuggling and are considered pertinent to the foregoing:

"These vast quantities of drugs come into the United States that are produced largely in European factories and we are unable to get the adequate evidence to seize the smuggled goods, or to reach the men higher up."

* * * * * * *

"Mr. FISH. That is it. You see there is very little raw opium used in the United States; there is practically none outside of a little bit in Chinatown that is used for opium smoking.

"Mr. CHRISTOPHERSON. Do you know how these drugs are shipped in here?

"Mr. FISH. Oh, yes.

"Mr. CHRISTOPHERSON. Do they come in through regular channels by consignment?

"Oh, yes.

"Mr. CHRISTOPHERSON. Or are they carried over by passengers?

"Mr. FISH. Both. They are carried over by sailors, and it is even found all around the ships—carried in trunks, carried between packages and boxes, shipped under different kinds of goods. It might be tin cans and then inside there will be these little packages, and the ingenuity of those people is such that it is almost impossible to detect it.

"Mr. CHRISTOPHERSON. For example, I saw the other day where some lead pencils had come in and the lead had been taken out of them.

"Mr. FISH. Exactly."

* * * * * * *

"Most of the prepared or smoking opium is smuggled or attempted to be smuggled into the United States through western ports of San Francisco and Seattle, but the salts and derivatives, such as heroin and morphine, come in through the eastern ports, principally that of New York. The manufactured drugs evidently emanate from European factories, and are apparently available in European countries in wholesale quantities, for shipment in the guise of legal merchandise to this country."

* * * * * * *

"Mr. HICKEY. We are all agreed on that proposition, but we do not understand how these shipments can get through the customs without being identified.

"Mr. FISH. Because the ingenuity of these people is away beyond our own comprehension. They are skilled in this thing and they bring it in in every possible way. They do not ship it all in 1,000-pound packages, but there may be a number of packages inside of other articles and trunks and everything else, and they can not stop it unless they find it."

* * * * * * *

"Mr. NUTT. And bear in mind, gentlemen, that 98 per cent of the dope that is sold illicitly in this country is smuggled into this country. And, being without authority to pay for information, we are in bad shape."

There may be a difference between the efficiency of the Government officials whose sole duty is to prevent the importation of contraband merchandise, and the officers of vessels who have other duties to perform. Probably the Government officials are more expert. While we do not like to admit that the ingenuity of smugglers is beyond our comprehension, nevertheless it must be remembered that it is much easier to hide an article than it is to find it. If the expert law enforcement officers of the Government have to admit that the ingenuity of the smugglers is beyond their comprehension, certainly it would seem very unjust to impose heavy penalties upon a transportation company because the officers of its vessel did not possess greater ability.

ASIATICS

It has been suggested that the employment of Asiatic crewmen facilitates or encourages the smuggling of narcotics. Hereinbefore authentic statements have been quoted establishing that practically all narcotics except a little bit of smoking opium are smuggled into the United States from Europe. Ships operating in this trade as a rule do not employ Asiatics and yet they admittedly present the Government's greatest problem.

The trade, and not the make-up of the crew, is a controlling factor in smuggling. If one country produces a commodity the smuggling of which, into the United States, will return large profits, efforts will be made to smuggle, regardless of the crew. Prepared narcotics and diamonds come from Europe; liquors come principally from the near-by foreign countries, and silks and smoking opium from the Orient.

KNOWLEDGE OF OWNER, ETC.

The statement has been made that it is well known that large quantities of opium can not be obtained and brought into this country without the connivance, if not the knowledge, of responsible people connected with the ship and the owners. It is obvious that this statement emanates from some one whose experience with the smugglers of narcotics is very limited, and confidence is felt that the Treasury officials dealing with enforcement of the narcotic laws will deny the correctness of such a statement. How can such a statement be reconciled with the suggestion that Asiatics are responsible for most of the smuggling when all

"responsible persons connected with the ship" must, as hereinbefore pointed out, be American citizens of established good character?

INADEQUACY OF RELIEF

There is a provision of law (sec. 618 of the 1922 act—unchanged in new bill) whereby the Secretary of the Treasury may remit, mitigate, or waive any fine, penalty, or forfeiture, if he finds that the violation occurred without intent to defraud the revenue, or willful negligence, or other mitigating circumstances, and it is under this section that carriers and masters obtain a measure of relief, but as hereinbefore explained, there is no basis in justice for the original liability.

The problem of the carriers under these two sections, if the proviso to section 594 (common carrier's excuse) is not applicable to opium cases, as evidenced by the situation prevailing prior to the Attorney General's opinion, is that they are required to defend their innocence in cases in which the most material facts are never known, namely, how the contraband came on board and whether it was moved en route to avoid detection.

The only thing the carrier can do is to recite in his petition the precautions taken, the searches made en route, etc., but as it is not known how the opium came on board, or why searches failed to disclose it, it can not be determined how the smugglers avoided the precautions of the carrier.

The result is that the Treasury officials must of necessity depend to a large extent upon suspicions and impressions in the disposition of these cases which the carrier is almost never able to disprove. While the Treasury officials in the main have been commendably appreciative of the carriers' position—and this accounts for the mitigation of large penalties to nominal sums—not the lack of liability of the vessel—it places the carrier in a hazardous position for him to have large investments subject to heavy penalties and have to rely mostly for relief upon decisions reached as a result of impressions and suspicions that they are unable to disprove.

Not only are the carriers improperly placed in the position of being particeps criminis with the smugglers instead of being regarded as covictims with the Government, but the amount of their liability in this connection is demonstrably disproportionate. For example, where the person actually and actively smuggling is apprehended, convicted and sentenced, his maximum for an affirmative act of commission is a fine of $5,000 or two years in jail (sec. 593), whereas the liability of carriers for, at the most, a suspected lack of diligence—an act of omission—is unlimited.

To illustrate, a master recently became subject to a penalty of about $400,000 which was mitigated to $7,500. The actual smuggler was apprehended and, upon conviction, was sentenced to but two years in the penitentiary.

In another case—involving liquor and not opium—the master was held responsible for a $1,000 fine, which the department refused to mitigate, whereas the actual smuggler upon a plea of guilty was fined but $100.

The party actually smuggling is entitled to a trial by jury at which the burden of proof is on the Government of establishing his guilt and the accused is cloaked with the presumption of innocence. The carriers, on the other hand, would automatically become liable to a civil penalty in an unlimited amount, would not be entitled to a trial by jury or otherwise, could obtain no benefit from the presumption of innocence, the Government would not have to prove negligence, and the carrier would, as hereinbefore explained, find itself in a position of being unable to disprove impressions and suspicions of negligence.

ALLEGED NECESSITY FOR CHANGE

In referring to the necessity for this proposed change in the press and on the floor of the House, reference has been made to the effect that provisions of existing section 594 constitute a "joker," implying that an unanticipated and improper result is produced thereby, and that by reason of the proviso to this section, the Treasury Department has not been able to impose the penalties it should in narcotic cases on account of the limited financial responsibility of masters and the lack of responsibility of the vessel itself. We wish to make a brief statement with respect to these allegations. To serve a purpose, these statements contain gross misrepresentations.

IS SECTION 594 A "JOKER"?

The provisions of section 594 of existing law relieving the vessels of common carriers from seizure and forfeiture for violation of the customs laws emanate

from a statute which received consideration independent of that incident to tariff revision, which has been law for 50 years, and which was expressly designed to create the situation now complained of. Section 594 of the 1922 act is but a reenactment of the act of February 8, 1881, the effect of the 1881 act and the proviso to section 594 being identical.

The 1881 act was unanimously reported from the Senate Finance Committee, and in discussing the measure on the floor of the Senate—no written report was submitted in either House—those in charge of the bill made the following pertinent explanations:

"They (committee) believe it is right and fair that a vessel should not be forfeited where a passenger, or even a sailor, smuggles in goods or anything else where neither the owner nor master nor any of the officers have any knowledge of the matter at all."

"It (the bill) enforces the rule that a man ought not to have large amounts of property forfeited in a legitimate business where neither he nor the man controlling the vessel, the master, is in any way privy, had any knowledge of, or in any way consented to the illegal act."

A copy of the entire discussion on this measure is attached ("A") for convenient reference.

The courts have recognized the innocence of carriers in this connection under the law previous to the 1922 act. (The Mount Clinton 6 F. (2d) 415), wherein the court states:

"Besides, the presumption must always be against the imposition of penalties upon those who are innocent and have used all reasonable precautions to prevent the evil against which the statute is directed. When Congress has by a positive change of purpose excluded a class of innocent people we should have to be well satisfied that in a similar case it later intended to withdraw the excuse."

The language and logic above referred to is quoted with approval, and the same result reached under existing law, in the opinion of the Attorney General of February 1, 1929, wherein the Attorney General overruled the contention of the Treasury officials that under the 1922 act the common carrier's excuse could not be set up in cases involving smoking opium. This will be referred to more in detail hereinafter.

We have, therefore, seen that the so-called common carrier's excuse contained in the proviso to section 594 of the 1922 act, is but a reenactment or restatement of the independent act of February 8, 1881, should not to be referred as a "joker," and is a carefully considered determination of liability wherein the rights of innocent parties are legislatively recognized and defined. Although admittedly conditions may now be somewhat different from those existing in 1881, nevertheless the principle of justice and the determination of liability comprehended by the 1881 act are constant, and no good reasons have been advanced as to why they should be departed from.

HAS THE COMMON CARRIER'S EXCUSE PREVENTED THE TREASURY DEPARTMENT FROM IMPOSING LARGER FINES IN OPIUM CASES?

Those in favor of the proposed change call attention to the mitigation, compromise, or settlement by the Treasury officials of large penalties for small amounts and state that this action was taken because it would be futile to impose large penalties against masters in view of the limited financial responsibility of such persons, and because the vessel could not be held liable. This is demonstrably untrue.

Since the inclusion in the 1922 act of the paragraph (sec. 584, par. 2) relating specifically to smoking opium, the officials of the Treasury Department have, until the recent opinion of the Attorney General to the contrary, uniformly insisted that the common carrier's excuse had no application where the unmanifested merchandise was smoking opium, and penalties were remitted or mitigated on the merits of the case alone and on the assumption that the vessel itself was responsible. Indeed, only a few months before the Attorney General rendered his opinion, the Solicitor of the Treasury rendered an opinion in the same case affirming the bureau's contention that the vessel was liable.

A case in which this and another point of law were involved was referred to the Attorney General and on February 1, 1929, the Attorney General overruled the Treasury officials, holding that the vessels of common carriers could not be held liable for having unmanifested smoking opium on board in the absence of connivance or complicity on the part of the owners or master. A copy of this opinion is attached (B).

It was not until May 16, 1929, that the Treasury officials decided to follow the opinion of the Attorney General, such opinions having no binding effect, being merely advisory.

Few cases have been disposed of since that time. If in the cases disposed of prior to the Attorney General's opinion—which constitute the cases referred to—the Treasury officials decided to either remit the penalties or mitigate same to nominal amounts when it was assumed the vessel could be held liable, and if the Attorney General's opinion to the contrary was rendered so recently as to preclude the subsequent disposition of more than one or two cases, how can it be said that the common carrier's excuse influenced the Treasury officials in the disposition of narcotic cases when that excuse was not thought to be applicable?

As a matter of fact, the reasons why large penalties incurred in this connection have been either remitted or mitigated to merely nominal sums is because the Treasury Department realized the majority of the transportation companies and the masters of their vessels did all that was possible to prevent illegal traffic in opium and other contraband. The Treasury officials have realized and acknowledged that notwithstanding the fact that the carriers have taken all possible precautions, contraband merchandise may escape their detection—and also detection by the expert searching squads of the Treasury Department. Responsible Treasury officials have frequently made the statement that almost never have any owners or masters of common carriers been involved in the smuggling of narcotics. The statement has also frequently been made that the penalty actually imposed is not so much by way of a punishment for any dereliction in connection with the particular case under consideration as by way of endeavoring to keep the carrier diligent.

There is no more reason for holding the vessels liable for smuggling in which neither the master nor the owner participates than in holding police officers criminally or penally responsible for all crimes committee on their beats.

CONCLUSION

It is believed that the Government officials familiar with this situation should admit that the established steamship lines—those operating as common carriers—are doing everything possible to cope with this situation, and that from a standpoint of justice and responsibility, the situation today is no different from that presented when the 1881 act was passed, and the law should not be changed.

With an appreciation of the seriousness of the narcotic problem, the common carriers hope that Congress will provide the heaviest of penalties upon those engaging in this nefarious traffic, but that it will not permit its zeal to cause it to impose "penalties upon those who are innocent and have used all reasonable precautions to prevent the evil against which the statute is directed," because of the inability or the difficulty of apprehending the guilty parties.

[Congressional Record of March 8, 1880 (41) vol. 10, part 2, pages 1365-1366]

SEIZURE OF VESSELS FOR SMUGGLING

The VICE PRESIDENT. The morning business being through the Calendar of General Orders will now be called, commencing at the point reached on Saturday last.

The bill (S. 939) to amend the law relative to the seizure and forfeiture of vessels for breach of the revenue laws, was announced as first in order and the bill was considered as in Committee of the Whole. It provides that no vessel used by any persons or corporation, as common carriers, in the transaction of their business as such common carriers, shall be subject to seizure or forfeiture by force of the provisions of Title 34 of the Revised Statutes of the United States unless it shall appear that the owner or master of such vessel, at the time of the alleged illegal act, was a consenting party or privy thereto.

Mr. COCKRELL. Is there a written report?

The VICE PRESIDENT. There is no report accompanying the bill.

Mr. COCKRELL. I should like to have an explanation of the bill.

Mr. KERNAN. I would state that the bill simply declares that a vessel used as a common carrier of persons and freight shall not be forfeited by any illegal act, unless it shall appear that the owner or master at the time of the alleged illegal act was a consenting party or privy thereto.

A very large number of petitions have been presented for the passage of such a bill, which the Committee on Finance have carefully examined. They believe it is right and fair that a vessel should not be forfeited where a passenger, or even a sailor, smuggles in goods or anything else where neither the owner nor master nor any of the officers have any knowledge of the matter at all. The goods are forfeited and the person so smuggling is liable to the penalty of the law, of course. The Committee on Finance was unanimous in recommending the bill.

Mr. HAMLIN. Will the Senator be kind enough to read the section to which the bill refers, if he has it before him?

Mr. KERNAN. It takes this out of a very large number of sections where neither the owner nor master knew or consented in any way to the illegal act. It is taken out of various sections under Title 34.

Mr. HAMLIN. Let me inqure of the Senator from New York if it will not result in this, that if you exonerate the vessel from all penalties in case of a violation of the law the owners will put their vessels into the hands of those persons who will violate the law and thus escape the penalty?

Mr. KERNAN. Allow me to say that whenever the master, the person controlling, at the time, consents to or knows of any act of this kind, the vessel remains liable to forfeiture just as it is now. But it is stated in these petitions that oftentimes a passenger brings in goods, or some steward or sailor does it, and the vessel becomes liable to forfeiture. This, it is said, subjects the owners to great hardships, and often to exactions which, when they afterward apply to have remitted, are remitted. The bill was sent to the Treasury Department and the sections were looked into. We do not understand that there is any danger to the revenue from enacting the proposed law.

I will say one other thing. This is only making the law as to these vessels the same as it is now as to all the railroad cars which come into our country from Canada.

There was an objection first made to relieving them from certain sections, but upon examining those sections they were found to be cases where the master, the man controlling the vessel at the time as master, violated the law, and then he is not exempted at all by this bill.

Mr. BAYARD. I will say to my friend from Maine that the object of this bill is to relieve vessel property from penalties totally disproportioned to the offense charged. In the case of a valuable steamship with her cargo, worth, perhaps, a million dollars, the captain and the owners may have exerted every precaution that honesty and prudence could devise for the purpose of preventing the smallest amount of smuggling or the like, and yet under existing laws, without their fault, without their connivance, there is the forfeiture of property to an enormous amount. It is the disproportion of the penalty to the offense that weighs upon the minds of merchants along the coast until they feel that while the penalties have been exacted against them, still the law subjects their vessels to seizure, it subjects them to vast expense. When the department examine they refuse to prosecute, but in the meantime the law stands there, subjecting an enormous amount of property to forfeiture for the most trivial offense.

I will say to the honorable Senator from Maine that wherever the offense exists the offender is not in any degree relieved from penalty. On the contrary, the punishment as to him continues, and wherever smuggling occurs the goods themselves are forfeited and the person who smuggled them is subject to punishment. There is no amendment of the laws in that respect. Where the captain or the owner is cognizant of this attempted fraud, the vessel is still liable to forfeiture; but the object of the bill is to relieve them against, as I said before, the obvious disproportions of the penalty to the offense, which would subject millions of dollars to forfeiture strictly under the law without the least fault upon the part of the real owner of the entire steamship or cargo.

The measure is therefore a reformation in the existing laws which I do not think tends at all to exonerate dishonest men from the consequences of their acts, but leaves them liable to punishment just as before, except that it does not allow the effect of their evil conduct to extend to an enormous amount of property. The matter has been very carefully examined.

Mr. HAMLIN. If the Senator will pardon me one moment. I am not going to object to the bill. I did not understand it as both the Senators have explained it. I thought it exculpated the vessel even when the captain was implicated.

Mr. BAYARD. Oh, no.

Mr. KERNAN. No; we were very careful on that point.

Mr. HAMLIN. Still, I will say that while I think if a passenger smuggles small amounts or if the crew indulges in the luxury of smuggling small amounts, the owners of the vessels ought not to be held liable; and if I am right in my recollection, the amount now must be equal to $300 or the vessel is not forfeited. I think that is the law.

Mr. KERNAN. Not in all cases.

Mr. HAMLIN. But still believing the bill to be right, I interpose no objection. If it had exonerated the captain from the list, I certainly should have objected.

Mr. KIRKWOOD. I should like to ask the Senator from New York a question. Does the Treasury Department think that this will not tend to increase the danger of smuggling? They ought to have some opinion on the subject. I do not know what it is at all.

Mr. KERNAN. The Treasury Department objected at first because they thought the bill left certain things without any adequate guard against. I had all the sections they referred to examined, and they are all cases where the master does an act and thereby incurs a penalty, and the vessel is liable for that penalty. This bill leaves the law just so. The clerk examined every one of the sections, and I looked at them myself, so that we believe it is entirely safe to the Government. It enforces the rule that a man ought not to have very large amounts of property forfeited in a legitimate business where neither he nor the man controlling the vessel, the master, is in any way privy, had any knowledge of, or in any way consented to the illegal act.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

LIABILITY OF COMMON-CARRIER VESSELS FOR PENALTY FOR IMPORTING UNMANIFESTED SMOKING OPIUM

DEPARTMENT OF JUSTICE,
February 1, 1929.

SIR: I have the honor to refer to your letter of October 1, 1928, in which you state that there has been filed with your department under section 618 of the tariff act of September 21, 1922 (ch. 356, 42 Stat. 858, 987), a petition for the remission or mitigation of a penalty amounting to $146,961.20, incurred by the master of the steamship *President Taft* for a violation of section 584 of the same act by reason of the fact that a large quantity of unmanifested smoking opium and other contraband articles were found on board that vessel upon her arrival at San Francisco on July 14, 1927. You also state that subsequent to the date of the violation the master died, the penalty not having been paid. In connection with the consideration of the appeal for relief you ask my advice with respect to two questions:

First. Does a cause of action which has accrued under section 584 of the tariff act of 1922 abate with the death of the master?

Second. Does the saving provision of section 594 of the tariff act (42 Stat. 982) concerning common carriers apply to the second paragraph of section 584 of the act; i. e., in cases where the violation of section 584 involves unmanifested smoking opium, is the vessel subject to the provisions of the second paragraph of section 584 even though it is a common carrier and neither the owner nor the master thereof was, at the time of the alleged illegal act, a consenting party or privy thereto?

It is my understanding that the vessel was, at the time referred to in your letter, a common carrier and that there is no evidence upon which to base a claim of guilty knowledge upon the part of her owner or master.

Section 584 of the tariff act imposed penalties upon the master of any vessel bound for the United States for failure to produce a manifest when commanded by the proper officer; for having on board merchandise not included in the manifest; and also for failure to have on board merchandise which is described in the manifest, with a proviso that these penalties shall not be incurred if the collector is satisfied that the manifest is lost, mislaid, or incorrect by reason of clerical error or other mistake, etc. Then follows this provision:

"If any of such merchandise so found consists of smoking opium or opium prepared for smoking, the master of such vessel or the person in charge of such vehicle shall be liable to a penalty of $25 for each ounce thereof so found. Such penalty shall constitute a lien upon such vessel which may be enforced by a libel in rem. Clearance of any such vessel may be withheld until such penalty is

paid or until a bond, satisfactory to the collector, is given for the payment thereof. The provisions of this paragraph shall not prevent the forfeiture of any such vessel or vehicle under any other provision of law."

Section 594 provides:

"SEC. 594. SEIZURE OF VESSELS AND VEHICLES: Whenever a vessel or vehicle, or the owner or master, conductor, driver, or other person in charge thereof, has become subject to a penalty for violation of the customs revenue laws of the United States, such vessel or vehicle shall be held for the payment of such penalty and may be seized and proceeded against summarily by libel to recover the same: *Provided*, That no vessel or vehicle used by any person as a common carrier in the transaction of business as such common carrier shall be so held or subject to seizure or forfeiture under the customs laws, unless it shall appear that the owner or master of such vessel or the conductor, driver, or other person in charge of such vehicle was at the time of the alleged illegal act a consenting party or privy thereto."

Answering your first question, I agree with the conclusion reached by the Solicitor of the Treasury that the cause of action against the master abated with his death, so far as his personal representatives are concerned. That conclusion is in accordance with well-settled principles governing actions for fines, penalties, etc. See Schreiber *v.* Sharpless (110 U. S. 76); United States *v.* Theurer (213 Fed. 904); United States *v.* DeGoer (38 Fed. 80); Bouvier's Law Dictionary, Title Actio Personalis Moritur cum Persona.

Though the cause of action against a master abates with his death, it does not necessarily follow that the cause of action against his ship also abates. That question, however, need not now concern us, because, in my opinion, the proviso in section 594 of the tariff act absolving vessels used as common carriers from being held, seized, or forfeited unless the owners or those in charge are consenting or privy to the illegal act upon which the penalty is based applies to the second paragraph of section 584 relating to opium.

In March, 1912, Attorney General Wickersham advised the then Secretary of the Treasury that a collector of customs had no right to refuse clearance of a vessel used as a common carrier because of the nonpayment of a fine imposed upon it by section 2809 of the Revised Statutes for bringing into the United States merchandise not included in the manifest unless the master or owner was consenting to the illegal act or privy thereto. (29 Ops. 364.)

From the opinion it appears that the collector had imposed fines on the masters of several vessels of the Pacific Mail Steamship Co. under section 2809, because smoking opium was found concealed on the vessels, which was not mentioned in the manifest. Mr. Wickersham first quoted sections 2809 and 3088, Revised Statutes, as follows:

"SEC. 2809. If any merchandise is brought into the United States in any vessel whatever from any foreign port without having such a manifest on board, or which shall not be included or described in the manifest, or shall not agree therewith, the master shall be liable to a penalty equal to the value of such merchandise not included in such manifest; and all such merchandise not included in the manifest; and all such merchandise not included in the manifest belonging or consigned to the master, mate, officers, or crew of such vessel shall be forfeited.

"SEC. 3088. Whenever a vessel, or the owner or master of a vessel, has become subject to a penalty for a violation of the revenue laws of the United States, such vessel shall be holden for the payment of such penalty, and may be seized and proceeded against summarily by libel to recover such penalty."

"But," he continued, "by the act of February 8, 1881 (21 Stat. 322), it was provided:

"'That no vessel used by any person or corporation as common carriers, in the transaction of their business as such common carriers, shall be subject to seizure or forfeiture by force of the provisions of title 34 of the Revised Statutes of the United States unless it shall appear that the owner or master of such vessel, at the time of the alleged illegal act, was a consenting party or privy thereto.'"

He then said:

"It is clear that, prior to the passage of the act of February 8, 1881, supra, for any violation of section 2809 by which the master became liable to a penalty, the United States acquired a lien on the vessel itself which it could enforce by libel and seizure (*The Queen*, 4 Ben. 237; *The Missouri*, 3 Ben. 508, affirmed 9 Blatch. 433); but it is equally well established that, since the passage of that act, no such lien arises and no such seizure can be made in the case of common carriers, unless the owner or master consenting to the illegal act or privy thereto.

(*The Saratoga*, 9 Fed. 322, *Walla*, 44 Fed. 796.) If no lien arises in favor of the United States, if the vessel be not 'holden for' the payment of the penalty where there is no such consent or privity, it would seem necessarily to follow that clearance could not be refused."

The quoted provisions of section 2809, Revised Statutes, were carried into section 584 of the tariff act, while section 3088 of the Revised Statutes, together with the act of February 8, 1881, was carried into section 594 of the tariff act. A provision similar to the second paragraph of section 594 of the tariff act, except that it reached to railway cars, engines, and other vehicles, was contained in section 3063 of the Revised Statutes, and those provisions were also carried into section 594 of the tariff act. Following the opinion of Mr. Wickersham, the soundness of which I see no reason to question, I would say that if we had to consider merely sections 584 and 594 of the tariff act, it would be plain that no lien exists against a common-carrier vessel, even if unmanifested opium is found on board, unless the owner or master was consenting or privy thereto. Sections 584 and 594 of the tariff act contain no provisions which, in my opinion, render inapplicable the reasoning of Mr. Wickersham with respect to sections 2809 and 3088 Revised Statutes, and the act of February 8, 1881.

It is argued, however, that section 8 of the opium act of May 26, 1922 (ch. 202, 42 Stat. 596, 598), renders the proviso in section 594 of the tariff act inapplicable to vessels found with unmanifested narcotic drugs on board. That section reads as follows:

"SEC. 8. (a) That a narcotic drug that is found upon a vessel arriving at a port of the United States or territory under its control or jurisdiction and is not shown upon the vessel's manifest, or that is landed from any such vessel without a permit first obtained from the collector of customs for that purpose, shall be seized, forfeited, and disposed of in the manner provided in subdivision (d) of section 2, and the master of the vessel shall be liable (1) if the narcotic drug is smoking opium, to a penalty of $25 an ounce, and (2) if any other narcotic drug, to a penalty equal to the value of the narcotic drug.

"(b) Such penalty shall constitute a lien upon the vessel which may be enforced by proceedings by libel in rem. Clearance of the vessel from a port of the United States may be withheld until the penalty is paid, or until there is deposited with the collector of customs at the port, a bond in a penal sum double the amount of the penalty, with sureties approved by the collector, and conditioned on the payment of the penalty (or so much thereof as is not remitted by the Secretary of the Treasury) and of all costs and other expenses to the Government in proceedings for the recovery of the penalty in case the master's application for remission of the penalty is denied in whole or in part by the Secretary of the Treasury.

"(c) The provisions of law for the mitigation and remission of penalties and forfeitures incurred for violations of the customs laws, shall apply to penalties incurred for a violation of the provisions of this section."

The history of section 8 of the opium act is this:

By the act of February 9, 1909 (ch. 100, 35 Stat. 614), Congress prohibited the importation of opium except for medicinal purposes. The act was a short one of two sections and provided penalties for violating its terms, but made no direct reference to ships, manifests, etc. By the act of January 17, 1914 (ch. 9, 38 Stat. 275), the act of 1909 was amended and expanded to comprise eight sections, and section 8 read (p. 277):

"That whenever opium or cocaine or any preparations or derivatives thereof shall be found upon any vessel arriving at any port of the United States which is not shown upon the vessel's manifest, as is provided by sections 2807 of the Revised Statutes, such vessel shall be liable for the penalty and forfeiture prescribed in section 2809 of the Revised Statutes."

It would seem plain that this section, read in connection with the sections of the Revised Statutes to which it refers, made the master of a ship which brought in opium not listed upon the ship's manifest liable for the penalties prescribed by section 2809 of the Revised Statutes. The Supreme Court eventually so decided. United States *v.* Sischo (262 U. S. 165), decided April 23, 1923. That decision, however, reversed a decision to the contrary by the Circuit Court of Appeals for the Ninth Circuit (290 Fed. 958), decided February 7, 1921. The opium act of May 26, 1922, was passed subsequent to the decision of the Circuit Court of Appeals in the *Sischo* case and prior to the reversal of that case by the Supreme Court, and the amendment making section 8 read as at present was undoubtedly intended to counteract the effect of the decision of the Circuit Court of Appeals. The legislative history of section 8 shows it clearly.

When the bill was reported to the House it was accompanied by a report which said of section 8:

"This section in the existing law was intended to penalize the failure to manifest narcotic drug importations arriving upon any vessel. This intent, however, was nullified by the decision of the Circuit Court of Appeals for the Ninth Circuit, in United States v. Sischo (1921), 270 Fed. 958). The committee amendment is intended to avoid the results of the decision by placing in the section itself the penalty for failure to manifest the narcotic drug." (H. R. No. 852, p. 10, 67th Cong., 2d sess.)

Senator Curtis, who reported the bill in the Senate, in explaining the bill, said:

"It provides for a penalty for the carriage of narcotics in vessels if it is knowingly done." (Cong. Rec., vol. 62, pt. 7, p. 6834.)

When the bill which became the opium act of 1914 was reported to the House it was accompanied by a report which said:

"Therefore section 8 provides for the libelling of vessels on which unmanifested opium and cocaine are found, in accordance with the established practice of this Government." (H. R. No. 24, p. 5, 63d Cong., 1st sess.)

The practice of the Government at that time, established over a period of many years, had been to absolve common carriers from liability for penalties imposed upon the master for bringing in unmanifested cargo where neither the master nor the owner was a party or privy to the illegal act. In my opinion, the subsequent legislation was not intended to mark a drastic departure from that policy.

The question which we are now considering arose under the law as it stood before the enactment of the 1922 legislation in the case of *The Mount Clinton* (6 F. (2d) 418 C. C. A., 2d circuit.) That case was a libel against a ship for failing to manifest opium and raised the question of the effect of section 8 of the act of 1914. The court said: "There would be no escape from a decree against the vessel were it not for the act of February 8, 1881," but held that the latter statute gave immunity to common carriers; that Congress did not intend to put ships with unmanifested opium in a different category from ships generally "who are guilty of a dereliction with which the carriege of opium is expressly classed," and added, "We think it prima facie improbable that Congress intended to do more than extend to opium the provisions generally applicable to unmanifested merchandise." Answering the argument that if such construction was correct the existing provisions of the Revised Statutes would have been sufficient to cover the case without section 8 of the opium act, and that Congress must have thought that opium was so baleful as to require more stringent penalties, the court said that if such was the purpose "section 8 was a curious way to accomplish the result." The court held that the purpose of Congress in enacting section 8 "was fully executed by bringing opium within the general class of merchandise." The opinion concluded:

"If so, there seems to be no occasion to introduce whimsical distinctions, born of grammatical niceties. Besides, the presumption must always be against the imposition of penalties upon those who are innocent and have used all reasonable precautions to pervent the evil against which the statute is directed. When Congress has by a positive change of purpose excused a class of innocent persons, we should have to be well satisfied that in a similar case it later intended to withdraw the excuse."

The same reasoning applies here. The new matter in section 8, inserted by the act of 1922, was added for the purpose of making it certain that ships carrying unmanifested opium should be treated in the same way as ships which carried other unmanifested merchandise. That was what Congress had intended to do by section 8 of the act of 1914, but its intention had been frustrated by the Circuit Court of Appeals in the Sischo case. The amendment of 1922 was intended to do merely what that court had said the act of 1914 failed to do. I am unable to see that it did more. For over 40 years Congress had expressly given immunity to common carriers whose owners and masters were innocent of guilty intent, and a departure from that policy in the case of opium should not be inferred except from some positive statutory declaration which leaves the matter substantially free from doubt. There is nothing of that kind here.

Though the traffic in narcotic drugs is a great evil which requires us to exert to the limit permitted by the statutes our efforts to suppress it, that fact does not justify us in pressing the statutes beyond that limit as fixed by sound canons of construction.

In my opinion, the proviso in section 594 of the tariff act applies to common-carrier vessels upon which, in violation of section 584, unmanifested smoking opium has been found.

Respectfully,

JOHN G. SARGENT.

To the SECRETARY OF THE TREASURY.

BRIEF OF HARPER & HARPER, ESQS., SAN FRANCISCO, CALIF.

Hon. REED SMOOT,
Chairman Finance Committee of the United States Senate,
Washington, D. C.

DEAR SIR: We beg to submit the following memorandum on the proposed changes in the tariff law contained in section 584 of the new tariff bill:

The new tariff bill as passed by the House of Representatives provides a change in section 584 whereby the owner of a vessel is made liable to a penalty of $25 for each ounce of opium discovered concealed aboard any vessel bound to the United States, notwithstanding the fact that the vessel may be a common carrier, which is relieved by section 594 of the tariff act of 1922 from liability to seizure or forfeiture under the customs laws unless it appears that the owners or master were at the time of the alleged illegal act a consenting party or privy thereto.

The evils of opium traffic are well known and well recognized by the carriers as well as by the public at large. Customs officials at the port of San Francisco are all agreed that the established steamship lines to the Orient, such as the Robert Dollar Co. and the Japanese lines, do all within their power to prevent smuggling of opium into this country. Every convenience is offered for enforcing the law, a regular search is made during the voyage by the officers of the vessel themselves, and watchmen are employed at the steamship companies' expense to discover concealed narcotics and prevent their being placed on the vessel.

The new provision, as it now stands, provides that the vessel shall be liable for the payment of the penalties although there is no fault whatsoever on the part of the owners. It also provides that the owner shall be fined to amounts which may even exceed the value of the vessel, as there is no limit set to the total penalty which may be assessed at the rate of $25 per ounce. It is true that, under section 618, the Secretary of the Treasury has the power to remit or mitigate these penalties; but such procedure requires time, and in order to secure the release of the vessel bonds must be filed at considerable expense. The premiums on these bonds are yearly charges, and when the litigation concerning the vessel is not settled for over a year double payment has to be made.

The present provision is sufficiently drastic. The steamship companies have cooperated in all ways possible with the customs officials, and it seems decidedly unfair to impose these liabilities upon the carriers who are not at fault. No matter how conscientious the owner of a ship may be, he can not at all times control the personal actions of his employees or those who patronize the steamship line. When the shipowner has taken all possible precautions to prevent the bringing on board of contraband merchandise, and the officers are further instructed to conduct periodical searches of the vessel for smuggled merchandise en route from foreign ports, the shipowner has done everything in his power to cooperate with the Government in its efforts to discover and prevent smuggling. If in any way the master or owners are guilty of assisting in such illegal practice, there are drastic penalties provided by other laws of the United States in the form of fines and imprisonment.

Therefore, it is respectfully submitted that this change should not be made in the law, and these new penalties should not be imposed upon owners who are entirely innocent and have no way of safeguarding themselves. It is not reasonable that shipowners should be penalized for opium carried without their knowledge or consent and in spite of all precautions they may take to prevent it.

Yours respectfully,

LAWRENCE A. HARPER.

LETTER FROM THE SAN FRANCISO CHAMBER OF COMMERCE

Hon. REED SMOOT,
Chairman Senate Finance Committee,
Washington, D. C.

MY DEAR SENATOR SMOOT: I beg to hand you herewith letter from San Francisco Chamber of Commerce opposing the proposed amendment of section 584 of the administrative section of the tariff act of 1922 so as to provide a penalty of $25 for each ounce of opium found unmanifested on board vessels put in American ports.

I trust you will bring this matter to the committee's attention, and that it will be possible to have it printed in the hearings as a brief coming from this organization.

Sincerely yours,

C. B. DODDS.

Mr. C. B. DODDS,
1221 National Press Building, Washington, D. C.

DEAR MR. DODDS: The board of directors of the San Francisco Chamber of Commerce, at its meeting on July 18, 1929, went on record as being opposed to the proposed amendment of section 584 of the administrative provisions of the tariff act of 1922, which would provide that vessels of common carriers would be made liable to a penalty of $25 for each and every ounce of smoking opium found unmanifested on board such vessels, regardless of whether the owner or master were privy or consented to such violation.

Opposition to this proposed amendment is voiced by the board of directors of the San Francisco Chamber of Commerce for the following reasons:

(1) The penalty is excessive because practically unlimited.

(2) It would be an injustice to hold an innocent party (a shipowner who has used reasonable precaution to prevent wrongdoing) liable for wrongdoing by others.

In accordance with this action by the board of directors, we ask that you inform the Senate Finance Committee and California congressional representatives of the board's opposition to the above-mentioned proposed amendment and reasons for that opposition.

Very truly yours,

SAN FRANCISCO CHAMBER OF COMMERCE,
WM. L. MONTGOMERY,
Assistant Department Manager, Foreign Trade Department.

COMMUNICATIONS FROM HUFFER, HAYDEN, MERRITT, SUMMERS & BUCEY, SEATTLE, WASH.

JULY 18, 1929.

Hon. REED SMOOT,
Chairman Finance Committee, United States Senate.

MY DEAR SENATOR: Herewith I inclose you letter from Huffer, Hayden, Merritt, Summers & Bucey, a very prominent firm of lawyers of Seattle, Wash., together with a telegram from these same gentlemen addressed to my secretary. It is desired that this letter and telegram be made a part of the hearings regarding the transportation of opium. I trust, therefore, that this letter and telegram will be made a part of the hearings in connection with the argument of Mr. Duff, representing the Ship Owners Association.

Very truly yours,

W. L. JONES.

JULY 17, 1929.

Mr. DAVIS,
Secretary Senator W. L. Jones, Washington:

Thanks for wire re committee meeting to consider opium matter. Find shipowners unanimously oppose law making lien on common-carrier vessels for amount of fine without master or owner being personally implicated in traffic, even if fine may later be remitted. Cost for bond and record to accomplish this and delay to vessel is very heavy and unjust. Imposition on innocent master

and owner. Account size common-carrier vessels in ocean trade with hundreds in crew and passenger. Utmost master and owner can do is act in good faith to prevent traffic venture. Opinion any law which may fail take into account fact it is humanly impossible for master and owner in most instances to prevent traffic will produce more injustice than benefit as preventive measures are for public welfare instead of fining vessels in cases where master or owner are not implicated. No fines should be levied on vessel or master but government should in our opinion make appropriation available and establish method whereby informer or discoverer can be promptly paid some substantial sum measured by importance of discovery or information in discretion of competent governmental authority. This idea is embodied in Canadian statutes and regulations of the subject and more drastic law puts additional burden on vessels trading with United States. Mr. Duff, of your city, with whom you have undoubtedly come in contact, represents ship owners' associations, and if agreeable suggest views herein and in my first letter to Senator Jones be submitted to committee in conjunction with his arguments. The seizure a few days ago in trunks of Mrs. Ying, wife of Chinese vice consul, on her arrival in San Francisco pointedly raises question if it would be just to have law which would subject the vessel on which Mrs. Ying traveled to a fine of half a million dollars and owners to cost of bonds, etc., to get it remitted or to defend action in court to defeat same. It is obvious neither shipowner nor master could have prevented this opium being carried.

HUFFER, HAYDEN, MERRITT, SUMMERS & BUCEY.

SEATTLE, WASH., *June 21, 1929.*

Hon. WESLEY L. JONES,
United States Senator, Washington, D. C.

DEAR SIR: We noticed by press dispatches and also by letter written by J. T. Steeb & Co. to the Pacific Westbound Conference, for whom we have been attorneys, that proposed legislation of Congress, with respect to smoking opium or opium prepared for smoking is aimed to change the present law exempting common carriers unless the owner or master is found to be implicated, to one which makes an absolute fine on the ships in the amount of $25 an ounce if opium is discovered thereon and has been brought aboard or concealed regardless of the efforts made by the shipowner to prevent it. This office has petitioned in behalf of American shipowners, as well as foreign shipowners, to have fines remitted, and the expense in connection therewith has run into many thousands of dollars. This expense is a penalty which is borne by the shipowner in all instances, even though the shipowner may be entirely innocent, has used the greatest precautions possible to prevent its being brought on board, and to discover it afterwards. One company we represent, which has ships running into this port, goes to a large expense annually to prevent opium getting on board its ships and to discover it afterwards. They employ four Seik policemen and two private detectives aboard the ships while in Hong Kong, employ Japanese detectives while the ships are in Japan, cause the ship to be searched under the supervision of the British consulate at the last port in Japan on leaving the Orient, causes the officers of the ship to make surprise searches, which are done at least three times on the voyage across—in fact, no person interested in preventing this trade could do more than the operators of these vessels, which are large 14-ton ships.

I am convinced that the opium smuggling is fostered by high governmental officials in China, although, of course, I have no proof of this, but I do know that in a recent article in the National Geographic Magazine an account was given of the raising of poppy seeds and producing opium in the interior of China, and packing it out on the backs of Chinese over almost impossible paths. It is quite currently believed that taxes imposed on the Chinese farmers are so high that they can not possibly pay them without resorting to this method.

Everyone knows that changes have taken place in maritime commerce since the original acts were passed, when the master was in command of a small ship propelled by sails, with a small crew, on long voyages, and where the master conducted all the ship's business. To-day, in the regular course of business, ships are managed largely by shore people—and the master has under him crew of a hundred or more people—and carry a thousand times more cargo than in any of the smaller ships. In one recent case, everyone here was convinced that the opium had been shipped as a part of the cargo and was found in the cargo holds. In fact, there are innumerable possibilities of getting cargo aboard the ship without the chance

of the master or the officers of the ship knowing it. The fact that it is impossible to do more than exercise the highest degree of care to prevent opium being brought on board the ship it seems to me should be taken into consideration by Congress when dealing with a practical proposition such as this. In Canada those who find the opium on the ships are given a reward through the Canadian Government. The customs officials in Canada receive this reward. Notwithstanding these facts and the fact that the vessels first touch at Canadian ports on their way in and are searched by Canadian officers, on several occasions, with my clients, opium has been found in Seattle on the vessel after most careful search by these Canadian officials in the hope of a reward for finding it. I mention this fact to show that the master and the officers of a ship are quite helpless in many instances. Of course, opium is at times discovered by the men on the ship in pursuance of their duties to search for it or prevent its coming on board.

To the ordinary man on the street it seems wrong to penalize him for something that he has not been responsible for and is not even negligent in connection with, and, if I may suggest it, it is more in harmony with human impulses and good order to reward the men who find the opium rather than to fine those who are helpless to prevent its being on board although they have used all due care to that end. It seems to me that it is not unreasonable to ask our representatives to treat the business interests dealing between the Pacific coast and China on the common, accepted, ordinary principles of justice. This method surely reduces the friction and antagonism of citizens toward their Government.

I hope you will not think I am imposing upon you by writing at this length in connection with this subject, or of seeming to criticize the proposed legislation. I have had considerable experience with the subject matter of this letter, and if I were not considerate of your time, could expand on the matter to far greater length by citing illustrations. I do urge you, however, to oppose legislation which may go the extreme limit of the ability of Congress to impose fines upon the innocent and those who are not even careless, or their property, because of the culpable, secretive acts of those who profit by the success of them.

Respectfully yours,

HUFFER, HAYDEN, MERRITT, SUMMERS & BUCEY.
By W. H. HAYDEN.

SALE OF FORFEITED GOODS

[Sec. 611]

BRIEF OF THE AMERICAN JEWELERS' PROTECTIVE ASSOCIATION

HON. REED SMOOT,
Chairman Committee on Finance,
United States Senate, Washington, D. C.

DEAR SENATOR: On behalf of the American Jewelers' Protective Association, I am directed to petition your committee for an amendment to section 611 of H. R. 2667.

On page 419 of the bill, line 21, after the period, the association recommends the addition of the following sentence:

"In the case of forfeiture proceedings in any court, if the Secretary of the Treasury requests that the decree of forfeiture shall provide that the vessel, vehicle, merchandise, or baggage so forfeited shall be delivered to the Secretary of the Treasury for sale, the decree of the court shall so provide."

The reason for this request is the following letter from Judge Bryant:

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF NEW YORK,
Malone, N. Y., May 3, 1929.

Messrs. BLACKMAN PRATT & KING,
61 Broadway, New York City, N. Y.

Re: U. S. *v.* Large Quantity of Diamonds, Jewelry, and Pearls seized from Henry Margulies and Abraham Treppel on June 2, 1925

GENTLEMEN: After careful consideration, I must decline to direct the sale of the forfeited merchandise in the southern district of New York.

I am sending a copy of this letter to the United States attorney at Syracuse, N. Y.

Yours very truly,

H. BRYANT, *U. S. D. J.*

In the case referred to request had been made that the forfeiture decree should provide for the sale of the forfeited diamonds in New York City, where it was believed the diamonds could be sold more advantageously to the Federal Government. It is my understanding that the position taken by the court was that it could not direct a United States marshal to sell the forfeited diamonds outside of his jurisdiction. It is the view of the association that the section contemplated the sale of forfeited merchandise in the jurisdiction in which the Secretary of the Treasury deemed it could most advantageously be made. In order that sales of forfeited merchandise may so be made in the future, this amendment is requested.

Respectfully submitted.

JOHN E. WALKER,
Attorney for American Jewelers' Protective Association.

Subscribed and sworn to before me this 20th day of July, 1929.

[SEAL.] REUBEN A. BOGLEY, JR.,
Notary Public.

REMISSION OR MITIGATION OF PENALTIES

[Sec. 618]

STATEMENT OF NATHAN B. WILLIAMS, WASHINGTON, D. C., REPRESENTING THE NATIONAL ASSOCIATION OF FINANCE COMPANIES

(The witness was duly sworn by the chairman.)

Mr. WILLIAMS. Mr. Chairman, I beg the indulgence of the committee for a few minutes to discuss section 618, remission or mitigation of penalties, the law being as it is now or as passed in the House bill.

The National Association of Finance Companies, as you know, is an organization composed of members of banking houses who finance automobiles and other property on instalment payments.

The language suggested is to amend section 618 by inserting after the phrase "as he deems reasonable and just"—that being the language of the present law. It is down about the middle of the section, Senator, and I will not take the time of the committee to read the entire section——

The CHAIRMAN. "Such terms and conditions as he deems reasonable and just?"

Mr. WILLIAMS. Yes. After that insert the words: "giving full protection to the rights of innocent lien holders, his action being subject to review in appropriate judicial proceedings in the district courts of the United States," and then proceeding with the section as it is.

There is a very serious situation growing out of customs and prohibition seizures with respect to motor cars, and the rights of innocent lien holders were before this committee a year ago in the revenue bill or tax bill, and the committee endeavored to meet the situation by the inclusion in the revenue act of 1928 of section 709, which reads as follows:

> The provisions of law applicable to the remission or mitigation by the Secretary of the Treasury of forfeitures under the customs laws shall apply to forfeitures incurred or alleged to have been incurred before or after the enactment of this act under the internal-revenue laws.

Unfortunately, Senators, the working out of that section, while it improved very materially the situation as respects seizures under internal-revenue laws, does not meet existing conditions with respect

to seizures under customs laws, and for that reason both branches of the subject must necessarily be considered together as to the extent of the problem for just one moment.

The customs branch of the Treasury from January to June, 1926, seized automobiles for violations of the customs laws which they appraised at a value of $183,445. That is in six months. I have no earlier figures.

For the fiscal year ending June 30, 1927, the customs-seized automobiles for violations of the customs law which at their appraisal value amounted to $456,449. These are appraisals made by the seizing officials.

For the fiscal year ending June 30, 1928, customs-seized automobiles for violations of the customs laws and an appraised value of $604,009.

The Prohibition Bureau does not keep figures on a valuation basis, but for the fiscal year ending June 30, 1928, they reported seizures of 6,931 cars which, at a $300 value each, would amount to $2,082,200.

As to seizures by the Prohibition Bureau only a very small percentage—I do not suppose that it exceeds 5 per cent of the seizures by prohibition officers—are seized under the internal revenue law, and consequently only such part of the seizures by the prohibition officials are subject to the provisions of section 709 of the revenue act which extended to such seizures the rights with respect to the remission and mitigation of penalties as contained in section 618 of the customs act. But the seizures under the customs act have constantly grown, and the working out of the statute applied by customs officers does not, in my opinion as a lawyer, either meet the legitimate rights of innocent lien holders or meet what I conceive to be a proper public policy in that respect.

I apprehend that it is scarcely the intention of this committee to complicate this subject—in fact, this committee has indicated a contrary intention by the passage of section 709 revenue act to simplify the question of seizures and the rights of those whose property is involved in seizures for violations of any law.

Making even an estimate of approximately $250 per car in these seizures by customs officers, and adding, say, 5 per cent of the seizures by the Prohibition Bureau, it would amount in a single year to seizures which might be made the subject of a petition for remission of 2,800 cases of cars in a single year.

There are 300 working days generally assumed for the purposes of public calculation, and at eight hours per day that makes 2,400 working hours in a year. All the entire working time of the Secretary of the Treasury would be devoted to reading the highly complicated and technical pleadings required under the decisions promulgated by the Secretary as to what must be shown as respects the seizure of cars and the interest of interveners. Of course all these cases do not come to the Treasury Department. They do not come for various and sundry reasons, some of which are that there is only a small amount involved; others, that the circumstances of the seizure or the circumstances growing out of the violation of customs laws are such that the finance company is convinced that it would have no equitable standing.

But we run against this very troublesome and, in my view, erroneous conception of the law, instead of applying what I regard and which

I trust you will regard as a sound rule, that finance companies must make for themselves, when they sell a car, what seems to them to be a proper investigation under all the facts and circumstances appearing at the time and to accept the risk and to be charged with the knowledge that a prudent inquiry would have produced.

You will observe in examining the earlier features of the section that there are three conditions set forth as respects the Secretary's findings—

the Secretary of the Treasury or the Secretary of Commerce, if he finds that such fine, penalty, or forfeiture was incurred without willful negligence or without any intention on the part of the petitioner to defraud the revenue or to violate the law, or finds the existence of such mitigating circumstances as to justify the remission,

and so forth.

So that presents three tests: Willful negligence, absence of intention to defraud the revenue, and absence of intention to violate the law.

Senator CONNALLY. Where would the burden of proof be?

Mr. WILLIAMS. Upon the finance company. But you will not find in the discussion of these cases with Treasury officials—at least I have not found it so—that they contend that the finance company intended to defraud the revenue or to violate the law, but they base their decisions upon the question of what is negligence; and with respect to that I regret to report that on that point they neither accept nor announce any rule of law. In one case they will allow the petition and order return of the car or the dismissal of the proceedings with respect thereto, and in another case that as a lawyer of a good many years' experience in examining and weighing evidence and facts alleged, an even stronger case where the car happens to be of higher value or there are more interesting circumstances, they deny the petition on the ground of no sufficient investigation.

Of course, when a motor car company sells to an individual on time payments it must be expected to make an investigation or accept the consequences, that that car is not being bought with the intention to be used in defrauding the revenue or in violation of the law. It is true that most of these cases arise out of alleged importations of alcoholic liquors, but not all of them.

Senator SHORTRIDGE. You say they do not apply the ordinary rules of law applicable to negligence?

Mr. WILLIAMS. They do not.

Senator CONNALLY. Do not lots of the collectors of customs seize these cars when they are violating the prohibition law and do not the officers take that into consideration in handling them, the prohibition law and the provisions of it?

Mr. WILLIAMS. Undoubtedly.

Senator CONNALLY. A customs inspector will seize an automobile because it is carrying liquor——

Mr. WILLIAMS. Or carrying Chinamen or various other things.

Senator CONNALLY. They can act under whatever provision is most easily handled by the Government.

Mr. WILLIAMS. In the Volstead Act, the law that provides for the enforcement of the eighteenth amendment, Congress protects the rights of innocent lienors. This committee by unanimous report last year protected the rights of innocent lienors, or thought they were doing so, I assume, as respects internal revenue seizures in the interior

of the country, having no relation to customs, by giving parties the right to appeal to the secretary for remission or mitigation of the penalty.. None of these are cases in which the finance company can collect from the purchaser of the car. In some of them the amount due on the car has been substantially paid, but their interest is not sufficient to justify an appeal to the Secretary of the Treasury. But in hundreds of cases they do come, and in hundeds more cases, individuals where there are no finance companies involved might, under a given set of circumstances, appeal to the Secretary of the Treasury.

Unquestionably there is a very proper distinction as to the rule of law as between the party who is engaged in the violation and the party who holds the mortgage or lien upon the property that he is employing.

Senator CONNALLY. You want the law to give you a right, because you have a mortgage on his interest in the property—

Mr. WILLIAMS. This would only give us a right to the amount of our lien where we could not collect it otherwise; that is all.

Senator CONNALLY. You would invite violations of the law if you did not give them the power to seize these vehicles.

Mr. WILLIAMS. I do not think it would invite them in the least.

Senator CONNALLY. It would invite violations of the law.

Mr. WILLIAMS. I do not see how it would invite violations of the law, because always the question of negligence is still there, and only the question of reviewability is asked where the innocent lienholders' rights are not protected. So it would not encourage or suggest violations of the law, because a finance company unable to show that it had made a due and proper and diligent inquiry with respect to the probable use of the car and the character and conscience of the purchaser or his general line of conduct, would not put themselves within the rule that still exists.

I do not attempt to change that rule, but simply to ask that the Secretary of the Treasury be required to protect the rights of innocent lienors, the same as you have in the Volstead Act and the same as you have attempted under the Internal Revenue act.

Senator CONNALLY. Suppose you investigated and found that the man you loaned the money to was all right; what would there be to prevent him from selling his car to some crook? Nothing would require you to foreclose it at that time?

Mr. WILLIAMS. That is very true.

Senator CONNALLY. You let some irresponsible party go ahead under those circumstances. Do you think you are to be protected then?

Mr. WILLIAMS. If that was brought to our attention or if by reasonable inquiry we could secure that information, we would not stand in good grace in a court of equity, or the District Court having charge of the libel proceeding where these cars are condemned and sold, nor would we stand in good conscience before the Secretary of the Treasury.

Senator SHORTRIDGE. I do not understand your answer to Senator Connally. You have a lien on a given car, and before you become liable you make prudent inquiry?

Mr. WILLIAMS. Yes, sir.

Senator SHORTRIDGE. The owner of the car sells it. What becomes of your lien? I did not understand your answer.

Mr. WILLIAMS. Our lien continues, and we would be require to make that same prudent inquiry with respect to that person if we allowed him to keep the car.

Senator SHORTRIDGE. That is what I wanted to develop.

Mr. WILLIAMS. We would be charged with duty.

Senator SACKETT. That is the only point you have to present?

Mr. WILLIAMS. Yes; that is the sum and substance of it.

Senator SACKETT. I think we understand it.

Mr. WILLIAMS. We want you to protect the rights of innocent lienors and to simplify this procedure so that in the event the finance company or other person having made petition to the Secretary of the Treasury believes that the Secretary of the Treasury's decision is erroneous he may test it in court if he so desires.

Senator CONNALLY. The law at present gives the Secretary of the Treasury the power to do this now if he wants to?

Mr. WILLIAMS. Oh, yes.

Senator WALSH. There is no appeal?

Mr. WILLIAMS. There is presumably no appeal. That question has not beem litigated.

Senator CONNALLY. If you can convince him now that you have a good case, he has the power to release it?

Mr. WILLIAMS. Yes.

Senator CONNALLY. But you want to make this a matter of litigation so that you can bring suits and try them all out——

Mr. WILLIAMS. No, indeed, because the Secretary of the Treasury now has power to order dismissal of the proceedings.

Senator CONNALLY. They have released cases for me when I made a good showing.

Mr. WILLIAMS. Yes, they have for me; and they have denied others in which I made a better showing.

Senator CONNALY. How do you figure that out?

Mr. WILLIAMS. On that undetermined and indefinable proposition of willful negligence.

The CHAIRMAN. Have you suggested any amendment to this section?

Mr. WILLIAMS. Yes, sir; I read it at the beginning.

I am very much indebted to the committee for the hearing, because I am satisfied that you want, like we do, to facilitate the administration of justice and to give no cause to any citizen of the country to believe that he is denied what he believes to be his rights without his day in court.

BRIEF OF CURIE, LANE & WALLACE, ESQS., NEW YORK CITY

Hon. REED SMOOT,
Chairman Committee on Finance, United States Senate,
Washington, D. C.

DEAR SENATOR SMOOT: Section 618 of the pending tariff bill (H. R. 2667) gives the Secretary of the Treasury a broad authority to remit or mitigate customs fines and penalties upon such terms and conditions as he deems reasonable and just. This is merely repetition of existing law.

The Treasury Department holds that even though circumstances exist which would justify remission or mitigation under section 618 it can not refund a fine, or any portion thereof, assessed upon a customs entry, after it has been covered into the Treasury, because the authority to make refunds given by section 520 does not cover such a case.

Subdivision (a) paragraph (2) of section 520 authorizes the Secretary of the Treasury to make refunds—

"(2) Whenever it is determined in the manner required by law that any fees, charges, or exactions, other than duties, have been erroneously collected."

The Comptroller General has ruled in effect that a fine is an "exaction" within the meaning of the above provision, but that the statute contains authority for refunding from the appropriation created by subdivision (b) only those fines which have been determined to be erroneously collected.

It is obvious that a fine may be legally and not erroneously collected and yet may be subject of remission or mitigation by the Secretary of the Treasury under section 618 if the circumstances warrant it. In fact it is only where a fine has been legally collected that there is any occasion for applying to the Secretary of the Treasury for remission or mitigation under section 618. A fine illegally imposed can be recovered by other proceedings.

Section 618 is to this extent deprived of effect because the Secretary's authority to remit or mitigate fines is wholly ineffective unless coupled with authority to make refunds.

It is felt that this hiatus in the law is due to oversight which your committee would desire to correct. The suggestion is accordingly made that paragraph (2) of subdivision (a) of section 520 should be amended to read somewhat as follows:

"(2) Whenever any fees, charges, or exactions, other than duties, have been remitted or mitigated by the Secretary of the Treasury or have been determined in the manner required by law to have been erroneously collected."

It is also suggested that the words "and fees, charges, or exactions, other than duties" should be inserted at the beginning of section 520 after the word "duties" in line 21 on page 378 of H. R. 2667 as referred to your committee.

Respectfully,

CURIE, LANE & WALLACE,
By T. M. LANE.

BRIEF OF THE AMERICAN JEWELERS PROTECTIVE ASSOCIATION

[Including compromise of Government claims, Sec. 617]

Hon. REED SMOOT,
Chairman Committee on Finance,
United States Senate, Washington, D. C.

DEAR SENATOR: I am directed on behalf of the American Jewelers Protective Association to petition your committee for an amendment to sections 617 and 618 of H. R. 2667.

The amendments requested are as follows:

Amend section 617 by adding a new paragraph at the end thereof to read as follows:

"No offer in compromise submitted incident to a seizure of merchandise shall be approved unless and until the informer or his representatives have been furnished with a copy of the offer in compromise and permitted to be present in person or by attorney at all hearings on such offer and given the privilege of offering testimony and filing a brief."

Amend section 618 by adding a new paragraph at the end thereof to read as follows:

"No petition for the remission or mitigation of a fine, penalty, or forfeiture under this section shall be approved unless and until the informer or his representative have been furnished with a copy of the petition and permitted to be present in person or by attorney at all hearings on such petition and given the privilege of offering testimony and filing a brief."

It has been the experience of the association that when a substantial amount of money is at stake in commercial smuggling cases constant and prolonged effort is made to compromise the case or to obtain a remission or mitigation of penalties. In the Margulies-Treppel case, for example, all the principals were convicted, sentenced and had served their terms of imprisonment before the court handed down its decree of forfeiture because of the delay incident to the submission and consideration of several offers in compromise.

It is believed that these amendments will be helpful to the Federal Government as well as to our association in securing all the facts and an expeditious final settlement of such cases.

Respectfully submitted.

JOHN E. WALKER,
Attorney for American Jewelers Protective Association.

Subscribed and sworn to before me this 20th day of July, 1929.

[SEAL.] REUBEN A. BOGLEY, Jr.,
Notary Public.

REPEALS

[Sec. 647]

BRIEF OF HON. JOHN J. COCHRAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI

[Importation of cigars and cigarettes by parcel post]

GENTLEMEN: Buried on page 244 of the tariff bill as it passed the House will be found paragraph 4 of section 647 which provides for certain specific repeals of acts and parts of acts. This paragraph reads as follows:

"(4) Section 2804 of the Revised Statutes, as amended (relating to limitations on importation packages of cigars)."

Over 50 years ago Congress enacted this law which prohibits the importation of cigars to the United States in less than 3,000 lots. The title of the tariff act reads as follows:

"To provide revenue, to regulate commerce with foreign countries, to encourage the industries of the United States, to protect American labor, and for other purposes."

I maintain that the repeal of section 2804 of the Revised Statutes will discourage industries and seriously affect rather than protect American labor. It will enable foreign countries to immediately inaugurate a mail-order business with the people of the United States selling cigars in small quantities, as in lots of 25 or more.

An investigation will disclose that the Republic of Cuba has been trying for a number of years to have this law repealed. When our parcel-post treaty with Cuba expired, the Republic of Cuba declined to agree to another parcel-post treaty unless the United States would repeal section 2804 of the Revised Statutes. On the recommendation of the Postmaster General a bill was introduced in the House providing for repeal. This bill was called up by Mr. Green, then chairman of the Ways and Means Committee in the House in the Sixty-ninth Congress, and was overwhelmingly defeated. In the Seventieth Congress the bill was again introduced and favorably reported by the Committee on Ways and Means. Hearings were held which should be available in the office of the Ways and Means Committee. A resolution was introduced asking the Rules Committee for a special rule to consider the legislation. The Rules Committee took the matter up but declined to report a special rule and the bill was not considered on the floor of the House in the Seventieth Congress.

The cigar industry in this country has not prospered, especially since prohibition. There is not sufficient tobacco grown in Cuba at the present time to manufacture all the cigars labeled "Habana cigars." Cuba is a large importer of tobacco, as statistics will show.

The result of the repeal of this act will not only seriously affect the tobacco industry and cigar makers but will also result in American citizens receiving inferior cigars labeled "Habana cigars." I maintain that this provision has no place in the tariff bill, but should be considered as a separate measure in both the House and the Senate.

I respectfully request that your committee give serious consideration to this question and I sincerely hope that it will not be included in the bill when it is reported to the Senate.

VALUATION

[Sec. 402]

WEDNESDAY, JUNE 12, 1929

UNITED STATES SENATE,
COMMITTEE ON FINANCE,
Washington, D. C.

The committee met pursuant to call at 9.30 a. m. in Room 312, Senate Office Building, Senator Reed Smoot (chairman) presiding.

The CHAIRMAN. If the committee will come to order we will begin the consideration of the question of valuation, as notice has been given to the public that we would open these hearings at 9.30 o'clock this morning.

I notice a long list of applicants here to be heard. It will be impossible to hear all of the applicants within the time assigned to this schedule. I should like very much if there could be a meeting of the witnesses and if they might agree upon three or four to present the subject matter to the committee. I think it would be very much better for those who are interested to do this than to try to have all the applicants given a chance to be heard, because if that policy is to be pursued I will have to at this time limit the time that any one person may speak.

Perhaps at this mornings's session, however, if that has not already been done—and it was suggested in advance to those, or at least some of those, who are interested in the subject—I am going to ask that the speakers be limited to as few minutes as it is possible for them to present their views.

I should like to ask Mr. Burgess, whose name appears first on the list, whether the parties interested in this question have had any meeting, a joint meeting for instance, or have agreed upon any policy of presenting the subject to the committee.

