

PARTICLEBOARD

1516-4

HEARING
BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE

EIGHTY-SEVENTH CONGRESS

SECOND SESSION

ON

H.R. 12242

AN ACT TO PROVIDE FOR THE TARIFF CLASSIFICATION OF
CERTAIN PARTICLEBOARD

OCTOBER 3, 1962

Printed for the use of the Committee on Finance



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PARTICLEBOARD

WEDNESDAY, OCTOBER 3, 1962

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C.

The committee met, pursuant to notice, at 10:45 a.m., in room 2221, New Senate Office Building, Senator Harry F. Byrd (chairman) presiding.

Present: Senators Byrd, Smathers, Douglas, Talmadge, and Hartke.

Also present: Elizabeth B. Springer, chief clerk, and Serge N. Benson, professional staff member.

The CHAIRMAN. The hearing today is on the bill H.R. 12242, to provide for the tariff classification of certain particleboard. I submit for the record a copy of the bill to be discussed, as well as copies of the reports thereon submitted by the Departments of Treasury and Commerce and an analysis by the U.S. Tariff Commission.

(The bill and reports follow:)

[H.R. 12242, 87th Cong., 2d sess.]

AN ACT To provide for the tariff classification of certain particleboard

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That particleboard, measuring not less than 48 inches nor more than 49 inches in width and not less than 96 inches nor more than 97 inches in length, entered, or withdrawn from warehouse, for consumption after July 11, 1957, and before the effective date of the tariff schedules of the United States (provided for by section 501 (a) of the Tariff Classification Act of 1962) shall be classified for duty purposes as wallboard under paragraph 1402 of the Tariff Act of 1930, if not excluded from classification under such paragraph by reason of any processing specified therein. If the liquidation of any such entry or withdrawal has become final, such entry or withdrawal shall be reliquidated and the appropriate refund of duty shall be made.

Passed the House of Representatives September 11, 1962.

Attest:

RALPH R. ROBERTS, Clerk.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, October 1, 1962.

HON. HARRY F. BYRD,
Chairman, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on H.R. 12242, to provide for the tariff classification of certain particleboard.

The proposed legislation would provide that particleboard, measuring 48 to 49 inches in width and 96 to 97 inches in length, entered or withdrawn from warehouse, for consumption after July 11, 1957, and before the effective date of the tariff schedules of the United States, shall be classified under paragraph 1402 of the Tariff Act and dutiable at the rate of 5 percent ad valorem. It would authorize refund of duty paid on entries which have been liquidated.

In order to provide for orderly handling of cases involving refund of duty, it is suggested that the following proviso be added at the end of the second sentence of the bill: "Provided, That a claim for refund is filed with the collector of customs concerned within ninety days after the date of enactment of this Act."

If the bill is amended as suggested, the Department anticipates no unusual administrative difficulties in carrying out its purposes and would have no objection to its enactment.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

Sincerely yours,

FRED B. SMITH,
Deputy General Counsel.

THE SECRETARY OF COMMERCE,
Washington, D.C., October 2, 1962.

HON. HARRY F. BYRD,
*Chairman, Committee on Finance,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of the Department of Commerce on H.R. 12242, an act to provide for the tariff classification of certain particleboard.

The bill, in effect, provides that wood particleboard which was imported into the United States after July 11, 1957, and before the effective date of the new tariff schedules provided in the Tariff Classification Act of 1962, and classified for duty purposes under tariff paragraph 1539(b) of the Tariff Act of 1930, shall be reclassified and dutiable as wallboard under paragraph 1402 of the act, if not excluded from classification under such paragraph by reason of any processing specification therein.

Prior to May 18, 1961, it was the practice of the Bureau of Customs to classify particleboard, of which a synthetic resin or resinlike substance is the chief binding agent, as wallboard under paragraph 1402 and assess a duty of 5 percent ad valorem, if imported in standard wallboard sizes and not processed or finished in any manner specified in that paragraph. If imported in other than wallboard sizes or processed or finished in any manner specified in paragraph 1402, the particleboard was classified as a manufacture wholly or in chief value of any product of which synthetic resin or resinlike substance is the chief binding agent under paragraph 1539(b) at the rate of 21 cents per pound and 17 percent ad valorem.

It is the Department's understanding that the purpose of the bill is to grant relief to domestic importers who entered shipments of particleboard with the expectation that they would be dutiable under paragraph 1402, but which were classified by Customs as dutiable under paragraph 1539(b) because the board measured a fraction more than 4 feet by 8 feet. Customs' action had the effect of assessing a duty which exceeded the value of the shipment by approximately 300 percent.

The Department does not favor bills of this type because they tend to discriminate against other importers and create a lack of certainty about the effectiveness of the tariff classification system. However, we believe that in this case the circumstances warrant some adjustment being made in the amount of duty which was assessed. This could be accomplished through a private relief bill, taking into consideration the rate of 20 percent ad valorem on wood particleboard which was established by the Tariff Commission in the revised tariff schedules.

We have been advised by the Bureau of the Budget that there would be no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

EDWARD GUDEMAN,
Under Secretary of Commerce.

U.S. TARIFF COMMISSION,
Washington, September 25, 1962.

MEMORANDUM ON H.R. 12242, 87TH CONGRESS, AN ACT TO PROVIDE FOR THE TARIFF
CLASSIFICATION OF CERTAIN PARTICLEBOARD

H.R. 12242 provides for the classification of imports of particleboard (measuring not less than 48 inches nor more than 49 inches in width and not less than 98 inches nor more than 97 inches in length, entered, or withdrawn from warehouse, for consumption after July 11, 1957, and before the effective date of the tariff schedules of the United States (provided for by section 501(a) of the Tariff Classification Act of 1962)) under the provision for wallboard in paragraph 1402, Tariff Act of 1930, at the rate of 5 percent ad valorem. It is anticipated that the effective date of the revised tariff schedules will be January 1, 1963.

Particleboard is a relatively new article of commerce. The manufacture of this product in the United States on a commercial basis began in 1946. It is used for a number of purposes, such as plywood cores, furniture panels and parts, underlayment for resilient floor coverings, decorative panelings, and sheathing. Particleboard may be produced in a variety of shapes, but is most often made as relatively thin flat, rectangular sheets. It is made from wood flakes, slivers, chips, and shavings, which are bound together with artificial resins (chiefly urea and phenol formaldehyde resins). Over 90 percent of the weight of particleboard consists of wood fibers, and the rest consists of synthetic resin. It is estimated that on the average the resin content of particleboard has twice the value of its wood content.

