CUSTOMS PROCEDURAL REFORM ACT OF 1977

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

OF THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

NINETY-FIFTH CONGRESS

SECOND SESSION

ON

H.R. 8149

AN ACT TO PROVIDE CUSTOMS PROCEDURAL REFORM, AND FOR OTHER PURPOSES

FEBRUARY 2, 1978

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CUSTOMS PROCEDURAL REFORM ACT OF 1977

THURSDAY, FEBRUARY 2, 1978

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL TRADE OF THE
COMMITTEE ON FINANCE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m. in room 2221, Dirksen Senate Office Building, Hon. Abraham Ribicoff (chairman of the subcommittee) presiding.

Present: Senators Ribicoff, Nelson, and Roth, Jr.

[The committee press release announcing this hearing and the text of the bill, H.R. 8149, follow. Oral testimony commences on page 41.]

P R E S S R E L E A S E

FOR IMMEDIATE RELEASE
January 3, 1978

UNITED STATES SENATE
COMMITTEE ON FINANCE
2227 Dirksen Senate Office Bldg.

FINANCE SUBCOMMITTEE ON INTERNATIONAL TRADE TO HOLD HEARINGS ON THE CUSTOMS PROCEDURAL REFORM ACT OF 1977 (H. R. 8149)

The Honorable Abraham Ribicoff, (D., Conn.), Chairman of the Subcommittee on International Trade of the Committee on Finance, today announced that the Subcommittee will hold public hearings on the Customs Procedural Reform Act of 1977 (H.R. 8149). The hearings will be held at 10:00 a.m., Thursday, February 2, 1978, in Room 2221 of the Dirksen Senate Office Building.

Requests to testify.--Chairman Ribicoff stated that witnesses desiring to testify during these hearings must make their requests to testify to Michael Stern, Staff Director, Committee on Finance, Room 2227, Dirksen Senate Office Building, Washington, D. C. 20510, not later than Thursday, January 26, 1978. Witnesses will be notified as soon as possible after this date as to when they are scheduled to appear. If for some reason the witness is unable to appear at the time scheduled, he may file a written statement for the record in lieu of the personal appearance.

Consolidated testimony.--Chairman Ribicoff also stated that the Subcommittee strongly urges all witnesses who have a common position or the same general interest to consolidate their testimony and designate a single spokesman to present their common viewpoint orally to the Subcommittee. This procedure will enable the Subcommittee to receive a wider expression of views than it might otherwise obtain. Chairman Ribicoff urged very strongly that all witnesses exert a maximum effort to consolidate and coordinate their statements.

Legislative Reorganization Act.--In this respect, he observed that the Legislative Reorganization Act of 1946 requires all witnesses appearing before the Committees of Congress to "file in advance written statements of their proposed testimony, and to limit their oral presentations to brief summaries of their argument." Chairman Ribicoff stated that in light of this statute, the number of witnesses who desire to appear before the Committee, and the limited time available for the hearings, all witnesses who are scheduled to testify must comply with the following rules:

1. All witnesses must include with their written statements a summary of the principal points included in the statement.

2. The written statements must be typed on letter-size paper (not legal size) and at least 75 copies must be submitted before the beginning of the hearing.

3. Witnesses are not to read their written statements to the Subcommittee, but are to confine their 10-minute oral presentations to a summary of the points included in the statement.

4. No more than 10 minutes will be allowed for the oral summary.

Witnesses who fail to comply with these rules will forfeit their privilege to testify.

Written statements.--Witnesses who are not scheduled to make an oral presentation, and others who desire to present their views to the Subcommittee, are urged to prepare a written statement for submission and inclusion in the printed record of the hearings. These written statements should be submitted to Michael Stern, Staff Director, Senate Committee on Finance, Room 2227, Dirksen Senate Office Building not later than Wednesday, February 15, 1978.

P.R. #1

95TH CONGRESS
1ST SESSION

H. R. 8149

IN THE SENATE OF THE UNITED STATES

OCTOBER 12, 1977

Read twice and referred to the Committee on Finance

AN ACT

To provide customs procedural reform, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—CUSTOMS PROCEDURAL REFORM

SEC. 101. This title may be cited as the "Customs Procedural Reform Act of 1977".

SEC. 102. Section 315 (a) of the Tariff Act of 1930 (19 U.S.C. 1315 (a)) is amended—

(1) by striking out "and" at the end of paragraph (1);

(2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and

(3) by adding at the end thereof the following new paragraph:

"(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.".

SEC. 103. Section 484(a) of the Tariff Act of 1930 (19 U.S.C. 1484(a)) is amended—

(1) by amending subsection (a) to read as follows:

"(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, each 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 (either at the time of entry or within such time thereafter as the Secretary may prescribe under paragraph (2)(B) of this subsection) 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) If the documentation required under paragraph (1) (B) of this subsection with respect to any imported merchandise is not filed with the appropriate customs officer when entry of the merchandise is made, such documentation shall be filed at such time within the ten-day period (exclusive of 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 paragraph, shall provide, to the maximum extent practicable, 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.";

(2) by striking out "subdivision" in subsection (c)

(3) and inserting in lieu thereof "subsection"; and

(3) by striking out the second sentence in subsection (j).

SEC. 104. Section 505(a) of the Tariff Act of 1930 (19 U.S.C. 1505) is amended to read as follows.

"(a) DEPOSIT OF ESTIMATED DUTIES.—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. 105. The Tariff Act of 1930 is amended by inserting after section 507 the following new section:

"**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, 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 sub-

section (a) of this section shall be kept for such periods of time, not to exceed 5 years from the date of entry, as the Secretary shall prescribe.

"(c) LIMITATION.—For the purpose of this section and section 509 of this Act, the phrase 'knowingly causes to be imported' does not include a domestic transaction between an importer and a person ordering merchandise from him, unless—

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

"(2) technical data, molds, equipment, or other production assistance, or 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. 106. Section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) is amended to read as follows:

"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 of reasonable specificity, any record, statement, declaration or other document which may be relevant or material 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 such records, statements, declarations and other documents required to be kept under section 508 of this Act, and to give

such testimony, under oath, as may be relevant or material 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 or material 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 in 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 certainty.

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

"(A) The term 'records' includes statements, dec-

larations, 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 accom-

panied 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, or, in the absence of a last known address, is left with the person summoned. If such notice is mailed, it shall be sufficient if mailed to the last known address of the person entitled to notice.

"(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 subsection.

"(6) No examination of any records required to be produced under a summons as to which notice is required under paragraph (1) 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. 107. Section 510 of the Tariff Act of 1930 (19 U.S.C. 1510) is amended to read as follows:

"SEC. 510. JUDICIAL ENFORCEMENT.

"(a) ORDER OF COURT.—If any person summoned under section 509 of this Act neglects or refuses to appear, to testify, or to produce records, 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 appear and give testimony or appear and produce records, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

"(b) CONTEMPT. Any person 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 may, for so long as the failure continues and in addition to the punishment imposed by the court, be prohibited from importing merchandise into the customs territory of the United States directly or indirectly or for his account, and the Secretary may instruct the appropriate customs officers to withhold delivery of merchandise imported directly or indirectly by him or for his account. If such failure continues for a period of one year from the date of such instruction such officer 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.".

SEC. 108. Section 511 of the Tariff Act of 1930 (19 U.S.C. 1511) is repealed.

SEC. 109. Section 557 of the Tariff Act of 1930 (19 U.S.C. 1557) is amended by adding at the end thereof the following new subsection:

"(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. 110. Section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is amended—

(1) by inserting "or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest" immediately after "or the owner of such vessel or vehicle" each place it appears in the first sentence of the first undesignated paragraph of such section;

(2) by inserting "or any person directly or indirectly responsible for heroin, morphine, cocaine, isonipecaine, or opiate being in such merchandise" immediately after "or the owner of such vessel or vehicle" in the first sentence of the second undesignated paragraph of such section; and

(3) by inserting "or any person directly or indirectly responsible for smoking opium, opium prepared for smoking, or marihuana being in such merchandise" immediately after "or the owner of such vessel or vehicle" in the second sentence of the second undesignated paragraph of such section.

SEC. 111. (a) Section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) is amended to read as follows:

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

"(a) IN GENERAL.—Any consignor, seller, owner, importer, consignee, agent, or other person (hereinafter in this section referred to as a 'person') who by fraud, gross negli-

gence, or negligence enters or introduces or attempts to enter or introduce any merchandise into the commerce of the United States by means of—

"(1) any invoice declaration, affidavit, letter, paper, written or oral statement, or act which is material and false, or

"(2) any omission which is material,

whether or not the United States is or may be deprived of the lawful duties, or any portion thereof, shall be subject to a monetary penalty as provided for in subsection (d). If the Secretary has reasonable cause to believe 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, 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 prohibited or restricted merchandise, and shall, in the case of any other merchandise, return such merchandise upon the deposit of security not to exceed the

maximum monetary penalty which may be assessed under subsection (d).

"(b) NOTICE.—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—

"(1) describe the merchandise;

"(2) set forth the details of the entry or introduction or the attempted entry or introduction;

"(3) specify all laws and regulations allegedly violated;

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

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

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

"(7) 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.

No notice is required under this subsection for any violation

of subsection (a) which is noncommercial in nature or for which the proposed penalty is $1,000 or less.

"(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 claim to such person. The written claim shall specify all changes in the information provided under paragraphs (1) through (6) of subsection (b). 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.

"(d) PENALTIES.—(1) The monetary penalty for a violation resulting from fraud shall not exceed the domestic value of the merchandise.

"(2) The monetary penalty for a violation resulting

from gross negligence shall not exceed the lesser of the domestic value of the merchandise which is the subject of the claim for such monetary penalty or four times the lawful duties of which the United States is or may be deprived. If such violation did not affect the assessment of duties, the monetary penalty shall not exceed 40 percent of the dutiable value.

"(3) The monetary penalty for a violation resulting from negligence shall not exceed the lesser of the domestic value of the merchandise which is the subject of the claim for such monetary penalty or two times the lawful duties of which the United States is or may be deprived. If such violation did not affect the assessment of duties, the monetary penalty shall not exceed 20 percent of the dutiable value.

"(4) 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.

"(c) CLERICAL ERRORS.—Notwithstanding subsection (a), merchandise shall not be seized nor shall a monetary penalty be assessed for a violation resulting from clerical errors, or mistakes of fact, unless such errors or mistakes establish a pattern of negligent conduct.

"(f) 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 (d) shall not exceed—

"(1) if the violation resulted from fraud—

"(A) the amount 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 this calculation of such unpaid amount, or

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

"(2) if the 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 thirty days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of this 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.

"(g) DISTRICT COURT.—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 viola-

tion, and the alleged violator shall have the burden of proof that the act or omission did not occur as a result of negligence."

(b) Section 603 of the Tariff Act of 1930 (19 U.S.C. 1603) is amended by inserting "promptly" immediately after "to report".

(c) Section 613 of the Tariff Act of 1930 (19 U.S.C 1613) is amended—

(1) by striking out "Any" in the first sentence and inserting in lieu thereof "(a) Except as provided in subsection (b) of this section, any"; and

(2) by adding at the end thereof the following new subsection:

"(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 subsection incurred in such sale shall be returned to the person against whom the penalty was assessed."

(d) Section 615 of the Tariff Act of 1930 (19 U.S.C. 1615) is amended by inserting "(other than those arising under section 592 of this Act)" immediately after "In all suits or actions".

(e) Section 621 of the Tariff Act of 1930 (19 U.S.C.

1621) is amended by inserting the following after "*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".

(f) (1) The amendments made by subsections (a) through (d) of this section shall take effect with respect to proceedings commenced on or after the 90th day after the date of the enactment of this Act; except that section 592 (g) of this Act (as added by subsection (a) of this section) shall take effect on such date of enactment.

(2) (A) The amendment made by subsection (c) shall apply with respect to alleged violations of section 592 of the Tariff Act of 1930 resulting from gross negligence or negligence which are committed on or after the date of the enactment of this Act.

(B) In the case of any alleged violation of such section 592 resulting from gross negligence or negligence which was committed before the date of the enactment of this Act and for which no suit or action for recovery was commenced before such date of enactment, no suit or action for recovery with respect to such alleged violation shall be instituted after—

(i) the closing date of the 5-year period beginning on the date on which the alleged violation was committed, or

(ii) the closing date of the 2-year period beginning on such date of enactment,

which ever date later occurs, except that no such suit or action may be instituted after the date on which such suit or action would have been barred under section 621 of the Tariff Act of 1930 (as in effect on the day before such date of enactment).

SEC. 112. (a) Section 607 of the Tariff Act of 1930 (19 U.S.C. 1607) is amended by striking out "$2,500" in the heading of such section and inserting in lieu thereof "$10,000", and by striking out "$2,500" each place that it appears therein and inserting in lieu thereof "$10,000".

(b) Section 610 of the Tariff Act of 1930 (19 U.S.C. 1610) is amended by striking out "$2,500" in the heading of such section and inserting in lieu thereof "$10,000", and by striking out "$2,500" in such section and inserting in lieu thereof "$10,000".

(c) Section 612 of the Tariff Act of 1930 (19 U.S.C. 1612) is amended by striking out "$2,500" each place it appears therein and inserting in lieu thereof "$10,000".

SEC. 113. The Tariff Act of 1930 is amended by inserting immediately after section 624 the following new section:

"SEC. 625. PUBLICATION OF RULINGS.

"Within 120 days after issuing any ruling under this Act with respect to any prospective customs transaction, the Secretary shall have such ruling published in the Customs Bulletin or shall otherwise make such ruling available for public inspection.".

SEC. 114. Section 641 of the Tariff Act of 1930 (19 U.S.C. 1641) is amended—

(1) by inserting after "governing the licensing" in the first sentence of subsection (a) the following: ", and renewal of licensing,"; and

(2) by inserting after the third sentence in subsection (a) the following new sentences: "Three years after the date of the enactment of the Customs Procedural Reform Act of 1977, all licenses issued under this subsection before such date of enactment shall be subject to renewal. After such date of enactment, the Secretary of the Treasury shall only issue or renew licenses under this subsection which are valid for a period of three years after the date of their issuance or renewal. No license may be renewed unless the licensee makes application

therefor to the Secretary within the 90-day period occurring before the expiration date of the license.".

TITLE II—CUSTOMS SIMPLIFICATION

SEC. 201. This title may be cited as the "Customs Simplification Act of 1977".

SEC. 202. (a) Section 11 of the Act of March 1, 1879 (19 U.S.C. 467) is amended to read as follows:

"SEC. 11. The Secretary of the Treasury may by regulation require such marks, brands, and stamps or devices to be placed on any container including any receptacle, vessel, or form of package, bottle, tank, or pipeline used for holding, storing, transferring or conveying imported distilled spirits, wines and malt liquors as he deems necessary and proper in the administration of the Federal laws applicable to such imported distilled spirits, wines and malt liquors and may specify those marks, brands, and stamps or devices which the importer or owner shall place or have placed on containers. Any 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 or stamp or device the Secretary of the Treasury may require, shall be with its contents, forfeited to the United States of America."

(b) Section 5205(a) (2) (C) of the Internal Revenue Code of 1954 is amended to read as follows:

"(C) distilled spirits, lawfully withdrawn from bond, in immediate containers the sampling of which may be required (whether or not it is, in fact, required) under other provisions of internal revenue or customs law and regulations issued pursuant thereof;".

(c) The Secretary may issue regulations authorized under the amendment made by subsection (a) at any time after the date of the enactment of this Act, but the amendment made by such subsection shall not take effect until the 60th day after the date on which such regulations are issued and shall not apply to other than merchandise which is entered, or withdrawn from warehouse, for consumption on or after such 60th day.

SEC. 203. (a) Schedule 8 of the Tariff Schedules of the United States (19 U.S.C. 1202) is amended as follows:

(1) Item 812.20 is amended by striking out "3 pounds" and inserting in lieu thereof "2 kilograms", by striking out "1 quart" and inserting in lieu thereof "1 liter", and by striking out "300 cigarettes" and inserting in lieu thereof "200 cigarettes".

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(2) Item 812.25 is amended by striking out "(including not more than 1 wine gallon of alcoholic beverages and not more than 100 cigars)" and inserting in lieu thereof "(not including alcoholic beverages and cigarettes but including not more than 100 cigars)".

(3) Item 812.40 is amended by inserting "(including not more than 4 liters of alcoholic beverages)" after "Not exceeding $200 in value of articles".

(4) The prefatory note to item 813.10 is amended by inserting the following before the colon at the end of such note: "(including American citizens who are residents of American Samoa, Guam, or the Virgin Islands of the United States)".

(5) Item 813.30 is amended by striking out "1 quart" each place it appears and inserting in lieu thereof "1 liter", by striking out "1 wine gallon" and inserting in lieu thereof "4 liters", and by inserting "200 cigarettes and" before "100 cigars".

(6) Item 813.31 is amended by striking out "$100" wherever it appears, and inserting in lieu thereof "$250", and by striking out "$200" and inserting in lieu thereof "$500".

(7) Item 814.00 is amended by striking out "3

pounds" and inserting in lieu thereof "2 kilograms" and by striking out "1 quart" and inserting in lieu thereof "1 liter".

(8) Item 860.10 is amended by striking out "8 ounces" and inserting in lieu thereof "300 milliliters", by striking out "4 ounces" and inserting in lieu thereof "150 milliliters", and by striking out "2 ounces" and inserting in lieu thereof "100 milliliters".

(9) Item 860.20 is amended by striking out "$\frac{1}{8}$ ounce" each place that it appears and inserting in lieu thereof "3.5 grams".

(b) (1) The amendments made by this section with respect to metric conversion apply to merchandise entered on or after January 1, 1980.

(2) The amendments made by this section (other than those referred to in paragraph (1)) shall apply with respect to persons arriving in the United States on or after the 30th day after the date of the enactment of this Act.

SEC. 204. (a) Schedule 8 of the Tariff Schedules of the United States (19 U.S.C. 1202) is further amended by redesignating part 6 as part 7, by striking out "Part 6 headnote:" in part 7 (as so redesignated) and inserting in lieu

thereof "Part 7 headnote:"; and by inserting after part 5 the following new part:

"	PART 6.—NONCOMMERCIAL IMPORTATIONS OF LIMITED VALUE		
	Part 6 headnote: 1. For the purposes of this part the rates of duty for articles provided for 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:		
869.00	Accompanying a person, arriving in the United States and valued in the aggregate (exclusive of duty-free articles) not over $600 fair retail value in the country of acquisition, if such person has not received the benefits of this item (869.00) within the 30 days immediately preceding his arrival.....	10% of the fair retail value or 5% of the fair retail value of such articles as have been acquired in American Samoa, Guam, or the Virgin Islands of the United States	10% of the fair retail value or 5% of the fair retail value of such articles as have been acquired in American Samoa, Guam, or the Virgin Islands of the United States ".

(b) The amendment made by this section shall apply to persons and articles arriving in the United States on or after the 30th day after the date of the enactment of this Act.

SEC. 205. Section 315(d) of the Tariff Act of 1930 (19 U.S.C. 1315(d)) is amended by striking out "weekly Treasury Decisions" and inserting in lieu thereof "Federal Register".

SEC. 206. (a) Section 321(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1321(a)(1)) is amended by striking out "$3" and inserting in lieu thereof "$10", and by striking out "or" after "duties" wherever it appears and inserting in lieu thereof "and".

(b)(1) Subparagraph (A) of section 321(a)(2) of the Tariff Act of 1930 (19 U.S.C. 1321(a)(2)) is amended by striking "$10" and inserting in lieu thereof "$25", and by striking out "$20" and inserting in lieu thereof "$40".

(2) Subparagraph (B) of such section 321(a)(2) is amended by striking out "$10" and inserting in lieu thereof "$25".

(3) Subparagraph (C) of such section 321(a)(2) is amended by striking "$1" and inserting in lieu thereof "$5".

SEC. 207. Section 466(a) of the Tariff Act of 1930 (19 U.S.C. 1466(a)) is amended by striking out "; and if the owner or master" and all that follows thereafter down through the period at the end of the first sentence and inserting in lieu thereof the following: ". 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 statement 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."

SEC. 208. Section 483 (1) of the Tariff Act of 1930 (19 U.S.C. 1483 (1)) is amended—

(1) by inserting "or the holder of an air waybill" immediately after "bill of lading";

(2) by adding "in the case of a bill of lading" immediately before "if consigned to order, by the consignor"; and

(3) by striking out the period at the end of the first sentence and inserting in lieu thereof the following: "; 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) ."

SEC. 209. Section 491 of the Tariff Act of 1930 (19 U.S.C. 1491) is amended—

(1) by amending the section heading to read as follows:

"SEC. 491. UNCLAIMED MERCHANDISE; DISPOSITION OF FORFEITED DISTILLED SPIRITS, WINES AND BEER";

(2) by inserting "(a)" at the beginning of such section;

(3) by striking out "one year" wherever it appears therein and inserting in lieu thereof "six months"; and

(4) by adding at the end thereof the following new subsection:

"(b) All distilled spirits, wines, and beer forfeited to the Government summarily or by order of court, under any provision of law administered by the United States Customs Service, 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 beer 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 beer 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 beer under paragraph (1) or (2); or

"(4) destruction."

SEC. 210. (a) The Tariff Act of 1930 is amended by adding immediately after section 503 the following new section:

"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. Notwithstanding section 500(e) of this Act, notice of liquidation need not be given of an entry deemed liquidated.

"(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 or such extension is required by statute;

"(3) liquidation is suspended pursuant to court order; or

"(4) 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 pursuant to statute or court order. When such a suspension of liquidation is removed, the entry shall be liquidated within 90 days therefrom."

(b) The amendment made by this section applies to the entry or withdrawal of merchandise for consumption on or after 180 days after the enactment of this Act.

SEC. 211. Section 520(c)(1) of the Tariff Act of 1930 (19 U.S.C. 1520(c)(1)) is amended to read as follows:

"(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 appropriate customs officer within one year after the date of liquidation or exaction; or".

SEC. 212. (a) Section 526 of the Tariff Act of 1930 (19 U.S.C. 1526) is amended—

(1) by striking out "It" in subsection (a) and inserting in lieu thereof "Except as provided in subsection (d) of this section, it"; and

(2) by adding at the end thereof the following new subsection:

"(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 the 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.".

(b) Section 42 of the Act of July 5, 1946 (15 U.S.C. 1124), is amended by striking out "That" and inserting in lieu thereof "Except as provided in subsection (d) of section 526 of the Tariff Act of 1930,".

SEC. 213. Section 599 of the Tariff Act of 1930 (19 U.S.C. 1599) is amended by inserting "(other than a yacht or other pleasure boat)" after "part, any vessel".

SEC. 214. The first sentence of section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883), is further amended by deleting the word "thereof" where it first appears and by inserting in lieu 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)".

SEC. 215. (a) Sections 2654, 4381, 4382, and 4383 of the Revised Statutes of the United States (19 U.S.C. 58 and 46 U.S.C. 329, 330, and 333) are each repealed.

(b) The amendments made by subsection (a) shall not be deemed to prohibit the Secretary of the Treasury from

the fixing of fees, charges, or prices under the authority of section 501 of the Act of August 31, 1951 (65 Stat. 290; 31 U.S.C. 483a).

SEC. 216. Except as may be provided in the Tariff Schedules of the United States, no officer or employee of the United States (including any member of the uniformed services) is entitled, when returning to the United States from abroad—

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

(2) to expedited customs examination and clearance of his or her baggage and effects;

unless such officer or employee—

(A) is seriously ill or infirm,

(B) has been summoned home by news of affliction or disaster, or

(C) is accompanying the body of a deceased relative.

For purposes of this section, the term "baggage and effects" means any article which was in the possession of the officer or employee while abroad and is being imported in connection with his or her arrival and is intended for his or her bona fide personal or household use. Such term does not include any article imported as an accommodation to others or for sale or other commercial use.

TITLE III—CUSTOMS SERVICE APPROPRIATIONS AUTHORIZATION

SEC. 301. (a) For the fiscal year beginning October 1, 1979, and each fiscal year thereafter, there are authorized to be appropriated to the Department of the Treasury for the United States Customs Service only such sums as are authorized by subsection (b) or as may hereafter be authorized by law.

(b) There are authorized to be appropriated to the Department of the Treasury for the fiscal years beginning on October 1, 1979, and October 1, 1980, such sums as may be necessary for the United States Customs Service to carry out its functions.

TITLE IV—SEPARABILITY OF PROVISIONS

SEC. 401 If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the provisions of this Act and the application of such provisions to other persons or circumstances, shall not be affected thereby.

Passed the House of Representatives October 17, 1977.

Attest: EDMUND L. HENSHAW, JR.,

Clerk.

Senator RIBICOFF. The subcommittee will come to order.

This morning we will hear testimony on H.R. 8149. It has been 20 years since Congress last reviewed customs procedure, and during that period our trade has grown enormously, both in volume and in importance to our economy.

Because of this, congressional review of the activities of the Customs Service is timely. Most customs laws were enacted when customs receipts were the principal source of Federal revenue and clerks with quill pens handled the entry of goods. Times have changed.

Today, computers have replaced clerks and cargo arrives by jet as well as by sea and land. Customs revenues are relatively less important.

The primary purpose of the Customs Service is the regulation of imports into the United States. Not only does Customs enforce quotas and other import restraints, it also administers more than 300 other laws at the border. The substance of these laws ranges from protection of endangered species to narcotics control.

In recognition of these changes, the Treasury, the private sector and the Ways and Means Committee have worked for several years to identify and improve numerous archaic laws and procedures. The results of their effort are now before the Finance Committee as H.R. 8149.

We will examine the bill closely to insure that it serves the best interests of all Americans affected.

We are pleased to welcome the Commissioner of Customs, Mr. Chasen, our first witness.

Mr. CHASEN. Senator, if I may start by introducing the people at the table with me from Customs, on my right is Bob Dickerson who is the Deputy Commissioner of Customs; on my left is Dick Abbey who is the Deputy Chief Counsel; and on the extreme right is Mr. Leonard Lehman, who is the Assistant Commissioner for Regulations and Rulings.

STATEMENT OF HON. ROBERT E. CHASEN, COMMISSIONER, CUSTOMS SERVICE, ACCOMPANIED BY BOB DICKERSON, DEPUTY COMMISSIONER OF CUSTOMS; RICHARD H. ABBEY, DEPUTY CHIEF COUNSEL; AND LEONARD LEHMAN, ASSISTANT COMMISSIONER FOR REGULATIONS AND RULINGS

Mr. CHASEN. I am pleased and delighted to have the opportunity to appear before this committee in support of H.R. 8149, which would amend the Tariff Act of 1930 and, more importantly to us, authorize customs procedural reform and simplification.

This bill represents the culmination of cooperative efforts by the Customs Service, the importing community, and the Trade Subcommittee of the House Ways and Means Committee, working together to fashion a bill which would eliminate antiquated customs procedures and permit the implementation of major administrative and operational reforms.

This bill is quite similar to the bill originally proposed by the administration and contains the essential administration proposals which would permit Customs to process commercial importations more effectively, simplify its revenue collection and its accounting procedures, improve import data verification and better utilize the resources

of Customs so that the many responsibilities assigned to our service may be successfully carried out.

Now, H.R. 8149 is not what one would call glamorous legislation. Proposals for administrative reform rarely fall within that category. We are hopeful, however, that after you have fully considered the benefits which will result from enactment of H.R. 8149 you will share our feelings of support of this bill.

The last major piece of legislation dealing with Customs administrative reform was enacted more than 20 years ago. Since then, the value of U.S. importations and the amount of duties collected has increased fivefold. Entries have tripled from 1.1 million in 1956 to 3.4 million in 1976.

The number of travelers processed has doubled during that time from 130 million to 266 million. The number of entries processed now averages more than 2,600 per import specialist per year, an increase of 94 percent over the past 20 years.

In addition to the enormous task of collecting and protecting the revenue which arises out of processing cargo and passengers, Customs is now responsible for enforcing 400 laws for more than 40 different Federal agencies, as well as verifying import-export documents which comprise the raw material of trade statistics.

To enable a relatively static workforce to keep pace with this ever-growing workload, the statutory changes in H.R. 8149 are necessary.

This bill is extremely important to the Customs Service. We call it the Customs modernization bill, because in order to carry out our mandate effectively and efficiently, Customs must be able to adopt modern merchandise processing methods and contemporary financial programs. One of the major obstacles we face in this area is the requirement under existing law that each importation be represented by a separate entry document accompanied by payment of the estimated duties owed on the imported merchandise.

Each entry must then be processed separately and a separate bill for additional duties or a refund check for an overpayment of duties has to be prepared and mailed to the importer.

The obvious result is an overwhelming flood of paperwork and substantial administrative costs and burdens on Customs, the importers, and their agents, the customhouse brokers.

Title I of H.R. 8149 would authorize a less cumbersome method of processing imports and collecting duties.

Sections 102, 103, 104, and 109 of the bill would permit the separation of this entry reporting process from the duty collection process and pave the way for full-scale implementation of the automated merchandise processing system, commonly referred to as AMPS.

This is a computer system under development in the Customs Service for some time. If enacted, this will would enable importers to take delivery of their importations by providing the customs officer with such documentation as may be necessary to insure that the merchandise is admissible and may be released into the commerce of the country.

Within specified times thereafter, the importer would be required to supply details of the importation and pay the duties. The practical effect of this provision will be to compress the many individual

duty payments into single weekly payments, and make available to all persons dealing with Customs the immediate delivery and delayed filing procedures that are now utilized in over 80 percent of all customs transactions.

It will improve the quality, also, of our import statistics.

AMPS is a modern, computerized entry filing system designed to monitor information on entries, liquidations and duty collections by utilizing telecommunications terminals and duty assessment offices located around the country. An individual importer's file would be updated whenever an importation was made.

The data would then be used for control of warehouse inventory, in-bond shipments, importers accounts and merchandise quotas. Records would be made of liquidations and duties and importers would be sent a single monthly statement of account reflecting the current status of duties owed or refunds due.

Through this monthly setoff and adjustment procedure, the customs accounting system would be simplified and numerous bills and checks would be eliminated.

As I stated before, it would be the modernization of what we would consider now to be an antiquated system. This AMPS system has been coordinated in its development with importers, customs brokers, carriers, industry associations, the customs services of other countries and with other Federal agencies.

The first phase of the system is now operating in Philadelphia, Chicago, Baltimore, Boston, Miami, and Los Angeles. This early phase is called the early implementation system, or the EIS. It permits more effective enforcement of the laws and protection of the revenue by automatically identifying the routine importations and separating complex or potentially incorrect entries for intensive examination.

The latter benefit cannot be overemphasized, since the key to processing such a tremendous volume of entries annually must be selectivity: that is, the capability to focus the attention of the customs import specialist on more complex problems while assigning routine work to the computer for complete processing.

Our import specialists are also available to devote greater amounts of time to the verification of invoice information which forms the basis for import trade statistics, thus increasing the accuracy and reliability of data supplied to the Bureau of the Census. This information will also be transmitted to Census much more quickly and in a machine-readable form, thereby reducing the possibility of errors in transmission.

We, in Customs, have concluded that, once fully implemented AMPS will facilitate the delivery of merchandise to importers reduce the amount of paperwork now required for processing merchandise, cut the number of financial transactions and provide much more reliable statistical data more quickly.

We, in Customs, are satisfied that sections 102–104 and section 109 will permit the full implementation of AMPS.

On further examination and in consideration of section 103, however, we find that changes in the statute will require extensive regulation revision. We therefore recommend that a delayed effective date, keyed to adoption of the necessary regulation amendments, be added to section 103.

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In conjunction with the implementation of the automated system, the proposed legislation would impose recordkeeping requirements on owners, importers, consignees and agents where no such requirements presently exist. Section 105 to 107 of the bill set forth the basic terms of this requirement and the means by which it can be enforced.

As the number of importations continues to grow, so does the need for recordkeeping. The physical examination and individual processing of each importation is simply not possible. Consequently, as part of our revenue collection and protection program, a regulatory audit capability has been developed within the Customs Service which concentrates on high-risk, high-payoff transactions. Its success or failure depends largely on voluntary compliance with import requirements and, of course, accurate records of import transactions.

The new recordkeeping provisions maintain a proper balance between the needs of the Customs Service and the genuine concerns of the importing community over the creation and retention of potentially expensive and burdensome systems of records.

To alleviate this concern, records required to be kept would be limited to those normally kept in the ordinary course of business. Such records place a responsibility on the importer to verify his import transactions and establish his duty liability.

Records would be kept no more than 5 years from the date of importation and, in certain instances, for far less time. For the most part, a constructive relationship exists between importers and the Customs Service. There are instances, however, when an importer, for whatever reason, is reluctant to cooperate with a customs audit or investigation. We must then rely on sections 509 and 510 of the Tariff Act which authorize the use of an administrative subpena to obtain relevant information and data and, if necessary, the enforcement of the subpena by the courts. These provisions would be amended by the bill to authorize the use of administrative subpenas in a broader range of customs investigations and to provide greater procedural due process to persons subject to a subpena.

We direct your attention, however, to new subsection (c) of 509 which would establish special procedures for obtaining access to records held by third parties.

This provision, which parallels a similar provision in the Tax Reform Act of 1975 was added by the House Ways and Means Committee. Government access to personal records and private papers is one of the many areas being explored by the President's Privacy Initiative Task Force.

Until this study is completed, I am unable to state a customs position on this new procedure.

Another major element of title I of H.R. 8149 is the proposed amendment to section 592 of the Tariff Act of 1930, the so-called fraud and penalty provision. The Customs Service recognizes that in its present form, 592 is often unduly harsh in its application since it requires an initial penalty assessment equal to the forfeiture value of the merchandise in question.

This initial penalty usually bears little relation to the Government's actual loss of revenue and may seriously injure a company's reputation, credit rating, or even its position on the stock exchange.

The present section 592 also effectively precludes judicial review. Judicial review of a penalty assessment is unavailable unless the government is forced to sue for the full amount of the initial penalty. Generally, when the risk of losing the litigation and having to pay the the onerous initial penalty is weighed against closing the matter by paying a mitigated amount, the businessman generally opts for settlement and forfeits his right to judicial review.

The proposed amendment would remedy these problems by establishing varying levels of penalty commensurate with the degree of culpability of the violator.

The initial penalty would no longer be equal to the full forfeiture value of the merchandise. Instead, it would be equal to a multiple of the loss of revenue or, if no revenue loss is involved, a percentage of the appraised value of the merchandise.

In addition, the amendment, to a large extent, would merely transfer Customs' current administrative practices in handling 592 cases from the customs regulations to the United States Code.

We strongly support this amendment. We would, however, like to call your attention to a serious problem that is likely to arise if section 111 is enacted in its present form, and we would like to offer a technical amendment.

Under section 592 (b) and (c), an alleged violator would be guaranteed the opportunity to receive advance written notice of the Government's intention to issue a claim for monetary penalty, to make written and oral representations, and to petition for relief under section 618 of the act, even if the statute of limitations were about to expire to the detriment of the Government.

Under the present law and regulations, however, when the statute of limitations will run within 1 year, the so-called penalty procedure is bypassed. A penalty notice is issued and the case is immediately referred to the U.S. attorney to institute a civil action which preserves the penalty.

If this option were removed, we would anticipate, in cases where the expiration of the limitations period was imminent, attempts to delay penalty proceedings through the use of judicial challenges to the adequacy of the prepenalty and penalty notices, the opportunity to make oral and written presentations and the opportunity to petition under section 618.

We therefore urge the committee to amend section 111 to permit the Secretary of the Treasury to issue a penalty notice and refer the matter immediately to the U.S. attorney where the statute of limitations prescribed in the act will run in less than a year, unless a waiver of the statute is executed by the alleged violator.

Title II of the proposed legislation is a collection of various amendments to the act and related navigation laws designed to facilitate the processing of international travelers and low-value importations. Travelers would benefit from the proposal, in our opinion, to raise personal exemptions for persons arriving from overseas from $100 to $250 and from $200 to $500 in the cases of persons arriving from Guam, American Samoa, and the Virgin Islands.

This move will adjust the personal exemption ceiling set in 1961 to the impact of inflation on the dollar.

H.R. 8149 would also provide importers with additional protection. Section 210, for example, would establish a limitation of 1 year for an entry to be liquidated by the Government. Current law provides no such limitation.

Under 210, an entry not liquidated within 1 year from date of entry or date of withdrawal from warehouse shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties entered by the importer, his consignee, or agent.

The liquidation period can be extended by the Secretary for specified reasons upon giving notice to the importer. This provision would be beneficial to both Customs and the importers. It would eliminate unanticipated requests by Customs for additional duties and would protect surety companies against losses resulting from dissolution of their principals in instances where there have been undue delays in liquidation.

Cost savings should result to Customs following improved management of the liquidation process.

A 10 percent flat rate of duty would be imposed on articles intended for personal or household use not in excess of $600 fair retail value accompanying returning residents. This provision would greatly facilitate the calculation of duty owed by passengers and expedite their clearance at ports of arrival.

Another benefit that would be conferred on American citizens returning from abroad is found in section 212, which would eliminate, under certain circumstances, the prohibition on the importation of trademarked articles. When accompanying a traveler, intended for personal use and not for resale, and within types and quantities to be established by the Secretary of the Treasury, such articles would be exempt from trademark restrictions.

Section 216 of H.R. 8149 would preclude duty-free admission of baggage and effects, or other special treatment in clearing Customs, for any officer or employee of the United States returning from abroad, absent serious illness or other specified emergency situations. Here we have no objection, but we would like to direct your attention to what we think perhaps is an error in drafting.

It is unlikely that the intent of the drafters was to provide for admission free of duty for officers and employees of the United States under any circumstances, although we do feel that expedited clearance may be warranted in emergency situations.

We, in Customs, feel confident that 8149 with the modifications we have mentioned would go far toward enabling the Customs Service to keep pace with international commerce and business procedures in a highly technological age and allow for the processing of everincreasing numbers of carriers without an undue expansion of the Customs work force.

Thank you for your attention.

Senator RIBICOFF. Thank you, Mr. Chasen.

Mr. Commissioner, we have a very busy day and I have a number of questions which we will deliver to you in writing and I would expect you to answer these questions forthwith so that tney would become part of the record as if asked of you orally here.

Thank you, Mr. Chasen.

[The following was subsequently supplied for the record:]

QUESTIONS SUBMITTED BY SENATOR RIBICOFF TO COMMISSIONER CHASEN AND THE CUSTOMS SERVICE ANSWERS TO THEM

Question

1. What advantages over current procedures would result from the entry procedure Customs intends to implement under sections 102, 104 and 109? What changes in procedures and document requirements are anticipated? Please be specific as possible, and include examples illustrating the entry and duty payment process under present practice and as anticipated under the bill's provisions, with sample documents attached, and a description of the up-to-date business methods and financial practices planned for adoption under the bill. Please supply a cost-benefit analysis of the intended procedures.

Answer

(a) Primarily, section 102 of the proposed legislation allows Customs to establish a consistent date of entry coincident with the release date of imported merchandise. Such consistency is not possible under current immediate delivery procedures which allow a variation of up to 10 days to clearly fix the duty rate. The new procedures also concentrate all admissibility, acceptability and release transactions at a single location—the station office, whereas immediate delivery procedures allow station office releases but may require admissibility determinations to be made at other locations.

Section 103 allows importers greater flexibility by expanding the area for completing transactions to the district rather than port limits. Section 104, similarly, permits flexibility by allowing consolidation of entry requirements and enables Customs to provide importers with monthly statements of billings, liquidations and penalties. Section 109 further simplifies financial transactions by reducing the number of calculations required for handling withdrawals of merchandise stored in bonded warehouse.

(b) The proposed legislation affects current procedures for presenting entry documentation and paying duty. Specifically, all acceptability, admissibility and duty assessment transactions, except for those on quota merchandise, will take place at the time the goods are released, at the station office with jurisdiction over the place where the merchandise is located. This will provide the importer with an immediate duty rate instead of allowing up to ten days to establish the appropriate duty. Customs will require follow-up documentation but will eliminate current duplicate numbering for immediate delivery and follow-up documents.

The act also enables Customs to offer importers the convenience of periodically depositing duty payments in an account rather than paying entry by entry. Customs automated system will also routinely issue importers monthly statements summarizing payments due, over-due, liquidations completed and all other transactions initiated or completed during the period. The cyclical collection process will reduce Customs financial workload as well as improving our service to importers and will not adversely affect our cash flow.

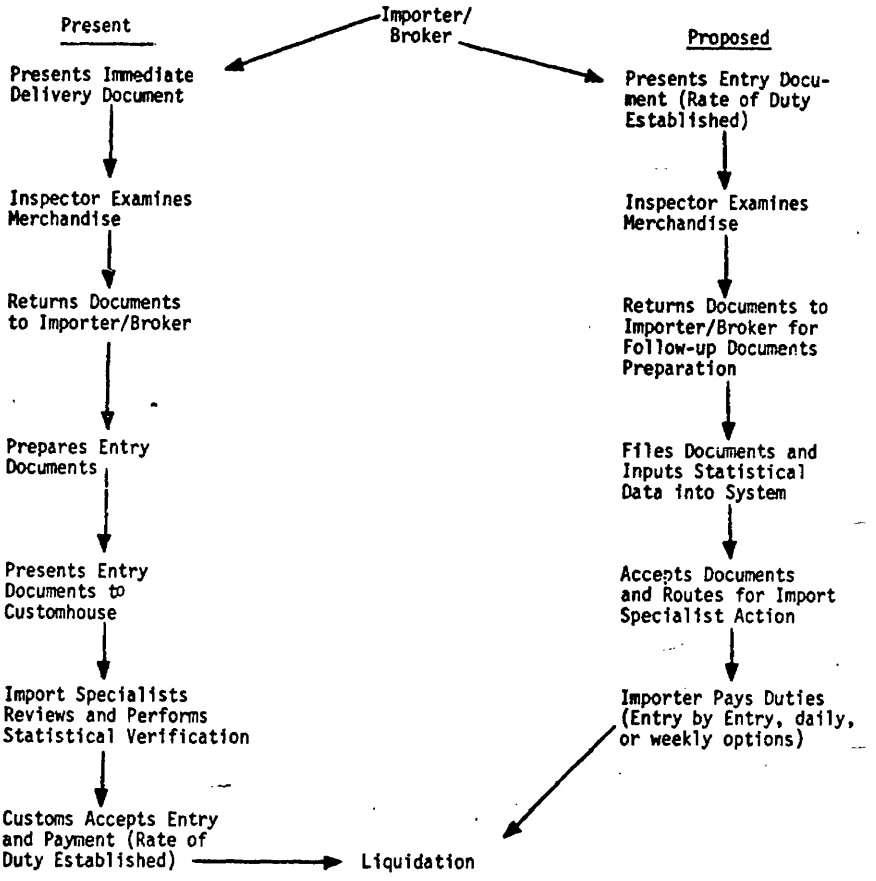
Customs is currently developing a consolidated entry form to replace most of the entry documents now in use. This document will represent the product of a joint effort by Customs and representatives of the importing public most directly affected by its design. The Customs Statement, also in the design stage, will include billings, previous cycle entry statistics and completed liquidations from the previous cycle. It will replace the bulletin notices currently posted in customhouses.

(c) Since document design is not complete, we are unable to provide samples. However, the attached chart (Attachment A) compares the present entry processing method with the procedure that will be followed once H.R. 8149 is enacted. Our planned modernized business and financial practices have been set forth above. However, Customs sees additional benefits in the proposed periodic entry payment since deposit of duties will no longer have to wait for approval of entry documentation. Under the new system, collections will be deposited immediately.

(d) An updated cost analysis of the AMPS program is attached (Attachment B).

ATTACHMENT A

ENTRY PROCESSING



ATTACHMENT B

EXCERPTS FROM THE CUSTOMS CONCEPT FOR MERCANDISE AND REVENUE COST BENEFIT

(Revised April, 1977)

* * * * * * *

9. Computer sizing and terminal operator requirements were based on the following logical transaction volumes.

[In millions]	*Number of transactions*
Transaction:	
Entry data input	5.0
No change liquidation	1.0
Change liquidation	1.0
Enter release No.[1]	7.7
Enter bond data	.1
Query entry status	.6
Enter warehouse withdrawals	.4
Enter miscellaneous collections	.3
Enter protest and penalty data	.3
Verify liquidation	.1
Enter data corrections	2.0
Re-enter entry rejects	.6
Collection transactions	2.3

[1] Includes in-bond transactions.

10. The cost estimates shown herein could vary considerably from year-to-year resulting from either a change in the implementation schedule or a decision to lease rather than purchase the computer. The overall cost/benefit ratio should not change appreciably as a result of either of these two actions.

11. It is known that collection processing will be substantially reduced in the field since cumulative payments will be made on a weekly basis rather than the present transaction-by-transaction basis. The field will continue to make collections on a transaction basis for entries from a small number of bad risk importers and one-time importers and on accumulated informal entries (i.e., informal entries will be manually accumulated over the day with only cumulative totals entered into the system).

12. Workload for the automated portion of the system is largely a function of commercial entries and collections. Commercial entries as defined by the concept include all entries currently processed as formal entries plus approximately 600,000 commercial entries which are currently processed as informal entries. Entry studies indicate that there will be a six percent per year increase in the number of formal and informal entries processed by Customs.

Using the previously indicated rates of increase, and the fiscal year 1976 workload as a base, it is estimated that the system will process approximately 5 million entries by fiscal year 1981.

The following is a breakdown of the number of entries and collections, by type, projected to fiscal year 1981:

Collection consumption	2,300,000
Free consumption	930,000
Dutiable consumption	[1] 4,000,000
Warehouse and rewarehouse	100,000
Vessel repair	2,000
Total	[2] 7,332,000

[1] Includes Puerto Rico and Virgin Islands.

[2] Includes 600,000 entries that would have been informals under the current system. It is assumed that the commercial importers will file formal entries on these in order to take advantage of the delayed payment feature proposed by the concept.

13. Manpower projections to operate the system were based upon the workload depicted in item 12 above. A 2 percent per year employee productivity increase was included where applicable when projecting future manpower requirements.

14. Computer rental cost estimates for manifest processing are prorated projections of actual cost incurred to date for manifest clearance. Eighty percent of all manifests will be cleared by computer. Part of this will be done locally, on service bureau computers, and part of it will be done in remote batch using the AMPS central site computer.

15. Automated broker interface will begin in FY 81. Brokers will input 10% of the entry data in FY 81, 20% in FY 82, 30%in FY 83, 35% in FY 84, 45% in FY 85 and 55% in FY 86.

16. It is assumed that the terminals will be rented rather than purchased because of the intent to begin transferring this part of the entry data capture function to the brokers beginning in FY 81.

17. It is assumed that EIS will be operational in ports that constitute 72% of workload by the end of FY 78, that the "Concept" system will replace all EIS during FY 79 and the remainder of the system will be implemented in FY 80.

18. It is assumed that the computer and concentrators will be purchased rather than leased because a present value analysis (10% rate) over the life of the system based on estimated lease and purchase prices indicates purchase will provide a 40% annual savings.

19. Network costs are based upon FCC–AT&T Tariff Section 260 that is to become effective June 8, 1977.

COSTS AND BENEFITS

[Dollar amounts in thousands]

Fiscal years	Estimated cost [1]	Benefits to customs	Benefits to other Government agencies	Benefits to importing public	Total (cols. 2+3+4)	Discount factor (10 percent)	Present value cost (cols. 1×6)	Present value benefits (cols. 5×6)
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1975	$5,483	$1,615	0	$150	$1,765			
1976 [2]	7,450	3,590	0	310	3,900			
1977	7,840	4,853	$290	1,665	6,808	1.000	$7,840	$6,808
1978	9,409	8,840	608	5,039	14,487	.909	8,553	13,168
1979 [3]	[4] 18,630	13,761	837	5,737	20,335	.826	15,388	16,797
1980	[4] 17,290	27,206	1,113	12,802	41,121	.751	12,985	30,882
1981 [5]	[6] 20,274	[7] 56,939	1,233	[8] 19,781	77,953	.683	13,847	53,242
1982	20,696	59,786	1,289	20,770	81,845	.621	12,852	50,825
1983	21,061	62,775	1,348	21,809	85,932	.564	11,878	48,466
1984	21,785	65,914	1,408	22,899	90,221	.513	11,176	46,283
1985	22,167	69,210	1,472	24,044	94,726	.467	10,352	44,237
1986	22,534	72,670	1,538	25,246	99,454	.424	9,554	42,168
Total	181,686	441,954	[9] 11,136	159,792	618,547		114,425	352,876

[1] Estimated cost includes development, implementation, retraining, and operating cost.
[2] Fiscal year 1976 includes transition quarter costs and benefits.
[3] Includes funds to purchase computer.
[4] Includes $2,000,000 for additional retraining of field personnel and $750,000 for additional relocation of field personnel.
[5] Increases after fiscal year 1981 are due to workload increases.
[6] Itemized on p. 10.
[7] Itemized on p. 11.
[8] Itemized on p. 13.
[9] Benefits are primarily replaced data preparation costs for other Government agencies. Approximately 85 percent will accrue to the Bureau of Census, foreign trade statistics program, breakout by agency benefit shown on 14.

Note: Benefit/cost ratio equals 3.08/1 (cols. 8 minus 7). Fiscal years 1975 and 1976 costs and benefits are sunk costs, therefore they are excluded from cost benefit calculations and totals.

OTHER BENEFITS NOT QUANTIFIED

There are several areas in which benefits will be realized, but which cannot be measured in quantitative terms. One of the most important byproducts of the system is the fact that procedures for merchandise and collection processing will become standardized throughout the Service. This feature should benefit both Customs and the importing community. Internally, the standardization of procedures should allow for the ease of control and management of operations. To the public, standardized procedures should facilitate any dealings with the Service, and eliminate any disparity of operations among multiple ports or districts through which a single firm may import.

The amount of management information that the Master File will make available is a second advantage. This will facilitate better process control and better resource allocations to match shifts in workload. Timely information will be available to Customs agents for investigative purposes. Timely statistics will be available to Treasury and other government agencies for use in balance of payment analysis, *dumping and countervailing* investigations, oil importations, quota and trade restraint agreements status, etc.

The system will provide faster processing of documents as well as merchandise, which will be of service to both Customs and the importing community. Another benefit to importers is that required documentation will be reduced. Only one copy of the entry document and summary is necessary. If the importer chooses to submit his entry and summary at the time of examination and release of the merchandise, he has fulfilled all of his entry requirements and needs only to make his weekly payment the next Tuesday for all transactions occurring during the week. The entry procedure can become a one-step process for the importer. Dealing directly with the station office makes entry simpler for importers and provides for better document control by Customs.

The fact that importers may wait until Tuesday of the following week to submit a payment for all of their transactions made during the week will be an additional advantage to them in two ways. It will eliminate the need for a payment to be submitted and processed with each transaction and will in some instances allow them additional time for use of the money.

The weekly payment procedure will benefit the Government generally by providing a cash flow that will be predictable and susceptible to regulation. Cash flow into the Treasury will not be impacted by changing to a weekly deposit system because many of the delays inherent to the current system will be eliminated. In fact a cash flow analysis indicates that there will even be a speed-up in cash flowing into the Treasury, the change however, is not considered significant and is therefore not included here.

Additional intangible benefits from the system will be felt by other agencies such as Census, Food and Drug, the Alcohol, Tobacco and Firearms Commission. and generally anyone who carries on business with the Customs Service by improving our operational effectiveness and efficiency. Some of the more obvious benefits for other agencies have been quantified, however, many benefits such as those resulting from better enforcement of laws for which other agencies are responsible, more timely and accurate statistics and information, etc. are not included.

Automated broker interface will also result in a significant savings to brokers and importers since they can avoid manual preparation of their entries and much of the routine account recordkeeping that they must do today. No savings is included herein for this but indications are that it will save them between 3 and 5 times the cost of the equipment and operators.

ESTIMATED FISCAL YEAR 1981 COSTS

Item	Man-years	Amount
1. Terminals operators	424	$4, 538, 072
2. Computer maintenance		215, 000
3. Concentrator maintenance		134, 000
4. Terminals equipment (lease and maintenance)		1, 165, 004
5. Communications lines (domestic)		257, 000
6. Communications lines (international)		178, 850
7. ADP facilities		350, 000
8. Headquarters personnel	135	1, 430, 000
9. Administrative overhead		550, 000
10. ADP other (supplies keypunch support, contracts, site upgrading, etc)		844, 000
11. Manifest clerks	97	1, 161, 000
12. Station office clerks		5, 256, 040
13. Acccunting center	19	195, 000
14. Liquidation verification	12	159, 000
15. Additional travel by import specialist		507, 000
16. Computer costs—local manifest processing		250, 000
17. Miscellaneous		84, 000
Total		20, 273, 966

Note: Number of terminal operators is less than number of terminals. This results from 2 factors. First, teller terminals will be operated by existing staff. Second, some terminals will be operated from broker offices.

BENEFITS TO CUSTOMS IN FISCAL YEAR 1981 ITEMIZED

	Man-years	Amount
1. Reduction in import specialist man-years (resulting from automated entry selection; rate 60 percent)	277	$7,287,593
2. Reduction in import specialist man-years (resulting from eliminating preentry review)	93	2,972,917
3. Reduction in entry control man-years (resulting from elimination of preentry review)	386	5,083,620
4. Reduction in import specialist man-years (resulting from elimination of manual duty extension)	132	3,472,788
5. Reduction in entry control man-years (resulting from less paper handling)	84	1,106,280
6. Reduction in the number of cashier/teller positions. (Note: after staffing teller terminals)	225	4,188,150
7. Reduction in the number of liquidator positions	155	2,800,385
8. Reduction in the number of regional financial management officer positions	70	1,176,490
9. Reduction in the number of inspector man-years required to clear manifests	349	6,543,052
10. Replace automated accounting system (computer, personnel, keypunch and miscellaneous, and supplies)		1,633,161
11. Replace quota system (hardware and personnel)		164,195
12. Additional revenue and penalties (increased fraud referrals)		3,700,000
13. Replace Maiden (computer, terminals, and operators)		960,000
14. Reduction in clerical man-hours required to keep manufacturing and value records	126	1,659,479
15. Replace Retide (equipment and supplies and personnel)	49	1,078,723
16. Additional duty (better control resulting in fewer refunds)		4,100,000
17. Eliminate CF-5101 processing		365,840
18. Eliminate Burrough's validating machines		115,500
19. Eliminate programma 101 machines		26,189
20. Eliminate cashier bonding		9,058
21. Reduction in clerical man-years required to resolve CEL and BCA errors	72	1,028,143
22. Reduction in number of forms required		228,024
23. Census import statistics		8,742
24. Locating entries	71	913,680
25. Replace current in-bond system		339,732
26. Reduction in man-years spent gathering statistics for studies		139,000
27. Reduction in man-years due to optimization of manpower assignment/reduction in overtime, etc		172,000
28. Reduction in man-years spent due to decisionmaking errors by management (i.e., availability of information)		26,040
29. Additional duty (liquidation verification and invoice to entry verification. Also increased duty from automated duty calculations)		4,640,000

Benefits to importing public itemized—Fiscal Year 1981

Item:	*Value of benefit in dollars (not discounted)*
1. Elimination of CF 5101 entry record:	
a. Cost of forms at $10 × 1,000	40,000
b. Processing of forms at .47 each	1,963,440
2. Monthly billing:	
a. Accounting procedures simplification	4,367,865
b. Preparation of checks (number of checks reduced)	2,183,933
c. Penalties—number reduced/research time reduced	96,000
d. Reduction in the time spent on change entries	1,900,000
e. Reduction in manpower due to liquidation procedures simplification	2,010,000
f. Protest and appeals reduced (legal costs reduced)	740,000
3. Processing time reduced for ID's (6,400,000 × 25)	1,600,000
4. Manpower savings due to reduction in number of rejected entries (415,000 less rejects × $10 percent reject)	4,150,000
5. Reduction in fees for bonds and in-bond entry preparation	600,000
6. Rewarehouse savings (quota merchandise)	130,000
Total savings	19,781,238

BENEFITS TO OTHER GOVERNMENT AGENCIES

Fiscal years	Census	Food and Drug	Agriculture	Public Health	ERDA	Interior	Other
1975	0	0	0	0	0	0	0
1976	0	0	0	0	0	0	0
1977	$289,999	0	0	0	0	0	0
1978	580,487	0	$15,000	0	$5,000	$7,700	0
1979	783,100	0	33,100	0	7,500	13,500	0
1980	952,850	$40,000	34,424	$18,000	8,000	24,833	$35,000
1981	1,050,000	50,000	36,145	18,000	8,100	26,075	45,000
1982	1,100,000	52,000	37,952	18,000	8,505	27,378	45,000
1983	1,153,000	54,000	39,850	18,000	8,930	28,747	45,000
1984	1,208,000	56,000	41,843	18,000	9,377	30,184	45,000
1985	1,265,000	58,000	43,935	18,000	9,846	31,694	45,000
1986	1,326,000	60,000	46,131	18,000	10,338	33,279	45,000

Computer configuration and estimated cost

	Purchase
CPU (dual processor)	$3,092,000
Byte multiplex channel	32,000
Block multiplex channel	42,000
Core	470,000
Miscellaneous features	54,000
Front end (dual)	250,000
Tape Controller and Drives (12)	415,000
Disk and drive	840.000
Low speed peripherals	70,000
Technical control modems	85,000
Printer	92,000
Software	400,000
Concentrators	690,000
Total cost	$6,532,000

COMPARISON OF COST ESTIMATES IN ORIGINAL CUSTOMS CONCEPT COST BENEFIT AND CURRENT (APRIL 1977 ESTIMATE)

[In thousands of dollars]

	Estimated in cost benefit	Actual or current estimate	Change
1975	7,579	[1] 5,483	−2,096
1976	13,105	[1] 7,450	−5,655
1977	15,664	7,840	−7,824
1978	18,247	9,409	−8,838
1979	22,591	[2] 18,630	−3,961
1980	22,630	17,290	−5,340
1981	23,512	20,274	−3,238
1982	24,520	20,696	−3,824
1983	25,581	21,061	−4,520
1984	26,709	21,785	−4,924
1985	27,872	22,167	−5,705
1986	29,142	22,534	−6,608
Total	257,152	194,619	−62,533

[1] Actual.
[2] Includes funds to purchase computer.

Note: Cost benefit revised April 1977.

COMPARISON OF BENEFITS—ORIGINAL COST BENEFIT TO CURRENT

[In thousands of dollars]

Fiscal years	Original estimate	Current estimate
I. Customs only:		
1975	1,062	1,615
1976	4,194	3,590
1977	6,928	4,853
1978	14,147	8,840
1979	21,590	13,761
1980	29,791	27,206
1981	36,950	56,939
1982	38,877	59,786
1983	40,911	62,775
1984	43,056	65,914
1985	45,317	69,210
1986	47,620	72,670
Total	330,443	447,159
II. Customs, other agencies and the importing public:		
1975	1,062	1,765
1976	4,297	3,900
1977	7,461	6,808
1978	15,806	14,487
1979	25,270	20,335
1980	33,904	41,121
1981	56,304	77,953
1982	59,316	81,845
1983	62,483	85,932
1984	65,683	90,221
1985	69,189	94,726
1986	72,325	99,454
Total	473,100	618,547

Note: Cost benefit revised April 1977.

Question

2. This Committee, Congress, the Executive branch and private industry need up-to-date and accurate trade statistics. How would the timeliness and reliability of trade statistics be affected by the entry procedures which will be adopted under the bill. Would the new automated entry system contemplated bypass in whole or in part the Import Specialist who is now responsible for the appraisement, classification, and statistical verification of imports? If so, what steps will be taken to minimize the effect of such a computer by-pass on the accuracy of statistical reporting? In answering this question, please compare the present statistic-gathering process with the process under the bill's provisions, showing what pieces of information will be gathered at what point of time by whom under both processes, and describing how the statistics are now and will be verified.

Answer

AMPS will improve the validity of trade statistics through edit criteria established by Census and built into the system. It will also insure that the data provided coincides with the appropriate month—not now possible because of reporting delays in the present system. In addition, it will reduce the transmittal time to Census particularly because the data provided will be machine-readable saving Census the time and manpower to keypunch the information.

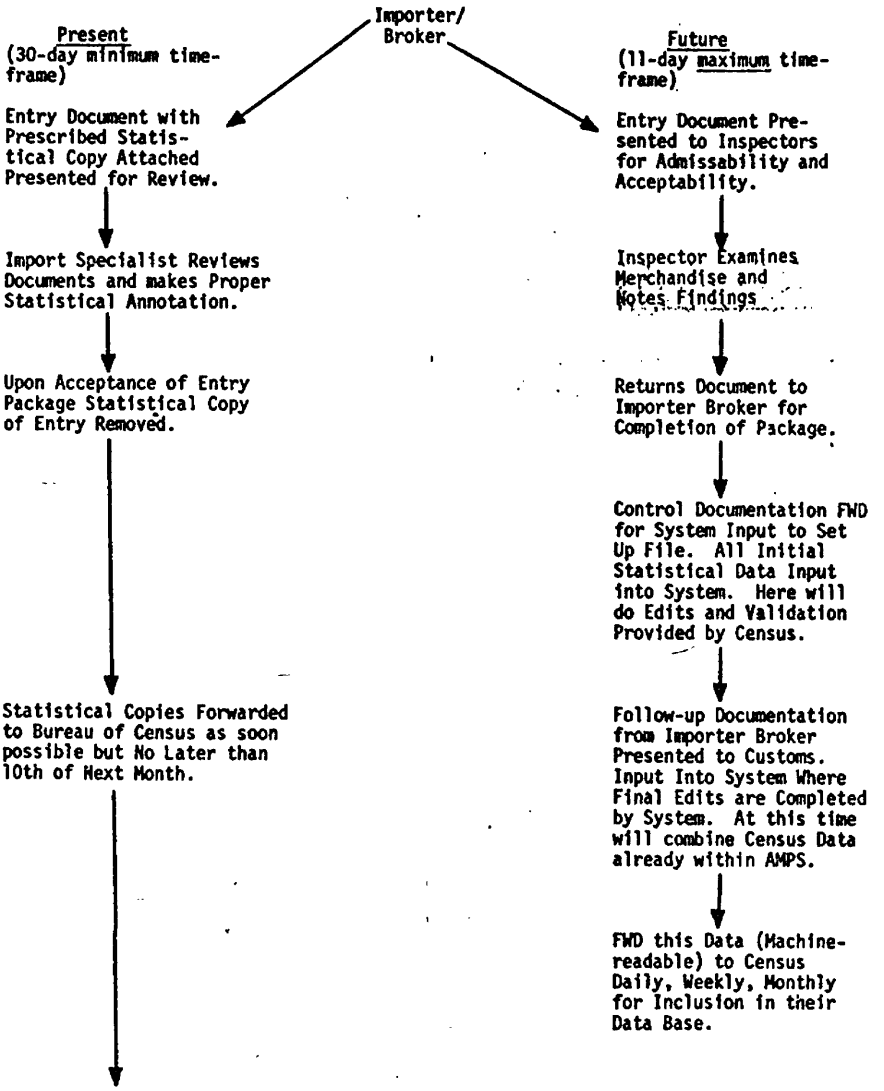
Since the Import Specialist will completely control the criteria AMPS utilizes to identify routine entries for bypass, he has, in effect, established and verified appraisement, classification and statistical verification of those entries. To insure that no significant changes in routine entries would endanger the revenue. Import Specialists will still receive randomly selected bypass entries and weekly transaction summaries from the system. The bypass operation, therefore, frees the Import Specialist to consider the more complex or controversial classification and value issues.

In addition to the methods described above Customs will provide more definitive examination instructions to Customs officers, insuring proper descriptive examination. We will also insure Servicewide uniformity of examinations. This standardization will provide the Import Specialist, the system, and eventually the Census Bureau with more accurate import statistics. The new procedure also provides on-line availability of quota information to the Import Specialist and the Inspector so that these very sensitive commodities can be clearly identified. Finally, the system's centralized data base will greatly enhance Customs capability to collect and analyze import trade statistics.

The attached chart compares present and planned procedures (Attachment C).

ATTACHMENT C

STATISTICAL REPORTING



Present	Future
Statistical Copies Received Bureau of Census Forwarding to Census Data Base. Where Initial Editing is Performed.	
↓	
Data (Hard Copy) Transmitted to Main Census Bureau Operations for Further Processing and Editing.	
↓	
Statistical Reports Completed Showing Approximately 85% of Months Transactions within 60 Days of Submission.	

Question

3. Without regard to this bill, the impression of the Committee is that the reliability of trade statistics is questionable in many instances. For example, the International Trade Commission has found that little or no attention has been given by Customs to the proper valuation of imported articles which are either free of duty or subject to specific rates of duty. What, if any, measures is the Custom Service taking to improve statistical reliability? Please respond to the recommendations made by the Commission in its report to the committee on customs procedures with respect to the collection and verification of import statistics (ITC investigation No. 332–83).

Answer

With regard to the measures being taken to improve statistical reliability, we are attaching our letter to you, dated January 31, 1978, which covers our current program quite extensively.

As noted in that letter, a formal response has not yet been made to the ITC recommendations, since we are awaiting a supplemental report on the accuracy of import data. Nevertheless, we have reviewed the recommendations, and the following is our initial reaction to them.

(1) *ITC.*—Prior to the arrival of an initial shipment of merchandise, an extensive importer/customs import specialist interview should be required to obtain classification and value information for statistical as well as duty purposes, as a condition to granting blanket immediate delivery privileges.

Customs.—To a large extent we are of the opinion that this recommendation can effectively be accomplished within existing procedures under which District Directors presently grant approvals for immediate delivery privileges for new importers on initial shipments. A somewhat different situation obtains with respect to existing importers who have immediate delivery privileges but import new products, and those new importers who enter their initial shipments under the immediate delivery privilege of the customhouse brokers. In the latter instances, however, we believe that the intent of the recommendation can be substantially met through an information program whereby importers and brokers alike can avail themselves of prearrival advice on statistical data as well as other aspects of the Customs processing of importations.

(2) *ITC.*—In response to requests for information or rulings concerning the classification of merchandise, Customs Headquarters should provide such information on the five- and seven-digit basis, thereby advising interested parties of not only the tariff, but also the statistical classification.

Customs.—We will undertake to implement this recommendation; however, the procedures required to do so will require some further study. It should also be understood that under some circumstances the information provided to importers may be sufficient for tariff classification determinations (five-digit) but insufficient for statistical (seven-digit) purposes. Even in these instances the

possible statistical alternatives will be set forth in such detail as to allow the importer to make a reasonably accurate presentation at the time of entry.

(3) *ITC.*—Since commercial invoices frequently lack sufficient information to enable Customs officers to classify imported merchandise accurately, importers should be encouraged to instruct their foreign shippers to prepare invoices with as much information as necessary to permit proper classification and, although it is not required, to prepare invoices in English.

Customs.—The United States Customs Service has traditionally supported the practice envisioned by this recommendation. To this end in a very related area we have been involved in the work of the United Nations Economic Commission for Europe (ECE) in the alignment of the commercial invoice to the ECE Layout Key and the development by the National Committee on International Trade Documentation of the U.S. Standard Master which is also applicable to commercial invoices. In fact, the special Customs invoice, Customs Form 5515, has been officially aligned with the latter, while information instructions are being issued with respect to the former.

(4) *ITC.*—Customs should not accept an entry with either statistical errors or the absence of sufficient information necessary for verification regardless of the possibility that the importer may not meet the deadline for filing of the entry.

Customs.—The proposed amendment to the Customs Regulations noted in our January 31 letter regarding the rejection of entries for statistical purposes, will satisfy this recommendation.

(5) *ITC.*—It is recommended that the Customs Service make increased use of available resources to carry out the verification programs—

(a) By requiring reports to the Customs Information Exchange to contain all the statistical information, including the seven-digit *TSUSA* classification number;

(b) By making greater use of the Customs Laboratory facilities in determining statistical classification;

(c) By expanding the current Statistical Circular program to provide a classification guide for all complex annotation schemes;

(d) By expanding the current program for conducting commodity seminars for Import Specialists to include special statistical seminars which emphasize the importance of import statistics; and

(e) By requiring all Customs ports to adopt a policy similar to that in effect at the Port of New York for auditing or surveying the performance of import specialists whereby selected statistical copies are verified before being sent to Census, rather than simply checking those documents which are rejected by Census.

Customs.—The initial reaction to each of these recommendations is positive and they can be adopted with little disruption to existing procedures.

(6) *ITC.*—It is recommended that the development and implementation of automated processing techniques be carefully reviewed in terms of their impact on statistical accuracy and on the needs of other governmental agencies.

Customs.—The development and implementation of our automated processing techniques are being constantly reviewed, with full consideration of their impact on statistical accuracy. For example, the entry-by-entry expertise of our import specialists is being built into our routine review program under the Early Implementation Systems (EIS) of the Automated Merchandise Processing Systems (AMPS). This will be fully incorporated in the total Customs Concept. We are presently working with the Bureau of the Census on the direct transmission of statistical data from our EIS ports in the very near future.

(7) *ITC.*—Customs, during the process of liquidation, should undertake to correct entries to reflect statistical changes not just duty changes, and Census should undertake to correct annual published data to reflect final Customs decisions.

Customs.—The United States Customs Service has no objection to this recommendation but believes that the final decision must necessarily rest with the Bureau of the Census. For example, if a classification decision (and thus the statistical data) of the United States Customs Service was changed three years after the date of importation by a decision of the Customs Court, would this be of significance to warrant the retroactive correction of census reports? It is our understanding that the Bureau of the Census will be responding to this recommendation as well as to recommendation 8 wherein the Commission recommends a review be undertaken of the Census edit criteria under the auspices of the 484(e) Committee.

Question

4. Regarding the recordkeeping requirements that would be established under section 105, what precisely is your understanding of the meaning of subsection (c)(1), "the terms and conditions of the importation are controlled by the person placing the order"? In what circumstances does the Customs Service anticipate it will require records to be kept which are not now kept? Will the Service require records to be kept in a specific form?

Answer

In a domestic transaction between an importer and a person ordering merchandise from him, the terms and conditions of the importation could be controlled either by the person actually making the importation or by the person placing the order with the importer. If the importer were acting as an independent contractor in the purchase of merchandise overseas for sale in the United States, such importer would, of course, set the terms and conditions of the importation and the person placing the order with the importer would be concerned only with the terms of the domestic transaction. However, if the importer were acting as an agent for the person ordering the merchandise, as for example a commission merchant who would buy goods overseas on a commission basis and would have the goods delivered to a principal, the person placing the order would in all probability set the terms and conditions of the importation. In the latter instance the principal, i.e., the person placing the order, would be exempt from the recordkeeping requirement of section 508.

We do not anticipate requiring any additional records to be kept other than those already cited under proposed section 508, nor would we require records to be kept in a specific form other than the form a normal prudent businessman would maintain in his business.

Question

5. What is the reason for providing two standards of value with respect to the bases for the penalties provided for gross and simple negligence violations, i.e., domestic value and dutiable value in proposed section 592(d)? Why should the maximum civil penalty for fraud under the customs laws be larger than the maximum civil penalty under internal revenue laws, i.e., section 6653(b) of the Internal Revenue Code of 1954?

Answer

(a) There is no apparent reason why two standards of value are provided. The Customs Service would prefer that only one basis of value be provided for all monetary penalties under section 592. Domestic value, which is easily ascertainable (see pages 15 and 16 of the Committee on Ways and Means Report), is preferable inasmuch as almost all other Customs penalty statutes utilize domestic value, although dutiable value would be acceptable.

(b) At first blush, the maximum civil penalty for fraud under the Customs laws, both present and proposed, appears to be substantially more harsh than the maximum civil fraud penalty under the Internal Revenue laws (26 U.S.C. 6653 (b)). In actual transaction terms, however, the Customs fraud penalty is comparable in impact and purpose to the Internal Revenue Service provision.

In an Internal Revenue fraud situation, the penalty is equal to 50 percent of the underpayment of tax. In the case of income tax fraud, the underpayment of taxes historically involves either a corporate taxpayer, whose violation deprives the Government of revenues at a rate of *48 percent* of the underlying taxable *income*, or a high bracket individual taxpayer whose tax bracket may well be in excess of 48 percent (low bracket individuals are rarely involved in income tax fraud cases). In addition, at the final termination of a civil fraud case by the Internal Revenue Service, *interest* is also collected on the tax underpayment at the rate of approximately 7 percent per year (currently), and such cases generally are terminated 3 years or more following the date on which the underpayment of tax was due. This would add a dollar cost of 21 percent or more to the penalty cost of the underpaid taxes. The cost to a fraudulent taxpayer, in penalty and interest, of fraud in connection with gift tax and other tax underpayments generally runs at the same level. Thus, for the taxpayer generally subject to fraud violations, *the combined dollar cost*, in penalty and interest, will be approximately one-half the unreported income (or fictitious deduction, or spurious gift, etc.).

In the case of Customs fraud, the "tax bracket" applied to the "underpayment" generally corresponds to the rate of duty applied to the undervaluation of a

shipment or group of shipments. Average duty rates currently run at 7 *percent or less* for all merchandise imported into the United States. In these circumstances, a penalty equal to as much as 8 times the "underpayment" (the usual mitigated fraud penalty when there is no criminal violation or other aggravating factor involved, bearing in mind that proposed section 592(d) provides for assessment of an amount equal to the full value of the merchandise only as a *maximum*) would impose a burden of no more than 56 percent of the unreported value. This penalty is frequently collected as much as 6 or 7 years following the date of entry of the merchandise (when the proper duty payment was due), *without any liability for the payment of interest.* Thus, *as a percentage of unreported value,* its actual cost closely approximates the combined interest and penalties that a corporation or high bracket individual taxpayer would pay *as a percentage of the unreported income* (or unreported gift, etc.) that results in a fraudulent tax underpayment.

