

Public Law 95-410
95th Congress

An Act

Oct. 3, 1978

[H.R. 8149]

Customs
Procedural
Reform and
Simplification
Act of 1978.
19 USC 1654
note.

To provide customs procedural reform, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Customs Procedural Reform and Simplification Act of 1978".

TITLE I—CUSTOMS PROCEDURAL REFORM

SEC. 101. Section 315 (a) of the Tariff Act of 1930 (19 U.S.C. 1315 (a)) is amended—

- (1) by striking out "and" at the end of paragraph (1);
- (2) by striking out the period at the end of paragraph (2) and inserting in lieu thereof "; and"; and
- (3) by adding at the end thereof the following new paragraph:
" (3) any article for which duties may, under section 505 of this Act, be paid at a time later than the time of making entry shall be subject to the rate or rates in effect at the time of entry."

19 USC 1505.

SEC. 102. (a) Section 484 of the Tariff Act of 1930 (19 U.S.C. 1484) is amended—

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

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

19 USC 1490,
1498,
1552, 1553,
1336.

Documentation.

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

"(B) shall file (at the time required under paragraph (2) (B) of this subsection) with the appropriate customs officer such other documentation as is necessary to enable such officer to assess properly the duties on the merchandise, collect accurate statistics with respect to the merchandise, and determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

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

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

Regulations.

"(C) The Secretary, in prescribing regulations to carry out this subsection, shall establish procedures which insure the accuracy and timeliness of import statistics, particularly statistics relevant to the classification and valuation of imports. Corrections of errors in such

NOTE: In the twelfth line of Sec. 102, which begins with "(B) shall . . .", the word "file" has been added after the word "shall".

statistical data discovered after the release of merchandise shall be transmitted immediately to the Director of the Bureau of the Census, who shall make corrections in the statistics maintained by the Bureau. The Secretary shall also provide, to the maximum extent practicable, for the protection of the revenue, the facilitation of the commerce of the United States, and the equal treatment of all consignees of imported merchandise.”;

(2) by striking out “subdivision” in subsection (c) (3) and inserting in lieu thereof “subsection”; and

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

(b) The amendments made by this section shall take effect 60 days after the date of enactment of this Act.

Effective date.
19 USC 1484
note.

SEC. 103. Section 505(a) of the Tariff Act of 1930 (19 U.S.C. 1505 (a)) is amended to read as follows:

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

Regulations.

SEC. 104. The Tariff Act of 1930 is amended by inserting after section 507 the following new section:

“SEC. 508. RECORDKEEPING.

19 USC 1508.

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

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

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

“(b) PERIOD OF TIME.—The records required by subsection (a) of this section shall be kept for such periods of time, not to exceed 5 years from the date of entry, as the Secretary shall prescribe.

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

Infra.

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

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

SEC. 105. Section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) is amended to read as follows:

“SEC. 509. EXAMINATION OF BOOKS AND WITNESSES.

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

Notice.

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

Notice.

"(2) summon, upon reasonable notice—

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

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

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

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

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

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

Ante, p. 889.

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

Definitions.

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

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

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

"(C) The term 'third-party recordkeeper' means—

"(i) any customhouse broker;

"(ii) any attorney; and

"(iii) any accountant.

Notice.

"(2) If—

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

"(B) the summons requires the production of, or the giving of testimony relating to, any portion of records made or kept of the import transactions of any person (other than the person sum-

moned) who is identified in the description of the records contained in such summons;

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

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

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

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

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

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

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

Infra.

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

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

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

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

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

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

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

SEC. 106. Section 510 of the Tariff Act of 1930 (19 U.S.C. 1510) is amended to read as follows:

“SEC. 510. JUDICIAL ENFORCEMENT.

“(a) ORDER OF COURT.—If any person summoned under section 509 of this Act does not comply with the summons, the district court of *Ante*, p. 889.

the United States for any district in which such person is found or resides or is doing business, upon application and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to comply with the summons. Failure to obey such order of the court may be punished by such court as a contempt thereof.

Ante, p. 889.

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

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

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

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

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

Repeal.

SEC. 107. Section 511 of the Tariff Act of 1930 (19 U.S.C. 1511) is repealed.

SEC. 108. (a) Section 557 of the Tariff Act of 1930 (19 U.S.C. 1557) is amended by adding at the end thereof the following new subsection:

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

19 USC 1505.

(b) (1) Sections 557 and 559 of the Tariff Act of 1930 (19 U.S.C. 1557 and 1559) are amended by striking out “three years” each place it appears and inserting in lieu thereof “5 years” in each such place.

