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ANTISMUGGLING ACT

MAY 13 (calendar day, JULY 10), 1935.—Ordered to be printed

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

REPORT

[To accompany H. R. 7980]

The Committee on Finance, to whom was referred the bill (H. R. 7980) to protect the revenue of the United States and provide measures for the more effective enforcement of the laws respecting the revenue, to prevent smuggling, to authorize customs-enforcement areas, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

NECESSITY AND PURPOSE OF THE BILL

A loss of revenue of millions of dollars annually is being occasioned since the repeal of the eighteenth amendment by the increased activity of smugglers in evading our revenue laws. This activity can be curbed by adequate remedial legislation. The bill is designed to accomplish this result by extending (within the limits authorized by international law) our customs jurisdiction, by providing more effective means of enforcing laws relating to smuggling, and, generally, by making smuggling unprofitable. The bill will not disturb our existing international relations, but rather is designed to clarify our position and to strengthen the understanding between foreign nations and ourselves in dealing with smuggling; nor will it interfere with legitimate commerce.

The Secretary of the Treasury personally appeared before the Ways and Means Committee of the House and testified to the necessity of enacting this bill if rapidly increasing post-repeal smuggling activity and consequent frauds upon the revenue of the United States are to be checked. The House hearings are available in printed form.

Prior to prohibition this country was not troubled much with smuggling. During the 14 years of prohibition the business of smuggling liquor into the United States from all parts of the world developed to very serious and troublesome proportions.

It was generally expected that with the repeal of prohibition liquor-smuggling operations and frauds on our revenue would be materially reduced. For a time after repeal such proved to be the case, but, commencing with the spring of 1934, liquor smugglers again appeared along our coasts, and their operations have now increased to alarming proportions. Thus, in March 1934, only 2 smuggling vessels were observed off the coast, but by February of this year this number had increased to 22. Thirty-nine foreign vessels are presently known to the Coast Guard to be regularly engaged in the illicit-liquor traffic. Inasmuch as these vessels are hovering beyond our customs waters, they are not subject to seizure under existing laws, and hence they carry on their smuggling operations almost with impunity.

Alcohol constitutes almost the entire cargo of these vessels. This is due to several things. It is very cheap. It can be produced abroad at costs ranging from 20 to 50 cents a gallon. It is highly concentrated. Two and one-half gallons of whisky can be made from a gallon of alcohol. It enjoys a large price differential due to the customs duties and internal-revenue taxes, which amount to $13.30 on a gallon of 190° proof.

A summary of the movements of known alcohol smugglers for the last 4 months of 1934 indicates an outward movement from the principal ports of supply to the coast of the Uuited States of over three-quarters of a million gallons of alcohol. At this rate there would be an annual movement of over 2¼ million gallons. The annual internal-revenue loss on this amount of alcohol, at $3.80 per gallon, would be almost $9,000,000; the loss in customs duties, at $9.50 per gallon, would be over $21,000,000, making a total loss of over $30,000,000.

The practical difficulties in checking smuggling can hardly be exaggerated. Our 10,000-mile coastline with the many opportunities it affords for concealment, our comparatively small Coast Guard force of about 10,000 men, the seamanship and daring of the rumrunners, and the highly efficient and well-financed smuggling organizations that have grown up since the advent of prohibition, are all prime factors in making the smuggling problem one difficult of solution. Another, and not the least important factor, is the inadequacy of existing antismuggling legislation. The ineffective legislative weapons at present at our disposal for this work have time and time again permitted the escape from punishment of vessels which were violating every principle behind our customs-enforcement laws, vessels, in fact, which had never earned an honest dollar in their entire sea-going lives, but had been designed, built, and used exclusively for smuggling into the United States.

The more serious defects in the existing provisions of the revenue laws from the viewpoint of effective enforcement are—

1. The statutory authority of the customs officials is not coextensive, so far as the area of enforcement is concerned, with the privileges conferred upon the authorities of the United States by the several treaties for the prevention of the smuggling of intoxicating liquors.

2. Existing statutes do not provide an effective basis for seeking international cooperation in the suppression of the illicit liquor traffic.

3. There is no provision for an economical, systematic check upon shipments to the United States of alcoholic liquors carried upon

vessels of 500 net tons or less, such as are typically employed for smuggling operations of an organized character.

4. The notorious activities of carriers of contraband liquors hovering off the coast of the United States are not branded as a statutory offense, so long as they take place without the 4-league limit established over a century ago.

5. There is at present no provision for an effective administrative control over the motorboats and private yachts, by which contact is typically effected with the contraband carriers and the smuggled liquors brought ashore.

6. Efforts to restrain the manifestations of organized criminal enterprise in the smuggling traffic are hampered by antiquated rules of proof, unsatisfactory provisions for the sale of forfeited vessels, and light penalties, which have enabled the illicit liquor traffic to be conducted at a profit in spite of the millions which have been spent in enforcement.

It is the purpose of the present bill to alleviate these and the related serious defects in the existing statutes, which have palpably contributed to the illicit smuggling of liquors into the United States during the past decade. The measures contemplated in the present bill have, therefore, been defined by evils amply demonstrated by experience and have been devised so as to protect legitimate commerce from unwarranted interference and at the same time to minimize the cost of administration.

To arm and equip the Coast Guard to a point where it could completely wipe out all smuggling by sea would be an expensive business. But it will cost nothing to give them adequate legislation with which to fight smuggling. The present bill is designed to do this. It provides for no appropriation by Congress. Its sole purpose is to give enforcement officers of the Government adequate weapons with which to fight a traffic that yearly is robbing the United States of millions of dollars of revenue.

