

RELIEVING COLLECTORS OF CUSTOMS FOR FAILURE TO
COLLECT CERTAIN SPECIAL TONNAGE DUTIES AND
LIGHT MONEY

FEBRUARY 7, 1947.—Ordered to be printed

Mr. WHITE (for Mr. MILLIKIN), from the Committee on Finance,
submitted the following

R E P O R T

[To accompany S. 132]

The Committee on Finance, to whom was referred the bill (S. 132) to relieve collectors of customs of liability for failure to collect certain special tonnage duties and light money, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of the bill is to relieve both the collectors of customs and the vessels concerned of liability in connection with uncollected special tonnage duties and light money in cases in which the liability arose prior to October 1, 1940. Special tonnage duties and light money are designed as retaliatory measures to be imposed only upon vessels of nations which discriminate against vessels of the United States. The statutes do not require payment in the case of vessels of a nation having a treaty with the United States on the subject, nor in the case of vessels of a nation as to which the President has issued an exempting proclamation based upon satisfactory proof that the nation does not impose discriminating duties on vessels of the United States. It appears, however, that because of the indefinite nature of the regulations on the subject prior to October 1, 1940, collectors in many instances failed to collect special tonnage duties and light money where treaties or a Presidential proclamation were not actually in force.

The committee is satisfied that the misunderstanding among collectors did not result in failure to collect special tonnage duties and light money in the case of any vessel from a nation which did in fact discriminate against vessels of the United States. The committee is also satisfied that there was no mishandling of Government funds on the part of collectors and that there was no actual loss of revenue to the United States.

The committee finds that it is only equitable that the collectors and vessels concerned be granted relief and recommends that the bill be enacted into law.

The following letter from the Acting Secretary of the Treasury and detailed explanatory memorandum which accompanied it are hereby made a part of this report.

JANUARY 2, 1947.

The PRESIDENT PRO TEMPORE OF THE SENATE.

MY DEAR MR. PRESIDENT: There is transmitted herewith a proposed bill to relieve collectors of customs of liability for failure to collect certain special tonnage duties and light money, and for other purposes.

It appears that, because of the indefinite nature of the former regulations dealing with the collection of special tonnage duties and light money in connection with the entries of foreign vessels, collectors at seaports and ports on the Great Lakes, prior to the receipt of appropriate instructions about October 1, 1940, in many instances failed to collect such duties and light money upon the entries of foreign vessels. Before that date there was misunderstanding among the collectors as to the treatment to be accorded to foreign vessels.

The proposed bill is designed to relieve both the collectors of customs and the vessels concerned from liability in connection with such uncollected duties and light money in cases in which the liability arose prior to October 1, 1940.

For the reasons set forth at length in the attached memorandum, this Department is of the opinion that, under the circumstances, it is only equitable that the collectors and vessels concerned should be granted relief from such liability, and therefore urges the enactment of the proposed bill.

The matter has been the subject of correspondence with the Comptroller General, who has advised this Department that, if called upon, he would be inclined to report favorably on proposed legislation to accomplish the purpose sought by the bill.

The Department has been advised by the Bureau of the Budget that there is no objection to the submission of this proposed legislation to the Congress.

Very truly yours,

E. H. FOLEY, Jr.,
Acting Secretary of the Treasury.

MEMORANDUM ACCOMPANYING PROPOSED BILL TO RELIEVE COLLECTORS OF CUSTOMS OF LIABILITY FOR FAILURE TO COLLECT CERTAIN SPECIAL TONNAGE DUTIES AND LIGHT MONEY, AND FOR OTHER PURPOSES

For consideration in connection with the proposed bill to relieve the collectors of customs and vessels concerned from liability in connection with uncollected special tonnage duties and light money in cases in which the liability arose prior to October 1, 1940, attention is invited to the following matters:

The first paragraph of section 121, title 46, United States Code, provides in part that—

"Upon vessels which shall be entered in the United States from any foreign port or place there shall be paid duties as follows: On vessels built within the United States but belonging wholly or in part to subjects of foreign powers, at the rate of thirty cents per ton; on other vessels not of the United States, at the rate of fifty cents per ton, * * *."

