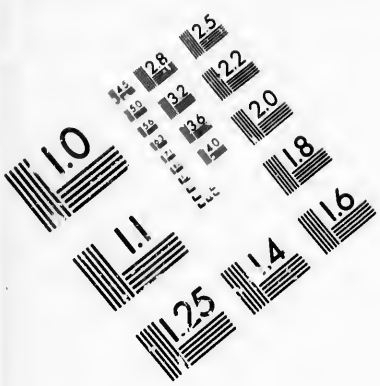

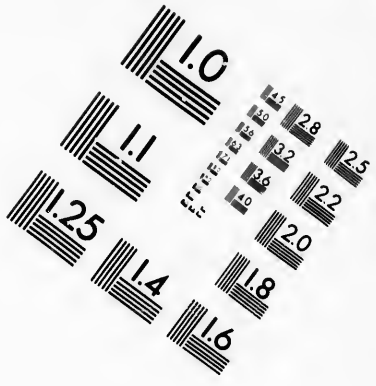

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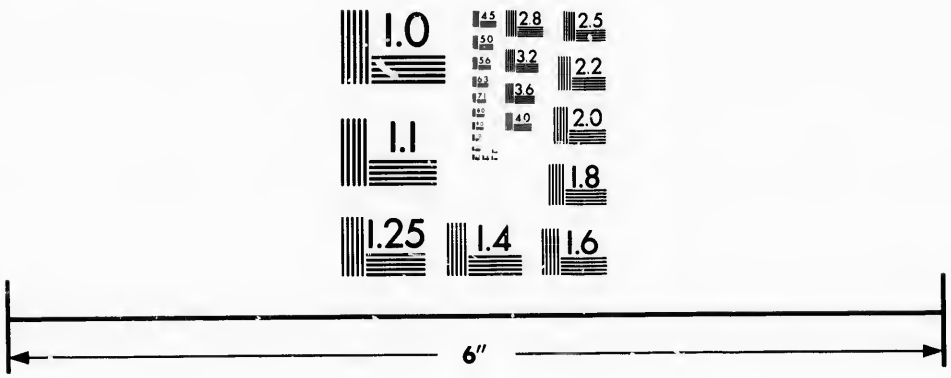

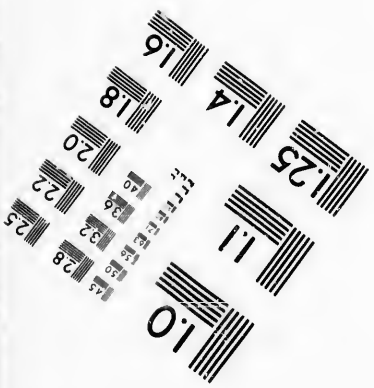

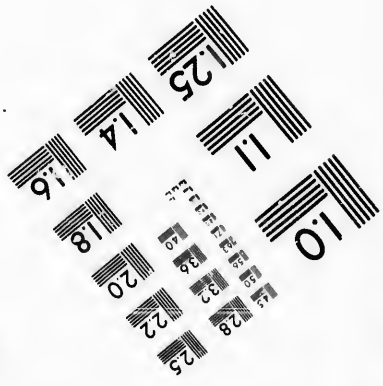

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CONSULAR SEALING OF CARS.

THE HONORABLE

THE SECRETARY OF THE TREASURY OF THE U. S.:

In your communication to the United States Senate, under date of August 5th, 1890, you state as follows:

"I am informed that since the completion of the Canadian Pacific Railway, goods arriving at Vancouver, British Columbia, from Asiatic ports destined to the United States, have been placed in the cars of that company, which were then sealed by the United States Consul at that port, and forwarded to their destination in the United States."

"I find that this practice has been acquiesced in by this Department in so far that the customs officials at the frontier ports of arrival have respected the consular seals, and allowed the cars to go forward without entry and examination of their contents if the seals were found intact."

"I am of the opinion that it was the intent of the law to confine the privilege of the consular seal to cars containing merchandise of the contiguous country, and that such privilege does not extend to cars containing imported merchandise landed in the contiguous country for transit to the United States."

"In this view of the law it is in contemplation to restrict the privilege to cars containing merchandise of the contiguous country."

While in this communication but one railway and one foreign port is mentioned, it is plain that the general question of consular sealing involves all ports and all railways of contiguous countries, Mexican and Canadian alike. This, in so far as the purpose and intent of the law itself

is concerned, while in so far as the merits and effect of its present construction by the Department are concerned, American interests, both railway and mercantile, ought equally to be considered.