It was the practice of the Bureau of Customs to classify imports of particleboard in standard wallboard sizes, such as 4 by 8 feet, as wallboard under paragraph 1402 of the tariff act, as modified, at the rate of 5 percent ad valorem, and other particleboard imports under the provision in paragraph 1539(b), as modified, for "manufacturers wholly or in chief value of any product of which any synthetic resin or resinlike substance is the chief binding agent" at the rate of 21 cents per pound plus 17 percent ad valorem. However, a domestic manufacturer protested against administrative classification of particleboard as wallboard under paragraph 1402, claiming that particleboard, regardless of sheet size, is classifiable under the aforementioned provision in paragraph 1539(b). The U.S. Customs Court sustained the protest (C.D. 2256, decided May 18, 1961), and the U.S. Court of Customs and Patent Appeals affirmed the lower court's ruling on May 18, 1962. A petition for rehearing filed by the importer under date of July 6, 1962, has not yet been acted upon by the appellate court.

A partial analysis of import data indicates that imports of particleboard prior to 1959 were very small or nil. In the period 1959-61 imports are believed to have come almost entirely from Surinam, with negligible amounts from Canada and Sweden. The value of imports is estimated to have approximated \$21,000 in 1959, \$229,000 in 1960, and \$147,000 in 1961. Particleboard has ceased to be imported following the ruling of the court in C.D. 2256 because of the prohibitive effect of the rate applied under paragraph 1539(b).

U.S. production of particleboard (on a basis of three-fourth inch in thickness) amounted to 296 million square feet valued at \$41 million in 1959, 268 million square feet valued at \$37 million in 1960, and 319 million square feet valued at \$44 million in 1961. There were 47 plants reporting production in 1961.

Export statistics for particleboard are not separately reported but are combined with plywood and other types of composition boards. Exports, if any, are small and would amount to less than 1 percent of domestic production.

It is understood that all of the imports of particleboard, except for a few shipments having an aggregate value in excess of \$25,000, were, prior to the court decision, admitted under the provision for wallboard in paragraph 1402 at the rate of 5 percent ad valorem. The excepted shipments consisted of particleboard 4 feet 1 inch by 8 feet 1 inch in size (i.e., not in standard wallboard sizes) and were, therefore, classified under paragraph 1539(b). The total duties assessed on these shipments amounted to over \$100,000 and are almost four times the value of the imports. One importer who obtained the release of the goods by paying duty at 5 percent under paragraph 1402 has not been able to pay the increased duties (about \$90,000) subsequently demanded by the customs officers.

The sole purpose of H.R. 12242 is to relieve these importers from liability for the increased duties imposed by customs officers under paragraph 1539(b). It may be noted that the tariff reclassification of such particleboard for that period of time which extends beyond the date of publication of the pertinent court ruling would have the temporary effect of upsetting the effort of a domestic producer to correct an erroneous administrative tariff classification of such particleboard, should the appellate court not change its decision as a result of the rehearing. In such a case the legislation, if enacted, would in effect constitute a temporary exception to the provisions of section 516(b) of the Tariff Act of 1930, as amended. The rate of duty made applicable to imported particleboard as a result of the final decision of the appellate court will be reflected in the revised tariff schedules of the United States.

The CHAIRMAN. Senator Smathers is in the anteroom trying to reach some agreement, but we will start the hearing for the purpose of the record.

The first witness is Mr. William E. Higman, Deputy Commissioner, Classification and Drawbacks, Bureau of Customs, Department of the Treasury.

Mr. Higman, you may be seated and proceed.

**STATEMENT OF WILLIAM E. HIGMAN, DEPUTY COMMISSIONER,
CLASSIFICATION AND DRAWBACKS, BUREAU OF CUSTOMS, DE-
PARTMENT OF THE TREASURY**

Mr. HIGMAN. I don't have a prepared statement. I have the Treasury Department report on the bill, which I will read.

The report is dated October 1, 1962, signed by Deputy General Counsel Fred B. Smith:

Reference is made to your request for the views of this Department on H.R. 12242 to provide for the tariff classification of certain particleboard. The proposed legislation would provide that particleboard measuring 48 to 49 inches in width and 96 to 97 inches in length entered or withdrawn from warehouse for consumption after July 11, 1957, and before the effective date of the tariff schedules of the United States shall be classified under paragraph 1402 of the Tariff Act and dutiable at the rate of 5 percent ad valorem.

It would authorize refund of duty paid on entries which have been liquidated.

In order to provide for orderly handling of cases involving refund of duty it is suggested that the following proviso be added to the end of the second sentence of the bill:

"Provided that a claim for refund was filed with the Collector of Customs concerned within 90 days after the date of enactment of this Act."

If the bill is amended as suggested, the Department anticipates no unusual administrative difficulties in carrying out its purposes and will have no objection to its enactment.

The Department has been advised by the Bureau of the Budget that there is no objection from the standpoint of the administration's program to the submission of this report to your committee.

The CHAIRMAN. Mr. Higman, thank you very much.

I have had correspondence objecting to the bill as originally introduced by Congressman Herlong which I understand is the version of the bill favored by Senator Smathers.

My correspondents want the bill limited to 4 by 8 panels.

Would you give me your opinion on this point?

Mr. HIGMAN. Limiting to 4 by 8 panels would cause us no administrative difficulties.

The CHAIRMAN. Would not?

Mr. HIGMAN. Would not.

The CHAIRMAN. Will you repeat that, I didn't hear it.

Mr. HIGMAN. We would have no difficulties in administering an act which was limited to 4 by 8 panels.

The CHAIRMAN. That would be satisfactory?

Mr. HIGMAN. It would; yes, sir.

The CHAIRMAN. Are you speaking of the operation of the bill?

Mr. HIGMAN. Speaking of the operation of the bill only, not of the policy.

The CHAIRMAN. I see.

Thank you very much, Mr. Higman.

Our next witness is Jame D. Williams, Jr., appearing in behalf of Abitibi Power & Paper Co., Ltd., and Abitibi Corp.

STATEMENT OF JAMES D. WILLIAMS, JR., ABITIBI POWER & PAPER CO., LTD., AND ABITIBI CORP.

Mr. WILLIAMS. Mr. Chairman, Senator Douglas, I am James D. Williams, Jr., of Washington, D.C., of the law firm of Barnes, Richardson & Colburn, counsel for Abitibi Power & Paper Co., Ltd., and Abitibi Corp.

I am accompanied by Mr. O. B. Eustis, manager of the Abitibi plant at Alpina, Mich., and Mr. Flintoff, legal officer of the company.

We support H.R. 12242 in the form that it passed the House, although we feel that an amendment should be added restricting application of the bill to the period July 11, 1957, to May 25, 1961. The reasons for enactment of the legislation itself, we think, are convincingly stated in the House report.

Certainly the practice of the Bureau of Customs prior to the effective date of the *National Starch Products* case was to classify particleboard in 4- by 8-foot sizes as wallboard under paragraph 1402 of the Tariff Act of 1930 and it has been a commercial practice of long standing to add a tolerance of up to 1 inch in either direction for the purpose of protecting the true 4- by 8-foot size.