One of the effects of that provision of law is to impose special tonnage duties at the rate of either 30 cents or 50 cents per ton in connection with the entry of every foreign vessel, the rate of those duties being dependent upon the place of build of the vessel concerned.

Section 128, title 46, United States Code, provides in part that—

"A duty of 50 cents per ton, to be denominated 'light money', shall be levied and collected on all vessels not of the United States which may enter the ports of the United States. Such light money shall be levied and collected in the same manner and under the same regulations as the tonnage duties: * * *."

One of the effects of that provision of law is to subject every foreign vessel to the payment of light money at the rate of 50 cents per ton in any case in which it is subject to the payment of special tonnage duties provided for in the quoted portion of section 121, supra.

However, the last paragraph of the said section 121 provides in part as follows: " * * * and none of the duties on tonnage above-mentioned shall be levied on the vessels of any foreign nation if the President of the United States shall be satisfied that the discriminating or countervailing duties of such foreign nations, so far as they operate to the disadvantage of the United States, have been abolished. Any rights or privileges acquired by any foreign nation under the laws and treaties of the United States relative to the duty of tonnage on vessels shall not be impaired; * * *."

In addition, section 135, title 46, United States Code, provides that—

"Nothing contained in this chapter shall be deemed in anywise to impair any rights and privileges which have been or may be acquired by any foreign nation under the laws and treaties of the United States relative to the duty on tonnage of vessels, or any other duty on vessels."

And section 141, title 46, United States Code, provides in part that—

"Upon satisfactory proof being given to the President, by the government of any foreign nation, that no discriminating duties of tonnage or imposts are imposed or levied in the ports of such nation upon vessels wholly belonging to citizens of the United States, or upon the produce, manufactures, or merchandise imported in the same from the United States or from any foreign country, the President may issue his proclamation, declaring that the foreign discriminating duties of tonnage and impost within the United States are suspended and discontinued, so far as respects the vessels of such foreign nation, and the produce, manufactures, or merchandise imported into the United States from such foreign nation, or from any other foreign country; the suspension to take effect from the time of such notification being given to the President, and to continue so long as the reciprocal exemption of vessels, belonging to citizens of the United States, and their cargoes, shall be continued, and no longer: * * *."

The effect of the three latter provisions of law is to relieve any vessel of any foreign nation from the special tonnage duties provided for in section 121, supra, and the light money provided for in section 128, supra, in any case in which vessels of such nation are exempted from the payment of such duties by treaty or by Presidential proclamation.

On March 25, 1879 (T. D. 3938), in connection with the administration of those statutes, the Assistant Secretary of the Treasury advised collectors of customs that vessels of the following nations were exempt from the payment of special tonnage duties and light money by the provisions of various treaties, conventions, and proclamations:

| | |
|------------------------------------|--------------------------------------|
| Argentine Confederation. | Liberia. |
| Austria-Hungary. | Madagascar. |
| Belgium. | Mexico. |
| Bolivia. | Muscat. |
| Borneo. | Netherlands. |
| Costa Rica. | Nicaragua. |
| Denmark. | Orange Free State. |
| Dominican Republic. | Ottoman Empire. |
| Ecuador. | Paraguay. |
| France. | Peru. |
| German Empire. | Portugal. |
| Great Britain and her possessions. | Russia. |
| Greece. | Salvador. |
| Guatemala. | Spain. |
| Hawaiian Islands. | Sweden and Norway, and the Island of |
| Haiti. | St. Bartholomew. |
| Honduras. | Tripoli. |
| Italy. | Tunis. |
| Japan. | United States of Colombia. |

