

PROCEDURE, PRACTICE, AND ADMINISTRATIVE METHODS OF THE
BOARD OF UNITED STATES GENERAL APPRAISERS.

M E S S A G E

FROM THE

PRESIDENT OF THE UNITED STATES,

TRANSMITTING

THE REPORT OF THE COMMITTEE TO INQUIRE INTO THE PRO-
CEDURE, PRACTICE, AND ADMINISTRATIVE METHODS OF THE
BOARD OF UNITED STATES GENERAL APPRAISERS.

APRIL 15, 1913.—Read, referred to the Committee on Finance, and ordered to be
printed.

To the Senate and House of Representatives:

On August 21, 1912, and October 19, 1912, there were appointed by the President, in accordance with the authority granted to him to reorganize the customs service, Winfred T. Denison, Esq., an Assistant Attorney General, William Loeb, jr., Esq., collector of customs at New York, and Felix Frankfurter, Esq., law officer of the Bureau of Insular Affairs, as a committee to inquire into the procedure, practice, and administrative methods of the Board of United States General Appraisers.

I transmit herewith the report of this committee on these subjects.

WOODROW WILSON.

THE WHITE HOUSE, *April 15, 1913.*

REPORT OF THE PRESIDENT'S COMMITTEE OF INQUIRY UPON THE PRACTICE, PROCEDURE, AND ADMINISTRATIVE METHODS OF THE BOARD OF UNITED STATES GENERAL APPRAISERS.

The PRESIDENT:

We have the honor to report the results of our investigation into the practice, procedure, and administrative methods of the Board of United States General Appraisers, made pursuant to your letters of appointment dated August 21, 1912, and October 19, 1912.

SOURCES OF INFORMATION COVERED BY THE INQUIRY.

The committee has held a large number of hearings, chiefly in New York and chiefly private, it being considered that the nature of the investigation made public hearings inadvisable.

Either by formal (though generally private) oral hearings or by personal conference or by written correspondence covering specific questions and answers, the committee examined a large number of witnesses, including the Secretary of the Treasury, the Assistant Secretary in charge of customs, and the officials of the Treasury Department and of the collector's office most familiar with the subject; the presiding judge and Judge De Vries, of the Court of Customs Appeals; the members of the Board of General Appraisers and the chief clerk of the board; the Assistant Attorney General in charge of the Customs Division, the Deputy Assistant Attorney General, and the attorneys and special attorneys in the Customs Division of the Department of Justice; the leading customs attorneys, certain of the importers, certain of the customs brokers, the Merchants' Association of New York, the American Paper and Pulp Association, and such associations and individuals as were interested to respond to a general public call.

Also we have had a study made by Mr. N. I. Stone, formerly statistical expert of the tariff board, covering the methods of customs administration in Canada, France, Germany, Holland, and Belgium.

Also we have had the benefit of an examination of the report of the appraisal commission of the Treasury Department, of which Mr. Edwin R. Wakefield was chairman.

THE PRESENT STRUCTURE AND OPERATION OF THE BOARD.

The board now consists of nine general appraisers appointed by the President and subject to removal by him for "malfeasance in office," "neglect of duty," or "incompetence."

Their offices are at the Appraisers' Stores in New York City.

The board is subdivided into three boards of three general appraisers each, and the work is distributed among these boards according to the schedule of the tariff under which the goods fall.

The jurisdiction includes two branches, which are conducted as follows:

1. The classification of cases. These cases involve the construction of the tariff law.

These questions come up on protest from the ruling of the collector of customs. They are passed on by the appropriate board of three General Appraisers.

From the decisions of these boards, appeal lies to the Court of Customs Appeals.

2. Reappraisement of merchandise.

These questions involve the determination of the valuation to be put upon the imported goods for the customs purposes. In most instances this involves the ascertainment of the foreign market value of the particular goods at the port and time of exportation to this country.

In the first instance such appraisements are made by the examiner and approved by the assistant appraiser and appraiser.

Appeal lies from this determination to a single general appraiser who sits upon it as a judge, hearing evidence brought in by the importer and by the Government.

From the valuation fixed by the single general appraiser further appeal lies to the appropriate board of three general appraisers who hear the matter again *de novo*.

The decision of the three is final.

DISSATISFACTION WITH THE STRUCTURE AND OPERATION OF THE BOARD.

While the general appraisers themselves have not advanced any formal complaints to your committee, it is evident to us that they are not content with the situation of the board. They feel a lack of dignity in its position, a confusion in its functions, and a discontent with its relation to the Department of the Treasury, and especially with the control of that department over the appropriation, and so over the clerical administration.

