

# Calendar No. 1657

69TH CONGRESS }  
2d Session }

SENATE

} REPORT  
No. 1650

## TO AMEND SECTION 523 OF THE TARIFF ACT OF 1922

FEBRUARY 28, 1927.—Ordered to be printed

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

### REPORT

[To accompany H. R. 11658]

The Committee on Finance, to whom was recommitted the bill (H. R. 11658) to amend section 523 of the tariff act of 1922, having had the same under consideration, report it back to the Senate with an amendment in the nature of a complete substitute and recommend that the bill do pass.

Following is a copy of the original report from the Senate Committee on Finance:

[Senate Report No. 1026, Sixty-ninth Congress, first session]

The Committee on Finance, to whom was referred the bill (H. R. 11658) to amend section 523 of the tariff act of 1922, having considered the same, report it back to the Senate, without amendment, and recommend that it do pass. The necessity for this legislation is clearly set forth in the report of the Committee on Ways and Means to the House of Representatives, being Report No. 1137 of the Sixty-ninth Congress, which is as follows:

[House Report No. 1137, Sixty-ninth Congress, first session]

The Committee on Ways and Means, to whom was referred the bill (H. R. 11658) to amend section 523 of the tariff act of 1922, having had the same under consideration, report it back to the House without amendment and recommend that the bill do pass.

This legislation has become necessary on account of a disagreement or difference of opinion between the Treasury Department and the General Accounting Office as to the authority and duty of the Comptroller General in auditing the accounts of collectors of customs.

Under the Budget and Accounting Act of 1921, which created the office of Comptroller General, it is provided in section 304 that—

All powers and duties now conferred or imposed by law upon the Comptroller of the Treasury or the six auditors of the Treasury Department, and the duties of the Division of Bookkeeping and Warrants of the office of the Secretary of the Treasury relating to keeping the personal ledger accounts of disbursing and collecting officers, shall, so far as not inconsistent with this act, be vested in and imposed upon the General Accounting Office and be exercised without direction from any other officer. \* \* \*

Section 305 of this act amended section 236 of the Revised Statutes so as to provide that—

All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office.

Section 309 of the same act further provides that—

The Comptroller General shall prescribe the forms, systems, and procedure for administrative appropriation and fund accounting in the several departments and establishments, and for the administrative examination of fiscal officers' accounts and claims against the United States.

In this connection the following portions of section 312 (a) and section 313 of the same act are also pertinent:

SEC. 312 (a). The Comptroller General shall investigate, at the seat of government or elsewhere, all matters relating to the receipt, disbursement, and application of public funds, and shall make to the President when requested by him, and to Congress at the beginning of each regular session, a report in writing of the work of the General Accounting Office, containing recommendations concerning the legislation he may deem necessary to facilitate the prompt and accurate rendition and settlement of accounts and concerning such other matters relating to the receipt, disbursement, and application of public funds as he may think advisable. \* \* \*

SEC. 313. All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment. \* \* \*

The tariff act of 1922, in section 523, substituted "collectors of customs" for the "naval officers of customs" then in office. Under the first act of Congress relative to the customs, being the act of July 31, 1789, a naval officer was provided at each principal port, whose duty it was—

to receive copies of all manifests and entries, and \* \* \* together with the collector, estimate the duties on all goods, wares, and merchandise subject to duty.

This legislation was taken from the laws of Parliament, which gave very wide authority to similar naval officers in the ports of Great Britain. In those smaller ports in which there were no naval officers, the findings and decisions of collectors of customs were subject to verification by the Auditor for the Treasury Department. Section 523 of the tariff act of 1922 transferred the duties of the naval officers of customs in the large (naval officer) ports and of the Auditor for the Treasury Department in the smaller (nonnaval officer) ports to the comptrollers of customs, and required the latter to "examine the collector's accounts of receipts and disbursements of money and receipts and disposition of merchandise and certify the same to the Secretary of the Treasury for transmission to the General Accounting Office"; \* \* \* to "perform such other duties as the Secretary of the Treasury may from time to time prescribe"; \* \* \* and to "verify all assessments of duties and allowances of drawbacks made by collectors in connection with the liquidation thereof"; and further provided that "in cases of disagreement between a collector and a comptroller of customs, the latter shall report the facts to the Secretary of the Treasury for instructions."

However, in the last paragraph of section 523 of the tariff act of 1922, it is further provided that that section shall not "affect the provisions of the Budget and Accounting Act, 1921, approved June 10, 1921."

Section 523 of the tariff act of 1922 reads in whole as follows:

SEC. 523. COMPTROLLERS OF CUSTOMS.—Naval officers of customs now in office and their successors shall hereafter be known as comptrollers of customs.

Comptrollers of customs shall examine the collector's accounts of receipts and disbursements of money and receipts and disposition of merchandise and certify the same to the Secretary of the Treasury for transmission to the General Account-

ing Office. They shall perform such other duties as the Secretary of the Treasury may from time to time prescribe, and their administrative examination shall extend to all customs districts assigned to them by the Secretary of the Treasury.

Comptrollers of customs shall verify all assessments of duties and allowances of drawbacks made by collectors in connection with the liquidation thereof. In cases of disagreement between a collector and a comptroller of customs, the latter shall report the facts to the Secretary of the Treasury for instructions.

This section shall not be construed to affect the manner of appointment, the terms of office, or the compensation of any such officer as now provided by law, nor to affect the provisions of the Budget and Accounting Act, 1921, approved June 10, 1921.

As stated in the letter hereinafter quoted from the Treasury Department, "until recently the certificate of the naval officer (now comptroller of customs) on the collector's abstract of duties collected or refunded and drawbacks paid was accepted by the accounting officers as sufficient evidence of the amounts chargeable and collected as revenue and the amounts due as refund of excessive duties or in payment of drawbacks." The Comptroller General, however, has insisted that, by reason of the provision of section 523 of the tariff act of 1922, that that section shall not "affect the provisions of the Budget and accounting act." It is his duty to audit and review, if he believes or finds it necessary to do so, the administrative acts of the customs officers in fixing and collecting the amount of duty upon imported merchandise and the amount of drawbacks payable upon exported merchandise previously admitted upon payment of duty. The result has been a deadlock between the Treasury Department and the General Accounting Office, in consequence whereof accounts of collectors of customs have not been audited for many months; such accounts involving millions of dollars, for which the collectors of customs have not obtained discharge or clearance.

During the course of the controversy, the Secretary of the Treasury requested an opinion in the matter of the Attorney General of the United States, which was rendered on October 21, 1924, and reads as follows:

DEPARTMENT OF JUSTICE,  
Washington, October 21, 1924.

SIR: By your letter of January 15, 1924, you state that the Comptroller General claims the right to pass upon the correctness of the amount of duties collected on imported merchandise and of the amount of drawback allowed and paid on drawback entries. It is further stated that to enable him to take such action he has suspended the settlement of accounts of collectors of customs for the production of supporting papers and original documents showing the various steps in the transactions, and that large numbers of such accounts have accumulated. An expression of my opinion is requested in answer to the following questions:

1. Whether the Comptroller General may require to be forwarded to him any other papers than as prescribed by the Secretary of the Treasury?

2. Whether the Comptroller General has any authority to review the collector's liquidation of entries of imported merchandise and drawback entries?

The Budget and accounting act of 1921 (ch. 18, 42 Stat. 20), creating the office of the Comptroller General, outlines his authority. The act provides:

"SEC. 301. There is created an establishment of the Government to be known as the General Accounting Office, which shall be independent of the executive departments and under the control and direction of the Comptroller General of the United States. \* \* \*

"SEC. 304. All powers and duties now conferred or imposed by law upon the Comptroller of the Treasury or the six auditors of the Treasury Department, and the duties of the division of bookkeeping and warrants of the office of the Secretary of the Treasury relating to keeping the personal ledger accounts of

disbursing and collecting officers, shall, so far as not inconsistent with this act, be vested in and imposed upon the General Accounting Office and be exercised without direction from any other officer. \* \* \*

"Sec. 305. Section 236 of the Revised Statutes is amended to read as follows:  
 "Sec. 236. All claims and demands whatever by the Government of the United States or against it, and all accounts whatever in which the Government of the United States is concerned, either as debtor or creditor, shall be settled and adjusted in the General Accounting Office."

\* \* \* \* \*  
 "Sec. 309. The Comptroller General shall prescribe the forms, systems, and procedure for administrative appropriation and fund accounting in the several departments and establishments, and for the administrative examination of fiscal officers' accounts and claims against the United States.

\* \* \* \* \*  
 "Sec. 312. (a) The Comptroller General shall investigate, at the seat of government or elsewhere, all matters relating to the receipt, disbursement, and application of public funds, and shall make to the President when requested by him, and to Congress at the beginning of each regular session, a report in writing of the work of the General Accounting Office, containing recommendations concerning the legislation he may deem necessary to facilitate the prompt and accurate rendition and settlement of accounts and concerning such other matters relating to the receipt, disbursement, and application of public funds as he may think advisable. \* \* \*"

"Sec. 313. All departments and establishments shall furnish to the Comptroller General such information regarding the powers, duties, activities, organization, financial transactions, and methods of business of their respective offices as he may from time to time require of them; and the Comptroller General, or any of his assistants or employees, when duly authorized by him, shall, for the purpose of securing such information, have access to and the right to examine any books, documents, papers, or records of any such department or establishment. \* \* \*"

The Comptroller General has such authority as is specifically given him by the Budget and accounting act of 1921 and "all powers and duties now conferred or imposed by law upon the Comptroller of the Treasury or the six auditors of the Treasury Department."

Section 7 of the act of July 1, 1894 (ch. 174, 28 Stat. 206), known as the Dockery Act, provides that the auditors for the Treasury Department shall "receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of the Treasury and all bureaus and offices under his direction, all accounts relating to the customs service, \* \* \* and certify the balances arising thereon to the division of bookkeeping and warrants."

Section 277, Revised Statutes, defining the duties of the several auditors, provides that "The First Auditor shall receive and examine all accounts accruing in the Treasury Department, all accounts relating to the receipts from customs, including accounts of collectors and other officers of the customs, \* \* \* and, after examination of such accounts relating to the receipts from customs, including the accounts of collectors and other officers of the customs, he shall certify the balances and transmit the same, with the vouchers and certificates, to the commissioner of customs for his decision thereon, \* \* \*"

Section 4 of the Dockery Act, supra, abolished the office of commissioner of customs and provided that the Comptroller of the Treasury "shall perform the same duties and have the same powers and responsibilities as those now performed by \* \* \* the commissioner of customs."

