63D CONGRESS, 3d Session. } HOUSE OF REPRESENTATIVES. { DOCUMENT No. 1591.

REFUNDS OF CUSTOMS DUTIES.

LETTER

FROM

THE SECRETARY OF THE TREASURY,

TRANSMITTING

A DETAILED STATEMENT OF THE REFUNDS OF CUSTOMS DUTIES, ETC., FOR THE FISCAL YEAR ENDED JUNE 30, 1914, AS REQUIRED BY PARAGRAPH Y OF SECTION 3 OF THE TARIFF ACT OF OCTOBER 3, 1913.

FEBRUARY 12, 1915.—Referred to the Committee on Ways and Means and ordered to be printed.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, February 12, 1915.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIR: I have the honor to transmit herewith, for the information of Congress, a detailed statement of the refunds of customs duties, etc., for the fiscal year ended June 30, 1914, as required by paragraph Y of section 3 of the tariff act of October 3, 1913.

Respectfully,

W. G. MCADOO, *Secretary.*

EXHIBIT I.

(T. D. 33527.)

Metal polish.

UNITED STATES *v.* HOLLAND-AMERICAN TRADING CO. (No. 1126).

POLISH AS A MANUFACTURED ARTICLE.

This polish appears to be composed of pulverized silicia, alumina, and lime saturated and mixed with petroleum oil and fat. This combination of materials is not fairly to be described as a chemical compound or mixture. It was properly held dutiable as an unenumerated manufacture under paragraph 480, tariff act of 1909.

United States Court of Customs Appeals, May 26, 1913.

APPEAL from Board of United States General Appraisers, Abstract 31318 (T. D. 33194).

[Affirmed.]

William L. Wemple, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel; *Anthony P. Ludden*, special attorney, on the brief), for the United States.

Jules Chopak, jr., for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The merchandise is metal polish, and was assessed for duty as composed of earthy or mineral substances under paragraph 95 of the tariff act of 1909 upon the return of the appraiser to that effect. He had reported that upon an examination of the merchandise he found it to be composed in chief value of earthy or mineral substances. The importers protested, claiming that duty should be assessed upon the polish as a manufactured article at 20 per cent ad valorem under paragraph 480 of the same act.

At the hearing before the Board of General Appraisers, although one witness was called by the importers, his evidence went no further than to establish the fact that the samples correctly represented the importation, but this fact was conceded by the Government. The case was then submitted with the request on the part of the importers that the samples be submitted to a chemist for a quantitative and qualitative analysis, with permission to file briefs 10 days after said analysis might be returned. After such return the importers preferred a request that the Government chemist be requested to determine the component material of chief value of the sample he had examined. The Government objected to this upon the ground that the chemist was not competent to testify as to values. The request was denied and no further proceedings that are material to the decision of the case were had before the board.

The board in its decision said that from the analysis of the chemist of the appraiser's laboratory it is quite apparent to us that it is not such an article as should be classified under paragraph 95 and sustained the protest.

The Government appeals, assigning, among other things, error in that the board should have held the merchandise dutiable as assessed; and also that it is dutiable as a chemical compound or mixture under paragraph 3 of the same act.

In its brief here the Government relies mainly upon its claim that the merchandise is dutiable under paragraph 3 and asks that the judgment of the board be reversed. The importers contend for its affirmance.

No objection was made to the chemist's analysis being treated as evidence by the board and no question as to its competency is made here. The analysis is as follows:

Dake's Metal Polish. 4 samples.

	Per cent.
Free acid as oleic	22.13
Volatile petroleum	5.37
Unsaponifiable oil (petroleum)	12.15
Saponifiable fat	10.32
Silica	40.25
Alumina and iron oxide	5.25
Moisture	2.82
Lime, etc	1.71

United States *v.* Embossing Co. (3 Ct. Cust. Appls., 220; T. D. 32536) and Bartley Brothers *v.* United States (*ib.*, 363) seem to preclude the correctness of the collector's classification and are referred to for authority and reasoning on that subject. Not only this, but they seem to be authority for sustaining the action of the board, because we do not think the merchandise here is *shown* to be a chemical compound or mixture within the meaning of paragraph 3.

This polish is apparently composed of pulverized silica, alumina, and lime, saturated and mixed with the petroleum, oil, and fat named in the analysis, resulting in a thick, pasty substance, typical in appearance of similar articles of common everyday use. Chemically speaking, some of the component materials may be chemical compounds or the result of chemical mixture, but we are unwilling to say on the record here that a substance composed so largely of silica, commonly known to be crushed quartz—the sand of the seashore—alumina, one of the most abundant of earths (see Century Dictionary), and petroleum and saponifiable fat is a chemical compound or mixture under paragraph 3.

Tariff statutes are addressed to the common understanding and speak in the language of the common people, unless a different commercial meaning is shown, although, of course, recourse may be had when necessary to technical and scientific works to elucidate the meaning.

So construed, we do not think it ought to be held *in this case* that the metal polish is a chemical compound or mixture, as claimed. Emphasis is given to this conclusion by the fact that this issue was in no respect litigated before the board, and the reliance of the Government here is upon certain chemical formulas for several of the ingredients of the polish.

Without designing to here establish a precedent for other cases involving similar or like articles coming before us on a more complete record, we conclude that the judgment of the Board of General Appraisers should be, and it is, *affirmed.*

Exhibit 2.

(T. D. 33482.)

Rotten fruit.

Lauricella *et al. v.* United States (No. 1063).

1. Rearranging Language in a Statute.
   It is a familiar principle of statutory construction that for the determination of legislative intent courts may assemble provisions of a statute in accord with that intent.

2. Subsection 22, Section 28, Tariff Act of 1909.
   Nonimportation of a part of the cargo of lemons was claimed. The provision of the statute is that "proof" of destruction or nonimportation "shall be lodged with the collector of customs," etc. There is no limitation in the language of the statute of the kind of proof or otherwise save as to time when this proof may be made by the importer. The statute allows ten days to introduce such proof; to limit this to five, as is sought in the Treasury regulation, is in excess of statutory power.—Vandegrift *v.* United States (3 Ct. Cust. Appls., 198; T. D. 32470) distinguished.

United States Court of Customs Appeals, May 23, 1913.

APPEAL from Board of United States General Appraisers, G. A. 7398 (T. D. 32881), Abstract 30352 (T. D. 32905).

[Reversed.]

Brown & Gerry for appellants.

William L. Wemple, Assistant Attorney General (*William A. Robertson*, special attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

This appeal concerns an importation of fruit at the port of New York, claimed to have suffered a shortage or nonimportation by reason of decay or rot, for which reason such part was condemned by the board of health at that port and destroyed. The claim is made under subsection 22 of section 28 of the tariff act of 1909, and overruled by the Board of General Appraisers.

That subsection reads:

SEC. 22. No allowance shall be made in the estimation and liquidation of duties for shortage or nonimportation caused by decay, destruction or injury to fruit or other perishable articles imported into the United States whereby their commercial value has been destroyed, unless under regulations prescribed by the Secretary of the Treasury. Proof to ascertain such destruction or nonimportation shall be lodged with the collector of customs of the port where such merchandise has been landed, or the person acting as such, within ten days after the landing of such merchandise. The provisions hereof shall apply whether or not the merchandise has been entered, and whether or not the duties have been paid or secured to be paid, and whether or not a permit of delivery has been granted to the owner or consignee. Nor shall any allowance be made for damage, but the importers may within ten days after entry abandon to the United States all or any portion of goods, wares or merchandise of every description included in any invoice and be relieved from the payment of duties on the portion so abandoned: *Provided*, That the portion so abandoned shall amount to ten per centum or more of the total value or quantity of the invoice. The right of abandonment herein provided for may be exercised whether the goods, wares or merchandise have been damaged or not, or whether or not the same have any commercial value: *Provided further*, That section twenty-eight hundred and ninety-nine of the Revised Statutes, relating to the return of packages unopened for appraisement, shall in no wise prohibit the right of importers to make all needful examinations to determine whether the right to abandon accrues, or whether by reason of total destruction there is a nonimportation in whole or in part. All merchandise abandoned to the Government by the importers shall be delivered by the importers thereof at such place within the port of arrival as the chief officer of customs may direct, and on the failure of the importers to comply with the direction of the collector or the chief officer of customs, as the case may be, the abandoned merchandise shall be disposed of by the customs authorities under such regulations as the Secretary of the Treasury may prescribe, at the expense of such importers. Where imported fruit or perishable goods have been condemned at the port of original entry within ten days after landing, by health officers or other legally constituted authorities, the importers or their agents shall, within twenty-four hours after such condemnation, lodge with the collector, or the person acting as collector, of said port, notice thereof in writing, together with an invoice description and the quantity of the articles condemned, their location, and the name of the vessel in which imported. Upon receipt of said notice the collector, or person acting as collector, shall at once cause an investigation and a report to be made in writing by at least two customs officers touching the identity and quantity of fruit or perishable goods condemned, and unless proof to ascertain the shortage or nonimportation of fruit or perishable goods shall have been lodged as herein required, or if the importer or his agent fails to notify the collector of such condemnation proceedings as herein provided, proof of such shortage or nonimportation shall not be deemed established and no allowance shall be made in the liquidation of duties chargeable thereon.

One of the questions involved is whether or not the power vested in the Secretary of the Treasury in said subsection to make specific

regulations in the premises extends to the part thereof relating to condemnation by a board of health or other legally constituted authorities. We think that question is answered by a transposition of the provisions of subsection 22 accordingly as they are related by reason of subject matter.

It is a familiar principle of statutory construction that in the ascertainment of legislative intent courts may assemble provisions of a statute to accord with that intent. When the context of a statute manifests, as in this case, provisions related according to subject matter and unrelated otherwise, though scattered in typographical arrangement, the application of the rule and the necessity therefor are apparent.

Words, phrases, and sentences may be transposed when necessary to give effect to all the words of a statute and to carry out the manifest intent.—Lewis's Sutherland Statutory Construction (sec. 386).

If a condition or qualifying clause has been misplaced, so that in the connection where it is inserted it is absurd or nonsensical, the court will apply it to its proper subject and give it effect if the statute affords the proper clues and it can be done in furtherance of its obvious intent.—Lewis's Sutherland Statutory Construction (sec. 410).

This statute embraces three separate and distinct matters The first provides an allowance for "shortage or nonimportation" caused by decay, "destruction," or injury to fruit. The second provides an allowance for "damage," and permits, under prescribed circumstances, an "abandonment" to the Government. The third provides for an allowance where goods are "condemned by the health officers or other legally constituted authorities."

The provisions of the subsection clearly and unquestionably relating to these respective different matters are scattered indiscriminately through the subsection. It will be instructive, therefore, as stated, in the determination of the legislative intent to assemble those provisions relating to the particular subject matter. This appeal involves the subject matter of the third provision above stated, being a claim for an allowance on account of goods condemned by health officers. The provisions of subsection 22 relating to the subjects matter may be assembled and quoted as follows:

(1) SHORTAGE OR NONIMPORTATION.

SEC. 22. No allowance shall be made in the estimation and liquidation of duties for shortage or nonimportation caused by decay, destruction or injury to fruit or other perishable articles imported into the United States whereby their commercial value has been destroyed, unless under regulations prescribed by the Secretary of the Treasury. Proof to ascertain such destruction or nonimportation shall be lodged with the collector of customs of the port where such merchandise has been landed, or the person acting as such, within ten days after the landing of such merchandise. * * * Unless proof to ascertain the shortage or nonimportation of fruit or perishable goods shall have been lodged as herein required, * * * proof of such shortage or nonimportation shall not be deemed established and no allowance shall be made in the liquidation of duties chargeable thereon. The provisions hereof shall apply whether or not the merchandise has been entered, and whether or not the duties have been paid or secured to be paid, and whether or not a permit of delivery has been granted to the owner or consignee.

(2) DAMAGE.

Nor shall any allowance be made for damage, but the importers may within ten days after such entry abandon to the United States all or any portion of goods, wares, or merchandise of every description included in any invoice and be relieved from

the payment of duties on the portion so abandoned: *Provided*, That the portion so abandoned shall amount to ten per centum or more of the total value or quantity of the invoice. The right of abandonment herein provided for may be exercised whether the goods, wares, or merchandise have been damaged or not, or whether or not the same have any commercial value: *Provided further*, That section twenty-eight hundred and ninety-nine of the Revised Statutes, relating to the return of packages unopened for appraisement, shall in no wise prohibit the right of importers to make all needful examinations to determine whether the right to abandon accrues. * * * All merchandise abandoned to the Government by the importer shall be delivered by the importers thereof at such place within the port of arrival as the chief officer of customs may direct, and on the failure of the importers to comply with the direction of the collector or the chief officer of customs, as the case may be, the abandoned merchandise shall be disposed of by the customs authorities under such regulations as the Secretary of the Treasury may prescribe, at the expense of the importers.

(3) CONDEMNATION.

Where imported fruit or perishable goods have been condemned at the port of original entry within ten days after landing, by health officers or other legally constituted authorities, the importers or their agents shall, within twenty-four hours after such condemnation, lodge with the collector, or the person acting as collector, of said port, notice thereof in writing, together with an invoice description and the quantity of the articles condemned, their location, and the name of the vessel in which imported. Upon receipt of said notice the collector, or person acting as collector, shall at once cause an investigation and a report to be made in writing by at least two customs officers touching the identity and quantity of fruit or perishable goods condemned, and * * * if the importer or his agent fails to notify the collector of such condemnation proceedings as herein provided, * * * no allowance shall be made in the liquidation of duties chargeable thereon.

The predication of two different subjects of the single phrase "no allowance shall be made in the liquidation of duties chargeable thereon" requires repetition of that phrase to preserve the congressional purpose in the arranged text in (1) and (3).

It will be observed, under this arrangement, that the words used in the last part of the subsection, as arranged in enactment, "unless proof to ascertain the shortage or nonimportation of fruit or perishable goods shall have been lodged *as herein required*," and the other provisions relating to proof concerning shortage or nonimportation are thereby given an apposite antecedent to the provisions relating to "proof" as to that subject matter appearing only earlier in the act as follows:

Proof to acertain such destruction or nonimportation shall be lodged with the collector of customs of the port where such merchandise has been landed, or the person acting as such, within ten days after the landing of such merchandise.

That this was the view taken by the Treasury Department when the regulations in question were promulgated is shown by T. D. 30023 and as subsequently amended in T. D. 31699 and T. D. 32511. It will be noted, in passing, that these regulations of the Treasury Department are divided into three separate and distinct classes, according to subject matter, exactly as we have hereinbefore indicated the statute naturally divides itself as to subject matter.

In this view the question first raised by appellant aforesaid as to whether or not the authority therein granted the Secretary of the Treasury to make regulations in the application of this subsection extended to that part thereof the subject of this appeal, to wit, the provisions relating to goods which have been condemned by health officers or other legally constituted authorities, is easily solved. They are not grammatically or according to their expressly limited subject matter applicable to that portion of the subsection.

Moreover, while the kind or character of proof is left open in the provisions relating to shortage and nonimportation, in the provisions relating to condemnation the legislature has defined precisely certain proof that shall be submitted. The importer must serve a statutory notice within 24 hours after condemnation, all requirements of which are obtainable from public records and without an inspection of the merchandise. Thereupon the examination is made by two examiners to corroborate or controvert this notice. If the notice is not given, no right of recovery follows; if it is, no further requirement seems imposed upon the importer. He may, however, within the statutory 10 days offer proof in support of his claim if deemed necessary or advisable. United States *v.* Shallus (2 Ct. Cust. Appls., 332; T. D. 32074). The statute, it seems, in this case furnishes a complete code of necessary requirements and procedure, hence the absence of the necessity for any regulations by the Secretary of the Treasury. It furnishes a rule of statutory evidence similar to that of section 2921, Revised Statutes. United States *v.* Parks (77 Fed., 608); United States *v.* Shallus (2 Ct. Cust. Appls., 332; T. D. 32074).

The further fact that Congress has expressly granted the Secretary the power to make specific regulations as to the disposition of abandoned merchandise argues that, wherever and as to every subject matter in the act upon which Congress wished to legislate, subject to such regulations, it did so expressly. Therefore such right and duty should be confined to those parts of the act only with which such provisions are immediately and expressly by subject matter associated.

It is appropriate to state in this connection that the contention is made upon behalf of the Government, and it was held in the decision by the board that these regulations were held to be reasonable by this court in Vandegrift *v.* United States (3 Ct. Cust. Appls., 198; T. D. 32470). This assumption overlooks the fact that the part of the regulations there commented upon by the court was not that part applicable to this subject matter of the subsection "condemnation," but those applicable to another different and distinct subject matter thereof, "shortage and nonimportation." The part of the regulations here in question concern the subject matter of section 2 thereof, while the part of the regulations therein questioned concerned the subject matter of section 1 thereof.

The above regulations were promulgated October 4, 1909. On June 17, 1911 (T. D. 31699), an amendatory regulation was promulgated, which, in so far as here pertinent, required that where an importation was condemned by the board of health and destroyed "the importer shall file with 5 days, exclusive of Sundays and legal holidays, after such condemnation a certificate issued by the board of health, specifying such packages as were condemned and destroyed in each line or lot. * * * In the absence of the proof aforesaid that the fruit so condemned was actually destroyed no allowance therefor shall be made." On May 16, 1912 (T. D. 32511), the Secretary of the Treasury amended this requirement by extending the time within which said certificate of the board of health might be filed to 15 days.

The facts and circumstances of this case make it unnecessary to discuss or decide whether the aforesaid regulations, promulgated expressly under the authority of said subsection 22, if unauthorized

as to fruit condemned, are nevertheless of vitality and force under the general power of the Secretary to promulgate regulations under section 251, Revised Statutes. In either case, in our opinion, the regulations as to this subject matter are beyond the statutory authorization and unreasonable.

The following facts are incontrovertibly established: Certain fruit imported was condemned at the port of original entry within 10 days after landing by health officers or other legally constituted authorities. The importers within 24 hours after such condemnation lodged with the collector notice thereof in writing, together with an invoice description and the quantity of the articles condemned, their location and the name of the vessel in which imported. Upon receipt of said notice the collector caused an investigation and a report to be made in writing by two customs officers touching the identity and quantity of fruit condemned. The customs officers reported that the condemnation had in each instance been made in accordance with the importers' notice. No allowance was made in liquidation for the duties paid on the condemned fruit.

These importations were made during the time that the amendatory regulation of June 17, 1911, was in full force and effect and before that of May 16, 1912, amendatory thereof, was promulgated.

The question for determination, in view of the stated reservations, is whether or not this regulation of the Secretary of the Treasury requiring a certificate of the board of health to be filed as a matter of proof within five days after condemnation was legal and valid, and whether or not the regulation requiring this certificate of an exclusive kind of proof upon behalf of the importers was legal and valid.

While it is well settled that the courts have uniformly discriminated between regulations promulgated by the Secretary of the Treasury under the general power to make such vested in him by section 251 of the Revised Statutes, and those such as these, vesting in him a special power to make regulations affecting a particular importation, we think the provisions of this regulation such that the distinction is not here controlling. The rule, as stated by this court in United States *v.* Morris European & American Express Co. (3 Ct. Cust. Appls., 146; T. D. 32386), is as follows:

> Compliance with such regulations (those made under the general power, vested by sec. 251, R. S.) may be had after the acts of importation and entry. Compliance with such may be the subject of proof before the Board of General Appraisers. Where, however, an exemption from or reduced rate of duty is claimed under a specific provision of the statutes which, as in this case, is accorded under or subject to such regulations as to proof or otherwise that may be prescribed by the Secretary of the Treasury, it has uniformly been held that such regulations become a condition precedent to the right accorded by the statute and must be complied with at the time of entry, or as otherwise specifically directed by the statute granting the same.

We further stated in that case the rule applicable to this regulation:

> While it is the established rule of law that where the right of exemption from, or to a reduced rate of, duty is by the Congress made subject to regulations to be prescribed therefor by the Secretary of the Treasury, these regulations nevertheless must be reasonable. The principle is that they must be regulative and not prohibitive. The right to import free of duty must not be destroyed or rendered inoperative by the prescribed regulations. United States *v.* Goodsell Co. (91 Fed., 519); Morrill *v.* Jones (106 U. S., 466); United States *v.* Dominici (78 Fed., 334).

The power of the Secretary of the Treasury under this general authority and under various grants of specific authority to make regulations affecting the character and kind of evidence that may be required by such regulations has frequently been the subject of decision by the courts. Such was the case in Morrill *v.* Jones (106 U. S., 466), decided by the Supreme Court. Therein the right of free entry of animals specially imported for breeding purposes was granted "upon proof thereof satisfactory to the Secretary of the Treasury, and under such regulations as he may prescribe." A regulation by the Secretary of the Treasury that satisfactory proof that the animals are of superior stock must be produced was held by the Supreme Court as invalid and beyond the statute.

It will be noted that in the Morris European & American Express Co. case, *supra*, the special statutory power to regulate the proof was vested in the Secretary of the Treasury and in this language:

> But the free importation of such objects shall be subject to such *regulations as to proof* of antiquity as the Secretary of the Treasury may prescribe.

In this case the provision of the statute is, "proof" to ascertain such destruction or nonimportation, etc., "shall be lodged with the collector of customs," etc. In the case, *supra*, there was an express grant to the Secretary of the Treasury to regulate the proof. In this case there is an express grant to the importers of an unrestricted right to make "proof." There is no limitation in the language of the statute of the kind of proof or otherwise save as to time when this proof may by the importers be made. The Congress having prescribed one limitation and given an unrestricted right of "proof" to the importer, the legal assumption must be that the word carried with it its natural legal import. In this view it was a grant to the importers to introduce any legal proof recognized by the courts of law and within the judicially defined meaning of that term, provided it was done within the statutory period. The limitation of the time for the introduction of this proof by the regulation of the Secretary of the Treasury to 5 days was clearly beyond his statutory power. The statute gave the importers 10 days in which to introduce such proof and restricted that right to that period of time. The amendatory extension of this time by the Government to 15 days seems equally beyond the statute.

We are of the opinion that the statute gives the importer the legal right within 10 days to make such proof as is regarded such in a court of law and according to the legal limitations of that term, and that both the limitation of the time of filing the same and the limitation of the character of this proof as to a particular kind thereof is beyond the words of the statute and unreasonable.

While we have rested decision in this case upon the stated grounds, we do not wish to be understood thereby to hold that the statute makes it incumbent upon the importer in cases of condemnation to introduce any "proof" or do other than duly serve the statutory notice of condemnation upon the collector. The point was not made or urged that in that class of cases the notice of condemnation by the importer and the report of the two examiners satisfied the statutory requirements; and that the "proof" required by the statute is not referable to condemnation cases. That point is not necessary

of decision and is not here decided. United States *v.* Shallus (2 Ct. Cust. Appls., 332; T. D. 32074); United States *v.* Park (77 Fed., 608).

The decision of the Board of General Appraisers is *reversed.*

NOTE.—The decision of the Board of General Appraisers, Abstract 30352 (T. D. 32905), likewise covered by this appeal, is *affirmed* by consent.

EXHIBIT 3.

(T. D. 33838.)

Bronze wire cloth.

UNITED STATES *v.* MCCOY CO. *et al.* (No. 1145). MCCOY CO. *et al. v.* UNITED STATES (No. 1146). UNITED STATES *v.* NEUMEYER & DIMOND (No. 1147). NEUMEYER & DIMOND *v.* UNITED STATES (No. 1148).

1. CONSTRUCTION.
   Courts will be alert to give effect to all of the provisions of a statute, but the case must be a very clear one, if it ever arises, in which a court will strike out words plainly limiting the operation of a clause that would be operative but for those words.

2. WOVEN BRONZE WIRE CLOTH—RATE.
   The first proviso to paragraph 135, tariff act of 1909, does not establish 35 per cent as a primary rate, but does establish it as a minimum rate.—Schloss *v.* United States (3 Ct. Cust. Appls., 459; T. D. 33038).

3. IBID.
   The second proviso requires that articles manufactured wholly or in chief value of any wires the duty upon which is fixed by the paragraph should pay the additional rate of 1 cent per pound; but it was not designed to increase the rate upon manufactured articles falling under other paragraphs of the act.

United States Court of Customs Appeals, October 24, 1913.

APPEAL from Board of United States General Appraisers, Abstract 31676 (T. D. 33280); Abstract 31816 (T. D. 33304).

[Affirmed.]

William L. Wemple, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel), for the United States.

Comstock & Washburn for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

Cross appeals are presented in the two above-entitled cases. The same issues are involved, and the cases were submitted as one case.

The merchandise consists of woven-wire cloth made of brass or bronze wire, used in paper machines, 9 to 14 feet in width, in length varying up to 50 feet. Duty was assessed thereon at the rate of 45 per cent ad valorem under the general unprovided-for manufactured metal articles provision, paragraph 199, tariff act of August 5, 1909, and in addition thereto 1 cent per pound under paragraph 135 of said act. Paragraph 135 provides:

135. Round iron or steel wire, not smaller than number thirteen wire gauge, one cent per pound; smaller than number thirteen and not smaller than number sixteen wire gauge, one and one-fourth cents per pound; smaller than number sixteen wire gauge, one and three-fourths cents per pound: *Provided*, That all the foregoing shall pay duty at not less than thirty-five per centum ad valorem; all wire composed of iron, steel, or other metal except gold or silver, covered with cotton, silk, or other material,

corset clasps, corset steels, dress steels, and all flat wires, and steel in strips, not thicker than number fifteen wire gauge and not exceeding five inches in width, whether in long or short lengths, in coils or otherwise, and whether rolled or drawn through dies or rolls, or otherwise produced, and all other wire not specially provided for in this section, shall pay a duty of not less than thirty-five per centum ad valorem; on iron or steel wire coated by dipping, galvanizing or similar process with zinc, tin, or other metal, there shall be paid two-tenths of one cent per pound in addition to the rate imposed on the wire of which it is made: *Provided further*, That articles manufactured wholly or in chief value of any wire or wires provided for in this paragraph shall pay the maximum rate of duty imposed in this section upon any wire used in the manufacture of such articles and in addition thereto one cent per pound: *And provided further*, That no article made from or composed of wire shall pay a less rate of duty than forty per centum ad valorem; telegraph, telephone, and other wires and cables composed of metal and rubber, or of metal, rubber, and other materials, forty per centum ad valorem; barbed fence wire, three-fourths of one cent per pound, but the same shall not be subject to any additional or other rate of duty hereinbefore provided; wire heddles or healds, twenty-five cents per thousand, and in addition thereto, forty per centum ad valorem.

It is contended by the importers' counsel that the first proviso of the paragraph above quoted providing that—

all wire composed of iron, steel, or other metal except gold or silver, covered with cotton, silk, or other material, corset clasps, corset steels, dress steels, and all flat wires, and steel in strips, not thicker than number fifteen wire gauge and not exceeding five inches in width, whether in long or short lengths, in coils or otherwise, and whether rolled or drawn through dies or rolls, or otherwise produced, and all other wire not specially provided for in this section, shall pay a duty of not less than thirty-five per centum ad valorem—

should be construed as establishing the rate of the commodity here in question at 35 per cent as a primary rate. Such construction would clearly do violence to the language of the paragraph, as it involves a reading of the words "not less than thirty-five per centum" as though the words "not less than" had been omitted, and as though the provision had read "shall pay a duty of thirty-five per centum." This contention is based upon the claim that all the materials named in this proviso are made dutiable by other provisions of law (if held to fall without the proviso) at a rate higher than 35 per cent, thus leaving the proviso as it appears in the paragraph wholly inoperative and unnecessary, and it is contended that a construction should be given which would leave some room for the application of the 35 per cent rate. Without doubt courts should, where it can be consistently done, so construe a statute as to give effect to all of its provisions, and the court will be alert to attribute such a meaning to the words employed as to give this effect. United States *v.* White (2 Ct. Cust. Appls., 80; T. D. 31632). Endlich on Interpretation of Statutes, section 295; United States *v.* Kirby (74 U. S., 486). But the case must be a very clear one, if it ever arises, in which a court will strike out words which in plain terms limit the operation of a clause which, but for such words, would be operative. A consideration of the nature of this proviso conduces to the conviction that this is not such an instance. The proviso is clearly in the main a minimum provision, as was held by us in Schloss *v.* United States (3 Ct. Cust. Appls., 459; T. D. 33038). The very nature of a minimum provision is to provide against a possible oversight by which an article might have otherwise fallen within a classification at too low a rate. The enactment of such a provision does not necessarily imply that such instances in fact exist, but are inserted as an added safeguard against errors in legislation. The question is ruled by Schloss *v.* United States, *supra*

The Government contends that by the terms of the second proviso there should be added 1 cent per pound to the duty imposed upon the articles made of wire, though they are held dutiable under the metal paragraph. The idea seems to be that the wires used in this article are provided for in this paragraph, although held not dutiable under the paragraph at all, but under another paragraph. We do not so construe this language. We think what was meant was that articles manufactured wholly or in chief value of any wires the duty upon which is provided for by the paragraph should pay the additional rate of 1 cent per pound. This view is expressed in Schloss *v.* United States, *supra*. It is sought to distinguish the two cases by stating that the articles there considered paid duty as silk and not as wire, while the present importation pays duty, it is said, as wire under paragraph 199. It does not, however, pay duty as wire *eo nomine*, but as articles composed of metal. The cases are not to be distinguished.

Affirmed.

EXHIBIT 4.

(T. D. 33410.)

Bungo sulphur.

NEWHALL & CO. *et al. v.* UNITED STATES (No. 911).

1. SUBLIMATION OF SULPHUR.
   Sublimation of sulphur is the artificial distillation thereof, in the course of which the sulphur content of the article distilled is, after evaporation, deposited, collected, and formed according to the commercial or other uses for which it may be designed.

2. CRUDE COMMODITIES.
   "Crude" refers commonly to substances or articles in a condition unfit for the ultimate purpose or use for which they are intended.

3. BUNGO SULPHUR NOT REFINED OR CRUDE.
   The sulphur of the importation is from Japan. It is expelled by volcanic force from geysers, is drawn off in conduits, and when cooled is broken into various shapes and placed in sacks for transportation. This sulphur, very nearly pure, can not be said to have been refined; nor is it crude. It falls appropriately within the free entry paragraphs of the acts of 1897 and 1909, as sulphur not otherwise provided for.

United States Court of Customs Appeals, May 6, 1913.

APPEAL from Board of United States General Appraisers, G. A. 7351 (T. D. 32420).

[Reversed.]

William Hayward for appellants.

William L. Wemple, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

This case involves the dutiability of sulphur imported from Japan in 1908, 1909, and 1910. It was assessed for duty by the collector, and the Government here claims the same to be dutiable under para-

graph 84 of the tariff act of 1897 and paragraph 81 of the tariff act of 1909, the material parts of which are identical and read as follows:

Sulphur, refined or sublimed, or flowers of, * * *.

A duty of $8 per ton was imposed by the earlier and $4 per ton by the later act.

The importers, and there are several in this case, claim the merchandise to be entitled to free entry under paragraph 674 of the act of 1897 and paragraph 686 of the act of 1909, which are identical and read as follows:

Sulphur, lac or precipitated, and sulphur or brimstone, crude, in bulk, sulphur ore as pyrites, or sulphuret of iron in its natural state, containing in excess of twenty-five per centum of sulphur, and sulphur not otherwise provided for in this section.

The Board of General Appraisers overruled the protests.

There appears to be no controversy as to the manner of obtaining this sulphur, which in substance is as follows, as stated by a Government witness:

In Bungo Province, Japan, there are many geyserlike craters which intermittently emit sulphurous gases, fumes, or vapors, and whose action is produced by volcanic activity. During their inactive periods the Japanese have placed pipes in the ground and in the crevices about the craters of these so-called geysers in such position that when activity is resumed these gases, fumes, or vapors are collected in pipes and thereby conducted into hermetically tight reservoirs, several pipes leading to the same reservoir, where they are condensed into sulphur, and from which reservoirs the sulphur flows down the mountain side in long tight conduits, where it hardens and from which it is taken, broken into various shapes, put into sacks, transported by coolies down the side of the mountain, and becomes a subject of commerce under the name of Bungo sulphur.

The merchandise involved in this case is imported in sacks or other packages and is conceded to be practically pure sulphur. Various samples have been analyzed and the analyses given in evidence. Therefrom it appears that every sample contains more than 99 per cent of pure sulphur and some samples run as high as 99.9 per cent pure, and the evidence shows that this sulphur is as pure as artificially refined sulphur, which appears to be the purest sulphur otherwise obtained.

The main contention of the importers is that this Bungo sulphur is a natural or crude sulphur and not refined, and that the word "refined" as used in the quoted paragraph implies a sulphur product which is the result of artificial processes applied to produce the condition of purity.

The chief contentions of the Government are, first, that the term "refined," as used in the paragraph, means sulphur containing practically no impurities, regardless of how it is produced; that is, it means a *condition* and not a *result*, and, further, that the facts in this case show what is the equivalent of an artificial refining process.

Evidence was introduced by the importers which tended to show that in trade and commerce this merchandise was known as natural or crude sulphur, while the evidence on the part of the Government tended to show that it was commercially known as refined sulphur, but, as we understand, it is not claimed by either side that a commercial designation has been established.

It is agreed that in the process of refining sulphur by wholly artificial means a considerable degree of heat is always required, and it appears that the throwing off of the sulphurous fumes, gases, or vapors from which the sulphur is obtained from these so-called geysers in Japan is always accompanied by the presence of a considerable degree of heat. It also appears that unless these fumes, gases, or vapors are collected they pass into the atmosphere; that there does not follow therefrom a deposit of sulphur on the surface of the ground to any considerable extent, and that whatever is so deposited is not practically pure as is the merchandise here, but is mixed with impurities of various kinds.

This sulphur, although practically pure, has not been brought to that condition by wholly artificial means, and, indeed, to know, if the fact were material, whether it is chiefly produced by artificial means, would involve a knowledge as to the form in which the sulphur existed in the crater of the geyser and the natural forces or processes which produced therefrom the sulphurous fumes.

But we are of opinion that this sulphur is not the refined or sublimed sulphur referred to in the duty paragraphs, and are satisfied that such sulphur is that which is produced by artificially applying the process of sublimation to a cruder form thereof which may be artificially or naturally brought into existence.

Without going into the details of the processes employed, sublimation of sulphur is the artificial distillation thereof, in the course of which the sulphur content of the article distilled is, after vaporization, deposited, collected, and formed according to the commercial or other uses for which it may be designed.

It was said by the Board of General Appraisers in G. A. 3742 (T. D. 17756), decided in 1894, construing language identical with that in the duty paragraphs before us, that the terms "'sulphur refined, sublimed, or flowers of' are interchangeable, refined sulphur being obtained only by sublimation and one of the forms evolved therefrom being flowers of sulphur."

In G. A. 432 (T. D. 10937), decided in 1891, it was stated by the board that to produce refined sulphur it was sometimes necessary to resort to more than one subliming process, depending apparently upon the quantity and kind of impurities present in the article from which the sublimed sulphur was to be produced.

The Treasury Department in 1876, by Synopsis 3032, construing the meaning of the term "brimstone, crude," given free entry in the act of 1870 and which was taken out of the duty provisions of the act of 1864, where it was used in contradistinction to the term "brimstone in rolls or refined," said, in substance, that crude brimstone was procured from sulphurous ore by roasting, fusing, or smelting, and that refined brimstone was obtained from the crude brimstone by the process of vaporization and sublimation, which released all foreign matter and left the article chemically pure.

In this connection, also, reference may be had to rulings of the department in Synopsis 8442 and T. D. 31962, which are consistent with the view that to be dutiable as refined the sulphur must be the product of sublimation processes, although we do not fail to note that in the last-mentioned Treasury decision Bungo sulphur was claimed to be refined within the meaning of the duty paragraph.

Inasmuch, however, as the question of its dutiability was then challenged by the protests in the case now before us, the department's reserve as to this sulphur was proper.

We think that the treatment of the subject of sulphur or brimstone, which, as the latter word is commonly used, is sulphur or a form thereof, by Congress and by the department for more than 25 years clearly indicates that the refined or sublimed sulphur referred to in the duty paragraphs was understood to be the result of one or more processes of artificial sublimation and did not, and does not now, refer to a pure or substantially pure sulphur naturally produced or to one in the production of which artificial processes are employed to no greater an extent than in this case. The fact that Congress has not seen fit to use the words "pure or substantially pure" or their equivalent in describing dutiable sulphur seems to corroborate this conclusion.

If it be conceded that the question is a doubtful one, the settled rule is that the importer in such a case is entitled to the benefit of the doubt.

The various other court and board decisions referred to by the Government are not inconsistent with this conclusion, because, as we understand them, it was found in every instance that the sulphur was in fact refined, and in none does it appear that it was produced in the same manner as the merchandise here.

It remains, however, to determine the application of the free-entry paragraphs to this sulphur. The Government urges that if it be found that the sulphur is crude these importations are not in bulk, and therefore not entitled to free entry. The words "in bulk" have received such legislative definition and administrative construction that we think this contention is sound. In paragraph 295 of the act of 1909 salt "in bags, sacks, barrels, or other packages" is made dutiable at one rate and salt "in bulk" at another. This indicates that in legislative contemplation the term "in bulk" excludes such containers as used in the importation here. Again, section 2990 of Revised Statutes and a ruling of the Treasury Department in Synopsis 2980 (1876), clearly are to the same effect and the common understanding of the term "in bulk" would seem to render further discussion of that subject unnecessary.

But we do not think this merchandise is the *crude* sulphur or brimstone of the free-entry paragraphs.

It does not follow because it is not *refined* within the meaning of the duty paragraphs that it must be *crude* in the sense that word is used in the free-entry paragraphs. Neither does it follow that any article that is not refined or pure in the common meaning of the term must necessarily be crude within the same meaning.

Without undertaking to define with precision the meaning of the word "crude," and it is evident its meaning should be determined with reference to the article to which it is applied, it would seem to commonly refer to substances or articles in a condition unfit for the ultimate purpose or use for which they are intended.

In United States *v.* Chemical Co. (2 Ct. Cust. Appls., 165; T. D. 31679), this court, in discussing the meaning of the word "crude" in paragraph 482 of the act of 1897, referring to articles in a crude state used for dyeing, etc., said that the merchandise there was crude in two respects: First, that it was an article in the state of its first produc-

tion without being refined by additional treatment applied for the purpose and was mixed with various impurities; second, that it was crude because not in a condition fit for use for dyeing, etc., but was only the raw material which by further treatment could be made fit for such uses.

In United States *v.* Danker (2 Ct. Cust. Appls., 522; T. D. 32251), the same paragraph as in the preceding case was again under consideration, and it was there said that "as applied to materials crudeness is a relative term, and to determine whether or not a thing is crude for industrial purposes some account must be taken of its intended use. However much a thing may be processed, if, as a matter of fact, it must go through some additional process of substantial preparation or manufacture in order to fit it for its chief or only use, it is, so far as that use is concerned, a crude article."

In United States *v.* Sheldon (2 Ct. Cust. Appls., 485; T. D. 32245), the question of whether the merchandise was gum resin, crude, was under consideration by this court, and it was said (p. 489) that the resin there which was held to be crude within the meaning of paragraph 559 of the act of 1909 was in a condition which forbade its "being subjected *per se* to final or further uses without substantial processes being applied."

The sulphur in this case, as appears from the evidence, is not only practically pure, but in its imported condition is fit and ready for nearly all the uses to which refined sulphur may be applied. It is not in the form nature first presented it or in a form resulting directly therefrom, but is instead in a form which is brought about by the intervention of human appliances and which have resulted in a much purer article than nature, if left alone, would have produced. Whether it is referred to as natural or elementary sulphur or by some other of the terms which are employed in Synopsis 3032 and T. D. 10936 is not of special importance, because, being sulphur and not being crude, it falls within the descriptive term "sulphur not otherwise provided for" in the free-entry paragraphs.

The judgment of the board of general appraisers is *reversed.*

EXHIBIT 5.

(T. D. 34170.)

Chamois skin.

UNITED STATES *v.* AMERICAN EXPRESS CO. (No. 1261).

CHAMOIS OR CHAMOIS SKIN.

These pieces of chamois or chamois skin, the terms being interchangeable, have not become manufactures of leather by being cut into particular sizes and by having their edges scalloped. They remain chamois or chamois skin and were dutiable as such under paragraph 451 tariff act of 1909.

United States Court of Customs Appeals, January 29, 1914.

APPEAL from Board of United States General Appraisers, Abstract 32274 (T. D. 33578).

[Affirmed.]

William L. Wemple, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel; *Charles D. Lawrence*, special attorney, on the brief), for the United States.

Comstock & Washburn for appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The question in this case is whether an importation described in the answer to the protest as "articles of chamois, with cut-out edges, known as face chamois" is dutiable at 40 per cent ad valorem as a manufacture of leather under paragraph 452 of the tariff act of 1909, as assessed, or at 20 per cent ad valorem as "chamois skin" under paragraph 451, as claimed by the importer and held by the Board of General Appraisers.

The sample of the merchandise used as an exhibit is a small piece of ordinary chamois about 9 by 6½ inches with scalloped edges. The case is here upon the record and files, no parol testimony having been taken by the board. It is unnecessary to quote in full either of the competing paragraphs. Paragraph 452, so far as pertinent, relates to "manufactures of leather not specially provided for" and paragraph 451 to "chamois skin," and if the latter term more specifically describes the merchandise in question than the former, the board should be sustained.

It is well known that originally the term "chamois or chamois skin," as applied to merchandise of this character, related to the skin or some product thereof of the chamois, an animal found in the mountainous districts of Europe and Asia, said to be about the size of a full-grown goat.

We think it is equally now well known that it relates to a soft leather made from various skins, perhaps most often from sheepskin, so tanned, dressed, or prepared that it is very soft and pliable. (See Century and Murray's New English dictionaries.)

As it is commonly understood we think the term "chamois" or "chamois skin," and we also think they are used interchangeably, relates to this kind of tanned and dressed skin often if not generally in pieces smaller than the size of the skin of the animal from which it was originally taken. It is a commodity that is devoted to a multitude of uses. We assume that by the term "face chamois" adopted by the appraiser in his answer to the protest it is implied that the particular importation in his opinion was designed to be used for toilet purposes, but there is nothing about the article itself that limits or confines it to that use and it may equally well be applied to some of the many other uses to which chamois itself is applied.

