

product was coming into the United States to rest here, to be consumed here, to be used here, and, you know, there are problems today under subpart F of determining whether goods are received for consumption in a particular country or whether they may be reshipped and resold out of the country. That is a problem under items 5 and 6.

The CHAIRMAN. Destination abroad, then, would be in there. Now, No. 7, material participation by office abroad.

Mr. HENDERSON. The problem with that factor is, Senator, that under the bill it is unclear whether participation by the office abroad in anything but a salesman's sense is important. For example, assume you manufacture goods in the Philippines and your only salesman is in the Seattle office. He handles all sales to Canada as well as to the United States. Since there is no salesman in the Philippines, there is a question under the bill whether the manufacturing activity in the Philippines is deemed a "material" participation in the "sale," which would exempt a Philippines-to-Canada sale from U.S. tax. That is the first question of interpretation, and it is a very serious question.

I think that the view of the Treasury may be that only the sales activity is the important activity; that manufacturing activity or substantial trading activity in the foreign country will not be deemed a material participation in the "sale."

So the first question about the material participation in the sale factor that would have to be determined by regulations or by the statute is what the statute means by the word "sale."

Let us assume the statute means that only a sales activity is a material activity abroad. If that is what it means then our clerk would have to decide, if we now add to our example a salesman in the Philippines office, whether the activity by the salesman in the Philippines office as opposed to the activity of the salesman in the U.S. office in Seattle was a material aspect in the sale.

I think you can understand that this is not a very simple question to decide. We can easily state the general phraseology, but if you put yourself in the lawyer's position or the clerk's position you have to make the decision of what, in fact, is "material."

Senator McCARTHY. You are talking now about something that was manufactured primarily in the United States?

Mr. HENDERSON. Outside the United States. But there are also problems where you have trading rather than manufacturing corporations abroad. For example, take the case of a corporation located abroad which does not manufacture abroad but which provides designs and so forth to subcontractors there which manufacture goods for it. It buys the goods with title passing abroad, say in the Philippines or any other country you want to name, and then sells those goods to another foreign country or, in part, to the United States, and it has an office here. In the case of sales to a foreign country you would have the question of what is material participation. Is it only sales activity, as mentioned before, or can it include other activities? Whether or not it includes other activities, what is material? Do you gage this by a time factor? By a salary factor? By a property factor? What is the factor or factors that determines whether it is material? It is simply not an easy question to decide. To get clerks to make these decisions is not going to be very easy.