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**NOMINATIONS OF WILL E. LEONARD, JR., OF LOUISIANA,
AND HERSCHEL D. NEWSOM, OF INDIANA, TO BE
MEMBERS OF THE U.S. TARIFF COMMISSION**

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HEARING
BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
NINETIETH CONGRESS
SECOND SESSION

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OCTOBER 9, 1968
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(Held in executive session and subsequently ordered released
by the Chairman)

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(II)

NOMINATIONS OF WILL E. LEONARD, JR., OF LOUISIANA AND HERSCHEL D. NEWSOM, OF INDIANA, TO BE MEMBERS OF THE U.S. TARIFF COMMISSION

WEDNESDAY, OCTOBER 9, 1968

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

The committee met, pursuant to call, at 10:15 a.m., in room 2219, New Senate Office Building, Senator Russell B. Long (chairman) presiding.

Present: Senators Long, Smathers, Anderson, Hartke, Metcalf, Harris, Curtis, Morton, and Dirksen.

Also present: Tom Vail, chief counsel, Committee on Finance.

The CHAIRMAN. The meeting will come to order.

Yesterday, the President submitted the nominations of Herschel D. Newsom of Indiana and Will E. Leonard of Louisiana to be members of the U.S. Tariff Commission. These nominees are waiting in the outside room to answer whatever questions Senators may have with respect to their performance.

I believe it would be well for us to hold a brief hearing before we act on their nominations. The Tariff Commission has become an important symbol in the dispute over the International Antidumping Code which Congress substantially nullified last week when it sent H.R. 17324 to the White House. Here in this committee and elsewhere in the legislative branch we have looked on the Tariff Commission as an arm of the Congress—separate and distinct from the policymaking groups who advise the President on trade matters.

The Tariff Commission performs no broad policymaking function. Its importance to the Congress, and to the executive branch also, stems from its ability to impartially and separately judge trade matters and report arguments both for and against a proposition so that the policymakers can reach a decision based on a fair and honest presentation of the facts.

We have on our desks this morning, biographical information with respect to both of these nominees. Without objection, we will invite them into the room now and inquire as to their qualifications for the job for which they are being considered.

[At this point, the nominees entered the meeting.]

The CHAIRMAN. Mr. Newsom and Mr. Leonard, we are happy to have you with us and we congratulate you on your nominations to be Tariff Commissioners. Before taking your appointments up in executive session the committee desires to conduct a short hearing so that the members of the committee may become acquainted with you and

the attitude you have with respect to the important work you will be doing on the Tariff Commission.

Mr. Newsom, you and I have already discussed your viewpoints, but for the benefit of the rest of the committee, I would appreciate it if you would take a few minutes and describe your views of the Tariff Commission and the work it performs.

(Biographical information on Mr. Newsom follows:)

HERSCHEL D. NEWSOM

Mr. Newsom, 16th master of the National Grange, elected in 1950, comes from an Indiana family of farmers for five generations. Mr. and Mrs. Newsom continue to maintain their farm home near Columbus, Indiana, in addition to their Washington residence.

Herschel Newsom received his A.B. degree in chemistry from Indiana University in 1926, and the University's Distinguished Alumni Award in 1960. He received the Honorary American Farmer Degree from Future Farmers of America in 1951. He helped organize the Indiana Blue Cross Hospital Plan and served as a Director from 1941 to 1963; Director, Indiana Blue Shield Plan 1946 to 1955.

In 1963 he became the eighth president of the International Federation of Agricultural Producers, a federation of farm organizations from five continents founded in London in 1946. He retired as president in 1966 after serving two terms.

He is a member of the U.S. Food for Peace Council; chairman of The World Food Crisis Committee; trustee of the American Freedom from Hunger Foundation; director, Crusade for Freedom; member, Public Advisory Committee for Trade Negotiations; Committee on Trade, Monetary and Corporate Policy of the Atlantic Council of U.S.; Board of Directors, Transportation Association of America; Transportation Council of the Department of Commerce; trustee, Joint Economic Council on Economic Education; a charter member of the Advisory Council of the International Movement for Atlantic Union, Inc.; and member, Inter-American Economic Policy Committee on Canadian-American Relations and Advisory Committee on Latin-American Relations.

