

STATEMENT IN SUPPORT OF H.R. 2411 AS AMENDED TO LIBERALIZE THE TARIFF LAWS  
FOR WORKS OF ART AND OTHER EXHIBITION MATERIAL, AND FOR OTHER PURPOSES

INTRODUCTION

For many years museums, dealers, and private collectors have been distressed by certain inconsistencies in the tariff laws for works of art. The present language has lead to such confusion that free entry for sculpture depends almost entirely upon its subject matter as shown by the title, but it can be made of almost anything: painting may represent anything or nothing, but must be made of certain materials: signed etchings come in free; but lithographs, signed or otherwise, do not: and modern tapestries are free only if they were woven in a certain French factory.

These difficulties do not appear to reflect any intent of Congress. They arise at the administrative level when the inadequate wording of the present text is given the narrowest possible interpretation.

The present series of amendments are the result of some ten years' work by a Committee on Customs of the American Association of Museums. They are an attempt, by means of the most careful possible rewording of tariff paragraphs 1720, 1807, 1809, 1811, and 1812, to make the law clear enough to eliminate all obstacles to the free importation of original works of art and flexible enough to cope with inevitable innovations in style and material. If this is accomplished, administrative practice will be greatly simplified and will conform for the first time with the simple intention of Congress to admit works of art free of duty.

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.

It is proposed that the paragraph read "to be used exclusively as models and as exhibits in exhibitions at any college, academy, school, or seminary of learning, and society established for the encouragement of the arts, science, or education, or any association of such organizations, and incapable of any other use.

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The following comments on these revisions will treat the tariff paragraphs affected in numerical order.

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This would permit museums, schools, and societies such as the Architectural League to import such models free of duty for exhibition. (Museums may now enter them under Permanent Exhibition Bond, but this method entails useless restrictions and formalities, and many potential exhibitors may not use it.)

### 1807

Paragraph 1807 contains all the principle provisions for importing works of the "free fine arts". Its obvious intent is to provide free entry for all bona fide original works of fine art, as opposed to useful designs, patterns, replicas, copies, etc., all of which are dutiable under paragraph 1547. This privilege is a tremendous help not only to American art museums, but to dealers and private collectors. Public collections benefit twice, through their own imports and through the growth of American private collections from which they receive loans, donations, and bequests.

However, the language of the paragraph, which has not been revised since 1930, has encouraged the growth of regulations through which part of the benefits have been lost. Many works of fine art, recognized as such by everyone, including the Customs Examiners, must be denied free entry because no specific provision for them can be found in the language of the paragraph. Such works must then be entered 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 1423 (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 a work 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.

### 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

3.

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 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 Art
- 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.

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.

#### 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.



### 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 more 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.

### 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 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, the words "made in any form" have been inserted in this bill.

#### 1809(c)

Paragraph 1809 grants museums and educational institutions the privilege of entering otherwise dutiable exhibition material under bond. Things entered in this way must be kept on the ~~premises~~ <sup>PREMISES</sup> of the importing institution and produced for periodic inspection by Customs officials. They may be transferred to other eligible institutions with the permission of the collector of Customs, but under no circumstances to a commercial gallery.

#### 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.

#### 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)

Paragraph 1811 provides for the free entry of antique articles. Because of the specific date (prior to 1830) used in paragraph 1811 as a criterion for free entry the paragraph applies every year to older material. When the Tariff Act of 1930 was passed the importer was required to establish an age of 100 years for goods imported under this paragraph. Now he must prove they are 129 years old. This paragraph is constantly of use to American museums and collectors, but its usefulness diminishes with the passage of time.

It is therefore suggested that a simple age requirement of 100 years be substituted for the date 1830. This was the system used in tariff acts prior to that of 1930.

At the suggestion of the Treasury Department the word "artistic" has been deleted before the word "antiquities" in this paragraph to lessen administrative difficulties. The paragraph has also been amended to allow the entry of antique frames at any port of entry so that they will not be restricted to ports of entry specified for antique furniture.

If it is the consensus that free entry under this sub-paragraph should be granted only to works produced prior to 1930, it is my hope and that of my associates that the other changes recommended will be retained and that sub-paragraph (c) will be incorporated.

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

Paragraph 1812 allows for free entry of Gobelin tapestries made by hand for use exclusively as wall hangings. The word gobelin has been applied to all fine tapestries. However, in the text of paragraph 1812 it is written with a capital G and has been taken to mean only those tapestries actually made at one of the two Gobelin factories in France and accompanied by a certificate from the manager of one of these plants.

It would be a great convenience to American museums and private collectors 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, Lurcat, Maillol, Miró 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.

On behalf of the American Association of Museums and the National Committee to Liberalize the Tariff Laws for Art, I urge your support of the changes proposed in the Amendment to H.R. 2411 so that free entry will be provided for all bona fide Works of Art.

Dorothy H. Dudley  
Registrar, The Museum of Modern Art and  
Chairman of the American Association of  
Museums Committee on Customs



2013

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LAWS FOR WORKS OF ART AND OTHER EXHIBITION MATERIAL

INTRODUCTION

The amendments to H.R. 2411 to liberalize the tariff laws for works of art and other exhibition material represent a revised version of the bill S-3900 introduced by Senator Javits on May 27, 1958 and the almost identical S-948, introduced by Senators Javits and Douglas on February 5, 1959. The text of these bills has been revised to conform with suggestions received from the Treasury Department.

The proposed legislation has the support of national organizations such as The American Federation of Arts, The American Association of Museums, American Institute of Architects, United States Committee of the International Association of Plastic Arts, The International Council at The Museum of Modern Art, College Art Association of America and The National Art Education Association. It is supported by museums throughout the country and by many artists, dealers and private collectors. The National Committee to Liberalize the Tariff Laws for Art, under the chairmanship of Mr. R. Sturgis Ingersoll, president of the Philadelphia Museum of Art, reports that twenty-four major museums and art associations have sent out literature in support of this legislation and that the Committee has received copies of scores of favorable letters sent to Congressmen by their constituents. The press has shown its support in editorials and articles in leading art magazines and in newspapers across the country, including the St. Louis Post-Dispatch, New York Times, New York Herald Tribune, Philadelphia Bulletin, Philadelphia Inquirer, Cleveland Plain Dealer, and Winston-Salem, N.C. Journal.

No figures are available to show the exact loss of revenue which might result from the enactment of these proposals. However a survey of dealers and other experts undertaken by the Committee to Liberalize the Tariff Laws for Art suggests that the amount is negligible. The consensus is that it would be about \$10,000. annually.

The wide support for this legislation comes from professional groups, dealers, and private collectors and from the trustees, members and staffs of American museums, all of whom have long been distressed by serious inconsistencies in the tariff laws for works of art. The present language has led to such confusion that free entry for sculpture depends almost entirely upon its subject matter as shown by the title, but it can be made of almost anything;