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REPORT
No. 1496

DUTY ON CERTAIN NONMALLEABLE IRON CASTINGS

AUGUST 1, 1968.—Ordered to be printed

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

REPORT

[To accompany H.R. 653]

The Committee on Finance, to which was referred the bill (H.R. 653) to amend the Tariff Schedules of the United States with respect to the rate of duty on certain nonmalleable iron castings, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

SUMMARY

House Bill.—The Committee on Finance approved the substance of the House bill in restoring to certain unfinished nonmalleable cast iron parts used in bottling and packaging equipment, the tariff rate which was applicable to such parts immediately prior to August 31, 1963, the effective date of the Tariff Schedules of the United States. The committee made technical amendments in the House text to eliminate certain unnecessary language and to reflect tariff concessions negotiated during the Kennedy round.

In addition to these amendments, the committee also added amendments relating to ther matters, as follows:

Woolen Fabrics.—The first of these additional amendments deals with certain practices under which certain high-rate woolen fabric tariffs have been circumvented by combining low-value reprocessed wool with other materials in such a way as to make such woolen fabrics dutiable under lower nonwool rates.

Liquor Exports and Reimports.—The next amendment is directed at the practice in some border States under which alcoholic beverages are purchased without payment of Federal or State tax ostensibly for consumption in a foreign country, but then are reimported back into the State for consumption, without payment of either taxes or tariffs.

Universities; Hospitals.—The final amendment permits the Utah State University and the Arizona State University each to import on a duty-free basis one mass spectrometer and accompanying parts. It also allows the Hospital for Crippled Children in Newington, Connecticut, to import duty free four hydraulic operating tables for use in the hospital.

NONMALLEABLE IRON CASTINGS

Background.—The purpose of this provision, as passed by the House, is to restore to certain unfinished nonmalleable cast-iron parts the tariff rate which was applicable to such parts prior to the effective date of the Tariff Schedules of the United States; that is, August 31, 1963.

Unfinished nonmalleable cast-iron parts of machinery for cleaning or drying bottles or other containers; of certain machinery for filling, closing, sealing, capsuling, or labeling bottles, cans, boxes, bags, or other containers; of certain other packing or wrapping machinery; of machinery for aerating beverages; of dishwashing machines; or of machine tools were dutiable under a general provision for cast-iron castings in paragraph 327 of the Tariff Act of 1930, as modified pursuant to trade agreement concessions, at the rate of 3 percent ad valorem.

The general provision for cast-iron castings was not continued in the Tariff Schedules of the United States because it was ambiguous in certain respects. In the Tariff Classification Study preceding the adoption of the tariff schedules, the Tariff Commission made a survey to determine the major imports which were being afforded the 3-percent tariff treatment and created special provisions for such cast-iron products in appropriate portions of schedule 6 of the TSUS in order to continue the substance of the past tariff treatment. No special provision was created to cover the aforementioned unfinished parts (other than such parts of machine tools) which are now dutiable under TSUS item 662.20 at 10 percent ad valorem.

Like the Committee on Ways and Means of the House, the Committee on Finance is desirous of restoring the tariff treatment which applied to these castings prior to August 31, 1963. In 1965, Congress restored the tariff treatment which previously applied to rough-iron castings for purification systems and for rollers used in food processing plants. However, it did not deal specifically with rough-iron castings used in bottling or packaging machinery, because it appeared the volume of trade in such castings was insufficient to warrant a special tariff category.

The committee is now informed that significant imports of articles of a kind falling within the tariff classification description proposed for the new TSUS item 662.18 were made prior to August 31, 1963, the effective date of the Tariff Schedules of the United States, and were subject to a 3-percent duty. In view of this new information it is appropriate to aline the tariff treatment for these rough-iron castings in the same manner as was provided for other castings by the 1965 Tariff Schedules Technical Amendments Act.

