

CUSTOMS PROCEDURAL REFORM
AND SIMPLIFICATION ACT
OF 1978

REPORT

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ON

H.R. 8149



MAY 2 (legislative day APRIL 24), 1978.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

CONTENTS

	Page
I. Summary -----	4
Entry procedures-----	1
Penalties-----	2
Customs rulings-----	3
Personal exemptions-----	3
Ten-percent duty for travelers-----	3
Travelers returning from U.S. possessions-----	3
Liquor and tobacco-----	3
Time limit on liquidation-----	4
Counterfeit trademarks-----	4
Preferential treatment for U.S. officials-----	4
Authorization of appropriations-----	4
II: General explanation -----	4
1. Date for determining rate of duty (section 101 of the bill)---	4
2. Requirements for filing documents and depositing estimated duties (section 102 of the bill)-----	5
3. Time for deposit of estimated duties (section 103 of the bill)---	12
4. Recordkeeping (section 104 of the bill)-----	12
5. Customs Service investigatory powers (section 105 of the bill)---	13
6. Judicial enforcement of administrative summons (section 106 of the bill)-----	14
7. Repeal of sanction (section 107 of the bill)-----	15
8. Time for deposit of estimated duties for goods in bonded ware- houses (section 108 of the bill)-----	15
9. Penalties for errors in a ship's manifest (section 109 of the bill)---	16
10. Fraud penalties (section 110 of the bill)-----	17
11. Summary sales (section 111 of the bill)-----	21
12. Publication of Customs' decisions (section 112 of the bill)-----	21
13. Renewal of brokers' licenses (section 114 of the House bill)---	22
14. Stamping of bulk containers of liquor (section 201 of the bill)---	23
15. Personal exemptions (section 202 of the bill)-----	24
16. Application of personal exemption to goods not accompanying returning U.S. residents (section 202 of the bill)-----	26
17. Flat rate of duty on noncommercial importations of 'limited value (section 203 of the bill)-----	27
18. Effective date for duty increases resulting from administrative action (section 204 of the bill)-----	28
19. Duty collection where expenses of collection are disproportion- ate to duty gained (section 205 of the bill)-----	28
20. Penalties for failure to enter and pay duties on equipment for and repairs of vessels (section 206 of the bill)-----	29
21. Air waybills (section 207 of the bill)-----	29
22. Abandoned and forfeited merchandise (section 208 of the bill)---	30
23. Liquidation of entries within a specific time period (section 209 of the bill)-----	31
24. Reliquidation to correct inadvertent errors (section 210 of the bill)-----	32
25. Exemption from prohibition of imports of trademarked arti- cles and treatment of copied or simulated trademarks (sec- tion 211 of the bill)-----	33
26. Customs officers owning pleasure boats (section 212 of the bill)---	34
27. Penalty for violating coastwise shipping laws (section 213 of the bill)-----	34

	Page
II. General explanation—Continued	
28. Fees for certain vessel services (section 214 of the bill)-----	35
29. Customs treatment of U.S. officers and employees (section 215 of the bill)-----	35
30. GAO study of customs clearance for travelers (section 216 of the bill)-----	35
31. Customs Service appropriations authorization (section 301 of the bill)-----	36
III. Regulatory impact of the bill-----	36
IV. Vote of the committee in reporting the bill-----	36
V. Budgetary impact of the bill-----	37
VI. Changes in existing law-----	38

CUSTOMS PROCEDURAL REFORM AND SIMPLIFICATION ACT OF 1978

MAY 2 (legislative day, APRIL 24), 1978.—Ordered to be printed

Mr. LONG, from the Committee on Finance,
submitted the following

REPORT

[To accompany H.R. 8149]

The Committee on Finance, to which was referred the bill (H.R. 8149) to provide customs procedural reform, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

I. SUMMARY

The Customs Procedural Reform and Simplification Act of 1978 (H.R. 8149), as amended by the Committee on Finance, is intended to achieve three major objectives—

1. To permit the establishment of more efficient and flexible procedures for handling the documentary and financial aspects of import transactions while insuring compliance with customs laws and the collection of accurate import statistics,

2. to relate the amount of the customs penalty for false and material statements to Customs to the culpability of the offender and insure due process for persons potentially liable for penalties, and

3. to modify numerous customs procedures to expedite the processing of goods and individuals while reducing administrative costs for the government.

The summary presented below outlines the principal features of the bill.

ENTRY PROCEDURES

Under present law, each importation is a separate transaction. Appropriate documents and estimated duties must be deposited at the customhouse for each entry. Under the statutory scheme, goods will

not be released to the importer until they are inspected and the entry documents are verified. After release of the goods, any overpayment or underpayment of duties is settled with the importer on an entry-by-entry basis. Most goods are in fact released before all the entry documents and the estimated duties are deposited. This is permitted under customs regulations which require all documents and duties to be deposited within 10 days after the goods are released. Accounts are settled with importers under this system on an entry-by-entry basis.

H.R. 8149, as amended by the committee, would permit the Secretary of the Treasury to release goods when an entry document is filed. All documents relating to the importation would have to be filed within 10 days after the entry document is filed. Estimated duties would have to be deposited within 30 days. Customs intends to send importers a periodic (monthly) consolidated statement for all entries made during the billing period. To insure compliance with this system, the bill would impose recordkeeping requirements on importers and strengthen Customs authority to inspect import related books and records. The bill would also insure the collection of accurate import statistics by Customs under the new entry system.

PENALTIES

The bill, as amended by the committee, would amend section 592 of the Tariff Act of 1930, the penalty provision for false and material statements in the Tariff Act. Existing section 592 is strongly criticized by all segments of the importing public because it requires a fixed penalty regardless of the nature of the violation, lacks due process safeguards, and does not permit effective judicial review.

Present law prohibits the importation of goods into the United States "by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or application whatsoever" unless the person has reasonable cause to believe the truth of such statement. The penalty imposed for violation of this provision is forfeiture of the merchandise itself or a fine equal to its domestic value.

The penalty under section 592 applies without regard to the degree of culpability. The penalty of forfeiture value may be applied to a violation occurring as a result of simple negligence. While Customs has procedures for mitigation of a section 592 penalty, the issuance of the original unmitigated claim creates several problems. For example, publicly held corporations must disclose penalty claims as contingent liabilities leading to difficulties involving the corporation's financial relationships. H.R. 8149 would provide different penalties for three different degrees of culpability: fraud, gross negligence, and negligence.

Section 592 also lacks procedural safeguards for the alleged violator and does not permit effective judicial review. The respondent is forced to choose between accepting the mitigated administrative penalty or face a Government suit, in which case the claim is for full forfeiture value. The court can only decide whether or not a violation occurred. It cannot change the amount of the statutory penalty, domestic value.

The risks of litigation are enormous when the initial penalty may become the final assessment. H.R. 8149, as amended by the committee, provides procedural rules for Customs consideration of penalty cases and provides for a trial in the Federal district courts on all issues if the matter is not resolved administratively.

CUSTOMS RULINGS

The bill, as amended by the committee, would require the publication of precedential Customs rulings in response to requests for advice from private parties regarding import transactions.

PERSONAL EXEMPTIONS

The personal duty exemption for returning residents would be increased from \$100 to \$500. The current \$100 exemption has been in effect since 1961. The proposed increases are intended to expedite the entry of travelers and account for the effects of inflation.

TEN-PERCENT DUTY FOR TRAVELERS

A 10 percent rate of duty would be applied to articles brought to the United States by individuals if the importation is not commercial and the goods are for the traveler's personal use and their value does not exceed \$600. The application of tariff classification procedures of merchandise imported by travelers requires an inordinate amount of processing time, compared to the amount of duty collected, and creates a bottleneck in the processing of persons entering the country. The bill would largely eliminate the bottleneck without adversely affecting customs revenue collections.

TRAVELERS RETURNING FROM U.S. POSSESSIONS

The bill, as amended by the committee, would increase the personal duty exemption from \$200 to \$1,000 for U.S. residents returning from American Samoa, Guam, or the Virgin Islands of the United States. The flat rate of duty applied to articles referred to in the previous paragraph would be 5 percent for articles acquired in these U.S. insular possessions. Further, travelers returning from these possessions could have the personal exemption and flat rate provisions applied to those goods shipped home as well as to those goods accompanying the traveler through customs entry.

LIQUOR AND TOBACCO

The disparity between the rights of U.S. residents and nonresidents to enter liquor and cigarettes free of duty would be reduced. A nonresident may now bring in duty free substantially more liquor and cigarettes than may a resident. Under the bill, both residents and nonresidents would be able to import 1 liter of alcoholic beverages and 200 cigarettes duty free. This represents a cutback in present levels in all respects save the quantity of liquor which a resident may now import duty free.

TIME LIMIT ON LIQUIDATION

The bill, as amended by the committee, would put a 1-year limit on the time in which customs has to liquidate an entry. "Liquidation" means the final ascertainment of the amount of duties due on an entry. Eliminated by this provision would be unanticipated requests by Customs, many years after importation, for additional duties which often result in substantial losses to importers because they are unable to anticipate such duties when pricing their products. Surety companies, which are jointly liable with importers for additional duties, would be better able to control their liabilities. Sureties would also be better protected against losses resulting from the dissolution of their principals in instances where there has been undue delay in liquidating entries. Benefits to Customs would primarily relate to improved management of the liquidation process which could result in some cost savings.

COUNTERFEIT TRADEMARKS

The bill, as amended by the committee, changes the procedures relating to disposal of imported merchandise which violates the law prohibiting unauthorized imports of merchandise bearing a mark copying or simulating a U.S. registered trademark. The bill would require notification of the trademark owner when such goods are seized by the Customs Service.

Goods seized under this provision would be forfeited to the Government unless the trademark owner consents, in writing, to some other disposition of the goods. The Government would have to attempt to donate the forfeited goods to a Federal, State, or local government agency or to a charitable institution. One year after forfeiture, the goods could be sold at a public auction. Destruction of the goods would be permitted if they are unsafe or a hazard to health.

PREFERENTIAL TREATMENT FOR U.S. OFFICIALS

The bill, as amended by the committee, would prohibit duty-free entry for any individual including an officer or employee of the Federal Government or Member of Congress.

AUTHORIZATION OF APPROPRIATIONS

The bill, as amended by the committee, would require an annual authorization of appropriations to the U.S. Customs Service beginning with fiscal year 1980. Authorizing legislation would require Finance Committee review, on a regular basis, of the operations of the Customs Service. Customs now receives nearly \$400 million a year for operating expenses.

II. GENERAL EXPLANATION

1. Date for Determining Rate of Duty (Section 101 of the Bill)

Present law.—Upon arrival at a port of entry, imported goods come under customs jurisdiction. Under the statutory scheme, entry documents must be filed at the customhouse within 5 days after arrival of the goods (19 U.S.C. 1484). Estimated duties must be paid when the entry documents are filed (19 U.S.C. 1505).

After examination of the entry documents to determine that the importer has the right to receive the goods and that the documents include the necessary information to determine duties and to meet statistical reporting requirements, the goods are examined. The examination is necessary to get information needed to assess duties and to verify the entry documents, among other things. After the examination, the goods are released to the importer under bond. The bond is necessary until the liquidation of the entry becomes final.

Over 80 percent of all import transactions are processed under special permits for immediate delivery. Immediate delivery, which the Customs Service bases on 19 U.S.C. 1448, differs from the entry process described above. The goods are examined to insure they conform to the description in the invoice and released. Within 10 days after release, the entry documents and estimated duties must be given to Customs (19 C.F.R. 142.0 et seq.). After receipt of the entry documents, Customs examines a sample of the goods to determine their classification and value and to verify the statistical information in the entry document.

The entry process is usually completed within a day or two. The final determination of duties, or "liquidation," occurs after release of the goods. Although there is no statutory or regulatory time limit on liquidation, about 30 percent of all entries are liquidated within 3 weeks of entry.

Section 315(a) of the Tariff Act of 1930 (19 U.S.C. 1315(a)) sets the rate of duty on an imported article at the rate of duty in effect when the entry documents and estimated or liquidated duties are deposited with the appropriate customs officer.

House bill.—The House bill would set the rate of duty as the rate in effect when the documents required to obtain release of merchandise from customs custody are filed.

Reason for change.—This amendment is part of the statutory changes necessary to separate duty payment from the filing of entry documents.

Revenue effect.—See *Revenue effect* under item 3.

2. Requirements for Filing Documents and Depositing Estimated Duties (Section 102 of the Bill)

Present law.—Section 484 of the Tariff Act of 1930 (19 U.S.C. 1484) requires entry documents to be filed at a customhouse, and only at a customhouse, within a specified time (usually 5 days) after the importation. Goods may be released only after they are entered and estimated duties deposited.

House bill.—The House bill would change the statutory entry process by allowing release of the goods upon filing an entry document. The documentation necessary for classifying and appraising the imported goods and verifying the statistical information would have to be filed within 10 days after the date of entry, i.e., the day the entry document is filed.

The entry document and the documents containing the details of the importation would be filed at the place within the customs district where the merchandise will be released from Customs custody, as prescribed by the Secretary in regulations. This change would permit entries to be filed at places other than the customhouse.

As a guideline for the Secretary in prescribing appropriate regulations, the amendment states that the Secretary shall, to the maximum extent practicable, provide for the protection of the revenue, the timely collection of import statistics, the facilitation of the commerce of the United States, and the equal treatment of all consignees of imported merchandise.

Committee amendments.—The committee amended the House provision to require the Secretary of the Treasury to transmit immediately to the Bureau of the Census any corrections to the statistical information included in the import documents if inspection of the goods and information obtained at a later time reveals an error. Census will be required to make all necessary corrections.

In addition, the Secretary will be required to insure the accuracy of statistics, particularly on classification and valuation of imports, collected under the new entry procedures. Finally, the effective date of section 102 is delayed until 60 days after the date of enactment of the act.

Reasons for change.—The new entry system permitted under the changes made by section 102 will enable customs to handle import transactions more efficiently than under present law. Sections 101–103 and 108 of the bill will give the Secretary of the Treasury considerable flexibility in establishing entry procedures. For this reason, the committee will closely follow the development of the new system.

The committee understands the entry procedure described in the following letter indicates the procedures the Customs Service intends to establish. While this description does not bind Customs, it will be used by the committee as a benchmark for future oversight of customs entry procedures.

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., April 28, 1978.

HON. RUSSELL LONG,
Chairman, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: As you requested at the markup of H.R. 8149, there is enclosed a description of the entry procedure which we intend to establish if H.R. 8149 is enacted.

Sincerely yours,

G. R. DICKERSON,
(For Commissioner of Customs).

Enclosure.

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
April 28, 1978.

MEMORANDUM

Subject: H.R. 8149.

The following is a description of the points that were raised by the subcommittee's staff on H.R. 8149.

1. ENTRY PROCEDURE—ROLE OF THE INSPECTOR AND IMPORT SPECIALIST

Under the AMPS system, entries will be legally accepted by Customs at the station office. They are not routed through ministerial

desks and import specialists for pre-entry review, as they are today, but are presented to inspectors at locations where merchandise is landed. Exceptions will be made for some, such as complex quota entries which require tariff classification before quota determinations can be made.

An entry will consist of: (a) a document similar to the current immediate delivery release, (b) a commercial invoice, (c) a packing list where appropriate, and (d) other documents which may be required on a particular shipment. Thus, the current immediate delivery procedure become the "entry procedure."

The inspector will review the entry package to determine if the necessary documents are present and the required information is complete. Thus, the inspector will be performing "entry acceptance" functions under the AMPS System.

After an entry is accepted at the station office, the inspector will examine the merchandise using standardized examination and sampling instructions, developed by the Duty Assessment, Inspection and Control and Technical Services Divisions. Equipment to perform weighing, gauging, measuring and sampling functions will be provided. The inspector will note the result of his examination on the invoices. He will also complete a delivery authorization document which will enable the importer or broker to obtain the merchandise from the carrier. A copy of this authorization document will be forwarded to the Manifest Clearance Unit for posting the release information against the appropriate manifest line item.

The original entry documentation and invoices with examination notations will be returned to the importer or broker. A copy of the entry noted as "released" will be forwarded to the appropriate duty assessment office. There, the entry information is input into the computer master file to initiate an entry record. The TECS (Treasury Enforcement Communication System) system will be selectively queried using entry information to identify possible fraudulent practices.

When the importer or broker receives his copy of the examined entry from the inspector he indicates on each invoice the tariff item number and nondutiable charges, if he has not already done so. He also prepares a document called "Tariff Item Summary" similar in content to the lower half of the current consumption entry. The tariff items summary with the original entry and examined invoice documents are forwarded to the appropriate duty assessment office. This must be accomplished within 10 working days after the release of cargo.

An alternative to the above procedure will also be provided. The importer or his broker may elect to submit all required documentation, including the tariff item summary, at the time he presents his entry to the station office. In these cases, Customs will proceed with normal processing through examination, authorizing delivery of the cargo, and forwarding the entire entry/summary package to the appropriate duty assessment office for processing without requiring further importer/broker intervention.

When the documents are received at the duty assessment office, the data is transmitted to the Master File through the use of data input terminals. The summary information is associated with the information input at the time of entry. Processing continues with edit routines validating the data and the duty calculations on the summary.

The entry/summary information is also evaluated by a set of screening criteria provided by import specialists. These criteria will identify routine and repetitive shipments which can be processed without intensive import specialist review. Entries not requiring intensive review will be immediately liquidated by the system. Those not initially liquidated by the system will be forwarded to the import specialist team for a manual determination of proper classification and value using appropriate classification decisions and files of current value information. In order to equally apply classification and value determinations among the ports, import specialists will continue to exchange information through the Customs Information Exchange (CIE) and Headquarters. On completion of import specialist action, the documents will be returned to the data input unit for liquidation by the system.

2. STATISTICS—ROLE OF THE INSPECTOR AND IMPORT SPECIALIST

Customs continues to maintain a high quality program for statistical verification. Under AMPS, this will be enhanced by multilevel checks.

As today, the inspector will note on the invoices the result of his visual comparisons of the merchandise and the description on the invoice. Also, in the case of an informal entry (under \$250 in value), the inspector will continue to perform his additional responsibilities for verifying the import statistics. Under AMPS, this function for statistical verification will be improved, however, by the establishment of a nationally standardized and complete set of examination instructions which will include statistical annotations. For the first time, inspectors will have a handy reference for all examination procedures and those statistical verification processes which he performs.

Additionally in the full AMPS system, qualifiers will be encountered by each entry passing the system. In this way, Customs will ensure that a standardized and tight control exists over the statistical information. Each entry will receive the same treatment from the AMPS automated edits for statistical information. Entries that are processed by the system and are also selected for intensive review by the import specialist will actually go through two statistical verification processes; one by the system and one by the import specialist.

In AMPS, as the entry and summary are being processed, the TSUSA statistical information is validated and if acceptable, it will be associated with other entry/summary information requested by Census and will be stored within the system. At an interval agreeable to both Customs and Census, this information will be transmitted from Customs to Census. This latter process will speed the statistical information directly to the Census system without waiting for copies of entry documents to reach the Census processing center and having them keyed into their system. In addition, then, to making the necessary information available for earlier compilation, Customs will also be bypassing a number of mail and keying processes that are performed today. This will eliminate opportunities for error.

Corrections to statistical information previously submitted to Census will be made in two ways. First, if the entry is still within our system and has not been transmitted to Census, the terminal operator,

upon submission of instructions from the import specialist, will recall the entry data, key in the correct information and send it to the master file. Second, if the data has already been forwarded to Census, Customs will make the corrections on a copy of the entry and forward it to Census for manual processing and input to their system.

At this time we do not anticipate requiring any special statistical information on release documents. Information from our field operations and the trade community indicate that such a requirement would substantially delay the release of cargo while these determinations are made. Often this information is not available or cannot be determined until additional documentation is present and the broker or importer has had time to consult with the import specialist as to the proper statistical annotations.

The question of a rated invoice being required at the time of release has not been decided. It is the opinion of the Customs Service that at the time of release, a rated invoice may not be necessary since it will be submitted with the filing of summary documentation as part of the entry package. If the total entry package, including the summary documentation, is submitted at the time of release, there will, of course, be a rated invoice.

3. FINANCIAL—THE ACCOUNT SYSTEM

The AMPS system will operate largely by accounts, based on the bonds submitted and approved by the District Director. Accounts will be established from the approved bond numbers. This account procedure is not mandatory however for those who have infrequent or onetime importations. Such importations will be processed as they are currently, with duties being paid before release.

With respect to duty payment for accounts, estimated duty/tax is due by the close of business Tuesday for summaries filed Monday through Friday of the previous week. Payments can be made anytime during this cycle.

