

MARJORIE M. SHOSTAK

Attorney, Stein & Shostak, Los Angeles, California

First Vice-President, Foreign Trade Association of Southern California

MARJORIE M. SHOSTAK, one of the comparatively few attorneys in the United States who specialize in Customs law practice, devotes her efforts exclusively to the representation of importers in customs matters and other foreign trade problems related to the importation of merchandise into the United States. She is the only woman attorney in the private practice of Customs law who regularly attends circuit sessions of the United States Customs Court at ports of entry on the Pacific Coast, along the Mexican Border, in Texas, and at New Orleans.

A native of Nebraska, she received her B.A. degree in 1935 from the University of Nebraska, where she was elected to Phi Beta Kappa. She has been associated with the practice of Customs law since 1935, when she began work as law clerk in the office of the late Philip Stein, nationally known authority on Customs law (*World Trade Personality No. 36*). In 1946, she became a partner in the firm, the name of which was changed in 1955 to Stein and Shostak.

Miss Shostak is a member of the Bar of the State of California, the United States Customs Court, which has nation-wide jurisdiction over customs controversies of a civil nature, the United States Court of Customs and Patent Appeals, and the Supreme Court of the United States. She is also admitted to practice before the Treasury Department and all field offices of the Bureau of Customs throughout the United States. Now first vice-president of the Foreign Trade Association of Southern California, Miss Shostak served as chairman of its Legislation Committee in 1955 and 1956; as secretary of the association in 1958; and as its second vice-president in 1959. She has been a director of the association since 1957, the first woman to serve on the board of that association in its 41-year history. An active member of the Los Angeles Chamber of Commerce, Miss Shostak serves on its World Trade Committee, and has acted as Chairman of its Import Legislation and Customs Committee since 1955. She is also a member of the West Coast Foreign Trade Group of the U. S. Department of Commerce; Los Angeles World Affairs Council; and the National Council of American Importers, Inc.

Miss Shostak took an active part in the civic campaign to obtain a new Custom House and Federal Office Building for Los Angeles. The campaign to obtain Congressional authorization for the building was initiated in 1944 by Philip Stein, then chairman of the Import Affairs Committee of the Los Angeles Chamber of Commerce. Title to the expanded site has now been acquired, and it is expected that construction of the building, to cost \$38,000,000, may begin in 1961.

From 1946 to 1953, Miss Shostak and Mr. Stein instructed classes at the University of Southern California on United States Customs Administration and Procedure, the first course of its kind given at any university or college in the United States. Miss Shostak also collaborated with Mr. Stein in the preparation of text books on the subject, and a brochure on the United States Customs Court published in 1950.



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CUSTOMS LAW PRACTICE: SCOPE AND CHALLENGE

By Marjorie M. Shostak

Attorney, Stein and Shostak, Los Angeles, Calif.

First Vice-President, Foreign Trade Association of Southern California

THE practice of Customs law is a specialized branch of the legal profession in which comparatively few members of the bar in the United States engage. While many lawyers have been admitted to practice before the United States Customs Court, it is estimated that not more than 150 attorneys regularly practice in this highly specialized field. The offices of most of these attorneys are located in New York City, where the United States Customs Court has its permanent headquarters. At a few of the larger ports of entry at which the Customs Court holds circuit hearings, such as Boston, Baltimore, Detroit, San Francisco and Los Angeles, only two or three attorneys specialize in Customs work.

The Customs Section of the Department of Justice, which handles all customs cases of a civil nature arising in the United States, likewise has a comparatively small staff, composed of highly specialized trial lawyers whose work is limited to the Customs field. Although stationed in New York City, these attorneys represent the Government at Customs Court circuit hearings at ports of entry throughout the United States, its territories and possessions.

The United States Customs Court, created by Act of Congress in 1926, has exclusive nation-wide jurisdiction over civil controversies arising under the tariff and customs laws of the United States. Nine Judges, appointed by the President, comprise the Bench of that Court, which holds regular sessions at New York throughout the year. Circuit sessions of the Court at which one Judge usually presides are held periodically at ports of entry throughout the United States, its territories and possessions, to permit importers to obtain judicial review of customs administrative assessments and rulings at the ports of entry where their controversies arise. The exclusive jurisdiction of the Customs Court over tariff controversies also insures uniformity of decisions throughout the United States, as required by Article I, Section 8, Clause 1 of the Constitution.

On first impression, Customs law practice may seem very limited in scope, concerned only with merchandise rather than with people. Suits in the United States Customs Court involve tons of crude ma-

terials, carloads of produce, bales of rags, yards of textiles, cases of manufactured goods. Personal relationships of adversary parties are seldom involved, since Customs Court actions deal principally with the rate and amount of customs duties chargeable on imported merchandise or its dutiable value, the facts relating to the determination thereof, and the interpretation and construction of our tariff laws.