He holds the following Presidential appointments: President's Advisory Committee on Trade Negotiations; Citizens' Commission on International Cooperation; President's Commission on the Employment of the Handicapped; President's Rural Safety Council, and Citizens' Committee for International Development. Mr. Newsom held similar appointments from President Truman, President Eisenhower and President Kennedy.

The leader of America's oldest national farm and rural family organization is also a member of the Advisory Committee on Agricultural Cooperatives to the Agency for International Development and some 25 other foundations, committees and boards, including the National Livestock and Meat Board; Foundation for American Agriculture; Agriculture Committee of the National Planning Association, the Farm Film Foundation; Committee on Rural Scouting, Boy Scouts of America since 1951; Director and Vice President, Care; National 4-H Club Committee; Honorary Committee, Credit Union National Association.

Since 1952 he has been listed in "Who's Who in America," and is a Trustee of the Advisory Council for Medical Education.

He is a Director and Vice President of the Farmers and Traders Life Insurance Company, Syracuse, New York, and Director of the National Grange Mutual Insurance Company of Keene, New Hampshire.

**STATEMENT OF HERSCHEL D. NEWSOM, OF INDIANA, NOMINEE, TO
BE A MEMBER OF THE U.S. TARIFF COMMISSION**

Mr. NEWSOM. Well, Mr. Chairman, I would only say that I became interested in assurance that there was a practical agricultural point of view within the Tariff Commission, because I have come, during the course of my lifetime, to realize that agriculture, not only in the United States but in all of the developed countries of the world, has not been

appropriately made an integral part of the various national economic and social systems, especially since World War I.

U.S. agricultural relations with the rest of the American economy, changed substantially following and during the course of World War I. By the same token, agricultural relationships in the national economies of most of the developed countries of the world changed at about that same time.

The world as a whole had depended upon abundant agricultural exports prior to the war. War disrupted those patterns.

The war and the postwar economy generated imposition of more protective devices on behalf of nonagricultural industry and nonagricultural workers.

I recognize that in all probability I will discover that the Tariff Commission is not able to modify any national policies; but I think it may well be possible that the Tariff Commission might make some findings in its reports to the Congress, or perhaps even to the executive branch, of our own Government, that might shed a great deal of light on some of the problems arising out of such problems as the recent request to the Tariff Commission to make a finding as to whether or not rapidly increasing dairy imports into the United States, chiefly from Europe, should be curtailed either by reason of section 22 of the Agricultural Adjustment Act, passed by the Congress of the United States, or perhaps under other laws of the United States.

To whatever extent as a member of the Tariff Commission, if it be the will of the Senate that I become a member of the Tariff Commission, I may be helpful to the Congress or to the executive branch of the Government, and as I understand it, the Commission is primarily an arm of the Congress, but I believe the President may ask the Commission for findings and recommendations too; then I pledge you the best that I have in this connection.

I earnestly hope that there will be no restrictions on me or any other member of the Commission, as a citizen of the United States to talk with the members of this committee; or whomsoever else may seem appropriate, in suggesting modifications of policy. But, I think I am reasonably clear in my understanding that the Tariff Commission itself is primarily a factfinding body and not a policymaking group. I will, of course, become much more familiar with all of the rules and the regulations, and accept the responsibility to do exactly that, if I actually become a member of the U.S. Tariff Commission.

I do not think that this change to which I referred to above has ever been thoroughly taken into account. If I may have had some small hand in bringing about a recognition of the fact that we were no longer as independent as my grandfather used to think we were then I shall be grateful.

We are interdependent with all other segments of the society, and I think such an effort might be worthy on my part.

With that statement, I would simply say to you that I have some mixed emotions about that. I do not presume, Mr. Chairman, that I can become a very important factor. But I am willing to try to become some sort of a factor, if it is the will of this committee that I assume this responsibility.

The CHAIRMAN. You and I have discussed both your nomination and the functions of the Tariff Commission. My concern about this Commission has been aroused in the last few months. It had to do with the fact that the Tariff Commission is a branch, an instrument, set up by Congress. In some respects it performs functions at the request of the executive branch, but I regard the Commission as something the Congress set up to provide the Congress with answers—in some cases—where the Congress was not in position to go into the details of matters. In most instances this Commission is a factfinding body.

Now, it seems to me that the Congress is going to do what is right if they have before them honest facts with respect to questions they are considering. If people are misinformed, misguided, the answer might very well be an improper answer.