If the Customs penalty were limited to a percentage, such as 50 percent, of the revenue loss itself, an importer would merely be encouraged to "borrow" government funds at a maximum risk of 50 percent of that average 7 percent duty rate, with no other interest cost, and Customs fraud penalties would become an attractive businessman's risk rather than a meaningful deterrent to fraud.

Question

6. What is your understanding of the phrases "without knowledge of" and "formal investigation" in proposed section 592(f)? Is the phrase "without knowledge of" limited by a concept of constructive knowledge?

Answer

Under section 171.1 of the Customs Regulations, a voluntary disclosure procedure has been established and is administered by the Customs Service. Under this provision, if information with respect to a possible violation of Customs law is disclosed to the Customs Service before an investigation is "initiated", that disclosure is treated as voluntary in nature, and the ultimate liability of the disclosing party is limited in a manner similar to the limitation imposed in this new statutory provision.

The present Customs Regulations set forth explicit, objective criteria to be used in order to establish when an investigation is "initiated", in relation to the date of disclosure. The Customs Service anticipates that it would use the same criteria to determine the "commencement of a formal investigation" within the meaning of new section 592(f). A copy of these criteria, as set forth specifically in section 171.1(a)(1) of the Customs Regulations, is attached.

The present objective test for ascertaining the relationship between the date of disclosure and the date of commencement of an investigation superseded an earlier test which, like new section 592(f), permitted the designation of a disclosure as "voluntary" if it occurred "without knowledge of" an ongoing investigation. This subjective test, which requires the ascertainment of the state of mind and knowledge of the disclosing party, was almost impossible to administer, other than by reference to the relationship between the date of disclosure and the date of initiation of the investigation. In effect, the disclosing party was required to establish his lack of knowledge, either actual or constructive, of any investigation initiated prior to the date of disclosure.

New section 592(f) revives this subjective test, as an alternative to the objective test, and retains the burden on a party who makes a disclosure after an investigation has begun to show that he lacked knowledge of an ongoing investigation. If an individual can in fact establish an absence of actual knowledge of an investigation, we would assume that a "reasonable man test" would not be used to attribute to him the knowledge that he should reasonably have had in his position or circumstances. However, where a corporate or other artificial business entity is under investigation, Customs will take the position that actual knowledge of an investigation by any officer or employee of that business entity can properly be attributed to the entity itself as "constructive knowledge".

Question

7. Section 113 would require Customs to publish or make available to the public rulings on prospective import transactions. How many rulings have been published under the existing regulations? Would the bill's provisions apply to all written Customs decisions with precedential effect? If not, describe the nature and number of precedential decisions which would not be covered. How much would it cost to make all precedential decisions available to the public? If a rul-

ing covered by section 113 is not published, when, where and in what form will the text of the ruling be available to the public?

Answer

(a) During 1977, the Customs Service published 6 rulings in the Customs Bulletin. An additional 187 rulings were reproduced and distributed to Customs field offices during the same period through the Customs Information Exchange (156) and the Customs Issuance System (31).

(b) The bill's provisions apply only to written Customs decisions with precedential effect which relate to prospective Customs transactions. However, two categories of decisions issued by the Office of Regulations and Rulings do not relate to prospective transactions. Rulings on requests for internal advice relate to ongoing transactions, and protest review decisions relate to completed transactions. The Customs Service, although not required to do so by the bill, intends to publish in the Customs Bulletin or otherwise make available such of these two categories of rulings with precedential effect which relate to prospective transactions. It is estimated that approximately 1,000 precedential rulings on requests for internal advice and protest review decisions are issued annually.

(c) The Customs Service would make available or publish between 8,000 and 10,000 precedential rulings on an annual basis. Approximately 500 of these rulings would be published in the Customs Bulletin. The cost of printing and publishing would be approximately $125,000 per year.

The cost of making the other precedential rulings available to the public would be $78,000 in the first year and then approximately $26,000 per year thereafter. A first year non-recurring cost of $52,000 represents the purchase of microfiche, and 10 reader/printers. The remaining costs are for maintenance contracts, supplies and the salary for one individual to do the microfiche copying. It should be noted that Customs has a microfiche key word index to its recent precedential decisions.

(d) Unpublished rulings would be available within 120 days at each Customs Region's reading room and at Headquarters. The ruling would be on microfiche and could be viewed on a reader. The public would also be able to get a hard copy of the ruling after viewing it. Copies of these rulings would be "sanitized" to comply with the provisions of the Freedom of Information Act, as amended, as implemented by Part 103 of the Customs Regulations (19 CFR Part 103) and the Treasury Department Regulations found in 31 CFR Part 1, and the Privacy Act of 1974.

Question

8. Customs reportedly is working on proposed regulations creating new reporting requirements for customs brokers. Will these regulations accomplish the objective of section 114? Do you believe section 114, or any other amendment of present law, is necessary in light of the regulations?

Answer

Section 114 was not part of the Administration-sponsored bill. It is a revision of section 116 of H.R. 8149, the bill introduced by Mr. Jones of Oklahoma. As we understand the objective, it is essentially to permit the Customs Service to ascertain whether a licensee is still in business, thus keeping its records of active brokers on a more current basis. The proposed regulation will accomplish that objective. If the objective of the provision in the Jones bill is to provide for renewal of licenses after a certain time through a full requalification procedure, and for termination of licenses not renewed, however, the proposed regulation will not accomplish the objective.

We believe the present statutory authority for the regulation is sufficient and no other legislation is necessary.

Question

9. What is the present Customs Service and IRS treatment of the articles by 19 U.S.C. 467, and what is the need for the change in section 202(a)? If the changes in section 202 become law, how will Customs practice change? Would this change affect the practices or authority of the Bureau of Alcohol, Tobacco and Firearms? Would the amendment to section 202(b) permit entry of distilled spirits with no evidence of revenue collection on the container? If so, how will enforcement of the revenue laws be affected?

Answer

Essentially, Customs officers must annotate and affix revenue stamps to containers of distilled spirits, wines and malt beverages upon their release from

Customs custody. This is not only time consuming but also somewhat impractical. In general, 19 U.S.C. 467 continues 19th century practices—requiring warehousing of alcoholic beverages, for example—not realistic today. Section 202 would give the Secretary of the Treasury discretionary authority to update these practices.

Although the provisions of the code were originally under IRS jurisdiction, the Bureau of Alcohol, Tobacco and Firearms now has responsibility for their administration. The Bureau's procedures are detailed at 27 CFR 251.

If the Secretary of the Treasury determines that stamping of bulk alcoholic beverage containers is no longer necessary to protect the revenue, section 202 will provide authority to discontinue the practice. No change in the practices or authority of the Bureau of Alcohol, Tobacco and Firearms wil loccur until such time as a decision is made on the protection of the revenue.

The Office of the Secretary is presently studying the practices and authority of the Bureau of Alcohol, Tobacco and Firearms with regard to collection and protection of the revenue. Should there be a decision that the stamping requirement is unnecessary, this provision will provide the authority for its elimination.

Question

10. What are the practices of the European Communities, Japan, and Canada regarding a personal exemption for returning residents? What would be the approximate annual value of all articles entered under a $250 personal exemption? How does this compare with the value of articles entering under the $100 exemption? What would be the effect of the increase in the personal exemption in the U.S. balance of payments? What are the characteristics of the traveler (e.g. frequency of travel, income, etc.) who would benefit from the increase in the personal exemption? How many individuals, as a percentage of all entering individuals exceed the $100 exemption? What would be the revenue effect of section 203?

Answer

(a) Japan and Canada allow the following exemptions to returning residents:

JAPAN

Duty free.—50 cigars or 200 cigarettes and 250 grams of other tobacco; 3 bottles (760 cl) of alcoholic beverages; 2 ounces of perfume; 2 watches if valued at less than 30,000 yen ($124); other goods with a total value of less than 100,000 yen ($400).

CANADA

If abroad one year or more.—Any goods taken abroad, or any goods acquired abroad and used for 6 months except that no one article may exceed Canadian Dollars $7,500 in value at the time of entry. Alcohol: one 40 oz. bottle. Tobacco: 200 cigarettes and 50 cigars, and 2 pounds of other tobacco.

If abroad less than one year.—

(a) *7 days or more.*—Goods of a value of Canadian $150 and the above noted alcohol and tobacco exemptions. May be used only one time per calendar year (except liquor and tobacco).

(b) *Less than 7 days at least 48 hours.*—Canadian $50 per quarter. If $50 exemption already used then $10.

(c) *Less than 48 hours.* Nothing.

The current European Communities limitations are attached (Attachment E).

(b) There is no simple way that the value for articles below the $100 exemption can be estimated, since all such declarations are exempt from duty, and no statistics are kept. A study conducted in late 1975, however, estimated that of the dutiable declarations that were processed at a major border and airports, roughly 45 percent fall within the $100-250 range. If these declarations had been exempt from duty, 13 percent less duty (approximately $1.4 million annually) would have been collected. This $1.4 million duty translates roughly into $9.3 million in merchandise value.

(c) The U.S. balance of payments for merchandise export/import has varied significantly over the past few years: +$9.3 billion in FY 76, −$23.0 billion for the first three quarters in FY 77. The increase in personal exemption is not expected to change the traveling or purchasing habits of U.S. travelers abroad; current U.S. economic climate, foreign inflation and the decrease in the purchasing power of the dollar that has increased the prices of foreign merchandise, and the decrease in trans-Atlantic air fares, have much more dramatic effect on foreign travel and purchases. No studies have been conducted to estimate the possible change, but if the additional purchases equaled those currently entering

in the $100–$250 range, $9.3 million stated above, it would constitute only 0.1 percent per $10 billion of balance of payment change. This $9.3 million represented only .007 percent of the nearly $150 billion in goods imported into the U.S. in FY 77. In short, a negligible effect on the balance of payments is foreseen.

(d) There are two basic reasons for international travel by American residents: business and pleasure. A recent Gallup survey indicated that within the past twelve months (prior to September 1977) the following distribution occurred:

	Percent
Business trips	21
Pleasure/personal trips	79
Visiting friends or relatives	30
Sightseeing/resort	43
Other	6

Business travelers do more frequent traveling, but seldom exceed the $100 exemption limit in existence now. Extending the limit to $250 will have little effect on this class of traveler. The major impact will be on the pleasure/personal trips. Since there are more middle and lower income people and families now traveling internationally due to the decrease in air fares, the major benefit will be to these groups. Upper income travelers who travel for pleasure will reap some benefits, but in most cases such travelers do not limit their foreign purchases because of the Customs exemption threshold.

(e) Overall, only five percent of all persons entering submit dutiable declarations.

(f) Raising the exemptions should cause Customs to lose only about $1.8 million in revenue.

Question

11. Section 207 would authorize a monetary penalty as an alternative to seizure and forfeiture. Does it make any other changes in present law, and if so, what changes are made and why are the changes needed? Would not a willful violation necessarily include the elements of a knowing violation? Is the term "willfully" necessary?

Answer

It does make other changes. It changes "willfully and knowingly" to "willfully or knowingly" and adds to the violations of failing to report, make entry, and pay duties the specifics of making any false statement in respect of such purchases or repairs and aiding or procuring the making of any false statements as to any material matter without reasonable cause to believe the truth of such statement. This is needed to describe the violations more specifically and to provide an affirmative defense ("reasonable cause") against assessment of the penalty.

While a willful violation would necessarily include the elements of a knowing violation, the converse is not true, since one can know he is performing a certain action without knowing that it is illegal. The term "willfully" is intended to cover actions performed with the intention to violate a legal obligation. The distinction is similar to the difference between gross negligence and intentional fraud.

Question

12. Section 210 provides a "deemed liquidated" provision for entries not liquidated within one year of entry. Will Customs send a notice of liquidation? What would be the cost of requiring such notice by mail?

Answer

The AMPS program will include the entries "deemed liquidated" as part of the importer's monthly statement of liquidated entries. Since this report is automatically issued to the importer, the notification will not incur any additional postage charges.

Question

13. Would the amendment under section 214 of the bill extend liability for violations to individuals not now affected by the forfeiture penalty? If so, why?

Answer

The amendment of 46 U.S.C. 883 would extend liability for violations to individuals who are not now in some way affected by the forfeiture penalty, but it would permit proceeding directly against whoever was responsible for the violation, whereas under present law the person responsible may be only slightly or peripherally affected by the forfeiture, while the person absolutely liable for the present penalty of forfeiture may not in fact be primarily responsible for the violation.

Question

14. During the course of the hearing before the Subcommittee on Thursday, February 2, a number of witnesses proposed amendments to H.R. 8149. Please review the testimony and give your views as to the proposed amendments suggested.

Answer

TESTIMONY OF ROBERT E. HERZSTEIN

In his statement before the Senate Finance Subcommittee on February 2, 1978, as the official representative of the American Bar Association, Mr. Herzstein described certain specific "problems" that he saw in the proposed amendments to section 592 as set forth in H.R. 8149.

First, there are reservations as to whether the Bill adequately achieves the American Bar Association objective that penalties should be reasonable in amount in light of the culpability of the violator and the consequences of the violation. For example, he is concerned that in the case of fraud, a monetary penalty could reach a maximum amount equal to the full value of the merchandise (it should be noted that under existing law, the full value of the merchandise is a mandatory initial penalty, and not a maximum, and must be assessed regardless of whether the violation is due to fraud or negligence). We believe that this maximum fraud penalty, which, under the Bill, could be modified to take mitigating factors into account in individual cases at the time of its initial assessment, must be retained as an effective deterrent to deliberate violations designed to defraud the revenue. The flexibility which can be exercised at the time of original assessment is sufficient to permit the Customs Service to take into account any equities that might justify a lesser initial penalty in the case of a fraudulent violator, and to balance those equities against the overall need to deter intentional violations of Customs law. A detailed comparison of the actual dollar impact of Customs fraud penalties with the actual dollar impact of Internal Revenue Service fraud penalties is submitted separately.

The House Ways and Means Committee deleted a section that would have permitted a violator, at his option, to surrender the merchandise involved in a violation in lieu of payment of a monetary penalty, presumably in instances where some deterioration in the merchandise, or a loss of contract, or other economic event had caused the merchandise to fall in value below the amount of the penalty. It is our understanding that the Ways and Means Committee concluded that under a system providing for monetary penalties only, actual violators should not be permitted to shift their economic costs to the general Treasury where the merchandise involved had so declined in value as to be insufficient to cover the reduced penalties provided in H.R. 8149.

The separately submitted analysis comparing Internal Revenue Service fraud penalties with the Customs fraud penalty, in actual impact, applies as well in evaluating Mr. Herzstein's concern for the burden that he sees in the negligence penalty provided in H.R. 8149. Thus, for a corporate taxpayer in the *48 percent bracket*, or a high bracket individual taxpayer, the Internal Revenue Service penalty of 50 percent of the underpayment of tax may well be equal in dollars to *25 percent of the underlying unreported income* (or improper deduction, etc.). Under the proposed ordinary negligence penalty in H.R. 8149, a penalty of twice the revenue loss, based on *average duty rates of 7 percent*, would mean, for example, a dollar amount equal to *14 percent of an underlying undervaluation* of merchandise that generates the Customs duty loss. This is actually less than the *dollar cost* of the penalty involved in the Internal Revenue example above. It should be noted that in negligent violations that do not involve a revenue loss, H.R. 8149 provides for a penalty of 20 percent of the value of the merchandise, a figure quite comparable to the Internal Revenue dollar impact of its negligence penalty in relation to the underlying tax transaction (assuming corporate or comparable tax brackets).

Finally, Mr. Herzstein expresses concern that section 207 of the Bill, which authorizes a monetary penalty for failure to report and pay duty on vessel repairs,

in lieu of seizure of the vessel, may increase the scope of the penalty by providing that it is applicable to persons who make false statements "without reasonable cause to believe the truth of such statements." This new provision is designed to liberalize the existing penalty provision, by providing for a monetary penalty more closely related to the scope of the violation involved, instead of compelling physical seizure of the vessel in each instance. Moreover, with the requirement that the failure to report and pay duty must be "willful" or "knowing" (knowing being the equivalent of a gross act of negligence, and willful being the equivalent of an intent to defraud the revenue as the objective of the knowing action), the "without reasonable cause" provision acts as an affirmative defense for a violator and thus liberalizes the provision, rather than, as Mr. Herzstein implies, making it more burdensome.

Mr. Herzstein recognizes that proposed new section 592 (b) and (c) would achieve the third objective of the American Bar Association resolution, by providing reasonable informal administrative procedures, including adequate notice and an opportunity to be heard prior to the assessment of a penalty.

Customs statutes traditionally used the phrase "appropriate Customs officers" in order to leave to the administering authority the right to assign specific administrative functions as a matter of efficient, effective management. We believe that the proposed Bill will provide that flexibility. Nothing in its terms would require the same Customs officer who initiates a penalty proceeding to be the deciding officer who makes the final determination.

We cannot agree with Mr. Herzstein that there is any doubt in the language of the Bill that in the course of judicial review, the reviewing judge would lack the ability to determine the specific amount of the penalty to be collected, and to make all necessary decisions that would result in the fixing of that amount, including its appropriateness in view of the culpability of the violator. Proposed new section 592(g) clearly authorizes the district court to consider all issues, "including the amount of the penalty", de novo.

We take issue with Mr. Herzstein's suggestion that in a case involving negligence, the government should have the full burden of proof to establish not only the act or omission constituting the violation, but the negligence of the person, as well. The formulation of the burden of proof proposed in H.R. 8149 in the case of negligence is parallel to the burden which must be borne by a taxpayer subject to a negligence penalty that is contested in the U.S. Tax Court. As we have indicated above, we do not accept Mr. Herzstein's argument that the penalty for negligence under the Customs provision, in its *actual impact*, is so much more severe than the dollar impact of the Internal Revenue negligence penalty that a shift in the burden of proof to the government with respect to the negligence of the violator is justified.

We have some problem in finding the logic behind Mr. Herzstein's final concern that the Bill places no obligation on the government to proceed to court "promptly". It would appear that the inability of the government to collect an assessed penalty without a court judgment, when a violator refuses to comply voluntarily with an administrative determination; the inability of the government to collect interest on penalty payments, whether the penalties themselves are paid voluntarily or collected after court proceedings; and the new statute of limitations provisions which require the government to initiate court action within 5 years of a negligent violation, rather than within 5 years of the date of its discovery, would all combine to provide more than enough government motivation "to proceed to court promptly".

In his closing remarks, Mr. Herzstein endorses section 115 of the Bill, which deals with rulings publication or other availability. He notes that the specific wording of the Bill would limit its scope to rulings with respect to prospective actions, and suggests that important interpretations of law that are made by the Customs Service with respect to ongoing transactions would also contribute to the objective of section 115 if they were made available to the public.

Regardless of the enactment of H.R. 8149, the Customs Service is now establishing procedures and seeking additional resources for a rulings dissemination program that would make available to the public, in the interest of predictability and uniformity in the administration of the Customs laws, all precedential "internal advice" interpretations provided to Customs field officers in connection with ongoing transactions that may be in dispute, and all protest review decisions rendered at headquarters which establish precedential interpretations of Customs law. We concur with Mr. Herzstein that the maximum dissemination of knowledge regarding the interpretations made by the Customs Service of the laws that it administers will minimize delays in the Customs process and will contribute to more economical and effective Customs administration.

TESTIMONY OF J. J. GREENE

Speaking on behalf of the Foreign Shipowners Association of the Pacific Coast and the Pacific Merchant Shipping Association, Mr. J. J. Greene recommended requiring a notice and hearing procedure for cases arising under section 584 of the Tariff Act of 1930 similar to that which will be required in 592 cases if section 111 of H.R. 8149 is enacted. However, the considerations which gave rise to the desirability of the "pre-penalty" notice procedure in section 592 cases are not present in penalty cases initiated under section 584. The pre-penalty procedure under section 592 was designed to provide full consideration of arguments as to why a penalty should be imposed in cases in which the huge initial penalties assessed under existing law created contingent liabilities on balance sheets of major corporations which affect credit ratings, jeopardize stock values or otherwise inflict economic punishment that was never intended or justified under 19 U.S.C. 1592, in addition to the penalty itself.

H.R. 8149 recognizes that the extension of the pre-penalty notice and hearing process to the total number of 592 cases, regardless of dollar amount, would create resource drains and burdens at the field level which would not be absorbed and which could not generally be justified by the same economic concerns that were involved in the large penalty cases. For that reason, noncommercial cases and cases involving $1,000 or less are excluded from the pre-penalty notice and hearing procedures in the proposed amendment to section 592. Additionally, in the smaller as well as the larger cases the opportunity for mitigation of the initial penalty, and the opportunity to make specific oral and written presentations in connection with the petition for relief under 19 U.S.C. 1618 is available in all section 592 cases, as well as in section 584 cases, regardless of amount.

In addition, it should be noted that approximately 1,500 to 2,000 section 584 penalties are issued each year, 75 percent of which are for amounts under $500.

Mr. Greene also suggests that a definition of clerical error be added to section 584 of the Tariff Act. However, Treasury Decision 75-299, dated November 24, 1975, (40 F.R. 55837) amended section 4.12(a)(5), Customs Regulations to define the term "clerical error or other mistake" as used in section 584 of the Tariff Act of 1930 (19 U.S.C. 1584). The term is defined as a non-negligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of manifests. However, repeated similar manifest discrepancies by the same parties may be deemed the result of negligence and not clerical error or other mistake. Therefore, it would seem that a statutory definition is not necessary.

Finally, Mr. Greene would like to see an Amendment to section 431 of the Tariff Act of 1930 to better delineate the quantity-reporting responsibilities of the master.

Other legislation under consideration in the Treasury Department, the "Customs Entry and Clearance Act," would repeal a number of Customs administrative provisions, including section 31 of the Tariff Act of 1930, and authorize the Secretary of the Treasury to "prescribe regulations to govern the arrival, entry, clearance, and related movements of vessels and vehicles: and to prescribe the form and content of such documents as may be required in the administration of" those regulations. Inasmuch as repeal of section 431 is contemplated, it would appear more appropriate to consider Mr. Greene's concern in connection with this legislation.

TESTIMONY OF THE NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF AMERICA, INC AND THE JOHN F. KENNEDY AIRPORT CUSTOMS BROKERS ASSOCIATION, INC.

Representatives of both groups appeared to urge deletion of section 114 of H.R. 8149, which would require customhouse brokers to renew their licenses every three years. In the alternative, they suggest that brokers merely be required to submit periodic reports of continuing activity to the Customs Service.

We would have no objection to the deletion of section 114 from the proposed legislation. The whole issue of regulation of customs brokers is under active study within Customs, with consideration being given, among other things, to possible deregulation of brokers' activities. Accordingly, it may be premature to create any new statutory requirements in this area at the present time.

TESTIMONY OF THE JOINT INDUSTRY WORKING GROUP

The Joint Industry Working Group concurs in the recommendation made by the customs brokers that section 114 be deleted and replaced by a periodic reporting requirement. As noted above, we have no objection to deletion of section 114.

With regard to section 111, the Joint Industry Working Group makes reference to a present provision of the Customs regulations, 19 CFR 171.1(a)(2). Under that provision, additional non-intentional violations disclosed in the course of investigation of a voluntary disclosure are treated as having been disclosed voluntarily. The Group recommends that this provision be included in the law, but notes that it is under the impression that the Customs Service will continue to follow that practice regardless. It should be pointed out, however, that the House Ways and Means Committee specifically precluded continuation of that policy in its report on the proposed legislation (Report No. 95–621, Sept. 23, 1977, p. 17).

Finally, the Group recommends that the Customs Service be required to continue providing courtesy notices of liquidation until the AMPS system is fully implemented, and that the final sentence of section 504(a), as set forth in section 210 of H.R. 8149 be deleted. We have no objection to continuing to provide importers with courtesy notices of liquidation until AMPS is completely operational. We would object, however, to deletion of the final sentence of section 504(a). That provision deals with the bulletin notices provided for at 19 CFR 159.9, which will become superfluous when AMPS is installed and generating periodic statements which will include notice of all liquidations in a timely manner.

TESTIMONY OF DONALD S. DAWSON

Mr. Dawson, representing the legislature of the Virgin Islands, suggested that the U.S. Generalized System of Preferences (GSP) be applied to the Virgin Islands on the basis that the GSP is available to many Caribbean and South American countries that are in direct competition with the Virgin Islands for the tourist trade. The present treatment accorded to items entering the United States which are the growth, product or manufacture of the Virgin Islands is preferable to that accorded under the GSP. Such merchandise is permitted to enter the United States duty-free. Mr. Dawson's suggestion would thus not appear to be beneficial to the Virgin Islands.

TESTIMONY OF DAVID HARRAR

Speaking on behalf of the Photo Marketing Association International, Mr. Harrar opposed any increase in the personal exemption. He felt that such action would be harmful to photographic retailers who rely heavily for their profits on the sale of imported photographic equipment.

The increase in the personal exemption is essential to speed the processing of passengers into the United States and to compensate for the impact of inflation on the dollar. The increase remains sufficiently low so as not to injure domestic industries or businesses, and our support for the increase is unchanged.

15. A number of the provisions of H.R. 8149 as it passed the House would have a cost and/or revenue effect. Please submit cost and/or revenue estimates on each of the provisions of H.R. 8149, detailing the basis of calculation.

TITLE I

A. With regard to sections 102–104 and 109 of the bill, which would authorize the new entry procedures along with the implementation of AMPS, a cost benefit analysis is attached (Attachment B, Question No. 1).

The enactment of sections 105–108, the recordkeeping provisions, is not expected to result in increased costs. However, the improved availability of and access to importer records will enable the regulatory audit staff to increase its productivity return from $145,000 per man year to $170,000 by virtue of the ability to perform more thorough audits in less time. Entirely apart from the Customs procedural reform bill, the field audit staff will be augmented by an additional 200 employees over the next few years; the increased personnel costs will not be attributable to H.R. 8149. However, improved productivity in conjunction with the expanded work force will produce an estimated annual increase of $7.5 million in penalties and collections.

Section 110 simply expands the range of potential violators and will have minimal cost or revenue impact.

Inasmuch as section 111 of the bill would to a great extent merely codify present administrative practice, any changes in cost or revenue would be minimal.

Section 112 would increase the ceiling for summary forfeiture actions from $2,500 to $10,000. Of the 300 vehicles judicially forfeited during FY 1976, nearly all would have fallen within the proposed new $10,000 limit and thus could have been disposed of without pursuing the costly and time-consuming judicial process.

Summary forfeiture up to $10,000 in addition to reducing time and paperwork associated with judicial forfeiture, will also result in decreased storage costs in the estimated amount of $100,000 per year on 300 vehicles. In addition, the speedier procedure will lead to less depreciation of seized vehicles while in Customs custody. If an average depreciation savings of $500 per vehicle were to be assumed, an additional saving of $150,000 annually would accrue to the Government in the form of increased sales receipts.

The cost/revenue impact of section 113 has been addressed in our response to question 7(c).

The customs broker licensing renewal provision set forth in section 114 is expected to have negligible cost or revenue impact.

TITLE II

Section 202 may lead to reduced processing time for certain shipments of alcoholic beverages, but the overall cost/revenue impact will be minimal.

The only revenue impact resulting from section 203 is in the increased personal exemption. The major impact of this provision will be at the airports where dutiable declarations comprise upwards of 10 percent of all declarations. At the border ports, significantly less than 1 percent of all crossings result in duty. A 1975 study estimated that roughly 45 percent of all dutiable declarations fell within the $100–$250 limit—for which no duty would have been collected had the provision been in effect then. The amount of duty represented in this interval was $1.4 million which, if this provision were enacted, would be retained by the traveling public. The resources required to obtain this duty were estimated at 3.5 man-years—spread out, of course, over dozens of ports of entry.

The major benefit is seen to be in the time savings to the traveler. There would be roughly 50 percent fewer dutiable passengers at airports to process, which can save up to 3.5 minutes per passenger. This time savings is not just to the individual passenger benefiting from the increased exemption, but to all those waiting behind him in line. This can result in total passenger time savings of over 7 percent. When the effects of this provision are combined with that of section 204(a), the 10 percent flat rate of duty, an approximate 9 percent overall reduction in total airport passenger Customs waiting time can be realized.

The primary benefit expected to be derived from enactment of section 204, the flat rate of duty provision, is improved service to returning residents at no increased cost to the Government. Over 10 million dutiable declarations were processed during FY 1977, about 2 million at airports, and about 8 million at borderports and seaports. An anticipated 5 percent reduction in passenger processing time per flight should result from more expeditious handling of passenger declarations.

It should be noted that the enactment of section 204 is not expected to affect the amount of duties actually collected, since the 10 percent flat rate on fair value closely approximates an overall average of 15 percent on wholesale costs that is presently being collected.

Section 205 is essentially a housekeeping measure which will have no cost or revenue impact.

Section 206 would increase the amounts of the administrative exemptions established in section 321 of the Tariff Act of 1930. Section 321(a)(1) permits the Customs Service to disregard differences up to $3 between the amount of duty assessed or deposited and the actual amount found to be due. Section 206 would increase this exemption to $10, leading to an estimated saving of over $1 million annually. The latest analysis, performed in 1974, indicates that $1.2 million was expended to collect $192,000 under the $3 ceiling, the figures have remained fairly stable over the last 4 years.

Section 321(a)(2)(A) allows a $10 exemption on bona fide gifts sent from persons in foreign countries to persons in the United States. About 500,000 more parcels, valued between $10 and $25 (the proposed new ceiling), entered the country during FY 1977. The average cost to process these mail entries was $5,

and the average duty collected in the $10–$25 range was $3 per entry, thus, there was a net loss of $2 per package, or $1 million for the year. The increased ceiling will reduce revenue collection by $1.5 million, but will greatly benefit those who wish to mail low-value gifts to the United States.

Section 321(a)(2)(B) permits a $10 exemption for articles accompanying a person not entitled to the present $100 personal exemption. This is generally applicable at border ports of entry where U.S. residents shop in neighboring foreign cities and have utilized the $100 exemption within 30 days. H.R. 8149 would increase the $10 ceiling to $25. Nearly a million dutiable declarations between $10 and $25 were made in FY 1974, costing $3.50 each to process to collect about $2 each in duties. That represents an annual loss of $1.5 million which would no longer occur if the provision were enacted. Reduced duty collections of $2 million would directly benefit those who make use of this exemption.

Section 206 would amend section 321(a)(2)(c) to increase the exemption for "other" cases from $1 to $5. This would apply primarily to merchandise ordered from overseas by U.S. residents. In FY 1977, about 250,000 mail entries were written (at an average processing cost of $3 each) for packages with a net value of $1 to $5, on which the average duty collection was $.60. The result was an overall loss of $750,000. Reduced revenue collections would amount to $150,000 annually.

With regard to each of the subsections to section 206 of H.R. 8149, the savings to Customs would be primarily in the form of increased productivity at no additional cost. The proposed new ceilings have been kept sufficiently low so as not to injure U.S. industry or business.

No cost or revenue impact is expected to result from sections 207 and 208 of the proposed legislation.

Under section 209, the Government would recover about $200,000, the value of forfeited liquor destroyed each year. Furthermore, the unnecessary and expensive transfer of the liquor to GSA for disposition could be avoided, although GSA would still retain their first rights to dispose of seized liquor by donation to a charitable institution or distribution to other Government agencies. Finally, inasmuch as Customs already disposes of unclaimed and abandoned liquor at public auction, adding forfeited liquor to a procedure already established would constitute no greater burden for Customs.

Section 210 would basically require the liquidation of entries within one year from date of entry or withdrawal from warehouse, with extensions available under certain circumstances.

There were approximately 3.6 million consumption entries in FY 77. Of this total 70 percent would be liquidated within one year under current procedures, leaving 1.08 million unliquidated. It is estimated that 50 percent or 540,000 of these unliquidated entries will require extension notices to be written; the remaining 540,000 will be automatically liquidated through this provision.

Workload increases due to the extra paperwork involved in sending out the extension notices will be balanced out by the workload savings in not having to send out liquidation notices (approximately 4 man-years for each). There would be more work involved in the first year as new procedures are implemented and current backlogs reduced, but this transient phase should not last more than one year.

For those entries automatically liquidated under this provision, there is a potential duty loss. Of the approximately 540,000 entries to be automatically liquidated annually, roughly 15 percent or 81,000 will have had errors, which would have resulted in a rate advance or rate decline had they not been automatically liquidated. The current ratio of rate advances to declines is 2 to 1. The average value of duty for a changed entry is $350.00 (for both rate advances and deliveries). This calculates out to a maximum *potential* duty loss of $9.5 million. As Import Specialists become more familiar with the new procedure, this maximum potential loss is expected to decrease somewhat.

Sections 211–214 would result in minimal cost or revenue impact, if any.

Section 215 would repeal a number of archaic, statutorily fixed fees relating to the entry and clearance of vessels and authorize the establishment of new fees more in keeping with the cost to the Government of performing the services. A study conducted in 1975 found that an additional $2.55 million would be collected annually for these reimbursable services, based on then current workload and salaries. The estimated cost to shipowners will be in the neighborhood of $50 for the entry and clearance of a vessel.

No cost or revenue impact will result from section 216.

ATTACHMENT D

SUBPART A—GENERAL PROVISIONS

§ 171.1 SPECIAL PROCEDURES FOR CERTAIN LIABILITIES INCURRED UNDER SECTION 592, TARIFF ACT OF 1930, AS AMENDED

(a) *Voluntary disclosure.* Any voluntary disclosure of violations of Customs laws which may result in a loss of revenue and which would subject either the merchandise involved or its value to forfeiture under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), accompanied by a tender of the loss of revenue, shall be immediately referred by the district director to Headquarters, U.S. Customs Service.

(1) *Mitigation of statutory liability.* If appropriate investigation establishes that no Customs investigation had been initiated with respect to the disclosed information prior to such disclosure, the disclosure shall be treated as voluntary for purposes of this paragraph. For purposes of this subparagraph an investigation is considered to be initiated with respect to disclosed information:

(i) In the case of a referral by an import specialist or other Customs officer of a matter involving the disclosing party and the disclosed information for investigation of a possible violation of 19 U.S.C. 1592, on the date such matter was referred to the Office of Investigations;

(ii) In the case of a referral by an import specialist or other Customs officer of a request for value, classification or other technical investigation, on the date recorded in writing by an investigating agent as the date on which he discovered facts and circumstances which caused him to believe that the possibility of a violation of 19 U.S.C. 1592 existed with respect to the disclosing party and the disclosed information;

(iii) In the case of an investigation prompted by an individual other than a Customs officer with regard to the disclosing party and the disclosed information, on the date recorded on the memorandum of Information Received by the Office of Investigations as the date on which such information was received;

(iv) In the case of an ongoing investigation of a possible violation of 19 U.S.C. 1592 not involving the disclosing party and the information disclosed, on the date recorded in writing by an investigating agent as the date on which he discovered facts and circumstances which caused him to believe that the possibility of a violation of 19 U.S.C. 1592 existed with respect to the disclosing party and the disclosed information;

(v) In the case of a general ongoing investigation of a specific class of goods or industry, on the date recorded by the Office of Investigations as the date on which it determined to direct its investigation specifically to the disclosing party and the disclosed information; and

(vi) In all other cases, on the date recorded in a Report of Investigation as the date on which an investigator was assigned to investigate possible violations of 19 U.S.C. 1592 by the disclosing party with respect to the disclosed information. Although a notice of penalty shall be issued with respect to a disclosed violation, as required by law, it shall, be the established policy of the Customs Service upon the filing of a petition for relief from such penalty, to mitigate the statutory liability to an amount not to exceed one time the total loss of revenue provided the actual loss of revenue is deposited as withheld duties, regardless of whether the disclosed violation was intentional when committed. Further mitigation beyond the foregoing maximum may be justified in individual cases on the basis of relevant circumstances, such as diligence in disclosing a violation following its discovery.

Senator RIBICOFF. Our next witness will be Shirley Kallek.
Miss Kallek?

STATEMENT OF SHIRLEY KALLEK, ASSOCIATE DIRECTOR, BUREAU OF THE CENSUS, U.S. DEPARTMENT OF COMMERCE

Ms. KALLEK. Mr. Chairman, I am pleased to have the opportunity to appear before this committee on behalf of the Department of Commerce to discuss legislation currently under consideration relating to customs procedural reform.

I am accompanied by Mr. Emmanuel Lipscomb, Chief of the Foreign Trade Division of the Bureau of the Census.

After a careful review of the legislation and discussion with officials of the U.S. Customs Service, we believe that adequate safeguards have been established to insure the continued integrity of the statistical system and the Department's ability to monitor imports and to implement its various trade-related programs.

The Bureau of the Census has the responsibility to compile the foreign trade statistics of the United States. The import statistics on kinds and quantities of merchandise are compiled from statistical copies of the import entries filed with the U.S. Customs Service.

The proposed legislation would amend section 484(a) of the Tariff Act of 1930 which presently requires that an entry shall be filed at the customhouse within a specified time period for each importation of merchandise.

The amendment would provide that entries shall be made by filing with the appropriate customs officer such documentation as is necessary to determine the release of the merchandise from customs custody.

Such other documentation as is required to assess duties, collect accurate statistics and to determine whether any other requirement of law is met shall be filed within 10 days at a specified place within the customs collection district.

In addition, the legislation would permit the consignee to defer, for as much as 30 days, the deposit of the amount of the estimated duty.

The Customs Service and the Bureau of the Census have reached an understanding on the implementation of these provisions so as not to endanger the accuracy of statistical programs for which this Department is responsible. We have been assured by Customs, that although no specific time is identified for the filing of the appropriate entry after the arrival of the merchandise, such as the 5-day restriction currently in force, no delays would be permitted that would affect the timeliness of the statistical data.

Provisions will be implemented so that the timing of the Census Bureau for obtaining data will be no slower than that obtained by present procedure.

Senator RIBICOFF. I am just wondering—"no slower than"—why not more rapidly?

Ms. KALLEK. Well, we hope so, but you see, right now, sir, there is no specified time within the law.

Senator RIBICOFF. There is no specified time?

Ms. KALLEK. No, none.

Senator RIBICOFF. How long does it take?

Ms. KALLEK. At the present time there is a 5-day restriction, and then 10 more days to file and we would hope that our time will either be at least the same, or better, and that there will be no reduction in the detailed information provided either on the entry form or in the machine-usable form.

These provisions would also enhance Customs efforts to develop an automated system for processing import entries and for duty collection purposes. Pilot programs of their automated merchandise processing system, referred to as AMPS, are underway in six customs districts. The staff at Census is working with Customs toward developing compatibility between the information processed by the AMPS program and the information required for census statistical operations.

The receipt of import data on machine-readable tapes from Customs would be a major step forward in the processing of import data.

Another objective of the Census/Customs joint effort is to assure that there will be sufficient opportunities for verification of import data in order to insure the statistical reliability of the public information. After procedures to implement the provisions of the proposed legislation related to filing entry documents and the establishment for the AMPS program have been developed and agreed to, a more formal agreement will be made between the Customs Service and the Bureau of the Census that will assure that such procedures will not reduce the timeliness of accuracy of statistical data on goods, particularly on those under import restrictions, which are furnished by the Bureau.

We therefore believe that the Census Bureau will continue to provide information for monitoring imports as quickly and as completely as it is currently doing.

I should now like to comment about duty-free treatment for returning tourists. The U.S. Travel Service was established on June 29, 1961, to exercise travel promotion authority vested in the Secretary of Commerce by Public Law 87-63. This authority includes the power to encourage the simplification, reduction or elimination of barriers to travel and the facilitation of international travel generally. This authority is similar to that exercised by most national tourist offices and is consistent with the principles of international cooperation as set forth in the final act of the European Conference on Security and Cooperation, signed August 1, 1975 in Helsinki, Finland.

The United States and 34 other signatories to that act agreed, among other things, "to gradually simplify and flexibly administer procedures for exit and entry."

The Department of Commerce believes that raising the values for returning tourists would further the purposes of international travel and, in addition, would contribute to progress toward the goals established in the so-called Helsinki Accord.

One of the provisions of the proposed legislation would raise from $100 to $250 and from $200 to $500 in the case of persons arriving, directly or indirectly from the Virgin Islands, Guam or American Samoa, the value limit of goods which can be imported duty free by residents returning after having remained outside the territorial limits of the United States for not less than 48 hours. These changes recognize the fact that persistent inflation throughout the world since 1965 has raised the price of individual articles purchased abroad.

The proposed legislation would also apply a flat 10 percent of duty to personal goods and gifts valued at up to $600 brought into the United States by international travelers. At present, articles brought into the country for personal or household use or as gifts if not included in the $100 or $200 personal exemption or if not duty free, are subject to the varying rates of duty prescribed by the Tariff Schedules of the United States.

The specific rate of duty depends upon the tariff classification category into which the item falls. Determining the classification of personal merchandise frequently requires considerable time and creates lengthy delays for persons declaring dutiable items.

The proposed legislation would make it unnecessary for customs agents to determine the tariff classification of noncommercial importations and would facilitate computation of duties on personal articles and gifts in aggregate value not over $600.

Senator RIBICOFF. In other words, what the system would be is if a husband and wife went abroad and brought in $1,000 worth of goods, $500 would be tax exempt and they would pay $50 on the other $500 value?

Ms. KALLEK. That is correct.

Senator RIBICOFF. When they declare that, they give a money order, check or cash and that would be it?

Ms. KALLEK. That would be it. Additionally, it would help to reduce processing bottlenecks encountered by persons entering the country and could assist foreign travel agents in selling the United States to their clients. Commerce supports these changes proposed by H.R. 8149.

Mr. Chairman, we should be pleased to answer any questions that the committee members have.

Senator RIBICOFF. Thank you very much. I appreciate your testimony, Miss Kallek.

Next, we will have a panel consisting of Mr. Eberle, Mr. Kvamme, Mr. Joseph Kaplan and Mr. William Outman.

Gentlemen, is there somebody here to make a statement for the whole panel?

STATEMENT OF WILLIAM D. EBERLE, ESQ., ROBERT A. WEAVER, JR., AND ASSOCIATES, BOSTON, MASS., AND CHAIRMAN, CUSTOMS WORKING GROUP, CHAMBER OF COMMERCE OF THE UNITED STATES

Mr. EBERLE. Mr. Chairman, I am delighted to be back in this room again and I want to thank you, Mr. Chairman, for allowing us the opportunity to testify.

My associates here will each make a brief comment.

At this time, Mr. Chairman, what I would like to do is to file for the record our written statement and simply cover the highlights generally with you.

Mr. Chairman, the group that is before you this morning represents some 70,000 American businesses with operations throughout the country and processes well over a quarter of the national GNP. We are here to support this bill, and I can say in principle that we also support the testimony you have heard from both the Customs Service and the Commerce Department.

There really are three reasons why there is this broad-based business support for this bill. First, the present law tightly prescribes the customs duties and requires excessive paperwork, substantial delays and the lack of having the prompt statistics, appraisals and liquidations.

We believe that this bill will solve that problem and permit better and more prompt statistics, appraisals and liquidations and better information needed for the enforcement of the trade laws of the United States.

Second, Mr. Chairman, as indicated by the customs officials, the primary tool today for enforcement is the blunt tool of fraud, without effective judicial court review. This bill corrects that. It would add due process to the proceeding, and we think that this is particularly important because it will allow the business people to see that they

are properly treated and still permit the Customs Service to handle these matters in an official manner.

Last, Mr. Chairman, is the question of the increase of the tourist exemption. In addtion to what has already been said, our air transport people here today, represented by Mr. James Gorsen, have pointed out that in many airports today during the heavy travel season there are delays up to several hours because of the present system.

We believe that the flat rate of duty and the change in the level of personal exemption will make the tourists' life a lot easier.

In concluding, let me just say that the reasons again for this broad business support are the better recordkeeping prospects, a more efficient system, and the due process safeguards.

Mr. Chairman, I would like to just have a brief statement from Mr. Kvamme on section 592, for your information.

STATEMENT OF FLOYD KVAMME, NATIONAL SEMICONDUCTOR CORP.

Mr. KVAMME. My name is Floyd Kvamme. I am vice president and general manager of National Semiconductor Corp.; and a board member of WEMA, a 900-company trade association engaged in sophisticated electronics technology.

We urge passage of H.R. 8149. We request that our analysis contained in our prepared remarks be included in the record.

Modification of the section 592 penalty provision is our prime concern. I will use my company's experience as an example.

We manufacture integrated circuit and transistor chips in our Connecticut, Utah, and California plants, which are assembled into electronic products in Southeast Asia. Since 1967, our sales have grown from $7 million to approaching $500 million with U.S. based employment of approximately 6,000.

From beginning operations in Southeast Asia through 1976, we deposited over $22 million in duties. The growth and complexity of the semiconductor business caused many complex valuation questions which are only now being resolved, such that virtually none of our imports over these 10 years has been liquidated.

In 1976, the U.S. Customs Service issued a prepenalty notice alleging our underpayment of $1.5 million in duty with a large forfeiture value. Eighteen months prior, our industry press, in a lead story, claimed that National Semiconductor could be penalized more than $100 million for the alleged underpayments.

We reconstructed our duty, at a cost of over $400,000, and now feel that when the entries are liquidated, Customs might owe us a goodly sum for the overpayment of duties. In any case, settlement will be made for a small percentage of the already-deposited duty.

The secrecy and suspicion surrounding the inquiry, the avenues open for redress and the low view taken of the Government process by this type action would never have happened had this act been law.

H.R. 8149 is necessary legislation, it provides a meaningful definition of violations, relates penalties to culpability, establishes due process and encourages voluntary compliance. In short, the act helps bring customs procedures into the $1 trillion trade computer-aided 20th century.

Thank you.

Senator RIBICOFF. Mr. Outman?

STATEMENT OF WILLIAM D. OUTMAN, ESQ., BAKER & McKENZIE, ON BEHALF OF ELECTRONIC INDUSTRIES ASSOCIATION

Mr. OUTMAN. Mr. Chairman, my name is William Outman. I am a partner in the law firm of Baker & McKenzie and appear today as a representative of the Electronic Industries Association. Mr. Kaplan, who is to may left, and I have participated with the Joint Industries Working Group throughout its consideration of H.R. 8149 and are among those who have been especially concerned with the language of the bill.

Perhaps the most serious defect today in the U.S. customs law is section 592, not because it empowers the U.S. Customs Service to assess civil penalties for acts or omissions that are false or fraudulent, but because it is almost totally lacking in due process.

Under present law, if the Government believes that a violation has occurred, it is required to make a claim for the forfeiture of either the goods or their value. There is no statutory requirement that the person involved be provided with a statement of charges.

In the face of often staggering penalty demands, assessable irrespective of whether the violation is alleged to involve fraud or simple inadvertence, mitigation on an administrative basis amounts to what one group, not here represented, has referred to as "an offer you can't refuse."

Judicial review is almost nonexistent.

H.R. 8149 is intended to correct this situation in a fair and reasonable way. First, the measure defines the violations and establishes penalties that are commensurate with culpability.

Senator RIBICOFF. At the present time, there is no standard, no test at all?

Mr. OUTMAN. Mr. Chairman, the one provision, section 592, provides for both false or fraudulent conduct in the same sentence. In other words, it could be a violation arising from an action that is either false or fraudulent. In terms of prior application, I think there has been some confusion on the part of the agents investigating on behalf of the Customs Service as to whether they had found an inadvertence or simple act of negligence, since they seem to characterize it, quite frequently, as fraud.

Senator RIBICOFF. There is no test of what is fraud and what is inadvertent?

Mr. OUTMAN. No, sir, not in the statute. There have been very few test cases in court. I believe the last major case that ever went through the judicial process was in about 1963 out in California. Although there was also a 1970 or a 1971 decision, actions brought in a court of law have been almost nonexistent.

Senator RIBICOFF. Do you have any horrendous examples of this?

Mr. OUTMAN. Mr. Chairman, there are numerous examples that have been cited. I think Mr. Kvamme's statement to the effect that his company has been assessed a penalty—in other words, the first demand made on his company—in excess of $200 million, illustrates what we are talking about. A very minor amount of revenue loss involving very technical issues can constitute a horror story in an investment context.

We have had instances in which clients of ours have been served with penalty demands and have had criminal indictments brought against them over very technical problems. It would not be too difficult to document a number of cases.

Again, H.R. 8149 would hopefully eliminate the need to even think back about these horror stories.

Anyway, under the three-tiered system that is proposed in the bill, the offense would be tied into a commensurate penalty. In the event of fraud, it would retain the present maximum penalty of the value of the goods. However, in the event that a violation involved gross negligence or ordinary negligence, the penalty would be tied to loss of revenue.

Senator RIBICOFF. Is it difficult to differentiate between fraud, inadvertent negligence, gross negligence? How do these gradations prove out?

Mr. OUTMAN. On an historical basis, the Customs Service has, I believe, attempted to characterize all violation as falling within one of these three categories. There is no requirement, however, under present law that you differentiate between negligence or fraud.

In administratively mitigating penalty demands such as the $200 million claim Mr. Kvamme referred to, the Customs Service has come up with standards that are set forth in the Federal Register of November 5, 1974. They have also attempted to spell out what they believed to be appropriate definitions of fraud, gross negligence and negligence. It is the application of those published standards, albeit in the guise of administrative determination, that serves as the best record of what has transpired to date.

If an action were brought in court, it would not be necessary for the Government to allege fraud, since the same action could be supported on the basis of merely alleging the conduct to be false.

Continuing, if I may, the bill would also establish effective judicial review, granting the importer the right to defend itself in a trial de novo initiated by the Government for the collection of the initial penalty demand. If the bill is enacted, the Government would be required in the case of alleged fraud, to establish its case by clear and convincing evidence, a comparable standard employed in the Tax Court for like offenses.

The Government would be required to prove gross negligence or ordinary negligence by a preponderance of the evidence. However, in the event that negligence were alleged, once the Government had introduced into evidence the facts alleged to support the violation, the burden would shift to the importer or person charged.

H.R. 8149 would also require the Government to institute a suit for the collection of any civil penalty within 5 years from the date of occurrence of the violation, except in the case of fraud, which would retain the present 5-year standard from date of discovery.

Of necessity, our treatment of these key provisions has been brief. We will be pleased to answer any questions that you or your staff may ask.

Senator RIBICOFF. Thank you very much.

Mr. Kaplan?

STATEMENT OF JOSEPH S. KAPLAN, ESQ., RIVKIN, SHERMAN & LEVY, ON BEHALF OF AMERICAN IMPORTERS ASSOCIATION AND AMERICAN RETAIL FEDERATION

Mr. KAPLAN. Mr. Chairman, I am Joseph Kaplan of the law firm of Rivkin, Sherman & Levy and I am here today as a member of this panel and as special counsel to the American Importers Association and the American Retail Federation.

The American Importers Association represents more than 1,000 importers, most of whom are small or medium size. The American Retail Federation represents all major U.S. retail merchandise houses and many smaller retail organizations, divided either geographically or by category of merchandise.

These organizations have been in the forefront of the effort to obtain passage of H.R. 8149, the Customs Procedural Reform Act.

The American Importers Association, as spokesman for the importing community, fully supports those aspects of H.R. 8149 which will result in quicker and more certain disposition of customs transactions. The position of the American Retail Federation, and, indeed, of all the organizations for whom this panel speaks, is identical.

All of these organizations view H.R. 8149 as a significant step forward in providing the Customs Service with capacity to administer international trade at the volumes presently experienced and anticipated in the near future, and to facilitate and speed the processing of returning travelers.

Moreover, these organizations heartily support the introduction of traditional concepts of due process and judicial review of administrative decisionmaking in the civil penalties area, the subjects that Mr. Outman has just discussed.

I thank you for the opportunity to have presented these views and would welcome any questions you may have. Also, if I may add something, I would like to relate a case in response to one of the questions that you asked Mr. Outman.

Senator RIBICOFF. Go ahead.

Mr. KAPLAN. A client of ours, a publicly traded company, was assessed with a penalty of $9,772,000—hardly the number that was mentioned by Mr. Kvamme, but still, a very substantial and significant number.

After investigation, which went on for a period of years, and after development of the facts—that is something, by the way, that the Customs Service had not done prior to introducing the civil penalty—it was discovered that the client, indeed, had at an early point in its history as an importer neglected to declare that it had sent a mold overseas.

The value of the mold was $332. The duty, which had not as a result of the use of the mold to produce imported products been paid to the Government, was $33.20. After 8 years, the case was canceled without penalty.

Senator RIBICOFF. Where did they arrive at the $9 million?

Mr. KAPLAN. They counted up the so-called forfeiture value, which is to say, the invoice price plus the duty, on hundreds and hundreds of importations which had been made over a period of more than 5 years. That is how the forfeiture value was established.

Senator RIBICOFF. Where did you go, through what proceedings? Customs, court, Commissioner? How did you——

Mr. KAPLAN. The matter was dealt with on an administrative level only. The penalty was assessed—this was at a time prior to the pre-penalty notice procedure which was described earlier.

After the penalty was assessed, a list of entries included in the penalty calculation, was furnished to us. We examined each of those entries—as I say, there were hundreds and hundreds of them. We went to each of the sources to see whether there had been any possible violations of the customs laws: Bit by bit, we were able to demonstrate to the Customs Service that there was no problem with the entries which had been enumerated in the list that made up the $9,772,000.

But it took years to do that. It took years of effort, and it was a case that never should have started in the first place.

Senator RIBICOFF. How much did all of that cost your client?

Mr. KAPLAN. It probably cost our client upwards of $150,000 by the time we were finished.

Mr. EBERLE. Mr. Chairman, that completes our presentation.

Senator RIBICOFF. Thank you very much, Mr. Eberle. Glad to see you again.

Is there no other comment from this panel?

Thank you very much.

[The prepared statement of the preceding panel follows:]

STATEMENT BY WILLIAM D. EBERLE ON H.R. 8149, PROVIDING FOR CUSTOMS PROCEDURAL REFORM, AND FOR OTHER PURPOSES

I am W. D. Eberle, Senior Partner of Robert A. Weaver, Jr., and Associates, Boston, Massachusetts, and Chairman of the Customs Working Group of the Chamber of Commerce of the United States. I am appearing today on behalf of the Chamber and also as a member of the Joint Industry Working Group that has been formed to work for the passage of H.R. 8149. Accompanying me are other members of the Joint Industry Working Group: Floyd Kvamme, Vice President, National Semiconductor Corporation, Joseph S. Kaplan, representing the American Retail Federation, and William D. Outman, representing the Electronic Industries Association.

We have a statement on behalf of the Joint Industry Working Group that we request be placed in the record of these hearings. The industry affiliations of the Working Group members are detailed in the joint statement. The National Chamber represents a nationwide membership of over 68,000 business firms and 4,000 trade associations, local and state chambers of commerce. The Chamber also represents American Chambers of Commerce in 41 foreign countries.

The Chamber's initial interest in customs reform focused largely on Section 592 of the Tariff Act of 1930. In response to the stated concerns of many Chamber members with what may be termed the "overkill" aspect of that section of customs law, a special working group on Section 592 was set up in early 1975 to seek a solution.

The group decided early that the key to a solution was the development of the broadest possible agreement among the business groups and the appropriate government agencies on the most desirable form of legislation. As a result, the bill passed by the House was the product of intensive study of the reforms needed by the Customs Service, the International Trade Commission, customs brokers, organized labor and the general business community. We believe that the bill represents a distillation of the most essential needs of all these groups.

To summarize, the National Chamber endorses the comments of the Joint Industry Working Group, as submitted to the Subcommittee. We believe that the bill will achieve important results in a number of areas. It will:

1. Improve trade statistics by permitting installation of Customs' AMPS computer system (Section 103).

2. Improve Customs' productivity by eliminating unnecessary procedures (Sections 103, 104, 112, 202, 206, 208, 209 and 212).

3. Establish a regulatory audit approach to enforcement, backed by strong but reasonable civil penalties (Sections 105–107, 110, 111, 207 and 214).
4. Provide for due process in civil penalty cases (Section 111).
5. Expedite clearance of passengers by Customs (Sections 203, 204 and 212).
6. Enhance Custom's performance by providing for authorization of Customs' appropriations (Section 301).

We respectfully urge the Subcommittee to move as quickly as possible on H.R. 8149 so that longstanding problems and inequities in the provisions and implementation of customs law can be redressed.

SUMMARY OF STATEMENT OF THE JOINT INDUSTRY WORKING GROUP

1. The Joint Industry Working Group and the many business associations and individual businesses it represents supports prompt passage of H.R. 8149 essentially as passed by the House of Representatives.
2. The Joint Industry Working Group believes that this Bill would:

Permit the U.S. Customs Service to replace outmoded manual entry processing and duty collection procedures with modern, computerized techniques.

Require importers, for the first time, to keep appropriate records. The U.S. Customs Service would be able to ensure compliance through regulatory audits.

Amend the U.S. Customs Service's primary civil penalty law (section 592) to provide administrative and judicial due process. It would replace automatic forfeiture of the value of goods with monetary penalties proportionate to culpability.

Ease the inflexibility of other Customs penalty laws relative to vessel manifests and cargo.

Expedite the U.S. Customs Service's processing of tourists by increasing the duty exemption from $100 o $250 and by providing a flat 10% duty rate for most other tourist importations.

Establish regular Congressional authorization of the U.S. Customs Service's appropriations.

Require that the U.S. Customs Service generally complete its processing of entries within one year; today there is no limit.

Eliminate various anachronisms in current law to permit the U.S. Customs Service to improve productivity.

WRITTEN STATEMENT OF THE JOINT INDUSTRY WORKING GROUP

Mr. Chairman and Honorable Members of the Subcommittee on International Trade: This document is the written testimony of a Working Group representing thirteen substantial business and trade associations that have united for the purpose of seeking reform of the archaic, procedural laws governing the operations of the United States Customs Service, and most particularly, section 592 of the Tariff Act of 1930, as amended (19 U.S.C. § 1592). The associations that have given their full support and backing to the Group include:

1. The *Air Transport Association of America*, which represents nearly all scheduled airlines of the United States.
2. The *American Importers Association*, representing over 1,000 companies, mostly small to medium in size, plus 150 customs brokers, attorneys and banks.
3. The *American Retail Federation*, an umbrella organization encompassing thirty national and fifty state retail associations that represent more than one million retail establishments with over 13,000 employees. J. C. Penney Co. and Sears, Roebuck & Co. are members.
4. The *Chamber of Commerce of the United States* representing 68,000 companies and 4.000 state and local Chambers of Commerce. Member companies active in the Joint Industry Working Group include American Cyanamide, Beech Aircraft, Control Data, PPG Industries, Procter & Gamble and Sprague Electric.
5. *The Computer & Business Equipment Manufacturers Association*, including over forty members with 1,000,000 employees and $35 billion in worldwide revenues. Members range from the smallest to the largest in the industry.
6. *The Council of American-Flag Ship Operators* which represents the interests of the American liner industry.
7. The *Electronic Industries Association:* its 287 member companies, which range in size from General Electric Co. and RCA to manufacturers in the $25–$50 million annual sales range, have plants in every state in the Union.

8. The *Foreign Trade Association of Southern California*, which represents 450 firms in Southern California in the import-export trade.

9. The *Imported Hardwood Products Association*, an international association of 250 importers, suppliers and allied industry members. Members handle 75% of all imported hardwood products and range in size from small private businesses to Boise-Cascade, Champion International, Georgia-Pacific and Weyerhaeuser.

10. The *Motor Vehicle Manufacturers Association*, whose eleven members produce 99% of all U.S.-made motor vehicles. Included are General Motors Corp., Ford Motor Co., White Motor Corp. and all major U.S. motor vehicle manufacturers.

11. The *National Committee on International Trade Documentation*, which includes many of the major U.S. industrial and service companies. Representative members are Exxon, Du Pont, Dow Chemical and Eastman Kodak.

12. The *National Passenger Traffic Association*, which is a voluntary professional association of corporate travel managers representing 350 major U.S. corporations. Aetna Life & Casualty, Allied Chemical, Coca Cola and Union Carbide are representative members.

13. "*WEMA*", which has over 900 high technology and electronics companies. Its members are mostly small to medium in size, with two-thirds of its members employing less than 200 employees. Fairchild Camera Corp., Hewlett-Packard, Intel and National Semiconductor Corp., are members.

The procedural laws under which the United States Customs Service operates have not been changed since prior to World War II. Many of these laws are much older; indeed, some date to the first session of Congress in 1789. These laws were written in a very different time and are so inflexible that the Customs Service has been unable to adjust to changes in international trade patterns and commercial practices. The present duty assessment systems are suitable for the quill pen but not for the electronic computer. Enforcement of the Customs laws is based upon "in terrorem" penalties rather than recordkeeping, field audit and strong incentives for voluntary compliance. Passengers stand in line at airports for hours because we have yet to adopt methods for clearing customs that are in widespread use elsewhere in the world. Trade statistics are less adequate and less timely than would be possible with modern data processing techniques. Importers and their sureties often are not able to determine for years their final duty liabilities—usually long after goods have been sold and adjustments in sales prices, to reflect increased duty assessments, are impossible. Congressional authorization of funds, a basic means of supervising performance of delegated responsibility by federal agencies, is not applied to the U.S. Customs Service.

H.R. 8149, if passed, will do much to bring the U.S. Customs Service's procedural laws out of the Eighteenth Century and prepare the U.S. Customs Service for the Twenty-First. For example:

1. The U.S. Customs Service would improve reliability and promptness of trade statistics and enforcement through its AMPS computer system, as provided for in section 104.

2. The U.S. Customs Service would move to enforcement by regulatory audit, as made possible by sections 105–107 of the Bill.

3. Due process in civil penalty cases would be established in section 111.

4. Passenger clearance would be speeded by sections 203 and 204.

5. Importers and their sureties would generally be able to determine their final duty liabilities within one year as a result of section 210.

6. Congressional oversight of the U.S. Customs Service's operations would be initiated by section 301.

The Bill, passed by the House of Representatives 386 to 11, was the product of careful study by the Subcommittee on Trade of the Committee on Ways and Means. Hearings were held in August 1976 and July 1977. The hearings were supplemented with field trips by a Committee Task Force to the Ports and U.S. Customs offices at New York, Philadelphia, Savannah, Miami, Houston, Laredo, Los Angeles, San Francisco and Chicago.

The Bill, as passed by the House, is acceptable to the Joint Industry Working Group, and we respectfully urge that the Senate pass the measure without substantial amendment. Should the Finance Committee in its judgment believe that technical changes and clarifications are appropriate, we believe the suggestions included in the following discussion of the major sections of the Bill merit attention.

SECTION 103

This section (and some others that provide conforming changes) makes it possible for the U.S. Customs Service to install the Automated Merchandise Processing System ("AMPS"). We support AMPS because it will enable the Customs Service to eliminate much of the paperwork now required of Inspectors and Import Specialists. This should enhance the quality of the professional work performed by these officials and make possible more uniform and equitable enforcement of the law. AMPS should improve both the accuracy and promptness of trade statistics. Computer editing techniques will improve the quality of the data on imports. The direct interfacing between the U.S. Customs Service and the Bureau of Census computers would make possible much speedier publication of import statistics with weekly—or even daily—reports if needed.

SECTION 105

Today, there is no requirement that importers maintain records. The requirement that records "normally kept in the ordinary course of business" be maintained by importers, as prescribed in this section, is unobjectionable. We believe that most importers keep such records today. We do not believe that this provision would add any significant burden to American business; if it did, we would oppose it.

SECTION 106

This provision grants authority to the U.S. Customs Service to inspect importers' records, subject to the usual safeguards of notice and reasonableness. We expect that this provision would lead to a climate of enforcement through field audit and verification rather than the confrontation approach that has been used in the past.

SECTION 107

This provision, in general, conforms the judicial enforcement of record keeping and the Customs Service's access to such records to the new provisions. It does, however, provide for an anomaly in that it divides the power to penalize contempts of court between the judicial and the administrative branches.

SECTION 110

Under present law, vessels and their masters are exclusively responsible for manifest discrepancies. The penalties for violations are severe. This is unfair under current commercial conditions where the master of a vessel at times has no knowledge of, or means of ascertaining, the exact nature of his cargo. Examples include sealed house-to-house containers. This section appropriately makes the liability non-exclusive. We believe, however, that elimination of the words "directly or indirectly" before "responsible for any discrepancy" will reduce potential ambiguity and eliminate possible penalties against those that have no responsibility for manifest discrepancies.

The House Report defines the term "clerical error" for purposes of section 584 of the Tariff Act.

SECTION 111

To the Joint Industry Working Group, this section is the most important in the Bill. Its basic wording was developed over a period of several months by a team of experienced lawyers and businessmen representing interested trade associations and businesses. We drew upon the experiences of previous efforts to reform this onerous law and upon close consultation with the Customs Service to ensure that its enforcement needs were met. It was further modified by the House of Representatives to expand its general acceptability and to provide strong additional incentives for voluntary compliance.

This section would:

Provide a comprehensible definition of a violation, which is notably absent from present law.

Replace the "in rem" nature of present law, which includes actual or constructive forfeiture of merchandise, regardless of whether the violation arises from a technical mistake occasioned by simple negligence or clerical error or fraud. The new law would provide for three tiers of violation: fraud, gross negli-

gence and negligence. The ceiling penalty for fraud would remain unchanged at domestic value; however, the ceilings for the two negligence categories would be tied to any resulting loss of revenue or to a percentage of the merchandise's value. Mitigation under section 618 (19 U.S.C. § 1618) would remain available.

Seizure of goods would be limited to situations in which such action is essential to protect the United States, such as in cases of insolvency, where an importer is beyond the reach of U.S. law, or where restricted merchandise would otherwise be permitted to enter the country.

The administrative due process requirements provided for in sections 592 (d) and (c) generally conform to current U.S. Customs Service procedures. The problems that arose prior to full implementation of these procedures indicate, however, the need for statutory confirmation. Importantly, these proceedings are not conducted before an informal arbiter but before those with an adversary position in the case. They are not a substitute for judicial review in cases that cannot be resolved in an administrative forum.

Section 592(e) properly exempts from penalty clerical errors, etc. that should not be punished. The exemptions from penalty are quite limited and are more restricted than are those provided in GATT or in the Kyoto Convention.

The prior disclosure provision, section 502(f), provides a very strong incentive for voluntary compliance with the law, especially in relation to the very stiff penalties (compared, for example, the IRS law) for all violations, whether negligent or fraudulent.

The House Bill, however, does not incorporate an important part of current Customs Regulations (19 C.F.R. § 171.1(a)(2)) that the U.S. Customs Service advises it will maintain if this Bill passed. Under that provision, additional non-intentional violations discovered in the course of investigation of a voluntary disclosure are presently treated as having been disclosed voluntarily. We believe that this administrative procedure should be included in the law.

The Joint Industry Working Group believes that the provision for judicial review set forth in section 592(g) is fundamental to American concepts of justice. The absence of any meaningful judicial review and the necessity for settling all cases with the same law enforcement agency that is making the accusations are serious defects in the present law.

Section 111(e) provides for a reasonable and meaningful statute of limitations on accusations of negligence. Present law has no effective statute of limitations.

SECTION 113

The proposal to require publication of rulings, as defined in the House Report, is well justified. We suggest that it not be limited to prospective transactions, but also include determinations issued under the post-importation "Internal Advice" procedure. This procedure is of growing importance in establishment of administrative precedents. This technical change can be accomplished simply by adding "Internal Advice rulings, with precedential significance" at line 25, page 22.

SECTION 114

We are advised the customs brokers are concerned regarding possible misunderstandings and misinterpretations arising from this provision that could lead to unnecessary difficulties, for example, in obtaining financing. The Joint Industry Working Group would be agreeable to elimination of this provision or to its replacement by one that required filing periodic reports of continuity of activity by brokers.

SECTION 210

Currently, there is no limitation on the time the U.S. Customs Service may take to conclude its determination of the duties on an entry, a process referred to as the "liquidation" of an entry. This causes serious problems. On the one hand, an importer may learn years after goods have been imported and sold that additional duties are due. On the other hand, Customs officers at times required deposit of more duty than is properly owed at the time of entry. Occasionally, the Customs Service has refused to liquidate such entries, precluding any administrative or legal actions to recover the excess money deposited. The Bill would help speed the liquidation process by deeming an entry to be liquidated one year after the date of entry unless a longer period of time is appropriate.

We suggest that a change, essentially, technical in nature, be considered. Under current law, the U.S. Customs Service is required to provide notice of liquidation. Legally this is done by a posting in the Customshouse. As a practical matter, however, importers rely upon the computerized "courtesy notice" that is mailed automatically when the U.S. Customs Service removes an entry from its present computer file. Continuation of this procedure until the AMPS system is installed would provide no added burden on the Government; in fact, we have been advised by the U.S. Customs Service that they would continue to mail such notices after passage of this Bill. The U.S. Customs Service advises that when the AMPS system is installed, its periodic statements will provide notice of all liquidations. Receipt of such notice is important because it signals the start of the short 90-day period allowed to initiate formal protests of the liquidation. Failure to provide notice of the automatic liquidations would require importers and customs brokers to establish special filing systems to determine which entries are liquidated upon notice, which by statutory deadline and which have had liquidation suspended. The costs of these systems would far exceed any savings to the Government from eliminating notices on a small proportion of total entries. The risk of any problem arising can be easily prevented by deleting the final sentence in section 504(a) under section 210 of the Bill.

SECTION 301

We strongly support the establishment of Congressional authorization of the Customs Service's appropriations. We believe this would be beneficial not only for the Customs Service but also for those persons that are directly or indirectly affected by its operations.

* * * * * * *

We appreciate the opportunity to be heard and for the interest of the Committee and its staff in this legislation. We believe H.R. 8149 is in the interests of all that are affected by the operations of the Customs Service and we urge that it be passed as promptly as possible.

STATEMENT OF E. FLOYD KVAMME, ON BEHALF OF WEMA, THE ASSOCIATION SERVING THE ELECTRONICS INDUSTRIES

Mr. Chairman and Members of the Subcommittee. I am E. Floyd Kvamme, vice president of National Semiconductor Corporation and general manager of its semiconductor division. National Semiconductor, with world headquarters in Santa Clara, California, designs, develops, manufactures and markets electronic products of various types that are derived from semiconductor technology. Some of our principal electronic products are integrated circuits, transistors, computers, computer components and terminals, watches and calculators. We employ more than 23,000 people worldwide, with operations in several states and foreign countries.

I am appearing here today on behalf of WEMA's member firms in support of the provisions of H.R. 8149, the Customs Procedural Reform Act of 1977.

WEMA, hadquartered in Palo Alto, California at 2600 El Camino Real, is a trade association of over 900 companies located in 176 Congressional districts in 36 states. Two-thirds of its members employ fewer than 200 employees, while our total membership employs more than one million persons.

WEMA member companies share a common interest in that they are all engaged in sophisticated electronics and information technology. A preponderance of WEMA companies design and manufacture sophisticated components and equipment for a number of end markets. Some of the types of products manufactured are: semiconductor devices such as transistors, diodes, and integrated circuits; test equipment such as oscillators, signal generators, counters, and volt meters; computers and computer peripheral equipment; calculators; telecommunications equipment such as radio transmitters and receivers; and finally, components such as tubes, resistors, capacitors, and similar items.

International trade is of increasing importance to WEMA's member companies. Despite strong competition abroad, most of our members have been successful in maintaining a technological lead over foreign competitors. In fact, the sale of high-technology products abroad has been one of the prime areas in which the United States has continued to hold its own in the world marketplace.

But, WEMA companies import as well as export. In general, they import components or products manufactured or assembled by their subsidiaries or affiliates abroad. Availability of these high quality products is necessary to preserve America's competitive edge. It is on behalf of the importing side of the high-technology electronics industry that WEMA submits this statement today.

U.S. importers presently operate in a 20th Century world with customs laws and regulations designed for the 19th Century. For example, separate reports must be filed for each entry; duty must be paid at the time of filing regardless of whether any government official can definitively tell the importer how much is owed; and importers have no sure way of knowing the latest customs rulings or interpretations, and constantly face the prospect of penalties equal to the full domestic value of the imported goods for even the smallest or most inadvertent error.

WEMA urges the Senate to pass H.R. 8149 without delay. The changes it brings to customs law, especially those dealing with Section 592 and judicial review, are needed immediately. WEMA supports passage of the bill without substantial amendment.

The Finance Committee will most likely be considering suggestions for minor amendments to H.R. 8149, and may feel some technical changes or clarifications are needed. In that regard, we believe the following WEMA analysis of the bill's provisions will be informative and useful.

SECTIONS 102–104

Adoption of these sections would provide a statutory basis for implementing a new system of accounting which would separate the payment of duty from the reporting of an entry.

WEMA welcomes this change. Periodic accounting, long and successfully used by the Internal Revenue Service, is much more suitable to today's business activities. It would save time, money and energy for the importer and government alike.

Under existing laws, every importation requires a separate entry document, separate processing, and the concurrent payment of estimated duties. This system may have been adequate when our international trade level was substantially lower and its pace considerably slower. Today, however, both the volume and tempo of international trade have grown tremendously and, as far as most high-technology importers are concerned, most imports are from a limited number of related, continuous suppliers. Under these conditions, entry-by-entry reporting and accounting is slow and wasteful and is of no particular advantage to either importers or the government.

Eventually, WEMA would like to see statutory authorization for periodic reporting as well as periodic accounting. The Internal Revenue Service has long since proven the efficiency of such a system, and adoption in the customs area seems long overdue. WEMA urges the International Trade Subcommittee to keep this objective in mind in their future work on customs reform.

SECTION 105

This portion of H.R. 8149 would add a new Section 508 to the Tariff Act. It would specify the records importers are to keep and the period of time for which they are to be retained.

Wema supports the inclusion of a clear record-keeping requirement, but urges the Congress, in report language, to encourage the Secretary of Treasury to set retention limits considerably shorter than five years for most routine entries. For example, there is no reason why supporting records need by kept for five years in the case of informal entries for goods valued at less than $600, or U.S. goods returned under TSUS 800.

