

THE MUSEUM OF MODERN ART

11 WEST 53 STREET, NEW YORK 19, N. Y.

TELEPHONE: CIRCLE 5-8900

STATEMENT ON NEED FOR BILL TO LIBERALIZE THE TARIFF LAWS FOR WORKS OF ART AND OTHER EXHIBITION MATERIAL, AND FOR OTHER PURPOSES

1720 Paragraph 1720 provides for the free entry of models. At present the words "to be used exclusively as models and incapable of any other use" prevent the free entry of architectural and other models for use in exhibitions.

The phrase "except as they may be used in educational and cultural exhibitions" is added so that museums may import architectural and other models free of duty for study and exhibition at schools of architecture and other organizations such as the Architectural League, New York. (Museums may now import such models under paragraph 1809 (q.v.), but many potential exhibitors may not, and models so imported may not be transferred to commercial galleries. The use of material entered under permanent exhibition bond (paragraph 1809) will be facilitated if proposals listed below are adopted. Organizations such as the Architectural League will, however, be required to pay duty unless paragraph 1720 is amended.)

1807 1. General Remarks:

The obvious intent of this paragraph is to allow free entry to all bona fide original works of art. This is a great advantage to American art museums and dealers as well as private collectors, who are potential donors to the museums.

However, the wording of the paragraph, which has not been revised since 1930, has permitted the development of regulations which make certain works dutiable under paragraph 1547 as "works of art not especially provided for" or even (frequently!) under paragraphs which were not intended to cover original works of art and which work considerable hardship when applied to very valuable objects. Two paragraphs often used in this way are 1023 (20 per cent ad valorem) and 1413 (17 1/2 per cent ad valorem) for "manufactures not especially provided for" of hemp and paper respectively. When these paragraphs are used, the duty is invariably based upon the value as works of art which is often in excess of \$10,000. (when as "manufactures of hemp and paper" this value might be 15 cents) These regulations vastly increase paper work for importers and the Customs Service. They cause needless delay and have sometimes forced importers to take court action against the government. Above all, they frustrate the intent of Congress.

2. Materials:

Paragraph 1807 includes a list of traditional artists' materials, which was apparently meant to include all those used in bona fide works of art. But artists are constantly using new materials, many of which are not manufactured as "art supplies"; and works incorporating such materials are excluded by implication.

For example, more and more artists in this country and abroad are making "collages," that is pictures or abstract compositions made of paper, cloth, small objects (manufactured or not), etc. pasted, glued, sewn, pinned, or nailed together and often combined with drawing or painting in traditional mediums. Collage as a fine arts medium was invented by Picasso and Braque about 1912. The best collages of these artists are now valued as high as \$20,000. Collages by Picasso, Gris, Braque, Matisse, Schwitters, Burri, and other important Twentieth Century artists are in the collections of most of the great art museums of the United States, including

- a) The Metropolitan Museum of Art, New York
- b) The Art Institute of Chicago
- c) The Philadelphia Museum of Art
- d) The Baltimore Museum of Art
- e) The Museum of Modern Art, New York
- f) The San Francisco Museum of Art
- g) The Columbus Gallery of Fine Arts
- h) Yale University Art Gallery

Several are illustrated in *Masters of Modern Art* edited by Alfred H. Barr, Jr., Museum of Modern Art, New York, 1954.

more. . . .

1807 2. Materials (cont.)
cont.)

Neither the esthetic nor the commercial value of modern works of art depends in any way on the materials of which they are made. This is generally recognized by artists, dealers, scholars, collectors, and museum officials. Paragraph 1807 is therefore modified to include some of the materials typical of collages and the words "in any other media" added to allow free entry to these and works in any new mediums that may come into use by professional artists.

3. Printing Processes:

In the same way original prints in limited editions printed by hand can be made in other ways than those listed in the paragraph, especially by lithography, and the purpose of the paragraph is defeated by the implied limitation to specified techniques. The paragraph has therefore been changed to include prints made by other hand-transfer processes.