The system will accept various combinations of payments; the choice is left to the discretion of the importer/broker. Payments can be made one summary at a time or one payment for numerous summaries. Also, the total weekly amount due can be paid, or payment of the weekly deposit minus selected summaries can be submitted. The importer/broker can elect to pay (a) by depositing funds to Customs' account in his local bank (if Treasury approved), (b) by currency or check directly to Customs, or (c) by applying the total or any portion of a credit balance in his account to the amount due.

Each importer or broker on the system will receive a monthly statement of all transactions that have taken place within their account during the cycle period. These statements itemize all transactions added to the Master File during the statement cycle including fines, penalties, reimbursable service charges, and miscellaneous charges. All payments received are also enumerated. Summaries liquidated during the cycle are listed, with the amount of increase or refund, if any. The statement date will be the liquidation date for all items liquidated during the cycle. Also, the statement acts as a bill or notice of a credit balance.

Importers or brokers remit their payment of monthly bills, together with the return portion of the statement, to either a Customs duty assessment office or directly to a Treasury approved commercial bank within 10 working days after the date of the statement. As in the case of deposits of estimated duties, a copy of the commercial bank deposit receipt is routed to Customs by the importer/broker. In turn, the data input unit in the Customs office transmits payment data to the Master File, updating the account with the payment information.

At the end of each account cycle, in addition to the Monthly Account Statement, a Broker's Extract of the Importers Monthly Statement will also be produced showing the broker all of the activity he performed for each importer account. The extract will show all summaries filed by the broker for the account and the status of the items filed for the account, i.e., paid, unpaid, liquidated, etc. The extract is not payable by the broker, but is provided for information only. If more than one broker filed summaries for an importer of record (account), separate extracts will be provided for each broker. Separate Monthly Account Statements will be provided for brokers who have filed summaries under their own account numbers.

4. CASH MANAGEMENT

The AMPS system will benefit the Government by providing a modern sophisticated cash management system. As soon as an importer requests release of merchandise, an accounting of duties and taxes due will be entered into the computer. The computer will verify that a valid and sufficient bond is on file to protect the Government against any default on the part of the importer.

The AMPS is an account based system. It is designed to facilitate collection of duties either in advance of merchandise release, at the time of release, or at some interval of time after release (periodic deposit, e.g., weekly, daily, etc.). If periodic deposit is included, the AMPS is also designed to facilitate charging of interest beginning on the date the merchandise is actually released, if Government policies so require. Thus, the Government will have an accounting of all taxes and duties outstanding at any time and they will be able to speed cashflow simply by changing policy with respect to the date duties and taxes are due.

The AMPS system will also facilitate cash management by expediting collections. By separating entry documentation from payment, Customs will be able to deposit duties and taxes immediately upon receipt rather than waiting until they have ascertained that the documentation is correct as is the case today. This will improve the flow of revenue into the Treasury. Also, by providing on-line change entry processing at each duty assessment office, Customs will be able to significantly accelerate billing of the importers for supplemental duties and taxes due. Finally, by having an account based system integrated with an automated bond control system, Customs will be able to insure more timely and prompt payment of overdue bills.

Customs plans for implementing AMPS include a provision for weekly deposit at the time the system is initially installed. Under this plan, Customs would continue to release merchandise in a manner similar to today's ID procedure, with a document summarizing the transaction, due to Customs within 10 days after the merchandise is

released. The importer would then be required to deposit duties and taxes on the Tuesday following the week in which the summary documentation was presented. Customs conducted a cash flow analysis, comparing cash flow under this method of processing to cash flow under the present method of processing. By separating payment from Customs processing of the documentation, as is provided for under AMPS, Customs will be able to eliminate most of the delays inherent in the current system, thereby, actually improving flow even after taking into account the delay resulting from weekly deposit.

The cash flow analysis was extensively reviewed from November 1974 through January 1975 by the Bureau of Government Financial Operations. They concurred in the results.

The cash flow was also audited by the General Accounting Office (GAO) in April and May of 1977. At the conclusion of the audit, GAO informed Customs informally that they concurred in the cash flow conclusions.

Thus, the AMPS will significantly improve Customs cash management and it will also improve cash flow. The system, as planned for initial installation, will provide deferred payment (weekly deposit) of duties and taxes without adversely impacting cash flow. Furthermore, the AMPS will also provide the capability to speed up cash flow by simply changing policy with respect to the date when payment is due.

5. IMPLEMENTATION SCHEDULE

The full AMPS system is to be initially implemented in 1979 in the Baltimore Region for operational shakedown tests. These tests will resolve any operational difficulties which may exist before proceeding to nationwide implementation in the other eight regions.

The remaining regions will be prepared concurrently for implementation through staffing, training, and facilities preparation. Each region will prepare for AMPS implementation based on an implementation plan formulated early in fiscal year 1979. Implementation expansion to these eight regions is expected to occur during 1980. This will allow time for delivery and installation of equipment and resolution of any additional system problems which arise while implementing the regions. Implementation may continue into 1981 if hardware acquisition is delayed.

JOHN B. O'LOUGHLIN,
(For Vernon V. Hann).

The committee amendments to section 102 are intended to emphasize the importance the committee attaches to the collection of accurate import statistics, particularly with respect to the valuation and classification of goods. The committee believes this emphasis is necessary to insure that the Executive, Congress, and private parties have accurate statistics available for the administration and assessment of United States trade policy and laws. The committee expects the Customs Service and Bureau of Census to make a maximum effort to collect and compile accurate import statistics on a timely basis.

The committee amendment delaying the effective date of section 102 will give the Customs Service time to prescribe regulations implementing that section. The committee understands that the new entry procedures will not be completely implemented until at least 1980.

Revenue effect.—See *Revenue effect* under item 3.

3. Time for Deposit of Estimated Duties (Section 103 of the Bill)

Present law.—Section 505(a) of the Tariff Act of 1930 (19 U.S.C. 1505(a)) generally requires that the estimated duties payable on an importation be deposited with the appropriate customs officer at the time entry documents are filed.

House bill.—The House bill would permit the deposit of estimated duties either at the time of making entry or at some time within 30 days after entry, as prescribed by regulation.

Reason for change.—The amendment would permit importers to deposit estimated duties for a number of entries on a periodic basis rather than on an entry-by-entry basis as is now the case. It also would permit Customs to settle accounts with importers by a periodic computer generated consolidated statement covering many transactions and requiring payment for net underpayments or giving credit for net overpayments of duties during the statement period. This change should permit more efficient handling of duty payment and collection by importers and by Customs than the current system which requires accounts to be settled on an entry-by-entry basis.

The committee understands the Customs Service intends to establish individual accounts for regular importers. The importer would be required to make deposits in this account on a regular basis. The committee is concerned about the possible imputed interest cost of this system to the government. For this reason, the committee expects Customs to review its cash management procedures. In particular, Customs should make every effort to reduce the time between receipt of checks from importers and actual deposit of those checks to the Government's account.

Revenue effect.—Negligible effect in fiscal year 1979. When the new entry system is fully implemented (probably in 1980), duties will be collected approximately 8 days later than under the current system. Due to this delay in collections, the revenue loss during the first fiscal year of full implementation will be about \$94 million. Thereafter, the loss due to the delay will be about \$6 million annually. The revenue loss results from a postponement of collections and a direct loss of cash flow in the year of implementation. The loss in subsequent years represents a postponement of a portion of the normally anticipated growth in duty receipts into each following year. The estimated cost to Customs of the new entry procedures, including development, retraining, acquisition, and operating costs, will be \$18.6 million in fiscal year 1979, \$17.3 million in fiscal year 1980, \$20.3 million in fiscal year 1981, \$20.7 million in fiscal year 1982, and \$21.1 million in fiscal year 1983.

4. Recordkeeping (Section 104 of the Bill)

Present law.—Importers are not required to keep records. Customs regulations require customs brokers to make and keep certain records for 6 years (19 CFR 111.21–111.27).

House bill.—The House bill would add a new section 508 to the Tariff Act of 1930 requiring any owner, importer, consignee or agent thereof who either imports goods into the customs territory of the United States or knowingly causes goods to be imported to keep

records. Records pertaining to the importation of merchandise or substantiating the correctness of information contained in the documents legally required in connection with the entry of merchandise and which are normally kept in the ordinary course of business would have to be made and supplied to Customs for examination and inspection upon request. Importers and other covered persons would have to keep the records for the period, not to exceed 5 years from the date of entry, the Secretary prescribes. The term "knowingly causes to be imported" would, in general, exclude domestic transactions between an importer and a person ordering merchandise from him. This means an individual ordering an item from a retailer and a retailer ordering an item from an importer would, in general, not be required to make a record of the transaction for customs purposes.

Reasons for change.—The committee understands that inquiries or investigations by the Customs Service to verify entry documents or uncover fraud are frequently hindered by lack of documentary evidence of transactions. This change will enhance Customs' ability to insure compliance with customs laws.

Revenue effect.—See *Revenue effect* under item 5.

5. Customs Service Investigatory Powers (Section 105 of the Bill)

Present law.—Section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) permits appropriate customs officers to order before them and to examine under oath any owner, importer, consignee, agent or other person upon any matter relating to the classification or value of imported goods and to require the production of any letters, accounts, contracts, invoices, or other documents relating to the goods. An order to appear and produce documents issued under section 509 may only be used to obtain information about importations under consideration by the Customs Service (unliquidated entries) or importations made during the preceding year.

House bill.—The House bill would permit the Secretary of the Treasury or his delegate to summon, upon reasonable notice any person involved with the importation of merchandise or any person who has possession, custody, or care of relevant records, and to examine records and to take testimony necessary to determine the correctness of an entry or return, the liability of any person for duties and taxes, the amount of fines and penalties, or to insure compliance with the laws and regulations of the United States administered by the Department of the Treasury.

Special procedures dealing with third-party summonses would be provided. These procedures would provide notice to a person whose records of import transactions are being kept by a third party if that third party is summoned to produce the records. The term "third-party recordkeeper" includes: (1) a customhouse broker; (2) an attorney; and (3) an accountant. The procedures are patterned after the third-party summonses procedures in section 7609 of the Internal Revenue Code of 1954.

Reasons for change.—The committee understands that the 1-year limitation on Customs' authority under current section 509 hinders fraud investigations which often involve transactions over a period of years. The committee also understands that individuals often refuse

to obey an order issued under present law and then pay the relatively small fine provided for such refusal. When this happens and Customs cannot obtain records under section 509, it must abandon an investigation unless there is independent evidence constituting probable cause to believe that a criminal fraud exists, in which case a grand jury subpoena can be obtained.

The committee believes the changes in section 509 will enhance the Customs Service's ability to insure compliance with the law while protecting the rights of individuals. The committee expects the Customs Service to use its new investigatory powers, together with the data processing equipment necessary to implement the new entry procedures, in a systematic and reasonable audit process. The committee also expects the Customs Service to develop a program to select for intensive review entries which are likely to contain errors and a random sample of all entries. The committee believes a regular audit process and automated selection of entries for review should improve compliance with customs laws and give early warning of likely problems while discouraging unwarranted concentration of audit and review activities on persons carrying on their businesses according to law.

The committee does not intend that new section 509(a)(1) be construed to require the Customs Service to notify an individual when the Service examines records already in its possession as the result of a filing required by law or regulations.

The committee deleted the requirement that any record examined be "relevant or material" to an investigation or inquiry and inserted the word "relevant." Any document which is "material" to an investigation is necessarily relevant to that investigation.

Revenue effect.—None. The committee estimates that the amendments made under sections 104–106 of the bill will increase the productivity of the customs audit staff which, together with an increase in that staff, could result in an estimated annual increase of \$7.5 million in penalties and collections.

6. Judicial Enforcement of Administrative Summons (Section 106 of the Bill)

Present law.—Under section 510 of the Tariff Act of 1930 (19 U.S.C. 1510), any person refusing to appear or to produce documents or to subscribe his name to a deposition or refusing to answer interrogatories under section 509 is subject to a penalty of not less than \$20 nor more than \$500. If an owner, importer, or consignee perjures himself during an examination, the goods concerned are forfeited or their value may be recovered from him.

House bill.—The provision in the House bill is similar to many statutes which provide for judicial enforcement of administrative summonses. The U.S. district courts would be given jurisdiction to compel, after a hearing, the production of records or the giving of testimony as ordered by Customs under section 509. If a person fails to obey a court order, he could be punished for contempt. In addition to contempt penalties, a person who refuses to obey a court order could, at the discretion of the Secretary of the Treasury and for so long as he fails to obey the court order, be prohibited from importing

merchandise into the customs territory of the United States or obtaining release from Customs of any of his merchandise of which it has custody. If he refuses to obey for 1 year, all of his goods in Customs custody would be sold at public auction or otherwise disposed of under the customs laws.

Reasons for change.—The committee believes that the monetary penalty of \$20 to \$500 is often insignificant when compared to the amount of duty a party stands to evade through the use of fraudulent practices. The committee also believes that the significant sanction under section 510, *i.e.*, forfeiture, has no effect on persons involved in a transaction under investigation other than the importer or owner. The committee intends judicial contempt to be a meaningful sanction for failure to obey a customs summons. A judicial contempt sanction will also insure the rights of the individuals involved are protected by due process in the courts.

Revenue effect.—See *Revenue effect* under item 5.

7. Repeal of Sanction (Section 107 of the Bill)

Present law.—Section 511 of the Tariff Act of 1930 (19 U.S.C. 1511) permits the Secretary of the Treasury to prohibit any person from importing goods into the United States if that person does not comply with the Secretary's request to permit inspection of that person's books or other documents relating to the value or classification of imported merchandise.

House bill.—The amendment repeals section 511.

Reason for change.—The purpose of section 511 of present law is served by proposed section 510 (see item 6).

Revenue effect.—None.

8. Time for Deposit of Estimated Duties for Goods in Bonded Warehouses (Section 108 of the Bill)

Present law.—Sections 557 and 559 of the Tariff Act of 1930 (19 U.S.C. 1557, 1559) allow goods to be kept in a customs bonded warehouse at the owner's expense for up to 3 years after arrival in the United States. A 1951 Presidential Proclamation declaring a national emergency due to the Korean War permits Customs to extend the 3-year period by an unlimited number of successive 1-year extensions. The Presidential Proclamation will be terminated September 14, 1978, by the National Emergencies Act. Estimated duty must be paid before the goods may be withdrawn from the warehouse for consumption in the United States.

House bill.—The House bill would conform section 557 to the changes proposed under section 103 by permitting payment of duty after withdrawal from warehouse when the person withdrawing the merchandise is permitted to pay duty at a later time.

Committee amendment.—The committee modified the House provision to amend sections 557 and 559 to permit goods to remain in a customs bonded warehouse at the owner's expense for up to 5 years. The 5-year period could not be extended. Goods in a bonded warehouse on the date of enactment of the bill could remain in the warehouse for up to 5 years from the date of enactment.

Reason for change.—Under the new entry procedures established under sections 101–103 and 108, the Secretary of the Treasury may release goods before estimated duties are deposited. Estimated duties must be deposited within 30 days after the date of entry. The amendment under section 108 will permit goods to be withdrawn from customs bonded warehouses under this procedure.

The committee believes that permitting goods to remain in a bonded warehouse for up to 5 years will serve a useful commercial purpose and eliminate the administrative burden of successive 1-year extensions.

Revenue effect.—See *Revenue effect* under item 3 for the impact of the House provision. The committee amendment will have no revenue effect.

9. Penalties for Errors in a Ship's Manifest (Section 109 of the Bill)

Present law.—Section 431 of the Tariff Act of 1930 (19 U.S.C. 1431) requires the master of a vessel arriving in the United States to keep on his ship a manifest in the form prescribed by the Secretary of the Treasury. The manifest must be signed by the master under oath as to the truth of the statements it contains. Under section 584 of the Tariff Act of 1930 (19 U.S.C. 1584), the penalty for an error in a manifest is, in general, a fine equal to the domestic value of the goods to which the error relates. The Customs Service uses the manifest primarily to insure that all goods in the cargo are ultimately entered or otherwise appropriately disposed of under the customs laws.

House bill.—The House bill amends section 584 to extend liability for an error in a ship's manifest to those persons directly or indirectly responsible for the error, including the importer or broker. The master or owner of the vessel would continue to be liable.

Committee amendments.—In addition to the amendment proposed by the House, the committee amended section 584 to:

1. Require a prepenalty notice of any proposed penalty greater than \$250;
2. require the Customs Service to consider representations made as a result of the notice before issuing a penalty claim;
3. explicitly prohibit any penalty being assessed for a non-negligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of a manifest; and
4. limit the maximum penalty to the lesser of \$10,000 or the domestic value of the goods to which the error relates.

Reason for change.—The committee believes that ocean carriers are being penalized under section 584 for discrepancies between the manifest and cargo packaged in a manner which prevents the master from knowing its contents. For example, cargo containers are often filled at the exporter's factory in a foreign country and the container is not opened again until it reaches the importer's facility inside the United States. Although the carrier sees only the container, not its contents, section 584 now makes the carrier responsible for the manifest description of the cargo in the container.

Further, the committee believes that the most common statutory penalty, an amount equal to the domestic value of the goods erroneously described, has no relation to the nature of the offenses involved.

In light of the use to which the Customs Service puts manifests and the actual amount of penalties collected after mitigation under section 618 of the Tariff Act of 1930, the committee believes the penalty for violation of sections 431 and 584 must be significantly modified.

The prepenalty notice procedure will permit carriers to quickly resolve possible violations of sections 431 and 584 before a penalty claim is issued. Because this notice will go to all persons directly or indirectly responsible for the error, the committee believes that there will be an incentive for importers, exporters, brokers, and carriers to cooperate in resolving problems. The \$250 exclusion means no prepenalty notice is required in about 30 percent of the section 584 cases.

The prohibition on penalties for clerical errors is intended to stop customs from issuing penalties for inconsequential mistakes, such as a single missing page in one copy of a multicopy submission to Customs. The committee expects the Customs Service to review its guidelines for section 584 penalties to insure that penalty claims are issued only when circumstances clearly require such an action.

The committee amendment limits the maximum penalty to \$10,000 to stop the issuance of exorbitant penalties which are almost always mitigated to small amounts before collection. For example, during fiscal year 1977, the Customs Service assessed section 584 penalties in 2,539 cases. The average amount assessed per case was \$29,974. The average amount actually collected per case was \$94. In imposing this ceiling, the committee understands that Customs Service records indicate no section 584 penalty actually collected has exceeded \$10,000.

In addition to these amendments, the committee intends to request the General Accounting Office to investigate the policing problems which containerization and other changes in cargo handling technology are causing Customs. GAO will report its findings and recommendations to the committee after 1 year.

Revenue effect.—None.

10. Fraud Penalties (Section 110 of the Bill)

Present law.—Section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) penalizes any person who imports, attempts to import, or aids or procures the importation of merchandise into the United States “by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever,” unless that person has “reasonable cause to believe the truth of such statement.” Violation of section 592 is penalized by forfeiture of the merchandise or a payment equal to the value of merchandise. The penalty applies to negligent as well as intentional violations and whether or not an underpayment of duties results from the violation.

Section 592 is the most frequently invoked customs penalty. It is intended to encourage accurate completion of the entry documents upon which Customs must rely to assess duties and administer other customs laws.

Under existing regulations, if a customs officer finds a suspected violation of section 592 and the district director of customs decides to issue a penalty claim for more than \$25,000 (most penalty claims

exceed this amount), he must send the importer a written prepenalty notice describing the merchandise and the circumstances of the alleged violation. If a customs officer finds a section 592 violation which results in a revenue loss of less than \$250 and is not part of a pattern of violations, then under current practice, the importer must pay the additional duty due, if any, but no penalty is assessed. If the section 592 penalty claim is for less than \$25,000, then no prepenalty notice is issued and the importer receives a penalty claim (19 CFR 171.1).

The importer has 30 days to respond to a prepenalty notice with evidence refuting the alleged violation or showing he had reasonable cause to believe the truth of his statements. After considering the importer's reply, the district director may issue a written penalty claim to the importer for forfeiture or, more commonly, payment of an amount equal to the domestic value of the merchandise.

Upon receiving a penalty claim, an importer can satisfy the penalty, wait 30 days for Customs to refer the claim to the U.S. Attorney who will begin civil proceedings to enforce the penalty, or petition the Treasury to mitigate the penalty under section 618 of the Tariff Act of 1930 (19 U.S.C. 1618). Virtually every importer petitions for mitigation.