House Bill.—The House bill would have specifically applied the lower tariff to rough-iron castings used in bottling and packaging machinery (and in machine tools) which had been normalized by heat treatment, machined for the purpose of determining its porosity, or painted for protection against oxidation. Enumerating these processes in the statute apparently was considered necessary to, effectively restore prior tariff treatment to these castings. However specifying these processes under one provision would have raised questions as to whether rough-iron castings described in other tariff

provisions could qualify for the lower tariff if they had been similarly processed. The Bureau of Customs was also concerned that the specified processes involved concepts which were new to customs administration and could lead to substantial litigation before their meanings were classified.

Committee Amendments.—After the bill passed the House, the Bureau of Customs indicated that the processes—"normalizing by heat treatment"; "determination of the porosity of the casting"; and "painted only for protection from oxidation"—as described in the House provision, were not such advancements in the manufacturing process as to require specific mention in the bill. Accordingly, since the specificity of the House bill is now unnecessary to achieve its objective, the Committee on Finance has omitted the unnecessary language from the bill.

Under the bill as amended, rough-iron castings for use in machinery for cleaning or drying bottles or other containers (including dishwashing machines), or for filling packages or labeling containers, or for aerating beverages, will again become dutiable as they were under the old tariff structure.

Moreover, in recognition of the passage of time since the bill passed the House (and particularly to reflect the tariff concessions granted during the Kennedy round of trade negotiations), the committee has added amendments providing that for 1968 the tariff on these castings is to be 2.5 percent; for 1969 and 1970 it is to be 2 percent; for 1971 and thereafter it is to be 1.5 percent. This schedule of tariff reduction parallels the concessions granted with respect to the iron castings dealt with by the 1965 amendments and reflects the tariff cut negotiated with respect to the duty presently applicable to these castings.

Like the House bill, the committee amendment permits entries to be reliquidated with respect to importations entered after August 30, 1963. For purposes of measuring refunds as to importations before 1968, the duty on these castings is to be treated as if it had been 3 percent—the rate derived from former paragraph 327.

WOOLEN FABRICS

Background.—In the Tariff Schedules Technical Amendments Act of 1965, Congress dealt with a tariff avoidance problem whereby fabric made of yarn containing more than 50 percent by weight of rayon or other manmade fibers and a small amount of high-value ramie or flax was avoiding the relatively high U.S. tariff on fabrics of manmade fibers. Even before the 1965 act finally became law, means were found to avoid the amendment Congress was in the process of enacting. The new method involved the addition of small amounts of cotton to yarns as a substitute for rayon, thereby reducing the manmade fiber content of the fabric to less than 50 percent. As a result, the fabrics became dutiable at 6.5 percent or 10 percent ad valorem rather than at the rayon rate of 25 cents per pound plus 22.5 percent ad valorem. Congress responded to this device in 1966 by further amending the 1965 amendment to reinstate the rayon rates to this fabric.

The 1965 act also dealt with a second-rate-avoidance problem, this one involving a combination of a small quantity of high-value flax

(or ramie) with a large quantity of low-value wool (generally reprocessed or reused wool) to create a fabric which, although 75 to 85 percent by weight of wool, was nevertheless in chief value of the vegetable fiber and dutiable at 10 percent ad valorem. The duty on wool fabric, generally, would be 37.5 cents per pound plus 60 percent ad valorem. The 1965 amendment corrected the wool-ramie situation by subjecting such a fabric to a compound duty of 30 cents per pound plus 45 percent ad valorem which is, generally, equivalent to a duty based on paragraph 1122 of the old tariff structure. (Under the old tariff structure, prior to August 31, 1963, woven fabrics containing 17 percent or more of wool by weight were, in effect, separated into their component fibers with wool rates applying to the wool content and other rates applying to the nonwool content of the fabric.)

Shortly after the 1965 amendments closed the wool-ramie loophole, a new type woolen fabric containing small quantities of high-value rabbit hair and large quantities of low-value reprocessed wool began to be imported in increasing amounts. Since rabbit hair (or other animal fur) comprised the chief value of the fabric, it was dutiable at only 17.5 percent, rather than the much higher rates for wool fabrics. To deal with this further tariff avoidance device, Congress enacted new legislation in 1966 to treat such a woven fabric of wool and fur at a compound duty of 30 cents per pound plus 50 percent ad valorem. As in the case of the 1965 amendment, this rate was, generally, equivalent to the duties which would have applied to this fabric under section 1122 of the old tariff structure.

