#163

(6b) CLEARED: 3/15/84

No Mfrs Identified

Excepted

Mfrs Notified

Comments Processed

RECEIVED OFFICE OF THE SECRETARY DEC 19 9 32 AM '74 CONSUMER PRODUCT SAFETY COMMISSION

UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO : Diane Debler, Compliance Officer
Compliance, New York City

DATE: DEC 1 8 1974

THRU : Michael A. Brown, General Counsel

FROM : Janie Kinney, Office of the General Counsel

SUBJECT: Request for Legal Guidance on Prevailing Danish Customs Law in the Virgin Islands and the Results of Such on CPSC Regulatory Import Program

This is in response to your memorandum of October 9, 1974 requesting guidance from this office regarding an import regulatory program in the Virgin Islands.

Neither the Consumer Product Safety Act nor the Flammable Fabrics Act permit import regulation in the Virgin Islands. The question of such regulation under Federal Hazardous Substances Act is unclear, and we are requesting the opinion of the Customs General Counsel on the question.

The following memorandum sets out the reasons for the above conclusions:

Consumer Product Safety Act

There is no authority under the Consumer Product Safety Act for the Commission to undertake efforts to regulate goods coming into ports in the Virgin Islands. Section 17 of the Act authorizes the Commission to take certain actions regarding consumer products offered for importation into the customs territory of the United States. The customs territory of the United States is defined in general headnote 2 to the Tariff Schedule of the United States (19 U.S.C. 1202) as including "only the States, the District of Columbia, and Puerto Rico." Since the Virgin Islands are not included within the definition, the Commission is precluded from exercising regulatory control under section 17 over goods offered for importation into the Virgin Islands.

However, this is not to say that the Commission cannot act to protect residents of the Virgin Islands from unsafe consumer products. While the Commission cannot use the authority

ADVISORY OPINION

*U.S. GOVERNMENT PRINTING OFFICE: 1974 733-533/3604 1-3

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6

UNITED STATES GOVERNMENT CONSUMER PRODUCT SAFETY COMMISSION

Memorandum

TO : Office of General Counsel

DATE: October 9, 1974

FROM : Compliance, NYC

SUBJECT: Request for Legal Guidance on prevailing Danish Customs Law in the Virgin Islands and the results of such on a CPSC regulatory import program

Please advise as to the regulatory actions that we may proceed with regarding imported products subject to CPSC, that are entered thru ports in the Virgin Islands. Danish Import Laws and Ordinances are presently in effect in the Virgin Islands.

During a recent trip to the Virgin Islands, Mr. Alex A. Labonski, Director, NYC-AO met with Mr. Joseph Banks, District Director, U.S. Customs, St. Thomas, Virgin Islands. Mr. Banks mentioned that bond revocations cannot be made by U.S. Customs unless such penalties are applicable by the existing local import laws (in this case, Danish Laws).

Mr. Banks also stated that since no provision is made for safety hazards in this law, any action on a shipment of hazardous products would have to be taken independently by the CPSC. It was further noted that specific authority would have to be delegated by U.S. Customs to withhold a bond entry if a product had already been shipped.

Request is made for guidance in this matter so that NYC-AO may initiate a plan of product safety coverage for the Virgin Islands.

Attached for your review is a copy of "Law and Ordinances concerning Customhouse And Ship Dues in St. Thomas and St. Jan and St. Croix Import Tariff."

Diane Debler
Compliance Officer

Attachment: a/s

cc: Director, NYC

NYC:
DDebler:sg 10/9/74

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

5010-110

given it under section 17 of the Act to refuse admission to noncomplying goods, the Commission can use authority under other provisions of the Act to act against unsafe consumer products in the Virgin Islands.

Section 3(a)(10) of the Act defines "State" to include the "Virgin Islands," and section 3(a)(14) states that the term "United States" means all of the states as defined in section 3(a)(10). Further, "commerce" means "trade, traffic, commerce, or transportation (A) between a place in a State and any place outside thereof, or (B) which affects trade, traffic, commerce, or transportation described in subparagraph (A)." (section 3(a)(12)). Thus, enforcement of the Act should be the same in the Virgin Islands as it is in New York, Pennsylvania, or any other State.

