

CUSTOMS SIMPLIFICATION ACT OF 1956

JULY 13, 1956.—Ordered to be printed

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

R E P O R T

together with

MINORITY VIEWS

(To accompany H. R. 6040)

The Committee on Finance to whom was referred the bill (H. R. 6040) to amend certain administrative provisions of the Tariff Act of 1930 and to repeal obsolete provisions of the customs laws, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

AMENDMENTS

The amendments are as follows:

1. Section 6 is a new section adopted by this committee which prevents the application of section 2, the valuation procedures, to those articles which the Secretary finds would be reduced in value by 5 percent or more under section 2. (The 5 percent, as used in the bill and in this report, refers to the possible differences in dutiable value of imported goods and not to differences in the amount of tariff duties.) The Secretary of the Treasury would prepare a preliminary list of such articles based on the sample survey made by the Treasury Department of imports made during the fiscal year 1954. Domestic interests would have 30 days after publication of this preliminary list to suggest the reasons for their belief that other articles would be reduced in value by 5 percent or more under the new valuation procedures. After investigation of these representations any of these articles which the Secretary determined would be so reduced in value would be added to the list and a final list of articles would then be published. Thirty days after publication of this final list all imports not listed would be valued under the procedures contained in section 2 of H. R. 6040.

All articles on the list would continue to be valued under the valuation procedures in effect before the enactment of H. R. 6040.

The Secretary of the Treasury would prepare a second preliminary list based upon a year's experience under H. R. 6040. This list would delete any articles which the Secretary found would no longer be reduced by 5 percent or more if valued under the provisions of H. R. 6040 and would add any articles which it was found would then make a 5 percent lower valuation under the H. R. 6040 provisions than they would if the former provisions of the law were applicable. Opportunity for comment would again be afforded domestic interests and these comments would be investigated, additions made to the preliminary lists, and a final list published. Thirty days after publication of this second final list any importation not on this list would be valued under the provisions of H. R. 6040 whether or not it had appeared on the first list. Every importation listed on the second list would be valued under the valuation provisions in effect before the enactment of H. R. 6040 whether or not the imported article was so valued under the first final list.

After a year's experience under the second list, a third list would be prepared and put into operation in the same manner. After a year's experience under the third list, a fourth list would be prepared and put into operation. All articles listed on the fourth list would continue to be valued under the valuation standards in existence before adoption of H. R. 6040 unless the Congress made other provision.

Each final list together with all explanatory data would be sent to the chairmen of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

2. The House amendment contained in section 5 required the Secretary of the Treasury's report on antidumping enforcement and legislation to be submitted to the Congress within 1 year after the effective date of this act. The committee amendment provides that this report should be submitted within 6 months after the date of enactment of this act.

PURPOSE

The purpose of the bill is to revise methods of valuing, for duty purposes, foreign goods being imported into the United States; to simplify procedures in the conversion of currencies for valuation purposes; and to repeal certain obsolete provisions of the customs laws. The Customs Simplification Acts of 1953 and 1954 have brought about substantial improvement in the administration of customs laws, but neither, as finally enacted, included the proposals included in H. R. 6040. The adoption of this bill would further simplify the provisions of the customs laws.

GENERAL STATEMENT

A private research firm, in making a study of customs operations, pursuant to an authorization of the Congress, recommended that the present method of valuing foreign goods for duty purposes be simplified. Specifically, it was recommended that foreign value be abolished as one of the bases for assessment of duties. Such a provision was included in a customs simplification bill considered in 1953, near the end of the session of Congress. Because of the lack of time for hearings and the controversial nature of the proposal it was

deleted by the Finance Committee and was not in the bill as finally signed into law.

Under existing law foreign value or export value, whichever is higher, is the primary basis of valuation. Section 2 of H. R. 6040 would revise this standard for valuation of imports by the elimination of foreign value, thereby making export value the single basis wherever it can be ascertained. The present law provides for other methods of valuation when export value or foreign value cannot be used. Section 2 continues the use of these other methods of value if export value cannot be determined.

The definition of the terms used in the various methods of valuation are changed and clarified in the bill to permit the Customs Bureau to take into account normal commercial practices relating to commodities in international trade. These and other changes are designed to make alternative bases of valuation, namely United States value and constructed value, more closely approximate an export value if one had existed. This is intended to remove present incentives to create artificial conditions in international trade in order to obtain the benefit of more favorable valuation standards.

The Treasury Department has stated that the above changes would reduce the number of difficult, expensive and time-consuming investigations in foreign countries to ascertain foreign value. This saving, plus the increased certainty in valuation determinations resulting from the redefinition of terms will assure more prompt determination of duty liability and further reduce the existing backlog of customs work.

Hearings were held by the Finance Committee late in the 1955 session on the bill H. R. 6040 as passed by the House and further hearings were held in 1956 on the amendments suggested by the Treasury Department. Opponents of the bill expressed concern over two principal points: (1) that the abolishment of foreign value would result in lower dutiable values on items dutiable on an ad valorem (percentage of the value) basis and thereby would reduce the amount of protection on similar items made in the United States, and (2) that the changes would result in a weakening of the enforcement of the anti-dumping law.

Concern about the possible loss of tariff protection resulting from a change in valuation procedures resulted in the Treasury Department conducting an extensive survey of the possibilities of such loss occurring. Studies were made at representative ports on all borders of the United States during the fiscal year 1954 to determine what the effect would have been if the provisions of H. R. 6040 had been in effect at that time. The survey confirmed that there would have been some reduction in valuation of ad valorem imports. The reduction was higher on some items than on others, but over all it averaged about 2½ percent. The average reduction in duties collected was 2 percent and the average reduction in after-duty cost amounted to about one half of 1 percent.

In order to prevent any sudden material change in valuation as a result of the enactment of the bill, the committee adopted amendments providing for the publication of a list of articles which would be reduced by 5 percent or more in value, and preserving the present system of using the higher of the 2 values (foreign or export value) on all the items so listed. The list so prepared would be tentative

until domestic interests had ample opportunity to suggest that additional items should be added. After an investigation of these new suggested items a final list would be prepared and published in the Federal Register. All items on the list then would continue to be valued on the basis of the present law. After a period of about 1 year, a new list would be prepared deleting any articles then found to be reduced by less than 5 percent and adding any articles which would be reduced by 5 percent or more. Similarly, third and fourth lists would be prepared after a year's experience with each preceding list. The Treasury Department estimates that the provisions of section 2 of H. R. 6040 would be used in about 90 percent of the cases at the time of the issuance of the first list and that the percentage would increase with each succeeding list. In other words, the Department's research indicates that less than 10 percent of the ad valorem items would be on the list as showing an important value reduction of 5 percent or more.

Each list, as it was made final, would be sent to the chairmen of the Ways and Means Committee of the House and the Committee on Finance of the Senate, respectively, and Congress would be kept fully informed as to current developments under the new procedure. As a result of the limitation of any reduction in value to less than 5 percent, and because some imports will increase in value and many more will not change at all, the Treasury estimates that the average reduction in value will be only a fraction of 1 percent. It would appear, therefore, that the margin of protection lost by domestic producers would be very small, especially during the life of the lists.

An amendment adopted by the committee would provide that the articles on the fourth and final list would continue to be appraised under the valuation procedures in effect before the enactment of H. R. 6040 unless and until the Congress provided otherwise.

With regard to the question of dumping and the fear that it might increase under the changes proposed by H. R. 6040, Treasury representatives advised the committee that there would likely be more effective enforcement of the antidumping law under the bill as reported than at the present time. The elimination of foreign value investigations would result in the increased availability of personnel in foreign countries to investigate dumping cases.

The Secretary of the Treasury has indicated that foreign value information would continue to be required on customs invoices made out by exporters. The Treasury would thereby continue to have available the information needed to initiate full-scale investigations whenever dumping was indicated.

The bill as passed by the House and reported by the Finance Committee contains a provision requiring a report by the Secretary of the Treasury, after consultation with the Tariff Commission, on the operation and effectiveness of the Antidumping Act, together with any recommendations for improvements in speed, efficiency and certainty in the enforcement of the act. The Finance Committee amended that section and provided that such a report shall be made within 6 months after the enactment of the act rather than within a year after the effective date as provided for in the House bill.

