

118TH CONGRESS  
2D SESSION

# S. 5329

To amend section 321 of the Tariff Act of 1930 to enhance transparency with respect to shipments seeking an administrative exemption from duties for low-value entries, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 14, 2024

Mr. WYDEN (for himself, Ms. LUMMIS, Mr. BROWN, Ms. COLLINS, and Mr. CASEY) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend section 321 of the Tariff Act of 1930 to enhance transparency with respect to shipments seeking an administrative exemption from duties for low-value entries, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fighting Illicit Goods,  
5 Helping Trustworthy Importers, and Netting Gains for  
6 America Act of 2024” or the “FIGHTING for America  
7 Act of 2024”.

1 **SEC. 2. SENSE OF CONGRESS.**

2 It is the sense of Congress that—

3 (1) driven by the COVID–19 pandemic and  
4 other global factors, the volume of low-value imports  
5 into the United States that are eligible for an ad-  
6 ministrative exemption from duties under section  
7 321 of the Tariff Act of 1930 (19 U.S.C. 1321),  
8 known as the “de minimis” exemption, has acceler-  
9 ated in recent years;

10 (2) as the patterns of trade change, it is nec-  
11 essary to periodically review customs procedures to  
12 ensure that those procedures are sufficient to protect  
13 the revenue of the United States, provide for the  
14 interdiction of illicit goods, and otherwise facilitate  
15 legitimate trade and the appropriate use of customs  
16 resources;

17 (3) since the amendment to section 321 of the  
18 Tariff Act of 1930 made by section 901 of the  
19 Trade Facilitation and Trade Enforcement Act of  
20 2015 (Public Law 114–125; 130 Stat. 223), growth  
21 in the direct-to-consumer model of business has ac-  
22 celerated attempts to ship illicit drugs and other un-  
23 authorized products through low-value shipments  
24 and tariff-based remedies seeking to ensure a level  
25 playing field for United States workers have in-  
26 creased; and

1           (4) as such, the conditions of trade require  
2           Congress to reevaluate the purpose and intent of the  
3           powers delegated to the Secretary of the Treasury  
4           under section 321 of the Tariff Act of 1930, as so  
5           amended, to both protect the revenue of the United  
6           States and properly scrutinize shipments subject to  
7           an administrative exemption established under that  
8           section.

9   **SEC. 3. DESIGNATION OF PRIORITY TRADE ISSUE.**

10          Section 117(a) of the Trade Facilitation and Trade  
11          Enforcement Act of 2015 (19 U.S.C. 4322(a)) is amended  
12          by adding at the end the following:

13                 “(8) The smuggling of fentanyl, other illicit  
14                 drugs, and related material by abusing entry proce-  
15                 dures for merchandise qualifying for an administra-  
16                 tive exemption pursuant to section 321 of the Tariff  
17                 Act of 1930 (19 U.S.C. 1321).”.

18   **SEC. 4. ENHANCED TRANSPARENCY FOR SHIPMENTS.**

19          Section 321 of the Tariff Act of 1930 (19 U.S.C.  
20          1321) is amended by adding at the end the following:

21                 “(c) DOCUMENTATION AND INFORMATION SUP-  
22                 PORTING ELIGIBILITY FOR EXEMPTION.—

23                         “(1) IN GENERAL.—Not later than 180 days  
24                         after the date of the enactment of this subsection,  
25                         the Secretary of the Treasury, in consultation with

1 the Postmaster General, shall prescribe regulations  
2 to require the provision to U.S. Customs and Border  
3 Protection, separate from any entry filing, of such  
4 documentation or information with respect to an ar-  
5 ticle that may qualify for an administrative exemp-  
6 tion under subsection (a)(2)(C) as the Secretary de-  
7 termines is reasonably necessary for U.S. Customs  
8 and Border Protection to determine the admissibility  
9 of the article and the eligibility of the article for the  
10 exemption when in a postal or other shipment.

