UNITED STATES TARIFF COMMISSION

STUDY OF TEMPORARY ENTRY PROVISIONS OF TITLE 19 OF THE UNITED STATES CODE

Investigation 332-45

Report on Legislative Objectives

TC Publication 170

Washington, D.C.
March 1966

UNITED STATES TARIFF COMMISSION

Address all communications to

United States Tariff Commission

Washington, D.C. 20436

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(TC29354)

LEGISLATIVE OBJECTIVES OF THE SEVERAL TEMPORARY ENTRY PROVISIONS IN TITLE 19 OF THE U.S. CODE -- INVESTIGATION 332-45

I. INTRODUCTION

The Tariff Commission, pursuant to the provisions of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332), initiated a study on July 26, 1965, of the various statutory provisions included in title 19 of the United States Code, which permit the temporary importation into the United States of merchandise without the payment of ordinary duties or which permit a virtual recovery of duties paid, when the imported merchandise, or its domestic equivalent, is exported either in its original form or in a changed condition.

In commenting on the scope of the study, the Commission stated it would review the objectives of each provision, examine the extent to which each provision is now accomplishing its purposes, and determine the impact each provision has on United States international trade. The Commission expressed special interest in ascertaining whether the economic forces which led to the creation of the subject statutes have so changed in the intervening years as to warrant modification and possible consolidation of the procedures to meet current conditions.

The first phase of the Commission's study necessarily involved a research of the legislative history of the statutory provisions in

order to establish their objectives. An internal memorandum on the subject was prepared by the Office of the General Counsel. Upon reviewing the memorandum, the Commission decided that it should be edited for publication because of its potential value to interested parties as well as to the Commission.

In researching the legislative history of the subject provisions to ascertain their congressional objectives, portions of the provisions were found to have either been initiated or continued in over 60 major pieces of legislation enacted since the First Congress. Except for the intrinsic purposes revealed in the text of the earlier provisions and the evolutional development of the basic provisions, there was found to be a dearth of background information regarding almost all legislation enacted prior to 1922. In a few instances the preamble to an earlier act would shed some light on the purpose of a provision. Committee reports on bills introduced after 1921, which were subsequently enacted, provided perhaps the greatest extrinsic information regarding the objectives of the current provisions. In the time permitted for this phase of the Tariff Commission study, it was impractical to research the congressional records and committee hearings on all the legislation involving the subject provisions. Accordingly, research in these areas was limited to the last 75 years, a period in which there were about nine major enactments pertaining to the subject

matter of this study, and it is acknowledged that some refinements might still be made to perfect this report.

Specific citations of acts, committee reports, congressional hearings, and similar matter have oftentimes been omitted from the text of this report because they would have an overbearing tendency to distract the reader from readily grasping the development of the drawback and related provisions. A table containing chronological citations of statutes, reports, and hearings bearing on the history of each provision appears in Appendix B. Statutory provisions merely identified by year in the text of this report can be easily traced in Appendix B as there were rarely two statutes enacted within the same year on the same subject matter.

II. LEGISLATIVE BACKGROUND

A. Origin of Drawback and Related Provisions

The word "drawback" has been historically used in the United States legislation to indicate a situation where a duty or tax, lawfully collected or due, may be partially or wholly recovered or remitted, as the case may be, because of a particular use made of a commodity on which the duty or tax is normally imposed.

Certain areas of drawback in the early history of the United States have gone through a process of evolution until the latest procedures for handling the imported commodities are not commonly viewed as drawback procedures although they had their origin as such. This study covers the entire range of procedures which had their origin as drawback procedures and is extended to include the Foreign Trade Zones Act and other temporary entry provisions which are closely related thereto.

Drawback had its origin in the first tariff act (1789). The act provided that all duties paid, or secured to be paid, upon any imported article, except on distilled spirits other than brandy or geneva, shall be returned or discharged upon such of the articles as shall within 12 months after payment made, or security given, be exported, except one per centum on the amount of said duties. The text of the provision would seem to limit drawback to cases where the imported article is subsequently exported without change in condition. The

same act provided that in lieu of drawback an allowance of 5 cents would be made on every exported quintal of dried fish and every exported barrel of pickled fish or salted provision, prepared with imported salt. The fish had to be a product of the fisheries of the United States.

In 1791 drawback was extended to a specific imported product upon its subsequent exportation in the form of a manufactured product. Over a period of about 100 years it was gradually expanded until it extended to almost all articles made in any part of imported duty-paid materials. The amount of drawback has ranged from 90 to 100 percent of the duties or taxes paid. It should be noted that drawback with respect to taxes is afforded to exported products made entirely of domestic materials.

Drawback was extended to shipments of articles merely in transit through the United States in 1804. Currently in transit goods are shipped under bond and no duties are assessed thereon.

Drawback was extended to imported articles by virtue of their end use where an exportation was not required. For examples, drawback was allowed in 1832 on steel rails used in the construction of public railroads or inclines; in 1872 on duty-paid building materials, except lumber, if used in the reconstruction of Chicago within one year after the date of the Act; and in 1884 on duty-paid supplies for vessels

engaged in foreign trade. Situations of this nature (except ships supplies) are now generally handled under a tariff classification provision which permits duty-free entry contingent upon subsequent production of proof of the appropriate end use made of such imports in the United States. They are now not generally viewed as drawback procedures; they are known as "conditional free entry" provisions.

During the course of the development of the various drawback provisions, the Congress has generally found it advisable to impose more rigid restrictions on the various drawback procedures to protect the "revenue". For example, about 29 years after drawback was authorized on the exportation of duty-paid wines and spirits, the Congress limited drawback to those cases where the articles were continuously in "public or other stores" while in the United States. When drawback was extended in 1824 to duty-paid silk fabrics dyed in the United States, more rigid identification procedures were established. One of the major criticisms of current drawback provisions is the cost of compliance with the regulatory procedures which are frequently said to deter the use of the provisions.

The various drawback and related provisions, most of which have their origins as drawback, are set forth hereinafter in their latest forms, together with summaries of their legislative backgrounds and the objectives intended to be accomplished by each provision.

Discussions of the provisions relating to foreign trade zones and the temporary entry provisions of the tariff schedules have been taken out of their codified sequence and placed after the discussions of the major drawback provisions and the warehouse provisions.

B. SUPPLIES FOR CERTAIN VESSELS AND AIRCRAFT [SEC. 1309]

(a) Exemption from Duties and Taxes.--Articles of foreign or domestic origin may be withdrawn, under such regulations as the Secretary of the Treasury may prescribe, from any customs bonded warehouse, from continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone free of duty and internal-revenue tax, or from any internal-revenue bonded warehouse, from any brewery, or from any winery premises or bonded premises for the storage of wine, free of internal-revenue tax --

(1) for supplies (not including equipment) of (A) vessels or aircraft operated by the United States, (B) vessels of the United States employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the Atlantic and Pacific ports of the United States or between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States, or (C) aircraft registered in the United States and actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States; or

(2) for supplies (including equipment) or repair of (A) vessels of war of any foreign nation, or (B) foreign vessels employed in the fisheries or in the whaling business, or actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States, where such trade by foreign vessels is permitted; or

(3) for supplies (including equipment), ground equipment, maintenance, or repair of aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, or between Hawaii and any other part of the United States or between Alaska and any other part of the United States, where trade by foreign aircraft is permitted. With respect to articles for ground equipment, the exemption hereunder shall apply only to duties and to taxes imposed upon or by reason of importation.

The provisions for free withdrawals made by this subsection shall not apply to petroleum products for vessels or aircraft in voyages or flights exclusively between Hawaii or Alaska and any airport or Pacific coast seaport of the United States.

(b) Drawback.--Articles withdrawn from bonded warehouses, bonded manufacturing warehouses, continuous customs custody elsewhere than in a bonded warehouse, or from a foreign-trade zone, and articles of domestic manufacture or production, laden as supplies upon any such vessel or aircraft of the United States or laden as supplies (including equipment) upon, or used in the maintenance or repair of, any such foreign vessel or aircraft, shall be considered to be exported within the meaning of the drawback provisions of this chapter.

(c) Articles Removed in, or Returned to, the United States.--Any article exempted from duty or tax, or in respect of which drawback has been allowed, under this section or section 1317 of this title and thereafter removed in the United States from any vessel or aircraft, or otherwise returned to the United States, shall be treated as an importation from a foreign country.

(d) Reciprocal Privileges.--The privileges granted by this section and section 1317 of this title in respect of aircraft registered in a foreign country shall be allowed only if the Secretary of the Treasury shall have been advised by the Secretary of Commerce that he has found that such foreign country allows, or will allow, substantially reciprocal privileges in respect of aircraft registered in the United States. If the Secretary of Commerce shall advise the Secretary of the Treasury that he has found that a foreign country has discontinued, or will discontinue, the allowance of such privileges, the privileges granted by this section and such section 1317 shall not apply thereafter in respect of aircraft registered in that foreign country.

Articles of foreign production needed, and actually withdrawn from bonded warehouses, for supplies (not including equipment) of vessels of the United States engaged in the foreign trade, including trade between the Atlantic and Pacific ports of the United States, were permitted duty-free withdrawal beginning in 1884, in order to "remove certain burdens on the American merchant marine and encourage the American foreign carrying trade." The duty-free privilege was extended in 1890 to include foreign articles needed for the repair of such vessels. Legislation in 1897 extended the duty-free withdrawal privileges to articles in bonded manufacturing warehouses and also permitted withdrawals

free of internal-revenue taxes. The Tariff Act of 1930 and its subsequent amendments broaden these privileges to their present coverage.

The privilege of purchasing supplies, including equipment, from public warehouses duty-free was afforded to vessels of war of any nation in 1862 provided reciprocal treatment was afforded to U.S. vessels of war by such nation. The privilege was expanded in 1909 to include supplies from bonded manufacturing warehouses and to afford internal-revenue tax-free treatment to such supplies. Representative Payne stated on the floor of the House in connection with the legislation that this policy had "grown out of the courtesy extended to war vessels of the United States in their recent trip around the world and for a period prior to that time."

It obviously would serve little purpose to impose duties and taxes on supplies for foreign vessels as such a policy would merely deter purchases in the United States and reduce the U.S. trade in such supplies.

In commenting on subsection 1309(b), the House Committee on Ways and Means stated in its report that it "believes that no good reason exists for withholding the drawback privileges in the case of articles laded as supplies upon such vessels."

The special provisions of subsections 1309(b) and (c) are necessary statutory exceptions to two legal principles involving the meanings of the words "exported" and "imported". The former word means a situation in which goods have entered the customs territory of the

United States with the intent of the owner or consignee to unlade and mingle the goods with the goods of the United States. The latter word means a situation in which goods have been sent from the customs territory of the United States with the intent of the owner or consignee to mingle the goods with the commerce of another country. Supplies laden on a vessel or aircraft for use thereon are not in the usual sense "exported" nor would their return to the United States be an "importation." The exceptions permit drawback but preclude use of the subsection as a duty-avoidance device.

C. BONDED MANUFACTURING WAREHOUSES [SEC. 1311]

All articles manufactured in whole or in part of imported materials, or of materials subject to internal-revenue tax, and intended for exportation without being charged with duty, and without having an internal-revenue stamp affixed thereto, shall, under such regulations as the Secretary of the Treasury may prescribe, in order to be so manufactured and exported, be made and manufactured in bonded warehouses similar to those known and designated in Treasury Regulations as bonded warehouses, class six: Provided: That the manufacturer of such articles shall first give satisfactory bonds for the faithful observance of all the provisions of law and of such regulations as shall be prescribed by the Secretary of the Treasury: Provided further, That the manufacture of distilled spirits from grain, starch, molasses, or sugar, including all dilutions or mixtures of them or either of them, shall not be permitted in such manufacturing warehouses.

