METHODS OF DETERMINING VALUE OF IMPORTED GOODS FOR DUTY PURPOSES

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

EIGHTY-FOURTH CONGRESS

SECOND SESSION

ON

SECTION 2 OF

H. R. 6040

CUSTOMS SIMPLIFICATION ACT

JUNE 25, 26, AND 27, 1956

Printed for the use of the Committee on Finance

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1956

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METHODS OF DETERMINING VALUE OF IMPORTED GOODS FOR DUTY PURPOSES

MONDAY, JUNE 25, 1956

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

The committee met, pursuant to call, at 10:20 a. m., in room 312, Senate Office Building, Senator Harry Flood Byrd (chairman) presiding.

Present: Senators Byrd, George, Anderson, Frear, Millikin, Martin of Pennsylvania, Williams, Flanders, Malone, Carlson, and Bennett.

Also present: Elizabeth B. Springer, chief clerk.

The CHAIRMAN. The meeting will come to order.

The hearings today are on the amendments which I introduced at the request of the Treasury Department intended to be considered as a substitute of section 2, relating to value, of the customs simplification bill, H. R. 6040.

(The amendment follows:)

[H. R. 6040, 84th Cong., 2d sess.]

AMENDMENTS

Intended to be proposed by Mr. Byrd (by request) to the bill (H. R. 6040) to amend certain administrative provisions of the Tariff Act of 1930 and to repeal obsolete provisions of the customs laws, viz:

Page 1, lines 4 and 5, insert a period after "1955" " and delete the remainder of the sentence.

Page 1, strike out lines 6 to 8 and insert the following:

"SEC. 2. (a) Section 402 of the Tariff Act of 1930, as amended (U. S. C., 1952 edition, title 19, sec. 1402), is redesignated 'Sec. 402a. Value (Alternative).' and such Tariff Act of 1930 is amended by inserting therein immediately before the redesignated section 402a a new section 402 to read as follows:".

Page 10, strike out lines 1 to 5 and insert the following: "is amended by striking out '(as defined in subdivision (g) of section 402, title IV),' and ', as defined in subdivision (e) of section 402, title IV'."

Page 10, strike out lines 8 to 12 and insert the following: "is amended by striking out '(as defined in subdivision (g) of section 402, title IV),' and ', as defined in subdivision (c) of section 402, title IV'."

Page 10, strike out lines 15 and 16 and insert the following: "amended by striking out '(as defined in section 402 (g))'."

Page 10, between lines 24 and 25, insert the following:

"(f) Redesignated section 402a of the Tariff Act of 1930 is amended by deleting the word 'merchandise' in the introductory matter of subsection (a) and substituting therefor 'articles designated by the Secretary of the Treasury as provided for in section 6 (a) of the Customs Simplification Act of 1955'."

Page 17, after line 3, insert the following new sections:

"SEC. 6. (a) The Secretary of the Treasury shall determine and make public lists of the articles which shall be valued in accordance with section 402a, Tariff Act of 1930, as amended by this Act, as follows:

"(1) As soon as practicable after the enactment of this Act the Secretary shall make public a preliminary list of the imported articles which he shall have determined, after such investigation as he deems necessary, would have been appraised in accordance with section 402 of the Tariff Act of 1930, as amended by this Act, at average values for each article which are 95 (or less) per centum of the average values at which such article was actually appraised during the fiscal year 1954. If within sixty days after the publication of such preliminary list any manufacturer, producer, or wholesaler in the United States presents to the Secretary reason to believe that any articles entered during the fiscal year 1954 but not specified in such list and like or similar to articles manufactured, produced, or sold at wholesale by him would have been appraised in accordance with such section 402 at average values which are 95 (or less) per centum of the average values at which they were actually appraised, the Secretary shall cause such investigation of the matter to be made as he deems necessary. If the belief is confirmed by the investigation, the articles involved shall be added to the preliminary list and such list, including any additions so made thereto, shall be published as a final list. Every article determined by the Secretary to be specified in the final list which is entered, or withdrawn from warehouse, for consumption on or after the thirtieth day following the date of publication of the final list and before the thirtieth day following the publication of the succeeding final list shall be appraised in accordance with the provisions of section 402a, Tariff Act of 1930, as amended by this Act.

"(2) As soon as practicable after the expiration of each of the three succeeding twelve-month periods following the date of publication of the final list provided for in paragraph (1), the Secretary, after such investigation as he shall deem necessary, shall publish successively second, third, and fourth preliminary lists of the articles entered for consumption or warehousing during the most recent twelve-month period for which information is then reasonably available which he shall have determined would have been or were appraised in accordance with section 402 of the Tariff Act of 1930, as amended by this Act, at average values for each article which are 95 (or less) per centum of the average values at which such article was or would have been appraised under section 402a, Tariff Act of 1930, as amended by this Act. If within thirty days after the publication of each such preliminary list any manufacturer, producer, or wholesaler in the United States makes with respect to any omission from such list a presentation such as is specified in paragraph (1), but relating to the relevant twelve-month period, the Secretary shall proceed with respect thereto as specified in paragraph (1) and make public as soon as practicable a final list, including any additions made to the related preliminary list. Each article determined by the Secretary to be specified in the second final list which is entered, or withdrawn from warehouse, for consumption on or after the thirtieth day following the publication of such second final list and before the thirtieth day following the publication of the third final list shall be appraised in accordance with the provisions of section 402a, Tariff Act of 1930, as amended by this Act. Each article determined by the Secretary to be specified in the third final list which is entered, or withdrawn from warehouse, for consumption on or after the thirtieth day following the publication of such third final list and before the expiration of the first period of ninety calendar days of continuous session of the Congress following the date of publication of the fourth final list shall be appraised in accordance with the provisions of section 402a, Tariff Act of 1930, as amended by this Act.

"(b) Each final list published in accordance with the provisions of subsection (a), together with explanatory data, shall be transmitted promptly to the chairman of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

"SEC. 7. This Act shall be effective on and after the day following the date of its enactment, except that section 2 shall be effective only as to articles entered, or withdrawn from warehouse, for consumption on or after the thirtieth day following the publication of the final list provided for in section 6 (a) (1) of this Act, and section 3 shall be effective as to entries filed on or after the thirtieth day following the date of enactment of this Act. Section 402a, Tariff Act of 1930, as amended by this Act, and section 6 of this Act shall have no force or effect with respect to any article entered, or withdrawn from warehouse, for consumption after the expiration of the first period of ninety calendar days of continuous session of the Congress following the date of publication of the fourth final list provided for in section 6 (a) (2) of this Act."

The CHAIRMAN. The first witness will be Hon. David W. Kendall, Assistant Secretary of the Treasury.

STATEMENT OF DAVID W. KENDALL, ASSISTANT SECRETARY OF THE TREASURY; ACCOMPANIED BY H. CHAPMAN ROSE, FORMER UNDER SECRETARY OF THE TREASURY

Mr. KENDALL. We would like to have Mr. Rose start, if that is agreeable.

The CHAIRMAN. Yes, Mr. Kendall.

I know Mr. Rose has devoted a great deal of time and thought to the question of simplification of the customs procedures. He is appearing here today as a private citizen, at the request of the Treasury Department and the committee, and he is doing this without compensation.

Will you proceed, Mr. Rose, and give an explanation of the amendments that I introduced, at your request and the request of the Treasury Department, on January 19.

Mr. ROSE. I have a statement, Senator, if I may go through it, and then I would be glad to answer any questions.

I am very grateful to the committee for the invitation to appear before you on the amendment to H. R. 6040 introduced by your chairman at the request of the Treasury Department. You will recall that I appeared before your committee last year on H. R. 6040, itself, as an official of the Treasury Department; and when I retired from the Treasury your chairman indicated that in view of my past familiarity with the customs field he would invite me to appear, as he has now done, when the bill came before the committee for further consideration.

Because so much time has elapsed since the prior hearings, it may be helpful if I seek to recall to your minds the origin of the proposals in H. R. 6040.

When this administration assumed office in January 1953, the business of the customs service had reached a very difficult situation. With the increasing activity since the end of the war, it had fallen further and further into arrears. In September 1953, its backlog of unliquidated entries—which means import transactions on which final liability for duties remained unsettled—had reached an all-time high of 900,000. The annual rate of liquidation was then about 900,000, so this meant 1 year's backlog of unfinished business. The serious effect of this condition in creating uncertainty and difficulty in commercial transactions needs no emphasis.

This condition was in large part caused by increasingly archaic procedures imposed upon customs by statute and by a concomitant failure to modernize its management procedures.

In the Customs Simplifications Acts of 1953 and 1954, the Congress responded to the administration's request for authority to modernize customs methods.

The Treasury has sought, in turn, to use this authority, without relaxing protection of the revenue, to bring about efficient administration. It sought out a prominent figure from the business world, Ralph Kelly, formerly vice president of Westinghouse Electric Corp., and formerly president of Baldwin Locomotive Works, to be Commissioner of Customs. Under his leadership and with the help of the authority

given by the statutes I mentioned, the condition has been substantially improved.

The annual rate of production has been raised by about a third, and the backlog has been reduced from 900,000 entries to 626,000 at the end of last March. At the present higher rate of output, this represents about 6 months' work, as compared with a 12-months' backlog 3 years ago.

Unfortunately, however, this condition still falls substantially short of putting the business of customs on a current basis. Furthermore, nearly all of the improvement was realized from the fall of 1953 to the summer of 1955, and very little of it during the last year. During the last year there has been approximately an 11-percent increase in imports: and improved procedures have succeeded only in staying abreast of the increase. An analysis of the existing backlog shows very clearly where the trouble lies and what needs to be done to improve it.

The existing backlog of 626,000 unliquidated entries can be broken down into 3 categories. The first, comprising about 100,000 entries, need give us little concern because they are held up either at the request of the importer or because of some default of his, such as failure to file required information.

These are not cases, therefore, where Government inefficiency is delaying business.

The second category, 242,000 entries, is in need of improvement, which is gradually coming about, but is in fairly good shape. These are the entries where all the necessary information is at hand to figure the final duty and all that remains is to process them. This group tends to turn over in 2 to 3 months' time.

The third and largest group is the main source of present difficulty. This comprises 282,000 entries where the collector's office must await determinations of the value of the merchandise before final duty can be computed.

This group contains the sluggish entries that tend to turn over very slowly, as can be seen from the following:

Customs has sought to regard a 30-day period as the target for completion of appraisement, but, of this group 282,000 unliquidated entries only 34,000 have been under appraisement less than 30 days.

Of the balance of 248,000, 90,000 are in court on appeal by the importer from determinations by the appraiser; and the remaining 158,000 have been in the hands of the appraiser for more than 30 days. Of this total 22,000 are awaiting the result of about 300 foreign inquiries.

It has been clear to me for some time that a major field in which customs procedures require improvement is that of valuation. This is the major purpose of H. R. 6040.

Section 2 of H. R. 6040 is intended to revise and simplify the valuation provisions so that the backlog of entries in litigation over appraisal, or which have been in the hands of appraisers more than 30 days, can be substantially reduced. This reduction should follow from eliminating the necessity for a great man foreign investigations, and from making valuations more predictable and certain and more realistic in terms of the wholesale prices actually paid in the trade with the United States.

Valuation of merchandise for customs purposes is necessary only in connection with those imports which are assessed duties on the basis of a percentage of their value. Such duties are called ad valorem duties.

Under existing law, the appraiser is required to determine both the foreign value, which is the going wholesale price in the country of origin for domestic consumption there, and the export value, which is the going wholesale price in the country of origin for export to the United States. After both of these values have been determined, the appraiser is required to use the higher of the two.

The first change which H. R. 6040 would make is to eliminate foreign value as the basis of appraisement and make export value the single primary basis.

The second substantial change made by this bill is to redefine a number of terms contained in the valuation provisions. The value to be used under the present law is stated to be the price at which "such or similar merchandise is freely offered for sale to all purchasers in usual wholesale quantities and in the ordinary course of trade" in the principal markets in question.

These words, with the judicial interpretations that have been placed upon them, have been responsible for a number of results which are inconsistent with normal trading practices. Consequently, the valuations arrived at are often surprising to businessmen not experienced with import practices.

Thus, for example, the courts have held that in determining wholesale value the price at which the largest number of transactions occur must be used rather than the price at which the largest quantity of goods is moved.

Court decisions have prohibited the use of a wholesale price which is freely offered to wholesalers but not to retailers who purchase in the same wholesale quantities. They have also prohibited the use of a wholesale price if the seller, pursuant to a frequent business practice, selects his customers and is willing, for example, to sell to only one customer in a given area.

The second important change which this bill makes in present valuation methods is to define these terms so as to permit the more frequent use of the actual going wholesale price when it is commercially realistic to do so.

The third important change relates to amendments to the secondary methods of valuation which are to be used in case export value cannot be determined. These secondary methods of valuation are basically the same as they are under existing law.

The first method of valuation which is resorted to if export value cannot be determined is United States value which, broadly speaking, is the going wholesale price at which the imported merchandise is sold in the United States less the cost of getting it here and selling it.

At present, the deductions permitted for general expenses and profit are limited by the statute to a fixed percentage of the price.

Under H. R. 6040 actual expenses and profits would be permitted to be deducted. The final method of valuation, if all else fails, is to construct a value out of the costs of materials and labor and expenses going into the product plus an amount for profit. This method of valuation formerly called cost of production has been retitled "constructed value."

H. R. 6040 will also revise the determination of constructed value by permitting actual expenses and profit to be used when they are less than the fixed minimum percentages now required by law.

In redrafting the valuation standards, the purpose was to make the secondary standards of valuation (United States value and constructed value) as nearly comparable as possible to an export value if one had existed. By doing so, it was hoped to discourage the practice which is sometimes resorted to now, of creating artificial conditions in the trade in a particular product so as to shift the valuation basis to a more favorable standard.

Some imports, particularly certain coal-tar products and rubber-soled footwear, are valued on the basis of the American selling price. This bill leaves the American selling price applicable to all such imports as well as to any imports to which the American selling price may be made applicable in the future.

The substance of this bill, with minor changes, was among the provisions passed by the House which became the Customs Simplification Act of 1953. They reached this committee so late in that session that there was not time for public hearings here; but concern was expressed over their possible effect on the level of tariff protection.

Accordingly, the Treasury, during 1954 and early 1955, conducted a very extensive test based on fiscal 1954 imports, applying carefully considered sampling methods to nearly 20,000 entries covering $42 million of merchandise imported through 8 principal ports of entry.

This survey was presented to the Congress and demonstrated that the average decrease in valuation under H. R. 6040 for ad valorem imports would be about 2½ percent, that the reduction of revenue collected would amount to about 2 percent, and that the average reduction of protection amounted to only one-half of 1 percent.

This information was also tabulated according to the commodity subgroups which the Bureau of the Census uses for import figures, and in only 8 groups was the indicated percentage decrease in appraised value greater than 8 percent.

It is true, however, that our sampling indicated that in an occasional unusual situation the reduction in valuation for a particular commodity in a particular transaction might be very much larger. After last year's hearings, this latter possibility appeared to remain the principal concern of this committee.

After the end of the public hearings, I worked with the technicians in the Treasury Department to see if there was any way of meeting this concern without at the same time destroying the benefits to be derived from enactment of the new valuation provisions.

We concluded that a procedure which preserved for the present the old valuation practices for those commodities which might be expected to experience a considerable initial reduction in valuation, could be worked out satisfactorily.

This proposal is contained in an amendment drafted by the Treasury Department which has been introduced by the chairman and which I would now like to explain in more detail.

This is the procedure that would be followed. The Treasury Department would prepare and publish in the Federal Register a tentative list of commodities which it finds would probably be decreased in value by 5 percent or more under the new valuation principles contained in H. R. 6040.

This tentative list would be based upon the survey already made covering imports for the fiscal year 1954 and would be supplemented by such further investigation as appeared to be necessary. Publication of the list would be made for the purpose of inviting comment by domestic industry in the form of reasons for belief that any additional commodities should be included in the list.

The Treasury Department would consider these representations and add such further commodities to the list as appeared warranted. A final list of commodities would then be published in the Federal Register.

In formulating these lists, every effort would be made to describe the commodities with such particularity that any import item which would be reduced in value by 5 percent or more under the new procedures would continue to be subject to the old valuation principles.

Thirty days after publication of the final list, all commodities not listed would be valued under the revised valuation provisions. All commodities on the list would continue to be valued under the present valuation system.

The customs service would maintain records of significant changes in value or in commercial and trading practices in the commodities involved which might result in a commodity no longer being reduced in value by as much as 5 percent, and which in other instances might result in a commodity shifting to a 5 percent or lower valuation.

Based upon a year's experience under the first published list, a new list would be prepared of the commodities which, as of that time, would have a 5 percent or lower value under the new system than under the old. This list would be published in tentative form in the Federal Register, comment would be invited, suggestions for additions would be considered and a final list published.

Thirty days after publication of this second revised list, all commodities not on the list would be valued under the new valuation principles. All commodities on the list would be valued under the old valuation principles whether or not they had been so valued during the course of the first year.

This procedure would be repeated once more after the second list had been in effect for 1 year and a third revised list would then be effective for a year. At the end of the year under the third revised list, a fourth list would be prepared and published on the basis of the third year's experience and comment thereon, but would be used only for transmittal to Congress. Each final list, together with explanatory data, would be sent to the Congress—this committee and the Ways and Means Committee.

At the end of the trial period, Congress would have before it complete information as to the number of commodities which would then be reduced in value by 5 percent or more if the new valuation principles came fully into effect. They would know how many commodities were on the original list and what changes occurred over each of the 3 succeeding years.

I believe that all of this information will demonstrate that domestic industry cannot rely on valuation procedures for protection from imports; that is, cannot relay satisfactorily for protection, because the protection therefrom is so much within the control of the terms of offering by the foreign exporter.

In my opinion, this trial period will establish that any level of valuation higher than the actual wholesale value in trade with the United States cannot be depended upon and that in fact foreign exporters are now in a position to so conduct their affairs that the export value will be used in most cases.

I also believe that this trial period will demonstrate that use of the new valuation principles will result in a more realistic basis of appraisement which will not encourage dual pricing practices or any other form of unfair competition in trade with the United States.

No matter what conclusions may be drawn, the Congress will have all the information necessary to decide the validity of the conflicting claims about the valuation principles which have been brought before this committee.

It will then be able, if it finds that the facts warrant it, to provide for some other system of valuation, to revert to the old valuation principles as to all imports or take any other special steps it feels may be necessary for one or more particular industries.

Under the provisions of the amendment, if Congress does not act within 90 days of continuous session after publication of the fourth final list the new valuation principles would become effective for all ad valorem imports.

The Bureau of Customs recognizes that for the transitional period a considerable additional amount of work will be necessary, but it is prepared to undertake this additional effort because the simplified valuation procedures will be applicable immediately to an estimated 90 percent of all ad valorem imports and because it offers a reasonable prospect of simplified valuation procedures for all ad valorem imports in the years to come.

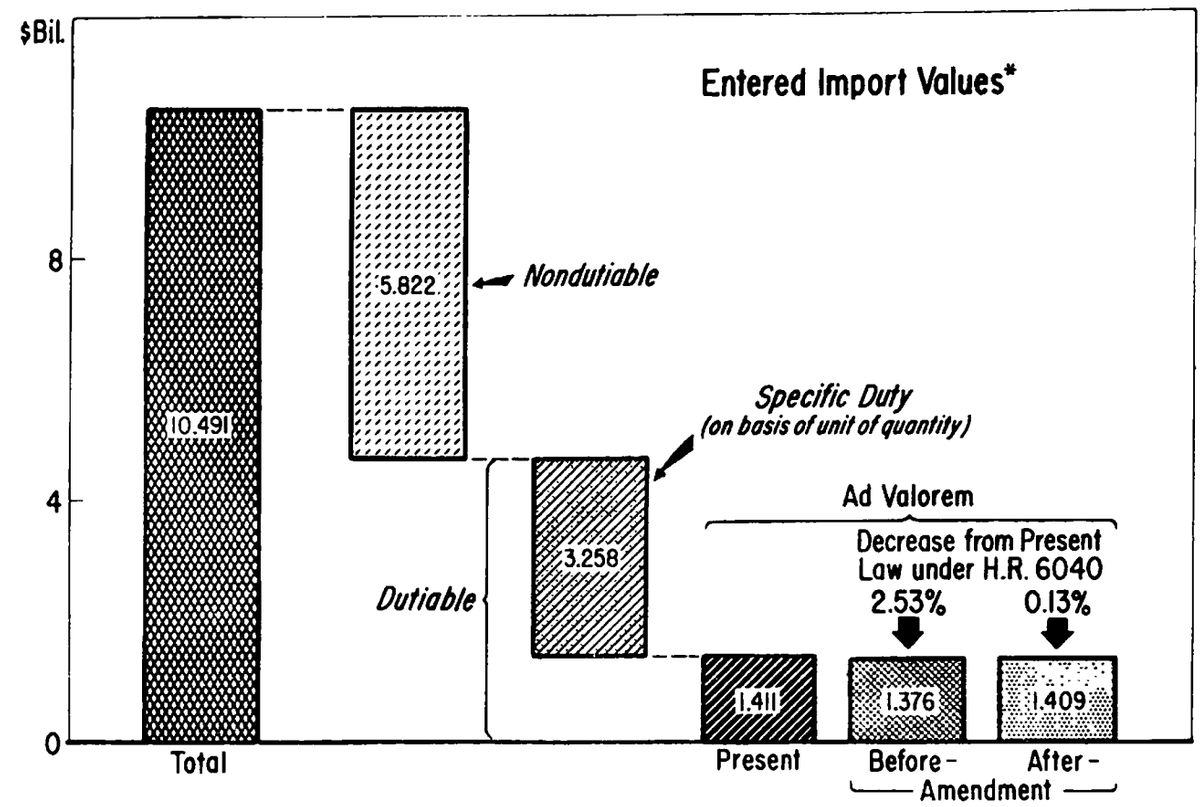
The amendment procedure gives full assurance that no domestic industry will be met by a material decrease in the valuation basis of competitive foreign imports. The Treasury Department has prepared some charts which more clearly demonstrate the very small possible effect this legislation could have on both valuation and the amount of duty collected during the trial period called for by the proposed amendment.

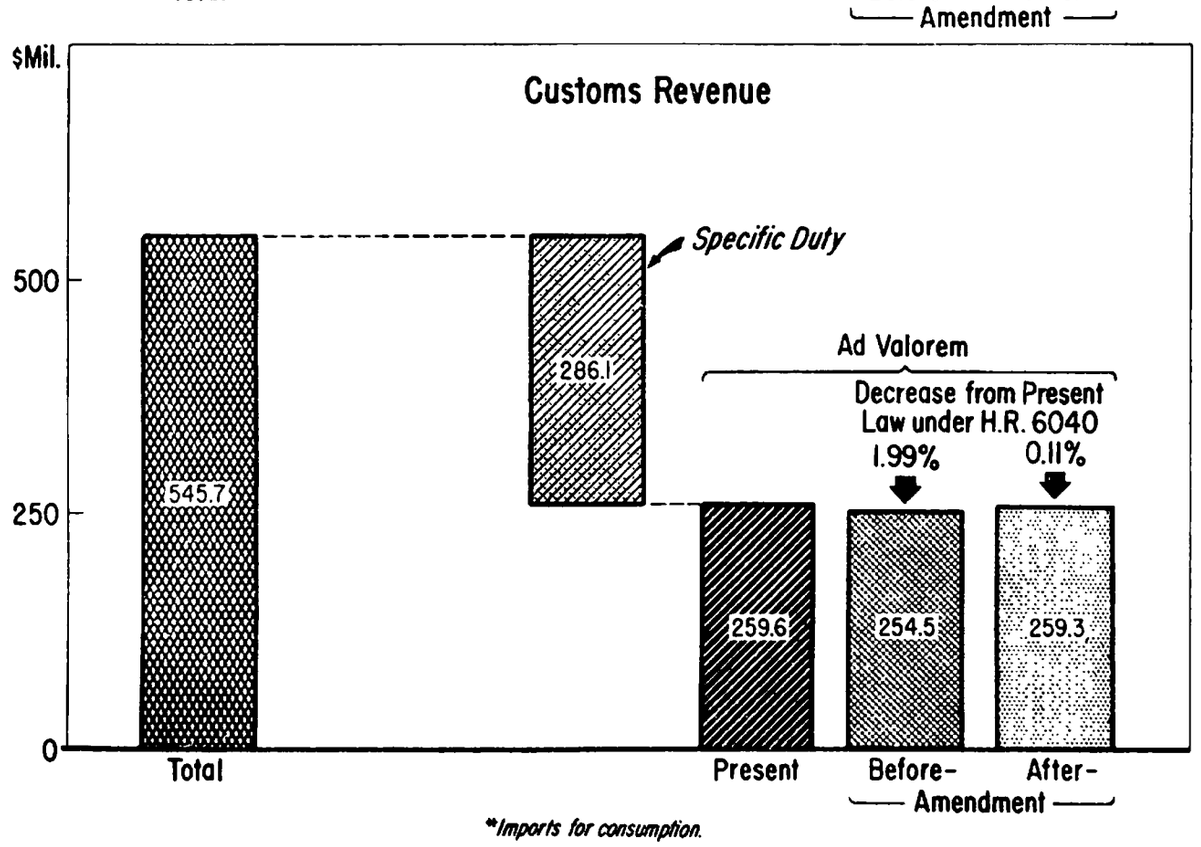
Mr. Chairman, I have had distributed some small charts which I believe are before the committee members, but it may be easier to understand if I do this before the large chart.

(The charts referred to are as follows:)

Chart I

RELATIONSHIP OF H.R. 6040 TO IMPORT VALUES AND CUSTOMS REVENUE, FISCAL 1954





*Imports for consumption.

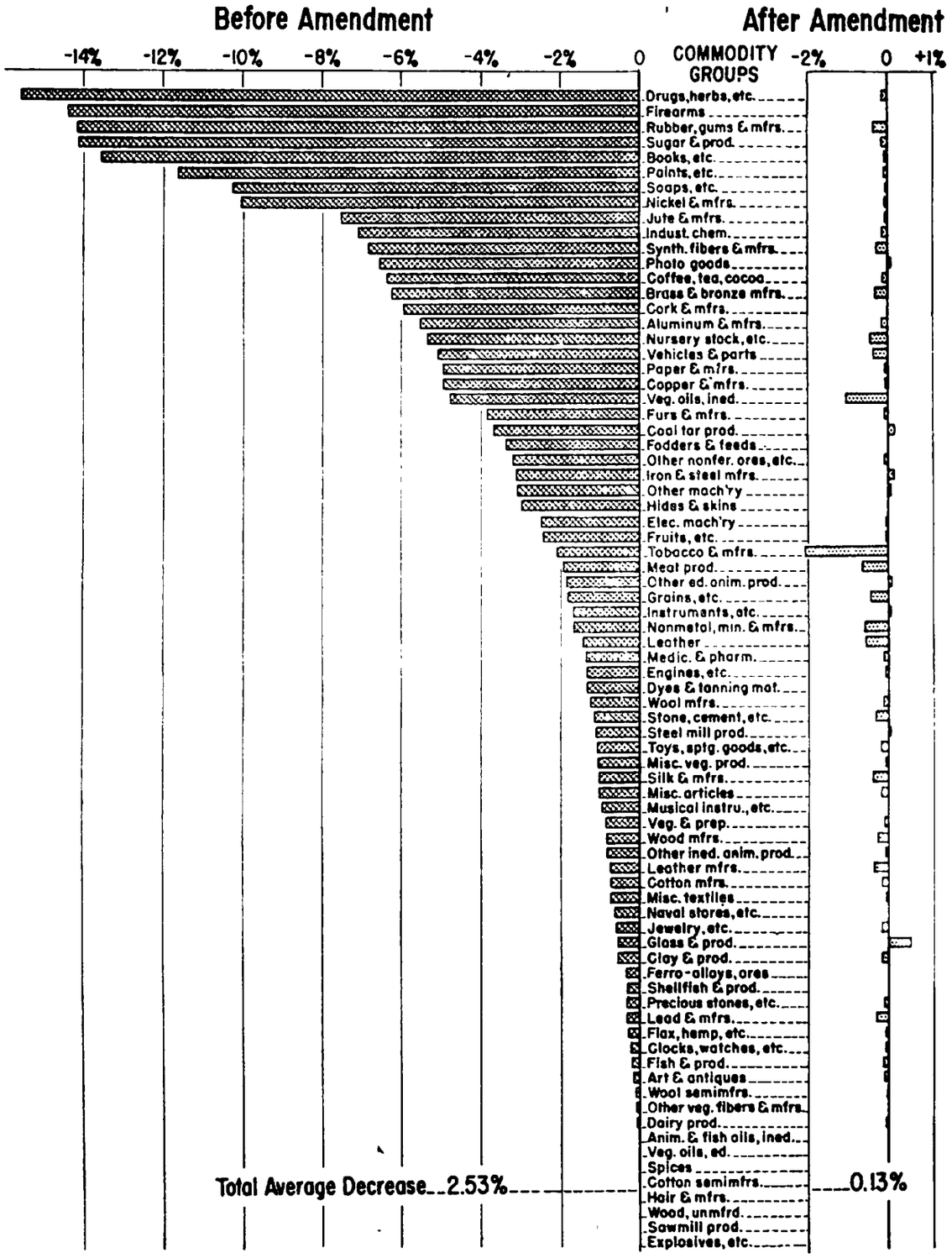
Office of the Secretary of the Treasury

C-1016-1

Chart 2

EFFECT ON VALUATION OF AD VALOREM IMPORTS OF H. R. 6040 BEFORE AND AFTER AMENDMENT

Percentage Decrease in Appraised Value by Commodity Groups*



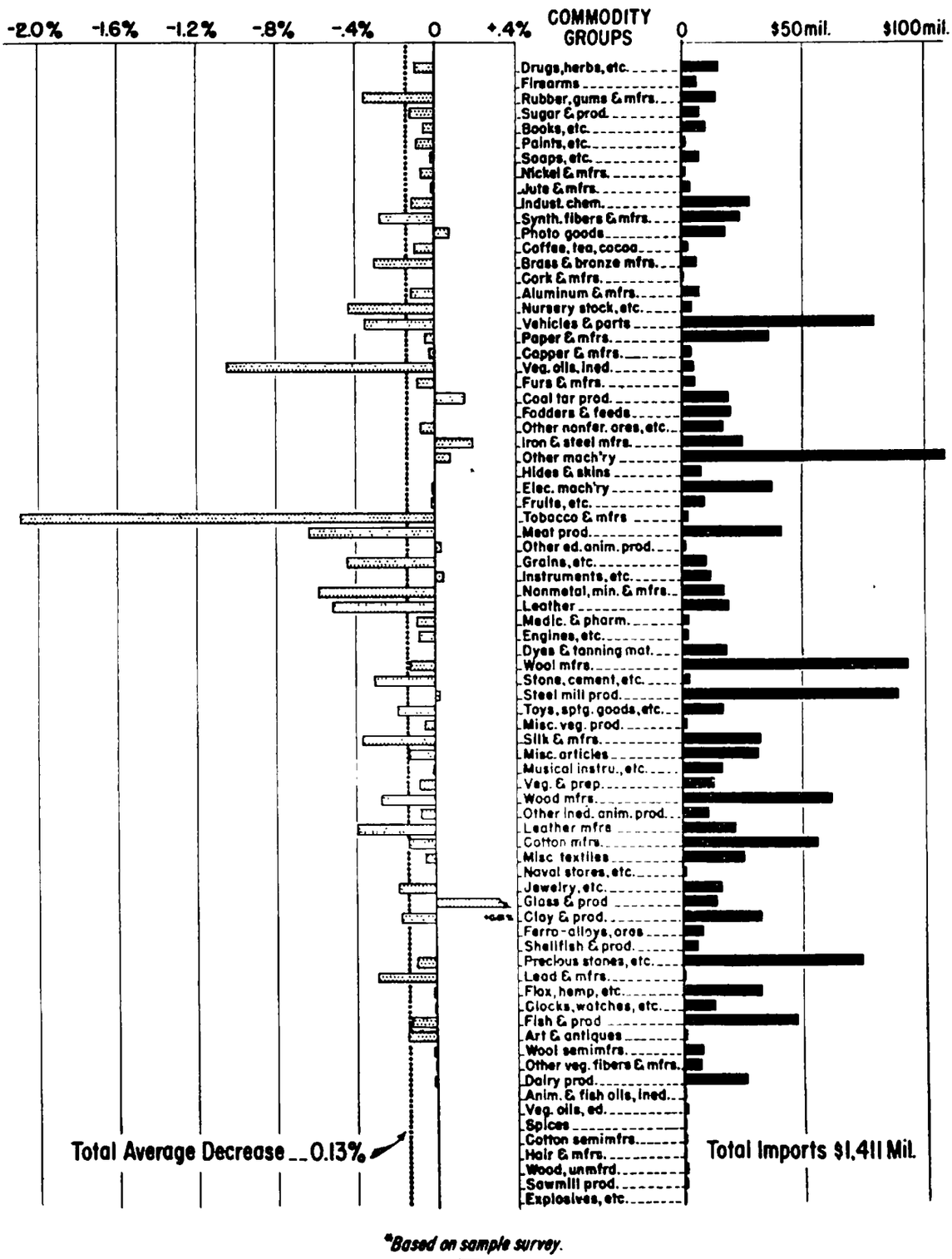
*Based on sample survey.

Office of the Secretary of the Treasury

C-1012-1

Chart 3

EFFECT OF H. R. 6040 AFTER AMENDMENT ON IMPORT VALUATION AND VOLUME OF FISCAL 1954 IMPORTS



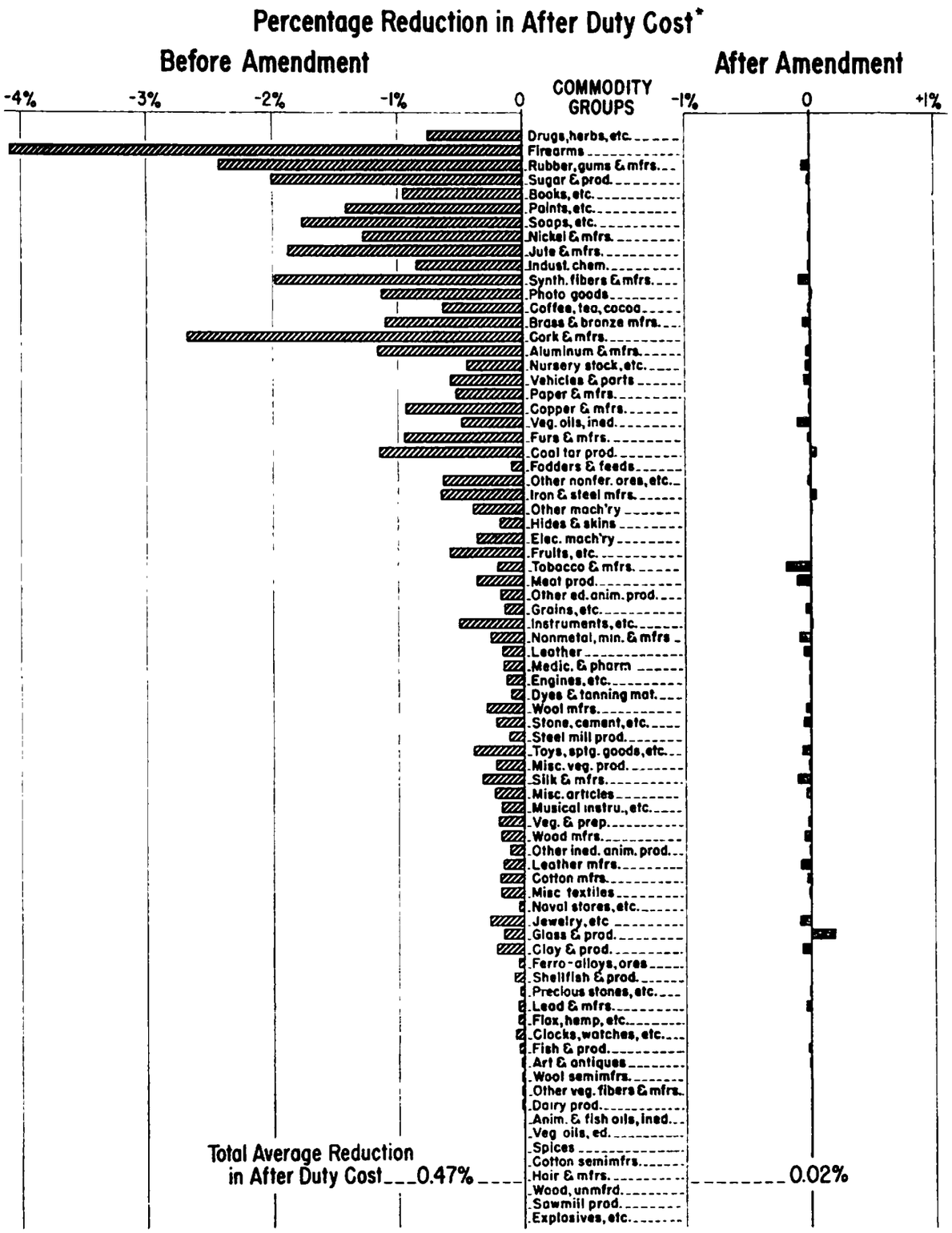
*Based on sample survey.

Office of the Secretary of the Treasury

C-1006-A

Chart 4

EFFECT OF H.R. 6040 ON AFTER DUTY COST OF AD VALOREM IMPORTS



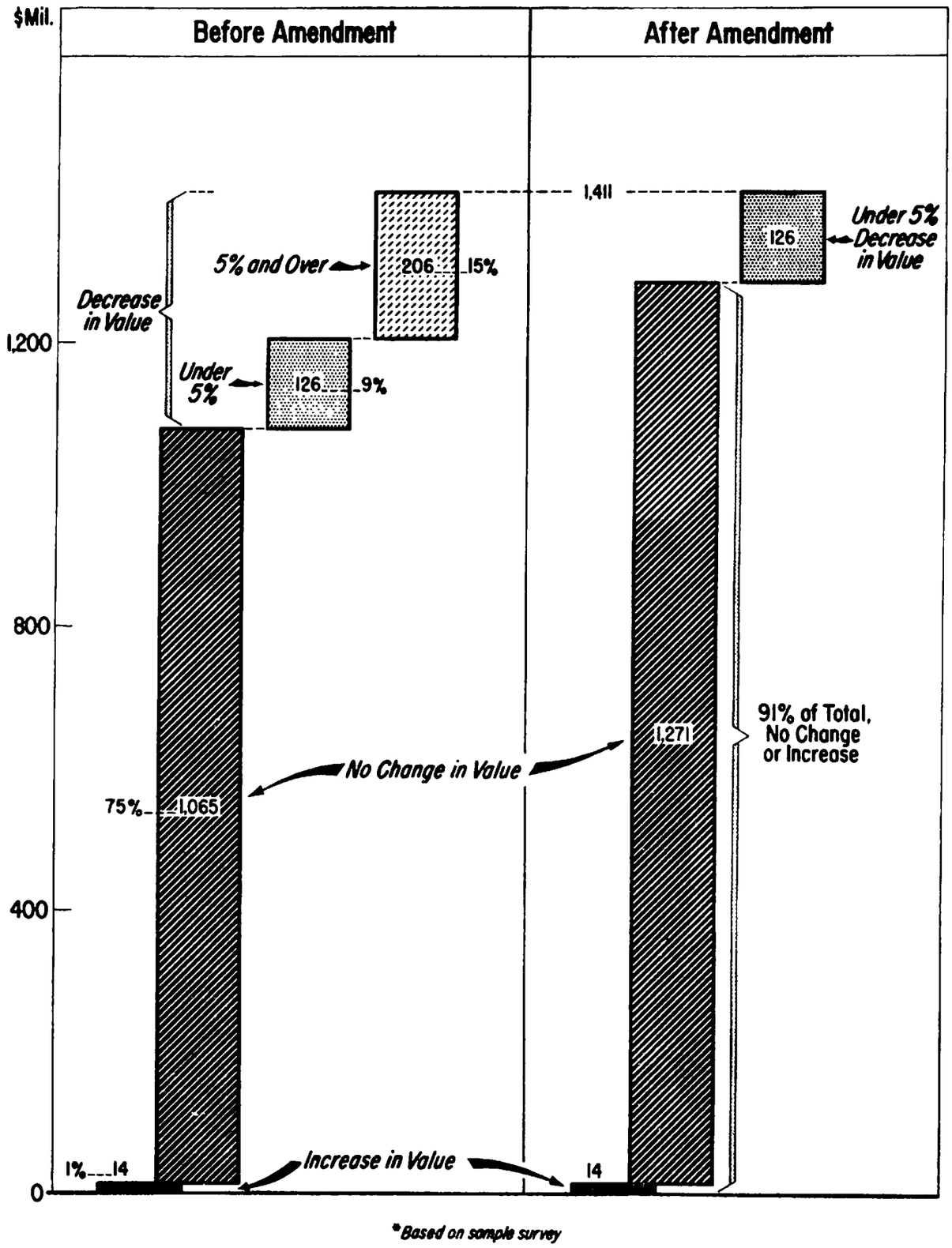
Reduction in after duty cost expressed as a percentage of present appraised value.

Office of the Secretary of the Treasury

C-1019

Chart 5

FISCAL 1954 AD VALOREM IMPORTS BY CHANGE IN APPRAISED VALUE UNDER H.R. 6040*



*Based on sample survey

Office of the Secretary of the Treasury

C-1015-1

Mr. ROSE. Chart 1 shows total imports during fiscal 1954, of $10,491 million, as this green bar, broken down into dutiable and nondutiable imports; $5,822 million are nondutiable. Another group of imports to which this bill is inapplicable is $3,258 million which are dutiable on a specific basis, which depends on measurement or quantity or some other basis not relating to value.

And then there is ad valorem merchandise, which is dutiable on an ad valorem or compound basis, that is a specific basis with an ad valorem component, which is $1,411 million. And this is the only group to which this bill applies.

The effect on valuation of H. R. 6040 before amendment is shown by this blue bar here, and the effect would be to reduce it by 2.53 percent to $1,376 million, and the amendment which is now before you would reduce the valuation by only $2 million to $1,409 million, or .13 percent.

Senator ANDERSON. Is that after 1 year or after 4 years?

Mr. ROSE. That is based, Senator, on fiscal 1954. We went back and redid the fiscal 1954 imports, and this is applying the amendment principles to that.

Senator ANDERSON. As I understood it, the amendment might change in 4 years; it would be one thing the first year, something else the second year, something else the third year, and something else the fourth year. Is this figure based on what it might become, or what it will be?

Mr. ROSE. It is based on what it would have been in 1954. You are quite right that in terms of change, the effect of the bill itself and the amendment might change—in other words, if we had done this sampling on a subsequent year, it might have shown different figures, and we think it would have shown less change in valuation, because we see a trend toward use of export value under existing law.

Senator ANDERSON. But in any event, the large share of the imports were nondutiable, or under the specific duty it would affect only a rather small amount of imports, and those to no great degree, some between two and one-half one-hundredths and thirteen one-hundredths of 1 percent?

Mr. ROSE. Well, in any event, the maximum to which any item could be affected is 5 percent. And the indicated average effect across the board is thirteen one-hundredths. I will break that down more accurately as we get further along.

Senator WILLIAMS. Without the amendment, what is the maximum effect on any one commodity?

Mr. ROSE. The figures ran—as I recall, there were a few that ran as high as 50 to 75 percent reduction in valuation.

Senator ANDERSON. Could you give us an example of a product?

Mr. ROSE. As I recall it, sugar candy was one. It was commodity grouping No. 22, sugar and related products, sugar and confectionaries. There were reductions in that category that ran from trivial reductions of less than 1 percent to as high as 50 or 60 percent.

I remember the explanation of that was that export value is not now the basis, but cost of production is the basis. And that is a very uncertain basis of valuation when you are trying to figure out what it costs in a foreign country to produce something.

To go ahead with this, if I may, the bottom half of this chart indicates the effect on customs revenue. Here is the total duty collected

on all imports in fiscal 1954 of $545 million. Of that, $286 million were specific duties which again would not be affected by this bill and $259 million were ad valorem duties.

The bill itself on this sampling, again would have affected revenues by approximately $5 million, or 1.99 percent; as amended, the revenues are $259.3 million as against $259.6 million, a difference of $300,000, or 0.11 percent.

Senator FLANDERS. Mr. Chairman, there is some elementary matter here that has escaped me.

What is the difference between the present and before amendment? Is the present before amendment?

Mr. ROSE. I am reflecting the effect of the amendment introduced by the chairman at the request of the Treasury. In other words, there is H. R. 6040 which proposes to change the valuation system in the three substantial ways that I described.

Then there was an amendment introduced by the chairman at the request of the Treasury Department which would have the effect of minimizing the change in valuation that H. R. 6040, as originally introduced, would produce.

Senator FLANDERS. Then, is the present law—this is the present law?

Mr. ROSE. Yes.

Senator FLANDERS. And the other is the new proposed law, before and after amendment?

Mr. ROSE. That is right.

Senator FLANDERS. All right.

Senator ANDERSON. Have you any estimates as to how much it is going to cost to make all these findings for 4 successive years? In other words, there is a thousand dollars' difference, and the other way, $5 million. Do you think you can make all these findings and publish them in the Federal Register for $5 million?

Mr. ROSE. Well, as I said when I was before the committee last year, I think that $5 million is a figure which might have been the case in 1954. There is no solidity to it for the future, because there is a trend, as we in the Treasury saw it when I was looking at the things there, to export value—from foreign value toward export value under existing law, so that that $5 million difference is what would be the difference at one point of time, but changing conditions in trade would, in my view, tend to minimize that, in any event.

Now, to take the other question, we did put into the record last year an estimate that it would cost about three-quarters of a million dollars to produce the same expedition in handling by adding people as by this amendment. So that is roughly the equation.

Senator ANDERSON. Yes, but we have both served in the administrative end enough to know that once you get a place where a man can stop and study and make a decision, you have got a position that he has got to fill with a secretary as a helper.

I wonder, with $5 million, whether it wouldn't be better to forgive and forget than to worry with all the people. I am willing to accept your statement that it can be done for about three-quarters of a million.

Mr. ROSE. As I see this, and as I believe the customs sees it, because of what is happening in terms of trade, this will be an evaporating job. It is more work to go through the additional computations necessary for these lists. On the other hand, the customs gets the benefit of going 90 percent to the new system of valuation. I can't in any exact way equate those.

Now, this is a tabulation, chart 2, which was before the committee last year, showing the effect on valuation of ad valorem imports of H. R. 6040 before and after amendment introduced by the chairman.

And, as you see, it runs from a maximum of something over 15 percent, I believe, in the first group on the chart—which was drugs and herbs, and so forth—down to a minimum of zero, coming down to an average of 2.53 percent, as is pointed out.

This is the bill as it was before you last year. The effect of the amendment is to produce the condition shown at the right of the chart, in which only one group, tobacco and manufactures, is affected as much as 2 percent—I have the exact figures here, there are only—perhaps I could go to the next chart, chart 3 which is the same thing, but blown up so that you can see it, because it is so small on that other scale that it is practically invisible.

There are only, as you can see, about 6 or 7 groups where the effect even in the groupings is as much as four-tenths of 1 percent on valuations.

Now, the bars to the right are for the purpose of showing the relative value of each one of these commodity groups in the total trade that year. In other words, that breaks down the $1,411 million into the commodity groups in which the trade took place.

That is an indication, of course, of the extent to which the amendment minimizes the effect of the changes in valuation.

Senator WILLIAMS. Those bars on the right, do they reflect increases in the tariffs?

Mr. ROSE. Those bars on the right, Senator Williams, are the relative volumes——

Senator WILLIAMS. I mean the ones on the right of the second chart.

Mr. ROSE. Of the second chart?

Senator WILLIAMS. Of the first chart.

Mr. ROSE. They reflect increases in valuations.

Senator WILLIAMS. Increases in tariffs?

Mr. ROSE. Yes. The reasons for that I could explain briefly.

They are this: These new principles produce increases in valuation in some cases. The reason why increases are shown which are not there before, is because, taking out offsetting decreases, the increases show up as group increases.

Senator WILLIAMS. Is 2 percent the maximum reduction that would be effective under the amendment?

Mr. ROSE. It is the maximum deduction for any group. Of course, for any item the maximum would be 5 percent, because those are the terms of the amendment.

Senator CARLSON. Then if I understand that correctly, that table shows on tobacco about 2 percent—the total volume is very small, it looks like it might be a million——

Mr. ROSE. This is 50 million, it is possibly between two and five million dollars.

Now, chart 4 is for the purpose of giving an indication of the effect on protection. You see, what we have talked about in the previous chart was the effect on valuation. Now, the degree of protection is a function of valuation times duty, because a reduction in valuation has the effect only of changing protection to the extent of that percentage of it which corresponds to the duty.

Before amendment—that is, H. R. 6040 as it was before the committee last year—these were the figures, coming out to an average of

less than a half of 1 percent, a maximum of 4 percent in any commodity group.

After amendment, these are the figures which are, as you can see, very small, and they total two one-hundredths of 1 percent, as an average.

Senator ANDERSON. May I ask you there, in that second line after amendment, it looks as though nothing is going to happen. Apparently, dollarwise, it isn't. But is there still a substantial improvement through the simplification of customs in the bill?

Mr. ROSE. Yes, because 90 percent of the commodities were transferred to the new system; 90 percent of the commodities—something in excess of 60 percent of the commodities that presently enter are valued on an export value basis. But the law says the higher of export or foreign value. It is nevertheless necessary both theoretically and practically, to make a computation of what the foreign value will be. That is the reason why the change is so small. But the gain in administration comes from removing the necessity for verifying that in an estimated approximately 90 percent of the cases.

Senator ANDERSON. I understand, then, that the bill, H. R. 6040, would result in substantial customs simplification, and the amendment would prevent it from doing anything dollarwise to the Treasury receipts.

Mr. ROSE. That, in summary, is the contention. I think chart 5 perhaps elaborates the answer to the question you just asked. It indicates the percentage changes in dollar value under the bill and under the amendment.

At the bottom is a black bar which indicates the $14 million of items which would increase in value. The yellow bar is 75 percent under the bill and 91 percent under the bill as amended, which would have no change in value.

The ones that would change under 5 percent, about the same on both sides, or $126 million. The $206 million which would change more than 5 percent are, of course, present here, but eliminated there under the amendment.

That, I think, sir, substantially concludes my affirmative presentation.

I believe, Mr. Chairman and members of the committee, that this should clearly demonstrate that the procedure which is being suggested to you will protect the interests of the United States and each domestic manufacturer of the United States for a trial period under the new law.

At the same time, the Bureau of Customs and the Treasury Department will be given an opportunity to put into actual practice the proposed valuation principles which it is believed will be of such great assistance in providing speedier and more certain and equitable valuation standards for the United States.

I hope you will report this bill favorably so that the customs service will be given the opportunity to make further progress toward the goal of simplified customs administration and prompt determination of duty liability.

(The prepared statement of Mr. Rose, in full, is as follows:)

STATEMENT BY H. CHAPMAN ROSE, OF CLEVELAND, OHIO

Mr. Chairman and members of the committee, I am very grateful to the committee for the invitation to appear before you on the amendment to H. R. 6040

introduced by your chairman at the request of the Treasury Department. You will recall that I appeared before your committee last year on H. R. 6040, itself, as an official of the Treasury Department; and when I retired from the Treasury your chairman indicated that in view of my past familiarity with the customs field he would invite me to appear, as he has now done, when the bill came before the committee for further consideration.

Because so much time has elapsed since the prior hearings, it may be helpful if I seek to recall to your minds the origin of the proposals in H. R. 6040.

When this administration assumed office in January 1953, the business of the customs service had reached a very difficult situation. With the increasing activity since the end of the war, it had fallen farther and farther into arrears. In September 1953, its backlog of unliquidated entries—which means import transactions on which final liability for duties remained unsettled—had reached an all-time high of 900,000. The annual rate of liquidation was then about 900,000, so this meant 1 year's backlog of unfinished business. The serious effect of this condition in creating uncertainty and difficulty in commercial transactions needs no emphasis.

This condition was in large part caused by increasingly archaic procedures imposed upon customs by statute and by a concomitant failure to modernize its management procedures. In the Customs Simplification Acts of 1953 and 1954, the Congress responded to the administration's request for authority to modernize customs methods. The Treasury has sought in turn to use this authority, without relaxing protection of the revenue, to bring about efficient administration. It sought out a prominent figure from the business world, Ralph Kelly, formerly vice president of Westinghouse Electric Corp., and president of Baldwin Locomotive Works, to be Commissioner of Customs. Under his leadership and with the help of the authority given by the statutes I mentioned, the condition has been substantially improved. The annual rate of production has been raised by about a third, and the backlog has been reduced from 900,000 entries to 626,000 at the end of last March. At the present higher rate of output, this represents about 6 months' work, as compared with a 12-months' blacklog 3 years ago.

Unfortunately, however, this condition still falls substantially short of putting the business of customs on a current basis. Furthermore, nearly all of the improvement was realized from the fall of 1953 to the summer of 1955, and very little of it during the last year. During the last year there has been approximately an 11 percent increase in imports; and improved procedures have succeeded only in staying abreast of the increase. An analysis of the existing backlog shows very clearly where the trouble lies and what needs to be done to improve it.

The existing backlog of 626,000 unliquidated entries can be broken down into three categories. The first, comprising about 100,000 entries, need give us little concern because they are held up either at the request of the importer or because of some default of his, such as failure to file required information. These are not cases, therefore, where Government inefficiency is delaying business. The second category, 242,000 entries, is in need of improvement, which is gradually coming about, but is in fairly good shape. These are the entries where all the necessary information is at hand to figure the final duty and all that remains is to process them. This group tends to turn over in 2 to 3 months' time. The third and largest group is the main source of present difficulty. This comprises 282,000 entries where the collector's office must await determinations of the value of the merchandise before final duty can be computed.

This group contains the sluggish entries that tend to turn over very slowly, as can be seen from the following: Customs has sought to regard a 30-day period as the target for completion of appraisement, but, of this group of 282,000 unliquidated entries only 34,000 have been under appraisement less than 30 days. Of the balance of 248,000, 90,000 are in court on appeal by the importer from determinations by the appraiser; and the remaining 158,000 have been in the hands of the appraiser for more than 30 days. Of this total 22,000 are awaiting the result of about 300 foreign inquiries. It has been clear to me for some time that a major field in which customs procedures require improvement is that of valuation. This is the major purpose of H. R. 6040.

Section 2 of H. R. 6040 is intended to revise and simplify the valuation provisions so that the backlog of entries in litigation over appraisal, or which have been in the hands of appraisers more than 30 days, can be substantially reduced. This reduction should follow from eliminating the necessity for a great many foreign investigations, and from making valuations more predictable and certain and more realistic in terms of the wholesale prices actually paid in the trade with the United States.

Valuation of merchandise for customs purposes is necessary only in connection with those imports which are assessed duties on the basis of a percentage of their value. Such duties are called ad valorem duties. Under existing law, the appraiser is required to determine both the foreign value, which is the going wholesale price in the country of origin for domestic consumption there, and the export value, which is the going wholesale price in the country of origin for export to the United States. After both of these values have been determined, the appraiser is required to use the higher of the two. The first change which H. R. 6040 would make is to eliminate foreign value as a basis of appraisement and make export value the single primary basis.

The second substantial change made by this bill is to redefine a number of terms contained in the valuation provisions. The value to be used under the present law is stated to be the price at which "such or similar merchandise is freely offered for sale to all purchasers in usual wholesale quantities and in the ordinary course of trade" in the principal markets in question. These words, with the judicial interpretations that have been placed upon them, have been responsible for a number of results which are inconsistent with normal trading practices. Consequently, the valuations arrived at are often surprising to businessmen not experienced with import practices. Thus, for example, the courts have held that in determining wholesale value the price at which the largest number of transactions occur must be used rather than the price at which the largest quantity of goods is moved. Court decisions have prohibited the use of a wholesale price which is freely offered to wholesalers but not to retailers who purchase in the same wholesale quantities. They have also prohibited the use of a wholesale price if the seller, pursuant to a frequent business practice, selects his customers and is willing, for example, to sell to only one customer in a given area. The second important change which this bill makes in present valuation methods is to define these terms so as to permit the more frequent use of the actual going wholesale price when it is commercially realistic to do so.

The third important change relates to amendments to the secondary methods of valuation which are to be used in case export value cannot be determined. These secondary methods of valuation are basically the same as they are under existing law. The first method of valuation which is resorted to if export value cannot be determined is United States value which, broadly speaking, is the going wholesale price at which the imported merchandise is sold in the United States less the cost of getting it here and selling it. At present, the deduction permitted for general expenses and profit are limited by the statute to a fixed percentage of the price. Under H. R. 6040 actual expenses and profits would be permitted to be deducted. The final method of valuation, if all else fails, is to construct a value out of the costs of materials and labor and expenses going into the product plus an amount for profit. This method of valuation formerly called "cost of production" has been retitled "constructed value." H. R. 6040 will also revise the determination of constructed value by permitting actual expenses and profit to be used when they are less than the fixed minimum percentages now required by law.

In redrafting the valuation standards, the purpose was to make the secondary standards of valuation—United States value and constructed value—as nearly comparable as possible to an export value if one had existed. By doing so, it was hoped to discourage the practice which is sometimes resorted to now, of creating artificial conditions in the trade in a particular product so as to shift the valuation basis to a more favorable standard.

Some imports, particularly certain coal tar products and rubber-soled footwear, are valued on the basis of the American selling price. This bill leaves the American selling price applicable to all such imports as well as to any imports to which the American selling price may be made applicable in the future.

The substance of this bill, with minor changes, was among the provisions passed by the House which became the Customs Simplification Act of 1953. They reached this committee so late in that session that there was no time for public hearings here; but concern was expressed over their possible effect on the level of tariff protection. Accordingly, the Treasury, during 1954 and early 1955, conducted a very extensive test based on fiscal 1954 imports, applying carefully considered sampling methods to nearly 20,000 entries covering $42 million of merchandise imported through 8 principal ports of entry. This survey was presented to the Congress and demonstrated that the average decrease in valuation under H. R. 6040 for ad valorem imports would be about 2½ percent, that the reduction of revenue collected would amount to about 2 percent, and that the average reduction of protection amounted to only one-half of 1 percent. This information was tabulated according to the commodity subgroups which

the Bureau of the Census uses for import figures, and in only eight groups was the indicated percentage decrease in appraised value greater than 8 percent. It is true, however, that our sampling indicated that in an occasional unusual situation the reduction in valuation for a particular commodity in a particular transaction might be very much larger. After last year's hearings, this latter possibility appeared to remain the principal concern of this committee

After the end of the public hearings, I worked with the technicians in the Treasury Department to see if there was any way of meeting this concern without at the same time destroying the benefits to be derived from enactment of the new valuation provisions. We concluded that a procedure which preserved for the present the old valuation practices for those commodities which might be expected to experience a considerable initial reduction in valuation could be worked out satisfactorily. This proposal is contained in an amendment drafted by the Treasury Department which has been introduced by the chairman and which I would now like to explain in more detail.

This is the procedure that would be followed. The Treasury Department would prepare and publish in the Federal Register a tentative list of commodities which it finds would probably be decreased in value by 5 percent or more under the new valuation principles contained in H. R. 6040. This tentative list would be based upon the survey already made covering imports for the fiscal year 1954 and would be supplemented by such further investigation as appeared to be necesssary. Publication of the list would be made for the purpose of inviting comment by domestic industry in the form of reasons for belief that any additional commodities should be included in the list. The Treasury Department would consider these representations and add such further commodities to the list as appeared warranted. A final list of commodities would then be published in the Federal Register. In formulating these lists, every effort would be made to describe the commodities with such particularity that any import item which would be reduced in value by 5 percent or more under the new procedures would continue to be subject to the old valuation principles.

Thirty days after publication of the final list, all commodities not listed would be valued under the revised valuation provisions. All commodities on the list would continue to be valued under the present valuation system. The Customs Service would maintain records of signficant changes in value or in commercial and trading practices in the commodities involved which might result in a commodity no longer being reduced in value by as much as 5 percent, and which in other instances might result in a commodity shifting to a 5 percent or lower valuation.

Based upon a year's experience under the first published list, a new list would be prepared of the commodities which, as of that time, would have a 5 percent or lower value under the new system than under the old. This list would be published in tentative form in the Federal Register, comment would be invited, suggestions for additions would be considered and a final list published. Thirty days after publication of this second revised list, all commodities not on the list would be valued under the new valuation principles. All commodities on the list would be valued under the old valuation principles whether or not they had been so valued during the course of the first year. This procedure would be repeated once more after the second list had been in effect for one year and a third revised list would then be effective for a year. At the end of the year under the third revised list, a fourth list would be prepared and published on the basis of the third year's experience and comment thereon, but would be used only for transmittal to Congress. Each final list, together with explanatory data, would be sent to the Congress. At the end of the trial period, Congress would have before it complete information as to the number of commodities which would then be reduced in value by 5 percent or more if the new valuation principles came fully into effect. They would know how many commodities were on the original list and what changes occurred over each of the three succeeding years.

I believe that all of this information will demonstrate that domestic industry cannot rely on valuation procedures for protection from imports. In my opinion, this trial period will establish that any level of valuation higher than the actual wholesale value in trade with the United States cannot be depended upon and that in fact foreign exporters are now in a position to so conduct their affairs that the export value will be used in most cases. I also believe that this trial period will demonstrate that use of the new valuation principles will result in a more realistic basis of appraisement which will not encourage dual pricing practices or any other form of unfair competition in trade with the United States.

No matter what conclusions may be drawn, the Congress will have all the information necessary to decide the validity of the conflicting claims about the

valuation principles. It will then be able, if it finds that the facts warrant it, to provide for some other system of valuation, to revert to the old valuation principles as to all imports or take any other special steps it feels may be necessary for one or more particular industries. Under the provisions of the amendment, if Congress does not act within 90 days of continuous session after publication of the fourth final list the new valuation principles would become effective for all ad valorem imports.

The Bureau of Customs recognizes that for the transitional period a considerable additional amount of work will be necessary, but it is prepared to undertake this additional effort because the simplified valuation procedures will be applicable immediately to an estimated 90 percent of all ad valorem imports and because it offers a reasonable prospect of simplified valuation procedures for all ad valorem imports in the years to come.

The amendment procedure gives full assurance that no domestic industry will be met by a material decrease in the valuation basis of competitive foreign imports. The Treasury Department has prepared some charts which more clearly demonstrate the very small possible effect this legislation could have on both valuation and the amount of duty collected during the trial period called for by the proposed amendment. In chart 1, the bar at the top left represents the total of all imports for the fiscal year 1954 which amounted to $10,491 million. Of this total, $5,822 million of imports were not subject to any duty, and $3,358 million of imports were subject only to a specific duty, that is, a duty based upon a unit of quantity, not affected by value. This leaves the first small bar on the chart, representing $1,411 million of imports, which are all of the imports which could possibly be affected by enactment of this bill. H. R. 6040 as orginally introduced, if applied in 1954, would probably have resulted in a reduction in valuation of approximately 2.53 percent, or a decrease in total valuation to $1,376 million. If H. R. 6040 were enacted with the proposed amendment, the valuation base would change by only thirteen one-hundreds of 1 percent, so that in 1954 the value of all ad valorem imports would have amounted to $1,409 million instead of $1,411 million.

The bars at the bottom of the page give comparable information about customs revenue for the fiscal year 1954. Going from left to right, there is illustrated $545.7 million of total customs revenue of which $286.1 million were derived from duties which would not be changed in any way by H. R. 6040. Revenues of $259.6 million were obtained from ad valorem imports in fiscal year 1954 in contrast to $254.5 million which would have been obtained under the original H. R. 6040, and $259.3 million which would have been received if H. R. 6040 with the proposed amendment had been in effect at that time. The reduction in revenue under the amendment amounts to only $300,000 or eleven one-hundredths of 1 percent.

Chart No. 2 gives the commodity breakdown. The bars on the left are the same as presented to you last year and represent the approximate estimated range of reduction for each commodity group under the original H. R. 6040. The bars on the right illustrate the valuation change which would have resulted in 1954 if H. R. 6040, with the proposed amendment, had been in effect. These changes are so small that they are difficult to see on a chart of this scale, and therefore a larger scale has been used on the left hand side of chart No. 3. You will note that under the amended bill only two commodity groups would be reduced in value by more than eight-tenths of 1 percent, and in only 6 more would the reduction amount to as much as four-tenths of 1 percent. Moreover, some of the groups which showed the biggest reduction before are now rendered almost insignificant. Drugs and herbs which originally showed a reduction of almost 15 percent would be reduced by only one-tenth of 1 percent. Firearms, the next largest in the original chart, would not change at all under the proposed amendment. The right hand side of chart No. 3 illustrates the relative importance in value of the various commodity groups in the import trade of the United States for the fiscal year 1954.

The reduction in value is not a measurement of the loss of tariff protection. The measurement of tariff protection is a multiple of both rate of duty and level of valuation. I presented this to you last year in the form of the percentage reduction in after-duty cost. Chart 4 illustrates this change under H. R. 6040 before and after the proposed amendment. The bars on the left are the same as used last year and show that in only one case, firearms, would the reduction in after-duty cost have been more than 4 percent, and the average reduction was slightly under five-tenths of 1 percent.

If H. R. 6040 with the proposed amendment had been in effect, the change in after-duty cost would have been infinitestimal. Firearms would show no

reduction; no commodity group would have been reduced by more than about two-tenths of 1 percent and the average reduction in after-duty cost amounts to only two-hundredths of 1 percent.

Chart 5 summarizes the overall effect of H. R. 6040 on the total value of 1954 ad valorem imports of $1,411 million. Both before and after the amendment, approximately $14 million of imports, or 1 percent of the total, would increase in value. Before amendment $1,065 million, or 75 percent of the total, would not change in value; $126 million, 9 percent of the total, would be reduced by less than 5 percent; and $206 million, or 15 percent, would be reduced by 5 percent or more. With the amendment, there would be no change with respect to $1,271 million of ad valorem imports. Thus, for 91 percent of the trade there would be either no change in valuation, or an increase in valuation under the proposed amended bill. With respect to only $126 million or 9 percent of total imports, would there be any decrease in valuation. The largest decrease would be less than 5 percent and the average decrease would be 2.13 percent.

I believe, Mr. Chairman and members of the committee, that this should clearly demonstrate that the procedure which is being suggested to you will protect the interests of the United States and each domestic manufacturer of the United States for a trial period under the new law. At the same time, the Bureau of Customs and the Treasury Department will be given an opportunity to put into actual practice the proposed valuation principles which it is believed will be of such great assistance in providing speedier and more certain and equitable valuation standards for the United States. I hope you will report this bill favorably so that the customs service will be given the opportunity to make further progress toward the goal of simplified customs administration and prompt determination of duty liability.

The CHAIRMAN. Thank you very much, Mr. Rose.

Any questions? Mr. Kendall, as Assistant Secretary of the Treasury, do you have a statement to supplement the fine statement made by Mr. Rose?

Mr. KENDALL. Yes, sir. Senator Byrd and members of the committee, I wish to express the appreciation of the Treasury Department and my own deep personal thanks to Mr. Rose for being willing to take the time from his business activities to present to you so forcibly and so clearly the reasons for the favorable consideration of H. R. 6040.

As you know, Mr. Rose was Assistant Secretary of the Treasury, and later was Under Secretary, and he lived daily for over 3 years with these complicated problems involving the improvement of customs administration. No small part of the record of achievement in approving customs administration which he cited to you, is due directly to his own efforts.

Particularly is this true in the field of legislation, where Mr. Rose gave personal attention to the formulation of legislative proposals for simplification and improvement of customs administration.

The drafting of H. R. 6040, and the proposed amendment particularly, and the preparation of the Treasury material in support of its enactment had all been completed or undertaken under Mr. Rose's direction before he left the Treasury, as you know. Consequently, nobody is in a better position to express the administration view on this important part of the President's foreign economic program.

I am very grateful to this committee that they have given him the opportunity to do so. The Treasury Department is in complete agreement with the statement which Mr. Rose has made to you, and wishes you to consider the views expressed by him as those of the Department.

I would only like to add one word or two to what has been said. First, I am sure that it is clear to you that this matter of customs valuation after enactment of H. R. 6040, with the amendment proposed, will be completely in the hands of Congress. The Congress, of course, always has the final authority to determine the procedures to be fol

lowed in the determination of value for customs, as well as all other matters of customs administration.

Under H. R. 6040, with the amendment proposed, you will be completely informed from year to year about the results of the valuation experience under H. R. 6040. Thus, you will not only have the authority but the information available to make whatever changes appear to be necessary or desirable in the procedures governing customs valuation at any time during the trial period, as well as within the 90 days after submission of the final list to you.

Secondly, I would like to make it clear that the Treasury Department approaches the amendment, which Mr. Rose has just explained, without any reservation, that a genuine trial period is to be undertaken. We have been and remain firmly of the view that the valuation principles set forth in H. R. 6040 are in the best interests of the United States, and that they are being approached in any event, and that they will simplify and expedite the customs valuation process, and that they will provide a more fair and certain valuation for ad valorem imports to the United States.

In other words, we are prepared to abide by the results of the trial period contemplated under the amendment. If, contrary to our every expectation, the trial period should prove that we have been mistaken, we would certainly wish promptly to cooperate with the Congress, to advise the Congress, and to do what is necessary to make such further revisions as may appear to be necessary.

Thank you, Mr. Chairman.

The CHAIRMAN. The Chair wishes to express the appreciation of the committee to Mr. Rose for the very fine presentation he has made.

Mr. ROSE. Thank you very much.

The CHAIRMAN. And I have very great confidence, Mr. Rose, in your judgment and conscientious work.

Are there any further questions?

Senator MARTIN. May I state that I think all of us are very appreciative of Mr. Rose's coming here this morning. I know personally that he is a very busy man, and I regret exceedingly that I didn't get in to hear the entire testimony. But I shall read it carefully.

Mr. Chairman, as long as America has men of the type and patriotism of Mr. Rose, I think we will make real advancement.

Mr. ROSE. I appreciate that, Senator.

The CHAIRMAN. Any further questions?

Senator FLANDERS. Mr. Rose and Mr. Kendall, I have received this morning a communication from the American Bar Association, the committee on the financing—some committee relating to customs.

May I inquire whether you have this document entitled "H. R. 6040, a Treasury Department Substitute Proposal, Statement on Behalf of the American Bar Association"?

Mr. ROSE. I don't believe I have seen that, Senator. I have heard that there was one.

Senator FLANDERS. It comes at a very late date, since it just came in the mail this morning.

They propose certain amendments in section 5, which takes care of what, in the judgment of this committee of the bar association, in the bill apparently cuts off access to the customs court; and then a second amendment which requries that an appraiser, or one acting in place, instead, shall state on the face of his official return to the collector the basis of his appraisal.

I must say that I am simply acting as a transmitting agent in this matter, and do not have the necessary knowledge to criticize or to support the recommendations made by the bar association. But I think it would be a good idea, Mr. Chairman, if we heard any offhand comments there may be, in view of the shortness of the time on these proposals of the bar association.

Mr. ROSE. I think I can say, in answer to that, Senator, that having looked at this, I am familiar, although not currently familiar, with the points that are raised. I believe they were discussed by Mr. Colburn in testimony before either the Ways and Means Committee or this committee in its prior consideration of this matter.

I believe both of them are dealt with in the report of the Ways and Means Committee. And if I may, I will read a section from page 6 of the printed report No. 858 of the Ways and Means Committee, of last year:

> Various amendments were suggested to protect the right of judicial review and the jurisdiction of the customs court. The committee considered that these amendments were unnecessary, since the right of review and the jurisdiction of the customs court are provided for elsewhere in the Tariff Act and in the Judicial Code. This bill does not confer any unreviewable discretion on any officer of the Treasury Department. To remove any possible doubt that the present scope of judicial review in valuation cases will continue in effect, the committee in its previous consideration of the valuation proposal had recommended an amendment to section 501 of the Tariff Act to provide that the review of the customs court includes all determinations entering into the appraisement valuation. That amendment was enacted in the Customs Simplification Act of 1953, and removes the need for continuation of the review provisions in present section 402 (b) of the Tariff Act—

which is the portion at which section 5 is directed.

Senator ANDERSON. Would we draw from that that if you had seen the American Bar Association provision that you would still have recommended to the committee that it go ahead with these amendments without additional delay?

Mr. ROSE. In essence, the point was covered before the Ways and Means Committee. Our conclusion at that time, and that of the Ways and Means Committee, was that this was a doubt that was not substantiated. And I take it that this is out of an abundance of caution that the recommendation is made again.

On the other point that is raised, the Ways and Means Committee commented as follows:

> The committee also considered a proposed amendment which would have required the appraiser to state the basis of his appraisement. The committee concluded that such a requirement would be an unnecessary delaying factor in the majority of appraisement cases, and that there were other means of obtaining information needed in connection with an appraisement in litigation.

Senator FLANDERS. I would like to inquire: What is the nature of the complication involved in that? Surely the appraiser knows which one of the various methods of making the appraisal he used and recommended, he surely knows that. And why can't he simply say so?

Mr. ROSE. That question I am not sufficiently familiar with to give an offhand answer. I would prefer, if I may, to have a reflection of the customs appraisers who are actually doing that business on a day-to-day basis. I am sure that that can be had.

Senator FLANDERS. The law requires them to do it on one basis or another.

Mr. ROSE. I know at one time it was in the customs procedures—not by statute but by regulation—that this was required to be done. And then it was not done.

I would have to do a little research, Senator, in order to be able to answer that.

Senator FLANDERS. Mr. Chairman, I am just raising these questions on account of this communication. It would seem to me, offhand, as though the first proposal had been satisfactorily disposed of. I am not quite so clear at the moment on the second.

Mr. ROSE. I am not either, sir. And I would like to get further information and have it communicated to you.

(The information was subsequently supplied, as follows:)

The Treasury is opposed to a requirement that the appraiser state the basis of each valuation on the face of his official return because it would be a delaying factor in the appraisement of merchandise. Appraisers maintain records of value information based upon investigations and reports of imports throughout the country. In many instances the appraiser is able to accept the entered value placed on an imported article by the importer because that value is consistent with the value information which he has available to him. In such a case the appraiser need not take the time to ascertain whether the basis of valuation is foreign value, export value, United States value, or cost of production. If the appraiser were required to make such a definite determination at that time with respect to each import, he would no longer be able to appraise as entered and much additional time would be required for appraisement.

Moreover, the only cases in which this information should be needed by the importer are those cases in which the appraiser disagrees with the value placed on the merchandise by the importer and in which the importer desires to contest the appraised value in court. In those cases the Bureau of Customs is prepared to advise the importer of the basis of valuation.

Senator ANDERSON. Did the bar association address this communication to the committee, as well? Did the committee staff receive copies of it? I didn't get a copy of it.

Senator CARLSON. I received a copy through the mails yesterday.

Senator FLANDERS. May I inquire whether the Senator from Kansas is a lawyer?

Senator CARLSON. No, I am not.

Senator FLANDERS. I think perhaps they sent it to the nonlawyers.

(The letter and accompanying statement of the standing committee on customs of the American Bar Association, subsequently received by the chairman follows:)

NEW YORK, N. Y., *June 22, 1956.*

Re H. R. 6040.

SENATOR HARRY FLOOD BYRD,
Chairman, Finance Committee of the Senate,
Senate Office Building, Washington, D. C.

SIR: There is transmitted herewith for your convenience a copy of the report which the standing committee on customs law of the American Bar Association is today filing with the clerk of the Finance Committee of the Senate.

Respectfully,

ALBERT MACC. BARNES, *Chairman.*

H. R. 6040 AND TREASURY DEPARTMENT SUBSTITUTE PROPOSAL

STATEMENT ON BEHALF OF THE AMERICAN BAR ASSOCIATION

On August 25, 1955, the house of delegates of the American Bar Association adopted the following resolutions relating to H. R. 6040, copies of which have been formally filed with each member of the Finance Committee by the secretary of the association:

"*Resolved*, That this committee, customs law, be authorized to present to the Ways and Means Committee of the House of Representatives and to the Finance

Committee of the Senate on behalf of the American Bar Association, the following amendment to H. R. 6040 or to other legislation having the same purpose:

"SEC. 5. All acts, findings, estimates, determinations, and decisions of any customs administrative officer or tribunal acting under the provisions of this act, or under the provisions of the Customs Simplification Act of 1953, or the Customs Simplification Act of 1954, shall be subject to complete judicial review by the United States customs court in the manner provided by existing laws.

"*Resolved*, That this committee, customs law, be authorized to present to the Ways and Means Committee of the House of Representatives and to the Finance Committee of the Senate on behalf of the American Bar Association, the following amendment to H. R. 6040 or to other legislation having the same purpose:

"SEC. 5. (a) In any appraisement made under this act or under the Customs Simplification Act of 1953 or under the Customs Simplification Act of 1954, the appraiser or one acting in his place and stead, shall state on the face of his official return to the Collector, the basis of his appraisal."

Adoption of these resolutions was prompted by the view that the bill H. R. 6040, presented serious questions as to the maintenance of the full and complete judicial review which the Congress has always provided in customs matters.

Since the filing of said resolutions a compromise proposal has been suggested by the Treasury Department, which proposal was embodied in an amendment to the bill H. R. 6040 offered by the chairman of the committee, Senator Byrd. Said amendment does not relate to or touch upon the subject matter of these resolutions and hence does not meet the basic objections to the original measure as embodied in the resolutions above set forth.

H. R. 6040, at the outset, omits section 402 (b) of existing law. Said section 402 (b) gives expressly a right of judicial review to all interested parties of actions of the appraiser in determining the basis of value applicable to imported merchandise. It is a basic principle that Congress is deemed to act advisedly in legislating, and to have some definite intention in mind when it changes or omits language. The very fact of omission of the express provision for judicial review found in section 402 (b) of the present law, therefore, may well raise questions whether it may have been the intention of Congress to impair, diminish, or abolish judicial review in this class of cases.

The Treasury Department has denied this to be the purpose of the bill. The report of the Committee on Ways and Means contains a general statement to the same effect. No possible doubt, however, should be permitted to exist on this score.

The bill, H. R. 6040, contains a series of definitions of the terms used for the various bases of dutiable value in addition to redefining in the administration's own words such terms as "wholesale quantity," "freely offered for sale," "such or similar," etc. which have heretofore been judicially construed. In all of these cases it seems apparent that the administrative officer would be vested with nonreviewable discretion and the legal precedents established on this general question of dutiable value since the Tariff Act of 1890, be discarded or upset. If there is any virtue in stability this bill totally disregards it. Even the heresy of overthrowing a large body of customs law established and followed for more than 100 years might be justified if it were not for the fact that this destruction replaces well thought out legal precedents with administrative nonreviewable discretion.

The bill contains no specific right of appeal to the customs court. Adoption of the first of the above recommended resolutions would insure continuation of independent judicial review of customs administrative decisions.

Under H. R. 6040 there is set up as a dutiable basis (1) the export value, (2) the United States value, (3) the constructed value, (4) in certain cases the American selling price of a comparable domestic article. Due to the refusal of the Treasury Department to instruct appraisers to state on their official return whether their appraisement is export value, United States value, constructed value or American selling price, an importer is in the strange position of having a tax levied accompanied by a refusal on the part of the taxing agent to state why he is so taxed. There is no justification whatever for this position by the Treasury Department. Elemental fairness requires that if the United States appraiser makes an official return of value he be compelled to advise the importer of the basis thereof. Refusal and/or failure to disclose this information acts, in many cases, as an effective bar to court review. Statements of the customs court will illustrate the inherent difficulty.

In *Joseph Fisher* v. *United States*, Reappraisement Decision 6950 of March 1947, the court, in passing upon the appraised value of certain imported hides, stated in part:

"In subsection 402 (c), (d), (e), (f), and (g) we find congressional definitions of the respective values which the Congress has set up as the basis for

all appraisements of imported merchandise. If the appraiser of merchandise is to be relieved of the duty of finding and also indicating the basis of his appraisement, that is, foreign value, export value, United States value, cost of production or American selling price, then the act of Congress in enacting this basis of appraisement would appear to be almost an idle gesture; and unless the appraiser indicates in some manner on some of the official papers the basis of his appraisement, no one will ever know whether or not he has found one of the statutory values required by section 402 or if so, which one."

* * * * * * *

"By section 402 (b) the Congress has given an importer a specific right of action against the Government to file an appeal against a decision of the appraiser that foreign value, export value, or United States value, cannot be satisfactorily ascertained. In order for an importer to take advantage of this specific right of action against the Government, the importer must be advised in some manner of the statutory basis of the value of the merchandise found by the appraiser."

Then the court quoted from a prior case in Reappraisement Decision 5881, wherein the court said in part:

"Considering the small amount of labor required to place upon the official papers the proper letters indicating the basis of appraisement, after the same has already been determined by the appraising officer, in comparison with the benefits which would flow therefrom, there would appear to be little, if any, excuse for not furnishing this information, even in the absence of a statute requiring it."

The Court of Customs and Patent Appeals has made similar reference to this matter of determining the basis of appraisement. Thus, in *Corrigan* v. *United States*, reported as C. A. D. 514, decided January 1953, the court of appeals by Chief Judge Garrett said in part:

"The appraiser at Laredo did not note upon the official papers the statutory basis which he applied in his finding of value, nor is it otherwise disclosed in the record. So the courts are left in the dark as to the statutory provision on which his valuation was based. From our experience in this field of controversy we may say that we often would find it helpful to know what basis the appraiser adopts, and we know of no sound reason for keeping it secret, but we recognize the fact that there is no mandatory requirement that his reasons be made public. The actions of appraisers in this regard doubtless are usually dictated, when difficulties arise, by higher officials of the Customs Bureau, but technically and for the purposes of procedure, the appraisal always is treated as the act of the appraiser whose official status is defined in section 401 (j) of the Tariff Act of 1930, and whose duties are prescribed in sections 499, 500, 503, 504, and 509 of the act."

The court quoted in part from the lower court, the appellate division of the customs court, to this effect:

"Simply because the Government has seen fit to accept and follow a policy of secrecy as to the basis of the value found and adopted by an appraiser, without attendant notation by him on the official papers, does not mean that such tactics should go on forever. Value, as defined in the Tariff Act, is the very essence of the issue in litigation of this character. It is incumbent upon a plaintiff in an action like this to assert and prove a value different from that found by the appraiser, and yet the Government contends that the basis for the latter cannot be divulged if not noted on the official papers, because to do so would violate some supposedly between-the-lines intendment in the statute. It is inconceivable that such as essential should not and cannot be obtained."

The second proposed amendment above set forth would correct this fundamental deficiency in the law.

The compromise proposal suggested by the Treasury Department and embodied in the amendment offered by Senator Byrd referred to, as stated, does not meet the foregoing objections.

The proposals presented on behalf of the bar association for express judicial review and for requirement of disclosure by appraising officers of the basis of appraisement are essential whether or not the said amendment be adopted. Approval of the two proposals so presented would assist in removing some of the confusion and uncertainty which would otherwise most certainly result from adoption of H. R. 6040.

Respectfully submitted.

ALBERT MACC. BARNES,

Chairman, Standing Committee on Customs Law, American Bar Association.

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Senator WILLIAMS. Mr. Rose, as I understand the amendment before the committee, to H. R. 6040, it would limit the reduction in any one commodity to 5 percent; is that correct?

Mr. ROSE. Yes.

Senator WILLIAMS. And provides that you publish a list at the end of each year showing the list of commodities which are affected to the extent of 5 percent?

Mr. ROSE. Before this mechanics goes into effect at all, a tentative list would be published, time would be allowed for industry to comment, the comment would be investigated, and then a list would be published of those items which the Treasury found would be affected by 5 percent or more. Those items would then continue to be valued on the old basis for the ensuing year. Everything else would go on the new basis.

Senator WILLIAMS. I see. In other words, a 5 percent reduction would not go into effect that first year?

Mr. ROSE. No; or at any other year.

Senator WILLIAMS. The question is, there would be no reductions that would go into effect, then, until the end of the 4 years?

Mr. ROSE. Put it this way: The items which would be listed as having an indicated reduction of more than 5 percent, that is, the items on the list, would be continued to be valued on the old basis during the first year, the second year, the third year, and then the whole thing would be submitted to Congress and laid before Congress.

Then, as the amendment now provides, if Congress didn't act at that point, the new procedures would go into effect across the board. But if Congress felt that they shouldn't, there would be opportunity for a different procedure or different legislation to be adopted with respect to those items.

Senator WILLIAMS. Then, as I understand it, there would be no reductions for the first 3 years, and only in the fourth year, if Congress fails to act; is that correct?

Mr. ROSE. Yes, sir.

Senator WILLIAMS. Do you think that the limitation of 5 percent that was written in the amendment will prove to be a handicap in the simplification procedures, objectives?

Mr. ROSE. Well, from the standpoint purely of simplification, it isn't as much simplification as if the new method were applied to everything. On the other hand, so much concern has been expressed about the effect—not the average effect, I think, but the effect on particular commodities that might be affected radically more than the average—perhaps, if I start a little further back, I can explaiin this better.

My feeling has been that the valuation procedures did not have, did not afford reliable protection to domestic industry. I feel that to take the higher or foreign value or export value, which is the principal thing that has been criticized—foreign value is the basis for valuation, really, only so long as a foreign exporter wants to allow it to remain so.

Under the definitions presently in the law, it is possible, in any case, for an exporter to the United States so to arrange his domestic market and his offerings to the domestic market that he can eliminate any ability of the customs to use foreign value. Therefore, I don't

think that this feature of the higher of the export or foreign value is a reliable protection.

I think foreign value is being eliminated under existing law by a change in the terms of offerings—that as manufacturers abroad find out how most effectively to offer to the American market, they are taking advantage, under existing law, of going to export value—on the other hand, this bill does that in effect for people who have not already done it for themselves.

Our feeling was that if you limited this to 5 percent it would prevent any radical, quick reduction, and that this test period would tend to show, tend to confirm what we think is happening already, namely, a direction toward export value as the valuation basis, and that at the end of this test period you will find that there is very little which is affected.

Senator WILLIAMS. Well, the question that was in my mind and that I wanted to get in the record was, if I understand you correctly, do you think that the 5 percent limitation which is recommended in this amendment would materially increase the administration work of the Department, or would it materially reduce the simplification objectives of the bill?

Mr. ROSE. If I may put it this way, there will be a material simplification that will result from the bill, with the amendment, in that it is estimated that about 90 percent of the commodities involved will move to the new and simpler method of valuation at the outset.

In other words, as to 90 percent of commodities there will be a less than 5 percent indicated variation, and they will move to the new basis. As to the remaining 10, the necessity for conducting a dual basis for valuation will add to the burden of customs, to begin with.

The exact amount, as I said to Senator Anderson, is very difficult to estimate. On the other hand, as I see it, it is a sort of offsetting thing; they will gain in the 90 percent and they will lose in the other.

But, on balance, they feel, and I feel, that they will gain because of the greater prospect of coming out at the end of the period with a better and more efficient system of valuation.

Senator WILLIAMS. You are endorsing the 5 percent limitation?

Mr. ROSE. Yes, sir.

Senator WILLIAMS. Well, that pretty much answers my question, that you don't think that it would materially raise the administrative costs; and at the same time I suppose you don't figure that it would reduce the benefits of simplification that would be obtained under the bill?

Mr. ROSE. I think, on balance, it is worthwhile—put it that way—the simplification that will come from the immediate application of the new valuation in the area where it will apply offsets the increased work in the other area.

Senator WILLIAMS. But the 5-percent limitation would not affect that balance?

Mr. ROSE. I think, on balance, it is worth-while with the 5-percent limitation.

Senator WILLIAMS. Is there anything sacred about the 5 percent? Could it be 4 percent, 3 percent, or 1 percent? Without the 5 percent, as I understood it, it went from zero up to 50 percent.

Mr. ROSE. You mean the possible effect on a particular item?

Senator WILLIAMS. The possible effect on commodities ran from zero to 50 percent. Now, if we can reduce the maximum effect to 5 percent without raising the administrative work, or without reducing the major objectives or benefits that could be obtained under simplification of the bill, is there anything sacred about the 5 percent, or can it be some other percent?

Mr. ROSE. Senator, I don't think you can say that there is anything sacred about a specific percentage. I, however, think this is true: I tried to answer your previous question in terms of the balance—in other words, a 5-percent figure would put 90 percent of the items onto the new basis at once, and give customs that benefit in administration.

I think it is their judgment that that plus the ultimate expectation of getting the new system completely into effect, that that balances off the additional complexity, which is unquestionably there, of this dual valuation system in the remaining 10 percent of imports.

Now, when you change those areas, as you would do if you go down to a 4 or 3 or 2 percent reduction in value, you change that equation. And I don't know what my answer would be. We would have to take another look at it, at a different figure.

Senator WILLIAMS. I was just wondering—I am very much in favor of working out some kind of legislation that would make it more simple to administer—but I was wondering if it could be done without these reductions in it.

Mr. ROSE. Well, going along this line, I think you have to take some reasonable figure. If you were to go as low as one-tenth of 1 percent, for instance, clearly there would be no advantage in it, and great complexity.

Five percent seemed to us the reasonable place to draw the line, and if it goes much lower, I think the equation would be adverse to trying it at all.

Senator WILLIAMS. You don't think that it would be possible at all to attain any simplification if it was said there would be no reductions; is that right?

Mr. ROSE. I believe not; not on this theory, unless someone comes up with a theory I am not familiar with.

Senator WILLIAMS. The theory of simplification, as provided in the bill, can only be achieved, in your opinion, as I understand it, as the result of some reductions?

Mr. ROSE. And some increases.

And these reductions, as I keep reiterating, if I may, are reductions at one moment of time. I would like to take an illustration.

In the case of synthetic fibers, during 1954 I am advised that rayon staple fibers were being valued on a foreign value basis. And those charts which we presented to you last year showed that, as I recall it, a reduction in valuation because of a shift to export value of 6.83 percent.

As a result of the case which involved alleged dumping of rayon staple fibers, it was found that the domestic offerings—that is, the offerings of all of the manufacturers of that commodity—were with a restriction on them, I think a restriction against further manufacture—which, when that became clear, prevented the customs under present law from using the foreign value as the basis for valuation.

Therefore, those commodities now are mainly valued on the basis of export value.

Now, this chart would show a reduction of 6.83 percent in the valuation by applying H. R. 6040, before amendment, to synthetic fibers. But if you would look at it for 1955 or 1956, as I am presently advised, the figures would show no reduction, because of the fact that a system of distribution has come into existence which values those things on the basis of export value now.

So that when you say reduction, it is that kind of thing that you mean. It is a reduction at one point of time and under one set of conditions of trade, but that reduction, by changing the conditions of trade, can evaporate entirely.

Senator WILLIAMS. Then you think you need that 5 percent leeway in order to work out anything?

Mr. ROSE. Yes, sir.

Senator WILLIAMS. That is what I wanted to know.

Senator BENNETT. Mr. Chairman, there have been a number of questions in which I have been interested, and I have a number of questions that I have been asked to ask, for the record.

I certainly appreciate the problem the Treasury is facing in its desire to simplify customs. These questions I shall ask do not represent a negative bias with respect to the problem, but I think they should be cleared for the record.

If the purpose of this bill is to simplify customs procedure, isn't it fair to say that in effect its purpose is to make it easier for importers to get their goods into the United States, rather than more difficult? Doesn't it have a double-barreled purpose: to reduce the paperwork or the management problems of our own Customs Bureau, and at the same time reduce similar responsibilities for the import?

So is it fair to say that a long-term result of the adoption of this legislation in any reasonable form would be to facilitate imports?

Mr. ROSE. I think I could answer that this way, Senator:

To the extent that protection results from confused or uncertain procedures, and to the extent that this bill would improve procedures, I think it does facilitate the introduction of imports. I don't think that it reduces dependable protection, if by protection you mean valuation times duty plus the cost of goods—that is, the landed cost of goods, including duty.

