

STAINED GLASS—BICYCLES— RELIGIOUS ARTICLES

HEARING BEFORE THE COMMITTEE ON FINANCE UNITED STATES SENATE EIGHTY-SEVENTH CONGRESS SECOND SESSION

ON

H.R. 7431

TO PROVIDE FOR THE FREE ENTRY OF CERTAIN STAINED
GLASS FOR ST. JOSEPH'S CATHEDRAL, HARTFORD, CONN.,
AND FOR THE CHURCH OF ST. FRANCIS XAVIER, OF PHOENIX,
ARIZ.

H.R. 8938

TO PROVIDE A MORE DEFINITIVE TARIFF CLASSIFICATION
DESCRIPTION FOR LIGHTWEIGHT BICYCLES

H.R. 4449

TO AMEND PARAGRAPH 1774 OF THE TARIFF ACT OF 1930 WITH
RESPECT TO THE IMPORTATION OF CERTAIN ARTICLES FOR
RELIGIOUS PURPOSES

JUNE 15, 1962

Printed for the use of the Committee on Finance



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WASHINGTON 1962

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STAINED GLASS—BICYCLES—RELIGIOUS ARTICLES

FRIDAY, JUNE 15, 1962

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

The committee met, pursuant to notice, at 10:05 a.m., in room 221, New Senate Office Building, Senator Harry Flood Byrd (chairman) presiding.

Present: Senators Byrd, Kerr, Douglas, Gore, Talmadge, McCarthy, and Curtis.

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

The CHAIRMAN. The committee will come to order. The first bill on which we will hear witnesses today is H.R. 8938, to provide a more definitive tariff classification description for lightweight bicycles. I place in the record a copy of the pending bill and departmental reports from the U.S. Tariff Commission, the Bureau of the Budget, Departments of Commerce, Treasury, and State.

(The bill and departmental reports follow:)

[H.R. 8938, 87th Cong., 2d sess.]

AN ACT To provide a more definitive tariff classification description for lightweight bicycles

Be it enacted by the Senate and House of Representatives of the United States in Congress assembled, That paragraph 371 of the Tariff Act of 1930, as amended, is amended by inserting "(a)" after "PAR. 371.", and by adding at the end thereof the following:

"(b) For the purposes of this paragraph and any existing or future proclamation of the President relating thereto, only bicycles with frames (not including the front and rear forks) consisting of all straight tubing (commercially known as diamond frame bicycles), shall be classified for duty purposes as 'bicycles with or without tires, having wheels in diameter (measured to the outer circumference of the tires) over twenty-five inches, if weighing less than thirty-six pounds complete without accessories and not designed for use with tires having a cross-sectional diameter exceeding one and five-eighth inches': *Provided*, That any bicycles which, except for this subparagraph, would have been classified for duty purposes under the tariff classification described above, shall be classified for duty purposes under such other provision of paragraph 371 of the Tariff Act of 1930, as heretofore or hereafter modified pursuant to any proclamation of the President, which describes such bicycles."

SEC. 2. (a) For the purposes of section 350 of the Tariff Act of 1930, as amended, the foregoing amendment shall be considered as having been in effect continuously since the original enactment of section 350: *Provided*, That for the purposes of including a continuance of the customs treatment provided for in such amendment in any trade agreement entered into pursuant to section 350 prior to the entry into force of the amendment pursuant to subsection (b), the provisions of section 4 of the Trade Agreements Act, as amended (19 U.S.C. 1354), and of sections 3 and 4 of the Trade Agreements Extension Act of 1951, as amended (19 U.S.C. 1360 and 1361), shall not apply.

(b) The foregoing amendment shall enter into force as soon as practicable, on a date to be specified by the President in a notice to the Secretary of the Treasury following such negotiations as may be necessary to effect a modification or termination of any international obligation of the United States with which the amendment might conflict, but in any event not later than 180 days after the date of the enactment of this Act.

Passed the House of Representatives April 5, 1962.

Attest:

RALPH R. ROBERTS, *Clerk*.

U.S. TARIFF COMMISSION

MEMORANDUM ON H.R. 8938, 87TH CONGRESS, AN ACT TO PROVIDE A MORE DEFINITIVE TARIFF CLASSIFICATION DESCRIPTION FOR LIGHTWEIGHT BICYCLES

BACKGROUND

The proposed legislation would amend paragraph 371 of the Tariff Act of 1930. Paragraph 371 as originally enacted provided simply for "bicycles" and specified a rate of 30 percent ad valorem. In the bilateral trade agreement with the United Kingdom, the provision for bicycles was subdivided into 3 rate categories depending upon the diameter of the wheels. The first rate category was for bicycles having wheels over 25 inches in diameter (measured to the outer circumference of the tire) for which a rate of \$2.50 each, but not less than 15 percent nor more than 30 percent ad valorem, was provided; the second category was for bicycles having wheels over 19 but not over 25 inches in diameter, for which a rate of \$2 each, but not less than 15 percent nor more than 30 percent ad valorem, was provided; and the third category was for bicycles having wheels not over 19 inches in diameter, for which a rate of \$1.25 each, but not less than 15 percent nor more than 30 percent ad valorem, was provided.

The U.S. tariff treatment of bicycles was further negotiated at Geneva in 1947, resulting in the inclusion of concessions in the General Agreement on Tariffs and Trade (GATT) that preserved the rate categories established in the bilateral agreement with the United Kingdom except the first rate category above mentioned (bicycles having wheels over 25 inches in diameter). That category was subdivided into two rate categories, and a further reduction in duty was granted on the typical lightweight type of bicycle which was being imported from England, described in the Agreement as follows:

"Bicycles with or without tires, having wheels over 25 inches in diameter (measured to the outer circumference of the tire), if weighing less than 36 pounds complete without accessories and not designed for use with tires having a cross-sectional diameter exceeding $1\frac{1}{8}$ inches."

The further reduction on this description of bicycles was to the rate of \$1.25 each, but not less than $7\frac{1}{2}$ percent nor more than 15 percent ad valorem. No changes in rates were made on other bicycles, and they remained the same as those which were established pursuant to the previous bilateral agreement with the United Kingdom.

As a result of an "escape clause" investigation by the Tariff Commission, the President, in August 1955, proclaimed increases in the duties on all bicycles provided for in paragraph 371 of the tariff act. However, a proportionately smaller increase was proclaimed on the "lightweight" category, the description of which is quoted above, than was proclaimed on the other categories of bicycles. The increased rate for the "lightweight" category was \$1.87 $\frac{1}{2}$ each, but not less than $11\frac{1}{4}$ percent nor more than $22\frac{1}{2}$ percent ad valorem.

Subsequently litigation involving the escape-clause proclamation resulted in the judicial invalidation of the tariff increase on the "lightweight" category of bicycles because the President had proclaimed a lower increased rate for such bicycles than had been recommended by the Tariff Commission. This had the effect of restoring the original GATT rate on "lightweight" bicycles (\$1.25 each, but not less than $7\frac{1}{2}$ percent nor more than 15 percent ad valorem), and the President promptly took steps to rectify the situation through the trade-agreement process. This involved resort to article XXVIII of GATT, the invocation of which, it was announced, "is intended to result in rates on bicycles equal to those provided for in" the escape-clause proclamation relating to bicycles, which had increased the duty rates on bicycles (25 F.R. 13248). The renegotiation of the bicycle tariff under article XXVIII extended to all bicycles, including the lightweight category above described, and followed "peril point" determina-

tions by the Tariff Commission in accordance with section 3 of the Trades Agreements Extension Act of 1951, as amended.

ANALYSIS OF LEGISLATION

The tariff-rate categories for bicycles under paragraph 371 of the Tariff Act of 1930, as established by the Presidential Proclamation 3394 of February 25, 1961 (26 F.R. 1751-2) following the renegotiation of the U.S. tariff treatment of bicycles under article XXVIII of GATT, are as follows:

Tariff Act of 1930, paragraph	Description of products	Rate of duty
371	Bicycles with or without tires, having wheels in diameter (measured to the outer circumference of the tire): Over 25 inches: If weighing less than 36 pounds complete without accessories and not designed for use with tires having a cross-sectional diameter exceeding 1 $\frac{3}{8}$ inches. Other..... Over 19 but not over 25 inches..... Not over 19 inches.....	\$1 87 $\frac{1}{2}$ each, but not less than 11 $\frac{1}{4}$ percent nor more than 22 $\frac{1}{2}$ percent ad valorem. \$3.75 each, but not less than 22 $\frac{1}{2}$ percent nor more than 30 percent ad valorem. \$3 each, but not less than 22 $\frac{1}{2}$ percent nor more than 30 percent ad valorem. \$1.87 $\frac{1}{2}$ each, but not less than 22 $\frac{1}{2}$ percent nor more than 30 percent ad valorem.

Bicycles meeting the specifications set forth in the first tariff-rate category above are dutiable thereunder regardless of the shape or form of the frame. The legislation, if enacted, would limit this tariff rate category to "bicycles with frames (not including the front and rear wheel forks) consisting of all-straight tubing (commercially known as diamond frame bicycles)." In other words, bicycles meeting all of the "lightweight" category specifications set forth in the GATT schedule of U.S. concessions, as modified pursuant to article XXVIII of the agreement, would be prohibited from classification under that category if their frames are not of all-straight tubing. This would result in an increase in the duty on such bicycles from an effective¹ rate of 11 $\frac{1}{4}$ percent ad valorem to an effective² rate of 22 $\frac{1}{2}$ percent ad valorem.

The proposed limitation of the "lightweight" bicycle rate provision to "only bicycles with frames (not including the front and rear wheel forks) consisting of all-straight tubing (commercially known as diamond frame bicycles)" is apparently intended to limit the lightweight rate to bicycles of the type represented in the attached illustration A. Presumably, the girls' models of lightweights (see illustration B) would be included also because they are considered commercially to be of the diamond frame type; however, as apparent from the illustration, the missing top bar alters the "diamond" shape.

The parenthetical words "(not including the front and rear wheel forks)" proposed in the act as part of the new definition of lightweight bicycles create an ambiguity because the elimination of the front wheel fork and the two rear wheel forks leaves a triangular rather than a diamond shape.

The types of bicycles which the proposed act would exclude from the "lightweight" category, and hence be subjected to the higher rate of duty, are those of the type in illustrations C and D. The frames of these bicycles do not consist of "all-straight tubing—one of the proposed requirements for bicycles classifiable under the "lightweight" rate category.

The U.S. bicycle industry, which is no doubt behind the proposed legislation, sought unsuccessfully to accomplish substantially the same results as those that would result from the enactment of the proposed legislation in connection with

¹ The duties on bicycles consist of a specific rate per unit with a minimum and maximum ad valorem rate. The minimum rates are presently the ones that apply, and it is in this sense that the word "effective" is here used.

² The duties on bicycles consist of a specific rate per unit with a minimum and maximum ad valorem rate. The minimum rates are presently the ones that apply, and it is in this sense that the word "effective" is here used.

the article XXVIII negotiations referred to above. Industry spokesmen contended that the U.S. industry developed the curved or "cantilever" bicycle frame, which became a characteristic of its "middleweight" type of bicycle, that following the President's escape clause action in 1955 the British adopted this type of frame for its "lightweight" bicycle still meeting the "lightweight" tariff specifications, thus resulting in the importation of "hybrid middleweights" under the "lightweight" tariff-rate category; and that in 1947, when the "lightweight" tariff category was established, it was intended to include in that category only the "traditional" lightweights; i.e., lightweight bicycles with frames of straight tubing.

At the time the U.S. GATT concessions on bicycles were originally negotiated (1947), "lightweight" bicycles were characterized by narrow ($1\frac{3}{8}$ inches in cross sectional diameter), high-pressure tires, and frames of straight tubing, and were commonly referred to in the United States as "diamond frame" bicycles (because of the general shape of part of the frame). (See illustrations A and B.)

The "lightweight" type of bicycle had also been produced in the United States for many years but not in significant quantities. Annual domestic production of "lightweights" never amounted to more than 5 or 6 percent of total annual production of all types.

Prior to 1955, the principal type of bicycle produced in the United States was one generally referred to as a "balloon tire" bicycle, occasionally referred to as a "heavyweight." The tires on this type of bicycle were characteristically low-pressure tires, usually $2\frac{1}{8}$ inches in cross sectional diameter, and the frames were usually of curved-bar design, either single- or double-bar design.

"Balloon tire" and "lightweight" were basically the only two types of bicycles produced in the United States until the latter part of 1954. In that year the domestic bicycle industry introduced a new type of bicycle referred to by various names, such as "cantilever," "cantilever frame," "cantilever middleweights," and "middleweights." In boys' models the frames had a "curved" or slightly "bent" top bar extending from the head post to the seat post; in addition, they had two curved parallel bars, in relatively small diameter tubing, that extended from the underbar near the head post up to the top bar near the seat post, then down to the rear axle in a single, sweeping curve. These bicycles were equipped with tires $1\frac{3}{4}$ inches in cross sectional diameter. Soon after 1954, all bicycles equipped with tires $1\frac{3}{4}$ inches in cross sectional diameter. Soon after 1954, all bicycles equipped with tires $1\frac{3}{4}$ inches in cross sectional diameter came to be referred to as "middleweights."

The "middleweight" was very successful, and sales in the United States rose rapidly. There were two main results: (1) Within 2 or 3 years the "middleweight" had completely replaced the "balloon tire" in domestic production, and (2) foreign manufacturers began producing "middleweights" for sale in the U.S. market. In 1955 about 2,700 bicycles described as "middleweights" were imported, and in 1956 more than 113,000 were imported.³

Foreign manufacturers soon began installing tires that were $1\frac{3}{8}$ inches in cross sectional diameter (a characteristic "lightweight" tire) on curved-frame bicycles (which was a characteristic of domestic "middleweight" bicycles) and still met the specifications of the "lightweight" tariff-rate category. The domestic industry protested to the Bureau of Customs, claiming that the language in the "lightweight" tariff category "not designed for use with tires having a cross sectional diameter exceeding $1\frac{5}{8}$ inches" excluded bicycles having frames usually associated with "middleweights." The Bureau of Customs did not agree.

Since 1957, one-half or more of all bicycles imported have been classified under the "lightweight" tariff category (see table attached). Separate data concerning the number of "lightweights" and the number of "middleweights" entering within the classification are not available. However, it is estimated that not less than one-third nor more than one-half of the total number of bicycles imported in this classification are bicycles with frames that are of the "middleweight" type (i.e., with curved frames). Thus, based on the volume of imports in recent years, it is estimated that this act would double the rate of duty on approximately 25 percent of the total imports of all bicycles.

³ These data were collected by the Commission from importers that accounted for more than 90 percent of total imports in 1956. It is not known in what tariff category they were classified for duty purposes.

COMMENT

Section 1 of the act would define by legislation a tariff classification description included in an international agreement so as to exclude therefrom articles presently included therein and to require the classification of the articles so excluded under a tariff classification description included in the international agreement that does not presently include such articles.

Section 2(b) of the act recognizes that the amendment made by section 1 would be inconsistent with international obligations of the United States and affords the President a 180-day period of grace within which to complete international negotiations to eliminate the inconsistency. However, if the President fails to bring U.S. international obligations into accord with the amendment within the 180-day grace period, the amendment is nevertheless to become effective.

Since the application of the amendment would deny to the contracting parties to the GATT the full benefits of a tariff concession the United States would be obligated to pay compensation or suffer retaliatory action that would deny some benefit that had been granted to the U.S. export trade.

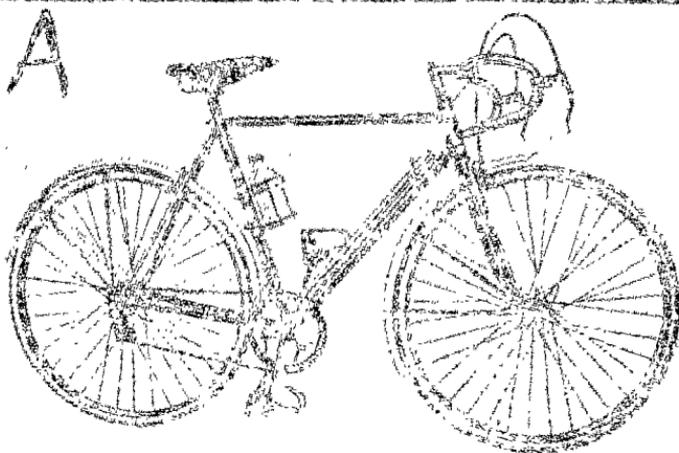
Spokesmen for the domestic bicycle industry take the position that when the "lightweight" bicycle classification was established in the GATT in 1947 it was intended to include only bicycles meeting the prescribed specifications, provided however that the frames of the bicycles were of all-straight tubing. They further contended that entry of bicycles not having frames with all-straight tubing under the "lightweight" rate category constitutes a "custom loophole." If it had been intended to include in the "lightweight" classification only those bicycles having frames with all-straight tubing it would seem that this could easily have been provided for in the specifications of the trade agreement concession on "lightweight" bicycles; the fact is, such a frame specification was not included. However, regardless of what may have been the "intention" in 1947, the GATT concession on bicycles was renegotiated only recently under article XXVIII procedures, and notwithstanding the well-known fact that bicycles with curved-bar frames entered under the "lightweight" classification if otherwise meeting the specifications of that classification, no change in the trade agreement specification for lightweights was made. (See Presidential Proclamation No. 3394 of Feb. 25, 1961; 26 F.R. 1751-2.)

Bicycles: U.S. imports, total, and by specified types, 1950-61

Year	Bicycles with or without tires, having wheels over 25 inches in diameter (measured to the outer circumference of the tire)			Total, all bicycles	Ratio of col. (1) to col. (3)	Ratio of col. (1) to col. (4)
	If weighing less than 36 pounds complete without accessories and not designed for use with tires having a cross-sectional diameter exceeding 1 3/8 inches	Other than bicycles weighing less than 36 pounds complete without accessories and not designed for use with tires having a cross-sectional diameter exceeding 1 3/8 inches	Total col. (1) and col. (2)			
	(1)	(2)	(3)			
	<i>Number</i>	<i>Number</i>	<i>Number</i>	<i>Number</i>	<i>Percent</i>	<i>Percent</i>
1950.....	39, 688	15, 632	55, 320	67, 789	71 7	58. 5
1951.....	90, 886	34, 876	125, 762	176, 644	72 3	51. 5
1952.....	166, 337	39, 238	205, 575	245, 763	80 9	67 7
1953.....	429, 321	35, 563	464, 884	592, 999	92 4	72. 4
1954.....	654, 683	41, 767	696, 450	963, 667	94 0	67. 9
1955.....	747, 188	72, 313	819, 501	1, 223, 990	91 2	61 0
1956.....	497, 716	198, 235	694, 951	1, 173, 346	71 5	42. 3
1957.....	373, 662	80, 142	453, 804	748, 689	82. 3	49 9
1958.....	467, 000	69, 821	536, 821	823, 614	87 0	56. 7
1959.....	578, 281	76, 895	655, 176	1, 013, 396	88 3	57 1
1960 ¹	704, 022	90, 833	794, 855	1, 188, 347	88 6	59 2
1961 ¹	726, 287	59, 921	786, 208	1, 087, 218	92. 4	66. 8

¹ Preliminary.

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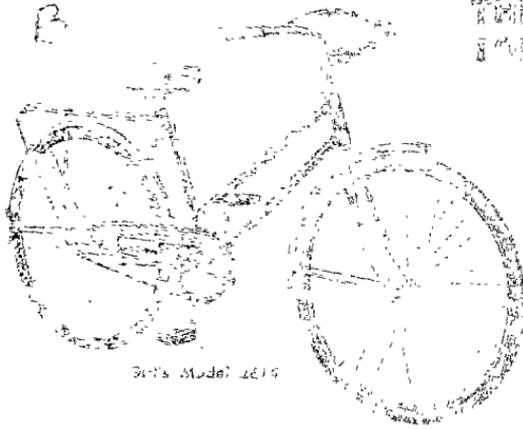
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NEWS

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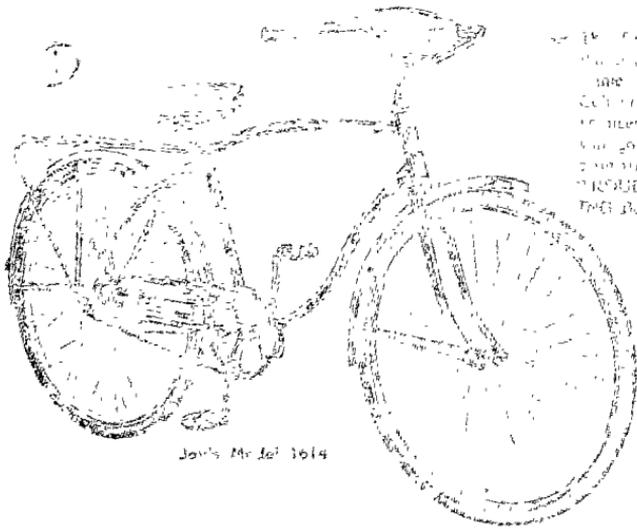
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★ **Boys' Auto-Shift Cassette Gear Brake**
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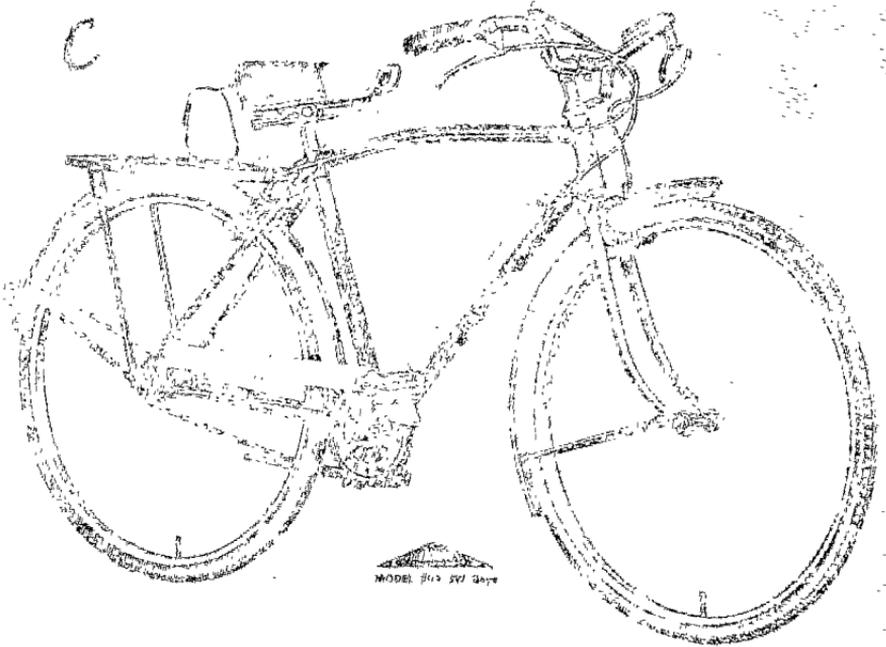


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- Wheels - 26" x 1 1/4", spaced Raleigh Rim.
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- Handlebar - Month Fixed Rigid.
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- Chaincase - Safety white.
- Tires - Dunlop.
- Finish - Royal Pink & White for Boys; Multicolor Blue & White for Girls.
- Decorative details, White head and fenders.
- fittings - Heavy-duty Carrier, White Pump Safety White Fenders, Spoke & Kickstand.



MODEL 5101 SW Girls

Tricolor Model 5101CW Boys; 5101CW Girls. Carrier Brakes with 3-speed gear, plus fender and bell.



EXECUTIVE OFFICE OF THE PRESIDENT,

BUREAU OF THE BUDGET,
Washington, D.C., June 25, 1962.

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

DEAR MR. CHAIRMAN: This will acknowledge your letter of April 11, 1962, requesting the views of the Bureau of the Budget regarding H.R. 8938, to provide a more definitive tariff classification description for lightweight bicycles.

The bill would prohibit the entry of bicycles under the lightweight classification if they have frames of curved tubing rather than straight tubing. This restriction would result in the application of increased rates of duty in violation of trade agreement obligations of the United States.

In view of the above, the Bureau of the Budget concurs with the Departments of State, the Treasury, and Commerce in opposing enactment of the bill.

Sincerely yours,

PHILIP S. HUGHES,
Assistant Director for Legislative Reference.

THE SECRETARY OF COMMERCE,
Washington, D.C., June 14, 1962.

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

DEAR MR. CHAIRMAN: This letter is in further reply to your request for the views of this Department with respect to H.R. 8938, a bill to provide a more definitive tariff classification description for lightweight bicycles.

By custom and usage in the United States, "lightweight bicycles" means bicycles having narrow tires, usually $1\frac{3}{8}$ inches in cross-sectional diameter, triangular-shaped frames and tubing, and weighing less than 36 pounds. Bicycles which weigh more than 36 pounds generally have a cantilever or curved frame and are known as middleweight. Bicycles having a cantilever or curved frame and weighing less than 36 pounds are now being imported. These imported bicycles thus combine the shape of the heavier bicycle with the weight of the lightweight bicycle.

The duty classification is in terms of weight and other characteristics rather than shape of frame. Thus, bicycles which weigh less than 36 pounds are in the same classification for duty purposes whether they have a triangular-shaped frame, a frame of straight tubing, or a frame of some other shape.

H.R. 8938 would provide that bicycles not having triangular-shaped frames could not be classified as lightweight bicycles, regardless of their actual weight. The practical effect of this legislation would be that imported bicycles having a cantilever or curved frame, whether weighing less or more than 36 pounds, would become subject to the same duty rate as bicycles weighing 36 pounds or more. This duty at present is \$3.75 each, but not less than $22\frac{1}{2}$ percent nor more than 30 percent ad valorem, as compared to the present duty of \$1.875 each, but not less than $11\frac{1}{4}$ percent nor more than $22\frac{1}{2}$ percent ad valorem, on bicycles weighing less than 36 pounds. No actual statistics are available which would show the effect of this action. However, an informed guess is that it would apply to approximately 25 percent of current imports in class 7940040. Total imports in this class were 704,022 units, valued at \$14,679,638 in 1960, and 726,287 units, valued at \$14,887,082 in 1961.

The present duty on bicycles is the result of a renegotiation which took place in February 1961 at the request of the United States. A court decision had invalidated a withdrawal of concession which the United States has previously made on bicycles, pursuant to an investigation by the Tariff Commission under section 7 of the Trade Agreements Extension Act, as amended. The purpose of this renegotiation, which was achieved, was to establish as the trade agreement rate, the rate of duty which had been declared invalid by the court decision.

The Department of Commerce is opposed to enactment of H.R. 8938. It would be detrimental to our overall negotiating position to reduce the tariff concession on bicycles within such a short time after negotiation without full justification.

This legislation would also make the United States liable to make compensatory concessions and would thus reduce the amount of tariff negotiating leeway which the administration hopes to obtain from the Trade Expansion Act of 1962.

The Department, however, believes that consideration should be given to clarifying the lightweight bicycle classification in any future treatment of the bicycle situation by the Tariff Commission or in any future negotiations on bicycles conducted under GATT.

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

Sincerely yours,

EDWARD GUDEMAN,
Under Secretary of Commerce.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, June 12, 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 the Treasury Department on H.R. 8938, to provide a more definitive tariff classification description for lightweight bicycles.

The proposed legislation would narrow the scope of a trade agreement provision reducing the rate of customs duty on certain bicycles classifiable under paragraph 371 of the Tariff Act of 1930. Specifically, it is designed to limit the classification of bicycles dutiable at the lower rate pursuant to the trade agreement to bicycles with frames consisting of all straight tubing (along with other specifications).