Section 618 permits the Secretary of the Treasury to mitigate penalties, including section 592 penalties, "upon such terms and conditions as he deems just and reasonable" if he finds the penalty "was incurred without willful negligence or without any intention * * * to defraud the revenue or violate the law, or finds the existence of such mitigating circumstances as to justify the * * * mitigation." Section 592 penalties are almost always mitigated by Customs to a multiple of the underpayment of duties resulting from the violation, usually between two and ten times the underpayment. If the section 592 violation is voluntarily disclosed by the importer before an investigation is begun, the Customs Service will mitigate the penalty to an amount equal to 100 percent of the amount of the duty underpayment.

If an importer refuses to pay a section 592 penalty, whether or not it is mitigated, then he will be sued for the penalty in a U.S. district court. After the Government has proved "probable cause" to believe section 592 was violated, the importer bears the burden of proving there was no violation. If he succeeds, there is no penalty. If he fails, the court must impose the statutory penalty. The court has no power to reduce the penalty or to impose a mitigated penalty proposed by Customs. Because of the all or nothing nature of litigation under section 592, most importers pay the mitigated penalty proposed by the Customs Service under section 618. The appropriateness of the mitigated penalty is not subject to judicial review.

House bill.—The House provision completely revises section 592. The persons covered and the nature of the offense are intended to remain the same as they are under present law. The procedural provisions adopted by the House are patterned after procedures in current Customs' regulations and guidelines.

If a customs officer has "reasonable cause to believe" there is a violation and determines that "further proceedings are warranted," then he would have to issue a written prepenalty notice which includes "all material facts" establishing the violation. The notice

would not be required in noncommercial cases, i.e., violations by noncommercial travelers, or if the proposed penalty is less than \$1,000. This provision would enact into law the prepenalty notice requirement now in the regulations with several changes: (1) The minimum penalty amount for which a prepenalty notice is required would be reduced from \$25,000 to \$1,000, and (2) the prepenalty notice would have to include "all material facts which establish the alleged violation" and the estimated amount of the duty underpayment. Presumably, the Service will continue to assess no penalty in small cases, i.e., less than \$250 revenue loss.

After considering representations by the importer, the appropriate customs officer would determine whether a section 592 violation has occurred and notify the importer of his decision.

The penalty for violation of section 592 would be changed from an in rem penalty, forfeiture of the merchandise, to an in personam penalty, a monetary liability of the importer. However, seizure of the merchandise would be permitted if the Secretary of the Treasury has "reasonable cause to believe" the importer is insolvent, outside U.S. jurisdiction, or that seizure is "necessary" to protect the revenue or prevent the importation of restricted goods. The seized merchandise would, in general, be forfeited to the United States only if the monetary penalty is not paid.

Although nonnegligent clerical errors and mistakes of fact would continue to be violations of section 592 under the House provision, no penalty could be assessed because of those errors or mistakes.

The monetary penalty would be changed from a fixed amount, the domestic value of the goods, to an amount varying according to the culpability of the importer. The penalty for a fraudulent violation could not exceed the domestic value of the merchandise. The penalty for gross negligence could not exceed the lesser of the domestic value or four times the duty underpayment involved. If there is no underpayment, the penalty for gross negligence could not exceed 40 percent of the dutiable value of the merchandise. The penalty for negligence would be the lesser of domestic value or twice the duty underpayment. If there is no underpayment, the negligence penalty could not exceed 20 percent of dutiable value.

In voluntary disclosure cases involving fraud, the penalty could not exceed an amount equal to 100 percent of the duty underpayment or 10 percent of the dutiable value of the merchandise if there is no underpayment. If a nonfraudulent violation is voluntarily disclosed, the penalty could not exceed the amount of interest accruing on the underpayment.

If the customs officer issues a penalty claim and the importer petitions for mitigation under section 618, then the importer would have the opportunity to make written and oral representations to the Service. Notice of the final decision in a mitigation proceeding, including findings of fact and conclusions of law, would be required to be sent to the importer. This provision would enact into law existing practice with several changes: (1) The importer would have the right to make representations in a mitigation proceeding before any decision on mitigation is made, and (2) the Service would be required to supply the importer with a detailed explanation of the factual and legal basis for its mitigation decision.

If an importer refuses to pay a section 592 monetary penalty and is sued by the United States in a district court, all issues, including the appropriateness of the penalty amount, would be considered by the court. In a fraud case, the government would have to prove the section 592 violation by "clear and convincing" evidence.

In gross negligence and negligence cases, the Government would have to prove the elements of the violation or the act or omission constituting the violation, respectively. This means the Government would have to prove, by a preponderance of the evidence, that the importer acted in reckless disregard of his legal duties in a gross negligence case. In a negligence case, the Government would have to prove, by a preponderance of the evidence, that the importer did an act which violates section 592. Thereafter, the importer would have to prove, by a preponderance of the evidence, that he exercised that care which was reasonable under the circumstances.

This provision would change existing law by (1) permitting a court to make its own judgement about the appropriate remedy for a section 592 violation, and (2) changing the burden of proof in fraud cases and shifting the burden of production in a proceeding to collect a section 592 penalty to the United States.

A suit brought to enforce a section 592 penalty arising out of gross negligence or negligence would have to be brought within 5 years after the violation occurs. Under present law, suits may be brought within five years after the violation is discovered.

The House revision of section 592 would be effective with respect to proceedings commenced 90 days after the date of enactment, i.e., proceedings in which a prepenalty notice is issued 90 days or more after the date of enactment. Any section 592 case will be subject to judicial review as of the date of enactment.

Committee amendment.—The committee has reorganized the House amendment and clarified the substantive prohibition in subsection 592(a). In doing so, the committee emphasizes that, in its amendment, the committee does not change the scope of present section 592 either with respect to the persons potentially liable or the acts prohibited.

The committee does not intend that the term "the appropriate customs officer" in paragraphs 592(b) (1) and (2) require the same individual to consider both the prepenalty and penalty claims issues in a given case. The committee expects Customs to insure that the prepenalty and penalty claim procedures are administered in an impartial and objective manner.

The House bill has two bases used in computing maximum penalties, i.e., *domestic value*, if there is a duty underpayment, and a percentage of *dutiable value*, if there is no duty underpayment. *Domestic value* is generally equivalent to retail value while *dutiable value* is generally equivalent to wholesale value. Customs must determine the dutiable value of all imported goods. It determines domestic value only for penalty purposes. The committee amended the House provision to require the use only of dutiable value in computing maximum penalties under section 592.

Reasons for change.—The committee change requiring the use only of dutiable value will require the Customs Service to make only one valuation of goods involved in a 592 penalty case. It will not result

in lower penalties being collected than is the case under present law. Currently, the maximum penalty collected after mitigation is 10 times the amount of duty underpayment.

The committee expects the Customs Service to examine the circumstances surrounding each offense before determining the amount of penalty assessed in a penalty claim. The maximum penalties in the revised section 592 are ceilings. Customs should not automatically issue a penalty claim for the maximum amount in each case. Further, the committee emphasizes that the appropriateness of the amount of the penalty is a proper subject for judicial review under new section 592(e).

The committee is aware of requests for revisions in section 592 received from our trading partners participating in the Multilateral Trade Negotiations. The committee has approved the revision of section 592 with these requests in mind and expects appropriate compensation in the MTN for this action by the United States.

Revenue effect.—None.

11. Summary Sales (Section 111 of the Bill)

Present law.—Sections 607, 610, and 612 of the Tariff Act of 1930 (19 U.S.C. 1607, 1610, 1612) provide for the summary sale, without judicial proceedings, of goods not exceeding \$2,500 in value which have been seized and forfeited because of violation of the customs laws. Summary sale is limited to goods which are likely to perish and goods which are expensive for customs to store relative to their value.

House bill.—The amendment would increase to \$10,000 the value of seized goods which may be sold by summary proceedings.

Reasons for change.—The committee understands that the \$2,500 limit, established over 20 years ago, precludes expeditious disposal of automobiles and other merchandise and forces Customs to pursue the time consuming and costly judicial forfeiture process.

Revenue effect.—None. Customs judicially forfeited 300 vehicles in 1976. This amendment would have saved Customs storage costs for these vehicles of about \$100,000.

12. Publication of Customs Decisions (Section 112 of the Bill)

Present law.—The Customs Service Office of Regulations and Rulings in Washington issues notices, letters, rulings, and written advice to customs officers and importers. The communications may state the Customs Service interpretation of customs law generally or with respect to a specific transaction.

Under regulations, Customs will provide a ruling letter to an importer, upon request, applying customs law to a specific prospective transaction. A prospective transaction is one in which no act under Customs jurisdiction, such as arrival or entry, has yet occurred. A ruling letter is binding on Customs only with respect to the transaction it describes. All ruling letters are available, upon request, to the public for inspection in Washington. If a ruling letter affects a substantial volume of imports or transactions, it will be published in the Customs Bulletin, a weekly publication available to the public. Between July, 1975, and July, 1977, Customs published three letter rulings in the Customs Bulletin. 6,000 to 8,000 letter rulings are issued each year.

Customs will also publish other rulings, not issued in response to a request, in the Customs Bulletin. These rulings state Customs' position on issues of widespread interest or application.

Customs will send an importer, upon request, an information letter stating well established interpretations or principles of customs law. Also, an importer may request a Customs field office to request advice from the headquarters office with respect to a *current* transaction. If Customs issues advice and the subject affects substantial imports or transactions, then the advice will be published in the Customs Bulletin.

Customs distributes all the communications described above and additional information on the application of customs laws to customs officers through the Customs Information Exchange. Much of the information in the Exchange is available to the public only if it is voluntarily disclosed by customs officers or released under a Freedom of Information Act request.

House bill.—The amendment would add a new section 625 to the Tariff Act of 1930 requiring any ruling under the Tariff Act of 1930 with respect to a “prospective customs transactions” to be published in the Customs Bulletin or otherwise be made available for public inspection. This provision would enact into law part of the existing regulations.

Committee amendment.—The committee modified the House provision to require all precedential decisions, including a ruling letter, internal advice memorandum, or protest review decision, to be published or otherwise made available to the public.

Reason for change.—The committee believes importers must know the Customs Service interpretation of the law if they are to supply the Service with correct information in the first instance. The committee expects the Customs Service to make every effort to make this information available to the public. The committee also expects the Customs Service to make every effort to answer requests for ruling letters or internal advice as rapidly as possible.

Revenue effect.—The committee estimates its amendment will cost \$78,000 in fiscal year 1979 and \$26,000 per year thereafter.

13. Renewal of Brokers' Licenses (Section 114 of the House Bill)

Present law.—In part because of the intricacies of the entry process, many importers hire a customhouse broker as their agent to clear merchandise through customs. Brokers advise their clients of documents that must be filed and the probable amount of duties. They then file the entry documents and deposit estimated duties with Customs.

Section 641 of the Tariff Act of 1930 (19 U.S.C. 1641) permits the Secretary of the Treasury to license customhouse brokers. Section 641 prohibits any person without a license from doing business as a customhouse broker. Under this law, Customs determines the qualifications and responsibilities of brokers, administers examinations, and issues, revokes and suspends licenses. Licenses are now good until revoked or suspended for cause.

House bill.—The House bill would require brokers' licenses to be renewed every 3 years. Brokers would have to apply for renewal

during the 90-day period before their current license expires. Outstanding licenses would not have to be renewed until 3 years after the date of enactment of H.R. 8149.

Committee amendment.—The committee deleted section 114 of the House bill.

Reason for change.—The committee understands the reason the House adopted this provision was to insure the Customs Service current information on the status and activities of licensed brokers. The House viewed license renewal as a “pro forma” matter.

The committee believes the Customs Service may collect information about brokers’ activities under present law. The committee believes the House provision is inappropriate to achieve its apparent purpose and would result largely in an unnecessary increase in Government regulatory activities.

Revenue effect.—None.

14. Stamping of Bulk Containers of Liquor (Section 201 of the Bill)

Present law.—Section 11 of the Act of March 1, 1879, (19 U.S.C. 467) requires all bulk containers of imported distilled spirits, wines, and malt liquors to be inspected and stamped by Customs before their release from Customs custody. Under section 5205(a)(2) of the Internal Revenue Code of 1954 (IRC), no person may transport or possess any distilled spirits unless the container bears a stamp evidencing the determination of the tax on the spirits or indicating compliance with applicable provisions of the IRC. Section 5205(a)(2)(C) of the IRC exempts from this stamping requirement any spirits stamped under the customs laws, e.g., section 11 of the Act of March 1, 1879. There is no IRC requirement for stamping bulk containers of malt liquors or wine.

House bill.—The House bill would eliminate the mandatory inspection and stamping requirement under section 11 of the act of March 1, 1879 and permit the Secretary of the Treasury to require by regulation those marks, stamps, brands, or devices which he believes to be necessary to control the transportation, possession, sale, or transfer of imported bulk distilled spirits, wines and malt liquors. An amendment also would be made to section 5205(a)(2)(C) of the IRC exempting from the IRC mandatory stamping requirement imported distilled spirits, the stamping of which may be required under customs law, whether or not it is in fact required.

Committee amendment.—The committee has deleted the amendment the House bill would make to section 5205(a)(2)(C) of the IRC. The committee also amended section 11 as amended by the House to clarify that the section applies only to bulk containers. The committee adopted the House bill provision eliminating the mandatory inspection and stamping requirement of section 11 and permitting the Secretary of the Treasury discretion to require by regulation those marks, stamps, brands, or devices which he considers necessary to control the transportation, possession, sale, or transfer of imported bulk distilled spirits, wines and malt liquors.

Reason for change.—The Internal Revenue Code does not require the stamping of bulk containers of wine or malt liquors. Because

stamping of such containers by Customs for customs purposes is not necessary for collection and protection of the revenues or other customs purposes, and is costly, time consuming, and impedes movement of such containers, the committee considered it appropriate to eliminate the mandatory inspection and stamping requirement of section 11 of the Act of March 1, 1879, with respect to such containers.

The IRC does provide for stamping of bulk containers of distilled spirits. Bulk containers of imported distilled spirits do not leave Customs custody unless stamped in conformance with the IRC or for transportation in bond to premises under the supervision of the Bureau of Alcohol, Tobacco, and Firearms. Given these requirements, the committee agreed to permit the Secretary of the Treasury discretion to stop Customs stamping of bulk containers of distilled spirits.

The committee understands that the Secretary of the Treasury has not yet determined whether continuation of the stamping requirement under the IRC is necessary for the collection and protection of the revenues. If and when the Secretary concludes such a change is appropriate, he can propose the change to Congress for consideration. Until such a proposal is made and considered by Congress, the committee considers an authorization to eliminate the IRC requirement to be inappropriate. For this reason, the committee eliminated the provision of the House bill amending the Internal Revenue Code.

Revenue effect.—None.

15. Personal Exemptions (Section 202 of the Bill)

Present law.—Schedule 8 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) permits a *nonresident* of the United States arriving in the United States from abroad to bring with him for his own consumption, free of duty, not over 50 cigars, or 300 cigarettes, or 3 pounds of smoking tobacco, and not over 1 quart of alcoholic beverages (TSUS item 812.20). In addition, a nonresident may bring with him, free of duty, articles not exceeding \$100 in value (including not more than 1 gallon of alcoholic beverages and 100 cigars) to be given as bona fide gifts (TSUS item 812.25). No limit is placed upon the number of cigarettes which may be included within the \$100 exemption.

Schedule 8 provides different treatment for a *resident* of the United States arriving in the United States from abroad. A returning resident may bring with him for his personal or household use, free of duty, not more than 1 quart of alcoholic beverages (1 gallon if arriving from American Samoa, Guam, or the Virgin Islands of the United States) and 100 cigars for his personal or household use (TSUS item 813.30), subject to the \$100 duty-free personal exemption for all foreign goods accompanying a returning resident (\$200 if arriving from American Samoa, Guam, or the Virgin Islands) (TSUS item 813.31). No limit is placed upon the number of cigarettes which may be included within the \$100 exemption.

TSUS item 814.00 of schedule 8 permits employees of a vessel, vehicle, or aircraft engaged in international traffic to import free of duty for personal use in the United States reasonable and appropriate articles, including not over 50 cigars or 300 cigarettes, or 3 pounds of smoking tobacco, and not over 1 quart of alcoholic beverages, if the

employee is to take unused portions with him when he leaves the United States and intends to resume his employment upon the vehicle, vessel, or aircraft on which he arrived.

TSUS items 860.10 and 860.20 permit the importation free of duty of alcoholic beverage samples and samples of tobacco products, respectively, to be used for soliciting orders from importers of commercial quantities of the merchandise.

House bill.—The House bill would convert the volumes and weights of merchandise exempt from duty under the TSUS items described above to the metric system. This conversion would become effective on January 1, 1980. No conversion would result in a reduction of the quantity of an article eligible for duty-free treatment.

The bill would also amend schedule 8 of the TSUS to equalize the personal liquor and cigarette duty-free exemption for returning U.S. residents and nonresidents. The amendment would eliminate alcoholic beverages (currently one wine gallon) and cigarettes from the category of articles that a nonresident can import duty free as bona fide gifts under the \$100 exemption. The items that could be brought in duty free by nonresidents for personal consumption would not be affected, except that the number of duty-free cigarettes a nonresident could bring in for his own use would be cut from 300 to 200. The amendment would also limit the number of cigarettes that could accompany a returning U.S. resident within his \$100 personal exemption to 200 (one carton). It would provide that citizens of the United States who are residents of American Samoa, Guam, or the Virgin Islands shall be treated as residents of the United States for the purposes of applying the personal exemption items of the TSUS.

These changes would permit travelers, regardless of place of residence, entering the United States to bring one liter (1.0567 quarts) of liquor and one carton (200) of cigarettes with them free of duty. There would be an exception for U.S. residents returning from the Virgin Islands, Guam, or American Samoa, whose one gallon duty-free exemption would be permitted to continue, to be defined in metric terms.

The House bill also would increase the amount of personal exemption accorded returning residents of the United States under TSUS item 813.31. The present exemption is \$100 (or \$200 in the case of persons arriving directly or indirectly from American Samoa, Guam, or the Virgin Islands); these amounts would be increased to \$250 and \$500, respectively.

Under the House bill, the amendments which relate to metric conversion would be effective as of January 1, 1980, while the amendments made by the subsection other than those dealing with metrification shall apply with respect to persons arriving in the United States on or after the 30th day after the date of enactment of this act.

Committee amendment.—The committee modified the House provision by increasing the personal exemption for a returning U.S. resident under TSUS item 813.31 from \$100 to \$500. The committee increased the exemption from \$200 to \$1,000 for a U.S. resident returning directly or indirectly from American Samoa, Guam, or the Virgin Islands of the United States. Not more than \$500 of the merchandise eligible for the \$1,000 exemption may be acquired elsewhere than in those insular possessions.

Reasons for change.—The conversion to the metric system made in this section is to conform the TSUS provisions to the regulations of the Bureau of Alcohol, Tobacco, and Firearms which will require all containers of alcoholic beverages to be in metric sizes as of January 1, 1980.

The equalization of the liquor and cigarette duty exemptions for U.S. residents and nonresidents resolves an inadvertent discrepancy in the treatment of U.S. citizens and foreign visitors which arose in 1965 when Congress reduced the amount of alcohol which could be included in the personal exemption for returning U.S. residents, but neglected to make a similar change for foreign travelers. The effect of the difference in duty-free allowances has not been great up to now. However, the committee understands a series of duty-free stations are being built in Canada on roads leading into the United States. Thirteen million Canadians entered the United States in 1975. Testimony was received to the effect that this could become a significant problem with great revenue loss to the United States and the border States on both liquor and cigarette taxes, and a considerable administrative burden.

The increases in the amount of the personal exemption for returning U.S. residents from \$100 to \$500 (\$200 to \$1,000 for residents returning from American Samoa, Guam, or the Virgin Islands of the United States) were made to account for the effects of inflation over the last decade and to deduce the time required for returning U.S. residents to be cleared through customs.

The eroding effect of inflation on the purchasing power of the dollar has been substantial. Processing time has increased significantly. Customs officers must classify, value, and assess duty on individual articles valued between \$100 and \$500. Under the bill, Customs will be required only to determine the individual retail value of items valued in the aggregate at less than \$500. The committee believes the increases provided in the House bill (to \$250 and \$500) did not adequately account for inflation nor sufficiently decrease processing time for travelers after often lengthy and tiring trips.

Revenue effect.—The committee estimates the annual customs revenue loss at \$4.9 million.