Whenever goods manufactured in any bonded warehouse established under the provisions of the preceding paragraph shall be exported directly therefrom or shall be duly laden for transportation and immediate exportation under the supervision of the proper officer who shall be duly designated for that purpose, such goods shall be exempt from duty and from the requirements relating to revenue stamps.

No flour, manufactured in a bonded manufacturing warehouse from wheat imported after ninety days after June 17, 1930, shall be withdrawn from such warehouse for exportation without payment of a duty on such imported wheat equal to any reduction in duty which by treaty will apply in respect of such flour in the country to which it is to be exported.

Any materials used in the manufacture of such goods, and any packages, coverings, vessels, brands, and labels used in putting up the same may, under the regulations of the Secretary of the Treasury, be conveyed without the payment of revenue tax or duty into any bonded manufacturing warehouse, and imported goods may, under the aforesaid regulations, be transferred without the exaction of duty from any bonded warehouse into any bonded manufacturing warehouse; but this privilege shall not be held to apply to implements, machinery, or apparatus to be used in the construction or repair of any bonded manufacturing warehouse or for the prosecution of the business carried on therein.

Articles or materials received into such bonded manufacturing warehouse or articles manufactured therefrom may be withdrawn or removed therefrom for direct shipment and exportation or for transportation and immediate exportation in bond to foreign

countries or to the Philippine Islands under the supervision of the officer duly designated therefor by the collector of the port, who shall certify to such shipment and exportation, or ladening for transportation, as the case may be, describing the articles by their mark or otherwise, the quantity, the date of exportation, and the name of the vessel: Provided, That the by-products incident to the processes of manufacture, including waste derived from cleaning rice in bonded warehouses under the Act of March 24, 1874, ch. 65, 18 Stat. 24, in said bonded warehouses may be withdrawn for domestic consumption on the payment of duty equal to the duty which would be assessed and collected by law if such waste or by-products were imported from a foreign country: Provided, That all waste material may be destroyed under Government supervision. All labor performed and services rendered under these provisions shall be under the supervision of a duly designated officer of the customs and at the expense of the manufacturer.

A careful account shall be kept by the collector of all merchandise delivered by him to any bonded manufacturing warehouse, and a sworn monthly return, verified by the customs officers in charge, shall be made by the manufacturer containing a detailed statement of all imported merchandise used by him in the manufacture of exported articles.

Before commencing business the proprietor of any manufacturing warehouse shall file with the Secretary of the Treasury a list of all the articles intended to be manufactured in such warehouse, and state the formula of manufacture and the names and quantities of the ingredients to be used therein.

Articles manufactured under these provisions may be withdrawn under such regulations as the Secretary of the Treasury may prescribe for transportation and delivery into any bonded warehouse at an exterior port for the sole purpose of immediate export therefrom: Provided, That cigars manufactured in whole of tobacco imported from any one country, made and manufactured in such bonded manufacturing warehouses, may be withdrawn for home consumption upon the payment of the duties on such tobacco in its condition as imported under such regulations as the Secretary of the Treasury may prescribe, and the payment of the internal-revenue tax accruing on such cigars in their condition as withdrawn, and the boxes or packages containing such cigars shall be stamped to indicate their character, origin of tobacco from which made, and place of manufacture.

The provisions of [26 U.S.C. 5521] shall, so far as may be practicable, apply to any bonded manufacturing warehouse established under this chapter and to the merchandise conveyed therein.

Distilled spirits and wines which are rectified in bonded manufacturing warehouses, class six, and distilled spirits which are reduced in proof and bottled in such warehouses, shall be deemed

> to have been manufactured within the meaning of this section, and may be withdrawn as hereinbefore provided, and likewise for shipment in bond to Puerto Rico, subject to the provisions of this section, and under such regulations as the Secretary of the Treasury may prescribe, there to be withdrawn for consumption or be rewarehoused and subsequently withdrawn for consumption: Provided, That upon withdrawal in Puerto Rico for consumption, the duties imposed by the customs laws of the United States shall be collected on all imported merchandise (in its condition as imported) and imported containers used in the manufacture and putting up of such spirits and wines in such warehouses: Provided further, That no internal-revenue tax shall be imposed on distilled spirits and wines rectified in class six warehouses if such distilled spirits and wines are exported or shipped in accordance with the provisions of this section, and that no person rectifying distilled spirits or wines in such warehouses shall be subject by reason of such rectification to the payment of special tax as a rectifier.

1. Original Procedure Limited to Temporary Entries

Bonded manufacturing warehouses were first authorized in 1864 for use in the production of eleven named articles to be exported from the United States without the assessment of duties or taxes. No articles manufactured under that provision could be released for domestic consumption. The Tariff Act of 1894 extended the privileges to all manufacturing operations except "the manufacture of distilled spirits from grain, starch, molasses or sugar, including all dilutions or mixtures of them or either of them." The Tariff Act of 1909 provided that waste material and byproducts incident to manufacturing in bonded warehouses may be withdrawn for domestic consumption, subject to applicable duties, as though imported from a foreign country. (How you determine dutiable value has never been clearly set forth in section 1311 or its ancestor provisions.)

2. Exceptions to Limitation

The Tariff Act of 1913 added a provision permitting the release for domestic consumption of "cigars manufactured in whole of tobacco imported from any one country, made and manufactured in such bonded manufacturing warehouses," upon the payment of duty applicable to the tobacco used therein in its condition as imported and upon payment of the internal-revenue tax applicable to the cigars in their condition as withdrawn. Boxes containing such cigars were to be stamped to indicate the character, origin of tobacco, and place of manufacture of the cigars. This provision was completely out of character from the general inherent reason (to be discussed later) for having bonded manufacturing warehouses. Enactment of the provision was for the purpose of enabling such cigar manufacturers to convince the buying public that the cigars were made wholly of Havana tobacco by reason of a government stamp which, in effect, certified these circumstances to be true. Since 1913 there has been an anomaly in the bonded manufacturing warehouse provisions because technically no merchandise could be taken into such a warehouse unless the product to be made therefrom was "intended for exportation without being charged duty." Over the years cigar manufacturers have clearly not intended to export all their cigars from such warehouses. Customs treats imports of cigar tobacco as being excepted from the requisite intent to export the imported article in its manufactured form.

The Tariff Act of 1930 provided that wheat used in making flour in a bonded manufacturing warehouse shall be subject to a duty equal to any reduction in duty that is allowable on the flour by reason of a U.S. treaty with the foreign country to which it is exported. This exceptional treatment was inserted to prevent Canadian wheat from benefitting from the 20 percent preferential tariff treatment generally afforded to U.S. products imported into Cuba. Inasmuch as the customs courts have treated "trade agreements" as "treaties" for some purposes, it is probable that the difference between the most-favored-nation rate and the statutory rate constitutes such a duty that must be imposed. Since 1930 the special provision for wheat flour has reflected a second anomalous provision in that wheat cannot be sent into such a warehouse in all cases with the "intent to export without being charged with duty".

The last paragraph of section 1311 was added by section 406 of the Liquor Tax Administration Act of June 26, 1936. It created a third anomalous situation in the section with respect to the requisite intent at the time of entry of the articles into the bonded manufacturing warehouse that the manufactured goods are to be exported.

3. Purpose of Temporary Entry Procedure

The Committee hearings and reports on the various acts which led to the present section 1311 appear to be void of expressions of purpose for having bonded manufacturing warehouses. However, it seems inherent

from the provisions *per se* that, except for the last three paragraphs of the section relating to cigars and distilled spirits, the section is intended to encourage domestic manufacturers to participate in export trade by permitting them to have access to the least expensive materials needed for their operations, regardless of source, and without having to pay duties or taxes on such materials, when they are incorporated in exported products.

D. BONDED SMELTING AND REFINING WAREHOUSES [SEC. 1312]

(a) Any plant engaged in smelting or refining, or both, of metal-bearing materials as defined in this section may, upon the giving of satisfactory bond, be designated a bonded smelting or refining warehouse. Metal-bearing materials may be entered into a bonded smelting or refining warehouse without the payment of duties thereon and there smelted or refined, or both, together with metal-bearing materials of domestic or foreign origin. Upon arrival of imported metal-bearing materials at the warehouse they shall be sampled according to commercial methods and assayed, both under customs supervision. The bond shall be charged with a sum equal in amount to the duties which would be payable on such metal-bearing materials in their condition as imported if entered for consumption, and the bond charge shall be adjusted to reflect changes in the applicable rate of duty occurring while the imported materials are still covered by the bond.

(b) The several charges against such bond may be canceled in whole or in part --

(1) upon the exportation from the bonded warehouses which treated the metal-bearing materials, or from any other bonded smelting or refining warehouse, of a quantity of the same kind of metal contained in any product of smelting or refining of metal-bearing materials equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c) of this section, or

(2) upon payment of duties on the dutiable quantity of metal contained in the imported metal-bearing materials, or

(3) upon the transfer of the bond charges to another bonded smelting or refining warehouse by physical shipment of a quantity of the same kind of metal contained in any product of smelting or refining of metal-bearing materials equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c) of this section, or

(4) upon the transfer of the bond charges to a bonded customs warehouse other than a bonded smelting or refining warehouse by physical shipment of a quantity of the same kind of metal contained in any product of smelting or refining equal to the dutiable quantity contained in the imported metal-bearing materials less wastage provided for in subsection (c) of this section, and upon withdrawal

from such other warehouse for exportation or domestic consumption the provisions of this section shall apply, or

(5) upon the transfer to another bonded smelting or refining warehouse without physical shipment of metal of bond charges representing a quantity of dutiable metal contained in imported metal-bearing materials less wastage provided for in subsection (c) of this section of the plant of initial treatment of such materials provided there is on hand at the warehouse to which the transfer is made sufficient like metal in any form to satisfy the transferred bond charges.

(c) For purposes of paragraphs (1), (3), (4), and (5) of subsection (b) of this section, due allowances shall be made for wastage of metals other than copper, lead, and zinc, as ascertained from time to time by the Secretary of the Treasury.

(d) Upon the exportation of a product of smelting or refining other than refined metal the bond shall be credited with a quantity of metal equivalent to the quantity of metal contained in the product exported less the proportionate part of the deductions allowed for losses in determination of the bond charge being cancelled that would not ordinarily be sustained in production of the specific product exported as ascertained from time to time by the Secretary of the Treasury.

(e) Two or more smelting or refining warehouses may be included under one general bond and the quantities of each kind of metal subject to duty on hand at all of such warehouses may be aggregated to satisfy the bond obligation.

(f) For purposes of this section --

(1) the term "metal-bearing materials" means metal-bearing ores and other metal-bearing materials provided for in schedule 6, part 1, of the Tariff Schedules of the United States, "metal waste and scrap" and "unwrought metal" to be smelted or refined provided for in schedule 6, part 2, of such schedules, and metal compounds to be processed for the recovery of their metal content;

(2) the term "smelting or refining" embraces only pyrometallurgical, hydrometallurgical, electrometallurgical, chemical, or other processes --

(A) for the treatment of metal-bearing materials to reduce the metal content thereof to a metallic state in the course of recovering it in forms which if imported would be classifiable in part 2 of schedule 6 as "unwrought metal", or in the form of oxides or other compounds which are obtained directly from the treatment of materials provided for in part 1 of schedule 6, and

(B) for the treatment of unwrought metal or metal waste and scrap to remove impurities or undesired components; and

(3) the term "product of smelting or refining" means metals or metal-bearing materials resulting directly from smelting or refining processes, but does not include metal-bearing ores as defined in part 1 of schedule 6.