19 USC 1557
note.

(2) For purposes of applying the amendments made by paragraph (1) to merchandise remaining in a bonded warehouse on the date of enactment of this Act, any period of time the merchandise was in the bonded warehouse before that date shall be disregarded.

SEC. 109. Section 584 of the Tariff Act of 1930 (19 U.S.C. 1584) is amended—

(1) by striking out the first word of each paragraph and inserting in lieu thereof—

(A) “(a) **GENERAL RULE.**—(1) Any” in the first paragraph,

(B) “(2) If” in the second paragraph, and

(C) “(3) If” in the last paragraph;

(2) by inserting “lesser of \$10,000 or the domestic” immediately after “penalty equal to the” in the first sentence of the first paragraph;

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

(4) by adding at the end of the first paragraph the following new sentence: "For purposes of this subsection, the term 'clerical error' means a nonnegligent, inadvertent, or typographical mistake in the preparation, assembly, or submission of the manifest.";

"Clerical error."

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

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

(7) by inserting "or any person directly or indirectly responsible for crude opium being in such merchandise" immediately after "or the owner of such vessel or vehicle" in the third sentence of the second paragraph; and

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

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

Notice.

"(A) describe the merchandise;

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

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

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

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

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

No notice is required under this subsection for any violation of subsection (a)(1) for which the proposed penalty is \$500 or less.

"(2) After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the appropriate customs officer shall determine whether any violation of subsection (a)(1), as alleged in the notice, has occurred. If such officer determines that there was no violation, he shall promptly issue a written statement of the determination to the person to whom the notice was sent. If such officer determines that there was a violation, he shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under subparagraphs (A) through (E) of paragraph (1)."

SEC. 110. (a) Section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) is amended to read as follows:

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

"(a) PROHIBITION.—

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

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

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

“(ii) any omission which is material, or

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

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

“(b) PROCEDURES.—

“(1) PRE-PENALTY NOTICE.—

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

“(i) describe the merchandise;

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

“(iii) specify all laws and regulations allegedly violated;

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

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

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

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

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

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

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

“(2) PENALTY CLAIM.—After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the appropriate customs officer shall determine whether any violation of subsection (a), as alleged in the notice, has occurred. If such officer determines that there was no violation, he shall promptly issue a written statement of the determination to the person to whom the notice was sent. If such officer determines that there was a violation, he shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vi) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 618 of this Act to make representations, both oral and written, seeking remission or miti-

gation of the monetary penalty. At the conclusion of any proceeding under such section 618, the appropriate customs officer shall provide to the person concerned a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

19 USC 1618.

“(c) MAXIMUM PENALTIES.—

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

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

“(A) the lesser of—

“(i) the domestic value of the merchandise, or

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

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

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

“(A) the lesser of—

“(i) the domestic value of the merchandise, or

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

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

“(4) PRIOR DISCLOSURE.—If the person concerned discloses the circumstances of a violation of subsection (a) before, or without knowledge of, the commencement of a formal investigation of such violation, with respect to such violation, merchandise shall not be seized and any monetary penalty to be assessed under subsection (c) shall not exceed—

“(A) if the violation resulted from fraud—

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

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

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

26 USC 6621.

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

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

19 USC 1514. "(d) DEPRIVATION OF LAWFUL DUTIES.—Notwithstanding section 514 of this Act, if the United States has been deprived of lawful duties as a result of a violation of subsection (a), the appropriate customs officer shall require that such lawful duties be restored, whether or not a monetary penalty is assessed.

19 USC 1604. "(e) DISTRICT COURT PROCEEDINGS.—Notwithstanding any other provision of law, in any proceeding in a United States district court commenced by the United States pursuant to section 604 of this Act for the recovery of any monetary penalty claimed under this section—

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

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

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

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

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

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

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

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

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

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

(e) Section 621 of the Tariff Act of 1930 (19 U.S.C. 1621) is amended by inserting the following after "Provided, That": "in the case of an alleged violation of section 592 of this Act arising out of gross negligence or negligence, such suit or action shall not be instituted more than five years after the date the alleged violation was committed: *Provided further, That*".

Ante, p. 893.