16. Application of Personal Exemption to Goods Not Accompanying Returning U.S. Residents (Section 202 of the Bill)

Present law.—The personal exemption provisions of the TSUS applicable to a U.S. resident arriving directly or indirectly from American Samoa, Guam, or the Virgin Islands of the United States (item 813.31) permits the exemption from duty only with respect to articles *accompanying* the returning U.S. resident through customs. The exemption permits entry duty free of twice the value of articles permitted for travelers whose trip did not include one of the enumerated insular possessions, provided no more than half the value of goods to which the exemption is applied were acquired outside those insular possessions.

House bill.—The House bill left present law intact.

Committee amendment.—The committee amended present law to permit U.S. residents arriving directly or indirectly from American

Samoa, Guam, or the Virgin Islands of the United States to apply the personal exemption to articles they purchase in the possessions but which do not accompany the arriving traveler through customs. That is to say, travelers would be allowed to apply the personal exemption to goods they purchase in the possessions while they are in the possessions and then ship home. Customs would be required to publish regulations to carry out this provision.

Reason for change.—The committee believes the amendment made by this section is needed to encourage U.S. residents to use the full personal exemption applicable to goods purchased in U.S. insular possessions. The insular possessions depend on the tourist trade and public policy is to encourage such trade for the benefit of the islands. Requiring travelers who are in the insular possessions to carry with them through customs all the goods they purchase in the islands in order to be eligible for the personal exemption with respect to those goods would reduce the benefit intended to be granted to the insular possessions by the preference in the personal exemption provisions.

Revenue effect.—There is no additional revenue effect because of this amendment beyond the revenue effect estimated for the change in the personal exemption levels provided for in section 202 of the bill as reported in *Revenue effect* for item 15.

17. Flat Rate of Duty on Noncommercial Importations of Limited Value (Section 203 of the Bill)

Present law.—The tariff classification of and rate of duty on an imported article generally is not affected by the commercial or non-commercial nature of the importation. The most notable exception to this rule is the personal exemption for returning residents and non-residents. For example, a returning resident is entitled to an exemption from duty for articles accompanying him through customs upon his return of up to \$100 aggregate value (\$200 if coming from the insular possessions of the United States). Dutiable articles over the \$100 limitation are subject to duties at the rates prescribed in the Tariff Schedules of the United States.

House bill.—The House bill would apply a flat 10-percent rate to all articles accompanying a returning resident which are intended for personal or household use; are not imported for another person and are not for resale, and are not worth more than \$600 fair retail value, exclusive of duty-free articles. The flat rate of duty would be 5 percent for articles acquired in American Samoa, Guam, or the Virgin Islands of the United States. The flat rate would not apply to commercial entries or to articles not accompanying the person through customs. If the application of the flat rate of duty to particular merchandise results in increases in imports of that merchandise which adversely affect the economic interest of the United States, then the Secretary could exclude that merchandise from this provision.

Committee amendment.—The committee modified the House amendment. Under the bill as reported by the committee, the flat rate provision applicable to articles from American Samoa, Guam, or the Virgin Islands would be applicable to goods purchased by travelers

while they are in the possessions even if the goods do not accompany the arriving U.S. resident through customs. The Secretary of the Treasury is required to issue regulations to carry out this change.

Reason for change.—The change in present law made by this section is intended to reduce delays and bottlenecks in clearance of travelers at ports of entry. The amendment which relates to goods from the insular possessions not accompanying the returning U.S. resident is intended to secure the full benefit of the preference for the insular possessions which is provided in the changes made by this section.

Revenue effect.—Negligible.

18. Effective Date for Duty Increases Resulting From Administrative Action (Section 204 of the Bill)

Present law.—Section 315(d) of the Tariff Act of 1930 (19 U.S.C. 1315(d)) makes a higher rate of duty or charge imposed by administrative ruling effective 30 days after publication of notice of the ruling in the publication Treasury Decisions (now called *Customs Bulletin*). Treasury Decisions is a weekly publication, and the delay in the effectiveness of a higher rate of duty may be as much as 50 days.

House bill.—The House bill would make the effective date of the imposition of a higher rate of duty or charge resulting from an administrative ruling 30 days after publication of notice of the ruling in the *Federal Register*, a daily publication.

Reason for change.—The amendment would reduce the delay in the effective date of a higher rate of duty or charge due to an administrative ruling.

Revenue effect.—Negligible increase.

19. Duty Collection Where Expenses of Collection Are Disproportionate to Duty Gained (Section 205 of the Bill)

Present law.—Section 321 of the Tariff Act of 1930 (19 U.S.C. 1321) permits the Secretary of the Treasury to forego collecting small amounts of duties and taxes if the expense and inconvenience to the Government of collecting the duties and taxes is disproportionate to the amount of revenue that would otherwise be collected. Under section 321(a)(1), the Secretary may disregard a difference of \$3 or less between estimated duties or taxes deposited and duties or taxes ultimately determined to be due. Under section 321(a)(2)(A), the Secretary may admit bona fide gifts to persons in the United States free of duty and tax if the aggregate value of the exempt articles imported by one person on 1 day does not exceed \$10 (\$20 if from the Virgin Islands, Guam, or American Samoa). Under section 321(a)(2)(B), the Secretary may admit free of duty and taxes articles up to a value of \$10 per person per day which accompany, and are for the personal household use of persons arriving in the United States who are not entitled to certain other listed exemptions. Under section 321(a)(2)(C), the Secretary may admit free of duty in any other case \$1 worth of goods per person per day.

House bill.—The House bill would increase the dollar limits in section 321 from \$3 to \$10 (section 321(a)(1)), \$10 to \$25 and \$20 to \$40 (section 321(a)(2)(A)), \$10 to \$25 (section 321(a)(2)(B)), and

\$1 to \$5 (section 321(a)(2)(C)). In addition, the authority to forgive an underpayment of "duties or taxes" would be changed to "duties and taxes." Under current law \$3 of duty and \$3 of tax could be forgiven. The amendment would limit the total amount of duty and tax underpayment which may be forgiven to \$10, not \$10 of duty and \$10 of tax.

Reason for change.—The specific dollar limits in section 321 have been unchanged for nearly 25 years. The amendments take account of inflation and increased costs in collection.

Revenue effect.—It is estimated that an annual customs revenue loss of \$4 million will be offset by an estimated savings in collection costs to the Government of \$7 million.

20. Penalties for Failure To Enter and Pay Duties on Equipment for and Repairs of Vessels (Section 206 of the Bill)

Present law.—Section 466 of the Tariff Act of 1930 (19 U.S.C. 1466) penalizes the willful and knowing neglect or failure to report, make entry, and pay duties on repairs or equipment purchases made in a foreign country for a vessel of U.S. registry by seizure and forfeiture of the vessel with its tackle, apparel, and furniture.

House bill.—The House bill would amend section 466 to provide a monetary penalty up to the value of the vessel as an alternative to forfeiture. It also would expand the acts penalized under section 466 to include the making or procuring of any false statement in respect to the purchases or repairs without reasonable cause to believe the truth of such statement.

Committee amendment.—The committee adopted the House provision with an amendment. The amendment would provide a prepenalty notice procedure to insure persons suspected of violating section 466 of an opportunity to discuss the circumstances of the alleged violation and the appropriateness of any possible penalty with Customs prior to the issuance of a penalty claim.

Reason for change.—Forfeiture of the vessel as now provided under section 466 is too severe a penalty relative to the revenue loss in many cases. The prohibition on false statements is necessary because the general customs false statement penalty provision, section 592 of the Tariff Act, does not apply to false statements about ship repairs or equipment. In adding such a penalty, the committee considered it appropriate to provide a prepenalty notice provision for any alleged violation of section 466, as a violation under section 466 now is analogous to a violation under section 592 of the Tariff Act of 1930. The prepenalty procedure is intended to permit rapid resolution of problems arising under section 466.

Revenue effect.—None.

21. Air Waybills (Section 207 of the Bill)

Present law.—The consignee of imported goods has numerous rights and obligations under the customs laws. For example, the consignee generally must enter the goods, in person or through an agent.

Section 483(1) of the Tariff Act of 1930 (19 U.S.C. 1483(1)) makes all imported goods the property of the consignee for purposes of cus-

toms law administration. The holder of a bill of lading endorsed by the consignee named in the bill (or, if the goods are consigned to order, endorsed by the consignor) is deemed to be the consignee of those goods.

However, the holder of an endorsed air waybill for goods imported by air is not deemed to be the consignee and owner of the goods under section 483. Although in commercial practice an air waybill serves a purpose similar to the purpose of a bill of lading in nonair transportation, Article 12 of the Warsaw Convention (49 Stat. 3017) permits the consignor to direct the air carrier not to deliver goods to the person named in the air waybill, i.e., the consignee may not have a right to receive the goods. For purposes of the customs laws, the air carrier is required to certify that the holder of an air waybill is the consignee of the imported goods (section 484(h) of the Tariff Act of 1930 (19 U.S.C. 1484(h)).

House bill.—The House bill would amend section 483(1) to create the same presumption for a holder of a properly endorsed air waybill as exists for a holder of a properly endorsed bill of lading, i.e., that he is the consignee of the goods. The rights of the consignor under Article 12 of the Warsaw Convention would remain the same, so that private commercial practice is not affected. The separate carrier's certificate required by section 484(h) in addition to an air waybill would no longer be necessary to enter the goods. For customs procedural purposes, goods imported by air will be treated the same as goods arriving by some other means of transportation.

Reason for change.—The committee believes no good purpose is served by treating air waybills differently from bills of lading for customs purposes. Treating air waybills and bills of lading the same for customs purposes eliminates the need for a separate carrier's certificate and speeds up the processing of goods through customs.

Revenue effect.—None.

22. Abandoned and Forfeited Merchandise (Section 208 of the Bill)

Present law.—Under section 491 of the Tariff Act of 1930 (19 U.S.C. 1491), merchandise which remains in customs custody for 1 year from the date of importation without payment of all estimated duties, storage fees, and other charges is considered unclaimed and abandoned to the Government. Abandoned goods, including liquor, are appraised and sold by the appropriate customs officer at public auction.

Section 492 of the Tariff Act of 1930 (19 U.S.C. 1492) permits the district director of customs to destroy merchandise forfeited to the Government if it is subject to internal revenue tax and if he believes it "will not sell" for an amount sufficient to pay the taxes. While section 492 appears to impliedly permit the sale of forfeited liquor, customs interprets section 5688(a) of the Internal Revenue Code of 1954 as prohibiting sales by customs of forfeited liquor and requiring destruction thereof, even though section 5688(a)(3) appears to provide an exception to the general rule of section 5688(a) if a different manner of disposal is "otherwise provided by law." The result is that Customs sells *abandoned* liquor while it destroys *forfeited* liquor. Customs practice does not distinguish with respect to disposition between abandoned and forfeited articles except for liquor.

House bill.—The House bill would amend section 491 to reduce from 1 year to 6 months the time in which merchandise must be retained in a general order warehouse before it is considered abandoned. Additionally, section 491 would be amended to explicitly permit the sale of forfeited distilled spirits, wines, and beer. Forfeited liquor could only be sold if the Secretary of the Treasury finds that no Government agency or eleemosynary institution needs the liquor.

Committee amendment.—The committee adopted the House provision with one amendment. The committee deleted the amendment in the House bill which would reduce from 1 year to 6 months the time in which merchandise must be retained before it is considered abandoned.

Reason for change.—The amendment relating to different customs treatment of abandoned and forfeited liquor removes an unwarranted distinction which results in unnecessary and wasteful destruction of merchandise. Regarding the period during which merchandise must be retained before it is considered abandoned, while the Customs Service originally believed the present provision of 1 year was excessive in light of modern communications and the storage costs Customs incurs, it informed the committee that it has reconsidered its position and believes the 1-year period provided by present law should be retained in light of present commercial practices.

Revenue effect.—It is estimated that customs revenues will be increased by approximately \$200,000 per year as a result of the sale of forfeited liquor.

23. Liquidation of Entries Within a Specific Time Period (Section 209 of the Bill)

Present law.—“Liquidation” is the final computation by customs of the duties due on an entry. There is no present law requiring liquidation to be completed within a specific time period. Indeed, prior to the Customs Courts and Administrative Act of 1970, it would have been difficult to establish such a time limit because the law permitted an importer to contest in the Customs Court the appraised value of his importation, as determined by the Customs Service, before liquidation could occur. The 1970 Act merged all decisions of the Customs Service with respect to value, classification, quantity, and amount of duties into a single action, the liquidation. These decisions can now be contested by lodging a protest against the liquidation.

House bill.—The House bill would add a new section 504 to the Tariff Act of 1930. Subsection (a) of the new section would provide that an entry is deemed liquidated if not actually liquidated within 1 year from: (1) the date of entry, (2) the date of final withdrawal of all the merchandise covered by a warehouse entry, or (3) the date of withdrawal from warehouse for consumption where duties may be deposited after the filing of an entry or withdrawal from warehouse. The merchandise would be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted by the importer, his consignee, or agent in the entry document and import documents filed with Customs under section 484 of the Tariff Act at the time of entry. Notice of liquidation by customs would not be required for entries deemed liquidated.

Subsection (b) of new section 504 would permit the Secretary of the Treasury to extend the 1-year period for liquidation in specific situa-

tions by giving notice of the extension. Subsection (c) would require notice of any suspension of liquidation to be given to the importer or consignee concerned and to any authorized agent and surety of such importer or consignee.

Subsection (d) would provide that any entries not liquidated at the expiration of 4 years from the dates prescribed in subsection (a) shall be deemed liquidated, except where liquidation continues to be suspended pursuant to statute or court order.

Committee amendment.—The committee adopted the House provision with one amendment. The committee amendment would require Customs to provide notice of liquidation in cases where an entry is deemed liquidated.

Reason for change.—The provisions adopted by the committee would increase certainty in the customs process for importers, surety companies, and other third parties with a potential liability relating to a customs transaction. Under the present law, an importer may learn years after goods have been imported and sold that additional duties are due, or may have deposited more money for estimated duties than are actually due but be unable to recover the excess for years as he awaits liquidation. Surety companies, which are jointly liable with importers for additional duties, would be better able to control their liabilities. Sureties would also be better protected against losses resulting from the dissolution of their principals in instances where there has been undue delay in liquidating entries.

The change to the House bill made by the committee was prompted by the fact that an importer must file a protest with Customs within 90 working days after the date of liquidation to preserve his right to judicial review of a Customs decision with respect to liquidation. If Customs failed to issue a notice in deemed liquidated cases, it is possible that many importers will not discover such an entry has been liquidated in time to make a timely protest.

The committee notes that several of the countries participating in the Multilateral Trade Negotiations have requested that the United States establish a time limit within which liquidation must occur. The committee has approved the limitations on liquidation with these requests in mind and expects appropriate compensation in the MTN for this action by the United States.

Revenue effect.—The committee estimates a maximum annual customs revenue loss of \$9.5 million.

24. Reliquidation To Correct Inadvertent Errors (Section 210 of the Bill)

Present law.—Section 520 of the Tariff Act of 1930 (19 U.S.C. 1520) permits a customs officer to reliquidate an entry to correct a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law if the error is adverse to the importer. The error must be brought to the attention of Customs within 1 year from the date of entry or transaction or within 90 days after the date of a liquidation reflecting that error if the liquidation is made more than 9 months after the date of entry. The 90-day limit applies even if the error is made by Customs.

House bill.—The House bill would, for purposes of reliquidation, permit an importer to bring a clerical error, mistake of fact, or other

inadvertence to the attention of Customs within 1 year of the date of liquidation.

Reason for change.—The provision would provide adequate time for importers to seek recalculation of duties when inadvertent errors occur, especially when the error is made by Customs.

Revenue effect.—Negligible.

25. Exemption From Prohibition of Imports of Trademarked Articles and Treatment of Copied or Simulated Trademarks (Section 211 of the Bill)

Present law.—Section 42 of the Act of July 5, 1946, (15 U.S.C. 1124) prohibits the importation of merchandise which copies or simulates a registered trademark or which bears any mark or name calculated to induce belief that the merchandise is manufactured in the United States. Goods imported in violation of section 42 may be: (1) forfeited and sold by Customs after obliteration of the trademark; (2) returned to the country of origin; (3) sold by the importer after obliteration of the trademark; or (4) destroyed. Section 526 of the Tariff Act of 1930 (19 U.S.C. 1526) prohibits importation of goods bearing a trademark owned by a corporate or real citizen of the United States and registered in accordance with the 1946 Act, unless written consent of the trademark owner to the goods' importation has been given. Goods imported in violation of section 526 may be seized by Customs and forfeited to the United States.

House bill.—The House bill would amend section 526 to permit the entry of imported trademark merchandise accompanying persons arriving in the United States. The trademark goods would have to be for the arriving person's personal use and within limitations of type and quantity to be specified by the Secretary of the Treasury in regulations. The trademark exemption could only be claimed by the same person once each 30 days. If any article exempted is sold within 1 year following its importation, the article or its value (to be recovered from the importer) would be subject to forfeiture. In establishing the quantitative limits, the Secretary would determine the quantities in which particular types of articles are usually purchased at retail for personal use. The inquiry would be directed to types of articles rather than individual trademarks. The proposed amendment also would modify section 42 to except from the general trademark restrictions merchandise which falls within the exception under amended section 526.

Committee amendment.—The committee adopted the House provision with an amendment. The amendment would require the following with respect to imported goods which violate the provisions of section 42 relating to merchandise which copies or simulates a registered trademark:

(a) Notification of the trademark owner when such goods are seized;

(b) Forfeiture to the Government of all such goods seized unless the trademark owner provides written consent to some other disposition of the goods, e.g., reexportation, entry after obliteration of the counterfeit trademark, etc.;

(c) Delivery of forfeited goods to a Federal, State or local government agency which needs the goods for an official purpose or to a charitable institution;

(d) Sale of the goods at public auction if, after 1 year, Customs cannot deliver the goods to a government agency or charity; the counterfeit trademarks on goods put up for auction would have to be obliterated where feasible, i.e., when to do so would not destroy the goods or be disproportionately expensive vis-a-vis the value of the goods; and

(e) Destruction of goods which are unsafe or a hazard to health.

Reason for change.—Many travelers unknowingly violate section 42 and section 526 by returning with goods bearing a trademark for which the trademark owner has not given permission for entry, and hence must forfeit such goods. The amendment allows a limited exception to the import prohibition for such unintentional noncommercial violations.

The committee believes that there is now no effective sanction against violations of section 42 as it relates to merchandise which simulates or copies a registered trademark. Under present law, Customs may immediately sell goods bearing a counterfeit trademark after forfeiture. Such a disposition puts the counterfeit goods in competition with legitimate trademark goods.

Revenue effect.—None.

26. Customs Officers Owning Pleasure Boats (Section 212 of the Bill)

Present law.—Section 599 of the Tariff Act of 1930 (19 U.S.C. 1599), a conflict-of-interest provision, prohibits customs officers from owning any vessels. This has been interpreted to prohibit ownership of yachts and other pleasure boats.

House bill.—The House bill would exclude yachts and other pleasure boats from the prohibition against customs officers owning vessels.

Reason for change.—Present law provides an unnecessarily broad restriction in this conflict-of-interest situation.

Revenue effect.—None.

27. Penalty for Violating Coastwise Shipping Laws (Section 213 of the Bill)

Present law.—Section 27 of the Merchant Marine Act of 1920 (46 U.S.C. 883) generally prohibits the transportation of merchandise between points in the United States by water, or by land and water, in any vessel other than a vessel built in the United States, under U.S. registry, and owned by U.S. citizens. The penalty for violation of this provision is forfeiture of the merchandise.

House bill.—The House bill would amend section 27 to permit as an alternative to seizure of the merchandise a monetary penalty in an amount up to the value of the merchandise. The vessel owner, agent, or operator, or any person with a commercial interest in the importation, could be liable for the monetary penalty. As under existing law, the Secretary of the Treasury could remit or mitigate any penalty or forfeiture assessed under section 27.

Reason for change.—The committee considers the present forfeiture penalty for violation of the coastwise shipping laws to be too inflexible and inappropriate in many circumstances.

Revenue effect.—Negligible.

28. Fees for Certain Vessel Services (Section 214 of the Bill)

Present law.—Section 2654, 4381, 4382, and 4383 of the Revised Statutes (49 U.S.C. 58; 46 U.S.C. 329, 330 and 333) impose specific dollar fees for certain enumerated services provided by customs officers to United States and foreign vessels.

House bill.—The House bill would repeal the statutes enumerated above and authorize the Secretary of the Treasury to set fees for furnishing the required services in an amount necessary to cover the cost of those services.

Reason for change.—The specific statutory fees are too low to cover the cost of providing the services required of Customs, and the Secretary needs discretion to set fees sufficient to cover the costs of the services provided.