Therefore, there should be no question concerning the classification or advisability of the classification of 4 feet 1 inch by 8 feet 1 inch as wallboard up to the effective date of the court decision.

We are suggesting, however, that the bill apply only to imports before that date in order to avoid any possibility of huge disruptive importations of 4-foot-1 by 8-foot-1 particleboard into the United States between now and the effective date of the new tariff schedules provided for in the Tariff Classification Act of 1962.

The original language introduced into the House before it was amended by the Ways and Means Committee, the original language introduced by Congressman Herlong, would not have covered imports of particleboard by Abitibi since the Abitibi shipments were from July to December 1957, a period not covered by the Herlong bill, and the Abitibi shipments had not technically been classified by a collector as the Florida shipments had.

Although we favor H.R. 12242 as it passed the House, with the proviso about amending the date, we actually would prefer the language known as the proposed Smathers amendment, since although covering the same time period it would expand the coverage of particleboard under paragraph 1402.

It is true, as the House report states, that the practice of the Bureau of Customs has been to classify particleboard in 4- by 8-foot sizes as wallboard under paragraph 1402 provided it meets the other requirements of the paragraph.

But one should not gain the erroneous impression from this statement that 4 by 8 feet is the only size of particleboard that has ever been classified under paragraph 1402 by the Bureau.

To cite only one example, there is in existence a Bureau letter dated August 13, 1956, stating that particleboard would be classified as wallboard if in any of the following sizes: 12 by 12 inches, 12 by 24 inches, 12 inches by 6 feet up to 12 feet. (I would imagine this would be in 1-foot increments.) Two by 6 feet to 12 feet, I would imagine also this would be in 1-foot increments, and 4 by 6 feet to 12 feet. I would imagine this also would be in 1-foot increments.

Certainly, this is adequate proof that the Bureau recognizes many standard wallboard sizes of which the sizes set forth above are only examples.

Since actual compilation and listing of all standard wallboard sizes, whether or not recognized by the Bureau would entail considerable discussion and cumbersome legislative language, we feel that the obvious solution is to adopt the Smathers amendment which simply classifies particleboard entered between July 11, 1957, and May 25, 1961 as wallboard.

The Smathers amendment could have no injurious effect on domestic industry since it is not prospective in operation, and applies only to particleboard that has long since entered the stream of commerce and been consumed.

That concludes my statement, Mr. Chairman.

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

Mr. WILLIAMS. Yes, sir.

Senator DOUGLAS. I regret I was unable to be here at the beginning of the testimony.

What is the duty at 5 percent for the 4 by 8's in terms of cents per pound?

Mr. WILLIAMS. I do not know, sir. I merely am talking in terms, it is an ad valorem equivalent, isn't it, it is an ad valorem equivalent. As you say it is a specific duty and Mr. Higman, who is the expert in this matter from the Bureau of Customs tells me he doesn't have it available.

I regret I cannot tell you.

Senator DOUGLAS. What I am trying to get at is the difference which is actually involved in giving this added inch of tolerance.

Mr. WILLIAMS. Well, the difference is that, let's say this bill were not passed at all, no bill. There was a *National Starch Products* case that the courts decided in March of 1961. Since that time it is settled what the law is.

However, previous to that time, Senator, the Bureau of Customs classified particleboard in 4- by 8-foot measurement, strictly 4 by 8, no tolerance at all, as particleboard.

Senator DOUGLAS. Wallboard?

Mr. WILLIAMS. As wallboard and it came in at 5 percent.

Now, unless this legislation—

Senator DOUGLAS. Five percent of what?

Mr. WILLIAMS. I beg your pardon?

Senator DOUGLAS. Five percent of what?

Mr. WILLIAMS. Ad valorem.

Senator DOUGLAS. Priced here in this country or—

Mr. WILLIAMS. No, freely offered price.

Senator DOUGLAS. What?

Mr. WILLIAMS. Freely offered price.

Senator DOUGLAS. In this country?

Mr. WILLIAMS. No, in the foreign country.

Senator DOUGLAS. Pardon?

Mr. WILLIAMS. In the foreign country.

Senator DOUGLAS. Foreign country.

Mr. WILLIAMS. Yes, sir.

Senator DOUGLAS. How much does that amount to per pound or per square foot?

Mr. WILLIAMS. We—I am trying to find that out, Senator. But absent this legislation, the 4 foot—to begin with, it has long been commercial practice to treat, to allow a 1-inch tolerance in case anything gets damaged or something but under the present way the Bureau rules on these things, there is a difference because the 4 by 8's come in at the 5 percent and the 4 by 8's with the 1-inch tolerance, these past entries we are talking about here, between 1957 and 1961, come in at 150 percent, you see, and unless this—

Senator DOUGLAS. 150 percent value of the exporting country, you mean 30 times?

Mr. WILLIAMS. Yes, sir.

Senator DOUGLAS. It is 30 times its rate?

Mr. WILLIAMS. Yes, sir—30 times; yes, sir.

Senator DOUGLAS. Is that accepted by everybody, is that true? Is the witness from the Bureau of Customs here?

Mr. HIGMAN. Yes, sir.

Mr. WILLIAMS. Mr. Higman can check me on that.

Senator DOUGLAS. Is that correct, Mr. Higman?

Mr. HIGMAN. I am not sure it is that percentage of increase but it is the difference between 5 percent ad valorem and 17 percent ad valorem and 21 cents a pound.

It has been referred to in the House as 400 percent. The higher rate has been referred to in the House frequently as being 400 percent as against 5 percent.

Senator DOUGLAS. So 80 times—

Mr. HIGMAN. I haven't verified that, but that is the statement that has been made.

Mr. WILLIAMS. That is what it would be if it were 400 times. We had computed it as 150.

Anyway, it is unbearable.

Senator DOUGLAS. What about this retroactive feature? As I understand it there was an importation of some magnitude which is held up because of the inability of the importer to pay the Custom's fee.

Mr. WILLIAMS. That is Mr. Sharp's case and I prefer to allow him to comment on that when he testifies, Senator. We are a little bit out of order here.

Senator DOUGLAS. He has not yet testified?

Mr. WILLIAMS. He has not yet testified. He has been detained but he is now in the room and I prefer to allow him to speak for himself.

Senator DOUGLAS. What you are primarily interested in is getting the inch of tolerance?

Mr. WILLIAMS. Yes, sir; because it makes that much difference and it has been common commercial practice and it seems to me unbelievable to treat the two differently. We are talking about past tense, we are talking about between 1957 to 1961, so it could not conceivably have any effect on the domestic industry because the stuff has long been consumed.

Senator DOUGLAS. That is what I wanted to raise the question on. You speak in line six or the House speaks in line six for consumption after July 11, 1957.

What is the significance of that date?

Mr. WILLIAMS. It was our first entry.

Senator DOUGLAS. What?

Mr. WILLIAMS. That is our first entry that is being held up here.