With all due respect and deference to your honorable self, permit me to say that I am compelled to differ with the Department in its construction of the law, and hope to throw such light upon the merits of the case that the practice which has so long obtained may not be disturbed.

In order to simplify the consideration of this question, I will proceed to discuss it under the following propositions:

1st. The law of 1864 was not designed to restrict the consular sealing privilege to the products of contiguous countries.

2d. If there is a reasonable doubt as to the construction of the law, the doubt should be resolved in favor of the American interests which have developed in reliance upon a construction which has been in force for twenty-six years.

3d. Our present and prospective railway and commercial relations with Mexico and the Central and South American Republics do not warrant a change of construction.

4th. Until Article 29 of the Treaty of Washington with Great Britain is terminated in accordance with the provisions thereof, it would be a breach of good faith to change the construction of the law in reference to the British Possessions.

In considering the first proposition we discover that the sections of the Revised Statutes under which the consular sealing privilege is authorized are found in Title Thirty-four, headed, "Collection of Duties," Chapter Eleven, headed, "Provisions Applying to Commerce with Contiguous Countries." Now this heading is simply a convenience for classification, adopted by the Commissioners of Revision, and has necessarily no weight in the construction of the statutes

brought within it. The opinion of the commissioners can neither add to, nor take from the meaning of a statute, nor in any way limit or control it. This proposition requires no argument in its support, since it is placed beyond all controversy by Section 5600 of the Revised Statutes themselves, which reads as follows: "The arrangement and classification of the several sections of the revision have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the title under which any particular section is placed." It has long been settled by the courts that commerce necessarily involves transportation, and this construction may properly bring these sections within the classification of the commissioners. I have, however, never heard it seriously contended, either in or out of court, that the word "commerce," so far as it relates to the articles transported, covers only those which are the growth or produce of the country with which the commerce is carried on. The every-day experience of commercial life is so utterly opposed to such a restriction of the meaning of the word, that I have no hesitancy in saying that any intelligent court would take judicial notice of the fact, as I also think the Treasury Department will do. Since commerce necessarily involves transportation, and the transportation in question here is Canadian, the commerce must be Canadian whether the articles carried are or are not, and Canadian commerce being that of a contiguous country, must be entitled, under any construction of the law, to the sealing privilege provided in Section 3102 of the Revised Statutes.

A careful investigation of all the sections of Chapter 11 will, I think, fail to reveal any intent in the statutes bearing on this question to limit their operation to the *products of any country contiguous or remote.* Section 3095, after enumerating the districts as those adjacent to the Canadian

and Mexican borders, provides that, except into these districts, "no merchandise of foreign growth or manufacture" shall be imported except as before provided, etc. *There is no requirement of contiguous origin here.*

Section 3096 says, "All persons may import any merchandise of which the importation shall not be entirely prohibited" into the aforesaid districts, etc. This is a portion of the Act of March 2, 1799, and has never been amended. *Surely, we look in vain for any limitation here.*

Section 3097 provides for reporting to the collectors of customs, of the vehicles "containing merchandise subject to duties." *Nothing said about the origin of the merchandise.*

Section 3098 provides that the manifest sworn to by the importer shall contain "a full, just and true account of the kinds, quantities and values of all the merchandise so brought from such foreign territory." *No questions asked as to where it originated.* This is Section 1 of the Act of March 2, 1821, and provides also for inspection *at the first port of arrival* of "merchandise subject to duty," carried by any person coming from any foreign territory adjacent to the United States.

Sections 3100 and 3102 compose Section 1 of the Act of June 27, 1864, which is entitled an Act to prevent smuggling and for other purposes. This Act modified the Act of March 2, 1821, by removing the obligation of inspection at the first port of arrival, and authorized consular sealing for this purpose. There is no evidence of any intent to modify or change the *character of the merchandise subject to both acts.* The words of the Act of 1821 are "merchandise subject to duty," and those of the Act of 1864 are "all merchandise, and all baggage and effects of passengers, and all other articles imported into the United States from any contiguous foreign country." This latter Act is still in force, and nowhere, from the Act of 1799 to date have we

discovered any restraints or privileges concerning imported goods, dependent *upon the place of their growth or production.*

I feel justified in going a step further and claiming that the Act of 1864 was directed more especially against the products of *remote* than of contiguous countries. At the time of the passage of this act the Reciprocity treaty with Canada was in full force and effect, having been put in operation by the proclamation of the President of the United States on the 16th day of March, 1855. This treaty was by its terms to continue in force "ten years, and further until the expiration of twelve months after either of the high contracting parties shall give notice to the other of its desire to terminate the same." The joint resolution of Congress giving notice of the termination of the treaty was adopted January 18, 1865, and the treaty was duly terminated in 1866. Article 3 of the Reciprocity treaty is as follows: "It is agreed that the articles enumerated in the schedule hereto annexed, *being the growth and produce of* the aforesaid British Colonies, or of the United States, shall be admitted into each country respectively free of duty."