Whatever may be the use or uses to which it may be applied it is, however, chamois or chamois skin, and therefore specifically provided for in paragraph 451. It has not been manufactured into any of the articles named in paragraph 452 and is in no sense a manufacture of leather thereunder unless the cutting into the particular size in question and the scalloping of the edges be so regarded. We think the operations thereby involved do not have that effect, for, as stated, the article is still chamois or chamois skin within the common understanding of the meaning of that term.

A similar view was adopted by the Board of General Appraisers in G. A. 7425 (T. D. 33143).

The judgment of the Board of General Appraisers ought to be, and it is, *affirmed*.

EXHIBIT 6.

(T. D. 33413.)

Horse-radish roots.

UNITED STATES *v.* WALLACE *et al* (No. 1086).

HORSE-RADISH ROOTS NOT VEGETABLES.

A review of the decisions shows that the word "vegetables" has not been employed in tariff acts in a strictly botanical sense, but rather has been applied to vegetables commonly used as food. Horse-radish is botanically a vegetable. Its use, however, is not as a food, but as a condiment. It is free of duty under paragraph 630, tariff act of 1909, as a vegetable substance, unmanufactured, not otherwise specially provided for.

United States Court of Customs Appeals, May 6, 1913.

APPEAL from Board of United States General Appraisers, Abstract 30673 (T. D. 32997). and Abstract 30988 (T. D. 33055).

[Affirmed.]

William L. Wemple, Assistant Attorney General (*Charles Duane Baker*, special attorney, on the brief), for the United States.

Comstock & Washburn for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

This appeal relates to certain entries of crude horse-radish roots which were imported in their natural state. They were returned by the appraiser as vegetables in their natural state, not specially provided for, and accordingly were assessed with duty at the rate of 25 per cent ad valorem under paragraph 269 of the tariff act of 1909.

The importers protested against this assessment, claiming that the merchandise was entitled to free entry as a vegetable substance, unmanufactured, under paragraph 630 of the same act.

This protest was sustained by the Board of General Appraisers, and the Government now appeals from that decision.

The following is a copy of the two competing paragraphs:

269. Vegetables in their natural state, not specially provided for in this section, twenty-five per centum ad valorem.

(Free list.) 630. Moss, seaweeds, and vegetable substances, crude or unmanufactured, not otherwise specially provided for in this section.

The word "vegetables" has been defined in numerous decisions of the courts, and these definitions indicate the proper decision of the present case.

The case of Robertson *v.* Salomon (130 U. S., 412) raised the issue whether white beans were classifiable as vegetables in their natural state or as seeds not specially provided for under the tariff act of 1883. In the course of the opinion delivered in that case, Bradley, Judge, speaking for the court, said:

On the other hand, in speaking generally of provisions, beans may well be included under the term "vegetables." As an article of food on our tables, whether baked or boiled, or forming the basis of soup, they are used as a vegetable, as well when ripe as when green. This is the common use to which they are put. Beyond the common knowledge which we have on this subject, very little evidence is necessary or can be produced.

Accordingly the court held in the foregoing case that white beans were vegetables within the tariff meaning of that term, although botanically speaking they were also seeds.

In the case of Nix *v.* Hedden (149 U. S., 304), the Supreme Court passed upon the question whether tomatoes were vegetables in their natural state or were fruits not specially provided for. In the decision of the court Gray, Judge, said:

> Botanically speaking, tomatoes are the fruit of a vine, just as are cucumbers, squashes, beans, and pease. But in the common language of the people, whether sellers or consumers of provisions, all these are vegetables, which are grown in kitchen gardens, and which, whether eaten cooked or raw, are, like potatoes, carrots, parsnips, turnips, beets, cauliflower, cabbage, celery, and lettuce, usually served at dinner in, with, or after, the soup, fish, or meats which constitute the principal part of the repast, and not, like fruits generally, as dessert.

In the case of Von Bremen *v.* United States (168 Fed., 889), the Circuit Court of Appeals, Second Circuit, had before it the question whether, under the tariff act of 1897, truffles in tin packages were dutiable as vegetables prepared or preserved, not specially provided for, or were dutiable by similitude with mushrooms in tins. The court said, speaking by Ward, Judge:

> Though truffles belong to the vegetable kingdom, they are used solely as a condiment in cooking and never separately served as a table dish, and are not included in the trade or in ordinary usage among vegetables.

In the case of Pierce *v.* United States (1 Ct. Cust. Appls., 171; T. D. 31215), this court held that under the tariff act of 1897 capers were not classifiable as vegetables, but were dutiable as an unenumerated article. In the opinion De Vries, Judge, speaking for the court, said:

> This court, therefore, is of the opinion that capers, being a condiment used to flavor vegetables and meats rather than to be eaten as a vegetable, is not included within the provisions of paragraph 241 of the tariff act of 1897. It is not a vegetable, nor is it a vegetable pickle in the sense those words are used in the tariff act.

In the case of United States *v.* Shing Shun & Co. (2 Ct. Cust. Appls., 388; T. D. 32113), this court held that melon seed, which had been reduced in size by peeling and which had been roasted and salted for food, are not vegetables under the tariff act of 1909, but are within the provisions of the act for nonenumerated manufactured articles. De Vries, Judge, speaking for the court, said:

> The fact that they are prepared for and eaten as a relish would seem to put them beyond the category of vegetables, as that term is used in customs acts.

The foregoing decisions indicate that in the tariff acts the word "vegetables" has not been employed in a strictly botanical sense, but rather has been applied to those articles of food which constitute in common acceptation the vegetable part of a repast. These are such articles of food as commonly grow in kitchen gardens. This definition excludes horse-radish, because that article, while botanically a vegetable, is not commonly given that name when it appears upon the dinner table, and in use is not a food at all, but only a condiment.

Therefore the court is of the opinion that the horse-radish roots in question are not vegetables within the purview of paragraph 269, above copied.

The question which next arises in the case is whether or not the importation is entitled to free entry as a vegetable substance, unmanufactured, under the provisions of paragraph 630 of the act.

The Government contends that the use of the words "vegetable substance" in paragraph 630, in conjunction with the provisions for moss and seaweed, implies that the classification in question was intended to include only such vegetable substances as are generically similar to moss and seaweed. It is claimed by the Government that moss and seaweed are never eaten either as food or condiments, and that this fact establishes a generical difference between those articles and horse-radish, since the latter article is almost exclusively used as a condiment.

The following quotations, however, contradict the premise upon which the foregoing argument of the Government rests:

Standard Dictionary:

Moss, n. * * * Ceylon moss, any one of various seaweeds of the rosetangle family, * * * forming an extensive article of trade and used for food and various other purposes.

Iceland moss, an edible lichen of the arctic regions, which, after steeping several hours for the expulsion of a bitter principle, is made into a nutritious jelly and sometimes used medicinally for lung troubles.

* * * * * * *

Carrageen, n. A small purplish-colored edible marine alga of rocky coasts; when bleached, the Irish moss of commerce.

New International Encyclopædia:

Seaweed. In a wide sense, any plant of the class algæ; in a more restricted sense, only plants of this class which live in the sea. The term is also applied to any plant growing in the sea. Several species are edible, the most important of these being Irish or carrageen moss, used as a cattle food and also in the preparation of jellies (blanc mange and similar dishes). Dulse, or dillesk, and kelp, or tangle, are also used to a limited extent as human food.

In fact it appears from the board's decision that certain kinds of seaweed have been imported into this country for human consumption; and that the board held such importations to be free of duty under the provisions for "moss, seaweeds, and vegetable substances." (T. D. 24151.) This point of resemblance of horse-radish roots with moss and seaweeds differentiates the present case from that of Dodge *v.* United States (84 Fed., 449), the importation in that case being crude camphor oil.

The provisions for vegetables in their natural state, and those for moss, seaweed, and vegetable substances, unmanufactured, which severally appear in paragraphs 269 and 630 of the act of 1909, also appeared in the same form in the tariff revisions of 1890, 1894, and 1897. A number of board decisions interpreting and applying the provisions in question were reported, and it appears that under those acts many diverse articles were given free entry under the name of vegetable substances. Among these were cottonseed hulls, commonly used as food for cattle (T. D. 14705); mustard hulls, used as an ingredient in mustard and spice preparations (T. D. 14739); aromatic tonka-bean crystals (T. D. 14836); copra or dried coconut meat, from which the oil was to be pressed, the residuum to serve as cattle feed (T. D. 15417); oat chaff (T. D. 16228); pea hulls, intended to be mixed with screenings and used as cattle feed (T. D. 18020); pine cones (T. D. 20038); angelica stalks, intended to be candied and

made into sweetmeats (T. D. 24917); gourd pith, to be used as a flesh brush (T. D. 24962).

It therefore appears that certain seaweeds are in fact edible and are so known in commerce. It also appears that such seaweeds and other edible vegetable substances, when imported under former tariff acts, were held by the board to be free under the provisions for "moss, seaweeds, and vegetable substances," and that those provisions were repeated in the same terms in successive tariff revisions.

Upon these facts the court is of the opinion that horse-radish roots also are within the classification in question and are entitled to free entry by its terms. The decision of the board to that effect is therefore *affirmed.*

EXHIBIT 7.

(T. D. 33371.)

Ladder tapes.

UNITED STATES *v.* WALTER *et al.* (No. 1058).

1. CONSTRUCTION.

In tariff statutes words describing merchandise are to be taken as used in their commercial sense, but the common and the commercial meanings are presumed to be the same. If a difference in meaning is attempted to be shown, the party seeking to show a difference has the burden of proof.

2. TAPES AND LADDER TAPES.

To bring these articles within the commercial designation of "tapes" it would be necessary to show that they are known as such. This is not here shown. On the contrary, the evidence discloses that, instead of being known commercially as tapes, they are commercially known as ladder tapes. Tapes and ladder tapes are not the same thing.

United States Court of Customs Appeals, April 22, 1913.

APPEAL from Board of United States General Appraisers, G. A. 7396 (T. D. 32871).

[Affirmed.]

William L. Wemple, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel), for the United States.

Brown & Gerry for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The merchandise here is known as ladder tapes, and is identical with that before this court in Burlington Venetian Blind Co. *v.* United States (1 Ct. Cust. Appls., 374; T. D. 31456), and United States *v.* Burlington Venetian Blind Co. (3 Ct. Cust. Appls., 378; T. D. 32967).

In the earlier of these cases the issue as to the classification of the merchandise was between the provisions of paragraph 349 and paragraph 332 of the tariff act of 1909. The importer claimed that the articles were dutiable as manufactures of cotton under paragraph 332; that under the doctrine of *noscitur a sociis* it should be held that paragraph 349 related entirely to articles of personal or household use, ornamental in character; and that the ladder tapes, not being *ejusdem*

generis with the merchandise named in the paragraph, should therefore be excluded from classification thereunder. It was not claimed that the articles were not in fact tapes, nor was there any claim of commercial designation. The merchandise had been assessed under paragraph 349, and the action of the board sustaining the collector's assessment was affirmed.

In the later case the same paragraphs were involved as in the former and the claim relied upon by the importer was that the merchandise was not in fact tapes within the meaning of that word as used in the paragraph. Although it was claimed by the Government that its evidence of commercial designation brought the articles within the meaning of the word "tapes" as used in the paragraph, this contention was not upheld and the judgment of the Board of General Appraisers ordering its assessment under paragraph 332, as a manufacture of cotton not specially provided for, was affirmed.

In the case at bar the evidence in the other cases has been imported into the record and it also contains the evidence of one additional witness whose testimony seems to be wholly directed to an effort to show that these articles are commercially known as "ladder tapes."

The Government here contends in substance that if it shall be found that the trade knows and refers to this merchandise under the name of "ladder tapes" it is thereby brought within the meaning of the word "tapes" as used in paragraph 349.

We assume for the purposes of this decision that the trade and commerce dealing with this commodity designate it as "ladder tapes."

It is established that the use of these ladder tapes is confined to the manufacture and repairing of Venetian blinds, to which they are attached, and by means of which the blind slats are turned, or raised and lowered.

It may here be stated that a ladder tape consists of two strips of woven fabric of indefinite length, about 1½ inches wide, connected at regular distances by lighter woven fabrics about 2½ inches long and ⅜ inch wide, produced by the loom from cotton threads of suitable sizes. After coming from the loom certain small connecting threads are cut by hand, resulting in the product assuming the ladder-like shape which its name indicates.

For further information as to the production of the merchandise and discussion of the questions raised therein reference is made to the decisions above mentioned.

The collector assessed the merchandise in this case as tapes under said paragraph 349, while the importer here claims that it is dutiable as a manufacture of cotton not otherwise provided for under paragraph 332. The board sustained the protest.

The learned counsel for the Government strenuously contends that having established that the merchandise is known commercially as "ladder tapes" it is thereby embraced within the commercial meaning of the word "tapes" as used in paragraph 349.

Nothing has occurred to change our opinion, as expressed in the later of the cited cases, that these articles are not in fact tapes within the common meaning of the word.

While if the respective parts had been produced separately and had become a separate entity before being combined, as in the ladder tapes, they might perhaps with propriety be said to be manufactures of tapes, the truth is that there has never in fact existed the

entity, tapes, in these articles. As first produced from the cotton threads they appear substantially as we find them here. To bring these articles within the commercial designation of tapes we think it must be shown that they are commercially known as such; but it is not so shown. On the contrary, the evidence plainly shows that instead of being commercially known as "*tapes*" they are known commercially as "*ladder tapes*," which is not the same thing. To illustrate: The tomato in earlier days, if not now, was frequently referred to in common speech as a "love apple." Suppose a paragraph of the tariff law had imposed a duty upon "apples" without further descriptive language. Would it be urged or ought it to be held that if the tomato was shown to be designated in commerce as a "love apple" that tomatoes by reason thereof were placed within the commercial meaning of the word "apples" as it might be used in the supposed paragraph without any evidence whatever as to the commercial meaning of the word "apples" itself?

We are unable to glean from the authorities cited by the Government or to find upon principle that such a supposed classification could or ought to be upheld.

One of the elementary principles in the construction of tariff statutes is that words describing merchandise are used in their commercial sense, but the common and commercial meanings are presumed to be the same unless it is otherwise shown, and upon him who claims a different commercial sense devolves the burden of making good his contention. To do that it is incumbent to show that the given word or term has a definite, uniform, and general meaning among those who are wholesale dealers therein which is different from its ordinary meaning. United States *v.* Kwong Yuen Shing (1 Ct. Cust. Appls., 14; T. D. 30773); Acker *v.* United States (1 Ct. Cust. Appls., 328; T. D. 31431).

As pointed out in the decision of the board in this case, no effort has been made to conform to this rule, the Government contenting itself by showing that the merchandise is commercially known as "ladder tapes" without showing that the word "tapes" itself is used in commerce as referring to the merchandise in question, or that the commercial meaning of the word "tapes" is other than its ordinary meaning.

The judgment of the Board of General Appraisers is *affirmed*.

EXHIBIT 8.

(T. D. 33536.)

Jewelry.

COHN & ROSENBERGER *v.* UNITED STATES (No. 1100). UNITED STATES *v.* COHN & ROSENBERGER (No. 1108). UNITED STATES *v.* CLAFLIN CO. *et al.* (No. 1109). GUTHMAN, SOLOMONS & CO. *et al. v.* UNITED STATES (No. 1110).

ARTICLES COMMONLY OR COMMERCIALLY KNOWN AS JEWELRY.

Avoiding a construction that would work inconsistent or absurd results, but not on that ground alone, it is held that in paragraph 448, tariff act of 1909, where jewelry is treated comprehensively, it was intended that to all articles commonly or commercially known as jewelry the lower rate of 60 per cent ad valorem should apply, notwithstanding the fact that such articles fall within the apparent *eo nomine* provisions in a preceding part of the paragraph.—United States *v.* Guthman *et al.* (3 Ct. Cust. Appls., 276; T. D. 32572).

United States Court of Customs Appeals, May 31, 1913.

APPEAL from Board of United States General Appraisers, G. A. 7424 (T. D. 33142).

[Affirmed as to part, reversed as to part.]

Hatch & Clute (*Walter F. Welch* of counsel) and *Comstock & Washburn* for appellants.
William L. Wemple, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

These cases were heard together by the Board of General Appraisers and are so considered here.

In the board's opinion the merchandise was arranged in the following classes, the correctness of which is not questioned:

(1) Brooches; (2) hatpins, bar pins, chatelaine pins, scarf pins, veil pins, and collar pins; (3) necklaces and necklets or lavallieres; (4) chains and neck chains; (5) lockets; (6) crosses and earrings; (7) steel chains in imitation of gun metal.

The board held that part of the merchandise covered by class 7 to be dutiable as a manufacture of metal under paragraph 199 of the tariff act of 1909; that the part described in class 6 was dutiable at 60 per cent ad valorem under the last clause of paragraph 448 of the same act; and there is no claim made here that the board erred therein.

All the merchandise was assessed by the collector at rates equivalent to 85 per cent ad valorem under the first part of said paragraph 448, which is hereinafter inserted.

The board adjudged that the merchandise described in its said second, fourth, and fifth classes was dutiable at rates equivalent to 85 per cent ad valorem under the first part of paragraph 448, from which judgment the importers appeal, and that so much thereof as was found to be included within its said first and third classes was dutiable at 60 per cent ad valorem under the last clause of the same paragraph, from which judgment the Government appeals. The board, however, found that some merchandise claimed to be within its class 1 belonged in class 2.

It is agreed by all parties here, and the board has found as a fact, that all the merchandise involved in these appeals is commonly and commercially known as jewelry, and it is assumed in argument that if the last clause of paragraph 448 does not apply thereto, it is, in view of the findings of the board, all dutiable under the first part thereof.

The paragraph we quote, but for convenience reproduce it subdivided as was done in United States *v.* Guthman *et al.* (3 Ct. Cust. Appls., 276; T. D. 32572), as follows:

1. Chains, pins, collar, cuff, and dress buttons, charms, combs, millinery and military ornaments, together with all other articles of every description, finished or partly finished—

(*a*) If set with imitation precious stones composed of glass or paste (except imitation jet),

(*b*) *Or* composed wholly or in chief value of silver, German silver, white metal, brass, or gun metal,

(*c*) Whether *or not* enameled, washed, covered, plated, or alloyed with gold, silver or nickel,

(*d*) *And designed to be worn on apparel or carried on or about or attached to the person,*

(*e*) Valued at twenty cents per dozen pieces, one cent each and in addition thereto three-fifths of one cent per dozen for each one cent the value exceeds twenty cents per dozen;

2. All stampings and materials of metal (except iron or steel), or of metal set with glass or paste, finished or partly finished, suitable for use in the manufacture of any of the foregoing articles (except chain valued at less than thirty cents per yard other than nickel or nickel-plated chain), valued at seventy-two cents per gross, three cents per dozen pieces and in addition thereto one-half of one cent per gross for each one cent the value exceeds seventy-two cents per gross;

3. Rope, curb, cable, and other fancy patterns of chain, without bar, swivel, snap or ring, composed of rolled-gold plate or of silver, German silver, white metal, or brass, not exceeding one-half of one inch in diameter, breadth or thickness, valued at thirty cents per yard, six cents per foot, and in addition thereto three-fifths of one cent per yard for each one cent the value exceeds thirty cents per yard.

4. Finished or unfinished bags, purses and other articles, or parts thereof, made in chief value of metal mesh composed of silver, German silver, or white metal, valued at two dollars per dozen pieces, ten cents per piece and in addition thereto three-fifths of one cent per dozen pieces for each one cent the value exceeds two dollars per dozen;

5. All *the foregoing*, whether known as jewelry or otherwise and whether or not denominatively or otherwise provided for in any *other paragraph* of this act, twenty-five per centum ad valorem in addition to *the specific rate or rates of duty herein provided;*

6. All articles commonly or commercially known as jewelry, or parts thereof, finished or unfinished, including chain, mesh, and mesh bags and purses composed of gold or platinum, whether set or not set with diamonds, pearls, cameos, coral, or other precious or semiprecious stones, or imitations thereof, sixty per centum ad valorem.

In the Guthman case, *supra*, the merchandise was brooches, which were agreed to be within the class of merchandise described in the first part of the paragraph and also to be commonly and commercially known as jewelry. The following discussion of the paragraph as relates to the merchandise then before this court is quoted as expressing our present views as to its meaning:

Some general considerations are pertinent. The legislative and administrative history of this paragraph in harmony with its internal evidences make very clear the congressional intent. The purpose was dual:

First. Prompted by continuous endeavors to exclude from the classification as jewelry many articles so assessed for duty by customs officials, the Congress endeavored to enlarge the scope of that term so as to include everything, and parts thereof, either *commonly* or *commercially* known as jewelry. The language of the corresponding paragraph of the tariff act of 1897 (434) as compared with that of the present act (448) and the vast number of cases arising under the previous act, many of which are cited in "Notes on Tariff Revision" at pages 591 and 592, conclusively establish this fact:

Secondly. The language of the first five provisions of paragraph 448 equally well indicate the congressional purpose to place upon certain classes of cheap, but not the cheapest, articles of personal adornment an unusually high duty of 85 per cent ad valorem. The precise and exact language of the law clearly indicates the purpose to confine this rate to those particular articles only within its words. The first provision of this paragraph is manifestly intended to levy duties upon ornaments for personal adornment of certain defined characteristics and uses. The predicated provision of descriptive scope thereof relates to "all other articles of every description, finished or partly finished." This provision, however, with the other subjects of the paragraph, is limited by the very language thereof that such articles must be (*a*) either "set with imitation precious stones," *or* (*b*) "composed wholly or in chief value of silver, German silver, white metal, brass, or gun metal," and (*d*) in every case "designed to be worn on apparel or carried on or about or attached to the person," and (*e*) "valued at twenty cents per dozen pieces or over."

The office of the fifth provision of the paragraph seems to be not alone to levy a cumulative rate on the previously defined paragraph, but to avoid classification thereof under other paragraphs of the law. Nevertheless, it is not made competitive with the last provision of the paragraph. It is expressly, as before pointed out, so drawn not to compete with the latter.

This division of the paragraph is confined by its language in its application to those articles alone which are primarily within one of the preceding specific descriptions. It seems to be designed to reach out into all other paragraphs of the tariff acts denominative and descriptive, and withdraw therefrom and make in the first instance specifically primarily dutiable under the preceding provisions of this paragraph all articles within any one of the preceding descriptions, and to add duty thereto of 25

per cent ad valorem. Obviously it does not extend to the last provision of paragraph 448 in that by language it is expressly related to "the foregoing" designation of merchandise and its cumulative duty is added only "to the *specific* rate or rates of duty herein provided." The final paragraph is not of "the foregoing," is not an "other paragraph of this act," and does not levy "specific rate or rates" of duty.

The omission of the customary word "other" in such a relative provision of law so very precisely worded, in conjunction with the very broad language following "commonly or commercially known," which, while broad in its scope, is under all decisions from its wording regarded of first application in its inclusiveness when read in conjunction with the fifth provision of the paragraph, which expressly excepts, for the reasons stated, this last provision from its terms, the reasons multiply which compel the conclusion that it was the congressional purpose that the scope of this provision of the law was not to be contracted or invaded by any other provision of the act and everything "commonly or commercially known as jewelry" was to be so assessed thereunder regardless of every other provision of the law, and as if this stood alone a complete act.

It seems to us the absence of the word "other," or words of similar import, assigning to the last provision a scope beyond what precedes, the use of language of first importance known to customs legislation "commonly *or* commercially known as jewelry," and the express limitation of the fifth provision of the paragraph to all *other paragraphs* of the act, all conduce to this conclusion.

Whether or not the language employed in this and the contrasted and competitive provisions of the paragraph and act has rendered effectual this purpose in all cases can not and should not be here decided.

We are not by this record called upon and do not decide, for example, if a certain cuff button otherwise within the first provision should be by the trade classed as jewelry that it would be dutiable under one or the other, the first or last provisions of the paragraph. Issues presented by such conditions might be controlled by the record or law of the individual case. What is here said is confined to the records and issues in the appeals now before the court, and in pertinent consideration of the scope of paragraph 448 as therein made issuable.

These articles, brooches, valued at less than 20 cents per dozen, are expressly excluded from all the preceding provisions of paragraph 448 but the last.

Comparing paragraph 199 of the same act with the last part of said paragraph 448, we said in United States *v.* Goldberg *et al.* (3 Ct. Cust. Appls., 282; T. D. 32573):

> The two tariff designations "commonly" and "commercially" are manifestly aimed to include, first, that which is commercially known as jewelry; that is to say, that which the wholesale jewelry trade of this country generally and uniformly throughout the country in the wholesale trade thereof regards and classifies as jewelry; and, secondly, that which is commonly known as jewelry; that is to say, that which the general public in its everyday understanding and converse regards and classifies as jewelry. The provision extends the scope of the paragraph to everything which the commercial and popular understanding denominates and classifies as jewelry.
>
> The one paragraph (199) extends to all articles made wholly or in chief value of metal not specially provided for, while the other (448) extends only to those articles wholly or in part of metal "known as jewelry." This latter is the more specific.

In Guthman *v.* United States (3 Ct. Cust. Appls., 286; T. D. 32574) and in Cohn *v.* United States (3 Ct. Cust. Appls., 288; T. D. 32575) the views expressed in the first Guthman case were in effect approved.

It is clear that these cases hold that all articles commonly or commercially known as jewelry and which are not *eo nomine* mentioned in the first subdivision of paragraph 448 are dutiable under the last subdivision thereof at the rate of 60 per cent ad valorem, and that the question, whether articles within the *eo nomine* provision of said first subdivision that are also commonly or commercially known as jewelry are likewise dutiable under the last subdivision, was left undecided. These cases require the determination of that question.

The rule invoked by the Government that an *eo nomine* description, other things being equal, must prevail in tariff statutes is sound and

well founded upon both logic and precedent, but it is manifestly controlled by the higher rule, that if Congress has indicated in a given case its intent that such rule is not to apply, effect must be given to such intent, because the *eo nomine* rule itself is but one means of discovering legislative intent which, if and when ascertained, must control.

It should, however, be observed, when the application, force, and effect of this rule is considered, as it relates to this case, that the *eo nomine* provisions in subdivision 1 of the paragraph are not designed to fix the classification of merchandise coming within the same, because, although it *may* be *eo nomine* within subdivision 1, it *must*, to warrant its classification thereunder, also fall within *either a* or *b* and within *both d* and *e* of the subparagraphs of said subdivision. When this is realized and the arrangement, scope, and purpose of the whole paragraph is considered, what we have called the *eo nomine* provision loses much of its supposed force because it is the ultimate fact that the articles *must* be within *both* subparagraphs *d* and *e* and *either a* or *b* and not their so-called *eo nomine* description that settles their classification. The specific mention of chains, pins, charms, etc., does not limit the words "all other articles of every description" which immediately follow the specific words. Nor are we able to see how such specific words render anything subject to said subparagraphs which would not be subject thereto were not such words employed. If the expression "all articles of every description" had been employed instead of the language that was used, it would have brought within subdivision 1 the same merchandise that is now within its terms, because the use of the word "other" between "all" and "articles," as the statute now is, does not limit the scope of the words which follow it. Their limitations are to be found in the subparagraphs we have mentioned.

Our conclusion is that while the words specifically naming certain articles in subdivision 1 serve to indicate that they are of those which may fall within the subparagraphs they were used for precautionary purposes and are not entitled to the construction and effect claimed by the Government.

If further reason were necessary for the employment of these specific words, it may be found in the fact that Congress was fully advised of the great amount of litigation which had grown up over jewelry importations; that some of the cases had involved articles bearing the precise names which were employed in these specific designations, and it doubtless, from excess of caution, as we have already suggested, employed these words to indicate its intent, that, whatever might have been the effect of decisions in the past as to the classification of any of the merchandise to which these specific names might apply (and as to what it in fact had been, counsel seem to disagree), in the future, whether the merchandise bore the name "chains" or "pins" or any other of the *eo nomine* designations employed, it was, nevertheless, to be classified with the "all other articles of every description" as limited by *d and e* and *a or b*, and that such *eo nomine* description has no further force.

It is manifest that if the contention of the Government be adopted, an inconsistent, not to say an absurd, result may happen.

Articles concededly known either commonly or commercially as jewelry, but specifically mentioned in subdivision 1, would, if designed

to be worn on apparel or to be carried on or about or attached to the person, and of the prescribed value, pay the high duty rate of at least 85 per cent ad valorem, while other articles also commonly or commercially known as jewelry, of like material and value, of similar construction, and designed also to be worn on apparel or to be carried on or about or attached to the person, would pay the lower rate of 60 per cent ad valorem, simply because they were not *eo nomine* mentioned in subdivision 1.

While this inconsistency alone is not a sufficient reason for placing the construction we do upon the paragraph, because whatever may be the results, if the language of a statute is clear and plain, its obvious meaning must be adopted by the courts; yet, in the presence of ambiguity, the fact that inconsistent or absurd results may flow from one construction and not from another will often lead the court to adopt the latter as most likely expressing the legislative intent.

In the first case cited it was said that the purpose of Congress was to declare that the scope of the last subdivision of paragraph 448 "was not to be contracted or invaded by any other provision of the act, and everything 'commonly or commercially known as jewelry' was to be so assessed thereunder, regardless of every other provision of the law and as if this stood alone a complete act."

In the determination of the issues here we think that the last subdivision of the paragraph may be regarded as if preceded by the word "but" or "nevertheless" or by the words "provided, however, that" and that this manner of introducing it serves more completely, accurately, and clearly to bring out its meaning as a whole. The subdivision is the last of a paragraph which comprehensively treats of jewelry and in concluding the expression of its will as to the assessment of duties upon that class of merchandise Congress, we think, meant to say that as to all articles commonly or commercially known as jewelry the lower rate of 60 per cent ad valorem should apply, notwithstanding the fact that such articles happened to fall within the *apparent eo nomine* provisions of the first subdivision of the paragraph.

The fact that this language is Congress's last word upon the subject we think confirms such conclusion.

The term "85 per cent ad valorem or its equivalent" is used in this opinion because the specific and ad valorem rates imposed under subdivisions 1 and 5 of the paragraph aggregate at least that rate and also because counsel so refer thereto.

We have not here undertaken to review the various cases and other matters referred to in argument, because our opinion, as stated, is that the paragraph itself, as analyzed in the first Guthman case by De Vries, Judge, and in view of all matters proper to be considered in its interpretation, most of which were there adverted to, furnishes its own rule of interpretation, leads to the conclusion we have reached in these cases and renders unnecessary the consideration of any other issues discussed by counsel.

As to such of the merchandise in these cases brought before us for consideration, either on appeal or cross appeal, as was held by the board to be dutiable at the rate imposed under the first part of paragraph 448, the judgment of the board is reversed and the same are held dutiable under the last clause of said paragraph, and as to

such of said merchandise as was by it found to be dutiable under the said last clause the judgment is *affirmed*. As thus modified, the cases are remanded with mandate that the necessary reliquidation be had accordingly.

EXHIBIT 9.

(T. D. 34128.)

Artificial flowers— What not.

UNITED STATES *v.* EDSON KEITH & CO. (No. 946).

1. BURDEN OF PROOF.
The burden of proof never shifts, but here the importer had sustained that burden prima facie, proving his case by a preponderance of evidence, and the Government was thereby called to offset that evidence by proof of equal weight tending either to sustain the collector's action or to prove the goods were not dutiable as claimed.

2. MANUFACTURES IN PART OF METAL.
Although the provisions for manufactures in chief value of cotton or silk are more specific than the provision for articles in part of metal, the goods here fell within the metal paragraph (paragraph 193, tariff act of 1897), according to the weight of the evidence.

United States Court of Customs Appeals, January 22, 1914.

APPEAL from Board of United States General Appraisers, Abstract 28964 (T. D. 32655).

[Affirmed.]

William L. Wemple, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, on the brief), for the United States.

Lester C. Childs for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

This case involves the classification of wreaths, clusters, sprays, bouquets, aigrettes, pompons, and artificial plants, made of artificial leaves, fruits, flowers, and grasses, branched or bound together by wire. The merchandise was classified by the collector of customs as artificial leaves, fruits, and flowers, dutiable at 50 per cent ad valorem under the provisions of that paragraph of the tariff act of 1897 which in part reads as follows:

425. * * * Artificial or ornamental feathers, fruits, grains, leaves, flowers, and stems or parts thereof, of whatever material composed, not specially provided for in this Act, fifty per centum ad valorem.

The importers claimed that the goods were manufactures in part of metal and therefore dutiable at 45 per cent ad valorem under the provisions of paragraph 193 of said act, which is as follows:

193. Articles or wares not specially provided for in this Act, composed wholly or in part of iron, steel, lead, copper, nickel, pewter, zinc, gold, silver, platinum, aluminum or other metal, and whether partly or wholly manufactured, forty-five per centum ad valorem.

The Board of General Appraisers sustained the protest. On appeal from that decision this court held, first, that the goods were not artificial leaves, fruits, or flowers, but manufactures of such wares and

wire, and having a name and a use so distinct and different from that of their components as to take them out of the category of artificial leaves, fruits, and flowers; second, that the constituents of the wreaths, clusters, sprays, bouquets, aigrettes, pompons, and artificial plants were not silk and cotton and wire, but artificial leaves, fruits, flowers, and wire, and that as there was no provision for articles composed of artificial leaves, fruits, or flowers the goods were dutiable as wares composed in part of metal.

On February 11, 1913, a rehearing was granted, and on that rehearing it was insisted by the Government that if the merchandise could not be classified as artificial or ornamental fruits, grains, leaves, or flowers they should be classified as manufactures in chief value of cotton or silk. When it came to the consideration of this point, however, it was found that there was no evidence from which we could determine whether silk, wire, or cotton was the component of chief value. A reargument was therefore ordered by the court on its own motion and discussion invited as to whether the burden of proof rested on the Government of establishing that the goods were in chief value of silk or cotton. If the Government was bound to show that the merchandise was made in chief value of silk or cotton, and therefore not dutiable under the metal paragraph as claimed by the importers, it failed to meet that burden and the decision of the board should be affirmed.

The Government contends, and correctly, that the burden of proof was on the importers all the way through the case to show that the collector was wrong and that he was right. As a corollary to that proposition it follows that unless the importers produced some evidence substantiating prima facie the correctness of his claim, no duty was imposed on the Government to sustain the correctness of the collector's classification or to make proof that the importers were wrong.

The burden of proof—that is to say, the obligation imposed by law on a litigant of establishing a fact by evidence—never shifts; but the duty of meeting or overcoming evidence in favor of or against any given contention may shift from one side to the other during the progress of the trial, according as the nature and weight of the proofs tend to support or controvert the fact or facts, the ascertainment of which is necessary for the proper judicial determination of the case. Central Bridge Corporation *v.* Butler (2 Gray, 68 Mass., 130–132); Scott *v.* Wood (81 Cal., 398, 400–402).

With this principle laid down, the question in the present controversy, as we see it, is not whether the importers were charged with the burden of proof, but whether they met their obligations by introducing credible, material, and competent evidence which showed, at least prima facie, that the collector's classification was incorrect and that the goods were dutiable under the paragraph claimed in the protest. If he did, then at the very least it was incumbent on the Government to offset that evidence by proof of equal weight tending either to sustain the collector's action or to prove that the goods were not dutiable under the paragraph claimed in the protest. The importers were not bound to make out their case to a moral certainty and beyond a reasonable doubt. To put the Government to its proofs, it was sufficient for the importers to show prima facie that their classification

was correct and that the collector's classification was wrong, and once that was done the burden of proceeding shifted to the Government—not because the burden of proof had shifted, but because prima facie the importers had sustained that burden and proved their case by a preponderance of evidence. McKelvey on Evidence (2d ed., p. 66 *et seq.*); Powers *v.* Russell (13 Pick., Mass., 69, 76–77).

Here the testimony introduced by the importers established, first, that the wares were not artificial leaves, fruits, or flowers, but articles made out of such wares, entitled to a new name and adapted to uses for which the original leaves, flowers, and fruits were not suitable; and from that it followed that the goods were new manufactures not provided for in paragraph 425 and consequently not dutiable as assessed; second, that the articles in controversy were composed in part of metal and therefore prima facie dutiable under paragraph 193 of the act of 1897, as claimed in the protest. This evidence was not contradicted by the Government. The board gave it full faith and credit, and the weight to which it was entitled when produced and submitted to the trial tribunal can not now be denied to it on the surmise that cotton or silk may be the component of chief value, a surmise, by the way, predicated on no evidence and fairly deducible from none of the facts in the case.

True, when the importers proved that the goods were in part of metal they at the same time proved that they were in part of silk and cotton, but that did not show that the articles were in *chief value* of silk or cotton and therefore dutiable as manufactures in chief value of silk or cotton and not as articles in part of metal. Of course, if the collector had assessed the goods as articles composed in chief value of cotton or silk, proof that they were in part of metal would be entirely consistent with the presumption that they were in chief value of cotton or silk and therefore entirely consistent with the presumption that the goods were dutiable as assessed. But that is not this case. The goods were not classified as articles composed in chief value of cotton or silk and there was neither presumption nor evidence of any kind that the merchandise was of that character. There was evidence that it was of the character claimed by the importers. Consequently, although the provisions for manufactures in chief value of cotton or silk are more specific than the provision for articles in part of metal, the goods here in controversy must be classified under the metal paragraph in accordance with the weight of the evidence, there being no evidence showing or tending to show that they are in chief value of silk or cotton.

The protest as to single leaves and single flowers was abandoned by the importers upon the hearing, and as to such single leaves and flowers this decision does not apply.

The decision of the Board of General Appraisers is *affirmed.*

EXHIBIT 10.

(T. D. 33392.)

Rotten fruit.

UNITED STATES *v.* HARRIS & CO. *et als.* (No. 987).

CLAIMS FOR ALLOWANCE.

The importation of grapes for the Boston market were entered partly at Boston, partly at New York for transshipment thence to Boston. Were the grapes immediately transshipped from New York "landed" there or in Boston? The fair inference from the acts and regulations that govern is that the "landing" referred to in subsection 22 of section 28, tariff act of 1909, is the landing at the post of actual destination; in this case, at the port of Boston.

United States Court of Customs Appeals, April 29, 1913.

APPEAL from Board of United States General Appraisers, Abstract 28947 (T. D. 32655)

[Affirmed.]

William L. Wemple, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel), for the United States.

Searle & Waterhouse (*William E. Waterhouse* of counsel) for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

The importations were of grapes at the port of Boston. Some of the importations were made direct from abroad, whilst others were made via New York, arriving at the port of Boston via Metropolitan Steamship Co. The protestants, who are appellees here, rest their claim upon the contention that a part of the grapes in every case were rotten or worthless and that allowance should be made in the assessment of duties for their depreciation in value and such loss and decay. The claim is asserted under subsection 22 of section 28 of the tariff act of 1909, which reads as follows:

22. No allowance shall be made in the estimation and liquidation of duties for shortage or nonimportation caused by decay, destruction or injury to fruit or other perishable articles imported into the United States whereby their commercial value has been destroyed, unless under regulations prescribed by the Secretary of the Treasury. Proof to ascertain such destruction or nonimportation shall be lodged with the collector of customs of the port where such merchandise has been landed, or the person acting as such, within ten days after the landing of such merchandise. The provisions hereof shall apply whether or not the merchandise has been entered, and whether or not the duties have been paid or secured to be paid, and whether or not a permit of delivery has been granted to the owner or consignee. Nor shall any allowance be made for damage, but the importers may within ten days after entry abandon to the United States all or any portion of goods, wares or merchandise of every description included in any invoice and be relieved from the payment of duties on the portion so abandoned: *Provided*, That the portion so abandoned shall amount to ten per centum or more of the total value or quantity of the invoice. The right of abandonment herein provided for may be exercised whether the goods, wares or merchandise have been damaged or not, or whether or not the same have any commercial value: *Provided, further*, That section twenty-eight hundred and ninety-nine of the Revised Statutes, relating to the return of packages unopened for appraisement, shall in no wise prohibit the right of importers to make all needful examinations to determine whether the right to abandon accrues, or whether by reason of total destruction there is a nonimportation in whole or in part. All merchandise abandoned to the Government by the importers shall be delivered by the importers thereof at such place within the port of arrival as the chief officer of the customs may direct, and on the failure of the importers to comply with the direction of the collector or

the chief officer of customs, as the case may be, the abandoned merchandise shall be disposed of by the customs authorities under such regulations as the Secretary of the Treasury may prescribe, at the expense of such importers. Where imported fruit or perishable goods have been condemned at the port of original entry within ten days after landing, by health officers or other legally constituted authorities, the importers or their agents shall, within twenty-four hours after such condemnation, lodge with the collector, or the person acting as collector, of said port, notice thereof in writing, together with an invoice description and the quantity of the articles condemned, their location, and the name of the vessel in which imported. Upon receipt of said notice the collector, or person acting as collector, shall at once cause an investigation and a report to be made in writing by at least two customs officers touching the identity and quantity of fruit or perishable goods condemned, and unless proof to ascertain the shortage or nonimportation of fruit or perishable goods shall have been lodged as herein required, or if the importer or his agent fails to notify the collector of such condemnation proceedings as herein provided, proof of such shortage or nonimportation shall not be deemed established and no allowance shall be made in the liquidation of duties chargeable thereon.

There seems to be no serious contention as to the claim of the importers with reference to the direct importations. As to those importations, however, made via New York, serious controversy arises. It seems that at the port of New York the goods were transshipped from the importing vessels arriving at that port and continued in their course via the Metropolitan Steamship Co. to the port of Boston, their ultimate destination. At the port of New York they were entered for immediate transportation.

Under said subsection 22 the Secretary of the Treasury in T. D. 30023 promulgated regulations. These regulations were in part the subject of consideration by this court in Vandegrift *v.* United States (3 Ct. Cust. Appls., 198; T. D. 32470). They provide in that part (section 1 thereof) that whenever the importer intends to make claim of allowance "on account of shortage or nonimportation caused by decay, destruction, or injury to imported fruit," he shall within 48 hours after the arrival of the importing vessel give a prescribed notice that he so intends. That part of the regulations further provides for a detail of examiners for that purpose, who shall cause to be set aside 5 per cent of each lot, reporting thereupon to the appraiser, who shall within 10 days "after the landing of the merchandise" make return, etc.

