

**AMENDING THE INTERNAL REVENUE CODE OF 1986 WITH RESPECT TO
THE TREATMENT OF CERTAIN AMOUNTS RECEIVED BY OPERATORS OF
LICENSED COTTON WAREHOUSES**

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Mr. BENTSEN, from the Committee on Finance,
submitted the following

R E P O R T

[To accompany H.R. 5643]

The Committee on Finance, having considered H.R. 5643, a bill to amend the Internal Revenue Code of 1986 with respect to the treatment of certain amounts received by operators of licensed cotton warehouses, reports favorably thereon and recommends that the bill do pass.

I. SUMMARY

The chief objective of the bill, the Customs Modernization and Improved Compliance Act, is to remove archaic statutory provisions requiring paper documentation and provide authority for electronic processing of customs-related transactions under the National Customs Automation Program (NCAP). In return for waiving paperwork requirements, importers would be required to maintain and produce information after merchandise has entered. The bill identifies three goals of the NCAP: ensuring uniform treatment of importers throughout the United States; facilitating business activity; and improving compliance with the customs laws. The Committee on Finance held a hearing on July 29, 1992 on Customs modernization legislation pending before the Committee.

II. GENERAL EXPLANATION

The Committee on Finance reports H.R. 5643, a bill to modernize the operations of the United States Customs Service. The bill includes provisions aimed at addressing four major issues: (1) facilitating Customs' processing of merchandise through automation; (2) improving compliance with U.S. customs laws by adopting or, where appropriate, increasing penalties for non-compliance; (3) pro-

viding the trade community with greater certainty concerning Customs' rules and regulations ("informed compliance"); and (4) streamlining Customs' operations through a number of administrative changes. The four major elements are summarized below, followed by a section-by-section analysis of the bill.

(1) FACILITATION OF ENTRIES

The bill provides the statutory authority to establish the NCAP and authorizes the remote filing of certain entry documents, which would permit an importer to file the necessary information from a single location regardless where the merchandise arrives in the United States or where it is released by the Customs Service. The bill also permits importers, in order to cut costs through the submission of information in batch form, to file electronically and periodically summaries of the information now contained in individual entry summaries. In addition, importers will be permitted to file "reconciliation" statements, permitting Customs to finalize the duty assessment process by liquidating the underlying entry as to all issues (e.g., classification, appraisement) covered by the entry, except for the issues identified by the importer as requiring the submission of additional information not currently available to the importer. This additional information will be contained in a reconciliation statement, which will in turn be liquidated by Customs. The bill also permits importers to pay duties and fees periodically, with interest.

Other provisions aimed at facilitating the entry of merchandise include changes and clarifications to the laws regarding duty drawback, the elimination of requirements to provide unnecessary documents or information, and changes updating the laws regarding the entry and clearance of vessels.

(2) IMPROVED ENFORCEMENT OF CUSTOMS LAWS

The bill also contains a number of provisions aimed at improving compliance with the customs laws, in exchange for the steps that Customs will take to facilitate the entry of merchandise. These measures chiefly take the form of penalties for failure to provide accurate information or to keep the records that will be necessary for Customs to audit or review entries of merchandise after they have been cleared through Customs.

The bill makes clear that penalties that currently apply to false, forged or altered documents will also apply to information submitted electronically. In addition, importers will be required to exercise "reasonable care" in entering merchandise; failure to do so will subject importers to civil penalties. The bill also subjects additional parties to the recordkeeping requirements of the law and establishes a new administrative penalty if parties fail to produce the records required by Customs to audit or review entries of merchandise. Penalties are also established for the filing of false duty drawback claims. The bill also establishes two voluntary compliance programs, a "Recordkeeping Compliance Program" and a "Drawback Compliance Program," in which Customs will be required to inform participants of their rights and obligations concerning recordkeeping and the filing of drawback claims.

(3) INFORMED COMPLIANCE

The concept of "informed compliance" is addressed in the bill in a number of provisions. "Informed compliance" is premised on the belief that importers have a right to be informed about Customs rules and regulations, as well as interpretive rulings and directives, and to expect certainty that Customs will not unilaterally change the rules without providing importers with proper notice and an opportunity to respond.

To expedite the entry of merchandise, the bill authorizes Customs to accredit private laboratories and commercial gaugers, and to accept quantity and analysis results from such accredited facilities, although Customs will always reserve the right to independently test, analyze or quantify merchandise. The bill also establishes specific procedures for the detention of merchandise by Customs and guarantees recourse to the Court of International Trade (CIT) in cases where Customs fails to make a timely decision concerning the admissibility of detained merchandise. The bill also clarifies the circumstances under which merchandise may be seized and forfeited; it is intended to codify existing practices. Additional provisions relate to Customs protest procedures, the publication of interpretive rulings and appeals of adverse interpretive rulings, and the conduct of regulatory audits.

(4) ADMINISTRATIVE MODIFICATIONS

The bill includes a number of measures aimed at streamlining Customs' operations and improving the productivity of the Service. For example, Customs will be authorized to use private collection agencies to recover money owed to the U.S. Government under the Customs laws. In addition, other agencies on whose behalf Customs collects fees will be required to reimburse Customs for its services. The bill also increases the specific dollar limits that authorize eligibility for Customs to issue administrative exemptions from duty and taxes on articles such as gifts and personal and household goods and authorizes Customs to waive the collection of duty where the duty is so low that the expense and resources required to process the entry are disproportionate to the revenue that would be collected. The bill requires reports to Congress regarding the collection of duties imposed under the antidumping and countervailing duty laws, compliance with the laws enforced by Customs, a review of courier services and the distribution of costs of Customs cargo examination program.

SECTION-BY-SECTION ANALYSIS***Section 1.—Short title***

This section provides that the bill may be cited as the "Customs Modernization and Informed Compliance Act." It also provides that, whenever in Title I, II, or III of this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a part, section, subsection, or other provision, the reference shall be considered to be made to a part, section, subsection, or other provision of the Tariff Act of 1930 (19 U.S.C. 1202 et seq.). Section 1 includes the bill's table of contents.

TITLE I—IMPROVEMENTS IN CUSTOMS ENFORCEMENT

Section 101. Penalties for violations of arrival, reporting, entry, and clearance requirements

Under current law (19 U.S.C. 1436), civil and criminal penalties are provided for violating the provisions of the statute concerning the report of arrival of vessels, vehicles and aircraft. These violations include the presentation of forged or altered documents. In order to bring uniformity to the penalty provisions that apply to the arrival, entry, clearance and manifest laws, the bill amends the law to provide penalties for violation of the arrival, entry, clearance, and manifest requirements consistent with the provisions of section 331(a) of the Anti-Drug Abuse Act of 1986 (Public Law 99-570; 100 Stat. 3207-81). Further, in order to recognize the use of electronic means of communications, this section also makes current penalties for presenting false or altered data or manifests applicable to the transmittal of false or altered data or manifests to Customs through an electronic data interchange system.

Section 102. Failure to declare

Current law (19 U.S.C. 1497) provides for forfeiture and penalties for the failure to declare articles. If the article is a controlled substance, the amount of the penalty is 1,000 percent of the value of the article. In order to ensure that an adequate penalty is assessed for the importation of even a small amount of a controlled substance, this section establishes a minimum \$500 penalty for the importation of controlled substances. The Committee bill provides that the penalty will be the greater of \$500 or an amount equal to 1,000 percent of the value of the article. The Committee bill also authorizes the electronic transmittal of entries and declarations.

Section 103. Customs testing laboratories; detention of merchandise

Current law (19 U.S.C. 1499) provides Customs with the authority to conduct examinations and detain imported merchandise. Under the statute, not less than one package of every invoice and not less than one package of every 10 packages of merchandise shall be examined unless it is determined that a lesser number of packages can be examined. If there is evidence of fraud, the statute permits seizure of the merchandise. If there is no evidence of fraud, the value of an article omitted on the entry shall be added and the duties paid on that article. Current law also describes the circumstances under which the appraisal of merchandise shall *not* be held to be invalid.

The Committee bill is intended to bring the law into conformity with existing Customs practice regarding the examination of merchandise by removing obsolete examination requirements. The bill requires Customs to: (1) designate the packages or quantities of merchandise covered by an entry that are to be opened and (2) order that such packages or quantities, and any additional packages or quantities that may be necessary, be sent to a designated examination site. The bill requires Customs to inspect a sufficient number of shipments and examine a sufficient number of entries to ensure compliance with the customs laws. The Committee bill provides that any articles fraudulently omitted from an entry or in-

voice are subject to seizure and that duties, fees and taxes must be paid on any articles that were omitted from an invoice or entry without fraudulent intent. It is the Committee's intent that, to ensure that adequate information is available to Customs officials responsible for conducting examinations, any required entry or manifest information that has been filed with the Customs Service, whether electronically or in paper form, be available to the appropriate official in the port of examination. It is the Committee's intent that the absence of any required entry or manifest information does not preclude or limit in any way the authority of the Customs Service to examine merchandise.

The Committee bill is also intended to codify Customs regulations and administrative guidelines concerning the use of commercial laboratories and gaugers. The bill authorizes Customs to set procedures for the accreditation of commercial laboratories and the approval of commercial gaugers, and the suspension and revocation of accreditation or approvals, but such procedures will apply only when the determination of admissibility, quantity, or composition of imported merchandise is vested in or delegated to the Customs Service. Although the bill authorizes Customs to impose a reasonable charge for accreditation or reaccreditation, it is the Committee's intent that these fees be equivalent to the costs incurred by Customs in performing such accreditation and reaccreditation. The bill provides that laboratories and gaugers that are currently accredited under Customs' regulations will not be required to reapply, but will be subject to reaccreditation. The Committee bill also creates appeal rights for commercial laboratories and gaugers to challenge in the CIT any order or decision relating to their accreditation or reaccreditation or the assessment of a penalty within 60 days of its issuance. The bill requires Customs to accept quantity and analysis results from laboratories and gaugers accredited by Customs but does not limit or preclude Customs or any other Federal agency from independently testing, analyzing, or quantifying any merchandise.

With respect to the suspension or revocation of accreditation, the bill requires the Secretary of the Treasury to prescribe regulations regarding the conditions under which Customs may suspend or revoke accreditation or impose monetary penalties. The Committee's bill provides that, notwithstanding the provisions of 19 U.S.C. 1592 (d), penalties may be assessed, but any monetary penalties may not exceed \$100,000 and shall be in addition to recoveries of any actual or potential loss of revenue that may have resulted from an intentionally falsified report or analysis submitted by an accredited laboratory or gauger in collusion with the importer. It is the Committee's understanding that the Customs Service, within a reasonable period of time following enactment of this legislation, will publish guidelines governing penalties and any mitigating factors that Customs will consider any such penalties. The Committee expects that such guidelines will take into account the severity of the violation and the frequency of violations. As the statute provides, penalties are not to be assessed in cases of good faith differences of professional opinion.

The Committee's bill also provides that testing procedures and methodologies will, unless developed by Customs for enforcement

purposes or proprietary to the holder of a copyright or patent covering such procedures or methodologies, be made available upon request to laboratories, importers or their agents, and any others in the trade community expected to make use of such procedures or methodologies in connection with their import activities. It is the Committee's intent that the phrase "testing procedures and methodologies . . . developed by the Customs Service for enforcement purposes" be interpreted to mean only those circumstances where the revelation of such procedures or methodologies would be expected to materially aid an importer in potentially circumventing Customs laws or regulations. Test results will be made available on request to the importer or its agents, unless they are proprietary to the holder of a copyright or patent or reveal information developed by Customs for enforcement purposes. It is the Committee's intent that, where information relating to analytical methods and results can be provided, such information shall include data and other information supportive of laboratory results, in addition to the final laboratory report.

The Committee's bill also sets forth procedures regarding the detention of merchandise by the Customs Service. These procedures compel Customs to make a decision to release or detain merchandise within five working days after presentation of the merchandise for examination. The bill requires Customs to notify the importer of any detention within five working days. The Committee's bill requires Customs to provide copies of any Customs' testing results and a description of the analytical procedures and methodologies employed to any party having an interest in detained merchandise unless such disclosure reveals testing procedures and methodologies that are proprietary to the holder of a patent or copyright covering such procedures or methodologies or are developed by Customs for enforcement purposes.

The Committee's bill provides for expedited administrative and judicial review of detentions. Under the bill, the failure to make an admissibility decision concerning the detained merchandise within 30 days after the merchandise has been presented for examination will qualify as a decision to exclude for purposes of the protest law (19 U.S.C. 1514). If the protest is denied, the challenging party may institute suit in the CIT. During judicial review of a detention, the Customs Service has, notwithstanding 28 U.S.C. 2639, the burden of proof in demonstrating that it has good cause for not reaching an admissibility decision. However, the burden remains with the complainant, in accordance with 28 U.S.C. 2639, if a suit is commenced after a decision on admissibility has been reached. If the CIT determines that the Customs Service has not met its burden of showing good cause for not reaching an admissibility decision, it shall order the appropriate relief which may include an order to release the merchandise. Once an action has commenced before the CIT, the Customs Service shall immediately notify the Court if a decision to release, exclude, or seize has been reached.

With respect to the "good cause" burden placed on the Customs Service relating to the admissibility decision, it is the Committee's intent that this burden may be satisfied by a showing that another Federal agency with jurisdiction over an admissibility decision has not yet reached the required determination.

The Committee understands that Customs frequently detains merchandise on behalf of other agencies, including the Food and Drug Administration and the Department of Agriculture, and is not directly involved in the activities that result in an admissibility decision. The procedure provided in the bill for recourse to the CIT is intended to apply only to admissibility determinations for which the Customs Service is responsible. The bill is not intended to change any existing procedures or relationships between Customs and any other Federal agency.

Section 104. Recordkeeping

Current law (19 U.S.C. 1508(a)) provides that any owner, importer, consignee, or agent must make, keep and render for examination and inspection records pertaining to any importation. Section 508(c) provides that records be maintained for a period of five years from the date of entry. 19 U.S.C. 1508(e) states that any person who fails to retain records of exports to Canada (as required under 19 U.S.C. 1508(b)) shall be liable to a civil penalty not to exceed \$10,000.

The Committee's bill expands the parties subject to the recordkeeping requirements to parties whose activities require filing an entry or declaration, parties transporting or storing merchandise carried or held under bond, parties who file drawback claims, and parties who cause an importation or the transportation or storage of merchandise held under bond. The bill also provides that information and data maintained in the form of electronically generated or machine readable data are "records" for purposes of the statute's recordkeeping requirements. Finally, the bill provides that records pertaining to drawback claims shall be kept for three years from the date the claim is paid and liquidated; all other records required to be kept by this section, including those pertaining to exportations to Canada, shall be retained for five years from the date of importation or exportation (to Canada), as appropriate.

The Committee's amendments are intended to clarify recordkeeping requirements for the importing community, close existing loopholes and provide statutory recognition of electronically transmitted records. The Committee intends that the recordkeeping requirements and Customs' examination authority shall apply only to those records specifically identified in the statute.

Section 105. Examination of books and witnesses

Current law (19 U.S.C. 1509(a)(1)) provides authority for the examination of records and witnesses. Section 1509(a)(2) provides the authority to summon the importer, or officer, employee, or agent of the importer; or any person having possession, custody, or care of the records; or any other person; and to require the production of the records. Section 1509(c) defines the terms "records," "summons," and "third-party recordkeeper," and sets forth special procedures for third-party summonses.

The Committee's bill amends section 19 U.S.C. 1509(a) by providing that records maintained in the form of electronically generated or machine readable data fall within the purview of this statute, and that records required for the entry of the merchandise, whether or not Customs waived their presentation at entry, shall be pro-

duced for Customs' examination within a reasonable time after demand for their production, taking into account the number, type, and age of the item demanded. The bill also requires that the Customs Service identify and publish of the "Customs Bulletin" a list of the records that are required for the entry of merchandise. The Committee intends that the list be published as soon as possible after the enactment of this legislation. Such records include, but are not limited to, commercial invoices, packing lists, certificates of origin, Form A, declarations of a foreign manufacturer, and any specific documents or other agency forms required pursuant to regulation for the admissibility into the United States of particular merchandise. The Committee intends that Customs publish regulations in connection with this requirement at a later date. Once this list has been made public and importers have had an opportunity to familiarize themselves with the contents, the Committee expects the person on whom a demand is made for the production of any of the records identified in the statute will furnish them within the "reasonable time" standard stipulated in the law. Failure to comply with a demand for the production of records required for the entry of merchandise may subject the non-complying party to an administrative penalty. The Committee believes that the statute is relatively clear on how such factors as the number, type, and age of the items demanded will affect the obligation to produce. For example, a single request for a one-page document associated with a six-month old entry should be produced within a matter of days, whereas the production of 50 commercial invoices relating to 50 entries that were filed two years before the documents were requested will take longer to produce—as long as two to four weeks, depending on whether the records had to be retrieved from storage and the method of storage involved. The Committee believes that Customs and the importing community should be able to develop production schedules that do not adversely affect the day-to-day operations of the business while permitting Customs to verify in a timely manner the accuracy of information relating to import transactions.

The Committee's bill establishes procedures for conducting regulatory audits. These procedures require advance notification, entry and closing conferences, and preparation of a written audit report within 90 days following the closing conference. The bill requires that a copy of the audit report, subject to any applicable exemption from disclosure provided in the Freedom of Information Act (5 U.S.C. 552), be sent to the audited party within 30 days of completion, unless a formal investigation has been commenced. It is the Committee's intention that, in an era of "informed compliance," Customs will make expanded use of its Regulatory Audit program. At the same time, the safeguards included in the Committee's bill should enhance the value of the regulatory audit program in ensuring compliance with applicable laws and regulations. The bill makes clear that Customs will not be required to hold a closing conference or complete and furnish a written audit report if a formal investigation is commenced. The Committee expects that this provision will not affect audits other than those where discrepancies are noted. The Committee urges Customs, however, to provide notice of the opening of a formal investigation as soon as pos-

sible, particularly where there is sufficient cause to believe that any required records would not be rendered unavailable or destroyed.