The statutes above cited do not provide that the Auditor for the Treasury Department shall review the orders and regulations of the Secretary of the Treasury in relation to the collection of the customs revenues, nor the decisions of the collectors in liquidating entries of imported merchandise, or the allowance and payment of drawbacks on drawback entries.

Prior to the enactment of the Budget and accounting act of 1921, the Comptroller of the Treasury had the power to "prescribe the forms of keeping and rendering all public accounts, except those relating to the postal revenues," and it was his duty to "report to the Secretary of the Treasury official forms to be used in the different offices for collecting the public receipts from customs, and all the manner and form of keeping and stating the accounts of the persons employed therein." (Sec. 5 of the Dockery Act, July 31, 1894, 28 Stat. 206; U. S. Revised Statutes, sec. 318, as amended by sec. 4 of the Dockery Act, supra.)

Section 8 of the Dockery Act, supra, provides for an appeal from the decisions of the several auditors "upon the settlement of public accounts" to the Comptroller of the Treasury.

troller of the Treasury, "whose decision upon such revision shall be final and conclusive upon the executive branch of the Government \* \* \*"

Nowhere is there found any statute, prior to the enactment of the Budget and Accounting Act, authorizing the Comptroller of the Treasury to review the discretionary acts of the Secretary of the Treasury or the decisions of the collectors of customs in the classification of merchandise, the liquidation of entries of imported merchandise, or the allowance and payment of drawbacks on drawback entries. Nor does the Budget and Accounting Act confer this reviewing power upon the Comptroller General.

Section 309 of the Budget and Accounting Act authorizes the Comptroller General to "prescribe the forms, systems, and procedure for administrative appropriation and fund accounting in the several departments and establishments," but does not confer any authority on the Comptroller General to review the decisions of the collectors in liquidating entries of imported merchandise under the regulations promulgated by the Secretary of the Treasury, nor to promulgate regulations for the administration of the customs laws. This power, by the tariff act, is reserved to the Secretary of the Treasury.

There can be no doubt but that the Comptroller General may prescribe the forms to be used and the systems of accounting to be employed in accounting for the customs revenues collected in the several collection districts. It is the duty of his office to examine all accounts submitted to determine their accuracy, and where it is believed an erroneous payment has been made, he may suspend credit in the account until the error has been corrected, or a satisfactory explanation has been made; but he has no authority, express or implied, to take and retain possession of the original entry papers and records which belong to the offices of the collectors of customs.

Various statutes have imposed certain duties upon the Secretary of the Treasury and upon the collectors of customs, which duties must be performed. It can not be assumed that the powers conferred on the Comptroller General by the Budget and Accounting act to settle claims by or against the United States; to prescribe forms, systems, and procedure of accounting; to investigate receipts and disbursements of public funds and report thereon; to require from the several executive departments information regarding the powers, duties, activities, financial transactions, and business methods of such departments, and the right to examine the books, documents, and records of such departments, for the purpose of securing this information, confers upon the Comptroller General the authority to take possession of the original records and documents relating to the liquidation of entries of imported merchandise and review the acts and decisions of the Secretary of the Treasury and the collectors of customs in the performance of their statutory duties.

Upon the Secretary of the Treasury and the collectors of customs have been imposed certain statutory duties in connection with the administration of the tariff act and the collection of customs revenues. Sections 248, 249, and 251, Revised Statutes, provide in part as follows:

"Sec. 248. The Secretary of the Treasury shall, from time to time, digest and prepare plans for the improvement and management of the revenue, and for the support of the public credit; shall superintend the collection of the revenue; shall, from time to time, prescribe the forms of keeping and rendering all public accounts and making returns; \* \* \*

"Sec. 249. The Secretary of the Treasury shall direct the superintendence of the collection of the duties on imports, as he shall judge best.

"Sec. 251. The Secretary of the Treasury \* \* \* shall prescribe forms of entries, oaths, bonds, and other papers, and rules and regulations, not inconsistent with law, to be used under and in the execution and enforcement of the various provisions of the internal-revenue laws, or in carrying out the provisions of law relating to raising revenue from imports, or to duties on imports, or to warehousing; he shall give such directions to collectors and prescribe such rules and forms to be observed by them as may be necessary for the proper execution of the law."

The tariff act of 1922, enacted subsequent to the enactment of the Budget and accounting act provides:

"Sec. 502 (a). The Secretary of the Treasury shall establish and promulgate such rules and regulations not inconsistent with the law, and may disseminate such information as may be necessary to secure a just, impartial, and uniform appraisement of imported merchandise and the classification and assessment of duties thereon at the various ports of entry.

"Sec. 504. \* \* \* the collector shall ascertain, fix, and liquidate the rate and amount of duties to be paid on such merchandise as provided by law and

shall give notice of such liquidation in the form and manner prescribed by the Secretary of the Treasury, and collect any increased or additional duties due or refund any excess of duties deposited as determined on such liquidation."

Sections 514 and 515 provide a method of securing a review of the collectors' decisions by appeal to the Board of General Appraisers. Said sections read in part as follows:

"Sec. 514. All decisions of the collector, including the legality of all orders and findings entering into the same, as to the rate and amount of duties chargeable, and as to all exactions of whatever character (within the jurisdiction of the Secretary of the Treasury), and his decisions excluding any merchandise from entry or delivery, under any provision of the customs revenue laws, and his liquidation of any entry, or refusal to pay any claim for drawbacks, or his refusal to reliquidate any entry for a clerical error discovered \* \* \* shall be final and conclusive upon all persons, unless the importer, consignee, or agent of the person paying such charge or exaction, or filing such claim for drawback, or seeking such entry or delivery, shall, \* \* \* file a protest in writing with the collector setting forth distinctly and specifically, and in respect to each entry, payment, claim, or decision, the reasons for the objection thereto, \* \* \*."

"Sec. 515. Upon the filing of such protest and payment of duties and other charges the collector shall within 60 days thereafter review his decision, and may modify the same in whole or in part and thereafter refund any duties, charge, or exaction found to have been collected in excess, or pay any drawback found due, \* \* \*. If the collector shall, upon such review, affirm his original decision, or, upon the filing of a protest against his modification of any decision, the collector shall forthwith transmit the entry and the accompanying papers, and all the exhibits connected therewith, to the Board of General Appraisers for due assignment and determination, as provided by law. Such determination shall be final and conclusive upon all persons, and the papers transmitted shall be returned, with the decision and judgment order thereon, to the collector, who shall take action accordingly, except in cases in which an appeal shall be filed in the United States Court of Customs Appeals within the time and in the manner provided by law."

If the demands of the Comptroller General for the transmission to him of the original entry papers are acceded to, the statutory direction contained in section 515 that in the event of protest, "the collector shall forthwith transmit the entry and the accompanying papers, and all the exhibits connected therewith, to the Board of General Appraisers," can not be complied with. It is clear that Congress, in enacting sections 514 and 515 of the tariff act, intended that the entry papers, and the accompanying documents and exhibits, should be retained in the possession of the collector as a part of his office records, available in case an appeal from the liquidation of an entry of merchandise should be taken to the Board of General Appraisers and to the Court of Customs Appeals as provided by law.

That it was intended the administration of the tariff act of 1922 should be under the jurisdiction of the Secretary of the Treasury, and under such rules and regulations, not inconsistent with law, as he might promulgate, is clearly shown by various sections of said act. Section 520 provides that the Secretary of the Treasury is authorized to refund duties and correct errors in liquidation of entries, while section 623 provides that "in addition to the specific powers conferred by this act, the Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this act."

Collectors of customs have other accounts in addition to accounting for the customs revenues collected by them, such as the payment of employees, cartage, and expenses connected with the destruction of certain classes of merchandise, etc. These are administrative accounts which are subject to inspection and revision by the Comptroller General, the same as the administrative accounts of other public officers charged with the receipt and disbursement of public moneys. In reference to such accounts the tariff act of 1922, by section 523 thereof, provides that naval officers of the customs shall hereafter be known as comptrollers of customs; that it shall be the duty of such comptrollers of customs to "examine the collector's accounts of receipts and disbursements of money and receipts and disposition of merchandise and certify the same to the Secretary of the Treasury for transmission to the General Accounting Office." Said section further provides that comptrollers of customs shall "verify all assessment of duties and allowances of drawbacks made by collectors in connection with the liquidation thereof," and that in case of "disagreement between a collector and a comptroller of customs, the latter shall report the facts to the Secretary of the Treasury for instructions."



Nowhere in the tariff act of 1922 or in the Budget and Accounting Act of 1921 has there been given to the Comptroller General the power of reviewing the acts or decisions of the collectors of customs in the liquidation of entries of imported merchandise or the allowance and payment of drawbacks on drawback entries. Nor has there been conferred upon the Comptroller General the power to review or modify the regulations promulgated by the Secretary of the Treasury for the administration of the customs laws.

It is my opinion, therefore, that the Comptroller General is not clothed with such reviewing power.

Answering your specific questions, I have the honor to advise you that:

1. The Comptroller General has no statutory authority to require to be forwarded to him any other papers relating to entries of imported merchandise than those prescribed by the Secretary of the Treasury.

2. The Comptroller General has no authority, express or implied, to review the collectors' liquidations of entries of imported merchandise and drawback entries.

Respectfully,

HARLAN F. STONE, *Attorney General.*

The SECRETARY OF THE TREASURY.

Notwithstanding this opinion from the Attorney General, the Comptroller General still insisted upon his right and duty to audit or review the administrative accounts of the collectors and comptrollers of customs. This situation is well illustrated by correspondence between the Secretary of the Treasury and the Comptroller General, consisting of a letter from the former to the latter of February 9, 1925, and the reply thereto of the Comptroller General dated February 10, 1925, in which he makes reference to a prior letter of April 25, 1923, showing what papers the Comptroller General required for the purpose of auditing the accounts of the collectors of customs. These letters are as follows:

FEBRUARY 9, 1925.