STATEMENT OF HON. WM. BURGESS, TRENTON, N. J.

Mr. BURGESS. Yes, sir; there will not be more than three, I presume, taking up different phases of the subject.

The CHAIRMAN. I wanted that done. And, Mr. Burgess, if that is done, and if you know who has been selected to take up one phase of it, we shall be glad to hear him at this time.

Mr. BURGESS. I have been selected to take one phase of it.

The CHAIRMAN. We will hear from you at this time. I do hope that you will make your presentation just as brief as possible, because we have only one day on this schedule, and while we want to give you all the possible time within the day that is before us for the subject, yet you must realize that the time in any event is limited.

Mr. BURGESS. So I understand.

The CHAIRMAN. You may proceed.

Mr. BURGESS. I may say that I will perhaps take a little more time than some of the others on account of laying a foundation for what we have in mind.

Senator THOMAS of Oklahoma. Might we have a little information about the witness before we begin, from whence he comes, and whom or what interests he represents?

The CHAIRMAN. Make a brief statement on that, Mr. Burgess.

Mr. BURGESS. I am speaking this morning for myself. I will say that I have recently been a member of the Federal Tariff Commission. I have also been a consul abroad and have made six investigations abroad in reference to undervaluation, and one to the Orient at the request of the Secretary of the Treasury. So I feel that I have had a rather unique experience.

Senator THOMAS of Oklahoma. Do you represent at this time any particular interest?

Mr. BURGESS. No.

Senator THOMAS of Oklahoma. Or any group of interests?

Mr. BURGESS. No. I can not say that I represent any group of interests, outside of the American manufacturers at large.

Senator THOMAS of Oklahoma. You hold no official position at this time?

Mr. BURGESS. No.

Senator SACKETT. In what you will say do you speak for the American manufacturers as a whole?

Mr. BURGESS. I can not say that I speak for them as a whole, but I speak for a very large portion of the American manufacturers, I think, and I know that they would indorse what I have to present.

Senator REED. Are you retained to appear here in behalf of anybody?

Mr. BURGESS. No, sir.

Senator REED. You are not paid for your appearance here before the committee?

Mr. BURGESS. No.

Senator REED. You come as an aid to the committee to that extent?

Mr. BURGESS. Purely that; yes, sir.

Senator THOMAS of Oklahoma. Are you a manufacturer yourself?

Mr. BURGESS. I am interested in manufacturing; yes.

Senator THOMAS of Oklahoma. In what phase of it?

Mr. BURGESS. In china manufacture. I have been connected with that business for 50 years.

The CHAIRMAN. You may proceed.

Mr. BURGESS. The question being considered by your committee at this time is not a partisan question. It is not a question of protection or nonprotection, but is a question of honest and effective collection of duties which the Congress, when fixing the rates, intends shall be collected.

The basis of value for the assessment of rates is fundamental.

If we are to administer our tariff legislation in actual fact and not merely in theory, we must ourselves control not only the rate of duty but the base to which that duty applies.

Since the foundation of our customs-revenue system this basis of value has been fixed by the foreign manufacturer or producer. In other words, so-called foreign-market values have been the values upon which our duties have been assessed. We would place ourselves in a ridiculous position if the corollary of our present valuation project would be to establish a base and then to say to the foreign exporter to the United States, "We have fixed the base, now select your own rate."

It is a corollary because up to the present in our ad valorem duties we have established a rate and have said to the foreign producer and his importing representative in this country, "Name the base to which these rates shall apply."

In the early days the variety and quantity of imports were small, compared wth the ever-increased demand of our present civilization.

There are certain staple articles which have a fixed world-market value. These can easily be ascertained, but such imports are few, compared with the large number of imports entering our ports from every part of the world.

An open invitation is extended by this method of assessing duties for undervaluation, and many and varied are the methods used by foreign producers and domestic importers to evade our tariff law.

The undervaluation of foreign merchandise entering our ports, dutiable upon an ad valorem rate, has been steadily increasing during the last 50 years or more. These methods have become more systematized and stabilized, and one could almost say legalized, since the enactment of the present law.

You are familiar with the provisions of paragraph 402 of the act of 1922, where the five methods are provided for in the establishment of a base for applying duty, namely:

(1) The foreign or export value, whichever is the higher;
(2) The United States value;
(3) The cost of production; and
(4) The so-called American value.

The first provision provides for two bases, namely, the foreign-market value and the export-market value. This provision has opened the door to an immense amount of undervaluation.

It will be remembered that the first provision was introduced in the present law at the time when money in certain European countries was greatly depreciated and values inflated. An American dollar would buy in many cases $2 worth of merchandise based on the foreign home market value. In such cases the law provided very properly this alternative provision, the implication being that there existed two values and when the two values were in existence foreign home market value and the export value, whichever of these two values was the higher, should be used as a basis for assessing duties.

This provision has been in my opinion misinterpreted and abused It is interpreted as providing for two separate bases of value, namely the foreign value and the export value.

It will be remembered that importers for many years tried to have a duty based upon an export value. This the Germans thought they had accomplished under the so-called Roosevelt tariff agreement, which provided that export values should be taken. Fortunately for the revenue of the country and the protection of industry, the appraising officers did not see any such provision in the law and continued their attempt to assess the duty upon the ascertained foreign market value.

Let us have clearly in our minds what these terms mean. The foreign or home market value means the price at which the foreign merchandise is freely sold to all purchasers, in the usual wholesale quantities, in the ordinary course of trade in the country or production.

The export value means the price at which the foreign merchandise is sold for exportation to the United States to all purchasers, in the usual wholesale quantities and in the ordinary course of trade.

By the insertion of this export provision it has made it comparatively easy for the importer to secure reductions of from 25 per cent to 60 per cent of their proper dutiable foreign home-market value. This has been accomplished by the foreign manufacturer making some slight alteration so as to make a difference between the goods sold to the foreign home trade and those for export to the United States, and making an enormous difference between the selling price.

In some cases such export goods are sold to several purchasers at the same export price, but in many other cases the goods are sold only to one export house and possibly to two or three stool pigeons in limited quantity. The law does not provide that sales shall actually be made to any number of persons but that the goods shall be "freely offered for sale to all purchasers." It is not an unusual thing, nor is it an unlikely thing, that a foreign manufacturer will freely offer his goods for sale, but when an actual purchase is desired to be made he finds himself so full of orders that he has to inform his purchaser that he will not be able to ship his goods within any reasonable time or to give some other such excuse.

As illustrative of how the law is evaded in this respect, I would cite the case of flooring and wall tiles made in Germany. These are sold in the German home market at a price 40 per cent higher than the same goods shipped for this country with the exception of a slight difference in size. All tiles sold in Germany are sold by the square meter; tiles measuring 5⅝ inches by 5⅝ inches, whereas the tiles exported to the United States measuring 6 inches by 6 inches are sold on the square-foot measurement. They are made for the same purpose and although there is a trifling difference in the size of each tile the adjustment between the metric measurement and the square-foot measurement could be easily made. This is not done, and the export value 40 per cent below the foreign home-market value becomes the dutiable value.

Another case in which the home market value in Germany was about 65 per cent higher than the export invoice price, was that of velvetine, the importer claiming that Germany required a finer finish than did the American market. This and other statements backed by 19 affidavits from the foreign manufacturer covering various phases

of his claims, were submitted to the Customs Court by the importer. The Government produced five expert witnesses, all of whom had been for years in the business in this country and who testified at the hearings that there was, from a trade standpoint, practically no difference in the various samples submitted and that they would accept the one imported quality on an order placed for the German market quality. On the other hand, the importer and one of his witnesses claimed a great difference in value between the samples submitted when they had the marks and numbers of the samples in their hands. When, however, under cross-examination, the samples were handed to the witnesses with the quality numbers turned under, both of these men still saw in the samples submitted a great difference in value. They were utterly astonished when the Government's attorney requested that they should look at the numbers while the samples were still in their hands and found that they were the identical marks and quality numbers. In spite of this testimony, the Government lost the case. It was evident from a decision rendered that the court considered the affidavits of the foreign manufacturers as having much greater weight than testimony of the Government's trade experts who gave their testimony in person and were subject to a grilling cross-examination by the importers' attorneys.

Senator SIMMONS. Let me ask you right there: Where was that court?

Mr. BURGESS. That was the United States Customs Court in New York, and it was sustained on points of law by the Customs Court of Appeals.

Senator SIMMONS. All right.

Mr. BURGESS. The terms used in our present law, namely, United States value and the American value, have been means of causing great confusion in the understanding of these provisions. The bill of 1922 left the House of Representatives based on the so-called American valuation; that is, the value or price at which merchandise such or similar to the imported merchandise and produced in the United States are sold in this country in the usual wholesale quantities and in the usual course of trade.

The United States value, however, differs from the American value very materially. The United States value is the value at which the imported merchandise is sold in the United States in the usual wholesale quantities and in the ordinary course of trade. The present law makes certain deductions, namely, an allowance of not more than 8 per cent for the general expenses and 8 per cent for profit or, if consigned, an allowance for commission of not more than 6 per cent if such commission has been paid or contracted to be paid in the duty. In other words, it is the method of arriving at a foreign dutiable value based on the American selling price of the imported article by mathematical calculation.

Where the importer has found it advantageous to discard the foreign value and an export value, claiming that neither one or the other exists he willingly accepts the present United States value.

The remaining provision of the law is that of cost of production; that is, the cost of manufacturing the foreign article in a foreign country. An attempt to find this cost has in most cases proved extremely unsatisfactory and has caused very great irritation on the part of the foreign manufacturer.

The difficulties in securing foreign values are almost insurmountable. I will attempt to name a few of these difficulties:

(1) Many foreign manufacturers, especially those on the continent of Europe and in the Orient, consider it quite proper and laudable on their part to evade in every conceivable way what they consider to be the unjust and iniquitous tariff laws of the United States.

(2) Some manufacturers think it advisable to give to our consuls and other officials, some information—such information is generally misleading and false.

(3) Others, more truthfully inclined, positively refuse to give information as to the foreign market sales price, stating that they consider such information irrelevant and claiming that they have a right to sell at such prices as they choose to the American producer regardless of our laws.

(4) The importer, when placed on the witness stand, invariably claims that he does not know the price at which the foreign manufacturer sells his goods in the foreign market for home consumption.

(5) The importer and foreign manufacturer have everything in their own hands. They know all the facts. On the other hand, the Government has no effective means of compelling the foreign manufacturer to furnish the information desired, except possibly by putting the screws on under section 510 of our law, which is very drastic and very rarely used. This provision has been left out of the House bill.

(6) Although the importer is supposed to furnish proof as to foreign market value when required, nevertheless the real burden of proof rests upon the United States to disprove the statement of the importer.

(7) Such information as can be secured by the special agents abroad is not considered the best evidence and is very frequently treated as of no value by some judges of the court as simply hearsay evidence.

(8) When the merchandise is imported and controlled by one house, it is necessary to establish a foreign market value, otherwise the duty would be assessed upon the United States value, the selling price of the imported merchandise within the United States with the statutory deductions. The establishing of this foreign value is generally accomplished through one of two methods, either by making a few sales throughout the foreign country of production at the same price as the importer's invoice will show or by making fictitious sales, that is, book sales.

To illustrate the first method: A foreign manufacturer making felt hats desired to establish a wholesale quantity value in the foreign country for dutiable purposes. To accomplish this he sold a large quantity of these goods to a friend in the hat business and in the same city. These goods were actually sold, billed, delivered, and paid for. The next day the manufacturer, through a third party, purchased back the same goods at a profit of 1 per cent to the dealer for the accommodation. These identical goods, still in the original packages, were shipped to the United States shortly after, the manufacturer thus having established absolute proof that such goods were sold in the country of production in large quantities and at the same price at which they were being exported to the United States. This, of course, was but one of a number of similar transactions.

Senator SIMMONS. How did you get the facts in the case you are citing to us as an illustration?

Mr. BURGESS. This case?

Senator SIMMONS. How can that be established, is my question really.

Mr. BURGESS. Many of them can be established by the cases that have come up in the customs court.

Senator SIMMONS. Was that a case that came up in the United States Customs Court?

Mr. BURGESS. This particular case I learned from the representative of the Government in Italy.

Senator SIMMONS. Could you give the committee, if we desire it, the names of the persons?

Mr. BURGESS. Yes, sir.

Senator SIMMONS. I should like to have it myself, and for the record.

Senator REED. Give us the name now if you remember it.

Mr. BURGESS. I do not recall his name offhand.

The CHAIRMAN. You may put it in the record at the proper place.

Senator SIMMONS. And his address and his business.

Senator SHORTRIDGE. Do you mean the shipper, the merchant, or the manufacturer?

Mr. BURGESS. I can not give the shipper's name. It was a Government official who give me the information, and whose name I can furnish.

Senator SHORTRIDGE. The names of whom can you not give?

Mr. BURGESS. The names of the exporters?

Senator SHORTRIDGE. The parties who perpetrated that fraud?

Mr. BURGESS. Yes, sir.

Senator SIMMONS. That is the name we want, of the man or the men who perpetrated the fraud.

Mr. BURGESS. Yes, sir.

Senator SIMMONS. You see we could not get it through the customs officer whose name you are to give the reporter.

Mr. BURGESS. I prefer to give that name to the committee in confidence, because it might look as if I was telling something that I should not tell.

Senator SIMMONS. Well, I do not know about the confidence.

Mr. BURGESS. But I do not know that that is important. I do not think he would hesitate to tell about it, or about having his name used.

The CHAIRMAN. You may go on with your statement.

Mr. BURGESS. As illustrating the other method of fictitiuos sales, one of the largest importers who also controlled the German factory, being fearful of an investigation, directed the manufacturer to be ready to show by his books that such goods were freely sold in Germany at the same price. The Government suspecting undervaluation on account of the invoice price, made an investigation. This investigation showed conclusively from a checking up of the books of the manufacturer that such goods were sold in Germany to 30 customers throughout the realm. Value seemed thus to be thoroughly established. There was, however, suspicion aroused by certain other transactions and the Berlin office was instructed to make another

and more thorough investigation. This investigation proved that the book sales were absolutely and entirely fictitious. Upon inquiry, it was found that not one of the concerns named in the books had ever purchased anything from the said manufacturer. The manufacturer being confronted with the facts, admitted the fraud and stated that he was simply following instructions from New York.

Senator SIMMONS. Was that a court case?

Mr. BURGESS. Yes, sir.

Senator SIMMONS. Was that developed on the trial?

Mr. BURGESS. Yes, sir; that was a court case.

Senator SIMMONS. Can not you give us the name of the case?

Mr. BURGESS. Yes; I could give you that name.

Senator SIMMONS. Give us the facts about the transaction.

Mr. BURGESS. All right.

Senator SHORTRIDGE. The name of the court, where it occurred, and all.

Senator SIMMONS. Yes; and when it occurred.

Senator REED. If you do not remember the name offhand, you can furnish the name for the record later.

Mr. BURGESS. It was the Quality Art Novelty Co., that is the name of the importer. The case did not come to the court, I now recall. A settlement was attempted out of court, and it has been seesawing backwards and forwards for a year, and is now in the hands of the Treasury Department.

The CHAIRMAN. Mr. Burgess, has not that already been collected? I know the Government official who made the investigation in Germany, and I think if I am not mistaken that they have already paid the duties that would have been imposed upon those goods.

Mr. BURGESS. So far as I am informed, Senator Smoot, the case has not been settled. It had not been settled two weeks ago. The importers have made a number of offers. The original amount of undervaluation claimed, with penalty, amounted to $104,000. There was a compromise offered of about $54,000, and they offered a settlement of $10,000. I understand that the Secretary was not satisfied with that, and returned it for a very much larger sum, with instructions to place the case in the hands of the United States attorney unless paid.

Senator KING. By way of analogy, although it is not quite germane, let me ask you this question: Is it not a fact that hundreds and thousands if not tens of thousands of American citizens in making their return for income taxes and corporation taxes have undervalued or made misrepresentations to the Government of the United States, necessitating suits and the levying of additional taxes by the Government?

Mr. BURGESS. I am not informed on that subject.

Senator SHORTRIDGE. What does that have to do with the inquiry here?

Senator KING. We will determine that. Is it not a fact that less than 5 per cent of the millions of transactions during the past 10 or 15 years in the matter of foreign valuations have been the subject of review by judicial authority and the administrative authorities set up by the Government of the United States, showing the fact that

measured by the enormous number of transactions the number of alleged undervaluations have been comparatively small, very small?

Mr. BURGESS. There have been thousands of cases of undervaluation at the various ports of entry. There have been, however, comparatively few decisions in favor of the Government on account of the lack of the possibility of getting proof that would stand in court.

Senator GEORGE. Do you mean to say that undervaluations are the rule or the exception to the rule?

Mr. BURGESS. No; I would not say they are the rule, because we have honest importers as well as honest men in every other line of business.

Senator GEORGE. We would infer that the rule is that they do give correct valuations.

Mr. BURGESS. I would answer that in the affirmative with qualifications: Every importer is going to take advantage of every loophole in the law. Take, for example, this exporter of whom I have spoken; the law was unduly taken advantage of in this particular case.

Senator GEORGE. That is not an uncommon practice. When you reverse the picture do not we have one price in America and another price for export?

Mr. BURGESS. In some commodities that may be so, and in the case of other commodities it is not so.

The CHAIRMAN. Senator George, within the last year or two, however, there has been no chance whatever of our representatives in foreign countries making examinations of the cost of goods or the sale of goods upon the books of any exporters there. That has been denied by France, and it has been denied by Germany, and it is a very hard task to even arrive at any positive facts. I suppose that will be the rule hereafter. Ordinarily in years past if one of our representatives, an attaché, should go into the office of a manufacturing concern, or a concern that imported goods, he might get some information, but that has been entirely stopped so far as France is concerned, and it is limited in most countries that are now importing goods to the United States.

Mr. BURGESS. Yes; and markedly so in Russia, where it is impossible on account of our relations to get any information.

Senator REED. Suppose we permit Mr. Burgess to go on and conclude his statement and then propound questions to him.

The CHAIRMAN. Yes; that will be the better plan. You may go on with your statement, Mr. Burgess.

Mr. BURGESS. One of the most serious results from foreign valuation has been the ill-feeling engendered toward this country on the part of foreign manufacturers, and more particularly on the part of the foreign governments.

Senator SIMMONS. Do I understand that you are contending these fictitious sales would be the selling price of these goods in the German market or in the market of the foreign country from which imported? Suppose they are fictitious sales, would there be any difficulty caused by that fact, or would it make it impossible, or highly difficult, I will say, to find out what was the real market selling price of that product in the country of exportation? I can see how there might be fictitious sales and how an exporter to this country might

want to avoid our tariff laws and defraud the customs of this country, but I do not see how by reason of an individual making a few fictitious sales he could affect the general selling price of a product in that particular country. Suppose it is a staple product, the selling price of that product is known, and fictitious sales can not change that selling price.

Mr. BURGESS. That is very true, Senator Simmons, in the case of staple articles, but these are not staple articles. In this particular case the article exported has absolutely no sale in Germany.

Senator SIMMONS. Suppose it is not a staple article but an article used in the commerce of that country, they could not change the real selling price of the article by a few fictitious sales.

Mr. BURGESS. No; you could not in the home country.

Senator SIMMONS. Don't you think our representative over there would be mighty lacking in alertness and diligence if he was misled by a few fictitious sales in the way of fixing the price at which a particular product is sold in the German market, assuming that the product is a general article of commerce in that country?

Mr. BURGESS. I hold no brief for the foreign representative, but——

Senator SIMMONS (interposing). I am not assuming that you do hold a brief for them, of course, but I am asking a question to elicit information.

Mr. BURGESS. But if you will not let me finish my statement——

Senator SIMMONS (interposing). Oh, I beg pardon. Go ahead.

Mr. BURGESS. The fact is that our foreign representatives have so many cases to investigate that they often have not the time to make thorough examinations. This particular examination of which I speak was the third examination that had been made.

Senator SIMMONS. That would mean that we need more representatives abroad.

Mr. BURGESS. Yes; more representatives and a greater appropriation.

Senator SIMMONS. The fault then is not with the law, not with the system, not with the method, but a failure of this Government to send enough agents abroad to ascertain the facts upon which the law is to be enforced.

Senator EDGE. What would be your estimate, Mr. Burgess, of the number of agents necessary to investigate all suspected cases of undervaluation, or at least a large majority of them?

Mr. BURGESS. That would be purely a guess, Senator Edge, but I think that ten times the number of those now there would be kept busy.

Senator SIMMONS. Don't you think if the Government had agents over there investigating these fictitious sales that we would be much better informed, and it would have an effect?

Mr. BURGESS. There is no doubt of that.

Senator SIMMONS. We might assume that we would get additional information at least, and would do some little good.

Mr. BURGESS. I have been interested in that, and have endeavored to get five additional men sent to Europe. But it has been impossible to get the desired results. Shortly after the bill of 1922 went into effect and the new administration took hold that force was increased

100 per cent in personnel. Two years ago, I think it was, I saw the report of the increase of personnel, and it showed 700 per cent increase in direct recoveries from their work, to say nothing of the vastly greater amount of revenue which would naturally follow these advances. This was but one case, of the one importer who had been caught in this unfair business. He would not try it again, not right away anyway, and therefore the additional duties are now coming into the Treasury.

Senator KING. I should like to ask you one question, if I may, and I apologize for interrupting again: Do you mean to say that if some representative of German or English business concerns came to the United States—and, by the way, what business do you represent?

Mr. BURGESS. I was a pottery manufacturer originally.

Senator KING. And that representative should try to find the wholesale price of the pottery business in the United States and went to you and 30 or 40 other manufacturers of pottery, and then went to the persons with whom you and they dealt, and inquired as to what those people paid, for the information is almost general, do you mean to say that in a few months he could not ascertain the general wholesale price in the United States?

Mr. BURGESS. I can answer that——

Senator KING (interposing). And is not there some relation between wholesale and retail prices of products, and could not he by going to the source ascertain something about the retail prices?

Mr. BURGESS. That would not be competent evidence as to the wholesale price.

Senator KING. I do not say that it would, but there is some relation, is there not?

Mr. BURGESS. Oh, yes.

Senator KING. You do not mean to say that there is no connection or no parity between wholesale and retail prices?

Mr. BURGESS. No; but they are not found that way very often. But I can answer your question——

Senator KING (interposing). Do you mean to say that wholesalers—you among them—if such a representative should visit you and those other men, that he could not obtain some reasonably correct ideas, one which would be capable of reasonable deduction by a man who knows the business, as to the price at which you are making your sales? Not the cost price, but the price at which you are making wholesale sales throughout the United States?

Mr. BURGESS. That is possible in a general way, but these general statements do not go in court; that is, they do not answer the requirement of the court as competent evidence.

Senator KING. May I use this by way of illustration——

Senator BINGHAM (interposing). Mr. Chairman, can not we permit the witness to give his answer to the first question before he is asked other questions? Let us afford him an opportunity to answer the questions as propounded. I should like to have the witness answer the first question that Senator King has asked him.

Senator KING. I supposed that he had answered it.

The CHAIRMAN. He had already answered it, as a matter of fact, in his previous statement.

Senator SHORTRIDGE. Why not let him finish his statement before we begin to question him.

Senator KING. I have no objection to that.

Mr. BURGESS. I have had some personal experience in this matter, and I can answer from personal experience and not from hearsay.

The CHAIRMAN. Well, do it now.

Mr. BURGESS. I have been called on by the Government six times to aid in ascertaining foreign-market values.

Senator KING. My questions were about domestic prices. If a person went to you and 30 other men engaged in the pottery business, don't you suppose he could ascertain the wholesale price in the United States pretty fairly?

Mr. BURGESS. There would be little difficulty in that.

Senator KING. That is all of my question.

Mr. BURGESS. But we are not dealing with the domestic values in this matter. We are talking about foreign values.

Senator SHORTRIDGE. If it can be done here in America, why could it not be done in Germany?

Senator KING. Yes; that is the very point.

Mr. BURGESS. Because it is not to their interest to have it done.

Senator EDGE. Yes; because Germany is paying the duties.

Mr. BURGESS. Germany is paying the duty to this country.

Senator SHORTRIDGE. Precisely.

Mr. BURGESS. In every conceivable way they have covered that price up. I want to say in this connection, following Senator King's request, that I can give you a little idea of the difficulties: I was for five months in Europe trying to find out the wholesale-selling price of one article. I knew that my way had been blocked because word had been sent from this country to the foreign country that I was over there and to look out for me. So every direct avenue of information was closed to me; that is, every avenue from which I could secure information that would amount to anything in a court of law as evidence was closed to me.

Senator BARKLEY. Was that article being imported into the United States?

Mr. BURGESS. Oh, yes.

Senator BARKLEY. Was there any difficulty in finding out what the American importers paid to the European manufacturers for that article?

Mr. BURGESS. There was only one importer bringing it into this country. We knew what he was selling it at because he was selling it at 25 or 30 per cent below what it could be manufactured for in this country. That is why I made the investigation. In order to try to accomplish that purpose, I employed a man in business to buy a large quantity of the goods in the country of manufacture.

Senator SIMMONS (interposing). Let me ask you right there: You suspected that this German product was being sold cheaper in this country than it was abroad?

Mr. BURGESS. Yes; we had every reason to think that. When I got to England I found that the English manufacturers could not make it for the price at which it was being invoiced to this country. As I was about to say, I employed a man in business there, having been

introduced by Consul General Roosevelt, who was a cousin of President Roosevelt. He started out good and earnest to purchase a large quantity of those goods. I got the information I wanted and came home, with the result of a 60 per cent advance. It was a surprise to the importers to learn that they had been discovered. Word was sent back to the old country that this man who had been assisting should be boycotted, not only in the country where he was, but in the various other countries producing the wares he handled. He was boycotted and driven out of business.

The CHAIRMAN. Mr. Burgess, if you will hasten on I shall be glad. We want to get through to-day, as we must, and you have already had one hour.

Senator SIMMONS. One more question: Were we exporting any of this product from this country to Germany?

Mr. BURGESS. Oh, no.

Senator SIMMONS. That is what I supposed.

Mr. BURGESS. Oh, no. The selling price of this article in this country was 60 cents, and the price at which they were selling the goods to this country was 19 cents.

Senator SIMMONS. Were we exporting any of that product to other countries?

Mr. BURGESS. No.

Senator SIMMONS. We were not exporting any of the product at all?

Mr. BURGESS. No, sir.

The CHAIRMAN. Now, proceed with your statement, Mr. Burgess.

Mr. BURGESS. The action taken by the French Government upwards of two years ago illustrates the bitter feeling aroused. It is not necessary for me to go into details. It is sufficient only to remind you that all investigations in France were ordered stopped and representatives of the Treasury Department were removed from France on February 1, 1928, except two whose dealings were confined to the matter of diamond smuggling.

If there was a reason for attempting to change the dutiable base in 1921 and 1922, there is a far greater reason for changing that base at the present time and getting away from foreign valuation.

A number of suggestions have been made, and, after careful investigation, I feel that a simple and effective method of assessing duties would be that of the wholesale selling price in the United States of the foreign merchandise; that, the price at which the foreign merchandise is freely sold and freely offered for sale to all purchasers in the usual wholesale quantities in the ordinary course of trade in the United States, less the estimated duty. This selling price must necessarily include the foreign cost of merchandise plus the manufacturer's profit.

Senator KING. And of course the freight across the Atlantic?

Mr. BURGESS. Yes; it must include all those things.

Senator KING. And insurance.

Mr. BURGESS. But I referred here particularly to the manufacturer's profit, which is the part that is evaded, the part of the value that can be juggled.

The selling price of an article in the United States is an ascertainable fact. No manufacturer or importer is going to continue selling his merchandise on anything but a profitable basis, whereas at the present time many goods are imported at little or no profit to the foreign manufacturer, and sometimes considerably below the cost when the profit is made in the selling of goods after they enter this country and the duty has been paid. The manufacturer's profit is returned to him by various routes.

In all tariff problems there are a number of things to be considered in the making of rates and especially so when the base of valuation is to be changed; but these problems, although they may appear to be great at first glance, are simple of solution compared with the extreme difficulty and often impossibility of securing honest foreign market values in the uttermost parts of the world. This difficulty is increased when the foreign manufacturer with the aid of the importer and his customs attorney determine that such true foreign value shall not be found.

Let me state a few advantages which would result from this change of base.

(1) The Government would not only have power to fix the rate of duty but also the securing of an absolute base upon which the rate would apply.

(2) The Government would collect vastly more revenue.

(3) The American manufacturer or producer would have increased protection without an increase in duty rate because the law could not be so easily evaded and they would receive the protection which Congress intended the industries should have.

(4) The power to secure facts and figures would be in the hands of our own officials. They could compel the attendance of all interested parties in cases of dispute. Both the seller and the buyer would be required to give truthful testimony and the Government agent could check both the seller's and the buyer's statements and their books. The whole legal process would be in the hands of our Government.

(5) The Government would then be free from all diplomatic entanglements and embarrassments which have been so frequent in recent years, caused by inquiries as to foreign values.

(6) It would reduce to the minimum, if not entirely eliminate, the necessity of maintaining an extensive corps of foreign Treasury agents who are now practically under the control of foreign governments and can be sent home if they become too active and thus become persona non grata.

(7) Those who through gross undervaluation are now reaping enormous profits out of this market and our people would at least be compelled to share those profits with the Government and thus reduce the unjust competition between them and the honest importers and producers.

There is no question in the minds of those familiar with the present methods of importation as to the advisability of getting away from a foreign-valuation basis and it is sincerely hoped that your committee will find some practical means of attaining this desirable end.

Senator EDGE. This one question, Mr. Burgess, you did not emphasize very strongly. You gave the illustration of the German producer where the goods were invoiced at 19 cents, as I recall it, and sold at 60 cents. I gather then, that your theory is that that 19 cents, being so much below the selling price in Germany, that the importer here is in partnership with the manufacturer, and returns a profit to him, otherwise the manufacturer in Germany, if that is all he was receiving for the goods, would be, of course, selling them at a big loss, would he not?

Mr. BURGESS. Just what happened under cover I do not know. But of course the German manufacturer, or the foreign manufacturer, must have had some further remuneration.

Senator BARKLEY. What was the product in question that you were testifying about a while ago?

Mr. BURGESS. They are cups and saucers.

Senator BARKLEY. Was the 19-cent and 60-cent price the price per cup and saucer, or per half dozen or per dozen?

Mr. BURGESS. Per dozen.

Senator BARKLEY. Would you tell what country they were manufactured in?

Mr. BURGESS. They were manufactured in Holland.

Senator SHORTRIDGE. The selling price in Holland was 60 cents, and it was invoiced at 19 cents?

Mr. BURGESS. No, no.

Senator SHORTRIDGE. What was it?

Mr. BURGESS. The American selling price of the American-made article was 60 cents. The English goods of the same kind was 62 cents landed here duty paid. These goods came over and were sold at 45 cents per dozen. We did not know how it could be done. I went to Europe, and, as I say, after five months—and just escaping German prison in attempting to find out some of these facts—we discovered that 19 cents was too low a price, and that 26 cents was about the dutiable price. There was an advance of 60 per cent made in the dutiable value of those goods.

Senator KING. What year was that you went over?

Mr. BURGESS. That was some years ago.

Senator KING. 1914?

Mr. BURGESS. No; that was back in 1905 or 1906.

Senator KING. Why did you not go back before the flood?

Mr. BURGESS. Well, Senator, I did not bring this matter up except as an illustration.

Senator KING. You brought it up here.

Mr. BURGESS. No; I was simply illustrating for Senator Simmons—or one of your questions.

Senator SHORTRIDGE. I think that is a very proper illustration.

Mr. BURGESS. It was an illustration from my own experience.

Senator SIMMONS. That was the reason we wanted to know the facts about your illustration.

Mr. BURGESS. Yes. The illustrations that I am using are——

Senator SIMMONS. We wanted to know the fact so that we might follow it up.

Mr. BURGESS. The illustrations that I am using are contemporaneous matters.

Senator KING. Are you in the pottery business now, Mr. Burgess?

Mr. BURGESS. No; I am a director in a pottery. Not in active management.

Senator KING. Was your company one of those recently prosecuted by the Government—pottery companies—for violating the Sherman antitrust law, and with a judgment against them?

Mr. BURGESS. No; that was the Sanitary Manufacturers. That was not in the tableware line at all.

Senator EDGE. He escapes.

Senator BARKLEY. Let me ask you, Mr. Burgess, have you estimated the percentage of increase in the tariff duties on all imports into the United States that would be involved in a change in the basis of valuation from foreign to American?

Mr. BURGESS. About 62 per cent of the goods, I think, coming into this country are on the free list. That leaves about 38 per cent on the dutiable list. About 40 per cent of that 38 per cent are on the ad valorem basis. The balance is on specific basis. So there is only a comparatively small amount that are directly affected by the change.

Senator BARKLEY. Then how do you estimate the accuracy of your statement a moment ago that change on this basis would mean a vast increase in revenue?

Mr. BURGESS. Because there is a very great revenue derived from ad valorem goods; ad valorem and the compounds.

Senator BARKLEY. But the amount brought in under ad valorem duty is comparatively small compared with the whole amount shipped into this country.

Mr. BURGESS. Yes; but that amounts to a good many million dollars when it is footed up.

Senator HARRISON. Do you think it would add anything to the price of the consumer?

Mr. BURGESS. No.

Senator HARRISON. Not a thing?

Mr. BURGESS. It is not our purpose in making this request to increase the amount of duty collected. It is simply to change it so that the rates fixed by Congress will be collected; change it so as to produce the same amount of duty.

Senator BARKLEY. Well, if the Congress should adopt the American valuation then are you advocating a reduction of the duty?

Mr. BURGESS. We are not advocating the American valuation, that is, the American selling price of the American-made article. We are advocating the American selling price of the imported article, known as the United States value.

Senator BARKLEY. Well, that is a difference in terms, but not in meaning.

The CHAIRMAN. Oh, yes; yes.

Mr. BURGESS. A very great difference.

Senator EDGE. You would consider it a considerable difference in totals, would you not?

Mr. BURGESS. Oh, yes; a very great difference.

Senator BARKLEY. In addition to the increase in duties involved in this bill, as already passed by the other branch of the Congress, there would be an automatic increase by the change in the basis of

the valuation which would add to the amount of duty, and therefore, to the cost of the product to the American importer, would there not?

Mr. BURGESS. No, sir.

Senator BARKLEY. Why not?

Mr. BURGESS. Because the rates would be adjusted to produce the same amount of duty.

Senator BARKLEY. Then if the article by which you illustrated your point, that was being invoiced at 19 cents, but the United States valuation of which was 60 cents, were changed so that the tariff would be levied on a 60-cent valuation, in order to produce the same amount of revenue there would have to be a reduction in the rate, would there not?

Mr. BURGESS. In that case there would.

Senator BARKLEY. In all similar cases there would?

Mr. BURGESS. That is a complicated question. That is where the difficulties come in, and where we have not time just now to discuss that in detail. We have thought it all out, and we are ready to answer the committee's inquiry when we have time to go into details.

Senator REED. I think the next witness is prepared to answer that.

The CHAIRMAN. Yes; if Mr. John G. Lerch is present we would like to hear from him.

Senator REED. Let me ask you one question, Mr. Burgess, in conclusion. Is this request which you now make to the committee inspired by a desire indirectly to raise the protection on particular articles?

Mr. BURGESS. Absolutely not, sir.

Senator REED. In other words, if you raise the base you would expect to diminish the rate of tariff, would you?

Mr. BURGESS. Yes; if necessary. There are some things that are not necessary, and other things that would be found to be necessary.

Senator REED. Well, it is always necessary to reduce the percentage, the ad valorem percentage rate if the amount of the base is increased, is it not?

Mr. BURGESS. Yes; it would be, taking your proposition just as you state it. But there are other ways of getting back by making a further reduction similar in a general way to the present United States values scheme, where there would be no reduction in the duty necessary.

Senator REED. In other words, it comes down to this, that your plan, as you suggest it, you think will enable us to get the duties out of which we are now being cheated by consignments to one's self and by undervaluations in invoices, and you are not expecting to get a larger amount of duty from an honest duty on the same article, is that right?

Mr. BURGESS. That is right, provided the rate fixed is a satisfactory rate on the foreign basis.

Senator REED. We are not talking about rates.

Mr. BURGESS. No.

Senator REED. Your suggestion, as I understand it, would apply just as well to the Underwood bill or the Fordney-McCumber bill, or any tariff bill?

Mr. BURGESS. Yes.

Senator EDGE. In other words, this is a formula, this is not an individual discussion of a schedule?

Mr. BURGESS. No.

Senator BARKLEY. Then you were not entirely accurate a while ago when you said that this change would involve a vast increase of revenue to the Government?

Senator REED. Yes; he is.

The CHAIRMAN. Yes.

Mr. BURGESS. Yes; by collecting a duty on the manufacturer's profit that is now evaded. There is often no duty being paid on that. I can give one illustration of what I mean. There is one large concern in this country that manufactures in France. They will not sell any goods in France to anybody in America. They sell through their American house. That American house takes orders and has the factory price, which is extremely low, re-bills the goods out at a very much higher price—one case that I know of was 115 per cent over invoice value—and charges the additional duty on that higher price, which has never been paid. If that particular importer had to pay his duty on the price at which he sells his goods here, even if it were on a 5 per cent commission basis, and he changed his method of doing business, the manufacturer's profit would have to be included in the dutiable price.

Senator BARKLEY. Can you give the name of that concern and what it produces?

Mr. BURGESS. I would prefer not to, unless it is very much desired. Because that goes back to ancient history in a way, too.

Senator BARKLEY. Well, I am not so much interested in ancient history as I am in current facts.

Mr. BURGESS. They conduct their business in the same way to-day.

Senator BARKLEY. You do not wish to give the name of that concern?

Mr. BURGESS. I prefer not to.

Senator KING. Mr. Chairman, I ask that he give the name of that concern.

Senator BARKLEY. I do not understand how we can check up the facts unless we know the source of this information.

Mr. BURGESS. I am willing to give the chairman the facts and the names, so all the members can know who they are.

Senator KING. May I ask you a question? I understood you to say a while ago that a change in basis of valuation would result in a greater degree of protection?

Mr. BURGESS. Yes.

Senator KING. In order to offset that you would have to reduce the rates, would you not?

Mr. BURGESS. In some cases the rates would probably——

Senator KING. Well, in all cases? If that is the rule, why would it not apply in all cases?

Mr. BURGESS. Because of the different methods of doing business in this country. Some sell on the foreign invoice price.

Senator KING. Well, you are not advocating reduction in rates on pottery, are you, if we adopt this new basis of valuation?

Mr. BURGESS. I think there would have to be a little reduction in the pottery line, because the expenses of bringing this ware over are

high. That is, the freight charges are high. The commission is higher than in some lines of industry.

Senator BARKLEY. If you adopted that basis, in view of the fluctuation or variations in the prices of pottery from time to time, how would you know precisely how much of a reduction to bring about in order to adjust the difference?

Mr. BURGESS. It would have to be done in an arbitrary way, to an extent, just as the present law provides for those 8 per cent reductions.

Senator EDGE. The tariff is more or less arbitrary, is it not?

Mr. BURGESS. Yes.

Senator THOMAS of Oklahoma. Mr. Burgess, you stated a while ago that you had spent a considerable time abroad, and you also stated in your prepared statement that foreigners regarded American tariff laws as iniquitous.

Mr. BURGESS. Yes.

Senator THOMAS of Oklahoma. Is that because we have laws at all that provide for a tariff or because the tariff is too high?

Mr. BURGESS. No; because we have laws that affect them, I should say, adversely. They would like to have the doors wide open to dump their products into this country without any restriction.

Senator BARKLEY. How do American exporters feel toward tariff walls in other countries?

Mr. BURGESS. I am not particularly familiar with the export business.

Senator BARKLEY. The same streak of human nature runs through all classes of people?

Mr. BURGESS. Yes.

Senator HARRISON. Mr. Chairman, we did not go farther about this suggestion of giving us the name of this particular concern against which the witness complained. Can we not get that name? I do not see how the committee is ever going to get the facts unless we would bring these people here and inquire of them when certain statements are made touching their business.

Senator BINGHAM. There would not have been any difficulty in having the witnesses give such information had the wishes of certain members of the committee been followed and the hearings held as executive hearings. However, those that insisted on public hearings prevailed, so that you can not get the information that way.

Senator HARRISON. We can get it. I move that the witness give the information to the committee.

The CHAIRMAN. Mr. Burgess, let me ask you a question before I put that motion. This case has been before the committee on numerous occasions. Is it not of record?

Mr. BURGESS. Yes.

Senator SHORTRIDGE. What is the case?

The CHAIRMAN. Why not give it, because I can look and find it, but why not tell it right now?

Mr. BURGESS. The whole history of the case is embodied in what is known as the Limoges investigation.

The CHAIRMAN. That is right.

Senator BARKLEY. Is it not public?

Mr. BURGESS. Yes.

Senator BARKLEY. Why the secrecy about it? Why should it not be given? Why should it be held confidential? This whole proposition affects all the people of the United States.

The CHAIRMAN. Senator Barkley, we have this same testimony in previous hearings. We had it before, in 1922.

Senator KING. How long ago was that investigation?

Mr. BURGESS. That investigation was 1912.

Senator KING. 1912. Mr. Burgess, one other question and I am through. You have been before other tariff hearings, have you not, representing the pottery interests as—I will not say as a lobbyist—but as a witness, and you have mentioned these illustrations which you have given to-day in all of the testimony you have given since the time that that occurred, have you not?

Mr. BURGESS. I have mentioned some of them several times.

Senator KING. Yes. You are just detailing now ancient history for the purpose of trying to influence this committee?

Mr. BURGESS. I am not, sir. I resent the suggestion.

Senator KING. What are you detailing it for if it is ancient history?

Mr. BURGESS. I am detailing these two cases because you gentlemen here asked me for it. I did not bring up anything of that kind.

Senator KING. You have given those as illustrations of what you regarded as the infirmity of the present law.

Mr. BURGESS. Yes; when the question has been asked what I know about it.

Senator EDGE. Mr. Burgess, you were a member of the Tariff Commission during what years?

Mr. BURGESS. 1921 to 1925.

Senator EDGE. Naturally, your information on matters of that kind would go back more or less to the time when you were connected with the public service, would it not?

Mr. BURGESS. Yes; a good deal of it.

Senator KING. You were not connected with the public service way back in 1905, were you?

Mr. BURGESS. No; not directly. I assisted the Government.

Senator KING. Nor 1912?

Mr. BURGESS. No. I was assisting a special commission.

Senator KING. No. You were simply on the Tariff Commission, appointed by Mr. Harding in 1921?

Mr. BURGESS. Yes.

Senator KING. And served for a few years?

Mr. BURGESS. Yes, sir.

Senator KING. And left that and went back as a representative of the pottery interests of the United States, which you are now representing here in testifying before this committee?

Mr. BURGESS. I am not, sir.

Senator KING. Who do you represent?

Mr. BURGESS. I represent myself.

Senator KING. Who else?

Mr. BURGESS. Nobody else, except in a general way a group of manufacturers who are interested in this subject of United States valuation—the change in base for foreign valuation.

Senator KING. You have been in conference with a number of them before testifying?

Mr. BURGESS. Yes.

Senator EDGE. Mr. Chairman, may I interject right here? Is it going to be the policy of this committee that they shall not hear representatives of organized business who plainly and frankly state their associations?

Senator KING. Senator, I have no objection to anybody testifying, but I want to know their interest. If a man goes on the stand in any case from petit larceny to grand larceny, or any other case, you are entitled to know his interest.

Senator EDGE. You are entirely correct.

Senator KING. Whether he is interested or disinterested.

Senator REED. Senator King, the witness stated his connections in full before you came in.

Senator EDGE. I inferred from the Senator's questions that it was something to be hidden, if a man really represented legitimately various business interests, either collectively or individually.

Senator KING. I am afraid the Senator's deduction from this is just as wrong as in many other instances.

Senator EDGE. The Senator is very glad to make his deductions quite public, because when American business men can not have representatives before the Finance Committee of the United States Senate, the Finance Committee had better adjourn.

Senator KING. They will always be heard, and I expect them and welcome them, but I want to know their interests, that is all.

Senator REED. Let us get on to the next witness.

The CHAIRMAN. Mr. Burgess in his opening statement gave exactly what his connection was, why he was here, and all, in detail.

Senator EDGE. Why, of course.

The CHAIRMAN. He did not try to cover it.

Senator SACKETT. We can not hear what is going on.

Senator REED. That is one of the advantages of public sessions, that you can not hear half of what is said.

Mr. BURGESS. Senators, I have laid before the members of the committee the concrete proposition that we have to offer.

The CHAIRMAN. The stenographer will put it in the record.

(The matter referred to is as follows:)

TO CHANGE BASE OF AD VALOREM DUTIES FROM FOREIGN VALUE BASE TO UNITED STATES VALUE BASE

LAW WILL READ

SEC. 402. *Value.*—(*a*) For the purposes of this act the value of imported merchandise shall be—

(1) United States value:

(2) If the United States value can not be ascertained to the satisfaction of the appraising officers, then the American selling price of any similar or competitive merchandise manufactured or produced in the United States.

(3) If neither the United States value nor the American selling price can be ascertained to the satisfaction of the appraising officers, then the cost of production.

(b) The United States value of imported merchandise shall be the price at which such imported merchandise or imported merchandise closely resembling or competitive with the particular merchandise under appraisement, is freely offered for sale, packed ready for delivery, in the principal market of the

United States to all purchasers, at the time of exportation of the imported merchandise, in the usual wholesale quantities, and in the ordinary course of trade, with allowance of estimated duty at time of entry.

In determining value on the basis of merchandise closely resembling or competitive with the merchandise under appraisement, such adjustments may be made as are necessary to equalize differences.

(c) The American selling price of any similar or competitive merchandise manufactured or produced in the United States shall be the price, including the cost of all containers and coverings of whatever nature and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for delivery, at which such merchandise is freely offered for sale to all purchasers in the principal market of the United States, in the ordinary course of trade and in the usual wholesale quantities in such market, or the price that the manufacturer, producer, or owner would have received or was willing to receive for such merchandise when sold in the ordinary course of trade and in the usual wholesale quantities, at the time of exportation of the imported merchandise.

For the purposes of this subdivision (c) any imported merchandise provided for in this act shall be considered similar to or competitive with the domestic merchandise if such imported merchandise displaces domestic merchandise or accomplishes results substantially equal to those accomplished by the domestic merchandise when used in substantially the same manner.

In determining value on the basis of merchandise closely resembling or competitive with the merchandise under appraisement, such adjustments may be made as are necessary to equalize differences.

(d) For the purpose of this title the cost of production of imported merchandise shall be the sum of—

(1) The cost of materials of, and of fabrication, manipulation, or other process employed in manufacturing or producing such merchandise in the United States, at a time preceding the date of exportation of the particular merchandise under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business;

(2) The usual general expenses (not less than 10 per centum of such cost) in the case of such merchandise produced in the United States;

(3) The cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing such merchandise in condition, packed ready for shipment in the United States; and

(4) An addition for profit (not less than 8 per centum of the sum of the amounts found under paragraphs (1) and (2) of this subdivision) equal to the profit which ordinarily is added, in the case of merchandise of the same general character as the particular merchandise under consideration, by manufacturers or producers in the United States who are engaged in the production or manufacture of merchandise of the same class or kind.

CHANGES FROM PRESENT LAW

[Matter to be omitted is inclosed in black brackets; new matter is in italic]

SEC. 402. VALUE.—(a) For the purposes of this Act the value of imported merchandise shall be—

(1) [The foreign value or the export] *United States* value, [whichever is higher;]

(2) If [neither the foreign value nor the export] *the United States* value can *not* be ascertained to the satisfaction of the appraising officers, then the [United States value;] *American selling price of any similar or competitive merchandise manufactured or produced in the United States;*

(3) If neither the [foreign] *United States* value, [the export value,] nor the [United States value,] *American selling price* can be ascertained to the satisfaction of the appraising officers, then the cost of production;

[(4) If there be any similar competitive article manufactured or produced in the United States of a class or kind upon which the President has made public a finding as provided in subdivision (b) of section 315 of Title III of this act, then the American selling price of such article.

[(b) The foreign value of imported merchandise shall be the market value or the price at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all

purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, including the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed read for shipment to the United States.

[(c) The export value of imported merchandise shall be the market value or the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States. If in the ordinary course of trade imported merchandise is shipped to the United States to an agent of the seller, or to the seller's branch house, pursuant to an order or an agreement to purchase (whether placed or entered into in the United States or in the foreign country), for delivery to the purchaser in the United States, and if the title to such merchandise remains in the seller until such delivery, then such merchandise shall not be deemed to be freely offered for sale in the principal markets of the country from which exported for exportation to the United States, within the meaning of this subdivision.]

(b) [(d)] The United States value of imported merchandise shall be the price at which such [or similar] imported merchandise *or imported merchandise closely resembling or competitive with the particular merchandise under appraisement,* is freely offered for sale, packed ready for delivery, in the principal market of the United States to all purchasers, at the time of exportation of the imported merchandise, in the usual wholesale quantities and in the ordinary course of trade, with allowance [made for duty, cost of transportation and insurance, and other necessary expenses from the place of shipment to the place of delivery, a commission not exceeding 6 per centum, if any has been paid or contracted to be paid on goods secured otherwise than by purchase, or profits not to exceed 8 per centum and a reasonable allowance for general expenses, not to exceed 8 per centum on purchased goods,] *of estimated duty at time of entry.*

In determining value on the basis of merchandise closely resembling or competitive with the merchandise under appraisement, such adjustments may be made as are necessary to equalize differences.[1]

(c) [f] The American sell ng price of any *similar or competitive merchandise* [article] manufactured or produced in the United States shall be the price, including the cost of all containers and coverings of whatever nature and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for delivery, at which such [article] *merchandise* is freely offered for sale to all purchasers in the principal market of the United States, in the ordinary course of trade and in the usual wholesale quantities in such market, or the price that the manufacturer, producer, or owner would have received or was willing to receive for such merchandise when sold in the ordinary course of trade and in the usual wholesale quantities, at the time of exportation of the imported [article] *merchandise.*

For the purposes of this subdivision (c) any imported merchandise provided for in this act shall be considered similar to or competitive with the domestic merchandise if such imported merchandise displaces domestic merchandise or accomplishes results substantially equal to those accomplished by the domestic merchandise when used in substantially the same manner.[2]

In determining value on the basis of merchandise closely resembling or competitive with the merchandise under appraisement, such adjustments may be made as are necessary to equalize differences.[3]

(d) [e] For the purpose of this title the cost of production of imported merchandise shall be the sum of—

(1) The cost of materials of, and of fabrication, manipulation, or other process employed in manufacturing or producing such [or similar] merchandise *in the United States,* at a time preceding the date of exportation of the particular merchandise under consideration which would ordinarily permit the

---

[1] Necessitated by decisions of court, TD 42714 and TD 42837.
[2] Reprinted from par. 28 and sec. 315, tariff act of 1922.
[3] Necessitated by decisions of court, TD 42714 and TD 42837.

manufacture or production of the particular merchandise under consideration, in the usual course of business;

(2) The usual general expenses (not less than 10 per centum of such cost) in the case of such [or similar] merchandise *produced in the United States.*

(3) The cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing [the particular] *such* merchandise [under consideration] in condition, packed ready for shipment [to] *in* the United States; and

(4) An addition for profit (not less than 8 per centum of the sum of the amounts found under paragraphs (1) and (2) of this subdivision) equal to the profit which ordinarily is added, in the case of merchandise of the same general character as the particular merchandise under consideration, by manufacturers or producers in the [country of manufacture or production] *United States* who are engaged in the production or manufacture of merchandise of the same class or kind.

REASONS FOR SUGGESTED CHANGES

The foreign-value basis of assessing ad valorem duties has had a long trial and has progressively, over the period of its application, shown its unsoundness. The possibility of this basis of valuation as a source of international complications and diplomatic embarrassments has within the last eighteen months been amply demonstrated in the controversy with the French Government which threatened to assume the proportions of open tariff warfare between the United States and France.

Other countries are prepared to follow the lead of France in demanding the recall of our Treasury Department investigators, thus making it impossible to check the accuracy of foreign value in those countries. That these demands have not been pressed is doubtless due to the pending American tariff revision with its attendant uncertainty as to the basis of value to be adopted.

The foreign valuation basis has made it possible for unscrupulous importers grossly to undervalue the commodities they bring into this country, has defrauded our Government of customs revenues, has deprived American producers and labor of the protection Congress intended them to have, and has given the dishonest importer an unfair advantage over his honest competitor. The adoption of a United States valuation basis for the assessment of ad valorem duties will bring the venue to the United States.

United States value.—United States value has long been a basis for assessment of duties. It is now defined under section 402 (d) as the selling price in the United States of the imported article in the principal market of the United States in the ordinary course of trade and in usual wholesale quantities, less the statutory deductions for duty, overhead, profit, freight, and insurance. Instead of these several deductions the new tariff laws should be based on a United States value which will make allowance only for the duty assessed at the time of importation. Thus in the case of an imported commodity which pays a duty of 50 per cent and sells in the United States for $1.50, this price would be 150 per cent of the dutiable value which would be $1.

Inasmuch as the word "similar" now appearing in section 402 has been narrowed in its application by the United States Court of Customs Appeals, more comprehensive language is used for the word "similar." The adoption of this provision would overcome all the evils of the present system of dutiable value, would give to American labor, industry, and agriculture that measure of protection intended for them under the law, and result in an increased revenue to the Government through the prevention of the undervaluation of imports now possible.

American selling price (American valuation).—Wherever it is impossible to determine the United States value of imported merchandise, and in the case of commodities covered by Paragraphs 27 and 28 of Schedule 1 of Title I, the basis of American selling price substantially as now defined in section 402 (f) is used.

For six years this form of valuation has been applied to paragraphs 27 and 28 of the law of 1922, the most complex and difficult line of commodities to which it could have been applied. It has been challenged, litigated in our courts, and in every particular found practical and capable of application. Unlike all forms of valuation heretofore defined in tariff acts, it defines as the comparable

or similar merchandise to which it applies, that which will produce substantially equal results when used in substantially the same manner.

The present definition of American selling price for duty purposes is made the concept of competition on a basis for comparison between the imported and domestic merchandise in addition to the test of similarity.

This form of valuation wherever applied will work in the same manner that experience has shown it to have worked in the coal-tar industry and the use of the American selling price basis will automatically hold down the selling price to the consumer in the United States.

Cost of production in the United States.—The cost of production of imported merchandise or merchandise similar to that imported has long been an alternative method of appraising imported merchandise. This method calls for the cost of materials, fabrication, and manipulation, plus general expenses, plus packing, plus profit—all foreign elements, and is to be used as the last means of ascertaining value or after every other form has failed of application. In every case in which it has been used, it has been difficult to ascertain accurately. In some cases it has led to an embargo and in others to diplomatic differences between the United States and foreign countries. While it is a necessary and accurate alternative means of ascertaining value, all of the difficulties arise by reason of the fact that it is ascertained abroad. It is retained but applies to cost of production in the United States of identical merchandise or merchandise of the same general character to the imported merchandise in question.

STATEMENT OF JOHN G. LERCH, NEW YORK CITY, REPRESENTING THE AMERICAN TARIFF LEAGUE

Mr. LERCH. Mr. Chairman and Senators, I am customs attorney, New York, representing both importers and domestic interests. And I appear here on behalf of the American Tariff League, a body of domestic interests advocating a change of base from foreign value to some form of value having for its base all the facts within the jurisdiction of the United States.

Mr. Burgess has given you the proposal which we made to the House of Representatives. That is a change to United States value or American selling price, either one being the first basis, with the other as the alternative, and cost of production in the United States as the second alternative.

Under the present law we had five different bases of values—the foreign value, the export value, the United States value, the foreign cost of production, and the American selling price, or, synonymously termed, the "American valuation." All of those bases have been applied under the present law.

I might say also that from 1912 to 1925 I was in the Government service. From 1920 to 1925 I was in charge of all litigation on value questions in the Department of Justice, all over the United States. Now, the foreign value plan has as its basis, or the facts governing it, the price at which merchandise is freely offered for sale in usual wholesale quantities in the ordinary course of business in the principal market of the foreign country, be that India, Africa, Asia, or what not. The principal market of Congo Free State for any commodity would be the governing fact in the foreign value. The price at which it sells in wholesale quantities in that market.

The next is the export value. Much the same. The price at which it is freely offered for sale in the principal markets in the foreign country in the ordinary course of business, the usual wholesale quantities, for exportation to the United States. The other being for home consumption. This being for exportation to the United States.

The United States value, which was to be taken in the absence of both the foreign value and the export value—the United States value. That is the thing which we are advocating here now, which has been in the law since 1913 in very much the same form that we are now proposing. That says the price at which it is freely offered for sale in the principal market of the United States, the imported merchandise freely offered in wholesale quantities in the ordinary course of business.

Senator HARRISON. Suppose it is not offered in wholesale quantities?

Mr. LERCH. Then we have the other plan, the cost of production, to cover that.

Senator REED. You are now talking of the present law?

Mr. LERCH. I am talking now of the present law and the plan under which we have been operating and are now operating. The United States value under the present law makes deductions for duty, cost of handling, overhead, and profit. In our proposal we propose deducting duty only.

Cost of production under the present law. That is the cost of materials in the foreign country, manipulated by similar manufacturers or business houses, the cost of fabrication, and the percentage for overhead and profit.

Senator SIMMONS. That is the fourth alternative?

Mr. LERCH. That is the third alternative under the present law. That is the fourth plan, or third alternative.

Senator SIMMONS. The fourth plan.

Mr. LERCH. Yes. Then we have the American selling price, which under the present law was confined to paragraphs 27 and 28, the coal-tar paragraphs. That provision has for its facts the selling price in wholesale quantities in the ordinary course of business of the competing domestic-made article to that which is before the appraising officer.

Coming back to foreign value, the reason why and the fundamental reason why we ask that you change from that basis is that it is practically impossible to ascertain. Mr. Burgess has given you some of the reasons. But assuming that we had 500 representatives of the American Government in every principal shipping country of Europe, Asia, and the world, and they made just as fine reports as could be made of facts which they would ascertain on the investigations they made, what have we got then? I have handled literally thousands of them and presented them to the courts. But against that we have a lot of hand-picked, hand-made affidavits that cost $2.50 abroad; that is all, just a little effort and $2.50 paid to an American consul. The special agent shows that they are not truthful in many cases. I do not say that there are not a great many honest importers, but in very many cases those affidavits are framed to fit the case.

Now, you have a half dozen of those gentlemen. I have a special agent's report—speaking for the Government—showing book transactions to support the Government's appraisal. What is the court going to believe—a sworn statement in the form of an affidavit, beautifully executed, and which purports to give facts, against a statement of a Government officer who may or may not have been

diligent and ascertained accurately the facts in the case? What do we get? We get what is said in the affidavits 9 times out of 10. Now, that is what you have got if you have got the very best that I ever had to offer as a Government attorney in one of these cases.

Since I have been representing importers I had this experience: An importer came to me to defend his case, or prosecute his case, where he had been advanced by the appraiser. I asked him the facts and he told me, "You draw up an affidavit and I will get it signed. Draw up an affidavit that will win the case." Now, I dare say that I could draw up 100 of them and send them abroad and have them executed and use them as occasion requires.

That is the thing that we are up against in the form of foreign value.

Senator HARRISON. What happened with that case?

Mr. LERCH. I did not take it. Under our scheme the United States value, if adopted, or American selling price, we have all the facts in the United States.

Senator SIMMONS. Would you adopt that to the exclusion of the other alternative?

Mr. LERCH. No; I propose, as is shown by this printed proposal here——

Senator SIMMONS. That is one of the alternatives?

Mr. LERCH. That is one of the two which we advocate as the basis of this bill. Under the United States value you can send out and bring in the importer, put him on the stand under oath, cross-examine him, bring in his books, have those examined in court. You can bring in his competitor who will check those statements. There is no chance of manipulation, or, if there is attempted manipulation it will pretty soon show under cross-examinatio[illegible]rrive accurately at a true value. That is what [illegible]eant when he said it would greatly incre[illegible], we would collect duty on an actua[illegible]ipulated basis.

The CHAIRMAN. A[illegible] on alter[illegible] to be used in every case?

Mr. LERCH. No; [illegible]pose that [illegible]ates [illegible]sed in every case.

Senator GEORGE[illegible]

Mr. LERCH. Th[illegible]

Senator REED. [illegible]

Mr. LERCH. Yes[illegible]or.

Senator REED. T[illegible] a suspi[illegible]h[illegible]among so[illegible]the members of the co[illegible] that th[illegible]an indir[illegible] of raising duties again[illegible] imp[illegible]he an[illegible]that, if there is an answe[illegible]

Mr. LERCH. My ju[illegible]very hon[illegible]uld be for it, for this reason, [illegible]pay duty o[illegible]ilar and cent value that his compe[illegible]y not, depending on whether his co[illegible]npulating his invoices, in manipulating the ci[illegible]overn value under the foreign-value plan.

Senator REED. But the American selling price is in every case necessarily higher than the foreign invoice price, is it not?

Mr. LERCH. The American selling price—and by that, Senator, do you mean the selling price of the domestic article?

Senator REED. No, no; I mean the selling price of the imported article is necessarily higher than the invoice price of that same article abroad?

Mr. LERCH. It is.

Senator REED. Therefore if your plan were not to result in a general increase in tariff rates you would have to reduce the ad valorem rates stated in the bill, if we adopt your plan; is that not so?

Mr. LERCH. Only to a very limited extent.

Senator REED. Well, it would have to be done to some extent?

Mr. LERCH. To a very limited extent; yes, Senator Reed. For instance, in a very great proportion of the merchandise imported today it is done on a commission basis of 1 to 5 per cent. Are you going to adjust a rate to take care of, let us say, 30 per cent of 3 per cent?

Senator REED. Well, that is approximately 1 per cent.

Mr. LERCH. Well, possibly then you would raise it 1 per cent.

Senator REED. In other words, I think that anybody who sincerely advocates this on the ground that it will prevent fraud and put a surer basis in effect ought in sincerity to advocate a corresponding reduction of the ad valorem rates.

Senator GEORGE. Would not your basis of valuation necessarily raise the amount of the duty paid by the honest importer?

Mr. LERCH. Why, no, because it is to be assumed now if he does business on a 1 per cent commission basis that he is actually paying on the true foreign value, which would be the United States value all but 1 per cent. So that it would raise his value just 1 per cent. However, if he is doing business here and the nature of that business requires an overhead of, say, 20 per cent, and that can not be changed over to this commission form of basis so as to obviate the necessity of paying that overhead, then that duty will have to be changed.

Senator REED. Reduced.

Mr. LERCH. Reduced; yes.

Senator SACKETT. Mr. Lerch, would not freight come into that question as well as 1 per cent commission?

Mr. LERCH. In my exprience in handling these invoices, freight, and insurance in over 90 per cent, I would say, amount to less than 1 per cent.

Senator SACKETT. Still, it amounts to something and has to be taken into consideration.

Mr. LERCH. Certainly.

Senator SACKETT. Are there any other matters besides the freight and the per cent to be received, that should be taken into consideration?

Senator REED. The duty, of course.

Mr. LERCH. Of course, there is the duty which we advocate taking out. And always has been.

Senator SACKETT. How about packing and all that sort of thing?

Mr. LERCH. That pays duty now and always has.

Senator SACKETT. In taking the foreign value do you take into consideration the cost of packing?

Mr. LERCH. The definition of "foreign value" is packed ready for shipment to the United States, so it includes all packing.