11 “(2) INCLUDED DOCUMENTATION OR INFORMA-  
12 TION.—Pursuant to paragraph (1), the Secretary  
13 may require, with respect to an article that may  
14 qualify for an administrative exemption under sub-  
15 section (a)(2)(C), documentation or information re-  
16 garding—

17 “(A) the offer for sale or purchase, or the  
18 subsequent sale, purchase, transportation, im-  
19 portation, or warehousing of, the article, includ-  
20 ing documentation or information related to the  
21 offering of the article for sale or purchase with-  
22 in the United States through a commercial or  
23 marketing platform, including an electronic  
24 commerce platform or marketplace, if applica-  
25 ble;

1           “(B) the identity of the seller, the shipper,  
2           the carrier, the final delivery party, or the pur-  
3           chaser of the article, as applicable;

4           “(C) the fair retail value in the country of  
5           shipment; and

6           “(D) other information determined to be  
7           necessary to protect the revenue and prevent  
8           unlawful importations.

9           “(3) IDENTIFICATION OF HARMONIZED TARIFF  
10          SCHEDULE CLASSIFICATION.—Notwithstanding any  
11          other provision of law, the Secretary, in consultation  
12          with the Postmaster General, shall require, with re-  
13          spect to an article claimed as qualifying for an ad-  
14          ministrative exemption under subsection (a)(2)(C),  
15          the submission of the following information as part  
16          of the entry filing:

17                 “(A) The identification of the 10-digit sta-  
18                 tistical reporting number of the Harmonized  
19                 Tariff Schedule of the United States under  
20                 which the article is classifiable.

21                 “(B) A description of the article with suffi-  
22                 cient specificity to allow U.S. Customs and Bor-  
23                 der Protection to evaluate the correctness of the  
24                 statistical reporting number for the article iden-  
25                 tified under subparagraph (A).

1           “(C) The country of origin of the article.

2           “(4) PARTIES PROVIDING DOCUMENTATION  
3           AND INFORMATION.—The documentation or infor-  
4           mation required pursuant to paragraph (1) with re-  
5           spect to an article that may qualify for an adminis-  
6           trative exemption under subsection (a)(2)(C) may be  
7           provided by a party or parties other than one of the  
8           parties qualifying to make entry, as specified by the  
9           Secretary by regulations prescribed under section  
10          498.

11          “(5) VERACITY OF DOCUMENTATION AND IN-  
12          FORMATION.—A person providing documentation or  
13          information to U.S. Customs and Border Protection  
14          pursuant to paragraph (1) shall ensure that the doc-  
15          umentation or information is true and correct to the  
16          best of the person’s knowledge and belief, subject to  
17          any penalties authorized by law.

18          “(6) USE OF INFORMATION.—U.S. Customs  
19          and Border Protection may use documentation or in-  
20          formation provided pursuant to paragraph (1) for  
21          any lawful purpose necessary to fulfill the mission of  
22          U.S. Customs and Border Protection.

23          “(7) PENALTIES.—

24                 “(A) VIOLATION OF REGULATIONS.—

1           “(i) CIVIL PENALTY.—Any person  
2 that violates the regulations prescribed  
3 under this subsection is liable for a civil  
4 penalty in an amount not to exceed—

5                   “(I) \$1,000 for the first viola-  
6 tion; and

7                   “(II) \$5,000 for each subsequent  
8 violation.

9           “(ii) ADDITIONAL PENALTIES.—A  
10 penalty imposed under this subparagraph  
11 shall be in addition to any other penalty  
12 provided by law.

13           “(iii) REMISSION; MITIGATION.—

14                   “(I) IN GENERAL.—Except as  
15 provided by subclause (II), a penalty  
16 imposed under this subparagraph may  
17 be remitted or mitigated on a per  
18 package or shipment basis, as appro-  
19 priate, under section 618.

20                   “(II) EXCEPTION.—If a penalty  
21 is being considered with respect to a  
22 fourth or subsequent violation de-  
23 scribed in clause (i) by the same per-  
24 son, the maximum penalty under

1 clause (i)(II) shall be imposed with re-  
2 spect to the violation.

3 “(B) ADDITIONAL VIOLATIONS.—

4 “(i) IN GENERAL.—A person commits  
5 fraud if the person provides a false state-  
6 ment to U.S. Customs and Border Protec-  
7 tion with respect to an article and U.S.  
8 Customs and Border Protection—

9 “(I) permits the entry of that ar-  
10 ticle at less than the proper rate of  
11 duty; or

12 “(II) improperly treats that arti-  
13 cle as qualifying for an administrative  
14 exemption under subsection (a)(2)(C).

