HR 95--621

95TH CONGRESS 1st Session

HOUSE OF REPRESENTATIVES REPORT No. 95-621

CUSTOMS PROCEDURAL REFORM

SEPTEMBER 23, 1977,----Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. ULLMAN, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 8149]
[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 8149) to provide customs procedural reform, and for other pur--poses, having considered the same, report favorably theron with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

GENERAL STATEMENT, SUMMARY AND PURPOSE

The last major pieces of legislation designed to facilitate the customs clearance of merchandise and passengers were the Customs Simplification Acts of the 1950's. Since the enactment of these bills, the value of U.S. importations and amount of duties collected have increased fivefold. In fiscal year 1976, there were over 3 million entries which represents a workload factor of 2,599 entries per import specialist, an increase of 74 percent in workload per import specialist over the past 20 years. Inspector workloads have been similarly impacted as the past 20 years have witnessed a dramatic increase in the number of importations and international travelers. Because of the heavy workload, Customs is prevented from efficiently and effectively uitilizing its resources, focusing on the high--risk, high--payoff transactions, with the result that revenue due the Government may not be fully collected. Moreover, importers and customhouse brokers are becoming frustrated with Customs' inability to utilize modern merchandise processing and financial practices.

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Title II further authorizes a limited exemption from present trademark restrictions by permitting importation of limited quantities of trademarked merchandise accompanying persons arriving in the Unites States, if the goods are intended for personal use and not for resale. The continued automatic exclusion under section 526 of most merchandise bearing a genuine trademark, without distinguishing between merchandise arriving in commercial quantities and merchan--disc accompanying a person arriving in the United States and intended for personal use, has generated substantial controversy in regard to the impact of this policy on Americans traveling abroad and purchasing, in good faith, articles bearing a genuine mark.

Frequent complaints are received from these persons when they find on their return to the United States that such articles are prohibited importation under the trademark laws unless the written consent of the trademark owner is obtained or the offending trademark is obliterated or removed from the articles. Although Customs expands a great deal of time talent, and money to put the traveling public on notice as to these restrictions, experience has shown that the vast [5] majority of violations occur because the returning traveler is unaware of the law. This situation creates a great deal of ill will not only for Customs but for the trademark owner as well.
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Your committee believes H.R. 8149 to be meritorious and urges its approval.
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SECTION--BY--SECTION ANALYSIS
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[26]
Section 212 would grant a limited exemption from present trademark restrictions by permitting the Secretary of the Treasury to authorize the importation of limited quantities of trademarked merchandise accompanying persons arriving in the United States, if such merchandise is intended for personal use and not for resale.
Section 42 of the act of July 5, 1946 (15 U.S.C. 1124). hereinafter called "the 1946 Act," which reenacted without change the provisions of section 27 of the Act, of February 20, 1905 (33 Stat. 730), prohibits the importation of merchandise that copies or simulates the name of any domestic manufacture, manufacturer or trader, or of any manufacturer or trader located in a foreign country which affords similar privileges to United States citizens, or which copies or simulates a trademark registered in accordance with the 1946 Act or which bears any mark or name calculated to induce belief that the merchandise is manufactured in the United States. Section 49 of the 1946 Act also authorizes a procedure pursuant to which manufacturers or traders may record their names and registered trademarks with the Department of the Treasury and provide identifying facsimiles for its use as an aid to enforcement.

[27]
Section 526 of the Tariff Act of 1930, as amended (19 U.S.C. 1526); makes it unlawful to import any merchandise of foreign manufacture if such merchandise, or its label or wrapper, bears 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 such owner to its importation is produced at the time of making customs entry of the marked merchandise. This section has been consistently interpreted by the United States Customs Service for the past 20 years as excluding from protection foreign--produced merchandise bearing a genuine trademark created, owned, and registered by a citizen of the United States if the foreign producer has been authorized by the American trademark owners to produce and sell aboard goods bearing the recorded trademark. Protection is accorded under section 526 to trademark owners if an attempt is made to import such merchandise in violation of an agreement authorizing the foreign producers to sell only to the trademark owner. In addition, if merchandise bears a genuine trademark created outside the United States the rights to which have been assigned to and recorded by a United States citizen, protection is also granted. Section 526 also provides specific remedies to enforce compliance with its provisions.

Section 212(a) would amend section 526 of the Tariff Act of 1930 by adding thereto a new subsection (d) dealing with the personal exemption, and adding language at the beginning of subsection (a) to except merchandise entered under new subsection (d) from the trademark restrictions of section 526.

New subsection (d) of section 526 of the Tariff Act would establish an exemption for Imported merchandise accompanying persons arriving in the United States, for their personal use, within limitations of type and quantity to be specified by the Secretary of the Treasury in regulations, provided that such an exemption has not been claimed by the same person within the preceding 30 days. If any article exempted under the subsection is sold within one year following its importation, the article or its value (to be recovered from the importer) is subject to forfeiture.

In establishing the quantitative limits, it is contemplated by your Committee that the Secretary, through the Customs Service, would conduct a survey to 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. For example, if the type of article were cameras, it is believed that a study would show that such articles, if for personal use, are usually
purchased singly. Therefore, the Secretary would probably establish the quantitative limits for cameras at one. Also, its is contemplated that before any list of such types of articles is given effect, a list giving tentative determinations with respect to quantitative limits for each type of article would be published in the Federal Register and all interested persons given an opportunity to state their views in writing. The bill would limit this privilege to articles accompanying persons arriving in the United States.

Section 212(b) would amend section 42 of the act of July 5, 1946, by adding at the beginning of that section language which excepts from

the general trademark restrictions merchandise which falls within new subsection (d) of section 526 of the Tariff Act of 1930.

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