

CUSTOMS PROCEDURAL REFORM

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AUGUST 17, 1978.—Ordered to be printed
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Mr. ULLMAN, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 8149]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8149) to provide customs procedural reform, and for other purposes, having met after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendment numbered 114.

That the House recede from its disagreement to the amendments of the Senate numbered 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55, 57, 59, 60, 61, 62, 63, 64, 65, 66, 67, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 115, 116, 117, 118, 119, 120, 121, 122, 124, 125, 126, 127, 129, 131, 132, and 133 and agree to the same.

Amendment numbered 8:

That the House recede from its disagreement to the amendment of the Senate numbered 8, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be stricken out by the Senate amendment, insert the following: (*at the time required under paragraph (2)(B) of this subsection*).

And the Senate agree to the same.

Amendment numbered 40:

That the House recede from its disagreement to the amendment of the Senate numbered 40, and agree to the same with amendments as follow:

On page 5 of the Senate engrossed amendments, strike out lines 5, 6, and 7 and insert in lieu thereof the following:

(1)

“(b) SANCTIONS.—(1) *For so long as any person, after being adjudged guilty of contempt for neglecting or refusing to obey a lawful summons issued under section 509 of this Act and for refusing to obey the order of the court, remains in contempt, the Secretary may—*

On page 5 of the Senate engrossed amendments, strike out lines 14 through 19, inclusive, and insert in lieu thereof the following:

“(2) *If any person remains in contempt for more than one year after the date on which the Secretary issues instructions under paragraph (1)(B) with respect to that person, the appropriate customs officers shall cause all merchandise held in customs custody pursuant to such instructions to be sold at public auction or otherwise disposed of under the customs laws.*

And the Senate agree to the same.

Amendment numbered 54:

That the House recede from its disagreement to the amendment of the Senate numbered 54, and agree to the same with amendments as follows:

On page 8, line 24, of the Senate engrossed amendments strike out “\$250” and insert in lieu thereof the following: \$500.

On page 9, line 5, of the Senate engrossed amendments, after the period insert the following: *If such officer determines that there was no violation, he shall promptly issue a written statement of the determination to the person to whom the notice was sent.*

And the Senate agree to the same.

Amendment numbered 56:

That the House recede from its disagreement to the amendment of the Senate numbered 56, and agree to the same with amendments as follows:

On page 9 of the Senate engrossed amendments, strike out lines 15 through 21 and insert in lieu thereof the following:

“(1) *GENERAL RULE.—Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty thereby, no person, by fraud, gross negligence, or negligence—*

“(A) *may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States by means of—*

“(i) *any document, written or oral statement, or act which is material and false, or*

“(ii) *any omission which is material, or*

“(B) *may aid or abet any other person to violate subparagraph (A).*

On page 11, line 21, of the Senate engrossed amendments, after the period insert the following: *If such officer determines that there was no violation, he shall promptly issue a written statement of the determination to the person to whom the notice was sent.*

On page 12, line 2 of the Senate engrossed amendments, after the period insert the following: *Such person shall have a reasonable opportunity under section 618 of this Act to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under such section 618, the appropriate customs officer shall provide to the person concerned a written*

statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

On page 12, lines 6, 11, and 22, of the Senate engrossed amendments strike out "dutiabie" and insert in lieu thereof *domestic*.

And the Senate agree to the same.

Amendment numbered 58:

That the House recede from its disagreement to the amendment of the Senate numbered 58, and agree to the same with an amendment as follows:

On page 16, beginning with line 13, strike out through line 5 on page 17, and insert in lieu thereof the following:

(f)(1)(A) *Except as provided in subparagraphs (B) and (C), subsections (a), (b) and (c) (other than new subsection (e)) of section 592 of the Tariff Act of 1930 as added by subsection (a) shall be effective with respect to proceedings commenced after the 89th day after the date of enactment of this Act.*

(B) *Except as provided in subparagraph (C), section 592 of the Tariff Act of 1930 (as such section existed on the day before the date of enactment of this Act) shall apply to any alleged intentional violation thereof involving television receivers that are the product of Japan and that were or are the subject of antidumping proceedings if the alleged intentional violation—*