The Committee intends that the written audit reports will provide sufficient information and be of such quality as to further the "informed compliance" goals of this bill. The Committee further intends that any exemptions under the Freedom of Information Act be used judiciously and in a manner consistent with the "informed compliance" objective. If a Customs auditor believes, during a routine audit, that recordkeeping deficiencies exist, the Committee expects the auditor to point out any such deficiencies to the audited party. Where matters are more properly characterized as involving tariff classifications, valuation, or interpretations of law, the Committee expects such matters will be brought to the attention of the Customs officer with the appropriate expertise.

The Committee's bill also establishes a new "Recordkeeping Compliance Program." Customs shall establish this program, on a voluntary basis, after consulting with the importing community. Recordkeepers who are certified by Customs may participate in the program or establish an alternative program suited to their and Customs' particular needs, if they can show, among other things, that they comprehend the legal recordkeeping requirements, have adopted procedures for explaining recordkeeping requirements to employees, have adopted procedures for the preparation, maintenance and production of required records, have designated an individual or individuals to be responsible for compliance with the recordkeeping program, have adopted procedures approved by Customs for the maintenance of original records or alternative records, and have adopted procedures for notifying Customs of variances to, or violations of, the recordkeeping compliance program, and for taking corrective action when notified by Customs of violations or problems regarding the program. Customs shall take into account the size and nature and volume of imports of an importing business when deciding to certify its program.

The Committee's bill also provides for administrative penalties for the failure to comply with a lawful demand for records which are required for the entry of merchandise. The Committee believes that administrative penalties are warranted because, under current law, Customs has no administrative recourse other than resorting to a Customs summons when requests for records are ignored. If the recordkeeper ignores a summons, Customs has no recourse but to go to court. The delay, burden and expense associated with enforcing a Customs summons has meant that such actions have been rare. The Committee believes that administrative penalties will provide an effective mechanism for enforcing Customs' recordkeeping requirements. The Committee intends, however, that the availability of an administrative penalty shall not reduce or limit in any way Customs' authority to issue summonses. Further, it is the Committee's firm intention that only those records that are required for the entry of merchandise should be within the purview of the administrative penalty provided by this section. The Committee believes that these penalties will allow Customs to reduce the paperwork demands on an importer because Customs can

waive the production of the records at entry while retaining authority to demand their production at a later time.

Under the Committee's bill, the imposition of a penalty for failure to comply is not mandatory, thus giving Customs the discretion to decide whether a civil penalty is warranted. Where an importer has adopted a recordkeeping compliance program in consultation with Customs, a penalty may be inappropriate. Specifically, recordkeepers who are certified by Customs for participation in the recordkeeping compliance program and are in general compliance with the program, shall, in the absence of willfulness or repeated violations, be issued a written warning notice (in lieu of a penalty) if they fail to comply with a demand for the production of records required for the entry of merchandise. However, willfulness in failing to produce demanded records or repeated violations of law by a recordkeeper may result in the issuance of penalties and removal of certification for the recordkeeping compliance program. The Committee intends that Customs should exercise tight control over the imposition of recordkeeping penalties and that, until the Customs Service gains experience in administering this penalty, no such penalty should be issued without prior Headquarters review and approval.

In addition, the bill makes clear that any penalty assessed by the Customs Service may be remitted or mitigated under 19 U.S.C. 1618. In all cases, the amount of the penalty will depend on whether the failure to produce the records is due to willful conduct or negligence.

The bill further provides that no penalty shall be issued if the demand is substantially complied with by the production of other evidence satisfactory to the Customs Service, if an act of God or other natural casualty or disaster prevents compliance with a lawful demand, or if demanded information was previously provided to and retained by Customs.

Under the Committee's bill, any penalty imposed under this section shall be in addition to any other penalty provided by law, except where the Customs Service assesses a penalty for violation of 19 U.S.C. 1592 for a material omission of demanded information, or where Customs takes disciplinary action against a customs broker under 19 U.S.C. 1641. With respect to customs brokers, the Committee notes that customs brokers can be considered recordkeepers under 19 U.S.C. 1509, as amended, and subject, therefore, to disciplinary action under this section. However, the Committee notes further that the conduct of customs brokers is controlled by 19 U.S.C. 1641, which specifies penalties for violations of the law. For reasons of commercial necessity, brokers may act as importers of record in cases where the actual importer does not have an entry bond. Their status as "brokers" does not change because of this and failure to maintain the records specified in this section should not automatically subject them to the penalties set forth in paragraph (g) of this section. The Committee intends that Customs shall apply 19 U.S.C. 1641 to brokers, including those who act as importers of record, unless there are exceptional circumstances. These occur when there is an egregious, flagrant or willful violation of the requirements of 19 U.S.C. 1509, or when there is a pattern or practice of abuse occurring over a sustained period of

time in willful disregard of the recordkeeping requirements. The recordkeeping penalty assessed under 19 U.S.C. 1641 for failure to comply with a demand for information shall follow the same principles as is the case under 19 U.S.C. 1509. Each failure of a broker to comply with a demand under 19 U.S.C. 1509 shall be actionable under 19 U.S.C. 1641, and subject the broker to revocation, suspension or monetary penalties in lieu of a penalty under 19 U.S.C. 1509.

Section 106. Judicial enforcement

Current law (19 U.S.C. 1510) provides that a district court may issue a compliance order to a person who refuses to obey a Customs summons issued under 19 U.S.C. 1509. The failure to abide by such court order may be punished as a contempt of court. The Committee's bill grants district court judges the authority to assess a monetary penalty for the failure to abide by a court order for the production of records, in addition to holding a non-complying party in contempt of court.

Section 107. Review of protests

Under 19 U.S.C. 1515, procedures are provided relating to review of protests, administrative review and modifications of decisions, and requests for accelerated disposition of protests. The Committee's bill permits the Commissioner of Customs to rectify erroneous denials of applications for further review and protests without recourse to the judicial system. The bill amends 19 U.S.C. 1515 to allow importers to request that the Commissioner of Customs review a decision denying an application for further review. Review of such a request will be based solely on the basis of the record before Customs at the time the application for further review was denied.

The bill also authorizes Customs, on its own initiative or pursuant to a request by a protesting party, to void a protest denied contrary to proper instructions. Proper instructions are only those instructions that are issued by an appropriate Customs official having the necessary authority vested by law or the U.S. Customs Service to issue such instructions. The Committee expects that, where an application is made, or Customs on its own initiative reviews a protest denied contrary to proper instructions, Customs will decide in a timely manner whether to void the denial of the protest. Finally, the bill provides that all administrative action pertaining to a protest or application for further review will terminate when an action is commenced in the CIT arising out of such protests or applications and that any administrative action taken subsequent to the commencement of an action shall be null and void.

Section 108. Repeal of provision relating to reliquidation on account of fraud

If the appropriate Customs officer determines that there is fraud in the case, he may, under 19 U.S.C. 1521, reliquidate the entry within two years (exclusive of the time during which a protest is pending) after the date of liquidation or reliquidation. The Committee's bill repeals 19 U.S.C. 1521. That section is no longer necessary since Customs may use 19 U.S.C. 1592(d) to recover duties.

Section 109. Penalties relating to manifests

Current law, 19 U.S.C. 1584, provides penalties for failure to produce a manifest and for manifest discrepancies; it also provides penalty procedures. The Committee bill amends that section to reflect that manifests, notices, statements, and claims may be electronically transmitted.

Section 110. Unlawful unloading or transshipment

Current law (19 U.S.C. 1586) provides penalties for: unloading prior to the grant of permission; transshipment to any vessel for purpose of unlawful entry; and for unlawful transshipment to any U.S. vessel. An unloading or transshipment because of accident, stress of weather, or other necessity may not be subject to a penalty. In order to close existing loopholes, the Committee's bill amends 19 U.S.C. 1586 to cover hovering vessels and vessels receiving merchandise outside of the territorial waters. Under existing law, vessels which leave U.S. territorial waters, receive merchandise from a vessel outside of U.S. territorial waters, and then return to the United States to unload the merchandise are not subject to a penalty. The Committee's bill remedies this defect in the law.

Section 111. Penalties for fraud, gross negligence, and negligence; prior disclosure

Under current law (19 U.S.C. 1592), if merchandise is entered, introduced, or attempted to be entered or introduced by a false document, oral or written statement, or act, or omission which is material, and the result of fraud, gross negligence or negligence, the person(s) responsible may be liable for a civil monetary penalty. In certain cases, the merchandise may be seized. Following written notice concerning the violation, a pre-penalty response and/or petition for relief may be filed requesting mitigation in accordance with established guidelines.

The Committee's bill amends 19 U.S.C. 1592 by prohibiting the electronic transmittal to Customs of false information or data, and authorizing Customs to recover underpayment or non-payment of taxes and fees resulting from a violation of 19 U.S.C. 1592. The Committee believes that, in order for "informed compliance" to work, it is essential that the importing community share with the Customs Service the responsibility to ensure that, at a minimum, "reasonable care" is used in discharging the importer's responsibilities. These include classifying and appraising the merchandise, furnishing sufficient information to permit Customs to fix final classification and appraisal of merchandise, taking measures that will lead to and ensure the preparation of accurate documentation, and providing adequate and accurate pricing and financial information to permit the proper valuation of merchandise. In meeting the "reasonable care" standard, the Committee believes that an importer should consider utilizing one or more of the following aids for proper compliance: seeking guidance from Customs through the pre-import or formal ruling program; consulting with a Customs broker; employing individuals in-house who are trained in Customs practice and procedures, seeking the assistance of outside counsel, consultants, public accountants, or the corporate controller on

issues relating to law, proper recordkeeping and valuation; and, when appropriate, obtaining analyses from accredited laboratories and gaugers for determining technical qualities of an imported product. Where an importer chooses to use an outside expert, the importer is responsible for providing the expert with full and complete information to allow the expert to make entry or to provide advice as to how to make entry. If the above steps are taken, the importer will be presumed to have acted with "reasonable care" in making entry. The following are two examples of how the reasonable care standard should be interpreted by Customs: (1) the failure to follow a binding ruling is a lack of reasonable care; and (2) an honest, good faith professional disagreement as to the correct classification of a technical matter shall not be lack of reasonable care unless such disagreement has no reasonable basis (e.g., snow skis are classified as water skis).

If an importer fails to use reasonable care in classifying and appraising the merchandise and presenting other entry data, Customs may impose a penalty under the appropriate culpability levels of 19 U.S.C. 1592. The Commission noted that Customs uses the following definitions for the various culpability levels in administering the present penalty guidelines and expects Customs to continue to use these definitions in the administration of the penalty provisions:

(1) *Negligence*.—A violation is determined to be negligent if it results from an act or acts (of commission or omission) done through either the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances in ascertaining the facts or in drawing inferences therefrom, in ascertaining the offender's obligations under the statute, or in communicating information so that it may be understood by the recipient. As a general rule, a violation is determined to be negligent if it results from the offender's failure to exercise reasonable care and competence to ensure that a statement made is correct.

(2) *Gross negligence*.—A violation is deemed to be grossly negligent if it results from an act or acts (of commission or omission) done with actual knowledge of or wanton disregard for the relevant facts and with indifference to or disregard for the offender's obligations under the statute.

(3) *Fraud*.—A violation is determined to be fraudulent if the material false statement or act was committed (or omitted) knowingly (voluntarily and intentionally), with an intent to deceive, mislead, or convey a false impression, as established by clear and convincing evidence.

The Committee also notes the recent decision of the CIT in *United States v. Thorson Chemical Corp.*, Slip Op. 92-84 (May 28, 1992) in which Judge Carman stated, "While the statute itself does not define [the three degrees of culpability], the Court is guided by case law and Customs' own regulations."

The Committee's bill also provides that the mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct. The Committee has included this provision in order to address concerns expressed by the industry representatives that this form of conduct will not be held to constitute a pattern of negligent conduct. The Committee

recognizes that, with increased reliance on electronic systems, it is entirely possible that an initial clerical error could be repeated numerous times. For example, where an entry level clerk or typist prepares documents using a model format as a guide, it is possible that an initial error may be repeated many times over. In such cases, multiple repetitions of an initial clerical error may not constitute a pattern of negligent conduct. The Committee urges the Customs Service to examine the nature of the data transcription in issue, and to take into consideration the element of time and the number of importations involved.

The Committee also recognizes that repetitive human errors may not, in some cases, constitute a pattern of negligence. The Committee expects that Customs will make its determination based on the existence and operation of quality control procedures, the nature of the data transmission, the number of importations handled, and the amount of time involved in the action creating the error. The Committee intends, however, that a failure to use reasonable care as required by 19 U.S.C. 1484, where such failure results in repetitive errors, shall constitute a pattern of negligent conduct.

The Committee notes that the element of time may affect the determination in at least two instances. If a repetitive error goes undetected for more than six months, the Committee believes that Customs should consider this a pattern of negligent conduct. For example, the Committee believes that the exercise of reasonable care should catch an error repeated in daily entries of merchandise. However, if there was but a single entry during that six-month period, the converse would be true. If the Customs Service discovers cases where there are repetitive clerical errors in multiple entries, and such errors have not previously been disclosed by the importer in its exercise of reasonable care, the Committee does not intend that the importer will be shielded from a finding of negligent conduct.

The Committee's bill further amends 19 U.S.C. 1592 by defining the commencement of a formal investigation, for purposes of prior disclosure, as being the date recorded in writing by the Customs Service when facts and circumstances were discovered or information received to believe a possibility of a violation of section 1592 existed. The Committee believes that there should be a clearly defined and objective standard by which to measure the date when a formal investigation has commenced. That standard must lie in the creation of a formal document or electronic transmission that will serve as evidence, if required, of the formal opening of an investigation. The Committee expects that such document or transmission will be maintained by the Office of Enforcement or other central unit designated within Customs.

If a Customs official has reasonable cause to believe that a violation of section 1592 has occurred, that official shall record the salient facts and present them to the Office of Enforcement or other central unit. That office shall determine whether the facts merit the commencement of a formal investigation. The Committee expects that Customs officials will exercise particular care in recording essential facts (including but not limited to names, types of issue (e.g., undervaluation and marking), date and time the case is opened, and nature of investigation); this requirement for careful

recordkeeping by Customs should allay the trade community's concerns that the benefits of prior disclosure will be denied in the absence of tangible evidence.

The Committee does not intend that Customs disclose to the target of an investigation the fact that a formal investigation has opened. But if Customs determines that it is appropriate to issue a pre-penalty notice under 19 U.S.C. 1592(b)(1), a copy of the written document or electronic transmission should be included as an exhibit. With that one document, it should be clear whether the alleged violation stems from information previously disclosed by the disclosing party. The time of disclosure will also be defined. If the importer's disclosure of the circumstances of the violation precedes the opening of the formal investigation, the case should be treated as one involving prior disclosure. But if the disclosure did not precede the opening of the formal investigation, the disclosing party will be left with the burden of proving that disclosure of the violation was made without knowledge that a formal investigation had been opened.

Section 112. Penalties for false drawback or refund claims

The bill creates a new section 19 U.S.C. 1593A to establish penalty provisions for the false submission of drawback refund claims and to establish a "Drawback Compliance Program" similar to the "Recordkeeping Compliance Program" described above. Customs would be required under the voluntary program to inform potential drawback claimants clearly about their rights and obligations. The Committee believes that the provision of penalties and the establishment of a drawback compliance program will promote informed compliance while balancing both trade facilitation and trade enforcement concerns.

The maximum statutory penalty for violations based on fraud would be three times the loss of revenue. For negligence, a drawback claimant qualifying for the "Compliance Program" would be issued a "warning notice" for an alleged first violation and then would be issued the following penalties on an escalating scale:

Second case.—Not to exceed 20 percent of the loss of revenue;

Third case.—Not to exceed 50 percent of the loss of revenue; and

Fourth and Subsequent.—Not to exceed 100 percent of the loss of revenue.

A drawback claimant who does not qualify for the Compliance Program would be subject to an initial penalty not to exceed 20 percent of the loss of revenue. The second violation would be 50 percent with third and subsequent violations not to exceed 100 percent of the loss of revenue.

For purposes of determining possible penalties, repetitive violations would be subject to a timeframe of a "rolling" three-year period (similar to a traffic violation) after which the "clock" would start over.

This section is to become effective on or after operational implementation by Customs of a nationwide drawback selectivity program.

Section 113. Interpretive rulings and decisions; public information

Under 19 U.S.C. 1625, within 120 days after issuing any precedential decision (including any ruling letter, internal advice memorandum, or protest review decision), the Secretary of the Treasury is required to publish the decision in the "Customs Bulletin" or otherwise make it available for public inspection.

The bill reduces the time period for publication to 90 days. It further provides that adverse interpretative rulings may be appealed within Customs, and requires that a ruling modifying or revoking an existing ruling be first published in the "Customs Bulletin" for notice and comment. The Secretary of the Treasury will give interested parties a 30-day period in which to submit comments. The bill also requires Customs to make available all information necessary for importers to comply with applicable laws and regulations. Any decision that limits the application of a court decision shall also be published for notice and comment in the "Customs Bulletin." It is the Committee's intent that Customs will be deemed to have met its publication requirements under this section if it disseminates such information through the U.S. Customs Service electronic bulletin board if such information remains publicly available in an accessible, retrievable format.

Section 114. Seizure authority

Under 19 U.S.C. 1595a(c), any merchandise that is introduced or attempted to be introduced contrary to law (other than in violation of 19 U.S.C. 1592) may be seized and forfeited.

The Committee's bill amends Customs' seizure authority to codify existing practice and clarify the circumstances under which merchandise may be seized and forfeited. Nothing in this section is intended to change existing procedures in effect between Customs and other Federal agencies regarding the seizure, forfeiture or other disposition of merchandise. The Committee does not intend that this section change current law or Customs' practice regarding parallel imports.