Senator DOUGLAS. Did you pay the duty?

Mr. WILLIAMS. No. The duty has been paid at 5 percent, and it is under contest with the Bureau of Customs at the present time.

Senator DOUGLAS. So it is not a question of refund?

Mr. WILLIAMS. No, sir; not for us.

Senator DOUGLAS. Not for you?

Mr. WILLIAMS. No, sir; not for us.

The CHAIRMAN. Any further questions?

Senator DOUGLAS. No.

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

The next witness is Mr. James R. Sharp of Sharp & Bogan.

Take a seat and proceed.

STATEMENT OF JAMES R. SHARP, OF SHARP & BOGAN, WASHINGTON, D.C.

Mr. SHARP. Mr. Chairman and members of the committee, my name is James R. Sharp of the law firm of Sharp & Brogan, 1108 16th Street NW., Washington, D.C.

Our firm represents Plyworld Corp., an organization located in Orlando, Fla., owned and operated by Mr. K. P. Hamilton, a long-time resident of the State of Kentucky and of more recent years the State of Florida.

I appear here in support of H.R. 12242 and of certain amendments thereto which I—which I believe will be offered by Senator Smathers in the course of the executive session of this committee which, I understand, is to follow these hearings.

These are the closing days of Congress and each of you is beset by numerous matters and pressures. Accordingly, I will try to be brief and to the point.

During the period from September 21, 1959, through September 27, 1960, Plyworld Corp. imported approximately \$21,000 in invoice value of particleboard from Surinam.

In other words, the bill involves past history only and has no prospective effects whatsoever. It cannot, therefore, be of any serious

concern to domestic particleboard producers who may be vigilant in attempts to prevent further penetration of the U.S. market by foreign producers.

Surinam is sometimes known as Dutch Guiana, a small area on the northern coast of South America, lying almost immediately to the east of Venezuela and consisting largely of forest land. The entries of my client, Plyworld Corp., were six in number.

For your information, particleboard is a mat-formed wood composition panel consisting of particles of wood bonded together by heat and pressure in connection with phenolic type synthetic resins, the latter being the primary bonding element.

The wood used consists of granules, slivers, shavings, or flakes which are byproducts of lumbering or milling operations. The raw materials normally would be wasted—were it not for its use and, I might say, that this panel I have here is one type of particleboard which appears to be made of shavings which is pressed together under the heat and the bonding element.

Surinam is one of the few countries in South America which has found the capital to make it possible to use waste materials in the production of an acceptable particleboard for internal use and export purposes. The utilization of these otherwise wasted byproducts is without question in furtherance of the Alliance for Progress.

Prior to the fall of 1959, Plyworld Corp. had dealt in some quantities of this product and had found it was quite acceptable to its clientele in the Southern States for a large variety of uses, including its use as decorative wallboard.

Prior to engaging to any substantial extent in the import of wood particleboard, Plyworld had assured itself that the customs officials would regard board 4 feet in width and anywhere from 6 to 12 feet in length as being in standard wallboard sizes dutiable at 5 percent under paragraph 1402 of the Tariff Act of 1930.

Mr. Hamilton, as the head of the Plyworld Corp., wrote to his supplier in Surinam in September 1959, as follows:

When I was last in Jacksonville I called on the customs appraiser and while there he showed me the recent decision of the Bureau of Customs regarding the duty on particleboard.

The decision stated that if particleboard was imported in wallboard sizes (4 by 6, 4 by 7, 4 by 8, 4 by 9, 4 by 10, 4 by 11, and 4 by 12 feet) that particleboard would be subject to a duty of only 5 percent. However, if particleboard was brought in in sizes other than wallboard sizes, then it would be subject to a duty at a considerably higher rate, same being under section 1539 (b) which calls for duty of 22 cents per pound and 18 percent of the value.

Some of Plyworld's customers, however, had complained that upon receipt of shipments of particleboard the edges had been damaged so that trimming was required to fit one sheet or panel to another.

Since wallboard must be 4 feet in width because of the fact that the joists require it, any trimming made standard sized sheets unusable for wallboard.

Plyworld's customers complained for this reason and suggested the sheets be shipped with a one-half-inch margin on each side and at each end in order that damage to the edges requiring trimming would not render the imported sheets unusable as wallboard.

Upon inquiries to their supplier, Plyworld found that the hot press used by the mill in Surinam to produce the product resulted in a board

slightly larger than normal wallboard sizes; that normally the edges of the board produced from the hot press were trimmed prior to shipping; and that such trimming could be eliminated if this seemed more acceptable to Plyworld's customers.

It then decided to try a new tack. The idea was to order standard sizes untrimmed by the producing mill with the understanding that the board would be trimmed in the United States by the customers and that upon receipt from abroad it would not be more than 1 inch in width or length over standard sizes.

Plyworld believed that with such shipments it would be protected against losses by having the trimming done in the United States to assure delivery of standard wallboard sizes. Upon receiving requests from his customers for receipt of board in this condition, Mr. Hamilton took the matter up with his supplier's attorney, this is an attorney I might say in the United States, in fact, in Washington, D.C., not me or my firm.

He was informed this attorney was knowledgeable in customs matters. The attorney subsequently reported to Mr. Hamilton that he has discussed the matter with the chief appraiser of wallboard at the port of New York, and that in light of such discussions it was his opinion that particleboard could be imported in standard sizes plus a tolerance as other than wallboard in standard sizes dutiable at 5 percent ad valorem under paragraph 1402.

The appraiser referred to, by reason of his long years of dealing with wallboard and similar products, is regarded as an authority in such matters by the appraisers and collectors throughout the country and his views are generally communicated to the collectors and appraisers through the Customs Information Exchange (CIE).

I want to interpolate this. Mr. Hamilton acted upon the advice of counsel, experienced in customs matters, who did discuss this with Mr. Geller, the gentleman I am referring to, in New York. Mr. Geller denies that he stated to the attorney that there could be one-half inch in tolerance each way on the board. He says normally the ruling was that one-eighth inch would be allowed but no more. The attorney nevertheless for reasons best known to himself gave it as his opinion to Hamilton that one-half inch tolerance was acceptable and it would still remain dutiable under 5 percent.

On the basis of this opinion of counsel, Plyworld commenced the importation of wallboard in standard sizes, plus no more than 1 inch in width and 1 inch in length. The first entry was on September 21, 1959. Subsequently there were five orders and five entries through September 13, 1960. The total invoice value to Plyworld of the shipments involved was approximately \$21,000.