The President, on January 25, 1962, sent to the Congress a message on the reciprocal trade agreements program in which he outlined his foreign trade program. He called for an expansion of the existing trade agreements program to be accompanied by trade adjustment assistance for companies, farmers, and workers who suffer damage from increased foreign import competition. This program has been incorporated in H.R. 9900 which is pending before the Committee on Ways and Means. The Treasury believes that H.R. 9900, which provides for the negotiation of reciprocal action to reduce import restrictions and for a comprehensive program of adjustment assistance, is preferable to isolated unilateral action on particular imports or relief of particular industries.

In view of the above, the Treasury Department would be opposed to the enactment of H.R. 8938 and recommends favorable consideration of the President's foreign trade program.

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,

ROBERT H. KNIGHT, *General Counsel.*

DEPARTMENT OF STATE,
Washington, June 19, 1962.

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

DEAR MR. CHAIRMAN: I refer to your letter of April 11, 1962, requesting the views of the Department of State regarding H.R. 8938, a bill to provide a more definite tariff classification description for lightweight bicycles.

The bill would restrict the classification of lightweight bicycles to types with straight-tube frames, thereby excluding from the lightweight classification bicycles having curved tube frames. If this classification were to be established, the rate on duty on imports of curved tube frame bicycles would be doubled.

U.S. imports of lightweight bicycles were valued at nearly \$15 million in 1961. The United Kingdom was the principal source of imports (\$8.4 million) followed by Austria (\$1.8 million), the Federal Republic of Germany (\$1.5 million), Japan (\$1.3 million), Italy, (\$918,000), the Benelux countries (\$435,000), and France (\$232,000). It is estimated that one-half of the imported bicycles now

entering the United States under the lightweight classification would be affected by the bill.

Bicycles are the subject of trade agreement concessions negotiated with other countries in return for concessions of benefit to the United States. The most recent negotiations regarding bicycle rates took place early last year when the United States agreed to maintain rates of 11¼ percent ad valorem on all lightweight bicycles regardless of their frame construction and 22½ percent ad valorem on all other types. These rates were proclaimed by the President on February 25, 1961, and became effective on February 27, 1961.

In section 7 of the Trade Agreements Extension Act of 1951, as amended, the Congress has provided a procedure whereby the domestic bicycle producers could request relief if they believe that increased imports of curved tube frame bicycles were causing or threatening serious injury to the industry. Most importantly, in the event of a Tariff Commission finding of serious injury and a recommendation by it for a modification of the existing trade agreement concession, the President could impose additional restrictions on imports in a manner which would be consistent with the terms of our trade agreement obligations. Without a finding of serious injury, however, action to increase the duty on bicycles would be inconsistent with the undertaking given last year by the United States not to increase the duty on lightweight bicycles.

If this bill is enacted and the United States by its action impairs its trade agreement concession on bicycles, it would be required to grant new trade agreement concessions to the other interested countries as compensation for its action or, failing that, to accept the imposition of higher tariffs by those countries on products imported from the United States. In other words, enactment of the proposed legislation would directly hurt the export opportunities of other American industries, either (1) by necessitating the utilization of U.S. tariff bargaining authority for compensation which could otherwise be used to obtain new concessions for these industries, or (2) causing retaliation by other countries which would raise tariffs and thus reduce market opportunities for efficient U.S. industries.

The British, French, Belgian, Austrian, West German, and Italian Governments have made strong formal representations to the Department of State and have indicated their view that the proposed legislation would be inconsistent with our trade agreement commitment with them. Thus, action to double the duty on curved-tube frame lightweight bicycles, following so closely on other restrictive actions by the United States in the trade field and affecting these same countries, would have an unfortunate effect on our foreign relations.

The view has been advanced in support of the proposed legislation that the change in classification is required because it was never intended to include curved-tube frame bicycles in the trade agreement concession. This Department considers that when the trade agreement concession was initially negotiated in 1947 on bicycles "having wheels * * * in diameter over 25 inches: if weighing less than 36 pounds complete without accessories and not designed for use with tires having a cross-sectional diameter exceeding 1⅝ inches," it was intended to include all such bicycles regardless of the type of frame. Curved-tube bicycles had been produced in the United Kingdom for a number of years prior to the negotiation of the concession in 1947, and British curved-tube bicycles had been sold in the United States since 1939. The tariff classification description was designed to distinguish between imported bicycles like the heavyweight, standard American bicycles which typically had balloon tires and imported lightweight bicycles which were characterized by large wheels and narrow tires. Thus, the only classification criteria were weight, wheel diameter, and tire size.

This Department considers that the Presidential proclamations of 1955 and 1961 which modified the original tariff concession rates on lightweight bicycles also include all types, inasmuch as the description of such bicycles in the proclamations was identical with that of the 1947 tariff concession. It believes, therefore, that special legislation is not required to clarify the scope of the existing tariff concession or the provisions relating to lightweight bicycles in the two Presidential proclamations.

One further point merits attention. Enactment of the proposed legislation would raise the rate of duty on the affected lightweight bicycles from 11¼ percent to 22½ percent, or about \$2 per bicycle, and would raise the retail price correspondingly. It would thus discourage bicycle imports and reduce the dollar earnings of the supplying countries. To the extent it did so, it would tend to diminish the ability of these countries—each of which purchases more than it

sells in the United States—to buy U.S. exports. As a result U.S. producers of internationally competitive goods would be deprived of a portion of their established export markets.

To sum up, it is clear that the trade agreement concession was intended to include all lightweight bicycles. The proposed legislation is not necessary to clarify the scope of the existing tariff concession or actions taken by the President. It would bypass the statutory escape-clause procedure and confer additional protection on the domestic bicycle industry at the expense of U.S. producers of goods for export. It would be inconsistent with international obligations of the United States and needlessly introduce new irritations in our relations with the exporting countries. For these reasons, the Department of State is opposed to the enactment of H.R. 8938.

If, after consideration of this report and the information submitted in public hearings, there are additional questions which arise, the Department would be pleased to appear before the committee.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

FREDERICK G. DUTTON, *Assistant Secretary.*

Senator KERR. Mr. Chairman, once before I had the opportunity to present Mr. Griffin Eckle of Oklahoma to this committee. He represents not only his own modest business in Oklahoma but also the National Bicycle Dealers Association, and I am happy to again present him to this committee, and urge the favorable consideration by the committee of the position that he and his associates take.

The CHAIRMAN. Mr. Eckle, we will be glad to hear from you, sir. Take a seat.

STATEMENT OF L. GRIFFIN ECKLE, NATIONAL BICYCLE DEALERS ASSOCIATION

Mr. ECKLE. Good morning; thank you, Senator.

Mr. Chairman, and members of the Senate Finance Committee, first I want to thank you for again permitting me to appear before you in the interest of my bicycle industry.

With your permission, I should like to step around the table here and speak with you rather informally for just a few moments.

Throughout these many years in the bicycle business, I, as L. Griffin Eckle, the owner of a bicycle concern that has operated for some 50 years—in fact, we are this year celebrating our golden anniversary—come before you to present a problem that faces the bicycle industry at this time.

With your indulgence, I should like to point out the solution to the problem which can be corrected through H.R. 8938.

Senator GORE. First, what is the problem?

Mr. ECKLE. The problem—

Senator GORE. Before you give us the solution, what is the problem?

Mr. ECKLE. Well, if the Senator will permit me, I will present the problem at this time, sir.

Senator GORE. Very well.

Mr. ECKLE. Here we find a bicycle with a No. 1. This bicycle has always been known as the foreign style lightweight bicycle. You will note that its construction is of a straight tubing, and its frame is shaped as a diamond, and this bicycle is commonly known and referred to as a diamond frame bicycle.

You will note, to, that its tires are of a very narrow construction; in fact, only $1\frac{3}{8}$ inches in diameter.

These tires are known in the market as a lightweight tire. We go over here to the No. 2 bicycle, and we find here the style of bicycle that has always been known as the American style of bicycle which is commonly referred to as the American middleweight bicycle.

This style is not constructed of the straight tubing but, rather, is constructed of the curved tubing. Its tires are not the $1\frac{3}{8}$ -inch diameter when inflated, but $1\frac{3}{4}$ inches and are commonly referred to in the market as a middleweight tire.

Now, the No. 3 bicycle which you see here is identical in appearance to the No. 2 except for one thing, and that is the fact that the No. 3 frame which you see over here has with it the No. 1 narrow, $1\frac{3}{8}$ -inch tires rather than the wider $1\frac{3}{4}$ -inch tires of the No. 2 bicycle.

Now, the problem is very simple; the No. 1 bicycle was intended to bear an $11\frac{1}{4}$ -percent tariff.

Senator KERR. It does bear an $11\frac{1}{4}$ -percent tariff under the law?

Mr. ECKLE. That is right, sir.

Senator KERR. And is classified as what?

Mr. ECKLE. It is classified as a lightweight bicycle and bears the $11\frac{1}{4}$ -percent tariff.

Senator KERR. Yes.

Now, in order to be relieved of the effect of the $11\frac{1}{4}$ -percent tariff what have the importers done?

Mr. ECKLE. All right, sir—

Senator KERR. Isn't that your problem?

Mr. ECKLE. Yes, sir. Just leading into that.

Senator KERR. Tell us what it is.

Mr. ECKLE. The problem, then, is that this style of bicycle (pointing to the No. 2 bicycle) was intended to bear a $22\frac{1}{2}$ -percent tariff, but when they took the No. 2 frame and put with it the No. 1 tires they took with it the No. 1 tariff, the $11\frac{1}{4}$ -percent tariff rather than the $22\frac{1}{2}$ -percent tariff that this bicycle, which appears to be the same as that, but isn't, bears.

It is as simple as that.

Now, gentlemen, Mr. John Auerbach and Mr. C. W. Hannon, who are scheduled to testify after me, intend to fully discuss this problem further, and to convey to you why we in the bicycle industry are vitally interested in the passage of H.R. 8938.

Senator KERR. What would H.R. 8938 do, Mr. Eckle?

Mr. ECKLE. H.R. 8938 would reclassify these bicycles in a manner in which the Treasury Department would be able to definitely affix a $22\frac{1}{2}$ -percent tariff to this bicycle along with this bicycle.

And would leave the No. 1 bicycle as it was intended in the first place, $11\frac{1}{4}$ percent.

The CHAIRMAN. Does Treasury approve or disapprove of H.R. 8938?

Mr. ECKLE. May I answer it this way: The House Ways and Means Committee voted unanimously, and the House has passed H.R. 8938.

Senator KERR. Do you know what the Treasury's position is on it?

Mr. ECKLE. I would be glad to ask our consultant here the result of the conference with the Treasury but I have not been informed, sir.

Senator KERR. You do not know yourself?

Mr. ECKLE. No, sir; but I am sure that one of these gentlemen will be glad to convey that answer to you.

Senator KERR. As I understand it now, the historic pattern has been that a bicycle like No. 1 has had a classification as a light or what has been the classification under which the No. 1 has had applied to it the 11¼-percent tariff rate?

Mr. ECKLE. Yes, sir.

Senator KERR. What is the classification rate, can one of your men tell us?

Mr. ECKLE. It is a lightweight.

Senator KERR. Lightweight bicycle?

Mr. ECKLE. Yes, sir.

Senator KERR. A bicycle number, like No. 2, has been classified as what?

Mr. ECKLE. As a middleweight.

Senator KERR. A middleweight.

Mr. ECKLE. Yes, sir.

Senator KERR. The No. 3 has been built to be imported as a lightweight bicycle and get the 11¼-percent rate instead of the one which it resembles here which has the 22-percent rate?

Mr. ECKLE. That is my impression; yes, sir.

Senator KERR. Is that the problem?

Mr. ECKLE. Yes, sir.

Senator KERR. How does H.R. 8938 correct that?

Mr. AUERBACH. By adding a new criteria which would require that the 11½-percent—11¼-percent rate in addition to present criteria be limited to those bikes which have these traditional straight tubes, always characteristic of foreign-type bicycles.

That other bicycles of the American type always marked by curved tubes would take the 22½-percent duty rate.

Senator KERR. And that is the sole purpose of H.R. 8938?

Mr. AUERBACH. Yes, sir, Senator, and we—

The CHAIRMAN. Have you identified yourself?

Mr. AUERBACH. Yes, sir, I am John Auerbach of the Bicycle Institute of America.

We expected to add more information to demonstrate that this bicycle (pointing to the No. 1 bicycle) has always been a characteristically foreign type, and that an American bike (pointing to the No. 2 bicycle).

Senator KERR. All right.

Mr. ECKLE. Thank you, very much, gentlemen, again.

This concludes my statement.

The CHAIRMAN. Just for curiosity, what do these three bicycles sell for?

Mr. ECKLE. This bicycle over here, I don't know the name of it, in my part of the country would sell for around \$39.50.

This bicycle, No. 2, sells for \$46.95 in my part of the country. And that one over here, No. 3, would sell for around \$37.50.

The CHAIRMAN. Thank you, sir.

The next witness, Mr. Paul Kaplowitz, General Counsel, U.S. Tariff Commission.

Take a seat, sir, and proceed.

STATEMENT OF PAUL KAPLOWITZ, GENERAL COUNSEL, U.S. TARIFF COMMISSION

Mr. KAPLOWITZ. Mr. Chairman, I am here at the request of the committee and not as a witness, to testify for or against this legislation, but only to be available to the committee for any special information that we might be able to supply.

The Tariff Commission does not take a position for or against any particular tariff bill. If there are any questions that we might be able to answer the committee might wish to ask of a factual nature or otherwise I will attempt to answer those but I am not going to make any statement for the Commission for or against this legislation.

The CHAIRMAN. Well, do you agree with what Mr. Eckle has said as to the facts?

Mr. KAPLOWITZ. Well, the only point that I would like to make is that the description in the agreement does not use the term "lightweight" but describes a bicycle in terms of specifications by weight and circumference of the wheels, the tires.

Senator GORE. Circumference or diameter?

Mr. KAPLOWITZ. Diameter of the tires; yes, sir, I am sorry. Diameter of the tires. What happened is that this bicycle—

Senator KERR. No. 3?

Mr. KAPLOWITZ. No. 3 by utilizing this tire width enables it to meet the trade agreement description for bicycles which is a description generally considered to have been designed to cover lightweight bicycles.

Senator KERR. Is it a fact at the time the agreement was made the No. 1 bicycle here represented the type generally being imported?

Mr. KAPLOWITZ. I believe at the time the first concession was made on this, and this goes back to probably 1939, we first made a concession to the United Kingdom in a bilateral agreement which was adopted in the General Agreement on Tariffs and Trade in 1947, at which time I do not believe that this type of bicycle, No. 2, had yet been introduced into the market.

The curved frame type of bicycle was introduced by the American producers, and it became very popular, and the foreign manufacturers began to make a bicycle with the curved frame which was generally called a middleweight type bicycle.

But in order to get it within the lower rate, the lightweight category which, as I said before, does not use the term "lightweight"—

Senator KERR. But that is what it is, is the lightweight category.

Mr. KAPLOWITZ. We are talking about the British lightweight bicycle particularly.

Senator KERR. Yes.

Mr. KAPLOWITZ. By putting these tires, these lightweight tires, on the middleweight type bicycle they were able to meet the specifications for the lower rate category.

The Customs Bureau necessarily goes by the specifications, and since it meets them it necessarily had to classify these bicycles within this category.

Senator KERR. But at the time the agreement was made, that was the type of bicycle that was being imported, and which was regarded as the lightweight bicycle.

Mr. KAPLOWITZ. I so understand.

Senator KERR. Or the one meeting the specification.

Mr. KAPLOWITZ. Yes.

I would only point out that this concession involving this particular description was renegotiated in 1960 after the President's escape-clause proclamation had been invalidated by a court because of a technical deficiency.

President Eisenhower had the concession renegotiated, at which time it was understood that bicycle No. 3 type fell within this classification.

Senator GORE. Within what classification?

Mr. KAPLOWITZ. Within the lightweight category, we will call it for convenience, bearing the lower rate of duty. And I suppose it would be argued that as recently as 1960 the United States, with the understanding that bicycle No. 3 took the lower rate, renegotiated. I am stating that as a fact without trying to color it.

Senator KERR. I understand.

Senator DOUGLAS. Mr. Chairman, may I ask a question?

The CHAIRMAN. Senator Douglas.

Senator DOUGLAS. You have spoken of two elements in the classification of these bicycles; namely, the frame, and the original British bicycle is triangular, and the American curved, and, second, the size of the tire.

Now, is there not a third criterion—

Mr. KAPLOWITZ. Weight.

Senator DOUGLAS (continuing). Namely, the weight?

Mr. KAPLOWITZ. That is right. Less than 36—

Senator DOUGLAS. What about the comparative weights of 1, 2, and 3?

Mr. KAPLOWITZ. Well, No. 1 would meet the 36-pound-weight requirement. I assume that No. 3 would also.

Senator DOUGLAS. You assume? I mean, do you know?

Mr. KAPLOWITZ. Well, I have not weighed them, but if they got the 11-percent tariff, if they received the treatment of the lower tariff rate—

Senator DOUGLAS. Thus far the discussion has been confined to the question of the size of the tire and the frame, but I had always thought if the term "lightweight" was used that it had some relationship to the weight, otherwise it is a complete misnomer.

Mr. KAPLOWITZ. Well, sir, as I stated before, the term "lightweight" is not used in the agreement. That word is not used in the agreement.

Senator DOUGLAS. In H.R. 8938 is says:

To provide a more definitive tariff classification description for lightweight bicycles.

Now, can you tell me the comparative weights of these, and if you cannot tell me, can we put them on the scales here and have them weighed?

Mr. KAPLOWITZ. I think one of the gentlemen who put these in evidence possibly could tell what the weights are.

Senator KERR. Mr. Chairman, I have got to go to another committee. The one thing I wanted to be sure was in the record was that at the time of the original negotiations this No. 1 was that type that was

being imported and met the specifications of what is referred to as "lightweight," although the negotiations did not carry that term.

Mr. KAPLOWITZ. Yes, sir.

Senator KERR. And it was the introduction of No. 3 before the 1960 negotiations that brought about the condition which caused the American bicycle industry to seek this legislation, and was the basis of the action by the Ways and Means Committee in the House.

Mr. KAPLOWITZ. That is right.

Senator DOUGLAS. Mr. Chairman, could I get an answer to my question? What is the comparative weight of these three bicycles?

Mr. AUERBACH. Sir, I identify myself again. I am John Auerbach. I would volunteer to be helpful by suggesting that bicycle No. 3 probably weighs a little under 36 pounds.

Senator DOUGLAS. And bicycle No. 1, how much?

Mr. AUERBACH. Bicycle No. 1 probably weighs somewhere between 30 and 36 pounds, perhaps 33.

Senator DOUGLAS. That is quite a gap. That is a 6-pound gap which you have between 30 and 36 pounds. How much does it weigh?

Mr. AUERBACH. I would say about 33 pounds.

Senator DOUGLAS. And No. 2?

Mr. AUERBACH. No. 2—permit me to qualify the weight of No. 3 by saying that the mudguard, the chain guard, is not weighed in the bicycle for duty purposes. I would say that the weight of the No. 2 bike is about 36 pounds.

Senator DOUGLAS. No. 2?

Mr. AUERBACH. Yes, sir.

Senator DOUGLAS. Thirty-six. And No. 1 was how much?

Mr. AUERBACH. Thirty-three.

Senator DOUGLAS. Thirty-three.

In other words, No. 2, which was classified as the lightweight bicycle originally was 3 pounds.

What about No. 3, what about this composite creature here, with a curved frame and small tires?

Mr. AUERBACH. In order to qualify it for the lower rate of duty, the exporters managed to get the weight of it just under 36 pounds. Generally they run about 35 pounds.

Senator GORE. Would you yield there just for a minute, Senator. I am a little confused.

Does that include the fender and the mudguard? Are you speaking of the weight of this bicycle as it appears here or is this bicycle shipped without the mudguard and weighed without the mudguard?

Mr. AUERBACH. On the paragraph 371, bulk classification of bicycles, has a phrase in it which says "complete without accessories."

It is the chain guard which is considered an accessory.

If that bicycle had a tank on it, which would be a metal enclosure in this area, that would not be weighed in the bicycle. It would be considered an accessory.

If it had other features of the same kind, the bike could come in weighing over 36 pounds, but yet qualify for the low rate of duty because the customs appraisers do not weigh in these accessories.

Therefore, the weight factor is quite a diluted one. There are lightweights coming in now, both over and under 36 pounds, as there are middleweights.

Senator GORE. I thank the Senator for yielding.

Senator DOUGLAS. Do the accessories have a tariff?

Mr. AUERBACH. Yes, sir.

Senator DOUGLAS. Are they taxed separately?

Mr. AUERBACH. Yes, sir.

Mr. KAPLOWITZ. Yes, sir.

Mr. AUERBACH. They have a separate paragraph.

Senator DOUGLAS. What percentage rate?

Mr. AUERBACH. 30 percent.

Senator DOUGLAS. They pay a higher rate as an accessory than their proportionate rate would be as a bicycle?

Mr. AUERBACH. Not when they come in with the bicycle. I think they are considered an entity.

Senator DOUGLAS. But they come in separately, you say—

Mr. AUERBACH. They come in with the bicycle, but even though the weight will not be included in the weight of the bicycle, the duty will be at the bicycle rate.

Senator DOUGLAS. I do not quite understand the full meaning of that sentence.

Mr. AUERBACH. If a bicycle, sir, that qualifies for the 36-pound duty rate, which is $11\frac{1}{4}$ percent, came in weighing 40 pounds, it would still take that $11\frac{1}{4}$ percent duty rate because it may have included 4 pounds of accessories, which the appraisers say will not be included in the weight for duty purposes.

Senator DOUGLAS. That will pull it down 11 percent or about \$4?

Mr. AUERBACH. It would pull it down to the $11\frac{1}{4}$ percent rate of the value of the bike, as against $22\frac{1}{2}$ percent.

Senator DOUGLAS. That is right, or \$4.80, you mean. But then the accessory would pay a tax as an accessory.

Mr. AUERBACH. Yes.

Senator DOUGLAS. How much would the tax be on the accessories, as such?

Mr. KAPLOWITZ. I think I might point out that when a bicycle comes in as one thing, if it is a complete bicycle, it pays a duty as a bicycle. But in order to determine its classification as to the rate, since the weight determines whether it pays a $22\frac{1}{2}$ percent or an $11\frac{1}{4}$ percent duty, the accessory, the weight of the accessories is deducted for the purpose of determining the rate, and then the bicycle—

Senator GORE. If the Senator would yield again briefly, it seems peculiar to me that a bicycle comes in weighing 40 pounds, and yet in order to determine the duty, the Customs Service does not weigh the bicycle as it is shipped, but deducts the accessories even though the accessories are on the bicycle, and yet you give the $11\frac{1}{4}$ percent rate to the accessories if they are on the bicycle. Do I understand this correctly?

Mr. KAPLOWITZ. Unless the accessories are separately provided for and are separately dutiable.

Senator GORE. Go ahead.

Mr. KAPLOWITZ. It is a very complicated thing.

Senator DOUGLAS. On the No. 1, which weighs 33 pounds—

Mr. AUERBACH. Yes, sir.

Senator DOUGLAS. Does that include accessories?

Mr. AUERBACH. At the moment does this include accessories? No, sir.

Senator DOUGLAS. If it were to come in with accessories weighing 4 pounds—

Mr. AUERBACH. Yes, sir.

Senator DOUGLAS. Wait a minute—would it include accessories?

Mr. AUERBACH. It could come in with accessories that will throw it over the 36-pound weight. But those accessories will not be considered part of the weight of the bicycle.

The answer to this question as to Senator Gore's question, is, yes, the bike can weigh over 40 pounds and yet take the low 36-pound rate of duty.

Senator DOUGLAS. Let me ask you this: In the days when No. 1 was imported from England, suppose it weighed 37 pounds with accessories. Would it still be classified as a lightweight bicycle?

Mr. AUERBACH. If it had the characteristics we have described, this diamond frame, straight tubes, and it had that—

Senator DOUGLAS. What I am trying to get at is this: Is it the frame or the tire or the weight or all three together which constitute the classification of a lightweight bicycle?

Mr. AUERBACH. There are two—

Mr. KAPLOWITZ. If I may interject here, the frame is not a part of the specification or this classification category. It is solely the weight and the circumference of the wheels—I mean the diameter of the wheels—or the outer circumference of the tires. There is no mention in the classification description as to what type of frame there should be.

The point being made here is that when the original description was carved out for this, what will be called a lightweight category, the foreign lightweight type bicycle was this diamond-shaped straight tube frame.

As often happens in customs experience when foreign manufacturers learn that some particular type of article is popular in this country, naturally they try to copy it.

They copied this curved shape middleweight bike because of the fact it was selling in this country. They took advantage of that popularity, but also in order, because it was usually a heavier type of bicycle than a lightweight bicycle, they fashioned it to meet the weight specification, and to meet the test of the circumference of the wheel by putting the narrow lightweight tire on the wheel. This is an effort to receive the benefit of a lower rate.

Senator DOUGLAS. Yes.

Mr. KAPLOWITZ. But, at the same time, take advantage of the popularity of a particular, of the curved-frame type of bicycle.

But it was within, as long as they met the classification description that took the lower rate they are, of course, entitled to fashion their bicycle in any form or shape that they desire.

Senator DOUGLAS. Was it the ruling of the customs authorities that they had to meet only one of these two tests; namely, the question of the tire or was the weight classification also, weight criterion?

Mr. KAPLOWITZ. No, sir. They have to meet every specification of this for this low weight category.

Senator DOUGLAS. That included tires and weight but did not include frame?

Mr. KAPLOWITZ. That is right.

Senator DOUGLAS. I may be naive, but I had always thought that the term "lightweight" referred to weight. However, I think there is a question as to whether the accessories should be included. That is a very real question. I always thought when you used the term "weight" that had a weights and measures connotation to it. It could be measured in pounds.

Mr. KAPLOWITZ. Well, Senator, this came about—the original tariff provision did not have any such category. It just had one provision, bicycles.

In the trade agreements there was a carving up of that original tariff provision into various categories, one of them being this particular specification which was very carefully calculated to meet the test of the British type or lightweight type of bicycle.

But once a set of specifications is established, and anyone has the privilege of fashioning his bicycle or whatever it may be to meet the particular specifications in order to receive the benefit of a lower rate, and this is what they did here.

Senator GORE. Let me ask a question at this point. Suppose that a bicycle with the characteristics of No. 2, is bought abroad, and the seat and the handlebars are left off, and it weighs 36 pounds—

Mr. KAPLOWITZ. No; it must be complete without accessories is the specification.

Senator GORE. What is an accessory?

Mr. KAPLOWITZ. This is a matter of great controversy. We have just had some judicial decisions handed down where the customs have classified particular additions to a bicycle as accessories.

Senator GORE. Suppose the fenders are left off. I don't know what the court decision is, but if you mean by a complete bicycle, a bicycle that one can ride, you can leave the fenders off of No. 2, and ride it, can you not?

Mr. KAPLOWITZ. Yes, sir, but the way the courts look at this—

Senator GORE. I am not talking about the way the courts look at it. How do you look at it, and how do we look at it?

Mr. KAPLOWITZ. It is a question of whether something is a part or whether it is an accessory.

Senator GORE. Now, the fender on the wheel is a mudguard, isn't it?

Mr. KAPLOWITZ. Yes, sir.

Senator GORE. The covering over the chain is likewise a guard of a sort, is it not?

Mr. KAPLOWITZ. Yes.

Senator GORE. How would the court distinguish between a mudguard fender and a guard on a chain, calling one an accessory and another a part of the bicycle?

Mr. KAPLOWITZ. I would like to ask the same question many times. [Laughter.]

Senator GORE. It is a little too complicated for me.

The CHAIRMAN. Any further questions?

If not, thank you, Mr. Kaplowitz.

The next witness is Mr. C. W. Hannon, Bicycle Manufacturers Association of America.

Take a seat, Mr. Hannon.