The section provides as follows: (1) merchandise that is stolen or smuggled or clandestinely imported, or that is contraband or a controlled substance, shall be seized and forfeited; (2) merchandise subject to a restriction or prohibition pertaining to health, safety, or conservation may be seized and forfeited if not in compliance with the restriction or prohibition; (3) merchandise which requires the authorization of a U.S. agency, but that is not accompanied by such, may be seized and forfeited; and (4) merchandise subject to copyright, trademark, trade name, or trade dress protection, and merchandise that is intentionally, falsely marked with the name of a country which is not the country of origin in violation of 19 U.S.C. 1304 or for which the importer has received written notices that previous importations of identical merchandise from the same supplier were found to have marking violations may also be seized and forfeited.

In addition, the bill provides that if merchandise is subject to quantitative restrictions requiring a permit and such document is not presented, the merchandise shall be detained unless the permit is counterfeit, in which case the merchandise shall be seized and

forfeited. Also, if the merchandise is imported contrary to applicable law governing the classification or appraisal of the merchandise and there are no issues concerning the admissibility of the merchandise, it may be seized only in accordance with 19 U.S.C. 1592.

TITLE II—NATIONAL CUSTOMS AUTOMATION PROGRAM

Section 201. National Customs Automation Program (NCAP)

This section is intended to give Customs the direct statutory authority to implement the NCAP that provides for full electronic processing of all Customs-related transactions. The bill defines the NCAP as an automated and electronic system for processing commercial importations and lists the existing and planned components of the program. The Committee understands that the list of planned components shall be expanded in the future as other components are initiated after the date of enactment. Participation in NCAP is voluntary, but Customs will establish eligibility criteria for participation. Since NCAP is a single program encompassing all Customs electronic processing procedures, the Committee expects that filers will either use NCAP electronic procedures, or use current procedures for filing paper documents. It is the Committee's intention that nothing in this section shall preclude the current practice of filing paper documentation within a single district. The Committee intends, however, to encourage electronic filing whenever possible. The Committee expects that Customs, in developing criteria for eligibility in NCAP, will qualify as broad a membership of the trade community as possible, including brokers, importers, express couriers, transportation companies, and foreign trade zone and sub-zone firms.

The bill identifies the goals of the NCAP as ensuring that all regulations and rulings administered or enforced by Customs are administered or enforced in a manner that is uniform and consistent, minimally intrusive upon the normal flow of business activity, and ensures compliance with applicable laws and regulations.

The bill requires Customs to provide the Senate Committee on Finance and the House Committee on Ways and means with a number of reports relating to the implementation of the NCAP. The Committee will also ask the General Accounting Office (GAO) to prepare an evaluation, as described below, of the remote entry filing component of the NCAP. The purpose of these reports is to provide the Committees with a comprehensive assessment of the progress achieved in implementing the NCAP and analyses of the effects the NCAP is having, or is expected to have, on Customs operations, on the users of the program and on the trade community at large, including importers and small, medium-sized and large brokers.

First, Customs must provide Congress an overall implementation plan for NCAP within 180 days of the enactment of this legislation. The overall implementation plan will include a general description of the NCAP, a brief description of each of the existing components of the program, estimates regarding the stages on which planned components of the NCAP will be brought on line. In addition, the overall implementation plan will also include an analysis of the ef-

fects that the existing components of NCAP are having, and the effects the planned components are likely to have, on Customs Service occupations, operations, processes and systems, and on the trade community (including small, medium-sized and large brokers and importers) using, or likely to use, NCAP.

Second, for each planned NCAP component, including remote filing, the bill requires Customs to prepare a separate implementation plan in consultation with the trade community, test the component, and transmit to Congress the implementation plan, testing results, and an evaluation report. The Committee intends that Customs consult with all relevant parties, including small, medium-sized and large brokers, importers, express couriers, sureties, transportation companies, including air and sea carriers, the National Treasury Employees Union and foreign trade zone and sub-zone firms, as necessary, in developing the implementation plan for each of the components. The Committee expects that testing of all planned components, including remote filing, will be conducted under carefully delineated circumstances with objective measures of success or failure, a predetermined timeframe and a defined class of participants. And in preparing its evaluation report on each of the components, the Committee expects Customs to solicit the views of all of the relevant parties, including but not limited to all of the parties with whom Customs consulted in developing the implementation plan. The Committee expects these evaluation reports will include detailed information on the scope of the testing and the parameters under which any testing was conducted and an objective assessment of the results. The Committee expects the valuation reports of each of the components to include summaries of the comments received by all relevant parties.

The implementation plan, the testing results and the evaluation report for each of the components will be transmitted to the Senate Committee on Finance and the House Committee on Ways and Means.

Third, the GAO will also prepare an independent evaluation of the remote filing component of the program and transmit the report to the Senate Committee on Finance and House Committee on Ways and Means. In order to ensure that the GAO report and the Customs report will be available to the Committees at approximately the same time, the Committee expects Customs to inform the Committee well in advance of the approximate date on which it expects to submit the implementation plan, testing results and evaluation of remote entry filing to the Committee so that the GAO may begin its evaluation in a timely manner.

In order to ensure that the Committee will have sufficient time to review the evaluation reports of the planned components, the bill provides that Customs may not implement the relevant program component on a permanent basis until 30 session days have elapsed after the submission of the relevant evaluation report. The Committee believes that it is necessary to establish a layover period during a time when Congress will be in session in order to provide Congress the opportunity to seek any necessary modifications to the program. However, the Committee intends that no further legislation is necessary before Customs may implement the planned components of the program, and implementation may

occur at any time after enactment as long as all of the requirements are met. The Committee intends that testing by Customs of any planned NCAP component, including remote filing of paper documentation, shall not be limited by any provision in this section.

Fourth, the bill requires Customs to develop a user satisfaction survey of parties participating in the program and evaluate the results of the survey every two years. Fifth, Customs will also be required to submit a separate evaluation of the cargo selectivity component of the program. Sixth, beginning in fiscal year 1993 and annually thereafter through fiscal year 1999, Customs will be required to transmit to the Senate Committee on Finance and House Committee on Ways and Means a written evaluation of all of the planned components of the program, with particular attention to remote entry filing. In preparing its reports, Customs will be required to solicit public comments, through the "Customs Bulletin," and shall consult with all relevant segments of the trade community, including small, medium-sized, and large brokers, importers, shippers and others.

The Committee's bill provides that Customs must publish a request for comments in the Customs Bulletin in order to solicit the views of the trade community concerning the implementation plan and evaluation of each of the planned components, and in preparing other required surveys, evaluations and reports. The Committee expects that Customs will also provide notice of the request for comments through other channels available to Customs, including electronic means. The Committee intends that the request for comments reach as broad an audience as possible.

The bill establishes specific conditions for the remote location filing component of NCAP. If a filer qualifies and elects to file from a remote location, then the filer must present electronically specified core entry information on an entry-by-entry basis, including electronic entry of merchandise, electronic entry summary, automated invoice information (when required by Customs) and electronic payment of duties, fees, and taxes. Customs may expand this core entry list in the future by regulation as capabilities develop. If any of the above means for filing core entry information electronically are not used, then paper documentation shall be filed in the district designated for examination.

With respect to the core requirements, the Committee intends the following definitions to apply: electronic entry means electronic submission of Form 3461 or Form 3461 Alt. information; electronic entry summary means electronic submission of Form 7501 or Import Activity Summary Statement information; automated invoice information means use of Automated Invoice Interface, but only applies when required by Customs; and electronic payment of duties, fees, and taxes means use of existing Automated Clearing House procedures.

After satisfying the core entry information requirement, filers must meet additional entry information filing requirements before any additional information required by Customs may be filed remotely. These requirements will be published and periodically updated. Any additional entry information required by Customs to be presented before the acceptance of entry summary information and

at the time of acceptance of entry summary information, may be filed from a remote location only if certain conditions are met. If Customs can accept the information electronically, then it shall be filed electronically.

If Customs cannot accept the additional information electronically, the circumstances under which filers may file remotely are limited. In all cases where Customs cannot electronically accept a document that is necessary for the release of the merchandise, the paper documentation must always be filed in the Customs district designated by the entry filer for purposes of Customs examination of the merchandise. Before January 1, 1999, all other types of additional paper documentation must be filed in the district designated for examination. After January 1, 1999, only those paper documents that are not necessary for the release of the merchandise may be filed at a remote location. It is the Committee's intent that all documents necessary for the release of goods, including those documents required by other Federal agencies for release, which Customs cannot accept electronically, be filed in the district designated for release and not remotely.

Under the bill, the importer may file any information required by Customs after entry summary in a remote location, whether using paper or electronic means. The Committee will request the GAO to conduct a comprehensive review of the remote entry filing component two years after that component is implemented on a permanent basis. The Committee intends that the GAO evaluate the implementation of the component, including the extent to which remote filing is used, the effect remote filing has had on the operations of the Customs Service and the distribution of its workload and employees, the costs and benefits of remote filing to importers, small, medium and large brokers, transportation companies and foreign trade zone and subzone companies, and other relevant parties, and the impact, if any, that remote filing has had on Customs' ability to enforce our trade, customs and drug laws.

The Committee believes that NCAP will enable Customs to make more efficient use of its impact specialist work force by channeling work to remote locations. However, the Committee does not intend that this bill prompt the movement of Customs personnel from one location to another to implement the goals of the program. The Committee has received assurances from the Commissioner of Customs that Customs will not remove import specialist positions from the Customs districts as a result of remote filing. The Committee expects that Customs will continue to use the full complement of import specialists at the district level.

Section 202. Drawback and refunds

Current law (19 U.S.C. 1313) permits drawback (a refund or remission) of the duties paid on imported merchandise when articles manufactured or produced with the use of such imported merchandise are exported. The Committee's bill contains provisions intended to expand U.S. exports and facilitate the use of drawback by easing administrative burdens while ensuring improved compliance (through increased penalties and informed compliance provisions) with the laws and regulations governing drawback.

Under current law, if dutiable raw materials and substituted domestic or duty-free raw materials of the same kind and quality are used by one manufacturer to make new articles that are exported, those articles are deemed to have been made with the dutiable raw materials and duty is refunded. The Committee's bill permits drawback upon exportation or where merchandise has been destroyed under customs supervision, if such articles have not been used prior to exportation or destruction.

Current law provides that an importer whose foreign supplier failed to follow the importer's purchase specifications or samples is entitled to a duty refund if the importer returns the imported merchandise to Customs within 90 days after release, provides sufficient evidence to show that the foreign supplier failed to follow the importer's specifications or sample, and then exports the merchandise. The Committee's bill amends the rejected merchandise drawback provisions to extend the period for return to Customs to three years, to allow destruction of the imported merchandise as an alternative to exportation, and to allow the importer and foreign supplier to agree that the imported merchandise was defective without reference to purchase specifications or samples. If the importer and foreign supplier could not agree that the merchandise was defective, Customs would be required to make that determination. Under this section, imported merchandise could be used for up to three years, and the importer could get a duty refund if it was shown that the merchandise did not conform to specifications or sample or was defective at the time of importation.

Current law also provides for "same condition" drawback whereby dutiable articles or substitute fungible articles, when exported or destroyed, are eligible for duty refund if the exported or destroyed articles were not used in the United States and are in the same condition as the dutiable articles when they were imported. Under a recent court decision (*B.F. Goodrich v. United States*, Court of International Trade, Slip op. 92-68 (1992)), any person who possessed the exported articles and paid the duty on the imported merchandise may claim the duty refund, opening the possibility of multiple claimants for the same exportation or destruction. The Committee's bill amends the same condition drawback provision to allow drawback on imported merchandise, or other domestic or imported merchandise that is substituted for the imported merchandise, that is not used within the United States before exportation or destruction. Substitute merchandise which forms the basis of a drawback claim must be in the possession of the drawback claimant before exportation or destruction.

The Committee's bill changes the standard for substitution under same condition or unused merchandise drawback from "fungible" to "commercially interchangeable." It is the Committee's intent that "commercial interchangeability" does *not* mean interchangeable in all situations. The Committee intends that, in determining whether merchandise is "commercially interchangeable," Customs should evaluate the critical properties of the substituted merchandise, rather than basing its determination on subjective standards. The Committee intends that, in determining the commercial interchangeability of two articles, Customs should consider the following criteria, among other factors: governmental and recognized indus-

try standards, part number, tariff classification, and relative values. The Committee intends that the test be more stringently applied if the article was destroyed rather than exported. The bill permits certain incidental operations with respect to the merchandise. In addition, for substitution under this provision, the Committee intends that, as a general rule, the possessor of the export merchandise must have paid duties on the imported merchandise (established by means of either an entry summary or a certificate of delivery).

The Committee's bill also permits the electronic filing of drawback claims and amends the packaging material drawback provision to expand eligibility for dutiable packaging material if used in the packaging of either the dutiable imported article or its substitute article as long as that article was exported or destroyed.

The bill also sets a period of three years from the date of export or destruction in which to file a complete claim. By virtue of changes elsewhere in this bill, the Committee understands that Customs would have three years from the date of payment of a claim to verify that claim. The bill also provides that, if a drawback claim is made under one subsection of 19 U.S.C. 1313 but is denied, the claim will be deemed to have been filed under any other subsection if the claim is allowable under that subsection. The Committee understands that Customs will not interpret this provision as imposing a requirement on Customs to investigate all alternatives in addition to the claimed basis before liquidating the drawback claim as presented, but will interpret the provision as allowing such a claimant to raise the alternative subsections by protest under 19 U.S.C. 1514.

The bill also allows a company to buy another company's factory and satisfy the "one manufacturer" requirement, under certain conditions. It also allows a person to buy a factory or division of another company and include a transfer of drawback rights. In all cases, the value of the realty and personalty transferred must exceed the value of the intangible property transferred to prevent pure sales of drawback rights. The Committee's bill also requires certifications against multiple claims of drawback rights. The Committee intends that a Trustee in Bankruptcy who has succeeded to all of the assets of an entity in bankruptcy would be considered to be a drawback successor.

The bill also requires any person who provided a certification of a fact which enabled another person to perfect a claim for drawback to keep records to show the validity of the certified fact. The bill codifies current Customs practice against "piggybacking" other duty exemption benefits (foreign trade zones, bonded warehouses, and duty-free temporary importation) onto the drawback benefits and provides that only one drawback claim per exportation or destruction will be allowed, but provides for appropriate credit or deduction for claims covering components or ingredients.

With respect to Customs' current practices for auditing drawback claims, the Committee is concerned that Customs may be denying entire claims in cases where a claim is deficient only with respect to a small number of entries or due to minor omissions. The Committee expects that if the entire universe of the claimed import entries and exports is audited and the audit reveals that only a por-

tion of a company's claims are deficient, drawback should be denied only on the deficient portion. If, however, a representative sample is audited and the audit reveals that a significant portion of the audited claim is deficient, then denial of a drawback claim may extend beyond the portion of the claim audited.

The Committee is also concerned with the lack of consistency with respect to the timeframes for record retention, submission of drawback claims and potential audit exposure. It is the Committee's expectation that Customs will issue drawback regulations that take into consideration the various time limitations for recordkeeping, filing claims, amendments and clarifications and for auditing and liquidating drawback claims.

The effective date of the drawback provisions is intended to permit the applications of these amendments to any drawback claim for which liquidation is not final (*i.e.*, which either has not been liquidated or, if liquidated, which may be timely protested).

Section 203. Effective dates of rates of duty

This section of the bill makes technical and conforming amendments to 19 U.S.C. 1315, which sets forth the effective date of the applicable rate or rates of duty imposed on any article of merchandise entered for consumption or withdrawn from warehouse for consumption. The Committee's bill updates the language used in the section by substituting "Customs" for "the appropriate customs officer" to reflect Customs' modernization and automation objectives, and changes a reference to the old Tariff Schedules of the United States to a reference to the equivalent provision in the Harmonized Tariff Schedule of the United States.

Section 204. Definitions

This section modifies 19 U.S.C. 1401, which sets forth definitions of certain terms used in the tariff laws. The section amends the definition of "hovering vessel" to close certain loopholes in the law, and adds definitions of "electronic transmission"; "electronic entry"; "electronic data interchange system"; "National Customs Automation Program"; "import activity summary statement"; and "reconciliation."

Section 205. Manifests

The law (19 U.S.C. 1431) currently requires the filing of a vessel manifest, and specifies requirements for the form, contents, signing and delivery, and public disclosure of that manifest. The Committee's bill deletes the specific requirements for the contents of a manifest and instead authorizes the Secretary of the Treasury to prescribe the manifest form and content and the manner of production and delivery of the manifest. This will provide the authority to permit the electronic transmission of manifests to Customs. The bill further provides that manifests may be supplemented by "bill of lading data" to be submitted with a manifest and clarifies responsibilities concerning production and delivery of manifests.

The Committee believes that these revisions to the manifest requirements will permit Customs to link manifest production requirements to better target high risk shipments according to such criteria as type of merchandise and country of origin. The Commit-

tee understands that, in many cases, the form and content of manifests have been developed and stipulated in international treaties to which the United States is a signatory, and the Committee expects that Customs will respect U.S. obligations under these treaties as it develops its manifest requirements.

The section also includes a provision for correcting a manifest discrepancy; that authority is currently provided in 19 U.S.C. 1440, which is being repealed by this bill.

The Committee's bill will also allow summary manifesting by carriers, including express consignment companies, of letter and document shipments which are already exempt from Customs' entry requirements. Letter packs and document packs would be required to be segregated according to size and country of origin. While the Committee believes that these changes are desirable because they will minimize the recordkeeping and data processing burdens on the affected industry, it is the Committee's firm intention that these changes not adversely affect Customs' ability to enforce the trade, customs and drug laws. The Committee understands that letter and document packs that may contain "merchandise," especially monetary instruments, are still subject to the current separate manifesting requirements. The Committee also understands that Customs cannot guarantee overnight clearance of items subject to summary manifesting, since additional examination procedures may be required. Nonetheless, the Committee expects Customs to make best efforts to achieve overnight clearance of such items in most instances.