(g) Labor performed and services rendered pursuant to this section shall be under the supervision of an officer of the customs, to be appointed by the Secretary of the Treasury and at the expense of the manufacturer. The Secretary of the Treasury is authorized to make such rules and regulations as may be necessary to carry out the provisions of this section.

1. Elective Procedures - Temporary Entry vs. Withdrawal for Consumption

Authorization for the operation of bonded smelting and refining warehouses first appeared in section 24 of the Tariff Act of 1890. That section permitted without payment of duty the entry of "metals in any crude form requiring smelting or refining to make them readily available in the arts" into a bonded plant for the purpose of smelting or refining. Commingling of crude imported metals with crude domestic metals was permitted; however, "each day a quantity of refined metal equal to the amount of imported metal refined that day" had to be set aside and subsequently exported or entered for consumption with the payment of duties applicable to the imported ore or crude metals from which they were derived. Section 21 of the Tariff Act of 1894 added "ores" to the "metals" in any crude form which may enter such warehouses. This addition gave statutory recognition to an administrative ruling that ores were crude metals. By an 1890 regulation the Secretary of the Treasury would allow no wastage incurred by smelting and refining processes if the metals were entered for domestic consumption.

However, the bond obligation concerning the disposal of the metals could be satisfied if the exported quantity of metals, inflated by 10 percent, were equal to the assayed quantity of the metal contained in the imported crude metal. Thus a wastage allowance was made in connection with the exportation of refined metals. An 1894 amendment of the regulations permitted cancellation of the bond obligation if the metals produced from the crude metals or ores were exported.

Section 29 of the Tariff Act of 1897 required "that each day a quantity of refined metal equal to ninety per centum of the amount of imported metal smelted or refined that day shall be set aside" for exportation and, if exported, the bond obligation would be satisfied. However, the smelted or refined metals could be entered for consumption upon the payment of duties. Lead ores had to be smelted and/or refined, and exported or entered and duties paid within six months from the date of receipt of the ore, in order to satisfy the bond requirements.

Section 24 of the Tariff Act of 1909 provided that the bond obligation would be satisfied with respect to crude lead or lead ore if the "actual amount of lead produced" is exported or if duty is paid on the lead entered for consumption "chargeable against it in that condition."

Section IV. N. of the Tariff Act of 1913 provided that the bond obligation would be satisfied with respect to any quantity of imported

ore or crude metal if the metal producible therefrom were exported or if duties were paid on such quantity of imported ore or crude metal prior to the withdrawal of the metal for consumption. Section IV. N. had a special provision that antimonial lead produced in a bonded smelting warehouse from imported ore could be withdrawn for consumption "upon the payment of the duties chargeable against it as type metal under existing law and the charges against the bond cancelled in a similar sum." The special provision for type metal was omitted from subsequent acts. By regulation the Treasury Department permitted "wastage" allowances in determining whether the bond charges were met at the time the metal was withdrawn for exportation, for transfer to a bonded manufacturing warehouse, or for domestic consumption. However, no wastage allowance was permitted in assessing duties on the metals withdrawn for consumption. This had the equitable effect of preventing the bonded smelter or refiner from having an "allowance" advantage over the non-bonded smelter or refiner who paid duties on his imported ores according to the actual metal content in the ores. However, it is to be noted that the bonded smelter or refiner could delay payment of duties until such time as he had a domestic sale for his metal.

Section 312 of the Tariff Act of 1922 and section 312 of the Tariff Act of 1930 were alike. The 1922 Act expanded the scope of the bonded smelting warehouse provisions to permit cancellation of

bond charges by substitution of metal produced in one bonded smelting warehouse for that of another bonded smelting warehouse for purposes of exportation or transfer to a bonded manufacturing warehouse.

Section 301(b) of the Tariff Classification Act of 1962 established fixed wastage allowances for copper, lead, and zinc appearing in metal-bearing materials, streamlined the bonding procedures for smelting warehouses, improved the terminology of the former provisions together with certain needed definitions, extended the scope of the benefits of bonded smelting warehouses to all metal alloys in unwrought forms, and permitted adjustments to be made in bond charges to take into account rate changes that occur while the imported materials are still covered by the bond.

2. Purpose of Elective Procedures

No specific legislative history was found regarding the reason for creating the special bonded manufacturing procedure which would permit the withdrawal of refined metals upon the payment of duties. However, it is noted that immediately prior to 1890 some domestic smelters and refiners testified in congressional hearings on tariffs that there was a critical need for the duty-free entry of certain fluxing ores (high grade lead ores) from Mexico in order that their domestic plants might continue to maintain high production levels of smelting lead, gold, or silver. There was also opposition expressed during the hearings to any move to remove the duty on lead fluxing ores by some mining interests

who had limited supplies of such fluxing ores. It seems likely that the enactment of the bonded smelting and refining warehouse procedure was a compromise settlement of the problem before the Congress. The creation of a provision separate from the bonded manufacturing procedure was no doubt prompted by the fact that the earlier bonded manufacturing provision did not permit any withdrawals for consumption.

E. DRAWBACK AND REFUNDS
[SEC. 1313]

(a) Articles Made from Imported Merchandise.--Upon the exportation of articles manufactured or produced in the United States with the use of imported merchandise, the full amount of the duties paid upon the merchandise so used shall be refunded as drawback, less 1 per centum of such duties, except that such duties shall not be so refunded upon the exportation of flour or by-products produced from wheat imported after ninety days after June 17, 1930. Where two or more products result from the manipulation of imported merchandise, the drawback shall be distributed to the several products in accordance with their relative values at the time of separation.

(b) Substitution for Drawback Purposes.--If imported duty-paid merchandise and duty-free or domestic merchandise of the same kind and quality are used in the manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported articles, an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported; but the total amount of drawback allowed upon the exportation of such articles, together with the total amount of drawback allowed in respect of such imported merchandise under any other provision of law, shall not exceed 99 per centum of the duty paid on such imported merchandise.

(c) Merchandise not Conforming to Sample or Specifications.--Upon the exportation of merchandise not conforming to sample or specifications or shipped without the consent of the consignee upon which the duties have been paid and which have been entered or withdrawn for consumption, and within ninety days after release from customs custody, unless the Secretary authorizes in writing a longer time, returned to customs custody for exportation, the full amount of the duties paid upon such merchandise shall be refunded as drawback, less 1 per centum of such duties.

(d) Flavoring Extracts and Medicinal or Toilet Preparations.--Upon the exportation of flavoring extracts, medicinal or toilet preparations (including perfumery) manufactured or produced in the United States in part from domestic alcohol on which an internal-revenue tax has been paid, there shall be allowed a drawback equal in amount to the tax found to have been paid on the alcohol so used.

Upon the exportation of bottled distilled spirits and wines manufactured or produced in the United States on which an internal-revenue tax has been paid, there shall be allowed, under regulations to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, a drawback equal in amount to the tax found to have been paid on such bottled distilled spirits and wines: Provided, That such distilled spirits and wines have been bottled especially for export, under regulations prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury.

(e) Imported Salt for Curing Fish.--Imported salt in bond may be used in curing fish taken by vessels licensed to engage in the fisheries, and in curing fish on the shores of the navigable waters of the United States, whether such fish are taken by licensed or unlicensed vessels, and upon proof that the salt has been used for either of such purposes, the duties on the same shall be remitted.

(f) Exportation of Meats Cured with Imported Salt.--Upon the exportation of meats, whether packed or smoked, which have been cured in the United States with imported salt, there shall be refunded, upon satisfactory proof that such meats have been cured with imported salt, the duties paid on the salt so used in curing such exported meats, in amounts not less than $100.

(g) Materials for Construction and Equipment of Vessels Built for Foreigners.--The provisions of this section shall apply to materials imported and used in the construction and equipment of vessels built for foreign account and ownership, or for the government of any foreign country, notwithstanding that such vessels may not within the strict meaning of the term be articles exported.

(h) Time Limitation on Exportation.--No drawback shall be allowed under the provisions of this section unless the completed article is exported within five years after importation of the imported merchandise.

(i) Regulations.--Allowance of the privileges provided for in this section shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe, which may include, but need not be limited to, the fixing of a time limit within which drawback entries or entries for refund under any of the provisions of this section or section 1309(b) of this title shall be filed and completed, and the designation of the person to whom any refund or payment of drawback shall be made.

(j) Source of Payment. Any drawback of duties that may be authorized under the provisions of this chapter shall be paid from the customs receipts of Puerto Rico, if the duties were originally paid into the Treasury of Puerto Rico.

1. Articles Made from Imported Merchandise

The legislative history of the general drawback provisions in section 1313 may best be discussed in the order of the subsections; however, it is to be noted that the subsections do not have a sequential order of derivation.

Drawback of duties paid on imported materials subsequently exported in the form of a manufactured product had its origin in an Act of 1791 which provided a specific allowance of 3 cents per gallon upon the exportation of spirits distilled in the United States from imported molasses. The specific drawback allowance was described as an equivalent of the duty paid on the molasses. According to the preamble of the Act, the provision was enacted for "the encouragement of the export trade of the United States". The drawback was not to be paid until six months after the date of exportation. An Act of 1797 granted a specific drawback on the exportation of sugar refined in the United States from imported brown sugar and the text is indicative that a similar drawback provision was already in force although the antecedent provision was not found.

Drawback on exported articles manufactured or produced in the United States from duty-paid foreign materials was extended in 1824 to imported silk cloths dyed in the United States, in 1830 to wines made of imported molasses if exported to a country other than Canada and Mexico, in 1861 to all articles wholly manufactured of imported materials, and in 1890 to articles made in any part of imported materials. Not all acts which extended this type of drawback are listed herein;

the aforementioned acts are cited primarily because they serve as benchmarks for the historic development of drawbacks of the kind allowed under subsection 1313(a).

In commenting on the general drawback provision in the proposed Tariff Act of 1930, the House Ways and Means Committee stated that one of the chief purposes of the drawback law was "the building up of a creditable foreign commerce". In this regard both administrative and judicial rulings have repeatedly held that drawback under subsection 1313(a) is not to be allowed unless the goods are "exported for the purpose of competing in foreign markets with the same articles manufactured in other countries". In other words, drawback is not intended to be a mere escape mechanism for recovering most or all the duties paid on poor import investments.

The first drawback provision allowed a 99 percent recovery of duty paid, the remaining 1 percent to be retained "in consideration of the expense which shall have accrued by the entry and safekeeping thereof". One year later the 1 percent was to be retained "as an indemnification for whatever expense may have accrued concerning the same". Still later when 10 percent of the duties was retained, the sum was to be "retained for the use of the United States" or to be "retained by the United States." The Chairman of the House Committee on Ways and Means stated during a public hearing on the proposed drawback provisions, which later appeared in the Tariff Act of 1909, that the cost of administering the drawback provision was about 2.58 percent of the duties paid. No change was made in the 1 percent sum then being retained. It is evident

that the partial retention of duties is prompted by the cost of administration of the drawback program; however, it does not appear that the Congress has endeavored to set the amount at precisely the average cost of administration during any period in this century.