For example, this Commission will be responsible and as a Commissioner you will have responsibility to report whether somebody is being injured by import competition; whether he is being hurt or not being hurt. A lot of this involves findings of fact—some of the decisions involve discretion.

Now, I am frank to tell you that the study that I have had our staff do on this matter, particularly Mr. Best and Mr. Vail over here, has indicated to us that a number of times we were not getting honest reports out of the Tariff Commission, that they were being slanted toward the Executive to some extent. Perhaps the Executive might want support on some position of the Executive or support of some particular position contrary to what Congress thinks might be right.

All we want is the truth. We can take the proper steps if we know what the truth is, and if we have the facts we can judge correctly and arrive at a proper answer. I would think that in speaking of the farmers in our economy, they get less return on their equity than those in manufacturing, and they are entitled to a better break as I see it. But where we have an industry being discriminated against, where foreigners are pricing their products to dump them in this country, then we feel that we have a law and we have precedents to go by, and those precedents should be respected.

We passed a law dealing with antidumping and sent it to the President. I hope he will sign it.

Now, insofar as that Antidumping Code negotiated over in Geneva last year does not change the law, I think perhaps Congress should implement it. We are not concerned about some place where the antidumping law does not apply. But it does concern this Senator, where we see some fellow in the cement or in the steel business for example, being injured substantially, and denied relief because some negotiator somewhere who had no power to make any law, might not want him to receive under the law what he was entitled to under the law.

I take it that whether he was a farmer, a shrimp fisherman, or in some particular industry, it is all the same; he is entitled to the relief the law provides. The Tariff Commission has a factfinding job and if this Commission will exercise its discretion the way it was set up to do, and intended to do, it can do a fine job and provide us with honest answers.

We think we can help provide good legislation which we don't think we can do if we are not getting honest answers to questions, and that is what we want done.

Now, Mr. Newsom, you come here with fine credentials, as a man highly respected by those with whom you do business. You have spent your life in the farm economy and are highly regarded there. If you were not a man who talked straight and tells the truth as the Lord gives you light to see it and know it, then you would not be the man for this job. But we think you are that man, and if we can count on you continuing that way, I think you will be a good man for this position.

Senator, did you want to say something?

Senator CURTIS. Mr. Newsom, we are aware of your fine record and character.

I do have a question or two, and if they are too involved on short notice, I shall understand.

You regard the Tariff Commission, both historically and primarily, as an arm of the Congress, do you not?

Mr. NEWSOM. I think, Senator, that the answer to that question is "Yes." Although I do understand from my limited knowledge of the functions, that perhaps I do not

Senator CURTIS. I understand.

Mr. NEWSOM. Frankly, I have not taken the time to become as familiar with its rules and regulations and restrictions and obligations as I would expect to do if I became a member. But, as I understand it, the Tariff Commission is authorized to make findings and report both to the President and to the Congress. By the statute that created it, it is primarily an arm of Congress, as I understand it.

As I remember the history of the thing, it was created because the overwhelming responsibilities of the Congress dictated the creation of a body to take this particular function and be responsible primarily to the Congress, so I think the answer to your question, as I understand it, is a definite "Yes."

Now, let me, if I may, try to be helpful to the members of this committee, and at the risk of saying something that I may learn a great deal more about later. One of my interests in trying to get, not myself initially, but somebody that I had suggested, on this Commission, was that it seemed apparent to me that in the case of dairy imports, for example, the case from my prejudiced point of view was clear that by subterfuge and other methods, dairy products were being imported into this country in an unreasonable and unfair manner.

I have some figures, I don't know about the authenticity of them, that butterfat was coming in in a way that was determined not to be subject to quota at a rate of perhaps 17 cents or 18 cents a pound, and this clearly made this situation in conflict with section 22 as passed by the Congress, as part of the Agricultural Adjustment Act.

I became convinced that somebody with an interest in the background of this kind of agricultural provision and of the other laws of the Congress in this connection ought to be close enough to this scene to speak in that connection.

Now, as I say, I may be speaking here about something that I should know more about before I express myself, but in an attempt to be honest and forthright with the members of this committee, I simply make that comment.

Senator CURTIS. I apologize for such short notice for this type of question and the one I am about to ask, and if you had rather not attempt to answer it at this time, we won't prejudge your answer. We won't assume that your answer was evidence of a view either favorable or unfavorable to the point of view that I may hold.

