

The imports took place between December 8, 1948, and July 3, 1950, and the customs duties were liquidated between January 9, 1951, and January 6, 1953.

After the merchandise covered by the entries in question had been appraised, the U.S. Customs Court, in *International Commercial Co., Inc., and Armour & Co. against United States*, ruled on April 4, 1951, that certain charges included by customs in the valuation of other importations of Argentine canned meats were nondutiable. This decision was sustained on appeal in reappraisal, on May 15, 1952.

In justifying relief the committee report states the committee's awareness that claimant is in disagreement with the Treasury Department on the fact of whether a request was made for the withholding of the appraisements here concerned. In a hearing on the bill conducted March 7, 1962, the attorney for claimant quoted from a letter from claimant company, dated November 2, 1961, as follows:

I would also like to refresh your memory on these entries in that I went to Washington and showed Mr. Roy that the appraisers had been advised not to liquidate these specific entries as values had not been established. Mr. Roy pointed out to me appraisers could liquidate any entry as they deemed that values were OK and it was my contention that this might be true except that they had been specifically advised that values had not been established on these items. Naturally, if we had known that the entries in this second group had been liquidated, we would have included them in our original bill.

The "original bill" referred to in the quotation was a bill which passed in the 86th Congress for the relief of the same claimant—Private Law 86-239. At the March 7, 1962, hearing the attorney quoted from the same letter for the purpose of demonstrating that the officers of the claimant company were under the impression that the entries listed in the earlier legislation had not been liquidated and therefore were not included in the original bill, as introduced. However, the entries in both of the bills were liquidated prior to the establishment of evaluation.

The committee report then goes on as follows:

In the light of previous action taken regarding similar entries and the subsequent determination by the U.S. Customs Court regarding this category of merchandise, it is recommended that the bill be considered favorably.

In opposing relief, the Treasury Department directs attention to the *International Commercial Co.* case above mentioned, in which the U.S. Customs Court ruled that certain charges included by customs in the valuation of importations of Argentine canned meats were nondutiable. The Treasury Department opposes any application of that decision "retroactively by private bill to values which long since were determined and became final by operation of law."

The Treasury Department calls attention to the facts that the U.S. Customs Court decision came after the appraisements of the meat products in question had been made in accordance with the Tariff Act of 1930, as amended, that no

request was received for the withholding of such appraisements, and no objection was made to the appraisements at the time and on the basis on which they were made. Its report states:

The importer has asserted an understanding that it was necessary in order to obtain the release of the merchandise to give entered values based on free-on-board prices in Argentina, including the charges which were later declared nondutiable charges by the courts. However, no provision of law or regulation prevented the importer from entering the merchandise at values the importer considered proper or from excluding any charge which the importer considered not a part of the values under section 402(d) of the act, as amended.

The appraisements at the export values, including certain charges levied in Argentina, determined by the appraisers of merchandise under the law were not appealed by the importer under section 501 of the Tariff Act, as amended. Consequently, the appraised values were correctly applied in the liquidation of the entries in question and duties were collected on that basis.

IRVING M. SOBIN CHEMICAL CO., INC.

The bill (H.R. 4088) for the relief of Irving M. Sobin Chemical Co., Inc., was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the Record an excerpt from the report (No. 835), explaining the purposes of the bill.

There being no objection, the excerpt was ordered to be printed in the Record, as follows:

PURPOSE

The purpose of the bill is to pay to Irving M. Sobin Chemical Co., Inc., of Boston, Mass., the sum of \$11,216.02 in settlement of its claims against the United States for repayment of customs duties collected by the Bureau of Customs on imported sodium perborate entered by or for the account of the said Irving M. Sobin Chemical Co., Inc., between September 15, 1954, and June 20, 1961, entries of which were liquidated between June 27, 1956, and December 8, 1961; and to provide that the collectors of customs at the various ports of entry shall waive the collection of unpaid assessments of liquidated increased duties, totaling \$3,216.19, due from the Irving M. Sobin Chemical Co., Inc., provided that the Irving M. Sobin Chemical Co., Inc., shall abandon its protests before the U.S. Customs Court claiming relief from assessments and duties totaling \$3,604.90.

Mr. SIMPSON. Mr. President, the purpose of this bill is to pay claimant \$11,216.02 in settlement of its claims for repayment of customs duties collected on imported sodium perborate entered by or for the account of claimant between September 15, 1954, and June 20, 1961, entries of which were liquidated between June 27, 1956, and December 8, 1961; and to provide that the collectors of customs at the various ports of entry waived the collection of unpaid assessments of liquidated increased duties, totaling \$3,216.19; provided that claimant abandon its protests claiming relief from assessments and duties totaling \$3,604.90.