SECTION 106

WEMA favors the degree of specificity which would be provided by this amendment to revise and strengthen the investigatory provisions of Section 509 of the Tariff Act. WEMA hopes this revision will in no way lead to an abandonment of the concept of the routine audit as part of the present two-step investigatory arrangement. In WEMA's view, the two-step system is desirable and should be retained by specific reference in the Committee Report. The first step of this two-step process is the largely informal regulatory audit procedure generally

used by the Customs Service to help importers determine whether their practices are correct. This routine audit is of advantage to the importer and to the Customs Service to help importers determine whether their practices are correct. This routine audit is of advantage to the importer and to the Customs Service. The second step occurs if, in the course of such an audit, probable cause is discovered for a charge of violation of Customs law. At this point, a full scale investigation is set in motion.

SECTION 107

This portion of H.R. 8149 would amend the judicial enforcement provisions of Section 510 of the Tariff Act of 1930, as amended. WEMA favors revised subsection 510(a) as included in the bill, but has reservations about the provisions of subsection 510(b) which provide for an administrative punishment upon a judicial finding of contempt. Although not interested in defending those judged guilty of contempt, WEMA believes that the punishment for disobedience of a court order should be left in the hands of the court rather than the Secretary of Treasury who, after all, is a party of interest to the proceedings.

WEMA believes the courts already have sufficient means to adequately punish those found guilty of contempt, and thus subsection 510(b) could very well be eliminated. Only a judge should be given the authority to prohibit a person found guilty of contempt from importing merchandise into the United States.

SECTION 111

This portion of H.R. 8149 would substantially amend the penalty provisions of Section 592 of the Tariff Act of 1930, as amended.

In recent years, several WEMA member firms have been involved in the archaic and inflexible provisions of the present Section 592. and thus WEMA is deeply concerned about its reform.

In general, WEMA is pleased with the changes suggested in Section 111 of H.R. 8149. These changes would improve many areas considered critical by WEMA membership by providing:

Prepenalty notices and an opportunity to be heard before the imposition of any penalty;

Elimination of automatic assessment of the full forfeiture value of the imported merchandise as a penalty and strict limitations on seizure;

Imposition of a multiple of the customs duty as a maximum penalty in cases of negligence with no penalty for mistake of fact or simple clerical error.

Unrestricted judicial review of the existence of the violation and amount of the penalty—when the government brings an action.

WEMA has several other suggestions which are important and should be considered.

Subsection 592(d) established a three-tier penalty structure based on fraud, gross negligence, and negligence. Ideally, WEMA would prefer to see the adoption of the two-tier model used by the Internal Revenue Service with IRS type penalties of 50% in the case of fraud and 5% in the case of negligence. Be this as it may, WEMA does recognize and support as a giant step forward the provisions of subsection 592(d) as included in H.R. 8149.

WEMA is concerned, however, that the courts may easily become choked with endless years of litigation if the legislative history does not clearly define the Congressional intent behind this penalty structure. For example, WEMA believes the committee report should clearly state that a monetary penalty equal to the domestic value of the merchandise should be applied only in the most extreme cases of fraud. Likewise, whenever gross negligence and negligence are involved, maximum penalties should be reserved for the most severe cases.

WEMA would also like to see fraud, gross negligence, negligence, and the concept of domestic value defined in the legislative history. WEMA assumes that the term "domestic value," as used in H.R. 8149, applies to the appraised value of the entered merchandise and not its final selling price. In WEMA's view, it would be completely inequitable to include costs of further domestic processing. These matters do need clarification.

Subsection 592(f) establishes a statutory basis for the Customs Service's current administrative practice of encouraging voluntary prior disclosures. It limits the monetary penalty assessed in such cases to the unpaid amount of lawful duties for fraud, interest on the unpaid amount for negligence or gross negligence, and, if the violation did not affect the assessment of duties, a percentage of the value of the merchandise.

Although WEMA supports the incorporation of this practice into statutory langauge, WEMA also believes that these provisions should be extended, as is the case in current practice, to cover undisclosed nonfraudulent violations which may be discovered in the course of an investigation of a voluntary disclosure. This could be accomplished in subsection 592(f), as included in the bill, by adding the phrase "or any nonfraudulent violations discovered as a result of an investigation of such violation" after the words "with respect to such violation."

Subsection 592(g)(1) provides for a trial de novo in a United States District Court on all issues, a change long advocated by WEMA. This is a crucial aspect of this legislation because there is today no meaningful access to judicial review. Under current law, the only way to obtain judicial review of a penalty is for the person to refuse to pay the penalty and wait for the U.S. to bring an enforcement action in the District Court. By doing so, the importer loses his opportunity to mitigate the damages through administrative channels, and the District Court has no discretion to mitigate the amount of the penalty. Thus, an importer faces an "all or nothing" situation and also must be ready to bear the burden of proof to obtain judicial review. Subsection 592(g)(1) would remedy this current problem, and subsections 592(g)(2)(3) and (4) would properly place the burden of proof for fraud, gross negligence, and negligence on the U.S. These provisions of H.R. 8149 are critical for any true reform to Section 592.

SECTION 113

This portion of H.R. 8149 would add a new Section 625 to the Tariff Act which would require the Customs Service to publish rulings within 120 days of the date of issuance. This proposal is well justified. We recommend that is not be limited to "prospective" transactions, but include those issued under the post-importation internal advice procedure. This procedure is important in the establishment of administrative precedents.

In the name of simple equity, WEMA strongly supports publication requirements. At present, public and private customs rulings are not available to the importing community in any organized fashion. Large, aggressive importers have developed extensive and costly arrangements to obtain this information and thus keep abreast of current rules and regulations. Smaller importers, however, cannot afford such arrangements and, to their competitive disadvantage, are rarely up to date.

We are sensitive to the need for purging rulings of confidential matter, but at the same time believe that a 120-day lag before publication is long and may work hardships on importers. For example, importers are presently permitted only 90 days to modify an entry before liquidation. Once the 90-day period is past, the importer has no recourse but to formally protest following liquidation. Under these circumstances, if a relevant ruling on a non-related transaction entered into three months earlier were published on the 91st to 120th day, the importer would be unable to modify his entry documentation and would have no recourse but to submit a formal protest after liquidation. Since entering a formal protest is an expensive, lengthy process, many importers are reluctant to take this course of action, and thus would lose the benefit of a favorable ruling. Alternately, if the ruling affected the method of valuation, the Customs Service may well lose additional revenue.

In the interest of equal access to public information, and particularly in view of the present 90-day protest period when entries may be reviewed and corrected, WEMA recommends that the Subcommittee in report language urge the Customs Service to publish rulings as quickly as possible with due regard for their time sensitivity and importance to the importer.

SECTION 210

This portion of H.R. 8149 adds a new Section 504 to the Tariff Act. Under normal circumstances, this new section would provide for liquidation within one year. WEMA supports the concept of a fixed time after which liquidation, if not already accomplished, would be deemed accomplished. It is true that in some instances more than a year might be required for liquidation, but WEMA believes that the extension provisions of subsection 504(b) would be adequate to handle such situations.

Currently there is no limitation on the time Customs may take to conclude its determination of the duties due on an entry, the so-called "liquidation" of entries. This causes serious problems. On the one hand, an importer may learn years

after goods have been imported and sold that additional duty is to be collected. On the other hand, Customs officers at times require deposit of more duty than is properly owed at the time of entry. Occasionally, they have refused to liquidate such entries, precluding any administrative or legal actions to recover the excess money deposited.

We suggest that the Subcommittee consider a technical change. Under existing law, Customs is required to provide notices of liquidation. Legally this is done by posting them in the Customs House, but, as a practical matter importers rely upon the computerized "courtesy notice" that is mailed automatically when Customs removes an entry from its present computer file. Continuation of this procedure until the AMPS system is installed would entail no added burden on the government. The Customs Service has noted that when the AMPS system is installed, its periodic statements will provide notice of all liquidations. Receipt of this notice is important because it signals the start of the short 90-day period allowed to initiate formal protest of the liquidation. Not providing notice of the automatic liquidations will require importers and customs brokers to set up special filing systems to keep track of entries that are liquidated upon notice, those by statutory deadline and those which have had liquidation suspended. The costs of these systems will far exceed any savings to the Customs Service from eliminating notices for a small proportion of total entries. This problem can be resolved by deleting the final sentence in Section 504(a) of Section 210.

We are hopeful that the new AMPS system, coupled with the requirement of notice of liquidation, will make the 90-day protest period more reasonable for importers. Currently, delays in mailing liquidation notices effectively reduce the time during which an importer may prepare and file a protest.

SECTION 301

We support the establishment of Congressional authorization of the Customs Service's appropriations. We believe this will be beneficial not only for the Customs Service, but also for all elements of our society that are directly or indirectly affected by its operations.

Mr. Chairman, this concludes my formal statement. On behalf of WEMA I wish to thank you and the members of the Subcommittee for your attention. I will be pleased to respond to any questions you might have.

Senator RIBICOFF. The next group is Mr. Hummel, for the National Brokers Association, accompanied by Mr. Shayne.

Mr. Hummel and his group?

STATEMENT OF ROLAND R. HUMMEL, PRESIDENT, NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA, INC., ACCOMPANIED BY LEONARD M. SHAYNE, CHAIRMAN, NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF AMERICA, INC.; WILLIAM ST. JOHN, SECRETARY, NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF AMERICA, INC.; AND THOMAS C. JAMES, PRESIDENT, INDEPENDENT FREIGHT FORWARDERS & CUSTOMS BROKERS ASSOCIATION OF SAVANNAH

Mr. HUMMEL. Senator Ribicoff, I am attended by my associates who are, to my right, Mr. Shayne, chairman of our board of directors; Mr. St. John from our New Orleans association and Mr. Tom James, to my left, from our Savannah association.

My name is Roland R. Hummel, Jr., and I am president of the National Customs Brokers & Forwarders Association of America, Inc. Our association consists of approximately 400 members licensed as customs brokers by the Treasury Department, ocean freight forwarders by the Federal Maritime Commission, or indirect air carriers by

the Civil Aeronautics Board, and is the only nationwide organization representing the customs brokerage and international freight forwarding industry.

We have 21 local broker/forwarder associations located in all of the major U.S. ports affiliated with our national association. Our members, and those of our affiliates, handle as customs brokers the vast bulk of importations into the United States and were instrumental in collecting over $6 billion in customs duty in 1977 for our country.

At the outset, we wish to emphasize that the Customs Procedural Reform Act contains many overdue reforms and new provisions which permit more efficient processing and control of our international trade. We support these changes.

However, we strongly oppose, and request the deletion of, the provision in section 114, title I of the bill which deprives brokers of the permanent license now enjoyed and provides, instead, for the renewal of customs brokers' licenses every 3 years.

Senator RIBICOFF. Why should you—you or anybody else—have a permanent license?

Mr. HUMMEL. Historically, sir, since the beginning of time, that is the way it has been. We have been licensed by the Treasury Department one time and that license stays until revoked for cause. That is the objection that we have. Let me go into it, and I will try to explain it.

Our industry consists of skilled professionals. The House Committee on Small Business has said that: "Customs brokers play a very necessary and key role in facilitating the entry, clearance and movement of cargo into the United States."

To deny to customs brokers a permanent license, which they have had for generations and require a relicensing every 3 years necessarily demeans our profession. Our license should remain permanent, as it is in related fields of transportation, such as ocean, air or surface forwarding, of course, it should continue to be subject to suspension or revocation when it is determined that serious offenses have been committed.

The 3-year renewal provision must necessarily have a chilling effect upon the ability of a customs broker to conduct his business. Banks may not be so prone to advance credit if the possibility exists that the broker's right to continue operations may terminate.

Infusions of capital would likewise be more difficult if a prospective investor is not certain that a license will be renewed. The saleability of a business is impaired if a prospective purchaser perceives a risk that the operation may not continue.

Senator RIBICOFF. Let me ask you, sir, what do you have to do to become a licensed broker?

Mr. HUMMEL. You are subjected to a written examination by the U.S. Customs Service, Senator, and investigated as to your moral integrity and so forth, as well. After passing the examination and passing the rest of the testing by Customs, a man is licensed by the Treasury Department.

Senator RIBICOFF. Are there often revocations or suspensions?

Mr. HUMMEL. Few, but there are some, yes.

Senator RIBICOFF. These are undertaken.

Mr. HUMMEL. There are some, yes. Very few, but there are some, yes.

And if, by inadvertence, illness or otherwise, a licensee fails to make timely application for renewal, he is out of business. By the time he gets a new license, his accounts have gone.

The 3-year renewal provision was inserted by the House committee when it learned that the U.S. Customs Service did not have up-to-date information as to the status of the more than 3,000 licensed brokers. According to Congressman Vanik, floor manager of the bill, the amendment was "intended to provide a means for at least keeping current with the identity and number of brokers still practicing."

Despite mention on page 20 of the House committee report on H.R. 8149 that the renewal provision is merely "pro forma," and is not intended to place any conditions whatsoever other than continued existence on license renewal, the language of the bill is such that it could be read to permit renewal to be made conditional, or subject to some requalification. Such a possible interpretation casts doubt about the renewability of the license.

Thus, we customs brokers find ourselves in the strange position of having imposed upon us the onerous burden of a 3-year renewal provision because the House committee felt that Customs did not have up-to-date information on its licensees.

Surely this problem can be solved without the necessity of our industry being asked to suffer unnecessarily.

We agree with the House committee that Customs should have current information on its licensees. To this end, the cumbersome and harmful 3-year licensing renewal provision need not be the answer. Under authority of present law, Customs can require triannual or even annual reports from customs brokers specifying whether they are currently practicing, under what company or trade name, and at what address.

It is our understanding that the Commissioner of Customs is initiating similar admiinstrative action to deal with the problem. Such action by Customs would effectively keep its records up to date and would eliminate the need for the statutory provision on renewals.

Or, if Congress believes that additional statutory authority is necessary in this matter, instead of the provisions requiring license renewal as presently proposed in section 114, Congress can modify section 641 by adding to subparagraph (d), section 641, a clause which would require a licensee to report to the U.S. Customs Service annually whether he is actively engaged in business, the location of his business, and the names of the individual licensees qualifying the firm.

We are not aware of any proponents in the private sector of the 3-year license renewal provision, nor has the Commissioner of Customs proposed such a provision. He did not support it before the House committee.

We believe that our approach is substantially more effective than the House renewal provision. Instead of having information on a 3-year basis, Customs will have it annually. Brokers will not be restricted in the financing or selling of their businesses and they will not run the risk of losing their business by the failure to obtain a timely renewal.

Last, but not least, brokers could feel with pride that by continuing their permanent licenses, Congress recognizes their important role in our international commerce.

Thank you.

Senator RIBICOFF. Does anyone else on the panel have something they would like to add?

Mr. HUMMEL. No; we have nothing further.

Senator RIBICOFF. Thank you very much, gentlemen.

Mr. James Trombetta?

Mr. SERKO. Good morning, Mr. Chairman. My name is David Serko from the law firm of Serko & Simon. Mr. Trombetta, who was scheduled to appear this morning, was unable to make a flight in time to get here and I have with me Mr. Dennis O'Donnell who is treasurer and a member of the executive board of the John F. Kennedy Brokers Association, whom my firm represents.

Mr. O'Donnell will address himself to the statement and I will have some remarks following that, and then perhaps you might have some questions.

STATEMENT OF DENNIS O'DONNELL, TREASURER AND MEMBER OF THE EXECUTIVE BOARD, JOHN F. KENNEDY BROKERS ASSOCIATION, ACCOMPANIED BY DAVID SERKO, ESQ., SERKO & SIMON

Mr. O'DONNELL. Mr. Chairman, members of the committee, ladies, and gentlemen.

The John F. Kennedy Airport Customs Brokers Association which is composed of 133 member firms licensed as professionals by the U.S. Customs Service in commenting on H.R. 8149 wishes to concentrate on that provision of the statute, section 641, which deals with the renewal of customhouse brokers' licenses.

We feel that, although the bill in balance is a good one, the provision regarding relicensing is undesirable. Customhouse brokers in obtaining their licenses in the first instance are subject to rigorous examination and investigation regarding character, background, and knowledge of customs law, and should not be subject to license renewal requirements, but should be, as now, granted permanent licenses, subject only to the strictures of the regulations for censure in the same manner as other professionals.

We have an uneasy feeling about the statute as it is presently written, since it does not express the congressional intent that the renewal be merely a pro forma procedure. It can be interpreted as requiring much more.

Although the legislative history may be indicative of what was intended by Congress, the language of the statute is unambiguous. U.S. Attorney General Griffin Bell, in a formal opinion in commenting on the Hyde amendment which prohibits Federal payments for abortions performed on rape and incest victims in cases where the life of the mother is not in danger has said that where the language of a statute is unambiguous, the words of that statute are sufficient, in and of themselves, to determine the purpose of the legislation.

So here we have such unambiguous language. The interpretation of the statute would be confined to a reading of the statute itself.

Thus, the renewal of licenses under one interpretation of the statute might well become more than the pro forma procedure which was stated as the intent of Congress on page 20 of the House of Representatives report.

In order to make the statute conform to such intent, present language should be deleted and language inserted which would require only periodic reporting of the name, address, and active status of a broker. If this is not done, the practical effects on a broker could well be devastating.

If it were viewed that renewal of a broker's license was not automatic, the possibility of obtaining bank financing might be foreclosed. The obtaining of investor's money would be much more difficult—in fact, would place a severe chilling effect on individuals considering entrance into emphasis on the customs brokerage business.

For these reasons, our association feels that the present language goes beyond what is needed to fulfill the needs of keeping current with the identity of the number of brokers still in practice.

Thank you.

Senator RIBICOFF. Thank you very much.

Did you want to add something?

Mr. SERKO. If I may, my firm has been exclusively in the practice of customs and trade law and I have so been for many years. I bring to this question that context of experience.

In talking with Mr. O'Donnell before the hearing this morning, we discussed the fact that Novo Corp., by whom he is employed, is a publicly held company and we talked about the impact in the case of a publicly held company of the uncertainty of the license renewal, just a specific in terms of the generalities that we spoke of.

I think that I would like to amplify very briefly on the question of legislative interpretation, because, in the report to accompany this bill, there is conflict in the stated purpose of the relicensing provision.

On page 3 of the general statement, summary, and purpose, the statement appears that title I amends the statute governing the licensing of customhouse brokers to require renewal of licenses every 3 years. During the course of onsite visits to customs facilities, we learned that there is very little control. The word control is troublesome.

On page 20, the statement is that it was the intention of the committee that this relicensing provision would not involve any reexamination. Now, since there is currently an examination to qualify a customs broker, which, parenthetically, is generally a very severe examination with varying degrees of failure and retesting, the intent that this relicensing would be pro forma might conflict with the word "reexamination."

Now, I do not need to remind the chairman of the progress of the Hyde amendment. The interpretation by the Attorney General in July of 1977, which stated medical procedures cannot mean abortion in view of the preceding language, the conference report is ambiguous.

Senator RIBICOFF. There are enough problems without trying to get this abortion issue mixed up in this. Let's not use that as an example.

Before you know it, you will have a Hyde amendment put on this thing, and then you have got problems.

Mr. SERKO. I will take that comment, Mr. Chairman, and merely state that, as you know, there was a subsequent interpretation, and we are concerned with the fact that the subsequent interpretation, after the passage of the bill as amended, is different than the initial interpretation.

Now, I have a proposal that I would like to suggest which might solve the problem of the support of this bill wholeheartedly, and that is this. Since the relicensing will not take effect for 3 years, and since there are administrative methods—and I would suggest that it is rather easy for Customs to be informed as to who is practicing customs brokerage throughout the country—that this provision be deleted and that, in 3 years' time, since Customs is studying the whole question of brokerage, supervision of brokers, and in fact, title III of the original H.R. 9220 provisions affecting brokers, the nature of their control and licensing of brokers is under study, that pending a complete study that this particular provision be deleted.

It is not going to take effect for 3 years. Three years is certainly enough time in which to do it advisedly, inasmuch as the licensing was inserted without—was not inserted by Treasury, was not requested by Treasury, was not supported by the brokerage industry, is not particularly supported by the private sector, and we might then find ourselves in a position of having pretty unanimous support for this bill without any damage being done to the stated intention of the Congressman who proposed this particular provision.

Senator RIBICOFF. I think Mr. Hummel's suggestion made a lot of sense. I do not know why you would object to that.

Mr. SERKO. Which one?

Senator RIBICOFF. Well, I will give you a copy of his testimony and you can read it.

Mr. SERKO. Are you suggesting deleting it under regulation?

Senator RIBICOFF. No, it is here. You can read it. I have a lot of copies.

Mr. SERKO. I have read his statement.

Senator RIBICOFF. I mean, if you are unhappy with it, you are unhappy with it——

Mr. SERKO. Mr. Chairman, I have read his statement. I am sorry——

Senator RIBICOFF. If you have some suggestions you can give it to us. I mean, I think Mr. Hummel's suggestion was a good one. Here is a copy of it. You can read it. If you want to write me on it, you can.

Mr. O'DONNELL. Thank you, Mr. Chairman.

Senator RIBICOFF. Mr. Greene.

STATEMENT OF J. J. GREENE, VICE PRESIDENT, GENERAL STEAMSHIP CORP., LTD., ON BEHALF OF PACIFIC MERCHANT SHIPPING ASSOCIATION AND THE FOREIGN SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST

Mr. GREENE. Good morning, Mr. Chairman. My name is J. J. Greene. I am speaking on behalf of several Pacific coast organizations: the Pacific Merchant Shipping Association; Foreign Shipowners Association of the Pacific Coast; and I have been authorized to speak on behalf of the Los Angeles Steamship Association.

These three groups represent 51 steamship lines engaged in the foreign trade of the United States, to and from ports in the States of Alaska, Hawaii, California, Oregon, and Washington.

I would like to ask the permission of the committee that my written statement, as submitted, be included in the record.

Senator RIBICOFF. Without objection.

Mr. GREENE. Thank you, sir.

I should also like to ask the committee's permission to amend page 11 of that statement, because I make some detailed recommendations as to amendments to the bill and I have had a chance to recast them in a somewhat better form—not changing the substance, the form—and I would like to submit those amendments to my page 11.

Senator RIBICOFF. Feel free to do so. Give it to the staff and they will substitute it.

Mr. GREENE. Thank you, sir.

I was impressed by the opening statement of the chairman and also Mr. Chasen, Commissioner of Customs. I thought they stated clearly and eloquently what has happened in this area in the last several decades. Namely, we have had an enormous growth of customs activity, enormous growth of imports and traffic.

At the same time, all of this activity has been regulated by laws that go back almost to the founding of this country.

This has led to some enormous structural inequities, we feel, and also inequities in the enforcement of these laws. What we are proposing are some small amendments to the present bill.

Let me state that we are enthusiastic supporters of this legislation. We believe that it will greatly improve the treatment of both importers and carriers, and for this reason we support it.

However, we think that the Senate can make some changes which will further strengthen the bill and grant to carriers the same sort of equities that are being returned to the importers under the amendments of section 592. The panel which spoke on behalf of the joint industry working group made a very good statement of the horror stories and the terrible inequities that have been visited upon importers by section 592.

Carriers have been afflicted with similar types of inequities, though not in the same dollar volume, under section 584.

So we are making proposals that would change 584 and make that more equitable.

At the present time, the same sort of presumption of guilt, the same inflexibility of enforcement, the same rigid definitions are given by Customs to section 584 to the detriment of carriers. To give you but one example, an American-flag vessel called at the Port of San Francisco not too many months ago, inadvertently failed to submit one page of the manifest in one set that went to a particular customs officer. All other sets of the manifest were complete. One page was missing in one set and Customs levied a fine of $1.8 million against the carrier, that being the estimated value of the merchandise represented on the——

Senator RIBICOFF. What was the end result of that?

Mr. GREENE. The result has not yet been determined, sir. The case is still being batted around out in San Francisco.

Senator RIBICOFF. You mean there are certain manifests that have to be given to Customs? How many copies?

Mr. GREENE. Normally it is in four or five copies one goes——

Senator RIBICOFF. How many pages?

Mr. GREENE. This particular manifest was probably on the order of 20 to 30 pages.

Senator RIBICOFF. And the clerk might have left out page 17?

Mr. GREENE. Correct.

Senator RIBICOFF. The others have the full pages?

Mr. GREENE. All other sets were complete, and one set, which went to the inspector on the dock, was missing one page.

Senator RIBICOFF. So they levied a fine of——

Mr. GREENE. $1.8 million. I believe that case is still being handled at the administrative level.

Senator RIBICOFF. What did the Customs Commissioner say when he did that?

Mr. GREENE. I have had some very frank and cordial and helpful talks with Customs here in Washington, most recently yesterday, and they acknowledge this problem at the Washington level. They recognize that these sorts of bureaucratic foulups occur.

But the problem is that the laws are being administered in a highly individual way at the district level, at the local level. Customs, by law and by tradition and by regulation has always granted their district directors a lot of discretion in individual cases. It is felt that this is just good practice, to let the District Director judge individual circumstances.

In general, we support that. The problem is that there are many varying interpretations at the local level and you get some district directors and their staffs who are strongly enforcement minded, take the view that carriers and importers are likely to cheat the Government unless the enforcement is very strict and ——

Senator RIBICOFF. I would like to see a copy of that manifest, the full copy and an indication of which page was left out on one copy.

Mr. GREENE. I shall get that to you, sir.

[The following was subsequently supplied for the record:]

General Steamship Corporation LTD
400 California Street, San Francisco, California · Telephone (415) 772-9200 · Cable "GENSTEAMCO" Mail Address: P.O. Box 3450, 94119

February 10, 1978

FEB [illegible]

Senator Abraham Ribicoff, Chairman
International Trade Sub-Committee
Senate Finance Committee
337 Russell Senate Office Building
Washington, D.C. 20510

Subject: HR8149 Customs Procedural Reform Act

Dear Senator Ribicoff:

During my testimony on this bill last week, you asked that certain supporting data be submitted concerning two aspects of Customs' administration of the present laws. These data are given below and in the enclosures.

Missing Manifest Pages. From the enclosed documents, stapled together and marked "Set I", you will note that the SS MAINE, a recent addition to the U. S. Flag Merchant Marine, arrived at Honolulu on January 24, 1976 laden with foreign cargo for discharge at U. S. ports, including Honolulu, Long Beach and San Francisco. Customary procedures were followed in that the Honolulu agents and the Master made up two manifest sets for the Honolulu Customs, the first being termed an original and the second a traveler. The purpose of the traveler is to accompany the ship at all subsequent U. S. ports of discharge, whereas the original remains on file with Customs at the first U. S. port of discharge. Through an innocent inadvertence, six pages were missing from both the original and the traveler. These six pages covered seven containers to be discharged at San Francisco.

When the vessel arrived in San Francisco, a complete manifest was filed, including the six pages missing from the previous sets. At this point, Customs noted the discrepancy and fined the vessel nearly $3,000,000, that figure being the valuation placed on the cargo by the District Director. States Line was able to secure release of the cargo for delivery to the consignees only upon establishing a letter of credit in the amount of $16,000. To date, more than a year later, this matter is unresolved, inasmuch as States Line has received no final decision from Customs concerning the correctness or the amount of the penalty.

Some six months after this incident, Honolulu Customs decided that they were owed a penalty, also, and slapped a fine of almost half a million dollars on States Line. This penalty was finally mitigated to the sum of $2,000, which States Line paid.

This incident illustrates several typical aspects of Customs' penalty procedures. Firstly, the fines levied often bear no relation to the degree of fault. Secondly, Customs has a self-righteous, almost vengeful policy of levying the maximum fine permitted by law. Thirdly, the manner in which Customs arrives at a cargo valuation, for purposes of penalty, is mysterious and Customs makes no effort to explain to the public how these fines are arrived at.

Shipper Packed/Importer Unpacked Containers. One of your questions was whether Customs held the vessel liable for the interior quantity of a shipper-packed container and I responded in the affirmative. The stapled set of correspondence, marked "Set II", illustrates this problem. In this particular case, on a vessel for which my company acted as agents, a bill of lading and manifest were issued in the Port of Rotterdam covering three containers containing 3,990 cartons of beer, SLAC. This code, SLAC, is a Customs-accepted abbreviation for "Shippers Load and Count" and means that the container was packed by the exporter in a foreign country and is to be unpacked by a consignee in this country. Obviously, the ocean carrier can only accept the word of the exporter as to the interior quantity. You will note that in this case we received a fine of $23,563 for an alleged shortage of 3,933 cartons (3,990 cartons less 57!).

It's a catch-22 situation. Customs agrees we should not be responsible for FCL interior quantities, but at the same time insists we manifest the interior quantity. Then, if there is any disparity in quantity, we are fined for the difference.

Customs is working to implement the AMPS program, a step we favor as this will introduce widespread automation and should free staff from tedious clerical duties. A note of caution is required, however. It is my understanding that input to AMPS will remain the same: from the carrier manifest, Customs will prepare an "A" punchcard, showing the manifested total. Then, from the importer's entry, a "B" card will be prepared. Any mismatches will kick out as

"errors", for which the carrier will be fined if the law is not changed. Our records indicate that fully 40% of all such "errors" are either not errors at all, or are caused by broker, importer or Customs itself misinterpreting records or mis-stating quantities.

We firmly believe that the amendments we have suggested for HR8149, which amendments would better delineate the Masters' responsibility for cargo quantity; insert a clear definition of clerical error in the law; and provide in Sec. 584 the same pre-penalty notice which HR8149 is placing in Sec. 592; will make HR8149 a significantly stronger piece of legislation and place carriers in a much more equitable position than we presently occupy vis-a-vis Customs.

Once again, the organizations I represent very much appreciate the opportunity we received to place our views before your committee.

Yours sincerely,

GENERAL STEAMSHIP CORPORATION, LTD.

J. J. Greene
Vice President

JJG:dmr

Enclosures

SET I

STATES LINE
STATES STEAMSHIP COMPANY
Serving All Pacific Coast Ports
Hawaii and the Far East
320 CALIFORNIA STREET • SAN FRANCISCO, CALIFORNIA 94104 • CABLE ADDRESS "STATESLINE" • TELEPHONE: (415) 983-8231

3 February 1978

John J. Greene
General Steamship Corporation, Ltd.
400 California Street
San Francisco, California 94104

Dear John:

Philip Steinberg, Pacific Merchant Shipping Association, has requested that we send to you the documents in our:

U. S. CUSTOMS (SF)77-2809-10185
U. S. CUSTOMS (HONO)77-3201-50126
FAILURE TO MANIFEST SEVEN CONTAINERS
SS MAINE Voyage 5E
States Line File F-608

Accordingly, we outline the sequence of events:

Vessel arrives Honolulu 1/24/77
Vessel arrives Long Beach 2/04/77
Vessel arrives San Francisco 2/05/77

At Honolulu, six pages of the manifest from Osaka via Kobe covering seven containers of merchandise were omitted from the original manifest filed at Honolulu and the Travellers.

No difficulty arose at Long Beach.

At San Francisco a complete manifest was provided the Customs Inspector for the vessel including the six pages not included in the Travellers.

However, the seven containers were noted as being discharged at San Francisco without being "permitted" inasmuch as the seven containers were not on the Travellers used to enter the vessel.

Accordingly, the seven (7) containers were seized by Customs and a demand made for a bond for $2,948,135.00 was demanded before the Customs could release the containers.

Thus, this item came to the attention of our executives who, with the assistance of the Customs House Broker, obtained release of the containers in exchange for the posting of a letter of credit for $16,000.00 in favor of Customs against which they could draw when the mitigated (hopefully) amount was known.

We petitioned against the original penalty (with difficulty in that for the first time ever Customs required the personal signature of the Master) and that whole item, i.e., the original penalty of $2,948,135.00, our $16,000.00 letter of credit and our petition (Masters) all are outstanding with no resolution of any item.

Subsequently, in July 1977 we received a Notice of Penalty from the District Director at Honolulu for "failure to manifest" (19USC1431 & 1584) for $470,630.00.

First we argued that we had already been penalized for the error but Honolulu said they were assessing us for failure to manifest and San Francisco for unloading non-permitted goods.

We petitioned and received a mitigated penalty of $2000.00. After a futile attempt to stall off the Honolulu $2000.00 pending a decision on the San Francisco penalty, we paid the $2,000.00.

Enclosed is our entire file on the whole subject, Honolulu as well as San Francisco.

Note the huge discrepancy between the evaluation as to value of the goods by Honolulu and San Francisco.

The merchandise was not high value in nature and we doubt it would value out at $470,638.00 or close thereto.

Our appreciation for your good work on our behalf.

Very truly yours,

STATES STEAMSHIP COMPANY

Robert Jenkins
Insurance and Claims

RJ/lab
Enclosures
cc: F-608

cc: Mr. Philip Steinberg, President
Pacific Merchant Shipping Association
P. O. Box 7861
San Francisco, California 94120

TREASURY DEPARTMENT

12606049

CASH RECEIPT

BUREAU OF CUSTOMS

RECEIVED OF: January 26 19 78

NAME States Steamship Company

ADDRESS 320 California Street

San Francisco, CA 94104

EXPLANATION OF TRANSACTION

ACCT. CLASS. CODE	USER CHARGE CODE	REMARKS	AMOUNT	
32		Failure to file complete and correct manifest of all cargo on board Amn SS MAINE on arrival at Honolulu from Yokohama, Japan, on 1-30-77: Penalty	2,000	00
		In violation of section 1584, title 19, U.S. Code		
		Honolulu District Case No. 77-3201-50126 dtd 7-15-77		
		TOTAL	2,000	00

CUSTOMS FORM 5104 JUL 66

Customs Officer

PAYER'S RECEIPT

☆ U. S. GOVERNMENT PRINTING OFFICE 1966-209-710

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
HONOLULU, HAWAII

JAN 26 1978

REFER TO

77-3201-50126
Your File: F-608

Mr. Robert Jenkins
Insurance and Claims
States Steamship Company
320 California Street
San Francisco, CA 94104

Dear Mr. Jenkins:

This will acknowledge receipt of payment of the mitigated penalty of $2,000 incurred in Honolulu District Case No. 77-3201-50126.

Enclosed is receipt No. 12606049 covering the payment. You may consider the case closed.

Sincerely yours,

Robert J. Hazelton
for George Roberts
District Director

Enclosure

24 January 1978

District Director of Customs
P. O. Box 1641
Honolulu, Hawaii 96806

ATTENTION: George Roberts,
District Director

Dear Sir:

Your: 77-3201-50126
19 January 1978
United States Customs Service Penalty
SS MAINE Voyage 5 E
States Line File F-608

Pursuant to the decision outlined in your letter of 19 January 1978, we are enclosing our check number 218139 of this date made payable to United States Customs Service for $2,000.00.

In view of the strictures noted in the last paragraph of your letter of 19 January 1978, we ask that we be provided with a prompt written acknowledgement of our payment as enclosed.

Very truly yours,

STATES STEAMSHIP COMPANY

Robert Jenkins
Insurance and Claims

RJ/lab

Enclosure

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
HONOLULU, HAWAII

JAN 1978

REFER TO
77-3201-50126

Mr. Robert Jenkins
States Steamship Company
320 California Street
San Francisco, CA 94104

Dear Mr. Jenkins:

This refers to your petition of August 3, 1977, filed on behalf of Captain Walter R. Day, master of the SS MAINE, requesting relief from the penalty of $470,638 assessed in Honolulu District Case No. 77-3201-50126, for violation of title 19, United States Code, section 1584.

The penalty was assessed because the manifest presented on arrival in the United States failed to include 13 shipments.

After careful consideration of the entire file, Customs Headquarters in Washington, D. C., mitigated the penalty to $2,000.

Payment is due on or before February 6, 1978; otherwise, the mitigation action will be canceled and the original penalty of $470,638 will be reinstated. Check should be made payable to the United States Customs Service and forwarded to this office.

If you are dissatisfied with the decision and have additional information which was not submitted for consideration in your original petition, you may file a supplemental petition (in triplicate) within 30 days from the date of this letter.

We have been advised by the Internal Revenue Service that amounts paid as penalties in connection with violations of Customs laws are not deductible for Federal income tax purposes.

Sincerely yours,

George Roberts
District Director

August 3, 1977

District Director of Customs
United States Customs Service
PO Box 1641
Honolulu, Hawaii 96806

Dear Sir:

Your: 77-3201-50126
SS MAINE Voyage 5 East
United States Inward Foreign Manifest
Osaka via Kobe/San Francisco Sheet 1
Kobe/San Francisco Sheets 1 and 2
Kobe/Oakland Sheet 1
Kobe/Richmond Sheets 1 and 2
Failure to Manifest - 19 USC 1584
States Line File Ref. F-608

States Steamship Company hereby petitions for relief from the penalty assessed of $470,638.00 for failure to include the subject manifest pages in the Traveller in the original United States Inward Foreign Manifest for this vessel.

The SS MAINE, having completed her calls at Orient ports and being homebound to the United States made her first United States port of arrival at Honolulu on January 30, 1977.

In accordance with the usual procedures, our agents in all Orient ports of loading prepare the shipping documents and the United States Inward Foreign Manifest for all the cargoes loaded to the vessel at their port.

The United States Inward Foreign Manifest is dispatched ahead by the swiftest routing to our agent at the first United States port of call for the vessel. The remaining shipping documents are dispatched to the port for the cargo concerned with copies of the United States Inward Foreign Manifest also for the cargo for each port concerned.

In this situation, the Inward Foreign Manifests came to our agent in Honolulu, Davies Marine Agencies, Inc. They were assembled by that office and made up into sets. Upon the vessel's arrival, a Davies Marine employee goes aboard the vessel with the United States Customs Service Boarding Officer whereupon they prepare a set of manifest pages which become the Original Manifest. When this manifest is determined to be complete, then the Boarding Officer grants a Preliminary Entrance. A second manifest set, identical to the original, is prepared and is used by the Customs House Broker in entering the vessel and it becomes the Traveller.

In this instance, due to an inadvertance, an unintentional clerical error, the subject manifest pages were not taken aboard the vessel upon arrival and were, as a consequence, not included in the Original or in the Traveller manifests.

The United States Inward Foreign Manifest for San Francisco cargoes was prepared and given to the Customs Inspector on Pier 80, San Francisco, prior to the vessel's arrival for his information. This manifest did include the manifest pages in caption that were missing in the Traveller.

We, therefore, petition for the release of the cargo in question on the following basis:

1. That the omission of the six manifest pages (and two attached sheets) was unintentional;

2. That there was no intent on the part of States Steamship, the Master, or Davies Marine Agencies, Inc., to defraud the United States;

3. That the omission resulted from a clerical error;

4. That States Steamship Company has been operating out of United States ports for decades with dozens of entries per year, each one with a conscientious endeavor at all times to comply with the United States Customs laws and regulations;

5. That the United States lost no revenue by reason of the omissions in question.

Respectfully,

STATES STEAMSHIP COMPANY

Robert Jenkins
for Walter R. Day
Master
SS MAINE Voyage 5

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
HONOLULU, HAWAII

AUG 1 1977

REFER TO
77-3201-50126

AUG 1977
JPH

Mr. Robert Jenkins
Insurance & Claims
States Steamship Company
320 California Street
San Francisco, CA 94104

Dear Mr. Jenkins:

This refers to your letter of July 18, 1977, concerning liabilities incurred by the Master of the American SS MAINE in two separate cases at Honolulu and San Francisco.

In Honolulu District Case No. 77-3201-50126, the penalty was assessed under title 19, United States Code, section 1584, for failure to file a complete and correct manifest of all cargo on board the American SS MAINE upon arrival of the vessel at Honolulu from Yokohama, Japan, on January 30, 1977.

In the San Francisco case, the violation was incurred under title 19, United States Code, section 1453, for the unlawful unlading of containers without a Customs permit.

The two cases involve violations of two different sections of law and are being treated separately.

The penalty action in the Honolulu case stands, and you are granted 60 days from the date of this letter to file your petition in this case.

Sincerely yours,

George Roberts
District Director

18 July 1977

District Director of Customs
United States Customs Service
P. O. Box 1641
Honolulu, Hawaii 96806

Dear Sir: Your: 77-3201-50126 15 July 1977
SS MAINE Voyage 5 E
States Line File Number F-608

Please refer to your Notice of Penalty, as captioned, covering the failure to manifest some thirteen shipments on this vessel upon arrival at your port.

We call your attention to the fact that the Distric Director of Customs, San Francisco seized the goods in question upon discharge at San Francisco; levied a penalty of $2,948,135.00; freed the seized merchandise upon our posting of an irrevocable letter of credit for $16,000. and who has received two petitions in connection therewith. (See attached copy.) (Case Number 77-2809-10185.

Accordingly, we hereby petition for withdrawal of the Notice of Penalty in caption on the basis that we have already been penalized for the alleged infraction.

Very tuly yours,

STATES STEAMSHIP COMPANY

Robert Jenkins
Insurance & Claims

Encl
/rj

NOTICE OF PENALTY OR LIQUIDATED DAMAGES INCURRED AND DEMAND FOR PAYMENT

Case Number: 77-3201-50126

Port Name and Code: Honolulu, HI - 3201

Investigation File No.:

TO:
States Steamship Company
320 California Street
San Francisco, California 94104

94-1388081
Master Walter R. Day, American SS MAINE

DEMAND IS HEREBY MADE FOR PAYMENT OF $ 670,638.00, representing ☒ Penalties or ☐ Liquidated Damages assessed against you for violation of law or regulation, or breach of bond, as set forth below:

Failure to file a complete and correct manifest of all cargo on board the American SS MAINE on arrival at this port from Yokohama, Japan on January 30, 1977.

13 shipments (KS 1-4, KOA 1-4, KR 1, KROV 301, KSOV 301-302, OS 1) were not included in the manifest for discharge at San Francisco, California.

Penalty is equal to the value of the merchandise.

(continue here on reverse)

LAW OR REGULATION VIOLATED	BOND BREACHED
19 U.S.C. 1431 19 U.S.C. 1584	Vessel, Vehicle or Aircraft Bond (Term)

DESCRIPTION OF BOND (If any)	Form Number	Amount	Date
	7569	$ 50,000.00	ABIS

Name and Address of Principal in Bond: States Steamship Company, 320 California St., San Francisco, Ca. 94104

Name and Address of Surety on Bond: Insurance Company of North America, Philadelphia, Pa.

Surety Identification No.: 413

If you feel there are extenuating circumstances, you have the right to object to the above action. Your petition should explain why you should not be penalized for the cited violation. Write the petition as a letter or in legal form; submit in (duplicate) (triplicate), addressed to the Commissioner of Customs, and forward to the District Director of Customs at P. O. Box 1641, Honolulu, Hawaii 96806

Unless the amount herein demanded is paid or a petition for relief is filed with the District Director of Customs within 60 days from the date hereof, further action will be taken in connection with your bond or the matter will be referred to the United States Attorney.

Signature	Title	Date
By: Robert J. Hazelton	Director, Inspection & Control	JUL 15 1977

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
23.11, 23.25, C.M.

Customs Form 5955-A (10-9-73)
Marine:ba

THE DEPARTMENT OF THE TREASURY
BUREAU OF CUSTOMS
19 U.S.C. 1618

FORM APPROVED:
BUREAU BUDGET NO. 48-R0400

PETITION FOR REMISSION OR MITIGATION OF FORFEITURES AND PENALITIES INCURRED

DISTRICT	PORT	SEIZURE NO.
San Francisco	2809	77-2809-10185

DESCRIPTION OF MERCHANDISE

container #NICA-1763, seal 119336
container #CTIU-206825seal 119337
container #NICB-0037, seal 119338
container #NICB-9158, seal 119334
container #SCPU-414238seal 119335
container #SSCC-5445, seal 118595
container #SSCC-7253, seal 118593

NAME	ADDRESS
Captain Walter R. Day Master, SS MAINE	c/o States Steamship Co. San Francisco, Calif.

I petition for the release and delivery of the seized above-described merchandise and for relief from the personal penalty incurred because of the following mitigating circumstances.

For Attached Petition Letter of Even Date Addressed:

District Director of Customs
United States Custom Service
P.O. Box 2450
San Francisco, CA. 94126

Mailed to District Director of Customs
United States Customs Service
P. O. Box 2450,
San Francisco, California 94126

With Enclosure 11 May 1977

Filed Under Time Extension GKB:rsw 6 May 1977

SIGNATURE	ADDRESS	DATE
	20405-80th, N.E. Bothell, Wash. 98011	March 25, 1977

CUSTOMS FORM 4609 Feb. 69

GPO 963-941

STATES LINE
STATES STEAMSHIP COMPANY
Serving All Pacific Coast Ports
Hawaii and the Far East
320 CALIFORNIA STREET • SAN FRANCISCO, CALIFORNIA 94104 • CABLE ADDRESS "STATESLINE" • TELEPHONE (415) 983-8231

March 25, 1977

District Director of Customs
United States Customs Service
P.O. Box 2450
San Francisco, CA. 94126

Dear Sir:

SS MAINE Voyage 5 East
United States Inward Foreign Manifest
Osaka via Kobe/San Francisco Sheet 1
Kobe/San Francisco Sheets 1 and 2
Kobe/Oakland Sheet 1
Kobe/Richmond Sheets 1 and 2
Failure to Manifest - Seizure of Cargo
States Line File Ref. F-608

States Steamship Company hereby petitions for the release of cargo seized by the United States Customs Service at Pier 80, San Francisco on or about February 5, 1977 and subsequent dates, the seizure resulting from the failure to include the subject manifest pages in the Traveller in the original United States Inward Foreign Manifest for this vessel.

The SS MAINE, having completed her calls at Orient ports and being homebound to the United States made her first United States port of arrival at Honolulu on January 30, 1977.

In accordance with the usual procedures, our agents in all Orient ports of loading prepare the shipping documents and the United States Inward Foreign Manifest for all the cargoes loaded to the vessel at their port.

The United States Inward Foreign Manifest is dispatched ahead by the swiftest routing to our agent at the first United States port of call for the vessel. The remaining shipping documents are dispatched to the port for the cargo concerned with copies of the United States Inward Foreign Manifest also for the cargo for each port concerned.

In this situation, the Inward Foreign Manifests came to our agent in Honolulu, Davies Marine Agencies, Inc. They were assembled by that office and made up into sets. Upon the vessel's arrival, a Davies Marine employee goes aboard the vessel with the United States Customs Service Boarding Officer whereupon they prepare a set of manifest pages which become the Original Manifest. When this manifest is determined to be complete, then the Boarding Officer grants a Preliminary Entrance. A second manifest set, identical to the original, is prepared and is used by the Customs House Broker in entering the vessel and it becomes the Traveller.

In this instance, due to an inadvertance, an unintentional clerical error, the subject manifest pages were not taken aboard the vessel upon arrival and were, as a consequence, not included in the Original or in the Traveller manifests.

The vessel called at Long Beach prior to San Francisco; however, none of the concerned personnel at that port had any way of knowing that the Traveller was incomplete insofar as the San Francisco cargo was concerned.

The United States Inward Foreign Manifest for San Francisco cargoes was prepared and given to the Customs Inspector on Pier 80, San Francisco, prior to the vessel's arrival for his information. This manifest did include the manifest pages in caption that were missing in the Traveller.

We, therefore, petition for the release of the cargo in question on the following basis:

1. That the omission of the six manifest pages (and two attached sheets) was unintentional;

2. That there was no intent on the part of States Steamship Company or its agent, Davies Marine Agencies, Inc., to defraud the United States;

3. That the omission resulted from a clerical error;

4. That States Steamship Company has been operating out of San Francisco for decades with dozens of entries per year, each one with a conscientious endeavor at all times to comply with the United States Customs laws and regulations;

5. That the United States lost no revenue by reason of the omissions in question.

Respectfully submitted,

STATES STEAMSHIP COMPANY

Walter R. Day

Walter R. Day
Master
SS MAINE Voyage 5

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
SAN FRANCISCO, CALIFORNIA

FEB 24 1977

REFER TO GKB:hs
Case No. 77-2809-10185

Captain Walter R. Day,
Master SS MAINE
c/o States Steamship Company
320 California Street
San Francisco, Calif.

Dear Sir:

Under the provisions of 19 U.S. Code 1453, you have incurred a Customs penalty of $2,948,135.00 and the seizure of the containers listed below containing various merchandise, for the reason these containers were unladen without a Customs permit. Seizure under the above Section of the U.S. Code subjects the containers to forfeiture and warrants collection of the Customs penalty.

Container #NICA-1763, seal 119336
Container #CTIU-206825, seal 119337
Container #NICB-0037, seal 119338
Container #NICB-9158, seal 119334
Container #SCPU-414238, seal 119335
Container #SSCC-5445, seal 118595
Container #SSCC-7253, seal 118593

These containers were placed under constructive seizure and left in the custody of States Steamship Company. They were released from constructive seizure after States Steamship Company deposited with Customs an irrevocable letter of credit in the amount of $16,000.

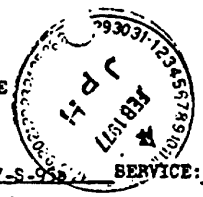
You have the right to petition for relief from the penalty under the provisions of 19 U.S. Code 1618. Your petition, in duplicate, should be addressed to the District Director of Customs, P.O. Box 2450, San Francisco, Calif. 94126, and should set forth any mitigating circumstances. Forms for your use are enclosed.

We consider sixty (60) days from the date of this letter a sufficient length of time in which to hear from you. After that date, if your petition has not been received, appropriate action will be taken to effect collection of the Customs penalty.

Yours very truly,

George K. Brokaw
District Director of Customs

Encls.



STATES STEAMSHIP COMPANY
COMPLETED VOYAGE SCHEDULE

VESSEL: MAINE VOYAGE: 05 TYPE: C7-S-95a SERVICE: B

COMMENCED: DATE: 12/15/76 TIME: 0001 PORT: Tacoma, Washington
TERMINATED: DATE: 02/10/77 TIME: 2400 PORT: Tacoma, Washington

ROUND VOYAGE DAYS: AT SEA: 36 IN PORT: 22 TOTAL: 58

ITINERARY

PORT	ARRIVED DATE TIME	SAILED DATE TIME	REMARKS
Tacoma	12/15/0001	12/15/2015	
New Westminster, B.C.	12/16/0648	12/16/1430	
Portland	12/17/1306	12/20/1515	
Long Beach	12/22/1607	12/24/0210	
San Francisco	12/24/2219	12/27/1110	1.
Yokohama	1/08/0840	1/09/0950	2.
Kawasaki	1/09/1150	1/11/0640	
Nagoya	1/11/1830	1/12/0500	
Kobe	1/12/1550	1/13/1300	
Kaohsiung	1/15/1630	1/16/1700	
Keelung	1/17/0500	1/17/2030	
Busan	1/19/0730	1/19/2000	
Kobe	1/21/0700	1/22/1950	
Yokohama	1/24/0900	1/24/2040	
Honolulu	1/30/0800	1/30/2400	
Long Beach	2/04/1215	2/05/0035	
San Francisco	2/05/1928	2/08/1700	
Tacoma	2/10/1100	2/10/2400	

1. Christmas Holiday 24th - 25th

2. Two-and-one-half days delay en route Yokohama a/c weather.

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
HONOLULU, HAWAII

JAN 1978 JPH

19 1978

REFER TO
77-3201-50126

Mr. Robert Jenkins
States Steamship Company
320 California Street
San Francisco, CA 94104

Dear Mr. Jenkins:

This is in response to your letter of January 10, 1978, concerning Honolulu District Case No. 77-3201-50126.

The decision in this case was rendered by Customs Headquarters in Washington, D. C. All factors of this matter were carefully considered and Headquarters expressed its position in mitigating the original penalty of $470,638 to the sum of $2,000.

Our letter of January 4, 1978, advised you of that decision. It further advised you that unless the mitigated penalty of $2,000 was paid, or a supplemental petition filed, by February 6, 1978, the mitigation action will be canceled and the original penalty will be reinstated.

Your letter of January 10 presents no factors warranting further extension of time; therefore, unless payment is forthcoming by February 6, this office will proceed against the surety on the vessel's bond for the full amount.

Sincerely yours,

George Roberts
District Director

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
HONOLULU, HAWAII

JAN 12 1978

77-3201-50126

Mr. Robert Jenkins
States Steamship Company
320 California Street
San Francisco, CA 94104

Dear Mr. Jenkins:

This will acknoledge receipt of your letter of January 10, 1978, concerning Honolulu District Case No. 77-3201-50126.

When our review of this matter has been completed, we will write to you again.

Sincerely yours,

George Roberts
District Director

10 January 1978

Commissioner of Customs
Washington, D.C., United States Customs Service

Thru: District Director of Customs
United States Customs Service
P. O. Box 1641
Honolulu, Hawaii 96806

Dear Sir:

Honolulu District Case 77-3201-50126
San Francisco District Case 77-2809-10185
SS MAINE Voyage 5 East
Seven Unmanifested Containers
States Line File F-608

As the result of a clerical error, pages of the United States Inward Foreign Manifest covering seven Osaka via Kobe to San Francisco containers were omitted from the Traveller.

The District Director of Customs at San Francisco seized the cargo in question and levied a penalty of $2,948,135. against the vessel, under the provisions of 19 U.S.C. 1453. Following some negotiations, States Steamship Company posted with the District Director of Customs in San Francisco an Irrevocable Letter of Credit in the sum of $16,000.00 and the cargo was released by Customs.

Against that penalty case there was filed and received by the District Director of Customs in San Francisco, 11 May 1977, a petition for relief from the penalty involved. We have not received a decision on that petition to date.

On 15 July 1977 the District Director of Customs in Hawaii filed a Notice of Penalty, 77-3201-50126 for $470,638.00 under 19 U.S.C. 1431 and 1584.

We protested being penalized twice for the same error but the District Director in Honolulu held that it was proper as two separate sections of the law were involved.

Against that penalty case we filed a petition of August 3, 1977.

We are now in receipt of a determination from the District Director of Customs in Honolulu that the Honolulu Case 77-3201-50126 has been mitigated to $2,000.00. While this is a considerable mitigation it also represents a very substantial penalty for an infraction that did not cost the United States any loss in revenue.

We are, however, more concerned presently with the fact that the decisions on this item are being made separately. Without knowing the decision on our petition on the San Francisco penalty we cannot be in a position to assess our proper reaction to the Honolulu penalty.

Accordingly, we ask that the decision of the District Director of Customs in Honolulu be held in abeyance pending receipt of the decision of the District Director of Customs in San Francisco. It is, after all, one single fact is under consideration.

Respectfully,

STATES STEAMSHIP COMPANY

Robert Jenkins
For:
W. R. Day, Master
SS MAINE Voyage 5

RJ/lab

Enclosures

P.S.: Copies of all documents herein referred to are enclosed for your ready reference. RJ.

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
HONOLULU, HAWAII

69P

AUG 31 1977

REFER TO

77-3201-50126

Mr. Robert Jenkins
States Steamship Company
320 California Street
San Francisco, CA 94104

SEP 1977
JpH

Dear Mr. Jenkins:

This concerns the petition you filed in connection with Honolulu District Case No. 77-3201-50126.

The case has been referred to Customs Headquarters, Washington, D.C., for a decision.

We will notify you as soon as a decision is rendered.

Sincerely yours,

George Roberts
District Director

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
SAN FRANCISCO, CALIFORNIA

FEB 24 1977

Reply to GKB:hs
Case No. 77-2809-10185

States Steamship Company
320 California Street
San Francisco, Calif.

Gentlemen:

Under the provisions of 19 U.S. Code 1453, you have incurred a Customs penalty of $2,948,135.00 and the seizure of the containers listed below containing various merchandise, for the reason these containers were unladen without a Customs permit. Seizure under the above Section of the U.S. Code subjects the containers to forfeiture and warrants collection of the Customs penalty.

Container #NICA-1763, seal 119336
Container #CTIU-206825, seal 119337
Container #NICB-0037, seal 119338
Container #NICB-9158, seal 119334
Container #SCPU-414238, seal 119335
Container #SSCC-5445, seal 118595
Container #SSCC-7253, seal 118593

These containers were placed under constructive seizure and left in your custody. We are in receipt of your irrevocable letter of credit, number 15623, in the amount of $16,000, deposited in order to secure immediate release of the containers. The containers were released from constructive seizure on February 10, 1977.

You have the right to petition for relief from the penalty under the provisions of 19 U.S. Code 1618. We are in receipt of your letter of petition, dated February 9, 1977. You will be notified accordingly of any decision made in this case.

Yours very truly,

George K. Brokaw
District Director of Customs

SET II

WESTERN OCEAN SERVICES COMPANY

SEATTLE, WASH. 98104
1001 Fourth Avenue
622-4701

PORTLAND, ORE. 97204
425 S. W. Washington Street
228 7214

SAN FRANCISCO, CAL. 94104
400 California Street
392 4100

LOS ANGELES 90017 – 550 So. Flower St.
624-7412
HARBOR OFFICE – Berth 143 Wilmington
835-7231

FROM: San Francisco DATE: June 13, 1977

TO: S.F. Accounting Dept. SUBJECT: U.S. Customs Penalty Notification

ATTENTION: Mr. Claud Morris REFERENCE: Case #76-2809-51303, Amount:$200.00

The above referenced Penalty Notification has been stamped and approved for payment. Although we were abel to convince Customs that no overage had occured on the subject Bills of Lading, and hense no Post Entries were necessary, we did not respond to the initial discrepancy report within the prescribed time limits and are therefore obliged to pay this greatly reduced amount for our "Failure to timely file".

Thank you,

Robert C. Mackenzie

Robert C. Mackenzie
Quantity Control

cc: Claims Dept.

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
SAN FRANCISCO, CALIFORNIA

JUN 8 1977

REFER TO GKB:br
76-2809-51303

Reference: Liquidated damages in the amount of $23,563.00 for failure to make post entry and lack of manifest for cargo laden aboard ANTONIA JOHNSON, arrival November 2, 1975.

Dear Mr. Mackenzie:

In view of statements made and documents submitted in your letter of petition dated January 25, 1977, we will cancel the subject claim upon payment of $200.00.

Your payment in the amount of $200.00 should be made in the form of a cashier's check or money order payable to the U. S. Customs Service and mailed to P. O. Box 2450, San Francisco, CA 94126.

If payment is not received within thirty (30) days from the date of this letter, a bill for the full amount of liquidated damages will be issued. Bills not promptly paid will be referred to the surety for collection.

Very truly yours,

GEORGE K. BROKAW
District Director of Customs

General Steamship Corp., Ltd.
P. O. Box 3450
San Francisco, CA 94119

APPROVED

Audit.	Rates	Tonnage	Compt.	Pm't.
S.C.U.				

GENERAL S. S. CORP LTD.
CHARGE TO SAN FRANCISCO

General Steamship Corporation LTD

0 California Street, San Francisco, California · Telephone (415) 392-4100 · Cable "GENSTEAMCO" Mail Address: P O. Box 3450, 94119

January 25, 1977

District Director of Customs
555 Battery Street
San Francisco, California 94126

Attn: Mr. Scott Whitely
Fines and Penalties

Re: M/S ANTONIA JOHNSON Voy. 22W
Arrived: 11/2/75
Bill of lading ROT/OAK 0311 and GOT/OAK 209
Penalty Notification 76-2809-51033
Amount: $23,563.00

Gentlemen:

We request a mitigation of the amount assessed against us under the above-referenced Penalty Notification because of the following information:

On the first bill of lading (ROT/OAK 0311) there was, in fact, no overage, but due to misleading manifesting on our part considerable confusion has arisen over how many cartons of beer are actually covered by this bill of lading. Our original bill of lading states 3 containers, each "said to contain" 19 oneway pallets "said to contain" 1330 cartons of beer in bottles. Unfortunately, the manifest shows only the total number of pallets (57). Each container held 19 pallets, "said to "contain" 1330 cartons, resulting in a 3 container total of 57 pallets, "said to contain" 3990 cartons of beer.

The broker for this cargo presented ID #1211804 for 3990 cartons of beer that were on the manifested 57 pallets. Since the 57 pallets contained the 3990 cartons of beer we did not think that we had made any error. The gross weight of the beer on the 57 pallets as manifested was equal to the gross weight of the beer as delivered. All duty and taxes on this merchandise were subsequently paid by the broker on his Consumption Entry #127192, resulting in no loss of revenue to the government. I have enclosed copies of all the documents available in our offices that relate to this case and hope that they are sufficient to clarify what we consider to be strictly a problem of interpretation and not an attempt on our part to misstate or submit any false documents to U.S. Customs.

The 100 cartons of sewing thread that were over on the secondbill of lading (GOT/OAK 209) were in a container that was sealed on delivery to

us at the foreign loadport and subsequently delivered, with the seal intact, against a Permit to Transfer to the consignee's NVOCC trucker. We only learned at a later date that there were an additional 100 cartons of thread covered by this bill of lading. The Manifest Correction Report that we would have used as supporting documentary evidence to substantiate this overage was misplaced for several months causing a delay in our filing on this overage. The broker in this case has filed CE #127419 and paid all the applicable duty and taxes on the total 266 cartons of thread, resulting in no loss of revenue to the government.

We would like to apologize for the long delay in responding to Customs on this matter and hope that we have submitted sufficient documentary evidence to have this fine against us mitigated to a lesser amount, as the facts presented in this letter may warrant.

Very truly yours,

JOHNSON SCANSTAR
by GENERAL STEAMSHIP CORPORATION, LTD.
As agents

Robert C. Mackenzie

Robert C. Mackenzie
Quantity Control

RCM/kc

Case Number: 76-2801-S 1303

Port Name and Code: San Francisco 28-09

Investigation File No.: I490/[illegible]/4

NOTICE OF PENALTY OR LIQUIDATED DAMAGES INCURRED AND DEMAND FOR PAYMENT

TO:
General Steamship Corp.
400 California Street
San Francisco, Calif. 94104

VES M.V. Antonia
Johnson

ARR: 11-2-75

DEMAND IS HEREBY MADE FOR PAYMENT OF $ 23,543.00, representing [X] Penalties or [ ] Liquidated Damages assessed against you for violation of law or regulation, or breach of bond, as set forth below:

Failure to make Post Entry and Lack of Manifest of cargo laden aboard vessel but not manifested.

B/L GOTHENBURG 209 100 Cs Polyester thread Value $3,113

B/L ROTTERDAM RTM 0311 3933 Cs Beer 19,950

(continue facts on reverse)

LAW OR REGULATION VIOLATED	BOND BREACHED
19 USC 1480 19 USC 1584	WVA

DESCRIPTION OF BOND (if any)	Form Number	Amount	Date
	7560	$ 50,000	5-20-74

Name and Address of Principal in Bond: Same as above

Name and Address of Surety on Bond: Fidelity & Casualty of New York, New York, N.Y.

Surety Identification No.: 94-0501206 CF (877)

If you feel there are extenuating circumstances, you have the right to object to the above action. Your petition should explain why you should not be penalized for the cited violation. Write the petition as a letter or in legal form; submit in (duplicate) (triplicate), addressed to the Commissioner of Customs, and forward to the District Director of Customs at 555 Battery Street, San Francisco, Ca. 94126

Unless the amount herein demanded is paid or a petition for relief is filed with the District Director of Customs within 60 days from the date hereof, further action will be taken in connection with your bond or the matter will be referred to the United States Attorney.

Signature	Title	Date
By: GEORGE K. REGAN	DISTRICT DIRECTOR OF CUSTOMS QUARTILY OFFICER	1-17-76

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
23.11; 22.75, C.M.

Customs Form 5955-A (10-9-73)

Johnson ScanStar

Joint Service of
[illegible] NORDSTJERNAN, JOHNSON LINE, STOCKHOLM
THE EAST ASIATIC COMPANY LTD, COPENHAGEN
[illegible] LONDON

CARGO MANIFEST

Page No. [illegible]

[illegible] JOHNSON	22R	[illegible] SCHEEPVAART MIJ. [illegible]		
SWEDISH		ROTTERDAM	OAKLAND	OAKLAND
JOHNSON LINE	[illegible]ARTSILA, ABO FINLAND	465491	STOCKHOLM	.12.71

B/L No.	(S) Shipper (C) Consignee (N) Notify	Cargo Marks and Numbers	Number of Packages	Kind of Packages and Description of Goods		Gross Weight of Cargo	Measurement of Cargo	Port of Discharge
	BROUGHT FORWARD		2520			122.686	197.136	
RTM 0310	(S) HEINEKEN BROUWERIJ B.V. POSTBUS 455 ROTTERDAM (C) MESSRS. VAN MUNCHING AND CO. INC. 51 WEST 51ST STR. NEW YORK N.Y. 10019	VAN MUNCHING AND CO. INC. 4.0	5	ONEWAY PALLETS S.T.C. 350 CARTONS BEER IN BOTTLES	FCL/FCL A.DEN BOSCH D.OAKLAND EACU 3113391 SEAL 166643 (10 X) (SLAC)	10.720	15.600	OAK
		VAN MUNCHING AND CO. INC. 4.0 6 PACKS	5	ONEWAY PALLETS S.T.C. 350 CARTONS BEER IN BOTTLES				
RTM 0311	(S) HEINEKEN BROUWERIJ B.V. POSTBUS 455 ROTTERDAM (C) MESSRS. VAN MUNCHING AND CO. INC. 51 WEST 51 ST STR. NEW YORK N.Y. 10019	VAN MUNCHING AND CO. INC. 4.0 6 PACKS	57	CARTONS BEER IN BOTTLES *equals 19 pallets 3 times.*	FCL/FCL A.DEN BOSCH D.OAKLAND CTIU 2983596 *1330 Cartons* SEAL 166641 (19 X) ULCU 746030 *1330 Carton* SEAL 163653 (19 X) EACU 9011435 *1330 Cartons* SEAL 166656 (19 X) (SLAC)	61.603	115.000 *3990 - total*	OAK
RTM 0312	(S) LAMPRECHT TRANSPORT A.G. PETER MERIANSTRASSE 48 4002-BASEL (C) TONY INGOLIA SALAMI INC 1520 TERMINAL STREET WEST SACRAMENTO CA. 95691 /USA	T.I.S. 1-5 6-10,11-25,26-50, 51-55,56-65,70-144 145-194,195-209,2 0-224 SACRAMENTO VIA OAKLAND	220	CARTONS CHEESE	FCL/FCL A.BASLE D.OAKLAND EACU 3450533 SEAL 166639 (317 X) (SLAC)	5.371	10.000	OAK
		T.I.S. 230-252 SACRAMENTO VIA OAKLAND	22	CARTONS CHEESE		312	0.600	
		T.I.S. 260-335 SACRAMENTO VIA OAKLAND	75	CARTONS CHEESE		435	0.800	
				COOLROOM				
	TO FORWARD		2904			201.027	339.136	

23-888 240

Mr. GREENE. That is but one example of what has occurred. There are many which I think would only make this session much longer and a good deal more tedious, so I will move on to what we would like to propose.

Our proposals are threefold. First of all, on page 10 of my statement I submit a notice procedure, a prepenalty notice procedure. This is carried over, verbatim, to section 584 of the same prepenalty procedure that appears in section 592 in H.R. 8149.

This prepenalty procedure addresses itself to the problem that, in fully 50 percent of the items referred to carriers as erroneous by Customs are, in fact, not the carriers' fault. We do extensive checking of our records to the best of our ability and by the cooperation of the other parties, we check importers' and brokers' records, and then we learn that the discrepancy is either an apparent one, an inadvertent one, or it is a result of some foul-up in the papers submitted by somebody else—usually the broker or the importer.

That is in 50 percent of the penalties that are submitted to us.

We feel that if there is a prepenalty procedure similar to 592, then all the parties, the broker, the importer and the carrier, will have an opportunity to respond to that notice and state the facts of the case and, upon receipt of those statements, many of these so-called penalties will evaporate.

Customs takes the position that this is unnecessarily duplicative in their paperwork, that it would cause a paperwork burden on them. I submit that we, as carriers, are presently bearing a paperwork burden in dealing with at least 50 percent of these items that do not belong to us. Secondly, that the burden for the entire industry will evaporate if this prepenalty procedure is followed through, and Customs will have a far less paperwork burden than they have now.

These cases go on for months before there is some sort of solution to them, or some settlement.

Senator RIBICOFF. Do you have the responsibility for the accuracy of what is in the sealed containers that come off of your ship?

Mr. GREENE. Under present law, yes, we do, and this is another proposal that I am making this morning, that the law be changed, section 431 of the Tariff Act of 1930 be changed, recognizing the shift of technology that is taking place in cargo-handling methods, namely that the ocean carrier cannot know, cannot count, the individual items within a sealed container.

The present law requires the master to be responsible for the individual piece count of every item of cargo on board the ship.

Senator RIBICOFF. How can he do that?

Mr. GREENE. It is impossible, sir. He cannot.

We must take the word of the exporter on the other side and the importing broker on this side that the piece count within the container is as stated on the bill of lading.

Senator RIBICOFF. Should the responsibility not be on the shoulders of the shipper?

Mr. GREENE. No; this is not really proper or practical because the exporter is abroad. I take it by "shipper," you mean the exporter?

Senator RIBICOFF. Well, all right, why should the shipping company, the carrier, be responsible? He does not open up that container. Does he have the authority to open up the container?

Mr. GREENE. He does not, no.

We feel that the shipping company and the master of the vessel should be responsible for that quantity of cargo he can count, and if that quantity of cargo happens to be one sealed container, that is all he should be responsible for.

Senator RIBICOFF. In other words, if he is carrying 20 containers or 50 tractors or he just lists those and not what is in the container that is sealed?

Mr. GREENE. Correct.

We are presently required to list what is in the container on the basis of what is called "said to contain" or "shippers load and count."

In other words, a statement that the master makes that, to the best of his knowledge, this is what is in the container, based on the statements of other persons.

But we are held responsible, if there is a discrepancy, between that count, as stated, and what is actually discharged from the container.

Senator RIBICOFF. Do you have any specific cases where a captain or a carrier was responsible for such a lapse or such an error?

Mr. GREENE. Every week cases pass over my desk for disposition by me or approval or further correspondence with Customs involving just such instances, yes.

I could furnish some to you.

Senator RIBICOFF. Would you furnish some samples of that to me?

Mr. GREENE. Yes, sir.

So the second proposal that we would be to amend section 431 and better delineate the responsibility of the master for the quantity of cargo aboard the vessel.

The third proposal that we would like to make is that there be inserted in two sections of the law, sections 453 and section 584, respectively section 102(c) of the bill and section 110 of the bill, a definition of clerical error. At the present time, there are four categories of fault, if you will, in the submission of information to Customs; that is fraud, negligence, gross negligence and clerical error.

Clerical error is ignored almost totally in the calculation of customs.

When discussing this informally, customs officials at every level will admit that there are numerous examples, unavoidable examples, of inadvertent clerical error. I maintain, and others maintain, that handling the volumes of papers in the import trade in the United States as it presently is, with all its complexity, with all its time pressures, that it is statistically impossible to have an error-free operation.

And for Customs to officially assume, as they do in their regulations and in their practice, that error equals negligence or, what is worse, represents almost a deliberate attempt to almost hoodwink Customs is, I think, an overly rigid and very unrealistic attitude.

What we find, and I am sure, as human beings dealing with paper and, as I say, time pressure, we all can recognize how easily an inadvertent error can be made, either in the transposition of figures or, in the case I cited, the inadvertent omission of one page of a document, and these things can be corrected.

But nowhere in the law, even though the phrase clerical error is used, nowhere in the law is a statement as to what comprises clerical

error. And we submit some language to amend those two sections, to add to those two sections, that would strengthen this definition of clerical error.

The House, in its report, referred to the language but did not include it in the bill. We would like to see a definition of clerical error included in the bill.

In conclusion, then, I would state on behalf of the people I represent, or restate, that this is a good bill that is before you and we think, as do the other witnesses who have discussed the bill this morning, we believe that it will be a significant contribution in this area.

However, we do feel that with the three improvements added to it that I have proposed this morning that we will have an even stronger bill, that will significantly reduce the amount of paperwork burden, borne by both industry and Customs, and make a major contribution to get customs inspectors and officials out of the office and onto the docks and onto the airports where they can better clear passengers and cargo.

We receive many complaints on the Pacific coast at almost all ports that there is an insufficient number of inspectors to handle the volume of cargo. Cargo is being held up and there are delays to the importers and there are necessarily delays to our ships.

We feel that a shifting of manpower away from niggling enforcement of inflexible laws and putting manpower in the clearance of cargo area, in the clearance of passenger area, is a far better use of their very qualified manpower.

Senator RIBICOFF. Well, thank you very much. I do appreciate your testimony. I am very much impressed with the knowledge and the understanding of this problem by all of the witnesses, and you have all been very constructive. Thank you very much.

Do you have any questions, Senator Roth?

Thank you, Mr. Greene.

Mr. GREENE. Thank you, sir.

[The prepared statement of Mr. Greene follows:]

STATEMENT OF J. J. GREENE, REPRESENTING FOREIGN SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST AND PACIFIC MERCHANT SHIPPING ASSOCIATION

My name is J. J. Greene and I am speaking on behalf of two Pacific Coast organizations, the Foreign Shipowners Association and the Pacific Merchant Shipping Association, which between them have a membership comprising some 51 American and foreign flag steamship operators, engaged in foreign commerce to and from ports in Alaska, Hawaii, Washington, Oregon and California.

The legislation before you, HR 8149, was considered and passed by the House last year. This bill is a substantial improvement over existing law. The purpose of my appearance before you today is to urge, on behalf of those I represent, some further improvements which will add strength to the efforts to reform and streamline Customs procedures and thus reduce the monetary and administrative burdens being borne by importers and shipowners alike.

CUSTOMS LAW HAS BEEN OUTPACED BY SHIPPING REALITIES

The basic law governing Customs' activities is the Tariff Act of 1930, an Act which itself included many legislative provisions stretching back to the first session of Congress in 1789. This law was last amended in the 1950's. Since the latter time, there has been a manifold growth in the foreign trade of the United States, by all measures: tonnage, number of items entering the country, dollar volume, variety of goods. Customs is hog-tied by legislation which was written for a simpler time. These laws make some very specific provisions (governing

enforcement and the layout of certain forms) which were not particularly burdensome when import volume and the cost of clerical staffs, within both industry and Customs, were low. Times have changed. In addition to the steep rise in import activity, the cost of handling paperwork has risen at an even more rapid rate.