After 25 years in legal work in the customs field, ranging from the review of liquidated entries at the custom house, to trial work and appellate appearances, the writer can say that, far from being the dull and uninteresting field a general practitioner or lay person might imagine, customs law is a fascinating and challenging profession. While it may be more exacting, demanding, and time-consuming than other branches of the law, it is a completely absorbing field and offers a never-ending challenge to the inquisitive mind.

Few other fields of law require such continuous study of a practically unlimited range of academic subjects normally unrelated to the law, such as chemistry, botany, engineering, electronics, metallurgy, to name but a few. Customs cases frequently involve inquiries into the composition, design, or chemical properties of imported articles, or the nature of the component materials of which they are made, or their function or method of operation, or the chief use to which they are put throughout the United States. At least an elementary understanding of many diversified fields must be acquired

all those fields of commerce, industry, science, manufacturing, the fine arts, agriculture, and every other field of endeavor in which importers may be engaged, or for which they may supply equipment or supplies. In some instances, unless customs counsel is familiar with the terminology of the trade or industry involved, even basic communication between counsel and expert witnesses may be difficult.

For these reasons, there is a considerable degree of specialization even within this specialized field. Thus, administratively, particular types of articles or classes of merchandise are assigned to individual customs field officers who examine and advisably classify imported merchandise, so that they may become experts on the articles which they handle. A similar practice is also followed in the Customs Section of the Department of Justice. Cases coming before the Customs Court are also assigned, according to subject, to particular Divisions of the Court.

The field is becoming progressively more complex, with the rapid advances now being made in science and technology, and with the increase in the volume of imports. The flow of imports through the port of Los Angeles, alone, has increased from approximately 8,000 dutiable entries in 1935, to an estimated 75,000 dutiable entries in the fiscal year ending June 30, 1960. During the same period, the value of imports through the Los Angeles Customs District increased from \$50 million in 1935 to \$516 million in the calendar year 1958 and to \$727 million in the calendar year 1959. Figures released by the U. S. Department of Commerce in its Annual Report FT 120 indicate that Los Angeles imports in 1958 amounted to 4.1% of total United States imports, which were valued at over \$12 billion.

With this ever-growing volume and variety of imports, the Customs Court and customs attorneys deal daily with subjects which vary from the sublime to the ridiculous: from inspirational stained glass windows which are works of art, to polystyrene paper weights; from complex electronic equipment to hand-sewing needles; from marble wainscoting to artificial teeth; from laboratory instruments to travelling irons; from complete generator plants to stove bolts; from automobiles to bicycle horns; from exquisite wearing apparel of ornamented fine fabrics to shop towels and wiping rags; from plywood panels to ice-cream sticks; from thoroughbred race horses to chocolate-covered ants. While some of these articles may seem trivial, problems relating to the proper tariff classifications and the duties chargeable on them are serious to the importers involved.

When new industrial and manufacturing materials are developed, customs problems often arise. Plastics, which were not

CUSTOMS LAW PRACTICE—Continued

known to commerce in 1930 or provided for in the Tariff Act, present problems of customs classification; if composed of substances in which synthetic resin is the chief binding agent, for example, higher rates of duty apply than to nonenumerated plastic articles composed wholly of synthetic resin in which no filler is used. Classification of synthetic textiles creates similar problems.

Customs counsel must be familiar not only with the decisions of the United States Customs Court and the United States Court of Customs and Patent Appeals, but must also keep informed of the rulings and regulations of the Bureau of Customs, the Bureau of Animal Industry, the Food, Drug and Cosmetic Administration, and other governmental agencies having jurisdiction over various types of imported articles. Legislation before Congress must be studied for possible changes in rates of duty and administrative procedures affecting imports. Also requiring attention are proceedings before the United States Tariff Commission, Proclamations of the President affecting tariffs, quotas, and import fees, and the negotiation of Reciprocal Trade Agreements.

In addition, customs attorneys must acquire, on occasion, knowledge of the laws of and conditions of sale in foreign countries from which merchandise is exported to the United States, since the dutiable value of imported merchandise under our

tariff laws is determined on the basis of market conditions in the country of exportation. The applicability or non-applicability of a tax in a foreign country, depending upon the correct interpretation of a foreign law, may increase or decrease the dutiable value of imported merchandise on which ad valorem duties are collected. Foreign statutory export controls or restrictions may likewise affect dutiable value.