Our chairman has mentioned the current conflict over the status of the Antidumping Act and an Executive agreement. This Executive agreement is not a treaty. It was never submitted for ratification to the Senate. I think it is regarded by all parties to have a lower standing than a treaty.

If I understand it correctly, the present Tariff Commission is quite divided on their view on it. Some of them feel that they are obligated to take into account this Executive agreement even to the point of modifying the operation of the Antidumping Act.

There are other members of the Tariff Commission who feel that they, being a domestic agency, are subject to domestic law, and domestic law they must follow, and in the absence of a ratified treaty, domestic law is not changed by an Executive agreement unless the Congress takes some legislative action to implement the Executive agreement.

I realize upon short notice it is a theoretical question, but if you care to comment on the question of your feeling about such a situation, I would be glad to hear it.

Mr. NEWSOM. I have no reluctance to comment on your question, as I understand it, sir. That dates back to my childhood, frankly.

The law as passed by the Congress, is supreme in this land, and if there is a conflict, brought about by an Executive agreement perhaps as a part of the Kennedy Round Agreement, with the law, I don't think anybody short of the Congress itself can resolve that conflict.

Now, to the effect that it might become a function of the Tariff Commission or any other arm of the Congress to interpret that conflict, I think I would have to reserve judgment. Whether there is a conflict, I guess would be the only appropriate jurisdiction for a body of that kind. I would say that it is my feeling that as a member of the Tariff Commission there is no restriction to getting back with some of the members of this committee immediately and finding out whether there is a real conflict here or whether it is a matter of faulty interpretation, and if there is, I think that the Congress of the United States is the only agency that can resolve such a conflict.

Senator CURRIS. Thank you.

No more questions.

The CHAIRMAN. Senator Morton?

Senator MORRIS. Only one thing, Mr. Newsom. I think you made it clear, but the Tariff Commission is not a policymaking commission, but a factfinding body; is that your understanding?

Mr. NEWSOM. This is my understanding. I don't know of any reason to suspect that more familiarity with the provisions establishing the Commission is going to change my mind, because I don't think we can have two policymaking bodies without getting into trouble.

Senator MORRIS. One further question, not relevant to that.

You did have a farm near Columbus, Ind. Did you ever grow any wheat?

Mr. NEWSOM. Yes, sir?

Senator MORRIS. Soft Red Winter?

Mr. NEWSOM. Yes, sir.

Senator MORRIS. And you shipped it to the elevator in Columbus.

Mr. NEWSOM. The small town of Elizabethtown, which is closer to my farm than Columbus.

Senator MORRIS. For your information, my grandfather and my

father and, perhaps, I, myself, bought wheat out of that elevator for Ballard & Ballard Co., in Louisville, so I am all for you.

Mr. NEWSOM. If the chairman would permit, I would like to say that I am old enough to remember when we used to scoop wheat from wagons into freight cars to ship it to Ballard & Ballard.

Senator MORTON. I see your class was 1926 and mine was 1929.

The CHAIRMAN. Senator Metcalf.

Senator METCALF. No questions.

The CHAIRMAN. Senator Harris.

Senator HARRIS. No questions, Mr. Chairman.

The CHAIRMAN. Would you mind handing Mr. Newsom a copy of the conference report on H.R. 17324.

I want to show you some language that we just got through fighting back and forth over. If you will look on that conference report, look at where it says "title II." This is a matter over which we fought for about 3 days in conference, didn't we?

Senator CURTIS. That is right.

The CHAIRMAN. And, we finally resolved it.

Here is what it says:

Determinations under the Anti-Dumping Act of 1921, Section 201 (a). Nothing contained in the International Anti-Dumping Code, signed at Geneva on June 30, 1937, shall be construed to restrict the discretion of the United States Tariff Commission in performing its duties and functions under the Anti-Dumping Act, 1921, and in performing their duties and functions under such Act the Secretary of the Treasury and the Tariff Commission shall—

(1) resolve any conflict between the International Anti-Dumping Code and the Anti-Dumping Act, 1921, in favor of the Act

and these are the important words that we fought over so long and hard,

as applied by the Agency administering the Act.

Those are the key words.

(2) take into account the provisions of the International Anti-Dumping Code only insofar as they are consistent with the Anti-Dumping Act, 1921,

and, again, these important words,

as applied by the Agency administering the Act.