SCHEDULE.

Grain, flour and breadstuffs of all kinds.

Animals of all kinds.

Fresh, smoked and salted meats.

Cotton, wool, seeds and vegetables.

Undried fruits, dried fruits.

Products of fish and of all other creatures living in the water.

Poultry, eggs.

Hides, furs, skins, or tails undressed.

Stone or marble in the crude or unwrought state.

Slate.

Butter, cheese, tallow.
Lard, hams, manures.
Ores of metals of all kinds.
Coal.
Pitch, tar, turpentine, ashes.
Timber and lumber of all kinds, round, hewed, and sawed, unmanufactured in whole, or in whole or in part.
Firewood.
Plants, shrubs and trees.
Pelts, wool.
Fish oil.
Rice, broom corn and bark.
Gypsum ground or unground.
Hewn or wrought or unwrought burr or grindstones.
Dyestuffs.
Flax, hemp, and tow, unmanufactured.
Tobacco unmanufactured.
Rags.

These articles comprised substantially all the products of the contiguous British Provinces in 1854, certainly all such products which would be likely to be imported into the United States in carloads under a seal. It must be borne in mind that Canada produced few or no manufactured goods until the adoption of the so-called National Policy, which was inaugurated subsequent to the termination of the treaty. An act therefore to prevent smuggling, passed in 1864, while the treaty was in force and two years before its termination, could scarcely have had special reference to the products of a contiguous country the great mass of which, as a matter both of law and fact, *could not be smuggled.* The danger of the violation of our revenue laws did not therefore arise from the great mass of products of the contiguous British Provinces, and the consular sealing of cars could neither guard nor expedite that traffic. The real menace to our revenue laws must on the contrary

have come from the dutiable *foreign merchandise*, which, imported into those Provinces, might be smuggled thence into the United States under cover of the Reciprocity Treaty, but which, being placed in sealed cars at the Canadian port of arrival, could be thus safely permitted to pass the frontier and be forwarded without delay to the final port of entry. Is it not therefore a fair inference that the sealing privilege was more especially designed for use in the transportation in bond of the products of *remote* foreign countries than of those of contiguous foreign countries? Is not this inference further supported by the fact that ever since the passage of the Act of 1864 the merchandise imported at the port of Montreal, destined for American ports of entry, has been forwarded in cars sealed at Montreal by the United States consul at that port, and in accordance with the regulations of the Treasury Department in force from that day to this?

In conversation recently with Consul-General Knapp at Montreal concerning this subject, he stated it as his opinion that nine-tenths of the cars sealed at that port contained imported merchandise. His deputy, Mr. Gorman, who has had personal charge of the sealing of cars for the past seventeen years, stated to me that at least eight-tenths of all the cars sealed during that period contained imported merchandise, and that the sealing of cars containing merchandise the growth or produce of Canada cut practically no figure in his duties, and never had done so during the past seventeen years of his official life. He did not know, he said, when the sealing of cars began at Montreal, but it was long antecedent to the beginning of his official duties, and he simply carried along the work in the same manner and form as his predecessors had done. It is clearly evident, therefore, that the Treasury Department, amidst all the diversity of opinions which might characterize six administrations of one party or arise from the complete transfer of power from

one party to another, has steadily construed the sealing privilege as applicable to the broad and inclusive description of merchandise given in the Act of March 2, 1799, viz: "*All merchandise the importation of which is not entirely prohibited.*"

During all these years, there is no evidence of complaint from any quarter that the revenue laws have been, or are being put in jeopardy by this sealing privilege, nor have the treasury regulations governing it been disturbed. As an additional safeguard for the interests of our government, the same Act of 1864 provides that the seal shall not protect the goods from examination and inspection whenever, under its cover, any fraud upon the revenue shall be suspected. The only interest that the United States Government, *propria persona*, as a national entity, can have in the use or non-use of the sealing privilege must necessarily arise from possible danger to its revenues, which, as we have already seen, is not and cannot be increased by its use. Unless there is some very grave and important reason for such action, ought not an executive department of the Government to hesitate to change the construction and operation of laws which it has authorized and acquiesced in for more than a quarter of a century? Ought not such hesitancy to be confirmed in the presence of strong affirmative reasons against any disturbance of the *status quo*?