The total duty paid by Plyworld under paragraph 1402 of the Tariff Act of 1930 at the rate of 5 percent provided by such paragraph was approximately \$1,500. Mr. Hamilton had every reason to believe, based on the opinion of counsel for the Surinam supplier, that the duties paid were the proper duties and I might interpolate to say at no time, either of the first entry in September of 1959 or the second entry which took place about the second week of July 1960, and the others which followed through to September 1960, did the collector who went down and inspected it, who looked at it and measured it and found it measured in excess of the one-eighth-inch tolerance allowed ever

warn Mr. Hamilton or suggest to him that the duty might be in any way in excess of 5 percent. He paid the 5 percent in the belief that was the proper duty rate and without any warning by the collector that a higher duty would be applied even though the first shipment preceded by some 9 months the other shipments. There was no warning of any kind.

Now, the first shipment as I have said was on September 11, 1959, and was entered in the United States on September 21, 1959. The second shipment took place on June 27, 1960.

In the interval Mr. Hamilton heard by chance in the importing community some word which gave him concern as to the reliability of the opinion of the supplier's counsel on the basis of which he had acted in making the imports.

Upon inquiry of his supplier he was assured that they believed their counsel's opinion was sound as to the one-half-inch tolerance allowed over standard sizes to permit trimming in case of damage and that they were convinced that the one-half-inch overage on each side would not disqualify the product as wallboard in "standard sizes."

As a result, the five entries which occurred over the period from June 27, 1960, through September 13, 1960, were accepted by Plyworld on the assumption that despite the one-half-inch overage in each dimension, the import would be classified as wallboard in standard sizes in accordance with the then current Bureau of Customs treatment of particleboard.

Accordingly upon entry of each order it paid the 5 percent ad valorem duty under paragraph 1402.

A considerable—I might say some year or year and a half later after the board had been consumed in commerce in the United States, a considerable time after the entries were received by Plyworld, delivered to its customers in the Southern States, and consumed in the building industry there, Plyworld was informed by the collector of customs at Tampa and the collector of customs at Jacksonville that, because of the one-half-inch overage on each side, the entries would be classified under paragraph 1539(b) of the Tariff Act of 1930 instead of paragraph 1402.

Paragraph 1539(b) exacts a duty payment of 22 cents per pound and 18 percent ad valorem. Particleboard is heavy. The total duty on Plyworld's six entries was approximately \$92,500, or almost \$91,000 in excess of the duty which Mr. Hamilton believed would be applicable to his importation of approximately \$21,000 worth of particleboard, and I think, Senator Douglas, that demonstrates what Mr. Higman has said to you that because of this little one-half-inch tolerance that this gentleman thought was permitted on the basis of advice of counsel, he now is faced with a duty of over 400 percent of the invoice value of the goods which he bought and was not notified of this until some year after it was imported and sold.

Senator Douglas. Mr. Sharp, in your brief you state that Mr. Hamilton was informed by the customs appraiser in Jacksonville that if particleboard was imported in wallboard sizes the duty would only be 5 percent.

You say:

Because of the one-half-inch overage on each side they have to be classified at a higher rate under the Smoot-Hawley tariff.

Do you regard this as a reversal of the informal assurance that Mr. Hamilton received or is it they felt a tolerance of a half-inch or inch put it into a different category?

Mr. SHARP. The assurances which Mr. Hamilton acted upon were assurances of allegedly competent counsel.

Senator DOUGLAS. I mean he says he was assured by the appraiser at Jacksonville, not—page 2.

Mr. SHARP. Senator, page 2 only indicates that the appraiser advised Hamilton that standard wallboard sizes included all lengths from 6 to 12 feet. What the collector was assuring Hamilton was that he was not confined to one specific size but rather to any length of 4-foot-wide board.

Senator DOUGLAS. Then, does the issue hinge as to whether the tolerance throws it into a different category, is that the whole question?

Mr. SHARP. That is how this fellow got stuck, I say, that is the guts of it. That is how this fellow got stuck because with a half-inch tolerance a year after he imported \$21,000 worth of goods he was advised that the \$1,500 duty would be increased to \$92,500.

Senator DOUGLAS. What was the tolerance informally promised, was it a half inch or an inch?

Mr. SHARP. One inch, if you want to put it overall, so it would be 49 inches instead of 48, but that is a half inch each way if you want to put it.

Senator DOUGLAS. I see.

Mr. SHARP. We speak of it 1 inch on width and 1 inch on lengths or one-half inch all sides for trimming purposes.

Senator DOUGLAS. Yes.

Mr. SHARP. Now, Mr. Hamilton was obviously shocked by the vagaries of the customs laws and by the fact that the opinion of his supplier's counsel could be so wrong.

The \$1,500 duty which he paid on the entries suddenly amounted to \$92,500 on a purchase of goods of a value of only \$21,000.

Mr. Hamilton was also concerned with the likelihood of a receivership, bankruptcy or financial collapse since the net worth of his company would not permit payment of the exorbitant duties.

Plyworld's foreign supplier, on the basis of its attorney's advice that the entry would be subject only to the 5-percent duty, had previously loosely indicated that they would stand behind Plyworld in the event the duty assessed against the imports exceeded 5 percent.

However, the difficult relationship which had developed between Plyworld and its supplier convinced Mr. Hamilton, the owner and president of Plyworld, that he could not rely upon loose promises of indemnity, particularly since he believed they were made solely to allay the fears of Plyworld as to the reliability of the opinions of the supplier's U.S. counsel.

His belief was sustained, he felt, by the fact that such assurances as he received from abroad were completely without legal consideration and therefore noncontractual in nature.

To preserve his business, Mr. Hamilton needed help. His was indeed a hardship case. After exploring the situation thoroughly he appealed for help from his Congressman.

Congressman A. Sidney Herlong, Jr. of Florida, the Representative from the district of which Mr. Hamilton is a constituent, introduced H.R. 12242. I am assured that he did then, and does now, have every reason to believe, based on Mr. Hamilton's forthright assurances, that Plyworld will have to pay an additional assessment in excess of \$90,000 with only a hope and a prayer, at the best, unsupported by any legally binding understanding, that he will ever collect any part thereof from his supplier, whose attorney Hamilton apparently relied on.

If, as appears probable, the \$90,000 additional duty must be paid by Plyworld because it relied on the opinion of counsel who apparently made unreliable representations to its foreign supplier, Plyworld now appears headed for financial ruin. We have no reason at this time to believe that the Plyworld Corp. will not have to bear the full burden of the 400-percent-plus duties which are being assessed by the Customs Bureau on the six entries of particleboard in 1959-60.

H.R. 12242, as originally introduced by Mr. Herlong to correct the unfortunate situation of his constituent, was amended in the House to take care of a situation experienced by a constituent of the Honorable Victor A. Knox of Michigan. Without the knowledge of either Representative Herlong or Representative Knox, the amendment to the Herlong bill resulted in denying his constituents three-fourths of the relief needed to prevent catastrophe.

Senator DOUGLAS. How was that done?

Mr. SHARP. It was done by restricting—the bill as originally introduced, Senator, merely provided that particleboard entered within this limited period of time from 1959 to 1960, which had been classified as under 1539(b) should be instead reclassified under section 1402. This was almost verbatim the bill introduced by the Representative.