What we particularly had in mind there was that this agency, the Tariff Commission, had a history of handling these antidumping cases. We know of cases where the Commission found injury to the industry under the act, where under this International Antidumping Code, they could not have possibly found injury.

Just for example, the code had a very restrictive definition of a regional industry concept. It says that only in exceptional cases can you apply the regional concept, and with regard to injury, you must weight all the factors which may be affecting the health of an industry against the injury caused by dumping and that the injury caused by dumping must exceed all other injuries put together.

Now, we were told by the people who handled these cases, that this would have reversed the finding in 80 percent of the recent cases where they found injury. What we are saying here in this new law is that you have this case history where you found injury, and you have this industry concept which has been applied historically and you are to continue to apply it. The discretion of the Commission remains unfettered—this code should not be construed as restricting the discretion of the Commission to find injury as it has in the past.

What we are saying here is that the case history is a part of the law—in interpreting both what the Commission has done and what it has declined to do—and that the Commission's discretion remains just as broad as it was before the code. Of course if there should be any conflict, the code is not even to be considered. And in the area of defining injury and industry, there is a conflict.

Now, we are not concerned about some matter where the code speaks in an area where the act has not been applied. That does not bother us. But, where the act has been applied, we think that that should be regarded as a part of the case history of this act, as applied by the agency administering the act which, for the most part, is the Tariff Commission, but also includes the Treasury.

Now, if the President signs this, there should be no doubt in the mind of Mr. Metzger of the Commission, of what it means. As far as our people were concerned, we thought that you cannot amend an act of Congress by a mere Executive agreement. Both sides—even Mr. Metzger—agreed on that. Frankly my attitude about this thing is that if I thought the President was trying to win a victory over us by stacking that Commission, we just would not approve anybody.

You do not appear to me to be the kind of man who would be nominated to stack a court or a commission. I think we can count on you for honest answers to questions.

I hope you understand what we meant, when we say this code does not repeal the act. The act remains the same, and it cannot limit the discretion of the Commission. It has the same discretion as it had before.

It is only where you have something on which the act is silent and you have no case history to look to that this code could be regarded as controlling.

Mr. NEWSON. Mr. Chairman, if it is appropriate that I comment on what I think I have heard you say, I would simply say that I don't believe that I personally have met any of the members of the Commission and I certainly don't want to pass judgment on their integrity or intentions, but I certainly don't see how I could take any issue about what I believe you have said, or with the language that is before me.

My surprise right now is that this kind of language would be necessary, and yet I don't pretend to know all of the background for this difficulty. But I don't see any problem at all from my traditional point of view with the language that I see before me.

The CHAIRMAN. I appreciate that, because it never occurred to me as a lawyer that anybody would ever contend that an act could be amended by an Executive agreement. I don't think they have a right to do it and it seems to me that if the Congress acts to protect its power under the Constitution—which insures the separation of powers—nobody else is going to try to do it in the future.

NOMINATION OF WILL E. LEONARD, JR., OF LOUISIANA, TO BE A MEMBER OF THE U.S. TARIFF COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING JUNE 16, 1969, VICE DAN H. FENN, JR., RESIGNED

Senator SMATHERS. Have you had anything on Bill Leonard?

The CHAIRMAN. Yes; at this point let me include his biographical sketch in the record.

(The biographical sketch of Will E. Leonard, Jr., of Louisiana, follows:)

WILL E. LEONARD, JR.

Vital statistics: Born January 18, 1935, Shreveport, Louisiana; married, three children.

Education: New Orleans, Louisiana public schools, Tulane University (BA-1956, LLB-1958), Harvard University (LLM-1960).

Employment: Legislative Assistant to Senator Russell B. Long (1960-65), Congressional Staff Fellow (1965-66), Professional Staff Member, Senate Committee on Finance (1966 to present).

Professional status: Member of the Bars of the United States Supreme Court, State of Louisiana, and District of Columbia.

Local residence: 3717 Fordham Road NW., Washington, D.C.