STATEMENT OF C. W. HANNON, PRESIDENT, THE MURRAY OHIO MANUFACTURING CO.

Mr. HANNON. My name is C. W. Hannon, and I am president of the Murray Ohio Manufacturing Co., with a factory at Lawrenceburg, Tenn., and offices in Nashville, Tenn.

Mr. Chairman and members of the Senate Finance Committee, I am very happy to have this opportunity of expressing my views on this bill 8938 which is of very vital importance to our company and to the other bicycle manufacturing companies in this country.

Now, this proposed legislation does not grant any concessions or give any preferred treatment to the American bicycle industry. No new relief is sought, and no change is made in the existing tariff rates. This is not a tariff bill. It is a bill to correct an error in classifications.

The sole purpose of this bill is to carry into effect the clear intent of the 1948 General Agreement on Tariff and Trade and the President's proclamation of August 18, 1955. Its enactment would plug a loophole and prevent continuation of a subterfuge by which foreign-made American style middleweight bicycles are being imported into this country camouflaged as lightweights and at only one-half the rate of duty required for middleweights.

In 1947 the British requested a lower rate of duty on lightweight bicycles. Effective January 1, 1948, the General Agreement on Tariff and Trade (GATT) granted a major tariff concession to lightweight bicycles fixing a duty rate of 7.5 percent on lightweights, and 15 percent on all other bicycles. At that time the rate on bicycles, of all types of bicycles, was 15 percent. So the concession of 7.5 percent down from the 15 percent, was made specifically for lightweight bicycles.

At that time there were only two types of bicycles on the world market: the lightweight, which was the foreign bicycle used primarily for adult transportation, and the American-style bicycle which was primarily for children, boys and girls, and any imports of that character were to take the 15 percent.

Now, paragraph 371 of the trade agreement which has just been discussed here by the previous witness, reads this way:

"Bicycles"—this is a classification of the lightweight bicycles—

Bicycles having wheels in diameter over 25 inches: If weighing less than 36 pounds complete without accessories and not designed for use with tires having a cross-sectional diameter exceeding 1½ inches.

I would like to differ very strongly with the previous witness that the classifications only involved the weight and the size of the tires. This paragraph very clearly says "not designed for."

Now, design has had some bearing in this or it would not be worded that way.

I will pass on from that. I just wanted to make that point because I feel that if the paragraph which is in the tariff code gives a "design factor" specification for a bicycle, then it should be included in any discussion of that particular paragraph.

Senator GORE. What is the significance of that paragraph? I do not understand what the significance of it is. Is this No. 3 bicycle designed for a tire of greater width or is it not?

Mr. HANNON. Well, Senator, if I may, with your permission, go ahead and finish what I am going to say, then I would like to answer that question because I think I will cover it pretty well in just a minute or so.

Prior to 1948 less than 2 percent of the bicycles that were sold in this country were imports. Imports grew following this concession, and by 1954 over 40 percent of the bicycles sold in this country were imports.

The Tariff Commission granted relief on bicycles in 1955. The President's proclamation increased the duty on lightweights from 7.5 to 11.5—to 11.25 percent, and all other bicycles from 15 to 22.5 percent.

Now, the President's letter—

Senator GORE. Was the term "lightweight" used in the proclamation?

Mr. HANNON. Oh, yes, very definitely, and I will quote right now from President Eisenhower's letter to the Senate Finance Committee and to the House Ways and Means Committee.

Senator GORE. What is meant by "lightweight"? Is this, in fact, a reference to weight, or does this have some historical meaning or connotation other than weight, or in addition to weight?

Mr. HANNON. Well, Senator, I am sure it is not just the weight that is involved that caused it to be called a lightweight. It is that type of bicycle that has been known universally as a lightweight.

Senator GORE. Would it be possible for both these bicycles, No. 1 and No. 2, to be called lightweight?

Mr. HANNON. I think it would be if they would make those tubes of solid steel and put some lead in the handlebars, you could get a lot of weight in that bike.

Senator DOUGLAS. But if it weighed over 36 pounds it would then not be a lightweight bicycle.

Mr. HANNON. That is correct. It would not take the classification that entitles it to a lower rate of duty.

If I may, I would just like to go through and I would be very glad to answer questions later, Senator. But I would like to just quote this portion of the President's letter to the chairman of this committee which was dated August 18, 1955. This is just a portion of his letter. It says:

Moreover, this action preserves the existing relationship in tariff treatment for imported large-wheel lightweights. * * * As for the other varieties of imports—the balloon-tire, middleweight, and junior-size types, for example—I have not disturbed the Tariff Commission majority's recommendation for an increase in the minimum duty to 22.5 percent. It is in these areas that the American industry has specialized and developed the market. Here the competition from imports is direct and thus most prone to cause serious injury.

Now from January 1948 when the concession was granted on that bicycle No. 1, up to February of 1957, Customs assessed the proper rates of duty.

The low rate of duty to this bicycle No. 1, and the higher rate of duty to any curved-bar type of bicycle, that is how Customs assessed the rates of duty.

Now in February of 1957, Customs issued a ruling to the ports of entry in which it inaccurately provided the specifications of paragraph 371. It completely ignored in that ruling the design factor of that paragraph.

As a result of that ruling, the importers found that by simply substituting the 1 $\frac{3}{8}$ type of tire on bicycle No. 3, they could have it accepted through our Customs at the lower rate of duty.

This had never occurred prior to this time. Bear in mind that for practically 10 years after this concession was made, from 1948 through 1957, Customs assessed the correct rate of duty, the low rate to No. 1, and the high rate to this other type of bicycle.

But the importers very cleverly seized upon the fact that this ruling of the ports did not specify anything with regard to the design, and they, therefore, copied the American design of this type of bicycle, No. 2, which, as the previous witness said, had become very popular.

Now the Germans first started shipping that type of bicycle in, in 1958, and the British followed suit, and in large volume production in 1959.

We made every effort to get the Customs to correct this error, and we understand that Mr. Kelly, Commissioner of Customs, felt their ruling was not correct, and that he recommended a change of practice order be issued. But both the legal department of Customs and the legal department of Treasury would not go along and would not approve it.

After 2 years of futile efforts with Customs and Treasury, we concluded that our only practical source of relief was by an act of Congress. The bill, H.R. 8938, will correct this inequity as it accurately describes a lightweight bicycle. Paragraph 371 has proved to be inadequate.

I might say right at this point that this bill, H.R. 8938—which is not a tariff bill but a classification bill is necessary in order to have this lightweight classification description clarified to correct what is going on.

It is most obvious that that type of bicycle, No. 2, has got a design different from bicycle No. 1, and when paragraph 371 was written and it said "not designed for," it certainly means something. It means that the design has got some relationship to this problem.

Now apparently paragraph 371 is not clear, and that is the reason for this proposed legislation. The present lightweight classification description is not properly or adequately defined, and we want a definition of a lightweight, which will do that, and we are seeking it through this bill, H.R. 8938.

Now the American bicycle industry is in a worse position with this going on than we were prior to the escape-clause action of 1955 when the tariffs were increased, because prior to 1955 all American-style bicycles were assessed at 15 percent rate of duty. Now at 11.25 percent they are 3.75 percent lower than they were prior to the escape clause action.

I think the following items clearly support our position:

No. 1 is the transcript of the 1947 trade agreement;

No. 2 is a statement made by Chairman Mills in support of this bill on the floor of the House which I quote :

The committee is convinced that the record made before the Committee for Reciprocity Information, the agency which heard interested parties before the trade agreement negotiations in question were started, shows that this trade agreement concession was intended to cover bicycles which are commonly known as diamond frame bicycles—

that bicycle there [pointing to bicycle No. 1]—

that is, bicycles with frames, not including the front and rear wheel forks, consisting of all straight tubing.

Now that is the end of the quote, and it pretty clearly shows from the investigation that they made that the record is clear that that is the only type of bicycle, No. 1, that was entitled to the lower rate of duty.

The next item is the President's proclamation of August 1955; and, No. 4, the Tariff Commission in its statement to the House Ways and Means Committee in connection with this bill, on page No. 6 of their report, and I quote from it, says :

At the time the U.S. GATT concession on bicycles was originally negotiated in 1947, lightweight bicycles were characterized by narrow 1 $\frac{3}{8}$ -inch, high-pressure tires, and frames of straight tubing, and more commonly referred to in the United States as diamond frames.

Now the previous witness, who is Counsel for the Tariff Commission—that is the Tariff Commission's report to the House in connection with this particular bill.

So then the last item that I think very definitely supports our position is that the importers themselves, and I would like to quote a section of the importers' testimony which appeared in the U.S. Court of Customs Appeals, and which was appeal No. 5069 of March 7, 1961, quoting Mr. Hiss, counsel for the importers, and Mr. Osgood, with the Raleigh Industries of England representative in this country, and this is the testimony—Mr. Hiss asking the question of Mr. Osgood. He said :

What is a lightweight bicycle?

I think you will find some of the answers to what we have all been talking about right in this testimony. He says :

What is a lightweight bicycle; how would you describe a lightweight?

Mr. Osgood. It's generally described as a bicycle with a diamond-type frame and with wheels that are 26 by 1 $\frac{3}{8}$ inches or whose width is less than 1 $\frac{3}{8}$ inches.

Mr. Hiss. There are other kinds of bicycles?

Mr. Osgood. Certainly.

Mr. Hiss. Such as?

Mr. Osgood. Middleweight bicycles, balloon-tired bicycles.

Senator DOUGLAS. Would the witness testify as to who Mr. Osgood is? Who is Mr. Osgood?

Mr. HANNON. Mr. Osgood is the director of the Raleigh Industries in this country.

Senator DOUGLAS. The what?

Mr. HANNON. He is a representative in this country of the Raleigh Industries, which is one of the large British manufacturing firms.

Senator DOUGLAS. British manufacturer?

Mr. HANNON. Yes.

Mr. HISS. How does a middleweight bicycle differ from a lightweight bicycle?

Mr. OSGOOD. A middleweight bicycle usually has a cantilever frame such as this, and it's usually equipped with a wider tire than a 1½ inch.

Mr. HISS. And a balloon tire bike?

Mr. OSGOOD. A balloon tire bike will have the same type of frame with a wider tire still.

Mr. HISS. And the bicycle which you import is a lightweight made in England?

Mr. OSGOOD. That's right.

Mr. HISS. Are lightweight bicycles made in other countries?

Mr. OSGOOD. Yes.

Mr. HISS. Such as?

Mr. OSGOOD. Holland, France, Belgium.

I would like to supply to this committee the written report that I prepared which includes a number of exhibits. The first exhibit is the Congressional Record, page 5507, of April 5, 1962, on this bill.

No. 2 is a picture of a typical lightweight bicycle.

No. 3 is the American style bicycle, with the small 1¾ tire which is coming in currently at the low rate of duty.

The fourth exhibit is the exhibit showing the true pictures of the bicycles that were used in the 1947 negotiations when this concession was granted, and it shows a lightweight bicycle just like that bicycle with the straight tubing, No. 1.

(Exhibits Nos. 2, 3, and 4 were made a part of the committee files. Exhibit No. 1 follows:)

TARIFF CLASSIFICATION FOR LIGHTWEIGHT BICYCLES

Mr. MILLS. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (H.R. 8938) to provide a more definitive tariff classification description for lightweight bicycles.

There being no objection, the Clerk read the bill, as follows:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph 371 of the Tariff Act of 1930, as amended, is amended by adding at the end thereof the following:

"For the purposes of this paragraph and any existing or future proclamation of the President relating thereto, only bicycles with frames (not including the wheel forks) consisting of all straight tubing (commercially known as diamond frame bicycles), shall be classified for duty purposes in any tariff classification for "bicycles having both wheels over twenty-five inches in diameter, if weighing less than thirty-six pounds complete without accessories and not designed for use with tires having a cross-sectional diameter exceeding one and five-eighth inches"; *Provided,* That any bicycles which, except for this amendment, would have been classified for duty purposes under the tariff classification described above, shall be classified for duty purposes under such other provision of paragraph 371 of the Tariff Act of 1930, as heretofore or hereafter modified pursuant to any proclamation of the President, which describes such bicycles.

"Sec. 2. (a) For the purposes of section 350 of the Tariff Act of 1930, as amended, the foregoing amendment shall be considered as having been in effect continuously since the original enactment of section 350: *Provided,* That for the purposes of including a continuance of the customs treatment provided for in such amendment in any trade agreement entered into pursuant to section 350 prior to the entry into force of the amendment pursuant to subsection (b), the provisions of section 4 of the Trade Agreements Act, as amended (19 U.S.C. 1354), and of sections 3 and 4 of the Trade Agreements Extension Act of 1951, as amended (19 U.S.C. 1360 and 1361), shall not apply.

"(b) The foregoing amendment shall enter into force as soon as practicable, on a date to be specified by the President in a notice to the Secretary of the Treasury, but in any event not later than ninety days after the passage of this Act."

With the following committee amendments:

"Page 1, line 4, strike out 'amended,' and insert 'amended by inserting "(a)" after "Par. 371.", and'

"Page 1, line, before 'For' insert 'b'.

"Page 1, line 7, after 'the' insert 'front and rear'.

"Page 1, strike out line 10 and in line 11 strike out 'over twenty-five inches in diameter,' and insert: 'as "bicycles with or without tires, having wheels in diameter (measured to the outer circumference of the tires) over twenty-five inches,"'

"Page 2, line 4, strike out 'amendment,' and insert 'subparagraph,'.

"Page 2, line 10, strike out the quotation marks.

"Page 2, line 22, strike out the quotation marks.

"Page 3, strike out 'Treasury, but' in line 2 and all of lines 3 and 4 and insert: 'Treasury following such negotiations as may be necessary to effect a modification or termination of any international obligation of the United States with which the amendment might conflict, but in any event not later than 180 days after the date of the enactment of this Act.'"

The committee amendments were agreed to.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

Mr. MILLS. Mr. Speaker, the purpose of H.R. 8938, which was introduced by our colleague, the Honorable Ross Bass, and which was unanimously reported by the Committee on Ways and Means, is to amend paragraph 371, Tariff Act of 1930, as amended and modified, to insure that for the purposes of that paragraph and any existing or future proclamation of the President relating thereto, only bicycles with frames, not including the front and rear wheel forks, consisting of all straight tubing shall be classified for duty purposes under any provision for bicycles with or without tires, having wheels in diameter—measured to the outer circumference of the tires—over 25 inches, if weighing less than 36 pounds complete without accessories and not designed for use with tires having a cross-sectional diameter exceeding $1\frac{5}{8}$ inches.

Pursuant to the authority given to him in section 350 of the Tariff Act of 1930, as amended, the President in 1947 proclaimed a modification in duty to reflect a trade agreement concession on certain bicycles provided for in paragraph 371 of the Tariff Act of 1930, as modified. These bicycles were described as follows for the purposes of the trade agreement concession:

"Bicycles with or without tires, having wheels in diameter (measured to the outer circumference of the tire):

"Over twenty-five inches—

"If weighing less than thirty-six pounds complete without accessories and not designed for use with tires having a cross-sectional diameter exceeding one and five-eighths inches."

The committee is convinced that the record made before the Committee for Reciprocity Information, the agency which heard interested parties before the trade agreement negotiations in questions were started, shows that this trade agreement concession was intended to cover bicycles which are commonly known as diamond frame bicycles; that is, bicycles with frames, not including the front and rear wheel forks, consisting of all straight tubing.

In 1954, the domestic producers of bicycles introduced a new bicycle style, featuring a curved tubular frame which they called the middleweight bicycle. This model proved popular with consumers. Its popularity led foreign manufacturers to imitate this style of bicycles on curved tubular frame bicycles found that if they mounted tires normally used on typical lightweight bicycles on curved tubular frame bicycles they could get the benefit of the lower rate of duty applicable under the trade agreement concession to typical light-weight bicycles. The customs authorities decided that the typical lightweight bicycle provision was not, by its own terms, limited to bicycles with straight tubular frames and accordingly, any bicycle meeting the stated specifications as to weight, diameter of wheels, and size of tires was classifiable thereunder, irrespective of the type of frame of the bicycle.

The passage of H.R. 8938 will insure that any provision for typical lightweight bicycles in paragraph 371 of the Tariff Act of 1930, as modified, will be applicable only to such typical bicycles, that is, straight tubular frame bicycles. The bill will consequently result in requiring a reclassification to another appropriate provision of paragraph 371, as modified, of those types of bicycles which are not typical lightweight bicycles, but which, nevertheless, are presently being classified under the provision therefor.

Your committee unanimously recommends the passage of H.R. 8938.

Mr. MASON. Mr. Speaker, this legislation pertains to the tariff classification for lightweight bicycles. During the consideration of this legislation, information was presented to the committee suggesting that bicycles that were in fact not lightweight bicycles were entering the United States under the lightweight classification instead of as mediumweight bicycles. It is the purpose of this legislation to correct that problem.

The Committee on Ways and Means was unanimous in recommending favorable consideration of this legislation to the House.

Mr. BASS of Tennessee. Mr. Speaker, in connection with H.R. 8938, that just passed, may I say that this bill seeks only to insure the application of the original trade agreement intent—1947—that bicycles classified as “lightweights” shall have frames—not including the front and rear wheel forks—of all straight tubing.

The record before the Committee for Reciprocity Information conclusively demonstrates that this was, in fact, the correct and proper intent of the trade agreement negotiators—see House Report No. 1255, 87th Congress, 1st session, at page 2.

Passage of H.R. 8938 will permit all bicycles which were originally intended to come in at the lower lightweight duty rate to continue to come in at that lower rate.

As the practice directly contravenes the 1947 trade agreement intent, curved tubular bicycles of American middleweight design will no longer be permitted entry into the United States at the low lightweight duty rate. This is as it should be and follows from the initial understanding and subsequent statements of all parties, including foreign manufacturers, importers, and domestic producers.

Calling as it does for the application of the original trade agreement intent, this bill is of a distinctly just and equitable nature. In these circumstances, a proper lightweight tariff classification should be worked out prior to the negotiations of further general tariff reductions.

Mr. HANNON. It shows the American style bicycle just like this with the curved tubing, No. 2. That is in the negotiation of 1947, and these are pictures from the transcript of that particular hearing.

Senator DOUGLAS. Mr. Chairman, might I ask the witness a question?

The CHAIRMAN. Yes.

Senator DOUGLAS. I would like to ask the witness what was the date on which this cross-questioning by Mr. Hiss and Mr. Osgood occurred?

Mr. HANNON. What was the date?

Senator DOUGLAS. Yes.

Mr. HANNON. It was in the early part of 1961. It was March 10, 1961.

Senator DOUGLAS. What?

Mr. HANNON. March 10, 1961.

Going ahead, in this report that I would like to have the privilege of leaving with the committee, I have a number of exhibits, and included in those exhibits is this testimony that I just gave you regarding Mr. Hiss and Mr. Osgood.

Now, in conclusion, gentlemen, I would like to say that if the negotiators in 1947 intended the low rate of duty to apply to the American designed bicycle as well as the lightweight design simply by putting the small $1\frac{3}{8}$ tire on the American style bicycle they would have worded paragraph 371 this way, “that any bicycle with a $1\frac{3}{8}$ tire will take the low rate of duty.” It would have been just that simple.

Now, so long as different rates of duty are maintained for different types of bicycles, it would appear imperative that descriptive language be enacted to delineate the distinctions so that each type will bear the rate of duty intended.

We, therefore, very strongly urge that the bill, H.R. 8938, which does contain a true description of the lightweight bicycle, be approved by your committee, and we hope passed by the Senate.

I would like to say that—I would like to repeat that—this is not a tariff bill. It is a bill to correct a classification, and it is pretty obvious that it needs correction because certainly the intent of the negotiators, when they granted the concession on that No. 1 bicycle never intended that the low rate of duty could ever apply to these other bicycles.

I want to thank you very kindly.

The CHAIRMAN. Thank you very much.

Are there any questions?

Senator DOUGLAS. I would like to have the witness comment on this remark I am going to make. The agreement dealing with bicycles with wheels over 25 inches in diameter laid down two specific criteria for a lightweight bicycle: (a) as weighing less than 36 pounds; (b) with tires having a cross-sectional diameter not designed for use for tires having the cross-sectional diameter exceeding $1\frac{5}{8}$ inches or less than $1\frac{5}{8}$ inches.

These are criteria established in the agreement, they are explicit.

As I understand it, unit No. 3 meets those three tests; first, it has small tires and, secondly, it weighs less than 36 pounds without accessories.

But now you are saying that you should consider the words "not designed for use"?

Mr. HANNON. Right. That is the real meat of this whole situation.

Senator DOUGLAS. You have the cross-examination of Mr. Osgood which seems to give support to your contention.

Mr. HANNON. Right.

Senator DOUGLAS. But is it not a somewhat forced interpretation to say that a bicycle is not designed to use with small tires when small tires can be used on this bicycle?

Mr. HANNON. No question about it, Senator, it can be used. You can use the middleweight tire and balloon tire on that bicycle. But what we are talking about is the classification of the bicycles that get the preferential rate of duty.

Senator DOUGLAS. I understand.

But now you are reading into this agreement this triangular frame instead of the curved frame.

Now, that is not mentioned. I agree if your reading is correct that the description of the British representative used this as a main criterion. But it is not in the letter of the law, so to speak, is it?

Mr. HANNON. Well, you take the Tariff Commission's report to the House Ways and Means Committee at page 6 that I read, the transcript of it very clearly says that the lightweight—at the 1947 trade agreement—had small $1\frac{3}{8}$ high-pressure tires and frames of straight tubing. That is the Tariff Commission's report to the House. That completely agrees with the testimony of Mr. Osgood.

Are there any further questions?

The CHAIRMAN. Any further questions?

Senator CURTIS. Just one word. I shall not delay the committee. I do want to say I have been interested in this bill since it was passed by the Ways and Means Committee. It seems to me that the premise

upon which it is based is not only just but it is sound, and it will also pick up maybe \$900,000 or up to \$1 million in revenue a year.

Mr. HANNON. That is right.

Senator CURTIS. That is all.

The CHAIRMAN. The next witness is Mr. John Auerbach of the Bicycle Institute of America.

STATEMENT OF JOHN AUERBACH, BICYCLE INSTITUTE OF AMERICA

Mr. AUERBACH. Thank you, sir.

The CHAIRMAN. Proceed, sir.

Mr. AUERBACH. I am very glad, Senator, that I have the opportunity to be the third and final speaker in support of 8938 because it gives me an opportunity to direct my testimony to many of the questions that have been asked by members of your committee.

As a previous witness, or as previous witnesses noted, the central problem of H.R. 8938 aims to correct a situation that began back in 1948 when the present definition for paragraph 371 was created.

Until that time the definition of bicycles for tariff purposes was a very simple one. That is because specific rates were set up for all bicycles on the basis of wheel size alone.

But that was changed at the GATT meeting in Geneva in 1947.

Our negotiators decided to give further concessions on the lightweight class of bicycles only.

Accordingly, the language of paragraph 371 was changed at that particular negotiation to do two things:

(1) To reduce the duty on lightweight or foreign-type bicycles, and

(2) To continue unchanged the rate on American-type bikes.

The circumstances surrounding this decision are quite illuminating. Back in 1947 we were advised that our American Government was receptive to a bid from the British to reduce the tariff on British bikes.

It was noted that British-type machines came in here in very, very small numbers and were not competitive with American-type bikes.

Our cooperation was sought in helping set up a definition that would differentiate the bicycles about which we are speaking this morning.

Thereupon, a record was made on which our negotiators relied at Geneva.

Two principal documents, we think, constitute this record. The first was a rather long brief which the American bicycle industry submitted. The second basic document was the transcript of the hearings of the Committee on Reciprocity Information.

We have got those documents here, and an examination of the transcript will show a very earnest attempt on the part of all of the members of the CRI and the representatives of our industry to work up a definition which would give a concession to British-type bikes while, at the same time, protecting the American-style bikes.

The record of this discussion covers such points even as to whether the price of the bicycle could be used as a possible criterion to separate these kinds of bicycles. There was a great deal of discussion on tire size and also on the weight of the bike.

I would only read to you from the transcript dated January 31, 1947 a few items. A Mr. Whitcomb, representing the Tariff Commission, says:

One other question which I hope you won't think is impertinent. Will the domestic manufacturers be seriously injured by a reduction in duty if it was confined to the lightweight bicycle, the typical British bicycle which has been coming in in the past?

Our representative answered:

If we are faced with and must take a further reduction, and if it is possible to give us adequate protection on our American machines, a small reduction in the conventional British lightweight would not be too serious. In other words, if we can get into that position where by conceding a small concession on the conventional British lightweight we can establish a proper differential on our heavyweights, it would be to our advantage to have it that way.

Mr. Whitcomb closed off by saying:

Thank you. I wanted to ascertain how much the industry would be hurt by a reduction on the lightweight bicycle.

There was no doubt in the minds of the negotiators or the members of the CRI as to what a lightweight bicycle was. Pictures of it are in this brief which was filed in 1947.

You could not, gentlemen, tell the difference between this lightweight pictured here, the same used by the negotiators, and that particular bicycle shown as No. 1 there. We could not just looking at this picture; they are so identical.

Similarly, so that there would be no doubt with respect to pictures of American-styled bikes at the time, and contrary to what Mr. Kaplowitz told you, unless I misunderstood him, curved bars have always been traditional with the American industry. Here they are at that time, as our examples. There is nothing new, but the type of a curve has changed. But the curve is there, very much so.

In addition, we show advertisements of the British industry at that time in this document which features this type of bike called, in the advertisement, a diamond frame bicycle.

Senator DOUGLAS. Mr. Chairman, may I ask a question?

The CHAIRMAN. Yes.

Senator DOUGLAS. If this is so, why wasn't it put into the definition? The definition merely mentioned size of tires and weight, and does not define a lightweight bicycle as one having a triangular frame. Why wasn't that put into the definition?

Mr. AUERBACH. We wished that the negotiators at that time could have foreseen the evasions that might occur in their definition, or rather the defect of language in that definition.

At the time the word "lightweight" usually meant a bicycle of this No. 1 kind, always lighter in weight than this type No. 2 bike, and when we confused you before, Senator Douglas, by saying that the bike could weigh 40 pounds and still come in under the 36 pounds, this results from the fact that our negotiators abroad added another criterion with the words "complete without accessories," which our customs court has since defined to mean—not customs court, I am sorry, the Treasury Department, to mean—a lot of things like the chain guard, pumps, and even lights until we took that to court.

So while all of us, including the French and the British, whose catalogs we have here, call them lightweights in 1939, I have a British catalog, a French one which was available to our negotiators. Somehow or other our negotiators did not use that terminology. They might have had good reasons, but without sounding presumptuous, I would say that our Founding Fathers had the same problem when they framed the Constitution. It needed amendment and clarification as time went on.

We are sorry that the words were not there. But the record shows that the words were freely used during the negotiations by the CRI members, by ourselves, that the type of bicycle that anyone could have in mind at that time is in the catalogs of the French bicycle industry which we have here; the British, the American catalogs that were available at the time, in the trade press of the American and foreign countries which I have before me as clear-cut examples that anyone talking of a lightweight had in mind a diamond-frame, straight-tube bicycle of that kind.

Senator DOUGLAS. Do you have any direct quotations to that effect?

Mr. AUERBACH. Oh, yes. They are called lightweights, as I read from the record. The term is used of "lightweight" there. As I read from the record, Senator, the word "lightweight" is always used.

As a matter of fact, in the voluminous record of hearings of the bicycle industry, which has appeared three times before the Tariff Commission, and many times before this hearing, bicycles are never described for tariff purposes as 11.25 or 22.5 percent bicycles; they are never classified by tire size bicycles.

All of us in the trade know when you say "lightweight" you mean the low rate of duty. When you say "American" you mean the high rate of duty.

Senator DOUGLAS. Well, that is a definition in terms. The question is whether it should bear a low rate or high rate.