These burdensome aspects of the practice of customs law are more than offset, however, by other considerations. The practice of Customs law affords to the lawyer the opportunity to deal with responsible business people engaged in trade with foreign countries all over the world; the opportunity to deal with highly qualified Government officials throughout the United States; the privilege of appearing before a special trial court created to hear and determine tariff controversies, the United States Customs Court, at New York and on circuit, and before the United States Court of Customs and Patent Appeals in Washington, D. C. in appellate proceedings; the mental stimulation of participating in proceedings by which the judicial interpretation of statutes, proclamations of the President, treaties, and rulings relating to our import trade are determined; and the satisfaction of thus contributing, at least in some small measure, to the smoother flow of world trade, and to the implementation of the foreign economic policy of our nation.



PHILIP STEIN

1898 – 1955

PHILIP STEIN

Attorney and Counsellor at Law
Chairman, Import Committee, Los Angeles Chamber of Commerce
Past President, Foreign Trade Association of Southern California

PHILIP STEIN, nationally known authority on customs law, administration and procedure, has, during the past 25 years, acquired a rich and colorful background in the foreign trade field.

Born in London, England, in 1898, Stein spent the following 9 years in Glasgow, Scotland, and came to the United States with his parents in 1908. While still a minor, he became a citizen of the United States upon the naturalization of his father. He received his primary and secondary education in Glasgow, Scotland and New York and is a graduate of Georgetown University, Washington, D. C., from which he received the degrees of Bachelor of Laws (LL.B) in 1922 and Master of Laws (LL.M.) in 1924. He is a member of the Bar and admitted to practice in the District of Columbia, the State of New York, the State of California, the Supreme Court of the United States, the U. S.

Customs Court, the U. S. Court of Customs and Patent Appeals, the Tax Court of the United States, the U. S. District Courts of several States, and numerous government departments, agencies, boards, bureaus, and commissions. He is a member of the Association of the Customs Bar, American Bar Association, Lawyers Club of New York, and Los Angeles Bar Association, and several fraternal, civic and service organizations.

As an active member of the Los Angeles Chamber of Commerce, Mr. Stein serves on its World Trade and Maritime Shipping Committees, and as Chairman of important subcommittees handling legislation, customs, imports, and related problems. He has been a leader in campaigns to secure for Los Angeles, the largest metropolitan area in the West, such essential world trade needs as adequate customs and appraisers' personnel and facilities, Foreign Trade Zone No. 4 (now operating at Los Angeles Harbor), and regional field offices of those government departments and agencies having jurisdiction over or concerned with foreign trade matters.

In recognition of his work for the cause of world trade, the Los Angeles Chamber of Commerce presented to him in May, 1951, the bronze plaque awarded annually as a feature of World Trade Week, to the individual in the Los Angeles area who has contributed most to the advancement of the area's world trade.

He served as President of the Foreign Trade Association of Southern California during 1949, and the following year as Chairman of its Board of Directors. That organization presented to him early this year its first "Certificate of Merit" in appreciation of his outstanding efforts in the promotion of world trade.

Mr. Stein is a member of the West Coast Advisory Committee, Office of International Trade, U. S. Department of Commerce. He has served as a delegate of the Foreign Trade Association and Los Angeles Chamber of Commerce to the Thirty-third to Thirty-eighth National Foreign Trade Conventions sponsored by the National Foreign Trade Council, Inc.; as a member of the President's Committee for Facilitation of International Aviation; and as a delegate of the Los Angeles Chamber of Commerce to the economic cooperation conference held in Monterrey, Mexico, in May, 1951, with representatives of the Confederated National Chambers of Commerce of Mexico.

He lectures at the University of Southern California on United States Customs Administration and Procedure, a course he inaugurated there in 1946 on the invitation of the Board of Trustees of the University. It is the first course of its kind given at any University or College in the United States. He is the author of several popular works relating to customs and import matters, entitled "Summary on Customs Administration," "The United States Customs Court," and "United States Customs Administration and Procedure."

From 1926, when he was appointed a United States Special Attorney in the Customs Division, Department of Justice, until 1933, he represented the government in the trial of numerous cases before the United States Customs Court at its headquarters at New York and on its circuits held throughout the United States at all principal ports of entry. Since his resignation from government service in 1933, he has engaged in the private practice of law, specializing in customs and foreign trade matters, maintaining his headquarter offices at Los Angeles and devoting his law practice chiefly to the representation of importers, custom house brokers, shipping and transportation firms, and other clients in the foreign trade field before the U. S. Customs Court at New York and on circuit the U. S. District Courts, and before the Bureau of Customs and other government agencies in Washington, D. C., and their field offices elsewhere.