The present bill provides:

1. For the establishment of customs-enforcement areas in areas adjacent to but outside the 12-mile limit in which smuggling vessels are actually present. Through the establishment of these areas the necessary flexible, administrative control over the enforcement of the antismuggling provisions of the bill can be exercised;

2. For the search and, where justified, the seizure and forfeiture of vessels engaged in the smuggling trade and hovering off the coast of the United States;

3. For the enforcement of the revenue laws against foreign vessels within the limits authorized by existing treaties with foreign governments, there being at present a gap between our customs control and treaty limits;

4. For the prohibition of smuggling offenses by our nationals and vessels against the revenue laws of foreign countries, so as to lay the basis for reciprocal legislation by other countries;

5. For the general increase of fines and penalties relative to smuggling and for the penalizing of acts particularly indicative of smuggling activity but not covered by existing laws. This feature of the bill is designed to check smuggling by making it unprofitable;

6. For effective administrative control over boats of less than 500 net tons which are the boats used for illicit importation from foreign

countries and for similar control over small contact boats which bring the contraband from hovering vessels; and

7. For changes in rules of proof in forfeiture proceedings to enable effective handling of such cases.

At the present time the customs control of the United States does not extend beyond the 12-mile limit, and consequently smuggling vessels hover beyond that limit with impunity. In fact, although this country has liquor treaties with Great Britain and 15 other nations authorizing us to seize their vessels within 1 hour's sailing distance of our shores, we are unable to do so when such vessels are beyond the 12-mile limit although within 1 hour's sailing distance of our shores. This is because our courts have held that the treaties are not self-executing in the sense that they extend the jurisdiction of any of our laws. The courts hold that even when such treaties are in force our laws do not extend beyond the 12-mile limit, but that the foreign country has, by treaty, merely agreed not to object if we exercise customs control over its vessels within 1 hour's sailing distance of our shores, measured either by the speed of the mother smuggling vessel or her contact boats, whichever may be the speedier.

Since our laws do not extend beyond the 12-mile limit, our customs and Coast Guard officers are unable to go beyond that limit, as respects these treaty vessels. Hence, if the "1 hour's sailing distance" of a treaty vessel is more than 12 miles, she can carry on unrestrained smuggling operations beyond the 12-mile limit. The effect of the bill is to include the waters beyond the 12-mile limit within which we are permitted by such treaties to board and examine vessels as a part of our customs waters for the purpose of enforcing our laws on the vessels of the treaty nations. Thus the jurisdictional gap between the limit of control which the treaties permit us to exercise and the limit to which our laws extend by their terms is filled by this bill in the case of such vessels.

INTERNATIONAL ASPECTS OF THE BILL

A consideration of certain aspects of the bill from the standpoint of international law is indicated at this point inasmuch as the bill involves an extension of the exercise of customs control over foreign as well as domestic vessels beyond the existing 12-mile limit.

In order properly to consider the questions involved it is necessary to have a clear understanding of the different degrees of jurisdiction exercised by a nation in the marginal seas adjoining its coasts. Extending to a distance of 3 miles from shore, generally speaking, is a zone known as "territorial waters." Within territorial waters the jurisdiction of a nation is as absolute and complete, broadly speaking, as if the land extended up to that point. It is generally held that a nation under international law cannot extend its territorial waters.

Beyond territorial waters, however, is a wider zone within which a nation may exercise limited jurisdiction for purposes of national safeguard and protection of the revenues.

From a review of the authorities on the subject, it may safely be asserted that though all nations claim a zone of complete territorial jurisdiction in the waters along their coast (usually but not always 3 miles; the Scandinavian countries, for example, claiming 4 miles), the overwhelming majority of all civilized nations have extended

their jurisdiction for these protective purposes to a varying but considerable distance beyond territorial waters. This wider zone is sometimes referred to as "jurisdictional waters." The extent of this area is by no means clearly defined. Different nations claim different zones of jurisdictional waters. The United States, for example, exercises customs control up to 12 miles and has done so since 1790. There is nothing sanctified about this 12-mile limit, however. Other powers claim differing areas as zones of customs control.

It appears clear that however fixed in international practice may be the limit of territorial waters (and even this is, as has already been indicated, doubtful) there is no fixed rule among the customs and usages of nations which prescribes the limits of jurisdictional waters other than the rule of reasonableness, that a nation may exercise authority upon the high seas to such an extent and to so great a distance as is reasonable and necessary to protect itself and its citizens from injury. This principle, which is believed to be controlling law today, was established in American law by Chief Justice Marshall in *Church* v. *Hubbart* (2 Cranch 187 (1804)). An American vessel had been seized 12 or 15 miles off the Brazilian coast by the Portuguese authorities for alleged illicit trade with the land. An action was brought on two insurance policies to recover for the loss of the vessel. Both policies contained a clause excepting liability for any loss of the vessel due to her engaging in illicit trade with the Portuguese. The defense was based upon these exceptions. The argument was made by the plaintiff that the acts of the vessel at such a distance from the coast could not be illicit. Marshall, however, held that the seizure was lawful and justified, and that the provisos in the policies were applicable. He asserted that although the authority of a nation within its own territory was absolute and exclusive, its power to assure itself from injury might certainly be exercised beyond the limit of its territory. The means to be taken to protect itself from injury he declared "do not appear to be limited within any certain marked boundaries which remain the same at all times, and in all situations."

Chief Justice Marshall went on to say:

> If they are such as unnecessarily vex and harass foreign lawful commerce foreign nations will resist their exercise. If they are such as are reasonable and necessary to secure their laws from violation, that will be submitted to. In different seas and on different coasts a wider or more contracted range in which to exercise the vigilance of government will be assented to.