The change with the greatest impact, however, has been the revolution in the manner of handling cargo. For centuries prior to the late 1950's, most of the nonbulk cargo moving in world trade was loaded and discharged piece by piece. Individual boxes, barrels, lengths of timber and pipe, etc. were hoisted or carried over the ship's rail. An Officer or representative of the ship maintained a tally and it was fitting for Customs law to provide, as does the Tariff Act of 1930, that the Master of the vessel be made responsible for each such piece of cargo and be required to produce a manifest equivalent in piece count to the number of packages and individual pieces aboard (Sec. 431).

In the past 20 years, however, shipowners, exporters and ports have made heavy investments in cargo handling improvements, the net effect of which has been to consolidate individual packages into larger units. First came *unitization*, whereby uniform packages were strapped together to a pallet, to move from exporter to importer without being broken down. The vessel's Master or his representatives could count each piece comprising the unit only with great difficulty and at a considerable cost in time. Shipping lines had to accept the count given them by the exporter and the manifest would describe the cargo as "one unit said to contain _____ pieces".

The next development was *containerization*, whereby uniform *or* disparate pieces can be packed into a container at the exporter's plant and this container can move, intact and under seal, by truck, rail and ship to the importer's warehouse overseas. Obviously, the ship cannot count, and it is unrealistic to make the ship responsible for, each piece of cargo. Yet the Tariff Act of 1930 continues to require us, under Sec. 431, to manifest every piece of cargo, even if uncountable, and Customs imposes severe penalties when the manifested count differs from the actual count, which may be determined only at the importer's receiving facility, which can be quite distant from the port of entry, both geographically and in time.

THE LAWS, CUSTOMS' REGULATIONS, AND THE ENFORCEMENT OF BOTH ARE BURDENSOME, UNREALISTIC AND INEQUITABLE

The Tariff Act of 1930 does not fit into modern trade practices. As a result, thousands of fines and penalties have been filed on the U.S. Pacific Coast over the past five years. Additionally, there have been many incidents of cargo seizures, vessel stoppages and other obstructions to transportation of cargoes, frustrating shipping and the customers who depend upon efficient and economical transportation of ocean cargoes.

These fines for the most have been the result of clerical errors where there is no intent to defraud and no attempt to smuggle cargoes or falsify documents.

Customs, in attempting to implement this outdated law, has imposed fines on ocean carriers based on the following sections of the Tariff Act of 1930:

19 USC 1584 describes penalties against master and shipowner for landing merchandise not included in the inward foreign manifest. Customs also has the power to seize such cargo after levying a fine.

19 USC 1453 also gives Customs authority to levy a fine against the master or shipowner in the amount of the value of the merchandise for cargoes unloaded from a ship without a Customs permit. Under this section Customs can seize the cargo, claiming it to be landing illegally, and seize the ship itself.

19 USC 1448 prevents unloading of cargoes until such time as vessel is entered by Customs. It is under this section that penalties (liquidated damages) have been assessed ocean carriers for discrepancies in the manifest on non-dutiable cargoes.

In April 1971 Customs, with the intent of improving cargo security, set up a new system called the Quantity Control Program for reporting and documenting discrepancies in imported quantities of merchandise. This system penalized ocean carriers for failure to maintain a 100 percent accurate foreign manifest without due regard to actual cargo delivered or lack of criminal intent on the part of carriers. Heavy penalties were also assessed for reported shortages in non-dutiable cargoes.

Financial burden.—The financial impact of the Tariff Act and the QCP has been considerable. A survey of three American-flag steamship lines shows a total of over $16 million in fines and penalties filed at U.S. West Coast Customs Districts from 1972 through 1976. (Only three were used because they were the only U.S. flag steamship lines having five years or more continuous experience at most major West Coast Customs District.)

Of special interest is the fact that out of over $16 million in fines only $1½ million, or 3 percent of the total assessed, was eventually paid.

Erroneous fines.—The sizable differences between fines received and those eventually paid are for the most part the result of erroneous notices. Customs' hands are tied in attempting to implement the law and at the same time take into account its reasonableness under present-day conditions. Fines have been greatly mitigated or cancelled outright after ocean carriers have gathered the necessary verification data from inland ports or agents abroad.

There is no doubt that other reasons for these penalties include differences in language and documentation; training of waterfront personnel at origin and destination terminals; errors at freight stations where cargo needs to be consolidated; and errors by dock delivery clerks.

However, the vast majority of fines can be attributed to the unworkability of the present statutes. The present law presumes the shipowner to be guilty until such time as he can resolve discrepancies in the manifest. This despite the fact that there is no apparent attempt to defraud and the errors are obviously clerical.

Customs also has been responsible for errors in documentation. With its limited manpower, we can appreciate the dilemma Customs faces in attempting to carry out its responsibilities to the letter of the law. Despite its diligent efforts, there are many instances of misplaced or late receipt of clearance documents from the consignee, clerical errors by Customs brokers on consumption entries for which shipowners are penalized and failure to carefully check files. Many times post entries, manifests, etc. are just overlooked.

Abnormally high fines—Fines and penalties under the statutes are completely out of proportion to the alleged violations.

Unnecessary man-hours expended—Thousands of man hours are unnecessarily expended in researching, reporting and attempting to mitigate penalties. The management, clerical, postal, courier, telephone and teletype, correspondence and duplicating costs in connection with Customs penalty actions cannot be easily determined. However, there is no doubt that it adds to the cost of doing business which then falls on shipping customs in the form of higher freight rates and the consumer in the form of higher prices.

Effect on shipping customers—Unnecessary and burdensome procedures in attempting to conform to the statutes force delays in the delivery of cargoes. They also damage the carrier/importer relationship which American steamship companies have so carefully nurtured over these past few years. Many steamship companies have reported delays in regard to clearing of "landbridge cargoes" as well as routine delivery of cargoes over the docks from various terminals. This is a result of Customs officers being tied up in processing fines instead of clearing vessels and cargoes.

Effect on customs utilization of manpower—If this ludicrous situation were corrected by a new law so that most of the unnecessary penalty notices were eliminated, it would free many Customs officers to work on cargo and vessel inspection. This would help Customs in utilization of it manpower.

As an example of how far a simple situation can go, take a shipment consisting of 500 cases each in 10 exporter-sealed containers. We must manifest this as "10 containers of 500 cases each, shipper's load and count". Ship's representatives can observe and count only the 10 containers; we must accept the exporter's statement that each container holds 500 cases. Suppose, as frequently happens, the importer declares this cargo not as 10 containers but 5000 cases. A discrepency, to be sure, but one whose cause is obvious. It is not obvious to Customs, however: according to their interpretation of the documents, the ship has a shortage of 4980 cases! A penalty notice is issued, fining the carrier for the value of the "missing" cases. Even if the fine is eventually reduced to a lesser amount, any fine is inequitable and places on the carrier the burden of researching records (his own as well as those of the importer) and responding to Customs in a timely manner (or face an additional penalty for late response).

The fact that the law is outmoded and unworkable in many instances has caused it to be enforced in a vastly different manner in different ports.

There is a considerable difference in levying Customs fines and penalties between districts on the West and on the East Coast. West Coast ports have about 3 times as many fines as comparable ports on the East Coast.

The present statutes are rigid. We do not necessarily fault West Coast Customs for interpreting the law strictly. They are in the difficult position of implementing archaic and unworkable statutes. In order to get a more uniformly applied law, we feel it must be changed to take into account modern trading and transportation practices. This can be done without any loss or revenue due the United States.

Another injustice in the present law is the imposition of a $500 liquidated damage assessment under the carrier's bond in instances of duty-free cargo, under Section 448 of the Tariff Act. This action is difficult to accept since there is no loss of revenue to the U.S. Government.

AMENDMENTS TO H.R. 8149 ARE HEREWITH OFFERED TO RECTIFY SHORTCOMINGS IN PRESENT LAW AND ITS ADMINISTRATION

The House Subcommittee on Trade conducted extensive Task Force investigations in the field and concluded with four days of hearings last summer. The bill that committee produced goes a long way toward righting the balance. The shipping community advocates further changes but we believe an excellent start has been made and we support the work the House committee has done, and are grateful for the time this Committee is taking in considering this legislation. The strength of this legislation lies in restoring equity to the importers, and this we applaud. Further, we support the statement submitted to you by the joint industry working group, except for the elimination they propose from Sec. 110. This bill is relatively modest, however, in its attention to matters that directly affect the shipping community. We believe, and urge this Committee to add to the bill, three additional provisions which will strengthen the bill, bring about a significant reduction in the paperwork and penalties we face, and improve the flow of commerce.

Specifically, we request that Section 110 of HR 8149 be amended by inserting:

If the appropriate Customs officer has reasonable cause to believe that there has been a violation of this section or finds discrepancies between importer documents and carrier's inward foreign manifest and determines that further proceedings are warranted, he shall send a written notice to interested parties, including importer, broker and carrier, of his intention to issue a claim for monetary penalty. Such notice shall—

(1) describe the merchandise;

(2) set forth the details of the entry or introduction or the attempted entry or introduction;

(3) specify all laws and regulations allegedly violated;

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

(5) state the estimated loss of lawful duties, if any, and, taking into ac-

This amendment is substantially the same as that proposed for Sec. 592 and

(6) inform such persons that they have sixty days in which to adequately respond and explain, by oral or written representations, why a claim for monetary penalty should not be issued in the amount stated.

This amendment is substantially the same as that proposed for Sec 592 and merely extends to carriers the same notice provisions granted importers.

Further that the following also be inserted in Section 110, also amending Sec. 584 of the Tariff Act:

Sec. 102a. Section 431(a) of the Tariff Act of 1930 (19 U.S.C. 1431(a)) is amended by adding at the end of the paragraph numbered "Third" the following new sentence:

"If the package is closed, e.g., by being nailed or sealed, so that the master does not have easy access to its contents, the account of the merchandise shall be obtained from the bills of lading issued therefor or, if the master has reason to believe that no bill of lading has been issued, from the shipping receipt or other evidence which the master has a basis for accepting as satisfactory for that purpose, and such an account of the merchandise in closed packages shall satisfy the master's oath as to the truth of the manifest unless the master did not have reasonable cause to believe the truth of the account."

Section 102c. Section 453 of the Tariff Act of 1930 (19 U.S.C. 1453) is amended—

(1) By striking out "If" at the beginning of the section and inserting in lieu thereof "If, as the result of intent or negligence,";

(2) by striking out "collector" and inserting in lieu thereof "appropriate Customs officer"; and

(3) by adding at the end thereof the following:

"However, no liability shall be assessed if the appropriate Customs officer is satisfied that such lading or unlading resulted from a non-negligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of the special license or permit. If the appropriate Customs officer has reasonable cause to believe that there has been a violation of this section and that liability should be assessed, he shall so notify the person or persons concerned and request clarification within 60 days. If an explanation acceptable to the appropriate Customs officer is not received within that time, liability should be assessed in accordance with applicable laws and regulations."

Sec. 110. Section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is amended—

(4) by striking out "collector" wherever it appears and inserting in lieu thereof "appropriate Customs officer";

(5) by inserting "as required by section 431 of this Act" immediately after the phrase "described in said manifest" and the phrase "described in such manifest";

(6) by inserting after the first sentence the following new sentence:

"The term 'clerical error or other mistake' as used in this section is defined as a non-negligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of manifests, although repeated similar manifest discrepancies by the same parties may be considered the result of negligence and not clerical error or other mistake"; and

(7) by adding at the end thereof the following new paragraph:

"If the appropriate Customs officer has reasonable cause to believe that there has been a violation of this section and that liability should be assessed, he shall so notify the person or persons concerned and request clarification within 60 days. If an explanation acceptable to the appropriate Customs officer is not received within that time, liability should be assessed in accordance with applicable laws and regulations."

This Committee has been generous with its time in hearing my presentation and on behalf of the organizations I represent, I thank you. We are confident the hard work and serious thought which has gone into this bill by elected officials and industry will produce good law.

PROPOSED AMENDMENTS OF H.R. 8149

1. Section 102a. New Section of H.R. 8149 to amend the law (19 U.S.C. 1431 (a)) that describes in detail the information vessel manifests should contain and provides that the vessel master should take an oath as to the truth of the statements in the manifest. The present law is substantially the same as section 2807 of the Revised Statutes of 1878, which incorporates the text of section 23 of Chapter 22 of the Act of March 2, 1799. The amendment would provide that when a package is closed, e.g., a nailed box or a sealed container, so that the master does not have easy access to its contents, the master can rely on the bills of lading (or acceptable alternative documents) when he lists the contents of such closed packages on the vessel's manifest. The amendment reflects the fact that conditions have changed since 1799 and that in 1978, masters of containerships and other modern vessels have no practical way of knowing by first hand observation what merchandise is in closed packages on board the vessel. The master must depend on the documents relating to the merchandise, such as bills of lading. The amendment would provide that an account of the merchandise based on such documents satisfies the master's oath. To insure against any knowing use of fraudulent documents when the manifest is prepared, the amendment would provide that the master's oath is not satisfied if the master did not have reasonable cause to believe the truth of the account of the merchandise on the documents.

2. Section 102b. New Section of H.R. 8149 to amend the law (19 U.S.C. 1448 (a)) that makes vessel owners liable for the duty on merchandise that is properly unladen from a vessel but is then removed from the place of unlading without a permit being issued by Customs for such removal. At present such merchandise may have been located and properly entered and duty paid by

the importer but the vessel owner has still been billed for the duty in spite of the fact that there is no provision for double duty on imported merchandise (if such merchandise is not dutiable, the vessel owner has been assessed liquidated damages under his vessel bond even though the merchandise was located and properly entered). The amendment would provide that the vessel owner is not eligible for the duty on such merchandise when the importer has entered the merchandise and paid the duty (and is not liable for liquidated damages if the merchandise is duty free but has been entered by the importer).

3. Section 102c. New section of H.R. 8149 to amend the law (19 U.S.C. 1453) concerning liability for lading or unlading merchandise without a permit. Under the present law liability may be assessed even though the unpermitted lading or unlading was without intent or negligence. The amendment would limit liability to cases where the unpermitted lading or unlading was intentional or was the result of negligence. The amendment would further provide that liability should not be assessed if the unpermitted lading or unlading was the result of a mistake and the term "mistake" is defined. The amendment would also provide that if Customs believes that liability should be assessed, the party involved should be notified and given 60 days to satisfactorily clarify the matter. Finally, the amendment would correct the reference to "collector", which has been out of date since 1970 (see Public Law 91–271).

4. Section 110. Amends an existing section of H.R. 8149 to further amend the law (19 U.S.C. 1584) concerning liability for manifest violations. The amendment would make it clear that the vessel manifest defined to in section 1584 is the manifest covered by section 1431, as it would be amended by proposed section 102.a, above. The amendment would also define the term "clerical error or other mistake", provide for a 60-day notice and opportunity to clarify similar to the provision in proposed section 102c, above, and correct the out of date reference to "collector."

§ 1431. Manifests; requirement, form, and contents; signing and delivery.

(a) The master of every vessel arriving in the United States and required to make entry shall have on board his vessel a manifest in a form to be prescribed by the Secretary of the Treasury and signed by such master under oath as to the truth of the statements therein contained. Such manifest shall contain:

First: The names of the ports or places at which the merchandise was taken on board and the ports of entry of the United States for which the same is destined, particularly describing the merchandise destined to each such port: *Provided*, That the master of any vessel laden exclusively with coal, sugar, salt, nitrates, hides, dyewoods, wool, or other merchandise in bulk consigned to one owner and arriving at a port for orders, may destine such cargo "for orders", and within fifteen days thereafter, but before the unlading of any part of the cargo such manifest may be amended by the master by designating the port or ports of discharge of such cargo, and in the event of failure to amend the manifest within the time permitted such cargo must be discharged at the port at which the vessel arrived and entered.

Second. The name, description, and build of the vessel, the true measure or tonnage thereof, the port to which such vessel belongs and the name of the master of such vessel.

Third. A detailed account of all merchandise on board such vessel, with the marks and numbers of each package, and the number and description of the packages according to their usual name or denomination, such as barrel, keg, hogshead, case, or bag.

Fourth. The names of the persons to whom such packages are respectively consigned in accordance with the bills of lading issued therefor, except that when such merchandise is consigned to order the manifest shall so state.

Fifth. The names of the several passengers aboard the vessel, stating whether cabin or steerage passengers, with their baggage, specifying the number and description of the pieces of baggage belonging to each, and a list of all baggage not accompanied by passengers.

Sixth. An account of the sea stores and ship's stores on board of the vessel.

(b) Whenever a manifest of articles or persons on board an aircraft is required for customs purposes to be signed, or produced or delivered to a customs officer, the manifest may be signed, produced, or delivered by the pilot or person in charge of the aircraft, or by any other authorized agent of the owner or operator of the aircraft, subject to such regulations as the Secretary of the Treasury may prescribe. If any irregularity of omission or commission occurs in any way in

respect of any such manifest, the owner or operator of the aircraft shall be liable for any fine or penalty prescribed by law in respect of such irregularity. (June 17, 1930, ch. 497, title IV, § 431, 46 Stat. 710; Aug. 8, 1953, ch. 397, § 15, 67 Stat. 516.)

§ 1448. Unlading.

(a) Permits and preliminary entries

Except as provided in section 1441 of this title (relating to vessels not required to enter), no merchandise, passengers, or baggage shall be unladen from any vessel or vehicle arriving from a foreign port or place until entry of such vessel or report of the arrival of such vehicle has been made and a permit for the unlading of the same issued by the collector: *Provided*, That the master may make a preliminary entry of a vessel by making oath or affirmation to the truth of the statements contained in the vessel's manifest and delivery the manifest to the customs officer who boards such vessel, but the making of such preliminary entry shall not excuse the master from making formal entry of his vessel at the customhouse, as provided by this chapter. After the entry, preliminary or otherwise, of any vessel or report of the arrival of any vehicle, the collector may issue a permit to the master of the vessel, or to the person in charge of the vehicle, to unlade merchandise or baggage, but except as provided in subdivision (b) of this section merchandise or baggage so unladen shall be retained at the place of unlading until entry therefor is made and a permit for its delivery granted, and the owners of the vessel or vehicle from which any imported merchandise is unladen prior to entry of such merchandise shall be liable for the payment of the duties accruing on any part thereof that may be removed from the place of unlading without a permit therefor having been issued. Any merchandise or baggage so unladen from any vessel or vehicle for which entry is not made within forty-eight hours exclusive of Sunday and holidays from the time of the entry of the vessel or report of the vehicle, unless a longer time is granted by the *collector*, as provided in section 1484 of this title, shall be sent to a bonded warehouse or the public stores and held as unclaimed at the risk and expense of the consignee in the case of merchandise and of the owner in the case of baggage, until entry thereof is made.

(b) Special delivery permit

The Secretary of the Treasury is authorized to provide by regulations for the issuing of special permits for delivery, prior to formal entry therefor, of perishable articles and other articles, the immediate delivery of which is necessary. (June 17, 1930, ch. 497, title IV, § 448, 46 Stat. 714.)

§ 1453. Lading and unlading of merchandise or baggage; penalties

If any merchandise or baggage is laden on, or unladen from, any vessel or vehicle without a special license or permit therefor issued by the collector, the master of such vessel or the person in charge of such vehicle and every other person who knowingly is concerned, or who aids therein, or in removing or otherwise securing such merchandise or baggage, shall each be liable to a penalty equal to the value of the merchandise or baggage so laden or unladen, and such merchandise or baggage shall be subject to forfeiture, and if the value thereof is $500 or more, the vessel or vehicle on or from which the same shall be laden or unladen shall be subject to forfeiture. (June 17, 1930, ch. 497, title IV, § 453, 46 Stat. 716.)

§ 1584. Falsity or lack of manifest; penalties

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 shall be liable to a penalty equal to the value of the merchandise so found or unladen, and any such merchandise belonging or consigned to the master or other officer or to any of the crew of such vessel, or to the owner or person in charge of such vehicle, shall be subject to forfeiture, if any merchandise described in such manifest not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle 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 mis-

take 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.

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 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 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 shall be liable to a penalty of $10 for each ounce thereof so found. Such penalties shall, notwithstanding the proviso in section 1594 of this title (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 privision of law. The words isonipecaine, opiate, and marihuana as used in this paragraph shall have the same meaning as defined in sections 3228 (e), 3228 (f) and 3238 (b), respectively, of Title 26.

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 1707 of this title 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 collector 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 mistage, said penalties shall not be incurred (June 17, 1930, ch. 497, title IV, § 584, 46 Stat. 748; Aug. 5, 1935, ch. 438, title II, § 204, 49 Stat. 523; July 1, 1944, ch. 377, § 10, 58 Stat. 722; Mar. 8, 1946, ch. 81, § 9, 60 Stat. 39.)

PACIFIC MERCHANT SHIPPING ASSOCIATION,
San Francisco, Calif., January 30, 1978.

MEMBERSHIPS

American President Lines, 1950 Franklin Street, Oakland, CA 94612.

Crowley Maritime Corp., One Market Plaza Spear Street Tower, San Francisco, CA 94105.

Farrell Lines, Inc., One Whitehall Street, New York, N.Y. 10004.

Farrell Lines, Inc., One Market Plaza, Steuart Street Tower, San Francisco, CA 94105.

Mason Navigation Company, 100 Mission Street, P.O. Box 3933, San Francisco, CA 94119.

Prudential Lines, Inc., One World Trade Center, Suite 3601, New York, N.Y. 10048.

Prudential Lines, Inc., One Market Plaza, Steuart Street Tower, San Francisco, CA 94105.

Sea-Land Service, Inc., 1425 Maritime, P.O. Box 24025, Oakland, CA 94623.

Sea-Land Service, Inc., 1425 Maritime, P.O. Box 24025, Oakland, CA 94623.
States Steamship Company, 320 California Street, San Francisco, CA 94104.
United States Lines, Inc., One Broadway, New York, N.Y. 10004.
United States Lines, Inc., 1579 Middle Harbor Road, Oakland, CA 94607.

FOREIGN SHIPOWNERS ASSOCIATION OF THE PACIFIC COAST,
San Francisco, Calif.

MEMBERSHIP LIST

Barber Blue Sea Line
Blue Star Line, Inc., The
C.N. Lloyd Brasileiro
Canadian Westfal Larsen Ltd.
Columbus Line (Hamburg-Suedamerikanische Dampfschiffarts-Gesellschaft Effert & Amsinck)
C.C.N.I. (Compania Chilena de Navegacion Interoceanica, S.A.)
Compania Peruana de Vapores
d'Amico Mediterranean/Pacific Line
East Asiatic Company, Inc.
Empresa Lineas Maritimas Aegentinas, S.A.
Evergreen Marine Corp.
Flota Mercante Grancolombiana, S.A.
French Line (Compagnie Generale Transatlantique)
Hapag-Lloyd A.G.
Hoegh Lines
Hoegh Ugland Auto Liners
Italian Line (Italia Societa per Azioni di Navigazione)
Japan Line Ltd.
Johnson Line
Karlander Kangaroo Line (Skibsaktieselskapet Karlander)
Kawasaki Kisen Kaisha, Ltd.
Knutsen Line
Korea Shipping Corporation
Maersk Line
Maritime Company of the Philippines, Ltd.
Mitsui O.S.K. Lines, Ltd.
Nedlloyd
N.Y.K. Line
Orient Overseas Line
Pacific Australia Direct Line
Pacific Islands Transport Line (Thor Dahls Hvalfangerselskap A/S)
Philippine President Lines
Shipping Corporation of India Ltd., The
Showa Shipping Co. Ltd.
Star Shipping A/S
Taiwan Navigation Co., Ltd.
Toko Line
United Yugoslav Lines (Splosna Plovba)
Yamashita-Shinnihon Line
Zim Israel Navigation Co. Ltd.
Phoenix Container Liners, Ltd.
Polynesia Line
Scindia Steam Navigation Co. Ltd.

Senator RIBICOFF. Mr. Herzstein?

STATEMENT OF ROBERT E. HERZSTEIN, CHAIRMAN, STANDING COMMITTEE ON CUSTOMS LAW, AMERICAN BAR ASSOCIATION

Mr. HERZSTEIN. Good morning, Senator. I am Robert Herzstein, a Washington lawyer testifying this morning as chairman of the Standing Committee on Customs Law of the American Bar Association. The position I am presenting to you has been authorized by the house of delegates of the American Bar Association.

If I may, I would like to have my full prepared statement submitted for the record.

Senator RIBICOFF. Your full statement will go in the record as if read, and I think you can give us a summary of your recommendations.

I think we know the bill by now fairly well, and there is no sense in going over and repeating the testimony of all of the expert witnesses. So if you could tell us what the recommendations of the American Bar Association are for changes in this, it would be appreciated.

Mr. HERZSTEIN. I am addressing myself only to section 111 of the bill, which makes amendments to section 592, the so-called penalty provision which you have heard about earlier. I might point out

that there is a summary of my statement on the very first page, and then on pages 22 and 23—particularly starting in the middle of page 23—are the resolutions of the American Bar Association stating the principles that we think should be accomplished in reforming this penalty provision.

And what I would suggest, Senator Ribicoff, is that I will run through each of the five principles, or objectives, set forth in the second resolution——

Senator RIBICOFF. With an explanation of those recommendations. We would appreciate that.

Mr. HERZSTEIN. And with an evaluation of how we feel this pending bill before you lives up to each of those objectives.

In general we feel that the basic problem here is one of harshness and a severe, dramatic, lack of due process.

Senator RIBICOFF. Are you engaged in the practice of customs law?

Mr. HERZSTEIN. Yes, I am.

Senator RIBICOFF. And have you found from your experience that there are these arbitrary and unfair penalties and procedures as testified by these people here this morning?

Mr. HERZSTEIN. Absolutely. There is no question about it, Senator. I have had a number of cases myself, similar to the ones that were described earlier this morning and, in my position with the Bar Association committee, a number of other cases have been brought to my attention.

Senator RIBICOFF. I think that if you have these examples and it would not be too onerous on your part to supply them to the committee, I would like some samples to be put in the record of some of these unfair, harsh cases and procedures so that the Senate can review it and the committee can review it in light of the experience, because many of us have never had the experience in this field, and you gentlemen have.

Mr. HERZSTEIN. Fine.

There are two examples given in the course of my testimony. If you would like, I will briefly describe those for you right now. These are both cases which I did not handle, so I do not know the details. These are traditionally very private things. The companies do not like all of the facts to be brought out. But these are two cases which I have picked up from the press reports and American Bar Association reports.

One of them is a case of *Standard-Kollsman Co.*, which was assessed a penalty of $42.5 million for an underpayment of duties which the company said was in the range of $300,000, and which Customs said was in the range of $1 million. Whichever version you accept, it is obvious that there is an enormous disparity between the penalty assessed and the underpayment of duties of which the company was accused.

The *Standard-Kollsman* case, after a great deal of strife, was settled for $1.65 million. The company at the time stated that they thought the settlement was probably four or five times the amount of the duty underpayment, but in light of the enormous penalty that was assessed against them, and the very serious problems of getting any effective due process consideration or judicial review, they felt that they had no alternative but to settle.

Another case which I mentioned in the prepared statement is that of Electronic Memories & Magnetics Corp., which was assessed a penalty of $110 million for an alleged duty underpayment of $330,000. They said they were going to fight it and they went to court, but just in last week's issue of Electronics News, it was reported that they finally agreed to settle for $1.5 million.

Senator RIBICOFF. Well, where do they get the $110 million? I am at a loss to understand where that is picked out? How do they pick a figure of $110 million?

Mr. HERZSTEIN. The answer to your question raises the basic problem with this statute, which we think demonstrates the fundamental need for reform. The statute says that when goods are brought in through use of a false or fraudulent document, the goods shall be forfeited, or an amount equal to the domestic value of the goods, shall be forfeited.

What Customs does instead of actually seizing the goods, is that in most cases they serve the importer with a penalty assessment equivalent to the forfeiture value of the goods. So you can see that the amount of the penalty is going to be totally unpredictable and quite unrelated to the seriousness of the violation. In these two cases I cited to you, both companies were regular importers of goods from foreign facilities, foreign suppliers, and Customs asserted that, over a period of time—in some cases, several years—the companies had systematically had some kind of error or false statement in their import documents.

Therefore, Customs took the value of all the imports brought in pursuant to those documents.

Senator RIBICOFF. But, of course, I think there should be a tough penalty if there is fraud, or if there is an attempt to really evade the laws of the country. It is one thing, carelessness or negligence or inadvertence, but if there is really a history of fraud, then, of course, a severe penalty is justified.

Mr. HERZSTEIN. Well, there is no question about that, Senator, and we are not, of course, taking issue with that principle. The main problem is to bring the procedures by which these penalties are assessed within the rule of law so that its traditional principles of fairness are applied.

Senator RIBICOFF. And the recommendations of the American Bar Association are designed to achieve this result?

Mr. HERZSTEIN. That is correct.

Senator RIBICOFF. All right. Will you explain your recommendations?

Mr. HERZSTEIN. Yes, sir. Beginning on the bottom of page 24, our first recommendation is that the amended law should provide for civil penalties against the person violating the statute rather than forfeiture of the goods involved. We feel that that would get to this fundamental problem that I was describing to you.

In other words, if a person has committed a violation you should go after him, and impose a penalty on him. The goods did not commit the violation and the goods are more or less irrelevant to the violation.

Senator RIBICOFF. Yes, but you have a problem here. Suppose that person is financially irresponsible and you have the goods that are subject to the wrongdoing.

Mr. HERZSTEIN. Then the bill could provide, and does provide, and we agree with this provision, that there should be authority for something like a jeopardy assessment under the Internal Revenue laws, to hold the goods if the Government has grounds to believe it is not going to be able to collect the penalty.

That rarely is the case, but in that emergency situation, we agree with that.

We feel that this first principle has been achieved by the bill that you have before you, so I will not comment on that further.

The second principle, which is on page 25, is that we believe that the law should be amended to provide that the penalty shall be a reasonable amount, in light of the culpability of the violator and the consequences of the violation.

This gets back to the point you were mentioning, Senator Ribicoff. We obviously do believe that there should be a penalty that will discourage violations and allow the customs laws to be enforced effectively. But, the penalty should not simply fluctuate anywhere from $10 to hundreds of millions of dollars without reference to the seriousness of the violation but, instead, by reference to what the value of the goods happens to be that are being imported.

We feel that the law has gone a long way in achieving this objective. It has set up three categories of offense: Fraud, gross negligence, and negligence, and its sets a different limit on the penalty for each of those.

We do feel that there is still a bit of a problem in the case of fraud. The bill you have before you still does allow the penalty to go up to the full domestic value of the merchandise.

Now, obviously people who commit fraud should not be dealt with lightly, but there is still in our view as lawyers, an element of unpredictability here and for that reason we suggest, on the bottom of page 27 of my statement, that it would be appropriate to revise the proposed bill, to call on the Treasury Department to give careful consideration in determining a fraud penalty, to the seriousiness of the offense and the amount of duty underpayment or other injury to U.S. interests caused by the offense.

In other words, the proposed amendment still allows Customs a lot of discretion, but it does put a legal standard in the law which would subject Customs to a rule of law and some possibility of judicial review.

The bill, as you have it before you, I am afraid, will be interpreted by them as requiring the imposition of the full forfeiture value of the goods in any fraud case, and we feel that this would be anomalous in our legal system. In most fraud cases there is a severe penalty, but it is a penalty which is related to the offense involved.

Now, the third principle which we endorse is on page 29 of my statement. It is that the law should provide reasonable, informal administrative procedures by the Customs Service, including an adequate notice and an opportunity to be heard, prior to the assessment of a penalty.

That would get away from the problems you have heard about this morning, where people get a penalty notice out of the blue and then have to fight their way out of a hole.

In the meantime, if they are a publicly held company, for instance, they have to disclose in their financial statements a possible, enormous contingent liability and live with that for some years while they go through administrative proceedings.

We feel that this objective has been achieved by the bill before you and we commend the drafters of the bill and the House committee for having taken care of that very adequately. That is a fundamental due process question.

The fourth principle is on page 30, and it is that the Customs Service should be required by the law to find a violation and assess a penalty on the basis of findings of fact and a statement of reasons. That also is a fundamental due process question and we feel that it is achieved by the bill before you.

The final principle, also on page 30, is that the law should provide a trial by a court of all the factual and legal questions relating to the issues of whether a violation occurred and the appropriate amount of the penalty.

We feel that here the bill represents a great improvement over the current law. I have not described the problem of getting judicial review, but in practice, there is no judicial review under the current law because in order to get review of a penalty that Customs decides to assert against you you have to go into an all-or-nothing situation.

Let's take, for instance, the case of Electronic Memories & Magnetics that I described to you. They were assessed a penalty of $110 million. They then negotiated with Customs under the mitigation authority which the Customs people have and Customs said, "OK, we will settle for $1.5 million."

The company was not satisfied. They still felt that that settlement was grossly out of line with what they should have owed, but in order to get judicial review, current law requires them to completely set aside that negotiated settlement with Customs and go to court on the question of whether they committed a violation.

If the company is found to have committed a violation, they have to pay the full assessed penalty of $110 million.

So, in order to get judicial review, they have to subject themselves to a risk of a vastly greater penalty which, of course, is a much larger risk than a prudent lawyer or businessman would assume.

Senator RIBICOFF. So all the Customs officials have to do is demand an outrageous penalty and they know they are going to get a very substantial settlement, even if it is just——

Mr. HERZSTEIN. That is right. It gives them incredible leverage, and this is why we feel there is really a fundamental "rule of law" question here. The statute, at present, really provides for the very arbitrary kind of "rule of man" and not the "rule of law."

We feel, on this question of judicial review, that the proposed bill has also gone a great distance toward taking care of that question by providing de novo review. We think, as I indicate on the bottom of page 30 and the top of page 31, that the legislative history should make clear that the reviewing court, in reviewing the penalty, should review not merely to determine whether it is within the maximum permitted by the statute, but whether the penalty in that particular case is appropriate to the offense that was committed.

We think this is a proper interpretation of the bill before you, and we would like to see that made clear so that there cannot be any dispute about that later on.

Those are essentially our views on this, Senator.

Senator RIBICOFF. I am just curious. On your table A, those figures, are those all the cases, or individual cases you are talking about?

Mr. HERZSTEIN. Those are all cases in those years.

Senator RIBICOFF. In other words, in 1975 there was an assessment of $505 million and the decisions came to $16 million for all cases?

Mr. HERZSTEIN. That is right. Those are administrative decisions. That indicates the disparity between the initial penalties assessed and the ultimate settlements that were reached by Treasury in those years.

Senator RIBICOFF. Thank you very much, Mr. Herzstein.

[The prepared statement of Mr. Herzstein follows:]

STATEMENT OF ROBERT HERZSTEIN, CHAIRMAN, STANDING COMMITTEE ON CUSTOMS LAW, AMERICAN BAR ASSOCIATION

Mr. Chairman, I am Robert E. Herzstein, a member of the District of Columbia Bar and currently Chairman of the American Bar Association's Standing Committee on Customs Law. I appreciate the opportunity to appear before you as the representative of the American Bar Association to express our support for legislation such as H.R. 8149, with some modifications which I will discuss, to reform Section 592, the provision of the Tariff Act of 1930 which imposes penalties for erroneous statements to the Customs Service in connection with the importation of merchandise.

The Association's House of Delegates has adopted two resolutions calling for reform of Section 592. The House of Delegates is the Association's highest "legislative" or policy-making body, and consists of a total of 352 members coming from every state in the Union. Thus, I do not speak to you on behalf of a particular group of businesses whose self-interest would be advanced by new legislation, nor do I speak merely on behalf of a special group of practicing lawyers who represent parties affected by this statute—though indeed some of us have done so and have thereby discovered how unfair this statute is. Instead, I speak on behalf of the entire American Bar Association in calling on the Congress to remedy a most unsatisfactory situation in which government action, having vast adverse effects on private persons and businesses, is excessively harsh, inconsistent with our legal tradition, and inadequately regulated by the rule of law.

The Committee is considering the proposed "Customs Procedural Reform Act of 1977," which would revise many of the antiquated provisions in the United States customs laws, and in particular would amend the antiquated provisions of section 592 of the Tariff Act of 1930. Reform of Section 592 is needed not merely for efficiency and economy, but to eliminate the following defects from the statute:

It is disruptive of the business of legitimate importers, far beyond what is necessary to achieve its purposes.

It is unfair in that the penalty imposed under Section 592 may be excessive in amount and bears no reasonable relation to the offense which has been committed.

It empowers and requires government officials to make decisions with vast impact but which are not subject to the rule of law. Rudimentary due process protections are missing, and there are no adequate opportunities for meaningful judicial review.

It is inconsistent with the standard for customs penalties set forth in the General Agreement on Tariffs and Trade, which is the basic international charter for cooperation in conduct of trade among nations.

I. THE PROVISIONS OF SECTION 592 AND RELATED STATUTES

Section 592 makes it unlawful for any person to import or attempt to import 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," unless that person has "reasonable cause to believe the truth of such statement." The statutory penalty is forfeiture of the merchandise itself or a fine equal to

its domestic value. By its terms the statute applies even where the false statement would not result in an underpayment of duty, and the term "false statement" is considered by the Customs Service to embrace negligent as well as intentional statements.

The penalty imposed by Section 592 is generally administratively assessed by the Customs Service. Then Customs officials may, in their discretion, reduce the penalty. Under 19 U.S.C. § 1618, they may mitigate penalties under Section 592 "upon such terms and conditions as [they] deem just and reasonable."

If the importer refuses to pay a penalty (whether or not mitigated), Section 592 may be enforced in an action commenced by the United States in a United States district court. Once the United States has established "probable cause" to believe that a violation of the statute has occurred—a task which can be accomplished simply by demonstrating an error in the entry documents—the burden of proof is placed on the respondent to show that in fact a violation has not occurred. 19 U.S.C. § 1615.

II. THE LEGAL DEFECTS IN SECTION 592 AND ITS ADMINISTRATION

A. The Penalty Imposed Under Section 592 May Bear No Relationship to the Nature or Consequences of the Offense

The amount of the potential penalty under Section 592 is excessive. The only statutory limitation on the penalty is the United States value of the merchandise covered by the false statement, which may of course run to many thousands or millions of dollars. Thus the sanctions available under this civil penalty statute can far exceed the penalties normally found in criminal statutes, even for felonies. It is particularly anomalous that the civil penalty which may be imposed under Section 592 may easily exceed the maximum $5,000 fine that can be imposed for a criminal conviction under 18 U.S.C. § 542, a criminal statute which is the counterpart of Section 592. This is so even though the standards of proof that prevail in establishing a violation of the criminal statute are, of course, much stricter than in the civil penalty forfeiture action under Section 592.

Further, the sanctions imposed by Section 592 are in most cases out of all proportion to the seriousness of the offense. When penalties are established for most legal infractions—by the legislature or the courts—careful consideration is customarily given to the degree of culpability of the offender and to the consequences of his offense. However, in Section 592 cases there is no predictable correlation between the value of goods in a given shipment and the culpability of the importer responsible for an error in the entry papers or the amount of duty underpaid.

Thus, under Section 592 a ten million dollar aircraft could be forfeited for false statements that resulted from mere negligence and produced a duty underpayment of a few hundred dollars. The value of shipments entered over a period of months or years and amounting to tens of millions of dollars could be forfeited upon discovery of errors resulting from negligence of an importer's clerical personnel, even though they produced relatively small duty underpayments. In a recent proceeding which attracted wide attention, a penalty notice was issued to Standard-Kollsman, Inc., an electronics manufacturer, claiming a penalty of some $42.5 million. The duty underpayment which gave rise to the penalty proceeding was reported to be around $115,000, *i.e.*, about 0.3 percent of the penalty asserted. The Treasury Department has stated that it felt the total duty underpayment was about $1 million, which is about 2.35 percent of the penalty asserted. It is interesting to note that if Standard-Kollsman had underpaid its taxes by $1 million the highest civil penalty that could have been assessed against it would have been $500,000, if the underpayment had been deliberate, or $100,000, if it had been negligent.

Although statutory penalties are frequently mitigated by the Customs Service, the mere issuance of a penalty notice of such magnitude creates an extraordinarily serious problem for the firm receiving it. Publicly held companies must disclose contingent liabilities of this kind, and even a privately held company attempting to obtain financing would have to reveal the contingent liability in its financial statements. It is almost certainly no coincidence that the publicly quoted price of Standard-Kollsman's stock dropped by 20 percent in the four weeks following the issuance of the penalty notice, but recovered most of this on the day after the penalty had been mitigated to $1.65 million. Since mitigation of the penalty is a matter of discretion with customs officials, and may vary

within a vast range from zero to the full value of the goods, it is very difficult for lawyers and accountants to give a company guidance on the amount and seriousness of the contingent liability it should disclose to its shareholders.

The unreasonableness and excessiveness of the sanctions under Section 592 are particularly clear when they are imposed upon a person who is innocent of any wrongdoing or has been merely negligent. As stated above, the Customs Service has taken the position that a penalty may be imposed on a person who made a false statement because of negligence. Indeed, some lawyers believe that the statute authorizes forfeiture of goods in the possession of a wholly innocent importer, when import documents made out by the foreign shipper contain false statements.

The excessive size of the penalty and its lack of any reasonable relationship to the state of mind of the violator or to the amount of harm caused by the violation raise substantial issues under the Due Process Clause of the Fifth Amendment—the violator may arguably be arbitrarily and capriciously deprived of his property. Further, it might be argued that Section 592 permits unreasonable seizures of property in violation of the Fourth Amendment's prohibition against unreasonable searches and seizures or involves the imposition of an excessive fine in violation of the provisions of the Eighth Amendment.

In addition, the penalties imposed under Section 592 would seem to contravene the policy expressed in a provision of the General Agreement on Tariffs and Trade:

"No contracting party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning." Art. VIII(3).

The GATT does not commit the United States to action inconsistent with prior legislation. Since Section 592 was a United States law prior to the United States undertaking to apply the provisions of GATT, it has not been legally superseded by this GATT provision. However, since United States policy has long sought the elimination of unnecessary import barriers—particularly those of a capricious and discretionary nature—it would make good sense to bring United States laws into line with this eminently reasonable GATT provision.

B. The Customs Service Procedures for Assessing a Penalty Pursuant to Section 592 Do Not Provide Due Process Protections to the Alleged Violators

Penalties have been assessed and seizures have been made by Customs under Section 592 without procedural protections normally associated with due process. There has generally been no adequate notice given of the facts upon which Customs bases its conclusions that a penalty or forfeiture has been incurred, no hearing before an impartial hearing examiner, no right of cross-examination of adverse witnesses, and no final determination with findings of fact and statements of the reasons for the decision.

The penalty notices are usually prepared by junior officials in the Customs Service, who may have little appreciation of the serious financial consequences that may follow the mere issuance of a notice, and often have received no more than a cursory review by the District Director before being issued. Moreover, it seems that in some cases penalty notices may have been issued even where the Customs officials do not have reason to believe that Section 592 was violated, simply as a convenient means of correcting nonculpable errors. The notice is usually extremely brief and conclusive in nature, and requests for additional information in the past have rarely produced useful results.

Once a penalty notice has been issued, customs officials at the local level may be reluctant to revoke it, even though the subsequently developed facts indicate that the statute has not been violated. Having put the respondent to the time and expense of investigating facts and preparing a petition for mitigation they may be reluctant to admit that the notice may have been issued in error, and the temptation to pass the matter on the Customs Headquarters in Washington for final decision is very strong.

Of course, Customs Headquarters relies heavily on the factual findings and recommendations of the local officials in reaching its decision. Determinations of liability apparently are made by Customs principally on the basis of information developed by Customs agents during their field investigation. The results of that investigation have not customarily been made available to the person receiving the penalty notice. Because of the absence of due process proce-

dures, efforts to contest penalty assessment under Section 592 generally have taken the form of negotiation between the alleged violator and the Service, rather than an adjudicatory fact-finding process.

A recent action by the Customs Service may provide some procedural rights to the importer. On January 16, 1975, the Service published new regulations which provide that, prior to issuing a penalty notice, the District Director must in most circumstances notify the importer of his intention to issue such notice and must describe the merchandise involved, the provisions of law violated and the acts or omissions constituting the violation. The importer may reply to such notice in writing within 30 days "either refuting the allegations or establishing that reasonable cause existed for believing that the acts or omissions described in the allegations were proper." 40 Fed. Reg. 2797–98 (Jan. 16, 1975). In addition, the District Director may permit oral argument. The District Director must consider the reply of the importer, determine whether it disproves the claim and either notify the importer that a penalty notice will not issue or issue the penalty notice.

The degree of relief to be obtained by the importers from this prepenalty-notice procedure depends in great part on how it is implemented: the specificity of the notice provided, the frequency with which hearings are held, etc. In any event, the procedure will not provide a hearing as a matter of right before an impartial decisionmaker nor will it require a determination based on findings of fact and conclusions of law.

Where a seizure is involved, the alleged violator is at the mercy of the Customs Service. Seizure can be made upon suspicion of a Section 592 violation, even before the penalty notice is issued, and unless the claimant is willing to prepay the penalty (or a substantial portion thereof set by the Customs officials in their discretion), the goods remain under seizure until the Service makes its final determination on the amount of penalty it will impose.

C. Procedures Followed by the Customs Service in Determining Whether To Mitigate a Penalty Also Lack Adequate Safeguards for the Petitioner

A person receiving a penalty notice may petition the Customs Service for mitigation or remission of the penalty. The proceedings relating to such petition are informal and discretionary with the Service. No provision is made for a hearing, nor is it clear that the petitioner can obtain full information relating to the reasons for the imposition of the penalty. The Customs Service does not give reasons for its decision whether to mitigate, nor does it make factual findings on which it bases its decision.

The Service has recently taken a step in the right direction by publishing standards relating to mitigation. 39 Fed. Reg. 39061 (Nov. 5, 1974); 40 Fed. Reg. 2797 (Jan. 16, 1975). Previously, a petitioner had little means of determining what information would be relevant to the mitigation determination. Now the published guidelines indicate that the usual mitigated penalty consists of a multiple of the duty underpayment and that the multiple varies according to the state of mind of the violator. But the Customs Service has still refused to disclose the multiples actually used by it.

D. Judicial Review of the Customs Service's Decision Is Inadequate

The sole method for obtaining judicial review of a penalty to date has been for the person who has been penalized to refuse to pay the penalty. In such a situation the United States then brings an enforcement action in a district court.

In an enforcement action the person penalized loses the benefit of any mitigation which may have been administratively granted. The court will only determine whether Section 592 has been violated. It has no discretion under the statute to mitigate the amount of the penalty (the full United States value of the goods), and the government refuses to mitigate if a case goes to trial.

In the case of Standard-Kollsman, described above, the Customs Service agreed to mitigate a $42.5 million penalty to $1.65 million. If Standard-Kollsman had wished to challenge the Customs Service's determination that Section 592 had been violated, it would have had to take into consideration the fact that the consequence of losing in court would have been, not a $1.65 million penalty, but the full original assessment of $42.5 million. Given the breadth of the statute and the fact that the burden of proof in a Section 592 proceeding is on the respondent, it is clear that the respondent cannot afford to take the case to court unless he is confident of winning. Even an estimated 95 percent chance of success would hardly justify risking a penalty of $42.5 million.

A person who challenges a penalty notice in court may incur substantial costs in addition to the risk of a massive judgment, as illustrated by another case that has recently been settled. Ending a five-year struggle with the Customs Service, Electronic Memories and Magnetics (EMM) has agreed to pay $1.5 million to settle claims and penalties for underpayment of duties. The Justice Department had filed suit last year to seek $110 million, the full forfeiture value of the goods on which duty was underpaid, and about four times the net worth of the company. EMM had refused the government's supposed "final" offer of a $1.4 million settlement, partly because the alleged underpayment of duties was only $330,000. This refusal meant litigation with a risk of an unfavorable judgment of $110 million. After five years of legal fees and fears that investors might shy away from a company facing an unresolved and massive penalty notice, EMM agreed to settle, as mentioned, at a figure nearly three-and-one-half times greater than the alleged underpayment. This settlement, along with the monetary and opportunity costs of the five-year battle, illustrates the practical barriers to judicial review of penalty notices.

Thus, in order to obtain judicial review of a penalty, the person penalized must forego the mitigation of a penalty which is in all probability excessive and unrelated to the offense involved. One might well argue that this requirement places an unconstitutional burden on the right to judicial review.

The situation is analogous to a procedure whereby a criminal defendant could only appeal from conviction upon pain of receiving the maximum sentence, instead of that imposed by the trial court, if he does not prevail. Such a requirement would clearly be unconstitutional. *See, e.g., North Carolina* v. *Pearce*, 395 U.S. 711, 724 (1969), in which the Supreme Court said:

"A court is without right to * * * put a price on an appeal. A defendant's exercise of a right of appeal must be free and unfettered. * * * [I]t is unfair to use the great power given to the court to determine sentence to place the defendant in the dilemma of making an unfree choice."

The Supreme Court faced a somewhat similar situation in *Ex parte Young*, 209 U.S. 123 (1908). There a railroad company challenged the constitutionality of a Minnesota statute which imposed heavy fines and possible imprisonment for failure to charge the rates established by a state commission. The Court held that the enforcement provisions of the act were "unconstitutional on their face," 209 U.S. at 148, since they effectively prevented judicial review of the validity of the ratemaking power. The court further stated:

"It may therefore be said that when the penalties for disobedience are by fines so enormous and imprisonment so severe as to intimidate the company and its officers from resorting to the courts to test the validity of the legislation, the result is the same as if the law in its terms prohibited the company from seeking judicial construction of laws which deeply affect its rights. * * *

"Now, to impose upon a party interested the burden of obtaining a judicial decison of such a question (no prior hearing having ever been given) only upon the condition that if unsuccessful he must suffer imprisonment and pay fines as provided in these acts, is, in effect, to close up all approaches to the courts, and thus prevent any hearing upon the question whether the rates as provided by the acts are not too low, and therefore invalid." 209 U.S. at 147–48.

As mentioned above, a further inadequacy relating to judicial review is that the burden of proof in an enforcement action is on the respondent rather than the government. Thus, even in court the government need not justify in detail its imposition of the penalty.

III. CONCLUSIONS

A. The Need To Restore the Rule of Law Over Customs Penalties

Now that we have reviewed these four legal defects individually, let us look at the overall effect of all of them. When we do, we see that, as often happens in human affairs, unlike geometry, the whole of the evil is greater than the sum of its parts.

The result of Seciton 592, as it is put into practice, is to place vast governmental power—including the power to cast individuals and firms into financial ruin—into the hands of government officials without guiding or restricting their actions through legal rules. The rule of law is replaced by the rule of man. A person or firm engaged in importing can find himself assessed with an enormous penalty relatively far out of proportion to either the misconduct for which he is accused or the effects of that misconduct. He has nothing approaching the usual procedural due process rights in attempting to understand the charges

and defend himself. His only hope is to negotiate a reduction of the penalty—in the complete discretion of Customs, which is judge, jury, and prosecutor. And he is effectively deprived of an opportunity to have the court review the lawfulness or reasonableness of the officials' action (i) in imposing the penalty initially or (ii) in deciding on the ultimate amount to be paid.

The enormous range of the discretion exercised by Customs officials in administering Section 592 can be illustrated in one way by comparing the amount of the penalties initially assessed against importers with the amount to which these assessments were ultimately mitigated. In 1975, the penalties assessed under Section 592 totaled over $500 million. Customs officials, in their discretion, agreed to reduce these to a total of $16 million. (Table A.) A look at this data prompts one to ask: How did Customs officials decide on these penalty levels? Were they excessively harsh or lenient with the importers concerned? Was one importer treated the same as others similarly situated? Were the officials too generous with funds that the government might have been entitled to? To what extent did importers agree to pay these mitigated amounts because they could seek judicial review only by greatly increasing their financial exposure? I am not aware of any process by which a member of the public can even ascertain the answer to these questions.

This process of making persons bargain with government officials who are unguided by rules and insulated from court review is of course fraught with the danger of injustice and abuse. It is a process we associate, regretfully and sometimes scornfully, with totalitarianism or primitively governed countries. It is quite unlike the regularity, objectivity, and fairness we normally insist upon in relations between our government and the governed.

I should add that, in deploring the excessive discretion this statute vests in Customs officials, I do not want my comments to be interpreted in any way as reflecting adversely on the good faith or competence of these officials. They are as conscientious and capable as the members of any other government agency—and that is high praise. But ability and good intentions alone cannot achieve fairness and objectivity. Also required, in any government regulatory process, are (i) legal standards and (ii) due process procedures for determining facts and applying the standards to them. The more conscientious a government official is, the more he recognizes the need for such standards and procedures so he can effectively perform his job of governing. Vast and unreviewable discretion places him in an extremely uncomfortable position since he is then deprived of the means to explain, justify, and defend the correctness and propriety of his decision, and is vulnerable to charges of favoritism, unfairness, capriciousness, or even abuse of power. As tyrants sometimes realize too late, law is a great comfort to the ruler as well as the ruled.

B. The ABA's Recommendations for Legislative Reform

In February 1975 the House of Delegates of the American Bar Association adopted the following resolution:

"*Be it resolved*, That the American Bar Association approves and supports the inclusion of the following principles in any legislation relating to the modernization of customs laws and procedures:

"1. fair procedures in administrative proceedings, including, in penalty cases, an opportunity to be timely apprised of the charges and their specific bases, and to submit written and oral views and evidence to the responsible officials;

"2. reasonable access to judicial review of all final decisions involving payment of duties and other exactions;

"3. timely dissemination to the public of rulings, instructions, circulars, and other decisions which affect members of the public, including domestic industries and importers; and

"4. sufficient appropriations to the United States Customs Service to hire and train adequate personnel to implement the foregoing principles effectively and in a timely manner.

"*Be it further resolved*, That the President or his designee is authorized to represent the foregoing policy of the American Bar Association before the appropriate committees of the Congress and other agencies of the federal government with respect to any proposed legislation relating to customs laws and procedures."

This resolution was then followed by a more specific one, adopted at the next meeting of the House of Delegates in August, 1975:

"*Be it resolved*, That the American Bar Association recommends that Congress adopt legislation reforming Section 592, of the Tariff Act of 1930, 19 U.S.C. § 1592, in the following respects:

"1. by providing for civil penalties against the person violating the statute rather than forfeiture of goods involved;

"2. by providing that such penalty shall be a reasonable amount in light of the culpability of the violator and the consequences of the violation;

"3. by providing reasonable informal administrative procedures by the Customs Service, including adequate notice and an opportunity to be heard prior to the assessment of a penalty;

"4. by providing that the Customs Service must find a violation and assess a penalty on the basis of findings of fact and a statement of reason; and

"5. by providing trial by a court of al factual and legal questions relating to the issues of whether a violation occurred and the appropriate amount of the penalty.

"*Be it further resolved*, That the President of the American Bar Association or his designee is hereby authorized to represent the foregoing policy of the American Bar Association before the appropriate committee of the Congress, and other agencies of the government, in support of such reform legislation."

C. Comments on H.R. 8149 in Light of the ABA's Recommendations

We have examined H.R. 8149 to determine whether it achieves the objectives set forth in these ABA recommendations. In general, we feel it makes excellent progress toward these goals. They are not fully achieved, however, and we would urge that H.R. 8149 be revised further to take account of the few remaining problems which I will describe.

For the sake of clarity, I will discuss the remaining problems in relation to each of the five objectives set forth in the ABA resolution of August, 1975:

1. Does H.R. 8149 provide "for civil penalties against the person violating the statute rather than for forfeiture of goods involved"?

Section 111(a) does appear to achieve this purpose. It provides for monetary penalties against a person who enters goods by improper means. It authorizes the Secretary of the Treasury to seize the imported goods themselves only if there is reason to believe either that the monetary penalty will not be collectible and seizure is therefore necessary to protect the revenues of the United States, or that restricted merchandise will be imported into the country. This limited seizure authority appears justifiable, particularly in light of the requirement that the Secretary must issue to the person concerned a written statement containing the reasons for the seizure within a reasonable time. Presumably, this notice will contain the facts and circumstances which are thought to underlie the claim for a monetary penalty, as called for in the proposed Section 592(b).

2. Does H.R. 8149 "provide that such penalty shall be a reasonable amount in light of the culpability of the violator and the consequences of the violation"?

The proposed revisions of sections 592(d), (e), (f), and (g) do go far to achieve this objective. In general, the penalties are related to the culpability of the violator by making them more severe as one goes from negligence and then to fraud. And the penalties are related to the consequences of the violation by keying the penalties—in the cases of negligence and gross negligence—to a multiple of the amount of duty underpayment which resulted from the violation.

We do feel it appropriate, however, to make a few comments on proposed Section 592(b); the provision establishing the penalty amounts:

(a) In the case of fraud, the monetary penalty can go up to the full domestic value of the merchandise (an amount which would even be greater, in most cases, than the amount paid by the importer to his supplier for the merchandise). This value will not relate to the amount of duty underpayment, and will fluctuate from one case to the next. One person could be penalized millions of dollars for a fraudulent act which deprived the government of only a few thousand dollars in duties, whereas another person, importing much less valuable merchandise, would be penalized much less for fraud that was just as culpable and which deprived the government of duties in the same or even a lesser amount than those of the first violator. Thus, the use in H.R. 8149 of the value of the merchandise as a measure of the maximum penalty still leaves us, as in the existing Section 592, with the danger of arbitrary penalties, although the circumstances in which such arbitrariness can exist have been greatly narrowed.

The impact of this already severe penalty was, for reasons that we cannot understand, made even harsher by the House Ways and Means Committee,

which deleted a section that would have allowed the person against whom a penalty notice was isued to hand over the merchandise in lieu of paying the monetary penalty. Such a person might not have the financial resources to pay such a penalty, particularly one in an amount equivalent to the "domestic value" of the merchandise. We believe it would be wise for this Committee to restore in its version of this bill a provision similar to that included in H.R. 8149 as originally introduced.

No one sympathizes with the person who commits fraud against the government. And perhaps those who enforce the customs laws feel it essential to have this big stick in dealing with fraudulent offenders. But though frauds must be dealt with sternly, they should also in our legal system be dealt with fairly. Thus we would hope that penalties for fraud will be administered with careful consideration to the seriousness of the offense and the amount of the duty underpayment or other injuries to U.S. interests caused by the fraudulent act. It would seem appropriate to revise the proposed bill to call on the Treasury Department to give careful consideration, in determining fraud penalties, to the seriousness of the offense and the amount of duty underpayment or other injury to U.S. interests caused by the offense. Then we might hope that the Treasury Department's determinations and the rulings of the courts will over time, produce a body of jurisprudence concerning the appropriate levels of fraud penalties in different kinds of situations, even though the statute might permit maximum penalties up to the value of the merchandise.

The proposed revisons of sections 592 (b) and (c) of the bill appear essen-

(b) The bill permits a penalty for merely negligent violations in the amount of two times the duty underpayment resulting from the negligent act. This amount appears somewhat harsh and out of line with the remedies for negligent conduct generally imposed by our legal system. Normally our system redresses negligent misconduct simply by requiring the wrongdoer to pay for the damage he has done. Such is society's judgment concerning the seriousness of this offense. The Internal Revenue Code basically adheres to that tradition—adding a five percent surcharge as a mild additional inducement to the use of reasonable care in dealing with the government. Such an approach would also seem appropriate in the case of customs violations which are merely negligent. This would also be more in line with the provision of Article VIII(3) of the GATT, which was quoted above. If Customs determines a violation to be more aggravated, this bill would permit an assertion of gross negligence, to be accompanied by a penalty of up to four times the amount of the duty underpayment.

(c) Section 207 of the bill would make certain amendments to Section 466 of the Tariff Act of 1930. The result would be to impose a penalty of forfeiture of a vessel, or the value thereof, when the owner or master wilfully or knowingly fails to report and pay duty on repairs or materials purchased abroad. The forfeiture is also imposed where he makes any false statements concerning such purchases or repairs "without reasonable cause to believe the truth of such statements . . . ." Thus, Section 207 of the bill reinstates the concept, and even some of the language, of the present Section 592, at the same time we are attempting, in Section 111 to modernize that section! We would recommend that the penalties and procedures in the situation covered by Section 207 be handled in the same way as other imports under Section 111 of the bill.

3. Does H.R. 8149 Provide "Reasonable Informal Administrative Procedures By the Customs Service, Including Adequate Notice and An Opportunity to be Heard Prior to the Assessment of a Penalty"?

The proposed revisions of sections 592 (b) and (c) of the bill appear essentially to achieve that objective. We would make only one observation:

It should be made clear that the "appropriate customs officer" who determines whether a violation has occurred, under the proposed Section 592(c), need not be the same customs officer who initiates the penalty proceeding by issuing a notice under the proposed Section 592(b). In many cases the determination of a violation would, and should, be made by higher officials in the Customs Service, after considering the notice of violation and the response of the alleged violator.

4. Does H.R. 8149 Provide "That the Customs Service Must Find a Violation and Assess a Penalty on the Basis of Findings of Fact and Statement of Reasons"?

We believe this objective will be achieved by the proposed act.

5. Does H.R. 8149 Provide "Trial By a Court of all Factual and Legal Questions Relating to the Issues of Whether a Violation Occurred and the Appropriate Amount of the Penalty?"

The bill represents a great improvement over the current law which, as I have indicated, in practice provides no reasonably available judicial review. The provisions in the bill could be improved, in our view, as follows:

(a) It should be made clear either in the bill or in the legislative history that a reviewing court is expected to review the amount of the penalty, not merely to determine whether it is within the maximum permitted by the statute, but also to determine whether it is an appropriate amount in view of the culpability of the violator and the consequences of the violation.

(b) The proposed Section 592(g)(4) states that, in a judicial review proceeding, when the monetary penalty is based on negligence, the alleged violator shall have the burden of providing that the "act or omission did not occur as a result of negligence." The government carries the burden of proof only to the extent it must establish the act or omission. If the assessment for a negligent violation exceeds the amount of duty underpayment by anything more than a nominal amount (e.g., 5 percent as in negligent tax underpayments) we do not feel that the burden to disprove negligence should fall on the alleged violator. Thus, if the penalty for a negligent violation can be two times the duty underpayment, as provided in the present bill, the burden of proof should be entirely on the government. This should not be a difficult burden if the government has done a good job of gathering and evaluating information in the course of the administrative proceedings provided for in proposed Sections 592(b) and (c). On the other hand, if the penalty is merely to be a nominal one, and the main effect of a determination of negligent violation is to restore the underpaid duty to the government, then the burden of proof in a judicial review proceeding should be essentially the same as it would be in a Customs Court proceeding where an importer protests an assessment of duties.

(c) The present bill does not place any obligation on the government to proceed to court promptly. Thus, a person might be subjected to a final administrative determination that he has committed a violation and is subject to penalties, but have no way of securing judicial review until the government chooses to go to court to collect the penalties from him. The government might delay unreasonably, placing a continuing burden of uncertainty on the alleged violator and resulting in hardships similar to those discussed above in the context of the recent EMM settlement. It would appear desirable to revise the bill to require the government to proceed to court to collect asserted penalties promptly—for example, within six months of the final administrative determination.

Before closing, Mr. Chairman, I should also like to endorse, on behalf of the ABA, Section 115 of H.R. 8149, which calls for mandatory publication of certain Customs Service rulings within 120 days, for the guidance of the public and the bar. The ABA resolution of February, 1975, quoted above, calls for "timely dissemination to the public" of rulings and other materials. As international trade continues to increase and to play a greater role in U.S. commercial life, American businesses and consumers will be increasingly affected by delays and difficulties in understanding the customs laws. We believe this provision will contribute to the economical and fair implementation of those laws. We note that this section, as presently drafted, is limited to rulings on prospective transactions. It would thus not require the Customs Service to publish the important rulings often rendered in connection with existing transactions in dispute between a customs official and an importer. These advisory rulings are also of interest to the public, and experience may demonstrate the wisdom of publishing them as well as prospective rulings.

Mr. Chairman, these observations concern the more important aspects of needed improvements in Section 592 procedures. I appreciate the opportunity to present the views of the Association on the pending legislation, and will be happy to respond to any questions.

TABLE A.—*Comparison of statutory liability for customs penalties with amounts imposed by Treasury after mitigation*

Calendar year:	*Amount*
1973:	
Liability	$58,327,171.63
Decision	4,926,514.36
1974:	
Liability	394,943,817.23
Decision	19,172,912.91
1975:	
Liability	505,603,800.57
Decision	16,332,627.26

Senator RIBICOFF. Mr. Dawson?
Take a seat, sir.
You may proceed, Mr. Dawson.

STATEMENT OF DONALD S. DAWSON, ESQ., DAWSON, RIDDELL, TAYLOR, DAVID & HOLROYD, ON BEHALF OF VIRGIN ISLAND GIFT AND FASHION SHOPS COMMITTEE OF ST. THOMAS-ST. JOHN CHAMBER OF COMMERCE

Mr. DAWSON. Mr. Chairman, my name is Donald S. Dawson. I am a practicing lawyer with the firm of Dawson, Riddell, Taylor, Davis Holroyd in the Washington Building of this city. I represent the Legislature of the Virgin Islands and the Virgin Island Gift and Fashion Shop Committee of the Chamber of Commerce of St. Thomas and St. John, and also that Chamber of Commerce.

I have a short statement on a new aspect of this bill.

The Delegate from the U.S. Virgin Islands, the Honorable Ron de Lugo, concurs in my statement and supports the position of the legislature, the fashion shop committee and the chamber of commerce and has submitted a written statement.

The U.S. Tariff Schedules presently in effect provide for a duty-free exemption of $100 in the case of persons returning from foreign countries and $200 in the case of persons returning from the U.S. possessions, American Samoa, Guam and the Virgin Islands of the United States.

H.R. 8149 provides for an increase in these duty-free exemptions and in addition provides for an allowance for each returning person above the duty-free exemption at a flat rate of duty in the amount of 10 percent for foreign countries and 5 percent for U.S. possessions.

The Foreign Trade Act of 1974 provides for assistance to certain developing foreign countries and permits duty-free entry without limitation from those countries, the only requirement being a certificate of origin for purchases over $250 and for goods shipped, a commercial invoice is also required.

At present, there are 138 foreign countries receiving this benefit, known as the U.S. Generalized System of Preferences, GSP. There are approximately 2900 items on the GSP list, which includes such items as tourists usually take home.

Not only is unlimited duty-free privilege accorded these foreign countries, but also purchasers are given the right to ship the purchases duty-free to the United States. They need not accompany the returning person, as is required of those persons who have made purchases in the U.S. possessions.

The GSP list of foreign countries includes most of Central and South America and the Caribbean area. Those countries, such as the Bahamas, Barbados, Dominican Republic, Grenada, Haiti, Jamaica, Trinidad and others are in direct competition with the U.S. Virgin Islands for the tourist trade.

American Samoa and Guam, likewise, receive competition from GSP countries in the Pacific area.

The Generalized System of Preferences was enacted to assist in improving the financial and economic conditions of the designated developing nations. The U.S. possessions have a like need for such assistance.

In the U.S. Virgin Islands, for example, the unemployment rate is approximately 10 percent and the government is operating at a very substantial deficit. Tourism accounts for approximately 50 percent of the gross national product of the Virgin Islands, and any assistance or stimulation that can be given the tourist trade in the U.S. possessions would be of great benefit.

Therefore, on behalf of the U.S. Virgin Islands Legislature and the Gift and Fashion Shop Committee, I earnestly ask for your favorable consideration of an amendment to H.R. 8149 which will permit duty-free and flat rate allowance shipment to the United States of items acquired by tourists in the U.S. possessions by persons physically present in those possessions within the limits of the amounts set out in H.R. 8149 in accordance with the same privilege granted to the 138 foreign countries on the GSP list.

Because items shipped are not subject to examination at the time travelers go through Customs, this will also speed the customs procedures.

The citizens of the U.S. possessions are U.S. citizens and their soil is U.S. soil; 84 cents of every dollar spent in the Virgin Islands remains in the U.S. economy. Competitive foreign tourist areas contribute little, if anything, to the U.S. economy.

Money spent in the U.S. possessions remains in the United States to a large extent.

In addition, the travel expenses, hotel, entertainment and living expenses are retained in the United States, not spent in going to foreign countries, but spent to build up the United States.

Furthermore, I would point out that, in the U.S. Virgin Islands, we are required to pay Federal minimum wages, U.S. social security taxes, workman's compensation, unemployment insurance, and Federal income taxes. Merchants in foreign areas do not pay these taxes and thus have lower costs which gives them a great competitive advantage.

All retailers in the Virgin Islands are required, by Federal law, to pay a 6-percent duty on all items imported for resale, including those which are manufactured in the United States. There is no comparable duty paid by their foreign competitors.

Stores in the Virgin Islands are required to pay various territorial taxes, such as a 2-percent excise tax and a gross receipts tax of 3 percent. No competing tourist area has comparable high local taxes.

Therefore, to be competitive, we have to have some inducement to offer tourists, such as the 2-to-1 ratio of exemptions from customs duty as is presently in effect.

I am glad to see that all of the witnesses who have testified here today have testified in favor of this 2-to-1 ratio. I would call your

attention particularly to the testimony of the Air Transport Association before the Ways and Means Committee on this bill, which recommended an even higher duty-free exemption and the 2-to-1 ratio for the U.S. possessions saying, and I quote:

> For these islands, who primary national resource is a sunny climate, tourism has been a prime factor in their development. Loss of the current two to one ratio of duty-free allowance for the U.S. Virgin Islands, Guam and American Samoa would make tourism less attractive to these vacation areas and would result in the deterioration of their economy.

I am happy to note that the American Automobile Association, testifying later, from their prepared statement, will support the House bill.

I think a simple example will show the fairness of permitting goods to be shipped within the duty-free allowance from U.S. possessions.

Wood carvings are on the list of GSP items and so is the country of Haiti. A U.S. citizen going to Haiti can ship back to his home an unlimited amount of wood carvings produced in Haiti, duty free. But a U.S. traveler going to the Virgin Islands and purchasing identical wood carvings made in Haiti can only bring in $200 duty free and cannot ship them home.

We believe this shipping privilege, provided any duty owing is paid, should be extended to the U.S. possessions as well as to the foreign countries under GSP.

I have drawn up suggested amendments to the Tariff Schedules which will permit the shipment of tourist purchases from the U.S. possessions within the duty-free exemption and flat-rate allowance established in H.R. 8149 and I submit them herewith.

[The material referred to follows:]

JANUARY 12, 1978.

The following are suggested as amendments to H.R. 8149 to permit United States tourists who have made purchase in U.S. possessions to ship purchases home and to eliminate the requirement that duty free or flat rate items must accompany the purchaser. The amendments are to apply to all purchase covered by the duty free and flat rate allowances, including cigarettes, cigars and liquors. Any duty payable over the duty free exemption and flat rate allowance is to be paid by the purchaser.

These amendments should be very carefully coordinated with the Customs Service so that there is a clear understanding that the amendments accomplish the purpose sought.

Section 204 of H.R. 8149 should be amended to read:

Sec. 204. Item 813.30 is amended by inserting after the words, "accompanying such person", "(except in the case of persons arriving directly or indirectly from American Samoa, Guam, or the Virgin Islands of the United States in which cases said articles acquired in such possessions of the United States as a result of the physical presence of the returning person may follow unaccompanied)".

It will then be necessary to re-number the present Sec. 204 to Sec. 205 and so on.

The new Section 205 should read:

Item 813.31 is amended by striking "$100" wherever it appears, and inserting in lieu thereof "$250", and by striking "$200" and inserting in lieu thereof "$500"; and by adding after the final word thereof the following: "Said articles which are acquired in the case of persons arriving directly or indirectly from American Samoa, Guam, or the Virgin Islands of the United States and acquired in such possessions of the United States as a result of the physical presence of the returning persons may follow unaccompanied."

The new Section 206 should read:

Sec. 205(a) Schedule 8 of the Tariff Schedules of the United States (19 U.S.C. 1202) is amended by redesignating "Part 6" as "Part 7", changing the phrase "Part 6 headnote" to "Part 7 headnote", and inserting a new Part 6 to read as follows":

PART 6—NON COMMERCIAL IMPORTATIONS OF LIMITED VALUE

Part 6 headnote:
(The first section to be the same as present H.R. 8149.)
869.00. Accompanying a person (except in the case of a person arriving directly or indirectly from American Samoa, Guam, or the Virgin Islands of the United States in which case said articles acquired in such possessions of the United States as a result of the physical presence therein of the returning person may follow unaccompanied) arriving in the United States and valued in the aggregate (exclusive of the duty free articles) not over $600 fair retail value in the country of acquisition, for such person has not received the benefits of this item (869.00) within the thirty days immediately preceding his arrival * * *.
The remainder of 869.00 is to remain the same as in the present bill H.R. 8149.

Mr. DAWSON. Just as we have extended the shipping privileges to foreign countries, we should extend that same privilege to the U.S. citizens of U.S. possessions.

Thank you, Mr. Chairman.

Senator RIBICOFF. Thank you very much, Mr. Dawson.

The committee will stand in recess until 1:30 this afternoon.

[Thereupon, at 11:50 a.m., the subcommittee recessed, to reconvene at 1:30 p.m. this same day.]

AFTER RECESS

Senator NELSON [presiding]. Our first witnesses this afternoon are Mr. George Watts of George Watts & Son, Inc., and Mr. David Harrar, Photo Marketing Association. If you both want to come up to the desk and just present your testimony however you wish to do so.

Mr. WATTS. Mr. Chairman, this is Mr. David Harrar, my associate and friend, and I am going to speak first, if I may, and he will speak second on the panel.

Senator NELSON. All right.

STATEMENT OF GEORGE WATTS, GEORGE WATTS & SON, INC.