Section 3 of the bill would make a time-saving change in section 522 (c) of the Tariff Act of 1930 which specifies the procedure for the conversion of currencies for customs valuation purposes. At the

present time each collector of customs must use the daily rate of exchange for each foreign currency involved in customs transactions. The amendment would give the Secretary of the Treasury authority to continue use of the same rate of exchange for each currency for a 3-month period so long as the rate on any particular day does not vary from it by 5 percent or more.

Section 4 would repeal a number of outdated provisions of the customs laws which do not affect any present obligations, duties, or operations of the Bureau of Customs. Their repeal will serve to remove a large amount of useless and confusing material from the statutes governing operations of the Bureau of Customs. For example, sections 54 and 57 of title 19 of the United States Code relate to the procurement of forms and stationery. These functions are now all performed under statutory authority granted to the General Services Administration and the tariff sections are obsolete. Section 542 of title 19 is another section being repealed because its authority for use of the motorboat at Corpus Christi is useless since there has been no such motorboat for many years.

A full analysis of each of the obsolete provisions repealed by this section follows.

Sections 12, 13, 14, and 15, of title 19, United States Code (pars. (1), (2), (3), and (4) of sec. 4 (a) of the bill), provide for appointment by the Secretary of the Treasury of a limited number of special agents for the purposes of checking the accounts of collectors and other customs officers for the prevention and detection of frauds upon the revenue, and, for the better guarding against frauds upon the revenue, authorize appointment of special agents to reside in foreign territory. The title "special agent" is no longer used in the Customs Service (see U. S. C. 1952 edition, title 5, sec. 281b (c)). The customs agents who perform the functions formerly exercised by the "special agents" now are appointed and serve under the operation of the Classification Act like other customs employees.

Sections 16, 17, and 18 of title 19, United States Code (pars. (5), (6), and (7) of sec. 4 (a) of the bill), are survivals of a statute enacted July 27, 1866 (c. 284, secs. 4, 5, and 8, 14 Stat. 303), to reorganize the office of the customs appraiser at New York. Section 16, prescribing qualifications and a special oath for examiners at New York only, is superfluous since placement standards for the position are fixed in accordance with the Classification Act by the Civil Service Commission, and the oath requirement is met by the provisions of section 1757, Revised Statutes (U. S. C. 1952 edition, title 5, sec. 16), applicable to all Federal officers. Section 17, prohibits only the employees in the office of the appraiser at New York from engaging or being employed in any commercial activity. Its repeal would leave such employees subject to the same restrictions on outside employment as other like employees. Section 18, relating to the duties applicable to the appraiser and assistant appraiser at New York, was originally enacted as a saving clause when a special statute was enacted to reorganize the office of the customs appraiser at New York (act of July 27, 1866, discussed above) but it now serves no useful purpose since all duties of appraisers are prescribed by section 500, Tariff Act of 1930 (U. S. C. 1952 edition, title 19, sec. 1500).

Sections 21, 22, 23, 24, 26, and 27 (pars. (8), (9), (10), (11), (12), and (13) of sec. 4 (a) of the bill) of title 19, United States Code,

prescribe special oaths of office for the officers enumerated therein and designate persons who may administer such oaths. These provisions are unnecessary, since a form of oath for all Government officers is prescribed by section 1757 of the Revised Statutes (discussed above).

The number of copies of oaths of office to be required and their disposition can readily be prescribed by regulation, and since an employee may not receive his salary until the oath of office is taken, there seems to be no purpose in prescribing a penalty for failure to take the oath. As to the designation of persons to administer the oaths, sections 16a of title 5, United States Code, gives authority, to persons designated in writing by the head of an executive department, to administer the oath of office.

In addition, section 26 of title 19 is obsolete (as is also sec. 379 of such title discussed below for similar reasons) in that it relates to special examiners of drugs, medicines, and chemicals, officers who are no longer appointed. The Food and Drug Administration now performs the functions formerly exercised by the special examiner of drugs, medicines, and chemicals (see U. S. C. 1952 edition, title 21, sec. 381).

Section 28 of title 19, United States Code (par. (14) of sec. 4 (a) of the bill), providing that the headquarters of the customs district in Florida shall be at Tampa, is unnecessary and serves no practical purpose. It is the only statutory provision expressly designating the situs of the headquarters of a customs district and there are 45 such districts. Section 1 of the act of August 1, 1914, as amended (U. S. C. 1952 edition, title 19, sec. 2), vests authority in the President to change from time to time the location of the headquarters customs collection district. By Executive Order 10289 of September 17, 1951, the President designated and empowered the Secretary of the Treasury to perform this function.

Section 40 of title 19, United States Code (par. (15) of sec. 4 (a) of the bill), prescribes the duties of the surveyor of customs. The title of surveyor of customs has been discontinued, except at the port of New York, and the duties there performed are those which are usually handled at any seaport by the officer in charge of the activities performed by the collector outside of the customhouse. The act of July 5, 1932 (U. S. C., 1952 edition, title 19, sec. 5a) abolished the offices of surveyor of customs at all other ports and their duties were transferred to career employees under the collector. Many of the functions prescribed by section 40 for the surveyor at New York have been obsolete for years and are no longer performed by that officer.

Section 53 of title 19, United States Code (par. (16) of sec. 4 (a) of the bill), which provides for the apportionment of compensation according to the time served, is believed to be obsolete in view of the act of June 30, 1945 (U. S. C., 1952 edition, title 5, sec. 944), which established the basic workweek, pay periods, and pay computation methods for all full-time officers and employees in the executive branch of the Government.

Sections 54 and 57 of title 19 (pars. (17) and (20) of sec. 4 (a) of the bill) which relate to the furnishing of blank forms, books, stationery, blank manifests for sale, etc., are obsolete. Section 54 is superseded by provisions of the act of June 30, 1949 (U. S. C., 1952 edition, title 40, sec. 481), with respect to procurement of supplies by the General Services Administration. Section 57 is obsolete because in lieu of payment of compensation out of commissions and fees, collectors of

customs are now on a fixed salary basis under the plan of reorganization of the Customs Service authorized by the act of August 24, 1912 (37 Stat. 434).

Section 55 of title 19 (par. (18) of sec. 4 (a) of the bill) provides that collectors of customs, and comptrollers and surveyors performing the functions of collectors, shall render quarterly accounts to the Secretary of the Treasury of fines collected, moneys received as rents, etc. These functions are presently being performed under authority of other statutes and this section is unnecessary.

Section 56 of title 19 (par. (19) of sec. 4 (a) of the bill) which relates to additional hours of service at public stores in New York, was made obsolete by the Federal Employees Pay Act of 1945, as amended (U. S. C., 1952 edition, title 5, secs. 901-954), which provides for the establishment of a basic administrative workweek and for overtime compensation at prescribed rates.

Section 59 of title 19 (par. (21) of sec. 4 (a) of the bill) prescribes requirements, related to those in section 57 (discussed above) which date back to the time when the compensation of customs officers was primarily the proceeds of the specific fees fixed by law. Many of the functions for which fees were fixed are no longer performed. While it is believed that a table of the rates of fees demandable by law should be posted in a conspicuous place in each customhouse, convenient for public inspection, and a receipt should be given for all fees paid, this is rather a matter for handling under existing regulatory authority without statutory prescription of impracticable and inflexible requirements.

Section 61 of title 19 (par. (22) of sec. 4 (a) of the bill) is inoperative and obsolete. Revised Statutes 2580, from which it was derived, authorized the Secretary of the Treasury to appoint inspectors at San Antonio, Eagle Pass, and other places in Texas, at an annual salary of \$2,500 to report to the Secretary of the Treasury semi-annually on goods exported to Mexico. Regular customs offices are now established at necessary ports, stations, and places along the Texas-Mexican border whose officers inspect and supervise imports, as well as exports, to the extent required.