(i) *occurred before the date of enactment of this Act, and*

(ii) *was the subject of an investigation by the Customs Service which was begun before the date of enactment of this Act.*

(C) *Except as provided in the next sentence, subsection (e) of section 592 of the Tariff Act of 1930 (as added by subsection (a)) shall be effective on the date of enactment of this Act. Notwithstanding any provision of law, in any proceeding in a United States district court commenced by the United States pursuant to section 604 of the Tariff Act of 1930 for the recovery of any monetary penalty claimed under section 592 of such Act for an alleged intentional violation described in subparagraph (B)—*

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

(ii) *the United States shall have the burden of proof to establish such violation by a preponderance of the evidence.*

And the Senate agree to the same.

Amendment numbered 68:

That the House recede from its disagreement to the amendment of the Senate numbered 68 and agree to the same with an amendment as follows:

In lieu of the matter proposed to be stricken out by the Senate amendment insert the following:

SEC. 113. Section 641 of the Tariff Act of 1930 (19 U.S.C. 1641) is amended by adding at the end thereof the following new subsection:

"(e) *Triennial Reports by Customhouse Brokers.—On February 1, 1979, and on February 1 of each third year thereafter, each person who is licensed as a customhouse broker under this section shall file with the Secretary a report as to—*

(1) *whether such person is actively engaged in business as a customhouse broker; and*

“(2) the name under, and the address at, which such business is being transacted.”

And the Senate agree to the same.

Amendment numbered 82:

That the House recede from its disagreement to the Senate amendment numbered 82 and agree to the same with an amendment as follows:

On page 19 of the Senate engrossed amendments strike out the matter appearing after line 3 and insert in lieu thereof the following:

“	Other articles, including not more than 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 815.30 or 815.31 within 30 days preceding his arrival, and does not claim an exemption under the other item on his arrival;	
815.30	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 of alcoholic beverages	Free Free
815.31	Articles, whether or not accompanying a person, not over \$600 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 of alcoholic beverages, not more than 1 quart of which shall have been acquired elsewhere than in American Samoa, Guam, or the Virgin Islands of the United States, if such person arrives directly or indirectly from such insular possessions, not more than \$500 of which shall have been acquired elsewhere than in such insular possessions (but this item does not permit the entry of articles not accompanying a person which were acquired elsewhere than in such insular possessions)	Free Free”

And the Senate agree to the same.

Amendment numbered 123:

That the House recede from its disagreement to the amendment of the Senate numbered 123 and agree to the same with amendments as follow:

On page 26, line 4, of the Senate engrossed amendments, after “merchandise” insert the following: *bearing a counterfeit mark (within the meaning of section 45 of the Act of July 5, 1946 (commonly referred to as the Lanham Act, 60 Stat. 427; 15 U.S.C. 1127)).*

On page 26, line 10, of the Senate engrossed amendments, after “forfeiture,” insert the following: *Obliterate the trademark where feasible and.*

Beginning with line 18 on page 26 of the Senate engrossed amendments, strike out through line 2 on page 27 of such amendments and insert in lieu thereof the following:

“(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 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), or

And the Senate agree to the same.

Amendment numbered 128:

That the House recede from its disagreement to the amendment of the Senate numbered 128 and agree to the same with an amendment as follows:

On page 27 of the Senate engrossed amendments, strike out lines 21 and 22 and insert in lieu thereof the following:

(1) entitled to the admission of his or her baggage and effects free of duty without entry; or

And the Senate agree to the same.

Amendment numbered 130:

That the House recede from its disagreement to the amendment of the Senate numbered 130 and agree to the same with an amendment as follows:

On page 28, line 23, strike out beginning with "not" through "1979." on line 24 and insert in lieu thereof the following: "and to the Committee on Ways and Means of the House of Representatives not later than September 1, 1979."

AL ULLMAN,
CHARLES A. VANIK,
DAN ROSTENKOWSKI,
JAMES JONES,
SAM GIBBONS,
WILLIAM A. STEIGER,
BILL FRENZEL,

Managers on the Part of the House.