In commenting on this case, Jessup in his work, The Law of Territorial Waters and Maritime Jurisdiction, which is cited by Justice Brandeis in *Maul* v. *United States* (274 U. S. 501 (1927), said (p. 82):

> It is evident that in this case Marshall speaking for a unanimous Court, considered that a nation might lawfully exercise authority upon the high seas, subject only to the test of reasonableness.

In *Manchester* v. *United States* (139 U. S. 240 (1891)) the Supreme Court declared that, as between nations, the minimum limit of the territorial jurisdiction of a nation was a marine league, or 3 miles, from its coast, but that "all governments for the purpose of self-protection in time of war or for the prevention of frauds on its revenue, exercise an authority beyond this limit." In support of this statement the court cited several English and Canadian cases, in-

cluding *Neil* v. *Duke of Devonshire* (8 App. Cas. 135); *Mowat* v. *McFee* (5 Sup. Ct. of Canada, 66); *The Queen* v. *Cubitt* (22 Q. B. D. 622).

In connection with the *Betsey case*, which was a Federal case, no. 1365, in 1818, Justice Story, in discussing section 27 of the act of 1799 (the predecessor of sec. 586 of the Tariff Act of 1930, one of the 4-league provisions of the present tariff act), which forbade an unloading within 4 leagues of the coast, said:

> And the policy of the act applies equally to all vessels; and indeed more strongly to foreign vessels; since frauds committed by them in evasion of the revenue laws are less easily detected, than like frauds under the regulations applicable to American vessels.

In this case the vessel whose nationality is not given was condemned and forfeited for taking on cargo from a Spanish steamer within 4 leagues of the coast in order to introduce the same into the United States without payment of duties.

The principle of such reasonable extraterritorial jurisdiction in coastal waters as is necessary for national self-protection is approved by the statutes, judicial decisions, and writers of many countries.

Russia claims a 12-mile customs zone. Belgium adheres to the 3-mile limit of territorial waters but claims customs control for certain purposes within 1 myriameter, or 6 miles. France has maintained a customs zone of 2 myriameters, or 12 miles, ever since 1794. Portugal and Spain both claim a 6-mile belt of waters within which customs authorities exercise jurisdiction. Italy has a home-customs zone of 10 kilometers, or about 6 miles, but maintains one of 12 miles for her African colonies. Denmark comparatively recently (art. 19, Act No. 208 of May 31, 1922) passed a law authorizing customs surveillance and control of smuggling of alcohol and other particularly heavily taxed goods within a zone of 4 mils, or 16 nautical miles; Norway, whose territorial waters extend 4 miles seaward, claims a 10-mile zone of customs jurisdictional waters. Argentine, Ecuador, and Chile adopted a boundary of 12 miles when the security of the country and the observance of the fiscal or revenue laws is involved.

At the beginning of the seventeenth century Great Britain first became seriously troubled with smuggling vessels off her coast, and as a result she began a steady period of experimentation in antismuggling legislation that lasted until 1876.

Every few years more stringent laws were passed. By an act of 1805 (45 Geo. III, c. CXXI, July 12, 1805) smuggling vessels were subjected to forfeiture for acts committed within 100 leagues of the coast if owned in whole or in part by British subjects. Since the registry of the vessel and not the partial ownership or nationality of those on board determines the nationality of the vessel herself, this was intended to and did apply to foreign vessels manned in part by British seamen. By 1819 it was observed that this and similar provisions were being defeated by foreign vessels having on board some British subjects but not amounting in number to one-half those on board. Accordingly an act was passed (59 Geo. III, c. CXXI) which subjected to forfeiture foreign smuggling vessels committing certain acts within 4 and 8 leagues of the coast if there was one or more British subjects on board. This proved very effective since smuggling craft, of whatever nationality, usually had at least one British subject on board, who served as a pilot or assisted in the running or landing

of the cargo, or who was owner of the cargo. Other provisions enacted between 1800 and 1825 provided for forfeiture of any vessel found anchoring or hovering within 4 or 8 leagues of the coast having on board and concealed any goods subject to the payment of duties, or having more than a certain quantity of liquors or tobacco on board. New acts were passed every few years, but the 4-, 8-, and 100-league provisions referred to were retained until 1876. Large foreign smuggling vessels were frequently seized within 4 and 8 leagues of the coast and condemned under these acts. (See Masterson, Jurisdiction in Marginal Seas, p. 89, pp. 93–94, pp. 124 et seq.)

After 1850, however, smuggling by sea rapidly declined due to the increasingly effective legislative weapons wielded against it. By 1866 smuggling had died out entirely, and in 1876 the Customs Consolidation Act was passed, repealing the more stringent antismuggling legislation. Great Britain still has on her statute books, however, antismuggling legislation which penalizes foreign vessels for the commission of offenses beyond the 3-mile limit. For example, section 53 of the 1876 act penalizes a master of any vessel, irrespective of nationality, for breaking bulk or destroying or throwing overboard any cargo within 4 leagues of the coast. Moreover, section 179 subjects to forfeiture vessels committing certain acts within 3 leagues of the coast if owned in whole or part by British subjects or having one-half those on board British subjects. Under the British Merchant Shipping Act, a vessel owned only in part by British subjects cannot be a British vessel, and, as already pointed out, the nationality of those on board a vessel is no criterion of the nationality of the vessel. Accordingly, this section would apply under certain circumstances to foreign vessels within 3 leagues.

On this side of the Atlantic, the United States has had 12-mile customs-control provisions on its statute books in varying forms since 1790. Ever since the act passed on August 4, of that year, statutory authority has existed for the boarding and search of foreign and domestic vessels within 4 leagues or 12 miles of the coast of the United States. Prior to the Tariff Act of 1922, however, this right of boarding and search extended only to such vessels as were bound to "any port or place in the United States."