(The chairman subsequently directed that the following announcement by the U.S. Tariff Commission, dated October 29, 1968, also be made a part of the record:)

WILL E. LEONARD, JR., TAKES OATH AS NEW MEMBER OF THE U.S. TARIFF COMMISSION

Will E. Leonard, Jr., was sworn in today as a Member of the U.S. Tariff Commission. Mr. Leonard's nomination was submitted by President Johnson on October 8, 1968, and was confirmed by the Senate on October 9, 1968. He is a Democrat, a legal resident of Louisiana, and was appointed to serve the unexpired term vacated by Dan H. Fenn on June 21, 1967, until its expiration on June 16, 1969. [In order to nominate Mr. Leonard, the President withdrew the nomination of Bernard Norwood which had been pending before the Senate since April 2, 1968.]

Mr. Leonard, 33, was born January 18, 1935, in Shreveport, La. He and a Member of the first Commission, William S. Culbertson, hold the distinction of being the youngest members ever to be appointed to the Commission.

Mr. Leonard received his education in the public schools of New Orleans and from Tulane University, from which he received his B.A. degree in 1950 and his LL.B. in 1958. While at Tulane, he was elected to Phi Beta Kappa, and he also served as President of the law school students. Mr. Leonard also attended Harvard Law School, from which he received his LL.M. in 1960.

Mr. Leonard was employed in radio and television from 1952 to 1960. He then served as Legislative Assistant to Senator Russell B. Long, holding that position from 1960 to 1965. During 1965 and 1966, he was a Congressional Staff Fellow, and since 1966 Mr. Leonard, until his appointment to the Tariff Commission, was a Professional Staff Member for the Senate Committee on Finance where he specialized in tax and trade legislation.

Mr. Leonard is a member of the bars of the United States Supreme Court, the State of Louisiana, and the District of Columbia. Locally, he resides with his wife and three children at 3717 Fordham Road, N.W., Washington, D.C.

The CHAIRMAN. I would like to make this clear, that I did not suggest Bill Leonard for the Tariff Commission. Bill Leonard did work for me before he came to the committee staff. I was very much concerned about the fact that Mr. Newsom had advised with regard to the agricultural parts of the agreements under the Kennedy round negotiations, and that this other fellow, Mr. Norwood, who had been suggested to us, had actually helped and participated in the negotiations. It looked to me like the Newsom appointment was comparable to the Metzger and Norwood appointments to the Commission.

And I must say, to me it appeared to be so clearly a case of the Executive usurping the functions of the Congress, that I simply was not going to agree to confirm anybody unless we could be absolutely confident that at least one of these two nominees would understand what the problem was and would say that you just can't repeal an act

of Congress by an Executive agreement. I never discussed that question with Mr. Metzger myself.

Now, when the Executive sent some names to us, we sent them back with some suggestions of our own—a number of people, including a man, a very able man, the counsel for the Tariff Commission, as people we thought would be qualified and would be good members of the Tariff Commission, but none of those we suggested were sent down.

For various and sundry reasons the Executive said, if it was all the same, they would like to have Bill Leonard on the Commission.

I did not know that Bill Leonard was eligible. I thought the old law was still in effect, that said you cannot go direct from a committee staff to one of the Commissions. It has been repealed, I understand, and that being the case it was suggested that Bill Leonard would be a good nominee.

I would hate to lose Bill, but he had already decided to go into private practice. I guess he had been gazing at the lush field of private enterprise, and there were more temptations there.

Senator MORTON. Smathers and Morton—

Senator SMATHERS. It sure doesn't hurt us; Morton, Smathers, and Leonard was the way it was going to be.

The CHAIRMAN. Mr. Leonard, do you have anything to volunteer on this subject?

**STATEMENT OF WILL E. LEONARD, JR., OF LOUISIANA, NOMINEE,
TO BE A MEMBER OF THE U.S. TARIFF COMMISSION**

Mr. LEONARD. First of all, I want to point out to my colleagues over there on the staff, that the chairs here where the Senators sit are not any more comfortable than they are over there. As a matter of fact, at this particular moment, I think it is a little more uncomfortable here.

Much of what I may have said has already been said, some of it by Senator Morton and some by you, Mr. Chairman, with regard to the role of the Tariff Commission and what a Commissioner is supposed to do.

I have no illusions that I am going into any sort of policymaking job.

It is historically and statutorily not a policymaking position. That does not mean that you do not have judgments to make and discretion to use.

There is no job I know of which doesn't require judgments to be made and discretion to be used. That is a difference between a human and a machine. I certainly know that is true in the congressional staff area. A staff man is sometimes supposed to be a technician but he can't escape using discretion, making decisions. This sort of thing would also occur in the position of Tariff Commissioner, too. However, it is not "a policymaking position," and I don't intend to make policy down there.