RUSSELL LONG,
HERMAN E. TALMADGE,
ABE RIBICOFF,
HARRY F. BYRD, Jr.,
GAYLORD NELSON,
DANIEL MOYNIHAN,
CARL T. CURTIS,
CLIFFORD HANSEN,
BOB PACKWOOD,
BILL ROTH,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 8149) to provide customs procedural reform, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The following Senate amendments made technical, clerical, clarifying, or conforming changes: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 42, 44, 46, 47, 49, 50, 51, 52, 53, 55, 57, 59, 60, 61, 62, 63, 69, 70, 71, 72, 73, 74, 75, 76, 77, 79, 80, 81, 83, 84, 85, 86, 87, 88, 89, 90, 92, 93, 94, 95, 96, 97, 98, 99, 100, 102, 103, 104, 105, 107, 108, 109, 110, 111, 112, 113, 115, 116, 117, 118, 119, 120, 121, 122, 124, 125, 126, 128, 129, 131, and 132. With respect to these amendments, the House either recedes or recedes with amendments which are technical, clerical, clarifying or conforming in nature.

AMENDMENT NUMBERED 13

The House bill contains a provision relating to the new entry procedures which was intended as a guideline for the Secretary of the Treasury in prescribing appropriate regulations. The provision 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.

Senate amendment numbered 13 would 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 would be required to make all necessary corrections. In addition, the Secretary would be required to insure the accuracy of statistics, particularly on classification and valuation of imports, collected under the new entry procedures.

The House receded from its disagreement with the Senate amendment and agreed to the same. The managers intend that the Census Bureau will make all corrections that are necessary to maintain the statistical validity of the import data. They do not expect trivial errors, not affecting the validity of the data, to be immediately corrected by census.

AMENDMENT NUMBERED 15

The House bill would make the new entry procedures effective on the date of enactment of H.R. 8149.

Senate amendment numbered 15 would delay the effective date of the entry procedures until 60 days after the date of enactment of H.R. 8149. The delay was meant to give the Customs Service time to prescribe regulations implementing the new procedures.

The House receded from its disagreement with the Senate amendment and agreed to the same.

AMENDMENT NUMBERED 40

The House bill, dealing with judicial enforcement of administrative summons, provides that if a person fails to obey a court order to produce records or give testimony as ordered by the Customs Service under section 509 of the Tariff Act of 1930, he could be punished for contempt. In addition to contempt penalties, a person adjudged guilty of contempt could, at the discretion of the Secretary of the Treasury and for so long as he remains in contempt, 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 remains in contempt for 1 year, all of his goods in Customs custody would be sold at public auction or otherwise disposed of under the customs law.

Senate amendment numbered 40 restructured the House provision to state that "for so long as a person fails to comply with a summons with which he has been ordered by the court to comply," the same sanctions would apply.

The House receded from its disagreement with the Senate amendment and agreed to the same with an amendment which clarifies that an individual must be adjudged guilty of contempt by a court before the additional sanctions which may be imposed by the Secretary of the Treasury are operative, and that the sanctions would continue as long as the individual remains in contempt of court.

AMENDMENT NUMBERED 43

Sections 557 and 559 of the Tariff Act of 1930 permits goods to remain in a customs bonded warehouse at the owner's expense for up to 3 years without entry and the payment of duty. A 1951 Presidential Proclamation declaring a national emergency due to the Korean War permits Customs to extend the present 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.

Senate amendment numbered 43 would 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.

The House bill contained no similar provision. The House receded from its disagreement with the Senate amendment and agreed to the same.

AMENDMENT NUMBERED 45

The House bill would amend section 584 of the Tariff Act of 1930 to extend liability for a discrepancy in a ship's manifest to those persons directly or indirectly responsible for the discrepancy, including the importer or broker. The master or owner of the vessel would continue to be liable as under present law.

Senate amendment numbered 45 further amended section 584 to limit the maximum penalty to the lesser of \$10,000 or the domestic value of the goods to which the error relates.

The House receded from its disagreement with the Senate amendment and agreed to the same.