Senator SACKETT. And all charges are taken into account?

Mr. LERCH. All charges except insurance and freight. I mean by that ocean insurance and freight.

Senator SACKETT. Well, then, ocean insurance would have to be added in taking this United States value?

Mr. LERCH. That, I say, amounts to in a great majority of the cases, to less than 1 per cent.

Senator SACKETT. And whatever those things were then you would have to reduce the amount of duty in proportion, would you not, in each article?

Mr. LERCH. That, of course, would be a subject for the consideration of this committee.

Senator SACKETT. Why would you not have to do that if you were not going to raise the duty?

Mr. LERCH. Well, as I said, if you had the one-half of 1 per cent as the freight and insurance, and you had that individual selling in this market on a 1 per cent commission basis, then you have 1½ per cent increase. If that is sufficient to warrant this committee in reducing that rate, say, one-tenth of 1 per cent so that the importer would not have to pay duty on that 1½ per cent increase in the total value, then you will have to consider it. But if you are going to ignore that one-tenth of 1 per cent decrease in rate which would take care of that, then I say you do not have to bother with it.

Senator BARKLEY. If you had to resort to one of your alternatives to using the American selling price as the basis of an import duty, then all these considerations of freight and ocean insurance would be irrelevant. You would have to base your tax upon the American selling price?

Mr. LERCH. That is right, if we adopt the American selling price or American valuation.

Senator BARKLEY. Regardless of the cost abroad; regardless of all of these other things?

Mr. LERCH. That is right.

Senator BARKLEY. So that in that case there would automatically be an increase in the duty.

Senator SHORTRIDGE. Mr. Chairman, perhaps I have already offended against what I am now going to suggest, but I venture to suggest that we permit the witness to make his statement direct, and then several Senators, if disposed, cross-examine by individual questions.

The CHAIRMAN. I made that suggestion.

Senator SHORTRIDGE. I have offended, myself.

Senator BARKLEY. Well, it is difficult to observe that rule.

Senator SHORTRIDGE. I grant you that.

Senator BARKLEY. Because something occurs to you on the moment that you may forget if you do not ask at the time.

Mr. LERCH. Well, I am willing to answer questions, Mr. Chairman. I am used to it.

Senator SIMMONS. I know it will take longer time, Senator Shortridge, but I believe that we come nearer getting the information that

we want if we ask the witness questions about statements as he makes those statements. If we wait until he gets through we will forget all about it, in many instances.

Senator SHORTRIDGE. Well, maybe so. I would like to hear him fully set forth his reasons for the suggestions made.

Mr. LERCH. Now, just in line with the questions that have been given me so far. The United States value is nothing new. We have had it. It has been in the tariff laws for years. It is to be assumed that when you wrote the last tariff act you certainly equalized—since that I believe, was the Republican yardstick—the cost of production abroad and that here.

Senator HARRISON. Where did you get that idea?

Mr. LERCH. I read it somewhere.

Senator HARRISON. We have not heard that in a long time.

Senator SHORTRIDGE. It is a very good doctrine.

Senator HARRISON. It is. If you stick to it you will get along very well.

Senator SHORTRIDGE. We have.

Senator EDGE. We have not heard it disproved.

Mr. LERCH. Let us use that as a violent assumption.

Senator HARRISON. Well, it is a violent assumption.

Mr. LERCH. And assume that 30 per cent, a rate given in the tariff law, exactly did that on foreign values. Then suppose that product went out of fashion in the foreign market, and there was no more sale over there in the usual wholesale quantities. You directed that the basis for the assessment of duty under the tariff act of 1922 on that commodity be the United States value, the thing we are now advocating, but no change of rate. The same rate, 30 per cent, applied, whether to foreign value or United States value in the tariff act of 1922.

There has been a great deal said before the House committee as to why the American selling price will not work. They said it is a fictitious form of value. I have heard it said that it was a compromise plan adopted in 1922, and did not work.

As Government attorney it fell to my lot to try all the cases under that form of value. We were successful in every one where any principle was involved.

That form of value, they also say, puts in the hands of American manufacturers a virtual embargo—my friends, the importers, say that. Now, let us just see if it does, for a minute. Let us take a rate of 50 per cent. Let us take a foreign cost of $1. Let us take an American selling price of a domestic article competitive with that imported, of $2. We have $1 cost. Fifty per cent of $2 is $1, added to your $1 cost makes $2 landed, ignoring the few cents for handling cost for the purpose of this illustration. Therefore you have an equal basis of competition.

But let us test this embargo principle, and let the American manufacturer say: "I will sell that for $4 in this market and sting the importer." Then under those conditions we have 50 per cent of $4, which is $2. Added to your $1 cost abroad you have $3 landed cost here against his alleged selling price of $4. Therefore the importer has $1 leeway on the domestic manufacturer. And so it will go.

The higher you go the wider will be the spread between the landed cost and the American selling price.

But let us have the American manufacturer selling it at $1.50 instead of $2. You have got 50 per cent of $1.50, which is 75 cents. Added to his $1 cost abroad you have $1.75 landed here. The article in the United States of American origin selling for $1.50 he can not import it.

So just the reverse of the statements made before the House committee by some of the importers is true with regard to the American selling price. The only way the American manufacturer gets any protection under that form of value is to keep his prices down to the consumer.

As I said, we advocate either one or the other, with the other as the alternative, and as the second alternative to our plan, the cost of production in the United States. And in framing that we have used literally the wording of the cost of production as now in the law, with the exception of a change of venue from the foreign country to the United States. And, gentlemen, I believe that every honest importer would agree to adopting the United States value, because as I have said, it gives to him an equal basis of competition with his competitor, which he does not have now. Because at various investigations and hearings honest importers have appeared before you and themselves complained against the competition of their dishonest friends who were manipulating the market abroad so as to get a little edge on competition here.

I think that is the basis of my statements.

Senator REED. May I ask you a question?

Mr. LERCH. Yes, Senator.

Senator REED. You have taken an illustrative case of a 1 per cent profit on the part of the importer. It seems to me that is perhaps an extreme case. I would like to direct your attention to the case Mr. Burgess gave as an illustration, where the foreign invoice price was 19 cents a dozen for cups and saucers, where the domestic selling price in America of the imported article was 62 cents, or approximately three times the invoice price.

Senator BARKLEY. He said that article sold at 45 cents, but the imported article from England was selling at 62 cents.

Senator REED. Well, that is what I mean. This United States value is the American wholesale selling price of the imported article.

Mr. LERCH. Exactly.

Senator REED. And that was 60 cents, we will say.

The CHAIRMAN. Sixty cents.

Senator REED. Approximately three time the invoice price. Now obviously if we are to get the same revenue from that transaction the duty has to be cut down to one-third of its present amount, its present percentage, in order to get the same revenue from a base which is three times as great.

Mr. LERCH. That is right.

Senator REED. That is right, is it not?

Mr. LERCH. That is right.

Senator REED. Now in extreme cases like that there would necessarily be a very sweeping reduction in the ad valorem tariff rate, would there not?

Mr. LERCH. There is one observation I would like to make in that connection, however.

Senator REED. All right.

Mr. LERCH. And that is that you are assuming that business can only be done on that basis. For instance, the evolution of importing business in the late decade or more has been to go over to an import company, which is virtually a foreign-owned company which sells to all the trade in the United States. Let us take that same example, Mr. Burgess's example. As I understand it that agent that imports sells at a profit in the United States, and it is that profit or that overhead which counts for this large increase in the selling price here and abroad. Now what is to prevent that same company from organizing a holding company or a subsidiary to import its merchandise and sell it directly here at the foreign value plus 1 per cent?

Senator REED. Those are particular cases. If that is the course of business, that ought to be taken into account in readjusting the rate.

Mr. LERCH. Exactly.

Senator REED. But what I am trying to bring out is, if it is the fact that this is not a sly scheme to make a sweeping general advance in American tariff rates without particular cases to justify it?

Mr. LERCH. My judgment would be, Senator Reed, that in 90 per cent—of course my guess is as good as yours; this is based on my experience—that in about 90 per cent of the ad valorem rates no change would have to be made. Now where you do have business done in this country, for instance, as in some lines it is done to-day, a patented article, patented both abroad and here, is brought into this country and sold through a distributor, an agency of the foreign corporation. There are very large advertising costs in this country, otherwise they could not sell this article in this country. There is some overhead. Now manifestly they can not do business in this country at the rate on foreign value if you change to your United States value unless that rate is reduced.

Senator REED. Right.

Mr. LERCH. We admit that. It is a question for this committee and the industries to show where that exists. And I say that is a very simple and reasonable method of reducing, to account for those few industries where that has to be done.

Senator BARKLEY. Do I understand you to mean that only 10 per cent of imports based upon foreign valuation would have an automatic increase in the duty if the United States valuation were adopted?

Mr. LERCH. Assuming, of course, that you ignore that 1½ per cent that we have talked about here as to insurance and freight.

Senator BARKLEY. Well, you speak as if you have in mind largely men who act in the capacity of commission merchants and get a commission on imported articles. There are vast numbers of business men in the United States who go abroad themselves and buy their articles in foreign countries and ship them directly into the United States to be sold in their stores.

Mr. LERCH. That is right.

Senator BARKLEY. In that case no commission is charged, as I understand. It is a direct purchase and a direct importation. If we change the basis of value from the foreign, as it is now understood, to the United States value, there would be an automatic increase in the tariff paid by such a merchant on any product that he imports into the United States, if the United States value is higher than the foreign?

Mr. LERCH. Yes; but, Senator, the reason that man goes abroad and buys himself and does not buy through the American agent of the foreign shipper is because he can get a little edge on that price by going abroad, or otherwise he would buy right here, he would cable his order abroad.

Senator BARKLEY. Well, that same reason actuates retail grocers who buy directly from a manufacturer rather than through a commission house or a jobber.

Mr. LERCH. True, but that man to-day is paying on the price at which his competitors are buying abroad in that market.

Senator BARKLEY. Whether he pays a commission for having it imported through some agent or whether he goes abroad and buys it directly, if the foreign price is lower than the United States price there would be an automatic increase in the tariff on the article, would there not?

Mr. LERCH. Well, there are so many factors entering into that.

Senator BARKLEY. Well, now, it seems to me that is simple.

Senator KING. Can you not answer that yes or no?

Mr. LERCH. I will attempt to do it in this way, that that same man is doing just that to-day, but he is paying duty on the price his competitors are paying in the foreign market to-day. He does not pay duty on his price.

Senator BARKLEY. He and his competitors are all paying a duty on a lesser valuation than they will pay on it if the United States figures are adopted?

Mr. LERCH. True.

Senator BARKLEY. So there is an automatic increase then in the tariff on every article whose value in the United States is greater than its foreign value, whether he buys it directly or through a commission house; that is true, is it not?

Senator REED. Obviously.

Senator EDGE. Yes.

Senator REED. That is just plain arithmetic.

Senator BARKLEY. Yes.

Senator REED. Let me ask you one or two more questions: I am very much attracted to the suggestion to have the change to the American selling price for the foreign article, because it gives us a yardstick, whether gotten in Canton or South Africa or any place else like that. But it has no chance of adoption, and I think my colleagues will agree with me, if it is merely a disguised effort to make a sweeping increase in rates throughout this bill. Some industries need greater protection to-day than they did in 1922, and we need not give typical cases, but I do not believe that Congress is going to shut its eyes and increase everybody blindly. They have got to show in particular cases what their particular needs are. Now, Mr. Lerch, how long would it take the experts of the Government,

whom we have to assist us, to change the list of ad valorem rates in order to do justice if we change this basis of valuation?

Mr. LERCH. Senator Reed, it is my honest opinion that if this committee were to say to-day that they were going to write this bill on United States value, as we propose it here, that before your hearings were done you would have the basis upon which to reduce the rates.

Senator REED. Could it be done in a month?

Mr. LERCH. It could be done in two weeks, I would say.

Senator SHORTRIDGE. Would it give equal protection to American manufacturers or dealers or the people?

Mr. LERCH. It would give greater protection to American manufacturers.

Senator REED. Because it would prevent fraud.

Mr. LERCH. Exactly. No manipulation. It will have all of its facts here where we can subpœna into court and cross-examine and have everything in the open.

Senator BARKLEY. Then, how long would it take the committee to hear those manufacturers of articles in the United States who would come here to protest against a reduction in their rates?

Mr. LERCH. You are going to hear those anyway, I expect, Senator.

Senator HARRISON. May I ask you this: Suppose there was importation of some novelties or things that have never been sold in the United States heretofore, how are you going to fix the United States value on those?

Mr. LERCH. The same way we always did. It is our last alternative under this plan and the last alternative under the present law: Cost of production.

Senator REED. Well, you know what price they are being offered for sale at in the United States.

Senator HARRISON. But they have not been offered heretofore for sale in the United States.

Mr. LERCH. The Senator's illustration, as I understood it, is something never having been sold before or offered for sale before by anybody, and presumably not being offered for sale now. Let us assume that some machine built on specifications for some particular use by a particular party in the United States, and no other demand for it: Then cost of production. That has always been the yardstick.

Senator KING. Cost of production where?

Mr. LERCH. Cost of production in the United States.

The CHAIRMAN. There is no incentive, then, in that case for you to lie about the cost of production?

Mr. LERCH. Absolutely not. And furthermore, we can produce in court or before the appraiser or the collector or any Government official and examine under oath those parties who are giving that cost of production.

Senator EDGE. Mr. Lerch, following the suggestion made by Senator Reed: If there has been gross undervaluation, as has been indicated by both Mr. Burgess and yourself, under the present system, I can not follow your reasoning when you indicate that it will not be necessary to change more than 10 per cent of the ad valorem duties now existing. If there has been gross undervaluation, and this system is going to bring about a fair valuation, certainly the gross undervaluation has not been limited to 10 per cent.

Mr. LERCH. Well, I do not believe you heard me say "gross undervaluation."

Senator EDGE. Well, I assume there has been gross undervaluation.

Mr. LERCH. I say manipulation of the market abroad. Manipulation of the market abroad, and fraudulent undervaluation are two different things. One might result in fraud, but you can never prove it. For instance, let us take the German cartel. It may very well be profitable for them to sell the handful of merchandise that they sell in Germany—that is a controlled market—at one-half the price they sell it to the United States. That German sale may be just 5 per cent of their total output. And it may well be that they sell in the German market at a loss. But that is a freely offered-for-sale price at which they will sell to everybody in Germany. Now, that governs the duty in the United States.

Senator EDGE. All right. Then, when you change your system of valuation to your so-called United States valuation, most naturally the ad valorem duty on that commodity must be reduced?

Mr. LERCH. Yes.

Senator EDGE. That is exactly my argument. You can not have the cake and the penny both. I am very sympathetic with the idea of honest valuations, ascertainable valuations, which apparently can only be ascertained on this side, but certainly with it must go, as I see the picture, an absolute rearrangement of ad valorem rates and a reduction downward pretty much all along the line if there has been fraud heretofore.

Mr. LERCH. Well, let us just take one example, for instance, and that is St. Gall embroidery. That is made for the foreign market. The same stuff is not sold abroad. That is on United States value to-day; has been for a long while.

Senator REED. Well, then of course in that case we do not need to change it.

Mr. LERCH. That is there now. What I am asking for is existing. And in a great many instances similar facts exist, and the committee pays no attention to it.

Senator BARKLEY. In order to penalize the dishonest importer who manipulates his value your plan will also penalize the honest importer who has honestly declared his valuation.

Mr. LERCH. Not if the committee follows my advice and adjusts the rate where it is necessary.

Senator BARKLEY. Yes, unless there is a reduction in the rate sufficient to make up the difference in the valution?

Mr. LERCH. Exactly.

Senator KING. Well, Mr. Lerch, if you adjust your rate as you want now, or adopt the American value with reference to the so-called dishonest importer you will tend to penalize in that same group or that same category the honest importer.

Mr. LERCH. I do not ask you to single out any honest importer or dishonest importer, but if you will take the value at which it is now being appraised on foreign value, and ascertain the value that it would be appraised under in the United States value and adjust your rate, then you do not have to inquire into it. That can be given you by any appraising official in the United States to-day.

Senator SIMMONS. Mr. Lerch, if I understand you, your contention is this, that in view of the fact that these alternative methods here are so adjusted, the appraiser is required to limit the duty upon whichever of the three or four alternatives gives the highest valuation?

Mr. LERCH. No, that is not so. Under the present law, regardless of whether it gives the highest duty or the greatest amount of duty, the appraiser must appraise on the foreign avlue, if such exists. Foreign or export value.

Senator SIMMONS. I am talking about the bill if written as you want it written?

Mr. LERCH. Will follow the same plan as the present law.

Senator SIMMONS. Does your proposition contain this provision, first, the foreign cost, the export selling cost, and the United States cost, either of those three, and we should select the one which is the highest?

Mr. LERCH. No, our proposition is——

Senator SHORTRIDGE. What is the present law in respect of those three bases.

Mr. LERCH. The present law has under bracket 1 the foreign or export value, whichever is higher. He must compare those two and take whichever is the higher.

Senator SHORTRIDGE. Exactly.

Mr. LERCH. Then if neither of those two are present, if they do not exist under the present law, he goes to United States value. That thing which we are now proposing as the first or the basic.

Senator SIMMONS. That is the present law.

Mr. LERCH. That is the present law.

Senator SIMMONS. Now under your proposition?

Mr. LERCH. My proposition is to rub out the foreign value and the export value.

Senator HARRISON. The present law goes farther than that.

Mr. LERCH. Pardon me?

Senator HARRISON. I say the present law goes farther than where you stop. If neither foreign value nor United States value can be ascertained, then cost of production.

Mr. LERCH. But we have not got that far. I was just answering Senator Simmons.

Senator SIMMONS. Now your plan is to abandon the first two alternatives in the present law altogether.

Mr. LERCH. Yes; exactly.

Senator SIMMONS. And to confine the appraiser to the United States value of the exported article, the selling price of the exported article.

Mr. LERCH. As the basis.

Senator SIMMONS. As the basis. As the basis of what?

Mr. LERCH. Basis for rates in the bill.

Senator SIMMONS. As the basis for the application of the rates?

Mr. LERCH. That is right.

Senator SIMMONS. And then you propose to make that the basis also for making the rate, do you not?

Mr. LERCH. Exactly.

Senator SIMMONS. Exactly. Your theory then is this, that the thing that you actually compete with in this country is not foreign

price or the foreign export price, but you actually compete with the United States price.

Mr. LERCH. The United States value of the foreign article.

Senator SIMMONS. And that that ought to be the basis upon which the duty is to be imposed.

Mr. LERCH. Exactly.

Senator SIMMONS. And that duty ought to measure the difference between the American selling price—that is, the domestic selling price—and the United States price of the imported article.

Mr. LERCH. That is exactly it.

Senator SIMMONS. Therefore, if the American selling price on an article is $3, and the exported article is sold in this market for $2, that is the proposition you have to meet, and the margin, or the spread, is a dollar.

Mr. LERCH. That is as I would have it.

Senator SIMMONS. That is as you would have it, and you would make the duty sufficient to cover that difference in the selling prices of the two products?

Mr. LERCH. Yes, of course, taking into consideration the fact that there are not exorbitant profits in either place.

Senator SIMMONS. Your theory is at present that a foreign product sells very high in this market as compared with the export price of that product to America. That is your theory, is it not?

Mr. LERCH. I did not understand that question.

Senator SIMMONS. Your theory is that the usual foreign price, or foreign export price, is much less than the United States price?

Mr. LERCH. No. My theory is that in a great majority of cases——

Senator SIMMONS. And that you wanted United States valuation.

Mr. LERCH. I do.

Senator SIMMONS. For the purpose of applying the tariff, because the value, or the basis of the application would be very much higher. This rate would be higher.

Mr. LERCH. No. I said this, Senator, that in the great majority of instances the selling price, in wholesale quantities, on the first turnover in this market of imported merchandise, is very little greater than the foregn value or export value.

Senator SIMMONS. Exactly.

Mr. LERCH. Because, in the great majority of merchandise, it is on a commission basis of 1, 2 or 3 per cent.

Senator SIMMONS. Your contention was, as I understood you, that the foreigner made fraudulent representation as to both the foreign price and the export price.

Mr. LERCH. No. I say that those two things can readily be manipulated so as to hold them down.

Senator SIMMONS That made a small valuation upon which the tariff rates fixed in the bill are applied.

Mr. LERCH. Exactly.

Senator SIMMONS. Now, you insist that you have to compete, not with that foreign price, but you have to compete with the United States price of the exported article; and that the rate of tariff should be adjusted to the difference between the American price and the United States price of the exported article.

Mr. LERCH. That is, in substance, correct, Senator. It does not embody all of my beliefs, and it would take a long while to go into it, because there are very many elements entering into it. An answer to that question would have to be conditional, but I am not attempting to suggest to this committee any policy as to rates. I am merely stating that it is absolutely fundamental that we have the basis of value changed to a basis in this country, where it can be accurately ascertained, and ascertained under oath in our courts, and after cross examination by our parties.

I admit, as I have several times in response to questions, that some adjustment of rates will be necessary. There is no question about that. In a great many instances it will not be, in my opinion.

Senator SHORTRIDGE. You gave three instances of the three bases upon which rates are fixed. Won't you pursue the suggestion made by Senator Harrison? Are there others?

Mr. LERCH. Yes. For instance, under the present system, and under the present law, in an instance such as I gave, of the machine which was made because of specifications, let us assume that there is a similar machine to that, generally used in Germany. It is freely sold to everybody. That would pay duty on the foreign value or export value, whichever is higher.

Let us assume that that machine, now, is not freely offered for sale to everybody in Germany, and hence, there is no answer to the two definitions of foreign and export value. In that event you take the United States selling price.

Senator SHORTRIDGE. Precisely.

Mr. LERCH. Or United States value, as it is called in the law.

Senator SHORTRIDGE. That means the selling price, though, does it?

Mr. LERCH. The selling price of the imported article in the United States.

The CHAIRMAN. Not American made. Then, assuming that it is not really offered for sale in the United States—in other words, that carries with it the assumption that it is not offered for sale anywhere—then, under the present law, we take the cost of production in Germany. Our proposal is, in that event, that we take the cost of production in the United States.

Senator SHORTRIDGE. That would be the fourth alternative.

Mr. LERCH. Yes; under the old law; and the second alternative under our proposal, since under our proposal we have eliminated the foreign and export value and utilized only the United States value, the American price, and the cost of production.

Senator SHORTRIDGE. Now, is there any other and further situation?

Mr. LERCH. No. That is all there is.

Senator GEORGE. Your view is that the United States value is very near to the true or honest foreign or export value?

Mr. LERCH. Absolutely.

Senator GEORGE. That is what you contend.

Mr. LERCH. Absolutely.

Senator GEORGE. And, therefore, you take that as your basis.

The CHAIRMAN. Not to exceed 1½ per cent.

Mr. LERCH. He said "very near."

Senator GEORGE. I said "very near."

Mr. LERCH. And I assume that he meant it is 1½ or 2 per cent higher. That, to my mind, is a negligible quantity in basing rates, but that is a question of policy for the committee.

Senator GEORGE. In other words, this proposal is based upon that assumption?

Mr. LERCH. Yes. Did I answer your question?

Senator GEORGE. Yes.

Senator BINGHAM. Mr. Lerch, will you tell me why it would not be practicable to base your valuation on the American selling price of the imported article, less the duty, less commission, less freight, insurance, and the cost of handling?

Mr. LERCH. Why it would not be?

Senator BINGHAM. Yes.

Mr. LERCH. That is what we are doing to-day, and hence it must be practicable. My only contention is that those are negligible quantities. They involve a great deal of calculation. In the great majority of instances they are present, if at all, in a negligible quantity.

Senator BINGHAM. I evidently did not make myself clear. I was trying to see whether there would not be some point which would prevent this experimental changing of the rates without actually increasing the duty to the honest importer; and, not being very familiar with it, I asked this question, Why it would not be possible, instead of merely deducting the duty, as I understand you propose to do, from the American selling price, to deduct also the commission, which may be 1 per cent, or may be 10 per cent, but to deduct it as it actually is, from that commodity when the assessor levies the duty; to deduct also the freight, which, in the case of jewelry, would be very small, and in the case of wicker furniture would be very large; to deduct the insurance, which would be one item of a very small character if it came over a very safe route, and another item of a very large character if it came from the South Seas, for instance; to deduct those things from your American selling price. Then you would not have to change your ad valorem at all, would you?

Mr. LERCH. No.

Senator BINGHAM. Why is it not practicable to make that proposal?

Mr. LERCH. That is practical. However, it does involve a great deal of investigation to find out whether or not the importer did pay 1, or 5, or 8 per cent commission. It does involve some calculation to determine what the handling charges are, and, if they are negligible, in my opinion they could be ignored.

Senator BINGHAM. Would that require any more investigation than is made to-day by the investigators abroad, who attempt, in the face of great obstacles, to find out what the actual cost is?

Mr. LERCH. No; far less.

Senator BINGHAM. Is that your only objection to it?

Mr. LERCH. Yes. It could be written that way. As a matter of fact, I would subscribe to the present United States value as written in the law to-day, as a first plan.

Senator BINGHAM. Does that provide for the deduction of all these various items?

Mr. LERCH. Yes.

Senator EDGE. That is the proposition the Senator has made, is it not?

Mr. LERCH. Yes.

Senator HARRISON. Would the proposition made by the Senator from Connecticut encourage importations, in your opinion?

Mr. LERCH. I do not think it would have any effect, one way or the other.

Senator BINGHAM. From what you have said, I can not see yet why that method of doing it, if put into this law, would not avoid any change in the ad valorem, and yet would protect the honest importer against the dishonest importer.

Mr. LERCH. I think it would.

Senator BINGHAM. Because, since the whole transaction would take place here, we could insist on the books of the buyer and the books of the seller, and the invoice which actually passed between them, and would know exactly the cost, not only of the duty, but also of the insurance, freight, and handling charges.

Mr. LERCH. I should say, Senator, that if we adopt the United States value as written in the law to-day, it would decrease, to a very small minimum, the number of rates that had to be changed, but yet it would not wipe out the necessity for an occasional change of rate. For instance——

Senator BINGHAM. But still it would meet the general objection, as I understand it, on the part of those who are opposing your scheme.

Mr. LERCH. It ought to.

Senator BINGHAM. Its effect would be to raise the price a little.

Mr. LERCH. If they are at all fair-minded, I say it would meet that objection.

Senator SACKETT. You only have one rate of duty now.

Mr. LERCH. Yes.

Senator SACKETT. It is applied both to the foreign value, the export value, and the United States value.

Mr. LERCH. That is true; and cost of production.

Senator SACKETT. And cost of production. It is all the same rate of duty.

Mr. LERCH. Absolutely.

Senator SACKETT. Is there any materail difference between the amount of duty paid on the specific article, according to which valuation is adopted by the appraiser?

Mr. LERCH. It depends somewhat on the article. There is no material difference in the great bulk of merchandise.

Senator SACKETT. And therefore, if you simply eliminate the export value and foreign value, you would not change the relative position of the amount of duty that a specific article paid, as compared with the present law.

Mr. LERCH. Not materially, but there is that exception, which I want to make clear, of business done in this country on a very high overhead—for instance, advertising, without which they could not do business—and then the present scheme permits only a deduction of 8 per cent for overhead, whereas the overhead may actually be 100 per cent. In that exceptional case the committee would still have to reduce the rate.

Senator SACKETT. If they had to reduce the rate in that case, then the same objection would apply to the present law, would it not?

Mr. LERCH. Exactly.

Senator SACKETT. Which permits the United States valuation to be used.

Mr. LERCH. Exactly; and that is why I say it is a question of policy. For instance, in 1922, those St. Gall embroideries went over, by reason of the passage of that law, from export value to United States value, but it did not seem to make any difference in the rate. They did not care about it.

Senator SACKETT. Then, if you adopted your plan, and eliminated the export and foreign value, it would give you an opportunity, by adjusting those minor cases, to make a very much fairer law in the basis of duties paid by foreign importers, than under the present law.

Mr. LERCH. That is our position exactly.

Senator BARKLEY. There is this difference: Under the present law the United States valuation is the exception, but under your plan it would be the rule.

Mr. LERCH. Yes; but, for instance, since the French have thrown out our agent, and we can not get any information abroad as to foreign value, in France, or in Russia, for example, where we do not recognize them, we have to put that merchandise on United States value. It was always on foreign value, but nobody has changed any rates that I heard of.

The CHAIRMAN. That is true also of Germany.

Senator GEORGE. I wanted to ask you this. If you did adopt the United States value as your basis, there would be, according to your statement—and manifestly that is true—some necessary downward revision in practically all items, though it would not be material except in a few instances. But you would head in, then, to a general revision of the tariff, would you not?

Mr. LERCH. I think not. I think, as I say, that I am firmly convinced that the difference between my plan and foreign value or export value, in the great bulk of merchandise, would be, possibly, an increase of 1½ per cent on the present rate. If that is going to result in a general revision of the tariff, then allow 1½ per cent reduction for cost of handling merchandise, or 3 per cent, if you will. That is a question of policy.

Senator GEORGE. That would be a reduction.

Mr. LERCH. That would keep it the same. If you allow a reduction from the selling price in the United States of 3 per cent for handling charges, cost, insurance, and freight——

Senator GEORGE. Would not that affect your rates?

Mr. LERCH. No. It would keep them the same, assuming, as I have stated——

Senator REED. It would keep the level the same.

Mr. LERCH. The amount of duty collected would be the same.

Senator GEORGE. I am talking about the rate.

Mr. LERCH. The rate could remain the same.

Senator REED. Subject to a discount, in other words.

Mr. LERCH. You would just put in the discount that is in the present United States value; take out cost of handling, and hence you have gone back to literally the export value.

Senator HARRISON. Mr. Lerch, I am interested in the observations you made a moment ago with respect to France, where they will not permit us to get the French valuation, and Russia. The chairman suggested Germany as well. You have used, in those instances, United States valuation.

Mr. LERCH. The appraiser has used that.

Senator HARRISON. Then you said you had not heard any great cry about reducing the rates in those instances.

Mr. LERCH. That is true.

Senator HARRISON. This bill coming from the House increases them, instead, in those cases, does it not, on many of the articles?

Mr. LERCH. Not having compared with that in mind, I would not know.

Senator REED. One question before we finish that, Mr. Lerch. In 1922 the House passed the tariff act with what was known as American valuation. That is not at all the plan that is proposed in this drafted amendment which has been laid before us, is it?

Mr. LERCH. American valuation, or the present American selling price, is used in this plan as an alternative measure only.

Senator REED. But, by American valuation, we understand the American selling price of the American produced article.

Mr. LERCH. And that is the first alternative in the printed plan which was proposed here to-day, and before the House.

The CHAIRMAN. I am unalterably opposed to any proposition of that kind, applying to the rates generally in this bill, as I said here in 1922.

Senator REED. I want to make sure that the proposal now before us is not the proposal which was adopted by the House in 1922. That is correct, is it not?

Mr. LERCH. It is not the proposal that was adopted in 1922.

Senator EDGE. Did you appear before the Ways and Means Committee with this same proposal?

Mr. LERCH. I did.

Senator REED. When, Mr. Lerch? Before they began consideration or after they had finished?

Mr. LERCH. I was practically the last witness to be heard.

Senator SHORTRIDGE. After the case was decided?

Mr. LERCH. After all the rate hearings or the schedule hearings were over, then they gave us one day to talk about the administrative features. At the close of that day I was heard.

Senator KING. Then the committee went into conference, and for weeks and weeks were considering the drafting of the bill.

Mr. LERCH. We hope they were.

Senator KING. Do you mean to say the Ways and Means Committee were idle during those weeks that they were holding sessions?

Mr. LERCH. No; but I mean to say that so far as any consideration of this proposition is concerned, we can not say that they looked at it.

Senator KING. Perhaps they did not approve of your view at all.

I wanted to ask Senator Reed a question. I understood you to state that in 1922 we adopted the American valuation.

Senator REED. No, no, Senator. I said that in the tariff act of 1922 the House adopted what was known as American valuation.

Senator EDGE. And we revised it.

Senator KING. You are familiar with the statement made by the chairman of the Senate committee, my colleague, on April 24, 1922, in which he announced the views of the Finance Committee of the Senate?

The CHAIRMAN. I have just stated that I was absolutely opposed to it at that time, and I am absolutely opposed to it to-day.

Senator KING. I was just asking if he was familiar with that view.

Senator REED. I do not think anybody suggested it to him.

Senator BINGHAM. I want to get your reasons for striking out the latter part of old paragraph D, now marked "B," including the words "made for duty, cost of transportation and insurance, and other necessary expenses from the place of shipment to the place of delivery, a commission not exceeding 6 per cent, if any has been paid or contracted to be paid on goods secured otherwise than by purchase, or profits not to exceed 8 per cent and a reasonable allowance for general expenses, not to exceed 8 per cent on purchased goods." Why would not the adoption of that paragraph, without those words being stricken out, accomplish what you want to do?

Mr. LERCH. It will; but for simplicity——

Senator BINGHAM. Why do you want to strike out those words?

Mr. LERCH. For simplicity of administration, and because I say that in a great majority of cases that is not needed. In the few exceptional cases where it is needed, it was my view that it would be much simpler to adjust that rate here and now, rather than have every appraising officer in every port of the country making that calculation and having the litigation that grows out of it.

Senator BINGHAM. But if you strike out those words, as you propose, and the importing concern has a very heavy overhead, spending an enormous amount for advertising, that would have to be taken into consideration.

Mr. LERCH. You would have to adjust that rate, but you will still have to do it, Senator, if you leave that in, because taking out, as the present law does, the 8 per cent, a reasonable allowance for general expenses—of course, that would have to cover your advertising and overhead—does not anywhere near cover it. The old law took part of that overhead and assessed duty on it, and they took part of your profit, if it was over 8 per cent, and assessed duty on it.

Senator BINGHAM. Would not your proposal, then, lead to just this situation, that the more the importer spent on advertising the less duty he would have to pay?

Mr. LERCH. No. Assuming that that finds its way—and I assume it does—into his selling price, he is going to get it back, and you would start with the basis of his selling price in the United States, which is all inclusive. Then, if you do not take it out, he is going to pay duty on it, is he not, Senator?

Senator BINGHAM. But if he spends a great deal on advertising, then the rate becomes very high.

Mr. LERCH. Exactly.

Senator CONNALLY. You said that in only about 10 per cent of these instances would it be necessary to readjust rates.

Mr. LERCH. That is my belief.

Senator CONNALLY. Would you mind mentioning one or two of the schedules you have in mind, where all these crooked fellows are?

Mr. LERCH. No; I have not——

Senator CONNALLY. I understood you to say the honest importer would not object, but it is only the crooked ones that would, and that on account of that——

Mr. LERCH. What I meant by that was this: I did not answer that question in connection with an adjustment of rates, Senator.

Senator CONNALLY. Tell us some or the schedules that you think ought to be reduced in this 10 per cent.

Mr. LERCH. I will name just one that I happen to know the exact facts about. Let us take one paragraph—perfumery. They spend 100 per cent of their foreign cost, let us say, for advertising in this market, and hence you would have to make some adjustment in that. The present perfumery rate is 100 per cent.

Senator CONNALLY. Do you want to reduce the rate or raise it?

Mr. LERCH. I should say you would have to reduce that rate, but that is not because of any crooked competitors, or anything of that sort. It is because of the economic facts.

Senator CONNALLY. Is that the only schedule on which you think the rate ought to be reduced?

Mr. LERCH. That is all that I personally know about.

Senator CONNALLY. You are testifying from personal knowledge?

Mr. LERCH. Yes.

Senator CONNALLY. What are some of the others included in this 10 per cent. Is it not a fact that you want the rate to stay exactly as it is and to raise the valuation over the foreign value?

Mr. LERCH. No; I have not said it.

Senator CONNALLY. I know you have not.

Mr. LERCH. And I never made any intimation of that.

Senator CONNALLY. I know you did not, but I am making the intimation. Is that not a fact?

Mr. LERCH. I will deny it again.

Senator CONNALLY. What rates do you want to lower?

Mr. LERCH. In any case where it proves necessary; and it is up to the industry, Senator, to prove that to you. That is a question of policy for you to decide.

Senator CONNALLY. You have said here that you favor the American valuation.

Mr. LERCH. I do.

Senator CONNALLY. You state that if we adopted the American valuation on the present rates of tariff, or the rates proposed in this bill, inevitably the rates would be reduced on only 10 per cent.

Mr. LERCH. With all due respect to you, I said "in some minor instances."

Senator CONNALLY. All right. Tell us those minor instances.

Mr. LERCH. I say I can not, except the one illustration I gave you.

Senator CONNALLY. Then, if there are only a few minor instances, your proposition is to leave the rates as they are and adopt the American valuation, which would have the effect of giving greater protection to all industries.

Mr. LERCH. I again deny it, and say that I want an adjustment of rate wherever it is necessary.

Senator CONNALLY. But you do not know where it is necessary.
Mr. LERCH. No. That is up to the committee, on proof from the importer.
Senator CONNALLY. The whole thing is up to the committee.
Mr. LERCH. Exactly.
Senator CONNALLY. But you do not give us any light as to where you think these rates ought to be reduced, and yet you insist on raising the valuation.
Mr. LERCH. I will promise you, Senator, that I will give you plenty of light in every industry I represent. I have not the facts with me now.
Senator CONNALLY. You do not favor reducing any of the industries you represent, do you?
Mr. LERCH. Not if I can help it.
Senator THOMAS of Oklahoma. Mr. Lerch testified that this proposal was sponsored by the tariff league. I would like to have a statement in the record as to what the tariff league is.
Mr. LERCH. It is an association of manufacturers and producers in the United States a half century old, consisting of nearly a thousand producers and business houses which have as their purpose the education of the public and the interests of the public in tariff questions.
Senator CONNALLY. The public and this committee, of course.
Mr. LERCH. No; they have not appeared anywhere in any schedule. I make the only appearance for them.
Senator SHORTRIDGE. The membership of the league is known.
Mr. LERCH. Yes.
Senator HARRISON. Let us put it in the record.
Senator SHORTRIDGE. That would be a good idea.
Senator THOMAS, of Oklahoma. Does the league embrace all classes of American manufacturers?
Mr. LERCH. Yes.
Senator THOMAS, of Oklahoma. Motor manufacturers, and manufacturers of electrical goods?
Mr. LERCH. Every conceivable industry. It is open to the membership of any American industry.
Senator HARRISON. Do any importers belong to it?
Mr. LERCH. A great many of its members are largely importers; yes, sir.
Senator SHORTRIDGE. Mr. Lerch, quite apart from other features and points to be considered, I gather from your statement that you think that your plan would avoid or prevent frauds now being perpetrated.
Mr. LERCH. That is its greatest exponent.
Senator SACKETT. Would you apply this United States valuation to agricultural products?
Mr. LERCH. Yes, sir.
Senator SACKETT. Would it work just as well there, and give them full protection, as it would in the case of industry?
Mr. LERCH. Absolutely.
Senator SACKETT. And can you use United States valuation in most agricultural products?
Mr. LERCH. Yes.

Senator SACKETT. Are there imports of that character that could be sold?

Mr. LERCH. Yes.

Senator SACKETT. Or would you have to go to the cost of production? It would be very difficult to go to the cost of production as an alternative in agricultural products, would it not?

Mr. LERCH. It is being applied now. For instance, we have a case that was tried in the Court of Customs Appeals on blueberry-pie stock, if you call that an agricultural product, and Cuban pineapple.

Senator SACKETT. Those are probably canned products, but if you undertook to apply it on wheat, with the millions of raisers of wheat, to get at the cost of production, you would find a very wide and almost impossible situation to arrive at the cost of production.

Mr. LERCH. Not under United States value.

Senator SACKETT. Not under United States value; but take the alternative, which you still leave in. If that is not available, then you apply cost of production.

Mr. LERCH. The American selling price first, which is very easily applied——

Senator SACKETT. And then the cost of production.

Mr. LERCH. Which you have to do to-day.

Senator SHORTRIDGE. Wheat is on a specific duty, though, Senator.

Senator SACKETT. I am just trying to apply it to agricultural products to see if it works out.

Mr. LERCH. In connection with tomatoes, for instance, coming from the Bahamas, there is a case that I actually tried, under the act of 1913, where they were on an ad valorem basis.

Senator SACKETT. Canned tomatoes?

Mr. LERCH. No; fresh tomatoes in crates. The United States value was applied there, and it worked perfectly.

Senator SHORTRIDGE. How does it apply to long staple cotton, Mr. Lerch? Have you devoted any thought to that?

Mr. LERCH. It would apply with great accuracy. It can be very easily ascertained.

Senator SHORTRIDGE. It is now on the free list, but we hope it will be put on the protected list.

Senator GEORGE. I understand you could not be absolutely accurate about it, but what percentage or what proportion of our imports now would you say you could not bring under the basis of your scheme, and give the United States value to?

Mr. LERCH. As I understand your question, you want to know what would be my estimate——

Senator GEORGE. What percentage of the imports would require the application of this alternative?

Mr. LERCH. And not the first principle, of United States value?

Senator GEORGE. No.

Mr. LERCH. Ninety-five per cent would be under the first bracket.

Senator GEORGE. Your idea is that you would be able to value 95 per cent under the United States value?

Mr. LERCH. There is no question in my mind of that at all.

Senator GEORGE. And you would have to apply the alternative to about 5 per cent.

Mr. LERCH. Exactly.

Senator SIMMONS. Under the present law, what per cent of goods imported into this country are upon the low and unreasonable basis of valuation?

Mr. LERCH. That is a rather important question. I would like to hear it again, Senator.

Senator SIMMONS. What per cent of the foreign products that are brought into this market are undervalued?

Senator SHORTRIDGE. Do you refer to the invoice price, Senator?

Senator SIMMONS. Undervalued under the present scheme of taxation.

Mr. LERCH. Government officials have said—and they said it first to an investigating committee back in the early eighties—that with all the vigilance of the special agents, the secret service of the Government, and the customs officials, not more than 60 per cent of its just dues were collected under the ad valorem rates. That is not my authority. That was stated before the Senate investigating committee in 1877. In 1885 it was repeated. It has been often repeated, right down to date.

Senator SHORTRIDGE. You mean undervalued?

Mr. LERCH. Yes.

Senator SHORTRIDGE. In the invoice, or other prices?

Mr. LERCH. Yes.

Senator SHORTRIDGE. Upon which the importer or the foreign exporter sought to have the rate based?

Mr. LERCH. Yes. The values were low.

Senator SHORTRIDGE. There was an undervaluation.

Mr. LERCH. And when I was a Government attorney in charge of these valuation cases, there were at least 15,000 cases a year brought on undervaluation, where the appraiser had found the undervaluation and increased the value, and they were litigating it.

Senator SIMMONS. You say 60 per cent. When these industries come up here, industries that are in competition with these undervalued foreign products, and ask for tariff portection, do they not base the rate upon which they insist, or the rate for which they ask, upon this known undervaluation?

Mr. LERCH. No. The rate is based, in all the briefs——

Senator SIMMONS. I mean in the requests.

Mr. LERCH. The requests for rates, you mean?

Senator SIMMONS. The individual or the industry coming up here asking for further protection, always makes the argument that the foreign article comes in here undervalued, is that not true'

Mr. LERCH. I think not. I think, if you will read the record before the House Ways and Means Committee, you will see that those comparisons have been made on the cost of production.

Senator SIMMONS. Let me put it another way. In their requests for specific rates, do they not always have in mind the knowledge of the fact—and you say it is a fact—that those rates are going to be applied upon an undervaluation of the foreign product?

Mr. LERCH. I do not think that enters into it.

Senator SIMMONS. You do not think that enters into it?

Mr. LERCH. From the arguments they have used, in the record that is now before you, it would appear that they are comparing labor costs, and costs of production abroad and here. In 99 per cent of

the cases in the briefs filed the suggested rate is based upon a comparison of those figures.

Senator SHORTRIDGE. On the true facts.

Mr. LERCH. As they know them.

Senator SHORTRIDGE. Although they may be conscious of these frauds that are perpetrated.

Senator GEORGE. It is aside from your particular function, but under this 5 per cent of imports that would not fall under the basis of American valuation, would you make the Treasury finding final as to the necessity of applying these alternatives, or would you still let them have recourse to the court?

Mr. LERCH. Under no system would I make the findings of the appraisers or the Treasury final.

Senator GEORGE. Fine. I agree with you about that.

Mr. LERCH. In no case. It would be a retrogression to the status of the customs of 1880. There have been volumes written on it. That is the very thing which led to the enactment of the statute which gave birth to the customs courts.

Senator HARRISON. May I ask the witness a question? You say you represent the Tariff League.

Mr. LERCH. Yes.

Senator HARRISON. And that is composed of manufacturers of the country.

Mr. LERCH. Yes.

Senator HARRISON. Is Mr. Grundy the president of that league?

Mr. LERCH. No.

Senator HARRISON. Is he in it?

Mr. LERCH. Yes.

Senator HARRISON. Is this bill that passed the House satisfactory to that organization?

Mr. LERCH. No.

Senator HARRISON. They wanted it higher on manufactured articles generally?

Mr. LERCH. They take no position on the rate schedules. They are appearing before this committee, as I said—both in the House and here—on this one phase of the case.

Senator HARRISON. I am speaking generally. Have they not gotten out literature saying that the rates are not high enough on certain products in this bill?

Mr. LERCH. I do not know that they have. They have gotten out literature as to the general character of this bill, yes.

Senator HARRISON. You did not see Mr. Grundy's statement about the rates on manufactured articles?

Mr. LERCH. I do not know which one you mean.

Senator HARRISON. The one where he complained about them not being high enough.

Mr. LERCH. I think he has made some such statement.

Senator SHORTRIDGE. He might well have made some such statement in regard to certain agricultural products.

Mr. LERCH. And very many of the industries, or, rather, a number of the industries that I represent, have made the same statement.

Senator BARKLEY. Mr. Grundy does not claim to represent the farmers, does he?

Mr. LERCH. I have not heard whether he does or not.

Senator SIMMONS. Let me ask you one more question. You say that when the industries ask for rates they base the demand or request upon the difference in the cost of production here and abroad?

Mr. LERCH. Yes.

Senator SIMMONS. You say that is the rule?

Mr. LERCH. Yes.

Senator SIMMONS. Now you tell us that we really do not compete upon the basis of the foreign cost, but we compete upon the basis of an arbitrary price fixed by the importer for the imported article.

Mr. LERCH. Yes. I was stating, in one case, the basis of competition, and you asked me another fact, as to what the industries based their comparisons or requests on, and I gave you that answer.

Senator SIMMONS. The United States price of these exported products is, in the main, much higher than the cost of production abroad, although there may be a little dumping going on in this country.

Mr. LERCH. I assume it is, because there has to be a profit somewhere. They are not in business for love.

Senator SIMMONS. The rate they are asking for to-day, if your scheme prevails, would be a rate based upon a competition with the price of the foreign article sold in the United States.

Mr. LERCH. Senator, I would prefer not to answer that question and say that I would suggest that the committee use this same yardstick that they have always used in determining what rate to put on anything.

Senator SIMMONS. Yes.

Mr. LERCH. The only difference is, put it on United States value.

BRIEF OF CHARLES ROOME PARMELE, NEW YORK CITY

The CHAIRMAN. Mr. Parmele handed me a brief that he asked me to put into the record, and I will hand it to the clerk to do so at this time.

(The brief referred to is as follows:)

JUNE 8, 1929.

I am American born, of American ancestry for eight generations, am a protectionist and for many years have been an importer of an antiseptic of coal-tar origin, which after importation, I manufacture into various forms for use by the medical profession.

Every dollar in my business is American money and represents over $100,000.

While I expect and am prepared to meet honest competition, I can not profitably compete against those whose chief weapon is neither skill nor excellence of manufacture—but is supplied to them by my Government in the form of what I feel I have the right to call vicious discrimination.

Among the many thousand articles of commerce, this law discriminates against coal-tar products only. What special privilege should coal-tar products deserve and which is denied all other products?

The affidavit which I here attach can hardly be treated lightly or with indifference. Many importing manufacturers have not the temerity to openly combat this discriminatory legislation and thus make targets of themselves. From several sources in the trade threats reached me that I would be driven out of business because of my activity in fighting against the attempted coal-tar embargo when the present tariff bill was under discussion years ago. And it has been threatened, so I hear, that my present activity will bring punishment upon me by those who now thrive through the present discriminatory law. This does not prevent me from placing facts before you and asking your help in wiping from our tariff act, now under discussion, the American valuation clause which relates to coal-tar products only and for reasons given.

One manufacturer stated in my hearing that he would raise his prices to figures which would make importation entirely impossible. Please realize that the present law accepts the verbal statement of the American coal-tar manufacturer as being absolutely true and without the necessity of evidence in writing and without authority to examine his records. Yet the importer is by inference considered dishonest and his records are subject to closest scrutiny. This again is unfair discrimination and special privilege, the simplest statement of the American manufacturer being accepted without any verification, whereas mine must be proven by documentary evidence and my books of records subject to examination.

I urge that the American valuation paragraphs Nos. 27 and 28, H. R. No. 2667, as now existing in the present tariff law shall be eliminated from the bill now under discussion and for the reasons which are here stated.

First. As it relates to coal-tar products exclusively and covers absolutely nothing else, it is therefore discriminatory. American valuation should apply to all articles of every character or else to none.

Second. It is manifestly prejudicial to strict honesty in business conduct.

Third. It is certainly unfair to those who import products and employ those products for further manufacturing here.

Fourth. It is in violation of our laws covering restraint of trade where one man or firm is given the power by Congress to decide the import duty that his competitor shall pay and to place in one man's hands the power to decide whether another man may or may not be driven out of business entirely.

Fifth. It results in increased cost to the American consumer without stimulating American manufacture—because it does not spur the American manufacturer to improved methods or scientific research, which would enable him to produce goods within reasonable limit of cost.

Sixth. It is not protection but is in fact an embargo of most unfair sort, when the importer must pay seven cents a pound and in addition 45 per cent on the price at which the American manufacturer sells his goods. The American manufacturer is now not only protected as to his cost, but is protected as to his profit, he selling at as high a figure as he pleases, thus forcing the importer to pay 45 per cent, not on American manufacturer's cost alone, but also on his profit. In addition, he can name as high a price as he sees fit, thus either shutting the importer out entirely or else making the importer's actual cost even more than his own selling price.

Seventh. It is most undesirable because it commercializes patriotism and was enacted as a supposedly patriotic measure upon the false plea made by gigantic chemical interests that it was necessary in order that we have a supply of high explosives in case of war.

Eighth. It is more than unfair competition because the importer can not tell what his goods will cost. He may make a contract (if he be venturesome) with a foreign firm for a specified quantity of merchandise at a stated price, covering a stated period. If he in turn makes a contract for delivery in America, he may through the action of the American producer be ruined financially—

First, by inability to complete his foreign contract and thus have to pay heavy damages for failure to purchase.

Second, by inability to fill his American contract, thus suffering not only loss of profit and loss of overhead, but also pay damages for failure to deliver the goods.

No importer of coal tar products can tell definitely what his goods will cost prior to arrival. The American manufacturer decides that for him when the entry is made at the customhouse and under present conditions can make it whatever he may see fit. This is not legitimate business—it is gambling pure and simple and unfortunately it is with loaded dice.

CHAS. ROOME PARMELE.

JUNE 10, 1929.

I hereby make affidavit that an American manufacturer of a coal-tar derivative was asked by an appraiser as to his selling price. He replied, "$7.50 per pound." The appraiser thus fixed $7.50 per pound as the American valuation upon which I had to pay 45 per cent and 7 cents per pound.

I have evidence that he was selling at $6 per pound—in fact, have a letter from him agreeing to sell to me at $6 per pound. I thus was forced, simply on his say so, to pay 45 per cent on $7.50 instead of 45 per cent on $6, thus causing me to pay on an importation of 100 kilos (220 pounds) 67½ cents per pound in excess

of the actual dutiable American selling price. This meant a total of $148.50 paid by me in excess of the honest figure.

I paid 45 per cent (on the valuation $1,650) $742.50. On an honest valuation ($1,320) I should have paid $594. I thus was forced to pay in excess of honest duty and simply because of the verbal statement of a competitor, $148.50.

CHAS. ROOME PARMELE.

NEW YORK, N. Y.:

Sworn and subscribed to before me this 8th day of June, 1929.

[SEAL.] EDWARD A. LORENZEN,
Notary Public, Bronx County.

Commission expires March 30, 1931.

STATEMENT OF J. W. BEVANS, REPRESENTING THE NATIONAL COUNCIL OF AMERICAN IMPORTERS AND TRADERS, NEW YORK CITY

Mr. BEVANS. Mr. Chairman and gentlemen of the committee, I appear for the National Council of American Importers and Traders, Inc. This council has a large membership, composed of wholesale and retail merchants located throughout the United States. These merchants are either engaged directly in importing merchandise or in dealing in imported merchandise.

We are opposed to any change in the present method of valuation. We are opposed to American valuation for the reasons stated in our brief filed in 1922, and for reasons more ably stated by the chairman of this committee at that time.

We are also opposed to the adoption of the United States value as the major method of appraisal, because we believe that the adoption of such a value as a major method will present many of the difficulties attaching to a United States value.

We object to section 402 as contained in House bill 2667 because there are embodied in that section some very drastic changes from the present legislation, from present methods of ascertaining value, that have lasted for a great many years.

I want to direct the attention of the committee particularly to paragraph (b) of that section, which is entitled "Finality of appraisal." Briefly stated, that paragraph proposes to make the decision of the appraising officer as to the basis of valuation final and conclusive upon all parties unless an appeal is taken to the Secretary of the Treasury by the importer, and if such appeal is taken the decision of the Secretary shall be final and binding upon the United States Customs Court and the United States Court of Customs and Patent Appeals.

The CHAIRMAN. In other words, you desire no change in the existing law as to that?

Mr. BEVANS. No. And my reasons for that, briefly stated, are these: Now, we have under the existing law a judicial review of appraisements. An appraisement consists of two questions: (1) a question of law, and (2) a question of fact.

The particular value to be taken is a question of law; that is, whether it is United States value, foreign value, or export value, cost of production. That presents a question of law. And that question of law has been decided by a single judge, and there is a review to three of the judges, and from those three judges an appeal or review

to the United States Court of Customs Appeals on questions of law only.

Prior to the act of 1922 there was no appeal from the United States Customs Court—that is, from the three judges—in a reappraisement case. On the question of law if it dealt with the validity of the appraisement it was taken up under protest after the entry was liquidated. But Congress in 1922 provided specifically for appeal to the United States Court of Customs Appeals on questions of law. This section proposes to transfer that jurisdiction from the court to the Secretary of the Treasury, an administrative officer.

We believe if this change is adopted an importer will not be able to get a proper review of these very important questions of law. It is the duty, of course, of all administrative officers to resolve questions of doubt in favor of the Government. On the other hand, it is the duty of a court to resolve questions of doubt in favor of the taxpayer.

Importers located at points distant from Washington would be at great disadvantage, subjected to great expense, and suffer much inconvenience. The United States Customs Court judges go on circuit. They travel to various ports of this country. Under this proposed plan all these reviews would take place in Washington, and it would be very difficult for an importer, located, say, in San Francisco, who would try a case before the Secretary of the Treasury, to produce his evidence by mail; and if he attempted to do it in person, a great deal of time would be consumed and naturally a great deal of expense.

It is a very unusual proposition to take away from a United States court the right to decide questions of law, leaving to it purely a determination of questions of fact, and transfer that right to decide questions of law to an administrative officer. That is certainly a reversal of the usual order.

Now, we have at the present time four methods of appraisement, that were gone into here this morning, but I should like to add a word:

First, we have the foreign value or the export value, whichever is the higher. If neither of these values exist then we have the United States value, as it is called.

Now, the United States value is in theory the foreign value for the reason that it takes the selling price in this country of the imported article and takes from that selling price the several factors that entered into it, from the purchase price of the foreign article. That is, it deducts the expenses of getting the article to this country, duty, overhead, and profit.

Now, if the actual overhead and the actual profit were deducted we would in every case get back to the price paid. As a matter of fact, that is the true basis of appraisement, in my opinion. The majority of merchandise is bought in open markets of the world, and the price paid, in my opinion, reflects the correct and true market value of that merchandise.

We do not get back, however, under United States value, although that was its theory, to its value, because of the maximum deductions of 8 and 8. At the time this was adopted perhaps 8 per cent as a maximum of overhead was ample; likewise, 8 per cent for profit. But that is no longer true.

Now, to the extent that an importer on United States value basis is not permitted to deduct his full overhead, he is paying a duty on wages paid by him in this country to American labor. I think that is obvious. To the extent that he is not permitted to deduct his full profit, being limited by the 8 per cent, he is paying a tax under our tariff act on his profits in addition to the regular income tax that he pays.

Any plan of value, and it makes no difference by what name you call it, that takes the selling prices in the United States and does not deduct all the factors that entered into that selling price, back to the foreign purchase price, imposes, as I have just stated, a tax on American labor and a tax on profits.

In every case an ad valorem duty predicated upon such value will produce a higher duty, and such rate is therefore increased, as you can readily see. For instance, a 50 per cent ad valorem duty will be increased to about 62 per cent if the shift in the value basis is from foreign value to United States value with the present deductions of 8 per cent and 8 per cent.

If there are no deductions, or only deductions of 8 per cent and 8 per cent and no deduction for duty, that ad valorem duty may be increased to 80 per cent or more.

So that if any value is adopted other than foreign value it will require a substantial readjustment of all our ad valorem rates of duty, in my opinion.

Senator THOMAS of Oklahoma. If this change is made are you prepared to advise the committee as to the percentage of increase generally throughout the protected commodities?

Mr. BEVANS. What the effect would be?

Senator THOMAS of Oklahoma. Yes.

Mr. BEVANS. Senator, I can not answer that question until I take it up with some of our importers.

Senator THOMAS of Oklahoma. I got the impression that it would be 12 per cent, and is that what you intended to convey to us, that the increase would be 12 per cent?

Mr. BEVANS. If you take the average ad valorem duty at 50 per cent, and that is the figure I use, that would be increased to a little over 62 per cent, or 62.2 per cent. So that it would be a little over 12 per cent if you considered 50 per cent as a fair statement of the average of the ad valorem duties. But of course the duties range to 90 per cent, and in the proposed act to 95 per cent.

The CHAIRMAN. Go ahead.

Mr. BEVANS. I am particularly concerned in the finality of appraisement——

Senator KING (interposing). In what?

Mr. BEVANS. In the provision entitled "Finality of appraisement." I have already stated that that is a very drastic change from long-existing law. And such provision makes it possible for the appraising officer, and the Secretary of the Treasury, to very materially increase the ad valorem rates of duty imposed by the act, and because of this fact the appraising officer, quite naturally, is concerned in getting as much duty for the Government as he can, and rightly so. Now, his basis of appraisement is reviewed in a United States court, where they have all the equipment and all the facilities for hearing witnesses, cross examining witnesses, making a record, and we have two reviews.

Naturally an officer whose decision is to be reviewed by the courts will be more careful in the basis that he selects. But when we have the basis of review by an administrative officer, who must resolve the doubt in favor of the Government, I am firmly of opinion that the trend will be toward the United States value as the major method of appraisement.

The CHAIRMAN. I will ask you, then: You want no change at all as to that? You want the existing practice, the existing law, to remain on the books instead of having the Secretary of the Treasury as a final arbiter?

Mr. BEVANS. That is right, Senator Smoot.

The CHAIRMAN. All right, we understand your position.

Mr. BEVANS. And I have suggested that the existing section 402 be reenacted, but with this change: I am going to suggest or at least I am preparing a brief which I hope the committee will permit me to file, on that subject.

The CHAIRMAN. The brief can be filed and will be printed right following your remarks if you will furnish it to the committee to-morrow.

Mr. BEVANS. I am going to propose that present section 402 be reenacted, but in the definition of United States value I want to suggest——

Senator KING (interposing). Wait one minute until I get that section of the law. You may now go ahead.

Mr. BEVANS. That would be paragraph (d) on page 102 of the present tariff act. That a commission, where it is provided that on merchandise shipped to the United States otherwise than by purchase, may be deducted not to exceed 6 per cent, I am going to suggest that that be made 10 per cent, for the reason that it is not unusual for a commission of 10 per cent to be paid by a foreign manufacturer to his agent in this country. And inasmuch as this United States value is, as I have stated, theoretically the foreign value, and the purpose is to work back to foreign value, the true amount of commission should be deducted, and also the profits, and 8 per cent and 8 per cent. That is, profits of 8 per cent and overhead of 8 per cent in the case of purchased goods.

Senator KING. What is your suggestion there?

Mr. BEVANS. That this maximum be taken out of the act, and that we be permitted to deduct the actual overhead and the profits that are usual in the class of merchandise.

Senator KING. That would be rather indefinite.

Mr. BEVANS. I was going to say——

Senator KING (interposing). Let me ask you this, if that is not rather indefinite. As to the matter of profits, how would you ever determine that without further examination?

Mr. BEVANS. The exact language, Senator King, I was going to propose is this:

> Equal to the profit which is ordinarily realized in the case of merchandise of the same general character, and the actual general expenses of purchased goods.

There will be no difficulties in proving that. The burden will be upon the importer to satisfy the appraising officer, or the court, if an appeal is taken from the appraising officer. And that is the language that has been used in the provision for cost of production

in many tariff acts. There has not been any difficulty in administering that section.

Senator KING. What is the objection to the inhibition of a rate in excess of 8 per cent?

Mr. BEVANS. Well, of course, 8 per cent is too low; 8 per cent is entirely too low. I do not see how you can fairly decide upon any maximum, because manifestly there are some classes of imports which are handled in bulk, on a very large scale, and where the percentage is not so high. On the other hand, there are a large number of imports, of various articles, where the profits must necessarily be a higher percentage by reason of the conditions of the trade in that particular item or those items. I think we would have no difficulty in that at all, and I think we would work back in every case to foreign value, just what is contemplated or was contemplated by United States value when it was adopted.

Senator SACKETT. How can you determine the profit on an individual item when an importer is handling several hundred or several thousand items? How can you apply an individual profit?

Mr. BEVANS. We would not apply the profit on an individual article. You will notice the language I suggest here, "on merchandise of the same general character." Now, although I am not a business man, I think in the conduct of business where a man is dealing in merchandise of a certain character he does not attempt to segregate his profit or overhead to each particular article. If he is handling glassware he would not attempt to segregate it to each glass or bowl. This would constitute one class of articles and on that class his profit averages so much.

Senator SACKETT. Suppose he is handling glassware and china. You would have to be able to segregate the china from the glassware in order to get at it under your theory.

Mr. BEVANS. Under my theory all that the Congress would do would be to remove those limitations and permit the actual deductions to be made, and the question of the actual deductions would be a matter for appraisement.

Senator SACKETT. That would be very difficult if a man were handling a number of different nonrelated items and he keeps his books to show his general profit. He might make 1 per cent on some items and 15 per cent on other items.

Mr. BEVANS. He has to do that to-day under United States value because he is allowed actual profit with a maximum of 8 per cent.

Senator SACKETT. He can not run over that 8 per cent.

Mr. BEVANS. No, but I am proposing to remove that 8 per cent. If you are going to allow a man his actual profit when it is, say, 2 per cent, why should not he be allowed his actual profit if he makes 15 per cent?

Senator SACKETT. Is not that the reason for the 8 per cent, that you can not get a return of the actual profit?

Mr. BEVANS. No, I think not. I think when 8 and 8 were drafted in the law they were considered at the time, in the usual course of business, maximum profits and overhead. That has been the law for a long time.

