

ANTI-SMUGGLING ACT OF 1935

Citation: 19 U.S.C. §§ 1701-1711 (2002).

Legislative Purpose:

The act authorizes the Coast Guard to prevent the introduction or removal, with the purpose of avoiding customs enforcement laws, of any merchandise or persons into or from the United States.

Summary:

The Anti-Smuggling Act of 1935 authorizes the President to find and declare that any place on the high seas outside of, but adjacent to, customs waters of the U.S. to be within a customs enforcement area if a vessel is "hovering" there in an attempt to load or unload merchandise or persons into or from the vessel with the intent of avoiding customs inspection laws. The Act authorizes the President to extend the customs enforcement area to a distance not more than 50 nautical miles from the outer limits of the customs waters of the United States.

One of the two primary statutes used for establishing jurisdiction in customs waters is the Customs Enforcement Statute which gives Customs officials a broad statutory authority to stop and board vessels without a warrant. However, the Anti-Smuggling Act expands the definition of customs waters to include "any area on the high seas adjacent to but outside customs waters" where a vessel may "hover" while engaged in an unlawful act against the United States. The Anti-Smuggling Act defines a hovering vessel as any vessel, off the coast of the United States, which may be used to contravene the revenue laws. Generally, a hovering vessel is one that waits to distribute contraband to less detectable, smaller vessels which can then carry the illicit cargo ashore.

Under the Anti-Smuggling Act, Department of Treasury agents may board any vessel that is within this limit with the purpose of searching and enforcing the customs regulations of the United States. However, the Act cannot be used to enforce the law when the vessel is a foreign vessel on the high seas registered with a country that has a contravening treaty with the U.S.

The Act calls for the seizure and forfeiture of any vessel and its cargo that was "built, purchased, fitted out in whole or in part, or held, in the United States, or elsewhere, for the purpose of being employed to defraud the revenue or to smuggle any merchandise into the United States." Evidence of smuggling is defined as any vessel that is subject to pursuit, is a hovering vessel, or a vessel that fails to display lights as required by law. The Secretary is allowed to revoke any endorsement on the vessel's certificate of documentation or refuse one if applied for later. Also, persons enforcing this treaty shall be indemnified from any penalties or damages related to seizing the vessel.

The masters of any vessel found to be smuggling liquor under this title are subject to a \$1,000 fine and the seizure and forfeiture of the vessel. Any person who procures the smuggling of liquor into the United States shall be subject to a \$1,000 fine or imprisonment for up to two years, or both.

TITLE 19. CUSTOMS DUTIES

CHAPTER 5. SMUGGLING

19 U.S.C. §§ 1701-1711 (2002).

§ 1701. Customs-enforcement area

(a) Establishment; extent and duration; enforcement of laws applicable to waters adjacent to customs waters. Whenever the President finds and declares that at any place or within any area on the high seas adjacent to but outside customs waters any vessel or vessels hover or are being kept off the coast of the United States and that, by virtue of the presence of any such vessel or vessels at such place or within such area, the unlawful introduction or removal into or from the United States of any merchandise or person is being or may be occasioned, promoted, or threatened, the place or area so found and declared shall constitute a customs-enforcement area for the purposes of this Act. Only such waters on the high seas shall be within a customs-enforcement area as the President finds and declares are in such proximity to such vessel or vessels that such unlawful introduction or removal of merchandise or persons may be carried on by or to or from such vessel or vessels. No customs-enforcement area shall include any waters more than one hundred nautical miles from the place or immediate area where the President declares such vessel or vessels are hovering or are being kept and, notwithstanding the foregoing provision, shall not include any waters more than fifty nautical miles outwards from the outer limit of customs waters. Whenever the President finds that, within any customs-enforcement area, the circumstances no longer exist which gave rise to the declaration of such area as a customs-enforcement area, he shall so declare, and thereafter, and until a further finding and declaration is made under this subsection with respect to waters within such area, no waters within such area shall constitute a part of such customs-enforcement area. The provisions of law applying to the high seas adjacent to customs waters of the United States shall be enforced in a customs-enforcement area upon any vessel, merchandise, or person found therein.

(b) Boarding vessels; arrest and seizure; compliance with treaty provisions; authority of Secretary of Commerce unaffected. At any place within a customs-enforcement area the several officers of the customs may go on board of any vessel and examine the vessel and any merchandise or person on board, and bring the same into port, and, subject to regulations of the Secretary of the Treasury, it shall be their duty to pursue and seize or arrest and otherwise enforce upon such vessel, merchandise, or person, the provisions of law which are made effective thereto in pursuance of subsection (a) in the same manner as such officers are or may be authorized or required to do in like case at any place in the United States by virtue of any law respecting the revenue: Provided, That nothing contained in this section or in any other provision of law respecting the revenue shall be construed to authorize or to require any officer of the United States to enforce any law thereof upon the high seas upon a foreign vessel in contravention of any treaty with a foreign government enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States except as such authorities are or may otherwise be enabled or permitted under special arrangement with such foreign government: Provided further, That none of the provisions of this Act shall be construed to relieve the

Secretary of Commerce of any authority, responsibility, or jurisdiction now vested in or imposed on that officer.