The Treasury Department is dissatisfied because the existing arrangement forces it into litigation before it has had any real opportunity to season the judgments of its administrative officers. Especially in reappraisements, the department officials feel that the work of the appraisers is reviewed without due recognition of the presumption in favor of the original appraisal, with too technical an application of strict rules of evidence appropriate for court trials, without sufficient exercise of the board's powers of affirmative investigation, and above all, without helpful effectiveness as a check against fraudulent undervaluations.

The representatives of the Department of Justice are dissatisfied especially with the handling of reappraisements.

The importers, customs brokers, and customs attorneys have not indicated any criticisms, though the anomalous status of the board necessarily affects its public standing.

The unfortunate and highly undesirable friction indicated by these points of dissatisfaction has existed to a growing extent ever since the creation of the board and is certain to continue until the structure of the board is radically revised.

INEFFECTIVENESS OF THE PRESENT MACHINERY OF REAPPRAISALS TO DISCLOSE AND PREVENT UNDERVALUATIONS.

In the district and port of New York alone there have been discovered during the last four years extensive, long-continued, and systematic frauds in the valuation of 50 different lines of merchandise, involving over 300 importers and recoveries of over \$4,000,000.^a

Undoubtedly the long-continued existence of these frauds without discovery was due to some extent to corruption and inefficiency in the customs service, which has now been eliminated. The service has, we believe, been put on an honest basis, nevertheless a share in the responsibility for the frauds in the past lies unquestionably in defects in the machinery by which appraisements and reappraisements are operated. These defects must be corrected in order to insure the prevention of frauds in the future.

The existing machinery affords no opportunity for adequate and thorough investigation and review of the values set by importers upon their merchandise. True, there are provided two reviews of the valuations set by the examiner—first, a review by a single general appraiser, and, second, a further review by a board of three general appraisers; but neither of these reviews is, or in the conditions can be expected to be, properly effective. They are judicial in character rather than investigatory, as they should be, and as the customs administrative act (by giving inquisitorial powers to the board) contemplates that they shall be.

They do not substantially advance the data on the subject, but only weigh it.

The board is not particularly at fault in this, though some of the members are undoubtedly too much inclined to apply the technical judicial rules of evidence and some are inclined in practice to cast the burden of proof on the examiners; but the principal fault is in the system. It is not practicable for the board to act as investigators. They have not the time, the training, or the machinery. The nature and extent of their duties in handling the classification branch of their jurisdiction would not permit of their going into the reappraisements in the manner in which reappraisements must be handled if any adequate security against frauds is to be obtained.

Finally, the members of the board, being mostly lawyers, greatly prefer the classification work and dislike the reappraisements, and this, again, is quite natural and to be expected.

The result of all these circumstances is that there exists no thorough and adequate second line of appraisements, and the defect, as experience has demonstrated, is one of the chief reasons why fraudulent undervaluations have flourished unobstructed to so wide an extent and for so long a time.

It is easy to understand, in the light of the facts we have outlined, why, for example, it should have happened that so many importers who have since been compelled to restore duties fraudulently withheld (as for instance importers of Swiss watches, cutlery, linens, Bradford woolens, Syrian laces, German machinery, and linings) should have succeeded in getting their entered values upheld by

^aThis is on frauds in undervaluation alone. The total collections on all the customs frauds, including underweighings and the other forms not involving appraisements, have aggregated some eight millions of dollars.

the board even after the examiners had (correctly as the event proved) advanced them. In this class of cases, special investigation by the collector's office and the Treasury special agents has demonstrated fraud so plainly that the importers have paid to the Government very large sums of withheld duties and thereby confessed that the values upheld by the board against the examiners were false and fraudulent.

Of course, no system can be expected infallibly to prevent errors, but it seems to us clear that the present system has actually invited errors and has provided no really substantial check against these frauds, the prevention of which is the real object of having a system.

In this conclusion we are confirmed by the opinion of the reappraisal commission of the Treasury Department, above referred to.

THE FUNDAMENTAL CAUSE OF THESE CONDITIONS IS THAT THE BOARD'S TWO FUNCTIONS ARE RADICALLY INHARMONIOUS AND CAN NOT BE SATISFACTORILY EXERCISED BY THE SAME TRIBUNAL.

We are clear that the root of the trouble is the inherent disharmony between the two jurisdictions of the board—the classification questions under the tariff act, and the valuations of merchandise.

In the essential nature of the questions involved the two jurisdictions are radically different. The classification questions are questions of law involving the interpretation and construction of the clauses of the tariff act; the valuations are questions of commercial fact, involving especially actual conditions in foreign markets.