Mr. Watts. Mr. Chairman, I am George Watts, third generation owner and manager of a specialty retail store located in downtown Milwaukee for the last 107 years. Our specialty includes fine china, silver, crystal, objects of art, casual stoneware and stainless steel flatware. Over 50 percent of our sales are from imported merchandise.

We operate in our store a distinguished restaurant called The Watts Teashop. We have no branches in the suburbs, just this one store. We employ, on average, 60 people, 19 of whom are black, one who is deaf and mute; 90 percent, or more, of our employees are residents of the city of Mulwaukee.

I speak for our store, plus the Wisconsin Merchant's Federation, the T. A. Chapman Co. of Milwaukee, another downtown store, and several other stores like ours that are located throughout the United States: Pitt Petri of Buffalo, Gearys of Beverly Hills, Kaplan Ben-Hur of Houston.

I would like to speak against that portion of the Customs Procedural Reform Act of 1977 which increases the amount of merchandise that our tourists could bring home from abroad duty free from $100 to $250 in most cases and from $200 to $500 in the case of American Samoa, Guam, and the Virgin Islands.

Hardly a day goes by that we do not hear of a sale we have lost to a foreign retailer, a purchase made by one of our customers who used his privileged status as a tourist to bring home his purchase duty free, or nearly duty free. Many, perhaps most of these purchases, are one-in-a-lifetime purchases—a complete table of Waterford crystal, a service for 12 in Spode stone china, a crystal object of art, and so on.

Our tourists are treated with extravagant and perhaps illegal generosity by our customs people. Wholesale value is used; much value is summarily excused.

It is obvious that world travel by Americans is becoming increasingly routine. Some of our customers go abroad as often as two or three times a year.

We cannot compete with these foreign retail stores which have access to our customers on a subsidized basis.

In 1961, we were responsible, to a large extent, for an action by the Congress and the President in getting the duty exemption reduced from $500 to $100. The arguments that were persuasive to the Congress at that time were: one, that our balance-of-trade situation, which resulted in a serious and severe negative balance of payments. At that time, it was estimated that American tourists buying abroad added approximately $6 billion to our negative trade balance.

Two, the fact that this tourist exemption amounted to a subsidy for foreign retailers, or, conversely, a tax on American retailers, and obviously dollars spent abroad cannot be spent here.

Three, that this was resulting in an exportation of jobs in retailing from our country to foreign countries.

Four, that this was discrimination in taxation—that is, it was inequitable to exempt one class of our citizens from paying duties, especially considering it was a privileged class.

Five, the fact that increasing air travel was making this problem greater and greater and the fact that the retail market for fine china and silver had become a world market.

Six, that American stores paid decent salaries, taxes to all levels of American governments, were productive of sustained relations, made friends overseas—in fact, in some cases, friendships over many generations. Further, that American stores that featured imported merchandise tend to give a stimulus to the sale of domestic products.

Seven, that promiscuous tourist buying abroad by Americans distorted the American image. Their greedy buying in foreign shops gave a false picture of this country.

Eight, that, for the most part, foreign countries offered no reciprocity, virtually without exception. I should add, parenthetically at this time, that Japan and Germany do now offer their nationals a $40 per capita exemption.

Senator NELSON. Do all other countries in Europe have——

Mr. WATTS. Senator, I understand that almost without exception we have not been able to turn up anybody else that gives their tourists the treatment that we give our tourists. In other words, when they come back with merchandise from America, it is fully dutied, to the best of my knowledge.

Senator NELSON. Is there any differential on duty that is paid by a merchant in this country who buys for resale?

Mr. WATTS. No, we pay your full duty—I think that is your question—without exceptions or exemptions of any sort.

Senator NELSON. Whatever the duty is, the merchant who buys it for purposes of retail or wholesale sale pays the full duty on it?

Mr. WATTS. He pays the full duty. In many cases, it is paid prior to our getting ahold of it by our importers, but it is paid completely.

Foreign tourists are taxed fully on the merchandise that they buy in the United States when they return home. In fact, many are limited to a per diem amount that they can spend. Plus the fact, as I have said, that anything that they bring back is fully dutied.

Nine, this loophole in our customs procedure is hurtful to American manufacturers as well as American retailers. It leaves American manufacturers without any protection, as it does retailers.

Ten, it enables a privileged group to avoid State sales taxes.

It is a fact that today the situation in the United States, if anything, is worse in regard to our negative balance of payments. I believe it was a minus $25 billion through November of 1977, and all of the other arguments that we put forward at that time, that were not only true then, are even more true today.

In short, thus, we would ask the Senate to completely eliminate the existing $100 or $200 exemption and have all merchandise brought back by tourists fully dutied, as any such exemption is discriminatory and inequitable and exceedingly damaging to American retail stores and to their employees.

It is particularly objected to that there should be a special higher exemption for American Samoa, the Virgin Islands, and Guam. Such exemption is not justifiable in any way and is a direct source of loss of business to us.

We also object to the fact that much merchandise is imported by the U.S. citizen through parcel post and on most of these private imports, duty is not levied.

Our customers, in addition to being privileged and spoiled are monied, traveled, sophisticated and well-educated. They use our store for comparison shopping and make their purchases abroad.

It is estimated that with the projected increases in air travel, the size of our business and businesses like ours, particularly if an increase in exemptions for tourists should be enacted, would cause our business to diminish, causing unemployment in the central city where it can least be afforded, and at worst, our survival would be in question.

At a time when our country is bleeding to death with the dollar drain, I cannot believe that there are groups that want to facilitate this bleeding! In view of the foregoing, it is hoped that the Senate will reject this portion of the Customs Procedural Reform Act, H.R. 8149, and instead, eliminate completely the existing exemption plus tighten up customs procedures on the direct imports of private citizens.

23-893—78——11

Thank you for your courtesy very much.

Senator NELSON. Do I remember correct—did you use the figure that $6 billion of goods were purchased by tourists?

Mr. WATTS. This is the figure that I remember from the testimony that was brought to the Congress in 1961. That was a net figure. If I recall correctly, they subtracted from the gross figure—that is, what Americans purchased abroad—the little that foreign tourists purchased here, and I believe they came up with a $6 billion deficit. I cannot vouch precisely, but that is in the ball park, I believe.

Senator NELSON. Thank you very much, Mr. Watts.

[The following was subsequently supplied for the record:]

QUESTIONS SUBMITTED BY SENATOR NELSON TO MR. WATTS AND HIS ANSWERS TO THEM

1. U.S. Customs has determined that only .02% of all U.S. tourists travelling abroad, pay any duty on foreign merchandise when they return to this country, therefore it is the Customs position that raising the duty free allowance will have no effect. What is my reason for thinking that the number of tourists involved, .02% should be so small?

In answer, I would say that this amount is small because:

(a) Lack of adequate administration of the law on the part of the Customs Bureau, plus wide-spread violation of the law inasmuch as arbitrarily much merchandise is allowed in duty free, and I am led to believe that there is a significant amount of smuggling that goes unchecked and unnoticed. Also, many of the entries recorded by the Customs are people coming in from Canada or Mexico, who do this on a routine basis; or businessmen who make many trips abroad every year, who can't be bothered. However, I am led to believe that in total, the amount of merchandise that is brought back, is enormously significant. Also, there is no question in my mind that the increase in the level of exemption, would not only stimulate travel abroad, but would stimulate higher purchases abroad as well.

Presently now, the $100 exemption acts as a psychological barrier. For the amount involved, people in most cases don't make purchases because they know there will be a hassle when they come back and they'd like to avoid this. Certainly one of the key questions the Senate Finance Committee should ask of the Customs Bureau is, what are total tourist expenditures abroad; not just in purchases abroad, but in tourist travel? In other words, what contribution does this make to our negative balance of payments? Finally, phoney invoices are used to substantiate purchases abroad, as a matter of routine.

2. In answer to question 2, which is with respect to my position on the change and duty free limitations—why haven't more trade associations and retailers complained?

My answer here is that many of these Associations have a conflict of interests. For example, the Association of Commerce, a group of which I am an active member, takes a position for the Bill because the wives of executives travelling abroad like to bring back as much as they can, duty free. It's the action of a privileged class who happen to be largely, in this case, the wives of manufacturers, thus they don't see any significant impairment to their own position and therefore would like the exemption—who wouldn't?

3. In answer to question 3, which is, in my judgment, business loss occurs from this exemption to us and to stores like us, and we would say it's enormously significant. That is, without an exemption, our business would increase 20%. With an increased exemption, our business would decrease by at least 20%. The impact of this, both monetarily and psychologically is momentous.

Very truly yours,

GEORGE WATTS.

Senator NELSON. Our next witness is Mr. David Harrar of the Photo Marketing Association. Is that Milwaukee? Where are you?

Mr. HARRAR. Well, I am from Philadelphia. Our association represents photodealers across the United States.

Senator NELSON. Represents what?

Mr. HARRAR. Photodealers across the United States.
Senator NELSON. How many?
Mr. HARRAR. About 14,000 dealers are represented by our association.
Senator NELSON. Dealing in photographic materials and equipment?
Mr. HARRAR. Essentially retail camera stores; yes, sir.
Senator NELSON. 14,000?
Mr. HARRAR. Yes, sir.

STATEMENT OF DAVID HARRAR, PHOTO MARKETING ASSOCIATION INTERNATIONAL

Mr. HARRAR. Mr. Chairman, my name is David Harrar. I am president of Larman Photo of Abington, Pa. I am here today on behalf of the Photo Marketing Association International, known as PMA, and its more than 14,000 dealer and finisher members.

It is not an overstatement for us to say that PMA members depend in a large measure on imported cameras and photographic equipment for their livelihood and it is for this reason that we are here today to urge this committee to delete a provision in H.R. 8149 which would jeopardize our business without serving any other useful purchase. With this deletion, PMA could support H.R. 8149.

The provision which we refer to is section 203(a)(6) which would amend the Tariff Schedules of the United States to increase the duty-free allowance for returning travelers from $100 to $250 and from $200 to $500 in the case of travelers returning from American territories.

The sponsors of H.R. 8149 and the administration have claimed that this provision is an effort to: one, reduce the paperwork burden on U.S. customs officers and returning tourists; and two, to react to the worldwide inflation that has taken place since the level was set at $100 more than 15 years ago.

Mr. Chairman, neither of these arguments is supportable, and a close examination of the hearing record of the House Ways and Means Committee on this subject will bear us out.

In a response to written questions propounded by the chairman of the subcommittee which held hearings on this bill, Acting Commissioner of Customs G. A. Dickinson responded that "less than 2 percent of all persons entering the country exceed their duty-free exemption."

This response deflates, in one sentence, both arguments used to support an increase in the duty-free allowance. Returning U.S. travelers are simply not making purchases abroad in amounts which would cause a paperwork burden on customs officers, or which would justify reaction to the inflation of the last 15 years.

To raise the duty-free allowance would do damage to the U.S. camera retailer. At present, the overwhelming percentage of most photographic dealers' income comes from the sale of imported cameras. This is because lower priced cameras are generally sold to a mass audience through general merchandise outlets, discount stores, drugstores, et cetera.

The photographic specialty retailer represented by PMA relies upon the 35-millimeter camera and related equipment as the basic staple of his merchandise assortment. And since there is no 35-millimeter camera made in the United States, it is the import which we must sell.

Our data indicates that even though these retailers depend on these sales for their survival, only an estimated two-thirds of the imported cameras sold in the United States were bought from U.S. dealers. The remaining one-third were purchased abroad by tourists and other travelers and brought back through U.S. customs.

The only deterrent to this flow of cameras purchased from foreign retailers is the $100 duty-free allowance. If it is raised, the U.S. retailer will lose more sales to foreign suppliers. Less you think that this might be an illusion, I would point to a recent article in the Wall Street Journal, attached to this statement, which is headlined, "U.S. shoppers find bargains on Windsor, Ontario's Ouellette Avenue."

The story then recounts how "the shopping drag only a 5-minute drive from downtown Detroit is packed with Americans snapping up china, jewelry and even furs." I have no doubt that many of these Americans are also buying cameras.

Boosting the duty-free allowance will only encourage more of this out of the country spending, which will benefit foreign retailers at the expense of domestic dealers, and State and local governments, which stand to lose sales tax revenue from items which would otherwise would have been purchased in this country. There would also be a loss of U.S. customs duties now paid by photographic equipment importers.

It is also a form of indirect subsidy to those higher-income persons who can afford to travel overseas. This extra benefit to those who travel will be offset by a corresponding burden on those who cannot afford to travel and must buy their cameras and other photographic equipment domestically.

The burden will result since U.S. retailers will be forced to raise their prices to cover sales lost to these off-shore shopping havens.

It is interesting to note, again referring to the testimony presented to the House Ways and Means Committee, that representatives of the Virgin Islands business community indicated that they did not feel that the duty-free allowance should be raised at all, since travelers were not now spending their allotted $200 limit in the islands.

All business representatives who testified stated their belief that if the $100 nonlimit were raised, sales would be lost by Virgin Island retailers. Even the spokesmen for the Virgin Islands Government indicated that their support of an increase was a compromise reached because the administration's original position of increasing the allowance without maintaining the 2-to-1 ratio between U.S. territories and foreign nations was unacceptable.

Finally, we might ask why we are proposing to relax our duty-free allowance when other countries are far more restrictive, and when our trade deficit reached a record high level of $26.7 billion in 1977. Germany and Japan, the leading non-United States photographic countries, allow their tourists returning from abroad to bring in only about 100 marks and 10,000 yen respectively, worth of duty-free goods; that is about $40 in each case.

Mr. Chairman, it is for these reasons that we urge deletion of section 203(a)(6) of H.R. 8419, which would increase the duty-free allowance.

If I may take a moment to relate a direct experience that has occurred in my retail business on numerous occasions over the years, it seems that people who travel travel with some regularity. They may visit the islands once a year for a vacation.

Years ago they brought back a camera for themselves. Now they travel and they offer to bring back a camera for their friends.

When you consider that one-third of the sophisticated cameras that are used in this country are brought in duty-free, that is a substantial amount.

I think that the only deterrent presently toward that increasing is the psychological effect that not more than $100 can be brought in from foreign nations, or $200 from the Virgin Islands. This makes it close to the value of a lot of these cameras, and so individuals will think a second time before they bring in that camera for a friend because they have to declare it, and pay a duty on it.

If we increase the allowance, then virtually every camera will be able to come in duty-free and this will be carte blancle for those people who travel to bring back one, perhaps two cameras, for their friends, rather than the one that they would need for themselves.

It is for this reason that I, as a retailer, would strongly object to it, because it is something that we see happen on a week-to-week basis in our retail stores.

Thank you.

[The attachment to the statement of David Harrar follows:]

[From the Wall Street Journal, Jan. 16, 1978]

U.S. shoppers find bargains on Windsor, Ontario's Ouellette Avenue.

Because of currency and tax savings, the shopping drag only a five-minute drive from downtown Detroit is packed with Americans snapping up china, jewelry, woolens and even furs. And there are similar scenes in other Canadian border towns.

A chief attraction is the depressed rate of the Canadian dollar. While the U.S. dollars has been sagging of late on international currency markets, the Canadian currency has dropped even more. The Canadian dollar has staaged a comeback of sorts since midautumn. Still, the Canadian currency is worth only about 91 U.S. cents. Just a year ago, the two currencies were nearly on par.

Canadian retailers, eager for sales, are taking advantage of the U.S. dollar's premium by knocking off as much as 10% from their Canadian price tags for customers who want to pay with U.S. money.

And that's only part of the bargain. The 7% Ontario sales tax is refundable to Americans, and Michigan shoppers escape the 4% sales tax imposed on them at home.

U.S. residents still have to contend with tariffs when they cross over the border. But even there some Canadian merchants are dangling a lure.

Eli Goldin of Lazare's Furs, for one, is refunding the duty that U.S. residents have to pay on the furs he sells them.

That can be a lot; the impost can range from 8½% to 18½% of the fur's wholesale value. But Mr. Goldin hopes that word-of-mouth will bring him more U.S. customers. And that business already is quite substantial. U.S. residents currently account for 60% of his volume; it's triple what it was a year ago.

Shanfields-Meyers Jewelry & China Shop also reports a significant portion of its business comes from south of the border. "About 85% of our total business is American," says Jack Shanfield, the owner. Last year, it was only 50%.

Some merchants, however, aren't so accommodating in seeking U.S. dollars.

"We only accept money at par," says Barry Stevenson, manager of Ye Olde Steak House in Windsor. "We never changed it a while back when the American dollar was weaker, and I can't see any reason to do so now," he says.

Mr. Stevenson figures it's only fair that he gets back what he lost in the past.

—Leonard M. Apcar.

Senator NELSON. Thank you both very much. I appreciate your taking the time to come and present your testimony. We may have some additional questions to submit before we close the record, and I assume if we send some, they would be answered?

Mr. HARRAR. Very definitely.

[The following was subsequently supplied for the record:]

MASTER PHOTO DEALERS' & FINISHERS' ASSOCIATION INTERNATIONAL,
Jackson, Mich., February 15, 1978.

Re: Customs Procedural Reform Act (H.R. 8149)

Senator ABRAHAM RIBICOFF,
Chairman, Subcommittee on International Trade, Senate Committee on Finance, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR RIBICOFF: The following are answers to written questions which were provided by Senator Gaylord Nelson to David Harrar, who testified before the Subcommittee with respect to H.R. 8149.

We would request that these questions and answers be made a part of the hearing record.

Question 1. The U.S. Customs Service has determined that only 0.02% of all U.S. tourists traveling abroad pay duty and/or tax on foreign merchandise upon their return to the U.S. Therefore, according to the Customs Service, the proposed raising of duty-free limitations would have little or no effect. What in your opinion is the major reason that such a miniscule percentage of returning U.S. tourists pay any duty on foreign merchandise?

Answer 1. PMA believes that the Customs Service is wrong in its conclusion that an increase in the duty-free allowance will have "little or no effect". In our view, the major reason that such a small percentage of returning U.S. tourists exceed their duty-free limitation is the existence of the limitation itself. If a returning tourist would have to pay duty on a purchase exceeding $100, its status as a "bargain" would disappear and the tourist would be less likely to make the purchase in the first instance. It is PMA's view that the existing duty-free allowance acts as a strong deterrent to foreign purchases in excess of $100, and thus the allowance should not be increased.

Question 2. With respect to your position that the proposed change in duty-free limitations will have an adverse effect on U.S. retail merchants, could you enlighten us as to why other retail merchants and trade associations have not come forward with similar testimony?

Answer 2. Other retail merchants and trade associations have in fact come forward with statement in opposition to an increase in the duty-free allowance. The Retail Jewelers of America, a national association headquartered in New York City which represents some 20,000 jewelers, has filed a statement in support of the PMA position. State jewelers organizations and many individual retailers who sell china and glassware have also submitted correspondence in opposition to an increase in the duty-free allowance.

Question 3. In your judgment, what effect in terms of monetary or business loss would the proposed change in the duty-free limitations have on your company and on those similarly situated?

Answer 3. While it is difficult to accurately predict the precise amount of business loss that an increase in the duty-free allowance would have, there is no doubt that it would be substantial in view of the large numbers of my customers who regularly travel out of the country.

Cordially,

JAMES M. GOLDBERG.

Senator NELSON. Thank you very much.

Mr. HARRAR. Thank you.

Senator NELSON. Our next witness is Mr. Charles S. Andrews, manager, Worldwide Travel Industry Affairs, American Automobile Association.

If you gentlemen would identify yourselves for the reporter so that the record will be accurate?

STATEMENT OF CHARLES S. ANDREWS, MANAGER, WORLDWIDE TRAVEL INDUSTRY AFFAIRS, AMERICAN AUTOMOBILE ASSOCIATION, ACCOMPANIED BY JERRY C. CONNORS, DIRECTOR, LEGISLATIVE AFFAIRS

Mr. ANDREWS. Good afternoon, Mr. Chairman. My name is Charles Andrews. With me this afternoon is Jerry C. Connors, our director of legislative affairs.

We are very pleased to have this opportunity to give our views on H.R. 8149 which modernizes and simplifies procedures of the U.S. Customs Service.

The American Automobile Association has more than 19½ million members in the United States and Canada. AAA serves the motoring and travel needs of those members with 210 clubs and a total of 966 offices.

AAA and its affiliated clubs also serve the American traveling public through approximately 600 travel agency locations which do more than one-half-billion dollars in travel agency sales annually. Not all of these travelers are in the privileged class.

These agency locations are accredited by the Air Traffic Conference of America and the International Air Transport Association and are open to the general public. In recent years, international travel has become increasingly accessible to a growing number of people. The choices for a holiday abroad are myriad, with foreign countries and cities ready to welcome American tourists the year round.

A week on an exotic tropical island or among the ruins of an ancient civilization can be a delightful experience and vacation. Delightful, that is, until the vacationer returns to the United States and discovers that the camera he bought is branded with an illegal trademark and the few souvenirs he bought are valued at over $100 and, therefore, not duty free.

As he waits in the airport a substantial amount of time while customs processes his belongings, the euphoria of the vacation fades and frustration and anger set in.

Getting through customs seems to be like rush-hour traffic—both are hardships to be endured. This is not to disparage the Customs Service which has performed its functions extremely well under the mandates it has been given. However, the last time any legislation was enacted to facilitate customs clearance of merchandise and passengers was in the 1950's.

Things do change in 20 years. While the travel industry began making regular use of computers and other modern technology, the U.S. Customs Service was still required to use outdated and cumbersome procedures. It became clear that something needed to be done.

Last year, legislation was introduced to alleviate some of the problems and H.R. 8149 which has already passed the House and is pending now before this subcommittee, permits the U.S. Customs Service to modernize and simplify customs procedures for both commercial and noncommercial merchandise entering the United States with returning travelers.

AAA, in its capacity as a travel agency, is pleased that such long-needed legislation is on its way to enactment. We are particularly happy with the changes contained in title II—the "Customs Simplification Act." It is in title II where changes in customs procedures affecting the international traveler are to be found, changes dealing with noncommercial importations. We therefore would like to direct our remarks specifically to these provisions.

The personal duty limitation of $100 has been in effect since 1961. Although 17 years ago $100 may have been a sufficient amount of money to purchase enough souvenirs and personal goods to satisfy the tourist, that $100 certainly will not purchase anywhere near the same amount of merchandise today.

H.R. 8149 provides for a personal exemption increase to $250—a much more reasonable and realistic amount, considering inflation's drain on the purchasing power of the dollar. In line with that increase, Americans, Americans returning from any of the American insular possessions—the Virgin Islands, Guam, or American Samoa, would be eligible for a personal exemption of $500, up from the current limit of $200.

Still, there are many travelers who spend more on goods than the personal exemption allows, yet they are not bringing those goods to the United States for commercial purposes. Under the present system, those travelers are required to go through a time consuming and confusing process of having duties assessed on their purchases as prescribed by the applicable provisions of the law.

This is a major cause of long lines and bottlenecks at airports and border crossings that are so frustrating to a returning traveler.

The legislation before you proposes another method of treating this situation, by providing that noncommercial merchandise over $250 but not more than an additional $600 in fair retail value would be assessed a flat 10 percent duty rate, or 5 percent acquired in the insular possessions.

The 10 percent rate would replace use of the Tariff Schedules, thereby speeding up customs processing. $850 is a fairly high limit and it is difficult to imagine the international vacationer, a person spending a week on a low-price tour charter, spending over $850 for personal purposes.

Since this provision applies only to noncommercial merchandise intended for personal use and not for resale, it would most likely apply to the majority of returning U.S. travelers.

The AAA feels that this bill will be extremely helpful to most travelers.

The increase in personal duty exemption is, as has been mentioned previously, much more realistic in the face of mounting inflation. The 10 percent commercial rate on noncommercial merchandise under $850 would allow much quicker passage through Customs.

There is one other provision in H.R. 3149 that AAA feels would be beneficial to Americans traveling abroad. That provision deals with the confusion caused by the current law governing imports of merchandise bearing a genuine U.S. trademark. This involves section 526 of the Tariff Act of 1930 and its interpretation by the Customs Service.

The current law prohibits U.S. trademarked articles from being imported into the United States unless they are foreign produced and bear a genuine U.S. trademark and have been authorized by the U.S. trademark owner to be produced and sold abroad. This law is neither generally well known, nor understood.

An example of what can result from this situation, and often does, is that of a returning U.S. tourist bringing through Customs a camera he has purchased abroad. The camera bears a genuine U.S. trademark, but the U.S. trademark owners have not authorized that camera to be produced and sold abroad bearing that trademark.

The returning traveler is probably not even aware of the trademark law protecting this trademark. When he checks in the camera at Customs, it will probably be confiscated, unless he receives permission from the trademark owners to keep the camera as is, or unless he obliterates the offending trademark.

As you can well imagine, such an incident could create a certain amount of ill will for the Customs Service.

To eliminate such confusion, H.R. 8149 would establish for persons arriving in the United States an exemption for imported merchandise bearing a genuine, registered U.S. trademark if the merchandise is for their personal use, and provided that such an exemption has not been claimed by the same person within the preceding 30 days.

The merchandise must also fall within limitations of type and quantity specified in regulations to be prescribed by the Secretary of the Treasury. This provision would protect not only the trademark owners, but also the incoming tourist.

In summary, AAA believes the public will be well-served by the changes in customs procedures outlined in H.R. 8149. Not only will the changes allow the Customs Service to be able to more efficiently perform its functions, they will also provide for a less time consuming and frustrating return trip for the vacationing American.

Thank you, Mr. Chairman. We will be glad to answer any questions.

Senator NELSON. Thank you very much for taking the time to come and testify.

That, as I understand it, closes the hearings on this issue. Thank you very much.

Mr. ANDREWS. Thank you.

[Thereupon, at 2:10 p.m. the hearings in the above-entitled matter were closed.]

APPENDIX A

QUESTIONS SUBMITTED BY SENATOR GRAVEL TO THE CUSTOMS SERVICE AND THE RESPONSES OF THE SERVICE

Question 1 (a). What is the PAIRS system and what is the intent of its use?

Response. In an effort to more efficiently process an increasingly large volume of persons, vehicles, and vessels entering the United States, the Customs Service has developed a computer query capability which would aid in more selective enforcement decisions. This computer system, which is called the Treasury Enforcement Communications System (TECS), provides a Customs officer with the capability of querying a central data base of more than 1 million records. The TECS data base contains records from the Bureau of Alcohol, Tobacco, and Firearms, IRS, INTERPOL, DEA, the Coast Guard, and the Department of State. TECS interfaces with the National Law Enforcement Telecommunications System (NLETS), the FBI's National Crime Information Center (NCIC), and the California Law Enforcement Telecommunications System (CLETS). TECS provides direct operational support to Customs field personnel with up-to-date information on suspected smugglers, stolen vehicles, vessels, and aircraft. All persons entering at either land, air, or sea ports, as well as vehicle license numbers, vessel registration numbers, and aircraft identification numbers are immediately queried upon entry into the United States.

The Private Aircraft Inspection Reporting System (PAIRS) is not a new computer system but was developed as a subsystem of the TECS data base. The PAIRS system did not result from a change in Title 19, U.S. Code, and is simply an automated record of private aircraft arrivals in our country from abroad. Under the PAIRS system, Customs officers are required to make a PAIRS query in TECS each time a private aircraft arriving from foreign territory arrives in the United States. If there is a PAIRS record in TECS, it must be modified to include current arrival data. If there is no record, a PAIRS record must be entered. PAIRS records thus chart the frequency of arrival of particular pilots and aircraft.

As you probably are aware, light aircraft have been increasingly identified as prime vehicles for the introduction of illicit drugs and illegal aliens into our country. During fiscal year 1977, U.S. Customs alone seized millions of dollars in illicit narcotics from small aircraft engaged in international smuggling. The border management agencies have attempted to counteract these smuggling efforts without unduly burdening honest travelers and legitimate aircraft traffic.

PAIRS can be used in conjunction with our Customs enforcement systems to provide intelligence data on the routing and arrival patterns of suspect and known violator aircraft. It, therefore, allows Customs to use its limited enforcement resources effectively. PAIRS also provides Federal officers with an easy and rapid means of satisfying themselves as to the legitimacy of private aircraft. This enables Customs officers to expedite the processing and movement of those aircraft.

There have been no procedural changes to the routine method of processing private aircraft other than the requirement for completing the PAIRS form (Customs Form 178). PAIRS merely represents the automation of a manual records system which has been maintained by the Immigration and Naturalization Service (INS). For many years, an INS form (I–92A) has had to be completed for every aircraft arriving from abroad.

The 178 form requires less data than the I–92A form, although the airman's registration number and date of birth now are required. Inspection officers have the legal and regulatory authority to require the presentation of all necessary documents relating to the required data. They also may review those documents.

In its procedures in securing the required information, Customs has fully complied with the letter and spirit of the Privacy Act of 1974.

The PAIRS Systems of Records was announced in the Federal Register on September 26, 1977 (Volume 42, No. 186, Page 49246). In accordance with the PAIRS System of Records and the Privacy Act, only that information concerning a known or suspected violation may be disclosed to other law enforcement agencies. PAIRS records are not routinely disclosed to other agencies since the PAIRS system is not a violator or criminal records system.

The names and dates of birth of passengers are not placed in the automated system. This information from the PAIRS form is microfiched and is maintained manually in the event that travel data are necessary to an investigation.

Customs further has worked closely with several major general aircraft associations in the development of PAIRS to ensure that the public's views and needs have been taken into consideration. At the request of those associations, Customs conducted public training and discussion sessions at 52 locations that process more than 90 percent of private aircraft arriving from abroad. A Customs team visited Anchorage, Alaska, on October 17, 1977, and briefed both Federal officials and interested parties.

In conclusion, PAIRS is intended to support our Customs enforcement systems. Equally important, however, it is designed to expedite the processing of private aircraft.

Question 1 (b)–(d). Is this the same system used on automobiles entering the United States (Alaska), is this system being used at every point of entry into the United States, and is it used to clear all passengers flying on commercial airlines or entering the United States?

Response. The TECS system (although not the PAIRS data base), is used to pre-screen most automobiles entering the United States. There are 1,000 TECS terminals located at more than 300 United States locations and at several preclearance sites outside the United States. However, the only port in Alaska that presently has a TECS terminal is Anchorage. When funding becomes available and after all logistical problems are resolved we plan to expand coverage of the systems to as many ports as possible.

TECS is used in clearing all passengers and crews entering the United States including commercial and non-commercial crews. This system is also used at several preclearance sites outside the United States.

Question 1 (e), (f). Do Customs officers perform the job of FAA in inspecting aircraft for air worthiness; and should the FAA delegate this inspection authority to another governmental agency which has not been trained to find aircraft deficiencies?

Response. The Customs Service does not conduct FAA inspections. Customs is not authorized to inspect aircraft for air worthiness, but may under 14 C.F.R. 61.3(h) inspect a pilot certificate. Customs is only concerned with the documentation of aircraft arrivals and with the inspection of passengers and cargo. However, if a violation of FAA requirements were discovered during the course of Customs inspection of an aircraft, the Customs officer would be remiss in failing to report it. However, such discoveries are incidental to the Customs inspection process.

Customs does not assume to determine air worthiness, and the FAA has not delegated to Customs the authority to conduct FAA air worthiness inspections. The inspection by Customs officers of aircraft arriving after refueling in a foreign country is a Customs inspection, not an FAA inspection. Similar inspections are required of all vessels arriving from foreign ports.

Question 1(g), (h). Please discuss the entry problems encountered by aircraft at Northway, Alaska.

Response. Under current regulations (19 C.F.R., Part 6), private aircraft must furnish a timely notice of intended arrival with either the District Director of Customs or the FAA. The normal procedure at Northway, Alaska, would be to notify the FAA of the intended time of arrival. Most flights arriving at Northway come from either Whitehorse, Canada, or Burwash Landing, Canada. Flights arriving from Whitehorse are usually one hour in duration and allow time for a Customs officer to reach Northway without causing undue delay to the pilot. Flights arriving from Burwash landing are only one-half hour in duration and do not allow sufficient travel time for a Customs official unless they are filed

well before take-off. In the past, because of insufficient notification time and in several instances a breakdown in the telephone lines, there have been delays in Customs response. We have undertaken several actions to improve this situation.

Since November of 1977 pilots and passengers have been allowed to disembark the aircraft when the Customs officer is not present. They are allowed to wait for inspection in the Flight Service Building where another federal officer is present. The Customs Service is presently in the process of transferring an inspector to Northway which would alleviate the above cited problems. In the interim, Northway will be serviced by a summer, seasonable employee as of May 1, 1978.

Under 49 U.S.C. 1747(a), a pilot can be subject to a civil penalty of $500 for leaving the aircraft prior to Customs inspection. If the pilot is unable to pay this penalty, the aircraft can be impounded. However, this action is taken only under the most unusual circumstances and is not the rule but the exception. The normal procedure is to issue a Notice of Penalty and release the aircraft without payment of the penalty. The pilot can then file a petition for remission or mitigation of the penalty based on the circumstances of the case.

Question 2. Is it necessary to continue the system of Customs taxes which requires inspection of every individual entering the borders of our country?

Response. Customs inspections at the borders are designed to protect the revenue, to interdict contraband and illegal drugs, and to enforce the regulations of numerous other governmental agencies relating to international trade. Although the duties associated with travelers are not a significant percentage of the total Customs collection of some $6 billion, travelers entering the country as pedestrians, in vehicles, or at airports have been major sources of narcotics and other smuggling. Furthermore, Customs has a major responsibility for enforcing more than 400 other provisions of law on behalf of some 40 other Federal agencies. As a major part of this responsibility, to protect against diseased produce and animals, Customs is required to inspect at least the hand baggage of every traveler. Further inspections may also be required of vehicles and other baggage. Many of the other statutes relate to motor vehicle safety and emission control, pesticide control, protection of endangered species and wildlife, and prohibitions against firearms. Numerous violations of all of these statutes, as well as a majority of Customs narcotic seizures, are detected by Customs inspectors at the ports of entry.

	Land border only	Ports of entry	Total
Heroin:			
Number of seizures	105	131	243
Quantity seized (pounds)	209.6	238.0	277.7
Cocaine:			
Number of seizures	183	512	1,017
Quantity seized (pounds)	28.1	597.8	951
Hashish:			
Number of seizures	786	1,071	6,257
Quantity seized (pounds)	212.0	13,474.5	15,921.8
Marihuana:			
Number of seizures	8,718	11,393	14,651
Quantity seized (pounds)	61,577.6	99,832	1,546,894.3
Opium:			
Number of seizures	3	13	49
Quantity seized (pounds)	0.1	10.4	20
Morphine:			
Number of seizures	1	3	14
Quantity seized (pounds)	(1)	0.6	1.3
Other drugs, barbituates and LSD:			
Number of seizures	1,134	1,693	2,057
Quantity seized (tablets)	7,073,435	7,187,530	7,811,758

[1] Less than 1/10 of 1 lb.

Question 2 (a), (b). Are any significant amounts of drugs seized during the inspection of individuals at regular border crossings, and what were the types and quantities of drugs discovered as a direct result of border inspections of

individuals in 1976? What percentage of all drug contraband coming into the United States does this represent?

Response. Although the term "regular border crossing" is quite specific to Customs officials, it is often misunderstood by the general public. A regular border crossing is a land border crossing and does not include ports of entry such as a seaport or an airport where similar inspections occur and where drugs are seized. In order to present a clear picture of Customs operations and the related narcotics seizure statistics in response to question 2(a), a significant amount of drugs are seized at both land borders and other Customs inspection points.

Drug seizure statistics are not available for FY 76. The following are statistics on drug seizures for FY 77, given in three columns. Column one represents seizures at land border crossings from passenger baggage. Column two represents the total seizures by inspectors from passenger baggage at all ports of entry including land border crossings. Column three gives the total drug seizures made by Customs personnel to include passenger baggage and cargo seizures. The monetary value of drug seizures for FY 77 was $930,661,485.

The Customs Service does not have precise information on the total amount of illicit drugs that entered the United States in FY 77. However, the 209.6 lbs. of heroin seized represents 75% of all the heroin seized by U.S. Customs during FY 77. The cocaine seized from persons entering the U.S. at land border crossings represents 3% of all the cocaine seized by U.S. Customs, the hashish represents 1%, and the marihuana represents 4%. The quantities of dangerous drugs such as amphetamines, barbituates, and LSD seized at the border from persons entering the U.S. represent 90% of all such drugs seized by the U.S. Customs.

Question 2(c). Is it true that most Customs Service drug recoveries come from tips by informers? Or that the majority of drugs confiscated by federal employees crossing U.S. borders comes with the help of informants rather than through regular border inspections?

Response. Customs makes the overwhelming majority of its drug seizures without the help of informants. Most seizures made by U.S. Customs are made by the initiative of our personnel who have no prior information to tip them off. Statistics for FY 76, FY 77, and FY 78 through March 7, 1978 show the percentage of seizures made with prior information to be 5.4%, 6.0% and 6.2% respectively. Attached is a breakdown of the types of drugs giving the percentage of seizures made with prior information for each drug for FY 76, FY 77, and FY 78 through March 7, 1978.

FISCAL YEAR 1976

	Number of narcotic seizures	Number of seizures with prior information	Percent of seizures with prior information	Number of seizures with prior DEA information	Percent of seizures with prior DEA information	Number of DEA refusals	Percent of DEA refusals
Heroin	446	79	17.7	22	4.9	62	13.9
Cocaine	1,167	103	8.8	22	1.9	320	27.4
Opium	86	3	3.5	2	2.3	44	51.2
Morphine	19	1	5.3	0	0	8	42.1
LSD	71	0	0	0	0	54	76.1
Other drugs	2,508	129	5.1	12	.5	1,756	70.0
Hashish	5,191	80	1.5	13	.3	903	17.4
Marihuana	12,792	818	6.4	90	.7	8,546	66.8
Total	22,280	1,213	5.4	161	.7	11,693	52.5

FISCAL YEAR 1977

Heroin	249	66	26.5	22	8.8	59	23.7
Cocaine	1,033	131	12.7	24	2.3	452	43.8
Opium	54	7	13.0	3	5.6	22	40.7
Morphine	19	0	0	0	0	1	5.3
LSD	111	3	2.7	0	0	97	87.4
Other drugs	2,074	180	8.7	11	.5	1,445	69.7
Hashish	6,305	93	1.5	21	.3	3,549	56.3
Marihuana	14,428	985	6.8	84	.6	11,388	78.9
Total	24,273	1,465	6.0	165	.7	17,013	70.1

FISCAL YEAR 1976

	Number of narcotic seizures	Number of seizures with prior information	Percent of seizures with prior information	Number of seizures with prior DEA information	Percent of seizures with prior DEA information	Number of DEA refusals	Percent of DEA refusals
Heroin	67	24	35.8	14	20.9	16	23.9
Cocaine	344	62	18.0	12	3.5	154	44.8
Opium	17	2	11.8	1	5.9	6	35.3
Morphine	5	2	40.0	1	20.0	2	40.0
LSD	28	3	10.7	1	3.6	22	78.6
Other drugs	637	46	7.2	8	1.3	432	67.8
Hashish	2,406	37	1.5	10	.4	1,953	81.2
Marihuana	3,788	276	7.3	26	.7	2,992	79.0
Total	7,292	452	6.2	73	1.0	5,577	76.5

Question 3(a)–(e). Please indicate the amount of revenue derived from Customs duties over the last several years and also indicate:

(a) What proportion of these revenues are derived from individuals bringing goods into the United States for their own personal use;

(b) What proportion of these revenues are collected at U.S. border points from tourists entering or returning to this country;

(c) How much would this revenue decrease if the floor for paying Customs duties were increased from $100 to $1,000, or to $5,000;

(d) Whether there is any reason why Customs duties with respect to individuals could not be operated on a self-policing basis (such as the income tax) with simple spot checks by Customs agencies to insure compliance; and

(e) What kind of savings could be generated by increasing the import duty exemption to $5,000 and using spot checks for compliance (exclusive of the decreased revenues mentioned above).

Responses. Customs collections over the last 2 fiscal years are broken down by various categories in the attached chart. The collection figures each year increase as evidenced by the $6 billion collected in FY 77 as compared with approximately $5 billion collected in FY 76.

(a) In FY 77 $13.2 million was collected from arriving travelers. This represents less than one percent of the total duties collected by Customs.

(b) We cannot determine either the proportion of duties collected at land borders or the amount collected from United States residents. Similarly, the proportion of duties paid by nonresidents (who are liable to pay duty in many instances) cannot be determined.

(c) Since there is no precise information available, a study would be required to determine the precise extent to which these revenues would decrease by increasing the important exemption to $1,000 or $5,000. However, we believe that the $13.2 million in duties collected would be reduced significantly if the current import exemption were increased as suggested. We have attached for your review the results of a 30-day study (November 8 to December 7, 1975) at 25 major Customs locations in the United States.

(d) As previously noted in our response to question number 2, Customs inspections are conducted not only for revenue purposes but also to interdict contraband, including illicit drugs, and to enforce the statutes and regulations of numerous other governmental agencies relating to international trade. Thus Customs inspections are necessary even where duties are not involved. Customs does not inspect every traveler to check compliance with all the provisions of law. Under the inspection system currently in effect at airports, our goal is for 75 percent of all travelers to simply stop in the primary inspection area for about one minute. All of Customs enforcement and compliance requirements are accomplished at that time, and travelers are then free to leave.

(e) As we have indicated above, Customs inspections are necessary to fulfill our broad responsibilities, which include the collection of duty. These inspections are already done on a selective basis. We, therefore, believe that only minor savings could be achieved by raising the import exemption as suggested. A special study would be needed to accurately measure these savings.

An import exemption of $5,000 would reduce the number of dutiable declarations that must be processed and could result in some personnel savings. It is also possible that some improvement in the facilitation of travelers would result. However, since our new Customs Accelerated Passenger Inspection System (CAPIS) sends travelers who are liable to pay duty to our secondary inspection area outside the main processing queues, the net overall impact in reducing delays would be minimized.

CUSTOMS COLLECTIONS BY CATEGORY

	Fiscal year 1976	Fiscal year (19 TQ)	Fiscal year 1977
Duties:			
Consumption entires	$3,902,318,266	$1,163,204,017	$4,942,241,526
Warehouse withdrawals	251,394,411	66,641,968	286,615,924
Mail entires	19,138,520	4,312,777	20,903,142
Passenger baggage entires	9,871,286	2,656,226	12,128,335
Crew member baggage entires	684,721	185,345	761,023
Military baggage entires	266,216	58,591	274,913
Informal entires	12,829,602	4,142,228	16,369,564
Appraisement entires	214,424	33,405	196,367
Vessel repair entires	2,017,637	237,237	1,929,471
Other duties	9,791,664	1,300,260	6,058,839
Total duties	4,208,526,756	1,242,772,054	5,287,479,104
Miscellaneous:			
Violations of Customs laws	13,876,004	3,405,790	13,618,902
Marine inspection and navigation services	126	356	178
Testing, inspecting, and grading	70,126	18,047	111,797
Miscellaneous taxes	11,283,713	4,327,660	13,522,182
Fees	150,912	1,826	4,506
Unclaimed funds	1,088,392	257,483	802,526
Recoveries	37,698	13,649	47,991
All other Customs receipts	128,972	51,906	200,129
Total miscellaneous	26,635,943	8,076,717	28,308,211
Internal revenue taxes	722,647,690	160,948,461	742,513,602
Total collections	4,957,810,389	1,411,797,232	6,058,300,917

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REGIONAL SUMMARY OF DUTY COLLECTIONS FROM PASSENGERS AT VARIOUS DECLARATION VALUES

Region	Total duty collected (30-day period)	Amount of duty collected—$100/$200	Percentage of total duty collected	Aount of duty collected—$200/$300	Percentage of total duty collected	Amount of duty collected—$300/$400	Percentage of total duty collected	Amount of duty collected—$400/$500	Percentage of total duty collected	Amount of duty collected—$500/$600	Percentage of total duty collected	Amount of duty collected—under $100 and over $600	Percentage to total duty collected
I	16,505.46	2,270.87	14	2,328.59	14	2,109,20	13	1,797.90	11	1,591.03	10	5,871.09	36
II	177,208.12	18,509.13	10	24,577.73	14	21,728.14	12	17,634.04	10	16,627.73	9	78,131.35	44
III	19,474.42	7,978.47	15	3,688.04	19	2,488.20	13	1,990.14	10	1,303.63	7	7,025.94	36
IV	55,616.32	3,694.86	7	4,968.58	9	4,431.46	8	4,248.03	8	3,448.88	6	34,824.52	63
V	1,584.47	211.10	13	450.06	28	345.76	22	101.81	6	475.75	30	.39	0
VI	30,102.38	8,274.98	27	5,456.83	18	3,284.89	11	2,275.89	8	7,591.59	25	3,218.20	11
VII	97,918.33	6,463.64	7	11,169.45	11	10,616.47	11	8,962.43	9	6,452.07	7	33,962.27	55
VIII	330,533.88	15,550.31	5	27,570.15	8	28,735.20	9	27,208.44	8	25,823.77	8	205,645.13	62
IX	52,465.42	3,845.16	7	4,914.30	9	4,619.77	9	3,242.20	6	3,577.58	7	32,267.41	62
Total	391,408.80	62,000.53	8	385,113.73	11	78,359.09	10	67,460.87	9	66,982.03	9	421,482.56	54

Note: Does not include duty or IRT collected from liquor declarations.

REGIONAL SUMMARY OF THE NUMBER OF WRITTEN DECLARATIONS FROM PASSENGERS AT VARIOUS VALUES

	Total Number of written declarations, (30-day period)	Number of dutiable declarations $100/250	Percentage of total number of written declarations	Number of dutiable declarations—$200/$300	Percentage of total number of written declarations	Number of dutiable declarations—$300/$400	Percentage of total number of written declarations	Number of dutible declarations—$400/$500	Percentage of total number of written declarations	Number of dutiable declarations—$500/600	Percentage of total number of written declarations
I	17,107	462	2.7	305	2	160	1	88	0.5	51	0.3
II	207,051	4,187	2	3,037	1.47	1,626	.79	868	.42	532	.26
III	22,434	726	3.2	496	2.2	182	.8	98	.44	37	.16
IV	97,066	1,035	1	862	.89	398	.4	329	.34	192	.2
V	6,445	38	.59	44	.68	25	4	8	.1	10	.16
VI	26,672	1,288	4.8	571	2	224	1	97	.36	155	.58
VII	59,242	1,356	2.3	1,432	1.9	664	1.12	404	.68	233	.39
VIII	84,000	2,323	2.8	2,347	2.8	1,611	2	1,067	1.3	791	1
IX	35,384	922	2.6	704	2	388	1	165	.5	121	.3
Totals	555,451	12,337	2.2	9,498	1.7	5,278	.95	3,124	.56	2,113	.38

GRAND SUMMARY INFORMATION—9 REGIONS

	Exemption increased from—				
	$100 to $200	$100 to $300	$100 to $400	$100 to $500	$100 to $600
Percentage of total duty collected for 30-day period which would be lost if the exemption was raised to various levels	8	19	29	38	47
Amount of total duty collected for 30-day period which would be lost if the exemption was raised to various levels	$62,000	$147,123	$225,482	$292,942	$359,924
Number of declarations which would not be processed if the exemption was raised to various levels	12,337	21,835	27,113	30,237	32,350
Projected minimum manpower savings—Given: Average time to process nondutiable declaration—3 min.; dutiable declaration—5 min.:					
Formula:					
1. Take the number of declarations in a category which would not be processed times 2 (minutes) equals number of minutes saved	24,674	43,670	54,226	60,474	64,700
2. Take the number of minutes saved divided by 60 equals the number of man-hours saved	411.23	727.83	903.76	1,007.89	1,078.32
3. Take the number of man-hours saved and divide by 2,080 equals the number of man-years saved	.20	.35	.43	.48	.52
4. Take the number of man-years saved in a calendar month times (12) equals the number of man-years saved in a full year	2.40	4.20	5.16	5.76	6.24
Minimum reduction in revenue over 1-year period	$744,000	$1,765,476	$2,705,784	$3,515,304	$4,319,088

Question 4. What is Customs opinion on these proposals: to increase the import exemption to $5,000; to eliminate the search of baggage except where there is some reason to believe that the law is being broken, and to use occasional spot checks of baggage to insure voluntary compliance with the laws of the United States. I would suggest continued use of existing procedures where goods are imported for resale, which fact would be disclosed by the importer.

Response. Customs has a longstanding program to improve the facilitation of travelers while maintaining an effective capability to protect and collect the revenue, to interdict contraband, including illicit drugs, and to enforce the statutes of numerous other governmental agencies. We have undertaken major improvements to accomplish this goal. Our basic inspectional system at the land borders includes primary and secondary inspectional areas. The primary inspection, which consists only of a few questions, a check of any hand baggage, and a TECS inquiry, all within probably less than a minute, is designed to select out potential smugglers and other problems. These individuals are then examined further in the secondary area while those remaining are then free to go. Under the CAPIS system, which is being installed at all major airports, a similar approach is extended to air travelers. This system applies the principle of selectivity, or spot-checks, to the inspectional process and removes the potential problem case from the main queues so that the majority of travelers can move through rapidly. The baggage examination system we now have is selective. Not all baggage is examined, but this determination must be made by the individual Customs officer after reviewing the written baggage declaration and questioning the traveler.

While we do not oppose setting the import exemption at an amount greater than $100, there is no precise information on the overall effects of increasing the exemption to $5,000. As we previously noted in our response to question 3(c), we believe that the amount of duties collected from arriving tavelers would be decreased significantly. We do not believe, however, that such an increase in the exemption would result in a significant time savings beyond that already experienced under our new CAPIS system.

Question 5. With regard to the entry forms which are distributed by the airlines prior to arrival in the United States, where are they stored, to what uses are they put, what indexing system is used to insure access by Customs Agents to the data supplied, and what is the cost to the United States of printing and storing these forms?

Response. The form referred to is the Baggage Declaration form, which is used by Customs to have arriving passengers list all dutiable merchandise items and their value. Customs officers then use the form to compute the required duties. It costs the United States Government about $80,000 per year to print, store, and ship the forms. For the convenience of tourists, the forms are printed in the French, German, Italian, Spanish, and Japanese languages as well as in English. Baggage declarations are stored at the particular port in which they are submitted. We retain these forms because they serve as a means of verifying duties paid and as an audit trial. They are filed by the flight number and date of arrival. If there is a complaint from a traveler on overcharging duties, Customs retrieves the duty declaration to verify the claim.

APPENDIX B

Communications Received by the Committee Expressing an Interest in this Hearing

STATEMENT OF HON. FRANK HORTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, AND FORMER CHAIRMAN ON THE COMMISSION ON FEDERAL PAPERWORK

Mr. Chairman, I want to thank you for affording me the opportunity of submitting this testimony to be included in the record of the Committee's deliberations on H. R. 8149, as passed by the House, the Customs Procedural Reform Act. I shall confine my comments to Section 205 which would speed the traveler coming to the United States as well as returning American citizens.

As part of its general paperwork reduction investigations, the Commission on Federal Paperwork looked into current procedures for U. S. entry of visitors.

We have all seen the long lines of visitors awaiting inspection at U. S. ports of entry. Some 17 million or more are expected to pass through our major airports alone this year.

Imagine the frustration resulting from long, slow-moving inspection lines at international airports, as travelers flood the area. Another 3 million visitors will arrive by ship, and another 180 million will cross our borders by train, bus, and automobile.

This section of H. R. 8149, identical to Section 2 of the Customs Paperwork Simplification Act of 1977, introduced by Congressman Steed and me, proposes a major simplification in procedures for classification of merchandise to be imported for the personal use of these travelers.

By doing so, the Commission on Federal Paperwork believed that the processing time now involved in these inspections would be greatly reduced.

For example, a traveler, either a visitor or a returning resident, might be expected to bring a variety of items for personal use -- jewelry, toys, porcelain or china dishes, clothing, liquor, and so forth.

For each item, the Customs inspector must look up the proper classification number and rate of duty in the Tariff Schedules of the United States, verify the retail value--60 percent of retail value--exclude up to $100 items having the highest rate of duty, and then compute the duty to be paid.

It is clear that, compared to the amount of duty collected in each instance, this processing presently creates an aggravating bottleneck.

It is unnecessary redtape and poses an undue burden on all travelers.

In addition, there is the confusion and frustration as these complexities have to be explained to travelers weary from their voyage and anxious to be on their way.

The Government in general, and the customs officer in particular should not have to bear the burden of ill-will implicit in a situation where a line of tourists stands waiting while an agency explains to a confused little old lady why her crystal ash tray should be included in her exemption, and the sweater she is bringing her grandson has lower rate of duty on the wholesale valuation.

Mr. Chairman, we have an obligation not only to collect reasonable rates and duties, but, also, to do it in an efficient way that is easily understood and accepted by the public.

This proposal will apply a 10-percent flat rate of duty for all personal-use goods, within a reasonable limit, brought into the country by such international travelers.

By even the roughest calculations, if this new rate allowed each visitor paying duty at Customs to save an average of 5 minutes processing time, both visitor and Government insp ctor would share in an estimated 3 million hour time savings per year.

The principle of a system of flat rate assessments to goods is endorsed by the Customs Cooperation in Brussels. The Common Market countries have already adopted it.

We have been advised by customs that the average rate of duty now assessed on the wholesale value of articles arriving in passengers baggage is approximately equal to the 10-percent rate of duty on retail value.

In closing, I would also like to mention the other principal section of the bill Congressman Steed and I introduced, Section 3, which was also a section in H. R. 8149, Section 211.

This section in our bill, H. R. 6922, would raise the ceiling on informal entries from $250 to $500. If enacted, the Customs Service estimates that an annual savings in manpower

would be $1.5 million; importers could also save up to $6 million in unneeded brokerage fees and surety bonds; 600,000 less pieces of paper would be required; and goods could be entered much more expeditiously.

The Commission on Federal Paperwork has unanimously endorsed legislation to raise the ceiling on informal entries to $500, and to assess a flat rate of duty of 10-percent on personal-use items up to the value of $500. We urge its speedy consideration and swift passage.

ANTONIO B. WON PAT, M.C.
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COMMITTEES:
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SUBCOMMITTEES:
INDIAN AFFAIRS AND PUBLIC LANDS
NATIONAL PARKS AND INSULAR AFFAIRS
WATER AND POWER RESOURCES

Honorable Abraham Ribicoff
Chairman
Subcommittee on International Trade
Senate Committee on Finance
2227 Dirksen Senate Office Building
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Dear Mr. Chairman:

Title II, the "Customs Simplification Act of 1977," of H.R. 8149, on which your Subcommittee held hearings February 2, 1978, provides for changes in the customs laws directly affecting the territory of Guam. Specifically, it would increase from $200 to $500 the limit on duty-free imports allowed per person returning to the States from or through Guam, the Virgin Islands, and American Samoa. It also would establish a flat ten percent rate for purchases over the $500 limit, rather than the current variable rates.

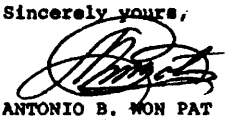
On behalf of the people of Guam, I urge your Subcommittee's favorable consideration of this legislation. It would enhance the attractiveness of Guam to stateside visitors and provide a much needed "shot in the arm" for our tourist business. Guam is still working to recover from the devastating effects of Typhoon Pamela in May, 1976, and the general economic slow-down felt across the country earlier in the 1970's. One of our hopes for achieving more economic autonomy and stability is our tourist industry, which takes advantage of our greatest natural resource -- Guam's tropic beauty and climate.

In addition, we need an expanded market to support our efforts to develop increased local industries. The limit boost to $500 is important if Guam is to develop a reputation as a shopping mecca in the Pacific.

I therefore ask the Senate International Trade Subcommittee's favorable action on this provision of H.R. 8149. Please let me know if I can provide additional information or assistance in this regard.

With best wishes,

Sincerely yours,



ANTONIO B. WON PAT
Member of Congress

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON

FEB 4 1976

REFER TO
MAN-5-06 CC:T SD

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The Honorable
Abraham Ribicoff, Chairman
Subcommittee on International Trade
Committee on Finance
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman:

In association with upcoming hearings on February 2 on H.R. 8149, the proposed Customs procedural reform legislation, members of the subcommittee staff requested a report on the steps Customs is taking to improve statistical reporting and verification.

To begin, we recognize that the collection of accurate import data for compilation of international trade statistics is one of the most important missions assigned to the Customs Service. A brief explanation of the program can best illustrate how Customs carries out this mission.

The official U.S. import statistics are compiled by the Bureau of the Census from copies of the import entry and warehouse withdrawal forms which importers are required by law to file with Customs. Prior to 1962 copies of these documents were forwarded to Census unverified. Because more accurate information was required, Customs import specialists were assigned the task of verifying the information as to country of origin, net quantity, value, and commodity classification on entries filed for transactions valued over $250, which are ordinarily subject to examination for formal entry duty assessment purposes. Verification melded readily with our collection, compliance and enforcement efforts, all of which are based on familiarity with merchandise, knowledge of commodities, market conditions, the Tariff Schedules and supporting documentation. Since 1962, the Congress has appropriated funds for 301 positions to administer the program. Some 1,100 import specialists at 69 ports of entry are involved in verifying import statistics on over 3,700,000 formal entries per year. Less than 1 percent of such documents are returned to Customs by Census for reverification.

The attached Statistical Circular No. 110, an information guide issued to assist Customs officers in administering the statistical program, provides an explanation of the Customs Service's responsibilities and information on the programs purpose, background, funding, and general procedures. We believe it further illustrates our commitment to the program.

In addition, a full-time Headquarters program manager and assistant, plus statistical coordinators in each of the 9 regional offices, oversee the day-to-day activities which include communicating daily with dozens of Customs field offices, the Census Bureau, and other Government agencies, as well as many businesses, trade associations, importers, domestic producers, brokers, and the general public. Any problems brought to their attention are quickly resolved.

They also develop long-range plans to improve the accuracy of the statistics. For example, we have been engaged in the process of strengthening the program by proposing certain changes to the Customs Regulations to give field officers greater authority to require information for statistical purposes. The present Customs Regulations do not provide sufficient authority to require importers to furnish complete information and documentation necessary for statistical purposes. The proposed amendments to the regulations would correct this deficiency by stating that commercial, special customs and pro forma invoices shall contain all information necessary to satisfy the statistical requirements.

In addition, when Customs officers review formal entry documentation prior to acceptance of the entry they will insure that all statistical requirements are complied with. At present they are only required to insure correct values and rates of duty. Customs officers will also be instructed to reject an entry for failure of the importer or broker to provide required statistical information if it is omitted or if the information provided clearly appears on its face, or is known by the Customs officer to be erroneous.

Other methods used to assure accurate statistics include the issuance of statistical circulars (over 30 this year) to Customs field offices and the public on specific problem areas and the providing of formal training for import specialists at the Customs Academy on the statistical verification program.

We believe we have a viable and effective program. Nevertheless, we continue to strive for improvements. In this regard, we are reviewing the International Trade Commission Report on Customs

Procedures Regarding the Verification of Import Statistics, which suggests further improvements which may be possible. We have not yet formally responded to the ITC report since we are awaiting a supplemental report on the accuracy of import data. In addition, our analysis of the report indicates that while statistical verification has been and continues to be a very complex program, it has for the most part been administered properly and produced a desired result.

We hope this information will be helpful to you. If we may be of further assistance, please be sure to let us know.

Sincerely yours,

R. E. Chasen

Commissioner of Customs

Enclosure

TREASURY DEPARTMENT
U.S. CUSTOMS SERVICE
CUSTOMS INFORMATION EXCHANGE

C.I.E. 21/77
May 5, 1977

Subject: Information Guide to Assist Customs Officers in Administering the Customs Import Statistics Reporting Program

APR 20 1977
MAN-5-06-O:D:S M

STATISTICAL CIRCULAR NO. 140

A. PURPOSE OF GUIDE

This guide is intended to provide Customs field officers with an explanation of the Customs Service's responsibilities in administering the Customs Import Statistics Reporting Program and furnish information on the program's purpose, background, funding, and general procedures.

B. PROGRAM PURPOSE AND BACKGROUND

Historically, the gathering of import statistics has been a function of the Treasury Department and the U.S. Customs Service. Pursuant to Chapter 9 of title 13 of the United States Code, the U.S. Customs Service participates in the foreign trade statistics program to compile and disseminate data relating to imports of the U.S. by collecting information in the form and manner prescribed by the regulations in Part 30, chapter 1, title 15, of the Code of Federal Regulations from persons engaged in foreign commerce or trade.

Also, section 484(e) of the Special and Administrative Provisions of the Tariff Act makes the collection and publication of import data the joint responsibility of the Secretary of the Treasury (Customs), the Secretary of Commerce (Census) and the Chairman of the U.S. International Trade Commission (formerly the U.S. Tariff Commission).

Prior to 1962, Customs involvement in the program was the sole responsibility of the Collector of Customs who forwarded copies of import entries containing the statistics to the Bureau of the Census for compilation. However, Customs officers did very little, if any, verification of the statistical data.

Because of the need for more accurate information on imports, the Examiner Verification Program (EVP) was developed and implemented on January 1, 1962. Under this program, now known as the Import Statistics Verification Procedures (ISVP), Customs line examiners (now senior import specialists) were required

to verify, on the statistical copy of the formal consumption (CF/7501) or warehouse (CF/7502) entry, the country of origin, net quantity, legal value, and commodity reporting number. Customs received 157 positions from Congress to administer this program. The EVP has resulted in a significant improvement in the accuracy and reliability of the published import statistics for both dutiable and nondutiable commodities.

During the past few years Customs involvement in the collection of import data has taken on greater importance. This is due primarily to the increased volume and complexity of international trade, negative trade balances, and the concern for the economic well-being of the U.S. resulting from foreign penetration of U.S. markets. These factors have caused government policy makers, as well as the business community, to request data which is more extensive, accurate, and precise for measuring the impact of foreign goods on domestic markets, determining the U.S. balances of trade and payments positions, negotiating trade agreements, administering import quotas, and for many other significant national and international economic and social programs and activities.

With the passage of the Trade Act of 1974, important and far-reaching decisions on international trade matters are now being made, often on the basis of the data provided under this program by the U.S. Customs Service.

Another indication of the importance this program plays in the Customs mission is the fact that in 1973-74 Congress provided Customs with $2,000,000 and 144 positions in order to collect and verify the f.o.b./c.i.f. data. Customs participation in this program has been specifically funded in recognition of the central indispensable role our agency plays in compiling trade statistics. This is due primarily to the unique position of the import specialist who has access to all of the import documents and the other pertinent data necessary to determine the quantity, value, and classification of the imported merchandise, while at the same time having a technical background in specialized commodity areas, and a well-rounded knowledge of the tariff which forms the basic classification system for the collection of data. When we add to this the fact that the import specialist is able to personally examine, or have examined for him, the imported merchandise, then it can be seen that the Customs role is, indeed, indispensable.

Therefore, the statistical reporting program should not be considered as simply a program that Customs administers for another agency. Rather, it should be considered a government-wide program in which several agencies, including Customs, play specific, clearly defined but interrelated roles.

C. PROGRAM DEFINITION

The Customs Import Statistics Reporting Program (CISRP) is, in fact, three distinct but overlapping programs or procedures. First and foremost is the Import Statistics Verification Procedures which cover the Customs verification on the CF's 7501 and 7502 of seven separate factors or items of information. These are explained in detail below.

A second part of the program involves Customs responsibility to provide Census with (1) the nonverified factors (those not subject to verification) such as country of exportation and gross weight on the CF's 7501 and 7502, and (2) the statistical copies of documents such as the CF's 7505 and 7506, Warehouse Withdrawals, in which none of the information is verified.

The third element of this program is the Import Statistics Reverification Procedures. These procedures deal with (1) the reverification of previously provided verified factors, (2) furnishing missing factors whether they be subject to verification or not, and (3) obtaining corrected data on previously provided, nonverified factors in special, limited cases.

D. VERIFICATION PROCEDURES:

1. Broker/Importer Responsible for Providing Statistical Data:

The basic responsibility for obtaining and providing all information required by the general statistical headnotes of the TSUSA rests with the person making the entry or withdrawal. This is provided for in Part 141.61(e)(2) of the Customs Regulations. Additional authority can be found in Part 141.61(a) of the Customs Regulations which requires that the entry forms shall clearly set forth all information required by such forms; and Part 144.38(c) of the Customs Regulations which states that each withdrawal shall show all information for which spaces are provided on the withdrawal form. Furthermore, statistical information for which spaces are not provided must be furnished on the entry or withdrawal documents in accordance with the instructions contained in Part 141.61(e)(3).

2. Customs Field Officers Responsible for Insuring that Statistical Data Is Furnished:

Customs officers are responsible for ascertaining that all the data required under the general statistical headnotes of the TSUSA are furnished on the entry or withdrawal documents. Part 141.64 of the Customs Regulations, provides that the entry shall be reviewed prior to acceptance to insure that all entry requirements are complied with and that, if any errors are found, the entry papers shall be returned to the importer for correction.

3. Reporting and Verification Requirements:

Customs field officers are responsible for verifying on the CF's 7501 and 7502, with the exceptions noted in the table below, the following information:

a. Country of Origin
b. Net Quantity
c. Entered Value
d. TSUSA Reporting Number
e. The f.o.b./c.i.f. Data (PEXT, CHGS, and when required EPEX)

The table with footnotes shows the appropriate action to be taken for each formal entry or withdrawal document and special transactions:

DOCUMENTS	STAT COPY TO CENSUS	A FOB/CIF DATA REQUIRED	FOB/CIF DATA VERIFIED	B OTHER DATA REQUIRED	OTHER DATA VERIFIED
CF/7500 Appraisement Entry	Yes	No	N/A	Yes	No
CF/7501 Consumption Entry	Yes	Yes	Yes	Yes	Yes
CF/7502 Warehouse Entry	Yes	Yes	Yes	Yes	Yes
CF/7502 Rewarehouse Entry (*1)	No	N/A	N/A	N/A	N/A
CF/7505 Warehouse Withdrawal Dutiable	Yes	Yes	No	Yes	No
CF/7506 Warehouse Withdrawal Free	Yes	Yes	No	Yes	No
CF/7512 I.E. & T&E (*2)	Yes	Partial	N/A	Partial	No
CF/7519 Comb. Rewarehouse Entry & Withdrawal for Cons.	Yes	Yes	No	Yes	No
CF/7521 Entry for Bonded Mfg. Warehouse	Yes	Yes	No	Yes	No
CF/7535 Vessel Repair	Yes	No	N/A	Yes	No
Transactions - (When Entered on CF's 7501 or 7502)					
Govt. Importations (*3)	Yes	Yes	No	Yes	No
Antiques & Semi-Antiques (*4)	Yes	Yes	No	Yes	No
From U.S. F.T.Z. (*5)	Yes	Yes	Yes	Yes	Yes
U.S. Goods Rtd. (800.00) (*6)	Yes	Yes	Yes	Yes	Yes
Articles Advanced in Value (806.20) (*7)	Yes	Yes	Yes	Yes	Yes
Articles Rtd. for Further Processing (806.30) (*8)	Yes	Yes	Yes	Yes	Yes
U.S. Articles Assembled Abroad (807.00) (*9)	Yes	Yes	Yes	Yes	Yes
T.I.B.'s (864.05) (*10)	Yes	Yes	Yes	Yes	Yes
From Insular Possessions (*11)	Yes	No	N/A	Yes	No
Foreign Mdse. Direct to V.I. (*12)	Yes	Yes	Yes	Yes	Yes
Foreign Mdse. Previously Entered into U.S. Shipped to V.I. (*13)	Yes	No	N/A	Yes	Yes
Mdse. Warehoused to be Withdrawn for Exportation Only (*14)	Yes	Yes	No	Yes	No

A. F.o.b./c.i.f. data required: (1) port of exportation transaction value (PEXT) (2) transportation charges (CHGS) and (3) when applicable, the equivalent port of exportation value (EPEX).

B. Other data required: (1) country of origin, (2) net quantity, (3) entered value, and (4) TSUSA reporting number.

(*1) Rewarehouse entries are now considered non-statistical by Census. No stat copy is required. However, the stat copy of rewarehouse entry withdrawals (CF 7505 or CF 7506) are statistical and must be forwarded to the Census Bureau.

(*2) CF/7512 - Transportation Entry: A statistical copy is required only when the CF 7512 is used to document an incoming vessel shipment proceeding to a 3rd country by means of either transportation and exportation or immediate export. The country of origin, country of destination, value, gross weight, quantity, TSUS reporting number, vessel and U.S. and foreign port information must be reported on the CF 7512.

(*3) Importations by government agencies under sections 10.104 and 10.105 of the Customs Regulations and TSUSA reporting numbers 832.0000, 833.0000, 834.0000, and 800.0000 when used to enter government importations.

(*4) Importations of antiques and semi-antiques.

(*5) Importations from U.S. Foreign Trade Zones.

(*6) American Goods Returned - TSUSA 800.0010, 800.0025 and 800.0035.

(*7) Articles returned to the U.S. after being advanced in value - TSUSA 806.2020 and 806.2040.

(*8) Articles returned to the U.S. for further processing - TSUSA 806.3000.

(*9) American articles assembled abroad - TSUSA 807.0000.

(*10) Articles admitted temporarily free of duty under bond (TIB's) - TSUSA 864.0520 and 865.0540 only.

(*11) Importations from Insular Possessions of the U.S. except Puerto Rico. Separate statistics are published on importations from the U.S. Virgin Islands, Midway Island, Wake Island, Guam, Canton, & Enderbury Islands, and American Samoa all of which are outside the Customs territory of the U.S. Puerto Rico is a Customs District within the Customs territory of the U.S. and not included in this category.

(*12) Importations direct from foreign countries or transshipped into the Virgin Islands from a U.S. port without having entered the U.S.

(*13) Shipments of foreign merchandise previously imported (entered with determination of duty) into the U.S. (including Puerto Rico) and subsequently resold for shipment to the Virgin Islands. PEXT and CHGS will be reported as "X".

(*14) Merchandise entered for warehouse in an authorized tax and duty-free store to be withdrawn for exportation only.

4. In addition to the data noted in item 3 above, there is other information on the statistical documents which, while not subject to verification, must nevertheless be reported for statistical purposes. In most cases this data, noted below, are also required for Customs purposes:

   a. The code number of the Customs district and of the port where the articles are being entered for consumption or warehouse
   b. The name and flag of the vessel or the name of the airline, or in the case of shipment by other than vessel or air, the means of transportation by which the articles first arrived in the United States
   c. The foreign port of lading
   d. The United States port of unlading for vessel and air shipments
   e. The date of importation
   f. The country of exportation
   g. The date of exportation
   h. A description of the articles
   i. Gross weight in pounds for the articles covered by each reporting number when imported in vessels or aircraft
   j. And such other information with respect to specific imported articles as is provided for in the various schedules of the TSUSA

5. For the types of transactions and documents not subject to verification, a knowledgeable Customs officer shall make a positive determination that the required statistical data has been provided on the entry or withdrawal document. The Customs officer need not, for statistical purposes, examine the data provided to ascertain its accuracy or correctness. However, if during the pre-entry review of the document, obvious statistical discrepancies or omissions are noted, the document should be returned to the importer or broker for correction before the entry is formally accepted.

6. Entries Processed by Commodity Teams:

   The original program to verify statistical information (country of origin, unit of quantity, value and TSUSA number) was built on the Customs duty assessment program. The information required for statistical reporting purposes was essentially the same as that required in connection with the appraisement and classification of imported merchandise entered under the formal entry procedures. Consequently, the original program did not require significant new determinations. The only differences were that for statistical reporting it was necessary to determine the 7-digit TSUSA statistical classification of the merchandise rather than only the 5-digit TSUS duty classification and to verify that the value of merchandise subject to free and specific rates of duty reflect the market value of the goods as representing the appraised value instead of an appraised value determined in strict accordance with the value laws.

The verification of country of origin, quantity, and the value of ad valorem rate goods was essential for duty assessment purposes so no additional effort was required for their statistical determinations.

To verify means to prove something to be true as by evidence or testimony. As used in the context of the verification procedures it means that the information provided by the importer/broker on the statistical copy of the entry document must be substantiated: (1) by other documentation such as attached invoices; (2) by information in commodity files such as price lists, purchase orders, brochures, CF/6431's, laboratory reports, foreign inquiry reports; (3) by examination of the imported merchandise; or (4) by the verification of earlier importations of the same merchandise.

In verifying the f.o.b./c.i.f. data the following previously disseminated guidelines should be followed:

1. Customs officers will monitor the accuracy of the values and charges on the basis of prima facie reasonableness and consistency with the included documentation.
2. Incomplete and obviously discrepant entries will be rejected and rechecked upon resubmission.
3. Customs officers may accept at face value an importer's statement that the transaction is not between related parties and, in such event;
4. Accept the commercial invoice price as relating to an arm's-length transaction.
5. If information is readily available or brought to the Customs officers' attention that, notwithstanding the importer's statement, the transaction is, in fact, between related parties, the entry will be rejected and the importer required to report the equivalent market value price.
6. Any figure given for equivalent market value will be accepted and reported unless it is obvious on simple inspection of the figure that it is not equivalent to an arm's-length purchase price.
7. In those cases where the Customs officers seriously question the equivalent market value figure, the officers will make adjustments only when they can do so out of personal knowledge.

Many statistical documents verified and processed by commodity teams have been found to contain careless mistakes, errors and omissions. From this, it is apparent that, in many cases, the Customs review and verification is strictly perfunctory and superficial. The following examples from a study made of data "verified" by import specialists indicate that often even a simple cursory check of the data has not been made: (1) Rescinded or impossible TSUSA numbers, (2) TSUSA numbers dependent on value or quantity which are in conflict with the quantity and entered value, and (3) Missing factors such as PEXT, CHGS, EPEX, and country of origin.

It perhaps should go without saying that statistical documents containing missing factors should never be sent to Census. We cannot stress too strongly

the importance of import specialists exercising care when initially verifying the statistical data to insure accurate and complete reporting to Census.