§ 1702. [Repealed]

§ 1703. Seizure and forfeiture of vessels

(a) Vessels subject to seizure and forfeiture. Whenever any vessel which shall have been built, purchased, fitted out in whole or in part, or held, in the United States or elsewhere, for the purpose of being employed to defraud the revenue or to smuggle any merchandise into the United States, or to smuggle any merchandise into the territory of any foreign government in violation of the laws there in force, if under the laws of such foreign government any penalty or forfeiture is provided for violation of the laws of the United States respecting the customs revenue, or whenever any vessel which shall be found, or discovered to have been, employed, or attempted to be employed, within the United States for any such purpose, or in anywise in assistance thereof, or whenever any vessel of the United States which shall be found, or discovered to have been, employed, or attempted to be employed at any place, for any such purpose, or in anywise in assistance thereof, if not subsequently forfeited to the United States or to a foreign government, is found at any place at which any such vessel may be examined by an officer of the customs in the enforcement of any law respecting the revenue, the said vessel and its cargo shall be seized and forfeited.

(b) Definition of "vessel of the United States". Every vessel which is documented, owned, or controlled in the United States, and every vessel of foreign registry which is, directly or indirectly, substantially owned or controlled by any citizen of, or corporation incorporated, owned, or controlled in, the United States, shall, for the purposes of this section, be deemed a vessel of the United States.

(c) Acts constituting prima facie evidence vessel engaged in smuggling. For purposes of this section, the fact that a vessel has become subject to pursuit as provided in section 581 of the Tariff Act of 1930, as amended [[19 USC § 1581](#)], or is a hovering vessel, or that a vessel fails, at any place within the customs waters of the United States or within a customs-enforcement area, to display lights as required by law, shall be prima facie evidence that such vessel is being, or has been, or is attempted to be employed to defraud the revenue of the United States.

§ 1704. Refusal or revocation of registry, enrollment, license or number on evidence that vessel engaging in smuggling; appeal; immunity from liability

Subject to appeal to the Secretary of Commerce [Secretary of Treasury] and under such regulations as he may prescribe, when the Secretary of Transportation is shown upon evidence which he deems sufficient that such vessel is being, or is intended to be, employed to smuggle, transport, or otherwise assist in the unlawful introduction or importation into the United States of any merchandise or person, or to smuggle any merchandise into the territory of any foreign government in violation of the laws there in force, if under the laws of such foreign government any penalty or forfeiture is provided for violation of the laws of the United States respecting the customs revenue, or whenever, from the design or fittings of any vessel or the nature

of any repairs made thereon, it is apparent to the Secretary of Transportation that such vessel has been built or adapted for the purpose of smuggling merchandise, [the] the Secretary of Transportation shall revoke any endorsement on the vessel's certificate of documentation or number (when the Secretary is the authority issuing the number under chapter 123 of title 46, United States Code [\[46 USC §§ 12301 et seq.\]](#)) or refuse the same if application be made therefor, as the case may be. The Secretary of Transportation and all persons acting by or under his direction shall be indemnified from any penalties or actions for damages for carrying out the provisions of this section.

§ 1705. Destruction of forfeited vessel or vehicle

Any vessel or vehicle forfeited to the United States, whether summarily or by a decree of any court, for violation of any law respecting the revenue, may, in the discretion of the Secretary of the Treasury, if he deems it necessary to protect the revenue of the United States, be destroyed in lieu of the sale thereof under existing law.

§ 1706. Importation in vessels under thirty tons and aircraft; licenses; labels as prima facie evidence of foreign origin of merchandise

Except into the districts adjoining to the Dominion of Canada, or into the districts adjacent to Mexico, no merchandise of foreign growth or manufacture subject to the payment of duties shall be brought into the United States from any foreign port or place, or from any hovering vessel, in any vessel of less than thirty net tons burden without special license granted by the Secretary of the Treasury under such conditions as he may prescribe, nor in any other manner than by sea, except by aircraft duly licensed in accordance with law, or landed or unladen at any other port than is directed by law, under the penalty of seizure and forfeiture of all such unlicensed vessels or aircraft and of the merchandise imported therein, landed or unladen in any manner. Marks, labels, brands, or stamps, indicative of foreign origin, upon or accompanying merchandise or containers of merchandise found upon any such vessel or aircraft, shall be prima facie evidence of the foreign origin of such merchandise.

§ 1707. [Repealed]

§ 1708. [Repealed]

§ 1709. Definitions

When used in this Act:

(a) The term "United States", when used in a geographical sense, includes all Territories and possessions of the United States, except [the Philippine Islands,] the Virgin Islands, the Canal Zone, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, and the island of Guam.

(b) The term "officer of the customs" means any officer of the Customs Service or any commissioned, warrant, or petty officer of the Coast Guard, or agent or other person authorized by law or by the

Secretary of the Treasury, or appointed in writing by a collector, to perform the duties of an officer of the Customs Service.

(c) The term "customs waters" means, in the case of a foreign vessel subject to a treaty or other arrangement between a foreign government and the United States enabling or permitting the authorities of the United States to board, examine, search, seize, or otherwise to enforce upon such vessel upon the high seas the laws of the United States, the waters within such distance of the coast of the United States as the said authorities are or may be so enabled or permitted by such treaty or arrangement and, in the case of every other vessel, the waters within four leagues of the coast of the United States.

(d) The term "hovering vessel" means any vessel which is found or kept off the coast of the United States within or without the customs waters, if, from the history, conduct, character, or location of the vessel, it is reasonable to believe that such vessel is being used or may be used to introduce or promote or facilitate the introduction or attempted introduction of merchandise into the United States in violation of the laws respecting the revenue.

§ 1710. Separability of provisions

If any clause, sentence, paragraph, or part of this Act, or the application thereof to any person, or circumstances, is held invalid, the application thereof to other persons, or circumstances, and the remainder of the Act shall not be affected thereby.

§ 1711. Citation of chapter

This Act may be cited as the "Anti-Smuggling Act".