Senator DENEEN. How could they check a statement of profits where in some foreign countries at least if not all the people do not allow them to look at their books?

Mr. BEVANS. I am talking about United States value. I am not proposing that in that case United States value be made the major method of appraisement or that there should be any change in the method we have to-day, except where we do have to go to the United States value that the true amounts of overhead and profit should be deducted. That is value that is ascertained here, selling price in the United States. The importer is here. His books are here. So that there would be no difficulty whatever in ascertaining those actual figures. We do it to-day. We have to show actual profit to-day, but when we get to 8 per cent we have to stop.

The CHAIRMAN. Have you the brief that you want to file?

Mr. BEVANS. No, I have not that brief with me, but if I may be permitted to file it later I will appreciate it.

The CHAIRMAN. If you will get it here to me any time to-morrow I will see that it is printed following your remarks. If you do not get it here at that time it will be printed somewhere else in the record. I will see that it does go into the record, but it should follow your remarks, and I take it that is what you would desire.

(The brief referred to is included in the body of the general brief filed by Mr. Bevans and printed on page 94.)

STATEMENT OF OTTO FIX, REPRESENTING THE NATIONAL COUNCIL OF AMERICAN IMPORTERS AND TRADERS, NEW YORK CITY

The CHAIRMAN. Mr. Fix, did you appear before the House committee?

Mr. FIX. No; I did not.

The CHAIRMAN. I did not see your name in the hearings.

Mr. FIX. No.

The CHAIRMAN. I understand that you wanted about 15 minutes.

Mr. FIX. Yes, sir.

Senator REED. Before you start, Mr. Fix, let me make this suggestion: Mr. Chairman, some of the members of the committee have suggested that all witnesses appearing before us be sworn.

The CHAIRMAN. I would not want to take that up now.

Mr. FIX. I will be very glad to be sworn.

The CHAIRMAN. Let us decide that later.

Senator KING. I am in favor of it.

Mr. FIX. I should be very glad to be sworn.

The CHAIRMAN. You may proceed, Mr. Fix.

Senator EDGE. Before you begin your statement, let me ask you a question: You used to be connected with the Government, or were you in the Government service?

Mr. FIX. If you want to hear my qualifications I shall be glad to go into them in detail.

Senator EDGE. No, I do not care for the details.

Senator KING. I should be very glad to have him state them briefly.

The CHAIRMAN. I know Mr. Fix very well, and he used to be around here a good deal in the tariff hearings.

Senator REED. But I should like to know something about his connections.

Mr. FIX. I was for 25 years an examiner of merchandise.

Senator REED. At New York?

Mr. FIX. Yes, sir; at the port of New York. I then was put in charge of the comparative value and rate bureau. It was for the purpose of creating uniformity in appraisements and classification of imported merchandise. I was assigned to the Finance Committee in 1909, and I was assigned to the Finance Committee during the preparation of the present act.

The CHAIRMAN. In 1922?

Mr. FIX. Yes, sir.

The CHAIRMAN. You may now go ahead with your statement.

Mr. FIX. Gentlemen of the committee, you have heard from witnesses that it is very simple to change a rate of duty from a foreign basis to the United States value basis. I want to say this: That if this committee had the time to investigate this question to determine the spread between foreign and domestic selling prices you would find that the spread varies according to the character of the merchandise involved. It is not very hard for any of you gentlemen to know that if you import a basket or a crate of baskets where the foreign value may not be more than $10 for the crate, the packing charge first represents possibly 50 to 75 per cent of the foreign value. Secondly, the freight charges, which are at a minimum of cost of cubic measurements, would represent anywhere up to 100 per cent.

Senator KING. Do you mean of the value?

Mr. FIX. Of the foreign value. Now, take diamonds, and that is a very different thing; I think that the freight charge and the insurance would probably not represent 5 per cent. And I could go on and name other classes in between which give different spreads, and which would show that there is no definite formula this committee could be offered which would truly show a rate of duty based on United States value now written on a foreign value basis. So that if your committee would consider United States value as the major basis of appraisement it would be necessary, if you wanted to do justice, to have an investigation made in order to know clearly what is the actual percentage of expense represented in the importation of merchandise of different classes. That is the first question. And then——

The CHAIRMAN (interposing). Could not we find that out by finding out what the agent is paid here by way of commission?

Mr. FIX. In the matter of commission——

The CHAIRMAN (continuing). That is all there is involved in this proposition. If the commission is 10 per cent, then it is 10 per cent; and if the commission is 1 per cent, then it is 1 per cent; and if the commission is 30 per cent, then it is 30 per cent that is involved.

Mr. FIX. I am speaking now of commission, but freight charges first. The freight charge is not in the form of a commission. The freight is usually charged on the selling price.

The CHAIRMAN. That is right.

Mr. FIX. Then you go to the next step, and that is what is the general expense of the importer. Now there again you have a myriad of classes. You have an importer who is the representative of a foreign manufacturer, who has a little office somewhere and who may not employ help but sells merchandise that is sold in bulk and of considerable value, and what is the result? That man can afford to sell merchandise on the basis of 1 per cent and make a mighty good living.

Take another concern that handles a variety of classes of merchandise. Take Marshall Field & Co. as an example, or Carson, Pirie, Scott & Co., and I could name hundreds of others, who have establishments and employ American labor; who display their merchandise, what is the general expense of such concerns? It can not be less than 20 per cent, I think, and in many instances a great deal more. Then what is the risk involved in the handling of merchandise? That again involves the character of the merchandise. You might have linens or cottons, where the value is more or less stable, and the risk involved is not great. Then you may have articles that are novelties, where the sale one day may demand the article at any price and the next day it can not be sold. So that in all these questions where you attempt to change the basis of valuation you have before you problems which I, with my long experience, would hesitate to say I could solve.

Senator REED. Suppose we do not make any of these deductions, but——

Mr. FIX (interposing). Then you would have——

Senator REED (continuing). Would base our duty merely on the American selling price of the imported article, without any deduction whatsoever.

Mr. FIX. Well, with the present rates as written in the act, it would simply prevent importations.

Senator REED. And of course they would have to be reduced.

Mr. FIX. Yes; but a formula of reducal is the unknown factor. It has been stated here repeatedly that it is simple, that it is easy, but has anyone ever offered to solve it? Such a formula can not be offered; there is no such formula.

Senator GEORGE. That would involve a study and consideration of every article in this schedule.

Mr. FIX. Yes, sir; and the study would be so tremendous that when your committee was through you would have so many different phases to consider that you would probably say we better stay on foreign valuation.

Senator SACKETT. Do not we do that now, in the third plan? Do not we keep it on United States valuation there?

Mr. FIX. Only in the absence of foreign or export price, and you do it through this method of arriving arbitrarily at the foreign cost. United States value it might be said is nothing else but a check on the integrity of the invoice price. In other words, when an examiner, as I have done many times, has a doubt as to the integrity of an invoice, he goes and visits the importer, and I did that, and I saw to whom he sold the merchandise and the price at which he sold it. I then made the deductions as prescribed by law, knowing also what his actual expenses were. When I made that deduction, that is, the value of the United States selling price, if I found that it checked with the foreign value, then I knew that the invoice price was true.

Now, if the major method is to be United States value, I want to repeat—well, I should like to give you an example. I had prepared some notes, but——

The CHAIRMAN (interposing). Before you go on that matter, you were here in 1922, Mr. Fix?

Mr. FIX. Yes, sir.

Mr. CHAIRMAN. You will remember that the House passed a bill basing all rates in it upon foreign goods as sold in the United States on American valuation?

Mr. FIX. Yes, sir.

The CHAIRMAN. And you will remember very well that I sat here for a day or two with the House Members and showed them what it would mean, and that we changed their bill in this committee, changed all the rates accordingly in compliance therewith, clear through the bill. You were here all the time?

Mr. FIX. Yes, sir.

Mr. REED. And how long did it take you to do that?

The CHAIRMAN. Oh, not so long as you would think.

Mr. FIX. They adopted an arbitrary method, a hearsay method. They said, and I think Mr. Burgess suggested it here—they said that the expense, I think, would be 5 per cent, with freight, insurance, and so forth. The gross profit was 33⅓ per cent on cost. And then they converted a 60 per cent rate, I think it was, to 37½ per cent, but when you applied that 37½ per cent to the United States selling price you found that it was a far greater amount of duty than if you had taken 60 per cent of the foreign cost.

Senator REED. When the House bill came over here in 1922 it provided for American valuation.

Mr. FIX. Yes, sir.

Senator REED. And the Senate committee changed that to the foreign invoice price.

Mr. FIX. Yes, sir.

Senator REED. And converted the whole schedule of rates to meet that new basis, and raised all the rates from 10 to 20 per cent, I believe it was.

Mr. FIX. By the formula used by the House committee, in changing from foreign to United States value——

The CHAIRMAN (interposing). I will say, Mr. Fix, if you will remember, we only used that to work to.

Mr. FIX. Yes; that is all that it was.

The CHAIRMAN. That was not final as to the rates we made in the present law.

Mr. FIX. Oh, no.

Senator REED. To change from the present basis of foreign value to the American selling price would not involve so great a step as a change from American valuation to foreign valuation.

Mr. FIX. It would involve exactly the same step.

Senator REED. Oh, no.

Mr. FIX. Because you would have to find out——

The CHAIRMAN (interposing). It could not be that, Mr. Fix.

Mr. FIX. It would involve this, a determination of what is the usual expense connected with transportation in all the various classes of merchandise, to start with.

The CHAIRMAN. That we have already had. You take your wicker chairs, take all wicker work that you have referred to here, and that has been figured out time and time again. We know just exactly what it is as to freight, and the cost of goods in 1922. There is no difficulty in that. As you must know yourself, there is no particular difficulty in that, because you were here and knew the plan that we worked out. And it was given here as a plan, as to the figures, as to

exactly what they paid, and what the Government knew they paid in the importation of these goods. I do not see any trouble at all about that.

Mr. FIX. It would require another investigation to establish present conditions. As you very well know, conditions have materially changed. Freight rates are different, rents are different, and so on.

The CHAIRMAN. It has slightly changed.

Mr. FIX. Wages are entirely different. Rents are entirely different. And you have corporation taxes and other expenses of conducting business, which are different to-day from 1922.

Senator REED. And if they were taken into consideration that would raise the rates, do you mean?

Mr. FIX. There is no formula that I know of that could be used to transform the rate basis of foreign valuation to United States valuation.

Senator EDGE. Whom do you say you represent?

Mr. FIX. I represent the National Council of American Importers and Traders.

The CHAIRMAN. I want to say to the members of the committee that Mr. Fix has had a great deal of experience, because I have met him in these matters for many years.

Mr. FIX. I am just taking as an example a foreign value of $1, and adding to it freight and insurance, which may apply to china and glassware, 15 cents, making $1.15, and then a rate of 50 per cent. I have taken 50 per cent as the average rate, although the rate on china is 70 per cent and on glassware is 55 or 60 per cent. The amount of the duty based on foreign valuation would be 50 cents, and the landing cost would be $1.75. I have taken 33⅓ per cent on landed cost, as that was suggested as the proper percentage.

Senator SHORTRIDGE. What is that?

Mr. FIX. Thirty-three and a third per cent is the gross profit. that makes a total of $2.20. Now if we use that as United States value, which is so arrived at, and work back to determine what the 50 per cent rate will equal, we will find this: The United States selling price is $2.20, and I am deducting the maximum allowed under the present law, 8 and 8. The deduction would be 35.2 cents, making $1.84.8. Taking off freight and insurance 15 cents, we find that we have a dutiable value of $1.69.8.. Then dividing by the amount of the duty, which is 50 per cent, we get a dutiable value of $1.13.2. So that we have increased the basis 13.2 per cent, and therefore increased the rate of 50 per cent to 63.2 per cent, using the present deductions allowed under United States value.

The CHAIRMAN. Mr. Fix, do you think that is a fair example of the goods covered by this bill? You know very well that glassware is higher perhaps in every detail, for packing charges are greater while the cost of the articles is very low as compared with the cost of transportation, not only on the ocean but upon the railroads of this country. You have always been fair, and I want to call your attention to that.

Mr. FIX. Yes; and I have been fair in this, because I have taken 15 per cent. I will give you the actual figures if you desire them showing exactly the cost of transportation as represented by percentage of any commodity that you might desire.

The CHAIRMAN. Oh, no; that is not my point.

Mr. FIX. And we can put it in a form to submit it, or the books, or whatever you may desire, and show that it is correct.

The CHAIRMAN. I do not think you understand my point. I am not questioning that, but I am questioning the 15 per cent. Suppose it was cost of linen, or suppose it was hardware, or almost any other commodity outside of glassware, and the packing charge would never be 15 per cent.

Mr. FIX. I have not said that it was. I have taken 15 per cent as the average cost. I believe when you said a moment ago that you knew the percentage represented by freight on baskets, that it was 100 per cent, considering that, you will see that I certainly have not been exaggerating when I say 15 per cent.

Senator REED. Take the illustration that you have given, would not full justice be done to every honest importer if on those facts we reduced the duty from 50 per cent to 40 per cent ad valorem?

Mr. FIX. That is very true, but you understand that this is simply an illustration.

Senator REED. Well, I have taken your illustration and given a solution of it.

Mr. FIX. But it does not solve the problem as to every class of merchandise. For instance, if you take the basket rate, where your freight item is 50 to 100 per cent, you would have an entirely different problem.

Senator REED. Then we would cut the duty in half.

Mr. FIX. That would not make a determination of what the percentage of freight is on each and every class of merchandise. In addition, it would require ascertainment of what the general expense is on the various classes of merchandise, and certainly if the committee desires that made after full examination, there may be a proper formula found. But let me point this out, that if you follow that procedure in adopting United States value what will be the remedy of the importer? That is the question. If the United States value is adopted I prophesy this, that every established house in the United States will have to go out of the importing business direct.

Senator REED. Why?

Mr. FIX. And substitute in place of that, or buy from the agent of the foreign manufacturer. Why?

Senator REED. Yes.

Mr. FIX. Because it will be then the effort to reduce the United States selling price so that the duty may be levied on the lower value, and the only way that that can be done is to eliminate the expenses now contained in the United States selling price to the greatest extent, and that can only be done by a transferring of the business to an agent, who has no overhead or at least very little overhead. Now, certainly if it is the desire to drive out reputable and long established houses, why, then, the United States value should be adopted.

Senator REED. That would be a great advantage to the consumer, would it not?

Mr. FIX. That might be true, but nevertheless that would be the effect. The representative of the foreign manufacturer will have to sell his merchandise, and the only charges included in that United States selling price will be the actual expense of transportation plus

whatever may be paid the agent, and then the importer, or the so-called importers of the present, will have to buy from these agents.

The CHAIRMAN. Have you any idea as to what the percentage of importations is on consignment?

Mr. FIX. It is not a big amount, because the purchase form of invoice is used in almost 90 per cent of the cases. I think I am not exaggerating when I say 10 per cent, and I do not believe it is 10 per cent.

Senator SHORTRIDGE. Will you state that again? I did not catch it.

Mr. FIX. I do not think that 10 per cent of all merchandise imported is on consignment; that is, sold to agents.

Senator SHORTRIDGE. Ninety per cent of the imported merchandise is bought directly from an exporter.

Mr. FIX. Yes, sir.

Senator SHORTRIDGE. Or a manufacturer in a foreign country?

Mr. FIX. Yes, sir.

Senator REED. Do you mean 10 per cent of the dutiable article?

Mr. FIX. Yes, sir; possibly 10 per cent

Senator REED. It is higher than that if you just consider the dutiable articles which is ignoring the free list.

Mr. FIX. I am only thinking of dutiable articles because we handle no free articles. Now, in paragraph (3) of the proposed law, United States value is first defined for such or similar merchandise, and then the second method of the House bill as added:

> If such or similar imported merchandise is not so offered for sale in the United States, then an estimated value, having regard for differences in quality and other differences, based on the price at which merchandise, whether domestic or imported, comparable in construction or use to the imported merchandise, is so offered for sale; making due allowance in either case for cost of transportation and insurance, and other necessary expenses from the place of shipment to the place of delivery, a commission not exceeding 6 per cent, if any has been paid or contracted to be paid on goods obtained otherwise than by purchase, or profits not to exceed 8 per cent and general expenses not to exceed 8 per cent, on purchased goods, and, in the case of imported merchandise, for duty.

Now, you will note, gentlemen of the committee, that under this section of the provision the appraiser can estimate value. If he finds that such or similar imported merchandise is not really offered for sale on date of importation. Now, you will find, gentlemen of the committee——

Senator SHORTRIDGE (interposing). Offered for sale where?

Mr. FIX. Imported for sale here in the United States.

Senator SHORTRIDGE. All right.

Mr. FIX. The great mass of merchandise is brought over here because of its novel character, and naturally there must be some first importations, at which time there can be none freely offered for such price. So that the appraiser under this section of the law will go to the estimation of value, and in the estimation of value he shall compare it with not alone imported merchandise but domestic merchandise, and if he adopts the price of the domestic article he is not permitted to deduct the duty. Now, let us see what that means: I have here, taking the same illustration of $2.20, because I assume that the price of the competing domestic article will be approximately the same as the imported article. So I take as the price of the domestic article the $2.20 which I arrived at before, through adding charges to foreign cost. I take out freight and insurance, which is

15 cents, and then 16 per cent, which is the maximum allowance, and the result is that the dutiable amount will then become $1.698. And this amount is 69.8 per cent higher than the foreign value. So you have increased the 50 per cent rate to 84.9 per cent.

The CHAIRMAN. Mr. Fix, you take one article and figure it—glassware, for instance—in one case, and then you take another article that could not possibly fall under that provision of the bill.

Mr. FIX. Oh, Senator Smoot, but it could.

The CHAIRMAN. It can not fall there.

Mr. FIX. All right, Senator Smoot, if you will permit me, let me show you why it can. Very recently there has been a great demand for glassware. Glassware is to-day brought over, and is also made here, in many different forms. I will give one illustration: To-day you have the tree made of glass, which is used for table decoration. That thing is a new creation; absolutely new. When the first importation arrived, there was no price at which such goods were sold at time of importation, and consequently the appraiser would go to the domestic price. Now, there were domestic articles of that character being made here, and you would have had to take the price of the domestic article and make the deductions incurred in the importation of the foreign merchandise; but when you come to duty, because of the provision of the law which limits deductions to duty only on imported merchandise, you have then, really just as I have said, the value of $1.69.8, or 69.8 per cent higher than the foreign cost.

The CHAIRMAN. But, Mr. Fix, you forget in that case that perhaps on an article which was imported here from Germany, which was never made in this country, that the imported price was much higher than the article you refer to here, which was $1.15. I mean to say the higher it is, the value of it, then the rates would be less than you quote on the dollar article.

Mr. FIX. Oh, no.

The CHAIRMAN. Fifteen per cent of $1 is 15 cents, but 15 per cent of $2 is 30 cents. It could not be the same.

Mr. FIX. I have proceeded on this theory: These examples are given because it is assumed, or we have assumed at least, that the rate of duty equalizes prices. So that if I say an article cost a dollar, and I add to it charges and duty and our general overhead, which we figure at 33⅓ per cent, we get to the price of the competing domestic article. This is fair, I think, because we have taken exactly what Congress itself fixes as the proper difference, and we have worked up a price from that showing the price of the domestic article.

The CHAIRMAN. I can plainly see where your dollar article in glassware figured out the way you did figure it, with the 15 cents added, and then working back the same as you did there, that it would be a great increase under the American valuation if that applied to section 2 of the valuation. I admit that. But I do not admit that if that item were $2 and a new thing entirely it would fall under that provision at all, and if it did it would not be the same spread as on the dollar article.

Mr. FIX. It would have to fall under that.

The CHAIRMAN. And if that is the case it could not be the same spread.

Mr. FIX. I am only pointing out to the committee this, and we will forget the price altogether: Is it fair to say that when you are

working back from the selling price, whether the price of the domestic article or of the imported article, that you shall in the one case deduct the duty and in the other case you shall not deduct the duty? And particularly for this reason, that the only reason why you fix a rate of duty is because you deem it necessary because of cost of production. So that if the selling price of a domestic article is $2, and the selling price of an imported article is $1, let us say, and you fix a duty of 100 per cent, you are equalizing those two things. Now if you say you shall take United States value of the domestic article, is it fair to say that you shall not make a deduction for the duty?

The CHAIRMAN. No, and nobody is thinking any such thing. Nobody wants any such thing.

Mr. FIX. That is the substance of it.

The CHAIRMAN. No, those are special cases perhaps that would not be applied once in ten thousand times, or not more than that, or maybe not more than once in a year.

Mr. FIX. Senator Smoot, I wish I could think that.

The CHAIRMAN. And if there is any change necessary I am perfectly willing to go into it more thoroughly and make the change. I do not want to do anything here to bring about the condition that you have just described. And taking up the analysis, which was just some particular case and I am perfectly aware of that, and you have been in the business long enough to point out these little particular cases that would not be one-thousandth part of the amount of the importations.

Mr. FIX. But that one-thousandth time might be a very serious time if it has accomplished an injury.

The CHAIRMAN. If it is unfair, I want to make it so that it is not unfair.

Senator KING. Mr. Fix, do you concede that it is only once in a long time, as my colleague has indicated, or do you claim that it is general in character and universal in application?

Mr. FIX. I think it will be used quite frequently, and for this reason: "Such or similar" has been defined by the United States Customs Court to mean commercially interchangeable. And it was stated this morning by Mr. Burgess that in a certain case the United States Customs Court of Appeals did not apply the foreign value because there was a slight difference, and he said that they should have used the foreign value even though it was slight.

The CHAIRMAN. But the court decided otherwise.

Mr. FIX. One moment. Following that up just a little further, at the present time the appraiser, if he finds that an article is not commercially interchangeable, he can not use the first section of United States value. He must go to the second section if he will follow the law, and consequently he will use the second section quite frequently, in my opinion, and that is my theory.

Senator KING. Have you concluded your answer?

Mr. FIX. Yes, sir.

Senator KING. I want to ask you one question which you have not covered, and I do not know whether you care to answer it or not: You have been as I understand it connected with the Government service for many years.

Mr. FIX. For 34 years.

Senator KING. And you are familiar with importations, and so forth.

Mr. FIX. Yes, sir.

Senator KING. Did you find any difficulty in determining foreign values of imports into the United States?

Mr. FIX. No, sir.

Senator KING. If so, to what extent did you find the difficulty?

Mr. FIX. As I stated to this committee before, when I had a doubt as to whether or not the foreign-market value or the export price was correct; in other words, when I doubted the invoice price stated, and I worked back to United States value, in that way, if I verified the foreign value, then I understood. And that had to be done very seldom because as you understand there are hundreds of importers in the United States, many of them importing identical merchandise, merchandise that is very similar—oh, there might be a little spray here or a difference there, but it is practically identical; and we have a central bureau to which appraising officers send a sample together with a statement of the invoice price for verification by the New York appraiser, so that there is a double check. And if there is any question, if the New York appraiser has no information on foreign value, he will ask for an investigation. So that it is up to the examiner to determine whether or not he has knowledge of foreign-market value, and if he has not it is his duty to ask for an investigation. I think that is being done very thoroughly at the present time.

Senator KING. Just two or three more questions, and then I am through: About what percentage of the dutiable imports are purchased directly by representatives of American houses, like Wanamaker, and Carson, Pirie, Scott & Co., and others, by sending agents and representatives abroad to make purchases there?

Mr. FIX. I do not think there is any great percentage, for the reason that the most of the——

Senator KING (interposing). I did not ask the reason but the number.

Mr. FIX. I want to explain because I might possibly be misunderstood.

Senator KING. I notice in the town in which I live that a number of business houses send their buyers direct to Europe, and I presume that same custom prevails in many other parts of the United States, and therefore I wanted to know what proportion of the dutiable imports are purchased by American business houses by sending their own representatives abroad for the purpose.

Mr. FIX. I think it is the general policy of all department stores, and naturally of importers to send representatives abroad for the purpose of buying. But when it comes to the department stores——

Senator KING (interposing). I did not ask you that, but about what the percentage is if you have any idea.

Mr. FIX. I should say practically not less than 90 per cent.

Senator KING. I did not understand that 90 per cent of the purchases were made direct by American buyers. Are they guilty of frauds, and are they the fraudulent purchasers whom Mr. Burgess and others referred to, these American buyers who buy direct? Are there a number of frauds there? Is there any such amount of fraud in that connection as indicated?

Senator REED. Never heard of any hats coming in with undervaluations?

Senator KING. Let me get through first.

Senator BINGHAM. Right along that line, Senator, if you will permit me, right in connection with your question, I wanted to ask whether one does not gain the impression by traveling in Europe from those one meets and talks with, and from one's own expereinces—for I have had it happen to me more than once when buying an article in an European city, that the European merchant offered to make out a different bill for me to present in the customhouse for the amount of money I paid—and is it not the case very frequently that a buyer from an American house, without any suggestion on his part, is offered a different invoice from the thing that he actually paid?

Mr. FIX. Senator, may I say to you that when you go into a store to buy in foreign ports merchandise you are buying at a retail price. The law provides that the duty shall be assessed on the wholesale price.

Senator BINGHAM. Do you think they ever do that?

Mr. FIX. What the purpose of offering you a different bill is I do not know. But I can say that if he did offer you a different bill, and if that bill was cut one-third, you would not be defrauding the United States customs, because it probably would represent the fair wholesale price on which duty should be assessed.

Senator EDGE. You say you do not know. Do you not have a pretty good idea that that is because he wants to make a sale?

Mr. FIX. I can not speak of what is in the minds of others.

Senator KING. Coming back to my question, if I may complete it. You say that 90 per cent of the dutiable imports are purchased directly by American business houses in foreign countries?

Mr. FIX. To the best of my knowledge, yes.

Senator KING. Did you in your long 25 or 30 years acting for the Government experience much difficulty because of frauds or undervaluation on the part of these American importers?

Mr. FIX. No, sir.

Senator KING. Now coming to the other 10 per cent, did you have any difficulty in ascertaining the foreign value of the 10 per cent imported by these persons who were agents rather than dealers?

Mr. FIX. No, sir.

Senator KING. What per cent of the imports brought into the United States were the subject of controversy based upon fraud?

Mr. FIX. I would say not 1 per cent. Thank you, gentlemen. I ask permission to file a brief later.

The CHAIRMAN. Yes.

Senator SHORTRIDGE. For the record it ought to appear that the Senator from Connecticut rejected that improper proposition.

Senator KING. I want to ask just one other question. Has there been any difficulty experienced by the department, or was there any difficulty during all your years of service in applying the foreign value provisions of the law?

Mr. FIX. No, sir.

Senator EDGE. When did you leave the public service?

Mr. FIX. 1922, October 15.

Senator REED. You are now import manager for George Brockfeldt Co., are you not?

Mr. FIX. Yes.

Senator REED. Very large importers in New York?

Mr. FIX. Yes.

Senator BINGHAM. Do you not think the Treasury Department ought to make it a little more apparent to tourists who go abroad that it is entirely legal for them to make their declarations of purchases based on the wholesale prices and not the retail prices which they have actually paid?

Mr. FIX. Do you mean in the passenger's declaration?

Senator BINGHAM. Yes. You said a few minutes ago that the duty should be based on the wholesale price.

Mr. FIX. They are under the law. The law specifies it.

Senator BINGHAM. I ask you whether you do not think it is the duty of the Treasury Department to let the public know a little more widely when they examine baggage that the passenger should not declare the retail price, but that the declaration for the purpose of payment of duty should be the wholesale price?

Mr. FIX. I think the declaration itself shows that. If you will read the declaration you will find that it is the wholesale price.

Senator SACKETT. Do you not think that the passengers are charged duty on the actual price they pay?

Mr. FIX. Do you mean as far as the passenger's baggage is concerned?

Senator SACKETT. Yes.

Mr. FIX. Yes; I think so.

Senator SACKETT. You do not think that is the wholesale price?

Mr. FIX. No.

Senator SACKETT. Well then, do you not think, as the Senator said, that the Secretary of the Treasury ought to spread that information, and not allow a passenger to list his things according to the retail price that he paid?

Mr. FIX. I think so.

Senator SACKETT. Do you not think that would be fair, according to your interpretation of the law?

Mr. FIX. Yes.

Senator KING. Mr. Fix, my colleagues on my right here and myself disagree as to one of your statements. I may have misunderstood what you said and they may have misunderstood. I asked you what proportion of the dutiable imports were brought into the United States by American business houses, they making the purchases, buying their own imports in foreign countries, and you said 90 per cent?

Mr. FIX. Ninety per cent, I should say; but, you see, that would embrace the entire United States, and my experience was limited to New York, so I might be a little faulty in my statement. I say from my experience in the port of New York of 30 years that approximately 90 per cent of all the merchandise imported is bought directly by the importer.

Senator KING. By the American importer?

Mr. FIX. Yes.

Senator SHORTRIDGE. Do you mean through his agent in Europe?

Mr. FIX. Yes.

Senator EDGE. Well, I should imagine there would not be any other answer to that. If he is an importer he has to have an agent to buy.

Senator REED. You said that these undervaluation cases, Mr. Fix, were relatively few and insignificant.

Mr. FIX. Yes.

Senator REED. Can you tell the committee how much was paid to the United States by importers and department stores who were fined for undervaluation of rug importations recently?

Mr. FIX. Senator, that my represent a big amount when you see it in figures.

Senator REED. Well, how much?

Mr. FIX. But it represents a very minor amount when you take it as compared to the total collection.

Senator REED. How much was it?

Mr. FIX. I said 1 per cent. There is $650,000,000, if my recollection is right, duties paid in the United States. About $650,000,000. So that 1 per cent would equal $6,500,000. Well, I question whether it is half of that, or one-quarter of it. When I said 1 per cent, I think I exaggerated.

Senator REED. How much was paid? You have not answered my question yet.

Mr. FIX. I do not know. I have no knowledge.

Senator REED. Oh, you know in round figures?

Mr. FIX. I do not.

Senator REED. Everybody interested in customs matters knows about that incident of the rugs.

Mr. FIX. I do not know. It may be $100,000. I do not know.

Senator REED. It was a great deal more than that; was it not?

Mr. FIX. I do not know. You see, I have no interest in rugs. It does not come to my attention.

Senator REED. Is it not a matter of common knowledge amongst everybody interested in imports?

Mr. FIX. No; I hardly think the department would circularize a statement of that kind. It might be reported in the newspapers.

Senator EDGE. You say you left the service in 1922. Then I take it that you had no experience as an appraiser or inspector after the passage of the present act—the 1922 act?

Mr. FIX. Except as I come in contact with customs daily, not as an official.

Senator EDGE. I mean as an official.

Mr. FIX. No; not as an official.

Senator EDGE. As you well know, the 1922 act provides an entirely new system of valuation, which is section 402 that has been referred to so frequently. Then you really have no direct knowledge as an official whether undervaluations have increased or decreased under the present system?

Mr. FIX. The system of valuation is no different from that in the act since the act of 1909.

Senator EDGE. I realize that.

Mr. FIX. In the act of 1890, amended by the section law in 1897, the United States value section was included in the act of 1890. Since that time the method of appraisement has been almost identical, with the exception that United States value has been adopted as one of the major methods in the act of 1922.

Senator EDGE. But you have no direct knowledge of just what percentage of increase or decrease of undervaluations have occurred since the present act went into effect?

Mr. FIX. No, sir.

Senator REED. Mr. Fix, in that rug incident, in that one case do you not remember that the assessment of additional duties and penalties in that case alone amounted to about $1,500,000?

Mr. FIX. Senator, I have no knowledge, as I said before, what the amount is. I know there were undervaluations, and I know there were settlements, but what the amount was I do not know.

The CHAIRMAN. In justice to so many of the witnesses who are here to-day I must ask that from now on the statements be made just as brief as possible, and I would like one person, if they can, to represent all of the witnesses that are here to speak upon one subject. Mr. Horace B. Cheney, of the Silk Association, desires to be heard for a few moments. I want to say, Mr. Cheney, that I have looked over your testimony in the House, and I would not want you to repeat now what you have said in the House, and if you have anything new we would be glad to hear it. Make it just as brief as you can. And I would like also if you could do so that you speak for those who want to speak here on that same subject.

STATEMENT OF HORACE B. CHENEY, SOUTH MANCHESTER, CONN., REPRESENTING THE SILK ASSOCIATION

Mr. CHENEY. I am Horace B. Cheney, of Cheney Bros., South Manchester, Conn., silk manufacturers; and I am the chairman of the legislative committee of the Silk Association, that represents 90 per cent in value of all the silk goods made in the United States. There are in the Silk Association some importers who are there for other community interests than those which I represent. And they do not always agree with us in that respect. But the domestic industry I represent practically.

At the expense of probably balling up my testimony somewhat I will endeavor to confine myself entirely to those things which seem to need additional illustration. I forgot to say also that I am a member of the executive committee of the Tariff League, which Mr. Lerch represented this morning, but I appear here for the silk industry.

Mr. Lerch made a statement here this morning which was so lucid and clear in relation to the legal aspects of the case and the presentation from the customs point of view, that I shall not attempt to add anything to what Mr. Lerch said in relation to that aspect of the case.

The testimony you will find cumulatively laying many criticisms on the difficulty of a change of base. We are advocating the United States value. And at this moment I wish to differentiate clearly between United States value and American value, a subject which seems to be very confused in the minds of a majority of people. The United States value, which we are advocating, is basing the duty upon the value of the foreign merchandise when sold in the markets of the United States, less the duty paid and such other deductions as the committee shall determine. The American valuation is basing the duty upon the cost of or price in the American market of an article produced in the United States. A very material difference, but I notice that even such experts as Mr. Fix confused the two continually in his conversation, referring from one to the other without differentiating between them.

The United States value has provided by law certain deductions. I wish to point out one important fact, which is that the Treasury Department in their administration of the law instead of carrying out the letter of the law have carried a formula which is not practically provided by law, which is that the deductions will be the maximum deductions allowed in the law, and not, as the law provides, whatever they happen to be.

So that practically a deduction generally in administration is made of the whole 16 per cent, although the actual facts may be, as in the majority of the cases of those things with which I am concerned, perhaps not more than two per cent. So we recommend that those deductions be eliminated because particularly of that fact. And also for the ease of administration.

Senator REED. And if that is done you are willing to see the amount of the percentage of the ad valorem duty reduced correspondingly, are you?

Mr. CHENEY. Yes and no.

Senator REED. Well, you do not want to have it reduced?

Mr. CHENEY. We do not want to have it reduced.

Senator REED. But in fairness it should be.

Mr. CHENEY. Because I believe that our duties to-day are unheard of.

Senator KING. Not high enough?

Mr. CHENEY. Yes. And I will explain immediately why that is.

Senator REED. No; I do not want to get you on the particular question of duties on silk. We are concerned with the principle, Mr. Cheney.

Mr. CHENEY. Yes. Well, this is the principle, and is a very important principle, and has a great bearing upon the subject that you are discussing.

At present you have a foreign valuation. Apparently in the minds of the general public that means a definite thing. It does not mean a definite thing by any manner of means. It means a different thing with every country of origin from which the merchandise originates. If you have, for instance, silk laces embroidered in China you have got an evaluation upon them which is an entirely different think than the same things produced in France.

Now the silk industry is particularly disfavored in the matter of ad valorem duties. Years ago we tried to get a substitution of specific duties for ad valorem, and we did have enacted a partial schedule of specific duties. Those, because of the entire change of the economic situation in the world, have become inoperative, and are practically eliminated in toto from the tariff bill to-day. So that the silk industry, which peculiarly needs definite, fixed duties, has to depend upon ad valorem duties exclusively for the first time in the last 30 years or more.

The competition of the silk industry is chiefly a competition with China and Japan and with France. The majority—you might say 90 per cent of the entire imports of silk goods come from one of those three sources. Now in reference to those which come from China and Japan, I defy anybody, even in China and Japan themselves, with the best of intentions, and the best of information which is there available, to determine what the cost of production is. There is no

such thing as cost accounting in our sense of the word, in China and Japan, and they do not know what their goods cost to produce. Therefore a differential which will make up for the difference in the cost of manufacture in China and Japan and in the United States is a very different thing than a differential which will make up for the same thing produced in some other country, particularly in Europe.

Senator KING. Would you permit a question?

Mr. CHENEY. Yes, sir.

Senator KING. There is a wholesale price in China as well as in Japan for their products, is there not?

Mr. CHENEY. No, sir.

Senator KING. No wholesale price?

Mr. CHENEY. There is not a wholesale price.

Senator KING. Well, is there a price?

Mr. CHENEY. There is a price which varies with each transaction and from day to day.

Senator KING. I will ask you, is there not a difference in wholesale prices of manufactures in the United States in various products?

Mr. CHENEY. Surely.

Senator KING. So that you would expect a variation from day to day, from year to year, and from one point to another?

Mr. CHENEY. Yes, sir.

Senator KING. As we have in the United States?

Mr. CHENEY. Not to the same degree.

Senator KING. But there is a variation here and they have variations there?

Mr. CHENEY. Yes.

Senator KING. But there is a price, a wholesale price?

Mr. CHENEY. Not one which can be readily determined.

Senator KING. Well, they sell their goods, do they not?

Mr. CHENEY. Yes.

Senator KING. They sell them at wholesale?

Mr. CHENEY. The great difficulty in that case is that most of the goods—52 per cent of all the silk goods that are imported come from Japan to the United States in the form of boiled-out goods, which are converted here after they are received in this country, and those goods are almost universally shipped from Japan to the United States to an agent of the man who made them in China and Japan. Therefore there is no wholesale price in Japan. There is a price in this country for those goods, because they are here sold to converters who change them into the form in which they are going to be used when they come upon the market.

Senator KING. But an American could go there and buy those articles?

Mr. CHENEY. He could perhaps. He would probably have to pay a different price.

Senator KING. Well, they are for sale?

Mr. CHENEY. Yes; they are for sale, surely. They are sold all over the world.

Senator KING. Certainly.

Senator EDGE. But do the United States purchasers buy them from the local agent or do they as a rule buy them direct?

Mr. CHENEY. In the United States the goods are bought from the agent of the manufacturer in Japan. The majority of those goods are handled by a very few very large houses.

The CHAIRMAN. Do those houses just finish the goods?

Mr. CHENEY. They do not finish them at all. They just simply transfer them from Japan to the United States, and in the United States they are purchased by individuals who take them and dye them and print them and otherwise convert them for finished goods.

Senator EDGE. Have there ever been any authentic records by the representatives of the department as to the real production cost in Japan?

Mr. CHENEY. No; they, themselves, do not know.

Senator EDGE. They would not tell us if they did?

Mr. CHENEY. No; they would not tell us if they did.

Senator SHORTRIDGE. Why is that, in a word?

Mr. CHENEY. Because there is no such thing as cost accounting, in our understanding of the term, in China and Japan.

The CHAIRMAN. Do you not have the market price?

Senator REED. There is no market price.

Mr. CHENEY. As I say, they are largely a matter of trade and barter in Japan. They are picked up from small districts around by large houses, brought into a central place, and that large house distributes them to this country.

Senator COUZENS. On what basis do they fix their price when they sell them to you?

Mr. CHENEY. They sell them in the United States.

Senator COUZENS. Yes; but you say they have no cost accounting. It is based on what they pay for them from these little outside sources?

Mr. CHENEY. In the average I presume; yes, it must be. But in a specific instance; no. Because a man will go to one small district and pick up some merchandise at a sale from the producer. He will go to another one and pick up some at a different price, and when he gets them all together he makes some kind of an estimate of what the average price of them is, and ships them to the United States for sale.

Senator REED. Mr. Cheney, as between these different foreign countries the result of all this must be that there is a great discrimination between the duties we charge the products of one country and the duties we charge similar products from another country?

Mr. CHENEY. That is the point I wish to impress deeply upon the committee.

Senator REED. Let me ask you about that. What is the average price paid to-day for common labor in this industry in Japan?

Mr. CHENEY. It varies with female and male labor, but male weavers in Japan to-day are earning about 50 cents a day.

Senator REED. And what are they earning in the same trade in France?

Mr. CHENEY. In France they are earning about $10 a week. I have got all those figures in my brief if you will let me get it.

Senator REED. This is for purposes of illustration.

Mr. CHENEY. I do not want to give you from memory what they are, but I will give you the best that I can.

Senator REED. Then, as the result, I presume the French invoice prices run generally higher than the Japanese?

Mr. CHENEY. Of course, they generally make different articles than the Japanese and Chinese.

Senator REED. But when they are making the same they run higher?

Mr. CHENEY. When they are making the same they run higher; yes.

Senator REED. So we charge a heavier duty against the French product than we do against the Japanese?

Mr. CHENEY. That is particularly true of crêpes, which come from both countries.

Senator REED. And if the United States selling value were adopted as the standard or basis of assessment of duty, the duty would be the same to each?

Mr. CHENEY. The duty would be the same to each. And that is the most important point, from my point of view—the United States value. It does make a common basis for the assessment of duty without regard to the source of origin of the merchandise.

Senator THOMAS of Oklahoma. You said that there is no cost accounting in Japan, Mr. Cheney. If that is true is it not a fact that some of this raw product, so to speak, is sold in this country at less than cost?

Mr. CHENEY. I am very glad you asked that question. The importation of Japanese goods in the boiled-out condition, which I said constituted 52 per cent in that one condition of the total imports of broad silks into the United States last year were imported at an average price of $6.32 a pound. The cost of the raw silk from which such goods would have to be made in the United States—the lowest price of such material during the year was $5.10, which reduced to the boiled-off condition, which is the condition in which the goods are received, would mean $6.80 a pound. Or the price of the lowest grade of Japanese silk which was current on the market of the United States was about 50 cents a pound more than the goods after they were woven. And yet they told us there was no such thing as undervaluation.

Senator BARKLEY. Are you able to tell what percentage of the silks used in the United States are imported and what per cent manufactured in this country?

Mr. CHENEY. Comparatively speaking, there is a very small percentage imported. There are some $800,000,000 worth of goods manufactured in the United States, and there are about $40,000,000 of goods imported.

Senator REED. Five per cent.

Senator BARKLEY. You are speaking of silks alone?

Mr. CHENEY. Yes; I am speaking of silks alone.

Senator BARKLEY. What types of silks are imported as compared to the types manufactured here?

Mr. CHENEY. As I said, 52 per cent of the total imports of silks are in the form of boiled-out habutais and crêpes from Japan. That is piece goods alone. Now there are velvets and spun yarns and other forms of silk goods which are not figured into that estimate?

Senator BARKLEY. How does it compare as to quality with domestic silks?

Mr. CHENEY. It is inferior. Japan and China generally make the cheapest of silks which are used in the United States.

Senator REED. That $40,000,000 is foreign value, I presume?

Mr. CHENEY. Yes.

Senator REED. Go ahead with your statement.

Senator KING. I just want to state, Mr. Chairman, that going into the question of the amount imported, and so on, and the domestic production, later I shall want to examine this witness or somebody else to show the profits of the silk manufacturers of the United States, the members, the capital which they have invested, the dividends which they have paid, the amount of stock, watered or otherwise, and the development which has been made in the past few years. I am not going into it now, but will do so later.

Mr. CHENEY. I can give in about five words an answer to anything that you want to get out of that. There has not been any profit in the silk industry in the last three years.

Senator KING. Well, we will examine that a little later.

Senator REED. That relates to the specific schedule. We want to talk about the principle.

Mr. CHENEY. I will go into that just as far as anybody wants to go.

Senator KING. We will be glad to have you.

Mr. CHENEY. I regret that I could not make a much more swollen profit statement than I would be able to do.

Senator KING. I have no doubt.

Mr. CHENEY. Now there is one other point I wish to make and I will quit. Heretofore we have been able, with some degree of success, to ascertain foreign values. When I started my investigation with relation to the present inquiry of Congress I went to every source of the United States Government—the Tariff Commission, the Department of Commerce, the Department of Labor, and the United States Industrial Conference Board—and the Silk Association and every other source of labor information that I could find, and I got one, and only one, reply from all of them: "In the future we will be unable to supply you with any information except that which can be ascertained from the official Government publications of foreign governments in relation to wages and cost of manufacture."

I think I will just rest it on that.

Senator GEORGE. Let me ask you on this point, Mr. Cheney, what values have they been applying at the customhouses by the appraisers during the last three years during which you have not made profits?

Mr. CHENEY. They have been applying very largely in the last year and a half United States value to the imports from France and from Europe, particularly from Russia. We have no relations with Russia, and therefore there is no means of ascertaining anything from Russia. France has denied us any access to any books or any records. It is absolutely impossible to get any foreign valuation as a dependable base from France. The same is practically true of all the foreign countries.

Senator EDGE. As a matter of fact, our representatives have been withdrawn from France since 1927.

Mr. CHENEY. They were ordered out.

Senator GEORGE. Are they applying the United States valuation on imports coming from China and Japan?

Mr. CHENEY. No.

Senator GEORGE. They are not?

Mr. CHENEY. No; they are not. Except in a very limited way.

Senator GEORGE. I do not know that that is pertinent to this inquiry, why, but I would like to know.

Mr. CHENEY. I only want to make one plea for the silk business. You have seen fit to practically exclude Asiatic labor from the United States, and our chief competitor is Asiatic labor which comes in in the form of manufactured goods.

Senator GEORGE. You want these goods to go along with them?

Mr. CHENEY. Yes.

Senator SIMMONS. What proportion of these silk goods come from Asia? You said $40,000,000.

Mr. CHENEY. That is the total imports of all silk goods.

Senator SIMMONS. All?

Mr. CHENEY. There are about 52 per cent of all the broad silks that come from Japan alone. You will find in my published brief, which you have a copy of, full statistics in relation to all of these questions of where the goods come from, what their amounts are, the percentages that they make of the whole, and any other information of that character you will find in most full detail in the statement that I made before the Ways and Means Committee.

Senator SIMMONS. Suppose the same quality of silk was produced here as in France, the United States price for that product would be the same whether the goods came from Japan or from Asia, would it not?

Mr. CHENEY. If they are exactly comparable and in exactly the same condition that would be true. And it is true in a portion of the imports. It is not true in all cases, because of the fact that the cost of production in Japan is so much lower than the cost in France that most of the goods which come from France have some form of addition to them.

Senator SIMMONS. But they are in the main comparable?

Mr. CHENEY. They are in the main; yes.

Senator SIMMONS. And they sell for substantially the same price in the American market?

Mr. CHENEY. After conversion. What generally happens is that the goods that come from Japan come in the unconverted condition, and those that come from France come in the converted condition, and in the final condition they are sold for the same price in the American market.

Senator SIMMONS. You have to compete with that price?

Mr. CHENEY. Yes. And that price is what is preventing very largely our getting a price which means a profit to-day in the silk business.

Senator SIMMONS. Upon that basis can you not compete just as well with the products produced in Asia as you can with the products produced in France, if they are both sold on the American market at substantially the same price?

Mr. CHENEY. Not the same articles to the same extent.

Senator SIMMONS. Suppose they are the same. You say there might be some slight difference. Suppose they were the same, you would compete against the same price whether the goods came from Asia or from France?

Mr. CHENEY. Well, those which come from France come in because of style value.

Senator SIMMONS. Well, suppose they are comparable?

Mr. CHENEY. Therefore the price would not be the same, because of the style value attached to them.

Senator SIMMONS. There would be a slight difference in price?

Mr. CHENEY. There would be a slight difference in price because of the slight style value attached to them.

Senator SIMMONS. But if they were?

Mr. CHENEY. If they were, then the price would be the same.

Senator SIMMONS. If they were, then the price would be the same, as far as competition was concerned, whether they came from one country or the other, would they not?

Mr. CHENEY. Yes. Well, now, we succeed in selling a very small quantity of exactly comparable goods made by us of the same qualities as come frome China and Japan in our own markets agains Chinese and Japanse competition solely because of the fact that wet have outlets which take them because they are taking other things, and because our goods are more perfect.

Senator BINGHAM. Mr. Chairman, may I suggest that the three members of the subcommittee on the silk schedule who happen to be at this end of the table would like to hear what is going on.

The CHAIRMAN. I think the witness is through.

Mr. CHENEY. I beg your pardon. I hope to have the opportunity of explaining to the gentlemen who are on the silk committee more in detail the story of the silk business. I will give you all you will accept.

Senator CONNALLY. Do you think that the American valuation gives higher protection or lower protection to the manufacturer?

Mr. CHENEY. I think the United States will give better protection, because I think that the chief difference is going to be that the duty will be collected. And I do not agree with the statements which have been made before that the under valuations are negligible. I believe that the under valuations are the rule rather than the exception. Years and years ago I went to Lyons when the first specific duties were enacted on silks, with my father. He was responsible for having written them and having them enacted. And I found Lyons in a turmoil over it. They were very much stirred up. And father said to them, "Why, those duties are no higher than the other duties that you had before on ad valorem." They said, "Oh, they are 100 per cent higher than they were before." He said, "Why, no, they are not." They said, "Well, we can not undervalue." They said it perfectly frankly. Made no bones about it whatever. And that was a large group of the most representative Lyons silk manufacturers.

Senator THOMAS of Oklahoma. Mr. Cheney, you said that you were a member of the Tariff League, I believe?

Mr. CHENEY. Yes, sir.

Senator THOMAS of Oklahoma. And an official?

Mr. CHENEY. Yes, sir. That is, I am a member of their executive committee.

Senator THOMAS of Oklahoma. Do you want the committee to understand that the Tariff League is proposing this different valuation plan to increase revenue to the Federal Government?

Mr. CHENEY. Why, we are proposing it for a variety of reasons, chiefly because we believe it will stop undervaluation. Secondly because foreign valuation has become absolutely impossible, under the present conditions, of reasonable application. Much more so than it has been in past years. And thirdly, because we believe that the prevention of undervaluation will result in better protection for us.

Senator SHORTRIDGE. So the record may disclose it, will you have the goodness to state in what States or cities are the principal factories?

Mr. CHENEY. Why, Senator Reed has the honor of having the largest.

Senator SHORTRIDGE. Well, for my information you may disclose it. Where are they?

Mr. CHENEY. The largest portion of the silk business is in Pennsylvania.

The CHAIRMAN. Connecticut and New Jersey.

Mr. CHENEY. Connecticut, and New Jersey comes next. And then New York, Massachusetts, and some in the South. There is some in the West. There is a little in Ohio and Illinois. New Jersey and Pennsylvania, which I see represented opposite me, are my chief places.

Senator BARKLEY. What is the basis of the silk produced in the United States?

Mr. CHENEY. Do you mean where do we get the raw material?

Senator BARKLEY. Yes.

Mr. CHENEY. Chiefly from Japan.

Senator BARKLEY. Is that the product of the silkworm?

Mr. CHENEY. Yes.

Senator BARKLEY. There are no silkworm facilities to speak of in the United States?

Mr. CHENEY. There is not enough raw silk produced in the United States in a year to run our factory alone one day.

Senator CONNALLY. How much would that be?

Mr. CHENEY. Why, we run about 2,000 pounds of raw silk a day; 1,500 to 2,000 pounds. It varies.

Senator BARKLEY. In your figures a while ago of the importations of silk and domestic production did you include in that rayon or pure silk.

Mr. CHENEY. I spoke only of silk. Rayon is now separated into separate schedule. I may later on have something to say about rayon.

Senator SACKETT. Could we not reserve these discussions for the committee hearings on silk?

The CHAIRMAN. Have you finished?

Mr. CHENEY. Yes. Thank you.

STATEMENT OF MATTHEW WOLL, WASHINGTON, D. C., REPRESENTING THE WAGE EARNERS' PROTECTIVE CONFERENCE

Mr. WOLL. Mr. Chairman, I represent the American Wage Earners' Protective Conference. This is an organization of trade unions, international unions, about 20 in number, who are directly involved

in competition with foreign-made commodities. In addition to that we have approximately 10 cooperating national and international unions, representing thus over two and a half millions of wage earners in direct competition with foreign-made commodities.

We come to you to-day with the approval and the support of the American Federation of Labor under its policy to approve and to support any of its affiliated organizations interested in tariff questions.

It was rather amusing to listen to the utterances made, and very entertaining to hear that in all this time the case of the importers and the foreign manufacturers and foreign workers was given so much consideration.

We come here to speak for the millions of wage earners of America. We come to you in the spirit as expressed by the Ways and Means Committee in its report that "It is intended to maintain confidence, encourage industry, foster agriculture, provide employment for our 27,000,000 of wage earners, and promote the continuance of our great and unusual prosperity."

The committee says:

> This bill proposes such changes in the existing law as careful and extended investigation has found necessary to maintain the American standards. Foreign competitors have an uncanny aptitude for discovering what goods, wares, and commodities are insufficiently protected, and attacking them. Foreign labor is becoming more efficient; it receives less than 40 per cent of average American wages; it lives on a much lower standard. This is a most important factor in tariff making.

This is the spirit that prompts us in coming before your committee, not only to disprove the continuance of the existing method of evaluation or basis of evaluation for duty, but to urge upon this committee the American valuation principle for the basis of determining the duties to be placed upon imports.

I think it has been made self-evident here this morning practically by all speakers, that the present method of valuation—the foreign method of valuation—places the real factor in the control of foreigners and of importers, and not upon American industry or the American Government. That the rate made determines the selling price, determines the actual rate to be paid. That there has been fraud, undervaluation, and other forms of manipulation under the existing law and the existing method of evaluating imports and placing duties upon them I think has been made clear to this committee. I shall therefore not take the time of this committee to practically repeat what has been stated on that subject.

Whether there is a change in the duty as between the United States valuation and the foreign valuation, if experts of long service in the Government can not agree it is difficult for me to say whether there is or not. But whether there is or not, we feel that there is not much change between the two systems that have been so clearly mentioned here. Because it does accept foreign valuation, although the first sales price determines the duty to be placed on it. So that there is very little change between the foreign valuation and the United States valuation. That is the selling price, wholesale selling price of foreign-made commodities when brought here, and based on the first sales price—very little difference. That difference does not spell any protection to the wage earner.

We are for protection. We believe that the American market ought to be protected and the American wage earners ought to be protected. We believe that the interests of the producers come prior to the interests of the merchants or the importers.

We find to-day a most astounding situation going on in the industrial world. But I think these are factors your committee ought to give serious attention to.

First of all, we find the mechanization of industry, the replacement of skill, the standardization of commodities, the wholesale methods not only of production but of distribution going on replacing hundreds of thousands of wage earners. Our army of unemployed is constantly increasing, and I believe it is of first importance that we protect the American market and give opportunity of employment to these hundreds of thousands of workers that are unemployed, for if this army of unemployed increases all industry will suffer and our whole social life will suffer. So it is first a question of self-preservation as against the profit-making in all importation of commodities to compete with or to even lessen the opportunities of employment in the American market.

In addition to that we find that our international banking interests have been constantly increasing their loans abroad. For what purpose? The building up of industry abroad, and building it up on modern basis, on the American industrial basis. Which, of course, must ultimately result in not only lessening our foreign markets, but likewise in building up competitors for our own markets.

We find to-day our department stores, or chain stores, who have nothing to do with investment in the production field, who are purely merchants, and merely buy and sell, and employ labor only incidentally as clerical help—the lowest paid in our industrial life—are interested in this question. They want the doors wide open.

Our banks are concerned in this in order to make their foreign loans profitable to them, caring not what may happen to our industrial life here in America. So it is with the department stores, with the chain stores, who are little concerned with what happens to our industrial life. Confining their labor only to their sales force, which is the lowest paid in industrial life, as a means of making profit in enterprises which are not productive industries.

So we find these elements are concerned in this question. And we find this resulting in our industrial life. We find industry laying off men, closing down their factories, importations increasing. We find a general agitation among the American people that commodities made abroad are superior to domestic articles. And everywhere we see the word "imported" as being superior in quality. All tending just simply to destroy our own industrial life and making for a worse condition.

More recently what do we find? We find our industrialists going out with their excess capital and putting it in capital investments abroad. What does that mean? We point with pride to our exports and to our foreign markets. Here is Ford and General Motors and these other people going out into Europe, building their own factories abroad. For what purpose? To get this lower labor cost—40 per cent of that paid in America. Transportation charges are removed. They are building up these factories abroad first of all to supply their foreign markets, it is true.

Senator HARRISON. Mr. Woll, may I ask you a question?

Mr. WOLL. If you do not mind, Senator, I would like to finish first. I will not be very long. These industrialists are going abroad and building factories abroad first of all to supply their foreign markets. That means a reduction of opportunity of employment of the workers here, because we have always been ready to believe that the foreign markets developed by American manufacturers gives employment to American labor here, and therefore they should be encouraged. But now we find that having developed a foreign market they are no longer concerned with American labor to supply these demands, but they are establishing their factories abroad to supply their foreign markets. And what is true of General Motors and Ford is true of the General Electric, Singer Sewing Machine, and a large number of other enterprises. Hence the opportunity for employment of American workers will be lessened.

Now as these European enterprises of these American industrialists develop, as American capital becomes more interested in the development of industries abroad, having filled their foreign markets they will be anxious to exploit even the American market, which we have already experienced. The Singer Sewing Machine Co. is one illustration. They closed their Elizabeth plant and just maintained their other plant for assembling purposes, and manufactured abroad, and brought their commodities here to be sold as American made commodities.

Now those things are going on, and we as wage earners see these things going on. We are not concerned with the technical features. We are concerned with the grave situation staring the American wage earners and producers in the face, and with these developments taking place we think that this committee, and Congress, should clearly declare for the American valuation principle, for an increase in rates in a number of industries where it has been found that American wage earners and American wages are not protected, and where the American wage may be destroyed by competition abroad.

By establishing their factories abroad there is this differentiation in wages of 40 per cent of the American wages on the average. In some cases only 10 per cent of American wages. Those figures varying, of course. Are we going to sit silently by and close our doors against immigration and let commodities come in and do the same damage to our wage earners?

Therefore we feel that the American principle of valuation ought to be enacted into law, and we believe that duties ought to be raised to give protection. Some might be lowered where there is undue protection. That is a matter that your subcommittees, I understand, are to take up. This committee now is only taking up the matter of valuation here.

We are supported in this view by no less a person than the President of the United States, for in his message he stated very clearly that there should be some other form of valuation given to the Treasury in order to adequately, fairly, and justly administer this important law meaning so much to our industrial life.

I am concerned about the peoples of Europe, but yet I do not want to see American standards lowered down to European standards, and I do not feel that the American people should suffer because we ought to give some help to European people.

Then when we look further what do we find after all with reference to these importations? We are speaking of wholesale prices, of foreign valuations, of United States valuations, but what does the consumer gain by it in the price that he pays? The report that your committee had four years ago in a letter transmitted by the United States Treasury, what does it show? That the retail price varies but little from that of the American retail price. But excessive profits are made by those who import these commodities. And they merely maintain their prices just a little lower to compete successfully with American-made commodities in order to capture the market and thus enlarge their profits. Why, I do not blame the American manufacturer for closing down his plant to-day and building a foreign plant, importing the commodity, and then having a larger distribution of profits for himself. And that is the situation we are in.

We find great comfort in the statement made by President Hoover in his address to this special session of Congress asking that a new principle of valuation be made. And then when we look further to see what he really means in that connection we find that eight years ago, when he was Secretary of Commerce and when he was summoned before the House Ways and Means Committee he was in favor of the American valuation principle. He was asked if it was possible to introduce it, and here is what occurred:

Mr. FREAR. If the American valuation system was adopted you do not consider the difficulties of administration insurmountable, do you?

Secretary HOOVER. No. I do not presume that anything is administratively insurmountable.

Now we have all these fancied arguments of those who have been in the Government service. You speak of the customs court. We know it only as an importers court, because no one else has any standing there. I do not want to take up the time of this committee to give you some illustrations of experiences we have had there, even though we are not represented in the customs court—we have no voice there, we have no standing there. But we have been watching decisions, we have been watching proceedings, and we know what is going on. And I say to you very frankly that while in principle I should not want to give power to one administrator in a great important matter of this kind, yet from the experience had in this customs court I would rather trust the Treasury of the United States in the fixing of a proper rate than oftentimes I would the customs court.

We feel that if this Congress really intends to protect the American wage earners—because both the Democratic and the Republican Party have now enunciated that the tariff legislation should be to equalize the wage factor and protect American wage earners, I say there is only one basis of carrying that out and that is to take the American basis of wages, of conditions, as the factor upon which to estimate the cost.

The last speaker spoke of the lower wage cost and the lower wholesale cost in France or Japan as compared with the United States. The United States, after all, accepts the foreign value and then maintains really its favoritism to the country of lowest standards of production and places a penalty upon that most advanced nation which is more fairly treating its wage earners. We find, of course, naturally that in England they are paying higher wages than in any other foreign

country. We find next Germany, then Italy, then Czechoslovakia and so on, constantly going down and down, but with our foreign evaluation, or with our United States valuation we given incentive to the country with the lowest wage standard and the worst industrial condition—we give them preference to the American market. So the United States valuation based upon this foreign valuation does not meet the situation.

We feel that the duty upon all should be alike, and it should be based upon American cost of production, American selling price. Of course I realize that such a change would necessitate a rearrangement in the schedule, because we have no desire to place an embargo. We have no desire to stop fair competition. And of course I think, as the chairman so well stated, that is a practical thing and it is a possibility. We have no desire to have this committee or Congress place itself in the position that we are going to close the doors entirely to all imports. But we do feel that there should be a greater protection, and that the American principle of valuation will lend itself to that with the readjustment in the various schedules.

Now I do not know that I could add anything more to this. I want to say to you very frankly that this is the first time that organized labor has taken hold of this situation of its own accord. We are not supported by any manufacturer or by any tariff league or organization. The organizations that are affiliated with us contribute $50 a month for the maintenance of one secretary in this work. And that is all the finances we have. We have come to realize this in past years. Employers would come to us and urge our support in legislation, and we find this, that when it comes to the finished product, when they are competing with it—oh, yes—they want a high tariff on that, but everything that enters into that production in the form of raw material, or even finished commodities essential to its production, there they want a low tariff. And we are tired of that.

We want all American labor protected. We do not want special privileges given to any. Take the wall-paper industry. That is a good illustration. The employer and the wage earner joined in asking for protection, and got it, and thereafter in the matter of the highest skilled labor connected with it, the print roller, through the customs court decisions that was brought down so that there was no protection whatever, and those are all imported from Europe to-day, and the skilled labor to-day is unemployed.

We know what the manufacturers are doing. They blow hot and cold. We know that. And we know when men come before you why they do not give direct answers. It is because they find themselves in dual positions, as importers as well as producers.

We come to your committee because we are interested in the labor conditions of America, and we are interested in the industrial life of our people. We want to safeguard their opportunities of employment. We see these great changes going on, and we want to meet them in an orderly and peaceable fashion, but we want the opportunities for employment protected, and so do we want to see protected the merchant and manufacturer as well. For while he may gain a temporary advantage by importation, he only destroys the market that he must ultimately rely upon.

Senator SIMMONS. Mr. Woll, what per cent of the benefits of protection are passed on to the laboring classes?

Mr. WOLL. Why, it is difficult to say what per cent. Might I give you one illustration of where we receive no protection whatever, but where the American valuation principle obtains, and that is in the coal-tar industry, employing 9,000 men, and half of them getting mere living, wages. Now, there the principle of the American valuation applies. And we do not say that the tariff itself will ultimately give the protection to the workers, because they can only get what they wring from the man that they are employed by. We have not yet found the employer who voluntarily gives away profits to the wage earners. It is only when competition or forceful action compels him to give a greater reward that we get the benefit.

Senator SIMMONS. The answer is that they give you just as much as you force them to give you?