There seems to be no question as to the compliance by the importer with these regulations so far as the detail of procedure is concerned, and the sole question in the case is whether or not this provision of the statute relates to the "landing" of the goods at the port of Boston or to the "landing" of the goods at the port of New York, whereupon they were transshipped to the port of Boston. If the former, the proofs were filed in time; if the latter, otherwise.

The claim is asserted under the first provision of subsection 22. That subsection authorized allowances in such case and prescribes that—

Proof to ascertain such destruction or nonimportation shall be lodged with the collector of customs of the port where such merchandise has been *landed*, or the person acting as such, within 10 days after the *landing* of such merchandise.

These goods were landed in the course of their importation to the port of Boston at both New York and Boston. The issue is which "landing" is contemplated by the statute. In the ascertainment of this question the statute must be read in connection with the act of

June 10, 1880, in relation to immediate transportation of dutiable goods and for other purposes. United States Statutes at Large (vol. 21, chap. 190, p. 173). That statute authorizes in section 1 collectors at certain ports, of which New York is one, where the merchandise "shall appear by the invoice or bill of lading and manifest of the importing vessel to be consigned to and destined for either of the ports specified in the seventh section of this act" [of which Boston is one], "the collector at the port of arrival shall allow the said merchandise *to be shipped immediately after the entry* prescribed in section 2 of this act has been made."

Section 2 reads as follows:

2. That the collector at the port of first arrival shall retain in his office a permanent record of such merchandise so to be forwarded to the port of destination, and such record shall consist of a copy of the invoice and an entry *whereon the duties shall be estimated as closely as possible* on the merchandise so shipped, but no oaths shall be required on the said entry. Such merchandise *shall not be subject to appraisement and liquidation of duties at the port of first arrival*, but shall undergo such examination as the Secretary of the Treasury shall deem necessary *to verify the invoice;* and the same *examination and appraisement thereof shall be required and had at the port of destination* as would have been required at the port of first arrival if such merchandise had been entered for consumption or warehouse at such port.

Then follows section 3 for the designation by the Secretary of the Treasury of certain transportation companies as bonded carriers; section 5, that the merchandise shall, under this paragraph, be kept under lock and key and under the constant supervision of Treasury agents at the expense of the bonded transportation companies; that it shall not be unladen en route except in certain emergency cases; and *in no case shall there be permitted any breaking of the original packages* of such merchandise.

Section 6 provides as follows:

6. That merchandise so destined for immediate transportation shall be transferred, *under proper supervision, directly from the importing vessel to the car, vessel, or vehicle in which the same is to be transported* to its final destination.

Section 9 is as follows:

9. That no merchandise shall be shipped under the provisions of this act after such merchandise shall have been landed 10 days from the importing vessel, and merchandise not entered within such time shall be sent to a bonded warehouse by the collector as unclaimed, and held until regularly entered and appraised.

It will be observed from the provisions of this act that the Congress has exercised diligent care that merchandise taken from importing vessels and transshipped by immediate-transportation entries to other common carriers, be they vessels or otherwise, shall be constantly in the customs custody and under active supervision of the customs officials. It is further expressly provided that utmost expedition be had in such cases. The statute provides that the "merchandise *must be shipped immediately* after the entry prescribed in section 2 of this act has been made," which is the immediate-transportation entry; and, "under proper supervision," shall be transferred "directly from the importing vessel to the car, vessel," etc., "in which the same is to be transported."

It will be observed by a careful reading of the act of June 10, 1880, that no appraisement of the merchandise is provided at the port of arrival, such as would require an opening and inspection of the goods themselves, but the contrary is the mandate of the statute. It will

be further observed that the detailed language of that section indicates that the only examination made at the port of arrival is to check up the *number of packages* and to note any shortage in that particular. Indeed, while the express provision of the statute that "in no case shall there be permitted *any breaking of the original packages*" strictly applies alone to one of the bonded carriers, the spirit of the act, as expressed in its words, applies clearly to all officials and other carriers.

We are unable to see, therefore, how the provisions of subsection 22 and the regulations made thereunder (arts. 407 to 414, Customs Regulations, 1908) can be advantageously exercised, if at all, by an importer while the Government officials and bonded carriers are performing their duty according to the act of June 10, 1880. For while that act enjoins zealous care and strict noninterference and expeditious delivery of the merchandise in transit, the other act and regulations thereunder, in any practicable observance, require an opening of the packages, inspection of the merchandise, a delay in its transit, and an interference by the importer or his agents with the expeditious transportation of the merchandise.

That the Congress did not contemplate further examination of the merchandise at the port of arrival than to compare the number of packages and cases arriving with those on the invoice is emphasized by a corresponding provision in subsection 22, wherein the right to examine those in the custody of the customs by virtue of section 2899, Revised Statutes, is expressly granted the importer. This provision is significant that Congress deemed it had nowhere in this subsection granted the right of examination of the goods to the importer while in the customs custody, and as only those packages mentioned in said section 2899 were so held, after arrival at the port of final destination and granting of a permit of delivery, Congress must have deemed such express grant of the right of examination necessary whenever it was to be exercised.

Indeed, it may well be said that if the act of 1880 is at all observed the goods would have already, in the ordinary course of transportation, been transshipped from the port of arrival before the 48 hours would have expired within which the importer under the regulations should serve his notice upon the collector. It follows that if the importer had the right at the port of arrival within 48 hours to serve notice upon the collector, as within the regulations provided, and the goods had entered upon their course of transit, that notice would be futile, and the duty would be incumbent upon the collector at the port of New York to recall if possible the shipment in order that he should duly exercise his duties as otherwise prescribed by the law and regulations. Or, forsooth, should any passage have been reserved for the goods at a particular time by the shipper, examination by customs officials might seriously interfere with such.

And, if the point be rested upon the language of the act instead of the regulations, the same consequence might follow the contended interpretation, for it is provided that proof *shall* be lodged with the collector at the port where the goods were "landed" "within 10 days *after the landing.*" Why file the proof or serve the notice aforesaid with the collector, who is not to determine the case? And, if the collector in the first instance is to determine the shortage, why so require, when the best evidence, the fruit, may have gone beyond his

possession; or, if in his possession, when he is authorized by law to make only such examination as will verify the invoice? For examination for appraisement is to be made, under said act of 1880, only at the port of final destination. *A fortiori*, the statute expressly provides that the notice and proof can be made after "entry" after "duties have been paid or secured to be paid" and after "a permit of delivery has been granted." Under the law no one of these matters occurs at the port of arrival, and in consequence we infer Congress in the enactment had in mind the port of final destination and referred to the "landing" thereat.

It is not without significance that in another part of subsection 22, which treats of such goods condemned by the health authorities, Congress there speaks of the "port of *original* entry." The enforcement of that provision of the subsection at the port of original entry being one wherein the condition of the goods were such as they must be seized by the health officers, a matter of emergency, it is perfectly consistent with the views hereinbefore expressed. The enforcement of that section does not call for an interference with or examination of the goods by the importer or his agents.

We are unable to see why, if Congress intended the landing herein referred to to be the landing at the port of original entry, why it did not use the same language as it later did in the same section when speaking of certain action proceeding from and upon authority of the health officers. We are further constrained to this view of the case by the obvious fact that any other conclusion upon part of the court would result in a discrimination of one port against another in the enforcement of the tariff laws.

The cases of United States *v.* The Express (25 Fed. Cas., 1035; case 15066) and United States *v.* Smith (27 Fed. Cas., 1246; case 16343) are in harmony with the views herein expressed.

Reading the two acts together, we think the logical and fair inference is that the "landing" referred to in subsection 22, *supra*, is the landing at the port of destination, in this case Boston. Of course, the condition of the fruit at the time of arrival within the customs district of original arrival is the time of ascertainment and should be borne in mind in all such determinations. United States *v.* Shallus (2 Ct. Cust. Appls., 332; T. D. 32074).

For the reasons herein stated we are of the opinion that the decision of the Board of General Appraisers should be *affirmed*.

Exhibit 11.

(T. D. 33879.)

Books for private circulation.

United States *v.* Gips (No. 1168).

Books Gratuitously and Privately Circulated.

These books appear to have been printed by the Brusse Publishing House, of Rotterdam, for the Holland-American Line. This shipping company circulates the books gratuitously to excite interest in foreign travel and so secure patronage for its steamers. The mere size of the circulation of these books, an edition of 40,000 being printed, does not negative the importer's contention that they were gratuitously privately circulated.—United States *v.* Badische Co. (4 Ct. Cust. Appls., —; T. D. 33170).

United States Court of Customs Appeals, November 11, 1913.

APPEAL from Board of United States General Appraisers, Abstract 31839 (T. D. 33304).

[Affirmed.]

William L. Wemple, Assistant Attorney General (*Martin T. Baldwin*, special attorney, of counsel), for the United States.

Brooks & Brooks (*F. W. Brooks, jr.*, of counsel) for appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The importation now in question consists of 1,000 copies of a book entitled "With Roosevelt through Holland," written in the English language by M. J. Brusse and illustrated with pen and ink sketches by J. G. Veldheer.

The appraiser reported that the importation consisted of "illustrated books containing advertising matter printed by a corporation," and returned an advisory classification as books not specially provided for, dutiable at 25 per cent ad valorem under paragraph 416 of the act of 1909. Duty was assessed by the collector in accordance with this return.

The importers duly filed their protest against the assessment, claiming the books to be publications of an individual for gratuitous private circulation, and free of duty under that description by force of paragraph 501 of the act.

The protest was submitted upon evidence to the Board of General Appraisers and was sustained, from which decision the Government now prosecutes this appeal.

The following is a copy of the pertinent parts of the paragraphs severally relied upon by the parties:

416. Books of all kinds, bound or unbound, including blank books, slate books and pamphlets, engravings, photographs, etchings, maps, charts, music in books or sheets, and printed matter, all the foregoing wholly or in chief value of paper and not specially provided for in this section, twenty-five per centum ad valorem. * * *

FREE LIST:

517. * * * And publications issued for their subscribers or exchanges by scientific and literary associations or academies, or publications of individuals for gratuitous private circulation, * * *.

The books in question are bound in paper and contain 62 pages Upon the front of each copy is the imprint "Published by the Holland-American Line." Upon the inner title page appears the statement "Published by the Holland-America Line, W. L. & J. Brusse, publishers, Rotterdam." It appears that the author of the work is a Dutch journalist who accompanied ex-President Roosevelt upon a tour through Holland, and the book contains a description of the trip, with illustrations. Upon the last page of the volume appears a schedule of the steamship service of the Holland-America Line, with the location of its principal agencies, illustrated with a cut of one of its steamships. The firm of W. L. & J. Brusse, printers and publishers, of Rotterdam, printed 40,000 copies of the book, all of which were purchased by the Holland-America Line. The Brusse firm did not issue any of the books to any person other than the company, and no copy of the work has ever been put upon the market for sale. The importer is the agent in this country of the Holland-America Line, and the present importation is made for the sole pur-

pose of gratuitous distribution among the patrons of the company and among other persons selected by the company who are likely to become interested in foreign travel. For this purpose the company preserves lists containing the names of its patrons and of other persons recommended by them, and in addition thereto it purchases lists of names from agencies which prepare such lists for various purposes. This work is sent gratuitously to the recipients, none being sold, and the purpose of the company is to excite interest in foreign travel and thereby to secure patronage for its line of steamships. It is said that half of the 40,000 copies have already been distributed by the company in this manner and for this purpose. A very few copies, however, have been sent to school teachers for educational purposes, this also gratuitously.

Upon the foregoing facts the Government presents two contentions: First, that the books in question were actually published by the Brusse firm, and not by the steamship company: and, second, that the distribution of the books by the steamship company to the extent and in the manner above stated is actually a public and not a private circulation of them under the statute. Upon these grounds the Government claims a reversal of the board's decision.

It seems to the court, however, that it can not be said that the Brusse firm really published the books in question. It is conceded that they printed the books. But, on the other hand, they never issued or distributed any of the volumes or brought any of them to the hands of the public or the book trade. In the transaction under review the publication of the volumes is properly to be found in the distribution of them by the steamship company rather than in the printing of them by the Brusse company. The books bear the confusing imprint that they are published by both companies, and the only witness examined in the case stated that the books were published by the Brusse firm, who thereupon sold the entire edition to the steamship company. However, it seems improbable that an edition of 40,000 copies of this English book should be published in Holland by a Dutch publishing house for ordinary book-trade purposes only; and this fact, taken together with the imprint already noted, and also the handling of the entire edition by the steamship company, reasonably leads to the belief that the Brusse firm simply printed the book by arrangement with the steamship company and were not the real publishers of the work at all. In this view of the facts the first contention of the Government as above noted is not sustained.

Coming to the second contention of the Government, it may first be noted that the expression of the tariff provision, "publications * * * for private circulation" itself seems somewhat anomalous, since publication primarily means to issue something to the public instead of keeping it private. However, the context of the clause in question aids in its construction, and, moreover, the subject has been considered by the courts in several reported cases.

In the case of Schieffelin *et al. v.* United States (84 Fed., 880, Circuit Court of Appeals, Second Circuit) a similar issue was made under a like paragraph of the tariff act of 1894 concerning an importation of 900 copies of a work relating to Norway, its fishermen and fisheries, its customs, and also relating to Moller's cod-liver oil

containing likewise some matter of scientific research original with the author. The book in question was published not for general circulation nor for sale, but for gratuitous distribution to selected persons, principally physicians and others who might become interested in Moller's cod-liver oil, such as should be designated by the publisher or his friends. The publisher doubtless expected by its distribution to promote the sale of his cod-liver oil by enlightening those who might read it in regard to the valuable properties of that article. This distribution of the work in question was held by the court to be a publication for gratuitous private circulation within the paragraph in question and therefore entitled to entry free of duty. The court said that the fact that the book was circulated in the effort to accomplish some ulterior object of interest to the publisher, in this case the sale of a merchantable article, did not take it out of the provision for free entry contained in the act.

The number of copies composing the single importation involved in the foregoing case does not appear in the court's decision therein, but in "Notes on Tariff Revision" (670) the number is stated to be 900 copies. The attention of the Ways and Means Committee was called in that work both to the number of copies imported and to the decision of the court in the case, but no change of phraseology appeared in the corresponding enactment of 1909.

In the case of United States *v.* Badische Co. (4 Ct. Cust. Appls., —; T. D. 33170) this court followed the principles announced in the foregoing decision. The Badische Co. was a corporation engaged in the manufacture and sale of colors and dyestuffs. Under the act of 1909 the company made an importation of 1,150 copies of a work entitled "Pocket Guide of Scientific Books," which related to dyestuffs and the processes of applying them, together with occasional references by name to the wares marketed by the company. The books were intended for gratuitous distribution to users of dyes and to technical schools, with the evident purpose of promoting the use of the company's products. The court held that the consignment was entitled to free entry under the paragraph now in question. It may here be noted that the number of copies constituting the protested consignment in the foregoing case does not appear in the court's decision therein, but is found in the testimony contained in the record of the case.

It therefore appears that the importation involved in the Schieffelin case consisted of 900 volumes, that in the Badische case 1,150 volumes, and that in the present case 1,000 volumes. In the present case it appears that the importation is only a small part of the total number of similar volumes composing the entire edition, and it may safely be assumed that the same condition obtained in respect to the former cases. In each case, however, the books were intended for gratuitous circulation among a selected class of persons only and not designed to be sold or spread abroad among the general public. In each case the publishers retained exclusive control of the circulation of the publication and limited the circulation to a selected class of persons acceptable to themselves, as distinguished from the general public. In the one case the selected class consisted "principally of physicians and others who might become interested in Moller's cod-liver oil." In the other case the selected class consisted of "dyers or users of dyes, to schools that make a specialty of preparing dyes, such

as the Lowell Textile School, to colleges, and so on." In the present case the selected class consists of "persons interested in Holland" or "in taking a trip to Holland," and the names of these persons are secured by getting the names of those who have traveled by the company's line, together with other names suggested by the travelers and also the names appearing upon a classified list purchased from a dispatch company.

There is no reason to believe that there is any significant disparity between the number of persons in this country who may be interested in Norway, with its fisheries, and Moller's cod-liver oil, or in dyes and dyestuffs upon the one hand, and the number of persons in this country who may be interested in travel in Holland upon the other hand. In each case the class is limited in interest and small in numbers when compared with the general public, and the distribution of a printed work within such a class gives the work a private rather than a public circulation.

The context of the tariff provision now in question is instructive upon the present issue. The entire clause of the free list now in question is, "and publications issued for their subscribers or exchanges by scientific and literary associations or academies or publications of individuals for gratuitous private circulation." There is nothing in this clause which limits the number of volumes entitled to free entry, except that they shall all come within the statutory description. And in that behalf it may be said that in many cases the publications issued for their subscribers or exchanges by scientific or literary associations may comprise many volumes and reach a large class of persons and contain matter of great general interest.

The court therefore accepts the view that the present importation is entitled to free entry as decided by the board, and the board's decision to that effect is *affirmed.*

EXHIBIT 12.

(T. D. 33264.)

Silk mufflers.

KASKEL & KASKEL *et al. v.* UNITED STATES (No. 835).

MUFFLERS OF SILK UNDER PARAGRAPH 400, TARIFF ACT OF 1909.

The merchandise is admittedly composed of silk, finished, cut, and not hemmed. Paragraph 400, tariff act of 1909, is not restricted in its operation to mufflers that are handkerchiefs or that are similar to handkerchiefs, and the term "mufflers" there employed embraces both knit and woven mufflers, "finished or unfinished, if cut, not hemmed or hemmed only." The goods were dutiable under that paragraph.

United States Court of Customs Appeals, February 28, 1913.

APPEAL from Board of United States General Appraisers, Abstracts 28475 and 28493 (T. D. 32507).

[Reversed.]

McLaughlin, Russell, Coe & Sprague (*Edward P. Sharretts* of counsel) for appellants.

William L. Wemple, Assistant Attorney General (*Thomas J. Doherty*, special attorney of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

The question involved in this case is the dutiable status of knitted silk mufflers, which were classified by the collector of customs at the port of New York as wearing apparel and assessed for duty at 60 per cent ad valorem under that part of paragraph 402 of the tariff act of 1909, which reads as follows:

402. Laces, * * * clothing, ready made, and articles of wearing apparel of every description, including knit goods, made up or manufactured in whole or in part by the tailor, seamstress, or manufacturer; all of the foregoing composed of silk, * * * or of which silk is the component material of chief value, * * * sixty per centum ad valorem: *Provided*, That articles composed wholly or in chief value of any of the materials or goods dutiable under this paragraph shall pay not less than the rate of duty imposed upon such materials or goods by this section: * * *.

The importers protested that the goods were mufflers within the intent and meaning of paragraph 400 and that they were therefore dutiable at 50 per cent ad valorem under the first clause of that paragraph, which is as follows:

400. Handkerchiefs or mufflers composed wholly or in chief value of silk, finished or unfinished, if cut, not hemmed or hemmed only, shall pay fifty per centum ad valorem; * * *.

The Board of General Appraisers overruled the protest, and the importers appealed.

From the evidence in the case it appears without contradiction that the goods are finished silk fabrics, cut, not hemmed, and designed to be worn by men about the neck for the purpose of protecting the throat from cold and the linen of the wearer from soiling. The articles are made on a knitting machine and are knitted in lengths of from 10 to 60 yards. These lengths are cut to the proper size and are then passed through what is known as an overwhelming machine, which stitches the borders, and thus protects the fabric from unraveling. In size, shape, and use the completed manufacture conforms to the modern and popular understanding of a muffler. Indeed, according to the testimony, it is so known to the trade.

The extreme narrowness of the article as compared with its length and the fact that it can not be worn about the shoulders exclude it from the class of wraps known as shawls. Like the shawl, the importation is a species of scarf, and scarfs have been held to be wearing apparel. Nevertheless, the goods under discussion are not dutiable as wearing apparel if they have been specifically provided for as mufflers. Whether the mufflers under discussion are the mufflers provided for in paragraph 400 of the tariff act in force is therefore the real question to be determined on the present appeal. Counsel for the Government contend that the paragraph mentioned was intended by the Congress to cover woven, not knitted, articles, and that it is limited to such mufflers as are of the character and kind of handkerchiefs. We have examined paragraph 400 with some care, and also the corresponding paragraph of the tariff act of 1897, and we can find nothing in either provision which at all justifies the conclusion that there was a congressional intention to limit the operation of paragraph 400 to woven articles or to mufflers of the character of handkerchiefs. Paragraph 388 of the

tariff act of 1897 is the original of the present provision for mufflers, and, with the exception of the italics, is as follows:

388. Handkerchiefs or mufflers composed wholly or in part of silk, whether in the piece or otherwise, finished or unfinished, if not hemmed or hemmed only, shall pay the same rate of duty as is imposed on goods *in the piece of the same description, weight, and condition as provided for in this schedule;* but such handkerchiefs or mufflers shall not pay a less rate of duty than fifty per centum ad valorem; * * *.

This paragraph provided that the rate of duty imposed on mufflers should be the same as that imposed on goods in the piece of the same description, weight, and condition as provided for in Schedule L. Inasmuch as the only fabrics in the piece described in Schedule L were woven fabrics, it would seem that the purpose of paragraph 388 was to lay a duty on such mufflers as were woven, and on none others. In paragraph 400 of the tariff act of 1909, however, the provision which imposed on mufflers the same duty as that borne by woven goods of the same kind was carefully omitted by Congress, and if we are warranted in drawing any conclusion at all from that omission it must be that there was no legislative intention to confine the paragraph now in force to woven mufflers.

But let that be as it may, there is nothing in the provision itself or in its relation to other laws in effect which makes necessary the ascertainment of its meaning by any other means than that of the language which Congress saw fit to employ. The first clause of paragraph 400 provides plainly and unequivocally that "mufflers composed wholly or in chief value of silk, finished or unfinished, if cut, not hemmed or hemmed only, shall pay fifty per centum ad valorem." This definition of the merchandise subjected to duty is not on its face susceptible of a double interpretation, and so far as the record discloses there is in it no latent ambiguity. The only inquiry, therefore, which the court can make is, Are the mufflers here imported within the description and designation of the statute? United States *v.* Citroen (223 U. S., 407, 415). As they are admittedly composed of silk, finished, cut, and not hemmed, it would seem that if full effect is to be given to the intention of Congress as manifested by the language that it used, we must hold that the importation is dutiable at 50 per cent ad valorem under paragraph 400. In order to sustain the contention of the Government that the enactment is restricted to woven mufflers or to mufflers which are handkerchiefs or are similar to handkerchiefs, the court would be obliged to add to the statute language which the legislature did not see fit to add and to insert in the law a limitation which the Congress did not deem proper to make. That course we are not prepared to take, especially as neither the record nor the statute itself offers any reasonable ground for believing that Congress did not mean exactly what it said.

Mufflers and handkerchiefs were coupled together for the first time in paragraphs 312 and 388 of the tariff act of 1897, and that coupling was brought about, it is true, because theretofore a certain kind of muffler, differing from a handkerchief only in size, had been assessed at another and lower rate of duty. *In re* Guiterman Bros. (T. D. 17959); Erhardt *v.* Ballen (55 Fed., 968). When handkerchiefs and mufflers were first provided for in the same paragraph, it is worthy of note that the enumeration of mufflers was not confined to those which were like handkerchiefs, but was broad enough to cover any woven muffler, whether square like a handkerchief or long and narrow like

the goods imported. Consequently, when the provision which restricted paragraphs 312 and 388 to woven mufflers was dropped from paragraph 400 of the present tariff act, the term "mufflers" as used therein was no longer limited to those which were woven, but became sufficiently comprehensive to embrace both knit and woven mufflers, "finished or unfinished, if cut, not hemmed or hemmed only."

The fact that the goods under consideration are sometimes called scarfs does not take them out of the classification of mufflers. "Scarfs" is a general term which covers small, thin shawls, mufflers, and even certain kind of neckties. At most, then, a muffler is a species of scarf, and that fact is not in any way incompatible with the idea that it might be made dutiable and specifically provided for as a muffler.

Counsel for the Government urges that knitted mufflers are not susceptible of the manipulations specified in the second clause of paragraph 400 and that therefore the whole paragraph must be considered inapplicable to knitted mufflers. We do not think that the premises laid justify that conclusion. Because Congress provided a duty of 50 per cent ad valorem in the first clause of the paragraph for mufflers composed wholly or in chief value of silk, finished or unfinished, if cut, not hemmed or hemmed only, and in the second clause a duty of 60 per cent ad valorem for mufflers composed wholly or in chief value of silk, if hemstitched, or imitation hemstitched, etc., it does not necessarily follow, in our opinion, that the articles first mentioned must be capable of development into articles such as those last described. Were it otherwise, a provision imposing a duty of 50 per cent ad valorem on shoes and a duty of 60 per cent ad valorem on shoes embroidered would be susceptible of no other interpretation than that the lower rate of duty was applicable only to such shoes as were capable of being embroidered. Moreover, there is uncontradicted evidence in the record which tends to show that knitted mufflers such as those imported are susceptible of some of the operations specified in the second clause of paragraph 400.

The decision of the Board of General Appraisers is *reversed.*

EXHIBIT 13.

(T. D. 34097.)

Silver sweepings.

UNITED STATES *v.* HENDERSON (No. 1222).

SILVER SWEEPINGS.

The merchandise is sweepings of silver contained in sawdust, and it is imported so that the silver content may be reclaimed. It falls clearly within paragraph 643, tariff act of 1909, providing free entry for "sweepings of gold and silver."

United States Court of Customs Appeals, January 14, 1914.

APPEAL from Board of United States General Appraisers, Abstract 32848 (T. D. 33591).

[Affirmed.]

William L. Wemple, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel; *Henry H. Childers*, special attorney, on the brief), for the United States.

Comstock & Washburn for appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

The tariff act of 1909, paragraph 643, provides free entry for "ores of gold, * * * sweepings of gold and silver." Paragraph 479 of the dutiable section of that act prescribes a rate of 10 per cent ad valorem upon "waste, not specially provided for in this section, * * *." M. Henderson imported at the port of Niagara Falls, during the year 1912, 19 barrels of merchandise, which was entered by him as silver sweepings, entitled to free entry under the provisions of paragraph 643 aforesaid. The collector of customs at that port rated it for duty as waste not specially provided for under said paragraph 479. The importer protested and the Board of General Appraisers sustained the protest. This is an appeal by the Government from that decision of the Board of General Appraisers.

There is no serious question of commercial designation in the record. The decision of the Board of General Appraisers recites all the facts of the case:

> These sweepings come off in buffing silver, and the buff wheels collect a quantity of the silver. A barrel of the sweepings examined contained sawdust, with a solution of silver sweepings saturated and mixed through it. Sawdust is scattered on the floor to pick up the silver. The witness was a silver and gold refiner and manufacturer of sterling silver and fine silver products. The only thing of value is the particles of silver in the sawdust.

These facts made apparent by the record as thus recited by the board are not seriously controverted. There is nothing in the record showing a commercial designation applicable to the imported merchandise or other meaning than as embraced within the natural signification of the words of the statute. The signification of those words as naturally suggested to the mind are in accord with the lexicographic definitions of the same. Thus in the Standard Dictionary "sweepings" are defined as follows:

> The refuse from the floors of an establishment in which precious metals are worked or handled, preserved to reclaim particles of gold or silver.

Knight's American Mechanical Dictionary (Vol. III) defines "sweep washings" as follows:

> The refuse of shops in which gold and silver are worked. These metals are separated by mechanical means and amalgamation.

Webster's Dictionary defines "sweepings" as follows:

> The sweepings of workshops where precious metals are worked, containing filings, etc.

While there may be some rubbish or refuse in which this silver is lodged which otherwise might be characterized as waste, this importation, however, is precisely within the definitions of that class of waste made free by paragraph 643, *supra*. The record is uncontradicted that the only valuable content of the importation is the silver. The merchandise is imported in order that its silver content may be reclaimed. It is in perfect harmony, therefore, with the provisions of the free list making ores of gold and silver free (paragraph 643) that sweepings containing a silver content should be made free.

Affirmed.

EXHIBIT 14.

(T. D. 33369.)

Containers and coverings.

KRAEMER & CO. *v.* UNITED STATES (No. 1000).

AMERICAN GOODS RETURNED.

In view of a long, practical departmental construction of language that does not essentially differ from the language of paragraph 500, tariff act of 1909, boxes or barrels made from American staves or shooks are entitled to free entry under that paragraph. This right is not limited to the value of the shooks and staves constituting a part of the barrels or boxes.

United States Court of Customs Appeals, April 22, 1913.

APPEAL from Board of United States General Appraisers, Abstract 29427 (T. D. 32751).

[Reversed.]

Brown & Gerry for appellants.

William L. Wemple, Assistant Attorney General, for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The question presented on this record is whether, under the provisions of paragraph 500 of the tariff act of 1909, which provides for the free admission of "casks, barrels, carboys, bags, and other containers or coverings of American manufacture exported filled with American products, or exported empty and returned filled with foreign products, including shooks and staves when returned as barrels or boxes," the right of free importation extends only to the *value* of the shooks and staves which constitute a part of the barrels or boxes, or whether it extends to the barrels or boxes composed of shooks and staves exported from the United States.

The board overruled the protest without distinctly passing upon this question, but apparently upon the ground that the record was too meager to furnish a basis upon which to predicate a finding. We, however, encounter no such difficulty. The items which go to make up the cost of the exported shooks and the various items which cover the cost of making them into boxes are sufficiently clear, so that whichever view of the case might be adopted the correct rate may be fixed.

The collector admitted to free entry the value of the shooks, but did impose duty upon the cost of the labor, paper, nails, and freightage of the shooks from this country to England. So we consider that the precise question stated above is involved and open for decision in this case.

Were the question presented upon a new enactment, it might present greater difficulties. But in view of the history of the legislation which is now embodied in the paragraph above quoted, we think there is little room for doubt as to the meaning of the paragraph.

The first enactment corresponding to that embodied in this paragraph was contained in section 9 of the act of February 8, 1875, entitled, "An act to amend existing customs and internal-revenue laws, and for other purposes." This section read:

That barrels and grain bags, the manufacture of the United States, when exported filled with American products, or exported empty and returned filled with foreign

products, may be returned to the United States free of duty, under such rules and regulations as shall be prescribed by the Secretary of the Treasury; and the provisions of this section shall apply to and include shooks when returned as barrels or boxes as aforesaid.

Acting upon authority of this section, the Secretary of the Treasury, in T. D. 2110, amended the regulations of 1874 so as to provide that—

All barrels, boxes, shooks, or grain bags of domestic manufacture, either empty or filled with foreign merchandise, exported from any foreign port for return to the United States, and for which it is intended to claim admission free of duty, must be accompanied by a certificate from the foreign shipper, * * * if filled with foreign merchandise, the value of the boxes, barrels, or bags must be separately stated in the invoice, and the certificate, in such case, must be attached to or be made a part of the invoice; * * *.

This is followed by the form of certificate, which was required to state "the actual market value of the articles herein named, at this time and in the form whence the same are to be exported to the United States."

This is followed by the statement—

On importation into any port of the United States of merchandise contained in such barrels, boxes, or bags, or of the said empty packages, the verification necessary to admit them free of duty will be—

First. The certificate herein referred to.

Second. Verification, by actual examination by the proper officers of the appraisers' department, with an indorsement of the fact of examination and of the truth of the statement on the invoice or declaration that the barrels, boxes, or bags bear evidence that they are manufactures of the United States, as claimed.

The value of the said barrels, boxes, or bags containing foreign merchandise liable to duty ad valorem, at the time and place of shipment for importation into the United States, must be separately stated in the invoice, and such separate value, after verification by the appraisers, will be excluded from duty.

There is no mistaking the proper construction of this regulation. It treats boxes made of shooks as free upon compliance with the regulations named. This regulation was interpreted in T. D. 5320 by the Assistant Secretary of the Treasury as follows:

The following instructions are issued with reference to applications under section 9 of the act of February 8, 1875, for the free entry of boxes containing green fruit, which are claimed to be made from shooks of domestic production:

The importers making such applications shall produce a certificate of the shipper of the fruit, duly authenticated by the United States consul at the port of shipment, showing that the boxes are made from domestic shooks, specifying therein the name of the United States port whence the shooks were exported, the date of exportation, and the name of the vessel in which they were exported, together with a certificate from the collector of customs at the domestic port of exportation, which shall contain, in addition to such data, a statement of the quantity of shooks so exported.

In passing upon such applications, when not covering the whole quantity of shooks covered by the export certificate, great care should be exercised to see that no greater number of boxes are admitted to free entry than could be made from the shooks specified in the export certificate.

The subject is again referred to in T. D. 5400.

Customs Regulations, 1908, articles 585–586, clearly import that boxes manufactured from American shooks are entitled to free entry under the provisions of the act of 1897, which contains language identical with that in the present tariff act. The form of affidavit required by a foreign shipper is given and the market value of the boxes or barrels is required to be stated, and the regulation concludes:

Such boxes or barrels shall be carefully examined by customs officers to make sure that they are made entirely from domestic shooks or staves.

It would appear, therefore, that covering a period of nearly 34 years the departmental construction of language not essentially different from that here involved has accorded to boxes or barrels made from American staves or shooks free entry, and has not restricted the free entry to the value of the shooks. Indeed, it will be noted that it is not the value of any component of the article returned which is admitted free, but it is the identical thing itself, namely, the box or barrel in which the shooks have lost their identity or which the shooks have become. In view of this long practical construction of these provisions, we feel that we would not be justified in establishing a new rule.

The case of T. D. 30944, decided in September, 1910, by General Appraiser Somerville, may be said to be negative authority. It does not appear that the question of whether the boxes made from shooks of American origin were free was raised. The case would rather indicate that the importer had not made that claim.

The decision of the Board of General Appraisers is *reversed.*

EXHIBIT 15.

(T. D. 33936.)

Indigo extracts or pastes.

KLIPSTEIN & CO. *v.* UNITED STATES (No. 1133).

1. A BROMINATED DERIVATIVE OF INDIGO.

Sulphonated indigo and brominated indigo are alike pastes in point of consistency and are alike extracts of the same parent substance.

2. "INDIGO EXTRACTS OR PASTES."

These terms do not possess a definite, uniform, and general trade usage in this country such as would exclude the article here therefrom; nor has the article here itself been given by the trade a definite, uniform, and general title or designation such as to compel another classification. It was dutiable as an indigo extract or paste under paragraph 25, tariff act of 1909.

United States Court of Customs Appeals, November 28, 1913.

APPEAL from Board of United States General Appraisers, G. A. 7432 (T. D. 33192).

[Reversed.]

Brown & Gerry for appellants.

William L. Wemple, Assistant Attorney General (*Charles D. Lawrence*, special attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise now before the court was assessed with duty at 30 per cent ad valorem as a coal-tar dye or color, under paragraph 15 of the tariff act of 1909.

The importers protested, claiming assessment of the merchandise at three-fourths of 1 cent per pound, as an indigo extract or paste, under paragraph 25 of the act.

The present record covers three distinct trials of this issue by the board, and contains the testimony taken at each of the three trials.

The decision at the first trial was reported as Abstract 26344 (T. D. 31832) and was favorable to the importers. That case was appealed to this court by the Government, but was dismissed on appellant's motion without a hearing upon the merits. The decision at the second trial was reported as Abstract 28915 (T. D. 32645) and likewise was favorable to the importers. No appeal was taken from that decision. At the third trial, being the present one, the testimony taken at the preceding trials was incorporated in the record, and additional testimony was taken. The decision of the board at this trial was adverse to the importers and sustained the collector's assessment (T. D. 33192). From that decision the importers prosecute the present appeal.

The article in question is a color or dye derived by chemical reactions from coal tar. It is therefore dutiable as a coal-tar dye or color under paragraph 15, as assessed by the collector, unless the article is also an indigo extract or paste, in which event it would properly be dutiable as such under paragraph 25, as claimed by the importers. The real question in the case appears thus to be whether the article at bar is an indigo extract or paste within the provisions of paragraph 25.

The following paragraphs from the tariff revision of 1883 and those following are copied for reference:

1883.

Duty.
Indigo, extracts of, and carmined, ten per centum ad valorem.
Free list.
Indigo and artificial indigo.

1890.

Duty.
20. Indigo, extracts, or pastes of, three-fourths of one cent per pound; carmined, ten cents per pound.
Free list.
614. Indigo.

1894.

Free list.
514. Indigo, and extracts or pastes of, and carmines.

1897.

Duty.
25. Indigo, extracts, or pastes of, three-fourths of one cent per pound; carmined, ten cents per pound.
Free list.
580. Indigo.

1909.

Duty.
25. Indigo extracts or pastes, three-fourths of one cent per pound; indigo, carmined, ten cents per pound.
Free list.
592. Indigo.

From the earliest historical times indigo of vegetable origin has been a dyestuff of great commercial value and importance. About the year 1880 for the first time there appeared in trade an article having the same formula as vegetable indigo, which, however, was produced by chemical reactions from coal tar. This material is a dyestuff capable of the same use as vegetable indigo, and is called artificial or synthetic indigo. At the present time both vegetable and synthetic indigoes are largely dealt in, but the latter has come to be the more common and important article of the two.

Not long after the first production of synthetic indigo there appeared in trade an article produced by treating either vegetable or synthetic indigo with sulphuric acid, whereby certain hydrogen atoms in the indigo are replaced by atoms from the sulphuric acid radical. This article, sulphonated indigo, is useful in dying wool and silk, but commercially it will not dye cotton. It is usually marketed in suspension as a paste or semiliquid. About the year 1907 or 1908 a second indigo derivative, being the article now in question, first came upon the market. It is produced by the treatment of indigo with bromine, whereby certain atoms of hydrogen in the indigo are replaced by atoms of bromine. This article is brominated indigo, and is chemically known as an insoluble haloid compound of indigo. It is used in dying cotton, wool, or silk, and is usually marketed in the form of a paste or semiliquid. Both sulphonated and brominated indigoes are largely used as dyes in this country, the former upon animal fibers and the latter mostly upon cotton.

It seems clear that these two indigo derivatives may be produced from either vegetable or synthetic indigo, but practically synthetic indigo alone is used as a basis in their manufacture. This condition results, perhaps, from commercial considerations; but apart from that, vegetable indigo frequently carries impurities from which the synthetic article is free, making the latter a better basis for further chemical treatment.

As appears above, indigo itself was admitted free of duty by the tariff revision of 1883 and those following it. In the act of 1883 synthetic indigo was specifically included within the free-list provision under the name of "artificial indigo." In the subsequent revisions the free list simply names "indigo," but this *eo nomine* provision includes synthetic as well as vegetable indigo. (T. D. 20925.)

As is above stated, sulphonated indigo has been an article of trade in this country for the past 30 years. In the tariff act of 1883 there appears a provision for "extracts" of indigo; and in the following tariff acts there are provisions for "extracts or pastes" of indigo. During all the time covered by these enactments sulphonated indigo in suspension was a subject of importation, and was classified as indigo extract or paste under these provisions. It is conceded that this classification is correct and should be followed. On the other hand, brominated indigo did not appear in this country until just before the tariff revision of 1909, and its dutiable status first became a subject of litigation under that act. The practical question, therefore, now is whether the brominated derivative of indigo shall be classified, like the sulphonated derivative, as an indigo extract or paste, under paragraph 25 of the act of 1909.

At the present trial the board held that the brominated indigo now in question is not commonly or scientifically known as indigo paste. The board also found from the testimony that the term "indigo paste," appearing in the act, possessed a definite, uniform and general signification in the commerce of this country which limited its application to sulphonated indigo alone. The board also found from the testimony that the present article—brominated indigo—is not uniformly, generally, and definitely known in the trade and commerce of this country as indigo paste. The board therefore held that the

present importations were not dutiable under the provisions for indigo extracts or pastes in paragraph 25, but were dutiable as coal-tar dyes or colors.

Upon a review of the record the court is unable to agree with the foregoing findings of the board. The testimony contained in the record in voluminous, and it is not necessary for the purposes of this decision to refer to the same in detail; the court will rather give the conclusions which it reaches upon the record. In doing this it seems proper to consider, first, the common or ordinary application of the words "indigo extracts or pastes," as used in the act; and to consider, second, whether those terms have acquired in this country a definite, uniform, and general commercial usage which excludes the importation therefrom; and to consider, third, whether the article in question has itself acquired in this country a definite, uniform, and general commercial title or designation which excludes it from classification under the provisions for indigo extracts or pastes.

In respect to the first branch of this subject, it may be said that if the terms "indigo extracts or pastes," ordinarily include and apply to sulphonated indigo it is difficult to see how they can fail to include and apply to brominated indigo likewise. The two substances are derived chemically from indigo by analogous processes. Both are dyestuffs, both produce "indigo-blue" colors, and both are usually marketed in the form of pastes. They bear a general resemblance to the parent substance and to one another. It is true that sulphonated indigo will dye wool and silk and will not dye cotton, whereas brominated indigo will dye cotton as well as wool and silk. However, both vegetable and synthetic indigo will dye cotton, wool, and silk; therefore in this particular the brominated article resembles the parent substance more nearly than does the sulphonated. It is also true that there are differences between the two articles in respect to the manner of their application in dyeing, the brightness of the shades of blue produced by them, the fastness of their respective colors, and their solubility or insolubility in water. These considerations, however, do not tend to exclude either article from the proposed classification without at the same time excluding the other. It seems certain that sulphonated indigo was first classified as an indigo extract or paste upon the theory that it was within the descriptive force and effect of those terms, and it may well be concluded that brominated indigo comes within the same description. The word "pastes," according to this construction, is simply descriptive of the physical consistency of the material as imported, and the word "extracts" relates to the derivation of the article from its parent substance, whose active principle it concentrates or preserves. These two qualities are the only ones which are required as conditions in the classification, and in respect to them the two articles in question stand upon precisely the same footing. They are alike pastes in point of consistency, and are alike extracts of the same parent substance.

Coming next to the question of the alleged commercial usage of the words "indigo extracts or pastes," it is apparent from the record that great weight must be given to the circumstances of the case.