4. Editions of Sculpture:

Three-dimensional works of art other than unique models and constructions are customarily cast from molds or reproduced by other quasi-mechanical means in strictly limited editions of usually no more than ten replicas. Each unit is finished by hand, and the first is not more valuable or original than the last. In exceptional cases an edition is completed by associates after the death or incapacity of the sculptor. In addition to the edition one sculptor's model made by hand in less permanent material is often preserved. This too is considered an original work of art.

Such editions are a normal feature of professional production in sculpture and do not constitute mass-produced commercial reproductions. The practice is traditional and not a recent innovation. It is recognized in the present wording of the paragraph; but the limitation to three replicas, the Customs Regulation that they must be the first three made, and failure to mention the sculptor's model raise obstacles to the importation of certain works identical with those admitted free.

In view of the large number of American museums and private collectors interested in casts of the same work, the wording is changed to admit the sculptor's model and not more than ten replicas.

5. Abstract Sculpture:

The present language of the paragraph would seem to allow free entry to all bona fide sculpture without regard to its form or title. However, a treasury ruling of 1916 (T.D. 36309) requires sculpture to consist of "imitations of natural objects, chiefly the human form. . . in their true proportion of length, breadth, and thickness. . . ." As a result of the famous Brancusi Bird in Space decision of 1928 (T.D. 43063) sculpture, though still required to represent a natural form, need no longer render it in its exact proportions. Although in his decision in the Brancusi case Judge Waite recognized that "There has been developing a so-called new school of art, whose exponents attempt to portray abstract ideas rather than to imitate natural objects," Customs officials are still required to follow the 1916 ruling and deny free entry to all frankly abstract sculpture, which makes no claim to derivation from any natural form. (At the same time paintings and drawings are admitted whether abstract or not if made from traditional materials.) Thus it happens at times that free entry for sculpture hinges entirely upon its title. Recently a piece of sculpture - not purely abstract - with the French title "Masque" was first denied free entry on the grounds that a mask is not a "natural" object, but was later admitted when it was shown that "Masque" may also be translated "masker" or "masquerader" and that this was the correct rendering in the particular case in hand.

Abstract sculpture is being produced here and abroad by many artists who have forsaken the idea of duplicating or distorting the human or animal form. Their works are included in many museum and private collections and are commonly illustrated in publications on the art of our time.

Since the 1916 ruling bars a large and increasing proportion of all the sculpture being made from duty free entry, we have inserted the words "made in any form".

309(c) 1. Transfer without Permission:

Since all institutions privileged to use this paragraph must first establish their non-commercial character, there is no risk that objects freely transferred from one to another might be put to illegitimate use. Thus the permission required for each move imposes a useless burden on the institutions and the government.

2. Transfer with Permission:

Benefit and other non-profit exhibitions must often be held on the premises of commercial organizations. It would be useful if material entered under exhibition bond might be shown in such exhibitions with permission.

The changes in this paragraph have therefore been made to simplify the work of the Customs Service as well as that of institutions privileged to use the paragraph and to increase the availability of such material for educational and cultural use.

1811(a) Because of the specific date used in paragraph 1811 as a criterion for free entry it applies every year to older material. An importer must now establish an age of 128 years instead of the 100 which was the original intent of Congress. This paragraph is constantly of use to American museums and collectors, but its usefulness diminishes with the passage of time.

1811(c) Objects representing the material culture of primitive peoples may be considered antique at an earlier age than is customary for other artistic antiquities. Some reasons for this are:

1. Within the past 50 years many of the cultures represented by such objects have disappeared, diminished, or changed radically.
2. In the absence of records it is often impossible to be certain of the age of such material.
3. The very preservation of such material frequently depends upon its possession by a museum, especially when it is no longer valued by its makers.
4. In many culture areas objects more than 50 years old are almost non-existent because of the perishable materials used and the corrosive effect of climate and vermin in the local environment.

These objects are seldom if ever capable of any use other than study and display, and they do not compete with any American products. An age of 50 years is more than enough to bar all modern commercial products and imitations made for the tourist trade.

1812 It would be a great convenience to American museums if the many modern tapestries not made at the Gobelin factory could be imported as duty free works of art. At present many tapestries designed by Picasso, Lurçat, Maillol, Miro and Léger, and other modern artists are denied free entry because they are not Gobelin tapestries. In this bill the paragraph is amended to allow free entry for other hand woven tapestries made for use as wall hangings.