Section 206. Invoice contents

Current law (19 U.S.C. 1481(a)) provides for the mandatory production of an invoice and specifies the information that must be stated on the invoice. Paragraph (b) provides the procedures for shipments not purchased and not shipped by the manufacturer. Paragraph (c) provides procedures for merchandise purchased in different consular districts. Paragraph (d) provides that the Secretary of the Treasury may provide exceptions to the requirements of this section by regulation. The Committee's bill amends 19 U.S.C. 1481 to allow importers to transmit to Customs by electronic means invoices, bills and other documents. This section also authorizes importers and Customs to use partial invoices and the electronic equivalent of invoices, bills, or other documents.

Section 207. Entry of merchandise

The essential requirements for the entry of merchandise are set forth in 19 U.S.C. 1484. The Committee's bill amends the law in several respects. The bill authorizes importers to transmit entry documents and/or data electronically to Customs. The bill also permits the periodic filing of entries by authorizing the Secretary to prescribe by regulation the time periods within which an entry must be filed. These regulations will provide that an importer may transmit electronically, by the 20th day following the end of a calendar month, an import activity summary statement covering all or some of the entries made during the calendar month. This electronic transmission would substitute for the filing of individual entry summaries. Whether an importer chooses to use the entry/

entry summary procedure or the entry/import activity summary statement, reconciliation would be available. Reconciliation is designed to permit those elements of an entry, other than those elements relating to the admissibility of the merchandise, that are undetermined at the time an entry summary or an import activity summary statement is required to be submitted, to be provided to the Customs Service at a later date. Importers that elect to use the reconciliation procedures will be required to post a bond or security, unless the bond or security filed at the time of entry also covers reconciliation statements.

Entries covered by an entry summary or an import activity summary statement will be liquidated in accordance with normal Customs' procedures, or kept open at the importer's request. If an importer wishes to submit a reconciliation for a particular entry or entries, he may do so by specifying in the entry summary or import activity summary statement that he wishes to provide relevant data at a later time, that is, when it become available. When the importer files the reconciliation, Customs will compare the information provided in the entry summary or import activity summary statement with the information provided in the reconciliation and make proper adjustments.

This approach permits the liquidation of an entry despite the fact that undetermined information has not been transmitted to Customs through the reconciliation process. For example, if an entry covers merchandise for which the importer supplies "assists" which can only be calculated on an annual basis, the importer can indicate to Customs that information contained in the entry is accurate for all purposes, other than its value as affected by the undetermined assists, and should be liquidated. Upon liquidation of the entry, any decision of the Customs Service entering into that liquidation, for example classification, could be protested pursuant to 19 U.S.C. 1514. When the "assist" information is later furnished in the reconciliation statement, the reconciliation statement will be treated as an entry, and liquidated. The decisions of the Customs Service pertaining only to the information contained in the liquidated reconciliation would be the proper subject of a protest.

The Committee believes that the introduction of the import activity summary statement and the concept of reconciliation will permit importers and customs brokers who are capable of interacting with Customs electronically to handle Customs transactions in a more efficient way, thus reducing paperwork and administrative costs.

Under the Committee's bill, importers will be required to use "reasonable care" in making entry. In the Committee's view, this requirement establishes a "shared responsibility" between Customs and the trade community, and allows Customs to rely on the accuracy of the information submitted by importers. This should allow Customs to streamline entry procedures. It is the Committee's view that the concept of "shared responsibility" means, at a minimum, that "reasonable care" be used in discharging the activities for which the importer bears responsibility. These include providing the classification and valuation of the merchandise, the furnishing of information sufficient to fix the final classification and appraisal of merchandise by Customs; taking measures that will lead to and

ensure the preparation of accurate documentation; and providing sufficient pricing and financial information to permit proper valuation of merchandise. Failure to use reasonable care would be actionable under the appropriate culpability levels of 19 U.S.C. 1592.

When an importer elects to submit a reconciliation, the Committee intends that "reasonable care" be used in preparing information contained in the reconciliation and the information contained in the entry summary or import activity summary statement that is certified by the importer for liquidation. However, it is the Committee's intent that, in most cases, discrepancies and inaccuracies in information contained in entry summaries or import activity summary statements for which a reconciliation will be submitted should not be penalized under 19 U.S.C. 1592 for failure to exercise reasonable care since the importer, by noting its intent to submit a reconciliation, is indicating that the information in the entry summary or import activity summary statement relating to the reconciliation is incomplete.

It is the Committee's intent that all certified electronic transmissions shall be binding and have the same force and effect as a signed paper document.

Section 208. Appraisalment and other procedures

Under 19 U.S.C. 1500, the appropriate Customs officer shall appraise merchandise, ascertain the classification and rate of duty, fix the amount of duty to be paid, and determine any increased or additional duties due or any excess of duties deposited, liquidate the entry, and give proper notice of liquidation. The Committee's bill updates the law to reflect automation and computerization realities and acknowledge that information and data may be electronically transmitted. As part of the "shared responsibility" concept, this section retains the requirement that Customs determine the amount of duties due, *i.e.*, that Customs fix the final classification, appraisalment, and rate of duty on an entry, and liquidate the entry. The Committee's amendments also reflect changes in the law which require Customs to assess user fees and taxes on entries. Finally, the bill authorizes Customs to liquidate reconciliations and to give or transmit electronically notice of liquidation in such form and manner as is prescribed by regulation.

Section 209. Voluntary reliquidations

Under 19 U.S.C. 1501, a liquidation of any entry may be reliquidated within 90 days from the date on which notice of the original liquidation is given. The Committee's bill authorizes the electronic transmission of reliquidation notices.

Section 210. Appraisalment regulations

Current law (19 U.S.C. 1502(a)) provides that the Secretary of the Treasury shall issue regulations necessary to secure the proper appraisalment, classification, and assessment of duties at the various ports of entry, and to direct any Customs officer to go from one port to another port to appraise the imported merchandise. Section 1502(b) states that no ruling made by the Secretary of the Treasury imposing Customs duties shall be reversed or modified adversely to the United States except in concurrence with the Attorney Gener-

al, or a final decision of the CIT, or a final decision of a binational panel pursuant to the U.S.-Canada Free-Trade Agreement.

The Committee's bill amends 19 U.S.C. 1502 to facilitate the implementation of remote filing under the NCAP by authorizing the Secretary to direct Customs officers at one port to review entries filed at another port. This section also repeals the requirement that the concurrence of the Attorney General be obtained prior to the reversal of a ruling by the Secretary construing any law imposing customs duties. This section also authorizes the Secretary to prescribe regulations for the issuance of binding rulings prior to the entry of merchandise. The Committee expects that these changes will provide greater certainty to importers through the binding rulings program and facilitate the entry process.

Section 211. Limitation on liquidation

Current law (19 U.S.C. 1504) provides for the liquidation of entries within one year unless liquidation is extended or suspended. Liquidation can be extended by Customs or the importer or suspended because of statute or court order. Customs must provide notice of the extension or suspension of liquidation. Any entry not liquidated at the expiration of four years shall be deemed liquidated unless liquidation continues to be suspended. When the suspension is removed, the entry must be liquidated within 90 days.

In order to implement the reconciliation process, the Committee's bill makes conforming amendments regarding the reconciliation of entries and the liquidation of entries subject to reconciliation. The bill provides that a reconciliation shall be treated as if it were an entry summary, and subject to the normal extension, suspension and protest requirements under 19 U.S.C. 1504 and 1514. To reflect technological changes, the Committee's bill also authorizes the electronic transmittal of notices of extension and suspension of liquidation.

In addition, the bill changes the time period, from 90 days to six months, in which the Secretary of the Treasury must liquidate a suspended entry after the suspension is removed; the six-month period runs from the date Customs is notified that the suspension has been removed.

The Committee has also made clear that the four-year limitation on unliquidated merchandise does not apply to suspended entries. This is intended to overturn the decision rendered in *Nunn Bush Shoe v. United States*, CIT, Slip Op. 92-5 (1992). The four-year limitation will apply only to extended entries, i.e., it sets the outer limit for extensions. Any entry whose liquidation is extended that is not liquidated within four years, and any entry whose liquidation is suspended and such suspension is subsequently removed but the entry is not liquidated within six months after Customs receives notice of the removal, shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted by the importer of record at the time of entry.

In order to correct an omission in existing law and codify existing administrative practice, the bill also provides that Customs must inform sureties when a suspension is removed or extended. Currently, Customs is required only to provide notice of an extension of liquidation of an entry to sureties when the liquidation is

suspended by statute or court order. The Committee's bill also requires notice to be sent to the surety when liquidation is extended because Customs requires additional information or when the importer has requested an extension. It further allows Customs to extend liquidation when information needed for insuring compliance with applicable law is not available to or in the possession of the Customs Service.

The Committee's provision retains the current authority for the Secretary of the Treasury to extend liquidation if sufficient information is not available to Customs to ensure compliance with applicable laws or the importer requests an extension.

Section 212. Payment of duties and fees

Current law (19 U.S.C. 1505(a)) provides that, unless merchandise is entered for warehouse or transportation, or under bond, the importer shall deposit at the time of making entry or at such later time as the Secretary of the Treasury shall prescribe by regulation (but not to exceed 30 days after the date of entry) the duties estimated to be due. Section 1505(b) provides that the appropriate Customs officer shall collect any increased or additional duties due or refund any excess duties deposited as determined by liquidation or reliquidation. Section (c) provides that duties due upon liquidation or reliquidation shall be due 15 days thereafter, and unless payment is received within 30 days after that date, duties shall be considered delinquent and bear interest from the 15th day after the date of liquidation or reliquidation.

The Committee's bill provides Customs with authority to permit the periodic payment of duties, taxes, and fees. The Committee believes that such periodic payments should permit Customs to streamline entry procedures. Under this section, periodic payments may be made by filing a monthly import activity summary statement together with the amounts due. The section further provides that interest will accrue on periodic payments from the first day of the month the import activity summary statement is or should be filed until the day the statement is actually filed. The Committee's changes also stipulate that increased or additional duties and fees determined at liquidation to be due or owing shall be collected or refunded together with interest, as appropriate. The Committee believes that these changes will provide equity in the collection and refund of duties and taxes, together with interest, by treating collections and refunds the same.

Section 213. Abandonment and damage

19 U.S.C. 1506 provides that allowance shall be made in the estimation and liquidation of duties for abandonment or damage to merchandise pursuant to regulations prescribed by the Secretary of the Treasury. The Committee's bill deletes obsolete language, makes conforming amendments regarding entries and invoices, and authorizes communication between Customs and the importing community through electronic means.

Section 214. Customs officer's immunity

Under current law (19 U.S.C. 1513), immunity is provided to a Customs officer for any decision relating to appraisement, classifi-

cation, or duties due on collection. The Committee's bill extends the immunity of Customs officers to include the collection of fees and taxes.

Section 215. Protests

19 U.S.C. 1514 provides that the decisions of the appropriate customs officer relating to appraisal, classification and rate and amount of duties chargeable, all charges or exactions within the jurisdiction of the Secretary of the Treasury, the exclusion of merchandise from entry or delivery or a demand for redelivery, the liquidation or reliquidation of an entry, the refusal to pay a drawback claim and the refusal to reliquidate an entry shall be final unless protested in accordance with the provisions of this section. The Committee's bill provides that reconciliation decisions may be protested, but the protest may only concern the issues contained in the reconciliation. The Committee also authorizes the electronic transmittal of protests. The Committee's bill also permits the Secretary of the Treasury, by regulation, to add requirements for the content of protests. The Committee intends that any new requirements be subject to notice and comment under the Administrative Procedure Act.

Section 216. Refunds and errors

Under current law (19 U.S.C. 1520), the Secretary of the Treasury is authorized to refund duties or monies on (1) excess duty deposits as determined at liquidation or reliquidation; (2) erroneous or excessive fees, charges, or exactions; (3) remitted or mitigated fines, penalties, and forfeitures; and (4) duties, fees, charges, or exactions paid by reason of clerical error. Section 1520(c) provides that, notwithstanding a valid protest not filed, the appropriate Customs officer may reliquidate an entry to correct a clerical error, mistake of fact, or other inadvertence not amounting to an error in the construction of law; or any assessment of duty on household or personal effects in which an application for refund has been filed. Section 1520(d) provides that if a determination is made to reliquidate an entry as a result of a protest filed, or under section 1520(c), or by court order, interest shall be allowed on any amount paid as increased or additional duties. Interest shall be calculated from the date of payment to the date of the refund or the filing of a summons, whichever occurs first. The Committee's bill makes conforming amendments regarding reconciliations, and clarifies that clerical errors or other inadvertencies may result from or be contained in an electronic transmission. Section 1520(d) is repealed in Section 212 of this bill, which provides for interest payments.

Section 217. Bonds and other security

19 U.S.C. 1623 gives the Secretary of the Treasury the authority to require or authorize Customs officers to require bonds or other security to protect the revenue or to assure compliance with any provision of law, and to set the conditions and form of the bonds. The Committee's bill permits the Secretary of the Treasury to authorize the electronic transmittal of bonds to Customs and clarifies that any bond electronically transmitted shall be binding on the parties thereto and have the same force and effect as if it were

manually executed, signed, and filed. This provision confirms that electronic transmission to Customs will bind both the principal and surety. This section is intended to eliminate potential defenses to claims raised by principals or sureties based solely on the contention that a bond is not valid because it is not physically signed. This provision is intended to avoid the situation which can arise with written bonds in which the principal may not be bound because of the improper execution or non-execution of a bond, while a surety, who properly signed the bond, finds itself solely liable on the obligation.

Section 218. Customhouse brokers

19 U.S.C. 1641 provides the procedures applicable to customs brokers, including the issuance of licenses and permits; disciplinary actions, including penalties, suspension or revocation of a license or permit; and fees to defray the costs of Customs' administration of this provision. The Committee's amendments to this provision are intended to permit Customs and the importing community to communicate electronically and to allow brokers to modernize by using computer technology in their recordkeeping operations rather than requiring the paper retention of documents. The Committee's bill clarifies that the definition of "customs business" does not include the mere electronic transmission of data received for transmission to Customs.

This section also allows Customs to issue national and single district permits to licensed brokers. The Committee intends that national permits are to be used solely for "remote location filing" under the NCAP. The Committee intends that single district permits will apply to brokers who do not participate in remote entry filing.

The section also provides for the appointment of broker sub-agents so that brokers with single district permits may serve as sub-agents for nationally permitted brokers. The bill also permits brokers to limit their liability contractually to other persons in the conduct of customs business. The Committee's bill also expands the time, from 15 days to 30 days, within which a hearing must be held after a broker is notified by Customs that a suspension or revocation hearing will take place.

The Secretary of the Treasury is also authorized to prescribe regulations concerning the conversion of data to electronic retention media and the use of centralized record retention systems.

Section 219. Conforming amendments

The Committee's bill makes technical and conforming amendments to 19 U.S.C. 1447 and 1449, which concerns the entry and unloading of vessels.

TITLE III—MISCELLANEOUS AMENDMENTS TO THE TARIFF ACT OF 1930

Section 301. Administrative exemptions

Current law (19 U.S.C. 1321) authorizes the Secretary of the Treasury to exempt from duty certain articles that do not exceed specified dollar amounts. The Committee's bill increases the statutorily specified dollar amounts that trigger eligibility for such ad-

ministrative exemptions. Although the dollar amounts were adjusted in 1975, 1978, and 1983, they have not kept pace with inflation and the current amounts are not sufficiently high to permit the Secretary to meet the statutory goal of limiting expense to the Government disproportionate to the revenue that is collected. The Committee's bill also adds a new provision that will allow Customs to waive collection of duty where the duty is so low that the expense and resources required to process the entry is disproportionate to the revenue that would be collected.

Section 302. Report of arrival

19 U.S.C. 1433 requires that arriving vessels, vehicles and aircraft be immediately reported, provides for the presentation to Customs of necessary documents and prohibits the unauthorized departure of vessels, vehicles and aircraft and unauthorized discharge of passengers or merchandise. This section makes conforming amendments regarding hovering vessels and authorizes the electronic transmittal to Customs of documents, papers, manifests, and other documents whose presentation is required by law.

Section 303. Entry of vessels

19 U.S.C. 1434 and 1435 provide the vessel entry requirements applicable to American and foreign vessels, and also provide for formal entry at the customhouse within 48 hours of arrival from a foreign port or place. The Committee's bill amends antiquated provisions which prescribe vessel entry procedures with a degree of specificity that allows little or no administrative discretion. The Committee's bill, by amending section 1434 and repealing elsewhere in this bill section 1435, consolidates in one section vessel entry requirements for American and foreign vessels. Under this section, the Secretary of the Treasury will have the authority to provide by regulation the specific procedures pertaining to vessel entry. These regulations will permit preliminary vessel entry in lieu of, or before, formal entry is made (preliminary entry is currently provided for in 19 U.S.C. 1448). This section also gives the Secretary authority to prescribe by regulation the place and the manner in which formal and preliminary vessel entries are to be made. This will authorize Customs to permit formal or preliminary vessel entry to be made outside a designated port of entry. The Committee's modifications also permit vessel entry to be made electronically.

The Committee's bill will also require Customs, in permitting preliminary entry, to board a sufficient number of vessels to ensure compliance with the laws it enforces. It is the Committee's belief that a continuation of Customs' current vessel boarding practices will aid Customs' enforcement efforts. The Committee is convinced that vessel boarding can, in certain circumstances, play an important role in detecting violations of the law. The Committee expects that, in the future and notwithstanding Customs' increased reliance on electronic information processing, Customs will continue to board at least as many vessels as are currently boarded.

Section 304. Unlawful return of foreign vessel papers

19 U.S.C. 1438 provides for a penalty against a foreign consul who delivers vessel papers to a master of a foreign vessel before such master is able to produce a vessel clearance issued by Customs. The Committee's bill makes technical conforming amendments.