Thereafter that list was revised and was set forth in articles 254 to 260, inclusive, of the Customs Regulations of 1884, as follows:

| | |
|--|---|
| Argentine Confederation. | Liberia. |
| Austria. | Madagascar. |
| Belgium. | Mecklenburg-Schwerin. |
| Bolivia. | Mexico. |
| Borneo. | Muscat. |
| Brazil. | Netherlands. |
| Chile. | New Granada, United States of Colombia. |
| China. | Nicaragua. |
| Costa Rica. | Norway. |
| Denmark. | Oldenburg. |
| Dominican Republic. | Orange Free State. |
| Ecuador. | Ottoman Empire. |
| France. | Paraguay. |
| German Empire. | Peru. |
| Great Britain and her possessions. | Portugal. |
| Greece. | Prussia. |
| Guatemala. | Russia. |
| Haiti. | Sandwich Islands. |
| Hanseatic towns: Hamburg, Lubec, Bremen. | Salvador. |
| Hawaiian Islands. | Serbia. |
| Honduras. | Spain. |
| Italy. | Sweden and Norway, and the Island of St. Bartholomew. |
| Japan. | |

Article 184 of the Customs Regulations of 1892 provided that Mexican vessels were subject to the payment of special tonnage duties and light money, but those regulations did not contain a list of countries whose vessels were exempt from the payment of such duties and light money.

Article 182 of the Customs Regulations of 1892 contained a table showing the rates of tonnage duties and light money to which vessels were liable. Among other things that table provided for the collection of tonnage duties and light money from "vessels not of the United States belonging wholly or in part to subjects of foreign powers, and not having privileges under treaties and proclamations."

Article 182 of the Customs Regulations of 1899, article 175 of the Customs Regulations of 1908, article 115 of the Customs Regulations of 1915, article 119 of the Customs Regulations of 1923, article 132 of the Customs Regulations of 1931, article 133 of the Customs Regulations of 1937, and section 3.4 of title 46 of the Code of Federal Regulations, as originally codified, contained similar tables, but did not carry any lists of nations whose vessels were exempt from the payment of special tonnage duties and light money. However, the annual report of the Commissioner of Navigation for 1890, at page 173, carried such a list; his reports for 1896, 1898, and 1904, at pages 74 to 104, at pages 213 to 243, and at pages 135 to 170, respectively, contained excerpts with regard to tonnage duties from various treaties and conventions; and his report for 1895, at page 22, carried a list of treaties providing for national treatment of vessels of the signatory nations.

In view of the indefinite nature of the regulations then in force, the Bureau of Marine Inspection and Navigation of the Department of Commerce, which was then charged with the administration of the laws relating to tonnage duties and light money, addressed identical letters on July 28, 1939, to collectors of customs at 13 seaports on the Atlantic, Gulf, and Pacific coasts of the United States, inquiring as to the procedure followed by their offices in the collection of special tonnage duties and light money and requesting that they furnish to the Bureau lists, if any, theretofore made available to them of nations whose vessels were exempted by treaty from the payment of such duties and light money. They were also instructed to advise that Bureau as to the authority upon which the collection of light money was discontinued if they had not been collecting it.

Replies to those letters indicated that the collectors concerned had not been collecting special tonnage duties and light money from foreign vessels of any nation for an indefinite period (except in isolated cases under unusual circumstances), and had no list of nations whose vessels were exempt from the payment of such duties and light money, but assumed that vessels of all nations were exempt.

It is interesting to note here that the Bureau of Navigation of the Department of Commerce, which was then charged with the administration of the laws relating to tonnage duties and light money, in a letter dated June 1, 1932, to the collector of customs at Buffalo, N. Y., in response to his inquiry informed him that---

"* * * So far as this Bureau is aware, the only vessels at the present time subject to the payment of light money are those which enter your ports from foreign countries including Canada without documents, or Russian vessels entering your ports inasmuch as we have no commercial treaty with Russia. * * *

"* * * Your attention is invited to the fact that in all cases where light money is due, the tax of 50 cents per ton under section 4219 of the Revised Statutes also is due and the two taxes should be collected in like manner and under the same conditions.