In 1922 Congress modified the legislative principle which had been on the statute books for 132 years. The Tariff Act of September 21, 1922, made the former boarding and search provisions applicable within the 12-mile zone to all vessels, foreign or domestic, whether bound for ports of the United States or not, and increased the scope of the laws to be enforced within the 12-mile limit. By the omission of the requirement that vessels boarded and examined be bound for the United States, Congress wished to bring unmistakably within the terms of the law the rum fleets that were hovering on the coast in large numbers with no intention of entering a port, but waiting for small boats to visit them from the shore to receive their liquors. These liquor carriers had revived the old smuggling practice of carrying two clearances, obtained by connivance with customs officials at smuggling bases outside the United States. The master of such a vessel would produce a clearance indicating that he was bound for a foreign port with his cargo of liquor if boarded and examined on the high seas by American customs officers. If, on the other hand, he succeeded in unloading his illicit cargo without being detected he

would go into the American port named in his other clearance for a return cargo.

The statutes to which reference has just been made have been repeatedly upheld by our courts. In the language of Justice Parker of the circuit court of appeals for the fourth circuit, in *Gillam* v. *United States*, it was said:

> We think it equally clear that these statutes are valid, notwithstanding the fact that the territorial boundaries of the United States extend only to the 3-mile limit. Such provisions have been a part of every tariff act passed by Congress, beginning with the statute of 1790 (1 Stat. 145), which introduced the 4-league limit (sec. 31) of the British hovering statutes. While in effect an assertion of extraterritorial jurisdiction, they are justified on the ground that they are necessary to territorial security and the proper enforcement of the laws of the country.

That case is reported in 27 Federal (2d), at page 296.

Other cases to the same effect are *Hudson* v. *Guestier* (6 Cranch 281), the *Appollon* (9 Wheat. 362), the *Metmuzel* (49 Fed. (2d) 368), and *Arch* v. *United States* (13 Fed. (2d) 382).

In the recent case of *Cook* v. *United States* (288 U. S. 102 (1932)), the Federal Supreme Court unmistakably indicated the validity of these statutes.

The *Mazel Tov*, a British vessel, of speed not exceeding 10 miles per hour, was seized by the Coast Guard at a point 11½ miles from shore. She carried a cargo of unmanifested intoxicating liquor which had been cleared from St. Pierre de Miquelon ostensibly for Nassau. She had been hovering off our coast with the intent that ultimately the liquor should be taken to the United States by other boats, but the evidence indicated that she did not intend to approach nearer than 4 leagues to our coast, and so far as appeared she had not been in communication with our shores and had not unladen any part of her cargo.

The case went to the Supreme Court where it was decided that the 1924 liquor treaty with Great Britain dealt completely with the limitations on the search of British vessels in enforcement of laws prohibiting importation or smuggling of liquor and that the treaty limited and did not extend such prohibitory acts and excluded all extraterritorial seizures not made in conformance with the treaty. Here the seizure was made within 4 leagues but outside of the hours' sailing distance provided by the treaty. It, therefore, was invalid.

In so holding, Mr. Justice Brandeis uses the following language in which he expressly upholds the validity of the 4-league or 12-mile provisions of the Tariff Act (secs. 581 et seq.) against foreign vessels where not covered by specific treaties:

> Searches and seizures in the enforcement of the laws prohibiting alcoholic liquors are governed, since the 1930 act, as they were before, by the provisions of the treaty. Section 581, with its scope narrowed by the treaty, remained in force after its enactment in the act of 1930. The section continued to apply to the boarding, search, and seizure of all vessels of all countries with which we had no relevant treaties. It continued also, in the enforcement of our customs laws not related to the prohibition of alcoholic liquors, to govern the boarding of vessels of those countries with which we had entered into treaties like that with Great Britain.

Since section 1 of the bill establishes customs-enforcement areas only after a finding of fact by the President that smuggling vessels are actually present in such areas and, by reason of their presence, menace or are likely to menace the revenue of the United States, etc., and since the bill makes applicable in such areas only a limited

number of laws, it is evident that the extension of our customs control provided in section 1 meets the test of reasonableness required under international law.

EXPLANATION OF THE BILL

TITLE I

This title contains new provisions of law.

Section 1 provides for the establishment of customs-enforcement areas beyond the 12-mile limit whenever the President finds and declares that smuggling vessels are hovering beyond that limit, and that by virtue of their presence there they are menacing or likely to menace the revenue or interfere with the legitimate commerce of the United States. The establishment of such customs-enforcement areas is subject to the two following geographical limitations: (1) Only such waters on the high seas shall be within a customs-enforcement area as are in such proximity to hovering vessels that smuggling activities may be carried on by, to, or from such vessels; (2) no customs-enforcement area shall include waters more than 100 miles in either direction up and down the coast from the place or immediate area where hovering vessels are present (i. e., 200 miles in all), or more than 50 miles out to sea beyond customs waters (12 miles) which would make a total of 62 miles seaward. Within these customs-enforcement areas officers of the customs are authorized to enforce all provisions of law applying to the high seas adjacent to customs waters. Provision is made for the termination of customs-enforcement areas when the circumstances no longer exist which gave rise to their establishment.

This section, at the same time, specifically preserves as a fundamental principle of the bill the rights of foreign vessels under the various hour-sailing-distance liquor treaties. Except by special arrangement with the treaty nation concerned, no treaty vessel can be seized under any provision of the bill beyond treaty limits. That is to say, customs control cannot be exercised over a treaty vessel if the vessel is beyond 1 hour's sailing distance of the shore, except by express consent of the treaty nation concerned. It is believed that this provision will stimulate and serve as a basis for special executive agreements with treaty nations with respect to individual vessels, which will permit enforcement of our laws from time to time against notorious, foreign smuggling vessels, sailing under the protection of treaty flags, at places and under circumstances not covered generally by the particular treaty.