15 “(ii) CIVIL PENALTY.—A person that  
16 engages in conduct described in clause (i)  
17 is liable for a civil penalty in an amount  
18 not to exceed—

19 “(I) \$5,000 for the first instance  
20 of such conduct; and

21 “(II) \$10,000 for each subse-  
22 quent instance of such conduct.

23 “(iii) ADDITIONAL PENALTIES.—A  
24 penalty imposed under this subparagraph  
25 shall be in addition to any other penalty



1 provided by section 592 or any other provi-  
2 sion of law.

3 “(iv) REMISSION; MITIGATION.—

4 “(I) IN GENERAL.—Except as  
5 provided by subclause (II), a penalty  
6 imposed under this subparagraph may  
7 be remitted or mitigated on a per  
8 package or shipment basis, as appro-  
9 priate, under section 618.

10 “(II) EXCEPTION.—If a penalty  
11 is being considered with respect to a  
12 fourth or subsequent violation de-  
13 scribed in clause (i) by the same per-  
14 son, the maximum penalty under  
15 clause (ii)(II) shall be imposed with  
16 respect to the violation.

17 “(8) DEFINITION.—In this subsection, the  
18 terms ‘provide’, ‘providing’, and ‘provision’, with re-  
19 spect to documentation or information provided to  
20 U.S. Customs and Border Protection, include the  
21 submission, transmission, or otherwise making avail-  
22 able of the documentation or information to U.S.  
23 Customs and Border Protection.”.

1 **SEC. 5. LIMITATIONS ON EXEMPTION FROM DUTIES.**

2 Section 321 of the Tariff Act of 1930 (19 U.S.C.  
3 1321) is amended by striking “(b) The Secretary of the  
4 Treasury” and inserting the following:

5 “(b) EXCEPTIONS.—

6 “(1) IN GENERAL.—The Secretary of the  
7 Treasury may not exempt from duties and taxes  
8 under subsection (a)(2)(C)—

9 “(A) any article that is—

10 “(i) subject to an antidumping or  
11 countervailing duty determination, instruc-  
12 tion, or order under title VII of this Act;

13 “(ii) subject to a tariff-rate quota or  
14 other quota;

15 “(iii) subject to a tax imposed under  
16 the Internal Revenue Code of 1986 that is  
17 collected by U.S. Customs and Border Pro-  
18 tection;

19 “(iv) subject to an action taken  
20 under—

21 “(I) section 201(a) or 301(c) of  
22 the Trade Act of 1974 (19 U.S.C.  
23 2251(a) and 2411(c)); or

24 “(II) section 232(c) of the Trade  
25 Expansion Act of 1962 (19 U.S.C.  
26 1862(c)); or

1           “(v) as of January 1, 2025, not des-  
2           ignated by the President under section 503  
3           of the Trade Act of 1974 (19 U.S.C. 2463)  
4           as an eligible article for purposes of the  
5           Generalized System of Preferences under  
6           title V of that Act (19 U.S.C. 2461 et  
7           seq.), as reflected in the Harmonized Tar-  
8           iff Schedule of the United States, without  
9           regard to whether the Generalized System  
10          of Preferences otherwise applies to the ar-  
11          ticle, including for reasons of country of  
12          origin of the article or expiration of the  
13          Generalized System of Preferences; or

14          “(B) any article of a type or class that the  
15          Secretary determines is not able to be exempted  
16          from duties and taxes under subsection (a) in  
17          a manner that will protect the revenue and pre-  
18          vent unlawful importations because the type or  
19          class is subject to—

20                  “(i) a significant increase in imports  
21                  over the trend for a recent representative  
22                  base period; or

23                  “(ii) persistent and significant evi-  
24                  dence of hiding the shipment of illicit

1 goods, fraud, counterfeiting, or other mal-  
2 feasance.

3 “(2) LIST OF ARTICLES DETERMINED UNABLE  
4 TO BE EXEMPTED.—The Secretary shall identify any  
5 article of a type or class that the Secretary deter-  
6 mines under paragraph (1)(B) is not able to be ex-  
7 empted from duties and taxes under subsection (a)  
8 on a list maintained on a publicly accessible website  
9 and reviewed not less frequently than annually by  
10 the Secretary.