"This Bureau cannot think of any condition under which you should collect light money unless some undocumented vessel of five net tons and over attempts to engage in trade into your port from Canada. * * *"

Upon receipt of the replies from collectors of customs mentioned above, the Department of Commerce addressed a letter on August 15, 1939, to the Secretary of State, listing the nations set forth in articles 252 to 291, inclusive, of the Customs Regulations of 1884, relating to the liability of vessels of those nations to the payment of special tonnage duties and light money, pointing out that no such compilation had been published since 1884, and requesting that the list be reviewed and brought up to date. In his reply dated November 7, 1939, the Counselor of the State Department furnished to the Department of Commerce a list of all nations whose vessels were exempted from such duties and light money by treaty, convention, or agreement. In that letter it was pointed out that the treaties under which vessels of Brazil, Chile, Greece, and Nicaragua had been exempted in 1884, were no longer in force, nor were those with Austria, the Dominican Republic, Ecuador, Guatemala, Haiti, the Hanseatic Towns, Hawaiian Islands, Italy, Madagascar, Mecklenburg-Schwerin, Mexico, Oldenburg, the Orange Free State, and the Ottoman Empire.

However, as that letter did not list nations whose vessels were exempted from such duties and light money by Presidential proclamation, the Department of Commerce on December 8, 1939, requested the Secretary of State to furnish it with a list of such nations. The Counselor of the State Department furnished such a list with his reply of January 19, 1940. From that list it appears that Presidential proclamations exempting vessels of Brazil, Chile, Greece, and Nicaragua from such duties and light money were issued prior to 1884 so that vessels of those nations have been exempted from such duties and light money continuously since that date.

This Department has since been advised informally by the State Department that the treaties in question with the other nations mentioned above were terminated as follows:

| <i>Nation</i> | <i>Terminated</i> |
|---------------------------|---|
| Austria..... | Upon cessation of existence as an independent nation. |
| Dominican Republic..... | Jan. 13, 1898. |
| Ecuador..... | Aug. 25, 1892. |
| Guatemala..... | Denounced in 1873. |
| Haiti..... | May 7, 1905. |
| Hanseatic Towns..... | Upon annexation to Prussia in 1875 or earlier. |
| Italy..... | Dec. 15, 1937. |
| Madagascar..... | Upon annexation to France in 1896. |
| Mecklenburg-Schwerin..... | July 1, 1916 (?). |
| Mexico..... | Nov. 30, 1881. |
| Oldenburg..... | Upon incorporation in Prussia in 1886. |
| Orange Free State..... | Denounced Jan. 4, 1895. |
| Ottoman Empire..... | June 5, 1884. |

It also appears that the liability of Hawaiian vessels for the payment of special tonnage duties and light money terminated upon the formal annexation of Hawaii to the United States on August 12, 1898 ((1899) 22 Op. Atty. Gen. 578, 580; *Hawaii v. Mankichi* (1903), 190 U. S. 197, 210).

In addition, this Department has been advised informally by the State Department that the treaty with Peru, which exempted vessels of that nation from the payment of such duties and light money, was terminated on March 31, 1886; and that the treaty with Sweden and Norway, under which vessels of those countries were exempted from the payment of such duties and light money, was terminated, insofar as Sweden was concerned, on February 4, 1919.