The Problem.—Since the 1965 and 1966 amendments were enacted, two additional devices have been resorted to in a further effort to avoid the high wool fabric tariffs. One of these involves the combination of low-value reused or reprocessed wool and high-value silk in such a way that although the resultant fabric is preponderantly wool by weight it is in chief value of silk and thus dutiable at a rate (31 percent in 1968) substantially below the rate applicable had the fabric been in chief value of wool. Imports of such wool-silk fabrics soared from 234,000 square yards in 1965 to more than 3 million square yards in both 1966 and 1967, and, according to available statistics will be substantially greater in 1968.

The other device is accomplished by laminating a fabric in chief weight of wool but in chief value of flax or of rabbit hair with another fabric (such as scrim or acetate tricot). Imports of the laminated wool-flax fabrics increased from zero in 1965 and 1966 to 1,548,000 pounds in 1967; they were 1,338,000 pounds in January–June 1968. Imports of the laminated wool-rabbit hair fabrics were zero in 1965, 18,000 pounds in 1966, 446,000 pounds in 1967, and 660,000 pounds in January–June 1968.

Explanation of Amendment.—To deal with these further devices the committee has approved an amendment to assure that any fabric which for practical purposes is a woolen fabric will be subject to the duties which should apply to woolen fabrics. Specifically, under the committee amendment any fabric which is in chief weight of wool (i.e. if the wool component is greater in weight than each of the other components) will be subject to wool fabric duties even though the component of chief value in the fabric is some other fiber.

All the fabrics involved are provided for in parts 3 and 4 of schedule 3 of the Tariff Schedules (relating to woven fabrics and fabrics of special construction or for special purposes). The new headnote added by the bill will result in the provisions in parts 3 and 4 involving the chief value concept to also embrace the chief weight concept insofar as the classification of fabrics in chief weight of wool is concerned. For example, in headnote 4(b) of schedule 3 the language should be read so that in determining the component fibers of chief weight, or chief value, in coated or filled or laminated, fabrics and articles wholly or in part thereof, the coating or filling, or the nontextile laminating substances, shall be disregarded.

In addition, the committee amendment adds a specific duty of 37.5 cents per pound to the present ad valorem rate of 32 percent applicable to 3 categories of fabrics in part 4 of schedule 3: (a) woven or knit fabrics (except pile or tufted fabrics) of wool, coated or filled with rubber or plastics material or laminated with sheet rubber or plastics (item 355.70 of Tariff Schedules), (b) woven or knit fabrics (except pile or tufted fabrics) of wool, coated or filled, not specifically provided for in other parts of the Tariff Schedules (item 356.30), and (c) textile fabrics, including laminated fabrics of wool, not specifically provided for (item 359.30).

The changes in the existing tariff law which would be accomplished by this amendment grew out of a study made by the Tariff Commission at the request of the Committee on Ways and Means of the House of Representatives. That committee requested the Tariff Commission to suggest not only "possible ways of solving the current problem" but also ways of "avoiding the necessity of having to legislate on 'loopholes' in the future by trying to anticipate and avoid" their occurrence "in this textile area." The Commission suggested that the "loophole" problem in the provisions of the TSUS could be lessened in either of two ways. First, substitution of a "chief-weight" concept for the "chief-value" concept in a selected portion of the textile provisions of the TSUS. This suggestion, approved by the committee, reflects the second alternative suggested by the Commission. (Under the other alternative suggestion of the Tariff Commission, a component in a fabric would be disregarded if it did not have a "commercial significance".)

This "chief weight" concept approved by the committee is certain and predictable in its results. It will impose little burden on customs officers and is less likely to raise questions for the courts. This sort of weight classification would also be consistent with international and industry practices and with the labeling requirements of the Wool Products Labeling Act of 1939 (15 U.S.C. 68–68j).

