

STATEMENT OF ATTORNEY GENERAL BIDDLE ON H.R. 7762 BEFORE THE

HOUSE COMMITTEE ON WAYS AND MEANS

NOVEMBER 18, 1942

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H. R. 7762 provides, "Whenever the President determines that the effective prosecution of the war requires the free movement of persons, tangible or intangible property, or information \* \* \*."

Stop at that point. Note that in the opening words of the statute the powers granted to the President are made to hinge on a determination by him that every action taken thereunder is necessary for the effective prosecution of the war. The whole purpose of the Act is to eliminate those unnecessary delays which our experience during the eleven months since Pearl Harbor has shown are constantly arising to prevent, in unforeseeable ways, that swift action which effective prosecution of the war demands.

As far back as December 23, 1941, the President approved a statement of war production policy for Canada and the United States which contained this recommendation: "Legislative and administrative barriers, including tariffs, import duties, customs, and other regulations or restrictions of any character which prohibit, prevent, delay, or otherwise impede the free flow of necessary munitions and war supplies between the two countries should be suspended or otherwise eliminated for the duration of the war." Experience since December 23 has shown the wisdom of this recommendation, and has indicated that it should be extended to the movement of individuals and of information and should be broadened to cover movements between the United States and any country.

In his message to the Congress recommending legislation such as the present bill, the President pointed out that the obstacles creating these hampering delays are of two general classes: 1) "Those directly affecting the movement to and from the customs territory of the United States of material, information and persons needed for the war effort \* \* \*"; and 2) "those which impose limitations on the procurement, acquisition, or use of non-American articles or the transportation of supplies in non-American bottoms." He gave, as examples of the first class, customs duties and the laws and administrative supervision affecting movement of persons and property at our borders and ports; and, as examples of the second, restrictions on the use of non-American materials in the construction of ships under the Merchant Marine Act of 1936, restrictions on the transportation by sea of navy supplies except in ships of the United States, and restrictions under similar statutes designed to ensure the use of American goods and facilities in peacetime.

The President pointed out that, under the First War Powers Act, he had already extended to the Government procurement agencies the statutory authority of the Secretary of the Navy to make emergency purchases of war materials abroad and to enter them free of duty. This order, typical of the kind of action contemplated in this Act, has, according to the President, "measurably assisted our war effort, but it only partially eliminates the obstacles prescribed by law."

In his message the President recommended the early enactment of appropriate legislation to enable him to complete the elimination of these obstacles. He emphasized that he was not recommending that the Congress repeal any of these peacetime restrictive laws. Of course, the problem

could be approached in this way. But it seems wiser merely to authorize the suspension of these Acts, when and if the effective prosecution of the war requires such action. It is just as impossible to foresee exactly what statutes will need to be suspended as it is to foresee the future course of the war. Moreover, the complete suspension of a statute may rarely be necessary. Only when the circumstances are actually before us, can we tell to what extent a statute will need to be suspended, and decide upon the terms and conditions necessary to safeguard, so far as the war will permit, the peacetime ends sought by Congress in these statutes. The power, as he said in his message, must be selective and flexible so that the President, as Commander in Chief, can meet "unforeseen problems as they may arise."

Before discussing other features of the bill, let me emphasize here the temporary nature of the legislation. The President requested that he be given these powers "for the duration of the war, but no longer". Section 2 accordingly provides specifically that the Act shall remain in force until the day following a proclamation by the President that the war has ended. In other words, the Act automatically ceases when the war is over, and no suspension of a statute under it will thereafter be effective. Moreover, the Act provides that Congress may at any time, by concurrent resolution, put an end to the Act, together with all suspensions then in force. The Congress thus keeps ultimate control over the exercise of these broad powers.

Precisely what powers would this bill give the Commander in Chief? The Act provides that "he may suspend, in whole or in part, upon such terms and conditions as he may by regulation prescribe and to the extent that he deems necessary to permit" the free movement required for the effective prosecution of the war, those laws or regulations which interfere therewith. Here,

I should like to emphasize that the Act provides that the orders and regulations issued under the Act must be published in the Federal Register. Thus, there would be a daily statement to the Congress and to the public of precisely what the Executive is doing under these broad powers. There is, of course, the usual exception that the President may dispense with publication if "in particular instances such publication would aid the enemy"; I cannot conceive of anybody suggesting that publication should be made where it might aid the enemy.