It appears from the testimony that for 30 years sulphonated indigo alone was known in this country as indigo extract or paste; it even came to be known as *the* extract or paste of indigo; also as simply

indigo extract or paste, but this fact obviously resulted from the circumstance that neither brominated indigo nor any other similar substance was imported at all during that period. Sulphonated indigo, in other words, was the only article which was classified under the terms in question, because it was the only article then appearing in trade which came within the common and ordinary signification of these terms. Therefore the long-continued application of the two terms to sulphonated indigo alone was not a peculiar trade usage of those terms; it simply indicated that sulphonated indigo was then the only subject of importation which came within the common meaning of the terms. This fact would not impair or limit the ordinary force of the terms as used in the acts, nor would it prevent their application in the usual and ordinary way to other articles possessing similar characteristics, if such articles should at any time be imported. Nor would it be necessary that a new article seeking classification thereunder should be exactly identical in all respects with the only article which already was conceded that classification. It would be sufficient if the new article possessed an essential resemblance to the former one in those particulars which the statute established as the criteria of the classification. In the present case the sole condition is that the article in question should be an extract or paste of indigo within the ordinary meaning of those terms. Matheson *v.* United States (90 Fed., 276); Newman *v.* Arthur (109 U. S., 132); Pickhardt *v.* Merritt (132 U. S., 252); Cassett *v.* United States (2 Ct. Cust. Appls., 465; T. D. 32225).

Coming next to the question whether the present article has acquired in this country an individual trade title or designation which excludes it from classification as an "indigo extract or paste," the court again is led by the record to a negative conclusion. It appears, as above stated, that the present dyestuff was first placed upon the market in the latter part of 1907 or the early part of 1908. In either event it is probable that a substantial time would elapse before the trade in this country would give it a definite, uniform, and general title differing from the common or ordinary one based upon its palpable characteristics. It appears that the article was produced by the Chemische Industrie Basle Actiengesellshaft, the inital letters of which name, taken in their order, form the word "Ciba." The article was first invoiced by the importers under various names, such as "Ciba blue," "Ciba blue G paste," "Ciba blue G D paste," and other similar proprietary designations. In some of these the word "paste" appeared, in others not. The same may be said concerning the advertisements which were published by the importers in trade journals to promote the sale of the article. In the domestic market the article was sometimes sold as "indigo 2 B 20 per cent paste," "Brome indigo F B paste," or "indigo 2 B in paste."

It is stated by the importers that finally they invoiced the article simply as indigo paste. This they did in order to support their claim for the assessment of the importations under that description in paragraph 25 of the act of 1909. It appears, however, that the article is still sometimes ordered by customers under the "Ciba" names, notwithstanding the effort of the importers to prevent it. These statements apply alike to the brief period during which the article was imported under the tariff act of 1897 and also to its importation under the tariff act of 1909.

However, the court does not incline to the view that the distinctive titles thus given the article as above stated were effective to withdraw it from the more general classification of indigo extracts or pastes. It is common observation in trade that certain articles are advertised and marketed under fabricated names, which, indeed, sometimes become household words throughout the country, and that, nevertheless, the dutiable classification of the articles is not affected thereby. The tariff act does not deal with "Ciba blue" *eo nomine*, and the use of such a proprietary name in the markets would have no greater tendency to exclude the article from classification as indigo paste than from classification as a coal-tar dye or color.

Therefore, upon the entire record the court is satisfied that the present importation is an indigo extract or paste within the common meaning of those terms as they appear in paragraph 25; that those terms do not possess a definite, uniform, and general trade usage in this country such as would exclude the present article therefrom; and that the article itself has not been given by the trade a definite, uniform, and general title or designation such as would exclude it from classification thereunder. And in reaching this conclusion the court does not differ with the board concerning the weight of the evidence or the credibility of the witnesses, but rather concerning the legal effect of such facts as are practically undisputed in the record.

In addition to the foregoing views, it may be stated that the conclusion herein reached seems to be most consistent with the repeated use in the several tariff revisions of the plural words "indigo extracts or pastes," which imply the existence or possibility of plural articles of that description. It is also most consistent with the reasonable construction that Congress probably intended to cover the entire subject of indigo and its immediate derivatives by the *eo nomine* provisions appearing in the several acts for indigo, its extracts or pastes, and indigo carmined.

The decision of the board is therefore *reversed.*

EXHIBIT 16.

(T. D. 33521.)

Trimmed straw hats.

UNITED STATES *v.* LORD & TAYLOR (No. 1090).

HATS OF STRAW TRIMMED WITH SILK.

On some of these hats the silk trimming is worth more, on others less, than the straw body to which it is attached. Paragraph 422, tariff act of 1909, imposes a certain rate of duty on hats composed wholly or in chief value of straw, whether wholly or partly manufactured, but not trimmed, and another and higher rate of duty on the same hat if trimmed. The hats are here the subject of the duty imposed and not the trimming on the hats.

United States Court of Customs Appeals, May 26, 1913.

APPEAL from Board of United States General Appraisers, G. A. 7415 (T. D. 33086).

[Affirmed.]

William L. Wemple, Assistant Attorney General (*Martin T. Baldwin*, special attorney, of counsel), for the United States.

Comstock & Washburn for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Straw hats trimmed with silk imported at the port of New York were classified by the collector of customs as wearing apparel composed in chief value of silk, dutiable at 60 per cent ad valorem under the provisions of paragraph 402 of the tariff act of 1909, which, in so far as it is pertinent to the issue, reads as follows:

402. Laces, * * * and articles of wearing apparel of every description including knit goods, made up or manufactured in whole or in part by the tailor, seamstress, or manufacturer; all of the foregoing composed of silk, or of silk and metal, or of which silk is the component material of chief value, * * * not specially provided for in this section, * * * sixty per centum ad valorem.

The importer protested the classification and duty assessed on several grounds; but on the hearing before the board the only claim insisted upon was that the goods were hats composed wholly or in chief value of straw, dutiable at 50 per cent ad valorem under the provisions of paragraph 422, which, in part, reads as follows:

422. * * * Hats, * * * composed wholly or in chief value of straw, * * * whether wholly or partly manufactured, but not trimmed, thirty-five per centum ad valorem; if trimmed, fifty per centum ad valorem. * * *.

The Board of General Appraisers sustained the protest and the Government appealed.

The hats involved are made of straw and are trimmed with silk. On some of them the silk trimming is worth more and on others less than the straw body to which it is attached. The Government admits that the hats the trimming of which is worth less than the straw bodies are properly dutiable under paragraph 422, and therefore concedes that as to such hats the protest was properly sustained. It contends, however, that the hats the silk trimming of which exceeds in value the straw body are not hats composed in chief value of straw and that consequently they should be excluded from the operation of paragraph 422 and held dutiable under paragraph 402 as wearing apparel composed in chief value of silk. This contention in effect means that trimmed hats should be considered as entireties in determining the component of chief value and that the particular provision of paragraph 422, above cited, must be interpreted as if it read "hats, if trimmed, composed wholly or in chief value of straw." We do not think that any such interpretation can be put upon the provision referred to without doing violence to the ordinary rules of grammatical construction and the intent of Congress as manifested by the language which it has actually used.

The paragraph imposes a certain rate of duty on hats composed wholly or in chief value of straw, whether wholly or partly manufactured, but not trimmed, and another and higher rate of duty on the very same hat if trimmed. As the hat contemplated by the second clause of the provision is the hat described in the first clause it follows that in determining the component of chief value the trimming is just as much to be excluded from consideration under the second clause as it is under the first. The phrase "composed wholly or in chief value of straw" relates to hats—not to hats untrimmed or to hats trimmed, and nothing appearing to justify the assumption that Congress made a grammatical slip which resulted in the saying of that which it did not intend to say, we must conclude that the

value of the trimming can not be considered in determining the component of chief value. In this view of the matter we are confirmed by the construction which was put upon a similar provision in paragraph 409 of the tariff act of 1897, which was the prototype of the provision now under consideration and read as follows:

409. * * * Hats, * * * composed of straw, * * * whether wholly or partly manufactured, but not trimmed, thirty-five per centum ad valorem; if trimmed, fifty per centum ad valorem. * * *

In construing this provision the Board of General Appraisers held in effect that the phrase "composed of straw" modified "hats," not "hats * * * if trimmed," and that the composition of the articles should be determined without regard to the trimming. *In re* Samuel Schiff & Co. (T. D. 21205); *In re* Henry Hummel & Co. (T. D. 25440).

It is true that the present act, instead of providing for "hats composed of straw," does provide for "hats composed wholly or in chief value of straw," but in our opinion that amendment was not passed to meet the decisions under paragraph 409, but rather to make it clear that hats not composed entirely of straw, but of braids of straw stitched together with thread should receive the same classification as hats composed of straw only. In making this change, however, Congress took care to preserve the syntax of paragraph 409, and the very same reasoning which excluded the trimming from consideration in determining whether a hat was "composed of straw" under the tariff act of 1897 excludes the trimming in determining whether a hat is "composed wholly or in chief value of straw" under the law now in force.

The decisions of the board just cited are not at all in conflict with the decisions reached in the protest of Leon Rheims Co. (T. D. 27541), affirmed by the Circuit Court in Leon Rheims Co. *v.* United States (154 Fed., 969), and by the Circuit Court of Appeals in Leon Rheims Co. *v.* United States (160 Fed., 925). Those cases did not deal with paragraph 409, but with paragraph 432, of the tariff act of 1897, which provided for "hats, * * * trimmed or untrimmed, * * * composed wholly or in chief value of fur of the rabbit, beaver, or other animals." In that provision the phrase "composed wholly or in chief value" clearly related to trimmed and untrimmed hats, and consequently in determining the chief value of a trimmed hat classified under it the trimming had to be considered in order to determine the component of chief value. To hold that the entirety must *always* be considered in ascertaining chief value would result in nullifying completely the distinction drawn by the board and the courts between paragraphs 409 and 432 of the tariff act of 1897, and carefully preserved by Congress in paragraphs 442 and 446 of the tariff act of 1909, to say nothing of the effect of such a holding on other paragraphs which make it manifest that the article, stripped of that which is incidental and not the article as an entirety, shall be taken into account in finding chief value.

The decision of the Board of General Appraisers is *affirmed.*

EXHIBIT 17.

(T. D. 34102.)

Ice tanks.

LANGLEY *et al. v.* UNITED STATES (No. 1259).

ICE TANKS MADE OF CHINA OR EARTHENWARE.

Paragraph 92, tariff act of 1909, more specifically applies to this merchandise than paragraph 93, and the protest covers the claim under paragraph 92. The provision in paragraph 92 is for yellow earthenware "coated with white or transparent vitreous glaze." This covers all yellow earthenware coated with white or transparent vitreous glaze that has no other ornamentation or decoration than white or vitreous glaze, and this specifically describes the goods here.

United States Court of Customs Appeals, January 14, 1914.

APPEAL from Board of United States General Appraisers, Abstract 33311 (T. D. 33677), Abstract 33447 (T. D. 33709).

[Reversed.]

Curie, Smith & Maxwell for appellants.

William L. Wemple, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel; *Henry H. Childers*, special attorney, on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The merchandise involved in this case was described by the appraisers as so-called ice tanks made of china or earthenware, having a white glaze on the inside and a brown glaze on the outside. The appraisers held that these articles, on account of having the brown glaze, were subject to the provisions of paragraph 93, which prescribes a rate of 60 per cent ad valorem on all china, earthenware, etc., which is "painted, colored, tinted, stained, enameled, gilded, printed, or ornamented or decorated in any manner." The importers, protested the assessment, claiming the goods to be dutiable under paragraph 92, and produced evidence before the board which appears undisputed and which is supported by an examination of the samples introduced in evidence in the case, to the effect that the ice tanks in question were made of fire clay, yellow in color, and that it is yellow ware coated with white glaze on the inside and transparent vitreous glaze on the outside. The board overruled the importers' protest, basing its ruling on a previous decision in Way's case, G. A. 7009 (T. D. 30543) and upon Frank *v.* United States (2 Ct. Cust. Appls., 85; T. D. 31633). The decisions in question, as well as the one here under consideration, were rested upon paragraph 93 of the tariff act of 1909, and in neither of the cases cited was paragraph 92 under consideration. It remains, therefore, for us to determine whether the importation in question is to be differentiated from those there under consideration, and whether it falls within the terms of paragraph 92, as claimed by the importer.

It is doubtless true that in the absence of more specific provision these articles would fall within paragraph 93 as crockery ware, enameled. But the question remains as to whether the provision of paragraph 92 is more specific. It was said in the opinion in this case

that the only claim urged by the attorney for the importers was under paragraph 95 for articles and wares composed in chief value of earthy or mineral substances. This the importers' counsel claims was an error. The record, however, does not show precisely what was urged before the board in the brief, but the protest clearly covers the claim here made under paragraph 92.

We turn then to paragraph 92 to see what is provided. This paragraph reads as follows:

92. Common yellow, brown, or gray earthenware, plain, embossed, or salt-glazed common stoneware, and earthenware or stoneware crucibles, all the foregoing not decorated in any manner, twenty-five per centum ad valorem; yellow earthenware, plain or embossed, coated with white or transparent vitreous glaze but not otherwise ornamented or decorated, and Rockingham earthenware, forty per centum ad valorem.

The precise contention is that the provision for earthenware "coated with white or transparent vitreous glaze" is more specific than the provision for earthenware, enameled. We think this contention should be sustained. The article here involved comes precisely within the narrow term "yellow earthenware * * * coated with white or transparent vitreous glaze but not otherwise ornamented or decorated." This plainly covers all yellow earthenware coated with white or transparent vitreous glaze which has no other ornamentation or decoration than white or transparent vitreous glaze. One or both may be present, white or transparent vitreous glaze, but no other or further ornamentation or decoration is permissible. It would be difficult to conceive of a more specific description of the article here involved than is furnished by the language above quoted, as thus interpreted. It is more specific than a general provision for enameled ware.

The decision of the board is reversed, and the claim of the importers under paragraph 92 is *sustained*.

EXHIBIT 18.

(T. D. 33516.)

Jute-manufacturing machinery.

UNITED STATES *v.* MURPHY & CO. (No. 1051).

MACHINES FOR MANUFACTURING JUTE YARNS.

The squeezers, doublers, spreaders, drawing frames, roving frames, and spinning frames of the importation operate directly on the jute and are all suitable, necessary, and are actually used for the making of jute yarns of the accepted and recognized commercial sizes. They are to be classified as jute manufacturing machinery. and are dutiable as such under paragraph 197, tariff act of 1909.

United States Court of Customs Appeals, May 26, 1913.

APPEAL from Board of United States General Appraisers, Abstract 30011 (T. D. 32858).

[Affirmed.]

William L. Wemple, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel; *Martin T. Baldwin*, special attorney, on the brief), for the United States.

Curie, Smith & Maxwell (*Thomas M. Lane*, of counsel), for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

Certain machines used in the manufacture of jute yarns and designated as squeezers, doublers, spreaders, drawing frames, roving frames, and spinning frames were assessed for duty by the collector of customs at the port of New York at 45 per cent ad valorem under the provisions of paragraph 199 of the tariff act of 1909, which paragraph reads as follows:

199. Articles or wares not specially provided for in this section, composed wholly or in part of iron, steel, lead, copper, nickel, pewter, zinc, gold, silver, platinum, aluminum, or other metal, and whether partly or wholly manufactured, forty-five per centum ad valorem.

The importers protested that the articles imported were jute-manufacturing machinery, and that therefore they should have been assessed for duty at 30 per cent ad valorem under the provisions of paragraph 197, which in part reads as follows:

197. Cash registers, jute-manufacturing machinery, linotype and all typesetting machines, machine tools, printing presses, sewing machines, typewriters, and all steam engines, thirty per centum ad valorem; * * *.

The Board of General Appraisers sustained the protest, and the Government appealed.

The appraiser returned the goods as machinery used in the manufacture of flax and therefore dutiable at 45 per cent ad valorem as a manufacture of metal not specially provided for. Beyond stating that the spinning frames are used for the spinning of jute and that the other machines are preparing machinery necessary for the manufacture of jute and flax yarns, the record furnishes little or no information as to the special work performed by the several machines. However, we think we may assume that the doublers, spreaders, drawing frames, and roving frames are designed to be used for drawing the fiber of carded jute into a filament which is converted into yarn by the spinning frame. The testimony shows without contradiction that all the machines are of the type of those used for the manufacture of flax and that there is no machinery designed for the drawing, roving, or spinning of jute exclusively. The doublers, spreaders, and drawing, roving, and spinning frames which are fitted for the making of a jute yarn may be and are used for the making of a flax yarn of the same size. Machines adapted to the manufacture of a finer yarn than 16-lea flax are not commercially practicable for the manufacture of jute. It is undisputed that all of the machines imported are adapted to the making of a yarn as coarse as 8-pound jute or as fine as 16-lea flax, which corresponds to 3-pound jute, the minimum commercial size of jute.

The Government admits that the spinning frames are jute-manufacturing machinery within the intention of paragraph 197, but contends that the doublers and spreaders and the drawing and roving frames can not be so classified, inasmuch as they are actually used chiefly for the manufacture of flax. It is true that when adjusted to the making of 3-pound jute or 16-lea flax the machines involved in this appeal are used by the importers in the making of jute and flax yarns in the proportion of about two-fifths jute and three-fifths flax. It is equally true, however, that these very same machines are capable of making and are used in making a coarser yarn than 16-lea flax and as coarse a yarn as 8-pound jute, and that when employed

to make yarns coarser than 3-pound jute or 16-lea flax they produce more jute yarns than flax yarns. More than that, the testimony is wholly uncontradicted that for the manufacture of jute there are no machines known to the world except such as those imported, and that as a world proposition machinery of the class imported is used more for the manufacture of jute than for the manufacture of flax. Presumably Congress had all these facts before it when the tariff act of 1909 was under consideration. Nevertheless it provided broadly that jute-manufacturing machinery should bear a duty of 30 per cent ad valorem and thereby effected a reduction of 15 per cent in the rate which theretofore had been borne by such machinery. The reduction in duty thus accomplished was evidently designed to encourage the manufacture in this country of commercial jute yarns, and having that legislative purpose in mind it can hardly be assumed that Congress intended that the designation "jute-manufacturing machinery" should embrace only those machines which were designed to produce a yarn coarser than 8-pound jute. Yarns varying in size from 3-pound to 8-pound jute are commercial jute yarns just as much as are the coarser yarns, and there is nothing in the act or in the language or history of the paragraph which affords the slightest reason for supposing that a jute machine for making one commercial size of yarn was to be covered by the provision and a machine for making another commercial size was to be excluded from its operation. If Congress had really intended that the 30 per cent rate should be applied only to the jute machines capable of producing certain sizes of commercial jute, we think it would have so declared, and not having done so we must decline to exclude from the favoring rate the only machinery available for the manufacture of the finer commercial jute yarns.

It may be that in commerce and trade the term "jute-manufacturing machinery" has a limited or special meaning which excludes the appliances in controversy, but if so the burden was on the Government to establish that fact by proper evidence. No evidence having been introduced showing or tending to show that the designation "jute-manufacturing machinery" has a special commercial signification, we must presume that the meaning of the term does not differ from that commonly and popularly assigned to it. The squeezers, doublers, spreaders, drawing frames, roving frames, and spinning frames operate directly on the jute and are all suitable, necessary, and actually used for the making of jute yarns of the accepted and recognized commercial sizes, and are therefore entitled to be classified as jute-manufacturing machinery.

The decision of the Board of General Appraisers is *affirmed.*

EXHIBIT 19.

(T. D. 33876.)

Sawed lumber.

UNITED STATES *v.* MITSUI & CO. (No. 1139).

SAWED LUMBER—WHEN NOT CABINET WOOD.

The issue as made here was one of fact, whether the wood of the importation is or is not cabinet wood as described in paragraph 203, tariff act of 1909. The board found that oak, poplar, and ash are not cabinet woods and the evidence supports this finding. Paragraph 201 applies.

United States Court of Customs Appeals, November 11, 1913.

APPEAL from Board of United States General Appraisers, Abstract 31558 (T. D. 33262).

[Affirmed.]

William L. Wemple, Assistant Attorney General (*Leland N. Wood*, special attorney, on the brief), for the United States.

William K. Dupre, jr. (*William Hayward* of counsel), for appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The merchandise in this case was entered at the port of Los Angeles, Cal., and was assessed for duty under paragraph 203 of the tariff act of 1909, as cabinet wood, sawed, at 15 per cent ad valorem.

A member of the importing firm testified that it was entered as sawn lumber—ash, poplar, and oak; that its general uses were for many purposes where pine is used; that some of the poplar might be used for trimmings in houses; and that this kind of lumber was sold by the importers to lumber dealers generally.

A witness for the importers who received the shipment testified that it consisted of planks and boards of oak, a little poplar, and a little ash; that it was designed to be used for all ordinary purposes for which oak was used, where tensile strength and endurance were required; that it was sawed in dimension boards, not of specific lengths, 6 feet and upward, 1, 1¼, 1½, 1¾, and 2 inches in thickness, and some thicker; that one-sixth of the cargo was 2 by 5 and wider, specified as 2-inch stock; that a lot of it was for building purposes, a lot for casing, etc.; that it was used for building, cabinet, and furniture work wherever tensile strength and endurance comes in.

The proportion of the importation that was oak, poplar, or ash, or the uses to which it was designed, are not more definitely stated than as appears in the foregoing testimony of these two witnesses, and no other witnesses testified at the hearing. We do not understand that it is claimed by anyone that this testimony does not correctly represent the character, condition, and uses of the merchandise.

The importers claim the merchandise is dutiable at $1.25 per thousand feet as sawed lumber under the provisions of paragraph 201 of the act of 1909. We quote the material part of each paragraph:

> 201. * * * Sawed lumber, not specially provided for in this section, one dollar and twenty-five cents per thousand feet board measure.
>
> 203. Sawed boards, planks, deals, and all forms of sawed cedar, lignum-vitæ, lancewood, ebony, box, granadilla, mahogany, rosewood, satinwood, and all other cabinet woods not further manufactured than sawed, fifteen per centum ad valorem; * * *.

It appears that in G. A. 7357 (T. D. 32454) the board held that Japanese white-oak hewn logs over 8 inches square were cabinet wood and entitled to free entry under paragraph 713 of the act of 1909. Their decision closed with this sentence:

> We find as a fact from the record that Japanese white oak is cabinet wood, and as such in the log, rough or hewn only, we hold it to be entitled to free entry.

The Government claimed in that case, as appears by the board's opinion, (*a*) that the merchandise, being in the form of logs, could not be considered a cabinet wood, and (*b*) that oak is not a cabinet wood.

The Government now claims that the board, having held in the other case as stated in the quoted part of the opinion, has, without

reason, reversed itself, and that in this case we should reverse the board because its decision is contrary to or not supported by the weight of evidence. To enforce this contention the evidence taken in the former case has been moved into the record here, and so the whole matter is before us.

Of course the claim of the Government also is that in the first case the board reached the right conclusion.

In its decision in this case the board, among other things, said:

> The mere fact that some part of the lumber was of oak and that certain kinds of oak in particular instances have been held to be cabinet wood does not justify the assumption that all oak is cabinet wood.

The record does not show, but both parties seem to assume as a fact that the oak of this importation is of the same kind as that in the other case.

An extended discussion of the somewhat voluminous evidence seems unnecessary.

In paragraph 203 Congress has seen fit to declare that certain and all sawed forms of specified woods, in which oak is not included, and "all other cabinet woods not further manufactured than sawed," shall pay duty at the rate of 15 per cent ad valorem. Manifestly what are "other cabinet woods" is left to common understanding or to proof. In view of the well-known and multitudinous uses to which oak is devoted we can not say as a matter of common knowledge that all oak is a cabinet wood. Upon the evidence above recited we can not say that the board erred in holding that the oak in this case was not a cabinet wood, neither does a consideration of the evidence in the case imported into the record here lead to any different conclusion, for witnesses there testified to what is well known, that oak has manifold uses. It should also be observed that the oak logs in the other case were shown to be of a high grade known as "No. 1 logs," and there is no evidence that the oak lumber in this case has been sawed from such logs or is of the same quality.

The oral discussion of counsel here finally reduced the issue to this: That as to woods not specifically named in paragraph 203 it must in each case be a question of fact whether the wood under consideration is or is not a cabinet wood. Without indicating how this would be as to the mentioned woods, we think it correctly states the issue as to the merchandise here. On that issue the board has found that this oak, poplar, and ash are not cabinet woods. We think the evidence supports the finding. The provisions of paragraph 201 are manifestly applicable, and the judgment of the Board of General Appraisers is *affirmed.*

EXHIBIT 20.

(T. D. 34189.)

Snails.

DE JONGHE *et al. v.* UNITED STATES (No. 1171.)

1. CONSTRUCTION.

Words to which Congress has given a special meaning in a tariff act will be presumed to retain that signification in a subsequent tariff act relating to the same subject matter, no contrary intention appearing. Reiche *v.* Smythe (13 Wall., 162). Accordingly snails may not be deemed "live animals."

2. ESCARGOTS OR EDIBLE SNAILS.

Nor, by the same reasoning, can snails be deemed shellfish and entitled to free entry. They are to be classified as a raw article designed to be converted into a food not enumerated or provided for. They were dutiable under paragraph 480, tariff act of 1909.

United States Court of Customs Appeals, February 5, 1914.

APPEAL from Board of United States General Appraisers, Abstract 32075 (T. D. 33348), Abstract 32338 (T. D. 33409).

[Reversed.]

Comstock & Washburn (*George J. Puckhafer* on the brief) for appellants.

William L. Wemple, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel; *Henry H. Childers*, special attorney, on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

This case involves the classification of escargots or edible snails, imported alive, which were subjected to a duty of 20 per cent ad valorem as "live animals" under paragraph 229 of the tariff act of 1909, which paragraph is as follows:

229. All other live animals, not specially provided for in this section, twenty per centum ad valorem.

The importers protested against the classification and the rate of duty applied to the importation by the collector and claimed that the snails were either entitled to free entry as shellfish under paragraph 671 of the free list or dutiable under paragraph 480 as a raw or unmanufactured article not provided for. Paragraphs 671 and 480 are as follows:

FREE LIST.

671. Shrimps and other shellfish.

480. That there shall be levied, collected, and paid on the importation of all raw or unmanufactured articles, not enumerated or provided for in this section, a duty of ten per centum ad valorem, and on all articles manufactured, in whole or in part, not provided for in this section, a duty of twenty per centum ad valorem.

The Board of General Appraisers overruled the protest and the importers appealed.

The first question presented by the record is whether the snails are "live animals" within the meaning of paragraph 229 and consequently dutiable as assessed.

Under section 23 of the act of March 2, 1861, "animals, living, of all kinds," and "birds, singing and other, and land and water fowls," were separately provided for and exempted from the payment of duty. While these provisions were still in force and on May 16, 1866, a special act was passed which levied a duty of 20 per cent ad valorem on all "horses, mules, cattle, sheep, hogs, and other *live animals* imported from foreign countries." As the act was limited to the subject of horses, mules, cattle, sheep, hogs, and other *live animals*, the collector of customs at New York considered that it was aimed at all live animals provided for in the free lists of previous acts, and that it was intended to make such animals dutiable instead of free. Accordingly canary birds were classified as live animals and subjected to a duty of 20 per cent ad valorem. The Supreme Court of the United States declined, however, to sustain the decision of the collector and

held, first, that a distinction having been once made by Congress between live animals and birds, that distinction, in the absence of anything to the contrary, would be presumed to have been carried into subsequent legislation on the same subject; and, second, that the word "animals" was used by Congress in its popular signification, and that the expression "animals, living," as employed in the act of 1861, applied to quadrupeds and not to birds or fowls. Reiche *v.* Smythe (13 Wall., 162, 164–165).

The doctrine laid down in the Reiche case, that words to which Congress has given a special meaning in a tariff act will be presumed to retain that signification in a subsequent tariff act relating to the same subject matter in the absence of anything showing a contrary intention, was, in effect, reaffirmed in Robertson *v.* Rosenthal (132 U. S., 460, 464).

In the tariff act of 1909, under which these goods were assessed for duty, we find nothing showing that Congress intended to use the expression "live animals" in any other sense than that in which it was used in the tariff acts of 1861 and 1866. Congress must be presumed to have had knowledge of the decision in the Reiche case and that the tariff provision for a duty on "other live animals" had been interpreted to mean such animals as were quadrupeds. Nevertheless, in every tariff act from the date of that decision down to and including the tariff act of 1909, Congress continued to impose a duty on live animals and indicated in no way any intention to change the signification put upon the designation "live animals" by the Supreme Court. We must therefore conclude that the judicial interpretation given to that term was approved by Congress and that as snails are not quadrupeds they were not subject to the duty imposed on live animals by paragraph 229. See Homer *v.* Collector (1 Wall., 486, 490).

The same reasoning, however, which excludes snails from the tariff provision for live animals likewise excludes them from classification as shellfish, and consequently from admission to free entry under the provisions of paragraph 671. Paragraph 703 of the act of 1890 provided for the admission free of duty of "shrimps and other shellfish," and paragraph 708 of the same act admitted "snails" to free entry. Paragraphs 615 and 620 of the act of 1894 likewise classified snails and shellfish as separate tariff entities and exempted both from duty. In the acts of 1897 and 1909 no provision was made for the free entry of snails, although shrimps and shellfish were continued on the free list. As snails and shellfish were separately provided for on the free list of the tariff acts of 1890 and 1894, it is evident that snails were not regarded by Congress as shellfish, and that snails and shellfish must be considered as distinct entities for tariff purposes. From this it follows that the designation "shellfish" does not embrace snails, and that as snails were omitted from the free list of the tariff act of 1909 they must be held to be dutiable and not entitled to free entry. Snails are not provided for *eo nomine* or by description in the dutiable list, and apparently they can not be made dutiable by similitude in material, quality, texture, or use to any enumerated article therein provided for. We think, however, that they may be classified as a raw article, designed to be converted into a food, and not enumerated or provided for. We therefore hold that edible snails are dutiable at 10 per cent ad valorem under the provisions of paragraph 480.

The decision of the Board of General Appraisers is *reversed.*

EXHIBIT 21.

(T. D. 33479.)

Aluminum articles.

UNIVERSAL SHIPPING CO. *et al. v.* UNITED STATES (No. 1030).

1. SHEETS.

The term "sheets" is ordinarily applied to a broad general surface, and in paragraph 172, tariff act of 1909, may fairly be said to mean the sheet of the metal made in that form as one of the developments in the process of manufacture, and not intended to include the articles made from such sheets.

2. ALUMINUM SHEETS ADVANCED IN CONDITION.

The articles here are not sheets of aluminum within the meaning of paragraph 172, but have been advanced beyond that state and must be held to be articles or wares, composed wholly of aluminum, partly manufactured, and dutiable under paragraph 199 of that act.

United States Court of Customs Appeals, May 23, 1913.

APPEAL from Board of United States General Appraisers, Abstract 29817 (T. D. 32830).

[Reversed.]

Lester C. Childs for appellants.

William L. Wemple, Assistant Attorney General (*Martin T. Baldwin*, special attorney, on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The importation involved in this appeal consists of certain merchandise cut from aluminum sheets into what are generally included under the term "blanks," and in two forms, one square and the other cut in the form of a circle. They were assessed for duty under paragraph 172 as sheets of aluminum. The paragraph provides for "aluminum * * * in plates, sheets, bars, and rods, eleven cents per pound." The claim the importers made before the board, and which is made here, is that the articles should have been assessed under paragraph 199 as articles composed of aluminum partly or wholly manufactured, 45 per cent ad valorem, and the question involved is as to the relative specificity of these two paragraphs.

It is conceded in the Government's brief that the merchandise was covered by the provisions of paragraph 199 for articles composed of aluminum, whether partly or wholly manufactured. But it is claimed that the provision for aluminum in plates, sheets, etc., is a more specific provision and should control and govern the assessment, as the imported aluminum is in fact in the form of plates or sheets.

We agree with the contention of the importers that these are not sheets of aluminum within the meaning of paragraph 172 when that paragraph is considered in contrast with paragraph 199. The term "sheets" is ordinarily applied to a broad general surface, and in the connection in which it is used in paragraph 172 may fairly be said to mean the sheet of the metal made in that form as one of the developments in the process of manufacture, and not intended to include the articles made from such sheets. So as to the word "plate" in the case of Newman-Andrew Co. *v.* United States (2 Ct. Cust. Appls., 4; T. D.

31570), we cited with approval the definition from Lockwood's Dictionary of Engineering Terms there given, namely, "a broad, thin sheet of metal." The Century Dictionary describes sheet as "a broad, usually flat, and relatively thin piece of anything," the Standard as "a very thin and broad piece of any substance," and Webster, "in general, any broad, uninterrupted expanse; a broad, thinly expanded portion of metal or other substance."

That these articles were once in the form of sheets is apparent. But they have been advanced beyond that state, and have become articles or wares composed wholly of aluminum, partly manufactured.

The cases cited in the brief of Government's counsel as to what constitutes a manufactured article have had full consideration, but these cases are not cases which deal with a provision such as that of paragraph 199 for articles or wares of aluminum *whether partly* or wholly manufactured, and are answered by the admission in the Government's brief that these articles do answer that description and fall within the provisions of paragraph 199 unless more specifically described in paragraph 172. They having been advanced, however, from the original condition of sheets, we think it follows that paragraph 199 contains the more specific designation.

The decision of the Board of General Appraisers is *reversed*, and reliquidation directed under paragraph 199.

EXHIBIT 22.

(T. D. 34188.)

American fisheries.

UNITED STATES *v.* POST FISH CO. (Nos. 1167 and 1212).

FISH FROM THE CANADIAN WATERS OF LAKE ERIE.

In all essentials the equipment put in place by the importer in the Canadian waters of Lake Erie, or put in place by the importer's orders, constituted an American fishery, and all the fish there taken were the sole property of the importer and the products of an American fishery. There was no requirement of law as to the showing necessary to be made to entitle these fish to free entry other than that they should be the products of American fisheries. This showing could be made before the board after protest had been filed in due form and in due time.

United States Court of Customs Appeals, February 5, 1914.

APPEAL from Board of United States General Appraisers, G. A. 7449 (T. D. 33279), Abstract 32984 (T. D. 33594).

[Affirmed.]

William L. Wemple, Assistant Attorney General, for the United States.
W. E. Guerin, jr., for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

SMITH, Judge, delivered the opinion of the court:

In this case fresh fish brought into the port of Sandusky, Ohio, by the Post Fish Co. were assessed for duty at one-fourth of 1 cent per pound as fresh-water fish not provided for under paragraph 271 of the tariff act of 1909, which paragraph reads as follows:

271. Fresh-water fish not specially provided for in this section, one fourth of one cent per pound.

The importer protested that the fish were the product of an American fishery and that therefore they were entitled to free entry under the provisions of paragraphs 567 and 639 of the free list of the tariff act of 1909, which free list in part reads as follows:

FREE LIST.

That on and after the passage of this act, * * * the articles mentioned in the following paragraphs shall, when imported into the United States, * * * be exempt from duty:

* * * * * * *

567. Fish, fresh, frozen, or packed in ice, caught in the Great Lakes or other fresh waters by citizens of the United States, and all other fish, the products of American fisheries.

* * * * * * *

639. * * * Spermaceti, whale, and other fish oils of American fisheries, and all fish and other products of such fisheries; * * *.

Two series of protests were submitted to the board for determination, and the board sustained all the protests of both series. The Government appealed. The two cases based on the two sets of protests are known in this court as suits 1167 and 1212. The record of suit 1167 constitutes a part of the record made up on the hearing of the protests involved in suit 1212, but the facts presented in both cases are substantially the same, with the exception that the affidavits required by Treasury regulations, filed in one case, were not filed in the other.

From the testimony produced at the hearing by the importers it appears that the Post Fish Co. is a corporation organized and existing under the laws of the State of Ohio. The corporation is engaged in the business of catching fish off Pelee Point, in the Canadian waters of Lake Erie, which business has been pursued continuously by the corporation and its American predecessors in interest for a period of some 30 years. The company, or J. W. Post acting for it, furnishes and owns the stakes, nets, fishing tackle, and all necessary equipment for the taking and catching of fish. The concern has established four fisheries on the east side of Pelee Point and three on the west side, by driving stakes into the bed of the lake and attaching to them nets set up in strings or rows and equipped with pounds for trapping fish. The men who drive the stakes, hang the nets, and have charge of the several strings or rows of nets and their corresponding pounds are employed by the company and are charged with the duty of lifting the fish from the nets and delivering them to the company's steamer, the *Louise*. With the exception of one man, who owns his boat, the men in charge of the nets are furnished by the company with motor boats and are thus enabled to visit the nets.

The motor boats receive the fish as they are lifted from the pounds and deliver them on board the *Louise*, where they are sorted and placed in boxes without segregating the catch of one fisherman from that of another. Fish caught by the Americans Waedel and Grathwohl were kept in separate packages and landed in that condition at Sandusky. As compensation for their services the employees of the company receive either a certain rate per pound or a percentage of the value of the fish caught and delivered, and at their own expense may hire, and do hire, other men to aid them in their work. The

employees of the company are charged with responsibility for all property confided to their care, and are bound to return it to the company in as good condition as that in which it was received by them, but they do not rent it in the sense that they pay anything for its use. The employees in charge of the nets are subject to the directions of the captain of the *Louise*, and the fish are left in the nets or lifted therefrom, as he may order. Unless prevented by weather or other contingency the *Louise* calls at the nets every day except Sunday, and taking on board such fish as may have been lifted carries them to Sandusky for entry at the customhouse. This state of facts, which was met by the Government by no competent evidence to the contrary, warranted, we think, a finding that the stakes, nets, pounds, fishing gear, tackle, and other essentials for the taking of fish established by the Post Fish Co. on both sides of Pelee Point were either wholly the property of the Post Fish Co., an American corporation, or property to the use of which the company was entitled, and which was completely subject to its orders, directions, control, and management. From this it follows, under the decided cases, that in all essentials the entire equipment put in place at Pelee Point by the importer or by its orders constituted an American fishery, and that all fish taken by it were the sole property of the Post Fish Co. and the products of an American fishery. T. D. 3131, T. D. 7933, T. D. 24738, T. D. 28768; Lake Ontario Fish Co. *v.* United States (99 Fed., 551–552); United States *v.* Reading (1 Ct. Cust. Appls., 515; T. D. 31534).

The suggestion that the tariff status of fish taken by American fisheries on the Great Lakes should be determined by a different rule from that governing the tariff status of fish caught by American fisheries in salt water does not appeal to us. Possibly the tariff act of 1897 exacted for the free entry of fresh-water fish taken by American fisheries compliance with a condition not required of American salt-water fisheries, but if it did both classes of fisheries, equally entitled to the favor of the Government, were placed on the same footing by the tariff act of 1909.

Paragraph 555 of the act of 1897 provided for the free entry of—

> Fish, fresh, frozen, or packed in ice, caught in the Great Lakes or other fresh waters by citizens of the United States.

That paragraph as it stood was open to the interpretation that only those fish in the catching of which none but American citizens had any intervention were entitled to free admission, and that consequently fish taken by American owned nets, boats, gear, tackle, and equipment—that is to say, by American fisheries—would be excluded from its operation if any but American citizens were employed in making the catch. (Lake Ontario Fish Co. *v.* United States, *supra*.) A provision so worded and interpreted was clearly to the disadvantage of American fresh-water fisheries, apparently without any compensating return, and that the provision was extended by paragraph 567 of the act of 1909 so as to cover "other" fish than those caught by American citizens evidenced, we think, an intention on the part of Congress to relieve American concerns fishing in the Great Lakes from the obligation of verifying the citizenship of every fisherman employed by them and to give to the products of their enterprise the same advantage as that accorded to fish caught

by American citizens possibly neither the owners of a fishery nor engaged in fishing as a business.

The point made by the Government that fish caught by Fred Waedel and William Grathwohl are not entitled to admission free of duty because the boats used in making the catch were hired by them from the owners, Post and Grubb, is not well taken. Fred Waedel and William Grathwohl were both American citizens, and the fish taken by them, which are the subject of protest in suit 1212, if they were not fish caught by the Post Fish Co., an American fishery, were either fish caught by American citizens or fish caught by a fishery of which Fred Waedel and William Grathwohl were the owners, and in either or any of the events they were fish entitled to free entry. It was further claimed by the Government that the entries involved in suit 1167 were not accompanied by the affidavits required by Circular No. 4, issued by the Secretary of the Treasury on January 10, 1912 (T. D. 32138), and that therefore all protests directed to the classification of fish covered by such entries should be overruled for failure to comply with the Treasury regulations. When the fishing season began in April, 1912, the importer presented its entry, accompanied by the affidavits required by the regulations, but was notified by the collector himself that he (the collector) was satisfied that the fish were dutiable and that therefore the affidavits need not be filed. In accordance with this statement of the collector no affidavits were filed with the entries involved in suit 1167, and all fish covered by such entries were held to be dutiable not because no affidavits were presented with the entries, but apparently on the theory that they were either not taken by American citizens or by an American fishery, or if taken by an American fishery that such fish were not entitled to free entry as "all other fish, the products of American fisheries."

The affidavits prescribed by Circular No. 4 for the free entry of the products of American fisheries were clearly designed for no other purpose than that of furnishing the collector with sufficient information to justify a determination on his part that the importation was within the terms of the free list and therefore entitled to admission free of duty. The collector having satisfied himself from other sources of information that the merchandise was dutiable and not free of duty, and having virtually declared that the affidavits if presented would not change his mind on that subject, it would have been a useless formality to present them, and their presentation must be regarded as waived. But apart from all that, the regulation in question was purely administrative and compliance with it as a condition precedent to the free entry of the fish was not required by the statute. Had the statute prescribed that the nature and character of the importation was to be determined by certain affidavits filed at the time of entry, or had the free entry of the products of American fisheries been conditioned by law on the presentation of such affidavits when entry was made, the goods might very properly be finally denied the favor of the free list. The act under which the importation in controversy was entered prescribed no condition, however, for its free entry other than that it should be fish the products of American fisheries, and proof that they were such products might properly be made before the board after protest filed in due form and time.

United States *v.* Morris European & American Express Co. (3 Ct. Cust. Appls., 146–147; T. D. 32386).

The decisions of the Board of General Appraisers in suits 1167 and 1212 are *affirmed.*

EXHIBIT 23.

(T. D. 34135.)

Amor's metal polish.

ROSENHEIM *et al. v.* UNITED STATES (No. 1231).

