

FEDERAL TEA TASTERS REPEAL ACT OF 1996

MARCH 8, 1996.—Ordered to be printed

Mr. BLILEY, from the Committee on Commerce,
submitted the following

REPORT

[To accompany H.R. 2969]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 2969) to eliminate the Board of Tea Experts by repealing the Tea Importation Act of 1897, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

This measure repeals the Tea Importation Act of 1897,¹ which: (1) prohibits the importation of tea, except as provided under the Act; (2) established the Board of Tea Experts; (3) authorizes a program to administer tea importation, which currently operates

¹ 21 U.S.C. Section 41 et seq. (1996).

through the Food and Drug Administration (FDA); and (4) authorizes the Customs Service to collect a fee of 10 cents per hundred-weight to pay for the costs of tea inspection.

Tea is also regulated under the Federal Food, Drug, and Cosmetic Act (FFDCA),² which prohibits the importation of adulterated or misbranded foods such as instant tea, tea, coffee, and fish.³ Because the safety of tea for human consumption is preserved under the FFDCA, the quality standards for tea imposed by the Tea Importation Act of 1897 and enforced by the FDA are no longer necessary. Repeal of the Tea Importation Act of 1897 would end the dual regulation of tea that occurs by virtue of the overlap between these two Acts. Upon repeal, imported tea would continue to be regulated by the FDA in accordance with the FFDCA in the same manner as instant tea, coffee, and other imported foods.

BACKGROUND AND NEED FOR LEGISLATION

The Tea Importation Act of 1897 establishes a program, currently administered by the FDA, that governs the importation of tea. Under the program, the FDA must: (1) inspect every lot of tea offered for import into the United States to determine whether it meets applicable quality standards; and (2) certify the tea for importation, if it meets the applicable quality standards. For example, a company that imports tea might receive a shipment, also known as a "lot," from an exporting country. Before the company can accept the tea, it must send a sample of the shipment to an FDA inspector. The inspector would test the tea to determine if it meets the applicable quality standard. If it does, then the FDA certifies that shipment of tea for import; if it does not, the country exporting the tea may be required to take it back, or destroy it. Under the Tea Importation Act of 1897, a United States company seeking to import tea cannot accept a shipment without this certification by the FDA.

The applicable quality standards for imported tea are set by the Secretary of Health and Human Services, who usually defers to the standard recommended by the Board of Tea Experts. The Board of Tea Experts, established under the Tea Importation Act of 1897, is an advisory board to the FDA chartered under the Federal Advisory Committee Act (FACA).⁴ The Board meets once a year to determine quality standards for imported tea, which it provides to the Secretary of Health and Human Services. FDA's appropriation for Fiscal Year 1996 prohibits allocation of any Federal funds to the Board of Tea Experts.⁵ However, the FDA still must comply with the requirements of the Tea Importation Act of 1897, i.e., set standards for the purity, quality, and fitness of imported tea. Therefore, the FDA is soliciting comments to determine standards by which

² 21 U.S.C. Section 301 et seq. (1996). Also, the United States Department of Agriculture operates programs in addition to the FFDCA that regulate the safety of meat and meat products, poultry, and eggs.

³ "The term 'food' means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article." 21 U.S.C. Section 321(f) (1996).

⁴ 5 U.S.C. app. Section 1 et seq. (1996).

⁵ Appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agency programs for the Fiscal Year ending September 30, 1996, Pub. L. No. 104-37, sec. 727, 109 Stat. 328 (1995).

to measure the quality of imported teas in order to comply with the Tea Importation Act of 1897.

The Tea Importation Act of 1897 also authorizes the Customs Service to collect a fee of 10 cents for every hundred pounds of tea imported. Currently, the Customs Service continues to collect 3.5 cents, and has not implemented the increase as provided under the Omnibus Budget Reconciliation Act of 1993. The purpose of the fee, which is paid directly into the U.S. Treasury, is to cover the implementation costs of the Tea Importation Act of 1897.