It is a factfinding Commission. It is traditionally, historically and conceptually supposed to act at the behest of the Congress and, to a degree, at the behest of the executive branch.

Personally, I think, having just received a brief cramming session with the people who are really experts in this area that still are on our staff, Tom Vail and Bob Best, perhaps you in Congress might want to consider adding a little more teeth to the law governing the Tariff Commission to show more clearly that it is an arm of the Congress.

I gather that it is not as clearly and as much integrated into the legislative branch as, say, the General Accounting Office or the Library of Congress. For example, I think the Tariff Commission appropriation is not provided for in the legislative appropriation bill. I believe also that the language authorizing the creation of the Tariff Commission is not as explicit as the language authorizing the creation of the Library of Congress or the General Accounting Office. There is no question, however, from its history that the Commission is at the beck and call of the Congress and that it should be ready to perform as Congress directs.

I bring, naturally, a lot of bias to the office, having served on this committee and knowing what the feeling is of the responsible Senate committee in this area, and particularly in the antidumping area, having just been in a conference and served on the staff level with the Senate conferees. I have a definite attitude about the International Antidumping Code and the domestic antidumping law. I think there is no question that generally an Executive agreement should bow when in conflict with the domestic statute, but particularly when this Executive agreement was enacted many years after the statute was written, and there was a long case history under the Antidumping Act of 1921. All of that must be given effect to in any conflict so that it is resolved in favor of the domestic law. But I think it is even more plain now that you have enacted this particular section in the Renegotiation Act.

I do say that I will try to do an honest job. In the final analysis, I shall try to approach the position with honesty and integrity.

The CHAIRMAN. You will be called upon to do something a little more difficult than the job you had as a lawyer, and that is to present facts to support both sides of an issue so that you can say, "Here are the two sides of it," and then give us the facts with which we can make a judgment.

Mr. LEONARD. And as I understand it, the only time we make recommendations is when we are called upon to make recommendations. Otherwise, we just present facts, lay them out and let the Executive or the Congress, whoever asked us to do it, make the decision.

The CHAIRMAN. It's my judgment that we are going to pass some very important trade legislation during the next few years, and if we are to do a good job we are going to need the facts so we know just exactly what the issues of the case are. In many instances the Commission can do it for us. That's what the Commission's for.

As you know, Mr. Weidenhammer was up here to do a steel study for us. He did a very good job, an excellent job. But in most instances the committee shouldn't have to be doing that itself. The Commission ought to be impartial enough that we can count on it to do that.

Senator SMATHERS. Mr. Chairman, may I just say this, that I think that this is one of the President's star appointments and one that I am sure will not lead to a filibuster. It will not be attacked as cronyism or anything of that character, because everybody who knows Bill

knows of his objectivity; they know of his great work on our committee, his thoroughness, his capacity. And I am delighted—I didn't know about it until Jay Constantine yesterday in the elevator told me this had been done. We hate to lose him off the committee. I don't know whether the committee would let him go, but apparently it's the committee's wish that he go ahead and accept this job. Obviously, it's the Tariff Commission's gain and the committee's loss. But it is a splendid appointment.

Senator MORTON. Would you yield at that point.

Senator SMATHERS. I will yield.

Senator MORTON. I think it's also the committee's gain, may I say, in a way that it's got somebody down there that's got some sense.

Senator SMATHERS. I do, too, but we got a lot of it here, but also it's a little bit difficult for us to lose a lot, and particularly you and me and him all at the same time. [Laughter.]

Senator MORTON. Well, we will leave the country in better hands.

Senator SMATHERS. That's right. But anyway, I think it's a wonderful appointment. I know Bill is going to do a splendid job for us, and as Thruston suggests, he understands both sides of this thing and I think will make a very, very distinguished member of the Tariff Commission. I am delighted with the appointment.

The CHAIRMAN. I think that Senator Dirksen, not being here at the moment, would want you to know, Mr. Newsom, he was very enthusiastic about your appointment, and he expressed the opinion to me that you should by all means be confirmed by this Congress.

Thank you very much, gentlemen.

Mr. NEWSOM. Thank you.

(Whereupon, at 11 a.m., the nominees were excused from the meeting and the committee proceeded to other business.)