Section 62 of title 19 (par. (23) of sec. 4 (a) of the bill) which was intended as a means of maintaining discipline among customs officers, authorizes suspension from duty for neglect or minor delinquency. The procedures which have been and will be followed in regard to the conduct of customs officers and employees are those prescribed in section 863, title 5, United States Code, and the regulations of the Civil Service Commission.

Section 67 of title 19 (par. (24) of sec. 4 (a) of the bill), which provides for a report to each session of the Congress by the Secretary on customhouse business, is inoperative and unnecessary. The Secretary submits an annual report to the Congress in accordance with sections 262, 264, and 265, title 5, United States Code, substantially superseding the requirements of this more limited provision of the customs laws.

Section 379 of title 19 (par. (25) of sec. 4 (a) of the bill), provides a method for preventing importation of adulterated drugs, etc. (see sec. 26 of such title, discussed above) at ports where there is no special examiner of drugs. As indicated in commenting on section 26 supra, special examiners of drugs are no longer appointed and the provisions

of this section are inoperative, functions with relation to spurious or adulterated foods, drugs, or cosmetics now being handled by the Food and Drug Administration of the Department of Health, Education, and Welfare under United States Code 1952 edition, title 21, section 321, et seq.

Section 390 of title 19 (par. (26) of sec. 4 (a) of the bill), which provides for the adoption of a hydrometer for use in ascertaining the proof of liquors, is unnecessary. The hydrometer in use by Customs is the same as that which is approved for use of the Internal Revenue Service under section 5212 (a) of the Internal Revenue Code of 1954. The standards for spirits are the same as those applicable to spirits of domestic manufacture under paragraph 811 of the Tariff Act of 1930, as amended (U. S. C., 1952 ed., title 19, sec. 1001, par. 811).

Section 494 of title 19 (par. (27) of sec. 4 (a) of the bill), which provides for the seizure of merchandise as security for fines imposed under the provisions of section 12 of the act of June 22, 1874 (18 Stat. 188), an ancestor provision of section 591 of the Tariff Act of 1930 (U. S. C., 1952 edition, title 19, sec. 1591), and has now been superseded in turn by section 542 of title 18 of the code. The 1874 provisions relating to unlawful importation have been repealed and this particular provision thereof is no longer operative.

Section 526 of title 19 (par. (28) of sec. 4 (a) of the bill) provides that the cost of prosecution in cases where seizure, condemnation and sale of merchandise takes place within the United States and the value is less than \$250, shall be paid from the part of the forfeiture which accrues to the United States. This section is obsolete since the subject matter is now covered by section 613 (1) of the Tariff Act of 1930 (U. S. C., 1952 edition, title 19, sec. 1613 (1)).

Section 541 of title 19 (par. (29) of sec. 4 (a) of the bill) authorizes the collector of each customs district to provide and use small open rowboats and sailboats, which shall be necessary in boarding vessels and for other purposes. Coast Guard crafts are used by customs officials for boarding purposes and section 541 is therefore obsolete.

Section 542 of title 19 (par. (30) of sec. 4 (a) of the bill) authorizes the Secretary of the Treasury to use elsewhere as the exigencies of the Service require, the motorboat provided for Corpus Christi, Tex. No motorboat is now provided or needed for Corpus Christi and there has been none for many years. The provision is obsolete.

Section 549 of title 31 of the code (par. 31) of sec. 4 (a) of the bill) directs the comptrollers of customs and surveyors, registers of land offices, and the superintendents of mints to examine the books and accounts of their depositaries, collectors, and treasurers and to make a report to the Secretary of the Treasury. The functions referred to are now performed by the Comptroller General under the Budget and Accounting Act of 1921 (42 Stat. 23; U. S. C., 1952 edition, title 31, secs. 41-58).

Section 579 of title 19 (par. (32) of sec. 4 (a) of the bill) provides that in a suit on bond for the recovery of duties the court shall grant judgment unless the defendant makes an oath that an error was committed in the liquidation of the duties demanded. This section has been superseded by the protest provisions of section 514 of the Tariff Act of 1930 (U. S. C., 1952 edition, title 19, sec. 1514).

Section 711 (7) of title 31 (par. (33) of sec. 4 (a) of the bill) authorizes a permanent appropriation for the repayment to importers of the

excess of deposits for unascertained customs duties, or duties or other moneys paid under protest. This section has been superseded by a permanent indefinite appropriation covering all refunds of customs collections or receipts authorized by law (see act of June 30, 1949, c. 286, 63 Stat. 360).

Paragraph (34) of section 4 (a) of the bill repeals that part of the act of September 30, 1890 (c. 1126, 26 Stat. 511 (formerly codified as U. S. C. title 19, sec. 30)), which provides that such clerks and inspectors as the Secretary may designate shall be authorized to administer oaths of office. This section is obsolete and is related to sections 21, 22, 23, 24, 26, and 27 of title 19, which will be repealed by the bill (see above).

Section 4 (b) of the bill amends subsection (f) of section 500 of the Tariff Act of 1930 (U. S. C., 1952 edition, title 19, sec. 1500 (f)), which provides for the designation of an acting appraiser at ports where there is no appraiser and requires that such acting appraiser take the oath provided in section 21, title 19 (discussed above). It would repeal the requirement that the acting appraiser take the special oath provided in such section 500 (f), since the provision for that oath is being repealed by paragraph (8) of section 4 (a) of the bill. The oath prescribed by section 1757 of the Revised Statutes (U. S. C., 1952 edition, title 5, sec. 16) will be sufficient.

Section 4 (c) of the bill amends section 583 of the Tariff Act of 1930 (U. S. C. 1952 edition, title 19, sec. 1583). Section 583 provides that the Customs or Coast Guard Officer's certification regarding the inspection of the manifest required by that section shall be made on "the back of" the original manifest. The manifest forms now in use have the space for such certification on the front. The procedural detail as to place of certification on a manifest is a minor one that should be left to administrative regulation and it is proposed to delete the language "the back of" in that section.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

TARIFF ACT OF 1930, AS AMENDED

TITLE I—DUTIABLE LIST

SECTION 1. That on and after the day following the passage of this Act, except as otherwise specially provided for in this Act, there shall be levied, collected, and paid upon all articles when imported from any foreign country into the United States or into any of its possessions (except the Philippine Islands, the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, and the island of Guam) the rates of duty which are prescribed by the schedules and paragraphs of the dutiable list of this title, namely:

SCHEDULE 1.—CHEMICALS, OILS, AND PAINTS

* * * * *
PAR. 27. Coal-tar products:
(a) (1) * * *

(c) The ad valorem rates provided in this paragraph shall be based upon the American selling price [(as defined in subdivision (g) of section 402, Title IV),] of any similar competitive article manufactured or produced in the United States. If there is no similar competitive article manufactured or produced in the United States then the ad valorem rate shall be based upon the United States value[, as defined in subdivision (e) of section 402, Title IV].

* * * * *
PAR. 28. Coal-tar products:
(a) * * *

(c) The ad valorem rates provided in this paragraph shall be based upon the American selling price [(as defined in subdivision (g) of section 402, Title IV),] of any similar competitive article manufactured or produced in the United States. If there is no similar competitive article manufactured or produced in the United States then the ad valorem rate shall be based upon the United States value[, as defined in subdivision (e) of section 402, Title IV].

TITLE III—SPECIAL PROVISIONS

PART I—MISCELLANEOUS

* * * * *
SEC. 336. EQUALIZATION OF COSTS OF PRODUCTION.
* * * * *

(b) CHANGE TO AMERICAN SELLING PRICE.—If the commission finds upon any such investigation that such differences cannot be equalized by proceeding as hereinbefore provided, it shall so state in its report to the President and shall specify therein such ad valorem rates of duty based upon the American selling price [(as defined in section 402 (g))] of the domestic article, as it finds shown by the investigation to be necessary to equalize such differences. In no case shall the total decrease of such rates of duty exceed 50 per centum of the rates expressly fixed by statute, and no such rate shall be increased.

TITLE IV—ADMINISTRATIVE PROVISIONS

PART I—DEFINITIONS

* * * * *
SEC. 402. VALUE.