I think that it is true to say that to the extent that unexpected valuations, and hearing about those things, discourages imports, to the extent that fear of our complex procedures discourages imports, that this bill may facilitate them.

Senator BENNETT. My second question: The present law requires use of the higher of two values, foreign value or the export value. Did the Treasury have any information as to the relative effect of those two values? Is foreign value generally higher than export value, or is export value generally higher than foreign value?

Mr. ROSE. Foreign value is generally higher than export value. Export value, in some cases, is higher than foreign value. The reasons why foreign value tends to be higher than export value are, I think, illuminating.

First, a major reason is that since the United States market is a larger market, the offerings to this market tend to be in larger quan-

tities than in the average domestic market from which the goods come. Therefore, the average quantity prices offered to the United States tend to be lower than the wholesale offerings in usual quantities in the market of origin.

The second thing is this, that other countries, the same as we do, exclude or remit excise taxes which are charged on goods consumed in their domestic market, remit those, as we do on exports of whisky or tobacco or whatnot, for sale abroad. Therefore, the foreign values very frequently tend to include domestic taxes, whereas the export values do not.

A third thing is inherent in a rather limited or rather specialized customs procedure, that a price, in order to be used as foreign value, must be a price freely offered to all purchasers.

Now, frequently abroad you will have a price to wholesalers and a price to retailers, and no retailer can buy at the wholesale price even though he is buying in wholesale quantities. The customs has in those cases appraised the foreign value of the goods as the price to the retailer.

There are a few court cases which raise the question as to whether that is proper. But those are three main reasons—there are others—why the foreign value would tend to be higher.

In consequence of that, however, since all of those reasons are not applicable to sales on our market, there is a constant effort by people who are in that trade to move to the price on which they are dealing, namely, the export price—I think it is a surprise to most businessmen who aren't familiar with this market to realize that they pay duty on a price which hasn't anything to do with them—and by gravitational attraction they try to get the value for duty purposes to the level of the market in which they are dealing.

Senator BENNETT. I think I understand the point you have made about the fact that the export value might be the value, the foreign value, less internal excise taxes and other internal conditions.

You have also stated in your statement, and in later discussion, that it is difficult to establish the foreign value because of this mixture of wholesale and retail, and some other consideration.

Is the so-called foreign value apt to be more stable or less stable than the export value?

Mr. ROSE. I have no basis for saying that one would tend to be more or less stable than the other.

Senator BENNETT. Well, I will follow it with another question, then.

The so-called foreign value is established by a formula which takes into consideration certain conditions in the foreign market. Does any similar formula apply to export value, so if we move solely to export value, would we tend to value imports on the basis of a single invoice?

Mr. ROSE. Well, both cases are the same under present law, foreign value is the price freely offered to all purchasers in usual wholesale quantities in the ordinary course of trade for consumption in the domestic market. The export value is identically defined "truly offered to all purchasers in the usual wholesale quantities in the ordinary course of trade for export to the United States."

Now, H. R. 6040 proposes changes in definition. But the concept is that the export value would be the going wholesale price in the export market, not the invoice price in the transaction, although frequently they would turn out to be the same thing.

Senator BENNETT. What I am understanding from what you are saying is that there is a stability in the export value—I am thinking of a situation in which, as a matter of national policy, articles might be offered to the United States at a price different from the price at which they might be offered to other countries. Does that enter into this determination of export value?

Mr. ROSE. It gets into one or two related areas. But if you are talking of the offering of goods to the United States, to the United States market, at prices which are lower than the prices being charged in the domestic market by an amount that is greater than reflects the commercial differences, then you are getting into the area of so-called dumping, which involves a separate statute, the effect of which is specifically preserved by this bill, and in my view is not affected by what we are talking about here.

If, by national policy, you meant subsidization, then we get into the so-called countervailing duty field, where there is another specific statute providing for a duty.

Senator BENNETT. Well, the question is running very strongly in my mind whether, if we go solely to export value without this balancing effect of a comparison with internal domestic value or foreign value, aren't we going to be subject to more litigation, more questions, by either the necessity for imposing the antidumping law or the countervailing duty, because as long as the customs officials are required to check the export value against the foreign value, that sort of situation is apt to show up, I would think, rather easily.

But if there is no longer any check against that thing, I would think the pressure—"pressure" isn't the word—I would think the temptation to stay as close to the edge of the ice as possible, or sail as close to the wind, would be a very great one.

I am just wondering if we can afford to surrender the protection to the local industries that exists by reason of that necessary check.

Mr. ROSE. That was the reason why the Secretary of the Treasury wrote to the Ways and Means Committee while the bill was under consideration there last year, saying that in the performance of its duty under the antidumping law, the Treasury would feel it necessary to continue to require on the invoices information as to the going wholesale price in the country of origin for consumption there.

I really think that this change would tend to improve rather than hurt the effectiveness of the enforcement of the antidumping law. And I say that for this reason, that there is a limited number of qualified people in the customs to conduct the two sorts of investigation that now have to be conducted.

As my statement indicated, there are 300 foreign-value inquiries for the purpose of figuring the duty, which are absorbing a good many of those people. An antidumping investigation is something that ought to be very intensively and very quickly followed up by people available for that purpose. It is an equally complex—more complex type of investigation, or can be.

Senator BENNETT. The thing that bothers me, with all of these hundreds of thousands of products, if the door is open and everybody

says, "Here is a chance to get to this antidumping situation," they can literally swamp us in that field as well, while now we have a pattern and tradition—"tradition" isn't the word—we have a pattern of comparison, which, while it may be difficult, I think wouldn't be quite as tempting as the other situation where there is only one single qualification, there is only one single standard, and that need no longer bear any relationship in the mind of the man who is selling the merchandise.

Mr. ROSE. It must, from the dumping standpoint.

Senator BENNETT. Yes, but the customs procedure doesn't show up that relationship any more.

Mr. ROSE. Yes, sir, it will; because on the invoice—and, as a matter of fact, even more clearly than at present—the information regarding foreign value will have to be shown.

Senator BENNETT. Then, how are you saving time if you have to get the foreign value on the invoice?

Mr. ROSE. You can very easily. Dumping is a matter of a wide spread—foreign value is a matter of very delicate calculation. So that the indication of dumping will be there on the invoice, prepared by the exporter, but the necessity of calculating the two things in each case will not be there.

There is a great saving, even so, but without any loss of an indication of possible dumping.

Senator BENNETT. Of course, I am interested in your comment that dumping is a matter of a wide spread—it is my feeling that this would encourage what, maybe, you might call a substitute for dumping, somebody just urging a little bit over the line in order to get a more desirable price than a domestic manufacturer. It wouldn't be dumping in the sense of basic national policy.

But there would be millions of decisions that now are no longer checked against foreign value, and we don't have to pay duty on the higher value, we can take off 2 percent or 3 percent or 4 percent here in order to put us in better competitive position in the United States, and get away with it.

Mr. ROSE. Senator, if I took your last question to exclude the area of what you and I talk of as dumping namely, getting rid of surplus goods——

Senator BENNETT. That is right.

Mr. ROSE (continuing). Then, what you are talking about is a close question of pricing, and as to whether or not there is an advantage in trying to offer to this market, because of the fact that duty is no longer payable on the foreign value, I think the answer to that, Senator, is that under existing law it is so simple, if it is worthwhile to do so, for the foreign manufacturer so to state his offering in his own market, that he has not got a foreign value in terms of our present law, that this check that is alleged to be there is really illusory when it is worthwhile for the manufacturer abroad to export to this country on an export value basis.

Senator BENNETT. Many of us have wondered why we are dealing with foreign values at all. What is the basic philosophy behind the idea that the tariff should be figured on foreign value, either type of foreign value, rather than on some easily ascertainable domestic value level?

Mr. ROSE. Well, I would answer that this way, Senator, that possible values, possible bases, I think, are about 4 or 5, and these are at varying bases:

Foreign value, which is a wholesale value in the market of origin, so-called export value, which is an export price f. o. b. the foreign country, so-called landed value, which is the same thing but with transportation charges added. United States value which is based on the United States price of imported merchandise and what we call American selling price, the price of competitive goods produced in the United States.

Now, how you do any of those has got to be related to your level of duty because, just as someone has said in hearings before this committee, the real-estate rate is related to the method of valuation in a particular community. I think you could do any of them, but we have always used, port value or foreign value, our whole duty scheme for many years has been based on that basis.

Senator BENNETT. Do we do any American value?

Mr. ROSE. Yes, sir. And it was done for the purpose of increasing the protective effect of particular rates of duty. In the coal tar product field, they are technically on American selling price if there is a competitive American product; in the rubber-soled footwear area, it is the same thing.

Senator BENNETT. It is, of course, a completely hypothetical question. But wouldn't it really simplify customs procedure if we went to a basis of American value, even though we had to readjust the rates of duty?

Mr. ROSE. Well, it would, but the process of getting there in that case, I think, would be a very complicated one, may I say, and might outweigh any end result of simplification.

Senator BENNETT. Do you know whether or not there is any uniformity of approach on this problem among other nations with respect to their own imports? Most nations use the foreign value basis or the so-called export value basis.

Mr. ROSE. I am not closely familiar with that, sir. I have seen surveys and tabulations which would indicate that a majority of countries use the so-called landed value, which is closer to export value than it is to anything else, that others use export value, and others value in the market of origin.

Senator BENNETT. This committee is concerned with the question of our relationship with GATT, and I am wondering, has GATT any policy with respect to a standard or uniform valuation method so far as the various members of its organization are concerned?

Mr. ROSE. I am not closely familiar with the provisions that relate to customs valuation. I think it has exhortations against the use of arbitrary or capricious methods of valuation in it. That is the principal recollection I have of what it does provide on the subject.

Senator BENNETT. You don't know whether it is attempting to move in the direction of so-called export value or value in the market of sale, the final market, in our case the American market?

Mr. ROSE. My recollection is that there is something in there that advocates against American selling price. And we have not changed that in this bill.

Senator BENNETT. Is that against American selling price alone, or against——

Mr. ROSE. Against use of the market of destination.

Senator BENNETT. Market of destination selling price?

Mr. ROSE. Yes.

Senator BENNETT. Mr. Kendall, do you know anything about that situation?

Mr. KENDALL. No, I don't, Senator Bennett, except to say this: that it is my understanding that GATT is not loking forward to trying to dictate a uniform price, but that what Mr. Rose says is correct; it is either the landed price or the export value, one or the other, which they seem to——

Senator BENNETT. The problem here, as Mr. Rose knows, after a number of painful days during previous hearings, the chief concern of those who oppose this legislation is that it is a device by which protection can be lowered. And it would seem to me that in the long run, if we could arrive at the American value, then we would be talking in terms of competition in a given product, we would be talking on the basis, in the face of the same basis, whereas now, so long as foreign value or export value is the basis, there will always be that suspicion, the seller can maneuver his price, and reduce our protection, whereas if it were on the basis of American value, that power would be taken from him.

Senator WILLIAMS. Would the Senator yield for a question of that nature?

Senator BENNETT. Yes.

Senator WILLIAMS. In answer to a question of Senator Bennett a few minutes ago, you said different countries had different formulas for arriving at the import duty.

Do other countries have a dual formula, the same as we do, or does each country have only one formula?

Mr. ROSE. I believe there are other instances of that dual formula. One of the tabulations that I saw listed Canada, for example, as one that used foreign value and export value.

Senator WILLIAMS. Could you furnish the committee a list of the countries that have 2 or more formulas, and those that have only 1 formula, and along with that, a list of the countries that have a formula based upon the domestic market?

Mr. KENDALL. Insofar as possible, what you would like, Senator, is a list of the countries and their varying methods, insofar as we can get them?

Senator WILLIAMS. Yes.

(The following was subsequently received for the record:)

The following information about the valuation systems employed by other governments is taken from a report prepared by the contracting parties to the General Agreement on Tariffs and Trade. We do not have available information about the valuation practices of countries not parties to the general agreement.

Internal price in country of export	Export price	Landed price	Import market price	Fixed values
Australia	Australia			
		Austria		
		Belgium		
		Belgian Congo		
Brazil		Brazil		
		Burma	Burma [1]	
Canada	Canada			
		Ceylon	Ceylon [1]	
				Chile [1]
Cuba	Cuba			
		Czechoslovakia		
		Denmark		
		Finland		
		France		France.[1]
		Germany		
		Greece		
		Haiti		
		India	India [1]	India.
		Indonesia		
		Italy		
Japan		Japan		
		Luxembourg		
		Netherlands		
	Netherland Antilles			
		New Guinea		
New Zealand				
	Nicaragua			
		Norway		
		Pakistan	Pakistan [1]	Pakistan.[1]
Rhodesia and Nyasaland	Rhodesia and Nyasaland			
		Surinam		
		Sweden		
		Turkey		
Union of South Africa	Union of South Africa			
		United Kingdom		

[1] For certain items only.

In the above list, Australia, Canada, Rhodesia and Nyasaland, and the Union of South Africa have a dual basis of valuation, using the internal price of the country of export or the export price, whichever is higher.

Only Burma, Cuba, and Japan have provisions which would base valuation on the market price of goods of domestic origin comparable to our American selling price. The report states that the Burmese definition of valuation would permit the market price of domestic goods to be taken into consideration in fixing values, but it was stated that in practice this did not happen. Cuba and Japan have authority to base duty on the value of products of domestic origin where no other means of establishing the value can be found, but this authority is stated to be rarely resorted to in practice.

Senator BENNETT. I would like to go back, just for the record, again again to this dumping question. Is it necessary in order to take action against dumping for a domestic industry to prove injury?

Mr. ROSE. For the Treasury to investigate; no. As you will recall, the present setup is that the Treasury is the one that is to make a finding as to whether a dumping price exists, and then the Tariff Commission holds a hearing to determine whether or not injury exists. Both those components must be found ultimately before a dumping duty is imposed.

Senator BENNETT. In other words, in the end, injury must be produced, must be proved, before any relief——

Mr. ROSE. Yes, sir.

Senator BENNETT. Can be hoped for.

Mr. ROSE. Yes, sir.

Senator BENNETT. That takes me back again to my original feeling that by whittling a little off, by price adjustments, they can get the effect, part of the effect, of dumping. Let's put it this way: They can lower the effective protection of the tariff rate to the domestic industry, without there being any effective way by which the domestic industry can stop it unless the thing is flagrant enough so that substantial injury can be proved and the antidumping law can come into effect.

Mr. ROSE. That would be true, Senator, if it were true that there was any protection in this higher of two bases in the first place, but I don't think there is, because I think it is so easy for a foreigner to move away from the foreign value if it is in his interest to do so. If he is dumping, we can catch him. If he is not dumping, there is nothing in existing law that gives protection.

Senator BENNETT. If this bill were enacted with the amendment, and during these 3 years the Congress should undertake the rather difficult job of deciding, of measuring what would have to be done in order to move over to an American value basis, that uncertainty would be completely eliminated, would it not, from the point of view of the man who is worried about the protection to his industry?

Mr. ROSE. Yes, sir; but the job of doing that is so immensely greater than any stakes, any purpose, that would be served, that I just cannot conceive of that, because it would really mean rewriting the tariff, when you change your valuation basis that radically.

Senator BENNETT. Now in your charts you have indicated that we have only got a fairly small percentage of the tariff items that are involved in this. The matter of about 14 percent in terms of money, I do not know what percent in terms of items.

Mr. ROSE. I could not say, sir.

Senator BENNETT. I could not, either.

Mr. Chairman, I have felt these questions should be in the record and before the committee.

Before I yield my share of the time, and I have taken more than my share of the time, I would like to say to Mr. Rose that I would certainly favor the amendment as compared to the proposal that was before us a year ago, and it is not my intention to indicate any dissatisfaction with the amendment, but to raise these fundamental issues that I think the committee must take into consideration.

Mr. ROSE. I am glad you did, sir.

The CHAIRMAN. The Chair has been requested to submit to Mr. Rose some questions that may take some portion of time, and I will submit them at this time and ask him to supply us with written answers so that both the questions and answers may be printed in the record of the hearings.

(The questions submitted by Senator Byrd and Mr. Rose's answers follow:)

Question. Mr. Rose, you are aware that the original bill would lower the appraised value of imports of particular commodities as much as 40 percent, and we understand that the amendment we are considering today was devised by the Treasury Department to answer the concern of domestic industry, and of members of this committee, about such decreases. What, if anything, is there in the amendment you have proposed which would avoid such decreases?

Answer. The amendment would limit any particular change in valuation to a decrease of less than 5 percent. This means that for the trial period no do-

mestic industry would be faced with a decrease in the appraised value of competitive imported articles of 5 percent or more because of the enactment of H. R. 6040.

Question. The net effect of your amendment, then, would merely be to postpone for 3 years any reduction in value of 5 percent or more?

Answer. As I explained in my original testimony, these decreases may occur at any time under existing law. I do not believe that putting H. R. 6040 fully into effect at the end of the trial period will result in a decrease in valuation at that time comparable to that indicated by the survey of 1954 imports. There is every reason to believe that normal trading practices will result in export value being the actual basis of appraisement under existing law for almost all imports before the end of the trial period.

Question. So that under the proposed compromise any reductions in valuation which would have resulted under the bill as originally introduced—even though such reduction might amount to 30 or 40 percent—would automatically take effect at the end of 3 years unless Congress took action to the contrary?

Answer. I believe a restatement of our approach to this bill may be helpful. We believe that the legitimate purpose of tariff protection against imported products should be accomplished directly through the imposition of tariff duties; that protection of domestic industry is not a proper function of customs procedures. Moreover, to the extent that protection may be derived from customs procedures, such as those governing the valuation of imports, such protection is erratic and uncertain and therefore unsatisfactory for all concerned. Specifically, protection from valuation is uncertain because a higher valuation for imported merchandise than is applicable in the usual wholesale trade with the United States is a result of conditions of trade at that particular moment of time. Those conditions of trade may change in 1 or 2 years' time, so that such a higher value will no longer be applicable. This change may result from normal changes in commercial practice or be a change designed for the specific purpose of obtaining a lower valuation for United States tariff purposes. Consequently, the fact that as of 1954 or the present date, it is determined that the new valuation provisions results in a decrease in valuation for a particular product of 40 percent does not mean that such a decrease will be found at a later period of time. Normal trade developments during the trial period will probably result in most values under existing law being about the same as they would be under the amendment. However, we will still have all of the administrative difficulties of determining that value under existing law, without the benefit of the simplified procedures under the new law.

Question. Do you see any reason why this committee should accept your proposal to bring about a result 3 years from now which the committee is unwilling to have happen now?

Answer. Under the amendment procedure the differing contentions about the effect of the valuation procedure will be put to the test. The Congress will be kept advised through submission of each of the four lists and all pertinent data as to the extent of the change which would result from H. R. 6040 being fully effective. It will know whether the application of H. R. 6040 to all imports at the end of the trial period will result in the same range of decreases which were indicated by the 1954 sample survey, which seems to be the contention of some opponents of the bill, or whether at that time full application of H. R. 6040 will result in almost no change in valuation levels, as is the belief of the Treasury. The Congress will thus be able to decide on the basis of facts and actual experience and not upon surmise and speculation whether H. R. 6040 should be continued in effect.

Question. If we were to accept your comprise the new value rules of H. R. 6040 would go into effect automatically 90 days after the Treasury Department submits its last report at the end of the 3-year period—unless Congress would take action during the 90-day period to prevent the new rules from going into effect. Do you not think this is putting the Congress to an almost impossible burden? To prevent that from happening we would have to introduce a bill, hold hearings on it, and get it through both Houses of Congress in a space of 90 days. Suppose it took us 4 months to pass such a bill, the Treasury Department would have to put into effect a completely new system of customs valuation and then, after having used that new system for 1 month, change it to conform to the new legislation. Would that not create great confusion in the place where you are anxious to avoid confusion, namely, the customshouse?

Answer. The requirement that Congress take action within 90 days of

continuous session after submission of all information of the results of the trial period was not thought to be an unreasonable burden. The process of formulating and revising the lists and keeping each one in effect for a year's period will probably take a total period of time of about 5 years. During this 5-year period Congress will have current information about the experience under the valuation proposals and will be in a position to take action at any time. Four months or more of additional time, which is the minimum period for 90 days of continuous sesssion, after 5 years of opportunity for consideration, would not seem to be unreasonably short. However, there would certainly be no objection to some revision designed to assure the Congress of time for adequate consideration.

Question. Under the present law, which would be continued with a number of modifications under your proposed new section 402, ad valorem duties are imposed on the specific "merchandise undergoing appraisement," on the basis of its value in the principal markets of the country of exportation. However, under your proposed section 402a, as I understand it, ad valorem duties would be computed not on the "merchandise" but on "articles" and not on the value "in the principal markets of the country of exportation," but on the " average value" of all appraisements actually made of that "article" in fiscal 1954, regardless of sources or time of importation. Now, if my understanding is correct, I should like to ask you: Why do you propose to recompute the value of merchandise appraised in fiscal 1954 on the basis of "articles" rather than "merchandise"?

Answer. In order to accomplish the maximum amount of protection against decreases of 5 percent or more, with the maximum amount of simplification where such decreases in value do not occur, it is necessary to have considerable discretion in describing the listed items. It is for this reason that the term "article," which is not a word of art in the Tariff Act, was used to describe the listings to be made. After listing, each importation on the list would be appraised in exactly the same manner that appraisal now takes place, i. e., on the value of the merchandise in the applicable principal markets.

Question. The proposed amendments speak of "average value," but give no indication as to what this is or how it is to be determined. How would the "average value" of a specific product be determined under section 402a?

Answer. Once the appropriate grouping for a product has been determined, the average decrease in value will be determined by a simple arithmetical calculation of the average value before and after amendment of the items in the article.

Question. I find no definition of "article" in the Tariff Act or the proposed amendments which would be applicable to section 402a. How would the Secretary distinguish one "article" from another?

Answer. I gave the general approach which would be followed in my prepared statement in which I said: "In formulating these lists, every effort would be made to describe the commodities with such particularity that any import item which would be reduced in value by 5 percent or more under the new procedures would continue to be subject to the old valuation principles." One imported article would be distinguished from another to the extent necessary to accomplish this purpose. The Treasury would not propose to group together all products as one "article" merely because they are so grouped by the Bureau of the Census for statistical purposes. On the other hand, the Bureau of the Census groupings might be used wherever they accomplished that purpose. If it appeared that some imports in a particular schedule A grouping decreased in value by more than 5 percent, although the average value of the whole group decreased by less than 5 percent, it would be the intention to describe the items which decrease by 5 percent or more as an article for the purpose of having the old valuation principles applied to them.

Question. Would the meaning to be attributed to the word "article" be left entirely to the discretion of the Secretary?

Answer. As stated above, we believe that discretion in determing the "articles" for listing is needed to obtain the greatest possible protection against decreases in value of 5 percent or more, coupled with the maximum amount of simplification possible.

Question. How would a distinction be drawn between two chemical compounds having the same active ingredients but in different proportions?

Answer. If it is necessary to accomplish the purpose of not permitting a decrease of 5 percent or more in valuation during the trial period, similar chemical compounds will be distinguished as will other related types of imported merchandise.

Question. How about two similar chemical compounds which are closely related but have different formula?

Answer. If one such compound decreased in value by 5 percent or more and the other didn't, the 5 percent decrease compound would be separately listed. If both changed by less than 5 percent or by 5 percent or more, they would not be distinguished.

Question. Do you propose that all products which are grouped together by the Bureau of the Census for statistical purposes be grouped together as one "article" for the purpose of determining "average value?" In other words, would you follow the same system of averaging which the Treasury Department used last year in determining the impact of H. R. 6040 on various domestic industries?

Answer. No. In many cases a considerable breakdown of a particular census group will be needed. In other cases we believe consideration of the Bureau of the Census group may be all that is necessary.

Question. What sources of information are available to domestic manufacturers, producers, or wholesalers for the purpose of verifying or disputing the "preliminary lists" which the Secretary would publish under section 402a?

Answer. It is doubtful if domestic manufacturers, producers, or wholesalers would have information available to verify all items on the preliminary list published by the Secretary under proposed section 6 of H. R. 6040. However, it is believed that such manufacturers, producers, or wholesalers will have sufficient knowledge of the prices and trading practices of competitive imported articles to present to the Treasury their reason for belief that the value of the imported article would change by 5 percent or more under the new valuation principles. This reason might be the fact that there are differences in wholesale quantities in the foreign and the United States market, that the methods of distribution would lead to a higher foreign value, that the remission of internal taxes or drawback on duties was likely to result in a 5 percent differential, et cetera. The Treasury Department and the Bureau of Customs would not expect the domestic manufacturer, producer, or wholesaler to establish a prima facie case of such change but only to give some indication of the reason that the domestic manufacturer, producer, or wholesaler has a reasonable belief that such a change would take place.

The CHAIRMAN. Are there any further questions?

Senator MILLIKIN. Mr. Chairman.

The CHAIRMAN. Senator Millikin.

Senator MILLIKIN. Have you solicited the advice of the importers on your amendment?

Mr. ROSE. Of the importers?

Senator MILLIKIN. Of the importers.

Mr. ROSE. Yes, I think some of them will testify before you here, sir. I think my impression is, although I am not as close to it as I was, because I haven't been on a day-to-day basis with it, that they are not as happy with it as they were with H. R. 6040 as it initially stood, but they feel that it is workable and an improvement and would favor it.

Senator MILLIKIN. That is, the general opinion?

Mr. ROSE. Well, I say that with a great hesitation, sir. That is the understanding that I have.

Senator MILLIKIN. Thank you very much.

The CHAIRMAN. Are there any further questions?

(GATT) GENERAL AGREEMENTS ON TARIFFS AND TRADE BY BACK DOOR AMERICAN WORKINGMEN AND INVESTORS ON DEFENSIVE

Senator MALONE. It seems to takle a pretty big subject, and I think the Senator from Utah had some very pertinent questions. I presume the Assistant Secretary of the Treasury would rather we examine Mr. Rose than himself.

Mr. KENDALL. I hate to shove anything off on the former Under Secretary, but he is more familiar with the basis of this.

Senator MALONE. When did you leave the Treasury, Mr. Rose?

Mr. ROSE. My resignation was effective the 31st of January.

Senator MALONE. What is your profession?

Mr. ROSE. I am a lawyer.

Senator MALONE. Do you represent any American firms or have any clients that do business abroad?

Mr. ROSE. Well, sir——

Senator MALONE. That have factories abroad?

Mr. ROSE. I have no doubt that some of the clients of my firm do. I might say that I went back into the law firm that I had come from before I came down here.

Senator MALONE. What firm is that?

Mr. ROSE. It is the firm of Jones, Day, Cockley & Reavis.

Senator MALONE. Where located?

Mr. ROSE. Of Cleveland. And I come as an individual, and not as representing them or any clients, simply because——

Senator MALONE. You are a member of the firm?

Mr. ROSE. Yes.

Senator MALONE. How can you separate yourself?

Mr. ROSE. Well, you can't separate yourself from your past, but I simply meant that I am not representing them when I appear here.

Senator MALONE. But you are a member of the firm. Then does the firm represent American firms that have plants or do business abroad, import materials from abroad?

Mr. ROSE. That import materials from aboard?

Senator MALONE. That have plants abroad or interests abroad in that connection.

Mr. ROSE. I am certain there must be some of them; yes, sir.

Senator MALONE. Do you represent any foreign firms that do business here that import goods here?

Mr. ROSE. Not that I know of, sir.

Senator MALONE. Would you check those two questions——

Mr. ROSE. Yes, sir.

Senator MALONE. And supply the information?

Mr. ROSE. Yes, sir.

Senator MALONE. There is no question but that the distinguished Senator for Utah put his finger right on the sore spot when he was talking about a revaluation for a lower valuation.

In the 10 years that I have been here as a Member of the Senate, there has never been a bill introduced, there never has been a bill that reached the dignity of serious hearings, or a bill passed that I have noted, that had any other effect—they all had an effect, every one of them, of a further reduction in the valuation on which the ad valorem duties were based or a reduction in the duties or preparatory to allowing some individual, in the Treasury or the State Department or some place, or in Geneva where the business is now being done. to further reduce tariffs.

Is that generally a correct statement?

Mr. ROSE. Well, Senator, I can speak only for the period that I am familiar with it.

Senator MALONE. That is all I would like you to speak for. But what did you notice in that regard? Was there anything brought to your attention?

Mr. ROSE. Well, the bills that I have had anything to do with have been three: The Customs Act of 1953, 1954, and this one.

Senator MALONE. I think that would cover ample area. What do you believe in that regard? You are an attorney, you are trained to think.

Mr. ROSE. Well, the only provision that I can think of that had anything to do with levels of duty is this one that we are talking about here.

Senator MALONE. Well, what does this one do?

Mr. ROSE. What I have described, sir. It does three things to the basis of valuation.

Senator MALONE. It all aranges it so that there can be some kind of a reduction, does it not, when you come right down to words of one syllable, in an engineer's language, not an attorney's.

Mr. ROSE. Well, export value is, for the reasons I explained, I think lower on the whole than foreign value.

Senator MALONE. I think you are correct. Of course the Senate has had no knowledge of what was going on. It was going on when I was in Geneva last year; last fall, about August.

I met the very charming Englishman who is chairman of the organization of 35 nations, 34 nations and the United States, each with 1 vote, that are working on this reduction of duties or tariffs. And apparently through the State Department, there has just been published a book about an inch thick on their work.

Unfortunately, I do not have it here, but it is available now. Since it has been done and all bundled up, no one can change it at all. It is available to Congress for the first time, and available to the producers in this Nation whom it affects very drastically.

I want to ask a question that is a little further along the lines of the question the distinguished Senator from Colorado asked. Did you consult any of the producers in this country about this bill?

Mr. ROSE. Yes.

Senator MALONE. What was the general effect, what did they think of it?

Mr. ROSE. Well, what we did was, last year when this amendment was generated, to send copies to everyone who had expressed an interest in the subject by coming before this or the Ways and Means Committee to testify.

Senator MALONE. What did they say, generally speaking?

Mr. ROSE. Well, I think your record is a very fair reflection.

Senator MALONE. What did they say, what did this record reflect?

Mr. ROSE. I think that there is concern, was concern, about the bill as originally drafted: which concern has not, I would gather from the responses that I saw before I left the Treasury, been entirely stilled by this proposed amendment.

Senator MALONE. That would be, I would say, one of the understatements of the year.

Mr. ROSE. Understatements of the year? [Laughter.]

Senator MALONE. Give me some idea of your own that I can understand, without a lot of language.

Mr. ROSE. Well, I think——

Senator MALONE. Did they oppose it?

Mr. ROSE. I think there are certain groups that are opposed to it.

Senator MALONE. By "certain groups," was that the majority or the minority, and about what proportion?

Mr. ROSE. I should say we heard from the chemical industry, we heard from the textile industry, or associations representing them, 4 or 5 companies, perhaps, in other industries, and that was about the extent of it, Senator.

Senator MALONE. The textile industry covers quite a lot of area, does it not?

Mr. ROSE. Yes, sir.

Senator MALONE. There was a speaker recently—I had an excerpt from one of the Reno papers which I unfortunately do not have with me—who was advocating that more textiles be imported from Japan. He said we must do that to keep Japan from trading with Communist China and Russia and other nations in Asia.

Of course, that is one of the plans which has been very carefully carried out in this Nation for 20 years, 24 now to be exact. They go into places like the State of Nevada where no textiles are produced, to sell the people the idea that more free trade is needed, and that more textiles should be imported under free trade, because then you could get a shirt about a dollar cheaper or $2 cheaper, or maybe $3 cheaper. At least the contention is we would profit by textiles coming in.

Then they go to another State which produces no machine tools, with the same story and you bring in more machine tools, and so on around, for about a couple of thousand products.

Nobody knows anything about a textile factory in the State of Nevada, so I suppose that it is fairly easy to sell the women and the men that there would be cheaper shirts and dresses, that it is going to be a very fine thing if you could just use 19-cent-an-hour labor and bring in the material.

If you have studied the other side of it, you at least have the lawyer's prerogative and judgment to let nothing fall that might injure your case. Did you ever hear of an organization in the Department of Commerce to promote investments abroad?

Mr. ROSE. I believe there is one; yes, sir.

Senator MALONE. Yes; I think there is. It is a very good one, too. And I would refer you, if you have any doubt about it, to some of the reports. They are very fine reports.

I would like, of course, to get them interested in American production, but I suppose that is asking too much.

The Department of Commerce report on investments in the Union of South Africa is an example, and in Pakistan. They do not seem to be dated on the outside. It costs a dollar to get one of these, and it is worth it to you if they make you pay for it, which they would in your private business now.

This one on the Union of South Africa is 75 cents. I still find no date. The date is unimportant. It is going on now.

On India, it costs 70 cents. And then these general reports—they are reports of the Department of Commerce—might be very enlightening to you. In general, they are enterprises to promote American industry abroad.

Do you have any knowledge of the amount of these investments that are in England, in South Africa, and other places, and in Japan, where they are using the lower-cost labor to bring this stuff into the United States?

Mr. ROSE. You mean the amount of American investment in those places?

Senator MALONE. Yes.

Mr. ROSE. No, sir; I don't.

Senator MALONE. It would be very interesting to you. American investment in Britain—I hold in my hand a report here, Labor and Industry in Britain. It is volume 14, No. 2, June 1956, British Information Services.

That is a very clever nation. They have brains in Britain, and they use them for Britain, and I admire them for it. I will read an excerpt:

AMERICAN INVESTMENT IN BRITAIN

Recent years have seen a great increase in number of United States branch plants operating profitably in Britain and freely remitting net earnings to corporations. Britain extends a ready welcome to American corporations and businessmen thinking of setting up business or opening a branch plant in the United Kingdom.

There are, in fact, some 800 United States companies operating in Britain today in dozens of lines of business from automobiles and oil refining to cosmetics and chewing gum.

A note there says "See Business Week of March 31, 1956, page 132 to 142." This is on the chewing gum article by Prof. John H. Dunning in the Bankers Review, 1955, page 19—United States-Britain trade balance which has gone on here. And then:

For although United States investment in Britain is highly concentrated—the 10 largest United States companies employ in all more than a hundred thousand workers and account for 60 percent of the United States investment in manufacturing; it includes the construction of earth-moving machinery, strip mining machinery, carbon black, stainless steel valves, Dictaphones, miners' lamps, clocks and watches, drill chucks, metal spray equipment, regulating instruments, home appliances, pharmaceuticals, soluble coffee, movie films, cash registers, and synthetic detergents.

Heavy manufacturing absorbs 32 percent of the workers employed by American firms; motor vehicles, 24 percent; chemicals (including oil refining and pharmaceuticals), 13 percent; industrial and scientific instruments, 7 percent; food, drink, and tobacco, 7 percent; electrical products, 6 percent; and miscellaneous manufacturers, 11 percent.

Now, I refer you to—this is on page 86 of this document.

On page 82—I think this whole document would be interesting to you. Page 82:

Main advantages and facilities. Availability of labor today is one of the most important factors limiting the expansion of industry. In this respect, the development areas, including Northern Ireland, possess a decided advantage over the rest of the country, for semiskilled and unskilled labor is relatively plentiful.

Not only is more labor seeking employment in the development areas than elsewhere, but no development area is saturated with industry and accordingly there are sizable untapped resources of labor, especially young women, which are not revealed in the unemployment figures. This does not mean that there is plenty of skilled labor—this cannot be found anywhere in the country—but the workers in the development areas have shown themselves capable of serving a wide range of industries, and a tradition of industrial diversity has been built up.

It goes on to outline the inducements in locating a factory there, that is, the granting of factory sites, and so on.

Now here is a Department of Commerce document dated January 1956, titled "List of Foreign Firms, Including United States Firms, Having Financial Interests in Firms in Japan and Technological As-

sistance Agreements With Japanese Firms." This material is taken from a book titled "Investment in Japan," published by the United States Department of Commerce. I would call your attention to this document. I think it is a wonderful activity of our Department of Commerce to try to make the products of cheap Japanese labor, available to American consumers, because, after all, it does cost quite a good deal to pay $15 or $18 a day for American workers, and if you can arrange to get your textiles and instruments of various kinds produced by 19-cent-a-day Japanese labor, there is no question but what a lot of money can be saved.

Of course, there is some question as to just what happens after these American jobs have been taken by 19-cent-a-day Japanese labor. Over in England they are earning about $2.50 and $3.50 a day, when they begin furnishing the industrials here or the consumers here. So unemployment in the United States will mount, especially after we get off some of this wartime economy, with $35 billion a year going for war production and $5 billion a year being given away to foreign countries to buy our goods. There is some question as to where your market is going to be here, when cheap foreign labor takes our American jobs, because your market is built up by the division of the profits and wages in this country.

Of course, Iwould not expect you to be interested in that angle at all, but some of us really are, and I want now to—first, I will mention the list here. You say it would amount to a cut here of an average of about a half of 1 percent. I figured that out for you, too. I will come to it in a minute.

But the details of how duties would be cut by H. R. 6040 may be found in the attached appendage A. It is a very interesting document. I could loan it to you if you thought it would be of any information to you.

This is what it says under the heading I just read: Drugs, herbs, and so forth, cut 16 percent.

If there is any one of these to which you do not agree, I hope you will interrupt me.

Firearms, 15 percent.

Mr. ROSE. That was by the bill as it stood last year, Senator, not pursuant to the amendment.

Senator MALONE. What difference—let me finish this, and then I will have you tell us just how the amendment would correct it.

Mr. ROSE. Very good, sir.

Senator MALONE. Rubber, gums, and manufactures, 14 percent.

Sugar and products cut 14 percent.

Books cut 14 percent.

Paints, and so forth, 13 percent.

Soaps, and so forth, 12 percent.

Now you may explain just how this amendment would correct that setup.

Mr. ROSE. The amendment creates the situation in which no individual item can go down more than 5 percent.

Senator MALONE. That is very interesting. In other words, you cut it 5 percent instead of 14 percent?

Mr. ROSE. No, sir. To take the group that you spoke of as 14 percent——

Senator MALONE. That would be 5 percent a year, I suppose.

Mr. ROSE. No, sir.

Senator MALONE. Because that was contemplated by the bill that was passed here, the 1955 Trade Agreements Act extension for 3 years; is that right?

Mr. ROSE. No, sir. The indicated—you take that one you spoke of as being 15 percent, drugs, herbs, and so forth.

Senator MALONE. Yes.

Mr. ROSE. Under the amendment, the indicated extent of the reduction is something about one-tenth of 1 percent.

Senator MALONE. What brought that about?

Mr. ROSE. By eliminating the items in that grouping which were over five.

Senator BENNETT. Under the amendment, Senator, anything that is over five is left alone. They are not allowed to reduce it by five. The status quo is preserved if it is over 5 percent.

Mr. ROSE. That is correct.

Senator MALONE. All right.

As this says here, it does introduce a radical change in the methods of calculating import value which would at one stroke reduce the duty on thousands of entries, in some cases by as much as 15 percent. No corresponding concession by the countries is required, and no opportunity for protest is provided.

Now you say this is limited to 5 percent. Is there any corresponding concession by other countries or is there any opportunity to protest any reduction that may come about?

Mr. ROSE. Well, this is——

Senator MALONE. You have already testified, I think, that some of them will be 50 percent.

Mr. ROSE. That was under the bill without the amendment.

Senator MALONE. Under the amendment now, it is limited to what, five?

Mr. ROSE. The maximum is five.

Senator MALONE. All right. The 5 percent, of course, in your language means nothing; is that right?

Mr. ROSE. No, sir, that is not true, sir. And what I do say is this: that the 5 percent that it can go down is not a reliable 5 percent of protection under existing law.

Senator MALONE. Not what?

Mr. ROSE. Not a reliable 5 percent of protection under existing law.

Senator MALONE. Explain that remark. I do not understand it at all.

Mr. ROSE. Well, our present law sets the standard of valuation as the higher of foreign value or export value. Duty is figured on the higher of those two.

Senator MALONE. Yes.

Mr. ROSE. But those two are defined as prices freely offered to all purchasers, each of them must be a price freely offered to all purchasers in order to qualify.

If the foreign price is not freely offered to all purchasers, then under existing law there is only an export value. Therefore, if a foreign manufacturer wishes to have his export value used, he simply does not freely offer in his domestic market.

Now, he can fail to freely offer very easily by simply saying, "I am only going to sell to wholesalers; I am only going to sell to one customer per town." He can pick out any restriction which fits his line of business, and then he has the export value only under existing law.

That is why I say nothing reliable is taken away here in any event.

Senator MALONE. Well, of course, there is nothing reliable in dealing with a foreign nation on imports into this country, because of the way we word our laws, our acts, so they can take advantage of them, as they do, through devaluation of their currency in terms of the dollar.

If it is something proposed to be exported from this Nation to a foreign country, they have exchange permits, they have import permits and licenses; and then, of course, in exports to this Nation they also have export permits, is that not true, in nearly every case?

Mr. ROSE. Export permits from the United States.

Senator MALONE. No, from the foreign country to this Nation, and they have import permits so that anything that goes from this Nation into a foreign nation has to go by that import permit application.

If it is to get by some bureau such as your bureau here——

Mr. ROSE. You are talking about our exports to foreign countries?

Senator MALONE. That is right.

Mr. ROSE. I just don't know enough about that to know.

Senator MALONE. How can you be such an expert in foreign trade and not understand what happens in foreign countries and in the United States, and about the foreign manipulation of permits for exports and imports, and exchange values, to effect the trade? How can you understand the situation without some kind of an understanding of the picture?

Mr. ROSE. Well, sir, I don't offer myself as an expert in foreign trade.

Senator MALONE. I think you are going to have to qualify yourself as an expert on imports here, because what you are doing is encouraging imports, as we have been doing for 24 years now, since 1934, when the Congress itself transferred its constitutional responsibility to the President to regulate foreign trade and the national economy, and also in that act, gave him full authority to transfer that regulation of our foreign trade and our national economy to any place on earth under the auspices of any organization that he might spearhead.

In 1947, we organized, through the State Department, the General Agreement on Tariffs and Trade that has already been mentioned here, and located it in Geneva. That was the place I visited last fall.

I just wanted to meet the head of it. The Secretary is a very fine fellow. He was not testifying about something he did not understand.

Now everything that has come before this Congress—I will say everything that has had serious hearings in this committee—has been for a further lowering of tariffs, and has lent itself to foreign manipulation.

You should at least study the duty and tariff act to that extent, so that you would know the effect of what you are talking about.

Mr. ROSE. Well, I have tried to do that, sir.

Senator MALONE. Do you know anything about that at all? Do you?

Mr. ROSE. I have tried to possess——

Senator MALONE. Do you know anything about that? Do you know that these things I just told you are true?

Mr. ROSE. Of course, I know that the General Agreement on Tariffs and Trade exists. Of course, I know——

Senator MALONE. You know where it is located?

Mr. ROSE. H. R. 1, yes.

Senator MALONE. Do you know how they do their work over there?

Mr. ROSE. No, sir, I don't.

Senator MALONE. Well, that would be quite a study for you, too, if you could just spend a little time with 35 nations sitting around the table—I saw the table. I wanted to see the surroundings, and took the Secretary or the Chairman to lunch. I found him to be a very fine and congenial Britisher, and running it just about the way you would expect him to run it, and I don't blame him. I only blame ourselves.

But these are multilateral trade agreements, are they not?

Mr. ROSE. Yes.

Senator MALONE. Did you ever hear of multilateral trade agreements?

Mr. ROSE. Yes.

Senator MALONE. What is a multilateral trade agreement? Do you understand what it is?

Mr. ROSE. In general, I understand that it is——

Senator MALONE. Give us your best understanding of it.

Mr. ROSE (continuing). A trade agreement binding more than one nation, which has an effect on the levels of duty charged.

Senator MALONE. Then do you know how these multilateral trade agreements are set up at all?

Mr. ROSE. I have a general idea of the process, Senator.

Senator MALONE. I will give you a little information that might be helpful to you in your business.

What they do is to sign an agreement to lower some tariff or duty on some American product in some country, where we then agree to lower the tariff on something they want to export to this country. Then we let it alone.

But what they then do is to impose their exchange permits and import permits, and regulate the value of their money in terms of the dollar for trade advantage. They are allowed to do it under a specific GATT provision, providing their trade balances are not what they apparently should be, as, of course, they never are, because they can show them to be anything they want them to be.

You understand that; do you not?

Mr. ROSE. Not fully. You mean to say, from what I understand you to say, that the concessions which are made to us are frustrated by——

Senator MALONE. Are nullified by manipulation of their money in terms of the dollar. It is never an actual value. You must know that better than I do. You used to be a member of the Treasury Department. You should understand that there is not an honest currency in the world except 1 or 2 or 3. One of them is Canada, and it is worth more than ours a good share of the time, because they have more sense up there than we do. They work for Canada.

But the rest of them, including Britain, there is never an honest value for the currency. You understand that; do you not?

Mr. ROSE. Well, I understand the different currencies have had different valuations.

Senator MALONE. Yes, they have, undoubtedly. And when they had $4.03 as the value of the pound, you bought the pound on a free market for $2.60. You can now buy it for about $2.25, and it is officially now about $2.80.

It is not the subject here.

Do you not know that practically all nations manipulate it so that it favors whatever they want to import and whatever they want to export? Did you ever hear of that sort of manipulation?

Mr. ROSE. Well, I have, of course, been familiar with the situation where there was radical imbalance in currency situations.

Senator MALONE. What do you call "imbalance"? Explain that to me.

Mr. ROSE. Well, there had been shortage of dollars, there had been import restrictions.

Senator MALONE. Do you know what causes a shortage of dollars? Have you been down there in the Treasury all this time and never found it out? It can be of two methods:

One of them affects all of us, and that is when you insist on spending more each year than you earn, and that is a great failure, a great habit of all the foreign nations. They insist on buying more than they can pay for, and then we will take the money out of this great Marshall plan—it has operated under 6 or 7 names and there is another now—and give it to them to pay their bills.

Then there is another method, not available to you and me, where they fix the value of their money, in terms of the dollar, higher than the market price, and nobody but a silly Congress will make it up. They cannot sell it at that price. You know that, do you not? Who would buy a British pound at $2.80? Who would buy any foreign currency you can think of at any but the market price?

I do not know of anybody, do you? And the market price is never the value they fix. You know that, do you not? You have been over there in Treasury for quite a while, and now you are out, where is it, Ohio?

Mr. ROSE. Cleveland, Ohio.

Senator MALONE. It is a good State today——

Mr. ROSE. Yes, sir.

Senator MALONE. But it has not been doing so well lately. I would like for you to tell me about this business, if it is going on, and the continual trend of free trade, to use the low-cost labor of the world to supplant the labor of the United States. Do you know of any such trend?

Mr. ROSE. Senator, my effort in customs——

Senator MALONE. Well, do you? Do you know of any such trend?

Mr. ROSE. To try to supplant United States——

Senator MALONE. To use the low-cost labor of the world to supplant American labor right here in the textiles, the minerals, and the machine-tool industries, the precision instruments, and everything you can mention. Do you know of any such trend?

Mr. ROSE. No, sir.

Senator MALONE. Well, I think it was time you resigned from the United States Treasury. I hope you have plenty of clients who deal in foreign countries, because you are going to need them.

The CHAIRMAN. Will the Senator from Nevada yield?

Senator MALONE. I am just starting.

The CHAIRMAN. The Chair hopes it will be understood that Mr. Rose is here at the request of the committee.

Senator MALONE. I am glad he is here, Mr. Chairman. I am just really glad of it.

The CHAIRMAN. And he is testifying as to the facts relating to this legislation.

Senator MALONE. I would like to find the facts.

The CHAIRMAN. He is not attempting to influence the committee, so far as I have been able to observe. He has given the facts, and he has given months of study to it. He is a man of the highest integrity and honor, and the Chair hopes the Senator from Nevada will make no reflection on him.

Senator MALONE. I do not want to reflect on him because he does not answer questions.

The CHAIRMAN. The Senator has a capacity for asking questions that are difficult to answer.

Senator MALONE. I know that.

The CHAIRMAN. He is very able, and he knows a great deal about this subject, but the Chair suggests he should not reflect upon the witness' character because he cannot answer the questions.

Senator MALONE. I am not. But he is here as an expert, and the Assistant Secretary of the Treasury would rather not be examined. I will examine him if he would rather do that.

Senator BENNETT. Mr. Chairman, because we have an interruption at this point, could I inquire what the time pattern will be?

The CHAIRMAN. The time pattern has been upset. [Laughter.]

I presume we will have to have an afternoon session.

Senator MALONE. Mr. Chairman——

Senator BENNETT. I wonder if the Senator will wait until we get an answer.

Shall we go through the lunch hour, or come back?

The CHAIRMAN. The Senate is in session now, and very shortly it will take up a very important bill. I was on the committee which reported it, and I will have to be present on the floor.

Senator MALONE. Could I ask the distinguished witness whether he knows what the value of the imports have been over the last 2 or 3 years?

Mr. ROSE. The figure for fiscal 1954 was $10.491 billion, as indicated in that chart.

Senator MALONE. Ten billion——

Mr. ROSE. $10.491 billion.

Senator MALONE. Billion?

Mr. ROSE. Billion.

Senator MALONE. Could you tell me how it was divided between the ad valorem—the three divisions, where the ad valorem rates apply, and where the fixed duty rates apply, and where there is no duty whatever?

Mr. ROSE. Yes, sir.

$10.491 billion was the total. The nondutiable was $5.822 billion.

Senator MALONE. That is a little more than 50 percent of all the imports, is it not?

Mr. ROSE. Yes, sir. The specific duty amount was $3.258 billion. And the ad valorem was $1.411 billion.

Senator MALONE. One billion what?

Mr. ROSE. One billion four eleven.

I can give you the figure for 1955. It is a little less.

Senator MALONE. This was for what?

Mr. ROSE. 1954.

Senator MALONE. Yes.

Mr. ROSE. For fiscal 1955, $10.432 billion. Nondutiable, $5.7 billion——

Senator MALONE. Five billion seven hundred million?

Mr. ROSE. Yes, sir.

Specific, $3.2 billion. Ad valorem and compound, $1.517 billion.

Senator MALONE. Would you give us some idea of how it had run over the years, if you have it here, say for the last 20 years, every five years, or some average?

Mr. ROSE. I could get that for you, Senator, but I have not got it here.

Senator MALONE. All right, if you would, I would appreciate it.

Mr. ROSE. I haven't got it.

(The information referred to is as follows:)

Value and duty of imports

[Dollars in millions]

	Total		Free value	Dutiable value
	Value	Duty		
1930 [1]	3,114		2,081	1,033
1953 [1]	2,206		1,284	922

	Total		Free value	Specific		Ad valorem	
	Value	Duty		Value	Duty	Value	Duty
1940	2,448	340	1,528	611	245	309	95
1945	3,966	353	2,767	910	283	289	60
1950	7,026	415	3,962	2 338	264	726	151
1955	10,433	568	5,712	3,204	281	1,517	287

[1] No records maintained of breakdown as to specific and ad valorem value or duty prior to 1938.

Senator MALONE. I have before me here a House of Representatives Report No. 858, by Mr. Cooper, reporting H. R. 6040, on June 18, 1955, and on page 27 it is headed: "Minority Views of Hon. Richard M. Simpson and Hon. Noah M. Mason."

You are acquainted with these two gentlemen?

Mr. ROSE. Yes, sir.

Senator MALONE. Do you think that you have eliminated all the objections of these two men by your amendment?

Mr. ROSE. Well——

Senator MALONE. I will read the first paragraph. It says:

We are opposed to H. R. 6040, commonly referred to as The Customs Simplification Act of 1955.

It says:

This is not a customs simplication act. Such acts were passed in 1953 and 1954 with the result, as pointed out by H. Chapman Rose, Assistant Secretary of the Treasury, that there has been a "drastic reversal" in the trend of the backlog of customs cases.

It goes on to give the statistics. And then it says, in the third paragraph:

This is a tariff reduction bill, pure and simple. There is no disagreement with the fact that, as shown by the exhibits of the Treasury Department, the dollar amount of duties on many, many products would be cut immediately all the way from modest amounts to as much as 16 percent.

This amendment would not allow more than a 5-percent reduction?

Mr. ROSE. Maximum amount for any item.

Senator MALONE. Yes.

This would be accomplished by providing new bases of valuation for the purpose of applying tariff rates.

I will ask you a question in connection with 5 percent or 16 percent, or whatever amount the rate might be.

Do you know on about what margin a manufacturer works in this country; that is to say, to his wholesalers and to his clients?

Mr. ROSE. Well, that varies a lot in different lines, of course, Senator.

Senator MALONE. Well, take textiles.

Mr. ROSE. I am not too familiar with the textile business, sir. You mean how much the price from the manufacturer to the jobber is, and from there on?

Senator MALONE. What would be the profit that a producer, a textile producer, would make that he can count on if he puts it in the hands of a wholesaler?

Mr. ROSE. I don't know enough about the textile business to answer that question.

Senator MALONE. What business are you familiar with?

Mr. ROSE. Well, I am a lawyer, and I have occasion to get familiar with certain businesses as I get cases, or other matters relating to them.

Senator MALONE. Can you give us one or two of them?

Mr. ROSE. Well, I have been on it previously and I am again on the board of an aircraft parts manufacturing concern.

Senator MALONE. Well, the Government buys the aircraft mostly, does it not?

Mr. ROSE. Although these——

Senator MALONE. If it does not buy it, it goes into commercial use and we pay a little subsidy.

Mr. ROSE. Well, these are subcontracts, and not too much direct Government business.

Senator MALONE. That would not make much difference there, because we are living in a war economy. Is it not a very thin margin, generally speaking?

Mr. ROSE. That is my impression, but what the figure would be, I do not know.

Senator MALONE. We have gotten so used to, here in the Congress, at least I say "we" because of my inability to stop it or slow it up, 5 percent or 10 percent does not make any difference in a manufac-

turer's profit. As a matter of fact, do not most of the manufacturers work on much less percentage of profit than 10 percent or even 5 percent?

Mr. ROSE. I do not have an overall figure. I know some lines where 10 percent manufacturing profit is thought to be usual; others that are on a much smaller ratio.

Senator MALONE. Well, as a matter of fact, there are wholesalers who—are not most of the real production industries on much less than 10 percent?

Mr. ROSE. Profit on sales?

Senator MALONE. Yes.

Senator BENNETT. Is the Senator talking about net profit or gross profit?

Senator MALONE. Net profit, of course.

Now then, you cut 5 percent of the valuation, you are seriously cutting into a profit. That net profit is very small to start with. You are entirely familiar with that. You were president of the National Association of Manufacturers at one time.

Senator BENNETT. Senator, I wanted to help you make the record clear that you were talking about net profit.

Senator MALONE. Of course I am talking about net profit. Gross profit means nothing, especially when we get through with it here in Congress.

Senator BENNETT. Of course, if you don't have a gross you don't have a net.

Senator MALONE. I am here to say to you now that there are some in the United Staes who do not have a gross, and when we get through with them here they may be on their way out, and I think more of us will realize that after going home this year.

To go on with this a little ways, this Richard M. Simpson, I have a high regard for Mr. Simpson and for Mr. Mason.

Mr. ROSE. So do I.

Senator MALONE. I think they have some idea of how business is run in this country, and just about what we are doing to it.

This House report says, June 18:

> This House has just passed H. R. 1. This measure gives the President power to enter into reciprocal trade agreements—

it does not give the President any power to make them reciprocal, but it gives him power to enter into them—

> and to effect tariff reductions. The State Department has just signed a new reciprocal trade agreement with Japan, lowering tariffs with that country and, under the most-favored-nation principle, extending such benefits to other countries.

You are, of course, familiar with the most-favored-nation principle. If you make a deal with one country, they all get it.

Senator MALONE. We are probably the only country in the world that would do that.

> A similar agreement has just been entered into with Switzerland. H. R. 6040 constitutes an additional attack on tariff levels It brings about not only double jeopardy but triple jeopardy to many industries, depending on whether their rates were cut in earlier trade agreements as well as in two recent ones negotiated for the benefit of Japan and Switzerland.

Just what do you think this bill would do in straightening out this complaint there in that paragraph?

Mr. ROSE. Well, as I have tried to explain, it limits the reduction that could take place, as to any items, to 5 percent.

Senator MALONE. Yes. You think 5 percent does not amount to anything?

Mr. ROSE. No, sir.

Senator MALONE. That is your general belief; is it not?

Mr. ROSE. No, sir, it is not. What I have tried to point out is that I don't think that this higher of two valuations is any real protection in any event.

Senator MALONE. In other words, I heartily agree with you there is no protection to anybody now under any duty or tariff law. Have we not, then—I will ask you this question further: Did we not in 1934 withdraw from a policy of 145 years, since 1789, that the tariff or duty, as the Constitution calls it in article I, section 8, generally represented the difference in the labor costs and the general costs of doing business in this Nation, and in the chief competitive nation on each product—sometimes a little awkwardly in arriving at it at times—but that was the objective, was it not?

Mr. ROSE. Well, it has been different at different times. At one time it was the main source of revenue for the country, but latterly it certainly has been a protective——

Senator MALONE. Did we not get away from it pretty quick?

Mr. ROSE. Yes, but latterly——

Senator MALONE. Was it not supposed to represent the difference between effective labor costs and the cost of doing business here, and in the chief competitive country, on each product?

Mr. ROSE. The purpose has been the appropriate amount of protection that Congress thought the particular article ought to have.

Senator MALONE. Is that not what the 1930 Tariff Act said, that they shall determine the cost of the production of a foreign article, including the freight to this Nation, laying it down at the water's edge, and the fair cost of production in this Nation, and recommend the difference as a tariff? Was that not what it said?

Mr. ROSE. Well, there is a provision in there that contemplates that being done.

Senator MALONE. Isn't that what it said?

Mr. ROSE. Yes; I think that is it.

Senator MALONE. Well, "yes" will do if that is what it was; is that your answer, "yes"?

Mr. ROSE. Isn't that the reciprocal—I mean the tariff adjustments in the 1930 Tariff—I am sure you are right, that is the fact.

Senator MALONE. Of course I am right. You have lived in this country for a long time, and up until 1934 we had a policy laid down by Congress: and after 1916 established a Tariff Commission, by an act of Congress, to determine that difference, did we not?

Mr. ROSE. That was the provision that I was thinking of.

Senator MALONE. In the 1930 Tariff Act, not the Reciprocal Trade Act I have other news for you. The two words "reciprocal trade" do not occur in the Act that was passed in 1934 at at all, the so-called Reciprocal Trade Act. You know that, do you not? It does not occur in the acts.

Mr. ROSE. I think that is right.

Senator MALONE. Of course, that is right, and no one ever had any intention of making it reciprocal, either, outside of this Nation, according to their actions since that time.

In 1930, Congress made the duty or tariff flexible, did it not, and told the Tariff Commission to determine the value of the foreign article laid down into this country, and the value, the fair value of manufacturing in this Nation, and to recommend the difference as a tariff, did they not?

Mr. ROSE. If I can get that provision—I have not looked at it recently, but I know the one you are talking about, the so-called flexible tariff provision.

Senator MALONE. Well, that is true, is it not?

Mr. ROSE. Yes.

Senator MALONE. Well, that is all I need to know. You do believe it, you have read it, you know that is true.

Mr. ROSE. Yes, that is in there; right.

Senator MALONE. In 1934, we changed the entire policy, that is, Congress—God only knows what they had in mind, if anything—but what it did was to transfer to the President of the United States all of its constitutional responsibility under article I, section 8, to set the duties, imposts and excises and to regulate the foreign trade of the United States and the national economy. Congress transferred it to the President, did it not?

Mr. ROSE. Gave him authority to make agreements affecting it.

Senator MALONE. But he could make agreements and lower tariffs without regard to the difference in the labor costs or the difference in the costs of doing business in this nation and any nation with which the trade agreement was being made without regard to Congress. It that true?

Mr. ROSE. Of course, there are safeguards in that act.

Senator MALONE. What safeguards are there in it?

First, is that true, that they transferred the authority and he could follow the procedure I stated above without any regard whatever to the difference in the labor costs or the costs of doing business in this country and the chief competing country? First, is that true?

Mr. ROSE. Well, are you talking about the provision of the act as orginally enacted?

Senator MALONE. In 1934.

Mr. ROSE. I believe there was no peril-point or escape-clause provision in it at that time.

Senator MALONE. We will come to the peril point or escape clause. Is "yes" your answer?

Mr. ROSE. At that time, that is my belief.

Senator MALONE. Yes, in 1934.

Then did we not change the principle? We allowed the President to change it; did we not?

Mr. ROSE. From a congressional setting of tariffs to a setting of tariffs by Executive order.

Senator MALONE. From the Tariff Commission, an agent of Congress, where in 1930 the Tariff Commission set the tariffs on a principle of fair and reasonable competition—you would agree with that, is that right?

Mr. ROSE. Well, whatever that flexible tariff provision says.

Senator MALONE. Well, did it not say——

Mr. ROSE. But it was, broadly speaking, equalizing of labor costs, production costs in this country as opposed to that you had——

Senator MALONE. It equalized. In other words, fair and equitable competition; would that not be a fair summary of it? It gave the American people equal access to their own markets.

Mr. ROSE. That is your characterization of it, Senator.

Senator MALONE. Why do you not puts yours in? What would you say about it?

Mr. ROSE. Well, the provision is whatever is in the act, and it is still there.

Senator MALONE. What is in the act?

Mr. ROSE. Let me get it. I have the section now, Senator.

Senator MALONE. Go ahead, read it.

Mr. ROSE (reading).

In order to put into force and effect the policy of Congress by this act intended, the commission—

which is the Tariff Commission—

(1) upon request of the President, or (2) upon resolution of either or both Houses of Congress, or (3) upon its own motion, or (4) when in the judgment of the Commission there is good and sufficient reason therefor upon application of any interested party, shall investigate the differences in the costs of production of any domestic article and of any like or similar foreign article. In the course of the investigation the Commission shall hold hearings and give reasonable public notice thereof, and shall afford reasonable opportunity for parties interested to be present to produce evidence, and to be heard at such hearings. The Commission is authorized—

well, the following part relates to procedure. Then:

The Commission shall report to the President the results of the investigation and its findings with respect to such differences in costs of production. If the Commission finds it shown by the investigation that the duties expressly fixed by statute do not equalize the differences in costs of production of the domestic article and the like or similar foreign article when produced in the principal competing country, the Commission shall specify in its report such increases or decreases in rates of duty expressly fixed by statute (including any necessary change in classification) as it finds shown by the investigation to be necessary to equalize such differences. In no case shall the total increase or decrease of such rates of duty exceed 50 per centum of the rates expressly fixed by statute.

Senator MALONE. Now, that does say, then, that if these wages and costs are equalized, that it really would give the American producer equal access to his own market, would it not?

Mr. ROSE. That is the effect of that.

Senator MALONE. Well, that is your best judgment, that that would just about equalize the cost of production; therefore, it would give him equal access, competitive access, to his own market?

Mr. ROSE. I suppose, if you equalize the cost of production and transportation. Without transportation, it would prevent——

Senator MALONE. Of course, that is included in it.

Mr. ROSE (continuing). Prevent anything coming in.

Senator MALONE. The whole business. So then it would give him approximately equal access to his own market; no advantage, mind you, but equal access. Is that right?

Mr. ROSE. Well, that is the theory of that provision, yes, sir.

Senator MALONE. You think you would have to interpret that that is the theory of it; your answer is "yes," is that it?

Mr. ROSE. This is a provision which requires the Commission to recommend an increase in duty to equalize differences in costs of production.

Senator MALONE. Or decrease.

Mr. ROSE. Yes, sir.

Senator MALONE. Then it is not a high tariff or a low tariff, as has been raised all over the landscape here for 20 years. It is equal access to markets. Does it not say that they decrease or increase?

Mr. ROSE. Yes, it says increase or decrease.

Senator MALONE. Then it s not a high tariff. It says decrease or increase.

Mr. ROSE. It contemplates going in both directions.

Senator MALONE. As long as we understand the theory we had, then, up to 1934—that obtained up to 1934, did it not?

Mr. ROSE. Yes, sir.

Senator MALONE. Then Congress, under considerable pressure—I guess some of the old-timers here would still remember it—did transfer that complete responsibility to regulate our foreign trade, to set the duties, excises, imposts, to the President of the United States in 1934, in the 1934 Trade Agreements Act; did it not?

Mr. ROSE. Yes.

Senator MALONE. Well, now, are you aware that in that act they gave the President full authority to transfer that responsibility to any foreign organization that might be spearheaded by him and that he could transfer that responsibility to a location in any foreign nation of 35 nations, of which we might be one, where they could sit down and determine what our tariffs ought to be? Are you aware of that fact, that that was included in that act?

Mr. ROSE. Well, it gives him the authority to make agreements.

Senator MALONE. It gave him authority to transfer that situation, that setup, that organization, under the General Agreement on Tariffs and Trade, to Geneva, did it not?

Mr. ROSE. Well, Senator, may I say, I am not—I have never worked extensively in the field of trade agreements, I have never worked with GATT. My familiarity——

Senator MALONE. I didn't ask you that. But did it give him that authority?

Mr. ROSE. Well, that is my premise for saying that I can't really——

Senator MALONE. Well, you believe it did; at least, he did transfer it; did he not?

Mr. ROSE. Well, there is an organization——

Senator MALONE. In 1947.

Mr. ROSE (continuing). In existence.

Senator MALONE. He organized and spearheaded the General Agreement on Tariffs and Trade and transferred it to Geneva under the 1934 Trade Agreements Act.

Mr. ROSE. Senator, I know there is an organization in Geneva. I know that it came into existence as a result of the President's authority under the Trade Agreements Act. But when you ask me specific questions about what this authorized or did not authorize him to do, I have not looked at those acts for a long time.

Senator MALONE. I will give you further information, and I do not assume you have much association with the Secretary of State,

but he testified right where you are sitting that that was included in the act; did he not?

Mr. ROSE. I would certainly underwrite anything he said on that subject.

Senator MALONE. I am sure you would.

I cannot quite go that far, but nevertheless, if you underwrite it, why, that is all right.

Mr. ROSE. If he said that is what the act provided, that is unquestionably what it provided. He has studied that and I have not.

Senator MALONE. Yes, that is the way he testified.

It is clear out of the hands of Congress now. We could, of course, repeal the act and bring it back to the Tariff Commission on that same basis of fair and reasonable competition which, of course, is what some of us would very much like to do.

I have a bill in, as a matter of fact, which is Senate bill 2926——

The CHAIRMAN. Would the Senator prefer to yield just at this moment?

Senator MALONE. Yes.

The CHAIRMAN. I do not understand that the Secretary of the Treasury said the Reciprocal Trade Act authorized GATT. Did you say that he had said that?

Mr. ROSE. Senator Malone referred to the Secretary of State.

Senator MALONE. The Secretary of State. I said it myself, and it is in the record under my cross-examination. He did not have to call on Congress; he had full authority to do what he did.

And under that same authority, if he had that authority—I think it is unconstitutional; there is a case in court now to test it—he could send it to Moscow or to Peking or anyplace else, as a matter of fact, and I do not think he will do it, but if we change administrations—that has been going on 24 years—somebody might do it.

H. R. 6040 provides—and still does, I think, according to your testimony, and this is from Mr. Richard M. Simpson and Noah M. Mason of the House:

> It provides for automatic arbitrary tariff cuts. These could be made without regard to their effect on domestic industry, and without hearing from the industries involved as to their effect.

Is that true?

Mr. ROSE. I don't believe it is, sir.

Senator MALONE. Would you hear these industries before you would put this bill into effect? Do you have any—as a matter of fact, if we passed the act, do you have any say in it at all? Do you have any discretion?

Mr. ROSE. Well, under the amendment, of course, there is a provision for suggestions by industry as to inclusion of products for valuation, continuing to be valued on the old basis.

Senator MALONE. But you have no provision there for hearings as to whether or not the cut should take place if you put them under that basis?

Mr. ROSE. No, sir, no provision for hearings.

Senator MALONE. That is right.

Mr. ROSE. But——

Senator MALONE. So, then, he is right in that regard, there is no provision for industry to be heard.

You might say that the Secretary of the Treasury, for whom I have the greatest regard, and you, too—you could say, "Well, we could judge," but that is not the kind of a Government they set up in the Constitution of the United States. They wanted to keep away from people who might temporarily be appointed or elected to some important office, from using their own discretion to tell the taxpayers or the producers how they are to operate.

I think you agree with that statement.

Second. Since the United States would receive no benefits from foreign countries, who themselves would benefit through the tariff reductions involved, H. R. 6040 disregards the basic principle of reciprocity.

I know he has about the same regard for that word as used in connection with our industries as I do. I know Mr. Simpson very well.

No benefit to industries, labor or agriculture in the United States have been pointed out to this committee.

I noticed in your chart there were four industries the chart showed a little increase, about a half-inch long, and on the other side there were something like 50 industries which you charted that reached, some of them, across the page. So the general thing is, the effect is a reduction; is it not?

Mr. ROSE. On balance, yes.

Senator MALONE. Well, I would not call it very good balance with maybe 3 or 4 industries having a very, very slight increase, with 50 industries, as you had on your chart, which would have a tremendous decrease.

Mr. ROSE. I think the ratio is about 15 for one.

Senator MALONE. It looked to me about a 150 for 1. I wish you would——

Mr. ROSE. As I recall it, there were about 15 million that went up, and about 200 or 206 that went down.

Yes, 14 to——

Senator MALONE. Take the other one. You had the bar showing one side where it decreased, and the other side where it increased itself, the one behind there. What would you judge there by the chart, the ones on the right being the ones that go up, and the ones on the left being the ones that go down?

Mr. ROSE. I think the dollars are about what I said, 14 million against 126 million.

Senator MALONE. Well, I have been reading charts for 40 years, and if that is—if there is one-third on the increase side there, I am going to have to go back to school.

Mr. ROSE. I would agree with your feeling about the adding up of those bars. I cannot quite make that consistent.

Senator MALONE. I think that is very good material to show to the committee. I do not understand it, either, and I generally understand charts, for your information.

Now, the third, if this bill is adopted—I am still reading from Mr. Simpson and Mr. Mason, it—

will, in effect, evade the peril-point provision in the Trade Agreements Act as amended. No opportunity is offered to anyone to submit facts as to whether the peril point of a given rate would be reached or passed as the result of H. R. 6040 unless and until the article involved is included in the bargaining list for some future trade agreements.

Now, the peril point, I am going to explain that to you, because I am sure you are counting heavily on the peril point.

In the first place, the peril point—the Tariff Commission is asked to establish what is a peril point, below which point the industry would suffer. Then they go ahead and make a trade agreement for 3 years. It is unchangeable without them changing the whole multilateral provisions, with penalties.

Two minutes after the peril point is established and before the ink is dry on the signed trade agreement, they can revalue their currency, put in their exchange permits for imports, and nullify the whole business.

Do you understand that?

Mr. ROSE. Well, I understand, Senator, that a restriction on imports for currency reasons, or a revaluation of currency, could have that effect.

Senator MALONE. Why, of course. And do you understand that an exchange permit could have that effect?

Mr. ROSE. Yes, sir.

Senator MALONE. If you cannot get the exchange, you cannot bring it in; can you?

Mr. ROSE. It could have that——

Senator MALONE. And the exchange—and a permit for imports would have that effect, because if you could not get the permits you could not bring it in at all.

Mr. ROSE. That is correct.

Senator MALONE. Is that not the way they operate? You do not have to answer if you do not understand that, and I suppose you don't, but that is the way it operates. But if you do know, I would like for you to answer.

Mr. ROSE. I thank you for excusing me, but I don't.

Senator MALONE. I think if you are going to be an expert in this business, you ought to carry it a step further. You ought to read some of this business.

Now, the escape clause is the same way. It is not exactly the same principle, but you cannot get an escape without disturbing the multilateral principles, and then they escape.

In other words, the whole thing is upset, and you have to show injury; and after an industry in this country can show injury, it is too late to do much for it. And if you are out there in private practice and get some clients on this side of the ocean, I think you would find that out pretty quick, too.

I have been in the industrial engineering business for 15 or 20 years, and that is one thing you learn pretty quick. After you are really hurt you are on the way out, and then you come back to Washington here, to some bureau official who does not know what you are manufacturing from a bale of hay, and he already has a policy established, so that is the end of that.

I will yield to the Senator from Delaware.

Senator FREAR. Thank you very much.

Senator MALONE. It just slipped my mind, I was so interested in the testimony of the distinguished witness.

Senator FREAR. I have only a few short questions, Mr. Rose.

My information is that in 1955, the customs handled about 1,600,000 invoices, in broad terms; is that about correct?

Mr. ROSE. I would have to ask about that.
That is correct.
Senator FREAR. Roughly speaking, that is about right?
Mr. ROSE. Yes.
Senator FREAR. And is it not true that each invoice may cover a large number of items, not merely just one item?
Mr. ROSE. Yes.
Senator FREAR. So it could be an extreme multiplication of that 1,600,000.
My point is, is it not going to be a tremendous job for the customs people to make an appraisement of each of those invoices in each of the next 3 years in order to make up the lists which I understand are to be remade each year?
Mr. ROSE. It is a substantial job, Senator. Of course, it is limited to those where the indicated effect of the removal of the existing system of valuation is going to be more than 5 percent. The estimated area that that would cover is about 10 percent of the total at the present time.
But the area that they will have to look at, of course, will be greater than that, because they would have to look at the maybe's, the ones that might be affected.
Senator FREAR. Well, at the end of the 4 years, if this bill did become law, would the Treasury be able then to save much in labor and dollars because of the doing away of the foreign value?
Mr. ROSE. We think that would be a substantial simplification.
Senator FREAR. You imagine the appropriations—the budget would ask for reduced appropriations for customs work?
Mr. ROSE. Well, we estimated that it would cost about from half to three-quarters of a million dollars to achieve the same speed result with people as would this amount of simplification.
Senator FREAR. Then I take it that the customs staff would be reduced if the workload was reduced.
Mr. ROSE. If the workload did not go up in the meanwhile.
Senator FREAR. That is how you would save the half to three-quarters of a million?
Mr. ROSE. Yes.
Senator FREAR. Of course, the reason for asking these questions is, personally, I am trying to evaluate this legislation and see what is necessary in it, and I appreciate the answers you have given to my questions.
Mr. ROSE. Thank you.
Senator FREAR. I thank the Senator from Nevada.
The CHAIRMAN. The committee will recess until 2:30. I want to ask the Senator from Nevada if he wants to question the witness further.
Senator MALONE. Yes, I would like to question him further here.
Mr. ROSE. I will return at 2:30.
(Whereupon, at 1 p. m., the committee recessed, to reconvene at 2:30 p. m. of the same day.)

AFTERNOON SESSION

Senator BENNETT (presiding). The committee will come to order.
I am acting in the place of the chairman, who is involved per-

sonally in the debate that is now going on on the floor, and has asked a number of us to sit in for him.

As I understand it, when the committee recessed just before 1 o'clock, Senator Malone was still questioning the witness.

Senator, if you are ready to proceed, you may do so. We still have four more witnesses who we hope to hear this afternoon.

Senator MALONE. I might ask the question, Mr. Chairman: Is there a limit on the hearings on this bill?

Senator BENNETT. It is my present understanding that it is expected that the hearings will be closed out as of Wednesday of this week.

Senator MALONE. Is there a sort of an emergency in this matter?

Senator BENNETT. I think the committee has other things it has to turn to. I am not the chairman, and I can't speak for him, but I may be able to get some specific information about this program.

I am informed that the chairman has stated that the hearings are scheduled to end Wednesday, and Thursday we go into executive session on a number of bills before the committee. We have the textile problem, we have the debt limit problem. And all of these have deadlines.

Senator MALONE. I thought we settled the debt limit problem last year when we extended it to $281 billion. Are we getting worried about that now?

Senator BENNETT. Well, we have to act this year. And I think the proposal this time is to reduce it by 2 or 3 billion.

Senator MALONE. I voted not to extend it last year, I remember.

Senator BENNETT. I have a hard enough time remembering how I voted.

Senator MALONE. I don't have any trouble remembering how I voted, because I think if you can't pay your debts in peacetime, you are going to have trouble when trouble comes on. If you have got to pay $6 billion last year to pay the interest, that doesn't sound very good.

Did this witness testify last year that they wanted an extension?

Senator BENNETT. I am sure this witness was not put on the pan on that particular situation.

Senator MALONE. I don't call it the "pan"; I think we simply have to start being for the United States of America. And I brought out this morning, Mr. Chairman, and I would like to call attention to it again, that all the propaganda here for 24 years, if somebody wants to put a fence around the United States of America, no imports and no exports, that the 1930 Tariff Act provided what is, in effect, fair and reasonable competition for the American producer.

What it does, or what it did, or what it would have done if left alone, was to give equal access to the American manufacturer to his own markets, no advantage and no disadvantage. That is what the act said, really.

Now, Mr. Chairman, another thing that I think is a besetting sin of Congress—and that means, of course, this committee—is that every one of these moves are made as an independent move, having no connection with anything else.

So we transferred in 1934 the constitutional responsibility of the Congress to regulate our foreign trade and the national economy to

the President, and then to Geneva, and it could go to Moscow now if anyone thought it ought to.

Well, that is about all it is.

Then we come in with additional debt continually all through the 24 years. We come in with what we call customs simplification, which sounds very good. But every bill that has been before this committee and every bill that has been passed, has been a further pressure for reduction of duties, without any regard whatsoever to the difference in the wages in the United States of America and in these cheap foreign labor countries.

Now, Mr. Chairman, I wanted the record to show that I think there is a connection. I think there has been a connection from the beginning, one overall plan, with men like Mr. Rose—men who are honest and good Americans—but they are confined to one question. And, frankly and admittedly, they don't understand any of the rest of them. So they don't understand what the plan is.

The plan is to divide the markets of the United States with the cheap labor nations of the world and furnish the American market with cheap labor goods. That is the plan, and has been the plan from the beginning.

So the difference, then, is in philosophies. The one that lasted 145 years, from 1789 until 1934, was to build this Nation's living standard as high as we could built it, based on our resources and the energy we were of a mind to put into the work.

The philosophy changed in 1934, so that the philosophy since then and now is to divide these markets with the nations of the world. And the American market is the only market in the world that is worth anything today.

The division of these markets is supposed to raise the living standard of all the nations of the world, of the 600 million Indians, and of the 600 million Chinese, who have no living standards, no economic situation—I have been in them, all over, and every other nation in the world.

I just thought I had to start out in 1947 to see our star boarders, and then I extended the trip.

So I know what I am talking about, as an industrial engineer, as to what is happening to our markets today. We are living on a war economy, spending $35 billion a year in contracts all over the United States, and 5 to 10 billion dollars in foreign nations to buy our goods—and if we quit spending that war economy money, in 60 days we are out like a light. We don't have the guts to quit spending. We couldn't afford peace.

If we had peace, we are broke, because our markets would be gone. Then the textile markets are gone. Our mineral markets are gone. Our machine tool markets are going. Take 5,000 products, and you can't name one of them that you can't go to the cheap labor countries with our machinery and our know-how—and we are paying for putting it in—and bring the stuff back cheaper than you can produce it here—You can't name one.

But you don't know anything about it; you only know that this would simplify the customs and make it easier to get the stuff into this Nation, that is all you know.

Now, what I am trying to say, Mr. Chairman, is that this has a definite connection with all the other legislation that we vote for, each one separately, on the theory—well, maybe that is too much—and then we have some bureau set up to tell what you can do with it, and when.

Now, you have a bill in the Senate, and I think one in the House, knowing that you are going to have unemployment all over this Nation, and putting these industries out—and if you are interested in where they are going, I have enumerated that on the Senate floor earlier this year—you call them distressed areas, and we bring them about ourselves by these very imports you are trying to make easier to bring in.

Then we have a bill to compensate the investors in these businesses for their loss. And we have in that same bill a provision that would move the working men and women from one area to another area, and if we pass it, we are another Russia. The only thing is, in Russia—I spent 2 months and a half behind that Iron Curtain last year—they don't have to have a bill. That would be the only difference.

So the Congress of the United States, starting in 1934, relinquished one by one its constitutional prerogatives, its constitutional responsibility to regulate foreign trade and the national economy—and that is all there is.

So that now, this Congress of the United States—with all the dignity, it has left, I would say to the distinguished ex-Assistant Secretary of the Treasury—all it has left is the liberty of setting taxes to pay the bills and to approve appropirations bills that come up here. That is what we have left. We are destroying ourselves.

And I come back to what President Lincoln said. He must have had some kind of second sight. He said:

> If this Nation is every destroyed it will not be from without, it will be from within.

And that is where it is coming from, the inside, not altogether from traitors and subversives—there are not many of them, but they are clever in manufacturing catchwords and phrases that good, honest men then mouth everywhere, and I come to believe them—reciprocal trade, "Trade, not aid," dollar shortage—well, if it wasn't a tragedy it would be ridiculous and funny.

Now, Mr. Chairman, with the limited time that I have at my disposal, I want the record to show—I have already cross-examined the witness on most of it—and if the chairman will bear with me, I will ask him another question in regard to it.

If this bill is adopted, it would encourage the two-price system, double pricing by foreign countries. In other words, it would encourage more subterfuge, more manipulation of the foreign currency and value in terms of the dollar, false value, either under or above, owing to whether they want the imports or don't want them, or whether they want exports or do not want them.

They have hidden subsidies that we finance, finance the food of the workingman, or the rental, or something else. And then we make up the difference in the 5 billion in foreign aid we will undoubtedly vote. I have only been here 10 years, but I have never seen any of it turned down yet, and I don't expect to, this time. I have never voted

for it, and I am not about to start. We will have that same thing here again in the Finance Committee, I suppose, soon.

What do you think it would encourage in these nations by your principle? Would it encourage them to do more to eradicate the issue?

Mr. ROSE. Senator, I think it would not. I think that our present system, which tries to use the higher of two things, is the thing which has the encouragement in it to move from one valuation to the other, as it is convenient to them.

Senator MALONE. You are talking now that you think the export price is the one you ought to hang your hat on?

Mr. ROSE. I think so, sir, for the reason that I think the average American businessman thinks in terms of paying duty on the price that he pays—I think that is what you feel when you go abroad.

Senator MALONE. Do you have any doubt that there will be many hidden subsidies for exports?

Mr. ROSE. I think there are some, yes.

Senator MALONE. As a matter of fact, don't you know there are?

Mr. ROSE. Well, by "hidden subsidies," what do you mean?

Senator MALONE. Well, it isn't hidden very much to anyone that wants to look for it. But do you believe there are?

Mr. ROSE. Well, I think that there are various governmental encouragements to export to us.

Senator MALONE. Well, I will illustrate the thing for you. I have made a study of this thing as much as I can, and attend to my other duties in the Senate.

I have been in every nation in the world, completing it last year behind the Iron Curtain with two months and a half. I saw the industry there, and saw these people at work; that is what I went for. And I saw the food they are eating and the clothes they are wearing. I am not interested in what they put in the paper, I wanted to see for myself, which I did.

For example, in the Stalingrad area, I went up there, and a young engineer, 35 years old, was working about 13,000 people, 35 percent of them women, on building a dam. This dam in Stalingrad will be completed in 1958, according to plan. And I have been interested in the construction of enough dams that I think that is about right.

There will be over 3 million kilowatts' power installed at a 50, or better, percent load factor, which is about 3 times the size of Hoover Dam. And there is a grid already existing and being improved, between the Volga River and Moscow, and the main arteries running in and out.

They are electrifying some railroads there. Of course, you wouldn't read that in the paper or any State Department reports, I don't expect.

I could go on. I saw 50 or 60 plants, manufacturing plants, with these Russians, men and women, getting 700 to 850 rubles a month, about $50 a month in any kind of a fair exchange. They charged me for four rooms. They made my hotel bill and room cost me about $35 a day, which was one way of getting me out of there, and my money ran out. And every day or so, someone would ask me when I was going to leave, and I said I had no plans, just grinned and went on.

Now, they have all the markets in the world at their disposal, with the nations of the world recognizing Communist China, shipping stuff to China boldly, and surreptitiously to Russia. I was in Austria, and trainloads of stuff, carloads, go through Austria en route behind the Iron Curtain without stopping. There is not going to be any effective revolt either in the Balkans or in Russia in time to help us. And I think our people know that. But I don't know why our taxpayers are told differently.

We are being cut out from all the markets of the world. We have priced ourselves out of them.

Inflation—you do understand that inflation lowers a fixed tariff—do you understand that?

Mr. ROSE. Yes, I do.

Senator MALONE. It has been cut to a third, hasn't it, just about?

Mr. ROSE. Between a half and a third.

Senator MALONE. Just about a third of the tariff you had in 1932, say?

Mr. ROSE. The ad valorem?

Senator MALONE. No, only the fixed tariff. Ad valorem is not affected.

Mr. ROSE. The ad valorem is not affected by it.

Senator MALONE. But the valorem is attacked all the time, just like you are attacking it now. You do understand that if you hadn't adjusted the tariffs at all, that to whatever extent the currency was inflated—and I believe that we have a 33-cent dollar, and we admit that we have a 48 percent—that would more than halve the tariff, wouldn't it?

Mr. ROSE. Yes, in the specific rates.

Senator MALONE. That is right.

So that means, of course, that there is no way that that 1930 Tariff Act could be effective without an amendment, that turns the Tariff Commission loose. And that is what my bill would do, my bill introduced this year. And I put the number of it in the record.

Now, there has been over the years, with this tariff act the way it is, and the Customs, there have been many court decisions, haven't there, as to just what each sentence and paragraph and everything means? What does this bill do to those decisions?

Mr. ROSE. Well, it inserts a series of new definitions for the purpose of changing some of the interpretations which have been effectively written into the act by the decisions that you speak of. I mentioned several of those in my affirmative testimony.

Senator MALONE. What we would have to have would be a complete new line of decisions, court actions; isn't that right?

Mr. ROSE. Well, there would have to be interpretation of the new language; that is quite right.

Senator MALONE. There would have to be somebody's interpretation besides yours, I suspect.

Mr. ROSE. That is all subject to the court.

Senator MALONE. If I happened to be an importer, or your client happens to be an importer, and he doesn't like the decision of the Treasury, then he can appeal it to a court?

Mr. ROSE. That is correct.

Senator MALONE. That has been done over the years, and we understand what the present tariff act means; is that correct?

Mr. ROSE. That is right. There have been many court decisions.

Senator MALONE. But this one upsets these many court decisions.

Mr. ROSE. It changes them in certain specific ways, which I spoke of.

Senator MALONE. And then we would have our officials interpreting it, and then court decisions over another long period of years interpreting the Bureau decisions; is that right?

Mr. ROSE. Let me take one specific thing, Senator, that I have looked at. I spoke this morning of the fact that while the tariff act sounds as if it were dealing with wholesale prices, that it has within it a provision that the price must be a price that is freely offered to all purchasers, so that in a foreign——

Senator MALONE. Is that a court decision?

Mr. ROSE. That is the language of the act, "freely offered to all purchasers."

Senator MALONE. That is the language of the act as it now stands?

Mr. ROSE. As it now stands.

Now, under that act, the Customs Bureau has taken the view that if a price was available only to wholesalers, and retailers buying in the same quantity couldn't get that price—and that is the method of distribution followed, as you know, by a number of forms of distribution—that the price to the retailer was the only price which was freely offered to all purchasers.

That results in assessing the duty on the basis of the price to the retailer rather than to the wholesaler.

Senator MALONE. Yes.

What effect would that have on a tariff?

Mr. ROSE. May I just finish the thought I had, and then I will come back to that?

Senator MALONE. Yes.

Mr. ROSE. The Customs decision to the effect that it is the price to the retailer that should govern in those circumstances is presently under litigation.

Senator MALONE. The court has never decided it?

Mr. ROSE. Not finally.

Senator MALONE. Are there any decisions on it?

Mr. ROSE. Yes; there are some decisions on it.

Senator MALONE. So you know what you have to do until you have a final decision?

Mr. ROSE. Well, it is a matter of confusion at this time.

Senator MALONE. How is it confused if there is a court decision on it?

Mr. ROSE. The question whether that particular interpretation is right is being litigated.

Senator MALONE. All right.

You have no choice except to live up to the decision do you, until it is reversed?

Mr. ROSE. Until it is reversed the Customs is following the interpretation that I spoke of.

Senator MALONE. You have no choice other than that, do you?

Mr. ROSE. I don't think that has been finally decided, and therefore it is a matter of custom.

Senator MALONE. It has been decided that you have no other choice; has it not? In other words, if there is a court decision that has not been reversed and it still stands, that is your bible, isn't it?

Mr. ROSE. It would be, if there were one in this field. But the point is, I don't believe that point has been finally decided, it is under ligitation.

Senator MALONE. Give me that point again.

Mr. ROSE. The point is that if a given manufacturer will sell only to wholesalers at the wholesale price, and he won't sell to retailers at the same price if the retailers buy in the quantities that the wholesalers do, then the custom currently says that the wholsale supplies are not freely offered to all purchasers, and that therefore the price to the retailer is the only one that everyone did buy at.

Senator MALONE. Answer my first question. What effect does that have?

Mr. ROSE. That has the effect of taking the higher of two prices at this stage of the game.

Senator MALONE. So your change here would have the effect of lowering the tariff?

Mr. ROSE. That point is in litigation, with some indication that the ——

Senator MALONE. I understand that. I just spent 5 minutes on it. Now, answer my question.

Mr. ROSE. To state that the price to wholesalers ——

Senator MALONE. Let me state my question again. We are off of it.

If you must take the retailer's price because it is the only one that is offered freely to all purchasers, then it takes a higher tariff on an ad valorem rate than the wholesale price; isn't that right?

Mr. ROSE. Yes.

Senator MALONE. Then what you are suggesting now has the effect of lowering the tariff, doesn't it?

Mr. ROSE. It lowers the amount of duty, which has the same economic effect, yes.

Senator MALONE. You understand that duty and tariff are interchangeable; do you not?

Mr. ROSE. I think tariff is the rate; duty is the amount payable.

Senator MALONE. Well, if the duty is 4 cents a pound, what would the tariff be?

Mr. ROSE. Well, that is a specific rate, and they would be the same thing in that case.

Senator MALONE. Of course. And it would be interchangeable in all other connections, wouldn't it?

And if it is not, let's get that cleared up for the record.

Mr. ROSE. Well, if the tariff is 5 percent, then you apply the 5 percent to a value to get to the duty.

Senator MALONE. In other words, interpreted, carried through, tariff at 5 percent would always be the same duty; would it not? It couldn't mean anything else, it would be 5 percent?

Mr. ROSE. Applied to the same valuation.

Senator MALONE. So, if you called it a duty of 5 percent, or a tariff of 5 percent, it would be the same; would it not?

Mr. ROSE. It comes to the same, yes.

Senator MALONE. Well, it is the same, isn't it? After all, they are used interchangeably.

Mr. ROSE. I don't want to get into a word-chopping argument with you. I think we understand each other. And they come to the same thing.

Senator MALONE. Well, I understand—and if you don't agree with me, I would like to have it plain for the record—that if you have a tariff of 5 percent, that the duty would always be exactly what that tariff of 5 percent indicated—in other words, they are interchangeable terms to that extent?

Mr. ROSE. Yes, I think that is correct.

Senator MALONE. All right.

I can see that you are a lawyer, because you are too much for an engineer here.

Mr. ROSE. I just wanted to keep the record accurate, Senator.

Senator MALONE. I would like to keep it accurate, too. And I would like also to preserve something for the American producer. But I am not doing very well, I have only been here 10 years.

Well, now, as a matter of fact, then, as I asked you before—and I will ask you once more—you settled on this business about the tariff and the duty—this particular item results in a lowering of the tariff, it results in the lowering of the duty, this particular simplification that you just explained?

Mr. ROSE. It results in a change in the basis of the valuation which, in this instance, does result in a lowering of the basis of valuation, and that results in the lowering of duty.