Section 305. Vessels not required to enter

19 U.S.C. 1441 provides a list of types of vessels which are not required to make entry at the customhouse when arriving in the United States. The Committee's bill makes these exceptions applicable to the clearance requirements. The Committee believes that these changes are needed to make the law consistent with current Customs practice and with changes made to the report of arrival requirements by section 3111 of the Anti-Drug Abuse Act of 1986 (P.L. 99-570, 100 Stat. 3207). The Committee's bill also provides that the following types of vessels will not be required to meet vessel entry and clearance requirements: (1) vessels carrying passengers on excursion from the U.S. Virgin Islands to the British Virgin Islands and returning; and (2) U.S. documented vessels with recreational endorsement or undocumented U.S. pleasure vessels not engaged in trade. If either of these types of vessels carries on board an article that is required to be entered, this section requires that such entry be reported immediately upon arrival, rather than after 24 hours as provided under current law.

Section 306. Unlading

Current law (19 U.S.C. 1448) provides the requirements for obtaining a permit from Customs prior to unlading merchandise, passengers or baggage; provides that preliminary entry may be made aboard vessels (but such does not excuse a vessel operator from making formal vessel entry at the customhouse); and provides that merchandise unladen under a permit must be retained at the place of unlading until the merchandise is entered (which must occur within 48 hours). The Committee's bill removes from section 1448 the authority for granting a preliminary entry. (It will be provided for in 19 U.S.C. 1434, the substantive provision on vessel entry.) This section also eliminates the requirement that a boarding officer must examine the manifest before preliminary entry. The Committee notes, however, that Customs will still have the authority to board vessels, and the Committee expects that it will do with such frequency as is warranted to ensure the effective enforcement of U.S. customs, trade and drug laws. As noted elsewhere in this report, the Committee expects that Customs will continue to board in the future approximately as many vessels as it currently boards because the Committee is convinced that boarding, in some circumstances, can contribute substantially to Customs' enforcement efforts.

This section also authorizes Customs to transmit electronically to carriers permits that allow them to unlade merchandise. These permits will be transmitted pursuant to authorized electronic data interchange systems. Carriers will be obligated to notify Customs of unladen merchandise where entry has not been made. Failure to so

notify Customs will subject the owner or master of the vessel or vehicle or his agent to a civil penalty not to exceed \$1,000 for each bill of lading for which notice is not given, and that party will be responsible for the unladen merchandise until removed from his control in accordance with 19 U.S.C. 1490.

Section 307. Declarations

19 U.S.C. 1485 requires the importer of record to make a declaration under oath setting forth specified facts relating to the imported merchandise. The Committee's bill authorizes transmittals to be made electronically and makes technical conforming amendments.

Section 308. General order

Current law (19 U.S.C. 1490) requires Customs to place general order (unclaimed) merchandise in a bonded warehouse at the expense of the consignee until entry can be made. The Committee's bill eliminates a legal fiction by deleting the requirement that Customs officers take unentered merchandise into their custody and send it to a bonded warehouse; Customs officers do not actually take unentered merchandise into their custody. Instead, carriers will be required to notify a bonded warehouse of such unentered merchandise and the bonded warehouse shall arrange for the transportation of the unentered merchandise to its premises for storage at the risk and expense of the consignee. The Committee's bill also codifies current practice whereby merchandise that cannot be entered because of an incomplete entry is transported to a bonded warehouse. The amendments also recognize that incomplete entries may result from lack of adequate electronically transmitted information. This section also authorizes the Secretary of the Treasury to establish procedures governing incomplete entries of merchandise consigned to or owned by the U.S. Government.

Section 309. Unclaimed merchandise

Under current law, 19 U.S.C. 1491, unclaimed merchandise shall be stored for a period of one year before it is considered abandoned to the Government and sold at a public auction. The Committee's bill reduces the waiting period from one year to six months. After six months in storage, Customs may sell the merchandise at public auction or notify all known interested parties that, unless entered for consumption, title to the subject merchandise shall vest in the United States 30 days after said notice. If the latter option is exercised, the amendment vests title to the goods in the United States free and clear of any liens and encumbrances so that the Customs Service or a transferee of the merchandise receives clean title. It is the Committee's belief that these amendments will reduce storage and processing costs associated with unclaimed merchandise.

This section also allows the Government to retain the goods for official use or transfer them to any other Federal, State, or local agency in lieu of sale. All transfer and storage charges and expenses will be paid by the receiving agency or out of the Customs Forfeiture Fund. The rights of interested parties are protected in the same manner as if the goods were sold. Finally, the section provides that the Secretary may grant relief to parties who can establish they did not receive notice that title to the merchandise will

vest in the United States unless entry of the merchandise is made. The Committee believes that these changes will streamline Customs' disposition of unclaimed merchandise while providing appropriate safeguards for all interested parties.

Section 310. Destruction of merchandise

19 U.S.C. 1492 provides that any merchandise that is abandoned or forfeited to the Government which is subject to internal revenue tax and which the appropriate Customs officer determines will not sell for a sufficient amount to pay such tax, shall be destroyed instead of being sold at auction. The Committee's bill gives Customs the option to retain or otherwise dispose of the property, rather than requiring destruction in all cases where the proceeds of sale are insufficient to cover taxes. The Committee believes that these amendments will provide for the more efficient disposition of abandoned or forfeited merchandise.

Section 311. Proceeds of sale

19 U.S.C. 1493 provides that the surplus of the proceeds of sale, after payment of storage charges, expenses, duties, and the satisfaction of any lien for freight, charges, or contribution in general average, shall be deposited in the U.S. Treasury. The Committee's bill establishes a priority for the disposition of any surplus proceed of sale. Under the Committee's amendment, proceeds from the sale of unclaimed merchandise are to be used first to pay outstanding duties, fees, and taxes due on such merchandise. Thereafter, surplus proceeds may be applied to offset the expenses of sale and other liens, and any remaining surplus proceeds will be deposited in the Customs Forfeiture Fund to offset related operating and enforcement expenses.

Section 312. Entry under regulations

Current law (19 U.S.C. 1498) permits the Secretary of the Treasury to issue regulations relating to the procedures for informal entry. The Committee's bill raises the informal entry qualification amount from \$1,250 to an amount prescribed by regulations but not more than \$2,500. The bill also permits the Secretary to prescribe the dollar limit for the informal entry of certain articles of U.S. origin as specified in the statute. The Committee intends that those modifications will streamline the entry process for informal entries.

Section 313. American trademarks

19 U.S.C. 1526(e)(3) provides that forfeited counterfeit trademark items shall be stored for a period of one year after the date of forfeiture before sale. The Committee's bill reduces the storage period to 90 days to reduce storage costs to the Government and expedite the disposition of the forfeited merchandise.

Section 314. Seizure

19 U.S.C. 1612(b) provides that if the expense of storing a seized conveyance or merchandise is disproportionate to its value, and the value is less than \$1,000, a Customs officer may proceed to order its destruction. The Committee's bill eliminates the requirement that

the seized conveyance or merchandise must be less than \$1,000 before it can be destroyed pursuant to this provision. The Committee believes that this will reduce storage costs by permitting destruction of merchandise in all cases where the expense of keeping the vessel, vehicle, aircraft, merchandise or baggage is disproportionate to its value. The bill also provides that no Customs officer shall be liable for the destruction or other disposition of property pursuant to this statute.

Section 315. Customs forfeiture fund

The Customs Forfeiture Fund is established in 19 U.S.C. 1613b. The proceeds of seizures and forfeitures are deposited into the Fund and subsequently allocated to certain Government expenses explicitly enumerated in the statute. This section of the Committee's bill makes conforming amendments to the Customs Forfeiture Fund regarding payments for storage charges on unclaimed merchandise abandoned to the Government, and the payment of claims against Customs Service employees. The Committee's amendment also permits, but does not require (as does current law), that excess monies in the Customs Forfeiture Fund be invested in U.S. obligations.

Section 316. Limitation on actions

19 U.S.C. 1621 provides for a five-year statute of limitations for civil actions involving pecuniary penalties and forfeiture of property under the Customs laws. In order to provide importers with certainty regarding the extent of their liability for lawful duties, the Committee's bill creates a statute of limitations for the recovery of lawful duties of which the United States was deprived as a result of a violation of 19 U.S.C. 1592 or 1593A. The Committee intends that the Government initiate suit promptly or be foreclosed from recovering the duties.

Section 317. Collection of fees on behalf of other agencies

There is no provisions in current law that requires other Government agencies to reimburse Customs for the expenses it incurs in collecting fees on behalf of these Government agencies. The Committee's bill creates a new statute, 19 U.S.C. 1529, which will require other agencies to reimburse Customs for such expenses. The amounts reimbursed to Customs shall come from the fees collected. This will ensure that Customs recovers the costs incurred in administering fee collection programs on behalf of other Government agencies. The Committee believes that this requirement is needed to provide Customs with additional resources for revenue collection. However, the Committee believes that Customs should make a good faith effort to collect all duties, taxes and fees without regard to the likelihood of reimbursement.

Section 318. Authority to settle claims

Because of concerns that Customs has little incentive to avoid damaging cargo during examination, the Committee believes that it is necessary to enact legislation to provide recourse or compensation to importers whose merchandise is unnecessarily damaged during the course of an examination. The Committee's bill, there-

fore, creates a new statute, 19 U.S.C. 1630, which grants the Secretary of the Treasury authority to settle claims, for less than \$50,000, against certain Customs Service employees who, while acting within the scope of their employment, cause personal injury, death, or damage to privately owned personal property. The statute will not apply to damage to commercial property, claims presented more than one year after the harm occurs, or if presented by a Government employee acting within the scope of employment. Claims will be paid out of the Customs Forfeiture Fund.

Section 319. Use of private collection agencies

The Committee believes that Customs should be granted the authority, as a last resort, to contract with private collection agencies to attempt to recover the indebtedness which Customs currently writes off as uncollectible. The Committee's bill creates a new statute, 19 U.S.C. 1631, which allows the Secretary of the Treasury to contract with private agencies for collection services to recover indebtedness arising under the customs laws provided that the private collection agencies are employed only after Customs exhausts all administrative efforts to collect the indebtedness. Customs must continue to attempt collection through applicable surety bonds prior to utilizing a private collection agency. The Secretary of the Treasury will retain authority to settle any claims or refer the matter to the Department of Justice for litigation. Finally, the private collection agency will be subject to the Freedom of Information Act (5 U.S.C. 552 et seq.) and all Federal and State laws and regulations related to debt collection practices.

TITLE IV—MISCELLANEOUS PROVISIONS AND CONSEQUENTIAL AND CONFORMING AMENDMENTS TO OTHER LAWS

Section 401. Amendments to the harmonized tariff schedule

Under present regulations, shipments which leave the United States and are undeliverable to the country of destination (without having left the custody of the carrier or foreign customs service) are considered exports and have to be "re-entered" into the United States as imports. The Committee regards these entry requirements as unnecessary and the Committee's bill provides that such returned shipments will be exempt from entry requirements.

Current regulations also provide that rail equipment brought into the United States from Canada, while not subject to duty, is subject to entry requirements. The Committee's bill eliminates the entry requirements for rail cars and locomotives on which no duty is owed. This section authorizes the Secretary of the Treasury to impose reporting and bonding requirements to ensure that no duty is owed on rail cars brought into the United States without being entered and to develop regulations requiring the submission by railroads, equipment owners, and lessors of information demonstrating the rail equipment's eligibility for duty-free treatment. In addition, the bill authorizes the Secretary to establish bonding requirements for companies to protect against rail equipment subject to a tariff from being brought into the United States without payment of duty.

This provision in the Committee's bill is intended to remove entry requirements that impede the use of Canadian freight cars and locomotives under the terms of the U.S.-Canada Free Trade Agreement. While U.S. duties have been removed on most Canadian rail equipment, the Committee is concerned that railroads have been unable to take full advantage of the tariff removal because of the entry requirements. The Committee believes that entry of freight cars is impractical because the decision to use a freight car for domestic service, which would require entry, would be made after a rail car has crossed the border and been unloaded. The Committee understands that the entry requirements on locomotives and rail cars have been burdensome since equipment repeatedly crossing the border for subsequent use in domestic service in the United States must be entered each time. In developing the eligibility and bonding requirements described above, the Committee urges the Secretary to work closely with the railroads, equipment owners and lessors. The Committee is concerned that the Secretary not substitute new entry requirements for the old requirements or issue regulations that will make compliance difficult.

Under present regulations, instruments of international traffic, such as containers, rail cars and locomotives, truck cabs, and trailers are exempt from formal entry procedures required of all merchandise entering the United States. This section of the Committee's bill provides for the statutory exemption of these instruments from formal entry procedures. These instruments would be required to be accounted for when imported and exported into and out of the United States, respectively, through the manifesting procedures required of all international carriers with U.S. Customs. Fees associated with the importation of these instruments would be reported and paid on a periodic basis based on regulations by the Secretary of the Treasury and in accordance with international conventions on instruments of international traffic. The Committee intends that these privileges are to be extended to instruments of international traffic only when they are imported, and only so long as they are used, in international traffic. If they are imported for other use, or if they are diverted in the United States from use in international traffic, they are subject to the ordinary requirements for a consumption entry, duties and applicable fees.

Section 402. Amendment to the Internal Revenue Code [IRC] of 1986

The IRC of 1986, as amended, provides in pertinent part in section 9505(c) that amounts in the Harbor Maintenance Trust Fund shall be available, as provided by Appropriations Acts, for the payment of all expenses of administration incurred by the Department of the Treasury in administering Subchapter A of Chapter 36 (relating to harbor maintenance tax) but not in excess of \$5 million for any fiscal year, and for periods during which no fee applies under paragraph (9) or (10) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985. The Committee's bill amends section 9505(c) of the IRC of 1986 to authorize appropriations out of the Harbor Maintenance Trust Fund to the Department of the Army for expenditures incurred by the Department of the Army and the Departments of the Treasury and Commerce in

connection with administering the charges imposed by IRC section 4461.

The Committee believes that this amendment is required to ensure reimbursement for the costs incurred by Customs in administering and collecting the section 4461 charges. It is the Committee's expectation, however, that Customs will continue to make a good faith effort to collect all duties, taxes and fees without regard to the possibility of reimbursement.

Section 403. Amendments to 28 U.S.C., relating to accreditation of private customs laboratories

In order to implement elements of the programs established for accreditation of and assessment of penalties on customs laboratories and the adjudication of the penalty provisions related to duty drawback, the Committee's bill makes a number of conforming changes to Title 28. 28 U.S.C. 1581 sets forth the actions in which the CIT is granted exclusive subject matter jurisdiction. The Committee's bill amends 28 U.S.C. 1581 to provide exclusive jurisdiction to the CIT with respect to any decision or order of Customs to deny, suspend, or revoke accreditation of private laboratories. Currently, 28 U.S.C. 2631 sets forth the persons entitled to commence specified civil actions in the CIT. The Committee's bill amends that section to provide standing to commence a civil action to persons whose private laboratory accreditation was denied, suspended, or revoked by Customs.

28 U.S.C. 2636 sets forth the time for commencement of specified actions in the CIT. The Committee's bill provides that a civil action contesting the denial, suspension, or revocation by Customs of a private laboratory's accreditation is barred unless commenced within 60 days after the date of Customs' decision or order and in accordance with the rules of the CIT. 28 U.S.C. 2640 sets forth the scope and standard of review of the CIT; the Committee's bill amends this section to provide that in any civil action commenced to review an order or decision by Customs with respect to denial, suspension, or revocation of the accreditation of a private laboratory, the Court shall review the action on the basis of the record before Customs at the time of issuing such decision or order. 28 U.S.C. 2642 authorizes the CIT to order an analysis of imported merchandise by U.S. agency laboratories. The Committee's bill expands the authorization by permitting the CIT to order reports of laboratories accredited by Customs, in addition to ordering an analysis of imported merchandise.

The Committee's bill also amends 28 U.S.C. 1582(1) to expand the jurisdiction of the CIT to adjudicate drawback penalty provisions and amends 28 U.S.C. 2635(a) to provide for the filing of official documents with the CIT. With respect to the filing of documents with the CIT, the Committee believes that the Court should be provided with maximum flexibility to respond to the changes that have arisen and will continue to ensue from the new automated and electronic system for processing commercial importations. This will permit the Court to respond promptly to unanticipated problems by exercising its rulemaking authority. The Court, after receiving recommendations from its advisory committees, will be able to prescribe rules regarding such matters as the information trans-

mitted to the court; the maner and medium of the transmittal; the timing of the transmittal; and any other issue relating to the provision of the information necessary to ensure well-informed judicial review.

Section 404. Amendments to the Revised Statutes of the United States

Section 4197 of the Revised Statutes, as amended (46 U.S.C. App. 91) provides the vessel clearance requirements for any vessel bound to a foreign port. The Committee's bill amends section 4197 by consolidating the provision relating to vessel clearance and the departure provision of the permit to proceed requirements now found in 19 U.S.C. 1443 and 46 U.S.C. App. 313. This section will continue to contain the basic requirements for clearance and will be the counterpart to the basic vessel entry statute (19 U.S.C. 1434, as amended). Penalties for violations of this section will be provided in 19 U.S.C. 1436.

This section of the Committee's bill also provides that a vessel departing from a port or place in the United States bound outside the territorial sea to visit a hovering vessel or to receive merchandise while outside the territorial sea will be required to obtain Customs clearance. Furthermore, this section will give the Secretary authority to prescribe by regulation the manner in which clearance is to be obtained, including the documents, data, or information which must be submitted or electronically transmitted to obtain the clearance. The Committee's amendments will continue to permit, under certain circumstances, the granting of clearance before all of the requirements for clearance have been complied with. This section also authorizes Customs to permit clearance to be obtained outside a designated port of entry.

This section also includes amendments to sections 2973, 3126 and 3127 of the Revised Statutes, as amended, that delete obsolete portions of those provisions. These sections contain various provisions relating to the entry and clearance of vessels.