In the opinion of the Committee on Finance the amendments made by this provision should substantially and permanently solve the recurring problem of fabrics essentially of low-value reprocessed wool being manipulated in such a way as to avoid the regular tariffs on wool fabrics.

TRADE IN TAX FREE LIQUOR

In 1933 the 21st amendment to the Constitution was ratified. It reads as follows:

> SECTION 1. The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

> SEC. 2. The transportation or importation into any State, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Generally, the courts have construed this language broadly to assure that the States are not inhibited in the reasonable exercise of their power to regulate the use of alcoholic beverages within their own jurisdictions.

In recent years new businesses have been created for the purpose of selling alcoholic beverages on a tax-free basis for export. For example, a person traveling from this country to Canada or Mexico may arrange to purchase such beverages for delivery to him at the border as he enters those countries. Or if he departs on a commercial aircraft he may arrange to have his tax-free beverages shipped on the aircraft to his foreign destination where he accepts their delivery as he disembarks.

The following illustration described by the Court in *Texas Liquor Control Board* v. *Ammex Warehouse Co.*, 384 SW 2d 768 (1964), outlines one procedure employed in selling these beverages for export without payment of tax:

> A purchaser of liquor orders liquor on forms approved by the Bureau and pays for such and is given a receipt. Other forms are given to the customs officers, who withdraw the whisky called for in the forms and make entries in the warehouse records.
>
> The liquor is delivered to a bonded cartman, who carries the liquor in bond to the customs station at the end of the international bridge.
>
> The purchaser presents his receipt and is handed the whisky he has purchased, and delivery is made under the supervision of the customs officer. The whisky is carried into Mexico, and a form certifying that the whisky has been exported is signed by the customs officer, which is placed with the other records that are kept by the Bureau.

Export sales along the Canadian border follow substantially similar procedures. A number of States have sought to bar this sort of retail trade in tax-free alcoholic beverages either on the ground that their laws and regulations did not specifically provide for it (and thus it was illegal) or because their laws and regulations directed at this trade were not adhered to. In ensuing litigation, the States were ordered to cease their efforts.[1] The courts found the State requirements were not calculated to "reasonably regulate," but rather were intended to "prohibit" the trade in question.

These decisions have cast doubt on the ability of the States to exercise the powers granted them by the 21st amendment. Moreover, there is increasing concern among many of the border States (particularly those which permit liquor to be dispensed only through State-owned outlets [2]) that considerable quantities of alcoholic beverages sold on a tax-free basis ostensibly for export are actually returned

[1] *Hostetter* v. *Idlewild Bon Voyage Liquor Corp.*, 327 US 324 (1963), *Ammex Warehouse Company, Inc.*, v. *Dept. of Alcoholic Beverage Control, State of Calif.*, 224 Fed. Supp. 546 (1963), *Texas Liquor Control Board* v. *Ammex Warehouse Co.*, 384 SW 2d 768 (1964), *Epstein* v. *Lordi*, 261 F. Supp. 921 (1966).

[2] Maine, New Hampshire, Vermont, Michigan, Montana, and Washington.

for consumption within the State. Unless appropriate tariffs and excise taxes (Federal, State, and local, where applicable) are paid on these beverages at the time they are returned to this country, the beverages are illegal importations. Yet, in light of the position stated by the courts, it is unclear to the States what actions they may properly employ in detecting and preventing the illicit diversion of tax-free alcoholic beverages into their areas.

This committee amendment is intended to make clear that even though the tax-free trade as it has developed involves foreign commerce, the States may apply reasonable regulations to assure that alcoholic beverages sold on a tax-free basis for consumption in a foreign country are not unlawfully diverted or returned into the internal commerce of the State. Today, customs agents supervise these sales for export and attempt to intercept spirits brought back into the country without payment of taxes or tariffs. However, there are so many border crossing points that it is no easy task to detect violators who purchase tax-free beverages at one point, drive into Canada, for example, and immediately return to this country through another border station.