Senator MALONE. Then it does result in a lower duty?

Mr. ROSE. Yes.

Senator MALONE. Well, I am trying to save the time of the committee, and I think we can.

Mr. ROSE. I think that is where the court would probably come out under existing law, but this provision does it by statute.

Senator MALONE. Don't you think if you would just let it alone the court would probably take care of it?

Mr. ROSE. In that instance.

Senator MALONE. Then, maybe it would be a good idea to just let it alone, then you wouldn't upset other court decisions, would you?

Mr. ROSE. Of course, that leads to the point that no change would ever be made. I would like, if I might, to go back and indicate what the source of these suggestions for change was.

I think all—substantially all, at least—of the material in the Customs Simplification Act of 1953, most of it in 1954, and certainly all of this, came out of a study which was made or authorized during the 80th Congress by the joint action of the Congress and the Treasury, by a management engineer——

Senator MALONE. What is this?

Mr. ROSE. This is a study which was made by a management engineering firm, called McKinsey & Co., of the operation of the Customs.

Senator MALONE. M-a-c——

Mr. ROSE. M-c-K-i-n-s-e-y.

Senator MALONE. Where are they located?

Mr. ROSE. Their main office is in New York; I think they have a number of others.

Senator MALONE. When did they make this study?

Mr. ROSE. It was authorized, I think, in 1947.

Senator MALONE. When did they render their report?

Mr. ROSE. Well, as I recall it, within a year or two after that.

Senator MALONE. 1950. Well, we still had the administration that started this whole business, didn't we?

Mr. ROSE. Well, the 80th Congress had its hand in authorizing this thing because of its dissatisfaction with the way Customs was running.

Senator MALONE. Well, the dissatisfaction didn't seem to originate in this Congress, it seemed to originate always in the Treasury Department or in the State Department or in some organization that wanted more imports; that is the effect, that the imports come easier; is it not?

Mr. ROSE. I answered a similar question of Senator Bennett's this morning. I think that it is true that simplifying procedures remove the element of protection which is involved in confusion. I don't think it removes any protection in terms of duty and valuation.

Senator MALONE. Didn't we just settle the point here a while ago, and you said in that particular instance it lowered the duty?

Mr. ROSE. Yes. But I understood your last question to be a different one.

Senator MALONE. It was just another question.

This simplification thing has been here ever since I have been here, and it always has a fish in it, a gadget that results in lower tariffs and getting the goods in faster. Now, I hope to be here long enough to see the philosophy of this Congress change, and I think I will. I don't think it is going to be very long, as a matter of fact, until it changes, and Congress begins to think of the American producer. I haven't heard him mentioned here in 10 years, except when someone brings him up as a side issue. It is always:

"How are we going to get this in here? We will use this low-cost labor and bring the product in, because we are going to raise the standard of living of all the world."

Do you believe that, by a division of our markets, we will raise the standard of living of the whole world? You have heard that philosophy, haven't you?

Mr. ROSE. Well, I think the raising of the standard of living elsewhere has got to come about through efforts elsewhere.

Senator MALONE. I am glad to hear you say that. I am getting closer to pay dirt.

As a matter of fact, as long as we have free trade, or virtually free trade—because when the tariff or the duty is below the difference between the two standards of living, the cost of doing business here and abroad, you either have to lower your standard of living, your wages here, to meet it, or go out of business, don't you?

Mr. ROSE. Well, sir, the last figures I was looking at, which were for May, show that our imports were about a billion dollars, our exports about a billion and a half.

Senator MALONE. Of what?

Mr. ROSE. Everything.

Senator MALONE. Did you ever stop to figure what the percentage of exportable goods exported now amounts to in comparison to the percentage of our exportable gods exported in 1934?

Mr. ROSE. I haven't made that analysis; no, sir.

Senator MALONE. I wonder if your Treasury ever did.

Mr. ROSE. I don't know.

Senator MALONE. Well, I have, for your information. And it is lower now than it was in 1934. The percentage is less today than when we passed the 1934 Trade Agreements Act, when you deduct the amount of money you give foreign countries to buy our goods, and the amount of goods that are exported free.

It looks fine on paper when you include both of them. But our chief export is cash—you are in the cash business, you are in the Treasury—and that was our chief export—cash.

Now, when you deduct—I hope you understand me, and I hope that you will encourage the Treasury to make up such a table; I made up one, and it will be available to you very shortly—when you deduct the cash outlay of foreign countries to buy our goods, deducting the cash that you give away, or the percentage that you give away—and I understand that that is what you do when you send agricultural products abroad—you do two things:

First, you lose the amount between the world price and the price you pay for it; that is axiomatic. And in general, they sell it below that, if, in fact, they get any money for it at all.

Then, when we give those goods away, we displace some other nation that has been exporting the goods to that nation. So we get an additional enemy.

The Secretary of Agriculture, Mr. Benson, told us that 2 or 3 different times.

Now, will you explain what Mr. Simpson meant here in the next to the last paragraph, his minority report, when he said:

Finally, H. R. 6040 involves another attempt to write the trade legislation language taken directly from GATT. Such language was eliminated from H. R. 1 when the attempt was made there; and again, as in past extensions of the Trade Agreements Act, Congress has stated that the passage of the extension involved neither approval nor disapproval of GATT.

What did he mean there by that statement?

Mr. ROSE. Well, I don't know. And I don't think—I have great regard for the Congressman, Congressman Simpson—but I don't think it is an accurate statement. There isn't, as far as I know, any language in this bill that is taken from GATT.

Senator MALONE. Are you familiar with the GATT provisions of customs valuation?

Mr. ROSE. I read those provisions at luncheon.

Senator MALONE. What did you read?

Mr. ROSE. Well, there are several paragraphs. One of them has to do with elimination of arbitrary and capricious elements in value. Another has to do with internal taxes. A third has to do with the use of internal prices in the market of destination. I have got it here.

Senator MALONE. Well, is it necessary to look at it? Don't you remember it?

Mr. ROSE. There are 1 or 2 respects, of course, in which the provisions of this bill are affirmatively inconsistent with this GATT provision.

Senator MALONE. Well, then, let me give you an idea of it, and maybe you can find it there. The ITO, International Trade Organization, with which we wrestled here 5 years ago, back, and the GATT provisions, are the same, and they permit a member of GATT to assess duty on the basis of export value, or exporters' prices on merchandise imported.

Are you aware that this was exactly what they wanted to do?

Mr. ROSE. Well, perhaps it would simplify it, sir, if you read the provisions in what I have here, which I believe to be the general agreement.

Senator MALONE. Well, there are quite a few provisions. It is all right with me, if you read all of them right into the record.

(Mr. ROSE (reading):

2. (a) The value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed, or of like merchandise, and should not be based on the value of merchandise of national orgin or on arbitrary or fictitious values.

(b) Actual value should be the price at which, at a time and place determined by the legislation of the country of importation, and in the ordinary course of trade, such or like merchandise is sold or offered for sale under fully competitive conditions. To the extent to which the price of such or like merchandise is governed by the quantity in a particular transaction, the price to be considered should uniformly be related to either (i) comparable quantities, or (ii) quantities not less favorable to importers than those in which the greater volume of the merchandise is sold in the trade between the countries of exportation and importation.

(c) When the actual value is not ascertainable in accordance with subparagraph (b) of this paragraph, the value for customs purposes should be based on the nearest ascertainable equivalent of such value.

3. The value for customs purposes of any imported product should not include the amount of any internal tax, applicable within the country of origin or export, from which the imported product has been exempted and has been or will be relieved by means of refund.

Those are the customs valuation provisions.

Senator MALONE. What about the subsidies, indirect and direct, that might be applicable to these exports from a foreign nation to the United States?

Mr. ROSE. The statute which deals with subsidies is the so-called countervailing duty statute, which is not in any way affected.

Senator MALONE. Does that take into account any subsidies in the way of food for workingmen, or clothing, or rental, or any other thing that amounts to a subsidy?

Mr. ROSE. Well, of course, when that statute was enacted what was being thought of as subsidy was a much simpler thing than some of the things that have been developed since.

Subsequently, various devices have been developed more or less far removed from the exportation. The language of the statute is in terms of bounty or grant without limitation. So that, wherever you can find such a bounty or grant the statute provides for the imposition of a countervailing duty—on the other hand, it is difficult sometimes to trace back.

Senator MALONE. Take copper, for example, in Chile, where a pair of shoes costs 11 cents to the workingman in the plant. What would you do with that particular thing?

Mr. ROSE. Well, I doubt very much if you could countervail on the basis of the price of shoes to the workman.

Senator MALONE. So do I. And I think you know you couldn't, and therefore it is a subsidy for the export, isn't it? What else could it be?

I only mention that particular place; there may be hundreds of other places. And I would have to look at some of my notes on these nations to find them.

But nations are smart, they have lived by their wits, a lot of them, for a hundred years, or 300 years, and they live on exports. In 1948, when we first passed the Marshall plan, the European nations were producing more at that moment than they could consume.

But we said in our debate—I say "we," because I couldn't stop it—that all we had to do was build more plants so that they could produce more, and all the problems were gone. You will find it in the record, in 1948, where I said any industrial engineer will tell you they have to sell it some place. And there is only one place in the world where they can sell it, and the pressure and the heat will be on to bring it here. And here it is. It is now caught up with us, and you can't stop them, you can't stop the subsidization of the exports, because they have lived by their wits for three or four hundred years, through Colonial slave nations and manipulation of trade factors. They understand foreign trade, we do not understand it. They understand the effect of shading of the factors controlling trade.

If we do understand it, it is a complete enigma to me why the congress votes the way it does. But everything we do, everything we have done in the 10 years I have been here, and everything I have read about Congress since 1934, is to encourage imports, because the availability of foreign cheap labor is the thing that our American foreign investors are after so they can send the stuff back here at a lower cost than it could possibly be produced here. I will just read to you again from this British Government document.

On page 82 of this great document, Labor and Industry in Britain, availability of labor today is one of the most important factors. Labor all over the world, from 40 cents a day to $3.50 a day—and the pressure since 1934 has been to use our machinery and to bring the products here and all of the pressure is to make it easier to bring the products in and displace the high standard of living America has with the cheap foreign labor.

And so I say to you, for the benefit of the record—this is not an isolated bill, there are dozens of them that have been introduced here since I have been in the Senate—it all points towards one philosophy, get the foreign-made goods, the cheap labor, into the United States of America to displace American workingmen and investors.

Mr. ROSE. I can only say as to that, Senator, that so for as I had any contribution to the origin of this bill, that was not the philosophy, it was simply born of my wanting to have the Bureau that I was responsible for operate as efficiently and fairly as I could.

Senator MALONE. I think I explained to you once before in this record—and I think it is one of the most important things—these are isolated approaches. But they all have the same objective, free trade, simplification of customs that further lower the duties. But that wasn't the most important thing.

The most important thing is to have no hesitancy in bringing them in, make it easy to bring them in. Nobody has ever talked about the American producer. He is the one that is put on the defensive, not only more so by this bill, but he has been on the defensive since 1934.

Now, what does a man have to do? Right now, under the law, the men running an industry are hurt, most of them are today, except where they have contracts under their war economy. What does he have to do in order to get any greater protection?

Do you understand what he has to do?

Mr. ROSE. It depends upon what his problem is. I dealt with several during the period that I was in the Treasury, where it was alleged that there was unfair dumping and unfair subsidization.

Senator MALONE. Unfair competition?

Mr. ROSE. Of one kind or another.

Senator MALONE. How many of them got relieved?

Mr. ROSE. I think, of the dumping cases that were filed while I was there, there were—perhaps this is to date, I don't know—there were seven findings of too low a price by the Treasury. In 5 of those cases, I believe the Tariff Commission did not find injury, and 2 dumping orders, I believe, were entered.

Senator MALONE. Well, I looked that up one time, and out of more than 50 applications—because they were really hurt—I think there were 2 cases of relief. I am talking now about tariffs and duties and other provisions. In other words, it is just made impossible.

Mr. ROSE. I don't believe so, sir.

Senator MALONE. I mean, the record shows that it is impossible.

Mr. ROSE. I believe actually in that area this bill would help, because so much depends, to give effective relief in a dumping case, on the availability of experienced people with the time to give to it. I think we are using a lot of that time in the not very profitable investigation of foreign value, and gradually, as those people are diverted to the important thing, I think we would do a better job for the American complainant.

Senator MALONE. What I believe in this thing is that Congress had better go back to a principle instead of depending on the judgment of someone in the Secretary of the Treasury's Office, of the State Department, who can do anything to a producer he really wants to do—you go back to a principle and let the Tariff Commission take care of it as you read out of a book, and you don't have to worry about that. You understand that, don't you?

Mr. ROSE. I read that section.

Senator MALONE. You understood the section, did you not? That meant fair and reasonable competition, equal access to our markets, but no advantage over a producer. But you had nothing to say about it as the Assistant Secretary of the Treasury, did you?

Mr. ROSE. I think that section, as I read it, provided for the submission of the report to the President's Commission.

Senator MALONE. That is right.

And the President had already taken it for granted that that was the principle laid down by Congress, of fair and reasonable competition under the 1930 Tariff Act. I think the record will bear that out.

Now we have reversed the situation, we want to find ways to bring it in, a greater labor supply.

Now, that is written into this bill—that is what GATT wanted, to start with, and ITO, and that is an export valuation—now, you have it written into the bill, don't you?

Mr. ROSE. It doesn't say anything about export value, as I read it——

Senator MALONE. Is that the International Trade Organization?

Mr. ROSE. General Agreement on Tariffs and Trade.

Senator MALONE. Now, you have a bill over in the House on the Office of Trade Cooperation. Did you ever hear of that bill?

Mr. ROSE. Yes, I have heard of it.

Senator MALONE. What is going to happen to that bill?

Mr. ROSE. I don't know, sir.

Senator MALONE. You are for it, I presume?

Mr. ROSE. I seconded the administration's position on matters that I was not intimately familiar with or responsible for, and I would feel the same way about that, as this is an administration bill.

Senator MALONE. You are for it?

Mr. ROSE. Yes, sir.

Senator MALONE. Well, I thought so. This makes sense. All of you fellows come up here and testify the same way, even if you don't know anything about it. That is a good confession, anyway. I am glad to have that in the record.

Mr. ROSE. I told you, Senator, that this has not been my field of responsibility, I am not intimately familiar with it.

Senator MALONE. That is the point I want to make. They bring in honest men—and I think you are one, I think you are a good, honest citizen—but you don't understand that these dozens of approaches all lead to the same objective, and that is to bring more cheap labor goods into the United States of America.

If this were the only bill in the whole of Congress in the last 24 years, I wouldn't pay much attention to it—and I guess no one is going to pay much attention to it anyhow, it will probably come out here and pass, but not on my vote, I guess you know that.

Mr. ROSE. I have drawn that inference.

Senator BENNETT. Have you reached the point where you are ready to put your material in the record, Senator?

Senator MALONE. No, unless we are short of time and you want to shut off debate. That is up to you.

Senator BENNETT. I would hope that you would want to finish within a reasonable time, because there are gentlemen that have patiently waited since 10 o'clock.

Senator MALONE. I have patiently waited for this witness. But if you don't want this cross-examination in the record, all you have to do is say so.

Senator BENNETT. You will pardon the observation but, listening to the question, it seems to the Senator from Utah that much of the material has been put in the record now once or twice—in other words, we are going back again over material that you have already established in the record.

So, I would hope that——

Senator MALONE. All you have to do is say the word. I am not through.

Senator BENNETT. Well, if you have additional material that you want to get in, then I think you should go ahead and get it in.

Senator MALONE. Are you now suggesting that the cross-examination cease?

Senator BENNETT. I was just expressing the hope that it would tighten up a little bit so that we could get the other witnesses through before the end of the day.

Senator MALONE. Of course, I don't expect to gain any votes by the cross-examination, I think the bill is going out of here, and I think it is going to pass, just like the debt limit rise last year of $6½ billion to pay the interest on the national debt. I never hoped to stop it, but I did hope to establish a record.

But I can understand your patience, because you have already expressed yourself before on the bill.

In view of the attitude of the Chair, I think that will end the cross-examination.

Senator BENNETT. Fine.

Senator Frear had a question he wanted to get in the record before this witness is excused, but he just stepped out. He will be back.

Senator MALONE. While we are waiting for Mr. Frear, I might just end this by a statement, and that is that I consider that for 24 years there has been a lot of legislation before this Congress—much of which was passed, starting with the 1934 Trade Agreements Act—all pointed toward one objective, and that is to destroy the American market for the American producer on the standard of living and wages that he now pays.

In other words, this is more or less simple thing, just a side issue that has the same effect if, however, not as great an effect. But there is no question but what the fight today is between the American producer who is confined to this country in his production, and the producer who can go behind the low-wage curtain and put in his plant and import at virtual free trade, if not altogether free trade, much below any differential of cost due to the difference in wages and the difference in effective wages and the difference in taxes and the cost of doing business.

There are many places in these foreign countries where they do not pay as much wages as we pay in industrial insurance and social security and employment insurance. And we are pitting that labor against the American workingmen today and the American investors.

And then, we have various approaches in legislation to compensate the investors and to move the workingmen into other areas where they say that they might find other employment. What that other employment is is not in evidence so far.

I am only hoping that Congress will reverse the trend.

Senator BENNETT. Thank you, Senator.

Senator Frear, did you have some questions?

Senator FREAR. I have no more.

Senator BENNETT. I understood that you had some you wanted to ask the witness.

Senator FREAR. I asked Mr. Rose the questions I had in mind previous to the recess.

Senator BENNETT. All right.

Thank you very much, Mr. Rose.

I think you were asked to submit some answers to some written questions for the record.

Mr. ROSE. I will do that as promptly as I can.

Senator BENNETT. The Senator from Utah is sure he can be an effective chairman, because the professional chairman sits at his right.

Mr. Harry S. Radcliffe, National Council of American Importers, Inc., and the Chamber of Commerce of the United States.

STATEMENT OF HARRY S. RADCLIFFE, EXECUTIVE VICE PRESIDENT, NATIONAL COUNCIL OF AMERICAN IMPORTERS, INC., AND A STATEMENT ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES BY MR. RADCLIFFE AS A MEMBER OF THE FOREIGN COMMERCE COMMITTEE, CHAMBER OF COMMERCE OF THE UNITED STATES; ACCOMPANIED BY KENNETH CAMPBELL, MANAGER OF THE FOREIGN COMMERCE DEPARTMENT OF THE UNITED STATES CHAMBER OF COMMERCE

Senator BENNETT. Do you have a prepared statement, Mr. Radcliffe?

Mr. RADCLIFFE. Yes, sir.

Mr. Chairman and members of the committee, my name is Harry S. Radcliffe. I am the executive vice president of the National Council of American Importers, located at 45 East 17th Street, New York.

The National Council of American Importers has given attention to many problems of customs administration since it was formed in 1921.

About 11 years ago, it submitted a report to the United States Tariff Commission on suggested changes in customs administrative laws. Among our suggestions in that report was that "foreign value" be completely eliminated as a basis for appraisement and that "export value" should be the primary value in the assessment of duty on ad valorem imports. We said then (May 1945):

> This is a very objectionable provision as it causes delay and uncertainty in the appraisement of imported merchandise.

Section 2 of H. R. 6040 would effect such complete elimination of "foreign value" as did the previous customs simplification bills which have been introduced in the Congress during the past 6 years.

A representative of our organization has appeared in support of this proposition at every public hearing held by the Committee on Ways and Means, and by your committee, since 1951. I had the privilege of appearing before your committee in strong support of H. R. 6040 when hearings were held last July.

The proposed amendment now under consideration would continue for a trial period the use of "foreign value" on selected lists of ad valorem imports, but the new standard set forth in section 2 of H. R. 6040 would apply to all other such imports.

We still strongly feel that your committee should approve H. R. 6040 as passed by the House. It will be recalled that the Committee on Ways and Means on three previous occasions has approved the proposal to eliminate "foreign value" completely by an overwhelming nonpartisan majority—H. R. 5505 in 1951, and H. R. 5877 and H. R. 6584 in 1953—and the House of Representatives, after full debate, has passed these bills. We think this is very significant.

We also regard as highly significant the recommendation made in the report of the Joint Committee on the Economic Report to the Congress of the United States, which was:

> Further simplification of the customs laws and related administrative matters should be carried out at the earliest possible date—

and I emphasize—

> to streamline their operation and minimize arbitrary elements (p. 30, S. Rep. No. 1312, 84th Cong., 2d sess., dated Jan. 5, 1956).

If, despite all this, your committee entertains any serious doubts about the wisdom of eliminating "foreign value" completely at this time, we wish to go on record in favor of the proposed amendment for reasons I shall explain later in my testimony.

The Treasury Department, as Mr. Rose just mentioned, sponsored the original proposal to revise the value section chiefly as a result of the recommendations contained in the McKinsey management survey of the Bureau of Customs.

This comprehensive survey was undertaken in 1948 by the Treasury Department with the assistance of McKinsey & Co., a private firm of management consultants, at the express suggestion of the Senate Committee on Appropriations, after the Congress had authorized additional funds for that survey. The McKinsey report strongly recommended that "foreign value" be eliminated simply to secure better efficiency in customs administration at less cost.

When the first customs simplification bill (H. R. 8304) was introduced on May 1, 1950, an official analysis of the bill explained that the objectives of the new value section, which for all practical purposes was the same as section 2 of H. R. 6040, were as follows:

(1) To eliminate unnecessary expense and delay in the appraisement of merchandise and thus to achieve greater administrative efficiency; and

(2) To provide a system for all customs valuation which will be commercially realistic and equitable and will not require arbitary and unreasonable additions to the ordinary value of some imported merchandise.

On this second point, the Treasury analysis states:

The next great object of this amendment is to produce a system of valuation which is fair and equitable and does not produce arbitrary and fictitious results. Entirely apart from questions of administrative expense and efficiency, the Treasury Department believes that in any system of ad valorem taxation, the value used should be the true value, the market value when the merchandise has a market, and not an arbitrary or fictitious value. This standard the present section 402 does not always meet.

American importers have for many years objected to the payment of customs duties on the basis of "foreign value" for those very same reasons. It is seldom the true world market value; it is not fair and equitable; and it very often produces arbitrary, fictitious, and unexpected results.

This unsatisfactory situation becomes intolerable when the administrative difficulties of determining "foreign value" cause long periods of uncertainty. Importers must often wait months and even years after clearing their goods through customs to find out what their final obligations are in the matter of duty payments.

I daresay no other group of American taxpayers is confronted with such unfair and frustrating conditions in paying Uncle Sam what he owes.

Certainly, members of this committee would never entertain a proposal that individual or corporate income-tax rates should be applied to an amount in excess of actual income as a result of an arbitrary and unrealistic formula in the law. This would be especially true if the tax due under such a formula could not be determined until long after the close of a tax year.

Shortly after the close of public hearings by your committee last July, the customs committee of our organization undertook an inten-

sive study of the whole subject of customs valuation to bring up to date the studies of the subject made in previous years.

A valuation questionnaire was prepared and circulated to United States importers throughout the country. Based upon replies received from importers at 22 ports, and covering a great variety of commodities, a special report on customs valuation was issued on December 22, 1955.

Among the significant findings of our special study was that where "foreign value," as determined under present law, was higher than prices paid by United States importers, it was due to the fact that there are many elements in the prices charged to wholesale buyers in the home markets abroad that are not involved when the same products are sold at wholesale for export to the United States.

We also found in many cases foreign producers are able to make goods for export on a more economical and efficient basis than they can for the home market. These factors in almost every case account for the entire difference between "foreign value" and "export value."

Typical of items included in home market prices that are not a part of export prices are certain internal taxes, domestic promotional and advertising expenses, and costs of extending credit terms.

An example of economies in production for export is when the export demand consists of large quantities, and the home demand is for small quantities. In some lines, quantity discounts are customary, and in others, importers placing large orders have a good bargaining position and are thus able to secure a more favorable price.

Another example is where the exported product is made with the use of materials imported by the foreign producer. As in this country, he secures a drawback of some of the duty when he exports the finished article but there are, of course, no drawback payments when the same article is sold for domestic consumption.

Another important reason for a difference between "foreign value" and "export value" is the restricted market situation. Under our present law, goods must be freely offered for sale to all purchasers at wholesale to establish a statutory dutiable value. If the foreign producer only sells to an exclusive agent in the United States, there can be no "export value" under present law.

Likewise, when goods are sold in the home market to selected distributors only, such as dealers or preferred wholesalers, there can be no "foreign value" under our law. While this is a normal business practice both here and abroad, the appraiser must often establish "foreign value" at prices freely offered to smaller buyers or to classes of trade in the home market which are not entitled to a class discount.

These situations are explained in more detail in the special report on customs valuation issued by our organization last December, to which reference was made. May I request that an excerpt from the summary of that report, taken from pages 7 to 11, be inserted in the record at this point as part of my testimony? That is part II of the summary.

Senator FREAR (presiding). Without objection, it will be so ordered.

(The pages referred to follow:)

II. Typical Situations Which Occur in Determining Dutiable Value

1. "FOREIGN VALUE" IS HIGHER THAN "EXPORT VALUE"

(*a*) *Quantity differentials.*—The quantities ordinarily bought by United States importers are much larger than the quantities bought for home consumption in many foreign countries. In some cases, foreign producers maintain a scale of quantity discounts, and United States importers regulate their purchases so as to obtain the greatest possible price advantage. In some lines, American importers maintain substantial inventories in bonded or free warehouses, foreign trade zones, or in stock, while home distributors in closer proximity to the foreign supplier do not have to carry large inventories.

(*b*) *Different classes of buyers in the home market.*—It is common for foreign producers to sell at wholesale to different classes of trade, such as dealers, wholesalers, and retailers or industrial users, with a class discount to those who normally buy in larger quantities. Thus, "foreign value" frequently turns out to be the price paid by a class of buyers in the foreign country which is not entitled to a class discount. Furthermore, sales to some classes of purchasers in the foreign country which are entitled to substantial discounts are restricted, and thus, not "freely offered for sale for home consumption to all purchasers" as that term is interpreted under our present law.

(*c*) *Home market sales to small buyers.*—Foreign producers sometimes sell to small retail shops or to small industrial users, or even to ultimate consumers in the home market, and the "foreign value" is ascertained on the basis of such sales in certain circumstances.

(*d*) *Promotional expenses.*—For some types of products, the foreign producers include in domestic prices the expense of advertising and promoting their articles in the home market, but sell to United States importers at lower prices because such expenses are not included.

(*e*) *Internal taxes.*—In certain countries, there are internal taxes, such as transaction taxes, turnover taxes, sales taxes, etc., which are not assessed when the same goods are exported, or are rebated upon exportation.

(*f*) *Home market sales on credit.*—It is a general practice in many lines for the foreign producer or distributor to grant his domestic customers credit terms ranging from 1 month to as much as 6 months or more. Home market prices include the financing cost, and also some allowance for the credit risks involved. Usually, United States importers purchase goods on terms that provide immediate payment at time of shipment.

(*g*) *Other considerations.*—There are other considerations leading to a finding of a "foreign value" higher than "export value." Among these may be cited cases where the foreign producer imports his raw material, and secures the benefit of drawback of custom duties upon the export of his finished product; and, cases where, while the exported article is not sold for domestic consumption, "similar merchandise" is sold in the home market or merely offered for sale by another producer of the same kind of goods at higher prices at the time of exportation of the goods being appraised.

2. "FOREIGN VALUE" IS THE SAME AS "EXPORT VALUE"

(*a*) *An open market.*—United States importers constantly look abroad for unusual or unique specialty items, or for articles that are suitable for seasonal promotion. Some of these items are casual imports, while others become regular staples in the trade. In such cases, the purchases are made in the open market in the foreign country, and usually there is no difference between the "foreign value" and the "export value."

(*b*) *Deliberate practice.*—In some regularly established lines, the foreign suppliers follow a deliberate practice of maintaining identical prices for home market sales and for export to the United States, either because they know if higher prices are obtained from their customers in the domestic market, it will create a higher "foreign value" on which their important American customers will have to pay ad valorem duties; or because they can see no reason for charging different prices for goods sold at home or exported.

3. "FOREIGN VALUE" IS LOWER THAN "EXPORT VALUE"

(*a*) *Supply and demand.*—World market prices fluctuate according to supply and demand, and when the demand from United States importers is stronger than from domestic customers, export prices are higher than home prices.

(*b*) *Limited supplies.*—Sometimes price levels in our market permit United States importers to outbid domestic customers in the foreign country for the supplies available. This is particularly true with respect to certain agricultural products under price support programs in the United States.

(*c*) *Export packing.*—Where the "foreign value" and the "export value" would normally be identical, the additional expense involved for the foreign producer to provide stronger containers for exported goods than used for his home trade causes a higher "export value."

4. NO "FOREIGN VALUE" EXISTS

(*a*) *Not sold in home market.*—Such or similar articles are not sold at all in the home market for domestic consumption because:

(i) There is no domestic demand for them.

(ii) Such or similar articles are specially designed for the American market, or are made according to particular specifications for American requirements.

(iii) The imported article is a semimanufacture which requires processing into a finished article after importation. In the home market, the semimanufactured article is processed before being offered for sale for domestic consumption.

(*b*) *Restricted market.*—Under the requirements of the present law, such or similar articles are not considered as being "freely offered for sale for domestic consumption to all purchasers," and thus a closed or controlled market exists.

5. "EXPORT VALUE" IS HIGHER THAN THE IMPORTER'S INVOICE PRICE

(*a*) *Advance orders.*—On a rising market, the prices prevailing for export to the United States are very often higher than the invoice price which reflects what the importer agreed to pay when he placed his orders months before. Incidentally, many importers strongly feel that duty should be based on their purchase prices rather than on any other basis.

(*b*) *Offers for future delivery.*—Another situation that frequently arises relates to certain kinds of goods which the foreign producer does not carry in stock for immediate delivery, but manufacturers upon receipt or orders. While the goods are being manufactured pursuant to orders given by United States importers, the foreign producer may quote higher prices for future deliveries. The offers being made at the time of exportation of the goods become the "export value," even though the foreign producer has failed to secure any orders at such higher quotations.

6. "UNITED STATES VALUE" APPLIES

(*a*) Where neither a "foreign value" nor an "export value" can be ascertained, the "United States value" becomes the basis of appraisement. The present law limits the deductions for commissions, or for profit and general expenses to arbitrary percentages. When the actual commissions, or profits and general expenses, exceed these limits, the result is an artificial and fictitious dutiable value.

7. APPRAISEMENT IS ON THE BASIS OF "COST OF PRODUCTION"

When computing cost of production under the present law, an arbitrary addition is required for general expenses of not less than 10 percent of the cost of materials and manufacturing processes; and also an addition for profit of not less than 8 percent of such costs, plus general expenses. Where the general expenses and profits of the foreign producer are lower than these arbitrary limits, an unrealistic dutiable value results.

Senator FREAR. You are the author of this report, Mr. Radcliffe?

Mr. RADCLIFFE. No, sir; that was prepared by the customs committee of our organization.

Senator FREAR. Under your supervision?

Mr. RADCLIFFE. I drafted the report, and then submitted it for criticism and changes, and there were several made.

For the various perfectly normal trade considerations mentioned, "foreign value" under the present law is often arbitrary, unrealistic, and fictitious. It is unjust for an importer to be assessed additional duty long after he has sold his goods merely because of technicalities and ramifications of the present value section.

H. R. 6040, as approved by the House will, by the complete elimination of "foreign value," correct this grossly unfair and inequitable situation. It will also permit realistic deductions for profits and general expenses, or for commissions, when computations must be made to arrive at "United States value" for duty assessment.

The amendment now under consideration, which we call the compromise plan, will continue the use of "foreign value" for a trial period of 3 years or so for selected groups of imported commodities.

We do not believe the continued use of "foreign value," even on such a limited basis, is either necessary or justified. Our basic position is that the present value section should immediately be amended as proposed in H. R. 6040 and approved by the Committee on Ways and Means and the House of Representatives last year.

At the same time, we realize that some domestic industries have expressed fears that the elimination of "foreign value" will mean a decrease in the current level of tariff protection.

While we seriously doubt that any significant decrease will actually occur, we wish to repeat that if your committee and the Senate entertains any doubts about the wisdom of the complete elimination of "foreign value" at the present time, we suggest the adoption of the proposed amendment to H. R. 6040 for two reasons:

1. It will provide an experimental period for the new valuation standards for a majority of ad valorem imports. Such an experiment should prove beyond a shadow of a doubt that the new standards mean economy and efficiency in customs administration, and certainty and promptness for importers in the settlement of their customs obligations.

2. During the trial period when the old system will continue to apply to certain imports, we feel confident that it will be possible to demonstrate from actual experience that the continued use of "foreign value" is quite unnecessary for proper tariff protection.

We should like, however, to make it clear that United States importers have never advocated elimination of foreign value as a tariff reducing proposition.

If any domestic industry feels that its present tariff protection is likely to be endangered by the valuation reform proposed, we submit that such industry should seek an adjustment in their protective tariff rates rather than to advocate continuing an unfair value system to obtain the same results by the back door.

The idea advanced by some opponents of this legislation that foreign value is a real value, and that export value is something less than a fair and true value is pure poppycock. There is no fixed relationship between those two values, as prices both in foreign countries and in our import trade are dynamic, not static, and fluctuate from time to time for different reasons.

We suspect that most of these people know this, but are simply throwing up a smokescreen to perpetuate an unwarranted dividend on their present protective tariff subsidies.

In conclusion, we wish to express the earnest hope that H. R. 6040 as passed by the House will be approved, but if the comprise plan is deemed absolutely necessary to allay the fears of certain protected industries, then we urge that this bill with the proposed amendment receive the prompt approval and support of this committee, and be passed by the Senate before the Congress adjourns.

Thank you very much.

That is my statement for the National Council of American Importers.

I have another statement for the Chamber of Commerce of the United States, but perhaps it would be more orderly, inasmuch as I am making a dual appearance, to have questions on this statement before I proceed to the second one.

Senator FREAR. Senator Malone.

Senator MALONE. What do you mean, your statement on behalf of the chamber of commerce?

Mr. RADCLIFFE. I have just presented by statement on behalf of the National Council of American Importers, of which I am executive vice president, and I have been asked also to appear before the committee in these hearings as a representative of the Chamber of Commerce of the United States.

Senator MALONE. What is the subject matter of that statement?

Mr. RADCLIFFE. It is an endorsement of the bill, with the amendment, and an explanation of the official position of the United States chamber on the subject of customs simplification.

Senator MALONE. You do represent the United States Chamber of Commerce?

Mr. RADCLIFFE. On this occasion, I do, sir. I am a member of the foreign commerce department committee of the United States chamber.

Senator MALONE. Is that the same chamber that endorsed H. R. 1, endorsed—tried to endorse the OTC, Office of Trade Cooperation, and failing in that, are now taking a poll of its chambers of commerce around the country?

Mr. RADCLIFFE. It is the same organization, sir, except that the poll has been completed; it was completed June 18.

Senator MALONE. What does the poll show?

Mr. RADCLIFFE. Under the referendum procedure of the United States chamber, two-thirds of the votes cast must favor the adoption of any proposal submitted to the referendum; at least one-third of the voting strength of the member organizations of the chamber must be recorded in the referendum as voting; and member organizations in at least 25 States must cast votes in the referendum.

As I understand it, the referendum in this particular case on multilateral trade agreements—which really had to do with the OTC—was completed on the 18th of June, and tabulated last Friday.

Senator MALONE. What was the vote?

Mr. RADCLIFFE. It was 1,376 to 1,200.

Senator MALONE. 1,376 for adoption?

Mr. RADCLIFFE. Yes.

Senator MALONE. And how many against?

Mr. RADCLIFFE. 1,200 against the adoption.

Mr. CAMPBELL. My name is Campbell. I am with the United States Chamber of Commerce, Kenneth H. Campbell.

We needed about 1,700 votes to get the two-thirds.

Senator MALONE. What is your position with the chamber of commerce?

Mr. CAMPBELL. I am manager of the foreign commerce department of the United States Chamber of Commerce.

Senator MALONE. Well, I have been hearing from some chambers of commerce in regard to this business of free trade, and all the rest of it, and this is the first time that I have noticed the United States chamber falling down and endorsing everything that goes toward assisting the importation of cheap labor goods into the United States, the first time.

Is this the first time?

Mr. RADCLIFFE. I am not sufficiently familiar with the history of the chamber, but I will say in explanation that the fact that the voting strength did not turn out was due to a compaign by certain interests that circularized all of the members of the chamber, urging them not to vote either yes or no on this proposition.

Senator MALONE. I understand there was enough voting, but there just wasn't a great enough majority.

Mr. RADCLIFFE. May I consult with Mr. Campbell on that?

Senator MALONE. Come up here, Mr. Campbell.

Mr. CAMPBELL. I would be glad to, sir.

To begin with, this was a policy proposal entited "Multilateral Trade Agreements," which was submitted to the annual meeting early in May and the annual meeting voted to submit it to referendum.

Senator FREAR. The meeting was held here?

Mr. CAMPBELL. Yes, at the end of April and the first days of May.

The policy proposal was ordered to referendum, by the annual meeting and under our bylaws, a proposal must register one-third of the voting strength of the chamber in order to have a valid referendum; in order to have the referendum to carry, it must get two-thirds of the one-third, and there must be votes cast from 25 different States.

In this referendum, we got the one-third necessary that was required for the quorum; 48 States reported, and the vote was 1,376 to 1,200. As this was not the necessary two-thirds of the one-third that voted, the referendum failed to carry, and the chamber, as a result, has no position on the Organization for Trade Cooperation.

Mr. RADCLIFFE. Thank you, Mr. Campbell.

Senator MALONE. Now, what is the full voting strength?

Mr. CAMPBELL. It is 7,622.

Mr. RADCLIFFE. There are 3,200 member organizations.

Mr. CAMPBELL. That is right—3,200 member organizations. And the voting strength is equated according to the size of the chamber, or the trade association; they run all the way from one vote to 10 votes.

Senator MALONE. Then, there are 3,200 chambers of commerce?

Mr. RADCLIFFE. And trade and professional organizations.

Senator MALONE. And they are great organizations, and it has always been a source of mystery for some of us, particularly myself, that any such powerful group could possibly be for all the things that you favor, and that is the free trade and bringing in of the imports from cheap labor countries without regard to any duty or tariff that might equalize the effective wages.

Mr. RADCLIFFE. A correction, Senator. I don't believe that the chamber has ever taken a position in favor of free trade. It has been in favor of liberalized trade measures.

Senator MALONE. Whatever you call it. Some people call it liberalism, some people call it liberalizing measures. But it all comes back to division of somebody else's trade or money. These liberals that are always talking about a division of wealth, they are all for this one economic world business, and to go back to the old trade wars of Europe that we took everything but a rowboat to get away from 300 years ago, that is called liberalism.

That isn't what I call it, however. But I still say to you, I cannot understand why the businessmen of America, represented through a great organization such as the United States Chamber of Commerce, can possibly be for the division of the markets of the United States with the nations of the world through favoring an act that would lower the duties or tariffs, without regard to that differentiation of the effective wages, labor standards, taxes, and the cost of doing business here as compared with that abroad of the chief competing nation in each—I don't understand it, and I never have.

Mr. RADCLIFFE. I would like to correct one impression that I think was left by your remark. The 3,200 organizations I mentioned are not all unanimous on these questions. But the chamber works by democratic processes. And we adhere to the majority rule. That is borne out by the very fact that this referendum failed to get the required majority, and therefore no position was taken on this particular question.

Senator MALONE. Well, while we are on the subject, from my observation of your organizations, the chambers of commerce away from the Atlantic seaboard are just beginning to find out what you have been doing. I think you will find that out from now on. But that remains to be seen.

Mr. RADCLIFFE. Well, it would be an interesting thing to have an analysis of that recent vote, which cleaves the line pretty sharply, and find out just whether it was seaboard all for, and interior all against.

Senator MALONE. I think it would be a good thing for you to make that, and I would like to know the result, because I do know some of the attitudes of people who are not exporters and who are not importers, they are people who are taxpayers and producers and working men and women in industries in this country.

I know their attitudes pretty thoroughly.

Mr. RADCLIFFE. The businessmen in this country have a great stake in international trade.

Senator MALONE. I have got news for you. You are exporting now a lesser percentage of your exportable goods in the United States of America than you did when you passed the act of 1934. That would be a nice study for your chamber to make.

Mr. RADCLIFFE. In quantity rather than the dollar volume, of course.

Senator MALONE. I think dollar volume is the only thing that you—you can't go by pounds, you have to go by value. And what I am talking about is that you do not export as much of your exportable goods today, the percentage of value, of course, as you did in 1934, and the facts, of course, show it—you never have had a duty on over half of our imports.

Mr. RADCLIFFE. That is right. About 55 percent of our imports are duty free. And it is also true that about two-thirds to 75 percent of our total imports are either raw materials or crude foodstuffs or semi-manufactures required by our domestic industries and by our consumers—coffee is free, bananas are free, and tea, and so on.

Senator MALONE. You are saying that with a tone of voice that seems to say that, naturally, they must be free trade. Will you explain that to me?

Mr. RADCLIFFE. I didn't catch the last part of your question.

Senator MALONE. Well, from your attitude, you would think that when there is anything imported into this country for the use of a company or an individual that is manufacturing, that it ought to be free trade. Will you explain that?

Mr. RADCLIFFE. Not all of those materials that are imported are free.

Senator MALONE. That is what you think. What is your opinion? You have made a point that a lot of the material imported at a lower duty below that differential that I described was material used in manufacture.

Mr. RADCLIFFE. I said that, yes.

Senator MALONE. What was your point?

Mr. RADCLIFFE. Well, the point was that our domestic industry requires vast quantities of a great variety of commodities that are not available in the United States.

Senator MALONE. What are they, for example?

Mr. RADCLIFFE. Well, tin is one, chrome, chromite—I haven't got a tabulation, but there is a long list.

Senator MALONE. I have some more news for you. There is a report turned out by the Senate, Senate Report 1627, that might be very helpful to you.

Mr. RADCLIFFE. Senate Report 1627?

Senator MALONE. Of the 83d Congress. And you will find that chromite is very liberally produced, if the duty or the set price is enough to cover the difference in the wages and the cost of doing business in this country and the chief competing foreign country. And that is where I think the dividing line should be. If it costs more than that difference, then it should be subject to special legislation. But the people of this country are entitled to that difference, represented in a tariff or duty that would make up the difference in the wages, effective wages—I say that, because some places are not quite as efficient—the taxes, and cost of doing business here, and the chief competing nation.

Now, that is where we part company. I know that you are on the other side.

Mr. RADCLIFFE. Right.

Senator MALONE. Now I want to ask you a question. How many members does your organization have, your national council?

Mr. RADCLIFFE. The national council has about 650 members.

Senator MALONE. What percentage of the imports coming into the country does that membership represent?

Mr. RADCLIFFE. I really don't know because we have never inquired into the volume of the import trade of our individual members. I would say, however, sir, that those 650 members are located in 22

States around the country with a great concentration on the seaboard areas as you would imagine, and the last tabulation included crude materials, semimanufactures, finished manufactured, foodstuffs, and the total list of the distinctive lines of commodities numbered a little over 270, so it is a good cross section of the import trade of the country. As a voluntary organization, of course, we can't claim that we have everybody that should be in the organization.

Senator MALONE. Is the import business their chief business, the importing of goods?

Mr. RADCLIFFE. Not necessarily. We have many people who are in the manufacturing business. We have some people that are in the retail business and then we have a class of members within that 650 who are service organizations such as banks, custom brokers, steamship lines, and people of that type.

Senator MALONE. In the business of transporting imports?

Mr. RADCLIFFE. Transportation, financing, servicing, and clearing through customs.

Senator MALONE. You would say that 90 percent of your members are interested in the transportation of goods and imports to the United States?

Mr. RADCLIFFE. Yes; if you include the transportation and the actual importation, it would run a very large percentage. I don't know whether it would be 90 or 89 percent.

Senator MALONE. Some of us are interested in the United States of America, in maintaining the economic structure. Not a low tariff or high tariff, that has been explained here before, but the differential costs of production including the difference in labor costs, taxes, cost of doing business here and in the chief competing country on each product. Naturally wages are the chief factor.

Mr. RADCLIFFE. Taking into account the relative productivity here and in other countries?

Senator MALONE. Well, wait until I finish my statement, and let that be as the 1934 Tariff Act specified, on a flexible scale with the Tariff Commission setting the duty as an agent of Congress and which is the law.

When this act of 1934 expires in 1958, it is nothing new, or if it should be repealed, all that would do would be to hold our economic structure while other nations are raising their own. The flexible import fee, the flexible duty or tariff would be lowered as the chief competing nation raises its living standards and when they are living about like us, free trade would be automatic and immediate. No such a thing as a low and high duty, but giving the American producers equal access to their American markets, does that seem outrageous to you?

Mr. RADCLIFFE. Well, referring to the section 336, the so-called flexible tariff or equalizing cost of production, that in practice is not proving infallible either, sir.

Senator MALONE. Nothing is infallible.

Mr. RADCLIFFE. I have had some personal experences with that.

Senator MALONE. I have too. I say to you, once you have fixed it, everybody knows within 6 months whether you are right or not, even if you used the cut and dried method which is not true because they are very, very good in the Tariff Commission and have the machinery to do the job.

Now, the fact is that you may not be exactly correct, but you can always change it. It is better than free trade, isn't it, or just taking your attitude of all your importers without regard to any difference in cost, you want to continually press the duties down.

Mr. RADCLIFFE. If I may revert——

Senator MALONE. What did you mean awhile ago when you started to explain the proportion of production?

Mr. RADCLIFFE. I meant the relative costs of production—the wage cost, as you say, is only one element in the whole comparison in the competitive situation of a given product.

Senator MALONE. Tell me the other factors for the record.

Mr. RADCLIFFE. Well, the chief factor I think is often overlooked in that situation is our own industry in the United States paying high wages are more efficient and their productivity output per hour or per week is far above that in other countries. How, otherwise, could we do a large export business in the world market?

Senator MALONE. Well, I have news for you. We are not. We are paying for our own now. Let me just give you an example or two and I have been in all these nations and I am an industrial engineer.

Mr. RADCLIFFE. Yes; you have an advantage.

Senator MALONE. No; I do not have the advantage. I just have the advantage of understanding what I see. I was in Chile, spent about a week, at one of the last plants—refineries covered, one of the finest companies in the world too, but what kind of plant do you think they built there, the last one in the world? One of these old-fashioned plants with hand machinery or something? I have news for you. It's the best one in the world. It's the best one in the world because it is the last one.

Then, what do they have? They have 5 to 10 percent American shifters and superintendents and men who are experienced, training the labor so they run the plant that way. That is the case all over the world today.

Mr. RADCLIFFE. In certain cases; I wouldn't say that general situation is true all over the world.

Senator MALONE. My friend, that is where we spent the Marshall plan money, the ECA money, and the rest of the money, financing technicians to go over and show them in these foreign countries how to best defeat our own production here. Then we have a department down in the Department of Commerce, Foreign Commerce, spending their time now in trying to increase foreign investments as I have previously explained here.

Mr. RADCLIFFE. Yes; I was in the room this morning, sir.

Senator MALONE. On Japanese production, and whose money do you think is going into these plants? American money. And what kind of machinery do you think they put in these plants when they rebuild them?

Mr. RADCLIFFE. The very best.

Senator MALONE. Why, of course. So it is poppycock that with our machinery and our know-how, the cheap labor isn't the cheap factor. It will be good for you to go back and study. Do you have any other ideas along that line?

Mr. RADCLIFFE. No; I think we are getting away from the valuation problem.

Senator MALONE. I think it's part of the deal, part of the picture, the whole depressing picture to bring in this foreign cheap labor goods to compete with American workingmen and the American investor and I will tell you what I think about that.

The investors are divided now between investors who are confined to this country where they can't move beyond the low-wage curtain and our workingmen can't do that either. Then there are other companies, some larger, some maybe not so large, so constituted that they can go beyond that low-wage curtain, and then ship their stuff back here in cooperation with the plants they have here. I think you know that, do you not?

Mr. RADCLIFFE. Why certainly I know that.

Senator MALONE. All right, that is good enough. That is all—sure.

Mr. RADCLIFFE. Now, Mr. Chairman, may I read this very brief statement?

Senator FREAR. Yes, go right ahead.

STATEMENT OF HARRY S. RADCLIFFE, ON BEHALF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES

Mr. RADCLIFFE. My name is Harry S. Radcliffe. I am executive vice president of the National Council of American Importers, 45 East 17th Street, New York, N. Y. I am also a member of the foreign commerce committee of the Chamber of Commerce of the United States, and it is in my capacity as a representative of the chamber that I present this testimony.

The Chamber of Commerce of the United States supports the principles of H. R. 6040 as a step forward in the expansion of world trade.

The chamber, in the national interest, has long favored the simplication and modernization of the customs administrative provisions of our tariff laws and has so informed committees of the Congress on several occasions in the past. At their recent annual meeting, on May 2, chamber members renewed their basic declaration on customs administration in a form which has particular pertinence to the bill before this committee.

Taking cognizance of the difficulties created by present valuation methods, the members urged—

> the further simplification and modernization of customs administrative provisions of the United States tariff laws, in order to eliminate uncertainties arising out of methods of customs valuation.

This measure, H. R. 6040, if enacted into law, would definitely remove many of the uncertainties arising out of our present customs valuation methods by the elimination of "foreign value" as a basis of appraisement. The determination of "foreign value" presents serious administrative difficulties and tends to create a very unsatisfactory situation for American importers.

Among other inequities, they are sometimes compelled to wait several months after clearing their goods through customs before they can discover the extent of their final duty payments.

Witnesses from some segments of American industry have, however, expressed fear that the change in valuation standards, as proposed in H. R. 6040, would lessen the protection against competitive

imports they now enjoy, because of the subsidiary effect of any reduction in the valuation base of some imported goods. Whether or not this fear is fully justified is difficult to determine until the new method supplants the old in actual operation. It is obvious, however, that any constructive attempt to replace the present unsatisfactory methods of customs valuation with more equitable ones, will have the subsidiary effect of changing to a varying degree the valuation basis of a multiplicity of imported articles.

The amendment to H. R. 6040 proposed by the Treasury Department and now under consideration by this committee therefore strikes us as an attempt at reasonable compromise. It is meant to eliminate the customs valuation uncertainties to which the chamber objects, but in at gradual rather than an abrupt manner, thereby relieving the apprehensions of those producers who fear that a sharp transition from one valuation base to another would suddenly lessen the degree of tariff protection they now enjoy.

The Treasury proposal would continue in effect for a trial period of 3 or 4 years present valuation standards for only those imported goods which might otherwise be reduced in value by 5 percent or more. The new valuation principle would apply to the vast majority of imports; those whose valuation base would be affected by less than 5 percent. During the trial period, detailed information reports concerning operation of the system could be submitted to the Congress, and if Congress did not act within a period of 90 days of continuous session after receipt of the final report, all imports would subsequently be subject to the revised valuation standards.

The Chamber of Commerce of the United States strongly supports the elimination of uncertainties arising out of present methods of customs valuation. It would like to see these methods replaced by more certain, precise, and efficient ones as soon as possible. H. R. 6040 with the Treasury Department's suggested amendment, we believe, will be a forward step in this direction and we strongly urge the passage of this bill in the present session.

I shall be grateful if the committee will include as part of the record the complete text of the chamber's official policy on customs administration, a copy of which is attached to my statement.

Senator FREAR. Is that the fourth page, Mr. Radcliffe?

Mr. RADCLIFFE. Yes, sir, that is the fourth page.

Senator FREAR. That will be made a part of the record.

(The information is as follows:)

CUSTOMS ADMINISTRATION [1]

The chamber strongly urges the furher simplification and modernization of customs administrative provisions of the United States tariff laws, in order to eliminate uncertainties arising out of methods of customs valuation.

Not only legislation is required but also continuous action on the part of the responsible agencies of the Government to improve and simplify the machinery and regulations.

Beyond the domestic revision that may be necessary, the chamber recommends such international action as is required to modernize, simplify, and standardize customs, consular, and other trade documentation and formalities.

Senator FREAR. Did you attend the meeting in Washington of the Chamber of Commerce?

[1] Policy declaration adopted by members of the Chamber of Commerce of the United States at its annual meeting, May 2, 1956.

Mr. RADCLIFFE. Yes, sir, I attended the annual meeting.

Senator FREAR. To what does this refer, the policy that has just been made a part of the record? The vote that you gave in previous testimony of 1,376 to 1,200, was that on this?

Mr. RADCLIFFE. No, sir, that was on a special referendum having to do with a proposed policy declaration on the administration of multilateral trade agreements. This policy declaration that I have inserted in the record was adopted at the annual meeting by a unanimous vote—no dissent whatever.

I might add it is merely a continuation and a strengthening of similar policies that the chamber has had in force for a period, as I understand, of 10 years.

All policy declarations, I might explain, sir, expire after a 3-year period and must either be renewed or revised or go by the board. This one was up again this year for renewal with some slight revisions to modernize it. It was readopted by unanimous vote.

Senator FREAR. And you say that was a voice vote?

Mr. RADCLIFFE. It was a voice vote at the annual policy luncheon.

Senator FREAR. We have had a little difficulty, I think, at least I have, of determining how it was a unanimous vote. I know one chamber of commerce that was pretty strongly in opposition to this thing, but if you say it was unanimous, you were there.

Mr. RADCLIFFE. I was present, sir. Of course, I might explain not all the 3,200 member organizations were present at that meeting.

Senator FREAR. It was a legally constituted meeting, wasn't it?

Mr. RADCLIFFE. A duly constituted meeting, and the policy declaration was presented to that meeting after it had come from the foreign commerce department committee and had been approved by the policy committee of the chamber and then cleared by the board of directors of the chamber for presentation to that meeting. It was, as I said, a duly constituted meeting and I might add that every member organization had received some weeks in advance, a copy of all the policy declarations that were going to be considered at that meeting.

Senator FREAR. I believe in your testimony here, unless I overlooked something, you said that it would affect—the amendment would affect only a small part of the imports.

Mr. RADCLIFFE. That is correct, sir.

Senator FREAR. That is correct?

Mr. RADCLIFFE. I think the Treasury Department people testified this morning that about 90 or 91 percent——

Senator FREAR. Well, here is a release which I am sure you are familiar with—Chamber of Commerce News Service, dateline, Monday, June 25, 1956, for p. m. release:

> In testimony prepared for the Senate Finance Committee, chamber spokesman, Harry S. Radcliffe, executive vice president, said the amendment would permit speedier custom valuations on most imports—

and in your testimony you said it was a small part of the imports?

Mr. RADCLIFFE. I am sorry. I meant a small part of the imports would not get the benefits of the new value standards.

Senator FREAR. Then you change your testimony, that we earlier understood, which is it—small or most?

Mr. RADCLIFFE. May I consult my testimony a moment? I am not too familiar with this.

Senator FREAR. I thought you prepared this—I am sorry.

Mr. RADCLIFFE. No, sir, that was prepared by the staff of the chamber. On this, it says:

> The Treasury proposal would continue in effect for a trial period of 3 or 4 years the present value standard for only those import goods that are reduced in value by 5 percent or more and the new valuation principle would apply to the vast majority of imports.

I think that is where the misunderstanding occurred.

Senator FREAR. I got the other impression.

Senator MALONE. I take it this general statement coincides with the statement you have already read?

Mr. RADCLIFFE. Yes, sir.

Senator MALONE. Well, now, Mr. Chairman, I would like to ask the distinguished representative of the United States Chamber of Commerce if he understands that the lowering of the duties or tariffs would be confined to 5 percent within the 5 percent.

Mr. RADCLIFFE. Yes, sir.

Senator MALONE. Well, does the distinguished representative of the United States Chamber of Commerce understand when you lower the duty or tariff 1 percent, that it means the domestic producer, if it is below that differential of cost, must either lower his wages or write off his investment to meet that 1 percent, or meet a substantial loss in business or maybe all of his business?

Mr. RADCLIFFE. Well, we are talking about a 5 percent of the duty value.

Senator MALONE. That is right.

Mr. RADCLIFFE. That is not stationary at any one time, sir, it is dynamic.

Senator MALONE. I understand. You are a very dynamic person, but I would like to pin you down on one answer, that whenever you go below the duty or the tariff is lowered below the differential of cost, made up of wages and many other factors as you so ably explained, that you have to meet that reduction here or go out of business or suffer a substantial loss.

Mr. RADCLIFFE. Well, most of the present rates of duty, as the Senator knows, are under trade agreements, and if there is a situation where there is the likelihood of danger or injury, they have recourse in the escape-clause provision under that act.

Senator MALONE. The history shows that about 1 out of 500 gets relief.

Mr. RADCLIFFE. That probably shows the degree to which the fears of imports, competitive imports, have been exaggerated.

Senator MALONE. Well, if you are interested I ended up on the Senate floor earlier this year and I intend to do it again before I leave. Unemployment is prevented largely by $40 billion of national-defense money. We are living a war economy now and if you are not cognizant of the fact, it might be well to inquire. You are not producing much pottery in the United States, much less in glassware, much less in 500 other industries and only for contracts to maintain employment on taxpayer's money, on the 35 billion of national-defense money is severe unemployment prevented.

I wouldn't expect the chamber of commerce to make very much of a study of that situation because a large number of them are profiting by those contracts, but it would be very interesting to you, I am sure,

if you would get into it and about next year or year after, it will hit you right in the head. I predict that, and I want you to remember it.

Mr. RADCLIFFE. I certainly shall remember that prediction.

Senator MALONE. Now, you have changed the entire policy of the United States of America and I congratulate those of you who are for it; that is for 145 years we built the standard of living in this country, due to a tariff or duty or whatever Mr. Rose decides it should be called, that made up the differential. I have no quarrel with anyone who believes we have too high a standard of living and is willing to say so, or that it should be reduced, but I do have a very severe difference of opinion with those who say they want to hold our way, our standard of living, and want to import low wage goods.

To me there is only one answer, and that is they either do not understand it or they are concealing something on account of a profit motive and I believe it is becoming generally known, and as the working men and women of this country understand it better, I think within 5 years and maybe within 2 and maybe much less, the workingmen of this country are going to tell their wives to look for the American trademark before they lay their money on the counter and that will be the end of all this business of soaring into space; that you are going to raise the living standards of 600 million Chinese, 600 million Indians through division of our markets. That is, in effect, what you are saying.

Mr. RADCLIFFE. Well, aside from the fact that we are not doing business at all with China——

Senator MALONE. You are not, maybe.

Mr. RADCLIFFE. No; the United States is not.

Senator MALONE. Is that true? They are getting 800,000 to 900,000 tons of manganese a year. Would it take too much of your time to study this situation a little? I think that is one thing that is the matter; that the people who have testified before this committee, they know where their profit is located. Look into that and see if I didn't tell you right.

(In this connection the following comments were subsequently submitted by Mr. Radcliffe:)

Although this subject has nothing whatsoever to do with H. R. 6040 or customs valuation, I have looked into the matter of the importations and exportations of manganese ore and concentrates. May I respectfully request that this letter be inserted in the final printed record following my testimony.

Report FT 110 issued by the Bureau of the Census, United States Department of Commerce, shows no imports for consumption from China for the calendar years 1951–55, inclusive, or for the first quarter of 1956, of manganese ores or concentrates or manganiferous iron ore containing more than 10 percent of manganese.

Imports of manganese from other countries, chiefly India, the Gold Coast, Union of South Africa, Cuba, Brazil, and Mexico during this period ran a little over 2 million tons a year except in the calendar year of 1953 when they ran about 3 million tons. Not a single ton of manganese was imported from Communist China.

In fact, under the regulations of Foreign Assets Control, United States Treasury, merchandise the country of origin of which is China, has been absolutely prohibited since December 17, 1950, unless authorized by license from the Secretary of the Treasury. I am informed by officials of Foreign Assets Control that no such licenses have been granted for imports of manganese from China, or will be granted.

As to exports from the United States, Report FT 410, issued by the Bureau of the Census, United States Department of Commerce, shows no exports to China of manganese ores and concentrates containing 10 percent or more of

manganese for the years 1951–55, inclusive, or for the period of January 1956 to March 1956 for which statistics are now available.

Under the present Export Control Act, a license is required before strategic materials may be exported to Communist China, Soviet Russia, or her satellites. The Office of Export Supply of the Department of Commerce has informed me that no licenses have been issued permitting manganese exports to China.

The United States did export manganese ores and concentrates containing 10 percent or more of manganese in the years 1951–55, inclusive, and in the first quarter of 1956, chiefly to Canada, Mexico, and Brazil, but these exports have been less than 7,000 tons a year since 1952 when they reached a peak of 9,749 tons.

Senator Malone has apparently been grossly misinformed when he stated: "They (China) are getting 800,000 to 900,000 tons of manganese a year." China may be getting that quantity from Russia but surely not from the United States. I am sure Mr. Malone will be glad to have this letter inserted in the record to keep it accurate.

Senator MALONE. I have to go to another committee and I am sorry, Mr. Chairman, but that is the truth and that report that I mentioned, I will give it to you.

Mr. RADCLIFFE. That Senate report I certainly shall look up.

Senator MALONE. I am sorry, Mr. Chairman. I suppose the hearing is over when I leave.

Senator FREAR. We will try to do our best, Senator.

Thank you very much, Mr. Radcliffe.

Mr. RADCLIFFE. Thank you, sir.

Senator FREAR. Mr. J. C. Heraper, of the Detroit Board of Commerce. Do you have a prepared statement?

Mr. HERAPER. Yes, sir; it has been distributed.

STATEMENT OF J. C. HERAPER, CHAIRMAN, IMPORT AND CUSTOMS COMMITTEE OF THE DETROIT BOARD OF COMMERCE, AND IMPORT MANAGER, THE J. L. HUDSON CO.

Mr. HERAPER. My name is J. C. Heraper, and I am import manager of the J. L. Hudson Co., a department store in Detroit, and chairman of the import and customs committee of the Detroit Board of Commerce. I appear before you to express the views of both my company and the board of commerce on H. R. 6040—

An act to amend certain administrative provisions of the Tariff Act of 1930 and to repeal obsolete provisions of the customs laws.

It is almost exactly 1 year since I appeared before this committee to urge favorable action on H. R. 6040 and express to you the strong support of the Detroit Board of Commerce and the J. L. Hudson Co. of the proposed changes in the valuation procedures of our customs laws.

At that time, much of the opposition to the passage of H. R. 6040 was based on the fear, which we believe to be exaggerated, that the changes in valuation procedures would lead to substantial tariff reductions on certain imported commodities. In order to overcome this opposition, the Treasury Department has proposed an amendment to the House-passed version of H. R. 6040 which would prevent more than minimal reductions in the effective duty rate through changes in customs valuation.

It is my understanding that this hearing is concerned, in the main, with these amendments proposed to H. R. 6040. The Detroit Board of Commerce, after careful study of H. R. 6040 and the underlying reasons for the need for changes in valuation procedures, continues

to favor the outright elimination of foreign value as proposed in the House-passed version of the bill before you. Under the circumstances, however, we wish to go on record as supporting the Treasury amendment as the best solution.

Although the amendment as proposed by the Treasury Department would for a limited period of time establish a dual system of valuation; namely, one based on the exclusive use of export value and the other on a continuance of present practices of using export value or foreign value, whichever is higher, we feel that importers can adjust to this added complication, particularly since it will only be a limited number of commodities which would be exempt from the new valuation procedures.

We believe that in actual practice the new valuation, exclusively on the basis of export value, will prove the contention made by supporters of this legislation that changes in the amount of duties collected on consumer goods will be insignificant in all but very few cases and that export value, as the exclusive basis of valuation of imported merchandise, will cause no hardship to domestic producers.

I wish to reiterate what I said last year when I appeared in support of this legislation that neither the board of commerce nor the J. L. Hudson Co. seeks any reductions in customs duties. We feel that this legislation is necessary in order to eliminate needless delays in clearing imports through customs and would reduce the amount of litigation relating to valuation procedures.

In our view, it is of particular importance that throughout the period of transition, and based on the periodic reports on the operations of the new valuation procedures, Congress will be able to study developments.

Under the new amendment, if adopted, Congress can later provide for some other system of valuation or even to revert to the present method if the new one is found to be unsatisfactory.

On the basis of the extensive hearings held both before this committee and before the Committee on Ways and Means in the House of Representatives further discussion of the difficulties inherent in the present valuation procedures seems unnecessary. I would, however, point out the following from my experience in dealing with imported consumer goods. Recent Presidential proclamations of higher duty rates have not been occasioned by foreign manufacturers using price quotations lower than their usual selling prices. The manufacturers of Swiss watches and English bicycles were not accused of undervaluation.

I would like to add in there, there is currently a great deal of argument going on regarding the importation of cotton blouses from Japan. It looks as though it will be a voluntary quota on the importation of those blouses, but there again, the question of valuation is not entered into at all.

Those blouses are made expressly for the export market, to the United States, and there is no home market value in Japan for those blouses. So that an important item like that, you would have to have either high duty rates or some other means of setting a quota.

Senator BENNETT. Mr. Heraper, just to clear the record, this voluntary quota of which you speak is a Japanese quota on exports rather than an American quota on imports?

Mr. HERAPER. Right, sir.

Senator BENNETT. I just wanted the record to be clear in that because you used the word "quota" on imports which has the other connotation.

Mr. HERAPER. Yes, sir.

Senator BENNETT. Thank you.

Mr. HERAPER. Those opposed to the use of exports value alone emphasize that the removal of foreign value consideration would tend to throw open our markets to greatly increased imports. In our opinion, consumer goods prices for export to the United States will not be lowered because of valuation changes. There will always be trading for price concessions, as quantities purchased for our market are frequently greater than those for the home market. Selling expenses are lower in the case of exports, and importers make prompt payments.

The answer to the control of an undesirable quantity of an imported commodity is in higher duty rates under legislative and administrative machinery outside the custom laws. It is not in the retention of cumbersome valuation procedures.

We have, at present, 12 unliquidated entries from 1953, 51 from 1954, and 360 from 1955. Last week, we received a bill for additional duty on a 1953 entry.

I can only repeat that the support of the Detroit Board of Commerce and the J. L. Hudson Co. of H. R. 6040 is not based on any desire for a reduction in the effective duty rates and we believe that, except in few cases, such reductions would be extremely small.

In view of some of the testimony today, the amount of imported goods used by a store of our type is extremely small in relation to our overall business. It runs less than 5 percent, so that over 95 percent of the goods which we handle are made in the United States and I would think of that as a fairly good indication of the picture in other stores of our standing.

I believe, really, that there was an exaggerated idea of the flood or pending flood, of imported merchandise.

Importers recognize and applaud the strides made in earlier customs simplification bills which have already brought a welcome improvement in customs procedures. The needed changes in custom valuation would represent another step forward.

In closing, I want to urge the members of this committee to consider favorably the amendment relating to customs valuation as proposed by the Treasury Department and to report H. R. 6040, as so amended, to the Senate.

Thank you.

Senator BENNETT. Thank you very much, Mr. Heraper. I have no questions. I think this subject has been discussed and rediscussed amply today.

Mr. Lloyd C. Halvorson. Will you take the stand, Mr. Halvorson, and let us have the view of the National Grange on this legislation?

STATEMENT OF LLOYD C. HALVORSON, NATIONAL GRANGE

Mr. HALVORSON. Mr. Chairman and members of the committee, the maintenance of peace and security in the world cannot and does not depend solely or primarily on the military might of our Nation. The expansion of mutually advantageous trade between nations is

essential. The conviction of the National Grange on this matter was expressed in the following words at our last annual session:

> To move in the direction of freer trade—of modification of trade barriers—is clearly the general direction in which we must go if we are to make progress in providing the kind of economic and political conditions which will give the greatest promise of international peace. It is clearly a difficult road, however, and one that we must travel with caution and consideration. The expansion of world trade on a mutually benefitting basis is essential to producers of export crops and other farm commodities; in fact, to the economy of the Nation and the peoples of the world who seek to enlarge the areas of freedom and maintain peace.

There are several major reasons why the lowering and removal of manmade barriers to world trade enhance the chances of peace, prosperity, and freedom. First of all, the reduction of manmade barriers to trade broadens the scope of the buyer's freedom in making his choice. This increased freedom for buyers soon results in greater specialization of production in countries according to their natural advantages and skills of people. A very important secondary effect resulting from increased specialization is the further economies of mass production, and the increased tempo of technological research and advance.

Each of the free nations of the world will likely enjoy greater output per man and a higher standard of living from the greater specialization in production and the greater breadth of choice made possible by the progressive lowering of manmade barriers to trade just as rapidly as justice and equity will permit. This enhances the chances of world peace and prosperity, not only by enlarging the economic base of the community of free nations, but also by binding them economically and politically together. It is quite probable that with a reduction in the manmade barriers to trade, American buyers will exercise their new-found freedom and their expanded area of choice by spending more of their dollars for goods from abroad.

The fear that unemployment will result from the lowering of trade barriers is real in some industries, and must be given fair consideration. This is especially true in short-term or immediate problems. However, on the other hand, we must take into account the overall long-term effect and the expansion of our export industries which, in many instances, can pay American wages and American taxes and still meet foreign competition. Furthermore, even if the lowering of trade barriers should eliminate some jobs, the number of jobs which our economy is capable of creating is not limited. This is demonstrated by the ability of our economy to absorb about a half-million additional workers each year, and also to absorb the impact of laborsaving machinery.

The National Grange considers customs simplification as a desirable step in our effort to help the world to a higher level of living through our economic leadership. Customs simplification need not involve sacrifice on our part, but rather that we should benefit from the expansion of buyers' choice and also by simplification of the governmental machinery incidental to customs procedures. It is economy and efficiency in Government to bring about customs simplification. The National Grange at its annual session adopted the following statement:

> It is the policy of the National Grange to work for a progressive and gradual reduction of international trade restrictions and the simplification of customs procedures so that trade and commerce can be established and maintained on a sound economic basis.

The National Grange believes that customs procedures should not provide hidden and spurious protection against imports. It is better to provide the required protection by tariffs rather than to complicate customs procedures at an unnecessary cost to Government and to businessmen.

We believe that it is wise to eliminate the task of determining foreign value on practically all goods imported into this country. This will eliminate much of the delay in customs procedures and eliminate some costs of administration. We understand and believe it is wise that the Government will continue to collect information on foreign value where dumping is suspected. The higher tariff that might be imposed on the basis of foreign value is not enough to be effective against dumping on our shores, so, in any case, to prevent dumping our principal reliance will be the Antidumping Act.

The change in the language defining "export value" seems desirable in order to wipe out certain obsolete and unrealistic applications of the existing language. It will also make possible a fairer application of the law to all businessmen.

The proposed amendment to H. R. 6040 to provide for a comparison of value under the present and the new valuation procedure for certain items is wise. Likewise, the provision that the present valuation method will apply to items where the value derived from the new procedure is 5 percent or more below the existing procedure, will provide adequate assurances to protected industries with the passage of H. R. 6040. Certainly, the American people are entitled to know how much protection the valuation procedure has provided certain of our industries, and no one can very legitimately argue with the desirability of more adequate knowledge. At the end of the trial period the Congress will have ample opportunity to decide whether or not compensations for loss of protection in new valuation procedures should be made to certain industries by way of tariff rate consideration, either in the form of higher tariffs, or by avoiding further tariff reductions. We should not for long maintain cumbersome, capricious, and costly valuation procedures in order to provide protection for certain industries when tariffs can do the job as well with revenue to the Federal Treasury.

In conclusion, the National Grange favors customs simplification as one step toward expanding world trade on an economically sound basis in order to promote our own economic welfare and the enlargement of the economic opportunities for all the peoples making up the community of free nations. Also, we favor customs simplification as a step toward efficiency and economy in Government, and as a step toward lessening the depressing effect of undue Government controls on business.

We respectfully urge the committee to also consider the long delays of record in getting appropriate action on these matters. We believe there is much evidence that the Bureau of Customs, as well as the United States Tariff Commission is grossly understaffed at present. Customs simplification would obviously tend to partially relieve the load on the Bureau of Customs and the Customs Court, but Congress should surely give consideration to providing an adequate staff for keeping this matter as current as possible at all times.

Senator BENNETT. Thank you very much Mr. Halvorson.

Our next witness is Mr. John C. Lynn who is representing the America Farm Bureau Federation. Mr. Lynn, have a seat.

STATEMENT OF JOHN C. LYNN, AMERICAN FARM BUREAU FEDERATION

Mr. LYNN. We appreciate the opportunity to again present the views of the American Farm Bureau Federation to this committee with regard to H. R. 6040, the Customs Simplification Act of 1955. The Farm Bureau represents 1,623,222 farm families who through their elected delegates have formulated and adopted policies which in their judgment will best achieve the national interest.

The views which we express here are based on these policies.

Farm Bureau has long recognized that proper administration of our customs laws is extremely important in our struggle to expand world markets. On this point, Farm Bureau 1956 policy states:

> * * * In order to increase and continue the opportunity for customer nations to earn dollars with which to pay for United States products, we recommend that the United States use its leadership to bring about realistic trade agreements and trade arrangements among free nations to reduce trade barriers progressively and to expand mutually advantageous private trade.
>
> For this purpose the United States should:
>
> (5) Enact legislation to further revise and simplify United States customs laws, regulations, and procedures.

During last session the Farm Bureau testified before the Committee on Ways and Means and before this committee urging the passage of H. R. 6040. In that testimony we pointed out the confusion and delay which had been caused by the necessity of determining "foreign value" on all products subject to an ad valorum duty. We feel that testimony also refutes the allegations which some have made that this change in the method of valuation will in any way weaken our antidumping law. The Treasury Department will be able to effectively police imports so as to preclude injury from dumping regardless of the manner of valuation.

We understand that some industries have claimed that the duty charged on competing imports will be substantially lowered if a foreign value is eliminated as a method of valuation. Stated in simple terms, the argument is this: "Competing imports have been valued at a fictitiously high level; if they are valued at a realistic level, we will be injured." It is not clear to Farm Bureau why any industry has a moral or legal right to have imported articles valued at a fictitious level. However, our information indicates that extremely few products would be valued at a substantially lower level if the method of valuation were changed. The Bureau of Custom's survey demonstrated that only 13.4 percent of the total value of United States imports would have been affected by the proposed change in the method of valuation; that the valuation of these imports would have been decreased by 2.5 percent; and that the actual duties collected would have been decreased by only 0.9 of 1 percent.

In order to make certain that no individual industry could be affected by a sudden change in the valuation of competing imports, the Treasury Department has proposed an amendment to exempt all commodities whose valuation would be decreased by more than 5 percent.

Under the Treasury proposal the list of commodities to be valued under the old procedures would be revised to take account of changes in commercial practices at the end of each of three yearly periods. Each of these lists and other pertinent results of the trial period would be made available to Congress. After submission of the results of the year's operation under the third published list, the Congress would

have a period of 90 days of continuous session in which to consider all information and to provide for any other system of valuation.

One of the primary benefits of this change in the method of valuation would be freeing the Bureau of Customs from the necessity of many extensive foreign investigations and from other unnecessary administrative procedures. This would result in considerable savings in time and expense. We feel that it is unfortunate that the proposed amendment will require the retention of much of the administrative expense which otherwise could have been avoided. However, we feel that the passage of the bill can still make a substantial contribution to the expansion of international trade. The vast majority of our imports will thereby receive valuations which are realistic in comparison to their true commercial value and most of the valuations will be uniform and not subject to unwarranted delays. This will represent progress toward the proper administration of our customs laws.

We support H. R. 6040 as passed the House. As stated before, we feel that the Treasury Department's proposed amendments are not necessary, however, we will support this legislation with these amendments as a step in the direction of simplifying our customs procedures.

Senator BENNETT. Thank you, Mr. Lynn.

Our next witness is Mr. George L. Bell, president of the Committee for a National Trade Policy, Inc. Won't you have a seat, Mr. Bell?

STATEMENT OF GEORGE L. BELL, PRESIDENT, COMMITTEE FOR A NATIONAL TRADE POLICY, INC.

Mr. BELL. I appreciate the opportunity to appear today and to present the testimony of the Committee for a National Trade Policy in support of the amendment to H. R. 6040 proposed by the Treasury Department. We would urge the Finance Committee to report out H. R. 6040, thus amended, favorably.

Our support of H. R. 6040, as passed by the House of Representatives, was recorded on July 8 when we had the opportunity of testifying before the Finance Committee. At that time, I explained that simplification of the valuation provisions of our customs law had been consistently urged by both Democratic and Republican administrations and by such official advisory groups as the Randall Commission. Existing valuation provisions had three main faults which required correction:

(*a*) They were cumbersome administratively, involving as they do a computational and administrative burden on the customs service;

(*b*) They posed technical pitfalls and complexities which ran counter to the canons of simplicity, certainty, and equity which have always helped to guide our tax policies; and

(*c*) They employed valuation principles that do not comport with commercial practices and were, therefore, an artificial barrier to commerce.

In recognition of these facts, the House of Representatives had passed customs simplification measures containing valuation provisions, substantially identical to those contained in H. R. 6040, on three previous occasions. We are convinced that the question of simplifying the valuation provisions of our customs law has enjoyed adequate study over the past 3 years. There is, therefore, no cause for delay.

Indeed, unless the Senate completes action on H. R. 6040 at this session, valuation simplification may well be consigned to limbo.

The valuation provisions (sec. II) of H. R. 6040 as originally before this committee would provide for the simplification that was required. It would have done so without any significant change in the valuation of imported items subject to ad valorem duties. Yet opposition was expressed to the bill, the allegation being made that the new preferred valuation base of "export value" was disguised duty reduction.

We have not accepted this allegation. First, the change in valuation was less than 2½ percent overall as the Treasury Department's survey demonstrated. Secondly, changing commercial practices would, over time, continue to bring "foreign value" and "export value" together so that any significant differences between the two on individual items would disappear. Third, the bill expressly provided that where a change in valuation did take place on an individual commodity and where that change was large enough to result in a lowering of the level of tariff protection on that commodity, the producers of the competitive product could have resort to the escape clause provisions of the Trade Agreements Act in order to have the tariff rate adjusted.

Despite this the opposition persisted on the grounds that there were some, albeit a few, commodities where the changed valuation base would result in a significant change in valuation for duty purposes. To meet this objection the Treasury Department has come forward with its amendment.

The amendment would limit the application of the new valuation base to those items for which the resultant change in values is less than 5 percent. The vast majority of imports subject to ad valorem duties would come in under this provision; only a fraction of imports would experience a value change of greater than 5 percent and these would be valued as before. Under the Treasury amendment, there would be an estimated reduction in valuation of only thirteen one-hundredths of 1 percent with a maximum of 5 percent for any commodity. The estimated average reduction in tariff protection would be only two one-hundredths of 1 percent.

In view of these facts, we cannot see why any who opposed H. R. 6040 as originally introduced should continue to oppose the bill if amended in the manner proposed by the Treasury Department. The amendment should allay any remaining concern that may have existed among those very few segments of industry that were troubled by a significant change in valuation on an imported item that was competitive with their own production.

Senator BENNETT. Thank you, Mr. Bell.

Our next witness is Mr. Wallace J. Campbell, who appears in behalf of the Cooperative League of U. S. A. You may proceed, Mr. Campbell.

STATEMENT OF WALLACE J. CAMPBELL, DIRECTOR, WASHINGTON OFFICE, COOPERATIVE LEAGUE OF U. S. A.

Mr. CAMPBELL. Mr. Chairman, I shall try to be very brief in presenting the statement of the Cooperative League of the U. S. A. in support of H. R. 6040, and more particularly in support of the amendment to H. R. 6040 proposed by the Treasury Department.

The Cooperative League is a national federation of consumer, supply and service cooperatives. Its affiliated member organizations include in their membership approximately 13 million different families who own cooperative businesses of various kinds through which they obtain farm supplies, insurance, consumer goods, electric power, savings and credit, health services, housing and other needs.

One of the major objectives of both political parties has been encouragement of international trade and commerce as a factor in international stability and an important factor of overall national prosperity. President Eisenhower made customs simplification an important part of his program. You will recall that in his message to the Congress he said, "The uncertainties and confusion arising from the complex system of valuation on imported articles cause unwarranted delays in the determination of customs duties." The President's concern has been shared by both parties as indicated by the passage in the House of four customs simplification measures, the one before you having been adopted on June 22, 1955.

The measure before you was designed to simplify customs administration, to conform valuation principles to current commercial practices, and to remove many of the technical pitfalls in importing commodities. As your committee is aware, there have been some firms and industries which have expressed a deep concern that the proposals might bring a sharp immediate reduction in tariff duties. If there are instances of real or threatened damage, all present procedures for Tariff Commission review are available to them. The Treasury Department, in its proposed amendment, would limit the effectiveness to a 5 percent reduction on any one commodity. The estimated effect on all imported commodities would be just a fraction of 1 percent. The great impact of the legislation would be simplification and speed in the importation of goods.

We favored H. R. 6040 as passed by the House of Representatives and on which hearings were held before the Committee on Finance last July. We did so because it has been our firm conviction that simplification of customs procedures is essential for the maintenance of good commercial relations between the United States and its trading partners. Benefits of such commerce accrue to all segments of the American economy, not the least of which are the American consumers.

It is our feeling that good progress was made in customs simplification by the enactment of the Customs Simplification Acts of 1953 and 1954. Perhaps the greatest hurdle in effective customs simplification still remains to be jumped—the simplification of valuation procedures so as to reduce the administrative burden in the customs service and so as to make the valuation criteria consistent with commercial reality.

One is reminded that Adam Smith, the father of the free enterprise economic philosophy, made some pertinent observations about the standards for taxation. You will recall Adam Smith's three cannons of taxation: simplicity, certainty, and equity. Customs being a form of taxation, it seems to us entirely appropriate that customs taxation try to hue as closely as possible to these three cannons.

It seems to us that the Treasury Department's recommendations on valuation which are contained in the parent bill, H. R. 6040, make an important contribution in this regard. The shift to a single preferred standard of valuation of "export value" would accomplish simplicity in administration, achieve a greater degree of certainty as to the tax

base for importers, and bring the valuation base closer to commercial values.

Because of the concern in certain quarters about the impact of the changeover to the export value as the preferred basis of valuation, the Treasury has offered the amendment to H. R. 6040 which is now before your committee. We are convinced this is an equitable compromise of views. To be sure, it would be much more simple and straightforward to enact H. R. 6040 as it was originally brought before this committee. In recognition, however, of the concern that some people have, we are prepared to support the Treasury amendment. We think it entirely fair and equitable and considerate of the objections that were presented before this committee last July.

By reporting out H. R. 6040 with the proposed amendment, the Senate Finance Committee would, in our opinion, be acting with care and with deliberate concern for the views of all interested parties. We therefore express our most urgent hope that the bill will be reported out expeditiously and that it will be enacted before the adjournment of this Congress.

Senator BENNETT. Thank you Mr. Campbell.

Our next witness is Mr. Jerome Gartner. Won't you have a seat Mr. Gartner and let us have your views on this proposed legislation?

STATEMENT OF JEROME GARTNER, NEW YORK, N. Y.

Mr. GARTNER. Mr. Chairman and members of the committee, I want to thank you for this chance to appear at this committee hearing.

My name is Jerome Gartner of 3985 Saxon Avenue, New York. I have just graduated from Harvard Law School. I represent no private interest. In the past year I have devoted a lot of my time to studying H. R. 6040, the Customs Simplification Act. I have written a 60-page paper analyzing the effect passage of this bill will have on the existing case law. I request permission to enter in the record a 60-page summary reviewing the changes which will result if H. R. 6040 becomes law.

Senator BENNETT. Permision is granted.

Mr. GARTNER. My study of this bill has convinced me that the aim of H. R. 6040 in simplifying customs is noteworthy. Passage of this bill is in the best economic and political interests of the United States.

The use of "export value" as the major basis of valuation will enable the importers to more easily and quickly determine the basis of valuation. In the case of an honest difference of opinion with the appraiser, the importer will be able to gather the evidence without unreasonable expense. For the necessary facts will be available in this country.

Under the present system, it may be necessary for both the Government and the importer to make lengthy investigations in a foreign country. These investigations are very time-consuming and expensive. Often an importer may have to wait 3 years for a determination of his duty. Then, long after he has sold the goods, he will find out whether he has made a profit.

This hearing, I believe, is to consider the proposed amendment to section 2 of H. R. 6040. I support the aim of this amendment in removing the possibility that H. R. 6040 is a tariff-reduction bill.

In the hearings before this committee on H. R. 6040 in July 1955 the major objection raised by witnesses was that its passage would reduce the tariff on some items. Adding this amendment should

eliminate the fear that passage of this bill will lower the protection now afforded by the tariff.

The amendment provides for the Treasury to list all items whose tariff would be lowered by 5 percent. These items would be continued to be valued under the present law for the time being. Also, within 60 days after publication of this list, any party who feels the tariff on his item will be lowered more than 5 percent may ask the Secretary of the Treasury to investigate.

If the Secretary finds that this item will have its tariff lowered more than 5 percent, it is added to the list. These two methods should insure that passage of this bill will not lower the duty on any item materially.

The amendment further provides for a 3-year period in which this procedure will be continued. In this period, I assume, other arrangements will be made to protect the items on this list. So at the end of this period foreign value will be eliminated as a basis of valuation of imports.

It is important that the temporary arrangement embodied in this amendment does not become a permanent part of the tariff. If it does, then the whole purpose of this bill simplifying customs will be defeated.

Passage of H. R. 6040 is important. Its passage will help eliminate the extra hazards now part of importing into the United States. Also, simplification of the procedure will encourage importations into the United States, but the bill, as amended, will not lower the protection afforded American producers.

If our allies can export more to the United States, they should have less need for the financial aid which this country has extended in the last 10 years.

(The summary submitted by Mr. Gartner follows:)

SUMMARY

H. R. 6040, the Customs Simplification Act, has appeared before Congress in this general form since 1952. It has passed the House several times, but never the Senate. In the first session of the 84th Congress the House of Representatives again passed this act.[1] The bill is now pending hearings by the Senate Finance Committee. President Eisenhower has named this bill as one of the important measures he wants to see passed by Congress this session.

Passage of this measure by Congress at this session will continue the progress that has been made in the postwar era in eliminating the technical tariff barriers to foreign trade. In the past 10 years several measures have been passed which have simplified the forms and the procedural requirements for imports into the United States.

These acts have accomplished a great deal in simplifying the administrative procedure necessary for importation into the United States. But, unless the valuation methods are also simplified, the other changes will not greatly ease entry of imports into the United States. The intent of H. R. 6040, as ex-Under Secretary of the Treasury, H. Chapman Rose testified at the House and Senate hearings last year, is not, by amending the valuation procedures, to reduce the tariff. The aim is to enable imports to be brought in more easily. Some objection was raised to the proposed measure that it would cut the tariffs on some goods dangerously low. The Treasury has offered an amendment which will alleviate this fear. They have suggested that a 3-year moratorium be declared on those rates which would be lowered more than 5 percent. In this period all interested parties would have a chance to testify to the damage that application of the new valuation rate would cause. After 3 years the Treasury would only put into effect the new system on imports where harm would not be caused to American industries.

[1] Passed June 22, 1955.

The major change in valuation under H. R. 6040 will be the elimination of "foreign value" as a basis of determination of value. Today the appraiser must determine both the foreign value and the export value, if he can. Then he applies the higher of these two rates as the basis for valuing importations. Elimination of foreign value will simplify the appraiser's job. If he finds export value he may immediately apply it to value the goods.

Elimination of foreign value will also eliminate one of the policies of the United States Government which has aroused much resentment in other nations for over 50 years. To discover the foreign home market prices the Treasury has the power to inspect the books of foreign manufacturers. Any foreign manufacturer refusing to open his books to the Treasury officials can be banned from exporting goods to the United States. Many nations have felt such investigations to be an infringement of their national sovereignty. France, in the 1920's, refused to ratify a debt treaty because of sanctions imposed against a French manufacturer who refused to open his books to United States Treasury investigators. So long as foreign value is part of our valuation system such investigations will be necessary. Otherwise the Treasury will not be able to determine what are the actual wholesale prices paid. Without the threat of investigation, foreign manufacturers would be tempted to falsify their domestic invoices to reduce the American tariff based on their domestic wholesale prices.

Future investigations into foreign businesses' books is likely again to arouse strong animosity against the United States. Such a furor might dissipate much of the goodwill we have built up in Western Europe and elsewhere.

Elimination of the "foreign value" will also be of practical benefit to the importer. Today it is not unusual for investigation of foreign home market prices to take several years. Often the importer has already sold the goods, and paid taxes on his estimated profit, to discover that his estimate of the amount of duty owing was incorrect. "Export value" is easier to determine. It is based on the price paid by exporters for the goods. Such information is often available from the records of fellow importers in the United States. So the Treasury Department may complete its investigation more quickly. If the importer disagrees with the Treasury findings and wishes to protest, it is possible for him to make his own investigation of "export value," while an investigation of foreign manufacturers' books would be difficult for even the largest of importing companies, if not impossible.

H. R. 6040 provides statutory definition for the phrases in the valuation paragraphs. Today the definition of these terms depends on a mass of case law, some of which is conflicting. With statutory definitions, the answers to some of the valuation problems will be spelled out for the importer who can better calculate his duty cost.

Some of the definitions clarify the terms and are an improvement over the existing case law. The proper wholesale price to use as a basis of valuation has been in confusion for many years. The statute was worded as if there was one wholesale price. While in fact, the appraisers and courts had to choose from several types of wholesale prices. The proposed definition will establish a set of priorities for the appraiser to apply. The definition lists the basic types of wholesale prices and the order in which they are to be applied. Omission of the phrase "all purchasers" will eliminate the anomalous rule that the wholesale price is determined to be the price paid by the retail consumer.

The proposed definitions of "freely offered for sale" raise serious question: What is the policy underlying the valuation section. The proposed definition does recognize the existing situation in many cases and legalizes it, as the basis for valuation of those prices. If Congress believes that restrictive prices should be accepted as part of the tariff system, then this definition achieves its purpose.

The definition of "such or similar merchandise" adopts in most respects the definition in the Massin case. This case is generally followed today. The one change is the use of "commercial value" as a criteria of similarity instead of "commercial interchangeability." "Commercial value" is a useful test and will aid determination of "similarity" in some cases. But it is not a good substitute for "commercial interchangeability." The definition should also include the concept of "commercial interchangeability." Otherwise the valuation of products which build up consumer acceptance in the United States may be subject to periodic revaluations. And the valuation of importations which is believed to be settled would have to be reopened.

"United States value," "constructed value," and "American selling price" are useful ancillary bases for the small number of cases where value could not be determined under "export value." The change to "reasonable profits" from a fixed sum is a more realistic approach. The profit margin in imported goods

varies tremendously depending on the item and to establish one profit margin for all these goods means a figure satisfactory for almost none. But there is the risk that this provision may produce a great deal of litigation on the question of what is the proper profit in this case. One solution might be to put this term on a 3-year trial basis. If little litigation ensues, then adopt the provision as law. But if it proves to be controversial and the case of much litigation, then revert back to the now existing system of fixed percentage profit allowance.

With a few exceptions, the passage of H. R. 6040, the Customs Simplification Act, will make importation of goods into the United States simpler and the determination of the duties more rapid. Speedy adoption of the bill would be a stimulus to our foreign trade without materially lowering the protection now afforded by the tariff to American producers.

Senator BENNETT. Now, the last witness is Mr. William J. Barnhard. Do you have a prepared statement, Mr. Barnhard?

Mr. BARNHARD. Yes, sir, it has been distributed.

STATEMENT OF WILLIAM J. BARNHARD, SECRETARY, NATIONAL ANTIDUMPING COMMITTEE, INC.

My name is William J. Barnhard. I am a Washington attorney, with the firm of Sharp & Bogan, and have devoted myself exclusively to problems in customs law and international trade for many years. I appear before you today in my capacity as secretary of the National Antidumping Committee, Inc., a recently organized national association of businessmen and other United States citizens and organizations interested in world trade. The committee and I appreciate this opportunity to present our views on a matter which is important to our membership and to the Nation.