DEAR MR. COMPTROLLER GENERAL: With reference to my conversation with you this morning in connection with review of customs receipts, I should like to get clear in my mind exactly what your position is. I can probably approach the subject better if I use a concrete case. In the ascertainment of the amount of duty which is due the Government on any imported merchandise, as I see it, there are three matters which have to be determined: First, what the article is which is imported; second, how it is classified under the tariff act; and third, its value. A determination of the first is a question of fact; of the second a mixed question of fact and law; and of the third again a question of fact. Assuming that the proper customs officials determine that a particular article is a dress; that it is subject to duty at, say, 60 per cent; that its value is \$100, and that the duty is assessed and paid on this basis, what sort of review would you desire to exercise in this particular matter? Would you require independent proof that it was a dress? Would you pass independently on whether, it being a dress, it was the particular type of dress which was dutiable at 60 per cent? Would you pass independently on its value?

I think if you will let me know your position on this particular case, I can more readily determine just what the difference is between the customs and yourself on the matter we are discussing.

Very truly yours,

GARRARD B. WINSTON,  
*Undersecretary of the Treasury.*

The COMPTROLLER GENERAL OF THE UNITED STATES.

COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, February 10, 1925.*

HON. GARRARD B. WINSTON,  
*Undersecretary of the Treasury.*

DEAR MR. WINSTON: I have your letter of February 9, 1925, with reference to our conversation the same day regarding an audit of customs transactions,

and requesting a statement as to the position of this office in order to make the matter clear.

Section 523 of the tariff act of 1922 (42 Stat. 974-975) provides that:

"Comptrollers of customs shall examine the collector's accounts of receipts and disbursements of money and receipts and disposition of merchandise and certify the same to the Secretary of the Treasury for transmission to the General Accounting Office \* \* \*."

\* \* \* \* \*

"This section shall not be construed \* \* \* to affect the provisions of the Budget and Accounting Act, 1921, approved June 10, 1921."

In the language of that section the position of this office is that after the "comptrollers of customs shall examine the collector's accounts" they should "certify the same to the Secretary of the Treasury for transmission to the General Accounting Office;" that is, the accounts as administratively examined should be forwarded by such comptrollers under certificate as to correctness to the Secretary, who should transmit same to this office. What papers, etc., should comprise the accounts are described in detail in my letter of April 25, 1923, copy attached.

The accounts now received comprise generally nothing more than the conclusions alleged by the collectors, having such verification as may have been made by the comptrollers. We now have no means of certifying the correctness of the collectors' balances because the facts necessary to such conclusion are not presented. The record facts giving the basis for the conclusions are a necessary part of the accounts and essential to an audit.

Taking the case presented by you in which the customs officials determine that the article imported is a dress subject to duty at 60 per cent and having a value of \$100, and duty is assessed and paid on that basis as to which you propound the questions: What sort of a review I desire to exercise in that particular matter? Would I require independent proof that it was a dress? Would I pass independently on whether, it being a dress, it was the particular type of dress which was dutiable at 60 per cent? Would I pass independently on its value?

If this office were furnished the records upon which it was determined that it was a dress dutiable at 60 per cent and valued at \$100, and the amount of duty collected and deposited, that would be sufficient to make the required audit. In other words, there would be available the results of the appraisal and liquidation and the amount of duty collected, which would enable this office to certify as to the correctness of the amount taken up by the collector. In the absence of fraud or such error appearing upon the face of the record or to which the attention of this office is otherwise called, no independent proof would be required as to the character, type, or value of the article so imported or appraised, or liquidation of the entry.

Such would generally be the scope of the audit of the account, but this does not mean that further inquiry would not be made in proper or particular cases invoking other functions of the General Accounting Office.

It will be noted that all papers pertaining to the accounts have not been demanded, but only such original copies and schedules as should not deprive the collector of a complete original record at the port.

There is known no law exempting customs transactions from the independent audit required generally as to transactions involving public funds. On the contrary an audit thereof is required and must be made before this office can honestly make certification of balances in the accounts of collectors. While I have long been convinced that the most satisfactory, prompt, and economical audit would be a pre-audit made at the ports, so that collectors would be provided adequate protection and importers given prompt information as to amounts due, I am willing, as I have heretofore stated, and to the end that the plan may be given a fair trial, to join in request for legislative authority for this office to make such portion of its audit in the field as is practicable.

Very truly yours,

J. C. McCARL, *Comptroller General.*

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COMPTROLLER GENERAL OF THE UNITED STATES,

*Washington, April 25, 1923.*

The SECRETARY OF THE TREASURY.

SIR: Referring to your letter of March 7, 1923, and other recent correspondence in the matter of customs accounts to be transmitted to this office under the provisions of the act of September 20, 1922, the situation is one in which the sub-



mission of the accounts and the audit will necessarily require further consideration between the Treasury Department and this office with a view to obtaining a satisfactory auditing procedure.

For the present it is believed that the nucleus of an account may be obtained by presenting with the account certain papers. The collectors of customs and comptrollers of customs will accordingly be required to submit with the accounts to support duties collected and drawbacks paid, the following:

**PAPERS REQUIRED IN CONNECTION WITH DUTIES COLLECTED**

(1) A schedule of estimated duties paid. This may be in substantially the same form as the present "Record of consumption entries" (customs form No. 5151 A and 5151 B), except that the number of packages should be given and the description of the merchandise should be such as to permit a ready identification with items on the manifest. The schedule would then give for each entry the following information: Date of collection; description of merchandise; number of packages; estimated duty paid; entry number, etc.

(2) The vessels' manifests with notations thereon showing the disposition of the merchandise, that is to say, whether covered by consumption entry, general order, transfer to warehouse or to another district by an informal entry, or that the merchandise is entitled to entry without payment of duty. The numbers of these various papers and districts to which the merchandise is transferred should be indicated on the manifest.

The evidence furnished, other than for items covered by notations indicating actual duties paid, may be in the form of schedules indicating the disposition of the goods in such manner as to permit this office, if desired, to follow them to ultimate destination or, if preferred, papers covering each individual item may be furnished.

(3) A schedule of additional duties collected giving similar information to that contained on the schedule of estimated duties paid.

(4) A schedule of excess duties refunded which will give the original entry number, the amount of estimated duty paid, the amount of liquidated duty, the excess to be refunded and number and date of checks issued in payment. So far as practicable this information should be furnished on the record of consumption entries, opposite the item showing the amount of estimated duties paid.

(5) All schedules should be certified to as to their correctness by the comptrollers of customs.

(6) It is believed practicable that one of the two copies of the completed entry forwarded to the comptrollers of customs from former nonnaval office ports should be forwarded direct to this office by said comptrollers of customs at the time the other copy is returned to the collector at the port of entry. These copies should be accompanied by schedules of delayed entries on customs Form No. 5045, giving the entry number, the name, the reason for withholding, the estimated duty, etc.

The furnishing of the information outlined above will enable this office to determine that duties have been collected on every item of merchandise imported, and in the case of former nonnaval ports will permit a check of the correctness of the amount of duty collected. Such further check of the correctness of collections in former naval office ports will be made as circumstances may seem to justify.

**PAPERS REQUIRED IN CONNECTION WITH DRAWBACK PAYMENTS**

(1) A schedule of drawbacks paid.

(2) Drawback entries fully completed to show the amount paid and the basis therefor.

(3) The notice of intent to export with the certificate of inspection and of actual shipment completely executed.

(4) Certificates of importation and prior payment of duty, identifying therewith by proper references the item being exported, giving, where practicable, the entry number under which duty was paid originally.

(5) Export bills of lading in cases where drawback allowances are paid to others than manufacturer or original importer.

(6) Date and number of check issued in payment.

Respectfully,

J. R. McCARL, *Comptroller General.*

An exact case in point is furnished in a letter by the Comptroller General dated January 14, 1926, to the collector of customs at New York, reading as follows:

JANUARY 14, 1926.

Mr. PHILIP ELTING,  
Collector of Customs, Customs District No. 10,  
New York, N. Y.

SIR: There has been received in this office an account current, together with certain papers, submitted as your account for September, 1925.

A preliminary examination discloses that the original entries, pro forma and duplicate consular invoices with summaries, the returns of appraisement, examination, weight, gauge, and shortage; reports of unclaimed, seized, or appraised merchandise; collection vouchers for all miscellaneous receipts; all of which are required in order to provide for a proper and exact audit of the collections, were not transmitted to this office with the account.

In the accounting for the receipt and disposition of merchandise required by section 523 of act approved September 21, 1922 (42 Stat. 974), evidence is not furnished that the merchandise entering the United States has passed into customs custody and proper entry and disposition made.

"Refund of excessive duties (customs)": As shown on abstract Cat. 5193 and Cat. 5195, \$366,769.23.

The customs entries and pro forma and duplicate consular invoices with summaries and the returns of appraisement, examination, weight, gauge, and shortage are requested, in order to provide for a proper and exact audit of the amounts for which credit is claimed as refunded.

"Debentures of drawbacks, bounties, or allowances (customs)": Total amount of drawbacks paid in September, 1925, as per schedule, \$933,579.45.

The drawback entries, except Nos. 8093/25, 11367/25, and 12551/25, paid September 30, 1925, and Nos. 925/26 and 928/26, paid September 10, 1925, have been received in this office. The following additional papers and information are also required in support of the disbursements:

(1) Copies of the import entries or warehouse withdrawals establishing the importation of the merchandise and the payment of the duty thereon.

(2) When the merchandise was imported into and duty paid in districts other than the district of New York, properly executed certificates of importation or extracts therefrom (Form 5267).

(3) Certificates of delivery, if any.

(4) Certificates of manufacture, if any, or extracts therefrom (Cat. 4537), showing the import entry or warehouse withdrawal numbers, value, and quantities of waste, if any; quantities and descriptions of the imported materials used; marks and numbers for identification; rates and amounts of duties; places and dates of payments.

(5) Extracts from abstract refinery records of sugar or sirups (customs Form 4519).

(6) Carrier's customs manifests (Cat. 7512), if any, showing inspection and lading under customs supervision at both the port of origin and the port of exit.

(7) Bills of lading or extracts therefrom (with indorsements thereon, when necessary) showing the exportation and ownership of the merchandise; and the names of the parties entitled to make claim for and to receive the drawback.