So in the essential nature of the appropriate proceedings these two jurisdictions are radically different. The classification questions are judicial and should be disposed of by a court, in the method of a court, with the dignity and authority of a court; but reappraisals require the expert study of innumerable lines of merchandise, the careful discrimination of different qualities, the free and flexible investigation of markets, with facilities for study at first hand of the foreign markets, the investigation of accounts, private invoices, and the intricacies of manufacturing costs and other business operations. Such matters it is impossible to handle by formal, set judicial proceedings; they should be reviewed by methods broader and more careful, it is true, than are open to the examiners of first instance, but of the same general type.

In neither Holland, Belgium, nor Canada—the principal foreign countries still using *ad valorem* duties—are the valuations passed on by any procedure of a judicial nature. Their methods amount to an arbitration under the control of the administrative branch of the Government and conducted by customs experts and merchants. The mass of business and the conditions would, of course, preclude any such method here. The government of India goes even further and itself prescribes the valuations in advance.

And most important of all, the personal qualifications and training requisite for the effective performance of these two kinds of duties are radically different. The classification work requires skilled lawyers as peremptorily as do any of our judicial jurisdictions; the reappraisal work requires expert and aggressive investigators, trained in the study of commercial conditions at home and abroad, and familiar with varieties of merchandise and the elements going into their valuation.

A man might be the best possible man for reappraisements and yet totally useless and unfit for classifications, and vice versa. It is absolutely essential that the classification work should be done by lawyers, but reappraisements do not require lawyers, and, indeed, as a class lawyers are probably less suited to it than other men. At any rate, though theoretically a board of lawyers adapted to the judicial work of classification might also be qualified to learn the reappraisal work, the process of education after taking office is unnecessarily wasteful, and experience has shown that, naturally, they do not take kindly to the nonlegal work.

As a member of the board is reported to have said: "When we turn from a classification case to a reappraisal we have to take off our judicial robes and put on overalls."

THE TWO FUNCTIONS OF CLASSIFICATION AND REAPPRAISEMENTS SHOULD BE ENTIRELY SEPARATED AND SHOULD BE PERFORMED BY TWO WHOLLY INDEPENDENT BODIES.

For these reasons we are clear that harmonious, satisfactory, and effective administration of the customs is impossible until these two discordant functions are separated. As one of the witnesses most familiar with this service and its history has put it: "Classification and reappraisal are ill-mated; they ought never to have been married, and they should be divorced as soon as possible."

Prior to the customs administrative act of June 10, 1890, these two functions were entirely separate, the classification questions being settled by the Secretary of the Treasury and the reappraisements by a so-called general appraiser and a merchant selected by the collector or by two merchants.

The two functions were joined by the customs administrative act, and the union has never worked well. Secretary Gage undertook to reparate them by dividing the board into two distinct sections (T. D. 18488), and for some years this method was followed, but it was very unsatisfactory, especially to those members of the board who were detailed to the reappraisements, and it was finally abandoned.

We find that thirteen years ago the conclusion we have independently reached was very clearly realized and stated by Mr. W. A. Robertson, one of the Government's attorneys before the board, in an article entitled "A customs court," in the Forum of March, 1900, page 54.

In fact, ever since the passage of the act this joinder of these two diverse jurisdictions has caused almost constant friction and dissatisfaction.

THE PRESENT BOARD SHOULD BE REDUCED IN NUMBER AND SHOULD BE CHANGED INTO A COURT OF CUSTOMS WITH NISI PRIUS JURISDICTION OF CLASSIFICATION QUESTIONS, BUT NOT OF REAPPRAISEMENT.

A court of customs should be created out of the present Board of General Appraisers and should be given the exclusive jurisdiction to try and determine in the first instance all protests against the classifications made by the collectors.

The judges should sit singly, and their headquarters should be in New York, with sessions set at other places as occasion requires.

OR THE COURT OF CUSTOMS APPEALS COULD BE GIVEN THE ENTIRE JURISDICTION OVER CLASSIFICATIONS, BOTH AT FIRST INSTANCE AND ON APPEAL.

Another possible, and perhaps from some points of view a preferable, method of handling this subject would be to transfer the entire jurisdiction of classification to the Court of Customs Appeals, which now has the appellate jurisdiction over it. If this court were increased to seven members and transferred to New York, it could, in our opinion, dispose of all of this business, sitting as single judges at first instance, with appeal to the full court *in banc*. This would involve the abolition of the Board of General Appraisers.