Section 405. Amendments to title 18, United States Code

18 U.S.C. 965(a) imposes certain requirements on masters of vessels in connection with the delivery of cargo during times of war when the United States is a neutral party. The Committee's bill adopts conforming amendments required by enactment of this legislation, along with amendments that correct outdated provisions.

Section 406. Amendment to the Act to Prevent Pollution From Ships

Current law (33 U.S.C. 1908(e)) authorizes the Secretary of the Treasury to revoke certain clearance and permit rights for ships subject to the MARCOL Protocol found to be liable for pollution-related violations. The Committee's bill provides technical amendments required by this legislation, as well as amendments that correct outdated provisions.

Section 407. Amendments to the act of November 6, 1966

Customs is authorized, under 46 U.S.C. App. 817d(e) and 817(e), to refuse departure or clearance for vessels that are not in compliance with provisions governing the financial responsibility of owners

and charterers for death or injury to passengers or other persons and for indemnification of passengers for non-performance of transportation. The Committee's bill adopts necessary conforming amendments and amendments to correct outdated provisions.

Section 408. Repeal of obsolete provisions of law

This section of the Committee's bill repeals a number of obsolete provisions of law.

Section 409. Reports to Congress

In order to address concerns with current compliance levels and the potential adverse impact that improved facilitation could have on Customs' compliance efforts, the Committee is requiring the Secretary of the Treasury to submit to the Congress reports concerning the collection of duties imposed under the antidumping and countervailing duty laws for entries liquidated after the effective date of this legislation and the total amount of Central Examination Stations fees collected nationwide annually and on the variations in such fees among Customs districts.

This section of the Committee's bill also requires the Secretary of the Treasury to establish a Customs Compliance Program to assess the level of compliance with the laws enforced by Customs. The Committee believes that compliance monitoring is best achieved by creating an objective, statistically based method of measurement. The Commissioner of Customs will also be required to initiate a compliance review of courier services operating under Part 128 of Title 19 of the Code of Federal Regulations and submit a report to the Congress on the results of the review. It is the Committee's intention that this review focus exclusively on the activities of the "on-board" couriers since there have been allegations of questionable compliance with the regulations.

Section 410. Applicability of amendments to entry or withdrawal of goods

This section of the Committee's bill establishes that any amendment of this title that is applicable to the entry, or withdrawal from warehouse for consumption, of goods applies to such entry or withdrawal that is made on or after the 15th day after the date of enactment of the bill.

As a final matter, the Committee notes that there have been complaints from brokers that they do not get a fair and impartial hearing at the Headquarters level in broker penalty and liquidated damages claims. It is the Committee's intent that the Customs Service will continue its study of the procedures relating to these claims, especially with regard to the issue of the sufficiency of due process.

III. VOTE OF THE COMMITTEE IN REPORTING THE BILL

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that the bill was ordered favorably reported by voice vote.

IV. BUDGETARY IMPACT OF THE BILL

In compliance with sections 308 and 403 of the Congressional Budget Act of 1974, and paragraph 11(a) of Rule XXVI of the Standing Rules of the Senate, the following letter has been received from the Congressional Budget Office regarding the budgetary impact of the bill.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 25, 1992.

Hon. LLOYD BENTSEN,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 5643, the Customs Modernization and Informed Compliance Act, as ordered reported by the Senate Committee on Finance on September 22, 1992. CBO estimates that this bill would decrease receipts by \$3 million each fiscal year, and assuming appropriation of authorized amounts, would increase outlays by \$8 million in fiscal year 1993 and \$5 million each year over the 1994 through 1997 period.

H.R. 5643 would implement measures to improve enforcement by the Customs Service, to establish an automated filing system for importers, and to make several miscellaneous and conforming amendments. The bill would make many changes in the procedures followed by the Customs Service in entering merchandise, but only four provisions would affect receipts and two would affect authorizations.

First, the bill would establish penalties for violations of record-keeping and drawback violations. Based on information from the Customs Service, CBO estimates that these penalties would increase receipts by less than \$500,000 each fiscal year.

Second, the bill would increase the minimum transaction amount collected by Customs from \$10 to \$20. Transactions involving duties of less than \$20 but over \$10, which under current law would be collected, would no longer be collected under the bill, resulting in a loss in customs duties, net of income and payroll tax offsets, of \$2 million each fiscal year.

Third, the bill would liberalize the definition of goods qualifying for customs duty drawbacks. Under current law an importer is eligible for a refund of 99 percent of the customs duties paid on an imported good if the good (or a product that uses the imported good as an input) is expected. Such a refund is called a drawback. The export of a good that is "commercially identical" (or contains inputs that are commercially identical) to the imported good also qualifies for a drawback. The bill would ease restrictions by allowing a drawback on exported goods which are "commercially interchangeable" with the import rather than strictly "commercially identical." Under such a definition, more producers could qualify for a drawback and claim refunds of customs duties paid. Based on information from the Customs Service, CBO estimates that, net of income and payroll tax offsets, this provision would decrease receipts by \$5 million each year.

Fourth, the bill would require payment of interest on merchandise revaluations after a good has been entered through Customs. Currently if an importer revises the value of the merchandise in the same fiscal year, Customs does not charge interest on any additional duties owed to or by the importer. This provision would charge interest on the additional duties owed, causing, net of income and payroll tax offsets, an increase in receipts of \$4 million each fiscal year.

Under the bill, Customs would be instructed to contract our debt collection to private agencies, with any costs of such contracting to be covered by allowing the private agencies to keep a portion of the collected payments. CBO estimates no budgetary effect for this provision. The debt collection activities of private agencies would represent either a supplement to or substitution for the identical activities carried out by the Customs Service. Because CBO would not score an increase in debt collection if funds were appropriated for additional Customs Service debt collectors (or score a decrease if the number of debt collectors were reduced), no increase in receipts from debt collection is scored for a provision that has substantially the same effect.

H.R. 5643 would require the Customs Service to establish an automated filing system for importers. The program would utilize an automated and electronic system for processing commercial imports and would consist of both existing and planned components. Under the system, importers would be able to electronically file not only entries of merchandise but also other applications such as protests and drawback claims. Based on information from Customs, CBO estimates that the costs of establishing such a system would be \$3 million in fiscal year 1993, assuming appropriation of authorized amounts.

H.R. 5643 would authorize the appropriation of up to \$5 million annually from the Harbor Maintenance Trust Fund to cover the administrative costs of collecting the harbor maintenance tax. Assuming appropriation of the authorized amounts, we estimate that enactment of this section would increase federal outlays by \$5 million annually beginning in fiscal year 1993.

Finally, the bill would set up several programs to improve and simplify compliance with Customs regulations, but these changes would cause an insignificant change in outlays. The budget effects of H.R. 5643, assuming appropriation of authorized amounts, are summarized below.

BUDGET EFFECTS OF H.R. 5643

[By fiscal year, in millions of dollars]

	1992	1993	1994	1995	1996	1997
Estimated authorized level		8	5	5	5	5
Estimated outlays		8	5	5	5	5
Estimated receipts ¹		-3	-3	-3	-3	-3

¹ Net of payroll and income tax offsets.

H.R. 5100 would affect receipts and, therefore, would be subject to pay-as-you-go procedures under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985.

PAY-AS-YOU-GO SCORING

[By fiscal year, in millions of dollars]

	1992	1993	1994	1995
Changes in outlays.....	(¹)	(¹)	(¹)	(¹)
Changes in receipts.....	0	-3	-3	-3

¹ Not applicable.

On June 19, 1992, CBO prepared a cost estimate on H.R. 5100, a bill with similar provisions reported by the House Committee on Ways and Means on June 23, 1992. In that estimate CBO included a \$5 million increase in receipts for the provision instructing the Customs Service to contract out debt collection to private agencies. The estimate of the provision in H.R. 5100 was incorrect. CBO estimates do not include any affect on receipts for such provisions.

If you wish further details, please feel free to contact me or your staff may wish to contact John Stell at 226-2720 for receipts, or Mark Grabowicz and Theresa Gullo at 226-2860 for outlays.

Sincerely,

ROBERT D. REISCHAUER,
Director.

V. REGULATORY IMPACT OF THE BILL

In compliance with paragraph 11(b) of the Standing Rules of the Senate, the Committee states that the bill will not significantly regulate any individuals or businesses, will not impact on the personal privacy of individuals, and will result in no significant additional paperwork.

VI. CHANGES IN EXISTING LAW

Pursuant to the requirements of paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, H.R. 5643, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TARIFF ACT OF 1930

* * * * *

TITLE III—SPECIAL PROVISIONS

PART I—MISCELLANEOUS

* * * * *

SEC. 213. DRAWBACK AND REFUNDS.

(a) **ARTICLES MADE FROM IMPORTED MERCHANDISE.**—Upon the exportation or destruction under customs supervision of articles manufactured or produced in the United States with the use of imported merchandise, provided that those articles have not been used prior to such exportation or destruction, the full amount of the duties paid upon the merchandise so used shall be refunded as

drawback, less 1 per centum of such duties, except that such duties shall not be so refunded upon the exportation or destruction of flour or by-products produced from [wheat imported after ninety days after the date of the enactment of this Act] *imported wheat*. Where two or more products result from the manipulation of imported merchandise, the drawback shall be distributed to the several products in accordance with their relative values at the time of separation.

(b) **SUBSTITUTION FOR DRAWBACK PURPOSES.**—If imported duty-paid merchandise and [duty-free or domestic merchandise] *any other merchandise (whether imported or domestic)* of the same kind and quality are used in the manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation, or destruction under customs supervision, of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported or destroyed articles, an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported, *but only if those articles have not been used prior to such exportation or destruction*; but the total amount of drawback allowed upon the exportation or destruction under customs supervision of such articles, together with the total amount of drawback allowed in respect of such imported merchandise under any other provision of law, shall not exceed 99 per centum of the duty paid on such imported merchandise.

[(c) **MERCHANDISE NOT CONFORMING TO SAMPLE OR SPECIFICATIONS.**—Upon the exportation of merchandise not conforming to sample or specifications or shipped without the consent of the consignee upon which the duties have been paid and which have been entered or withdrawn for consumption and, within ninety days after release from customs custody, unless the Secretary authorizes in writing a longer time, returned to customs custody for exportation, the full amount of the duties paid upon such merchandise shall be refunded as drawback, less 1 per centum of such duties.]

(c) **MERCHANDISE NOT CONFORMING TO SAMPLE OR SPECIFICATIONS.**—*Upon the exportation, or destruction under the supervision of the Customs Service, of merchandise—*

(1) *not conforming to sample or specifications, shipped without the consent of the consignee, or determined to be defective as of the time of importation;*

(2) *upon which the duties have been paid;*

(3) *which has been entered or withdrawn for consumption;*
and

(4) *which, within 3 years after release from the custody of the Customs Service, has been returned to the custody of the Customs Service for exportation or destruction under the supervision of the Customs Service;*

the full amount of the duties paid upon such merchandise, less 1 percent, shall be refunded as drawback.

[(j) SAME CONDITION DRAWBACK.—(1) If imported merchandise, on which was paid any duty, tax, or fee imposed under Federal law because of its importation—

[(A) is, before the close of the three-year period beginning on the date of importation—

[(i) exported in the same condition as when imported, or

[(ii) destroyed under Customs supervision; and

[(B) is not used within the United States before such exportation or destruction;

then upon such exportation or destruction 99 per centum of the amount of each such duty, tax, and fee so paid shall be refunded as drawback.

[(2) If there is, with respect to imported merchandise on which was paid any duty, tax, or fee imposed under Federal law because of its importation, any other merchandise (whether imported or domestic) that—

[(A) is fungible with such imported merchandise;

[(B) is, before the close of the three-year period beginning on the date of importation of the imported merchandise, either exported or destroyed under Customs supervision;

[(C) before such exportation or destruction—

[(i) is not used within the United States, and

[(ii) is in the possession of the party claiming drawback under this paragraph; and

[(D) is in the same condition at the time of exportation or destruction as was the imported merchandise at the time of its importation;

then upon the exportation or destruction of such other merchandise the amount of each such duty, tax, and fee paid regarding the imported merchandise shall be refunded as drawback, but in no case may the total drawback on the imported merchandise, whether available under this paragraph or any other provision of law or any combination thereof, exceed 99 percent of that duty, tax, or fee.

[(3) Packaging material that is imported for use in packaging or repackaging imported merchandise to which paragraph (1) applies shall be eligible under the same conditions provided in such paragraph for refund, as drawback, of 99 per centum of any duty, tax, or fee imposed under Federal law on the importation of such material.

[(4) The performing of incidental operations (including, but not limited to, testing, cleaning, repacking, and inspecting) on—

[(A) the imported merchandise itself in cases to which paragraph (1) applies, or

[(B) the merchandise of the same kind and quality in cases to which paragraph (2) applies,

that does not amount to manufacture or production for drawback purposes under the preceding provisions of this section shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B) or (2)(C).]

(j) UNUSED MERCHANDISE DRAWBACK.—

(1) If imported merchandise, on which was paid any duty, tax, or fee imposed under Federal law because of its importation—

(A) is, before the close of the 3-year period beginning on the date of importation—

(i) exported, or

(ii) destroyed under customs supervision, and

(B) is not used within the United States before such exportation or destruction;

then upon such exportation or destruction 99 percent of the amount of each duty, tax, or fee so paid shall be refunded as drawback.

(2) If there is, with respect to imported merchandise on which was paid any duty, tax, or fee imposed under Federal law because of its importation, any other merchandise (whether imported or domestic), that—

(A) is commercially interchangeable with such imported merchandise;

(B) is, before the close of the 3-year period beginning on the date of importation of the imported merchandise, either exported or destroyed under customs supervision; and

(C) before such exportation or destruction—

(i) is not used within the United States, and

(ii) is in the possession of, including ownership while in bailment, in leased facilities, in transit to, or in any other manner under the operational control of, the party claiming drawback under this paragraph (if that party paid the duty, tax, or fee on the imported merchandise (established by means of either an entry summary or a certificate of delivery));

then upon the exportation or destruction of such other merchandise the amount of each such duty, tax, or fee paid regarding the imported merchandise shall be refunded as drawback, but in no case may the total drawback on the imported merchandise, whether available under this paragraph or any other provision of law or any combination thereof, exceed 99 percent of that duty, tax, or fee.

(3) The performing of any operation or combination of operations (including, but not limited to, testing, cleaning, repackaging, inspecting, sorting, refurbishing, freezing, blending, repairing, reworking, cutting, slitting, adjusting, replacing components, relabeling, disassembling, and unpacking), not amounting to manufacture or production for drawback purposes under the preceding provisions of this section on—

(A) the imported merchandise itself in cases to which paragraph (1) applies, or

(B) the commercially interchangeable merchandise in cases to which paragraph (2) applies,

shall not be treated as a use of that merchandise for purposes of applying paragraph (1)(B) or (2)(C).

* * * * *

(1) REGULATIONS.—Allowance of the privileges provided for in this section shall be subject to compliance with such rules and regulations as the Secretary of the Treasury shall prescribe, which may include, but need not be limited to, [the fixing of a time limit within which drawback entries or entries for refund under any of

the provisions of this section 309(b) of this Act shall be filed and completed,] *the authority for the electronic submission of drawback entries and the designation of the person to whom any refund or payment of drawback shall be made.*

* * * * *

(g) **PACKAGING MATERIAL.**—*Packing material, when used on or for articles or merchandise exported or destroyed under subsection (a), (b), (c), or (j), shall be eligible under such subsection for refund, as drawback, of 99 percent of any duty, tax, or fee imposed under Federal law on the importation of such material.*

(r) **FILING DRAWBACK CLAIMS.**—

(1) *A drawback entry and all documents necessary to complete a drawback claim, including those issued by one customs officer to another, shall be filed or applied for, as applicable, within 3 years after the date of exportation or destruction of the articles on which drawback is claimed, except that any landing certificate required by regulation shall be filed within the time limit prescribed in such regulation. Claims not completed within the 3-year period shall be considered abandoned. No extension will be granted unless it is established that a customs officer was responsible for the untimely filing.*

(2) *A drawback entry for refund filed pursuant to any subsection of this section shall be deemed filed pursuant to any other subsection of this section should it be determined that drawback is not allowable under the entry as originally filed but is allowable under such other subsection.*

(s) **DESIGNATION OF MERCHANDISE BY SUCCESSOR.**—

(1) *For purposes of subsection (b), a drawback successor may designate imported merchandise used by the predecessor before the date of succession as the basis for drawback on articles manufactured by the drawback successor after the date of succession.*

(2) *For purposes of subsection (j)(2), a drawback successor may designate imported merchandise upon which the predecessor, before the date of succession, paid the duty, tax, or fee related to the importation of the merchandise as the basis for drawback on merchandise possessed by the drawback successor after the date of succession.*

(3) *For purposes of this subsection, the term “drawback successor” means an entity to which another entity (in this subsection referred to as the “predecessor”) has transferred by written agreement, merger, or corporate resolution all or substantially all of the rights, privileges, immunities, powers, duties, and liabilities of the predecessor, or all or substantially all of the assets and other business interests of a division, plant, or other business unit of such predecessor, but only if in such transfer the value of the transferred realty and personalty exceeds the value of all transferred intangibles.*

(4) *No drawback shall be paid under this subsection until either the predecessor or the drawback successor (who shall also certify that it has the predecessor’s records) certifies that—*

(A) *The transferred merchandise was not and will not be claimed by the predecessor, and*

(B) *The predecessor did not and will not issue any certificate to any other person that would enable that person to claim drawback.*

(t) **DRAWBACK CERTIFICATES.**—*Any person who issues a certificate which would enable another person to claim drawback shall be subject to the recordkeeping provisions of this chapter, with the retention period beginning on the date that such certificate is issued.*

(u) **ELIGIBILITY OF ENTERED OR WITHDRAWN MERCHANDISE.**—*Imported merchandise that has not been regularly entered or withdrawn for consumption shall not satisfy any requirement for use, exportation, or destruction under this section.*

(v) **MULTIPLE DRAWBACK CLAIMS.**—*Merchandise that is exported or destroyed to satisfy any claim for drawback shall not be the basis of any other claim for drawback; except that appropriate credit and deductions for claims covering components or ingredients of such merchandise shall be made in computing drawback payments.*

SEC. 315. EFFECTIVE DATES OF RATES OF DUTY.