(8) Notices of intent to export dated prior to January 1, 1923.

(9) Copies of letters of authorization, if any, covering allowances of drawback under T. D. 39415, etc.

The inspection return on the copies of notices of intent to export made at New York and forwarded to this office is not completed. This defect may be remedied, in each case, by forwarding the original or complete duplicate notices.

It is noted that the certificates of continuous custody and the certificates of lading on the continuous custody drawback entries submitted are not signed by customs officers. These defects may be remedied by forwarding to this office the original custody entries or complete duplicate copies.

The dates of receipt on the following notices of intent to export are later than the respective dates of clearance on the drawback entries. Information is requested as to whether in every case the notices were filed by the exporters or their agents in time for customs inspection and lading of the merchandise. In every case when there was not timely notice at fault of exporter statement is required as to why the drawback should not be refunded to the Government.

A settlement will be made when the papers described, which are necessary to form a complete account, have been received.

Respectfully,

J. H. McCARL, *Comptroller General.*  
By CHARLES L. BROCKWAY.

It will be noted that the Comptroller General requires the transmission to him of original documents relative to the imposition of duties and the payment of drawbacks. The Treasury Department insists that these documents can not be relinquished from the custody of the department because they are required not only for future reference in the ports of entry but also for proceedings before the Board of General Appraisers and before the Court of Customs Appeals and sometimes before other courts. An instance is cited where it became necessary for the Treasury Department to serve a subpoena duces tecum upon the Comptroller General for the production of a document involved in one of these transactions before a court in San Francisco, Calif. In this case it was necessary to send a messenger from Washington to California to carry this document and to preserve it in the custody of the General Accounting Office.

In order to relieve themselves of their embarrassment and, if possible, secure the audit and approval of their accounts, collectors of customs appealed to Members of Congress for necessary legislation, with the result that on March 20, 1926, the writer of this report submitted to the Secretary of the Treasury, with a letter on the subject, a proposed bill to read as follows:

The decisions of collectors of customs and the verification thereof by the comptrollers of customs as to the rate and amount of duties chargeable and collected upon imported merchandise and the amount of refunds of duties ascertained and paid as drawback upon exported merchandise shall not be subject to review by any other officer of the United States, except in the case of mistake in mathematical calculation or as provided in sections 489, 515, 516, and 520 of the act of September 21, 1922, and section 28, subsection 29 of the act of August 5, 1909, and in the absence of fraud.

\_\_\_\_\_  
TREASURY DEPARTMENT,  
Washington, March 31, 1926.

MY DEAR CONGRESSMAN: Receipt is acknowledged of your letter dated March 26, 1926, stating that you have been requested by some of the collectors of customs to introduce a bill, a copy of which you inclose, providing that the decisions of collectors of customs and the verification thereof by comptrollers of customs as to the rate and amount of duties chargeable and collected upon imported merchandise and the amount of refunds of duties ascertained and paid as drawbacks upon exported merchandise shall not be subject to review by any other officer of the United States except under certain conditions. You request the views of the Secretary not only upon the subject matter of this bill but also on the form in which it is drawn.

On April 25, 1923, the Comptroller General of the United States notified the Secretary of the Treasury that thereafter collectors of customs would be required to submit certain papers with their accounts in support of reports of collections made and payments on account of drawbacks. The Comptroller General stated that the information demanded as to the collection accounts would enable his office to determine that duties had been collected on every item of merchandise imported and that the correct amounts had been paid on account of drawbacks. This was a departure from a practice which had existed since the foundation of the Government and the department took exceptions to the demands of the Comptroller General. After considerable correspondence with the Comptroller General, the Secretary of the Treasury, on January 15, 1924, addressed a letter to the Attorney General requesting his opinion as to the matter in controversy.

In an opinion rendered October 21, 1924, the Attorney General said, "Answering your specific questions, I have the honor to advise you that—

"(1) The Comptroller General has no statutory authority to require to be forwarded to him any other papers relating to entries of imported merchandise than those prescribed by the Secretary of the Treasury.

"(2) The Comptroller General has no authority, express or implied, to review the collector's liquidation of entries of imported merchandise and drawback entries."

Notwithstanding the opinion of the Attorney General, the Comptroller General has continued his demands that collectors of customs shall furnish the documents which will enable the General Accounting Office to determine that the correct amount of duties have been assessed and collected and that the correct amounts have been paid as refunds of excessive duties or in payment of drawbacks. He has suspended the settlement of the collectors' accounts until they shall have furnished the documents that he demands. The legislation requested by the collectors of customs should satisfy the Comptroller General that he does not have the jurisdiction which he now claims. Since the Treasury is obliged by Executive order to follow opinions of the Attorney General, the attitude of the Comptroller General leaves the Treasury in an anomalous position.

The Treasury Department approves the bill in substance but suggests the following as a more appropriate form:

Section 523 of the tariff act of 1922, approved September 21, 1922, is hereby amended by adding the following:

"The findings and decisions of the proper customs officers as to the rates and amounts of duties chargeable and collected upon imported merchandise and the amounts due as refund of excessive duties or in payment of drawbacks upon exported merchandise shall not be subject to review except by the Secretary of the Treasury, by the Board of General Appraisers, and by the Court of Customs Appeals, as provided by law.

The first act of Congress relative to the customs was the act of July 31, 1789 (1-Stat. 29), which established customs districts and ports of entry and prescribed what officers should be appointed in each. A naval officer was provided at each of the principal ports who was to "receive copies of all manifests and entries, and shall, together with the collector, estimate the duties on all goods, wares and merchandise subject to duty." He was to keep a separate record and countersign all permits, clearances, certificates, debentures and other documents granted by the collector, also to examine the collector's abstracts of duties, and other accounts of receipts, bonds and expenditures and to certify the same. The title of naval officer was changed to that of comptroller of customs by section 523 of the tariff act of 1922. Said section prescribes the duties of comptrollers of customs as follows:

"Comptrollers of customs shall examine the collector's accounts of receipts and disbursements of money and receipts and disposition of merchandise and certify the same to the Secretary of the Treasury for transmission to the General Accounting Office. They shall perform such other duties as the Secretary of the Treasury may from time to time prescribe, and their administrative examination shall extend to all customs districts assigned to them by the Secretary of the Treasury.

"Comptrollers of customs shall verify all assessments of duties and allowances of drawbacks made by collectors in connection with the liquidation thereof. In case of disagreement between a collector and a comptroller of customs, the latter shall report the facts to the Secretary of the Treasury for instructions."

Under authority of this section, each port or district has been assigned to one of the comptrollers of customs, who makes the same administrative examination and verification as was made at the former naval office ports. The collector and the comptroller act entirely independent of each other. Consequently, there is a complete verification by the comptroller of customs of the work of each collector of customs. A verification of the amount of duties chargeable and collected, the amounts due as refund of excessive duties and the amounts due as drawback are thus fully proven by independent and disinterested audit. In case of a disagreement between them the facts are reported to the Secretary of the Treasury for instructions.

Until recently the certificate of the naval officer (now comptroller of customs) on the collector's abstract of duties collected or refunded and drawbacks paid was accepted by the accounting officers as sufficient evidence of the amounts chargeable and collected as revenue and the amounts due as refund of excessive duties or in payment of drawbacks.

The Budget and Accounting Act of 1921 created the General Accounting Office which took over the powers and duties conferred or imposed by law upon the Comptroller of the Treasury and the six auditors of the Treasury Department. So far as relates to the examination and settlement of accounts and claims, the act did not confer upon the General Accounting Office or the Comptroller General any different authority than that which formerly existed in the case of the Comptroller of the Treasury and the six auditors.

No reason appears why there should be a change in the long continued practice in settling the accounts of collectors of customs. The verification of all transactions by separate and independent officers of the Government assures that the correct amount of duties are assessed and collected and that the correct amounts are paid as refunds or as drawbacks. The customs collections are administratively verified in a more thorough manner than any other large class of revenues.

It is not understood that it has ever been alleged that the verification of the collector's revenue accounts has not been efficiently accomplished by the comptrollers of customs, and it is manifest that efficient administration would not indorse another audit of an account that has already been thoroughly scrutinized and revised by efficient and specially trained auditors. Obviously a second efficient review would require a large additional force of trained employees.

The audit as now conducted by the comptroller of customs is a part of the collection operation and is simultaneously accomplished. There is a distinct benefit in such a procedure for it authoritatively determines the amount of the tax due and permits the importer to dispose of his merchandise with exact costs known.

If the Comptroller General may reaudit the collection and overrule findings, authoritative settlement with the importer will not occur until the money account of the collector is cleared many months subsequent to the audit that has been made by the comptroller of customs. Furthermore, a complete audit by the General Accounting Office would require that all the documents relating to entries, repayments, and drawbacks accompany each collector's money account. As some 2,000 entries of merchandise are filed daily at New York alone, the task of preparing the accounts would be very great, for each entry verification comprehends the review of many supporting certificates and reports. The documents that would thus be required to be transmitted with the money accounts are a necessary part of the collector's files, for they must be referred to currently in order to permit the collector's operations to be carried on properly, and they must be available for call by the Board of General Appraisers and the Court of Customs Appeals. Those tribunals have been set up especially to review the customs cases on appeal and their many calls for the records must be complied with. Finally the comptrollers of customs are the officials who are required by law to verify customs collections. It is their sole duty and it is for that particular purpose that their officers were created.

There does not appear to be any necessity for a second review such as it appears the Comptroller General considers that the law requires him to make and, since that official has determined that he has no alternative but to accomplish the re-audit referred to, it would seem that it is advisable to procure definite legislation that will make the law certain. The paragraph set forth above as a substitute for the draft of a bill transmitted with your letter would seem to be appropriate for settling the question. If enacted, the customs collections will continue to be fully protected by sufficient review.

Very truly yours,

GARRARD B. WINSTON,  
*Acting Secretary of the Treasury.*

HON. CARL R. CHINDELOM,  
*House of Representatives.*

Thereupon, on April 1, 1926, the writer of this report introduced the bill H. R. 10939, reading as follows:

A BILL To amend section 523 of the Tariff Act of 1922

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 523 of the tariff act of 1922, approved September 21, 1922, be, and the same hereby is, amended by adding thereto the following paragraph:

"The findings and decisions of the proper customs officials as to the rates and amounts of duties chargeable and collected upon imported merchandise and

the amounts due as refund of excessive duties or in payment of drawbacks upon exported merchandise shall not be subject to review except by the Secretary of the Treasury, by the Board of General Appraisers, or by the court of Customs Appeals, as provided by law.