I appear before you today as a proponent of this amendment to H. R. 6040, but I am a proponent only in this sense: I believe that section 2 of the bill now before this committee, as passed by the House of Representatives, is fair, necessary, and beneficial. I believe that this proposed amendment will, to a certain extent, limit the benefits of the basic bill. Yet, if approval of the amendment is necessary to assure enactment of the basic measure, I believe that the resultant bill, with the amendment, is still so obviously beneficial that I would support the amendment as a necessary compromise for the greater gain.

The advantages of H. R. 6040 have already been adequately described to this committee. This bill would:

1. Eliminate gross inequities in the imposition of ad valorem duties;
2. Tax such imports on the basis of their real value;
3. Reduce administrative overhead in enforcing the Tariff Act;
4. Reduce tthe tremendous backlog of customs litigation;
5. Allow importers and consumers of imported merchandise to know their costs and duty liabilities when they buy the merchandise; and
6. Increase the effectiveness of Antidumping Act enforcement.

Against these advantages, most of them conceded by the opponents of H. R. 6040, the only major complaint is that one effect of the bill would be to reduce some tariff assessments. On the average, this reduction would be minute, although in a few instances it appears to be substantial. It was in answer to this complaint that the Treasury Department has proposed the amendment being considered today.

In order to put this complaint and the proposed amendment in their proper perspective, I should like to make two additional fundamental

points on section 2 which may not have been adequately brought to the attention of this committee.

First, the real purpose of this legislation is to carry out the original intent of Congress, an intent which has been thwarted and frustrated by administrative practice and judicial decision.

And second, the real effect of this legislation would be to end the undeserved and unintended "windfall profits" that have been enjoyed by a group of United States companies.

To illustrate these two points, let us take the example of an imported commodity that costs $100 f.o.b. foreign port and carries an ad valorem duty of 20 percent. So long as the $100 price was a normal commercial price, reached as a result of arm's length bargaining in the ordinary course of trade, Congress obviously intended that the importer of this commodity was to pay a customs duty of $20. This rate of 20 percent, this tax of $20, was fixed by Congress either to equalize production costs, or to offer 20 percent protection to domestic producers, or for some other reason. At any rate, it was fixed at the level that Congress thought best, within the exercise of its constitutional powers. But in the cases of the imports we are discussing, the tax on this $100 import has often been $30 instead of the $20 intended by Congress. Why? Because, instead of taking 20 percent of the true value, as Congress intended, overzealous administrators have taken 20 percent of a false and fictitious value substantially higher than the true value.

Senator BENNETT. May I stop you at this point? You wish the record to show that you believe that the men who have to apply these customs duties are arbitrarily taking advantage of a situation and that they are writing up—they are arbitrarily using unfair, higher rates in order—their motive is to get more revenue for the Federal Government, to impose a higher tax on the individual? That is the implication I get from reading this testimony.

Mr. BARNHARD. Mr. Chairman, I do not impugn in any way the motives of the administrators of this tariff act. The sitaution is actually one where the administrators who are committed by law to finding the highest possible duty, and who are committed by the pressure of administrative practices——

Senator BENNETT. Let's stop there. They are committed by law to find the higher of two possible duties. They are not committed by law to find the highest possible duty because if they were to do that, they could take the highest retail price at which the article was sold abroad and apply the tax to that.

Mr. BARNHARD. They frequently do, sir.

Senator BENNETT. That, theoretically, is when they cannot under the regulations establish a lower price as the foreign price. I get a little bit of the impression from your testimony that you are suggesting that these, that the present law is being used deliberately to hike up the taxes when, under the present law, it would be possible under another interpretation of the present law, it would be possible to set up a lower tax rate.

Mr. BARNHARD. Sir, I think that if more attention had been paid to the intent of Congress and less to hypertechnical distinctions in language, that this result might not have been reached.

I believe also that if the Congress, which in the 1930 act included several specific safeguards against undervaluation of imported goods,

if the Congress had then included similar safeguards for overvaluation of imported goods, this result would not have been reached. I don't think the attempt of the administrators here has been a deliberate attempt. I think the pattern of their activity—that they are under constant administrative pressure to protect themselves against somebody in the future finding that they could have collected a higher tax rate—because of administrative pressure, has tended toward this overvaluation.

Senator BENNETT. Hasn't the testimony indicated that the present pattern has been tested in the courts and rather substantially established and hasn't there been some complaint that if we set up a new pattern, we are going to have a long period of uncertainty while the courts are reestablishing it?

Mr. BARNHARD. I think that it is an unnecessary fear in this respect —the basic change that would be made by this act would be a change to export value, and the courts have been dealing with export value for well over 30 years now. So that the changes that are required would be relatively small changes.

This is not the substitution of a brandnew concept in place of an old one; it is the elimination of 1 of 2 concepts with the retention of the second with certain changes that appear elsewhere in section 2.

Senator BENNETT. I am looking again at this statement. This sentence on page 3 of your statement:

> It is as though Congress fixed an income tax rate of 20 percent and the tax collectors arbitrarily added 50 percent to the taxpayer's actual income before applying the statutory tax rate.

Do you want to let that stand? Doesn't that carry the inference that it has been a matter of unreasonable exercise of authority?

Mr. BARNHARD. I think, sir, if the cumulative total of the experience of the last 30 years had been reached at one swoop, it would have been an arbitrary act. Over the period of time during which this concept has grown, I believe it is a series of intrinsic administrative pressures of a natural growth because of a lack of definition in the original act, but I believe the net result as of today is a distorted view of what Congress intended when it adopted these provisions.

Senator BENNETT. Well, I will renew my question. You want that sentence to remain in your statement?

Mr. BARNHARD. Sir, if the implication is that this has been arbitrary and based on evil motives of the administrators, then I would say delete it, sir. I would certainly delete the word "arbitrarily." I mean no such implication.

Senator BENNETT. I think between us you would be better off to take the whole sentence out. It doesn't injure your point of view, but in there it certainly leaves an inference that I don't think by our colloquy, that you would want to leave.

Mr. BARNHARD. I shall be happy to delete the sentence then, sir, and the record can be so corrected.

I would like to emphasize at this stage, sir, that this hypothetical example I have taken where the 20 percent rate applied to a $100 import actually represents a $30 tariff, is a most unsual circumstance. On the average, as the figures of the Secretary of the Treasury have shown, on the average the reduction would actually be from a duty of $20.40 to a duty of $20—that is roughly 2 percent.

There are a few cases where the domestic producers have insisted that the change would be 30 or 40 or 50 percent, and it is this most unusual case that I am taking as an example since it is for their benefit that this proposed amendment has been drafted.

Nowhere does it appear that Congress intended to tax a wholesale transaction at a retail value, yet this is regularly done under the tariff act.

Nowhere does it appear that Congress intended a quantity sale in the thousands of items to be priced and taxed at the same level as retail sales of 2 or 3 items, yet this is regularly done under the tariff act.

Nowhere does it appear that Congress intended to place a tax upon the amount of another tax which was never applied to the particular commodity, yet this is regularly done under the tariff act.

The result has been a complete distortion of the congressional purpose in fixing the tax at 20 percent. On a $100 item, Congress intended the tax to be $20. Instead, the administrators are collecting a $30 tax.

If Congress had intended the tariff to be $30 it would have enacted a 30 percent tariff rate. But it did not. It thought 20 percent of the true value of the import was an adequate tax.

To protect our customs revenue and tariff walls against artificial undervaluation by affiliated companies, it provided for true value to be on the basis of either export value or foreign value, whichever was higher. Unfortunately, Congress did not spell out any adequate safeguards against artificial overvaluation, and the long-range results of administrative enforcement by officials committed to finding the highest possible duty has been an increasing tendency to tax these commodities on the basis of wholly fictitious values far above the true commercial value that Congress intended to tax.

Section 2 of H. R. 6040 will revive and enforce the original intent of the Congress to tax this $100 import at 20 percent and to collect therefrom a tax of $20. The need for such congressional restatement of original intent and congressional correction of harsh administrative interpretations is not unusual. A recent example that comes to mind is the provision for tax deduction of business bad debts. Congress originally said that bad debts incurred in a trade or business should be deductible. Many companies that went out of business with a host of accounts receivable, many of which turned out to be noncollectible, found that the tax collectors refused to allow the deduction of these bad debts, even though they arose in a trade or business, on the ground that the taxpayer was no longer in that trade or business.

In the 1954 tax revision, Congress corrected this harsh interpretation, stating that such bad debts were deductible so long as they were originally incurred in a trade or business, and indicating clearly that this had always been the intent of the law.

Here, too, Congress can correct a harsh administrative interpretation that misconceives the original congressional intent, for by enacting H. R. 6040 it will state that a 20 percent tax on a $100 item means $20 and not $30.

In discussing the impact of this tax, I have been considering the problem from the viewpoint of the taxpayer—that is, the United States importer and the United States businesses and consumers who purchase the imports. Let us consider the same problem from the

viewpoint of the domestic producer of commodities that may compete with the imports, for, he, after all, is the man for whose benefit this proposed amendment has been drafted.

It was for his benefit primarily that Congress originally established this tariff rate of 20 percent, for in recent decades it has been obvious that the principal purpose of the tariff has been protection, not revenue. Congress intended this imported commodity costing $100 f. o. b. foreign port, assuming an additional $10 for freight and insurance, $10 for the importer's markup, and $20 in duty, to sell here for not less than $140. This in effect put a floor under the United States market price, a minimum price, for the protection of the domestic producer.

Senator BENNETT. May I just observe, parenthetically, that a gross markup of 10 percent is not a reasonable allowance. I don't think our friend from J. L. Hudson would be interested in pointing to too many foreign articles in his store for a gross markup of 10 percent.

Mr. BARNHARD. I think you will find, sir, among importers, who are not also distributors or retailers, this is not an unusual markup.

Senator BENNETT. I don't know the import market, but I am very much surprised that they can operate on a 10 percent gross margin.

Mr. BARNHARD. At any rate for the purpose of this hypothetical example, the floor here was, in effect, a floor of $140.

But, through the artificial devices previously explained the administrators have raised that minimum price from $140 to $150, by raising the duty from $20 to $30—thus adding an extra $10 to the minimum price chargeable by the domestic producer. This $10 is a bonanza for the domestic producers, a windfall that Congress never intended to give them and never thought they needed.

It is only this windfall profit Congress never intended for them to have that might be taken away by H. R. 6040. They would revert to the level of prices and the level of protection that Congress intended to give them in the first place—no more and no less.

Senator BENNETT. I can't follow that theory which assumes that Congress intended to legislate for the lower of the two prices, foreign price or export price when the bill very plainly says the higher of the two prices.

Mr. BARNHARD. Congress intended to legislate for the higher, sir, but Congress did not in any way indicate that all of these artificial components of the foreign value were intended to establish an artificial price. The distinction is between a true export value and a very false foreign value.

In place of the bill proposed here, it might be just as effective to have foreign value redefined so as to reflect a true foreign value rather than an artificial one, but I believe that would lose to the Congress the advantages of administrative efficiency and savings cited by Mr. Rose.

Senator BENNETT. Again, the Senator from Utah is disturbed at your constant reiteration of that idea that Congress intended to legislate for low value, but by manipulation, a higher value has come out and I am glad we have had this little colloquy because the law is very clear that Congress did intend to legislate for the higher of two values.

Now, the discussion today would indicate—the Senator from Utah has a little bit of the feeling that under the present law, not only could you manipulate a higher value but you could also manipulate a lower

value and what might be said the true value. If a man wanted to break in this market and establish an export price low enough to do it, though it had no real relationship to the bulk of his business abroad, he could do that and still can do it under the present law. So I don't think you can establish a pattern by law which will completely take away from an individual the power to manipulate prices for his own benefit.

Mr. BARNHARD. Sir, the ingenuity of taxpayers to make sure they pay the lowest possible tax is a long-standing and recognized practice in this country and elsewhere.

I think the complaint here is not that there is an area of manipulation, an area of business judgment between export value and foreign value, it is that the export value under the safeguards that have been written into the Tariff Act in general reflects a true value, a commercial value, a normal value, whereas the foreign value under the definition which has been applied to it in the last 20 or 30 years, does not represent a true value or commercial value, or a real value in any sense. It is purely artificial because basically of the five major factors that have been revealed here by many witnesses before me.

Senator BENNETT. I want to come back to another idea, but I would rather you go further into your statement before I bring it up.

Mr. BARNHARD. Very well, sir. If the Congress believes that this domestic producer should be given a protection level of 30 percent, then it is easy for Congress to say so. H. R. 6040 merely says that where Congress has said 20 percent, it means 20 percent.

Senator BENNETT. The definite reference to 20 and 30, he said Congress meant this. Actually, Congress set up a procedure and it may have turned out 20 percent or it may have turned out 30 percent, but Congress did not specify a particular percentage as exactly as you would indicate that we have.

Mr. BARNHARD. I think, sir, that Congress did specify a rate of 20 percent and they did mean 20 percent of a real value, not 20 percent of an artificial value and the complaint against the enforcement of this act has been that 20 percent has in some cases been parlayed to a grossly artificial value.

Senator BENNETT. You don't ask us to accept the idea that all foreign prices when chosen as the higher of the two under the law, are artificial.

Mr. BARNHARD. No, sir, there are commercial circumstances in the foreign country, not here, commercial circumstances in the foreign country that will vary for each commodity at each period of time. But in many cases, and particularly in the cases which are protected by this amendment to H. R. 6040, there can be that great distinction only because the value is applied to a grossly artificial price, the foreign value in these cases that would be covered by the amendment.

Every one of these cases is based entirely upon these artificial factors that have been described.

Senator BENNETT. All right, you may proceed.

Mr. BARNHARD. The proposed amendment states that those producers who have been enjoying the greatest bonanza can continue to earn their "windfall profits" for at least another 3 years.

It is true that the few companies in this position would be hurt by adoption of H. R. 6040. This is true of much legislation that is fair

and necessary and beneficial. When Congress says that freight rates must be reasonable, those who charge unreasonable rates are hurt. When Congress taxes the windfall profits of certain construction companies, these companies are hurt. Yet, all of these become law because they are in the public interest. Similarly, I submit there is no reason to delay action on or reduce the benefits of this legislation which is in the public interest—both in terms of our economic interest and our national security—merely because some few companies will no longer enjoy an unintended windfall.

One final word, if I may, about dumping, the specter of which has been raised in several ways during the discussion of this measure.

The threat of a large-scale two-price system of exports to the United States is a chimera having no basis in economic reality. Contrary to the impression frequently created, foreign manufacturers desire to sell here not at the lowest possible price, but rather at the highest possible price. There is no reasonable basis for believing that this legislation or any legislation would or could result in substantial reductions in the value of imported commodities.

In the few cases where undervaluation might be attempted, for duty-saving purposes, the penalties of existing law on undervaluation and on dumping would correct the practice much more effectively than section 402.

The "foreign value" provision of section 402 has often been cited to this committee as a dumping preventive. Actually, it is no such thing. For one thing, "foreign value" in section 402 is substantially different from "foreign market value" under the Antidumping Act. Moreover, the penalty of the antidumping law is much greater and therefore more effective than any increased duty under section 402. For example, if this $100 import had a foreign market value of $150, the additional duty under section 402, foreign value provision, would be only $10—that is, 20 percent of $50. Under the Antidumping Act, the "special dumping duty" would be $50, that is, the entire difference between the foreign price and the United States purchase price. This protection of the antidumping enforcement would be strengthened by allowing the foreign investigations of the Treasury Department experts to concentrate on dumping problems and put a quick end to any such practices.

For these reasons, on behalf of the organization for which I appear, I respectfully urge this committee to approve H. R. 6040 as passed by the House of Representatives, but failing that, if the proposed amendment be deemed essential, that it adopt H. R. 6040 with that amendment.

Senator BENNETT. Mr. Barnhard, could you furnish for the committee a list of the members of your antidumping organization committee?

Mr. BARNHARD. I will be happy to, sir. Here is a little brochure that we have prepared that gives the purpose of the committee, its board of directors, and a list of members. This is a partial membership. We are a new organization.

Senator BENNETT. We will accept this and this list will be put in the record.

(The information supplied is as follows:)

A SPECTER OF THE TWENTIES

Prepared for United States world traders by National Antidumping Committee, Inc., Washington, D. C.

In 1920–21 the United States economy faced a real threat in the plans of some foreign cartels to unload huge quantities of their goods on the United States market at artifically low prices. The United States Antidumping Act of 1921 was needed to stop this "dumping" and thus prevent the destruction of United States industries.

But today "dumping" is no longer a serious threat to the United States. A much graver threat to normal competition and normal trade lies in the excesses of our antidumping policy, which is being used to harass United States businessmen, encourage monopoly, discourage our foreign suppliers, lose our foreign customers, and throttle legimate trade that has no relation to any threat of "dumping."

"Dumping" has been found in many cases where the foreign goods were sold at the highest price they could command in the United States market. And "injury" has been found to exist in a growing and prosperous industry where the imports totaled less than four-tenths of 1 percent of United States production.

Read what leading observers have recently said of our antidumping enforcement program:

"[Present antidumping policy] can make the escape clause look like small potatoes."—Prof. Jacob Viner, Trade Economist.

"I recommend that the antidumping law * * * be changed * * * to prevent undue interference with trade * * *."—Dwight D. Eisenhower, March 1954.

"The now obsolete Antidumping Act * * * is grossly unfair in several respects."—Representatives Daniel Reed and Richard Simpson, minority report, Randall Commission.

"The operation of the antidumping provision creates a real hazard * * *."—Staff papers, Randall Commission.

"[The latest antidumping decision] seems to us to set some kind of new high of absurdity."—Export Trade & Shipper, November 14, 1955.

"Capricious use of the antidumping penalty * * * could negate much of our reciprocal program of trade liberalization."—Joint Committee on Economic Report, (S. Rept. No. 1312, 84th Cong.).

Thus, there is almost universal recognition of the inequities and dangers implicit in our present antidumping procedures and penalties—procedures that punish the United States traders instead of the foreign "dumpers," and penalties that are imposed whether or not there is any real "dumping."

Since the birth of the reciprocal trade program, there have been almost 200 roadblocks to our foreign trade by way of antidumping investigations—virtually none of them involving "dumping." And the number of complaints and investigations is on the increase.

At the end of 1955, the Antidumping Act was being used to deny customs clearance to between 50 and 100 million dollars' worth of imports that had no relation to "dumping" and offered no threat to any United States industry. Such a hurdle to our imports and exports is unnecessary and dangerous. It threatens the trade program that has been enunciated by the Congress and endorsed by the leaders of both our major political parties.

Our foreign trade must be fair, and effective controls on "dumping" will help keep it that way.

But, at the same time, our restrictions on foreign trade must also be fair, and must be kept within the area where those controls are needed. Any other course will curtail our trade and invite retaliatory restrictions on our exports.

This, in brief, is the program of the National Antidumping Committee, Inc.—to prevent actual "dumping" without allowing the specter of "dumping" to befog the two-way flow of legitimate trade.

The National Antidumping Committee, Inc., is a nonprofit, nonpartisan association of United States businessmen and others concerned with problems of world trade. Its policies are set by a board of directors that includes:

George H. Mahoney, Grace & Co. (Pacific Coast), San Francisco, Calif.
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James A. Sutton, Dilworth, Paxson, Kalish & Green, Philadelphia, Pa.
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Jon Gudmundson, Wood-Mosaic Corp., Loisville, Ky.
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Simon Nusbaum, New York, N. Y.
James R. Sharp, Sharp & Bogan, Washington, D. C.

The Officers (protem) of the NADC are: President, A. W. Horton, San Francisco, Calif.; vice president, James A. Sutton, Philadelphia, Pa.; Treasurer, James R. Sharp, Washington, D. C.; Secretary, Wm. J. Barnhard, Washington, D. C.

The effectiveness of the National Antidumping Committee, Inc., in reaching its dual goal of more trade and fair trade practices, lies in its growing membership, already including some of the Nation's leading importers and exporters. Among the charter members of NADC are:

Beton Co., San Francisco, Calif.
Borneo-Sumatra Trading Corp., New York, N. Y.
Camarge Trading Co., Philadelphia, Pa.
M. S. Cowen Co., San Francisco, Calif.
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Getz Bros. & Co., Inc., San Francisco, Calif.
Grace & Co. (Pacific coast), San Francisco, Calif.
Elof Hansson, Inc., New York, N. Y.
Heidner & Co., Tacoma, Wash.
Hoenig Plywood Corp., New York, N. Y.
Isbrandtsen Co., San Francisco, Calif.
Pacific Wood Products Co., Los Angeles, Calif.
Plywood & Door Manufacturing Corp., New York, N. Y.
Treetex Corp., New York, N. Y.
Wood-Mosaic Corp., Louisville, Ky.
Woodward & Dickerson, Inc., Philadelphia, Pa.

If you have a stake in United States foreign trade—whether as importer, exporter, banker, carrier, or otherwise—then you have a stake in this fight for a reasonable antidumping policy, both here and abroad.

Membership in the National Antidumping Committee, Inc., is restricted to United States nationals, whether individuals, businesses, or associations. (Interested persons not eligible for membership may subscribe to the periodicals and special reports published by the NADC.) The following classes of membership are available:

Business members	[1] $100
Individual members	25
Association members	25
Student members	5
Sustaining members	[1] 250

[1] Unless otherwise indicated, 25 percent of this amount will be allocated to the legislative council of NADC for legislative activities.

To protect existing trade channels, to encourage an expanding level of world trade, and to keep our foreign trade on an equitable basis, your help is needed. The time is short, the need is great. So send the enclosed membership blank today to the National Antidumping Committee, Inc., 1101 Vermont Avenue NW., Washington 5, D. C.

Senator BENNETT. Senator, you were not here to hear most of Mr. Barnhard's testimony.

Senator MALONE. We are attacked on too many fronts, Mr. Chairman. I cannot attend all these meetings; I do the best I can.

Senator BENNETT. That is right.

Senator MALONE. Are these all the members you have—these eight members that are listed?

Mr. BARNHARD. No, sir, the eight members listed on page 3 are members of the board of directors of the organization. A larger list appears on page 4 which you are now looking at, and several members have joined since this booklet was published. We are a small but growing organization.

Senator MALONE. There is only about 15 on page 4.

Mr. BARNHARD. Our total membership now is about 30. What the exact number is, I do not know. We do not have up-to-the-minute reports from our units all over the country.

Senator MALONE. About 30 members, and I suppose substantially all importers—companies.

Mr. BARNHARD. These companies are largely engaged in world trade, importers or exporters, or both. Included in the list are several domestic manufacturers.

Senator BENNETT. I notice the number of plywood corporations. I would judge from a quick look at the list that the plywood industry furnishes you with the largest single bloc.

Mr. BARNHARD. The original membership of the organization, sir, the place where the interest first arose was among those industries that had been subjected to this anti-dumping enforcement problem. It includes plywood, cast-iron soil pipe, hardboard, but there are other more general interests represented there too, sir.

Senator MALONE. Does your plywood members approve of the Office of Trade Cooperation?

Mr. BARNHARD. The membership of the committee is generally in favor of, as far as I know, unanimously in favor of it.

Senator MALONE. Did they favor the extension of the 1934 act, H. R. 1, last year?

Mr. BARNHARD. I do not know, sir. The organization was not in existence then.

Senator MALONE. When was it organized?

Mr. BARNHARD. Last December, sir, incorporated in the District of Columbia.

Senator MALONE. I notice that you say that naturally, contrary to the impressions that were created, foreign manufacturers desire to sell here, not at the lowest possible price but at the highest possible price. That corroborates something that I have often said, that the American consumer is entitled to profit by the lower prices that you can get from foreign countries instead of the higher standard of wage and living prices here. The facts are, of course, that they do not profit. The consumer does not profit. When you finally get the American producer out of the way, you take what the traffic will bear. They get the highest price they can get.

Mr. BARNHARD. I think that is true, generally, in the case of most business monopolies, no matter where located.

Senator MALONE. It's a catch phase, the customer is emtitled to the lower price—it doesn't apply at all, does it? If the American pro-

ducer is out of the way, he is no competition. You take what the traffic will bear. It makes no difference what the product is, does it?

Mr. BARNHARD. I think it makes a considerable difference what the product is.

Senator MALONE. I said what the traffic will bear.

Mr. BARNHARD. I think there are factors other than that that enter into the determination.

Senator MALONE. What other factor would it be? All the factors of cost would enter into it, what the traffic will bear. You know sometimes you take all of your factors, it will finally culminate in what the traffic will bear.

Mr. BARNHARD. If you mean that economic prices are largely dictated by demand, I would agree.

Senator MALONE. The price is dictated by the sole producers, which are foreign producers after the American producer is gone, then he can sell at whatever the traffic will bear even if it is twice as much as it cost him.

Mr. BARNHARD. I agree that any company that has power to establish a monopoly can do that.

Senator MALONE. Of course that is what is happening in this country, of course.

Now, you say when Congress prohibits the sale of adulterated food——

Senator BENNETT. Might I say, Senator, he left that line out when he presented the statement.

Senator MALONE. I assume that the reporter would have that ——

(The sentence referred to in the witness' statement was voluntarily deleted by the witness.)

Senator MALONE. Then that was deleted. You just didn't read it, but you distributed the statement to the reporter, didn't you?

Mr. BARNHARD. Yes, sir.

Senator MALONE. Well, do they know you want that cut out?

Mr. BARNHARD. If they were present during my testimony they know it, sir.

Senator MALONE. Well, the reporter is the only place that this is available, right here in this room?

Mr. BARNHARD. Yes, sir.

Senator MALONE. No one else outside has a copy of it?

Mr. BARNHARD. This has not been distributed outside this room, sir.

Senator MALONE. Are there other copies that are available to other people now, after you leave here?

Mr. BARNHARD. There are other copies, sir.

Senator MALONE. You will destroy them and there won't be any distribution?

Mr. BARNHARD. No sir; if we have any request for additional copies, we will be very happy to furnish them.

Senator MALONE. But you will strike this sentence out?

Mr. BARNHARD. I believe in all good conscience I should.

Senator MALONE. I think you should be a little consistent about it and I just wondered how your mind works when you talk about Congress prohibits adulterated food. That is entirely different when they are talking about a regular product that compares favorably with an American product, doesn't it?

Mr. BARNHARD. The point I am trying to make in that entire paragraph is whenever Congress passes any sort of regulation somebody will be affected adversely and there are many times when the adverse effect upon certain individuals, a small group of individuals, is greatly counterbalanced by the general benefit to the economy of the Nation or the legislative policy as a whole.

Senator MALONE. When an engineer condemns a bridge, a county bridge or a bridge where somebody is hurt, that is a bad bridge, or he wouldn't be condemning it. We are talking about materials that compare favorably with materials in this country that you are making it easier to import.

I can see how your mind works. I think it is very enlightening. Now, just how do you consider the public interest so ably served by this bill? It doesn't matter, if, as you say, there are going to be quite a few people hurt. What is the public interest, in your opinion?

Mr. BARNHARD. I think the public interest was spelled out fairly well at some length.

Senator MALONE. Well, just give it to me in your own words.

Mr. BARNHARD. Well, in my own words, on the bottom of page 1 of this statement I think I spell out the advantages of this legislation.

Senator MALONE. What are the advantages to the American producer and the American workingmen?

Mr. BARNHARD. Sir, I think there are tremendous advantages to the American producer in this.

Senator MALONE. Explain it.

Mr. BARNHARD. Because there are many areas of our economy where American producers are dependent in some part or in large part and in some cases, exclusively upon the availability of raw materials and semimanufactured materials from abroad in order to produce an economical product at a reasonable price.

Senator MALONE. Would you name over a few of them just out of your wealth of information?

Mr. BARNHARD. Well, sir, out of my own very recent experiences, I think there are approximately 125 manufacturers of flush doors in the United States.

Senator MALONE. Of what?

Mr. BARNHARD. Flush doors.

Senator MALONE. Spell that last word.

Mr. BARNHARD. Flush doors.

Senator BENNETT. D-o-o-r.

Senator MALONE. Flush doors. Now, tell me what you use flush doors for.

Mr. BARNHARD. Most modern doors are flush doors rather than the type we have at the entrance of the committee room which is known as a panel door. A flush door is a solid plywood panel, and is used to a great extent in homes with the——

Senator MALONE. What is the advantage then to the American producer?

Mr. BARNHARD. There are many advantages, sir, but very briefly, they use the imported panels because it gives them better materials at a price which makes it possible for them to sell in large quantities where there was no market for that product before.

Senator MALONE. Now, there are two things you said and I want to be sure you haven't led me astray. First is that they make better plywood than they do domestic?

Mr. BARNHARD. No, sir; I said better materials at that price.

Senator MALONE. Well, what did I understand you to say? Will the reporter read back my question?

Senator MALONE. Now, there are two things you said and I want to be sure you haven't led me astray. First is that they make better plywood than they do domestic? What do you mean by better materials? Better material—let's just settle that first—better material as the same price, of course, you could get the better material here at a price paying American wages, couldn't you?

Mr. BARNHARD. You can get a domestic material which will do a similar job, a comparable material, but at prices that make it impossible to use it in large scale, or on the scale which it has been used through these years.

Senator MALONE. So what you are saying, if you are paying American wages, it is too expensive?

Mr. BARNHARD. What I am saying, sir, is that American industry found it impossible to buy this particular product from American producers and sell it on a large scale, or use it on a large scale.

Senator MALONE. Foreign nations, or here?

Mr. BARNHARD. These are American industries I am talking about.

Senator MALONE. American industry cannot use the American plywood and sell it at a price that they will buy the doors for, is that what you are talking about?

Mr. BARNHARD. They cannot use American manufactured plywood and sell it at a price that will make it possible for these doors and this type of wall paneling to be used in low-cost and medium-cost housing. The domestic plywood has always been available and frequently been used in high-cost homes, but has never been able to be used by contractors in the low-priced homes.

Senator MALONE. Simply because of the difference in the wages of the producers; is that it?

Mr. BARNHARD. No, sir; because of the difference in the price.

Senator MALONE. That is what I am talking about. The difference in the delivery price.

Mr. BARNHARD. There are many factors other than wages entering into the final price.

Senator MALONE. Give me the factors.

Mr. BARNHARD. The productivity of labor, the cost of machines, power, the cost of freight——

Senator MALONE. In other words, it cost $3½ million down in Henderson, Nev., and you are about to put him out of the chemical business. It's power, labor, materials, freight, transportation, all of the factors that go into a delivered price. In other words, it is the American standard of living that you just can't pay for; is that it?

Mr. BARNHARD. Sir, I am not the one that can't pay for it. It is the American industries and contractors.

Senator MALONE. All you have to do is go abroad, get $2 labor, 50-cent labor, no taxes, no unemployment insurance, no social security for the laborer and that puts you in business here. Is that it?

Mr. BARNHARD. There are many American industries that have found it to their advantage and the country's advantage.

Senator MALONE. The country comes second. It is to their advantage, but that is what you think. It is to the advantage of the country.

Mr. BARNHARD. Well, sir, the country has thought so too, including this Congress, since they have encouraged this type of thing.

Senator MALONE. I will say to you that I don't think they have started to think yet, but they are going to soon with these boys going out of work. When we get through with this war economy, and you will see it, you are a young man, and in about a year or two, what about this two-price system that encourages or stops or whatever was your testimony, you changed some of it so much—what do you think about it?

Mr. BARNHARD. Well, I don't quite know the object of your question.

Senator MALONE. You mentioned that a threat of a large scale two-price system of exports to the United States, has no basis in economic reality. Now, I understand that that is what you think, but I would like to ask you a question in regard to it. When they have no threat of having to fall back on actual cost or what they settle for in their own country and all they have to do is to manipulate the system, do anything that is necessary to lower that support price, that threat is gone. Then tell me why it wouldn't be an economic reality.

Mr. BARNHARD. Well, in the first place, sir, there is no incentive to any manufacturer no matter where he is located, to sell at a lower price than one that he can command in any market.

Senator MALONE. But there is, and that there is where you convict yourself, in my opinion. The foreign producer then not only can manipulate prices so they just come under the American producer's price and take what the traffic will bear, but he can always lower his price through indirect subsidies and undersell the American producer so you say there is no threat.

Mr. BARNHARD. Sir——

Senator MALONE. And he does do it every day of the week.

Mr. BARNHARD. There are many manufacturers abroad who, in a wide variety of commodities, can undersell the American producer.

Senator MALONE. And that goes for every one of them, if you just mention to me a few products, just half a dozen that can't be manufactured in a lower wage country for our people, our transfer of labor, with our machinery. Give me a half dozen of them.

Mr. BARNHARD. Sir, there is $15 billion worth of goods which we sell abroad which means we can produce it cheaper.

Senator MALONE. I have news for you. It is not $15 billion worth of goods you sell abroad, you give it away—give away about a third of it. When you deduct the cash payments to foreign countries and the material that you sell lower than the world price, you are exporting a lesser percentage of your exportable goods than you were in 1934 or when you passed this act, transferring the constitutional responsibility of this Congress to Geneva, to foreign countries to regulate our economy and our foreign trade. You know that?

Mr. BARNHARD. Sir, I had not know it before, but I have heard you mention it today.

Senator MALONE. I think it would be a good idea to study it.

Mr. BARNHARD. I think that figure shows to me that the United States producers have been able to maintain an increasing market in the United States, despite increases in our imports.

Senator MALONE. We have a continual increase in population which may account for a good part of it. Mr. Benson's quite a supporter of exporting goods. For every 100 pounds of sugar we export to Cuba, it cost $1.34 through subsidy through this subsidy. The taxpayers pay the difference between what we pay the producers here and what Cubans pay us for it. They pay the world price, or less, and we guarantee the world price support price.

Mr. BARNHARD. I understand that, sir.

Senator MALONE. That is the kind of trade you are counting into your $15 billion. It sounds very good on paper, very good in a speech.

Mr. BARNHARD. I submit that still leaves at least $10 billion worth of goods that have no relation to foreign aid or subsidies.

Senator MALONE. I think it would be a good idea for you to study it. You are just estimating.

Mr. BARNHARD. I shall study it, sir.

Senator MALONE. All right, I think that is a good idea. Now, people make these statements when they are making them out among the people where they have no avenue of information and you make them so positive that they must be true, but that don't count here. Just don't count me in on that.

I see nothing more in your statement to ask you about. You don't know anything about the percentage of actual trade that we have. If you called it public interest in encouraging imports so that you can undersell the American workingmen and the American investor—well, I will ask you one more question. How much, what percentage of the imports to this country do not now have and have never had a duty or a tariff?

Mr. BARNHARD. Why, I don't know the figures as to the past, sir, but I understand that approximately 53 to 55 percent of our imports are duty free, and have been for a number of years.

Senator MALONE. At least that much and what does that mean? Did you ever think it through? What does it mean?

Mr. BARNHARD. It means there is a substantial part of our import trade that is made up of commodities that we urgently need.

Senator MALONE. I will tell you what it means and it would be another avenue that it won't hurt you to study. It means that we do not produce enough of those commodities to protect the people in the business, a very small amount of it—true. Whenever you get a substantial amount produced in a commodity in this country, then we have tried to protect that industry and protect the investors' interest in it, the American investor and the American workingman in their jobs.

The last 23 years out of 180, the last 24 years out of the last 180 years is the first and only period that we were not protecting the American investor and workingman. But there has never been any intentional duty on any commodity that we didn't produce in this country in substantial amounts.

It is supposed to be then, when you can produce an article in this country in substantial amounts, then protect the workingman and the investor and the investor in his investment and the workingman in

his job and we started out that way in 1789, and for a while we had a combination to protect and collect revenue. It soon got away, but we have raised our standard of living in a century and a half and on the theory that we were entitled to a profit in this country in accordance with the energy that we put into it and the resources that we had.

In 1934, we reversed the process. Now, we have a part of the great department of Government encouraging investments behind the low wage curtain. We have raised our standard of living here higher than any in the world through duty protection. That was our objective. No high tariff, no low tariff, but the differential of cost represented by the flexible duty. They blow your hat off for 24 years saying you want to stop foreign trade. Nobody wants to stop foreign trade but we want it on the basis of fair and reasonable competition. Everybody is for foreign trade, some are for the cheap labor products destroying American labor and leveling our standard with that of the world and some of us are for adjusting that differential or duty as their standards of living costs come up and when they are living about like us, free trade is automatic and immediate.

I am for free trade, but for a different method of reaching the objective. I do not believe that your free trade method will work.

Mr. BARNHARD. Well, sir, I have at no time in your presence or in the presence of this committee, expressed my ideas on free trade.

Senator MALONE. I asked you to express them. You are here to express your opinion and you have.

Mr. BARNHARD. My opinion about this legislation, not about free trade.

Senator MALONE. There has been a pressure and the heat has been on this Congress for 24 years for more imports, more value, and different products, cheap labor, utilize the cheap labor all over the world, knock the heads of the American workingmen off and the local investor and you are interested. You just inquire at the office and I will cite you a list of such depressed areas in the United States and they have increased since I made the list and that has been about 60 days ago.

Now, I have a bill over here. It is in the House and in the Senate, to compensate investors for losses of investments through imports and to pay the freight, pay the fare, and the freight of the household goods, I suppose, of the workers, workingmen and their wives to put them in other areas where they presumably would find a new type of employment.

Now, they do the same thing in Russia but they don't need a net. I just spent 2½ months behind the Iron Curtain and it is working over there. If they can get an act here that will do that here, it will work here.

But Russia has this protection—their wages are much lower so their markets are anywhere in the world. The only protection we have in the world against any country, whether it is behind the Iron Curtain or in Europe or other parts of Asia, is that little tariff or duty that the Constitution, article I, section 8, specifies. That is all. That is all we have.

So we had a parade of witnesses. I don't know whether you were here last year when they passed H. R. 1 out of this committee, but

then, as now. I am the only interrogator of witnesses. Everybody is for it. A couple of votes out of this committee, some on the floor, about 15. I started with my own about 10 years ago.

I can see your interest, but to call it the public interest is to me something beyond comprehension and that is all.

Mr. BARNHARD. Thank you.

(Whereupon, at 5:40 p. m., the committee adjourned, to reconvene at 10 a. m., June 26, 1956.)

80209—56——9

METHODS OF DETERMINING VALUE OF IMPORTED GOODS FOR DUTY PURPOSES

TUESDAY, JUNE 26, 1956

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

The committee met, pursuant to recess, at 10:10 a. m., in room 312, Senate Office Building, Senator Harry Flood Byrd (chairman) presiding.

Present: Senators Byrd, Douglas, Millikin, Martin of Pennsylvania, Malone, Carlson, and Bennett.

Also present: Elizabeth B. Springer, chief clerk.

The CHAIRMAN. The committee will come to order.

The first witness is Mr. O. R. Strackbein, the Nation-Wide Committee of Industry, Agriculture and Labor on Import-Export Policy.

Will you come forward, sir, and take a seat. We are glad to see you.

STATEMENT OF O. R. STRACKBEIN, THE NATION-WIDE COMMITTEE OF INDUSTRY, AGRICULTURE, AND LABOR ON IMPORT-EXPORT POLICY

Mr. STRACKBEIN. Mr. Chairman and members of the committee, I don't believe this is the first time that I have appeared on this customs simplification bill. We had it here last year, and testimony was taken on the general subject.

Since the last hearing the Treasury Department has proposed a compromise. However, that compromise actually is nothing more than a 3-year transition period. It simply postpones the effective date from the present to 3 years hence.

Now, it does make the provision that if at the end of that time the Congress should not act adversely, H. R. 6040 would go into effect at the end of 3 years. In other words, it would require positive action on the part of Congress to prevent its going into effect.

So we feel that, actually, the proposal is nothing more than a 3-year period of postponement of the effective date. In the meantime, certain lists would be drawn up and certain other complicated procedures would be followed.

Actually, I see no purpose in those lists and those procedures. They certainly do not add up to simplification. The Treasury Department itself admits that they would introduce considerable complication and a very considerable amount of work. I don't see the point of drawing up these lists.

Mr. Chairman, before I proceed any further, I want to say that in speaking for the Nation-Wide Committee of Industry, Agriculture

and Labor on Import-Export Policy, I speak for a wide variety of industrial and agriculture and labor groups. I say this because yesterday it was intimated that only the chemical and the textile industries were much interested in this bill. That is not the case.

Many industries whose products when imported are dutiable on an ad valorem basis are extremely interested in this bill.

I would like to say that glassware and pottery, bicycles, scientific apparatus, vegetables, wine, handtools and cutlery, nuts and bolts, fisheries, raw wool, and also others are equally interested, along with the textile and chemical industries.

Now, inasmuch as the compromise proposal merely represents a postponement of the effective date, it seems to me that we really come back to the original H. R. 6040.

Yesterday the question came up of the relationship between H. R. 6040 and the General Agreement on Tariffs and Trade. There is no question in my mind that the genesis of this change of the basis of valuation does have its origin not only in the General Agreement on Tariffs and Trade but in its predecessor, the Charter for an International Trade Organization.

This can be documented—it has been documented in the past—before the Ways and Means Committee.

I would like to read at this point a part of article 7 of the General Agreement on Tariffs and Trade, which relates to value. I think it was shown that the present legislation is no more than a proposal to bring the United States law into conformity with the provisions of GATT, and that perhaps the question of customs simplification is distinctly a secondary consideration. Article 7 of GATT says:

> That the contracting parties recognize the validity of the general principles of valuation set forth in the folowing paragraphs of this article; and they undertake to give effect to such principles in respect of all products subject to duties or other charges or restrictions on importation and exportation, based upon or regulated in any manner by value, at the earliest practicable date.

That is to say, the contracting parties are to give effect to these principles at the earliest practicable date.

> Moreover, they shall, upon a request by another contracting party, review the operation of any of their laws or regulations relating to value for customs purposes in the light of these principles. The contracting parties—

referring, of course, to the cotnracting parties of the General Agreement on Tariffs and Trade—

> may request from contracting parties reports on steps taken by them in pursuance of the provisions of this article.

The United States is a signatory, and is therefore bound by article 7, paragraph 1. And it appears to me that H. R. 6040 is explained by this article that I have just read.

That is further reinforced by the principles that appear in this article and that are referred to in the part that I have read.

Paragraph 2 says, subparagraph (a):

> The value for customs purposes of imported merchandise should be based on the actual value of the imported merchandise on which duty is assessed, or of like merchandise, and should not be based on the value of merchandise of national origin or on arbitrary or fictitious values.

Then it goes on to define what they mean by actual value. Actual value, they say in subparagraph (b), should be—

the price at which, at a time and place determined by the legislation of the country of importation, and in the ordinary course of trade, such or like merchandise is sold or offered for sale under fully competitive conditions. To the extent to which the price of such or like merchandise is governed by the quantity in a particular transaction, the price to be considered should uniformly be related either to (1) comparable quanties or (2) quantities not less favorable to importers than those in which the greater volume of the merchandise is sold in the trade between the countries of exportation and importation.

Now, right there is a clue as to the contents of H. R. 6040. You may recall that the question of quantity, of wholesale quanties, is redefined, departing from the present law, to bring that definition into conformity with this concept of quantity. Also, there appears in the bill, as distinct from existing law, the same wording as appears in the section from GATT that I have just read, namely, "such or like merchandise sold or offered for sale"—"sold;" that word does not appear in our present law. And the origin, it seems clear, is to be found in this article of GATT.

Of course, it is not surprising that this should be so. The United States is a member of GATT. We have promised to conform our statutes to GATT, and this is one of the steps proposed in this correction.

The CHAIRMAN. Who made that promise?

Mr. STRACKBEIN. By signing the agreement—we are signatory to this article which says that the contracting parties undertake to give effect to such principles at the earliest practicable date.

Now, in the last revision of GATT there was taken out, there was deleted the clause "at the earliest practicable date." In other words, without putting a date on there, or specifying the earliest practicable date, it leaves us simply agreeing to undertake to give effect to such principles.

Senator MALONE. Mr. Chairman.

Mr. Strackbein, isn't it a fact that the Congress of the United States in 1934 gave the President full authority to organize any organization he might spearhead, and to locate the regulation of foreign trade, transfer it to this organization? Didn't the Secretary of State testify that they had full authority to do what they have done to organize GATT, the General Agreement on Tariffs and Trade, and put it in Geneva, under the 1934 Trade Agreement Act?

Mr. STRACKBEIN. The Secretary of State now takes the position that the General Agreement on Tariffs and Trade was fully authorized by the Trade Agreements Act of 1934.

Senator MALONE. Has that ever been denied? Congress has never denied it.

Mr. STRACKBEIN. That was not the prevoius position of the Department of State. The previous position of the Department of State was that the general agreement was not negotiated solely on the authority of the Trade Agreements Act, that they went beyond the authority of the Trade Agreements Act.

Senator MALONE. What is his position now? Am I correct that he testified that he has full authority to do what he does?

Mr. STRACKBEIN. That is correct.

The position has changed—that is to say, the State Department's position on this subject has changed.

Senator MALONE. Now, subsequent to the Secretary's testimony, and Congress knowing full well the Secretary's position that the

1934 Trade Agreements Act gave them full authority to put it in the President of the United States to organize or spearhead any organization that he cares to form and locate it any place that he cared to locate it; we extended the act 3 years. That is true, isn't it, Congress extended the act for 3 years?

The CHAIRMAN. I don't think the opinion of the Secretary of State is binding on Congress.

Senator MALONE. I am only trying to clarify it in the record, Mr. Chairman, and I would like very much to have the opportunity to do it.

The CHAIRMAN. But you are stating as a fact something that isn't necessary for the record.

Senator MALONE. I would just like an opportunity to clarify this in the record.

Isn't it a fact that the Secretary testified that they had full authority to do what they have done?

Mr. STRACKBEIN. Yes, he did.

The CHAIRMAN. Wait a minute.

He testified to that effect when he came up and supported legislation to authorize him to do it? That wasn't consistent was it?

Mr. STRACKBEIN. Mr. Chairman, I fully agree, myself, that the Trade Agreement Act of 1934 did not authorize fully all the provisions that are found in the General Agreement on Tariffs and Trade. But the Secretary of State has said in a new position adopted contrary to the previous position, that in their estimation, at least——

The CHAIRMAN. The Secretary was before the Finance Committee advocating GATT; was he not?

Mr. STRACKBEIN. Yes.

The CHAIRMAN. Then it is said that he stated that he had the authority?

Mr. STRACKBEIN. That is right.

The CHAIRMAN. If he had the authority, why was he advocating the passage of GATT?

Mr. STRACKBEIN. Mr. Chairman, I recall that very distinctly.

Senator MALONE. May I ask one more question, if you are finished?

The CHAIRMAN. Go ahead.

Senator MALONE. Did or did not the Congress of the United States, after listening to this testimony, have full authority to do what they have done, extend that act for 3 years, with full knowledge and full understanding that the Secretary believed, and that his attorneys and the White House attorneys had agreed, that there was full authority in the 1934 act to form GATT, locate it in Geneva, or form any other organization and locate it anywhere?

Under my questioning, he testified to that fact.

Mr. STRACKBEIN. The fact is that the Congress passed the bill.

Senator MALONE. And extended the bill after hearing his testimony?

Mr. STRACKBEIN. They heard his testimony, along with a lot of other perhaps contrary testimony.

Senator MALONE. That wasn't my question. Did he extend it 3 years after we knew he believed that he had full authority to do what he has done?

Mr. STRACKBEIN. There is no question about it.

The CHAIRMAN. I want to say this, as chairman of the committee I don't recognize the authority of the Secretary of State—it is nothing

to his discredit, but I don't recognize his authority—to speak for the Congress of the United States in matters of this kind, when, at the same time, he asks for legislation authorizing him to do so.

Mr. STRACKBEIN. That is correct.

Senator MALONE. Then I will just add this, Mr. Chairman, that every act that comes before this committee is a creeping paralysis on the trade of the United States of America, and this is part of it, and every time we adopt one of these things we just go one step further.

I will ask the witness if he agrees with that general statement.

Mr. STRACKBEIN. That is a very broad statement. I wouldn't want to be in the position of answering that yes or no.

Senator MALONE. Then state it in your own words. What do you think we are doing now?

Mr. STRACKBEIN. I am testifying on H. R. 6040, and a compromise offered by the Treasury Department.

Senator MALONE. What do you think it does?

Mr. STRACKBEIN. I haven't concluded my testimony but, in my opinion, it would would lead to a further reduction of the tariff in certain areas.

Senator MALONE. And then do you think—this is why I am questioning you, because this is what I heard you say—that it is another step toward—at least, I understood you to say that it is another step in the approval of certain factors in the General Agreement on Tariffs and Trade?

Mr. STRACKBEIN. Correct.

Senator MALONE. That is my whole point.

Go ahead.

Mr. STRACKBEIN. The effect of H. R. 6040 would be, in many instances, to lower the duty paid on certain products that are dutiable on and advalorem basis. That is admitted by the Treasury Department.

Senator MALONE. Even with the present admendment, proposed admendment?

Mr. STRACKBEIN. Yes.

As previously explained, Senator, the present admendment is nothing more than a 3-year transition period—that is to say, after 3 years, unless Congress acted to the contrary, the bill would go into effect, and export value would supersede foreign value altogether.

So that the extent to which export value is lower than foreign value, the effectiveness of the tariff would be reduced.

Now, it has been testified that there is a considerable variation from one group of products to another, as to the difference between foreign value and export value. Nonetheless, there is this difference, and no one knows exactly what it is.

Senator MALONE. Mr. Chairman, if I might interpose there, I think this is very interesting testimony, and in my opinion has the finger right on the sore spot.

Now, Mr. Strackbein, hasn't there been for 24 years a definite trend toward making it easier to use the low-cost foreign labor and import goods into this country and displace the American labor, and all of these acts, all of these approaches—many different approaches—all these are the same thing, to make it easier to bring the low-cost manufactured goods in to this country?

Mr. STRACKBEIN. You ask that as a question?

Senator MALONE. That is a question. Is that a fact, for 24 years now, since 1934 to 1956?

Mr. STRACKBEIN. The trade program was designed to reduce world trade barriers, so it would not be surprising.

Senator MALONE. Just define a barrier for me. Even you and I are talking about some of these catchwords and phrases like "dollar shortage," and "reciprocal trade," and "trade barriers." And I notice this morning's papers all talk about high tariff. I never mentioned high tariff in any of my questions or discussions.

What we are talking about is the difference between the wages and the effective wages paid in foreign competitive countries, and the difference in taxes, and the difference in the cost of doing business. Nobody is talking about a high tariff or a low tariff or duty.

Mr. STRACKBEIN. But relating your question to this particular legislation, we have no objection to the improvement of customs administration and to the elimination of complicated and obsolete practices; if it stopped there, we would have no objection to it.

Senator MALONE. Of course not. But isn't this just one more drop of water on the wheel, however slight, to bring it in at a cheaper price?

Mr. STRACKBEIN. My own view was that it was more of an effort to bring our present statute into conformity with the provisions of the General Agreement on Tariffs and Trade.

Incidentally, it may have the effect that you say, if lowering the duty. But that is not our only objection. We have another objection, and that goes to the weakening of the Antidumping Act of 1921.

Dumping is defined as selling goods at a price lower than that prevailing in the usual wholesale quanties in the country of export. If this legislation is adopted, either the Treasury Department continues to ascertain what foreign value is—in which case, I find it hard to see where there will be any simplification or any reduction in work—or it will eliminate the ascertainment of foreign value.

If it does the latter, then it will be extremely difficult to make a case of dumping, because in order to establish dumping as a fact you must prove that the price at which the goods are sold is lower than that prevailing in the country of export.

Now, if you don't have any record of what those prices are, then how can you prove that there has been dumping?

The Treasury has answered by saying that they will continue to demand that the foreign value be stated on the invoice. Of course, if there is no surveillance, it would be very easy for a foreign exporter to set down a price on an invoice. He could make the price the same as the export value price, which would be the value adopted under this law. An in that case, you would have no evidence of dumping whatsoever.

In order to determine whether or not the foreign value was actually higher than the export value, an investigation would have to be instituted; otherwise you would have no evidence.

And again, going beyond that, under this bill the export value would be the value of the goods for exportation to the United States. That means that if a country were so minded, if it desired to penetrate this market, it could lower its price on the goods for shipment

to the United States to a level lower than the price offered to other countries, and it would be within the law.

Now, then, the Treasury says that would be dumping. But, on the other hand, the foreign shipper, the foreign country would be in the position of having complied with our law, with our law on valuation.

Now, we would say, yes, but we have another law on the same subject, and you are in violation of that law, you are in violation of our Antidumping Act.

Which of the two would then prevail, the Antidumping Act of 1921 or the Customs Act of 1956?

And furthermore, it seems to me that rather than leading to friendly relations with other countries in the field of international trade, this would actually be throwing sand into the gears.

You have two laws on the same subject; and if they (the foreign exporters) comply with one law they find themselves in violation of the other law. And that condition would seem to me to be very unsound.

The bill was amended to say that nothing in the bill was to be construed in any way as weakening or otherwise affecting the Antidumping Act.

Nothing in this Act—

it says—

shall be considered to repeal, modify or supersede, directly or indirectly, any provision of the Antidumping Act of 1921.

But you still have the situation where, if a foreign shipper complies with our laws on valuation, he may still be in violation of another of our laws.

And, secondly, as I said before, if you drop foreign value, you will have no yardstick by which to measure whether or not dumping has actually taken place, unless the Treasury Department takes the trouble, expends the money, and hires the people or keeps employed these people whose business it will be to ascertain foreign value even though it is no longer the basis of our valuation for customs purposes.

There is a similar situation with respect to the countervailing duty, which is a part of the Tariff Act of 1930. I see no point in going into that, since the principle is exactly the same as in the case of the antidumping—that is to say, where they could be—a foreign shipper could be in conformity with our law on the one hand, and in violation of another law on the same subject, by the same act, i. e., by the same act of valuing their goods and shipping to the United States.

The CHAIRMAN. What would be your suggestion as to the basis of value?

Mr. STRACKBEIN. I beg your pardon?

The CHAIRMAN. What would you advise to take as a basis of value of the imports?

Mr. STRACKBEIN. I think the present system, export value or foreign value, whichever is higher—I see no strong reason, no urgent reason for changing it, and I don't believe that the Treasury Department would, if we were not a signatory to the general agreement.

The CHAIRMAN. Exactly how does this amendment change the present basis of valuation?

Mr. STRACKBEIN. The present basis says that the value of the goods shall be the foreign value or the export value, whichever is higher.

Now, the foreign value is the value of the goods in the usual wholesale quantity in the country of export.

The export value is different, in that it is the value of such goods made ready for shipment to the United States. It may not include internal taxes, or it may be a special price for shipment to the United States. The export value need bear no relation to the foreign value.

If they want to sell at 10 or 20 percent discount to the United States in order to penetrate this market, as a cartel might do, they can do so.

The CHAIRMAN. Would the export value be the selling price?

Mr. STRACKBEIN. Ready for shipment to the United States, yes.

The CHAIRMAN. Selling price, f. o. b. to the shipper?

Mr. STRACKBEIN. Packed, ready for shipment.

The CHAIRMAN. Suppose it was consigned and didn't have a selling price, what then?

Mr. STRACKBEIN. There is a special provision in the tariff act for cases of that kind where they construct domestic value. They allow so much for profits, so much for commission, and so forth, so much for the expenses, all set forth in the act itself. But not a great volume of goods moves in that manner.

The CHAIRMAN. Continue to explain the way this amendment changes the basis of valuation. You stated what the law was at present.

Mr STRACKBEIN. Today it is the foreign value.

The CHAIRMAN. You have stated that; I understand that. Now, explain how this amendment changes that.

Mr. STRACKBEIN. Under the bill it would be the price at which the goods are made ready for shipment to the United States, and that need have no relation to the foreign value, no necessary relation.

The CHAIRMAN. That is the law now?

Mr. STRACKBEIN. No.

Today you do have foreign value or export value, but the customs takes whichever is higher.

The CHAIRMAN. I have got that now. Explain how this amendment changes it.

Mr. STRACKBEIN. This would abolish foreign value, you wouldn't have the higher, you would have nothing to compare the export value with; it would be the export value, whatever appears on the invoice. And you wouldn't have this other yardstick.

The CHAIRMAN. Suppose you consign goods and don't make a sale of them, who would then determine the value? That is frequently done, isn't it?

Mr. STRACKBEIN. Yes. But it is not one of the—if I had the Tariff Act of 1930 with me I think I could point out the value as it is there calculated.

The CHAIRMAN. That is the custom you have of shipping goods back and forth. I used to consign great quantities of apples to England. I didn't have a selling price. That is just like consigning them to a commission merchant in this country. Isn't that custom still used between countries?

Mr. STRACKBEIN. Yes; there is a provision for that type of shipment. It provides for adding on to the selling price or the quoted price a commission and a certain allowance for profit.

The CHAIRMAN. Now, your objection, one of your objections to this amendment, is that it abolishes the foreign value?

Mr. STRACKBEIN. That is correct.

The CHAIRMAN. And the reasons you object to it is that that would lead to dumping?

Mr. STRACKBEIN. That is correct.

The CHAIRMAN. And if you put an export value on it there would be no way to ascertain whether it would mean a dumping at an unnecessary low valuation?

Mr. STRACKBEIN. Right.

The CHAIRMAN. You object to the amendment first for that reason; am I correct?

Mr. STRACKBEIN. One of the practical effects that it would have, yes. I don't want to say that it would be impossible to ascertain whether there was dumping. But if the antidumping statute is to be enforced, then I do not see where the adoption of this system would lead to any economy of administration.

The CHAIRMAN. You object to that. Now, what else do you object to with respect to this amendment?

First, let me ask you, because I have confidence in your judgment on these matters, you are a student of them and have appeared before the committee on them many times; do you think there is need for customs simplification?

Mr. STRACKBEIN. There was need for customs simplification, I think that was generally admitted, and two bills have been enacted into law.

The CHAIRMAN. Is there a need now for customs simplification?

Mr. STRACKBEIN. Further need?

The CHAIRMAN. Yes.

Mr. STRACKBEIN. I wouldn't want to say that there wasn't, because undoubtedly a management firm could look into the system as it is now administered, and perhaps could find ways of cutting corners here and there. But I am not aware of any great field where further simplification can be accomplished, if you want to protect American industry, if you want to give full effect to the tariff as enacted by Congress and the other customs laws, such as inspection of goods for health and sanitary purposes, and so on.

Now, of course, you could simplify customs by cutting out all formalities at the customhouse, and it would greatly simplify it. But if you want to preserve certain objectives you can't go too far with simplification, you simply do it at the expense of the law that is supposed to be enforced.

The CHAIRMAN. No. 1, you see no particular need for simplification. No. 2——

Mr. STRACKBEIN. I don't want to say that. I would say there may still be room for simplification. But I don't believe that this bill lies in that sector.

The CHAIRMAN. How would you simplify it, then?

Mr. STRACKBEIN. Senator, I think it was in 1947 that a management firm made an investigation for the Treasury Department, and they issued a report. If I were asked to pick out the spots that still need further simplification, I would want to go over that report and then determine to what extent the legislation that has already been passed has complied with those recommendations, and how the methods and procedures since they were changed, whether they actually did result in improvement and greater efficiency.

I wouldn't want to put myself in the position of saying out of hand that nothing else can still be done, or that the acts already passed have fulfilled completely the objective of customs simplification. I think they should go back and resurvey to see whether or not the previous recommendations have been susbtantially carried out.

The CHAIRMAN. Is there any pressing need for simplification, in your judgment, at this time?

Mr. STRACKBEIN. I wouldn't say there was.

The CHAIRMAN. And you object to this amendment, first, because it eliminates the foreign valuation. What other objections do you have?

Mr. STRACKBEIN. The tariff reduction of unstated amount that would result without hearings before any of the committees of Congress about the extent of the reductions, and just what would happen—in other words, here is a gratuitous tariff reduction made without Congress having any detailed information. Any time that——

Senator MARTIN. Might I ask a question?

You still feel that the matter of tariff is a function of Congress?

Mr. STRACKBEIN. Yes.

Senator MALONE. Actually it is not a function right now, is it?

Mr. STRACKBEIN. Under the Constitution, it is.

Senator MALONE. Under the Constitution, but as now carried out, the Congress has nothing whatever to do with it, unless they want to repudiate what is done, does it?

Mr. STRACKBEIN. I wouldn't want to say that Congress has nothing whatever to do with it; I think that Congress has passed over to the executive branch of the Government a very considerable authority over the tariff.

Senator MALONE. Well, of course, we could take it back by repealing the 1934 Trade Agreements Act, or we could allow it to run out in 1958, and it automatically, in either case, would revert to the constitutional authority, the constitutional responsibility of Congress—that is, they would actually exercise their constitutional responsibility. But as of the moment, except for that latent power that we could at any time exercise by the repeal of the act and the modification of it, we do not actually even know what is going on, do we, in Geneva?

Mr. STRACKBEIN. I would prefer to say that we don't know exactly what is going on while it is going on, we learn later what went on.

Senator MALONE. We learn after it has been signed and sealed, and delivered——

Senator MARTIN. Would the Senator yield there?

Senator MALONE. I would be happy to.

Senator MARTIN. Mr. Strackbein, what I was getting at, the matter of the tariff is the responsibility of Congress?

Mr. STRACKBEIN. Correct.

Senator MARTIN. And if we start to delegate authority, we are still responsible?

Mr. STRACKBEIN. Correct.

Senator MARTIN. That is what I wanted to get at.

Senator MALONE. How do you figure that we are responsible Mr. Strackbein? It would be very interesting to me to have it explained for the record. We are responsible now——

Mr. STRACKBEIN. Under the Constitution, the authority and the responsibility of levying and collecting taxes and duties is one of the

enumerated powers of Congress, and so also is the regulation of foreign commerce. So it is a responsibility of the Congress, under the Constitution, and will so remain until the Constitution is amended.

Senator MALONE. I think you are absolutely correct. But the effect of it is, actually if a general in charge of an army just said, "There is the enemy; take over, sergeant," and he goes home, he isn't actually in charge, is he? He is responsible; he may get his head cut off.

Mr. STRACKBEIN. I think that it is up to the American people.

Senator MALONE. As a matter of fact, when some of us go home we may get our heads cut off. But we are not now regulating the foreign trade, are we?

Mr. STRACKBEIN. Well, it is up to the American people to determine whether or not the representatives that they have elected to the Congress have carried out their responsibilities——

Senator MALONE. I agree with you thoroughly.

Mr. STRACKBEIN (continuing). Because that is where the sovereignty of this country resides.

Senator MALONE. I agree with you there. And I think they will take it over, too, one of these days.

Mr. STRACKBEIN. Mr. Chairman, the objection to duty reductions that are——

Senator MALONE. As a matter of fact—just one question further—in the 1934 Trade Agreements Act didn't Congress dodge its responsibility deliberately, just got afraid of its own responsibility and left it in the hands of someone who had the nerve to take it over and cut the tariff below that differential in the labor cost?

Mr. STRACKBEIN. Well, the Congress delegated to the executive certain powers to enter into trade agreements, and to raise or lower the duty by 50 percent.

Senator MALONE. And then he has now delegated that power to the General Agreements on Tariffs and Trade, located at Geneva; is that true?

Mr. STRACKBEIN. That is not quite correct, no.

Senator MALONE. What is the correct statement in that regard? I would be very happy to have your explanation.

Mr. STRACKBEIN. The United States signed the General Agreement on Tariffs and Trade, along with 22 other countries——

Senator MALONE. Thirty-four, isn't it?

Mr. STRACKBEIN. Today, but in 1947 it was 22 countries.

Senator MALONE. Now it is 34 countries, with us having 1 vote, the same as each of the others; isn't that true?

Mr. STRACKBEIN. That is correct.

But in delegating the power to reduce or increase the duties, the Congress—at least, in my estimation—did not delegate to the executive the authority to agree to certain provisions in the general agreements, which go far beyond the question of reducing the duty.

As an example of that, the United States has agreed that there will not be established or maintained import quotas on the imports of any products. There are some exceptions to that. But it is, nonetheless, a firm commitment. We have a firm commitment to eliminate any quotas that we now have, even though they fall within the exceptions.

Now, there is a case where the Executive has made an international commitment that the Congress will not do what the Constitution says it may do and shall do under particular circumstances.

Senator MALONE. But isn't the practical effect, what I just said to you, isn't that the practical effect, that we wake up here 2 year or a year and a half after all these negotiations—I happened to be there last fall, in Geneva, as I said yesterday, I made it a point to take the Chairman or President or Secretary of GATT out to lunch—he is a Britisher, as you might expect, and a very affable one and a very effective one, and I do not blame him for what he is doing.

But the effect of it is that we get a pamphlet about an inch thick—it was laid on my desk about 2 weeks ago—that constitute about 1 year or even 2 years' work of a complex system of multilateral agreements of lowering tariffs. And that is the first I had ever heard of it, as a Member of the Senate, and if any other Senator was notified of what was going on and how it was being done, he kept it very quiet. And, as a matter of fact, the businessmen of this country are not allowed to know what is going on. Now, is all that the practical effect?

Mr. STRACKBEIN. Well, the effect there has been—in this particular instance, the contracting parties of GATT came together in a general conference—I think it was the fourth general tariff-cutting conference—and the United States, the Congress had authorized the President to make a further reduction of 15 percent in existing rates of duty. And it was in carrying out that specific delegation that the conference was held and that these reductions were made.

Senator MALONE. You have made a much longer statement than I did about it. But the facts are still the same, that these tariff reductions were made without the knowledge at all of Congress, as to just what was being done?

Mr. STRACKBEIN. No, I wouldn't say that. The Congress authorized a further 15-percent reduction.

Senator MALONE. Well, they authorized 50 percent first, as you started to say a while ago, and then another 50 percent, which is 75 percent on one product, if they both were exercised. Is that true?

Mr. STRACKBEIN. That is correct.

Senator MALONE. Now, then, we have a 15 percent additional. So Congress authorizes all of these things, and then walks away from its responsibility, and allows someone to do it, and it is published, and we can't help it.

Is that about right?

Mr. STRACKBEIN. Senator, you are a Member of Congress, and I am not.

Senator MALONE. You already know that, but I am asking the questions.

Mr. STRACKBEIN. I mean, I didn't walk away.

Senator MALONE. I said the Congress walked away, and you are not included in it.

The CHAIRMAN. Congress also authorized the President to establish quotas in the event some domestic industry——

Senator MALONE. Could I have an answer to this question, Mr. Chairman?

Mr. STRACKBEIN. As to whether or not Congress walked away?

Senator MALONE. No. The question was about 10 minutes ago. Is the practical effect——

Mr. STRACKBEIN. I have forgotten it.

Senator MALONE. Is the practical effect of the first 50 percent authorization and the second 50 percent authorization and third 15 percent

authorization; under certain conditions, is the practical effect of it, then, that Congress forgets or walks away, and at Geneva now where this thing is located, they go ahead under their multilateral trade agreements and make any kind of agreements within that limit that they care to make, and then publish it and send us a copy?

Mr. STRACKBEIN. Now, I am not saying that Congress has walked away.

Senator MALONE. No; it might have run a little ways—at least, hid its head in the sand, we will put it that way.

Mr. STRACKBEIN. The effect is that in these conferences the negotiations are carried on in secret fashion. There is no member of the press there, there is no member of the American business or agricultural or labor community there. And whatever the conferees wish to give out in the way of a press statement they give out, and nothing else.

So that you do not actually know what is going on within these limits of delegated authority; that is entirely true.

Senator MALONE. I guess that is much shorter. I am a little blunter in my statement. I think yours will read better, and maybe make a better feeling with the Senator or Congressman that has either walked or run away from his responsibility, or stuck his head in the sand.

But the fact remains that he doesn't know what is going on, does he, and he doesn't know how certain businesses in this country, or products, or production are going to be affected, does he?

Mr. STRACKBEIN. I don't know the minds of all the Congressmen. Perhaps some of them do.

Senator MALONE. Unless he reads it in a report, and then they don't know what the effects are going to be until about 6 months or a year, when the boys are on the street.

So I merely ask you the general question: When they passed the 1934 Trade Agreement Act and they gave them a 50-percent reduction that could go within that limit, and then the additional 50 percent, and then the additional 15 percent, Congress had nothing to do with the detailed arrangement as to how that was to be done, or how much at one time was to be accomplished?

Mr. STRACKBEIN. I think that is correct.

Senator MALONE. And they know nothing about it until after it is published in a pamphlet, and then sent to them? I think we are getting somewhere now.

Mr. STRACKBEIN. I think that is perhaps true, although Congress could have, perhaps, set up a watchdog committee.

Senator MALONE. What would you watch? They don't let you in their conference over there.

Mr. STRACKBEIN. I think they would allow Members of Congress.

Senator MALONE. You might stay in the hotel. I know Congressment that went over there and tried to listen in, and they wouldn't let them listen in. Did you ever hear of that?

Mr. STRACKBEIN. No, I have not heard of that. I understood that there were representatives of business that had gone over there with the idea that they could perhaps—that the hearings were public, or that people could sit in and listen and observe what was going on. And they would not permit them inside. That is entirely true.

Senator MALONE. The same with Congressmen.

I think that is all right. It took quite a while, there is a lot of language, but I think the result is all right.

Mr. Chairman, that is all at the present time.

Mr. STRACKBEIN. Mr. Chairman, I wanted to answer this one question. You asked about the objections to this bill, and one of the objections that I mentioned was the tariff reduction that would be incidental to this bill.

The CHAIRMAN. Do you accept Mr. Rose's statement as to the manner of that reduction?

Mr. STRACKBEIN. That was based on a sampling operation, and I don't know how good the sampling was. It is somewhat like a public-opinion poll. Unless the sample is very carefully worked out, you may get a very erroneous result, as has happened in some instances.

But it is admitted, in any case, by Mr. Rose that reductions would take place in some instances, of an unknown magnitude.

The CHAIRMAN. But it is limited to 5 percent; isn't it?

Mr. STRACKBEIN. It wouldn't be after 3 years. After 3 years, the whole thing would go into effect, unless Congress legislated positively to the contrary. No; it would not be limited to 5 percent. That is a misimpression. After 3 years the foreign valuation would be set aside, so whatever the difference would be between foreign valuation and export value would be lost.

So, if it were 20 or 50 percent—in other words, if the export value in particular items were 20 percent lower than foreign value would be, you would take the export value after 3 years.

Now, the question of individual rates of duty is so important that the United States cannot make a change unilaterally in any duty without consulting the contracting parties of GATT. If individual rates are that important, then are they not also important enough that they should not—that widespread reductions should not be made by simply passing a bill of which these reductions would be a byproduct?

In other words, supposing in a particular instance the reduction in valuation would be as much as 20 percent. Now, if anyone undertakes to have a duty modified, they go to the Ways and Means Committee and have a bill introduced, and hearings are held, on any individual item. Perhaps the modification is not very important, it might be only 5 or 10 or 15 percent. But here is a whole range of items where reductions of an unknown magnitude would occur. And yet there is no examination into any of the individnual items, no examination as to particular circumstances, no examination as to the kind of competitive position that the industry is in in relation to imports.

Senator MALONE. Isn't it a matter, Mr. Strackbein, of averaging the reduction of duties, when it is well known that 1 percent often is the difference, or 2 percent, and when you average a large number of duty reductions, it would be a good deal like averaging the lengths of a lot of pairs of pants, they wouldn't fit anybody; would they?

Mr. STRACKBEIN. Well, they might fit a few; yes. The averages are always a mean between extremes, of course, and in averages you don't get the extremes.

Senator MALONE. Some would be ruined, and some not hurt at all?

Mr. STRACKBEIN. That is right.

Senator MALONE. Is it your opinion that the countries that we deal with made commensurate reductions in their tariff to what we have made?

Mr. STRACKBEIN. My opinion is that they have not—across the board, they have not—and in many instances where they have, they have substituted other import restrictions. So that the effectiveness of a lower duty did not necessarily take effect. They have instituted the exchange controls.

On top of that, they have instituted a system, in many of these countries, of import licenses. Now, you can remove a duty, and as long as the Government controls how much exchange is extended to a particular import, the duty becomes meaningless.

Senator MALONE. Or they refuse to issue a license.

Mr. STRACKBEIN. Or again, if the import license has to be obtained by going to some central authority, then again any duty reduction may become meaningless, because if a country, if the government does not want these imports, it simply doesn't issue the licenses.

So, on balance, I would say that the United States has made concessions far outweighing the concessions, the effective concessions made by other countries.

The CHAIRMAN. Have you got any specific instances of that?

Mr. STRACKBEIN. There is a listing which has been made by the Department of Commerce of the countries that exercise exchange controls, as well as those that require an import license. That is quite a long list. And these practices are engaged in by nearly all the leading trading nations of the world.

I can obtain that list for the record, if you so desire. (See letter p. 148.)

The CHAIRMAN. I would like to have that. But offhand, you don't recall any specific cases?

Mr. STRACKBEIN. Well, among these countries that require an import license to bring in anything, anything at all, any imports—you don't bring them in without an import license, and the same thing with the exchange control. Now, there are specific instances——

The CHAIRMAN. I am not talking about the license in this country, but in other countries.

Mr. STRACKBEIN. I am talking about other countries. If you want to ship a motorcycle to England, no importer over there can import this item without an import license that mentions the item and how many of the items and at what cost. And, as a matter of fact, I understand that you cannot ship—you cannot sell an American motorcycle in the United Kingdom.

Now, whether that has been changed recently, I don't know, but it was so testified. And I am sure that could be verified. I think that you would find that if you undertook, as a manufacturer of watches, to ship watches to Switzerland you would have a very difficult time, indeed. I don't think you would get your watches in over there.

The CHAIRMAN. This memorandum that you are speaking about, will that cover these cases? It is a matter of considerable interest to me. I would like to know, in making these agreements, whether you receive the same treatment or equal treatment from other countries shipping to us.

Mr. STRACKBEIN. I can tell you without reservation that we do not.

The CHAIRMAN. But I want something more than that. I want specific instances where we don't, and the reasons why it is that we don't. That may be your opinion, and I know it is an honest opinion,

but you have got to go a little further than that and get some information. Is that available anywhere, that information?

Mr. STRACKBEIN. The list of import restrictions is available, and I can make that available to you.

The CHAIRMAN. That is just one part of it; isn't it?

Mr. STRACKBEIN. That does not mention any specific commodities.

The CHAIRMAN. That is what I mean; it doesn't mention any specific tariff, either.

Mr. STRAKBEIN. No. It simply lists the country that, as a matter of importation into that country——

The CHAIRMAN. Where they have the import restrictions, and then disregard them, what would be the tariff to another country, and the tariff, here?

Mr. STRACKBEIN. You mean the relative tariff rates?

The CHAIRMAN. Yes.

Mr. STRACKBEIN. Well, coming now to the averages to which Senator Malone objects, the average rate of duty on dutiable items on imports in the United States is now about 12½ percent. This puts us among the lower tariff levels of the world. There are only 6 or 7 other countries of the trading nations that have tariffs lower than we do, on the average, on the dutiable items.

Actually, our duty—the effective protective effect of our duty has been reduced by a full 75 percent under this program.

The CHAIRMAN. I understand that.

Mr. STRACKBEIN. Previously, the average duty was slightly over 50 percent.

The CHAIRMAN. In that period it was 75 percent. Did the other nations reduce their tariffs on an average of 75 percent?

Mr. STRAKBEIN. No. Some may have, but even if they did, they have backstopped themselves, they have covered themselves by these systems of exchange controls and import licenses.

The CHAIRMAN. I understand that. But we have got to consider one step at a time, get the tariff information first, because they have these import licenses, or whatever they are——

Mr. STRACKBEIN. We have some information which shows the extent to which these duties——

The CHAIRMAN. The licenses can be changed from time to time. Going back once more to apples, with which I am familiar, if there is a shortage of apples in England, they permit imports; if there is not a shortage, they don't. That is one question.

On the tariff question, which is a simpler one; during the time that we have had the tariff agreements whereby we proposed to reduce an average of 75 percent, what the other nations have done in the way of tariff duties? It is very hard to get an analysis of these imports permits, because they vary from time to time.

Mr. STRACKBEIN. They do. They may vary at will, at the will of the foreign country.

Senator BENNETT. Mr. Chairman, I understand that GATT has just made an announcement of its recent negotiations, and they probably show—I think they should be available to the committee, and perhaps in this record—probably show that in exchange for definite tariff reductions on our part, the other contracting nations have simply agreed to freeze their present levels, to bind themselves not to

raise their present levels. I think the committee might be interested in looking at that.

The CHAIRMAN. I think the committee should go into that feature, to see whether these agreements are really reciprocal. I am not saying that they are not. But that the whole theory of this program is to have reciprocal trade agreements whereby each party makes concessions in the interests of world trade. Isn't that the basis of it?

Mr. STRACKBEIN. That is correct.

Now there are some 60,000 items in this Geneva agreement.

The CHAIRMAN. I know that. But there must be information somewhere.

Mr. STRACKBEIN. There is. I will undertake to obtain it for you. (See letter, p. —.)

The CHAIRMAN. The Senator from Nevada says that we have run out on our obligations. As a matter of fact I don't think we ran out on our obligations. We changed from a system in existence in 1935 that was proven to be totally ineffective in world trade. That was when Congress fixed each individual item. Isn't that correct?

Mr. STRACKBEIN. Yes. I know of no one who advocates going back to that, Senator.

The CHAIRMAN. I don't know about that. I believe there are some who advocate going back to that.

Mr. STRACKBEIN. For the record, I am not one of them.

The CHAIRMAN. And then reciprocal trade was taken as a substitute for that plan which had proved to be completely unworkable. So we laid out the general rules whereby these agreements were made.

Congress has always controlled that, as you know. And we can cancel that any time we please. And the last time we gave the President the right to put on an import quota to protect any American industry that was in distress.

Mr. STRACKBEIN. But, Mr. Chairman, the situation that has been created is this: that the United States has agreed in the Geneva agreement not to do certain things. Now, that does not mean that Congress cannot do them.

The CHAIRMAN. That is a very confusing situation. And maybe I don't fully understand it. These agreements have been made, and they have not been approved by Congress—that is to say, GATT has not been approved by Congress.

Mr. STRACKBEIN. Right.

The CHAIRMAN. Now, the question is whether the original Reciprocal Trade Act gave the right of bilateral agreement, multilateral agreement—that is what I understand the State Department bases their position on.

Mr. STRACKBEIN. They claim that it does.

The CHAIRMAN. But the State Department, or the President, or whoever it is certainly is not very certain of his position, because authority to legalize GATT has been requested twice. Isn't that correct?

Mr. STRACKBEIN. That is correct.

Now, more recently, they have not asked for the legalization of GATT directly, but for an approval by Congress of the Organization for Trade Cooperation, which, in turn, would administer and carry out the purposes and objectives of GATT.

The CHAIRMAN. Well, what is the difference?

Mr. STRACKBEIN. It is the same horse.

The CHAIRMAN. I have been here 23 years, and I have seen names changed frequently. They get something unpopular, and they change it to another name. But the purpose of both these acts is the same, to legalize making agreements among 34 nations.

Mr. STRACKBEIN. Yes.

I did want to make a further comment on the question of the powers of Congress and the position in which the United States finds itself as the result of the agreements made by the State Department.

The State Department makes certain agreements, it has agreed that we will not establish or maintain import quotas. Now, that is a firm commitment. There are certain exceptions. The only one applying to the United States is the one on agricultural commodities. Several exceptions were made——

The CHAIRMAN. This last act went way beyond agricultural commodities. You can establish a quota on anything.

Mr. STRACKBEIN. That is in violation of the general agreement.

The CHAIRMAN. Isn't it true that under the amendment that we enacted last year there can be a quota on the importation of oils, a quota on the importation of Japanese textiles, a quota on anything, regardless of the agreements made by these technicians?

Mr. STRACKBEIN. That is correct.

When it comes to the administration of these things, they are placed in the hands of the Executive, and then they will not carry them out, because to carry them out in many instances would be in conflict with the international obligations that they have assumed.

The CHAIRMAN. What administration?

Mr. STRACKBEIN. Whichever administration is in power.

The CHAIRMAN. But administrations change every 4 years.

Mr. STRACKBEIN. The executive branch of the Government.

The CHAIRMAN. That isn't a continuous policy.

Mr. STRACKBEIN. I know, but it is the Executive that has negotiated these agreements and has agreed not to establish or make import quotas.

The CHAIRMAN. Do you think it would be improper for a President to establish a quota on oils, for example, or against Japanese textiles?

Mr. STRACKBEIN. In my own mind, it would not be improper, but it would be a violation of the General Agreement on Tariffs and Trade.

The CHAIRMAN. Would it be illegal?

Mr. STRACKBEIN. That becomes a constitutional question, Senator. I would say—all that I can say is that it would be a violation of the international commitments of the United States. Now, whether that would make it illegal or not is a different question. I think that the——

The CHAIRMAN. If Congress authorized it, it wouldn't be illegal, would it?

Mr. STRACKBEIN. No; if Congress authorized it without the limits of delegated power it would not be illegal, but it might——

The CHAIRMAN. You are familiar with the amendment that was adopted, aren't you?

Mr. STRACKBEIN. Yes.

The CHAIRMAN. It wouldn't be illegal to put a quota on anything that comes into this country?

Mr. STRACKBEIN. I am sure that that provision was not illegal, because Congress was carrying out its authority to regulate the commerce of the United States, and I am sure that it is not illegal. But that does not say that it would not be in violation of an agreement by the Executive. That is the situation.

The CHAIRMAN. It comes back to the point as to whether this agreement is a legal agreement. If it was an illegal agreement it would be in violation of the law.

Mr. STRACKBEIN. I would agree that the GATT, in great part, is not illegal.

The CHAIRMAN. You are a very interesting witness, but we have three others.

Senator MALONE. Mr. Chairman.

I think you have made a very interesting witness, Mr. Strackbein, and a very valuable contribution to the record.

I want to ask you a question. We talk about lowering duties, and a foreign nation having a comparable lowering of duties on some other product. But in the first instance, the only thing we have used our tariff for in many, many years—it started out as a revenue measure, but was abandoned later; in 1789 it started out as a revenue measure—I have heard debates about it—but soon it became a protection measure.

And over the years, for 145 years, we did use it as a protection measure. And then, in 1934 we reversed the process.

Now, during that 145 years we raised the standard of living in this country very high, much higher than any nation in the world. Now, if you start out with our level of tariffs in 1934—or our standard of living and their standard of living being so different, there was no reason whatever for them having a tariff applicable against us for protection, was there?

Mr. STRACKBEIN. Well, there might very well have been in particular industries.

Senator MALONE. Of course, why, they didn't at the time have the up-to-date machinery and the know-how that we had.

Mr. STRACKBEIN. That is right.

Senator MALONE. But let's assume now right at the present time, where your machinery, mostly paid for by the American taxpayer, but sometimes by American manufacturers, going into these places, and then take their superintendents and trainers of labor, and they have the know-how, then in countries, especially like England or Scotland or Australia, or in any of the livewire countries, there is very little difference in efficiency, is there? Isn't there very little difference after they have our machinery and know-how and superintendents and foremen?

Mr. STRACKBEIN. Well, it would certainly tend to equalize the efficiency, or bring it closer together than it was.

Senator MALONE. Then, as the efficiency increases with the better machinery and the better training, then doesn't the difference in the cost of the labor become a greater percentage factor in the cost of manufacture?

Mr. STRACKBEIN. The cost of labor?

Senator MALONE. Yes—in other words, the cost of labor in England when they have a plant there like the Ford plant, in making a Ford or any other machinery or any other product, the cost of labor at

$3 or $3.50 in England, and $15 or $18 a day here, doesn't that become the chief difference?

Mr. STRACKBEIN. Yes; I follow you.

Senator MALONE. Now, come back to the original question. They have reached that point now. So they need no duty against us to equalize labor costs that we have always maintained that we needed, and taxes, and the cost of doing business in this country and in their country, generally speaking, they don't need a duty for the same reason we need it, do they?

Mr. STRACKBEIN. Well, I would have to answer that as I answered before, that it would depend on the kind of industry and how the industry was technologically developed. There certainly are instances where we could not undersell them. And in that event, they would not need a tariff to protect their domestic industry, that is entirely true.

But how many of those industries there are, industry by industry, I wouldn't really know.

Senator MALONE. I have seen all these countries, and inspected the industries. For example, in Chile, the last real copper smelter in the world was built in Chile, therefore it is the best one. And they have about 5 percent, between 5 and 10 percent, of American labor there to train the other labor. Therefore, the costs are much below the costs here.

Now, that is the type of thing I am talking about. So, for the reason that we invoked the duty, they have less reason for it, put it that way, with the low-cost labor and the same machinery and the same know-how.

Mr. STRACKBEIN. That would certainly be true in this instance.

Senator MALONE. It is true in any instance.

Mr. STRACKBEIN. In any similar instance.

Senator MALONE. Any similar instance. That is right.

Now, what we are doing, then, when we lower a duty, we do it deliberately to allow the goods to come in here, whereas, as a matter of fact, they can lower their duty that they had for some other reason, revenue, or for preventive purposes, and not affect imports at all: wouldn't that be true in certain instances?

Mr. STRACKBEIN. Yes, except in that instance they have to find the revenue for government from other sources.

Senator MALONE. That is true.

Mr. STRACKBEIN. It is true that particularly in Latin America the tariff is a tremendous source of revenue for the government. The tariff supplies a much, much larger portion of the total public revenue there than it does in the United States. In this country the tariff, as a revenue measure, is now a very minor thing.

Senator MALONE. That is all true.

Now, then, as a matter of fact, they don't use the tariff for the same purpose, as far as their workers are concerned, to protect their labor and the local investors, they don't need a tariff for the same purpose, do they?

Mr. STRACKBEIN. If they start up a new industry, they might, and they use the tariff for protective purposes where they have new industries.

Senator MALONE. Take one instance. Do you know how much it costs to get an automobile into England, for example?

Mr. STRACKBEIN. No; I do not.

Senator MALONE. It cost 55 percent of its cost in tariff and taxes to import a car into England. Now, that is prohibitive of course. That would be a case in point, wouldn't it?

Mr. STRACKBEIN. Yes.

Senator MALONE. Now, since there has been extensive conversation along this line, I want to clarify something here again for the record.

We assume—and it was sold to this country—that any kind of protection or wage evener that Congress tried to put on an industry destroyed foreign trade. There could have been instances. But the last tariff act of the United States laid down the policy that the tariff or the duty represented the difference in the cost of production or manufacture, generally speaking; isn't that the principle that it laid down?

Mr. STRACKBEIN. That is perhaps the principle laid down, but I wouldn't say it was necessarily followed out by the system of tariff-making by the committees of Congress at that time; I don't think they went into the cost.

Senator MALONE. As a matter of fact, didn't it transfer the tariff-making policy to its agent, the Tariff Commission, in 1930?

Mr. STRACKBEIN. Well, it had not transferred the whole tariff-making authority, it transferred to the Tariff Commission the authority to—

Senator MALONE. Recommend.

Mr. STRACKBEIN (continuing). Recommend reductions or increases in the duty of as much as 50 percent.

Senator MALONE. In accordance with what?

Mr. STRACKBEIN. In accordance with the difference in cost of production here and abroad.

Senator MALONE. Now, then, the Tariff Act of 1930 delegated that duty to the Tariff Commission, did it not?

Mr. STRACKBEIN. Yes.

Senator MALONE. And they quit holding hearings on the regular overall adjustments of all tariffs at one time?

Mr. STRACKBEIN. Well, the 1930 act was the last tariff written by congressional committees.

Senator MALONE. And it was written by a congressional committee to get away from the very thing about which someone just complained, a system where Congress wrote every tariff; was that the purpose of it?

Mr. STRACKBEIN. That was the purpose of setting up the Tariff Commission, yes, to modify existing rates by 50 percent.

Senator MALONE. Well, it was set up so that an organization with the personnel, trained personnel, and the principle laid down by Congress, then, of fair and reasonable competition, or the difference between the costs here and abroad—so that that would be reflected in the tariff; is that right?

Mr. STRACKBEIN. Correct.

Senator MALONE. Now, it never had a chance to operate, for in 1934 we came along with this difference in philosophy, and that is to give the President of the United States the authority to lower at random any duty he wanted to, within certain limits, regardless of that difference in the cost of production. Is that a true statement?

Mr. STRACKBEIN. Yes. The difference in the cost of production was not made a criterion for the lowering of a tariff; that is correct.

Senator MALONE. For the first time in the history of the United States. All right.

I want, then, the record to show that no one has ever advocated, in my hearing, that you go back to the system of the Congress of the United States through its Finance Committee and the Ways and Means Committee of the House, of holding hearings continually and setting each duty on each product, 5,000 of them in a hearing.

Mr. STRACKBEIN. My organization does not advocate that at all.

Senator MALONE. My organization doesn't advocate it, either, and I am the one that belongs to it. And I want the record to show that what I have advocated many times is to give this policy of fair and reasonable competition a chance to operate without trying—giving someone the right to favor some industries and destroy others. And that can be done under the authority granted by the President, can it not?

Mr. STRACKBEIN. Under the present authority, under the Trade Agreements Act? Well, I can say this, that duties may be reduced on one product coming into this country with the idea of getting a reduction in another country, to help the export of another commodity from this country to another country.

Senator MALONE. In other words, you could destroy one and build up another?

Mr. STRACKBEIN. Potentially, I think that that would be true.

Senator MALONE. That is correct.

I am against that system; I am for the system that Congress adopted as a policy in 1930, of fair and reasonable competition, it would amount to equal access to our market, but no advantage.

And with that flexible tariff adjusted within 50 percent either way, there was probably plenty of leeway at that time. But since we have inflation, so that our dollar is worth about 35 or 40 cents, we lowered all fixed tariffs 60 percent out of hand. Wouldn't that be true?

Mr. STRACKBEIN. Yes, that would be substantially right.

Senator MALONE. Then we destroyed the system.

Now, if Congress still believes that some certain industries would have more influence than others with the Executive, or with GATT, and you may destroy some and build up others—and that is what the State Department has virtually said in testimony before this committee—that they not only believe that some industries should be destroyed, but they believe in legislation by Congress that would repay investors in those industries, and would furnish money to move working men and women from one area to another, to compensate.

Mr. STRACKBEIN. Yes, but I don't think that the State Department has said certain industries ought to be destroyed; I think that they have said——

Senator MALONE. I said that they may be destroyed.

Mr. STRACKBEIN. I think that they have said that if an inustry cannot compete under such-and-such conditions, then that industry is obviously inefficient, and we should not support it.

Senator MALONE. Of course, that is the simplest thing on earth. Of course you can't compete with the cheap labor, with our machinery and our efficiency and our know-how, and that is what we are putting there now, and that is where a lot of this pressure is coming from,

from American investors abroad—in England, France, and other countries. And, that will come out later.

What I am saying now for the record is that if Congress would go to a principle of fair and reasonable competition and allow the Tariff Commission to figure what that difference is, make recommendations to lower the flexible duty, or tariff, as we have come to call it, when that chief competitive nation in that particular product raises its standard of living and they are living about like us, it is automatically free trade.

I am for free trade. But there are two ways of reaching it; one by destroying the industry in this country, and one by holding up our economic structure here, while we are reaching what we hope is——

Mr. STRACKBEIN. You are aware, of course, that the 50 percent——

Senator MALONE. Wait until I finish. I want this in the record.

While we are attempting to raise the living standards of the low living standard nations of the world. But I want to make one further statement for this record, and that is, our policy now of free trade virtually is what it is, because when you go 5 percent below that differential you either have to lower the wages and the cost of doing business in this country 5 percent, or you lose the business.

So when we do this thing, this principle that we are carrying out, we make it profitable for employers in foreign lands to hold down the wages in those foreign lands. And that is exactly what they are doing.

Now, if at the water's edge, you took the profit out of those low wages, sweatshop wages, with this flexible import fee, those nations would very likely go back and take another look, and maybe let the wages go up a little and create a market of their own. That is the way we created ours, as our earning power and manufacturing processes improved.