(a) Except as otherwise specially provided for, the rate or rates of duty imposed by or pursuant to this Act or any other law on any article entered for consumption or withdrawn from warehouse for consumption shall be the rate or rates in effect when the documents comprising the entry for consumption or withdrawal from warehouse for consumption and any estimated or liquidated duties then required to be paid have been deposited with the [appropriate customs officer in the form and manner prescribed by regulations of the Secretary of the Treasury,] *Customs Service by written, electronic or such other means as the Secretary by regulation shall prescribe, except that*

(1) * * *

* * * * *

(b) Any article which has been entered for consumption but which, before release from [customs custody] *custody of the Customs Service*, is removed from the port or other place of intended release because of inaccessibility, overcarriage, strike, act of God, or unforeseen contingency, shall be subject to duty at the rate or rates in effect when the entry for consumption and any required duties were deposited in accordance with subsection (a) of this section, but only if the article is returned to such port or place within ninety days after the date of removal and the identity of the article as that covered by the entry is established in accordance with regulations prescribed by the Secretary of the Treasury.

(c) Insofar as duties are based upon the quantity of any merchandise, such duties shall except as provided in [section 1001, paragraph 813] *chapter 98 of the Harmonized Tariff Schedule of the United States* and section 562 of this Act (relating respectively to certain beverages and to manipulating warehouses), be levied and collected upon the quantity of such merchandise at the time of its importation.

* * * * *

SEC. 321. ADMINISTRATIVE EXEMPTIONS.

(a) The Secretary of the Treasury, in order to avoid expense and inconvenience to the Government disproportionate to the amount

of revenue that would otherwise be collected, is hereby authorized, under such regulations as he shall prescribe, to—

(1) disregard a difference **[of less than \$10]** *of an amount specified by the Secretary by regulation, but not less than \$20*, between the total estimated duties, fees, and taxes deposited, or the total duties, fees, and taxes tentatively assessed, with respect to any entry of merchandise and the total amount of duties, fees, and taxes actually accruing thereon; **[and]**

(2) admit articles free of duty and of any tax imposed on or by reason of importation, but the aggregate fair retail value in the country of shipment of articles imported by one person on one day and exempted from the payment of duty **[shall not exceed—]** *shall not exceed an amount specified by the Secretary by regulation, but not less than—*

(A) **[\$50]** *\$100* in the case of articles sent as bona fide gifts from persons in foreign countries to persons in the United States (**[\$100]** *\$200*, in the case of articles sent as bona fide gifts from persons in the Virgin Islands, Guam, and American Samoa), or

(B) **[\$250]** *\$200* in the case of articles accompanying, and for the personal or household use of, persons arriving in the United States who are not entitled to any exemption from duty under subheading 9804.00.30 or 9804.00.70 of this Act, or

(C) **[\$5]** *\$200* in any other case **[.]**; *and*

(3) *waive the collection of duties, fees, and taxes due on entered merchandise when such duties, fees, or taxes are less than \$20 or such greater amount as may be specified by the Secretary by regulation.*

The privilege of this subdivision (2) shall not be granted in any case in which merchandise covered by a single order or contract is forwarded in separate lots to secure the benefit of this subdivision (2).

(b) The Secretary of the Treasury is authorized by regulations **[to diminish any dollar amount specified in subsection (a) and]** to prescribe exemptions to any exemption provided for in **[such subsection]** *subsection (a)* whenever he finds that such action is consistent with the purpose of **[such subsection]** *subsection (a)* or is necessary for any reason to protect the revenue or to prevent unlawful importations.

* * * * *

TITLE IV—ADMINISTRATIVE PROVISIONS

[PART I—DEFINITIONS]

PART I—DEFINITIONS AND NATIONAL CUSTOMS AUTOMATION PROGRAM

Subpart A—Definitions

SEC. 401. MISCELLANEOUS.

When used in this title or in Part I of Title III—

(a) * * *

* * * * *

[(k) HOVERING VESSEL.—(1) 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.

[For the purpose of sections 432, 433, 434, 448, 585, and 586 of this Act, any vessel which has visited any hovering vessel shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place.

[(2) For the purposes of sections 432, 433, 434, 448, 585, and 586, any vessel which—

[(A) has visited any hovering vessel;

[(B) has received merchandise while in the customs waters beyond the territorial sea; or

[(C) has received merchandise while on the high seas; shall be deemed to arrive or have arrived, as the case may be, from a foreign port or place.]

(k) *The term “hovering vessel” means—*

(1) 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 of the United States; and

(2) any vessel which has visited a vessel described in paragraph (1).

* * * * *

(n) *The term “electronic transmission” means the transfer of data or information through an authorized electronic data interchange system consisting of, but not limited to, computer modems and computer networks.*

(o) *The term “electronic entry” means the electronic transmission of the Customs Service of—*

(1) entry information required for the entry of merchandise, and

(2) entry summary information required for the classification and appraisalment of the merchandise, the verification of statistical information, and the determination of compliance with applicable law.

(p) *The term “electronic data interchange system” means any established mechanism approved by the Commissioner of Customs through which information can be transferred electronically.*

(q) *The term “National Customs Automation Program” means the program established under section 411.*

(r) *The term “import activity summary statement” refers to data or information transmitted electronically to the Customs Service, in*

accordance with such regulations as the Secretary prescribes, at the end of a specified period of time which enables the Customs Service to assess properly the duties, taxes and fees on merchandise imported during that period, collect accurate statistics and determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

(s) The term "reconciliation" means an electronic process, initiated at the request of an importer, under which the elements of an entry, other than those elements related to the admissibility of the merchandise, that are undetermined at the time of entry summary are provided to the Customs Service at a later time. A reconciliation is treated as an entry for purposes of liquidation, reliquidation, and protest.

* * * * *

Subpart B—National Customs Automation Program

SEC. 411. NATIONAL CUSTOMS AUTOMATION PROGRAM.

(a) **ESTABLISHMENT.**—The Secretary shall establish the National Customs Automation Program (hereinafter in this subpart referred to as the "Program") which shall be an automated and electronic system for processing commercial importations and shall include the following existing and planned components:

(1) **Existing components:**

- (A) The electronic entry of merchandise.
- (B) The electronic entry summary of required information.
- (C) The electronic transmission of invoice information.
- (D) The electronic transmission of manifest information.
- (E) Electronic payments of duties, fees, and taxes.
- (F) The electronic status of liquidation and reliquidation.
- (G) The electronic selection of high risk entries for examination (cargo selectivity and entry summary selectivity).

(2) **Planned components:**

- (A) The electronic filing and status of protests.
- (B) The electronic filing (including remote filing under section 414) of entry information with the Customs Service at any location.
- (C) The electronic filing of import activity summary statements and reconciliation.
- (D) The electronic filing of bonds.
- (E) The electronic penalty process.
- (F) The electronic filing of drawback claims, records, or entries.
- (G) Any other component initiated by the Customs Service to carry out the goals of this subpart.

(b) **PARTICIPATION IN PROGRAM.**—The Secretary shall by regulation prescribe the eligibility criteria for participation in the Program. Participation in the Program is voluntary.

SEC. 412. PROGRAM GOALS.

The goals of the Program are to ensure that all regulations and rulings that are administered or enforced by the Customs Service are administered and enforced in a manner that—

- (1) is uniform and consistent;
- (2) is as minimally intrusive upon the normal flow of business activity as practicable; and
- (3) improves compliance.

SEC. 413. IMPLEMENTATION AND EVALUATION OF PROGRAM.

(a) OVERALL PROGRAM PLAN.—

(1) **IN GENERAL.**—Before the 180th day after the date of the enactment of this Act, the Secretary shall develop and transmit to the Committees an overall plan for the Program. The overall Program plan shall set forth—

(A) a general description of the ultimate configuration of the Program;

(B) a description of each of the existing components of the Program listed in section 411(a)(1); and

(C) estimates regarding the stages on which planned components of the Program listed in section 411(a)(2) will be brought on-line.

(2) **ADDITIONAL INFORMATION.**—In addition to the information required under paragraph (1), the overall Program plan shall include a statement regarding—

(A) the extent to which the existing components of the Program currently meet, and the planned components will meet, the Program goals set forth in section 412; and

(B) the effects that the existing components are currently having, and the effects that the planned components will have, on—

(i) importers, brokers, and other users of the Program, and

(ii) Customs Service occupations, operations, processes, and systems.

(b) IMPLEMENTATION PLAN, TESTING, AND EVALUATION.—

(1) **IMPLEMENTATION PLAN.**—For each of the planned components of the Program listed in section 411(a)(2), the Secretary shall—

(A) develop an implementation plan;

(B) test the component in order to assess its viability;

(C) evaluate the component in order to assess its contribution toward achieving the program goals; and

(D) transmit to the Committees the implementation plan, the testing results, and an evaluation report.

In developing an implementation plan under subparagraph (A) and evaluating components under subparagraph (C), the Secretary shall publish a request for comments in the Customs Bulletin and shall consult with the trade community including importers, brokers, shippers, and other affected parties.

(2) IMPLEMENTATION.—

(A) The Secretary may implement on a permanent basis any Program component referred to in paragraph (1) on or after the date which is 30 days after paragraph (1)(D) is complied with.

(B) For purposes of subparagraph (A), the 30 days shall be computed by excluding—

(i) the days either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die, and

(ii) any Saturday and Sunday, not excluded under clause (i), when either House is not in session.

(3) EVALUATION AND REPORT.—The Secretary shall—

(A) develop a user satisfaction survey of parties participating in the Program;

(B) evaluate the results of the user satisfaction survey on a biennial basis (fiscal years) and transmit a report to the Committees on the evaluation by no later than the 90th day after the close of each 2nd fiscal year; and

(C) with respect to the existing Program component listed in section 411(a)(1)(F) transmit to the Committees—

(i) a written evaluation of such component before the 180th day after the date of the enactment of this section and before the implementation of the planned Program components listed in section 411(a)(2) (B) and (C), and

(ii) a report on such component for each of the 3 full fiscal years occurring after the date of the enactment of this section, which report shall be transmitted not later than the 90th day after the close of each such year; and

(D) not later than the 90th day after the close of fiscal year 1993, and annually thereafter through fiscal year 1999, transmit to the Committees a written evaluation with respect to the implementation and effect on users of each of the planned Program components listed in section 411(a)(2).

In carrying out the provisions of this paragraph, the Secretary shall publish requests for comments in the Customs Bulletin and shall consult with the trade community, including importers, brokers, shippers, and other affected parties.

(c) **COMMITTEES.**—For purposes of this section, the term “Committees” means the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

SEC. 414. REMOTE LOCATION FILING.

(a) CORE ENTRY INFORMATION.—

(1) **IN GENERAL.**—A Program participant may file an entry of merchandise with the Customs Service from a location other than the district designated in the entry for examination (hereinafter in this section referred to as a “remote location”) if—

(A) the Customs Service is satisfied that the participant has the capabilities referred to in paragraph (2) regarding such method of filing; and

(B) the participant elects to file from the remote location.

(2) **REQUIREMENTS.**—In order to qualify for filing from a remote location, a Program participant must have the capability to provide, on an entry-by-entry basis, for the following:

(A) The electronic entry of merchandise.

(B) The electronic entry summary of required information.

(C) *The electronic transmission of invoice information (when required by the Custom Service).*

(D) *The electronic payment of duties, fees, and taxes.*

(E) *Such other electronic capabilities within the existing or planned components of the Program as the Secretary shall by regulation require.*

(3) **ALTERNATE FILING.**—Any Program participant that is eligible under paragraph (1) to file entry information electronically from a remote location but chooses not to do so in the case of any entry must file any paper documentation for the entry at the designated location referred to in subsection (d).

(b) **ADDITIONAL ENTRY INFORMATION.**—

(1) **IN GENERAL.**—A Program participant that is eligible under subsection (a) to file entry information from a remote location may, if the Customs Service is satisfied that the participant meets the requirement under paragraph (2), also electronically file from the remote location additional information that is required by the Customs Service to be presented before the acceptance of entry summary information and at the time of acceptance of entry summary information.

(2) **REQUIREMENTS.**—The Secretary shall publish, and periodically update, a list of those capabilities within the existing and planned components of the Program that a Program participant must have for purposes of this subsection.

(3) **FILING OF ADDITIONAL INFORMATION.**—

(A) **IF INFORMATION ELECTRONICALLY ACCEPTABLE.**—A Program participant that is eligible under paragraph (1) to file additional information from a remote location shall electronically file all such information that the Customs Service can accept electronically.

(B) **ALTERNATIVE FILING.**—If the Customs Service cannot accept additional information electronically, the Program participant shall file the paper documentation with respect to the information at the appropriate filing location.

(C) **APPROPRIATE LOCATION.**—For purposes of subparagraph (B), the “appropriate location” is—

(i) before January 1, 1999, a designated location; and
(ii) after December 31, 1998—

(I) if the paper documentation is required for release, the designated location; or

(II) if the paper documentation is not required for release, a remote location designated by the Customs Service or a designated location.

(D) **OTHER.**—A Program participant that is eligible under paragraph (1) to file additional information electronically from a remote location but chooses not to do so must file the paper documentation with respect to the information at a designated location.

(c) **POST-ENTRY SUMMARY INFORMATION.**—A program participant who is eligible to file electronically entry information under subsection (a) and additional information under subsection (b) from a remote location may file at any remote location designated by the Customs Service any information required by the Customs Service after entry summary.

(d) *DEFINITION OF DESIGNATED LOCATION.*—For purposes of this section, the term “designated location” means a customs office located in the customs district designated by the entry filer for purposes of customs examination of the merchandise.

PART II—REPORT, ENTRY, AND UNLOADING OF VESSELS AND VEHICLES

SEC. 431. MANIFEST—REQUIREMENT, FORM, AND CONTENTS.

[(a) The master of every vessel arriving in the United States and required to make entry shall have on board his vessel a manifest in a form to be prescribed by the Secretary of the Treasury and signed by such master under oath as to the truth of the statements therein contained. Such manifest shall contain:

【First. The names of the ports or places at which the merchandise was taken on board and the ports of entry of the United States for which the same is destined, particularly describing the merchandise destined to each such port: *Provided*, That the master of any vessel laden exclusively with coal, sugar, salt, nitrates, hides, dyewoods, wool, or other merchandise in bulk consigned to one owner and arriving at a port for orders, may destine such cargo “for orders,” and within fifteen days thereafter, but before the unloading of any part of the cargo such manifest may be amended by the master by designating the port or ports of discharge of such cargo, and in the event of failure to amend the manifest within the time permitted such cargo must be discharged at the port at which the vessel arrived and entered.

【Second. The name, description, and build of the vessel, the true measure or tonnage thereof, the port to which such vessel belongs, and the name of the master of such vessel.

【Third. A detailed account of all merchandise on board such vessel, with the marks and numbers of each package, and the number and description of the packages according to their usual name or denomination, such as barrel, keg, hogshead, case, or bag; and the names of the shippers of such merchandise.

【Fourth. The names of the persons to whom such packages are respectively consigned in accordance with the bills of lading issued therefore, except that when such merchandise is consigned to order the manifest shall so state.

【Fifth. The names of the several passengers aboard the vessel, stating whether cabin or steerage passengers, with their baggage, specifying the number and description of the pieces of baggage belonging to each, and a list of all baggage not accompanied by passengers.

【Sixth. An account of the sea stores and ship’s stores on board of the vessel.

[(b) Whenever a manifest of articles or persons on board an aircraft is required for customs purposes to be signed, or produced or delivered to a customs officer, the manifest may be signed, produced, or delivered by the pilot or person in charge of the aircraft, or by any other authorized agent of the owner or operator of the aircraft, subject to such regulations as the Secretary of the Treas-

ury may prescribe. If any irregularity of omission or commission occurs in any way in respect of any such manifest, the owner or operator of the aircraft shall be liable for any fine or penalty prescribed by law in respect of such irregularity.】

(a) *IN GENERAL.*—Every vessel required to make entry under section 434 or obtain clearance under section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91) shall have a manifest that complies with the requirements prescribed under subsection (d).

(b) *PRODUCTION OF MANIFEST.*—Any manifest required by the Customs Service shall be signed, produced, delivered or electronically transmitted by the master or person in charge of the vessel, aircraft, or vehicle, or by any other authorized agent of the owner or operator of the vessel, aircraft, or vehicle in accordance with the requirements prescribed under subsection (d). A manifest may be supplemented by bill of lading data supplied by the issuer of such bill. If any irregularity of omission or commission occurs in any way in respect to any manifest or bill of lading data, the owner or operator of the vessel, aircraft or vehicle, or any party responsible for such irregularity, shall be liable for any fine or penalty prescribed by law with respect to such irregularity. The Customs Service may take appropriate action against any of the parties.

* * * * *

(d) *REGULATIONS.*—

(1) *IN GENERAL.*—The Secretary shall by regulation—

(A) specify the form for, and the information and data that must be contained in, the manifest required by subsection (a);

(B) allow, at the option of the individual producing the manifest and subject to paragraph (2), letter and documents shipments to be accounted for by summary manifesting procedures;

(C) prescribe the manner of production for, and the delivery or electronic transmittal of the manifest required by subsection (a); and

(D) prescribe the manner for supplementing manifests with bill of lading data under subsection (b).