A *small protest or docket fee* should be charged for transmission of protests to the court by the collector. Probably a fee of \$1 would be sufficient. This requirement is of first importance because it would unquestionably eliminate an immense amount of useless and costly work. On the present system all protests filed have to be forwarded, with other papers, by the collector, reported on by the appraiser, docketed, indexed, etc., by the clerical force, and acted on by the court, although thousands of them are never really prosecuted, being filed merely on a speculative chance that some point of controversy may be discovered at some time. If thirty or forty days are allowed for the filing of protests all necessary opportunity for deliberation will be afforded, no legitimate occasion would exist for filing of protests not really intended to be litigated, and no real hardship would be involved in the imposition of the fee.

A BOARD OF EXAMINERS SHOULD BE ESTABLISHED WITH EXCLUSIVE JURISDICTION OVER REAPPRAISEMENTS.

Appraisals should be reviewed only by a board of examiners.

This board should consist probably of six or seven members, sitting three at a time, according to the schedules concerned, and having final authority on reappraisements.

We do not approve of the present scheme by which there are two successive reviews (each *de novo*) of appraisements. It is dilatory, where dispatch is of unusual importance; it is cumbersome, because both reviewing bodies have to travel independently through the same investigation; and it would be quite unnecessary if either one of the reviews were handled by appropriate methods.

The board should be within the classified civil service and should be constituted by a regular system of civil-service promotion from the customs service, including especially the appraisers, assistant appraisers, examiners, confidential agents, and special agents.

The appointments should be for life, subject to removal on charges.

A board so constituted would, in our opinion, have the following decisive advantages:

It would furnish the requisite aggressive safeguard against the scandalous fraudulent undervaluations which have been so injurious to honest merchants.

It would have the qualifications and training above pointed out as essential.

It would, by reason of its permanence of tenure and selection by merit, command confidence in its fairness.

It would expedite the proceedings.

It would reach more accurate results.

It would provide a consistent structure for the entire administration of appraisements.

It would tone up the service by providing a line of promotion for meritorious and efficient service in the lower grades.

ALTERNATIVE RECOMMENDATIONS.

If it be deemed advisable or necessary to continue the present double jurisdiction of the board, there are certain changes which in our judgment should still be made.

As to classification questions, the board should act by a single general appraiser instead of by a board of three, as at present. This is the judgment of practically all of the present members of the board and it is the best opinion of the other witnesses whose views we have received. The present practice is cumbersome, unnecessarily wasteful of time, and unnecessarily laborious. It is also costly from the clerical point of view, owing to the fact that it practically requires the transcription of the testimony in substantially all the cases. So long as there is a final review by the Court of Customs Appeals it seems sufficient that the review in the first instance should be by a single general appraiser.

As to reappraisements. If the present board is to be continued as the final appellate body, the present intermediate appeal to the single general appraisers should be eliminated and replaced by an intermediate appeal to a board of examiners constituted as recommended above.

This change is recommended by the report of the appraisement commission of the Treasury Department at pages 105 to 107, inclusive, and for the reasons fully stated in that report we concur in the recommendation.

The change is opposed by the members of the present board and generally by the customs attorneys and importers, but what seems to us the better opinion favors it, and we are convinced of its desirability for the same reasons which have led us to our principal recommendation.

Thus there would be provided at least at one stage an opportunity for a thorough *investigatory* reexamination, and this is essential to the due security of the revenues.

Bipartisan appointments.—The requirement that the appointments to the board should be bipartisan should be repealed. It has worked harmfully to the board and is bound to continue to be injurious to it. The tendency of the requirement is to emphasize political considerations for these positions, though such considerations are wholly inapplicable. The theory of the requirement appears to be that party differences concerning tariff legislation should be reflected in the board which interprets the act and fixes the values on the

imported goods. That theory was not carried out in reference to the Court of Customs Appeals and it should have no greater application to the board than to that court.

Protest fee.—If the present general constitution of the board is retained, a protest fee should be required as a condition precedent to the forwarding of protests by the collector to the board; but the time allowed importers to determine whether to protest at all should, in this event, be extended to thirty or forty-five days. This is for the reasons we have stated in our principal recommendation above.

The difficulties and expense of the clerical work would be enormously reduced by the imposition of the small protest fee suggested above.

An appeal fee of \$1 on reappraisements should be imposed for the same general reasons, though the need of this is less urgent.

THE CLERICAL WORK OF THE BOARD.

We have not made a detailed study of the clerical machinery of the board because such an investigation has already been recently made by experts on the subject. We refer to the report of Messrs. Springstead & Bartlett, and to the further examination and consideration of that report by Messrs. Price, Waterhouse & Co. We concur in the result of these reports.

Very respectfully,

WINFRED T. DENISON,
Assistant Attorney General, Chairman.
WILLIAM LOEB, JR.,
Collector of Customs, New York.
FELIX FRANKFURTER,
Law Officer, Bureau of Insular Affairs.

FEBRUARY 15, 1913.