11 “(3) OTHER EXCEPTIONS.—The Secretary”.

12 **SEC. 6. DISPOSITION OF DETAINED MERCHANDISE.**

13 Section 499 of the Tariff Act of 1930 (19 U.S.C.  
14 1499) is amended—

15 (1) in subsection (c)—

16 (A) in paragraph (2)—

17 (i) by redesignating subparagraphs  
18 (A) through (E) as clauses (i) through (v),  
19 respectively, and by moving such clauses,  
20 as so redesignated, 2 ems to the right;

21 (ii) by striking “The Customs Service  
22 shall” and inserting the following:

23 “(A) IN GENERAL.—U.S. Customs and  
24 Border Protection shall”; and

1 (iii) by adding at the end the fol-  
2 lowing:

3 “(B) MERCHANDISE FOR WHICH ENTRY  
4 SOUGHT UNDER ADMINISTRATIVE EXEMPTION  
5 FROM DUTIES.—In the case of detained mer-  
6 chandise for which entry under an administra-  
7 tive exemption under section 321(a)(2)(C) is  
8 claimed—

9 “(i) U.S. Customs and Border Protec-  
10 tion shall provide the notice required by  
11 subparagraph (A) to each party that ap-  
12 pears to have an interest in the merchan-  
13 dise, based on information reasonably  
14 available to U.S. Customs and Border Pro-  
15 tection, in such form and manner as the  
16 Secretary shall by regulation prescribe;

17 “(ii) in addition to the matter re-  
18 quired by clauses (i) through (v) of sub-  
19 paragraph (A), the notice shall advise the  
20 interested party that, instead of providing  
21 information in response to subparagraph  
22 (A)(v), the interested party may volun-  
23 tarily abandon the merchandise; and

24 “(iii) if U.S. Customs and Border  
25 Protection does not receive a response

1 from an interested party by the date that  
2 is 15 days after the date of the notice—

3 “(I) the merchandise shall be  
4 deemed abandoned; and

5 “(II) title to the merchandise  
6 shall be vested in the United States  
7 and disposed of in accordance with  
8 law.”; and

9 (B) in paragraph (5), by adding at the end  
10 the following:

11 “(D) Subparagraphs (A), (B), and (C) do  
12 not apply with respect to merchandise for which  
13 entry under an administrative exemption under  
14 section 321(a)(2)(C) is claimed.”;

15 (2) by striking “The Customs Service” each  
16 place it appears and inserting “U.S. Customs and  
17 Border Protection”; and

18 (3) by striking “the Customs Service” each  
19 place it appears and inserting “U.S. Customs and  
20 Border Protection”.

21 **SEC. 7. REPORT ON REVIEW OF MERCHANDISE BY PART-**  
22 **NER GOVERNMENT AGENCIES.**

23 Not later than 270 days after the date of the enact-  
24 ment of this Act, the Secretary of the Treasury shall sub-  
25 mit to Congress a report on the engagement of partner

1 government agencies of U.S. Customs and Border Protec-  
 2 tion in the review and detention of merchandise for which  
 3 an administrative exemption under section 321 of the Tar-  
 4 iff Act of 1930 (19 U.S.C. 1321) is claimed that includes  
 5 recommendations for improving such engagement and the  
 6 interdiction of merchandise inconsistent with the require-  
 7 ments of such agencies.

8 **SEC. 8. SUMMARY FORFEITURE OF CERTAIN MERCHAN-**  
 9 **DISE IMPORTED CONTRARY TO LAW.**

10 Section 596 of the Tariff Act of 1930 (19 U.S.C.  
 11 1595a) is amended by adding at the end the following:

12 “(e) SUMMARY FORFEITURE.—

13 “(1) IN GENERAL.—Merchandise described in  
 14 paragraph (2) may be summarily forfeited to the  
 15 United States and title shall vest immediately in the  
 16 United States.

17 “(2) MERCHANDISE DESCRIBED.—Merchandise  
 18 described in this paragraph is merchandise being im-  
 19 ported or attempted to be imported—

20 “(A) for which an administrative exemp-  
 21 tion under section 321(a)(2)(C) is claimed; and

22 “(B) that is described in paragraph (1),  
 23 (2), or (3) of section 596(e).