EARTHY OR MINERAL SUBSTANCES—WHAT NOT.

The amorphous viscous substance of the importation, without any determinate shape or form, does not come within the provisions of paragraph 95, tariff act of 1909, as an article composed wholly or in chief value of earthy or mineral substance. There is no evidence of similitude in the record, but it is clear the substance is a manufacture not expressly provided for by any paragraph of the law in question. It was classifiable as a nonenumerated manufacture under paragraph 480.

United States Court of Customs Appeals, January 22, 1914.

APPEAL from Board of United States General Appraisers, Abstract 32480 (T. D. 33464).

[Reversed.]

Walter Evans Hampton for appellants.

William L. Wemple, Assistant Attorney General (*William A. Robertson*, special attorney, on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

This appeal is from four decisions of the Board of General Appraisers. The merchandise was returned to the collector of customs at the port of New York by the appraiser at that port in a statement that "the merchandise in question consists of Amor's metal polish, an article composed wholly of mineral substances * * *." The collector assessed the same for duty under the provisions of paragraph 95 of the tariff act of 1909 as an article composed wholly or in chief value of earthy or mineral substances. The protests contain several counts, chief of which here relied upon is that the merchandise is properly dutiable as a nonenumerated manufactured article under the provisions of paragraph 480 of the said act. The Board of General Appraisers in all of the cases overruled the protests upon the ground that there was not sufficient evidence in the record to warrant the board in disturbing the decisions of the collector. The importers appeal.

The record discloses that the decisions of the board were rendered in the absence of further testimony than that which came to the board from the collector. An application for rehearing was made and overruled in each case. The merchandise was returned by the local appraiser to the collector as above stated. Samples of the merchandise, together with an analysis thereof made by the Government chemist at the port of New York, accompany the record, duly identified. These samples evidence a material much like that the subject of the decision of this court in United States *v.* Holland-American

Trading Co. (4 Ct. Cust. Appls., 336; T. D. 33527). The analysis states:

Amor Metal Polish. * * * The same has the following components: Fat (by loss in ignition), 55.88 per cent; mineral residue consisting of silica, alumina, and iron oxide, probably clay, 44.12 per cent.

In each of the decisions the Board of General Appraisers recites that the merchandise in these cases consists of "Amor's metal *polish.*" There is ample in this record to disclose that the conclusion of the board was not warranted by the facts disclosed in the record and recited in each of its opinions.

This court in frequent decisions has held that the words "articles and wares composed wholly or in chief value of earthy or mineral substances," as used in paragraph 95 of the tariff act of 1909, do not include an impalpable powder. Salomon *v.* United States (2 Ct. Cust. Appls., 92; T. D. 31635); United States *v.* Embossing Co. *et als.* (3 Ct. Cust. Appls., 220; T. D. 32536); Bartley Bros. & Hall *et als. v.* United States (3 Ct. Cust. Appls., 363; T. D. 32961). It is fully within the principles of said decisions that amorphous, viscous substances of this description, without any determinate shape or form, are likewise for the reasons therein stated not included within the provisions of said paragraph 95. Such substances are more like the "plasticine" or "plastilina" the subject of decision by this court in United States *v.* Embossing Co., *supra,* and held not within the description of "articles and wares" as used in paragraph 95, for the reason that it was not of "specific form for definite and ultimate use."

Whether or not the article is properly dutiable by similitude of use to whiting, as was held of Goddard's plate powder in Bartley Bros. & Hall *et als. v.* United States, *supra,* and later of the same material in United States *v.* Kraemer & Co. *et al.* (4 Ct. Cust. Appls., 433; T. D. 33858), there is not sufficient evidence in this record to determine. Similitude is a question of fact, which must be established by evidence. In the absence of such evidence in the record, however, it is clear that the article is not properly dutiable as assessed by the collector and as held by the Board of General Appraisers. It is equally clear that it is a manufacture. Likewise it is clear that it is not expressly provided for by any paragraph of the tariff law. It, therefore, upon this record would be properly classifiable for dutiable purposes as a nonenumerated manufactured article under the provisions of paragraph 480, as claimed by the protestants, who are appellants here. This decision, however, must for want of a more complete record be confined to this record, as was the decision of this court in United States *v.* Holland-American Trading Co., *supra,* confined to the record in that case.

Reversed.

EXHIBIT 24.

(T. D. 33835.)

Marble columns.

UNITED STATES *v.* STERLING BRONZE CO. (No. 1131).

MARBLE COLUMNS—SCULPTURES.

These highly ornamented columns are made of solid marble. The board found they were sculptures and dutiable as such under paragraph 470, tariff act of 1909. On the whole record it does not appear that the finding of the board is clearly against the weight of the testimony.

United States Court of Customs Appeals, October 24, 1913.

APPEAL from Board of United States General Appraisers, Abstract 31435 (T. D. 33217).

[Affirmed.]

William L. Wemple, Assistant Attorney General (*William A. Robertson*, special attorney, of counsel), for the United States.

Walter Evans Hampton for appellee.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The goods in question consist of highly ornamental marble columns imported for use in the public library of the city of New York, which, since their importation, have been fitted for the support of electric lights and put in place. They were assessed for duty under paragraph 112 of the tariff act of 1909. They were held by the Board of General Appraisers to be dutiable as sculptures under paragraph 470. From this decision the Government appeals.

The question involved is one of fact. The testimony consisted of evidence of the value of the columns—the seven being shown by the invoice to be worth $1,563—photographs of the articles, and the testimony of a professional sculptor. The board, in discussing the case, said:

> Some testimony was given, and a photograph of the article was produced in evidence, which shows it to be an elaborately carved column or standard * * *. The testimony of the witnesses tends to show that it is artistic and made by a professional sculptor. It is made out of solid marble, and in our judgment conforms to the requirement in said paragraph 470.

The photograph fully accords with the statement made, and the statement that the columns are produced from solid marble is unchallenged. It is claimed, however, that the testimony of the sculptor called as a witness is not convincing. He testified in part as follows:

> Q. What sort of an examination did you make?—A. Well, I looked them over thoroughly, examined the workmanship, general character of the work, and the material, and the effect of the whole.
>
> Q. What did you find as to the character of the articles in the relief upon this Exhibit 1?—A. I should judge it a very good work.
>
> Q. Did they show leaves or animal life or what?—A. Showed leaves and animal life, as I remember.
>
> * * * * * * *
>
> Q. Will you state briefly what you consider, as an expert, sculpture is? * * *.—A. I should think anything that was marble and carved: any material whether in stone or bronze work I consider sculpture.
>
> Q. Does it have to show artistic skill and ability?—A. Well, I should judge the work would have to show some ability to be considered a good sculpture, and others might be considered very bad sculpture.
>
> Q. Is there anything about these articles that enables you to say whether or not it is sculpture?—A. I should consider it sculpture, a good sculpture of the character of that work. It strikes me as very well done.
>
> Q. Did you have any particular reason to say why you consider it sculpture?—A. No.
>
> Q. Do you recognize whether there are degrees of sculpture or not?—A. Yes, sir.
>
> Q. High and low degree and middling ground?—A. Yes.
>
> Q. To which would this article belong?—A. I consider it very good.
>
> * * * * * * *
>
> Q. Can you state from an examination that you have made whether that was produced by a professional sculptor?—A. I should judge he would have to be a professional man to do that kind of work.

Q. Did it reflect the genius of the man?—A. Reflected a great deal of ability.

Q. Do you see any difference between these seven articles that you examined?—A. Why, it struck me there was some difference in the technique; in the handling of the carving there was a slight difference.

Q. Was that any guide to you whether or not that was the work of a professional sculptor?—A. Yes, sir.

Q. Why?—A. On account of the different handling, different technique in each separate piece.

Q. Showed personal application?—A. Yes, sir.

By Mr. PAYNE. You stated to your counsel that you saw some indication that it was done by a professional scultor?—A. Yes, sir.

Q. What do you mean by a professional sculptor?—A. A man that has practiced in that way for years; done nothing but that.

Q. How would you distinguish between a professional sculptor and an artisan in a sculptor's studio who was a skilled artisan and carried out the designs of an artist?—A. It is in the quality of his work.

Q. Where would you draw the dividing line between a skillful artisan and a professional sculptor, if you think there is a distinction?—A. I don't know whether I could describe it. If I saw it, I could tell the difference, and a professional man would, between a sculptor's and an artisan's work. There is a difference—I mean in the way it is done, technique or effect of it.

Q. Will you tell me briefly what characteristics a piece would show that would determine—what is the evidence of a difference (in) techinque, for instance?—A. Better technique would have life in it, would have more the individual force of the artist, while the artisan's work might be very hard and more mechanical.

Q. Wouldn't that apply more to the design from which the work was done—would a faithful artisan, a skillful artisan, faithfully carrying out a design, express those things?—A. He would follow the model. An expert carver would follow faithfully the model.

Q. Then wouldn't this last distinction apply rather to the question whether or not the design had been made by what you would term an artist rather than an artisan?—A. Well, I judge the model would have to be made by an artist also.

Q. Not knowing who made the design and not knowing who executed the design in marble, is it not very difficult to determine with any degree of accuracy by looking at a finished marble whether or not it had been executed by the artisan who had worked for a long time and had become skillful under the supervision of a professional sculptor or whether it had been done by the hand of the sculptor himself?—A. Well, that would be—you could tell the difference, I think. I can. If I had my work reproduced by a good carver or a mechanic, there would be a big difference, which I would recognize immediately.

Q. Don't you know, as a matter of fact, from your experience that there are in some of the countries certain sculptors who have large studios and workshops in which they employ a good many, or a number, of skilled artisans and that they make designs and there are reproductions of those designs by the artisans in large numbers, sometimes half a dozen, sometimes more, carrying out these designs, not done by the sculptor himself, but done by his employees; is that not a fact?—A. His employee would be considered a sculptor.

Q. You would consider all that work as the work of a professional sculptor?—A. Yes; I should judge so.

Q. You stated that you saw indications of a variation in the various pieces?—A. Yes; I did notice such.

Q. Did that variation lead you to the supposition that they had all been done by one man or different persons at work on them, or was that not sufficient to draw any deduction from?—A. I would not be able to draw any deduction from that.

* * * * * * *

By Mr. HAMPTON: Counsel interrogated you about the men in the studio of the professional artist or sculptor. I understood you to say that you considered them to be sculptors?—A. Yes.

Q. Do you mean that they must have some professional skill to be in that position?—A. They do.

Q. Can you distinguish these men that counsel interrogated you on from the others who do but mechanical work?—A. Yes; I would.

Q. How are you able to distinguish them, will you state?—A. Well, from the character of the work they generally do; that is the distinction.

It is claimed that this testimony indicates that the witness understood that a mere artisan was a sculptor. We do not think his tes-

timony, taken as a whole, necessarily leads to this conclusion. It is open to the view that he was, in his cross-examination, speaking of workmen who were capable of producing such high-class sculpture as he apparently thought that here in question to be. In other portions of his testimony it will be noted that he judged the work to be that of a professional man, and that it represented a great deal of ability, and that his guide in this was the different handling, the different technique in each piece, and that he could by inspection see the difference between the work of an artisan and a sculptor.

On the whole record we are unable to say that the finding of the board is clearly against the weight of the testimony.

Affirmed.

EXHIBIT 25.

(T. D. 34136.)

Mill buttings.

UNITED STATES *v.* SAUNDERS *et al.* (No. 1244).

MILL BUTTINGS—FIREWOOD.

The evidence here is that not over 30 per cent of these importations is suitable for or is used for making matches, and that the remainder is used for firewood. The merchandise—ends cut from deals or planks—should be classified as firewood, and was entitled to free entry.

United States Court of Customs Appeals, January 22, 1914.

APPEAL from Board of United States General Appraisers, Abstract 33069 (T. D. 33644).

[Affirmed.]

William L. Wemple, Assistant Attorney General (*Frank L. Lawrence*, special attorney, on the brief), for the United States.

Brown & Gerry for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

BARBER, Judge, delivered the opinion of the court:

The question here is whether so-called mill buttings are entitled to free entry under paragraph 712 of the tariff act of 1909 or dutiable under paragraphs 201 or 479 of the same act. The material portions of the paragraphs are here inserted:

201. * * * Sawed lumber, not specially provided for in this section, one dollar and twenty-five cents per thousand feet, board measure.

479. Waste, not specially provided for, ten per centum ad valorem.

712. Wood; logs and round unmanufactured timber, including pulp woods, firewood, * * *.

The case involves two appeals, the collector having assessed the merchandise, which is the same in each case however, in one instance under paragraph 201 and in the other under paragraph 479. The board reversed the collector and sustained the protests.

These mill buttings consist of the ends cut from deals or planks manufactured in Canada for the English market. The logs from which the deals are sawed are cut a little longer than the deals themselves These logs are evidently floated downstream to the

sawmill, and, as a quite natural result of this method of transportation, the ends of the logs become bruised or injured and after the deals are sawed therefrom they are butted, the product being the merchandise here.

The samples used as exhibits in the case vary from 4 to 10 inches in length, running with the grain of the wood, from 8 to 12 inches in width, and all are 3 inches thick, but the evidence shows that some are 3 feet in length. The only use made of these deal ends in Canada is for firewood and they are used there for that purpose.

The importations before us were in carload lots and were sold to the Ohio Match Co.

The Government contends that the evidence shows that the particular importations were wholly for the purpose of making matches, and, further, that it fails to show that they were firewood or were intended to be so used.

As we understand the evidence, it is to the effect that not only these particular importations but many others have by the Ohio Match Co. been taken to their factory and such pieces as were of sufficiently good quality used in the manufacture of matches; that the balance was sold or used for firewood; and that the importers have sold some importations, not perhaps those involved in this case, but of like nature, for firewood.

The Board of General Appraisers in G. A. 6573 (T. D. 28070), which apparently involved merchandise like these mill buttings, held they were entitled to free entry as pulp wood under paragraph 699 of the act of 1897, it appearing in that case that they were used for that purpose.

In T. D. 32926 apparently like merchandise was claimed and by the board held to be entitled to free entry under paragraph 712 of the act of 1909, hereinbefore quoted, and in sustaining the protests here the board rely upon the authority of those cases.

In the board decision first above mentioned, reference is made to T. D. 25166, where spruce sticks or logs about 10 inches in diameter, cut into lengths of from 2 to 2½ feet and rossed, and which were shown to be chiefly if not solely used to make wood pulp, were held entitled to free entry under paragraph 699 of the act of 1897, which ruling was affirmed in United States *v.* Pierce (140 Fed., 962, and again in 147 Fed., 199).

In the case at bar the board has found that the merchandise is used for firewood and match blocks. We think the evidence supports the finding and that the finding is to be construed in the light of the evidence, which is that not over 30 per cent of these importations is suitable for or is used for matches and that the balance is used for firewood.

The Government relies somewhat upon T. D. 20100, where certain mill buttings were held dutiable at 20 per cent ad valorem as match blocks under paragraph 200 of the act of 1897, relating to certain blocks and all other "like blocks or sticks," as against the claim for free entry as firewood. That case, as we read it, related to importations of assorted mill buttings, all of which were found to be match blocks suitable for the purpose of that manufacture and not firewood, and therefore seems to distinguishable from the case at bar.

We are of opinion, after a review of all the authorities cited and in view of the facts here, that this merchandise should be classified as

firewood and entitled to free entry. Were not firewood upon the free list it might appropriately be dutiable as waste under paragraph 479, but Congress has seen fit to give free entry to firewood and we think its mandate is properly invoked in this case.

The judgment of the Board of General Appraisers is *affirmed.*

EXHIBIT 26.

(T. D. 34443.)

Herrings.

UNITED STATES *v.* MILLER & TOKSTAD *et al.* (No. 1294). UNITED STATES *v.* MOOS & CO. *et al.* (No. 1302). UNITED STATES *v.* STROHMEYER & ARPE CO. (No. 1324).

HERRINGS UNDER PARAGRAPH 272, TARIFF ACT OF 1909.

In view of the decisions of the courts and Board of General Appraisers and in view of departmental rulings besides, it must be taken that the various small fish of the several importations come within the provision for herrings in paragraph 272, tariff act of 1909, and not within paragraph 270 of that act, as fish packed in tin boxes or cans.

United States Court of Customs Appeals, May 4, 1914.

APPEALS from Board of United States General Appraisers, G. A. 7504 (T. D. 33815), Abstract 34000 (T. D. 33848), Abstract 34389 (T. D. 34033).

[Affirmed.]

William L. Wemple, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel), for the United States.

B. A. Levett and *Brown & Gerry* for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

Three appeals from as many decisions of the Board of General Appraisers covering importations of fish in tins.

In United States, appellant, *v.* Miller & Tokstad *et al.*, appellees, the imported merchandise consisted of the following classes: (1) Fish described in the invoices as herrings; (2) fish described in the invoices as mackerel; and (3) fish described in the invoices as sardines put up in bouillon, tomato sauce, vinegar, or mustard sauce.

In United States, appellant, *v.* Moos & Co. *et al.* (Von Bremen, Asche & Co.), appellees, the merchandise consisted of sprats and smoked sardines in tomato sauce in tins.

In United States, appellant, *v.* Strohmeyer & Arpe Co., appellees, the merchandise consisted of sprats in tomato sauce and anchovies salted and spiced in tins.

All of the merchandise above described was assessed with duty at the rate of 30 per cent ad valorem as "fish * * * packed in * * * tin boxes, or cans," under the provisions of paragraph 270 of the tariff act of 1909, which reads:

270. Fish (except shellfish) by whatever name known, packed in oil, in bottles, jars, kegs, tin boxes, or cans, shall be dutiable as follows: When in packages containing seven and one-half cubic inches or less, one and one-half cents per bottle, jar, keg, box, or can; containing more than seven and one-half and not more than twenty-one cubic inches, two and one-half cents per bottle, jar, keg, box, or can;

containing more than twenty-one and not more than thirty-three cubic inches, five cents per bottle, jar, keg, box, or can; containing more than thirty-three and not more than seventy cubic inches, ten cents per bottle, jar, keg, box, or can; all other fish (except shellfish) in tin packages, thirty per centum ad valorem; fish in packages, containing less than one-half barrel, and not specially provided for in this section, thirty per centum ad valorem; caviar, and other preserved roe of fish, thirty per centum ad valorem.

As to the classes of merchandise 1 and 2, the subject of the first-stated appeal, the following stipulation was entered into:

It is hereby stipulated and agreed that the merchandise described on the invoices covered by the below-numbered protests as fried herrings in bouillon, smoked herrings in tomato sauce, smoked herrings in tomato, fat herrings in bouillon, and merchandise described as herrings in protest 558916, is herrings, smoked; that the merchandise described as herrings in tomato, tomato herrings, herrings in tomato sauce, and fresh herrings in tomato sauce is herrings, salted; and that said merchandise is of the same dutiable character as that passed on by the Board of United States General Appraisers in G. A. 7380 (T. D. 32680); * * * that the merchandise described as marinated mackerel is mackerel, pickled.

No controversy was waged in this court as to the dutiable classification of these two classes of merchandise. The decision of the Board of General Appraisers was to the effect that the herrings were dutiable at the rate of one-half of 1 cent per pound under the provision for "herrings, pickled or salted, smoked or kippered," in paragraph 272 of the tariff act of 1909, and that the mackerel were dutiable at the rate of 1 cent per pound as "mackerel, * * * pickled," under paragraph 273 of said act. This decision is in accordance with the decision of this court in Ahlbrecht & Son *v.* United States (2 Ct. Cust. Appls., 471; T. D. 32226). The remaining class of merchandise covered by that appeal, together with that the subject of the other appeals stated, was claimed by the importers to be properly dutiable as herrings at the rate prescribed, according to condition, as provided for in paragraph 272 of said act, which reads as follows:

272. Herrings, pickled or salted, smoked or kippered, one-half of one cent per pound; herrings, fresh, one-fourth of one cent per pound; eels and smelts, fresh or frozen, three-fourths of one cent per pound.

The weights and condition of the merchandise covered by the protests were duly set out in the opinion of the Board of General Appraisers in accordance with stipulations found in the record and need not here be repeated.

Eliminating these descriptive details there is presented to this court for decision the one question whether or not the various descriptions of fish above given are "herrings" as that term is used in paragraph 272 of the tariff act of 1909.

The relative specificity of the provisions of the two competing paragraphs, 270 and 272, and the scope of each has been the subject of previous decisions of this court. United States *v.* Rosenstein (1 Ct. Cust. Appls., 304; T. D. 31357); Ahlbrecht & Son *v.* United States (2 Ct. Cust. Appls., 471; T. D. 32226); United States *v.* Smith & Nessle Co. *et als.* (4 Ct. Cust. Appls., 70; T. D. 33312); United States *v.* Haaker & Co. *et als.* (4 Ct. Cust. Appls., 471; T. D. 33884). It may therefore be regarded as settled that the term "herrings" as used in paragraph 272 is more specific than the term "fish * * * packed in * * * tin boxes, or cans" as used in paragraph 270.

That being regarded and treated as *stare decisis* the Government undertook at the trial below to show that the term "herrings" as used in paragraph 272 was employed in a commercial sense and that

it should be applied to a certain, uniform, and definite class of fish which excluded those enumerated as the subjects of these appeals. The board found that the proof offered by the Government failed to establish such a commercial understanding or usage. An examination of the record discloses that this finding of the board is amply justified by the testimony in the case. Indeed, every witness produced by the Government in his testimony seemed rather to dispute than to establish any such uniform and general trade understanding or usage.

We are therefore left to determine whether or not the word "herrings," as used in paragraph 272, in its common and ordinary acceptation includes the above enumerated fish, the subject of these appeals.

While the trade testimony introduced by the Government failed to establish a general, uniform usage which assigned to the word "herrings" a definite class of fish, which excluded therefrom sprats, sardines, and anchovies, the testimony offered did establish *pro tanto* that among merchants dealing for many years in these variously named fish it was commonly understood by them that the sardines, anchovies, and sprats imported into this country and put up in the manner as was this imported merchandise are all deemed to belong to the class of fish commonly known as herrings. It is unnecessary for the purposes of this case to analyze in detail the testimony in the record, the result of which would be but an extended and unprofitable review of evidence which amply, and we think unquestionably supports the above statement.

The record contains also much evidence as to the scientific understanding of the relationship of the respectively enumerated fish. Some of the controversy was had by reason of the inaccuracy of the record in the first instance to properly express the scientific testimony given by one of the witnesses who is a recognized authority upon the subject. Corrections have been made by stipulation of the respective parties and presented as a part of the record in this court, and when examined in connection with the recognized standard works on the subject pertinent excerpts from which were likewise properly introduced in the case, a general and uniform result is produced. The herring is scientifically known as *Clupeidae*. That is the family name. Included within this family name are different genera of *Clupeidae* or *Clupea*, which in turn respectively embrace various species. Thus, there is the *Clupea spratus*, which is a species of herring known as the bristling or sprat. These imported anchovies seem to be but bristlings or sprats put up in a certain way. The *Clupea pilchardus*, or pilchard, which comes from the Mediterranean and is the true sardine, while classed by some authorities as of the genus *Clupanodon* and others *Clupea* nevertheless comes in the *Clupeidae* or herring family. So there is the *Clupea* herrings and *Clupea pallassi* or California herring—all of the *Clupeidae* or herring family. Upon the whole it satisfactorily appears from the record that all the classes of fish covered by these importations are of the herring or *Clupeidae* family.

Lexicographic authority brings us to the same conclusion. Thus sardines are defined in the Standard Dictionary as—

> One of various small clupeoid fishes preserved in oil as a delicacy, especially the European pilchard (*Clupea pilchardus*). * * * The young of the herring * * *.

Likewise the sprat is mentioned in the Standard Dictionary as the young of the herring.

The briefs in this court refer *in extenso* to the departmental holdings upon this subject. They, likewise, with much industry and thoroughness review the decisions of the Board of General Appraisers and of the courts. While there may be found some expressions of divergence from that view, upon the whole it quite uniformly appears to have been held for a long period of time by the department, the Board of General Appraisers, and the courts that the word "herrings" as used in many preceding tariff acts included sprats, sardines, and anchovies. Whatever may be said in criticism of the completeness of the uniform trade references, or the scientific understanding, or the departmental and judicial view upon the subject, there seems to be no escape from the conclusion that it is fairly established by a great preponderance of the evidence in the record and emphasized throughout these various sources that in common understanding the word "herrings" includes the various species of fish as imported in these cases.

We are the more impressed with this conclusion and that it was the view taken by the Congress upon the enactment of the respective paragraphs of the tariff law under consideration by a reference to "Notes on Tariff Revision." With these notes before it for information and guidance the Congress enacted the respective competing provisions of the tariff act under consideration.

Under the head of general information, at page 318, "Notes on Tariff Revision," it is stated:

> The *anchovy* is a small, richly flavored, herring-like fish caught in the waters of southern Europe. * * *
>
> The *sprat* is a small European herring, also called garvie. It is allied to the common herring and sardine or pilchard.
>
> *Bristlings* are a small European herring, usually brought into this country canned, and probably sold as sardines or sardelles.

It is significant that in the corresponding paragraph of the tariff act of 1897, which was paragraph 258, paragraph 270 read:

> Fish known or labeled as anchovies, sardines, sprats, bristlings, sardels, or sardellon, * * *.

With the above-quoted information before them Congress omitted these enumerations of fish from the act of 1909. Under the circumstances, with the information above quoted before them, taken in connection with the decisions of the courts, Board of General Appraisers and departmental rulings, of which they are deemed to take notice, there would seem to be no escape from the conclusion that by striking these words from the paragraph providing for fish packed in tin boxes or cans Congress must have known and intended that such importations would thereafter fall within the provision for herrings in paragraph 272, and we are of the opinion that upon the whole Congress so contemplated.

Affirmed.

EXHIBIT 27.

(T. D. 33478.)

Lacquered metal boxes.

WOOLWORTH & CO. *v.* UNITED STATES (No. 1020).

CONTAINERS UNDER PARAGRAPH 195, TARIFF ACT OF 1909.

The legislative history of this paragraph makes it clear that containers under paragraph 195, tariff act of 1909, are such as are ordinarily employed in the transportation of merchandise. The goods of the importation are not containers in that sense.

United States Court of Customs Appeals, May 23, 1913.

APPEAL from Board of United States General Appraisers, G. A. 7391 (T. D. 32821).

[Reversed.]

Walter Evans Hampton for appellants.

William L. Wemple, Assistant Attorney General (*Thomas J. Doherty*, special attorney, of counsel), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

The importation was of small lacquered metal boxes, having a slit in the top and a lock thereupon accompanied by a key. They were classified for dutiable purposes by the collector at the port of New York under the provisions of paragraph 195 of the tariff act of 1909, which reads as follows:

195. Cans, boxes, packages, and other containers of all kinds (except such as are hermetically sealed by soldering or otherwise), composed wholly or in chief value of metal lacquered or printed by any process of lithography whatever, if filled or unfilled, and whether their contents be dutiable or free, four cents per pound and thirty-five per centum ad valorem: *Provided*, That none of the foregoing articles shall pay a less rate of duty than fifty-five per centum ad valorem; but no cans, boxes, packages, or containers of any kind, of the capacity of five pounds or under, subject to duty under this paragraph, shall pay less duty than if the same were imported empty; and the dutiable value of the same shall include all packing charges, cartons, wrappings, envelopes, and printed matter accompanying them when such cans, boxes, packages, or containers are imported wholly or partly filled with merchandise exempt from duty (except liquids and merchandise commercially known as drugs) and which is commonly dealt in at wholesale in the country of original exportation in bulk or in packages exceeding five pounds in capacity: *Provided further*, That paper, cardboard or pasteboard wrappings or containers that are made and used only for the purpose of holding or containing the articles with which they are filled, and after such use are mere waste material, shall not be dutiable unless their contents are dutiable.

They are claimed by the appellants, the importers, to be dutiable under the provisions of paragraph 199 of that act as manufactures of metal not specially provided for; or, in the alternative, under the provisions of paragraph 431 of that act as toys. The Board of General Appraisers overruled the protest and errors are assigned to this court.

One assigned error is that the Board of General Appraisers erred in not admitting testimony that these articles were sold in the toy departments of certain retail stores and testimony that they were ordered by wholesale houses in this country from abroad as "toys."

The court is of the opinion that if any error were committed by the board in sustaining objections to these proffers of testimony it was

immaterial error. It is conceded by counsel for appellant in his brief that he was not attempting to show commercial designation. In the record is set forth the character and uses of the articles themselves. It is stated by the appellant in his brief that they are used "for holding a variety of articles in ordinary everyday personal transactions; also to amuse children in their play, as an examination of the article clearly indicates." An examination of the articles further indicates that they are of a class of merchandise encountered in our everyday observations in hardware and other stores which are made and used for a great variety of purposes other than for the amusement of children and are articles of common demand and sale.

We are satisfied from this admission of counsel, the appearance of the articles themselves, and the testimony in the case, that they are not toys within that term as used in the tariff act and construed by this court. It was, therefore, immaterial that evidence going to show the same, *other than evidence of commercial designation*, was excluded by the board. The board was of the same opinion, stating "it clearly appears that the articles are not toys."

They were classified by the Board of General Appraisers for dutiable purposes as "containers" under the provisions of said paragraph 195.

The contention made by the appellants, both before the board and this court is that the provisions of paragraph 195 relate to such containers only of the character therein described which are ordinarily employed as containers or holders *in the transportation* of merchandise. The Board of General Appraisers declined to accept this view of the statute. The board based its rulings chiefly upon the construction previously given paragraph 99 of the tariff act of 1897, wherein bottles were provided for, restricted by the same phrase. The board states:

> The rulings under the life of that act did not exclude on that account such bottles as were ordinarily employed otherwise than as containers for the holding or transportation of merchandise.

It is then pointed out that bottles used in chemical operations, such as Woulff flasks or Koch flasks, were held dutiable under this provision of the law, which holding was on appeal affirmed in Eimer & Amend *v.* United States (126 Fed., 439; T. D. 25112). It is then stated that to meet this decision Congress in the act of 1909 enacted a provision to the contrary with reference to such chemical containers. The inference drawn by the board is that as Congress did not likewise modify paragraph 195 of the present tariff act the construction of paragraph 99 of the tariff act of 1897 should obtain. This process of legal logic rests the decision upon a principle of construction and that mainly upon other paragraphs of the act. Where, however, the law contains express words indicative of a legislative intent and leading to a certain conclusion, construction may not be resorted to for a contrary conclusion.

> The statute itself furnishes the best means of its own exposition; and if the intent of the act can be clearly ascertained from a reading of its provisions, and all its parts may be brought into harmony therewith, that intent will prevail without resorting to other aids for construction.

Lewis's Sutherland Statutory Construction, volume 2, section 348.

We are satisfied that paragraph 195 contains intrinsic evidences in the express words of the act that conduce to the conclusion above

reached. The words are "cans, boxes, packages, *and other containers of all kinds.*" The insertion of the words "other containers," thereby impressing upon the legislative provision a character thereby limited in accordance with the rule of *ejusdem generis*, must be given some effect. This is particularly true as will hereafter be shown in view of the manner in which those words made their appearance in the law during its enactment.

The obvious purpose of Congress seems to have been to confine the operation of the paragraph to containers. This court in Illfelder & Co. *et al. v.* United States (2 Ct. Cust. Appls., 299; T. D. 32040), in construing paragraph 195 and its relation to subsection 18 of section 28 of the act, held that paragraph 195 carved out of said subsection 18 the special classes of containers enumerated in paragraph 195. The underlying principle of that case was that the articles provided for in both provisions of the law were alike as to whether or not they were containers. The containers, the subject matter of said subsection 18, were by the express terms of that act limited to those containers used for the transportation of goods.

When we turn to paragraph 195 we find similar evidences of the legislative intent. One of the conditions provided in that paragraph as to the merchandise the subject thereof is related only to merchandise in the course of *import* transportation. It is said by the legislature that the provisions shall apply to the described articles "and whether their contents be dutiable or free." If the legislative mind was dwelling upon goods to which this phrase would be applicable it must have been dwelling upon goods in the course of import transportation. It would hardly be suggested that the legislature was inserting this condition in an act which contemplated goods which were not in the course of import transportation.

The whole framework of the paragraph is related expressly to merchandise used during transportation and at the time of importation.

The fact that these boxes are provided with a slot within which money and other articles may be deposited, and with a lock and key for their safe-keeping, indicates a use other than in the course of transportation. So, too, their ornamental character indicates a different character to be applied to them in actual use rather than to the uses of transportation. So the remaining provisions of paragraph 195, and each of them, contain language relating to these containers which relate the application of the statute to them while and as being imported.

The provision originated in the Senate and in lieu of the words "containers of all kinds" in its earlier legislative stages was related to the words "packages of all kinds." Before its final passage, however, the latter words were eliminated and the former substituted.

This adoption of the language of subsection 18 of section 28 of the act as denominative of the subject of this dutiable provision brought with it, when read in connection with the remainder of the paragraph the limitation stated.

Furthermore, it was necessary in order to address the language of enactment to containers or coverings only as distinguished from their contents, to insert the words "filled or unfilled," which office of these words was filled by other similarly effective words in said subsection 18.

For these reasons we are of the opinion that the application of paragraph 195 should be restricted, and is by the express language thereof restricted, as hereinbefore indicated. It follows that the decision of the Board of General Appraisers should be, and is, *reversed.*

EXHIBIT 28.

(T. D. 33836.)

St. John's bread.

UNITED STATES *v.* WINTER & SMILLIE (No. 1132).

LOCUST BEANS CHOPPED INTO COARSE PIECES.

The locust pods had been chopped into coarse pieces, the pith and seed being indiscriminately mixed together, but relatively few of the seed being broken in the process and nothing being taken away. The importation is accordingly not to be deemed a manufacture, but rather as by its collective name it is designated "St. John's bread." It was entitled to free entry.

United States Court of Customs Appeals, October 24, 1913.

APPEAL from Board of United States General Appraisers, Abstract 31521 (T. D. 33242.)

[Affirmed.]

William L. Wemple, Assistant Attorney General (*Frank L. Lawrence*, special attorney, on the brief), for the United States.

B. A. Levett for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MARTIN, Judge, delivered the opinion of the court:

The merchandise now before the court consists of locust pods chopped into coarse pieces, the pith and seeds being indiscriminately mixed together.

The importers claim that the article is St. John's bread or bean, and therefore entitled to free entry under the *eo nomine* provisions of paragraph 668 of the tariff act of 1909. The appraiser reported the merchandise as St. John's bread, but furthermore reported that the chopping process had destroyed the beans as seeds; he therefore made return that the importation was not entitled to free entry under paragraph 668, but was dutiable as prepared edible fruit at 2 cents per pound under paragraph 274 of the act. Duty was assessed upon the article in accordance with this return.

The importers duly filed their protest against the assessment and the same was submitted to the Board of General Appraisers and was sustained. From that decision of the board the Government now prosecutes this appeal.

The following is a copy of paragraph 668, act of 1909, under which the importers claim:

668. Seeds: Anise, canary, caraway, cardamom, cauliflower, coriander, cotton, cummin, fennel, fenugreek, hemp, hoarhound, mangel-wurzel, mustard, rape, Saint John's bread or bean, sugar beet, sorghum or sugar cane for seed; bulbs and bulbous roots, not edible and not otherwise provided for in this section; all flower and grass seeds; evergreen seedlings; all the foregoing not specially provided for in this section.

There was no oral testimony submitted at the hearing before the board, but a sample of the importation was placed in evidence and the same is now before the court. An inspection of the sample discloses the fact that the dry pith of the locust pods has been cut into coarse pieces, but that the seeds are almost entirely intact, relatively few of them having been broken by the process. Moreover, the broken seeds are so nearly entire that they may not have lost the capability of germination. Therefore the finding upon which the appraiser rested his return is negatived by an inspection of the exhibits.

The Government, however, contends that paragraph 668 of the free list relates exclusively to seeds alone, and therefore that the name St. John's bread or bean, therein appearing, applies only to the seeds of the locust pod and not to the pith and seeds when mixed together. This claim concerning the meaning of the name in question may best be answered by the following authorities:

The New International Encyclopædia—

Carob, algaroba, locust tree.—* * * The seeds are bitter and of no use, but the sweet pulp renders the pods an important article of food to the poorer classes of the countries in which the tree grows, as they contain as much as 60 per cent of sugar. They are very much used by the Moors and Arabs. They are also valuable as food for horses and cattle, for which they are much employed in the south of Europe, and have of late years begun to be extensively imported into Great Britain under the name of locust beans or Saint John's bread. * * *

Encyclopædia Britannica—

Locust tree, or carob tree.—* * * The pods are eaten by men and animals, and in Sicily a spirit and a syrup are made from them. These husks being often used for swine are called swine's bread, and are probably referred to in the parable of the Prodigal Son. It is also called St. John's bread, from a misunderstanding of Matt. iii, 4. * * *

Century Dictionary and Cyclopedia—

Carob bean, n. The pod or fruit of the carob; St. John's bread.

Murray's New English Dictionary—

Carob.—* * * 1. The fruit of an evergreen leguminous tree (*Ceratonia siliqua*), carob tree, a native of the Levant; a long flat hornlike pod containing numerous hard seeds embedded in pulp. Also called *carob bean, carob pod.* Generally identified with the "husks" eaten by the prodigal in the parable, Luke XV, 16; and by some taken to be the "locusts" eaten by John the Baptist, whence the names *Locust pods* and *St. John's bread.*

From the foregoing extracts it seems clear that the name "St. John's bread" applies to the entire pod of the carob and that the origin of the name relates especially to the edible pith rather than to the seeds as such. This meaning is so well established that it should prevail against the construction of *ejusdem generis* presented by the Government. Congress evidently intended to include both pod and seeds as one article under that name.

The following reference to this subject is found in Notes on Tariff Revision (p. 787):

St. John's bread, or carob bean, or algaroba bean, is the fruit of the carob tree, which grows along the Mediterranean. These beans are sometimes imported into this country as a food for horses. There were no importations in 1907.

As already stated, the present importation is a mixture of chopped pith and seeds, and the question arises whether or not it is properly

a manufacture of carob pods rather than St. John's bread itself. The record gives no information concerning the form in which the article is commonly imported. It does not appear, however, that the present mixture differs in collective name, character, or use from the entire pods. The only difference is that the pods have been coarsely chopped into fragments; but these have all the uses of the entire pods, and no more. Nothing has been added in substance to the pods by this process and nothing taken away; and the material in hand rightly seems to be covered by the same collective name which applies to the pods themselves. On this state of the record the court does not incline to a reversal of the board's decision, and the same is therefore *affirmed.*

EXHIBIT 29.

(T. D. 33939.)

Unmanufactured reeds.

UNITED STATES *v.* WINTER & SMILLIE (No. 1206).

REEDS UNMANUFACTURED AND IN THE ROUGH.

Reeds imported in the rough in the crudest form in which such reeds are imported are unmanufactured, and fall within the terms of paragraph 713 of the act of 1909 for "reeds unmanufactured * * * or not further advanced than cut into lengths suitable for sticks for umbrellas, parasols, sunshades, etc.," although not suitable for sticks, etc. The fact that a further provision or exception extended the paragraph to reeds partly manufactured, to wit, when advanced but not further than cut into lengths suitable for sticks, etc., does not exclude the importation in question therefrom. The further provision was not designed as restrictive, but the words employed are words of extension.

United States Court of Customs Appeals, November 28, 1913.

APPEAL from Board of United States General Appraisers, Abstract 32085 (T. D. 33362).

[Affirmed.]

William L. Wemple, Assistant Attorney General (*Charles D. Lawrence*, special attorney, on the brief), for the United States.

B. A. Levett for appellees.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The merchandise the subject of controversy in this case is reported by the appraiser to consist of round reeds manufactured from rattan, measuring less than 7 millimeters in diameter. The testimony introduced in the record shows that the merchandise in its present form is properly designated as a reed, and counsel for the Government concedes that it should be so treated on the strength of earlier decisions relating to this class of merchandise. The finding of the board is that it is the crudest form of reed imported, and this finding is fully sustained by the testimony. It is, as reported, less than 7 millimeters in diameter. It is not suitable for sticks for umbrellas,

parasols, or sunshades. The question presented is whether it is classifiable under the provision of paragraph 212, which reads:

> Chair cane or reeds wrought or manufactured from rattan or reeds, * * * 10 per centum ad valorem—

or as free of duty under paragraph 713 as—

> Rattan, reeds unmanufactured * * * or not further advanced than cut into lengths suitable for sticks for umbrellas, parasols, sunshades, whips, fishing rods, or walking canes.

The board held the article entitled to free entry on the authority of Foppes *v.* Magone (40 Fed., 570). In this case it was said:

> It appears * * * that the core or central part of the rattan which is left after the stripping, is known in trade and commerce, and was for many years prior to the passage of the act of 1883 well known in trade and commerce, as a "reed." Upon that point there is no dispute on the testimony. It appears, then, that when the rattan has gone through this first transformation there is left the external rind, cut into narrow strips, and the inner core, which is commercially a "reed," and which, therefore, must be taken to be a reed within the meaning of the tariff act. With it as a reed, then, we are concerned. If it is a reed, unmanufactured, it comes in free; if a reed, manufactured, it should pay 10 per cent duty. Now, the central core or round reed * * * is in the same condition in which nature produced it, except that the outer covering or enamel, which made it a rattan, has been stripped off. Nothing other or different has been done to it than that. In other words, it is one of the products of the first process of manufacture to which the rattan is subjected; and when that first process is completed, and this product, the reed, is produced, it is a reed, pure and simple, and in the first condition in which a reed, as such, is known to the tariff. I can not see, therefore, that the round reeds can fairly be held to be "reeds manufactured."

This statement accurately describes the importation here under consideration, and except for the contention of the Government that it should be distinguished because of modifications of the tariff law and of later decisions would be persuasive, if not controlling. Government counsel, however, contends that the case should be distinguished and has been distinguished by the board and the courts in cases arising under statutes later than that there considered, including the act of 1909.

Certain results may be stated as having been reached, first, that the hard substance of the reed produced as the present reed is from rattan and of a size suitable for sticks, etc., has generally been held free of duty, and later, upon fuller records, the soft pith has been likewise held free of duty when of a size admitting of its being used for sticks for umbrellas, canes, etc. But in some of the board cases the crude pith or reed less than 7 millimeters in diameter has been held unsuitable for sticks and not entitled to free entry.