Subsequently, the bill was amended and it provided that the only particleboard which would be reclassified under 1402, and thereby be brought back to 5 percent would be four by eights.

In the last few days I spent considerable time trying to find out why the House bill limited the relief sought to the duty applicable to the 4 by 8 boards, this duty being only about 24 percent of the total duty of \$92,500. It may have been, in part, due to my own error in initially stating in my fact sheet to the House Committee on Ways and Means that the boards imported by Mr. Hamilton were 4 by 8's, a fact I did not learn was erroneous until some days after the House bill was passed and sent to this committee. I had no reason to think that it would make any difference one way or the other whether the boards were 4 by 8 or were other standard sizes from 4 by 6 through 4 by 12. Nevertheless, upon ascertaining the facts from the invoices, I immediately informed Senator Smathers of the matter and of the necessity that the bill be amended by the Senate committee if the relief which Mr. Herlong sought for his constituent was to be obtained. I have since also informed the House committee of the fact that the 4 by 6 through 4 by 12 boards were included in Plyworld's imports in addition to the 4 by 8's.

In any event, I cannot see how an issue could be made of the fact that the legislative relief sought affects boards in lengths (even feet) less or more than 8 feet. There is ample evidence that not only 4 by 6 through 4 by 12 but numerous other sizes have been consistently regarded by the Bureau of Customs as "standard wallboard sizes." A

prime example is the letter ruling of the Bureau of Customs which was referred to by Mr. Williams in his testimony here. That letter was dated August 13, 1956, and was signed by Mr. Higman, the Customs Bureau official who is here today. In that letter the Bureau of Customs states unequivocally that standard wallboard sizes include, among other things, the range of sizes from 4 by 6 through 4 by 12 (in even feet). If nothing more, I think this alone should make it clear that there is no controversy. Secondly, I have been assured only yesterday by the chief appraiser of wallboard at the port of New York that the Bureau of Customs has always admitted 4 by 6 through 4 by 12 board as standard wallboard sizes, and that he knows of no question ever having been raised about this matter either in the courts or internally in the collector's office of the Bureau of Customs.

Next, earlier in my testimony I have quoted the statement from Mr. Hamilton's letter of September 1959 in which he refers to "the recent decision of the Bureau of Customs." In that letter he quoted the collector at Jacksonville, Fla., as having stated that the decision held that 4 by 6's through 4 by 12's were regarded as "standard wallboard sizes."

In addition, I have here a substantial amount of literature which establishes beyond question that 4 by 6's through 4 by 12's are regarded as standard wallboard sizes.

One item is the brochure of the National Gypsum Co. which, on page 4, shows standard wallboard sizes for regular wallboard, insulating wallboard and fire-shield wallboard all in lengths from 6 to 12 feet of uniformly 4-foot widths. Secondly, I have an excerpt from the trade magazine Building Supply News for September 1961 relating to gypsum wallboard specification data and showing standard wallboard as being all 4 feet in width and 6, 7, 8, 9, 10, and 12 feet long.

Next I have the publication of the West Coast Particleboard Association setting up the specification for particleboard intended for exterior use in building construction. The publication states that the specifications covering particleboard for use as gable ends, board and batten siding over sheathing, carport closets, semiprotected ceilings and exposed storage units, and the sizes are shown as 4 feet in width and anywhere from 2 feet to 12 feet in length. Next I have a publication issued by the Architectural Standards Division of the Federal Housing Administration under date of June 19, 1961, concerning matformed particleboard for exterior use. On page 2 it is stated that such board is manufactured in standard "sizes of 4 by 2 to 4 by 12 feet." The next item is a publication of U.S. Gypsum Co. giving technical data for sheetrock wallboard which shows such board is manufactured in standard widths of 4 feet and lengths ranging to 8, 9, 10, 12, or 14 feet.

Next I have a publication relative to Bestwall Gypsum wallboard setting out the technical data and stating that the width are 4 feet and the lengths range from "6 to 16 feet (in even feet)."

Finally, I have an excerpt from the Commercial Standards issued by the Office of Technical Services, Department of Commerce, giving the technical requirements for various construction materials. The excerpts cover three common types of wallboard, one being commercial standard CS112-43 for "homogenous fiber wallboard," the second being CS176-58 covering "prefinished hardboard wall panels," and

the third being CS42-49 covering structural "fiber insulating board." In each instance the width is uniformly shown as 4 feet and the lengths for standard sizes as 6, 7, 8, 9, 10, and 12 feet.

How, under the circumstances, anyone could suggest that Mr. Hamilton's imports of particleboard in lengths of 4 by 6, 4 by 7, 4 by 9, 4 by 10, 4 by 11, and 4 by 12 feet were not imports of standard wallboard sizes, I fail to understand. Certainly, there was no thought in my mind when I filed the fact sheet with the House committee (and there is none now) that it can make any difference that the imports were not all 8 feet in length. Unfortunately, it was not until after I saw that actual measurements had been inserted in the House bill that I actually sent to Mr. Hamilton for the invoices and found that the imports included sizes other than 4 by 8. In any event, Hamilton imported only standard sizes of 4 by 6 feet through 4 by 12 feet (in even feet) and relief from the grossly inequitable duty assessed against him because of the 1-inch overage should be provided across the board and not only for the 4 by 8's.

Senator DOUGLAS. Did you have 4 by 8's in your original bill?

Mr. SHARP. No, sir.

The original bill said anything, particleboard brought in within this limited period of time classified under 1539(b) shall be reclassified under 1402. It didn't mention any sizes. It just said particleboard; no sizes were mentioned.

In my fact sheet, I did say I thought there were 4 by 8's; unfortunately, it turned out this wasn't altogether true, and this is why I testified that the change resulting in denying Mr. Hamilton three-fourths of the relief Representative Herlong was trying to provide to save Hamilton from financial catastrophe.

Now, therefore, we urge and support the amendment to the bill which has been proposed by Senator Smathers. We believe this amendment will solve the problem of Plyworld and of the constituent of Representative Knox, and will in no way set precedents or establish patterns with which the domestic particleboard producers' association need be concerned.

It can't affect any imports in the future.

In conclusion, I would like to make two short points:

1. The adoption of the amendment proposed by Senator Smathers will restore the bill generally to the form in which it was referred by the House Ways and Means Committee to the Department of Commerce, the Department of State, the Department of the Treasury, and the Tariff Commission, all of which thereafter rendered favorable reports. For this reason we support the Smathers amendment.

2. While an indefinite and unenforceable statement was made some time ago to Plyworld by its supplier that it might assist Plyworld in meeting additional duty assessments resulting from the entries involved, so far as we are informed, and I have gone into it thoroughly, I might say, there never has been any legal obligation undertaken. Plyworld currently has every reason to believe that the supplier's promises are absolutely empty in view of the lack of any legal undertaking in view of the deteriorating relationship between Plyworld and the supplier, and the fact that the supplier has since fired the attorney.