This bill was submitted to the Comptroller General on April 4, 1926, who, on April 16, 1926, submitted the following reply:

WASHINGTON, April 16, 1926.

HON. CARL R. CHINDBLOM,  
*Committee on Ways and Means, House of Representatives.*

MY DEAR MR. CHINDBLOM: I have your letter of April 4, 1926, in which attention is called to H. R. 10939, wherein it is proposed to limit the authority of the General Accounting Office in auditing the accounts of collectors of customs. The law now requires that customs accounts receive the same careful and thorough audit by the General Accounting Office as is required with reference to accounts involving receipts and disbursements of other public moneys. I may add that H. R. 10939 can not be viewed otherwise than as an admission by all concerned of the correctness of the position of this office upon the matter involved and that its duty therein may only be destroyed by enactment of Congress and not by administrative action as has been attempted, as I shall herein set forth.

The real question presented is, whether there is to be an abandonment of the audit of receipts and disbursements in customs transactions, by the accounting officers of the United States—whether an independent audit of receipts and disbursements in customs transactions by the accounting officers of the United States as constituted by the Budget and Accounting Act of 1921, is now to be abandoned—leaving such checking as is to be done, and which by the way is not stipulated in the bill or otherwise prescribed by law, to the supervision and control of the department whose officers receive the funds and make the disbursements.

While it would be an additional departure from the plan for enforcing accountability for public funds that the earlier Congresses maintained with such vigor as an essential in our form of government, but which weakened for a period under strong executive pressure, only to be revived, however, following the expenses of the World War, it is purely a matter of policy for determination by the Congress. There need be, of course, only such independent audit—or such accounting for public funds—as the Congress in its wisdom may deem necessary and prescribe by law.

There is room for no question as to present law requiring an independent audit of receipts and disbursements in customs transactions and if such audit is now to be discontinued there are many matters involved that the proposed bill will not reach.

It may be that whether or not there shall be an independent audit of customs accounts equally with other public accounts is a question of policy not of so much concern to the General Accounting Office as the matter of its present responsibility under the laws as they now exist.

If this office were called to give counsel upon the matter of public policy involved in accounting for customs and other public receipts and disbursements, its position would be that all public accounts should have a most painstaking audit in support of a sound system of Federal control of the fiscal affairs of the Nation—not only in behalf of the people who furnish the financial support, those who share it through tangible contributions or those who are dependent, but also in behalf of that class of public servants personally charged with receiving, safeguarding, and disbursing the vast sums passing through the Treasury and who are entitled to have their responsibilities periodically cleared by competent authority, unswayed by those elements ordinarily inflicted upon the receiving and spending agencies of the Government. However, such question of public policy is for the Congress, hence the gravity of the amendment involves the General Accounting Office only to the extent of its sufficiency to clearly show the legislative will in the matter of auditing customs receipts and disbursements. Do not understand me as presuming to protest as to the degree of responsibility that is to rest upon the accounting officers, but as a practicable matter it is suggested that the interests of the United States will be best served if the amendment is couched in terms positively fixing the degree of responsibility affecting the customs service, the Secretary of the Treasury and the General Accounting Office. In other words, if an audit of any class of accounts is or is not desired it is imperative that the statute so prescribe without equivocation if the public interests are to be fully served.



Untold loss has been sustained by the United States through lack of certainty as to the scope and extent of the statutory provisions affecting the accounting procedure of the Government, although the terms required to insure certainty could be expressed in the simplest language. The absence of certainty and the recognized purpose of a general audit places the General Accounting Office in the position of having to resolve doubtful cases in favor of the Government—no such doubt exists with reference to customs matters, that being a question involving the refusal of the Secretary of the Treasury to permit collectors of customs to render proper accounts to this office for auditing as required by law.

The bill provides, lines 5 to 13, as follows:

"The findings and decisions of the proper customs officials as to the rates and amounts of duties chargeable and collected upon imported merchandise and the amounts due as refund of excessive duties or in payment of drawbacks upon exported merchandise shall not be subject to review except by the Secretary of the Treasury, by the Board of General Appraisers, or by the Court of Customs Appeals, as provided by law."

This proposed amendment will, in all probability, accomplish the desired purpose, but there arises two questions in that connection as to which it would seem the effect of the bill is not fully appreciated. Under its provisions the findings and decisions of the proper customs officials as to the rates and amounts of duties chargeable and collected shall not be subject to review except by the Secretary of the Treasury, the Board of General Appraisers, or the Court of Customs Appeals. The first question relates to the words "and collected" and the second relates to the authority of the comptrollers of customs. I understand the purpose is to preclude this office from reviewing the findings and decisions of customs officials as to the rates and amounts of duties chargeable and not as to the amounts collected. Once the rates and amounts of duties chargeable have been determined by proper customs officials the amounts so determined should be collected if possible and not left to the discretion of anyone. As the bill now provides it permits those mentioned to determine what amounts should be collected, if any, regardless of the amounts chargeable. It is therefore recommended that the words in line 8 "and collected" be omitted should the bill receive favorable consideration.

Section 523 of the tariff act of 1922 provides that the comptrollers of customs shall examine the collector's accounts of receipts and disbursements of money and receipts and disposition of merchandise and in cases of disagreement between a collector and a comptroller, the latter shall report the facts to the Secretary of the Treasury for instructions. While the comptrollers of customs are thus given authority to merely administratively review the accounts of the collectors subject to the instructions of the Secretary of the Treasury, it would seem that should the bill be favorably considered the comptrollers of customs should be named among those authorized to review the findings and decisions of the proper customs officials. Under the law the General Accounting Office has authority to settle and adjust such accounts without administrative or executive control. If that function is to be abandoned as proposed by the bill the comptrollers of customs should, in my opinion, at least be given the authority now imposed upon the General Accounting Office with reference to such accounts.

Instead of the amendment as proposed I would like to suggest that it would be better to accomplish the same purpose by modifying the existing terms of section 523 by omitting the objectionable provisions found therein, rather than adding to that section a paragraph repealing its own provisions. The section now reads as follows:

"SEC. 523. COMPTROLLERS OF CUSTOMS.—Naval officers of customs now in office and their successors shall hereafter be known as comptrollers of customs.

"Comptrollers of customs shall examine the collector's accounts of receipts and disbursements of money and receipts and disposition of merchandise and certify the same to the Secretary of the Treasury for transmission to the General Accounting Office. They shall perform such other duties as the Secretary of the Treasury may from time to time prescribe, and their administrative examination shall extend to all customs districts assigned to them by the Secretary of the Treasury.

"Comptrollers of customs shall verify all assessments of duties and allowances of drawbacks made by collectors in connection with the liquidation thereof. In cases of disagreement between a collector and a comptroller of customs, the latter shall report the facts to the Secretary of the Treasury for instructions.

"This section shall not be construed to affect the manner of appointment, the term of office, or the compensation of any such officer as now provided by law, nor

to effect the provisions of the Budget and Accounting Act, 1921, approved June 10, 1921." (Lined out by me.)

Should such an amendment be adopted the section will read as though the section did not contain the words and paragraph lined out which now give to the General Accounting Office the authority to audit customs accounts pursuant to section 236 of the Revised Statutes as amended by the Budget and Accounting Act of June 10, 1921. While such an amendment would accomplish the purpose provided in the bill and would avoid the objectionable feature of having the section contain conflicting provisions as repealing a part thereof, there would still be for consideration the need for strengthening the authority of the comptrollers of customs should either amendment be enacted.

Should the bill be enacted the law would still require that the comptrollers of customs certify the accounts to the Secretary of the Treasury for transmission to the General Accounting Office. If the General Accounting Office is not to have any accounting function with reference to customs accounts the expenses incident to the preparation, transportation, and storage of the accounts documents would be needless. In either case, the terms of section 523 requiring such certification and transmission to the General Accounting Office should be repealed.

In order that the position of the General Accounting Office and its efforts to carry out the law requiring an audit of customs accounts may be fully understood permit me to call your attention to the following beginning with my annual report for the fiscal year 1924, submitted to the Congress December 1, 1924, wherein it was said that—

"The accounting officers are required to receive and examine all accounts and to certify the balances arising thereon. The accounts are required to be transmitted by fiscal officers to the General Accounting Office at given periods accompanied by vouchers and other evidence supporting the transactions covered thereby in such detail as may be prescribed by the accounting officers. In prescribing the methods and procedure, forms, etc., for administrative accounting certain evidence is deemed necessary to permit a proper determination as to the correctness of the transactions to be accounted for and it is required that competent evidence be submitted in all cases to support the expenditure and collection of public moneys and revenues.

"To certify the balance in any particular claim or account not fully supported by competent evidence involves the correctness of the certificate; therefore, no certificate should properly issue unless it is such that any honest man could subscribe thereto. If material documents or information is lacking and the certificate is nevertheless issued the integrity of the certificate and of the certifying officer is not only open to attack but is such as to suggest official negligence and should be condemned if knowingly and willingly done. If the Government is unable to maintain the sanctity of the certificates of its officers every transaction will be open to question. Following these views it has become necessary to withhold certification in many claims and accounts in which the supporting evidence was not such as to justify the certification of balances.

"The practice of withholding certificates in claims not fully supported by record evidence has been of long standing; more recently, however, the same principle was applied to customs accounts in which the collectors failed and refused because of administrative directions, to submit with their accounts documents and papers the examination of which was necessary to a proper audit and certification of their balances. The accounts of collectors of customs received in the General Accounting Office covering expenditures on and after January 1, 1923, are not completed and final settlement has not been made thereon except in such cases as were examined in the field by representatives of the General Accounting Office.