Revenue effect.—The committee estimates an annual increase in customs revenues of \$2.5 million.

29. Customs Treatment of U.S. Officers and Employees (Section 215 of the Bill)

Present law.—For many years Customs permitted certain U.S. officials and employees, including Members of Congress, duty-free entry of goods they brought with them from abroad by not requiring them to enter their baggage and effects. There was no statutory basis for such practice. A recent Treasury Decision (T.D. 76-325) changes this practice by prohibiting any officer or employee of the United States (including any member of the uniformed services) from admission free of duty without entry of his or her baggage and effects. The decision permits expedited customs examination and clearance for such officials in certain circumstances.

House bill.—The House bill would enact into law the recent Treasury Decision.

Committee amendment.—The committee modified the House provision to prohibit duty-free entry for all individuals in all situations unless otherwise permitted by law. Expedited entry could be permitted for any individual in certain circumstances, including when a person is seriously ill or infirm, summoned home by news of affliction or disaster, or accompanying the body of a deceased relative.

Reason for change.—The committee considered it appropriate to legislatively eliminate duty-free entry for all individuals, including officers and employees of the United States. The committee believed it appropriate to provide expedited examination and clearance for all persons in certain circumstances, some of which are defined.

Revenue effect.—Negligible.

30. GAO Study of Customs Clearance of Travelers (Section 216 of the Bill)

House bill.—No provision.

Committee amendment.—The committee amended the House bill to direct the Comptroller General of the United States, in cooperation with the Customs Service and Immigration and Naturalization Service, to study clearance procedures for individuals entering or reentering the United States. The Comptroller General must report his findings and recommendations to the Committee on Finance not later than February 1, 1979.

Reason for change.—The committee is concerned about delays in the processing of individuals entering the United States. It will use the findings and recommendations of the GAO as a basis for future legislation to speed up the entry process for travelers.

Revenue effect.—None.

31. Customs Service Appropriations Authorization (Section 301 of the Bill)

Present law.—Appropriations for the U.S. Customs Service are now permanently authorized as part of the authorization of appropriations made to the Department of the Treasury under 19 U.S.C. 52.

House bill.—Under section 301 of the House bill, beginning in fiscal year 1980, an authorization of appropriations to the Department of the Treasury for the U.S. Customs Service would be required. The authorization would be examined in the House and Senate by the Ways and Means Committee and the Finance Committee, respectively. The House bill would authorize Customs Service appropriations of such sums as may be necessary for fiscal years 1980 and 1981, making appropriations for fiscal year 1982 the first year requiring separate authorization.

Committee amendment.—The committee adopted the House provision with an amendment. The committee amendment deleted the authorization of appropriation of such sums as may be necessary for the Customs Service for fiscal years 1980 and 1981. This change by the committee will require a separate annual authorization beginning with fiscal year 1980.

Reason for change.—The Customs Service performs functions which should be subject to legislative oversight by the committees in the House and Senate who have primary legislative jurisdiction over international trade matters. The committee considers it appropriate to begin such oversight in fiscal year 1980 due to the immediate need to review Customs Service activities in view of its enormous authority and discretion.

Revenue effect.—None.

III. REGULATORY IMPACT OF THE BILL

In compliance with paragraph 5 of rule XXIX of the Standing Rules of the Senate, the committee states that the provisions of the bill should not result in new major and continuing regulatory activity. The committee believes the new entry procedures for goods and the changes affecting returning individuals should significantly reduce the regulatory activity occurring under present law.

The committee believes that the recordkeeping requirement in section 104 of the bill will result in no additional burden for most persons affected. For those few persons who now keep no records, the limitation that only records "normally kept in the ordinary course of business" will be required to be kept should minimize the regulatory impact.

IV. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the committee states that the bill was ordered reported by a voice vote.

V. BUDGETARY IMPACT OF THE BILL

In compliance with section 252(a) of the Legislative Reorganization Act of 1970 and sections 308 and 403 of the Congressional Budget Act, the following statements are made relative to the costs and budgetary impact of the bill.

The provisions of the bill do not provide new budget authority or tax expenditures. The committee accepts the estimates of the Congressional Budget Office on the impact of the bill. The report received by the committee from the Congressional Budget Office is included in this report.

CONGRESSIONAL BUDGET OFFICE,
U.S. CONGRESS,
Washington, D.C.

Hon. RUSSELL B. LONG,
Chairman, Committee on Finance,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: In accordance with the Budget Act, the Congressional Budget Office has examined H.R. 8149 which would make numerous changes in customs procedures and penalties.

The bill does not provide any new budget authority or any new or increased tax expenditures.

It would change revenue collections by the following amounts in millions of dollars in the following fiscal years:

	1979	1980	1981	1982	1983
Sec. 103.....		-94.0	-6.0	-6.0	-6.0
Sec. 202.....	-4.9	-4.9	-4.9	-4.9	-4.9
Sec. 205.....	-4.0	-4.0	-4.0	-4.0	-4.0
Sec. 208.....	+2	+2	+2	+2	+2
Sec. 209.....	-9.5	-9.5	-9.5	-9.5	-9.5
Sec. 214.....	-2.5	-2.5	-2.5	-2.5	-2.5
Total.....	-20.7	-114.7	-26.7	-26.7	-26.7

An earlier cost estimate of this bill prepared by the Congressional Budget Office for the House Ways and Means Committee showed revenue losses resulting from section 103 of the bill beginning in fiscal year 1978. The U.S. Customs Service has subsequently informed the Congressional Budget Office that it would require at least 15 months to obtain the data processing equipment necessary to implement the customs entry procedures provided under section 103. This would delay the revenue effects of section 103 until fiscal year 1980, as shown above.

Sincerely,

ROBERT LEVINE,
Deputy Director.

VI. CHANGES IN EXISTING LAW

In compliance with paragraph 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown below (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TARIFF ACT OF 1930

* * * * *

TITLE III—SPECIAL PROVISIONS

Part I.—Miscellaneous

* * * * *

SEC. 315. EFFECTIVE DATES OF RATES OF DUTY.

(a) Except as otherwise specially provided for, the rate or rates of duty imposed by or pursuant to this Act or any other law on any article entered for consumption or withdrawn from warehouse for consumption shall be the rate or rates in effect when the documents comprising the entry for consumption or withdrawal from warehouse for consumption and any estimated or liquidated duties then required to be paid have been deposited with the appropriate customs officer in the form and manner prescribed by regulations of the Secretary of the Treasury, except that—

(1) any article released under an informal mail entry shall be subject to duty at the rate or rates in effect when the preparation of the entry is completed; [and]

(2) any article which is not subject to a quantitative or tariff-rate quota and which is covered by an entry for immediate transportation made at the port of original importation under section 552 of this Act, if entered for consumption at the port designated by the consignee, or his agent, in such transportation entry without having been taken into the custody of the appropriate customs officer under section 490 of this Act, shall be subject to the rate or rates in effect when the transportation entry was accepted at the port of original importation[.]; and

(3) *any article for which duties may, under section 505 of this Act, be paid at a time later than the time of making entry shall be subject to the rate or rates in effect at the time of entry.*

(b) Any article which has been entered for consumption but which, before release from customs custody, is removed from the port or other place of intended release because of inaccessibility, overcarriage, strike, act of God, or unforeseen contingency, shall be subject to duty at the rate or rates in effect when the entry for consumption and any required duties were deposited in accordance with subsection (a) of this section, but only if the article is returned to such port or place within ninety days after the date of removal and the identity of the article as that covered by the entry is established in accordance with regulations prescribed by the Secretary of the Treasury.

(c) Insofar as duties are based upon the quantity of any merchandise, such duties shall, except as provided in paragraph 813 and

section 562 of this Act (relating respectively to certain beverages and to manipulating warehouses), be levied and collected upon the quantity of such merchandise at the time of its importation.

(d) No administrative ruling resulting in the imposition of a higher rate of duty or charge than the Secretary of the Treasury shall find to have been applicable to imported merchandise under an established and uniform practice shall be effective with respect to articles entered for consumption or withdrawn from warehouse for consumption prior to the expiration of thirty days after the date of publication in the [weekly Treasury Decision] *Federal Register* of notice of such ruling; but this provision shall not apply with respect to the imposition of antidumping duties or the imposition of countervailing duties under section 303.

* * * * *

SEC. 321. ADMINISTRATIVE EXEMPTIONS.

(a) The Secretary of the Treasury, in order to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected, is hereby authorized, under such regulations as he shall prescribe, to—

(1) disregard a difference of less than [\\$3] \$10 between the total estimated duties [or] and taxes deposited, or the total duties [or] and taxes tentatively assessed, with respect to any entry of merchandise and the amount of duties or taxes actually accruing thereon; and

(2) admit articles free of duty and of any tax imposed on or by reason of importation, but the aggregate fair retail value in the country of shipment of articles imported by one person on one day and exempted from the payment of duty shall not exceed—

(A) [\\$10] \$25 in the case of articles sent as bona fide gifts from persons in foreign countries to persons in the United States ([\\$20] \$40 in the case of articles sent as bona fide gifts from persons in the Virgin Islands, Guam, and American Samoa), or

(B) [\\$10] \$25 in the case of articles accompanying, and for the personal or household use of, persons arriving in the United States who are not entitled to any exemption from duty under item 812.25 or 813.31 of title I of this Act, or

(C) [\\$1] \$5 in any other case.

The privilege of this subdivision (2) shall not be granted in any case in which merchandise covered by a single order or contract is forwarded in separate lots to secure the benefit of this subdivision (2).

(b) The Secretary of the Treasury is authorized by regulations to diminish any dollar amount specified in subsection (a) and to prescribe exceptions to any exemption provided for in such subsection whenever he finds that such action is consistent with the purpose of such subsection or is necessary for any reason to protect the revenue or to prevent unlawful importations.

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TITLE IV—ADMINISTRATIVE PROVISIONS

* * * * *

Part II—Report, Entry, and Unlading of Vessels and Vehicles

* * * * *

SEC. 466. EQUIPMENT AND REPAIRS OF VESSELS.

(a) The equipments, or any part thereof, including boats, purchased for, or the repair parts or materials to be used, or the expenses of repairs made in a foreign country upon a vessel documented under the laws of the United States to engage in the foreign or coasting trade, or a vessel intended to be employed in such trade, shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty of 50 per centum on the cost thereof in such foreign country [; and if the owner or master of such vessel shall willfully and knowingly neglect or fail to report, make entry, and pay duties as herein required, such vessel, with her tackle, apparel, and furniture shall be seized and forfeited.]. *If the owner or master willfully or knowingly neglects or fails to report, make entry, and pay duties as herein required, or if he makes any false statement in respect of such purchases or repairs without reasonable cause to believe the truth of such statements, or aids or procures the making of any false statements as to any matter material thereto without reasonable cause to believe the truth of such statement, such vessel, or a monetary amount up to the value thereof as determined by the Secretary, to be recovered from the owner, shall be subject to seizure and forfeiture.* For the purposes of this section, compensation paid to members of the regular crew of such vessel in connection with the installation of any such equipments or any part thereof, or the making of repairs, in a foreign country, shall not be included in the cost of such equipment or part thereof, or of such repairs.

(b) *NOTICE.*—*If the appropriate customs officer has reasonable cause to believe a violation has occurred and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intention to issue a penalty claim. Such notice shall—*

- (1) *describe the circumstances of the alleged violation;*
- (2) *specify all laws and regulations allegedly violated;*
- (3) *disclose all the material facts which establish the alleged violation;*

(4) *state the estimated loss of lawful duties, if any, and taking into account all of the circumstances, the amount of the proposed penalty; and*

(5) *inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why such penalty should not be issued.*

(c) *VIOLATION.*—*After considering representations, if any, made by the person concerned pursuant to the notice issued under subsection (b), the appropriate customs officer shall determine whether any violation of subsection (a), as alleged in the notice, has occurred. If such officer determines that there was no violation, he shall promptly notify, in writing, the person to whom the notice was sent. If such officer determines that there was a violation, he shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under paragraphs (1) through (4) of subsection (b).*

[(b)] (d) *If the owner or master of such vessel furnishes good and sufficient evidence that—*

(1) such vessel, while in the regular course of her voyage, was compelled, by stress of weather or other casualty, to put into such foreign port and purchase such equipments, or make such repairs to secure the safety and seaworthiness of the vessel to enable her to reach her port of destination;

(2) such equipments or parts thereof or repair parts or materials, were manufactured or produced in the United States, and the labor necessary to install such equipments or to make such repairs was performed by residents of the United States, or by members of the regular crew of such vessel; or

(3) such equipments, or parts thereof, or materials, or labor, were used as dunnage for cargo, or for the packing or shoring thereof, or in the erection of temporary bulkheads or other similar devices for the control of bulk cargo, or in the preparation (without permanent repair or alteration) of tanks for the carriage of liquid cargo;

then the Secretary of the Treasury is authorized to remit or refund such duties, and such vessel shall not be liable to forfeiture, and no license or enrollment and license, or renewal of either, shall hereafter be issued to any such vessel until the collector to whom application is made for the same shall be satisfied, from the oath of the owner or master, that all such equipments or parts thereof or materials and repairs made within the year immediately preceding such application have been duly accounted for under the provisions of this section, and the duties accruing thereon duly paid; and if such owner or master shall refuse to take such oath, or take it falsely, the vessel shall be seized and forfeited.

[(c)] (e) In the case of any vessel designed and used primarily for purposes other than transporting passengers or property in the foreign or coasting trade which arrives in a port of the United States two years or more after its last departure from a port of the United States, the duties imposed by this section shall apply only with respect to (1) fish nets and netting, and (2) other equipments, and parts thereof, and repair parts and materials purchased, or repairs made, during the first six months after the last departure of such vessel from a port of the United States.

* * * * *

Part III—Ascertainment, Collection, and Recovery of Duties

* * * * *

SEC. 483. CONSIGNEE AS OWNER OF MERCHANDISE.

For the purposes of this subtitle—

(1) All merchandise imported into the United States shall be held to be the property of the person to whom the same is consigned; and the holder of a bill of lading or the holder of an air way bill duly indorsed by the consignee therein named, or, in the case of a bill of lading if consigned to order, by the consignor, shall be deemed the consignee thereof; except that this section shall not limit in any way the rights of the consignor, as prescribed by article 12 of the Warsaw Convention (49 Stat. 3017). The underwriters of abandoned merchandise and the salvors of merchandise saved from a wreck at sea or on or along a coast of the United States may be regarded as the consignees.

(2) A person making entry of merchandise under the provisions of subdivision (h) or (i) of section 484 (relating to entry on carrier's certificate and on duplicate bill of lading, respectively) shall be deemed the sole consignee thereof.

SEC. 484. ENTRY OF MERCHANDISE REQUIREMENT AND TIME.

[(a) Except as provided in sections 490, 498, 552, and 553 and in subdivision (j) of section 336 of this Act, and in subdivisions (h) and (i) of this section, the consignee of imported merchandise shall make entry therefor either in person or by an agent authorized by him in writing under such regulations as the Secretary of the Treasury may prescribe. Such entry shall be made at the customhouse within five days, exclusive of Sundays and holidays, after the entry of the importing vessel or report of the vehicle, or after the arrival at the port of destination in the case of merchandise transported in bond, unless the appropriate customs officer authorizes in writing a longer time.]

(a) *REQUIREMENT AND TIME.*—(1) *Except as provided in sections 490, 498, 552, 553, and 336(j) of this Act and in subsections (h) and (i) of this section, the consignee of imported merchandise, either in person or by an agent authorized by the consignee in writing—*

(A) *shall make entry therefor by filing with the appropriate customs officer such documentation as is necessary to enable such officer to determine whether the merchandise may be released from customs custody; and*

(B) *shall file with the appropriate customs officer such other documentation as is necessary to enable such officer to assess properly the duties on the merchandise, collect accurate statistics with respect to the merchandise, and determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.*

(2)(A) *The documentation required under paragraph (1) of this subsection with respect to any imported merchandise shall be filed at such place within the customs-collection district where the merchandise will be released from customs custody as the Secretary shall by regulation prescribe.*

(B) *The documentation required under paragraph (1)(B) of this subsection with respect to any imported merchandise shall be filed with the appropriate customs officer when entry of the merchandise is made or at such time within the ten-day period (exclusive of Saturdays, Sundays, and holidays) immediately following the date of entry as the Secretary shall by regulation prescribe.*

(C) *The Secretary, in prescribing regulations to carry out this subsection, shall establish procedures which insure the accuracy and timeliness of import statistics, particularly statistics relevant to the classification and valuation of imports. Corrections of errors in such statistical data discovered after the release of merchandise shall be transmitted immediately to the Director of the Bureau of the Census, who shall make corrections in the statistics maintained by the Bureau. The Secretary shall also provide, to the maximum extent practicable, for the protection of the revenue, the facilitation of the commerce of the United States, and the equal treatment of all consignees of imported merchandise.*

(b) *PRODUCTION OF CERTIFIED INVOICE.*—The Secretary of the Treasury shall provide by regulation for the production of a certified invoice with respect to such merchandise as he deems advisable and for the terms and conditions under which such merchandise may be

permitted entry under the provisions of this section without the production of a certified invoice.

(c) PRODUCTION OF BILL OF LADING.—The consignee shall produce the bill of lading at the time of making entry, except that—

(1) If the appropriate customs officer is satisfied that no bill of lading has been issued, the shipping receipt or other evidence satisfactory to such customs officer may be accepted in lieu thereof;

(2) The appropriate customs officer is authorized to permit entry and to release merchandise from customs custody without the production of the bill of lading if the person making such entry gives a bond satisfactory to such customs officer, in a sum equal to not less than one and one-half times the invoice value of the merchandise, to produce such bill of lading, to relieve such customs officer of all liability, to indemnify such customs officer against loss, to defend every action brought upon a claim for loss or damage, by reason of such release from customs custody or a failure to produce such bill of lading and to entitle any person injured by reason of such release from customs custody to sue on such bond in his own name, without making such customs officer a party thereto. Any person so injured by such release may sue on such bond to recover any damages so sustained by him; and

(3) The provisions of this subdivision shall not apply in the case of an entry under [subdivision] subsection (h) or (i) of this section (relating to entry on carrier's certificate and on duplicate bill of lading, respectively).

(d) SIGNING AND CONTENTS.—Such entry shall be signed by the consignee, or his agent, and shall set forth such facts in regard to the importation as the Secretary of the Treasury may require for the purpose of assessing duties and to secure a proper examination, inspection, appraisal, and liquidation, and shall be accompanied by such invoices, bills of lading, certificates, and documents as are required by law and regulations promulgated thereunder.

* * * * *

(j) RELEASE OF MERCHANDISE.—Merchandise shall be released from customs custody only to or upon the order of the carrier by whom the merchandise is brought to the port at which entry is made, except that merchandise in a bonded warehouse shall be released from customs custody only to or upon the order of the proprietor of the warehouse. [The customs officer shall return to the person making entry the bill of lading (if any is produced) with a notation thereon to the effect that entry for such merchandise has been made.] The customs officer shall not be liable to any person in respect of the delivery of merchandise released from customs custody in accordance with the provisions of this section. Where a recovery is had in any suit or proceeding against a customs officer on account of the release of merchandise from customs custody, in the performance of his official duty, and the court certifies that there was probable cause for such release by such customs officer, or that he acted under the directions of the Secretary of the Treasury, or other proper officer or the Government, no execution shall issue against such customs officer, but the amount so recovered shall, upon final judgment, be paid out of moneys appropriated from the Treasury for that purpose.

* * * * *

SEC. 491. UNCLAIMED MERCHANDISE; DISPOSITION OF FORFEITED DISTILLED SPIRITS, WINES AND MALT LIQUORS.

(a) Any entered or unentered merchandise (except merchandise entered under section 557 of this Act, but including merchandise entered for transportation in bond or for exportation) which shall remain in customs custody for one year from the date of importation thereof, without all estimated duties and storage or other charges thereon having been paid, shall be considered unclaimed and abandoned to the Government and shall be appraised and sold by the appropriate customs officer at public auction under such regulations as the Secretary of the Treasury shall prescribe. All gunpowder and other explosive substances and merchandise liable to depreciation in value by damage, leakage, or other cause to such extent that the proceeds of sale thereof may be insufficient to pay the duties, storage, and other charges, if permitted to remain in public store or bonded warehouse for a period of one year, may be sold forthwith, under such regulations as the Secretary of the Treasury may prescribe. Merchandise subject to sale hereunder or under section 559 of this Act may be entered or withdrawn for consumption at any time prior to such sale upon payment of all duties, storage, and other charges, and expenses that may have accrued thereon, but such merchandise after becoming subject to sale may not be exported prior to sale without the payment of such duties, charges, and expenses nor may it be entered for warehouse. The computation of duties for the purposes of this section and sections 493 and 559 of this Act shall be at the rate or rates applicable at the time the merchandise becomes subject to sale.