Mr. Chairman, and members of the committee, I believe that this gives you the full background of the situation and the reasons we are here; I urge the following:

1. That you adopt the amendment proposed by the Honorable Senator Smathers. This amendment is limited to assure that the only entries which will be affected by this legislation will be those which Plyworld and Representative Knox's constituent have previously brought into the country. This is in order to assure that in no respect can anyone claim that this legislation will affect any particleboard which has not long since been imported and consumed in the United States.

2. The legislation as thus amended will relieve only two importers, one in Florida and one in Michigan, from the exaction of unbelievably inordinate and inequitable duties applicable to imports which took place from 1957 through 1960; imports which due to vagaries of the customs laws have been subjected to an effective duty rate of over 400 percent ad valorem.

Senator Smathers' amendment would, we believe, simply restore the bill very closely to the language in which it was approved by the four Government agencies to which it was submitted, and which unanimously approved the bill.

The next paragraph in my statement refers to this alleged controversy over what are standard wallboard sizes.

I believe in the light of the letter which Mr. Williams read, in the light of the literature which is replete everywhere, the advertising brochures—

The CHAIRMAN. Mr. Sharp, I hope you will condense your testimony. The Senate is in session and we may have to be called to the floor.

I think you have adequately presented your case. I don't want to shut you off but please condense it all you can.

Mr. SHARP. I understand. I think I have covered the point adequately, Senator.

There is nothing left to my statement except—

The CHAIRMAN. We will insert the unread portion of your statement in the record, so that your concluding remarks will be included.

Mr. SHARP. Thank you, sir, very kindly.

The CHAIRMAN. Thank you very much.

(The unread portion of Mr. Sharp's statement follows:)

Finally, I have been informed unofficially that there is alleged to be some controversy as to whether or not sizes other than 4 by 8's should be considered as "standard wallboard sizes." I cannot imagine what the controversy can be or how one could arise on this point. Conversations held by me in the last day or two with the chief wallboard examiner in New York have convinced me that at no time has there been any question as to what sizes should be regarded as "standard wallboard sizes." Standard sizes, I am told by the examiner have not heretofore been limited to 4 by 8's, but have included many other sizes and particularly all 4-foot widths, and lengths from 6 to 10 feet, these being the sizes involved in the entries here. I am informed that the Bureau of Customs has heretofore issued rulings which make clear the position of the Bureau of Customs in this matter. The rulings are to the effect that 4 by 6's to 4 by 12's are standard wallboard sizes. One of the proponents of this bill and of the Smathers amendment, who will follow me, will make these facts clear to you.

In the closing days of Congress it seems unfortunate that you should be required to take your time in listening to a matter which relates to a specific situation such as this. However, thank God our system of Government is so designed

as to permit citizens aggrieved by the action of a branch of the Government to find a forum in which to present his grievance and obtain relief should he prove his case. The Constitution assures each of us a right of petition and this is one of the many reasons why we take such great pride in our system of Government.

I have attempted in the best way I know to present to you the grievance and petition of Plyworld Corp. of Orlando, Fla., and of its owner, Mr. K. P. Hamilton. I have further attempted to spell out to you how the bill was changed to its present form and the reasons why it must again be amended if justice is to be done to Mr. Herlong's constituent on whose behalf he introduced the bill. I deeply appreciate the opportunity to appear here, and I trust that in the short time remaining in this Congress you can find it possible to amend the bill as I have suggested to accomplish the results sought by its sponsor.

The CHAIRMAN. Now, the next witness is Mr. Richmond Gray of the National Particleboard Association, accompanied by Robert N. Hawes and Robert E. Dougherty.

Mr. Gray, will you proceed, sir.

STATEMENT OF RICHMOND GRAY, VICE PRESIDENT, GRAY PRODUCTS CO., REPRESENTING NATIONAL PARTICLEBOARD ASSOCIATION

MR. GRAY. Mr. Chairman and members of the committee, my name is Richmond Gray. I am vice president of the Gray Products Co., a manufacturer of mat-formed wood particleboard, located in Waverly, Va. I am also president of the National Particleboard Association. This association has 17 members scattered throughout the United States. These 17 companies produce approximately 75 percent of the domestic products.

Members of the association are:

Brownsville Particle Board & Associated Products, Inc., Brownsville, Oreg.
 Chapwood, Inc., Philomath, Oreg.
 Collins Pine Co., Chester, Calif.
 Crossett Lumber Co., Crossett, Ark.
 Duraflake Co., Portland, Oreg.
 Formica Corp., Cincinnati, Ohio.
 Forrest Industries, Inc., Dillard, Oreg.
 Gray Products Co., Waverly, Va.
 International Paper Co., Longview, Wash.
 National Starch & Chemical Corp., New York, N.Y.
 Pope & Talbot, Inc., Portland, Oreg.
 Rock Island Millwork Co., Rock Island, Ill.
 U.S. Plywood Corp., New York, N.Y.
 West Virginia Pulp & Paper Co., Tyrone, Pa.
 Western Panel, Inc., Sweethome, Oreg.
 Weyerhaeuser Co., Tacoma, Wash., and
 Wynnewood Products Co., Dallas, Tex.

You gentlemen have seen a sample of particleboard. Very briefly, it is a wood composition product made of particles of wood, as the name implies. These particles can be flakes, shavings, splinters, any type of particle of wood bound together with a resin binder, pressed under heat and pressure to form a panel.

These products have broad outlets including all types of furniture, including commercial and institutional furniture, that uses underlayment, decorative laminated plastics, sink tops, kitchen cabinets.

Particleboard is used in all types of cabinetry work and it is also used as an underlayment for resilient floor coverings in residential construction, also used as a shelving product, and it has a lot of miscellaneous uses.

As the committee knows, this hearing was called on a short notice and while we have done our best to prepare a statement, to set out in detail our reasons for objecting to this legislation, there are facts relating to H.R. 12242 which we know of only through information supplied to us by members of the House Ways and Means Committee and by the House committee report of the bill.

We do not know the reasons which make this legislation justifiable, as it appears to be special legislation, benefiting only a few people, all of whom have legal remedies within the provisions of section 514 of the Tariff Act of 1930.

We have been advised that the House Ways and Means Committee issued a favorable report on an amended version of the original bill because it was represented that there involved a hardship resulting from an unfair and arbitrary decision of the customs collector, in refusing to permit a 1-inch tolerance on 4- by 8-foot particleboard panels.

