

Of course it is a simple one now and anybody knows destination is where the product goes. But, as you pointed out, transshipment is always possible, so destination and ultimate destination or place of consumption could be entirely different; is that not correct?

Mr. HENDERSON. Yes, sir; and that is the problem. That is difficult to determine.

As you know, this question became a very substantial issue of litigation earlier in our history under the Constitution. The Supreme Court had to deal with the original package doctrine, and all the questions presented by goods landed here for transshipment to another country or for possible transshipment.

Senator MORRIS. Even more recently we have had a problem which has caused a lot of litigation in this country, the so-called Battle Act, which most of us voted for some 18 years ago here in the Congress, which brings in the question of ultimate destination.

You can ship a strategic material to France, but there is a responsibility to see that it does not go to Russia, and we have had all kinds of problems in the enforcement of the so-called Battle Act which, I think, are indicative of the problems that we might get under the language of the section of the bill to which you refer.

Certainly I think all of us want to see that the U.S. national, with a U.S. business is not unfairly—does not encounter unfair competition because a foreign national might have an office in the same building and avoid certain taxes.

But, as you say, the extent of this problem we do not know. If, in trying to cure that we throw out the baby with the bath water, and we lose business, that is here giving employment to people, to Nassau or Trinidad or wherever it might be with communication and transportation what it is today, they could easily operate in, across the border, or across the seas.

Mr. HENDERSON. That is right; and also if the main purpose were to benefit American business then it would seem essential to put this "effectively connected" concept in also where it would directly benefit an American taxpayer, to permit him to treat activities effectively connected in this sense with a foreign office as being foreign source income so he could get a foreign tax credit for it, which he cannot get under the present source rules.

Senator MORTON. You do agree that if a case can be made, American business is losing business because of a tax break that we give to a foreign operation, that this is a matter of concern to the Congress?

Mr. HENDERSON. Yes, sir.

Senator MORTON. If it can be shown.

Mr. HENDERSON. Absolutely. That is one of these major policy things that really should be fully explored, and that is all we are urging here, that this provision not be enacted until all of the facts and the issues it presents are really fully explored, and they have not been as yet.

Senator MORTON. You also agree that these features of this bill which tend to discourage the recapture by this country of foreign earnings by American companies operating abroad, in view of our balance-of-payments dilemma, that this is a matter of major concern to this committee and the Congress?