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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

CIVIL DIVISION

DEC 8 1969

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Dear Mr. Ambrose:

We have completed our review at the Miami District Office of Customs control over jet fuel imported and withdrawn, free of duty, under section 309 of the Tariff Act of 1930, as amended, by air carriers at the Miami International Airport (MIA). We are currently finalizing the results of similar reviews performed at the New York and Seattle District Offices. The purpose of this letter is to obtain your comments on the findings developed at the Miami District Office regarding weaknesses in Customs procedures for controlling the withdrawals of jet fuels and the collection of duties on fuel that was used on ineligible flights and on the domestic portion of an Eastern/Braniff interchange flight from March 1967 through January 1969. These matters are presented for your comments inasmuch as they have agency-wide application and require a decision regarding the collection of duties on Customs transactions that have been finalized.

Treasury Decision 66-99 allows use of duty-free fuel on inbound and outbound flights simultaneously engaged in domestic and foreign trade provided there is no change of aircraft in the United States. Records furnished Customs by five oil companies importing fuel show that a total of about 106.2 million gallons of duty-free jet fuel (AVJET "A") was withdrawn at MIA during fiscal year 1969. Customs Regulation 10.62(d) provides that representatives of the Commissioner of Customs will from time to time verify various withdrawals of bonded jet fuel against all pertinent records, including financial records, of the withdrawers, deliverers, and receivers of fuel. Since the majority of the flights receiving duty-free fuel at MIA and simultaneously engaged in domestic and foreign trade were operated by Eastern Airlines, we selected some of the Eastern flights for review to ascertain the extent of Customs control over withdrawals.

Weaknesses in procedures for controlling
the withdrawals of jet fuel

Our review disclosed that personnel controlling withdrawals, in the Miami District, were relying on the importer for assurance that all flights receiving the fuel were properly entitled to duty-free use of jet fuel. We found that Eastern Airlines loaded its own aircraft at MIA and that Humble Oil & Refining Company (Humble), the importer, was relying on Eastern Airlines to determine those flights entitled to the fuel.

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Eastern Airlines disseminated, to its officials responsible for fueling operations, a list of flights eligible for the fuel together with rules for its use. The rules provided generally that the flights listed were eligible for the fuel except when an aircraft substitution was made at a domestic station. Humble did not perform any independent verifications of Eastern's usage of the fuel.

Our review of duty-free jet fuel loadings into Eastern aircraft during the week of June 22-28, 1969, disclosed that six ineligible aircraft received 18,855 gallons of fuel at Miami. In comparing certificates of use, showing loadings of the fuel for the week with Eastern's list of eligible flights, we found two erroneous loadings into aircraft engaged solely in domestic trade. Our comparison also of Customs records with Eastern's aircraft routing records for eight inbound and three outbound flights (67 trips or loadings) disclosed that four ineligible aircraft received duty-free fuel--three because aircraft were changed at domestic stops and one because the foreign or qualifying portion of the flight was canceled. In response to our question concerning the eligibility of the six aircraft to receive the fuel, Eastern Airlines agreed that the aircraft were not eligible. The Customs Port Director at Port Everglades advised us that the duty (\$235.69) on the 18,855 gallons used on the six ineligible flights will be collected from Humble and that the fuel will be charged against Humble's import quota.

We believe that duty-free fuel has been received by ineligible Eastern aircraft since March 1967, when Humble first started delivering the fuel to Eastern's storage tanks at MIA. If our findings for the flights made during the week of June 22-28, 1969, are representative, as much as 2.4 million gallons could have been received by ineligible Eastern aircraft during the period March 1967 through August 1969 and about \$30,600 in Customs duty was avoided. Our review at Miami covered Eastern Airlines; however, duty-free fuel may have also been received at MIA by ineligible aircraft operated by other airlines, such as Northwest, Braniff, and Northeast.

We believe that the district personnel did not detect the improper withdrawals of duty-free fuel, because formal guidelines have not been developed for use in controlling and monitoring this program. We believe that specific guidelines are necessary to properly implement the provisions of Customs Regulation 10.62(d).