In addition it appears from the latter letter of the State Department that during the period from 1884 to 1939, inclusive, the President, under authority of section 141, title 46, United States Code, issued proclamations, as listed below, exempting vessels of the nations concerned from the payment of special tonnage duties and light money.

| No. | Nation concerned | Date of issue | Effective date | Published | |
|------|--|----------------|----------------|--------------------|---|
| | | | | Statutes at Large | Other publication |
| 4 | Spain..... | Sept. 21, 1887 | Sept. 21, 1887 | 25 Stat. 1482..... | Richardson, revised edition, XIV, 6496. |
| | Mexico..... | Nov. 12, 1897 | Nov. 12, 1897 | 30 Stat. 1767..... | |
| | do..... | Feb. 9, 1899 | | | |
| 28 | Cuba..... | July 3, 1902 | July 3, 1902 | 32 Stat. 2013..... | |
| | Panama..... | May 15, 1905 | Feb. 15, 1905 | 34 Stat. 3038..... | |
| | Poland and Danzig..... | May 6, 1921 | May 6, 1921 | 42 Stat. 2239..... | |
| | Germany..... | Mar. 22, 1922 | Nov. 11, 1921 | 42 Stat. 2267..... | |
| | Hungary..... | Jan. 15, 1923 | Dec. 17, 1921 | 42 Stat. 2293..... | |
| | Finland..... | Feb. 10, 1926 | Feb. 1, 1926 | 44 Stat. 2601..... | |
| | Union of Soviet Socialist Republics..... | Jan. 16, 1934 | Nov. 21, 1933 | 48 Stat. 1729..... | |
| 2338 | Australia..... | May 22, 1939 | Feb. 27, 1939 | 53 Stat. 2543..... | 4 F. R. 2159. |

Although Borneo was listed in T. D. 3938 and article 255 of the Customs Regulations of 1884, among the nations whose vessels were exempted by convention from the payment of special tonnage duties and light money, the Department of State in its letter of November 7, 1939, stated that the convention of June 23, 1850, with Borneo, which was referred to in that regulation, did not contain provisions requiring national treatment to be accorded to vessels of that nation in ports of the United States. Hence it appears that Borneo was erroneously included in those lists.

After receipt by the Department of Commerce of the letters from the State Department referred to above, the President, under authority of section 141, title 46, United States Code, issued four proclamations, as listed below, exempting vessels of the nations concerned from the payment of special tonnage duties and light money.

| No. | Nation concerned | Date of issue | Effective date | Published | |
|------|------------------|---------------|----------------|--------------------|------------------|
| | | | | Statutes at Large | Federal Register |
| 2305 | Fiji..... | Apr. 11, 1940 | Apr. 11, 1940 | 54 Stat. 2605..... | 5 F. R. 1431. |
| 2307 | Sweden..... | Apr. 18, 1940 | Apr. 18, 1940 | 54 Stat. 2697..... | 5 F. R. 1473. |
| 2403 | Italy..... | May 7, 1940 | May 7, 1940 | 54 Stat. 2702..... | 5 F. R. 1607. |
| 2419 | Canada..... | Aug. 8, 1940 | Aug. 8, 1940 | 54 Stat. 2728..... | 5 F. R. 2813. |

As a result of the information contained in the letters of the State Department and the proclamations referred to above, the Bureau of Marine Inspection and Navigation on August 15, 1940, issued Bureau Memorandum No. 320, advising collectors of customs that vessels of the following nations were then exempt from the payment of special tonnage duties and light money—

| | | |
|--------------|-----------------------------|---------------------------|
| Argentina. | Finland. | Nicaragua. |
| Australia. | France. | Norway. |
| Belgium. | Germany. | Panama. |
| Bolivia. | Great Britain. ¹ | Paraguay. |
| Brazil. | Greece. | Poland. |
| Canada. | Honduras. | Portugal. |
| Chile. | Hungary. | Rumania. |
| China. | Ireland (Eire). | Saudi Arabia. |
| Colombia. | Italy. | Spain. |
| Costa Rica. | Japan. | Sweden. |
| Cuba. | Latvia. | Thailand (formerly Siam). |
| Danzig. | Liberia. | Turkey. |
| Denmark. | Mexico. | Union of Soviet Socialist |
| El Salvador. | Muscat. | Republics. |
| Estonia. | Netherlands. | Yugoslavia. |

Fiji and Iraq were apparently inadvertently omitted from that list.