"Section 304 of the Budget and Accounting Act provides that all powers and duties now conferred and imposed by law upon the Comptroller of the Treasury or the six auditors of the Treasury shall be vested in and imposed upon the General Accounting Office and be exercised without direction from any other officer. By section 4 of the Dockery act the office of the Commissioner of Customs was abolished and his duties and powers conferred upon the Comptroller of the Treasury and it was provided that all laws relating to the commissioner not inconsistent with the Dockery Act should thereafter be construed as relating to the Comptroller. The Dockery Act required the Comptroller to prescribe the forms of bookkeeping and rendering of all public accounts and directed the Auditor for the Treasury Department to receive and examine all accounts relating to the customs service and certify the balances arising thereon.

"By section 8 of the Dockery Act the auditors under the direction of the comptroller were required to preserve with their vouchers and certificates all accounts which have been finally adjusted. The tariff act of 1922, provides that the comptrollers of customs shall examine the collectors' accounts of receipts and disbursements of money and receipts and disposition of merchandise and certify the same to the Secretary of the Treasury for transmission to the General Accounting Office and further provides that this section (sec. 523) shall not be construed to affect the provisions of the Budget and Accounting Act.

"Because of these and other statutes relating to the audit of customs accounts the General Accounting Office could not certify the balances therein until evidence necessary to complete the vouchers and accounts was transmitted by the collectors or until an opportunity was presented to otherwise examine the evidence deemed necessary to support a proper certificate."

Beginning in 1923 repeated attempts have been made to audit customs accounts but no progress has been made because of the attitude of the Treasury Department that the accounting officers were not entitled to the facts necessary to an audit. At first, papers and documents reflecting the facts were sought and were refused, but in the meantime the unsettled accounts were increasing to such number as to require positive action, in consequence of which and without surrendering its position the General Accounting Office directed such field investigations as would permit settlement of many of the accounts. The personnel and facilities available for such an audit were not sufficient to more than permit certification of the collectors' balances on the theory that the casual examination made in the field failed to disclose such irregularities as would negative the presumption that the accounts were correct. Many of the accounts were thus settled but others were settled through error in understanding instructions given with reference thereto.

Late in 1924 the matter was again presenting an acute situation, resulting in a proposal to the Treasury that representatives be detailed to cooperate with representatives of this office in establishing an auditing procedure satisfactory to all. Such an arrangement was not progressing when it was proposed that the two establishments join in seeking legislation providing for a field audit, but that plan also failed because of the insistent position of the Customs Service denying the authority of the General Accounting Office. In letter of January 15, 1925, on the subject of the field audit, this office advised the Secretary of the Treasury that—

"The law requires an audit of customs accounts by the accounting officers of the United States (General Accounting Office), and the intent clearly appears that such audit be made in the established way, in Washington, the accounts with all papers necessary to support the items of receipts and expenditures to be forwarded here. It has been impossible for this office to perform the audit as contemplated by law because the accounts with essential supporting papers have not been forwarded, and I understand it to be the view of the officials of your department that to forward the essential papers as required by this office will prove highly detrimental to the administrative functions at the ports and unduly expensive. Whether much considerations may be permitted to control the matter need not here be discussed. The essential papers are not being furnished and because thereof this office is without the facts to enable it to perform its duty and state the accounts with the United States of the numerous collectors of customs. As a temporary expedient and with a view to obtaining the facts essential for action in the stating of the accounts of such collectors, employees of this office were dispatched to numerous ports to make examination of the original papers, and to obtain and report the needed facts. While I feel this procedure was justified as a temporary measure in view of the condition of the accounts due to the long delay in action thereon, I do not think it would be justified under existing law as a regular procedure."

In answer to certain questions involving the jurisdiction of the two establishments, the Undersecretary of the Treasury was advised February 10, 1925, as follows:

"I have your letter of February 9, 1925, with reference to our conversation the same day regarding an audit of customs transactions, and requesting a statement as to the position of this office in order to make the matter clear.

"Section 523 of the tariff act of 1922 (42 Stat. 974-975), provides that—

"Comptrollers of customs shall examine the collector's accounts of receipts and disbursements of money and receipts and disposition of merchandise and

certify the same to the Secretary of the Treasury for transmission to the General Accounting Office. \* \* \*

\* \* \* \* \*  
 "This section shall not be construed \* \* \* to affect the provisions of the budget and accounting act, 1921, approved June 10, 1921."

"In the language of that section the position of this office is that after the 'comptrollers of customs shall examine the collector's accounts' they should 'certify the same to the Secretary of the Treasury for transmission to the General Accounting Office'; that is, the accounts as administratively examined should be forwarded by such comptrollers under certificate as to correctness to the Secretary who should transmit same to this office. What papers, etc., should comprise the accounts are described in detail in my letter of April 25, 1923; copy attached.

"The accounts now received comprise generally nothing more than the conclusions alleged by the collectors having such verifications as may have been made by the comptrollers. We now have no means of certifying the correctness of the collectors' balances because the facts necessary to such conclusions are not presented. The record facts giving the basis for the conclusions are a necessary part of the accounts and essential to an audit.

"Taking the case presented by you in which the customs officials determine that the article imported is a dress subject to duty at 60 per cent and having a value of \$100, and duty is assessed and paid on that basis as to which you propound the questions: What sort of a review I desire to exercise in that particular matter? Would I require independent proof that it was a dress? Would I pass independently on whether, it being a dress, it was the particular type of dress which was dutiable at 60 per cent? Would I pass independently on its value?

"If this office were furnished the records upon which it was determined that it was a dress dutiable at 60 per cent and valued at \$100, and the amount of duty collected and deposited, that would be sufficient to make the required audit. In other words, there would be available the results of the appraisal and liquidation and the amount of duty collected, which would enable this office to certify as to the correctness of the amount taken up by the collector. In the absence of fraud or such error appearing upon the face of the record or to which the attention of this office is otherwise called, no independent proof would be required as to the character, type, or value of the article so imported or appraised, or liquidation of the entry.

"Such would generally be the scope of the audit of the account but this does not mean that further inquiry would not be made in proper or particular cases invoking other functions of the General Accounting Office.

"It will be noted that all papers pertaining to the accounts have not been demanded but only such original copies and schedules as should not deprive the collector of a complete original record at the port.

"There is known no law exempting customs transactions from the independent audit required generally as to transactions involving public funds. On the contrary an audit thereof is required and must be made before this office can honestly make certification of balances in the accounts of collectors. While I have long been convinced that the most satisfactory, prompt and economical audit would be a pre-audit made at the ports, so that collectors would be provided adequate protection and importers given prompt information as to amounts due, I am willing, as I have heretofore stated, and to the end that the plan may be given a fair trial, to join in request for legislative authority for this office to make such portion of its audit in the field as is practicable."

When the proposed amendment was brought to my attention there arose the same jurisdictional question, and I was confronted with the allegation that this office was claiming authority to review customs actions in appraising importations and liquidating entries, notwithstanding my letter of February 10, 1925, negating any such position. In order that there might be no further misunderstanding, purposely or otherwise, I immediately addressed you March 5, 1926, as follows:

"There was mentioned by you yesterday, during our conversation a letter as having been referred to by some one in the Treasury Department, dated February 10, 1925, and referring to the audit of receipts and disbursements in customs transactions by the General Accounting Office. You evidenced interest therein and I am transmitting herewith a copy of that letter—it being a communication addressed by me to the Undersecretary of the Treasury at a time when we hoped there might be worked out through cooperation a safe and satisfactory procedure for the audit of such receipts and disbursements, as is required by law, that would

operate to reduce the time of accomplishment and the expense involved, to a minimum. Unfortunately the negotiations failed of results and as before, the Treasury Department continued directing accountable officers of the Customs Service not to furnish this office with the papers to support their accounts, necessary for this office to make such audit of the receipts and disbursements as would enable it to certify the true balances in their respective accounts—and this, notwithstanding the laws applicable, including the provision appearing in section 523 of the tariff act of 1922, quoted in the letter to the Undersecretary.

"As you will note, the Undersecretary was advised just what facts would necessarily be required to enable this office to know that there had been collected and deposited in the Treasury the correct amounts due to the United States under the law—for which collectors of customs are by law made responsible. Such essential facts are of course, those developed by the administrative officers—the collectors and their respective forces—in the discharge of the duties entrusted to them by law, and you will note it was said that:

"In the absence of fraud or such error appearing upon the face of the record or to which the attention of this office is otherwise called, no independent proof will be required as to the character, type, or value of the article so imported or appraised, or liquidation of the entry."

"The Budget and Accounting Act, as you know, requires of the General Accounting Office the performance of duties not strictly a part of the audit work, and in order that there might be no ground for misunderstanding as to such matters, should need arise, there was stated in the letter the following:

"Such would generally be the scope of the audit of the account, but this does not mean that further inquiry would not be made in proper and particular cases invoking other functions of the General Accounting Office."

"This had reference, as will be noted from the language, 'cases invoking other functions of the General Accounting Office,' to the duties imposed by law upon this office that are not strictly audit duties yet have relation thereto so far as uses of public funds may be involved. The investigating functions of this office have now been in progress for more than four years and it is believed they are quite fully understood. In general, there is helpful administrative cooperation in connection therewith.

"As I think the letter of February 10, 1925, will make clear to you, our difficulty in making promptly such audit of receipts and disbursements in customs transactions as the law requires and is essential to enable this office to find and certify true balances in the accounts of the accountable officers, has been largely occasioned by orders given by the Treasury Department prohibiting such accountable officers—the collectors—from furnishing the General Accounting Office such papers as are essential to an audit of their accounts and ascertainment of their true balance—and this notwithstanding the specific requirements of section 523 of the tariff act of 1922, quoted in the letter to the Undersecretary, which enactment is the last expression of the Congress with reference to the matter, and is to-day the law."

While the Treasury Department has recognized the statutory requirement of rendering accounts for customs receipts and disbursements, it has refused to render such complete accounts as would enable the accounting officers to perform their duty in stating and certifying the balances. However, by decision of November 23, 1925, the department directed a procedure effective January 1, 1926, departing from its customary practice of rendering accounts, the directions being to not render accounts for funds received by collectors of customs, as such, for special services in connection with lading, unloading, etc., from steamships and railroad companies. Pursuant to express provisions of law, requests were made for reports on the contemplated procedure and that its inauguration be withheld until it was lawfully authorized. My requests were denied and in reply to the Secretary's letter of February 11, 1926, still resisting my requests, he was advised by letter of March 10, 1926, as follows:

"It will be observed that in this decision there is no departure from the uniform holding that such funds are to be properly accounted for as moneys received by a public employe by reason of his official position, and that they are required to be accounted for in accordance with the Government accounting procedure."