Collection of duties for fuel used on
Eastern/Braniff interchange flights

The Bureau of Customs ruled in February 1969 that aircraft operating on the domestic portion of interchange flights were not engaged in foreign trade and therefore were not eligible for duty-free fuel.

We estimate that during the period March 1967 through January 1969 about \$130,000 in Customs duty was avoided on duty-free fuel (10.4 million gallons) loaded by Eastern Airlines at MIA for the Miami to New York portion of the Eastern/Braniff interchange flights between South America and New York. The duty was avoided because the eligibility of the aircraft was never questioned by Customs field officials nor presented to the Bureau of Customs for a ruling. The Eastern/Braniff interchange flights were discontinued in late January 1969.

We did not review certificates of use showing fuel loadings for Eastern/Braniff interchange flights originating at New York for Miami but we noted that Eastern's fueling instructions required the loading of duty-free fuel into the aircraft for the southbound flights to MIA. We estimate that approximately 6.3 million gallons of fuel were loaded into these flights at New York during the period March 1967 through January 1969, resulting in about \$79,000 in Customs duty being avoided.

During our close-out conference on October 10, 1969, with Miami Regional officials we discussed the possibilities of Customs collecting duties on the fuel withdrawn for the six ineligible flights and for the domestic portion of the Eastern/Braniff interchange flight. The officials present indicated that duties probably could be collected for the six flights under the importer's General Term Bond for Entry of Merchandise (CF 7595) and that the provisions of 19 U.S.C. 1592, Penalty against goods, may be applicable to the importer's certifications as to the use of duty-free fuel. As to collecting duties for the fuel used on the Eastern/Braniff interchange flights, the officials advised, however, that this matter would have to be considered by the Bureau.

Subsequent to the closing conference, we noted that 19 C.F.R. 8.1(b), liability of importer for duties, states in part, that:

"Unless relieved by law or regulations, the liability for duties, both regular and additional, attaching on importation constitutes a personal debt due from the importer to the United States which can be discharged only by payment in full of all duties legally accruing. It may be enforced notwithstanding the fact that an erroneous construction of law or regulation may have enabled the importer to pass his goods through the customhouse without such payment. ***"

In view of the reference above in 19 C.F.R. 8.1(b) to "erroneous construction of law or regulation," it would appear that payment could be demanded from Eastern Airlines for the duty applicable to fuel used between March 1967 and January 1969 on the domestic portion of the Eastern/Braniff interchange flight.

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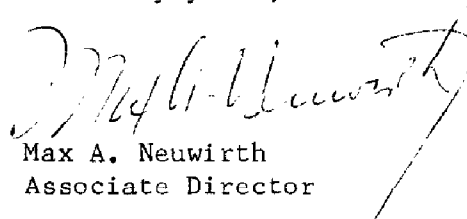
Our review work at the New York and Seattle District Offices will be finalized in the near future. However, the reviews to date have disclosed that district officials rely, generally, on the importer for assurance that all flights receiving duty-free fuel were properly entitled to receive the fuel. We found several examples at these offices where Northwest and TWA airlines improperly received duty-free fuel for flights where plane changes were made at domestic stops. The situations were discussed with district officials in New York and Seattle. Also, examples of improper withdrawals by Northwest airlines have been furnished your staff at the Bureau.

In view of the duty loss currently being realized by improper withdrawals of duty-free fuel we suggest that all appropriate district offices be requested, as soon as practical, to determine if only qualified flights are receiving duty-free fuel. We suggest, also

- (1) that procedures be established to detect erroneous loadings of duty-free fuel into aircraft engaged solely in domestic trade, and to detect aircraft substitutions which disqualify an aircraft from entitlement to duty-free fuel;
- (2) that an agency-wide determination be made as to the quantity of duty-free fuel improperly withdrawn in the past by domestic air carriers and that appropriate duties be assessed and collected; and
- (3) that collections of duty be made from Eastern Airlines for fuel used on the domestic portion of the Eastern/Braniff interchange flights.

We would appreciate your views and comments on our suggestions. We will be pleased to discuss these matters with you in greater detail, should you so desire.

Sincerely yours,


Max A. Neuwirth
Associate Director

Mr. Myles J. Ambrose
Commissioner of Customs
Department of the Treasury

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