Although the Consumer Product Safety Act does not permit noncomplying consumer products to be refused entry into the Virgin Islands, the Commission can bring civil and criminal suits against persons who import into the Virgin Islands any consumer product which is not in conformity with an applicable consumer product safety standard or which has been declared a banned hazardous substance. (See sections 3(a)(14), 19(a)(1), 19(a)(2), 20(a), 21(a), and 21(b).

It may seem inconsistent for Congress to permit civil and criminal sanctions to be applied to an importer of non-conforming goods but not to permit refusal of admission to the same noncomforming products. However, Congress was not acting inconsistently. Rather it was only reflecting the existing enforcement structure. Section 17 anticipates that the Commission and the Secretary of the Treasury under his/her authority under the customs laws shall work together to enforce the section. Under section 4 of the "Act to provide a temporary government for the Western Indian Islands acquired by the United States from Denmark," (48 U.S.C. 1395), the Secretary of the Treasury is only authorized to assist in enforcing the customs laws of the Virgin Islands. Since the Secretary of the Treasury would not have the statutory authority to properly assist the Commission in enforcing section 17 in the Virgin Islands, Congress exempted the Virgin Islands from coverage by the section.

Flammable Fabrics Acts

The Flammable Fabrics Act does not provide the Commission with the authority to directly regulate imports coming into the Virgin Islands. Section 9 of the FFA sets forth treatment for imported goods under the FFA. That section specifies that section 499 of the Tariff Act of 1930 (19 U.S.C. 1499) will apply to imported products subject to the jurisdiction of FFA. The Secretary of the Treasury does not view section 499 as applying to goods imported into the Virgin Islands.* The Treasury Secretary feels the role of the customs personnel in the Virgin Islands is to assist in the collection of the customs taxes levied under the existing Virgin Islands law, not to apply U. S. Customs law.

As with goods within the jurisdiction of the Consumer Product Safety Act, the Commission should treat the Virgin Islands as it would any other part of the United States in regulating goods subject to the FFA. Also, Section 3(a) of the FFA proscribes the importation into the United States of nonconforming goods, and section 5 gives the Commission authority to prevent a violation of this proscription through use of the enforcement powers of the Federal Trade Commission Act.

*This interpretation of section 499 of the Tariff Act of 1930 (19 U.S.C. 1499) was given by an attorney in the Customs Bureau Chief Counsel's Office in Washington, D. C., and by Mr. Richard Friedland, Assistant Regional Counsel for Region 4 (which includes the Virgin Islands) of the Customs Bureau.

There is nothing in section 499 itself which explicity leads to this conclusion, but the interpretation is supported by surrounding sections of the Tariff Act and by the provisions of 48 U.S.C. 1391-1403. Section 1401 of 19 U.S.C. defines United States to specifically exclude the Virgin Islands. Since section 499 deals with goods imported into the United States, it cannot apply to goods imported into the Virgin Islands.

Hazardous Substances Act

Section 14 of the Federal Hazardous Substances Act (FHSA) instructs the Secretary of the Treasury to deliver to the Commission samples of products being imported into the United States so the Commission can make a determination whether the products should be refused admission into the United States. The section also permits the Secretary of the Treasury to permit goods to be entered into the U. S. under bond subject to forfeiture pending a determination of whether the goods conform to the FHSA. Thus, the provisions anticipates that there be cooperative action between the Commission and the Secretary of the Treasury in implementing the import provision of the Act.

Although it would seem that hazardous substances imported into the Virgin Islands can be regulated under the Hazardous Substances Act, effective regulation is dependent on cooperation with Customs. At the time the Commission initiates communications with Customs regarding implementation of import procedures throughout the United States, we shall request an opinion from customs regarding their authority under FHSA to regulate imports in the Virgin Islands. We shall inform you of the response we receive from Customs at that time.