The program established under the Tea Importation Act of 1897 is run separately from, and in addition to, the FDA's standard programs for inspection of imported foods as required by the FFDCA. Under the FFDCA, the FDA is responsible for the safety of imported foods such as tea, instant tea, coffee, and fish. The FFDCA prohibits importation of adulterated or misbranded foods. Under that Act, foods are considered "adulterated" if, among other things, they: (1) contain poisonous substances or unsafe pesticides; (2) were packaged under unsanitary conditions; or (3) contain any "filthy, putrid, or decomposed substances."⁶ Because the safety of imported foods such as tea is preserved under the FFDCA, regulation of tea under the Tea Importation Act of 1897 is redundant to the extent it preserves the safety of tea for human consumption.

The Tea Importation Act of 1897 requires the FDA to enforce Federal quality standards for tea, in addition to its responsibilities under the FFDCA for the safety of imported foods. Tea is the only beverage for which a program requiring inspection of every shipment offered for import exists. In fact, even the safety of both instant tea and coffee are regulated only under the FFDCA.⁷ Repeal of the 1897 Act will promote a more efficient FDA, while the safety of imported tea will continue to be provided for in the same fashion as the safety of other imported foods such as instant tea and coffee.

HEARINGS

The Committee on Commerce has not held hearings on this legislation.

COMMITTEE CONSIDERATION

On March 6, 1996, the Committee on Commerce met in open markup session and ordered H.R. 2929 reported to the House, without amendment, by a voice vote, a quorum being present.

ROLLCALL VOTES

Clause 2(l)(2)(B) of rule XI of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and amendments thereto. There were no recorded votes

⁶ 21 U.S.C. Section 342 (1996).

⁷ "Since the law passed in 1897 said nothing about such fractions of tea as solubles, the relatively small amounts of instant tea and instant tea mixes imported in these forms are not subject to the requirements of the Tea Act, but they, like other foods, are subject to the requirements of the FDC [Federal Food, Drug, and Cosmetic Act] and Fair Packaging and Labeling Acts." Tea solubles are the parts of tea used for instant tea and instant tea mixes. Robert H. Dick and Harold Hopkins, "Putting Tea to the Taste," FDA Consumer at 18, 22 (September 1974).

taken in connection with ordering H.R. 2969 reported. The voice votes taken in Committee are as follows:

Bill: H.R. 2969, Federal Tea Tasters Repeal Act of 1996.

Motion: Motion by Mr. Bilirakis to discharge the Subcommittee on Health and Environment from further consideration of H.R. 2969, and provide for its immediate consideration by the Full Committee.

Disposition: Agreed to, by a voice vote.

Motion: Motion by Mr. Bliley to order H.R. 2969 reported to the House.

Disposition: Agreed to, by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee has not held oversight or legislative hearings on this legislation.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 2969 would result in no new or increased budget authority or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 6, 1996.

Hon. THOMAS J. BLILEY, Jr.,
*Chairman, Committee on Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 2969, the Federal Tea Tasters Repeal Act of 1996, as ordered reported by the Commerce Committee on March 6, 1996. CBO estimates that the bill would reduce governmental receipts by less than \$500,000 in each of the fiscal years 1996 through 2000. Because enacting H.R. 2969 would affect receipts, pay-as-you-go procedures would apply to the bill. H.R. 2969 contains no intergov-

ernmental or private sector mandates as defined in Public Law 104-4 and would impose no direct costs on state, local, or tribal governments.

The Tea Importation Act of 1897 requires tea to be examined upon import to the United States, and establishes an examination fee to be paid by the importer. H.R. 2969 repeals the Tea Importation Act of 1897, eliminating the examination requirement and the corresponding fee. Under Public Law 103-66, signed August 10, 1993, the amount of the fee for the examination of tea imports was raised from 3.5 cents per hundred weight to 10 cents per hundred weight of tea imported. However, due to an oversight in the Harmonized Tariff Schedule, U.S. Customs has continued to charge a rate of 3.5 cents per hundred weight of the tea, collecting about \$70,000 in each of the fiscal years 1994 and 1995. Based on information from Customs, CBO assumes that this discrepancy will be corrected and that Customs will begin collecting the fee at the statutory rate of 10 cents per hundred weight. CBO estimates that collections of the fee at the 10 cent rate would be approximately \$200,000 annually. Enacting H.R. 2969 would therefore result in a negligible loss of revenue from fee collections.