In that memorandum collectors of customs were instructed to communicate immediately with that Bureau upon the entry of any vessel of any nation not listed therein and to request instructions as to its liability for the payment of special tonnage duties and light money.

Thereafter the President, under authority of section 141, of title 46, United States Code, issued seven proclamations, as listed below, exempting vessels of the nations concerned from the payment of special tonnage duties and light money.

| No. | Nation concerned | Date of issue | Effective date | Published | |
|------|-------------------------|----------------|----------------|--------------------|------------------|
| | | | | Statutes at Large | Federal Register |
| 2429 | Iceland..... | Sept. 30, 1940 | Sept. 13, 1940 | 54 Stat. 2744..... | 5 F. R. 3887. |
| 2432 | Peru..... | Oct. 17, 1940 | Oct. 1, 1940 | 54 Stat. 2750..... | 5 F. R. 4163. |
| 2434 | Greenland..... | Oct. 29, 1940 | Oct. 9, 1940 | 54 Stat. 2751..... | 5 F. R. 4329. |
| 2435 | Egypt..... | Nov. 7, 1940 | Oct. 3, 1940 | 54 Stat. 2752..... | 5 F. R. 4441. |
| 2436 | Guatemala..... | do..... | Oct. 19, 1940 | 54 Stat. 2753..... | 5 F. R. 4441. |
| 2437 | Dominican Republic..... | do..... | do..... | 54 Stat. 2754..... | 5 F. R. 4442. |
| 2438 | Haiti..... | do..... | do..... | 54 Stat. 2755..... | 5 F. R. 4443. |

The list of nations whose vessels were exempt from the payment of such duties and light money was then brought up to date by the addition of Fiji, Iraq, Palestine, Syria, and the Lebanon, and the seven nations listed above, and was furnished to collectors of customs in Bureau of Marine Inspection and Navigation Memorandum No. 337, dated November 13, 1940. Palestine and Syria and the Lebanon were added upon the informal advice of the State Department. In that memorandum collectors of customs were again instructed to communicate immediately with the Bureau of Marine Inspection and Navigation upon the entry of any vessel of any nation not listed thereon and to request instructions as to its liability for the payment of special tonnage duties and light money.

Section 3.4a containing that list of nations was then added to part 3, Tonnage Duties and Light Money, of title 46 of the Code of Federal Regulations on December 18, 1940 (5 F. R. 5197).

Thereafter the President, under authority of section 141, title 46, United States Code, issued six proclamations, as listed below, exempting vessels of the nations concerned from the payment of special tonnage duties and light money.

¹ Vessels of Great Britain include, among others, British vessels arriving at ports in the United States from ports in the British West Indies, British Guiana, Bahama Islands, Calcos Islands (now a part of Jamaica) and from the islands, provinces, and colonies of Great Britain on or near the American Continent¹ and north or east of the United States. (See Presidential Proclamation dated October 5, 1830.)

| No. | Nation concerned | Date of issue | Effective date | Published | |
|------|------------------|---------------|----------------|--------------------|------------------|
| | | | | Statutes at Large | Federal Register |
| 2452 | Uruguay | Dec. 28, 1940 | Dec. 10, 1940 | 54 Stat. 2771..... | 6 F. R. 1. |
| 2455 | New Zealand..... | Jan. 31, 1941 | Jan. 17, 1941 | 55 Stat. 1609..... | 6 F. R. 727. |
| 2457 | India..... | Feb. 6, 1941 |do..... | 55 Stat. 1611..... | 6 F. R. 849. |
| 2462 | Iran..... | Feb. 27, 1941 | Feb. 5, 1941 | 55 Stat. 1616..... | 6 F. R. 1229. |
| 2491 | Switzerland..... | June 7, 1941 | May 20, 1941 | 55 Stat. 1652..... | 6 F. R. 2811. |
| 2495 | Burma..... | July 1, 1941 | June 10, 1941 | 55 Stat. 1655..... | 6 F. R. 3263. |