Claimant bases its requests for relief on the decision in *United States against Philipp Brothers Chemicals, Inc.*, by the U.S. Customs Court, on June 13, 1961,

which held that there was no "foreign value" for certain sodium perborate exported from Germany and therefore that the proper basis for appraisal was "export value" determined by bargaining between the manufacturer and the purchaser. The imports of sodium perborate involved in this bill were appraised at unit values based on "foreign value," and not upon the basis of value approved in the *Philipp Brothers* case. The appraisal at "foreign value" had the effect of advancing the value of the sodium perborate over the entered value. The importer was given notices of this action. No appeals to reappraisal were filed, except as to port of Charleston entries Nos. 1479, 1665, and 2754. Appraisements for the other entries became final.

Liquidations at the higher, final appraised values were concluded with respect to all the entries except the three Charleston entries. Following this, increased duties, over and above the estimated duties deposited on entry, became payable. Protests against the liquidations were filed as to many of the entries. These were denied by the collectors of customs. Several applications by claimant for administrative relief against the increased assessments were also denied. Eighteen of the denied protests, together with the entries, were forwarded to the U.S. Customs Court, as were the timely appeals to reappraisal filed for the Charleston entries above referred to. These are all currently pending before the court.

The legislation would grant relief to claimant upon all of the appraisements, including the 18 which were denied and which could not be considered by the Customs Court because timely protest was not made.

The Department opposes the bill insofar as it applies to remaining entries since the importer failed to take advantage of his administrative remedies and the liquidations became final by operation of law. To grant relief would discriminate against other importers who may be similarly situated and undermine the principle of statutory limitations of time within which appeals to reappraisal against decisions of appraisers of merchandise and protests against decisions of collectors of customs must be filed.

It is essential, states the Treasury Department report, that finality attach to the actions of appraisers and collectors subject, of course, to proper judicial review, and that any appeal or protests should be made within the time limits prescribed by statute. In this case, an importer was predicated its claim on circumstances which took place after final determinations had been made with respect to its entries. This was highly undesirable.

Witnesses in behalf of claimant appearing at a subcommittee hearing of the House Committee on the Judiciary explained their failure to file protests was based on the assumption that since the importations involved in the *Philipp Brothers* case concern sodium perborate produced by another West German company, the decision would not have any effect upon claimants. At the hear-

ing, witnesses stated this was erroneous and the claimant company learned that the sodium perborate manufactured by Kali-Chemie, a producer other than that which supplied Philipp Brothers in West Germany, was affected by the Philipp Brothers case. By the time claimant realized the latter case would govern appraisal of its importations, the time had expired for protesting the advanced values based on "foreign value," with the exception of 12 entries.

The committee report justifies relief on the ground that the Philipp Brothers case settled a difficult question concerning the value of importations of sodium perborate. In that case the court found that prices for sales of sodium perborate sold in Western Germany were determined by bargaining between manufacturer and purchaser, but that as of the time of the exportations involved in that case similar merchandise was not freely offered for sale to all purchasers for home consumption in West Germany. The court concluded there was no "foreign value," within the meaning of section 402(c) of the Tariff Act of 1930, as amended, for such merchandise; and that the basis for the determination of the value was "export value" as defined in section 402(d) of that act.

There remained 100 entries which were appraised at the higher figure and not in accordance with the decision of the Philipp Brothers case. The committee justifies relief on the ground that "under the particular circumstances of the case, Sobin Chemical Co. should be granted similar treatment—to that in the Philipp Brothers case. Due to the passage of time this can only be established by legislative action."

The Treasury Department opposes the bill on the ground that it is premature with respect to those entries which are the subject of pending litigation wherein timely appeals or protests have been filed.

RIFKIN TEXTILES CORP.

The bill (H.R. 8646) for the relief of Rifkin Textiles Corp. was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 849), explaining the purpose of the bill.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of the bill is to waive the statute of limitations to permit the reliquidation of 10 customs entries on behalf of Rifkin Textiles Corp., of New York.

Mr. SIMPSON. Mr. President, the purpose of the bill is to waive the statute of limitations to permit the reliquidation of 10 customs entries on behalf of claimant.