24 “(3) NOTICE.—In any case in which merchan-  
 25 dise is summarily forfeited pursuant to this sub-

1 section, U.S. Customs and Border Protection shall  
2 notify the carrier of the merchandise, and may no-  
3 tify a customs broker involved in the importation or  
4 attempted importation of the merchandise, in such  
5 form and manner as the Secretary shall prescribe by  
6 regulation, which may include communication  
7 through an authorized electronic data interchange  
8 system.”.

9 **SEC. 9. MODIFICATION OF PENALTY FOR AIDING UNLAW-**  
10 **FUL IMPORTATION.**

11 Section 596(b) of the Tariff Act of 1930 (19 U.S.C.  
12 1595a(b)) is amended by striking “the preceding sub-  
13 section” and all that follows and inserting the following:  
14 “subsection (a) shall be liable, without regard to whether  
15 the article or articles introduced or attempted to be intro-  
16 duced were seized, for a penalty equal to the greater of—  
17 “(1) the domestic value of the article or arti-  
18 cles; or  
19 “(2) \$5,000.”.

20 **SEC. 10. SHARING OF INFORMATION WITH RESPECT TO**  
21 **SUSPECTED VIOLATIONS OF INTELLECTUAL**  
22 **PROPERTY RIGHTS.**

23 Section 628A(a) of the Tariff Act of 1930 (19 U.S.C.  
24 1628a(a)) is amended—

25 (1) in the matter preceding paragraph (1)—



1 (A) by striking “suspects” and inserting  
2 “has a reasonable suspicion”; and

3 (B) by striking “testing—” and inserting  
4 “testing, may—”;

5 (2) in paragraph (1)—

6 (A) by striking “shall”; and

7 (B) by striking “; and” and inserting a  
8 semicolon;

9 (3) in paragraph (2)—

10 (A) by striking “may,”; and

11 (B) by striking the period at the end and  
12 inserting “; and”; and

13 (4) by adding at the end the following:

14 “(3) provide to the person nonpublic informa-  
15 tion about the merchandise that was—

16 “(A) generated by an online marketplace  
17 or other similar market platform, an express  
18 consignment operator, a freight forwarder, or  
19 any other entity that plays a role in the sale or  
20 importation of merchandise into the United  
21 States or the facilitation of such sale or impor-  
22 tation, including copies or images of packaging,  
23 materials, labeling, or containers; and

24 “(B) provided to, shared with, or obtained  
25 by, U.S. Customs and Border Protection.”.

1 **SEC. 11. CUSTOMS USER FEE FOR PROCESSING SHIP-**  
2 **MENTS.**

3 (a) IN GENERAL.—Section 13031(a)(10) of the Con-  
4 solidated Omnibus Budget Reconciliation Act of 1985 (19  
5 U.S.C. 58c(a)(10)) is amended—

6 (1) in subparagraph (C)—

7 (A) in clause (ii), by striking “; or” and in-  
8 serting a semicolon;

9 (B) in clause (iii), by striking the period at  
10 the end and inserting “; or”; and

11 (C) by inserting after clause (iii) the fol-  
12 lowing:

13 “(iv) \$2 for each shipment, to be paid  
14 by the party making entry, if the entry or  
15 release of that shipment, whether auto-  
16 mated or manual, is made under section  
17 321(a)(2)(C) of the Tariff Act of 1930 (19  
18 U.S.C. 1321(a)(2)(C)).”; and

19 (2) in the flush text at the end, by adding at  
20 the end the following: “In the case of shipments the  
21 entry or release of which is made under section  
22 321(a)(2)(C) of the Tariff Act of 1930 (19 U.S.C.  
23 1321(a)(2)(C)) that are sent to the United States  
24 through the international postal network, the Sec-  
25 retary, in consultation with the Postmaster General,  
26 shall determine whether it is appropriate to impose

1 fees that are the same or similar as the fees applica-  
2 ble to shipments under subparagraph (C)(iv) on  
3 shipments by the United States Postal Service. If  
4 the Secretary determines that such requirements are  
5 appropriate, such requirements shall be prescribed  
6 by regulation.”.