(b) *All distilled spirits, wines, and malt liquor forfeited to the Government summarily or by order of court, under any provision of law administered by the United States Customs Services, shall be appraised and disposed of by—*

(1) *delivery to such Government agencies, as in the opinion of the Secretary have a need for such distilled spirits, wines, and malt liquor for medical, scientific, or mechanical purposes, or for any other official purpose for which appropriated funds may be expended by a Government agency;*

(2) *gifts to such eleemosynary institutions as, in the opinion of the Secretary, have a need for such distilled spirits, wines, and malt liquor for medical purposes;*

(3) *sale by appropriate customs officer at public auction under such regulations as the Secretary shall prescribe, except that before making any such sale the Secretary shall determine that no Government agency or eleemosynary institution has established a need for such spirits, wines, and malt liquor under paragraph (1) or (2); or*

(4) *destruction.*

* * * * *

SEC. 504. LIMITATION ON LIQUIDATION.

(a) *LIQUIDATION.—Except as provided in subsection (b), an entry of merchandise not liquidated within one year from:*

(1) *the date of entry of such merchandise;*

(2) *the date of the final withdrawal of all such merchandise covered by a warehouse entry; or*

(3) *the date of withdrawal from warehouse of such merchandise for consumption where, pursuant to regulations issued under*

section 104 of this Act, duties may be deposited after the filing of an entry or withdrawal from warehouse; shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer, his consignee, or agent.

(b) *EXTENSION*.—The Secretary may extend the period in which to liquidate an entry by giving notice of such extension to the importer, his consignee, or agent in such form and manner as the Secretary shall prescribe in regulations, if—

(1) information needed for the proper appraisement or classification of the merchandise is not available to the appropriate customs officer;

(2) liquidation is suspended as required by statute or court order; or

(3) the importer, consignee, or his agent requests such extension and shows good cause therefor.

(c) *NOTICE OF SUSPENSION*.—If the liquidation of any entry is suspended, the Secretary shall, by regulation, require that notice of such suspension be provided to the importer or consignee concerned and to any authorized agent and surety of such importer or consignee.

(d) *LIMITATION*.—Any entry of merchandise not liquidated at the expiration of four years from the applicable date specified in subsection (a) of this section, shall be deemed liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer, his consignee, or agent, unless liquidation continues to be suspended as required by statute or court order. When such a suspension of liquidation is removed, the entry shall be liquidated within 90 days therefrom.

SEC. 505. PAYMENT OF DUTIES.

(a) Unless merchandise is entered for warehouse or transportation, or under bond, the consignee shall deposit with the appropriate customs officer at the time of making entry, or at such later time as the Secretary may prescribe by regulation (but not to exceed thirty days after the date of entry), the amount of duties estimated by such customs officer to be payable thereon.

* * * * *

SEC. 508. RECORDKEEPING.

(a) *REQUIREMENTS*.—Any owner, importer, consignee or agent thereof who imports, or who knowingly causes to be imported, any merchandise into the customs territory of the United States shall make, keep, and render for examination and inspection such records (including statements, declarations, and other documents) which—

(1) pertain to any such importation, or to the information contained in the documents required by this Act in connection with the entry of merchandise; and

(2) are normally kept in the ordinary course of business.

(b) *PERIOD OF TIME*.—The records required by subsection (a) of this section shall be kept for such periods of time, not to exceed five years from the date of entry, as the Secretary shall prescribe.

(c) *LIMITATION*.—For the purposes of this section and section 509, a person ordering merchandise from an importer in a domestic transaction does not knowingly cause merchandise to be imported unless—

(1) the terms and conditions of the importation are controlled by the person placing the order; or

(2) *technical data, molds, equipment, other production assistance, material, components, or parts are furnished by the person placing the order with knowledge that they will be used in the manufacture or production of the imported merchandise.*

[SEC. 509. EXAMINATION OF IMPORTER AND OTHERS.]

[Appropriate customs officers may cite to appear before them or any of them and to examine upon oath, which said officers or any of them are hereby authorized to administer, any owner, importer, consignee, agent, or other person upon any matter or thing which they, or any of them, may deem material respecting any imported merchandise then under consideration or previously imported within one year, in ascertaining the classification or the value thereof or the rate or amount of duty; and they, or any of them, may require the production of any letters, accounts, contracts, invoices, or other documents relating to said merchandise, and may require such testimony to be reduced to writing, and when so taken it shall be filed and preserved, under such rules as the United States Customs Court may prescribe, and such evidence may be given consideration in subsequent proceedings relating to such merchandise.**]**

SEC. 509. EXAMINATION OF BOOKS AND WITNESSES.

(a) *AUTHORITY.*—*In any investigation or inquiry conducted for the purpose of ascertaining the correctness of any entry, for determining the liability of any person for duty and taxes due or duties and taxes which may be due the United States, for determining liability for fines and penalties, or for insuring compliance with the laws of the United States administered by the United States Customs Service, the Secretary (but no delegate of the Secretary below the rank of district director or special agent in charge) may—*

(1) *examine, or cause to be examined, upon reasonable notice, any record, statement, declaration or other document, described in the notice with reasonable specificity, which may be relevant to such investigation or inquiry;*

(2) *summon, upon reasonable notice—*

(A) *the person who imported, or knowingly caused to be imported, merchandise into the customs territory of the United States,*

(B) *any officer, employee, or agent of such person,*

(C) *any person having possession, custody, or care of records relating to such importation, or*

(D) *any other person he may deem proper,*

to appear before the appropriate customs officer at the time and place within the customs territory of the United States specified in the summons (except that no witness may be required to appear at any place more than one hundred miles distant from the place where he was served with the summons), to produce records required to be kept under section 508 of this Act, and to give such testimony, under oath, as may be relevant to such investigation or inquiry; and

(3) *take, or cause to be taken, such testimony of the person concerned, under oath, as may be relevant to such investigation or inquiry.*

(b) *SERVICE OF SUMMONS.*—*A summons issued pursuant to this section may be served by any person designated in the summons to serve it.*

Service upon a natural person may be made by personal delivery of the summons to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the summons to an officer, or managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The certificate of service signed by the person serving the summons is prima facie evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of records, such records shall be described in the summons with reasonable specificity.

(c) SPECIAL PROCEDURES FOR THIRD-PARTY SUMMONSES.—(1) For purposes of this subsection—

(A) The term “records” includes statements, declarations, or documents required to be kept under section 508 of this Act.

(B) The term “summons” means any summons issued under subsection (a) of this section which requires the production of records or the giving of testimony relating to records. Such term does not mean any summons issued to aid in the collection of the liability of any person against whom an assessment has been made or judgment rendered.

(C) The term “third-party recordkeeper” means—

- (i) any customhouse broker;
- (ii) any attorney; and
- (iii) any accountant.

(2) If—

(A) any summons is served on any person who is a third-party recordkeeper; and

(B) the summons requires the production of, or the giving of testimony relating to, any portion of records made or kept of the import transactions of any person (other than the person summoned) who is identified in the description of the records contained in such summons;

then notice of such summons shall be given to any persons so identified within a reasonable time before the day fixed in the summons as the day upon which such records are to be examined or testimony given. Such notice shall be accompanied by a copy of the summons which has been served and shall contain directions for staying compliance with the summons under paragraph (5)(B) of this subsection.

(3) Any notice required under paragraph (2) of this subsection shall be sufficient if such notice is served in the manner provided in subsection (b) of this section upon the person entitled to notice, or is mailed by certified or registered mail to the last known address of such person.

(4) Paragraph (2) of this subsection shall not apply to any summons—

(A) served on the person with respect to whose liability for duties or taxes the summons is issued, or any officer or employee of such person; or

(B) to determine whether or not records of the import transactions of an identified person have been made or kept.

(5) Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under paragraph (2) of this subsection shall have the right—

(A) to intervene in any proceeding with respect to the enforcement of such summons under section 510 of this Act; and

(B) to stay compliance with the summons if, not later than the day before the day fixed in the summons as the day upon which the records are to be examined or testimony given—

(i) notice in writing is given to the person summoned not to comply with the summons; and

(ii) a copy of such notice not to comply with the summons is mailed by registered or certified mail to such person and to such office as the Secretary may direct in the notice referred to in paragraph (2) of this section.

(6) No examination of any records required to be produced under a summons as to which notice is required under paragraph (2) of this subsection may be made—

(A) before the expiration of the period allowed for the notice not to comply under paragraph (5)(B) of this subsection, or

(B) if the requirements of such paragraph (5)(B) have been met, except in accordance with an order issued by a court of competent jurisdiction authorizing examination of such records or with the consent of the person staying compliance.

(7) The provisions of paragraphs (2) and (5) of this subsection shall not apply with respect to any summons if, upon petition by the Secretary, the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

[SEC. 510. PENALTIES FOR REFUSAL TO GIVE TESTIMONY.

If any person so cited to appear shall neglect or refuse to attend, or shall decline to answer, or shall refuse to answer in writing any interrogatories, and subscribe his name to his deposition, or to produce such papers when so required by a judge of the United States Customs Court, or an appropriate customs officer, he shall be liable to a penalty of not less than \$20 nor more than \$500; and if such person be the owner, importer, or consignee, the appraisement last made of such merchandise, whether made by an appropriate customs officer, or a judge of the United States Customs Court, shall be final and conclusive against such person; and any person who shall willfully and corruptly swear falsely on an examination before any judge of the United States Customs Court, or appropriate customs officer, shall be deemed guilty of perjury; and if he is the owner, importer, or consignee, the merchandise shall be forfeited or the value thereof may be recovered from him.]

SEC. 510. JUDICIAL ENFORCEMENT.

(a) *ORDER OF COURT.*—If any person summoned under section 509 of this Act does not comply with the summons, the district court of the United States for any district in which such person is found or resides or is doing business, upon application and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to comply with the summons. Failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) *SANCTIONS.*—(1) For so long as a person fails to comply with a summons with which he has been ordered by the court to comply, the Secretary may—

(A) prohibit that person from importing merchandise into the customs territory of the United States directly or indirectly or for his account, and

(B) instruct the appropriate customs officers to withhold delivery of merchandise imported directly or indirectly by that person or for his account.

(2) If the failure of a person to comply with a summons continues for more than one year after the date on which the Secretary issues such instructions, such customs officers shall cause all merchandise held in customs custody pursuant to this provision to be sold at public auction or otherwise disposed of under the customs laws.

(3) The sanctions which may be imposed under paragraphs (1) and (2) are in addition to any punishment which may be imposed by the court for contempt.

[SEC. 511. INSPECTION OF IMPORTER'S BOOKS.

[If any person importing merchandise into the United States or dealing in imported merchandise fails, at the request of the Secretary of the Treasury, or an appropriate customs officer, or the United States Customs Court, or a judge of such court, as the case may be, to permit a duly accredited officer of the United States to inspect his books, papers, records, accounts, documents, or correspondence, pertaining to the value or classification of such merchandise, then while such failure continues the Secretary of the Treasury, under regulations prescribed by him, (1) shall prohibit the importation of merchandise into the United States by or for the account of such person, and (2) shall instruct customs officers to withhold delivery of merchandise imported by or for the account of such person. If such failure continues for a period of one year from the date of such instructions the appropriate customs officer shall cause the merchandise unless previously exported, to be sold at public auction as in the case of forfeited merchandise.**]**

* * * * *

SEC. 520. REFUNDS AND ERRORS.

(a) The Secretary of the Treasury is hereby authorized to refund duties or other receipts in the following cases:

(1) **EXCESS DEPOSITS.**—Whenever it is ascertained on liquidation or reliquidation of an entry that more money has been deposited or paid as duties than was required by law to be so deposited or paid;

(2) **FEEES, CHARGES, AND EXACTIONS.**—Whenever it is determined in the manner required by law that any fees, charges, or exactions, other than duties and taxes, have been erroneously or excessively collected; and

(3) **FINES, PENALTIES, AND FORFEITURES.**—Whenever money has been deposited in the Treasury on account of a fine, penalty, or forfeiture which did not accrue, or which is finally determined to have accrued in an amount less than that so deposited, or which is mitigated to an amount less than that so deposited or is remitted.

(b) The necessary moneys to make such refunds are hereby authorized to be appropriated annually from the general fund of the Treasury.

(c) Notwithstanding a valid protest was not filed, the appropriate customs officer may, in accordance with regulations prescribed by the Secretary, reliquidate an entry to correct—

(1) a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the [customs within one year after the date of entry, or transaction, or within ninety days after liquidation or exaction when the liquidation or exaction is made more than nine months after the date of the entry, or transaction; or] *appropriate customs officer within one year after the date of liquidation or exaction; or*

(2) any assessment of duty on household or personal effects in respect of which an application for refund has been filed, with such employee as the Secretary of the Treasury shall designate, within one year after the date of entry.

* * * * *

SEC. 526. MERCHANDISE BEARING AMERICAN TRADE-MARK.

(a) IMPORTATION PROHIBITED.—[It] *Except as provided in subsection (d) of this section, it shall be unlawful to import into the United States any merchandise of foreign manufacture if such merchandise, or the label, sign, print, package, wrapper, or receptacle, bears a trade-mark owned by a citizen of, or by a corporation or association created or organized within, the United States, and registered in the Patent Office by a person domiciled in the United States, under the provisions of the Act entitled "An Act to authorize the registration of trade-marks used in commerce with foreign nations or among the several States or with Indian tribes, and to protect the same," approved February 20, 1905, as amended, and if a copy of the certificate of registration of such trade-mark is filed with the Secretary of the Treasury, in the manner provided in section 27 of such Act, unless written consent of the owner of such trade-mark is produced at the time of making entry.*

(b) SEIZURE AND FORFEITURE.—*Any such merchandise imported into the United States in violation of the provisions of this section shall be subject to seizure and forfeiture for violation of the customs laws.*

(c) INJUNCTION AND DAMAGES.—*Any person dealing in any such merchandise may be enjoined from dealing therein within the United States or may be required to export or destroy such merchandise or to remove or obliterate such trade-mark and shall be liable for the same damages and profits provided for wrongful use of a trade-mark, under the provisions of such Act of February 20, 1905, as amended.*

(d) EXEMPTIONS.—(1) *The trademark provisions of this section and section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1124), do not apply to the importation of articles accompanying any person arriving in the United States when such articles are for his personal use and not for sale if (A) such articles are within the limits of types and quantities determined by the Secretary pursuant to paragraph (2) of*

this subsection, and (B) such person has not been granted an exemption under this subsection within thirty days immediately preceding his arrival.

(2) The Secretary shall determine and publish in the Federal Register lists of the types of articles and the quantities of each which shall be entitled to the exemption provided by this subsection. In determining such quantities of particular types of trade-marked articles, the Secretary shall give such consideration as he deems necessary to the numbers of such articles usually purchased at retail for personal use.

(3) If any article which has been exempted from the restrictions on importation of the trade-mark laws under this subsection is sold within one year after the date of importation, such article, or its value (to be recovered from the importer), is subject to forfeiture. A sale pursuant to a judicial order or in liquidation of the estate of a decedent is not subject to the provisions of this paragraph.

(4) The Secretary may prescribe such rules and regulations as may be necessary to carry out the provisions of this subsection.

(e) Any such merchandise imported into the United States in violation of the provisions of section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1124), shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violations of the customs laws. Upon seizure of such merchandise, the Secretary shall notify the owner of the trademark, and shall, after forfeiture, dispose of the goods seized—

(1) by delivery to such Federal, State, and local government agencies as in the opinion of the Secretary have a need for such merchandise,

(2) by gift to such eleemosynary institutions as in the opinion of the Secretary have a need for such merchandise,

(3) more than 1 year after the date of forfeiture, by sale by appropriate customs officers at public auction under such regulations as the Secretary prescribes, except that before making any such sale the Secretary—

(A) shall determine that no Federal, State, or local government agency or eleemosynary institution has established a need for such merchandise under paragraph (1) or (2), and,

(B) shall obliterate the trademark where feasible, or

(4) if the merchandise is unsafe or a hazard to health, by destruction.

* * * * *

Part IV—Transportation in Bond and Warehousing of Merchandise

* * * * *

SEC. 557. ENTRY FOR WAREHOUSE—WAREHOUSE PERIOD—DRAW-BACK.

(a) Any merchandise subject to duty, with the exception of perishable articles and explosive substances other than firecrackers, may be entered for warehousing and be deposited in a bonded warehouse at the expense and risk of the owner, importer, or consignee. Such merchandise may be withdrawn, at any time within [three] five years from the date of importation, for consumption upon payment of the duties and charges accruing thereon at the rate of duty imposed by law

upon such merchandise at the date of withdrawal; or may be withdrawn for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, without the payment of duties thereon, or for transportation and rewarehousing at another port or elsewhere, or for transfer to another bonded warehouse at the same port: *Provided*, That the total period of time for which such merchandise may remain in bonded warehouse shall not exceed **[three]** *five* years from the date of importation. Merchandise upon which the duties have been paid and which shall have remained continuously in bonded warehouse or otherwise in the custody and under the control of customs officers, may be entered or withdrawn at any time within **[three]** *five* years after the date of importation for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, under such regulations as the Secretary of the Treasury shall prescribe, and upon such entry or withdrawal, and exportation or shipment, the duties thereon shall be refunded.

* * * * *

(d) *WITHDRAWAL BEFORE PAYMENT.*—*Merchandise may be withdrawn for consumption without the payment of the duty thereon if the consignee or transferee is permitted to pay duty at a later time pursuant to regulations prescribed by the Secretary under section 505 of this Act.*

SEC. 559. WAREHOUSE GOODS DEEMED ABANDONED AFTER **[THREE] FIVE YEARS.**

Merchandise upon which any duties or charges are unpaid, remaining in bonded warehouse beyond **[three]** *five* years from the date of importation, shall be regarded as abandoned to the Government and shall be sold under such regulations as the Secretary of the Treasury shall prescribe, and the proceeds of sale paid into the Treasury, as in the case of unclaimed merchandise covered by section 1493 of this title, subject to the payment to the owner or consignee of such amount, if any, as shall remain after deduction of duties, charges, and expenses. Merchandise upon which all duties and charges have been paid, remaining in bonded warehouse beyond **[three]** *five* years from the date of importation, shall be held to be no longer in the custody or control of the officers of the customs.

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Part V—Enforcement Provisions

* * * * *

SEC. 584. FALSITY OR LACK OF MANIFEST—PENALTIES.

(a) *GENERAL RULE.*—(1) Any master of any vessel and any person in charge of any vehicle bound to the United States who does not produce the manifest to the officer demanding the same shall be liable

to a penalty of \$500, and if any merchandise, including sea stores, is found on board of or after having been unladen from such vessel or vehicle which is not included or described in said manifest or does not agree therewith, the master of such vessel or the person in charge of such vehicle or the owner of such vessel or vehicle *or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest* shall be liable to a penalty equal to the lesser of \$10,000 or the domestic value of the merchandise so found or unladen, and any such merchandise belonging or consigned to the master or other officer to any of the crew of such vessel, or to the owner or person in charge of such vehicle, shall be subject to forfeiture, and if any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle *or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest* shall be subject to a penalty of \$500: *Provided*, That if the collector shall be satisfied that the manifest was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistakes and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master, said penalties shall not be incurred. *For purposes of this subsection, the term "clerical error" means a nonnegligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of the manifest.*

(2) If any of such merchandise so found consists of heroin, morphine, cocaine, isonipecaine, or opiate, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle *or any person directly or indirectly responsible for heroin, morphine, cocaine, isonipecaine, or opiate being in such merchandise* shall be liable to a penalty of \$50 for each ounce thereof so found, If any of such merchandise so found consists of smoking opium, opium prepared for smoking, or marihuana, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle *or any person directly or indirectly responsible for smoking opium, opium prepared for smoking, or marihuana being in such merchandise* shall be liable to a penalty of \$25 for each ounce thereof so found, If any of such merchandise so found consists of crude opium, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle *or any person directly or indirectly responsible for crude opium being in such merchandise* shall be liable to a penalty of \$10 for each ounce thereof so found. Such penalties shall, notwithstanding the proviso in section 594 of this Act (relating to the immunity of vessels or vehicles used as common carriers), constitute a lien upon such vessel which may be enforced by a libel in rem; except that the master or owner of a vessel used by any person as a common carrier in the transaction of business as such common carrier shall not be liable to such penalties and the vessel shall not be held subject to the lien, if it appears to the satisfaction of the court that neither the master nor any of the officers (including licensed and unlicensed officers and petty officers) nor the owner of the vessel knew, and could not, by the exercise of the highest degree of care and diligence, have known, that such narcotic drugs were on board. Clearance of any such vessel may be withheld until such penalties are paid or until a bond, satisfactory to the collector, is

given for the payment thereof. The provisions of this paragraph shall not prevent the forfeiture of any such vessel or vehicle under any other provision of law. As used in this paragraph, the terms "opiate" and "marihuana" shall have the same meaning given those terms by sections 102(17) and 102(15), respectively, of the Controlled Substances Act.