Mr. WOLL. Yes; but we know this, that despite that fact, if foreign importation is encouraged, if merchants and manufacturers are forced to close their manufactures down and bring in importations, we have no chance to struggle for a greater return in the returns of industry.

Senator EDGE. You spoke about the employment increasing, following it, as I recall, with a plea for greater duty in some cases?

Mr. WOLL. Yes; absolutely true.

Senator EDGE. As I understand it, you do believe that there are many industrial commodities, or some industrial commodities, where the duty is not sufficient to keep the factories running at anywhere near 100 per cent?

Mr. WOLL. Absolutely true. There is no question about that. And I am not concerned about this general cry about no increase in tariff duties. We know the power of the press. I am in the printing industry, and we know who are the large advertisers of the metropolitan press. And if it is not the department stores and the importers that are the great bulk of the advertisers I would like to know where they come from. And certainly the press is responsive to its income.

Senator THOMAS of Oklahoma. Mr. Woll, the records show that American exports are approximately $5,000,000,000 annually.

Mr. WOLL. Yes.

Senator THOMAS of Oklahoma. A good portion of that exportable product is manufactured and is produced by American labor.

Mr. WOLL. Yes.

Senator THOMAS of Oklahoma. Higher rates would probably destroy to a certain extent some of those exports. Has your organization given thought to that?

Mr. WOLL. Most assuredly we have. And I tried to indicate to you that while we point with pride to our exports, and we seek to minimize the effect of our imports, because we accept foreign valuation and not American valuation when we estimate our imports—despite that do we not find industries going out to organize their factories abroad and making their capital investments abroad so that our exports are not going to maintain even the happy situation we are in to-day, regardless of what this committee or Congress may do on the tariff question.

Senator THOMAS of Oklahoma. Just another question. It has been admitted here by some witnesses that this proposed change would raise the price of imports.

Mr. WOLL. The American valuation would undoubtedly raise all of them. That is, if no adjustments were taking place in the fixation of the several schedules. And I do not urge that we shall maintain the rate in the present schedules and simply substitute the American valuation principle in place of them, thus in a deceptive sense, you might say, raising the rates. I do not urge that at all.

Senator THOMAS of Oklahoma. Considering that to be true, then it is proposed in this bill to further raise the rates on imports?

Mr. WOLL. I certainly do urge the raising of the protection of duty on a number of industries.

Senator THOMAS of Oklahoma. Then this bill would raise the rates in two ways. First by the change of valuation, second by an increase of the percentage rate.

Mr. WOLL. The substitution of the American valuation in place of the foreign valuation can take place by a formula which I am sure that your committee with its experts, is able to develop, where it will not need a substantial increase or any increase whatever. The question of a particular industry which should receive protection is quite another thing, and I understand you have your subcommittees for that purpose.

Senator THOMAS of Oklahoma. Your organization would not be favorable to raising these rates so high as to cut off our exports, would it?

Mr. WOLL. We certainly do not want to place an embargo on imports, but we do want a tariff that will protect American industry, and that will safeguard not only existing conditions of employment, but enable the hundreds of thousands who are not employed to have an opportunity for employment.

Senator THOMAS of Oklahoma. You concede, do you not, that we have to sell abroad in order for foreigners to buy our products?

Mr. WOLL. I quite agree with you that we must have an export market. But to my mind the American market, which is far superior to our foreign market, ought to receive first and foremost consideration, and should first be protected before attention is given to the foreign market—not ignoring the importance of it, but I see the importance of it dwindling away because these large industries are merging, and they are going out and establishing their own foreign plants because they can buy them for a song. They can hire labor at 40 per cent of what it costs here, and supply their foreign markets by that means.

Senator THOMAS of Oklahoma. Have you a list of American investors who have built factories abroad?

Mr. WOLL. I have no list here, but that information can be obtained.

Senator THOMAS of Oklahoma. Could you get that information for us?

Mr. WOLL. I will be very glad to.

Of course, the tariff sets up other reactions. If Europeans are anxious to get into the American market, let them invest their money here. Let them put up their factories here, and let them employ American labor. The doors are open to capital always.

Senator REED. You have been talking about the foreign wage level being 40 per cent of ours.

Mr. WOLL. Yes.

Senator REED. My impression was that it was not as high as that.

Mr. WOLL. That is the average. If you take China and Japan, it is about 10 per cent.

Senator REED. I was thinking about Belgium, Czechoslovakia, Yugoslavia, and Italy.

Mr. WOLL. England is the highest wage nation of the European and Asiatic nations. Next in order comes Germany; next follows France, and then Italy and Czechoslovakia, and so on down the line. When I say 40 per cent, that is the finding of the Ways and Means Committee as to the average of the lowest and the highest. In China and Japan you will find it about 10 per cent, or even less than that, of the American wages.

Senator SHORTRIDGE. I want the committee to know this, Mr. Woll, that at my suggestion, after a discussion with him, our Secretary of Labor set Mr. Stewart, who is in charge of that branch of the work of his department, to work gathering authoritative data concerning the wage scales in practically all the nations of the world. The Senate authorized the publication of that study, and I am informed here within the last few moments that the Public Printer will issue that document in the course of a few days.

Mr. WOLL. It will be an astounding document, I dare say.

Senator SHORTRIDGE. I propose to invite the earnest attention of this committee and of the Senate, and of the Congress, and of the country, I hope, to that document. I venture now to say that the general average of wages paid to labor in all the handicrafts and all the branches of human labor in other countries is far less than 40 per cent of our wage scales.

Mr. WOLL. There is no question about it. I am using the figures of the Ways and Means Committee.

Senator SHORTRIDGE. Precisely; but I was astounded and shocked and perhaps grieved, to note the wages paid to laboring men and women in other countries of the earth.

Mr. WOLL. And you would be still more astounded if you took into consideration the hours of labor, and the home work done, as compared with the conditions prevailing here.

Senator HARRISON. Would you not still be astounded if you took into consideration the enormous profits certain manufacturing interests have made, and the small amounts of profits they have given to labor?

Mr. WOLL. If the protective tariff to industry could be regulated according to the benefits distributed to wage earners, and if such a system could be developed, we would be heartily in favor of it. There is no question about it. As I have tried to indicate before, our return for services rendered in industry is only what we can wring out of industry, and what competition between employers for labor compels them to give.

Senator KING. In determining wages, necessarily you must take into account the price levels, must you not? That is to say, in countries where there is a lower wage but the commodities of life which the wage earner purchases are very much less, that also must be taken into consideration.

Mr. WOLL. But what consolation is that with the American wage earner?

Senator KING. But, when you are instituting a comparison, you have to take into account the price levels, do you not?

Mr. WOLL. There is no question about that; and if I were to compare the social life of the American worker with that of the foreign worker, I could not be guided entirely by the amount of wages paid, because the exchange rate might be different. But when I study the competition of American labor with foreign labor, it is of little consolation to me that he can purchase more with his centime than we can with our penny.

The CHAIRMAN. That is not true. He can not purchase very much more of the necessities of life than he can in this country.

Mr. WOLL. Even allowing for the slight difference in exchange.

Senator REED. And the man out of a job does not care what the price level is.

Mr. WOLL. The man who is working to-day, and is laid off because of competition from foreign-made goods does not quibble about the principles involved, or the technicalities. He knows he is out of a job, and he is wondering where he will get a job. He has given all his life to that skilled training, and he just goes on the human scrap heap. That is the reason for the great agitation for taking care of men who have reached the age of 40, which industry will not employ, because they can find younger men, in the prime of life, to produce. I say we have serious problems confronting us. As to our home markets, we want them protected, first of all, and that is the way we think it can be done.

Senator EDGE. You emphasized the importance of protecting the home market. I agree with you. That represents about 85 per cent of our products, does it not?

Mr. WOLL. I can not give you the exact ratio, but suppose it is 85 per cent. It is constantly lessening. If you go to the department stores to-day, or the chain stores to-day, or go to any stores, you will find the shelves filled with imported articles. Where they can sell them because they are imported, they will maintain the emblem on them. Where they find they will meet with opposition, they find a ready means of taking the markings off, in order to deceive the American buying public.

Senator EDGE. I am merely emphasizing that as one of the necessities for further protection.

Mr. WOLL. There is no question about it.

Senator HARRISON. I did not understand you to say that you indorsed all the increases carried in the House bill.

Mr. WOLL. I can not say that I indorse all the increases. Various organizations appeared before tke committee and presented their particular demands and peculiar requirements. I can not answer for the various industries, because I am not familiar with the details, but that has been done by the respective industries involved, who gave the wage rates, conditions of employment, and opportunities of the industry, and what has taken place.

Senator SIMMONS. I understand you are in favor of increased duties wherever it is necessary from your standpoint?

Mr. WOLL. Yes.

Senator SIMMONS. You think you are also in favor of United States valuation.

Mr. WOLL. American valuation.

Senator SIMMONS. Because you think that will increase the protection.

Mr. WOLL. No. I say there that you can regulate the schedules on the particular items so that there will be no increase, but we say this, that if one set system is adopted, as conditions change it will make it possible, as industry develops, for industry itself to meet that situation. It may mean that the duty will go down, because if the American selling price goes down those foreign competitors would get that advantage automatically.

Senator SIMMONS. Then, you are not in favor of the American standard selling price.

Mr. WOLL. Not the United States value; no.

Senator SIMMONS. You are not in favor of that. You are in favor of the American price.

Mr. WOLL. Yes; to accept the American cost of production and American means of production as a standard.

Senator SIMMONS. You think that if you should apply to that the rates carried in the House bill it would not materially increase the duties?

Mr. WOLL. I say, if you accepted the schedule in the existing law and substituted the American valuation principle to-day, it would increase the duties. For instance, some commodity might be increased 100 per cent.

Senator SIMMONS. Would it not very largely increase it?

Mr. WOLL. In some instances it would be very large. In some instances it would go over 100 per cent. But suppose here is a commodity where the American valuation would increase the duty 100 per cent. Then it is a simple matter of revising the schedule so as to put it on a par with what it was before.

Senator SIMMONS. Therefore, if we adopt the American valuation, you are in favor of——

Mr. WOLL. Readjusting the rates so as to meet that situation.

Senator SIMMONS. The rates must be lowered.

Mr. WOLL. Yes.

Senator KING. Are you still in favor of the repeal of the Sherman antitrust law and those other laws against monopolies?

Mr. WOLL. Certainly, because I think they have been inefficient and ineffective.

The CHAIRMAN. Mr. Henry Scheel. Mr. Scheel, did you want to speak on valuation?

Mr. SCHEEL. Valuation, yes, sir.

The CHAIRMAN. Just confine yourself to that.

Senator HARRISON. Mr. Chairman, is the opposition going to be heard?

The CHAIRMAN. We will hear it all.

Senator EDGE. We heard four different viewpoints of six different witnesses.

Senator HARRISON. I did not know how the chairman was taking them.

The CHAIRMAN. We have had opposition here this afternoon.

Senator EDGE. This gentleman was opposed to United States valuations.

STATEMENT OF HENRY VAN RIPER SCHEEL, REPRESENTING BOTANY WORSTED MILLS, PASSAIC, N. J.

Mr. SCHEEL. Mr. Chairman and gentlemen, I am vice president of the Botany Worsted Mills, and have been for a number of years an officer of that company. I am an engineer by training.

I speak out of the background of the woolen worsted industry on the matter of valuation, because, contained in the situation of the woolen worsted industry are elements of valuation which I have analyzed as per the sheet which I have asked to be passed around.

The CHAIRMAN. Do you want that sheet printed in the record at this point?

Mr. SCHEEL. Yes, sir.

The CHAIRMAN. Give the stenographer a copy.

(The statement referred to is as follows:)

Analysis of the several systems of levying duties, which are the protection of American manufactures

	Foreign value base for ad valorem	United States value base for ad valorem	American value base for ad valorem	Specifics proportionate to American conversion costs	Specifics proportionate with labor conversion differentials superimposed
Responsibilities partly or wholly outside the direct jurisdiction of the United States	X				
Responsibilities entirely within the jurisdiction of the United States		OK	OK	OK	OK
Intentional undervaluations	X				
Unintentional undervaluations	X				
No undervaluations		OK	OK	OK	OK
Discrimination in favor of Low-Standard-Living-Countries	X	X			
Equal duties (protection) on same goods irrespective of costs or values in exporting countries			OK	OK	OK
Variation in degree of protection to American labor and manufacturing depending on vagaries in price of wool	X	X	X		
No variations due to changes in price of wool				OK	OK
Importers' selling prices vary with foreign costs, i. e., foreign standards of living	X	X	X	X	
Foreign low-standard-of-living costs partially corrected for					OK

Mr. SCHEEL. This is an analysis of several systems of levying duties. We are familiar with ad valorem duties on foreign value, on United States value, and on American valuation. I am here to suggest and to recommend including specific duties, for reasons that I shall refer to in a minute, that is, specific duties proportionate to the American conversion costs, and, as a fifth alternative, for the sake of including it, I mention specifics proportionate to the American conversion costs with labor conversion differentials superimposed, those being theoretical additional amounts that would be levied against Japan, for example, in larger amount than against Czechoslovakia, all relatively to England.

It may sound ridiculous to suggest that a theoretical something should be superimposed, but it is no more ridiculous, I submit, than the fact contained in the present law, where, in proportion as the foreign value is lower, the duty is lower, and the protection to the American manufacturer works "in reverse." In other words, as against the country where he needs protection most under the present system, he gets it least.

There are a number of questions that might be asked about each one of these duties. The first one, it seems to me, is, where is the responsibility? Is the responsibility partly or wholly outside the direct jurisdiction of the United States? That is true of foreign valuations. It is not true of the other forms at the head of columns 2, 3, 4, and 5.

How about undervaluations? There are intentional undervaluations, and there are unintentional undervaluations. They are possible under foreign value. They are not possible under any of the other forms.

How about discrimination in favor of the low-standard-of-living countries? I talk from the background of the woolen worsted industry, as to which there is substantial production in nearly all the countries of the world—in the immediate future about to be competitive with our industry to a larger extent than even we who are in it realize. There is in that situation contained discrimination in favor of the low-standard-of-living country. The discrimination is carried in favor of the low-standard-of-living country as regards ad valorems on foreign value and ad valorems on United States value; not so on American——

The CHAIRMAN. I think you have covered that very well in your statement before the House, even better than you can at this time, this afternoon.

Mr. SCHEEL. Except, Mr. Chairman, that I did not refer to specifics, and could not at that time. That is what I am leading to.

The variation in the degree of protection to American labor and manufacture, under any ad valorem system, is dependent upon the vagaries in the price of raw wool in our industry, and that obtains in several other schedules also. If I may show to you a graph that indicates the way that wool has changed in value, you will see exactly what I mean.

When the present law, the act of 1922, was under consideration, values were as they were in 1921, here [indicating]. Since that time the value of wool has gone up, and to-day it is down here again [indicating], and there are more people who think that wool is going down in price in the next four or eight years than there are who think that wool is going up in price.

I submit that the protection enjoyed by the unprofitable woolen worsted industry has been in spite of an ad valorem protection which, in fact, has been larger than was intended by Congress in 1921, because, when wool goes up 40 to 70 per cent, the price of the foreign article goes up, the foreign value goes up, and the protection enjoyed by the American manufacturer as a manufacturer automatically goes up. The reverse is true when the price of wool goes down. The foreign value and the American value, and the United States value go down, and the protection to the American manufacturer as a manufacturer goes down.

As an officer of our company, I have spent a good deal of time on this matter, because we realize that it is extremely important to us.

Senator BARKLEY. Are you speaking of raw wool there?

Mr. SCHEEL. Yes; raw wool and tops, which run in proportion. I have the same thing for wool here.

Senator BARKLEY. I am curious to know just what the relation is between the depression in the price of raw wool and the depression in the profits, and the protection of the manufacturer, who does not produce raw wool, but who uses it.

Mr. SCHEEL. You see, if the American manufacturer buys wool, he buys wool in substantially fixed proportion to the world price. His protection is set by the value of the foreign article. The foreign article depends for its value on two things, a lower conversion cost abroad, and whatever the price of wool is.

For instance, the foreign value is a dollar. The conversion cost portion of that is, say, 30 cents. Wool cost then is 70 cents. If wool goes down 10 per cent, then the foreigners wool cost is 7 cents less, and the foreign value is demonstrably 93 cents instead of a dollar. The duty has been 50 per cent. Fifty per cent duty on 93 cents foreign valuation is three and one-half cents less protection to the American manufacturer than it had been before. Do you follow me on that?

Senator BARKLEY. Yes; but when the duty goes down——

The CHAIRMAN. But he buys his wool for less money.

Mr. SCHEEL. Exactly.

The CHAIRMAN. Then he is not hurt.

Mr. SCHEEL. Oh, yes; he is.

The CHAIRMAN. Not at all.

Mr. SCHEEL. He is, because 50 per cent of the foreign value of the cloth is less.

The CHAIRMAN. That does not make a particle of difference. He gets more than that in the decrease in the price of his wool.

Mr. SCHEEL. No.

The CHAIRMAN. You can not tell me anything about it. I have made more wool goods than you have.

Mr. SCHEEL. Let me say it over again. Let us take a foreign value of a particular piece of goods, in which the wool costs 70 cents, and the conversion cost is 30 cents. That makes a foreign value of $1.

The CHAIRMAN. On the cloth.

Mr. SCHEEL. On the cloth. The protection to the American manufacturer is the ad valorem duty, 50 per cent of the foreign value, or 50 cents. If, now, wool goes down next month, and is 10 per cent less next month, then the foreign value is not 70 plus 30, but 63 plus 30.

The CHAIRMAN. But the woolgrower gets his 31 cents a pound on the scoured basis just the same.

Mr. SCHEEL. Exactly, but the American price goes down also. The foreign price goes down. That is true, but the manufacturer does not get that. I am speaking for the manufacturer.

Senator HARRISON. The chairman is speaking for the woolgrower.

Mr. SCHEEL. The manufacturer is the woolgrower's best friend, because unless American woolen worsted manufacture runs, there is no market for the American woolgrower's wool.

Senator SHORTRIDGE. That is correct.

Mr. SCHEEL. The compensatory of 31 cents, or 45 cents a pound on the cloth, is the difference between what the American has to pay and what the foreigner has to pay for his wool. The protection to the man who buys wool and converts it into top, yarn or cloth is a percentage of the foreign value, and that depends, in large part, on the value of wool.

The CHAIRMAN. Like everything else, it depends upon the world market.

Mr. SCHEEL. Exactly. I, as an officer of our company, have been studying this matter, because the problem is once more before botany to determine what its policy shall be as the result of tariff conditions. The industry came to this country under the McKinley tariff. To-day, it is facing the question of whether it must not, to a considerable extent, promptly search out low-cost-of-production countries where it shall buy its top, where it shall buy its yarn, where it shall buy its cloth in the gray, and even its finished goods, because our individual responsibility is at least to keep our selling organization going, if we can not manufacture satisfactorily well as to foreign competition costs.

To-day, certain yarns are on an import basis. To-day, certain cloths are on an import basis, and it is just as plain as that two and two are at least more than three, that a further decline in the price of wool places the necessity on American manufacturers of buying where they can buy the cheapest, their responsibility to their employees notwithstanding. We have 4,000 people in Passaic as to whom there would be a very unpleasant job to explain that there is no work for them.

The CHAIRMAN. You were speaking of the valuation.

Mr. SCHEEL. Yes.

The CHAIRMAN. You have not said anything about that, but I would like to know what your proposition is to solve what you say is wrong.

Mr. SCHEEL. My proposition is——

The CHAIRMAN. You have protection there. We gave you the compensatory duty. We gave you protection on the manufacturing. I do not know what you are going to do, or what you are asking for. Are you asking for a higher rate?

Mr. SCHEEL. I am asking for the development of a system of duties which will be specific.

The CHAIRMAN. Certainly.

Mr. SCHEEL. Per pound, or per yard, that will not depend upon changes in prices; that will be uniform against the different countries as to their cost of production. And I offer to assist in the development of those figures, speaking for others in the industry, and for the Wool Institute. A large part of it has been done already, and I would like now to have you specifically include in your considerations the matter of specifics.

The CHAIRMAN. What do you want? Take a piece of cloth that comes in here, we will say, as carded wool. You can not tell what percentage of waste is in that piece of cloth. What do you want to do?

Mr. SCHEEL. I am going to have the appraiser do the following——

The CHAIRMAN. You want the specific on the whole amount of clean wool, do you not?

Mr. SCHEEL. I am going to leave the compensatory duty just as it is now. When I say "specifics" I mean in substitution for ad valorem duties—which are the protection of the American labor and American manufacturer.

The CHAIRMAN. How are you going to work it out?

Mr. SCHEEL. This way: I will ask the appraiser to take a sample of the cloth and analyze it, as to the number of ends, the number of picks, the crimp; per pick, there shall be a duty of so much.

The CHAIRMAN. No matter what is in the yarn, whether it is all wool, or whether it is 90 per cent wool, or 85 per cent wool?

Mr. SCHEEL. You anticipate me. So much per pick. That is for the weaving. Then, knowing what the yarns are, there having been determined, in another paragraph, the duty on yarn, according to whether it is woolen yarn, or worsted type yarn, and the amount of its duty, you can add those duties together and get a specific total which will be satisfactory.

The CHAIRMAN. You can do it with worsted yarn, but you could not do it on carded yarn.

Mr. SCHEEL. Yes; I believe you can.

The CHAIRMAN. I say you can not do it. You can not tell whether it is 15 per cent waste, or 10 per cent waste. It may be the very best, but there will be a different rate of duty.

Mr. SCHEEL. Not as to the conversion cost.

The CHAIRMAN. It is not the conversion you are after. You are after a specific rate, not only on the amount of wool, to compensate you for the duty upon wool, but you want a specific rate there to protect you against the manufacturing of that wool into cloth.

Mr. SCHEEL. Yes.

The CHAIRMAN. That is what you want, is it not?

Mr. SCHEEL. Yes.

The CHAIRMAN. When you get into yarn, you could not do it. You could not tell it.

Mr. SCHEEL. I would like to show you what has been done here.

The CHAIRMAN. I know you can not do it, that is all.

Mr. SCHEEL. If we know what the conversion cost of a particular yarn is, then we do know, do we not?

The CHAIRMAN. How are you going to find out, after it comes into this country from a foreign country?

Mr. SCHEEL. By analyzing the cloth into its yarns.

The CHAIRMAN. You can tell what size it is, or you can tell whether it is a mixture of wool and cotton, or other vegetable fibers, and you can tell the percentage of that, but you can not tell whether it is all wool, or whether it is 85 per cent wool and 15 per cent garnetted waste.

Mr. SCHEEL. It does not make any difference.

The CHAIRMAN. It does make a difference, because garnetted waste is not the same. It does not carry the same duty as pure wool.

Mr. SCHEEL. How do you tell now?

The CHAIRMAN. You do not have to tell now.

Mr. SCHEEL. No, because you take this, that, or the other value from abroad.

The CHAIRMAN. You have to take it.

Senator SHORTRIDGE. What is it you want?

Senator EDGE. I would suggest that he wants to get a chance to talk.

Senator SHORTRIDGE. I am very sympathetic with you, but I would like to have you state it as clearly as you can.

Mr. SCHEEL. May I state it as the conclusion of a resolution that was discussed yesterday in Boston by the National Association of Woolen and Worsted Manufacturers?

Senator SHORTRIDGE. Yes.

Mr. SCHEEL (reading): Be it resolved that the Finance Committee of the Senate be urged to draw the permissive, investigative, and flexible paragraphs of the law so as to include reference to specific duties, also changes in them in accordance with changes in the American conversion costs; and further to recommend to the Congress a system of specific rates properly based upon the American conversion costs.

Senator EDGE. Have you presented a brief to the Ways and Means Committee setting forth your plan to bring this about?

Mr. SCHEEL. No, sir. I appeared before the Ways and Means Committee and argued for American valuation. Now I am arguing for something out of two grounds. First, there has been the President's statement, made since my testimony; and, secondly, wool has declined in price 10 per cent in six weeks. That is a very striking something to those of us in the woolen worsted business, because we see disappearing from under our protective structure our duty structure, the base. It is going.

Senator SHORTRIDGE. You want the American valuation idea carried into the law, is that right?

Mr. SCHEEL. No. The American valuation means the selling price of the American article, which, of course, includes the cost of the wool.

Senator SHORTRIDGE. Certainly.

Mr. SCHEEL. Since wool has changed, American manufacture is on a shaky basis.

Senator SHORTRIDGE. Yes.

Mr. SCHEEL. And is in danger. I say that in proportion to the American conversion cost there shall be a specific duty for a specific kind of yarn, so much per pound.

Senator SHORTRIDGE. Speaking generally, you would prefer a specific rather than an ad valorem duty?

Mr. SCHEEL. Yes, sir. There are 13 per cent of the imports, by value, now on the ad valorem basis. I say the time has come when we should reduce that percentage, at least so far as some of the textile—the woolen—worsted business is concerned.

Senator BARKLEY. Do the manufacturers find themselves in possession of a lot of high-priced wool which has changed their attitude toward specific duties, Mr. Scheel?

Mr. SCHEEL. I do not think so. I think the manufacturers are working on a hand-to-mouth basis now as never before.

The CHAIRMAN. I want to say to you that I would have to buy my wool to last me a full year. What kind of a return could we make on your proposition?

Senator SHORTRIDGE. You mean the woolgrower?

The CHAIRMAN. No; I am referring to the wool itself. We would have to buy wool enough for the whole year in 30 days.

Mr. SCHEEL. Botany used to do that, but we do not have to do that now.

The CHAIRMAN. Of course you do not have to, because you can go into the market and buy it any time you want to. But who can tell, if you buy the wool on the 15th day of June, and you do not manufacture it for three months, whether the wool price is going to change in the meantime, perhaps three times. What are you going to do?

Mr. SCHEEL. A system of specifics has no regard to the price of wool.

The CHAIRMAN. It has no regard to the price of wool, but this is the question here. If the change is made and you base it upon the fact, now that the wool is very low——

Mr. SCHEEL. No.

The CHAIRMAN. Certainly.

Mr. SCHEEL. No. I base it on the conversion cost. The conversion cost leaves out the price of wool. If I spend a dollar after I have paid for my wool, I argue that I am entitled to 66 cents protection on the dollar that I spend.

The CHAIRMAN. You want it in the specific duty. I do not know how you are going to get it.

Mr. SCHEEL. By working it out on the basis of 66 cents on every dollar that is spent to make a particular kind of yarn.

Senator KING. Are you opposing the increases in ad valorems in the Hawley bill?

Mr. SCHEEL. I do not think they make very much difference.

Senator KING. I understood you to say that you would have to go abroad and seek cheaper manufactured wool.

Mr. SCHEEL. Exactly; and at that time, even, I say it would make no difference, because the difference in the foreign value to-day as between Czechoslovakia and England, on which the rate is supposed to be based, wipes out the advantage.

Senator KING. You do not mean to state that the price of wool makes no difference in the amount you produce, the quality you produce, and the prices you charge for it. If you can get large quantities of cheap wool, you will produce a larger amount of goods, and can sell them cheaper.

Mr. SCHEEL. In general that is so.

Senator KING. Wool is one of the principal commodities in the manufacture of woolen cloth.

Mr. SCHEEL. Yes.

Senator KING. Then, if you can get cheap wool, obviously you can sell your produce cheaper?

Mr. SCHEEL. Yes; but the foreigner's price comes down also.

Senator KING. I know, but I am speaking about the price of wool. If you can get foreign wool or domestic wool cheaper you can sell your product cheaper.

Mr. SCHEEL. Yes, sir.

Senator KING. Then you do not object to a higher tariff on wool, so that if you had to pay 60 cents a pound for wool——

Mr. SCHEEL. I think the American woolgrower ought to have the protection he believes he needs for his business.

Senator KING. Of course; providing you get a compensatory duty.

Mr. SCHEEL. Exactly, which is provided for in the law, and is satisfactory.

Senator EDGE. I would suggest that inasmuch as this is a more or less complicated plan to introduce specifics rather than ad valorem, if you have a brief and can file it with the chairman, we will have a chance to study it.

The CHAIRMAN. The whole schedule will be up. This is only on American valuation.

Senator EDGE. I am not talking about the duty, generally speaking.

The CHAIRMAN. This question is to be taken up when we write the schedule.

Senator EDGE. I would not think so. I think he is directing his argument, as I understand it, to the change even in the system of values; to use specifics, of course, on this schedule.

The CHAIRMAN. He wants specific duties instead of ad valorem.

Mr. SCHEEL. Yes.

The CHAIRMAN. That is all he wants.

Senator SHORTRIDGE. Mr. Scheel, in respect to the immediate matter we set about to consider to-day, touching the basis for the valuation, whether it shall be ad valorem rates or not, which do you favor? You might state it in just a few words.

Mr. SCHEEL. Specific duties.

Senator SHORTRIDGE. I am not talking about specifics.

Mr. SCHEEL. American valuation; then United States valuation; and, last of all, foreign values.

Senator SHORTRIDGE. First, American valuation. Leave out the question, now, as between ad valorem and specifics.

Mr. SCHEEL. Yes.

Senator SHORTRIDGE. I [illegible]ntirely. What shall be the basis? Shall it be [illegible]s been urged here by some?

Mr. SCHEEL [illegible]

Senator SH[illegible]nat i[illegible] r pos[illegible]

Mr. SCHE[illegible]ir.

Senator [illegible] On b[illegible]f the i[illegible]ich you here represent?

Mr. Sc[illegible]

Senato[illegible]TRID[illegible]the [illegible] you represent. T[illegible]ght, is[illegible]

Mr. S[illegible]Yes, sir.[illegible]stry) a[illegible]ord to that effect.

(Mr. S[illegible]

[illegible]D MIL[illegible]N. J.

Gentlemen of [illegible] Committee:

We are in c[illegible]t earne[illegible] in urg[illegible]onsideration of our conclusions as st[illegible]the[illegible]this brief. They are in supplement to o[illegible]the Ways and Means Committee and have[illegible]members of the woolen-worsted industry.

Within the past few mon[illegible]ppearance before the Ways and Means Committee the President has said:

"It would seem to me that the test of necessity for revision is in the main whether there has been a substantial slackening of activity in an industry during the past few years and a consequent decrease of employment due to insurmountable competition in the products of that industry. It is not as if we were setting up a new basis of protective duties. We did that seven years ago. What we need to remedy now is whatever substantial loss of employment may have resulted from shifts since that time."

All that he says here applies to the woolen-worsted industry.

Within six weeks since the first of the year raw wool has declined 10 per cent in value and now is more than 20 per cent lower in value than the average in 1928.

Also the reparations question has been settled and the countries on the Continent of Europe are "ready to go."

May we now refer to the attached "Analysis of the several systems of levying duties, which are the protection of American manufactures"? Reference to this analysis shows that by every test foreign value base is dangerous; that United States value base probably will obviate undervaluations and will bring the responsibility within the jurisdiction of the United States; that American value base, in addition, avoids the discrimination in favor of low-standard-of-living-countries; and that this system of specific duties proportionate to the American conversion cost contains all the advantages of American valuation and in addition avoids variableness in the degree of protection to American labor and the American manufacturer due to changes in the price of wool.

Specific duties with superimposed labor-conversion-costs differentials proportionate to the primary conversion-cost advantage possessed by a Japan, a Czechoslovakia, and a Germany, each relatively to an England in different amounts, is theoretical and impractical of recommendation, nevertheless fundamentally it is no more ridiculous or unjust than is its converse, viz, foreign value base or United States value base where the duty is least on goods from the low-standard-of-living countries. Theoretically, why shouldn't there be a higher duty on goods from the lowest-cost country?

Scientifically speaking, the specific-duty system is the most correct system because as manufacturers we are interested in being protected in proportion to our conversion costs—i. e., the cost of producing a pound of top, yarn, woven goods, or dyed and finished goods, not including the cost of raw wool. All of the ad valorem forms of duty vary the amount of protection possessed by the American manufacturer, depending upon vagaries in the price of wool. When wool goes up in price the protection to American labor and to the American manufacturer automatically goes up, and when the price of wool goes down the protection to American goods goes down. That this influence is considerable is apparent when we consider that during 1928 the price of wool was 50 per cent higher than it was in 1921, when the present law was drawn, and it can be said that for all of the seven years just passed the protection to the American manufacturer has been greater in cents per pound or per yard than was intended by Congress in the 1922 law. Within a recent short six weeks the price of wool has fallen 10 per cent; and may we point out that in those six weeks there has been taken from the American manufacturer much of the additional protection provided for him on certain fabrics by the suggested bill passed by the House? The following figures illustrate:

	United States	England	Germany	France and Italy	Czechoslovakia	Japan
Earlier wool cost per pound of fabric	$2.00	$1.55	$1.55	$1.55	$1.55	$1.55
Manufacturing costs	2.00	1.00	.67	.67	.50	.30
Foreign value	4.00	2.55	2.42	2.22	2.05	1.85
Later wool costs per pound of fabric	1.80	1.35	1.35	1.35	1.35	1.35
Manufacturing costs	2.00	1.00	.87	.67	.50	.30
Foreign value	3.80	2.35	2.22	2.02	1.85	1.65
Reduction in foreign value		.20	.20	.20	.20	.20
Reduction in protection to American manufacturers at present ad valorem rate of 50 per cent actually is		.10	.10	.10	.10	.10
The present bill proposes a maximum increase of 10 per cent (from 50 per cent ad valorem to 60 per cent ad valorem), which increase (applicable to certain fabrics only) would be 10 per cent of foreign values factual at "earlier" time		.255	.242	.222	.205	.185

So that it can be said that of the 25½ to 18½ cents of additional protection intended by the new bill to be additionally available to the American manufacturer, already, in six weeks 10 cents per pound (39 to 54 per cent of the increase, or more if figured at 60 per cent, viz, 47 to 65 per cent has already disappeared into thin air, due to the circumstance of a 10 per cent reduction in the value of wool.

We are making the law for a period of from 4 to 10 years. There are as many individuals who believe that wool is going to average much lowers during this period as there are who believe that wool wi go up in price. Certainly the production of wool is increasing more rapidly than is its consumption-demand and the influence of mixed fibers, artificial and others, makes for lower wool values: American labor and American manufacture—indeed, the American standard of living—are not safe under a protection which varies in proportion to the entirely unrelated variations in the price for wool.

How generally is it recognized that technical skill in the several foreign countries varies less in woolen-worsted goods manufacturing than in most lines; that the woolen-worsted industry is one of the oldest industries in the world, and American methods offer less advantage to us in our world competition, relatively, than in most lines; that more of skill and more of machinery has come from abroad to us than from us to abroad, relatively to other lines; and that the productivity per employee-hour is more uniform in the woolen-worsted industry throughout the world than in most industries.

Unless the American woolen-worsted manufacturer is continuingly and satisfactorily protected in his ability to consume American wool, the American woolgrower, no matter what protection is offered him, will have no market; for the American manufacturer is the woolgrowers' only customer. It would seem too bad if the woolgrowers and the American laboring men and women in the textile factories of American were deprived of a market for their product and their labor by the circumstance of a reduction in the protection intended for them due to the circumstance of a reduction in the price of wool such as would reduce automatically the duty protection to the point as would permit large quantities of imports. It may be that prices will decline to the levels obtaining in 1922, when millions of pounds of top and yarn were imported; indeed certain yarn counts-qualities are on an importing basis to-day due to this pernicious influence of the price of wool.

Only 13 per cent of the value of all imports are now on an ad valorem basis, and we submit that the time has come to still further reduce this percentage by expressing the preesnt ad valorem duty on woolen-worsted goods in an equivalent system of specific duties, which in themselves are proportionate to the American conversion costs.

We summarize in the form of the following resolution:

Whereas ad valorem rates based on foreign value involve (a) control not within the United States, (b) possibility of undervaluation, (c) discrimination in favor of the low-standard-of-living country, (d) dependence upon the vagaries of wool prices; and

Whereas ad valorem rates based on United States value involve (c) discrimination in favor of the low-standard-of-living country, (d) dependence upon the vagaries of wool prices; and

Whereas ad valorem rates based on American value involve (d) dependence upon the vagaries of wool prices; and

Whereas fixed specific duties calculated in proportion to the American conversion cost are without any of the disadvantages referred to above; and

Whereas the intent of the law should be and the desire and demand of American labor and of the American manufacturer is to be protected against the differences between the American cost and the foreign cost of converting raw material into a finished product: Therefore be it

Resolved, That the Finance Committee of the Senate be urged to draw the permissive, investigative, and flexible paragraphs of the law so as to include reference to specific duties, also changes in them in accordance with changes in the American conversion cost; and, further, to recommend to the Congress a system of specific rates properly based upon the American conversion costs.

HENRY VAN RIPER SCHEEL,
Botany Worsted Mills, Passaic, N. J.

STATEMENT OF PHILIP LE BOUTILLIER, REPRESENTING THE NATIONAL RETAIL DRY GOODS ASSOCIATION

Mr. LE BOUTILLIER. Mr. Chairman and gentlemen, I represent the National Retail Dry Goods Association, a national organization with home office in New York, and not the Retail Merchants Association of Washington.

The National Retail Dry Goods Association has a store membership of 2,500 stores. They do business varying from $30,000 a year to $90,000,000. They employ directly 500,000 people.

I was surprised to hear that it is the poorest-paid industry in the country; but I have been surprised about a lot of thing I have heard to-day.

Senator THOMAS. Is it the poorest-paid industry in the country?

Mr. LE BOUTILLIER. It is not, sir; far from it. If you figure three members in a family, there are 2,000,000 people interested in the retail trade.

I appear here by direction of our tariff committee, and I should like to have the names of the members of the tariff committee, 16 in number, appear in the record. They are either the nominal or operating heads of 16 stores, from the Atlantic to the Pacific, and from Maine to the Gulf:

(The list referred to is as follows:)

Chairman, Philip Le Boutillier, president Best & Co., New York, N. Y.
John S. Burke, vice president B. Altman & Co., New York, N. Y.
F. E. Eastman, president Eastman Bros. & Bancroft, Portland, Me.
Lew Hahn, president Hahn Department Stores (Inc.), New York, N. Y.
Marshall Hale, president Hale Bros., San Francisco, Calif.
Ralph C. Hudson, president O'Neill & Co., Baltimore, Md.
Albert Hutzler, president The Hutzler Bros. Co., Baltimore, Md.
Louis E. Kirstein, vice president, Wm. Filene's Sons Co., Boston, Mass.
Alfred B. Koch, president Lasalle & Koch, Toledo, Ohio.
Richard Mitton, vice president, Jordan Marsh Co., Boston, Mass.
F. J. Paxon, president The Davison-Paxon Co., Atlanta, Ga.
F. McL. Radford, vice president, The Bon Marche, Seattle, Wash.
Frederick H. Rike, president The Rike-Kumler Co., Dayton, Ohio.
E. C. Sams, president J. C. Penney Co., New York, N. Y.
Jesse Isidor Straus, president R. H. Macy & Co. (Inc.), New York, N. Y.
Herbert J. Tily, president Strawbridge & Clothier, Philadelphia, Pa.

Mr. LE BOUTILLIER. We have been studying the subject of valuation for a number of years. In 1921 and 1922 we appeared against American valuation, which I would remind you, sir, was proven at that time to be absolutely unworkable, and was discarded by the Senate Finance Committee as being unworkable. I have been surprised to see here to-day two representatives select American valuation as their first choice. I think such selection is absolutely unsound, and would only produce great confusion in the commerce of the country.

We have passed resolutions which, owing to the shortness of time and because I am sympathetic with your desire that witnesses should not take any more time than necessary, I will not read, but they are very definite, and they will be in our brief.

They oppose any change in the present basis of valuation. The present basis of valuation is, so far as manufatured products are concerned, chiefly foreign value.

We have heard gentlemen say here to-day that foreign value is the same as United States value. We have heard the witnesses who desired a change, evading questions of members of this committee as to whether the application of United States value, with the same rates, would increase the rates or not. Mr. Scheel, who just spoke, said that it would increase rates without a doubt. Mr. Woll, who spoke on behalf of American labor, said it would increase rates, without a doubt—in some cases not less than 100 per cent.

We are opposed to a change in the system of value basis that has been in effect in this country in regard to finished products for a great many years. I will take the liberty of telling you right now what we want. You gentlemen have asked what the different ones want.

What we want is sanity, and what we want is common sense. What we want is a continuance of the present conditions of American prosperity, in which the merchant, the manufacturer, labor, and practically everybody in the country except a few industries that are in an unfortunate condition, share; the record shows that there is no doubt about it.

I was astounded to hear Mr. Woll make his brilliant plea for isolation; and to say that American labor is almost on the rocks, and that lots of industries here are on the rocks. Nothing could be further from the truth.

I was surprised to hear that the shelves of our stores are filled with foreign made goods. I am a merchant. I am the head of a department store. Apparently I am anathema. I mean, I represent a suspect line of business, according to some. But I do not. I was surprised to hear that our shelves are filled with foreign products—the department stores, chain stores, and specialty stores, all of them filled with these foreign products, on which they make millions.

The fact of the matter is absolutely to the contrary. The National Retail Dry Goods Association, by an exhaustive survey conducted in recent years among its members, who are absolutely representative of the retail trade of this country, and who represent an absolute cross section, found the facts, and the facts are that not 5 per cent of our merchandise is of foreign origin—not 5 per cent.

Senator REED. You are the president of Best & Co., are you not?

Mr. LE BOUTILLIER. Yes, sir.

Senator REED. Is that true of your own institution?

Mr. LE BOUTILLIER. Our percentage is a little higher. It would probably run about 8 per cent. I am speaking about the average, from one end of the country to the other.

Senator SACKETT. What would Saks & Co. run?

Mr. LE BOUTILLIER. They would run about the way we do.

Senator SACKETT. Would they not run a great deal higher than that?

Mr. LE BOUTILLIER. Higher than ours?

Senator SACKETT. Yes.

Mr. LE BOUTILLIER. I do not know, sir; I have not the figures.

The CHAIRMAN. What would Gimbel Bros. be?

Mr. LE BOUTILLIER. I do not think they would be any higher than that. It might seem that they ought to be; but, as a matter of fact, the merchant is the one who distributes the products of Amer-

ican labor. Somebody said that if the mill quit work the wool grower would be out of luck. The same thing is true of us. We distribute. They continually seem to take delight in misrepresenting us. We do not mind that.

Senator BINGHAM. There is not any of it due to the fact that the clerks are so fond of telling the customer that "this is an imported article," is there?

Mr. LE BOUTILLIER. I do not think so. In stating our view of the situation, I do not think there is anything anathema about a foreign product. I think the world has proceeded far beyond the stage where isolation should even be discussed seriously.

Senator BINGHAM. I do not think you got my point. I was just wondering whether or not the general impression that prevails, that a large amount of foreign manufactured goods is on the shelves in the New York stores, for example, was due, perhaps, to the fact that so many customers like to buy imported articles, and the clerks are very fond of telling them that nearly everything is imported.

Mr. LE BOUTILLIER. I disagree with some of these gentlemen. I do not think we are lying about these things. One gentleman had the nerve to say that we put on foreign labels when the stuff was not foreign, and all that sort of thing. That is too silly even to dignify with comment. If you believe that any importer is an undesirable foreigner, you have to class among the importers practically every big store in the country. If you believe I am a foreigner, and therefore undesirable, you can believe it, but it does not change the fact. I maintain that the stores are just as good Americans and just as much interested in domestic products as they ought to be. That is 95 per cent.

If the intent of this change of value basis is to eliminate foreign products, say so. I believe in putting the cards on the table. I was really astounded.

I have always had the highest respect for the Senate of the United States and for the individual Senators. I have it now; and I add to it a great deal of sympathy for you gentlemen who sit here in a beautiful room to hear so many things that are not so. I have been here since 10 o'clock this morning, and I have listened with respect and interest to every speaker. I have not put in six or eight hours in any room in my life when I have heard so many things that were not so. Therefore I say that I have for you gentlemen the highest sympathy, as well as the greatest respect, because after you listen to these statements that are made, many of which are ridiculous and contradicted by the facts, how could we do anything else but sympathize with you? I was thinking, "Well, if I stood up under this sort of thing for two or three days I would probably lose any common sense that I might have."

I think that some of the things that were not said this morning absolutely disprove the case that the gentlemen were trying to present. For instance, take the matter of undervaluation. Mr. Lerch said that undervaluation was the main cause for his sponsoring United States value. Mr. Burgess said the same thing, that it was the main cause.

What do you find out about undervaluations? There is no mystery about undervaluations. You can get the figures from the Treasury

Department, and they are a joke. It is all right to take one bale of rugs and show a ton of rugs, and say that there has been undervaluation, and prove it; but are you going to change the whole basis under which the import commerce of this country has been done for years because of one crook? No. I say that common sense says to put more teeth in the law. The actual facts about undervaluation, if I may attempt to explain it to you a little——

Senator COUZENS. You are talking on the assumption that we discover all undervaluations.

Mr. LE BOUTILLIER. I am talking on the statement—and I make it now—that it does not exist.

Senator COUZENS. There may be undervaluations that we do not discover, may there not?

Mr. LE BOUTILLIER. Perhaps there are.

Senator COUZENS. Then, of course, if that is so, your statistics in that connection are not accurate, are they?

Mr. LE BOUTILLIER. That indicts the whole Customs Service. I do not think the whole Customs Service is so rank. I think they are a very competent lot of men.

Senator COUZENS. They do not need to be rank, necessarily. They may be mistaken, or may be fooled. It is not always that a crook is caught, by any means.

Mr. LE BOUTILLIER. That is true. He is not always caught under the income tax law, either; but you do not wipe that out.

Senator COUZENS. I can certify to that.

Mr. LE BOUTILLIER. We ought to know the facts about undervaluation. It is always brought up. I was astounded, and very much pleased, too, to see Mr. Burgess go back to 1908 for his undervaluation cases, and I was very much interested to see Mr. Lerch go back to 1912. Why do they not bring up the cases of undervaluation that exist now? As a matter of fact, my concern is guilty of undervaluation, if it is a guilt; and it arises in this way:

We send our buyers and representatives abroad to buy merchandise. We do not send them over there to buy the goods primarily to make a longer profit than if we bought the same goods here. A gentleman said that this morning. He does not know what he is talking about; or, if he does know what he is talking about, he does not state it fairly. We send them over there because there is a genuine demand on the part of the American consumer for original merchandise and novelty merchandise, and Europe has it. We buy a thing, say, in London or Paris, and we buy some 60 of them. A certain value is put on it when it gets over here, and we pay our duty on that basis. Somebody else, unfortunately, goes to the same producer abroad, or the same manufacturer, and buys perhaps a dozen. It may come in at 50 cents higher; so we are recorded as undervaluing and our rate is raised to meet the higher rate. We do not complain about that, but is that fraudulent undervaluation? I maintain that not a man here this morning or this afternoon pointed that out to you; and I maintain, sir, that you can get proof of that from the Treasury officials themselves. The number of cases of undervaluation represent a very small percentage of the total. It has been pointed out that it is around 1 per cent. The percentage of fraudulent undervaluation is far less than that.

That is your undervaluation. But this morning they debated, and they hinted all sorts of things about undervaluation. I claim that Mr. Burgess and Mr. Lerch absolutely disproved their own cases, because they said the main reason for switching to United States value is undervaluation, and the Treasury records, which are available to you, and about which there is no particular secret, prove conclusively that the amount of fraudulent undervaluation is far less than 1 per cent.

I claim that it is not logical. It is not sensible. There is no sense in changing the basis of value that this country has used for years. In spite of Mr. Woll, I do not think we are going on the rocks yet. I think conditions here are pretty good, and we are opposed to a change, because it would increase tremendously the uncertainty and the confusion in the customs department.

Senator COUZENS. May I ask a question at this point?

Mr. LE BOUTILLIER. Yes.

Senator COUZENS. You heard Mr. Woll say that the present system of valuation gave advantages to the low-wage countries; and I think that is correct. What is your opinion in that connection?

Mr. LE BOUTILLIER. Of course, it is very nice to say that. I am in a business that does not make a great deal of money, either. If we could find some pill or some formula that would change all our problems, it would be wonderful; but it does not exist. I think Mr. Woll entirely ignores, intentionally or otherwise, the greater unit production of the worker in this country, as compared with other countries. This country is underproducing, and is underselling a great many foreign countries. All you have to do is to look at the export figures.

Senator COUZENS. That does not answer my question, as to whether or not that country which produces the cheapest gets the lowest duty rate.

Mr. LE BOUTILLIER. I do not see why that should concern us at all. For instance, Mr. Cheney says Japan has the "drop." Why should we insist that France should be on the same basis as Japan? If Japan can produce something that the consumer in this country wants, and can use, why should they not do it, and why should we not buy it? If you do not do that you are forced inevitably into the isolation theory.

Senator COUZENS. I am not arguing that question. I asked you if you would not answer the statement that the present system of valuation gives advantages to the country that produces at the lowest cost.

Mr. LE BOUTILLIER. I do not see it; and I do not see that the remedy that he suggested——

Senator COUZENS. I am not talking about the remedy.

Mr. LE BOUTILLIER. Raise the rate.

Senator COUZENS. Then you would have a higher rate for the low cost producing countries than you would have for the high cost producing countries.

Senator SHORTRIDGE. That can not be done.

Senator COUZENS. I understand; but that is his theory. He proposes to attempt to equalize the duties of the low cost producing countries with those which produce at a higher cost.

Senator SHORTRIDGE. Correct.

Senator KING. Let me give an illustration. Suppose there were a tariff on coffee, and Brazil could produce it at a profit, say, at 10 cents a pound, and Haiti could produce it at 20 cents a pound, and we imported it. Brazil would have a little advantage, but, as you say, that is not our concern.

Mr. LE BOUTILLIER. I do not think it is, sir. Why is it?

Senator COUZENS. I wholly disagree, because it helps to maintain the low standard of wages.

Mr. LE BOUTILLIER. Is not the remedy for that to raise the duty higher?

Senator COUZENS. But the advantage still exists to the low cost producing country. There is no question about that.

Mr. LE BOUTILLIER. Raise it to the point where the higher cost producing country can not compete.

Senator KING. Let me put it this way: Suppose bananas grew with great prodigality in a certain country with less labor and at less expense than in some other country, and we placed a tariff upon bananas that are imported. Do you think it would be lowering the standard of wages or contributing to the lowering of the standard of wage if we fixed the same tariff rate on all bananas that come into the United States?

Senator SHORTRIDGE. We do not raise bananas.

Senator KING. I am not talking about that.

Senator COUZENS. I will take Mr. Cheney's example. Mr. Cheney said that because of the low wages in Japan and China they can produce at a lower cost than they can in France, so that every encouragement is lent by this system to getting France to reduce her wages so that she can compete with Japan and China. It is perfectly obvious that when it is based upon a foreign value the country with the lowest cost of production pays the lowest duty.

Mr. LE BOUTILLIER. Mr. Cheney pointed out also that the French silk production was more a matter of design and structure than it was of the gray material that Japan produces and sends over, which is converted here.

Senator COUZENS. I merely used that as an example.

Mr. LE BOUTILLIER. That situation does not exist, because France does not manufacture the same class of silk that Japan does.

Senator COUZENS. It might.

Mr. LE BOUTILLIER. It does not.

Senator COUZENS. France might if she had the same standard of living as they have in Japan and China.

Senator BINGHAM. Is it not true that one of the principal reasons for the existence of the protective tariff is the difference between the cost of labor here and abroad?

Mr. LE BOUTILLIER. I suppose so.

Senator BINGHAM. If in the United States a silk weaver gets $34 a week and in Switzerland he gets $10 a week, if you are going to put a duty on the Swiss article that will overcome the difference between the man weaving at $10 a week and the one weaving at $34 a week, you will get protection for American labor?

Mr. LE BOUTILLIER. I think it is absolutely an unimportant point.

Senator BINGHAM. The trouble is, as Mr. Cheney pointed out, that in Poland a mill weaver gets $4.22 a week, in Japan $3.54, and in China, $1.80.

Mr. LE BOUTILLIER. Why doesn't he point out how much they produce?

Senator BINGHAM. The only way you can protect the American laborer under that widely different system and widely different scale of prices for labor in different parts of the world for doing the same thing, it seems to me, is by putting the tariff on the basis of the sale price in America rather than on the valuation in those countries where cheap labor exists. I wish you would tell us why you are so strongly opposed to putting it on the basis of a valuation which must be uniform because it is the sale price in America.

Mr. LE BOUTILLIER. Suppose, for the sake of argument, that you are correct—which I do not believe—but suppose that you are correct, for the sake of argument. The difficulties that will follow the inauguration of United States value will far exceed the benefit you will obtain for France, Switzerland, or some other country by that system.

Senator BINGHAM. What are the difficulties?

Mr. LE BOUTILLIER. The difficulties are those of administration. For instance, it is our information that the undervaluation, which is Mr. Burgess's chief argument, and Mr. Lerch's chief argument, and the only chief argument I have heard here, is unfounded. It is a false premise, and therefore their conclusion is false.

We will assume, for the sake of argument, that that is wiped out, that that does not exist. Now, you still say, "Go to United States value," or "Go to American valuation," which the Senate committee in 1921 proved to be absolutely unworkable.

Senator SACKETT. We are asking you about United States value.

Mr. LE BOUTILLIER. Yes, sir. I am trying to get to it. It is our opinion that the big urge to get United States value was to increase the uncertainty for the importer, for the merchant, and for anybody to buy his goods abroad and import them here for sale. It increases the difficulty of the administration and increases the uncertainty of the price. You will admit that, sir. We go abroad and buy now. We know what the foreign selling price is. We do not find all these difficulties that were mentioned this morning in discovering the foreign price. We do not find that difficulty.

Senator EDGE. Do you not find difficulty in finding the foreign cost of production?

Mr. LE BOUTILLIER. Sir?

Senator EDGE. You have evaded the question entirely—not purposely, perhaps. You say the only real reason advanced for this change was undervaluation. I consider one of the most forceful reasons advanced was the failure to find the cost of production abroad, which is the fundamental principle of protection.

Mr. LE BOUTILLIER. How have we gotten along in the last 50 or 60 years?

Senator EDGE. We are discovering that we can not get it.

Mr. LE BOUTILLIER. I do not think that is shown by the fact that, perhaps in certain cases, when our agents go to certain factories over there, the books are not trotted right out, and they are not given all the formulas. That is not unreasonable.

Senator EDGE. You know, as a matter of fact, that it is true that our men have been withdrawn from some very important exporting countries.

Mr. LE BOUTILLIER. I understand they were not thrown out of France. They were withdrawn from France.

Senator EDGE. Whatever the reason was, the fact remains that we have no method, so far as I know, of ascertaining these costs. You speak of undervaluation as being the main argument.

Mr. LE BOUTILLIER. The gentlemen said so themselves.

Senator EDGE. I think the main argument is that we have no method now to get the facts on the cost of production abroad. I think that is a fundamental principle of protection.

Senator REED. I would like to ask one question——

Senator COUZENS. I would like to ask the Chairman if he is going on any longer to-day on this subject.

The CHAIRMAN. We have another matter to-morrow. I want to conclude this to-night.

Mr. LE BOUTILLIER. I will not take long.

The CHAIRMAN. I want to call your attention to one matter, so that the record will not show that we have all been dumb in regard to undervaluation. The total number of seizures made during 1928 amounted to 28,030. That is the total number of seizures on account of undervaluation. Among some of the duties collected during the year 1928 were $1,398,904 on imports of rugs; on cotton velvets we collected $315,000; on cotton velvets, again, $60,000; on embroideries and laces from China we collected $300,770; on tie silks we collected $231,000. There were seizures to the number of 23,030 during the year 1928; so, there was a little more than one, was there not?

Senator KING. I think the statement made by my colleague, when you analyze it, throws very little light on this situation, because I know of a great many cases of Americans who brought goods here and gave the prices which they paid for them, and the goods were seized. Mr. Burgess gave the reason why. Prices had changed in the meantime. The goods were seized, and probably they had to pay. In some instances they got a rebate.

The CHAIRMAN. I have read the figures to you from the record.

Mr. LE BOUTILLIER. Suppose there were 28,000 seizures, and that was out of how many million entries?

Senator KING. This gentleman said there had been some change in price which caused the seizure.

The CHAIRMAN. He said himself perhaps there was one case.

Mr. LE BOUTILLIER. One per cent.

Senator KING. In how many million cases?

Mr. LE BOUTILLIER. Yes; many millions of cases.

Senator HARRISON. Mr. Chairman, these other witnesses have been permitted to go ahead and make their statement. Why not allow this witness to do so?

The CHAIRMAN. I always think that is a good plan.

Senator REED. I have been trying to ask a question for some minutes, and I should like to ask it now.

The CHAIRMAN. Certainly.

Senator REED. Mr. Le Boutillier referred rather sneeringly to my reference to rug undervaluation, and also stated that there were no

recent cases of undervaluation mentioned. I have before me the report of the Secretary of the Treasury for the last fiscal year, from which I read:

> The investigation concerning market values of rugs was concluded during the year, and the values now used for appraisement purposes of practically all imported oriental rugs have resulted in additions amounting to $1,398,904 by importers on making entry during the year just closed.

I find also under the heading, "Cork board," the following:

> Investigations concluded by the appraiser of merchandise at New York and by the customs representatives abroad have disclosed that systematic undervaluation ranging from 10 to 15 per cent was practiced by at least eight importers of cork boards. The value of additions amounts to more than $500,000, and it is understood that the importers will accept the higher valuations determined by the assessor.

So they are not all insignificant, and are not all 20 years old.

Mr. LE BOUTILLIER. Senator Reed, I am sorry that you thought I referred to your remarks in a sneering fashion. I have the highest respect for you. I do not know what it could be, whether my earnestness or my form of face.

Senator KING. Both of you being Princeton men and classmates, I think you ought to get along very well.

Mr. LE BOUTILLIER. I think on the matter of appraisers you have to compare them with the total number, hundreds. I may have a pain in my head, but the doctor that recommends cutting off my arm will not be so popular with me. I do not believe in cutting off a man's head to cure headaches.

Senator REED. Neither do we. Let me correct a misunderstanding you seemed to have formed as a result of my questions propounded to you: I do not consent to the proposition that we raise these duties by the adoption of a new valuation, but do make a corresponding reduction in schedules to compensate for a change in basis. I think it is not fair to others, to the members of this committee at least, no matter what witnesses may have said, to assume that we intend to raise revenue by indirection.

Mr. LE BOUTILLIER. It is the judgment of our committee, sir, that if you are going to compensate and leave the eventual income or revenue the same as you have you have to rewrite the whole bill, and you will be at it until next March. Yes; you will have to rewrite the whole bill. You can not take a formula and say that this will compensate for everything, because the formula presented, 8 and 8 per cent, is not correct. On lots of things we charge 50 and 100 per cent increase, gross profit. Some gentleman might say we make the money on that and that is the reason why we are interested in it. As a matter of fact, we hardly break even. But we believe that foreign goods ought to be here, and we believe that it is good for American industry to have foreign goods here.

As an illustration take the Dunhill lighters. Suppose they had been barred out? Since they were imported American industry has taken hold of it and has made all sorts of lighters. You can not have a birthday or a Christmas come around without getting six or eight of them.

Senator SHORTRIDGE. That seems to be so.

Mr. LE BOUTILLIER. They do not all light and yet they are lighters. The same thing applies to merchandise in which my store is interested

and in which all stores are interested. The design, the fabric, and the construction of Europeans are very original. They are more original, with due respect to our linen and silk merchants, and Mr. Cheney practically admitted it. I say that these things should be allowed to continue to come in to our country, and I say that the merchant is absolutely in a correct position as far as the country is concerned, as far as the consumer is concerned, to encourage the sale of that merchandise and to import it.

Senator REED. Nobody proposes to stop him.

Mr. LE BOUTILLIER. But if you change your basis without rewriting the entire bill you will stop it, because we will have to go over there if we continue to buy, and we will have to pay in most cases an unknown price. You would not do that in your private life, Senator Reed.

Senator REED. You say it will take us until next March to rewrite the bill?

Mr. LE BOUTILLIER. I believe it.

Senator REED. The committee did rewrite the bill in 1922 and it did not take that length of time.

Mr. LE BOUTILLIER. But it threw that provision out.

Senator REED. The American valuation was put in the bill in the House, and the Senate committee threw that provision out and adopted foreign valuation and rewrote the schedules to conform to the new basis, and that is the law to-day.

Senator KING. Was it not the foreign valuation before?

Senator REED. I beg your pardon, Senator King?

Senator KING. I say, was it not on a foreign valuation before?

Senator REED. We had it under the Underwood bill.

Senator KING. The foreign valuation had been in vogue for many years, and we just changed the policy that had existed for many years.

Senator REED. To the great benefit of the country we changed the policy.

Mr. LE BOUTILLIER. The most of the merchandise that we import is brought in under foreign value. We are not assessed United States value now. We object to this bill because in sections 2 and 3 it practically hands over to the appraiser the right to change the rate. I do not think that is the function of an appraiser at all. I do not see how anybody else can think so. I think that is the function of the Congress.

Senator SHORTRIDGE. How do you read that into the bill?

Mr. LE BOUTILLIER. You have 50 appraisers, and you have a couple of thousand appraising officers all over the country, and if a man has not a comparative piece of merchandise on his desk, or he has not it before him, he has a right to put it on a United States value. That is the way our committee read that provision; he has the right to put that on a United States value. If that is not changing the taxable basis of the country, then I do not know what it is.

Senator SHORTRIDGE. Do you think that his finding on that matter should be final?

Mr. LE BOUTILLIER. No; I certainly do not. I think it ought to go to the courts instead of being final there. I believe it ought to go to the courts in spite of the feeling of certain gentlemen that the courts could not handle it and that an administrative officer would be better qualified.

Senator SHORTRIDGE. Mr. Chairman, there is a gentleman here who wishes to address himself to that point.

The CHAIRMAN. We will hear him just as soon as Mr. Le Boutillier has concluded.

Mr. LE BOUTILLIER. Could I raise this point? It is the judgment of our committee, gentlemen, although we may be wrong about it——

Senator SACKETT (interposing). Mr. Chairman, we have not heard any question discussed by the representatives of the agricultural interests on the question of change of valuation. I think we ought to have that.

The CHAIRMAN. I think we can go on until 6 o'clock and get through.

Senator KING. Why not adopt a motion that we confine the activities of this committee to a consideration of agricultural products as recommended by the President of the United States?

Senator REED. On the theory that the man that works with a hoe is entitled to better treatment than the man who works at the forge or at the desk?

The CHAIRMAN. My idea was to have every witness heard. We have a great number of witnesses here, however, and I do not see how we could get through to-night.

Senator COUZENS. You do not intend to go on much longer, do you?

The CHAIRMAN. I should like to go as long as we can.

Senator SIMMONS. I see that we can not finish to-night.

The CHAIRMAN. Well, as soon as this witness concludes the committee will take an adjournment until 9.30 to-morrow morning.

Mr. LE BOUTILLIER. Might I have 10 minutes more?

The CHAIRMAN. Yes; but you have asked for that and have had 35 minutes now.

Senator HARRISON. But he has been harassed by a great number of interruptions.

The CHAIRMAN. I realize that, and that is the reason he has been allowed to go on in spite of his request for only 10 minutes more.

Mr. LE BOUTILLIER. We pointed out in our brief that we submitted to the Committee on Ways and Means of the House of Representatives, and we will point out in a brief we will submit to you, that we are in favor of adequate protection, but we do not believe in prohibitive protection. We make this statement and you can challenge it and throw it out if you wish: We are business men. We have no higher rates to look for. You know what we want. We want a continuation of prosperous conditions, and we believe that can be obtained by common sense. We believe the most of those who favor the American or United States value plan do so because they want more protection than our citizens would consider fair and proper. Some favor it because they do not understand it, of course for the shallow reason that it is called United States or American.