The exception of wheat flour and wheat by-products from the drawback provision was for the purpose of preventing Canadian wheat from indirectly benefitting from the 20 percent preferential tariff treatment generally afforded to U.S. products into Cuba. The Congress felt that the preferential tariff treatment should enure to the special benefit of the U.S. wheat farmer rather than just to the benefit of the millers.

2. Substitution for Drawback Purposes

Prior to the Tariff Act of 1930, if the article to be exported were manufactured or produced in part from domestic materials, the imported merchandise had to so appear in the completed article that the quantity or measure thereof could be ascertained if drawback was to be allowed. This limitation was quite restrictive in two ways. First, the imported material must not lose its identity when incorporated in the article and, secondly, the imported material must actually be that which is incorporated in the article. The latter restriction in many cases required the maintenance of separate inventories, separate productions, or both, the costs of which frequently exceeded the duty refunds in the form of drawback.

The limitation was omitted from the 1930 drawback provision and an embryo of the present "substitution" provision was added to eliminate the separate inventory requirement with respect to "duty-paid sugar or nonferrous metal, or ore containing nonferrous metal". Drawback was

limited in such cases to articles manufactured or produced within one year from the receipt of the imported merchandise by the manufacturer or producer. In 1951 the substitution privilege was extended to other metals, metal ores, flaxseed or linseed, and the oils therefrom; in 1956 to printing papers; and in 1958 to all classes of merchandise. Committee reports indicate that the limited scope of the earlier substitute provisions was for the purpose of trying out such procedures to determine whether a general provision was administratively feasible.

The one-year limitation was expanded in 1953 to three years because it was "unnecessarily restrictive".

3. Merchandise not Conforming to Sample or Specification

An importer is generally not allowed to inspect his merchandise until it is released from customs custody. Prior to 1930, if the imported merchandise did not conform to samples or specification, the importer had no recourse for the tariff and other losses that might be incurred by the variances in the delivered goods except those adjustments the exporter might make with him. An importer might, without further expense to himself, return an erroneous shipment to the sender and thereafter receive the correct merchandise. However, with respect to both shipments he had to pay the appropriate duties and he could not recover the duties paid on the erroneous shipment.

Subsection 1313(c) was added to the Tariff Act of 1930 to permit a 99-percent recovery of the duty paid on erroneous or defective shipments

provided the goods were returned to customs custody within 30 days for exportation. Section 12 of the Customs Simplification Act of 1953 extended the provision to cover merchandise sent to a consignee without his consent. It also extended the 30-day period to 90 days, or such longer period as the Secretary of the Treasury finds extenuating circumstances warrant, in order to provide a reasonably adequate time in which to discover latent defects and those defects which can only be ascertained by test or use.

4. Flavoring Extracts and Medicinal or Toilet Preparations (Including bottled distilled spirits and wines)

During the course of the hearings on the proposed Tariff Act of 1897, Parke, Davis and Company requested a provision in the proposed act which would allow drawback of the internal-revenue tax paid on domestic alcohol so that its firm would not find it necessary to use foreign alcohol in its export products. A drawback was allowable on foreign alcohol. The firm also suggested that substitution of domestic alcohol for foreign alcohol be allowed for purposes of drawback.

The Tariff Act of 1913 contained the first provision "That on the exportation of flavoring extracts, medicinal or toilet preparations (including perfumery) hereafter manufactured or produced in the United States in part from domestic alcohol on which an internal-revenue tax has been paid, there shall be allowed a drawback equal in amount to the tax found to have been paid on the alsohol so used: Provided, that no other than domestic tax-paid alcohol shall have been used in the manufacture or production of such preparations." The reason for the

proviso was not expressed nor apparent in the legislative history of the Act. It was omitted from the drawback provisions of the tariff acts of 1922 and 1930. As such a proviso has never been utilized in the drawback provisions relating to tariffs, it is believed that the Congress probably concluded that the proviso was of no significant value.

The second paragraph to subsection 1313(d) was added by the Liquor Tax Administration Act of June 26, 1936, to permit a 100-percent drawback of internal-revenue taxes paid on domestic distilled spirits and wines which are bottled especially for export and are actually exported. In this connection it should be noted that section 5062 of the Internal Revenue Code authorizes similar drawback with respect to distilled spirits and wines packaged in all types of containers (its predecessor provision, section 3179 of the Internal Revenue Code of 1939, was the same as section 1313(d) until an Act of July 14, 1947, extended it to all types of containers).

5. Imported Salt for Curing Fish

The provision for drawback of the duties paid on imported salt used in curing fish the product of American fisheries is one of the oldest drawback provisions in history. It had its origin in section 4 of the Act of July 4, 1789, which made the allowance contingent upon exportation of the cured fish. A specific allowance of five cents per quintal (believed to be 112 pounds) or barrel (about four bushels) of fish was made in lieu of a drawback of 99 percent of the duty paid.

The duty on salt was 6 cents per bushel (believed to be 56 pounds). In 1846 the drawback allowance was changed to equal the actual duties paid on the salt. In 1866 a drawback of duties was granted on imported salt used to cure fish on board American fishing vessels without regard to whether the cured fish were exported. In 1872 the 1866 provision was amended to limit drawback used to cure fish "taken" by the American fisheries. The provision has had no significant changes made in it since that date. Its obvious purpose is to aid the American fisheries in competing with foreign fisheries both in the United States and abroad.

6. Exportation of Meats Cured with Imported Salt

The provision for drawback of the duties paid on imported salt used for curing meats which are subsequently exported is also one of the oldest drawback provisions in history having its origin in the first tariff act in 1789. As early as 1883 such drawback allowances were limited to amounts not less than $100.

7. Materials for Construction and Equipment of Vessels Built for Foreigners

The competitive position of the domestic shipbuilding industry compared with foreign shipbuilders has perhaps never been as favorable as desired by the U.S. Government. Because of this posture, the United States prohibits the use of foreign-built vessels in local carrier services. That is, such vessels may not be used to transport merchandise or passengers in coastal trade (trade between Atlantic and Pacific ports being excepted) or between ports located on the navigable waters of the

continental United States, nor may such vessels be licensed for use in the American fisheries. On the other hand, treaties with various foreign countries require that imported goods going into ports of the contracting parties to such treaties shall be admitted to entry without discrimination as to the origin of the carrying vessel. The imposition of U.S. taxes and duties on materials used in the construction of vessels of U.S. registry competing in international trade would tend to aggrevate the poor competitive position of our domestic shipment building industry.

To promote the economic improvement of the United States shipbuilding industry in building vessels for use in international carrier service, section 10 of an Act of June 6, 1872, provided "That from and after the passage of this act all lumber, timber, hemp, manila, and iron and steel rods, bars, spikes, nails, and bolts, and copper and composition metal, which may be necessary for the construction and equipment of vessels built in the United States for the purpose of being employed in the foreign trades, including the trade between the Atlantic and Pacific ports of the United States, and finished after the passage of this act, may be imported in bond, under such regulations as the Secretary of the Treasury may prescribe; and upon proof that such materials have been used for the purpose aforesaid, no duties shall be paid thereon: Provided, that vessels receiving the benefit of this section shall not be allowed to engage in the coastwise trade of the United States more than two months in any one year, except upon the payment

to the United States of the duties on which a rebate is herein allowed." Section 2510 of the Revised Statutes (1883) contained the identical provisions except that the two-month permissible coastal trade was then limited to such vessels of domestic ownership.

In 1890 the duty-free entry-under-bond procedure of 1872 was extended to wire rope and iron and steel plates, tees, angles, and beams. In 1894 the duty-free entry-under-bond procedure was extended to all materials necessary for construction of vessels for foreign account or international trade. The procedure was broadened in 1913 to cover all kinds of vessels. No subsequent legislation of this nature has been enacted. It is apparent that the drawback procedure has superseded the entry-under-bond procedure.

In 1884 drawback was afforded to all foreign materials in the domestic construction of vessels for foreign account. However, 10 percent of the duties was to be retained for the use of the United States. Drawback was to be allowed when the vessel was "exported". Since 1909 the tariff acts have provided that the vessels need not be "exported" in the technical sense for the purpose of obtaining drawback.

8. Time Limitation on Exportation

Until 1930 drawback on an article produced from duty-paid materials could be claimed without limitation as to the time elapsing between the date of importation of the material and the date of exportation of the article. The broad construction given to the word "produced"

induced manufacturers and dealers to devise processes for nominally treating imported goods solely for the purposes of obtaining drawback and thus one of the chief purposes of the drawback law - the building up of a creditable foreign commerce - was set at nought. These practices often were pursued in respect of articles which had remained on the merchant's shelf many years and had so deteriorated as to be almost useless for trade purposes. In an effort to remedy the situation caused by the absence from the law of a time limit, the Treasury Department issued a regulation providing that, to be entitled to the benefit of drawback, merchandise must be exported within three years from the date of entry or withdrawal from warehouse. The Court of Customs Appeals held the regulation to be void as going beyond the power of the Department. To remedy this situation, the House Committee on Ways and Means reported favorably on a bill in 1930 which would impose a 5-year limitation. The Senate Finance Committee reduced the limit to 3 years as "It would seem that three years is a reasonable and sufficient period within which to take advantage of the drawback privilege." The latter limit was contained in the Tariff Act of 1930. The limit was broadened to five years by the Customs Simplification Act of 1953 without comment thereon by either congressional committee.

9. Regulations

The special statutory authority to make regulations governing the procedures under the drawback provisions has varied over the years. However, the differences do not appear to have any substantive bearing on the study.

10. Source of Payment

Duties paid on imports into Puerto Rico are, after the payment of customs administrative expenses, covered into the Treasury of Puerto Rico for local use. The Tariff Act of 1930 provided that drawback of duties may be paid from Puerto Rican Customs Receipts in those cases where the original duties were paid into the Treasury of Puerto Rico.

F. TOBACCO PRODUCTS--SUPPLIES FOR AIRCRAFT [SEC. 1317]

(a) The shipment or delivery of manufactured tobacco, snuff, cigars, or cigarettes, for consumption beyond the jurisdiction of the internal-revenue laws of the United States, as defined by section [7701 of IRC of 1954], shall be deemed exportation within the meaning of the customs and internal-revenue laws applicable to the exportation of such articles without payment of duty or internal-revenue tax.

(b) The shipment or delivery of any merchandise for use as supplies (including equipment) upon, or in the maintenance or repair of any vessel or aircraft described in subdivision (2) or (3) of section 1309(a) of this title, or for use as ground equipment for any such aircraft, shall be deemed an exportation within the meaning of the customs and internal-revenue laws applicable to the exportation of such merchandise without the payment of duty or internal-revenue tax. With respect to merchandise for use as ground equipment, such shipment or delivery shall not be deemed an exportation within the meaning of the internal-revenue laws relating to taxes other than those imposed upon or by reason of importation.

The first provision to allow the shipment or delivery of manufactured tobacco products for consumption outside of the United States without the payment of duty or internal-revenue tax or with the benefit of drawback of the duty and tax paid thereon appeared in the Tariff Act of 1930. The benefits under section 1317, in either case, were granted without the contingency that the products be "exported" - that is, shipped to a foreign country with the intent to mingle with the commerce of that country. The authority for granting drawback of internal-revenue taxes on tobacco products is contained in section 5706 of the Internal Revenue Code.

