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CUSTOMS PROCEDURAL REFORM AND SIMPLIFICATION ACT OF 1978

MAY 2 (legislative day, APRIL 24), 1978----Ordered to be printed

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

REPORT
[To accompany H.R. 8149]
The Committee on Finance, to which was referred the bill (H.R. 8149) to provide customs procedural reform, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

I. SUMMARY

The Customs Procedural Reform and Simplification Act of 1978 (H.R. 8149), as amended by the Committee on Finance, is intended to achieve three major objectives--
To permit the establishment of more efficient and flexible procedures for handling the documentary and financial aspects of import transactions while insuring compliance with customs laws and the collection of accurate import statistics.
to relate the amount of the customs penalty for false and material statements to Customs to the culpability of the offender and insure due process for persons potentially liable for penalties, and to modify numerous customs procedures to expedite the processing of goods and individuals while reducing administrative costs for the government.

The summary presented below outlines the principal features of the bill.*****

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COUNTERFEIT TRADEMARKS

The bill, as amended by the committee, changes the procedures relating to disposal of imported merchandise which violates the law prohibiting unauthorized imports of merchandise bearing a mark copying or simulating a U.S. registered trademark. The bill would require notification of the trademark owner when such goods are seized by the Customs Service.
Goods seized under this provision would be forfeited to the Government unless the trademark owner consents, in writing, to some other disposition of the goods. The Government would have to attempt to donate the forefeited goods to a Federal, State, or local government agency or to a charitable institution. One year after forefeiture, the goods could be sold at a public auction. Destruction of the goods would be permitted if they are unsafe or a hazard to health.

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II. GENERAL EXPLANATION*****

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25. Exemption From Prohibition of Imports of Trademarked Articles and Treatment of Copied or Simulated Trademarks (Section 211 of the Bill)

Present law. --Section 42 of the Act of July 5, 1946, (15 U.S.C. 1124) prohibits the importation of merchandise which copies or simulates a registered trademark or which bears any mark or name calculated to induce belief that the merchandise is manufactured in the United States. Goods imported in violation of section 42 may be: (1) forfeited and sold by Customs after obliteration of the trademark: (2) returned to the country of origin; (3) sold by the importer after obliteration of the trademark; or (4) destroyed. Section 526 of the Tariff Act of 1930 (19 U.S.C. 1526) prohibits importation of goods bearing a trademark owned by a corporate or real citizen of the United States and registered in accordance with the 1946 Act, unless written consent of the trademark owner to the goods' importation has been given. Goods imported in violation of section 526 may be seized by Customs and forfeited to the United States.

House bill. --The House bill would amend section 526 to permit the entry of imported trademark merchandise accompanying persons arriving in the United States. The trademark goods would have to be for the arriving person's personal use and within limitations of type and quantity to be specified by the Secretary of the Treasury in regulations. The trademark exemption could only be claimed by the same person once each 30 days. If any article exempted is sold within 1 year following its importation, the article or its value (to be recovered from the importer) would be subject to forfeiture. In establishing the quantitative limits, the Secretary would determine the quantities in which particular types of articles are usually purchased at retail for personal use. The inquiry would be directed to types of articles rather than individual trademarks. The proposed amendment also would modify section 42 to except from the general trademark restrictions merchandise which falls within the exception under amended section 526.

Committee amendment. --The committee adopted the House provision with an amendment. The amendment would require the following with respect to imported goods which violate the provisions of section 42 relating to merchandise which copies or simulates a registered trademark:
(a) Notification of the trademark owner when such goods are seized;
(b) Forfeiture to the Government of all such goods seized unless the trademark owner provides written consent to some other disposition of the goods, e.g., reexportation, entry after obliteration of the counterfeit trademark, etc.;
(c) Delivery of forfeited goods to a Federal, State or local government agency which needs the goods for an official purpose or to a charitable institution;

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(d) Sale of the goods at public auction, if, after 1 year, Customs cannot deliver the goods to a government agency or charity; the counterfeit trademarks on goods put up for auction would

have to be obliterated where feasible, i.e., when to do so would not destroy the goods or be disproportionately expensive vis--a--vis the value of the goods; and
(e) Destruction of goods which are unsafe or a hazard to health.

Reason for change. --Many travelers unknowingly violate section 42 and section 526 by returning with goods bearing a trademark for which the trademark owner has not given permission for entry, and hence must forfeit such goods. The amendment allows a limited exception to the import prohibition for such unintentional noncommercial violations.
The committee believes that there is now no effective sanction against violations of section 42 as it relates to merchandise which simulates or copies a registered trademark. Under present law, Customs may immediately sell goods bearing a counterfeit trademark after forfeiture. Such a disposition puts the counterfeit goods in competition with legitimate trademark goods.

Revenue effect. --None.

26. Customs Officers Owning Pleasure Boats (Section 212 of the Bill)

Present law. --Section 599 of the Tariff Act of 1930 (19 U.S.C. 1599), a conflict--of--interest provision, prohibits customs officers from owning any vessels. This has been interpreted to prohibit ownership of yachts and other pleasure boats.

House bill. --The House bill would exclude yachts and other pleasure boats from the prohibition against customs
officers owning vessels.

Reason for change. --Present law provides an unnecessarily broad restriction in this conflict--of--interest situation.

Revenue effect. --None.

27. Penalty for Violating Coastwise Shipping Laws (Section 213 of the Bill)

Present law. --Section 27 of the Merchant Marine Act of 1920 (46 U.S.C. 883) generally prohibits the transportation of merchandise between points in the United States by water, or by land and water, in any vessel other than a vessel built in the United States, under U.S. registry, and owned by U.S. citizens. The penalty for violation of this provision is forfeiture of the merchandise.

House bill. --The House bill would amend section 27 to permit as an alternative to seizure of the merchandise a monetary penalty in an amount up to the value of the merchandise. The vessel owner, agent, or operator, or any person with a commercial interest in the importation, could be liable for the monetary penalty. As under existing law, the Secretary of the Treasury could remit or mitigate any penalty or forfeiture assessed under section 27.

Reason for change. --The committee considers the present forfeiture penalty for violation of the coastwise shipping laws to be too inflexible and inappropriate in many circumstances.

Revenue effect. --Negligible.