The use of the sealing privilege at Vancouver is no innovation, and is not dependent upon any different construction of the law than the privilege at Montreal, which latter, I think, must be seen to be indefeasible by law, by treaty, and by long continued use. Even if no American interests were benefited by the practice, but only those of foreign railways *per se*, is there not grave doubt of the right, as there certainly is of the policy, of the Department to overturn it by the arbitrary exercise of a discretion which has lain dormant since 1864? If the exigencies of the Government

make a change of policy necessary or desirable, would not, at this late date, the remedy be more properly a legislative one, by a repeal or amendment of the Act of 1864?

The configuration of our borders makes dependent upon these Canadian routes and the competition afforded by them, vast American interests, represented not only by the millions invested in American railways dependent upon them for connections with the seaboard, but by the millions invested in commercial enterprises along these connecting railways, enterprises established in New England, the West and the Northwest, in reliance upon the good faith of the Government to continue the methods which have largely contributed to make them possible. The practical and only effect of the sealing of cars containg imported merchandise at Vancouver and Montreal, is to expedite the forwarding of it from the frontier port of arrival in the United States to its destination, where it is finally entered and cleared at the custom house. Take for illustration a shipment from Liverpool to Chicago or St. Paul via Montreal. A consular invoice accompanies the merchandise from Liverpool to Montreal. When the steamship reaches Montreal the merchandise is transferred directly to the cars placed on the wharf, under the supervision of the United States Consul who at the same time compares and checks it with the consular invoice as made in Liverpool. If found correct, he seals the car, makes out a consular manifest and certifies upon the back thereof that the car contains the imported merchandise described in the manifest. A bond is then given by the railway company to the Dominion Government, conditioned upon the exportation of the merchandise. A copy of the consular manifest last mentioned is then furnished to the conductor having the car in charge. Upon the arrival of the car at Port Huron or Detroit, or Sault Ste Marie, he shows the consular manifest to the Collector of Customs, and if the seals on the car are

found intact, it is evidence to the Collector that no additional inspection or examination is necessary, and the car proceeds to destination without detention. A customs certificate of its arrival there is returned to the Dominion Customs Department at Montreal, and the bond given for exportation is cancelled. It is difficult to perceive wherein the interest of the United States Government in this shipment could have been affected in the slightest degree, either more or less, *had it been the product of a Montreal factory instead of a Liverpool factory.*

If the sealing privilege is withdrawn from the Canadian seaports, the inspection and examination of the merchandise and its comparison with the Liverpool consular invoice, which is so easily, safely and rapidly made while it is undergoing the necessary transfer from vessel to cars, must take place at the frontier port of arrival. A special unloading and reloading of the cars must then be done in order to put the United States Government in *precisely the same relation to the merchandise* as if it had been sealed at the Canadian seaport. This at once imposes upon all connecting American railways a large expense for additional yard room, side tracks, freight platforms, freight sheds and labor. It compels the breaking up of trains and the extra switching of cars to and from the places of inspection and examination. Preparations for the new order of things would become necessary at Rouse's Point, Ogdensburg and Morristown in New York, Newport in Vermont, Detroit, Port Huron and Sault Ste Marie in Michigan, Neche in North Dakota, St. Vincent and very soon Duluth in Minnesota. American importers, merchants and consumers throughout the wide regions affected would inevitably be subjected to an unnecessary and exasperating delay. When the imported merchandise comprised several carloads in one lot, as is frequently the case, the wreck, detention, or misdirection of a single car might subject the whole lot to

such delay at the frontier as to involve the merchants in serious damage and loss. Would they not be justified in asking *cui bono* are all these new barriers to our traffic, when the United States Government would not and could not be a single iota the gainer by the system?

The aspect of this question is materially broadened when we turn our eyes to our southwestern border and contemplate our future relations with Mexico, Central America and South America. A prominent American, largely interested in Mexican railways, was recently elected President of the Gautemala Central R. R. Co., which is designed to connect with his Mexican system and bring the products of Gautemala to this country. Shall we say to him and the merchants of that country, your products shall not come here under consular seal through Mexico because, forsooth, they are not the growth and produce of a contiguous country? An American railway company was recently organized to build a line from Mazatlan, one of the best harbors on the Mexican Pacific coast, across Mexico to the American border, and thence to Wichita, Kansas City and other points. Shall we say to this company and to the merchants of Ecuador, Peru, Chili, and the whole Pacific coast of South America, your products shall not be sealed by the United States Consul at Mazatlan, when transferred from vessels to cars, because your countries are not contiguous to the United States? When the great Columbia Central Railway shall be built, one of the best if not "the first fruits" of the Pan-American Congress, shall we say to our sister republics bordering that great highway, your products shall not pass through Mexico under consular seal to the United States, because your boundaries are not contiguous to our own? The rich tropical fruits with which you would fill our waiting hands shall lose their flavor and substance while awaiting tardy inspection on some American side-track at the frontier, but the competing products of