"The mere custody of such collections follows like requirements as to any special deposit funds, while the procedure required to be followed for their accountability is to be prescribed by the accounting officers which is an authority exercised in pursuance of powers conferred by the budget and accounting act of June 10, 1921. That statute, it is to be observed, in contradistinction to former acts of this character, provides that:

"All powers and duties now conferred or imposed by law upon the Comptroller of the Treasury or the six auditors of the Treasury Department, \* \* \* shall \* \* \* be vested in and imposed upon the General Accounting Office and be exercised without direction from any other officer \* \* \*"

"It is quite inconceivable that any public official who, as such, must pursuant to law receive and disburse funds, not technically public but of such public character as to impose great official responsibility and as to involve the elements of public accounting, would wish to avoid accountability, or wish other in the matter than an opportunity to submit his transactions for audit examination and such final clearance as the accounting officers of the United States are authorized to give where the facts submitted justify. Even if the law in the matter were not well settled, the public interest in transactions of this character is such that basically there is a responsibility of the United States, especially if such faulty procedure was permitted to afford less protection for such funds than is ordinarily afforded for the protection of the funds of the United States. In this particular matter there is the further element of all uses of the funds so collected being specifically prescribed through statute.

"It would appear fruitless to further prolong discussion as to the status of these funds because that question has been fully settled by the accounting officers of the United States, my predecessors as well as myself, in the discharge of their responsibilities under the law, and the only subject now apparently for consideration is the one of accounting procedure. As that is a matter exclusively within the jurisdiction of this office, it is not seen where any further objection can properly be raised to a compliance with my original request of December 14, 1925.

"The requirements of the statutes in such cases will make it the duty of this office to list and report to the Congress, as delinquent, collectors of customs who do not account for such moneys. While customs accounts reaching this office are, I regret to say, generally quite unsatisfactory, but due to efforts this office has been able to make, the condition has not yet become such as to make it clearly imperative for this office to apply more drastic statutory measures for their improvement, and I am still hopeful the Treasury Department will soon see the propriety and wisdom of earnestly cooperating with this office so that the basic laws and the clear purpose of section 523 of the tariff act of 1922 may be faithfully carried out to the end that a proper audit may be had by the accounting officers of the United States of receipts and disbursements in customs transactions. It would be most unfortunate if through administrative direction by the Treasury Department accountable officers (collectors of customs) should be induced to become delinquent in rendition of required accounts and thereby make it absolutely impossible for this office, because of the applicable laws, to take favorable action on future requisitions for funds."

By letter of March 29, 1925, the department abandoned its position as to such accounts and assured this office that they would be transmitted for final audit and clearance, but this did not affect the accounts for customs receipts and disbursements.

So long as an account is required to be rendered to and audited by the General Accounting Office, duty requires it to function thereon, and to fully comply with the law it must examine into the facts, ascertain and certify the balance appearing. If the records and facts are withheld there can be no proper certification, thus there are now on hand about 643 customs accounts that can not be "settled and adjusted" and the balances certified because the records and facts have been refused. The proposed amendment would sustain the withholding of the records and facts and place the General Accounting Office in the position of having to balance the accounts without the data essential thereto. Surely such a position is impossible. Accordingly it must be agreed that there may be no halfway measures in such matters. Either there must be an audit if there is to be a certification of the balances or there is to be no certification and hence no audit. And the situation with reference to customs is equally applicable to internal revenue; World War insurance and compensation; pension; and other like accounts involving receipts and disbursements only, as to which there is no adequate audit.

It is therefore recommended that the vast expenses now being unnecessarily incurred incident to an attempted audit of such accounts be saved by the enactment of provisions authorizing the General Accounting Office to prescribe a simple procedure with reference to such exceptional accounts, to the end that only such an accounting be made as will reflect the condition of the officers' depository balance without reference to the details bearing upon the correctness of the receipts and disbursements, and without certifying the balances appearing as being otherwise correct.



Should my foregoing recommendation receive favorable consideration I would suggest the following for enactment in lieu of either of the proposed amendments:

"The Comptroller General of the United States is hereby authorized and directed to prescribe a procedure simplifying the rendition of accounts involving receipts and disbursements of money by accountable officers where the administrative action is lawfully conclusive upon the accounting officers as to any matter material to a complete audit by the General Accounting Office: *Provided*, That periodic inspections and examinations of the papers, books, and records pertaining to such accounts shall be made under the supervision of the Comptroller General: *Provided further*, That accounts shall be rendered to the General Accounting Office in the manner and form prescribed pursuant to this section, for all moneys received by any person in the employ of the United States, its corporate or other agencies in the capacity of his employment, unless accounts for such moneys are now being rendered pursuant to law as directed by the Comptroller General. Balances reported by accountable officers pursuant to the procedure authorized by this section shall, after verification from the data furnished and ascertaining the depository balance, be entered on the books without certification; but all differences found upon such verification or upon any inspection, examination or investigation, shall be certified by the Comptroller General and such certificates shall be deemed in all respects prima facie correct. Such officers and employees of the General Accounting Office may be detailed or stationed outside the District of Columbia as may be necessary to ascertain the correctness of the accounts of accountable officers and to investigate matters within the authority of the General Accounting Office."

It is believed that such legislation is necessary to a proper functioning of the General Accounting Office so long as its authority is to be limited in the auditing of several classes of accounts. That many economies will flow therefrom there can be no doubt, not only in reducing expenditures in rendering accounts, but also in the improvement of the audit of those accounts that are now being rendered in sufficient detail to permit a complete audit thereof.

I would be pleased to have this report used by the committee upon consideration of the bill and have forwarded a copy hereof for the committee's files.

If I can be of any service in the matter I would be pleased to be so advised.

Sincerely yours,

J. R. McCARL,

*Comptroller General of the United States.*

This letter of April 16, 1926, from the Comptroller General having been brought to the attention of the Treasury Department, the following reply was made thereto on April 17, 1926:

TREASURY DEPARTMENT,  
Washington, April 17, 1926.

MY DEAR MR. CHINDBLOM: There has been brought to my attention a copy of the letter of the Comptroller General addressed to you under date of April 16, 1926, relative to bill H. R. 10939, which letter was presented to the Committee on Ways and Means at the hearing on said bill on the same day. The following comments on said letter are submitted for consideration:

In the first paragraph of his letter the Comptroller General states:

"I may add that H. R. 10939 can not be viewed otherwise than as an admission by all concerned of the correctness of the position of this office upon the matter involved and that its duty therein may only be destroyed by enactment of Congress and not by administrative action as has been attempted."

The Treasury Department has not admitted, but specifically denies, that the Comptroller General has the jurisdiction which he now claims. The Comptroller General first began to assert such jurisdiction about three years ago and the matter has been in controversy ever since. The position of the Treasury Department is upheld by an opinion of the Attorney General rendered October 21, 1924. The Comptroller General has ignored that opinion and continues to claim jurisdiction. In my letter addressed to you on March 31, 1926, I said at page 3:

"The legislation requested by the collectors of customs should satisfy the Comptroller General that he does not have the jurisdiction which he now claims. Since the Treasury is obliged, by Executive order, to follow opinions of the Attorney General the attitude of the Comptroller General leaves the Treasury in an anomalous position."

The Comptroller General bases his statements largely upon the assumption that he has additional powers and duties by reason of the provisions of the

Budget and Accounting Act, 1921, and section 523 of the tariff act of 1922. An examination of the Budget and Accounting Act, 1921, will reveal that said act gives the Comptroller General the same authority and duties relative to examining and settling accounts and claims as formerly existed in case of the six auditors of the Treasury and the Comptroller of the Treasury, and no more. Section 312 of that act provides that the Comptroller General shall investigate at the seat of Government or elsewhere, all matters relating to the receipts, disbursement and application of public funds and shall make reports to the President and to Congress containing recommendations concerning legislation he may deem necessary. This requirement that he shall investigate and report, of course, does not give him any additional authority relative to the examination and settlement of accounts and claims. Section 305 of the same act provides that all claims and demands by the United States, or against it, and all accounts in which the United States is concerned shall be settled and adjusted in the General Accounting Office. This simply amends section 236, Revised Statutes, by substituting General Accounting Office for the Treasury Department.

Section 523 of the tariff act of 1922, provides:

"Comptrollers of customs shall examine the collectors' accounts of receipts and disbursements of money and receipts and disposition of merchandise and certify the same to the Secretary of the Treasury for transmission to the General Accounting Office."

This provision is in harmony with section 12 of the act of July 31, 1894 (28 Stat. 209), the so-called Dockery Act, which provides:

"All monthly accounts shall be mailed or otherwise sent to the proper officer at Washington within 10 days after the end of the month to which they relate, and quarterly and other accounts within 20 days after the period to which they relate, and shall be transmitted to and received by the auditors within 20 days of their actual receipt in the proper office in Washington in the case of monthly and 60 days in the case of quarterly and other accounts."

This provision was evidently inserted in section 523 of the tariff act of 1922 for the sole purpose of making certain the procedure by which the collectors' accounts are transmitted to the General Accounting Office in accordance with the provisions of the act of July 31, 1894, and for no other purpose. It simply reiterates the provision in the act of July 31, 1789, and subsequent acts that naval officers, now comptrollers of customs, shall examine the collectors' accounts and certify the same, and made clear that after such examination they shall be transmitted to the General Accounting Office in the usual manner.

The comptroller also mentions the following provision in section 523 of the tariff act of 1922:

"This section shall not be construed to affect the provisions of the Budget and Accounting Act, 1921, approved June 10, 1921."

As I have already pointed out, the Budget and Accounting Act, 1921, did not change the powers and duties which were transferred from the auditors and the Comptroller of the Treasury to the Comptroller General, hence the provision just quoted could not operate to change in any way the powers and duties of the Comptroller General as they existed prior to the enactment of the tariff act of 1922.