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

19 USC 1592
note.

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

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

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

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

19 USC 1604.

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

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

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

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

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

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

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

19 USC 1621.

SEC. 111. (a) Section 607 of the Tariff Act of 1930 (19 U.S.C. 1607) is amended by striking out "\$2,500" in the heading of such section and inserting in lieu thereof "\$10,000", and by striking out "\$2,500" each place that it appears therein and inserting in lieu thereof "\$10,000".

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

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

SEC. 112. The Tariff Act of 1930 is amended by inserting immediately after section 624 the following new section:

19 USC 1625.

"SEC. 625. PUBLICATION OF DECISIONS.

"Within 120 days after issuing any precedential decision (including any ruling letter, internal advice memorandum, or protest review decision) under this Act with respect to any customs transaction, the Secretary shall have such decision published in the Customs Bulletin or shall otherwise make such decision available for public inspection."

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

"(e) TRIENNIAL REPORTS BY CUSTOMHOUSE BROKERS.—On February 1, 1979, and on February 1 of each third year thereafter, each person who is licensed as a customhouse broker under this section shall file with the Secretary a report as to—

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

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

TITLE II—CUSTOMS SIMPLIFICATION

SEC. 201. Section 11 of the Act of March 1, 1879 (19 U.S.C. 467) is amended to read as follows:

Regulations.

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

SEC. 202. (a) Schedule 8 of the Tariff Schedules of the United States (19 U.S.C. 1202) is amended as follows:

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

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

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

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

(5) Subpart A of part 2 is amended by striking out items 813.30 and 813.31 and by inserting in lieu thereof the following new items:

	Other articles, including not more than 100 cigars, acquired abroad as an incident of the journey from which the person is returning if such person arrives from the Virgin Islands of the United States or from a contiguous country which maintains a free zone or free port, or arrives from any other country after having remained beyond the United States for a period of not less than 48 hours, for his personal or household use, but not imported for the account of any other person nor intended for sale, if declared in accordance with regulations of the Secretary of the Treasury and if such person has not claimed an exemption under item 813.30 or 813.31 within 30 days preceding his arrival, and does not claim an exemption under the other item on his arrival:		
813.30	Articles, accompanying a person, not over \$300 in aggregate fair retail value in the country of acquisition, including (but only in the case of an individual who has attained the age of 21) not more than 1 quart of alcoholic beverages.	Free	Free
813.31	Articles, whether or not accompanying a person, not over \$600 in aggregate fair market value in the country of acquisition, including (but only in the case of an individual who has attained the age of 21) not more than 1 wine gallon of alcoholic beverages, not more than 1 quart of which shall have been acquired elsewhere than in American Samoa, Guam, or the Virgin Islands of the United States, if such person arrives directly or indirectly from such insular possessions, not more than \$300 of which shall have been acquired elsewhere than in such insular possessions (but this item does not permit the entry of articles not accompanying a person which were acquired elsewhere than in such insular possessions).	Free	Free "

(6) The item description appearing immediately before item 813.30 (as amended by paragraph (5)) is amended by inserting "200 cigarettes and" before "100 cigars".

(7) Item 813.30 (as amended by paragraph (5)) is amended by striking out "1 quart" and inserting in lieu thereof "1 liter".

(8) Item 813.31 (as amended by paragraph (5)) is amended by striking out "1 wine gallon" and inserting in lieu thereof "4 liters", and by striking out "1 quart" and inserting in lieu thereof "1 liter".

(9) Item 814.00 is amended by striking out "3 pounds" and inserting in lieu thereof "2 kilograms" and by striking out "1 quart" and inserting in lieu thereof "1 liter".

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

(11) Item 860.20 is amended by striking out "1/8 ounce" each place that it appears and inserting in lieu thereof "3.5 grams".

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

(2) The amendments made by this section (other than those referred to in paragraph (1)) shall apply with respect to persons arriving in the United States on or after the 30th day after the date of the enactment of this Act. For purposes of this subsection, the amendment made by paragraph (3) of subsection (a) shall not be considered an amendment with respect to metric conversion.