7 (b) PAYMENT.—Section 13031(b)(8)(D)(i) of the  
8 Consolidated Omnibus Budget Reconciliation Act of 1985  
9 (19 U.S.C. 58c(b)(8)(D)(i)) is amended by inserting after  
10 “merchandise” the following: “, except in the case of fees  
11 charged under subsection (a)(10)(C)(iv), in which case  
12 such fees shall be paid by the party making entry”.

13 **SEC. 12. REPORT ON USE OF ADMINISTRATIVE EXEMP-**  
14 **TIONS AND ENFORCEMENT ACTIONS.**

15 (a) IN GENERAL.—Not later than one year after the  
16 date of the enactment of this Act, and annually thereafter,  
17 the Secretary of the Treasury, in consultation with the  
18 Commissioner of U.S. Customs and Border Protection,  
19 shall submit to the Committee on Finance of the Senate  
20 and the Committee on Ways and Means of the House of  
21 Representatives a report, followed by a briefing, on the  
22 use of administrative exemptions under section 321 of the  
23 Tariff Act of 1930 (19 U.S.C. 1321).

1 (b) ELEMENTS.—Each report required by subsection  
2 (a) shall include, for the year preceding submission of the  
3 report, the following:

4 (1) An assessment of the volume of imports  
5 claiming an administrative exemption under section  
6 321(a)(2)(C) of the Tariff Act of 1930 (19 U.S.C.  
7 1321(a)(2)(C)), including—

8 (A) the total number of shipments of im-  
9 ports claiming such an exemption; and

10 (B) the volume of merchandise claiming  
11 such an exemption, identified by—

12 (i) the 4-digit heading of the Har-  
13 monized Tariff Schedule of the United  
14 States under which the merchandise was  
15 classified; and

16 (ii) the country of origin of the mer-  
17 chandise.

18 (2) An assessment of the total revenue forgone  
19 by the United States Government as a result of per-  
20 mitting the entry of merchandise free of duty pursu-  
21 ant to that section.

22 (3) The number and a description of the type  
23 of violations of the regulations prescribed under sub-  
24 section (c) of section 321 of the Tariff Act of 1930,  
25 as added by section 4, identified in shipments claim-

1 ing an administrative exemption under that section,  
2 and penalties applied to such shipments, including a  
3 description of the type and frequency of mitigation  
4 actions applicable to such shipments.

5 (4) A detailed description of shipments,  
6 disaggregated by port of entry, for which an admin-  
7 istrative exemption under section 321(a)(2)(C) of  
8 the Tariff Act of 1930 (19 U.S.C. 1321(a)(2)(C))  
9 was claimed that were subject to detention or for-  
10 feiture and the reasons for the detention or for-  
11 feiture.

12 (5) A description of any merchandise or ship-  
13 ments under evaluation as ineligible, under sub-  
14 section (b)(1)(B) of section 321 of the Tariff Act of  
15 1930, as amended by section 5, for such an adminis-  
16 trative exemption.

17 (6) The average number of referrals of criminal  
18 matters to the Department of Justice or Homeland  
19 Security Investigations made on a monthly basis for  
20 merchandise for which such an administrative ex-  
21 emption was claimed.

22 (7) A description of the use of administrative  
23 exemptions under section 321 of the Tariff Act of  
24 1930 (19 U.S.C. 1321) for merchandise shipped  
25 from Mexico or Canada to the United States, includ-

1       ing the volume and type of such merchandise for  
2       which such an exemption was claimed, and any  
3       trends in the use of such exemptions.

4               (8) A description of current staffing, risk miti-  
5       gation, and other actions to ensure that administra-  
6       tive exemptions under section 321 of the Tariff Act  
7       of 1930 (19 U.S.C. 1321) are used in compliance  
8       with United States law.

9       **SEC. 13. EFFECTIVE DATE; APPLICABILITY.**

10       The amendments made by this Act shall—

11               (1) take effect on the date that is 60 days after  
12       the date of the enactment of this Act; and

13               (2) apply with respect to articles entered on or  
14       after the date that is 30 days after the effective date  
15       of the regulations prescribed under subsection (c) of  
16       section 321 of the Tariff Act of 1930, as added by  
17       section 4.

○