The House Ways and Means Committee in reporting on section 1317 noted that "The provisions of section 1309 did not extend to foreign vessels and vessels, therefore, requiring such tobacco products for use as sea stores, have, in order to obtain the benefit of the customs and internal-revenue laws relating to exportation of such products, found it necessary to purchase such products after exportation to a foreign country." It also noted that "the shipment of such articles to foreign countries for sale to or consumption by official representatives of armed forces of the United States stationed in such countries cannot be held exportation under these laws. Such official representatives and armed forces have thus been required to pay higher prices for such products on direct shipment than residents of the countries in which they are stationed."

Section 5(b) of the Customs Administrative Act of 1938 added a new paragraph to section 1317 to provide that the shipment or delivery of any merchandise for use as supplies or equipment upon, or in the maintenance of repair of, aircraft registered in any foreign country and actually engaged in foreign trade or trade between the United States and any of its possessions, where such trade by foreign aircraft is permitted, shall be deemed an exportation for drawback purposes.

Paragraph (b) of section 1317 was added "to remove a conflict with certain treaty obligations of the United States and to encourage the

development of international aviation". The provisions of paragraph (b) were not to be applied with respect to foreign aircraft of a country which does not afford substantially reciprocal treatment (section 1309(d) of title 19).

Section 11(b) of the Customs Administrative Act of 1953 extended to foreign ships the exception from payment of duty and internal-revenue tax then available under section 1317 for supplies used in the maintenance or repair of aircraft. It also provided an exemption for ground equipment for foreign flag aircraft. The amendment was described in the House debate on the bill as being for the purpose of eliminating discrimination between vessels and aircraft (Rep. Cooper, p. 8847 of Cong. Record).

G. GENERAL WAREHOUSE PROVISIONS

BONDED WAREHOUSES FOR STORAGE AND CLEANSING OF IMPORTED GARBANZO; WITHDRAWALS [SEC. 151]

Under such regulations and conditions as may be prescribed by the Secretary of the Treasury, bonded warehouses may be established in which imported Mexican peas, commonly called garbanzo may be stored, cleaned, repacked or otherwise changed in condition, but not manufactured, and withdrawn for exportation without the payment of duty thereon. The whole or any part of such imported garbanzo, and the waste material and by-products incident to cleaning or otherwise treating said imported garbanzo, may be withdrawn for domestic consumption upon the payment on the quantity so withdrawn of the duty imposed by law on such garbanzo in their condition as imported. The compensation of customs officers and storekeepers for all services in the supervision of such warehouses shall be paid from moneys advanced by the warehouse proprietor to the collector of customs and be carried in a special account and disbursed for such purposes, and all expenses incurred shall be paid by the warehouse proprietor.

BONDED WAREHOUSES [SEC. 1555]

Buildings or parts of buildings and other inclosures may be designated by the Secretary of the Treasury as bonded warehouses for the storage of imported merchandise entered for warehousing, or taken possession of by the collector, or under seizure, or for the manufacture of merchandise in bond, or for the repacking, sorting, or cleaning of imported merchandise. Such warehouses may be bonded for the storing of such merchandise only as shall belong or be consigned to the owners or proprietors thereof and be known as private bonded warehouses, or for the storage of imported merchandise generally and be known as public bonded warehouses. Before any imported merchandise not finally released from customs custody shall be stored in any such premises, the owner or lessee thereof shall give a bond in such sum and with such sureties as may be approved by the Secretary of the Treasury to secure the Government against any loss or expense connected

with or arising from the deposit, storage, or manipulation of merchandise in such warehouse. Except as otherwise provided in this chapter, bonded warehouses shall be used solely for the storage of imported merchandise and shall be placed in charge of a proper officer of the customs, who, together with the proprietor thereof, shall have joint custody of all merchandise stored in the warehouse; and all labor on the merchandise so stored shall be performed by the owner or proprietor of the warehouse, under supervision of the officer of the customs in charge of the same, at the expense of the owner or proprietor. The compensation of such officer of the customs and other customs employees appointed to supervise the receipt of merchandise into any such warehouse and deliveries therefrom shall be reimbursed to the Government by the proprietor of such warehouse.

REGULATIONS FOR ESTABLISHING WAREHOUSES
[SEC. 1556]

The Secretary of the Treasury shall from time to time establish such rules and regulations as may be necessary for the establishment of bonded warehouses and to protect the interests of the Government in the conduct, management, and operation of such warehouses and in the withdrawal of and accounting for merchandise deposited therein.

ENTRY FOR WAREHOUSE--WAREHOUSE PERIOD--DRAWBACK
(SEC. 1557]

(a) Any merchandise subject to duty, with the exception of perishable articles and explosive substances other than firecrackers, may be entered for warehousing and be deposited in a bonded warehouse at the expense and risk of the owner, importer, or consignee. Such merchandise may be withdrawn, at any time within three years from the date of importation,1/ for consumption upon payment of the duties and charges accruing thereon at the rate of duty imposed by law upon such merchandise at the date of withdrawal; or may be withdrawn for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, without the payment of duties thereon, or for transportation and rewarehousing at another port or elsewhere, or for transfer to another bonded warehouse at

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1/ The Secretary of the Treasury may, under certain conditions and for a limited time, extend the 3-year period for additional 1-year periods. T.D. 52896

the same port: Provided, That the total period of time for which such merchandise may remain in bonded warehouse shall not exceed three years from the date of importation. Merchandise upon which the duties have been paid and which shall have remained continuously in bonded warehouse or otherwise in the custody and under the control of customs officers, may be entered or withdrawn at any time within three years after the date of importation for exportation or for transportation and exportation to a foreign country, or for shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island or the island of Guam, under such regulations as the Secretary of the Treasury shall prescribe, and upon such entry or withdrawal, and exportation or shipment, the duties thereon shall be refunded.

(b) The right to withdraw any merchandise entered in accordance with subsection (a) of this section for the purposes specified in such subsection may be transferred upon compliance with regulations prescribed by the Secretary of the Treasury and upon the filing by the transferee of a bond in such amount and containing such conditions as the Secretary of the Treasury shall prescribe. The bond shall include an obligation to pay, with respect to the merchandise the subject of the transfer, all unpaid regular, increased, and additional duties, all unpaid taxes imposed upon or by reason of importation, and all unpaid charges and exactions. Such transfers shall be irrevocable, shall relieve the transferor from all customs liability with respect to obligations assumed by the transferee under the bond herein provided for, and shall confer upon the transferee all rights to the privileges provided for in this section and in sections 1562 and 1563 of this title which were vested in the transferor prior to the transfer. The transferee shall also have the right to receive all lawful refunds of moneys paid by him to the United States with respect to the merchandise the subject of the transfer, but shall have no right to file any protest under section 1514 of this title except as to decisions with respect to his rights under subsection (c) of this section or under section 1562 or 1563 of this title or against a decision as to the rate or amount of duty, tax, charge, or exaction when such rate or amount has been changed by statute or proclamation on or after the date of the transfer. The transferee shall have no right to file an appeal for reappraisement under section 1501 of this title, except when subsequent to the transfer and before a withdrawal for consumption has been deposited for the merchandise, it has been changed in condition pursuant to the provisions of section 1311 or 1562 of this title in a manner which necessitates that it be appraised in its changed condition in order that the correct amount of duties may be assessed. No new or separate liquidation, reliquidation, or determination shall be made in the name of, or on behalf of, a transferee, except with regard to

any matter which may arise under subsection (c) of this section or section 1562 or 1563 of this title when the transferee has invoked either of these sections, and in the case of a statutory or proclaimed change in the rate of duty, tax, charge, or exaction applicable to the merchandise the subject of the transfer and effective on or after the date of the transfer. A transferee may further transfer the right to withdraw merchandise, subject to the provisions of this subsection relating to original transfers.

(c) Merchandise entered under bond, under any provisions of law, may, upon payment of all charges other than duty on the merchandise, be destroyed, at the request and at the expense of the consignee, within the bonded period under customs supervision, in lieu of exportation, and upon such destruction the entry of such merchandise shall be liquidated without payment of duty and any duties collected shall be refunded.

WAREHOUSE GOODS DEEMED ABANDONED AFTER THREE YEARS [SEC. 1559]

Merchandise upon which any duties or charges are unpaid, remaining in bonded warehouse beyond three years from the date of importation, 1/ shall be regarded as abandoned to the Government and shall be sold under such regulations as the Secretary of the Treasury shall prescribe, and the proceeds of sale paid into the Treasury, as in the case of unclaimed merchandise covered by section 1493 of this title, subject to the payment to the owner or consignee of such amount, if any, as shall remain after deduction of duties, charges, and expenses. Merchandise upon which all duties and charges have been paid, remaining in bonded warehouse beyond three years from the date of importation, shall be held to be no longer in the custody or control of the officers of the customs.

1/ The Secretary of the Treasury may, under certain conditions and for a limited time, extend the 3-year period for additional 1-year periods. T.D. 52896.

LEASING OF WAREHOUSES
[SEC. 1560]

The Secretary of the Treasury may cause to be set aside any available space in a building used as a customhouse for the storage of bonded merchandise or may lease premises for the storage of unclaimed merchandise or other imported merchandise required to be stored by the Government, and set aside a portion of such leased premises for the storage of bonded merchandise: Provided, That no part of any premises owned or leased by the Government may be used for the storage of bonded merchandise at any port at which a public bonded warehouse has been established and is in operation. All the premises so leased shall be leased on public account and the storage and other charges shall be deposited and accounted for as customs receipts, and the rates therefor shall not be less than the charges for storage and similar services made at such port of entry by commercial concerns for the storage and handling of merchandise. No collector or other officer of the customs shall own, in whole or in part, any bonded warehouse or enter into any contract or agreement for the lease or use of any building to be thereafter erected as a public store or warehouse. No lease of any building to be so used shall be taken for a longer period than three years, nor shall rent for any such premises be paid, in whole or in part, in advance.

PUBLIC STORES
[SEC. 1561]

Any premises owned or leased by the Government and used for the storage of merchandise for the final release of which from customs custody a permit has not been issued shall be known as a "public store".

MANIPULATION IN WAREHOUSE
(SEC. 1562]

Unless by special authority of the Secretary of the Treasury, no merchandise shall be withdrawn from bonded warehouse in less quantity than an entire bale, cask, box, or other package; or, if in bulk, in the entire quantity imported or in a quantity not less than one ton weight. All merchandise so withdrawn shall be withdrawn in the original packages in which imported unless, upon the application of the importer, it appears to the collector that it

SEC. 1557 - con.

Sec. 54, Tariff Act of 1890

Sec. 20, Act of June 10, 1890

Revised Statutes 2962, 2970, 2977

Section 33, Act of July 14, 1870

Sec. 21, Act of July 14, 1862

Sec. 5, Act of August 5, 1861

Sec. 4, Act of March 3, 1857

Secs. 1 and 2, Act of August 6, 1846

Sec. 6, Act of July 14, 1832

Secs. 1 and 4, Act of April 20, 1818

SEC. 1562

Secs. 2 and 25, Customs Administrative Act of 1938 - Public Law 721, 75th Cong.
Senate Report No. 1465, 75th Cong., 3d Sess., pp. 5, 11

Sec. 562, Tariff Act of 1930

Sec. 562, Tariff Act of 1922

Act of June 28, 1916

Revised Statutes 2980, 3028

Act of March 24, 1874

When such premises are not sufficient or available for the storage of seized and unclaimed goods, such goods may be stored in a warehouse of class 3, 4, or 5. So far as such warehouses are used for this purpose, they shall be designated "bonded stores." If there are no warehouses of these classes available, the collector may, with the approval of the Bureau, rent suitable premises for the storage of seized and unclaimed goods.