19 USC 1202
note.

19 USC 1202
note.

19 USC 1202
note.

SEC. 203. (a) Schedule 8 of the Tariff Schedules of the United States (19 U.S.C. 1202) is further amended by redesignating part 6 as part 7, by striking out "Part 6 headnote:" in part 7 (as so redesignated) and inserting in lieu thereof "Part 7 headnote:"; and by inserting after part 5 the following new part:

PART 6.—NONCOMMERCIAL IMPORTATIONS OF LIMITED VALUE			
Part 6 headnote:			
For the purposes of this part the rates of duty for articles provided in this part shall be assessed in lieu of any other rates of duty, except free rates of duty on such articles, unless the Secretary of the Treasury or his delegate determines, in accordance with regulations, that the application of the rate of duty provided in this part to any article in lieu of the rate of duty otherwise applicable thereto adversely affects the economic interest of the United States.			
Articles for personal or household use, or as bona fide gifts, not imported for the account of another person, valued in the aggregate at not over \$600 fair retail value in the country of acquisition, if the person claiming the benefit of item 869.00 or 869.10, or both, has not received the benefits thereof within the 30 days immediately preceding his arrival:			
869.00	Accompanying a person, arriving in the United States (exclusive of duty-free articles and articles acquired in American Samoa, Guam, or the Virgin Islands of the United States).....	10% of the fair retail value	10% of the fair retail value
869.10	Imported by or for the account of a person (whether or not accompanying him) arriving directly or indirectly from American Samoa, Guam, or the Virgin Islands of the United States, acquired in such insular possessions as an incident of such person's physical presence.....	5% of the fair retail value	5% of the fair retail value

19 USC 1202
note.

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

Publication in
Federal Register.

SEC. 204. Section 315(d) of the Tariff Act of 1930 (19 U.S.C. 1315(d)) is amended by striking out "weekly Treasury Decisions" and inserting in lieu thereof "Federal Register".

SEC. 205. (a) Section 321(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1321(a)(1)) is amended by striking out "\$3" and inserting in lieu thereof "\$10", and by striking out "or" after "duties" wherever it appears and inserting in lieu thereof "and".

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

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

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

SEC. 206. Section 466 of the Tariff Act of 1930 (19 U.S.C. 1466) is amended—

(1) by striking out "; and if the owner or master" in subsection (a) and all that follows thereafter down through the period at the end of the first sentence and inserting in lieu thereof the following: ". If the owner or master willfully or knowingly

neglects or fails to report, make entry, and pay duties as herein required, or if he makes any false statement in respect of such purchases or repairs without reasonable cause to believe the truth of such statements, or aids or procures the making of any false statement as to any matter material thereto without reasonable cause to believe the truth of such statement, such vessel, or a monetary amount up to the value thereof as determined by the Secretary, to be recovered from the owner, shall be subject to seizure and forfeiture; and

(2) by redesignating subsections (b) and (c) as (d) and (e), respectively, and by inserting after subsection (a) the following new subsections: 19 USC 1466.

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

“(1) describe the circumstances of the alleged violation;

“(2) specify all laws and regulations allegedly violated;

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

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

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

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

SEC. 207. Section 483(1) of the Tariff Act of 1930 (19 U.S.C. 1483(1)) is amended—

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

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

(3) by striking out the period at the end of the first sentence and inserting in lieu thereof the following: “; except that this section shall not limit in any way the rights of the consignor, as prescribed by article 12 of the Warsaw Convention (49 Stat. 3017).”

SEC. 208. Section 491 of the Tariff Act of 1930 (19 U.S.C. 1491) is amended—

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

“SEC. 491. UNCLAIMED MERCHANDISE; DISPOSITION OF FORFEITED DISTILLED SPIRITS, WINES AND MALT LIQUOR”;

(2) by inserting “(a)” at the beginning of such section; and

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

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

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

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

Regulations.

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

“(4) destruction.”

SEC. 209. (a) The Tariff Act of 1930 is amended by adding immediately after section 503 the following new section:

19 USC 1504.

“SEC. 504. LIMITATION ON LIQUIDATION.

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

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

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

“(3) the date of withdrawal from warehouse of such merchandise for consumption where, pursuant to regulations issued under section 505 (a) of this Act, duties may be deposited after the filing of an entry or withdrawal from warehouse;

Ante, p. 889.

shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer, his consignee, or agent. Notwithstanding section 500 (e) of this Act, notice of liquidation need not be given of an entry deemed liquidated.

19 USC 1500.

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

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

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

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

Regulations.

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

“(d) LIMITATION.—Any entry of merchandise not liquidated at the expiration of four years from the applicable date specified in subsection (a) of this section, shall be deemed liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by

the importer, his consignee, or agent, unless liquidation continues to be suspended as required by statute or court order. When such a suspension of liquidation is removed, the entry shall be liquidated within 90 days therefrom."