Section 2 (a) subjects to fine of not more than $5,000, or to imprisonment of not more than 2 years, or to both, any person owning whole or in part any vessel of the United States or controlling it, directly or indirectly, who permits such vessel to be employed in smuggling merchandise into any foreign country, if such foreign country provides any penalty for violation of the customs revenue laws of the United States. Persons on board assisting in such smuggling activities are subject to the same penalties.

Section 2 (b) makes it an offense to charter a vessel with actual or implied knowledge that the vessel is going to be used for the purposes prohibited by section 2 (a), provided that the vessel is actually used for such purposes during the time the charter is in effect.

This whole section, which is modeled along the lines of a Norwegian law of June 25, 1926, is designed to encourage reciprocal legislation on the part of foreign countries penalizing their nationals and vessels for violating our customs revenue laws. Reciprocal legislation of this character is analogous to that enacted under certain international conventions, notably the International Opium Convention of 1912, whereby each signatory power bound itself to enact legislation which would be reciprocally cooperative in the suppression of the illicit drug traffic in the other countries which were parties to that convention.

Section 3 (a) subjects to forefeiture any vessel built or fitted out for the purpose of being employed to defraud the revenue, or to smuggle merchandise into the United States or into such foreign countries as have reciprocal legislation, of the character referred to in section 2 (a), or so employed within the United States if a foreign vessel or at any place if an American vessel.

Section 3 (b) provides that for the purpose of section 3, vessels which are de facto owned or controlled by American citizens or corporations are deemed vessels of the United States.

Section 3 (c) provides that for the purposes of this section, the fact that a vessel is displaying certain typical indicia of smuggling activities, such as not stopping when required to by customs officers, or hovering suspiciously off the coast of the United States, or failing to display proper light, raises the presumption that the vessel is being employed to defraud the revenue of the United States.

This section is patterned after an old statute relating to piratical vessels (Rev. Stats. 4296; 33 U. S. C. 384). It is believed that this statute will prove very useful since the build and dimensions of smuggling craft are, in almost every instance, a give-away of the nature of their illicit activities. This section will also stimulate reciprocal legislation by other countries.

Section 4 authorizes collectors of customs to revoke or refuse to document (i. e., to register, enroll, license, or number) any vessel when it appears, from its build or otherwise, that the vessel is going to be employed in smuggling. At present this authority does not exist even though the master of a vessel on applying for documentation should announce that he were going to use the vessel as a rumrunner This section is also reciprocal like sections 2 and 3.

Section 5 permits vessels forfeited for violations of the revenue laws to be destroyed whenever the Secretary of the Treasury is of the opinion that they are likely to be returned to the smuggling traffic if sold.

At present forfeited rumrunners, practically useless for legitimate commerce, are sold very cheaply at condemnation sales and in the majority of cases quickly return to rumrunning.

Section 6 prohibits the importation of dutiable merchandise into the United States in vessels of less than 30 tons unless specially licensed to do so (licensed aircraft being specifically excepted) except from Canada and Mexico. This section, which is derived from the act of March 2, 1799 (1 Stat. 697), incorporated in the Revised Statutes as section 3095, was repealed by an oversight by the Tariff Act of 1922. It is particularly aimed at the small contact boats which ply between our shores and hovering rum boats or neighboring islands, which by reason of their small size can run smuggled goods into shallow inlets or up small streams where no customhouses are established.

Section 7 requires vessels under 500 tons coming from abroad and carrying liquors destined to the United States to have on board a certificate issued by an American consular officer for the importation thereof. Any uncertificated liquors found on board a vessel of this type within our customs waters would be subject to seizure if not shown to have a bona fide destination outside the United States. If shown to be destined to a foreign port, a bond in double the amount of the duties if imported into the United States would be required, conditioned on the actual landing of the liquor at the foreign port of destination. A proviso exempts from the penalty provisions of this section cases where the certificate has been lost or is incorrect by virtue of accident or clerical error. Since little if any liquor is carried legitimately on vessels under 500 tons, and since all rumrunners are at present under that tonnage figure, it is believed that this measure will prove effective without harassing legitimate commerce.

Section 8 (a) subjects masters of American vessels under 500 tons, loading liquors destined to the United States on such vessels in foreign ports without obtaining a consular certificate as required by section 7, to a penalty equal to the value of the merchandise so loaded, but not less than $1,000. The vessel and merchandise are subject to forfeiture.

Section 8 (b) subjects citizens of the United States, masters, or members of the crew of American vessels to a fine of not more than $1,000 or to imprisonment for not more than 2 years, or to both, for assisting in unlawfully loading uncertificated liquor bound to the United States on vessels under 500 tons in foreign ports.

TITLE II

This title contains 10 sections, which amend various sections of the Tariff Act of 1930 and certain related statutes.

Section 201 amends section 401 of the Tariff Act of 1930 by defining the terms "officers of the custom" (means any officer of the custom service or any commissioned, warrant, or petty officer of the Coast Guard or other person authorized by law or the Secretary of the Treasury or appointed in writing by a collector of customs to perform the duties of a customs service officer), "custom waters" (means 12 miles in the case of domestic or nontreaty foreign vessels, treaty distance which is at present 1 hour sailing distance in the case of foreign treaty vessels) and "hovering vessel" (means any vessel found or kept anywhere off our coast under suspicious circumstances which make it reasonable to believe that the vessel is being used or will be used in smuggling activities). This section also subjects to entry and clearance requirements at the customhouse any vessel which visits a "hovering vessel."