I guess you agree with that general statement?

Mr. STRACKBEIN. Yes. I did want to point out that we do adhere to the principle of free trade in those commodities that are noncompetitive; about 55 percent of all our imports are now and for over 40 years have been completely free of duty, so that we do recognize——

Senator MALONE. That is true, absolutely. And I agree with you that we have never put a duty on anything, or at least we didn't intend to, on our principal, where we did not produce enough of it to really amount to anything, or if, as you say, it was not competitive.

But in the 40 percent or the 50 percent of the goods where the cheap labor was a factor, then we did even it by an import fee for 145 years, and retained that right to raise our standard of living in accordance with the resources of this Nation and the energy that we were willing to put into it; isn't that about right?

Mr. STRACKBEIN. We have operated under the system of protection at least——

Senator MALONE. I am getting awfully tired every time I pick up a newspaper of seeing, "the high tariff boys." Nobody here has ever mentioned a high tariff; at least, I have never heard it. Of course, we have raised a new crop of people under this funny system of destroying labor. What we are doing is promoting a system that increases the use of cheap labor to bring the stuff in here and dismiss American labor. That is exactly what we are doing.

And every one of these bills that I have seen that come in here, every one that I have seen for 10 years, has been water on that wheel.

The CHAIRMAN. Thank you very much, Mr. Strackbein.

Senator MILLIKIN. May I ask this: What are the objections of your clients to the bill before us?

Mr. STRACKBEIN. The objections would go principally, on the part of some of them, to the unknown degree of tariff reduction that would take place as a result of this.

Now, there are some others within this group that are concerned about the Anti-Dumping Act and the weakening of that act, should this bill pass.

Senator MILLIKIN. The two principles?

Mr. STRACKBEIN. Yes.

Senator MILLIKIN. Thank you very much.

The CHAIRMAN. Thank you very much.

(Mr. Strackbein subsequently submitted the following for the record:)

THE NATION-WIDE COMMITTEE OF INDUSTRY,
AGRICULTURE, AND LABOR ON IMPORT-EXPORT POLICY,
Washington, D. C., June 28, 1956.

HON. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: In the course of my testimony during the hearings by your committee on H. R. 6040, the so-called customs simplification bill, you requested that I supply certain information relating to import restrictions imposed by other countries on imports from the United States.

Accordingly there is attached hereto a tabulation that appeared in Foreign Commerce Weekly of February 13, 1956, in which are listed the countries that require exchange permits or import licenses or both for the importation of goods of any description.

Exchange permits and import licenses, wherever they are required, in effect supersede the tariff as trade-control instrumentalities. They can and often are used to restrict imports to any desired level. If the importation of a particular product is frowned upon for any reason deemed sufficient by any foreign government controlling its imports, it is merely a question of refusing to issue an exchange permit or import license. No importation can then take place.

A scanning of the list of countries that do require either import licenses or exchange permits outnumber those that do not by 3 to 1. Among the countries having such requirements are England, Germany, Japan, France, Italy, Denmark, Belgium, Holland, and Spain, as well as Russia.

The principal exceptions are the United States, Canada, Cuba, Switzerland, Sweden, Peru, and Venezuela. Among these, there are a few items for which a license or permit is necessary.

The United States, as the recapitulation shows, exercises no exchange control over imports nor do we require licenses in order to import from abroad. With the exception of import quotas on certain agricultural products, our tariff represents virtually the only barrier to imports. Whenever we reduce a tariff under GATT no benefits, such as they may be, are withheld. The concessions are not nullified by other requirements such as import licenses or exchange permits.

There are other restrictions beside those listed in the tabulation. Among them are import quotas, bilateral trade agreements, barter arrangements, and in some instances outright embargoes.

American motorcycles cannot be sold in England, Australia, Japan, Formosa, and Turkey or in most of the English sterling-bloc countries. Most of the countries of South America, Africa, and Asia require import licenses and these are not issued for motorcycles except for military and police use.

The United States has only a 10 percent duty on motorcycles with no other requirement.

Our exporters cannot sell pipe tobacco or saccharine to England, sardines to Norway, watches to Switzerland, olives to Spain, or matches to Italy even if the exchange were available. The countries concerned simply refuse to issue import licenses for these items.

In the case of phthalic anhydride Canada adds an amount to the existing duty sufficient to equalize the price. For example, should the price of the American product shipped to Canada be 20 cents, landed cost duty paid, while the price on the Canadian product was 21 cents, 1 cent would be added to the duty.

France uses compensation dollars in a system under which the French importer buys from French exporters to the United States the dollars the importer needs for payment to American exporters. The premium is about 15 percent. This is over and above the duty on any given item imported and acts as a further brake on imports and goes far to nullify previous duty reductions.

The United States reduced the duty on lightweight bicycles of the British type from 30 to 7½ percent in two successive tariff reductions of 50 percent each. In 1955 the 7½ percent rate was increased 50 percent but this carried the new rate to only 11¼ percent.

The rate on bicycles to England is 20 percent of landed cost (including plus the purchase price, the ocean freight, insurance, etc., amounting to some 15 percent on top of the purchase price). An import license is, of course, also required. The result is that English bicycles are taking an increasing share of the American market while no American bicycles are sold in England.

These are a few examples among many that could be found if a more extensive survey were made.

One of the more formidable restrictions not yet mentioned by which our exports are limited is embodied in the British "token import plan." This is a program that limits imports into England of a long list of exports from the United States and Canada to 30 percent of the average exports of the same items to England from 1936 to 1938.

The items are classified under the general groupings of food and drink, tobacco manufactures, leather products, rubber manufactures, cotton fabrics and manufactures, woolen fabrics, synthetic fiber manufactures, linen manufactures, apparel, wood manufactures, glass, clay and manufactures, iron and steel manufactures, aluminum and manufacturers, electrical machinery, supplies and apparatus, industrial machinery and apparatus, agricultural and garden machinery and equipment, automotive equipment, chemical and related products, office supplies, sporting goods, and miscellaneous.

The list is attached.

The Bureau of Foreign Commerce, United States Department of Commerce, administers the allocations of these token imports to Britain among our exporters.

Obviously any duty reductions made on any of the included items are meaningless so long as the items remain on the list of token imports. This list was inaugurated in 1946. At first the imports were limited to 20 percent of the prewar period. This was later raised to 40 percent but then dropped to the present rate of 30 percent.

There is no question about the prevalence of import restrictions of a nontariff character. These restrictions serve in fact as a sort of supplement to the tariff. Where a tariff has been reduced the danger of increased imports can be eliminated by instituting these other controls.

The fact is that most of the other members of GATT were in no position to make outright tariff reductions with no safeguards. They could not have withstood the effects. Therefore, they controlled the situation by setting much more effective controls of imports as a backstop.

The United States Tariff Commission Eighth Report on the Operation of the Trade Agreements Program covering the period from July 1954 to June 30, 1955, said that 22 of the 34 members of GATT maintained import restrictions to safeguard their balance of payments position; and that they exercise "some degree" of discrimination between sources of supply. Among the 22 countries were England, France, Germany, Brazil, Turkey, Netherlands, India, Italy, Norway and Sweden.

In Latin America wide use has been made of multiple rates of exchange as a means of controlling both imports and exports, according to the same report. "The systems are particularly elaborate in Argentina, Brazil, Chile, Paraguay and Uruguay," the report states.

With respect to tariff changes in Europe the report states: "During 1954 and 1955, *most European countries continued to make routine upward or downward adjustments in individual import duties*, as they did in previous years. *Those countries* that were undertaking revisions of their tariff schedules *did not wait for completion of the revisions before making*—or seeking authorization

to make—*such changes in rates of duty as seemed to them urgent.*" [Italic added.]

This observation by the Tariff Commission throws a revealing light if further light were needed on the attitude of the European countries toward self-protection.

Sincerely yours,

O. R. STRACKBEIN, *Chairman.*

SUMMARY OF FOREIGN CONTROL REGULATIONS APPLYING TO IMPORTS FROM THE UNITED STATES

The following tabulation of import and exchange permit requirements in foreign countries, prepared by the Bureau of Foreign Commerce as an aid to exporters, has been revised as of January 1, 1956.

These regulations apply primarily to goods of United States origin and to other goods payable in United States dollars.

Many countries do not permit foreign goods to be imported unless they are covered by import licenses, which must be obtained by the importer. In some cases the import license must be granted before the order for goods is placed. In various countries the importer also is required to obtain an exchange permit before payment for the import may be made.

United States exporters therefore are advised to make certain before shipping that the foreign importer has obtained the required permit. Exporters should insist on being informed as to the identifying number or symbol of the permit.

More detailed information on licensing and exchange controls may be obtained from the field offices of the United States Department of Commerce. Publications covering licensing and exchange controls of individual countries also are available from the field offices at a nominal charge.

Country	Is import license necessary?	Is exchange permit required?
Afghanistan	No; but a declaration or customs permit must be obtained from Afghan border officials or trade agents abroad.	No; but permission to remit foreign exchange to exporters abroad must be obtained from the Government bank.
Anglo-Egyptian Sudan	Yes	Yes.
Arabian Peninsula areas:		
Saudi Arabia	No; except for International Wheat Agreement (IWA) shipments.	No; except for IWA shipments.
Aden, Bahrein, Qatar, Trucial Oman.	Yes	Yes.
Kuwait, Muscat and Oman, Yemen.	No	No.
Argentina	No; except for certain products subject to import quota.	Yes, for goods contained in lists of imports granted official rate of exchange. No, for goods contained in free-market lists.
Australia	Yes	No; import license carries right to foreign exchange.
Austria	Yes, for most commodities	Yes.
Belgium-Luxembourg	Yes, but automatically granted for most commodities.	No separate permit required.
Belgian Congo	Yes; combination import license and exchange authorization is required for all imports except shipments valued at $100 or less, provided goods are not intended for resale.	Yes.
Bolivia	Yes; copy of permit or its number must be given to consul to obtain legalization of documents.	No; import license authorizes purchase of exchange but is not a guaranty that exchange will be granted.
Brazil	Yes	No; exchange for most imports is sold at auction.
British colonies, not specified elsewhere.[1]	Yes	Yes; import license generally assures release of foreign exchange.
Bulgaria	Yes	Import license automatically assures foreign exchange.
Burma	Yes; except for Government imports.	Yes.
Cambodia	Yes	Yes; import license carries right to foreign exchange.
Canada	No; except for a few commodities	No.
Ceylon	Yes; either a general license for commodities under open general license, or an individual license for other commodities.	Yes.

[1] Includes Bermuda, British West Indies, British East Africa, British West Africa, British Guiana, British Honduras, Federation of Rhodesia and Nyasaland, and minor colonies, protectorates, and trusteeship territories.

Country	Is import license necessary?	Is exchange permit required?
Chile	Yes; must be obtained prior to shipment of goods and copy must be sent to exporter. Many items considered nonessential are prohibited importation.	Yes; in form of notation on import license.
Colombia	All imports require prior import licenses, "import registration certificates," which are issued without quota upon payment of a stamp tax. In addition, certain food products, and chemical and pharmaceutical products require permits from the appropriate Government Ministries. Many items considered nonessential are prohibited importation.	Payment for imports require exchange registration (registro), which is normally granted upon submission of the import registration and evidence (customs manifests) that the goods have entered the country.
Costa Rica	No	Yes, for imports with official exchange. No permit required for imports with free-market exchange.
Cuba	No; except for wheat and wheat flour, rice, tires and tubes, red and pink beans, potatoes, condensed milk, and butter.	No.
Czechoslovakia	Yes	Import license automatically provides for allocation of necessary foreign exchange.
Denmark	Yes; but no license required for dollar goods on extensive general free list.	Yes; copy of license or importer's declaration with customs certification of importation takes place of exchange license.
Domician Republic	No, except for wheat and wheat flour, rice, fertilizers, radio transmission apparatus.	No; but all applications for foreign exchange require Government approval, which is granted automatically for bona fide commercial transactions.
Ecuador	Yes; one copy must be presented to obtain consular legalization of prescribed documents. Many items considered nonessential are prohibited importation.	No; import license carries the right to foreign exchange.
Egypt	Yes; unlicensed imports are subject to confiscation.	Yes.
El Salvador	No	No.
Ethiopia	No	Yes.
Finland	Yes	No separate permit required; import license carries right to foreign exchange.
France	Yes; obtainable for "essentials" only.	No separate permit required; import license carries right to foreign exchange.
French oversea territories, not elsewhere specified, except French Somaliland.	Yes	Yes; import license carries right to foreign exchange.
French Somaliland	No	No.
Germany, Federal Republic, including Western Berlin.	Yes; also procurement authorization except for items on dollar import free list.	Yes; import and payments license combined in one document.
Germany, Soviet-Occupied Zone.	Yes; Government monopolies for foreign trade are the only importers.	Yes.
Greece	No; except for certain machinery and a few luxury items.	No; but applications for foreign exchange must be approved by the authorities, who determine whether imports will be financed by procurement authorizations of the International Cooperation Administration or by dollar resources of the Bank of Greece.
Guatemala	No; except for wheat and wheat flour, strong boxes, and certain safety vault doors.	No.
Haiti	No; except for wheat quota imports and tobacco products.	No.
Hashemite Jordan Kingdom	Yes	Yes.
Honduras	No; except for alcohol	No.
Hong Kong	Yes; for dutiable, strategic, or short-supply goods.	No; except for few transactions financed at official rate of exchange.
Hungary	Yes	Yes.
Iceland	Yes; except for items on "special conditional free list" and a limited number of staples.	Yes; except for "special conditional free list" imports.
India	Yes; either a general license for commodities under open general license, or an individual license for other commodities.	Yes; however, foreign exchange is automatically released upon presentation of validated import license to exchange bank.

Country	Is import license necessary?	Is exchange permit required?
Indonesia	Yes	No separate permit required; combined import license-foreign exchange permit necessary.
Iran	Yes; but only to release goods from customs; prospective imports must come within annual or supplemental quotas.	Yes.
Iraq	Yes; goo ls exported from a foreign country before license is obtained are confiscated.	Yes; permits are obtained through licensed dealers.
Ireland	For a few products only	Yes.
Israel	Yes	Yes; import license usually carries right to foreign exchange.
Italy	Yes; from Italian Exchange Office except for list A goods—mostly industrial raw materials, which require only bank "benestare."	No separate permit required.
Japan	Yes	Some commodities, announced by Japanese Government from time to time, require allocation certificate; for others, import license carries right to foreign exchange.
Korea, Republic of	Yes	Application for import license must be accompanied by certificate from Bank of Korea stating that applicant has sufficient foreign exchange cover on deposit.
Laos	Yes	Yes; import license carries right to foreign exchange.
Lebanon	Yes	No.
Liberia	No; except for arms, ammunition, used clothing, pharmaceuticals, and rice.	No.
Libya	Yes	Yes; issued automatically if import licenses have been issued.
Malaya, Federation of	Yes; only certain items may be imported directly from hard-currency sources. Licenses to import nonsterling area goods via Hong Kong are issued provided certain exchange regulations are observed.	Yes; for direct imports. For imports from hard-currency areas via Hong Kong, no permit is necessary but payment must be made in a sterling-area currency and shipment effected on a bill of lading issued in Hong Kong.
Mexico	Yes; for an extensive list of articles	No.
Morocco:		
French Zone	Yes; with exception of goods imported "sans devise," i. e., shipments financed by importer with his own funds held abroad. A temporary import-quota system requiring special permits for imports of used clothing, certain textiles, and electric cable and wire, established in March 1955, covers all such imports regardless of means of financing or country of origin and includes imports "sans devise."	Yes; except for goods imported "sans devise."
Spanish Zone	Yes	Yes; import license carries right to foreign exchange.
Tangier (International Zone).	No	No.
Netherlands	Yes; but automatically granted for most commodities.	No separate permit required.
Netherlands West Indies	No; except for certain luxury items	Yes.
New Zealand	Yes	No; import license carries right to foreign exchange.
Nicaragua	Yes	No; import permit authorizes purchase of exchange.
Norway	Yes	No; foreign exchange is automatically made available in currency specified in import license.
Pakistan	Yes	Yes; however, foreign exchange is automatically released upon presentation of validated import license to exchange bank.
Panama	No; except for tomato paste, tanned cattle hides, wheat flour, baby chicks, hatching eggs; a few items, however, are subject to quota restrictions.	No.
Paraguay	No	Yes.
Peru	No; except for plants, roots, seeds, cuttings, animals, medicinal cigarettes, explosives, firearms and other weapons, alcoholic beverages, salt, tobacco, and chemical and pharmaceutical products.	No.

Country	Is import license necessary?	Is exchange permit required?
Philippines, Republic of	No	No permit as such; exchange generally allocated to importers semiannually for each of 5 classes of imports. A small number of decontrolled commodities may be imported without quota limitations. Letter of credit opened against allocation considered as exchange license.
Poland	Yes	Yes.
Portugal, including the Azores and Madeira.	Yes	Yes.
Portuguese Colonies	Yes	Yes.
Rumania	Yes	Yes.
Singapore	Yes; only certain items may be imported directly from hard-currency sources. Licenses to import nonsterling area goods via Hong Kong are issued provided certain exchange regulations are observed.	Yes, for direct imports. For imports from hard-currency areas via Hong Kong no permit is necessary, but payment must be made in a sterling area currency and shipment effected on a bill of lading issued in Hong Kong.
Spain, including the Canary Islands.	Yes; limited largely to essential raw materials.	Yes; special exchange rates are fixed for many import products.
Spanish Colonies	Yes	Yes; import license carries right to foreign exchange.
Surinam	Yes	No; import license carries right to foreign exchange.
Sweden	No, for most goods imported from United States; import license still required for such commodities as automobiles, coal, and certain agricultural products.	No separate permit required. Foreign exchange, including dollar exchange, is automatically made available if import license specifies payment in such currency and if license is registered with a foreign exchange bank within 2 months after issuance.
Switzerland	Import licenses required for certain agricultural products, various industrial raw materials, and some types of vehicles and machinery. Also, special import authorizations must be obtained for most animals and fowl, shellfish, and bees, beeswax, and honeycomb.	No.
Syria	Yes; for hard-currency imports	No.
Taiwan (Formosa)	Yes	No.
Thailand	No; except for 23 categories of specified goods.	No; but a "certificate of payment" issued by Bank of Thailand or authorized bank or company is required.
Turkey	Yes	One application suffices for both import permit and exchange-control purposes.
Union of South Africa, including Southwest Africa, Basutoland, Bechuanaland, and Swaziland.	Yes; for most goods. Import licenses are issued to importers on basis of periodic exchange quotas established by Government. Special licensing restrictions apply to certain nonessential items; recent trend has been toward liberalization of such restrictions and outright decontrol of certain short-supply or essential items.	No; import license carries right to foreign exchange up to amount expressed in local currency in relevant import license.
United Kingdom	Yes; except some foodstuffs, raw materials, fertilizers, etc.	Yes; granted automatically following issuance of import license.
Uruguay	Yes	No; import license carries right to foreign exchange.
U. S. S. R.	Yes; importing Government agencies are responsible for securing own permit.	Yes; all exchange is allocated by U. S. S. R. State Bank upon receipt of import license.
Venezuela	No; except for approximately 25 tariff items.	No.
Vietnam	Yes	Yes; import license carries right to foreign exchange.
Yugoslavia	No; individual import license abolished July 1, 1952; since that time only licensed import firms are allowed to carry on import operations.	No; but Government maintains strict control over foreign exchange allocations.

List of Products Subject to British Token Import Plan

§ 361.13 *Commodities subject to the Plan.* The commodities listed below have been approved by the British Board of Trade as those to which the British Token Import Plan shall apply. The number preceding each commodity is the "Commodity Group Number," which must be entered on all forms which require this information.

Food and Drink

156. Bottled fruits, processed for serving with ice cream.
85. Canned lobster.
75. Canned macaroni and spaghetti.
76. Canned pork and beans.
74. Canned soups.
84. Canned vegetables, other than tomatoes and tomato puree (including tomato juice).
87. Cheese rennet.
118. Glacé cherries.
1. Jelly powder.
120. Marshmallow (cooking ingredient).
82. Mustard.
83. Olives preserved in salt or brine.
188. Onion and garlic salt.
219. Pectin, domestic pack.
157. Pickles.
185. Quick-frozen fruits.
119. Quick-frozen peas.
73. Rolled or flaked oats.
178. Sugar confectionery of all kinds, excluding cocoa preparations.
86. Vegetable butter coloring.
77. Whisky.

Tobacco Manufactures

186. Cigarettes.
187. Manufactured smoking tobacco and plug tobacco.

Leather Products

151. Fancy leather goods, excluding trunks, traveling bags, handbags, wallets, and pochettes.
221. Leather footwear.
138. Leather gloves, excluding industrial gloves.

Rubber Manufactures

142. Elastic braid.
91. Household rubber gloves.
68. Rubber bands.
67. Rubber bathing caps.
47. Rubber belting, other than conveyor belting.
69. Rubber erasers.
152. Rubber garden hose.
15. Rubber heels and soles.
80. Rubber hot-water bottles.
94. Rubber soling slabs.
16. Surgeon's rubber gloves.
10. Waterproof rubber footwear of all types.

Cotton Fabrics and Manufactures

168. Bed ticking.
141. Cotton boot and shoe and corset laces and braid.
143. Cotton ribbon and tapes; trimmings of cotton and cotton-rayon mixtures.
79. Embroidery and embroidered articles (other than apparel) of descriptions currently manufactured in the United Kingdom for the home market, of which the base fabric is wholly or mainly of cotton.
170. Finished cotton sewing thread.
167. Furnishing fabrics of cotton and cotton-rayon mixtures.

169. Quilts, counterpanes, and other bed coverings of cotton and cotton-rayon mixtures.
166. Woven cotton piece goods of all kinds.

Woolen Fabrics

147. Wool and mohair plushes and other wool pile fabrics.
146. Woolen damasks, tapestries, and brocades.
145. Woolen tissues.

Synthetic Fiber Manufactures

63. Artificial silk woven fabric of a width not exceeding 12 inches.
7. Woven fabric of a width exceeding 12 inches of artificial silk or of artificial silk mixed with other materials except silk. (Furnishing fabrics of cotton-rayon mixtures under group 167.)

Linen Manufactures

164. Finished linen thread.
163. Linen canvas not under 12 ounces per square yard.
161. Printed or dyed linen piece goods.

Apparel

6. Artificial silk clothing, excluding hose. (Women's hose under group 179.)
64. Athletes' supporters.
108. Children's outer garments, knitted, netted, or crocheted, excluding hose. (Artificial silk clothing under group 6; cotton and woolen stockings under group 200.)
203. Corsets, girdles, and brassieres.
202. Garter and sanitary belts.
107. Men's and boys' outer garments of material other than artificial silk, excluding knitted, netted, or crocheted. (Artificial silk clothing under group 6; men's shirts under group 139.)
140. Men's felt hats, unlined.
139. Men's shirts.
201. Men's socks.
106. Underwear of material other than artificial silk, excluding corsets, girdles, and brassieres. (Artificail silk clothing under group 6.)
92. Proofed clothing of all kinds (including blankets, baby pants, and crib sheets).
200. Women's and childrens' cotton and woolen stockings.
199. Women's dresses other than of silk or artificial silk. (Women's dresses of artificial silk under group 6.)
5. Women's felt hats.
179. Women's full-fashioned stockings of silk and artificial silk.

Wood Manufactures

31. Domestic woodware (clothes, pegs, etc.).
222. Manufactures of mulga wood.
158. Wood wool (excelsior).
62. Wood mouldings for pictures and mirror frames.
61. Wooden picture and mirror frames.
70. Wooden spring blinds or shade rollers.

Paper and Related Products

210. Adhesive labels.
112. Blotting paper.
117. Bristol boards.
116. Duplicating paper.
211. Indexing or filing cards.
65. Paper dress patterns.
114. Printing paper of the following types: book, text, cover, litho, offset.
113. Stationery paper in uncut form and writing paper in large sheets (bond ledger).
66. Wallpaper.
123. Yellow varnished paper for bottle-cap linings.

Glass, Clay, and Manufactures

148. Bottles other than ornamental, pharmaceutical, medicine, wine, and spirit bottles.
171. Colored sheet and plate window glass.
122. Glazed wall tiles.
154. Illuminating glassware of the following: Oil-lamp chimneys, hurrican-lamp glasses, globes, and shades.
4. Industrial porcelain insulators.
177. Mirrors conforming in shape and size to those in current use for utility furniture.
78. Table glassware as follows: Plain stemware, tumblers, tableware, and heat-resisting glassware.

Iron and Steel Manufactures

49. Axes.
197. Belt fasteners for conveyor belts.
56. Bolts and nuts of all kinds, other than precision bolts and nuts.
99. Carpet sweepers and repair parts.
23. Domestic cutlery (includes only knives, forks, and spoons).
127. Domestic hand-operated meat mincers, coffee and spice mills.
217. Furniture casters and parts thereof.
20. Furniture of metal (other than domestic furniture).
89. Gasoline and kerosene pressing irons.
96. Hard haberdashery, such as eyelets and hooks for boots and shoes, hooks and eyes, safety and other pins, snap fasteners, studs, steel fasteners, etc. (excluding hair combs).
218. Ladies' handbag and purse frames.
21. Locks, padlocks, keys, and key blanks.
124. Machine knives.
55. Nails and staples of all kinds except for decorative purposes (including hobnails and boot and shoe studs and spikes).
125. Paper machine wires.
134. Pipe joints of iron and steel excluding maleable cast iron and nonmalleable cast iron.
133. Pipe joints of nonmalleable cast iron.
184. Precision screws and other precision turned parts of metal.
57. Rivest of iron and steel.
190. Safety razors.
25. Slide fasteners.
194. Spectacle frames other than of gold or gold-filled.
189. Stropping machines, razor grinders, and razor sharpeners, all hand-operated.
172. Weighing apparatus of less than 5-hundredweight capacity, and sold at a retail price not exceeding 50 pounds sterling.
126. Woven wire cloth, gauze, fabric, or meshing.

Aluminum and Manufactures

174. Aluminum and aluminum alloys in sheets, disks, wire, tubes, rods, angles, shapes, and sections.
54. Aluminum cooking utensils.
175. Aluminum kitchen utensils other than cooking utensils.
173. Beer barrels, made of aluminum or aluminum alloys.

Electrical Machinery, Supplies, and Apparatus

2. Carbon electrodes.
29. Dry batteries (high tention).
28. Dry batteries (torch).
104. Electrical equipment for cycles and motorcycles.
130. Electric fans complete with motors for domestic use.
132. Electric-light bulbs.
103. Electric-light fixtures.
102. Electric meters.
153. Electric switches.
101. Electric refrigerators and parts for domestic purposes.
131. Electrically operated domestic washing machines.
27. Vacuum cleaners and parts.

Industrial Machinery and Apparatus

129. Gear transmissions and gears.
24. Mechanical valves.
128. Pulley blocks.

Agricultural and Garden Machinery and Equipment

46. Beehives and frames, bee veils, bee smokers, and other beekeepers' accessories.
53. Hand cultivators for garden and farm use.
50. Forks for garden and farm use.
191. Hand seeders for garden and farm use.
51. Hoses for garden and farm use.
17. Lawn mowers.
100. Milk churns, cans, pails, and strainers.
52. Rakes for garden and farm use.

Automotive Equipment

19. Antiskid chains.
212. Automotive cables.
216. Chemical maintenance products for motorcars except oils and polishes (includes valve-grinding compounds; radiator leak stop, weather sealer, gasket cement, radiator flush, hydraulic-brake fluid, rubbing compound, mechanics' blue for marking valves, bearings, etc., and tar remover).
30. Spark plugs.
213. Windshield wipers and parts.

Chemicals and Related Products

204. Bone black.
136. Fuses and detonators.
206. Medicinal preparations packed ready for retail sale under proprietary or trade names (excluding veterinary medicinals).
110. Meta fuel (solidified mentholated spirits).
3. Paints and varnishes.
37. Petroleum-jelly preparations.
205. Porcelain enamel frit.
72. Powder for sporting cartridges.
155. Shampoos, nonliquid, in containers holding no more than 1 ounce.
182. Toilet preparations, including tooth paste and powder, but excluding perfumery and soap.

Photographic and Projection Goods

105. Cinematographic cameras and projectors (for 16-mm. film or less).
26. Film for photographers' use.
60. Photographic coated paper (not sensitized).
59. Photographic paper and cloth, unexposed, sensitized.
58. Photographers' plates.

Office Supplies

176. Carbon paper.
198. Filing boxes or filing trays (of wood or cardboard).
42. Fountain pens and parts.
215. Miscellaneous office supplies: telephone indexes, numbering machines, staplers and stapler refills, eyeletting machines and eyelets.
43. Propelling pencils and parts.
137. Typewriter ribbons.

Sporting Goods

41. Ice skates, roller skates, ice hockey equipment, and other sports equipment.
214. Loaded sporting cartridges and loaded shotgun shells.
71. Sporting cartridges, primed, empty.
135. Sporting guns, sporting rifles, and spare parts thereof.[1]

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[1] Imported sporting guns and sporting rifles will be subject to the provisions of the British 1937 Firearms Act, except smooth-bore guns having a barrel not less than 20 inches in length.

MISCELLANEOUS

196. Aquarium equipment (includes aquarium pumps).
193. Artificial teeth.
183. Baskets and basketware.
32. Brushes.
44. Buttons of all kinds other than vegetable-ivory and dum buttons.
18. Cooking and heating appliances and parts.
192. Dental equipment and instruments.
95. Goldsmiths' and silversmiths' wares.
160. Granite pavement kerbs and setts.
88. Ice-cream cabinets.
33. Imitation jewelry (excluding jewelry findings, cigarette cases, cigarette lighters, hair ornaments, insignia, lipstick cases, match boxes, military ornaments, rhinestone buckles, Ronson repeaters, shoulder devices, and watch containers).
144. Jute webbing.
207. Laundry soap.
90. Manufactured abrasive cloths, papers, and disks.
97. Musical boxes.
22. Oil lamps and lanterns for illumination.
8. Papermakers' felts.
220. Pocket watches, except watches in cases made of gold or other precious metals.
165. Saddlers' thread.
150. Sun goggles and sun glasses.
40. Toilet requisites (includes only powder bowls or boxes, powder puffs, nail polishes, nail clippers, nail files, denture bowls, manicure sets, compacts, vanity cases, and pancake cases).
9. Toys, dolls, and parts, of all kinds except those made of hemp.
93. Varnished cambric insulating material.

LORING K. MACY,
Director, Bureau of Foreign Commerce.

MARCH 1, 1954.

[F. R. Doc. 54–1516; Filed, Mar. 3, 1954; 8:48 a. m.]

The CHAIRMAN. Mr. Karl H. Helfrich, the American Tariff League.

STATEMENT OF KARL H. HELFRICH, THE AMERICAN TARIFF LEAGUE, INC.

Mr. HELFRICH. Mr. Chairman, Members of the Senate Finance Committee:

My name is Karl H. Helfrich, and I appear as President of the American Tariff League, whose office is at 19 West 44th Street, New York City.

In connection with H. R. 6040, the custom simplification bill, the chief bone of contention seems to be section 2, which would change the methods of valuation by which ad valorem and compound duty rates are determined. Many interested parties, including the Tariff League, are convinced that the application of section 2 would lead to further tariff cuts.

After last year's hearings on this bill, when these objections were voiced, the then Under Secretary of the Treasury, Mr. H. Chapman Rose, proposed an amendment to this controversial section 2. Furthermore, Mr. Rose took the trouble to ask many interested individuals and organizations, again including the Tariff League, to express their opinions regarding his proposed amendment.

The league officially replied to Mr. Rose in a letter dated December 7, 1955, in which we set forth in some detail our considered opinion

and objections to his amendment. Since I understand that Mr. Rose's amendment is the primary subject of discussion at this further hearing, I now respectfully ask that our letter be included in the record of these hearings at this point in my remarks.

The CHAIRMAN. Without objection, the insertion will be made.

(The letter referred to is as follows:)

THE AMERICAN TARIFF LEAGUE, INC.,
December 7, 1955.

Hon. H. CHAPMAN ROSE,
Undersecretary of the Treasury.
Washington, D. C.

DEAR MR. ROSE: I am replying to your request for the views of the league on the amendment you propose to offer on H. R. 6040.

As you remember, the league's objections to H. R. 6040 as introduced and, as it passed the House, center on section 2 which would change the bases of valuation for customs purposes, and the definitions of terms. The Treasury's survey showing the effect of the proposed changes reveals that the protective levels of ad valorem and of compound rates of duty would be reduced on average for many categories of commodities.

The league does not favor freezing forever valuation bases and definitions. However, the league believes that whenever valuation bases and definitions are changed in the interest of simplification, or modernization, or harmony with the practices of other countries, the effect of such changes on the protective levels of ad valorem rates should be thoroughly considered at the same time and provision made for adjustment.

We recognize your sincere belief that domestic producers competing with imports carrying ad valorem or compound duties will not be adversely affected by the provisions of H. R. 6040, or that, if they are, your proposed amendment would maintain their current status and alert Congress to take legislative action in their behalf, if Congress thought it advisable.

In reply we must state our sincere belief that the changes proposed in H. R. 6040 will adversely affect some of these domestic producers. As to the effect of the proposed amendment, we think these producers would be put to an all but impossible task in trying to prove their right to a continuation of the present protective levels of pertinent duties under the amendment procedures, or in trying to force Congress to legislate in their behalf.

The proposed amendment would require the Treasury Department, each year for 3 years, to compile a list of products as to which the valuation would be reduced by 5 percent or more under the new valuation procedures of H. R. 6040. Products on the list would continue to be appraised on present valuation bases so long as the list was in effect.

Any domestic producer of a product omitted from the list thereupon would have the burden of determining and advising the Treasury, within 60 days, his "reason to believe" that if the product had been imported during the previous year and appraised under the new procedures, the average valuation assigned it would have been 95 percent (or less) of the average values at which it was actually appraised. The Secretary of the Treasury would then be empowered to "cause such investigation of the matter as he deems necessary," and if he agrees with the complainant producer, the article would be added to the list.

To arrive at his "reason to believe," and to present his prima facie case to the Treasury, the domestic producer must have detailed knowledge of what articles actually were imported during the previous year, how they were actually appraised, and how they would have been appraised if the new law had been in effect. Ordinarily, information on individual appraisals of import shipments is not made public by the Customs Bureau, and is not even available to the public. For example, imports of many individual items are not segregated, but are lumped under basket clauses or commodity classifications.

Even if a domestic producer obtained such information the question would be a matter more of judgment than of fact. Omission of a product from the Treasury's list would mean that the Customs Bureau had already determined from its appraisal data that the item should be omitted. The domestic producer would, in practice, have the burden of policing the lists as they appear and of proving the Treasury wrong by his interpretation of the facts, or else offering additional appraisal information from some source other than the Customs Bureau, from where, it is difficult to imagine.

The proposed amendment in no way meets the following objections made to section 2 of H. R. 6040:

Any reductions in effective rates of ad valorem duties resulting from the enactment of H. R. 6040 would be made without the preventive safeguard of peril point determinations, and without the remedial escape clause procedures other than recourse to Congress.

Foreign countries would be encouraged to adopt multiple price systems, the lowest price applying to exports to the United States.

The working of the antidumping act and countervailing duty provisions of the law would be complicated, and perhaps even defeated.

Producers of items with ad valorem or compound rates recently cut or which face possible cuts in forthcoming trade agreements are in jeopardy of further cuts to an unknown degree. The proposed amendment, even in the interim period, offers no relief for cuts less than 5 percent.

Since the proposed amendment, in our view, does not meet our basic objections to H. R. 6040, we feel we must register our objections to it and reiterate our earlier views that section 2 not be enacted.

Sincerely yours,

KARL H. HELFRICH, *President.*

Mr. HELFRICH. As far as I am aware, no attempt has been made by the Treasury Department to meet these objections which were raised in answer to Mr. Rose's own inquiry last year.

The present system of valuation for duty purposes has been in effect for many years. People who are actively concerned with tariff rates and procedures necessarily know in their day-to-day business transactions how this system works. Moot questions have been carefully interpreted administratively and judicially through many hearings and court cases.

If this system is changed without sound cause, we believe it will inevitably stir up confusion without net benefit to our national economy. This does not serve the cause of simplification.

The American Tariff League believes that before any such changes are made, a comprehensive and authoritative study should be made of the customs valuation systems, not only as used by us but as used by other countries throughout the world.

This study should be made by a thoroughly competent and properly staffed official body, such as the United States Tariff Commission. When completed, the results would serve as an invaluable guide to the Congress in determining that valuation system which would best serve the basic needs of the United States.

If it eventually develops that a change in system is desirable for purposes of simplification, it must be mandatory that any resultant increases or decreases in the effective levels of protection be immediately compensated for by appropriate corrections in the pertinent tariff rates. What is done in the name of simplification should be confined to simplification. Any changes in the effective levels or protection should be dealt with openly and directly on their merits.

The American Tariff League specifically opposed the original wording in section 2 of H. R. 6040, because it was the direct antithesis of what we here advocate. We submit that the amendment now offered by the Treasury Department fails to correct the basic fallacy of this section.

The amendment does nothing to refute our contention that this provision entails hidden tariff cuts; on the contrary, it admits the possibility of such cuts and merely provides an impractical mechanism for postponing the results.

In opposing this amendment, it must be clear that we also continue to oppose the original wording of section 2 of H. R. 6040.

The CHAIRMAN. Thank you very much.

Any questions?

Senator MALONE. Yes.

Mr. Helfrich, I think you have made a very fair statement. What do you believe—or how do you believe that the constitutional responsibility of Congress to regulate foreign trade in the national economy should be carried out?

Mr. HELFRICH. I personally believe that the control of foreign trade should be at all times within the power of Congress, as the Constitution calls for.

Senator MALONE. Well, what system would you suggest in lieu of the present system of delegating to 35 nations, of which we are one, with one vote, 3,000 miles away?

Mr. HELFRICH. I believe, sir, that a trained body such as the United States Tariff Commission—which is an adjunct of Congress, or should be, I believe——

Senator MALONE. Agent of Congress.

Mr. HELFRICH. Agent of Congress, excuse me—properly staffed, properly equipped to do the statistical work and studies which are requisite, should propose rate schedules which are of necessity complicated and cover a wide range of products, that those proposed rate schedules adequately reflect and compensate for the differences in the wage costs between here and above, and that these schedules, when so studied and prepared, should then be submitted to the Congress of the United States for adoption. That, sir, is my personal belief.

Senator MALONE. What principle should Congress then adopt in giving the Tariff Commission the responsibility? The principle long adopted appeared to be along the lines of fair and reasonable competition, that is, no high tariff or low tariff, but a simple representation of that difference in cost of production due to many factors, all of which the Tariff Commission, as you suggest, is fully confident of determining. At least then, if a mistake is made in the first setting of a tariff, a certain tariff, it can immediately be adjusted, because it is obvious to everyone soon whether it represents that differential or not, provided there is a principle laid down by Congress.

What principle should be laid down to the Tariff Commission when it is empowered to do this work?

Mr. HELFRICH. Sir, I believe that the basic philosophy of principle should be that tariff rates set by our country on products that are imported here of a competitive nature, competitive to those made here or grown here or mined here, as the case may be, that those rates should properly and fairly reflect basic differences in the cost of production, which in turn are primarily and essentially, I believe, differences in labor costs between other countries, and labor costs pertaining here.

Senator MALONE. You would include costs such as taxes, and the general cost of doing business, added to the labor costs, or subtracted, as the case may be; would you not?

Mr. HELFRICH. I think all of those things could, and I feel would, be studied in such an analysis.

But I still believe, sir, that the essential difference is a difference in labor costs, and in the standards of living between here and abroad, which are a reflection of differences in labor costs.

Senator MALONE. Now, as a matter of fact, let me ask you this—and it has bothered me for some time, because all of our starry one-worlders

say that in the division of our markets through the lowering and continual lowering of that differential between the labor cost here and abroad, including the other costs of doing business, the tariff—it doesn't matter what you call it—that it is a labor evener, a legitimate evener of cost of production, they say that if we will allow these imports from cheap labor countries to come in, with a continual lowering of duty without regard to that differential, that we will raise the standard of living of those nations to our standard.

What would be your thought in that connection?

Mr. HELFRICH. I believe, sir, in answer to that question, that it is far more likely that our standards of living would be brought down to a median level. I don't believe that the United States, with all its undoubted economic power and prestige can singlehandedly lift up the living standards of the entire world to our level in any short space of time.

I think that that must be a gradual evolution in which our friends across the sea must play an active part themselves, and have the will to do it. I do not believe that we can lift them by their bootstraps up to our level in any short period of time. I think the opposite result would happen, that our level would come down to more of a median level.

Senator MALONE. Well, do you believe—I have tried to think this thing through, and of course we are all fallible, and do the best we can—but in trying to think it through, I have visited every one of the foreign nations, I have gone into their plants—I have been in the engineering business for 35 years, I do have some understanding about a plant—and I say that without embarassment. Take a typesetter, if he doesn't know how to set type after 30 years, he has wasted 30 years. But what bothers me is that when we allow this cheap labor stuff to come in, as we are now doing, from Japan and other nations, and thereby make it profitable to hold the wage standard down it is just an ordinary fact of commonsense, that the lower they can hold that labor down, then the higher they can—whatever the traffic will bear here—the higher they can come in here and compete, and at greater profit; whereas, if they allow that labor to go up, they lose their profit.

Now, do you think that might have a tendency in free trade in the opposite direction, to make a profit out of this low level?

Mr. HELFRICH. Under certain conditions, as I understand your question, I think it puts a human temptation to exploit the labor across the seas, and the resulting profits go more for the benefit of the few than the many. I believe that they would be better off if they took such steps as we have taken to raise their own standards of living—it can't be done overnight, I admit.

And in so doing, they would create better markets within their own lands for the products of their mines and farms; they would not be so dependent upon exports, as they believe they are dependent upon exports.

Senator MALONE. Now, suppose Congress did again adopt the principle of fair and reasonable competition—in the 1930 Tariff Act and the principle was very clear, and that is a principle, no high tariff, no low tariff, but representing at all times, in the ability of the Tariff Commission to compute it—just to take the profit out of the

low-cost labor. Most of these nations have no social security, and no industrial insurance, no unemployment insurance.

But if we take the profit out of the low-cost labor wouldn't there be a tendency to allow their own labor to take its rightful place, to go up as their production increases, and create a market at home just as we have created a market here?

Mr. HELFRICH. Yes, sir. I would like to answer your question in this way. I think it would stimulate the search for other markets, which would primarily be within their own countries, as you have indicated. I think that is answering the question, perhaps, with a slightly different emphasis.

Senator MALONE. I think you are correct. Then we are talking now about a cold war. Ever since I have been in the Senate we have had a cold war. We had a hot one at one time, about 1917, the one that the President kept me out of, that was hot.

And then there was another President that kept us out of war, and it got pretty warm.

Now we have a cold war.

What do you think is the most important thing in a cold war, that is, to maintain our economic level while we are helping other nations to raise theirs, or is it better through continually lowering duties of tariffs, to bring ours down intending to upset it?

Mr. HELFICH. I have a very definite feeling about that, Senator Malone. I feel that the economy of the United States is the keystone of the whole free world arch, and that if our economy falters, the whole free world will be in danger.

And I think, without putting a selfish motive to it—although selfish motives, we must admit, do exist—I nevertheless feel that it is of paramount importance to the whole free world that the United States remains strong and powerful, not only in a military, but in an economic sense, and that the economy should not be undermined by any means that can be humanly prevented.

Senator MALONE. Now then, isn't the most important thing in the so-called cold war to maintain that economy?

Mr. HELFRICH. Yes, sir.

Senator MALONE. Maintain the structure?

Mr. HELFRICH. I believe so. And I don't say that with any spirit—and I hope that my remarks will not be so construed—I do not say that with any spirit of ill feeling toward other nations that stand shoulder to shoulder with us. I think it is best for all that we maintain a position of strong leadership, I think for their welfare as well as our own.

Senator MALONE. Now, it only remains, then, to determine the best system to do that. And the dispute, then, hinges around whether or not we should have the principle adopted here of a flexible duty, as we did in 1930—but never allowed it to operate—that would make that difference in the labor and the other costs of production here and the chief competing nation on each product—lower it as they raise their standard of living, and maintain our structure at all times—or whether we should have a policy just as we now have, where Congress has frankly shifted its constitutional responsibility to regulate foreign trade and the national economy to the President, who believes, whether he has it or not—as has been testified here by the Secretary of State—

that he has the authority to transfer it any place in the world, to any organization that he might spearhead.

They did spearhead the general agreement on tariffs and trade, and put it in Geneva, and the Secretary of State sat where you are sitting and testified that he had that authority under the 1934 trade agreements—the fact remains, whether he has it or not, he has done it—and the tariffs have been continually lowered for 34 years—he has done it with full authority granted him by Congress, without regard to any difference in labor costs, or other costs of doing business, between this country and the chief competing country on any product.

Isn't it a question, then, just which is the proper system? Can't you nail it down to that principle?

Mr. HELFRICH. I think there was that question. I did not challenge the sincerity of those who adopted the other way. I happen to represent those who believe that a different way is the best way.

Senator MALONE. I just want to read an example here. In the Wall Street Journal of yesterday, on page 4, under the headline, "Bill To Simplify Customs Rules Called Aid to Antidumping Law," it says:

> Mr. Rose supported a Treasury-proposed amendment designed to make the measure more acceptable to the high-tariff lawmakers—

high tariff—

> the amendment would exempt for a 5-year trade period all items that would be decreased 5 percent or more in value under the new standards.

Have you in your appearances before this committee—and you have appeared, sir, you and your representatives——

Mr. HELFRICH. Yes, other representatives of the league; I personally have not appeared before the Senate Finance Committee.

Senator MALONE. Your representatives have, and you have read the testimony, no doubt.

Have you ever heard anybody in this group advocate a high tariff?

Mr. HELFRICH. No, sir. I dislike that word "high" tariff, just as I appreciate your dislike of it, because I think it is an unfair evaluation of what we stand for.

Those whom I represent here today believe in fair and adequate protection.

Senator MALONE. Fair and reasonable competition.

Mr. HELFRICH. Fair and reasonable, fair and adequate—which is a different thing from high tariff.

Senator MALONE. That differential between the wage standard of living in the chief competing nation on each product, and this Nation, and other factors that may vitally affect the difference in cost, that is what you would like to have in a duty, isn't it?

Mr. HELFRICH. I think that explains it, sir. I believe that every member of the group that I represent would be perfectly willing to say that he or she in their business does not fear competition, provided that that competition is fair competition, and then let the business go to those who by ingenuity of management or ingenuity of planning or hard work, or inate ability, are able to do something better and thereby gain the market.

The point is that the disparity of labor rates that exists between this country and abroad is such that in most cases—I do not say in every case—but in many cases there is no efficiency or ingenuity available to

overcome them, to overcome that differential, without reasonable, adequate tariff protection.

Senator MALONE. That is all, Mr. Chairman.

Senator DOUGLAS. May I ask a question?

The CHAIRMAN. Senator Douglas.

Senator DOUGLAS. Mr. Helfrich, do I understand that you object to this proposal on the ground that it will eliminate the test of foreign value from the criteria which can be used in determining the value of imported merchandise?

Mr. HELFRICH. Senator, I believe that that change in the method of valuation which you refer to, the elimination of foreign value, coming immediately to export value, is the principal factor which would bring about hidden tariff cuts, rather than any simplification.

And it is on that basis that those whom I represent primarily take exception to section 2.

Senator DOUGLAS. When Mr. Strackbein was testifying, I looked up the present definitions which are given to "foreign value" and to "export value" on page 17 of the House hearings, and put them in parallel columns, so I could try to find out what the actual difference was between them.

And there is a virtual identity of language, except for the phrase "sale for home consumption," which is contained in the definition of "foreign value," and not contained in the definition of "export value."

Now, what I am trying to get at is, just was precise feature of the definition of "foreign value" is it that you want to retain, that you think would not be covered in the term "export value"?

Mr. HELFRICH. I think the germ of the difference is in the wording that you have referred to. But if I might, in answer to your question, elaborate on that a little bit: "Foreign value," I think, as it works out in practice, is the value at which certain articles of comparable grade and in comparable quantity, are freely offered for sale within the country of origin.

Senator DOUGLAS. That is the precise definition also of "export value," except that the term "for sale for home consumption" is omitted, and the phrase which is substituted is "for sale to all purchasers," that is, the words "for home consumption" are inserted between the words "for sale" and "to all customers," and the definition of "foreign value" does not contain the definition of "export value."

Mr. HELFRICH. That is the gist of the whole thing. If I may just speak for a second in answer to your query about "export value," I believe it is one thing to set up a price and price rules in the ordinary, everyday business transaction, that is what we are talking about, is the price.

It is one thing to have a price for home consumption. It is another thing to have a price which may be directly affected by desire to capture a certain foreign market. That market may be in the United States, it may be in another country.

Senator DOUGLAS. When dumping occurs, when you have dumping normally, the country which is dumping sells abroad at a lower price than it sells at home. Now——

Mr. HELFRICH. If I understand you, sir, you are bringing in something which I believe was touched on by the previous witness in his testimony.

To be sure, there is an antidumping law. And if I may just repeat what I believe to be the essence, if it can be demonstrated that certain articles of comparable grade and quantity are sold in the country of origin at a certain price, but suddenly they are sent over to a foreign market, such as ours, at a definitely lower price, and those become provable facts, that becomes dumping.

Senator DOUGLAS. If it were sold in this country, that would be United States value, would it not, if that definition is retained?

Mr. HELFRICH. Yes, but——

Senator DOUGLAS. What I am trying to get at is, what is all the shooting about on this reluctance to give up foreign value?

Mr. HELFRICH. Because I think, sir, that foreign value is apt to be a fairer measure for the purposes of duty valuation than would be an export value which might, for specific purposes, for very understandable purposes, from the other fellow's point of view, be aimed at lowering the landed cost in this country in order to take over a section of the market, to develop a market, to eliminate certain domestic competition on this side of the water.

I think it would be much more difficult to police the antidumping law under such conditions, as has already been pointed out this morning. There would be a conflict between this proposed law and its proposed definition as against the antidumping law. Which law would prevail?

But I believe it is an invitation to set values unreasonably low for customs purposes, or duty valuation purposes, in order to drive out domestic competition here, and to take fuller advantage of lower labor costs.

And I believe that that is the nub of the matter, sir, in that section. And I believe, sir, if I may add, that it is admitted that would have that effect even by those who propose it.

Senator DOUGLAS. The language of the two criteria are identical, as I see it, except one says—

offered for sale for home consumption to all purchasers in the market of the country—

and for export purposes—

freely offered for sale to all purchasers in the principal market of the country from which exported.

And the only difference that I find is, as I have said, that foreign value uses a qualified phrase—

for sale for home consumption to all purchases—

and the definition of "export value" refers to home consumption.

Am I correct?

Mr. HELFRICH. I certainly do not question your reading of the language, sir. But I contend that what may appear to be a small difference in the wording can have a very big practical effect.

Senator DOUGLAS. I wonder if you would be willing to submit a statement on that for the record, or the precise difference in meaning between "export value" and "foreign value," and why you do not wish to see the foreign value abandoned.

Mr. HELFRICH. I would be very glad to submit my understanding of the difference. I hope I am not repeating myself, but I would be very glad to state it now, that "foreign value" means that a price

or prices, including terms which have an effect, at which a given article or group of articles are freely offered for sale in certain quantities in the country of origin, which, in other words, is for home consumption—consumption in the country of origin; whereas, my understanding in all practicality of an "export value" is a value at which it might well be that the people at home could not have access to such merchandise at such a price, it is a price which perhaps by national policy in a controlled or partially controlled economy was set for the specific purpose of stimulating business overseas, and taking part, an increasing part, in overseas markets, by eliminating those few words about home consumption. Leaving that out opens the door for the practical working out of what I have endeavored to sketch out in my own words, sir.

(Mr. Helfrich subsequently submitted the following for the record:)

THE AMERICAN TARIFF LEAGUE, INC.,
New York, N. Y., June 28, 1956.

HON. HARRY F. BYRD,
Chairman, Committee on Finance,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR BYRD: During my testimony June 26 on H. R. 6040, I was qestioned by Senator Douglas on the effect of dropping foreign value as the primary basis of valuation for customs purposes. In my reply I outlined the various reasons why I felt that primary reliance on export value might open the way for foreign countries to underprice their exports so as to capture the United States market, and that, without foreign value determinations, there would be no continuous measuring stick available to detect such practices.

Senator Douglas prefaced his questions by stating that it seemed to him that the only difference between the definitions of foreign and export values was that the former was based on offers for sale "for home consumption" in the export country, while the latter had no such restriction.

In my replies I pointed up how this distinction is an important one because it offers a comparison between home market prices abroad and those offered for United States markets, for the same goods.

I believe my replies were responsive to the questions of Senator Douglas. However, at one point the Senator suggested that a supplementary statement be filed. Accordingly, I am making this further statement and submit it to you and Senator Douglas for whatever use you may wish to make of it.

There is a further difference in the definitions of foreign and export values which Senator Douglas may have overlooked. That is, foreign value applies to offers for sale within the exporting country exclusively for home consumption, while export value applies to offers for sale within the exporting country expressly "for exportation to the United States."

It is helpful to keep in mind that appraisals of merchandise imported into the United States are attempts to find various values for a particular shipment, where applicable.

First, an attempt is made to determine, under "Foreign value," what would have been the value of that shipment if freely offered for sale in the exporting country for home consumption there.

Second, an attempt is made to determine, under "Export value," what would have been the value of that shipment if freely offered for sale in the exporting country for exportation to the United States.

If both foreign and export values can be ascertained, the higher is used as the basis of duty assessed.

However, it may be that one such value is inapplicable, or both may be. If foreign value is not applicable because the particular merchandise is not ordinarily freely offered for home consumption in the exporting country, then the duty is assessed on export value, if applicable.

If not applicable the appraiser then attempts to ascertain United States value, which is a kind of landed value in this country, from which certain deductions for duty, transportation, insurance, commission, and profit are taken, in an attempt to reconstruct export value.

If United States value is not ascertainable, the appraiser falls back on the cost-of-production basis.

These valuation bases were, of course, enacted by Congress, which also set individual ad volarem duties with the idea that they would be applied on such bases. If one or another valuation basis is dropped or redefined, the effective protective level of some ad valorem rates may be changed, as the Treasury Department acknowledges. This may come about because alternative bases will produce a different protective level for a particular rate than would the basis dropped. In addition, as I stressed in my testimony, dropping foreign value may well invite foreign shoppers to set low prices on their exports to the United States so as to capture our markets, thereby injuring the producers of competing domestic goods. With the necessity for ascertaining foreign value discarded under H. R. 6040, such practices could well flourish with impunity, as I pointed out.

Sincerely yours,

KARL H. HELFRICH, *President.*

The CHAIRMAN. Thank you very much, Mr. Helfrich.

The committee will recess until 2 o'clock.

(Whereupon, at 12:25 p. m., the committee recessed, to reconvene at 2 p. m. of the same day.)

AFTERNOON SESSION

Senator MALONE. The committee will be in order. Mr. John G. Lerch, American Manufacturers. Mr. Lerch, I am glad to see you here, and will you make your statement any way you care to. You may submit it for the record or any way you want to.

STATEMENT OF JOHN G. LERCH, AMERICAN MANUFACTURERS

Mr. LERCH. I have a very short statement, Mr. Chairman, and I might add a few remarks.

Senator MALONE. Go right ahead.

Mr. LERCH. My name is John G. Lerch of the firm of Lamb & Lerch, 25 Broadway, New York City. I am an attorney specializing in the practice of customs law and I represent here the individual members of the 11 following trade associations:

American Manufacturers of Thermostatic Containers
The Candle Manufacturers Association
Collapsible Tube Manufacturers Association
The Industrial Wire Cloth Institute
The National Building Granite Quarries Association
The Rubber Footwear Division of the Rubber Manufacturers Association
The Toy Manufacturers of the U. S., Inc.
The Twisted Jute Packing and Oakum Institute
United States Potters Association
American Corduroy Industries
American Velveteen Industries

On July 7, 1955, I appeared before this committee and gave testimony in opposition to the enactment of this bill (p. 79 of the record). Nothing has happened in the interim that would change the testimony that I gave at that time.

Following these hearings, on August 9, 1955, I received from the Honorable H. Chapman Rose, Under Secretary of the Treasury, a letter transmitting a proposed amendment to H. R. 6040, asking my comments upon this amendment. I am submitting a copy of his letter, together with a copy of my reply, and I ask that they be printed as part of my remarks.

Senator MALONE. They will be accepted and made a part of the record at this time.

(The documents referred to are as follows:)

THE UNDER SECRETARY OF THE TREASURY,
Washington, August 8, 1955.

Mr. JOHN G. LERCH
Cunard Building, New York, N. Y.

DEAR MR. LERCH: In the hearings before the Senate Finance Committee on H. R. 6040, the Customs Simplification Act of 1955, a number of witnesses expressed the fear that the change in valuation standards would result in a substantial lessening in the protection afforded to some segments of American industry because of the reduction in valuation. To meet this situation, the Treasury Department proposed to the Senate Finance Committee an amendment to H. R. 6040 which, for a trial period of 3 or 4 years, would continue in effect present valuation standards for any imported article which would otherwise be reduced in value by 5 percent or more. Periodic reports would be submitted to the Congress and at the end of the trial period a final report would be made. If Congress did not act within a period of 90 days of continuous session after receipt of that final report, all imports would thereafter be subject to the revised valuation standards.

This proposal would maintain present valuation standards whenever the possible change in value was significant. During the trial period it would be clearly determined whether the Treasury's view, that the protection thought to be derived from the present valuation standards is largely illusory, is correct. If, contrary to our expectations, there still proved to be a substantial difference in protection under the old and new standards, the Congress would be able to continue the old valuation provisions in effect.

In our view, the added complications during the trial period would be more than compensated for by the advantages from the use of the revised valuation standards for 90 percent or more of ad valorem imports.

There was no opportunity to present this amendment for broad public comment before the adjournment of Congress. I am therefore enclosing a copy of the proposed amendment for your information. We are anxious to have the benefit of as many informed views as possible before the matter again receives consideration in the 2d session of the 84th Congress and would be interested in receiving your comments.

Very truly yours,

H. CHAPMAN ROSE,
Under Secretary of the Treasury.

LAMB & LERCH,
New York, N. Y., August 19, 1955.

Hon. H. CHAPMAN ROSE,
Under Secretary of the Treasury,
Washington, D. C.

DEAR MR. ROSE: I have your letter of August 8, requesting my views on the substitute bill for H. R. 6040, which you had not sufficient time to bring to the attention of Congress before adjournment. I have read the proposed substitute bill and find it no substitute for the changes which H. R. 6040 proposes to make. The proposals of the substitute bill would frankly seem to put into effect H. R. 6040, but to some extent delay the evil day.

The proposal is, as I understand it, that you put into effect the provisions of H. R. 6040, with some exceptions for a period to match it against the tabulation which you submitted to the Finance Committee, and give domestic industry the right to file their objections with an ultimate right to a veto of the bill by Congress after 3 years. Your list submitted to Congress was based on group classifications, acocrding to United States Commerce statistics, embracing up to hundreds of articles. The classifications in the list cover from 1 to 1,000 articles which were surveyed. There is no indication which of them are now appraised on foreign value, and at what figure they would be appraised under the provisions of H. R. 6040.

As I read the substitute bill, you propose a test period in which the provisions of H. R. 6040 would be used for appraisement purposes, the results to be tabulated and ultimately sent to Congress for a possible veto or the bill will remain the

law. Under this plan, for the period involved, all merchandise not appearing on the list would be passed at the lower value contemplated by the new definitions and the new values in the substitute bill. Any damage to domestic industry by reason of reduction of duty on competitive articles to their manufacturers, which do not appear on the list, would be irreparable.

Action on H. R. 6040 cannot possibly be had before January 1956. Could not the same experiment be had by directing the tabulation of all entries, let us say beginning September 1, 1955, to December 31, 1955, that are now appraised on foreign value and thereon placed in juxtaposition a column showing the invoice value of each of these entries? I suggest this on the premise that under the new bill the great majority of appraisals will be on export value which, under the new definitions, will be approximately the price it was invoiced. By this means, on January 1, 1956, you can present to Congress an accurate picture based upon 3 months of actual imports, which would seem to me to put the Department in a much more favorable position than to ask Congress to adopt a bill, conduct an experiment, and possibly rescind its action.

My proposal would also either justify or answer much of the criticism H. R. 6040 received at the last session, which of necessity was based upon speculation, since there were no facts available to the witnesses upon which they could operate. My proposal contemplates doing the work before adopting the bill, whereas your substitute contemplates doing it after adopting the bill.

In your proposed bill, opportunity is afforded domestic producers to furnish information on competitive articles which "would have been appraised in accordance with section 402 at average values which are 95 (or less) percent of the average values at which they are actually appraised." Throughout my entire experience with customs, I have never known a period when a domestic manufacturer could apply to an appraiser and receive information as to the value or the basis of value on which competitive imported merchandise was being appraised. Under the proposed bill, will this practice be changed and this information be made available to domestic interests? Without it, I can see no way that manufacturers, producers or wholesalers in the United States could gather the facts on which to make a presentation to the Secretary. Would it not result in a wholesale fishing expedition, where domestic producers, having nothing to lose, would file with the Secretary all of the items on which they have foreign competition, which the Secretary, under the bill, is obligated to investigate? Under the present practice, I seriously doubt that the Secretary would disclose to the complaining manufacturer the facts surrounding his competitors' importations.

Very truly yours,

J. G. LERCH.

Mr. LERCH. In my reply I called attention to the impracticability of the Secretary's amendment in that the facts upon which the amendment is to operate would not be available to an interested American producer and could not be made available to such producer by the Treasury Department.

The proposed bill contemplates a domestic industry furnishing the Treasury Department a description of the articles in which it is interested, which are not included in the Department's list, and which by reason of the application of amended H. R. 6040 would be reduced in value by 5 percent or more.

Let me furnish you a current illustration of the impossibility of some domestic interests complying with the provisions of this bill. I represent the American manufacturers of cotton corduroy. In its recent effort, extending over many months, this industry has attempted to obtain statistics of imports of cotton corduroy. We found that the prevailing imports have been classified for customs purposes under the basket clause for cotton wearing apparel. The Bureau of Census compiles no statistics on corduroy wearing apparel, as distinguished from other cotton wearing apparel.

Hence it is impossible for them to furnish statistics of imports. All other avenues have been canvassed with the same result—no sta-

tistics. If it is impossible to obtain statistics of imports of a given article, thousands of which are classified under so-called basket provisions of our tariff law, how much more impossible would it be to obtain the average expert value (invoice value) of that same article, when such information is regarded by the Treasury Department as confidential information?

As I am preparing this appearance, there is no way of knowing what facts the Treasury Department will lay before this committee illustrating the operation of its proposed amendment. You will notice in my reply of August 19, 1955 to the Under Secretary of the Treasury, I suggested that a tabulation be made and submitted to the committee of the relative values; that at which the item is now being appraised, as against the value at which it would be appraised under the proposed amendment.

If such a tabulation were made of items now being appraised under the foreign value provision of our law, I am confident it would disclose many instances where the resultant reduction in duty would exceed by many times the 5 percent differential proposed by the Treasury Department.

Under the provisions of existing law for value, section 402, Tariff Act of 1930, and the bills for customs simplification that have been recently passed, clearance of merchandise through customs according to Treasury reports, has been greatly accelerated. The radical changes in section 2 of the proposed law can hardly be proposed under the guise of further simplification, since years of litigation would have to ensue before the scope of these changes is definitely determined.

Therefore, there must be another incentive. Examination of article VII of the General Agreement on Tariffs and Trade (GATT), participation in which Congress has never ratified, would seem to supply this incentive. This article is entitled "Valuation for Customs Purposes." I quote from Department of State Publication 5813, Commercial Policy Series 147:

ARTICLE VII VALUATION FOR CUSTOMS PURPOSES

While article VII does not attempt to establish a uniform basis of valuation for all countries, it does set forth certain principles of tariff valuation which contracting parties agree to put into effect "at the earliest possible date." Dutiable value should be based on the "actual value" of the imported goods and not on arbitrary or fictitious values nor on the value of domestic goods in the importing country. "Actual value" means the price at which such or like goods are sold or offered for sale under fully competitive conditions. Where imported goods are exempted in the exporting country from internal taxes applicable to sales for home consumption, such taxes should not be included in dutiable value in the importing country.

Foreign value, as defined in our existing law, you will see does not in all of its elements comply with the more or less nebulous "actual value," as defined in the above-quoted paragraph.

One of our main objections to H. R. 6040 was the fact that it would further reduce existing rates of duty and confer upon Government officials discretionary powers.

Since the substitute bill was proposed several hundred rates have been reduced by as much as 15 percent in the recent

General Agreement on Tariffs and Trade, analysis of United States negotiations, sixth protocol (including schedules) of supplementary concessions, negotiated at Geneva, Switzerland, January to May, 1956.

Enactment of this bill will further reduce the import duties on all of these articles now appraised on foreign value by an indeterminate amount, according to the exercise of the discretion vested in the appraising officials.

From my testimony, page 79 of the hearings, you will see that those domestic interests that I represent and a large segment of American industry that is dependent upon protection feel that this bill is one of the most vicious that has been yet proposed under the guise of customs simplification. OTC, ITO, GATT, and all of the other attempts to destroy protection of American industry and labor have at least been forthright in their statement of the ends to be accomplished.

The proposed changes in H. R. 6040 of 100 years of customs practice and judicial precedents in exchange for a system predicated upon discretionary powers exercised by Government officials certainly will not conform to an orderly administration of our customs law.

We ask that H. R. 6040 be not passed.

The question was asked this morning, Mr. Chairman, as to how the witness would simplify customs, further simplify customs. My answer to that question would be to rescind everything we have done since 1934 and carry on under existing law as it has been interpreted and as anybody using the least amount of diligence can ascertain its meaning and apply it. Included in that answer is section 336 of which you spoke this morning, the flexible tariff act. That was enacted in 1922 to take out of politics the regulation of tariff duties, and to turn over to the Tariff Commission the right to equalize cost of product abroad and here. That being the test of competitiveness or protection that Congress at that time enacted into law, and had it been followed or applied, we probably would not be here today, because it would have worked to equalize the cost of production here and abroad and would have landed on this shore on an equal basis with our competitor around the corner, his competitive article. That particular section of the law has not worked because of the discretion lodged in the President to put into effect the findings of the Tariff Commission. Our suggestion would be that section 336, the finding under section 336, be mandatory, and cut out the discretionary power of the President. That is my definition, Mr. Chairman, of free trade.

Senator MALONE. I think, Mr. Lerch, that you have made a very comprehensive statement. Do you recognize or have you recognized the trend beginning in 1934 toward the division of American markets with the lower wage nations of the world?

Mr. LERCH. There can be no question about it.

Senator MALONE. What in your judgment brought that about? Was it a matter of trying to displace the lower wage living standards of the American working men with the lower paid foreign worker?

Mr. LERCH. When H. R. 1 was before the House of Representatives, I expressed it in the way that I heard you say it this morning, the exportation of labor and industry to foreign countries.

Senator MALONE. Can you tell me why some very prominent labor leaders are for this legislation?

Mr. LERCH. That I will never know.

Senator MALONE. It has been a mystery to me. They have said because they have members who are interested in foreign trade. Now how does our foreign trade, the percentage of exports, compare, the

percentage of our export of goods that are actually being exported for a commercial provision, how does it compare with exporting prior to that 1934 Trade Agreements Law?

Mr. LERCH. Well, I don't have the export tables in front of me. Of course, the value of those exports, on account of increasing cost of labor here has increased. However, the volume has not increased.

Senator MALONE. Well, you have an argument. What do you have to say about the argument that it is in the public interest to have this rearrangement to close down if necessary or to restrict if necessary the manufacture or production of certain materials in this country in order to increase the production or manufacture of another commodity? What do you have to say about the public interest in this regard?

Mr. LERCH. Mr. Chairman, I was never brought up in that school. I could never see sacrificing industry that had been developed here as part of our economy, industries such as the pottery industry, with small plants, often the only industry in a given community, being sacrificed because our State Department considered it diplomatically or politically more desirable to ship more automobiles, or other articles abroad.

Senator MALONE. Let's take automobiles. How do you export automobiles abroad to England, for example? Do you know what it costs to take an automobile into England?

Mr. LERCH. I don't think you can get them in there.

Senator MALONE. Yes, you can by paying 35-percent tax, 33 percent tariff. Now when you say equalize the labor here and abroad, do you maintain that a tariff should ever be more or a duty should ever represent more than the difference in the effective labor cost and the taxes for the cost of doing business here and each of the competitive nations on each product?

Mr. LERCH. I do not, Mr. Chairman. I represented a number of industries in 1929 and 30 when that act was written, and I defy anybody to prove that I recommended a rate that would more than equalize cost of production here and abroad.

Senator MALONE. You believe then that the American workers, the American workingmen, the American industrialists, are entitled to that difference that you have described of the effective labor cost, taxes and the cost of doing business here and the chief competing nations on each product, that they are entitled to have a duty or tariff that represents that amount as a matter of fairness, providing access to their own market.

Mr. LERCH. I think it is absolutely necessary, for if a foreign producer can land in New York let us say a given commodity that is competitive with a New York producer at less than he and his competitor around the corner is making it, neither one of them will make it very long.

Senator MALONE. Do you think that there is a plan—this is the 24th year—do you think there has been a deliberate plan or intent or an effort to displace the lower cost American labor with the cheaper foreign labor goods?

Mr. LERCH. Whether that is the intent, that is what is being accomplished.

Senator MALONE. Have you made study as to the number of American firms, their magnitude of investments abroad in plants such as in

Japan and England, the European nations, Asiatic nations that are now importing products of their plants there?

Mr. LERCH. I know there are a great number. Some of my own clients have done so. I would like not to name them here.

Senator MALONE. Well, I think it is all right to name them. I don't think you are doing them any disservice, because over a period of 10 years I have been here, I have heard many of them say that if this keeps up, in self-defense they must go abroad and build plants, and some chemical companies have done that and I think rightly so if they want to survive under this system.

Mr. LERCH. Well, it is following the policy that I said just a while ago. This whole tendency is to export industry and labor.

Senator MALONE. We are exporting American jobs.

Mr. LERCH. Exactly.

Senator MALONE. The argument that we hear, and continually, is that somehow or another that benefits the United States of America, that the foreign people can produce some things better and we can produce some things better here and there should be some kind of a balancing of this business.

Could you explain how that might be effective?

Mr. LERCH. No, I cannot. My office is at 25 Broadway, New York, and before they built the new Brooklyn Tunnel, it overlooked a lot of cold water tenements. I am told by the manager of the building, the Cunard Building, who owns some of those tenements, that they had some of the Syrians that migrated over here 20 years before, and although their income had multiplied many times, they are still in those tenements. Now the same thing is true abroad. They are perfectly satisfied with their way of life, and the more we give them over there doesn't seem to make them less satisfied with the wages they are receiving or their present standards of living.

Senator MALONE. I never had very much use for anyone who was entirely satisfied anyway. I was sure they weren't going any place. I have seen all these nations and I can't altogether agree with you that they are satisfied, but many of our people are not satisfied. There is a striving for a higher standard of living.

Mr. LERCH. Well, they have it, the wherewithal to do it, but they don't do it. In other words, what I was trying to explain is that you can't force a higher standard of living upon anybody who doesn't want to use it.

Senator MALONE. Well, it may be the system, I'm not sure about that. I have tried to study it. Do you think that taking the profit out of the low-cost foreign labor at the water's edge with a tariff or flexible duty, representing at all times the difference in cost abroad and here, which is as you say correctly set out in the 1930 Tariff Act, do you think that that would have a tendency to cause them to allow their wages to go up in some of these foreign nations, or on the contrary do you think that free trade would let them profit by the low-cost labor coming in here that would cause them to let their labor go higher in these countries that are autocratically controlled?

Mr. LERCH. Over 30 years personal experience in this business has taught me that, when you put on a duty to protect you, or you take it off, it affects very little the foreign wage. It fluctuates very litle over a period, and the profit that is gained by the producer over there is absorbed, and labor seldom benefits from it or gets any share of it.

Senator MALONE. Could it be that a difference in systems under our system here labor organizations and workingmen and women generally are given sometimes some people think a greater share than they are entitled to but at least they are right up on the ball all the time and get their share of the increased profit and increased lower cost of production, in wages. Our people do that. In some of the foreign nations perhaps the system is what makes the difference? Do you think that it might?

Mr. LERCH. There is no question about it. They are told what they get in many countries.

Senator MALONE. There is a rollcall vote. We will be back.

(Short recess.)

Senator MALONE. The committee will be in order. I'm sorry for the interruption. Go right ahead.

Mr. LERCH. I have given my statement. There is one other thing that I would like to say, however, there was some discussion this morning as to the delegation of power to the President the ability to set tariff rates. You undoubtedly know that there are 2 suits testing the constitutionality of the Trade Agreement Act, 1 of which I am now engaged in prosecuting. My view is that even though the Congress were to delegate, within the terms of the pending bill, to the President or to the Tariff Commission, discretion to appraise imported merchandise without prescribing the yardstick it would still be unconstitutional. Section 336, the section we know and speak of as the flexible tariff act, was held to be constitutional and not an unlawful delegation of power to the President because it erected a yardstick. You could raise or lower within 50 percent to equalize the cost of production here and abroad. It is that provision which limited the Tariff Commission to a factual finding of a rate which would exactly equalize cost of production here and abroad which saved the constitutionality.

Senator MALONE. Is that what the Court said?

Mr. LERCH. It is in the Hampton case.

Senator MALONE. Would you mind inserting that decision or excerpts from the decision in the record as part of your testimony?

Mr. LERCH. I'll be glad to do that.

(The document referred to is as follows:)

LAMB & LERCH,
New York, June 27, 1956.

Re H. R. 6040.

CHAIRMAN, SENATE FINANCE COMMITTEE,
United States Senate, Washington, D. C.

DEAR SIR: When I appeared before your committee yesterday, I was requested to file as part of my testimony a description of the case I have pending in the United States Customs Court in New York, testing the constitutionality of the Trade Agreements Act of 1934.

The suit is entitled "*Star-Kist Foods, Inc., Plaintiff* v. *United States*," Protest No. 258737–K. It was filed with the United States Customs Court on May 26, 1955. On October 18, 1855, it was tried and submitted. At the trial in the United States Customs Court, the United States moved to dismiss the case on technical grounds. This motion was briefed by both parties, and the case has been pending on that motion since January 20, 1956. No decision has yet been rendered. After the decision on the motion, the issue will be briefed by both parties on the constitutional question.

Respectfully,

J. R. LERCH.

LAMB & LERCH,
New York, June 29, 1956.

Re H. R. 6040.

CHAIRMAN, SENATE FINANCE COMMITTEE,
United States Senate, Washington 25, D. C.

DEAR SIR: When I appeared before your committee on June 26, 1956, I promised to furnish the committee my comment on the decision of the United States Supreme Court in *Hampton, Jr. & Co.* v. *United States* (73 Law ed. U. S. Supreme Court Reports 624).

This case involved the constitutionality of the so-called flexible tariff provision, section 315 of the Tariff Act of 1922. I think the following excerpts from the opinion of Chief Justice Taft in the above-entitled case clearly show its application to the Trade Agreements Act of 1934. I quote:

" * * * First. It seems clear what Congress intended by section 315. Its plan was to secure by law the imposition of customs duties on articles of imported merchandise which should equal the difference between the cost of producing in a foreign country the articles in question and laying them down for sale in the United States, and the cost of producing and selling like or similar articles in the United States, so that the duties not only secure revenue but at the same time enable domestic producers to compete on terms of equality with foreign producers in the markets of the United States. It may be that it is difficult to fix with exactness this difference, but the difference which is sought in the statute is perfectly clear and perfectly intelligible. Because of the difficulty in practically determining what that difference is, Congress seems to have doubted that the information in its possession was such as to enable it to make the adjustment accurately, and also to have apprehended that with changing conditions the difference might vary in such a way that some readjustments would be necessary to give effect to the principle on which the statute proceeds. To avoid such difficulties, Congress adopted in section 315 the method of describing with clearness what its policy and plan was and then authorizing a member of the executive branch to carry out its policy and plan and to find the changing difference from time to time and to make the adjustments necessary to conform the duties to the standard underlying that policy and plan. As it was a matter of great importance, it concluded to give by statute to the President, the chief of the executive branch, the function of determining the difference as it might vary. He was provided with a body of investigators who were to assist him in obtaining needed data and ascertaining the facts justifying readjustments. There was no specific provision by which action by the President might be invoked under this act, but it was presumed that the President would through this body of advisers keep himself advised of the necessity for investigation or change and then would proceed to pursue his duties under the act and reach such conclusion as he might find justified by the investigation, and proclaim the same if necessary.

"The Tariff Commission does not itself fix duties, but before the President reaches a conclusion on the subject of investigation, the Tariff Commission must make an investigation and in doing so must give notice to all parties interested and an opportunity to adduce evidence and to be heard.

"The well-known maxim 'delegata potestas non potest delegari,' applicable to the law of agency in the general and common law, is well understood and has had wider application in the construction of our Federal and State Constitutions than it has in private law. Our Federal Constitution and State constitutions of this country divide the governmental power into three branches. The first is the legislative, the second is the executive, and the third is the judicial, and the rule is that in the actual administration of the government Congress or the legislation should exercise the legislative power, the President or the State executive, the governor, the executive power, and the courts or the judiciary the judicial power, and in carrying out that constitutional division into three branches it is a breach of the national fundamental law if Congress gives up its legislative power and transfers it to the President, or to the judicial branch, or if by law it attempts to invest itself or its Members with either executive power or judicial power. This is not to say that the three branches are not coordinate parts of one government and that each in the field of its duties may not invoke the action of the two other branches insofar as the action invoked shall not be an assumption of the constitutional field of action of another branch. In determining what it may do in seek-

ing assistance from another branch, the extent and character of that assistance must be fixed according to commonsense and the inherent necessities of the governmental coordination.

* * * * * * *

"* * * The same principle that permits Congress to exercise its ratemaking power in interstate commerce by declaring the rule which shall prevail in the legislative fixing of rates, and enables it to remit to a ratemaking 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.

* * * * * * *

"And so here the fact that Congress declares that one of its motives in fixing the rates of duty is so to fix them 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, cannot invalidate a revenue act so framed. Section 315 and its provisions are within the power of Congress. The judgment of the Court of Customs Appeals is affirmed."

I think this case substantiates my position at the hearing, namely, that in order to be constitutional, a delegation of power by the legislative branch of the Government to the executive must be specifically defined, must be factual, and operate within prescribed limits.

Thanking you for your courtesy, I am,

Very truly yours,

J. G. LERCH.

Mr. LERCH. I just want to finish that by saying that the Trade Agreements Act nor any of the proposals that I have read since in the way of simplification will subscribe to that yardstick.

Senator MALONE. Your idea is that the Congress can delegate the authority to the President if they had done it on a principle that he was allowed with his organization to determine that difference on a flexible basis, that would have been constitutional?

Mr. LERCH. Factually within limits.

Senator MALONE. Yes, factually within limits. But to delegate the constitutional power of Congress to the President or anyone else to go ahead and adjust the duties or tariffs without regard to any principle in your opinion would not be constitutional.

Mr. LERCH. The principle being that of equalizing and working within set limits on a factual basis.

Senator MALONE. Well, he is working within set limits. But the point of your argument it seems to me was that it is unconstitutional because it delegated the power beyond a principle of equalizing the cost.

Mr. LERCH. Exactly.

Senator MALONE. But if they had delegated power to the President to equalize the costs in the same manner but with his organization, setting up an organization, you think that might have been constitutional?

Mr. LERCH. I think it would come within the Hampton decision.

Senator MALONE. And if they so desired, which they did do according to the Secretary of State, they could transfer that same authority, Congress could, and did, according to the Secretary of State in the 1934 Trade Agreements Act to Geneva under the General Agreement on Tariffs and Trade, the 35 nations and we have 1 vote. But if we had delegated it to determine that difference in cost, they would take the profit out of low-cost labor and equalize the cost of production

then you think it still might have been legal to give it to a group of foreign nations?

Mr. LERCH. No, I do not agree with the Secretary's statement that it was a legal delegation of power to begin with in 1934, and now even if you limit it——

Senator MALONE. He has said that it did give him the power and they have transferred it. So what is the remedy?

Mr. LERCH. My suit as to unconstitutionality.

Senator MALONE. Is there any suit in the court today to test the constitutionality of his statement, that is the transfer to Geneva of this?

Mr. LERCH. Obviously if I am successful in my suit in the Star-Kist Tunafish case——

Senator MALONE. What is that?

Mr. LERCH. That is the suit in the customs court.

Senator MALONE. Describe the suit of the plaintiffs just for the benefit of the record.

Mr. LERCH. Well, the Star-Kist Tunafish Co. is a well-known packer of tunafish, and they pack tunafish in oil, and the rate was reduced in tunafish in brine. The Japanese flooded this market with tunafish in brine. This case tests the constitutionality of the act in that they reduced the rate on tunafish in brine. We contend that there is no authority under the Trade Agreements Act to delegate such power, Congress to delegate such power to the President.

Senator MALONE. They lowered the tariff on tunafish in brine without regard to any differential in cost of such an operation between this Nation and Japan.

Mr. LERCH. Right.

Senator MALONE. And that is what you say is unconstitutional.

Mr. LERCH. No, I say they don't have the right, Congress did not have the right to delegate to the President to make that reduction to begin with, because it has not subscribed to the legal standards erected in the Hampton case by the Supreme Court of the United States, namely, the delegation of power to find certain facts to an agency of Congress within certain limits.

Senator MALONE. Could they then transfer in your opinion the power to determine facts to the President, being the executive branch of the Government, a different branch of the Government, could they in any case transfer it to the executive branch of the Government?

Mr. LERCH. I think the Congress can make any part of the executive branch of the Government its agent for ascertaining certain facts and applying those facts within the limits prescribed by Congress.

Senator MALONE. Maybe the President would not like to be an agent of Congress. But he being entirely——

Mr. LERCH. Pardon me, Senator Malone. I didn't suggest you make the President the agent, but any part of the executive branch of the Government the agency for finding the facts.

Senator MALONE. Do you think unless we did make him or a part of his executive branch our agent, then it would be unconstitutional?

Mr. LERCH. Absolutely. At least it doesn't subscribe to the one case that fits this description, the Hampton case, which was held to be constitutional.

Senator MALONE. And also unless we gave him the principle to operate by and to determine the effects, that would indicate then what

the answer should be, that is to say the differential of costs between this country and the others.

Mr. LERCH. Exactly, in other words remove any discretion.

Senator MALONE. Then this is what you are trying to tell the committee and this is what I want to get clear in the record, because other Senators will no doubt review it in due time.

The Congress could not delegate its constitutional responsibility to the President to be used at his discretion.

Mr. LERCH. Exactly, and in saying that I am quoting the Hampton decision of the Supreme Court.

Senator MALONE. I'll say to you in all seriousness, and that is one of the reasons I am in the United States Senate, I knew when we passed the 1934 Trade Agreements Act we were on the way, if it were used as it is now being used, that if it were constitutional, it would be unwise to delegate that power to the President and the power for him to delegate it to 34 foreign nations and our Nation making 35, each with 1 vote to do whatever they want to do within certain limits of that protective duty or tariff without regard to any principle or the determination of facts to fit that principle.

Mr. LERCH. Senator, I'll go you one better. Within the scope of my practice it has proven ruinous.

Senator MALONE. Of course, in Washington we know nothing about that. These cushions are soft, the air is conditioned, we have nice looking secretaries and all we need to do is just raise the taxes and get the money whenever we want to, and all the fish people and the tool-steel people and the crockery people and the mining people, all they have to do if they can't make a living in their business is to go some place where they can get a job. That is our attitude here.

Mr. LERCH. Don't forget our textiles, Senator.

Senator MALONE. Well, the textiles of course are gone. I mentioned this yesterday and I shouldn't clutter up the record with it again, but one of these jokers made a speech in Reno the other day in which he said that there should be more textiles imported. Of course there is no textile manufacturer in my State and with a sympathetic audience they can do that. They go into the States that do not produce the thing they talk about and they advocate free trade and get sympathetic listeners so they play one against another.

My own opinion is you have to have a principle because naturally everyone in the United States would like to see free trade in what he buys and a tariff on what he sells.

Mr. LERCH. Exactly.

Senator MALONE. The blast workers wanted free trade on copper but when you suggested free trade for lipstick holders and articles made of brass, I showed in the committee here I think about 6 or 7 years ago that they had a tariff all the way from 16 percent to 60 percent on their manufactured goods.

Now they have not been back since. They didn't testify any more. Well, I am glad to see you and I think you have made a good witness and I think you have talked well about the subject.

Now we have Mr. Robert N. Hawes, American Manufacturers of Plywood, American Wood Fabric Institute.

Mr. Hawes, I see you have a written statement. You may proceed in any way you choose.

STATEMENT OF ROBERT N. HAWES, GENERAL COUNSEL, HARDWOOD PLYWOOD INSTITUTE

Mr. HAWES. My name is Robert N. Hawes, and I am general counsel for the Hardwood Plywood Institute, whose membership consists of 51 American producers of hardwood plywood.

The American hardwood plywood industry has sustained substantial damage and restriction of expansion as the result of the influx since 1951 of large quantities of low-priced plywood produced in foreign countries having wage scales a fraction of the scale in our country.

Plywood imports in the first quarter, 1956 absorb more than 37 percent of the American market for hardwood plywood. Imports of plywood from Japan and Finland have increased several thousand percent since 1951.

Our interests in H. R. 6040 are to oppose the reduction in tariff which the bill is designed to effect, and to preserve the Antidumping Act as a deterrent to unrestrained unfair competition.

Under the present law, appraisals are made on the basis of foreign value or export value, whichever is the higher. The obvious purpose of selecting foreign value for elimination as a basis for appraisals is to effect a reduction of duty. Treasury concedes that a tariff reduction will result, but attempts to minimize their effect by citing a survey made on a random sampling basis.

Senator MALONE. Let me ask you at that point, do you believe that to be true even if this proposed amendment were adopted?

Mr. HAWES. Yes, sir.

Senator MALONE. Go ahead.

Mr. HAWES. This survey has as a basis the averaging of reductions on dissimilar products which are imported at different rates of duty. Plywood, if included in the survey, has been tossed in with manufacturers of wood which class includes many products unrelated to plywood in production, costs, prices, marketing, or duty. The Treasury cannot determine the depth of the cut today or forecast the effect for the future. H. R. 6040 provides for a tariff reduction of an unknown amount by means which deprive American industry of the protection of the peril-point and escape-clause provisions of the Trade Agreements Act.

H. R. 6040 fosters multiple pricing by foreign producers. Prices for export to the United States can be fixed without regard to domestic prices or prices for export to other countries. The protection provided under the antidumping law will be destroyed. H. R. 6040 and the antidumping law are not compatible.

Should H. R. 6040 be enacted, entries under H. R. 6040 with appraisals on export value basis may be subject to the penalties of the Antidumping Act, if the price is less than the foreign value.

Treasury will have to decide whether to enforce the Antidumping Act or take the position that law conflicts with H. R. 6040, and the Antidumping Act will be ignored until Congress clarifies the situation.

The passage of H. R. 6040, without the deletion of section 2 under the proposed amendment, will result in an administrative repeal of the Antidumping Act.

The Treasury has proposed that section 402 of the present law be redesignated section 402 (a) and that a new section 6 be added. This

is an afterthought proposed after it became evident that this committee was not inclined to grant Treasury unrestricted authority to reduce tariffs. Section 6 has been drafted to assure that the Secretary shall have absolute discretion in determining what products may remain under the present method of appraisement.

Section 6 would provide for the retention of foreign value for the products listed and export value for the products unlisted. As Treasury will have to ascertain both the foreign value and export value under section 6 it can no longer be contended that the purpose of this bill is simplification of the appraisal basis.

Section 6 affords no real protection to American industry. The listing of products lies within the uncontrolled discretion of the Secretary. In the event a product is not listed, the American company affected must show reason why the product should have been listed.

With all the necessary figures being in possession of Treasury, many of which are held on a restricted basis and others available only in grouping dictated by Treasury, an American company would find the task of supplying a reason for the listing of his product an impossibility.

In that all of the information is peculiarly within the confines of Treasury, it would appear that good faith requires the Treasury to justify the listing of products under section 2, after investigation with the findings made available to the interested industry. Section 2 cannot be considered a remedy for American enterprises damaged by the tariff reduction to be effected by this bill.

Our industry is deeply concerned by the method of a tariff reduction which is proposed by this bill.

The innocuous title "Customs Simplification" submerges the real purpose which is a tariff reduction. Congress considered the administration's request for deeper tariff cuts at the last session and refused to grant the blanket authority requested. If the administration was not satisfied with the extent of the authority Congress granted it, then it should openly ask for additional authority.

Our industry like many others has been seriously injured by the tariff reductions of 1951. We have not sat on our hands and complained; we have exhausted all administrative remedies provided by law. With plywood imports up, over 800 percent, production, profits and employment down, the Tariff Commission denied escape-clause relief on the ground that the general recession of 1954 was a contributing cause to our damage and plywood imports were not the entire cause.

Antidumping complaints were under investigation by Treasury for 2 years; in one, it was decided that dumping had not occurred in a sufficient number of transactions to warrant an affirmative finding, in the other, no explanation of the finding was made.

Our industry is well aware of the difficulties of securing administrative relief in tariff matters where decisions may be influenced by foreign political considerations. We are of the opinion that section 6 is merely a subterfuge to put the tariff reduction plan in effect with American industry told that it has an administrative remedy.

We would like to suggest that your committee make a thorough investigation of the administration of the escape clause and the Antidumping Act. We are confident that such an investigation would disclose the need for amendments to both provisions of both acts to

assure to American industry the remedies intended by Congress at the time of the passage of those laws.

We respectfully request that your committee delete section 402 of H. R. 6040, and the proposed amendment designated section 6.

Mr. Chairman, I have a statement for the American Wood Fabric Institute. Our objections are somewhat similar except one different situation that exists on their product, and rather than read the entire statement, I would like to explain that.

Senator MALONE. You can make your explanation and then we will make the statement a part of the record.

Mr. HAWES. Yes. The American Wood Fabric Institute is a trade association whose members consist of the manufacturers of woven-wood fabric. Woven-wood fabric would be familiar to you in the wood slat blinds that you see on porches. In recent years the wooden slat blind has come into the house, and now it is used for screens and drapes and window shades. Their industry has been seriously damaged by the import of bamboo blinds and wood slat blinds, shades, screens, and drapes. We have appeared before the Committee on Reciprocity Information on two occasions in opposition to tariff reductions. Now their problem, which is directly related to this amendment section 6, is that competitive products come in under four different classifications under the Tariff Act. All of those classifications are what are known as basket provisions. They are not otherwise specified in the act, so each one has many items coming in under that same paragraph. There is no product breakout on the statistics by the Bureau of Census or Customs. There is no way for us to ascertain the value of our particular products or the ones that are competitive with us, so if we are left to the remedy of section 6 to show a reason to the Treasury why the value is 95 percent or less, we will have nothing to establish a case, and automatically we will be unlisted.

So far as our industry is concerned, section 6 means nothing. It is no remedy.

And I am sure, with a limited familiarity with the Tariff Act, and all of these vast categories, that there must be hundreds of small American industries which are in the same situation we are, in that they have no idea of what might happen to them, or what could happen.

Senator MALONE. Can't you go into some other kind of business, as suggested by the State Department?

Mr. HAYES. Unfortunately these companies are old—their people have been employed there for many years, many reaching the age of retirement, and a vast majority of them, I think, would find it extremely difficult to adjust themselves to a new occupation. Their pension rights would be lost.