(2) Class 2. Importers' private bonded warehouses used exclusively for the storage of merchandise belonging or consigned to the proprietor thereof. A warehouse of class 4 or 5 may be bonded exclusively for the storage of goods imported by the proprietor thereof, in which case it shall be known as a private bonded warehouse.

(3) Class 3. Public bonded warehouses used exclusively for the storage of imported merchandise.

(4) Class 4. Bonded yards or sheds for the storage of heavy and bulky imported merchandise; stables, feeding pens, corrals, or other similar buildings or limited enclosures for the storage of imported animals; and tanks for the storage of imported liquid merchandise in bulk. If the collector deems it necessary, the yards shall be enclosed by substantial fences with entrance and exit gates capable of being secured by customs locks. The inlets and outlets to tanks shall be secured by means of seals or customs locks in combination with steel chains.

(5) Class 5. Bonded bins or parts of buildings or of elevators to be used for the storage of grain. The bonded portions shall be effectively separated from the rest of the building.

(6) Class 6. Warehouses for the manufacture in bond, solely for exportation, of articles made in whole or in part of imported materials or of materials subject to internal-revenue tax; and for the manufacture for home consumption or exportation of cigars in whole of tobacco imported from one country.

(7) Class 7. Warehouses bonded for smelting and refining imported metal-bearing materials for exportation or domestic consumption.

(8) Class 8. Bonded warehouses established for the purpose of cleaning, sorting, repacking, or otherwise changing in condition, but not manufacturing, imported merchandise, under customs supervision and at the expense of the proprietor.

Each of the above-cited sections relating to bonded warehouses are quoted in this memorandum for convenient reference, together with a description of the various customs warehouses designated according to class. A perusal of the background of the current laws lends itself to

a clearer understanding of the legislative history of sections 1557 and 1562 on which the comments herein will be focused.

1. Origin and General Purposes of Warehouses

The first tariff legislation in 1789 did not make any provision for the use of warehouses. At that time all imported goods were entered for consumption and duties had to be "paid" or "secured" to be paid. Collection of duties was not as militant as now. The first act did not specify when duties should be paid. In some subsequent acts special sections provided for staged payments of duties. For example, in 1791 duties of $50 or less on distilled spirits would have to be paid at the time of entry; however, duties over $50 but not over $500 could be secured by bond and paid within four months and duties in excess of $500 could be secured by bond and paid within six months. In either case the bond had to include adequate surety or a deposit of an adequate portion of the goods to cover the duty. Still later, large duties could be paid on a quarterly basis. Beginning in 1842 the duties on all imported goods had to be paid in cash at the time they were entered for consumption. Today an importer entering goods for consumption must either pay the duty immediately or deposit "estimated duties", and in the latter case he must give bond to pay the difference between the ascertained duties and estimated duties should the latter be lower.

The use of warehouses began in 1818. Prior to that date imported wines and distilled spirits normally had to be entered for consumption and duties paid, or secured to be paid, before release from customs

custody. However, in that year the importer was afforded two new methods for entering such goods. He could give his bond, with surety, in double the amount of the duties due thereon, guaranteeing payment of duties within 12 months from the date of the bond, or he could give his bond in like amount without surety provided the goods were stored in "public or other storehouses" agreed upon by the importer and customs officials and, provided further, that the goods were kept under joint locks of the two parties. The goods could not be withdrawn until the duties were paid, or secured to be paid, in the manner required for consumption entries. In any event the duties were to be paid within 12 months from the date of the original bond.

In 1832 all the articles enumerated in the tariff act of that year could be placed in "custom-house stores" under bond of the importer or owner and, if withdrawn after March 3, 1833, would be dutiable at whatever rates were in effect on the date of withdrawal. In 1846 such treatment was extended to all imported goods placed in "public stores".

A special act was passed in 1846 "to establish a warehouse system". It was substantially a restatement of the warehouse procedures then in effect plus the following additional features. If an importer failed to pay duties within the prescribed time, the collector was authorized to take possession of the goods and place them in the "public stores" or other stores mutually agreeable to the parties.

The costs of storage were to be paid by the importer or owner, or from the proceeds of the sale of the goods. The revised warehouse procedures also provided "That no merchandise shall be withdrawn from any warehouse in which it may be deposited, in a less quantity than in an entire package, bale, cask, or box, unless in bulk; nor shall merchandise so imported in bulk be delivered, except in the whole quantity of each parcel, or in a quantity not less than one ton weight, unless by special authority of the Secretary of the Treasury". Warehoused goods could be exported or shipped in bond for exportation from another port without payment of duties, but duties had to be paid on such goods remaining in storage longer than one year. Upon failure to pay the duties after one year, the collector was to auction the goods, pay all charges and duties, and to pay the remainder of the proceeds to the importer or owner. Perishable goods and explosives were no longer to be admissable for warehousing.

In 1861 goods had to be withdrawn from "public stores" or "bonded warehouse", or current duties paid, within three months from the date of deposit, if they were intended to be withdrawn for consumption. Goods intended for export could be warehoused for three years. If withdrawn for consumption after three months and duties were not paid, such goods were then subject to 1-1/4 times the ordinary duty. A 99-percent drawback was allowed on any duty-paid goods withdrawn for exportation. In 1862 the 3-month period in which

goods could be stored was increased to one year. In 1864 firecrackers were again permitted to be warehoused. In 1866 the increased duty imposed for withdrawing merchandise after one year has elapsed for purposes of domestic consumption was lowered from 1-1/4 times the ordinary duty to 1-1/10 times the ordinary duty. In 1872, provision was made that if duty-paid goods remained in warehouse after a rate reduction occurred and such goods are withdrawn for consumption, a refund of the difference in duties was to be allowed. In 1890 goods were permitted to be warehoused for 3 years irrespective of whether they were to be withdrawn for consumption or exportation.

Beginning in 1922, warehoused goods could be destroyed under customs supervision, in lieu of exportation, and the owner or importer was relieved of the payment of duties thereon. Goods could also be withdrawn for transportation and rewarehousing at another port of entry. Only goods "subject to duty" could be placed in a bonded warehouse from this date. The Tariff Act of 1930 and subsequent acts effectively relaxed the meaning of the word "exported" by treating shipments to certain named U.S. possessions as though they were exports for purposes of the warehouse procedures. Obviously, such shipments were removed from the domestic competitive market area usually designated as the customs territory of the United States.

In 1938 the warehouse procedure was amended to permit transportation and rewarehousing wherever the warehouse might be situated in the United States. The drawback of duties-paid was increased to 100

percent. The 1938 act also added a new provision (subsection 1557(b)) which permitted the transfer of the right to withdraw goods in bonded warehouses and made such transfers irrevocable in cases where the transferee, in the bond provided for in the section, assumed the customs obligations of the transferor with respect to the transferred merchandise. It further provided that the transferee was entitled to receive all refunds of moneys paid by him and would have all rights to file protests under section 1514 of title 19 which would otherwise be possessed by the transferor.

The conferring of new rights of protests on transferees necessitated additional liquidations and increased record keeping by the Treasury Department in behalf of the transferees. To stem the additional work, an act of 1953 provided that all transfers shall be irrevocable; that in the case of each transfer the transferee shall file a bond undertaking to pay all unpaid duties, taxes, charges, and exactions on the merchandise the subject of the transfer; and that a transferee shall have no right to file a protest under section 1514, or to a separate liquidation in his behalf, unless the rate of duty, tax, charge, or exaction has been changed pursuant to statute or proclamation after the right to withdraw the merchandise was transferred to him.

In 1950 the President proclaimed a national emergency and in 1951, pursuant to section 1318 of title 19, he proclaimed an additional

one-year period during which goods in bonded warehouses might be stored or otherwise treated in accordance with the Tariff Act.

Current customs regulations require in connection with a warehouse entry the production of a bond with surety by the importer guaranteeing the payment of all charges and duties should the goods go into domestic consumption. They also require the warehouse proprietor to give bond with surety to guarantee payment of duties. If warehoused goods are unaccounted for and there is negligence on the part of the proprietor, he must pay the duties. If his bond does not cover full duties, either the importer must make up the deficit or the surety on his bond.

2. Manipulation Permitted in Warehouses

Manipulation of goods in bonded warehouses has its origin in 1874 when statutory authority was enacted to permit bonded warehouses to be established at any port of entry "to be used for the storage and cleansing of rice intended for exportation" subject to appropriate procedures to be covered by regulations. Similarly, in 1916 authority was granted to establish bonded warehouses "in which Mexican peas, commonly called garbanzo may be stored, cleaned, repacked or otherwise changed in condition, but not manufactured, and withdrawn for exportation without the payment of duty thereon". The earlier provision was repealed in 1922, presumably because the general authority to manipulate goods in bonded warehouses, which was enacted at that time, was sufficient to cover the situation. It appears that the act of 1916 (section 151) might also have been repealed for the same

reason but was overlooked. In 1930 the general manipulation authority was amended to provide that manipulated goods would be dutiable at the time of withdrawal for domestic consumption at current rates of duty based on adjusted values where the values of the goods were changed as a result of the manipulation.

The last sentence in section 1562 was added in 1938. It permits importers under certain circumstances to manipulate merchandise elsewhere than in a bonded warehouse. The Senate Finance Committee reported that the requirement that all manipulation be performed in a bonded warehouse had "subjected importers to expense not necessary for the protection of the revenue". The new provision was to remedy this situation and to "facilitate the movement and handling of imported merchandise with safety to the revenue and without interference with the proper conduct of customs business".

Except for bonded manufacturing warehouses, bonded smelting and refining warehouses, and to some extent those warehouses in which manipulation is permitted, the major congressional purposes for customs bonded warehouses have no purpose paralleling the drawback procedures.

H. ARTICLES ADMITTED TEMPORARILY FREE OF DUTY UNDER BOND (SEC. 1202, Schedule 8, Subpart 5C)

Articles covered by the following tariff descriptions may be admitted temporarily free of duty under bond guaranteeing their exportation or destruction within one year from the date of importation, which period may be extended, in the discretion of the Secretary of the Treasury, upon application, for one or more further periods which, when added to the initial one year, shall not exceed three years:

Item 864.05 - Articles to be repaired, altered, or processed (including processes which result in articles manufactured or produced in the United States)

Item 864.15 - Articles imported by illustrators and photographers for use solely as models in their own establishments, in the illustrating of catalogues, pamphlets, or advertising matter

Item 864.25 - Articles solely for examination with a view to reproduction, or for such examination and reproduction (except photoengraved printing plates for examination and reproduction); and motion-picture advertising films

Item 864.45 - Containers for compressed gases, filled or empty, and containers or other articles in use for covering or holding merchandise (including personal or household effects) during transportation and suitable for reuse for that purpose)

Item 864.55 - Articles of special design for temporary use exclusively in connection with the manufacture or production of articles for export

Items 864.05, 864.15, 864.25, 864.45, and 864.55 contain classification descriptions for the temporary entry of articles under circumstances which are intended, at least in part, to promote the exportation of U.S. labor in the form of commodities. All other items in subpart 5C of schedule

8 of the Tariff Schedules of the United States tend to promote temporary importation under circumstances which would appear to have no direct influence on the promotion of exports of domestic products. A research of the legislative history of the latter category of items in depth has not been made because the items are not related to the main thrust of the Commission's study. However, because the items in the latter category overlap in scope in several cases, the Commission in considering possible changes in the first category will consider a possible clean-up proposal to consolidate the remaining items (this was attempted to some degree during the Tariff Classification Study but time factors prevented further revision in this area).