The amendment clarifies the authority of the States to impose reasonable measures (including licensing requirements) aimed at preventing unlawful diversion or use of alcoholic beverages sold solely for consumption in a foreign country. It is not intended to authorize the prohibition of any legitimate export business, but it is intended to assure that a State may reasonably regulate foreign shipments of liquor to aid in preventing the importation or transportation of liquor into the State in violation of its laws, and that where such regulations are reasonable the burden placed on the trade will not require the State regulation to be struck down.

By so clarifying the role of the States in establishing reasonable licensing or other regulations to aid in the detection and punishment of those who seek to divert tax-free export beverages for unlawful consumption in this country, the amendment should also benefit the Federal revenues.

UNIVERSITIES AND HOSPITALS

The committee amended the bill to provide free importation of a mass spectrometer for the use of the Utah State University and the Arizona State University. A mass spectrometer is a device used by chemical engineers to provide chemical analyses, measurements, and other research features. It is ordinarily built to specifications to meet particular requirements of the user. In the use of a mass spectrometer, the material to be studied is subjected to an ionizing process after which the ions formed are physically separated according to mass by electromagnetic means so that a mass spectrum is produced.

Congress has approved similar requests for free importation of these scientific instruments for specified educational institutions in the past. This amendment follows the earlier practice.

The Committee observes however, that the Educational Scientific and Cultural Materials Importation Act of 1966 (implementing the Florence agreement) now enables nonprofit institutions established for scientific or educational purposes to import instruments free of duty if no instrument of equivalent scientific value, for the purpose

for which the instrument is intended to be used, is being manufactured in the United States. This general legislation became effective February 1, 1967, and should serve to make amendments for specific institutions unnecessary in the future.

The instruments imported for the Utah State University and for the Arizona State University were entered prior to February 1967 and for this reason the Florence agreement legislation permitting duty-free treatment is not applicable. That being the case, the committee has approved this amendment to permit these two universities to enter their mass spectrometers on a duty-free basis.

Another feature of the amendment authorizes the Newington Hospital for Children, Newington, Conn., to import on a duty-free basis up to four hydraulic operating tables. The committee understands that the operating tables involved are Swedish-made. Under the arrangement, worked out with the manufacturer, the tables are to be supplied on a cost basis, with the hospital assuming the costs of installation and customs duties. The hospital subsequently made an application for duty-free entry of the equipment under the provisions of the Florence agreement legislation which authorizes the duty-free importation of "instruments and apparatus" that is not duplicated in the United States. They were advised by the Treasury Department, however, that under present language of the act such operating tables must be classified as hospital furniture, and as such they are not eligible for duty-free entry. Since the duty would be approximately $2,000 for each table the financial burden on the hospital would be substantial.

The committee is sympathetic to the needs of the Newington Hospital and therefore approves of the amendment to permit these operating tables to be entered free of duty.

Under the amendment, if duty on either of the mass spectrometers, or on the operating tables, has already been paid, refund claims (technically called "requests for reliquidation") may be filed within 120 days after the date of enactment of this act.

CHANGES IN EXISTING LAW

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

TARIFF ACT OF 1930

TITLE I—TARIFF SCHEDULES OF THE UNITED STATES

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Schedule 3—TEXTILE FIBERS AND TEXTILE PRODUCTS

Schedule 3 headnotes:

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7. With respect to fabrics provided for in parts 3 and 4 of this schedule provisions for fabrics in chief value of wool shall also apply to fabrics in chief weight of wool (whether or not in chief value of wool). For the pur-

poses of the preceding sentence, a fabric is in chief weight of wool if the weight of the wool component is greater than the weight of each other textile component (i.e., cotton, vegetable fibers except cotton, silk, man-made fibers, or other textile materials) of the fabric.