Senator MALONE. It doesn't seem to bother the State Department officials very much.

I suppose you would favor this bill in the Senate now that would compensate investors, for investments destroyed through imports, and to move working men and women from one area to the other.

Mr. HAWES. We would not, we would oppose it, Senator. We would rather maintain our own businesses in fair competition with other countries, and with our own American industry.

Senator MALONE. What do you call fair competition?

Mr. HAWES. Anything that is sold within a reasonable price range of our products.

Senator MALONE. How would you bring about an evener of wages? What would you suggest as a principle in place of the 1934 Trade Agreements Act now being operated in Geneva?

Mr. HAWES. We feel that the tariff rate should be based on—the purpose of the tariff rates should be to equalize the cost of production. Both of these industries are faced with an 11- to 13-cent-an-hour Japanese competition, as against $1.30 and up per hour for our workmen. That is the principal difficulty.

Senator MALONE. There has been an argument going around that with their antiquated methods in Japan, and our know-how in up-to-date machinery, that we need not fear imports.

Mr. HAWES. That question is rather pertinent to the woven-wood fabric people, Senator. Prior to the war, almost all of the competitive products of bamboo blinds were handmade. They were very poor quality.

After the war, through our assistance, these plants developed their own machines, and imported machines from the United States, so that the industry is now highly mechanized—in fact, they have the identical machines that we have in our plants, to make the identical product.

We can come out with a new product in the spring, and, the identical product is imported from Japan in the fall.

Senator MALONE. Do you mean to tell me that we shouldn't help these people there, is that your testimony, that you are against helping these backward nations?

Mr. HAWES. Oh, I am in favor of helping the American workmen first.

Senator MALONE. That is a rather old-fashioned idea.

Mr. HAWES. It might be, you might typify me as a liberal or something.

Senator MALONE. I understand the heads of the consolidated CIO–AFL, are for free trade, for the 1934 Trade Agreements Act, as it is being regulated and adjusted in Geneva, aren't they?

Mr. HAWES. I have heard some of their statements on H. R. 1 in some of the hearings. I hardly believe they are reflecting the opinion of their men whose jobs are in jeopardy.

Senator MALONE. Now, seriously speaking, you just don't think that the situation exists that they do use this antiquated machinery, that the starry-eyed one-worlders described, do you?

Mr. HAWES. We know that they don't use antiquated machinery.

Senator MALONE. Did we pay for that machinery, did I get that from your testimony?

Mr. HAWES. I understand that a great deal of it was bought with the help of the foreign aid programs, and the military government programs to restore these plants to operation and increase production.

Senator MALONE. That wouldn't be restoring it, would it, that would be replacing it with up-to-date machinery.

Mr. HAWES. That is right. And that is what has been done.

Senator MALONE. To your knowledge, are there American firms going into those low-wage countries, like Japan, and manufacturing the products and shipping them back here—not this particular product, I am talking about the general spread of products in England and other countries.

Mr. HAWES. All I would know about that would be what I read in the papers. There haven't been any of our companies going into foreign countries and setting up plants.

Senator MALONE. I cited a pamphlet yesterday on Japan, and put it in the record, it would be very interesting to you, no doubt, where American firms are buying into the foreign firms, and replacing or building new factories, as a matter of fact.

Have you noticed over the years a trend to replace American labor with foreign cheaper labor in the production of goods being imported here?

Mr. HAWES. As far as our industries are concerned, we have been very seriously concerned about just exactly that.

Senator MALONE. You are talking about your own industry. If you are the only industry hurt, it might be, according to the State Department—if you are the only industry hurt, it doesn't matter very much, you are just one of the casualties.

But is there a general trend in that regard, have you noticed it?

Mr. HAWES. Well, on the basis of facts that I have read, and statements that I have read, I would say that there is a general trend.

Senator MALONE. What do you think the policy should be? What should Congress do about this business? You understand that Congress could do anything it wanted to do up to now, could it not, in regard to the regulation of foreign trade and the national economy.

Mr. HAWES. That is right. I think Congress has the right to completely control it under the Constitution.

Senator MALONE. What do you think they have a right to do? You didn't come all this way and write this statement, without knowing something about the principle, and having some discussions to make.

Mr. HAWES. I think that Congress should do as suggested by Mr. Lerch, do away with all laws passed since 1934, and revert to the old flexible tariff provisions, and give the Tariff Commission the power to investigate and determine what the rate should be on the basis of factual information, using the cost, differences in cost of production as the basis for the rates.

Senator MALONE. In other words, arrange a fair and reasonable competitive basis between imports and American-manufactured goods.

Mr. HAWES. I think that is all any American manufacturer asks for.

Senator MALONE. Where did Congress get the authority to do that?

Mr. HAWES. Congress has it under the Constitution, Senator, they are the sole repository.

Senator MALONE. Do you suggest we read the Constitution one more time?

Mr. HAWES. I think it would be a good idea on many occasions.

Senator MALONE. You know, we got away from that in 1934, and and all this business of the Constitution of the United States, if it didn't fit in with what we wanted to do, we just ignored it; isn't that the idea?

Mr. HAWES. I think that is the situation in many cases; yes, sir.

Senator MALONE. You are suggesting that we go back to the Constitution for the regulation of foreign trade, and the national economy, and that Congress just read it and abide by it; is that it?

Mr. HAWES. I think so. And let's take these duties and tariffs out of foreign politics and bring them back—

Senator MALONE. What do you call foreign politics?

Mr. HAWES. Well, I think we are playing politics with foreign countries, we are attempting to bolster up the industry of foreign countries because of foreign political situations without regard to what damage it does to the American economy.

Senator MALONE. Some of the debates that I had early in my career in the Senate, in 1948, when the Marshall plan was first suggested, I debated Mr. Vandenberg and others on the Senate floor, I was a freshman. I had been in the engineering business for 35 years, and I had watched these things.

And when they suggested that we build up their industry in Europe so that we could get them back on their feet, I suggested—rather timidly, I suppose—the language reads all right, I read it again the other day—that they already had a capacity beyond the ability to consume in Europe; and that if we increased that capacity we would have to buy the goods, or somebody would, and as long as we are responsible for increasing it, perhaps they would look to us. And that, of course, is what they are doing.

I also said at that time—I think it was 1948 or 1949—we changed the name of this trick organization every year, I forget now even what it was that spends the money—that any engineer, any industrial engineer would tell them, if they had time to ask him, that wherever in the world you had the markets assured, you could always finance the plant, that the only thing that ever bothered an industrial engineer was the markets and the price of your raw materials and transportation, and the cost of your operation, but that they were going about it backwards, they were not investigating the market first, as an engineer always does, they were building the plant, like is done so often, though not so much any more.

But 30 or 40 years ago, or 50 years ago, out in the mining country there would be a promoter come from New York or Massachusetts, some place, and he would sell stock to build a mill. He would build a mill, and it would be a fine mill, and then he would start looking for the mine. And the mine, when found—if it ever was—might be a good many miles from the mill site.

So the mill wasn't any good. But as long as they were building a mill, they could sell stock.

That is exactly what were were doing. We built the mill first, and there was no market. They built the mill first, and there was no mine. They could not sell to each other—they will not sell to each other, they refuse to sell to each other—and their plants in 1948 were then producing above their ability to consume.

I think you can say that, without fear of contradiction, as to all of the European countries with respect to their manufacturing area, their processing area, we have built it even higher, and there may be many of these people who advocate free trade or freer trade, knowing that it means a displacement of industry here.

They feel that obligation, they feel that by building those people up, furnishing them their market for the goods, that they are preventing another war in some intangible way, that we are preventing a war by doing that.

Have you heard that?

Mr. HAWES. Yes; I have heard that.

Senator MALONE. What do you believe about it?

Mr. HAWES. No; I don't believe it. I think we are just making them fat. You are talking about increasing beyond capacity. The Japanese plywood industry before the war had a total production of considerably less than half a billion square feet.

Senator MALONE. What is it now?

Mr. HAWES. Almost 3 billion.

Senator MALONE. What is their ability to consume plywood?

Mr. HAWES. About—I think their markets would take less than 20 percent of what they produce now. So they have to ship it here. But their market, peculiarly, is good here, because we have reduced the duty and have no restrictions, they go in other countries, and they are restricted.

Senator MALONE. Do you have any idea of what would happen if you started to ship plywood to Japan?

Mr. HAWES. We couldn't sell it, because the cost at the mill is more than the cost that they sell it for here, duty paid.

Senator MALONE. Suppose you subsidized it, and tried to ship it into Japan, what do you suppose would happen now?

Mr. HAWES. They woudn't permit it in, because they have foreign exchange controls.

Senator MALONE. Then they would not give you the exchange to bring plywod into Japan?

Mr. HAWES. It is the same in England today.

Senator MALONE. Explain that about England.

Mr. HAWES. Well, the English funds for the purchase of plywood are controlled by the Board of Trade, and they are allotted so many millions of dollars to buy with. So that we have a market, to the extent that they make dollars available.

Senator MALONE. What would happen if you started shipping textiles into Scotland or England?

Mr. HAWES. I am not familiar with the question of textiles, but I am quite sure that it would be controlled.

Senator MALONE. We are the only nation on earth that will allow shipments—that is to say, shipments without an evener of the labor standards—of material into our country that we ourselves produce in quantity, without an evener of the labor standards, of the cost of production, or, in fact, allowed to come in at all in greater quantities than we need; are we about the only nation?

Mr. HAWES. I don't know of any other that is as liberal in their controls as we are.

Senator MALONE. How about shipping copper to Chile; do you suppose you could ship copper to Chile, even if you gave it to them?

Mr. HAWES. I doubt it. I don't know, but I doubt it. We had an export business one time of 500 million square feet of hardwood plywood a year—not 500 million, 50 million—and now we can't sell a square foot.

Senator MALONE. Now, you know, on cross-examination—and it was mine, because I am the only one here that seems to object to this business, and I get a reputation of wanting to put a wall around the United States; that I am a high tariff man, according to the papers. And of

course no one that I know of has mentioned the high tariff or the low tariff.

But the mention is an evener—call it a cow, if you want to—that will even the cost between this Nation and the chief competitive nation on each product, and lowering that tariff, or cow, or duty, or whatever you call it, in accordance with the rise in the living standards of that nation. And when they live about like we do, if they ever do, then it is automatically free trade. I want free trade. I want foreign trade. But the way I would like to get it would be to protect our own economic structure while we are getting it, and do it on a basis that we maintain our economic structure while we are helping the other nations.

And what I mean by helping other nations is not giving them the taxpayers' money. Our chief export at the moment is cash, has been for the 10 years I have been here.

I mean not selling our house and dividing it with our neighbor, but being a good neighbor, doing everything you can for them without destroying yourself.

Well, the other idea is, the philosophy is to do just what the Secretary of State testified, that under this General Agreement on Tariffs and Trade, they have a perfect right to operate in Geneva, and that if, in helping these nations, there are industries here that are impaired or destroyed, it is just a part of a whole great worldwide economic cold war that we are conducting. And that is the way to keep out of war.

Now, there are the two philosophies. And I am getting a little tired of reading in the papers about the high tariff advocates and the wall around this Nation that would be placed, if you had a principle that would protect the American workingman, and the American investor, on the basis of fair and reasonable competition, allowing the Tariff Commission, an agent of Congress, to adjust at all times that flexible duty or import fee or tariff, or cow, whatever you want to call it, to take the profit out of the sweatshop labor at the water's edge.

Now, that is what I would like to see. I am very frank about it. And I, of course, like your testimony. You are not asking for a tariff or a duty, or whatever you call it, higher than that differential of cost of production, are you?

Mr. HAWES. No, we are not. We have one country, Canada, which competes with us very fairly. We have no unfair competition.

Senator MALONE. They do not manipulate their money.

Mr. HAWES. They don't manipulate their money, and they do not manipulate their prices to meet the market conditions to take advantage of a softness in our market. We compete very fairly, and are happy with our relations with them.

But they have a price which is comparable to ours, so that we can compete.

Senator MALONE. I doubt if it would hurt this Nation very much if we suddenly had free trade with Canada, that is my idea of free trade, that when any nation in the world, any chief competitive nation in plywood, for instance—if Japan reached as near our standard of living wages as Canada, I doubt if you would be hurt.

Mr. HAWES. We wouldn't.

Senator MALONE. And I doubt if you would be here testifying for any tariff.

Mr. HAWES. If their prices were anywhere within the range of 10 percent of ours, we would not be concerned with the competition. But they range from 30 to 40 percent less.

Senator MALONE. Now, you know what the real argument is, and that is what this fellow in Reno the other day was arguing, that we must import more textiles.

Of course, that puts Georgia and the New England States, and the Southern States, and any other States that have textile plants, out of business.

But in our State of Nevada, they are only human, they like to get their shirts and dresses a little cheaper—of course, not thinking it through. And that is what happens in Connecticut when they talk about minerals and machine tools. But if they don't have a job—which they could not have if we followed it through to the conclusion, and everything came in at free trade—if they don't have a job, they don't have the cheaper price, the lower price to pay for the goods.

But each industry, each individual over the years has had some kind of an idea that they can use their influence and get a tariff on what they sell, and free trade on what they buy. And that is still in their minds, and it has worked—that chord is played upon by the State Department, in my opinion.

Their argument now is that if you do not buy Japanese goods, then they will sell them to Asia, Russia.

What do you have to say to that?

Mr. HAWES. Well, we have heard that argument about plywood. We have gone back and checked Japanese figures put out by their ministry which show that the largest quantity they ever sold to China and Manchuria when Manchuria was under the control of Japan was approximately 140 million square feet, which was then about 35 percent of their total production.

So today—I mean, they could sell the same quantity that they sold before to China or Asia and still have 2½ billion feet to sell in other markets.

Senator MALONE. Well, the same applies to the European nations. If we do not buy their stuff, now that we have increased their capacity to produce, the argument is that they will sell—and they tell you frankly, you see it in the papers—they will sell to Russia and the Iron Curtain countries. And they are selling to China, and of course they are selling to Russia through the neutral countries. I spent 2½ months behind the Iron Curtain. And Moscow was crawling with salesmen from the European nations and low countries, trying to sell them anything they would buy including turbo-jet engines.

One Swede I met had made a deal to sell turbojet engines. And he was very wary because the Russians insisted on delivery of the engines before they paid him the money, and he insisted on the money before he delivered the engines, and they were at cross-purposes.

But I presume they got together on that pretty soon. He had no trouble getting turbojets to sell them, that was not a problem.

So what do you think we are heading for in the groove that we are in now?

You are not making any headway as a witness, of course you know that.

Mr. HAWES. I think it would take a person——

Senator MALONE. I am about the only person on the committee that would listen to you.

Mr. HAWES. With a great deal more knowledge and clairvoyance than I have, to answer your questions.

Senator MALONE. Use your horsesense. You know, that is entirely absent in Washington now; but that is one reason I like to ride a horse, because at least you know what he will do under a certain set of circumstances.

Mr. HAWES. I am afraid that if we don't give some thought to the effect of some of these actions on our American economy, we are going to be in a very serious situation.

Senator MALONE. Don't you think if we holed up in a war economy, if we appropriate more money for contracts, and give more to foreign countries, and raise the debt limit——

Mr. HAWES. No, I don't think we can continue to build them up so that eventually they will be stronger, and we weaker.

Senator MALONE. What do you think would happen then? Wouldn't they divide with us on the same basis that we divided with them, everything nice and lovely?

Mr. HAWES. It has never happened before. I doubt if it would happen now.

Senator MALONE. I think you have made a good witness. Of course, it won't make any difference. We are in the groove, and have been in it for 10 years. I don't know when it will change, it may be in 10 years, or it could be in 6 months.

But eventually the American workmen will instruct their wives to look to the American market before they lay the money on the counter, and that will be the end of it.

Mr. HAWES. I can remember the "Buy American," it wasn't too long ago.

Senator MALONE. If that completes your testimony, the committee will stand in recess, subject to the call of the chairman.

Mr. HAWES. Thank you, Senator.

(Whereupon, at 3:40 p. m., the committee adjourned, to reconvene at 10 a. m., Wednesday, June 27, 1956.)

METHODS OF DETERMINING VALUE OF IMPORTED GOODS FOR DUTY PURPOSES

WEDNESDAY, JUNE 27, 1956

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

The committee met, pursuant to recess, at 10:10 a. m., in room 312, Senate Office Building, Senator Harry Flood Byrd (chairman) presiding.

Present: Senators Byrd, Douglas, Millikin, Martin (of Pennsylvania), Williams, Malone, Carlson, and Bennett.

Also present: Elizabeth B. Springer, chief clerk.

The CHAIRMAN. The committee will come to order, please.

The first witness is Mr. Buford Brandis, chief economist of the American Cotton Manufacturers Institute.

STATEMENT OF R. BUFORD BRANDIS, CHIEF ECONOMIST, AMERICAN COTTON MANUFACTURERS INSTITUTE

Mr. BRANDIS. Mr. Chairman, gentlemen, I am Buford Brandis, chief economist of the American Cotton Manufacturers Institute, with offices here in Washington.

Last summer when this committee first held hearings on H. R. 6040, the so-called customs simplification bill, Mr. R. Houston Jewell appeared on behalf of the American Cotton Manufacturers Institute. Mr. Jewell urged that section 2 of the bill be stricken in its entirety. On that occasion our witness pointed out that—

> The proposed changes in the methods of determining dutiable value are drastic in character and would tend to impair, or remove altogether, authentic standards of appraisement in the application of ad valorem duties.
>
> The proposed changes in consequence would—
>
> 1. Subordinate the tariff function to considerations of "easy" administration.
> 2. Transfer the power of value determination to foreign exporters without the offset of legally dependable correctives.
> 3. Establish a pattern of legalized price discriminations in international trade.
> 4. Remove the factor of competition, whether national or international, from value determination.
> 5. Establish dumping as a legalized practice by removing the means of identifying it.
> 6. Distort the dollar measurements of imports, thus crippling further their use in trade analysis.

Since those hearings of last year, the Treasury Department has submitted for consideration of this Committee an amendment to H. R. 6040 which it argues meets the objections offered to the original language of section 2 dealing with valuation procedure for customs purposes. It is the view of the American Cotton Manufacturers In-

stitute that the Treasury's proposed amendment does not cure the deficiencies of the original section 2 of H. R. 6040 and we therefore still urge this committee to strike in its entirety section 2 of the bill.

The basic idea of the proposed Treasury amendment is to delay for a period of 3 years the full effect of the changes in valuation procedure which would make export value the preferred method of determining dutiable value of imports. The Treasury amendment would accomplish this delay by retaining the current valuation procedures for those items which under the new system of valuation would have their valuation reduced by as much as 5 percent as compared to valuation under existing procedures. Unless within 90 days after the 3-year trial period the Congress amended section 2 of H. R. 6040, it would take full effect regardless of the extent to which valuations were reduced thereby.

In other words, the compromise proposal of the Treasury Department does not in any way change the basic concept of the bill as first considered, to which concept we were then and are now unalterably opposed.

The Treasury proposal puts the cart before the horse. It would have the Congress make a revolutionary change in our whole customs system, in effect making unknown numbers of tariff reductions of unknown amounts and then requiring the Customs Bureau to run a 3-year check on what the results of that action had been.

Furthermore, the proposed 3-year check on the new valuation procedure is really meaningless. Under the Treasury amendment, foreign exporters are put on notice that if valuations for United States customs purposes are changed substantially through the new reliance on export value, the advantage given to them will be withdrawn when the next annual list is compiled by the Treasury and that, moreover, too much of a change in dutiable valuations during the trial period may result in restoration of the present system of valuation by the Congress. For these reasons the trial period will give no clearer picture of the eventual results of application of section 2 procedures than did the Treasury's study submitted last year based on 1954 imports. The resulting statistics in each case are meaningless.

The fact is that section 2, either as originally proposed, or amended in accordance with the Treasury's suggestion, amounts to tariff reduction under the guise of customs simplification. For this reason we urge this committee to strike section 2 from the bill.

The cotton textile industry last year was the victim of deep reductions in ad valorem tariff rates during the GATT negotiations at Geneva. Enactment of section 2 of H. R. 6040, in either of its two versions, would subject this industry to further tariff reductions by reducing the valuations to which the rates of duty are applied. In effect, the determination of those valuations would be placed in the hands of the foreign exporters whose interest, of course, it is to have such valuations as low as possible.

Once again, therefore, we respectfully urge this committee to amend H. R. 6040 by striking section 2 in its entirety.

The present system, in force for many years, checks fictitious export valuations by providing that foreign value in the country of origin be used instead, if higher. This bill would remove the check of the "foreign value" alternative. The 1956 Treasury amendment

is nothing more than the 1955 model with a new paint job—and a pretty thin coat of paint at that.

Thank you very much.

The CHAIRMAN. Thank you, Dr. Brandis.

Are there any questions?

Senator CARLSON. As one interested in imports and exports, do you feel there is any need for custom simplification?

Mr. BRANDIS. Well, Senator, I think everybody is in favor of simplification of procedures where possible. Our view is that this bill is misnamed, sir, that the vital section, section 2, is more a tariff-reduction provision than it is a simplification of administrative procedure.

Senator CARLSON. Well, I happen to notice that the Department has come up with a suggestion that we go from foreign value to export value as simplification. So far as I have heard, no one has come up here with any real program of simplification except this program. Most people say, "Let's have simplification," but haven't come up with any plan.

Mr. BRANDIS. Well, I have no plan, Senator.

The CHAIRMAN. Thank you, Dr. Brandis.

The next witness is Mr. Richard F. Hansen, chairman of the International Trade and Tariff Committee of the Manufacturing Chemists' Association, Inc.

STATEMENT OF RICHARD F. HANSEN, CHAIRMAN OF THE INTERNATIONAL TRADE AND TARIFF COMMITTEE OF THE MANUFACTURING CHEMISTS' ASSOCIATION, INC.

Mr. HANSEN. Mr. Chairman and members of the committee, my name is Richard F. Hansen. I am chairman of the International Trade and Tariff Committee of the Manufacturing Chemists' Association, Inc. I am appearing on behalf of the board of directors of that association, whose members represent more than 90 percent of the productive capacity of the chemical industry in the United States. The 148 members of the association include all phases and branches of chemical industry operations from the production of major tonnage chemicals to products produced on a small scale.

Representatives of the chemical industry testified with regard to H. R. 6040 before your committee on July 8, 1955, and before the House Ways and Means Committee on May 24, 1955. We will not repeat or attempt to restate what was said on those occasions, but will confine our remarks to the effects of the proposed amendments now under consideration by your committee.

On December 15, 1955, the Manufacturing Chemists' Association, in a letter to the then Under Secretary of the Treasury, complimented him on the improvements he had brought about in customs simplification. We advised him, however, that in our opinion section 2 of H. R. 6040 goes far beyond mere simplification in some applications and falls far short of the goal in others, and that the proposed amendments would not remove the objections we had previously expressed. To view these amendments in their proper perspective, it is necessary to recognize:

That H. R. 6040 and the proposed amendments are presented solely in the interests of simplifying customs procedures.

That the heart of H. R. 6040 and the amendments is the elimination of "foreign value" as a basis of customs valuation—a proposal which has repeatedly failed to receive congressional approval over the past 6 years.

That H. R. 6040, as originally introduced, would reduce customs valuations and customs duties on thousands of commodities subject to ad valorem duties, by amounts which are largely unknown.

That these reductions would be in addition to all reductions which have been or may be brought about by changes in rates of duty, and would be completely outside the scope of the peril-point and escape-clause procedures.

That these reductions would not be selective, or reciprocal, as required in the case of rate reductions under H. R. 1, and would not be moderate, except by sheer coincidence.

All of these objections to H. R. 6040, as originally introduced, are just as valid as they were last year. In fact, the only objection asserted by us last year which has been overcome even partially by the proposed amendments is that the duty reductions which would flow from the amended bill would not necessarily all be automatic and immediate and without notice.

Just how would the amendments operate?

For a period of 3 to 4 years we would have 2 alternative value provisions—1 without and 1 with "foreign value" as a basis of valuation. According to the analysis presented by the Treasury Department last year, approximately four-fifths of all customs entries subject to ad valorem duties have been, and would continue to be, appraised on the basis of "export value." Consequently, they would be completely unaffected by the elimination of "foreign value." On the other hand, about one-fifth of all entries subject to ad valorem have been appraised on the basis of "foreign value." Under the proposed amendments, this ratio would be drastically and annually reduced until, at the expiration of the period, no entries subject to ad valorem duties would be subject to valuation on the basis of foreign value.

The proposed amendments provide that during this transition period, an "article" would be valued on the present statutory basis only if a number of things happened to coincide:

1. The first requirement would be that the same "article" had actually been appraised in 1954. Please note that under this provision an article not actually appraised in 1954, even though imported in that year, would automatically be precluded from being appraised at "foreign value."

2. The second requirement would be that the average value of all imports on that "article" in the fiscal year 1954, recomputed on the basis of the proposed new section 402, must be 95 percent or less of the "average values" at which such article was actually appraised during the fiscal year 1954.

3. The third requirement would be that the Secretary of the Treasury would have to make determinations in accordance with the first two requirements and publish a list of such articles.

This approach to the valuation of imports is just as objectionable as it is complicated. In the first place, "article" is not defined, and the delegation to the Secretary of authority to determine what an

"article" is, and whether or not such article was appraised in 1954, could only lead to uncertainty and expensive litigation. As the former Under Secretary of the Treasury himself said in Detroit last September:

> * * * the description in the tariff act are now 25 years old and * * * whole families of products, as in the electronics and synthetics field, have come into being that were not even dreamed of when the words under which they must be classified were enacted into law.

As the principal producer of synthetics and other new products, the chemical industry would be seriously concerned with the way in which the determinations would be made. Even if all doubts as to the meaning of the word "article," were resolved in its favor, practically all new products would automatically be appraised at lower values. Thousands of products which were neither imported nor appraised in 1954 are today, or may be tomorrow, important articles of commerce. Between September 1954 and September 1955, at least 426 new chemicals and chemical products were introduced into commerce in the United States.

And, quite apart from the meaning to be given to the word "article," why should the value of an article for duty purposes today or tomorrow arbitrarily depend upon whether or not that article "was actually appraised during the fiscal year 1954"?

And why would the United States suddenly, in the interests of simplifying its customs procedures, say to all the world that henceforth the valuation which will be applied to an import will be determined by the average values of all appraisements of that article in 1954, regardless of their sources or prices?

The Treasury Department has publicized the fact that its backlog of unliquidated customs entries has been greatly reduced in recent years, even during a period of peak imports. It also has reported that it was necessary to make foreign value determinations in only 400 instances out of a total of 1,600,000 individual appraisements in the fiscal year 1955. Can it seriously be contended that the use of foreign value in one-fortieth of 1 percent of the appraisements so impedes our customs clearances as to justify the adoption of the scheme now proposed? Clearly, the proposed amendments could not make much of a contribution toward avoiding delays and uncertainties in our customs administration.

Under section 6, the Secretary of the Treasury would, at intervals of approximately a year over the next 3 years, issue a preliminary list of articles, which would continue to be valued on the present statutory basis. In each such instance, domestic manufacturers, producers and wholesalers would ostensibly be given the opportunity to present reasons why additional products should be added to the list. Thereafter, the Secretary would issue a final list to be appraised on the present statutory basis, and all other imports subject to ad valorem duties would then become dutiable on a different basis. After this cycle had been repeated 3 times—after 4 preliminary lists and 4 final lists—all imports subject to ad valorem duty would be appraised on the new basis, unless Congress took action to the contrary within 90 days.

The provisions which would be made for the addition of articles not listed by the Secretary on his preliminary list are wholly unreal-

istic. The time periods within which presentations might be made by domestic manufacturers, producers and wholesalers are hopelessly inadequate. The information which would be required for presentations regarding additions to the list is not available to the public. The Bureau of Census, Reports FT–110, United States Imports of Merchandise for Consumption, which are the only source of detailed data on imports, reveal only summary information covering total quantities and total value of all imports in a statistical category. These categories frequently include a large number of different products, but the reports do not disclose the valuation basis of either individual products or groups.

For example, consider ascorbic acid. According to the testimony presented to this committee last year, the value of ascorbic acid would be reduced as much as 40 percent under H. R. 6040. But how would a domestic producer know this fact or have information on which to base a request for the addition of ascorbic acid to a list from which it had been omitted? Table I shows the total quantity and the total value of 1954 imports under schedule A, commodity No. 2,220,490, covering drugs of vegetable origin, etc., including ascorbic acid, broken down by country of origin. However, there is no indication as to the value of ascorbic acid imports or the method of valuation, or even whether any ascorbic acid was imported. Indeed, the computed value of the many products comprising this category varies from 20 cents a pound, in the case of one country, to $1,269 a pound in the case of another, and the offices of the New York collector and the New York appraiser have advised that they cannot identify the products included therein without an elaborate study.

Table II lists the 1954 data of a single product, chloral hydrate, under schedule A, No. 8,380,305. However, the Bureau of Census report from which these data were drawn, does not disclose whether or not appraisement was made on the basis of "foreign value," "export value," or a combination of both. Like the information in table I, it does not provide any basis for any "reason to believe" that its inclusion on or its exclusion from any list issued by the Secretary would be either correct or incorrect. However, the special study made by the Bureau of Census, referred to at page 180 of the hearings before this committee on H. R. 6040 last year, indicated a 23-percent-reduction in dutiable value of chloral hydrate under H. R. 6040.

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As I stated in my testimony before the committee last July, whatever method is adopted for simplification should provide for prior adjustment in rates of duty to offset reductions in dutiable values. Representatives of this industry in the past have supported, and will continue to support, measures providing constructive simplification with adequate safeguards for domestic industry. We cannot support the proposals embodied in the amendments under consideration.

(The entire statement and tables I and II are as follows:)

STATEMENT OF RICHARD F. HANSEN, CHAIRMAN OF INTERNATIONAL TRADE AND TARIFF COMMITTEE OF MANUFACTURING CHEMISTS' ASSOCIATION, INC.

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TABLE I.—*Imports, 1954—Schedule A: Commodity No. 2220490, drugs of vegetable origin n. c. s., advanced in value or condition not compounded*

[Includes pawpaw juice or papain dried, formerly 220160]

	Pounds	Amount	Unit value
Canada	81,652	$483,257	$5.92
Mexico	322,920	3,698,316	11.45
Panama	13	1,361	104.69
Netherlands Antilles	13,100	31,950	2.44
Chile	11,000	2,212	.204
Brazil	17,670	7,275	.412
Sweden	7,848	40,749	5.19
Denmark	3,189	15,178	4.76
United Kingdom	13,974	284,709	20.37
Netherlands	16,566	168,581	10.18
Belgium	2,279	5,387	2.36
France	16,548	231,227	13.97
West Germany	101,108	803,967	7.95
Hungary	4	5,078	1,269.50
Switzerland	17,927	5,384,477	300.36
Italy	45,427	334,330	7.36
Yugoslavia	2,513	1,890	.75
India	1,801	2,340	1.30
Japan	35,609	267,792	7.52
Australia	28,940	166,783	5.76
Egypt	53	5,236	98.79
Union of South Africa	4,000	1,025	.26
Total	744,141	11,943,150	16.05

Source: U. S. Department of Commerce, Bureau of the Census Report No. FT 110, United States Imports of Merchandise for Consumption.

TABLE II.—*Imports, 1954—Schedule A: Commodity No. 8380305, chloral hydrate*

	Pounds	Amount	Unit value
United Kingdom	28,980	$14,513	$0.5008
Belgium	33,070	14,987	.451
Total	62,050	29,410	.476

Source: U. S. Department of Commerce, Bureau of the Census Report No. FT 110, United States Imports of Merchandise for Consumption.

The CHAIRMAN. Are there any questions?

Senator CARLSON. I would be interested to know what commodity we get from Hungary valued at $1,269?

Mr. HANSEN. As far as industry is concerned, we could get it if we wanted to pay to have a study made to analyze thte figures and go back to the custom invoices. It is not available without undergoing expense and having a special study made.

The CHAIRMAN. Thank you, Mr. Hansen.

The next witness is Mr. Hooker, president of the Synthetic Organic Chemical Manufacturers Association.

STATEMENT OF R. W. HOOKER, PRESIDENT OF THE SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS ASSOCIATION; ACCOMPANIED BY DONALD O. LINCOLN, OF COUNSEL

Mr. HOOKER. Mr. Chairman, and members of the committee, I am R. W. Hooker, president of the Synthetic Organic Chemical Manufacturers Association.

We appreciate this opportunity to comment on the so-called compromise to H. R. 6040.

This bill makes a fundamental change in customs valuation law. Our existing value bases and the terms which comprise them have become settled in meaning through long-continued use. Under the bill they would be overturned.

We are opposed to the suggested changes for a number of reasons basic to the economic stability of our industry.

First, United States ad valorem rates of duty have been established by Congress in the various tariff acts on the major premise of the foreign value of the imported merchandise. Foreign value has been the basis of assessing ad valorem duties practically throughout the history of United States customs valuation. Export value was added as an alternate standard in 1921 to maintain some stability in the United States tariff. This action was taken in the face of widespread devaluation of foreign currencies. The use of the higher of foreign or export value has consistently been retained by Congress as a prime feature of a customs valuation system which seeks (1) to maintain some stability in the incidence of the tariff, (2) to serve as an automatic deterrent against undervaluation, and (3) to discourage attempted manipulation of the United States tariff by foreign interests. The role which foreign value plays in this connection is pointed up by a recent report of the National Council of American Importers. It states in part as follows, and I quote:

> In many commodity lines, prices for the home market (our foreign value) are often stable for long periods of time, while prices for export to the United States of the same commodity are subject to constant fluctuations.

Obviously an ad valorem tariff is meaningless which is principally tied to a constantly fluctuating price level such as export value. But H. R. 6040 would eliminate foreign value, and make export value the chief value base. How could there be any stability in the operation of the tariff, or how could Congress evaluate the significance of any ad valorem rate of duty, if the base, that is, the value, were a constantly fluctuating one?

Second, a system which has export value alone as the principal value base gives the foreign exporter partial control of the amount of duty which his goods will pay when imported into the United States. This is so because export value is the price at which goods are sold for export to the United States. The exporter's pricing policy, therefore, influences the dutiable value of his goods. The domestic organic chemical industry must compete with highly integrated foreign chemical industries which in the past have repeatedly relied upon cartel arrangements. Any system which tends to place control of the amount of the United States duty in the hands of the foreign chemical cartels seriously handicaps the domestic industry within the United States market.

Third, H. R. 6040 would reduce the dutiable value of organic chemicals now appraised at foreign value by about 20 percent. This would exceed the 15 percent reduction in duty which Congress was willing to authorize in the trade agreements extension act last year. It would be in addition to that reduction, would apply across the board, and would not be subject to the peril point, escape clause, or national security remedies. Congress has insisted that these procedures apply to any reduction in protection under the trade agreements law.

We are greatly concerned over the duty-cutting effects of the bill. A Bureau of Census study made in 1954 showed that on the basis of a sampling of 1952 imports, about half of imported non-coal-tar organic chemicals subject to ad valorem or compound duties would be reduced in value an average of 12 percent, while overall the reduction would be about 7 percent. That study was made a part of the record of your hearings last year.

When the Treasury Department's report of the effects of the bill, based on a sampling of 1954 import entries, was made public last year, we could find no grouping which would show the effect on organic chemical imports only. We asked the Bureau of Census to undertake a second study, using the same worksheets which Customs prepared for the Treasury Department report.

We have just received the report of the Bureau of Census of the results of its new study. It is a dramatic confirmation of our fears about H. R. 6040. It shows that the effect of the bill on more than half of the organic chemicals included in the study would have been an average reduction in dutiable value of 20 percent below the value actually appraised under present law. The effect on all imports of organic chemicals included in the study would have been an average reduction of 12 percent. This new study is attached to my written statement, which I ask be made part of the record of these hearings.

This Bureau of Census report is pertinent to the committee's consideration of the so-called "compromise." It shows that the effects of the bill in reducing values, which were reported to you last year by the Treasury Department, may not be representative of the actual

effect on domestic industries. For example, we discovered that the effect on our industry would be much greater than that suggested by any of the data in the Treasury survey.

We think that these conditions qualify our industry to have an interest in the "compromise." The points we wish to make regarding the "compromise" are:

I. It fails to correct the major defects in H. R. 6040.

It merely defers the duty-reducing effect of the bill on those items which Treasury in its discretion places on its annual lists of articles which would be reduced by 5 percent or more.

It does not delay the removal of the last automatic check against undervaluation which now exists in the use of the higher of foreign or export value. Mr. Rose has stated that the compromise would permit the immediate use of the new value rules on 90 percent or more of ad valorem imports. On all of these, undervaluation would be immediately facilitated. On those products, also, foreign interests would find themselves able substantially to influence the amount of duties collected in the United States.

II. It is based on an impossible procedure which could only mislead Congress as to the real effects of the bill.

The Secretary of the Treasury would make up annual lists, "after such investigation as he deems necessary" of articles reduced in dutiable value 5 percent or more by the new value rules. There are no limiting standards specified to insure that the lists would fairly enumerate the various individual articles which actually would be dropped 5 percent or more in value. There can, therefore, be no assurance that the list would include all or even a substantial part of the individual items which in fact would be appraised 5 percent or more below the values provided by present law.

Furthermore, the lists will not show the extent of the reduction in value for each item listed. Only the fact that the reduction is 5 percent or more (but not how much more) will be reported. Of course, 5 percent is bad enough, but Congress wouldn't know how much worse the reductions would actually be.

The lists, to be accurate, would have to include as separate and distinct items each type or kind of thing imported in 1954 and each succeeding year. In organic chemicals, this runs into many hundreds, even thousands, of individual chemical compounds or products. It would not do to put a number of articles into a group or subgroup the way the Treasury Department did in its survey of the effect of the bill. That approach obscures or cancels out the effect of the bill on all the items in the group. The amounts of reduction on some articles are offset or diminished through averaging with lesser reductions, no change, or increases in duty applying to other items in the group.

Under the compromise, a producer who believes that an article was improperly left off the list could notify the Secretary. The Secretary then will cause to be made such investigation "as he deems necessary." There are a number of defects in this procedure:

First, it would be a rare situation in which a domestic producer knew at what value an imported article was actually appraised or even of the fact of a particular importation.

Second, it is unlikely that a domestic producer would have appraisement information on all the importations of an article during

the course of a year. But to convince the Secretary that the articles concerned had been appraised 5 percent or more below the average values at which they were actually appraised, as the compromise procedure requires, he would have to have such information.

Third, in any event, the Secretary need make only such investigation as he deems necessary. With that kind of latitude there is no way to correct well-meaning errors which rule out worthy additions to the list. There is no avenue of appeal for the domestic producer to follow.

The entire procedure is illusory. It presents domestic industry with a list prepared in camera. It gives the domestic industry 60 days to identify every article improperly omitted and to dig up compelling facts to support each omission discovered. No domestic industry would have suitable data in its possession to even make the identification in a 60-day period, let alone to marshal the facts needed to give the Secretary reason to believe he made a mistake.

III. The administrative problem which H. R. 6040 is to solve is so small, and the price exacted of domestic industries for its partial attainment is so large, that the bill in its present form or amended as proposed is undeserving of consideration.

The data submitted to the committees of Congress by Treasury itself, properly evaluated, show that the bill means an average reduction in value of 15 percent, and in duty of 12 percent, on one-sixth of all imports subject to ad valorem or compound duties. Our own studies show that is approximately the effect on all noncoal-tar organic chemical imports.

What is the objective which could require such a price of domestic industry?

Mr. Rose told you last year that the bill would simplify procedures, "primarily by eliminating the necessity for a great number of investigations in foreign countries." What are the actual dimensions of this problem? The 1955 report of the Secretary of Treasury states that only 420 foreign inquiries (including both classification and value problems) were required in fiscal 1955 out of a total of 1,632,000 invoices handled.

Gentlemen, this is less than three-hundredths of 1 percent. It is less than half the 968 foreign inquiries in the preceding year. It is little more than a third of the peak year, 1953, when foreign investigations reached 1,180. Moreover, Customs reduced its backlog of entries awaiting liquidation by about 61 percent during fiscal year 1955. So where is the problem? Customs is apparently handling its largest import volume in history with a proportionately smaller number of valuation problems of any time in our history. Is this the kind of situation which calls for scrapping our well-established customs value machinery?

The question answers itself. Obviously it is not.

IV. The amendments are no compromise; they create an illusion of deliberate action but would actually result in legislation by default.

The scheme inherent in the amendments forestalls congressional disapproval for 3 years. Then it offers Congress 90 days in which to make an examination of the effect of the new value system on domestic industries. Does anyone suppose that Congress could cause hearings to be held, reports to be written, and floor action to be be completed

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within 90 days of the final report from Treasury? Who can predict what matters will occupy the attention of the Congress at such a time?

We are considering a compromise now because of the understandable reluctance of the committee to approve the bill on the record before it. Can the passage of time improve that record? The evidence of the tariff-reducing quality of the bill is based on Government analysis of actual transactions. Will the passage of time, as proposed by the compromise, in any way change the caliber of the evidence? Of course not.

What, then, is there in the compromise which could justify the effort which has been centered in securing its consideration?

It is only this: Its elaborate and technical nature in providing for a very busy program of reports during a "test period" evokes the illusion of deliberation before action. It is as though Congress would not be committing itself to fundamental changes in our law until it had all the facts before it. Unfortunately, this is but an illusion—for adoption of the compromise means that Congress here and now approves permanently of the new system. It does agree that the Secretary can defer its application for certain products from year to year as he may decide. But it becomes fully applicable to all imports without any further congressional action within 90 days after the Treasury's final report to Congress. This scheme merits but one name—it is legislation by default.

Our conclusion is:

1. The "compromise" does not remedy the serious effects of H. R. 6040 on domestic industries.

2. It is a misleading proposal that Congress legislate by default.

3. The organic chemical industry would experience a loss of protection ranging from 12 to 20 percent under the bill.

We respectfully request the committee not to report the bill favorably, either in its present form or as proposed for amendment.

(The written statement of Mr. R. W. Hooker is as follows:)

STATEMENT SUBMITTED BY R. W. HOOKER, PRESIDENT OF THE SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS ASSOCIATION

INTRODUCTION

The Synthetic Organic Chemical Manufacturers Association represents 91 members who account for about 90 percent of the domestic production of synthetic organic chemicals. Their 255 plants and establishments are located in 35 of the 48 States. The majority are small business enterprises.

In 1921 Congress established a national policy for the development of a complete synthetic organic chemical manufacturing industry in the United States. The chemical schedule of the Tariff Act of 1922 and 1930 became the chosen instrument for execution of that policy. The enormous demands of World War II for organic chemicals were met by the domestic industry only because of that policy. America's strength in chemical technology is also the result of that policy.

The lessons of the past can soon be forgotten, however. The commitments made after World War II in ITO and GATT substantially to reduce the general level of United States tariffs have to a great extent been realized under the continued extensions of the trade agreement authority. Of a total of 119 tariff rates applying to organic chemical imports, for example, 92 have been reduced—78 by 50 percent or more. United States trade agreement negotiators recently agreed to reduce some 38 more by an additional 15 percent, and the presidential proclamation making those reductions effective was issued on June 13, 1956. Many of these classifications are "basket" type provisions which include hundreds of individual chemicals.

Most of these reductions were made under the General Agreement on Tariffs and Trade. They were also made under the dominant principle specified in the purpose clauses of the Charter for an International Trade Organization and GATT. Though these were never ratified or approved by Congress, they bear the solemn signature of United States diplomats. In essence they pledge the United States to a substantial reduction in the general level of tariffs. We have never felt that these commitments are consistent with the actual authority held by the President under the trade-agreements law. The reductions have nevertheless been made. We mention this here only as background for a better understanding of the significance of the valuation changes proposed in H. R. 6040.

Rightly or wrongly, the persons who draw up agreements like ITO and GATT have always felt that any customs valuation system other than one geared to the actual invoice price of the merchandise is arbitrary and, hence, something like a barrier to trade. Hence, in article 35 of ITO and in article VII of GATT, our State Department, by putting the signature of its representative to the documents, recognized the validity of customs valuation principles which declare that the actual value of the imported merchandise is to be used rather than arbitrary or fictitious values.

When hearings were held in 1951 on H. R. 1535, one of the first so-called customs simplification bills, the Assistant Secretary of the Treasury testified that certain provisions of the bill were included "primarily for the purpose of bringing customs procedures into line with the international rules of fair practice as set forth in the General Agreement on Tariffs and Trade." The Tariff Commission's report on that bill states that "The proposed revision of section 402 of the ariff Act will bring our valuation law into conformity with the GATT and the ITO."

Though it is now said that the value changes are desired for the sake of efficiency, we suggest that the executive department continue to press for their enactment in order to carry out the commitment its representatives made under the old ITO charter, and under GATT.

Enactment of H. R. 6040 would involve a further disruption of the competitive relationship between domestic producers of non-coal-tar organic chemicals and the foreign chemical industry. This has already been considerably impaired by the methodical manner in which the State Department has carried out its ITO–GATT commitments for a substantial reduction of tariffs. Now, through H. R. 6040, a further substantial reduction in duties can be achieved by changing the rules for determining dutiable value of imports subject to ad valorem and compound duties.

The Bureau of Census in 1954 made a special study for our association of the reduction in dutiable value which would occur under H. R. 6040's immediate predecessor, H. R. 6584. Those items which had been appraised at foreign value in 1952 were found to be subject to an average reduction in value of 12 percent. Sampling variability could cause this reduction to vary from as high as 16 percent to as low as 8 percent.

Now we have just received a Bureau of Census report of a new study which it made for us, based on 1954 imports. The Bureau of Census examined worksheets prepared by the Bureau of Customs for the Treasury Department survey of the effect of H. R. 6040 on values and duties. Census examined all the worksheets involving organic chemical imports in any of the 80 statistical classifications which include non-coal-tar organic chemicals. It found that over half of the entries had been appraised in 1954 on the basis of foreign value. It reports that if these entries had been appraised on the basis of the value rules under H. R. 6040, an average reduction in value of 20 percent would have been experienced on those items. Because of sampling variability, this reduction could have been as much as 25 percent or as low as 15 percent. The full text of the Bureau of Census report is attached to this statement as an appendix.

This study means that the domestic organic chemical industry is faced in H. R. 6040 with the probability that at least half of the imports of organic chemicals subject to ad valorem or compound duties (other than coal-tar chemicals) which compete with our domestic products will be reduced about 20 percent in dutiable value. This means about a 20-percent reduction in duty. Coming on the heels of the trade-agreement reductions in duty previously described, the committee will understand our concern.

As spokesman for the organic chemical industry in the United States, this association asks the committee to weigh carefully the following points concerning the compromise to H. R. 6040:

1. The compromise in no way diminishes the tariff-reducing impact of H. R. 6040 on domestic industries, which in our case averages 20 percent on the organic chemicals subject to foreign value.

The committee has been offered a compromise proposal because of its apparent reluctance to approve a simplification measure with such a marked tariff-reducing effect as H. R. 6040 has been demonstrated to have.

If the compromise were really intended to overcome this fundamental objection to H. R. 6040, one would logically expect it to be designed to avoid causing that effect.

The amendments now before you for consideration, however, do not in any way eliminate the tariff-cutting effect of H. R. 6040. They merely defer the taking effect of the new rules from year to year for 3 or 4 years on such items as the Secretary of Treasury places on his list of articles affected by a 5 percent or greater reduction in value. On everything not listed (the Under Secretary has estimated that 90 percent or more of ad valorem imports will not be listed), H. R. 6040 takes effect immediately.

Even as to the items listed, H. R. 6040 becomes fully applicable on the expiration of 90 days after the final list is sent to Congress.

Nothing in the amendments, therefore, provides for the continuation of the present system of valuation after the 3- or 4-year reporting period regardless of the tariff-reducing effect involved. Nor is any mitigation of the effect of the bill by an increase in the rate of duty on such items contemplated.

Hence, the full impact of the bill, H. R. 6040, hits 90 percent or more of all ad valorem imports now, and the remaining 10 percent in one stroke 3 years hence.

Though we know that the average reduction in duty on all organic chemicals now assessed ad valorem duties on the basis of foreign value is 20 percent, and that the average reduction overall for all non-coal-tar organic chemicals subject to ad valorem or compound duties is 12 percent, it does not necessarily follow that some or all of these will not be subjected immediately to the new valuation standards with their new tariff-cutting consequences. All will depend on what items the Secretary puts on his initial and subsequent lists. That is a matter exclusively within his discretion, with no minimum investigatory procedure or appeal provided.

Even if we were fortunate enough to have all of our products listed by the Secretary each year, the full force of H. R. 6040 would fall simultaneously on all our products 90 days after the last listing is sent to Congress.

2. The compromise places complete discretion in the hands of the Secretary of the Treasury, H. R. 6040's principal advocate, to decide what Congress will be told as to the effect of H. R. 6040.

The compromise provides for a series of reports to Congress. It is not specific either as to the content or the preparation of the reports. Such reports can be revealing or not, depending upon the intent of the person making the report.

It is not necessary to attribute bad motives to the person who will make the required reports. The compromise itself reveals their inadequacy so far as the experiment is concerned. Basically, the reports are to contain a list of articles which would, under the new standard, have been valued at less than 95 percent of the old appraisal. Inherent in the compromise, first of all, is the assumption that a 5-degree decrease in valuation will not affect the tariff protection afforder by the existing valuation standard. Any such premise is invalid; and, on this basis alone, the reports are practically without value.

The limited value of the reports is further depreciated because the determination of the classification of articles for reporting purposes is left up to an advocate of the new system. No standard for classification is prescribed. It is possible to group imported articles for listing purposes in such a fashion as to eliminate the possibility of determining the effect of the changed valuation standard.

Moreover, the compromise does not even require accurate reports. All that is required is preparation of lists after such investigation as the Secretary deems necessary. This leaves to the Secretary of the Treasury complete discretion as to the standards which are to govern the information to be contained in the reports to Congress. Such discretion might be defended in another context. But where, as in this instance, the reports form the basis for what is to be an experiment, the results of which are as yet unknown, it seems anomalous to commit the rules by which the trial is to be conducted to the discretion of a proponent of a specific result.

The full extent of this discretion cannot be measured; nor can anyone complain of its use or abuse. The compromise makes no provision for an effective

appeal. If an article of merchandise is omitted from a list or is improperly classified, complaint must be made to the Secretary. All the compromise requires the Secretary to do is to "cause such investigation of the matter to be made as he deems necessary." As a practical matter, no investigation is required either for preparation of the preliminary lists or the final lists. Under the compromise the Secretary may validly decide that no investigation is required.

Moreover, and more importantly, under the compromise no complaint can be registered with the Secretary unless under the new standard the article complained about will be appraised at 95 percent (or less) of its average value under the old standard. In effect, the Secretary is given the power to decide, "after such investigation as he deems necessary," that no article will be undervalued and to so report to Congress. On this account it will be impossible to correct any discrepancy in the reports.

There is nothing in the compromise which specifies how the Secretary will set up statistical classes of products in determining whether H. R. 6040 would reduce values by 5 percent or more. Obviously, if the Secretary groups some articles where the reduction would be above 5 percent with others where it would be below 5 percent, the two groups could cancel each other out in a way which would not even defer the application of the new value rules of H. R. 6040 3 years.

Unless the Secretary examines each specific individual article which is imported and secures contemporary foreign and export value information on each article, many articles will be made immediately subject to the new value standards which, even under the 5 percent principle contained in the compromise, ought not in actuality be effected until after 3 years.

The procedure suggested in the compromise under which a domestic manufacturer would have 60 days in which to specify particular articles which he believes belong on the list of items that would be cut by 5 percent or more, would be ineffective. Import statistics are not published in sufficient detail nor rapidly enough to let any private company know whether its products classified under general tariff terminology have actually been received. Nor do most producers have readily available foreign and export value data on all their products. The compromise is a stratagem to throw the burden of proof on domestic companies to show why the tariff-cutting effect of the bill should be postponed for 3 years in the case of their products.

In short, the Secretary can lower the valuation of any article as a result of the experiment without Congress even knowing about it. Clearly, if there is to be an experiment in which reports are to play a part, some better system of collecting and testing the data upon which Congress is to act will have to be devised.

3. The compromise, if properly executed, would create widespread confusion as to the dutiable basis of imports, while being so onerous administratively as to make impracticable the prompt movement of imports through customs.

If the compromise is actually to operate so as to defer the applicability of the new valuation rules to articles which would suffer a reduction in value by 5 percent or more, it is obviously necessary that for each test period specified, each and every imported article subject to ad valorem duties be appraised under both the present value standards and under those specified in H. R. 6040.

Let us consider for a moment what this means. The proposed amendments specify (p. 2, line 24, to p. 4, line 2) that the Secretary will publish a preliminary list of articles which were imported in fiscal year 1954 and which would have been appraised under H. R. 6040 at 95 percent or less of the average values at which such articles were actually appraised.

Is there any way for the Secretary to prepare such a list so as accurately to reflect all of the individual articles or commodities which would have been cut 5 percent or more in value except by reappraising each and every article that came in during 1954? The articles themselves, of course, are gone. They cannot be examined. The only course of action open to him would be an examination of the paperwork on file. Can this actually be done? The Secretary's annual report for fiscal 1954 states under the caption, "Appraisement of merchandise," that there were 1,472,000 invoices handled in 1954. Each of these would have to be reexamined presumably to identify those pertaining to articles whose duties are based in whole or part on value. Then a new appraisement would have to be made of the merchandise covered by each invoice so identified.

What is the magnitude of this task? In a 5-percent sampling of fiscal year 1954 dutiable entries at New York and Laredo, and a 2½-percent sampling at 6 other ports, customs personnel made 19,908 recomputations of dutiable values. To do

a 100-percent job just on those ports, it would apparently require at least 20 times that number of recomputations, or more than 398,160 recomputations.

It seems fair to ask, with what degree of accuracy can such a monumental undertaking be accomplished in the customs houses of the United States? What will the effect be on the regular day-to-day workload of the customs personnel?

Assuming that the Secretary can get over the seemingly Gargantuan task of compiling the first list, he must face the task of compiling the second, third, and fourth lists.

As to these, the amendments specify (p. 4, line 3 to p. 5, line 16) that there shall be included the articles entered "during the most recent 12-month period for which information is then reasonably available" which he shall have determined were or would have been appraised under H. R. 6040's new value rules at values 95 percent or less than those applicable under the law's present value standards. Here, again, if the listing is to really carry out the implied intent of the amendments, every imported article subject to ad valorem or compound duties will have to be subjected to a double appraisement.

Either this dual appraisement, under the present law's value standards and under the new rules contained in H. R. 6040, will have to be done day by day at each port, or it will have to be done all at once by reexamining all the invoices on file for a 12-month period. The Secretary's 1955 annual report. states under the caption, "Appraisement of merchandise," that 1,632,000 invoices were handled in fiscal year 1955. This suggests the volume of paperwork which would have to be reexamined in the preparation of the subsequent lists.

Whether the double appraisement of each imported article is done on a day-by-day basis, or at the end of a 12-month period, it would seem that a very great additional workload would be thrown on the appraisers at each port. The question becomes pertinent, would the job be done properly under such pressure? If so, would it not clog the flow of import entries through each port?

The lists would not necessarily carry the same items year after year. An item could, under the system referred to in the amendments, drop off a subsequent list to the one on which it first appears, only to reappear later on.

Since items appearing on the list are to be appraised under the present value standards, while those not listed are appraised under H. R. 6040's rules, the on-again, off-again character of the lists would create considerable confusion abroad as to the amount of duties to which imported articles would be subject during the 4-year period involved.

In short, the compromise if it is not to be a farce involves almost an insurmountable administrative workload at home, and continuing confusion among foreign traders abroad.

4. Though the compromise is made to look like a test of H. R. 6040's effect, in reality it constitutes immediate, permanent congressional approval of the new rules regardless of the test-period results and, thus, is unresponsive to the tariff-reducing consequences of the bill.

The proposed amendments in effect wink at the committee's concern over the tariff-reducing consequences of H. R. 6040. The committee's reluctance to approve the bill thus far undoubtedly reflects its able grasp of the real effect of the bill in reducing protection for many domestic industries.

The compromise does not meet this basic issue at all. Instead, it asks immediate approval by Congress of H. R. 6040's rules. It promises to delay for 3 years the effectiveness of the new rules to such items as Treasury decides would be affected by a 5-percent reduction in value or more. But it insists on the full application of the new value rules to all imports at the end of the test period regardless of the results disclosed.

It answers nothing to say that Congress can repeal the new rules if it is sufficiently concerned 3 years from now. The point is that reductions in duty as a result of H. R. 6040's rules have already been demonstrated to be so substantial that the committee is presently unwilling to place the new rules in effect. Does it solve anything to say to the committee—as the proposed amendments do—wait 3 years and see if you then feel strongly enough to repeal the law which you have been asked to pass despite your misgivings?

Congress never need consider the wisdom of legislation under that theory. It should pass every bill offered to it by any of the executive departments of the Government, regardless of its own feelings about the merits, contenting itself with the thought that it could always repeal the law if it was sufficiently concerned years later. This approach would reverse the roles of Congress and the executive department. It would legislate by sending the bills to Congress. Congress would

have a delayed veto by repealing measures it felt strongly enough about after a prolonged waiting period. This is a novel approach, but it's not constitutional legislative process.

The busy season of reports for 3 or 4 years provided by the amendments is chiefly windowdressing. They actually have no operative effect at all on the full application of the new rules at the end of the test period. That happens automatically.

This series of reports is, nevertheless, apparently designed to lull Congress into the feeling that it need not approve final and permanent application of the new value rules of H. R. 6040 if it concludes 3 years hence that too great a reduction of tariff duties is involved for the welfare and stability of domestic industries. This notion has been encouraged within industry circles by a statement of Mr. Rose that if "there still proved to be a substantial difference in protection under the old and new standards, the Congress would be able to continue the old valuation provisions in effect."

The language of the amendments destroys such an illusion. At page 6, lines 4 through 11, it is stated:

"Section 402a. Tariff Act of 1930, as amended by this Act [these are the value rules of existing law as renumbered by the proposed amendments], and section 6 of this Act [this is the part of the amendments which continues the present value standards in effect for imported articles identified on the Secretary's "lists"] shall have no force or effect with respect to any article entered, or withdrawn from warehouse, for consumption after the expiration of the first period of ninety calendar days of continuous session of the Congress following the date of publication of the fourth final list provided for in section 6 (a) (2) of this Act."

The above language is clear and unequivocal. Congress itself by approving the so-called compromise amendments will be decided then and there that the new value rules of H. R. 6040 become automatically fully applicable 90 days after the last list is sent to it by the Secretary. Regardless of what the four lists submitted by the Secretary contain, the new rules become fully applicable as the law of the land without any further action by the Congress. Only a repealing statute could alter the situation. With the new rules actually in effect to the extent of 90 percent of all ad valorem imports (by Mr. Rose's estimate) for the 3- or 4-year test period, the pressures on the Congress not to repeal the new system would be very great. Enactment of the compromise amendments would virtually assure their permanence under these circumstances.

By passing the compromise bill, Congress would have effectively repealed the old standard of valuation, notwithstanding the fact that similar legislation has been defeated every year since 1951 on the basis of the fact that existing protection for domestic industries would be sharply reduced. Moreover, if the compromise is passed, Congress will have so acted while misled by the idea that there would be something that could be done at the end of the experiment to prevent the loss of protection engendered by a change in the valuation standard.

5. The compromise requires Congress to accept a tariff-reducing measure, equal or greater in its impact on particular industries than its recent extension of trade-agreement authority, but devoid of the obligations for selectivity or the peril point, escape clause, and national defense procedures which have been established by Congress as imperative safeguards for domestic industries.

After exhaustive hearings by this committee and the House Ways and Means Committee and intense debate on the floors of both Houses, the Congress last year agreed to a 3-year extension of the trade agreements authority. Reduction of tariffs was carefully limited by Congress to 15 percent of the rates in existence as of January 1, 1955.

In addition, the Congress continued in existence the peril-point procedure, strengthened the escape-clause procedure, and added a new procedure for adjustment of imports which threaten to impair the national security. This committee emphasized in its report on H. R. 1 "the need for a planned and well-organized program so that trade expansion can be obtained without serious injury to any segment of our economy." The committee directed attention to the President's recognition of the same need when he stated: "Reduction in tariffs and other trade barriers, both here and abroad, must be gradual, selective, and reciprocal."

It is abundantly clear that 15 percent was the maximum limit the Congress was willing to go in authorizing selective tariff reductions to be made during the next 3 years. It is also abundantly clear that Congress wanted each exercise of that authority to be moderated by the full applicability of the peril point, escape clause, and national security procedures.

In this context, consider H. R. 6040 and the proposed amendments. They will result in a 20-percent reduction in duties on half of the non-coal-tar organic chemicals subject to ad valorem or compound duties, and about 12 percent overall. The reduction will not be made selectively, but will apply across the board to every ad valorem non-coal-tar organic chemical imported into the United States. This is clearly contrary to the intent of Congress disclosed in its enactment of H. R. 1. Furthermore, the reduction will not be moderated, or subject to later moderation, by the peril point or escape clause remedies. As discussed in preceding sections of this statement, the proposed compromise amendments do not abate this reduction in any way. Rather the compromise at most phases the full effect of the cut to fall in one stroke at the end of the period when the 15 percent cuts in duty under H. R. 1 become fully effective.

6. The compromise is contradictory of the principle established by Congress in prior customs simplification legislation, that administrative efficiency not be gained at the price of a reduction in the level of protection afforded domestic industries.

The bill, H. R. 6040, and the proposed amendments are contrary to the principle established by Congress in the Customs Simplification Act of 1954. In providing for just a study of tariff reclassifications by the Tariff Commission, Congress prescribed that the simplification purposes be achieved if at all possible without suggesting changes in the tariff. In those instances where the Commission concluded that the study could not be completed without suggesting changes in the level of the tariff, Congress directed that before making such suggestions "the Commission shall give public notice of its intention to do so and shall afford reasonable opportunity for parties interested to be present, to produce evidence, and to be heard at public hearings with respect to the probable effect of such suggested changes on any industry in the United States."

How different H. R. 6040 and the proposed amendments are from this procedure. They ask immediate approval by Congress before even the reports to be made during the test period are to be received. They ignore the possible effect of the tariff-reducing consequences of H. R. 6040 on domestic industries. No public hearings are provided at all for consideration of the effect of the changes on domestic industries. H. R. 6040 and the compromise are completely alien in approach to the care and deliberation insisted upon by Congress in the Customs Simplification Act of 1954. They are undeserving of serious consideration for this reason alone. There is no mystery about the attitude of Congress in a matter of this sort. It has simply not sanctioned riding roughshod over the substantive protection of domestic industries in order to achieve administrative simplification. Congress has refused to legislate in such matters in a vacuum in the past. We sincerely hope it will not do so now.

7. The "compromise" requires an unconstitutional delegation of legislative power to the Secretary of the Treasury.

While the "compromise" can be criticized soundly from the practial side, it also presents serious constitutional questions.

No statute truly comparable to "compromise" H. R. 6040 has been encountered. The "compromise" looks like an ordinary delegation of power to fill in the details of the basic statutory policy or, from another point of view, to determine the facts upon which depend the operative effect of a predetermined legislative policy. Actually, it is neither, for there is no policy to implement.

If the sponsors of the "compromise" are taken at their own word, the "compromise," if passed, would set in motion an experiment pursuant to which Congress will determine upon a policy.[1] This is an anomalous thing—this experiment which, while it is being conducted, has the force and effect of permanent law.

There are two basic but related constitutional questions posed by the "compromise." The first is whether, assuming that Congress may experiment with the passage of a statute, it can so do without defining with particularity the terms upon which it delegates the power to conduct the experiment. Second, and more importantly, the question is whether Congress can ever delegate power when it has formulated no legislative policy and is, in fact, only in the process of formulating one.

The conduct of the experiment by the Secretary in making up the list of articles remaining subject to the old valuation standard is not guided by an intelligible

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[1] The investigatory power of Congress has always served in the past to determine the facts necessary to legislative action. Consequently, no statutory experiment like this has come to our attention.

principle determined by Congress. The "compromise" directs the Secretary of the Treasury to make a preliminary list of the imported articles, "which he shall have determined, *after such investigation as he deems necessary*, would have been appraised in accordance with section 402 of the Tariff Act of 1930, as amended by this Act, at average values for each article which are 95 (or less) per centum of the average values at which such article was actually appraised during the fiscal year 1954. If within sixty days after the publication of such preliminary list any manufacturer, producer, or wholesaler in the United States presents to the Secretary reason to believe that any articles entered during the fiscal year 1954 but not specified in such list and like or similar to articles manufactured, produced, or sold at wholesale by him would have been appraised in accordance with such section 402 at average values which are 95 (or less) per centum of the average values at which they were actually appraised, *the Secretary shall cause such investigation of the matter to be made* as he deems necessary." [Emphasis added.]

The same basic procedure is to be followed as to further, periodic preliminary reports and as to the final report. Any article not appearing on a list submitted to Congress will be appraised under the new standard. If, at the end of the experiment, Congress does not act, a new valuation standard will go into effect as to all imported merchandise.

As has been pointed out elsewhere, the "compromise" does not actually call for an experiment. Adoption of the new valuation standard is a fait accompli. Although obscured by a lot of window dressing, the fundamental significance of the "compromise" is that it repeals the old value standard.

The extent of the discretion conferred upon the Secretary insofar as the preparation of the lists of articles is concerned has been discussed already, and that analysis applies here also. These lists are laws. During the experimental period they will delay repeal of the old valuation standard as to some articles while, because they do not appear on the lists, others will be subjected to the new valuation. The Secretary is guided by no Congress-determined policy as to the content of the lists, and subject to no requirements as to the investigation to be made or the factors to be considered in making any investigation. It would appear that if Congress were to accept the "compromise," it would have delegated complete unfettered power to make the law, retaining only the talisman of future action to repeal the legislation.

Our form of government is committed to the principle of a division of functions between its coordinate branches; and it is a breach of the national fundamental law when Congress gives us its legislative power and transfers it to either the President, to the judicial branch, or to private individuals (*Hampton, Jr. & Co.* v. *United States*, 276 U. S. 394 (1928)).

This is not to say that there is not coordination among the departments of Government. Yielding to commonsense and the inherent necessities of Government, the Supreme Court has sustained numerous statutes granting vast powers to administrative or executive agencies. It has never been, supposed, however, that Congress could do more than (*a*) delegate the power to "fill up the details" of a statute (*Wayman, et al.* v. *Southard et al.*, 10 Wheat. 1 (1825)) or (*b*) legislate contingently leaving to others the task of ascertaining the facts, under appropriate policy standards, which bring the legislation into operation (*Cargo of Brig Aurora, Burnside Claimant* v. *United States*, 7 Cr. 382 (1813)).

It is not necessary to cite cases for the proposition that before the executive can "fill up the details," Congress must enact something to be thus supplemented. As has been stated many times, the legislature must first adopt a policy or set up "an intelligible standard" to which administrative action must conform. The Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is vested (*Schechter* v. *United States*, 295 U. S. 495 (1935); *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381, 398 (1940); *United States* v. *Rock Royal Co-operative*, 307 U. S. 533, 577 (1939)).

It has never been supposed that retention of the power to cut off or disagree with the exercise of a delegation cured an otherwise invalid statute. Congress can repeal any law it passes (or, as frequently happens, refuse to appropriate funds). If retention of that power cured an invalid delegation, no statute could be held to contain an unconstitutional delegation of power. Consequently, the 90-day waiting period (illusory as it is) cannot support the constitutionality of the "compromise."

It seems clear that the Secretary of the Treasury has no Congress-imposed standard upon which to base either the scope of the investigation mentioned in the "compromise," or the principles to be applied in making such investigation.

Under the "compromise" the Secretary is not even required to make an investigation if he deems none to be necessary. Moreover, while the term "articles" in the statute would seem to imply specific commodities, in actuality this is not the case. The Secretary may classify "articles" as broadly or narrowly as he sees fit, thus obliterating any possible objective test to govern the exercise of his power. His inclination to do just that is shown by the type of data offered by the Secretary to the Senate Finance Committee during hearings on H. R. 6040. The effect of the bill on thousands of commodities was attempted to be shown by averaging the effect on some 90 arbitrary classifications of articles.

Even the implied directive to list all articles which will be valued at 95 percent (or less) of their old appraisal is robbed of significance by the wide latitude allowed the Secretary as to the investigation required and the principles of classification or selectivity he may use. Neither of these two areas are bounded by an intelligible standard.

In recent years, the Supreme Court has taken a generous view of what constitutes a policy or standard which is sufficiently definite. However, a distinction is to be observed between these recent cases and the situation which would exist under the "compromise" bill. Although it has been said that "procedural safeguards cannot validate an unconstitutional delegation" (*United States* v. *Rock Royal Co-operative, supra,* at 576), whether there are procedural safeguards is an important—perhaps the most important—element weighed in determining whether a given delegation of power is constitutional.

In cases where the delegated power is exercised by orders directed to particular persons after notice and hearing with findings of fact and conclusions of law based upon a record, the court has held such standards as "public interest," "public convenience, interest or necessity," or "excessive profits" to be sufficiently definite (*New York Central S. Corp.* v. *United States,* 287 U. S. 12, 24 (1932); *Federal Radio Commission* v. *Nelson Brothers B. & M. Co.,* 289 U. S. 266, 285 (1933); *National Broadcasting Co.* v. *United States,* 319 U. S. 225 (1943); *Federal Communications Commission* v. *Pottsville Broadcasting Co.,* 309 U. S. 134, 138 (1940); *Lichter* v. *United States,* 334 U. S. 742, 783 (1948). Standards of comparable generality were struck down in *Panama Refining Co.* v. *Ryan* (293 U. S. 388 (1935)), and *Schechter* v. *United States,* supra, where no procedural safeguards were available to the mass of persons who could be affected by the legislation in question.[2]

In *Panama Refining Co.* v. *Ryan,* supra, the President had been authorized to put into effect by proclamation rules forbidding the shipment in interstate commerce of oil produced or withdrawn from storage in violation of State law. Apart from the propositions broadly stated in the first section of the statute—economic recovery and conservation of natural resources—there was no standard or statement of policy by which the President should be guided in determining whether or not to issue the order forbidding the shipment. He was not required to make findings of fact or to disclose the basis of his act.

The court referred to many of the cases sustaining delegations of authority, and premised its discussion upon the proposition that:

"In every case in which the question has been raised, the Court has recognized that there are limits of delegation which there is no constitutional authority to transcend." (P. 430.)

It laid down the test in that case as follows:

"* * * we look to the statute to see whether the Congress has declared a policy with respect to that subject; whether the Congress has set up a standard for the President's action; whether the Congress has required any finding by the President in the exercise of the authority to enact the prohibition" (p. 415).

The Court concluded that the statute met none of these tests and was, therefore, unconstitutional.

It was also held that the delegation argument could not be answered by presuming that the President would act in good faith and for what he believed to be the public good:

"The point is not one of motives but of constitutional authority, for which the best of motives is not a substitute." (P. 420.)

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[2] *Sunshine Anthracite Coal Co.* v. *Adkins,* 310 U. S. 381 (1940); *Bowles* v. *Willingham,* 321 U. S. 503 (1944); and *Yakus* v. *United States,* 321 U. S. 414 (1944), are sometimes thought of as overruling the two cases mentioned above. However, it must be observed that the Sunshine case involved a statute containing procedural safeguards and the standard laid down was as specific as could be made under the circumstances. The latter cases involved emergency legislation and, in any event, the standards were more definite than contained in compromise H. R. 6040.

This precludes reliance upon the good faith of the Secretary of the Treasury.

There have been delegations to the President in the field of tariff laws. In *Field* v. *Clark* (143 U. S. 649 (1892)), the Court sustained a delegation of power to the President to suspend the free importation of enumerated commodities "for such time as he shall deem just," if he found that other countries imposed upon products of the United States duties or other exactions which "he may deem to be reciprocally unequal and unjust." The Court held that this act did not "in any real sense, invest the President with the power of legislation." By similar reasoning, the Court sustained flexible provisions of the Tariff Act of 1922 where duties were increased or decreased to reflect differences in cost of production at home and abroad as such differences were ascertained and proclaimed by the President. See also, *Hampton, Jr. & Co.* v. *United States*, *supra*.

The statutes in both of these cases are clearly distinguishable from the present "compromise" bill. In each, the President was given a standard by which to govern his action. There was no provision comparable to that contained in the instant "compromise" leaving to the discretion of the Secretary whether or not to make an investigation, and the extent and method of such investigation. Every such statute that has been encountered in the past required a finding by the President. No comparable finding is required by this statute and, accordingly, under the principles outlined in the Panama Refining Co. case, the delegation should not be sustained.

The short of the matter is that whether or not the old or new valuation standard applies to a given commodity is to be determined by the Secretary of the Treasury. Nothing binds or guides the Secretary in discharging the power committed to him. No policy is adopted. No finding is required to be made and, even if there were a finding, the procedural safeguards usually attending broad delegation of power are not provided for by the "compromise." Therefore, the "compromise" is unconstitutional.

There are other grounds for doubting the constitutionality of the "compromise." Broadly stated, the question is whether Congress, in order to evolve a policy, may delegate its legislative power and, if it may do this, can it approve the adoption of a new policy by silence or anything short of affirmative action.

As proposed, the "compromise" involves the concept of an experimental determination whether or not to adopt a new evaluation standard. By implication Congress reserves to itself the power to decide at the end of the experiment what the policy shall be; and if this is to be an experiment in fact, Congress has not determined upon a policy.

The new effect of the "compromise" is the creation of a method of determining upon a policy. Accordingly, the "compromise" differs from the ordinary delegation statute in that in the one the policy is determined on however broad a basis, whereas here the policy is expressly undetermined.

Viewing congressional inaction regarding the lists given it as a form of legislation merely emphasizes the disparity between the functions of Congress envisioned by the Constitution and the end result of H. R. 6040. The Constitution requires unified action by a majority of each House to do any act. The "compromise" calls for no action as a substitute for the requirement; or, at best, any action that may be taken can be piecemeal, on an individual Congressman basis. The Constitution requires recordation of the Congress' proceedings on any question, but no action of Congress will mark the passage of the 90-day period contemplated by the "compromise." It has never been supposed that an executive agency could submit to Congress a proposed bill and say, "If Congress does not act to reject the bill, it will become law." Yet that would be the impact of the "compromise."

While many cases sustain the right of Congress to delegate legislative power, all require that to be valid, the delegation must be bottomed upon a prior determination by Congress of at least the fundamental policy to be implemented by the delegatee. H. R. 6040 says, in effect, that the Secretary of the Treasury may, according to his own lights, determine what the policy shall be and that, unless Congress disagrees with that policy, it shall go into effect as the law of the land. This is legislation by default, never before attempted successfully, and flatly contrary to the fundamental requirements of the Constitution.

The ratio decendi of every delegation of power case decided runs counter to the fundamental purpose of H. R. 6040. Particularly germaine is the Panama Refining Co. case where, referring to a provision of the statute in question, the Court said:

"That reference simply defines the subject of the prohibition which the President is authorized to enact, or not to enact, as he pleases and if that legislative

power may be given to the President or other grantee, it would seem to follow that such power may similarly be conferred with respect to the transportation of other commodities in the interstate commerce or without reference to State action, *thus giving to the grantee of the power the determination of what is a wise policy as to that transportation, and authority to permit or prohibit it, as the person, or Board of Commission, so chosen, may think desirable*" (p. 420). [Emphasis added.]

From the discussion and cases cited, it is clear that Congress cannot legislate by default. The reason is that the Constitution, article I, section 8, commits the sole legislative power to Congress; and, although some of this power may be delegated, the delegation must be circumscribed. As the Court said again in the Panama Refining Co. case:

"* * * from the beginning of the Government, the Congress has conferred upon executive officers the power to make regulations—'not for the government of their department, but for administering the laws which did govern.' * * * Such regulations become, indeed, binding rules of conduct, *but they are valid only as subordinate rules and when found to be within the framework of the policy which the legislature has sufficiently defined*" (p. 428). [Emphasis added.]

Upon this basis, the "compromise" is clearly unconstitutional; and, if the experimental nature of the "compromise" is adhered to in one's thinking, the argument appears conclusive.

Countering this argument, it will be asserted that a policy is determined by the "compromise," and that the new valuation standard is adopted except as to certain articles. In other words, it would be said that the exercise of statutory powers can be made contingent upon findings of fact by an executive officer, as in other tariff cases (*Field* v. *Clark*, supra; *Hampton, Jr. & Co.* v. *United States*, supra) or upon the favorable vote of the persons who will be affected by proposed governmental action, as under some of the agricultural marketing statutes (*Currin* v. *Wallace*, 306 U. S. 1 (1939); *United States* v. *Rock Royal Co-operative*, supra).

This argument admits that the change in the law, in at least most instances, is accomplished by passage of the "compromise." It is an admission that the charge of fait accompli is fully justified.

In the cases cited above, Congress had decided upon the statutory policy and left the implementation of the policy to someone else. If the proponents of this "compromise" are to be believed, the whole object of the "compromise" is to lead up to a policy decision. Congress would not intend, under the theory of the "compromise," to change the standard of valuation except as to articles the value of which would not be greatly affected. Moreover, after these were ascertained, further consideration would be given to the change at a later time.[3] Consequently, the proponents of the "compromise" reason in a great circle. The bill represents policymaking by Congress; yet it leaves the policy unmade until failure to act in 90 days confirms it.

Many statutes, of course, incorporate the principle of congressional inaction. Some of these have been cataloged in Ginnane, The Control of Federal Administration by Congressional Resolutions and Committees (66 Harv. L. Rev. 569); (see also, Note, 65 Harv. L. Rev. 637); Jaffee, An Essay on Delegation of Legislative Power (41 Col. L. Rev. 359, 372).

There are no Federal cases involving the constitutionality of such legislation. However, in Ginnane, Control of Administration, etc., supra, at 596, the author, commenting on the Reorganization Act of 1949, states:

"It is not clear, however, whether the power of each House to determine its own procedure can be viewed as including the power to provide that a bill will be deemed passed unless specifically disapproved within a certain period of time. There is at least a question under the Constitution whether the mere inaction of both Houses, which conceivable might reflect little or no deliberation, is an accepable substitute for the deliberation which is ordinarily assured by the requirement of an affirmative vote."

The Supreme Court of New Hampshire held invalid a statute which, like the Reorganization Acts, provided for submission by the Governor to the legislature of reorganization plans which were to become effective in a stated period unless a concurrent resolution by both houses disapproved the plan. *Opinion of the Justices* (96 N. H. 517, 83 A. 2d 738 (1950)). The court remarked (83 A. 2d 741) that:

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[3] It must be recognized that if in fact there is any control, it is only over the "articles" appearing on the final list, a list prepared by the Secretary unguided by any mandate from the Congress. All other "articles" are irretrievably placed under a new valuation standard.

"* * * the act provides for a reversal of the democratic processes required by the Constitution, for under it the Governor would propose the legislative action, rather than approve or disapprove action taken."

Previously, the court had held:

"There can be no doubt that the traditional method of enacting laws by the passage of bills or resolutions calls for separate action by each house by a voting of its members 'for or against' the bill or resolution. * * * We think is plain that the Constitution requires that 'by settled and well-understood parliamentary law these two houses are to hold separate sessions for their deliberations, and the determination of the one upon a proposed law is to be submitted to the separate determination of the other' (Cooley, Constitutional Limitations (7th ed.) 187)."[4]

The Constitution of the United States as distinguished from that of New Hampshire does not expressly provide that each House of Congress shall have a negative upon the other. Nevertheless, that is the way the Federal system works; and neither House of Congress can be deprived of its power to prevent a legislative proposal from becoming law.

The short of the matter is that Congress cannot under the Constitution pass a law unless certain prescribed steps are taken.[5] Each House must first adopt the legislation and do so independently via a majority of its members. The other House must then concur in the actions of the first House independently via a majority of its members. Finally, the bill must be submitted to the President for his signature. Only then is there a law.

By contrast, the compromise to H. R. 6040 is premised upon the assumption that Congress does not know whether it will put into effect a new standard. As a result, it will undertake to determine through the Secretary of the Treasury whether to change the valution standard. It will do this without sufficient guides under which to make such a determination and without provision for consideration of the determination by the Congress. Nothing in the compromise suggests that the President will finally approve the lists as law. The whole process envisioned is unconstitutional as a reversal of proper legislative procedure; and, by it, Congress abdicates and emasculates not only its legislative function but that of the President also.

CONCLUSION

We respectfully request the committee not to act favorably on H. R. 6040 as it now stands or as it is proposed to be amended. Its tariff-reducing effects; its contradiction of national policy concerning care and selectivity in tariff reduction contained in the Trade Agreements Extension Acts of 1951, 1954, and 1955; its contradiction of the basic simplification principle of administrative progress without changes in the level of the tariff contained in the Customs Simplification Act of 1954; and its contradiction of basic constitutional and legislative principles, make the bill and the compromise undeserving of favorable consideration.

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[4] The quotation from Cooley is applicable to all cases in which provision is made for more than one legislative house. Indeed, Cooley's discussion strongly supports the argument here made that the ultimate method of adopting the change in valuation standard contravenes the Federal Constitution.

[5] Whether these requirements are met is a judicial question (*Town of Walnut* v. *Wade*, 103 U. S. 683 (1881)).

UNITED STATES DEPARTMENT OF COMMERCE

Sinclair Weeks, Secretary

BUREAU OF THE CENSUS

Robert W. Burgess, Director

WASHINGTON, D. C.

FOREIGN TRADE REPORT

VALUES FOR CERTAIN UNITED STATES GENERAL IMPORTS OF SYNTHETIC ORGANIC CHEMICALS (EXCLUDING IMPORTS OF COAL TAR PRODUCTS) DUTIABLE AT AN AD VALOREM OR COMPOUND RATE OF DUTY, BY VALUATION BASIS UNDER SECTION 402 OF THE TARIFF ACT OF 1930 AND UNDER THE PROPOSED REVISION OF SECTION 402 IN H. R. 6040

The information on the values and the valuation basis under section 402 of the Tariff Act of 1930 and under the proposed revision of section 402 in H. R. 6040 presented in this report was obtained from Bureau of Customs records based on a random sample consisting of 5 percent of all dutiable entries filed at the ports of New York and Laredo, and 2½ percent of all dutiable entries filed at the ports of Buffalo, Detroit, Houston, Los Angeles, New Orleans, and San Francisco, during the fiscal year 1954.

This report does not reflect the values and valuation bases for imported merchandise under the amendment to H. R. 6040 proposed by the Treasury Department and published in the Foreign Commerce Weekly, dated August 22, 1955.

COVERAGE OF IMPORT STATISTICS

The import statistics include government as well as nongovernment shipments of merchandise from foreign countries to the United States. However, American goods returned by the United States Armed Forces for their own use are excluded. Shipments into the United States from its territories and possessions and shipments between the territories and possessions are not reported as United States imports, but are presented separately in Report No. FT–800. Imports from Alaska, Hawaii, and Puerto Rico from foreign countries are considered to be United States imports and are included in the import statistics. Merchandise shipped through the United States in transit from one foreign country to another is not reported as imports. In general, the import statistics are a complete record of merchandise which moves into the United States from foreign countries (except for in-transit shipments), but there are some exclusions of items of relatively small importance in terms of total value such as gifts valued at less than $100.

The official statistics on imports into the United States are compiled on a type of transaction basis as follows:

(*a*) Immediate consumption entries:

(1) Commodities which, upon arrival, enter immediately into domestic merchandising or consumption channels.

(2) For statistical purposes, commodities such as wheat and petroleum products entered directly into bonded manufacturing warehouses for further processing to be subsequently withdrawn for exportation.

(*b*) Warehouse entries:

(1) Commodities entered into bonded storage warehouses.

(2) Imported ores and crude metals such as copper, lead, and zinc entered into bonded smelting and refining warehouses.

(*c*) Warehouse withdrawals for consumption:

(1) Commodities withdrawn from bonded storage warehouses for consumption.

(2) For statistical purposes, ores and crude metals, such as copper, lead, and zinc, which were entered into bonded smelting and refining warehouse, are included when the finished product is withdrawn for consumption or for exportation. Commodities such as wheat and petroleum transferred from bonded storage warehouses to bonded manufacturing warehouses for further processing and subsequent withdrawal for exportation are also included.

(*d*) Warehouse withdrawals for export:

(1) For statistical purposes, warehouse withdrawals for export include only withdrawals from bonded storage warehouse for shipment to a foreign country.

General imports are the total of the entries for immediate consumption and the entries into warehouse, as described above, and therefore reflect the total arrivals of merchandise, whether such merchandise enters consumption channels immediately or is entered into warehouses under Customs custody. Imports for consumption are the total of the entries for immediate consumption and the withdrawals from warehouse for consumption, as described above, and therefore reflect the total of commodities entered into United States consumption channels. The figures for general imports and imports for consumption will be identical if all the imports for a particular commodity are imports for immediate consumption, and/or if the amount entered into warehouse is equal to the amount withdrawn from warehouse for consumption during any period.

Sampling of shipments of $250 or less

As described in the February 1954 issue of Foreign Trade Statistics Notes, effective with the January 1954 statistics, the values for immediate consumption shipments valued $250 or less, whether filed on formal or informal entries, are estimated from a 5-percent probability sample. These estimated values are excluded from the detailed commodity statistics and are presented in the monthly data in terms of commodity subgroups (groupings of commodities), and in terms of countries, customs districts, and economic classes, without cross classification (i. e., subgroup by country, country by customs district, etc.).

Prior to January 1954, informal entries were excluded from the import statistics and effective with July 1953, the regular schedule A commodity statistics excluded under $100 shipments filed on formal immediate consumption entries.

Source of information

The source of information for all of the imports included in this report is the import entry (various customs forms), which importers are required to file with collectors of customs for each shipment arriving in the United States.

Valuation

The values are in general based on market or selling price, and are in general f. o. b. the exporting country. (Transportation costs to the United States may inadvertently be included in the case of merchandise which is not subject to an import duty based on value.) United States import duties are excluded.

Commodity information

Commodity information is generally reported according to the classifications established in schedule A, Statistical Classification of Commodities Imported into the United States, and is reported in the order of the numbered classifications in that schedule.

Country of origin

The country of origin is defined as the country where the merchandise was grown, mined, or manufactured. In the event the importer cannot readily obtain information as to the country of origin for a shipment, it is credited, for statistical purposes, to the country of shipment. Countries reported by the importer and included in the statistics as country of origin may actually represent shipment instead of origin for merchandise which is transshipped before it reaches the United States. Countries are reported as defined in schedule C, Classification of Country Designations Used in Compiling the United States Foreign Trade Statistics.

Sources of further information about import statistics

A complete discussion of the compilation procedures and coverage for import statistics will be found in the foreword to the latest edition of Foreign Commerce and Navigation of the United States. Regular subscribers to FT reports are automatically supplied with copies of Foreign Trade Statistics Notes, a monthly publication containing information of value to users of foreign trade statistics. A catalog of United States Foreign Trade Statistical Publications is also available. Free copies of the foreword and the catalog are available upon request to the Bureau of the Census.

DEPARTMENT OF COMMERCE

BUREAU OF THE CENSUS

Washington

FOREIGN TRADE DIVISION

VALUES FOR CERTAIN UNITED STATES GENERAL IMPORTS OF SYNTHETIC ORGANIC CHEMICALS (EXCLUDING IMPORTS OF COAL-TAR PRODUCTS) DUTIABLE AT AN AD VALOREM OR COMPOUND RATE OF DUTY, BY VALUATION BASIS UNDER SECTION 402 OF THE TARIFF ACT OF 1930 AND UNDER THE PROPOSED REVISION OF SECTION 402 IN H. R. 6040.

GENERAL EXPLANATION

Source

This report covers imports of synthetic organic chemicals dutiable at ad valorem or compound rates of duty, excluding coal-tar products, which were included in a random sample made by the Bureau of Customs consisting of 5 percent of all dutiable imports entered at the ports of New York and Laredo (every 20th entry), and 2½ percent of all dutiable imports entered at the ports of Baffalo, Detroit, Houston, Los Angeles, New Orleans, and San Francisco (every 40th entry), during the fiscal year 1954. The Bureau of Customs study showed the appraised value and valuation basis (foreign value, export value, etc.) under section 402 of the Tariff Act of 1930 and under the proposed revision of section 402 in H. R. 6040 for each importation included in the sample.

Selection of the data

Information shown in the customs study for the above-described sample was in terms of schedule A: Statistical Classification of Commodities Imported into the United States, commodity number (no commodity description) by Customs district of entry by entry number. Basic data for each importation shown for commodity numbers used in preparing this report were transcribed directly from the customs study.

Schedule A commodity numbers used in this report

The schedule A: Statistical Classification of Commodities Imported into the United States, commodity numbers used in the preparation of this report are listed below. Complete commodity descriptions for these commodities are presented in schedule A.

1250	780	8170	160	8380	360 (P)
2098	710	8170	180	8380	470[1]
2220	470 (P)	8170	200[1]	8380	490
2220	490 (P)	8170	250[1]	8380	697 (P)
2260	280	8170	300[1]	8380	790[2] (P)
2330	100[1]	8170	400[1]	8380	800[1] (P)
2330	190 (P)	8170	450[1]	8380	820 (P)
8110	120	8170	500[1]	8380	845[2] (P)
8110	700 (P)	8170	570	8380	860[1] (P)
8130	090	8170	580	8380	920 (P)
8130	110	8170	600[1]	8380	921 (P)
8130	300	8170	700[2]	8380	923 (P)
8130	630	8170	800[2]	8380	930
8130	640	8170	900[2]	8380	938
8130	860[1]	8170	990[2]	8380	939
8130	870	8220	480 (P)	8380	950 (P)
8130	900 (P)	8312	900 (P)	8380	981 (P)
8130	950 (P)	8330	900 (P)	8722	100[1]
8170	000[1]	8350	350 (P)	8722	150
8170	020[1]	8350	530	8722	200
8170	030[1]	8350	600 (P)	8722	600[1]
8170	040[2]	8380	050	8722	700[1]
8170	050[1]	8380	170 (P)	8722	810
8170	090[1]	8380	210 (P)	8722	870[1]
8170	100[1]	8380	225	8722	890 (P)
8170	120[1]	8380	285 (P)	8722	900 (P)
8170	140[2]	8380	305		

[1] Schedule A commodity classifications discontinued effective January 1, 1954.
[2] Schedule A commodity classifications established January 1, 1954.

These schedule A commodity classifications represent those classes, for imports dutiable at ad valorem or compound rates of duty, previously determined by the subscriber as covering imports of synthetic organic chemicals. For those commodities which bear the symbol (P) immediately after the commodity number (indicating that only a part of the entire commodity may cover imports of synthetic organic chemicals) only the data covering imports of synthetic organic chemicals, as determined by the Bureau of Customs were used. This determination was made by reference to the import entry papers covering the importation. For all other commodities all the imports in the classification were used. The appraised values for each of these two categories of commodities shown in the customs study and reflected in the data for the 78 entries shown in this report are as follows:

Description	Number of entries	Value appraised under section 402 of Tariff Act of 1930	Value appraised under proposed revision of section 402 in H. R. 6040
Schedule A commodities for which all data were used	32	$137,130	$126,211
Schedule A commodities for which only part of data were used	46	424,229	367,775
Total	78	561,359	493,986

Values used in this report

The values used in this report were obtained from the previously described Bureau of Customs study which showed the appraised value and valuation basis (foreign value, export value, etc.) under section 402 of the Tariff Act of 1930 and under the proposed revision of section 402 in H. R. 6040, as determined by customs, for each importation included in the sample.