There has been some confusion in the cases. To illustrate: In G. A. 761 (T. D. 11586) an opinion by Wilkinson, General Appraiser, in construing paragraph 229 of the act of 1890, which provided for chair canes or reeds wrought or manufactured from rattan or reeds, and whether round, square, or any other shape, 10 per cent ad valorem, in connection with a provision in the free list (paragraph 756) for reeds in the rough or not further manufactured or cut into lengths suitable for sticks, etc., it was said:

> Paragraph 229 provides for "chair cane, or reeds, wrought or manufactured from rattans or reeds." We are of the opinion that the correct construction of this paragraph is "chair canes or chair reeds," for any other rendering would lead to such absurd phraseology as "reeds wrought or manufactured from reeds." As the rattans in question are not chair canes or reeds, the classification under paragraph 229 was erroneous.

This decision was announced in 1891. In 1892, in G. A. 1665 (T. D. 13244), it was said:

> Rattans with the bark or skin peeled off are known as reeds. Those reeds may be and are often converted by one or more drawings through cutting machines into smaller reeds, round, oval, square, or flat. A reed wrought from rattan may thus be manufactured into small reeds, such as the "Chinese reed," which is used in making brooms, or the reed winding, which is used in the manufacture of chairs, baby carriages, etc.
>
> Paragraph 229 says: "Chair cane or reeds, wrought or manufactured from rattan or reeds." A construction of the paragraph to better exhibit the intent of Congress would be "chair cane and reeds, wrought," etc.
>
> Paragraph 756 provides for reeds in the rough not otherwise specially provided for or not further manufactured than cut into lengths suitable for sticks for whips, etc. The only reeds in the rough which have come under our observation are reeds made from rattans, but as they are specially provided for without any limitation in paragraph 229 the exemption does not operate in their favor.

The board, however, held in further discussion that the provision for reeds which were suitable to cut into lengths for sticks or whips was a controlling provision and that stock of that character was entitled to free entry. The reason for a departure from the construction which was placed upon paragraph 229 in the earlier decision and the adoption of the altogether arbitrary one of substituting the construction "chair cane and reeds wrought" in place of the language employed by the paragraph is not stated. Nor is it clear how it could be consistently said that the crudest form of reeds were specially provided for as reeds wrought, but that the same n. s. p. f. provision should not be extended to include such material which might be cut into sticks or whips, etc., and thus further advanced.

But the case cited by and relied upon by the Government of Foppes *v.* United States (154 Fed., 866) does not rest upon any distinction between reeds which are suitable to be cut into lengths for sticks or whips and other reeds in the rough. The decision in that case reads as follows:

> These are reeds of rattan, from which the outside that is used for seating chairs has been removed, not further manufactured than cut into lengths suitable for whips. Chair cane, or reeds manufactured from rattans or reeds are dutiable at 10 per cent; while reeds with other woods in the rough and not further manufactured than cut into lengths are free. These reeds are not exactly in the rough; and the reeds associated with chair cane do not seem to be confined to chair reeds. These seem to be reeds wrought from rattans and to be dutiable at 10 per cent, as assessed.

It will be seen that the court made no distinction in that opinion between reeds which were suitable for cutting into lengths and other reeds produced from rattan, and it is to be clearly inferred from the record and the discussion of counsel that this broad holding has not been followed by the assessing officers, and it is to be noted that the opinion itself does not show precisely what the condition of the reeds were which were under consideration. They were described as not exactly in the rough, whatever that may mean. In the present case, however, the reeds are described as the crudest reed ever imported.

In my own view, a sufficient ground for maintaining the contention of the importer can be found in either of these two provisions. The provision of paragraph 212 for chair cane or reeds wrought or manufactured from rattans or reeds, as it was very aptly stated in the opinion of Wilkinson, General Appraiser, first above quoted, can not be given full force without restricting it to chair cane or chair reeds. The chair reeds when wrought or manufactured from rat-

tans or reeds were made subject to a duty of 10 per cent ad valorem. But only when so wrought, and only when wrought to a condition which properly designated them as chair reeds. Now, in the free list reeds unmanufactured are provided for when in the rough. That in the present case the reeds are unmanufactured, and that they are in the rough, being the crudest material imported as reeds, and, in fact, corresponding with the reeds referred to in Foppes *v.* Magone, *supra*, as the first evolution of the reed from the rattan, is made clear from the record. The fact that reeds thus far advanced may not (and still be within the exemption) be further advanced than cut into lengths suitable for sticks, etc., does not lead to the conclusion that reeds which can not be or are not susceptible of being so advanced (whether they are advanced beyond the stage in the rough within the meaning of the paragraph) are excluded from the paragraph.

The paragraph should be construed in the alternative if reeds are unmanufactured and in the rough. They fall clearly within the terms thus far. But a further provision or exception was provided extending the terms to reeds partly manufactured, to wit, advanced but not advanced further than cut into lengths suitable for sticks, etc. These words are not words of restriction, but words of extension.

The board therefore reached the correct conclusion and the decision should be *affirmed.*

EXHIBIT 30.

(T. D. 33874.)

Rubber waste.

MAGEE & CO. *et al. v.* UNITED STATES (No. 1124).

SCRAPS OF NEW OR WORN RUBBER.

There is no basis in the record for segregating the worn and the new scrap rubber of the importation. The new scrap rubber here is not a manufactured article with a changed texture; it is still rubber and "rubber, crude." Since 1890 rubber of this description had been entitled to free entry, and the act of 1909, which still relates the scrap there dealt with to the articles of which it had once been composed, does not withdraw from the term "rubber, crude" anything that had theretofore fallen within the clause. The merchandise was entitled to free entry.—United States *v.* Michelin Tire Co. (1 Ct. Cust. Appls., 518; T. D. 31544).

United States Court of Customs Appeals, November 11, 1913.

APPEAL from Board of United States General Appraisers, Abstract 31630 (T. D. 33263).

[Reversed.]

Churchill & Marlow for appellants.

William L. Wemple, Assistant Attorney General (*Leland N. Wood*, special attorney, on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

MONTGOMERY, Presiding Judge, delivered the opinion of the court:

The merchandise involved in this appeal consists of so-called scrap rubber waste. It comprises articles of new rubber, such as balls, all of which are defective and unfit for ordinary use, scrap pieces of new

rubber, rubber shoes which have not been worn but damaged in manufacture, and included in the importation it is said there is also scrap rubber, articles of various kinds, which have been in actual physical use, and as the result of such use have been worn out. As the record furnishes no basis for any segregation of the old and worn-out portions from those which are clippings from new material, the case should be treated as though the articles were all of the description indicated by the report of the appraiser as scraps or pieces of new rubber or rubber not worn out by use, and the importers appear to have so treated the goods.

The goods were held subject to duty as waste not specially provided for under paragraph 479 of the act of 1909. Free entry was claimed by the importer under the provisions of paragraph 591, which reads as follows:

India rubber, crude, and milk of, and scrap or refuse India rubber, fit only for remanufacture, and which has been worn out by use.

The history of this provision dates back to the tariff act of 1883, in which there appeared in the free list, "india rubber, crude and milk of," and a provision in the similitude clause that "nonenumerated articles similar in material and quality and texture, and the use to which they may be applied, to articles on the free list, and in the manufacture of which no dutiable materials are used, shall be free." The question arose under this act as to whether old worn-out india-rubber shoes and scraps of rubber were entitled to free entry. The court held that the old shoes, having lost their commercial use and value as such, and having a value only by reason of the india rubber they contained, were a substitute for crude rubber; that they could not fairly be called articles composed of rubber, and as such dutiable under a provision for such articles; and that although they may have originally been manufactured articles composed of india rubber they had lost their commercial value as such articles and substantially were merely the material called crude rubber. Cadwalader *v.* Jessup & Moore Paper Co. (149 U. S., 350).

Following the decision of this case at the circuit, and before the case was reached in the Supreme Court, the act of 1890 had changed the form of the provision for free india rubber to read as follows:

India rubber, crude, and milk of, and old scrap or refuse India rubber, which has been worn out by use and is fit only for remanufacture.

This language was continued in the act of 1897, and in 1909 the paragraph was modified to read:

India rubber, crude, and milk of, and scrap or refuse India rubber, fit only for remanufacture and which has been worn out by use.

It is obvious that under the act of 1890 the scrap which was provided for in the free list as scrap was the old scrap derived from articles of india rubber which had been worn out by use and which was fit only for remanufacture. The change of the act of 1909 by the omission of the word "old" appears not to have changed the meaning, at least such is the contention of the Government. So the real question is whether the placing in 1890 of old scrap or refuse india rubber which had been worn out by use in the free list in terms had any other effect than to adopt the rule laid down in the Cadwalader case, where the similitude clause was relied upon to sustain the holding. Such we think is the force and effect of this

language. Whatever before that had fallen within the term "india rubber, crude," was in no way affected by this legislative provision incorporating in terms what had before rested upon the rule of similitude, namely, treating as crude old scrap or refuse which resulted from the use of a manufactured article which has been worn out by use.

The question then recurs as to whether scrap or the unused portions of crude rubber which have never been used as an article, but containing simply the material rubber, are anything other than crude rubber. Obviously the word "crude" here is not applied to articles composed of rubber, but its application is to the material. It would seem not to be very important, in determining whether rubber is crude, to distinguish its various forms, whether it be cut into small pieces or into large pieces or in one shape or form or another so long as it has not reached the dignity of an article, but is merely the material out of which an article is made. While it is such it would seem to be crude material, hence crude rubber.

This accords with the view which was expressed by this court in the case of United States *v.* Michelin Tire Co. (1 Ct. Cust. Appls., 518; T. D. 31544.) We were there dealing with paragraph 579 of the act of 1897 and it was said:

> The manifest purpose of Congress in paragraph 579 was to put on the free list all india rubber, whatever its source or condition, which was imported to be used as a material in the manufacture of india-rubber articles. * * * Old scrap or refuse india rubber, owing to the sources from which it was obtained and condition in which it was found, needed qualifications lest there be introduced free under that term otherwise dutiable articles. The actual thing made free by this provision seems to have been lost sight of. It is a provision enacted solely for the purpose of permitting free entry of india rubber as and when a manufacturing material. * * * The Congress having in mind rubber only, and that the source of much of this rubber in condition as found was old shoes, tires, hose, and other similar sources, which were apparently "articles" or "manufactures" dutiable under other specific provisions of the tariff law, confined its language in paragraph 579 so as to embrace only the rubber contained in these old articles. It is not old rubber shoes or old rubber tires or old rubber hose that are made free, but is the old scrap or refuse rubber found in these things.

And we there held that the india rubber recovered from worn-out articles was, under this paragraph, entitled to free entry.

We think it is clear that the purpose of Congress was, as stated, to admit free of duty rubber which was a material for the manufacture of india-rubber articles and which was nothing more. This was sufficiently provided for as to rubber in any form so long as it was crude.

In United States *v.* Sheldon (2 Ct. Cust. Appls., 485; T. D. 32245), in the opinion of Judge De Vries, it is said:

> The word "crude" as used in tariff laws has by construction and a long and consistent line of decisions been given a meaning somewhat variant from its common and accepted meaning, the frequent reenactment of the term in the statute having been tantamount to a confirmation thereof. What constitutes a refining or advance in condition from the crude state of the article has likewise been the subject of judicial and legislative construction, and it is not every manipulation, though it may add something to the value or condition of the article, which may be held to bring it within such language of the statute. Its presence in a tariff act requires that it be construed with a thought to its apposite conditions provided in the act, to wit, manufactured or a condition of substantial advancement by processing.

Further in the same opinion, at page 497, it was said:

> And in United States *v.* Michelin Tire Co. * * * this court held that where old scrap or crude rubber was chopped and there was separated therefrom particles of

iron, such as rivets, valves, etc., grinding the rubber into smaller particles, chemically treating, washing, riffling, and blowing these, are all done to separate the rubber from the other component materials of the old scrap or refuse from which it was reclaimed; in short, to recover or reclaim the rubber content of these old articles in a shape suitable for transportation or marketing did not carry it out in the category of "crude" rubber in paragraph 579 of the tariff act of 1909.

The case of United States *v.* Michelin Tire Co. as thus construed is decisive of the present case.

Of course, rubber which had at any stage of its history been made into articles could no longer be said to be crude rubber, except by similitude, or except as made so by the express terms of the enactment, which, as above stated, was first had in 1890. But not so new scrap, which never had formed an article of commerce or taken on any form subjecting it to duty under the terms of the tariff law. Such material had not lost its identity as rubber. It was not a manufactured article which had been changed in texture. It was still rubber, and "rubber, crude," and was therefore, under the act of 1883, entitled to free entry. It was not taken out of the terms of that act by the act of 1890 or 1897, nor, as we think, by the act of 1909, which still relates the scrap there dealt with to the articles of which it had once been composed and does not withdraw from the term "rubber, crude," anything that theretofore had fallen within that clause.

We think, for the reasons stated, that the merchandise is entitled to free entry, and the decision of the board is *reversed.*

EXHIBIT 31.

(T. D. 34254.)

Russian lambskins.

GOAT AND SHEEPSKIN IMPORT CO. *et al.* *v.* UNITED STATES (No. 1241).

1. CONSTRUCTION.

Commercial designation is first to be ascertained and if found to exist it controls the application of the language of the statute.

2. IBID.

Where two terms of description are differentiated in a statute and in another paragraph one of these terms is employed, its use here must be taken to be confined to the single subject matter expressed, exclusive of the other.

3. IBID.

An administrative interpretation, long continued and adopted in legislation, is controlling.

4. LAMBSKINS NOT SHEEPSKINS.

In conformity with these principles of construction lambskins can not be deemed sheepskins, and the merchandise was entitled to free entry whether classified under either paragraph 574 or 676, tariff act of 1909.

United States Court of Customs Appeals, January 14, 1914.

APPEAL from Board of United States General Appraisers, Abstract 32961 (T. D. 33594).

[Reversed.]

Comstock & Washburn for appellants.

William L. Wemple, Assistant Attorney General (*Charles E. McNabb*, assistant attorney, of counsel; *Charles D. Lawrence*, special attorney, on the brief), for the United States.

Before MONTGOMERY, SMITH, BARBER, DE VRIES, and MARTIN, Judges.

DE VRIES, Judge, delivered the opinion of the court:

This appeal brings up for determination the dutiable classification of lambskins under the tariff act of 1909. The importation was of Russian lambskins. Free entry was accorded those upon which there was no wool. On the wool contained upon the others there was levied by the collector of customs at the port of New York duty at the rate of 3 cents per pound under the provisions of paragraphs 370 and 371 of said act. The importers, who are the appellants here, claim that the lambskins, inclusive of the wool, are entitled to free entry. Other contentions are made by the appellants, but in our view of the case they are not controlling and the merchandise is entitled to free entry under the provisions of either paragraph 574 or 676 of the act. These several paragraphs read:

370. On wools of the third class and on camel's hair of the third class the value whereof shall be 12 cents or less per pound, the duty shall be 4 cents per pound. On wools of the third class, and on camel's hair of the third class, the value whereof shall exceed 12 cents per pound, the duty shall be 7 cents per pound.

371. The duty on wools on the skin shall be 1 cent less per pound than is imposed in this schedule on other wools of the same class and condition, the quantity and value to be ascertained under such rules as the Secretary of the Treasury may prescribe.

574. Fur skins of all kinds not dressed in any manner and not specially provided for in this section.

676. Skins of all kinds, raw (except sheepskins with the wool on), and hides not specially provided for in this section.

The Board of General Appraisers in overruling these protests succinctly stated the position taken by quoting from a previous decision of the board the following concise statement:

It is wholly immaterial whether the skins are of sheep or lambs; the growth thereon is wool, and subject to duty as such.

It is a fundamental principle of statutory construction, which we think this statement overlooks, that in the determination of the force and effect of every statute the whole act must be read together and each part, if possible, be given some efficiency. If the dutiable provisions, paragraphs 370 and 371, quoted *supra*, stood alone, unaffected by any other provisions of the tariff law, we might be justified in saying that the importation is in part at least of wool, that wool is made dutiable under these provisions, and, therefore, this merchandise should be accordingly rated for dutiable purposes. But these dutiable provisions do not stand alone, and whatever force and effect is accorded them by construction must be subject to and in harmony with the associated provisions *in pari materia* of the same act.

The case as presented is one which is fraught with serious doubt. It is not one in which the legislative words and purpose are free from serious question. Accordingly, in the ascertainment of the legislative meaning, we are controlled by the intent indicated by the well-known rules of statutory interpretation and construction. In this inquiry in this case there is afforded the exceptional situation that all the applicable rules of statutory construction lead to the same conclusion.

First and foremost of the rules of construction applicable to a customs revenue measure is the primary one that the words of the legislative body must be considered to have been used in conformity with the customs and usages of the particular trade. Commercial

designation is first to be ascertained, and, if found to exist, held to control the application of the language of the legislature. Cadwalader *v.* Zeh (151 U. S., 171–176), United States *v.* Vandegrift & Co. (3 Ct. Cust. Appls., 161; T. D. 32457), Guthman, Solomons & Co. *v.* United States (3 Ct. Cust. Appls., 286; T. D. 32574).

This record presents no conflict upon this question of fact. Three witnesses testified, two on behalf of the importer and one on behalf of the Government. Those who testified on behalf of the importer were long experienced wholesale dealers in sheepskins and lambskins. The Government witness who testified was the examiner of this class of merchandise at the port of New York, of admitted qualifications and long experience. They all agreed that in the trade and commerce of the country there was a well defined, long established, and generally accepted distinction between lambskins and sheepskins. They likewise agreed that this distinction was clearly and easily distinguishable, resting itself in the differences of appearance, weight, and texture, size and use of the respective articles. The significance of this distinction is made obvious by the language of paragraph 676 of the free list. It is conceded by all parties, as is made apparent by a reading of the various provisions *in pari materia* of the act, that if lambskins are not included within the exception to paragraph 676 of the free list, they fall within the purview of that paragraph, and hence as "skins of all kinds" are entitled to free entry. Preliminary to this inquiry we are confronted with the rule that the exception which carves out of the statute something ordinarily included within its purview must be strictly construed. "An exception is strictly construed." (2 Lewis Sutherland Statutory Cons., sec 351.) Bearing in mind then that the exception in paragraph 676, which is related to sheepskins alone, must be strictly construed, and being at the same time confronted by undisputed testimony in the record that the trade and commerce of the country did not recognize lambskins as sheepskins, there would seem to be no escape from the conclusion that the Congress did not intend to include them as such, but did include them in the more general language of the purview of that paragraph as "skins of all kinds."

The second rule of construction here applicable is that of legislative differentiation. The question for solution being whether or not in paragraph 676 the Congress intended to include within the word sheepskins, lambskins as well, some light is thrown upon the question by the contrasted use of the respective words, not alone in the act under consideration, but in previous acts *in pari materia.* It is a logical inference and a legal probability, if not conclusion, that if the Congress in its legislation upon this subject has differentiated the words, using both to express its purpose where both were intended to be included, that the use of but one of these words was intended by Congress to be confined to the single subject matter expressed exclusive of the other.

Addressing our attention first to the act under consideration (the tariff act of 1909), we find in paragraph 451 that Congress has levied a duty upon both sheepskins and lambskins; that it did not content itself with the use of the word sheepskins alone, but uses the language "sheep and goat skins (including lamb and kid skins) * * *." When, therefore, we turn therefrom to paragraph 676 of the same act,

which is the provision which excepts out of paragraph 451 that which otherwise would be included therewithin, it being the competing paragraph in the law with the foregoing one, and find that Congress has taken out of the purview of that paragraph by exception sheepskins only, we can see no escape from the conclusion that the word sheepskins in paragraph 676 was used advisedly in contrast with both sheepskins and lambskins in paragraph 451, and did not include lambskins. If this were an entirely new provision of tariff law with which the legislative body was dealing it might with more force be contended that the congressional expression was accidental and not intentional, though that would not necessarily change or affect the rule of construction. The force of this suggestion, moreover, is entirely neutralized by an advertence to previous tariff acts *in pari materia*. The subject matter, lambskins, as expressly distinguished from sheepskins in the language above quoted from paragraph 451, first made its appearance in paragraph 456 of the tariff act of 1890 in the same form, wherein the Congress legislated as to "sheep and goat skins, including lamb and kid skins, * * *." The language was repeated in paragraph 341 of the tariff act of 1894 and paragraph 438 of the tariff act of 1897. So that covering a period of almost 20 years, during which four reenactments of this legislative subject were had by Congress, this language and differentiation was repeated and continued. It is not without significance that coincident with the appearance of this phrase in the tariff act of 1890 there also appeared in the free list of that act, paragraph 605, the phrase exempting from duty "skins, except sheepskins with the wool on." Paragraph 505 of the free list of the tariff act of 1894 equally significantly dropped this exceptive language, because all wool was put upon the free list by that act. The tariff act of 1897, however, free list paragraph 664, reenacted the provision in the same language that it appears in this act, and as it appeared in competition with the words of paragraph 438 of that act, "sheep and goat skins (including lamb and kid skins) * * *." It would seem, therefore, that the Congress, after quite 20 years and during the enactment of four different tariff acts, has not only observed a distinction between sheepskins and lambskins, but has pursued a consistent policy with refence to its exception from such free list provisions of sheepskins alone.

At the oral argument in this court counsel for the Government cited various instances from well-considered cases wherein it was held either directly or by inference that the word "lamb" was included within the word "sheep." Aside from the fact that those are not the words here under consideration, sheepskins and lambskins, which are probably dealt in by different trades and, therefore, treated differently according to the trade understanding, there is the more pronounced reason rendering such cases inapplicable, or at least not controlling, resting in the fact that those words as thus construed appear in statutes having different associate provisions *in pari materia*. The context of the statutes being different the legal effect of one word upon the other must be different. For these reasons it is obvious that while such cases may be instructive they are by no means conclusive.

The third rule of construction here applicable leads to the same conclusion. This rule fortifies the second above considered. It is that where a certain uniform construction has been given a tariff

provision by those intrusted by the law with its enforcement, interpretation, and construction, such reading will be adopted by the courts, not alone on account of long-continued usage, but as in this case, where the same words have been repeatedly reenacted by Congress as a legislative interpretation. Psaki Bros. *v.* United States (3 Ct. Cust. Appls., 479; T. D. 33122), United States *v.* Post & Co. (3 Ct. Cust. Appls., 260; T. D. 32568).

In the tariff act of 1883 (par. 706), and many acts antedating the same, as well as in the tariff act of 1890 (par. 588), in the tariff act of 1894 (par. 493), in the tariff act of 1897 (par. 562), and in the tariff act of 1909 (par. 574), there appears a provision for "fur skins of all kinds not dressed in any manner." To those provisions in the tariff acts of 1897 and 1909 were added the words "and not specially provided for in this act" (1909—"section"). The uniform classification, so far as we have been able to discover, of lambskins with the wool on seems to have been to classify them as fur skins under these provisions of the various tariff laws. To the same effect and of equal force was the uniform holdings of the same authorities that where lambskins were tanned or dressed they were classifiable as "furs tanned or dressed" under the same tariff acts and the respective applicable provisions thereof. See G. A. 45 (T. D. 10324), G. A. 1508 (T. D. 12957), G. A. 2907 (T. D. 15726), G. A. 4109 (T. D. 19136), Mavtner *v.* United States (84 Fed., 155), Fleet *v.* United States (148 Fed., 335).

This claim is made in the protest. Inasmuch, however, as the result must be the same, whether the goods are classified under paragraph 574 or 676 of the free list, the determination of that question is here unnecessary.

"Fur skins of all kinds not dressed in any manner" are equally though more generally provided for as "skins of all kinds" and free entry is provided for all such. If they are not skins they are furs, and *vice versa*, and in either case they are *enumerated* articles and hence not nonenumerated within paragraph 480 of the act.

In United States *v.* Bennet (66 Fed., 299), the United States Circuit Court of Appeals for the Second Circuit determined that angora goat skins with the hair or wool on were entitled to free entry under the provisions of paragraph 588 of the tariff act of 1890 as "fur skins of all kinds not dressed in any manner."

Confirmation of these views is found in Encyclopedia Britannica, eleventh edition, article "Fur." In enumerating and defining the classes of such the following occurs:

> *Lambs.*—The sorts that primarily interest the fur trade in Europe and America are those from south Russia, Persia, and Afghanistan, which are included under the following wholesale or retail commercial terms: Persian lamb, broadtail, astrachan, Shiraz, Bokharan, and caracul lamb. With the public the general term astrachan is an old one, embracing all the above curly sorts; the flatter kinds, as broadtail and caracul lamb, have always been named separately. The Persian lambs, size 18 by 9 inches, are the finest and the best of them. When dressed and dyed they should have regular, close, and bright curl, varying from a small to a very large one, and if of equal size, regularity, tightness, and brightness, the value is comparatively a matter of fancy. Those that are dull and loose or very coarse and flat in the curl are of far less market value.

Lastly. With all applicable canons of construction conducing to the conclusion stated, in the presence of an obviously doubtful question of law, this court is bound to construe the statute that the importers,

appellants here, shall be accorded the benefit of the doubt. Woolworth *v.* United States (1 Ct. Cust. Appls., 120–122; T. D. 31119), United States *v.* Hatters' Fur Exchange (1 Ct. Cust. Appls., 198–202; T. D. 31237), United States *v.* Matagrin (1 Ct. Cust. Appls., 309–312; T. D. 31406), United States *v.* Harper (2 Ct. Cust. Appls., 101–105; T. D. 31655), American Express Company *v.* United States (3 Ct. Cust. Appls., 475–479; T. D. 33121), United States *v.* American Bead Company (3 Ct. Cust. Appls., 509–515; T. D. 33166), Newhall *et al. v.* United States (4 Ct. Cust. Appls., 134; T. D. 33410, decided May 6, 1913).

Reversed.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1914.

[Report required by sec. 28, subsection 23, act Aug. 5, 1909, and paragraph Y, sec. 3, act Oct. 3, 1913.]

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1913.					
July 2	American Express Co	Charts	$240.80	Error in classification	Sec. 28, subsec. 23, act Aug. 5, 1909.
9	Anderson Dulin Varnell Co	Mattings	15.75	Clerical error	Do.
11	Adler Millinery Co., The	Imitation horsehair	8.50	Error in classification	Do.
11	Allschul, jr., Co., S	Merchandise	2.86	Excess deposit refunded on liquidation.	Do.
15	American Express Co	Herring	123.60	Error in classification	Do.
19	Alms & Doepke Co., The	Cotton wearing apparel	1.20	Short-shipped	Do.
"	Asahi & Co. (Ltd.)	Dried peas	6.40	Error in classification	Do.
19	American Express Co	Buttons	3.85	do	Do.
30	do	Pickles	4.73	do	Do.
Aug. 19	do	Metal polish	53.40	Exhibit 1, appendix	Do.
28	Alexander & Baldwin (Ltd.)	Toilet preparation	1.45	Short shipped	Do.
Sept. 29	Adam Meldrum & Anderson Co	Knit underwear	7.50	Clerical error	Do.
Nov. 18	Abraham & Strauss	Gloves	99.16	Court judgment	Par. Y, sec. 3, act Oct. 3, 1913.
20	American Express Co	Jewelry	120.00	do	Do.
26	do	do	9.25	do	Do.
Dec. 8	do	do	109.75	do	Do.
9	do	do	43.50	do	Do.
9	Aroson, J	Still wine	1.85	Short landed	Do.
10	Allen, John F	Wire articles	125.70	Warehoused under act 1909, withdrawn under act 1913.	Do.
12	Abraham & Strauss	Jewelry	2.25	Court judgment	Do.
16	American Express Co	do	211.25	do	Do.
20	do	do	47.75	do	Do.
24	Ajello, F. C	Rotten fruit	3.60	Exhibit 2, appendix	Do.
29	Asahi & Co. (Ltd.)	Various articles	50.81	Withdrawn from warehouse after change in rate.	Do.
1914.					
Jan. 9	Allen, John F	Glass lenses	75.70	do	Do.
12	Armstrong Cork Co	Seine floats	91.05	Error in classification	Do.
31	Acker Merrall & Condit Co	Plate powder	67.60	Court judgment	Do.
Feb. 11	American Express Co	Bronze wire cloth	8.70	Exhibit 3, appendix	Do.
19	Adams & Co., J. N	Lamb gloves	109.59	Error in classification	Do.
Mar. 3	American Express Co	Meerschaum	24.00	do	Do.
3	do	Printed matter	61.80	do	Do.
10	Ariss Campbell & Gault	Sulphur	1,070.75	Exhibit 4, appendix	Do.
26	American Express Co	Charts	123.60	Error in classification	Do.
27	Alms & Doepke Co., The	Fabric of cotton and metal	6.15	Clerical error	Do.
27	Armstrong Cork Co	Seine floats	103.80	Error in classification	Do.
Apr. 4	American Express Co	Chamois	107.80	Exhibit 5, appendix	Do.
7	do	Charts	182.40	Error in classification	Do.
7	Ascher Co., Theo	Pacquets	107.95	Court judgment	Do.
May 13	Allen & Lewis	Herring	43.70	Error in classification	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1914—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1914.					
May 13	Arise Campbell & Gault Co.	Herring	$110.10	Error in classfication	Par. Y, sec. 3, act Oct. 3, 1913.
27	Altman & Co., B	Wearing apparel	4.30	Court judgment	Do.
1913.					
July 2	Bush & Co., Geo. S	Pimentos	18.00	Clerical error	Sec. 28, subsec. 23, act. Aug. 5, 1909.
3	Bartley Bros. & Hall	Leather	3.15	Court judgment	Do.
9	Bush & Co., Geo. S	Fish	75.00	Error in weight	Do.
12	Budde & Westermann	Matches	2.05	Court judgment	Do.
15	Beck & Engstrom	Brandy	10.60	Short shipped	Do.
17	Bahrenburg Bro. & Co., J. H	Horseradish roots	392.75	Following the decision, Exhibit 6, appendix.	Do.
18	Barreda Manuel	Liquors	3.49	Short shipped	Do.
18	....do	Cattle	3.50	Error in classification	Do.
18	Barreda, A. P	....do	3.75	Short shipped	Do.
Aug. 2	Ball & Smith	Leather	20.77	Error in classification	Do.
8	Ban Co., S	Sulphur	206.65	....do	Do.
19	Bush, Geo. S	Wire rope	22.04	....do	Do.
26	Boltz Clymer & Co	Tobacco	91.20	....do	Do.
30	Bernard Judas & Co	Matches	23.45	....do	Do.
30	Borgfeldt & Co., Geo	Willow baskets	51.00	....do	Do.
Sept. 1	Bradshaw & Co. (Inc.), W. R	Wool cloth	110.88	Court judgment	Do.
Oct. 18	Bacheberle, Charles	Coated paper	53.39	Error in classification	Par. Y, sec. 3, act Oct. 3, 1913.
Nov. 1	Bliss Co., The E. A	German silver mesh	635.60	....do	Do.
5	Bates, Fred	Samples	52.68	Exported	Do.
5	Burke, Fitzsimons & Co	Linen tubing	1.50	Error in classification	Do.
8	Becker, Hazleton Co	Decorated china, etc	58.10	Excess deposit refunded on liquidation.	Do.
12	Bliss Co., The E. A	Imitation precious stones	29.75	....do	Do.
18	Bayer & Pretzfelder Co	Jewelry	16.50	Court judgment	Do.
21	....do	....do	23.25	....do	Do.
5	Bleazley Bros	Baskets	7.20	Clerical error	Do.
25	Barrough, M. H	Whisky	37.03	....do	Do.
26	Burlington Venetian Blind Co	Cotton tape	417.30	Exhibit 7, appendix	Do.
26	Bloomingdale Bros	Jewelry	48.75	Court judgment	Do.
26	Brown & Roese	....do	6.25	....do	Do.
26	Bloomingdale Bros	....do	48.25	....do	Do.
28	Brandt & Co., J. W	....do	398.40	....do	Do.
29	Bayer & Pretzfelder Co	....do	40.25	....do	Do.
Dec. 1	Blumenthal & Co., B	....do	2.25	....do	Do.
2	Brandt & Co., J. W	....do	96.75	....do	Do.
2	Bayer & Pretzfelder Co	....do	89.43	....do	Do.
2	Brady Co., E. L	....do	142.25	....do	Do.
4	Brandt & Co., J. W	....do	164.00	....do	Do.
4	Bayer & Pretzfelder Co	....do	4.00	....do	Do.
5	Bailey, Green & Elger	....do	34.25	....do	Do.

5	Barnard, H	do	1.00	do	Do.
8	Bass, E. & J	do	.75	do	Do.
8	Brady Co., E. L	do	14.50	do	Do.
8	Bloomingdale Bros	do	165.90	do	Do.
8	Brandt & Co., J. W	do	5.50	do	Do.
8	Bayer & Pretzfelder Co	do	12.25	do	Do.
10	Barnard, H	do	1.00	do	Do.
11	Bayer & Pretzfelder Co	do	91.25	do	Do.
12	Bloomingdale Bros	do	98.25	do	Do.
13	Brown & Roese	do	15.00	do	Do.
15	Bloomingdale Bros	do	16.50	do	Do.
15	Bredt & Co., F	Lappings	4,176.48	do	Do.
18	Bonomolo	Rotten fruit	6.06	Exhibit 2, appendix	Do.
19	Brandt & Co., J. W	Jewelry	7.75	Court judgment	Do.
19	Bayer & Pretzfelder Co	do	89.00	do	Do.
19	Bredt & Co., F	Lappings	520.52	do	Do.
19	Brown & Roese	Jewelry	5.75	do	Do.
23	Bloomingdale Bros	do	24.00	do	Do.
1914.					
Jan. 10	Brittain Dry Goods Co., John S	Linens	12.88	Clerical error	Do.
12	Ban & Co., S	Salt ginger	8.40	Destroyed under the food and drugs act; also clerical error.	Do.
12	Browne, Thompson & Co	Lamb gloves	.34	Error in classification	Do.
26	Brinker, Wm	Hyacinth bulbs	31.95	Clerical error	Do.
27	Becker-Wilkser Co	Cotton apparel	12.28	Error in classification	Do.
27	Berzen, N. E	Scrap rubber	115.90	Exhibit 30, appendix	Do.
27	Brown & Co., Wm. A	Jewelry	1.50	Court judgment	Do.
30	Bird, Wm. A	Herring	364.68	Error in classification	Do.
Feb. 2	Bush & Co. (Inc.), Geo. S	Cork	45.90	do	Do.
2	do	Brass skimmings	37.00	do	Do.
5	Butts, A. L	Cattle	221.48	Court judgment	Do.
5	Becker, Hazleton & Co	Earthenware	.35	Excess deposit refunded on liquidation.	Do.
13	Bartley Bros. & Hall	Breeches, ball, etc	45.75	Court judgment	Do.
18	Bush & Co. (Inc.), Geo. S	Sulphur	101.30	Error in classification	Do.
18	Baltz, Clymer & Co	Tobacco	169.80	do	Do.
19	Bush & Co. (Inc.), Geo. S	Linen	8.27	Short shipped	Do.
28	Brinton, D. B	Suit of clothes	8.76	American goods returned	Do.
28	Brown, Thompson & Co	Gloves	41.79	Error in classification	Do.
Mar. 3	Butler Bros	Dolls	8.40	Short shipped	Do.
4	Bailey, Green & Elger	Jewelry	19.00	Court judgment	Do.
5	Bartley Bros. & Hall	Plate powder	6.57	do	Do.
10	do	do	19.71	do	Do.
10	Bemis Bro. Bag Co	Burlaps	140.58	Clerical error	Do.
10	Broderick & Bascom Rope Co	Steel wire	1.00	do	Do.
11	Bush & Co. (Inc.), Geo. S	Agricultural implements	229.16	Error in classification	Do.
18	Baird & Son, David	Silk ribbons	13.35	Clerical error	Do.
18	Bird, Wm. A	Mackerel	156.00	Error in classification	Do.
19	Beck, J. D	Pecan nuts	1.94	Error in weight	Do.
26	Butler Bros	Decorated glassware	1.80	Clerical error	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1914—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1914.					
Apr. 3	Barboro & Co., A. S	Cheese	$2.60	Clerical error	Par. Y, sec. 3, act Oct. 3, 1913.
3	Bush & Co., Geo. S	Earthenware	6.00	do	Do.
3	do	Toys	8.40	do	Do.
10	Becker, Hazleton & Co	White earthenware	.70	Excess deposit refunded on liquidation.	Do.
23	Barboro & Co., A. S	Cheese	2.60	Clerical error	Do.
25	Bush & Co. (Inc.), Geo. S	Decorated earthenware	154.75	Error in classification	Do.
29	Bird, Wm. A	Articles of aluminum	68.12	do	Do.
May 14	Burlington Venetian Blind Co	Cotton webb	34.50	do	Do.
19	Brandies & Sons, J. L	Hats	2.25	Clerical error	Do.
19	Bernheim & Co., M	Palm-leaf hats	166.00	Error in reduction of currency	Do.
27	Buss & Co., H	Tapes	11.40	Court judgment	Do.
27	Bertuck & Co., F	Wood pulp	1,171.98	do	Do.
27	Bartley Bros. & Hall	Breeches, ball	7.50	do	Do.
June 10	Beattie, James	Beans	474.27	Error in weight	Do.
20	Braun Corporation, The	Manufactures of glass	4.90	Error in classification	Do.
22	Bernheim & Co., M	Palm-leaf hats	369.50	Error in reduction of currency	Do.
23	Broderick & Bascom Rope Co	Steel wire	7.35	Nonimportation	Do.
23	Bush & Co. (Inc.), Geo. S	Herrings	50.13	Error in classification	Sec. 28, subsec. 23, act Aug. 5, 1909.
29	Brown & Co., Wm. A	Ganffre leather	60.90	Court judgment	Do.
1913.					
July 9	Curtice Co., Ross P	Musical instruments	4.50	Clerical error	Do.
11	Champion Coated Paper Co	China clay	60.89	Excess deposit refunded on liquidation.	Do.
18	Celaya, Jose	Wine	5.54	Short shipped	Do.
18	Cardenas, E	Cattle	3.75	do	Do.
Aug. 8	Chew Hing Lung	Silk apparel	1.80	Clerical error	Do.
30	Continental Distributing Co	Vermouth	3.54	Short landed	Do.
Sept. 4	Corney & Johnson Co., The	Hatters' plush	20,738.30	Error in classification	Do.
Oct. 31	Canadian Pacific Ry	Burlap bags	24.30	do	Par. Y, sec. 3, act Oct. 3, 1913.
31	Cheney Bros	American manufactures	133.50	do	Do.
Nov. 5	Carberry Co., The John J	Cotton cloth	17.21	do	Do.
18	Cleveland Worsted Mills Co., The	Belting	342.90	do	Do.
18	Claflin Co., The H. B	Gloves	158.56	Court judgment	Do.
26	do	Jewelry	161.75	Exhibit 8, appendix	Do.
28	Cohn & Rosenberger	do	495.00	do	Do.
Dec. 2	Claflin Co., The H. B	do	436.70	Court judgment	Do.
10	Callender, McAuslan & Troupe Co	Bleached cotton	1,824.21	Withdrawn from warehouse after change of rate.	Do.
12	Corbett & Co., M. J	Jewelry	3.00	Court judgment	Do.
18	Claflin Co., The H. B	do	595.75	do	Do.
18	Calabrese, G	Rotten fruit	8.66	Exhibit 2, appendix	Do.
18	Cirincione, G	do	4.06	do	Do.
20	Corbett & Co., M. J	Jewelry	3.50	Court judgment	Do.
24	Cirincione, G	Rotten fruit	1.86	Exhibit 2, appendix	Do.