The Comptroller General asserts that it is his duty to make a complete audit of the receipt accounts of collectors of customs and it is intimated that such accounts are not carefully examined at present. Congress has created a special procedure for examining the receipt accounts of collectors of customs. Each transaction is examined separately by the collector of customs and the comptroller of customs, both of whom are presidential appointees, acting independently of each other. They must agree as to the amount of duty chargeable in a particular case, or the amount of duties to be refunded, or the amount of drawback to be paid in a case where imported merchandise is exported. In case of disagreement between those officers the matter is reported to the Secretary of the Treasury for instructions. The Board of General Appraisers and the Court of Customs Appeals also have appellant jurisdiction in such matters. The collector of customs prepares an abstract of the amounts of duties collected, amounts refunded as excessive duties, and amounts paid as drawbacks. The comptroller of customs examines these abstracts and certifies to their correctness. It is the contention of the Treasury Department that those abstracts so certified are all the evidence that the Comptroller General should receive showing the amounts of duties collected, excessive duties refunded, and the amounts due as drawbacks. It is a fact that customs collections are the most thoroughly audited of the large Government receipt accounts. The determination of the amount

of duties chargeable in a particular case and the collection thereof is a purely administrative function. That duty is now being performed in a highly efficient manner and no reason appears why collectors of customs should be required to furnish the documents which the Comptroller General claims will enable him to verify the amounts chargeable and collected.

It has been estimated that at the port of New York alone 40 additional employees would be required to prepare the papers which the Comptroller General has demanded in support of the collectors' accounts of receipts and refunds. There would be added a large additional expense in the General Accounting Office in examining the papers which the Comptroller General is demanding.

The futility of a detailed examination of receipt accounts by the Comptroller General is apparent. Should he determine in a particular case that the full revenue had not been collected such a determination by him would be without force, for it is manifest that the collector could not be held personally liable for an error in judgment in applying the rate or in determining the value. If the collector has been negligent or is incompetent, that is a matter for administrative action and discipline. As the Comptroller General is without means of enforcing his decision in such administrative matters, they should be left entirely in the hands of the administrative officers who must be presumed to be fully as honest, efficient, and diligent in the discharge of their duties as is the Comptroller General.

The Treasury Department does not question that the Comptroller General has the same jurisdiction over the collectors of customs that he has over other fiscal officers as to the disbursement of appropriated funds or for the proper payment of ascertained amounts which the administrative officers have determined are due as refunds or as payments of drawbacks.

Attention is invited to the fact that the accounts of the collectors of customs for receipts and refunds are separately examined and audited by comptrollers of customs, whose offices were created by law for that express purpose. A third examination of such accounts by the Comptroller General would result in a large additional expense and unnecessary delay in the final ascertainment of the duties chargeable. Prompt settlement of such accounts is vitally necessary in the interests of importers.

The Comptroller General makes mention of the fact that a question recently arose as to what accounting the collectors of customs should make for moneys received for night services. While the opinion was entertained by certain subordinates of the Customs Service that there should be no accounting for such funds to the General Accounting Office, the department on full consideration acquiesced in the view of the Comptroller General that those accounts and all supporting vouchers should be submitted to the General Accounting Office for audit. There is no controversy on that point.

It is the contention of the department that, as to receipt accounts, the General Accounting Office should confine itself to ascertaining how much money the collector received and then require him to account for it. It is believed that collectors' abstracts of collections and refunds certified by comptrollers of customs are sufficient evidence to establish the sums for which the collectors are accountable.

Very truly yours,

GARRARD B. WINSTON,  
*Undersecretary of the Treasury.*

Hon. CARL R. CHINDBLOM,  
*Committee on Ways and Means, House of Representatives.*

Section 523 of the tariff act of 1922 was not in the Fordney tariff bill as originally passed by the House, but was inserted by the Senate as amendment No. 2081, as to which the conference report contained the following statement:

The Senate amendment changes the names of the present naval officers to "comptrollers of customs" and defines their duties in accordance with existing practice; and the House recedes.

Your committee does not believe that it was the purpose of the Congress that the Comptroller General should review the administrative actions of the Treasury Department, whether by the collectors of customs, the comptrollers of customs, or the Secretary of the Treasury, as to the imposition and collection of customs duties, the refund of

excessive duties, or the payment of drawbacks. The Comptroller General concedes that such review could only properly be made at the ports of entry at the time the various transactions occurred. In fact, such review by the Comptroller General would be an exact duplication of the work now being done by the comptrollers of customs, and the latter offices should be abolished and their work transferred to the Comptroller General if he is to make such audit of these administrative transactions. Such a change in the law would give the Comptroller General complete control over customs matters and make him, in fact, the customs officer, in place of the Secretary of the Treasury.

The present condition is intolerable. The collectors of customs can not obtain an audit of their accounts by the General Accounting Office unless they transmit to the Comptroller General documents and papers which the Secretary of the Treasury says can not be removed from his custody without demoralizing the service. In addition, persons having transactions with the customs department could not depend upon the finality of such transactions until the Comptroller General had approved the accounts of the collectors of customs. In the opinion of your committee, the collection of customs duties must necessarily stand in the same relation to the General Accounting Office as does the collection of internal revenue. As to the latter, the revenue act of 1926 contains the following provisions in section 1107:

#### ADMINISTRATIVE REVIEW

SEC. 1107. In the absence of fraud or mistake in mathematical calculation, the findings of facts in and the decision of the commissioner upon (or in case the Secretary is authorized to approved the same, then after such approval) the merits of any claim presented under or authorized by the internal revenue laws shall not, except as provided in Title IX of the revenue act of 1924, as amended, be subject to review by any other administrative or accounting officer, employee, or agent of the United States.

Your committee has slightly revised the bill H. R. 10939 in the bill H. R. 11658, which, as above stated, is hereby recommended for passage. Exhaustive hearings were held on H. R. 10939.

Following are official letters in relation to the bill:

COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, December 6, 1926.*

HON. REED SMOOT,  
*United States Senate.*

MY DEAR SENATOR: During the closing days of the last session H. R. 11658, copy attached, was reported to the Senate by the Committee on Finance without hearing or any opportunity for the accounting officers to point out the possible far-reaching effect of the proposed legislation. The bill is now on the Senate calendar.

You will probably recall that after I had suggested some of the damaging effects that might be expected if the bill should be enacted you were of the opinion the bill should be referred back to the committee for further consideration, in which connection the views of the accounting officers would be permitted expressed. The time was short and doubtless because there were so many matters demanding your attention the request was not made to have the bill referred back to the committee. It is still on the calendar and if permitted to remain its enactment will no doubt be immediately urged.

The bill in its provisions prohibiting review otherwise than by certain designated authorities, mainly administrative and judicial, is not clearly conclusive upon the settlement and adjustment of accounts, both disbursing and collecting,

performed by the General Accounting Office, the general permanent statutory law in that connection being applicable unless expressly excluded. The enactment can not be interpreted as making a repeal thereof by implication. There is sufficient in the bill, however, to afford administrative basis for resisting accounting requirements and I do not think the Congress either desires to create that undesirable situation or intends to relieve from accounting requirements, so far as public funds are concerned, whatever else may be the purpose of restricting review.

This bill, while not clearly so providing, might if enacted be urged administratively as a further surrender by the Congress of its right through an orderly accounting procedure to maintain its constitutional control over public funds. If that be the intent, its enactment would be a marked and serious departure from the accounting procedure established by the Budget and Accounting Act, which it is not believed would be seriously considered by the Congress if understood.

In view of all the circumstances, I most respectfully urge that the bill be obtained by the committee and an opportunity afforded for a complete submission of the matters involved.

Sincerely yours,

J. R. McCARL,  
*Comptroller General of the United States.*

THE SECRETARY OF THE TREASURY,  
*Washington, February 25, 1927.*

MY DEAR MR. CHAIRMAN: There is submitted herewith a tentative draft of a proposed amendment to H. R. 11658, entitled "A bill to amend section 523 of the tariff act of 1922."

The Comptroller General is of the opinion that as an accounting officer it is his duty to check and verify customs collections and refunds and drawbacks paid. The Treasury has been of the opinion that a field audit would be superfluous in view of the very thorough examination made by the comptrollers of customs.

The proposed amendment is a compromise that will settle existing differences between the Treasury Department and the Comptroller General's office. If the committee should determine as a matter of policy that a field audit by the Comptroller General is desirable the Treasury Department interposes no objection and approves of the amendment as suitable to carry out this purpose.

Very truly yours,

A. W. MELLON,  
*Secretary of the Treasury.*

Hon. REED SMOOT,  
*Chairman Committee on Finance,  
United States Senate, Washington, D. C.*

COMPTROLLER GENERAL OF THE UNITED STATES,  
*Washington, February 28, 1927.*

The CHAIRMAN OF THE FINANCE COMMITTEE,  
*United States Senate.*

MY DEAR MR. CHAIRMAN: With further reference to H. R. 11658, a bill proposing to amend section 523 of the tariff act, 1922, which was recommitted to the Finance Committee at your request, I have the honor to advise that since the recommitment of the bill representatives from my office have met with representatives of the Treasury Department and discussed the matters of the proposed legislation with a view to reaching a better understanding of the problem involved and that an agreement has been reached between the Treasury Department and this office as to the legislation believed necessary to meet the situation. This agreement has been reduced to the form of a proposed amendment to H. R. 11658, and a copy thereof is hereto attached.

I am in hopes that the proposed amendment will have the approval of the Finance Committee and that the bill amended as proposed may be enacted during the present session.

Sincerely yours,

J. R. McCARL,  
*Comptroller General of the United States.*

## TENTATIVE DRAFT OF PROPOSED AMENDMENT TO H. R. 11656

Strike out all after the enacting clause and insert in lieu thereof the following:  
That the first sentence of the second paragraph of section 523 of the tariff act of 1922 is amended to read as follows:

"Comptrollers of customs shall examine the collector's accounts of receipts and disbursements of money and receipts and disposition of merchandise and certify the same to the Secretary of the Treasury for transmission to the General Accounting Office, and officers and employees of the General Accounting Office, upon direction of the Comptroller General, may make such periodical examination and audit in any customs district of the books, records, papers, and documents, which may be retained therein by the collector, as may be required to settle and adjust such accounts; but if the Secretary of the Treasury or any customs official has decided any question of fact or law and if the law or the regulations duly promulgated thereunder vest in him the power of deciding such question, such decision shall not be subject to review by the General Accounting Office."