Collectors of customs were informed of the issuance of those proclamations and were instructed in Bureau of Marine Inspection and Navigation Memoranda No. 345, dated January 3, 1941, No. 348, dated February 4, 1941, No. 349, dated February 12, 1941, No. 354, dated March 4, 1941, No. 383, dated June 11, 1941, and No. 386, dated July 10, 1941, to add those nations to the list contained in Bureau Memorandum No. 337. In addition, the list of nations contained in section 3.4a, title 46, of the Code of Federal Regulations was amended by the addition of Uruguay on January 10, 1941 (6 F. R. 302), and by the addition of the other nations named in those proclamations on April 30, 1942 (7 F. R. 3331).

After the receipt of Bureau of Marine Inspection and Navigation Memorandum No. 320 by collectors of customs, that Bureau was notified by them upon the arrival of any vessel of any nation whose vessels were not exempted from the payment of special tonnage duties and light money at that time. Upon receipt of each such notice the collector was instructed to collect such duties and light money and the State Department was then informally advised of the facts. Steps were apparently taken by that Department at once to obtain satisfactory proof "that no discriminating duties of tonnage or imposts" were imposed or levied "in the ports of such nation upon vessels wholly belonging to citizens of the United States or upon the produce, manufactures, or merchandise imported in the same from United States or from any foreign country." In every such case the proof required by section 141, title 46, United States Code, was given to the President and a proclamation was issued by him under authority of that statute. Each of those proclamations was made effective as of a date prior to its promulgation. It is understood that in the great majority of those cases the effective date of the proclamation was either on or before the date of the first entry of a vessel of the nation concerned of which advice was given as noted above.

An exception occurred in the case of vessels of Ecuador. The Bureau of Customs was first informed of the arrival of such a vessel when the collector of customs at Los Angeles inquired as to the liability of such a vessel for the payment of special tonnage duties and light money on April 14, 1944. He was instructed to collect such duties and light money and the State Department was immediately notified of the facts. However, in this case there was some delay before action was taken by the President, apparently because the proof required by section 141, supra, was not given to him immediately. It was not until December 12, 1944, that the President, under authority of that statute, issued a proclamation (No. 2632; 58 Stat. 1162; 9 F. R. 14665), effective November 1, 1944, exempting vessels of Ecuador from the payment of such duties and light money.

Prior to the issuance of the proclamations in question no claim was made to the Department of Commerce (or in the case of Ecuador, to this Department) that any nations had been imposing discriminating duties of tonnage or imposts upon vessels belonging to citizens of the United States or their cargoes, nor was that Department advised by the State Department, United States Shipping Board, United States Maritime Commission, or any other department or agency of this Government that any such claim had been made to it.

Furthermore, the United States Tariff Commission is charged by law (U. S. C. 1940 edition, title 19, sec. 1338 (g)) with the duty of ascertaining and keeping itself at all times informed as to whether or not any nation discriminates in fact against the commerce of the United States, directly or indirectly, by or in respect to any customs, tonnage, or port duty, free charge, exaction, classification, regulation, condition, restriction, or prohibition in such manner as to place the commerce of the United States at a disadvantage compared with the commerce of any foreign country. That Commission is also required by the same statute to bring any such discriminatory acts; together with its recommendations, to the

attention of the President. Insofar as this Department is informed no such discrimination by any nation has been found by that commission and hence no such report has been made to the President. It would seem that no such discrimination has been practiced by any nation.