What I am trying to find out is there anywhere in the record that a lightweight must have a triangular frame?

Mr. AUERBACH. Yes, to this extent, sir: that we could show in 1939 bicycles labeled and advertised as lightweights with diamond frames.

We show it in the brief.

Senator DOUGLAS. You show it in pictures but do you show it in words?

Mr. AUERBACH. No, not that I am aware of at the moment.

Senator DOUGLAS. All right.

Mr. AUERBACH. But the record that our negotiators relied on was a clear one. It indicated that separate rates of duty were to be set for the first time that would give a privileged duty to British-type bicycles.

The British have never made any bicycle other than this No. 1, and I will quote them many times to prove that.

But it seems to us that the record reveals the fact that conscientious men were acting toward the goal of finding a formula to classify two types of bicycles.

If our negotiators did not want to classify bicycles they would have stayed with the present decision which merely classified them in terms of wheel diameters, and there would have been no problem.

As a matter of fact, when the duties were changed in 1939 they still relied on the 1934 classification. But it was only in 1947 when an effort was made to accommodate the British that this change was called for.

It is clear that if they did not want to give a rate of protection to the American-style bikes, they would not have set up a higher rate of duty or a definition which at that time covered American-style bicycles.

This definition created no problems until about 1955 or 1956. At that time, in the space of 5 years, bicycle imports had risen to nearly 1 million units. The market was expanding very rapidly.

It was a honey jar to the bicycle exporting nations of the world. The principle of free trade, incidentally, works very well in our industry, gentlemen. Last year 17 different countries exported bicycles into the American market.

This condition also occurred back in 1955 and 1956. The British preempted the lightweight market. The Germans and Netherlanders had come in with copies of the American type bicycles.

The duty had been increased, the large nations had most of the market sewed up. There was hardly any room for new member nations and smaller operators.

But they continued to prospect until one of them hit upon the idea of bringing in an American type bicycle with a small tire, and the only difference between the copy of the American bicycle and the foreign bicycle is three-eighths of an inch, only three-eighths of an inch of tire size, which enables them to bring the bikes in at 11¼ percent instead of 22½ percent. There is no other distinguishing difference.

Senator DOUGLAS. They also bring the weight under 36 pounds, without accessories.

Mr. AUERBACH. Yes. That criterion they always had. But it was the tire size—they were able to meet the weight criterion, but not the tire size one until they reduced the tire size.

We protested to Customs, to the Treasury Department, to the Tariff Commission.

We told them about this, and they said, "We are sorry, the language as it is written now gives them this technical right to bring in the bicycles at the low rate of duty, as we see it; that the language is inadequate." "Your recourse is to go to the Tariff Commission or elsewhere."

So we went to the Tariff Commission, and they said, "This is not a problem we can handle." We had wasted so much time, and we were so well advised, it seems, by so many people that the language was a bar to us, that there was no purpose in going to court. Our only hope then was to come to Congress and hope that we could make this inadequacy evident.

Now, Mr. Kaplowitz mentioned earlier that this matter might have been adjudicated in 1960. I want to digress a moment to explain what happened then because it is of very great importance.

When the President proclaimed new rates of duty in 1955 on American bicycles, he wrote to Senator Byrd as chairman of this committee, and explained that he was reducing the recommendation of the Tariff Commission on lightweight bicycles.

This apparently was a legal error. The importers took the matter to court and they were upheld, and they collected 5 years of duties which were paid on light weight bicycles from 1955 to 1960.

The President, President Eisenhower, with whose aids we discussed this subject, was quite disturbed about this.

The Supreme Court acted December 12, 1959. On December 20, only 8 days later, he ordered that this be acted upon and corrected.

The Tariff Commission said, "We are all booked up. We cannot act on it speedily."

He wanted to act on it before his administration ended, so he ordered them to meet on a Saturday, on January 7, which, to our knowledge, was the first time that the Tariff Commission had ever met on a Saturday.

We met with members of the Tariff Commission and we asked Mr. Kaplowitz, and we said, "Why are you making this a peril point proceeding?"

And he and others said, "This is such a unique thing that we never have had to contend with this problem before, and this is the best method we know to cope with it fast and get it done so you will have your relief back."

We said, "Well, this is dangerous to us because we might get in trouble on this later on."

He said: "Well, we were told this is the way it was going to be."

We thereupon made a record of this issue just the protect ourselves.

The matter was quickly settled abroad. But it came back too late for President Eisenhower to act upon.

Early in the days of the new administration, President Kennedy's administration, we brought this matter to his attention, and he acted on it very, very promptly.

But both President Eisenhower and President Kennedy, both in public statements, made this fact clear, that it was their sole intention to correct the defect in the proclamation and not go beyond it.

This is the record in that part of the Congressional Record. These are the documents we have before us.

President Kennedy, "All I am doing is restoring the status quo."

No one had in mind that other aspects of the bike industry problems were examined, except the very simple thing of correcting the legal defect.

Senator DOUGLAS. Did either President Eisenhower or President Kennedy introduce into the definition of a light weight bicycle the triangular or diamond frame?

Mr. AUERBACH. No, sir. We asked that. But they said, "all you want to do, first, is to get back the tariff increase you lost," and we said we would like to go beyond it, but they said that this would mean a new action. It would have to go before the Tariff Commission, and so on, and so we could not tell them what to do.

They just went ahead and said "it has to be done this way." And—

Senator DOUGLAS. But you asked them to include—

Mr. AUERBACH. Yes.

Senator DOUGLAS (continuing). The triangular definition?

Mr. AUERBACH. Yes; they said that would be another matter that would delay these proceedings.

Senator DOUGLAS. And having failed to get it established by administrative action, you are now requesting it by legislative action?

Mr. AUERBACH. Yes, sir.

An examination of the history of the American bike industry will reveal a vein of information showing agreement as to what is understood as an American style bicycle as compared to imported bicycles known as lightweights, sometimes as British, sometimes as continental, or racers, and so on.

A set of distinctive characteristics is ascribed to each. It is also acknowledged that the American class takes a higher rate of duty than the foreign class.

The bicycle trade, the importers, the Congress, the U.S. Tariff Commission, and the President of the United States agree on this.

Ours is a voluminous record, as I have indicated before, and we could spend a great deal of time proving the point I have just made.

Mr. Hannon has already drawn attention to President Eisenhower's statement to your committee. President Eisenhower said:

I acknowledge that lightweights were developed—that the market for lightweights here was developed—by the British and other importers. This is their kind of a bicycle.

This is quite implicit in his letter. But he said:

The Americans have specialized and created a market for American style bikes, balloon tire, and middleweight by name—

and so, he said—

because I want to maintain the relationship of duties between both, I am going to increase the duty on American style bikes at the recommendation of the Tariff Commission, on American bikes, but I will reduce it on lightweights so that the 2-to-1 ratio prevailed—

and this is implicit in the President's letter.

Now, the Tariff Commission has filed four 10401 reports on the American bike industry, and in not one of them did they fail to define bicycles. Over and over again they say this:

Middleweights have tires $1\frac{3}{4}$ inch in cross section diameter, and either curved bar frames or frames of the so-called cantilever design.

Most lightweight bicycles have had narrow tires, usually $1\frac{3}{8}$ inch in cross sectional diameter and triangular shaped frames or straight tubing.

Elsewhere they use the words "diamond frame," but they always say "straight tubing or triangular shape."

For us, the American style, the Tariff Commission always says "curved tubes."

Then, to highlight the problem, the Tariff Commission has sent many signals as to what was happening in this evasion. In 1960 they said:

More recently, however, some foreign manufacturers have combined a feature of the traditional lightweights, $1\frac{3}{4}$ -inch tires, with a feature of the original middleweights, the cantilever frame in a bicycle principally for sale in the U.S. market.

If such an imported bicycle had wheels more than 25 inches in diameter, and weighs less than 36 pounds—

they go on to say—

it will take the $11\frac{1}{4}$ percent rate of duty instead of the 22.

They conclude by saying:

This is the rate applicable to those imported bicycles which, in the past, have been commonly referred to as lightweights.

They are saying in this sentence that the middleweight, the importers were bringing in middleweights, at the lightweight rate of duty.

Mr. Hannon read from testimony by Mr. Hiss, who will soon be a witness, as the record indicates, against this bill.

Mr. Hiss is on the record numerous times in agreement with the principles which are sought for in H.R. 8938.

For example, in a brief he filed in 1952 with the U.S. Tariff Commission he said:

At the outset, it is relevant to note that the balloon-tire bicycle and the lightweight bicycle in addition to differences in weight possess distinctive characteristics. The camel-humped frame is used on balloon tire bicycles; the diamond frame used on lightweights.

In 1954 he filed a brief in behalf of the British bicycle industry, and many, many importers, and he said:

The British bicycle, both as produced for home consumption in England, and as exported abroad, is a distinctive product. An English bike is thus known as a lightweight.

Then he said:

The English bicycle industry has for nearly six decades produced only the lightweight diamond frame variety.

Then, on another phase:

Similarly, the domestic industry in 1954, a few months before the escape-clause hearing, finally introduced a new type of bicycle, the middleweight, which it hoped would match the popularity of the full-sized lightweight, and help sustain or expand sales.

A very important quote, and certainly demonstrative of the fact that Mr. Hiss, as the attorney for not only the British bike industry but, at times, the Netherland bicycle industry, the German bicycle industry, the French bicycle industry, said, in arguing that the Tariff Commission should not grant a duty increase in 1954, he said:

Already the separability of these questions is established in the over 25-inch and less than 36-pound category with the lowest 7½-percent duty, purposely designed to encourage British lightweight imports without similarly encouraging balloon-tire bicycle imports.

In 1957 he said:

There is no blinking the fact that the competitive situation of lightweights has deteriorated drastically as a result of the combination of the duty increase in 1955 and the definite fan appeal of the new middleweight which has had such an outstanding success. The consumer appeal of the middleweight has replaced to a large extent the former unique appeal of the lightweight. It has an added feature of consumer appeal with the cantilever frame.

Moreover, bicycle riding with the large 1¾ inch middleweight tire is far more comfortable than the lightweight tire which must be equipped with an under an inch and five-eighths tire in order to classify for the present 11½-percent rate of duty.

We think we would settle right now for Mr. Hiss' understanding of what a lightweight is and what a middleweight bicycle is.

As Mr. Hannon read to you and, at the risk of repetition, I want to read two questions, and the answers are precisely the description in 8938.

You will remember when Mr. Hannon said Mr. Hiss asked: What is a lightweight bicycle; how would you describe a lightweight?

Mr. Osgood said:

It's generally described as a bicycle with a diamond-type frame and with wheels that are 26 by $1\frac{3}{8}$ inches or whose width is less than $1\frac{3}{8}$ inches.

This is exactly what H.R. 8938 says. A diamond frame is a lightweight.

"What is a middleweight," he asked his client. The client answers, and the client is an expert, "a middleweight bicycle usually has a cantilever frame such as this, and it's usually equipped with a wider tire than a $1\frac{3}{8}$ inches.

Lest there be any doubt about lightweights, and so on, over in the Smithsonian Institution, there is a British bicycle, a lightweight it is called, and it is described as having a diamond, a modern typical diamond, frame. This bicycle is in the catalog of the Smithsonian Institution.

To us, gentlemen, the stakes are so important that we would like to show you further evidence of how this evasion occurs.

The British bicycle industry has had troubles; bicycle sales are declining in England at a rapid rate as they are, incidentally, in many other parts of the world.

As people get a better standard of living they are going to motorpedes and motorcycles. So the British decided they would introduce American bicycles in their own market, and I have here a copy of a publication called Motorcycle Trade, it is a British publication for the bike trade, and it is dated July 1960, and it says:

The completely new American style bicycle is being offered in the British market—

and they give it an American name "Santa Fe." They say that it is a completely new model.

Described as a middleweight, it is styled on American lines with curved top rail, and front down tubes and, finally, when the British decided to offer this bicycle in their own market, what tire size did they put on it? They put the right tire size, the tire that was designed for this bicycle, a $1\frac{3}{4}$ inch.

But when they sent them here, the very same bike, they put the small tire on and save the duty on it.

Yet in their home market, they very well know, as bicycle people, as we do, that this bike needs a larger size tire for some technical reasons.

Here are catalog pages from Corliss, a large importer. He says: "Here is my lightweight bicycle," and he calls it a lightweight, and he says, "here is my middleweight bicycle."

These bike pictures are identical. He used the same picture. But there is only one difference. One bike has a tire of $1\frac{3}{4}$, and the other $1\frac{3}{8}$ tire.

He calls this bicycle his lightweight, which is identical to that No. 1 also. In other words, he makes, this importer makes, like the rest of the trade, no bones about it. It creates further confusion.

Gimbel's advertises the middleweight sometimes as a middleweight, and sometimes as a lightweight.

Here are two Gimbel ads, identical bicycles, identical in every respect. Here they say—

Gimbel's imported full-size 26-inch middleweight bicycle.

Here they say—

Flying Eagle, lightweight imported bicycles.

Senator DOUGLAS. Is there any difference in price?

Mr. AUERBACH. \$3. They were at different times, though. This was getting towards Christmas, this later ad.

The British also advertised middleweight bicycles.

We know, gentlemen, that the language of paragraph 371, as it is constituted now, perhaps gives a fine technical right to the customs appraisers to let that bicycle, let No. 3, let the No. 3 bike come in at an 11.25 percent duty rate.

But the history of the bicycle industry, the testimony before Congress, the words of a President, the testimony before this committee, the words of the Tariff Commission, leave it unmistakably clear that we think of bikes in generic terms.

They no longer have significance as to weight. We think of them in this generic term as a lightweight being a foreign-type machine with a diamond frame; an American type since the beginning of the industry has always had curved frames.

We know that our opponents in this measure have suggested to the Ways and Means Committee in a brief and, perhaps, to this committee, that this issue has already been renegotiated in 1960 in the area which I earlier covered, which was the act of the two Presidents, quickly in the space of 8 days after a Supreme Court decision, to correct a little legal technicality.

We hope that that will be put in proper context.

We do not think, as they also maintain, that a treaty obligation will be violated because as Mr. Hannon has pointed out, we are not asking for an increase in the duty on the proper lightweights; we are not asking for an increase of the duty on the middleweight bicycles. We know that Senator Byrd would quickly stop us and tell us that this is not the forum for that.

We are merely asking that the proper rates of duty be applied to the bikes to which they apply.

Our negotiators made it plain they had this in mind, but they did not make very good language.

I think I have taken a little more than my time, Senator, and I am most appreciative that you let me go on.

Thank you.

The CHAIRMAN. Any questions?

Senator DOUGLAS. I would like to ask a question, if I may, on the international aspects of this. I think you have produced a good deal of evidence to indicate that there is a general assumption that the lightweight bicycle, the British lightweight bicycle, had this triangular frame. But this is not in the international agreement or the reciprocal agreement.

The international agreement confines itself to the size of the tire and to the weight, both of which tests are met by this No. 3.

Now suppose we redefine by national action a lightweight bicycle to include a triangular frame and to exclude the curved frame. The next question that comes is, would not the British interpret this as a violation of the international agreement, and would it not justify them in imposing retaliatory action?

Recently, as you know, the President raised the duties on glass and carpets, and the result was that Belgium raised duties on chemicals, and the whole Common Market, indeed, raised duties on chemicals.

I think the British at times juggle classifications unfairly. As I understand it, they discriminate against American automobiles by their definition on engine power, and so forth.

I think the European countries, particularly France, have juggled classifications to discriminate against American exports.

I would favor a new tariff bill which gives the President the power to increase tariffs, if this were necessary, to compel European countries to reduce theirs or to eliminate retaliatory measures but, at the same time, we do not want to start a retaliatory war.

I am willing to use this in self-defense, so to speak. But I am hesitant in the general interest to take the aggressive.

What would you say to this, that this would inevitably touch off a series of reprisals by Great Britain and if Great Britain joins the Common Market, by the whole Common Market against the United States?

MR. AUERBACH. Thank you for asking me for my opinion with respect to such a profound question.

My first impulse is to say that justice should always be considered first and the consequences second, if there are consequences. But if justice is involved here, we like to think that will be forthcoming.

With respect to consequences, we think that there should not be retaliatory action because the record is so clear cut that what you are doing is confirming what our negotiators had in mind, and making it possible for the customs appraisers to make a proper appraisal.

Senator DOUGLAS. But, you see, they did not say it.

MR. AUERBACH. I beg your pardon?

Senator DOUGLAS. They did not say it. They did not use the term "triangular frame."

MR. AUERBACH. No.

Senator DOUGLAS. They used simply weight and tire size.

MR. AUERBACH. Yes, sir. But we say it was implicit, and we have tried to prove that this is what everyone thinks, even including our adversaries.

After all, if I may continue, Senator, you will be asking what the British will think. Well, why should the British take objection to a stand taken by their attorney here? He has said these things that we read to you. Those are his words that are in 8938, and they might just have to agree with their own attorney and with the elaborate record of the British that they have never been interested in anything but that bicycle No. 1, and other nations other than the British might take an objection, of course. But this same attorney has represented France, the Netherlands, a host of importers.

Mr. Counihan wishes to say something, Mr. Chairman.

**STATEMENT OF DONALD COUNIHAN, ATTORNEY, BICYCLE
INSTITUTE OF AMERICA**

Mr. COUNIHAN. My name is Don Counihan. I am counsel to the institute.

This is a question of putting apples in the apple basket, and the pears in the pear basket.

We have the problem of competing, but we want fair play to compete from the same starting place.

Originally in 1955 when the Tariff Commission recommended the rate for bicycles, we established the case and made the case that a bike is a bike is a bike.

Senator DOUGLAS. That sounds like Gertrude Stein, and that phrase, I never thought, was particularly revealing.

Mr. COUNIHAN. But, at any rate, inasmuch as there are the two types, all we are saying is put the pears into the pear basket, and the apples into the apple basket, and we will fight competition there. There is no change there in the classification. I do not think we will have a retaliatory problem.

Mr. AUERBACH. We do not oppose trade. Last year we have given up a third of our market. Even though we had an escape clause, we are not asking for a tariff increase, but merely our rights.

Mr. HANNON. May I say one word on this subject?

From 1948 through 1957, Customs assessed the proper rate of duty, the lower rate of duty, only to that big No. 1, and the higher rate to the curve bar bicycle.

But when this order went out to the ports of entry in 1957 it permitted a loophole, and for 10 years the proper rates of duty were assessed, and then a loophole develops, and that is the pure objective of this bill, H.R. 8938, which is to classify it as it should be, because the language apparently of paragraph 371 has proven inadequate.

The CHAIRMAN. Any further questions?

If not, thank you very much.

The next witness is Mr. Donald Hiss, the British Cycle & Motorcycle Association.

**STATEMENT OF DONALD HISS, ATTORNEY, REPRESENTING BRITISH
CYCLE & MOTORCYCLE ASSOCIATION, LTD., AND RALEIGH IN-
DUSTRIES OF AMERICA, INC.**

Mr. HISS. Mr. Chairman, thank you.

I have been quoted a lot at this proceeding, but let me first introduce myself, if I may, Mr. Chairman.

My name is Donald Hiss. I am a member of the Washington law firm of Covington & Burling.

We represent the British Cycle Association & Raleigh Industries.

The British Cycle Association includes in its membership all the producers and exporters of bicycles from Great Britain to this country, and Raleigh is one of the big importers of British bicycles.

At the outset, if I may, before making the points I had in mind, may I refer briefly to statements made in briefs filed by me in 1952, 1954, 1957 and my interrogation of Mr. Osgood in the Customs Court 2 years ago.

The issues presented in those proceedings had nothing to do with this issue of whether Congress should add another requirement of what constitutes a concession rate for bicycles.

The present requirements are that it must weigh less than 36 pounds, and it must have a tire of not in excess of $1\frac{5}{8}$ inches.

This bill would add a further requirement that it must have a diamond or straight tube frame. In no event, in no case, before the Tariff Commission, where the briefs were cited, and statements were quoted out of context, was that issue at all relevant, and Mr. Osgood's testimony, the question involved a wholly different matter than this particular concession. There the question was whether you weighed a lighting set, and whether you weighed a kick stand in determining whether it is an accessory or part.

Mr. Osgood testified merely for the general background for the court of the various kinds of bicycles, and if you will read his testimony it was, in general, that it was a diamond frame.

The fact of the matter is that as early as 1939, Mr. Osgood's company in England, Raleigh, made a curved tube frame bicycle, and it exported that bicycle to this market.

Mr. Baker, an importer in New York, has informed us that in 1939, he imported twice as many curved tube frame lightweight bicycles from England than straight tube frame bicycles.

The term "lightweight" is really a very generic term.

The No. 1 bicycle is, our opponents' concept of what is, a typical lightweight. That bicycle, they say, weighs less than 36 pounds.

If you put on that bicycle a dynamo lighting set, which has the equipment for generating the power in the front or rear axles, the weight will be over 36 pounds. But it still is a lightweight in their sense, and yet for purposes of this particular concession language, the weight is important, and it would not be a concession rate bicycle in that the weight would be over 36 pounds and, therefore, they would pay the full 22.5 percent rather than 11.25 percent.

The second point which I would like to clarify is Mr. Hannon's rather innocuous statement that this is not a tariff bill, that it is a classification proposal.

The fact of the matter is if this bill is adopted, it will double the existing 11.25-percent rate of duty on some 500,000 bicycles being imported into this market today, so you raise the duty from \$2.30 per bicycle to \$4.60, exactly doubling it.

When that reaches the markups at the marketing level, and at the retail level, you will have the additional \$2.30 coming close to \$5 added to the difference in price.

The result of this bill will be that you will prohibit a lot of bicycles which now enter this market at 11.25 percent from entering this market. That is obviously the interest of the domestic industry. They want to stop that competition.

Instead of, as Senator Curtis suggested, increasing the income to the United States, this will mean you will not get the \$2.30 on some 500,000 bicycles, per unit today, you won't have bicycles coming in in that category, so you will lose that amount of revenue, and you will not gain any revenue.

The amount of trade involved in this bill is somewhere between \$7,350,000, and \$10,300,000. Census does not classify in its import statistics what bicycles are of curved tubes and what bicycles have

straight tubes. It merely gives you the classification of whether it comes in under the 1947 concession rate at 11.25 percent, that is, on those two standards, weighing less than 36 pounds and the tire being less than $1\frac{5}{8}$ in diameter, and then it gives no other descriptions and no other breakdowns as to whether it is curved or whether it is straight tubed.

In 1960 the last Tariff Commission report they estimated that 50 percent of the so-called lightweight category consisted of curved tube bicycles. That is on a 1959 ratio.

We think since then the ratio has increased, and you probably have, of the million bicycles imported in 1961, which are down from 1960, that probably 500,000 were equipped in the form of curved tubes.

Even on the Tariff Commission level you would have 350,000 of the some 712,000 imported in this particular classification. So that you will have a substantial volume of trade involved.

It could be, we think, as much as \$10 million. It certainly is not less than \$7 million.

The countries which are concerned are primarily the United Kingdom, which accounts for more than half of this type of imported bicycle. They imported over 400,000 so-called lightweights in this limited category, satisfying the two requirements of this concession, at a value of \$8,400,000. This is 1961.

You have Austria, West Germany, Japan, Italy, and the Netherlands which are also very important suppliers.

Now, as to the basis of the Ways and Means Committee report, we asked the Ways and Means Committee for a hearing and hoped to give the facts as we saw them.

Unfortunately, the Ways and Means Committee was very active last summer, very busy, and they did not hold hearings.

We think they were misled by our friends, Mr. Auerbach and Mr. Hannon and the others, as to the real facts behind this bill, and that their report is based on two erroneous conceptions of fact.

The first is that the committee states that the record behind this concession of 1947, the record before the Committee for Reciprocity Information, makes it perfectly clear that it was intended to be limited to bicycles not only that satisfied the weight requirement and the tire requirement, but in addition had a diamond or straight frame.

Now, it so happens that the domestic bicycle industry's own representative at that hearing, and he was Mr. Coe, who is no longer with the institute, made this statement to the committee as to what should be the distinguishing characteristics:

Our people feel the simplest and easiest way of trying to accomplish the purpose would be by specification of the tire diameter. That seems to be one thing that is a very definite indication of the type of bicycle.

So that you have by the domestic industry's own request, you have the tire as the additional requirement in addition to weight, as the limitations which would determine whether it came within the concession or whether it paid a higher rate.

Now, secondly, if the Ways and Means Committee is right, and if our friends are right, then they have a perfectly ready access to the Customs Court, and if the record shows that the intention of the negotiators was to limit it to diamond frame bicycles, the Customs Court

will grant them relief and they need not bother Congress for special legislation.

They have just obtained relief from the Customs Court as American manufacturers on whether a lamp and a kick stand were accessories and should be included in the weight or should be excluded, because it was a part.

Finally, if they are right, if the Ways and Means Committee were right, we would have a different position here.

But for 13 years, since this concession has been in effect, the Treasury and the administrative agencies have consistently maintained the only two requirements were weight and tire size. It does not make any difference at all as to the design of the frame.

It can be curved, it can curve up or down, it can be straight or anything, so that you have a consistent policy of the administration of reading this concession that it applies with those two qualifications and none others.

If you add this, it is clearly going to be violation of the GATT Agreement, and the concession which you granted to the British, and there will clearly come into the problem compensatory adjustments.

As Senator Douglas mentioned we have just gone through the horrors of the carpets and glass cases where the chemical industry has to pay the price of getting relief for two industries there which were subjected to import injury.

Here you are asking other industries which are interested in the United Kingdom market and the European market, you are asking other American interests to pay a price involving trade of some \$7 to \$10 million which, undoubtedly, compensatory duties will be granted on them. For what? Not to protect a domestic industry from import injury, because they have no case of injury.

They went to the Tariff Commission in 1961. The Tariff Commission established the peril point of 11.25 percent, exactly the rate which we have today, for this type of bicycle, and in 1961 the Commission said that there is no actual or there is no threatened injury at that rate.

Hence, you do not have any situation comparable to the glass or the rug and carpet people where they have to get relief because they are being injured by imports.

Here there is no injury by imports. It is merely that they want a needed and additional protection, and they want other American interests to pay the price of that.

Now, finally, there are other objections to this bill. We have filed with each member of the committee a statement and a supplemental statement, and I have made 50 copies available to the clerk, of those statements today, and I won't refer to them because of the time limitations imposed on me here.

I do, however, wish, and would like to mention, two other points which were discussed more fully in our statements.

If this bill is enacted, the result will be that you will establish a precedent for other industries to come in and seek special legislation for tariff relief, even though there is no need for obtaining such relief, because of injury from imports.

Secondly, the precedent will be that the other American industries will not have to exhaust their local remedies and available remedies, such as going to the Court of Customs and Patent Appeals to correct any deficiencies which they find to exist in existing law.

Finally, this bill is in direct conflict with the President's trade program, and with the new bill reported out by the Ways and Means Committee, H.R. 11970.

That program in that bill is designed to reduce duties on a reciprocal basis and provide safeguards against import injury to domestic industries.

But reciprocity is its basis. We reduce our duties and the other countries reduce theirs.

In this case, if this bill goes through, we increase our duties. There is not going to be any reciprocity, there is going to be just the opposite, the opposite of the reduction of duties abroad; it is going to be increasing duties against other American products such as cotton exported from this country to England, petroleum derivatives, machinery, wheat and tobacco, and various fruits and other products.

So we are very much opposed to this bill, and we think it would be a great mistake, and set an unfortunate precedent, and would fly directly in the face of the President's trade program, and the new bill reported by the House Ways and Means Committee.

Thank you, Mr. Chairman.