1914.						
Jan.	6	Claflin Co., The H. B.	Jewelry	76.29	Court judgment	Do.
	9	Callender, McAuslan & Troupe Co.	Porcelain, etc	9.65	Withdrawn from warehouse after change of rate.	Do.
	9	do	Manufactures of paste	207.27	do	Do.
	9	do	Articles of celluloid	548.70	do	Do.
	9	Chase & Co., F. A	Steel wire	181.52	do	Do.
	10	Canadian Lakes Fishing Co	Fish	155.60	Error in classification	Do.
	27	Cohn Rudolph Importing Co	Manufactured metal	18.45	do	Do.
Feb.	10	Castle, Gottheil & Overton	Bronze wire cloth	.60	Exhibit 3, appendix	Do.
	10	do	do	23.75	do	Do.
	18	Cuesta, Rey & Co	Tobacco	96.00	Error in classification	Do.
Apr.	7	Coccarro, A. J	Candles	5.10	Court judgment	Do.
	29	Caldarone, Peter J	Oil and wine	3.25	Excess deposit	Do.
	29	Chicago Mercantile Co	Pacquets	1,143.90	Exhibit 9, appendix	Do.
	29	Columbus Dry Goods Co., The	Leather gloves	29.90	Error in classification	Do.
May	1	Castle, Gottheil & Overton	Wood pulp	223.00	Court judgment	Do.
	7	Cresca Co	Snails	11.25	do	Do.
	12	Chapman, W. H	Manufactures of granite	10.20	Error in classification	Do.
	19	Campbell, J. G	Lace articles	35.25	Reappraisement	Do.
	19	Carson, Perie, Scott & Co	Pacquets	59.35	Court judgment	Do.
	19	Chicago Mercantile Co	do	345.15	do	Do.
	19	do	do	319.85	do	Do.
June	22	Chase & Co., F. A	Steel wire	2.35	Error in weight	Do.
	24	Caradine Harvest Hat Co	Untrimmed hats	428.00	Error in reduction of currency	Do.
	24	do	do	578.10	do	Do.
1913.						
July	9	Davies & Co. (Ltd.), Theo. H	Herring	464.40	Error in classification	Sec. 28, subsec. 23, act Aug. 5, 1909.
	11	Dilks, A	Merchandise	.50	Excess deposit refunded on liquidation	Do.
	17	Deforth Bros	Horse-radish roots	16.00	Exhibit 6, appendix	Do.
	19	Draper Brokerage Co	Herring	5.40	Error in classification	Do.
	21	Dyke, A. L	Charts	67.20	do	Do.
Aug.	19	Dow (Inc.), Frank P	Willow baskets	86.35	do	Do.
	20	Dey & Co., M. E	Matches	35.35	do	Do.
	23	Dean Chase Co	Lace-making machines	4,061.70	do	Special act of Congress, approved Feb. 7, 1913.
	23	Daniels & Fischer Stores Co., The	Gloves	40.00	do	Sec. 28, subsec. 23, act Aug. 5, 1909.
Sept.	23	Dey & Co., M. E	Matches	20.65	do	Do.
Oct.	10	Donaldson Co., L. S	Lamb gloves	63.60	do	Par. Y, sec. 3, act Oct. 3, 1913.
	18	Denike, E	Resin	142.63	Free	Do.
	31	Davies & Co. (Ltd.), Theo. H	Saddles	12.00	Error in classification	Do.
	31	Dow Co. (Inc.), Frank P	Herring	14.10	do	Do.
Nov.	8	Daphonia, P	Wine and bitters	17.34	Excess deposit refunded on liquidation	Do.
	12	Davies & Co. (Ltd.), Theo. H	Herrings	39.60	Error in classification	Do.
	12	Dillingham, E	Bran	72.00	do	Do.
	24	Dunham, Wallace B	Brass and metal ware	1.10	Clerical error	Do.
	24	Davies, Turner & Co	Jewelry	385.75	Court judgment	Do.
Dec.	11	do	do	25.00	do	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1914—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1914.					
Jan. 9	Davies & Co. (Ltd.), Theo. H	Rice	$103.66	Withdrawn from warehouse after change of rate.	Par. Y, sec. 3, act Oct. 3, 1913.
15	Dieckerhoff, Raffloer & Co	Artificial fruits	1.75	Court judgment	Do.
26	Dorn F. Philip	Machine tools	25.65	Clerical error	Do.
Feb. 2	Dow Co. (Inc.), Frank P	Sheathing paper	68.80	Error in classification	Do.
11	Donahue Co. (Inc.), T. F	Glass bottles	1.20	Withdrawn from warehouse after change of rates.	Do.
Mar. 3	Dyke, A. L	Printed matter	229.50	Error in classification	Do.
10	Davies & Co. (Ltd.), Theo. H	Sugar bags	79.20	Short shipped	Do.
10	Dollar, Robert	Oak logs	319.20	Error in classification	Do.
26	Dyke, A. L	Charts	213.40	....do	Do.
Apr. 3	Drake, Mrs. Chas. R	Silk apparel	4.80	....do	Do.
9	Dyke, A. L	Charts	127.80	....do	Do.
10	Dapalonia, P	Vermuth	3.70	Excess deposit refunded on liquidation.	Do.
18	Davies & Co. (Ltd.), T. E	Straw hats	28.25	Error in classification	Do.
18	Downing, Judae & Co	Pacquets	87.70	Exhibit 9, appendix	Do.
May 9	....do	....do	5.70	Court judgment	Do.
9	....do	....do	165.65	....do	Do.
9	Doudiet & Co., L. E	Herring	36.90	Error in classification	Do.
1913.					
July 9	Ehrlich Harrison Co	Lumber	6.53	Error in quantity	Sec. 28, subsec. 23, act Aug. 5, 1909.
Oct. 29	Economu & Bro., T	Olives	121.50	Court judgment	Par. Y, sec. 3, act Oct. 3, 1913.
29	....do	Olives in wine	363.15	....do	Do.
Nov. 20	Elder & Johnston, The	Linen goods	3.60	Clerical error	Do.
25	Ensel, Sam	Linen, embroidered	12.60	....do	Do.
26	Eden Co., C. H	Jewelry	363.00	Court judgment	Do.
28	....do	....do	325.25	....do	Do.
Dec. 1	....do	....do	208.50	....do	Do.
2	....do	....do	227.75	....do	Do.
5	....do	....do	1,485.25	....do	Do.
8	....do	....do	408.50	....do	Do.
9	....do	....do	558.75	....do	Do.
10	....do	....do	477.25	....do	Do.
11	....do	....do	279.75	....do	Do.
12	....do	....do	54.25	....do	Do.
15	....do	....do	567.25	....do	Do.
17	....do	....do	201.50	....do	Do.
18	....do	....do	36.25	....do	Do.
19	....do	....do	91.75	....do	Do.

1914.						
Jan. 10	Eytings & Co	Bronze wire articles	2.61	Exhibit 3, appendix	Do.
10	Eytings & Co. (Inc.)	Rubber waste	56.80	Court judgment	Do.
10	do	do	55.00	do	Do.
10	Ely & Walker Dry Goods Co	Glass buttons	10.65	Clerical error	Do.
Mar. 10	El Paso Live Stock Comm. Co	Cattle	1.58	do	Do.
26	Ely & Walker Dry Goods Co	Lamb gloves	8.77	Error in classification	Do.
26	do	Fabrics of flax	48.80	do	Do.
26	Emery Bird Thayer Dry Goods Co	Hats	3.10	do	Do.
Apr. 29	Elden & Son, J	Fish	4.56	do	Do.
29	Edson Keith & Co	Pacquets	296.80	Exhibit 9, appendix	Do.
May 12	Espy Cotton Co	Jute bagging	25.94	Free	Do.
12	Ehrman Mason & Co	Kippered herring	12.15	Error in classification	Do.
14	Elliott Taylor Wolfenden Co	Gloves	6.00	Clerical error	Do.
June 23	Ely & Walker Dry Goods Co	Fabrics of flax	70.95	Error in classification	Do.
1913.					
July 14	Fondeville & Van Iderstine	Matches	34.40	Court judgment	Sec 28, subsec. 23, act Aug. 5, 1909.
25	Flory & Co., W. E	Rubber jewelry	5.00	do	Do.
29	Friedenberg, J	Horseradish roots	24.00	Following the decision, Exhibit 6, appendix.	Do.
Aug. 1	Fuld & Co	Embossed cards	2.40	Court judgment	Do.
28	Fenton, jr., A. W	Herring	135.35	Error in classification	Do.
Oct. 10	Foster, I. J	Animals	13.75	Breeding purpose, free	Par. Y. sec. 3, act Oct. 3, 1913.
18	Felscher Albert	Pocket knives	41.10	Error in classification	Do.
Nov. 20	Frederic's	Jewelry	27.25	Court judgment	Do.
26	Flory & Co., W. E	do	87.75	do	Do.
26	Finkelstein Bros	do	16.00	do	Do.
28	Fenton, jr., A. W	Foreign books	23.25	Error in classification	Do.
29	Fischer, C	Jewelry	4.75	Court judgment	Do.
29	Frederic's	do	160.00	do	Do.
Dec. 1	Flory & Co., W. E	do	35.75	do	Do.
4	Ferd Bing & Cos., successors	do	45.50	do	Do.
5	do	do	36.25	do	Do.
8	Frederic's	do	90.85	do	Do.
11	Freudenberg, M	do	3.75	do	Do.
11	Flory & Co., W. E	do	222.90	do	Do.
12	Frederic's	do	94.75	do	Do.
13	Fischer, C	do	13.00	do	Do.
16	Fillman Lee & Happel	do	117.25	do	Do.
23	Flory & Co., W. E	do	85.70	do	Do.
29	Fukushima, Y	Soya beans	23.50	Withdrawn from warehouse after change of rate.	Do.
29	Fuju, Shoten	Silk goods	120.29	do	Do.
1914.					
Jan. 9	do	Various articles	268.84	do	Do.
26	Fenton, jr., A. W	Alabaster dish	12.50	Abandoned, and clerical error	Do.
26	Fransioli & Co., P. J	Earth, unwrought	21.38	Error in classification	Do.
26	Furuya Co., M	Gut, unmanufactured	11.25	do	Do.
30	Fraser, A. S	Cocoa	38.00	Reappraisement	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1914—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1914.					
Feb. 2	Furuya Co., M.	Salted ginger	$5.60	Error in classification	Par. Y, sec. 3, act Oct. 3, 191 .
17	Ferd Bing & Co's., successors	Candles	1.20	Court judgment	Do.
28	Fox & Co., G.	Gloves	37.47	Error in classification	Do.
Mar. 11	Furuya Co., M.	Biscuits	6.00	....do	Do.
19	Fair Co., The	Lamb gloves	14.56	....do	Do.
27	Fusenot Co., A.	Mirrors and brushes	9.80	....do	Do.
Apr. 2	Fenton, jr., A. W.	American crates	72.00	American goods returned, free	Do.
3	French Co., The B. T.	Red pepper	41.54	Clerical error	Do.
13	Flory & Co., W. E.	Merchandise	8.75	Court judgment	Do.
24	Fensterer & Ruhe	....do	21.80	....do	Do.
24	Fisk & Co., D. B.	Pacquets	387.50	Exhibit 9, appendix	Do.
24	Fischer, H. F.	Rotten grapes	405.75	Exhibit 10, appendix	Do.
May 9	Furuya Co., M.	Fruits in brine	22.90	Error in classification	Do.
June 3	Flory & Co., W. E.	Jewelry	25.75	Court judgment	Do.
22	Fenton, jr., A. W.	Chemical compound	89.00	Error in classification	Do.
23	Frederick & Nelson (Inc.)	Gloves	16.93	....do	Do.
24	Fabenfabriken of Elberfeld Co.	Indigo	211.33	....do	Do.
1913.					
Aug. 2	Gimbel Bros.	Cotton laces	68.80	....do	Sec. 28, subsec. 23, act Aug. 5, 1909.
7	Gleeson, W. A.	Wool blankets	4.31	Household goods, free	Do.
19	Great Northern Ry. Co.	Toys	5.95	Error in classification	Do.
Sept. 29	Golden Rule, The	Gloves	36.84	....do	Do.
Oct. 18	Gibson Art Co., The	Prints	17.50	....do	Par. Y, sec. 3, act Oct. 3, 1913.
31	German-American Importing Co.	Beads	3.15	Clerical error	Do.
Nov. 14	Guthman, Solomons & Co.	Jewelry	5.25	Exhibit 8, appendix	Do.
17	Gugenheim, M.	....do	14.50	Court judgment	Do.
17	Gertzen Co., F. Wm.	....do	152.00	....do	Do.
22	....do	....do	323.75	....do	Do.
22	Gary Co., Theo. H.	....do	3.50	....do	Do.
26	Gugenheim, M.	....do	117.75	....do	Do.
26	Guthman, Solomons & Co.	....do	546.50	....do	Do.
26	Gottlieb & Co., O.	....do	89.50	....do	Do.
26	Gugenheim, M.	....do	356.50	....do	Do.
26	Guthman, Solomons & Co.	....do	227.00	....do	Do.
Dec. 2	....do	....do	135.25	....do	Do.
4	....do	....do	156.00	....do	Do.
5	Gottlieb & Co., O.	....do	19.75	....do	Do.
5	Gugenheim, M.	....do	461.75	....do	Do.
8	Gottlieb & Co., O.	....do	21.75	....do	Do.
8	Gugenheim, M.	....do	432.75	....do	Do.
8	Gugenheim, M., & Co.	....do	7.50	....do	Do.
8	Guthman, Solomons & Co.	....do	192.50	....do	Do.
9	....do	....do	77.40	....do	Do.

	10	Gugenheim, M.	do	105.00	do	Do.
	10	Gugenheim, M., & Co.	do	114.25	do	Do.
	11	Guthman, Solomons & Co.	do	146.75	do	Do.
	12	Greenhut & Co.	do	3.50	do	Do.
	12	Greenhut, Siegel-Cooper Co.	do	142.25	do	Do.
	12	Guthman, Solomons & Co.	do	24.50	do	Do.
	13	Gertzen Co., F. Wm.	do	453.10	do	Do.
	15	Greenhut, Siegel-Cooper Co.	do	20.50	do	Do.
	15	Gugenheim & Co., M.	do	281.05	do	Do.
	15	Gugenheim, M.	do	1,151.00	do	Do.
	15	Gottlieb & Co.	do	37.25	do	Do.
	15	Gugenheim, M.	do	483.25	do	Do.
	15	Gugenheim, M., & Co.	do	362.25	do	Do.
	15	Guthman, Solomons & Co.	do	129.75	do	Do.
	16	Gugenheim, M.	do	17.50	do	Do.
	16	Gugenheim, M., & Co.	do	101.25	do	Do.
	17	Guthman, L.	do	5.50	do	Do.
	17	Guthman, Solomons & Co.	do	258.50	do	Do.
	18	Grills, A.	Rotten fruit	4.22	Exhibit 2, appendix	Do.
	18	Gottlieb & Co., O.	Jewelry	126.20	Court judgment	Do.
	18	Gugenheim, M.	do	120.25	do	Do.
	18	Gugenheim, M., & Co.	do	462.70	do	Do.
	18	Guthman, Solomons & Co.	do	186.75	do	Do.
	19	Giammanco, P.	Rotten fruit	18.77	Exhibit 2, appendix	Do.
	19	Gottlieb & Co., O.	Jewelry	32.25	Court judgment	Do.
	19	Gugenheim, M.	do	83.00	do	Do.
	19	Gugenheim & Co.	do	253.50	Court judgment	Par. Y, sec. 3, act Oct. 3, 1913.
	20	Gertzen Co., F. Wm.	do	110.00	do	Do.
	22	Guthman Solomon & Co.	do	25.00	do	Do.
	23	Greenhut, Siegel-Cooper Co.	do	12.25	do	Do.
	31	Guthman Solomons & Co.	do	8.25	do	Do.
	31	General Electric Co.	Sapphires	449.70	do	Do.
1914.						
Jan.	10	Garrett & Co.	Willow baskets	40.00	Clerical error	Do.
	13	Guthman Solomons & Co.	Jewelry	17.50	Court judgment	Do.
	19	Gips, A.	Books	748.00	Exhibit 11, appendix	Do.
	26	Garfield, Abram.	Foreign books	12.50	Books in foreign language, free	Do.
Feb.	5	Griffith, George.	Cattle	54.33	Court judgment	Do.
	6	Gillespie, J. W.	do	900.00	do	Sec. 3689, R. S.
	11	Graves Co., M. M.	Steel bands	18.89	Error in weight	Par. Y, sec. 3, act Oct. 3, 1913.
Mar.	10	Giacannio Vignalo Co.	Macaroni	1.80	Short landed	Do.
	19	Greensmith, Herbert, & Son.	Bulbs	6.00	Error in classification	Do.
Apr.	10	General Electric Co.	Sapphire bearings	71.96	Court judgment	Do.
	10	Gurney Seed & Nursery Co.	Celery seed	.75	Excess deposit refunded on liquidation.	Do.
	16	Goat & Sheep Skins Importing Co. (Ltd.)	Skins	379.68	Court judgment	Do.
	23	Glyde, Joseph S.	Jewelry	2.10	American goods returned, free	Do.
	23	Gage Bros. & Co.	Racquets	645.00	Exhibit 9, appendix	Do.
May	27	do	do	765.75	Court judgment	Do.
	27	Germania Importing Co.	Wood pulp	34.40	do	Do.
June	20	German Press & Plate Co.	News-print paper	58.64	Clerical error	Do.
	24	German American Button Co.	Vegetable ivory	135.10	Error in classification	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1914—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1913.					
July 15	Humburg, Charles	Gin	$2.06	Error in quantity	Sec. 28, subsec. 23, act Aug. 5, 1909.
17	Hall, M. C.	Horseradish roots	210.00	Following the decision, Exhibit 6, appendix.	Do.
19	Hackfeld & Co. (Ltd.)	Sulphur	1,103.72	Error in classification	Do.
21	Hensel, Bruckmann & Lorbacher	Coverings	152.60	Court judgment	Do.
22	.....do	.....do	102.90	.....do	Do.
Aug. 7	Howell Bros	Suit of clothes	10.85	American goods returned, free	Do.
7	Hancher, M	Leather	9.37	Error in classification	Do.
20	Hawley & Letzerich	Sheathing	27.48	.....do	Do.
28	.....do	Olive oil	24.73	Error in quantity	Do.
28	Howland Dry Goods Co., The	Women's gloves	14.04	Error in classification	Do.
30	Hawley & Letzerich	Machine tool	51.00	.....do	Do.
30	Hempstead & Son, O. G	Aluminum	14.10	Court judgment	Do.
Sept. 23	Herrmann Bros	Liquors	8.24	Shortage	Do.
23	Hop Chong Lung	Spirits	5.20	Clerical error	Do.
Oct. 10	Hawley & Letzerich	Wrapping paper	392.70	Free under treaty and Canadian reciprocity act.	Par. Y, sec. 3, act Oct. 3, 1913.
31	.....do	Sulphur	21.36	Error in classification	Do.
Nov. 5	Herrlinger & Co	Felt	28.70	.....do	Do.
12	Hawley & Letzerich	Wrapping paper	48.65	Free under treaty and Canadian reciprocity act.	Do.
12	Herbert Importing Co	Whisky	6.27	Paid by carrier	Do.
14	Haynes & Co., C. A	Knitted mufflers	7.30	Exhibit 12, appendix	Do.
15	Hesse & Bro., D. S	Jewelry	294.50	Court judgment	Do.
17	.....do	.....do	87.75	.....do	Do.
17	Hensel, Bruckmann & Lorbacher	.....do	126.00	.....do	Do.
21	Hesse & Bro., D. S	.....do	105.50	.....do	Do.
21	Hussa & Co	.....do	3.50	.....do	Do.
22	Hesse & Bro., D. S	.....do	1,380.75	.....do	Do.
22	Haynes & Co., C. A	Knitted mufflers	120.50	Exhibit 12, appendix	Do.
25	Halle Bros. Co., The	Jewelry	2.75	Error in classification	Do.
26	Hawley & Letzerich	Gloves	8.43	Clerical error	Do.
26	.....do	Cider	14.15	Error in classification	Do.
26	Hensel, Bruckmann & Lorbacher	Jewelry	591.50	Court judgment	Do.
26	.....do	.....do	232.50	.....do	Do.
26	.....do	.....do	120.41	.....do	Do.
26	Hirsch's Sons, G	.....do	35.00	.....do	Do.
26	Hesse & Bro., D. S	.....do	1,781.00	.....do	Do.
28	Hussa & Co	.....do	1.50	.....do	Do.
Dec. 1	Hesse & Bro., D. S	.....do	62.00	.....do	Do.
3	Hirsch's Sons, G	.....do	10.75	.....do	Do.
4	Hensel, Bruckmann & Lorbacher	.....do	104.75	.....do	Do.
5	.....do	.....do	498.75	.....do	Do.
8	.....do	.....do	524.50	.....do	Do.

10	....do	...do	202.75	....do	Do.
10	Hoey, John J	Wire card clothing	33.95	Withdrawn from warehouse after change of rate.	Do.
11	Hesse & Bro., D. S	Jewelry	785.15	Court judgment	Do.
13	Hussa & Co	....do	16.25	....do	Do.
13	Hewlett & Power	....do	.75	....do	Do.
15	Hensel, Bruckmann & Lorbacher	....do	1,484.40	....do	Do.
15	Hague & Co. A. J. (Inc.)	....do	1.00	....do	Do.
16	Hensel Bruckmann & Lorbacher	....do	14.25	....do	Do.
17	Hirsch's Sons, G	....do	83.50	....do	Do.
18	....do	....do	10.50	....do	Do.
18	Hensel, Bruckmann & Lorbacher	....do	194.25	....do	Do.
18	Hirshbach & Smith	....do	1.50	....do	Do.
19	Hensel, Bruckmann & Lorbacher	....do	91.81	....do	Do.
19	Hussa & Co	....do	21.00	....do	Do.
22	Hawley & Letzerich	Pencils	15.84	Short shipped	Do.
26	Hirsch's Sons, G	Jewelry	.75	Court judgment	Do.
29	Hamano, Shoten	Various articles	1,620.42	Withdrawn from warehouse after change of rate.	Do.
29	....do	Rice	51.33	....do	Do.
29	Hata, S	Various articles	9.40	....do	Do.
29	....do	Matting	13.00	....do	Do.
29	....do	Cotton and silk cloth	25.26	....do	Do.
29	Hoffschlaeger Co. (Ltd.)	Linen duck	39.43	....do	Do.
29	....do	Brown linen duck	37.20	....do	Do.
29	Honolulu Brewing Co. (Ltd.)	Rice	133.50	....do	Do.
29	Honolulu Hat Co	Paper	11.54	....do	Do.
29	Hop Hing & Co	Various articles	18.16	....do	Do.
1914.					
Jan. 9	Honolulu Hat Co	Paper	11.50	....do	Do.
10	Hardwood Manufacturing Co	Fabrics of jute	27.22	Clerical error	Do.
10	Haaker Co., Wm	Herrings	16.43	Court judgment	Do.
12	Heidelberg Liquor Co	Liquor	1.00	Clerical error	Do.
27	Hawley & Letzerich	Earthenware	74.10	Error in classification	Do.
29	Haaker, Anna	Marble base	60.90	Court judgment	Do.
30	Hardwood Manufacturing Co	Burlap	76.86	Duty twice paid	Do.
30	Hempstead & Son, O. G	Rubber waste	55.80	Court judgment	Do.
30	Harris & Co., H	Rotten grapes	370.50	Exhibit 10, appendix	Do.
30	....do	....do	147.25	....do	Do.
30	....do	....do	285.75	....do	Do.
Feb. 9	....do	....do	1,805.50	....do	Do.
9	Hanhart, E	Knitted mufflers	11.80	Court judgment	Do.
9	Hensell, Bruckmann & Lorbacher	....do	599.10	....do	Do.
19	Hawley & Letzerich	Iron castings	151.50	Error in classification	Do.
19	Herbst Importing Co., C. S	Wine	3.70	Short landed	Do.
28	Hawaii Meat Co. (Ltd.)	Beef, veal, and mutton	2,554.39	Withdrawn from warehouse after change of rate.	Do.
Mar. 10	Halle Bros. Co., The	Leather	10.30	Clerical error	Do.
11	Hulen, Van H	Gloves	4.00	Personal effects, free	Do.
19	Haberman Provision Co., The A	Tripe	37.90	Error in classification	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1914—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1914.					
Mar. 21	Hoffschlaeger Co. (Ltd.)	Woolens, etc	$1,117.93	Withdrawn from warehouse after change of rate.	Par. Y, sec. 3, act Oct. 3, 1913.
21	Hop Hing & Co	Bottles, etc	9.36	do	Do.
21	Heil Chemical Co., Henry	Filter paper	2.40	Clerical error	Do.
31	Hensel, Bruckmann & Lorbacher	Knitted mufflers	82.00	Court judgment	Do.
Apr. 2	Hanke Bros	Lamb gloves	10.23	Error in classification	Do.
3	Henderson, M	Silver sweeps	9.00	Exhibit 13, appendix	Do.
7	Hills & Co., C. S	Gloves	30.28	Error in classification	Do.
9	Hawley & Letzerich	Decorated earthenware	36.40	Exported from warehouse	Section 2977, R. S.
18	Hoffschlaeger Co. (Ltd.)	Woolens	138.68	Withdrawn from warehouse after change of rate.	Par. Y, sec. III, act Oct. 3, 1913.
20	Hensel, Bruckmann & Lorbacher	Knitted mufflers	724.30	Court judgment	Do.
23	Hartrick, Geo	Bottles	40.65	Error in classification	Do.
May 7	Helwig, R	Wood pulp	1,239.07	Court judgment	Do.
9	Hirsch Distilling Co., S	Whisky	1.37	Clerical error	Do.
12	Hawley & Letzerich	Decorated earthenware	45.90	Error in classification	Do.
12	do	Old jute bagging	234.90	do	Do.
12	do	Earthenware	237.75	do	Do.
14	Herbst Importing Co., S. C	Champagne	9.60	Paid by carrier	Do.
19	Hibben Hollweg & Co	Linen cloth	31.50	Error in classification	Do.
19	Hawley & Letzerich	Rubber toys	3.70	do	Do.
June 10	Heidner, Hans	Baskets of wood	16.50	do	Do.
22	Hawley & Letzerich	Wine	1.85	Clerical error	Do.
24	Herrlinger Paper Co., The	Roofing felt	19.30	Error in classification	Do.
24	Henderson, M	Flax and straw	165.00	do	Do.
29	Hamburger, Levine Co	Wearing apparel	78.60	Court judgment	Do.
1913.					
Nov. 5	Italian Delicatessen Grocery Co	Olive oil	8.90	Clerical error	Do.
8	Italian Importing Co	Cheese	7.62	Excess deposit refunded on liquidation.	Do.
26	Isaacs, Vought & Co	Jewelry	11.25	Court judgment	Do.
Dec. 3	do	do	9.50	do	Do.
8	do	do	11.25	do	Do.
9	do	do	6.90	do	Do.
11	do	do	215.25	do	Do.
12	do	do	6.75	do	Do.
15	do	do	8.50	do	Do.
18	Isaacs Vought & Co	do	1.75	do	Do.
29	Isoshima, K	Various articles	21.90	Withdrawn from warehouse after change of rate.	Do.
29	Iwakami & Co	Straw hats	11.80	do	Do.

1914.					
Jan. 9	Isoshima, K	Various articles	57.07	do	Do.
9	Iwakami & Co	do	73.39	do	Do.
24	Italian Importing Co	Cheese	11.80	Excess deposit refunded on liquidation.	Do.
Apr. 23	Ishimitsu Suetara	Dried peas	6.00	Error in classification	Do.
23	Importers & Manufacturing Co	Pacquets	25.34	Court judgment	Do.
June 24	Iwakami & Co	Straw hats	129.45	Error in classification	Do.
1913.					
July 30	Jevne Co., H	Gin and bitters	58.01	Short shipped and clerical error	Sec. 28, subsec. 23, act Aug. 5, 1909.
Aug. 28	Jackson Temple	Woolen suit	2.92	Clerical error	Do.
Sept. 23	Jordan Cutlery Co., A. J	Pocket knives	15.30	do	Do.
Oct. 29	Japanese Rice Mill Co	Rice	341.62	Withdrawn from warehouse after change of rate.	Par. Y, sec. 3, act Oct. 3, 1913.
Nov. 26	Judkins & McCormick Co	Jewelry	9.75	Court judgment	Do.
Dec. 6	do	do	22.25	do	Do.
12	do	do	8.00	do	Do.
22	do	do	18.75	do	Do.
1914.					
Apr. 15	Jefferson Importation Co	Wine	24.25	Error in classification	Do.
June 24	Jordan, W. B. & W. G	Herring	48.87	do	Do.
1913.					
July 2	Kerr, Frank W	Drugs	2.50	Clerical error	Sec. 28, subsec. 23, act Aug. 5, 1901.
11	Kemper, P. A. (estate)	Merchandise	.91	Excess deposit refunded on liquidation.	Do.
18	Kowalski, J. L	Cattle	123.37	Short shipped	Do.
18	Kraemer & Co., F. L	Am. goods returned	38.70	Exhibit 14, appendix	Do.
18	Kraemer & Foster	Olive oil	2,010.40	Court judgment	Do.
Aug. 2	Kaufman & Co., K	Leather	403.89	Error in classification	Do.
8	Kinney & Levan Co., The	Statuary	22.40	Clerical error	Do.
8	Kawayu, M	Sulphur	403.80	Error in classification	Do.
18	Kenyon Co., C	Waterproof cloth	145.75	Court judgment	Do.
22	Kronfeld, Saunders & Co	Post cards	12.80	do	Do.
28	Kiefer Drug Co., A	Cigars	15.89	Error in weight	Do.
28	Kildall Fish Co	Herring	122.70	Error in classification	Do.
Sept. 23	Kaufer Co., The P. A	Church regalia	10.20	Free	Do.
29	Kammerer Conrad Glue Co	Gelatin	49.00	Error in classification	Do.
29	Kitchen, John C	Pine lumber	29.25	do	Do.
Nov. 7	Kaskel & Kaskel	Knitted mufflers	119.00	Exhibit 12, appendix	Par. Y, sec. 3, act Oct. 3, 1913.
21	Koopman & Co	Jewelry	17.50	Court judgment	Do.
Dec. 1	Keller Becker & Co	do	9.25	do	Do.
5	Kops Bros	do	16.25	do	Do.
8	Knauth Nachod & Kuhne	Jewelry and leather cases	22.19	do	Do.
8	do	Jewelry	3.75	do	Do.
9	do	do	4.25	do	Do.
9	Kojima & Co. (Ltd.), S	Sake	1.76	Leakage	Do.
16	Kahn, E. W	Jewelry	114.25	Court judgment	Do.
17	Knauth, Nachod & Kuhne	do	12.50	do	Do.
22	Kingsbacher Bros	Celluloid clocks	8.10	Error in classification	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1914—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1913.					
Dec. 29	Kam Fai Co	Various articles	$63.37	Withdrawn from warehouse after change in rate.	Par. Y, sec. 3, act Oct. 3, 1913.
29	Kawano, T	do	67.59	do	Do.
1914.					
Jan. 9	Kennedy & Gough	Meat	42.75	do	Do.
9	Kishii Shoten	Various articles	61.07	do	Do.
10	Knauth, Nachod & Kuhne	Jewelry	131.75	Court judgment	Do.
31	Kraemer & Co., F. L	Plate powder	29.06	do	Do.
Feb. 2	Kinney & Levan Co., The	China	2.20	Clerical error	Do.
11	Kentucky Tobacco Products Co	Cigarette machines	416.64	do	Do.
13	Kraemer & Co., F. L	Breeches ball, etc	15.00	Court judgment	Do.
17	Klipstein & Co., A	Indigo paste	1,448.04	Exhibit No. 15, appendix	Do.
18	Klosterman & Co., J. H	Sulphur	208.20	Exhibit 4, appendix	Do.
18	Koons, Wilson & Co	Alizarin assistant	46.65	Court judgment	Do.
Mar. 5	Kraemer & Co., F. L	Plate powder	80.20	do	Do.
10	Kansas City Bag Manufacturing Co	Burlaps	88.83	Clerical error	Do.
21	Kwong Chong Lung Co	Bottles	7.92	Withdrawn from warehouse after change in rate.	Do.
May 4	Kurtz, Stuboeck & Co	Merchandise	1,325.10	Court judgment	Do.
5	Kern Commercial Co	Wood pulp	152.18	do	Do.
12	Kiam, Ed	Fur hats	45.57	Error in classification	Do.
14	Kelley, Clarke Co	Fish	1.35	Clerical error	Do.
14	Kingsbacher Bros	Hat pins	4.30	Error in classification	Do.
June 12	Klipstein & Co., A	Indigo paste	232.65	Exhibit 15, appendix	Do.
24	Knowlton, Co., M. D	Wrapping paper	497.00	Free, under treaty and Canadian reciprocity act.	Do.
1913.					
July 1	Lang, R. F	Bouillon cubes	73.40	Court judgment	Sec. 28, subsec. 23, act Aug. 5, 1909.
2	Lawrence, B. R	Herring	26.70	Clerical error	Do.
9	do	Magnesia	126.35	Error in classification	Do.
17	Lippman, Spier & Hahn	Rubber jewelry	24.75	Court judgment	Do.
17	Levy & Co., L. W	do	5.75	do	Do.
18	Lubbock, W. R	Cattle	181.35	Short shipped	Do.
Aug. 23	Linen Thread Co., The	Lace-making machines	2,457.55	Error in classification	Special act of Congress, approved Feb. 7, 1913.
26	Lozano & Co., F	Tobacco	62.40	do	Sec. 28, subsec. 23, act Aug. 5, 1909.
27	Lewis Grain Co	Feed wheat	760.00	do	Do.
30	Lyman, Miss Marjorie	Hat	1.75	Product of Philippine Islands, free	Do.
30	Lyman, Miss Wilena	do	1.75	do	Do.
Sept. 2	Lord & Taylor	Trimmed hats	122.30	Exhibit 16, appendix	Do.
29	Landrum, A. J	Cattle	95.25	Error in classification and short shipped.	Do.
Nov. 11	Liggett & Myers Tobacco Co	Tobacco	139.74	Clerical error	Par. Y, sec. 3, act Oct. 3, 1913.

	17	Lewy & Cohen	Jewelry	11.50	Court judgment	Do.
	17	Lang, R. F	do	21.00	Exhibit 8, appendix	Do.
	17	Lorsch & Co., A	do	29.75	Court judgment	Do.
	18	Leon Rheims Co	do	6.25	do	Do.
	18	Lippmann, Spier & Hahn	Hand bags	85.75	do	Do.
	18	Lord & Taylor	do	119.25	do	Do
	19	Lisner & Co., D	Jewelry	302.75	do	Do.
	19	Lord & Taylor	do	23.25	do	Do.
	20	Lippmann, Spier & Hahn	do	34.75	do	Do.
	21	Levy & Co., L. W	do	184.50	do	Do.
	21	Lord & Taylor	do	116.75	do	Do.
	21	Lewy & Cohen	do	69.75	do	Do.
	21	Lippmann, Spier & Hahn	do	92.50	do	Do.
	22	Lewy & Cohen	do	4.50	do	Do.
	22	Lippmann, Spier & Hahn	do	3.25	do	Do.
	22	Leon Rheims Co	do	22.75	do	Do.
	26	Lisner & Co., D	do	66.50	do	Do.
	26	Lewy & Cohen		27.25	do	Do.
	26	do	do	51.75	do	Do.
	26	Lippmann, Spier & Hahn	do	77.75	do	Do.
	26	Lord & Taylor	do	35.75	do	Do.
	26	Lewy & Cohen	do	5.00	do	Do.
	26	do	do	15.50	do	Do.
	26	Levison Bros. & Co	do	13.25	do	Do.
	26	Lisner & Co., D	do	9,049.50	do	Do.
	26	Lorsch & Co., A	do	312.75	do	Do.
	26	Loveless, R. L	Brandy	26.00	Clerical error	Do.
	28	Lord & Taylor	Jewelry	117.50	Court judgment	Do.
Dec.	1	Levy & Co., L. W	do	23.75	do	Do.
	1	Lewy & Cohen	do	140.00	do	Do.
	1	Lang, R. F	do	348.00	do	Do.
	2	Lippmann, Spier & Hahn	do	23.50	do	Do.
	2	Levy & Co., M	do	55.25	do	Do.
	2	Lorsch & Co., A	do	106.50	do	Do.
	4	Lisner & Co., D	do	3,935.55	do	Do.
	4	Lewy & Cohen	do	81.50	do	Do.
	4	Leon Rheims Co	do	18.75	do	Do.
	5	Lippmann, Spier & Hahn	do	1,672.75	do	Do.
	5	Leon Rheims Co	do	2.00	do	Do.
	5	Lewy & Cohen	do	301.50	do	Do.
	6	Lord & Taylor	do	171.40	do	Do.
	8	Lisner & Co., D	do	163.00	do	Do.
	8	Leon Rheims Co	do	3.50	do	Do.
	8	Lewy & Cohen	do	28.00	do	Do.
	8	Lorsch & Co., A	do	50.50	do	Do.
	8	Lord & Taylor	do	12.00	do	Do.
	8	Lippmann, Spier & Hahn	do	869.05	do	Do.
	9	do	do	5.00	do	Do.
	9	Lewy & Cohen	do	10.25	do	Do.
	9	Lorsch & Co., A	do	187.00	do	Do.
	10	Lewy & Cohen	do	44.50	do	Do.
	10	Lippmann, Spier & Hahn	do	43.50	do	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1914—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1913.					
Dec. 10	Lang, R. F	Jewelry	$138.00	Court judgment	Par. Y, sec. 3, act Oct. 3, 1913.
10	Leon Rheims Co	do	39.25	do	Do.
11	Lewy & Cohen	do	23.00	do	Do.
11	Lord & Taylor	do	392.28	do	Do.
11	Leon Rheims Co	do	28.50	do	Do.
11	Lorsch & Co., A	do	17.00	do	Do.
12	Lippmann, Spier & Hahn	do	29.50	do	Do.
12	Lord & Taylor	do	8.00	do	Do.
12	Lisner & Co., D	do	2,974.55	do	Do.
12	Lorsch & Co. (Inc.), Albert	do	31.00	do	Do.
15	Lisner & Co., D	do	2,061.00	do	Do.
15	Lewy & Cohen	do	22.25	do	Do.
15	Lorsch & Co., A	do	89.70	do	Do.
15	Lorsch & Co. (Inc.), A	do	339.40	do	Do.
15	Lippmann, Spier & Hahn	do	206.00	do	Do.
16	Lisner & Co., D	do	7,249.65	do	Do.
17	Leon Rheims Co	do	4.25	do	Do.
17	Lewy & Cohen	do	14.75	do	Do.
17	Lorsch & Co., A	do	370.60	do	Do.
17	Lippman, Spier & Hahn	do	17.00	do	Do.
18	Lang, R. F	do	212.15	do	Do.
18	Lewy & Cohen	do	23.50	do	Do.
18	Lisner & Co., D	do	4,051.10	do	Do.
19	Lewy & Cohen	do	5.90	do	Do.
19	Lauricella, P	Rotten fruit	67.08	Exhibit 2, appendix	Do.
19	Lippmann, Spier & Hahn	Jewelry	242.35	Court judgment	Do.
23	Leuchtenberg Co., Wm. E	do	3.75	do	Do.
23	Lisner & Co., D	do	139.25	do	Do.
24	Lauricella, P	Rotten fruit	48.77	Exhibit 2, appendix	Do.
31	Lippmann, Spier & Hahn	Jewelry	841.65	Court judgment	Do.
31	Lang, R. F	do	415.20	do	Do.
31	Leigh & Butler	Iron castings	1,280.53	do	Do.
1914.					
Jan. 6	Lyon & Healy	Ivory mouthpieces	39.00	do	Do.
6	Lang, R. F	Jewelry	49.75	do	Do.
30	Lehrback, K. E	Oat screenings	65.92	Error in classification	Do.
Feb. 2	Loose, J. L	Antiquities	4.50	Antiquities over 100 years old, free	Do.
5	Lumley, J	Cattle	184.03	Court judgment	Do.
18	Lozano Son & Co., F	Tobacco	295.20	Error in classification	Do.
20	Lang, R. F	Rapeseed oil	16.55	Court judgment	Do.
Mar. 3	do	Jewelry	205.65	do	Do.
10	Lofaro & Rossi	Tomatoes	7.60	Clerical error	Do.
10	Lorraine Mfg. Co	Wool	123.37	Error in weight	Do.

	16	Lang, R. F	Jewelry	121.75	Court judgment	Do.
	23	do	do	66.85	do	Do.
	30	do	do	260.25	do	Do.
	30	Lewis & Co., Chas. E	Flaxseed	1.24	Clerical error	Do.
	30	Lovejoy & Co. (Ltd.)	Bottles	19.65	Withdrawn from warehouse after change of rate.	Do.
	30	Langley, C. H	Earthenware ice tanks	688.80	Exhibit 17, appendix	Do.
Apr.	1	Lewy & Cohen	Jewelry	63.80	Court judgment	Do.
	2	Lazarus & Co., The F. & R	Lamb gloves	16.20	Error in classification	Do.
	2	Langley, C. H	Refrigerator interiors	173.80	Exhibit 17, appendix	Do.
	3	Lawrence, B. R	Paper board	24.60	Clerical error	Do.
	7	LeBeck Bros	Hat pins	6.75	Error in classification	Do.
	23	do	Jewelry	8.93	do	Do.
May	13	Levi & Ottenheimer	Whisky	53.55	Shortage	Do.
	13	Lange, Kenyon & Co	Herring	17.10	Error in classification	Do.
	13	Lang & Co	do	42.85	do	Do.
	29	Levy & Levis Co	Dried cherries	633.24	Court judgment	Do.
June	10	Letts, Arthur	Gloves	5.96	Error in classification	Do.
	12	Lewisohn Importing & Trading Co. (Ltd.)	Merchandise	35.80	Court judgment	Do.
1913.						
July	9	Mitchell & Jennings	Cattle	37.92	Short shipped and error in classification.	Sec. 28, subsec. 23, act Aug. 5, 1909.
	9	McPherson, Jas. G	Magnesia rings	252.35	Error in classification	Do.
	16	Menzel & Co	Horseradish roots	20.25	Exhibit 6, appendix	Do.
	16	Maynard & Child	do	97.75	Follows decision in exhibit 6, appendix.	Do.
	17	Menzel & Co	do	54.21	Exhibit 6, appendix	Do.
	18	Manufacturers Paper Co	Lava stone	192.90	Court judgment	Do.
	18	Macmaners, C. L	Red pepper	4.80	Short shipped	Do.
	18	Maltby, David	Wine	.44	do	Do.
	18	do	Cattle	11.25	do	Do.
	30	Mandelbaum & Sons, J	Beaded bags	1.20	Excess deposit refunded on liquidation.	Do.
Aug.	5	Murphy & Co., A	Jute manufacturing machinery.	3,280.80	Exhibit 18, appendix	Do.
	7	Morrison, Alexander	Harvester	150.00	Error in classification	Do.
	19	Mill & Mine Supply Co	Wire rope	478.46	do	Do.
	19	Marck & Richards	Whalebone	20.65	do	Do.
	19	Morimura Bros	Cases	7.00	do	Do.
	20	McGettrick, P	Airdale pups	12.60	For breeding purposes, free	Do.
	23	Murphy & Co., A	Jute manufacturing machinery.	193.95	Exhibit 18, appendix	Do.
	28	McLaughlin, Gormley, King Co	Wild celery seed	595.20	Error in classification	Do.
	28	McNiven	Hayloaders	22.80	do	Do.
Sept.	23	Myers & Co., F. W	Shingles	25.00	Clerical error	Do.
	29	do	Lumber	21.07	do	Do.
Oct.	10	do	Bran	200.00	Error in classification	Par. Y, sec. 3, act Oct. 3, 1913.
	17	Mark Cross Co	Leather cases	3.20	Court judgment	Do.
	31	Manila Trading & Supply Co., The	Embroidered cotton articles	6.00	Clerical error	Do.
	31	MacDougall & Southwick Co., The	Gloves	24.43	Error in classification	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1914—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1913.					
Nov. 18	Macy & Co., R. H	Hand bags	$11.90	Court judgment	Par. Y, sec. 3, act Oct. 3, 1913.
19	Matthews Sons, A. D	Jewelry	13.00	.....do	Do.
21	Meadows & Co., T	.....do	4.25	.....do	Do.
21	Matthews Sons, A. D	.....do	125.75	.....do	Do.
22	.....do	.....do	19.50	.....do	Do.
24	Myers & Co., F. W	Bran	514.60	Error in classification	Do.
26	.....do	Lumber	24.75	Imported by error, and returned	Do.
26	.....do	Bran	60.00	Error in classification	Do.
26	Meyer, G. A. & E	Jewelry	3.50	Court judgment	Do.
Dec. 1	Meadows & Co., Thos	Leather cases	18.30	.....do	Do.
2	.....do	.....do	8.55	.....do	Do.
2	Mills & Gibb	Jewelry	21.50	.....do	Do.
2	Mills & Duflot	Woven palm leaves	453.00	.....do	Do.
3	Meyer, G. A. & E	Jewelry	9.25	.....do	Do.
4	Matthews Sons, A. D	.....do	8.75	.....do	Do.
5	Mills & Gibb	.....do	1.00	.....do	Do.
6	Morrison, J	.....do	14.25	.....do	Do.
9	McGettrick, P	Books	18.75	Free distribution, free	Do.
9	Moore Dry Goods Co., Wm. R	Matting	8.05	Clerical error	Do.
9	Myers & Co., F. W	One horse	31.00	United States origin, free	Do.
10	Mehcanical Fabric Co	Unbleached cotton cloth	179.75	Withdrawn from warehouse after change of rate.	Do.
10	Mills & Gibb	Jewelry	3.25	Court judgment	Do.
12	.....do	.....do	70.75	.....do	Do.
12	Meyer, G. A. & E	.....do	9.00	.....do	Do.
12	Morrison, J	.....do	9.50	.....do	Do.
15	Matthews Sons, A. D	.....do	2.75	.....do	Do.
16	.....do	.....do	24.75	.....do	Do.
17	Meyer, G. A. & E	.....do	12.50	.....do	Do.
18	Meadows & Co., Thos	.....do	.75	.....do	Do.
18	Moleti, R	.....do	94.82	.....do	Do.
19	Musacchia, B	Rotten fruit	26.30	Exhibit 2, appendix	Do.
22	Mayer & Co., Chas	Metal	39.40	Error in classification	Do.
22	Mendel Weinstock Hat Co	Palm-leaf hats	52.50	Clerical error	Do.
22	MacKenzie, J. F	Pastile manufactures	28.85	Error in classification	Do.
22	Morrison, John	Jewelry	3.50	Court judgment	Do.
23	Maniaci, G	.....do	9.12	.....do	Do.
23	Morris Eurn & Am. Ex. Co. (Ltd.)	.....do	1.75	.....do	Do.
23	Mordica & Co., J. D	Rotten fruit	35.15	Exhibit 2, appendix	Do.
1914.					
an. 9	Menzel & Co	Herrings	268.86	Court judgment	Do.
9	Mayor & Son, Thos	Articles of metal	89.25	Withdrawn from warehouse after change of rate.	Do.

