

INTRODUCTION AND OVERVIEW

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If government agencies possess certain characteristics like people, as the wise author of the introduction to the first edition of this book suggested, then it is only natural that government agencies evolve. Over the years, U.S. Customs and Border Protection (CBP)² has adapted to the rapidly changing global economy and risks. Some of these changes have occurred slowly through time, while others have occurred quickly. Not surprisingly, then, there have been many changes at CBP since its inception in 1789 and since the first edition of this book in 2009. Despite these changes, CBP has maintained a certain core DNA—characteristics, such as the collection of revenue, that have remained throughout its history. In the end, whether it is adapting to change or maintaining its core mission, CBP's functions reflect the environment within which it works.

Customs has played a significant role in the development of our country. The first major act of Congress in 1789 established the U.S. Customs Service.³ Our fledgling country needed to generate revenue to pay war debts. Prior to 1789, each state collected customs duties, and only remitted what it deemed necessary to the federal treasury. Our founding fathers realized that uniform and consistent revenue collection was required to support the government.

The Tariff Act of 1789 was significant in a number of ways. First, it shifted power from the states to the federal government. Money is power. For years CBP was one of the most powerful federal agencies. Not only was it the first fully formed agency, effectively setting the precedent on how other federal agencies would function, but it remained the largest source of federal revenue until the income tax laws were passed in 1913. To appreciate the significance of Customs' role all you have to do is visit some of the older customs houses at ports around the country (New York, New Orleans, Charleston, and Philadelphia); these large majestic buildings are symbols of customs' importance. Customs officials were some of the most powerful and prominent people in government. Former Customs officials included presidents Ulysses S. Grant and Chester Arthur and authors Herman Melville and Nathaniel Hawthorne.⁴

Second, the Tariff Act of 1789 provided the basic framework for Customs' core functions as an agency, namely how goods are admitted into the commerce of the United States and how duties are collected. The Tariff Act of 1789 provided the four basic elements that define customs functions that still exist today:

(1) admissibility, which determines what goods may be entered into the commerce of the United States; (2) classification, which assigns the rate of the duty owed upon importation according to the product's description; (3) valuation (or quantity), which determines the duties that will be assessed based on a product's value (*ad valorem*) or quantity (i.e., the total amount of duty owed on imported products is determined by multiplying the applicable classification rate by the product's value or quantity); and (4) country of origin of a given product, which may impact admissibility or the amount of duty imposed. The same policies that drove the 1789 Act also exist today, such as refusal to admit a product for commercial or health reasons and imposition of tariffs to protect U.S. industries or promote trade with certain countries.

For many of us, our first exposure to customs and tariffs may have been "anyone, anyone,"⁵ studying the Smoot-Hawley Tariff Act in high school history. Known to current customs practitioners as the Tariff Act of 1930, history has not been kind to this Act. Implemented to cure the economic woes of the Great Depression by increasing duties to protect U.S. industries and raise revenue, it is widely viewed as having had the opposite effect. While the higher tariffs were repealed, the Tariff Act of 1930 confirmed Customs' core missions: (1) to assess and collect customs duties on imported merchandise, (2) to prevent fraud and smuggling, and (3) to control carriers, goods, and people entering and departing the United States. The Tariff Act of 1930 also provided detailed statutory provisions covering a full range of customs processes and trade laws that form the basis for current practice, including laws on entry process, administrative proceedings (e.g., liquidation and protests), origin marking, penalties, and unfair trade laws. The Tariff Act of 1930 highlighted CBP's role as an "enforcement" agency. For example, in the 1930s Customs fought the illicit trade of "rum running" during Prohibition.

The failure of the Tariff Act of 1930 ultimately gave way to reduced tariffs and bilateral trade negotiations. In 1947 the United States became a signatory to the General Agreement on Tariffs and Trade (GATT), which provides the general framework for global tariff reduction and was the predecessor to the World Trade Organization (WTO). The GATT served as the key multilateral agreement involving international trade until the conclusion of the 1994 Uruguay Round negotiations establishing the WTO. The basic tenet of the GATT is that each signatory country will apply specific and bound tariff rates to exports from other signatory countries according to most favored nation rules (i.e., countries cannot provide lower tariff rates for one signatory country than it does to others). Between 1947 and 1994 there were numerous tariff negotiation rounds, which broadened the scope of the GATT in terms of countries participating and concessions provided from 23 countries and \$10 million in tariff concessions during the 1947 Geneva Round to 102 countries and over \$300 billion in tariff concessions in the 1979 Tokyo Round.⁶

The terms of the Tokyo Round GATT Agreement were implemented into U.S. law as part of the Trade Act of 1979. For the customs practitioner, one of the main elements of this legislation was that it changed U.S. Customs valuation law to adopt the GATT valuation code. This was intended to harmonize the

way all signatory countries valued imports. Previously, although countries may have agreed to bind tariff rates for imports, such concessions had little impact if a country could impose whatever value on subject imports it wished. The 1979 Trade Act was also significant because it transferred the authority for the administration of certain U.S. antidumping and countervailing duty determinations from Customs to the Department of Commerce.

The year 1980 was important for customs practitioners because the Customs Court Act established the U.S. Court of International Trade (CIT). Before the CIT, specialized customs courts with unique and limited authority reviewed appeals of customs matters. Customs courts were first established as Article III federal courts in 1956, but did not enjoy the full substantive and procedural benefits of federal courts. The Customs Court Act of 1980 ensured that the customs courts had full federal court powers in law, equity, and procedures under Article III of the Constitution. The Act also defined the scope of CIT jurisdiction to cover customs and many other trade matters. The CIT is based in New York City, which reflects the fact that prior to 1980, New York, as the largest port and financial capital, was the epicenter of trade and customs practices. Appeals from the CIT are heard by the Court of Appeals for the Federal Circuit in Washington, D.C.

The next significant piece of legislation and change for the customs practitioner was the implementation of the Harmonized Tariff Schedule of the United States (HTS) in 1989.⁷ The HTS implements into U.S. law the International Convention on the Harmonized Commodity Description and Coding System (HS). The HS is a product nomenclature comprised of 5,000 commodity groups identified by six-digit numerical codes developed by the World Customs Organization (WCO) and used by over 200 countries. The HS is arranged in a legal and logical structure, with rules of interpretation. All of the terms of the HS are considered legal text as implemented by the HTS. The goal of the HS, which is often not realized, is to harmonize how countries “classify” imported products, although each country assigns unique tariff rates based on HS classification and its commitments under the WTO. The WCO is the international bureaucracy, composed of representatives from each signatory country or customs union, that oversees changes to the HS, issues opinions and guidance on how the terms should be interpreted, and resolves disputes in interpretation between countries. Prior to implementation of the HTS, the United States classified imported goods and assigned tariff rates using its own unique tariff schedules (Tariff Schedules of the United States).⁸ HS countries account for over 98 percent of the world’s trade in goods, and the HS has been a great tool in simplifying and facilitating world trade. For example, many rules of origin, trade preference agreements, and programs are based on HS classification.

In 1993, Congress passed the Customs Modernization Act (Mod Act), which represented a fundamental shift in how Customs appraises and enforces its laws. The purpose of the Mod Act was to create a new era of shared responsibility and “informed compliance.” Given the increase in global trade and volume of imports into the United States, Customs does not have the ability to inspect and appraise every shipment of goods upon entry or arrival. To increase compliance, Customs imposed greater obligations on importers. In return, Customs provided