(The written statement and supplement filed by Mr. Hiss follow:)

STATEMENT IN OPPOSITION TO H.R. 8938

INTRODUCTION

On September 22, 1961, the House Committee on Ways and Means reported favorably on H.R. 8938, with certain technical amendments (H. Rept. 1255, 87th Cong., 1st sess.). This bill would provide "a more definitive tariff classification for lightweight bicycles" by amending one of the existing classifications as contained in paragraph 371 of the dutiable list of the Tariff Act of 1930, as amended.

As a result of a concession granted by the United States in the General Agreement on Tariffs and Trade of 1947 (GATT), a special classification was provided for full-size bicycles (with wheels over 25 inches in diameter) which weighed less than 36 pounds complete without accessories, and which were designed for use with tires not exceeding $1\frac{5}{8}$ inches in diameter, hereinafter referred to as lightweights. Pursuant to the GATT concession the duty on such lightweight bicycles was reduced from 15 to $7\frac{1}{2}$ percent. Early in 1961, however, this rate was increased to $11\frac{1}{4}$ percent following negotiations between representatives of the United States and of the GATT member countries which export bicycles to the U.S. market.¹ The duty on all other types of bicycles is $22\frac{1}{2}$ percent.

Since 1947 the GATT concession rate has been applied to all lightweight bicycles regardless of their frame design, the only requirements of this special classification being size of the wheels, weight, and diameter of the tires. Under the provisions of H.R. 8938 the $11\frac{1}{4}$ -percent concession rate would be limited to lightweight bicycles with diamond- or straight-tube frames. Lightweight bicycles with curved-tube frames would be excluded from this classification and thereby become subject to the $22\frac{1}{2}$ -percent rate. Curved-tube-frame lightweights, which currently may account for as much as 50 percent of all bicycles imported into the United States, would therefore become subject to an import duty exactly twice that currently being collected.

¹This method was used when the Court of Customs and Patent Appeals held invalid the President's proclamation of 1955 which had increased the rate from $7\frac{1}{2}$ to $11\frac{1}{4}$ percent following an escape-clause investigation.

Because of the interests of British bicycle producers who export to the United States, we sent a letter to the chairman of the Ways and Means Committee on July 12, 1961, referring to pending bills which were identical with H.R. 8938, explaining why such proposed legislation should not be adopted and requesting a public hearing in order to present all of the facts and our position to the committee. A statement explaining the reasons for our opposition to the bills was attached to the letter to the chairman. Notwithstanding our request for a public hearing, the committee reported favorably on H.R. 8938 on September 22, 1961, without holding a hearing.

H.R. 8938 WOULD CONSTITUTE A FUNDAMENTAL CHANGE IN THE EXISTING CLASSIFICATION OF LIGHTWEIGHTS

Paragraph 371 of the Tariff Act of 1930 as originally enacted by Congress provided a uniform import duty on "bicycles and parts thereof, not including tires."² In the bilateral trade agreement with the United Kingdom in 1938³ the duty on bicycles was reduced to 15 percent and, as noted above, in 1947 the rate on full-size bicycles weighing less than 36 pounds complete without accessories, and designed for use with tires not in excess of 1 $\frac{5}{8}$ inches in diameter, was further reduced to 7 $\frac{1}{2}$ percent but was increased in 1961 to 11 $\frac{1}{4}$ percent. In the 1930 Tariff Act, in the United Kingdom agreement and in the GATT concession of 1947, no distinction was made between curved tube frame and diamond or straight tube frame bicycles. By adding an additional requirement with respect to the design of the frame of a bicycle to the existing requirements as to wheel size, weight, and tire diameter, H.R. 8938 would constitute a fundamental change in the classification of lightweight bicycles and a fundamental modification of the GATT concession.

ENDORSEMENT OF H.R. 8938 BASED ON ERRONEOUS FACTS

From the contents of House Report 1255 favorably reporting H.R. 8938, it is apparent that the committee was not accurately informed as to the history of curved tubular frame bicycles or the purpose of the 1947 GATT concession. For example, on page 2 the report states that the domestic producers of bicycles "introduced a new bicycle style" in 1954 which features "a curved tubular frame." The fact of the matter is that the British bicycle manufacturers since sometime before 1939 had been producing a curved tubular frame bicycle and the domestic producers merely copied this design some 15 years later. It is also a fact that British bicycles with curved tubular frames had been imported and sold in the American market at least as early as 1939.⁴

That the curved tubular frame bicycle with tires not in excess of 1 $\frac{5}{8}$ inches and with full-size wheels had been a standard product of the British bicycle industry for some 15 years prior to 1954 is established by the 1939 catalog of the Raleigh Cycle Co. of Nottingham, England. On page 10 of that catalog there is advertised a model designated as "the ultra safety sports" model. The picture of this particular type of bicycle shows that the top tube of the frame is curved and the specifications use the words "curved top tube" and note that this model is equipped with wheels of 26 by 1 $\frac{1}{4}$ inches. This is a full-size bicycle equipped with tires not exceeding 1 $\frac{5}{8}$ inches and therefore a lightweight model.

The files of the Raleigh company, moreover, contain an interoffice memorandum dated October 13, 1938, referring to this type of bicycle as "FA 265, curved top tube sports frame" and noting that "production is most urgently required." Furthermore, British patents for the curved tubular frame design were registered in Britain on October 15, 1945, by BSA Cycles, Ltd., of Birmingham, England (patent Nos. 844692 and 844693).

These records therefore establish that the committee was misinformed, apparently by the domestic bicycle industry in sponsoring the proposed legislation, that the curved tubular frame type of bicycle "was introduced" or invented by the U.S. bicycle producers in 1954. The fact is that by 1954 the British had been producing a bicycle with a curved tube frame for not less than 15 years, and had exported such type of bicycle to the United States as far back as 1939.

² 46 Stat. 625 (1930), 19 U.S.C., sec. 1001, par. 371 (1958).

³ 54 Stat. 1897, 1963 (1938).

⁴ An importer in New York of British bicycles, which he assembled and sold in this country, recalls that in 1939 he imported "about twice as many" curved tubular frame sets as diamond or straight tube sets.

The House report also asserts that the record before the Committee for Reciprocity Information, the agency which heard interested parties before the 1947 GATT concession was negotiated, "shows that this trade agreement concession was intended to cover bicycles which are commonly known as diamond-frame bicycles; that is, bicycles with frames (not including the front and rear wheel frames) consisting of all straight tubing."

Examination of the transcript of the hearing before the Committee for Reciprocity Information, we submit, does not disclose an intention to limit the GATT concession to bicycles with frames "consisting of all straight tubing."

In the 1947 hearing before the Committee for Reciprocity Information the domestic bicycle industry was represented by Mr. Coe of the Bicycle Institute of America. In the course of that hearing Mr. Coe sought a tariff classification for use in the proposed concession which would distinguish between "the lightweight type bicycle" and "the standard American type."⁵ After considerable discussion regarding the standard to be adopted in distinguishing "the lightweight bicycle" and "the standard American type," Mr. Coe explained the position of the domestic bicycle industry:

"[O]ur people feel the simplest and easiest way of trying to accomplish the purpose would be by specification of the tire diameter. That seems to be one thing that is a very definite indication of the type of bicycle."

* * * * *

"All I can add there (reference to the institute's written brief) is it was discussed at length, and we tried to figure out the different methods as to price, some description as to the double bar frame, Camel Back, and so forth, as against the diamond frame, and they go into such complicated combination of statements that they all came back and said it would be indicative of the lightweight if the tire was 1½ inches or less, and any over 1½ would never go on lightweight, so all I can say is the best we can give you from our knowledge of the industry."⁶

Thus in 1947 the domestic industry was satisfied that in distinguishing between "the lightweight-type bicycle" and "the standard American type" a definition in terms of frame design was impractical and that the distinguishing characteristic was the smaller tire diameter of a lightweight. Since curved-tube bicycles had been produced in both the United States and the United Kingdom for a number of years prior to 1947, and since British curved-tube bicycles had been sold in this market since 1939, a distinction based on frame design would have been inappropriate.

Also indicative that the GATT negotiators did not intend to limit the concession to bicycles with frames "consisting of all straight tubing" are the comments of the Tariff Commission in 1948 in discussing the GATT concession of the previous year. In summarizing the purpose of the GATT concession of 1947, the Commission distinguished between the lightweight and the standard American-type bicycle, not on the basis of a difference in the design of the frame but in the heavier weight of the American bicycle, its larger tires and its fittings and accessories:

"The usual American type of bicycle weighs over 40 pounds whereas lightweight models weigh from 25 to 30 pounds."

* * * * *

"Outstanding features of the popular American type which attempts to simulate the motorcycle in appearance, are balloon-type tires, brightly finished fittings and accessories, including lamps, horns, carriers, and 'tanks'."⁷

Thus the committee in reporting favorably on H.R. 8938, was not fully informed by the proponents of this bill of the actual facts with respect to the original inventors of the curved-tube frame bicycle, or the intention of the negotiators of the GATT concession.

⁵ Stenographer's minutes of the hearing before the Committee for Reciprocity Information in connection with the negotiation of a reciprocal trade agreement, 12 Committee for Reciprocity Information, hearings, Panel B, Metals and Minerals, 2182-2183 (Jan. 31, 1947). These minutes are cited hereafter as "transcript."

⁶ Transcript 2188, 2196.

⁷ U.S. Tariff Commission, Three Summaries of Tariff Information, pt. 4, Schedule 3—Metals and Minerals 26, 28 (1948).

THE DOMESTIC BICYCLE INDUSTRY, NOT HAVING EXHAUSTED AVAILABLE REMEDIES,
LEGISLATIVE ACTION WOULD BE PREMATURE

While the domestic bicycle industry has unsuccessfully endeavored to persuade Treasury of the validity of its contention that the GATT concession was not intended to include bicycles with curved-tube frames, it has not exhausted a remedy which Congress has made available to any domestic manufacturer which is dissatisfied with a Treasury ruling on applicable rates of duty or the appropriate classification of a competitive imported product. Pursuant to section 516(b) of the Tariff Act of 1930,⁸ any domestic bicycle manufacturer is entitled to obtain review by the Customs Court and the Court of Customs and Patent Appeals of the propriety of Treasury's ruling to include curved-tube frame bicycles in the GATT concession. The domestic bicycle industry is fully familiar with this remedy as it recently followed this route and succeeded in persuading the Customs Court that Treasury had erroneously ruled that under the same GATT concession bicycle lamps and kickstands are accessories with the result that such items of equipment must now be included in weighing a bicycle to determine whether it satisfies the weight requirement of the concession.⁹

If the record of the GATT concession shows that it was intended to be limited to bicycles with straight tubes, as the domestic producers asserted and as the committee in its report accepted to be the fact, section 516(b) provides a remedy for correcting the erroneous position of Treasury to the contrary. Until this judicial remedy has been exhausted by the domestic manufacturers of bicycles it would be premature for Congress to act. If the courts conclude that the assertion of the domestic producers as to the intention of the GATT negotiators is incorrect, then one of the two factual bases of the favorable report of the committee on H.R. 8938 will be found to be without foundation. Since the committee refused to hold a hearing other interested parties were not given an opportunity to present the actual facts concerning the development of the curved-tube model or of the intention of the negotiators of the GATT concession, Congress should refrain from acting on H.R. 8938 at least until the domestic bicycle manufacturers have exhausted the remedy available to them under section 516(b) and have obtained from the customs courts resolution of the conflicting factual contentions of the domestic industry and of the other interested parties. At this stage action by Congress would be premature.

DOMESTIC BICYCLE INDUSTRY NOT BEING SUBJECTED TO IMPORT INJURY

Nor is there any need for legislation at this time in order to prevent injury to the domestic bicycle industry from imports of curved-tube lightweights. In 1957 the Tariff Commission unanimously rejected an escape-clause application of the domestic bicycle industry and in its report found:

"On the basis of its investigation, including the hearing, the Tariff Commission finds that bicycles provided for in paragraph 371 of the Tariff Act of 1930 are not, as a result in whole or in part of the customs treatment reflecting the concession granted thereon under the General Agreement on Tariffs and Trade, as modified by Presidential Proclamation No. 3018 of August 18, 1955, being imported into the United States in such increased quantities, either actual or relative, as to cause or threaten serious injury to the domestic producers of like or directly competitive products."¹⁰

Moreover, in December 1960 the President initiated a peril point investigation by the Tariff Commission before undertaking negotiations with representatives of other countries for the purpose of restoring the 11¼ percent rate of duty on lightweights which he had proclaimed in 1955 but which proclamation had been held to be legally defective by the Court of Customs and Patent Appeals. At the peril point hearing before the Tariff Commission the domestic industry urged the Commission, among other things, to establish a peril point of 30 percent on curved-tube lightweights, or in other words that such a rate was necessary to prevent injury to the domestic bicycle manufacturers. While the Tariff Commission's reports in peril point investigations are not made public, events since the January 1961 report was filed with the President demonstrate conclusively

⁸ 19 U.S.C. 1516(b) (1958)

⁹ *Westfield Mfg v United States*, — Cust. Ct —, C.D. 2232 (1961); now pending on appeal before the Court of Customs and Patent Appeals

¹⁰ U.S. Tariff Commission, *Bicycles: Report on Escape-Clause Investigation No. 58*, 1957, p. 2.

that the Tariff Commission rejected the domestic industry's contention and found that a duty of 11¼ percent on all lightweights, regardless of frame design, would avoid import injury to the domestic bicycle industry. For the President thereafter negotiated the existing 11¼ percent rate and if this rate had been lower than the peril point determined by the Tariff Commission he would have advised the Congress of the fact that he had agreed to a rate lower than the Tariff Commission's peril point.¹¹

It has therefore been established as recently as January 1961 that the domestic bicycle industry is not being injured nor is it threatened with injury from imports of lightweights regardless of frame design so long as the existing 11¼ percent remains in effect.

ENACTMENT OF H.R. 8938 WOULD ADVERSELY AFFECT OTHER AMERICAN INTERESTS

The current 11¼ percent duty on lightweights is based on a concession which the United States granted to other members of GATT in return for concessions from such other countries pursuant to which such countries lowered their duties on certain products. Such products were selected on the basis that lowered foreign duties would facilitate the sale of American-produced articles in these foreign markets. The reduction of such foreign duties has undoubtedly benefited other American manufacturing concerns and these interests have relied on these concessions since 1947. If the concession granted by the United States on lightweight bicycles is modified so as to be no longer available to curved tube lightweights, the other members of GATT will be entitled to compensation from the United States which could take the form of the modification of their concessions which have benefited American products being imported into their territories.

ENACTMENT OF H.R. 8938 WOULD CONFLICT DIRECTLY WITH THE PRESIDENT'S NEW TRADE PROGRAM

As we have shown above, H.R. 8938 would afford additional protection to a domestic industry which was found by the Tariff Commission as recently as 1961 to need no further protection to avoid existing or threatened import injury. By doubling the existing rates of duty on full-size lightweight bicycles with curved tubular frames H.R. 8938 would conflict directly with the President's proposed new trade program as explained in his message to Congress of January 25, 1962, Document No. 314, and as set forth in H.R. 9900. Instead of meeting the "new challenges and opportunities" by providing for the further reduction of tariff restrictions on a reciprocal basis as proposed by the President in his message of January 25, 1962, H.R. 8938 would by unilateral action provide unneeded additional protection for a single domestic industry by doubling the existing rates on a substantial portion of imported bicycles.

Thus, H.R. 8938, which was favorably reported by the House Ways and Means Committee in September 1961, some 4 months before the President proposed his new trade program, conflicts directly with such proposed program. In addition, H.R. 8938 collides with the basic policy objective of the trade agreements program—the elimination of trade barriers on the basis of reciprocity—a policy which this country has followed consistently since 1934 when the trade agreements program was first instituted.

For the foregoing reasons it is respectfully submitted that the Senate Finance Committee should refrain from reporting favorably on this proposed legislation or, alternatively, that the committee should refrain from taking any action pending a hearing at which all interested parties are afforded an opportunity to testify.

SUPPLEMENTAL STATEMENT IN OPPOSITION TO H.R. 8938

COMPENSATORY ADJUSTMENTS WHICH WOULD BE REQUIRED BY ENACTMENT OF H.R. 8938

Since the 1947 GATT concession first went into effect, the U.S. Customs Bureau has consistently construed the concession as being applicable to all full-size, lightweight bicycles weighing less than 36 pounds whether equipped with

¹¹ Sec 4 of the Trade Agreements Extension Act of 1951 requires the President to inform the Congress when he ignores a Tariff Commission peril point determination.

curved or straight tubular frames. Thus it is clear that if H.R. 8938 is enacted, the United States in its negotiations with the other GATT members would not be in a position to deny that this legislation constituted a modification of the 1947 GATT concession which was initially negotiated with the British. As a consequence the British and other parties to GATT who have a substantial interest in this concession would be entitled to request "compensatory adjustment with respect to other products" in accordance with article XXVIII of GATT.¹ Such adjustments could take the form of increases in foreign duties on American manufactured or agricultural products entering the markets of GATT countries or of reductions in U.S. duties on imported articles other than bicycles.

Since such compensatory adjustments would necessarily extend to a volume of trade comparable to that adversely affected by H.R. 8938, it is appropriate to examine the value of imported bicycles covered by the bill and the extent to which the concession would be modified. According to the import statistics of the Census Bureau, imports of bicycles in 1961 from countries which are parties to GATT totaled 1,006,779 of which 712,779 were classified as full-size, lightweight bicycles weighing less than 36 pounds. While the Census Bureau statistics do not distinguish between full-size, lightweight bicycles weighing less than 36 pounds which are equipped with curved tubular frames, and such bicycles which are equipped with straight frames, it has been estimated that not less than 50-percent of the total number of all full-size lightweight bicycles weighing less than 36 pounds imported into the United States are equipped with curved tubular frames.² On this basis at least 356,389 bicycles imported in 1961 from GATT member countries came within this category. With respect to these 356,389 bicycles H.R. 8938 would double the existing duty from 11¼ to 22½ percent.

According to Census Bureau statistics, the average value of all full-size, lightweight bicycles weighing less than 36 pounds imported in 1961 was \$20.65. On this basis the total value of the 356,389 bicycles imported from GATT member countries in 1961 amounted to \$7,359,432.³ While the 1947 GATT concession originally reduced the duty on full-size, lightweight bicycles weighing less than 36 pounds from 15 to 7½ percent, this concession was subsequently modified by raising the duty 50 percent, from 7½ to 11¼ percent. The remaining 50 percent of this concession rate would be eliminated by H.R. 8938 on all such bicycles equipped with curved tubular frames. Consequently, compensatory adjustments pursuant to article XXVIII of GATT would apply to trade with an annual value of \$7,359,432 and the extent of any such adjustment on other products would be 50 percent of the existing concession rate or rates.

If compensatory adjustments should take the form of action by the United Kingdom and other principal suppliers increasing foreign duties on exports of other American manufactured or agricultural commodities, substantially equivalent to the tariff concession, the effect would be significant indeed. For example, these countries would be free to withdraw the 20-percent concessions they just gave us at Geneva on trade valued at \$18,421,142⁴ (these 20-percent reductions being only two-fifths as important as the 50-percent reduction in duties on bicycles which this legislation would take away). In selecting the U.S. export products for such compensatory increases in tariffs, the foreign countries could be expected to concentrate on those which have been most successful in competing in their domestic markets.

If compensatory adjustments should take the form of new tariff concessions by the United States on products other than bicycles, it would mean that a portion of the new authority contained in H.R. 9900 would have to be used, not to bargain down the level of foreign tariffs, but to pay for additional protection of the American bicycle producers. Other export-oriented American producers

¹ Such countries might also be in a position to proceed under art. XXIII on the ground that enactment of H.R. 8938 "nullified or impaired" benefits accruing to them under GATT. In that circumstance, and subject to the approval of GATT, unilateral reprisals in the form of suspended concessions or other actions would be authorized.

² In its latest report on bicycles of August 1960 the Tariff Commission estimated that "about half" of all full-size lightweights imported in 1959 were so equipped. In 1960 and in 1961 we are satisfied that the proportion increased and probably resulted in imports of cantilever-frame bicycles accounting for one-half of total imports or, in other words, more than 500,000 bicycles with cantilever frames were imported.

³ On the basis of 500,000 cantilever-frame bicycles having been imported in 1961 (see footnote 2), the value of such imports amounted to \$10,325,000.

⁴ On the basis of 500,000 cantilever-frame bicycles having been imported in 1961, this figure increases to \$25,812,500.

would thus be forced to forego some of the benefits envisaged in the new trade legislation.

Thus it is apparent that the unjustified additional protection which the enactment of H.R. 8938 would afford the domestic bicycle industry would result in the imposition of new restrictions against a large volume of imports into GATT countries of American manufactured products or agricultural commodities or in the reduction in U.S. duties involving a large volume of imports into the United States, without obtaining any reciprocal reductions in foreign duties in return, depending on the form in which compensatory adjustments are made.

ENACTMENT OF H.R. 8938 WOULD CONSTITUTE A PRECEDENT FOR OTHER INDUSTRIES TO OBTAIN LEGISLATIVE PROTECTION FOR THEIR PRODUCTS

Being limited to imports of bicycles, the enactment of H.R. 8938 would establish a precedent for other industries to seek special and separate protection by legislation against imports of articles which compete with their products. Since the domestic bicycle industry has been unable to meet the criteria established by existing law and demonstrate to the Tariff Commission any need for relief, the enactment of H.R. 8938 would encourage other industries to ignore the available administrative routes and to turn to Congress for special legislation against competitive imports. Because H.R. 8938 would establish a precedent for special tariff legislation on an industry-by-industry basis, the Senate Finance Committee and the Senate should refrain from approving this bill.

The CHAIRMAN. Any questions?

Senator GORE. Does Great Britain have a tariff?

Mr. HISS. Great Britain does have a tariff on bicycles.

Senator GORE. What would be the tariff in Great Britain if the U.S. industry wished to sell either of those bicycles there?

Mr. HISS. It would be the same. They would treat all bicycles as bicycles. They do not make a distinction between types of bicycles or between tire sizes.

Senator GORE. Well, you know, that was my next question. I do not really see a great deal of wisdom in having one rate apply to one of these bicycles and another rate apply to the other.

What is the British rate?

Mr. HISS. The British rate, I will have to check this, Senator Gore, but I think it is 35 percent.

Senator GORE. Thirty-five percent?

Mr. HISS. I think that is true, but I will have to check that and let you know.

Senator GORE. Well, the British rate is 35, yet you are complaining if these people are given a classification that would carry a 22-percent rate.

Mr. HISS. That is right, sir. But then the 11.25-percent rate, concession rate, was granted, the British, in turn, they got that concession, granted other American interests concessions in duties on entry into Britain. The American industry has never produced a bicycle for export.

Senator GORE. What is the French tariff?

Mr. HISS. Contrary to Mr. Auerbach's statement, I have never represented any except the British interests in this. I do not know what the French duties are.

Senator GORE. Can anyone give us the French duty on this kind of bicycle or bicycles?

Mr. AUERBACH. Yes, sir; 27 percent, sir.

Senator GORE. Thank you.

I would like to know if this No. 2 bicycle should have placed on it the tire that is on No. 3, would it then carry a duty of $11\frac{1}{4}$ instead of $22\frac{1}{2}$?

Mr. HISS. May I just lift it and get some idea of the weight? I think that is a much heavier bicycle. I think that is much heavier and is way over 36 pounds, and, therefore, if you took this tire off this bicycle and put it over there you would still pay 22.5 percent. You would not pay 11.25. This is a much lighter bicycle, as I feel it. We are both guessing.

Senator GORE. Yes; we are both guessing.

Mr. HISS. I am guessing; yes.

Senator GORE. Suppose this rod were made of aluminum, and you shortened these fenders a bit and took off the chainguard, and put this tire on it. Would it then come in at 11.25?

Mr. HISS. If it weighed less than 36 pounds it would come in at 11 percent.

Senator GORE. Mr. Chairman, really this is not something the U.S. Senate ought to be deciding.

Mr. HISS. That is quite true, quite true, Senator. I couldn't agree more. That is something for the courts to decide if it is in issue.

Senator GORE. It seems to me that the Tariff Commission, if we could give them authority to do so, should do this.

Mr. HISS. Well, the Tariff Commission has decided that the concession was intended to apply to any bicycle which satisfied the weight and tire requirements.

Senator GORE. But you have just demonstrated here, and your answer was, "Yes," when I asked you if you take the chain guard off and put this tire on that one, that the tariff would be cut in half.

Mr. HISS. Senator, since 1939 the British have been making a bicycle with a curved tube, and they assigned to the curve tube a small tire. This is not an invention. This is not a great discovery.

They maintain they invented this bicycle. We invented this in 1939 and patented it in 1945. We have been sending to this market this type as well as this type.

Senator GORE. I remember we had something here about classification of shoes that Senator Pastore and others brought it, something about rubber tops.

Mr. HISS. I am familiar with that, sir.

Senator GORE. Of course, foreign manufacturers are ingenious and we should anticipate that they would be resourceful and ingenious to meet the specifications.

You people have been engaged in a contest here this morning that is pretty well a dogfall as to quoting past statements of representatives of each side. But we will have bicycles here, one of which carries an $11\frac{1}{4}$ percent rate and another a $22\frac{1}{2}$ percent rate, and the duty in Great Britain is 35 percent on either one of them.

Mr. HISS. I do not think the duty in Great Britain is particularly relevant since this country has never exported any bicycles to Great Britain. They never tried to.

Senator GORE. The existence of the 35 percent rate may be a pretty good reason.

Mr. HISS. It is a very simple reason, Senator. It produces a bicycle as a toy, not as a means of locomotion, which the British have to use their bicycles as a means of locomotion.

Senator GORE. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Hiss.

Mr. HISS. Thank you.

The CHAIRMAN. The next witness is Mr. Scheuer.

STATEMENT OF BENJAMIN SCHEUER, PRESIDENT, BERT SCHEUER, INC., NEW YORK, N.Y.

Mr. SCHEUER. Mr. Chairman, Senators of the Committee on Finance, my name is Benjamin Scheuer. I am president of Bert Scheuer, Inc., an importer of bicycles located at 200 Fifth Avenue, New York, N.Y. We have been in business since 1931. Our company is solely dependent for its existence on bicycle imports. I appear in opposition to H.R. 8938.

I fully endorse the views expressed by Mr. Hiss on behalf of the manufacturers and American importers of English bicycles.

My firm designs bicycles and imports them from Germany and Belgium. The figures just received from the Consumer Durables Division of the Department of Commerce show that total German imports dropped 50 percent in 1961 from the number of imports in 1960 (185,200 versus 377,090). Similarly, imports from Belgium dropped from 73,591 units in 1960 to 54,446 units in 1961.

H.R. 8938 would double the import duty on full-size lightweight bicycles with curved tubular frames. It is a fact that the cantilever frame was not an original American concept. It was first developed in France and Germany and, subsequently, the principal American bicycle manufacturers copied and adopted it. Actually, one of our factories, Bauer of Auheim Au Main, Germany, produced its first cantilever frame in 1933.

Apart from the fact that this bill is premised on a factual error, I should like to point out that this measure, if enacted, will adversely affect the American public in two ways:

1. The foreign competition which has caused the American bicycle manufacturers to improve their products and reduce their prices will be eliminated from the market here; and

2. Unemployment will result through the reduction in force of salesmen, dockworkers, freight handlers, truckmen, warehousemen, and office workers, who are important to the handling of the products that we import.

Regarding the weights on these various models of bicycles, Nos. 1, 2, and 3, we personally disagree with the previous gentlemen so stating the weights.

Regarding bicycle No. 1, as shown on the floor, according to our figures, this bicycle weighs approximately 33 to 34 pounds.

To the best of our knowledge, bike No. 2, as shown on the floor, weighs approximately 42 pounds, and bicycle No. 3, as shown on the floor, approximately 32 to 33 pounds.

Senator DOUGLAS. Thirty-two to thirty-three?

Mr. SCHERER. Thirty-two to thirty-three; yes, sir.