In this regard, probably the most important factor to be verified is the TSUSA number (although all factors should be carefully scrutinized) because if the number is wrong, the information published for two numbers (the number that should have been reported and the incorrect one) will be in error; this, despite the fact that all of the other information may be correct. So the utmost care should be taken when the original verification is made to determine the proper 7-digit number. A correct 6-digit number is not sufficient.

Unfortunately, a review of the documents show a tendency on the part of the brokers and importers in preparing the entry and the import specialist in verifying it to report merchandise in the "catchall" or basket provisions identified in the Tariff Schedules as "other", when they apparently are uncertain as to the precise classification. It is the responsibility of all parties to make such inquiries as are necessary to correctly classify the commodity in a 7-digit TSUSA number at the time of entry.

Furthermore, at the time of pre-entry review, if the import specialist is in doubt as to the correctness of any of the statistical data, he should take the time necessary to check it out (but not beyond the cutoff date, the 10th of the month following the month of entry) rather than let it go through on the assumption that Census will catch it. This may not happen since many TSUSA numbers encompass a wide variety of merchandise requiring very broad edit criteria. Consequently, the entry containing the incorrect data may slip through.

While many users of the foreign trade statistics are interested only in total import data or in information relating to a broad group of commodities, others must have very detailed statistics on specific 7-digit TSUSA numbers. As an example, the U.S. International Trade Commission utilizes data collected on individual TSUSA numbers in their so-called micro-studies for their work in conducting escape-clause and other investigations. Therefore, it is extremely important that Customs officers be aware that every piece of data on the statistical documents, whether or not it be a factor requiring verification, is of significance to some agency of government or the business community.

7. Entries Processed Under the Routine Review Procedures:

While the majority of consumption and warehouse entries continue to be processed by commodity specialist teams (our comments in part 6 above are limited to that type of processing) an ever increasing number of entries are receiving routine review processing under the policy of selectivity.

Under this system, entries covering repetitive, low-risk merchandise are diverted from the pre-entry review by the teams and processed (including the statistical verification) without team review, by clerical personnel. However, the teams do review 10% of the bypass entries to insure their accuracy and correctness. One of the most critical factors to be considered in establishing criteria for placing an account on a by-pass system must be the quality of statistical reporting by the broker or importer.

On by-pass entries and on entries processed by other than import specialists at outports the statistical information is not verified. Nevertheless, it is necessary that these factors be underlined in red in order to identify the items for the Bureau of the Census key operators who key information onto computer disks. Because theirs is a repetitive, high speed operation this identification greatly facilitates the recording of this data.

Regardless of the fact that these documents bypass the commodity teams, the senior import specialist is responsible for the accuracy of the statistical data on these documents as well as the data on those stats the team processes. This can be accomplished by the team performing a substantive, in-depth review of the control entries during which any error or omissions should be detected and corrective action taken with the broker or importer filing the by-pass entries. A further check on routine review entries can be made from the stat copies returned under the reverification procedures.

8. Census Bureau Edits:

Edit masters have been established by the Census Bureau for each of the approximately 10,000 TSUSA commodity numbers. Each edit master contains information characteristics of the commodity covered. Information is developed by Census Bureau commodity specialists for each commodity on the basis of historical data and other research. The edit program contains 19 distinct and unique tests including unit price and unit shipping weight ranges, tests for presence of net quantity data, TSUSA commodity number test, f.o.b./c.i.f. value test, etc. Line items with a value of $100,000 or more receive special processing.

The Census Bureau continually adjust and refine these edits. Import specialists can assist in this regard by writing brief explanations on the statistical copy at the time of original verification when they have reason to believe that an unusual transaction may cause the reported data to be rejected by Census. This should insure that the document will not be returned for reverification.

9. Reverification Procedures:

During the initial phase of the EVP, when a statistical report appeared out of line, it was the practice of the Bureau of the Census to summarily change the examiner's report without referring the document back to the reporting officer.

This procedure was amended by USIDA Circular No. 46, dated June 12, 1962, published as C.I.E. N-289/62, June 13, 1962, which provided that documents appearing incorrect to Census personnel be referred to Customs Headquarters prior to any change being made, on the theory that even in instances where the report appears illogical the examiner (import specialist) should be contacted and an explanation received. While it was recognized that this would result in the referral of some documents which otherwise would not have been returned, it was deemed imperative that examiners realize the importance being attached to their reports and eliminate errors to the greatest extent possible.

This procedure subsequently evolved into that utilized today, whereby import documents containing questionable or missing statistical factors, resulting in rejection, either manually or by computer edits, and which Census is unable to correct are returned to the Duty Assessment Division (DAD) at Headquarters by Census with the specific questions and defects pertaining to each document indicated in appropriate spaces on verification form BC-734, attached to each document. The documents and attachments are referred to DAD monthly by Census, where they are segregated and listed as to the number of entries for each district and port involved.

After being aggregated by district, they are logged out and transmitted to the districts concerned, where they are further broken down and forwarded to the ports involved. Customs officers have been directed in Statistical Circular No. 49, dated June 14, 1974, to make all corrections and comments on the form BC-734. Corrections should not be made on the statistical document itself. When reverification of the data requested has been completed, the documents are returned by the district as soon as possible, but in no case later than 30 days after referral, to DAD where they are logged in, reviewed, and then returned to Census.

Customs field officers are expected to provide responsive answers to the Census questions and comments. To this end, it may be necessary to contact the broker or importer for further information. Nonresponsive or incomplete replies will be returned to the districts for further action.

If there is no change to the reported data, the import specialist should write a brief explanation on the BC-734. It may be that the Census edits are incorrect or too broad and the information provided by Customs can be used to correct and refine them.

There have been some misunderstandings concerning Customs responsibilities with regard to reverifying statistical data. It has generally been understood that Customs will reverify only the data that was originally verified on the CFs 7501 and 7502 (i.e., country of origin, net quantities, TSUSA reporting number, entered value, and now the f.o.b./c.i.f. data).

For data and documents not subject to verification, Census, in the past, has referred the documents directly to Customs field offices (bypassing

Headquarters) to obtain the required data or has written to the importer (with a courtesy copy to the local Customs office) noting the particular error and requesting his cooperation in ensuring that future entry documents are correctly prepared.

In order to clarify this matter and to properly monitor the statistical program, Census has been requested to refer all documents containing questionable or missing data through Service Headquarters except for the requests made directly to importers and brokers which do not involve correcting previously filed documents.

Although Customs is responsible only for reverifying previously verified information, we are equally responsible for ensuring that all of the other data on the CFs 7501 and 7502 are present before the documents are forwarded to Census. CFs 7501 and 7502 from which statistical information not subject to verification is missing will be returned to Customs field offices with a request that the data be obtained unverified from entry records or, if necessary, from the importer or broker.

The same procedure will be followed in the case of missing data on statistical documents not subject to the verification procedures, such as warehouse withdrawals on CFs 7505 and 7506, U.S. Government importations under C.R. 10.104 and 10.105 entered on CF/7501, importations from the U.S. Virgin Islands and others.

Ordinarily, Census will not request reverification of data not subject to verification if the data has been initially reported on the statistical document. However, there will be occasions when it will be necessary to require field offices to obtain corrected data on items previously reported which are not subject to verification. For instance, requests have been made recently for additional information on oil importations since oil statistics are having a profound impact on economic and political decisions being made by our Government. Headquarters will screen all such requests before they are forwarded to the field and every effort will be made to keep these requests to a minimum. Field officers can assist in this regard by more closely reviewing the entry and withdrawal documents, when received initially so that errors can be eliminated before they get into the system.

Data on documents returned for reverification are not published in the Census reports until some three to five months after entry. For most merchandise this has been considered acceptable. However, for high valued, sensitive products it is important that the statistics be published for the month of entry.

For this reason it was necessary in January 1974, to initiate a procedure to obtain information telephonically from Customs field offices on questionable or missing data on documents covering oil imports valued over $1,000,000. Since that time, in addition to oil statistics, this procedure has been

used occasionally to reverify data on million dollar plus shipments (since January 1977 the value was revised to $2 million) of coal, iron ore, and several other commodities. Headquarters recognizes that such a procedure is more time consuming for field officers than the regular reverification procedures. Consequently, we have asked that Census limit such requests to truly significant importations.

Only about 6 percent of the rejected documents are returned to Customs for reverification. The other 94 percent are corrected by Census and reintroduced into the statistics without further Customs involvement. The latter documents, many of which contain significant errors and discrepancies, are often corrected, as noted above, on the basis of information previously provided by import specialists on the form BC-734 which accompanied earlier referrals for reverification. Consequently, the number of Customs-caused errors is obviously greater than 6 percent. With the implementation of the f.o.b./c.i.f. program, the Generalized System of Preferences (GSP) Program, and the recent increased emphasis on more accurate and precise statistical data, particularly on free and specific-rate merchandise, the number of documents returned for Customs review can be expected to increase substantially in the future.

The reverification program also permits Service Headquarters to identify continuing problems which require corrective actions other than the reverification of individual statistical documents. These corrective actions usually are in the form of Statistical Circulars which are issued when significant, widespread discrepancies are discovered. In this way, these matters are brought to the attention of both the Customs field offices across the country and the importing public.

While the main purpose of the reverification program is to provide Census with accurate information on imported merchandise and to educate field officers in the proper verification of statistical data, the review of the same documents can provide Regional and District supervisors with an effective management tool to monitor and evaluate the performance of subordinate employees responsible for the District's involvement in the statistical program.

10. Miscellaneous:

The following comments are included herewith as background information and to provide the field with the reasoning behind the continued use of the verification procedures established when the program was first implemented. The many suggestions made with a view to improving the program along with the Headquarters position have been consolidated into the following:

1. Customs should be allowed to provide Census with only a five digit TSUS commodity number rather than the seven digit TSUSA number.

   A. It is only by the use of the seven digit number that trade agreements, import quotas, and checks on the export quotas of countries trading with the U.S. can be monitored. It is the last two digits that provide meaningful and detailed infor-

mation to government agencies and domestic businesses interested in the value and quantities of specific imported commodities. U.S. companies, trade associations and government agencies are constantly requesting further statistical breakouts to aid them in evaluating and assessing the impact that imported merchandise has on U.S. manufacturers and their domestic markets.

2. The statistical reporting requirements should be changed so that red ink notations are made only in the case of changes instead of underlining each item as is presently done.

   A. The operation by which the Bureau of the Census keys information into the computer disks is a repetitive, high speed operation and underlining in red the items to be recorded greatly simplifies the task of identifying those items. It is probable that many more keying errors would result if items were not underlined. Furthermore, unless the Customs officer is required to take a positive action (underlining the factors in red) it would be impossible to determine if he had, in fact, reviewed the statistical copy. Moreover, it should be recognized that the majority of the time spent in verifying statistical information is in analyzing and determining whether the entered information is correct or whether a change in a statistical item is necessary. This must be done whether or not underlining was required. The physical act of underlining, in itself, takes only a few seconds.

3. Eliminate the statistical verification altogether. The statistical copies could be forwarded directly to Census without verification since the chances are great that if an entry is accepted at the time of pre-entry the statistical copy is also correct. When an entry is rejected the statistical copy is corrected by the broker along with the other documents.

   A. The purpose behind the verification program adopted in 1962 was to provide more reliable statistical information since the previous unverified import statistics were considered by Census and the many users as totally unreliable. With the increased interest shown in these statistics by the highest levels in both government and industry, it is imperative that the data Customs furnishes to Census be as accurate as possible. Without the Customs verification, the reject rate would be significantly higher thereby placing in doubt the reliability of the entire statistical program.

William D. Lynn
for John B. O'Loughlin

PETITION FOR AMENDMENT TO SECTION 557 OF THE TARIFF ACT OF 1930

(By Thomas E. O'Neill, National Association of Alcoholic Beverage Importers, Inc.)

BACKGROUND

Under Proclamation No. 2498 of October 12, 1951, the then Bureau of Customs was allowed to grant unlimited, successive extensions of one year each to the holding of merchandise in bonded warehouses. Under the law itself, merchandise held in bonded warehouses must be removed and duties and taxes paid within three years from the date of importation [19 U.S.C. 557(a)]. The superseding authority of Proclamation No. 2498 was terminated by the National Emergencies Act of September 14, 1976. This Act becomes fully effective on September 14, 1978. Obviously, this means that goods which have been entered into Customs bonded warehouses will now be subject to the three-year repose mandated by the basic statute, and that no further extensions may be granted.

ADMINISTRATIVE SITUATION

Indications are that the United States Customs Service does not oppose the granting of further extensions, but will be forbidden from granting them by the legal situation outlined above. On behalf of alcoholic beverage importers who utilize Customs bonded warehouses, and who often find it necessary to extend the time in which goods are kept in Customs bonded warehouses beyond the three-year basic limit, it is urged that 19 U.S.C. 557 be further amended, so as to allow the continuation of some limited extension period beyond the basic three years. Again, indications are that this should present no administrative difficulties at the level of the Treasury Department or the Customs Service.

RELIEF REQUESTED

Sec. 109 of H.R. 8149 now before the Committee would amend Sec. 557 of the Tariff Act by adding a new paragraph (d), providing for withdrawal for consumption without the payment of duty under certain circumstances.

NAABI urges that a new paragraph (e) be added as a further amendment to this bill which would read substantially as follows:

"(e) The Secretary of the Treasury may by regulation provide for extensions of the three-year period prescribed for warehousing under this section and under Sec. 559 of this Act. Each extension shall be for one year, but no more than five extensions may be granted with respect to the same merchandise."

STATEMENT BY THE ASSOCIATION OF THE CUSTOMS BAR

The Association of the Customs Bar is a national professional Association of lawyers engaged principally in the practice of Customs law. The purpose of this statement is to present the views of this Bar Association on H.R. 8149 relating to Customs procedural reform. Our comments are limited to the several sections of the Bill where we have specific recommendations for changes.

SECTION 105

This section relates to recordkeeping requirements and we would propose that the last two paragraphs designated (c) (1) and (2) of this section be deleted and that (c) have the following words added after "except where": "the importer is the agent of the person ordering the merchandise."

The foregoing change would, we believe, more clearly define the persons, other than the actual importer, who are subject to the recordkeeping requirements. Frequently the contract between an importer and the domestic person ordering merchandise from him will, in effect, control the terms and conditions of the importation. The domestic purchaser may specify in the contract precisely what he wants to receive, the quantities and the dates of delivery and many other terms and conditions. Nevertheless, this relationship between the importer and his domestic purchaser should not cause the latter to become subject to the

recordkeeping requirements. This type of situation has to be distinguished from that where the importer is acting as an agent of the person ordering the merchandise. Under these circumstances the recordkeeping requirements should apply to the principal since the importer-agent is simply acting on his behalf.

Our purpose in suggesting the deletion of sub-section (c) (2), relating to technical data, molds, etc., is that it would, in our opinion, place an unreasonable and unnecessary burden upon a person ordering merchandise from an importer. It has always been the responsibility of the importer to ascertain and to report to the appropriate Customs officer information regarding assists in connection with the initial importation to which the assists relate. This responsibility should not be shared with his customer who, in many instances, purchases from an importer rather than import himself because he does not wish to become involved in the intricacies and risks associated with importing. Indeed, the domestic purchaser who has had no experience in importing is not likely to be aware of this recordkeeping requirement and enforcement would be very difficult, particularly since it only applies where there is knowledge that the material furnished will be used in the manufacture or production of the merchandise ordered. Furthermore, since the customer of the importer does not generally have any direct contact with the exporter or manufacturer, he is frequently not in a position to know how, or to what extent the material furnished will be used in the manufacture or production of the merchandise ordered. Accordingly, we recommend that this requirement be eliminated.

SECTION 107

This section would amend Section 510 relating to judicial enforcement. We recommend the following changes:

(a) We could suggest that sub-section (a) be changed to provide that the United States Customs Court, rather than a United States District Court shall have jurisdiction to issue an order requiring the person summoned to appear and give testimony or appear and produce records or both and to punish for contempt for failure to obey such order. The reason for this recommendation is that the United States Customs Court is a national court and a circuit court with jurisdiction throughout the United States. This court has special expertise in matters relating to Customs law and it would seem appropriate therefore that the provisions relating to judicial enforcement should be within the jurisdiction of that court. Furthermore the calendars of the United States Customs Court are not as crowded as those of many United States district courts which would tend to expedite the disposition of the matters provided for in this section that were brought before it.

(b) We believe that sub-section (b) should be deleted in its entirety. Any failure to obey the order of a federal court should be enforced exclusively by such court and there should not be an additional punishment imposed by the Secretary of the Treasury prohibiting the importation of merchandise which order would be enforced administratively outside the jurisdiction of the court, although arising solely by reason of the contempt of court proceeding. Any questions relating to the Secretary's order, such as whether the importations which are prohibited are directly or indirectly for the account of the person adjudged in contempt, would not be subject to review and would be dealt with solely in the discretion of the Secretary. If the punishment for contempt of court is to include prohibiting the person adjudged in contempt from importing merchandise, it should only be applied by the court.

SECTION 111(a)

This section amends Section 592 of the Tariff Act of 1930 relating to penalties for fraud, gross negligence and negligence. We would recommend that the following changes be made:

(a) Subsection (f) provides that a disclosure before, or without knowledge of, the commencement of a formal investigation of such violation limits any penalty to a maximum equal to the revenue loss. This is a codification of the present Customs regulations dealing with voluntary disclosures.

However, this sub-section does not include within the disclosure umbrella such other violations which are discovered during the formal investigation of the

prior disclosure. The Customs Service regulations (§ 171.1(a)(2)) make no distinction between a voluntary disclosure and the subsequent discovery of other violations during the formal investigation of the disclosure.

Normally, the type of other violations discovered during the formal investigation following the voluntary disclosure are minimal and good faith oversights or may not be considered to be violations by the importer. Such violations should not be subject to more severe penalties than the disclosed violations.

We believe that other violations discovered during the investigation of the voluntary disclosure should be included within this subsection.

(b) Sub-section (h) provides for a procedure whereby the administrative decision can be reviewed in a United States District Court. When the monetary penalty is based upon fraud or gross negligence the United States has the burden of proof to establish the alleged violation. However, where the monetary penalty is based on negligence the alleged violator has the burden of proof to rebut the presumption of correctness which arises with assertion of negligence.

We believe that shifting the burden to the alleged violator in the case of a penalty based on alleged negligence is unwarranted. In any proceeding where an action is commenced the plaintiff generally has the burden of proof to establish its case. We see no reason why this general rule should be changed or that a distinction should be made between the burden of proof in cases of alleged fraud or gross negligence.

(c) We do not believe that a United States District Court should have exclusive jurisdiction to hear actions by the United States to recover penalties. We would recommend that a new provision be included to provide that where the alleged violator has paid the mitigated penalty he may bring an action in the United States Customs Court for recovery of such payment. This would permit importers or other alleged violators to have the same option as tax payers have in disputes with the Internal Revenue Service. In this manner an importer or other alleged violator who is prepared to pay the mitigated penalty and thus eliminate the necessity of the government bringing an action in the District Court would, nevertheless, have a right to judicial review of the administrative determination.

SECTION 210

This section adds a new Section 504 to the Tariff Act of 1930 and provides that an entry of merchandise not liquidated within one year from the date of entry or withdrawal from warehouse for consumption shall be deemed liquidated at the rate of duty, value, quantity and amount of duties asserted at the time of entry by the importer unless the period in which to liquidate is extended by notice of such extension to the importer.

This section would substantially negate the right of judicial review since it would be operative without appropriate notice to the importer. Under existing law importers are compelled to enter their merchandise at the value and rate of duty required by Customs. Where an importer does not agree with the value or rate of duty assessed at the time of entry, his right to judicial review should not be impaired by an automatic liquidation without notice. Entries are customarily made by Customs brokers and frequently under immediate delivery procedures, after which the actual consumption entry is filed. Frequently an importer may not receive a copy of his consumption entry with the entry number or if he does, the precise date of entry may not be readily ascertainable since Customs frequently does not stamp entry dates on the consumption entries. Considering the relatively short period of time in which a protest may be filed after liquidation, but not before liquidation, and the uncertainty as to the actual date of entry, an automatic liquidation of an entry without notice to the importer would materially affect his ability to file a timely protest. Furthermore, the importer, if he did not have notice of liquidation, would have the additional and new recordkeeping burden of determining the precise 90 day period within which he could file a protest. This problem would become even more acute in the case of importers who regularly have a large volume of entries.

We submit that if entries are to be deemed liquidated, a notice of liquidation to the importer is esential so that his right to judicial review will not be substantially negated.

JAMES H. LUNDQUIST, *Vice-President.*

STATEMENT OF SHAW, PITTMAN, POTTS & TROWBRIDGE, ATTORNEYS-AT-LAW, WASHINGTON, D.C.

Shaw, Pitman, Potts & Trowbridge is a law firm presently consisting of fifty attorneys, engaged in the general practice of law, located in Washington, D.C. This practice includes representation and counsel in the area of customs and related trade problems, on behalf of a variety of clients.

Shaw, Pittman, Potts & Trowbridge supports passage of H.R. 8149. As attorneys who practice regularly in the area of customs and related trade problems on behalf of a variety of clients, we believe that many of its provisions will bring about a simplification in the procedures of the United States Customs Service and will enable the Customs Service to accomplish its institutional purposes in a more orderly and businesslike manner.

TECHNICAL AMENDMENT URGED FOR CUSTOMS BONDED WAREHOUSES

Shaw, Pittman, Potts & Trowbridge also urges the Subcommittee to consider and adopt a technical amendment to this bill that would remedy a problem inadvertently created by the enactment of the National Emergencies Act of September 14, 1976. This technical amendment would continue, in limited form, the authority of the Customs Service to grant extensions of the storage periods applicable to merchandise stored in bonded warehouses. The authority presently enjoyed by the Customs Service in this regard—authority to grant an unlimited number of successive one-year extensions of such storage periods—will terminate on September 14, 1978, by operation of the National Emergencies Act of 1976.

REASONS FOR THE PROPOSED TECHNICAL AMENDMENT

Since October 12, 1951, the United States Customs Service has enjoyed the authority to grant an unlimited number of successive one-year extensions of the warehousing periods referred to in Sections 557, 559 and 491 of the Tariff Act of 1930 (19 U.S.C. §§ 1491, 1557, & 1559). *See* Proc. No. 2948, 16 Fed. Reg. 10,589 (1951), reprinted in 19 U.S.C. § 1318 (1970). During this 26-year period, the United States Customs Service has routinely granted, upon application, such one-year extensions of the storage periods applicable to merchandise stored in bonded warehouses.

Accordingly, since 1951 a number of businesses have come to depend on the continuing availability of this 26-year practice as an integral part of their operations. Affected businesses include not only warehouse proprietors but also businesses importing a wide variety of products ranging from tobacco, ammunition, firearms, and alcoholic beverages, to articles having only an occassional market, such as ship's propellers. The need of such businesses for the availability of such extensions arises in a variety of contexts. Some businesses take advantage of surpluses in certain geographic (international) markets to make bulk purchases of large volumes of items at favorable prices, and in turn, market such items over time, as demand dictates, both in the domestic U.S. market and in the international market. The period of time involved for marketing the entire volume of items purchased in any single such bulk-volume acquisition is extended not infrequently over many years—due either to a limited inelastic demand for such items, to adverse market developments of many kinds, or to some combination of these factors. Businesses using bonded warehouses have used such extensions of warehousing periods also (i) during protracted disputes with exporters (delays that are accompanied frequently by extended negotiations, arbitration, and/or judicial proceedings, as well as occasional diplomatic intervention), and (ii) during delays in marketing stored merchandise that are due either to changing import restrictions or to FDA inspection problems (delays that are accompanied frequently by protracted administrative and/or judicial proceedings protesting the cause of the delay).

On January 11, 1978, the United States Customs Service announced that its authority to grant such one-year extensions will expire September 14, 1978 (*See* attached press release of January 11, 1978), by operation of the National Emergencies Act of September 14, 1976. It should be noted by the Subcommittee, however, that Treasury is currently preparing, as was contemplated by the

National Emergencies Act of September 14, 1976,[1] draft proposed legislation to replace its present measure of authority (authority to grant an unlimited number of one-year extensions of warehousing periods) with authority to grant a finite number of such one-year extensions.[2] This draft proposed legislation, which provides limited replacement authority for virtually unlimited authority that inadvertently will be terminated by the National Emergencies Act of 1976, is noncontroversial in nature. Nevertheless, the termination of the present authority to grant one-year extensions, without replacement authority being provided in the meantime by Congress, will result in the unintended and inadvertent imposition of a substantial economic burden on businesses that have structured their operations around the 26-year practice of the Customs Service of granting such one-year extensions. Such businesses would be caused undue hardship and substantial disruption of their routine operations, in that they would be forced (i) to remove merchandise from existing bonded warehouse facilities, remit duty payment, and find alternative storage space until all the merchandise can be marketed, and/or (ii) to turn to foreign storage facilities to the detrimnet of American warehouse operators and their employees.

An amendment to Section 109 of H.R. 8149, which would authorize the Customs Service to grant a finite number of one-year extensions of bonded warehouse storage periods, not only would remedy in a timely manner the problems outlined above but also would eliminate the necessity for separate legislation later this year on precisely the same subject, which very well may not be enacted in a timely manner. In view of the adverse impact on many U.S. businesses that such a piecemeal legislative approach would have, and in light of the noncontroversial nature of the needed legislation, it would be most appropriate for the Subcommittee to adopt this technical amendment to H.R. 8149, and thereby prevent an inadvertent hiatus in the Executive's authority from imposing substantial, unintended economic hardship on many U.S. businesses. This technical amendment, moreover, will not cause a reduction in revenue to the United States Government and will not add any significant cost items to the budget of the Customs Service. Furthermore, we have been advised informally by officials of the Customs Service that Customs does not oppose any such amendment that provides a reasonable, finite maximum number of one-year extensions. We believe that a maximum of seven (7) such one-year extensions, in addition to the initial storage period applicable to goods stored in bonded warehouses, would constitute a reasonable striking of the balance between the interests of the Customs Service in this connection (discussed at footnote 2, *supra*) and the needs of businesses using bonded warehouses as part of their operations.

SUGGESTED AMENDMENT LANGUAGE

In its present form, Section 109 of H.R. 8149 would amend Section 557 of the Tariff Act of 1930, as amended, which concerns bonded warehouses. Section 557 is also the appropriate section to continue, in limited form, the present authority of the Customs Service to grant one-year extensions of the warehousing periods applicable to merchandise stored in bonded warehouses. Accordingly, we suggest that a new Subsection (e) be added to Section 557 of the Tariff Act of 1930, as follows:

"(e) The Secretary of the Treasury may provide for the extension of the three year period prescribed under this section and under section 559 of this Act, and of the one-year period prescribed in section 491 of this Act. Each such extension shall be for one year, but no more than seven such one-year extensions shall be granted with respect to the same merchandise."

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[1] As stated in S. Rep. No. 94–1168, 94th Cong., 2d Sess. 3 (1976), reprinted in [1976] U.S. Code Cong. & Ad. News 2288, 2290, "[t]he 2-year delay [from September 14, 1976 to September14, 1978] is designed to provide time for all executive agencies, offices, and departments, dependent on emergency statutes for their day-to-day operations, to seek permanent legislation, if appropriate. It would permit an orderly transition and give the Congress adequate opportunity to evaluate Executive requests."

[2] We have been advised by officials of the Customs Service that the requirement for a finite number of possible one-year extensions is dictated primarily by the needs of computerized information storage and retrieval, which the Customs Service intends to use more fully in connection with all of its operations.

It should be noted that under this authority no more than seven one-year extensions could be granted, which is to be contrasted with the presently unlimited authority enjoyed and exercised routinely by the Executive Branch. We believe that this figure of seven such one-year extensions would strike the proper balance between the needs of the Customs Service for a finite number of such one-year extensions and the needs of businesses routinely using bonded warehouses as an integral part of their operations. The maximum total warehousing period possible under this formula—ten years—would cover the routine needs of the vast majority of business uses of bonded warehouses as well as the majority of unusual situations dictating longer-than-usual warehousing periods.

For all of the reasons outlined above, Shaw, Pittman, Potts & Trowbridge urges the Subcommittee to consider and adopt a technical amendment to Section 109 of H.R. 8149 as outlined herein.

U.S. Customs To End Extension of Bonded Warehouse Storage Periods Starting in Late 1978

Effective September 14, 1978, the U.S. Customs Service will end its policy of permitting an unlimited number of extensions to the time imported merchandise may remain in bonded warehouses.

After the deadline merchandise in bonded warehouses must be withdrawn within three years from the date of importation into the United States.

Although the Tariff Act of 1930 states that imported goods in bonded warehouses should be removed within three years of the date of importation, Customs has allowed an unlimited number of one-year extensions under the authority of a Korean War Emergency decree, Proclamation 2498 of eOctober 12, 1951. This decree was terminated by the National Emergencies Act of September 14, 1976, which becomes effective on September 14, 1978.

One year extensions granted before September 14, 1978, will be allowed to run their full course. Merchandise placed in bonded storage on September 13, 1975, for example, may remain there until September 13, 1979.

The change does not affect merchandise in foreign trade zones. Customs places no time limits on goods stored in any of the 29 foreign trade zones currently operating in the United States, since these zones are not considered to be part of the Customs territory of the United States. Customs notes, however, that merchandise may not be transferred from bonded warehouses to foreign trade zones unless it is to be exported.

Customs also serves notice that the upcoming change ends extensions to the one-year storage period during which unclaimed merchandise may remain in Customs General Order (GO) storage before it is sold at auction.

Statement of the Industrial Fasteners Institute

The Industrial Fasteners Institute supports the objective of H.R. 8149 in simplifying, modernizing, and otherwise modifying the customs law to make its administration more effective. In that connection, the Institute would like to call to the Committee's attention an administrative problem which we believe should be corrected by an appropriate Committee amendment to this bill.

The problem relates to the country-of-origin marking requirements in section 304 of the Tariff Act of 1930, as amended. The object of that provision is to permit the "ultimate purchaser" in the United States to choose between domestic and foreign-made products, or between products of different foreign countries, when he makes his purchase decision. In short, the provision is intended to facilitate the "ultimate purchaser's" freedom of choice. The great majority of products imported into the United States must bear a country-of-origin marking. Under section 304(a)(3)(J) the Secretary of the Treasury is authorized to exempt any imported article from the marking requirement under specified circumstances if that article is of a class or kind which (1) was imported in substantial quantities during 1932–1936 period and (2) was not required to bear a country-of-origin marking during that period. Articles excepted from the marking requirements are contained in the so-called "J" List in section 134.33 of the Customs Regulations (copy attached).

There is evidence that a number of articles on the "J" List were not in fact imported in substantial quantities during the 5-year reference period. In 1971, for example, cast iron soil pipe and fittings were removed from the "J" List after it was determined that imports during the base period did not meet the substantial quantities test (copy of Customs decision attached).

In other cases interested parties have requested Customs to delete particular articles, such as bars and tool steel, from the "J" List on the basis of data indicating that such articles had not been imported in substantial quantities. Customs has frequently been unreceptive to such requests. In short, experience has shown that requests to correct the "J" List have not been handled in an orderly, consistent manner. There are no criteria to be applied in such cases. There no time limits for processing. Finally, there is no requirement that such requests be considered at all.

A review procedure is clearly needed to assure the integrity of country-of-origin marking system under section 304. The Industrial Fasteners Institute respectfully urges the Committee to consider and adopt an amendment to H.R. 8149 to establish such a review procedure. We have taken the liberty of drafting proposed amendment to achieve this purpose (attached).

The proposed amendment would require the Secretary of the Treasury to review the items on the "J" List within 120 days to determine which articles were not imported in substantial quantities during the 5-year reference period, and to take corrective action to remove any such article from the "J" List. "Substantial quantities" would be defined as meaning a quantity of imports in excess of 5 percent of domestic production of that article during the same 5-year period.

NOTE: The Industrial Fasteners Institute is an association of the leading North American manufacturers of bolts, nuts, screws, rivets and all types of special industrial fasteners. It is located at 1505 East Ohio Building, 1717 East 9th Street, Cleveland, Ohio, (216) 241–1482. Its president is Clyde F. Roberts.

PROPOSED AMENDMENT TO H.R. 8149

SEC. ——. REVIEW OF MARKING EXCEPTIONS

(a) Within 120 days after the enactment of this section, the Secretary of the Treasury shall review each class or kind of article as to which the Secretary has given notice under section 304(a)(3)(J) of the Tariff Act of 1930, as amended, and shall determine whether articles of such class or kind were imported in substantial quantities during the five-year period prescribed in section 304(a)(3)(J). If it is determined that any class or kind of article was not imported in substantial quantities, the Secretary shall promptly publish notice of that fact in the Federal Register and shall take all necessary steps to assure the proper marking under section 304 of every article of such class or kind imported into the United States on or after 30 days following the date of such notice.

(b) For purposes of this section and section 304(a)(3)(J) of the Tariff Act of 1930, as amended, the term "substantial quantities" shall mean a quantity which is not less than five percent of the quantity produced in the United States. The Secretary shall use the best evidence available in making the determinations prescribed by this section.

134.33 J-List exceptions.

134.33 Articles of a class or kind listed below are excepted from the requirement of country of origin marking in accordance with the provisions of section 304(a) (3) (J), Tariff Act of 1930, as amended (19 U.S.C. 1304(a) (3) (J)). However, in the case of any article described in this list which is imported in a container, the outermost container in which the article ordinarily reaches the ultimate purchaser is required to be marked to indicate the origin of its contents in accordance with the requirements of Subpart C of this part. All articles are listed in Treasury Decisions 49690, 49835, and 49896. A reference different from the foregoing indicates an amendment.

Articles	References
Art, works of.	
Articles classifiable under items 850.40, 850.70, 851.30, and 853.30, Tariff Schedules of the United States.	T.D. 66-153
Articles entered in good faith as antiques and rejected as unauthentic.	
Bagging, waste.	
Bags, jute.	
Bands, steel.	
Beads, unstrung.	
Bearings, ball, 5/8-inch or less in diameter.	
Blanks, metal, to be plated.	
Bodies, harvest hat.	
Bolts, nuts, and washers.	
Briarwood in blocks.	
Briquettes, coal or coke.	
Buckles, 1 inch or less in greatest dimension.	
Burlap.	
Buttons.	
Cards, playing.	
Cellophane and celluloid in sheets bands, or strips.	
Chemicals, drugs, medicinal, and similar substances, when imported in capsules, pills, tablets, lozenges, or troches.	
Cigars and cigarettes.	
Covers, straw bottle.	
Dies, diamond wire, unmounted.	
Dowels, wooden.	
Effects, theatrical.	
Eggs.	
Feathers.	
Firewood.	
Flooring, not further manufactured than planed, tongued, and grooved.	T. De. 49750; 50366(6)
Flowers, artificial, except bunches.	
Flowers, cut.	
Glass, cut to shape and size for use in clocks, hand, picket, and purse mirrors, and other glass of similar shapes and sizes, not including lenses or watch crystals.	
Glides, furniture, except glides with prongs.	
Hairnets.	
Hides, raw.	
Hooks, fish, (except snelled fish hooks)	T.D. 50205(3)
Hoops (wood), barrel.	
Laths.	
Leather, except finished.	
Livestock.	
Lumber, sawed.	T.De. 49750; 50366(6)
Metal bars, except concrete reinforcement bars; billets, blocks, blooms; ingots; pigs; plates; sheets; except galvanized sheets; shafting; slabs; and metal in similar forms.	
Mica not further manufactured than cut or stamped to dimensions, shape or form.	
Monuments.	
Nails, spikes, and staples.	
Natural products, such as vegetables, fruits, nuts, berries, and live or dead animals, fish and birds; all the foregoing which are in their natural state or not advanced in any manner further than is necessary for their safe transportation.	
Nets, bottle, wire.	
Paper, newsprint.	
Paper, stencil.	
Paper, stock.	
Parchment and vellum.	
Parts for machines imported from same country as parts.	
Pickets (wood).	
Pins, tuning.	
Pipes, iron or steel, and pipe fittings of cast or malleable iron (except cast iron soil pipe and fittings).	T.D. 71-89
Plants, shrubs and other nursery stock.	
Plugs, tie.	
Poles, bamboo.	
Post (wood), fence.	
Pulpwood.	
Rags (including wiping rags).	
Rails, joint bars, and tie plates covered by item 610.20 through 610.26, Tariff Schedules of the United States.	
Ribbon.	
Rivets.	
Rope, including wire rope; cordage; cords; twines, threads, and yarns.	
Scrap and waste.	
Screws.	
Shims, track.	
Shingles (wood), bundles of (except bundles of red-cedar shingles).	T.D. 49750
Skins, fur, dressed or dyed.	
Skins, raw fur.	
Sponges.	
Springs, watch.	
Stamps, postage and revenue, and other articles covered in item 274.40, Tariff Schedules of the United States.	T.D. 66-153
Staves (wood), barrel.	
Steel, hoop.	
Sugar, maple.	
Ties (wood), railroad.	
Tiles, not over 1 inch in greatest dimension.	
Timbers, sawed.	
Tips, penholder.	
Trees, Christmas.	
Weights, analytical and precision in sets.	T.De. 49750; 51802
Wicking, candle.	
Wire, except barbed.	

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Bureau of Customs

(T.D. 71-89)

Country of Origin Marking—cast iron soil pipe and fittings

Part 11, Customs Regulations, relating to exceptions from country of origin marking requirements

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—BUREAU OF CUSTOMS

PART 11—PACKING AND STAMPING, MARKING; TRADEMARKS AND TRADE NAMES; COPYRIGHTS

There was published in the Federal Register for July 9, 1970 (35 F.R. 11033), a notice that the Bureau of Customs had under consideration the question of whether cast iron pipe and fittings imported into the United States should be marked to indicate the country of origin in accordance with the provisions of 19 U.S.C. 1304. These articles are encompassed within the description "Pipes, iron or steel, and pipe fittings of cast or malleable iron" listed in T.D. (49896 (1939) (4 F.R. 2509) among the articles found, pursuant to 19 U.S.C. 1304(a)(3)(J), to have been imported in substantial quantities during the 5-year period immediately preceding January 1, 1937, and not required during such period to be marked to indicate the country of their origin, which articles are now excepted from the marking requirements by section 11.10(a) of the Customs Regulations (19 CFR 11.10(a)).

The Bureau has given careful consideration to the written data, views, and arguments submitted in response to the above notice. These comments have pointed out that the original information submitted to the Bureau to justify the revocation of the exception from marking for cast iron pipe and fittings (made available to interested parties who requested it) was directed specifically to the fact that cast iron soil pipe and fittings were not imported in substantial quantities in the 5-year period immediately preceding January 1, 1937. Information

has been submitted indicating that cast iron pipe and fittings, other than cast iron soil pipe and fittings, were imported in the 5-year period immediately preceding January 1, 1937.

In view of the fact that cast iron soil pipe and fittings were not imported in substantial quantities in the 5-year period immediately preceding January 1, 1937, that such pipe and fittings are large enough to be readily marked to indicate the country of origin without unusual difficulties, and the possibility that such pipe and fittings may be commingled with domestically manufactured pipe and fittings prior to the time they reach the ultimate purchaser in the United States, the Bureau has concluded that an exception from marking for imported cast iron soil pipe and fittings under 19 U.S.C. 1304 (a) (3) (J) is no longer warranted.

Accordingly, the exception under 19 U.S.C. 1304(a) (3) (J) and T.D. 49896 of "Pipes, iron or steel, and pipe fittings of cast or malleable iron" is hereby amended to read as follows:

> "Pipes, iron or steel, and pipe fittings of cast or malleable iron (except cast iron soil pipe and fittings).

This amendment shall apply to cast iron soil pipe and fittings entered, or withdrawn from warehouse, for consumption after the expiration of 90 days after the publication of this Treasury Decision in the Federal Register. The Customs Regulations are amended as set forth below:

PART 11—PACKING AND STAMPING; MARKING; TRADEMARKS AND TRADE NAMES; COPYRIGHTS

Section 11.10(a) is hereby amended by changing the fourth sentence to read as follows: "The exceptions under section 304(a) (3) (J) are set forth in T.D. 49690, T.D. 49835, T.D. 49896, T.D. 54167, and T.D. 71-89)."

(Sec. 304, 46 Stat. 687, as amended; 19 U.S.C. 1304.)

(RM-2-MAR)

EDWIN F. RAINS,
Acting Commissioner of Customs.

Approved March 15, 1971:

EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[Published in the Federal Register March 24, 1971 (36 F.R. 5405)]

STATEMENT OF THE AMALGAMATED CLOTHING AND TEXTILE WORKERS UNION, AFL–CIO, SUBMITTED BY MURRAY H. FINLEY, PRESIDENT; JACOB SHEINKMAN, SECRETARY-TREASURER

SUMMARY

The Amalgamated Clothing and Textile Workers Union has no objection to the draft legislation before the Subcommittee. However, we wish to point out that our union did have strong objections to one provision in an earlier version originally reviewed by the Committee on Ways and Means in the House. The proposal, wisely rejected by that Committee, would have increased from $250 to $600 the maximum value authorized for imported articles eligible for informal customs entry.

We felt, and so advised the House Ways and Means Committee, that the proposal [Section 211(a)] would undermine proper enforcement of the Government's textile and apparel import program and, therefore, adversely affect th interest of our 500,000 members whose jobs are increasingly threatened by low-wage, low-cost imports. Were this proposed change again to receive consideration in the course of Senate committee review, we would be as vigorously opposed, and for the following reasons:

The proposal would open loopholes in the proper enforcement of Customs regulations and create greater risk of circumvention of these regulations. Such possibilities relate especially to imports with low values, such as those of labor-intensive industries from low-wage countries (e.g., textiles and apparel). Under the Multi-Fiber Arrangement governing trade in textiles and apparel and the bilateral agreements concluded by the United States thereunder, the Customs Service plays a particularly important role in monitoring the volume of textile and apparel imports. Current import data must be made available in timely fashion to government officials charged with administering the textile and apparel import program and enforcing restraint levels for controlled countries. We are fearful that this will be undermined should the informal entry procedures which now govern shipments valued under $250 be increased to shipments up to $800. Under such an expanded value level, sizable shipments would go unrecorded in the U.S. trade and thus not be properly counted against the restraint levels specified under the U.S. bilateral agreements with supplying countries. Through this mechanism it would be possible for uncontrolled imports to disrupt the U.S. market without recourse by the U.S. Government, thus defeating the objective of the textile and apparel imports program. This cannot be permitted since the textile and apparel industries have suffered great damage from imports.

STATEMENT

On behalf of our union leadership and workers, we appreciate the opportunity to submit our views on the Customs Procedural Reform Act of 1977 now before the Subcommittee. We have no objections to this proposed legislation which aims at the modernization of customs procedures and the introduction of possible economies in customs administration.

It should be noted, however, that when the proposed legislation was under review by the Ways and Means Committee in the House, it contained one provision to which we raised strong objections. This was Section 211(a) which increased to $600, from $250, the value of imported articles eligible for entry into the United States through informal customs entry procedures. We were pleased and greatly relieved when that Committee deleted Section 211(a) from H.R. 8149, which subsequently passed the House on October 17, 1977. We regarded that Section as ill-advised and very damaging to the interests of workers and their jobs in the textile and apparel industries.

Now that the proposed legislation is under review within the Senate it may be that some parties may seek to revive the informal entry provision dropped by the House. Importer groups, in particular, may favor such a statutory change and they may justify it on specious grounds that the action would simplify customs procedures and introduce economies in the administration of such procedures.

The ACTWU considers any such extension of the informal entry procedure to shipments up to $600 as not being in the public interest. It would add new administrative complexities in customs enforcement and thus involve additional costs to outweigh possible savings. Of equal concern, it would add to the import

injury suffered by the domestic textile and apparel industry. Hopefully, this Subcommittee will not pay heed to any such pressure for revival of this objectionable statutory revision. However, it may be of interest to the Subcommittee for us to restate briefly our objections to any such move.

In the United States the textile and apparel industries are the largest employers in the aggregate of any manufacturing industry, accounting for some 2.3 million jobs in every State. Roughly one out of every eight workers in manufacturing finds his or her livelihood in textile and apparel production. These industries are extremely labor-intensive and thus are extremely sensitive to the impact of imports.

The situation found by textiles and apparel can be summarized by three simultaneous developments:

—Falling production.

—Falling domestic employment.

—Rising quantities of disruptive imports.

In the ten years from 1967–1976 over 35,000 jobs have been lost due to plant closings and reduced output in the apparel industry. Among sectors in men's and boys' apparel, the tailored clothing sector has been especially hard hit. For example, production workers in all men's and boys' apparel declined 8 percent (from 443,000 to 406,000 between 1967 and 1976) while in men's suits and coats the job loss amounted to 3 percent. This reduced employment is the consequence of falling production. For example, in suits, between 1968 and 1976, domestic industry output dropped from 25 million to 16 million units with more and more of the market being captured by imports. Well over one-fifth of the total market for suits is accounted for by imports and imports represent almost one-half of the market in coats, jackets and trousers.

Strong and constant increases in imports even while domestic output and employment have been declining is basically a reflection of the fact that the labor cost disparity between U.S. and foreign wage rates has given a great competitive edge to foreign producers who also are significantly aided by subsidy benefits under their governments' export incentive programs.

Growing import penetration with respect to the textile and apparel industries has occurred notwithstanding the Multi-Fiber Arrangement (MFA) and the bilateral agreements to regulate trade which have been negotiated between the United States and supplying countries. Nonetheless, while the MFA and the bilateral agreements negotiated under it constitute an imperfect mechanism for the regulation of international trade in textiles and apparel—without it there would be no mechanism of any sort to prevent uncontrolled and excessive import surges. It is therefore very much in the national interest to do nothing which would dilute the effectiveness of the MFA and the bilateral agreements negotiated under it by the U.S. Indeed the task before this nation is to reinforce and strengthen those agreements.

This is why the Amalgamated Clothing and Textile Workers Union is concerned over any possibility that there could be introduced once again into the proposed Customs Procedural Reform Act, a provision for informal entry procedures for shipments valued up to $600.

Our concerns are based on the following reasons:

Such a statutory change would mean that there would be no formal appraisement of shipments up to a value of $600, instead of $250 as at present. Under such informal entry procedures, a customs official simply accepts without further formality or question the shipping documents and statements made therein covering the shipment with regard to the kinds, quantity, and value of imported articles.

Looser and more flexible customs supervision and control by Customs of shipments entered under informal entry procedures in our view poses greater risks of customs violations with respect to the accuracy of documentation presented by the importer. Of equal concern to our union is that shipments would not be properly recorded in the import statistics collected and tabulated by the Foreign Trade Division of the Bureau of the Census, thus understating import data and undermining the Government's textile and apparel import program.

Under the Multi-Fiber Arrangement and the bilateral agreements negotiated by the U.S. Government pertaining to textile and apparel imports, the U.S. Customs Service plays a particularly important role in monitoring the volume and value of textile and apparel imports. Accurate import data must be made available in timely fashion to government officials charged with administering

the textile import program and enforcing pertinent restraint levels for controlled countries. We are fearful that this would be hindered were the informal entry procedure expanded to shipments of up to $600.

It should be emphasized that at the present time under the $250 informal entry procedures, shipments up to this value are not recorded properly in the import statistics or in the controls on imports. Were the limit for informal entry shipments to be revised to $600, it could have a disastrous impact on low-value imports in the textile and apparel industries, particularly those products whose valuation for duty purposes is governed by Item 807 of Tariff Schedules. Apparel imports such as man-made fiber sport coats, trousers, shirts and outercoats from Mexico and Colombia all of which are imported under Item 807 would be the greatest beneficiaries of any increased value for shipments eligible for informal entry.

Illustrative of one dramatic example of what could happen should such a provision be enacted is the following:

Imports of men's suits from Colombia have risen rapidly in recent years to the point where they have created major disruption to the domestic men's and boys' tailored clothing industries. The unit export price of a Colombian man-made suit is $30. They are normally packed 18 to a case. Eighteen suits at an average export price of $30 totals $540 which would be less than the limit of $600 in the deleted Section 211(a) of the original version of H.R. 8149. Such a revised valuation would permit shipments to enter the United States without being counted against the restraint levels for suits under the U.S.-Colombian Bilateral Agreement. By not recording such imports it would be possible for uncontrolled imports to disrupt the U.S. market without recourse by the U.S. Government, thus defeating the objective of the bilateral agreement. This cannot be permitted to occur.

The Amalgamated Clothing and Textile Workers Union stands ready to support meaningful modernization and simplification of customs procedures but we do not support any measures which would be at the expense of import sensitive industries, such as ours, which face an uphill struggle against low-wage, low-cost foreign production.

There has never been provided any evidence to indicate that extending the informal entry valuation to $600 would provide any advantages to the U.S. Customs Service either in cutting down paperwork or in introducing administrative economies. Rather the evidence is to the contrary; that by increasing the risk of customs violations there would be introduced new problems of customs administration and enforcement of the customs procedures.

For all of the foregoing reasons we earnestly trust that there will be no change in the informal entry limit of $250 as is now embodied in existing statute.

STATEMENT OF RICHARD L. MILLER, CHAIRMAN, IMPORT-EXPORT COMMITTEE AND PAST PRESIDENT OF THE NATIONAL HANDBAG ASSOCIATION

SUMMARY

The National Handbag Association is pleased that the proposed legislation now before this Subcommittee for review does not increase to $600 the current requirement of a $250 maximum limit for shipments eligible for informal customs entry. A provision to this effect [Section 211(a)] had been originally considered in the course of the House committee review of H.R. 8149, but this Section wisely was deleted from the final House version. It would be unfortunate if the same proposal were to be again revived in the Senate review. In this event, the National Handbag Association would again wish to be on record with its objections.

The domestic handbag industry is suffering serious injury as the result of low-wage foreign imports which are steadily absorbing a greater proportion of the domestic market. Accurate and timely statistics on such imports from all countries are vital for proper assessment of the economic impact of imports on the domestic market. Under expanded informal entry procedures, an increased volume of handbags simply would not be properly monitored or recorded in the statistics. This would result in understanding the actual handbag imports in the official statistics, both in terms of volume and value. We strongly urge that this Subcommittee reject as did its House counterpart committee any pressure from groups, such as the importer organizations, to revive this proposal.

STATEMENT

My name is Richard L. Miller. I am Chairman of the Import-Export Committee and past President of the National Handbag Association which is a National Trade Association whose member-firms account for the great bulk of the current annual production of women's handbags in the United States. We have no objections to the proposed legislation under consideration and in fact commend its objectives which are to streamline and modernize customs procedures. We would be concerned, however, were this Subcommittee to reconsider adding to this proposed legislation one section [Section 211(a)] of the original draft legislation which had been deleted by the House Committee on Ways and Means prior to passage of H.R. 8149 by the House on October 17, 1977. That Section would have increased the value of imported articles eligible for informal customs entry from the present maximum of $250 to $600.

The concern of the National Handbag Association over the possibility of such a statutory revision being introduced for informal customs entry of shipments up to a value of $600 is that it would introduce new risks of a significant understatement of import valuations and thus would skew the import trade data collected and tabulated by the Bureau of the Census of the Department of Commerce. Such data of course are based on the official customs entry documents of the U.S. Customs Service. Accurate and timely import trade data are a vital concern to the domestic handbag industry which has been cruelly buffeted by import competition from low-wage, low-cost foreign suppliers who have benefited also from direct foreign government export subsidies and various unfair trade practices.

Over the past decade, the industry has been characterized by falling domestic output, rising imports, and erosion of plants and jobs. This industry now has one-fifth fewer manufacturing plants and production workers' jobs that existed ten years ago. If this industry is to be preserved and the jobs of its thousands of largely minority group workers safeguarded, the U.S. Government must give urgent consideration to measures which can stem the tide of rising imports.

Precise monitoring of import trade with respect to handbags from all countries is of crucial importance to this industry in its efforts to seek appropriate import relief. In 1976 imports of handbags of all types had an f.o.b. unit value of $2.06. Were informal entry procedures to apply to shipments up to $600 in value, it would mean that any one shipment containing 291 handbags could go unrecorded in our import statistics—or at best—be subject to much looser procedures for the collection and tabulation of import data. The Bureau of the Census in the Department of Commerce makes no effort to collect or record trade data for informal entry shipments up to the $250 limitation. There is thus considerable understatement of actual import valuations at the present time which would be even greater were informal entry extended to shipments up to $600.

For this industry which is making a valiant struggle to keep imports from engulfing the domestic market, precise and comprehensive information on a current basis of all handbag imports from all sources is required irrespective of the value of shipments concerned.

Apart from our concerns for accurate and timely compilation of official data on handbag imports, we feel that elimination of direct appraisement by the U.S. Customs Service for shipments under $600 is not in the public interest. There may very likely be more cases, for example, of deliberate evasion of duties through false or inaccurate shipping documents. As we understand it, under informal entry procedures, the customs officer simply releases the articles to the importer with payment of duty based on the shipping documents and statements furnished therein to the U.S. Customs Service generally without further individual investigation of the kinds, quantities and values of articles in the shipment.

In our view, neither the interest of the U.S. Government and certainly not that of an import-impacted industry like the handbag industry would be served by reintroducing into the new customs legislation the proposal for extending the informal entry provision to a $600 limit. We trust this will not occur.

STATEMENT OF EARL S. RAUEN, PRESIDENT, WORK GLOVE MANUFACTURERS ASSOCIATION

SUMMARY

The Work Glove Manufacturers Association had objected strongly to one provision [Section 211(a)] of the original House draft H.R. 8149 which would

have increased the value of shipments eligible for informal customs entry procedures from $250 to $600. This provision was wisely dropped in committee review in the House and it is to be hoped that it will not again be considered in the course of Senate committee review. The Work Glove Manufacturers Association had objected to the original proposal because if enacted into law it would lead to inaccuracies in the collecting and recording of trade statistics covering imported articles such as work gloves which are labor-intensive products with very low-unit values.

The domestic work glove industry has been adversely affected by low-wage foreign imports which are steadily absorbing a greater proportion of the domestic market. Accurate import data are essential for proper assessment of the economic impact of imports on the domestic work glove market. Accurate and timely statistics on such imports from all countries are also vital for the implementation of the government's textile and apparel import program which applies to one category of work gloves, namely those made of cotton.

STATEMENT

My name is Earl S. Rauen. I am President of the Work Glove Manufacturers Association with headquarters in Libertyville, Illinois. I am submitting this statement in connection with the Customs Procedural Reform Act of 1977 (H.R. 8149) which is before the Subcommittee for its consideration.

The Work Glove Manufacturers Association is pleased to note that the draft legislation does not contain any provision, at one time considered in committee in the House, to increase the value from $250 to $600 for imported articles authorized informal customs entry. The intent of that original provision was to simplify customs procedures but the House Committee on Ways and Means wisely concluded that any potential benefits to the U.S. Government in that direction would be more than offset by added costs in other directions.

We earnestly trust there will be no need for this Subcommittee to give renewed consideration to such revision of the informal entry statute, though this may be advocated in some quarters, especially by representatives of importer organizations. Importers, of course, would welcome reducing their paperwork with the Customs Service but this also reduces the degree of customs control and supervision on their import shipments. We see no material advantages accruing to the U.S. Customs Service were the informal entry provision raised to a higher value. We do see considerable risk of increasing the serious injury from low-wage imports already being experienced by labor-intensive domestic industries such as is the work glove industry.

It is felt the Subcommittee will be interested in the views of the Work Glove Manufacturers Association on this matter and the following comments are respectfully offered.

It is our understanding that under "informal entry" procedures, more flexible customs procedures prevail in that no bond is required and the shipment is not subject to formal appraisement by the U.S. Customs Service. While the customs officer clearing the shipment, of course, has the right to examine the contents of all parcels, ordinarily under "informal entry", he simply releases the articles to the importer, with payment of duty based entirely on the shipping documents and the statements made therein as to quantities and values of the goods.

Increasing the value of goods eligible for informal customs entry to a $600 maximum may simplify customs procedures but we believe it will also generate new problems with regard to the proper enforcement of customs regulations by increasing the risk of deliberate evasion of duties by importers through false or inaccurate statements as to quantities and values of articles in a particular shipment.

Expansion in the use of informal entry procedures also would create hardships for import-sensitive industries like the work glove industry which already is facing injurious competition from low-wage, low-cost foreign production benefiting also from direct foreign government subsidies and other unfair trade practices. Domestic manufacturers of all work gloves (including gloves of cotton leather, part leather and coated and partially coated gloves) have been cruelly buffeted by such imports but in cotton work gloves, there is a particularly distressing import problem caused by disruptive imports since 1973 from the People's Republic of China. The International Trade Commission currently is conducting an investigation into this matter, pursuant to Section 406(a) of the Trade Act of 1974 in connection with a petition for import relief from the Work Glove Manufacturers Association.

For any domestic industry producing a low value product which embodies a heavy labor cost element, extension of informal entry procedures to imports up to $600 in value is fraught with danger. For one thing, it would mean looser customs controls over a greater inflow of imports classified under TSUSA items covered under the category and consultation levels specified in bilateral textile and apparel agreements negotiated by the U.S. with supply countries. This would undermine effective implementation of the government's textile and apparel import program which encompasses also woven and knit cotton work glove imports under TSUSA items 704.4010, 704.4502, 704.4504fi 704.4506, and 704.4508. These are also the same TSUSA items involved in the Section 406 case now before the International Trade Commission.

Under the informal entry procedure, shipments up to $250 in value are simply not recorded in U.S. statistics. To this extent U.S. import statistics for work gloves already are significantly skewed, thus, underestimating the full impact of imports in the domestic industry. Were shipments of work gloves up to $600 in value to be similarly excluded from the import statistics it would further mask the the real extent of import injury suffered by this industry. For the first 10 months of 1977, for example, cotton work glove imports had an average unit value of $1.99 per dozen pair. Raising the informal entry provision to $600 would mean that any single shipments containing up to 300 dozen pairs of cotton gloves could go unrecorded in the import statistics.

If the International Trade Commission imposes quotas on cotton work glove imports from the People's Republic of China, an increase in the value of shipments authorized informal entry would complicate and undermine the import restraint program put into place for such work gloves. It would also interfere with the program which would need to be instituted for monitoring imports of cotton work gloves from all countries.

In the light of the above circumstances, it is earnestly hoped that the Subcommittee will not consider any proposal to increase the informal entry provision beyond the current $250 maximum value. In its present form, the proposed legislation before the Subcommittee is unobjectionable.

W. M. STONE & CO., INC.,
Norfolk, Va., January 30, 1978.

Hon. HARRY F. BYRD, Jr.,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR BYRD: W. M. Stone & Company, Inc. is a Customs House Brokerage-Foreign Freight Forwarding firm established by the grandfather of this writer in 1907. His license number 17 issued January 25, 1915 must have been one of the earlier ones issued. My father and this writer are currently active in the business and each is a licensed Customs House Broker.

We understand hearings will commence February 1, 1978 on H.R. 8149. We further understand that Section 114 concerns license renewals of Customs House Brokers. While the balance of this bill appears generally beneficial to Customs House Brokers and to the import community, we feel Section 114 needs review. It is our understanding that this section requires Customs House Brokers apply for renewal of their licenses every three years. We can see absolutely no justification for this requirement. The law and accompanying regulations change infrequently and could not be the reason for the Treasury Department continuing to test our knowledge of these laws and regulations periodically. If the sole purpose is to secure information for Customs as to whether or where we are in business, there must be alternate suggestions for supplying Customs with this information.

Each Customs House should maintain a list for the public that indicates the available Customs House Brokers licensed to transact business in that district. It should be the responsibility of the District Director to establish and maintain that list and also advise the region who in turn can advise Customs headquarters.

The writer will not be able to attend hearings which we understand are to commence February 1 but he would appreciate this letter being made part of the record.

Very truly yours,

MEADE G. STONE, Jr., *Vice-President.*

STATEMENT OF CHARLES H. STEIN ON BEHALF OF HARDWICKE COS., INC.

I am Charles H. Stein, Chairman of Hardwicke Companies Incorporated, 9 W. 57th Street, New York City. Through subsidiaries, Hardwicke sells tax and duty free merchandise to persons leaving the United States, pursuant to various U.S. Customs and Treasury licenses.

We are in favor of the provisions of H.R. 8149[1] and the Committee's efforts to reform and improve customs laws and procedures as incorporated therein. Hardwicke's operations would not be directly affected by the proposed legislation, but we are interested in certain aspects of that litigation which we feel are necessary to avoid problems and disputes among various governmental authorities which might adversely affect the whole duty free business. We think the provisions of Section 203(a), relating to the personal exemption amendments to Title 8 of the Tariff Schedules, are particularly needed.

Most countries in the world permit entering adult travelers, resident or non-resident, to bring one or two liters of alcoholic beverages into the country with them. The United States is one of the few countries which distinguishes in this respect between resident and non-residents. Its present allowance of a total of 5 quarts (1 gallon as gifts and one quart for personal use) to non-residents is a larger allowance than that given to any group by any other country, and discriminates against American residents, who can bring in only 1 quart.

This situation of discrimination by American law against American residents arose by inadvertence and is generally corrected by the proposed legislation. My statement relates (1) how this strange situation arose and (2) why it is important that it be corrected. It also (3) suggests minor changes to effect more fully the purpose of the proposed legislation in this regard.

I. HOW THE SITUATION AROSE

In 1961, U.S. residents could bring in 1 gallon of liquor duty free, while non-residents could bring in only 1 quart. To equalize the situation as a gesture of good will to foreign visitors, non-residents were permitted by 1961 amendment to bring in 1 gallon as gifts in addition to the 1 quart for personal use.

But when the amount for residents was reduced from 1 gallon to 1 quart in 1965, Congress neglected, apparently inadvertently, to continue the equalization, and did not correspondingly reduce the allowance for non-residents.

A chart showing the history of changes in amounts of liquor and tobacco which may be brought back duty-free by residents and non-residents is annexed hereto as Exhibit A. The chart addresses itself only to the history of the significant provisions, and excludes those provisions relating solely to the Virgin Islands and other insular possessions. The chart also shows the effect of H.R. 8149 and of the modifications suggested herein.

(1) This provision was an amendment to legislation introduced in the House (H.R. 5852) to provide for the free entry of a towing carriage for the use of the University of Michigan. It passed in the House and was referred to the Senate Committee on Finance which reported the Bill out with the non-resident gift amendment.

(2) Senator Jacob Javits of New York had during the prior three years sponsored bills similar to this non-resident gift provision. The essence of these prior bills became the amendment to H.R. 5852 when reported out by the Senate Finance Committee.

(3) Senator Javits, in support of this amendment, stated as its purpose: "The bill thereby gives *equal treatment* to tourists from abroad with our own tourists who return from abroad." (107 Cong. Rec. 18453, September, 1961.)

(4) When the House accepted the Senate amendment to H.R. 5852, Representative Wilbur Mills stated:

"In reporting on this amendment to the Committee on Finance, the executive departments indicated their support of the proposal, and expressed the opinion that to give nonresident travelers a more adequate duty-free allowance for gifts would contribute to better public international relations and to some increased international travel, with little, if any, loss of revenue. (107 Cong. Rec. 19538-9, Sept. 14, 1961.)

[1] H.R. 8149 was passed by the House on October 17, 1977 by a vote of 386 to 11, and was referred to the Senate Committee on Finance on October 19.

(5) Statement by Rep. Mason in the House in support of the Senate amendment:

"The Senate Finance Committee in its consideration of this legislation approved an amendment to permit visitors from abroad to bring $100 worth of gifts into the United States free of duty. Existing law allows such a visitor to bring only $10 worth of gifts into the United States duty free. The executive departments reported favorably to the Finance Committee on this amendment. This amendment tends to give similar treatment to individuals coming into the United States as tourists as is accorded to our own citizens who are returning tourists from abroad." (107 Cong. Rec. 19539, Sept. 14, 1961.)

(6) Senate Report No. 851 cited a report from the Department of Commerce which included the following statement:

"This Department favors enactment of S. 1280 (the original text of the amendment) as an element in the encouragement of foreign travel to the United States.

"Many visitors from abroad enjoy the hospitality of American families during all or part of their stay, and such visitors quite naturally feel that they should at least offer a gift in return for the hospitality received. To some extent, the limitations on dollar exchange allowed to them by their governments make it impracticable for foreign visitors to purchase gifts here. On the other hand, gifts from the home country can, of course, be purchased with local currency, and more importantly have the added attraction of being more personal and characteristic in nature. To give nonresident travelers a more adequate duty-free allowance for gifts, as proposed, would, we believe, contribute to better public international relations and to some increased international travel, with little, if any, loss of revenue."

(1) This provision was part of general legislation in 1965 to amend the tariff schedules of the United States with respect to the duty-free exemption for returning residents and for other purposes (H.R. 8147).

The bill dealt with the then existing $100 limitation on duty-free items for residents returning to the United States. The crux of the Congressional debate was centered on the exact picture of the balance-of-payments problem. The alcoholic beverage allowance provision was part of that package. Generally the allowance was reduced from one gallon to one quart and a provision was inserted that it was available only if the person using that allowance had attained the age of 21.

There was no discussion or change of the 1961 nonresident gift legislation even though Senator Javits, the sponsor of that prior legislation, participated in the Senate debate on the 1965 Act, and even though the reason for the 1965 reduction of resident allowances would have applied equally to nonresidents.

(2) Senate Report (Finance Committee) No. 376 dated June 28, 1965 stated the following as the general purpose of the legislation:

"This bill, by restricting still further the duty-free privilege of returning residents, should make a significant contribution to our efforts to achieve balance-of-payments savings, and will let the world know we are determined to combat the present situation on all fronts.

The same report stated the following in particular with respect to the alcoholic beverage allowance:

"The present rate of $10.50 per proof gallon on distilled spirits and the extensive use of the alcoholic beverage privilege in connection with the returning resident exemption results in a considerable loss of revenue, aside from the ordinary customs duty loss ($1.02 or $1.25 per proof gallon on whisky). This factor and the fact that each person in a family of whatever age, including infants, returning from abroad is individually entitled to the full amount of the exemption, including the gallon of alcoholic beverages, have persuaded your committee, as they persuaded the House, to reduce the quantity of alcoholic beverages that may be entered free of duty and tax under the returning resident exemption to 1 quart, but only if the person at the time of arrival in the United States, has attained age 21."

(3) On the floor of the House, Rep. Wilbur Mills, addressing the alcoholic beverage allowance provision, stated the same reasons as set forth in the above quote from the Senate Report. That is, he placed the emphasis on the "considerable loss of revenue" which is sustained because of the loss of the proof gallon tax on alcohol. He stated:

"When you consider this [loss of proof gallon tax] and also the fact that in the case of a family, each person, of whatever age, is entitled to the full amount

of the exemption, including the 1-gallon allowance for alcoholic beverages, the committee concluded that it was time to reduce this privilege. Thus, it is recommending not only the reduction in the liquor allowance from 1 gallon to 1 quart but also to allow the liquor exemption only in the case of persons who at the time of arrival in the United States have reached the age of 21." (111 Cong. Rec. 12624, June 7, 1965.)

(4) Representative Joel Broyhill (Rep. Va.) stated the following:

"Another important aspect of the bill is that it limits the duty exemption, so far as liquor is concerned, to importations not in excess of one quart and allows this exemption only for liquor imported by an adult. This is a change from the existing law in which every returning resident is allowed a duty-free and tax-free gallon of liquor for himself and all of the members of his family who accompany him, regardless of their ages.

"There are several reasons to support the changes which will be made by this aspect of the bill. One reason, and the most important, is that this change is a measure calculated to serve the basic purpose of the bill; to help our balance-of-payments position. Importations of liquor are among the most numerous brought in under the present duty exemption law. This is so because the duty and the internal revenue tax saving when the exemption is used is so large in terms of the value of the liquor."

(5) House Report (Committee on Ways and Means) No. 366, dated May 25, 1965, in addressing the alcoholic beverage allowance, reiterated almost verbatim the language in the Senate Report mentioned above. The hearings before the House Ways and Means Committee had centered around the balance of payments problem and did not directly consider the alcoholic beverage allowance section.

In that House report, the "Separate Views of the Republicans" expressed their support for this reduction, and that statement contained the following:

"The duty-free exemption was intended as a convenience for the American tourist, recognizing that most persons traveling abroad will wish to bring back mementos or other incidental purchases made in the course of their visit. We see no justification for permitting the returning traveler to bring in free of duty and without the payment of the excise tax the equivalent of 1 gallon of liquor for each member of his family who may be traveling with him, irrespective of age."

The "Separate Views of the Hon. Joel T. Broyhill" stated the following:

"For many years, we have had a situation where the returning traveler has been persuaded to buy articles which are readily available in the United States, such as watches, liquor, linens, and perfume, solely because such articles may be sold abroad free of any duty and free of any U.S. tax. While the amount of such purchases may not be significient, in relation to the overall U.S. consumption of the article in question, I see no reason why such purchases should be encouraged by an exemption from duty. I would prefer to see the American merchant get this business."

(6) There is a reference in the Senate debate on the alcoholic beverage allowance that prior to the contemplated change in law, a "babe in arms" could bring back a gallon of liquor. This was one reason why the new legislation included a provision restricting the entry of liquor under the duty-free provision to adults who have attained the age of 21.

(7) It appears that the general legislative purposes of the liquor allowance reduction was: (i) loss of revenue; and (ii) the balance-of-payments problem.

In the Senate debate, there was some discussion of neighboring countries such as Mexico and Canada for which the United States has surplus balance of payments. There was also discussion of Mexicans buying products in United States border towns. However, there was no discussion of the prior nonresident gift legislation in 1961 or that the rationale for reducing the resident allowance also applied to non-residents entering the United States.

II. WHY IT IS IMPORTANT TO CORRECT THE SITUATION

(A) The standard Federal tax on a gallon of liquor is $10.50. In addition to not paying the duty (which varies, depending on type, but averages about $1.25), the non-resident is not required to pay the Federal tax on the "gift gallon" that is brought into the United States. The effect on U.S. tax revenues is the loss of many millions of dollars.

(B) Consideration by this committee of the provisions of Section 203(a) of H.R. 8149 comes at a significant time. The government of Canada has recently permitted, for the first time, the establishment of duty-free shops at all highway points on the U.S.-Canada border. Seven stores in Quebec Province will soon be opening, with openings in other province to follow.

Under the current provisions of our tariff law, once such stores begin operating, every entering Canadian motorist will have the opportunity, which will no doubt be well advertised, to purchase duty free at these stores up to five quarts of liquor (one quart by adults for personal use, four quarters by adults or minors for "gifts"), or up to about 34 cartons of cigarettes (at current prices) to bring into the United States. These purchases can be made free of U.S. duty and Canadian excise tax, and thus at approximately 50 percent of the U.S. prices. An American resident returning from a visit to Canada will be able to purchase duty free up to 34 cartons of cigarettes (at current prices). An non-resident alien is allowed to bring in 1½ cartons for personal use, plus an unlimited amount within the $100 exemption limit for gifts.

To avoid a huge influx of duty-free liquor and cigarettes in violation of the law, while allowing the imports permitted by present law, will require cumbersome new procedures by the Customs Department. Such cumbersome procedures can be avoided by making liquor and tobacco allowances for residents and non-residents clear and uniform.

At the present time, Customs facilities at border points are understaffed and busy with the normal collection of duties as well as the enormously serious problem of stopping the smuggling of illegal drugs. To add new procedures to the present work load would complicate these far more important tasks.

(C) The duty free operation being established in Canada, and which one can expect will also be established in Mexico, will result in a great amount of duty free merchandise entering the United States unless the proposed changes in non-resident allowances are made. In addition to affecting the U.S. revenues and increasing needed customs supervision, these operations will affect revenues of the border States, such as New York and Texas, and create problems for those states in enforcing their alcohol laws. Since a Canadian can under present law bring 5 quarts or $100 worth of cigarettes into the United States duty free, but will have to pay taxes to take back more than 1 quart or one carton, some entering non-residents can be expected to illegally dispose of the excess alcohol and tobacco into a black market in the U.S. border States.

(D) Once alcohol and cigarette purchases are brought into the United States, there is no substantial enforcement machinery available to prevent them from being surreptitiously sold or bartered for merchandise at American retail stores or to U.S. citizens in violation of federal and State laws.

A large portion of border crossings by Canadians are for the principal purpose of saving money by shopping in U.S. stores. It is obvious that "black market" opportunities would be available to Canadians if they were to purchase duty free "gift gallons" and cigarettes as they are about to enter the United States. For example, a Canadian couple bound for New York State to shop could, under the present exemption, purchase twelve bottles of whiskey at the Quebec duty free store for one-half the New York State retail price of those same bottles. Alternatively, the same couple could bring into New York a total of 68 cartons (at current prices) of cigarettes within their $100 exemption. In either instance, if the foreign couple wished, a considerable profit could be made upon resale or barter—at the expense of American taxpayers.

The temptation to abuse the "bona-fide gifts" requirement would be strong, especially since no effort is now made to enforce compliance with this requirement except through brief oral declaration and, as a practical matter, no enforcement effort could ever be very effective.

A Canadian, returning to Canada from a visit to the United States, is permitted to bring to Canada only one quart of duty free liquor and one carton of cigarettes. Thus, Canadians would have an additional incentive to dispose of any additional liquor or cigarettes in their possession before returning home.

Of course, an established and continuing "black market" in border states would attract the attentions of organized crime, with other deleterious effects upon the affected areas.

III. SUGGESTED CHANGES

(A) The amendment to Item 812.20, should substitute "100 cigars" in lieu of "50 cigars" in order to equalize the number of cigars which residents and non-residents may bring into the United States duty-free.

(B) The amendment to Item 812.20 should strike out all references to "smoking tobacco", again to equalize the resident and non-resident allowances.

(C) The amendment to Item 812.20 should strike out the words "for his own consumption" and insert in lieu thereof "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." This would equalize the definition of the words "personal use" for residents and non-residents.