(a) BASIS.—*Except as otherwise specifically provided for in this Act, the value of imported merchandise for the purposes of this Act shall be—*
(1) *the export value, or*

(2) if the export value cannot be determined satisfactorily, then the United States value, or

(3) if neither the export value nor the United States value can be determined satisfactorily, then the constructed value; except that, in the case of an imported article subject to a rate of duty based on the American selling price of a domestic article, such value shall be—

(4) the American selling price of such domestic article.

(b) **EXPORT VALUE.**—For the purposes of this section, the export value of imported merchandise shall be the price, at the time of exportation to the United States of the merchandise undergoing appraisalment, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal markets of the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature and all other expenses incidental to placing the merchandise in condition, packed ready for shipment to the United States.

(c) **UNITED STATES VALUE.**—For the purposes of this section, the United States value of imported merchandise shall be the price, at the time of exportation to the United States of the merchandise undergoing appraisalment, at which such or similar merchandise is freely sold or, in the absence of sales, offered for sale in the principal market of the United States for domestic consumption, packed ready for delivery, in the usual wholesale quantities and in the ordinary course of trade, with allowances made for—

(1) any commission usually paid or agreed to be paid, or the addition for profit and general expenses usually made, in connection with sales in such market of imported merchandise of the same class or kind as the merchandise undergoing appraisalment;

(2) the usual costs of transportation and insurance and other usual expenses incurred with respect to such or similar merchandise from the place of shipment to the place of delivery, not including any expense provided for in subdivision (1); and

(3) the ordinary customs duties and other Federal taxes currently payable on such or similar merchandise by reason of its importation, and any Federal excise taxes on, or measured by the value of, such or similar merchandise, for which vendors at wholesale in the United States are ordinarily liable.

If such or similar merchandise was not so sold or offered at the time of exportation of the merchandise undergoing appraisalment, the United States value shall be determined, subject to the foregoing specifications of this subsection, from the price at which such or similar merchandise is so sold or offered at the earliest date after such time of exportation but before the expiration of ninety days after the importation of the merchandise undergoing appraisalment.

(d) **CONSTRUCTED VALUE.**—For the purposes of this section, the constructed value of imported merchandise shall be the sum of—

(1) the cost of materials (exclusive of any internal tax applicable in the country of exportation directly to such materials or their disposition, but remitted or refunded upon the exportation of the article in the production of which such materials are used) and of fabrication or other processing of any kind employed in producing such or similar merchandise, at a time preceding the date of exportation of the merchandise undergoing appraisalment which would ordinarily

permit the production of that particular merchandise in the ordinary course of business;

(2) an amount for general expenses and profit equal to that usually reflected in sales of merchandise of the same general class or kind as the merchandise undergoing appraisement which are made by producers in the country of exportation, in the usual wholesale quantities and in the ordinary course of trade, for shipment to the United States; and

(3) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the merchandise undergoing appraisement in condition, packed ready for shipment to the United States.

(e) **AMERICAN SELLING PRICE.**—For the purposes of this section, the American selling price of any article produced in the United States shall be the price, including the cost of all containers and coverings of whatever nature and all other expenses incidental to placing the article in condition packed ready for delivery, at which such article is freely sold or, in the absence of sales, offered for sale for domestic consumption in the principal market of the United States, in the ordinary course of trade and in the usual wholesale quantities, or the price that the manufacturer, producer, or owner would have received or was willing to receive for such article when sold for domestic consumption in the ordinary course of trade and in the usual wholesale quantities, at the time of exportation of the imported article.

(f) **DEFINITIONS.**—For the purposes of this section—

(1) The term “freely sold or, in the absence of sales, offered for sale” means sold or, in the absence of sales, offered—

(A) to all purchasers at wholesale, or

(B) in the ordinary course of trade to one or more selected purchasers at wholesale at a price which fairly reflects the market value of the merchandise,

without restrictions as to the disposition or use of the merchandise by the purchaser, except restrictions as to such disposition or use which (i) are imposed or required by law, (ii) limit the price at which or the territory in which the merchandise may be resold, or (iii) do not substantially affect the value of the merchandise to usual purchasers at wholesale.

(2) The term “ordinary course of trade” means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise undergoing appraisement, have been normal in the trade under consideration with respect to merchandise of the same class or kind as the merchandise undergoing appraisement.

(3) The term “purchasers at wholesale” means purchasers who buy in the usual wholesale quantities for industrial use or for resale otherwise than at retail; or, if there are no such purchasers, then all other purchasers for resale who buy in the usual wholesale quantities; or, if there are no purchasers in either of the foregoing categories, then all other purchasers who buy in the usual wholesale quantities.

(4) The term “such or similar merchandise” means merchandise in the first of the following categories in respect of which export value, United States value, or constructed value, as the case may be, can be satisfactorily determined:

(A) The merchandise undergoing appraisement and other merchandise which is identical in physical characteristics with,

and was produced in the same country by the same person as, the merchandise undergoing appraisement.

(B) Merchandise which is identical in physical characteristics with, and was produced by another person in the same country as, the merchandise undergoing appraisement.

(C) Merchandise (i) produced in the same country and by the same person as the merchandise undergoing appraisement, (ii) like the merchandise undergoing appraisement in component material or materials and in the purposes for which used, and (iii) approximately equal in commercial value to the merchandise undergoing appraisement.

(D) Merchandise which satisfies all the requirements of subdivision (C) except that it was produced by another person.

(5) The term "usual wholesale quantities", in any case in which the merchandise in respect of which value is being determined is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

(g) **TRANSACTIONS BETWEEN RELATED PERSONS.—**

(1) For the purposes of subsection (c) (1) or (d), as the case may be, a transaction directly or indirectly between persons specified in any one of the subdivisions in paragraph (2) of this subsection may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales in the market under consideration of merchandise of the same general class or kind as the merchandise undergoing appraisement. If a transaction is disregarded under the preceding sentence and there are no other transactions available for consideration, then, for the purposes of subsection (d), the determination of the amount required to be considered shall be based on the best evidence available as to what the amount would have been if the transaction had occurred between persons not specified in any one of the subdivisions in paragraph (2).

(2) The persons referred to in paragraph (1) are:

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants;

(B) Any officer or director of an organization and such organization;

(C) Partners;

(D) Employer and employee;

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting stock or shares of any organization and such organization; and

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

[SEC. 402. VALUE.] SEC. 402a. VALUE (ALTERNATIVE).

(a) **BASIS.**—For the purposes of this Act the value of imported [merchandise] articles designated by the Secretary of the Treasury as provided for in section 6 (a) of the Customs Simplification Act of 1956 shall be—

- (1) The foreign value or the export value, whichever is higher;
- (2) If the appraiser determines that neither the foreign value nor the export value can be satisfactorily ascertained, then the United States value;
- (3) If the appraiser determines that neither the foreign value, the export value, nor the United States value can be satisfactorily ascertained, then the cost of production;
- (4) In the case of an article with respect to which there is in effect under section 336 a rate of duty based upon the American selling price of a domestic article, then the American selling price of such article.

(b) **REVIEW OF APPRAISER'S DECISION.**—A decision of the appraiser that foreign value, export value, or United States value can not be satisfactorily ascertained shall be subject to review in reappraisal proceedings under section 501; but in any such proceeding, an affidavit executed outside of the United States shall not be admitted in evidence if executed by any person who fails to permit a Treasury attaché to inspect his books, papers, records, accounts, documents, or correspondence, pertaining to the value or classification of such merchandise.

(c) **FOREIGN VALUE.**—The foreign value of imported merchandise shall be the market value or the price at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale for home consumption to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, including the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

(d) **EXPORT VALUE.**—The export value of imported merchandise shall be the market value or the price, at the time of exportation of such merchandise to the United States, at which such or similar merchandise is freely offered for sale to all purchasers in the principal markets of the country from which exported, in the usual wholesale quantities and in the ordinary course of trade, for exportation to the United States, plus, when not included in such price, the cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the merchandise in condition, packed ready for shipment to the United States.