Senator DOUGLAS. Well, now, Mr. Chairman, this can be easily determined by weighing.

Mr. SCHEUER. That is correct.

Senator DOUGLAS. I would like to have this done.

The CHAIRMAN. Do you want the bicycles weighed?

Senator DOUGLAS. Yes.

The CHAIRMAN. I will ask the staff to do that. We do not have a weighing machine here, and I will ask the staff to weigh them.

Senator DOUGLAS. What?

The CHAIRMAN. You say you want them weighed, and I say we have no weighing machine in the room.

Senator DOUGLAS. We have no scales in the room. The Senate Office Building has every accessory possible, and I am sure it has scales. [Laughter.]

As a matter of fact, there has been a great difference in testimony.

The CHAIRMAN. The Chair instructs Mr. Benson to have the bicycles weighed.

(Mr. Benson subsequently supplied the following information:)

Bicycle No. 1, identified as an imported diamond-frame type, weighed 35½ pounds;

Bicycle No. 2, identified as made in the United States and of the curved frame or cantilever type, weighed 41¼ pounds; and

Bicycle No. 3, identified as an imported curved frame or cantilever type, weighed 32½ pounds.

Senator GORE. Let us also get some information about the weight of the accessories, and some definition of what is an accessory or what is not.

The CHAIRMAN. What is an accessory; what the weight is, too?

Senator GORE. What can be removed.

The CHAIRMAN. I think Mr. Benson can make a statement about the accessories.

Mr. BENSON. The accessories are those things identified ordinarily in the trade which are not essential to the proper operation of the bicycle, but which enhance its value and usefulness.

Senator GORE. As many britches legs as I have had gnawed off by a bicycle chain, I think that guard is a rather necessary part of the bicycle.

Mr. BENSON. We ought to verify that, but I think the chain guard has been classified as an accessory.

Mr. AUERBACH. It is.

Mr. BENSON. It is the Customs Bureau that does that.

Senator GORE. If you would give me my choice between this aluminum wheel guard and a chain guard, I think I would cut down on the wheel guard and add to the chain guard.

Mr. SCHEUER. Mr. Chairman, may I make a statement?

The CHAIRMAN. Go ahead, sir.

Mr. SCHEUER. The chain guard is counted in the weight of the bicycle. We had a problem a number of years ago, and customs in Boston, Mass., so stated that the chain guard is part of the bicycle.

Senator DOUGLAS. Mr. Benson, do you dispute that?

Mr. BENSON. I am only quoting indirect information that in the total weight of an imported bicycle the chain guard has been con-

sidered an accessory. It can be removed; a bicycle sometimes is used without it.

Senator DOUGLAS. This again is a question of fact?

Mr. BENSON. Yes. We can verify the actual practice through the Customs Bureau and I will do that.

(Mr. Benson subsequently supplied the following information:)

The Bureau of Customs reports that chain guards attached to bicycles upon importation are classified as a part of the bicycles and are not dutiable as accessories. In ascertaining the total weight, for duty classification purposes, the chain guard is included. Treasury Decision 54967, issued on October 22, 1959, lists mudguards and chain guards as parts to be included and not as separate accessories.

The chain guards on the bicycles exhibited varied but little in weight; each one approximated one-half pound.

Mr. BENSON. You asked about other things. There are innumerable accessories that can be added. Little pouches to carry things, a luggage frame on the back to carry things, little instrument or tool bags, warning bells and so forth, many accessories can be added.

The CHAIRMAN. We will have them weighed by the time you get back, Senator Gore.

Senator GORE. Thank you, Mr. Chairman.

Mr. SCHEUER. Thank you very much for giving me the opportunity to appear.

Mr. HISS. Mr. Chairman, could I say I made a misstatement as to my understanding of what the British rate of duty was on imports of bicycles. I referred to it as 35 percent. I have just now learned that it is 20 percent, not 35 percent.

Thank you, Mr. Chairman.

Mr. COUNIHAN. Mr. Chairman, could I also submit for the record a statement from the Bicycle Manufacturers Association, and also call to the attention of the committee that evidently Mr. Hiss has misstated, and I can refresh his memory, that on July 10, 1957, a brief was filed at the Tariff Commission by Donald Hiss, attorney for importers of bicycles, the Juncker-Rijwiel Fabrick N. V. Apeldoorn, Netherlands; Chambre Syndicate National du Cycle, Paris, France; The British Cycle & Motorcycle Industries Association, Ltd., Coventry, England.

I just wanted to refresh your memory that you did represent the Dutch and the French.

The CHAIRMAN. Without objection, the insertion will be made.

(The statement referred to follows:)

STATEMENT OF THE BICYCLE MANUFACTURERS ASSOCIATION OF AMERICA

INTRODUCTION

On April 9, 1962, H.R. 8938 was referred to the U.S. Senate and is presently pending before the Senate Finance Committee. This bill was unanimously reported by the House Committee on Ways and Means on September 22, 1961, and was passed with the unanimous consent of the House of Representatives on April 5, 1962.

The bill provides for a fair application of tariff rates to lightweight bicycles as reflected in the collective intent of the GATT (General Agreement on Tariffs and Trade) negotiators who created the lightweight tariff classification and accorded it a preferential rate; and as further reflected in the intent of President Eisenhower who permitted the preferential rate to continue to apply when he issued his escape-clause proclamation on bicycles.

While the bill makes no changes in any prior international understanding with respect to lightweights, it would clarify for custom purposes the types of bicycles on which preferential duty should apply.

The bill is fully supported by the domestic bicycle industry but was not designed to secure concessions or preferential treatment. While injured by foreign imports, American producers seek no new relief. They ask only for the fair application of tariff laws with respect to lightweight bicycles.

DEFINITION

A "lightweight" bicycle is commonly known in the trade as that traditional type of bicycle having the triangular-shaped (diamond) frame of all straight tubing. There never was any question as to what was meant by the term "lightweight" prior to the establishment of the tariff classification on lightweight bikes in 1947.

In this connection, on January 31, 1947, at hearings before the Committee for Reciprocity Information, Mr. H. L. Coe, on behalf of the Bicycle Institute of America, indicated the position of the domestic bicycle industry with respect to a proposed reduction in duty on lightweight bicycles, in response to a question asked by Reciprocity Committee Member Whitcomb. In so doing, Mr. Coe and Mr. Whitcomb both indicated their mutual understanding as to the meaning of the term "lightweight."

"Mr. WHITCOMB. Will the domestic manufacturers be seriously injured by a reduction in duty if it was *confined* to the lightweight bicycle, the typical British bicycle, *which has been coming in in the past*?"

"Mr. COE. * * * if it is possible to give us adequate protection on our heavyweights, a small reduction in the *conventional* British lightweight would not be too serious. [Emphasis supplied.]

Thereafter the American industry summed up its position at the hearings by saying:

"We are respectfully petitioning * * * that bicycles listed for possible tariff concessions be restricted to the lightweight type of vehicle *which has been imported* into the United States *up to the present* (and) * * * we respectfully urge that *imports of prototypes of the standard American models be not permitted.*" [Emphasis supplied.]

Based on the foregoing statement of position, the Geneva negotiators agreed to accord a preferential tariff rate to traditional lightweight bicycles. Among the hopefully workable tariff classification criteria they utilized in setting up a lightweight bike classification for that purpose were size, weight, and wheel diameter. Also, a subjective criterion was added as a safety factor: Custom officials were to consider the intent of foreign designers in relating the size and weight of a lightweight bike to its tire diameter. It was then thought that these criteria would protect American industry from "imports of prototypes of the standard American models." Unfortunately, however, this proved not to be the case.

PRESIDENT EISENHOWER AFFIRMS INTENT OF GATT NEGOTIATORS

When President Eisenhower issued his 1955 escape clause proclamation on bicycles, he indicated that both he and American importers were well aware as to the meaning of the term "lightweight" and as to what bicycles were to be permitted entry at a reduced rate under that classification. Thus in his letter of August 18, 1955, addressed to the chairman of the Senate Finance Committee and the House Ways and Means Committee, the President explained that he was proclaiming a lower rate on the so-called traditional lightweights to "preserve" their place in the American market. The President specifically described the lightweights which were to receive the lower rate by saying that the "domestic industry manufactures almost no bicycles of this type," that they were "not directly competitive," and that the "development of the present American market for this particular bicycle is attributable almost entirely to the ingenuity and resourceful efforts of foreign producers."

The President went on to distinguish these bikes from the so-called middleweight bicycle originated and developed in the United States. He pointed out:

"As for the other varieties of imports—the balloon tire, *middleweight* and *junior size* types, for example—I have not disturbed the Tariff Commission's majority recommendation for an increase in the minimum duty to 22½ percent. *It is in these areas that the American industry has specialized and developed the market.* Here the competition from imports is direct and thus most prone to cause serious injury * * *."

"The American industry is showing encouraging signs of stirring to meet the challenge of competition from abroad. It is improving its technology and appeal to consumer tastes. The newly developed middleweight bicycle, now being produced in increasing quantities, is an example." [Emphasis supplied.]

Conclusions With Respect to "Intent."—From the foregoing, it is clear that it was the specific intent of both the GATT negotiators and the President to extend preferential tariff treatment only to traditional lightweight bicycles, and not to those of American middleweight design.

DEVELOPMENT OF THE AMERICAN MIDDLEWEIGHT

In 1954 the U.S. bicycle manufacturers introduced the curved-frame (cantilever) "middleweight" bicycle. While the fact that the United States did introduce the middleweight bicycle has never before been seriously questioned, it is interesting to note the following in connection with any unfounded and unwarranted claims of foreign origin that might be put forward at this late date. More specifically, in the brief filed April 7, 1957, on behalf of the British Cycle & Motorcycle Industries, Ltd., Coventry, England, and others, it was admitted and acknowledged that the American bicycle industry introduced the middleweight bicycle in 1954. The brief said at page 118:

"* * * the domestic industry in 1954 a few months before the escape clause hearing, finally introduced a *new type of bicycle [middleweight]* which it hoped would match the popularity of the full size lightweight and help sustain or expand sales among older children and adults." [Emphasis and bracketed item supplied.]

In this same brief at page 60, it was also admitted that the English for almost 60 years have produced only *lightweight* diamond frame bicycles:

"* * * the English bicycle industry has for nearly six decades produced *only* the lightweight diamond frame variety, generally with three speeds." [Emphasis supplied.]

In addition, it should be noted that in the testimony presented on April 11, 1957, before the U.S. Tariff Commission, on behalf of the British Cycle & Motorcycle Industries, and others, the following exchanges took place between Attorney Hiss and Attorney Loos and Witness Osgood:

Page 418: "Mr. Hiss. It is your opinion that Raleigh middleweights will be a big seller in the market in 1957?"

"Mr. Osgood. I don't personally think it will. I have always staked our faith on the lightweight."

Page 436: "Mr. Loos. When did you begin the importation of bicycles from England into this country?"

"Mr. Osgood. 1933.

"Mr. Loos. And were the importations lightweights?"

"Mr. Osgood. Yes."

Page 448: "Mr. Loos. When did you decide to manufacture a middleweight?"

"Mr. Osgood. * * * *Actually, the first was* produced this year." (1957) [Emphasis supplied.]

RECENT ADMISSION BY FOREIGN BIKE IMPORTER

In addition to his having admitted that middleweight bicycles were first produced by British producers in 1957, Mr. Osgood has recently—1961—reiterated the fact that lightweight bicycles are generally known in the trade as bicycles having a diamond-type frame (that is, a frame of all straight tubing). Thus, in recent testimony given before the U.S. Custom Court, he indicated that foreign bike importers were well aware of the correct and proper definition of a "lightweight" bicycle. (Mr. Hiss is counsel for the foreign bicycle manufacturers and Mr. Osgood is the American representative for one of the world's largest bicycle companies, Raleigh Industries, Ltd., located in England.)

"Mr. Hiss. What kind of bicycles do you import, does your company import and sell in the United States?"

"Mr. Osgood. British lightweight bicycles.

"Mr. Hiss. What is a lightweight bicycle as distinguished from another type of bicycle or different type of bicycle?"

"Mr. Osgood. You mean for the trade?"

"Mr. Hiss. What is a lightweight bicycle; how would you describe a lightweight?"

"Mr. Osgood. It's generally described as a bicycle *with a diamond-type frame* and with wheels that are 26 x 1 $\frac{3}{8}$ inch or whose width is less than 1 $\frac{3}{8}$ inch.

"Mr. Hiss. There are other kinds of bicycles?

Mr. Osgood. Certainly.

"Mr. Hiss. Such as?

"Mr. Osgood. Middleweight bicycles, balloon-tired bicycles.

"Mr. Hiss. How does a middleweight bicycle differ from a lightweight bicycle?

"Mr. Osgood. A *middleweight bicycle usually has a cantilever frame* such as this, and it's usually equipped with a wider tire than 1 $\frac{3}{8}$ inch. [Emphasis supplied.]

(See pp. 47 and 48 of the transcript of the record printed in connection with Custom Appeals Nos. 5069, filed Mar. 7, 1961, and 5072, filed Mar. 19, 1961—with the U.S. Court of Customs and Patent Appeals.)

DOMESTIC CONSUMER ACCEPTANCE OF THE AMERICAN MIDDLEWEIGHT

The middleweight model gained domestic consumer acceptance at a remarkable rate and was hailed by President Eisenhower in his letter accompanying the 1955 escape clause proclamation on bikes, quoted from hereinabove. In fact, by 1956, American manufacturers had shifted their production so as to be able to deliver the middleweight bicycle in a variety of sizes and colors. Thereafter, as a direct result of the ingenuity and resourcefulness of the American bicycle industry, the American market for middleweights underwent a tremendous expansion, so that by 1959 they represented more than 93 percent of domestic bike production.

DEFICIENCY IN LIGHTWEIGHT BIKE CLASSIFICATION DISCOVERED

In 1957 foreign bike manufacturers discovered a means of bringing into the United States foreign bicycles of American middleweight design at the preferential lightweight tariff rate (i.e., 11 $\frac{1}{4}$ percent instead of the 22 $\frac{1}{2}$ percent applicable to bicycles generally). They found that by equipping bicycles of middleweight design with narrow tires, the resultant hybrids would be permitted entry, under U.S. customs laws, at the lightweight duty rate. Here is the manner in which this anomalous situation was described in the most recent 10401 report (1960) of the U.S. Tariff Commission, at page 2:

"Most lightweight bicycles in the past have had narrow tires, usually 1 $\frac{3}{8}$ inches in cross-sectional diameter, and triangular-shaped frames of straight tubing. More recently, however, some foreign manufacturers have combined a feature of the traditional lightweights (1 $\frac{3}{8}$ -inch tires) with a feature of the original middleweights (cantilever frames) in a bicycle, principally for sale in the U.S. market. A common term for such bicycles is 'cantilever lightweights.' If such an imported bicycle has wheels more than 25 inches in diameter and weighs less than 36 pounds, present customs practice is to levy a duty on it at the rate of \$1.87 $\frac{1}{2}$ each, but not less than 11 $\frac{1}{4}$ percent nor more than 22 $\frac{1}{2}$ percent ad valorem. This is the rate applicable to those imported bicycles which, in the past, have been commonly referred to as lightweights." [Emphasis supplied.]

Visually these hybrids are identical to the American middleweight bicycle. Only after careful scrutiny would someone technically familiar with bicycles be able to ascertain the existence of the more narrow tire diameter.

CONCLUSION WITH RESPECT TO CLASSIFICATION DEFICIENCY

We have seen how the GATT negotiators and President Eisenhower permitted lightweights to be accorded a preferential rate because they were not directly competitive. And we have noted that in 1955 the Tariff Commission concluded that directly competitive bicycles would cause serious injury and should be accorded the maximum tariff protection of a 22 $\frac{1}{2}$ -percent tariff rate, and that this conclusion was specifically affirmed by the President in his subsequent escape proclamation.

In these circumstances, it is clear that the avoidance of U.S. tariff by bringing bicycles of American middleweight design at the lightweight duty rate, contravenes and frustrates the intent of those parties who made the low rate possible in the first place. Such warping of intent should not be permitted to continue and in fact should have been corrected long ago.

CORRECTIVE LEGISLATION NEEDED

Since 1958 the American bicycle industry without success has endeavored to have this classification matter corrected, first by the Customs Bureau of the Treasury Department and thereafter by the State Department. The former decided that:

"* * * the typical lightweight bicycle provision of paragraph 371 of the Tariff Act of 1930, as modified, was not, *by its own terms*, limited to bicycles with straight tubular frames and, accordingly, any bicycle meeting the stated specifications as to weight, diameter of wheels, and size of the tires was classifiable thereunder, irrespective of the type of frame of the bicycle." [Emphasis supplied.] (H. Rept. No. 1255, 87th Cong., 1st sess., "Tariff Classification Description for Lightweight Bicycles" at pp. 2 and 3.)

In connection with the latter, it is noted that while foreign countries understandably are unwilling to give up something they have, even though in equity and good conscience it does not belong to them, certainly our American negotiators could reasonably be expected to have taken such action as was necessary to rectify the injustices occasioned by the above tariff loophole. Certainly, they were fully apprised of, and had ample opportunity to correct the problem. Having failed to act, the State Department placed the final and ultimate responsibility for correction back where it had been originally—in the hands of the Congress.

PURPOSE OF H.R. 8938

H.R. 8938, a bill to provide a more definitive tariff classification description for lightweight bicycles, seeks only to insure the application of the original trade agreement intent (1947) that bicycles classified as "lightweights" shall have frames (not including the front and rear wheel forks) of all straight tubing. In this connection, House Ways and Means Committee Chairman Wilbur Mills said, at the time this bill was unanimously passed by the House:

"The committee (Committee on Ways and Means) is convinced that the record made before the Committee for Reciprocity Information, the agency which heard interested parties before the trade agreement negotiations in question were started, shows that this trade agreement concession *was intended to cover bicycles which are commonly known as diamond frame bicycles*; that is, bicycles with frames, not including the front and rear wheel forks, consisting of all straight tubing." [Emphasis supplied.]

Here is the way Congressman Bass, who originally introduced the bill H.R. 8938, summed up the purpose of the bill on the floor of the House at the time it was unanimously passed by that body:

"Passage of H.R. 8938 will permit all bicycles which were originally intended to come in at the lower lightweight duty rate to continue to come in at that lower rate.

"As the practice directly contravenes the 1947 trade agreement intent, curved tubular bicycles of American middleweight design will no longer be permitted entry into the United States at the low lightweight duty rate. This is as it should be and follows from the initial understanding and subsequent statements of all parties, including foreign manufacturers, importers, and domestic producers.

"Calling as it does for the application of the original trade agreement intent, this bill is of a distinctly just and equitable nature."

CONCLUSIONS

While we are told that passage of H.R. 8938 will prevent the loss of over \$500,000 to the taxpayers of our already overstretched economy, the main crux of this bill is that its passage is simply a matter of fair play. Stated in the simplest of language, the American bicycle industry is seeking only to insure that "apples be placed in the apple basket and that pears be placed in the basket reserved for pears." It asks only that bicycles intended to be dutiable at 11¼ percent ad valorem (triangular-framed lightweights) be dutiable at 11¼ percent, and that bicycles intended to be dutiable at 22½ percent ad valorem (all other bicycles) be dutiable at 22½ percent.

While foreign producers can be expected to delay in every way possible a need and called for clarification of the lightweight bicycle classification description, there comes a time when, in simple justice, the loophole should be plugged. H.R. 8938 will do exactly that. And, for this reason, we urge that it be favorably reported out by the Senate Finance Committee.

The CHAIRMAN. I submit for the record a telegram received from Mr. E. E. Proctor, managing director of Metasco, Inc., in New York, and also a letter received from Mr. Philip Kamler, president of Kent International, of Newark, N.J.

(The telegram and letter follow:)

NEW YORK, N.Y., June 13, 1962.

HON. HARRY F. BYRD,
Chairman, Senate Committee on Finance,
New Senate Office Building, Washington, D.C.:

With reference to H.R. 8938 now under discussion in the Senate Finance Committee, increasing tariff on cantilever-frame bicycles is equivalent to penalizing progress in design and modernization. This is analogous to increasing tariffs on imported automobiles simply because styles are modernized. Most commodities used by the American consumer show the effect of modern style and design much of which originated abroad and are not restricted to the designs of 30 years ago. We respectfully submit that the Senate Finance Committee should not approve H.R. 8938.

E. E. PROCTOR,
Managing Director, Metasco, Inc., New York.

KENT INTERNATIONAL,
Newark, N.J., May 15, 1962.

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

DEAR SIR: I am registering this protest against passage of legislation to increase import duties on bicycles, now under consideration by the Senate Finance Committee.

An act to increase bicycle duties was passed by the House of Representatives on April 5, 1962, H.R. 8938. H.R. 8938 is based upon a material misstatement of fact. We propose to state the true facts in this letter, so that the Senate Finance Committee will have complete information upon which to render a just decision, as to whether further import duties on bicycles are justified.

Our company, Kent International, is a major importer of bicycles. In the year 1961, our company imported 65 to 75 percent of all the bicycles brought into the United States from the Netherlands. Kent International, a bicycle importing company, is an outgrowth of 55 years of continuous participation in the American bicycle market. Our company's position is in serious jeopardy should H.R. 8938 be enacted into law, and in addition, the importation of bicycles from Holland will be severely curtailed.

Briefly stated, H.R. 8938 seeks to create a new classification upon which to base increased import duties on 26-inch bicycles, frame design. A 100-percent increase in the tariff is proposed on import bicycles with lightweight 26 by 1½ wheels, if the bicycle has a curved frame. The large proportion of all 26-inch bicycles imported from Holland have curved frames. It is our position that this legislation favors the interests of American bicycle manufacturers, who have already received the benefit of tariff increases imposed on imported bicycles over the past 5 years, after three long and exhaustive hearings by the U.S. Tariff Commission. We feel that this proposed legislation is arbitrary and is based upon a mere technicality upon which a tariff increase is sought—the shape of the frame. Should this approach be successful, this would encourage tariff increase proposals in the future also based upon arbitrary ground such as the color of the bicycle, the amount of chrome used, the number of spokes in each wheel—ad infinitum.

Our prime objection is the fact that the premise upon which this proposed legislation is based does not conform to the facts. The report accompanying H.R. 8938, states that in 1954, a new bicycle was developed by American manufacturers having curved tubing, and for this reason was designated "middle-weight" bicycle. This is not true. The frame style of all domestic manufactured bicycles were curved for at least a period of 20 years prior to 1954. In 1954, the wheel, rim, and tire designation was changed from a width of 2.125 inches known as balloon tires, to a width of 1.75 inches now to be designated "middleweight." This was the only change in American bicycles in 1954, and the

basic middleweight makeup has not been changed to this date. In other words, in 1954, the wheel and tire designation was changed, but there was absolutely no change in the frame design of bicycles, as has been stated in the report to H.R. 8938.

The interests advocating passage of this legislation to increase tariffs on bicycles having curved frames imply that bicycles with curved frames were not in use in the United States prior to 1954. They state that in 1954 a new bicycle was developed by American bicycle manufacturers having curved tubing and this new bicycle was designated "middleweight" bicycle. We state unequivocally that bicycles having curved frames have been produced by every American manufacturer continuously for at least 20 years. We state further that bicycles with curved frame styling made up the major proportion of all bicycles manufactured and sold in the United States for a 20-year period prior to 1954. The true and real facts of the matter are that in 1954 American bicycle manufacturers were greatly alarmed by the tremendous increase in popularity and acceptance of the lighter weight bicycle imported into the United States from European countries. In the effort to stem this tide of popularity, a decision was apparently made by domestic manufacturers to make a lighter weight bicycle. The bicycle in use in the United States prior to 1954 was a bicycle having a tire width of 2.125 inches. This bicycle was known in the trade as a balloon tire bicycle. The change of the middleweight bicycle introduced in 1954 changed only the tire width designation from the 2.125 balloon size to a new tire designation of 1.75 inches which came to be known as the middleweight size. The change in the middleweight bicycle introduced in 1954 had absolutely nothing to do with the frame design or shape. The change referred to the tire width designation.

The frames used on bicycles prior to 1954 on balloon tire bicycles were curved frames. There were no straight or diamond frames on models produced by American manufacturers of any sales importance. The frames on the new middleweight bicycles were identically the same frames used on the old balloon tire bicycles. In fact, every American manufacturer advertised that the new middleweight bicycles had frames of exactly the same shape and design as the balloon tire models and that further, it would be possible to interchange the wheels and tires of these two models. We have gone into great detail to set forth the fact that the "new" middleweight bicycles introduced in 1954 have the same curved frames as balloon tire models produced for a 20-year period prior, and that the only real change in the middleweight bicycle was a change in tire sizes.

We violently object to the statement listed in the report to accompany H.R. 8938 that "in 1954, the domestic producers of bicycles introduced a new bicycle style featuring a curved tubular frame which they called the middleweight bicycle." We have attached herewith catalogs of major American bicycle manufacturers listing models produced in the year 1952 and setting forth the frame styling of American bicycles with balloon tires produced prior to 1954. It can easily be observed that the great preponderance of models exhibited in these catalogs are bicycles with curved frames. We submit these catalogs as concrete proof of our contention that the change effected by the introduction of middleweight bicycles had absolutely nothing to do with the question of curved frames or frame styling. The only change of the middleweight bicycles was a change of tire size. This is not a matter of opinion on our part. This is a matter of fact. There is no American manufacturer who would testify under oath to the contrary.

We therefore categorically state that, the middleweight bicycle introduced in 1954 continuing the use of a curved-bar frame, but having a new lighter weight middleweight tire, was the result of the impact of the popularity of import bicycles in the United States. The facts have now been turned to create a false picture, alleging that the imported bicycles since 1954 have copied American middleweight styling.

H.R. 8938 now seeks to set up a new tariff classification of duties based upon an alleged change in frame design of domestic manufacturers in 1954.

How can a new frame classification now be set up, when there was no change in frame design? We, therefore protest this very premise of frame classification as being completely unjustified. Since this is the premise which H.R. 8938 has been legislated upon, we respectfully bring this to the attention of your committee, so that you may have the complete picture upon which to act.

In conclusion then, a new classification has been proposed by H.R. 8938 upon which to base bicycle import duties—the shape of the frame, or curved tubing. This change in classification was requested because of an alleged new American frame design with curved tubing introduced in 1954. We have proved by presentation of catalog material from the very people seeking these tariff increases, that there has been no change in American frame design. We present the question to you of how a new tariff classification can now be set up, based upon frame design, where there has been no basis of change?

We respectfully request that you give due consideration to the seriousness of our plea. The position of our company is in jeopardy, based upon this point. The future of imports of bicycles from Holland hinges upon your decision.

PHILIP KAMLER, *President.*

The CHAIRMAN. We will now take up the next bill, H.R. 7431, to allow the importation free of duty of certain stained glass windows for use in St. Joseph's Cathedral, Hartford, Conn., et cetera. I place in the record a copy of the bill as well as departmental reports received from the U.S. Tariff Commission, the Bureau of the Budget, and Departments of Commerce, State, and Treasury.

(The bill and departmental reports follow :)

[H.R. 7431, 87th Cong., 2d sess.]

AN ACT To provide for the free entry of certain stained glass for Saint Joseph's Cathedral, Hartford, Connecticut, and for the Church of Saint Francis Xavier of Phoenix, Arizona

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury is hereby directed to admit free of duty any stained glass or any prefabricated panels consisting of stained glass set in reinforced concrete with fastening devices which may be imported during the thirty-month period commencing on July 1, 1960, for use in Saint Joseph's Cathedral, Hartford, Connecticut.

SEC. 2. The Secretary of the Treasury is hereby directed to admit free of duty any stained glass or any prefabricated panels consisting of stained glass set in reinforced concrete with fastening devices which may have been imported before the date of the enactment of this Act for use in the construction of a new church and auxiliary buildings for the Church of Saint Francis Xavier of Phoenix, Arizona.