The bill empowers the President to suspend two types of laws when, in his opinion, they prohibit, delay, or otherwise interfere with the free movement required for the effective prosecution of the war. Laws of the first type are those which impose a duty or tax, or a prohibition or restriction of any kind upon the entry or departure of persons, property or information. These laws are in the main the tariff and immigration statutes. The technical requirements in these laws, which impede war movements into and out of this country are numerous and complex. Many of them cannot be dispensed with by administrative action. Laws of the second type are those which impose a prohibition, restriction or tax upon the "procurement, processing, acquisition, disposition, transportation, transmission, or use" of any property not produced or manufactured in the United States. These laws indirectly impede the free movement into the United States of property required for the effective prosecution of the war.

I shall give you specific examples of what I mean.

I have been particularly aware of the many restrictions in the immigration laws on the movement of persons into and out of the United States,

because these laws are administered by the Immigration and Naturalization Service which is part of the Department of Justice. There is, for instance, the requirement that all aliens arriving in the United States be inspected by officers of the Immigration and Naturalization Service. The Air Transport Command, which brings to the United States many distinguished civilian and military representatives of nations allied with us in the present war, has found great difficulty with this provision. For reasons of military secrecy as well as for reasons of physical necessity, the aircraft of the Command must land at a large number of different airports. Many of these are, of course, not designated as ports of entry for aliens. This may mean long delay at the airport while immigration officials are summoned, or a long trip to the nearest immigration office for the passenger, who should be going directly on his way to his war duties. Moreover, some of these aliens are on highly confidential missions, and this delay and inspection makes it very difficult to preserve the necessary secrecy concerning their presence in the United States. These difficulties could be obviated under present law only by designating almost every airport in the country as a port of entry. The waste of manpower involved in such a step is so preposterous that it requires no comment.

A similar example is the statutory requirement that every member of an alien merchant crew be inspected on arrival by immigration officers, that crew lists be filed covering all such seamen, and that certain classes of seamen be removed from the vessel and hospitalized at the expense of the vessel. If the officers of a vessel fail through oversight to furnish full and accurate crew lists, fail to detain on board any

alien seamen until they have been inspected, or fail to take other similar steps, the vessel is liable to various penalties. The law now requires that clearance for sailing be denied it until a deposit or bond is filed for the sums involved. This rule cannot be waived for foreign troop ships, for ships carrying essential war materials, or even for ships operating under contract with our War Shipping Administration. All these restrictions are clearly valuable in peacetime. But if now, in the midst of a war, the officers of a boat carrying tanks or planes for our allies or the officers of a foreign troop transport should commit some minor infraction of these laws, it is fantastic to delay sailing merely in order to comply with the technicalities of a deposit or a bond.

The statutory requirement of passports, visas, etc. is fundamental to any workable immigration system, but if an important official or military officer of a foreign government should arrive with some minor omission in his papers, we cannot afford to delay his mission on that account. And yet there have been, I am told, several instances of such delay because of our existing laws.

The head tax of \$8 on each alien entering this country is another example of a statutory requirement which, with a few minor exceptions, cannot now be suspended. Yet how ridiculous this seems when applied, for instance, to a large body of prisoners of war coming into or passing through the United States. A literal application of the statute would even require the collection of such a tax on each man in a body of allied troops who were ordered into the United States in connection

with training operations with our own Armed forces.

If a thousand prisoners of war arrive in New York on their way to Canada, a manifest covering all of them must be made out and they must each be inspected by our immigration officials. These aliens are not going to escape or run loose in this country; they are carefully guarded prisoners who are in the United States only for a short while. There is no need for all the manifests and the individual inspections. Yet they are now required by law. We cannot afford to waste the time and the manpower thus required in time of national emergency.

I am told that there was recently a very long delay at the border when some Canadian troops entered Alaska as a part of our united war effort. The details of this are not yet clear, but presumably the Canadians were held up by nothing more than the great mass of documents which our statutes required them to fill out. Certainly, the exigencies of war should not wait upon such formalities.

I could continue for a long while with these specific examples of requirements which cannot presently be waived. More important, however, is the general point that it is not the fundamental substantive requirements, but rather the many technical, procedural requirements, with which we are principally concerned. The payment of the penalty for failing by mistake to include an alien seaman in a crew list, the payment of a head tax, the payment of visa fees -- these do not concern us. It is rather the time it takes to fill out all the papers required even in those cases where the fee or other substantive requirement may

be waived, that is holding up the war.

Technical information must be easily and quickly transferred between the United States and its allies. A striking example of the need for legislation in this field recently came to my attention. An American munitions company was asked by the War Department to admit to its plant representatives of a similar company operating in another of the United Nations and to communicate to them information about its manufacturing methods. It refused, upon the ground that this would constitute a violation of the Espionage Act. Not until the Judge Advocate General and I, as Attorney General, had each given a formal opinion that the Act was inapplicable to the facts of the case, did the American company transfer the information. Similar cases, each involving somewhat different facts, are likely to arise in the future. Surely, it should not be necessary in each such case to have the transfer of information postponed until a formal opinion of the Attorney General can be prepared. The present bill would remove all possible doubts in such cases.