(D) In the amendment to Item 812.25 (Section 203(a)(2)), the words "or cigarettes or cigars" should be substituted in lieu of "and cigarettes" and the words "but including not more than 100 cigars" should be deleted, to correct apparent inadvertant oversights.

Prior to being reported out by the House Committee on Ways and Means, H.R. 8149 did not exclude cigarettes from the non-resident gift allowance. Absent such exclusion, U.S. residents would have a cigarette limitation, but entering aliens would not. H.R. 8149, as reported out, was amended to exclude cigarettes from the non-resident gift allowance. The disjunctive form "or cigarettes" should more properly have been inserted after "beverages" instead of "and cigarettes".

The suggested change related to cigars, *i.e.*, similarly excluding cigars from the gift exemption, would accomplish equality so that residents could bring in up to 100 cigars for personal use, and non-residents can bring in up to 100 cigars under the amendment suggested in III. (A) above.

(E) The amendments to Item 812.20 and 812.25 should provide that the exemptions are available only "if accompanying one who has attained the age of 21" so that resident and non-resident provisions should be alike.

(F) In the amendment to Item 813.30 (Section 203(a)(5)) the words "200 cigarettes or" should be inserted in lieu of "200 cigarettes and" to conform the residents' tobacco limitation to that of non-residents.

(G) Section 303(b) provides that the amendments made by Section 203 "with respect to metric conversion apply to merchandise entered on or after January 1, 1980", and all other provisions will apply to persons arriving in the United States on or after the 30th day after enactment of this Act. There is no reason why this corrective legislation should not apply across the board thirty days after enactment. Since the metric sizes are slightly larger than the non-metric ones, there will be no problem complying with the new rules if the old sizes are used. Moreover, much of the liquor and tobacco industry already packages its products in metric sizes and there is thus no need to await the full adoption of metrication.

History of significant U.S. allowances of duty-free purchases abroad together with comparison of proposed changes[1]

Year	Resident	Nonresident	Authority
1930	Dollar limitation, $100: Liquor, not specified; tobacco, not specified. (For personal or household use or as souvenirs or curios, but not brought on commission or intended for sale.)	Personal effects	Resident: Sec. 1798, Tariff Act of 1930.
1936	Dollar limitation, $100—With maximum: Liquor, one wine-gallon; tobacco, not specified. (For personal use.)	No change	Paragraph 1798, Tariff Act of 1930, as amended by sec. 337 of the Liquor Tax Administration Act, approved June 26, 1936, 46 Stat. 1959.
1937	Dollar limitation, $100—With maximum: Liquor, one wine-gallon; tobacco, not specified. (For personal use.)	Dollar limitation, none: Liquor, one quart; tobacco, 50 cigars, or 300 cigarettes, or 3 lb tobacco. (When brought in by adult nonresident, it not for sale or other commercial use—for personal use.)	Resident: Regulation issued by Secretary of Treasury, 1937, 2 Fed. Reg. 1538–1539; see, e.g. 19 C.F.R. sec, 8,20 (b) (1939); 19 C.F.R. sec, 10,18 (1949), (1953). Nonresident: regulations issued by Secretary of Treasury, 1937, 2 Fed. Reg. 1538–1539 on authority of sec. 498 (a) (6) of Tariff Act (Secretary of Treasury authorized to prescribe rules reentry of articles carried on person or in baggage etc.). In later years, see, e.g., 19 C.F.R. sec. 8,20(a) (1939), 19 C.F.R. sec. 10.18 (1949), (1953).
1948	Dollar limitation: Added additional $300 to $100 limitation, if resident remained abroad more than 12 days.	No change	Sec. 42(a), 62 Stat. 242. (Post-World War II legislation; to give dollars to countries which need dollars.
1949	Dollar limitation: Added additional $100 (total $500).	do	Sec. 9, 63 Stat. 896. (Post World War II legislation; to give dollars to countries which need dollars.)
As of 1953	Dollar limitation, $500—With maximum: Liquor, 1 wine-gallon; tobacco, 100 cigars. (For personal use.) Note; Limitations which were in regulations issued in 1937 relating to residents had been inserted into par. 1798 of Tariff Act of 1930 with slight changes.	Liquor, 1 quart; tobacco, 50 cigars, or 300 cigarettes, or 3 lb. tobacco. (When brought in by adult nonresident, if not for sale or other commercial use. For personal use.)	Resident: Par. 1798–(c)(2) Tariff Act of 1930. Non Resident: Customs Regulation 10.18(e).
As of Sept. 10, 1961	Dollar limitation reduced to $100.		Balance-of-payments problem.
As of Oct. 21, 1961	Dollar limitation, $100—With maximum: Liquor, 1 wine-gallon; tobacco, 100 cigars. (For personal use.)	Dollar limitation, $100 on gifts; Liquor, 1 quart (by adult-personal use); and 1 wine gallon by adult or child if bonafide gift (subject to $100 limitation); tobacco, 50 cigars, or 300 cigarettes, or 3 lb (personal use); and 100 cigars (bonafide gift subject to $100 limitation).	Resident: Para. 1798–(c)(2). Non resident: Personal use: Customs Reg. 10.18 (e); gift: Added by Public Law 87–261, 75 Stat. 541.

[1] As of Aug. 31, 1963	Dollar limitation, $100—With maximum: Liquor, 1 wine-gallon; tobacco, 100 cigars. (For personal use—Personal use defined as "for his personal or household use, but not imported for the account of any other person nor intended for sale".) Note: All provisions codified into Trade Classification Act of 1962.	No change	Sch. 8, Trade Classification Act of 1962. Residents: Items 813.30, 813.31, 813.32, 915.30. Non residents: Items 812.10 (personal use) and 812.25 (gifts).
As of Oct. 1, 1965 to date	Dollar limitation, $100—With maximum: Liquor, 1 quart; tobacco, 100 cigars. (For personal use—if accompanying individual who has attained the age of 21. Personal use defined as "for his personal or household use, but not imported for the account of any other person nor intended for sale".)	do	Public Law 89-62; 79 Stat. 208. Residents: Items 813.30. (Reduction of residents duty free liquor allowance to one quart.)
Proposed under H.R. 8149	Dollar limitation, $300—With maximum: Liquor, 1 liter; tobacco, 100 cigars and 200 cigarettes. (Accompanying one who has attained the age of 21. Personal use defined as "for his personal or household use, but not imported for the account of any other person nor intended for sale".)	Dollar limitation, $100 on gifts: Liquor, 1 liter (by adult-personal use); $100 gift allowance may not include liquor. Tobacco, 50 cigars, or 200 cigars, or 2 kg (personal use); and 100 cigars (bonafide gift subject to $100 limitation); $100 gift allowance may not include cigarettes. (Effective date: (1) Jan. 1, 1980 with respect to metric conversion; (2) 30 days after enactment with respect to all other provisions.)	
Suggested changes to H.R. 8149.	Dollar limitation, $300	Dollar limitation, $100 on gifts.)	
Additions—*in italic;* deletions [bracketed].	With maximum: Liquor, 1 liter; tobacco, 100 cigars [and] *or* 200 cigarettes. (Change from "and" to "or" to conform to nonresident restriction); accompanying one who has attained the age of 21 (personal use).	Liquor, 1 liter [by adult] *accompanying one who has attained the age of 21;* $100 gift allowance may not include liquor. Tobacco [50] 100 cigars or 200 cigarettes [or 2 kg] (personal use) [and *or* 100 cigars (bonafide gift) subject to $100 limitation]; $100 gift allowance may not include cigarettes *or cigars; accompanying one who has attained the age of 21.* Personal use is defined as "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", which is the present restriction for residents, but not for non-residents. This is a change in the non-resident personal use section to conform to the resident personal use section. Effective date: [(1) Jan. 1, 1980 with respect to metric conversion] [(2)] 30 days after enactment with respect to all [other] provisions.	

[1] Allowances with respect to U.S. insular possessions are not included, in the interests of simplicity of presentation.

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STATEMENT OF PROF. FREDERICK W. HESS, UNIVERSITY OF MISSOURI, KANSAS CITY SCHOOL OF LAW

My name is Frederick W. Hess. I express my appreciation to the subcommittee for this opportunity to present my views on H.R. 8149.

I am a professor of law; my teaching and research areas include Administrative Law, International Law and various fields of regulation of international trade, to include particularly Customs Law. I am admitted to practice before the U.S. Customs Court and the U.S. Court of Customs and Patent Appeals, and have in Customs cases since 1962. I have appeared before the U.S. Customs Service and its field organizations in a variety of administrative matters, to include a number of penalty cases, and am familiar with its practices and procedures in their field of Customs Law.

I have been and am still active in trade organizations in my area. I am a past president of the International Trade Club of Greater Kansas City, and am still a member of its board of directors as well as of its Customs committee. I am a past chairman of the International Law and Foreign Trade Committee of The Missouri Bar. I was a member of the Kansas City Regional Export Expansion Council of the U.S. Department of Commerce for most of its existence, and served two terms in its successor body, the Missouri District Export Expansion Council. I am a former member of the Board of Directors of the Kansas City Chamber of Commerce and served on its Foreign Trade Council.

All the views set forth below are my personal views and do not necessarily represent those of any of the organizations with which I am or have been connected.

My comments are confined to that part of H.R. 8149 which is entitled (sec. 101) the "Customs Procedural Reform Act of 1977". They are based on the text passed by the House of Representatives on October 17, 1977, which is before your Subcommittee.

As a parenthetical remark I note that the above text of H.R. 8149 differs in one minor way from that of accompanying House of Representatives Report 95–621: Whereas in the latter there appears an amendment in sec. 315(d), Tariff Act of 1930 (19 USC 1315(d)), by substituting "Federal Register" for "Weekly Treasury Decisions", this change seems to have been dropped in the version adopted by the House. I welcome this deletion and hope it remains deleted because the Weekly Treasury Decisions (re-named "Customs Bulletin" in 1967) are regularly read by the Importing Community, Whereas only few read the Federal Register, so that the preservation of the status quo assures that all changes in administrative practice will promptly be noted by all concerned.

My first comment applies to the proposed legislation as a whole. Undoubtedly it is a step in the right direction. It will curb administrative excesses, and violations of due process, admitted to exist (see House Report 95–621, on pages 2 and 10), and thus assure that the customs laws will be enforced firmly, but with greater fairness than what was hitherto the case.

The recommendations submitted in the following are intended to further reduce opportunities for arbitrariness and provide greater certitude to importers.

1. The determination of the domestic value of seized merchandise is at present required to be performed by sec. 606, Tariff Act of 1930, as amended (19 USC 1606). I consider it an oversight that, contrary to the multitudinous definitions of dutiable value, this type value has never been defined by statute. I have no quarrel with the definition cited by the House Report (page 15, Report 95–621), but it is only a partial statement of the Customs Regulation quoted (sec. 162.43, 19 CFR). Because under the proposed legislation the domestic value has a number of applications as to the amount of claim, or in fraud cases the amount of penalty, I consider it imperative that this important enforcement tool become anchored in the statute, and not in any regulation.

In my experience there has been a tendency among Customs field personnel to minimize the importance of the domestic (forfeiture) value, because it is frequently abandoned upon mitigation, and because of this view, there has been the appearance of haphazard determination of the domestic value. The instructions set forth on pp. 15/16 should be incorporated into the statute and, as a matter of due process, the importer should be advised as to how domestic value was arrived at in specific applications.

2. In proposed sec. 592(a) of H.R. 8149 there is missing a statutory definition of the terms "fraud", "gross negligence" and "negligence", although these terms

are crucial as to the assessment of penalties, the burden of proof in judicial proceedings and the application of the proper statute of limitations. These terms were defined in Treasury Decision 74-287, 8 Customs Bulletin 553 (1974), also published in 39 FR 39061. It would avoid much waste of time and guesswork on the part of the already overburdened U.S. District Courts if these administrative definitions were replaced with statutory definitions.

3. In proposed sec. 592(f), in connection with the "voluntary disclosure" procedure, the burden of proof of lack of knowledge of an ongoing investigation is placed on the target of such investigation. This burden is rarely, if ever, sustainable. Customs is not in the habit of advising importers that they are being investigated for possible violations of the law, and importers may be unaware of such investigations until they are faced with a penalty notice. In the past the fact that entries were not liquidated for an excessive period might have occasionally served as a warning, but with the institution of liquidations prior to completion of an investigation by Treasury Decision 76-112, now incorporated as sec. 162.41(c) into the Customs Regulations (19 CFR), even this possibility has been largely removed. For this reason I recommend that the requirement of sustaining the burden of proof be dropped, and the procedure presently provided by sec. 171(a)(1), Customs Regulations (19 CFR) continue to be applied.

4. I fully concur with the statement allegedly made by Customs to the House Committee (see page 15, House of Representatives Report 95-621, third paragraph) "that an amendment to state the reasons for its actions, is desirable". However, the practice of Customs belies this readiness to give reasons. Moreover, Customs would already by existing law (5 USC 555(e)) be required to give reasons, but I have not noted in any of its penalty dispositions that it ever gave any reasons. Moreover, the proposed statutory language of sec. 592(c) ignores the suggestion attributed to Customs as to the requirement for reasons. I therefore recommend that Customs be required to give reasons for its final disposition of a penalty case, to include all elements thereof (e.g. classification as fraud, gross negligence or negligence; non-acceptance of contentions of petitioner in a petition for mitigation under 19 USC 1618). Since under present Customs Regulations (sec. 171.33, 19 CFR) a supplemental petition met with a particular disposition, that the petitioner, in a proper case. could clear up factual misapprehensions on the part of the adjudicating officials. To leave such matters for eventual judicial review would, in most circumstances, mean an unnecessary burden for the courts.

5. I am gravely concerned by the proposed amendment of sec. 641 of the Tariff Act of 1930, 19 USC 1641, by sec. 114 of H.R. 8149. The factual explanation given (see bottom page 2 and top of page 3 of House Report 95-621) from my experience, is simply not in accord with the facts. If this explanation were to be believed, Customs would surely admit that it cannot control a relative handful of Customhouse Brokers. Sec. 641(b), Tariff Act of 1930 (19 USC 1641(b)), as amplified by Part III, 19 CFR, gives Customs adequate tools to exercise control. I have never met a Customhouse Broker who has escaped such control.

As every profession, Customhouse Brokers are not without their "black sheep". However, Customs has always been successful to spot them and take the necessary action against them.

I am fearful, that the language of sec. 114 of H.R. 8149 will open the door to abuse. While it preserves the procedural safeguards now contained in sec. 641(b)), Tariff Act of 1930 (19 USC 1641(b)), I cannot dismiss the belief that Customs may, instead of resorting to a disciplinary proceeding, simply choose not to renew a Customhouse Broker's license. The language of proposed sec. 114 of H.R. 8149 lacks all standards by which renewal of a license is to be guided. Therefore, any reason or no reason would be sufficient since none is required. The fact that the House Committee had to ask Customs for "its report on customhouse brokers when it is available" (see p. 20, House of Representatives Report 95-621) implies that no evidence was before the Committee when it adopted this language, other than possibly some vague and conclusionary statements by unidentified individuals. Certainly this should not be sufficient to jeopardize the livelihood of Brokers.

A Customhouse Broker is a person, partnership or corporation who by virtue of the license is authorized to conduct customs business in behalf of others before the Treasury Department. In my opinion, under the present language of sec. 114 of H.R. 8149, a broker would understandably be more concerned

about the renewal of his license than about the vigorous representation of the interests of his clients; for instance, a broker may not wish to argue too vigorously with an import specialist about the proper appraisement or classification of merchandise imported by his client for fear to be labelled a "trouble-maker", regardless whether or not the import specialist was clearly wrong about his interpretation of the law.

To avoid this danger, I recommend one of the following two alternatives:

(*a*) Eliminate proposed sec. 114 of H.R. 8149 entirely. As there was no factual evidence before the House Committee, this would seem to me the preferable course.

(*b*) Add language to the proposad sec. 114(2) of H.R. 8149 to the effect that renewal of a license may be denied only for reasons which would justify a proceeding for revocation or suspension of a license under present sec. 641(b), Tariff Act of 1930 (19 USC 1641), and that such denial is subject to the same judicial review now provided under the said statute.

NATIONAL COMMITTEE ON INTERNATIONAL TRADE DOCUMENTATION,
New York, N.Y., February 10, 1978.

Hon. ABRAHAM RIBICOFF,
Chairman, Subcommittee on International Trade of the Committee on Finance, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

DEAR SENATOR RIBICOFF: The National Committee on International Trade Documentation wishes to affirm its strong support for the enactment of H.R. 8149, the Customs Procedural Reform Act of 1977, which is now before your Subcommittee for consideration.

The National Committee on International Trade Documentation (NCITD) is the U.S. organization dedicated to simplifying international trade documents, practices and procedures—all toward the goal of making it possible to exchange the necessary trade information more accurately, efficiently, and economically. This is a commercial and business organization consisting of more than 250 member companies who consistently trade and ship internationally. NCITD is representative of exporters, importers, manufacturers, suppliers, forwarders, agents, carriers of all types, banks, insurance interests, port authorities, associations—and, in fact, most of those interests that give the leadership to U.S. international trade. A roster of its memberships is enclosed herewith.

We have followed, and supported the "Customs Procedural Reform Act" since its early inception and are convinced that it represents a philosophy of change and up-dating of reporting and procedures that is long past due. As passed by the House of Representatives, H.R. 9149 includes Titles on Customs Procedural Reform, Customs Simplification, Customs Service Appropriations Authorization, and Separatability of Provisions. Our organization fully supports the Bill and each of these specific Titles.

H.R. 8149 represents the first substantive customs administrative reform legislation in more than 20 years and NCITD urges its early passage.

Respectfully yours,

ARTHUR E. BAYLIS,
Executive Director.
W. G. PENNELL,
Chairman, NCITD Import Documentation Committee.

MAN-MADE FIBER PRODUCERS ASSOCIATION, INC.,
Washington, D.C., February 13, 1978.

Hon. ABRAHAM A. RIBICOFF,
Chairman, Subcommittee on International Trade, Committee on Finance, Senate Office Building, Washington, D.C.

DEAR SENATOR RIBICOFF: The Man-Made Fiber Producers Association is a trade association representing the domestic manufacturers of man-made fibers. Our members produce over 90 percent of the man-made fibers manufactured in this country; and man-made fibers, in turn, account for more than 70 percent of the fibers consumed in the American textile industry.

Our Association is in support of H.R. 8149, the Customs Procedural Reform Act of 1977, as passed by the House of Representatives. However, we are con-

cerned with the possible adverse effects that a proposal made by the Administration, during your hearings, would have on textile imports. The American fiber, textile and apparel industry provides jobs for two and one-half million Americans, but our industry is severely impacted by imports from low-wage countries. As you know, the United States and some 50 other countries have signed the Multifiber Arrangement (MFA) under the auspices of the General Agreement on Tariffs and Trade (GATT). Under the MFA, there have been 18 bilateral agreements negotiated between the United States and her trading partners. For these agreements to be effectively administered there must be efficient enforcement of customs regulations and availability of timely and accurate import data.

The Man-Made Fiber Producers Association objects to the proposal which would increase from $250 to $600 the limitation for informal entries. This increase would allow large quantities of apparel or textile items to be imported into this country without being counted against the restraint levels negotiated in the bilateral agreements. It must be pointed out that $600 represents a substantial shipment of many textile and apparel products and, under this provision, importers might find it worthwhile to ship large quantities of products into this country in $600 lots. Such a provision, therefore, could create major market disruption in this country and severely hamper the efforts of our government to enforce and administer the bilateral agreements.

This Association appreciates the opportunity to comment for the record on this bill and we are prepared to provide any more information you may wish.

Sincerely,

CHARLIE W. JONES.

STATEMENT OF NICHOLAS H. ZUMAS, ON BEHALF OF AMMEX-CHAMPLAIN CO.

My name is Nicholas H. Zumas, 1140 Connecticut Avenue, Washington, D.C. I represent the Ammex-Champlain Company in Washington. With me is Mr. James J. Murray, 250 Park Avenue, New York. Mr. Murray is counsel to Ammex-Champlain.

Ammex-Champlain is a small American company located in Champlain, New York and operates three duty-free sales outlets in up state New York, all in the vicinicty of the border crossing at Champlain, N.Y. It sells duty free goods primarily to Americans visiting Canada and to Canadian citizens returning to Canada after their visit to the United States.

We endorse the provisions of H.R. 8149, passed by the House 386 to 11, as a sound and meaningful way to reform and improve customs laws and procedures.

We particularly endorse those provisions of Section 203 (a) relating to the personal exemption amendments to Title 8 of the Tariff Schedules.

Your attention is called to the fact that Committee on Finance approved an identical provision to Section 203 (a) as an amendment to H.R. 11796 on December 14, 1974. For ready reference the pertinent portions of H.R. 11796 and its accompanying report are appended hereto as Attachment A and Attachment B. Unfortunately there was no opportunity for the Senate to vote on the amendment in the final days of the 93rd Congress.

In addition to adopting the metric system, the changes proposed by Section 203 (a) would equalize the personal liquor and cigarette duty-free exemption between returning U.S. residents and non-resident aliens. The effect of Section 203 (a) would be to limit all travelers entering the United States to the duty-free purcase of one liter of liquor and one carton of cigarettes under their personal exemption.

By way of simplification, the following is a side by side comparison of the present law and the effect of the amendments under Section 203 (a) :

	Present law		Amendments	
	U.S. citizen [1]	Nonresident	U.S. citizen [1]	Nonresident
Liquor	1 qt for personal use	1 qt for personal use plus 5 fifths (1 gal) for gifts.	1 qt for personal use	1 qt for personal use.
Cigarettes	Unlimited amount up to $100.	1½ cartons for personal use plus unlimited amount up to $100 for gifts.	1 carton	1 carton.

[1] Not including U.S. citizens of Virgin Islands, American Samoa, and Guam, and returning U.S. citizens from these insular possessions.

There are four primary reasons why the amendments of Section 203(a) are desired and needed:

1. They would treat Americans and non-Americans equally in the United States and abroad.
2. They would ease U.S. Customs and state enforcement burdens.
3. They would save the Federal and state government potentially several million dollars each year.
4. They would prevent inevitable black marketeering and probable organized crime involvement.

1. EQUALIZATION

When Congress amended Sections 813.30 and 813.31 of the Tariff Schedules in 1965, to reduce the personal exemption for alcoholic beverages allowed returning U.S. residents from one gallon to one quart, it neglected to make a corresponding adjustment in the exemption allowed non-resident visitors. Under present law, Section 812.25, a non-resident who intends to remain in the United States for more than 72 hours and has not made a previous visit in the preceding six months, has a duty-free personal exemption of one quart of alcoholic beverages for his personal consumption, and five fifths to be disposed by him as bona-fide gifts, as long as the total value of the beverages stays with the overall $100 personal exemption he is allowed. Alternatively, he can bring up to $100 in cigarettes, duty free, to be disposed of as gifts, ar a combination of liquor and cigarettes not to exceed $100.

Prohibiting non-residents from importing alcoholic beverages duty free into the United States for gift purposes would bring U.S. customs regulations into conformity with the regulations applicable to resident returning to the United States as well as conformity with the treatment presently accorded U.S. travelers to Canada.

An American citizen is prohibited by Canadian law from bringing more than one duty-free bottle (quart) of liquor and one carton of cigarettes for personal use only into Canada while visiting there. There is no duty-free allowance for gifts under Canadian law. As far as can be determined, the United States is the only country that allows duty-free exemptions to non-residents for goods intended as gifts as opposed to purchases for personal use.

As can been seen from a page of the Amsterdam Airport catalog, (Attachment C), only the United States has a larger liquor allowance for non-residents, and, other than the Philippines and Netherland Antilles, is the only country that distinguishes between residents and non-residents.

With respect to cigarettes, a returning U.S. resident may bring in up to $100 worth of duty free cigarettes, A Canadian or other non-resident may bring in 1½ carton for personal use and up to $100 worth of duty free cigarettes intended only as bona fide gifts.

2. EASING U.S. CUSTOMS AND STATE ENFORCEMENT BURDENS

Consideration by this committee of the provisions of Section 203(a) of H.R. 8149 comes at a propitious time. The government of Canada authorized the establishment of duty-free shops at all highway points on the United States-Canadian border in 1974. Several problems, including a conflict of interest scandal and jurisdictional problems, have delayed openings. However, it is now anticipated that seven stores in Quebec Province will soon be opening, and openings in other provinces all across the border are expected to follow.

Under the current provisions of our tariff law, once such stores begin operating, every Canadian citizen or other foreign resident over 21 years of age will have the opportunity to purchase duty free at these stores up to six bottles of liquor (one quart for personal use, five fifths for "gifts") or up to 34 cartons of cigarettes (at current prices) as they are about to enter the United States. These purchases can be made free of U.S. duty and Canadian excise tax, and thus at approximately 50 percent of the U.S. prices. An American resident returning from a visit to Canada will be able to purchase duty free up to 34 cartons of cigarettes (at current prices). A non-resident alien is allowed to bring in 1½ cartons for personal use, plus an unlimited amount within the $100 exemption limit for gifts.

To guard from the possibility of a truly enormous potential influx of duty-free liquor, in violation of these laws, it is our belief that Customs officials would have to adopt numerous cumbersome new procedures. For example:

A. They would have to ascertain whether the people in any given motor vehicle were 21 or older, and whether those over 21 wishing to bring in liquor were residents of the U.S. or non-residents, in order to apply the differing personal exemptions of present law.

B. They would have to ask each non-resident adult desiring to take advantage of the one gallon gift exemption whether he or she will be staying in the United States for the required 72 hour period, and devise an effective way to monitor whether the stay was observed. They would similarly have to ascertain whether each of said non-residents had entered the U.S. within the previous six months.

C. They would have to devise a method of seeking assurances the liquor and cigarettes would in fact be distributed as bona-fide gifts.

This additional enforcement burden would require additional inspections, new forms, additional questions, traffic delays, etc. At the present time, Customs facilities at border points are understaffed and extremely pressed with both the normal collection of duties from mounting imports and the vital assignment of carrying out the government's directive to halt the smuggling of narcotic drugs. To add these new procedures to the present working load would take time from these far more important tasks. Not to add them, we feel, could quickly result in abuse of the non-resident exemption, which would create strong pressures to institute them. It is better to correct the potential abuse before it can begin.

Evidence of the current confusion and problems of state enforcement with respect to taxes in New York on imported cigarettes is set forth in a recent article in the New York Times (Attachment D). It is clear that the problems of the New York State authorities would be multiplied many-fold once the border crossing duty free stores start operating unless the proposed legislation is enacted.

In order to highlight the additional burdens to be placed on U.S. Customs officials as border crossings in handling large amounts of liquor, it is interesting to note that the Canadian officials expect a major involvement of U.S. Customs. In an address to the Paris Symposium, Mr. Alan A. Mc Isaac, Vice President of Cara Operations Ltd., described how Canadian duty-free interests successfully lobbied the Canadian government to open up their land border to duty-free trading. In discussing how large quantities of untaxed liquor would be controlled, Mr. Mc Isaac stated:

"As I indicated earlier, the chief reason for duty-free stores being illegal on land borders in Canada—apart from official indifference—was related to control. Customs officials could visualize large quantities of untaxed liquor disappearing over the border. But, as with so many apparently difficult problems that present themselves to the official mind, the solution was quite simple. The method to be used in Canada works in this way.

"All dutiable items would be received in bond in the operator's warehouse and customs would enter them as warehouse receivables. Delivery to a customer of a purchase from the warehouse would be made to him only immediately prior to his departure from Canada and only at a point south of Canadian customs which, of course, would prevent its duty or tax-free entry into Canada.

"Next step. Upon a tourist's arrival at the United States Customs, literally moments after receiving delivery, he would present the warehouse's invoice, which would be a required export document. The United States Customs would verify the quantity, since it is merchandise entering the country, and at the end of the day, these documents would be turned over to Canadian Customs. They, in return, would credit the stock of the border operator's warehouse with the quantity shown on the documents which the United States Customs have verified as having left Canada and entered the country. Thus the total security of the system is verified effectively by the government agencies of two countries."

3. POTENTIAL TAX REVENUE LOSS

The standard Federal tax on a gallon of liquor is $10.50. In addition to not paying the duty (which varies, depending on type, but averages about $1.25),

the non-resident is not required to pay the Federal tax on the "gift gallon" that is brought into the United States.

The 1975 Annual Report: Immigration and Naturalization Service published by the Department of Justice show that for the period ending June 1975 there were approximately 43,000,000 alien (non-resident) entries into the United States from Canada in 1975. (Attachment E.) Since 1961 there has been an increase of alien entries from Canada of approximately 13,000,000. (Attachment F.) The great majority of these entries were by automobile.

While it is not possible to determine how many of these non-resident entries in 1975 would have taken advantage of the duty free "gift gallon" if such liquor had been available at border crossing shops along the border, estimates can be made of the potentially sizable annual tax revenue loss to the Federal Government of $10.50 per gallon even with conservative assumptions:

—Assuming 5 percent (2,180,000) entries made such a purchase the loss would be $22,890,000.

—Assuming 10 percent (4,360,000) entries made such a purchase, the loss would be $45,780,000.

—Assuming 15 percent (6,540,000) made such a purchase, the loss would be $68,670,000.

In addition to substantial Federal revenue losses, the potential losses to states of liquor and cigarette tax revenues are considerable.

In discussions with officials in New York, Michigan and Minnesota there is unanimous agreement that if such duty free stores were in operation under the present law, collection of state liquor and cigarette taxes from non-resident aliens would be virtually impossible.

For example, there were 12,831,000 non-resident entries in 1975 from Canada to the State of New York (Attachment E–2). The New York liquor tax of $3.25 per gallon and cigarette tax of $1.50 per carton apply to non-residents. If such liquor and cigarettes had been available in 1975 at duty free shops at border crossings on the Canadian side of the New York border, and assuming that 10% of the 12,831,000 (or 1,283,000) made purchases, monitoring such purchases and collecting taxes by the New York State authorities would obviously have been a nightmare.

It should be noted that only Canadian entry figures are used. The Mexican Government only this year had authorized the installation of duty free stores at airports, and there is no indication at present that duty free stores will be authorized at border crossings between Mexico and the United States.

This is not to say, however, that a future problem does not exist on the Mexican border, once it is determined what a potentially profitable source of revenue it would be to the Mexicans. As indicated in Attachment E, the number of non-resident alien entries from Mexico to the United States in 1975 was over 97,500,000. In announcing the decision to authorize the establishment of duty-free stores at airports, Mexican Secretary of the Treasury Jose Lopez Portillo said the aim was "to enable tourists to make last minute purchases, as they are accustomed to do elsewhere, to the financial benefit of the Mexican economy."

4. BLACK MARKETING AND ORGANIZED CRIME INVOLVEMENT

Once such "gift gallon" and cigarette purchases are brought into the United States, there is nothing to prevent them from being surreptitiously sold or bartered for merchandise at American retail stores or to U.S. citizens. It should be kept in mind that a large portion of border crossings by Canadians are for the sole purpose of saving money by shopping in U.S. retail stores. It is obvious that additional economic opportunities would be available to them by purchasing duty free "gift gallons" and cigarettes as they are about to enter the United States. For example, a Canadian couple bound for Plattsburgh, N.Y. to shop could, under the present exemption purchase twelve bottles of scotch whiskey at the Quebec duty free store for one-half the price those same bottles retail for in New York State. Alternatively, the same couple could bring into New York a total of 68 cartons (at current prices) of cigarettes within their $100 exemption. In either instance, if the couple were so inclined, a considerable profit could be made upon resale or barter—at the expense of American tax payers. The temptation to abuse the "bona-fide gifts" requirement would be strong, especially since no effort is now made to enforce compliance with this requirement except through brief oral declaration. It should also be pointed out that

a Canadian, returning to Canada from a visit to the United States, are permitted to bring to Canada one quart of duty free liquor and one carton of cigarettes. Thus, they would have to dispose of any additional liquor or cigarettes in their possession unless they chose to pay Canadian duty and tax as well as fill out numerous forms required under Canadian law.

It goes without saying that if the Congress approves an increase of the personal exemption from $100 to $300 for returning U.S. residents (which we approve) without enacting the other amendments in Section 203(a), the problems would be monumental.

Finally, it should also be obvious that the availability of duty free "gift gallon" and cigarette purchases at duty free stores all across the border would be an open invitation for exploitation by organized crime elements. We need only to look at the importation of "bootlegged" cigarettes into New York from North Carolina by organized crime elements to appreciate what could happen all along the United States-Canadian border. For example, under present law, five U.S. or Canadian citizens in a truck would be able to purchase duty free approximately 170 cartons of cigarettes each time they entered the United States. If the exemption were increased to $300 as proposed without a corresponding limitation on the numbers of cigarettes that could be purchased duty free, those five persons would be able to purchase duty-free up to 510 cartons of cigarettes each time a border crossing into the United States was made.

In summary, we feel that H.R. 8149 is the product of careful and extensive effort. It is far-reaching, equitable and effective legislation that will modernize and simplify customs procedures. It treats everyone—resident and nonresident—equally and fairly. We urge this committee to adopt H.R. 8149 as passed overwhelmingly by the House.

ATTACHMENT A

[H.R. 11796, 93d Cong. 2d sess.]

AN ACT To provide for the duty-free entry of a 3.60 meter telescope and associated articles for the use of the Canada-France-Hawaii Telescope Project at Mauna Kea, Hawaii

* * * * * * *

SEC. 4. (a) Item 812.20 of the Tariff Schedules of the United States is amended by striking out "300 cigarettes" and inserting in lieu thereof "200 cigarettes".

(b) Item 812.25 of such Schedules is amended by striking out "(including not more than 1 wine gallon of alcoholic beverages and not more than 100 cigars)" and inserting in lieu thereof "(not including alcoholic beverages or cigarettes but including not more than 100 cigars)".

(c) The article description preceeding item 813.10 of such Schedules is amended by inserting after "thereof" the following: "or who is a citizen of the United States and is a resident of American Samoa, Guam, or the Virgin Islands of the United States".

(d) Item 813.30 of the Tariff Schedules of the United States is amended by inserting "200 cigarettes and" before "100 cigars".

ATTACHMENT B

S. REPT 93-1355

DUTY-FREE ENTRY OF TELESCOPE AND ASSOCIATED ARTICLES FOR CANADA-FRANCE-HAWAII TELESCOPE PROJECT

The Committee on Finance, to which was referred the bill (H.R. 11796) to provide for the duty-free entry of a 3.60 meter telescope and associated articles for the use of the Canada-France-Hawaii Telescope Project at Mauna Kea, Hawaii, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

I. SUMMARY

House bill.—The House bill would permit the duty free entry of a 3.60 meter telescope and associated articles for the use of the Canada-France-Hawaii telescope at Mauna Kea, Hawaii.

Committee bill.—The committee adopted two amendments. One committee amendment would suspend until June 30, 1977, the duty on zinc-bearing ores and

certain other zinc bearing materials, including zinc waste and scrap. The second committee amendment would amend the gift exemption provisions of the Tariff Schedules to prohibit non-residents from importing alcoholic beverages and cigarettes duty free into the United States for gift purposes and would bring U.S. customs regulations for residents and nonresident into conformity with the treatment presently accorded U.S. travelers to Canada.

* * * * * * *

C. DUTY EXEMPTION FOR ACOHOLIC BEVERAGES AND CIGARETTES BROUGHT INTO THE UNITED STATES

The purpose of the committee amendment is to equalize the personal liquor and cigarette duty exemption for returning residents and nonresidents. The amendment would amend Section 812.25 of the Tariff Schedules of the United States (relating to nonresident exemptions) to eliminate alcoholic beverages and cigarettes from the category of articles a nonresident can import duty-free under his $100 exemption for bona fide gifts. The items he or she could bring in free of duty for his or her personal consumption would not be affected. The amendment would also change Section 813.30 of the Tariff Schedules to limit the number of cigarettes that could accompany a returning American resident to 200 (one carton). The amendment would also cut this number of duty free cigarettes a nonresident could enter for his own use from 300 to 200. Item 813.10 of the Tariff Schedules would be amended to provide that citizens of the United States who are residents of American Samoa, Guam, or the Virgin Islands, shall be treated as residents for the purposes of applying these items of The Tariff Schedules.

The changes proposed by the Committee amendment would in effect limit all travellers entering the United States to the duty free purchase of one bottle of liquor and one carton of cigarettes. (The only exception would be in the case of residents returning from the Virgin Islands, Guam, or American Samoa, whose one gallon duty free exemption would be permitted to continued.)

When Congress amended Sections 813.30 and 813.31 of the Tariff Schedules in 1965, to reduce the personal exemption for alcoholic beverages allowed returning U.S. residents from one gallon to one quart, it negelected to make a corresponding adjustment in the exemption allowed nonresident visitors. Under present law, Section 812.25, a nonresident who intends to remain in the United States for more than 72 hours and has not made a previous visit in the preceding six months, has a duty-free personal exemption of one quart of alcoholic beverages for his personal consumption, and five fifths to be disposed by him as bona fide gifts, as long as the total value of the beverages stays within the overall $100 personal exemption he is allowed. Alternatively, he can bring in up to $100 in cigarettes, duty free, to be disposed of as gifts, or a combination of liquor and cigarettes not to exceed $100.

Until now, this discrepancy has not threatened to complicate customs inspection at points of entry. Most non-residents making purchases as duty-free shops at foreign airports, prior to coming to the U.S., have not taken advantage of the five fifths liquor exemption or the $100 cigarette exemption, either because they are unaware of it or because of the difficulty in carrying this much liquor or cigarettes on an air journey with them. Nonresidents arriving by automobile must come from either Canada or Mexico, both countries in which liquor and cigarette prices for the popular brands are as high or higher than in the United States. Since neither country has had duty-free shops on their side of the border, it did not pay for nonresidents to purchase these products entering the United States by auto.

For these reasons, the Customs Service has not felt it necessary to physically distinguish residents from nonresidents in making inspections for these goods. Oral declarations have been accepted, and no effort has had to be made to police the requirement that liquor and tobacco imported free of duty by visiting nonresidents must be bonafide gifts.

This situation is about to change radically. The government of Canada has recently authorized the establishment of duty-free shops at all highway points on the U.S.-Canadian border, and such stores will begin operating as early as next summer.

In fiscal 1972, almost five million persons and over two million vehicles entered the United States at the ten most heavily-used border points. This traffic was a 70 percent increase in volume over fiscal year 1960. The total number of entrees from all Canadian points last year was in excess of 65 million.

Under the current provisions of our tariff law, once such stores begin operating, every Canadian citizen or other foreign resident over 21 years of age will have the opportunity to purchase at these stores up to six bottles of liquor (one quart for personal use, five fifths for "gifts") and an unlimited number of cigarettes on their way into the U.S. These purchases can be made free of U.S. duty and Canadian excise tax, and thus at approximately 50 percent of the U.S. prices.

Once such purchases are brought into the U.S., there is nothing to prevent them from being surreptitiously sold or bartered for merchandise at U.S. stores, in violation of both the tariff law and revenue laws of the several states. For example at Champlain, New York, the most frequently used entry point from Quebec, where 1.4 million vehicles and 3.4 million people entered in fiscal year 1972, many Canadian citizens regularly cross the border once a week to do their grocery shopping in nearby Plattsburgh, New York. A Canadian couple bound for Plattsburgh could, under the present exemption, purchase twelve bottles of scotch at the Quebec duty-free stores for approximately $42. Those same bottles retail in New York State for $84, a considerable profit upon resale or barter. The temptation to abuse the "bona-fide gifts" requirement would be strong, especially since no effort is now made to enforce compliance with this requirement except through brief oral declaration.

No unfavorable comments have been received by the committee on this amendment.

ATTACHMENT C

"IMPORTATION ALLOWANCES"

For further information please collect the appropriate cards at shop entrances.

34 fl.oz. = 1 ltr. = 35 fl.oz. Imp.

25 fl.oz. = ¾ ltr. = fifth 26⅔ fl.oz. Imp.
32 fl.oz. = 0.945 ltr. = US quart = 33⅓ fl.oz. Imp.

12⅔ fl.oz. = ⅜ ltr. = 13⅓ fl.oz. Imp.
17 fl.oz. = ½ ltr. = 17⅔ fl.oz. Imp.

Country	Liquor 32 oz	25 oz		Wine *Champagne	Table wine	Cigarettes		Cigars		Pipe Tobacco in grams
Argentinia	2					400	and	50	or	900
Australia	1					200	or	25	or	250
Austria	1		and	2		200	or	50	or	250
Brazil	2			3+2*		200	and	25	and	250
Bulgaria	2		and	3		200	or	50	or	250
Canada	1	40 oz				200	and	50	and	900
Canary Islands	no restrictions									
Czechoslovakia	1		and	2		250	or	20	or	250
Congo						100	or	10	or	100
Denmark		1	or	2 and 2		200	or	50	or	250
EEC countries	1		or	2 and 2		200	or	50	or	250
Egypt**	1					200	or	50	or	250
Finland		1	and	1		200	or	50	or	250
Germany east	1		or	1		Tobacco products				50
Ghana (Accra)	1		and	1		400	or	100	or	450
Greece	1					200	or	50	or	200
Guinea (Conakry)	1					1000	or	250	or	1000
Hungary	1		or	2		250	or	40	or	200
Hong Kong	1					200	or	50	or	250
India		1				200	or	50	or	250
Indonesia	2					400	or	100	or	200
Ireland	1		and	3		300	or	75	or	400
Israel		1	and	1		250	or	50	or	250
Japan	3					200	or	50	or	250
Lebanon	1					200	and	25	or	225
Mexico	2		or	2		400	or	50	and	1000
Neth. Antilles ●	2					200	or	50	or	200
Norway		1	and	1		200	or	50	or	250
Pakistan		1				200	or	50	or	225
Philippines ●	1		and	1		200	or	50	or	500
Poland	1		and	2		250	or	50	or	250
Portugal	¼		and	1		200	or	50	or	250
Singapore	1		and	1		200	or	50	or	225
South Africa	1		and	1		400	and	50	and	250
Spain	1		or	2		200	or	50	or	250
Surinam	2		and	4		400	or	100	or	500
Sweden		1	and	1		200	or	50	or	250
Switzerland	½		and	2		200	or	50	or	250
Turkey	1					200	or	50	or	250
USA	1					*		100		*
Non residents	5					300	or	50	or	1350
USSR	1		and	2		250		—		—
Venezuela	2					200	and	25		—
Yugoslavia	1		and	1		200	or	50	or	250
Zealand. New	1		and	1		200	or	50	or	225

* Unlimited except the State or City of New York
** A reasonable quantity —

● Non residents only
All quantities are per person

ASSORTMENT AND PRICES SUBJECT TO CHANGE WITHOUT NOTICE

ATTACHMENT D

[From the New York Times, July 18, 1976]

NOTES: GETTING BURNED BY CIGARETTE TAXES

(By John Brannon Albright)

In March, 1975, New York businessman Pierre Wilkins returned home from a trip to Bermuda. In June, 1976—15 months later—Mr. Wilkins received a letter from the Department of Taxation and Finance of the State of New York, notifying him that he owed $11.25 on five cartons of cigarettes he'd brought in from Bermuda—$7.50 in tax and a $3.75 penalty. He had run afoul of a law that he and many thousands of other travelers have never heard of—a law that is more honored in the breach and that relies for its enforcement on the exchange of information among three separate governmental units.

Under Federal law, a returning United States resident is permitted to bring into the country an unlimited number of cigarettes duty free so long as the total value of his purchases does not exceed his $100 exemption. Those residents who live in New York, however, are allowed under state law to bring into the state only two cartons of cigarettes without payment of the state tax. (There is also a city tax for residents of New York City.) The law, Article 20 of the New York State Tax Law, enacted in 1939, provides that a state resident who brings in more than two cartons is subject to tax on the full number of cartons. The state tax is 15 cents a pack, or $1.50 a carton. If the proper form is not filed within 24 hours of arrival, a penalty of 50 percent is added to the tax liability. (The city tax is 80 cents a carton, with a similar 50 percent penalty for failure to file the proper form within 24 hours.)

Where does a traveler obtain the forms? From the New York State Department of Taxation and Finance, Room 6456, 2 World Trade Center, New York 10047, and from the City Finance Department, Room 809, 139 Centre Street, New York 10013. The state form is MT–102.7; the city form is SID–25.

How is the traveler supposed to know all this? An official of the United States Customs Service said that the booklet "Know Before You Go," which contains information on customs rules and is usually available at airports and docks, has an insert advising travelers to check with local tax officials to find out if their state or city has a law requiring payment of tax on cigarettes. A spokesman for New York States said that posters were regularly sent to airlines and shipping lines with a request that they be displayed to advise passengers of the rules.

Do any persons voluntary file the forms and pay the tax? "Once in a rare while," a city official said. "Yes, occasionally," a state official observed, adding, "Perhaps they've been stung before." And how many people does the state track down each year? "I wouldn't care to say exactly," another state official said, "but the number is in the thousands."

How does the state find out that the traveler has arrived with more than two cartons of cigarettes? "Information available in this office . . ." is how the letter from the state begins. According to an official in Albany, the state sends an examiner to the Customs Service to copy down the information from the customs declarations that travelers hand to Federal inspectors as they pass by to have their baggage examined.

Only United States residents bringing back items purchased abroad that total more than $100 are required to list their purchases on the declaration, but, according to Charles McGee, regional public affairs officer of the Customs Service, "A lot of people declare everything they bring in whether they are required to or not. It's our opinion that this is where the state gets most of its business." He added that the service, under the Freedom of Information Act, makes its records available to government officials—and to other "qualified persons like newspaper reporters."

Asked if the inspectors were likely to make any notations about cigarettes on a declaration that wasn't itemized, Mr. McGee said, "No, because under Federal law cigarettes are not dutiable. They do note the quantity of liquor a traveler brings in, since more than one quart of liquor is dutiable."

How does the city obtain its information? An official in the Finance Department said, "When they [the state] have collected their pound of flesh, they give their list to us." He added that the city had tried unsuccessfully to get the state to collect both taxes at the same time. "It would be six months or so after the state has sent out its notices that we get the list, and the traveler becomes irate, but that's the situation and we have to live with it."

Why did it take the state 15 months to notify Mr. Wilkins of his obligation? "You can attribute that to personnel problems—the austerity program," a state official said. Another official said examiners checked the customs declarations only about twice a year.

What if the traveler fails to pay the tax and the penalty after the state bills him? "Well, it becomes a tax lien, the same as any other tax obligation," a state official said, adding, however, that the person affected may request a hearing. Eventually, unpaid notices are sent to the Tax Compliance Bureau of the Department of Taxation and Finance, and warrants may be issued for collection, which could lead to a filing with the county clerk and the garnisheeing of wages, an official in Albany said. "The Tax Department is always the villain, but we have to enforce the law."

Mr. Wilkins feels that the law is "inequitably applied in a random fashion to certain citizens," specifically those who make declarations at international ports of entry. State officials say that the state is content to rely on the Customs Service for its information and that the cost of manning every road leading into the state and every airport and dock would be prohibitive.

ATTACHMENT E-1

TABLE 3.—ALIENS AND CITIZENS ADMITTED AT UNITED STATES PORTS OF ENTRY, YEARS ENDED JUNE 30, 1975, AND 1974

[Each entry of the same person counted separately]

Class	Total	Aliens	Citizens
	Year ended June 30, 1975		
Total number	258, 427, 327	152, 381, 957	106, 045, 370
Border crossers [1]	236, 822, 638	141, 103, 691	95, 719, 007
Canadian	78, 374, 007	43, 591, 722	34, 782, 285
Mexican	158, 448, 691	97, 511, 969	60, 936, 722
Crewmen	3, 671, 740	2, 598, 849	1, 072, 891
Others admitted	17, 932, 889	[2] 8, 679, 417	[3] 9, 253, 472
	Year ended June 30, 1974		
Total number	267, 416, 910	154, 826, 724	112, 590, 186
Border crossers [1]	245, 310, 821	143, 727, 726	101, 583, 095
Canadian	75, 740, 595	42, 067, 543	33, 673, 052
Mexican	169, 570, 226	101, 660, 183	67, 910, 043
Crewmen	3, 825, 067	2, 707, 856	1, 117, 211
Others admitted	18, 281, 022	[2] 8, 391, 142	[3] 9, 889, 880

[1] Partially estimated.
[2] Includes immigrants, documented nonimmigrants, aliens with multiple entry documents other than border crossers and crewmen, and aliens returning from Canada or Mexico after extended visits.
[3] Includes all citizens arrived by sea and air and citizens returning from Canada or Mexico after extended visits.

Source: U.S. Department of Justice and Immigration and Naturalization Service.

ATTACHMENT E-2 AND E-3

TABLE 19.—ENTRIES OF ALIEN AND CITIZEN BORDER CROSSERS OVER INTERNATIONAL LAND BOUNDARIES BY STATE AND PORT, YEAR ENDED JUNE 30, 1975

[Each entry of the same person counted separately]

State and port	All persons crossing		
	Total	Aliens	Citizens
All ports [1]	236, 822, 698	141, 103, 691	95, 719, 007
Canadian border	78, 374, 007	43, 591, 722	34, 782, 285
Alaska	270, 078	53, 963	216, 115
Alcan	117, 300	6, 817	110, 492
Anchorage	4, 860	22, 225	2, 635
Eagle	398	54	344
Fairbanks	6, 270	1, 132	5, 138
Haines	42, 227	10, 460	31, 767
Hyder [2]	17, 673	15, 131	2, 542
Juneau	7, 002	780	6, 222
Ketchikan	16, 646	3, 648	12, 998
Northway	2, 535	81	2, 454
Pelican [3]	107	107	
Poker Creek [4]	14, 071	4, 757	9, 314
Sitka	65	3	62
Skagway	40, 751	8, 755	31, 996
Wrangell	164	13	151
Idaho	590, 582	347, 648	242, 934
Eastport	367, 385	206, 710	160, 675
Porthill	223, 197	140, 938	82, 259
Illinois: Chicago	136, 673	22, 525	114, 148
Maine	13, 683, 979	8, 177, 426	5, 506, 553
Bangor	67, 460	27, 948	39, 512
Bridgewater	236, 497	156, 220	80, 277
Calais	3, 811, 281	2, 405, 621	1, 405, 660
Ferry Point	3, 235, 569	2, 037, 322	1, 198, 247
Milltown Bridge	575, 712	368, 299	207, 413
Coburn Gore	100, 283	63, 816	36, 467
Daaquam	17, 871	15, 212	2, 659
Easton	8, 877	5, 992	2, 885
Eastport	14, 647	9, 330	5, 317
Estcourt	20, 488	13, 500	6, 988
Forest City	10, 670	5, 948	4, 722
Fort Fairfield	679, 025	439, 143	239, 882
Fort Kent	693, 891	402, 090	291, 801
Hamlin	390, 773	276, 775	113, 998
Houlton	1, 693, 162	912, 965	780, 197
Jackman	321, 979	193, 316	128, 663
Limestone	229, 975	130, 799	99, 176
Lubec	388, 885	201, 892	186, 993
Madawaska	3, 475, 510	1, 983, 513	1, 491, 997
Monticello	6, 402	4, 595	1, 807
Orient	33, 600	22, 319	11, 281
St. Aurelie	20, 350	17, 946	2, 404
St. Pamphile	36, 501	28, 936	7, 565
Van Buren	1, 179, 854	712, 378	467, 476
Vanceboro	245, 998	147, 172	98, 826
Michigan	18, 024, 764	8, 932, 488	9, 092, 276
Algonac	120, 376	77, 660	42, 716
Alpena	169	24	145
Detroit	12, 483, 617	6, 135, 743	6, 347, 874
Ambassador Bridge	5, 573, 667	2, 592, 025	2, 981, 642
Detroit and Canada Tunnel	6, 900, 959	3, 541, 304	3, 359, 655
Detroit City Airport	3, 653	926	2, 727
Detroit Metropolitan Airport	4, 641	1, 371	3, 270
Detroit River and River Rouge Terminals	697	117	580

See footnotes at end of table.

ATTACHMENT E-2 AND E-3—Continued

TABLE 19.—ENTRIES OF ALIEN AND CITIZEN BORDER CROSSERS OVER INTERNATIONAL LAND BOUNDARIES BY STATE AND PORT, YEAR ENDED JUNE 30, 1975—Continued

[Each entry of the same person counted separately]

State and port	All persons crossing		
	Total	Aliens	Citizens
Michigan—Continued			
Escanaba [8]	136	14	122
Houghton [8]	160	72	88
Isle Royale [8]	268	154	114
Mackinac Island [7]	558	142	416
Marine City	181,632	93,496	88,136
Marquette [8]	56	4	52
Muskegon	191	91	100
Port Huron [8]	3,469,657	1,631,841	1,837,816
Roberts Landing	120,716	57,001	63,715
Rogers City [8]	75	14	61
Saginaw	251	88	163
Sault Ste. Marie	1,646,902	936,144	710,758
Minnesota	2,142,810	974,877	1,167,933
Baudette [9]	197,259	134,752	62,507
Crane Lake	7,445	1,569	5,876
Duluth	13,655	6,971	6,684
Ely [10]	21,134	2,290	18,844
Grand Marais [4]	3,146	146	3,000
Grand Portage	375,828	140,610	235,218
Indus	93	75	18
International Falls [9]	1,005,080	376,970	628,110
Lancaster	75,155	45,890	29,265
Noyes	177,010	92,815	84,195
Oak Island [4]	1,517	819	698
Pine Creek	28,246	15,829	12,417
Ranier	5,851	21	5,830
Roseau	60,654	36,904	23,750
St. Paul	5,800	1,582	4,218
Warroad	164,937	117,634	47,303
Montana	1,160,371	649,488	510,883
Chief Mountain [8]	91,501	27,959	63,542
Cut Bank (airport)	662	225	437
Del Bonita	26,800	13,684	13,116
Glasgow (airport)	555	162	393
Great Falls (airport)	40,512	23,942	16,570
Havre (Hill County airport)	286	124	162
Kalispell	351	89	262
Morgan	16,859	13,008	3,851
Opheim	13,690	8,402	5,288
Piegan	201,971	101,884	100,087
Raymond	79,439	49,369	30,070
Roosville	170,285	99,493	70,792
Scobey	22,349	13,455	8,894
Sweetgrass	437,776	257,324	180,452
Trail Creek [4]	1,877	722	1,155
Turner	16,551	11,747	4,804
Whitetail	12,589	10,264	2,325
Whitlash	2,657	993	1,664
Wild Horse	13,646	8,572	5,074
Willow Creek	10,015	8,070	1,945
New Hampshire: Pittsburg	22,613	11,273	11,340
New York	23,759,537	12,831,826	10,927,711
Black Rock	25,864	13,663	12,201
Buffalo	7,301,355	3,273,329	4,028,026
Buffalo Seaport	293	270	23
Greater Buffalo International Airport	7,438	2,223	5,215
Peace Bridge	7,293,624	3,270,836	4,022,788

See footnotes at end of table.

ATTACHMENT E-2 AND E-3—Continued

TABLE 19.—ENTRIES OF ALIEN AND CITIZEN BORDER CROSSERS OVER INTERNATIONAL LAND BOUNDARIES BY STATE AND PORT, YEAR ENDED JUNE 30, 1975—Continued

[Each entry of the same person counted separately]

State and port	All persons crossing— Total	Aliens	Citizens
New York—Continued			
Cannons Corners	36,836	24,220	12,616
Cape Vincent[11]	28,481	10,724	17,757
Champlain	3,060,728	1,992,383	1,068,345
Chateaugay	116,619	74,960	41,659
Churubusco	46,658	22,864	23,794
Clayton[3]	61,464	28,024	33,440
Fort Covington	340,617	143,238	197,379
Heart Island[3]	92,881	61,916	30,965
Jamieson's Line	8,921	4,774	4,147
Lewiston	2,457,991	1,474,794	983,197
Massena	1,244,271	779,387	464,434
Mooers	237,865	131,589	106,276
Niagara Falls	5,048,635	2,984,503	2,064,132
Municipal Airport	1,104	338	766
Rainbow Bridge	3,889,132	2,325,921	1,563,211
Whirlpool Rapids Bridge	1,158,399	658,244	500,155
Ogdensburg	563,429	312,939	250,490
Rochester	2,002	963	1,039
Municipal Airport	1,650	754	896
Port Authority	352	209	143
Rouses Point	398,356	294,537	103,819
Syracuse	3,107	1,427	1,680
Thousand Island Bridge	2,145,774	855,341	1,290,433
Trout River	519,961	338,731	181,230
Youngstown[4]	17,722	7,070	10,652
North Dakota	1,516,877	747,291	769,586
Ambrose	9,197	5,643	3,554
Antler	21,384	13,051	8,333
Carbury	22,729	16,924	5,805
Dunseith	281,931	86,995	194,936
Fortuna	29,523	17,462	12,061
Grand Forks (Munic. Airport)	3,092	791	2,301
Hannah	9,824	5,950	3,874
Hansboro	23,531	10,188	13,343
Maida	34,685	14,858	19,827
Minot (Airport)	3,442	1,215	2,227
Neche	110,500	66,336	44,164
Noonan	40,895	19,854	21,041
Northgate	60,938	35,369	25,569
Pembina	414,314	219,992	194,332
Portal	255,275	137,386	117,889
St. John	44,759	17,903	26,856
Sarles	24,684	9,552	15,162
Sherwood	25,544	16,686	8,858
Wahalla	66,717	31,623	35,084
Westhope	32,810	19,358	13,452
Williston, Sloulin Field	1,103	185	918
Ohio	40,355	13,787	26,568
Cleveland	20,341	11,910	8,431
Sandusky	18,707	1,427	17,280
Toledo	1,307	450	857
Vermont	3,539,655	2,176,807	1,362,848
Alburg	65,654	44,154	21,500
Alburg Springs	76,105	65,123	10,982
Beebe Plain	182,121	126,851	55,270
Beecher Falls	126,071	83,725	42,346
Burlington Airport	5,328	2,183	3,145
Canaan	73,375	46,210	27,165
Derby Line	1,026,992	591,853	435,139
East Richford	63,325	40,942	22,383
Highgate Springs	1,076,429	617,686	458,743
Morses Line	22,271	14,250	8,021
Newport	6,035	5,379	656
North Troy	173,731	111,399	62,332
Norton	287,372	206,335	81,037
Richford	186,879	115,565	71,314
St. Albans	37,068	12,815	24,253
West Berkshire	130,899	92,337	38,562

See footnotes at end of table.

ATTACHMENT E-2 AND E-3—Continued

TABLE 19.—ENTRIES OF ALIEN AND CITIZEN BORDER CROSSERS OVER INTERNATIONAL LAND BOUNDARIES BY STATE AND PORT, YEAR ENDED JUNE 30, 1975—Continued

[Each entry of the same person counted separately]

State and port	All persons crossing		
	Total	Aliens	Citizens
Washington	9,865,013	6,639,025	3,225,988
Bellingham	5,460	1,435	4,025
Blaine [1]	5,150,196	3,440,666	1,709,530
Pacific Highway	1,277,557	873,424	404,133
Peace Arch	3,872,639	2,567,242	1,305,397
Boundary	34,946	24,760	10,186
Danville	48,904	17,867	31,037
Ferry	17,857	10,237	7,620
Friday Harbor	42,532	20,235	22,297
Frontier	138,900	99,776	39,124
Laurier	107,674	63,260	44,414
Lynden	665,269	399,460	265,809
Metaline Falls	73,733	40,179	33,554
Neah Bay	381	161	220
Nighthawk	14,738	8,885	5,853
Oroville	680,640	373,764	306,876
Point Roberts [1]	1,484,348	1,341,179	143,169
Port Angeles	1,277	247	1,030
Port Townsend	2,277	168	2,109
Seattle	59,364	26,088	33,276
Spokane (Felts Field)	365	146	219
Spokane International Airport	52,044	35,858	16,186
Sumas	1,282,512	734,421	548,091
Tacoma	1,596	233	1,363
Canada	3,620,700	2,013,298	1,607,402
Amherstburg, Ontario [2]	713,603	238,372	475,231
Montreal, Quebec	686,934	480,001	206,933
Prince Rupert, British Columbia	29,177	3,484	25,693
Toronto, Ontario (Malton Airport)	1,347,123	1,010,955	336,168
Vancouver, British Columbia	276,426	147,426	129,000
Victoria, British Columbia	467,252	76,114	391,138
Winnepeg, Manitoba	100,185	56,946	43,239
Mexican border	158,448,691	97,511,969	60,936,722
Arizona	19,994,114	12,367,543	7,626,571
Douglas	4,853,202	2,668,735	2,184,467
Lochiel	11,092	7,292	3,800
Lukeville	656,648	161,590	495,058
Naco	1,270,692	694,672	576,020
Nogales	8,661,840	5,509,719	3,152,121
Grand Avenue	7,370,745	4,388,184	2,982,561
Morley Avenue	1,220,481	1,055,194	165,287
Nogales International Airport	2,504	1,008	1,496
Truck Gate	68,110	65,333	2,777
Phoenix (airport)	34,715	2,372	32,343
San Luis	4,376,179	3,260,737	1,115,442
Sasabe	88,824	57,848	30,976
Tucson International Airport	40,922	4,578	36,344
California	52,295,408	33,990,107	18,305,301
Andrade	666,212	441,699	224,513
Calexico	15,796,125	11,967,593	3,828,532
Los Angeles (airport)	234,879	32,242	202,637
San Diego	16,170	1,211	14,959
San Ysidro [1]	34,248,586	20,713,172	13,535,414
Tecate	1,333,436	834,190	499,246
New Mexico	339,910	223,923	115,987
Antelope Wells	5,697	4,965	732
Columbus	334,213	218,958	115,255

See footnotes at end of table.

ATTACHMENT E-2 AND E-3—Continued

TABLE 19.—ENTRIES OF ALIEN AND CITIZEN BORDER CROSSERS OVER INTERNATIONAL LAND BOUNDARIES BY STATE AND PORT, YEAR ENDED JUNE 30, 1975—Continued

[Each entry of the same person counted separately]

State and port	All person crossing		
	Total	Aliens	Citizens
Texas	85,819,259	50,930,396	34,888,863
Amistad Dam	239,491	92,761	146,730
Boquillas [11]	3,358	1,589	1,769
Brownsville	14,131,636	9,201,924	4,929,712
Corpus Christi	446	190	256
Dallas Airport	173,257	4,475	168,782
Del Rio	2,922,235	1,306,268	1,615,967
Eagle Pass	6,668,501	4,518,781	2,149,720
El Paso	28,250,601	14,147,061	14,103,540
Bridge of the Americas	11,487,472	4,020,614	7,466,858
El Paso Airport	6,435	1,693	4,742
Paso del Norte Bridge	13,686,308	8,897,399	4,790,909
Yaleta Bridge	3,068,386	1,227,355	1,841,031
Fabens	573,064	351,521	221,543
Falcon Heights [9]	471,068	103,417	367,651
Fort Hancock	146,646	88,941	57,705
Hidalgo	10,929,969	7,164,848	3,765,121
Houston Airport	95,569	5,411	90,158
Laredo	15,135,434	9,993,406	5,142,028
Laredo	15,129,234	9,990,452	5,138,782
International Airport	6,200	2,954	3,246
Los Ebanos	103,605	61,897	41,708
Presidio	806,702	486,017	320,685
Progreso	1,821,928	1,088,111	733,817
Rio Grande City [9]	737,726	545,568	192,158
Roma [9]	2,546,138	1,763,444	782,694
San Antonio Airport	61,885	4,766	57,119

[1] Figures include arrivals by private aircraft at border ports.
[2] July–November 1974.
[3] July–September 1974 and May and June 1975.
[4] July–October 1974 and May and June 1975.
[5] July–December 1975 and April–June 1975.
[6] July–December 1974 and January–May 1975.
[7] July–October 1974 and June 1975.
[8] July and November 1974 and June 1975.
[9] Partially estimated.
[10] July–November 1974 and May and June 1975.
[11] July–October 1974.

ATTACHMENT F

TABLE 20.—ENTRIES OF ALIEN AND CITIZEN BORDER CROSSERS OVER INTERNATIONAL LAND BOUNDARIES, YEARS ENDED JUNE 30, 1928–75

[Inward movement of aliens and citizens over international land boundaries first recorded in 1928; each entry of the same person counted separately; figures partially estimated]

Period	All entries			Via Candian border			Via Mexican border		
	Total	Aliens	Citizens	Total	Aliens	Citizens	Total	Aliens	Citizens
1928–75	5, 560, 005, 093	3, 085, 349, 121	2, 474, 655, 972	2, 111, 802, 119	1, 078, 039, 503	1, 033, 762, 616	3, 448, 202, 974	2, 007, 309, 658	1, 440, 833, 354
1928	53, 539, 702	30, 162, 945	23, 376, 757	26, 410, 720	12, 823, 162	13, 587, 558	27, 128, 982	17, 339, 783	9, 789, 199
1929	57, 905, 685	31, 562, 934	26, 342, 751	30, 854, 674	15, 221, 215	15, 633, 459	27, 051, 011	16, 341, 719	10, 704, 292
1930	59, 276, 639	30, 034, 301	29, 242, 338	32, 251, 548	14, 498, 083	17, 753, 465	27, 025, 091	15, 536, 218	11, 488, 873
1931–40	477, 022, 589	255, 240, 806	221, 781, 783	252, 372, 946	117, 878, 795	134, 494, 151	224, 649, 643	137, 362, 011	87, 287, 632
1931	52, 991, 765	26, 481, 279	26, 510, 486	28, 939, 718	12, 929, 750	16, 009, 968	24, 052, 047	13, 551, 529	10, 500, 318
1932	46, 858, 719	22, 862, 697	23, 996, 022	23, 592, 271	10, 275, 347	13, 316, 924	23, 266, 448	12, 587, 350	10, 674, 043
1933	40, 662, 207	20, 560, 826	20, 101, 381	18, 877, 956	8, 434, 715	10, 443, 241	21, 784, 251	12, 126, 111	9, 658, 140
1934	40, 749, 632	21, 627, 711	19, 121, 921	19, 608, 768	9, 105, 383	10, 503, 385	21, 140, 864	12, 522, 328	8, 613, 536
1955	43, 424, 920	23, 497, 061	19, 927, 559	21, 707, 282	10, 165, 762	11, 541, 520	21, 717, 638	13, 331, 299	8, 386, 339
1936	46, 152, 918	25, 739, 288	20, 413, 630	24, 965, 327	11, 861, 161	13, 104, 166	21, 187, 591	13, 873, 127	7, 309, 444
1937	51, 722, 089	28, 841, 066	22, 881, 023	29, 022, 710	13, 669, 009	15, 353, 701	22, 699, 379	15, 172, 057	7, 527, 322
1938	52, 993, 989	28, 651, 501	24, 342, 488	29, 970, 636	14, 230, 131	15, 740, 505	23, 023, 353	14, 421, 370	8, 601, 980
1939	51, 363, 952	28, 858, 336	22, 505, 616	28, 631, 775	14, 141, 028	14, 490, 747	22, 732, 177	14, 717, 308	8, 014, 849
1940	50, 102, 398	28, 121, 041	21, 981, 357	27, 056, 503	13, 066, 509	13, 989, 994	23, 045, 895	55, 054, 332	7, 991, 043
1941–50	628, 278, 660	306, 083, 624	322, 195, 036	267, 883, 986	110, 511, 592	157, 372, 394	360, 394, 674	195, 572, 032	164, 822, 642
1941	38, 974, 008	18, 617, 633	20, 356, 375	15, 454, 432	4, 096, 470	11, 357, 962	23, 519, 576	14, 321, 163	8, 998, 413
1942	43, 679, 900	20, 975, 281	22, 704, 619	17, 480, 723	5, 253, 535	12, 227, 188	26, 199, 177	15, 721, 746	10, 477, 431
1943	40, 717, 372	20, 378, 438	20, 338, 934	14, 806, 312	5, 623, 592	9, 182, 720	25, 911, 060	14, 754, 846	11, 156, 714
1944	46, 243, 243	22, 441, 827	23, 801, 416	18, 228, 744	7, 621, 217	10, 607, 527	28, 014, 499	14, 820, 610	13, 193, 889
1945	55, 801, 140	27, 395, 495	28, 405, 645	23, 515, 596	10, 482, 226	13, 033, 370	32, 285, 544	16, 918, 269	15, 372, 275

1946	74,240,190	37,085,718	37,154,472	30,163,138	13,443,528	16,719,610	44,077,052	23,642,190	20,434,842
1947	77,350,266	38,921,170	38,429,096	34,839,194	15,773,964	19,065,730	42,511,072	23,147,706	19,363,644
1948	78,362,207	38,892,545	39,469,662	34,888,274	15,535,509	19,352,765	43,473,933	23,357,036	20,116,897
1949	85,400,278	40,077,743	45,322,535	39,736,497	16,054,649	23,681,848	45,663,781	24,023,094	21,640,687
1950	87,510,056	41,297,774	46,212,282	38,771,076	16,626,902	22,144,174	48,738,980	24,670,872	24,068,108
1951–60	1,260,474,979	668,425,964	592,049,015	492,806,365	252,897,204	239,909,161	767,668,614	415,528,760	352,139,854
1951	92,400,356	44,620,010	47,780,346	41,341,410	18,680,987	22,660,423	51,058,946	25,939,023	25,119,923
1952	103,712,099	51,129,142	52,582,957	44,212,088	20,898,541	23,313,547	59,500,011	30,230,601	29,269,410
1953	114,946,383	57,931,998	57,014,385	46,701,040	23,918,781	22,782,259	68,245,343	34,013,217	34,232,176
1954	114,456,153	57,968,104	56,488,049	47,571,458	23,963,853	23,607,605	66,884,695	34,004,251	32,840,444
1955	119,763,360	61,611,311	58,152,049	48,000,554	24,812,698	23,187,856	71,762,806	36,798,613	34,964,193
1956	129,616,053	68,792,308	60,823,745	49,767,313	26,097,673	23,669,640	79,848,740	42,694,435	37,154,105
1957	137,590,261	74,271,162	63,319,099	53,522,956	28,068,556	25,514,400	84,067,305	46,262,606	37,804,699
1958	144,298,007	78,982,718	65,315,289	53,363,327	28,262,967	25,100,360	90,934,680	50,719,751	40,114,929
1959	149,657,907	84,127,330	65,530,577	52,831,912	28,497,753	24,334,159	96,825,995	55,629,377	41,146,418
1960	154,034,400	88,991,881	65,042,519	55,494,307	29,755,395	25,738,912	98,540,093	59,236,466	39,303,607
1961–70	1,855,541,179	1,080,549,292	774,991,887	630,589,188	345,379,172	285,210,016	1,224,951,991	735,170,120	489,781,871
1961	160,294,175	92,259,659	68,034,516	56,624,149	30,626,879	25,997,270	103,670,026	61,632,780	42,037,246
1962	164,980,440	94,835,674	70,144,766	57,406,672	30,778,071	26,628,601	107,573,768	64,057,603	43,516,165
1963	164,881,601	94,694,164	70,187,437	56,785,973	29,957,041	26,828,932	108,095,628	64,737,123	43,358,505
1964	168,807,677	98,855,809	69,951,868	57,628,322	31,691,951	25,936,371	111,179,355	67,163,858	44,015,497
1965	175,814,081	101,807,624	74,006,457	59,814,872	33,313,991	26,500,881	115,999,209	68,493,633	47,505,376
1966	186,139,285	109,237,567	76,901,718	63,573,664	35,629,433	27,944,231	122,565,621	73,608,134	48,957,487
1967	195,143,536	114,630,122	80,513,414	67,265,449	37,044,010	30,221,439	127,878,087	77,386,112	50,291,975
1968	205,762,516	119,673,849	86,088,667	69,918,151	37,605,781	32,312,370	135,844,365	82,068,066	53,776,297
1969	217,680,053	128,076,705	89,603,348	69,948,201	38,953,525	30,994,676	147,731,852	89,123,160	58,608,672
1970	216,037,815	126,478,119	89,559,696	71,623,735	39,778,490	31,845,245	144,414,080	86,699,629	57,714,451
1971	220,364,917	128,110,768	92,254,149	72,610,668	39,960,015	32,650,653	147,754,249	88,150,753	59,603,496
1972	227,193,849	131,980,988	95,209,861	74,556,071	40,693,808	33,862,263	152,637,778	91,290,180	61,347,396
1973	238,273,375	138,363,082	99,910,293	77,351,351	42,517,192	34,834,159	160,922,024	95,845,890	65,076,134
1974	245,310,821	143,727,726	101,583,095	75,340,595	42,067,543	33,673,052	169,570,226	101,660,183	67,910,043
1975	236,822,698	141,103,691	95,719,007	78,374,007	43,591,722	34,782,285	158,448,691	97,511,969	60,926,722

BEDROS ODIAN,
Buffalo, N.Y., December 5, 1977.

Re H.R. 8149, An Act, "Customs Procedural Reform Act of 1977."

CHIEF COUNSEL
Committee on Finance, U.S. Senate,
Dirksen Senate Office Building, Washington, D.C.

DEAR SIR: Section 111. (a) of H.R. 8149 amends section 592 of the Tariff Act of 1930 so as to include the terms, "fraud," "gross negligence," and "negligence."

It is suggested that each of the terms be defined in the Act itself, in preference to the Customs Service defining the terms initially, whether by regulation or internal memorandum. Support can be found for this suggestion in various statutes: Social Security Act, Immigration and Nationality Act, Internal Revenue Code, and others. It can be said that statutes which are administered by governmental agencies usually contain "definitions." Outside the field of government, the Uniform Commercial Code, a comprehensive statute treating private rights and liabilities, is replete with definitions.

Such terms as "fraud," "gross negligence," and "negligence," evolved from a branch of the commmon law of torts, negligence. Traditionally, these terms have been associated with litigation between parties before the courts. Treaties, such as Prosser on Torts have expounded the law of torts. The Restatement on Torts continually codifies and compiles the massive materials on the subject.