Variability due to sampling

If the figures in this report are used to calculate the estimated percentage decrease in the appraised value which would result from the proposed revision of section 402 of the Tariff Act, the extent to which such a derived percentage could be affected by sampling variability should be considered.[1]

It was found that for the 78 entries in the special report identified as synthetic organic chemicals, the sampling variability is such that in two times out of three an estimated percentage calculated from the figures in the report to show the decrease in appraised value which could result from the proposed revision of section 402 of the Tariff Act might be as great as 3 percentage points. In other words, if the percentage figure had been derived from data based on an examination of all dutiable entries filed during fiscal year 1954 at the eight ports in the customs study (instead of the 2½ percent and 5 percent samples used in the study), the chances are 2 out of 3 that the estimated 12 percent decrease which can be derived from the data for the 78 entries in the report would have been between 12 percent less 3 percentage points and 12 percent plus 3 percentage points. Thus, a derived estimated percentage figure of 12 percent might be as low as 9 percent or as high as 15 percent.

It was found that for the 41 entries which were appraised on the basis of the foreign value, of the 78 entry total, the sampling variability is such that in 2 times out of 3 an estimated percentage calculated from the figures in the report to show the decrease in appraised value which could result from the proposed revision of section 402 of the Tariff Act might be as great as 5 percentage points. In other words, if the percentage figure had been derived from data based on an examination of all dutiable entries appraised on the basis of foreign value filed at the 8 selected ports during fiscal year 1954 (instead of the 2½ percent and 5 per cent samples in the customs study), the chances are 2 out of 3 that the estimated 20 percent decrease which can be derived from the data for the 41 entries in the report could have been between 20 percent less 5 percentage points and 20 percent plus 5 percentage points. Thus, a derived estimated percentage figure of 20 percent might be as low as 15 percent or as high as 25 percent.

[1] In determining the variability due to sampling, data for the imports based on the 2½ percent sample were doubled and added to data for imports based on the 5 percent sample.

The derived estimated percentage decreases and their range are applicable to only the figures presented in the special report for imports through the ports of Buffalo, Detroit, Houston, Los Angeles, New Orleans, and San Francisco based on a 2½ percent sample of the entries, and imports through the ports of New York and Laredo based on a 5 percent sample of the entries. The derived estimated percentage decreases and the ranges are not directly applicable to, and may not be representative of, imports not covered by this report, such as—

1. United States imports of synthetic organic chemicals through all ports or through ports other than Buffalo, Detroit, Houston, Laredo, Los Angeles, New Orleans, New York, and San Francisco.
2. United States imports of any other commodity or group of commodities through all or any ports.
3. Imports of any commodities (including synthetic organic chemicals) during any period not covered by the report.

VALUES FOR CERTAIN UNITED STATES GENERAL IMPORTS OF SYNTHETIC ORGANIC CHEMICALS (EXCLUDING IMPORTS OF COAL TAR PRODUCTS) DUTIABLE AT AN AD VALOREM OR COMPOUND RATE OF DUTY, BY VALUATION BASIS UNDER SECTION 402 OF THE TARIFF ACT OF 1930 AND UNDER THE PROPOSED REVISION OF SECTION 402 IN H. R. 6040

The information on the values and the valuation basis under section 402 of the Tariff Act of 1930 and under the proposed revision of section 402 in H. R. 6040 presented in this report was obtained from Bureau of Customs records based on a random sample consisting of 5 percent of all dutiable entries filed at the ports of New York and Laredo, and 2½ percent of all dutiable entries filed at the ports of Buffalo, Detroit, Houston, Los Angeles, New Orleans, and San Francisco, during the fiscal year 1954.

Value and valuation basis under existing sec. 402 of the Tariff Act of 1930

Total number of entries	78
Total appraised value	$561,359
Foreign value:	
Number of entries	41
Value	$334,998
Export value:	
Number of entries	25
Value	$102,067
Cost of production:	
Number of entries	10
Value	$98,149
United States value:	
Number of entries	2
Value	$26,145

Value and valuation basis under the proposed revision of sec. 402 in H. R. 6040

Total number of entries	78
Total appraised value	$493,986
Export value:	
Number of entries	58
Value	$306,757
Constructed:	
Number of entries	15
Value	$175,033
United States value:	
Number of entries	5
Value	$12,196

Comparison of value and valuation basis under sec. 402 of the Tariff Act of 1930 and the proposed revision of sec. 402 in H. R. 6040

SEC. 402 OF THE TARIFF ACT OF 1930

Value basis	Number of entries	Value
Foreign value	41	$334,998
Export value	25	102,067
United States value	2	26,145
Cost of production	10	98,149

PROPOSED REVISION OF SEC. 402 IN H. R. 6040

Export value	32	$181,722
United States value	3	10,259
Constructed value	6	77,076
Export value	25	101,855
Do	1	23,180
United States value	1	1,745
Do	1	192
Constructed value	9	97,957

The CHAIRMAN. Thank you very much, Mr. Hooker. Are there any questions?

Senator MALONE. Mr. Chairman, I consider that to be one of the finest statements that I have ever heard made in this committee. I do have a few general questions. If there is any statement that ever brought to the surface the utter ignorance and nonunderstanding of the Members of Congress of an industry this is it. And it is a dangerous condition.

Mr. Hooker, I see that you are the president of the Synthetic Organic Chemical Manufacturers Association. Now, how many products do you manufacture? I am trying to get into the record from a man who apparently understands the chemical industry just what part it plays in our living today and the products that you manufacture.

Mr. HOOKER. Senator, it is almost infinite.

Senator MALONE. I know that. I know it is a terrific question, but you are one man that might be able to estimate it for a committee.

Mr. HOOKER. There are hundreds of thousands of different products that are included within the organic chemical industry. There are so many variations of dyestuffs, so many variations of antibiotics, so many variations of the agricultural chemicals, herbicides and fungicides, and so on. May I ask counsel if he has any accurate notion as to how many products? I think, perhaps, it might be possible for us to get that information by calling the roll of all of our members, to get a reasonably accurate idea.

Senator MALONE. I would like to have it as part of the record.

Mr. HOOKER. We will undertake to get that.

Senator MALONE. There is no Member of Congress that has any idea of the magnitude of the problem. None, including myself.

Mr. HOOKER. My company, sir, is a relatively small company. I think we would be classified as a medium-size company and we make several hundred products.

Senator MALONE. And you are continually working out in your laboratory new products?

Mr. HOOKER. Yes; the amorization of products is such that we must be working out new ones.

Senator MALONE. Will you attempt to get some estimate?

Mr. HOOKER. Yes, we will get you something that will be our best effort to answer the question.

Senator MALONE. The number of firms, perhaps, in the business, an estimate of them, and the number of products that they manufacture and maybe the rate of new products coming on the market as a result of the laboratory work over the years.

Mr. HOOKER. I can tell you that 2 years ago I recall, sir, that it was reasonably estimated that a new product came on the market every day. And I suspect that now it is two new products every day.

Senator MALONE. That would be conservative. Improvement of existing products is continually being made?

Mr. HOOKER. Yes, sir.

(Mr. Hooker subsequently submitted the following:)

SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS
ASSOCIATION OF THE UNITED STATES,
New York, N. Y., July 6, 1956.

Hon. GEORGE W. MALONE,
Senate Office Building, Washington, D. C.

DEAR SENATOR MALONE: At the time of my appearance on June 27, 1956, before the Senate Finance Committee during its hearings on the proposed amendments to H. R. 6040, you requested me to supply the following information for the record:

"The number of firms, perhaps, in the business, an estimate of them, and the number of products that they manufacture and maybe the rate of new products coming on the market as a result of the laboratory work over the years."

The most recent tabulation of the number of domestic firms engaged in the manufacture of synthetic organic chemicals is contained in the report of the United States Tariff Commission, Synthetic Organic Chemicals, United States Production and Sales, 1954. This report in its directory of manufacturers lists 605 companies that reported their production of synthetic organic chemicals to the Tariff Commission in that year.

This report also contains the most recent information available as to the number of different products manufactured by these companies. It shows that some 6,000 products were manufactured during 1954 in commercially significant quantities by the 605 companies reporting.

The rate of new products coming on the market is more difficult to estimate. After consultation with experts in the industry and in the Government service, however, we estimate at the present time that more than 500 new products are placed on the market each year by our industry.

We appreciate your interest and hope that the above information may be helpful to you in understanding our reasons for opposing H. R. 6040.

Sincerely yours,

R. WOLCOTT HOOKER, *President.*

Senator MALONE. Now, a good many of us, if we stop to think a long way back, we would remember what happened in World War I by virtue of the fact that we were not prepared to handle the chemical industry.

Mr. HOOKER. Well, sir, the fact was that I think it was about 2 years, a 2-year period of grace during which the American chemical industry was able to pull itself up by its bootstraps and was able to do a fine job because it was discovered that as a result of cartel action in Europe the development of the American chemical industry had been very considerably stifled.

Immediately following World War I, Woodrow Wilson, who was, I think, admittedly a low tariff advocate, made a statement to the effect that at no time in the future should this country be subjected to the same hazards that it had been in the past and that the chemical industry

was one which should be protected by tariffs. I can't quote the exact words of that, but they are readily available.

Senator MALONE. Every World War I veteran will remember it. Of course we raise a new crop, a new generation, and two and a half decades is a long time. And starting in 1934 we instituted a new trend, but I didn't intend to get in that.

Mr. HOOKER. In 1921, sir, there was a base established for the tariff and then again, as you say, in 1934.

Senator MALONE. That's right. However, in my humble opinion, and I would like yours, it is a very dangerous thing to do, what we are doing today, or about to do with this bill. It was a very dangerous thing that we did in 1934, to institute an entirely new policy and a trend on two fronts. One is the economic front that I am particularly concerned with, that when you raise your standard of living above that of the world or the nations of the world there is only one way to maintain the business. Either by fixed prices on each product, enough above the world price to make the difference in the labor and the taxes and cost of doing business here and in the chief competing country on each product, or a duty, mentioned in article 1 of section 8 of the Constitution, which definitely placed on the Congress of the United States the responsibility of regulating foreign trade and the national economy.

In 1930 the duty was made flexible and fixed definitely on the principle of that difference in cost, by the Tariff Commission, an agent of Congress, well qualified to determine the facts. President Wilson, who I referred to earlier, was talking about national defense. Even with his free trade tendencies and polices he realized that he simply could not endanger the United States of America any more.

Mr. HOOKER. That is right, sir. I think he so stated.

Senator MALONE. He did so state. I had just returned from France and well remember. Suddenly we had been fighting the people we were buying this stuff from, and the cartels controlling these products. Therefore, their products were not available. This time, if we have a third world war, and we will if we keep on the present trend, we won't be able to get anything across an ocean at all.

Mr. HOOKER. That's right.

Senator MALONE. So, suddenly this very thing we are doing will endanger the national defense again, will it not?

Mr. HOOKER. I believe so. Of course, in the First World War and the Second World War we in the United States were fortunate in having a sort of a cushion period in which to prepare ourselves. I think it is generally recognized, or felt, that no such period will exist the third time. We must be ready then and there.

Senator MALONE. We will be cut off instantly from any imports?

Mr. HOOKER. That's right.

Senator MALONE. Now, first, it seems to me that Congress itself must determine what it is trying to do, what its objective is. If its objective is to destroy industry in this country and move the industries abroad we are certainly well on the way of doing it.

What is the final solution to your problem as a company if you are unable to have protection here? Would it be to move to a foreign country and open a branch plant?

Mr. HOOKER. I think that would be inevitable. The capital invested here would have a tendency to move to some place where it could work for a profit.

Senator MALONE. Where you could import the stuff here and then sell it on the American market and make money?

Mr. HOOKER. There has been a very substantial precedent established in that direction already, as you well know.

Senator MALONE. As a matter of fact, some of your people interested in your industry already are doing that, aren't they?

Mr. HOOKER. Yes; that is what I said.

Senator MALONE. We had an interesting witness here last year who said that the industry he represented had the money and knew how to do it, and that if forced to it would go to foreign countries. Now, as a matter of fact, aren't they starting to do that now?

Mr. HOOKER. They have been doing it for some time; yes, sir. They have established a very definite trend.

Senator MALONE. Now, what is the effect then of a foreign country where they have this market, a lower wage market—which means it has to be manufactured by the low wages to sell there at a profit, but they are smart enough to have exchange permits, import permits, and all kinds of protection so that nothing can come in that they do not want to come in—what is the effect then on companies that want to furnish that market? Could they move there and put up a plant?

Mr. HOOKER. Inevitably, it seems to me.

Senator MALONE. Well, then, in addition to having established conditions all over the world, other nations are having these conditions established so that the only way you can trade or sell there is to build your plant there, and that is the way it is, isn't it?

Mr. HOOKER. Substantially, yes, sir.

Senator MALONE. How do you ship anything to England, we will say they make something in England, and are you able to export there? Just taking England as an example.

Mr. HOOKER. Virtually nothing that they make there themselves. We are excluded from the market.

Senator MALONE. How do they exclude you?

Mr. HOOKER. They exclude you by tariffs, they exclude you by import quotas.

Senator MALONE. Import permits?

Mr. HOOKER. Yes, permits, I should say.

Senator MALONE. Do you have exchange permits, too?

Mr. HOOKER. Yes.

Senator MALONE. Then just how does that exchange permit work if there is something you want to take in there to sell to the folks in England and they do not want you to bring it in, what happens?

Mr. HOOKER. Well, it is a little technical, I am afraid, that I might get over my head in trying to describe it. Perhaps counsel could.

Senator MALONE. Well, you apply for an exchange to buy the stuff, is that right? Do you get it if they don't want you to have it?

Mr. HOOKER. Not if they don't want you to have it; no, sir.

Senator MALONE. Let the counsel make a try at it, then. I have been studying this for a long time, and all I understand is that they fully control their market.

Mr. HOOKER. Completely, sir.

Senator MALONE. And you do not import anything into any nation that they manufacture themselves, unless they need it at that particular moment and give you the exchange or permit to bring it in?

Mr. HOOKER. I can assure you that that is the practical result. As I say, I would like to excuse myself from trying to outline in detail the procedure. I don't presume to be an expert.

Mr. LINCOLN. Senator, I don't believe I could improve on your statement of the net result or the practical effect of it, sir.

Senator MALONE. Do you think that is true, is that what you find to be true?

Mr. LINCOLN. I think that is generally true, sir.

Senator MALONE. There is no question, of course, but that while from 1789 to 1934 we floundered a good deal, in general, we protected our American industry, did we not. We protected it by some kind of a tariff duty that made up a considerable amount of the difference in cost of manufacture or production, didn't we?

Mr. HOOKER. Indeed we did.

Senator MALONE. In 1934 then did we change the direction of the trend of our trade by the Trade Agreements Act?

Mr. HOOKER. Change the direction of our trade?

Senator MALONE. Did we change the trend?

Mr. HOOKER. I believe we did very profoundly.

Senator MALONE. Didn't we just go in the opposite direction?

Mr. HOOKER. Yes.

Senator MALONE. That instead of trying to build our own industry we tried by every way possible to make it easier to bring stuff into the United States?

Mr. HOOKER. Yes, sir.

Seantor MALONE. Under the American production cost?

Mr. HOOKER. That has been the practical effect, sir.

Seantor MALONE. I think it is well that the people of the United States understand what our objective is. Sometimes we hear something in detail so that we feel that we know what our own objective is, but I am afraid that the public generally doesn't understand it. They do in these communities where they are walking the streets, they understand it, but where they are still fat, they are a little lax, but their time will come if this keeps up.

Now, you mentioned cartels. How does a cartel operate in connection with material of this kind?

Mr. HOOKER. Well, sir, it would be my feeling that a cartel would operate this way: Suppose the European countries wanted to put a company in his country out of business that was making a particular product for sale in this country or to the world markets. They would simply reduce the price, their export price to this country to the point at which it would make it impossible for the company in this country to stay in business. As soon as the company in this country went out of business, the cartel would then raise its price in this country and they would have done away with competition.

Senator MALONE. In other words, take what the traffic can bear as soon as the competition is subdued?

Mr. HOOKER. That is what has happened over the years.

Senator MALONE. How do they pick up the check over there in underselling you, and do we, through acts such as this one and through the 1934 act, and the act at Geneva, set the stage for it in the first place? Or do they simply take a loss on one thing and make it up some place else, or how does a cartel operate?

Mr. HOOKER. I think prior to World War I, if I am correct, they operated by taking a loss on this and making it up on this. Since then, since 1934, I think in a substantial measure we have set the stage for them and shown them how we take up part of the tab.

Senator MALONE. At the same time we are furnishing money, machinery, to build these plants over there which in a large measure are paid by the taxpayers of this Nation, are we not?

Mr. HOOKER. Yes, sir.

Senator MALONE. But hasn't there been an exodus of American companies to foreign nations, or I may put it better in the form of a question. Are there not more and more American companies putting in branch plants behind a low-wage curtain so they may ship the stuff back here through free trade and bolster their product here and through those plants, furnishing the markets of the low-wage countries?

Mr. HOOKER. I am positive that is a correct statement. I think that can be established as truth.

Senator MALONE. Well, I have some very enlightening reports here and I read the titles into the record. Perhaps you should get some of them. When I asked the Department of Commerce for a complete list of the companies that are in various nations and the business they are doing, they suddenly went blank and said like the State Department, it would be so much work to get it, and that it would take weeks to compile the data. I am unable to get it. But they do have considerable information and we have enough to know it is tremendous now and on the increase.

Let me ask you this: After these companies through the urging of our own Department of Commerce and State Department establish these plants, do you have an idea that part of the pressure here for further reduction in duties or tariffs and further leniencies in importations might come from some of these American companies?

Mr. HOOKER. I am not quite sure I get the significance of your question, sir.

Senator MALONE. In the first instance some of the American companies have been forced to go abroad to survive. In some instances some of them wanted to go in the beginning, but they could survive only if they could import the stuff into the United States, which they could do under the present tariff structure. Isn't there a continually increasing pressure from these American business enterprises abroad for a lower and lower tariff in this Nation to utilize the low-cost labor of the foreign nations and displace the higher-cost labor here?

Mr. HOOKER. I am confident that that is true, sir.

Senator MALONE. We find pressure coming from unexpected places in this Congress. Isn't the effect of what is going on now a displacement of American labor?

Mr. HOOKER. I am sure that it is.

Senator MALONE. And American investment?

Mr. HOOKER. Yes, sir, definitely.

Senator MALONE. If the trend keeps up, your investment, to be worth anything, you would have to be augmented by foreign investments and foreign plants?

Mr. HOOKER. That is our present thinking.

Senator MALONE. After you start, and establish plants abroad then you might join the parade of bringing pressure on us for a continually lower tariff?

Mr. HOOKER. It becomes confusing. Obviously people would have divided interest and it becomes sort of ridiculous, shall we say reductio ad absurdum, but I think it is true.

Senator MALONE. So finally we find ourselves divided against ourselves?

Mr. HOOKER. Yes.

Senator MALONE. I am bearing down on the chemical industry, having lived through two occasions where we cried our eyes out because we had been prevented from building up our own chemical industry prior to a war. Wasn't that one of the reasons we rebelled in 1776, because we couldn't build any industries or factories, we couldn't build anything over here?

Mr. HOOKER. Without paying tribute, yes.

Senator MALONE. Well, are we returning to the status of a colony by volunteering the enactment of legislation?

Mr. HOOKER. I hadn't interpreted it that way, but I think it is reasonable.

Senator MALONE. Of course I did say in an address not long ago that I wouldn't believe that Britain would have had guts enough to charge us as much taxes as we pay now voluntarily, if we had remained a colony. But you can't tell, we might have.

Now, you said something about the prices of imports being manipulated there and I think you explained it to a certain extent, but the record, I hope, will be widely read. I will do what I can to see that some of the workingmen of this Nation and investors read it who are unable to go abroad behind the low-wage curtain and build plants and import the stuff read it.

Mr. HOOKER. Thank you, sir.

Senator MALONE. Would you mind explaining a little more how they manipulate that price there for an export price?

Mr. HOOKER. Well, I think it is readily explained, sir, in that you have a domestic price in a foreign country which we will call the foreign price, that is a price at which they sell locally. Then, we have another price which is their export price to the United States, and that price can be manipulated quite freely and put at any figure that they want and it need bear no relation whatsoever to their home market.

Senator MALONE. That price would be manipulated to undersell the competition here?

Mr. HOOKER. That is right.

Senator MALONE. Regardless of any other connection?

Mr. HOOKER. And it would be incremental production so that they would be selling a larger and larger volume of material and perhaps reducing their costs by so doing, but selling that larger and larger volume at a lower price in the United States market.

Senator MALONE. Then, as you say, as you have explained, when the production weakens here, then they can take what the traffic will bear?

Mr. HOOKER. Absolutely.

Senator MALONE. Now, do you have any particular knowledge of the methods they use, or do you set export prices?

Mr. HOOKER. No, sir, I cannot explain the actual manipulation of price-fixing procedures in foreign countries.

Senator MALONE. You mentioned about the manipulation of prices, there are many in terms of a dollar?

Mr. HOOKER. Yes.

Senator MALONE. Do you think that has some effect?

Mr. HOOKER. I am sure it does.

Senator MALONE. Also, I have made some investigation, but I will not go into it here, but in France, for example, and many of these foreign nations they have several exchange prices for the dollar for the exporter in France. If it is a product that they want exported to the United States they will give many more francs for the dollar, because they want the dollar. If it is something they do not want exported, they give fewer francs, and they are smart people in each of these nations who have lived by their wits for 300 years on trade. They understand the immediate effect, and that is something we do not understand, something Congress has no idea about at all, the effect of what they do. But when they change francs I don't know what it is today, three or four hundred francs to the dollar.

Mr. HOOKER. Three eighty-five.

Senator MALONE. I have been there several times in recent years since World War I and I know you can go around to the corner there and look a little uncertain, like you have money in your pocket, and you get about the number of francs that you demand for the dollar. The official price would be one thing. But they know exactly the effect. For example, the official price was 350 francs to the dollar, and they want something exported and they will give him 360 francs for it, or 351, or if we have 410, whatever it takes. They know exactly what effect it has, so does the exporter. Then, if they do not want it exported and they give him 349 or 325, or whatever it is, they know the exact effect, isn't that right?

Mr. HOOKER. Yes, sir.

Senator MALONE. We, of course, have no idea what the effect is except when we start paying unemployment insurance, and I realize that this is a terrible condemnation of Congress, but that is what it is.

In the chemical field that you are in, this organic chemical field, that is the field where most of the chemicals for national defense purposes are applied, is it not?

Mr. HOOKER. Yes, sir.

Senator MALONE. Do you believe that if this trend keeps up, that it is possible that Congress can materially weaken the chemical industry and cause it to be transferred to foreign nations again?

Mr. HOOKER. I think I represent the membership of the Synthetic Organic Chemical Manufacturers Association in giving you an affirmative answer to that, sir; that we do believe that is the danger, and that is why I am here.

Senator MALONE. I am trying to ask you what the factors are in the difference in costs to manufacturers of chemicals; how important is the differential in labor, how important is the differential in taxes, and the general cost of doing business here and abroad.

What are those factors; how do they affect you?

Mr. HOOKER. Well, of course, raw material of some things is a very important factor, but in the organic chemical industry, I think that

labor is perhaps the all important factor because of the fact of the thousands, or perhaps hundreds of thousands of organic chemicals that are made.

Most of them are what we call batch processes. They do not have the benefit of——

Senator MALONE. Continuous——

Mr. HOOKER. Continuous processes, where great economies are possible.

It is like cooking in a kitchen. You make a potfull of stuff, and then you make another potfull of a different material, and that requires very high grade, very intelligent and high paid labor.

We believe that our labor in America is not—in the chemical industry—is not more intelligent or is not more efficient than the labor in Switzerland or in Germany, or perhaps Italy or in England or Japan, but in the United States it is paid anywhere from 10 times to 2 times as much as the labor in foreign countries, and because of our costs, the things that are required of us, labor costs, and all of our overhead that are placed upon the industry in this country by legislation, by law, over which we have no control, it isn't a matter of whether or not we are efficient operators in our respective plants, these overheads are placed on us by law.

Senator MALONE. That is the cost of doing business?

Mr. HOOKER. That is the cost of doing business.

Senator MALONE. Could you name me some of the principal costs of doing business?

Mr. HOOKER. Well, first of all, you have your established labor rates, you have your pension plans, you have your social security, and things——

Senator MALONE. Industry insurance.

Mr. HOOKER. Industry insurance, and—what do you call it——

Senator CARLSON. Unemployment compensation.

Mr. HOOKER. Yes, thank you, sir.

Things of that type that are imposed upon us, and frankly, I have no objection to them at this point, but they are not competitive with the things that are imposed on our competitors in foreign countries.

Senator MALONE. You have no objection. You think many of the things are good things, but if your competitors pay the same wages, the same taxes, then you are willing to compete?

Mr. HOOKER. We are. I believe this; that the American chemical industry, the American chemical operators will compete on an even basis with anybody on God's world, but it has got to be an even basis.

Senator MALONE. Then all you would ask, if we could arrange it, is just something like a tariff or something, flexible if possible like what the 1930 act provided that would roughly make up that difference, and put you on the basis of fair and reasonable competition?

Mr. HOOKER. Yes.

Senator MALONE. You would not object if they had equal access to our markets?

Mr. HOOKER. No, sir. If they have equal access on an equal basis, we will compete in the open market place.

Senator MALONE. Let the Tariff Commission, or an agency of the Congress, or anything Congress might set up to study that situation—they are very efficient there—determine at all times the differential, what that differential is, to provide fair and reasonable competition,

and if that competitor making a certain product raises its standard of living, the duty or whatever you would call it would go down in accordance with it, and perhaps at some time they would live just about like us and automatically free trade would result.

You would have no objection to that, paying the same wages and taxes?

Mr. HOOKER. That's my feeling, sir.

Of course, going back into history as you did, originally the tariffs, I believe, were to protect so-called infant industries.

It would be ridiculous for us to say that the chemical industry is an infant, but the bigger they are, the harder they fall.

Senator MALONE. I just want to say for the record that that was a ridiculous phrase to start with, "infant industries."

We were all infants 200 years ago, or 180 years ago, but whenever you raise your standard of living in any nation higher than the surrounding nations, there are only two ways you could do it, one, to fix your price enough above to make the difference in the labor cost, and the other, some sliding scale called a tariff that would make the difference; isn't that right?

Mr. HOOKER. I believe that is correct, sir.

Senator MALONE. So we thought, our people coming over here three of four hundred years ago in everything but a rowboat, to get away from those endless wars in Europe. They couldn't, making a living there then, and they can't now. We thought we had come to a place where we were entitled to raise our standard of living in accordance with our energy anad our resources; didn't we?

You have that idea about this, that they came over here to get away from it; didn't they?

Mr. HOOKER. That appears to be the historic story.

Senator MALONE. Well now, we spent 145 years doing that, and now we have spent 24 years trying to get back into that endless maelstrom of trade wars and competition with cheap labor on the theory that we divide our wealth and our markets and, of course, our cash.

That is all established. It is just a question of how much we are giving now. It isn't a question of giving it to them; it is just a question of whether it is 4.8 billion or 5 billion or 6 billion.

They are on our payroll just like the State Department officials now. So it is a diversion and a division of wealth, a world wide socialistic scheme, but nevertheless, under that system, it reversed the ideas that we first had.

And now you agree that the general trend of practically every act that goes before these committees is to make it more effective, a greater division of the markets.

Explain it if you don't?

Mr. HOOKER. No, sir. That is the attitude of—I believe it to be the attitude of the members of my association, and that is the reason that I am here, to try and stem the tide, if I can.

Senator MALONE. I believe that we are stemming it a little but my opinion is that when the boys remember, the increasing numbers starting out in the street, and they are increasing——

Mr. HOOKER. Yes, sir.

Senator MALONE. That they are going to tell their wives some fine day, like they did once before in my short span of life, they are going to just tell their wives to look for the American trade market before

they lay their money down on the counter, and that will fix Congress up. That will take care of it.

Mr. CHAIRMAN. I think this witness has been one of the best that we have had so far, and it is one of the finest statements that I have ever heard on American principles.

Mr. HOOKER. Thank you very kindly.

The CHAIRMAN. Are there any further questions?

Senator DOUGLAS. Yes, Mr. Chairman.

The CHAIRMAN. Senator Douglas.

Senator DOUGLAS. I have one or two questions, and then I would like to make a suggestion.

I would like to ask the witness a question about the statement he made—it is on page 4 of his testimony—that you received the report of the Bureau of the Census apparently on the difference between export prices and foreign prices, and that the adoption of the export price would cause a reduction of 20 percent in the appraised value of organic chemicals.

Would you be willing to furnish a copy of that for the record?

Mr. HOOKER. Yes, sir, that is this report that I have here. The report is attached to my statement, sir, my written statement, not the oral satement that I made, but that is with the written statement that is being submitted to you.

Senator DOUGLAS. Do we have it now?

Mr. HOOKER. I believe you have it now.

Senator DOUGLAS. I beg your pardon then.

Mr. HOOKER. Yes, that is it.

Senator DOUGLAS. I regret I was not here, Mr. Hooker, when you were making your statement.

Mr. HOOKER. That's all right, sir.

Senator DOUGLAS. There is another question I would like to ask.

At the bottom of page 2 and at the top of page 3 you mention the fact that the domestic organic chemical industry apparently is being forced to compete with foreign industries which are organized under the cartel system.

Does this mean that you have been subjected to dumping on the part of these foreign cartels?

Have they been selling their products at lower prices here than abroad?

Mr. HOOKER. We believe so; yes, sir.

Senator DOUGLAS. Do you have any evidence on that?

Mr. HOOKER. I think that we can show evidence to that effect, that they use a lower price to sell in the world market.

Senator DOUGLAS. Could you submit evidence on that point for the record?

Mr. HOOKER. What evidence do we have? I am referring to counsel for just a moment, sir.

Senator DOUGLAS. Certainly. I understand, sir.

Mr. HOOKER. Senator, would you let counsel speak to you directly on that, sir.

Mr. LINCOLN. Senator Douglas, to answer your question, I don't believe that the industry has in its possession evidence of specific dumping situations today, but there is, as you know, Senator, in the various hearings in the past, investigations by Congress of the so-called German cartels, there is much evidence in these——

Senator DOUGLAS. Are you charging either the German cartels, or the Imperial Chemicals, which is a British firm, with now.dumping on the American market?

Mr. HOOKER. I don't believe that there is evidence of that right today, sir.

Senator DOUGLAS. I see.

Well then, if there is no dumping, that would seem to me to do away with a good deal of the strength of your argument which you have been making, Mr. Hooker?

Mr. HOOKER. Unless you permit the foreign value to be withdrawn and rely only on export value——

Senator DOUGLAS. You think that we could?

Mr. HOOKER. Which would relax the regulations under which they would operate, it would make it far more difficult for us to discover what was going on, as a matter of fact.

Senator DOUGLAS. Mr. Chairman, I wonder if we could request the Tariff Commission to make a brief report to us on the practices of Imperial Chemicals, the British firm, and the German chemicals cartel, so far as dumping is concerned?

Mr. HOOKER. I think that would be very enlightening, too.

The CHAIRMAN. I say to the Senator from Illinois that we expect the Chairman of the Tariff Commission to appear before the committee tomorrow morning.

Senator DOUGLAS. All right, and now I am going to make a suggestion with your permission, which I hope will not be taken amiss.

It is this. These are very complicated questions, and some members of the committee undoubtedly have a greater knowledge of the subject than I possess, but I would respectfully suggest that members of the committee should try as far as possible to confine their questions within a stated period of time, say not to exceed 10 minutes, so that other members of the committee may have a chance to question witnesses.

Senator MALONE. I oppose that. I think that if the senior Senator from Illinois would like to question him, he should be allowed to right now, and should not question other members' time either.

The CHAIRMAN. Do you make that as a suggestion?

Senator DOUGLAS. I merely offer it as a suggestion.

The CHAIRMAN. You offer that as a suggestion.

Senator MALONE. I would like to ask a couple of more questions, Mr. Chairman?

The CHAIRMAN. Just 1 minute.

Would you please identify yourself.

Mr. LINCOLN. I am Donald O. Lincoln, of Steptoe and Johnson, general counsel for the Synthetic Organic Chemical Manufacturers Association.

Senator MALONE. What is the average, generally speaking, in the chemical industry, the rate of the wages that you were discussing a while ago, hourly or daily?

Mr. HOOKER. Well, something better than—I would say an average of $2.25 an hour; that would be the average scale wage in our plants.

Senator MALONE. And that is for an 8-hour day?

Mr. HOOKER. An 8-hour day.

Senator MALONE. And the foreign wages, generally speaking of course, they differ considerably in foreign countries, like Germany and England and other nations like Japan?

Mr. HOOKER. I would hesitate to state those.

In general, I believe that Japan is perhaps one-tenth of what we have, and Germany may be one-third or one-half. I am not sure of my figures, sir, but I believe it is in that range.

Senator MALONE. Well now, the way the law is now, and every amendment that we add to it, generally is to put the American producer behind the well-known eight ball, that is to say, he must prove injury, he must prove that he is hurt.

What happens after an industry such as yours can prove injury after they have been injured enough so they can prove it?

Mr. HOOKER. Well, practically the situation appears to be that you can't prove that you are hurt until it is too late.

Seantor MALONE. Until you are dead.

Mr. HOOKER. Yes.

Senator MALONE. Well, of course that is part of the plan in my opinion, but only people that have been in business understand that; that after you can prove you have been hurt, it is too late.

Mr. HOOKER. Apparently the only sure proof that you are hurt is when you succumb to it.

Senator MALONE. That is all.

The CHAIRMAN. Are there any more questions?

Senator MARTIN. You stated that you have 148 members of your association which represents 90 percent——

Mr. HOOKER. I think it is not 148, sir. I think it is 91 members, if I remember correctly.

Yes, the written statement here: "91 members who account for about 90 percent of the domestic production of synthetic organic chemicals."

That is in the written statement, sir.

Senator MARTIN. Do you have any information as to how many of the companies in your association now have either plants in foreign countries or interest in plants in foreign countries?

Mr. HOOKER. I don't have that information as a fact.

Roughly I would say perhaps a dozen.

Senator MARTIN. Could you give us a list of those companies and the countries in which they have either plants, or countries where they have a large interest—cooperating in foreign countries?

Mr. HOOKER. I am reasonably sure, sir, that we could give you a list of those companies which are members of our association that have plants in foreign countries.

I am not sure that we could give you a list of those companies who have a large interest in foreign countries. That may not be available to us.

(Mr. Hooker subsequently submitted the following:)

SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS
ASSOCIATION OF THE UNITED STATES,
New York, N. Y., July 6, 1956.

Hon. EDWARD MARTIN,
Senate Office Building, Washington, D. C.

DEAR SENATOR MARTIN: During my testimony before the Senate Finance Committee on June 27, 1956, concerning the proposed amendments to H. R. 6040, you requested me to supply the following information for the record:

"Do you have any information as to how many of the companies in your association now have either plants in foreign countries or interest in plants in foreign countries?

"Could you give us a list of those companies and the countries in which they have either plants, or countries where they have a large interest—cooperating in foreign countries?"

Based upon the best industry information available to us at this time, we understand that the following member companies presently have an interest, ranging from full ownership to a small partial interest, in plants now existing or under construction in foreign countries for the production of synthetic organic chemicals:

American Cyanamid Co.
American Dyewood Co. division, United Dye & Chemical Corp.
Atlas Powder Co.
Carbide & Carbon Chemicals Co. (Union Carbide & Carbon Corp.)
Celanese Corporation of America.
Commercial Solvents Corp.
Diamond Alkali Co.
Dow Chemical Co.
Food Machinery & Chemical Corp.
Koppers Company, Inc.
Monsanto Chemical Co.
Olin Mathieson Chemical Corp.

The location and number of these plants are as follows:

Country:	*Number of plants*	Country—Continued	*Number of plants*
Argentina	3	Germany	1
Australia	1	India	1
Belgium	1	Italy	2
Brazil	3	Japan	3
Canada	7	Mexico	6
Chile	1	South Africa	1
England	6	Spain	1
France	1	Sweden	1

We trust that this information will be helpful to you in your consideration of H. R. 6040. We appreciate your interest in our industry and in our position on the proposed amendments to the bill.

Sincerely yours,

R. WOLCOTT HOOKER, *President.*

Senator MARTIN. Do you have a large number of companies which now have plants in Japan, or have interest in companies operating in Japan?

Mr. HOOKER. I wouldn't say it is a large number, but we do have some.

Senator MARTIN. Mr. Chairman, I have here, this is data furnished by the Banking Institution of Japan, the number of American companies which either now have plants in Japan or have large interests in companies, and it is very surprising to me the number of them, and how rapidly they have been growing.

Mr. HOOKER. Yes, sir.

Senator MARTIN. And all that means taking away from the working people of America, opportunities, jobs, gainful employment.

Mr. HOOKER. That is one of the most important points, sir, we are trying to make upon the committee, upon you gentlemen.

Senator MARTIN. Mr. Chairman, while this list here doesn't seem to apply very much to the chemical industry, and that is why I was asking whether it did apply to the chemical industry, I am surprised to see the number of companies; Radio Corporation of America, Westinghouse Electric, oil companies, and so forth that now have large interest in companies that are operating in Japan.

That is just the Japanese. I don't have it for other countries.

Senator WILLIAMS. In connection with the question raised by Senator Martin, could you furnish us also with a report as to the percentage

of the products produced by these foreign subsidiaries, which in turn comes back into the United States?

Mr. HOOKER. We certainly will do our best, sir.

(Mr. Hooker subsequently submitted the following:)

SYNTHETIC ORGANIC CHEMICAL MANUFACTURERS
ASSOCIATION OF THE UNITED STATES,
New York, N. Y., July 6, 1956.

Hon. JOHN J. WILLIAMS,
Senate Office Building,
Washington, D. C.

DEAR SENATOR WILLIAMS: When I appeared before the Senate Finance Committee on June 27, 1956, to testify concerning the proposed amendments to H. R. 6040, you requested me to submit the following information for the record:

"In connection with the question raised by Senator Martin, could you furnish us also with a report as to the percentage of the products produced by these foreign subsidiaries which in turn come back into the United States?"

Our report to Senator Martin in response to his inquiry, which has been incorporated in the record of the hearings, shows that 12 of our member companies have an interest in 39 foreign plants for the production of synthetic organic chemicals located in 16 foreign countries. A copy of this report is enclosed for your information. We are advised by these member companies that from somewhat less than 10 to 50 percent of the products from 3 of the Canadian plants are imported into the United States. In the case of the other foreign plants, no products are presently sent to the United States or shipments are so small as to be negligible. Some of these member companies point out, however, that under the proper market conditions the products of all of these foreign plants might be exported to the United States.

We hope that the above supplies the information which you desire. We are appreciative of your interest in our industry and in our reasons for urging the committee not to report H. R. 6040 favorably, either in its present form or as proposed for amendment.

Sincerely yours,

R. WOLCOTT HOOKER, *President.*

Senator MARTIN. I think that is a very pertinent question.

Senator MALONE. I am very happy, Mr. Chairman, that the Senator from Pennsylvania has brought that point out, when we remember that Westinghouse was trying to compete in selling their material, their technical equipment, even for Government dams, and, of course, they could not compete with England or others because of wages, and so forth, and so we had a great hassle for a while here as to whether or not they would accept the low bid whatever it was, and of course they accepted the low bid.

So we have driven Westinghouse into what they are doing and we are driving other important companies out of the United States.

Mr. HOOKER. I think there can be no question of it, sir.

The CHAIRMAN. Thank you very much, Mr. Hooker.

Mr. HOOKER. Thank you, sir.

(The following letter was subsequently received for the record:)

DRY COLOR MANUFACTURERS' ASSOCIATION,
New York, N. Y., June 27, 1956.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

SIR: I am directed by the Dry Color Manufacturers' Association to register with the Senate Finance Committee its complete concurrence to the written statement submitted by Mr. R. W. Hooker with regard to the proposed amendments to H. R. 6040 and to the oral statement made by Mr. Hooker in his appearance before your committee on June 27, 1956.

This expression of concurrence is of the same force and effect as if this association had presented exactly the same written statement and the same oral testimony by its own spokesman.

The Dry Color Manufacturers' Association has within its membership 60 percent of the total number of manufacturers of organic dry colors (pigments) in the United States. The production by this 60 percent is conservatively estimated to be 66⅔ percent of the total volume of organic dry colors produced in the United States. In numbers, 26 of the 43 producers in the industry are members of this association. The other 17 are mostly either very small manufacturers or manufacturers whose production is entirely captive.

We trust, therefore, that your committee will consider the added weight of the endorsement by this important industry of the statement and testimony of Mr. R. W. Hooker.

Respectfully yours,

CLYDE D. MARLATT, *Secretary.*

The CHAIRMAN. The next witness is Mr. Edwin Wilkinson of the National Association of Wool Manufacturers.

STATEMENT OF EDWIN WILKINSON, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF WOOL MANUFACTURERS

Mr. WILKINSON. Mr. Chairman and members of the committee, my name is Edwin Wilkinson. I appear on behalf of and as executive vice president of the National Association of Wool Manufacturers, 386 Fourth Avenue, New York 16, N. Y.

We recorded our opposition to section 2 of H. R. 6040 before this committee in July of 1955.

We are told that the impression prevails in the Treasury Department that this compromise eliminates all opposition. It does not eliminate our opposition expressed a year ago.

We took exception to the prediction of the Honorable H. Chapman Rose, then Assistant Secretary of the Treasury, to the effect that everybody would be happy about the measure.

We believe the hearings a year ago clearly demonstrated this prediction to be erroneous. Just as our objections have not been met by this compromise Treasury draft of section 2, I now predict you will find that few, if any, former dissenters have been won over by it.

We still believe that the elimination of foreign value as one of the criteria for the assessment of ad valorem duties, even at a proposed decelerated pace, will in large and important measure inhibit effective administration of the Antidumping Act of 1921.

We believe that the contentions that this measure, if enacted, would result in duty reductions of unpredictable amounts, as respects specific items, are as valid now as when directed to last year's proposal.

While historic price and value data are admittedly of some value in determining what has happened, they are not reliable indexes of what will or can happen in the future.

If our study of the current proposal leads us only to a slight appreciation of what is contemplated under it, then assuredly it falls flat as a customs simplification proposal.

It certainly would not appear either to simplify or reduce the Treasury job.

Rather, it would seem to enlarge it, opening the door for an unpredictable number of investigations concerning items not included by Treasury on its published list of items on which ad valorem duties would continue to be assessed against the higher of export or foreign value.

American producers of items subject to ad valorem duties would have new and well nigh impossible obligations imposed upon them if they are to maintain the degree of protection through duties that Congress has intended for them.

How, we ask, is the American taxpayer-producer to develop data in support of his reason to believe that items excluded by Treasury from the list should actually have been included?

Certainly it must be obvious that Treasury does not intend to lay itself open to limitless investigation obligations and that some supporting data must underlie reasons to believe.

Yet the American producer should not be expected or required to maintain far-flung foreign offices which would appear to be necessary to enjoy whatever consideration Congress by law has provided for him.

Even should an American producer have the benefits of a widespread foreign representation, with what force and effect could his representatives approach a foreign competitor to obtain value data, the purpose of which is to be a base for a claim that that very same foreign competitor is enjoying an unfair advantage in his export of goods to the United States.

It may be ventured that our own consulates and commercial attachés, with the latchstring to our ports of entry in their hands and the prestige of the United States Government at their back, find this business of collecting accurate and true data in price and value extremely difficult.

Gentlemen, we submit this current proposal is both cumbersome and unrealistic.

It would not relieve the Government's current responsibilities. It probably will increase the workload and at the same time, place additional, confounding and futile tasks upon American producers.

And what is the American producers' plight to be at the expiration of 3 years?

Is it too much to expect that foreign producers sensing a large market potential in the United States, accruing from abnormal and unfair labor cost advantage, will take extraordinary measures to assure that their products are not listed by the Treasury?

Three years of good behavior would be a little enough price for a cartel to pay for the permanent privilege of unrestrained dumping in the largest effective market in the world.

We do not believe that this current proposal is in the interests of the United States or its wool textile industry.

We do not believe its proponents would support it for a moment if they shared our concern.

We have every confidence you will not find us alone in opposing this measure.

We do not envy you your task in judging which point of view is correct.

We hope you will agree with ours and reject the proposal.

The CHAIRMAN. Thank you very much, Mr. Wilkinson.

Are there any questions?

Senator MALONE. Mr. Chairman, I think that this witness has made a very good statement.

Has there been an effort on the part of Congress, in your opinion, and the executive branch in the Government, to maintain a fair and

reasonable competitive situation between foreign producers and domestic producers, or has there been a trend toward continually putting the American producer on the defensive?

Mr. WILKINSON. Well, as far as the wool textile industry is concerned, sir, we feel that the trend has lamentably been in the latter direction; this opening up of our markets to increased competition from the low cost labor abroad.

Senator MALONE. Well now, you know the general propaganda trend, that what Congress has been doing since 1934 is to raise the standard of living of the world to our standard, so as to prevent wars and for various other reasons.

What do you think about the effect of that trend?

No one denies that it is a trend.

Mr. WILKINSON. Well, again speaking for our industry, sir, we are very definitely concerned, and we have so advised the Office of the Director of Defense Mobilization.

We feel, that as a consequence of the increase of exports to this country of the products we make, and as a consequence of the liquidations that have occurred in our industry, there is very grave doubt as to whether the wool textile industry would prove as adequate as it has in the past two wars and the police action for the supply of our military requirements.

Senator MALONE. Well, would you say then that it has resulted in a reduced capacity to produce?

Mr. WILKINSON. It has resulted in a reduction in our physical plants, and it has resulted in spectacular increases of products "like and similar" to the ones that we are prepared, equipped, and able to make here in adequate volume.

Senator MALONE. Are you able to study the welfare of the entire people of the United States and see in that movement that our welfare in the long run is benefited by this action?

After all, if the people in the United States sacrificed your industry, perhaps the circumstances——

Mr. WILKINSON. Well, I could answer that by saying that we have a fundamental belief that the wool textile industry is a vital segment of our defense base.

We are gravely concerned about its present adequacy to meet emergency requirements, particularly if they are to meet any like volume as they have in previous wartime experiences.

Senator MALONE. Now, your industry is a part of the economic structure of this country, isn't it?

Mr. WILKINSON. Yes; it is.

Senator MALONE. An important part?

Mr. WILKINSON. We like to believe so; yes, sir.

Senator MALONE. What happens to that part of the economic structure of the country and the community where you are located by this reduction?

Mr. WILKINSON. Well, there has been very severe reduction retraction in plant equipment. There has been severe reduction in employment, and it does not bode well, in our judgment, for our defense procurement.

Senator MALONE. Well, our State Department has testified here many times that it may result in a severe reduction or elimination of some industries in this country, but that it is for the overall benefit

of the Nation, and for our objectives, that it is worth it; that it just must come about. You have read that testimony, no doubt?

Mr. WILKINSON. That is a point of view that we can't understand on many premises.

One theory is that by increasing world trade, you increase the general welfare of the peoples in the world.

We don't quite see how you increase world trade by taking a job away from an American who is being paid $1.64 an hour and transfer that job to the Japanese at 14 cents an hour or an Englishmen or a Frenchman at 30 cents or 40 cents an hour, or whatever the rate may be.

We don't think they are equal as consumers of the world's goods, and we don't think that process is desirable or necessary.

Now, as for increasing trade in manufacturing and raw materials that we don't have, we think it is a very logical thing to do, and that has been primarily the basis of our tariff laws for many years.

Senator MALONE. Yes, about 60 percent—55 percent to 60 percent of the export volume has never had a tariff because it has not been considered necessary or advisable to have any kind of a duty or tariff on anything that we do not produce, or produce in substantial amount.

Now, what do you have to say about this theory that every nation should produce what they can best produce, meaning the cheapest, and the quality that is necessary, and that we should have this world-wide so that we would eventually arrive at where every nation would produce what it can best produce, and have a regular organization of that kind?

That is no real organization but free trade among nations.

Mr. WILKINSON. Well, I think that theory presupposes "peace on earth, good will towards all men" with no fear of aggression by any one.

Senator MALONE. Well, they have the United Nations and all, and so——

Mr. WILKINSON. We have instruments working for peace, but I don't think it can be truly felt that anyone in this world is not concerned about the possibility of its continuance.

Senator MALONE. We have people who say that if people in every nation in the world lived alike, that would be the end of wars.

Mr. WILKINSON. Well, you have got in my judgment, the question of the attitude arriving before the fact.

Senator MALONE. Well, what do you have to say to this theory, this trend of making our markets available to lower cost labor throughout the world, so that by doing that we will raise the standard of living throughout the world up to ours?

Mr. WILKINSON. Well, Mr. Senator, that is a little more involved in my judgment, and if I may offer a brief illustration of the point—I crave your indulgence.

We have in this country minimum-wage laws relating to the maximum hours that can be worked without premium pay.

We have minimum-wage laws for Government contracts and the like.

Now, Japan has a land area about, I believe, the size of California. It has a population of about 85 million, but the ink was dry when I read that, so it must be much more now.

Let us take Japan, let it displace California in this geographic area of the United States, bounded by our tariff structure.

How long could the other 47 States compete against the population of "Japalfornia" let us call it, with that 85 million getting 14 cents an hour with no obligation to pay overtime for work in excess of 40 hours, with no obligation to pay a minimum wage.

I don't think it would be possible for the others long to survive.

Senator MALONE. And Japan now, in its present location, the difference if it took the place of California would be a cheap mode of transportation.

Mr. WILKINSON. Yes, sir.

Senator MALONE. You are the first one I have heard bring that out.

Of course, and the only low-water transportation is between Japan—or England or any other State in these markets, and in Pennsylvania; perhaps the rail freight between there and New York would be higher than the water rate from England to New York, or not much difference.

I think you have hit the nail on the head.

What do you think of the trend for 23 or 24 years here; is it to establish a basis for fair and reasonable competition between the foreign low-cost labor and the American workingman and investors, or has there been a tendency to put the American investor and labor on the defensive?

Mr. WILKINSON. I can't explain the underlying reason, but it seems to us that the zeal for the advancement of free trade has been ill-advised in the absence of any criteria, specific criteria, as to what foreign trade should be stimulated by the United States.

And we made our views on that, we hoped, clear before the Randall Commission when we alleged that that was the basic criteria that the Commission should establish.

Senator MALONE. Would it appear that our objective has changed in the United States; the 1930 Tariff Act? The Tariff Commission, an agent of Congress, was directed to establish fair and reasonable competition; the flexible duty of tariff to represent the difference in the wages, taxes, and the cost of doing business here and in the chief competing country on each product; no one doubts that effective. However, the 1934 Trade Agreements Act reverses the trend toward opening our markets to the cheap labor of the world.

What in your opinion brought about this change in objective?

Is it a change in the objective of Congress and the executive branch of the Government of the United States?

What motivates the action?

Mr. WILKINSON. Mr. Senator, I would hesitate to describe the motive.

Senator MALONE. I wish you would, for the record. Somebody has got to do it.

Mr. WILKINSON. I would if I could. It escapes us.

Senator MALONE. From your testimony I take it that you do think you are on the defensive?

Mr. WILKINSON. Very definitely, and the State Department has been very effective in advancing or changing the trend of thinking with respect to protection of domestic industry and domestic labor through its pursuit of trade-treaty programs from its inception.

Senator MALONE. Now, of course, our tariff regulations are in the hands of 35 nations at Geneva.

Do you think that is a healthy condition?

Mr. WILKINSON. We certainly hope that that condition will not be brought about by the enactment of T. C. 5504.

The CHAIRMAN. Thank you very much.

Are there more questions?

Senator DOUGLAS. I don't want to ask any questions if there are other members of the committee want to ask questions, but if there are no other questions, I would like to ask the witness two or three questions, if I may?

The CHAIRMAN. All right, sir. I don't think any other members have any.

Senator DOUGLAS. May I ask if the English woolen manufacturing industry is organized on the cartel basis?

Mr. WILKINSON. I don't believe that it is, sir. I don't know. I have no——

Senator DOUGLAS. Is the Japanese industry organized on the cartel basis?

Mr. WILKINSON. I have no factual information of that. I am under the impression that it is.

Senator DOUGLAS. If the English industry is not organized under the cartel basis, then they would not be dumping here, would they?

Mr. WILKINSON. I don't think that dumping alone, that characterization, has anything in and of itself to do with dumping.

A foreign manufacturer, in a cartel or not, may find it desirable to dump.

Senator DOUGLAS. He would have to be a pretty big manufacturer to do that?

Mr. WILKINSON. No. The necessity to dump or clearance of goods is a situation that comes frequently upon all sizes of manufacturers.

Senator DOUGLAS. May I ask this, then?

Do you have any evidence that English manufacturers are selling goods in this country at lower prices than they are selling the identical products to the domestic market in England?

Mr. WILKINSON. I can only answer that by saying that imports that are coming in now, are coming in under the governor mechanism, and this ad valorem duty is assessed at "export" or "foreign value" whichever is the higher, so that this mechanism, the controling mechanism of "foreign value", if you take that off, then you have no measure.

Senator DOUGLAS. The question I was asking was this.

Not what the price was when the duty was levied, but whether in fact English manufacturers were selling woolens to major importers at lower prices than they were charging to domestic consumers in England?

Mr. WILKINSON. Exports to the United States?

Senator DOUGLAS. That's right.

Mr. WILKINSON. Well, presumably if the Treasury Department is effectively administering the law, they aren't.

Senator DOUGLAS. Well, that is merely an addition to the price which will be taken as the method for the levying of the duty, but what I am asking you is this; what I am trying to get at is this.

What is the actual price charged to American importers of English woolens compared to English purchasers of those identical woolens in England?

Are the English concerns selling identical goods in this country at lower prices than they are selling those goods in England?

Mr. WILKINSON. We don't have access to their books.

Senator DOUGLAS. You do have agents abroad?

Mr. WILKINSON. We don't have agents abroad who would have access to the individual company books.

Senator DOUGLAS. Do you know that the English are selling here at lower prices than they are selling the same goods for in England?

Mr. WILKINSON. I do not know.

Senator DOUGLAS. What about Japan; do you have any evidence to indicate that the Japanese are selling woolens in this country at lower prices than they are charging for the identical articles in their country?

Mr. WILKINSON. The same answer would apply. In the absence of knowledge, as to the individual practices in England and Japan, the same answer would apply.

Senator DOUGLAS. In other words, you do not know.

Let me ask you this question: Has the decline in the woolen indusdustry been due primarily to foreign competition, or has it been due to the development of substitute materials, such as rayon, nylon, dacron, and so on?

Mr. WILKINSON. I should like to—I welcome this opportunity, Senator Douglas, to point out that our mills, members of the National Association of Wool Manufacturers, they themselves utilize these new fibers.

So it does not suffice to say that the decline in the physical equipment of the industry is attributable to the development of these synthetic fibers, which we employ.

On the other hand, there have been very spectacular increases in the importation of goods similar to those that we make from both the Continent and from Japan.

For example, I can give you the cloth exports from Japan to the United States. In 1955 they were of a magnitude of 555,000 square yards for the first quarter. For the first quarter of 1956, they had reached the magnitude of 1,369,000 square yards or an increase of 147 percent.

Taking the first 5 months of the imports from the United Kingdom, in 1955 they reached a magnitude of 7,040,000 square yards—that was a record for imports from Great Britain by the way—and in this year, during the first 5 months, they have reached a total of 9,112,000 square yards, or an increase of 30 percent over the same period as last year.

Senator DOUGLAS. May I ask just this one more question.

What percentage of the domestic consumption do the Japanese imports form, and what percentage of domestic production do they form?

Mr. WILKINSON. Well, measured in terms of percentages I would not try at this time, nor to break them down as you have, but I can tell you the average imports for 1955 in relation to the average 3 years domestic production was around the magnitude of 7 percent.

Senator DOUGLAS. That is from all sources?

Mr. WILKINSON. From all sources.

It is the rate of increase that concerns us more than the specific magnitude of tonnage. It has been a precipitous increase.

Senator DOUGLAS. You have not been hurt much yet?

Mr. WILKINSON. I think it is a very definite hurt when you are faced with increased foreign competition at the same time that your domestic market is reduced.

Yes, I think that constitutes hurt.

Senator DOUGLAS. I wonder if the witness would supply for the record, figures on the total domestic production of woolen cloth and total imports within the last 4 years, including the first 5 months of 1956, so that we could work out a percentage?

Mr. WILKINSON. Yes.

Senator BENNETT. I wanted to ask about the witness' last statement when he said that the domestic market is reducing.

You mean the consumption is reducing?

Mr. WILKINSON. I should have said the industry is reducing. I think then, in the face of the contraction of the domestic industry, to have a sweeping increase in the volume of imports is damaging.

Senator BENNETT. But only taking the recent peak years into consideration, the total consumption of your industry, the products of your industry in the American market has been decreasing?

Mr. WILKINSON. Yes, sir.

Senator BENNETT. People are not wearing woolen clothes?

Mr. WILKINSON. I don't know about that.

Senator BENNETT. Well, the point I am trying to get at, it is obvious, or it would be obvious to me, that if consumption is staying level, and the imports are increasing, your production must be decreasing?

Mr. WILKINSON. Our production in yarns and woven fabrics and in blankets have been decreasing, the production has been decreasing, and it has been a severe decrease. In the past 6 or 8 months there has been a slight improvement, but the trend since the war has been a downward trend, a decline.

Senator BENNETT. Well, when you say it has been downward, are you comparing it with the high wartime figures when your industry was supplying uniform material?

Mr. WILKINSON. I am comparing it with the operations of the industry since the cessation of the war.

I can give you the detailed figures, Senator, that will illustrate the point more effectively.

Senator BENNETT. I think it might be well to have that in the picture, because it would be interesting to know whether the total market is increasing, or staying level, or decreasing, so that we could measure more clearly the effect of these increasing imports.

If the market is decreasing and the consumption is increasing, the effect of the imports is multiplied.

Mr. WILKINSON. The American market has been decreasing, and the industry has been reducing its physical stature.

Senator BENNETT. That is all, Mr. Chairman.

The CHAIRMAN. Are there any further questions?

Thank you very much, Mr. Winkinson.

(The following charts were subsequently received for the record:)

WOOLEN AND WORSTED BROAD LOOMS IN PLACE IN U.S.
AND
PRODUCTION OF WOVEN CLOTHS IN U.S.
25% or More by Weight of Wool, Reprocessed Wool
or Reused Wool Except Woven Felts

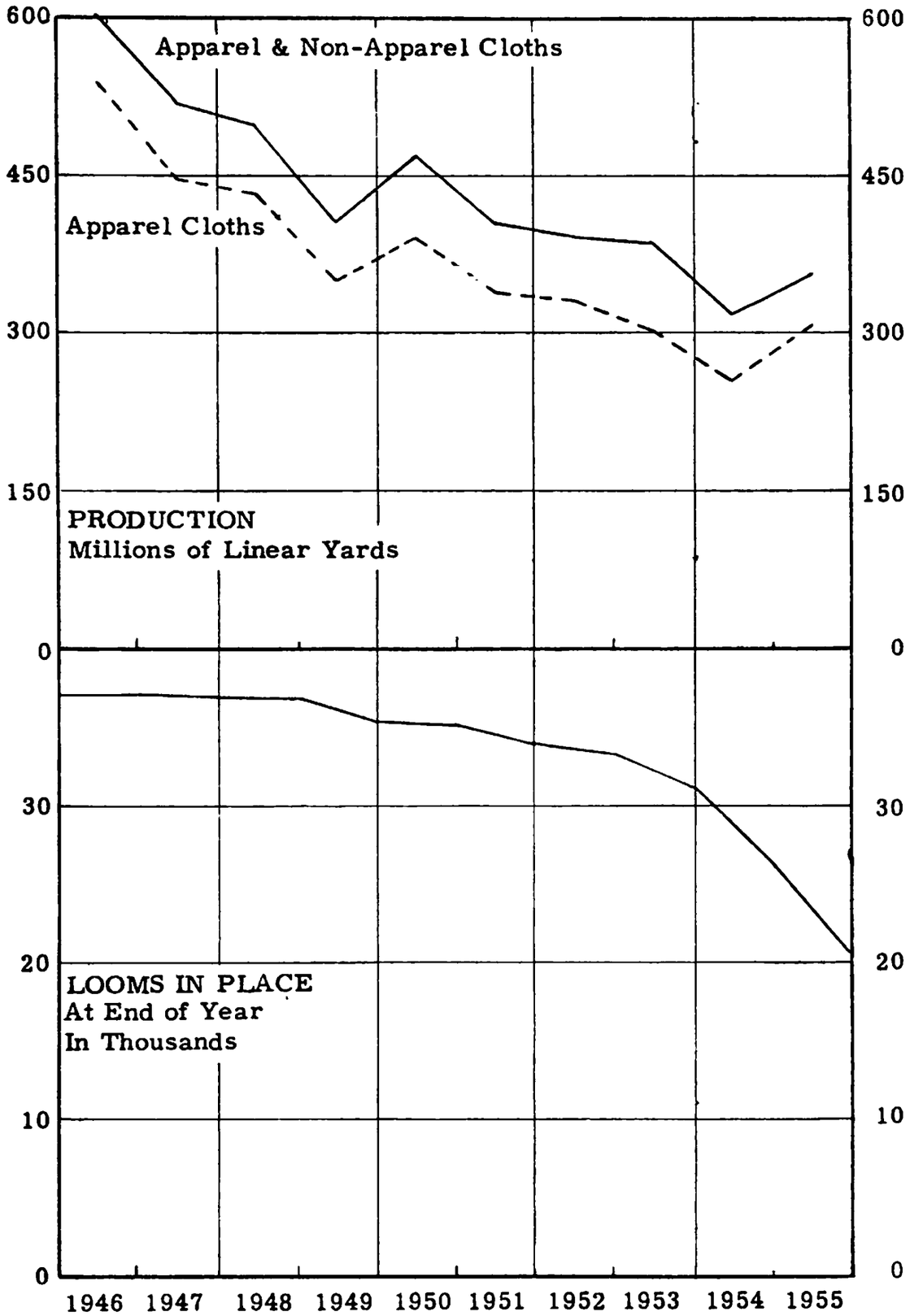

Chart by National Association of Wool Manufacturers

IMPORTS INTO UNITED STATES
FOR CONSUMPTION OF WOVEN FABRICS WHOLLY OR IN CHIEF VALUE OF WOOL OR HAIR

In Millions of Square Yards

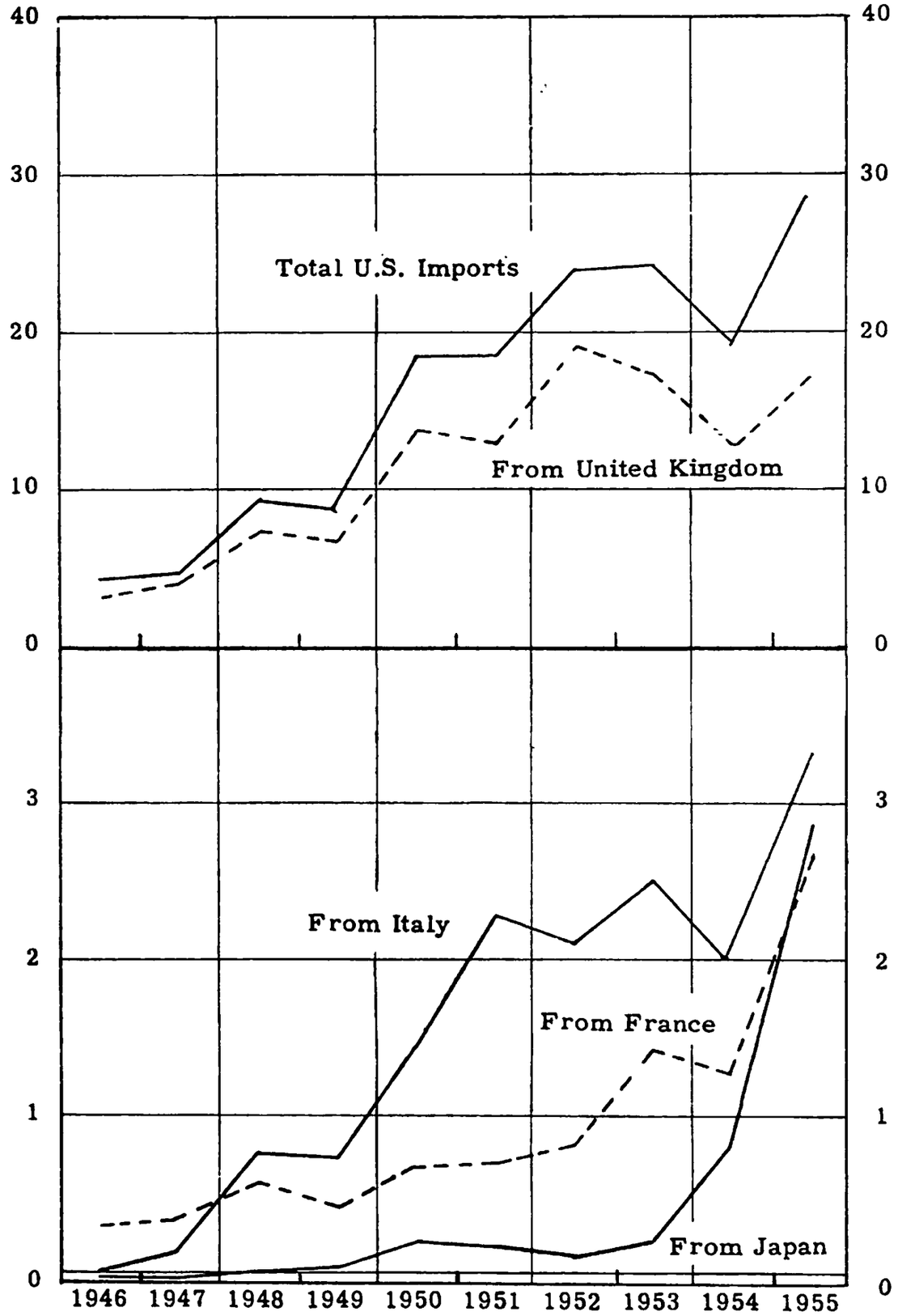

Chart by National Association of Wool Manufacturers

The CHAIRMAN. The next witness is Mr. Lyle W. Jones.

STATEMENT OF LYLE W. JONES, DIRECTOR, THE UNITED STATES POTTERS ASSOCIATION

Mr. JONES. Mr. Chairman, my name is Lyle W. Jones. I am the director of the Washington office of the United States Potters Association, which has its national headquarters in East Liverpool, Ohio.

The association is comprised of domestic manufacturers of tableware and art pottery, both earthenware and chinaware and which includes most of the commercial production of these items in the United States.

After a careful study of the proposed amendment to section II of H. R. 6040, the so-called customs simplifications bill, the association wishes to continue to be on record with the committee as being opposed to section II of the bill.

The amendment does not, in our opinion, remove any of our previous objections but instead only prolongs the valuation conversion to cover a period of 3 years.

As we have previously testified before this committee, our objection to the proposed change in the preferred basis of valuation from "foreign" to "export" is based on our concern that it will give foreign manufacturers the opportunity and in fact a wide-open invitation to especially price goods for export to the United States and to a large extent enable them to name their own low values on which duties would be assessed.

It would encourage a two-pricing system.

Testimony before this committee last summer stated that export value in many instances has been found to be lower than foreign value and has been known to be as much as 16 percent less.

The proposed change in valuation basis removes the only readily available means of determining whether the imported goods are being unloaded at dump prices or priced for our domestic market as provided under the bill.

We have no comparison left on which to intelligently conclude whether the merchandise is being dumped or not.

If there is to be any change in the basis of valuation on which duties are to be levied we believe that the best interests of the Government and American manufacturers would be served if the so-called United States selling price, the price at which comparable American-produced ware is sold on the American market, was adopted.

Such a change would afford some protection from the impact of merchandise from low-wage countries such as Japan, where prevailing wages in the pottery industry are about 19 cents per hour in contrast to the $1.90 per hour paid workers in the pottery industry in the United States.

In any event, we support the recommendation of the American Tariff League that calls for a comprehensive and authoritative study before any changes are made in the customs-valuation systems used not only by the United states but by other countries throughout the world.

We also support their further recommendation that this study should be made by a thoroughly competent and properly staffed official body such as the United States Tariff Commission.

We also agree that such a study would be an invaluable guide in determining the valuation system which would best serve the basic needs of the United States.

In view of the fact that imports of earthern dinnerware were increased over 385 percent during the period of 1947–55 and china dinnerware imports are up over 960 percent during the same period, the domestic pottery industry has become most sensitive to any proposal that would further add to the already critical situation that has been caused by imports from low-wage-paying countries.

In the interest of increased efficiency we recognize the importance of streamlining customs procedures but in doing so great care should be exercised in not changing the intent of the Tariff Act of 1930—

*** * * to regulate commerce with foreign countries, to encourage the industries of the United States, to protect American labor, and for other purposes.**

The CHAIRMAN. Are there any questions?

Thank you very much, Mr. Jones, for your statement.

The next witness will be William F. Sullivan, of the National Association of Cotton Manufacturers.

Mr. Sullivan, please proceed.

STATEMENT OF WILLIAM F. SULLIVAN, SECRETARY, NATIONAL ASSOCIATION OF COTTON MANUFACTURERS

Mr. SULLIVAN. The National Association of Cotton Manufacturers represents cotton and manmade fiber textile mills located predominantly in New England. The New England textile industry, of which the cotton and manmade fiber textile mills constitute a significant portion, is the region's second largest employer with 172,000 workers.

The National Association of Cotton Manufacturers is in accord with the objective of simplifying customs procedures, but is strongly opposed to both section 2 of H. R. 6040 and the compromise proposal, submitted by the Treasury Department, on section 2 of H. R. 6040.

We urge that section 2 be eliminated from the bill since the Treasury Department's proposed amendment in no way meets the objections to section 2. Retention of this section will not be of any material assistance in simplifying customs law or procedure, but will only result in serious damage to many domestic industries, including the textile industry.

REASONS FOR OPPOSING SECTION 2 OF H. R. 6040

Section 2 of H. R. 6040 changes the valuation base on which ad valorem duties are assessed and would result in significant tariff reductions on textile items. Abandonment of the present method of basing ad valorem rates on either the export value of the textile product or the value of the product in the foreign market, whichever is the higher, and substituting the export value, as determined by the foreign exporter, as the sole basis on which ad valorem duties would be levied, is simply a device for tariff reductions under the guise of customs simplification.

Section 2 of H. R. 6040 presents completely unjustifiable hazards and dangers to domestic textile producers. Itemization of the reasons why serious damage to the domestic textile industry would result from the operation of section 2 include:

1. Section 2 actually enables foreign producers to take unilateral action in lowering the United States tariff on goods which they are exporting to the United States. This can be done by the simple expedient of selling textile products to the American market at a lower price than in their own domestic market. Foreign producers organized into cartels can use a two-price system—a high price in their own country where they control the market and a lower price for export to the United States. Section 2 of H. R. 6040 places a very desirable premium on the use of this system and is an open invitation to foreign producers to exploit the American textile market.

Even in situations where a cartel does not control the foreign market, textile producers in other countries are offered a strong temptation to maintain an export price lower than the price in their own market in order to break into the American market. Foreign producers would be given a free hand to abuse and distort our ad valorem rates of duty. There would be no real protection for the domestic textile industry against price manipulation by foreign producers.

2. Reductions in ad valorem rates resulting from the operation of section 2 would be in addition to the tariff concessions granted by the United States in the Japanese treaty concluded at Geneva in June 1955. The lowered tariffs, which became effective in September 1955, have resulted in a significant rise in imports of cotton cloths from Japan.

3. Reductions in rates of duty which would result from the use of section 2, would be in addition to the 15 percent tariff reduction authorized under the Trade Agreements Extension Act.

4. Tariff reductions would be made without any advance notification and the domestic textile industry would be denied any opportunity to present its case at peril-point hearings—because there is no peril-point provision with respect to the reductions which would be effected under section 2.

5. The domestic textile industry, damaged by tariff reductions under section 2, could receive no relief from the escape-clause procedure established under the Trade Agreements Extension Act—because there is no escape clause applicable to section 2 of H. R. 6040.

6. Despite the provision in H. R. 6040 which states that—

> Nothing in this Act shall be considered to repeal, modify, or supersede, directly or indirectly, any provision of the Antidumping Act * * *

Section 2 of H. R. 6040 would result in an increase in dumping since many cases would go undetected if the present routine of checking the export value against foreign value is abandoned.

Under the present law this routine check automatically reveals any cases of dumping and acts as a deterrent to this practice by foreign producers.

Although the Antidumping Act would remain in effect, it would afford completely inadequate protection to the domestic textile industry against the abuses resulting from section 2 of H. R. 6040. The Antidumping Act operates only in extreme cases and any relief it might afford would come too late to be of any real help to textile mills damaged by tariff reductions effected under section 2. Additionally, no protection would be afforded against the variety of price manipulations which would be practiced by foreign textile producers.

It is our firm belief that section 2 of H. R. 6040 serves no constructive purpose and its inclusion in this bill can result only in harm to the domestic textile industry. We are, therefore, strongly opposed to this section and request that it be eliminated from H. R. 6040.

REASONS FOR OPPOSITION TO TREASURY DEPARTMENT'S PROPOSED AMENDMENT

In our opinion, the amendment proposed by the Treasury Department would neither prove nor disprove the contention that the operation of section 2 of H. R. 6040 would result in a lowering of ad valorem duties on textile products and add to the present serious damage being suffered by the domestic textile industry.

One important element in this entire problem is that if the dual criteria of "export value" and "foreign value" now contained in the law are abandoned and only "export value" is used as the base for the ad valorem duty, there is created an incentive for foreign textile producers to use a lower value on goods shipped to the United States than that which actually exists in the country of origin. Under the Treasury's proposed amendment, this incentive would not be created in the case of any products wherein abandonment of the present standards would result in a reduction in value of 5 percent or more. Since this incentive to price manipulation by foreign textile producers would not exist under the Treasury's proposal, but would exist if section 2 should ever be adopted the proposed amendment cannot possibly result in either the proof or disproof of the contentions of the opponents of section 2.

With respect to goods wherein the decline in value would be less than 5 percent, the proposed amendment would definitely result in a lowering of ad valorem duties. From the point of view of the Treasury, any reduction in value of less than 5 percent may not be significant; but from the point of view of the domestic textile industry, any reduction in tariff of any degree whatsoever is significant, important, and dangerous. Any reduction of rates will accelerate the curtailment of markets for domestic producers and reduce employment in the American textile industry.

During the first quarter of 1956, United States imports of cotton cloths and apparel from Japan have continued to increase in an alarming rate. Imports of cotton cloths, excluding velveteens, are now at the annual rate of 244 million square yards—which is an increase of almost 700 percent over total imports from Japan during 1953.

Compared with imports during the corresponding quarter of a year ago, imports of cotton cloths from Japan during the first quarter of 1956 have increased 183 percent. A pamphlet showing the tremendous increase which has taken place in the imports of cotton cloths and apparel from Japan is attached.

In our opinion, the Treasury Department's proposed amendment does not add anything constructive to H. R. 6040 and would result in lowered tariffs on goods which would be reduced in value by less than 5 percent.

We wish to record ourselves as strongly opposed to section 2 of H. R. 6040 and the compromise proposal submitted by the Treasury Department.

The CHAIRMAN. Thank you, Mr. Sullivan.

The next witness is Matthew H. O'Brien, secretary, Rayon and Acetate Fiber Producers Group.

Please proceed, Mr. O'Brien.

STATEMENT BY MATTHEW H. O'BRIEN, SECRETARY, RAYON AND ACETATE FIBER PRODUCERS GROUP

Mr. O'BRIEN. Mr. Chairman, members of the committee, my name is Matthew H. O'Brien, and I appear as secretary of the Rayon and Acetate Fiber Producers Group, 350 Fifth Avenue, New York, N. Y., whose membership includes: American Enka Corp., American Viscose Corp., Beaunit Mills, Inc., Celanese Corporation of America, Courtaulds (Alabama), Inc., Delaware Rayon Co., E. I. du Pont de Nemours & Co., Inc., Eastman Chemical Products, Inc., Hartford Rayon Co., Industrial Rayon Corp., and New Bedford Rayon Co.

In addition to commenting on the proposed new sections 6 and 7, we request the committee to amend section 5 of the act which provides, in effect, that the Treasury Department shall, within 1 year of the effective date of the act, report to the Congress on the operation and effectiveness of the Antidumping Act, 1921.

Because of the close interrelation of the methods of valuation permitted under court decisions construing the Antidumping Act and the methods of valuation proposed in H. R. 6040 and the Treasury amendments, we urge that this committee seriously consider, in connection with the Treasury's proposals, immediate amendments to insure that domestic industry has the protection which the Congress intended in the Antidumping Act.

In the course of the hearings in July 1955, on this act, the members of the committee elicited from the then Assistant Secretary of the Treasury, Mr. H. Chapman Rose, the statement that—

we—

meaning the Treasury Department—

think that the substantial protection against a two-price system is in the Dumping Act, rather than our present system of valuation. (Transcript of hearings before this committee in July 1955, p. 39.)

Notwithstanding this statement by Mr. Rose, which represents that the Antidumping Act provides "substantial protection," the Treasury Department and the Senate Finance Committee have recognized that the Antidumping Act, 1921, does not afford to domestic industry the remedy which the Congress intended to provide against unfair competition and that there is an urgent need for amendment to that act.

Almost 2 years ago, Mr. Rose, in a letter to Senator Millikin, then chairman of this committee, under date of August 5, 1954, stated:

Further study is being given to the question of the proper definition of "injury" for the purpose of the Antidumping Act. There is great difficulty, under the existing statute and decisions construing it, in giving proper effect to the law in cases where the home market of the country in which the dumping originates is to any extent restricted in the way in which the commodity is offered for sale. This subject is also being studied. It may be that, as the result of these studies, the Treasury will have further suggestions regarding changes which, in its opinion, would improve the functioning of the act.

The text of this letter is included in the Senate Finance Committee Report No. 2326 on the Customs Simplification Act of 1954.

On the following day, August 6, 1954, in the same Finance Committee Report (No. 2326), this committee recognized the problem by stating that:

The committee recognizes that further substantive changes in the antidumping law may be desirable, particularly in relation to price and injury definitions. The committee believes, for example, that it should be clear that injury in a particular geographical area may be sufficient for a finding of injury under the Antidumping Act. Any change, however, relating to price or injury opens up a broad and difficult subject without time remaining in this session for its adequate consideration. The Assistant Secretary of the Treasury has written to the committee that he believes further substantive amendments may be necessary in connection with these subjects and that the Treasury Department is giving study to these questions which may lead to suggestions for further improvement of the act.

Please note that these statements were made 2 years ago, and no action in accord therewith has yet been taken.

In June 1955, the Ways and Means Committee of the House of Representatives in its report to accompany H. R. 6040, at the suggestion of the Treasury Department, amended the bill as introduced specifically to direct as follows:

The Secretary of the Treasury, after consulting with the United States Tariff Commission, shall review the operation and effectiveness of such Antidumping Act and report thereon to the Congress within one year after the effective date of this Act. In that report, the Secretary shall recommend to the Congress any amendment of such Antidumping Act which he considers desirable or necessary to provide for greater certainty, speed, and efficiency in the enforcement of such Antidumping Act.

Now, after the passage of another year, the Treasury Department apparently desires to defer its report until sometime in the summer of 1957 if H. R. 6040 should be enacted at this session of the Congress. In other words, they are asking that they be given 1 year from the effective date of the pending legislation to make a report on the Antidumping Act although 2 years ago the then Assistant Secretary of the Treasury, Mr. H. Chapman Rose, admitted in a letter to the then chairman of this committee that—

There is great difficulty, under the existing statute and decisions construing it, in giving proper effect to the law * * *." (Antidumping Act, 1921).

The foregoing citations from the records show that the Senate Finance Committee and the Treasury Department have, for at least 2 years, recognized the need for amendments to make the Antidumping Act effective.

The time lag is, however, much greater than 2 years. The decisions to which Mr. Rose referred in his letter to this committee in 1954 are contained in a line of decisions of the Court of Customs and Patent Appeals originating in the decision in the Cottman case in 1932[1] establishing the principle that, in determining the dumping price differential of any commodity between the lower price on export to the United States and the higher home-market price in the exporting country, no consideration could be given to the home-market price on any sales which were to any degree retricted in the home market.

Thus, a foreign producer needs only to place on his sales note or invoice in his home market a restriction which does not affect the value of the commodity to the purchaser, and which may not be ever en-

[1] *Cotton & Co. v. United States*, 20 C. C. P. A. 344, T. D. 46114 (1932) (Cert. denied, 289 U. S. 750, 1933).

forced, in order to avoid comparison of that price with the dumping price to this country. This method of sale is actually being practiced abroad to the detriment of our industry. The foreigner now sells his rayon and other synthetic yards to a weaver or knitter in his home market adding to the sales note or invoice the restriction that the weaver or knitter must not resell the yarns without further processing. In this manner, he gets a higher price in his home market and dumps in the United States at a lower price. Under the decisions of the Court of Customs and Patent Appeals, the differential between such prices cannot be used as a measure of the antidumping duty. This practice has resulted in the taking over of approximately one-third of the American market for rayon staple fiber while domestic capacity is unused, with consequent loss of business and employment in this country.

We submit that, on a problem reported by the Assistant Secretary of the Treasury to the chairman of this committee in 1954, there has already been adequate time for the Treasury Department to propose amendments to overcome the recognized enforcement difficulties and that the Treasury Department does not need an additional year after the enactment, if ever, of H. R. 6040, in which to present its recommendations for amendments to the act.

Since the court decision was handed down in 1932 and particularly since the Treasury Department admitted in 1954 the difficulties in enforcement of the Antidumping Act, it has been for years the duty of the Treasury Department to propose to the Congress such amendments as are necessary to make effective the intent of the Congress in the Antidumping Act. Believing, as the record indicates, that we are in agreement with the Treasury Department on the principle that the Antidumping Act needs corrective amendments for its proper enforcement we have endeavored, without any success, to come to agreement with the Treasury Department upon the phrasing of such amendments. Our suggestions for the amendments to the Antidumping Act have already been presented to this committee in the July 1955 hearings and the Treasury Department has had a year to consider and to comment on our proposals. We are dismayed to learn that the Treasury Department still wants another year to elapse before it presents its recommendations on the problem to the Congress.

It is extremely important that the Congress recognize that, even while it is considering the Treasury proposals in H. R. 6040 to change the method of valuation on imports subject to ad valorem duties, the method of valuation has already been changed on imports of products competing with products of our industry. Since the Treasury Department cannot consider home market prices on so-called restricted sales, it is presently basing ad valorem duties on the export value of goods which are being dumped here.

On page 42 of the record of the hearings before this committee in July 1955, Mr. Rose said:

> You take on chart 2, about halfway down in the first group of items which are principally affected, you will find synthetic fibers and manufactures which show an indicated reduction in value of about 7 percent. My information is that in the current year those imports are being appraised on export value so that the 7 percent reduction has already accrued.
>
> In other words, if this survey were made in 1955, synthetic fibers would show little or no change in value. The reason for that being determinations which were made in connection with a consideration of a dumping case last year, as to the proper basis of valuation.

In the dumping case to which Mr. Rose referred, restricted sales in foreign markets were excluded in accord with the court decisions previously cited.

The former Assistant Secretary of the Treasury seems to feel, as indicated by his testimony in the 1955 hearings before this committee, that we should not object to H. R. 6040 because our industry is already suffering the disadvantages which would be imposed by that act. Our position is, however, that the situation which imposes such injury on our industry, and potentially on every industry in the United States, should be corrected by legislative enactment rather than sanctioned by the provisions of H. R. 6040.

In the application of the Antidumping Act, the lowered valuation results in a reduction, not only in the value to which an ad valorum duty will be applied, but a reduction in the duty itself equal to the differential between the higher price in the home market and the lower price on export to the United States. Affirmative action by the Congress in corrective amendment to the Antidumping Act overcoming the erroneous principle laid down in court decisions is, therefore, necessary to prevent the Treasury Department from applying a valuation in dumping cases contrary to congressional intent in the enactment of the Antidumping Act.

We therefore urge the committee recommend to the Senate an amendment of section 5 to overcome the difficulty of enforcement occasioned by the decisions mentioned by Mr. Rose almost 2 years ago and specifically that the committee approve the amendments which we proposed in the July 1955 hearings and which appear on pages 96 and 97 of the record of those hearings.

We propose further that, if the Congress passes H. R. 6040, which we do not advocate, this committee include the following additional amendment to section 5 of the act:

On page 16, in line 22, strike out the words:

within one year after the effective date of this Act

and insert in lieu thereof:

within five days after the convening of the first session of the 85th Congress.

The second sentence in the present section 5 would then read as follows:

The Secretary of the Treasury, after consulting with the United States Tariff Commission, shall review the operation and effectiveness of such Antidumping Act and report thereon to the Congress within five days after the convening of the first session of the 85th Congress.

Whether or not this Congress adopts the pending legislation, we urge this committee by resolution to direct the Treasury Department to make to the 1st session of the 85th Congress the report called for in section 5 not later than 5 days after the convening of such session.

With reference to section 2 of H. R. 6040, we renew all of the objections which we presented at the hearings in July 1955, as reported on pages 91–103 of the record of those hearings. Many of the points which we then made in opposition to section 2 have been emphasized by previous witnesses in these hearings and will not, therefore, be repeated now.

With reference to the pending amendments which would incorporate new sections 6 and 7 of the act, we submit that the proposals not only fail to meet the objections of American industry to section 2 of the

act but are in themselves so objectionable that comment thereon seems to be in order.

The members of this committee, by persistent questioning, elicited from the representative of the Treasury Department at the July 1955 hearings the fact that H. R. 6040 as passed by the House of Representatives would effect a reduction in valuation on some commodities by as much as 50 percent. The basic theory, and fallacy, of the amendments proposed after such hearings seems to be that, for the next 3 years or more, it is proper for the Congress to reduce by an amount up to 5 percent the valuations of each and every imported article covered by ad valorem duties and that, after 4 annual reports, the act shall become completely effective requiring reductions in valuations, whether they be 5 percent or 50 percent or more, on all articles subject to ad valorem duties without any consideration of individual commodities and industries, unless the Congress repeals this act within a period of 90 days of continuous session following the publication of the fourth final list. To state the proposition is to refute it.

This act has been pending for more than a year. We submit that a 90-day period is entirely too short for the enactment of tariff legislation which will be required if the act ever becomes effective.

Notwithstanding the fact that the questions by the members of this committee at the hearings a year ago indicated a desire to know the effect this proposed legislation would have on the valuations of specific commodities subject to ad valorem duties, the Treasury Department has not yet given and does not now in the proposed amendments attempt to give the Congress the facts which it should have in order to pass considered judgment on the proposed legislation. In lieu of presenting the facts which this committee sought to obtain by its questions in the July 1955 hearings, the Treasury Department now recommends in the proposed amendments to H. R. 6040 that valuations on which ad valorem duties are based be reduced not more than 5 percent for a period of approximately 3 years but thereafter that such valuations be reduced by percentages still unknown. This is requesting the Congress to give a blank check with the foreigner privileged to fill in the blank and legitimatize for ad valorem duties dumping prices.

One of the most remarkable features of this act is in the words in its title "Customs Simplification." As pointed out in the hearings before the House Ways and Means Committee and as confirmed by a letter from Secretary of the Treasury Humphrey included in the report of that committee on H. R. 6040 (Rept. No. 858, p. 5), the Treasury intends still to consider and ascertain the fact concerning foreign market value even though duty may not be based thereon.

Thus, the Treasury Department says it intends to continue the process which it considers burdensome and from which it asks to be relieved in this act. In addition to the continuation of that administrative burden, the Treasury Department now proposes that, as to each and every article subject to ad valorem duties, the Secretary will, in the next 3 or more years, prepare and publish 4 separate lists showing the effect of this act as against the present law, each list covering an annual period.

After the Secretary prepares such lists, they are subject to revision on representations by domestic industry that articles have been omitted from the list. Thus, the staff of the Treasury Department has an

added burden and domestic industry has an added burden. It would be interesting indeed if the Treasury Department submitted to this committee an estimate of the man-hours which would be required and the cost thereof to compile such lists. Is this simplification?

We desire to conclude with what we believe to be a further constructive suggestion. Since it is obvious that the committee should have before it facts showing the effect of the Treasury's proposal to change the method of valuation of imported commodities on which ad valorem duties apply, we suggest that the committee, before the enactment of any legislation to change such methods of valuation, require the Treasury Department to submit to the committee a report showing, as to every commodity affected by the act, the exact amounts by which each may ultimately be reduced in valuation and the net result in reduction of the duties to be paid thereon. Without such information, we respectfully submit that the committee is being asked to act without knowledge of the effects or the consequences of its action.

The CHAIRMAN. Thank you, Mr. O'Brien.

The next witness is Mr. Edmund Wellington, of the National Fedation of Textiles.

STATEMENT OF EDMUND WELLINGTON, JR., SECRETARY, THE NATIONAL FEDERATION OF TEXTILES, INC.

Mr. WELLINGTON. Mr. Chairman, my name is Edmund Wellington, Jr., and I appear as secretary of the National Federation of Textiles, Inc., of New York.

This is the trade association representing the textile manufacturers of the United States who use manmade fibers and silk in the production of their fabrics.

The members of the federation operate 288 mills in 24 States and Puerto Rico.

Of these, 149 are located in the Southern States of Alabama, Georgia, North and South Carolina, Tennessee, Virginia, and West Virginia; 38 are located in the New England States of Connecticut, Maine, Massachusetts, New Hampshire, and Rhode Island; and 97 are located in the Middle Atlantic States of New Jersey, New York, and Pennsylvania.

The products of these mills represent 71 percent of the total machine (loom) capacity of the industry reported by the Bureau of Census as working on broad woven goods of manmade fibers and silk.

In our branch of the industry, there are approximately 100,000 workers, earning an average of $54.54 per week, or a total potential annual payroll of about $280 million.

Senator MARTIN. What is that per hour? I believe we have been talking hourly figures up to now.

Mr. WELLINGTON. I believe, Senator, it is about $1.32 per hour.

In July 1955, be sumitted a brief to this committee outlining our objections to H. R. 6040 as then written, with the exception of section 4 which repeals outmoded legislation.

Our brief stated that the members of the federation were sympathetic with the desire to simplify customs procedures, and indeed, such is still the case.

However, our members did not, and do not now, believe that H. R. 6040 accomplishes this objective.

Moreover, certain provisions of the bill, especially section 2, will aggravate the already serious situation facing the textile industry in this country in its efforts to keep its mills open and its employment lists full and in competition with the growing imports from our low-wage foreign competitors.

We join our associates in the textile manufacturing industry—the American Cotton Manufacturers Institute, Inc., the National Association of Wool Manufacturers, and the Northern Textile Association—in the views that they are presenting to you in this connection.

It was hoped that the amendments subsequently included in the bill at the request of the Treasury Department would divest H. R. 6040 of its objectionable features; namely, section 2, which does away with foreign value as a basis of valuation for customs purposes.

We believed last year, and we still believe, that both export value and foreign value are needed as backstops.

However, the amendments do not provide the needed means of backstopping since foreign value is still omitted.

So far as we are able to determine, the only substantive change in the amended bill is that the tariff reductions, which the Treasury Department concedes would result from the implementation of H. R. 6040, would be held in abeyance for 3 years instead of taking effect immediately.

Presumably, the Treasury believes this moratorium would be less injurious to American industry, or that industry would find the reductions less painful 3 years from now than at present.

Nothing could be further from the fact.

Our industry still views with alarm any proposal which would tend to lower tariffs on textiles whether the reductions are effective today, tomorrow, or 3 years hence.

The time factor does not offer our industry any means of redress nor any measure of protection.

A tariff reduction by any name and at any time further exposes our industry and its employees to low-wage foreign competition, whether it be future or immediate; whether it be in the name of customs simplifications or reciprocal trade.