(3) If any of such merchandise (sea stores excepted), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors for the importation of which into the United States a certificate is required under section 7 of the Anti-Smuggling Act and the required certificate be not shown, be so found upon any vessel not exceeding five hundred net tons, the vessel shall, in addition to any other penalties herein or by law provided, be seized and forfeited, and, if any manifested merchandise (sea stores excepted) consisting of any such spirits, wines, or other alcoholic liquors be found upon any such vessel and the required certificate be not shown, the master of the vessel shall be liable to the penalty herein provided in the case of merchandise not duly manifested: *Provided*, That if the appropriate customs officer shall be satisfied that the certificate required for the importation of any spirits, wines or other alcoholic liquors was issued and was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake, said penalties shall not be incurred.

"(b) PROCEDURES.—(1) If the appropriate customs officer has reasonable cause to believe that there has been a violation of subsection (a)(1) and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intention to issue a claim for a monetary penalty. Such notice shall—

(A) describe the merchandise;

(B) set forth the details of the error in the manifest;

(C) specify all laws and regulations allegedly violated;

(D) disclose all the material facts which establish the alleged violation;

(E) state the estimated loss of lawful duties, if any, and, taking into account all of the circumstances, the amount of the proposed monetary penalty; and

(F) inform such person that he will have a reasonable opportunity to make representations, both oral and written, as to why such penalty claim should not be issued.

No notice is required under this subsection for any violation of subsection (a)(1) for which the proposed penalty is \$250 or less.

(2) After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the appropriate customs officer shall determine whether any violation of subsection (a)(1), as alleged in the notice, has occurred. If such officer determines that there was a violation, he shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under subparagraphs (A) through (E) of paragraph (1).

* * * * *

[Sec. 592. SAME—PENALTY AGAINST GOODS.

[If any consignor, seller, owner, importer, consignee, agent, or other person or persons enters or introduces, or attempts to enter or intro-

duce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or makes any false statement in any declaration under the provisions of section 485 of this Act (relating to declaration on entry) without reasonable cause to believe the truth of such statement, or aids or procures the making of any such false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, whether or not the United States shall or may be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement; or is guilty of any willful act or omission by means whereof the United States is or may be deprived of the lawful duties or any portion thereof accruing upon the merchandise or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by such act or omission, such merchandise, or the value thereof, to be recovered from such person or persons, shall be subject to forfeiture, which forfeiture shall only apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles of merchandise to which such fraud or false paper or statement relates. The arrival within the territorial limits of the United States of any merchandise consigned for sale and remaining the property of the shipper or consignor, and the acceptance of a false or fraudulent invoice thereof by the consignee or the agent of the consignor, or the existence of any other facts constituting an attempted fraud, shall be deemed, for the purposes of this section, to be an attempt to enter such merchandise notwithstanding no actual entry has been made or offered.]

SEC. 592. PENALTIES FOR FRAUD, GROSS NEGLIGENCE, AND NEGLIGENCE.

(a) *PROHIBITION.*—

(1) *GENERAL RULE.*—No person may enter, introduce, attempt to enter or introduce, or aid or procure the entry or introduction of any merchandise into the commerce of the United States by means of—

(A) any document, written or oral statement, or act which is material and false, or

(B) any omission which is material.

(2) *EXCEPTION.*—Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct.

(b) *PROCEDURES.*—

(1) *PRE-PENALTY NOTICE.*—

(A) *IN GENERAL.*—If the appropriate customs officer has reasonable cause to believe that there has been a violation of subsection (a) and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intention to issue a claim for a monetary penalty. Such notice shall—

(i) describe the merchandise;

given for the payment thereof. The provisions of this paragraph shall not prevent the forfeiture of any such vessel or vehicle under any other provision of law. As used in this paragraph, the terms "opiate" and "marihuana" shall have the same meaning given those terms by sections 102(17) and 102(15), respectively, of the Controlled Substances Act.

(3) If any of such merchandise (sea stores excepted), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors for the importation of which into the United States a certificate is required under section 7 of the Anti-Smuggling Act and the required certificate be not shown, be so found upon any vessel not exceeding five hundred net tons, the vessel shall, in addition to any other penalties herein or by law provided, be seized and forfeited, and, if any manifested merchandise (sea stores excepted) consisting of any such spirits, wines, or other alcoholic liquors be found upon any such vessel and the required certificate be not shown, the master of the vessel shall be liable to the penalty herein provided in the case of merchandise not duly manifested: *Provided*, That if the appropriate customs officer shall be satisfied that the certificate required for the importation of any spirits, wines or other alcoholic liquors was issued and was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake, said penalties shall not be incurred.

"(b) *PROCEDURES.*—(1) *If the appropriate customs officer has reasonable cause to believe that there has been a violation of subsection (a)(1) and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intention to issue a claim for a monetary penalty. Such notice shall—*

- (A) *describe the merchandise;*
- (B) *set forth the details of the error in the manifest;*
- (C) *specify all laws and regulations allegedly violated;*
- (D) *disclose all the material facts which establish the alleged violation;*
- (E) *state the estimated loss of lawful duties, if any, and, taking into account all of the circumstances, the amount of the proposed monetary penalty; and*
- (F) *inform such person that he will have a reasonable opportunity to make representations, both oral and written, as to why such penalty claim should not be issued.*

No notice is required under this subsection for any violation of subsection (a)(1) for which the proposed penalty is \$250 or less.

(2) *After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the appropriate customs officer shall determine whether any violation of subsection (a)(1), as alleged in the notice, has occurred. If such officer determines that there was a violation, he shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under subparagraphs (A) through (E) of paragraph (1).*

* * * * *

[Sec. 592. SAME—PENALTY AGAINST GOODS.

[If any consignor, seller, owner, importer, consignee, agent, or other person or persons enters or introduces, or attempts to enter or intro-

duce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by means of any false or fraudulent practice or appliance whatsoever, or makes any false statement in any declaration under the provisions of section 485 of this Act (relating to declaration on entry) without reasonable cause to believe the truth of such statement, or aids or procures the making of any such false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, whether or not the United States shall or may be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement; or is guilty of any willful act or omission by means whereof the United States is or may be deprived of the lawful duties or any portion thereof accruing upon the merchandise or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement, or affected by such act or omission, such merchandise, or the value thereof, to be recovered from such person or persons, shall be subject to forfeiture, which forfeiture shall only apply to the whole of the merchandise or the value thereof in the case or package containing the particular article or articles of merchandise to which such fraud or false paper or statement relates. The arrival within the territorial limits of the United States of any merchandise consigned for sale and remaining the property of the shipper or consignor, and the acceptance of a false or fraudulent invoice thereof by the consignee or the agent of the consignor, or the existence of any other facts constituting an attempted fraud, shall be deemed, for the purposes of this section, to be an attempt to enter such merchandise notwithstanding no actual entry has been made or offered.】

SEC. 592. PENALTIES FOR FRAUD, GROSS NEGLIGENCE, AND NEGLIGENCE.

(a) **PROHIBITION.**—

(1) **GENERAL RULE.**—No person may enter, introduce, attempt to enter or introduce, or aid or procure the entry or introduction of any merchandise into the commerce of the United States by means of—

(A) any document, written or oral statement, or act which is material and false, or

(B) any omission which is material.

(2) **EXCEPTION.**—Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct.

(b) **PROCEDURES.**—

(1) **PRE-PENALTY NOTICE.**—

(A) **IN GENERAL.**—If the appropriate customs officer has reasonable cause to believe that there has been a violation of subsection (a) and determines that further proceedings are warranted, he shall issue to the person concerned a written notice of his intention to issue a claim for a monetary penalty. Such notice shall—

(i) describe the merchandise;

(ii) set forth the details of the entry or introduction, the attempted entry or introduction, or the aiding or procuring of the entry or introduction;

(iii) specify all laws and regulations allegedly violated;

(iv) disclose all the material facts which establish the alleged violation;

(v) state whether the alleged violation occurred as a result of fraud, gross negligence, or negligence;

(vi) state the estimated loss of lawful duties, if any, and, taking into account all circumstances, the amount of the proposed monetary penalty; and

(vii) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why a claim for a monetary penalty should not be issued in the amount stated.

(B) *EXCEPTIONS.*—The preceding subparagraph shall not apply if—

(i) the importation with respect to which the violation of subsection (a) occurs is noncommercial in nature, or

(ii) the amount of the penalty in the penalty claim issued under paragraph (2) is \$1,000 or less.

(2) *PENALTY CLAIM.*—After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the appropriate customs officer shall determine whether any violation of subsection (a), as alleged in the notice, has occurred. If such officer determines that there was a violation, he shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vi) of paragraph (1)(A).

(c) *MAXIMUM PENALTIES.*—

(1) *FRAUD.*—A fraudulent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed the dutiable value of the merchandise.

(2) *GROSS NEGLIGENCE.*—A grossly negligent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the dutiable value of the merchandise, or

(ii) four times the lawful duties of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 40 percent of the dutiable value of the merchandise.

(3) *NEGLIGENCE.*—A negligent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the dutiable value of the merchandise, or

(ii) two times the lawful duties of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 20 percent of the dutiable value of the merchandise.

(4) *PRIOR DISCLOSURE.*—If the person concerned discloses the circumstances of a violation of subsection (a) before, or without knowledge, of the commencement of a formal investigation of such

violation, with respect to such violation, merchandise shall not be seized and any monetary penalty to be assessed under subsection (c) shall not exceed—

(A) if the violation resulted from fraud—

(i) an amount equal to 100 percent of the lawful duties of which the United States is or may be deprived, so long as such person tenders the unpaid amount of the lawful duties at the time of disclosure or within thirty days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his calculations of such unpaid amount, or

(ii) if such violation did not affect the assessment of duties, 10 percent of the dutiable value; or

(B) if such violation resulted from negligence or gross negligence, the interest (computed from the date of liquidation at the prevailing rate of interest applied under section 6621 of the Internal Revenue Code of 1954) on the amount of lawful duties of which the United States is or may be deprived so long as such person tenders the unpaid amount of the lawful duties at the time of disclosure or within 30 days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his calculation of such unpaid amount.

The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge.

(5) SEIZURE.—If the Secretary has reasonable cause to believe that a person has violated the provisions of subsection (a) and that such person is insolvent or beyond the jurisdiction of the United States or that seizure is otherwise essential to protect the revenue of the United States or to prevent the introduction of prohibited or restricted merchandise into the customs territory of the United States, then such merchandise may be seized and, upon assessment of a monetary penalty, forfeited unless the monetary penalty is paid within the time specified by law. Within a reasonable time after any such seizure is made, the Secretary shall issue to the person concerned a written statement containing the reasons for the seizure. After seizure of merchandise under this subsection, the Secretary may, in the case of restricted merchandise, and shall, in the case of any other merchandise (other than prohibited merchandise), return such merchandise upon the deposit of security not to exceed the maximum monetary penalty which may be assessed under subsection (c).

(d) DEPRIVATION OF LAWFUL DUTIES.—Notwithstanding section 514 of this Act, if the United States has been deprived of lawful duties as a result of a violation of subsection (a), the appropriate customs officer shall require that such lawful duties be restored, whether or not a monetary penalty is assessed.

(e) DISTRICT COURT PROCEEDINGS.—Notwithstanding any other provision of law, in any proceeding in a United States district court commenced by the United States pursuant to section 604 of this Act for the recovery of any monetary penalty claimed under this section—

(1) all issues, including the amount of the penalty, shall be tried *de novo*;

(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence;

(3) if the monetary penalty is based on gross negligence, the United States shall have the burden of proof to establish all the elements of the alleged violation; and

(4) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of proof that the act or omission did not occur as a result of negligence.

* * * * *

SEC. 599. OFFICERS NOT TO BE INTERESTED IN VESSELS OR CARGO.

No person employed under the authority of the United States, in the collection of duties on imports or tonnage, shall own, either in whole or in part, any vessel (other than a yacht or other pleasure boat), or act as agent, attorney, or consignee for the owner or owners of any vessel, or of any cargo or lading on board the same; nor shall any such person import, or be concerned directly or indirectly in the importation of, any merchandise for sale into the United States. Every person who violates this section shall be liable to a penalty of \$500.

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SEC. 603. SAME—CUSTOMS OFFICER'S REPORTS.

Whenever a seizure of merchandise for violation of the customs laws is made, or a violation of the customs laws is discovered, and legal proceedings by the United States attorney in connection with such seizure or discovery are required, it shall be the duty of the appropriate customs officer to report *promptly* such seizure or violation to the United States attorney for the district in which such violation has occurred, or in which such seizure was made, and to include in such report a statement of all the facts and circumstances of the case within his knowledge, with the names of the witnesses and a citation to the statute or statutes believed to have been violated, and on which reliance may be had for forfeiture or conviction.

* * * * *

SEC. 607. SAME—VALUE ~~[\$2,500]~~ \$10,000 OR LESS.

If such value of such vessel, vehicle, merchandise, or baggage, does not exceed ~~[\$2,500]~~ \$10,000, the appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. For the purposes of this section and sections 610 and 612 of this Act merchandise the importation of which is prohibited shall be held not to exceed ~~[\$2,500]~~ \$10,000 in value.

SEC. 610. SAME—VALUE MORE THAN ~~[\$2,500]~~ \$10,000.

If the value of any vessel, vehicle, merchandise, or baggage so seized is greater than ~~[\$2,500]~~ \$10,000, the appropriate customs officer shall transmit a report of the case, with the names of available witnesses, to the United States attorney for the district in which the seizure was made for the institution of the proper proceedings for the condemnation of such property.

* * * * *

SEC. 612. SAME—SUMMARY SALE.

Whenever it appears to the appropriate customs officer that any vessel, vehicle, merchandise, or baggage seized under the customs laws is liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and the value of such vessel, vehicle, merchandise, or baggage as determined under section 606 of this Act, does not exceed ~~[\$2,500]~~ \$10,000 and such vessel, vehicle, merchandise, or baggage has not been delivered under bond, such officer shall, proceed forthwith to advertise and sell the same at auction under regulations to be prescribed by the Secretary of the Treasury. If such value of such vessel, vehicle, merchandise, or baggage exceeds ~~[\$2,500]~~ \$10,000, such officer shall forthwith transmit the appraiser's return and his report of the seizure to the United States district attorney, who shall petition the court to order an immediate sale of such vessel, vehicle, merchandise, or baggage, and if the ends of justice require it the court shall order such immediate sale, the proceeds thereof to be deposited with the court to await the final determination of the condemnation proceedings. Whether such sale be made by the customs officer or by order of the court, the proceeds thereof shall be held subject to claims of parties in interest to the same extent as the vessel, vehicle, merchandise, or baggage so sold would have been subject to such claim.

SEC. 613. DISPOSITION OF PROCEEDS OF FORFEITED PROPERTY.

~~[Any]~~ (a) *Except as provided in subsection (b) of this section, any person claiming any vessel, vehicle, merchandise, or baggage, or any interest therein, which has been forfeited and sold under the provisions of this Act, may at any time within three months after the date of sale apply to the Secretary of the Treasury if the forfeiture and sale was under the customs laws, or to the Secretary of Commerce if the forfeiture and sale was under the navigation laws, for a remission of the forfeiture and restoration of the proceeds of such sale, or such part thereof as may be claimed by him. Upon the production of satisfactory proof that the applicant did not know of the seizure prior to the declaration or condemnation of forfeiture, and was in such circumstances as prevented him from knowing of the same, and that such forfeiture was incurred without any willful negligence or intention to defraud on the part of the applicant, the Secretary of the Treasury or the Secretary of Commerce may order the proceeds of the sale, or any part thereof, restored to the applicant, after deducting the cost of seizure and of sale, the duties, if any, accruing on the merchandise or baggage, and any sum due on a lien for freight, charges, or contribution in general average that may have been filed. If no application for such remission or restoration is made within three months after such sale, or if the application be denied by the Secretary of the Treasury or the Secretary of Commerce, the proceeds of sale shall be disposed of as follows:*

(1) For the payment of all proper expenses of the proceedings of forfeiture and sale, including expenses of seizure, maintaining the custody of the property, advertising and sale; and if condemned by a decree of a district court and a bond for such costs was not given, the costs as taxed by the court;

(2) For the satisfaction of liens for freight, charges, and contributions in general average, notice of which has been filed with the appropriate customs officer according to law; and

(3) The residue shall be deposited with the Treasurer of the United States as a customs or navigation fine.

(b) *If merchandise is forfeited under section 592 of this Act, any proceeds from the sale thereof in excess of the monetary penalty finally assessed thereunder and the expenses and costs described in subsection (a) (1) and (2) of this section incurred in such sale shall be returned to the person against whom the penalty was assessed.*

* * * * *

SEC. 615. BURDEN OF PROOF IN FORFEITURE PROCEEDINGS.

In all suits or actions (*other than those arising under section 592 of this Act*) brought for the forfeiture of any vessel, vehicle, merchandise, or baggage seized under the provisions of any law relating to the collection of duties on imports or tonnage, where the property is claimed by any person, the burden of proof shall lie upon such claimant; and in all suits or actions brought for the recovery of the value of any vessel, vehicle, merchandise, or baggage, because of violation of any such law, the burden of proof shall be upon the defendant: *Provided*, That probable cause shall be first shown for the institution of such suit or action, to be judged of by the court, subject to the following rules of proof:

(1) The testimony or deposition of the officer of the customs who has boarded or required to come to a stop or seized a vessel or vehicle, or has arrested a person, shall be prima facie evidence of the place where the act in question occurred.

(2) Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise, shall be prima facie evidence of the foreign origin of such merchandise.

(3) The fact that a vessel of any description is found, or discovered to have been, in the vicinity of any hovering vessel and under any circumstances indicating contact or communication therewith, whether by proceeding to or from such vessel, or by coming to in the vicinity of such vessel, or by delivering to or receiving from such vessel any merchandise, person, or communication, or by any other means effecting contact or communication therewith, shall be prima facie evidence that the vessel in question has visited such hovering vessel.

* * * * *

SEC. 621. LIMITATION OF ACTIONS.

No suit or action to recover any pecuniary penalty or forfeiture of property accruing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was discovered: *Provided*, *That in the case of an alleged violation of section 592 of this Act arising out of gross negligence or negligence, such suit or action shall not be instituted more than five years after the date the alleged violation was committed: Provided further*, That the time of the absence from the United States of the person subject to such penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within this period of limitation.

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SEC. 625. PUBLICATION OF RULINGS.

Within 120 days after issuing any precedential decision (including any ruling letter, internal advice memorandum, or protest review decision)

under this Act with respect to any customs transaction, the Secretary shall have such decision published in the Customs Bulletin or shall otherwise make such decision available for public inspection.

* * * * *

SECTION 11 OF THE ACT OF MARCH 1, 1879

AN ACT To amend the laws relating to internal revenue

IMPORTED-LIQUOR STAMPS, &c.

[SEC. 11. That all distilled spirits, wines, and malt liquors, imported in pipes, hogheads, tierces, barrels, casks, or other similar packages, shall be first placed in public store or bonded warehouse, and shall not be removed therefrom until the same shall have been inspected, marked, and branded by a United States customs-gauger, and a stamp affixed to each package, indicating the date and particulars of such inspection; and the Secretary of the Treasury is hereby authorized to prescribe the form of, and provide, the requisite stamps, and to make all regulations which he may deem necessary and proper for carrying the foregoing requirements into effect. Any pipe, hogshead, tierce, barrel, cask, or other package withdrawn from public store or bonded warehouse after the thirtieth day of June, eighteen hundred and seventy-nine, purporting to contain imported liquor, found without having thereon the stamp hereby required, shall be, with its contents, forfeited to the United States; and whenever any cask or package of imported distilled spirits of not less than five wine-gallons is filled for shipment, sale, or delivery on the premises of any wholesale liquor-dealer, the same shall be stamped with a special stamp for imported spirits, under such rules and regulations as the Commissioner of Internal Revenue has prescribed, or may hereafter prescribe, in the case of domestic distilled spirits.]