If you wish further details, please feel free to contact me or your staff may wish to contact Stephanie Weiner.

Sincerely,

JUNE E. O'NEILL, *Director*.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that H.R. 2969 would have no inflationary impact.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

SECTION 1. SHORT TITLE

This section provides that the Act may be cited as the "Federal Tea Tasters Repeal Act of 1996."

SECTION 2. REPEAL OF TEA IMPORTATION ACT OF 1897

This section repeals the Tea Importation Act (21 U.S.C. Section 41 et seq.), and leaves tea to be regulated by the Food and Drug Administration according to the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 301 et seq.).

SECTION 3. EFFECTIVE DATE

This section provides that the Act shall take effect on the date of its enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, existing law in which no change is proposed is shown in roman):

TEA IMPORTATION ACT

[SEC. 1. It shall be unlawful for any person or persons or corporation to import or bring into the United States any merchandise as tea which is inferior in purity, quality, and fitness for consumption to the standards provided in section three of this Act, and the importation of all such merchandise is prohibited, except as provided in the Harmonized Tariff Schedule of the United States.

[SEC. 2. On or before February 15 of each year, the Secretary of Health, Education, and Welfare shall appoint a board, to consist of seven members, each of whom shall be an expert in teas, and who shall prepare and submit to him standard samples of tea. The persons so appointed shall be at all times subject to removal by the said Secretary and shall serve for the term of one year. Vacancies in the said board occurring by removal, death, resignation, or any other cause shall be forthwith filled by the Secretary of Health, Education, and Welfare by appointment, such appointee to hold for the unexpired term. Said board shall appoint a presiding officer, who shall be the medium of all communications to or from such board. Each member of said board shall receive as compensation the sum of \$50 per annum, which, together with all necessary expenses while engaged upon the duty herein provided, shall be paid by the Secretary.

[SEC. 3. The Secretary of Health, Education, and Welfare, upon the recommendation of the board, shall fix and establish uniform standards of purity, quality, and fitness for consumption of all kinds of teas imported into the United States, and shall procure and deposit in the customhouses of the ports of New York, Chicago, San Francisco, and such other ports as he may determine, duplicate samples of such standards. Said Administrator shall procure a sufficient number of other duplicate samples of such standards to supply the importers and dealers in tea at all ports desiring the same at cost. All teas, or merchandise described as tea, of inferior purity, quality, and fitness for consumption to such standards shall be deemed within the prohibition of the first section hereof.

[SEC. 4. On making entry at the customhouse of all teas, or merchandise described as tea, imported into the United States, the importer or consignee shall give a bond to the collector of the port that such merchandise shall not be removed from the warehouse until released by the collector, after it shall have been duly examined with reference to its purity, quality, and fitness for consumption. For the purpose of such examination samples of each line in every invoice of tea shall be submitted by the importer or consignee to the examiner, together with the sworn statement of such importer or consignee that such samples represent the true quality of each and every part of the invoice and accord with the specifications therein contained; or in the discretion of the Secretary of Health, Education, and Welfare, such samples shall be obtained by the examiner and compared by him with the standards established

by this Act. In cases where said tea, or merchandise described as tea, is entered at ports where there is no qualified examiner as provided in section seven, the consignee or importer shall in the manner aforesaid furnish under oath a sample of each line of tea to the collector or other revenue officer to whom is committed the collection of duties, and said officer shall also draw or cause to be drawn samples of each line in every invoice and shall forward the same to a duly qualified examiner as provided in said section. The bond required by this section shall also be conditioned for the payment of all customhouse charges which may attach to such merchandise prior to its being released or destroyed (as the case may be) under the provisions of this Act.

[SEC. 5. If, after an examination as provided in section four, the tea is found by the examiner to be equal in purity, quality, and fitness for consumption to the standards provided, and no reexamination shall be demanded by the collector as provided in section six, a permit shall at once be granted to importer or consignee declaring the tea free from the control of the customs authorities; but if on examination such tea, or merchandise described as tea, is found, in the opinion of the examiner, to be inferior in purity, quality, and fitness for consumption to the said standards the importer or consignee shall be immediately notified, and the tea, or merchandise described as tea, shall not be released by the customhouse, unless on a reexamination called for by the importer or consignee the finding of the examiner shall be found to be erroneous. Should a portion of the invoice be passed by the examiner, a permit shall be granted for that portion and the remainder held for further examination, as provided in said section six.