In addition to section 2 of H. R. 6040, we request the committee to amend section 5 of the bill which provides that the Secretary of the Treasury, after consultation with the United States Tariff Commission, shall review the operation and effectiveness of the Antidumping Act and report thereon to the Congress within 1 year of the effective date of H. R. 6040.

The background of our opposition to the present proposals is being described to you in detail by that branch of our manmade fiber industry which is most immediately affected, the producers of the yarns, particularly rayon and acetate.

We support the recommendations being made to you in this connection by Mr. Mathew H. O'Brien, secretary of the Rayon and Acetate Fibers Producers Group.

Supporters of H. R. 6040 have contended that domestic industry would be protected from price manipulation on the part of foreign manufacturers by the Antidumping Act of 1921.

However, we fail to understand how this is so, especially since the Treasury Department itself has acknowledged the shortcoming of the Antidumping Act in correspondence included in the Senate

Finance Committee Report No. 2326, on the Customs Simplification Act of 1954.

The inadequacy of the Antidumping Act was further recognized in the House Ways and Means Committee's report on H. R. 6040 when it concluded hearings on the latter in June 1955.

To say that the Antidumping Act will protect American industry against price manipulations, which we believe would be made by foreign manufacturers if H. R. 6040 is enacted, and then to admit that the Antidumping Act is ineffectual, is—it seems to us—putting the cart before the horse.

We therefore urge the committee to consider directing the Secretary of the Treasury to make a study of the operation and effectiveness of the Antidumping Act of 1921 to be completed prior to further action of H. R. 6040.

Whatever the committee's decision on this recommendation, we strongly urge that at such time as H. R. 6040 may be enacted that section 2, which does away with foreign value as a basis of valuation for customs purposes, be stricken from the bill.

We appreciate the opportunity to present our views, and we sincerely hope they will be helpful to the committee in its consideration of H. R. 6040.

The CHAIRMAN. Any questions?

Thank you, Mr. Wellington.

That concludes the witnesses for this morning.

The committee will now adjourn.

(By direction of the chairman, the following is made a part of the record:)

STATEMENT OF THE LEAGUE OF WOMEN VOTERS OF THE UNITED STATES IN SUPPORT OF CUSTOMS SIMPLIFICATION (H. R. 6040)

The League of Women Voters of the United States has long been concerned with problems of world trade and has worked for various measures which it believed would contribute to its expansion. The league has also worked for economy and efficiency in Government. Because the league believes that both these goals will be served by the enactment of further customs simplification legislation, it wishes to express its support for H. R. 6040, the customs simplification bill now before you.

This bill would simplify and facilitate valuation procedures.

Since 1930 the league has studied ways of reducing trade barriers. In the course of this study our members became aware that outmoded, complex and inequitable customs regulations constitute one of the major stumbling blocks to increased world trade.

The league is aware that much has been done to improve customs administration in the past few years. Determination of the value of imports for duty purposes, however, has not been among these improvements although it has long been regarded as a particularly cumbersome area of customs administration. Both foreign exporters and American importers have criticized the delays, extra expense and uncertainties which surround valuation provisions. The league believes that the proposals contained in this bill are in the interest of promoting more orderly trading procedures between nations, and that this is wholly consistent with United States efforts to strengthen the free world by promoting trade cooperation and economic development.

The American economy is rapidly expanding. In order to meet the needs of this expansion the United States will have to look more and more to foreign markets.

We have already seen both in 1955 and the first quarter of 1956 substantial increases in American international trade.

Clarification and simplification of our customs procedures is needed not only to help meet the challenge of economic expansion by making it possible for countries to sell in the American market so that they may buy our exports

abroad, but also to handle this already increasing volume of trade economically and efficiently in the interest of the American taxpayer and consumer.

Under the existing law there are four methods of determining the value of goods for the purpose of assessing duty, and a fifth is required for certain goods. These methods are time consuming since they require a great deal of investigation and documentation. They are so complex and ambiguous that the same goods are often valued differently by different customs officials at different ports of entry.

Many United States customs regulations stem from the Tariff Act of 1930. Although there have been a number of amendments and other statutes over the years, no comprehensive revision of the basic tariff-rate structure has been undertaken since 1930. As we have indicated, these regulations are costly to operate, variable in their application and unnecessarily restrictive. We believe that the United States must take the lead in doing away with these restrictive measures by improving its system of customs law. H. R. 6040 is an important step in this direction. The League of Women Voters urges this committee to report the bill favorably and do all it can to promote its passage by the Senate.

Recently leagues throughout the country completed over 186 surveys of the local impact of foreign trade. As a background of public awareness concerning world trade, we would like to submit for inclusion in the record a section from this report which summarizes the leagues' look at grassroots "Facts and Attitudes on World Trade."

SOME GENERAL OBSERVATIONS

The major insights yielded by the surveys are qualitative rather than quantitative—psychological rather than statistical. It is a safe observation that extreme protectionist views are now held by only a minority of our citizens, regardless of the degree to which this is reflected in Congress. But if the balance of opinion is in favor of a more liberal expanding trade policy, it is also true that a surprising number of those interviewed did not have a clear idea of what their personal stake might be or what present trade policies and proposals are. Nevertheless, it can hardly be overstressed that the survey showed that acceptance of new economic realities concerning our stake in world trade has far outstripped general attitudes toward decisions on public policy relating to the maintenance and development of this trade.

The pattern of thinking that emerged tended to be consistent over the country as a whole. Economic isolationism has less to do with geography than it has with the nature of the traditionally dominant industry in each area, and the state of that industry's health. This consistency makes less serious the spottiness of the survey.

The tentative tone of most of the survey findings has its own significance. They are less a technical appraisal of the economic effects of international trade on local communities than a mirror of public opinion regarding policies and attitudes. This does not lessen their value, since opinions probably constitute as important a factor in shaping attitudes and polices as do facts.

EASTHAMPTON, MASS., *June 15, 1956*

Re H. R. 6040.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: We are opposed to the so-called customs simplification bill because we feel it does not adequately protect American producers and their employees.

We feel that the amendment proposed, if enacted, would make it very difficult for American firms injured to protect themselves either through the Treasury Department or through Congress. We also think it would encourage foreign countries to adopt multiple price systems with the lowest price applying to exports to the United States. Producers of items recently cut or facing possible future cuts would be in jeopardy of further cuts to an unknown degree.

We feel this would be harmful to our plants in New England and also those we operate in Virginia, and we urge you to oppose this bill.

We appreciate your interest.

Respectfully yours,

UNITED ELASTIC CORP.,
By H. W. CONANT, *President.*

PHILADELPHIA, PA., *June 15, 1956.*

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
United States Senate, Washington, D. C.

DEAR SENATOR BYRD: Although I cannot arrange to appear before the Senate Finance Committee to protest against the compromise proposal on section 2 (valuation) of H. R. 6040, I would greatly favor the courtesy of having this letter as part of the record opposing and presenting some of my objections to the compromise proposal. The grounds and reasons for originally opposing this section and the so-called customs simplification bill still apply to the compromise proposal.

The bases of valuation for customs purposes and the definitions of terms are changed. The Treasury's survey showing the effect of the proposed changes revealed that the protective levels of ad valorem and of the compound rates of duties would be reduced on average for many categories of commodities.

Now while we do not favor freezing forever valuation bases and definitions, we do believe that whenever valuation bases and definitions are changed in the interest of simplification or modernization or harmony with the practices of other countries, the effect of such changes on the protective levels of ad valorem rates should be thoroughly considered at the same time and provision made for adjustment.

It is for these and many other reasons that we oppose the proposed change.

Respectfully submitted.

Yours very truly,

PHILADELPHIA FELT CO.,
R. E. PUTNEY, *Treasurer.*

NEW YORK, N. Y., *June 20, 1956.*

Subject: H. R. 6040, customs simplification bill.

Senator HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: As chairman of the American Glassware Association's import committee I respectfully request this letter be made a part of the record of the hearings being conducted on H. R. 6040.

Former Under Secretary H. Chapman Rose has distributed the compromise proposal to a number of organizations and individuals greatly interested and having a substantial stake in the outcome of this bill. None to our knowledge who have been opposed to the compromise have since been convinced the compromise will remove the objectionable features of section 2 provisions.

The producers of handmade table, stem, tumbler, and ornamental glassware of this industry have been severely harmed by the downward spiraling reductions in tariffs. It is apparent this harmful trend would be continued even with the compromise in effect. Section 2 would change the valuation for customs purposes from foreign value (which would be eliminated) to export value. The Treasury study has shown that the change from foreign to export value, plus the definitions of terms, will reduce ad valorem rates even further than they are at the present time. Mr. Rose in his September 22, 1955, speech said "that in a few rare instances immediate reduction and value of a particular commodity might be as much as 40 percent."

We feel quite certain that the changes proposed for H. R. 6040 will have an adverse effect on glassware manufacturers. Amendment procedures proposed would make it practically impossible for the manufacturers to prove tariffs at present levels should be continued or to try and secure congressional legislation supporting their position even though their contentions are wholly supportable.

The amendment proposes that the Treasury Department compile a list of products each year for 3 years showing on which of the products valuation would be reduced by 5 percent or more under the new export value. Products on a list showing valuation has been reduced by 5 percent or more under the new valuation would continue to be appraised on the current duty basis for as long as the list is in effect. Any manufacturer of a product which has been stricken from the list would have to advise the Treasury within 60 days he has "reason to believe" that if the product had been imported in the previous year and appraised under H. R. 6040 the average valuation would have been 95 percent or less of the average value at which it was actually appraised. The Secretary of the Treasury would then be empowered to "cause such investigation of the mat-

ter as he deems necessary." If the Secretary agreed with the complainant producer, the article then would be added to the list.

Such matters of opinion as "reason to believe" and "call such an investigation of the matter as he deems necessary" are so nebulous in nature and, consequently, so dangerous in their implications from the standpoint of permitting the possibility of unjustifiable damage to the producers of many products, that the proposed amendment should be rejected. This becomes more obviously apparent when it is understood that the domestic producer would have to police the Treasury's lists as they are published from time to time, prove that the Treasury is wrong by his interpretation of the facts, or else present authentic information on appraisals from some acceptable source. Since the Customs Bureau is the only place where such information can be secured, and that information is considered confidential and presumably would not be available to the producer, he would have no way to offer any evidence in rebuttal no matter how justifiable his case might be.

There are other ways in which the proposed amendment does not satisfactorily take care of the objectionable features of section 2 of H. R. 6040. Countervailing duty provisions would be complicated and apparently so would the operation of the Antidumping Act. Reduced rates of ad valorem duties by enactment of H. R. 6040 would be made without peril point determinations and without benefit of an escape clause.

Because Treasury's compromise proposal of section 2 does not dispose of the objectionable and dangerous provisions of the section, we request section 2 not be included in H. R. 6040 for enactment.

Sincerely yours,

AMERICAN GLASSWARE ASSOCIATION IMPORT COMMITTEE,
J. C. WEBER, Jr., *Chairman*.

CORDAGE INSTITUTE,
New York, June 20, 1956.

HON. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR: We understand that you have called hearings to begin on June 25, 1956, on the Treasury Department's compromise proposal on section 2 of H. R. 6040, and we are writing you this letter to register our opposition to this compromise proposal.

The valuation provisions of H. R. 6040, if adopted, would substantially and effectively nullify the Antidumping Act and countervailing duty provisions of the law. Further, reductions in rates of ad valorem duties could be made without peril-point considerations and injured parties would be denied the use of the escape-clause procedure in seeking relief. We therefore have been against the enactment of H. R. 6040.

The Treasury Department's compromise proposal would do no more than postpone the full effect of the present valuation provisions of H. R. 6040 for a period of 3 years, and we earnestly urge that this compromise proposal be rejected.

There is attached a list of the hard fiber cordage and twine manufacturers on whose behalf this letter is written.

Sincerely yours,

DEWITT C. SCHIECK, *Secretary.*

American Manufacturing Co., Brooklyn, N. Y.
St. Louis Cordage Mills, St. Louis, Mo.
Badger Cordage Mills, Inc., Milwaukee, Wis.
Cating Rope Works, Inc., Maspeth, N. Y.
Columbian Rope Co., Auburn, N. Y.
Edward H. Fitler Co., Philadelphia, Pa., and New Orleans, La.
Hooven & Allison Co., Xenia, Ohio
Thomas Jackson & Son Co., Reading, Pa.
New Bedford Cordage Co., New Bedford, Mass.
Peoria Cordage Co., Peoria, Ill.
Plymouth Cordage Co., North Plymouth, Mass., and New Orleans, La.
E. T. Rugg Co., Newark, Ohio.
Tubbs Cordage Co., San Francisco, Calif., and Seattle, Wash.
Great Western Cordage Co., Orange, Calif.
Wall Rope Works, Inc., New York, N. Y., and Beverly, N. J.
Whitlock Cordage Co., New York, N. Y., and Jersey City, N. J.

DRUG, CHEMICAL, AND ALLIED TRADES SECTION,
NEW YORK BOARD OF TRADE, INC.,
New York, N. Y., June 22, 1956.

HON. HARRY F. BYRD,
Chairman, Senate Committee on Finance,
Senate Office Building, Washington, D. C.

Mr. CHAIRMAN: It is my responsibility as chairman of the drug, chemical, and allied trades section of the New York Board of Trade (DCAT) to present to you and your committee the written testimony of this group on the subject of the January 16, 1956, amendment to section 2 of H. R. 6040, introduced by you on request. Accordingly, this letter is submitted for your consideration and for inclusion in the printed record of the hearings.

We have made a cereful examination of the proposed amendment and we find it does not meet the basic objections to section 2 of the original bill, which objections we expressed in our written testimony to your committee on July 7, 1955, during the public hearings.

In our opinion, the proposed amendment could only add confusion and uncertainty for both importers and domestic industry during the proposed experimental period. During that period, we would have two systems of customs appraisement in effect. At the end of the period, Congress would be faced with the necessity of taking positive action to correct the mistakes and resulting inequities.

We respectfully urge that the value provisions of section 2 of the original bill (H. R. 6040) be deleted, whether or not amended as proposed.

Respectfully submitted.

SYDNEY N. STOKES, *Chairman.*

STATEMENT OF E. M. NORTON, SECRETARY, NATIONAL MILK PRODUCERS FEDERATION

The National Milk Producers Federation is a national farm organization. It represents approximately half a million dairy farmers and the dairy cooperative associations which they own and operate and through which they act together to process and market at cost the milk and butterfat produced on their farms.

Prices for milk and butterfat are presently supported at 78.7 percent of parity (under the Secretary of Agriculture's revised formula about 83.1 percent). Hourly returns for dairy farm operators, as reported by the Department of Agriculture, are approximately 42 cents per hour. This rate for trained men with management ability and with heavy investments at stake compares with the minimum wage rate of $1 per hour provided by law for common labor.

Obviously, dairy prices cannot be further reduced to meet competition from imports, nor in fact can they be maintained at their present low levels without serious consequences. There already is apparent a growing spirit of unrest among dairy farmers evidenced by the springing up of new groups under new leadership advocating the use of strikes and violence to obtain a more equitable place in the Nation's economic picture. More conservative leadership is hard pressed to maintain its position and its more orderly policies.

Even under these adverse conditions, domestic prices for dairy products are still substantially above world price levels. For example, the support price for butter in New York is 60¼ cents per pound. Butter being sold in world trade by the Department of Agriculture on competitive bids is bringing about 39 cents per pound. With this disparity between domestic and world price levels, dairy farmers are vitally interested in effective import controls.

We are not as directly affected by the current bill, H. R. 6040, as we have been by some other bills which have been considered by this committee. We are concerned primarily with the character of this bill and the fact that it is another piece in the general pattern which we must oppose if the dairy industry in the United States is to continue to exist.

We are concerned with the character of the bill because it is not really a customs-simplification bill. It would, of course, repeal a few obsolete sections of law, but basically it is a tariff-reduction bill.

The bill would make tariff reductions which the Treasury Department estimates would reduce customs revenue collections on ad valorem goods approximately 2 percent. Dutiable ad valorem values would be reduced, according to the Treasury estimate, an average of 2.5 percent, but running up to a maximum of 16 percent in 1 case. Out of 5 pages of Treasury tables listing categories on which tariffs would be reduced by this bill there is shown just 1 category where an increase would result.

Not only would the bill make substantial tariff reductions, but it would do so in an across-the-board fashion without separate consideration of the effect of each reduction on the domestic industry affected, and without our receiving in return any reciprocal benefits.

Should there be any doubt that the basic objective of the bill is tariff reduction and not customs simplification, an intriguing way to check this would be to try the shoe on the other foot. If the bill were amended to provide an across-the-board tariff increase so that its net result would be a tariff increase of 2 percent instead of a decrease of 2 percent, we suspect there would be an immediate and striking loss of interest in its customs-simplification features.

This is not the first time that important and far-reaching changes in our foreign-trade policies have been presented to Congress under the guise of customs simplification. Congress has found it necessary on more than one occasion in the past to examine such bills with a critical eye and to remove from them matters which were not properly customs simplification.

Possibly the most outstanding example of the need for Congress to review critically foreign trade bills was the original wording of H. R. 1. Equally bad is the OTC bill, H. R. 5550, now pending in the House, which contains another implied plea to Congress to approve the General Agreement on Tariffs and Trade, without first finding out what is in it.

The Treasury compromise relating to H. R. 6040 is not a compromise in fact, but is merely a postponement of the day when the more serious tariff cuts would go into effect. It does not meet a single one of the major objections which have been made to the bill.

With respect to dairy tariffs, they have been so reduced, and so neutralized by inflation, foreign currency devaluation, and other factors, that in many cases they are unrealistic and ineffective. Because of this, we had to turn to import quotas to prevent a destructive level of dairy imports. We would, therefore, be less immediately and less directly affected by the proposed tariff cuts than some of the other industries.

We are not convinced that the amendments made by the House Ways and Means Committee are adequate to prevent the bill from implementing the use by foreign nations of controlled multiple export prices. That committee apparently realized the danger inherent in the bill in this respect. In addition to the amendments it made relating to antidumping, it stated in its report: "Your committee does not wish, even by implication, to approve the use of multiple exchange rates."

H. R. 6040 would require ad valorem tariffs to be computed on the export price to the United States. This would surely leave open, if it did not actually invite, an export price to the United States which would be different from wholesale prices in the foreign country and possibly also different from export prices to other nations. The present law requiring use of the foreign price or the export price to the United States, whichever is higher, does not provide the same incentive to manipulate export prices for tariff purposes.

To summarize: The proposed Treasury amendments would add nothing to the bill insofar as meeting major objections are concerned. Sections 2 and 3 have not been adequately safeguarded, particularly against the use by foreign countries of controlled multiple export prices. Section 2, under the guise of customs simplification, would result in substantial across-the-board tariff cuts without separate consideration of the effect of the cuts on American jobs and American farms and without any reciprocal benefits being received in return. And, finally, the bill does not provide a new, effective, and efficient valuation procedure but merely lops off one alternative of the present procedure, thereby reducing tariffs.

In view of the foregoing, we oppose the enactment of the bill.

SPORTING ARMS AND AMMUNITION
MANUFACTURERS' INSTITUTE,
New York, N. Y., June 22, 1956.

Senator HARRY F. BYRD,
Chairman, Committee on Finance,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: Last June 30 the Sporting Arms and Ammunition Manufacturers' Institute forwarded a letter to you expressing its views in opposition to section 2 of H. R. 6040.

Since that time, an amendment to section 2 has been proposed by the Department of the Treasury on which that Department sought public views. The

Sporting Arms and Ammunition Manufacturers' Institute complied with the request and wrote December 29, 1955, to Under Secretary H. Chapman Rose expressing its views on the proposed amendment. A copy of that letter, which we also sent to you and members of your committee on January 3, 1956, is attached for your ready reference.

The Treasury Department amendment, which you introduced on January 19, 1956, by request, would serve only to delay, in a complicated and confusing way, the full application of the new customs valuation provisions of the original section 2. Because this proposal does not meet its basic obligations to section 2, the Sporting Arms and Ammunition Manufacturers' Institute wishes to express its continued opposition to that section in either original or amended form.

We respectfully request that this letter and its attachment be made a part of the record of the hearings scheduled to begin June 25, 1956.

Cordially yours,

RICHARD F. WEBSTER, *Secretary.*

SPORTING ARMS AND AMMUNITION
MANUFACTURERS' INSTITUTE,
New York N. Y., December 29, 1955.

Hon. H. CHAPMAN ROSE,
Under Secretary, Department of the Treasury,
Washington, D. C.

DEAR MR. SECRETARY: It has been brought to our attention that the Department of the Treasury has proposed a modification of section 2 of H. R. 6040 now pending before the Senate Finance Committee. We also understand the Department would welcome the views of any interested persons. As you are probably aware, the Sporting Arms and Ammunition Manufacturers' Institute has already indicated the interest of the industry it represents in the matter of customs valuation in a letter filed with Senate Finance Committee during the hearings on H. R. 6040. In that letter we objected to what seemed to us in substance to be tariff reduction in the name of customs simplification. This position should not be taken to mean that the institute is not in favor of true customs simplification, nor should it be construed to mean that the institute believes the current system of valuation should, necessarily, be perpetuated.

If the proposed modifications were adopted, there would result not simplification customs procedures, but greatly increased complexity. First of all, there is a changeover to a new system of valuation. After a year of this, during which an injured industry has no recourse, those groups of products for which there is an aggregate duty reduction of greater than 5 percent against the old system of valuation, become dutiable again under the former valuation methods. We believe the products of our industry would be one of these based on the sampling of the Treasury Department during 1954, where a reduction of 13 percent was indicated. This reduction, compounded with the 68 percent average reduction in duty rates already made in our products and the additional 15 percent authority recently granted under the trade agreements program, will give an idea of the industry's concern.

The responsibility of reviewing the lists of products eligible for return to the old valuation procedures imposes an impossible burden. Domestic producers, whose products have been omitted from the lists and who feel their products should be included, do not have access to the valuation data or the basis of appraisement. Any relief which the proposal purports to give is more apparent than real.

During the ensuing 3 years there would be in operation a dual system of valuation. This is not simplification and must inevitably lead to confusion and delay for both the domestic manufacturer and the importer.

The new proposals do nothing to meet the other objections to section 2 relating to the escape clause provisions, to the peril-point determinations, and to the application of the antidumping and countervailing duty provisions. Furthermore, the right of judicial review is denied as a practical matter because of the broad exercise of administrative discretion provided for.

Finally, should the proposals prove undesirable, the burden of unraveling the 4 years of confusion rests squarely with the Congress. The Treasury Department has given no indication that it knows how this confusion could be resolved. We

believe it is sound legislative practice to have extensive studies made before legislative proposals of this type, instead of enacting legislation which is admittedly experimental and from which there may be no return.

We therefore feel that the amendments proposed do not merit support.

Yours very truly,

RICHARD F. WEBSTER, *Secretary.*

STATEMENT OF THE UNITED STATES COUNCIL OF THE INTERNATIONAL CHAMBER OF COMMERCE, INC.

The United States Council of the International Chamber of Commerce testified before the Finance Committee of the United States Senate in July 1955 in support of the Customs Simplification Act, H. R. 6040, on the grounds that it would—

First, tend to reduce unreasonable delays in the appraisement of goods;

Second, tend to permit importers to determine in advance with reasonable certainty the duties they will be required to pay;

Third, result in values reflecting the actual commercial value of the imported goods as shown in the invoice prices for the bulk of merchandise arriving in the United States.

The council's testimony was based upon its conviction that the economic and political interest of the United States requires the use of clear and predictable procedures to govern our trading relations with businessmen in other countries. The council also feels that our laws and procedures governing international trade should be equitable and reasonable in order that trade and friendship may be stimulated with those nations who wish to have commerce with us.

One of the major accomplishments of the bill would be its elimination of "foreign value" from our customs law. This value is difficult and costly to determine and contrary to the basic principle that dutiable value should correspond as closely as possible to true commercial value.

Concern has been expressed by some parties that the elimination of "foreign value" would result in a serious loss of protection for some American products. The council does not believe that such would be the case. Nor does it believe that protection should be provided by indirect and cumbersome methods which do not indicate the cost and amount of aid which is being given to particular groups in this country. The United States council believes that whatever protection is necessary should be provided through appropriate tariff rates set by the processes established by Congress.

The proposal to amend the Customs Classification Act, H. R. 6040, to provide for the retention of "foreign value" for a relatively small group of products for a trial period, therefore, seems to us to be less desirable than is the bill in the form considered by this committee last year.

In the interest, however, of securing enactment of the other provisions of H. R. 6040 and of gaining a partial elimination of "foreign value," the United States council recommends adoption, if necessary, of the compromise valuation amendment. The United States council believes that this bill with the compromise amendment would, if enacted, demonstrate that the fears of those concerned about loss of protection are groundless. Also enactment of this bill, even with the amendment, will benefit our international trade and the growing number of Americans who participate in that trade.

HOUGH MANUFACTURING CORP.,
Janesville, Wis., June 21, 1956.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: I would like to express our opposition to H. R. 6040 relating to customs simplification. We are small manufacturers of woven wood products and our principal competition comes from Japanese goods which already undersell us to a very great extent. We would be particularly hurt by the provisions of H. R. 6040 which would change the method of determining value to "export value" from the present "value in the country of origin." It so happens that an important part of the Japanese imports which compete with our products are not sold for domestic consumption in Japan but are produced solely for the United States market. Most of the rest of the Japanese products that compete with us are sold in such minor quantities in Japan as to make the United States market the key to the selling price.

Under the circumstances, it appears that H. R. 6040 would certainly result in reduced valuations and reduced tariffs as a result.

We are not at all satisfied with the proposed amendment which would permit a 3-year trial on this new method. On the record, a 3-year trial would almost inevitably become permanent.

We sincerely hope that you will oppose this act in committee and that it may not become law.

Cordially yours,

JOHN E. HOUGH, *President.*

CONSOLIDATED GENERAL PRODUCTS, INC.,
Houston, Tex., June 21, 1956.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Building, Washington, D. C.

DEAR SIR: It is our understanding that the Senate Finance Committee will start hearings on H. R. 6040, customs simplification, on June 25, 1956.

We are opposed to bill H. R. 6040 since it would change the method of determining value of imported goods from value in country of origin to export value and would permit foreign producers to sell for less to United States customers than the price received in their home markets.

This bill would not only reduce valuations but also tariffs and would certainly encourage foreign countries to use multiple-price systems with the lowest prices applying to the United States. The Antidumping Act would be completely ineffective, and the passage of this bill would permit foreign countries to liquidate excessive stocks of merchandise for any reason whatsoever in the United States at extremely low prices and as a result the United States would soon become a dumping ground for all types of manufactured goods. Every foreign manufacturer that makes a mistake in business judgment, in the quantities of goods made up or wishes to seek a market for part of his goods at a lower than regular selling price, will be in a position to effectively dispose of this merchandise in our country at extremely harmful results to manufacturers of all types of products in the United States.

It would seem that the recent reductions in tariff would be sufficient concessions from a trade standpoint without the passage of this bill, would certainly limit this country's control over the prices at which foreign goods would enter this country.

We urge you and the committee to consider the aspects of this bill fully.

Very truly yours,

HARRY P. WAYMAN, Jr.,
Vice President.

COMMERCE AND INDUSTRY ASSOCIATION, OF NEW YORK, INC.,
New York, N. Y., June 22, 1956.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: With reference to public hearings by your committee scheduled for June 25, 1956, on H. R. 6040, the customs simplification bill, we wish to be recorded with you and your committee as favoring enactment of H. R. 6040, without the amendment as proposed to section 2.

This association, the recognized service chamber of commerce for the New York area, with approximately 3,500 business firms in its membership, about half of which are directly engaged in international trade, is understandably interested in legislation affecting export and import operations and for many years has given careful consideration to problems in this field through our import and customs committee.

Our association's support of H. R. 6040 is stated in the record of your committee's hearings on this bill last year. We understand that the hearings next week will relate only to proposed amendment to section 2.

In our judgment, the proposed amendment suffers from the following defects:

(*a*) It would further complicate the work of customs appraisers and involve dual appraisement of all imports dutiable on an ad volorem basis for the next several years.

(*b*) Most of the commodities to be designated on the proposed "foreign value list" would be those now subject to foreign value appraisement, with little, if any, reduction in the number for which foreign value would be utilized as the basis for assessment of duties.

(*c*) Products might be put on or taken off the list two or three times in as many years, adding to the burden of importers and to the risk of doing business.

(*d*) The proposal would probably increase, and to a large degree preclude the elimination of, delays and inconveniences in the customs clearance of merchandise and in determining the landed cost of imported goods.

We urge, therefore, favorable action by your committee on H. R. 6040 in its original form.

Sincerely,

JOSEPH A. SINCLAIR, *Secretary.*

STATEMENT OF THE NATIONAL WOOL GROWERS ASSOCIATION

The National Wool Growers Association is the oldest national livestock organization in the United States, and we speak for the sheep producers of the Nation. The area where most of our membership resides produced in 1955, 71 percent of the shorn wool grown in the United States. We have not requested time for an oral presentation of our views, but will appreciate your making this statement a part of the record of the hearings on this legislation.

At the Senate Finance Committee hearings on H. R. 6040, on July 8, 1955, Senator Frank A. Barrett, of Wyoming, expressed his opposition to section 2 of the bill. He referred to the distress in the domestic wool textile industry and its adverse effects on the market for domestic wools. He said he feared that changing the valuation procedures, as provided in section 2, would "make possible the accomplishment of arbitrary tariff reduction without previous notice to domestic producers and without regard to peril-point protection for American manufacturers under the guise of legislation for custom simplification."

Senator Barrett's statement accurately reflects the position of the National Wool Growers Association. While there is no ad valorem duty on raw wool, we depend for our livelihood on the American wool textile industry. Imported wool textiles do have ad valorem elements in their duty rates. What adversely affects that industry, adversely affects us.

After Senator Barrett made his statement, nearly a year ago, the Treasury proposed substitute procedures for section 2 of the bill. However, the proposal does not meet our objections to section 2, and we urge your committee to reject the substitute proposal as well as the original section 2.

The proposal attempts temporarily to prevent the protective levels of ad valorem duties from being reduced below 5 percent. If it appears that such reduction is likely to occur under the new valuation procedures of section 2, the Treasury proposal requires that pertinent imports continue to be appraised under current procedures, but only for a maximum of 4 years. So, sooner or later, all ad valorem imports could be appraised according to the section 2 procedures to which Senator Barrett objected so strongly. And there is no provision for an automatic increase in the ad valorem rates involved so as to maintain their protective levels.

The woolgrowers, dependent as they are on an industry already the recipient of tariff cuts, believe that they should not be subjected to the double jeopardy of further indirect, but quite real, rate reductions.

Until some permanent mechanism is devised that will truly safeguard the domestic producer by maintaining the effective level of the tariff rates on which he depends for fair competition with imports, we respectfully ask Congress to continue the present valuation procedures, and to reject both section 2 of H. R. 6040 and the Treasury's proposed amendment to it.

PITTSBURGH PLATE GLASS CO.,
Pittsburgh, Pa., June 22, 1956.

Re H. R. 6040.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
United States Senate, Washington, D. C.

DEAR SENATOR BYRD: It is my understanding that the Committee on Finance will hold hearings beginning June 25 on a substitute proposal to the bill, H. R. 6040, suggested by the Treasury Department.

You will recall that I appeared in opposition to the original bill at hearings before your committee on July 7, 1955. Thereafter, and in November last, I wrote you enclosing a copy of a statement which I had sent to Mr. H. Chapman Rose, outlining fully the reasons in support of my convictions that the Treasury Department compromise proposal fails to meet the basic objections to the original measure. I am enclosing again for your convenient reference, a copy of my letter to you of November last, as well as the statement filed directly with Mr. Rose.

In brief, I am opposed to the substitute proposal offered by the Treasury Department on the ground that the said proposal fails to meet any of the original objections to the bill, H. R. 6040, would automatically effect across-the-board reductions in tariff rates, the full extent of which is unknown, and that such reductions would be made effective without any of the safeguards with which the Congress has usually surrounded delegation of tariff reducing powers.

The tariff reducing results of H. R. 6040, with or without the compromise proposal of the Treasury Department, have assumed even more serious aspects since consideration was given thereto last fall by the widespread tariff reductions just proclaimed by the President as a result of tariff negotiations at Geneva. Said reductions, which begin to take effect on June 30, affect a great number of products including, of particular concern to my company, flat glass, pigments, paints, and varnishes, and various industrial chemicals.

For the foregoing reasons and those more fully set forth in the enclosures, I want to register my protest against favorable action on the bill or the compromise proposal therefor. It is requested that my views, as set forth herein and in the enclosures, be made a part of the record for consideration by your committee.

Thanking you for this opportunity for an expression of my views, and with every good wish, I am

Sincerely,

R. B. TUCKER, *Vice President.*

Re H. R. 6040

Hon. H. CHAPMAN ROSE,
Under Secretary of the Treasury,
Treasury Department, Washington, D. C.

DEAR MR. ROSE: In August last you were good enough to write me and invite my comments on a proposed amendment to the bill H. R. 6040. The delay in answering is due to the fact that I was in Europe at the time your letter was received, and in the intervening time I have been away from my office a good deal. In view of the fact that the proposal will not be considered by the Congress until some time after the first of the year, however, I trust this delay will not prevent consideration of the views hereinafter expressed.

I do not agree with or approve of the amendment which you suggest. It seems to me that this proposal fails completely to meet the original objections to the bill H. R. 6040 which I presented to the Committee on Finance at its public hearings. Particularly, the amendment would not meet the objection that the bill would automatically effect across-the-board reductions in tariff rates, the full extent of which is unknown, and that such reductions would be made effective without any of the safeguards with which the Congress has customarily surrounded delegation of tariff-reducing powers.

I believe that the amendment would place a very heavy burden on any domestic manufacturer and on importers alike. Instead of further simplification, the proposed amendment, I am advised by customs counsel, would introduce confusion.

The proposed amendment would provide for continuing in effect present valuation standards for any imported article which would be reduced in value by 5 percent or more if appraised under the proposed basis of value embodied in the so-called Simplification Act of 1955. The selected list of articles which shall continue to be so appraised is to be promulgated by the Secretary after such investigation as he deems necessary. Apparently, determination of whether appraisement under the act of 1955 would result in a change of 5 percent or more is to be based on average values for each article. The list of the imported articles to be promulgated by the Secretary seems to be left entirely to the discretion of the Secretary. No provision is made for hearing of interested parties nor for consideration of the possible effect of any change in basis of valuation,

whether greater or less than 5 percent, on the industry or sections of an industry concerned.

Apparently, the proposed amendment would permit use by the Secretary of the average values of broad classes of products such as those embodied in the Summary of Survey and Projection Against Total Import Statistics. The classes of products there presented are far too broad to permit of any proper evaluation of the effect of changes in appraisement basis and would not permit of any proper assessment of the effect on any specific industry.

Said summary projects a possible decrease in revenue under the new proposed bases of value for products in which my company is particularly interested; for example, on pigments, paints, and varnishes of 10.07 percent and industrial chemicals, of 7.33 percent. These classes of products are quite broad and cover a large variety of individual commodities. Each of these individual products presents different appraisement problems. They are imported from a number of different foreign countries. Their appraisement involves different bases of value and widely varying actual values. It is entirely probable that the reduction in duty which might be brought about by the proposed bill and by the amendment would greatly exceed the average reductions above referred to.

If the purpose of the proposed amendment, in vesting discretion in the Secretary to select the list of imported articles, be intended to permit averaging of values over the broad classes indicated, the result must be to disregard entirely the far larger reductions in duty which would result on individual products included in the average, as well as the undoubted serious effect on the industry and individual companies concerned. If, by chance, it be the purpose of the proposed amendment, however, to determine separate valuations for each individual product the subject of importation, such construction is equally subject to criticism.

While it might be that this latter course might result in a continued application of the present law to individual products where a reduction in duty greater than 5 percent would result, the amendment would nevertheless provide for transfer to the new proposed bases of value at the end of a 3-year period. This possible 3-year period of grace during which the new proposals would presumably be applied on a piecemeal basis, does not meet the basic objections to use of such new bases of valuation at all. The provision that the so-called final list shall lie before the Congress for 90 days of continuous session, is a wholly innocuous substitute for any real safeguard.

The proposed amendment seemingly contemplates application of the new proposed bases of value to approximately 90 percent of the total imports subject to ad valorem duties, immediately following enactment of the measure. The remaining 10 percent of imports would be subject to duty under the provisions of present law, the expectation, however, being clearly evidenced that this 10 percent would be sharply diminished over a 3-year period. It is not at all clear what the basis is for this expectation. It has been our experience and we are advised that fluctuating market values could just as well be expected to result in higher valuations as in lower ones. Products placed on the first list, accordingly, might well be expected to be maintained on such list until the end of the 3-year period and at that time summarily removed therefrom, even though the abrupt change in duty resulting from such action might well be greater than that which would have existed when the first list was promulgated.

The provision in the amendment that any manufacturer, producer, or wholesaler may present reasons to the Secretary in support of a complaint that any article imported would have been appraised under present law at average values which are 95 percent or less than the average values at which they were actually appraised, has no practical meaning. Appraised values of individual imported commodities are maintained as confidential by customs officers. Manufacturers, producers, or wholesalers do not have access thereto. It is undoubtedly lack of access to this information which has resulted in the failure of any domestic manufacturer, so far as known, to avail himself of the somewhat similar provisions of section 516 (a) of the Tariff Act of 1930.

The proposed amendment fails to give the right of a proper opportunity to be heard, to any manufacturer, producer, or wholesaler, and no right of court review is provided over actions of the Secretary in establishing the respective lists of products. The proposed amendment would result in a dual system of appraisement for at least 3 years which would introduce market instability in any competitive American industry. It is believed that the measure would also impose an impossible burden upon administrative officers.

The proposed amendment fails to meet the original criticisms that the bill, H. R. 6040, would result in across-the-board reductions of many rates of duty which, in many instances, would be greater in amount than the reductions in rates authorized in the Trade Agreements Act, and be at the same time without any of the limitations or safeguards of that act.

For all the foregoing reasons, I am opposed to the proposed amendment to the bill, H. R. 6040.

I appreciate greatly the opportunity to express my views directly to you on this matter.

Very truly yours,

——— ———.

Re H. R. 6040.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
United States Senate, Washington, D. C.

DEAR SENATOR BYRD: You will recall that I appeared before the Committee on Finance in opposition to the so-called Customs Simplification Act of 1955, H. R. 6040. Subsequent to my appearance, Under Secretary of the Treasury, H. Chapman Rose, sent to me a copy of an amendment which the Department had proposed, presumed to meet objections to the bill which had been raised by me and a number of other witnesses.

I do not believe that Mr. Rose's proposal does, in fact, meet any of such objections, particularly that the bill, H. R. 6040, would bring about wholesale across-the-board reductions in tariff rates without any of the safeguards set by the Congress in connection with such action. It would introduce great confusion and, I am advised by our customs counsel, would fail completely to achieve any measure of simplification.

I enclose a copy of my statement to Mr. Rose in this connection which I trust may have the consideration of your committee.

With every good wish, I am,

Very truly yours,

——— ———.

NEW YORK, *N. Y., June 25, 1956.*

Senator HARRY F. BYRD,
Committee on Finance,
United States Senate, Washington, D. C.

Regarding H. R. 6040, please amend to require appraiser of merchandise to appraise all imports within 60 days from entry or give written notice of failure to do so to importer. Believe also that present value provisions would be satisfactory if foreign value was eliminated.

I. J. NETHE & Co.

NEW YORK, *N. Y., June 25, 1956.*

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

Regarding H. R. 6040, believe existing tariff laws on valuation of imports should be changed only to extent of repealing foreign value provision and amending to require appraiser to give written notice to importer whenever he fails to appraise within 90 days.

MICHAEL A. DILLON,
President, Taylor Friedsam Co., Inc.

TOLEDO, OHIO, *June 25, 1956.*

Hon. HARRY E. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.:

Our membership is employed in an industry that suffers greatly from import competition. Tariff rates have already been cut too deeply. We strongly oppose any further legislation such as H. R. 6040, customs simplification bill, that would cause additional loss of protection and weakening of Antidumping Act. Com-

promise offered by Treasury not acceptable, since it would only postpone final effective date for 3 years. Such simplification as would be accomplished by H. R. 6040 would be at expense of adequate customs administration. In our opinion the bill should be rejected outright. Request that this telegram be made part of the record.

THE AMERICAN FLINT GLASS WORKERS UNION OF NORTH AMERICA,
HARRY H. COOK, *International President.*

STATEMENT BY BERNARD WEIZER, NATIONAL LEGISLATIVE DIRECTOR OF THE JEWISH WAR VETERANS OF THE UNITED STATES OF AMERICA

The Jewish War Veterans of the United States of America have long supported the Reciprocal Trade Agreements Act and other measures designed to increase our import and export trade. Our present customs administration and valuation procedures are important barriers to the international trade policies which are inherent in the Reciprocal Trade Agreements Act. It was with that thought in mind that the delegates to our 60th annual national convention passed the following resolution:

"Whereas it is the demonstrated policy of our Nation to stimulate exports to and imports from the friendly nations of the world whereby we expect to strengthen the economic conditions abroad and thereby improve our national security and stimulate our own industry and agriculture; and

"Whereas toward that end, the Reciprocal Trade Agreements Act has been extended, regularly, since the mid 1930's and our organization has consistently testified in favor of such extension; and

"Whereas the present procedures for customs valuation and the regulations for the entry of imports are complex and uncertain thus causing obstacles to the full development of our import and export trade: Now, therefore, be it

"*Resolved*, That the Jewish War Veterans of America, in 60th annual national convention assembled at Miami Beach, Fla., October 24–30, 1955, do approve and urge passage of H. R. 6040, the customs simplification bill which has been proposed by the administration."

May I strongly urge that your committee report favorably to the Senate and try to secure the passage of H. R. 6040 with the proposed Treasury Department amendment to the valuation features of the bill.

PACIFIC AMERICAN STEAMSHIP ASSOCIATION,
Washington, D. C., June 26, 1956.

Re H. R. 6040, Customs simplification.

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

DEAR MR. CHAIRMAN: Our association, consisting of the principal American-flag ship operators on the Pacific coast, welcomes this opportunity to indicate its support for H. R. 6040, and more particularly to indicate its support for the revised section 2 thereof, which is presently the subject of a hearing by your committee.

The interest of ship operators in legislative adjustments relating to customs matters is of long-standing duration. No one knows better than we the problems that can arise on the waterfront when incoming cargo becomes the subject of controversy between the consignee and the customs service as to its valuation for duty purposes. Experiences are too frequent to mention where incoming cargo has been held up by customs service and caused congestion and confusion on the piers. Such congestion and confusion is one of the more serious problems of which our industry is continuing to seek solutions, and we would view any efforts to smooth the flow of inbound cargoes as a contributing factor in this solution.

The Treasury Department proposal embodied in the new section 2 of H. R. 6040 is a reasonable one albeit considerably more restrictive than would seem to be necessary. Nevertheless, we support the proposal as being the best possible compromise and would urge the Finance Committee to take early action on this legislation.

Very truly yours,

RALPH B. DEWEY, *Vice President.*

MONSANTO CHEMICAL CO.,
St. Louis, Mo., June 25, 1956.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR CHAIRMAN BYRD: This memorandum is submitted for inclusion in the record of proceedings pursuant to the June 13, 1956, announcement of public hearings on amendments to H. R. 6040 to be held by your committee beginning June 25, 1956, and is in lieu of an appearance a these hearings.

Monsanto Chemical Co. favors legislative action to simplify United States customs regulations and procedures. However, it strongly opposes the inclusion in such legislation of provisions for subtle but meaningful reductions in United States tariff levels. The effect of section 2 of H. R. 6040, with its suggested amendments, would be to bring about reductions in valuation of imported goods and corresponding reductions in their assessed duties. Monsanto opposes the enactment of these provisions.

Attached is a copy of our memonandum of May 23, 1955, to the House Committee on Ways and Means which fully sets forth this company's objections to the valuation provisions of H. R. 6040. These objections remain applicable to the bill with its presently proposed amendments.

In addition, the suggested amendments to H. R. 6040, in our opinion, would further complicate United States customs regulations and procedures instead of simplifying them, and thus would be contrary to the purpose of the legislation.

The amendments propose that the Treasury Department issue each year for 3 years a list of those commodities on which duties have been reduced 5 percent or more as the result of valuation under section 2 of H. R. 6040. This in itself would add a very sizable clerical and administrative burden to the Treasury Department.

It is further proposed that industry be responsible for determining what items properly should be added to each list, and to present facts in support of such additions to the Treasury Department within 60 days after the lists are made public.

Large numbers of the chemical industry's products are classified for duty purposes in basket clauses. It is impossible for domestic producers to obtain and submit factual data on the volume and value of such imports or on their countries of origin. Thus the proposed amendments offer domestic producers no redress whatever on reductions of valuation of 5 percent or more under section 2 of H. R. 6040 which may apply to the hundreds of imported commodities falling within such basket clauses.

Instead of adopting the suggested amendments under consideration, Monsanto Chemical Co. urges that section 2 of H. R. 6040 be amended to retain the following provisions of the present law:

(*a*) Foreign value instead of export value as the primary basis for assessed valuation;
(*b*) The present definition of "usual wholesale quantities";
(*c*) The present procedure for determining United States value; and
(*d*) The present procedure for arriving at cost of production.

By removing from H. R. 6040 its proposed changes in valuation procedures, the burdensome procedures set forth in the amendments under consideration would become unnecessary. H. R. 6040 would be limited to its proper scope as a legislative instrument for the simplification of customs procedures, and its freedom from implicit and inevitable tariff reductions would speed the adoption of its other needed provisions.

Sincerely yours,

EDWIN J. PUTZELL, Jr.

MONSANTO CHEMICAL CO.,
St. Louis, Mo., May 23, 1955.

CHAIRMAN, COMMITTEE ON WAYS AND MEANS,
House of Representatives,
New House Office Building, Washington, D. C.

DEAR SIR: This memorandum is submitted for inclusion in the record of proceedings pursuant to announcement to the public on May 5, 1955, of public hearings on H. R. 6040, to be held by your committee beginning May 23, 1955, and is in lieu of an appearance at these hearings.

Monsanto Chemical Co. is sympathetic with the President's desires for a simplification of United States customs regulations, and the attempt to implement these desires which is represented by H. R. 6040.

However, our company strongly opposes the enactment of those provisions of H. R. 6040 having to do with the valuation of imported merchandise for the purpose of assessing duties. These provisions do not simplify the existing valuation procedures to any significant degree, if at all. Their primary effect would be to bring about reductions in valuation and corresponding reductions in assessed duties.

Section 2 (e) of H. R. 6040 anticipates this effect by stipulating, in any executive action on tariffs, a "full consideration to any reduction in the level of tariff protection which has resulted or is likely to result from * * * this act." We submit the President has not requested reductions in assessed valuation of import merchandise to result from custom simplification, and that H. R. 6040 exceeds its proper purpose by incorporating changes in valuation procedure which would result in such reductions.

The valuation provisions of this bill would bring about an estimated reduction of 8 to 16 percent in the appraised value of half of our country's organic chemical imports. The total effect on all organic chemical imports other than those dutiable in paragraphs 27 and 28 would be an estimated reduction of 4 to 10 percent in appraised value.

The lower duties which would follow these reduced valuations would put downward pressures on the price schedules of more than 50 products and product categories manufactured and sold by Monsanto here in competition with foreign producers. Tariffs on practically all of these chemicals have been reduced 50 percent or more under the Trade Agrements Act, and H. R. 1 currently provides for further substantial reductions in their tariffs.

A caveat calling for a "full consideration" of H. R. 6040's tariff reductions in subsequent executive action on tariffs does not adequately cover the bill's transgression of purpose. Rather, H. R. 6040 should restrict itself to those changes in valuation procedure which would eliminate customs delays but which would not lead to lower assessed values than those obtained under present methods of valuation.

Foreign value should be retained as a basis for value appraisal. By abandoning it in favor of export value alone, H. R. 6040 would permit the use of invoice value as the basis for import valuation. It is true that this might simplify and speed up customs procedure by simply permitting the exporter to the United States to specify value by invoice. Obviously, invoice value could be manipulated by foreign exporters to result in lower duties on their merchandise.

Even without such manipulation, however, invoice value cannot be construed to be a fair commercial value on imported merchandise. It too frequently can reflect the exporters strong desire for very negotiable dollar credits or his willingness to undersell for purposes of strategically displacing a like kind and quanitity of domestic goods in the American market.

If the export value were to be computed as provided for in H. R. 6040 rather than being based on invoice value, it still would fail to reflect a true commercial value for imported merchandise. The fact that export value is influenced by the competitive conditions in world markets is borne out by a study of organic chemical imports compiled in 1954 by the Foreign Trade Division of the Bureau of the Census. In this study, based on a Treasury Department sampling of organic chemical imports during 1952, a comparison was made between the appraised foreign value of 31 organic chemical imports and their export value as it would be computed under provisions such as those of H. R. 6040. It showed that foreign value exceeded export value by an average 12.1 percent. Based on this study, the elimination of foreign value alone would have the effect of reducing tariffs 12.1 percent on more than half of the United States organic chemical imports.

The abandonment of foreign value as a basis for customs valuations would lead to an automatic and substantial increase in dumping by foreign producers. The Antidumping Act provides a special dumping duty "* * * if the purchase price or the exporter's sales price is less than the foreign market value (or in the absence of such value, than the cost of production)."

The question then is whether H. R. 6040 has the effect of nullifying this antidumping law. If so, this fact is not stated in the wording of the bill. Such nullification would take H. R. 6040 far beyond its proper scope as an instrument for customs simplification. If H. R. 6040 does not nullify the foreign market value provisions of the Antidumping Act, then each future instance of valuation based on an export value lower than foreign value could become a case for antidumping action under that act. Far from simplifying customs procedures, this fact would complicate them extremely.

Still further hidden tariff reductions would result from the changed definition of "usual wholesale quantities" embodied in H. R. 6040. By defining this as the quantity in which the greatest aggregate volume of the merchandise is sold, the bill would base valuation on prices lower, because of quantity discount, than that price at which the usual transactions in such merchandise take place. Thus, in the determination of either export value or United States value, this provision could operate to bring the appraised value on a particular consignment lower than its actual invoice value. We have pointed out earlier that invoice value frequently is lower than export value which, in turn, is consistently lower than foreign value as appraised under existing law.

It is significant to note here that the proposed new definition of "usual wholesale quantities" in H. R. 6040 conforms carefully to article VII, 2 (b) of the General Agreements on Tariffs and Trade (GATT) which provides that "to the extent to which the price of such or like merchandise is governed by the quantity in a particular transaction, the price to be considered should uniformly be related to either (i) comparable quantities, or (ii) quantities not less favorable to importers than those in which the greater volume of the merchandise is sold in the trade between the countries of exportation and importation."

This, therefore, appears to be an attempt to alter the body of existing law to conform to an international executive agreement that lacks the approval of Congress or the status of treaty. We participate in GATT only to the extent that its provisions do not contravene our existing law. It is a dangerous course of action to amend existing law to make it conform to such a provisional agreement.

A vagueness of terms which exists in H. R. 6040's provisions for arriving at United States value and constructed value would serve to complicate rather than simplify customs procedure, and also would operate to permit a too hasty or haphazard arrival at "usual" commissions, profit, and general expenses, or "usually reflected" general expenses and profits.

In summary, Monsanto Chemical Co. urges that section 2 of H. R. 6040 be amended to retain the following provisions of the present law:

(*a*) Foreign value as a basis for assessed valuation;
(*b*) The definition of "usual wholesale quantities";
(*c*) The procedure for determining United States value; and
(*d*) The procedure for arriving at cost of production.

In this way, H. R. 6040 will have effected important simplifications in customs procedure in line with the President's desires. At the same time, it will have remained within its proper purpose of customs simplification without having subjected domestic industry, and especially the organic chemical industry, to damaging price pressure from imports through hidden but effective tariff reductions.

Sincerely yours,

EDWIN J. PUTZELL, JR., *Secretary.*

VINYL FABRICS INSTITUTE,
June 22, 1956.

Senator HARRY F. BYRD,
Chairman, Committee on Finance,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: In a letter dated July 1, 1955, a copy of which is attached for your convenience, the Plastic Coating and Film Association (now known as the Vinyl Fabrics Institute) wrote you opposing section 2 of the bill H. R. 6040.

On January 19, 1956 you introduced, by request, an amendment of section 2 proposed by the Treasury Department on which the Committee on Finance has scheduled hearings beginning Monday, June 25, 1956. It is this amendment to which these remarks are directed.

Examination reveals that the amendment would accomplish the establishment of the original customs-valuation proposals of section 2 over a 4-year period during which there would be much confusion and complication.

1. There would be a dual valuation structure in effect for the 4 years. This is scarcely simplification.

2. An impossible burden would be imposed upon those industries whose products were adversely affected with duty reductions under the new proposals. The information necessary to establish that a product rightfully belongs on the list of those items eligible for return to the old valuation procedures is just not publicly available.

3. There would be no recourse in case of injury due to the effects of the proposals.

4. Positive action by the Congress would be required at the end of 4 years should the whole procedure prove undesirable.

5. The resulting confusion and delay is wholly unwarranted.

6. This proposal would still effect the arbitrary duty reductions expected from the original section 2 proposals.

7. This amendment does nothing to meet the other original objections to section 2 voiced in our July 1, 1955, letter referred to above.

In summary, the proposals to amend section 2 do not in any way alter the opposition of the Vinyl Fabrics Institute to the inclusion of that section in H. R. 6040.

Respectfully submitted.

PAUL F. JOHNSON, *Executive Secretary.*

ALBANY, N. Y., *June 25, 1956.*

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: The Papermakers' Felt Association is a trade organization composed of the 11 companies that produce woven woolen felts, used principally as essential operation parts of papermaking machinery. These companies employ approximately 5,000 workers and have plants in 8 States. This letter is written on behalf of all of the members of the association, in opposition to H. R. 6040, the so-called customs-simplification bill, and in opposition to the proposal submitted by the Treasury Department to revise H. R. 6040. The Treasury proposal would authorize immediately some tariff reductions and would defer only temporarily the most drastic reductions in levels of tariff protection provided in the original bill.

On July 8, 1955, a repreesntative of the Papermakers' Felt Association testified in opposition of H. R. 6040 before the Senate Finance Committee.[1] The felt industry's objections to H. R. 6040 can be summarized:

1. H. R. 6040, inaccurately described as a technical simplification bill, would have the immediate and automatic effect of reducing tariffs in the felt industry by at least 10 percent and on some of our products by as much as 20 percent. This automatic cut of 10 to 20 percent would be in addition to, and greater than, the authority given to the President under H. R. 1 to reduce tariffs by 15 percent over a 3-year period. This automatic cut, and the threat of further cuts, would seriously threaten the health of the felt industry in view of the fact that the ad valorem tariff on its products has already been cut 75 percent.

2. H. R. 6040 not only would reduce tariffs, but by elimination foreign value as a basis for customs valuation, it would destroy a very important line of defense against foreign cartels. Double pricing is a standard cartel practice; one price for domestic sales, another for exports. So long as foreign value is a basis for valuation, the foreign cartel cannot use the double-price system against American industry.

3. The Antidumping Act is not an adequate substitute for the automatic protection provided in the present law. Moreover the enforcement of the Antidumping Act is closely related to the existing valuation provisions of the Tariff Act. If the customs staff abroad is reduced and no longer determines foreign values, the Tariff Commission and the Secretary of the Treasury will inevitably do a less effective job of stopping dumping in the United States.

The Treasury proposal (amendments to H. R. 6040) in no way changes the basic objections of the felt industry to section 2 of H. R. 6040; indeed, it raises new objections. The Treasury has proposed amendments which would (*a*) result in immediate tariff cuts in all cases where the difference between the foreign value and the invoice value of imported goods is less than 5 percent, and (*b*) temporarily defer for a period of not more than 3 years the substantial cuts above 5 percent in tariff protection on other products.

The record presented to this committee at the earlier hearing on H. R. 6040 shows that the papermaker's felt industry would suffer at 10- to 20-percent reduction in tariff protection as a result of eliminating foreign value as a basis for assessing duties on papermakers' felts.

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[1] Hearings before the Committee on Finance, U. S. Senate, 84th Cong., 1st sess., on H. R. 6040, pp. 163–168.

The only protection afforded by the Treasury proposal to the papermakers' felt industry would be the hope that Congress, at the end of the three-year trial period, would pass special legislation relating to the customs treatment of papermakers' felts. However beguiling this possibility may seem to the Treasury Department, our industry believes it neither realistic nor desirable to expect Congress to assume the enormous burden of determining, on a product-by-product basis, the proper valuation standard to be applied to thousands of tariff classifications. The Treasury proposal is comparable to a request that this committee pass novel and drastic tax legislation with the hope that the committee later would approve bills to relieve individual taxpayers from inequities in the original legislation.

The only advance made by the new Treasury Department proposal is a negative one. Apparently the Department has abandoned its former position that the effects of H. R. 6040 would be insignificant and now concedes that H. R. 6040 would in fact reduce the levels of tariff protection on a multitude of American products, including papermakers' felts, by 5 percent or more. Nevertheless, unless Congress intervenes specially, the new proposal would permit these cuts to go into effect automatically and ex parte as a part of a bill whose ostensible purpose is to simplify customs procedure.

The Treasury proposal is open to other serious objections. The proposal makes it possible, and even probable, that the basis for computing the duty on imported products would shift from year to year during the trial period, depending upon the difference between the foreign value and the invoice price of goods imported within the relevant 12-month period. If a commodity, by reason of price manipulation by a foreign producer, is eligible for the new valuation standard, the tariff for the next succeeding period would be assessed on the invoice value, even though the foreign value might in fact be 10 or 20 percent higher. While the Secretary, after 12 months, might again assess the ad valorem duty on the foreign value for the succeeding period, he would not redress the damage already done to an American industry for 12 months. The result would be uncertainty on the part of domestic producers and a complete loss of predictability as to the level of tariff protection.

At the end of the 3-year period, there would be the virtual certainty of a permanent reduction in the level of American tariff protection by reason of the new valuation standard, for which the United States would secure no reciprocal advantages from foreign countries.

The possibilities of price manipulation by foreign producers to take advantage of changes in American valuation standards are very real for the felt industry. The production of papermakers' felts in European countries, the major competitors of our industry, is controlled by a cartel. The cartel has established different prices for different markets; export prices to the United States are between 10 and 20 percent below prices for internal foreign consumption. Indeed, through cartel control, United States export prices can be fixed with no regard to actual foreign costs of production.

The present law, by adopting the higher of export or foreign value, protects American producers against significant changes in the level of their tariff protection as a result of these cartel pricing practices. H. R. 6040 and the Treasury proposal would both deny the domestic industry this protection; H. R. 6040 immediately and the Treasury proposal, at the latest, after the 3-year trial period.

Finally, the Treasury proposal, if adopted, appears certain to be a complex administrative nightmare of preliminary lists, final lists, applications, and investigations. It would be bending our language past the breaking point to call it a measure for customs simplification.

In the circumstances, the Treasury proposal would:

1. Introduce enormous complexity into a so-called customs-simplification measure;
2. Produce uncertainty as to the levels of tariff protection to be received by American producers during the next 3 years;
3. Result in serious cuts in the level of tariff protection (approximately 20 percent for the papermakers' felt industry) at the end of 3 years, unless Congress legislated specially for each industry concerned;
4. Eliminate the automatic protection in existing law against cartel double-pricing practices; and
5. Reduce the effectiveness of the Antidumping Act and place on American industry the expense of administrative proceedings, after injury had been done, to try to stop dumping.

For these reasons the papermakers' felt industry is opposed to the amendments to H. R. 6040 proposed by the Treasury Department.

We respectfully request that this statement be included in the transcript of the hearings on H. R. 6040.

Very truly yours,

LEWIS R. PARKER,
President, Albany Felt Co., and Chairman,
Tariff Committee, Papermakers' Felt Association.

GLOVERSVILLE, N. Y., *June 25, 1956.*

Subject: H. R. 6040, customs simplification bill.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
United States Senate, Washington, D. C.

MY DEAR SENATOR BYRD: On behalf of the American producers of knitted handwear, we wish to again express our opposition to H. R. 6040, and ask that this letter be entered in the record of the present hearings on the bill.

Section 2 of the bill is entirely objectionable:

1. Any reductions in effective rates of ad valorem duties resulting from the enactment of H. R. 6040 would be made without the preventive safeguard of peril-point determinations, and without the remedial escape-clause procedures other than recourse to Congress.

2. Foreign countries would be encouraged to adopt multiple price systems, the lowest price applying to exports to the United States.

3. The working of the Antidumping Act and counter-vailing duty provisions of the law would be complicated, and perhaps even defeated.

Respectfully submitted.

AMERICAN KNIT HANDWEAR ASSOCIATION, INC.,
HARRY A. MOSS, Jr., *Secretary.*

NATIONAL FARMERS UNION,
Washington, D. C., June 27, 1956.

Hon. HARRY F. BYRD,
Chairman, Senate Finance Committee,
Senate Office Building, Washington, D. C.

DEAR SENATOR BYRD: Last July, when the Committee on Finance was considering H. R. 6040 as passed by the House of Representatives, it was my privilege to submit to you a statement on behalf of National Farmers Union supporting the legislation. On this occasion, when the Committee on Finance is considering an amendment to H. R. 6040 proposed by the Treasury Department and introduced by you, National Farmers Union would like to indicate for the record its support for this amendment.

We have supported customs simplification over the past few years. It has been consistent with the policy declarations of National Farmers Union. We feel that good work has been done by the Congress of the United States in simplifying some of the administrative provisions of our customs law and by so doing removing obsolete and complex procedures which constitute a burden to international trade. We are convinced, however, that the major piece of work in customs simplification still remains to be done and that is the simplification of the procedures for valuing imports subjects to ad valorem duties.

Over the decades, since the valuation provisions of the customs law have been in effect, the valuation provisions have become increasingly complex and commercially unrealistic. This is quite natural. Commercial procedures in international trade have changed considerably over the years. Also the process over time of litigation and court decision have added complexity to what was at the beginning not a simple law. As a result, unintended barriers to the flow of commerce have arisen. Barriers which are unrelated to the level of tariffs but which nevertheless are burdensome. Section 2 of H. R. 6040 would make the most important contribution to the simplification of these complexities by using export value as the preferred valuation base. Our duties would be assessed against a value that is commercially realistic but which nevertheless could not be manipulated by the foreign exporters. The discarding of foreign value would reduce the burden on the customs service of complicated computations and of time-consuming foreign investigations. The existing valuation provisions are the major cause for the delays involved in clearing imports through custom.

It is our view that H. R. 6040 as reported by the House is to be preferred to H. R. 6040 as amended by the proposed amendment, yet we are prepared to support the amendment offered by the executive branch in recognition of the fact that certain segments of American industry expressed concern about the impact of a change in the valuation base on the level of valuation of competing products.

The amendment would make any adjustments in any significant change in valuation a very gradual matter for the less than 10 percent of imports that would experience a valuation change of greater than 5 percent. The amendment should therefore recommend itself to anyone who has legitimate concern about the impact of the proposed valuation change. Under the amendment the estimated average reduction in valuation will only be thirteen one-hundredths of 1 percent and of course the maximum reduction would be 5 percent for any single commodity. This should allay any fears that anyone has about H. R. 6040.

We would, therefore, respectfully urge that the committee report out H. R. 6040 as amended as expeditiously as possible so that the Senate may complete action on the legislation in this session of the Congress.

Please include this expression of our views in the record of hearings.

Sincerely yours,

JAMES G. PATTON, *President.*

STATEMENT OF DONALD LINVILLE, EXECUTIVE SECRETARY, HARDBOARD ASSOCIATION

My name is Donald Linville. I am executive secretary of the Hardboard Association, Chicago, Ill., a trade association of domestic hardboard producers. I file this statement on behalf of the hardboard producers in the United States, in opposition to a portion of H. R. 6040.

First a word about hardboard. From a simple origin as an American invention in 1926 in finding a way to use sawmill slab waste and edgings, hardboard has become a product having hundreds of uses in all walks of life. Few automobiles or TV sets are built without it. It will be found in nearly every home, office, and factory in some form. It is used as paneling in the lumber, furniture, and millwork industries: and as interior finish, floor underlayment, paneling, and as forms for concrete in construction and remodeling. It is also widely used in merchandising and display, and in the transportation, education, recreation, electronics, and manufacturing fields.

Hardboard is simply small pieces of tough, dense wood taken apart and reformed mechanically into large, wide, hard boards for greater utility. It is wood made better, that will not split, splinter, or crack.

We oppose those portions of section 2 of H. R. 6040 which would eliminate the historic "foreign value" basis of valuation, for the following reasons:

In the first place, elimination of "foreign value" as a general basis of valuation for tariff purposes would undoubtedly have a crippling effect upon the antidumping and countervailing duty provisions. This industry, having obtained one [1] of the few antidumping findings in the past 15 years, is cognizant of and concerned over the imposition of any additional hurdles to obtaining ready relief under these remedies.

In point of fact, the present "foreign value" test as a basis for valuation, which H. R. 6040 would abolish, was first enacted at the same time as the Anti-Dumping Act of 1921 (title III, sec. 302, 42 Stat. 15), and has been a pillar of our tariff laws for 35 years having survived the Tariff Act of 1930, the Trade Agreements Act, and all prior simplification acts. Any such basic change should be based on patently clear grounds.

Under the Anti-Dumping Act of 1921 (19 U. S. C. 160–171) imported merchandise is "dumped" whenever the importer's purchase price (or the exporter's sales price) is less than the market value in the country of origin, the determination of dumping involving a comparison of one or the other of these prices with the "foreign market value." Dumping necessarily involves a comparison of two prices, first, the price of a product exported from one country to another with, second, the price of the same or a like product when purchase for consumption in the exporting country. Dumping occurs whenever the first is less than the second. So long as dumping is to be prevented—and it is internationally condemned (see T. D. 52167)—"foreign market value" is necessarily a factor to be calculated and considered.

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[1] A finding of dumping of Swedish hardboard was made by the Secretary of the Treasury on August 26, 1954.

Otherwise stated. abolition of the "foreign value" test under H. R. 6040 will directly encourage foreign countries to adopt multiple price systems, the lowest price applying to exports to the United States, which is simply "dumping," in the determination of which the same "foreign market value" concept must be applied.

One can fully appreciate the technical problems that have arisen in connection with the judicial and administrative construction that has been given the "foreign value" valuation basis, and therefore support as we do the clarifying definition in section 2 of H. R. 6040, yet be unalterably opposed to abolishing the antidumping remedy under the guise of simplifying valuation procedure.

Second, abolition of the "foreign value" basis of valuation will, as to all articles carrying ad valorem or compound duty rates,[2] result in reduced tariffs through reduced valuations. Studies of the Treasury Department have demonstrated this fact, and the bill itself contemplates reductions up to 5 percent. Enactment of H. R. 6040 would, therefore, result in a reduction in effective rates of ad valorem duties without the conventional preventive safeguards of a peril-point determination or the remedial escape-clause procedure. The only remaining recourse would be to Congress for individual legislation.

Third, the compromise of the listing procedure, suggested by Hon. H. Chapman Rose, and embodied in the proposed amendments introduced by Senator Byrd by request on January 19, 1956, is, we believe, entirely unworkable. The direct effect of the proposed amendments would be to put upon domestic producers the impossible task during the next 3 years of trying to prove their right to a continuation of the present protective levels of pertinent duties, by requiring them to prove that the valuation of their type article would be reduced by 5 percent or more under the new valuation procedures of H. R. 6040 so as to avoid their operation. They would not even have that opportunity after 3 years. It should be realized that domestic producers simply do not have and cannot obtain the detailed knowledge necessary to carry such a burden of proof, for the reason that individual appraisals of imported merchandise are not made public and are not available to the public. Moreover, available import statistics of the Census Bureau lump many different individual items together under broad commodity classifications or basket clauses, and do not give the basis of valuation used.

For these reasons, we respectfully submit that "foreign value" should not be eliminated as a basis of valuation under section 402 of the Tariff Act of 1930.

We are heartily in accord with paragraph 2 (f) of the bill in defining the terms used in section 402 of the Tariff Act of 1930. Such terms as "freely offered for sale," "to all purchasers," "in the usual wholesale quantities," and "in the course of trade," in light of their confusing meaning after 35 years of judicial and administrative construction, should be clarified by statute. We also urge that the term "freely offered for sale" be expanded to "sold or freely offered for sale" to make clear that sales as well as offers are to be used in establishing values.

NEW YORK, N. Y., *June 28, 1956.*

Hon. HARRY F. BYRD,
Senate Office Building,
Washington, D. C.

DEAR MR. BYRD: This organization and the underwear industry are opposed to H R. 6040 for the many reasons already brought before your committee by other textile organizations.

Sincerely yours,

UNDERWEAR INSTITUTE,
ROY A. CHENEY,
President.

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[2] Hardboard is now classified under par. 1413, which provides for a reduced combination rate of $7.25 per short ton, but not more than 15 percent nor less than 7½ percent ad valorem. These maximum and minimum rates would in effect be reduced by the lower valuations resulting from the abolition of the "fair value" test.

STATEMENT SUBMITTED BY TOBACCO ASSOCIATES, INC.

Approximately 400,000 farm families in the States of Virginia, North and South Carolina, Georgia, Florida, and Alabama produce flue-cured tobacco. Most of these families depend almost entirely on the income from tobacco production for their livelihood.

Approximately one-third of the flue-cured tobacco produced in the United States is exported. This means that the flue-cured tobacco farmers have a large stake in international trade. Any action taken by the United States which affects adversely United States foreign trade also affects adversely the flue-cured tobacco producers. Conversely, any action on the part of the United States which affects favorably our foreign trade benefits flue-cured growers.

At the last annual meeting of the membership of Tobacco Associates which was held in Raleigh, N. C., on March 6, 1956, the following resolution was adopted:

"Whereas more than one-third of the total flue-cured tobacco produced in the United States is exported; and

"Whereas the value of flue-cured tobacco exported annually amounts to $250 to $300 million; and

"Whereas the ability of foreign manufacturers to buy our tobacco is often limited by the ability of manufacturers of commodities in their countries to sell their commodities in the United States; and

"Whereas customs simplification legislation now before Congress would in some cases facilitate the sale of foreign commodities in the United States: Now, therefore, be it

Resolved, That we, as the membership of Tobacco Associates, Inc., representing the producers, warehousemen, and leaf exporters of flue-cured tobacco and the bankers, merchants, and fertilizer manufacturers in the uue-cured producing area, recommend and urge that the United States Congress enact legislation that will simplify and modernize our outdated and antiquated customs procedures such as is provided for in H. R. 6040 which has already passed the United States House of Representatives."

UNITED STATES SENATE,
COMMITTEE ON AGRICULTURE AND FORESTRY,
March 8, 1956.

Hon. HARRY F. BYRD,
Chairman, Finance Committee,
United States Senate, Washington, D. C.

DEAR MR. CHAIRMAN: It is my understanding that there will be further hearings on legislation concerning the revision of customs procedures. I am enclosing correspondence which I would appreciate having made a part of the record as I believe it deserves the consideration of the committee.

The attached letters from Mr. R. C. Portner of the E. M. Lohmann Co. in St. Paul, Minn., and one from Ralph Kelly, Commissioner of Customs, bear upon a point that apparently affects importers throughout the Nation. Mr. Portner states quite clearly and fully the problem that is created for importers by the difficulty in finding out from the Bureau of Customs the basis upon which additional customs duties are accrued. According to Mr. Portner this problem is compounded by the lengthly delay often involved between the initial assessment and notification of the additional duty that must be paid.

It does seem that importers are entitled to know on what basis they are being charged additional duties. Certainly it makes it extremely difficult for importers to carry on their business if they cannot know what duties are being charged on items in a shipment.

As Mr. Portner spells out this problem quite fully in the accompanying correspondence, I will not go into it further. It does appear to be a situation that merits the attention of the committee. If there is anything that can be done legislatively to improve on this condition, then I would urge the committee to consider taking such action as seems advisable.

Thank you.

Sincerely,

HUBERT H. HUMPHREY.

ST. PAUL, MINN., *June 6, 1956.*

Hon. HUBERT HUMPHREY,
United States Senate,
Washington, D. C.

MY DEAR SENATOR HUMPHREY: It has been reported in the press that Congress has under consideration a revision of the customs law with a special view to the simplification of the customs procedure. We have been importing merchandise for a number of years and are much interested in this revision.

Among the provisions which we believe should have special attention is the matter of the information which the customs office gives to the importer when they assess additional duty upon his imported merchandise. For example: we import a shipment from France. We file the customs entry papers, pay the duty as we understand the law, and receive the shipment. Some time later—it may be a few days, a few weeks, or even many months—we may receive a slip from the collector of customs telling us that we owe a certain additional amount on this shipment.

The shipment may have consisted of a number of items, composed of silk, wool, cotton, rayon, linen, either pure or in various mixtures, and all dutiable at different rates. They do not tell us upon what items the changes were made or whether the values or the rates of duty were incorrect, or whether it was merely an error in our computations.

This information, of course, is important to us. We need it to determine the cost of the particular merchandise affected, both for establishing the selling prices and for our guidance in making future purchases. Recently we have had more courtesy from the customs office. By a cumbersome and time-consuming procedure on the telephone we manage to get the information. Even this courtesy has not always been extended to us.

We instructed our customs broker some time ago to make some investigation regarding the matter. He reported to us that the question was once—many years ago—taken to the Supreme Court of the United States. The Court held that the law did not require the collector to give this information. There the matter stopped.

We think the importer is entitled to receive this information without going through any devious or difficult process to obtain it. If we are right on this point we think the law should be amended to require the collector to give it. We will appreciate your courtesy if you will be good enough to refer this letter to the committee which is considering the revision of the customs law.

Yours very truly,

THE E. M. LOHMANN CO.,
R. C. PORTNER.

TREASURY DEPARTMENT,
BUREAU OF CUSTOMS,
Washington, June 21, 1955.

Hon. HUBERT H. HUMPHREY,
United States Senate,
Senate Office Building, Washington, D. C.

MY DEAR SENATOR: This has reference to the letter addressed to you on June 6, 1955, by R. C. Portner, the E. M. Lohmann Co., St. Paul, Minn., suggesting legislation to require collectors of customs to disclose in the billing the details why increased or additional duties have accrued. You ask for our comments on the suggestion.

Necessarily, customs entries are filed on an estimated basis and it is only when all necessary information is available or has been developed that an accurate computation of the duties actually due can be made. When this is done, if the importer has deposited too much, he is automatically paid a refund. If he has put up too little, he is billed for the difference.

It would be administratively impracticable because of the work involved and the personnel needed to attempt to explain in detail in each billing the exact reasons for the difference, when more duties accrue than have been deposited. For this reason, this Bureau would not be in favor of placing such a responsibility on the collectors of customs as a matter of law.

In any cases in which the importer has need for such information, the customs office will be glad to furnish it in a suitable manner upon request.

Very truly yours,

RALPH KELLY,
Commissioner of Customs.

ST. PAUL MINN., *July 13, 1955.*

Senator H. HUMPHREY,
United States Senate,
Washington, D. C.

DEAR SENATOR HUMPHREY: Under date of June 23 you sent us a letter from Mr. R. Kelly, Commissioner of Customs, which was in reply to our letter to you of June 6.

The question we raised is of such importance not only to us but to all importers that we believe it is worth going into at some length. Because of the importance of the question we conferred with other local importers and learned their views and what has been their experience.

We asked that the tariff law be amended to require the collector of customs to give certain information when he changes the rate of duty which has been reported by the importer. In answer to this proposal the Commissioner's letter of June 21 says:

"It would be administratively impracticable because of the work involved and the personnel needed to attempt to explain in detail in each billing the exact reasons for the difference, when more duties accrue than have been deposited. For this reason, this Bureau would not be in favor of placing such a responsibility on the collector of customs as a matter of law."

This statement appears to us to be so wide of the fact that we doubt whether it was made in good faith. We do not ask them to explain in detail the exact reasons. In every instance where they change our reported rate of duty we want certain facts. We do not ask that the law require them to give any reasons.

Commissioner Kelly says it would be impracticable to give this information. The term "impracticable" is a very general term which can be made to fit any situation. Let us present a specific case in the light of Commissioner Kelly's argument.

When we file a customs entry we fill out a form showing among other things the value, the paragraph under which it is classified, the rate of duty, and the amount of the duty. For example, we report: wooden statuary, works of art, value $1,000, paragraph 1547, rate 10 percent, duty $100.

Sometime later—it may be a few weeks or even many months—we receive a small form from the collector telling us that we own $66.67 more on this shipment. No other information is given. Upon inquiry by telephone or by personal call at the customs office they tell us that it is dutiable as manufactures of wood at 16⅔ percent under paragraph 412. We do not understand why it is impracticable to give us this information on the form when they notify us of the change in the amount of duty.

Mr. Kelly's letter says: "In any cases in which the importer has need for such information the customs office will be glad to furnish it in a suitable manner upon request."

We need this information in every instance where they change the amount payable, and we believe every other importer needs and wants the information.

We are particularly interested in the phrase "the customs office will be glad to furnish." This writer has had experience in importing for many years. During the past few years we have been aware of a degree of politeness in the customs office that was quite unusual. We assumed that this change was due to certain new personnel in the office. In conferring with other importers we learn that this change in courtesy and cooperativeness is general throughout the customs service. Until a few years ago it was the policy to give, either in information or services, only what the law required to be given. The blunt refusals with which requests for information were met discouraged the importers from asking for information. This policy and other similar policies brought such numerous requests upon the Members of Congress that the President announced that one of the major points in his legislative program would be a reform of the customs procedure. Since this proposed reform was announced we have been treated with great courtesy by the customs office. We could not ask for more. Since this courtesy was extended to us only under pressure from Congress we believe we are justified in doubting whether the old policy will not be reestablished when the pressure is removed. If the importers are entitled to the information we do not see why they are not entitled to it as a matter of law.

Our customs broker has called our attention to an interesting provision in the customs regulations. In our present complaint we are considering situations in which the collector says that our rate is incorrect, it should be something else. We have the privilege of saying the collector is wrong, but when we do so this is the regulation that applies:

"Protests shall be in duplicate and in writing, addressed to the collector, and signed by the party protesting or his agent or attorney. Each protest shall give the address of the protestant or his attorney, and entry number, importing vessel, date of arrival, and of liquidation of the entry, and shall set forth distinctly and specifically in respect to each entry, payment, claim, or decision, the reasons for the objection, citing the rate or rates of duty claimed to be applicable and the paragraph or section of the law, if any, under which relief is claimed."

This is what we must do when we object to the Government's findings. We do not object to this. We think it is entirely reasonable. We only ask that the customs give us a small part of the information which they require: namely, the part which has been underlined.

We had assumed that you would refer this matter to a committee with a staff which included specialists in customs law. We do not wish to place any unusual burden upon you. We and other importers with whom we have conferred will appreciate any help you can give us.

Very truly yours,

THE E. M. LOHMANN CO.,
R. C. PORTNER.

ST. PAUL, MINN., *August 5, 1955.*

Hon. H. HUMPHREY,
United States Senate,
Washington, D. C.

MY DEAR SENATOR HUMPHREY: We received your letter of July 18, also the copy of the bil H. R. 6040. We also received a copy of the report on this bill by the Committee on Ways and Means of the House.

We have looked over both these documents carefully. We find nothing in either document that offers hope of relief on the point we raised, that is to say, that the appraiser when he changes the amount of duty which is payable on certain merchandise should give us certain information regarding the nature of the change.

In the report of the Committee on Ways and Means we find two paragraphs which indicate to us that the Treasury Department has no intention of giving the importer any real relief. When the law speaks of a Customs Simplification Act it means simplification from the point of view of the Treasury Department, not from the point of view of the importer.

On page 7 of the committee report are these two paragraphs:

"(6) The committee also considered a proposed amendment which would have required the appraiser to state the basis of his appraisement. The committee concluded that such a requirement would be an unnecessary delaying factor in the majority of appraisement cases and that there were other means of obtaining information needed in connection with an appraisement in litigation.

"(7) With respect to the proposal that some form of limitation be placed upon the time in which an appraisement could be made, the committee was not convinced that a fixed time limitation would be helpful in obtaining adequate consideration in appraisement actions."

These two paragraphs go to the very heart of the complaint that we and other local importers are making. Several years after a shipment has been received, and sold, an importer will receive a notice that he owes more duty. Why it should take 2 or 3 years to determine this fact is not apparent. The Maurice L. Rothschild Co., of St. Paul, tells that they have had numerous such experiences. They themselves tried to learn from the customs office and they employed a lawyer to try to learn where the appraiser got the prices on which they assessed the duty. They got no information, either themselves, through their attorney, or from the foreign firm which sold them the merchandise.

The committee report says that the revised act will carefully preserve the right to appeal to the court. However, a little study will reveal that the Treasury Department has something in reserve on this point. Under the law the appraiser's findings are presumed to be correct. The burden is upon the importer to prove that the appraiser is wrong. If the importer has no information whatever as to the source of the appraiser's figures, how is he going to prove that the appraiser is wrong. Maurice L. Rothschild Co. tell us that they have practically ceased to import because of their experiences under paragraphs (6) and (7) quoted above. Field Schlick Co. tell us they have reduced their imports in some years as much as 90 percent because of similar experiences.

The law proposes to simplify the method of determining prices. It offers no relief from certain kinds of irritating annoyances. Here is a case reported to us this week by Schuneman's. Its pettiness makes it the more irritating. They had a small shipment of chinaware from England which was overdue and arrived late in the selling season. The invoice showed a trade discount of 5 percent. The appraiser must hold the shipment until he has a bond which would guarantee payment of the duty if this discount was not allowed. The customs clerk said the additional duty would be about $1.75. Schuneman's offered to pay the $1.75 now and forget it. This could not be done because the auditor might find that it was not payable. They must furnish a bond, which cost $3 and the signature of 2 officers of the company. Some months from now they may receive notice that they owe $1.75. Upon searching their records and conferring with the customs office they may learn that the auditor disallowed the 5-percent discount.

We do not believe that responsibility for this procedure rests upon the local customs office but upon the Secretary of the Treasury who promulgated the rules which require this procedure.

Let me review the developments on our own request up to this point. We asked that the appraiser, when he changed the amount of duty which we reported payable on our merchandise, be required to give some explanation of the change. We were told that this was not practicable but that the customs office would gladly give us this information on request. Messrs. Maurice L. Rothschild & Co. tell us that they made long and intensive efforts to obtain such information from the customs office and were unsuccessful.

The report of the committee, quoted above as paragraph (7) says the appraiser should not be required to give this information: "that there were other means of obtaining information."

What the other means of obtaining the information are the report does not say, nor have we been able to learn what they are. Paragraph (7) clearly implies, however, that it is not the intention that the appraiser shall give this information in the majority of appraisement cases. Why there should be any secret at to the manner in which he arrives at his values is not apparent to us nor was it apparent to any of the other importers with whom we have conferred.

Thank you again for the time you are giving to this matter.

Very truly yours,

THE E. M. LOHMANN CO.,
R. C. PORTNER.

ST. PAUL, MINN., *December 14, 1955.*

Hon. HUBERT HUMPHREY,
United States Senate,
Washington, D. C.

MY DEAR SENATOR HUMPHREY: Some months ago we had some correspondence regarding the proposed revision of the customs law. Since that time we have conferred further with other importers and have had an opportunity to give some further study to the subject. We understand from the press that action on the amended bill was put over until the next session of Congress. We hope, therefore, that our views may be considered by the committee before the bill is acted upon.

We are interested at this time in presenting our further views on two points. Paragraph (6) page 7 of House Report No. 858 reads:

"(6) The committee also considered a proposed amendment which would have required the appraiser to state the basis of his appraisement. The committee concluded that such a requirement would be an unnecessary delaying factor in the majority of appraisement cases and that there were other means of obtaining information needed in connection with an appraisement in litigation."

There are two reasons given in this paragraph why the appraiser should not be required to give this information.

First. It would be an unnecessary delaying factor.

We are unable to understand why a requirement that the appraiser should furnish this information after he has made his appraisal, should in any way whatsoever delay the making of the appraisement.

Second. There are other sources from which the information can be obtained.

The last phrase is so skillfully worded that we surmise it was prepared in the Customs Bureau. The information can be obtained "in connection with an appraisement in litigation." The importer is first of all concerned with appraisements not in litigation.

Our laws presume that the appraiser's findings are correct. It is not sufficient for the importer to show that he bought the merchandise in the open market at the current price. That is not the question at issue in the case. The question at issue is: Are the apraiser's figures correct. The importer must prove they are not. If the appraiser changes the values reported by the importer and the importer is unable to learn when the appraiser arrived at his values he is necessarily unable to determine whether he wants to contest the appraiser's findings He is placed in a position where he must bring a lawsuit in order to learn whether he wants to bring a lawsuit.

When an importer files an entry with the collector of customs or when he appeals a case to the Customs Court he is expected to make a complete and accurate disclosure of all information in his possession which might affect the dutiable value or character of the merchandise. To deliberately suppress or conceal relevant information would brand him a fraud and a cheat. An attorney who attempted to win his case by such methods, we believe, would be subject to disbarment. Yet apparently Government standards of morality permit the Government to openly declare that it is and will be their policy to withhold such information—information which they alone possess.

On the same page, page 7, is this sentence regarding the amended bill: "It will eliminate many of the uncertainties in valuation and the unexpected results which sometimes prove disastrous to importers."

It is our opinion that unless the bill requires the appraiser in every instance to inform the importer the basis of his revised figures the bill will perpetuate many of the uncertainties in valuation and the unexpected results which sometimes prove disastrous to importers.

Our second objection is against the absence of any limitation upon the time within which an appraisal may be made. Paragraph 7 on page 7 of the House report 858 reads:

"(7) With respect to the proposal that some form of limitation be placed upon the time in which an appraisement could be made, the committee was not convinced that a fixed limitation would be helpful in obtaining adequate consideration in appraisement actions."

We know of no reason why the rule of reason should not apply in this situation. That is to say, is it impossible to establish a reasonable time within which to make an appraisement, and then to make that reasonable time a part of the law. Several years after merchandise has been cleared through customs and the transaction is considered closed, the importer receives notice of a change in values. Employees may have died or left the employment of the firm, records have been stored away, the transaction is not in the memory of anyone then with the company.

On the other hand, an employee of one of our importers informs us that he was for some years employed in one of the Government bureaus in Washington. He says that in that bureau it was the regular practice when any of the employees got a file which was troublesome or which they didn't know what to do with, to shelve it indefinitely or to keep it moving on an endless journey from office to office. In this way it was impossible to fix the responsibility for delay in disposing of it. It is no doubt such procedures as these that the Customs Bureau have in mind when they say they must have time for adequate consideration. Our position is that they should be given a reasonable time for consideration. We thank you for your help.

Yours very respectfully,

THE E. M. LOHMANN CO.,
R. C. PORTNER.

UNITED STATES SENATE,
COMMITTEE ON APPROPRIATIONS,
Washington, D. C., March 27, 1956.

Hon. HARRY F. BYRD,
Chairman, Senate Committee on Finance,
Senate Office Building, Washington, D. C.

DEAR CHAIRMAN BYRD: Last year I wrote you in connection with correspondence I have received from Mr. R. C. Portner, of the E. M. Lohmann Co., of St. Paul, Minn.

Mr. Portner has again written me, and at his request, I am enclosing his letter for incorporation in the record of your committee's hearings on customs-law revisions.

Sincerely yours,

EDWARD J. THYE,
United States Senator.

ST. PAUL, MINN., *March 16, 1956.*

Hon. EDWARD J. THYE,
United States Senate,
Washington, D. C.

MY DEAR SENATOR THYE: We have written you several times regarding the administration of the customers regulations by the Customs Bureau. In the present instance, we are writing you with regard to the customs law itself which we would also like to have you incorporate in the hearing.

Our company is a frequent importer of merchandise which is classified under section 1773 or 1774 of the Tariff Act. Omitting the language not relevant to our purpose, the two sections read as follows:

"FREE LIST

"1773. Regalia, where specially imported in good faith for the use and by the order of any society incorporated or established solely for religious, philosophical, educational, or literary purposes, or for the use and by the order of any college, academy, school, seminary of learning, orphan asylum, or public hospital in the United States, or any State or public library, and not for sale.

"1774. Altars, pulpits, communion tables, baptismal fonts, shrines, or parts of any of the foregoing, and statuary (except casts of plaster of paris, or of compositions of paper or papier mache) imported in good faith for presentation (without charge) to, and for the use of, any corporation or association organized and operated exclusively for religious purposes."

Any article complying with the provisions of sections 1773 or 1774 may be entered free of duty. It is our contention that the articles enumerated in paragraph 1774 should be admitted free of duty when imported by any society of the classes enumerated in 1773; and not, as now, limited to societies operated solely for religious purposes.

A hospital, for example, may import regalia free of duty. The same hospital may not import statuary in wood free of duty because the hospital is not operated exclusively for religious purposes. It is at this point that we disagree with the law.

Let us apply this principle to a specific case. The visitor who enters St. Joseph's Hospital in St. Paul sees in a niche in the wall before him a large statue of St. Joseph. The purpose of this statue is to remind the visitor that it was the prayer of the founders of this hospital that the spirit of St. Joseph might dwell within this building and within those who entered within its walls. It is the purpose of such a statue to remind the spectator of the life and work of the subject. The statute derives no special qualities or powers by reason of the fact that it is located within a church or chapel. Its spiritual qualities are equally present and equally powerful when the statue is located in a hospital or school.

In some villages in northern Italy, close to the Austrian border, some families have been engaged in religious wood carving for some generations. Their products have the spiritual quality which is possessed only by true works of art. Works of a similar quality and character are not produced in the United States for the open market. The workers in Italy, by their religious devotion, are dedicated to their work.

We have been told that the usual method of influencing tariff legislation is by submitting statistics showing the cost of production here and abroad and the effect of the imports upon the American producer. We are not in a position to submit such figures, but we believe that the factors we have mentioned are also worthy of consideration when drafting the tariff law.

Yours very respectfully,

THE E. M. LOHMANN CO.,
R. C. PORTNER.

STATEMENT OF JOSEPH W. DYE

My name is Joseph W. Dye. I am president of Wolf & Dessauer, a department store in Fort Wayne, Ind., and I am presenting this statement as chairman of the government affairs committee of the National Retail Dry Goods Association. NRDGA is a voluntary trade association, numbering in its membership more than 8,000 department, specialty, and chain stores.

American retailers have for many years imported various types of consumer goods from European and Asian countries. These importations are made primarily because there is a demand in the American market for the unique type of merchandise manufactured abroad. I think it should be clearly understood that the importations by retailers are made solely because of a market demand, and not for any other reason. Hence, as a group, retailers fall into neither the class of freetraders nor that of protectionists. In fact, our major concern is not with the question of tariffs, but rather with the artificial barriers that exist in the channels of international trade. For this reason, we strongly support the principle established in H. R. 6040 and the amendment now being considered by this committee.

We feel it is most unfortunate when, because of unnecessary redtape, uncertain valuations, and other reasons, American buyers are discouraged from entering into contracts with foreign producers. From our experience, we know that many retailers in the past decided to abandon importing goods, not because of the price, nor because of the tariff rates, but because of the multiplicity of uncertainties that prevail.

Because our association represents both American and foreign retailers, I can assure this committee that there is a sincere desire on our part to increase the pattern of two-way trade. As there is a demand in this country for foreign-made merchandise, so is there abroad a demand for American-made goods. Just a few weeks ago, an exciting display of American-made dresses captured the imagination of consumers in Paris. This, mind you, while thousands of words have been written about the sale of French gowns in American stores. Retailers, activated solely by the profit motive, will continue to expand two-way trade if the prinicples set forth in the Customs Simplification Act can be given full implementation.

For these reasons we urge that H. R. 6040 and the recommended amendment presented by the Treasury Department be approved by this committee.

(Whereupon, at 12:10 p. m., the committee was adjourned.)

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