SEC. 3. If the liquidation of the entry, or withdrawal from warehouse, for consumption, of any article subject to the provisions of the first section or section 2 of this Act has become final, such entry or withdrawal may be re-liquidated and the appropriate refund of duty may be made.

Passed the House of Representatives March 6, 1962.

Attest:

RALPH R. ROBERTS, *Clerk.*

U.S. TARIFF COMMISSION,
Washington, D.C., March 16, 1962.

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

DEAR MR. CHAIRMAN: This is in response to your request of March 12, 1962, for a report on H.R. 7431, 87th Congress, which was passed by the House of Representatives on March 6, 1962, to provide for the free entry of certain stained glass for St. Joseph's Cathedral, Hartford, Conn., and for the Church of St. Francis Xavier, of Phoenix, Ariz.

Section 1 of the bill directs the Secretary of the Treasury to admit free of duty any stained glass or any prefabricated panels consisting of stained glass set in reinforced concrete with fastening devices which may be imported during the 30-month period commencing on July 1, 1960, for use in St. Joseph's Cathedral, Hartford, Conn. Section 2 provides similar treatment for any such glass or panels which may have been imported before the date of enactment of the act for use in the construction of a new church and auxiliary buildings for the Church of St. Francis Xavier, of Phoenix, Ariz.

Section 3 of the bill would authorize refund of any duty paid on any article described in section 1 or 2 if the liquidation of the customs entry has become final.

Windows, painted or stained, which are works of art, if imported to be used in houses of worship, and if valued at \$15 or more per square foot, are duty free under paragraph 1810 of the Tariff Act of 1930. Other painted or stained glass windows and parts thereof are dutiable under paragraph 230(a) of that act at the rate of 30 percent ad valorem.

A number of bills have been introduced in recent years to extend similar special exemptions to various religious institutions. One of these bills, which was for the benefit of the First Presbyterian Church, of Stamford, Conn., was enacted into law (H.R. 9396, 84th Cong., Public Law 1001).

In view of this precedent, the same considerations which prompted the exemption for the First Presbyterian Church of Stamford would apply in the consideration of H.R. 7431.

Sincerely yours,

BEN DORFMAN, *Chairman.*

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., May 31, 1962.

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

DEAR MR. CHAIRMAN: This will acknowledge your letter of March 12, 1962, requesting the views of the Bureau of the Budget regarding H.R. 7431, to provide for the free entry of certain stained glass for St. Joseph's Cathedral, Hartford, Conn., and for the Church of St. Francis Xavier, of Phoenix, Ariz.

The bill would grant to two churches a special privilege not available to other churches. As a matter of general policy, we believe that tariff legislation should treat alike all importers in the same class. If duty-free importation of stained glass windows of the type covered by this bill is considered warranted, the privilege should, in our view, be extended to all importers similarly situated.

The statement made by Senator Dodd on introducing a related bill, S. 2100 (p. 9967 of the Congressional Record of June 6, 1961), indicates a belief that a Treasury Department ruling requiring payment of duty on the windows being imported by St. Joseph's Cathedral is not in accord with existing law. As was stated in the Presidential message of June 13, 1960, returning, without approval, H.R. 5150 of the 86th Congress, a bill for the relief of Our Lady of the Lake Church: "Special legislation is not needed, however, in cases where the law may have been misinterpreted. General law provides procedures by which importers may challenge, administratively and in the courts, the Bureau of Customs' interpretations of the laws relating to importation." Accordingly, if St. Joseph's Cathedral and the Church of St. Francis Xavier believe the law is being misinterpreted in connection with the importation of their stained glass windows, these procedures are available to them.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

THE SECRETARY OF COMMERCE,
Washington, D.C., June 5, 1962.

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

DEAR MR. CHAIRMAN: This letter is in further reply to your request for the views of this Department with respect to H.R. 7431, an act to provide for the free entry of certain stained glass for St. Joseph's Cathedral, Hartford, Conn., and for the Church of St. Francis Xavier, of Phoenix, Ariz.

H.R. 7431 would provide an exemption from duty during the 30-month period beginning July 1, 1960, for stained glass or prefabricated stained glass panels set in reinforced concrete imported for use in the construction of the above-named churches.

On general policy grounds the Department is opposed to special exceptions to established rates of duties. Exceptions of this type, unless warranted by very unusual circumstances, tend to serve as precedents and thus to diminish the

overall effectiveness and fairness of the system of tariff administration. In the present instance, we understand that a reasonably comparable product is available from domestic sources, and no unusual circumstances appear to exist.

We are not unmindful of the financial problems encountered by religious groups undertaking church construction, and the importance of all possible savings. However, the fact that a proposed exception is for use in constructing a church is not thought of itself to be a valid basis for departing from the general rule.

The Bureau of the Budget advised 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.

DEPARTMENT OF STATE,
Washington, June 6, 1962.

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

DEAR MR. CHAIRMAN: I refer to your letter of March 12, 1962, requesting the Department's comments on H.R. 7431, a bill, to provide for the free entry of certain stained glass for St. Joseph's Cathedral, Hartford, Conn., and for the Church of St. Francis Xavier, of Phoenix, Ariz.

The Department of State has examined the proposed legislation and has no objection from the standpoint of foreign economic policy to its enactment.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

FREDERICK G. DUTTON,
*Assistant Secretary
(For the Secretary of State).*

THE GENERAL COUNSEL OF THE TREASURY,
Washington, June 13, 1962.

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

MY DEAR MR. CHAIRMAN: In your communication of March 12, 1962, you requested the views of this Department on H.R. 7431, to provide for the free entry of certain stained glass for St. Joseph's Cathedral, Hartford, Conn., and for the Church of St. Francis Xavier, of Phoenix, Ariz.

The bill would provide for the free entry of any stained glass or any prefabricated panels consisting of stained glass set in reinforced concrete with fastening devices which may be imported during the 30-month period commencing on July 1, 1960, for use in St. Joseph's Cathedral, Hartford, Conn. It would also provide for free entry of the same type of merchandise imported before the date of enactment of the act for use in the construction of a new church and auxiliary buildings for the Church of St. Francis Xavier, of Phoenix, Ariz. The bill also provides for the reliquidation of entries covering such articles, with a refund of duties paid, if the liquidation of those entries has become final.

Enactment of the proposed legislation would relieve these particular importers of duties imposed by the Congress upon all other importers of the same class. In the Department's opinion tariff legislation should provide equal treatment for importers similarly situated. The granting by the Congress of favored treatment to individual importers, as H.R. 7431 proposes, would not accord with this principle. Accordingly, the Department cannot recommend enactment of the proposed legislation.

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,

ROBERT H. KNIGHT, *General Counsel.*

The CHAIRMAN. The Chair inserts in the record, the statement of Senator Thomas J. Dodd, of Connecticut, at this point.

(The prepared statement of Senator Thomas J. Dodd, of Connecticut, follows:)

STATEMENT OF SENATOR THOMAS J. DODD, OF CONNECTICUT

I am grateful to the distinguished members of this committee for this opportunity to testify on behalf of H.R. 7431, to allow the duty-free importation of stained glass windows for St. Joseph's Cathedral in Hartford, Conn., and for the Church of St. Francis Xavier, in Phoenix, Ariz.

Last year I introduced S. 2100, which applies only to St. Joseph's Cathedral. My colleague in the House, Congressman Emilio Daddario, introduced an identical bill in the House, and it is an amended version of this bill which is presently under consideration by your committee.

We did not sponsor legislation until all administrative means of providing duty-free entry for these stained glass windows were thoroughly explored.

An administrative exemption on behalf of St. Joseph's was requested of the Treasury Department, on the basis that these windows are, in fact, "stained glass" within the scope of paragraph 810 of the Tariff Act.

Unfortunately, the Treasury Department denied this exemption, on the grounds that these windows are not stained glass works of art within the meaning of the Tariff Act.

This adverse decision seems to be based on the traditional concept of stained glass windows as flat, thin pieces of colored glass, held together by channels of lead.

This is a narrow view and does not take cognizance of the fact that art forms and art conceptions change as do church designs and church construction.

The St. Joseph's windows are thick pieces of colored glass, cemented together. I think they are stained glass works of art within the meaning of the Tariff Act.

These windows do not fit a literal interpretation of the Tariff Act, since they are the modern products of an ancient craft. But their structure is possible due to contemporary advances in architecture and ecclesiastical construction.

I believe that this section of the Tariff Act should be construed in such a way as to take account of progress in the making of stained glass windows.

Since this has not been done in this case, I hope that Congress will take the necessary action to allow the importation of these windows free of duty.

There is judicial and legislative precedent for exemptions such as those provided for in H.R. 7431. The Mission of San Gabriel, in California, successfully appealed a similar Treasury Department ruling before the customs court in Los Angeles. And Public Law 1001, passed on August 6, 1956, granted relief to the First Presbyterian Church of Stamford, Stamford, Conn., despite Treasury Department opposition.

On the basis of the information concerning the nature of these stained glass windows, and the fact that there is precedent for this kind of relief from the payment of duty, I urge that the Finance Committee give favorable consideration to H.R. 7431.

The CHAIRMAN. The Chair recognizes Mr. Paul Kaplowitz, General Counsel of the U.S. Tariff Commission. Mr. Kaplowitz, I suggest that you sit at the table so that you will be readily available for questions in connection with the testimony to be given.

The CHAIRMAN. Our first witness will be John G. Lloyd of the Stained Glass Association of America.

STATEMENT OF JOHN G. LLOYD, EXECUTIVE SECRETARY, STAINED GLASS ASSOCIATION OF AMERICA

Mr. LLOYD. Mr. Chairman and gentlemen of the committee, my name is John G. Lloyd, and I am executive secretary for the Stained Glass Association of America. We represent 53 American stained glass studios and over 150 stained glass artists and craftsmen. The association is a nonprofit organization established 60 years ago to promote the finest development of this ancient craft in America. Our

craft is one of the few remaining handicraft industries still able to operate commercially in the United States. At the present time, the craft in America is fighting for its very existence due to the unprecedented flood of stained and faceted glass windows being imported from Europe. Basically, this is the reason we are here today to oppose private bill H.R. 7431 which would permit the duty-free importation of faceted glass windows for St. Joseph's Cathedral, Hartford, Conn., and St. Francis Xavier Church, Phoenix, Ariz.

It is our understanding that the purpose of a private bill is to correct inequities in the law. In this case there have been no inequities perpetrated. The tariff provisions in question and the duty assessed have been in effect for at least 30 years and has been paid by every other, but one, church that chose to import its faceted glass windows.

Both churches here knew at the time these contracts were made that the imported windows would be subject to duty. We do not question their right to make purchases where or from whom they choose, but we do challenge the contention that they should be given special financial considerations not normally available to others, and particularly when these considerations serve to undermine the position of competitive American producers.

With the average American wage rate for stained glass workers standing at \$3.14 per hour as compared to less than 50 cents an hour in France, shipping charges and the relatively modest tariff in effect can in no way bring the cost of French-made windows up to comparable American windows. When the submitted bid prices for similar windows on a job are approximately the same figure, as they were in the present instance, it can only mean the American producer has drastically and dangerously reduced his profit margin, the French producer is making an exorbitant profit, or the importing agent (the middleman) is reaping the financial reward. The church is not getting the benefit of lower prices nor is the low paid French worker any better off.

We understand that the importers' agents are presently using this sales gimmick saying that even though duty is chargeable on these windows it will never have to be paid as the purchaser's representative in Congress can easily introduce a bill to have it avoided. In other words, H.R. 7431 is being used as a test case. If enacted into law a precedent will have been set and dozens, if not hundreds, of similar bills will be presented to take advantage of another loophole in the law. If enacted into law every other church that has or will import their faceted glass windows can ask for, and expect to receive, the same special treatment. And, as practically all of these imports are for churches, the legal tariff will be circumvented, voided and, in effect, nullified.

It might be argued that a precedent has already been set as a similar special privilege bill was passed in 1956. Unfortunately a like bill did get through the 84th Congress, but a word of explanation is needed about it. When the bill was entered our people protested to the House Ways and Means Committee and were led to believe a hearing would be granted before it got out of committee. Then, without prior notice, in the rush of business on the very last day of the session this private bill was attached as a rider to the very last bill to be pushed through and enacted at that session. The do-

mestic producers had no opportunity to be heard in the House and, of course, did not present their case to the Senate. Thus, since arguments were not heard for or against this earlier bill it should not be considered a precedent. In every Congress since the 84th similar bills have been introduced but they never got out of the Ways and Means Committee, until the one now being considered.

I might add, although favorably reported by the Ways and Means Committee, adverse reports were submitted to the committee by the Commerce Department, the Treasury, and the Labor Department. The only favorable report that came in was from the State Department.

Because these are church structures it is said they should be accorded special considerations, but I have not heard of any local taxes or Federal excises being lowered or eliminated on the basis of this argument. The Hartford Cathedral in particular is not a poor neighborhood parish church but a great city cathedral built on a monumental scale. I wonder what the working people would think who contributed money to the funds that made these buildings possible, if they knew that some of it was used to cause unemployment for other American workers, and then learn that an effort was being made to deprive the Government of needed revenue.

If this bill should be enacted the Government would have to return over \$100,000 in legally collected duty, not to mention the great administrative expenses that would be incurred to accomplish the refund—this all taking place at a time when the Government is hard pressed for cash and is using all available means to collect taxes from its citizens. Over and above these considerations is the fact that untold corporate and personal income tax moneys have already been lost because the jobs originally went overseas.

There is no question that this type of stained glasswork known as faceted glass or chipped glass set in concrete, was available and has been made for many years by American studios. The installations in question could have been executed by any one of many domestic companies and would have kept American craftsmen busy at a time when near recession conditions existed in the industry.

We do not, however, wish to appear as seeming to want to dictate where a purchaser must obtain his windows. On the other hand we do not believe it to be either fair or equitable to hand foreign studios a further competitive advantage over and above those they already enjoy.

Over two-thirds of the cost of a stained or faceted glass window goes for labor. Being a handcraft industry there is no possible way to lower production costs through technical, mechanical, or speedup methods. Whether made in Europe or America the craft techniques are the same with the primary difference in final price being the difference in labor costs.

In the past 10 years imported stained and faceted glass windows have increased by over 1,000 percent without any special help other than a favorable tariff. Now the importers and the users of imports are asking for additional incentives to make it even cheaper and easier to buy the foreign product.

For over 150 years the American stained glass craft has struggled to establish itself. Now at a period of its greatest development when it equals or surpasses any other in the world, it is placed in a most

precarious economic position. It is made up of small family-type businesses the skills for which have been handed down from father to son for generations. However, it can make but a small impression on the country's overall economic picture. Our production and employment figures may appear insignificant but the craft has become a real part of America's culture and heritage. America would suffer much more than just an economic loss if the craft were allowed to disappear—and that is just what is about to happen if fair competitive standards between foreign and domestic studios are not established and maintained.

Now, the booklet I left upon the desk there explains what these faceted glass windows are and how they might differ from the usual traditional stained glass windows.

Thank you.

The CHAIRMAN. Any questions?

Senator DOUGLAS. Is John La Farge regarded as the modern founder of the stained glass craftsmen's work in this country?

Mr. LLOYD. La Farge and Tiffany were the two men who gave the greatest impetus to stained glass America, and that is about the mid-1890's.

Although stained glass had been made in the original New Amsterdam Dutch Colony in the 17th century, that is when the craft appeared in this country.

Senator DOUGLAS. Did the La Farge Workshop originate in Boston?

Mr. LLOYD. No. He was originally in New York.

Senator DOUGLAS. Isn't there a Boston firm or group?

Mr. LLOYD. Well, Boston is sometimes known as the center of the industry, which is not quite true. But the Connick Studios in Boston are what you are referring to. Charles Connick was the man who did the most for American stained glass during the 1930's, and many of his windows are seen all over the country.

The CHAIRMAN. The next witness is Mr. O. R. Strackbein of the International Brotherhood of Painters, Decorators, and Paperhangers.

Take a seat, sir, and proceed.

STATEMENT OF O. R. STRACKBEIN, INTERNATIONAL BROTHERHOOD OF PAINTERS, DECORATORS, AND PAPERHANGERS

Mr. STRACKBEIN. Mr. Chairman, I have no prepared statement, and in view of the lateness of the hour I will endorse the statement of the previous witness and simply say that special bills of this kind, if encouraged, will lead to endless series of private bills to change the duty rates on particular products.

Generally, the policy, as I have observed it in the Congress over the past 15 or 20 years, has been against private legislation. We have general laws and trade agreements programs which are here.

The people who are interested in bringing in the stained glass have an opportunity through the trade agreements program to have these rates reduced if this should be accomplished. If the rates of duty have not been sufficiently reduced there is possibly still a continuation of the trade program of by which there could be accomplished this in the future.

Additionally, I want to say that if such a law is passed it will set a precedent that might, in turn, become rather inconvenient, and encourage other people to try the same means.

This is an industry, not very large, but it does employ people who are highly skilled and who are, of course, entitled to employment and who, undoubtedly, will be adversely effected if these imports came in free of duty.

Mr. Chairman, with that, I am simply saying that I support the position taken by the Stained Glass Window Association itself, I will simply say thank you for the opportunity to appear here. I will be glad to answer any questions.

The CHAIRMAN. Thank you.

Any questions, Senator Douglas?

Senator DOUGLAS. No.

The CHAIRMAN. Thank you.

The next witness is Mr. Henry Lee Willet.

STATEMENT OF HENRY LEE WILLET, WILLET STAINED GLASS STUDIOS, PHILADELPHIA, PA.

Mr. WILLET. Senator Byrd, this is a great relief, I can assure you, all these years, I mean, as a frustrated crazy artist, taxpayer, and we wanted so to present our case before the Government, and this is the first time we have been granted that privilege, so at least you have aided my psychosis and frustration.

The CHAIRMAN. We are glad to have you.

Mr. WILLET. Mr. Winterich was to represent our committee, and he could not here here. Some ways it might be good because I can speak firsthandedly having been called in—I did not solicit, but was called in—by the architects for this cathedral in Hartford, and I met with them and I think, therefore, that I can speak firsthand about many of the things that have been raised.

I think there are three important areas: One is that it was stated that it was necessary to get this work from France, abroad, because the artists in this country were not qualified.

The second was that it was necessary to get it from this studio in France because that we were not capable of producing the commission of this size.

Third, that they could not afford to get it in this country.

Now, with regard to the first, I do not think of myself too highly. I am a second generation. My father worked with La Farge and trained Mr. Connick, who was referred to.

I personally have, since he died, been in this work since 1921.

Since I have some reputation, I have done work in Washington, on the Washington Cathedral here, and many other churches in the District and down through Virginia, all the way to Harrisonburg and Upperville and Winchester, and I just came back from Chicago this week where I received a commission for the great new university chapel at Northwestern University.

I am doing work in the Cathedral of St. John Divine, the Princeton Chapel, finished work in the new Roman Catholic Cathedral in Baltimore.

I think the records will indicate, and if you will look through Who's Who in American Art, I and many other are qualified in an artistic way and have received awards and citations for our work, and while we may not be quite as glamorous as the French, we feel we are eminently qualified as artists and capable of doing work of high artistic merit.

The question of whether we were able to do a commission of this size, for the past 6 or 7 years, I put in your hands a little folder, which shows just my studio alone, the work we have done, over 100 different churches in 27 States, and the District of Columbia, done this type of work. This only refers to the faceted glass which we have under consideration. We have been doing work for such international architects as Marcel Breuer, and Pietro Bieluski, and other architects who have an international reputation.

Our studio is a studio where we have almost double the number of artists and craftsmen as the French studio, so our studio alone, and there are others, would be capable of doing the commission of this size.

Third, the question about cost. When I was called over for the conference on this glass, and the architects said, "but you could not meet the price of the French studios."

I said we could do this for less than \$17 a square foot, and he said, "well, that is just the price of the French studios without the 30 percent duty." Since I knew their price I was going to meet it, because it was very vital to our whole craft that this job, if possible, this great commission, be done in this country.

So that really if the law is lived up to, I mean they would have saved 30 percent of the cost of this great commission, so it was not a question of price.

The Government, if they should pass this bill, would not only lose this duty to which by law they are entitled, they also have lost already the taxes that it would have gotten from wages and salaries and corporate gains taxes, and it just seems impossible that such a thing could be done in this country.

It is completely discriminatory and against what I think this country stands for.

Other churches have brought in, in fact, if they wanted to have the glamour of French stained glass, they have paid their duty. That is fine.

If they want to do that, why, that is fine. But why should a person be able to circumnavigate this and deprive the Government of this money to which it is entitled? If this is a bad law, then let us have our lawmakers change the law.

If it is a good law, I do not think that one person, no matter how highly placed, should be allowed to defeat the purpose of this bill which calls for this 30 percent duty.

It has not cut down the work coming into this country. This is going up by leaps and bounds. Our make-and-break point between price and any gain is going down every year.

We have just—believe it or not, we are unionists, we are unionized, and we come under the Painters, Paperhangers & Decorators, so that keeps us from thinking we are too important, two-armed paperhangers—we have just negotiated in our local a new agreement in which the increase is just about the value of what the whole wage

scale is in France. So, you see, we are in a pretty good bind there.

But this is not cutting down sending work in. Those who have, have paid the duty. A great many of the studios, I mean importers, have brought this in and have paid the duty themselves, and these things have been paid under protest, so if this is passed, it is not only going to be the money on these two bills, I mean these two churches, but great numbers of others are going to come in and there will be a tremendous amount of nest eggs going to importers which, I am sure, they will enjoy.

I do not think that the French should mind our tariff, if they were to commission me to do a window in one of their churches they would have to pay 40 percent of duty on it.

Senator DOUGLAS. How much?

Mr. WILLET. Forty percent.

Senator DOUGLAS. What is the American tariff?

Mr. WILLET. Thirty percent.

Senator DOUGLAS. Thirty percent.

Mr. WILLET. So I do not think that they could complain on that basis.

As you have seen in magazines, the new Coventry Cathedral has just been dedicated. They tried to bring out that they had to get these great international studios to do it. The Coventry Cathedral used their own fine artists in England to do the glass there. They did not have to go across the channel any more than we have to go across the sea, and vice versa in the great French churches, they use their French studios.

I do not know why this great desire for foreign work, but that is all right, if that is what the people want, to have French stained glass. But we do desperately and from the terrible position we are in, plead with you not to do something that is going to make it almost impossible for us to continue on.

We are in a very tight and close position, and we not only lose from these commissions but we lose from the publicity.

A commission like this is given to the Associated Press and other wire services. It goes out to every little hamlet in the country that this great commission has been given to a French studio, and there are great pictures of it, pictures of the archbishop in the Paris studio looking at the glass.

They get all kinds of publicity, so it is not only this job, but that it aids the importers to get further jobs because of the tremendous publicity they get and which American studios cannot command.

So I hope that great care will be given and great thought given not to make it any more difficult for us to continue what we feel is a very important part of the cultural side of the United States.

The CHAIRMAN. Thank you.

Any questions?

Senator DOUGLAS. May I ask a question?

It used to be said that American stained glass artists were not able to get the soft purples and violet colors that the French have been able to obtain ever since the time they did the windows for the Chartres Cathedral. Do you want to make any comment as to the ability to reproduce violet and soft purple?

MR. WILLET. The raw material itself, we have, those of us who are qualified. For instance, part of our education I have spent months and months of course, in Chartres. They have great scaffolds that you are allowed to go on and make color studies, and so on. We have been able to produce every color. That is an apocryphal story, this is an interesting apocryphal story like so many you get that if you go into Chartres or other great cathedrals that you cannot do it.

We can produce any color that was done. The only thing they have at Chartres that we do not have is a patina of 900 years which is, of course, a very salutary and wonderful thing. But as far as the glass itself and the colors they can be reproduced and have been the same as they were back in the 12th and 13th centuries.

SENATOR DOUGLAS. I felt there has been a big improvement in American stained glass work in the last 30 years. Some of the stained glass 40 years ago, I thought was hideous. But I have felt that in these last 30 years there has been tremendous improvement. Would you agree with that?

MR. WILLET. Yes.

You have brought up the name of La Farge and the name of Tiffany, and that was sort of the low watermark, really, in stained glass, because they completely lost the concept of what is a stained-glass window. It is not a picture, and their materials were not permanent or lasting. They used what we call on opalescent glass and enamel paints, which cannot be properly fused into the glass. But with this technique they were able to produce copies of such famous reproductions as "Christ knocking against the door." But that is not a stained-glass window. Stained glass should be synthesized into the structure, become a part of the wall surface, two dimensional, decorative, and largely, it is the color which produces a liturgical or worshipful feeling.

SENATOR DOUGLAS. Are you saying it is not representational?

MR. WILLET. We do quite a bit of that today in contemporary churches; yes, sir. In the one that I was just in Chicago on—

SENATOR DOUGLAS. Are you moving in the nonpictorial direction, too, along with modern painting?

MR. WILLET. We are not an independent art. We are the hand-
maiden of architecture, sir, and if—

SENATOR DOUGLAS. I see. In other words, you have to dance to the tune that the architect sets.

I wish you would take more initiative.

MR. WILLET. We cannot. I mean, if you build a church it is there not to say that Henry Willet is the grandest tiger in the jungle. It is to help you when you get into the church to feel the presence of the Almighty, and you want to worship.

SENATOR DOUGLAS. Of course, the Chartres Cathedral represents scenes from the Bible.

MR. WILLET. In a completely decorative way.

If you go into Chartres Cathedral, if you have been in there, as I assume you have—

SENATOR DOUGLAS. Yes, many times.

MR. WILLET. I would be surprised if you could tell me many of the scenes that were there, because primarily it is the tremendous liturgical effect that you get in there with the light coming through, the position of these glorious blues and rubies which set up—

Senator DOUGLAS. I must say I once took the Bible in there and tried to trace the tree of Jesse, and I made an effort. And——

Mr. WILLET. That is wonderful. That is probably one of the greatest windows of all times. It is a rather cascade of light.

Senator DOUGLAS. It is not merely light, but history.

Mr. WILLET. It is symbolic, but there are those who believe that symbolism is something which can be shown without using representational figures.

Senator DOUGLAS. I think that this colloquy of ours should be eliminated from the record.

Mr. WILLET. You should do like Senator Clark did a week ago. He came up to the studio and went through it.

Senator DOUGLAS. But I am afraid I am a simple man and I like to see pictures.

Mr. WILLET. Senator Clark came up just a week ago unannounced in the studio and he and Mrs. Clark went through, and he has not been sympathetic to our position when I had written to him. He is my Senator, one of my two Senators, he and Hugh Scott, and I think if you talked to him now he has completely changed his whole idea after having been there and seen these really devoted artists and craftsmen who have given their whole lives to this and trained and work like a great symphony orchestra together. So we do have something——

Senator DOUGLAS. I am sorry you have to feel you have to deny the great John La Farge so.

Mr. WILLET. Well, that type of work is no longer being made, sir, because it was not done with materials such as were used at Chartres. We use the same techniques and materials as at Chartres.

The CHAIRMAN. Thank you very much.

I submit for the record a letter received from Mr. Otto C. Winterich, President of Winterich's, of Bedford, Ohio.

(The statement follows:)

WINTERICH'S,
Bedford, Ohio, June 13, 1962.

Subject: Senate Committee on Finance public hearing of tariff bills H.R. 7431, S. 2100.

Mrs. ELIZABETH B. SPRINGER,
Chief Clerk, Senate Committee on Finance,
Washington, D.C.

DEAR MRS. SPRINGER: Thank you kindly for your telegram of June 12 regarding the subject committee meeting which is to be held at 10 a.m. on the day of June 15, 1962. I am extremely sorry that previous commitments and obligations prevent me from attending this meeting.