Had this tolerance been allowed under the then rulings of the Customs Bureau, the entries could have been liquidated under paragraph 1402 at 5 percent ad valorem as provided for in the Tariff Act of 1930. That such representations were made to the House Ways and Means Committee is supported by the report of the Ways and Means Committee, in which the committee states as follows:

* * * Several instances have been called to the committee's attention where classification under paragraph 1402 of such size board has been denied because the 4- and 8-foot dimensions have been exceeded by up to, and including, 1 inch. In one such case, the importer concerned acted upon advice that the addition of 1 inch to the length and width of the particleboard would not affect classification under paragraph 1402. However, the collector of customs who classified this merchandise deemed such excess to preclude classification under paragraph 1402.

The result is that the importer in question is liable for duties amounting to four times the value of the particleboard he brought into the United States. There are also other entries of particleboard awaiting classification where the question of classification centers about the effect of an excess of up to 1 inch in the 4- and 8-foot dimensions.

Your committee understands that the addition of up to 1 inch in the dimensions of the particleboard in question is for purposes of protecting the true 4- by 8-foot size.

If, as often happens during handling and shipping, the edges of the boards are damaged, the extra margin can be trimmed without affecting the basic 4- by 8-foot size. The addition of such a small amount of board should not, in the opinion of your committee, affect its classification and such boards should be treated as 4- by 8-foot boards. * * *

It is our understanding that the proponents of this legislation now wish to obtain an exemption from the collector's legal ruling to be extended to all sizes of particleboard entering between July 11, 1957, and until the President's proclamation of the Customs Classification Act of 1962.

Particleboard is a wood product manufactured in various size panels. It is composed of flakes or shavings of wood bound together under high heat and pressure by adhesives made of resins. Its principal end use is as core-stock in all types of furniture and in kitchen cabinets and sink tops.

The classification of particleboard has been in dispute for many years. We are advised that there are cases pending under section 514 of the Tariff Act of 1930, which involved the classification of particleboard in other than 4- by 8-foot size, classified by the collector of customs under paragraph 1539 (b).

On January 16, 1959, the Customs Service notified the industry that particleboard, if imported in standard wallboard sizes and not processed or finished in any manner specified in paragraph 1402, would be classified as wallboard under paragraph 1402 of the Tariff Act of 1930 at a duty of 5 percent ad valorem. If imported in other than "wallboard sizes" or processed or finished in any manner specified under paragraph 1402, it would be classified under paragraph 1539(b) of the Tariff Act of 1930, at a duty of 17 percent ad valorem plus 21 cents per pound.

On August 20, 1959, the Commissioner of Customs published its notice that the National Starch Products, Inc., under the provisions of section 514(b) of the Tariff Act of 1930, had protested the classification of particleboard as wallboard under paragraph 1402. This notice was published and directed to the collector of customs and others concerned. The first entry to be liquidated under the protest was on December 16, 1959, and consisted of eight crates of Virola chipboard in sheets 4 by 8 feet.

Industry protest was filed against this entry and the case was then sent to the customs court and set down for hearing on May 17, 1960. The issue before the court was the anomalous situation where identical material imported in two different sizes was being classified under two paragraphs and assessed at two different rates of duty.

A standard 4- by 8-foot wallboard size was entered under paragraph 1402 and all other sizes were entered under paragraph 1539(b).

Ten witnesses testified in this case on behalf of the American producer. No testimony was offered by the importer of the particleboard in issue. The evidence conclusively established that particleboard, whether in a 4- by 8-foot size or in other sizes, was not wallboard and was properly classified under paragraph 1539(b).

The customs court, ruling in favor of the domestic producers, in its opinion, said:

* * * The instant record provides considerably more than "a small degree of competent proof" with respect to the chief use of particleboard of the dimensions here involved. The evidence is abundant, clear, and convincing that regardless of dimensions particleboard is not only not used as wallboard, but that it is not suitable for such use. Ten witnesses having direct contact with the sale of particleboard, and personal knowledge of its ultimate uses, whose combined experiences embrace every area of the country, positively asserted that particleboard had no market in the wallboard trade, and conversely that wallboards were not suited to the ultimate purpose served by particleboard. * * *

* * * By reason of the foregoing, we find and hold that whether or not in so-called standard wallboard dimensions, particleboard is not wallboard within the contemplation of paragraph 1402, as modified, supra. * * *

The decision of the customs court was handed down on May 18, 1961. This decision was appealed to the Court of Customs and Patent Appeals, which on May 18, 1962, affirmed the decision of the customs court. Motion for a rehearing has been filed in that court.

From the above, it is quite apparent that no entries should ever have been classified by the collector of customs under paragraph 1402 as wallboard. The peculiar situation of particleboard entering under two classifications was well known to all collectors and probably to most importers, certainly prior to 1957 when at least one of the section 514 protests had been filed.

We do not know whether these entries have been liquidated and the material sold in our markets, or whether it is in warehouses wait-

ing to be sold in competition with our products. In either event it has injured or worked a hardship on the domestic industry or it will do so particularly in the Southern States.

We know that errors are possible and misunderstandings frequently occur. If the case is as represented to the House Ways and Means Committee, that the collector arbitrarily classified the proponents' imports because of a 1-inch tolerance on a 4- by 8-foot panel, then — would feel justified that the committee take the position that relief should be granted from an arbitrary and unfair decision.

However, if the panels involved are not 4- by 8-feet with 1-inch tolerance but other sizes as well, then the importers knowingly brought this material in with full knowledge of the ruling of the collector on customs and in probable knowledge of the American producer's protest which had been brought by the industry. The date of the publication of that notice was prior to August 20, 1959.

On May 18, 1961, the court ruled that particleboard was not wall-board and that it was classifiable under 1539 (b).

Any entry after May 18, 1961, should be subject to the court's decision as the proper classification. The proposal to classify particleboard under paragraph 1402, until such time as the President may proclaim the tariff schedules under section 501 (a) of the Tariff Classification Act of 1926, would have the effect of abrogating the court's decision in this matter and result in serious injury to the domestic industry.

The American industry would like to recommend to the committee that your committee accept the size limitation contained in the H.C. bill and insert a cutoff date of May 18, 1961, the date of the court's decision classifying particleboard.

Thank you, Mr. Chairman, for the opportunity to appear before the committee.

The CHAIRMAN. Thank you, Mr. Gray.

Senator DOUGLAS?

Senator DOUGLAS. Would that protect the Michigan importer?

Mr. GRAY. Under the same arrangement, it would protect all under the same basis.

Senator DOUGLAS. I thought there were two importers involved, one in Michigan and one in Florida.

What I am trying to find out is would your proposal protect the Michigan importer?

Mr. GRAY. Yes, he is to the limitation of the proposal.

Senator DOUGLAS. But not the Florida importer?

Mr. GRAY. Some of his.

Senator DOUGLAS. But not most of it?

Mr. GRAY. As I understand from the previous testimony there would be a substantial amount that would not be protected.

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

The committee will adjourn.

(Whereupon, at 11:40 a.m., the committee adjourned, subject to the call of the Chair.)