LIA21817

Refer To
26364

TREASURY DEPARTMENT

Office of the Commissioner

Bureau Of Customs

Address Reply To
Commissioner of Customs

Washington

Feb. 24, 1931

Lead Industries Association,
420 Lexington Avenue,
New York, New York.

Gentlemen:

Please refer to previous correspondence in regard to section 313 (h) of the Tariff Act of 1930.

Section 313 (h) provides that:

"No drawback shall be allowed under the provisions of this section or of section 6 of the Act entitled "An Act temporarily to provide revenue for the Philippine Islands, and for other purposes," approved March 8, 1902 (relating to drawback on shipments to the Philippine Islands), unless the completed article is exported, or shipped to the Philippine Islands, within three years after importation of the imported merchandise."

In several briefs which have been filed in the Bureau in behalf of the several parties interested many court decisions are cited and much argument presented in an effort to establish that there exists confusion and uncertainty in respect to the meaning of the word "importation"; that the term has been used in tariff legislation with different meanings and that Congress does not regard importation as complete so long as goods remain in the custody and control of the Government. The contention is made, based on the above premises, that for the purposes of section 313 (h) Congress did not regard merchandise in customs custody as imported and that the phrase "within three years after importation of the imported merchandise" should be interpreted as meaning three years after actual withdrawal of the imported merchandise from the custody and control of the Government.

The Bureau has examined all of the cases cited in the several briefs on file as well as many others, and is able to find little, if anything, which would support any of the premises relied upon. While there is found in several decisions expressions to the general effect that Congress does not regard importation as complete so long as goods remain in the custody and control of the Government as was stated in the case of Diana et al v. United States (12 Court of Customs Appeals, 290), "the statutes passed upon and held applicable in such cases, provided in terms that the duties thereunder should apply to merchandise in customs custody and the obiter discussion, therefore, must be understood with that limitation."

While it is true that in the case of Meadows, Wye & Company v. United States (T. D. 39342), the Board of General Appraisers held, with respect to certain merchandise imported for experimental purposes, that the date of importation contemplated by subsection 4, paragraph J, section 4 of the Tariff Act of 1913 was the date on which the importer is allowed by law and regulations to take possession of the property, in the case of United

States v. Estate of Boshell (14 Cust. Appls. 273), the Appellate Court discussed the case of Meadows, Wye & Company v. United States, and stated that it was unable to agree with the interpretation of the statute in that case. In this case also the court analyzes those cases in which such expressions as "importation is not complete until entry is made", and points out that in every such instance the statute invoked plainly declared that the duties provided thereunder should be applicable to merchandise already imported.

In none of the above cases was the meaning of the word "importation" an issue, nor was the time or date when the merchandise was imported material to the proper construction of the statute under consideration, in view of which such judicial expressions as those we are considering must be regarded as obiter dictum and, when understood with the limitations by the courts intended, create no uncertainty in respect to the meaning of the term "importation" wherever employed in tariff legislation.

On the other hand there exists a long line of decisions of the Federal Courts, extending far back into the history of tariff legislation in this country, defining the term "importation" and fixing the time of importation as the day of the vessel's arrival at the port of entry with intent to unlade.

But even if it were established that for some purposes Congress regards importation as incomplete so long as goods remain in the custody and under the control of the Government there is nothing in the cases cited or the record before the Bureau supporting the contention that Congress so regarded importation for the purposes of section 313 (h). On the other hand, in construing legislation, similar in essential respects, section 308 of the Tariff Act of 1922, exempting articles imported for various purposes from the payment of duty if exported within six months from the date of importation, the Court of Customs Appeals has held that the date of importation is the date on which the merchandise is brought within the limits of the port of entry with intent to unlade, United States v. Estate of Boshell, (14 Court Cust. Appls. 273), and the Bureau feels itself bound by that decision in this case.

In view of the foregoing, the Bureau is constrained to adhere to its original conclusion that by the word importation, as used in section 313 (h) of the Tariff Act of 1930, Congress meant "importation" in the ordinary and well understood sense in which it is employed generally in tariff legislation and that the limitation upon the payment of drawback in the said section 313 (h) begins to run from the date on which the merchandise is brought into a port of entry with intent to there unlade the same.

Respectfully,

(Signed) F. X. A. EBLE

Commissioner of Customs.