Section 202 amends section 436 of the Tariff Act of 1930 by imposing an additional penalty (not more than $2,000, or a year, or both) on the master of any vessel for failure to make a report or entry upon arrival in this country if the vessel has or had liquor or prohibited merchandise on board. This section also imposes a new penalty ($50 to $5,000, or not more than 2 years, or both) for presenting false or forged papers or documents upon entry of a vessel at the customhouse.

This section is in line with the general intent of the antismuggling bill to increase existing fines and penalties relative to smuggling and

to penalize acts particularly indicative of smuggling activity which are not covered by the present law.

Section 203 (a) amends section 581 of the Tariff Act of 1930 by clarifying and enlarging considerably the authority and duties of the officers of the customs in connection with boarding, search, seizure, and pursuit of vessels and vehicles and by providing appropriate penalties for obstructing officers in the performance of their duties under this section. The amendment divides section 581 into subsections as follows:

(a) Authorizes customs officers to board and search vessels or vehicles within the United States or within its customs waters or within any custom-enforcement areas that may have been established under section 1.

(b) Authorizes officers of the Department of Commerce to board vessels within customs waters in the enforcement of the navigation laws.

(c) Subjects to penalties masters of vessels who present false or forged papers or documents to boarding officers.

(d) Provides that a vessel or vehicle which does not stop when lawfully required to by an authorized officer shall become subject to pursuit and the master to a penalty of $1,000 to $5,000. It is made the duty of officers of the customs to pursue such vessels anywhere on the high seas or elsewhere if authorized.

(e) Provides that if upon examination of a vessel or vehicle it appears that the law of the United States is being breached, the vessel shall be seized and any person assisting in the breach arrested.

(f) Makes it the duty of the officers of the customs to seize or arrest vessels, vehicles, or persons violating any revenue law, whether within or without the respective districts of such officers.

(g) Provides that any vessel, even if outside our customs waters, which is illicitly smuggling merchandise into the United States by means of small boats belonging to or commonly owned or controlled with the vessel, shall be deemed to be within the United States and subject to the boarding provisions of this section. This subsection is a codification of the "constructive presence" doctrine of *Henry L. Marshall* (292 Fed. 486) and *Grace and Ruby* (283 Fed. 475).

(h) Provides that no exercise of jurisdiction shall be asserted under this section over any foreign treaty vessel, except in accordance with the terms of the relevant treaty, unless such action is permitted by special arrangement with the foreign power involved.

Section 203 (b) repeals Revised Statutes 3072, which has been incorporated with slight changes in subsection (f) above.

Section 204 (a) amends section 584 of the Tariff Act of 1930 by enlarging the scope of the penalty imposed by that section against vessels carrying unmanifested smoking opium so as to also include heroin, cocaine, morphine, and crude opium. Section 584 at present provides a penalty of $25 an ounce against the master or owner of a vessel upon which is found unmanifested smoking opium or opium prepared for smoking. Other unmanifested narcotics found on board are subject only to the penalty provided by section 584 for failure to manifest general merchandise, which is a penalty equal to the value of the goods themselves. Since the value of narcotics in legitimate commerce is not nearly as high as the value of the same narcotics for illegal purposes, this penalty is in many instances not sufficiently

drastic to provide an effective deterrent to smuggling. It is desired, therefore, to enlarge the section as so to provide a severe penalty for carrying unmanifested narcotic drugs of other types than smoking opium. The present amendment is designed to do this.

Section 204 (b) amends section 584 of the Tariff Act of 1930 by subjecting vessels under 500 tons to forfeiture and the masters of such vessels to penalties when found within customs waters with prohibited merchandise on board, or with liquors on board without the consular certificate provided for by section 7. The effect of this section is to make the consular certificate an extra manifest on the issuance of which a much more effective check may be maintained than on clearances or ordinary manifests, inasmuch as the consular certificate will be issued by an American consul, whereas clearances and certain manifests of vessels coming from foreign ports are issued by foreign customs officers.

Section 205 amends section 586 of the Tariff Act of 1930. Section 586 is divided up in subsections, which provide as follows:

(a) Is substantially identical with section 586 as it at present reads; it penalizes vessels from foreign ports for unloading cargo without permission in our customs waters.

(b) Penalizes masters of vessels from foreign ports for unloading or transshipping outside the customs waters any liquors or merchandise whose importation into this country is prohibited, under circumstances indicating an attempt to smuggle any merchandise into the United States, and the vessel and merchandise are subject to forfeiture.

(c) Is similar to (b) except that it penalizes unloadings or transshipments to any American vessel outside of customs waters, regardless of the circumstances under which the transshipment is made. The jurisdiction which we exert over our own vessels anywhere on the high seas justifies this measure.

(d) Penalizes the receiving vessel in these transshipment cases, as well as its master and those assisting in the transshipment.

(e) Subjects to imprisonment for not more than 2 years American citizens who at any place or foreign nationals who, within 3 miles of our coast, assist in any transshipment by reason of which any vessel is subject to forfeiture under any provision of this section.

(f) Exempts from penalty under the provisions of this section cases where the transshipment is due to accident, stress of weather, or other necessity.

Section 206 inserts a new section in place of section 587 of the Tariff Act of 1930, which has been incorporated in subsection (d) of the amended section 586 (see last section). This new section 587, providing for the examination of hovering vessels, is divided into subsections, as follows:

(a) Subjects to customs examination in some cases outside of customs waters, vessels which are displaying particularly suspicious indicia of smuggling activity, such as failing to stop when properly required by customs officers, hovering suspiciously off the coast, or failing to display proper lights. If any dutiable merchandise destined to the United States is found on board such vessel, it becomes subject to forfeiture. For the purpose of this section, the presumption is raised that liquors and prohibited merchandise when found on board such vessels are destined to the United States.