IMPRESSIONS OF A CUSTOMS "CIRCUIT RIDER"

By PHILIP STEIN

Attorney

Lecturer on U. S. Customs Administration and Procedure

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During a quarter of a century of experience "riding the circuits" of the United States Customs Court throughout the United States in connection with customs litigation of all kinds, first representing the government for a period of seven years, and thereafter opposing the government on behalf of importers, custom house brokers, steamship lines, and others engaged in the importation of merchandise into the United States, the writer has had a unique opportunity to note and compare import trade practices at the various ports of entry, as well as the application of our customs laws and regulations in practically all sections of the country. Thus, he has had ample occasion to observe many of the relative advantages and disadvantages and the trials and tribulations which are generally the lot of importers, not only at the port of New York, but also at all other ports of entry which he has visited during twenty-five years of customs "circuit riding."

Importers, custom house brokers, freight forwarders, and others in the foreign trade field at the port of New York, through which more than 50% of all imports into the United States are cleared through customs, are relatively well versed in their duties, obligations and responsibilities, and familiar with their rights and privileges under existing customs and tariff laws and regulations. However, importers, custom house brokers, freight forwarders and foreign traders at outlying ports of entry throughout the United States, some quite remote from New York, are seriously handicapped because of their distance from the administrative, legislative, and judicial centers of government at Washington and New York, from which flow most of the customs regulations affecting every port of entry in the United States; and also because of inadequate facilities and lack of customs personnel with which those outlying ports have been beset due to the failure of Congress to provide sufficient funds for the handling of the increased import trade which Congress nevertheless strongly advocates and otherwise supports.

In the larger world trade centers in the United States, importers, custom house

brokers, freight forwarders and foreign traders have the opportunity, through their membership in various service organizations, to obtain promptly information valuable to them in their respective fields. It is surprising, however, to find that not only are many importers at ports distant from New York unaware of the existence of such worthy service organizations in the foreign trade field, but also that they have little or no knowledge concerning the government organizations which have been established to promote our two-way world trade, or of the publications issued by the government and by private organizations which are available to those so engaged. Too frequently, such foreign traders are not aware of the privileges and remedies granted by Congress through which many of their problems in the conduct of their foreign trade businesses may be solved.

For example, the writer has discovered, while attending circuits throughout the country, that there are many importers who are not aware of the existence of the United States Customs Court, notwithstanding that it is frequently referred to as "The Importers' Court" and was created by Congress in order that importers may obtain the benefit of judicial review of customs administrative rulings with respect to their imported merchandise.

Few importers are aware that some measure of relief has been consistently granted by Congress to importers ever since the Act of July 31, 1789, in which provision was first made that controversies between customs officials and importers should be reviewed and decided by merchants located at the port of entry, chosen by the importer and the Collector of Customs. The character of the reviewing authority and the procedure necessary to be invoked has been changed considerably since that time by various Congressional enactments. However, in 1926, the United States Customs Court was created to succeed to the powers theretofore exercised by the United States Board of General Appraisers, with respect to the special, limited, and exclusive jurisdiction the Board had exercised, over cases and controversies arising under the tariff and cus-

Impressions of a Customs "Circuit Rider" —Continued

toms laws of the United States.

Under existing law, provision is made for the following types of proceedings before the Customs Court: (1) appeals for reappraisal, on application by the importer or Collector of Customs, wherein the Court determines the correct dutiable value of imported merchandise; (2) protest cases, initiated by the importer, in which the Court determines the proper rates applicable to imported merchandise, or the legality of other assessments, acts, or omissions of the Collector; (3) Petitions for remission of additional duties, initiated by the importer seeking relief from assessments made because of undervaluation of imported merchandise; and (4) American Manufacturers' protests, in which an American manufacturer whose business is affected by imported merchandise, seeks to invoke a higher tariff rate than was assessed by the customs officials.

The headquarters of the Court are fixed by law at New York, the major port of entry in the United States, where, as stated above, most of the customs litigation arises. However, importers at outlying ports are not required to travel to New York to obtain "their day in Court" or a determination of any of the controversies above enumerated, arising with respect to their importations. Congress has provided that the Court shall hold hearings at outlying ports where customs controversies have arisen, in order to provide a convenient means and method by which importers may obtain hearings without the undue expense and interference with the conduct of their businesses, which would otherwise be involved in bringing their witnesses and attorneys to New York for trial purposes.

Particularly at ports outside of New York, where importers are not as familiar with the existence of the Customs Court, custom house brokers, who perform valuable services in connection with the entry and clearance through customs of imported merchandise, having direct contact with the importers, frequently are the first to make known to their importer customers the availability of the Customs Court for a judicial review of the decisions of the customs officials with which the importers may be dissatisfied. The failure of a custom house broker to make known to his importer customers the existence of this tribunal, may prove disastrous to the importer, should his competitors, importing identical merchandise, receive the benefit of a lower value or rate of duty than he had received, because of a judicial review obtained by them, a procedure of which the importer in question was not aware or had not been informed by his custom house broker. Frequently, the failure of an importer to apply for, or obtain a judicial