AMENDMENT NUMBERED 48

Section 584 of the Tariff Act of 1930 makes the master or owner of a vessel liable for discrepancies in a ship's manifest. Liability does not extend to clerical errors. Senate amendment numbered 48 clarifies the meaning of the term "clerical error" for the purposes of section 584 to mean "a nonnegligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of the manifest."

The House receded from its disagreement with the Senate amendment and agreed to the same. The managers intend that the term "clerical error" as used in this section would not include a fraudulent violation.

AMENDMENT NUMBERED 54

The House bill would amend section 584 of the Tariff Act of 1930 which relates to penalties for discrepancies in ship's manifests. Senate amendment numbered 54 would amend section 584 further to:

1. Require a prepenalty notice for any proposed penalty greater than \$250; and
2. Require the Customs Service to consider representations made as a result of the notice before issuing a penalty claim.

The House receded from its disagreement with the Senate amendment, and agreed to the same with two amendments:

1. The prepenalty notice would be required only for any proposed penalty greater than \$500; and
2. If the appropriate customs officer determines that there was no violation, he must promptly issue a written statement of the determination to the person to whom the notice was sent.

AMENDMENT NUMBERED 56

The House bill would completely revise section 592 of the Tariff Act of 1930, the most frequently invoked customs penalty, which 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 any 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.

Under the House revision, 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 established 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 judgment 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.

Senate amendment numbered 56 reorganized the House amendment and clarified the substantive prohibition in subsection 592(a).

The House bill had 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. Senate amendment numbered 56 amended the House provision to require the use only of dutiable value in computing maximum penalties under section 592.

The House receded from its disagreement with Senate amendment and agreed to the same with amendments as follows—

First, the addition of culpability levels in the General Rule itself is made. The language thus reads: "No person may, *by fraud, gross negligence, or negligence*, enter, introduce, etc."

Second, the language regarding "aiding or procuring" is recast in such a way that it relates to a material and false statement or act, and

not merely the entry of merchandise. This is meant to prevent innocent parties who are somehow involved in the entry from being charged with a 592 violation.

Third, as part of the General Rule, there is added language found in the present law, as well as in the House version, to the effect that the 592 violations are punishable "whether or not the United States is or may be deprived of the lawful duties, or any portion thereof."

Fourth, the standards for determining the maximum penalties for violations of section 592 remain as provided in the House bill, *e.g.*, "domestic value" of the merchandise would be the standard for the maximum penalty for fraudulent violations.

Fifth, conferees added language requiring that an individual will be promptly notified in writing when Customs determines, after considering any representations made in response to the prepenalty notice, that there is in fact no violation.

Sixth, the conferees also added House language, deleted in the Senate, that an alleged violator shall have a reasonable opportunity, under the mitigation procedures, to make both oral and written representations seeking remission or mitigation of the monetary penalty. At the conclusion of any such proceeding, the appropriate Customs officer shall provide to the person concerned a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

For 592 cases which are before the courts after the date of enactment but prior to the effectiveness of the revised section 592, the managers intend that, for the purpose of applying the judicial review provisions, the court will have full discretion to look at the merits of the case and make its own independent determination on the appropriate amount of the penalty and would not be bound by the old maximum penalty which was set out in the old 592. The court would not, of course, be authorized to assess a penalty *above* the maximum penalty allowable under old section 592.

AMENDMENT NUMBERED 58

The House bill revision of section 592 of the Tariff Act of 1930 would be effective with respect to proceedings which begin on or after the 90th day after the date of enactment of H.R. 8149. The only exception to this rule would make section 592(g), providing for de novo judicial review of all issues in a 592 case, effective on the date of enactment.

Senate amendment numbered 58 would apply section 592 as existed on the day before the date of enactment to all intentional acts or omissions committed before the date of enactment if the violation of section 592 was the subject of a Customs Service investigation before such date. The Senate amendment would apply the Senate revision of section 592 to all proceedings, except proceedings described in the preceding sentence, begun after the 89th day after the date of enactment. The only exception to both effective date rules in the Senate amendment would make de novo judicial review under section 592(e) effective on the date of enactment.