(b) Subjects to forfeiture a vessel which having once been found within our customs waters or a customs-enforcement area, laden with cargo is later found with less cargo on board, and the master is unable properly to explain where he unloaded any portion of the cargo, which may have consisted of liquors or prohibited merchandise. This subsection is patterned after a British hovering act.

(c) Exempts from forfeiture under this section vessels actually bound from one foreign port to another, if pursuing their course as best they may under prevailing weather conditions. This subsection is copied from a British statute.

Section 207 amends section 615, of the Tariff Act of 1930 by the insertion of several rules of proof which will aid the Government in showing the probable cause required under this section as the prerequisite for suits for the forfeiture of vessels.

The first rule makes the testimony of the customs officer boarding or requiring to come to a stop any vessel or vehicle or arresting any person, prima facie evidence of the place where the act in question occurred. This provision is made desirable by the conflict in testimony which commonly occurs in forfeiture suits between customs officers and rum runners, as to whether the seizure in question was made within or without the proper limits.

The second rule makes marks, labels, etc., accompanying merchandise which are indicative of foreign origin prima facie evidence of the foreign evidence of the merchandise. In order to prove that merchandise is unlawfully imported into this country, it must obviously be shown to be of foreign origin, but the courts in the past have held that foreign labels on bottles could not be assumed to be genuine, nor the liquor necessarily of foreign origin in the absence of further corroborative evidence. See *Kennedy* v. *United States* (44 F. (2d) 131); *United States* v. *Packard Sedan* (23 F. (2d) 865).

The third rule makes it prima facie evidence that a vessel has visited a "hovering vessel" if it is found in the vicinity of such hovering vessel under circumstances indicating contact or communication with it. The importance of proving that a vessel has visited a hovering vessel is that under section 201 of this bill (supra) any vessel which visits any hovering vessel is made subject to the same entry requirements as if it were coming from a foreign port.

Section 208 amends section 3062 of the Revised Statutes to include within the scope of its forfeiture provisions, vessels, aircraft, pilot boats, and pilot cars. Pilot boats and cars, though not necessarily carrying contraband themselves, assist smugglers by acting as decoys. This section, which has proved to be very useful in the enforcement of the revenue laws, is at present limited to vehicles. Section 208 also provides a penalty for assisting in the unlawful importation or bringing in of contraband merchandise.

Section 209 amends section 4197 of the Revised Statutes by imposing certain additional requirements with regard to clearance of vessels for foreign ports (master must truly answer all questions asked of him, must notify the collector if he adds to the cargo after receiving clearance, or if he delays leaving more than 2 days after obtaining clearance) and penalizing false statements in connection with such clearances. The penalty is made more severe if the cargo is in part composed of liquors or prohibited merchandise.

Section 210 amends the Motor Boat Act of June 10, 1918, by providing an additional requirement that motor boats under 5 tons must have on board at all times their identification papers issued by the collector of customs. This requirement will facilitate custom supervision over these small boats, which has been difficult in the past, since identification papers are more difficult to forge than the numbers which under existing law are the only thing which these small boats are required to carry.

TITLE III

This title contains 14 miscellaneous sections, 12 of which amend various sections of the tariff act and navigation laws. Of the other two sections, one amends a Coast Guard statute; the other is a new section also relating to the Coast Guard.

Section 301 amends section 434 of the Tariff Act of 1930. This section is at present inconsistent, inasmuch as it requires masters of American vessels arriving in the United States from foreign ports to deposit with the collector of customs within 48 hours after such arrival the vessel's "register or document in lieu thereof", other papers and to make oath "that the ownership of the vessel is as indicated in the register." The section does not at present require any oath that the ownership is as indicated in the document in lieu of the register. The purpose of the present amendment is to cure this inconsistency by inserting "or document in lieu thereof" after the phrase, "the master * * * shall make oath that the ownership of the vessel is as indicated in the register."

Section 302 amends subsection 3 of section 441 of the Tariff Act of 1930 so as to require yachts of less than 15 tons (at present exempted from entry at the customhouse) to make entry at the customhouse if they have visited any hovering vessel, or for any reason breached the laws of the United States so as to be liable to seizure and forfeiture.

Section 303 amends section 585 of the Tariff Act of 1930 by substituting "any officer of the customs" for "any customs or Coast Guard officer." This is in line with the new definition of "officer of the customs" provided by section 201 of this bill.

Section 303 also amends section 585 by changing the phrase "subject to forfeiture" (i. e., vessels violating its provisions are at present "subject to forfeiture") to "shall be forfeited." This is necessary because some courts have held that the forfeiture in a statute employing the phrase "subject to forfeiture" only relates back to the seizure whereas if the phrase "shall be forfeited" is used, the forfeiture relates back to the occurrence of the act for which the vessel was forfeited. Under the latter phrase, therefore, the intervening liens are divested on forfeiture, even though they attach before the seizure, whereas the same would not be true of liens attaching before seizure in the other case.

Section 304 (a) amends section 591 of the Tariff Act of 1930 so as to remedy an ambiguity of construction raised by a recent unreported district court case as to whether it is necessary under this section to show in every instance that the United States has been actually deprived of duties in order to impose personal penalties for fraudulent introduction of merchandise into the United States provided for by this section.

Section 304 (b) similarly amends section 592 of the Tariff Act of 1930 which is a provision substantially the same as 591, except that the penalty is against the goods rather than against the person.

Section 305 (a) amends section 619 of the Tariff Act of 1930 which provides for the award of compensation to informers in forfeiture cases under the customs laws. The Comptroller General has held that in a smuggling case, if the forfeiture is actually made under navigation law (many of the navigation laws are in part or in whole intended as revenue protective measures), there can be no award of compensation to an informer. Many seizures and forfeitures of rum runners result from information received by custom officers from informers. It is therefore desirable that informers' award provisions should be as liberal as possible. The present amendment is designed to permit awards where the forfeiture is made under the navigation laws.