9	Macomber, J. C	Rotten grapes	42.75	Exhibit 10, appendix	Do.
10	McLaughlin, Gormley, King Co	Seeds	800.50	Error in classification	Do.
12	Myers & Co., F. W	Pulpwood	15.00	Free under treaty and Canadian reciprocity act.	Do.
17	Meyer & Lange	Fish in tins	1,138.31	Court judgment	Do.
27	McCabe Elevator Co	Wheat	257.75	Twice paid	Do.
29	Mitsui & Co	Lumber	2,862.32	Exhibit 19, appendix	Do.
Feb. 7	Magee & Co., W. T	Scrap rubber	387.50	Court judgment	Do.
11	McCoy Co., Jos. F	Bronze wire cloth	38.22	Exhibit 3, appendix	Do.
11	Morrison Ricker Manufacturing Co	Kid gloves	36.57	Error in classification	Do.
11	Macomber, J. C	Rotten grapes	34.50	Exhibit 10, appendix	Do.
18	Meier & Co., Frank	Cotton hose	3.00	Clerical error	Do.
18	....do	Gloves	3.70	....do	Do.
28	Morrison Ricker Manufacturing Co	....do	501.88	Paid by carrier	Do.
Mar. 6	Musica & Son, A	Jewelry	14.75	Court judgment	Do.
10	Massey, C. A	Fur neck piece	5.00	American manufacture, free	Do.
10	Maynard & Child	Rotten grapes	291.50	Exhibit 10, appendix	Do.
18	Memphis Queensware Co	Decorated china	4.40	Clerical error in reduction of currency	Do.
19	Miers & Rose	Horses, etc	10.00	....do	Do.
Apr. 6	Massce & Co	Candles	2.00	Court judgment	Do.
7	Miller, Rhodes & Swartz	Gloves	26.17	Error in classification	Do.
15	Mathis, E. M	Steamer rugs	2.80	....do	Do.
20	Monguin, Rest. & Wine Co. (Ltd.)	Snails	77.80	Exhibit 20, appendix	Do.
23	Mill & Mine Supply Co	Wire rope	97.48	Error in classification	Do.
29	Merick Reynolds Co	Leather gloves	6.09	....do	Do.
May 9	Miyozaki & Co., H	Fruits	7.98	Error in classification and exported	Do.
9	....do	Medicine preparations	22.63	....do	Do.
9	Mannheimer Bros	Gloves	49.83	Error in classification	Do.
13	Manila Trading & Supply Co	Wood stands	18.60	....do	Do.
29	Memphis Paper Co	Wrapping paper	8,550.15	Free under treaty and Canadian reciprocity act.	Do.
June 10	Mathis, E. M	Decalcamanias	10.00	Error in classification	Do.
17	Miller & Togstad	Fish in tins	595.48	Court judgment	Do.
20	McNiven, I	Wood pulp	93.33	Error in classification	Do.
20	Moore & Co., A. B	Beet pulp	25.90	Clerical error	Do.
20	Myers & Co., F. W	Lumber	149.60	Error in classification	Do.
22	Mexican Telegraph Co., The	Manufactures of wood	16.10	....do	Do.
22	May Co., The	Flax fabrics	12.50	....do	Do.
23	MacDougall & Southwick Co	Lamb gloves	44.17	....do	Do.
24	McNiven, I	Flax straw	190.80	....do	Do.
24	Macomber, J. C	Rotten grapes	4.50	Exhibit 10, appendix	Do.
24	Masson, Wm. H	Sardines in bouillon	132.20	Court judgment	Do.
1913.					
July 21	Nix & Co., J	Horseradish roots	988.75	Following the decision in Exhibit 6, appendix.	Sec. 28, subsec. 23, act Aug. 5, 1909.
21	Neuman & Schwiers Co., The	Herrings	4.20	Court judgment	Do.
Aug. 20	National Cash Register Co	Printing press	660.45	Error in classification	Do.
Sept. 1	Newhall & Co., H. M	Sulphur	791.29	Exhibit 4, appendix	Do.
Nov. 26	New York Millinery & Supply Co	Jewelry	11.25	Court judgment	Par. Y, sec. 3, act Oct. 3, 1913.
Dec. 2	New York Merchandise Co	....do	63.75	....do	Do.
3	....do	....do	153.15	....do	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1914—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1913.					
Dec. 4	New York Merchandise Co	Jewelry	$69.00	Court judgment	Par. Y, sec. 3, act Oct. 3, 1913.
5	Neuburger & Co., M	do	49.50	do	Do.
6	do	do	20.25	do	Do.
8	New York Merchandise Co	do	53.25	do	Do.
9	do	do	240.50	do	Do.
10	do	do	272.25	do	Do.
11	do	do	83.75	do	Do.
11	New York Millinery & Supply Co	do	14.50	do	Do.
12	Neuburger & Co., M	do	64.25	do	Do.
12	New York Merchandise Co	do	33.00	do	Do.
15	do	do	108.75	do	Do.
15	Neuburger & Co., M	do	41.25	do	Do.
15	New York Merchandise Co	do	47.50	do	Do.
18	do	do	29.25	do	Do.
20	do	do	7.75	do	Do.
24	Nairn Linoleum Co., The	Belting	190.30	do	Do.
1914.					
Jan. 10	Niles Moser Cigar Co	Cigars	3.15	Error in weight	Do.
Feb. 28	Nye, Jenks & Co	Screenings	194.00	Error in classification	Do.
Mar. 18	Nicolini & Verani	Whisky	4.86	Error in gauge	Do.
Apr. 6	Neustadter & Bro., G	Metal polish	33.90	Court judgment	Do.
9	Nugent Bro. Dry Goods Co., B	Lamb gloves	20.82	Error in classification	Do.
25	National Sales Co	Cotton cloth	377.12	do	Do.
29	Noonan, Lohrmann Co	Rosaries of glass	35.60	do	Do.
May 9	Nozaki Bros	Fish	2.97	do	Do.
9	Nugent Bro. Dry Goods Co., B	Paintings in frames	22.00	Clerical error	Do.
26	Neustadter & Bro., G	Metal polish	34.35	Court judgment	Do.
June 10	Nordlinger & Sons., S	Decorated earthenware	6.05	Clerical error	Do.
1913.					
Aug. 30	O'Brien, E. P	Herring	242.40	Error in classification	Sec. 28, subsec. 23, act Aug. 5, 1909.
Nov. 5	Ornes Esswein & Co	Cheese	4.02	Error in weight	Par. Y, sec. 3, act Oct. 3, 1913.
20	Ovington Bros. Co	Jewelry	5.00	Court judgment	Do.
Dec. 8	Ovington Bros	do	.50	do	Do.
11	Ottensoser, D	do	254.50	do	Do.
12	do	do	106.50	do	Do.
16	do	do	172.25	do	Do.
19	Ovington Bros Co	do	58.75	do	Do.
27	do	do	.75	do	Do.
27	Ottensoser, D	do	448.50	do	Do.
27	do	do	317.50	do	Do.
29	Osaki Shoten	Paper	19.33	Withdrawn from warehouse after change of rate.	Do.

1914.					
Jan. 19	Oriental Tea Co	Bulbs	7.20	Error in classification	Do.
26	Ottensoser, D	Jewelry	18.25	Court judgment	Do.
Feb. 19	do	do	534.50	do	Do.
May 9	Oriental Trading Co	Biscuits	6.75	Error in classification	Do.
1913.					
July 11	Pasteur Chamberland Filter Co	Merchandise	3.50	Excess deposit refunded on liquidation.	Sec. 28, subsec. 23, act Aug. 5, 1909.
Oct. 10	Pratt, C. N	Aluminum	21.35	Exhibit 21, appendix	Par. Y, sec. 3, act Oct. 3, 1913.
10	Pickert, Fish & Co	Soused mackerel	143.70	Court judgment	Do.
Nov. 11	Pittsburgh Dry Goods Co., The	Clocks	3.20	Short shipped	Do.
Dec. 5	Pratt & Farmer Co	Jewelry	49.00	Court judgment	Do.
10	Pierson, Ralph & Co	Sheep dip	113.20	Error in classification	Do.
19	Puccio, G	Rotten fruit	4.34	Exhibit 2, appendix	Do.
22	Pittsburgh Dry Goods Co., The	Cotton gloves	29.50	Error in classification	Do.
1914.					
Jan. 9	Palmer Co., The	Tracing cloth	1,830.50	Withdrawn from warehouse after change of rate.	Do.
9	Parise Luige	Steel	2.20	do	Do.
Feb. 9	Perkins, Goodwin Co	Bronze wire cloth	52.85	Exhibit 3, appendix	Do.
19	Palemo Bros	Wines	1.80	Clerical error	Do.
Mar. 10	Peck Dry Goods Co., Geo. B	Felt hats	14.49	Error in classification	Do.
18	Parmelee Dohrmann Co	Decorated earthenware	7.60	Clerical error	Do.
26	Pierson Schade Forwarding Co	Gloves	25.67	Error in classification	Do.
26	Pratt & Co., C. N	Aluminum	19.50	Exhibit 21, appendix	Do.
Apr. 13	Perceval, C	Snails	136.30	Exhibit 20, appendix	Do.
23	Pacific Land & Cattle Co	Drums	34.00	American goods returned	Do.
29	Park Fisher Co	Fish	64.38	Error in classification	Do.
May 1	Portland Rice Milling Co	Rice	6.25	Clerical error	Do.
21	Post Fish Co., The	Fish	2,617.09	Exhibit 22, appendix	Do.
June 10	do	do	1,426.95	do	Do.
24	Pierson Schade Forwarding Co	Straw hats	55.00	Clerical error in reduction of currency	Do.
1913.					
July 9	Ritchie, H. B	Herring	17.40	Error in classification	Sec. 28, subsec. 23, act Aug. 5, 1909.
15	Rothenberg & Schloss Cigar Co	Cigars	1.44	Error in weight	Do.
Aug. 1	Ruckert, C	Horse-radish roots	93.00	Court judgment	Do.
8	Rich & Co., H. J	Articles of silk yarn	10.72	Error in classification	Do.
8	Robinson, J. C	Bungo sulphur	408.70	do	Do.
20	Rhomberg Bros. Co	Brandy	6.28	Short landed	Do.
Sept. 29	Rasmussen, J. A	Typewriter	7.50	United States manufacture, free	Do.
Nov. 4	Rosenthal Sloan Merc	Carpets	10.00	Clerical error	Par. Y, sec. 3, act Oct. 3, 1913.
5	Rothe, M. A. Graser	Saddlery	3.60	Error in classification	Do.
5	do	Saddles	27.60	do	Do.
11	Reed Bros. Co., The	Woolen goods	1.10	Clerical error	Do.
17	Royal Metal Manufacturing Co	Jewelry	133.50	Court judgment	Do.
19	do	do	91.25	do	Do.
21	do	do	263.75	do	Do.
22	do	do	139.00	do	Do.
22	do	do	649.75	do	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1914—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1913.					
Nov. 26	Richard & Co., C. B	Jewelry	$68.50	Court judgment	Par. Y, sec. 3, act Oct. 3, 1913.
26	Rodgers Co., The	do	3.00	do	Do.
29	Royal Metal Manufacturing Co	do	1,069.50	do	Do.
29	Royal Jewelry Manufacturing Co	do	1,024.75	do	Do.
Dec. 3	Richard & Co., C. B	do	4.75	do	Do.
4	Ringk & Co., A. H	do	2.00	do	Do.
5	Royal Jewelry Manufacturing Co	do	2,613.10	do	Do.
5	Royal Metal Manufacturing Co	do	3,130.75	do	Do.
12	do	do	3,080.00	do	Do.
12	Royal Jewelry Manufacturing Co	do	123.75	do	Do.
13	Royal Metal Manufacturing Co	do	291.00	do	Do.
13	Rike Kumler Co., The	Gloves	9.56	Error in classification	Do.
13	Rothchild Bros	Spirits	13.00	Clerical error	Do.
18	Royal Metal Manufacturing Co	Jewelry	509.05	Court judgment	Do.
18	Royal Jewelry Manufacturing Co	do	38.60	do	Do.
22	Racine Woolen Manufacturing Co	Cotton wearing apparel	20.40	Withdrawn from warehouse after change of rate.	Do.
27	Royal Jewelry Manufacturing Co	Jewelry	275.65	Court judgment	Do.
27	Royal Metal Manufacturing Co	do	111.10	do	Do.
1914.					
Jan 17	Richard & Co., C. B	do	49.05	do	Do.
26	Rich & Co., N. J	Articles of silk yarn	122.56	Error in classification	Do.
26	Rubelli's Sons, L	Rubber waste	68.10	Court judgment	Do.
Feb. 18	Robinson, J. C	Sulphur	239.05	Exhibit 4, appendix	Do.
19	Rosenbloom, A	Turnips	2.75	Error in weight	Do.
19	Roycrofters, The	Envelopes	18.90	Error in classification	Do.
Mar. 10	Regnier & Shoup Crockery Co	Leather cases	1.00	Clerical error	Do.
19	Rice Stix Dry Goods Co	Linens	25.95	Error in classification	Do.
26	Rosenthal Sloan Millinery Co	Cotton apparel	4.90	do	Do.
Apr. 6	Rosenheim, A. M	Metal polish	175.50	Exhibit 23, appendix	Do.
20	do	do	183.15	Court judgment	Do.
20	do	do	38.10	do	Do.
May 9	Rice Stix Dry Goods Co	Fabrics of flax	56.40	Error in classification	Do.
9	Rosenthal Sloan Millinery Co	Straw hats	16.10	do	Do.
12	Rosenthal & Co., E. W	Jute bagging	39.70	do	Do.
13	Richmond Dry Goods Co. (Inc.)	Linens	5.70	Clerical error	Do.
June 10	Ross & Co. (Inc.), Jas. R	Bottle caps, etc	5.80	Error in classification	Do.
22	Rabe, H	Palm-leaf hats	169.75	Clerical error in reduction of currency	Do.
23	Ravarino & Freschi Grocer Co	Spirituous beverages	18.45	Error in classification	Do.
24	Richmond Paper Co	Wrapping paper	46.90	Free under treaty and Canadian reciprocity act.	Do.
1913.					
July 2	Seggerman, H	Steers	39.58	Clerical error	Sec. 28, subsec. 23, act Aug. 5, 1909.
2	Sittig, J. W	Iron kettles	53.57	Court judgment	Do.

	2	Sigmund, R. P	Fish	55.43	Error in classification	Do.
	2	Scrivner, J. D	Cattle	7.50	Short shipped	Do.
	18	Scanlan, J. P	do	76.12	do	Do.
Aug.	20	Standard Knitting Co., The	Articles of silk yarn	59.50	Error in classification	Do.
	23	Smith & Dove Manufacturing Co	Lace machines	5,959.40	do	Special act of Congress, approved Feb 7, 1913.
	26	Salley, W. H	Pulp	3,332.57	Free under treaty and Canadian reciprocity act.	Sec. 28, subsec. 23, act Aug. 5, 1909.
	26	Schade, Wilfred & Co	do	925.82	do	Do.
	30	Stone & Co., W. M	Matches	104.30	Error in classification	Do.
Sept.	23	Schmasen, H	Publications	3.25	do	Do.
	23	Salley, W. H	Pulp	2,675.73	Free under treaty and Canadian reciprocity act.	Do.
	23	Schade, Wilfred & Co	do	1,710.18	do	Do.
	23	Southern Pacific Co	Sulphur	299.11	Court judgment	Do.
	23	do	do	99.37	do	Do.
Oct.	10	Sheldon & Co., G. W	Brushes	4.20	do	Par. Y, sec. 3, act Oct. 3, 1913.
	10	Schoellkopf, Hartford & Hanna Co	Coal tar products	232.20	Error in classification	Do.
	18	Schade, Wilfred & Co	Old bagging	50.80	do	Do.
Nov.	5	Streeter, Daniel W	Silk apparel	28.40	Clerical error	Do.
	11	Southern Bagging Co	Old bagging	406.00	Error in classification	Do.
	11	Scientific Materials Co	Glass covers	65.74	do	Do.
	19	Samuels & Bro. (Inc.) J	Gloves	13.04	do	Do.
	19	Stern Bros. (Inc.)	do	11.23	Court judgment	Do.
	19	Stern Bros	do	19.25	do	Do.
	21	do	Jewelry	9.00	do	Do.
	21	do	do	21.75	do	Do.
	21	Samstag & Hilder Bros	do	48.50	do	Do.
	22	Stern Bros	do	70.75	do	Do.
	24	Schatz, Max	Cigarettes	43.63	Error in weight	Do.
	26	Saks & Co	Jewelry	669.75	Court judgment	Do.
	26	Simpson, Crawford & Co	do	431.25	do	Do.
	26	Siegel, Cooper Co	do	66.75	do	Do.
	26	Straus Bros. & Co	do	165.25	do	Do.
	26	Siegel Cooper Co	do	38.25	do	Do.
	26	Saks & Co	do	165.25	do	Do.
	26	Schmitt, M	do	3.50	do	Do.
	26	Samstag & Hilder Bros	do	1,436.00	do	Do.
	26	Steinhardt & Bro. (Inc.), A	do	21.25	do	Do.
	28	Shartenberg & Robinson Co	Gloves	20.69	Error in classification	Do.
	28	Steinhardt & Bro. (Inc.), A	Jewelry	433.75	Court judgment	Do.
	28	Sheldon & Co., G. W	do	44.75	do	Do.
	28	Syndicate Trading Co	do	27.25	do	Do.
Dec.	1	Stegemann, jr., E	do	2.50	do	Do.
	1	Samstag & Hilder Bros	do	743.55	do	Do.
	1	Steinhardt & Bro. (Inc.), A	do	3.25	do	Do.
	1	Strauss Bros & Co	do	159.00	do	Do.
	2	Steinhardt & Bro. (Inc.), A	do	6.50	do	Do.
	2	Stern Bros	do	17.00	do	Do.
	3	Schmitt, M	do	31.25	do	Do.
	4	Stegemann, jr., E	do	2.75	do	Do.
	5	Searles, Babbitt Co	do	8.25	do	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1914—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1913.					
Dec. 5	Sanger Bros	Jewelry	$15.25	Court judgment	Par. Y, sec. , act Oct. 3, 1913.
5	Stegemann, jr., E	do	63.50	do	Do.
6	Samstag & Hilder Bros	do	458.00	do	Do.
8	Saks & Co	do	3,098.25	do	Do.
8	Simpson, Crawford Co	do	175.50	do	Do.
8	Siegel, Cooper Co	do	74.50	do	Do.
10	Stegemann, jr., E	do	135.00	do	Do.
10	Schade, Wilfred & Co	Manufactures of paper	5.53	Error in classification	Do.
11	Schmitt, M	Jewelry	8.25	Court judgment	Do.
11	Stegemann, jr., E	do	1,141.65	do	Do.
12	Samstag & Hilder Bros	do	545.50	do	Do.
12	Siegel, Cooper Co	do	64.75	do	Do.
12	Simpson, Crawford Co	do	491.15	do	Do.
12	Saks & Co	do	525.00	do	Do.
12	Stiner & Son, W. H	do	14.50	do	Do.
15	Saks & Co	do	8.75	do	Do.
15	Simpson, Crawford & Co	do	125.25	do	Do.
15	Siegel, Cooper Co	do	27.75	do	Do.
15	Strauss Bros & Co	do	58.00	do	Do.
15	Stern, P	do	42.25	do	Do.
16	Stern Bros	do	884.15	do	Do.
17	Snows, W. S., Sample Ex. Co	do	28.50	do	Do.
17	Schmitt, M	do	55.50	do	Do.
17	Stegemann, jr., E	do	597.00	do	Do.
17	Samstag & Hilder Bros	do	515.65	do	Do.
18	Strauss Bros. & Co	do	42.50	do	Do.
18	Samstag & Hilder Bros	do	2.75	do	Do.
18	Stegemann, jr., E	do	178.50	do	Do.
18	Stern Bros	do	48.50	do	Do.
19	Steinhardt & Bro. (Inc.). A	do	1,443.20	do	Do.
19	Steinhardt & Bro., A	do	3.50	do	Do.
20	Sterling Bronze Co., The	Marble sculptures	547.05	Exhibit 24, appendix	Do.
22	Samstag & Hilder Bros	Jewelry	134.25	Court judgment	Do.
22	Stern Bros	do	8.75	do	Do.
23	Sun Kwong On	Shortage	14.49	do	Do.
23	Siegel Cooper Co	Jewelry	123.66	do	Do.
23	Simpson-Crawford Co	do	146.25	do	Do.
23	Saks & Co	do	106.75	do	Do.
24	Schmitt, M	do	42.25	do	Do.
24	Steiner, S. S	Rotten fruit	42.60	Exhibit 2, appendix	Do.
29	Samura, K	Manufactures of metal	5.60	Withdrawn from warehouse after change in rate.	Do.
29	do	Various articles	24.55	do	Do.
	Sayegusa, Shoten M	Bamboo screens	13.00	do	Do.

	29	Shiraki, S	Manufactures of metal	29.48	do	Do.
	30	Salley, W. H	Waste Bagging	123.64	Error in classification	Do.
1914.						
Jan.	9	Salisbury & Nightingale	Steel	197.69	Withdrawn from warehouse after change in rate	Do.
	9	Sugrant, E. M	Bronze wire articles	3.96	Exhibit 3, appendix	Do.
	9	Sayegusa. M. Shoten	Various articles	150.34	Withdrawn from warehouse after change in rate.	Do.
	10	Schade, Wilfred & Co	Cartons	2.70	Error in classification	Do.
	10	do	Bulbs	6.55	do	Do.
	10	Stein Block Co., The	Woolen cloth	3.85	Clerical error	Do.
	12	Schoellkopf, Hartford & Hanna Co	Coal-tar products	4,183.20	Error in classification	Do.
	15	Stern, S	Jewelry	65.00	Court judgment	Do.
	17	Stegemann, jr., E	do	15.25	do	Do.
	20	Stern Bros	do	32.25	do	Do.
	22	do	do	32.25	do	Do.
	22	Stohmeyer & Arpe Co	Fish in tins	22.13	do	Do.
	26	Southworth Co., The W. P	Articles of silk yarn	2.52	Error in classification	Do.
	27	Smith-McCord Dry Goods Co	Fabrics of flax	38.55	do	Do.
	28	Salts Textile Manufacturing Co	Spun silk	88.85	Clerical error	Do.
	30	Sherwood & Sherwood	Glass jars	3.30	Error in classification	Do.
Feb.	2	Southern States Bag Co	Burlap	115.18	Withdrawn from warehouse after change in rate.	Do.
	2	Stix, Baer & Fuller Dry Goods Co	Galloons	18.00	Clerical error	Do.
	3	Sioux City Seed & Nursery Co	Cabbage seed	2.00	Excess deposit refunded on liquidation.	Do.
	10	Sergeant & Co., E. M	Bronze wire cloth	4.59	Exhibit 3, appendix	Do.
	11	Stone & Co., W. M	Bulbs	71.25	Error in classification	Do.
	11	Schade, Wilfred & Co	Gloves	336.90	do	Do.
	13	Sas Wouter	Peas and beans	14.60	Excess deposit refunded on liquidation.	Do.
	14	Stern Bros	Candles	4.40	Court judgment	Do.
	16	Stern, S	Waste rubber	93.60	do	Do.
	16	Stegemann, jr., E	Jewelry	12.00	do	Do.
	19	Sage Allen & Co	Women's gloves	3.75	Error in classification	Do.
	28	Salley, W. H	Herring	174.00	do	Do.
	28	Siegrist & Fraley	Gloves	58.55	do	Do.
Mar.	2	Stern Bros	Jewelry	5.25	Court judgment	Do.
	3	Scruggs, Vandervoort & Barney Dry Goods Co.	Manufactures of glass	19.50	Error in classification	Do.
	10	Strouse, Adler & Co	Silk goods	25.60	Clerical error	Do.
	10	Southern Express Co	Cigar box labels	1.96	do	Do.
Apr.	3	Samuels & Bro. (Inc.), J	Gloves	4.00	Error in classification	Do.
	3	Stewart Bros. Hardware Co	Fork trowels, etc	9.40	do	Do.
	3	Sheldon & Co., G. W	Pacquets	91.10	Exhibit 9, appendix	Do.
	3	Stirn, L. & E	Beans	78.05	Court judgment	Do.
	6	Standard Chemical Co	Metal polish	124.05	Exhibit 23, appendix	Do.
	7	Stewart Loader Co	Sheaf loaders	900.00	Error in classification	Do.
	7	Sage, Allen & Co	Gloves	20.21	do	Do.
	8	Straus & Sons, L	Merchandise	34.20	Court judgment	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1914—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1914.					
Apr. 9	Scruggs, Vandervoort & Barney Dry Goods Co.	Straw hats	$44.40	Error in classification	Par. Y, sec. 3, act Oct. 3, 1913.
18	Straus, Henry	Cigars	3.02	Clerical error	Do.
18	Saunders, T. W	Solder dross	21.75	.....do	Do.
18	.....do	Bran	54.40	.....do	Do.
18	.....do	Mill buttings	508.82	Exhibit 25, appendix	Do.
18	Severin, N	Medical preparations	31.50	Error in classification	Do.
23	Storrs & Harrison Co., The	Rhododendrons	19.50	.....do	Do.
23	Shun Yuen Co	Eggs	6.84	.....do	Do.
29	Schwabacher Bros. & Co. (Inc.)	Fish	190.35	.....do	Do.
29	Seattle & Puget Sound Packing Co	.....do	67.89	.....do	Do.
29	Straus & Sons, L	Merchandise	19.35	Court judgment	Do.
May 9	Schade, Wilfred & Co	Straw hats	4.10	Error in classification	Do.
9	.....do	Regalia	202.30	.....do	Do.
12	Smith, R. Waverly	Bread	2.25	.....do	Do.
12	Shallus, F. H	Sardines in bouillon	39.01	Court judgment	Do.
13	Salley, W. H	Old gunny rags	18.90	Error in classification	Do.
14	Salts Textile Manufacturing Co., The	Spun silk	5,026.46	.....do	Do.
June 10	Sommers & Co., G	Wool apparel	3.15	Appraiser's amended return	Do.
17	Snows U. S. Sample Ex. Co. (Ltd.)	Merchandise	8.87	Court judgment	Do.
22	Saunders, T.	Flax straw	147.33	Error in classification	Do.
22	Sinclair, Rooney & Co	Manila hemp	16.58	Additional duty erroneously assessed	Do.
23	Samuels & Bro. (Inc.), J	Gloves	12.21	Error in classification	Do.
23	Shallus F. H	Sardines in bouillon	56.60	Court judgment	Do.
1913.					
July 30	Tammen Co., The H. H	Jewelry	28.50	Error in classification	Sec. 28, subsec. 23, act Aug. 5, 1909.
Aug. 28	Textile Finishing Machinery Co	Tools	245.25	.....do	Do.
Sept. 23	Teikoku Co., The	Shellfish	31.50	.....do	Do.
Nov. 26	Trevor, W	Jewelry	9.75	Court judgment	Par. Y sec. 3, act Oct. 3, 1913.
Dec. 19	.....do	.....do	40.50	.....do	Do
22	Tilden Thurber Corp., The	Glassware	115.25	Withdrawn from warehouse after change in rate.	Do.
24	Tamaka, S	Manufactures of paper	25.85	.....do	Do.
1914					
Jan. 9	Takakuwa, Y	Various articles	372.22	.....do	Do.
10	Taylor Instrument Companies	Manufactures of metal	45.00	Clerical error	Do.
Mar. 31	Tootle Campbell Dry Goods Co	Gloves	25.67	Error in classification	Do.
Apr. 3	Taylor, Son & Co	Jacquards	12.90	.....do	Do.
7	Taylor Dry Goods Co., John	Fabrics of flax	10.00	.....do	Do.
23	Thurnauer & Bro., G. M	Merchandise	14.15	Court judgment	Do.
25	Taylor, Son & Co	Fabrics of silk	22.15	Error in classification	Do.
May 13	Thompson, Mrs. Chas. R	Wood boxes	12.20	.....do	Do.

June 17	Tokstad Burger Co	Fish in tins	8,736.46	Exhibit 26, appendix	Do.
17	Tokstad, T V	.....do	2,625.58	.....do	Do.
18	Tokstad Burger Co	.....do	1,462.79	.....do	Do.
26	.....do	.....do	1,112.41	.....do	Do
1913.					
July 2	Union Electric Light & Power Co	Cedar poles	10.00	Clerical error	Sec. 28, subsec. 23, act Aug. 5, 1909.
Nov. 11	Union Cotton Bagging Corp	Old bagging	77.20	Error in classification	Par. Y, sec. 3, act Oct. 3, 1913.
19	Uihlein, Henry	Champagne	9.60	Paid by carrier	Do.
Dec. 11	United States Express Co	Jewelry	6.25	Court judgment	Do.
1914.					
Mar. 26	Universal Shipping Co	Manufactures of aluminum	37.35	Error in classification	Do.
1913.					
July 18	Villareal, F	Cattle	4.67	Short shipped	Sec 28, subsec. 23, act Aug. 5, 1909.
Sept. 30	Vantine & Co., A. A	Bone charms	5.00	Court judgment	Do.
Oct. 31	Vittucci Co., John	Herrings	23.80	Error in classification	Par. Y, sec. 3, act Oct. 3, 1913.
31	.....do	Frankfurter sausage	150.75	.....do	Do.
Nov. 1	Vitro Manufacturing Co., The	Clay	2.13	Clerical error	Do.
Dec. 10	Ventrone, F. P	Macaroni	173.98	Withdrawn from warehouse after change in rate.	Do.
30	Vicario, V	.....do	15.52	Error in weight	Do.
1914.					
Jan. 9	Ventrone, F. P	Olive oil	333.58	Withdrawn from warehouse after change in rate.	Do.
9	Vicario, V	.....do	96.64	.....do	Do.
Feb. 26	Vandergrift & Co., F. B	Flax-weaving machines	6,317.50	Error in classification	Special act of Congress, approved Feb. 7, 1913.
Mar. 27	Van Hoesen Co., F. P	Aniline dye	2.10	Clerical error	Par. Y, sec. 3, act Oct. 3, 1913.
Apr. 15	Vandergrift & Co., F. B	Parts of machines	2,530.35	Error in classification	Special act of Congress, approved Feb. 7, 1913
18	Vanderink Co., The B. T	Paint	1,679.21	.....do	Par. Y, sec. 3, act Oct. 3, 1913
June 1	Vandiver, John L	Wool on lambskins	1,284.12	Court judgment	Do.
1913.					
July 9	Weideman Co., The	Vermouth	14.03	Short shipped and paid by carrier in part.	Sec. 28, subsec. 23, act Aug. 5, 1909.
15	Wyman & Co., C. H	Meat	23.00	Paid by carrier	Do.
15	.....do	Iron	82.11	Error in classification	Do.
21	Watson & Co., T. A	Horseradish roots	72.00	Following the decision in Exhibit 6, appendix.	Do.
23	Wallace, T. P	.....do	387.25	Exhibit 6, appendix	Do.
24	Weitheimer & Co	Gloves	92.10	Court judgment	Do.
31	Wittiver Lace Co	Cotton laces	3.50	Clerical error	Do.
g	Waterhouse, Frank & Co	Sulphur	5,756.30	Error in classification	Do.
18	Woolworth & Co., F. W	Metal boxes	334.32	Exhibit 27, appendix	Do.
20	Western Linen Co	Machinery	1,147.05	Error in classification	Do.
26	Wyman & Co., Chas	Herrings	4,560.92	.....do	Do.
26	.....do	Lettuce seed	16.80	Clerical error	Do.
26	.....do	Lamb gloves	40.24	Error in classification	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1914—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1913.					
Sept. 23	Webb Freyschlag Mercantile Co	Lead pencils	$4.80	Shortage	Sec. 28, subsec. 23, act Aug. 5, 1909.
Oct. 31	Walberg, Albin E	Fur wearing apparel	36.88	Personal effects, free	Par. Y, sec. 3, act Oct. 3, 1913.
31	Webb Freyschlag Mercantile Co	Decorated china	13.80	Clerical error	Do.
Nov. 12	White Wilson Drew Co	Chow chow	24.53	Error in classification	Do.
14	Woolworth & Co., F. W	Jewelry	142.25	Court judgment	Do.
15	Wiener Bros	do	214.25	do	Do.
17	do	do	196.25	do	Do.
17	do	do	301.00	do	Do.
19	do	do	453.25	do	Do.
19	Wolff & Co., H	do	13.75	do	Do.
19	Wolff & Co., Alfred	do	8.25	do	Do.
20	Wanamaker, J	do	8.25	do	Do.
21	Wolff & Co., H	do	87.15	do	Do.
21	Wiener Bros	do	2,577.50	do	Do.
22	do	do	1,882.50	do	Do.
22	Wolff & Co., H	do	64.25	do	Do.
22	Wertheimer Bros	do	27.75	do	Do.
26	Wolff & Co., H	do	239.75	do	Do.
26	Wiener Bros	do	8,682.25	do	Do.
26	Wertheimer Bros	do	51.00	do	Do.
26	Wolff & Co., Alfred	do	16.25	do	Do.
26	Wolff & Co., H	do	26.75	do	Do.
26	Wiener Bros	do	6,763.10	do	Do.
28	do	do	4,779.40	do	Do.
28	Wolff & Co., H	do	46.00	do	Do.
29	do	do	10.90	do	Do.
29	Wiener Bros	do	2,408.90	do	Do.
29	Wanamaker, J	Jewelry and gloves	420.18	do	Do.
Dec. 1	Wiener Bros	Jewelry	530.75	do	Do.
2	do	do	613.75	do	Do.
2	Wolff & Co., H	do	8.50	do	Do.
4	Woolworth & Co., F. W	do	8.75	do	Do.
5	Wolff & Co., H	do	108.50	do	Do.
5	Wiener Bros	do	3,087.75	do	Do.
8	Woolworth & Co., F. W	do	213.75	do	Do.
8	Wolff & Co., H	do	17.50	do	Do.
8	Wiener Bros	do	1,303.25	do	Do.
9	do	do	576.95	do	Do.
9	Wolff & Co., Alfred	do	7.95	do	Do.
10	Wiener Bros	do	1,559.60	do	Do.
11	do	do	172.00	do	Do.
11	Wolff & Co., H	do	43.30	do	Do.
11	Woolworth & Co., F. W	do	143.75	do	Do.
13	Wanamaker, J	do	904.90	do	Do.

	15	Wolff & Co., H	do	19.55	do	Do.
	15	Wiener Bros	do	712.05	do	Do.
	17	Wolff & Co., H	do	78.25	do	Do.
	17	Wiener Bros	do	39.00	do	Do.
	18	Welss, Fargo & Co	do	3.00	do	Do.
	18	Wolff & Co., H	do	14.50	do	Do.
	18	Wiener Bros	do	103.30	do	Do.
	19	do	do	2,055.50	do	Do.
	22	Winter & Smillie	St. John's bread	224.00	Exhibit 28, appendix	Do.
	23	Wanamaker, J	Jewelry	206.25	Court judgment	Do.
	29	Wing Hong Yuen Co	Various articles	53.56	Withdrawn from warehouse after change in rate.	Do.
	30	Webb-Freyschlag Mercantile Co	Lacquered tin boxes	5.50	Clerical error	Do.
1914.						
Jan.	6	Wanamaker, J	Jewelry	645.25	Court judgment	Do.
	20	do	do	30.00	do	Do.
	29	Winter & Smillie	Round reeds	1,167.90	Exhibit 29, appendix	Do.
	30	do	do	1,151.60	do	Do.
	30	Wiener Bros	Jewelry	500.65	Court judgment	Do.
	30	Webling, Walter	Rotten grapes	12.50	Exhibit 10, appendix	Do.
Feb.	2	Weber, H	Scrap rubber	33.80	Exhibit 30, appendix	Do.
	5	Wiley, C. A	Cattle	147.78	Court judgment	Do.
	5	Webling, Walter	Rotten grapes	230.63	Exhibit 10, appendix	Do.
	11	Wyman & Co., C. H	Golves	12.40	Error in classification	Do.
	11	do	Leather	26.50	do	Do.
	11	do	Manufactures of fur	35.55	do	Do.
	16	Woolworth & Co., F. W	Candles	55.80	Court jugdment	Do.
	19	Wilkinson Co., E. de F	Lappings, flax	10,102.73	Error in classification	Do.
Mar.	3	Wyman & Co., Chas. H	Books in foreign language	12.00	Free	Do.
	3	do	Gloves	34.40	Error in classification	Do.
	3	do	Books	56.25	do	Do.
	3	do	Printed matter	226.20	do	Do.
	10	Woodhead, C. B	Flax embroideries	6.60	Clerical error	Do.
	19	Weideman Co., The	Liquors	23.22	Shortage	Do.
	21	Wing Chong Lung Co	Bottles	1.20	Withdrawn from warehouse after change in rate.	Do.
	28	Wyman & Co., Chas. H	Charts	145.20	Error in classification	Do.
	29	do	Straw hats	72.25	Error in reduction of currency	Do.
Apr.	9	do	Brass wire cloth	6.83	Error in classification	Do.
	9	do	Straw hats	2.10	do	Do.
	9	do	Herring	1,209.91	do	Do.
	18	Whitfield, M	Decorated earthenware	22.75	do	Do.
	21	Wilkinson Co., E. de F	Fabrics of flax	315.12	do	Do.
May	13	Weidman Co., The	Mineral waters	20.00	Clerical error	Do.
	13	Wadhams & Kerr Bros	Herring	41.80	Error in classification	Do.
	19	Wyman & Co., C. H	Barber supplies	4.90	Clerical error	Do.
June	10	Wheatley, A. C	Tools	22.00	Tools of trade, free	Do.
	23	Wyman & Co., C. H	Drugs	38.60	Error in classification.	
	23	do	Fabrics of silk	39.75	do	Do.
	23	do	Books	77.25	Free distribution, free	Do.

Statement of customs refunds made by the Treasury Department during the fiscal year ending June 30, 1914—Continued.

Date.	To whom refunded.	Nature of refund.	Duty.	Reasons for refund.	Law under which refund was made.
1913.					
July 2	Young, H. H	Lemons	$89.72	Abandoned	Sec. 28, subsec. 23, act Aug. 5, 1909.
15	Yamato (Inc.), The	Decorated earthenware	10.80	Short shipped	Do.
19	Younker Bros. (Inc.)	Gloves	28.03	Error in classification	Do.
Dec. 29	Yamanoto & Co., S	Various articles	128.70	Withdrawn from warehouse after change in rate.	Par. Y, sec. 3, act Oct. 3, 1913.
29	Yamanoto, K	do	204.36	do	Do.
1914.					
Jan. 27	Young, H. H	Pocket knives	84.40	Exported from warehouse	Sec. 2977, R. S.
Mar. 18	do	Olive oil	4.66	Withdrawn from warehouse after change in rate.	Par. Y, sec. 3, act Oct. 3, 1913.
18	do	Rice	22.40	do	Do.
Apr. 17	Young Co., Richard	Skins	492.27	Exhibit 31, appendix	Do.
June 18	Yamato (Inc.), The	Decorated earthenware	24.70	Clerical error	Do.
1913.					
Aug. 7	Zuazua, F. Garcia	Cattle	30.00	do	Sec. 28, subsec. 23, act Aug. 5, 1909.
1914.					
Apr. 15	Zanes, W. R	Cotton laces	40.80	do	Par. Y, sec. 3, act Oct. 3, 1913.
			358,346.51		

Respectfully submitted.

OFFICE OF AUDITOR FOR THE TREASURY DEPARTMENT,
Washington, D. C., October 3, 1914.

W. E. ANDREWS, *Auditor.*

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