Senator BINGHAM. Do not other countries use it—England, for instance?

Mr. LE BOUTILLIER. England is practically a free-trade country, and we do not believe in that plan.

Senator BINGHAM. How long since has it been a free-trade country?

Mr. LE BOUTILLIER. I believe they have been a free-trade country for centuries.

Senator BINGHAM. You have not been over there recently evidently.

Mr. LE BOUTILLIER. No; business has been too good over here.

Senator BINGHAM. If business is so good and only 5 per cent of your merchandise is affected, why take up so much time of the committee talking about it?

Mr. LE BOUTILLIER. You offered us an opportunity to be heard, and we think you should hear from somebody who is not interested in higher rates or in prohibitive rates, and we think you are entitled to hear from the industry that is in closest contact with the consumer. We have not been elected to appear here by the consumer, but we are closer to the consumer, we study the consumer's wants, and the consumer's state of mind more than anybody else in the country. That is why we think our views should be heard.

Senator BINGHAM. It has been stated here repeatedly that the object of this plan was not to increase the cost to the consumer but to protect the honest importer against the dishonest one.

Senator GEORGE. Mr. Chairman, that is disputed, and I think we will save as much time by hearing the testimony as by arguing the case out here. I do not share that view.

The CHAIRMAN. I am waiting for Mr. Le Boutillier to go on.

Senator GEORGE. I do not think a witness who represents the importers ought to be impatiently heard by the committee.

The CHAIRMAN. They have had the most of the afternoon.

Mr. LE BOUTILLIER. I have been on for 15 minutes.

Senator SIMMONS. I move that this witness be allowed to continue his statement without interruption.

The CHAIRMAN. I think that would be a good plan.

Mr. LE BOUTILLIER. I will simply state my position in brief: We are opposed to section 402, and we give our reasons in our brief. We are going to give a copy of it to each member of the committee.

We are opposed to section 336. The reason will be stated in our brief.

In closing permit me to present what I wrote out this morning: The National Retail Dry Goods Association believes that no convincing case has been made out by the advocates of this radical change in customs administration. And to maintain that the case has got to be made out just as a matter of common sense before a change is made. I believe you gentlemen will agree with that.

Proposals similar in principle have been repeatedly rejected in the making of American tariff bills.

The proposed changes are exactly the opposite of what the words "American" and "United States" have come to stand for. They are not straightforward, their effect is concealed, they are for the benefit of special interests only.

They would result in increased expense of customs administration and decreased revenues, and produce chaotic conditions in our necessary and beneficial import commerce, to be followed soon by decreased imports to the serious damage of our prosperity and to the detriment of our whole population.

We are unalterably opposed to any change from the foreign value basis, the method under which our foreign commerce has become the wonder and the envy of the world.

I should like to say to the committee that I appreciate your courtesy. We are submitting a brief, which is rather extensive, because

we have endeavored to look at this from the standpoint of the country and not from the standpoint of getting an increase in rates or to get subsidies for stores. As a matter of fact, it may be pertinent to you to know that the department store business is not in a very prosperous condition.

Senator BINGHAM. I thought you said you were so prosperous you could not go abroad.

Mr. LE BOUTILLIER. I said I was so busy. We are doing a big business. In this connection I should like to say that the reports of the bureau of business research of Harvard University show that the net profit per dollar of sales was, in 1922, 3.4 cents and in 1928 was 1.6 cents.

We are not asking you to pass a law that no additional retailer shall be allowed to open. We believe in competition. We believe it inspires imagination, better methods of production and distribution.

We shall be very glad if there are any figures that we have to furnish them to you. I will say that we have tons of them.

The CHAIRMAN. I have a ton here now.

Mr. LE BOUTILLIER. I thank you.

(The following letters were subsequently submitted:)

NATIONAL RETAIL DRY GOODS ASSOCIATION,
June 15, 1929.

SENATE FINANCE COMMITTEE,
Washington, D. C.

GENTLEMEN: Mr. Le Boutillier's time having been cut short and inasmuch as I was to amplify in a specific manner certain matters which he drew to your attention, I would ask that you receive this data as part of the testimony furnished by the National Retail Dry Goods Association. The undersigned is manager of the foreign office of Bonwit Teller & Co., a member of the aforementioned dry goods association.

As proof of the fact that the change from foreign or export value to United States value would increase duties to the importing merchant, I give herewith the following example:

Formula

Foreign cost, foreign office	$1.00
Expense: Buying, commission, freight, insurance, and landing charges	.15
Total	1.15
Duty, 50 per cent	.50
	1.65
Mark-up, 33⅓ per cent	.55
Selling price	2.20

United States value

8 per cent expense	$2.20
8 per cent profit	.352
16 per cent	1.848
Expense	.15
Dutiable basis and duty	1.698

Appraisement basis	per cent	100
Duty	do	50
Total		150=1.5
1.698 divided by 1.5 equals		1.132
Increase duty basis	per cent	.13⅓
When mark-up is—		
40 per cent duty increase is	do	.195
50 per cent duty increase is	do	.286
75 per cent duty increase is	do	.519
100 per cent duty increase is	do	.755

The 8 and 8 per cent deductions mentioned are in accordance with the present law for the figuring of United States value and have got to be accepted as fact.

First. Inasmuch as United States value is based upon the wholesale selling price of a domestic article in the United States and inasmuch as we are retailers, how would we know the price at which to make entry in the customhouse of our imported merchandise for we are not familiar with the wholesalers' selling prices.

Second. How would our buyers in Europe know the duty on merchandise when inspecting the markets of Europe? Certainly they would have no knowledge of what the wholesale selling price would be; if for no other reason than that when he visits Europe he does so with a view of finding out just what the Europeran markets have for his store.

Third. Then a large number of the stores buy things which are exclusive to them. In other words, they will not purchase articles which other stores in America have purchased, insisting upon exclusiveness of things. That is the fact to a great extent with the store I represent, we absolutely refusing to purchase an article which other concerns have purchased.

In consequence of the fact just stated, no wholesale selling price of this foreign article could be found in the United States.

Respectfully submitted.

R. W. McCONNOCHIE.

[Copies of telegrams received from members of the National Retail Dry Goods Association, indorsing its stand on the administrative provisions provided for in secs. 336, 402-B and E of bill H. R. 2667]

BOSTON, MASS., *June 14, 1929.*

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York, N. Y.:

E. T. Slattery Co. heartily indorses stand of National Retail Dry Goods Association before Senate Finance Committee and strongly oppose any change from foreign valuation base. Such change would have tendency to increase confusion in customs administration. Therefore trust association will do everything possible to eliminate this objectionable feature.

P. A. O'CONNELL.

AKRON, OHIO, *June 14, 1929.*

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York, N. Y.:

We strongly indorse your stand before Senate Finance Committee opposing any change from foreign valuation.

A. POLSKY CO.

PHILADELPHIA, PA., *June 14, 1929.*

CHANNING E. SWEITZER,
Managing Director National Retail Dry Goods Association,
New York, N. Y.:

We heartily indorse the stand of the association before Senate Finance Committee and are opposed to any change from foreign valuation base as leading to concealed higher duties as it will only cause increased confusion in custom administration and will be ultimately damaging to the import, export, and general commerce of the United States.

THE BLUM STORE,
MAURICE SPECTOR, *President.*

BOSTON, MASS., *June 14, 1929.*

CHANNING E. SWEITZER,
Managing Director National Retail Dry Goods Association,
New York, N. Y.:

We agree with stand taken by your association before Senate Finance Committee and consider undesirable any change from foreign valuation base as such change would lead to concealed higher duties to increase red tape in customs administration and would we believe be ultimately damaging to the import, export, and general commerce of the United States.

WM. FILENE'S SONS CO.

INDIANAPOLIS, IND., *June 13, 1929.*

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York, N. Y.:

The suggested change in the new tariff law from foreign valuation basis to any other basis for assessing import duties will lead, in our opinion, to increased confusion in the administration of customs to unequal assessments against the same merchandise brought into the country through different ports and to such uncertainty of the landed costs of merchandise purchased abroad that it will result in restricting the trade of our country with other nations. We are heartily in favor of the National Retail Dry Goods Association opposing any change from the foreign valuation base.

L. S. AYRES & CO.

NEW ORLEANS, LA., *June 13, 1929.*

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York, N. Y.:

We oppose any change from foreign valuation base as that will lead to concealed higher duties also increased confusion in customs administration and will seriously damage the import, as well as export, and general commerce of the United States. We indorse your stand before Senate Finance Committee. Advise if you wish me to get in direct touch with our Senators.

D. H. HOLMES CO. (LTD.),
F. W. EVANS, *President.*

ST. LOUIS, MO., *June 13, 1929.*

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York, N. Y.:

We indorse your stand before Senate Finance Committee and oppose any change from foreign valuation base. We believe such change will result in confusion and damage to import business in this country.

F. M. MAYFIELD-SCRUGGS-VANDERVOORT-BARNEY DRY GOODS CO.

CHICAGO, ILL., *June 13, 1929.*

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York, N. Y.:

On June 12 Marshall Field & Co., filed before the Finance Committee of the Senate a brief opposing the United States valuation and urging a perpetuation of the foreign value as the base for appraising imported merchandise. We indorse the stand of the National Retail Dry Goods Association, which, as we understand it, is identical with our own.

MARSHALL FIELD & CO.
FRED D. CORLEY, *Vice President.*

SEATTLE, WASH., *June 13, 1929.*

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York, N. Y.:

We indorse stand of National Retail Dry Goods Association before Senate Finance Committee and oppose any change from foreign valuation base as leading to concealed higher duties to increased confusion in customs administration,

and as ultimately damaging to the import, export, and general commerce of the United States.

THE BON MARCHE,
FRANK MCL. RADFORD, *President.*

SAN FRANCISCO, CALIF., *June 13, 1929.*

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York, N. Y.:

We indorse stand of National Retail Dry Goods Association before Senate Finance Committee and oppose any change from foreign valuation base as leading to concealed higher duties to increased confusion in customs administration and as ultimately damaging to the import, export, and general commerce of the United States.

HALE BROS. STORES (INC.).

PORTLAND, ME., *June 14, 1929.*

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York, N. Y.:

I indorse the stand of the association before the Senate Finance Committee and oppose any change from foreign valuation base. Believe such change would lead to concealed higher duties and would increase confusion in customs administration and that it would ultimately damage the import, export, and general commerce of the United States.

EASTMAN BROS. & BANCROFT.
F. E. EASTMAN.

CHICAGO, ILL., *June 13, 1929.*

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York, N. Y.:

We sincerely hope you will leave nothing undone in your efforts to endeavor to persuade Congress to make no change from foreign valuation base. A change such as has been proposed will lead to confusion in administration and will be damaging to merchandising organizations. If the same type of article was shipped to three ports of entry—one on the Atlantic, one on the Pacific, and one on the Gulf—we would probably have three different valuations thereon. The present arrangement has given general satisfaction.

THE FAIR.
D. F. KELLY, *President.*

BROOKLYN, N. Y., *June 14, 1929.*

CHANNING E. SWEITZER,
Managing Director National Retail Dry Goods Association,
New York, N. Y.:

Having read presentation of case by Tariff Committee of National Retail Dry Goods Association before the Senate Finance Committee we wish to register unqualified indorsement of their position. We believe change from foreign valuation basis will lead to higher duties and will produce complications in customs administration and thereby damage the general commerce of the country, both import and export.

FREDERICK LOESER CO.
GORDON K. CREIGHTON.

BALTIMORE, MD., *June 14, 1929.*

CHANNING E. SWEITZER,
National Retail Dry Goods Association, New York, N. Y.:

We concur with the National Retail Dry Goods Association in opposing any change from the foreign valuation base in the tariff bill. Feel this would tend to conceal duties, cause confusion in custom administration, and general damage the trade of the country.

ALBERT D. HUTZLER.

ROCHESTER, N. Y., *June 14, 1929.*

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York, N. Y.:

We heartily approve your stand before Senate Finance Committee and oppose any change from foreign valuation base as leading to concealed higher duties, to increased confusion in customs administration, and as ultimately damaging to the import, export, and general commerce of the United States.

McCURDY & Co.

COLUMBUS, OHIO, *June 14, 1929.*

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York, N. Y.:

We indorse stand of National Retail Dry Goods Association before Senate Finance Committee and oppose any change from foreign valuation base as leading to concealed higher duties, to increased confusion in customs administration, and as ultimately damaging to the import, export, and general commerce of the United States.

THE F. & R. LAZARUS CO.

PITTSBURGH, PA., *June 14, 1929.*

CHANNING E. SWEITZER,
Managing Director National Retail Dry Goods Association, New York:

As vice president of Joseph Horne Co., Pittsburgh, Pa., I herewith indorse the action of the National Retail Dry Goods Association in opposing any change from the foreign valuation basis on imports in the belief that only confusion and uncertainty can result in customs administration through the use of any other basis.

A. H. BURCHFIELD.

ELMIRA, N. Y., *June 14, 1929.*

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York, N. Y.:

We indorse stand of National Retail Dry Goods Association before Senate Finance Committee and oppose any change from foreign valuation base as leading to concealed higher duties, to increased confusion in customs administration, and as ultimately damaging to the import, export, and general commerce of the United States.

S. F. ISZARD Co.

INDIANAPOLIS, IND., *June 15, 1929.*

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York, N. Y.:

We are opposed to any change from the present basis of tariff valuation on imports to any such method as the American selling price and indorse the stand of the National Retail Dry Goods Association before the Senate Finance Committee in opposing such changes.

H. P. WASSON & Co.

JUNE 15,1929.

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York, N. Y.

Our company, owning and operating 29 department stores located throughout the country and representing the interests of a vast number of consumers whose needs we serve, strongly opposes any change from foreign valuation base in the tariff. We believe United States value and American selling price bases would lead to untold confusion and grave injustice in customs administration and would result in a virtual embargo on many lines of imports and would immediately and ultimately damage the export and general commerce of the United States. We heartily indorse the stand of National Retail Dry Goods Association before the Senate Finance Committee and trust that this committee realizes that your association and all retail stores are pleading not only for themselves but for every consumer in the country on whose welfare retailing is dependent. We suggest that you again remind the committee that only about 5 per cent of retail sales

are of imported goods. Retailers import merchandise largely for its novelty value and to stimulate trade in the American goods which form about 95 per cent of the sales.

HAHN DEPARTMENT STORES (Inc.),
LEW HAHN, *President.*

CLEVELAND, OHIO, *June 15, 1929.*

CHANNING E. SWEITZER,
Managing Director National Retail Dry Goods Association,
New York, N. Y.:

We are all with you in opposing before Senate Finance Committee change from foreign valuation to a basis that will not only increase duties unscientifically but will add confusion and uncertainty in buying, for all of which the consumer will pay.

WM. TAYLOR SON & CO.
C. H. STRONG.

SPOKANE, WASH., *June 15, 1929.*

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York, N. Y.:

We indorse stand of National Retail Dry Goods Association before Senate Finance Committee and oppose any change from foreign valuation base as leading to conceal higher duties, to increase confusion in customs administration.

GEO. A. PHILLIPS.

NEW YORK, N. Y., *June 15, 1929.*

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York, N. Y.:

We indorse stand of National Retail Dry Goods Association before Senate Finance Committee and oppose any change from foreign valuation base as leading to concealed higher duties, to increased confusion in customs administration, and as ultimately damaging to the import, export, and general commerce of the United States.

ARNOLD CONSTABLE & CO.

BIRMINGHAM, ALA., *June 15, 1929.*

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York, N. Y.:

We indorse stand of National Retail Dry Goods Association before Senate Finance Committee and oppose any change from foreign valuation base as leading to concealed higher duties, to increased confusion in customs administration and as ultimately damaging to the import, export, and general commerce of the United States.

CAHEEN BROS.

PEORIA, ILL., *June 15, 1929.*

CHANNING E. SWEITZER,
Managing Director National Retail Dry Goods Association,
New York, N. Y.:

We give our unqualified indorsement to the stand taken by the National Retail Dry Goods Association at the hearing given by Finance Committee of the United States Senate. We believe that proposed changes would seriously affect import, export, and general commerce of our entire Nation.

P. A. BERGNER & CO.

NEWARK, N. J., *June 15, 1929.*

PHILIP LE BOUTILLIER,
National Retail Dry Goods Association,
New York, N. Y.:

We thoroughly agree with you and indorse your opposition to the proposed change from foreign valuation base. The change could result only in confusion and uncertainty.

L. BAMBERGER & CO.

LOS ANGELES, CALIF., *June 15, 1929.*

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York, N. Y.:

We indorse stand of National Retail Dry Goods Association before Senate Finance Committee, and oppose any change from foreign valuation base as leading to concealed higher duties to increased confusion in customs administration and as ultimately damaging to the import, export, and general commerce of the United States.

RETAIL DRY GOODS MERCHANTS ASSOCIATION OF LOS ANGELES.
BARKER BROS.
N. B. BLACKSTONE CO.
BROADWAY DEPARTMENT STORE (INC.).
BULLOCKS.
COULTER DRY GOODS CO.
B. H. DYAS CO.
JACOBY BROS.
PARMELEE DOHRMANN CO.
MYER SIEGEL & CO.
WALKERS (INC.).
MAY CO.

SYRACUSE, N. Y., *June 15, 1929.*

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York, N. Y.:

We indorse the stand of the National Retail Dry Goods Association before Senate Finance Committee opposing any change from foreign valuation base as leading to concealed higher duties, increased confusion in customs administration, and as ultimately damaging to the import, export, and general commerce of the United States.

DEY BROS. & CO.

CINCINNATI, OHIO, *June 15, 1929.*

Mr. CHANNING E. SWEITZER,
Managing director National Retail Dry Goods Association,
New York, N. Y.:

In view of confusion, uncertainties, and fraud bound to occur to disadvantage of our merchants and consumers if suggested valuation change in tariff law be made we commend and indorse the attitude of National Retail Dry Goods Association before Senate Finance Committee opposing such change. To place local port appraisers in charge of valuations with practically no appeal therefrom is alone of momentous importance to the commerce of this country.

MABLEY & CAREW CO.,
B. S. ARMSTRONG, *President.*

KANSAS CITY, MO., *June 15, 1929.*

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York, N. Y.:

We wish to add our protest against any change from the present basis of foreign valuation in assessing import values. The so-called American selling price plan would seriously curtail our imports of merchandise. Would materially increase prices to consumer. Create incalculable confusion in customs administration, and thus most unsatisfactory to foreign manufacturers, our own importers, and, finally, our own taxpaying consumers.

EMERY BIRD THAYER DRY GOODS CO.

DENVER, COLO., *June 17, 1929.*

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York, N. Y.:

We indorse stand of National Retail Dry Goods Association before Senate Finance Committee and oppose any change from foreign valuation base as leading to concealed higher duties, to increased confusion in customs administration, and as ultimately damaging to the import, export, and general commerce to the United States.

A. T. LEWIS & SON DRY GOODS CO.,
A. D. LEWIS, *President.*

JUNE 13, 1929.

CHAIRMAN FINANCE COMMITTEE,
United States Senate, Washington, D. C.:

We wish to respectfully register our approval of the stand of the National Retail Dry Goods Association against the proposed American valuation program. We strongly believe in ample protection for American industries but can not support a movement that in our judgment can lead only to confusion and will seriously interefere with both import and export business.

ABRAHAM & STRAUS (INC.).
A. I. NAMM & SON,
FREDERICK LOESER & CO.

JUNE 18, 1929.

CHANNING E. SWEITZER,
Managing Director National Retail Dry Goods Association,
New York, N. Y.:

Believe any change from foreign valuation base in tariff bill inimical and damaging to the import, export, and general commerce of the United States. We therefore oppose such change and indorse stand taken by the National Retail Dry Goods Association before the Senate Finance Committee.

STRAWBRIDGE & CLOTHIER,
Philadelphia, Pa.

JUNE 17, 1929.

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York City:

We indorse stand of National Retail Dry Goods Association before the Senate Finance Committee; oppose any change from foreign valuation base; feel that this will lead to conceal higher increase, confusion in customs administration, and ultimately damage the import, export, and general commerce of the United States.

ROBABAUGH BROWN DRY GOODS CO.,
Oklahoma City.

JUNE 18, 1929.

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York City:

We heartily indorse your opposition to change from foreign valuation base, believing that such change would seriously hamper foreign trade. The brief filed by your association should be convincing.

SIBLEY LINDSAY & CURR CO.,
Rochester, N. Y.

JUNE 17, 1929.

CHANNING E. SWEITZER,
Executive Secretary National Retail Dry Goods Association,
New York City:

At a meeting of the board of directors the Merchants Association, Indianapolis, to-day, we approve and indorse stand your committee is taking regarding tariff. Our association is to-day wiring and writing our Senators protesting against the American valuation clause.

BOARD OF DIRECTORS MERCHANTS ASSOCIATION,
HERMAN P. LIEBER, *President.*

JUNE 17, 1929.

NATIONAL RETAIL DRY GOODS ASSOCIATION,
New York City:

We commend you and Philip Le Boutillier for presenting to the Senate Finance Committee the serious objections to making a departure from the foreign valuation basis. While the American plan has sincere supporters, they would un-

questionably be greatly disappointed in results, because the idea is unsound and uneconomical and would do great harm to our foreign trade and friendly relations abroad.

C. C. BLOCK,
President Block & Kuhl Co., Peoria, Ill.

* * * * * * *

[PROCEEDINGS BEFORE THE SUBCOMMITTEE ON SCHEDULE 2, JUNE 19, 1929]

Senator KING. Mr. Chairman and Senator Reed, you remember the other day that Senator Smoot put into the record the seizures, and I asked one of the Treasury men whom they sent here to help us, to let me know what those seizures were, and he handed me this statement this morning. May I put that in the record?

Senator EDGE. That will go back in the hearings before the full committee.

Senator KING. Yes, in the hearings before the full committee. The statement shows that there were more than 27,000 seizures in 1928.

	(Seizures)
Narcotics seized	160
Liquors and vehicles in connection	21,166
Merchandise, smuggled and mail	6,705

There has not been any seizure for undervaluation. Section 489, act of 1922, provides for seizure when the appraised value exceeds the entered value by more than 100 per cent, and there does not appear to be any record of seizure under the statute.

The duties collected on rugs were in excess of the duties which would have been ordinarily collected in one case only. In all the other rug cases the duties collected were equal to the duties which would have been collected if the rugs had been originally entered at what was subsequently agreed upon as the correct basis for the assessment of duty. There were no penalties for undervaluation.

I thought in fairness to importers and everybody that ought to go in the record.

* * * * * * *

STATEMENT OF FREDERICK W. BROOKS, JR., REPRESENTING THE ASSOCIATION OF THE CUSTOMS BAR, NEW YORK CITY

Mr. BROOKS. I will say that I am president of the Association of the Customs Bar, which embraces in its membership practically all of the attorneys, specialists in customs law, in and around New York. We also have members out on the Pacific coast, up in New England, and elsewhere.

I hold no brief for any interest; in fact, I believe domestic manufacturers, as well as importing interests, are in entire accord with me on this proposition. Mr. Lerch expressed himself, if I understood him correctly, this morning as opposed to this legislation.

The new legislation in this bill is section 402, paragraph (b), which reads as follows:

Finality of appraiser's decision: Any decision of the appraiser that the foreign value or the export value, or both, can not be satisfactorily ascertained shall be

final and conclusive upon all parties in any administrative or judicial proceedings, and the value of the merchandise shall be determined in accordance therewith, unless, within 10 days after notice of the appraisement is given under section 501, the consignee or his agent files with or mails to the Secretary of the Treasury a request for a review of such decision.

In other words, as it has been very aptly put to me to-day, that transfers the right of appeal of the taxpayer from the United States court to the Secretary of the Treasury, who is one of the parties litigant and his fiat is final.

In the very nature of things it is much better to present questions of fact and to argue questions of law before a judicial tribunal rather than to appear before an administrative official, whether he be high or low.

I think there will be great difficulty in administering this proposed change in the law. For instance, we have importers who bring their goods in on the Pacific coast, down on the Gulf ports, and up throughout New England. Under present practice and ever since the customs administrative act of 1890 has been in force, the judges of the Customs Court travel on circuit and hear these cases at the port where they arise. A merchant can put in his proof, the Government puts in its proof at that port by the officer who has made the appraisal, the case is then decided by the justice who hears it; or, if it is a complicated case, it is returned to New York, where it is considered and decision rendered at a later date.

Senator KING. By the court in banc.

Mr. BROOKS. By a single trial justice in a reappraisement case, on appeal, by the appellate division of three justices. On reappraisement matters a single justice first decides questions of fact and law.

Now, if we go before an administrative official, whether it be in New York, San Francisco, New Orleans, Portland, or what other port we might name, or if we come down here before the Treasury Department, it will mean delay, it will mean increased cost to the taxpayer. It may mean that political pressure may be brought to bear; but at any rate it will not be sent to a judicial tribunal such as we have had in the last 40 years in the customs practice.

Now, further, it may happen, and I think it frequently will happen, that the Secretary of the Treasury, to whom final appeal will stand, may make a decision, may come to a conclusion that will be in error. There will be no way by which that can be corrected, for his decision is final.

It frequently happens to-day, and in my experience it has happened often, that the examiner or assistant appraiser, or the appraiser at the port of New York, comes into the court room and admits error, even a month or two after the case has been on appeal. That in the present practice is possible, but under the new proposal it would be impossible.

Senator REED. How many such cases arise each year?

Mr. BROOKS. I spoke to the chief justice of the court on Monday, and he said there was a considerable number. I asked him if he could give me the number of these cases and he said no, but that it frequently happened, so much so that it happens at every monthly term of court.

Senator REED. I mean, how many appeals are taken to that court each year?

Mr. BROOKS. Oh. I have the statistics for 1924 to 1926, and they run around 15,000.

Senator REED. Per year?

Mr. BROOKS. Yes.

Senator REED. That is 50 cases a day. How could the Secretary of the Treasury or the Commissioner of Customs ever hear 50 cases a day?

Mr. BROOKS. I do not think it is humanly possible for any 1 man, or any 2 or 3 or 4 men——

The CHAIRMAN (interposing). These cases were not appeal cases, were they?

Mr. BROOKS. These are all appeals, Senator. Appeals filed at the port of New York from the actions of the appraiser as to valuation, which will be embraced in section 402 (b), for the year 1924 were 11,309; for all other ports that year, 4,425. At the port of New York for 1925 they were 12,241, and all other ports, 2,468; for the year 1926 at the port of New York, 12,118, and at all other ports, 3,247. These are the statistics in the report of the United States Customs Court.

Senator SHORTRIDGE. Did they reach the court of appeals?

Mr. BROOKS. These cases all went to the United States Customs Court. These are the number of appeals filed in the court in New York.

Senator SHORTRIDGE. And they were not all carried to the court of appeals?

Mr. BROOKS. No.

Senator GEORGE. But all these cases under the new bill would have to go to the Secretary of the Treasury?

Mr. BROOKS. Oh, no; I will not say that, because this new bill only takes away the appeal from the Customs Court to determine the kind of value.

Senator GEORGE. These involved both kind and amount?

Mr. BROOKS. Yes.

Senator GEORGE. I see.

Mr. BROOKS. The Association of the Customs Bar at a special meeting of its members called for the purpose of consideration of this proposition, held the 22d of May, unanimously approved this resolution. I will not read it. However, it is not very long and each member of the committee received from me in yesterday's mail a copy of the resolution from New York.

The CHAIRMAN. The same will be made a part of the record.

Senator BINGHAM. What is it, in brief?

Mr. BROOKS. I will say that——

Senator BINGHAM (interposing). You need not read it, but just tell me in a few words what it is.

Senator HARRISON. I suggest that the easiest way is to read it. Mr. Chairman, I should like to have him read it.

The CHAIRMAN. Very well.

Mr. BROOKS. It is as follows [reading]:

RESOLUTION OF THE CUSTOMS BAR ASSOCIATION ON SECTION 402, H. R. 2667

Whereas, by the bill introduced in the House of Representatives on May 7, 1929 (sec. 402, H. R. 2667), it is proposed to divest the United States Customs Court and the United States Court of Customs and Patent Appeals of jurisdiction to determine whether foreign or export value or United States value shall

be applicable to imported merchandise and to make the determination of the appraiser therein, subject only to appeal to the Secretary of the Treasury, final and conclusive upon all parties in any administrative or judicial proceedings; and

Whereas the determination of which of the statutory definitions of value is legally applicable to merchandise is solely a conclusion of law, as to which the right of judicial review should be preserved: Now, therefore, be it

Resolved, That it is the sense and judgment of this association—

1. That the proposal to substitute administrative fiat for judicial review is revolutionary and reactionary in the extreme and most unjust, inequitable, and unwise:

2. That to deprive the importer or the American manufacturer, producer, or wholesaler of judicial review, as proposed in said section, is contrary to the whole trend of tariff legislation in recent times and to the spirit of American institutions as admirably expressed by Judge Storey in Carey *v.* Curtis (3 How. 236, 253, 256):

"I know of no power, indeed, of which a free people ought to be more jealous than of that of levying taxes and duties; and yet if it is to rest with a mere executive functionary of the Government absolutely and finally to decide what taxes and duties are leviable under a particular act, without any power of appeal to any judicial tribunal, it seems to me that we have no security whatsoever for the rights of the citizens. And if Congress possess a constitutional authority to vest such summary and final power of interpretation in an executive functionary, I know no other subject within the reach of the legislation which may not be exclusively confided in the same way to an executive functionary—nay, to the Executive himself * * *.

"Where, then, is the remedy which is supposed to exist? It is an appeal to the Secretary of the Treasury for a return of the money, if in his opinion it ought to be returned, and not otherwise. No court, no jury, nay, not even the ordinary rules of evidence, are to pass between that officer and the injured claimant, to try his rights or to secure him adequate redress. Assuming that the Secretary of the Treasury will always be disposed to do what he deems to be right in the exercise of his discretion, and that he possesses all the qualifications requisite to perform his duty, among the other complicated duties of his office, a presumption which I am in no manner disposed to question, still it removes not a single objection. It is, after all, a substitution of executive authority and discretion for judicial remedies."

3. That any limitation on the jurisdiction of the United States Customs Court and the United States Court of Customs and Patent Appeals which would interfere with or curtail the present rights of judicial review of any matter which relates to the amount of duties payable on imported merchandise and thereby affects property rights is abhorrent to that sense of fair play which has heretofore characterized the acts of the Congress of the United States of America.

4. That the secretary of this association be instructed to submit a copy of these resolutions to the proper committees of Congress and that a committee of this association be appointed to give the matter such further investigation and attention as its importance demands.

WALTER F. WELCH, *Secretary.*

Senator SACKETT. Suppose the export and foreign value were cut out; that would affect your argument, would it not?

Mr. BROOKS. Yes; it would affect it to a certain degree, but there would still be two different classifications of value.

Senator SACKETT. Would it then be so important whether determined by the Secretary of the Treasury or the court?

Mr. BROOKS. I think so, because as a matter of principle I do not think we should go back to the times of the eighties, before the customs administrative act was passed for the express purpose of giving every citizen, a judicial review whether he be manufacturer (and manufacturers are interested) or importer; and I represent manufacturers sometimes but not often. I say in principle it is wrong.

Senator SACKETT. What I meant was, if we take out the foreign value and export value, it is reduced one-half anyway.

Mr. BROOKS. In all propositions I have heard here to-day you have some alternative. You already have the alternative here. This would take the appeal, as to which of the alternatives is to apply, away from the courts, and put in the hands of an executive official.

One of the reasons for the suggestion of this change was because of the fact that it is difficult to check up abroad the information obtained, in France for instance. I want to say to the members of this committee, and I will ask that it be incorporated in the record, that I offer the decision of Chief Justice Fischer where he excluded affidavits of French citizens and manufacturers for the reason that they over there, in agreement with our Government, thought it best not to have their books examined by our agents. Therefore, Judge Fischer held that he would not receive affidavits from French people.

The CHAIRMAN. Very well. That may be made a part of the record.

(The decision referred to is as follows:)

At a session of the United States Customs Court, held in chambers for the hearing of motions on the 4th day of May, 1928.

Present, Hon. I. F. Fischer, Chief Justice.

DeMauduit Paper Corporation of New York, et al., plaintiffs, *v.* United States, defendant. Reappraisements 64746–A, etc.

The affidavits offered by counsel for importers are sworn to by the affiants in France, a country which refuses our representatives the right to investigate into the allegations therein made.

It is true that section 501 of the present tariff act covering reappraisement proceedings provides that "affidavits of persons whose attendance can not reasonably be had * * * may be considered in evidence." As we read that language the use of the optional word "may" rather than the mandatory verb "shall" or "will" was intended to rest the question of such admissibility within the sound discretion of this court.

Since I believe that it is unfair to admit these affidavits when the opposite party is denied an opportunity to examine into and meet the allegations therein made, I therefore exclude them and direct that all reference thereto and testimony based thereon be expunged from the record.

I. F. FISCHER, *Chief Justice.*

UNITED STATES CUSTOMS COURT,
New York, N. Y., June 11, 1929.

I hereby certify that this is a true copy of the original on file in this office.

[SEAL.] J. W. DALE, *Clerk.*

However, it also should be stated that Judge McClelland, sitting as a single justice, held to the contrary, his view being stated as follows:

OCTOBER 27, 1928.

United States Customs Court. J. E. Bernard & Company (Inc.), plaintiff, *v.* United States, defendant. Reappraisement No. 86123–A

MCCLELLAND, *Justice:* When this appeal came on to be heard the plaintiff offered an affidavit of the manufacturer of the involved perfumery in evidence which was made and verified in France. The Government objected to the reception of the affidavit in evidence for the reasons stated in a decision made by Chief Justice Fischer in reappraisement 64746–A excluding an affidavit similarly made and executed in France on the ground that the French Government "refuses our representatives the right to investigate into the allegations made therein," and the case was continued until the November docket pending a decision on the admissibility of the affidavit

In the brief of Government counsel the diplomatic correspondence between the Republic of France and the United States which resulted in the withdrawal of United States representatives of customs from France is set forth. From it it appears clearly that the withdrawal of United States customs representatives from France was not because of arbitrary refusal of the Government of that country to permit such representatives to make investigations in France, but rather that the withdrawal of such representatives from that country was with the full consent and approbation of the United States Government.

I regret that I have to differ from the conclusion of the chief justice. The affidavit in question is pertinent to the issue and it is therefore admitted with the benefit of an exception granted to the Government.

C. P. McCLELLAND, *J.*

UNITED STATES CUSTOMS COURT,
New York, N. Y., June 11, 1929.

I certify that this is a true copy of the original on file in this office.

[SEAL.] J. W. DALE, *Clerk.*

I think without constant and immediate communication among the various ports throughout the country, we would have a number of different appraisals because of difference of opinion of local appraisers. So that we would never have a uniform administration of valuation such as we have to-day.

STATEMENT OF BENJAMIN C. MARSH, WASHINGTON, D. C., REPRESENTING THE PEOPLE'S LOBBY

Mr. MARSH. Mr. Chairman, and gentlemen of the committee, I am executive secretary of the People's Lobby, with headquarters here in Washington.

I want to admit that I was a little bit embarrassed yesterday when I came here in seeing the millionaires' bread line asking for a dole of about a billion dollars, which is what the present Hawley tariff bill amounts to. They asked for that, of course, on the theory that to him that hath shall be given, and from him that hath not shall be taken even that which he seemeth to have.

I appear in behalf of the People's Lobby, which represents the consumers, as such, to oppose this so-called American valuation plan, because what it really means is an effort to get a higher tariff. I am not going into the administrative difficulties, because those are going to be covered, but the advocacy of the American valuation plan is an effort to be as dishonest as the protective tariff itself is, to get more without seeming to ask for more.

I was perfectly astounded to hear some one say yesterday that labor was to be benefited by this tariff. I remarked to my friend, Matt Woll, yesterday that as soon as labor asked for a tariff labor admitted it has ceased to function as a labor organization and is to be a parasite, and incompetent, like American manufacturers.

Here are the facts about labor. I will take up the consumer's standpoint later. I have before me a report from the Commerce Department. For 1927 the total amount of wages paid, in round figures only, was $10,848,000,000 in all factories. The value of products was $62,713,000,000. In other words, the wages were a little over one-sixth of the value of the products.

Mr. Chairman, the farmers have come here asking for a tariff, too. It seems to me it ought to be perfectly obvious to the farmers of the United States that the fiscal policy upon which the United States has embarked makes it a matter of complete indifference to the Nation

in the long run whether we have many farmers here in the United States or not. We are the world's greatest industrialist and imperialist Nation. We could get along just as well if we did not raise any wheat or cotton here. Temporarily, of course, you are going to string the farmers some more, and are going to give them a tariff. You gave them a tariff before, and they said it was fine. "We are fixed for a long time." But the more you give them the worse it works, as your own experience shows, because American farmers can produce at least three times as much as they are producing to-day. Therefore you can increase the tariff, if you please, on wheat, you can put a high tariff on cotton, you can even subsidize the people who raise sugar beets, plus, of course, the refiners of sugars, materially, but you are not going to change the situation as far as the prices are concerned as long as we have any importations to amount to anything.

I will ask this committee to consider what is the essential corollary to the American valuation plan for tariff. It is this, that as soon as a foreigner comes into this country, you shall pay that foreigner the highest wage paid to any American employee in this country. I am surprised that Mr. Matt Woll did not suggest that practical application of the American valuation plan. Out in the sugar-beet fields, Senator Smoot, you ought to pay the fullest price to all the Mexicans bootlegged in, and who otherwise come in, that is paid to any employee in any American industry.

The plea is made—Senator Borah made the remark the other day—that some two and a half billion dollars of farm products were brought into the United States which should not be brought here. I assume he got his figures from this highly incorrect analysis of the situation made by the Farm Journal.

As I contemplate the sagacity of our financiers, I can not help wondering how they think we can permanently go on exporting a surplus of 1,000,000,000 or more a year, or half a billion a year, and still be even with the world.

We had a little illustration in this Owen Commission on Reparations of the need to get over the war and postwar hysteria. First they were going to make Germany pay $125,000,000,000. Then Lloyd-George was going to make them go to the bitter end, and you saw what happened to him in the election a few days ago in England. Finally they reduced it from $125,000,000,000 to about $9,000,000,000 of reparations, and I respectfully suggest that if labor and the farmers, plus the manufacturers, would become a little more efficient, they would find a large measure of the solution of their difficulties.

It grates upon the average consumer to have Mr. Hoover herald himself, and be heralded, as the great apostle of efficiency, of engineering, of cheap production, and then to have the party, which I assume follows Mr. Hoover, though apparently you can not be sure of that for 24 hours consecutively—to have that party, which assumes to follow Mr. Hoover, say, "For God's sake, give us about 50 or 100 per cent increase in protection in order that we may break even."

As a matter of fact, we have enormous mass production in this country. What has happened is this, the machinery which has been developed, and the efficiency of American workers, have been so striking that we have created a surplus, in finding markets for which, we are going to have difficulty, and, of course, we have set out to dominate the world.

I know you do not want to have a great deal of discussion about this by anybody representing the public——

The CHAIRMAN. You may put in anything you wish.

Mr. MARSH. I was going to suggest that I am going to put in a few standards and tests as to whether any industry needs a protective tariff. I will submit a statement to be inserted in the record.

The CHAIRMAN. It will be included in the record.

(The statement referred to is as follows:)

INFORMATION TO BE OBTAINED BEFORE TARIFF DUTIES ARE CHANGED

A. Regarding manufactured products—

1. Ranges in costs of production between high and low cost producers in the United States.
2. Profits of high and low cost production plants, and per cent.
3. World production, and proportion produced in the United States, and probable world consumption.
4. Scale of wages paid.
5. Relation between wages paid and profits—have wages been advanced as profits have increased?
6. Do manufacturers share their profits with their workers?
7. If costs of raw materials have increased, is this due to scarcity, to tariff duties thereon, or to domestic monopolization, or to monopolization of the raw materials in foreign countries, and if this last, are those raw materials abroad owned by Americans or controlled by them?
8. Is the product manufactured in the United States?
9. Is up-to-date, efficient, or worn-out and obsolete machinery used?

B. Regarding farm products—

1. Ranges in costs of production between high and low cost producers in the United States.
2. Ratio between costs of production, and prices at primary markets.
3. World production and proportion produced in the United States.
4. Scale of wages paid to employees (hired men).
5. Increase in selling price of farm lands in areas in which crop is produced.
6. Extent to which domestic production would supplant or be an efficient and economic substitute for foreign products not produced here—it is desired to exclude.
7. Extent to which product is being raised on lands not suited, as shown by small yield.
8. Extent to which product is being produced by use of obsolete methods and machinery.
9. Are the producers using a reasonably efficient marketing system?

Mr. MARSH. Of course, you want some constructive suggestions, and the first one will be this. Do not tinker with the tariff. The kindest thing you can do for the American people is to find what is farm relief, if there is such a thing, not continue a policy in this country committed to the extermination of agriculture. If you can not find any policy of the Republican Party which will be beneficial, a party whose doctrine is the survival of the fattest, if you can not find anything, then for God's sake go home and do not do anything with the tariff at this time, because you will not have any success, for it is right after election, and you will not be allowed by the gentlemen who contributed to you to do anything for the American people.

I am going to suggest this, get a record, and make it public, of the occupation and the wealth of every gentleman who appears before you asking for an increase in the tariff on products in which he is interested—and all of you Senators should do the same thing. You remember I suggested that years ago, that the Senators and Congressmen ought to give a record of the stocks and bonds they owned, and

I have a copy of the letter which Secretary Mellon wrote in 1924, when he said that Government employees should not be asked to "expose" their investments. Subsequent events have demonstrated the accuracy of his analysis of the situation.

Instead of trying to pass a tariff to make more millionaires, remember this, the tariff you have had in order to bring prosperity has resulted in this, that less than one-sixth of the American families to-day have incomes adequate to support a family of parents and three children under working age. Your prosperity-producing tariff has produced that situation, and now, if that is not bad enough, we hope you will refrain from making it any worse at this time.

Two or three practical suggestions. Farmers, of course, are the worst land speculators we have. We can not afford to pay the agricultural people a return on corn and wheat land at $700 an acre or $500 an acre. When I was a boy working my way through college in the central part of Iowa, we raised just as much wheat and corn on the farm at $25 or $35 an acre as has been raised on that farm at $500 an acre; and, incidentally, three out of four banks in that college town went broke as a result. We should revise our credit and patent systems and inaugurate unemployment insurance.

There has never been one year when there has been a surplus of any farm product in the world. There have been years after years, and there is to-day, a tragic underconsumption. Senator Nye has before you a bill to appropriate $200,000,000 to send grain to the starving people of China. His bill, of course, may not be adopted, but instead of protecting manufacturers and farmers in inefficient, high-cost methods of production, it would seem that the common sense of the situation would induce this committee and this Congress, if they are going to do anything on the tariff, to pay attention to the economics of the situation. We are up on stilts in this country all down the line. You can not help it in any way whatsoever for more than a few months at a time. I admit you can give oxygen to a dying patient and he will seem to be healthy, until the oxygen wears off. But you have administered doses of protective oxygen to the American people so often, and they come back worse than they started, or they are lying about it. The end of that will be when you gentlemen require every gentleman who appears before you asking for an increase in the tariff to give the facts about his own stock holdings, his own corporation affiliations, and his own wealth. I really think that the best thing you can do for the American people is to quit monkeying with the tariff at this time, and go home and give a chance for a little sanity later in the year.

I thank you very much for your courtesy, and I am sure you all heartily agree with me.

STATEMENT OF CHESTER H. GRAY, WASHINGTON, D. C., REPRESENTING THE AMERICAN FARM BUREAU FEDERATION

The CHAIRMAN. I desire to call your attention, and to call the attention of the other witnesses here to-day, to the fact that we have a long list and we want to be through by noon, because to-day we ought to be considering the tobacco schedule.

Senator HARRISON. Are we hearing witnesses merely on the question of valuation?

The CHAIRMAN. That is all. I hope you will not take over a quarter of an hour if you can help it, Mr. Gray.

Mr. GRAY. My name is Chester H. Gray. I am the Washington representative of the American Farm Bureau Federation. I shall make an effort, which I think will be successful, to confine myself exclusively to the question which is before the committee at this hearing; that is, the question of valuation.

It may be a surprise to some that a representative of a farm organization would think it appropriate to say anything about valuation at all, inasmuch as it ordinarily is considered that farm items are on the specific basis; but in the effort which has been made thus far on the House side—and the hearings will disclose that effort to have been more or less successful—most farm organizations have asked for an valorem rates of duty on many but not all farm commodities. If the readjustment of tariff matters on the Senate side goes along as it has on the House side, one may conclude that by the time this tariff act is reformed there will be many farm commodities on an ad valorem basis of protection, which means that the farmers have come to be interested in the basis of valuation.

More and more we have come to recognize in agriculture that the ad valorem principle of protection, which has seemingly worked so advantageously to industry, will work advantageously to agriculture if it can be invoked.

More and more we are getting displeased in agriculture with having our commodities on the exclusive specific basis.

We believe that as the price and profit of a commodity increase, the rate of protection should increase likewise, which is the fundamental basis of the ad valorem principle; that whenever a producer, whether he is an industrial or an agricultural producer, gets his commodity up to the point of happiness; that is, where he is making a profit, we believe that the protection on that commodity should increase as his profit and market increase.

That is not true under the specific basis.

The CHAIRMAN. May I ask you when this change of thought took place?

Mr. GRAY. In the last three years, very largely.

The CHAIRMAN. It must have been, because in every hearing we have ever had in regard to farm products, there never was a time when those representing the farmers did not insist upon specific duties, and I thought they were much safer with the specific than with the ad valorem. There could not be any undervaluation under the specific duties, and I know that in the past the farmers have demanded specific duties.

Mr. GRAY. That is true.

The CHAIRMAN. I would be glad to have you explain to us in detail, if you can—I know the time is running fast, and I do not want to interrupt you, and I did not intend to—just what you advocate. This is an absolute reversal of the position taken ever since 1909. Your brief statement now is the first one I have ever heard to the effect that the attitude had been changed.

Mr. GRAY. In one way of speaking, it is an absolute reversal of policy, of procedure, on the part of agriculture, which has heretofore been on the specific basis. The reversal is attributable very largely

to the fact that agriculture has studied in the last five years the question of tariff more intensively in its own behalf than it had studied it in the preceding 95 years, and it has been noticed, not only by agricultural leaders but by agricultural members of farm organizations, that if there is any one thing relative to industrial protection which industrialists seem to be proud of, it is the fact that the ad valorem basis should be used on all commodities, either by itself or in conjunction with specific rates of duty; and if we have seen that in a hundred years of history in industry it has seemingly worked advantageously to industry, our simple conclusion has been, and is, that it will work equally advantageously to agriculture. Because, as I stated a while ago, when the producer of corn, or wheat, or alfalfa seed, or sugar, or what not, gets his commodity up to a basis of prosperity, the ad valorem rate of protection increases proportionately to his price, and thereby permits him, if he gets on a basis of prosperity, to maintain it; whereas a specific rate of duty is a flat, definite, measurable amount of money, and when the price gets high, it is an attraction for corn to come in from the Argentine, for tomatoes to come in from Italy, and seeds to come in from France; and as the price gets high and the American farmer gets happy under the specific rate, it is an inducement, with the duty standing static, for foreign competition to come in and break down the profit line which the American farmer has built up for himself.

Senator HARRISON. Mr. Gray, as the representative of your organization, how do you get an expression of that organization? What is the modus operandi of ascertaining a change in the views of the membership of your organization respecting the valuation proposition?

Mr. GRAY. By votes of the voting directors in the annual meeting of the American Farm Bureau Federation, those voting directors being appointed by the 43 State farm bureau federations which comprise the membership of the American Farm Bureau Federation, coming to the central group representing their own State membership. In the last meeting of the American Farm Bureau Federation, which was held in Chicago last December, we adopted a tariff resolution, and a portion of our tariff resolution reads as follows:

> The rates of duty should be based on the value of the crops to the American producers thereof, and should be of such nature that, as the value increases, the rates of duty automatically will increase.

This means the ad valorem principle, of course. So I am not speaking without authority.

Senator COUZENS. With the diversity of costs in foreign countries, how can you get at the cost in order to apply the ad valorem duty? How do you get the cost of production abroad in order to apply the ad valorem duty?

Mr. GRAY. If you will delay that, Senator Couzens, I will get to it, if time permits. It impinges on the position we are advocating in favor of domestic valuation. We want to get away from the necessity of getting foreign values and foreign costs of production.

The CHAIRMAN. You accomplish that under specific duties.

Mr. GRAY. To a certain extent.

The CHAIRMAN. Suppose you take that up right now in connection with what has been already said and in connection with the question asked.

Senator SHORTRIDGE. Let him finish his argument.

Mr. GRAY. It is immaterial to me what course of procedure I follow. I will present an orderly argument, if you desire, or I will be glad to be interrupted and answer the questions as they are propounded, if that is pleasant to the committee.

The CHAIRMAN. Make such orderly presentation as you desire.

Senator EDGE. That is, everything pertaining to the one point of method of valuation.

Mr. GRAY. I have just concluded a brief summary of one reason for our interest in the question of valuation—that is, the growing desire on our part in agriculture to have our rates on the ad valorem basis, or on the combination of ad valorem with specific.

Referring again to the testimony which many farm organizations, as well as the American Farm Bureau Federation, have already presented on the House side, you will see that what I have said relative to our shift to the ad valorem basis is true.

Another reason why we are interested in valuation is that in the last two years we have done much work before the Tariff Commission relative to getting increased agricultural protection under the flexible provision of the tariff law. Speaking of the organization which I have the honor to represent, the American Farm Bureau Federation—and I could speak of some other organizations which have done similar work—I will say that we have been interested in from 10 to 15 cases before the Tariff Commission, and we have found that under the tariff act of 1922, based, as it is, in its valuation basis and in its flexible provision basis, so much upon foreign bases, we have been unable, and the Tariff Commission likewise has been unable, to go abroad and get foreign values and also foreign costs of production. So we are interested in valuation from this second point of view, that we expect to have to continue before the Tariff Commission in years to come, irrespective of what kind of tariff bill this Congress passes, in adjusting tariff rates as economic conditions change, and we do not want to be compelled for the next decade, which presumably will be the life of this tariff act which is being formulated now, to go to the Tariff Commission and be forced to confess, and hear its confession, that it can not get the foreign values and can not get the foreign cost of production. That is the second basis of our interest in the question of valuation.

I give you those two approaches to the question introductory to the positions we take relative to valuation, and those positions are, briefly, these:

First, providing there is an adjustment of ad valorem rates of duty up or down proportionate to the change in the values up or down, there should be a shift from the foreign basis of valuation to a domestic basis.

You will note that I have made there a proviso at the beginning that there must be a scaling down in most cases of ad valorem rates of duty if there should be a shift from the present foreign basis to a prospective domestic basis.

What do we mean by a domestic basis of valuation? We do not mean anything that is defined in the act of 1922 or in the tariff bill which came to you from the House. We are seeking to get only two definitions for the administration of bases in valuation, rather than the four or five which are in the bill as it came from the House, and are in the act of 1922 in somewhat different language.

We mean by domestic basis of valuation the wholesale-market value or the wholesale price at which such or similar imported merchandise is freely offered for sale in the principal markets of the United States to all purchasers in the usual wholesale quantities and in the ordinary course of trade, packed ready for delivery at the time of importation of the imported merchandise.

Senator SIMMONS. May I ask you a question there?

Mr. GRAY. Certainly.

Senator SIMMONS. In making this argument which you are now presenting for valuation based upon domestic conditions and markets, do you mean to exclude altogether the valuations under the present law based upon the cost of production in foreign countries, or the selling price in foreign countries, or the export selling price in foreign countries? Do you mean to exclude those altogether, to eliminate them from the bill, and confine the basis entirely to the price paid in the American market?

Mr. GRAY. My answer to that would be "Yes," but I will qualify that by saying, as I shall explain in brief later, that it will take a few months to get to the culmination of that answer.

The first definition of a domestic basis is that it is the wholesale selling price of the imported merchandise in the United States. That is a brief definition.

You will note that definition cuts out eliminations which are attached to the United States value and to the other values defined in the act of 1922.

We want to come definitely to the domestic basis of valuation and not have to deduct cost, not have to deduct commission, not have to deduct cartage and transportation, but whatever the domestic article is its value shall be the domestic value as above defined. In other words, I am seeking to begin the use of a new terminology, domestic value.

Now, that will not catch all commodities. It is a sort of screen in the way of a definition, or a sieve, with which it is sought to catch as many imported commodities as possible, but that definition of domestic basis will not catch all commodities; in fact, I must confess that I have not known of anyone who can define one basis of valuation to catch all commodities.

Therefore, for those commodities which are shipped straight to distributors in the United States, like the mail-order houses do, that have no wholesale price, commodities that go immediately into the retail trade, this definition will not catch them. And so for those articles you need to retain the definition which is now in the act of 1922, known as the American selling price.

Briefly, then, our position is to adopt the definition of domestic value, which will catch every commodity imported except such as go immediately into the retail trade and have no wholesale price. And then for those commodities which this first definition does not catch, put in another screen or sieve definition so that the American selling price of like or similar articles will be applicable to the ones which the domestic definition does not cover.

Senator EDGE. Did you hear the testimony given on yesterday by Mr. Matthew Woll, a representative of the labor organizations?

Mr. GRAY. Yes.

Senator EDGE. I am trying to follow your proposal as compared to his proposal, and as near as I have been able to analyze it your proposal is practically the same idea, is it not; although he was talking more from the standpoint of industry.

Mr. GRAY. I understand that he was in favor of the American basis of valuation, but the American basis of valuation alone will not apply because many commodities will not come into it, and you can not apply upon them the American basis of valuation.

Senator EDGE. I agree to that, but so far as you can apply them as to the matter of value, your plan, representing more or less agricultural products, and his plan representing industry, are practically the same, are they not?

Mr. GRAY. Yes, but in reverse order; because we want to make the American basis of value or American selling price usable only to catch those commodities which will not be contained in the definition of domestic value.

Senator EDGE. I follow you I think, but I do not see very much difference between the two plans.

Mr. GRAY. Except that Mr. Woll puts the American valuation first and exclusively, while we put it secondary; and I believe the definition which has been just advanced for domestic value will catch from 75 to 95 per cent of all imported articles, and American selling price would only apply upon from 25 to 10 per cent variably.

Now, furthermore, this definition just outlined would allow the act of 1922 to continue. I realize that you gentlemen here, or any committee of Congress, can not scale these ad valorem rates down so that the ultimate amount of duty under this domestic basis which I am talking about will be the same as if the foreign value should continue. You can not do that in a week or in a month, as has been so carelessly, if I may say so, presented to you by witnesses. I am submitting the thought that the act of 1922 should continue with its definition of foreign, United States, and export values until the Tariff Commission has had an opportunity, of 15 months' duration, to readjust these rates onto the domestic basis; and three months thereafter, which will be a total of 18 months from the time the act goes into effect by the signature of President Hoover, the domestic basis could be made operative. This procedure turns the transition, the statistical, and scientific work over to the Tariff Commission, and does not ask you gentlemen here, in a hurried manner, to do it at all.

Briefly may I summarize: We advocate a continuance of the definitions in the tariff act of 1922 for a period of 15 months, until the domestic basis and the shifting of rates can be ascertained by the Tariff Commission; three months thereafter, we want the domestic basis, and the new rates scaled down in most instances, then to become operative by making it a part of the tariff act which you will write. Briefly that is our position.

Senator GEORGE. As I understand it, your argument comes down to this: That the United States value, or the American value, or the domestic value, will involve the scaling down of practically all rates in the act.

Mr. GRAY. The domestic value, Senator George, will require more scaling down of the ad valorem rates than the United States value or the export value would require.

Senator GEORGE. They are in different degree, but all would require a scaling down?

Mf. GRAY. Practically so, yes.

Senator GEORGE. It is your conclusion that there is no fixed rigid formula tht we could apply with justice to the American consumer, to all persons interested, and that it ought to go to the Tariff Commission?

Mr. GRAY. Each item, whether it be industrial or agricultural, will have to be considered in its own light on its own merits; and I can not see that there is any definite formula which by rule of thumb can be instantaneously applied for a solution of this matter.

Senator GEORGE. I fully agree with you, but I want to impress this fact: In your judgment that same reasoning and principle applies whether you take United States value, domestic value, or American value, but it differs in degree.

Mr. GRAY. It differs in degree.

Senator GEORGE. And you have selected your basis. Now, let me ask you this: If you go to the United States value. or the American value, or to the domestic value, do you not break down ultimately any thought of competitive conditions against which you are trying to provide in a tariff? And will you not hasten the day when those who want a tariff will simply come here and say: We want certain specific rates ourselves, leaving out of mind the competition against which the whole tariff system is presumed to act? Is not that the logical consequence of it?

Mr. GRAY. I believe not, because under the domestic basis which I have brought to your attention this morning, if the ad valorem rates are scaled down to bring in on each item at the time that the act goes into effect and throughout its life, approximately, if not exactly, the same amount of revenue as would have been secured by the foreign value, I can not see that competition will either be hastened or lessened by that transition.

Senator GEORGE. Yes; but won't it inevitably come about that those who seek protection will come to Congress and say: You have left out all question of foreign values, of export values, therefore we want to leave it out, and what we want is the protection which we suggest to you, the protection which we consider adequate. And you are leaving out the entire equation on which the entire protective system is built. Is not that the logical ultimate consequence of this going over to a domestic basis of valuation. I do not mean immediately, but is not that what we may expect?

Mr. GRAY. I hardly think so, Senator George, any more than it would be true under the present plan. I hardly think so.

Senator SHORTRIDGE. You do not ignore the existence of conditions abroad, do you?

Mr. GRAY. Pardon me, Senator?

Senator SHORTRIDGE. I say, you do not ignore conditions abroad, do you, in your definition and your plan?

Mr. GRAY. By no means.

Senator SHORTRIDGE. They must be taken into consideration, must they not?

Mr. GRAY. They will be taken into consideration; and if I may answer more fully, by the Tariff Commission in readjusting these

rates, scaling down or up as the case requires. The Tariff Commission will have to take into balance the foregin values, export values, domestic values, and every other relationship and rearrange rates.

Senator SHORTRIDGE. The Senator from Georgia (Mr. George) puts his finger, so to speak, upon the vital or material controlling point, or one of the facts which must necessarily be taken into consideration in the framing and enacting of what we call the protective tariff law, does he not?

Mr. GRAY. Perhaps so.

Senator SHORTRIDGE. It can not be ignored, otherwise we are merely dreaming.

Senator KING. As I understand the position of Mr. Gray it is not protection he wants, but an embargo, or it would inevitably result in that.

Mr. GRAY. No.

Senator SHORTRIDGE. I think not.

Senator KING. The establishment of that policy would result in an embargo upon everything.

Senator SHORTRIDGE. That is not my thought on the subject, but I do not wish to prolong the discussion. I was interested in the gentleman's remarks. We enact a tariff law for certain purposes, as set forth in the first tariff act, first, to raise revenue for the support of Government; second, to pay the nation's debt; and third, as you will remember so well, to protect and encourage American manufactures. You still hold that that is one of the purposes, do you not?

Mr. GRAY. That is one of the purposes.

Senator SHORTRIDGE. Very well. Now, from the farmer's standpoint, and I call it one of the greatest of our industries, and I have always objected to differentiating when speaking of industry and agriculture, for I think it is misleading and brings about a conflict between interests which ought to be harmonious; we levy a tariff duty for revenue and for the protection of American industries, which include agriculture.

Mr. GRAY. Yes, sir.

Senator SHORTRIDGE. Now, that protects the American agriculturist, be he a raiser of wheat or corn or figs or oranges or lemons or rice, or cotton of a certain type, and, with our scale of wages and cost of living and standard of life, he cannot, without adequate protection, compete in the American market with like or similar products brought here from other countries where the cost of production is far less than it is here—is not that so?

Mr. GRAY. That is true in our point of view.

Senator SHORTRIDGE. Then you must necessarily take into consideration and keep before the mind the costs of production of a given article in a foreign country in the fixing of a rate, whether it be a specific or ad valorem, is not that true?

Mr. GRAY. That is true, but that does not mean that we have to make the basis in a tariff act a definition of values founded upon foreign facts.

Senator SHORTRIDGE. Quite true. I am very sympathetic with much that you have said.

Senator CONNALLY. You do not favor the adoption of this new basis of valuation unless these rates are all scaled down?

Mr. GRAY. It would be the height of folly for us to favor it so.

Senator CONNALLY. And you do not favor it?

Mr. GRAY. No.

Senator CONNALLY. Representing the American Farm Bureau Federation you do not want to be put in the attitude of advocating higher rates by means of a new valuation unless they are going to be scaled down in each instance?

Mr. GRAY. We are not interested in a valuation basis, Senator Connally, as a measure for giving higher rates, and I do not know that anybody else is.

Senator CONNALLY. You were not here on yesterday, were you?

Mr. GRAY. I was, a part of the time.

Senator CONNALLY. You could not have had that view if you had heard all of the statements made before us I am sure.

Mr. GRAY. We are not interested in getting away from a foreign basis of valuation as I said a while ago unless rates are scaled down so that the income from tariff funds will be the same in the new basis as in the old. Our interest lies largely in two things, as I said at the beginning, and I believe you were not here then, Senator Connally; that we are getting more ad valorem rates on farm commodities than ever have been advocated before, and, second, we will appear before the Tariff Commission on many commodities, as economic conditions change, and in presenting our arguments during the next decade, we do not want to go to foreign countries or have to chase down foreign facts and foreign costs of production when we know before we start we can not get them.

Senator CONNALLY. Do you mind saying what one or two of those commodities are? Are you speaking about farm commodities?

Mr. GRAY. Yes. Do you mean what farm commodities have been before the Tariff Commission that we are interested in?

Senator CONNALLY. Yes; that you have had difficulty about.

Mr. GRAY. Well, tomatoes is one of them, coming mostly from Italy, whether in the can or in paste form. Tomatoes also in the fresh state coming from Mexico, grown down on the West coast and propagated by American capital. I could mention——

Senator SHORTRIDGE (interposing). And cherries.

Mr. GRAY. Green peppers is another, which the Florida producers can hardly grow any more on account of Mexican competition. And the maraschino type of cherry which Italy produces and is almost monopolizing our market with.

Senator CONNALLY. As to those values——

Senator SHORTRIDGE (interposing). There is poultry, and that case is pending now, as I understand.

Senator EDGE. On all these commodities in the House bill they have proposed very much higher rates of duty, have they not? They have raised tomatoes, for instance, 600 per cent, I believe.

Mr. GRAY. I believe of those commodities I have mentioned the House bill has given us increases.

Senator BARKLEY. If I understand you correctly, if the rates carried in the House bill are to be kept as high as they are or increased, you would not favor any change in the basis of valuation?

Mr. GRAY. Yes. We favor a change in the basis of valuation entirely irrespective of and disconnected from the rate proposition

provided that the income from the new basis be the same as the last basis.

Senator BARKLEY. I understand, but if you fix a basis of valuation that increases the amount of income unless the rates are reduced, that is one thing. But if the rates are to be left as they are or increased, and assuming you increase the basis of valuation, you necessarily increase the income; so that if the rates are to be left as high as they are or increased you would not then advocate in addition to the new basis of valuation that would increase the income, a situation that would leave that result.