The statutes relating to special tonnage duties and light money are designed to provide for retaliation by this Government against any nation which imposes discriminating duties of tonnage or imposts upon our vessels and their cargoes in its ports. While it is true that those statutes provide for the imposition of such duties and light money upon vessels of foreign nations which are not exempted therefrom by law or treaty, unless the President, by proclamation, has suspended the requirement for their imposition, it is evident that the purpose of those statutes is to impose such burdens only upon vessels of nations which practice discrimination against our vessels or cargoes, and not to impose such burdens upon vessels of nations which do not practice such discrimination. Indeed, the imposition of such duties and light money upon vessels of nations which do not practice such discrimination might well lead to retaliatory measures by such nations which would burden our foreign commerce and which might tend to strain our relations with such nations.

In this connection your attention is invited to the following language which was used by the Senate Committee on Commerce in its report on S. 727, Fifty-sixth Congress, first session (Rept. No. 473):

"The proposition to impose discriminating duties on tonnage or cargoes of foreign vessels is in conflict with nearly all our commercial treaties. It involves radical changes in our relations with the world, which in the main are now satisfactory. It requires indefinite delay and the certainty of retaliatory measures. In any form in which it can be presented it necessitates considerable changes in the relative rates of duties of the present tariff law, which was carefully prepared and has operated to the general satisfaction of the country."

Statements of similar tenor will be found in the annual report of the Commissioner of Navigation for 1895 on pages 21 to 24; in his report for 1896 on pages 11 to 17, and in the insert immediately following; and in his report for 1920 on pages 31 and 32.

Such retaliatory measures were forestalled by the issuance of proclamations by the President exempting vessels of each nation from those burdens as soon as the situation with respect to any nation was brought to his attention. It is only reasonable to assume that those proclamations would have been issued earlier if the matter had been brought to the attention of the President sooner, and it certainly would have been brought to his attention sooner if such duties and light money had been collected from vessels of the nations concerned at an earlier date.

Under such circumstances, it is evident that the failure of collectors of customs to collect special tonnage duties and light money in connection with the entries of foreign vessels did not result in any actual loss of revenue. It is also evident that it would have been contrary to the policy of this Government to have collected such duties and light money from such vessels.

In passing, your attention is invited to the fact that any attempt to collect special tonnage duties and light money in connection with the entries of foreign vessels prior to the receipt of Bureau of Marine Inspection and Navigation memorandum No. 320 by collectors of customs in all cases in which such duties and light money may have been due but were not paid might well result in bankruptcy for the owners or agents of those vessels, since, in many instances, there were doubtless large numbers of entries involving the same owners or agents. In addition, diplomatic protests might well be anticipated if such action were attempted.

This Department is of the opinion that no suspicion of mishandling of Government funds arises by reason of the mere failure of a collector of customs to deposit any sum which might have been due the United States as special tonnage duties or light money from any foreign vessel, since audits of the accounts of collectors of customs by representatives of the Comptroller General apparently have not revealed any misappropriation of any such funds and audits of the accounts of collectors of customs by the Port Examination Commission of the Bureau of Customs prior to July 28, 1939, and thereafter by field auditors of the offices of comptrollers of customs, have not revealed any evidence of any such defalcation. Moreover, in practically every case in which special tonnage duties and light money have been collected upon the entry of a foreign vessel, application for the refund of such duties and light money has been made, as might well be expected, since the imposition of such duties and light money upon a vessel is tremendously

burdensome to it, but there is no record of a failure of any collector to have deposited to the credit of the Treasurer any special tonnage duties or light money claimed by the applicant to have been collected. Even though there might be a possibility of collusion between a customs officer and the agent of a foreign vessel, it seems certain that, because of the burdensome nature of such duties and light money, the owner of any such vessel required to pay them would immediately take all possible steps looking toward their refund, if his agent failed to do so.

In view of the foregoing it is evident that it is only equitable that both the collectors of customs and the vessels concerned should be granted relief from liability in connection with such special tonnage duties and light money in cases in which that liability arose prior to October 1, 1940, since collectors generally did not receive Bureau of Marine Inspection and Navigation Memorandum No. 320 until then.