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

19 USC 1504
note.

SEC. 210. Section 520(c) (1) of the Tariff Act of 1930 (19 U.S.C. 1520(c) (1)) is amended to read as follows:

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

SEC. 211. (a) Section 526 of the Tariff Act of 1930 (19 U.S.C. 1526) is amended—

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

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

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

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

Publication in
Federal Register.

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

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

Rules and
regulations.

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

(c) Section 526 of the Tariff Act of 1930 (19 U.S.C. 1526) is amended by adding at the end of the following new subsection:

"(e) Any such merchandise bearing a counterfeit mark (within the meaning of section 45 of the Act of July 5, 1946 (commonly referred to as the Lanham Act, 60 Stat. 427; 15 U.S.C. 1127)) imported into the United States in violation of the provisions of section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1124), shall

be seized and, in the absence of the written consent of the trademark owner, forfeited for violations of the customs laws. Upon seizure of such merchandise, the Secretary shall notify the owner of the trademark, and shall, after forfeiture, obliterate the trademark where feasible and dispose of the goods seized—

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

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

“(3) more than 1 year after the date of forfeiture, by sale by appropriate customs officers at public auction under such regulations as the Secretary prescribes, except that before making any such sale the Secretary shall determine that no Federal, State, or local government agency or eleemosynary institution has established a need for such merchandise under paragraph (1) or (2), or

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

SEC. 212. Section 599 of the Tariff Act of 1930 (19 U.S.C. 1599) is amended by inserting “(other than a yacht or other pleasure boat)” after “part, any vessel”.

SEC. 213. The first sentence of section 27, Merchant Marine Act of 1920, as amended (46 U.S.C. 883), is further amended by deleting the word “thereof” where it first appears and by inserting in lieu thereof “of the merchandise (or a monetary amount up to the value thereof as determined by the Secretary of the Treasury to be recovered from any consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing said merchandise to be transported)”.

Repeals.

SEC. 214. (a) Sections 2654, 4381, 4382, and 4383 of the Revised Statutes of the United States (19 U.S.C. 58 and 46 U.S.C. 329, 330, and 333) are each repealed.

Fees.

19 USC 58a.

(b) The Secretary may charge such fees as may be necessary to cover the costs of providing services similar to or the same as services furnished by customs officers under the sections repealed by subsection (a).

19 USC 1496a.

SEC. 215. Except as otherwise provided by law, no individual returning to the United States from abroad shall be—

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

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

Paragraph (2) shall not apply to individuals in special circumstances (including being seriously ill or infirm, having been summoned by news of affliction or disaster, and accompanying the body of a deceased relative). For purposes of this section, the term “baggage and effects” means any article which was in the possession of the individual while abroad and is being imported in connection with his or her arrival and is intended for his or her bona fide personal or household use. Such term does not include any article imported as an accommodation to others or for sale or other commercial use.

“Baggage and effects.”

Study.

19 USC 1496a note.

SEC. 216. The Comptroller General, in cooperation with the Customs Service of the Department of the Treasury and the Immigration and Naturalization Service of the Department of Justice, shall study

clearance procedures for individuals entering or reentering the United States. The study shall include an analysis and comparison of the clearance procedures employed by other countries for individuals entering or reentering such other countries and an analysis of the usefulness of preentry forms completed by travelers for use when entering or reentering the United States. The Comptroller General shall report the results of his study and any recommendations he may have for expediting the clearance process (including recommendations for legislation) to the Committee on Finance of the United States Senate and to the Committee on Ways and Means of the House of Representatives not later than September 1, 1979.

Report to
congressional
committees.

TITLE III—CUSTOMS SERVICE APPROPRIATIONS AUTHORIZATION

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

19 USC 2075.

TITLE IV—SEPARABILITY OF PROVISIONS

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

19 USC 1652
note.

Approved October 3, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 95-621 (Comm. on Ways and Means) and No. 95-1517 (Comm. of Conference).

SENATE REPORT No. 95-778 (Comm. on Finance).

CONGRESSIONAL RECORD:

Vol. 123 (1977): Oct. 17, considered and passed House.

Vol. 124 (1978): June 7, considered and passed Senate, amended.

Aug. 25, Senate agreed to conference report.

Sept. 19, House agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:

Vol. 14, No. 40 (1978): Oct. 4, Presidential statement.