In 1961 and 1962 claimant was importing woven wool fabrics from Italy for sale to the American dress industry. This fabric had a braid sewn along one edge for the full length of the piece. At the time of their importation the Bureau

of Customs contended these goods were classifiable as woven wool cloth and therefore dutiable under the Tariff Act at 37½ cents per pound and 60 percent ad valorem.

On the other hand, claimant contended the goods were classifiable as woven woolen fabrics "in part braid" which were dutiable under an other section of the Tariff Act at 42 percent ad valorem. This was a vital distinction because there was a difference of 40 cents per yard in the duties.

At the time the controversy arose and prior to May 2, 1962, the collector of customs classified the goods as "woven woolen fabrics, in part braid" and duties were paid by the importer at the lower rate of 42½ percent.

On May 2, 1962 after hearings had been conducted in Washington, D.C., the Commissioner of Customs ruled these importations were dutiable at the higher rate. The ruling was made applicable only to goods entered for consumption or withdrawn from warehouse after May 25, 1962. A timely protest was filed against the liquidations of a number of entries at the higher rate. This protest was rejected by the Bureau of Customs and was taken to the U.S. Customs Court. On December 18, 1962 the court held that the goods were "woven woolen fabrics, in part braid." This was the manner in which the importer had contended they should have been classified from the outset. The court therefore sustained the protests and the collector of customs at the port of New York was directed to reliquidate the entries which had been protested.

Following the decision the Department of Justice advised the attorney for the claimant that it did not intend to appeal from the judgment. The next day the attorney wrote the collector advising him of the decision of the court and of the fact that he had been advised that the Government would not appeal. In the same letter, the attorney requested that the entries which were the subject matter of the protest be reliquidated in line with the court's decision at the lower rate.

While the litigation was pending and before the December 18, 1962, decision, the Commissioner of Customs ordered a suspension as of December 14, 1962, of all liquidations by the collector of customs. At that time there were a number of importations of the same type of fabric which were not involved in the litigation and which were awaiting liquidations by the collector.

The 10 entries which were specified in this bill were not covered by the protests which were sustained by the court.

The committee, which justifies relief on the ground that the Treasury Department opposes relief solely on the technical ground of the statute of limitations, calls attention to the fact that late in December 1962 the attorney for claimant and its president personally inquired of the collector of customs in New York City, as to what, if anything, should be done in relation to the importations liquidated at the higher rate, but not yet protested. The collector replied that he had requested a ruling from the

Commissioner of Customs as to whether the U.S. Customs Court decision would be taken to govern all importations of a like character or would be limited to the entries specifically included in the litigation.

The importer was advised that no action of any kind had to be taken by the importer and was given to understand that when the collector was given formal notice that the Government did not intend to appeal, that he would immediately proceed to reliquidate all of the entries and that all of the other protested items would be disposed of accordingly.

The collector sent his letter of inquiry to the Commissioner of Customs on December 31, 1962, which was long before the 60-day statute of limitations on the 10 entries would expire. When, on February 12, 1963, the Commissioner replied to the collector's letter, the authority to reliquidate was limited specifically to those liquidations which had not become final. The report stresses that it took 43 days to get the instructions to proceed, although the liquidations covered by the bill were not final when the collector originally requested instructions. The committee report states that the facts establish a firm basis for the equitable relief provided in the bill.

The Treasury Department opposes relief, stating, among other things, that enactment of the proposed legislation would grant to a single importer more favorable treatment than is accorded others in similar circumstances, and it would undermine the principle of statutory limitation of time within which protests against decisions of the collector must be filed.

BILLS PASSED OVER

The bill (H.R. 9545) providing for the acquisition and preservation by the United States of certain items of evidence pertaining to the assassination of President John F. Kennedy, was announced as next in order.

Mr. MANSFIELD. Over, Mr. President.

The ACTING PRESIDENT pro tempore. The bill will be passed over.

The bill (S. 1848) for the relief of Mary Horalek and Eva Horalek, Blue Rapids, Kans., was announced as next in order.

Mr. MANSFIELD. Over, Mr. President.

The ACTING PRESIDENT pro tempore. The bill will be passed over.

HILDA SHEN TSIANG

The bill (S. 2362) for the relief of Hilda Shen Tsiang, was announced as next in order.

Mr. MANSFIELD. Mr. President, I move that the Senate indefinitely postpone the bill S. 2362, which was reported by the Senate Judiciary Committee and placed on the Senate Calendar, in view of the fact that the bill H.R. 10292, for the relief of the same beneficiary, has been received and placed on the Senate Calendar. The language of the two bills is identical.