(e) **UNITED STATES VALUE.**—The United States value of imported merchandise shall be the price at which such or similar imported merchandise is freely offered for sale for domestic consumption, packed ready for delivery, in the principal market of the United States to all purchasers, at the time of exportation of the imported merchandise, in the usual wholesale quantities and in the ordinary course of trade, with allowance made for duty, cost of transportation and insurance, and other necessary expenses from the place of shipment to the place of delivery, a commission not exceeding 6 per centum, if any has been paid or contracted to be paid on goods secured otherwise than by purchase, or profits not to exceed 8 per centum and a reasonable allowance for general expenses, not to exceed 8 per centum on purchased goods.

(f) **COST OF PRODUCTION.**—For the purpose of this title, the cost of production of imported merchandise shall be the sum of—

(1) The cost of materials of, and of fabrication, manipulation, or other process employed in manufacturing or producing such or similar merchandise, at a time preceding the date of exportation of the particular merchandise under consideration which would ordinarily permit the manufacture or production of the particular merchandise under consideration in the usual course of business;

(2) The usual general expenses (not less than 10 per centum of such cost) in the case of such or similar merchandise;

(3) The cost of all containers and coverings of whatever nature, and all other costs, charges, and expenses incident to placing the particular merchandise under consideration in condition, packed ready for shipment to the United States; and

(4) An addition for profit (not less than 8 per centum of the sum of the amounts found under paragraphs (1) and (2) of this subdivision) equal to the profit which ordinarily is added, in the case of merchandise of the same general character as the particular merchandise under consideration, by manufacturers or producers in the country of manufacture or production who are engaged in the production or manufacture of merchandise of the same class or kind.

(g) **AMERICAN SELLING PRICE.**—The American selling price of any article manufactured or produced in the United States shall be the price, including the cost of all containers and coverings of whatever nature and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for delivery, at which such article is freely offered for sale for domestic consumption to all purchasers in the principle market of the United States, in the ordinary course of trade and in the usual wholesale quantities in such market, or the price that the manufacturer, producer, or owner would have received or was willing to receive for such merchandise when sold for domestic consumption in the ordinary course of trade and in the usual wholesale quantities, at the time of exportation of the imported article.

* * * * *

PART III—ASCERTAINMENT, COLLECTION, AND RECOVERY OF DUTIES

SEC. 500. DUTIES OF APPRAISING OFFICERS.

* * * * *

(f) **ACTING APPRAISER.**—The Secretary of the Treasury is authorized to designate an officer of the customs as acting appraiser at a port where there is no appraiser. Such acting appraiser shall [take the oath,] perform all the duties[,] and possess all the powers of an appraiser. The Secretary of the Treasury may appoint an officer of the customs who shall perform the functions of acting appraiser during the absence or disability of such acting appraiser.

* * * * *

SEC. 522. CONVERSION OF CURRENCY.

* * * * *

[(c) **MARKET RATE WHEN NO PROCLAMATION.**—If no such value has been proclaimed, or if the value so proclaimed varies by 5 per centum or more from a value measured by the buying rate in the New York market at noon on the day of exportation, conversion shall be made at a value measured by such buying rate. If the date of exportation falls upon a Sunday or holiday, then the buying rate at noon

on the last preceding business day shall be used. For the purposes of this subdivision such buying rate shall be the buying rate for cable transfers payable in the foreign currency so to be converted; and shall be determined by the Federal Reserve Bank of New York and certified daily to the Secretary of the Treasury, who shall make it public at such times and to such extent as he deems necessary. In ascertaining such buying rate such Federal reserve bank may in its discretion (1) take into consideration the last ascertainable transactions and quotations, whether direct or through exchange of other currencies, and (2) if there is no market buying rate for such cable transfers, calculate such rate from actual transactions and quotations in demand or time bills of exchange.】

(c) *MARKET RATE WHEN NO PROCLAMATION.*—

(1) *If no value has been proclaimed under subsection (a) for the quarter in which the merchandise was exported, or if the value so proclaimed varies by 5 per centum or more from a value measured by the buying rate at noon on the day of exportation, then conversion of the foreign currency involved shall be made—*

(A) *at a value measured by such buying rate, or*

(B) *if the Secretary of the Treasury shall by regulation so prescribe with respect to the particular foreign currency, at a value measured by the buying rate first certified under this subsection for a day in the quarter in which the day of exportation falls (but only if the buying rate at noon on the day of exportation does not vary by 5 per centum or more from such first-certified buying rate).*

(2) *For the purposes of this subsection, the term "buying rate" means the buying rate in the New York market for cable transfers payable in the foreign currency so to be converted. Such rate shall be determined by the Federal Reserve Bank of New York and certified to the Secretary of the Treasury, who shall make it public at such times and to such extent as he deems necessary. In ascertaining such buying rate, the Federal Reserve Bank of New York may, in its discretion—*

(A) *take into consideration the last ascertainable transactions and quotations, whether direct or through exchange of other currencies, and*

(B) *if there is no market buying rate for such cable transfers, calculate such rate (i) from actual transactions and quotations in demand or time bills of exchange, or (ii) from the last ascertainable transactions and quotations outside the United States in or for exchange payable in United States currency or other currency.*

(3) *For the purposes of this subsection, if the day of exportation is one on which banks are generally closed in New York City, then the buying rate at noon on the last preceding business day shall be considered the buying rate at noon on the day of exportation.*

* * * * *

PART V—ENFORCEMENT PROVISIONS

* * * * *

SEC. 583. CERTIFICATION OF MANIFEST.

The master of every vessel and the person in charge of every vehicle bound to a port or place in the United States shall deliver to the officer of the customs or Coast Guard who shall first demand it of him, the original and one copy of the manifest of such vessel or vehicle, and such officer shall certify on [the back of] the original manifest to the inspection thereof and return the same to the master or other person in charge.

SECTIONS OF THE REVISED STATUTES OF THE UNITED STATES REPEALED

[SEC. 258. The Secretary of the Treasury shall lay before Congress at the commencement of each regular session a statement of the amount of money expended at each customhouse during the preceding fiscal year, and of the number of persons employed, and the occupation and salary of each person at each customhouse during the same period.]

* * * * *

[SEC. 960. When suit is brought on any bond for the recovery of duties due to the United States, it shall be the duty of the court to grant judgment at the return term, upon motion, unless the defendant in open court (the United States attorney being present) makes oath that an error has been committed in the liquidation of the duties demanded upon such bond, specifying the errors alleged to have been committed, and that the same have been notified in writing to the collector of the district before the said return term; whereupon a continuance may be granted until the next term, and no longer, if the court is satisfied that such continuance is necessary for the attainment of justice.]

* * * * *

[SEC. 2580. The Secretary of the Treasury shall appoint inspectors of the customs to reside at San Antonio, Eagle Pass, the Presidio del Norte, and San Elizario, or at such other points as he may designate, not exceeding four in number, upon the routes by which goods entered and bonded and withdrawn from warehouse may, in pursuance of law, be exported to Mexico; and such inspectors shall make a report semiannually to the Secretary of the Treasury of all the trade that passes under inspection, stating the number of packages, description of goods, their value, and the names of the exporters.]

* * * * *

[SEC. 2611. Special examiners of drugs, medicines, chemicals, and so forth, shall, before entering upon their duties, take and subscribe an oath faithfully and diligently to perform such duties, and to use their best endeavors to prevent and detect frauds upon the revenue of the United States; which oath shall be administered by the collector of the port or district where the examiner making it is employed.]

[SEC. 2612. The Secretary of the Treasury shall give to the collectors of districts for which an examiner of drugs, medicines, and chemicals is not provided by law, such instructions as he may deem

necessary to prevent the importation of adulterated and spurious drugs and medicines.]

* * * * *

[SEC. 2614. The appraiser at New York, before he enters upon the duties of his office, shall take and subscribe an oath faithfully to direct and supervise the examination, inspection, and appraisal according to law, of such merchandise as the collector may direct pursuant to law, and to cause to be duly reported to the collector the true value thereof as required by law. All other appraisers, and all resident merchants appointed according to law to act as appraisers, shall severally take and subscribe an oath diligently and faithfully to examine and inspect such merchandise as the collector may direct, and truly to report, to the best of their knowledge and belief, the true value thereof.]