Section 305 (b) further amends section 619 of the Tariff Act of 1930 to permit payment of awards of 25 percent of the appraised value to informers in cases where forfeited vessels, vehicles, or merchandise are not sold at condemnation sales but are taken over for governmental use or are destroyed under the provisions of section 5 of this bill, as a continuing menace to the revenue of the United States, or under the provisions of any other revenue law. This is in line with the comment made relative to section 305 (a) that the provisions permitting compensation of informers should be liberal and thus encourage the continuation of these valuable sources of information concerning smuggling activities.

Section 306 amends section 621 of the Tariff Act of 1930 which is the statute of limitations on recoveries of penalties of forfeitures under the customs laws. At present the section provides that actions of this nature must be commenced "within 5 years after the time when such penalty or forfeiture accrued." In many instances, this statute has run before the discovery of the revenue law violation in question. It therefore is highly desirable from an enforcement standpoint to make the statute run from the time of the discovery of the violation, and not from the time it was actually committed, and the present amendment is designed to accomplish this result.

Section 307 amends section 3068 of the Revised Statutes by increasing the penalty imposed upon masters of vessels for obstructing boarding officers engaged in enforcing revenue and navigation laws of the United States (present penalty $50 to $500; new penalty $500 to $2,000). The present section also applied only to vessels "coming into or having arrived at any port within the United States." The amendment will remove this limitation and make the section apply to vesels wherever subject to customs inspection.

Section 308 amends section 2764 of the Revised Statutes by increasing the penalty imposed on the master of a vessel for unlawful use of the Coast Guard pennant and ensign. (Present penalty, $100; new fine, $1,000 to $5,000, or 6 months to 2 years, or both.)

Section 309 is a new provision penalizing the misuse of the uniform or badge of our Coast Guard or Customs Service or of a foreign revenue service. The penalty is a fine of not more than $500 and 2 years imprisonment.

Section 310 amends section 4189 of the Revised Statutes. This section at present subjects to forfeiture fraudulent obtaining or use

of documentation (registry, enrollment, etc.) by any vessel "not entitled to the benefit thereof." The use of the phrase "not entitled to the benefit thereof" permits construing this section so that if a vessel entitled to the benefit of documentation fraudulently obtains or uses such documentation, such vessel is not subject to the forfeiture provisions of this section. The present amendment eliminates this possible construction by striking out the words "not entitled to the benefits thereof".

Section 311 amends section 4218 of the Revised Statutes. This amendment is designed to make this section (which applies to the entry of yachts at the customhouse on returning from foreign countries) consistent with the amendment to section 441 of the tariff act made by section 302 of the present bill.

Section 312 amends section 4336 of the Revised Statutes, so as to increase the penalty for failure on the part of the master of a vessel to display his ship's document to any revenue officer from $100 to $1,000 (civil penalty) and a fine of not more than $1,000, or imprisonment for not more than 1 year, or both, in cases where the failure to exhibit it is willful. The section has also been enlarged to permit revenue officers to inspect "the register or enrollment or license of any vessel or any document in lieu thereof" instead of merely "the enrollment or license of any vessel" as it at present provides.

Section 313 amends section 4377 of the Revised Statutes by enlarging its forfeiture provisions to include vessels employed in any trade whereby the revenue of the United States is defrauded or found with foreign merchandise or domestic liquors on board, on which the duties or taxes have not been paid or secured to be paid.

In the past, this section has been one of the most useful statutes available for the forfeiture of domestic vessels engaged in smuggling. The present amendment to it is designed to broaden considerably its scope and make clear certain ambiguities which have arisen in its construction by the courts, notably whether a vessel engaged in defrauding the revenue of the United States comes within the statutory prohibition of the section, as it at present reads, against vessels being "employed in any other trade than that for which licensed."

A presumption has also been added to this section that marks, labels, etc., indicative of foreign origin, upon merchandise found upon any vessel shall be prima facie evidence of the foreign origin of such merchandise. This is the same rule of proof incorporated in section 207 of the present bill (see supra) which amends section 615 of the tariff act, but its insertion in the present section is made necessary by the fact that Revised Statutes 4377 is not a tariff act provision, and, consequently, does not come within the purview of section 615.

Section 314 amends section 7 of the act of June 19, 1886, which penalizes coastwise trading by unlicensed domestic vessels. The section is amended to provide that if an unlicensed vessel is found engaged in coastwise trading and has on board any foreign goods other than sea stores it is subject to forfeiture. The present amendment also includes within the forfeiture provisions of this section cases where such vessels have domestic liquors on board on which the taxes have not been paid or secured to be paid.

The presumption regarding marks, labels, etc., indicative of foreign origin, mentioned in the last section, has also been included in this section.

TITLE IV

This title includes three sections containing formal provisions.

Section 401 defines various terms used in the bill.

Subsection (a) defines the term "United States", when used in a geographical sense, to include "all territories and possessions of the United States, except the Philippine Islands, the Virgin Islands, the Canal Zone, American Samoa, and the island of Guam."

Subsections (b), (c), and (d) of section 401 of the present bill define respectively the terms "officer of the customs", "customs waters", and "hovering vessel." These definitions are identical with the definitions of the same terms made by section 201 of this bill as an amendment to section 401 of the Tariff Act of 1930. The need of again defining these terms comes from the fact that the definitions in section 401 of the tariff act only apply to the provisions of the tariff act and it is, therefore, necessary to define these terms again for the purposes of those provisions of the present bill which are not amendments to the tariff act and to which, therefore, the definitions contained in that act will have no application.

Section 402 is the separability clause.

Section 403 gives a short title to the act, the "Antismuggling Act."

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