Mexico, a contiguous country, shall go under consular seal swiftly and without delay to their destination. When this traffic begins, as it will at no distant day, I fear it will be difficult to defend such a construction of the Act of 1864.

In view of the foregoing reasons and facts, I respectfully submit that the undisturbed practice of the Treasury Department for twenty-six years ought not to be reversed, the only resulting benefit of which would be to make the United States government a *quasi* side partner with certain American railways in their fierce struggle for business with their Canadian competitors.

The final objection to a change in construction arises under the treaty of Washington in 1871, between the United States and Great Britain. It is assumed that Article 29 of this treaty is still in force. There would seem to be no reasonable ground for a contention to the contrary, notwithstanding the position taken by the late President Cleveland in respect of it. I will not here argue the question. The reference in the article, for the time of its duration, to "the term of years mentioned in Article 33," very evidently is equivalent to the embodiment in Article 29 *in extenso* of the words designating the aforesaid term of years, as set forth in Article 33, viz., "ten years from the date of coming into operation, and further until the expiration of two years after either of the high contracting parties shall have given notice to the other of its wish to terminate the same." Such I believe to be the correct interpretation of the treaty, and it is the one adopted by the political party represented by the present administration, as expressed through the opinions of its leaders in congress. Article 29 therefore will remain operative until the expiration of two years after notice given by one of the governments to the other of a desire to terminate it.

This article provides for the reciprocal importation and exportation, free of duty, through the ports of either Canada

or the United States of foreign merchandise moving to or from either country. The clear intent and meaning of this Article is to place upon an exactly equal footing the railways and the citizens of both countries in using the facilities of either, in the importation and exportation of merchandise. For instance, it is a benefit to Canadian interests to have her seaports open to receive goods, etc., imported from abroad for the United States, and transported thence by her carriers to frontier ports of the United States. And the same is true of the United States in respect of her ports and the transportation by her carriers to the frontier ports of Canada. Which side makes the greater gain by this reciprocal arrangement I cannot state in figures, but it can be readily ascertained. Those who are well informed as to the details claim a large balance in favor of the United States.

If, then, the Canadian government has a treaty right to continue this business, does not that right extend to a continuance of the means and methods in force since the ratification of the treaty, and designed to render effective the facilities of the Canadian railways both for themselves and for the American interests dependent upon them? Within this category must assuredly fall the privilege of consular sealing, which had been in operation for seven years when the treaty took effect, and which has continued to the present time. This, I submit, amounts to a practical construction of the treaty, in other words, is a part of it; and for our government at this late day to substitute for it a system which would require the examination and transfer of all imported merchandise at the frontier ports, thereby seriously obstructing the business, might justly be construed into an unfriendly act, a substantial violation of the treaty.

In respect to merchandise imported into Canada via seaports of the United States, there is a substantially similar method of doing the business. The only difference is that

the merchandise is carried by the American railways to the Canadian frontier under the American customs seal, and is taken through in the same cars to any interior port of entry in Canada, without inspection or examination, other than the substitution of a Canadian seal at the frontier if the American seal is found intact.

The two governments seem to have dealt with this matter under mutual arrangement to give efficiency to the treaty provisions in question, so as to carry out in good faith the plain intent of the high contracting parties.

I submit, moreover, that there is nothing in the situation, no controlling public interest, that will justify a disturbance of the existing system, even if it should be thought that it is not technically protected by the treaty. If such disturbance should result in correspondingly unfriendly action by the Dominion Government, and divert to Canadian ports and railways exclusively, the large tonnage now carried through American ports by American railways, the loss and injury to these latter transportation interests would be much more serious than to the Canadian interests which would be prejudiced by the contemplated action of the Treasury Department. It is a well known fact that, especially during the close of navigation, the great bulk of Canadian imports pass through American Atlantic ports and over American railways. There does not appear to be any sufficient reason for depriving these American lines of their large revenues from this traffic, for the contingent effect it may have upon the general competition between American and Canadian trans-continental lines.