The provisions of item 864.05 were initiated in part in section 2507 of the Revised Statutes which provided that "Machinery for repair may be imported into the United States without payment of duty, under bond, to be given in double the appraised value thereof to be withdrawn and exported after said machinery shall have been repaired * * * ". The time period was six months from the date of importation. The Tariff Act of 1913 broadened the provision to include all "articles to be altered or repaired". The Tariff Act of 1930 extended the scope of the provision to permit an extension of the initial time period, not to exceed six months, in which the article must be exported. In 1953 the initial period was changed to one year with two additional 1-year extensions being permitted at the discretion of the Secretary of the Treasury because the former periods of time had "proved insufficient". Temporary importation procedures of the kind now

provided for in item 864.05 have been in effect since 1958. The scope of the provision was extended to include manufacturing operations in 1958 because small manufacturers were experiencing difficulties in the use of the general drawback procedures which involved costly delays in obtaining the drawback payments.

The provision for "Articles imported by illustrators and photographers for use solely as models in their own establishments, in the illustration of catalogues, pamphlets, or advertising matters" in item 864.15 had its origin in the Tariff Act of 1930. In describing its purposes, the Senate Finance Committee stated: "A considerable business has, for some years, been done by American commercial illustrating, printing, and lithographing concerns in the making of illustrations for catalogues and advertisements for Canadian and other foreign houses. Recently, however, the competition in this industry has become so keen that the American concerns are handicapped in getting business from foreign countries because they are required to pay duty on the article brought into the United States as a model from which the illustration is to be made. As articles imported under this section can not be sold but must be exported within a year at the most, no disadvantage to American manufacturers is involved."

The provision for "Articles solely for examination with a view to reproduction, or for such examination and reproduction" in item 864.25 had its origin in the Tariff Act of 1930. In describing its purpose,

the House Committee on Ways and Means stated that the temporary duty-free admission of articles "should materially assist American manufacturing concerns which are meeting severe competition from foreign articles in common export markets, and is recommended by the Department of Commerce on account of its bearing upon the promotion of American export trade."

The provision for "Containers for compressed gases, filled or empty" in item 864.45 had its origin in a provision in the Tariff Act of 1922 for "Containers for compressed gases which comply with the laws and regulations for the transportation of such containers within the United States." The latter part of the original description appears to have been omitted as surplusage from the classification description in item 864.45 inasmuch as safety regulations applicable to interstate trade are applicable thereto whether or not mentioned in the tariff description.

The provision for "Articles of special design for temporary use exclusively in connection with the manufacture or production of articles for export" in item 864.55 was originated by the Customs Administrative Act of 1938. Committee reports on the bill which later became that Act did not elaborate on its purpose.

I. FOREIGN TRADE ZONES

ADMISSION OF FOREIGN MERCHANDISE; TREATMENT; SHIPMENT TO CUSTOMS TERRITORY; APPRAISAL; RESHIPMENT TO ZONE [SEC. 81c]

Foreign and domestic merchandise of every description, except such as is prohibited by law, may, without being subject to the customs laws of the United States, except as otherwise provided in this chapter, be brought into a zone and may be stored, sold, exhibited, broken up, repacked, assembled, distributed, sorted, graded, cleaned, mixed with foreign or domestic merchandise, or otherwise manipulated, or be manufactured except as otherwise provided in this chapter, and be exported, destroyed, or sent into customs territory of the United States therefrom, in the original package or otherwise; but when foreign merchandise is so sent from a zone into customs territory of the United States it shall be subject to the laws and regulations of the United States affecting imported merchandise: Provided, That whenever the privilege shall be requested and there has been no manipulation or manufacture effecting a change in tariff classification, the collector of customs shall take under supervision any lot or part of a lot of foreign merchandise in a zone, cause it to be appraised and taxes determined and duties liquidated thereon. Merchandise so taken under supervision may be stored, manipulated, or manufactured under the supervision and regulations prescribed by the Secretary of the Treasury, and whether mixed or manufactured with domestic merchandise or not may, under regulations prescribed by the Secretary of the Treasury, be exported or destroyed, or may be sent into customs territory upon the payment of such liquidated duties and determined taxes thereon. If merchandise so taken under supervision has been manipulated or manufactured, such duties and taxes shall be payable on the quantity of such foreign merchandise used in the manipulation or manufacture of the entered article. Allowance shall be made for recoverable and irrecoverable waste; and if recoverable waste is sent into customs territory, it shall be dutiable and taxable in its condition and quantity and at its weight at the time of entry. Where two or more products result from the manipulation or manufacture of merchandise in a zone the liquidated duties and determined taxes shall be distributed to the several products in accordance with their relative value at the time of separation with due allowance for waste as provided for above: Provided further, That subject to such regulations respecting identity and the safeguarding of the revenue as the Secretary of the Treasury may deem necessary, articles, the growth, product, or manufacture of the United States, on which all internal-revenue taxes have been paid,

if subject thereto, and articles previously imported on which duty and/or tax has been paid, or which have been admitted free of duty and tax, may be taken into a zone from the customs territory of the United States, placed under the supervision of the collector, and whether or not they have been combined with or made part, while in such zone, of other articles, may be brought back thereto free of quotas, duty, or tax: Provided further, That if in the opinion of the Secretary of the Treasury their identity has been lost, such articles not entitled to free entry by reason of noncompliance with the requirements made hereunder by the Secretary of the Treasury shall be treated when they reenter customs territory of the United States as foreign merchandise under the provisions of the tariff and internal-revenue laws in force at that time: Provided further, That under the rules and regulations of the controlling Federal agencies, articles which have been taken into a zone from customs territory for the sole purpose of exportation, destruction (except destruction of distilled spirits, wines, and fermented malt liquors), or storage shall be considered to be exported for the purpose of --

(a) the draw-back, warehousing, and bonding, or any other provisions of the Tariff Act of 1930, as amended, and the regulations thereunder; and

(b) the statutes and bonds exacted for the payment of drawback, refund, or exemption from liability for internal-revenue taxes and for the purposes of the internal-revenue laws generally and the regulations thereunder.

Such a transfer may also be considered an exportation for the purposes of other Federal laws insofar as Federal agencies charged with the enforcement of those laws deem it advisable. Such articles may not be returned to customs territory for domestic consumption except where the Foreign-Trade Zones Board deems such return to be in the public interest, in which event the articles shall be subject to the provisions of paragraph 1615(f) of section 1201 of this title: Provided further, That no operation involving any foreign or domestic merchandise brought into a zone which operation would be subject to any provision or provisions of section 1807 of Title 26 and chapters 15-17, 21, 23-26 or 32 of Title 26, if performed in customs territory, or involving the manufacture of any article provided for in paragraphs 367 or 368 of section 1001 of this title, shall be permitted in a zone except those operations (other than rectification of distilled spirits and wines, or the manufacture or production of alcoholic products unfit for beverage purposes) which were permissible under this chapter prior to July 1, 1949: Provided further, That articles

> produced or manufactured in a zone and exported therefrom shall on subsequent importation into the customs territory of the United States be subject to the import laws applicable to like articles manufactured in a foreign country, except that articles produced or manufactured in a zone exclusively with the use of domestic merchandise, the identity of which has been maintained in accordance with the second proviso of this section may, on such importation, be entered as American goods returned.

The original Foreign Trade Zone Act was enacted in 1934 "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes." The first Act specifically precluded manufacturing operations and exhibitions within the zone, did not provide for destruction of imported goods in lieu of exportation, and required that imported goods within the zone be disposed of within two years after unloading. In 1950 the Act was amended to permit exhibitions, manufacturing generally except for most merchandise subject to internal-revenue or manufacturers excise taxes, and the retention of imported merchandise in the zone for an indefinite time.

Under the original Act, if an importer obtained a privileged status for his merchandise in the zone, he had to pay the ascertained duty even though it did not enter the customs territory. This result was removed by a 1950 amendment.

The 1950 amendments also provided that goods sent into the zone for purposes of exportation, destruction (except distilled spirits, wines, and fermented malt liquors), or storage were to be considered

as exported for purposes of the customs and internal-revenue laws, as well as other Federal laws in which the administering agency deems it advisable.

The Foreign Trade Zone Act needs to be revised in that it currently cites tariff classifications from the former tariff schedules.

III. GENERAL CONCLUSIONS

A. Objectives of the Drawback Procedures

The objectives of the various drawback procedures might be summarized as the following:

1. To encourage domestic industries to sell in foreign markets,

2. To enable domestic industries to be competitive in foreign markets,

3. To aid the U.S. Maritime Service in maintaining an American fleet of vessels in international commerce,

4. To give reciprocal treatment to foreign vessels of all kinds,

5. To prevent undue hardship in cases where U.S. purchasers of foreign goods have not received appropriate goods,

6. To encourage the use of the United States as a trading center for world goods to be used elsewhere than in the United States, and

7. To encourage the use of U.S. labor to the extent possible in making or preparing goods for sale or use in other countries.

It is not an objective of section 1313(a) and (b) to permit the recovery of duties paid in cases where the exported goods are not intended to compete with foreign commerce.

B. Consolidations

A perusal of the sections concerning the drawback and related procedures and their disassociated locations within title 19 immediately raises the question as to why they have not been treated in a common part of the statutes. The answer is obvious when one notes the sequence of their origins; most sections had origins as special laws unto themselves and with the passage of time some of these sections were placed together as their affinity became more apparent to the legislators. It is apparent that no legislative effort has ever been made to draw all such procedures together under one umbrella where a prospective user might weigh the values of each to determine which procedure best suits his needs. Correspondence with the public has demonstrated that many manufacturers are not acquainted with the procedures they might elect to use.

The procedures under sections 1309, 1313, and 1317 are overlapping in scope and perhaps could be consolidated into a single section. Similarly, consideration might be given to consolidating sections 1311 and 1312. Such considerations in depth, however, will be deferred until the preliminary evidence can be studied to determine whether there is a need for the continuance of each section or portion thereof.

B. Legislative Intent Regarding Administrative Costs of Procedure

As previously indicated in the discussion under section 1313, it is evident that the Congress, in connection with the general drawback procedures, intended that the residuary amount of duty returned after payment of drawback was to pay, at least in part, for the cost of administration. It may be noted that a similar situation exists with respect to procedures utilizing bonded warehouse procedures. In these procedures the warehouse proprietor must reimburse Treasury for the salaries of customs officers who physically supervise the operations at the warehouse. These costs are of course indirectly paid by the importer of the merchandise placed in the warehouse. However, as administrative costs incurred at the customhouse are not reimbursable, it may be concluded that the operation of warehouse procedures is not wholly self-supporting. A like situation exists with respect to foreign trade zones. No administrative costs of the Government are absorbed by an importer temporarily entering goods under bond for subsequent export pursuant to section 1202.

D. De Minimis Claims for Drawback

One year after the first tariff law was enacted, the Congress limited drawback payments on imported goods returned to customs custody for exportation to claims in amounts not less than $50. In 1832 drawback with respect to cordage was limited to shipments in amounts not

less than five tons. As early as 1883 claims for drawback on salt used in curing meats were limited to amounts not less than $100. The last limitation is the only current limitation. These limitations would appear to have been made to prevent small claims from being filed which insignificantly contribute to the promotion of international trade. The cost of handling such claims perhaps exceeded the promotional value of the drawback.