[SEC. 2615. Each of the assistant appraisers at the port of New York, before entering upon the duties of his office, shall take and subscribe an oath diligently and faithfully to examine and inspect such goods, wares, and merchandise as the appraiser may direct, and truly to report to him the true value thereof, according to law. Such report shall be subject to revision and correction by the appraiser, and when approved by him shall be transmitted to the collector, and shall be deemed an appraisal by the United States local appraiser of the district of such merchandise required by law. The assistant appraisers at Boston, Philadelphia, and San Francisco, shall take and subscribe an oath diligently and faithfully to examine and inspect such merchandise as the principal appraisers may direct, and truly to report to them the true value thereof, according to law.]

[SEC. 2616. Every officer, clerk, or employee appointed under this Title shall, before entering upon his duties, take and subscribe an oath in addition to the oath of office prescribed by section seventeen hundred and fifty-six or section seventeen hundred and fifty-seven, Title "Provisions Applying to Several Classes of Officers," that he will use his best endeavors to prevent and detect frauds against the laws of the United States imposing duties upon imports.]

[SEC. 2617. The oath of office required by law to be taken by a collector may be taken before any magistrate authorized to administer oaths within the district to which such collector belongs. The oath required to be taken by any other person appointed to any office under this Title shall be taken before the collector of his district.]

* * * * *

[SEC. 2627. At ports to which there are appointed a collector, naval officer, and surveyor, it shall be the duty of the surveyor, who shall be in all cases subject to the direction of the collector—

[First. To superintend and direct all inspectors, weighers, measurers, and gaugers within his port.

[Second. To report once in every week to the collector the name or names of all inspectors, weighers, gaugers, or measurers who are absent from or neglect to do their duty.

[Third. To visit or inspect the vessels which arrive in his port, and make a return in writing every morning to the collector of all vessels which have arrived from foreign ports during the preceding day; specifying the names and denominations of the vessels, the masters' names, from whence arrived, whether laden or in ballast, to what

nation belonging, and, if American vessels, whether the masters thereof have or have not complied with the law, in having the required number of manifests of the cargo on board, agreeing in substance with the provisions of law.

【Fourth. To put on board each of such vessels one or more inspectors immediately after their arrival in his port.

【Fifth. To ascertain the proof, quantities, and kinds of distilled spirits imported, rating such spirits according to their respective degrees of proof, as defined by the laws imposing duties on spirits.

【Sixth. To examine whether the goods imported in any vessel, and the deliveries thereof, agreeably to the inspector's returns, correspond with the permits for landing the same; and if any error or disagreement appears, to report the same to the collector, and to the naval officer, if any.

【Seventh. To superintend the lading for exportation of all goods entered for the benefit of any drawback, bounty, or allowance, and examine and report whether the kind, quantity, and quality of the goods, so laden on board any vessel for exportation, correspond with the entries and permits granted therefor.

【Eighth. To examine, and, from time to time, and particularly on the first Mondays of January and July in each year, try the weights, measures, and other instruments used in ascertaining the duties on imports, with standards to be provided by each collector at the public expense for that purpose; and where disagreements or errors are discovered, to report the same to the collector; and to obey and execute such directions as he may receive for correcting the same, agreeably to the standards.】

* * * * *

【SEC. 2635. Every collector, naval officer, and surveyor shall cause to be affixed, and constantly kept in some public and conspicuous place of his office, a fair table of the rates of fees and duties demandable by law, and shall give a receipt for the fees received by him, specifying the particulars whenever required so to do; and for every failure so to do, he shall be liable to a penalty of one hundred dollars, recoverable to the use of the informer.】

* * * * *

【SEC. 2646. All blank-books, blanks, and stationery of every kind required by collectors and other officers of the customs shall, so soon as they can be prepared for delivery, by or under the direction of the Secretary of the Treasury, be furnished to them for the use of their respective offices, upon requisition made by them, and the expense of such books, blanks, and stationery shall be paid out of the appropriation for defraying the expenses of collecting the revenue from customs.】

【SEC. 2647. Every collector of customs, every naval officer, and every surveyor performing or having performed the duties of a collector, shall render a quarter-yearly account, under oath, to the Secretary of the Treasury, in such form as the Secretary shall prescribe, of all sums of money by each of them respectively received or collected for fines, penalties, or forfeitures, or for seizure of merchandise, or upon compromises made upon any seizure; or on account of suits instituted for frauds against the revenue laws; or for rent and storage of merchandise, which may be stored in the public store-houses, and

for which a rent is paid beyond the rents paid by the collector or other such officer; or for custody of goods in bonded warehouses; and if from such accounting it shall appear that the money received in any one year by any collector, naval officer, or surveyor, on account and for rents and storage, and for fees and emoluments, shall in the aggregate exceed the sum of two thousand dollars, such excess shall be paid by the collector, naval officer, or surveyor, as the case may be, into the Treasury as public money.]

[SEC. 2648. Collectors and surveyors of the collection-districts on the northern, northeastern, and northwestern frontiers are authorized to keep on sale, at their several offices, blank manifests and clearances required for the business of their districts, and to charge the sum of ten cents, and no more, for each blank which shall be prepared and executed by them.]

[SEC. 2649. The Secretary of the Treasury may appoint special agents, not exceeding fifty-three in number, for the purpose of making the examinations of the books, papers, and accounts of collectors and other officers of the customs, and to be employed generally, under the direction of the Secretary, in the prevention and detection of frauds on the customs revenue; and the expense thereof shall be charged to the "appropriation to defray the expense of collecting the revenue from customs."]

* * * * *

[SEC. 2651. The Secretary of the Treasury may, from time to time, make such regulations not inconsistent with law, for the government of the special agents, as he deems expedient, and may rescind or alter regulations so made. But no special agent, in addition to those authorized by the two preceding sections, shall be appointed or employed upon any business relating to the customs revenue; nor shall any sum be paid to any agent authorized to be employed for mileage or any other expenses except such as are actually incurred in the discharge of his official duty.]

* * * * *

[SEC. 2687. Collectors and all other officers of the customs, serving for a less period than a year, shall not be paid for the entire year, but shall be allowed in no case a greater than a pro rata of the maximum compensation of such officers respectively for the time only which they actually serve as such collectors or officers, whether the same be under one or more appointments, or before or after confirmation. And no collector or other officer shall, in any case, receive for his services, either as fees, salary, fines, penalties, forfeitures, or otherwise for the time he may be in service, beyond the maximum pro rata rate provided by law. And this section shall be applied and enforced in regard to all officers, agents, and employees of the United States whomsoever, as well as those whose compensation is determined by a commission on disbursements, not to exceed an annual maximum, as those paid by salary or otherwise.]

* * * * *

[SEC. 2763. The collector of each district may, with the approval of the Secretary of the Treasury, provide and employ such small open row and sail boats, and persons to serve in them, as shall be

necessary for the use of the surveyors and inspectors in going on board of vessels and otherwise for the better detection of frauds.】

* * * * *

【SEC. 2918. The Secretary of the Treasury may, under the direction of the President, adopt such hydrometer as he may deem best calculated to promote the public interest for the purpose of ascertaining the proof of liquors; and, after such adoption, the duties imposed by law upon distilled spirits shall be collected according to proof ascertained by any hydrometer so adopted.】

* * * * *

【SEC. 2940. The Secretary of the Treasury may, on the nomination of the appraiser, appoint such number of examiners at the port of New York as the Secretary may in writing determine to be necessary, to aid each of the assistant appraisers in the examination, inspection, and appraisal of merchandise. No person shall be appointed such examiner who is not, at the time of his appointment, practically and thoroughly acquainted with the character, quality, and value of the article in the examination and appraisal of which he is to be employed; nor shall any such examiner enter upon the discharge of his duties, as such, until he shall have taken and subscribed an oath faithfully and diligently to discharge such duties.】

【SEC. 2941. No appraiser, assistant appraiser, examiner, clerk, verifier, sampler, messenger, or other person employed in the departments of appraisal at the port of New York, or any of them, shall engage or be employed in any commercial or mercantile business, or act as agent for any person engaged in such business during the term of his appointment.】