The House receded from its disagreement with the Senate amendment and agreed to the same with an amendment. The conference

agreement would apply section 592 as it existed on the day before the date of enactment to any alleged intentional violation of such section 592 involving television receivers that are the product of Japan and that were or are the subject of antidumping proceedings if the alleged violation—

(1) occurred before the date of enactment of H.R. 8149, and

(2) was the subject of an investigation by the Customs Service which was begun before the date of enactment of H.R. 8149.

De novo judicial review would be available for all issues arising in section 592 cases covered by the preceding sentence when the Government commences a proceeding under section 604 of the Tariff Act of 1930 to collect a monetary penalty imposed under section 592. In such a proceeding, the United States would have the burden of proof to establish such an intentional violation by a preponderance of evidence. The de novo review would include the amount of the penalty, which, as in all cases to which new section 592(e) applies, could be reduced by the court or increased up to the maximum amount provided by law.

Except for intentional violations described in the preceding paragraph, the conference revision of section 592 would be effective for all proceedings begun after the 89th day after the date of enactment. The only exception to this rule would be section 592(e), providing for de novo review, which would be effective on the date of enactment.

The managers intend that, for purposes of the effective date rules, proceedings begin when the Customs Service issues a prepenalty notice, or, if none is required, when Customs issues a penalty notice. The managers also intend that the entry or attempted entry of merchandise into the commerce of the United States by means of a document or statement reporting a price for such merchandise in excess of the price ultimately paid for such merchandise, after rebates, kickbacks, or other devices, for the purpose of avoiding assessment of antidumping duties be considered to be false within the meaning of section 592.

AMENDMENTS NUMBERED 64, 65, 66 AND 67

The House bill would add a new section 625 to the Tariff Act of 1930 requiring any ruling under the Tariff Act of 1930 with respect to "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 existing regulations.

Senate amendments numbered 64, 65, 66 and 67 would 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.

The House receded from its disagreement with the Senate amendments and agreed to the same.

AMENDMENT NUMBERED 68

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.

Senate amendment numbered 68 deleted the House provision.

The House receded from its disagreement to the Senate amendment with an amendment which would require each licensed customhouse broker to report to the Secretary of the Treasury on February 1, 1979, and on February 1 of each third year thereafter. The report would state whether the individual, partnership, or corporation reporting is actively engaged in business as a customhouse broker and the name under and address at which such business is being transacted. In the case of a reporting partnership or corporation, the managers intend that the names and addresses of the licensed individuals who qualify the partnership or corporation for a license also be reported.

AMENDMENT NUMBERED 78

The House bill would amend section 5205(a)(2)(C) of the Internal Revenue Code of 1954 to exempt from the Code's mandatory stamping requirement imported distilled spirits, the stamping of which may be required under customs laws, whether or not it is in fact stamped.

Senate amendment numbered 78 deleted the House provision.

The House receded from its disagreement with the Senate amendment and agreed to the same. The managers believe that if and when the Secretary of the Treasury determines that the Internal Revenue Code stamping requirement is not necessary for the collection and protection of the revenues, he can propose such a change to Congress for consideration.

AMENDMENT NUMBERED 82

The House bill 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. The House bill would continue the requirement under present law which permits duty-free entry under item 813.31 only with respect to articles accompanying the returning resident.

Senate amendment numbered 82 would increase the personal exemption for a returning U.S. resident under TSUS item 813.31 from \$100 to \$500. The amendment would increase 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 could be acquired elsewhere than in those insular possessions.

The Senate amendment would also 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 which they purchase in the possessions and then ship home. Customs would be required to publish regulations to carry out this provision.

The House receded from its disagreement with the Senate amendment and agreed to the same with an amendment which would increase the personal exemption from \$100 to \$300 (or \$600 in the case

of persons arriving directly or indirectly from the insular possessions). Not more than \$300 of the merchandise eligible for the \$600 exemption could be acquired elsewhere than in the possessions. Furthermore, the the duty-free exemption would apply to articles not accompanying the traveler only if those articles are purchased in and shipped from the insular possessions.

AMENDMENT NUMBER 91

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.