One might reason that the drawback procedures are geared to commercial shipments involving imports and exports of a size commonly expected to be made by a manufacturer or wholesaler of merchandise, and that the three historic limitations are indicative of a general congressional intent to weed out inconsequential transactions. There appears to be no legislative history to the contrary.

APPENDIX A

UNITED STATES TARIFF COMMISSION
Washington

[332-45]

NOTICE OF STUDY OF PROVISIONS OF TITLE 19 OF THE U.S. CODE RELATING TO THE TEMPORARY ENTRY OF ARTICLES IMPORTED INTO THE UNITED STATES-- PUBLIC INVITATION TO COMMENT

Notice is hereby given that the United States Tariff Commission, pursuant to the provisions of section 332 of the Tariff Act of 1930 (19 U.S.C. 1332), has initiated a study of the various statutory provisions included in title 19 of the United States Code, which permit the temporary importation into the United States of merchandise without the payment of ordinary duties or which permit a virtual recovery of duties paid, when the imported merchandise, or its domestic equivalent, is exported either in its original form or in a changed condition.

Without excluding other sections, the study includes in whole or in part the following sections of title 19 of the U.S. Code:

Section 81 - Foreign Trade Zones
Section 1202 - (Schedule 8, Part 5C) - Temporary Free Entry under Bond
Section 1311 - Bonded Manufacturing Warehouses
Section 1312 - Bonded Smelting and Refining Warehouses
Section 1313 - Drawback and Refunds
Section 1555 - Bonded Warehouses
Section 1557 - Entry for Warehouse - Warehouse Period - Drawback
Section 1562 - Manipulation in Warehouse

The Commission's study will review the original objectives of each provision, examine the extent to which each provision is now accomplishing its purposes, and determine the impact each provision has on United States international trade. The Commission is especially interested in whether the economic forces which led to the creation of these programs have so changed in the intervening years as to warrant modification and possible consolidation of the procedures to meet current conditions.

The Commission invites all interested parties to submit written views pertinent to the study. Because of the large anticipated response to this invitation, the Commission will merely acknowledge the receipt of submissions with the assurance that they will be given due consideration. At the conclusion of a preliminary study of all submissions, as well as all other pertinent information obtained by its staff, the Commission will publish a resume of the results of the preliminary study, together with any proposals for revision of the present statutes. Public notice will be given thereafter of a hearing to be held by the Tariff Commission to permit all interested parties to be present, to produce evidence, and to be heard regarding any proposed revisions.

Interested parties should file their submissions with the Secretary of the Commission no later than November 1, 1965, to ensure their consideration by the Commission.

By direction of the Commission:

DONN N. BENT
Secretary

Issued July 26, 1965.

APPENDIX B

To trace the citation of an act or a provision of an act merely identified by year in the text of this report, one should first locate the pertinent section listed below in numerical order and then locate the act of the cited year. The pertinent section or sections of the act cited for that year contain the legislation discussed in the text.

SEC. 81c

Public Law 566, 81st Cong.
Senate Report No. 1107, 81st Cong., 1st Sess.
House Report No. 1437, 81st Cong., 1st Sess.
House Report No. 957, 81st Cong., 1st Sess.

Foreign Trade Zones Act of June 18, 1934

SEC. 1202 (Schedule 8, Part 5C)

Sec. 10, Customs Simplification Act of 1953 - Public Law 243, 83d Cong.
Senate Report No. 632, 83d Cong., 1st Sess., p. 10
House Report No. 760, 83d Cong., 1st Sess., pp. 5, 10

Sec. 4, Customs Administrative Act of 1938 - Public Law 721, 75th Cong.
Senate Report No. 1465, 75th Cong., 3d Sess., p. 7
House Report No. 1429, 75th Cong., 1st Sess., pp. 2, 3

Sec. 308, Tariff Act of 1930
House Report No. 7, 71st Cong., 1st Sess., p. 160
Senate Report No. 37, 71st Cong., 1st Sess., p. 61

Sec. 308, Tariff Act of 1922

Sec. IV, par. 14, Tariff Act of 1913

Sec. 18, Tariff Act of 1909

Sec. 19, Tariff Act of 1897

Sec. 13, Tariff Act of 1894

Sec. 14, Tariff Act of 1890

Sec. 6, Tariff Act of 1883

R.S. 2507

SEC. 1309

Sec. 11(a), Customs Simplification Act of 1953 - Public Law 243, 83d Cong.
Senate Report No. 632, 83d Cong., 1st Sess., p. 11
House Report No. 760, 83d Cong., 1st Sess., p. 11

Sec. 5, Customs Administrative Act of 1938, Public Law 721, 75th Cong.
Senate Report No. 1465, 75th Cong., 3d Sess., pp. 2, 7

Sec. 309, Tariff Act of 1930
House Report No. 7, 71st Cong., 1st Sess., p. 161

Sec. 309, Tariff Act of 1922

Sec. IV, par. K, Tariff Act of 1913
4 Cong. Record, pt. 1, p. 191 - Statement of Rep. Payne

Sec. 21, Tariff Act of 1909

Sec. 14, Tariff Act of 1897

Sec. 9, Tariff Act of 1890

Sec. 16, Act of June 26, 1884

Sec. 22, Act of July 14, 1862

SEC. 1311

Sec. 406, Liquor Tax Administration Act of June 26, 1936

Sec. 311, Tariff Act of 1930
Senate Report No. 37, 71st Cong., 1st Sess., p. 61
Hearings by Ways and Means Committee on Tariff Act of 1930, pp. 9972-10091 and 10644-10659

Sec. 311, Tariff Act of 1922

Sec. IV, par. M, Tariff Act of 1913

Sec. 23, Tariff Act of 1909

Sec. 15, Tariff Act of 1897

SEC. 1311 - con.

Sec. 9, Tariff Act of 1894

Sec. 10, Tariff Act of 1890

Revised Statutes 3433

Act of January 9, 1883

Sec. 168, Act of June 30, 1864

SEC. 1312

Sec. 312, Tariff Act of 1930
Hearings by Ways and Means Committee on Tariff Act of 1930, pp. 10081-10083.

Sec. 312, Tariff Act of 1922

Sec. IV, par. N, Tariff Act of 1913

Sec. 24, Tariff Act of 1909

Sec. 29, Tariff Act of 1897

Sec. 21, Tariff Act of 1894

Sec. 24, Tariff Act of 1890

SEC. 1313

Public Law 85-673
Senate Report No. 2165, 85th Cong., 2d Sess.
House Report No. 1380, 85th Cong., 2d Sess.

Sec. 12(a), Customs Simplification Act of 1953 - Public Law 243, 83d Cong.
Senate Report No. 632, 83d Cong., 1st Sess., p. 11
House Report No. 760, 83d Cong., 1st Sess., pp. 5, 13

Public Law 109, 82d Cong.
Senate Report No. 323, 82d Cong., 1st Sess.
House Report No. 27, 82d Cong., 1st Sess.

Sec. 313, Tariff Act of 1930
Senate Report No. 37, 71st Cong., 1st Sess., p. 61
House Report No. 7, 71st Cong., 1st Sess., p. 161
Hearings by Ways and Means Committee on Tariff Act of 1930, pp. 9749, 9972-10091, and 10644-10657

Sec. 313, Tariff Act of 1922

Sec. IV, par. J5 and 6, O, Tariff Act of 1913

Secs. 19, 20, and 25, Tariff Act of 1909

Secs. 12, 13, and 30, and par. 284, Tariff Act of 1897

Secs. 7, 8, and 22, Tariff Act of 1894

Secs. 8, 9, and 25, and pars. 322 and 328, Tariff Act of 1890

Sec. 17, Act of June 26, 1884

Par. 483, Tariff Act of 1883

Sec. 4, Act of March 3, 1883

Revised Statutes 3019, 3020, 3022, 3026

Sec. 3, Act of March 3, 1875

Secs. 5 and 10, Act of February 8, 1875

Secs. 9, 10, and 11, Act of June 6, 1872

Sec. 2, Act of April 5, 1872

Act of July 14, 1870 (p. 274)

Secs. 4 and 5, Act of July 28, 1866

Sec. 7, Act of January 28, 1964

Sec. 4, Act of August 5, 1861

Sec. 30, Act of March 2, 1861

Sec. 5, Act of July 30, 1846

Sec. 1, Act of August 8, 1846

Secs. 1 and 2, Act of March 3, 1845

Secs. 4, 14, and 15, Act of August 30, 1842

Sec. 3, Act of September 11, 1841

Act of July 14, 1832 (Two acts - see sec. 11 in first)

Sec. 1, Act of February 12, 1831

Sec. 1, Act of May 29, 1830

Secs. 2 and 3, Act of May 24, 1828

Sec. 4, Act of May 19, 1828

Sec. 1, Act of March 3, 1825

Secs. 3 and 4, Act of May 22, 1824

Sec. 2, Act of April 18, 1820

Sec. 3, Act of March 3, 1819

Sec. 3, Act of April 3, 1818

Sec. 24, Act of April 20, 1818

Sec. 1, Act of February 6, 1818

Secs. 4 and 5, Act of April 27, 1816

Secs. 4 and 5, Act of March 27, 1804

Secs. 1 and 2, Act of March 3, 1804

Sec. 5, Act of May 13, 1800

Sec. 75, Act of March 2, 1799

Sec. 2, Act of July 8, 1797

Sec. 5, Act of March 3, 1797

SEC. 1313 - con.

Sec. 5, Act of June 7, 1794

Sec. 6, Act of May 2, 1792

Secs. 51-55, Act of March 3, 1791

Secs. 3-5, Act of August 10, 1790

Secs. 3-4, Act of July 4, 1789

SEC. 1317

Sec. 11(b), Customs Simplification Act of 1953 - Public Law 243, 83d Cong.
Senate Report No. 632, 83d Cong., 1st Sess., p. 11
House Report No. 760, 83d Cong., 1st Sess., p. 12

Sec. 5(b), Customs Administrative Act of 1938 - Public Law 721, 75th Cong.
Senate Report No. 1465, 75th Cong., 3d Sess., p. 8

Sec. 317, Tariff Act of 1930 - Public Law 361,
House Report No. 7, 71st Cong., 1st Sess., p. 162

SEC. 1557

Sec. 21(a), Customs Simplification Act of 1953 - Public Law 243, 83d Cong.
Senate Report No. 632, 83d Cong., 1st Sess., p. 16
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Secs. 2, 22, and 23, Customs Administrative Act of 1938 - Public Law 721, 75th Cong.
Senate Report No. 1465, 75th Cong., 3d Sess., p. 10
House Report No. 1429, 75th Cong., 1st Sess., p. 5

Sec. 557, Tariff Act of 1930

Sec. 557, Tariff Act of 1922

Sec. IV, par. S, Tariff Act of 1913

Sec. 19, Tariff Act of 1909

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Sec. 54, Tariff Act of 1890

Sec. 20, Act of June 10, 1890

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Section 33, Act of July 14, 1870

Sec. 21, Act of July 14, 1862

Sec. 5, Act of August 5, 1861

Sec. 4, Act of March 3, 1857

Secs. 1 and 2, Act of August 6, 1846

Sec. 6, Act of July 14, 1832

Secs. 1 and 4, Act of April 20, 1818

SEC. 1562

Secs. 2 and 25, Customs Administrative Act of 1938 - Public Law 721, 75th Cong.
Senate Report No. 1465, 75th Cong., 3d Sess., pp. 5, 11

Sec. 562, Tariff Act of 1930

Sec. 562, Tariff Act of 1922

Act of June 28, 1916

Revised Statutes 2980, 3028

Act of March 24, 1874