【SEC. 2942. All provisions relating to the duties of appraisers, or to any proceedings consequent or dependent upon the action of such appraisers and not inconsistent with the provisions relating to the appraiser and assistant appraisers at the port of New York, shall be construed to apply to them.】

* * * * *

【SEC. 2944. If at any time, from an increase of importation, or from any other cause, there shall be found upon the floors of the public stores in the city of New York an accumulation of merchandise awaiting appraisal, the appraiser shall, under regulations established by the Secretary of the Treasury, direct the assistant appraisers, and others associated with them in this branch of the public business, to devote time beyond the usual business hours, in each day, during daylight, to their respective duties, so that the business of appraisal may be faithfully and more promptly dispatched.】

* * * * *

【SEC. 2999. For the purpose of better guarding against frauds upon the revenue on foreign merchandise transported between the ports of the Atlantic and those of the Pacific overland through any foreign territory, the Secretary of the Treasury may appoint special sworn agents as inspectors of the customs, to reside in such foreign territory where such merchandise may be landed or embarked, with power to superintend the landing or shipping of all merchandise, passing coastwise between the ports of the United States on the Pacific and the Atlantic. It shall be their duty, under such regulations and instructions as the Secretary of the Treasury may proscribe, to guard

against the perpetration of frauds upon the revenue. The compensation paid to such inspectors shall not in the aggregate exceed five thousand dollars per annum.】

* * * * *

【SEC. 3089. Whenever a seizure, condemnation, and sale of merchandise takes place within the United States, and the value thereof is less than \$250, that part of the forfeiture which accrues to the United States, or so much thereof as may be necessary, shall be applied to the payment of the cost of prosecution.】

* * * * *

【SEC. 3650. In addition to the examinations provided for in the preceding section, it shall be the duty of each naval officer and surveyor, as a check upon the assistant treasurers, or the collector of the customs, of their respective districts; of each register of a land-office, as a check upon the receiver of his land-office; and of the director and superintendent of each Mint and branch-mint, when separate officers, as a check upon the treasurers, respectively, of the mints, or the persons acting as such, at the close of each quarter of the year, and as much oftener as they are directed by the Secretary of the Treasury to do so, to examine the books, accounts, returns, and money on hand, of the assistant treasurers, collectors, receivers of land-offices, treasurers of the Mint and each branch-mint, and persons acting as such, and to make a full, accurate, and faithful return of their condition to the Secretary of the Treasury.】

* * * * *

SEC. 3689. There are appropriated, out of any moneys in the Treasury not otherwise appropriated, for the purposes hereinafter specified, such sums as may be necessary for the same respectively; and such appropriation shall be deemed permanent annual appropriations.

* * * * *

【Repayment of excess of deposits for unascertained duties, (customs):

【To repay to importers the excess of deposits for unascertained duties, or duties or other moneys paid under protest.】

SECTION 13 OF TITLE 19, UNITED STATES CODE

【§ 13. SAME; NUMBER

【The number of special agents referred to in section 12 of this title shall be thirty.】

SECTION 13 OF THE ACT OF JUNE 22, 1874

【SEC. 13. That any merchandise entered by any person or persons violating any of the provisions of the preceding section, but not subject to forfeiture under the same section, may, while owned by him or them, or while in his or their possession, to double the amount claimed, be taken by the collector and held as security for the payment of any fine or fines incurred as aforesaid, or may be levied upon and sold on execution to satisfy any judgment recovered for such fine or fines.

But nothing herein contained shall prevent any owner or claimant from obtaining a release of such merchandise on giving a bond, with sureties satisfactory to the collector, or, in case of judicial proceedings, satisfactory to the court, or the judge thereof, for the payment of any fine or fines so incurred: *Provided, however,* That such merchandise shall in no case be released until all accrued duties thereon shall have been paid or secured.】

SECTION 11 OF THE ACT OF FEBRUARY 8, 1875

【Sec. 11. That the oaths now required to be taken by subordinate officers of the customs may be taken before the collector of the customs in the district in which they are appointed, or before any officer authorized to administer oaths generally; and the oaths shall be taken in duplicate, one copy to be transmitted to the Commissioner of Customs, and the other to be filed with the collector of customs for the district in which the officer appointed acts. And in default of taking such oath, or transmitting a certificate thereof, or filing the same with the collector, the party failing shall forfeit and pay the sum of two hundred dollars, to be recovered, with cost of suit, in any court of competent jurisdiction, to the use of the United States.】

SECTION 1 OF THE ACT OF SEPTEMBER 30, 1890

That * * *

* * * * *

Relief of Collector of Customs at New York: The accounting officers of the Treasury are hereby authorized in the settlement of the accounts of the collector of customs at the port of New York to allow payments made to additional customs officers appointed in the district of New York under the provisions of section twenty-seven hundred and twenty-two of the Revised Statutes for the time they actually served, being in amounts for fiscal years as follows: For eighteen hundred and ninety, three thousand nine hundred and sixty dollars and seventy-four cents; for eighteen hundred and ninety-one, eight hundred and fifteen dollars and twenty-two cents; in all, four thousand seven hundred and seventy-five dollars and ninety-six cents. And the proper accounting officers of the Treasury are hereby authorized hereafter in the settlement of the accounts of the collector of customs at the port of New York to allow payments for salaries of two additional deputy surveyors at the rate of two thousand five hundred dollars each per annum, and for one additional deputy naval officer at the rate of two thousand five hundred dollars per annum. 【And such clerks and inspectors of customs as the Secretary of the Treasury may designate for the purpose shall be authorized to administer oaths, such as deputy collectors of customs are now authorized to administer, and no compensation shall be paid or charge made therefor.】

* * * * *

ACT OF DECEMBER 18, 1890

【That the several collectors, naval officers, surveyors, and appraisers shall have power, with the approval of the Secretary of the Treasury, as punishment for any neglect or minor delinquency the punishment whereof is not prescribed by law, to suspend from duty with loss of pay for a period not to exceed thirty days for any one cause, any customs officer or employee nominated or appointed and subordinate to such collector, naval officer, surveyor, or appraiser: *Provided, however,* That the Secretary of the Treasury may, on application by the suspended person within one year from the expiration of the suspension, in his discretion pay the whole or any part of the pay forfeited by reason of said suspension.】

ACT OF FEBRUARY 10, 1913

【That the Secretary of the Treasury be, and he is hereby, authorized and directed to construct or purchase one gasoline motorboat, for service in the customs collection district of Corpus Christi, Texas, at a cost not to exceed the sum of six thousand dollars: *Provided,* That the Secretary of the Treasury may use this boat elsewhere than at Corpus Christi as the exigencies of the service may require.】

ACT OF SEPTEMBER 24, 1914

【That hereafter the headquarters of the customs district of Florida shall be at Tampa, in said State.】

MINORITY VIEWS ON H. R. 6040

We are opposed to H. R. 6040 in the form in which it was referred to the committee and as amended by the committee.

This very complicated customs simplification bill would change customs valuation rules of 30 years' standing. It would eliminate foreign value, make export value the major base for United States ad valorem duties, and change longstanding definitions of value terms. As shown by the Treasury Department's own testimony, these changes will lower the value for customs duty purposes and, hence, United States duties more than 5 percent on 19 broad classes of imported merchandise.

The bill's innocent appearance did not deceive the committee last year. Because of its tariff-reducing effect, the committee after hearings in July 1955 did not report the bill. Thereafter, Treasury proposed "compromise" amendments.

This "compromise" consisted of a complicated scheme under which Treasury would identify at the beginning of each year for 3 years the imported products which would experience a reduction in duty exceeding 5 percent if the bill's value rules were applied. For 3 years those articles appearing on the Treasury list would continue to be valued for duty purposes under the present law. At the end of 3 years a report of the duty reductions which would occur under H. R. 6040 would be made by Treasury to Congress. If Congress did not act in 90 days, the new valuation rules of H. R. 6040 would have automatically become applicable to all United States imports.

Hearings were held by the committee on the "compromise" amendments on June 25, 26, and 27 of this year. After the public hearings had been concluded, the Treasury Department proposed to the committee an additional amendment to the bill providing in substance that all articles appearing on the fourth and final list to be prepared by the Treasury Department would continue to be valued for duty purposes under the present law unless and until Congress by appropriate legislation directed that such articles be valued for duty purposes under the new value provisions of H. R. 6040.