Mr. GRAY. Absolutely not. If this committee can not adopt the domestic basis of values and at the same time scale down the ad valorem rates proportionately to that change of basic valuation, then you better keep off of the whole proposition entirely.

Senator CONNALLY. Then you are in favor of leaving it like it is?

Mr. GRAY. If you can not do the other thing, yes.

Senator SHORTRIDGE. As I understand you then, finally, to say, the association which you represent favors enlarging the ad valorem list rather than the specific list?

Mr. GRAY. Absolutely.

Senator SHORTRIDGE. All right. I just wanted to know your view.

Mr. GRAY. And our real preference is a combined rate, so much specific but not less than a certain percentage of ad valorem.

Senator SIMMONS. Mr. Gray, you seem to have given considerable study to this matter of a proper basis of valuation. You spoke about your preference, of the basis that you prefer, as the American selling price basis, did you not?

Mr. GRAY. I spoke of the domestic basis of valuation, which is a new terminology.

Senator SIMMONS. That is substantially the same thing as the American basis.

Mr. GRAY. There are some differences.

Senator SIMMONS. Well, we have been discussing that heretofore as being an interchangeable term, and we will say practically the domestic basis. What domestic basis of prices do you refer to, the price at the factory or the price fixed by the wholesaler or jobber?

Senator KING. Or the price in Idaho or in New York on a farm product which has to be shipped?

Mr. GRAY. In the brief which I hope to file for printing in the record, the exact definition is this:

> The domestic value shall be the wholesale market value or the wholesale price at which such or similar imported merchandise is freely offered for sale in the principal market—

And now, mind you, that word "market" is singular—

> of the United States to all purchasers in the usual wholesale quantities and in the ordinary course of trade, and packed ready for delivery, at the time of importation of the imported merchandise.

Now, may I apply that to canned tomatoes from Italy, if you please?

Senator SIMMONS. No; suppose you reply to the question I asked: Do you interpret that definition you have given us to mean price at the factory or price after it has passed from the factory into the hands of the wholesaler or jobber?

Mr. GRAY. It would be in some instances after it had passed into the hands of the wholesaler, because the wording here, which is subject to change of course if you care to have it so considered, is "wholesale market value or wholesale price."

Senator SIMMONS. Leaving out your definition altogether I want you to answer my question: Is it your thought to apply this basis to the price of the manufacturer, or is it your purpose to apply it to the price of the purchaser from the manufacturer after a profit has been added to it?

Mr. GRAY. Whichever is considered the wholesale price.

Senator SIMMONS. Which do you intend shall be considered?

Mr. GRAY. Well, I would not contend for one definitely in all cases, but would wish——

Senator SIMMONS (interposing). You have given us a definition that is susceptible of two interpretations, and you must have a thought about it in your mind.

Mr. GRAY. Usually it would be the price that the manufacturer gives of the product packed for distribution and ready for shipment out of his factory; and such price as is quoted ordinarily in the trade journals as being the wholesale price.

Senator SIMMONS. Your answer is that in some cases you would take the price of the manufacturer, and in other cases you would take the price of the person to whom he sold it at wholesale?

Mr. GRAY. There would sometimes be that difference, because the wholesale price is not always measurable at the factory.

Senator SIMMONS. Do you think that a fair or a good or a satisfactory rule?

Mr. GRAY. I think it is a fairly good rule, for this reason: That the wholesale price of all commodities is shown in trade journals, in reports of the Department of Agriculture, in reports of the Department of Commerce, and elsewhere around Washington, so that anybody in America, the plain citizen or the importer or the exporter, or the manufacturer, or the dealer, or what not, can get the wholesale price. It is a quotable and public item.

Senator SIMMONS. Yes; but you state the price at which sold. Now, we will assume that it is sold by a jobber or a wholesaler; it has when it reaches the wholesaler's hands one profit, the manufacturer's profit. Then when it is sold in the way you have suggested by the wholesaler another profit, and the price upon which you propose to base the ad valorem rate would have two profits in it.

Mr. GRAY. Not in all instances.

Senator SIMMONS. It would have not only cost of production but two profits.

Mr. GRAY. I would answer the question finally this way: That whatever is in the trade journals and departmental publications, known as the wholesale price of a commodity, on any day or in any month, would be the price used.

Senator SIMMONS. Your price includes the profit of the wholesaler?

Mr. GRAY. In some cases it does, but not in all cases.

Senator HARRISON. Let us take tomatoes on which there is a tariff placed in the House bill, and also in the present law I believe: Tomatoes are grown in Arizona and Texas and Mississippi and Florida, and in all these States they vary as to price. When they come into this country, what is the amount that you would fix, what is the basis of valuation on the tomatoes that are shipped here from abroad?

Mr. GRAY. At the principal market, ordinarily New York.

Senator HARRISON. But if they have several principal markets, what is the price?

Mr. GRAY. Ordinarily it is New York.

Senator HARRISON. In Texas and Arizona the people would find the market in the Middle West. The people in Florida would ship to the nearest point, somewhere in the East. I was just wondering how your definition would fix the price of tomatoes imported.

Mr. GRAY. The definition is applied to the imported article at the principal market, and the principal market for tomatoes for instance, is New York.

Senator HARRISON. Well, I do not know about that.

Mr. GRAY. I confess, Senator Harrison, that the price of the domestic product will vary, but the definition of domestic value is based on the imported article.

Senator HARRISON. Take tomatoes and the price differs every day, rises and falls.

Mr. GRAY. And so does the foreign basis differ just as much, day by day.

Senator GEORGE. You do not mean that you would leave to the Tariff Commission the broad discretionary powers that you have indicated here, but you mean you would leave to them to work out the problem and report back so that it might have congressional sanction in scaling down?

Mr. GRAY. That proposition is one which we better leave to the discretion of this committee; but I think personally, and officially, because there is no use of my speaking personally, that the rates of duty when figured out by the Tariff Commission should come back to its source, which is the Congress of the United States, for final approval.

Senator GEORGE. I might say, if it be worth anything to you, that that would necessarily have to come back because it involves every element of legislative discretion rather than administrative detail.

Mr. GRAY. But in the meantime the definition, the court procedure, the administration of the tariff act of 1922, would go right on until the Tariff Commission had reported these changes and they had been approved by some governmental sanction, whatever it would be that you gentlemen may decide.

The CHAIRMAN. We thank you, Mr. Gray.

Mr. GRAY. I wish to thank you, and I now present our brief.

(Mr. Gray submitted the following brief:)

BRIEF OF AMERICAN FARM BUREAU FEDERATION CONCERNING VALUATION

[By Chester H. Gray, Washington representative]

There are two general bases of valuation for the collection of ad valorem duties on imported goods, foreign valuation and domestic valuation, each of which may assume several different forms.

In the act of 1922 foreign valuation is the predominant basis, the statute requiring the use of the foreign value or the export value, whichever is higher, whenever either of these values is obtainable. Both of them are forms of foreign valuation. If neither of them is obtainable, then the United States value of the imported merchandise must be used; this is a form of domestic valuation. If the United States value is not obtainable, then the cost of production shall be used; this again is a form of foreign valuation. The American selling price,

another form of domestic valuation, is only authorized for certain cases arising under the flexible provision in which the President finds that a change of 50 per cent in the existing rates of duty will not be sufficient to equalize the difference in cost of production at home and abroad.

Experience has shown that all forms of foreign valuation are objectionable. A somewhat detailed discussion of these objectionable features is presented in the brief filed by the American Farm Bureau Federation with the Ways and Means Committee of the House of Representatives. (See pp. 9780–9783 of the hearings.) Without repeating in detail the information in that brief, the chief objections to foreign valuation may be summarized as follows:

(1) A large number of agents must be maintained in foreign countries to check the accuracy of alleged valuations of exporters.

(2) The presence of these agents is a constant source of irritation to foreign countries and a fomenter of international discord.

(3) Inability to commandeer records and witnesses in foreign lands as could be done at home tends to encourage fraudulent values.

(4) Unscrupulous exporters are able more easily to establish fictitiously low values on their goods.

(5) The foreign value may fluctuate without reference to conditions in the American market.

In order to avoid the pitfalls and difficulties which result from the use of various forms of foreign valuation, the American Farm Bureau Federation suggests that a new form of valuation for imported merchandise be provided which shall be known as domestic value and which shall replace foreign value, export value, and United States value, which are now contained in the statute. This form of domestic value may be defined as the wholesale selling price of the imported article when freely offered for sale in the United States. Whenever it is impracticable to obtain the wholesale selling price in the United States of the the imported article, then, as an alternative method, the American selling price of a like or similar article produced in the United States, less the amount of the duty on the imported article, may be substituted.

The effect of adopting this new form of valuation would be to collect an ad valorem duty on the basis of the value of the imported product delivered to our shores. Such a method would be easier of ascertainment, less subject to fictitious or fraudulent values, and less provocative of international friction than any form of foreign valuation. Moreover, it more nearly would carry out the fundamental purpose of a protective tariff by providing for the collection of a duty on the value of imported goods when offered for sale in domestic markets in competition with domestic goods. The competition may be more exactly measured and certainly equalized.

This recommendation correlates with the changes which have been suggested in section 315, the so-called flexible provision of the act of 1922, whereby the cost-of-production formula would be replaced very largely by another formula which would take into consideration primarily conditions of competition in domestic markets. These two proposals are closely linked together; both seek to do away with the necessity of sending abroad to foreign countries agents to pry into the costs and prices of foreign industries. (For discussion of suggested changes in the flexible provision see brief of American Farm Bureau Federation before House Ways and Means Committee, pp. 9765–9778, hearings.)

Such a change in the basis of valuation, however, necessarily must be accompanied by a proportionate scaling down of all ad valorem rates, otherwise the effect would be to inordinately increase the actual amount of duty collected without any visible change in the rates because of the fact that the values upon which the ad valorem rates are computed would be considerably raised through this change in the basis of valuation. Generally speaking, the foreign value of a commodity is much lower than the American value of the same product.

For example, in the case of men's sewed straw hats, the foreign valuation, according to a study made by the Tariff Commission, was $6.42 per dozen, whereas the American selling price was $13.28. The rate of duty under the act of 1922 was 60 per cent ad valorem. Based on foreign valuation this rate would yield a duty of $3.85 per dozen, whereas on the American selling price it would yield a duty of $7.96, or about double the former amount.

Similarly, Japanese rag rugs, dutiable at 35 per cent ad valorem, would yield a duty of 11.4 cents, based on a foreign value of 32.62 cents per square yard, compared with a duty of 23.8 cents, based on a domestic value of 68.3 cents per square yard.

Cast-iron pipe, dutiable at 20 per cent ad valorem, would yield a duty of $10.05, based on the American value of $50.25, compared with a duty of $6.02 based on a foreign value of $30.10.

Phenol, dutiable under the act of 1922 at 7 cents per pound, and 40 per cent ad valorem, would yield a duty of 17.93 cents per pound based on an American value of 19.83 cents per pound, compared with a duty of 10.95 cents per pound based on a foreign value of 9.89 cents per pound.

Sodium silico fluoride, dutiable under the act of 1922 at 25 per cent ad valorem, would yield a duty of 1.27 cents per pound on the basis of an American selling price of 5.073 cents per pound, compared with a duty of 0.66 cent per pound on the basis of a foreign value of 2.65 cents per pound.

Embroidered or ornamented gloves, dutiable at 75 per cent ad valorem, would yield a duty of $6.81 per dozen pairs, based on an American selling price of $9.08 per dozen pairs, compared with a duty of $2.74 based on a foreign value of $3.65 per dozen pairs.

These illustrations, based upon valuations taken from official reports published by the United States Tariff Commission, indicate that the American selling price is from two to three times the foreign value for many commodities. The proposed domestic value of an imported article would probably be somewhat less in most cases than the American selling price of a domestic article, but the former would still be very much higher than the foreign value in most instances. In other words, the change in the basis of valuation from foreign value to domestic value would result in enormous increases in the actual duties collected unless the rates of duty are scaled down proportionately.

To make such a change without a proportionate scaling down of rates would penalize agriculture because of the fact that only a few agricultural products carry an ad valorem rate of duty, whereas there are a vast number of industrial products which carry ad valorem rates. A rough approximation indicates that there are about 1,500 commodities and groups of commodities which may be classed as industrial products that carry ad valorem rates in the act of 1922, whereas there are less than 100 commodities or groups of commodities which may be classed as agricultural products that carry ad valorem rates. Consequently we wish to make it clear that the American Farm Bureau Federation strenuously opposes any change in the basis of valuation from foreign value to any form of domestic value unless such change be accompanied by the proper adjustment of every ad valorem rate so that the actual duty collected under the new basis of value will be the same as that which would be collected under the old basis.

We believe, however, that a change in the basis of valuation from foreign value to domestic value, if accompanied by this adjustment of ad valorem rates, would greatly improve the effectiveness of our protective system and simplify its administration.

The question now arises as to how such change should be brought about. The largeness of the task and the importance of doing it carefully and exactly, so as not to upset business conditions, would seem to indicate the wisdom of assigning the undertaking to the United States Tariff Commission.

The actual task of determining the foreign and domestic values of all of the commodities in the tariff act which bear ad valorem rates and computing the proper adjustment of duties would require a considerable amount of study and investigation. This information is not immediately available for a great many commodities, and it would be necessary to assemble the appropriate price data in order to supply the necessary data upon which to adjust the rates of duty. The Tariff Commission with its staff of trained experts is perhaps best fitted to do this work under proper restrictions by Congress. Unless the transition is made in a scientific manner such as this, it may be expected that an attempted adjustment of rates to conform to the change in the basis of valuation might result in giving some commodities actual increases and to others actual decreases in the amount of protection, due to the lack of accurate information as to foreign and domestic price levels of some commodities.

It is further suggested that in giving authority to the Tariff Commission to make this investigation and to adjust the rates in accordance therewith, a definite time limit for the completion of this task should be specified. No doubt the commission could give an estimate as to the amount of time which would be needed, but it would seem that the task might be completed within a period not to exceed 15 to 18 months, provided adequate personnel is given to the commission for this task. Unless such a time limit is specified, the proceedings might drag along through many years, entailing great uncertainty to business. The change, if properly made, however, within a reasonable length of time, should

occasion no disturbance to business if, coincident with the change in the basis of valuation, the rates are so adjusted that the actual amount of duty to be collected under the new value is the same as would have been collected under the old value.

In making these adjustments in rates the commission should not be limited by the 50 per cent limitation now prevailing in the flexible provision of the act, but specific authority should be given which would enable the commission to make whatever adjustments are necessary, even though the amount of change exceeds 50 per cent.

Furthermore, the system of valuation prevailing in the act of 1922 would need to be retained until the new basis of valuation with the adjusted rates of duty shall have become effective. It is suggested that, if the commission is allowed 15 months to complete its investigation, the adjusted rates and the values upon which these are based be published by the commission by proclamation at the end of that period of time and that these new rates and the new basis of value become effective 3 months later. This would give ample notice of the transition.

In the proposed bill, H. R. 2667, a new subsection (b) of section 402 has been added which makes the decision of the appraiser final and conclusive, except for appeal to the Secretary of the Treasury, as to whether or not the foreign value or the export value can be satisfactorily ascertained and no appeal from this decision to the courts is permitted, although such appeals may be taken in the actual determination of specific values after the basis of value has been determined. This would appear to give to administrative employees unwarranted authority and deprive citizens of their constitutional right to redress in the courts through due process of law. If the present system of valuation is to be retained, we respectfully urge that the wording of section 402, in the act of 1922, in its entirety, be retained without change. The adoption of domestic value, which we have suggested, would do away with all of these difficult, controversial, and objectionable features involved in a plan of foreign valuation. If domestic value is adopted, there would be no need for foreign value, export value, cost of production, or for this provision as to the finality of the appraiser's decision concerning the basis of value. In order to carry out these suggestions, we respectfully submit the following language as a substitute for section 402

SEC. 402. Value: (*a*) For the purposes of this act the value of imported merchandise shall be—

(1) The foreign value or the export value, whichever is higher;

(2) If neither the foreign value nor the export value can be ascertained to the satisfaction of the appraising officers, then the United States value;

(3) If neither the foreign value, the export value, nor the United States value can be ascertained to the satisfaction of the appraising officers, then the cost of production;

(4) If there be any similar competitive article manufactured or produced in the United States of a class or kind upon which the President has made public a finding as provided in subdivision (b) of section 315 of Title III of this act, then the American selling price of such article;

(5) On and after 18 months from the date of the approval of this act, in lieu of (1), (2), and (3), the domestic value; but if the domestic value can not be ascertained to the satisfaction of the appraising officers, then the American selling price of a like or similar domestic article.

(*b*) The foreign value of imported merchandise shall be the market value of the price at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, including the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

(*c*) The export value of imported merchandise shall be the market value or the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to

placing the merchandise in condition, packed ready for shipment to the United States. If in the ordinary course of trade imported merchandise is shipped to the United States to an agent of the seller, or to the seller's branch house, pursuant to an order or an agreement to purchase (whether placed or entered into in the United States or in the foreign country), for delivery to the purchaser in the United States, and if the title to such merchandise remains in the seller until such delivery, then such merchandise shall not be deemed to be freely offered for sale in the principal markets of the country from which exported for exportation to the United States, within the meaning of this subdivision.

(*d*) The United States value of imported merchandise shall be the price at which such or similar imported merchandise is freely offered for sale, packed ready for delivery in the principal market of the United States to all purchasers, at the time of exportation of the imported merchandise in the usual wholesale quantities and in the ordinary course of trade, with allowance made for duty, cost of transportation and insurance, and other necessary expenses from the place of shipment to the place of delivery, a commission not exceeding 6 per centum, if any has been paid or contracted to be paid on goods secured otherwise than by purchase, or profits not to exceed 8 per centum and a reasonable allowance for general expenses, not to exceed 8 per cent on purchased goods.

(*e*) For the purpose of this title the cost of production of imported merchandise shall be the sum of—

(1) The cost of materials of, and of fabrication, manipulation, or other process employed in manufacturing or producing such or similar merchandise, at a time preceding the date of exportation of the particular merchandise under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business:

(2) The usual general expenses (not less than 10 per centum of such cost) in the case of such or similar merchandise;

(3) The cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the particular merchandise under consideration in condition, packed ready for shipment to the United States; and

(4) An addition for profit (not less than 8 per centum of the sum of the amounts found under paragraphs (1) and (2) of this subdivision) equal to the profit which ordinarily is added, in the case of merchandise of the same general character as the particular merchandise under consideration, by manufacturers or producers in the country of manufacture or production who are engaged in the production or manufacture of merchandise of the same class or kind.

(*f*) The American selling price of any article manufactured or produced in the United States shall be the price, including the cost of all containers and coverings of whatever nature and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for delivery, at which such article is freely offered for sale to all purchasers in the principal market of the United States, in the ordinary course of trade and in the usual wholesale quantities in such market, or the price that the manufacturer, producer, or owner would have received or was willing to receive for such merchandise when sold in the ordinary course of trade and in the usual wholesale quantities, at the time of importation of the imported article.

(*g*) The domestic value shall be the wholesale market value or the wholesale price at which such or similar imported merchandise is freely offered for sale in the principal market of the United States to all purchasers in the usual wholesale quantities and in the ordinary course of trade, and packed ready for delivery, at the time of importation of the imported merchandise. The United States Tariff Commission is authorized and directed to ascertain the domestic value of all imported merchandise subject to ad valorem rates of duty, and the rates of duty necessary to yield the same amount of duty per unit of quantity on the basis of domestic value as would be yielded under the prevailing basis of valuation, and to proclaim and publish these new rates within a period not to exceed 15 months from the date of the approval of this act. Eighteen months from the date of the approval of this act the new rates of duty which have been proclaimed and published by the commission shall become effective.

APPENDIX EXHIBIT II

WASHINGTON, D. C., *April 9, 1929.*

HON. WILLIS C. HAWLEY,
Chairman House Ways and Means Committee,
House Office Building, Washington, D. C.

DEAR CONGRESSMAN HAWLEY: Recent statements appearing in the press have expressed the fear that the adoption of some form of domestic valuation to replace the present use of foreign value as a basis for computing ad valorem duties, is being advocated by certain industrial interests as a subterfuge through which general increases can be secured on industrial products without changing the existing rates of duty.

Regardless of whether or not this fear is well-founded, the actual effect of such a change would be to give to industry drastic increases in the tariff, unless this change in the base for ad valorem duties, is coupled with a scaling down of the rates. The actual duty collected on each pound or other unit of the commodity must be the same on the new basis as would be the case with the present or proposed rates which are based on a continuation of the foreign valuation.

The American Farm Bureau Federation had advocated before your honorable committee, a change in the basis of valuation for the present method of using the foreign value to some form of domestic value; but this request was made on the assumption that such a change would be accompanied by a scaling down of all existing ad valorem rates in the act and all proposed rates which are based on the foreign value.

In the brief upon this subject, it was stated:

"Those who oppose an American valuation, or the United States valuation, adduce various alarming arguments in their efforts to show that it will be impossible to translate into the American or United States valuation the rates of duty which are now written in our tariff act upon the foreign valuation basis. A demonstration may show the fallacy of this line of argument and conversely may show the comparative ease with which an American valuation may be put into operation."

Unless adjustments of rates are made proportionate to the change in the basis of valuation for these rates, we do not desire any change in the basis of valuation.

To make such a change without a proportionate scaling down of rates would penalize agriculture and destroy to a large extent such benefits as might otherwise be expected to accrue to agriculture through adjusting upward the rates on various agricultural products. Very few agricultural products carry an ad valorem rate of duty; most of them in the present act carry specific rates of duty which remain unchanged regardless of fluctuating values. On the other hand there are a vast number of industrial products which carry ad valorem rates of duty. A rough approximation indicates that there are about 1,500 commodities and groups of commodities which may be classed as industrial products which carry ad valorem rates in the tariff act of 1922, whereas there are only 66 commodities or groups of commodities which may be classed as agricultural products which carry ad valorem rates. Moreover, in this list of 1,500 industrial commodities are many groups of commodities which in turn comprise scores of articles of varying value but all carrying the same ad valorem rate, so that the list is really much more extensive than this number indicates. Hence to change the base of valuation without changing the ad valorem rates would have the effect of raising the duties actually collected on 1,500 industrial commodities and groups of commodities which bear an ad valorem rate, whereas but few agricultural commodities would share in this increase because very few bear an ad valorem rate.

Moreover, the amount of increase in the actual duties collected on industrial products by such a change in base would be tremendous, amounting to several hundred per cent in many instances and perhaps averaging from 100 per cent to 150 per cent above the amounts already collected. These large increases would result from the fact that the domestic value is generally very much higher than the foreign value.

The effect of adopting domestic valuation as a substitute for foreign value for all ad valorem duties, without scaling down rates proportionately, may be illustrated by reference to the action of the President concerning the duty on sodium silicofluorida. This product carried a duty of 25 per cent ad valorem based on foreign value. An investigation was conducted under section 315 by the Tariff Commission and it reported to the President that a study of the cost of production of this product in the United States and the principal competing country showed

that the rate of 25 per cent was not sufficient to equalize the difference in the cost of production. The report further stated that the maximum increase of 50 per cent under the flexible provision would not be sufficient to equalize the difference in the cost of production. Hence the President acting under the authority of section 315 (b) of the tariff act of 1922, issued a proclamation changing the basis for computing the ad valorem duty from foreign value to the American selling price, dutiable at a rate of 25 per cent. In 1925, the American selling price was 5.073 cents per pound and the foreign value in Denmark and Holland was 2.65 cents per pound. In other words the domestic value was nearly double the foreign value. The change in the base therefore had the actual effect of nearly doubling the actual duty per pound which was collected although the rate of 25 per cent ad valorem remained unchanged in amount. (See report of Tariff Commission to President, dated August 11, 1928, p. 17.)

Embroidered or ornamented gloves may be cited as an illustration of the effect of such a change in the base without a proportionate scaling down of the rate of duty. According to a study made by the United States Tariff Commission, the American selling price of this type of gloves was $9.08 per dozen pairs and the foreign value was $3.65 per dozen pairs. With a duty of 75 per cent ad valorem if the base for valuation is changed from the foreign value to the American selling price without changing the rate of duty, the actual duty collected on a dozen pairs would be increased from $2.74 to $6.81. (See report of Tariff Commission to President, June 11, 1925, p. 22.)

Thus a change in the base of valuation without a proportionate scaling down of the duties would result in increasing the actual amount of duties collected to an enormous extent, which, not only would give industry an unfair advantage over agriculture in the adjustment of tariff protection, but it would greatly increase the cost of a large number of industrial products purchased by the farmers without increasing proportionately the price of the products which farmers have to sell. Some of the industrial products carrying an ad valorem duty which would be affected by such a change include the following products which are purchased by farmers:

Paints and various paint materials, kitchen utensils, spectacles, electric light bulbs and lamps, mirrors, glassware, soaps, cast-iron pipe, crosscut saws, handsaws, saddlery and harness hardware, hooks and eyes, snap fasteners and clasps, pins, hairpins, safety pins, pocketknives, pruning knives, budding knives, table knives and forks, hay knives, beet-topping knives, tobacco knives, animal clippers, pruning and sheep shears, scissors, razors, pliers, pincers, nippers, lawn mowers, and machine tools, shovels, spades, scoops, scythes, sickles, grass hooks, corn knives, drainage tools, hubs for wheels, wagon blocks, casks, barrels, hogsheads, porch and window blinds, baskets, chair seats, curtains, shades, screens, spring clothespins, house or cabinet furniture made from wood or rattan or similar materials, candy and confectionery, cotton thread, cotton cloths, tapestries, cotton tablecloths, cotton quilts and bedspreads, cotton gloves, embroidered gloves, cotton hose and cotton socks, cotton underwear, cotton handkerchiefs and mufflers, cotton clothing and articles of wearing apparel, lace window curtains and bed sets, linen towels, linen napkins, linen tabelcloths, jute bags, linoleum, wool fabrics, wool blankets, wool hose, wool socks, wool gloves, wool mittens, wool underwear, wool clothing and wool wearing apparel, carpets and rugs, silk thread, silk fabrics, silk handkerchiefs, silk clothing, wall board, writing paper, envelopes, brooms, toothbrushes and all other brushes, buttons, dolls, emery wheels, hats, caps, bonnets, laces, belts, satchels, pocketbooks, leather gloves, harnesses, cabinet locks, padlocks, pencils, and umbrellas.

This is not an exhaustive list but it contains the more common articles purchased by the farmers, which now carry ad valorem rates of duty. In addition to these articles there is a vast number which also would be affected by such a change in base because of the increases in the tariff on materials entering into the manufacture of these articles.

The American Farm Bureau Federation still favors the adoption of some form of domestic valuation to replace the present use of foreign value, as suggested in our brief filed with your honorable committee on February 27, 1929. Some of the advantages of the domestic valuation plan over the foreign valuation plan may be summarized as follows:

(1) It would be more difficult for exporters in foreign countries to conceal the true value of their products;

(2) It would be easier for customs officials to ascertain the facts as to values, if these are based on domestic prices rather than foreign prices;

(3) It would reduce the amount of international friction engendered by the foreign valuation system which requires investigation in foreign countries by agents of the United States Government;

(4) It would make possible a more adequate check on records of sales because the Government would have authority to commandeer records of its own citizens but does not have this authority over foreigners living in foreign lands;

(5) It provides a better measure of the protection required by domestic industries because it permits the amount of protection to fluctuate in direct ratio to the domestic price level instead of fluctuating conditions in foreign countries. Past experience indicates that the higher the domestic price level, the more likelihood there is of large importations.

Much as we desire that such a change in the valuation plan be made, we prefer that no change be made unless it is accompanied by a proportionate scaling down of all ad valorem rates, both industrial as well as agricultural. The requests we have made for changes in the duties on agricultural products were based on the foreign valuation plan wherever ad valorem rates were sought, since that plan is now incorporated in the tariff law. We are willing that these rates be scaled down proportionately to the change in base from foreign value to domestiv values, providing all other ad valorem rates are likewise reduced.

In working out the technicalities involved in such a readjustment, the committee, of course, could avail itself of the services of the United States Tariff Commission, if necessary.

Very respectfully,

AMERICAN FARM BUREAU FEDERATION,
CHESTER H. GRAY, *Washington Representative.*

MOTION TO CONFINE HEARINGS TO AGRICULTURAL PRODUCTS—PROCEEDINGS AS IN EXECUTIVE SESSION

Senator KING. In harmony with the recommendation made by President Hoover in his message convening the Congress in extraordinary session, I move that the committee in the matter now before it confine itself to the consideration of agricultural products and such schedules and commodities as are directly affected by tariff rates upon or related to agricultural products.

Senator REED. I move as an amendment to the motion made by Senator King, that there be added the proviso that the term "agricultural products" does not include sugar.

Senator HARRISON. I ask for a vote on that.

Senator BINGHAM. I do not think that the Senator from Utah (Mr. King) quite correctly stated the situation as to the recommendations made by the President. The President says that there are a number of industries that have been running behind recently, which have nothing whatever to do with agriculture, and he specifically says that he desires us to take up anything where it can be shown that industry has suffered since the last tariff bill was enacted, and where there is an emergency of increasing unemployment in that particular industry. If the Senator from Utah (Mr. King) will refer to the message of President Hoover I think he will find I am correct.

Senator KING. I am very familiar with that message.

Senator BINGHAM. I suggest that if he is very familiar with it he would hardly make the statement that he did..

Senator KING. That is a difference of interpretation, and the Senator from Utah is as much entitled to his interpretation as is the Senator from Connecticut.

The CHAIRMAN. We will take a vote.

Senator SIMMONS. Before that is voted on, if it be true as Senator Bingham states that there are specific manufactured products that are not adequately provided for by the present tariff rates, why can

they not apply under the present tariff act, under the flexible provisions, and get 50 per cent added to their rates. If they are entitled to it, as you say they are, we would then have a judicial determination by the Tariff Commission before the President acts, as to whether they are entitled to it or not. We have in that manner the best method for them to get it if they are entitled to it.

Senator BINGHAM. I will say to my distinguished friend from North Carolina (Mr. Simmons), without any desire to criticize the Tariff Commission, they are now about four years behind on their schedules. In the meanwhile these industries are being put out of business due to cheap labor in Europe. They will have to close their doors and throw their employees out of work. If the Tariff Commission could settle the matter within two weeks instead of two or three years I would agree with the Senator from North Carolina.

The CHAIRMAN. May I ask a vote by the committee upon the motion as amended?

Senator COUZENS. I suggest that the motion is not germane to the subject we have under consideration, and therefore I move to lay it on the table.

Senator SHORTRIDGE. I second the motion.

Senator HARRISON. Does that include sugar?

Senator COUZENS. It includes everything.

The CHAIRMAN. And leave the other rates as the House provides?

Senator KING. No; that we confine ourselves to these things alone and that we reject the House bill in toto.

Senator BARKLEY. Does that motion apply to valuation or to everything before the committee?

Senator COUZENS. I insist upon my motion to lay on the table.

Senator HARRISON. I call for a recorded vote.

The CHAIRMAN. The clerk will call the roll.

(Thereupon the roll was called upon Senator Couzens's motion, resulting as follows: Ayes—Senators Watson, Reed, Shortridge, Edge, Couzens, Greene, Deneen, Keyes, Bingham, Sackett, and the chairman; noes—Simmons, Harrison, King, George, Barkley, Thomas, and Connally.)

The CHAIRMAN. The vote stands 11 ayes, 7 noes, and Senator King's motion is laid upon the table. We will hear the next witness.

STATEMENT OF ARMIN C. STAPFER, REPRESENTING PIEDMONT SILK CO., NEW YORK CITY

Mr. STAPFER. I am general manager and vice president of the Piedmont Silk Co., manufacturers of silk piece goods in Pennsylvania. I wish to state that I am a graduate of the Textile College, Zurich, Switzerland, and have been for a good many years examiner of silks at the port of New York. I also spent considerable time in Japan, engaged in manufacturing. I wish to testify in regards to valuation basis which has been proposed. Before the Ways and Means Committee I recommended the application of the United States valuation plan on consigned goods.

There are two forms of importations, one form of purchased goods, or merchandise which has been bought outright in the foreign markets. The second form consists of merchandise shipped over here and consigned to the agent in this country to be sold either at a fixed price

or at the best price obtainable. In this transaction the foreign shipper or manufacturer is the principal.

It is obvious that in such a case the party that consigns the merchandise is eager to bring the goods in at the lowest possible invoice value that will pass the appraiser. In a great many cases such merchandise is not sold in the home market, and the appraiser is not in a position to make either comparison with other similar merchandise or to verify the home market value. In such a case the examiner has the opportunity to apply the United States selling price at which the merchandise is freely offered for sale in this country. Or, he could apply cost production as specified in the present tariff act. Either basis which is higher could be applied.

Before the House hearings I recommended a clearer definition of cost production. Cost production should include the price or market value of the material, all direct and indirect labor charges, general expenses, which in the textile line should not be less than 15 per cent and should include all such items, depreciation and interest, plus the usual profit in the respective lines. It has been suggested tha the basis of cost production should be shifted to this market. In other words, the cost production of a comparable article in this market should be obtained.

In view of the fact that production methods here and abroad are vastly different, as well as the fact as in very few cases the domestic merchandise is identical with foreign merchandise, such a method would not be practical.

For instance, Mr. Cheney, in his testimony yesterday, made reference that Japanese habutaes were being sold below cost of production, and that such cost of production was less than the price of the raw silk imported. This clearly demonstrates what a vast difference of opinion exists regarding cost of production. Before the Ways and Means Committee Mr. Cheney submitted a statement estimating the cost of production of an imported habutae to be in the neighborhood of $18.62 in this country and $10.12 per pound in Japan, but then he also makes the statement that these goods could be purchased at $6.35, or otherwise making deductions for boil-off less than the price of raw silk. This shows the amount of guess work applied. Habutaes are being sold freely in the open market in Japan to all buyers into all countries in the world. It certainly will be ridiculous for the Japanese to sell such habutaes in the open market for $3 less than cost. The habutae market is an open market, and quotations and transactions are published daily, just as cotton and grain and other commodities are quoted in this market.

Mr. Cheney particularly referred in his appeal for the United States valuation to such importations of Japan. Such merchandise is purchased outright, and sold at a very small margin of profit, and the application of the United States valuation would not alter conditions except for the difference between the foreign cost in Japan and the landed cost here.

The application of the United States valuation will not compensate the difference between countries having a low conversion cost and countries having higher conversion cost, as for instance, France and Switzerland. The United States value or United States selling price will naturally be proportionate. The equalization of such difference

would be remedied theoretically under the basis of American valuation, or comparable domestic goods, but such a basis is not practical and not feasible.

Therefore, the tariff protection must be protective against the countries which have the lowest conversion cost, and which is fully the case in the silk schedule.

Importations of Japanese silks are merely confined to such habutaes and pongees which enjoy a reputation for their purity the world over. The Japanese Government guarantees that such fabrics are not weighted or adulterated.

The entire importation of all dutiable silk goods in comparison with equal domestic production is less than 5 per cent. Imports are equally divided between Europe and Japan. Importations from China are practically nil.

In view of the fact that the appraisers' department had long experience in ascertaining foreign values, and particularly where merchandise is purchased outright the invoice in itself is documentary evidence of the foreign value. In addition to such documents, the appraisers receive evidence of market value by means of invoices from other shippers, great reports, price lists, etc.

It is absolutely essential that the examiners or appraising officials have as many means available, means to ascertain values in order to make proper appraisals. To change the entire method of appraisal would be unwise and not sound, and would be, saying the least, highly confusing.

Under United States valuation plan, the examiners will be confronted with new difficulties and would have to acquire this new experience, particulalry under the present unfortunate and chaotic conditions due to overproduction, selling prices to-day are particularly unstable. They are asking prices and liquidation prices, and the fluctuations are untold.

If the United States valuation plan is adopted. it will be hard to adjust and find a happy medium for the various commodities, for instance, Japanese silks are sold on a very small margin of profit, with a comparatively small landing charge, due to the fact that they are sold in bulk. It would also make a difference in the landing cost whether such goods are shipped over land or by way of Panama Canal. The situation with French goods is entirely different, and the application of the United States selling prices on such high-priced novelty fabrics will be exceedingly difficult. Importations from France are chiefly confined to novelties which are not made here. The selling price in a great many cases is dependent upon the design and the color, and the same quality may be sold at different prices, owing to the various designs and colorings. The method of quantity also governs the selling prices. Some of these high novelties are sold in exceedingly small quantities and imported naturally is entitled to a larger profit on account of the great risk involved.

Before your honorable committee decised to change the valuation all these conditions should be very carefully weighed and considered.

The silk industry has not suffered by any influx of imports, and to-day our industry consumes 75 per cent of the entire raw silk produced, or 90 per cent of the entire raw silk produced in Japan.

The trouble with the silk industry to-day is overexpansion and overproduction, and this can only be remedied by the manufacturers themselves.

In reference to the statements made regarding alleged undervaluations or fraud, I wish to state that based upon my experience such cases have been exceedingly rare. The greatest undervaluation of fraud practiced occurred in 1901 and 1902 under specific rates.

The CHAIRMAN. Mr. Doherty, I am going to request that you and the gentlemen following you make their remarks brief and to the point. We wish to get through here this morning.

I wish also to ask the members of the committee to refrain from asking questions until the witness completes his statement. Then ask whatever questions you wish but let the witness have an opportunity to complete his statement. Then when we consider the questions we will have it all in one place and the statement will be more easily understood.

STATEMENT OF THOMAS J. DOHERTY, NEW YORK CITY, REPRESENTING THE AMERICAN IRON AND STEEL INSTITUTE

Mr. DOHERTY. Mr. Chairman, I represent here to-day the American Iron and Steel Institute as their tariff counsel.

The American Iron and Steel Institute comprises within its membership 95 per cent of the iron and steel producers of the United States. Heretofore it has confined its activities to purely technical matters, the collection of statistics, and matters interesting the industry; but this year it appointed a tariff committee and concluded that now the steel industry needs a little attention from the tariff; so we are trying to present to the committee, or will present to the subcommittee, some of the things we have to ask. I will confine myself strictly at this time to this matter of valuation.

It seems to me that ultimately the question as to the basis of valuation for ad valorem duties, whether it be the foreign valuation of the domestic valuation, that is to say, the United States selling price of the article, or whether it be the so-called American valuation, which means the American selling price of the comparable domestic article, is essentially a matter of administration. It is entirely dissociated from the rates of duty to be prescribed by this committee.

I think the witnesses that have appeared before the committee have agreed that if the result of changing from the foreign back to the domestic valuation, or United States valuation, results in a higher basis of valuation, necessarily, if you retain the same ad valorem rates there will be a greater amount of duty collected and a greater impost on the imported articles. There is no getting away from that.

The principal advantage, to my mind, is that it will bring within the reach of the Government and within reach of the process of the Nation's courts and tribunals all the information necessary upon which to base the assessment of the duty; and that is a highly desirable thing. I speak from an experience of close to 35 years in close daily contact with tariff and custom matters, part of the time in the Government service and part of the time without; and I know that it would contribute greatly to the facility with which duties are

collected; and also it would tend to put all importers on a parity if the appraising officers had within their reach the sources of information upon which they would base their valuation.

There has been a great deal of undervaluation. While that word has a sinister sound, it does not always mean fraud, at all. There is a great deal of what I might call "honest" undervaluation. That is to say, there is undervaluation due to a change in the market—of which the importer may not be aware—due also to technical questions. In the old times before we had the circuit court of appeals, and, of course, long before we had the uCstoms Court of Appeals, the cases went to the Supreme Court, and that tribunal had many questions of value before it, of reappraisement; and interpretation of the many technical questions that grew out of it. So, you must not lay too much stress upon that phrase "undervaluation," because it does not necessarily mean fraud or chicanery, or any moral turpitude at all.

Senator KING. You said in your testimony before this committee a few years ago that there was comparatively none, did you not, speaking of undervaluation?

Mr. DOHERTY. No, no. Pardon me, Senator. I have what I said right here.

Senator EDGE. Let us have it 100 per cent, Mr. Chairman; you asked us not to interrupt the witness's statement with questions.

Mr. DOHERTY. If you compare my two statements, Senator, you will find they are consistent. One speaker yesterday emphasized the fact that the United States valuation was admirable, because it would put all countries on a level. It does not do anything of the kind. It makes them all pay the same amount of duty, but that does not change their relative position because, after all, the duty paid is only one of the factors of the landed cost. So that taking them in the order listed yesterday, Japan, Italy, Czechoslovakia, Germany, France, and England, in each one of those countries the initial cost would be different; so, if each paid the same amount of duty it would not change their relative positions in the least. In other words, there would be no advantage at all to England, because Japan pays the same amount of duty ahd their landed cost would still indicate the same spread.

Something was said, too, about putting this new scheme into effect immediately. I think it might be done experimentally; you might change the tariff right away and try it for a while and see what effect it would have on importations. But, if you do not want to do that the House has provided a means whereby you can secure the information that is necessary. I notice in section 642 of the bill the President is requested to cause a survey to be made with all the instrumentalities at his disposal for the purpose of gathering all the necessary facts as to prices, market conditions, commodities, and so forth, whereby you could adjust the rates of duty to this new basis; and it is very interesting to note that Congress now has asked Herbert Hoover as President to do exactly the same thing that the Ways and Means Committee of the House asked Herbert Hoover to do as Secretary of Commerce in 1924. When he appeared before Mr. Fordney's committee at that time they asked him to prepare that data for the purposes of comparison.

Senator EDGE. Mr. Chairman, can we not have order out in the hall? It is almost impossible to hear the witness.

Mr. DOHERTY. I have concluded my statement.

Senator KING. I have Mr. Doherty's testimony here that he gave before the committee when the Fordney-McCumber bill was under consideration and I ask permission to read excerpts from his testimony given at that time and desire to put it in the record.

The CHAIRMAN. If there is no objection that may be done.

Senator BINGHAM. We have his testimony before us in printed form.

Mr. DOHERTY. I would like the opportunity of answering. Is that the testimony of 1921?

Senator KING. The testimony before Senator McCumber.

Mr. DOHERTY. I rather thought I would be confronted with that, because eight years ago I opposed the adoption of the American valuation plan upon the ground, strictly, that it was impractical to do that sort of thing overnight. Let me just for a moment refer to that. While it may be of no interest to the committee, still I feel I am entitled to reply to Senator King.

Senator KING. You have changed your views on this meanwhile?

Mr. DOHERTY. In 1922 when I appeared at this very table before the then Senate Finance Committee, here is what I said:

> It is one of the favored arguments of the proponents of this legislation to resort to such things as wheat and copper and cotton, things that have a world market and a world value. If legislation were limited to them there would be no particular difficulty in administering it.

I say the same thing now, and that is particularly applicable to the commodities with which I am particularly interested, iron and steel.

In 1921 at the invitation of Mr. Chairman Fordney I appeared before the House Ways and Means Committee with a number of others who were summoned there and I said that on the general proposition of basing duties on American valuation I was not opposed to it in principle; that it seemed to me that it was correct; that it made but little difference upon what basis the duties were levied providing the basis was fair and equitable and the system provided was workable.

Senator REED. What do you say now as to the basis?

Mr. DOHERTY. I come here to say that the American Iron and Steel Institute is disposed to act with other tariff organizations which desire a change to the basis of the United States selling value.

Senator BARKLEY. Is that your personal opinion?

Mr. DOHERTY. Yes; I think so now—yes.

Senator BARKLEY. You are not sure of that?

Mr. DOHERTY. I have here the evidence I gave there.

Senator BARKLEY. That is what we are trying to ascertain here.

Senator KING. You represented at that time the National Council of American Importers and Traders.

Mr. DOHERTY. Yes, sir.

Senator KING. Now you represent the American Iron and Steel Institute.

Mr. DOHERTY. Yes; the American Iron and Steel Institute.

STATEMENT OF CARL W. STERN, NEW YORK CITY, REPRESENTING SWISS AND GERMAN SILK IMPORTERS,

Mr. STERN. Mr. Chairman. I am a customs attorney and customhouse broker, and have been engaged in that line upward of 35 years.

I represent Krone & Jacobson, importers of silks from Czechoslovakia. They receive silks on consignment; and since it has been held that there is neither a foreign, home, or export value for the goods which they import, their merchandise is now classed on the American United States valuation plan.

It is the theory, as I understand it, of United States valuation to work back and arrive at something which is theoretically a home or foreign valuation. By working back under the present law the allowance for commission which may be deducted is 6 per cent. The commission which the importers actually receive from heir manufacturers is 10 per cent. The Government, therefore, is exacting a double tax upon that extra 4 per cent.

I ask that as to merchandise secured upon consignment the allowance by deduction of a commission be the actual commission paid to the agent not in excess of 10 per cent, if you will have it thus.

I believe that that would not be opposed by the appraisers, or other customs representatives in New York. It seems only fair if it is intended to deduct the commission which is paid that it be not fixed at a minimum of 6 per cent, but to make it more nearly commensurate with the actual commission paid. In brief I think that is all that need be said upon that subject.

I desire to address myself for a few moments, if you will allow me, Mr. Chairman, to the matter of undervaluations. Much has been said with regard to undervaluations. I understand that it is not the plan of the proponents of the United States valuation plan to secure higher duties, but simply to secure all of the duties which Congress intended should be levied, the claim being that the United States valuation or American plan is the plan under which that may be accomplished.

I believe that if the committee will delve into the matter carefully they will ascertain that the amount of undervaluation is negligible. It is my information that in the case of 500,000 invoices passed by the appraiser at New York in a year a total of $16,000,000 was secured above the duty which would have been represented based upon the invoice price. I would not have you understand, however, that that means that there were $16,000,000 of undervaluation. That does not mean that the appraiser secured that extra $16,000,000, but it means that the importers themselves added valuation to the invoice value because of a change in market conditions, and that change in conditions might very well have taken place between the time they placed the order and the time the goods were shipped—an advancing market would mean an increased value—and that $16,000,000 on a total of 500,000 appraisements was collected by the Government because of a change of market value and a voluntary increased valuation on the part of the importer prior to entry—that is, full declaration.

Something was said yesterday specifically as to undervaluations, and I believe that the suggestion was made that they were fraudulent. It involved greeting cards, rugs, cork boards, and tie silks. I claim

an intimate knowledge with these cases, Mr. Chairman. I represented the importers in some feature of each one of these cases, and I say to you with full knowledge of the facts that in none of these cases was there proof or even claim that the moneys paid to the shipper for merchandise covered by the invoices was other than the price stated on the invoice. In other words, much of the extra duties that were collected came about because of a change in the basis of valuation, a change from cost or foreign or export value to United States valuation.

And, right here, let me mention that if it is suggested that United States valuation should not produce any more money than the duty based on the actual cost of the goods you would see how woefully ill considered it was. For instance, in the rug cases part of the extra duties collected were by reason of certain internal revenue taxes which it later developed were dutiable and as to which the importer had either direct knowledge or otherwise.

With regard to the cork boards there were two markets in Spain for cork boards. The goods were truthfully invoiced at their truthful cost, understand, but it was claimed that some other market in Spain, a higher-cost-producing market was held to be proper valuation.

Some one referred to the refund of about $2,000,000 in some of these matters covering extra valuation in one year, but it covered the extra duties which were last year collected covering a period of four or five years back.

I would not go so far as to say that United States valuation is not a helpful, or even a necessary basis of appraisement, but I maintain that it should not be the major basis of appraisement. I mean that it is helpful as a theory, and, as Mr. Fix pointed out yesterday, United States value with its proper and necessary deductions for overhead profit and expense will simply work you back to your foreign market value; and in that way it is a very excellent check. It would work out splendidly if applied exclusively to bulk merchandise such as zinc, copper, lead, tin, and such things, but if applied to the large part of the imports from Europe it would be impractical.

The adoption of the United States valuation basis as the major basis of appraisement will mean the scrapping of the accumulated knowledge of the appraisers' departments throughout the United States. It is firmly believed that the appraisers have no knowledge of the United States selling prices of the various commodities, either imported or domestic. The finding of these values is a most complicated matter, much more so than the finding of foreign value. Merchandise purchased abroad is obtained from one or possibly two markets in the country of exportation from the manufacturers. The markets in the United States might be practically unlimited in number and are purely distributive ones. Furthermore, conditions of trade in the United Sttaes are such that, depending on the class of trade credit conditions and purchasing power, as many as five selling prices on the same commodity might prevail. To amplify this permit me to state that this is due to chain stores, jobbers, large department stores, specialty shops, and general stores. So we would have very many United States values.

A request was directed by Senator Bingham to a witness whether levying duty on United States value would not equalize the difference

between labor costs as to silks originating in Japan and France. This question was not answered. If permitted, I will answer the question.

United States value as written in the bill is the price at which such or similar merchandise is freely offered for sale in usual wholesale quantities in the United States. Therefore, if Japanese silks are imported and sold under the conditions specified, then the price of the Japanese silk as sold in the United States must become the dutiable value. This selling price would naturally be the result of addition to the foreign value of expense and profits. The greater cost of French silks could not be corrected by the imposition of United States value as the value or selling price of the French silk could not be used in the appraisement of the Japanese silks, the Japanese silks having an established United States selling price.

Reference was made yesterday by either Mr. Burgess or Mr. Lerch to manipulated values, and a French house was referred to selling the silks only through their agents in this country instead of offering their goods freely in the French market for shipment to America.

Under present law such goods would be appraised at United States valuation, and no remedy is required to afford relief in this case.

These gentlemen stressed the great difficulty of ascertaining foreign value, explaining that we could not conduct investigations abroad, but they evidently lost sight of the fact that the present law provides for the taking of duty on export value, which is the price to America, and this value can be checked up in this country and requires no trips abroad.

Mr. Cheny said yesterday that there should be no deduction from the United States selling price of 8 and 8 or any other sum for overhead and profit. He charges that the Treasury Department transgresses upon these deductions for the purpose of arriving at United States value. I deny that such is the case and I challenge Mr. Cheny to prove it. Thirty-five years' experience satisfies me that the appraiser does not permit any deduction for overhead and profit except the same can be actually proven; and never is an allowance of more than 8 and 8 per cent permitted even though the expenses and profits frequently exceed this sum.

Now, let me tell you something about the details of making an entry under United States valuation. Importers are allowed 48 hours from the arrival of the steamer in which to prepare their documents, file them in the customhouse, and pay duties. They are required upon entry to state not only the true cost but the dutiable value of the merchandise; and failure to state the dutiable value in accordance with the rules of the appraising office entails a penalty of 1 per cent for each 1 per cent of difference, while if they overstate the value, duty is collected upon such overstated value, even though the appraiser returns a lower value as the correct dutiable value.

I represent such firms as R. H. Macy & Co., Gimbel Bros., Arnold, Constable & Co., and other large department stores. Their invoices run anywhere from an average of 5 to 200 sheets of invoice paper, closely written, and containing thousands of different articles. These houses can, naturally, have no knowledge, particularly at the time of entry, of the wholesale selling price in the principal markets of this country in the ordinary course of trade of the thousands of different

articles covered by their invoices. The difficulties attendant upon entry under the United States value in such cases are insurmountable, Mr. Chairman.

The department stores, chain stores, and retailers generally who import direct are obviously in that position where it would be almost impossible for them to make an entry at the customhouse under oath stating the wholesale market value in the United States as the only value they know is the price they intend to ask for the merchandise.

The adoption of the United States valuation plan will require a rewriting of the rates, and I believe that the committee will find that the factors necessary to permit of this readjustment of rates will take considerable time and result in the administration of a law on the new basis of valuation found unsatisfactory.

I am satisfied that not only are the obstacles insurmountable from the standpoint of the importer, but I am convinced that a sizable department-store invoice entered under the provisions of the United States valuation plan as a major basis of appraisement would not be passed or released by the appraiser short of a month, or possibly more, after entry, during which time the retailer will be unable to fix his selling price because of the lack of knowledge as to the amount of duty to be paid, and his goods held up.

Something was said yesterday with regard to passenger declarations. Might I ask you to imagine the turmoil and confusion which would result under the United States valuation plan upon arrival of a large liner from Europe with 1,000 or more passengers, first class, and perhaps another thousand second-class passengers, each one with a trunk or more of novelties which he purchased in the European market for souvenirs, and so forth. Each one of them is required to state not the cost, of which he might have some knowledge, having come in contact with the seller of the goods when he purchased them, but the United States selling price of the articles which he brings in his bag; and the appraiser on the pier is required to investigate and report as to the United States selling price of these articles in the principal markets of the United States, in the ordinary course of trade, entered wholesale, in order that duty may be legally and properly assessed. And if you gentlemen can imagine how long it would take to clear the passengers of an incoming steamer based upon this plan, "special courtesy" and "privilege of the port" might again come up for consideration, and justly so.

Mr. Woll pointed out that Ford, General Motors, and others, including the Singer Sewing Machine Co. are establishing plants abroad to supply their foreign markets from such foreign plants instead of exporting from here. This is not surprising. Retaliation must be looked for and expected when we build a tariff wall as high as is proposed; and with its many obstacles presumably big business sees a further retaliation.

On the other hand, notwithstanding our higher labor costs, you must not lose sight of the fact that foreign silk manufacturers and rayon plants and woolen mills have established themselves over here during the last 20 years to get behind the barrier of the high American tariff.

Just one further point: Reference was made yesterday to the large additional duties which were collected. Let me say this, that for not one of the items, Mr. Chairman, to which you referred—and

I believe I speak correctly—was there a single penny of penalty collected or any charge made that those invoices were false or fraudulent. It was the attitude of the customs officers to appraise under the law, but where they had a change in the basis of valuation they accepted the incident and were glad to account for simply the duty as if it were based on a different basis of valuation; and in not one of those cases—and I am familiar with them—was there any charge of fraud.

Senator REED. Is that true of the rug cases that you spoke of?

Mr. STERN. If there had been fraud, Mr. Chairman, the collector would not have been satisfied to collect merely the duty without interest.

Let me say also, Mr. Chairman, that I am afraid you did not calculate the large amount of refunds. You indicated that some $2,000,000 or thereabouts were collected by the Treasury Department last year, but let me point out that this covers the period of some three or four years, and I want particularly to urge the fact that refunds during that period probably far exceed the additional collections.

Senator BARKLEY. You said they collected $16,000,000 because of undervaluations.

Mr. STERN. No, Senator; $16,000,000 was the total additional that came to the Government by reason of a change of price. That is what I am talking about; and it would happen under United States valuation, foreign valuation, or under all of the systems at present in effect.

Senator BARKLEY. The question is whether or not that would happen under a system of exclusive United States valuation as well as of foreign valuation.

Mr. STERN. Most assuredly, since we have just as many factors in regard to United States valuation For instance, what is the ordinary course of trade? What is the usual wholesale quantity? And I point out again that the method of administration is so difficult that there is no real saving by it.

Senator BINGHAM. Will you tell us, if it is such a monstrosity as you picture it, why other foreign countries have adopted it?

Mr. STERN. There is none, as I recall it, that has adopted it. I understand that the system adopted by England is the port value, which is foreign value of the country of export, plus freight.

Senator BINGHAM. How about Japan?

Mr. STERN. I have no knowledge about Japan, sir.

Senator BINGHAM. Japan has a very high protective tariff, and the basis employed there is domestic valuation.

Mr. STERN. Imports into Japan, Mr. Senator, are far less varied than those into the United States.

Senator EDGE. To make a summary of your testimony, as I understand it, representing the importers and department stores, you do not want any change in section 402 as it now appears in the law.

Mr. STERN. Excepting that where United States valuation is used the deductions for profit should be the usual and normal profits; the deduction for expense shall be the actual expense; and, with regard to consigned goods, the deduction for commission should be the actual commission paid to the agent not exceeding 12 per cent.

Senator SACKETT. If it should be 12½ per cent, you would not want it covered?

Mr. STERN. I agree that there should be some limit; and 10 per cent seems to me to be the average commission.

Senator SACKETT. How many importers get more than 10 per cent?

Mr. STERN. You mean agents?

Senator SACKETT. Yes.

Mr. STERN. Not many. A few do, but in any case I think 10 per cent should be a maximum.

Senator SACKETT. Would there not be the same objection to a 10 per cent limit that you now have to the 6 per cent limit?

Mr. STERN. Yes, but it would reduce the evil, because so many get 10 per cent; and on that 4 per cent between 6 per cent and 10 per cent the Government gets a double tax in that they get an income tax and an import tax.

Senator REED. Going back to your rug case that you spoke of, is it not a fact that indictments were threatened; and they threatened to send the case to the district attorney before you came in and offered this payment as promised?

Mr. STERN. Senator——

Senator REED. Is not that so?

Mr. STERN. I do not so understand it. Threatened indictments in New York are frequent and general, and used possibly as a means of collecting duties, for importers threatened with heavy expense and publicity and annoyance, to save embarrassment will pay up.

STATEMENT OF JAMES CRAWFORD M'CREERY, REPRESENTING THE MERCHANTS' ASSOCIATION OF NEW YORK, NEW YORK CITY

Mr. MCCREERY. Mr. Chairman, I represent the Merchants' Association of New York, of which I am one of the directors, and also a member of the committee on customs.

The Merchants' Association was organized and incorporated in 1897, and therefore is about 32 years old. The membership is about 8,000 and is composed of individuals, firms, corporations, and is drawn from the trade and industry, manufacturers, and specialists which are allied with business finance. Therefore, you see, it has a very general representation of the mercantile and business world.

Senator KING. You are connected with the McCreery house in New York?

Mr. MCCREERY. My father was James McCreery, and I was one of the members of that firm. I am president of a real estate corporation at the present time, but having served as the chairman of the original committee on customs, they have continued me on that committee, and I am therefore in a neutral position in presenting this matter.

I address myself to one thing: That is, section 402, paragraph (b) The Merchants' Association does not take cognizance, through its committee, by its directors of any question of rates of duty. We do not concern ourselves with questions of the classification of articles, and at the present time we are not arguing on the question of the basis of valuation except as comprised in section 402, paragraph (b), in which the basis of valuation is determined exclusively by the appraiser.

For the first time in the history of this country the decision of the local appraiser as to the basis of valuation is made final, subject only to an appeal to the Secretary of the Treasury, whose decision is then made final. From the days long preceding the enactment of the administrative act of June 10, 1910, the importer always had the right to a review of a judicial or quasi-judicial tribunal from the action of the local appraiser. When the local appraiser or the merchant appraiser or the Board of General Appraisers proceeded on an incorrect principle of law an appeal lay to the Federal court, and it has always been held to be the right of the importer and the Government to have disputes as to value and the basis of value reviewed by the courts.

Under the act of 1922 this right was extended to American manufacturers with whose goods the imported goods might compete and the right was given to them to contest the value found by the local appraiser by appeal to the Board of General Appraisers and from that tribunal to the Customs Court of Appeals on the question of law, or, in other words, where the appraiser had proceeded on an incorrect principle or basis.

Paragraph (b) of section 402, therefore, seeks to do away with a practice which has obtained from the organization of this Government and to deprive the courts of jurisdiction in a matter which is singularly vital to American manufacturers, to Government, and to importers. The question as to whether merchandise shall be taxed upon the basis of the foreign value or the United States value is one of the most vital questions that can be raised in customs procedure, for by reason of the change from one basis to other duties may be greatly increased or lowered and importers' rights to do business or American manufacturers' rights to protection are equally jeopardized by placing this momentous question wholly in the minds of administrative officers.

Under paragraph (c) of this section foreign value is defined as the price at which such similar merchandise is freely offered for sale in the country of exportation and it may frequently occur that an appraiser may believe similar merchandise is sold abroad, and accept a foreign value as the proper basis, while the fact may be that there is no foreign value. In such case the imported articles may pay less duty than should properly be imposed and the domestic manufacturer who is injured by the reduction in the protection to which he is entitled will suffer accordingly since in such case obviously no appeal would be taken to the Secretary. This is true because only the consignee or his agent may request the Secretary of the Treasury to make such a review. On the other hand, the appraiser may believe that similar goods are not sold abroad and adopt the United States value and the importer be deprived of his right to test the matter in the courts.

Moreover, it should be pointed out that the provision suggests difficulties that it might be impossible to overcome. As it now reads, the local appraiser's decision is final unless an appeal be taken to the Secretary of the Treasury. The Secretary, on appeal, may affirm, modify, or reverse the decision of the appraiser. To illustrate the difficulties of procedure let us assume that the appraiser has returned the United States value; that an appeal has been filed by

the importer and the Secretary reverses the decision of the appraiser and finds there is a foreign value. Under the law the appraiser has made his return on the basis of the United States value. In the meantime, if the importer has paid duty based on the appraiser's return he is entitled to his goods and by the time the Secretary has made a decision the goods may have gone into consumption. How then is the collector to liquidate the entry? The appraiser's return is on the basis of the United States value, the Secretary has held that he should have returned it on the basis of the foreign value. The appraiser can no longer find the foreign value inasmuch as he no longer has the goods. Yet the collector's liquidation on the basis of the appraiser's return would be invalid under the Secretary's ruling.

This is one of the difficulties that appears from the language of the provision. It is believed, however, that the proposition itself of depriving parties in interest of their right to a judicial decision in a matter in which an interpretation of the law is involved, is wrong in principle.

Moreover, the Merchants' Association believe that confusion would be inevitable as a result of conflicting decisions of various appraisers of merchandise throughout the country in connection with importations of identical or similar merchandise, and also in connection with reviews and decisions by succeeding appraisers and secretaries of the Treasury, a condition which is not provided against in the pending bill and which would not occur under the system of review by the courts which is now effective. It is not inconceivable that such officials, wholly unintentionally, might follow personal opinions and wishes in making these important decisions but under the proposed plan American citizens, including manufacturers and importers, whose property rights would be infringed by wrong decisions of appraisers and secretaries of the Treasury would have no appeal.

The CHAIRMAN. What is it the Merchants' Association proposes?

Mr. MCCREERY. I will read the resolution:

The Merchants' Association of New York strongly urges that this provision be eliminated in toto and that the law continue as it is at present which permits the United States Customs Court and the United States Court of Customs and Patent Appeals to make the final decision regarding this question.

Senator EDGE. Do you want to leave that memorandum about the Merchants' Association for the record?

Mr. MCCREERY. I would.

(The statement referred to and submitted is as follows:)

The Merchants' Association of New York was organized and incorporated in 1897. It has, therefore, been in existence 32 years. Its present membership, approximately 8,000, is drawn from every trade, industry, and profession. It consists of individuals, firms, and corporations. Under the provisions of the by-laws, firms and corporations designate a member of the firm or an officer of the corporation as its representative. In the trades and industries the membership is that of manufacturers, jobbers, importers, and exporters, with a large number of concerns manufacturing and importing and an equally large number manufacturing and exporting; also an equally large number jobbing both domestically manufactured and imported products.

The association maintains a permanent committee to study customs administrative problems. The Merchants' Association and the committee referred to never give consideration to any matter relating to the rate of import duty, if any, which is to be assessed, or the tariff classification of any imported article, devoting its entire attention to the practical operation of the administrative provisions of

tariff legislation. This committee of 10 is composed as follows: The chairman is a customs attorney and was formerly officially connected with the Customs Division of the Treasury Department; 4 members of the committee represent domestic manufacturing interests; 1 member of the committee is a domestic manufacturer who also imports certain articles; 2 members of the committee are importers; and 1 is a customhouse broker and forwarder; and I am a retired business man having previously been engaged in the manufacturing, importing, and wholesaling and retailing business.