Senate amendment numbered 91 would amend the House bill to apply the 5 percent rate (applicable to articles acquired in the insular possessions) to articles purchased by travelers while they are in the possessions even if the articles do not accompany the arriving traveler through customs, *i.e.*, the traveler ships the goods home.

The House receded from its disagreement to the Senate amendment and agreed to the same. The managers intend the flat rate provisions to apply even if the fair retail value of eligible articles exceeds \$600. For example, if a traveler claims the benefit of item 869.00 or 869.10 and has eligible articles with a fair retail value of \$700, then the appropriate flat rate would apply to \$600 worth of the articles and rates otherwise applicable under the Tariff Schedules would apply to the excess \$100 worth of articles.

AMENDMENT NUMBERED 101

The House bill would amend section 466 of the Tariff Act of 1930 to provide a monetary penalty up to the value of the vessel as an alternative to forfeiture of the vessel for 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. 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.

Senate amendment numbered 101 leaves intact the House provision but 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.

The House receded from its disagreement with the Senate amendment and agreed to the same.

AMENDMENT NUMBERED 106

The House bill would amend section 491 of the Tariff Act of 1930 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.

Senate amendment numbered 106 deleted the amendment in the House bill which would reduce from 1 year to 6 months the time in which the merchandise must be retained before it is considered abandoned.

The House receded from its disagreement to the Senate amendment and agreed to the same. While the Customs Service originally believed the present provision of 1 year was excessive in light of modern communications and the storage costs which Customs incurs, it reconsidered its position and believes the 1-year period provided by present law should be retained to conform with present commercial practices.

AMENDMENT NUMBERED 114

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 firing 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.

Senate amendment numbered 114 would require Customs to provide notice of liquidation in cases where an entry is deemed liquidated. The Senate recedes.

AMENDMENT NUMBERED 123

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. 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.

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. It also would modify section 42 to except from the general trademark restrictions merchandise which falls within the exception under amended section 526.

Senate amendment numbered 123 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.

The House receded from its disagreement with the Senate amendment with amendments to clearly limit the Senate amendment to merchandise bearing a counterfeit mark as defined in section 45 of the Act of July 5, 1946 (the Lanham Act), as the amendment is intended solely to strengthen the remedies available to prevent the importation of merchandise bearing such a mark, and to require the obliteration of the counterfeit trademark where feasible in all cases before disposition of the merchandise by the Customs Service. The conferees intend that the Customs Service need do no more than publish a public notice of the availability of forfeited goods to State and local Government agencies and charitable institutions and allow a reasonable opportunity for response to the notice in order to meet its obligations to determine that these agencies or institutions have no need for such goods.

AMENDMENT NUMBERED 127

Section 2654, 4381, 4382, and 4383 of the Revised Statutes (19 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. 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.

Senate amendment numbered 127 would clearly provide specific authority for the Secretary of the Treasury to set fees necessary to cover the costs of providing services similar to or the same as services furnished by customs officers under the sections repealed.

The House receded from its disagreement to the Senate amendment and agreed to the same.

AMENDMENT NUMBERED 130

Senate amendment numbered 130 would 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. There is no comparable provision in the House bill.

The House receded from its disagreement to the Senate amendment and agreed to the same with an amendment requiring the Comptroller General to make his report to the Committee on Ways and Means of the House, as well as to the Committee on Finance. The conferees understand that the report will include a consideration of the necessity for officials of both the Customs Service and Immigration and Naturalization Service to process persons entering the United States, or whether the functions performed by these officials could be appropriately and adequately consolidated into one procedure. The report will be made by September 1, 1979.

AMENDMENT NUMBERED 133

The House bill would require, beginning in fiscal year 1980, an authorization of appropriations to the Department of the Treasury for the U.S. Customs Service. The authorization would be examined in the House and Senate by the Ways and Means Committee and 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.

Senate amendment numbered 133 deleted that part of the House bill authorizing the appropriation of such sums as may be necessary for the Customs Service for fiscal years 1980 and 1981. This change would require a separate annual authorization beginning with fiscal year 1980.

The House receded from its disagreement with the Senate amendment and agreed to the same.

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SAM GIBBONS,
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BOB PACKWOOD,
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Managers on the Part of the Senate.