The free movement of property into the United States in furtherance of the war effort is impeded and delayed mainly by the customs laws and regulations. It is not because duties are payable that this is so. The Government in effect reimburses, in the end, not only its prime contractors but also their subcontractors and other suppliers, for the sums they pay when they import dutiable goods used in producing war materiel. Thus, the existence of the duties means only that the Government takes money out of one of its pockets and puts it into another. But, because duties are payable, intricate forms must be filled out and



complex procedures followed. This causes delay. It means excessive paperwork and thus a misuse of manpower. Pilots and army officers are not selected upon the basis of their aptitude for the work of customs brokers and supercargoes. Representatives of the War Department, I am informed, will give you examples of the harmful delays and misuse of manpower which compliance with the customs laws and regulations has entailed. Moreover, they will tell you of instances in which existing law has required that secret devices and confidential papers be exhibited to customs officials.

If this bill becomes law, the President can do away with all this. Suspensions of customs duties with respect to property imported in furtherance of the war effort will eliminate these complicated procedures. The suspensions can be made upon suitable conditions which will insure that no supplier will get a financial windfall. Contracts can be renegotiated, subcontractors and other suppliers required to adjust their contract prices downward to offset their customs duty savings.

Domestic producers will not suffer. Under the conditions which now prevail, with a short supply in this country of all the goods for the importation of which shipping space can be made available, domestic producers will not be undersold by importers of duty-free goods, as they would be in peacetime.

Executive and administrative relaxation of customs laws and regulations has gone as far as it can go - and that is not far enough. The statutes do not authorize the President to extend to anyone but governmental procurement agencies the power of the Secretary of the Navy

to make emergency purchases of war materials abroad and enter them free of duty. Section 318 of the Tariff Act of 1930 (46 Stat. 590, 696) authorizes the President, in wartime, to permit the free importation only of food, clothing, and medical and other such supplies and of those articles only when they are to be used in emergency relief work.

The statutory limits upon administrative relaxation of the customs laws and regulations are well illustrated by a problem which was presented to the Treasury. The State Department asked if Canadian soldiers, who had gone into Alaska to help us defend it, had to pay duty on goods sent to them from their homes. The Canadian Government had accorded to United States soldiers stationed in Canada the privilege of receiving similar goods duty-free. The Treasury told the State Department that, under existing law, the duty would have to be paid unless the Canadian soldiers could be viewed as "distinguished visitors". A bill was promptly introduced in the Congress to take care of the problem. But, although the bill was introduced in June, it was not until October 21, 1942 that it became law as Public No. 635.

This Act, and several others -- Public 497, approved March 13, 1942, eliminating the duty on scrap iron and steel; Public 711, introduced in February 1942, approved September 16, 1942, permitting the suspension of the processing tax on non-Philippine coconut oil; Public 753, introduced in July 1942, approved October 21, 1942, which deals with importations of industrial alcohol -- illustrate the piecemeal fashion in which this problem has been attacked in the past, and also the delays which have resulted

from that piecemeal procedure.

In the last war, there was a long series of acts authorizing the Government to requisition first this type and then that type of property. Finally, virtually all types of property were covered. In enacting our present legislation in this field, the Congress drew from this experience the obvious conclusion. The present requisitioning act is broad enough to cover property of all kinds. The time has come when similarly all-inclusive legislation must be enacted in the whole field of international movement of persons, property, and information so that statutory restrictions appropriate to peacetime conditions will not interfere with the effective prosecution of the war.

It has been suggested by some newspapers that there might be a long armistice after the war, and that until the formal declaration that the war was over the President would have complete power to strike down tariff barriers and to permit uncontrolled immigration into this country. I can assure you that in asking for this legislation the President had no intention of exercising the power in that way -- or in any other way -- so as to remove customs or immigration barriers for any purpose not directly connected with our war effort. I am certain that neither now nor later will he consider using the powers granted him by this bill for any purpose other than that for which they were granted to him. If there are any who are not satisfied by this assurance, the obvious answer to them is that the Congress can at any time, irrespective of whether or not the President has declared the war to be over, terminate this Act by a concurrent resolution.

The Commander in Chief is requesting the Congress to give him the power to eliminate, as the need arises, peace-time restrictions which

seriously hamper our war effort. The Congress, when it enacted the First and Second War Powers Acts, recognized that total war requires that the power of the Executive be made broad and flexible. Experience has shown that a further grant of such power to the President is now imperative. If the Congress realizes this, I am sure it will not hesitate to grant to the President the power that he has requested.