STATEMENT OF H. M. WALLACE, REPRESENTING ELECTROLUX (INC.), NEW YORK CITY

Mr. WALLACE. I am a member of the firm of Carey, Lynn & Wallace, attorneys of New York, and represent before your committee this morning 17 firms who import embroideries which are at the present time being assessed on a duty basis under the cost-of-production provision of section 402; and, in addition one firm which imports vacuum cleaners from Sweden, which is now also being appraised on the cost-of-production basis of section 402, f.

I wish to address my few remarks to this new and novel feature of valuation which has been introduced by the House in this bill. It is the end of paragraph e, under United States valuation, and is something entirely new in valuation bases. It provides that if the United States value can not be ascertained—in plain English it provides that the appraiser shall get the United States value. They call it an estimate, by——

Senator REED. Suppose you read the whole thing.

Mr. WALLACE. They provide that if such or similar imported merchandise—2 under subparagraph e—is not offered for sale in the United States, then an estimated value, having regard for difference in quality and other differences based upon the price at which merchandise, whether domestic or imported, comparable in construction or use to the imported merchandise is so offered for sale, making due allowances for expenses but in the case of imported merchandise only making allowance for duty——

Senator SHORTRIDGE. Read that for the record.

Mr. WALLACE. Making due allowance in either case for cost of transportation, insurance, and other necessary expenses from the place shipped to the place delivered and commission not exceeding 6 per cent if any has been paid or contracted to be paid on goods obtained otherwise than by purchase, or profits not to exceed 8 per cent, and general expenses not to exceed 8 per cent on purchased goods, and in the case of imported merchandise for duty.

Senator SIMMONS. Does not that mean for duty in addition to these other allowances?

Mr. WALLACE. Yes; deducting an allowance for duty. As I understand it, if they estimate this value on the fair cost of marketing merchandise they do not make any allowance for duty. This provision catches for all dutiable purposes all merchandise which under the act of 1922 was appraised on a cost of production basis. There is nothing that can get by that paragraph and into the cost-of-production basis.

We do not object before this committee or to Congress adopting United States valuation, foreign valuation, American valuation, or any other valuation as a proper basis of dutiable rates. We simply

request that it make it simple and not complicated, so that our importers can understand it. But we do object to Congress adopting foreign valuation as a basis with appropriate rates thereunder, and having these foreign valuation rates supplied to this estimated United States value at the whim of the appraiser.

For example, there are probably six products brought into the United States to-day which are paying duty based on a cost-of-production basis. Embroidered linen is one, this vacuum cleaner is another. There are others. We do not represent them. I do not know just what articles they are, but all of those articles, if this paragraph on United States valuation is adopted by Congress, will no longer be dutiable on a basis of cost of production. They will emasculate from the act all of paragraph (f) of section 402. They might just as well leave it out of here because there is nothing that by any hook or crook can get in there.

The duty upon embroidery under this new act is 80 per cent ad valorem. That rate was supposedly put into the bill to apply against the dutiable basis upon a cost-of-production basis, which is the basis which for the past seven years has been applied.

It is quite conceivable that this estimated value under this subsection would be two or three times as high as the cost-of-production value; and under the proposed bill the 90 per cent rate would still apply; and, if that happens, it will mean a rate of 180, or 270 per cent of the present dutiable basis, the cost-of-production basis.

We deem this new dutiable basis to be wholly impractical and even unjust in its application because, first, it substitutes an estimated, guessed-at, hypothetical value that exists nowhere but in the mind of the appraiser, for a real existing value, which is cost of production.

It will eliminate from operation paragraph f, cost of production, because a guessed-at value can always be applied to any merchandise; and this estimated value must be taken before the cost-of-production basis is applicable under the new act.

It also bases the estimate upon a vague and indefinite comparability in construction or use to some other article, either domestic or imported.

Senator KING. But would include quality too, I suppose?

Mr. WALLACE. They make allowance for difference in quality after having first compared it with something comparable in use.

How can such an uncertain and indefinite basis of value result in anything more than guess work? How can comparability in construction or use be better than a basis that works with certainty and fairness?

At this time I would like to briefly outline the importers' problems if this provision is left in here. He imports some embroidered table covers. On embroidered table covers the appraiser has said during the past seven years that he can not find foreign value; he can not find export value; he can not find United States value. He has appraised it under cost of production. The importer must make entry of that merchandise. First the act tells him he must make entry at a certain definite value.

Under the act he must first go and find something comparable in construction or use, that is a hand-embroidered tablecloth. Now, he has all the tablecloths in the world to choose from. They are all

used to cover tables. So he finds a machine-embroidered tablecloth manufactured in the United States. I understand we make no hand-embroidered articles in the United States. So he finds a machine-embroidered tablecloth somewhat like his own. Then he must go to the domestic manufacturer of that tablecloth and ask him what his wholesale price is. The domestic manufacturer may tell him, and he may not. If he will not the importer is stopped. Let us assume that he does tell him what this machine embroidered tablecloth sells for. The importer goes back to his office and he says: "Now, I must make an allowance for quality and other things." About this time I think he will be hiring a lawyer, because he would be in pretty deep water—

Senator KING. As well as experts.

Mr. WALLACE. He will come down to me and he will say to me: "What does this mean, quality or other difference? What allowance shall I make?"

And I will not know any more about it than he does; but I will try to use deep chest tones and I will tell him that differences in quality are probably based upon differences in cost of production; so if you can find the cost of production of those machine embroidered tablecloths and the cost of production of your own tablecloth, make that allowance against your value.

So he goes back to the domestic manufacturer and he says: "How much does it cost to make this tablecloth?" And, of course, the domestic manufacturer will tell him—maybe. The importer finds that out. Then he can figure his own cost of production, and then he can find the difference and he can make that allowance. He makes that allowance, adds that difference to this cost of the domestic article, and he makes his entry. Let us say it is a dollar. That is his best guess at what that means.

The appraiser gets that invoice and he has got to do the same thing.

Senator SHORTRIDGE. Pardon the interruption—and I know you will—the language says, though:

> Based on the price at which merchandise, whether domestic or imported, comparable in construction or use with the imported merchandise, is offered for sale.

You have left out one of the elements.

Mr. WALLACE. All right.

Senator BINGHAM. Does he not know what he is going to offer it for sale at?

Senator SHORTRIDGE. You seem to be multiplying the difficulties.

Senator BINGHAM. The importer knows what it costs him to get the goods to this country; and he has a pretty good idea of the price at which he is going to sell it, does he not?

Mr. WALLACE. Yes.

Senator BINGHAM. Then why this deep thought?

Mr. WALLACE. Because he can not enter it at that value, that is, the estimated United States value. He might have the United States value, but the appraiser for the last seven years has said he can not determine United States value; and this says here that if he can not determine United States value then you must take the estimated value—hence all this deep thought.

Senator EDGE. Why the deep thought? That is what he is asking you?

Mr. WALLACE. Let us take another example. These embroidery examples are complicated.

The CHAIRMAN. Let the gentleman make his statement without interruption.

Senator SHORTRIDGE. I have offended against the rule.

The CHAIRMAN. We will never get through otherwise.

Senator SHORTRIDGE. That is true.

Mr. WALLACE. The appraiser has got to do the same thing. I will take another example.

Senator BINGHAM. Why should you concern yourself with the difficulty of the appraiser? That seems to be his difficulty and not the importers.

Mr. WALLACE. I am referring to it because it is a very complicated affair.

Senator BINGHAM. The appraiser should worry, and not the importer.

Mr. WALLACE. Suppose the appraiser, under tablecloths, takes a plain table linen cover as his basis and then makes an allowance for the difference of the embroidery and gives $2 as the valuation of this imported tablecloth with the result that the importer pays duty at the rate of 90 per cent upon the $2 appraisement and pays a penalty of 75 per cent upon the $2 appraisement, and his merchandise is forfeited. That is what happens.

Senator REED. How often does that happen?

Mr. WALLACE. Under this provision, Senator, I can not imagine—I am only talking about this estimated value provision—I can not imagine any two appraisers from the port of New York to the port of San Francisco arriving at the same estimated value. I think it is inconceivable that two minds following that method of appraisement could arrive at the same answer.

Senator REED. I understood the last witness to tell us that penalties were not resorted to.

Mr. WALLACE. Speaking of penalties, Senator, this act has teeth in it.

Senator KING. It has not gone into effect.

Mr. WALLACE. It has plenty of teeth in it. The act of 1922 has teeth in it; and I want to say this, although it is not part of my presentation, that undervaluations, in my humble judgment, are due to the complexity of section 402. Importers do not know how to make an entry at United States values. I confess that I do not know how to make an entry at American selling prices; and a tax statute should have a simple, easily ascertained method of establishing the taxpayer's tax; and with the exception of Otto Fix, I do not think there is an importer in New York who could go to work on an entry without consulting the examiner or appraiser and figure out the United States value correctly.

Senator EDGE. How about the export value?

Mr. WALLACE. The export value is what he pays for his merchandise. It is on the invoice.

Senator EDGE. Exactly.

Mr. WALLACE. That is only one element.

Senator EDGE. But he has got that much information to start with, has he not?

Mr. WALLACE. Yes. But let me go back to this estimated value——

Senator BINGHAM. But does not this poor American business man who does not know what tax to pay know how much he is going to charge for it, or know how to find out how much he is going to charge for it?

Mr. WALLACE. No, it is not that, Senator. He has got to make an entry of his merchandise at an estimated United States value.

Senator BINGHAM. He knows when he imports it about what he is going to charge for it.

Mr. WALLACE. Yes.

Senator BINGHAM. Then where does the difficulty come in?

Mr. WALLACE. Let me take another example. Take the Electrolux vacuum cleaner. It is never sold except to the consumer. They bring them into the United States and sell them on a house-to-house basis. They are imported here. There is no wholesale value. There is no wholesale export price. There is no wholesale United States value. That has been appraised to-day on cost of production basis.

Under this new provision it would fall within that estimated United States value. The first problem these men would be up against would be to find something comparable in construction or use, and he can go all the way from a whisk broom to a carpet sweeper. There are about 50 manufacturers of vacuum sweepers and he has got to choose one of them to compare with his vacuum sweeper and then make allowance for the difference in construction, quality, and other differences between the two; and for two people to arrive at the same answer on value, pursue investigations conducted independently in is inconceivable; and I say that the statute is so complex that it injures the American importer; and the American importer I believe to be as honest as the American manufacturer, or the American laborer. I think we are all Americans. I do not think all crooks go into the importing business.

The importer can not possibly find an estimated United States value under any method you could devise. He has got to enter it at a guess; and if the appraiser's guess is higher he has got to pay a penalty of 1 per cent for each 1 per cent advance in the appraiser's estimate.

Senator SACKETT. Could he not ascertain the wholesale value?

Mr. WALLACE. But vacuum cleaners are not sold wholesale. You will find that the manufacturers have representatives in the different department stores to sell those vacuum cleaners. All he can do is guess. Then after that is done it is going to court and the court is again going to estimate the value of that vacuum cleaner; and then it is probably going to the Court of Appeals, and every guess will be different. The court will not guess the same as the appraiser. The appraiser will not guess the same as the importer; and the Court of Appeals may guess different still, and for two years it is in litigation. He has got to enter his merchandise at some value; and all that time he has nothing but the hope of getting it back.

I submit that that as a tax statute is too vague, too difficult of application, to be allowed to remain in the bill.

Senator EDGE. Do you wish to file any of your statements?

Mr. WALLACE. I will file them this afternoon.
(Mr. Wallace submitted the following brief:)

BRIEF OF ELECTROLUX (INC.) NEW YORK CITY

COMMITTEE ON FINANCE,
United States Senate, Washington, D. C.

GENTLEMEN: Section 402 of H. R. 2667 contains provisions which are not only new in tariff legislation but so reactionary and revolutionary in their character that they have produced a storm of unfavorable comment in the press and otherwise throughout the entire country. This is particularly true in reference to paragraph (b), finality of appraiser's decision, which makes the decision of a local appraiser that foreign value or export value can not be satisfactorily ascertained final and conclusive upon all parties in any administrative or judicial proceedings, except that an importer may file a request with the Secretary of the Treasury (the appraisre's superior officer) for a review of such decision, whose decision in rurn is made final and conclusive upon all parties in any administrative or judicial proceedings.

This can mean but one thing, and that is to commit absolutely to the appraiser and the Secretary of the Treasury, without any judicial review whatever, the determination of the question whether or not foreign value or export value shall be the basis of appraisement of merchandise, thus substituting departmental fiat for the judicial review and determination of such questions which importers have heretofore had for many years. It has been repeatedly held by the courts that the determination of the question as to which of the several prescribed values shall apply to imported merchandise is a question of law to be determined from all the facts in a given case.

Thus, the provision as now constituted, commits to administrative officials the exclusive and final determination of a question of law, which questions it has always been the policy of our Government to have determined by duly constituted courts of law. We do not know of another instance where it has even been attempted to foreclose the citizen from a judicial review and determination of any question between him and his Government.

That is why we say the present legislation is revolutionary and reactionary. It is an abrupt and unjustifiable step backward in customs legislation. For many years the tendency has been, and properly so, by the courts as well as the Congress, to safeguard the importer's rights in every way, and to provide a judicial method of reviewing and settling every question arising in connection with the importation of merchandise.

Moreover, a special court, now denominated the United States Customs Court by special act of Congress, has now for many years had committed to it the judicial determination of these questions, with a right of appeal from its decisions in former years to the United States district and circuit courts, the Circuit Court of Appeals, and the Supreme Court; and in later years to the specially constituted Court of Customs Appeals, with a further appeal to the Supreme Court in certain kinds of cases.

The powers and jurisdiction of the Customs Court have been increased and enlarged from time to time by successive Congresses, until now there is not a question arising between an importer and his Government for the settlement of which there has not been provided a judicial means of consideration and determination.

An importer now has a judicial review of every act of the collector of customs in connection with imported merchandise, and of every charge or exaction made by him against an importer, whether it be the result of his own act or by direction of the Secretary of the Treasury, his superior officer.

Likewise, an importer now has a judicial review of every act of the appraiser in connection with the determination of the proper dutiable value of such merchandise.

The tariff act of 1922 made still further strides in providing necessary and adequate judicial remedies for importers, viz the remission of so-called additional or penal duties arising from the fact that the final appraised value exceeded the entered value, where it was shown to the satisfaction of the Customs Court that such "undervaluation" was not intended to defraud the Government, or to mislead the appraising officers; the remission of duties on merchandise which was damaged while in Government custody by fire or other casualty, to the extent of such damage; the right to amend a protest by adding other claims to it at any time before the first docket call of the protest; the right to have the decisions of the collector of customs in connection with drawback reviewed by the Customs Court, etc

These remedies have grown out of a recognition that all transactions between a citizen and his Government should of right be the subject of judicial review and determination, and that their finality should not rest with administrative officials, no matter how high their standing in the administrative machinery of the Government. They have doubtless come into existence as the result of principles clearly and fearlessly enunciated many years ago by Judge Story in his opinion in Cary *v.* Curtis (3 How. 236), in which he said:

"I know of no power, indeed, of which a free people ought to be more jealous, than of that of levying taxes and duties; and yet if it is to rest with a mere executive functionary of the Government absolutely and finally to decide what taxes and duties are leviable under a particular act, without any power of appeal to any judicial tribunal, it seems to me that we have no security whatsoever for the rights of the citizens. And if Congress possess a constitutional authority to vest such summary and final power of interpretation in an executive functionary, I know of no other subject within the reach of legislation which may not be exclusively confided in the same way to an executive functionary;

* * * * * *

"* * * What ground is there to suppose that Congress could intend to take away so important and valuable a remedy and leave our citizens utterly without any adequate protection?"

* * * * * * *

"Where, then, is the remedy which is supposed to exist? It is an appeal to the Secretary of the Treasury for a return of the money, if in his opinion it ought to be returned, and not otherwise. No court, no jury, nay, not even the ordinary rules of evidence, are to pass between that officer and the injured claimant, to try his rights or to secure him adequate redress. Assuming that the Secretary of the Treasury will always be disposed to do what he deems to be right in the exercise of his discretion, and that he possesses all the qualifications requisite to perform this duty, among the other other complicated duties of his office—a presumption which I am in no manner disposed to question—still it removes not a single objection. It is, after all, a substitution of executive authority and discretion for judicial remedies. Nor should it be disguised that upon so complicated a subject as the nature and character of articles made subject to duties, grave controversies must always exist (as they have always hitherto existed) as to the category within which particular fabrics and articles are to be classed. The line of discrimination between fabrics and articles approaching near to each other in quality, or component materials, or commercial denominations, is often very nice and difficult, and sometimes exceedingly obscure. It is the very case, therefore, which is fit for judicial inquiry and decision. * * *

* * * * * * *

"Besides, we all know that, in all revenue cases, it is the constant practice of the Secretary of the Treasury to give written instructions to the various collectors of the customs as to what duties are to be collected under particular revenue laws, and what, in his judgment, is the proper interpretation of those laws. I will venture to assert that, in 19 cases out of 20 of doubtful interpretation of any such laws, the collector never acts without the express instructions of the Secretary of the Treasury. So that in most, if not in all, cases where a controversy arises, the Secretary of the Treasury has already pronounced his own judgment. Of what use, then, practically speaking, is the appeal to him, since he has already given his decision? Further, it is well known, and the annals of this court as well as those of the other courts of the United States establish in the fullest manner, that the interpretations so given by the Secretary of the Treasury have, in many instances, differed widely from those of the courts. The Constitution looks to the courts as the final interpreters of the laws. Yet the opinion maintained by my brethern does, in effect, vest such interpretation exclusively in that officer.

"These considerations have led me to the conclusion that it never could be the intention of Congress to pass any statute by which the courts of the United States, as well as the State courts, should be excluded from all judicial power in the interpretation of the revenue laws, and that it should be exclusively confided to an executive functionary finally to interpret and execute them—a power which must press severely upon the citizens, however discreetly exercised, and which deeply involves their constitutional rights, privileges, and liberties. The same considerations force me, in all cases of doubtful or ambiguous language admitting of different interpretations, to cling to that which should least trench upon

those rights, privileges, and liberties, and a fortiori to adopt that which would be in general harmony with our whole system of government."

While this was a dissenting opinion, the majority of the court having held that a rider in an appropriation bill requiring collectors to turn over to the Treasury money received on protested classifications, had destroyed the common law remedy to sue the collector, the Congress immediately by a special declaratory statute made Judge Story's opinion the law of the land, expressly enacting therein that nothing in the appropriation rider should be construed to destroy the common law remedy by suit against the collector.

One can not read the above quotation from Judge Story's opinion without feeling that it almost seems to have been written as a prophetic warning against just such an attempt to curtail judicial review as that contemplated in the legislation now under consideration. Moreover, grave doubt arises whether such an attempt would not be in violation of the Federal Constitution—the taking of a citizen's property without due process of law.

In this connection we quote from Dr. Frank J. Goodnow's Principles of Constitutional Government in reference to the necessity of a judicial review of administrative action, viz:

"We may say, then, that one of the fundamental principles of consitutional government, as seen in the law of modern European States, is:

"First. The existence of judicial bodies independent in tenure of the executive; which shall;

"Second. Apply the law regulating the relations of individuals one with another—usually called the private law—by deciding the cases brought before them; and

"Third. Shall apply in the same manner the law regulating the relations between officers of the Government and private individuals—usually called the public or administrative law.

"Whether a formal distinction is made between the private and the administrative law, and whether these two functions are discharged by the same courts, are matters of comparatively little importance. The important thing is that the courts which have these powers shall be independent of the executive. Without such independence it may be said that constitutional government is impossible."

It is elemental that the sole function of the court in a tax case is to decide whether the tax has really been levied or not—whether the legislature has said the citizen before the court has been taxed at all or with the correct amount. To deprive the citizen of the right to have that issue sifted and tested before an independent judicial body by giving him such appeal is to deprive him of a right so fundamental—the right to show his governmental administrators have illegally taken his money—that without it constitutional liberty is indeed impossible.

It is quite evident that the present system of customs judicial procedure, as well as the establishment of special tribunals to consider and decide all questions arising between the importer of merchandise and his government, have been developed and extended from time to time in keeping with the fundamental principles so well expressed in Judge Story's opinion. It is, therefore, almost inconceivable that at this late day an attempt should be made to deprive an importer of a part of his judicial review, and to curtail the long established jurisdiction of the customs courts.

Yet, not only is this thing proposed in the House bill, but in the original bill as introduced in the House there was a provision changing the name of the United States Customs Court back to its old title, "Board of Appraisers." This attempted action, coupled with the provision for curtailing the court's jurisdiction as above pointed out, was such a manifest attempt to embarrass and belittle the court, and caused such a storm of disapproval from all parts of the country, that the change of name provision was eliminated in the bill by the House. But the curtailment of the court's jurisdiction to review and determine foreign and export values was retained in section 402 of the bill, as it was passed by the House.

All this clearly indicates and points to but one conclusion—that a concerted attempt has been made, and is being made, by the administrative arm of the Government (the provision has the backing of the Treasury Department) to arrogate to itself the final decision of questions heretofore committed to judicial consideration and determination. It is retrogression of the worst kind, from the standpoint of both the citizen-importer and the customs courts, and should not be countenanced by the upper House of Congress.

And the scheme back of all this is perfectly obvious to anyone familiar with the matter. For some years the Treasury Department, as well as other interests, have advocated a general policy of making all imports dutiable upon the basis

of United States value. This policy was strongly advocated and fully discussed when the tariff act of 1922 was in the making. Reams of testimony, pro and con, were taken before both committees of Congress having the tariff bill in charge. The scheme was finally rejected by Congress.

Again, when the present pending tariff bill was under discussion in the House, the same scheme was strongly advanced and urged, and once more it failed to find a place in the bill.

But, strange as it may seem, the very scheme which Congress itself has twice refused to sponsor and adopt as a general policy has now been indirectly introduced and committed to the appraiser and the Secretary of the Treasury for application without any judicial review whatever. In other words, under section 402 the appraiser and the Secretary of the Treasury may apply United States value whenever they may see fit to do so, and their decision in that regard is absolutely final and conclusive. It works out in this way, under the rather ingenious method which is prescribed in section 402:

If the appraiser and the Secretary of the Treasury decide that neither the foreign value nor the export value can be ascertained, their decision in that respect is absolutely final.

Then section 402, in (a) (2), provides that if neither the foreign value nor the export value can be satisfactorily ascertained that the United States value shall be used. So it is evident that if the administrative arm of the Government desires to put the United States value upon an importation, all it has to do is to make its own decision that foreign and export value can not be satisfactorily ascertained, and its decision in that respect is final.

The fact that finality of decision in section 402 attaches only to the action of the administrative officials in excluding foreign and export values from consideration, shows that its clear purpose is to enable them to fasten United States value upon an importation absolutely and finally, without any judicial review whatever of their action. After that point in the proceeding the right to appeal to reappraisement by the Customs Court under section 501 is carefully preserved. But while the court apparently may judicially pass upon the question of "how much the United States value shall be, it is absolutely foreclosed from considering the question whether United States value should in any event have been applied by the administrative officials. They are the final arbiters in irrevocably fastening United States value upon importations.

Paragraph (a) (3) of section 402 provides that if the appraiser determines that neither the foreign value, the export value, nor the United States value can be satisfactorily ascertained, then the cost of production shall be applied; and paragraph (a) (4) provides that if there be any similar competitive article manufactured or produced in the United States of a class or kind upon which the President has made public a finding as provided in subdivision (b) of section 336, then the American selling price of such article shall be applied.

The determination of whether one of these other two values shall apply is apparently still subject to judicial review. All that is excluded from judicial review is the finding of the administrative officials that foreign and export values can not be ascertained, which finding finally and irrevocably fastens United States value upon an importation.

And to make certain that every door shall be closed to an importer, there is a provision near the end of the paragraph (b) that an importer shall be deemed to have finally waived any right to a review by the Secretary of the Treasury if he takes an appeal for reappraisement under the provisions of section 501. In other words, if a local appraiser puts United States value upon an importation, and the importer takes an appeal for reappraisement to the Customs Court to endeavor to obtain a judicial review of the appraiser's action, then he is deemed to have waived even the right to a review of the appraiser's action by the Secretary of the Treasury. All this, manifestly, is beaurocracy in its worst form, and should not, and doubtless will not, have the approval of the Senate.

Another vicious feature of this proposed beaurocratic innovation is the circumstances under which the importer is given an opportunity to be "heard" before the Secretary of the Treasury on appeal to him for a review of the action of the local appraiser in putting the United States value upon his merchandise. Section 402, (b) provides that "upon such request the Secretary of the Treasury shall, after reasonable notice and opportunity to be heard has been afforded the consignee of his agent" proceed to render his decision in the matter. This "opportunity to be heard" can only mean that the importer must go to Washington for his hearing before the Secretary (or content himself with filing a written brief), for it can not be assumed that the Secretary will go to the importer's

place of residence to give him a hearing there. It has been held by the Court of Customs Appeals that where Congress commits the doing of something to the Secretary of the Treasury he can not delegate the doing of it to anyone else but must do it himself. (United States *v.* Tower & Sons, 14 Ct. Cust. Appls. 421.)

It therefore follows that importers throughout the United States would not be afforded equal opportunity to be "heard," for the importer in San Francisco, 3,000 miles from Washington, would be at a distinct disadvantage as against the importer in Baltimore, Philadelphia, or New York, who could go to Washington for his hearing before the Secretary within a few hours and at comparatively little expense, which the San Francisco importer would have to take a week or more to make the trip, and it might well cost him more than the entire amount involved in the matter before the Secretary.

On the other hand, if the review of the local appraiser's action in putting United States value upon an importation were left where it belongs—a judicial review of the matter by the United States Customs Court—then the importer would have his "hearing" at his own port of entry in accordance with the long-established and practiced custom of that court to hold regular hearings throughout the year at all of the principal ports of entry in the United States, where the importer not only can be heard by the court, but also has the opportunity to face the local appraiser whose action is under consideration, and to cross-examine him and any other witnesses the Government may produce at the trial of the case. In other words, have an orderly judicial consideration and disposition of the issue.

The schedule of hearings by the United States Customs Court for the present year (published in T. D. 43108) shows that the court was scheduled to hold hearings in 52 different ports of entry throughout the country, at some of them several times during the year. This, therefore, shows that Congress in the past has not only deemed it essential to give importers a judicial review of all questions arising in connection with the importation of merchandise, but also that they should have a convenient hearing on these matters at their own ports of entry.

Not only does paragraph (b) deprive the importer of a judicial review of the question whether or not United States value shall be put upon his merchandise, but it also forecloses him in like manner in respect to the question whether foreign value or export value shall be used, for the provision reads:

"Any decision of the appraiser that the foreign value or the export value, or both, can not be satisfactorily ascertained shall be final and conclusive upon all parties in any administrative or judicial proceedings" * * *.

Hence, the administrative officials of the Government can also finally fix upon merchandise either the foreign or the export value, without any judicial review whatever of their action, and all that the importer can have reviewed by the customs courts, on appeal to reappraisement, is the question of the amount of the foreign value or the export value, as the case may be.

Thus another question of law is taken away from consideration and determination by the customs courts, and committed to the administrative officials of the Government for final decision, depriving the importer of the judicial review of such question, which he has had for many years.

It is probably a safe statement to make that most of the reappraisement cases which have been passed upon by the Court of Customs Appeals (whose jurisdiction in such cases is limited to questions of law) under the tariff act of 1922 have involved the question as to which value was applicable to the merchandise rather than the amount of the particular value used in the appraisement. There can, therefore, be no doubt that paragraph (b) seeks to commit to administrative officials the final and conclusive determination of questions of law, which have heretofore always been committed for decision to the courts. This is, indeed, a step backward which is deplorable and alarming, and which should have very careful and sincere consideration by this committee of the Senate before it subscribes to a proposition of this kind. In fact it is inconceivable that the House, in passing paragraph (b) of section 402, could have fully understood and relized how revolutionary its action is when carefully analyzed.

Taking all the above into consideration section 402 manifestly commits to the administrative officials the power to finally and conclusively use the United States value whenever they see fit to do so, without any judicial review whatever. The determination of all questions up to the point where United States value may be applied under section 402 is absolutely left to the appraiser and the Secretary of the Treasury; after that point the right of judicial review is preserved to the importer. The purpose is perfectly plain. While the House did not see fit to assume the responsibility of adopting United States value generally

as a basis for valuation, it was prevailed upon to commit the imposition of that value upon merchandise under certain circumstances to the administrative officials; and by making their action final and conclusive, and not subject to judicial review, it in effect has given the administrative officials absolute power to use United States value wherever they may see fit to do so. In other words, what the House would not assume to do itself, it has empowered the administrative officials to do in their own absolute discretion.

Another new and novel feature has been introduced in paragraph (e) of section 402, which defines "United States value," viz:

"(2) if such or similar imported merchandise is not so offered for sale in the United States, then the estimated value, having regard for differences in quality and other differences, based on the price at which merchandise, whether domestic or imported, comparable in construction or use to the imported merchandise, is so offered for sale." * * *

This provision, we submit, forms such an uncertain and far-fetched basis for establishing the dutiable value of imported merchandise that it would be wholly impracticable and even unjust in its application. It substitutes an estimated value for a real existing value, and bases the "estimate" upon vague and indefinite comparability "in construction or use" to some other article, either domestic or imported. How can such an uncertain and indefinite basis of value result in anything more than guesswork? How can comparability "in construction or use" be determined with any degree of certainty or fairness?

An imported article may be comparable "in construction" to another article, and it may also be comparable "in use" to still another article. Upon which article is the "estimate" of the value of the imported article to be based?

Under previous tariff acts, in which imported merchandise was made dutiable upon the value of "such or similar merchandise," much litigation arose over the apparent simple question of what constituted "similar merchandise," where only merchandise, as such, was to be considered; and often this question was very difficult to determine by the courts. But that was something definite compared with what is now proposed in the new provision above quoted—an "estimate" based, not upon "similar merchandise," but upon merchandise which is "comparable in construction or use" to the imported merchandise. Can anything more indefinite, vague, and complicated be imagined, or anything more difficult of application with reason or fairness?

Suppose a new kind of automotive vehicle, built upon an entirely new principle, were imported, and the appraiser and Secretary of the Treasury should decide that neither the foreign nor the export value could be ascertained; then United States value would have to be used; but assume that the new car was not freely offered at wholesale in the United States, nor was a "similar" car so sold. Then the new car would be "comparable in use" to all the different kinds and grades of automobiles which are freely offered for sale in the United States, from the Ford car to Rolls Royce car. Which of these cars would be used as a basis to "estimate" the dutiable value of the new car?

One of our clients import a vacuum cleaner which is not sold at wholesale in the home market, either for home consumption or for export. Hence, there is no foreign value or export value for the article.

The United States value does not apply because the article is sold here only at retail, not at wholesale; hence, under the present tariff act, the "cost of production" value is used, which produces a dutiable value of about $13.

However, under the provision in paragraph (e) (2) of section 402 of the proposed act, above quoted, "United States value" would be "estimated" on the basis of the price at which a domestic article, "comparable in construction or use" to the imported article, is offered for sale here at wholesale.

It so happens that there are a number of such "comparable in use" articles so offered for sale in the United States, varying in price from about $10 to $80. Which of these articles is to be used for comparison to "estimate" the dutiable value of the imported article?

If the $80 domestic article is used, which is most likely, and all the allowances and deductions therefrom provided for in paragraph (e) are made, then the result would be a dutiable value for the imported article of about $39 as against $13 under the present act, an increase of 200 per cent.

And in addition to that increase in dutiable value, the rate of duty on the imported article has been increased from 30 to 40 per cent in the proposed tariff act.

We think if this paragraph is retained there must be litigation upon each entry where estimated value is used, which includes all present cost of production

items, and if the court, which has the last estimate, advances the entered value, counsel for domestic interests will no doubt, when the next tariff is being prepared, cite each such instance as another example of undervaluation by importers.

Respectfully submitted.

CURIE, LANE & WALLACE
By HERBERT M. WALLACE.

STATEMENT OF CARL A. SAUER, REPRESENTING MARSHALL FIELD & CO., CHICAGO, ILL.

Mr. SAUER. I do not desire to take up the time of this committee by going over anything that has been presented so far. You have heard all the arguments on both sides. I desire only to go on record before you gentlemen as supporting the evidence brought up by Mr. Bevans and Mr. Fix yesterday, opposed to any change in the basis of valuation and to section 402 as now incorporated in the House bill.

I desire further to call your attention to the character of business that is making this statement, and I will do that by reading one short paragraph of the brief, which I will submit to the clerk.

Our business is that of wholesale and retail distributors of merchandise which we obtain by direct purchase, by manufacture, and by importation. Our manufactures in 1928 amounted to roughly $26,000,000, to which figure there should be added several millions of dollars of converted domestic merchandise on which we carry on partial manufacturing processes. Our imports in the same year amounted to roughly $10,000,000 landed cost. These imports are either entirely noncompetitive with domestic products, or, by reason of special quality, finish, or style, round out our line of domestic merchandise and enable us to meet the demands of the consumer.

The only reason I bring that up, gentlemen, is to show you that, due to the diverse character of our business, we must assume a sound attitude on the manner of valuation.

The CHAIRMAN. What percentage of their business do Marshall Field & Co., import?

Mr. SAUER. Of our total purchase business?

The CHAIRMAN. Of their annual business?

Mr. SAUER. I have wired for the figures that will enable me to give you that percentage. I do not have them here. I can furnish that information to you.

The CHAIRMAN. You have an idea. I have had it stated to me a number of times but I do not know whether it is true or not.

Mr. SAUER. I prefer not to make an estimate or guess right here. I can furnish you that in a matter of a few hours.

Senator REED. You may put it in the record.

Mr. SAUER. Yes.

CHICAGO, ILL., *June 14, 1929.*

CARL A. SAUER,
Washington, D. C.:

In addition to figures on our imports and our domestic manufactures stated in brief we convert or partially manufacture in United States twelve million and purchase in domestic market eighty-two million, making one hundred thirty million.

THOMAS H. EDDY.

Senator REED. You have given a preference. What is your attitude as to the basis of valuation?

Mr. SAUER. Our attitude is to leave it as it is now on foreign valuation. We are further opposed to the provisions of section 402-b as to the finality of appraisement.

Senator REED. You think that ought to be specified by a court?

Mr. SAUER. By a court, not by an administrative officer.

Senator KING. May I ask a question?

Mr. SAUER. Certainly.

Senator KING. Has Marshall Field & Co., a reputable firm, an American firm, occasionally had its valuation which it has stated according to its best information it could get, raised by the appraiser?

Mr. SAUER. Absolutely.

Senator KING. Was that undervaluation a fradudulent valuation upon your part?

Senator BINGHAM. That is not a fair question.

Mr. SAUER. It is not fraudulent.

Senator BINGHAM. It is not everybody does that.

Senator KING. It is for the witness to say.

Senator BINGHAM. It is not a fair question to ask.

Senator KING. The witness can answer it. I want to know the facts.

Mr. SAUER. I do not object to answering the Senator's question. It is necessary to add that valuation is based on the wholesale market price, which may change from the time the buying order is given until the merchandise reaches here.

Senator BINGHAM. I do not think any American business man who appears here ought to be asked a question of that kind, which implies the possibility that he will be guilty of fraud.

Senator KING. I know that Marshall Field is not any more guilty of the practice, but they have testified that nearly everybody who imports is guilty of fraud.

Senator REED. What is the difference to the United States whether it is innocent or fraudulent? They lose the tariff just the same.

Senator KING. They do not lose it.

Senator REED. That is why you perfer the foreign selling price to the American selling price?

Mr. SAUER. One reason for our preference is that the foreign valuation enables the importer to do business on a basis of certainty as against uncertainty, and it might make a difference in the United States valuation where the value is put on after the merchandise reaches here.

Senator REED. In other words, you sell the merchandise before it reaches here.

Mr. SAUER. Not that.

Senator REED. Then what difference does it make? I can see where it determines the wholesaler's attitude in a line that buys and sells goods six months ahead, but you do not do that, do you? Your firm does not do that?

Mr. SAUER. We sell some things ahead, placing orders abroad, but when the price is uncertain we meet with this sort of thing. We can send our buyers abroad to buy merchandise which we know will be demanded by a certain type of domestic consumers and we know about what that consumer will pay, but if we are uncertain as we would be under the United States valuation as to what we should

have to charge due to the variable duty involved, we could not afford to go abroad to place orders.

Senator REED. The uncertainty exists only in the case of the importers.

Mr. SAUER. If the merchandise is a staple line I should say this uncertainty would not exist.

Senator EDGE. You made an interesting statement, if I understood you correctly, that the largest proportion of your imports were not in competition with American production. In a general way I think I know what your imports are. Did I understand it correctly that the major part of your imports are not in competition with similar articles produced here?

Mr. SAUER. Yes, sir; the major part of our importation is what has been called before your committee style merchandise.

Senator EDGE. I am merely asking for information. It is rather a remarkable fact.

The CHAIRMAN. In those cases where undervaluation has been charged, has it ever been proven to the Government that they were entered at a lower value than the cost?

Mr. SAUER. Has it ever been proven?

The CHAIRMAN. Yes.

Mr. SAUER. As to our valuation?

The CHAIRMAN. Has Marshall Field ever been obliged to pay additional duty?

Mr. SAUER. Yes; we do that.

The CHAIRMAN. In those cases did the Government take the wrong position? Did they take more money out of your firm than was allowed under the act itself?

Mr. SAUER. I could not answer that.

The CHAIRMAN. Was it wrong in the case of Marshall Field in any case where there was an undervaluation?

Mr. SAUER. You mean whether the court has decided according to our laws that they were wrong?

The CHAIRMAN. Yes.

Mr. SAUER. Offhand I should say not.

The CHAIRMAN. That is what I wanted to know.

Senator BARKLEY. If I understood you about this uncertainty, when you send your buyer abroad to purchase a certain quantity, you have a reasonable approximation as to what the duty will be on it when it comes into this country. But if you have to purchase it with your eyes shut, not knowing what the United States value may be when it comes out three months or six months later, you would not know how to fix your prices on it and, therefore, not know what to purchase.

Mr. SAUER. We would not know whether we could sell it or not. The brief I have here is as follows:

Dealing with section 402 of H. R. 2667, may I say as representing Marshall Field & Co., of Chicago, Ill., that our business is that of wholesale and retail distributors of merchandise which we obtain by direct purchase, by manufacture, and by importation. Our manufactures in 1928 amounted to, roughly, $26,000,000, to which figure there should be added several millions of dollars of converted domestic merchandise on which we carry on partial manufacturing processes. Our imports in the same year amounted to, roughly, $10,000,000 landed cost. These imports are either entirely noncompetitive with domestic products, or, by

reason of special quality, finish, or style round out our line of domestic merchandise and enable us to meet the demands of the consumer.

In section 402, paragraph (a), part (2), provision is made that "if the appraiser determines" that neither the foreign nor the export value can be satisfactorily ascertained, then the United States value shall be used as the basis of appraisal. This puts into the hands of an individual employee of the Treasury Department the determination of the question of the basis of valuation, a question of law at present committed to the Customs Court and the Court of Customs and Patent Appeals. Under the existing law the appraiser is independent of the Treasury Department, and dissatisfaction with his decision, whether such dissatisfaction be on the part of the importer or on the part of the Government, must be brought for redress to a court whose function is the impartial and disinterested interpretation of the law.

Paragraph (b) of the same section provides that the decision of the appraiser is final, subject to review only by the Secretary of the Treasury, who is an interested party and whose decision thereupon is final and binding on all parties. This means a purely administrative review by the Bureau of Customs, or, in other words, the passing upon evidence and upon a question of law by a clerk of that bureau. It is only natural that this procedure would tend to work to the disadvantage of the importer because Treasury Department and customs bureau officials would have a very natural bias in favor of their own, revenue-producing bureau of the department.

Paragraph (c) of section 402 redefines United States value in terms which are capable of varying interpretations. Part (1) defines the United States value of imported merchandise as "the price at which such or similar imported merchandise is freely offered for sale" etc., in which definition the words "or similar" admit considerable latitude since no mention is made of the basis of similarity such as use, construction, quality, etc. The same fault is found with the words "or similar" in the construction of part (2) of this paragraph: "If such or similar merchandise is not so offered for sale in the United States."

Moreover the phrasing "then an estimated value," having regard for difference in quality and other differences, etc., will be found capable of considerable variations of interpretations since it lacks the quality of being specific.

This estimated value is further required to be based "on the price at which merchandise whether domestic or imported, comparable in construction or use to the imported merchandise, is offered for sale." The words "comparable in construction or use" are again capable of wide latitudes of interpretation; many specious arguments could be presented on either side of any specific case whereby an article truly comparable in construction and use but of either higher or lower quality could be chosen as the basis for the preparation of such estimated value.

In computing this estimated value, further, provision is made for the deduction of the costs of transportation and insurance, of a commission if any is involved, of profits not to exceed 8 per cent, of general expenses not to exceed 8 per cent, "and, in the case of imported merchandise, for duty"; that is, if the article with which the imported merchandise in question is being compared for the purpose of estimating a United States value is itself an imported article, then duty paid on such imported article is to be deducted. But if the article with which the imported merchandise in question is being compared is a domestic article, then no allowance for an amount comparable to duty can be made. Thus since there is no provision which requires either domestic or imported merchandise to be used as a basis of comparison, it would be possible to arrive at two separate United States values, one higher than the other by the amount of duty paid on a similar article.

It can be very easily seen that, as a result of relying on information gained from the domestic market for the settlement of questions of valuation, the Treasury Department places the importer at a great disadvantage. Information on selling prices of domestic articles must be obtained from domestic manufacturers, since there would be no other source, and, with a double motive (reducing competition and keeping up his own level of prices) the domestic manufacturer would naturally have a bias in furnishing information that would operate to his own interest.

The fact that the entire procedure provided in section 402 removes the possibility of an appeal to the Customs Court or the Court of Customs and Patent Appeals on the part of a dissatisfied importer can be interpreted as being due to an unwillingness to allow the questions of value involved to come before an impartial and disinterested tribunal for an interpretation of the law.

One effect of the operation of this section as now proposed would be to put into the hands of an administrative officer the power to raise rates of duty. The appraiser can, by his own decision, change the basis of valuation from foreign to United States value. Since rates of duty are designed at present to be applied to foreign value, the application of these same rates to United States value amounts in effect to an increase in the rates of duty on the articles affected.

Under the provisions of this section importers would be obliged to go to Washington in order to secure a proper and satisfactory hearing on their cases, thus working a hardship on all importers but especially upon smaller firms.

The uncertainty as to whether merchandise would be held dutiable at foreign or United States valuation and if the latter, whether the duty would be determined by comparison with a foreign or a domestic article and whether allowance would be made for duty or not, this uncertainty would be so great as to effectually deter merchants from purchasing goods abroad. No merchant would be able to predict with any reasonable amount of assurance the cost of his imported merchandise after it had landed in this country.

Due to the looseness of construction of this section, an increase in the number of commodities on which United States value is applied is certain. The increase in the amount of duty due to the operation of this section, together with the increase due to the rates proposed in H. R. 2667 would definitely restrict imports, thereby reducing the actual revenue obtained and, what is more serious, exercise a deleterious effect on American export trade.

(The foregoing brief is signed by Thomas H. Eddy, treasurer of Marshall Field & Co.)

STATEMENT OF JOSEPH F. LOCKETT, BOSTON, MASS.

Mr. LOCKETT. Mr. Chairman and gentlemen of the committee: I will just speak a few minutes concerning section 402 (*b*), in the House bill, and I am speaking as a practicing attorney specializing in customs and tariff matters, and have been in practice for about 17 or 18 years in Boston. I speak for myself and do not represent any group or individual.

I want to say first that I indorse what Mr. Brooks said yesterday as president of the Customs Bar Association, and I subscribe to those resolutions, but there are certain details, perhaps, that the committee has not had clearly brought to mind concerning what I believe to be a most extraordinary suggestion. Under the practice that exists today an importer may bring in his goods and he may enter them, for example, at the foreign market value, at a certain valuation. If the appraiser says that the export value is higher and that said export value should control because it is higher, the importer then may take an appeal to one of the judges of the United States Customs Court. When that case goes to the court the issue involves not only the question of value but also whether the duty will be assessed on the export value or the foreign market value. From this decision there is an appeal to three judges of the Customs Court sitting in New York, known as the appellate division, and then from that decision there is an appeal to the United States Court of Customs Appeals in Washington. Therefore, I believe that this right which has been enjoyed by the citizens of the country for many years should not be taken away, because it is an inexpensive practice apart from the counsel fees, in that there are no court costs or charges. The importer has a right to have his case heard in San Francisco, Galveston, Tex., or St. Albans, Vt., or in any other part of the country. These judges sit at different places throughout the country during the year.

Can you imagine the result which would happen in the handling of something like 15,000 cases, which Mr. Brooks mentioned yesterday

by the Treasury Department in Washington? These are known as reappraisement cases and as Senator Reed observed yesterday it means that about 50 cases a day would have to be disposed of by department officials. Can you conceive that one man or a group of men in Washington, and I have no complaint against the officials in the customs department because I consider them among the very best Government employees, high-grade, honorable, and efficient in every way, could give these matters as prompt consideration as does the court now by giving the importer or the American manufacturer the opportunity to have a trial at their home ports on the issues involved. We all know as a matter of practice that this work would not be done by the Secretary; it means it would be handled by some one delegated by him, and however well-intentioned that person might be, under the proposed law, if the appraiser at the port of Boston, in the case which I have stated, should say that the export values should apply as they are higher, there is an appeal to the Secretary of the Treasury down here, and his decision is final and conclusive and there is no appeal to any court whatsoever. There is, for example, Senator Shortridge, some very distinguished counsel in San Francisco who appear for importers in that district who might be inconvenienced by coming to Washington, assuming that the case justified expenses of the trip. I have no doubt but what the Treasury Department would endeavor to do the right and fair thing.

But here we have set up from years of experience a set of machinery for the handling of these cases, and it should not be discarded. I think somebody yesterday said there were criticisms before the House committee of the United States Customs Court and the Appellate Court. I want to say here publicly for the record that so far as I am concerned, based upon my experience, I have found the judges of those courts to be able, honest, and efficient men, and if there has been dissatisfaction with their decisions, as there frequently is, I think any fair-minded lawyer would be able to point out that much of it is due to the record. The judges, as everyone knows, are bound to decide these cases by the record.

Senator KING. Is that the court of which Judge Tilson, the brother of leader Tilson, is a member?

Mr. LOCKETT. He is on the lower court. That is what is known as the trial court, the United States Customs Court.

Senator SHORTRIDGE. That is in New York City

Senator KING. That is the court that has ambulatory cases.

Mr. LOCKETT. Ambulatory; yes.

Senator SHORTRIDGE. You are more or less familiar with the court. Does the Government lose anything by delay incident to the trial and appeal?

Mr. LOCKETT. My experience is this, Senator, that I do not believe that the Government does. The Government is represented by very efficient persons, and assistant Attorney General, with a staff of something like twelve lawyers. In every case of that kind in the court I believe the Government interest is well represented. Another feature that perhaps may be of interest, and which is favorable to the Government, irrespective of whether it is desirable or undesirable, is that the importers have to prove the negative of the case. The appraiser will mark the goods up and he does not have to sustain it.

The burden of proof is on the importer and he must sustain the lower value by a preponderance of the evidence.

Senator SHORTRIDGE. Apart from the decision of the court, whatever it may be, the delay occasions some loss to the Government?

Mr. LOCKETT. No, sir; I don't think so. I can not conceive that if the cases were concentrated in Washington for decision it would lessen any delay, it would increase it in my opinion. The decisions of the court are now made by nine men who dispose of them as promptly as possible and with but little delay.

Senator SIMMONS. At the present time these appeals to the Judges of the Customs Court sitting separately as has been stated are conducted in an orderly way and hearings are given in a very orderly way just like hearings in courts.

Mr. LOCKETT. Yes, sir, just as sittings in courts.

Senator SIMMONS. These judges are generally lawyers.

Mr. LOCKETT. Yes; they are all lawyers.

Senator SIMMONS. I believe we have had the contention in recent cases that no one has been appointed on the court unless he was a fine lawyer, thoroughly equipped.

Senator SHORTRIDGE. That is sound, too.

Mr. LOCKETT. Yes.

Senator SIMMONS. In these cases eminent lawyers have been appointed, but under the plan provided in the House bill these cases will be decided, you say, by clerks.

Mr. LOCKETT. Law clerks, possibly.

Senator SIMMONS. Law clerks of the Treasury Department.

Mr. LOCKETT. Yes.

Senator SIMMONS. They are lawyers and you might call them experts.

Mr. LOCKETT. I don't think, Senator, I can give a forecast or the arrangement which the Secretary would make if this section 402 (b) is enacted. That is beyond my province, but I think it is reasonable to assume these cases would be handled by lawyers in the Treasury Department, of whom there are many able experts in the customs division.

Senator SIMMONS. That would be a matter for the Secretary to determine and he would refer these cases to them.

Mr. LOCKETT. That is correct.

Senator SIMMONS. He might or might not refer them to a lawyer.

Mr. LOCKETT. That is true.

Senator SIMMONS. If he did refer it to a lawyer, would the machinery provided here be sufficient to give the litigants in the case opportunity of a regular hearing under rules of law which ought to regulate the decision of questions involving property rights.

Mr. LOCKETT. That is my point exactly. I can not forecast what system would be set up, but I do presume there would be some arrangement made for a hearing. In other words, the machinery we now have would in a sense be possibly duplicated although not so efficiently or economically. I was sorry I was not able to hear Senator Shortridge's most excellent address in New York last April, dedicating the new United States court building, although I read it afterwards. But we now have this elaborate machinery throughout the United States set up for handling these cases.

Senator HARRISON. I object to the ingenious method by which he is trying to get Senator Shortridge with him.

Mr. LOCKETT. You not having said anything, Senator, in opposition, I assumed you might be with me, too.

Senator CONNALLY. At present you have a judicial determination.

Mr. LOCKETT. Yes.

Senator CONNALLY. If you put it with the Secretary of the Treasury, you have a political determination with Senators and Members of Congress hot-footing it down there in each case.

Mr. LOCKETT. Possibly.

Senator CONNALLY. Lawyers cost money but Senators do not.

Mr. LOCKETT. That is a new proposition to me.

Senator SHORTRIDGE. That is, maybe, because lawyers are worth money and Senators are not.

Senator CONNALLY. Senators ought not to be worth anything in determining this question.

Senator SHORTRIDGE. Since there is a little levity indulged in here, let us not take it too seriously. Under this proposed system a case may be decided in San Francisco or Los Angeles against citizens importing if an appeal were to be taken, as I understand it.

Mr. LOCKETT. No appeal can be taken on the basis of value.

Senator SHORTRIDGE. Precisely, but there is an appeal in respect to a certain feature.

Mr. LOCKETT. Only as to the value after the basis has been determined.

Senator SHORTRIDGE. Certainly.

Mr. LOCKETT. Yes.

Senator SHORTRIDGE. That appeal would have to be prosecuted here in Washington.

Mr. LOCKETT. No, the appeal for the appraiser in the first instance would be heard in Washington.

Senator SHORTRIDGE. And that would necessitate coming down from far distant points. Possibly they would have to come from Texas. I do not know. There may be merchants down in Texas who import.

Mr. LOCKETT. Exactly.

Senator SHORTRIDGE. Thank you very much.

Mr. LOCKETT. Thank you very much.

BRIEF OF THE HOME MARKET CLUB, BOSTON, MASS.

Hon. REED SMOOT,

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

The American valuation method of assessing ad valorem rates of duty has been ideal for the coal tar branch of the chemical industry during the past seven years. America may well be proud of her dye industry. In 1914 the total domestic production of synthetic dyes amounted to 7,000,000 pounds. The American dye industry, properly protected by American valuation, was encouraged to make enormous expenditures in research and plant investment. It produced well over 95,000,000 pounds in 1927 and has become self-contained, for now only 6 per cent of our domestic consumption is imported. Furthermore, we have reduced the price of dyes and have become the second largest exporting country in the world. In 1927 we exported almost 27,000,000 pounds of dyes and became second only to Germany, having passed Great Britain, Switzerland, France, Italy, and Japan. It is logical to suppose that if American valuation is beneficial to one industry, it will be beneficial to other industries.

In order that all American producers, now being protected by ad valorem rates of duty, shall receive all the protection that it is the intent of Congress to give to them, we petition the Finance Committee to retain the present bases of value in the pending tariff bill, but to reverse their present order to read as follows:

"SEC. 402. Value. (a) For the purpose of this act the value of imported merchandise shall be—

"(1) The American selling price or the United States value, whichever is higher.

"(2) If neither the American selling price nor the United States value can be ascertained to the satisfaction of the appraising officers, then the foreign value or the export value, whichever is higher.

"(b) The American selling price of imported merchandise shall be the market value or price at which similar and competitive domestic merchandise is freely offered for sale, in the principal markets of the United States to all purchasers, at the time of exportation of the imported merchandise, in the usual wholesale quantities and in the ordinary course of trade. Any domestic product provided for in this act shall be considered similar to and competitive with any imported product which accomplishes results substantially equal to those accomplished by the domestic product when used in substantially the same manner.

"(c) The United States value of imported merchandise shall be the value thereof at the time of arrival at the port of importation, including the cost of all containers and coverings of whatever nature, all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for delivery in bond at the port of importation.

"(d) The foreign value of imported merchandise, etc.—as in present law.

"(e) The export value of imported merchandise, etc.—as in present law."

HOME MARKET CLUB,
WILLIAM H. CLIFF, *Secretary.*

BOSTON, MASS.

SUPPLEMENT

LETT

Hon. R
Ur

My
of the
headed
We w
paragra
or ore c
The
covers
We t
tion an
Than

LETT
A.

Hon.

My
asked
earnin
his ques
Total o
ship
Total p
(T
Average
Of t
was pai
5 comp
Anot
inspect
port of
The
$3,300,
are all
5 to 17
$2,500,
above
years.
I wis
shown
the com

SUBSTITUTION FOR DRAWBACK PURPOSES

[Sec. 313 (b)]

LETTER FROM THE CENTRAL ALLOY STEEL CORPORATION, MASSILLON, OHIO

Hon. REED SMOOT,
United States Senate, Washington, D. C.

MY DEAR SENATOR SMOOT: No doubt through an oversight in the writing of the present tariff, section 313, "Drawbacks and refunds" and paragraph B headed "Substitution for drawback purposes," ferrous metal has been omitted.

We would kindly ask that you consider placing the word ferrous metals in this paragraph, causing the paragraph to read "Sugar, ferrous or nonferrous metal or ore containing ferrous or nonferrous metal."

The paragraph as written with the exception of the omission of the word ferrous covers this subject very thoroughly.

We trust that it will be possible for you to include ferrous metals in this description and will appreciate anything that you can do to bring this about.

Thanking you, I beg to remain,

Yours very truly,

FREDERICK J. GRIFFITHS, *Chairman.*

EXTRA COMPENSATION

[Sec. 451]

LETTER FROM WILLIAM H. BOND, REPRESENTING THE NATIONAL ASSOCIATION OF UNITED STATES CUSTOMS INSPECTORS

BOSTON, *July 19, 1929.*

Hon. REED SMOOT,
Washington, D. C.

MY DEAR SENATOR: At the close of my testimony yesterday Senator Sackett asked me to furnish to the committee certain information as to the overtime earnings of the inspectors at this port. Following are the figures which cover his question as I understood it:

Total overtime paid during calendar year 1928 by railroads, steamship companies, and warehouses	$43,172.31
Total paid to 113 inspectors of customs	35,176.54
(The balance was paid to various employees.)	
Average amount received by inspectors	311.29

Of the grand total given above approximately 5 per cent, or about $2,000 was paid for work on railroad freight-car loading and unloading, divided among 5 companies.

Another Senator, I think Senator Shortridge, asked for the salaries paid to the inspectors. At such short notice I can only give the information regarding the port of Boston which may be sufficient, and which is as follows:

The Bacharach Act authorized salary ranges for inspectors from $2,100 to $3,300, and for station inspectors from $3,000 to $3,600. The station inspectors are all at the minimum of their grade although their service as such ranges from 5 to 17 years. We have 25 inspectors at $2,200, 42 at $2,300, 12 at $2,400, 17 at $2,500, 23 at $2,600, and 13 at $2,700; an average of $2,407.57, with not one above the average of the grade although their service ranges up well above 30 years.

I wish to take this opportunity to express my appreciation of the courtesy shown me. The patience and sympathetic interest shown by the members of the committee was very gratifying.

Very truly yours,

W. H. BOND.

ENTRY OF MERCHANDISE—BILLS OF LADING

[Sec. 484]

BRIEF OF HARPER & HARPER, ESQS., SAN, FRANCISCO, CALIF.

Hon. REED SMOOT,
Chairman Finance Committee,
United States Senate, Washington, D. C.

DEAR SIR: As a broker of over 30 years' experience and a customs attorney, I have been very much interested in proposed revisions of the tariff act of 1922.

The subcommittee on the tariff of the foreign trade section of the San Francisco Chamber of Commerce, of which I am chairman, has considered very carefully the requirement of section 484 that the original bill of lading must be presented to the customs at the time of entry. The committee, in cooperation with the Hon. W. B. Hamilton, Collector of Customs at San Francisco, prepared and drafted a brief suggesting certain changes in this section, a copy of which is herewith submitted for your consideration.

The difficulties which arise under the present law are many. To quote the report to the House of the Hon. Willis Hawley, chairman of the Committee on Ways and Means of the House of Representatives:

"In many shipments in the ordinary course of trade, the original bill of lading can not be obtained at the time of making entry, being held in the possession of a bank against payment of the purchase price of the merchandise, or delayed in transit or otherwise unavailable within the time prescribed for making entry. This general problem has resulted in varying practices at different ports of entry, where collectors have endeavored to make some arrangement whereby the deadlock could be avoided. This lack of uniformity of practice in itself is not desirable."

One can cite a thousand examples of the unnecessary cost and annoyance to shippers and consignees that are caused by the demands of the carrier and also the collector of customs that original bills of lading shall be lodged with each one of them, but it is only necessary to cite two examples here:

1. Our Latin-American friend sends his coffee to the United States port; the bill of lading is not at hand when the goods arrive; the consignee asks his bank to file a guaranty with the carrier that the bill of lading will be produced, and this is promptly done by the bank. The steamship company then issue a delivery order for the goods. There is no duty on coffee, but the collector of customs must also require a bond in lieu of the production of the original bill of lading in the sum of 150 per cent of the invoice value of the goods. Is it any wonder that our Latin-American neighbors complain about our red tape? He naturally can not understand why he must pay some hundreds of dollars (the charge made by the surety company) for supplying the bond, when the bank acting for the consignee has already given its guaranty to the carrier for the production of the identical document.

2. Wood oil is pumped into tanks of vessels at an outside port; the shipper and the steamship agent reside in the principal city, say Shanghai. When the figures as to the quantity of cargo are agreed upon, the bill of lading is signed and mailed to the consignee on the regular mail steamer. The steamer carrying the cargo goes direct to the United States, arriving before the steamer which carries the mail. The oil must be immediately pumped from the steamer's tanks into waiting railroad tank cars. This oil is free of duty. Again the bankers guarantee that original bill of lading will be presented by the consignee to the carrier and the delivery order for the oil is issued, but the pumping can not commence until the consignee has filed a surety company bond in a sum equal to 150 per cent of invoice value with the collector of customs (I know of one instance where the cost of this bond was $400).

To point out the handicaps to trade and the cause of the foreign trade complaint at our red tape, I refer to the record at one port only, the port of New York. There alone, during the past three fiscal years, an average each year of over 10,000 bonds have been filed, in the penal amounts of over $50,000,000.

To remedy these difficulties, the committee proposed that the law be amended by adding a paragraph (h) to section 484, as follows:

"Any person may, upon the production of a duplicate bill of lading signed or certified to be genuine by the issuing carrier, make entry for the merchandise in respect of which such bill of lading is issued, in the manner and subject to

the requirements prescribed in this section (or in the regulations promulgated hereunder) in the case of a consignee within the meaning of a paragraph (1) of section 483, except that such person shall make such entry in his own name. No merchandise so entered shall be released from customs custody except to such carrier, but the person so making entry shall be liable for the payment of all additional and increased duties on such merchandise."

For reasons hereafter stated it is believed that another amendment will be preferable to that proposed by the House of Representatives; but if your honorable committee decides to accept the House proposal it is respectfully suggested a slight change be made in the phraseology now used in the proposed bill.

The use of the words "duplicate bill of lading" may lead to some possible misconstruction of the provision because of technical use of "duplicate" in commercial practice. Under ordinary commercial practice a duplicate bill of lading is to all intents and purposes a second original signed and indorsed in all respects as the original. It is stamped "Duplicate" merely to avoid confusion with the original. The desired change in the law is one which will permit delivery to be made without the production of an original bill of lading or either first or second copy thereof, and to permit the merchandise to be delivered upon a document certified by the carrier to be a true copy of the bill of lading. Therefore, it is suggested that the requirement of production of a copy of the bill of lading issued by the carrier and certified by it to be in all respects the same as the original be substituted for the requirement that there be presented a "duplicate bill of lading signed or certified to be the original by the issuing carrier." It is believed this change will avoid any possible misinterpretation.

It is respectfully submitted, however, that the situation can be better remedied by the following amendments to sections 484 and 483.

Section 484 should be amended as proposed in the brief prepared by the collector of customs at San Francisco and the foreign trade committee of the San Francisco Chamber of Commerce:

Strike out all of paragraph (c) including subsections (1) and (2) and omit the words "bill of lading" in paragraph (d). Insert in lieu of paragraph (c) the following:

"The collector shall permit entry and release merchandise from customs custody without the production of the bill of lading. Merchandise that is not sent to a bonded warehouse or to the appraiser's store may be delivered by the carrier after receipt by the carrier of a permit to release from customs custody from the collector of customs. Merchandise sent to a bonded warehouse shall be delivered to the consignee by the proprietor of the warehouse on receipt of a permit to release from customs custody from the collector of customs and a delivery order from the carrier. Merchandise sent to the appraiser's store or other public stores shall be delivered by the collector of customs on receipt of a delivery order from the carrier.

"The delivery of any merchandise not herein provided for shall be made under such regulations as the Secretary of the Treasury may prescribe."

Section 483 should also be amended by deleting the present provisions and inserting in lieu thereof the amendment which I understand has been proposed by the authorities at the port of New York, as follows:

"Right to make entry: The consignee of imported merchandise, for the purpose of this act, shall be the person certified to the collector by the carrier, in a form prescribed by the Secretary of the Treasury, as being the person to whom delivery will be made after release from customs custody. The underwriters of abandoned merchandise and the salvors of merchandise saved from a wreck at sea or on or along a coast of the United States may, for such purposes, be regarded as the consignees. The collector as such, or individually, shall incur no liability by reason of the entry or release of the merchandise in accordance with the provisions of this section."

The advantage of this method of solving the problem of bills of lading for customs purposes is that it squarely places the responsibility for the delivery of the merchandise upon the carrier, where it properly belongs. An importer who can convince the carrier that he is entitled to delivery from the carrier can make entry without further difficulty; if he can not, it would be useless for him to make entry of the goods.

Furthermore, the amendment will relieve the collector of responsibility for the delivery of the merchandise. He will be relieved of the onerous burden of determining the validity and correctness of the numerous indorsements upon the bills of lading, thus eliminating a needless expense to the Government.

Yours respectfully,

F. F. G. HARPER.

INDEX TO SPECIAL AND ADMINISTRATIVE PROVISIONS

NAMES

H

I

K

L

Mc

M

N

O

P

SUBJECTS

C

D

E

F