[SEC. 6. In case the collector, importer, or consignee shall protest against the finding of the examiner, the matter in dispute shall be referred for decision to the United States Board of Tea Appeals, to consist of three employees of the Department of Health, Education, and Welfare to be designated by the Secretary of Health, Education, and Welfare. If such board shall, after due examination, find the tea in question to be equal in purity, quality, and fitness for consumption to the proper standards, a permit shall be issued by the collector for its release and delivery to the importer; but if upon such final reexamination by such board the tea shall be found to be inferior in purity, quality, and fitness for consumption to the said standards, the importer or consignee shall give a bond, with security satisfactory to the collector, to export said tea, or merchandise described as tea, out of the limits of the United States within a period of six months after such final reexamination; and if the same shall not have been exported within the time specified, the collector, at the expiration of that time, shall cause the same to be destroyed.

[SEC. 7. The examination provided for shall be made by a duly qualified examiner at a port where standard samples are established, and where the merchandise is entered at ports where there is no qualified examiner, the examination shall be made at that one of said ports which is nearest the port of entry, and that for this purpose samples of the merchandise, obtained in the manner prescribed by section four of this Act, shall be forwarded to the proper port by the collector or chief officer at the port of entry. In all cases of examination or reexamination of teas, or merchandise described as tea, by examiners or the United States Board of Tea

Appeals under the provisions of this chapter, the purity, quality, and fitness for consumption of the same shall be tested according to the usage and customs of the tea trade, including the testing of an infusion of the same in boiling water, and, if necessary, chemical analysis.

[SEC. 8. In cases of reexamination of teas, or merchandise described as teas, by the United States Board of Tea Appeals in pursuance of the provisions hereof, samples of the tea, or merchandise described as tea, in dispute, for transmission to such board for its decision, shall be put up and sealed by the examiner in the presence of the importer or consignee if he so desires, and transmitted to such board, together with a copy of the finding of the examiner, setting forth the cause of condemnation and the claim or ground of the protest of the importer relating to the same, such samples, and the papers therewith, to be distinguished by such mark that the same may be identified. The decision of such board shall be in writing, signed by them, and transmitted, together with the record and samples, within three days after the rendition thereof, to the collector, who shall forthwith furnish the examiner and the importer or consignee with a copy of said decision or finding. The United States Board of Tea Appeals shall be authorized to obtain the advice, when necessary, of persons skilled in the examination of teas, who shall each receive for his services in any particular case a compensation not exceeding \$5.

[SEC. 9. No imported teas which have been rejected by a customs examiner or by the United States Board of Tea Appeals, and exported under the provisions of this Act, shall be reimported into the United States under the penalty of forfeiture for a violation of this prohibition.

[SEC. 10. The Secretary of Health, Education, and Welfare shall have the power to enforce the provisions of this Act by appropriate regulations.

[SEC. 11. That teas actually on shipboard for shipment to the United States at the time of the passage of this Act shall not be subject to the prohibition hereof, but the provisions of the Act entitled "An Act to prevent the importation of adulterated and spurious teas," approved March second, eighteen hundred and eighty-three, shall be applicable thereto.

[SEC. 12. That the Act entitled "An Act to prevent the importation of adulterated and spurious teas," approved March second, eighteen hundred and eighty-three, is hereby repealed, such repeal to take effect on the date on which this Act goes into effect.

[SEC. 13. No tea or merchandise described as tea shall be examined for importation into the United States, or released by the Customs Service, under the Tea Importation Act unless the importer or consignee of such tea or merchandise has paid, before the examination, a fee in an amount equal to—

[(1) 10 cents for each hundred weight or fraction thereof of the tea or merchandise; or

[(2) the approximate cost of the examinations;

whichever amount is less. Such fee shall be deposited into the Treasury of the United States as miscellaneous receipts.]