The Tariff Act is a statute which is, in the first instance, administered by an agency of government. It is not enough merely to set forth the terms, "fraud," "gross negligence," "negligence" in the statute and to look to the Committee Reports, agency regulations, or internal administrative manuals, circulars and memorandums for their meaning.

The definitions of the terms should be set forth in the statute. The importing public and customs personnel should not be required, initially, at the operational level, to go beyond the statute and to look for the meanings in the Committee Reports, regulations, manuals, circulars, and memorandums.

Admittedly, statutes cannot foresee every *factual* situation. Nevertheless, administrative difficulties can be reduced if the legal limits of the terms are fixed by defining them within the statute. Both the importing public and the customs service will benefit.

With kind regards, I remain

Yours respectfully,

BEDROS ODIAN.

BEDROS ODIAN,

Re H.R. 8149, An Act, "Customs Procedural Reform Act of 1977."

COMMITTEE ON FINANCE
(Attention: Trade Staff).
Dirksen Senate Office Building, Washington, D.C.

SIR: In the Tariff Act of 1930, subsection (c) of section 484, Production of Bill of Lading, should be repealed in its entirety.

Indeed, section 141.11(b) of Customs Regulations [19 CFR 141.11(b)] states that "... the delivery of the merchandise by the carrier to the person making entry ... shall be deemed to be the certification required by subsection (h), section 484, Tariff Act of 1930." Otherwise stated, the carrier's *act* of delivering the goods to the person making entry is considered to be the certification that such person is owner or consignee. See T.D. 72-3 in the 1972 volume of the Customs Bulletin for the rationale of the then section 8.6(n), now section 141.11(b), of Customs Regulations.

Hence, there is no need for subsection (c) of section 484, requiring the production of a Bill of Lading.

Section 483 subsection (1), wherein the holder of a bill of lading is deemed to be the consignee, is permissive only, whereas, section 484(c) is mandatory, and unnecessary as well. Section 483(1) does not require the production of a bill of lading. Incidentally, the language, "shall be held to be the property", in subsection (1) of section 483 should be amended to, "shall be deemed the property." "Deem" connotes a presumption, which is proper in the context of the section. "Held" does not connote a presumption. The words, "to be", are superfluous.

The Customs Service has no legal interest, whether as bailee, consignee, consignor or issuer, in a Bill of Lading, a Document of Title under the Uniform Commercial Code.

Surely, under the expedited procedures in the imminent Customs Procedural Reform Act of 1977," H.R. 8147, there will be no need for the Customs Service to require or be concerned with Bills of Lading.

I repeat here my remarks written ten years ago and which appeared at page 35 of your Committee's "Compendium of Papers on Legislative Oversight Review of U.S. Trade Policies," February 7, 1968:

> Common carriers are strictly regulated by the Federal Maritime Commission, the Civil Aeronautics Board, or the Interstate Commerce Commission.
>
> Further, common carriers are subject to liability under the Federal Bills of Lading Act (49 U.S.C. 81–124). They are also subject to the "Bills of Lading" provisions of the Uniform Commercial Code as enacted by [49] States [and the District of Columbia and the Virgin Islands].
>
> It is presumed that the common carrier is acting lawfully and within the scope of its authority when it conveys bills of lading and other papers and receipts to a consignee, or when it processes an entry, either directly with customs or through a customhouse broker.
>
> The carrier, or a customhouse broker selected by the carrier, or the consignee, in making the entry in his own right (importer of record), is accepting the responsibilities and obligations entailed in the transaction. In any event, the various bonds posted by the carrier, or by the broker, or by the consignee, protect the rights of the Government. The various liabilities which inure to the benefit of the Government are safeguarded.

The benefits will be the elimination of paperwork, forms, and requirements which retard making and processing entries, and which delay the movement of importations; better service to the importing public; reduction of paper handling, without injuring the interests of the Government.

Subsection (c) of section 484 of the Tariff Act should be repealed.

With kind regards, I remain

Yours respectfully,

BEDROS ODIAN.

P.S. In section 483(1) of the Tariff Act, the language, "shall be held to be the property", should be amended to, "shall be deemed the property."

JACKSONVILLE MARITIME ASSOCIATION, INC.,
Jacksonville, Fla., January 30, 1978.

Senator ABRAHAM RIBICOFF,
Chairman, International Trade Subcommittee, Senate Finance Committee, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR RIBICOFF: We are writing on behalf of our 32 member companies and their three hundred plus U.S. and Foreign Flag shipping company principals who operate deep-sea cargo vessels, container ships, auto carriers, tankers and other vessels concerned with import/export foreign commerce moving through the port of Jacksonville, Florida.

HR–3149 will provide long overdue relief from the expensive and punitive enforcement by U.S. Customs of outmoded and ancient penalty sections of the 1930 Tariff Act. This relief, however, is primarily for importers and customs house brokers.

Shipping companies and their agents also need legislative relief from some of the penalty provisions of the Act. (Sections 584, 453, 448 etc.) Shipowner sponsored amendments will be presented to your subcommittee by Mr. J. J. Greene. We urgently request the subcommittee to give serious consideration to these recommendations.

We strongly recommend the approval of HR–8149 and such amendments that will provide U.S. Customs with laws that are consistent with foreign trade practices and modern day handling of cargo documents and cargo.

We ask that this letter be made part of the Subcommittee record of the hearing on HR–8149.

Very truly yours,

VERNON MCDANIEL, JR., *Executive Secretary.*

NEW ORLEANS STEAMSHIP ASSOCIATION,
New Orleans, La., January 31, 1978.

Re: H.R. 8149—Customs Procedural Reform Act of 1977, etc.

Senator ABRAHAM RIBICOFF,
Chairman, International Trade Subcommittee, Senate Finance Committee, Russell Senate Office Building, Washington, D.C.

DEAR SENATOR RIBICOFF: The New Orleans Steamship Association, whose membership comprises 55 companies of steamship owners, operators, agents and stevedores in the Port of New Orleans associated with hundreds of owners in international commerce, wishes to submit the following comments in support of the shipowners sponsored amendments to H.R. 8149 which will be presented to your Subcommittee by the President of the Foreign Shipowners Association of the Pacific Coast.

The amendments sponsored by the Foreign Shipowners Association of the Pacific Coast would amend Sections 431, 440, 448, 453 and 584 of the Tariff Act of 1930. We note that the Customs Procedural Act of 1977, H.R. 8149, among other things, proposes to amend Section 592 which would provide some relief from the archaic penalty sections of the existing law; however, this relief would apply only to the importers and their Customhouse Broker. Such relief is important and necessary for this segment of the shipping industry; however, we also feel that similar relief should be afforded the shipowners and their agents. The amendments of the Foreign Shipowners Association would provide such relief.

While we have the other section of the proposed Customs Procedural Reform Act of 1977—H.R. 8149 under review, we at this time urge that the shipowner sponsored amendments be approved and we request that this letter be made a part of the Subcommittee's records at the Public Hearings in Washington scheduled for February 2, 1978.

We are of the opinion that, although this bill leaves much yet to be accomplished in the modernization of the Custom laws, the changes that would come about through the above referred to amendments are a great step forward in removing some impediments in international commerce.

Yours very truly,

S. GIALLANZA, *Senior Vice President.*

STATEMENT OF SEA-LAND SERVICE, INC.

This statement sets forth the views of Sea-Land Service, Inc. of Menlo Park, New Jersey, regarding H.R. 8149, the Customs Procedural Reform Act of 1977. Sea-Land is an ocean common carrier serving more than 130 ports in over 50 countries. Sea-Land pioneered the carriage of goods by containers and now carriers more than 300,000 containers each year into and out of various United States ports. Sea-Land primarily operates U.S.-flag vessels in the U.S. foreign commerce and serves each of the major coastal ranges of the United States.

For years Sea-Land and other carriers have been plagued with increased customs penalty assessments against cargoes being imported into the United States. As a result, because of antiquated laws being applied to modern shipping techniques, initial large assessments are drastically reduced by the time a final penalty is imposed on the carrier at a large administrative cost to carriers and the Customs Service. This situation is prevalent not only for carriers but also for various cargo interests such as sellers, importers and agents.

It is primarily for this reason that Section 112 is included in H.R. 8149 which was passed by the House of Representatives on October 17, 1977. Section 112 would amend section 592 of the Tariff Act of 1930, as amended, (19 U.S.C. § 1592) by establishing new statutory rules for the assessment of penalties against consignors, sellers, owners, importers, consignees, agents or other persons who enter or introduce merchandise into the United States. Customs officers are required to give such individuals notice that there is reasonable cause to believe the customs laws have been violated. These persons may then explain why a claim for monetary penalties should not be issued. It is only after an explanation has or should have been received that a penalty may be assessed. Of greatest importance is the requirement that merchandise may not be seized nor may a monetary penalty be assessed for a violation resulting from clerical errors or mistakes of fact, unless a pattern of negligent conduct is established.

On the other hand H.R. 8149, as passed by the House, provides no such relief to shipping interests such as Sea-Land. The situation faced by carriers is not

materially different from that of the cargo interests and similar relief for such carriers is certainly warranted. Carriers such as Sea-Land are subject to section 584 of the Tariff Act of 1930, as amended (19 U.S.C. § 1584) which now provides that if merchandise, found on board or having been discharged from a vessel, is not included or described in the manifest, or does not agree with such manifest, the master or owner of the vessel, or the person in charge, shall be liable for a penalty equal to the value of the merchandise so found or discharged. A proviso states, however, that if the manifest is incorrect by reason of clerical error or other mistake, no penalty shall be incurred. In actual practice, customs officers assess the penalty, require a substantial bond, and then release the cargo. If at some later time a clerical error is proven and the customs officers finds the mistake was due to clerical error or other type of minor mistake, then the bond shall be returned and, at most, a minimal penalty is assessed. In the meantime a substantial number of individuals spend countless hours revising, preparing, justifying and discussing such errors to prove there was no intentional attempt to misdeclare items on such manifests.

Attachment A of this statement is a report prepared by Sea-Land on U.S. Customs Fines and Penalties incurred in 1977 and prior years. The figures speak for themselves, but it is important to note that most of the cases resulted in substantial mitigation of fines or cancellations. Basically Sea-Land, in 1977, received 506 fines totalling $7,166,311. Of the 506 fines, only 291 were paid for a total of $35,865. Of the 291 fines paid, Sea-Land initially had a total exposure of $639,629, but ended only paying 5.6 percent of this amount. The primary reason these fines were paid can be laid to clerical error and the inability of Sea-Land to amend its manifests within 60 days. 135 fines for $2,221,025 were cancelled. The fines assessed are extraordinary because the Customs Service fines are 70 percent of the value of the cargo in instances of misdelivery, non-manifested cargo, and cargo released without Customs Service supervision. Attachment B sets forth three examples in 1977 of assessed fines in excess of $100,000 were were ultimately canceled by the Customs Service. Of course, more examples could be supplied if requested by the subcommittee.

As is clear this is no small problem to Sea-Land which is only requesting that it be given the same treatment under § 584 as is contemplated for the cargo interests under § 592. There is no reason why automatic enforcement should be imposed upon the carriers. Fines and penalties should not be levied, and cargo should not be seized, until the master, owner, or other responsible person is given a reasonable time to fully explain a particular situation. Customs officials should be required to consider explanations and all revelant information before the fine is actually levied, before cargo and/or the ship is seized, and before a burdensome cash bond is required. A notice provision similar to that for the cargo interests is preferable to the present automatic assessment system. It is improper to levy a fine when there are no falsified documents or false declarations. It is not reasonable to hold carriers, their masters, owners, or other persons responsible for non-negligent and unintentional errors set forth in manifests.

One final matter must be noted. Containerization has dramatically revolutionized the whole concept of transportation both domestically and internationally. Now cargo is loaded into a container at a shipper's place of business and is taken directly to the ultimate consignee without being handled again by any person. Typically a sealed container is not opened until it reaches its final destination. By this the cost of transporting goods has been substantially reduced, cargo is handled less frequently, and damage to cargo is much less, resulting in a more efficient and economical transportation system.

Since the container is sealed when it reaches the vessel, the master and other responsible persons do not see the cargo which is actually in the container. Necessarily they must rely upon shipper supplied documents to compile a manifest. It is unreasonable to hold the master or other persons responsible for the contents of a container since they have no control over the cargo. They should not be liable when they have reasonably relied upon shipper representations.

In summary Sea-Land supports H.R. 8149 but believes it does not go far enough. H.R. 8149 should also protect shipping interests, which do not vary substantially from the cargo interests, since there is no reason to continue to enforce the present antiquated enforcement system against carriers. Indeed, Sea-Land believes that in those cases involving gross negligence and fraud, a carrier should be held accountable. Sea-Land is not requesting any special status but is only advocating that it be given the same privileges given to the cargo interests. Your consideration of these views is greatly appreciated.

ATTACHMENT A

SEA-LAND SERVICE, INC., U.S. CUSTOMS FINES AND PENALTIES INCURRED, 1977

(Activity period Jan. 2–Dec. 31, 1977)

Terminal	1977 fines received [1]		Paid [2]		Canceled [3]		Mitigated [4]		Recovered [5]		Inventory-unsettled [6]		Total inventory unsettled 1977, 1978 and prior	
	Number	Amount	Number	Amount	Number	Amount	Number	Amount	Number	Amount	Number	Amount	Number	Amount
Boston	10	$5,468	1	$20	1	$20	0	0	0	0	8	$5,428	10	$5,502
Elizabeth	167	650,316	94	10,968	66	336,312	50	$204,592	5	$462	7	90,623	7	90,623
Philadelphia	7	1,060	6	115	0	0	0	0	0	0	1	945	1	945
Baltimore	18	7,146	17	6,020	0	0	1	485	0	0	1	700	1	700
Portsmouth	3	1,985,516	0	0	0	0	0	0	0	0	3	1,985,516	3	1,985,516
Charleston	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Atlantic total	205	2,649,506	118	17,123	67	336,332	51	205,077	5	462	20	2,083,212	22	2,083,286
Jacksonville	27	304,018	14	877	8	221,807	8	41,778	0	0	5	6,700	5	6,700
Port Everglades	3	2,716	2	323	1	570	0	0	0	0	0	0	0	0
New Orleans	10	1,665	9	218	0	0	2	1,425	0	0	1	22	1	22
Houston	54	1,096,206	30	7,927	13	507,590	18	210,169	0	0	11	370,520	13	525,992
Gulf total	94	1,404,605	55	9,345	22	729,967	28	253,372	0	0	17	377,242	19	532,714
Long Beach	18	728,995	5	497	6	676,510	1	3,950	0	0	7	51,594	11	71,494
Oakland	129	2,267,479	89	6,868	30	467,279	51	128,990	0	0	10	1,664,342	10	1,664,342
Seattle	32	95,609	9	1,223	1	3,159	2	2,119	0	0	22	89,023	22	89,023
Pacific total	179	3,092,083	103	8,588	37	1,146,948	54	135,059	0	0	39	1,804,959	43	1,824,859
Seattle—domestic	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Anchorage	8	3,247	8	607	0	0	1	2,640	0	0	0	0	0	0
Alaska Division total	8	3,247	8	607	0	0	1	2,640	0	0	0	0	0	0
Americas Division, Puerto Rico, total	20	16,870	7	202	9	7,778	3	7,616	0	0	4	8,555	4	8,555
Grand total	506	7,166,311	291	35,865	135	2,221,025	187	603,764	5	462	80	4,273,968	88	4,449,414

[1] Total fines assessed during this period.
[2] Total fines paid, after investigation and petition.
[3] Total fines completely canceled through petition.
[4] Total fines mitigated through petition.
[5] Total fines recovered through supplemental petitions presenting new evidence.
[6] Total unsettled fines presently under investigation or awaiting Customs decision on petitions.
[7] Total unsettled fines for 1977, 1976, and prior, under investigation or awaiting Customs decision on petitions.
[8] Includes 5 fines for $3,300,000 for claims relating to containers.

SEA-LAND SERVICE INC., OPEN U.S. CUSTOMS FINES AND PENALTIES INCURRED 1976 AND PRIOR ACTIVITY PERIOD DEC. 31, 1976—DEC. 31, 1977

Terminal	1976 and prior fines and penalties		Paid[3]		Canceled[4]		Mitigated[5]		Recovered[6]		Inventory—Unsettled[7]	
	Number	Amount	Number	Amount	Number	Amount	Number	Amount	Number	Amount	Number	Amount
Boston	6	$1,729	2	$104	2	$1,463	1	$89	0	0	2	$74
Elizabeth	33	81,557	2	425	31	79,160	1	2,397	1	$26	0	0
Philadelphia	8	2,435	1	15	7	2,419	0	0	0	0	0	0
Baltimore	3	3,594	2	59	1	3,557	0	0	0	0	0	0
Portsmouth	8	6,700	4	2,226	4	4,474	0	0	0	0	0	0
Charleston	8	1,383,500	8	13,540	0	0	8	1,369,960	0	0	0	0
Atlantic total	66	1,479,515	19	16,369	45	91,073	10	1,372,446	1	26	2	74
Jacksonville	3	3,650	1	50	2	3,650	0	0	0	0	0	0
Port Everglades	0	0	0	0	0	0	0	0	0	0	0	0
New Orleans	1	50	0	0	1	50	0	0	0	0	0	0
Houston	28	312,537	7	2,139	19	154,026	2	900	0	0	2	155,472
Gulf total	32	316,237	8	2,189	22	157,726	2	900	0	0	2	155,472
Long Beach	31	121,525	6	725	21	81,478	4	20,109	0	0	4	19,900
Oakland	62	980,976	19	3,605	43	455,297	13	540,914	0	0	0	0
Seattle	4	2,302	2	105	2	2,197	0	0	0	0	0	0
Pacific total	97	1,104,803	27	4,435	66	538,972	17	561,023	0	0	4	19,900
Seattle—Domestic	0	0	0	0	0	0	6	0	0	0	0	0
Anchorage	0	0	0	0	0	0	0	0	0	0	0	0
Alaska Division total	0	0	0	0	0	0	0	0	0	0	0	0
Americas Division, Puerto Rico, total	8	3,996	0	0	8	3,996	0	0	0	0	0	0
Grand total	203	2,904,551	54	22,993	141	791,767	29	1,934,369	1	26	8	175,446

[1] Total fines assessed during this period.
[2] See total inventory columns on prior table, for 1977 figures.
[3] Total fines paid, after investigation and petition.
[4] Total fines completely canceled through petition.
[5] Total fines mitigated through petition.
[6] Total fines recovered through supplemental petitions presenting new evidence.
[7] Total unsettled fines presently under investigation of awaiting Customs decision on petitions.

J. F. SPELLMAN—CUSTOMS CONTROL

	1976	
	Number	Amount
Carried over from 1975	139	$1,950,194
Assessed amount 1976	498	2,324,684
Total	637	4,274,878
Paid	224	24,986
Canceled	210	1,345,341
Mitigated	130	454,741
Recovered	3	731
Inventory—Unsettled end of year, 1976	203	2,904,551

U.S. CUSTOMS FINES AND PENALTIES 1976 AND 1977—ACTIVE IN 1977

	Number	Amount
Carried over from 1976, cases only	203	$2,904,551
Paid	54	22,993
Canceled	141	791,767
Mitigated	29	1,934,369
Recovered	1	26
Inventory—Unsettled end of year, 1977	8	175,446
1977 cases only:		
Assessed amount	506	7,166,311
Paid	291	35,865
Canceled	135	2,221,025
Mitigated	137	603,764
Recovered	5	462
Inventory—Unsettled end of year, 1977	80	4,273,968
Total inventory—Unsettled end of year, 1977 and 1976:		
1977	80	4,273,968
1977 and prior	8	175,446
Total	88	4,449,414

ATTACHMENT B

U.S. CUSTOMS PENALTIES OVER $100,000 THAT WERE RECEIVED BY SEA-LAND SERVICE, INC. IN 1977 AND CANCELLED

In reference to the above subject, listed below are three cases that were over $100,000 and cancelled.

LONG BEACH

(1) District Case 77-2704-50444—$353,797.50. Cause 19 CFR 18.8-B2. Misdelivery of manifested merchandise. Received on March 9, 1977. Petitioned on May 4, 1977. Cancelled on July 5, 1977. Penalty Notice attached.

(2) District Case 77-2704-50446—$296,450. Cause 19 CFR 18.8-B2. Misdelivery of manifested merchandise. Received on March 3, 1977. Petitioned on May 3, 1977. Cancelled on July 5, 1977. Penalty Notice attached.

OAKLAND

(3) District Case 77-2809-52564—$109,660. Cause 19 USC 1584. Not having all B/L listed on the manifested presented for formal entry. Received on August 10, 1977. Petitioned on September 8, 1977. Cancelled on September 26, 1977. Penalty Notice attached.

These are just three examples of the subject cases. Additional cases are available.

Case Number: 77-2704-50444
Port Name and Code: LA - L3
Date: MAR 3 1977

NOTICE OF PENALTY OR LIQUIDATED DAMAGES INCURRED AND DEMAND FOR PAYMENT

TO:

Sealand Service, Inc.
P.O. Box 900
Edison, N.J. 08817

IRS #22-1625254

Att'n: Mr. James F. Spellman, Customs Control/Controllers

DEMAND IS HEREBY MADE FOR PAYMENT OF $ 353,797.50 representing ☐ Penalties or ☒ Liquidated Damages assessed against you for violation of law or regulation, or breach of bond, as set forth below:

This port has no record of merchandise moving in bond under Los Angeles Transportation Entry No. IT 8127210, dated 7/17/75 being delivered to Customs custody at Baltimore, Md. or any other authorized port. Liquidated damages are assessed for the apparent misdelivery of the manifested merchandise.

Merchandise - 1350 Pkgs. misc.

Value - $505,425.00

Rate - 70% of value

Claim - $353,797.50

LAW OR REGULATION VIOLATED	BOND BREACHED
19 CFR 18.8 B 2	Carrier's Bond

Description of Bond: [illegible] | Form Number: CF 3587 | Amount: $ 50,000.00 | Date: 11-8-68

Name and Address of Principal on Bond: Sea-Land Service Inc., Corbin & Fleet Sts., Elizabeth, N.J.

Name and Address of Surety on Bond: St. Paul Fire & Marine Ins. Co. 3345 Wilshire Blvd., Suite 592, Los Angeles, Ca. 90010 | Surety Identification No.: 740

If you feel there are extenuating circumstances, you have the right to petition for relief from this claim. Such petition should be executed in [illegible] and addressed to the Commissioner of Customs and must be forwarded to the District Director of Customs at 300 S. Ferry St., Terminal Is., Ca. 90731

Unless the amount herein demanded is paid or a petition for relief is filed with the District Director of Customs within 60 days from the date hereof, further action will be taken in connection with your bond or the matter will be referred to the United States Attorney.

District Director of Customs

BY: [illegible]

DEPT. OF THE TREASURY
BUREAU OF CUSTOMS
19 U.S.C. 1595a, C.F.R.

NOTICE OF PENALTY OR LIQUIDATED DAMAGES INCURRED AND DEMAND FOR PAYMENT	Case Number: 77-2704-50446 Port Name and Code: LA - 1.3 Date: MAR 3 1977 Investigation File No.:

TO:

Sealand Service, Inc.
P.O. Box 900
Edison, N.J. 08817

Att'n: Mr. James F. Speilman, IRS #22-1625254
Customs Control/Controllers

RECEIVED
MAR 7 1977
CUSTOMS CONTROL

DEMAND IS HEREBY MADE FOR PAYMENT OF $ 296,450.00 representing ☐ Penalties or XX Liquidated Damages assessed against you for violation of law or regulation, or breach of bond, as set forth below:

This port has no record of merchandise moving in bond under Los Angeles Transportation Entry No. IT 8105252, dated 7/17/75 being delivered to Customs custody at Baltimore Md. or any other authorized port. Liquidated damages are demanded for the apparent misdelivery of the manifested merchandise.

Merchandise - 1334 ctns. frozen Chinese pea pods

Value - $423,500.00

Rate - 70% of value

Claim - $296,450.00

(Continue facts on reverse)

LAW OR REGULATION VIOLATED	BOND BREACHED
19 CFR 18.8 B 2	Carrier's Bond

Description of Bond (if any)	Form Number	Amount	Date
	CF 3587	$ 50,000.00	11-8-68

Name and Address of Principal in Bond: Sea-Land Service Inc., Corbin & Fleet Sts., Elizabeth, N.J.

Name and Address of Surety on Bond: St. Paul Fire & Marine Ins. Co. 3345 Wilshire Blvd., Suite 502, Los Angeles, Ca. 90010 | Surety Identification No.: 740

If you feel there are extenuating circumstances, you have the right to petition for administrative relief. Such petition must be executed in duplicate (triplicate), and addressed to the Commissioner of Customs, and must be forwarded to the District Director of Customs at 300 S. Ferry St., Terminal Is., Ca. 90731

Unless the amount herein demanded is paid or a petition for relief is filed with the District Director of Customs within 60 days from the date hereof, further action will be taken in connection with your bond or the matter will be referred to the United States Attorney.

District Director of Customs
By: [signature]

Customs Form 5955 A (2/70)

23-525
23-526

(432)

Case Number
77-2809-52564

NOTICE OF PENALTY OR LIQUIDATED DAMAGES INCURRED AND DEMAND FOR PAYMENT

Port Name and Code
San Francisco 28 09
Investigation File No.

TO:
B. Von Gerber, Master
c/o Sea-Land Service Inc.
1425 Maritime Street
Oakland, California

IRSF #1946
Entered 6-16-77
IRS #22-1625254-93

DEMAND IS HEREBY MADE FOR PAYMENT OF $ 109,650.00, representing [X] Penalties or [ ] Liquidated Damages assessed against you for violation of law or regulation, or breach of bond, as set forth below:

The AM SS SEA-LAND TRADE entered the port of San Francisco on 6-16-77 from Los Angeles, California with residue foreign cargo for discharge. The following Fusen B/L's were not on the manifest presented for formal entry, the manifest certified by the bond port, Seattle, Wash, was also missing the B/L's listed: B/L 962-585752 851 ctns work shoes, 962-585757 80 ctns squeeze toys, 962-585801 920 ctns leather work shoes, 962-585791 300 ctns work shoes.

RECEIVED
AUG 10 1977
INTERNATIONAL SYSTEMS

LAW OR REGULATION VIOLATED	BOND DEMANDED
19 U.S.C. 1584	Vessel Term Bond

Description of Bond (If any)	Form Number	Amount	Date of Execution
	7599	$ 50,000.00	5-11-76

Principal's Name and Address of Bond
Sea-Land Services Inc., 1425 Maritime Street, Oakland, California

Name and Address of Surety on Bond
Federal Ins Co, St John F. Kennedy Parkway, Short Hills, New Jersey

Surety Identification No.
269

If you feel that there are extenuating circumstances, you have the right to object to the above action. Your petition should explain why you should not be penalized for the cited violation. While the petition is a matter of right, it is submitted in (duplicate) to the Commissioner of Customs, and forward to the District Director of Customs at
595 Battery Street, San Francisco, Ca. 94126
Unless the amount demanded is paid or a petition for relief is filed with the District Director of Customs within 60 days from the date hereof, further action will be taken in connection with your bond or the matter will be referred to the United States Attorney.

Signature: [signature]
Title: Customs Service Officer
Date: JUL 1 1977

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
19 U.S.C. 1623, C.F.R.

Customs Form 5955-A (10-9-73)

AMERICAN TEXTILE MANUFACTURERS INSTITUTE, INC.
Washington, D.C., February 2, 1978.

Hon. ABRAHAM A. RIBICOFF,
Chairman, Subcommittee on International Trade, Senate Committee on Finance, Dirksen Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is with regard to H.R. 8149, the Customs Procedural Reform Act of 1977. We would appreciate its inclusion in the record of hearings on this bill.

ATMI is the central organization of the United States textile industry, representing approximately 85 percent of the domestic capacity for spinning, weaving, knitting and finishing of textiles of cotton, wool and man-made fibers. We have a vital interest in any action by our government affecting in any way international textile trade.

Since 1961 the United States has been a signatory to GATT arrangements regarding textile and apparel imports. Currently there are bilateral agreements in force between the United States and some 18 countries regarding such imports into the United States.

As originally introduced, H.R. 8149 would have increased the value of informal entries which escape altogether being recorded as imports. Because a large volume of apparel imports are of relatively low value, this would have created a large loophole in textile quota enforcement procedures.

This provision was deleted from H.R. 8149 as passed by the House and we strongly urge the committee to concur in that action.

Section 103 of the bill could permit the combining of several entries into one report which, in turn, could distort the statistical base essential for measuring textile imports. We are aware of the overall purpose of this provision and that the language of this section seeks to build in safeguards to assure the timely colection of statistics. However, we would suggest a statement in the Committee's Report on the measure making clear that it is the intent of the committee that this provision be administered in a manner which ensures that integrity of the statistical base for measuring textile imports be maintained.

Without accurate statistics, it is not possible to monitor performance of exporting countries under bilateral agreements, nor properly to determine restraint levels when the United States takes unilateral action.

Sincerely,

W. RAY SHOCKLEY, *Executive Vice President.*

STATEMENT OF AFL–CIO ON THE CUSTOMS PROCEDURAL REFORM ACT OF 1977 (H.R. 8149)

The AFL-CIO believes that H.R. 8149, the Customs Procedural Reform Act of 1977, amounts to a unilateral concession by the United States to speed imports into this country. To put such a law into effect while international trade negotiations are underway in Geneva and while customs issues are subject to negotiation seems to weaken the bargaining stance of the United States. We therefore urge this subcommittee not to recommend enactment of customs procedural reform at this time.

The AFL-CIO believe that H.R. 8149, the Customs Procedural Reform Act of 1977, will further weaken implementation of trade laws and policies designed to help U.S. production and jobs.

We recognize that Congress has been bombarded with complaints of those who are directly concerned with the technicalities of customs—importers, multinationals and Treasury officials. Conditions at customs ports of entry have raised serious concern. The bill now reflects most of the concerns raised by Treasury officials, travelers and traders.

But customs law affects the jobs and lives of millions of Americans who are not world travelers or world traders. For customs law sets the requirements for reporting imports that come into the United States. Customs is the primary source of information on which government agencies and the public must depend to monitor the effect of imports on production and jobs across the nation. Thus, customs law affects 400 laws and 40 agencies of government who are responsible to the public. Unfortunately, H.R. 8149 would, in our view, adversely affect most of these laws by further weakening the already inadequate reporting of imports. The objective of extensive Customs changes should be to improve the availability of needed information, not to reduce it.

These other laws that would be affected include the Trade Act of 1974 with its negotiating authority, import relief, and adjustment assistant; food and drug laws; consumer protection laws, etc. Also involved in the proposed changes of requirements for reporting imports are international trade arrangements now in place and/or currently being extended—such as the multifibre agreement, restraints on imports of color TVs, shoes and other orderly marketing arrangements.

The details of the impact of imports on jobs and production in firms and communities across the Nation must be monitored if the negotiating authority or the import relief of the Trade Act of 1974 is to be effectively carried out. H.R. 8149 is not designed for that purpose.

Instead, plans to put import data on tape will emphasize what Customs and Treasury need to know—not what other agencies need to know. Access to the actual customs entries should be assured, but the bill makes no provision for this.

Title I, Customs Procedural Reform, gives the Secretary of the Treasury the power to change the procedures for reporting imports. The Secretary of the Treasury can establish periodic payment of import duties. Many multinational importers view this change as one that accommodates their interest. In H.R. 8149 the imported products could be processed and duties not paid until 30 days later instead of the current 5 day limit. Many entries could be put together in a single total accounting. The rationale for this is that customs will be more efficient. Both customs and the corporation will find their paperwork reduced. But paper proof is needed for action under other laws of the United States—proof that will not necessarily be available on computer tape.

For example, as the multinational electronic industry association—WEMA—views the problem, the bill would "provide a statutory basis for implementing a new system of accounting which would separate the payment of duty from the reporting of an entry."

"WEMA welcomes this change. Periodic accounting, long and successfully used by the Internal Revenue Service, is much more suitable to today's business activities. It would save time, money and energy for the importers and government alike."

But delaying the payment of import duties or lumping imports into broad categories for payment purposes may have adverse effects upon other laws that depend upon this information. For example, current provisions of the Trade Act require that specific proof of specific injury be offered before adjustment assistance or import relief can be granted. If computerization is designed so that importers can lump their products together and aggregate them in their accounting reports, present difficulties will be magnified, because petitioners for import relief will be unable to obtain proof.

Even now, billions of dollars worth of products are entered in "basket categories," lumping various products together. But the trade law requires specific proof of specific displacement for an imported component, or an auto part, etc. A worker group or a firm has trouble getting information now because the government does not collect data.

Business, government and labor have complained about lack of data. In 1974, Congress directed the agencies to gather statistics on imports and U.S. output so that fair comparisons could be made. This has not been done. These factual details may be considered "de minimis" or unimportant by efficiency-minded customs processors. But the loss of a job or business is important to those who are hurt. Better reporting is necessary because injury cannot be proved legally without detailed information.

Duty free items are imported and affect U.S. jobs. The Treasury emphasis on revenue tends to minimize reporting of such items. Furthermore, the Administration is now granting duty-free status to products and parts of products imported from developing countries; 2700 products or parts of products are allowed in. The Government must depend on the word of global firms whose foreign operations would benefit from their statements. Merely computerizing would make the detailed proof of what is being imported much harder to ascertain.

Corporate records and modern accounting practices shed little light on the impact of products or parts of products on production or jobs here at home. They are geared to the profit objectives of global firms and to the internal pricing policies of these firms.

This is not to say that the accounting practices do not serve the firms' objectives or are dishonest. But corporate accounting is not designed to meet the needs for information on the impact of trade on our economy. H.R. 8149 will allow the giant multinationals and those interested in speed at Customs to determine who will get information on imports and what kind. But impact on U.S. output—a matter of concern to the firms and Congress as well, will be left to statistical reports designed for the convenience of customs and importers.

Title I also provides interest-free credit, because the time for paying duties, which under current law, is within 5 days of entry will be changed to 30 days. With 30 days to pay, the firm has 30 days of interest-free use of money it owes the Government. Some firms have requested that a 90 day period be included in the law. That would give them 90 days of interest-free credit.

AFL–CIO three years ago prepared a list of needs that modern laws and events require be served by customs modernization. We reiterate the need for the criteria contained in that list:

The purpose of the bill should be to collect necessary information to help the Nation—not only to help revenue and cut customs' costs. Therefore, the emphasis should be on accurate, timely, and detailed reporting:

1. Clear reporting, on a current basis, on products, parts of products and place of entry is necessary.

2. Responsibility for adequate reporting should be required of the Treasury with specific directions. The direction to the Secretary of the Treasury should be specifically related to Congressional and public needs.

3. Duty-free items are major parts of international trade and the influx of more and more duty-free items will flood the Nation without knowledge of their impact on jobs and production, unless the purely revenue-related aspects of customs service are made a secondary consideration. Therefore, clear, precise, and timely detailed data on duty-free items are needed.

4. Inspection of the physical item is essential for verification. Otherwise the reports will merely be a computerized numbers game, and the numbers will have less and less clarity for the purpose of helping the Congress find out what is affecting the Nation. Bill should require verification that such-and-such an item that is being imported is actually reported on the numbers given for the computer.

5. Trademark regulations need to be changed, because nowadays companies can license total production of the trademark item outside the U.S., and the customs law is merely designed to help the owner of the trademark—not to require adequate reporting of the import of the item

6. Modernization and simplification are attractive words, but the modernization can be taken care of, if necessary, by a few changes of some of the most obsolete provisions (fees, for example) in separate bill. Computerization does not mean modernization if it merely adds to confusion. Simplification can take the form of making it easier for the Congress to get information about what is affecting their interest—constituents' jobs and production—not merely cutting out necessary information to adapt to the computer or to Treasury and importer's needs.

7. Country-of-origin must be included in any reporting. Otherwise, neither diplomatic nor economic objectives of the Nation can be pursued. Failure to enforce country-of-origin marking requirements already has raised concern. Treasury has not acted.

8. The Trade Act of 1974 has many provisions to which this bill should be geared; as it now stands, the bill works against the purposes of 608 and 609 and even much of the purpose of the Trade Act of 1974 (promote U.S. employment, curb injurious imports, enforce bilateral agreements with Communist and other countries, allow for "mutual" advantages with developing nations) Trade Act provisions of reporting imports, exports and U.S. production consistently (608 and 609) should be carried out to help Congress know what is happening in the U.S., not merely to provide some new statistics.

The need for better import information can be demonstrated by a review of the experience with Trade Adjustment Assistance. Since the Trade Act of 1974 became effective three years ago, the majority of workers who petitioned have not received adjustment assistance. Out of 628,578 who petitioned, only 275,908 had been certified as eligible to apply for assistance between April 3, 1975 and November 30, 1977. One reason is the lack of adequate information. But even this does not include all the people affected. The GAO report on adjustment

assistance explained that the majority of workers in the U.S. were unaware of the availability of trade adjustment assistance.

The Trade Act of 1974 gives the Labor Department 60 days to decide adjustment assistance cases, but as experience has shown, it often takes more than 60 days to get information and determine cases. Frequently, no information is available on imports of products and parts of products. Since import information is so inadequate, the Labor Department now depends on questionnaires sent to the customers of firms whose employees petition for relief on the grounds that imports have cost their jobs. These questionnaires are a basis for decisionmaking. Thus if a firm's former customer tells the Labor Department that he did not switch to imports, the Labor Department may determine that the worker did not lose his job because of imports. GAO has found these customer surveys an inadequate and inaccurate measure of import effects. The information on imports should be available, starting at the point of entry, if the requirements of adjustment assistance are to be fulfilled. Only then can relationships to production be ascertained clearly. H.R. 8149 does not improve this deficiency and can worsen it.

In fact, the bill assures that records to be kept by business will be geared to the ordinary recordkeeping of business. But all analysts of import relief and adjustment assistance agree that adequate information in detail about imports of products and parts of products is not now available.

Thus, without adequate data, the Labor Department cannot make findings of injury in many cases, cannot make accurate findings in other cases. The workers lose out while imports keep coming in.

It can be argued that H.R. 8149 now refers to this problem. In delegating authority to the Secretary of the Treasury, provisions for adequate statistical data are included in Title I.

The following examples illustrate why this revision fails to solve the issue AFL–CIO has repeatedly raised about the need for specific directions concerning collection of data in the statutory language.

First, the impact on U.S. labor can be ignored by those who are mainly concerned with customs technicalities. Labor has, in fact, been ignored by Customs: The new Commissioner of Customs, Robert Chasen, stated on July 19, 1977, that "In February and March of this year Customs representatives met with representatives of most of the groups and associations that had testified before this Committee on H.R. 9220, the earlier version of this bill. Their respective criticisms, objections and proposals were considered and discussed. The officials of each group were given an opportunity to comment on various aspects of legislation as it was revised." The AFL–CIO knows of no instance where a labor union was consulted by Customs officials on this issue by that time. But the AFL–CIO and some affiliates had appeared in Congressional hearings and submitted statements on earlier proposals. Since H.R. 8149 was sent to the Senate, some Customs officials have briefly discussed some issues but failed to answer AFL–CIO concerns. They were well-versed in customs problems but could not understand labor's objections. The same will undoubtedly be true of problems for small business.

Second, Mr. Chasen also stated that the proposed law contains "a revised recordkeeping requirement which balances the needs of the Government and the genuine concerns of the importing community over the creation of expensive, new, burdensome systems of records. To eliminate this concern, one of the factors included in the revised statutory provision is that the records shall be those normally kept in the ordinary course of business."

In the face of the expressed need of the Congress and the public for better information, this vague assurance is not sufficient.

This exemplifies the reason the AFL–CIO has urged much more specific direction and oversight for a flexible data base, so that customs modernization will create a source of adequate information for national needs. More and better information is necessary.

Customs has not shown concern for the urgency of action in the face of import injury. Evidence that current laws have not been adequately enforced on such issues as dumping have led to proposals to make the antidumping law stricter. H.R. 8149 also tries to change the penalties for fraudulent or mistaken entries. This part of the bill has received a great deal of attention.

To give statistical discretion to the agency which has not carried out Congressional directions precisely in international trade matters, will not reassure those who need data. The Congress needs the facts. There is no evidence available

that 40 agencies and 400 laws affected have been fully analyzed. Census statements that the available information will not be worse are not reassuring.

Section 592 of the Tariff Act of 1930 established penalties and procedures for those who make false statements to customs officials. Importers say they have been denied due process and talked of "police-state tactics," in 1977, because of actions by Customs. Importers, like all Americans, have the right to due process. But high penalties should be assessed for defrauding the government.

H.R. 8149 revises Section 592 to provide for due process but it reduces the penalties for those who make false statements to the government under some circumstances. Again, AFL–CIO supports procedures for due process, but believes that any fraudulent entry should be subject to heavy penalty.

In summary, AFL–CIO believes that Customs is the primary source of information on imports. Only accurate detailed and timely reports at each point of entry can give a clear picture of what is happening. Adequate reports are not now available, and the problems are growing.

With about $150 billion worth of imports pouring into this nation in 1977 and about $120 billion worth of exports moving abroad, the impact of trade has become vitally important to the nation's welfare. Workers, producers, communities and the $1.8 trillion U.S. economy feel the impact of this vast interchange, but how, when and where the impact occurs frequently is not available to policymakers. The Congress needs facts and accurate information.

Congress recognized the inadequacy of information and directed the Executive Branch to relate imports and exports to U.S. production in Section 608 and 609 of the Trade Act of 1974. This directive has not yet been implemented.

Computerization will not be designed to accomplish that goal, but rather to speed the impact of goods and to make the accounting more efficient.

Meanwhile, workers, producers, and government administrators are dependent on information that only the government can collect and only the traders can provide. Every title of the Trade Act, from the negotiating authority of Title I to the monitoring of East West Trade in Title IV to the preferential arrangements for imports from developing countries in Title V depends on information. The claims of hundreds of thousands of trade displaced workers, of whole segments of industries now decimated are left to the vagaries of inadequate statistics.

The AFL–CIO believes H.R. 8149 should be revised to permit Treasury to computerize existing customs procedures only after provisions assure more detailed information and make certain that Customs wil coect the data necessary for enforcing other laws.

STATEMENT OF F. A. MEISTER, PRESIDENT, AMERICAN FOOTWEAR INDUSTRIES ASSOCIATION

My name is Frederick A. Meister, Jr. I am President of the American Footwear Industries Association—a trade association headquartered in Arlington, Virginia whose member firms account for 90 percent of the production of non-rubber footwear in the United States.

At the time H.R. 8149 was under consideration in the Ways and Means Committee of the House of Representatives, we communicated to that Committee the deep concern of our industry over Section 211(a) of the draft legislation which would have increased the value of imported articles eligible for informal customs entry from $250 to $600. We were pleased that the final version, as passed by the House on October 17, 1977, did not contain this objectionable section.

Now that the proposed legislation is under review within the Senate, it may be that some parties will seek to revive the informal entry provision dropped by the House. If so, we earnestly trust this Subcommittee will conclude, as did its House counterpart, that such revision of the customs statute is not justified and conflicts with the Government's program to revitalize the U.S. non-rubber footwear industry.

The rationale for the proposal of a $600 informal customs entry for imports was that, by eliminating the necessity for formal entry of shipments under this amount, paperwork and other administrative burdens on the U.S. Customs Service would be lightened, thereby introducing economies and greater efficiency into the customs procedures. Representatives of U.S. importer organizations were—and presumably still are—eager to see the customs statute on informal entry so

changed. However, their objective is not to lighten burdens on the Customs Service but to lighten their own responsibilities to the Customs Service in having to furnish the necessary documentation for appropriate customs clearance and entry of imported articles.

In our view, looser customs procedures coupled with reduced importer responsibilities to the U.S. Customs Service does not serve public policy. Extension of informal customs entry privileges to import shipments above the present $250 value means just that—looser customs supervision and control over a larger volume of imports—which would add to the cost and complexity of customs administration. But perhaps of greater concern to public policy is the damaging results of such a revision in the customs statute for the operations and jobs of American firms and workers in industries such as the non-rubber footwear industry, which are import sensitive and have suffered serious injury from low-wage, low-cost foreign production.

For the Subcommittee's information, I would like to describe more fully our objections to any increase in the value of the informal entry provision from the present authorized $250 limit.

CUSTOMS ENFORCEMENT PROBLEMS WOULD BE COMPOUNDED

Under informal entry procedures, more flexible customs procedures prevail in that no bond is required and the shipment is not subject to formal appraisement by the U.S. Customs Service. The customs officer clearing the shipment, of course, has a right to examine the contents of all parcels but ordinarily under "informal entry", he simply releases the articles to the importer, with payment of duty based on the shipping documents and statements furnished therein, regarding quantities and the values of articles.

To the exent that the value of goods subject to such informal entry provisions is increased from $250 to $600, it would obvlously mean more import shipments would clear U.S. Customs with much less direct supervision and control. Such a situation can be expected to lead to new problems with regard to the proper enforcement of customs regulations and requirements in that there may be more incidence of deliberate evasion of duties through false or inaccurate statements as to the quantities and values of articles in a particular shipment.

IMPORT DATA WOULD BE UNDERSTATED

At present, shipments entered by informal entry procedures go unrecorded in the U.S. import data and although Section 211(a) of the original House draft legislaiton would have required "accurate statements" as to the kinds, quantities and values of articles of shipments over $250 to the $600 maximum which are informally entered through customs, there is a great risk that such shipments would not be properly recorded or tabulated. Thus, U.S. import data issued for nonrubber footwear could be significantly skewed.

Accurate and timely import trade data are of great concern to the nonrubber footwear industry and are vital to the effective implementation of the import relief program granted by the President last April, through negotiated orderly marketing agreements with appropriate supplying countries. Such agreements, involving a roll back in imports from two principal foreign suppliers of shoes—Taiwan and Korea—were officially implemented by Presidential Proclamation 4510 of June 22, 1977. [It should be noted here that imports from these two countries spurted from 98 million pairs of shoes in 1974 to 200 million pairs in 1976, representing in 1976 about 54 percent of total imports.] Agreements to moderate the level of shipments from these countries, and assurances from the Administration that there will be a cap on the rest of the world at levels no higher than their 1976 levels, provide this industry with its first opportunity for a breathing spell to adjust to import competition.

Surveillance of import flows from all supplying countries aimed at preventing import surges from non-controlled countries is thus an essential element in the import relief program. To this end, there has been set up a special statistical program in Executive Branch agencies to monitor imports of nonrubber footwear from Korea and Taiwan as well as all uncontrolled suppliers. In the first eleven months of 1977, total imports of all nonrubber footwear had an average f.o.b. unit value of $4.31. Were informal entry provisions to apply to shipments up to $600 in value, it would mean that any one shipment containing 139 pairs of shoes could go unrecorded in our import statistics, or at best be subject to much looser procedures for the collection and tabulation of import data.

This could also be troublesome to effective implementation of import restraints on shipments of nonrubber footwear from Korea and Taiwan.

PRESIDENT'S IMPORT RELIEF PROGRAM GIVES INDUSTRY NEEDED BREATHING SPELL

Our industry with its ancillary supplying industries—the tanners, in-sole manufacurers, machinery manufacturers, plastics producers, last and die-makers, among others—provide jobs for over 250,000 men and women all over this country. Yet what we have seen throughout each sector of this industry is a consistent decline in employment, production, and reasonable profit margins as a consequence of the relentless penetration of low-wage, low-cost imports in the domestic market.

Consider these shocking statistics:

From 1968 to 1977, footwear imports doubled from 182 to about 365 million pairs.

Import penetration increased in this period from 22 percent to about 50 percent.

Domestic production fell from 642 to about 380 million pairs.

Employment in footwear manufacturing declined from 233,000 to 165,000 workers.

Our unemployment rate is double the national average.

Idle capacity in our industry is about 200 million pairs, 30 percent of the industry's capacity.

The number of firms declined from 597 in 1969 to 376 in 1975 and probably is less than 350 today.

After experiencing rebuff after rebuff at the hands of prior Administrations, after three escape clause investigations, two unanimous injury findings, and prolonged inter-agency consideration by special task forces of appropriate measures to deal with the shoe industry's import problems, this industry has at long last been given an opportunity for a breathing spell against injurious imports.

It is therefore essential that the Executive and Legislative Branches refrain from measures which could make more difficult the nonrubber footwear industry's efforts to adjust to import competition. In this context, the American Footwear Industries Association is opposed to any revision in the customs statute which would increase the value of imported articles eligible for informal entry. This is not now part of the legislation pending review in the Senate and it is hoped the Subcommittee on International Trade will reject any effort to reintroduce it as part of the proposed Customs Procedural Reform Act.

STATEMENT OF THE CIGAR ASSOCIATION OF AMERICA, INC.

The Cigar Association supports passage of H.R. 8149. We feel that many of its provisions will simplify procedures and permit Customs to operate in a more orderly and businesslike manner.

TECHNICAL AMENDMENT URGED FOR CUSTOMS BONDED WAREHOUSES

We also urge the Subcommittee to consider and adopt a technical amendment to this bill which would cure a problem created by the National Emergencies Act of September 14, 1976. The amendment would continue Customs authority to grant extensions of the 3-year storage limit for merchandise in Customs bonded warehouses. That authority is scheduled to expire on September 14 of this year under the terms of the National Emergencies Act noted above.

REASONS FOR AMENDMENT

For the last 26 years, Customs has routinely granted extensions of the 3-year limit applicable to merchandise stored in Customs bonded warehouses. On January 11, 1978, the U.S. Customs Service announced that the authority to grant such extensions will expire on September 14, 1978. See attached press release. This will cause undue hardship and disruption for businesses whose operations have been structured around this 26-year practice. It will place a financial burden

on them, since they would be forced to (1) remove merchandise from bonded facilities, remit duty payment, and find alternative storage space until the merchandise is actually needed, or (2) turn to foreign storage facilities to the detriment of American warehouse operators and their employees. Affected interests include a number of businesses importing many products ranging from tobacco to articles having only an occasional market (ship's propellers, for example).

An amendment to section 109 of the bill to authorize Customs to grant a limited number of extensions of the storage period would cure the problem outlined above. Such an amendment will not cause a reduction in revenue to the Government. Moreover, we have been advised that Customs and Treasury do not oppose such an amendment.

SUGGESTED AMENDMENT LANGUAGE

In its present form, section 109 of the bill would amend section 557 of the Tariff Act (relating to Customs bonded warehouses). Section 557 is also the appropriate section to continue Customs authority to grant extensions of the 3-year storage limit for merchandise in Customs bonded warehouses. Accordingly, we suggest that a new subsection (e) be added to section 557 of the Tariff Act, as follows:

"(e) The Secretary of the Treasury may provide for the extension of the 3-year period prescribed for warehousing under this section and under section 559 of this Act. Each extension shall be for one year, but no more than three extensions may be granted with respect to the same merchandise."

It should be noted that under this authority no more than three extensions could be granted, each extension being for a one-year period. The existing extension authority is unlimited. We believe that a limitation on the number of extensions is desirable as a matter of administrative convenience.

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, D.C., January 11, 1978.

U.S. CUSTOMS TO END EXTENSIONS ON BONDED WAREHOUSE STORAGE PERIODS STARTING IN LATE 1978

Effective September 14, 1978 the U.S. Customs Service will end its policy of permitting an unlimited number of extensions to the time imported merchandise may remain in bonded warehouses.

After the deadline merchandise in bonded warehouses must be withdrawn within three years from the date of importation into the United States.

Although the Tariff Act of 1930 states that imported goods in bonded warehouses should be removed within three years of the date of importation into the United States.

Although the Tariff Act of 1930 states that imported goods in bonded warehouses should be removed within three years of the date of importation, Customs has allowed an unlimited number of one-year extensions under the authority of a Korean War Emergency decree, Proclamation 2498 of October 12, 1951. This decree was terminated by the National Emergencies Act of September 14, 1976 which becomes effective on September 14, 1978.

One year extensions granted before September 14, 1978 will be allowed to run their full course. Merchandise placed in bonded storage on September 13, 1975. for example, may remain there until September 13, 1979.

The change does not affect merchandise in foreign trade zones. Customs places no time limits on goods stored in any of the 29 foreign trade zones currently operating in the U.S., since these zones are not considered to be part of the Customs territory of the United States. Customs notes, however, that merchandise may not be transferred from bonded warehouses to foreign trade zones unless it is to be exported.

Customs also serves notice that the upcoming change ends extensions to the one-year storage period during which unclaimed merchandise may remain in Customs General Order (GO) storage before it is sold at auction.

[Mailgram]

CUSTOMS BROKERS AND FOREIGN FREIGHT
FORWARDERS ASSOCIATION OF CHICAGO,
Chicago, Ill., February 2, 1978.

Senator ADLAI STEVENSON,
U.S. Senate,
Washington, D.C.:

Hearing began February 2, 1978, in the Senate Finance Committee on H.R. 8149, within the bill is a section 114 that is a potential clerical nightmare. It requires the relicensing of the industry of custom house brokers every 3 years. Similar to a drivers license program. The effect of section 114 is to find out when a licensed broker dies. If he fails to renew his license then he is considered out of business and his license is cancelled. You must know how easy it is to forget to renew a drivers license. The difference is that if a broker makes a clerical omission and fails to renew his license he cannot conduct business until it is renewed. In some ports this could cause a massive cargo jam and severe financial losses to an importer as well as the broker. Since U.S. Customs Commissioner Chasen has already gone on record with our national association that he: ". . . would not object to section 114 being deleted", we request that it be deleted. It is just too dangerous to be ignored. In the entire United States there are about 3,500 licensed brokers. Some ports have only one broker. There must be a more reasonable way to accomplish this task that is not so potentially lethal.

RICHARD H. OWENS,
President and Chairman of the Board of Directors.

INTERNATIONAL LAW COUNCIL,
FEDERAL BAR ASSOCIATION,
Washington, D.C., February 15, 1978.

Mr. MICHAEL STERN,
Staff Director, Senate Committee on Finance, Dirksen Senate Office Building, Washington, D.C.

DEAR MR. STERN: This letter is in response to an invitation to submit a written statement to include in the printed record of hearings conducted by the Senate Finance Subcommittee on International Trade on the Customs Procedural Reform Act of 1977 (H.R. 8149).

The subject of this letter is the provision in Title I of H.R. 8149 (Sec. 114) that would require customhouse brokers to renew their license every three years.

We understand that the reason for this provision is to provide Customs with more accurate information concerning what brokers are still in business and their current addresses. According to the House Ways and Means Committee Report on the bill (No. 95-621), the proposed amendment "would not involve any reexamination, but would serve as a pro forma filing for a renewed license (p. 20)."

Unfortunately, the requirement of renewing a license every three years creates a problem for brokers in obtaining financing, in selling their businesses, etc., which are probably unintended and unforeseen by the drafters of this bill. Accordingly, the National Customs Brokers & Forwarders Association of America, Inc. is proposing that, instead of a relicensing requirement, customhouse brokers simply be required to file periodic reports with Customs concerning the continued conduct of their busines. This would avod the potential financial problems anticipated under a relicensing procedure, but accomplish the desired result of keeping Customs informed about brokers. This reporting requirement could either be imposed by administrative regulation or by statute.

The International Trade and Customs Law Committee of the Federal Bar Association has canvassed its members with respect to the proposal by the National Customs Brokers & Forwarders Asociation, and the great majority of the memberhip respondings are in favor of the proposal. It is felt that since the relicensing would be merely a "pro forma" exercise, it should not be made a statutory requirement.

Sincerely,

WILLIAM K. INCE, *Chairman.*

ADMINISTRATION CONFERENCE OF THE UNITED STATES,
Washington, D.C., February 8, 1978.

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

DEAR CHAIRMAN LONG: This is in response to your request for the comments of this Office on H.R. 8149, the Customs Procedural Reform Act of 1977, passed by the House of Representatives on October 17, 1977 and now the subject of hearings before your Committee.

As you may know, the Administrative Conference recently completed extensive consideration of the system of judicial review of actions of the Customs Service, which resulted in adoption of enclosed Recommendation 77-2, approved September 16, 1977. One of the major focuses of our review was the civil penalty scheme utilized by the Customs Service under Section 592 of the Tariff Act of 1930. The current Section 592 provides that the penalty for violations of the Tariff Act and certain other import statutes is the forfeiture of the imported merchandise or its full value. Even though the Customs Service is normally prepared to negotiate a mitigation of this penalty, the potential sanction is often so great as to deprive alleged violators of any real choice in the matter. If the alleged violator does not wish to accept the proferred mitigation because he believes he did not violate the statute or because he believes that he is entitled to a greater degree of mitigation, he is subject to suit in the district court for the full forfeiture value. If he does accede to the mitigated amount, there is no opportunity for judicial review.

In our consideration of this matter we received numerous comments attesting to the unfairness of this scheme, and paragraph E of our Recommendation 77-2 was designed as a prescription for reform of the Customs Service's civil penalty assessment process.

We believe that Section 111 of H.R. 8149 is consistent with the objectives of our recommendation, and because of the urgent need for reform of Section 592, we strongly support H.R. 8149 and urge its passage. Representatives of our Office testified before the House Ways and Means Subcommittee on Trade last session in support of H.R. 8149 (see pp. 303-318 of Hearings, Serial 95-31).

As the bill currently stands, we believe Section 111 carries out paragraph E of our Recommendation 77-2, except in one particular: the venue of actions by the government to enforce penalty assessments. The bill extends the current law providing for the bringing of such proceedings in the U.S. District Courts, whereas our recommendation urges that such suits be brought exclusively in the Customs Court. Our preference is based upon three factors. First, the Customs Court has more experience than district courts with the legal issues that often arise in such proceedings. For example, the Customs Court is better able to decide whether blueprints given by an importer to a foreign supplier should have been declared as a dutiable "assist" and whether the failure to make such a declaration violates Section 592. Second, the likelihood of more uniform penalty assessments will be greater if jurisdiction is in one specialized court. Third, the Customs Court's dockets are markedly less crowded than most district courts—a factor which would ensure relatively speedier adjudication. On the other hand, we recognize two drawbacks to our preference, though, we feel that both can be overcome. The first is that the Customs Court, despite its authority to hold trials anywhere within its nationwide jurisdiction, most often sits in New York City, while district courts may be more accessible to defendants at other ports. This problem can be overcome by encouraging the Customs Court to "ride circuit" more often. Alternatively, an idea proposed to us by the Department of Justice would permit *removal* of penalty cases from the district court to the Customs Court at the instance of the importer under certain circumstances. Another possible drawback is the fact that the Customs Court seems to lack the power to empanel juries. Although the constitutional right to a jury trial does not extend to enforcement cases brought by the government to assess or collect civil penalties, *Atlas Roofing Co.* v. *Occupational Safety and Health Review Commission*, 430 U.S. 442 (1977), if Congress wished to retain the present right to jury trial in customs penalty cases, it could authorize the Customs Court to empanel juries for this purpose.

We recognize that the Department of Justice is in the process of preparing a more comprehensive proposal for revision of the Customs Court's jurisdiction, and that perhaps consideration of this venue issue should await the considera-

tion of such legislation. We also would agree that reform of Section 592 should not await, nor foreclose, subsequent reconsideration of this issue.

One other particular of the bill warrants our special endorsement. Section 106 would amend Section 509 of the Tariff Act of 1930 to provide "special procedures for third-party summons," providing for notice to the person identified in the records sought by the summons. This provision parallels a similar recommendation of the Administrative Conference (Recommendation 75-10, enclosed), relating to the summons power of the Internal Revenue Service. Although we did not study the issue with respect to the Customs Service, we know of no reason the proposal should not apply to its procedures as well.

Sincerely yours,

ROBERT A. ANTHONY,
Chairman.

Enclosure.

§ 305.75-10 Internal Revenue Service Procedures: The IRS Summons Power (Recommendation No. 75-10).

(a) *Information on the Summons.* The Internal Revenue Service should revise its Summons form (Form 2039) to delete extraneous language and references to particular statutes, regulations, or fact situations, and to include, preferably on its face, and in a prominent position and type style:

(1) A brief and specific description of administrative procedures available to the summoned party for rising objections to the summons or to question propounded at the appearance; and

(2) A statement that if the summoned party fails to comply with the summons or fails to answer questions propounded, the Service may seek a court order to compel compliance, and that where the summoned party fails to appear or otherwise to comply with the summons willfully and without legal excuse, he may be subject to contempt proceedings or criminal prosecution.

(b) *Notification to Taxpayer of Summons to Third Parties.* At the time a summons is served on a third party requesting testimony or production of documents, or as soon as feasible thereafter, the Internal Revenue Service should transmit a copy of such summons to the person to whom such testimony or documents relate.

(c) *Management Monitoring of Use of Summons.* To assure better oversight by its management of the use of the summons by its officers and employees, the Internal Revenue Service should prepare and maintain statistics and analyses for each taxpayer class, to the extent possible, comprising the following data:

(1) Number of summonses issued;

(2) Classifications of employees issuing summonses;

(3) Number of summonses with which there is voluntary compliance;

(4) Number of summonses with which there is not voluntary compliance and for which it is decided not to seek judicial enforcement, together with the reasons for such decisions; and

(5) Number of summonses with which there is not voluntary compliance and for which it is decided to seek enforcement, together with the reasons for such decisions, whether judicial enforcement is granted or denied, and the reasons for denial of enforcement.

RICHARD K. BERG,
Executive Secretary.

JANUARY 6, 1976.

RECOMMENDATION 77-2: JUDICIAL REVIEW OF CUSTOMS SERVICE ACTIONS
(ADOPTED SEPTEMBER 15-16, 1977)

A. JURISDICTION AND POWERS OF THE CUSTOMS COURT

The Customs Court has exclusive jurisdiction to review decisions of the Customs Service (1) denying protests of importers relating to certain enumerated matters and (2) rejecting petitions of United States manufacturers, producers or wholesalers to challenge certain actions taken with respect to merchandise imported by others. Actions of the Customs Service suspending or revoking cus-

toms brokers licenses are reviewable, by statute, in the courts of appeals.[1] There are other actions of the Customs Service that are administratively final but for which no specific statutory provision for review has been made. These include decisions made by the Service to suspend or discontinue permits for immediate delivery of merchandise as well as decisions to exclude certain types of merchandise from entry. Such actions are now reviewable, if at all, in the district courts pursuant to their general or special jurisdiction.

Moreover, the Customs Court does not have power at present to "compel agency action unlawfully withheld or unreasonably delayed," as can district courts under the APA, 5 U.S.C. § 706(1). The Customs Service sometimes fails to act on significant matters for such extended periods that its inaction may amount to agency action, as defined by 5 U.S.C. § 551(13) to include "failure to act." An example is the failure or refusal of the Service to complete the final assessment of duties payable on an importation. Finally, the Customs Court has no power at present to provide relief until after the protest or petition process has run its course even though the Customs Service has taken action with such immediate and drastic impact on a person that a district court considering comparable action of another agency would treat it as final for purposes of review. The recommendation would provide for review by the Customs Court of the final actions and failures to act just described.

Decisions to exclude merchandise may be made either by the Customs Service or another agency, such as the Food and Drug Administration. All exclusion decisions pursuant to a customs law (*i.e.*, a law applicable only to imported merchandise, usually codified in Title 19 of the United States Code), whether made by the Customs Service or some other agency, are now reviewable in the Customs Court. This review would be unaffected by the recommendation. Exclusion decisions under a law that is not a customs law are never reviewed in the Customs Court. When such an exclusion decision is made by an agency other than the Customs Service, the Customs Court does not, and under the recommendation would not, review the decision. However, when such an exclusion decision is made by the Customs Service, the recommendation would give the Customs Court exclusive jurisdiction to review it.

The Customs Court has sometimes been said not to have "equity powers." What is meant by this is not clear, but the recommendation would give the Customs Court all powers, injunctive and other, of the district courts.

The Customs Court is unique among Article III courts in being subject to a requirement that not more than five of its nine judges be appointed from the same political party and in having a chief judge selected from time to time by the President. These requirements, appropriate perhaps for multi-member administrative agencies, are not consonant with the Article III judicial role of the Customs Court, especially as that role would be expanded by these recommendations.

1. Jurisdiction without a protest or petition

Congress should amend 28 U.S.C. § 1582 to broaden the jurisdiction of the Customs Court by giving the court exclusive jurisdiction of any civil action brought to challenge final agency action (as defined in the Administrative Procedure Act) of the Customs Service except (1) action specifically subject to review in another court and (2) action pertaining to the exclusion of merchandise, under a law that is not a customs law, and taken by the Customs Service on the request or at the direction of a court or another federal agency.

2. Remedial powers

Congress should amend 28 U.S.C. § 1581 to confer upon the Customs Court in respect of actions properly pending before it the remedial powers of a United States district court.

3. Political affiliation of court appointees and selection of chief judge

Congress should amend 28 U.S.C. § 251 to delete the requirement that not more than five of the nine judges of the Customs Court be appointed from the same political party and to provide that the chief judge is appointed by the Presi-

[1] The Conference has not studied the advisability of a change in the reviewing forum for such action. Nor does the Conference intend that the current method of reviewing personnel actions of the Customs Service or its determinations under the Freedom of Information Act of like statutes be disturbed.

dent with the advice and consent of the Senate, as in the case of the Court of Claims and the Court of Customs and Patent Appeals.

B. STANDING TO SEEK ADMINISTRATIVE AND JUDICIAL REVIEW

Under Section 516 of the Tariff Act of 1930, 19 U.S.C. § 1516, an "American manufacturer, producer, or wholesaler" may ask for and receive information on the duty imposed on imported merchandise of a kind manufactured, produced or dealt in by him and, thereafter, contest the appraised value of, classification of, or the rate of duty assessed upon, that merchandise by petition to the Customs Service. As stated under heading A, a decision concerning such a petition may be reviewed in the Customs Court. The recommendation is that Congress consider broadening the category of persons entitled to seek this sort of administrative relief and, thereafter, review in the Customs Court to include all persons adversely affected by an incorrect determination by the Customs Service. The Conference believes that the category of persons eligible to challenge such determinations by the Customs Service should thus conform with modern administrative practice, unless Congress determines that overriding considerations of economic policy make this undesirable.

Only the importer of excluded merchandise may now protest within the Customs Service the exclusion of merchandise and have denial of that protest reviewed by the Customs Court. The recommendation contemplates a broadening of the standing provision to enable any adversely affected person to seek administrative and judicial review of action either to exclude or to admit merchanise (unless the action is taken under a law that is not a customs law upon the request or at the direction of a court or another agency).

Under A(1) final actions of the Customs Service other than the denial of protests or petitions relating to classification, appraisal, duty and admission of merchandie, such as the suspension of immediate delivery permits, would be subject to review in the Customs Court. The recommendation contemplates conferring upon any adversely affected person who has exhausted his administrative remedies standing to seek review of such actions. The recommendation does not specify what procedures must be exhausted.

1. Decisions concerning duties

Congress should consider amending Section 516 of the Tariff Act of 1930, 19 U.S.C. § 1516, to allow any person adversely affected by an incorrect determination of the appraised value of, classification of, or rate of duty assessed upon, imported merchandise to obtain from the Customs Service information concerning such appraisal, classification or rate and to petition for a change. Denials of such petitions should be reviewable in the Customs Court.

2. Exclusion cases

Congress should consider enacting a new provision giving any person adversely affected by an action of the Customs Service, concerning merchandise that is, or should be, excluded from entry or delivery, a means of seeking administrative review of such action, with subsequent review in the Customs Court. Such a procedure should not be available to challenge action pertaining to the exclusion of merchandise, under a law that is not a customs law, and taken by the Customs Service on the request or at the direction of a court or another federal agency.

3. Other actions

If Congress broadens the jurisdiction of the Customs Court as recommended in A(1), it should also consider providing that actions within the broadened jurisdiction may be brought by any adversely affected person who has exhausted his administrative remedies.

C. BURDEN OF PROOF IN THE CUSTOMS COURT

The Customs Court operates under a statute that establishes a presumption that a Customs Service decision under review is correct and places upon a party seeking review the burden of proving the decision incorrect. Trial in the Customs Court is had on a record made in the court although 28 U.S.C. § 2632(f) provides that, upon the service of a summons, the Customs Service is to transmit certain documents underlying the Customs Service decision to the court "as part of the official record of the civil action." The Customs Court and the Court of Customs and Patent Appeals have inferred from the statute a further require-

ment, that in order to prevail the party seeking review must prove, in addition to the incorrectness of the agency's decision, what the correct decision should be. The recommendation would do away with that unorthodox further requirement and make Customs Court review of Customs Service actions conform in this respect with the review of actions of other agencies by other courts. The mode of review would continue to be a de novo trial (in the sense indicated above), which is considered appropriate because of the high degree of informality of most Customs Service procedures.

1. Elimination of the plaintiff's double burden

Congress should amend 28 U.S.C. § 2635(a) to revise the Customs Court's standard of review in the following way: The presumption of correctness of Customs Service decisions and the imposition upon a party challenging a decision the burden of proving otherwise would be retained, but an additional requirement read into the statute by the Customs Court and the Court of Customs and Patent Appeals would be eliminated. The additional requirement is that the challenging party prove not only that the Customs Service was wrong but also what a correct decision would be or risk suffering affirmance of the incorrect adverse decision.

Specifically, the amended statute should provide that, if the Customs Court determines that action taken by the Customs Service is erroneous, the court should modify or set aside such action; if the court is able to determine what action is correct, it should so determine and order that the correct action be taken; if the court, after exhausting its processes and procedures, cannot determine what action is correct, it should remand the case to the Customs Service with instructions to take action consistent with the decision of the court; any redetermination made by the Customs Service pursuant to a remand should be subject to a new protest or petition; a decision by the Customs Court to remand a case should be appealable.

D. REVIEW OF DECISIONS TO EXCLUDE MERCHANDISE

Exclusion of merchandise is a severe remedy. The recommendation would attempt to ensure expedited review of exclusion decisions and would delete the extraordinary authority of the Customs Service to detain and seize imported merchandise that allegedly infringes a United States trademark or copyright in the absence of the same sort of court order that is required before action may be taken against allegedly infringing domestic merchandise.

1. Expedited review

Congress should amend the statutes giving preference to certain types of cases in the Customs Court, 28 U.S.C. § 2633, and the Court of Customs and Patent Appeals, 28 U.S.C. § 2602, to ensure a similar preference for cases properly before either court involving the exclusion of merchandise from entry or delivery.

2. The Customs Service's authority under the trademark and copyright statutes

Congress should amend the statutes under which the Customs Service is authorized to detain and seize merchandise that allegedly infringes a United States trademark, 19 U.S.C. § 1526, or copyright, 17 U.S.C. § 603, to provide that the Customs Service may take no such action until after the owner of the trademark or copyright has obtained an order in a United States district court enjoining the importation. Alternatively, Congress should amend the trademark statute, as it has the copyright statute, to authorize the Customs Service to establish by regulation such a condition precedent to its acting to detain and seize allegedly infringing merchandise, and the Customs Service should promulgate such a regulation. In either event, the Customs Service should then adopt express procedures that would enable the owner of a trademark or copyright to identify imported merchandise that may infringe his mark or copyright.

E. IMPOSITION OF CIVIL PENALTIES

The penalty for violations of Section 592 of the Tariff Act of 1930, 19 U.S.C. § 1592, and some other import statutes is forfeiture of imported merchandise or its value. These penalty provisions are unsatisfactory. The statutory forfeiture penalty is likely to be disproportionate to the gravity of the alleged offense. Although the Customs Service is usually prepared to mitigate the penalty, the statutes pose the following dilemma: If the alleged violator does not wish to accept the profered mitigation because he believes he did not violate the stat-

ute or because he believes that he is entitled to a greater degree of mitigation, he is subject to suit in the district court for the full forfeiture value. Moreover, he will lose the benefit of any mitigation if the government can prove a violation, however insignificant, on his part. The recommendation would rationalize penalty procedures.

1. The rationalization of section 592

Section 592 of the Tariff Act of 1930, 19 U.S.C. § 1592, prohibiting fraudulent or false statements or practices respecting imports, should be revised to make it fairer and more rational in its operation.

a. Section 592 should be amended to provide for civil money penalties against the person violating the statute rather than for forfeiture of the merchandise or the full value thereof. Congress should establish maximum penalties based upon the revenue deficiency, if any, resulting from the violation and upon the degree of culpability of the violator. In any case in which the violation does not result in a revenue deficiency, the maximum penalties should be based upon a percentage of the value of the imported merchandise and upon the degree of culpability of the violator. If the violator is an importer, he should be given the option of surrendering his merchandise in lieu of payment of any penalty assessed.

b. The Customs Service should continue to have the authority to mitigate civil penalties. If an assessment is contested, an action by the government to enforce the penalty should be in the Customs Court. In such an action, the government should have the burden of proving the act or omission constituting a violation and, if so alleged, the intentional nature thereof. The Customs Court should be authorized to determine de novo the amount of the penalty.

c. In order to ensure that those subject to possible penalties under Section 592 know what is expected of them under the laws administered and enforced by the Customs Service, the Service should, to the maximum extent feasible, adopt and publish standards that will guide its determinations under such laws.

d. The authority of the Customs Service to seize and hold merchandise under Section 592, other than prohibited or restricted merchandise, should be limited to instances where such seizure and holding are necessary to protect its ability to collect any revenue deficiency or penalty, and the Customs Service should be required to release the merchandise to the owner upon his provision of security for payment of such revenue deficiency or penalty. Where no such release is effected by the owner, the Customs Service should be required to release the merchandise not later than 60 days after seizure unless the government has initiated an action in the Customs Court within that period and obtained an extension for good cause from the court. In instances where the Customs Court permits the Service to hold merchandise for sale by the Service to satisfy any revenue deficiency or penalty determined by the judgment of the court, the net proceeds of such sale, after allowance for the judgment and costs of the sale, should be paid to the owner.

2. Other statutes

Each of the other penalty provisions enforced by the Customs Service should be reviewed and, if appropriate, revised in a manner consistent with the foregoing recommendations for the revision of Section 592.

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