SEC. 11. The Secretary of the Treasury may by regulation require such marks, brands, and stamps or devices to be placed on any bulk container (including a pipeline) used for holding, storing, transferring or conveying imported distilled spirits, wines, or malt liquors as he deems necessary and proper in the administration of the Federal laws applicable to such imported distilled spirits, wines, or malt liquors and may specify those marks, brands, and stamps or devices which the importer or owner shall place or have placed on such containers. Any such container of imported distilled spirits, wines, or malt liquors withdrawn from customs custody purporting to contain imported distilled spirits, wines, or malt liquors found without having thereon any mark, brand, stamp, or device the Secretary of the Treasury may require, shall be with its contents, forfeited to the United States of America.

* * * * *

TARIFF SCHEDULES OF THE UNITED STATES

SCHEDULE 8—SPECIAL CLASSIFICATION PROVISIONS

Item	Articles	Rates of duty	
		1	2
PART 2.—PERSONAL EXEMPTIONS			
Subpart A.—Residents and Nonresidents			
812.20	Not over 50 cigars, or [300] 200 cigarettes, or [3 pounds] 2 kilograms of smoking tobacco, or a proportionate amount of each, and not over 1 [quart] liter of alcoholic beverages, when brought in by an adult nonresident for his own consumption.	Free	Free
812.25	Not exceeding \$100 in value of articles [(including not more than 1 wine gallon of alcoholic beverages and not more than 100 cigars)] (not including alcoholic beverages and cigarettes but including not more than 100 cigars) accompanying such person to be disposed of by him as bona fide gifts, if such person has not claimed an exemption under this item 812.25 within the 6 months immediately preceding his arrival and he intends to remain in the United States for not less than 72 hours.	Free	Free
812.40	Not exceeding \$200 in value of articles (including not more than 4 liters of alcoholic beverages) accompanying such a person who is in transit to a place outside United States customs territory and who will take the articles with him to such place.	Free	Free
813.10	Articles imported by or for the account of any person arriving in the United States who is a returning resident thereof (including American citizens who are residents of American Samoa, Guam, or the Virgin Islands of the United States); All personal and household effects taken abroad by him or for his account.	Free	Free
[813.30	Other articles accompanying such person, including (but only in the case of an individual who has attained the age of 21) not more than 1 quart of alcoholic beverages (or 1 wine gallon of such beverages if such individual arrives directly or indirectly from American Samoa, Guam, or the Virgin Islands of the United States, not more than 1 quart of which shall have been acquired elsewhere than in such insular possessions) and including not more than 100 cigars, acquired abroad as an incident of the journey from which he is returning, for his personal or household use, but not imported for the account of any other person nor intended for sale, if declared in accordance with regulations of the Secretary of the Treasury:		
813.31	Articles not over \$100 (or \$200 in the case of persons arriving directly or indirectly from American Samoa, Guam or the Virgin Islands of the United States, not more than \$100 of which shall have been acquired elsewhere than in such insular possessions) in aggregate fair retail value in the country of acquisition, if such person arrives from the Virgin Islands of the United States or from a contiguous country which maintains a free zone or free port, or arrives from any other country after having remained beyond the territorial limits of the United States for a period of not less than 48 hours, and in either case has not claimed an exemption under this item (813.31) or under item 915.30 within the 30 days immediately preceding his arrival.	Free	Free
	Other articles, including not more than 200 cigarettes and 100 cigars, acquired abroad as an incident of the journey from which the person is returning if such person arrives from the Virgin Islands of the United States or from a contiguous country which maintains a free zone or free port, or arrives from any other country after having remained beyond the United States for a period of not less than 48 hours, for his personal or household use, but not imported for the account of any other person nor intended for sale, if declared in accordance with regulations of the Secretary of the Treasury and if such person has not claimed an exemption under item 813.30 or 813.31 within 30 days preceding his arrival:		

Item	Articles	Rates of duty	
		1	2
PART 2.—PERSONAL EXEMPTIONS			
• • • • •			
Subpart A.—Residents and Nonresidents			
• • • • •			
813.30	Articles, accompanying a person, not over \$500 in aggregate fair retail value in the country of acquisition, including (but only in the case of an individual who has attained the age of 21) not more than 1 [quart] liter of alcoholic beverages.....	Free	Free
813.31	Articles, whether or not accompanying a person, not over \$1,000 in aggregate fair market value in the country of acquisition, including (but only in the case of an individual who has attained the age of 21) not more than [1 wine gallon] 4 liters of alcoholic beverages, not more than 1 [quart] liter of which shall have been acquired elsewhere than in such insular possessions, if such person arrives directly or indirectly from American Samoa, Guam, or the Virgin Islands, not more than \$500 of which shall have been acquired elsewhere than in such insular possessions....	Free	Free
• • • • •			
814.00	Articles (including not over 50 cigars, or 330 cigarettes, or [3 pounds] 2 kilograms of smoking tobacco, or a proportionate amount of each, and not over 1 [quart] liter of alcoholic beverages), reasonable and appropriate, and intended exclusively, for the bona fide personal use of, and (except for articles consumed in use) to be taken out of the United States by, any person arriving in the United States who is leaving a vessel, vehicle, or aircraft engaged in international traffic, on which he is employed, with the intention of resuming such employment.....	Free	Free
• • • • •			

Item	Articles	Rates of duty	
		1	2
PART 5.—SAMPLES; ARTICLES ADMITTED FREE OF DUTY UNDER BOND			
Subpart A.—Samples for Soliciting Orders			
• • • • •			
860.10	Alcoholic beverage samples (each sample containing not more than [8 ounces] 300 milliliters if a malt beverage, not more than [4 ounces] 150 milliliters if a wine, and not more than [2 ounces] 100 milliliters if any other alcoholic beverage) to be used in the United States only for soliciting orders by persons importing alcoholic beverages in commercial quantities.....	Free	Free
860.20	Samples of tobacco products, and cigarette papers and tubes (each sample consisting of not more than (a) 3 cigars, (b) 3 cigarettes, (c) [½ ounce] 5.5 grams of tobacco, (d) [½ ounce] 5.5 grams of snuff, (e) 3 cigarette tubes, or (f) 25 cigarette papers) to be used in the United States only for soliciting orders by persons importing tobacco products, cigarette papers, or cigarette tubes in commercial quantities.....	Free	Free
• • • • •			

PART 6.—NONCOMMERCIAL IMPORTATIONS OF LIMITED VALUE

Part 6 headnote:

For the purposes of this part the rates of duty for articles provided in this part shall be assessed in lieu of any other rates of duty, except free rates of duty on such articles, unless the Secretary of the Treasury or his delegate determines, in accordance with regulations, that the application of the rate of duty provided in this part to any article in lieu of the rate of duty otherwise applicable thereto adversely affects the economic interest of the United States.

Articles for personal or household use, or as bona fide gifts, not imported for the account of another person, valued in the aggregate at not over \$600 fair retail value in the country of acquisition, if the person claiming the benefit of item 869.00 or 869.10, or both, has not received the benefits thereof within the 30 days immediately preceding his arrival;

Item	Articles	Rates of duty	
		1	2
PART 2.—PERSONAL EXEMPTIONS			
• • • • •			
Subpart A.—Residents and Nonresidents			
• • • • •			
869.00	<i>Accompanying a person, arriving in the United States (exclusive of duty-free articles and articles acquired in American Samoa, Guam, or the Virgin Islands of the United States)---</i>	10% of the fair retail value	10% of the fair retail value
869.10	<i>Imported by or for the account of a person (whether or not accompanying him) arriving directly or indirectly from American Samoa, Guam, or the Virgin Islands of the United States, acquired in such insular possessions as an incident of such person's physical presence-----</i>	5% of the fair retail value.	5% of the fair retail value
• • • • •			

PART [6] 7.—OTHER SPECIAL CLASSIFICATION PROVISIONS

Part [6] 7—headnote:

1. No article shall be exempted from duty under item 870.30 unless a Federal agency or agencies designated by the President determines that such article is visual or auditory material of an educational, scientific, or cultural character within the meaning of the Agreement for Facilitating the international Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character. Whenever the President determines that there is or may be profitmaking exhibition or use of articles described in item 870.30 which interferes significantly (or threatens to interfere significantly) with domestic production of similar articles, he may prescribe regulations imposing restrictions on the entry of such foreign articles to insure that they will be exhibited or used only for nonprofit-making purposes.

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SECTION 42 OF THE ACT OF JULY 5, 1946

AN ACT To provide for the registration and protection of trade-marks used in commerce, to carry out the provisions of certain international conventions, and for other purposes

SEC. 42. [That] *Except as provided in subsection (d) of section 526 of the Tariff Act of 1930, no article of imported merchandise which shall copy or simulate the name of the any domestic manufacture, or manufacturer, or trader, or of any manufacturer or trader located in any foreign country which, by treaty, convention, or law affords similar privileges to citizens of the United States, or which shall copy or simulate a trade-mark registered in accordance with the provisions of this Act or shall bear a name or mark calculated to induce the public to believe that the article is manufactured in the United States, or that it is manufactured in any foreign country or locality other than the country or locality in which it is in fact manufactured, shall be admitted to entry at any customhouse of the United States; and, in order to aid the officers of the customs in enforcing this prohibition, any domestic manufacturer or trader, and any foreign manufacturer or trader, who is entitled under the provisions of a treaty, convention, declaration, or agreement between the United States and any foreign country to the advantages afforded by law to citizens of the United States in respect to trade-marks and commercial names, may require his name and residence, and the name of the locality in*

which his goods are manufactured, and a copy of the certificate of registration of his trade-mark, issued in accordance with the provisions of this Act, to be recorded in books which shall be kept for this purpose in the Department of the Treasury, under such regulations as the Secretary of the Treasury shall prescribe, and may furnish to the Department facsimiles of his name, the name of the locality in which his goods are manufactured, or of his registered trade-mark, and thereupon the Secretary of the Treasury shall cause one or more copies of the same to be transmitted to each collector or other proper officer of customs.

SECTION 27 OF THE MERCHANT MARINE ACT OF 1920

SEC. 27. That no merchandise shall be transported by water, or by land and water, on penalty of forfeiture [thereof] of the merchandise (or a monetary amount up to the value thereof as determined by the Secretary of the Treasury to be recovered from any consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing said merchandise to be transported), between points in the United States, including Districts, Territories, and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, or vessels to which the privilege of engaging in the coastwise trade is extended by sections 18 or 22 of this Act: *Provided*, That no vessel having at any time acquired the lawful right to engage in the coastwise trade, either by virtue of having been built in, or documented under the laws of the United States, and later sold foreign in whole or in part, or placed under foreign registry, shall hereafter acquire the right to engage in the coastwise trade: *Provided further*, That no vessel of more than five hundred gross tons which has acquired the lawful right to engage in the coastwise trade, by virtue of having been built in or documented under the laws of the United States, and which has later been rebuilt, shall have the right thereafter to engage in the coastwise trade, unless the entire rebuilding, including the construction of any major components of the hull or superstructure of the vessel, is effected within the United States, its Territories (not including trust territories), or its possessions: *Provided further*, That this section shall not apply to merchandise transported between points within the continental United States, including Alaska, over through routes heretofore or hereafter recognized by the Interstate Commerce Commission for which routes rate tariffs have been or shall hereafter be filed with said Commission when such routes are in part over Canadian rail lines and their own or other connecting water facilities: *Provided further*, That this section shall not become effective upon the Yukon River until the Alaska Railroad shall be completed and the Shipping Board shall find that proper facilities will be furnished for transportation by persons citizens of the United States for properly handling the traffic: *Provided further*, That this section shall not apply to the transportation of merchandise loaded on railroad cars or to motor vehicles with or without trailers, and with their passengers or contents when accompanied by the operator thereof, when such rail-

road cars or motor vehicles are transported in any railroad car ferry operated between fixed termini on the Great Lakes as a part of a rail route, if such car ferry is owned by a common carrier by water and operated as part of a rail route with the approval of the Interstate Commerce Commission, and if the stock of such common carrier by water, or its predecessor, was owned or controlled by a common carrier by rail prior to June 5, 1920, and if the stock of the common carrier owning such car ferry is, with the approval of the Interstate Commerce Commission, now owned or controlled by any common carrier by rail and if such car ferry is built in and documented under the laws of the United States: *Provided further*, That upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States, this section shall not apply to the transportation by vessels of the United States not qualified to engage in the coastwise trade, or by vessels of foreign registry, of (a) empty cargo vans, empty lift vans, and empty shipping tanks, (b) equipment for use with cargo vans, lift vans, or shipping tanks, (c) empty barges specifically designed for carriage aboard a vessel and equipment, excluding propulsion equipment, for use with such barges, and (d) any empty instrument for international traffic exempted from application of the customs laws by the Secretary of the Treasury pursuant to the provisions of section 322(a), Tariff Act of 1930 (19 U.S.C. 1322(a)), if the articles described in clauses (a) through (d) are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade; and (e) stevedoring equipment and material, if such equipment and material is owned or leased by the owner or operator of the transporting vessel, or is owned or leased by the stevedoring company contracting for the lading or unlading of that vessel, and is transported without charge for use in the handling of cargo in foreign trade: *Provided further*, That upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon his finding, pursuant to information furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States, the Secretary of the Treasury may suspend the application of this section to the transportation of merchandise between points in the United States (excluding transportation between the continental United States and noncontiguous states, districts, territories, and possessions embraced within the coastwise laws) which, while moving in the foreign trade of the United States, is transferred from a non-self-propelled barge certified by the owner or operator to be specifically designed for carriage aboard a vessel and regularly carried aboard a vessel in foreign trade to another such barge owned or leased by the same owner or operator, without regard to whether any such barge is under foreign registry or qualified to engage in the coastwise trade.

REVISED STATUTES OF THE UNITED STATES

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[SEC. 2654. There shall be allowed and paid for the use of the Customs officers the following fees:

[First. To each collector for every entrance of any vessel of one hundred tons burden and upward, two dollars and a half.

[Second. For every clearance of any vessel of one hundred tons burden and upward, two dollars and a half.

[Third. For every entrance of any vessel under the burden of one hundred tons, one dollar and a half.

[Fourth. For every clearance of any vessel under one hundred tons burden, one dollar and a half.

[Fifth. For every post entry, two dollars.

[Sixth. For every permit to land goods, twenty cents.

[Seventh. For every bond taken officially, forty cents.

[Eighth. For every permit to load goods for exportation, which are entitled to drawback, thirty cents.

[Ninth. For every debenture or other official certificate, twenty cents.

[Tenth. For every bill of health, twenty cents.

[Eleventh. For every official document, registers excepted, required by any merchant, owner, or master of any vessel not elsewhere enumerated, twenty cents.]

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[SEC. 4381. The following fees shall be levied and collected from the owners and masters of all vessels except those navigating the waters of the northern, northeastern, and northwestern frontiers, otherwise than by sea:

[First. For measuring every vessel, in order to the enrollment or licensing and recording the same, the fees prescribed for like services in order to the registry of vessels.

[Second. For every certificate of enrollment, fifty cents.

[Third. For every indorsement on a certificate of enrollment, twenty cents.

[Fourth. For every license, and granting the same, including the bond, if not exceeding twenty tons, twenty-five cents; if above twenty and not more than one hundred tons, fifty cents; and if more than one hundred tons, one dollar.

[Fifth. For every indorsement on a license, twenty cents.

[Sixth. For certifying manifests and granting a permit for a licensed vessel to proceed from district to district, ten cents.

[Seventh. For receiving a certified manifest and granting a permit on the arrival of such licensed vessel, ten cents.

[Eighth. For certifying manifests, and granting a permit for a registered vessel to proceed from district to district, one dollar and fifty cents.

[Ninth. For receiving a certified manifest, and granting a permit on the arrival of such registered vessel, one dollar.

【Tenth. For granting a permit for a vessel not belonging to a citizen or citizens of the United States, to proceed from district to district, and receiving the manifest, two dollars.

【Eleventh. For receiving a manifest, and granting a permit, to unload, for such last-mentioned vessel, on her arrival in one district from another district, two dollars.

【Twelfth. For granting a permit for a vessel carrying on the fishery to trade at a foreign port, twenty-five cents, and for the report and entry of any foreign goods imported in such vessel, twenty-five cents.

【Where a surveyor certifies a manifest, or grants a permit, or receives a certified manifest and grants a permit, the fees arising therefrom shall be received by him solely for his use; and all other fees arising by virtue of this section shall be received and accounted for by the collector, or, at his option, by the naval officer, where there is one, and where there is a collector, naval officer, and surveyor, shall be equally divided monthly between the said officers; and where there is no naval officer, two thirds to the collector and the other third to the surveyor; and where there is only a collector, he shall receive the whole amount thereof; and where there is more than one surveyor in any district, each of them shall receive his proportional part of such fees as shall arise at the port for which he is appointed; and in all cases where the tonnage of any ship or vessel shall be ascertained by any person appointed for that purpose, such person shall be paid a reasonable compensation therefor out of the fees aforesaid, before any distribution thereof as aforesaid.】

【Sec. 4382. The following fees shall be levied and collected from the owners and masters of vessels navigating the waters of the northern, northeastern, and northwestern frontiers of the United States, otherwise than by sea:

【First, for the measurement of any vessel, the fees prescribed in Title XLVIII, "REGULATION OF COMMERCE AND NAVIGATION."

【Second. For certificate of enrollment, including bond and oath, one dollar and ten cents.

【Third. For granting license, including bond and oath, if not over twenty tons, forty-five cents.

【Fourth. For granting license, including bond and oath, above twenty and not over one hundred tons, seventy cents.

【Fifth. For granting license, including bond and oath, above one hundred tons, one dollar and twenty cents.

【Sixth. For certifying manifest, including master's oath, and granting permit for vessel to go from district to district, ten cents.

【Seventh. For certifying manifest, including master's oath, and granting permit for vessel to go from district to district, over fifty tons, fifty cents.

【Eighth. For receiving manifest, including master's oath on arrival of a vessel from one collection district to another, whether touching at foreign, intermediate ports or not, ten cents.

【Ninth. For receiving manifest, including master's oath, on arrival of a vessel from one collection district to another, whether touching at foreign intermediate ports or not, over fifty tons, fifty cents.

【Tenth. For certifying a manifest, including master's oath, and granting permit to a vessel under fifty tons, laden with a cargo destined for a port or place in another district at which there is no custom-house, twenty-five cents.

【Eleventh. For certifying a manifest, including master's oath, and granting permit to a vessel above fifty tons, laden with a cargo destined for a port or place in another district at which there is no custom-house, fifty cents.

【Twelfth. For the entry of a vessel direct from a foreign port, fifty cents.

【Thirteenth. For the clearance of a vessel direct to a foreign port, fifty cents.

【Fourteenth. Vessels departing to or arriving from a port in one district to or from a port in an adjoining district, and touching at intermediate foreign ports, are exempted from the payment of the entry fees.

【Fifteenth. For a port entry of such vessel, two dollars.

【Sixteenth. For permit to land or deliver goods, twenty cents.

【Seventeenth. For a bond taken officially, not otherwise provided for, fifty cents.

【Eighteenth. For permit to load goods for exportation entitled to drawback, thirty cents.

【Nineteenth. For debenture or other official certificate not otherwise provided for, twenty cents.

【Twentieth. For recording all bills of sale, mortgages, hypothecations, or conveyances of vessels, fifty cents.

【Twenty-first. For recording all certificates for discharging and canceling any such conveyances, fifty cents.

【Twenty-second. For furnishing a certificate setting forth the names of the owners of any registered or enrolled vessel, the parts or proportions owned by each, and also the material facts of any existing bill of sale, mortgage, hypothecation, or other incumbrance; the date, amount of such incumbrance, and from and to whom made, one dollar.

【Twenty-third. For furnishing copies of such records for each bill of sale, mortgage, or other conveyance, fifty cents.

【Twenty-fourth. For receiving manifest of each railroad-car or other vehicle laden with goods, wares, or merchandise from a foreign contiguous territory, twenty-five cents.

【Twenty-fifth. For entry of goods, wares, or merchandise for consumption, warehouse, rewarehouse, transportation, or exportation, including oath and permit to land or deliver, fifty cents.

【Twenty-sixth. For certificate of registry, including bond and oath, two dollars and twenty-five cents.

【Twenty-seventh. For indorsement of change of masters on registry, one dollar.

【Sec. 4383. Every collector and naval officer, and every surveyor residing at a port where there is no collector, shall cause to be affixed and constantly kept in some conspicuous place in his office a fair table of the rates of fees demandable by this Title.】

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