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Item	Articles	Rates of duty	
		1	2
	PART 4.—FABRICS OF SPECIAL CONSTRUCTION OR FOR SPECIAL PURPOSES; ARTICLES OF WADDING OR FELT; FISH NETS; MACHINE CLOTHING		
*	* * * *	*	*
	Woven or knit fabrics (except pile or tufted fabrics), of textile materials, coated or filled with rubber or plastics material, or laminated with sheet rubber or plastics:		
355.65	Of vegetable fibers	10% ad val.	40% ad val.
355.70	Of wool	[32% ad val.] *37.5¢ per lb.+ 32% ad val.*	[50% ad val.] *50¢ per lb.+ 50% ad val.*
355.75	Of silk	24.5% ad val.	65% ad val.
	Of man-made fibers:		
355.81	Over 70 percent by weight of rubber or plastics	11% ad val.	25% ad val.
355.82	Other	22¢ per lb.+ 27% ad val.	45¢ per lb.+ 65% ad val.
355.85	Other	15.5% ad val.	10% ad val.
*	* * * *	*	* *
	Woven or knit fabrics (except pile or tufted fabrics), of textile materials, coated or filled, not specially provided for:		
	Oilcloths:		
356.05	Of silk	24.5% ad val.	65% ad val.
356.10	Other	9% ad val.	30% ad val.
356.15	Tracing cloth	16.5% ad val.	30% ad val.
356.20	Window hollands of cotton	9% ad val.	30% ad val.
	Other:		
356.25	Of vegetable fibers	9% ad val.	35% ad val.
356.30	Of wool	[32% ad val.] *37.5¢ per lb.+ 32% ad val.*	[50% ad val.] *60¢ per lb.+ 50% ad val.*
356.35	Of silk	24.5% ad val.	65% ad val.
356.40	Of man-made fibers	22¢ per lb.+27% ad val.	45¢ per lb.+65% ad val.
356.45	Other	15.5% ad val.	40% ad val.
*	* * * *	*	* *
	Textile fabrics, including laminated fabrics, not specially provided for:		
359.10	Of cotton	19% ad val.	40% ad val.
359.20	Of vegetable fibers, except cotton	12% ad val.	40% ad val.
359.30	Of wool	[32% ad val.] *37.5¢ per lb. +32% ad val.*	[50% ad val.] *60¢ per lb. +50% ad val.*
359.40	Of silk	24.5% ad val.	65% ad val.
359.50	Of man-made fibers	25¢ per lb.+30% ad val.	45¢ per lb.+65% ad val.
359.60	Other	15.5% ad val.	40% ad val.
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Schedule 6.—Metals and Metal Products

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Item	Articles	Rates of duty	
		1	2
	PART 4.—MACHINERY AND MECHANICAL EQUIPMENT		
	SUBPART A.—BOILERS, NONELECTRIC MOTORS AND ENGINES, AND OTHER GENERAL PURPOSE MACHINERY		
*	* * * * *	*	*
	Machinery for cleaning or drying bottles or other containers; machinery for filling, closing, sealing, capsuling, or labeling bottles, cans, boxes, bags, or other containers; other packing or wrapping machinery; machinery for aerating beverages; dish washing machines; all the foregoing and parts thereof:		
662.10	Machines for packaging pipe tobacco; machines for wrapping candy; machines for wrapping cigarette packages; and combination candy cutting and wrapping machines; all the foregoing and parts thereof	8% (9%) ad val.	35% ad val.
662.15	Can-sealing machines, and parts thereof	15% ad val.	30% ad val.
[662.20	Other	10% ad val.	35% ad val.]
	Other:		
662.18	*Cast iron (except malleable cast iron) parts, not alloyed and not advanced beyond cleaning, and machined only for the removal of fins, gates, sprues, and risers, or to permit location in finishing machinery*	*2.5% ad val.*	*10% ad val.*
662.20	*Other*	*10% ad val.*	*35% ad val.*

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TITLE III—SPECIAL PROVISIONS

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Part V—Enforcement Provisions

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Sec. 625. State Regulation of Transportation of Intoxicating Liquors.

No provision of this Act or of any regulation issued thereunder shall be construed to prevent any State from regulating the transportation or importation for delivery or use therein of intoxicating liquors.

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