This amendment was adopted by the committee without opportunity for interested and affected industries to be heard and without sufficient time for an examination of the full implications of the amendment.

The bill as amended by the committee fails to correct the basic defects in the bill:

First: Inherent in the bill as amended by the committee is the assumption that a 5 percent decrease in valuation will not significantly affect the tariff protection afforded by the existing valuation standards. Any such premise is invalid. Furthermore, the bill as amended fails to meet the concern the committee itself had at the conclusion of its hearings in July of last year about the duty-reducing effects of the bill. The amended bill provides for arbitrary and across-the-board tariff reductions rather than the "gradual" and "selective" reductions

advocated by President Eisenhower. Moreover, these reductions are not subject to the "peril point," "escape clause," and national security industries.

The fact that the so-called peril point and escape clause are ineffective and only included in prior extensions of the 1934 Trade Agreements Act to "wet down" public opinion do not justify ignoring the last vestige of recognition of the American workingman and investors.

Second: The bill as amended by the committee provides for a series of reports to Congress. It is not specific either as to the content or the preparation of the reports. Such reports can be revealing or not, depending upon the intent of the person making the report. No standard for classification is prescribed. It is possible to group imported articles for listing purposes in such a fashion as to eliminate the possibility of determining the effect of the changed valuation standard. Moreover, the amended bill provides for nothing more than publication of the lists. The Secretary is not required to publish any findings or supporting data upon which the lists are based. All that is required is preparation of lists "after such investigation" as the Secretary "deems necessary." This leaves the Secretary of the Treasury complete discretion as to the standards which are to govern the information to be contained in the reports to Congress.

The full extent of this discretion cannot be measured. The amended bill makes no provision for an effective appeal. If an article of merchandise is omitted from a list or is improperly classified, complaint must be made to the Secretary. All the amended bill requires the Secretary to do is to "cause such investigation of the matter to be made as he deems necessary." The amended bill places an impossible burden of proof on domestic industries to show why their products should not be subjected to the tariff-reducing effects of the bill.

Third: The procedure provided in the amended bill for objection by a domestic manufacturer would be ineffective. The 60 days given to a domestic manufacturer in which to specify particular articles which he believes belong on the Treasury lists is unrealistic. Import statistics are not published in sufficient detail nor rapidly enough to let any private company know whether its products classified under general tariff terminology have actually been imported. Moreover, most producers do not have readily available foreign and export value data on all their products. Finally, much of this information as may be in the possession of the Treasury is not made available to domestic producers.

Fourth: If such reports are to determine what articles are to continue being valued for duty purposes under the present law, some better system of collecting and testing the data on which these reports are based should be provided. Congress in the Customs Simplification Act of 1954, in providing for a study of tariff reclassifications by the Tariff Commission, prescribed that the simplification purposes be achieved if at all possible without changes in the tariff. In those instances where the Commission concluded that changes in the level of the tariff would be required, Congress directed that before making such recommendations—

the Commission shall give public notice of its intention to do so and shall afford reasonable opportunity for parties interested to be present, to produce evidence, and to be heard at

public hearings with respect to the probably effect of such suggested changes on any industry in the United States.

The amended bill is completely lacking in any such safeguards.

Fifth: Under the amended bill foreign producers would have it within their power to manipulate their merchandising procedures in such a way as to influence the exclusion of their products from the list of articles which would experience a reduction in duty exceeding 5 percent under the new value rules. This could be accomplished by trade practices which would result in no foreign value being found at the time the preliminary and final lists were prepared under the amended bill. Treasury in its testimony before the committee admitted that "foreign exporters are now in a position to so conduct their affairs that the export value will be used in most cases." Once having accomplished the appraisement of their products under the new value provisions and after publication of the final list under the amended bill, the foreign producers would be free to resume their former practice of exporting their products to this country far below the foreign value without being subjected to the automatic check against this practice provided by the present value provisions. There would remain for the protection of domestic producers only the anti-dumping provisions of our tariff law.

This result is typical of the implications of the last amendment adopted by the committee without opportunity for hearing and adequate consideration. The fact that under this amendment Congress must take affirmative action to remove an article from the fourth and final list and subject it to the new value standards is no protection against the practice referred to. If anything, this amendment enhances the opportunity of foreign producers to engage in dumping practices to the detriment of domestic producers.

Sixth: Even the last remaining antidumping provision of our tariff laws for the protection of our domestic industries would be substantially weakened by the amended bill. With the elimination of foreign value by the amended bill, the foreign value data now collected by the Customs Service for the administration of the present value provisions would be substantially curtailed.

Seventh: If a proper determination is to be made under the amended bill as to the applicability of the new valuation rules to articles which will suffer a reduction in value by 5 percent or more, it is obviously necessary that for each test period specified each and every imported article subject to ad valorem duties be appraised under both the present value standards and those specified in the amended bill.

The amended bill provides that the Secretary will publish a preliminary list of articles which were imported in fiscal year 1954 and which would have been appraised under the amended bill at 95 percent or less of the average value at which such articles were actually appraised. The Secretary's annual report for fiscal 1954 states under the caption, "Appraisement of Merchandise," that there were 1,472,000 invoices handled in 1954. Each of these would have to be reexamined to identify those pertaining to articles whose duties are based in whole or part on value. Then a new appraisement would have to be made of the merchandise covered by each invoice so identified.

What is the magnitude of this task? In a 5 percent sampling of fiscal year 1954 dutiable entries at New York and Laredo and a 2½ percent sampling at 6 other ports, customs personnel made 19,908

recomputations of dutiable values. To do a 100 percent job just on those ports, it would apparently require at least 20 times that number of recomputations, or more than 398,160 recomputations. With what degree of accuracy can such a monumental undertaking be accomplished in the customhouses of the United States? What will the effect be on the regular day-to-day workload of the customs personnel and the prompt disposition of customs entries which Treasury is seeking to accomplish by the amended bill? Assuming that the Secretary can get over the task of compiling the first list, he must face the task of compiling the second, third, and fourth lists in the same way.

Furthermore, the lists would not necessarily carry the same items year after year. Items appearing on the list are to be appraised under the present value standards while those not listed would be appraised under the rules provided in the amended bill. This on-again, off-again character of the lists would create considerable confusion abroad as to the amount of duties to which imported articles would be subject during the 4-year period involved.

The final amendment proposed by Treasury to the bill would only add to this confusion, for after the publication of the fourth and final list certain imported articles would be valued under the value rules provided for in the amended bill and other imported articles would continue to be valued under the present value rules.

In short, the amended bill, if it is to be properly executed, involves almost an insurmountable workload at home and continuing confusion among foreign traders abroad. This is hardly customs simplification.

Eighth: What is the objective which would require a substantial reduction in the duty protection now afforded domestic producers, a tremendous increase in the workload of customs personnel, and confusion to foreign producers as to the tariff treatment of their products which they desire to export to the United States? The Treasury Department has testified that the bill would simplify customs procedures "primarily by eliminating the necessity for a great number of investigations in foreign countries." What are the actual dimensions of this problem? The 1955 report of the Secretary of the Treasury states that only 420 foreign investigations (including both classifications and value problems) were required in fiscal 1955 out of a total of 1,632,000 invoices handled. This is less than three-one hundredths of 1 percent. It is less than half of the 968 foreign inquiries in the preceding year. It is little more than a third of the peak year, 1953, when foreign investigations reached 1,180. Moreover, customs reduced its backlog of entries awaiting liquidation by about 61 percent during fiscal year 1955.

Is this the kind of a situation which calls for scrapping our well-established customs value machinery? We think not.

The people generally are only now becoming aware of the fact that beginning with the 1934 Trade Agreements Act that every move, GATT, ITO, OTC, customs simplification, billions to Europe, International Monetary Fund and many other organizations, and much proposed legislation form a concentrated attack on the economy of this Nation—and a leveling of our standard of living with that of the low-wage living standard nations of the world.

GEO. W. MALONE,
United States Senator, Nevada.