I would like to take this opportunity to express our reasons for objecting to H.R. 7431 and S. 2100. The decision of the Finance Committee will be of vital importance to the future existence of our stained glass and faceted glass studio. This also holds true for many other studios similar to ours in this country.

First of all, we feel that this particular bill is discriminatory. It allows certain parties to be free of paying legal established duties where other similar churches and organizations have already paid duty not requesting special privileges. If this particular bill is passed, the House and Senate will be deluged with similar requests from many other churches and organizations.

We object to the passage of this bill because, our company pays duties on many imported items similar to the item referred to here, which under the existing tariff laws are dutiable but, are still used in churches. If some churches can gain this special privilege of having the duty waived, I believe that companies such as ours, should also have this opportunity if the ultimate use is going to be for a church. Allowing the church the special privilege of not pay-

ing duty for dutiable items by them going directly to a foreign country to have work done, encourages them to circumvent and stay away from legitimate American business concerns.

We object to the passage of this bill because those requesting this special privilege were aware at the time that they contracted with a foreign concern for this work, that there was duty to be paid on this commodity. They felt they would be able to have this duty waived by requesting special privileges from their representatives in the legislature. By this particular work going out of the country the various agencies of our Government consisting of city, county, State, and Federal lost considerable dollar's worth of revenue which would have been paid by an American concern through various taxes such as corporate income taxes, personal income tax, Federal unemployment tax, social security, industrial compensation, State unemployment, use tax, etc. We feel that any competition coming from foreign shores should pay the same as the American producer for having the opportunity of doing business in this country.

We object to the passage of this bill for if this work had been done on this particular project in this country, it would have kept 10 average studios busy for 1 year.

We object to the passage of this bill because it will set a precedent which will allow many more projects to come into this country duty free. This in turn will prevent our studio and many other studios in this country from keeping its talented craftsmen and artists employed. This particular craft is a hand-craft where 75 percent of the cost is hand labor where there is no possible way to improve production through the use of newer technological machinery or speed up methods to compensate for the fact that the average hourly wage of the competing foreign concern is 20 to 30 percent of ours. We in this country need this 30-percent duty as a protection to allow us to stay in business.

We object to the passage of this bill because, it will in the future, prevent talented craftsmen and artists from carrying on a God-given talent in this country which in turn will deprive the American public from the exposure of our cultural heritage.

I wish to sincerely thank you for advising us of this hearing and giving us the opportunity of presenting our viewpoints.

We trust and hope that you as our representatives in Washington will have the same feeling in this matter as we do and will pursue with vigor its defeat.

Sincerely yours,

JOHN W. WINTERICH AND ASSOCIATES, INC.,
OTTO C. WINTERICH, *President*.

The CHAIRMAN. The last bill on which hearings were scheduled today is H.R. 4449, to amend paragraph 1774 of the Tariff Act of 1930 with respect to the importation of certain articles for religious purposes. The witnesses who had indicated a desire to testify found that it was impossible for them to be here today and have submitted their written statements in lieu of appearing.

The Chair submits for the record a copy of the pending bill, as well as departmental reports received from the U.S. Tariff Commission, the Bureau of the Budget, Departments of Commerce and Interior.

(The bill and departmental reports follow:)

[H.R. 4449, 87th Cong., 1st sess.]

AN ACT To amend paragraph 1774 of the Tariff Act of 1930 with respect to the importation of certain articles for religious purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph 1774 of the Tariff Act of 1930, as amended (19 U.S.C. 1201, par. 1774), is amended to read as follows:

"PAR. 1774. Altars, pulpits, communion tables, baptismal fonts, shrines, mosaics, iconostases, or parts, appurtenances, or adjuncts of any of the foregoing, whether to be physically joined thereto or not, and statuary (except granite cemetery headstones, granite grave markers, and granite feature memorials,

and excepting casts of plaster of Paris, or of compositions of paper or papier mâché), imported in good faith for the use of, either by order of, or for presentation (without charge) to, any corporation or association organized and operated for religious purposes, including cemeteries, schools, hospitals, orphanages, and similar nonprofit activities staffed and controlled by such corporation or association."

SEC. 2. The amendment made by the first section of this Act shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on or after the thirtieth day after the enactment of this Act.

Passed the House of Representatives June 14, 1961.

Attest:

RALPH R. ROBERTS, *Clerk.*

U.S. TARIFF COMMISSION,
Washington, June 28, 1961.

MEMORANDUM OF H.R. 4449, 87TH CONGRESS, A BILL TO AMEND PARAGRAPH 1774 OF THE TARIFF ACT OF 1930 WITH RESPECT TO THE IMPORTATION OF CERTAIN ARTICLES FOR RELIGIOUS PURPOSES

Paragraph 1774 of the Tariff Act of 1930 is a free list provision, which, as proposed to be amended by H.R. 4449, would read as follows (proposed new language italicized; deleted language in black brackets):

"Altars, pulpits, communion tables, baptismal fonts, shrines, mosaics, *iconostases*, or parts, *appurtenances*, or *adjuncts* of any of the foregoing, *whether to be physically joined thereto or not*, and statuary (except *granite cemetery headstones, granite grave markers, and granite feature memorials*, and excepting casts of plaster of paris, or of compositions of paper or papier mache), imported in good faith for the use of, either by order of, or for presentation (without charge) to, any corporation or association organized and operated [**exclusively**] for religious purposes, *including cemeteries, schools, hospitals, orphanages, and similar nonprofit activities staffed and controlled by such corporation or association.*"

Except for the language "granite cemetery headstones, granite grave markers, and granite feature memorials, and excepting", in line 10 on page 1 and line 1 on page 2 of the bill, H.R. 4449 is identical with H.R. ~~4384~~, 86th Congress, as reported out by the Committee on Finance (S. Rept. No. 1911, 86th Cong., 2d sess.). The Senate passed H.R. 4384 with certain added amendments to the bill relating to other matters. The bill did not become law.

H.R. 4449 is designed to extend and make more effective the duty-free privileges accorded by paragraph 1774 to religious institutions by: (1) Adding iconostases (a type of screen or partition used to enclose the altar sanctuary)¹ to the articles now mentioned by name in paragraph 1774 (altars, pulpits, communion tables, baptismal fonts, shrines, mosaics, and statuary), (2) exempting (in addition to the present exemption for parts of the named articles (except parts of statuary)) adjuncts and appurtenances of such named articles, whether or not to be physically joined thereto, (3) eliminating the requirement that the beneficiary corporations or associations be organized exclusively for religious purposes, and (4) extending the privileges of paragraph 1774 to cemeteries, schools, hospitals, orphanages, and similar nonprofit activities staffed and controlled by a corporation or association organized and operated for religious purposes.

Explanation of all but one of the proposed changes in the coverage of paragraph 1774 is set forth in the above-mentioned report of the Finance Committee on H.R. 4384. The change not discussed, viz., the exception dealing with granite cemetery headstones, granite grave markers, and granite feature memorials was not included in H.R. 4384. This exception limits the scope of the provision for statuary and was presumably added to quiet the concern of the domestic headstone industry.

The articles now provided for in paragraph 1774 are usually integral parts of religious edifices and the designs and space to be occupied are frequently worked out by the architects in collaboration with sculptors and other highly qualified craftsmen. In many cases the nature of the articles finally installed is influenced by costs and by availability of different types of materials and craftsmen. Since the domestic producers are able to maintain close contact

¹ On Mar. 14, 1961, the U.S. Customs Court held, in *Greek Orthodox Church of Evangelismos v. United States*, C.D. 2241; 96 Treas. Dec. (No. 12), p. 30, that an iconostasis is "a shrine or part thereof" within the meaning of that term as used in par. 1774. The decision has been appealed.

with the architects they have distinct advantages over foreign producers in supplying most installations.

The architect often deals with the artists or producing concerns through church supply houses, whose services are advantageous because of their familiarity with the many regulations and conventions of ecclesiastical architecture. The larger supply houses act as intermediaries for both the domestic and the foreign producers.

The aggregate values of imports under paragraph 1774 for the years 1952-60, inclusive, were as follows:

1952-----	\$1, 017, 000	1957-----	\$1, 801, 000
1953-----	1, 150, 000	1958-----	2, 000, 000
1954-----	1, 328, 000	1959-----	2, 148, 000
1955-----	1, 724, 000	1960-----	2, 404, 000
1956-----	1, 690, 000		

Throughout the years shown above Italy has supplied more than 75 percent of the total imports each year.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., July 21, 1961.

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

DEAR MR. CHAIRMAN: This is in reply to your request of June 16, 1961, for a report on H.R. 4449, a bill to amend paragraph 1774 of the Tariff Act of 1930 with respect to the importation of certain articles for religious purposes.

The bill would eliminate many administrative difficulties involved in the present provision authorizing the free entry for the use of religious organizations of certain religious articles which are usually integral parts of church structures.

The Bureau of the Budget has no objection to the enactment of the bill from the standpoint of the administration's program.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

DEPARTMENT OF STATE,
Washington, July 7, 1961.

HON. HARRY F. BYRD,
Committee on Finance,
U.S. Senate.

DEAR MR. CHAIRMAN: I refer to your request of June 16, 1961 for the Department's comments on H.R. 4449, a bill, to amend paragraph 1774 of the Tariff Act of 1930 with respect to the importation of certain articles for religious purposes.

Paragraph 1774 provides for the free entry of various religious articles if imported for the use of any corporation or association organized or operated exclusively for religious purposes. The proposed legislation would add to this list of articles, iconostases, and parts, appurtenances or adjuncts of any of the items listed. The amendment would specifically exclude from duty free treatment under this paragraph granite cemetery headstones, grave markers, and feature memorials. These items do not presently enter under paragraph 1774. The proposed legislation would entitle cemeteries, schools, hospitals, orphanages, and other nonprofit activities staffed and controlled by a religious corporation or association to the duty free importation privileges of paragraph 1774.

The Department has examined the proposed legislation and would have no objection on the basis of foreign economic policy to its enactment.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely yours,

BROOKS HAYS, Assistant Secretary
(For the Secretary of State).

THE GENERAL COUNSEL OF THE TREASURY,

Washington, July 6, 1961.

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. 4449, to amend paragraph 1774 of the Tariff Act of 1930 with respect to the importation of certain articles for religious purposes.

The proposed legislation would grant free entry to appurtenances or adjuncts of articles provided for in paragraph 1774 of the Tariff Act, as amended, whether to be physically joined thereto or not, and would add iconostases to the items granted free entry under paragraph 1774. It would also extend the free entry privilege of this paragraph to cemeteries, schools, hospitals, orphanages, and similar nonprofit activities staffed and controlled by corporations or associations organized and operated for religious purposes.

Adoption of the bill would eliminate many administrative difficulties involved in distinguishing between articles presently provided for in paragraph 1774 and their appurtenances or adjuncts, and would clarify the status of articles imported for the cemeteries, schools, hospitals and orphanages of religious organizations.

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,

ROBERT H. KNIGHT, *General Counsel.*

THE SECRETARY OF COMMERCE,

Washington, D.C., July 28, 1961.

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

DEAR MR. CHAIRMAN: This letter is in reply to your request for the views of this department with respect to H.R. 4449, an act to amend paragraph 1774 of the Tariff Act of 1930 with respect to the importation of certain articles for religious purposes.

Paragraph 1774 of the Tariff Act provides for the duty-free admission of altars, pulpits, communion tables, baptismal fonts, shrines, mosaics, or parts of any of the foregoing, and statuary, imported for the use of organizations operated exclusively for religious purposes. In somewhat broader language, H.R. 4449 proposes that the duty-free admission for the above articles should be extended to cemeteries, schools, hospitals, orphanages, and similar nonprofit activities staffed and controlled by such corporation or association. It further provides for the duty-free admission of appurtenances or adjuncts of any of the articles covered in the paragraph.

The Department of Commerce does not object to this bill. However, when this bill was before the House we expressed concern lest the phrase "appurtenances or adjuncts" was not sufficiently clear. For example, articles such as candleabra and candlesticks, dutiable under paragraph 339, and wax candles dutiable under paragraph 1536, might be described as appurtenances and adjuncts to an altar, thus negating the duty schedules on these items.

This problem was recognized by the House Ways and Means Committee, which stated in its report favoring this legislation that " * * * articles concerning which certain interpretative questions have arisen, such as baldichinos, reredoses, tabernacles, altar predellas, altar clothes, altar screens, and altar candlesticks, which are not necessarily physically attached to or structural parts of altars, pulpits, communion tables, and other religious articles named in paragraph 1774, would be within the purview of the bill. Candles and similar items not specially prepared for use with altars, shrines, etc., and which find a wide range of uses for other purposes would not be included."

In view of this clarification by the Ways and Means Committee, which will constitute part of the legislative history, we have no objection to the enactment of the bill.

The Bureau of the Budget advised there would be no objection to the submission of this report from the standpoint of the administration's program.

Sincerely yours,

EDWARD GUDEMAN,
Acting Secretary of Commerce.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., August 17, 1961.

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

DEAR SENATOR BYRD: This is in response to your request for the views of the Department of the Interior on H.R. 4449, a bill to amend paragraph 1774 of the Tariff Act of 1930 with respect to the importation of certain articles for religious purposes.

Paragraph 1774 permits the importation of certain religious articles free of duty if imported by any corporation or association organized and operated exclusively for religious purposes.

H.R. 4449 would amend the paragraph to read "any corporation or association organized and operated for religious purposes, including cemeteries, schools, hospitals, orphanages, and similar nonprofit activities staffed and controlled by such corporation or association."

The Department appreciates the opportunity to comment on the bill, but we have no recommendations to make. The bill would not affect any of our programs.

Sincerely yours,

JAMES K. CARR,
Under Secretary of the Interior.

The CHAIRMAN. Statements submitted for the record in lieu of appearing will be incorporated in the record of the hearing when received.

(The following statements were subsequently submitted and included in the record: Mr. H. R. Parker, secretary, Candle Manufacturing Industry; Mr. Roy E. Mayes, president, Carthage Marble Corp. of Carthage, Mo.; Mr. William H. Adams, vice president, Vermont Marble Co., Proctor, Vt.; Mr. Robert S. Gillette, president, Rock of Ages Corp., Barre, Vt.; Mr. Milton B. Lyndes, general manager, Barre Granite Association, Barre, Vt.; Mr. W. H. Runge, president of the Alabama Marble Co., of Sylacauga, Ala. [in form of telegram to Senator Lister Hill, of Alabama]; and Mr. Charles P. Taft, senior warden of Christ Episcopal Church, in Cincinnati, Ohio.)

STATEMENT ON BEHALF OF THE CANDLE MANUFACTURING INDUSTRY

Public hearings are to be held by the Senate Committee on Finance, June 15 on H.R. 4449, an act to amend paragraph 1774 of the Tariff Act of 1930. This industry has been invited to appear as a witness at the oral hearings. This statement of our views is submitted in lieu of appearing.

We understand from the report of the House Ways and Means Committee on H.R. 4449 that "candles and similar items not specially prepared for use with altars, shrines, etc., and which find a wide range of uses for other purposes would not be included."

Although candles are not presently covered specifically by the wording of the proposal there seems to be some opinion that certain types of candles used only for religious purposes might be within the ambit of the law. In order to eliminate any possibility of misunderstanding we respectfully suggest that the bill be amended so that it would specifically state that it did not cover the importation of candles. Candles are covered in paragraph 1536 of the Tariff Act of 1930.

Some description of the type of candle we are discussing should be helpful in considering our request. As a means of expressing spiritual ideas the Catholic Church prescribes that candles made of beeswax (*luminari cerea*) be burning on the altar during the holy sacrifice of the mass and at other liturgical functions. (*Missale Rom.*, *De Defectibus*, X, 1: *Cong. Sac. Rites*, September 4, 1875.) This same liturgical light which burns as a ritual act on the altar and as an integral part of the ceremony which it enhances is not used exclusively as an "altar appurtenance" but is also used elsewhere in the church and in the homes of the faithful.

The Roman ritual also requires that this liturgical candle of pure natural beeswax shall be used for the administration of all the sacraments with the exception of penance. It is required at baptism, confirmation, holy communion, matrimony, and extreme unction. It burns during the reservation of the blessed sacrament and also it reveals the real presence of the light of the world during the exposition and benediction. Similar wax candles light the Corpus Christi and Candlemas processions; the light of the beeswax candle flickers in the sick room while the priest performs his work and no funeral is held without its steady light of faith to banish the dark shadows. They are used during the blessing of a cemetery and are also given to the new priest at the time of his ordination by the bishop. On Candlemas Day this beeswax candle of the liturgy is blessed by the priest and distributed to the faithful to take home to be burned later during family prayers or during times of stress. The church encourages the use of this meaningful sacramental.

Since these candles are not prepared for altar use only and are used for other purposes throughout the church and by the faithful in their homes we respectfully ask that the bill be further amended so that it would specifically exclude candles.

CANDLE MANUFACTURERS ASSOCIATION,
By H. R. PARKER, *Secretary*.

CARTHAGE MARBLE CORP.,
Carthage, Mo., June 12, 1962.

Re H.R. 4449.

Senator STUART SYMINGTON,
Senate Office Building, Washington, D.C.

DEAR SENATOR SYMINGTON: On June 29, 1961, I wrote you about the above bill which was before the Senate Finance Committee, and I believe died there at that time. It is my understanding that hearings are now being held on this bill once again. Our position against this bill is the same as it was a year ago, and we are soliciting your support against its passage.

In fact, the competition from foreign sources is even worse in our industry that it was a year ago, and we are having more and more difficulty meeting increased costs continually narrowing our margin so that it is difficult to make ends meet. We certainly hope that you can see fit to work against this legislation.

Very truly yours,

ROY E. MAYES, *President*.

VERMONT MARBLE CO.,
Proctor, Vt., June 14, 1962.

HON. HARRY F. BYRD,
Chairman, Committee on Finance,
Senate Office Building, Washington, D.C.

DEAR SENATOR BYRD: I am writing you regarding H.R. 4449, in lieu of appearing at the hearing to be held on Friday, June 15, and I have sent the following telegram to Mrs. Elizabeth B. Springer, chief clerk of the Senate Committee on Finance:

"We do not desire to be registered as a witness at hearing on H.R. 4449 to be held Friday, June 15 at 10 a.m. as indicated in your telegram of June 12 but we will submit a written statement in opposition to this bill. The passage of this legislation would be detrimental not only to this company but to the domestic marble industry as a whole and we hope careful consideration will be given by the committee to the statement which we are sending."

This is the same bill which failed to pass in the 86th Congress.

It seems to us that this is unnecessary legislation and its enactment would be detrimental to all of the marble producers and finishers in the United States. While it is true that altars, pulpits, communion tables, and baptismal fonts now come in duty free, we have lost a great deal of this business even though we import marble which is used for these purposes, because we find it very difficult to compete with foreign labor rates. The sleeper in this bill from the standpoint of our industry is "or parts, appurtenances, or adjuncts of any of the foregoing, whether to be physically joined thereto or not, and statuary (except granite cemetery headstones, granite gravemarkers, and granite feature memorials, and

excepting cases of plaster of paris or of paper or papier mache).’ It would seem that marble cemetery headstones and marble gravemarkers and marble feature memorials ought to be exempt, as well as granite, in order that the entire monumental industry can be afforded the same degree of protection. As this bill is now written, the “parts, appurtenances, or adjuncts * * * whether physically joined thereto or not” might be confusing and might allow structural marble to come in duty free, because certainly the wall in back and surrounding an altar as well as the floor, could be considered appurtenant or adjunct, even though it were not physically joined to the altar, communion table, baptismal font, or shrine. The bill is so broad that the floor and walls in the chancel could all be included, duty free.

The excuse for the introduction of the bill and the very carefully worded report of the House committee, which was obviously written for it by someone acquainted with the industry, is to clarify the present law, but the present law says nothing about appurtenances or adjuncts, so that the passage of this bill would clearly permit the importation of finished building marble without the payment of duty when used in a church. The passage of this bill would permit the use of foreign marbles in our churches in competition with domestic marbles and would also promote the finishing of building marble with cheap foreign labor, with which we cannot possibly compete here. As you well know, Italian marble workers get about one-fourth of the wages that are paid in our industry in this country. We are sure you are also aware of the fact that it is cheaper to ship marble from Italy to our west coast than from the eastern part of the United States across the country by rail. If Congress keeps on chipping away at the tariff, our marble business will just as gradually be shifted to Europe.

There is another indefinite expression in this bill, in the use of the word “shrine.” This word is not defined and it should not be left to the understanding of the promoters of the bill, or to the possibility of an interpretation by the customs officials and the courts, which would be adverse to our interest. If any legislation is necessary, it ought to be written clearly enough so that it would not have to be interpreted by the courts. The word “shrine” as it is commonly used throughout the world, may be a small religious statue, or it could be the Shrine of the Immaculate Conception at Catholic University in Georgetown, with which we are sure all of the Members of Congress are familiar.

This letter is being written for the sole purpose of familiarizing your committee with the reasons for our opposition to the passage of H.R. 4449 and because we believe it is an unnecessary piece of legislation, which as written is subject to interpretation and it could do great harm to our company and to the marble industry in general.

Sincerely,

WM. H. ADAMS, *Vice President.*

STATEMENT CONCERNING H.R. 4449 BY ROCK OF AGES CORP., BARRE, VT.

For each of the past several years the question of reducing or removing the tariff on imported articles designed for religious purposes has come before Congress. On each such occasion the bill has failed of passage. It is respectfully requested that, in the current consideration of the matter, the following statement be entered on behalf of Rock of Ages Corp., Barre, Vt., a producer of granite memorial products. Rock of Ages has substantial subsidiary operations in Kansas and Oklahoma.

In recent years cemetery procedures, and particularly those of some religious cemeteries, have changed rather drastically. Because of space limitations, cost factor, or for some other reason, these cemeteries are developing so-called shrine sections. Such sections contain a number of burial plots, marked only by a flat, or flush-with-the-ground marker, centered around a large memorial which is commonly designated a “shrine.” The memorials, or shrines, ordinarily are of special design produced for that particular section.

The other change of consequence is the installation, by some religious cemeteries, of large mausoleums containing spaces, or niches, for the interment of many hundreds. Such mausoleums commonly have contained therein, as integral parts, chapels and other religious indicia.

Rock of Ages Corp., and the entire Barre granite industry, which in total employs between 2,000 and 3,000 people, are vitally interested in competing on a sound and fair basis for as much of the described cemetery installations as is

possible. Currently an appreciable share of these installations is produced in Barre, but we fear that any change in existing tariff laws, such as proposed by H.R. 4449, will result in the diminution of that share.

In particular, we are concerned by any such language as "parts, appurtenances, or adjuncts of the foregoing [which refers to items which may be already admissible either without any tariff, or at very low rates]." Such broad language, subject to a variety of interpretations, might permit in duty free an entire mausoleum structure built around a relatively small shrine or chapel. We are opposed, also, to language which in any way would permit in, duty free, any standard memorial items, such as monuments, markers, headstones, gravestones, etc. Finally, if the word "shrine" is to remain as a part of the list of duty-free items, we would respectfully request that some definition of that word be inserted so as to limit its application by excluding from duty-free importation, any shrines to be used as central religious features in a cemetery or mausoleum.

The Barre granite industry is an important element in Vermont's economy. The Oklahoma and Kansas operations of Rock of Ages also contribute to their respective States. Employers in the industry presently must meet strong internal competition and also must meet aggressive competition from other granite areas in the United States. Additionally, Barre granite employers pay some of the highest wages, and offer more liberal fringe benefits than any stone industry in the world. The added pressure which would be exerted by duty-free importation of religious articles, primarily intended and designed for religious cemeteries and mausoleums, could only weaken an industry which is vital to Vermont and, indirectly, to the rest of the United States.

Respectfull submitted.

ROBERT S. GILLETTE, *President.*

BARRE, VT., *June 18, 1962.*

The COMMITTEE ON FINANCE,
U.S. Senate, Washington, D.C.:

On behalf of our 60 member companies, I urge that the tariffs on imported articles designed for religious purposes be neither reduced nor removed, therefore, we are not in favor of H.R. 4449. We subscribe to the statements made by the Rock of Ages Corp. in regard to this bill which were recently sent to you.

MILTON B. LYNDES,
General Manager, Barre Granite Association.

U.S. SENATE,
COMMITTEE ON LABOR AND PUBLIC WELFARE,
Washington, D.C., June 15, 1962.

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

MY DEAR SENATOR BYRD: I have just received the following wire from Mr. W. H. Runge, president of the Alabama Marble Co., Sylacauga, Ala.:

"We would like to strongly protest the reporting out of the Senate Finance Committee favorably H.R. 4419 now under consideration. We feel that the bill as now written would open up further areas for cheap foreign importation and very adversely affect our already gravely damaged industry. H.R. 4449 if not disapproved should at least be changed to exempt marble or stone as well as granite for use in wall and floor construction, and the word 'shrine' more positively defined and limited."

I shall appreciate very much your committee's earnest consideration of Mr. Runge's views regarding the bill and any amendment along the lines he has suggested.

Thanking you and with kindest regards, I am,
Very sincerely,

LISTER HILL.

STATEMENT OF CHARLES P. TAFT ON H.R. 4449 PROPOSING AN AMENDMENT

I am Charles P. Taft. My address is 1003 First National Bank Building, Cincinnati.

I am senior warden of Christ Episcopal Church, 318 East Fourth Street, Cincinnati, Ohio, and I file this statement on its behalf and with its authority.

I am proposing for consideration of the Senate Finance Committee the following amendment at the end of the bill, a rewrite of section 2. It would read:

"The amendment made by the first section of the act shall apply with respect to articles entered, or withdrawn from warehouse, for consumption on and after the date of the reenactment of this act, and which are covered by entries or withdrawals which have not been liquidated, and the legislation of which has not become final on such date of reenactment."

As the committee probably knows, much of the amendment proposed by H.R. 4449 is intended to eliminate certain inequities not foreseen or intended in the present statutes. Terms were used which were common and quite proper in Catholic and Orthodox liturgy and practice, but did not cover similar situations in Protestant and even Anglican churches where different terms and practices existed.

In our case at Christ Episcopal Church a parishioner had a beautiful cross made in England especially for our chapel. Since it was not attached to an altar (free), and since "shrines" of which it could be a part (free) are not very common in our church, or in any Protestant church, and since it is not a crucifix (statutory and free), we were faced with about 100 percent duty.

The present bill, H.R. 4449, corrects this, but because of the failure of this bill and its predecessor in the last Congress, H.R. 4384, to meet the situation or pass it on in the next Congress, we have been caught with no remedy for an unjust situation, except with this bill with the amendment which I propose.

The amendment is somewhat retroactive and some objection has been expressed to this feature. But I would point out to the committee that this has numerous precedents. I refer you to Public Law 85-284; Public 85-645; Public Law 86-244. If there is objection to the fact that there may be cases pending besides mine which might be affected by this bill, thousands were pending when Public Law 80-612 was reenacted. The lawyer in our case, which is pending, Mr. Allerton Tompkins of New York has written as follows:

"There are only a very few protests pending at court claiming that the provisions of paragraph 1774 should apply to such things as altar crosses, and the duties involved, in any event, in such few protests are negligible. But it seems to me that much more importance should be attached to the injured feelings of charitable and religious people when the Government heavily taxes a beautiful gift to a church, only because the courts have given a narrow construction to the terms 'altars or parts thereof.' As you doubtless appreciate, such gifts should not be dutiable. In my opinion, Congress never intended that paragraph 1774 should be given a narrow construction, as the courts have done. The proposed legislation, if made retroactive, would merely correct an erroneous court interpretation, much to the relief of everyone."

Although this in no way binds the Government, I can state to the committee that counsel for the Government in some preliminary discussions in this pending case of ours expressed entire satisfaction that we should be trying to get this statutory amendment.

Whereupon, at 12:45 o'clock p.m., the committee was adjourned.