(2) *LETTER AND DOCUMENTS SHIPMENTS.*—For purposes of paragraph 1(B)—

(A) the Customs Service may require with respect to letter and documents shipments—

(i) that they be segregated by country of origin, and

(ii) additional examination procedures that are not necessary for individually manifested shipments;

(B) standard letter envelopes and standard document packs shall be segregated from larger document shipments for purposes of customs inspections; and

(C) the term “letters and documents” means—

(i) data described in General Headnote 4(c) of the Harmonized Tariff Schedule of the United States,

(ii) securities and similar evidences of value described in heading 4907 of such Schedule, but not monetary instruments defined pursuant to chapter 53 of title 31, United States Code, and

(iii) *personal correspondence, whether on paper, cards, photographs, tapes, or other media.*

[SEC. 432. MANIFEST TO SPECIFY SEA AND SHIP'S STORES.

[The manifest of any vessel arriving from a foreign port or place shall separately specify the articles to be retained on board of such vessel as sea stores, ship's stores, or bunker coal, or bunker oil, and if any other or greater quantity of sea stores, ship's stores, bunker coal, or bunker oil is found on board of any such vessel than is specified in the manifest, or if any such articles, whether shown on the manifest or not, are landed without a permit therefor issued by the appropriate customs officer, all such articles omitted from the manifest or landed without a permit shall be subject to forfeiture, and the master shall be liable to a penalty equal to the value of the articles.**]**

SEC. 433. REPORT OF ARRIVAL OF VESSELS, VEHICLES, AND AIRCRAFT.

(a) **VESSEL ARRIVAL.**—(1) Immediately upon the arrival at any port or place within the United States or the Virgin Islands of—

(A) any vessel from a foreign port or place;

(B) any foreign vessel from a domestic port; **[or]**

(C) any vessel of the United States carrying bonded merchandise, or foreign merchandise for which entry has not been made; or

(D) *any vessel which has visited a hovering vessel or received merchandise while outside the territorial sea;*

the master of the vessel shall report the arrival at the nearest customs facility or such other place as the Secretary may prescribe by regulations.

* * * * *

(d) **PRESENTATION OF DOCUMENTATION.**—The master, person in charge of a vehicle, or aircraft pilot shall **[**present to customs officers such**]** *present, or transmit pursuant to an electronic data interchange system, to the Customs Service such information, data, documents, papers, or manifests as the Secretary may by regulation prescribe.*

[(e) **PROHIBITION ON DEPARTURES AND DISCHARGE.**—Unless otherwise authorized by law, a vessel, aircraft, or vehicle may, after arriving in the United States or the Virgin Islands—

[(1) depart from the port, place, or airport of arrival; or

[(2) discharge any passenger or merchandise (including baggage);

only in accordance with regulations prescribed by the Secretary.**]**

(e) **PROHIBITION ON DEPARTURES AND DISCHARGE.**—*Unless otherwise authorized by law, a vessel, aircraft or vehicle after arriving in the United States or Virgin Islands may, but only in accordance with regulations prescribed by the Secretary—*

(1) *depart from the port, place, or airport of arrival; or*

(2) *discharge any passenger or merchandise (including baggage).*

[SEC. 434. ENTRY OF AMERICAN VESSELS.

[Except as otherwise provided by law, and under such regulations as the Secretary of Commerce may prescribe, the master of a vessel of the United States arriving in the United States from a

foreign port or place shall, within forty-eight hours after its arrival within the limits of any customs collection district, make formal entry of the vessel at the customhouse by producing and depositing with the appropriate customs officer the vessel's crew list, its register, or document in lieu thereof, the clearance and bills of health issued to the vessel at the foreign port or ports from which it arrived, together with the original and one copy of the manifest, and shall make oath that the ownership of the vessel is as indicated in the register, or document in lieu thereof, and that the manifest was made out in accordance with section 341 of this Act.】

SEC. 434. ENTRY; VESSELS.

(a) **FORMAL ENTRY.**—*Within 24 hours (or such other period of time as may be provided under subsection (c)(2)) after the arrival at any port or place in the United States of—*

- (1) *any vessel from a foreign port or place;*
- (2) *any foreign vessel from a domestic port;*
- (3) *any vessel of the United States having on board bonded merchandise or foreign merchandise for which entry has not been made; or*
- (4) *any vessel which has visited a hovering vessel or has delivered or received merchandise while outside the territorial sea;*

the master of the vessel shall, unless otherwise provided by law, make formal entry at the nearest customs facility or such other place as the Secretary may prescribe by regulation.

(b) **PRELIMINARY ENTRY.**—*The Secretary may by regulation permit the master to make preliminary entry of the vessel with the Customs Service in lieu of formal entry or before formal entry is made. In permitting preliminary entry, the Customs Service shall board a sufficient number of vessels to ensure compliance with the laws it enforces.*

(c) **REGULATIONS.**—*The Secretary may by regulation—*

- (1) *prescribe the manner and format in which entry under subsection (a) or subsection (b), or both, must be made, and such regulations may provide that any such entry may be made electronically pursuant to an electronic data interchange system;*
- (2) *provide that—*
 - (A) *formal entry must be made within a greater or lesser 48 hours after arrival, and*
 - (B) *formal entry may be made before arrival; and*
- (3) *authorize the Customs Service to permit entry or preliminary entry of any vessel to be made at a place other than a designated port of entry, under such conditions as may be prescribed.*

【SEC. 435. ENTRY OF FOREIGN VESSELS.

【The master of any foreign vessel arriving within the limits of any customs collection district shall, within forty-eight hours thereafter, make entry at the customhouse in the same manner as is required for the entry of a vessel of the United States, except that a list of the crew need not be delivered, and that instead of depositing the register or document in lieu thereof such master may produce a certificate by the consul of the nation to which such vessel belongs that said documents have been deposited with him:

Provided, That such exception shall not apply to the vessels of foreign nations in whose ports American consular officers are not permitted to have the custody and possession of the register and other papers of vessels entering the ports of such nations.]

SEC. 436. PENALTIES FOR VIOLATIONS OF THE ARRIVAL, REPORTING, [AND ENTRY] ENTRY, AND CLEARANCE REQUIREMENTS.

(a) UNLAWFUL ACTS.—It is unlawful—

(1) to fail to comply with section [433] 431, 433, or 434 of this Act or section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91);

[(2) to present any forged, altered, or false document, paper, or manifest to a customs officer under section 433(d) without revealing the facts;]

(2) to present or transmit, electronically or otherwise, any forged, altered, or false document, paper information, data or manifest to the Customs Service under section 431(e), 433(d), or 434 of this Act or section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91) without revealing the facts; or

[(3) to fail to make entry as required by section 434, 435, or 644 of this Act or section 1109 of the Federal Aviation Act (49 U.S.C. App. 1509); or]

(3) to fail to make entry or to obtain clearance as required by section 434 or 644 of this Act, section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91), or section 1109 of the Federal Aviation Act of 1958 (49 U.S.C. 1509); or

* * * * *

[SEC 437. DOCUMENTS RETURNED AT CLEARANCE.

[The register, or document in lieu thereof, deposited in accordance with section 434 or 435 of this Act shall be returned to the master or owner of the vessel upon its clearance.]

SEC. 438. UNLAWFUL RETURN OF FOREIGN VESSEL'S PAPERS.

It shall not be lawful for any foreign consul to deliver to the master of any foreign vessel the register, or document in lieu thereof, deposited with him in accordance with the provisions of section [435] 434 of this Act, or regulations issued thereunder, until such master shall produce to him a clearance in due form from [the appropriate customs officer of the port where such vessel has been entered.] *the Customs Service in the port in which such vessel has entered.* Any consul offending against the provisions of this section shall be liable to a fine of not more than \$5,000.

[SEC. 439. DELIVERY OF MANIFEST.

[Immediately upon arrival and before entering his vessel, the master of a vessel from a foreign port or place required to make entry shall mail or deliver to such employee as the Secretary of the Treasury shall designate, a copy of the manifest, and shall on entering his vessel make affidavit that a true and correct copy was so mailed or delivered, and he shall also mail or deliver to such employee designated by the Secretary a true and correct copy of any correction of such manifest filed on entry of his vessel. Any master who fails so to mail or delivery such copy of the manifest or correction thereof shall be liable to a penalty of not more than \$500.

[SEC. 440. CORRECTION OF MANIFEST.

[If there is any merchandise or baggage on board such vessel which is not included in or which does not agree with the manifest, the master of the vessel shall make a post entry thereof, and mail or deliver a copy to such employee as the Secretary of the Treasury shall designate and for failure so to do so shall be liable to a penalty of \$500.]

SEC. 441. [VESSELS NOT REQUIRED TO ENTER.] EXCEPTIONS TO VESSEL ENTRY AND CLEARANCE REQUIREMENTS.

[The following vessels shall not be required to make entry at the customhouse:] *The following vessels shall not be required to make entry under section 434 or to obtain clearance under section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91):*

(1) * * *

* * * * *

[(3) Vessels carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning, and licensed yachts or undocumented American pleasure vessels not engaged in trade: *Provided*, That such vessels do not in any way violate the customs or navigation laws of the United States and have not visited any hovering vessel: *Provided further*, That the master of any such vessel which has on board any article required by law to be entered shall be required to report such article to the appropriate customs officer within twenty-four hours after arrival.]

(3) Any vessel carrying passengers on excursion from the United States Virgin Islands to the British Virgin Islands and returning, if—

(A) the vessel does not in any way violate the customs or navigation laws of the United States;

(B) the vessel has not visited any hovering vessel; and

(C) the master of the vessel, if there is on board any article required by law to be entered, reports the article to the Customs Service immediately upon arrival.

(4) Any United States documented vessel with recreational endorsement or any undocumented United States pleasure vessel not engaged in trade, if—

(A) the vessel complies with the reporting requirements of section 433, and with the customs and navigation laws of the United States;

(B) the vessel has not visited any hovering vessel; and

(C) the master of, and any other person on board, the vessel, if the master or such person has on board any article required by law to be entered or declared, reports such article to the Customs Service immediately upon arrival;

[(4)] (5) Vessels arriving in distress or for the purpose of taking on bunker coal, bunker oil, sea stores, or ship's stores and which shall depart within twenty-four hours after arrival without having landed or taken on board any passengers, or any merchandise other than bunker coal, bunker oil, sea stores, or ship's stores: *Provided*, That the master, owner, or agent of such vessel shall report under oath to the appropriate customs officer the hour and date of

arrival and departure and the quantity of bunker coal, bunker oil, sea stores, or ship's stores taken on board; and

[(5)] (6) Tugs enrolled and licensed to engage in the foreign and coasting trade in the northern, eastern, and northwestern frontiers when towing vessels which are required by law to enter and clear.

* * * * *

[SEC. 443. CARGO FOR DIFFERENT PORTS—MANIFEST AND PERMIT.

[Merchandise arriving in any vessel for delivery in different districts or ports of entry shall be described in the manifest in the order of the districts or ports at or in which the same is to be unladen. Before any vessel arriving in the United States with any such merchandise shall depart from the port of first arrival, the master shall obtain from the appropriate customs officer a permit therefor with a certified copy of the vessel's manifest showing the quantities and particulars of the merchandise entered at such port of entry and of that remaining on board.

[SEC. 444. ARRIVAL AT ANOTHER PORT.

[Within twenty-four hours after the arrival of such vessel at another port of entry, the master shall report the arrival of his vessel to the appropriate customs officer at such port and shall produce the permit issued by the appropriate customs officer at the port of first arrival, together with the certified copy of his manifest.

[SEC. 445. PENALTIES FOR FAILURE TO HAVE PERMIT AND CERTIFIED MANIFEST.

[If the master of any such vessel shall proceed to another port or district without having obtained a permit therefor and a certified copy of his manifest, or if he shall fail to produce such permit and certified copy of his manifest to the appropriate customs officer at the port of destination, or if he shall proceed to any port not specified in the permit, he shall be liable to a penalty, for each offense, of not more than \$500.]

* * * * *

SEC. 447. PLACE OF ENTRY AND UNLADING.

It shall be unlawful to make entry of any vessel or to unlade the cargo or any part thereof of any vessel elsewhere than at a port of entry: *Provided*, That upon good cause therefor being shown, the Secretary of Commerce may permit entry of any vessel to be made at a place other than port of entry designated by him, under such conditions as he shall prescribe: *And provided further*, That any vessel laden with merchandise in bulk may proceed after entry of such vessel laden with merchandise in bulk may proceed after entry of such vessel to any place designated by the Secretary of the Treasury for the purpose of unlading such cargo, under the supervision of customs officers if [the appropriate customs officer shall consider] *the Customs Service considers* the same necessary, and in such case the compensation and expenses of such officers shall be reimbursed to the Government by the party in interest.

SEC. 448. UNLADING.

(a) **PERMITS AND PRELIMINARY ENTRIES.**—Except as provided in section 441 of this Act (relating to vessels not required to enter or clear), no merchandise, passengers, or baggage shall be unladen

from any vessel [or vehicle arriving from a foreign port or place] required to make entry under section 434, or vehicle required to report arrival under section 433, until entry of such vessel or report of the arrival of such vehicle has been made and a permit for the unloading of the same issued or transmitted pursuant to an electronic data interchange system by [the appropriate customs officer] the Customs Service[: Provided, That the master may make a preliminary entry of a vessel by making oath or affirmation to the truth of the statements contained in the vessel's manifest and delivering the manifest to the customs officer who boards such vessel, but the making of such preliminary entry shall excuse the master from making formal entry of his vessel at the customhouse, as provided by this Act]. After the entry[, preliminary or otherwise,] of any vessel or report of the arrival of any vehicle, [such customs officer] the Customs Service may issue a permit, electronically pursuant to an authorized electronic data interchange system or otherwise, to the master of the vessel, or to the person in charge of the vehicle, to unlade merchandise or baggage, but except as provided in subdivision (b) of this section merchandise or baggage so unladen shall be retained at the place of unloading until entry therefor is made and a permit for its delivery granted, and the owners of the vessel or vehicle from which any imported merchandise is unladen prior to entry of such merchandise shall be liable for the payment of the duties accruing on any part thereof that may be removed from the place of unloading without a permit therefore having been issued. Any merchandise or baggage so unladen from any vessel or vehicle for which entry is not made within forty-eight hours exclusive of Sunday and holidays from the time of the entry of the vessel or report of the vehicle, unless a longer time is granted by [such customs officer,] the Customs Service, as provided in section 384, shall be sent to a bonded warehouse or the public stores and held as unclaimed at the risk and expense of the consignee in the case of merchandise and of the owner in the case of baggage, until entry thereof is made. *The owner or master of any vessel or vehicle, or agent thereof, shall notify the Customs Service of any merchandise or baggage so unladen for which entry is not made within the time prescribed by law or regulation. The Secretary shall be regulation prescribe administrative penalties not to exceed \$1,000 for each bill of lading for which notice is not given. Any such administrative penalty shall be subject to mitigation and remittance under section 618. Such unentered merchandise or baggage shall be in the responsibility of the master or person in charge of the importing vessel or vehicle, or agent thereof, until it is removed from the carrier's control in accordance with section 490.*

* * * * *

SEC. 449. UNLADING AT PORT OF ENTRY.

Except as provided in sections 442 and 447 of this act (relating to residue cargo and to bulk cargo, respectively), merchandise and baggage imported in such vessel by sea shall be unladen at the port of entry to which such vessel is destined, unless (1) such vessel is compelled by any cause to put into another port of entry, and the [appropriate customs officer of such port issues a permit for the unloading of such merchandise or baggage,] *Customs Service issues*

a permit for the unloading of such merchandise or baggage at such port, or (2) the Secretary of the Treasury, because of an emergency existing at the port of destination, authorizes such vessel to proceed to another port of entry. Merchandise and baggage so unladen may be entered in the same manner as other imported merchandise or baggage and may be treated as unclaimed merchandise or baggage and stored at the expense and risk of the owner thereof, or may be reladen without entry upon the vessel from which it was unladen for transportation to its destination.

* * * * *

[SEC. 465. SAME—SUPPLIES.

[The master of any vessel of the United States documented to engage in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers shall, upon arrival from a foreign contiguous territory, file with the manifest of such vessel a detailed list of all supplies or other merchandise purchase in such foreign country for use or sale on such vessel, and also a statement of the cost of all repairs to and all equipment taken on board such vessel. The conductor or person in charge of any railway car arriving from a contiguous country shall file with the manifest of such car a detailed list of all supplies or other merchandise purchased in such foreign country for use in the United States. If any such supplies, merchandise, repairs, or equipment shall not be reported, the master, conductor, or other person having charge of such vessel or vehicle shall be liable to a fine of not less than \$100 and not more than \$500 or to imprisonment for not more than two years, or both.]

* * * * *

PART III—ASCERTAINMENT, COLLECTION, AND RECOVERY OF DUTIES

SEC. 481. INVOICE—CONTENTS.

(a) **IN GENERAL.**—**[All invoices of merchandise to be imported into the United States shall set forth—] All invoices of merchandise to be imported into the United States and any electronic equivalent thereof considered acceptable by the Secretary in regulations prescribed under this action shall set forth, in written, electronic, or such other form as the Secretary shall prescribe, the following:**

(1) * * *

* * * * *

[(3) A detailed description of the merchandise, including the name by which each item is known, the grade or quality, and the marks, numbers, or symbols under which sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed;]

(3) A detailed description of the merchandise, including the commercial name by which each item is known, the grade or quality, and the marks, numbers, or symbols under which sold by the seller or manufacturer in the country of exportation, to-

gether with the marks and numbers of the packages in which the merchandise is packed;

* * * * *

[(10) Any other facts deemed necessary to a proper appraisal, examination, and classification of the merchandise that the Secretary of the Treasury may require.]

(10) Any other fact that the Secretary may by regulation require as being necessary to a proper appraisal, examination and classification of the merchandise.

* * * * *

[(c) PURCHASES IN DIFFERENT CONSULAR DISTRICTS.—When the merchandise has been purchased in different consular districts for shipment to the United States and is assembled for shipment and embraced in a single invoice which is produced for certification under the provisions of paragraph (2) of subdivision (a) of section 482 of this Act, the invoice shall have attached thereto the original bills or invoices received by the shipper, or extracts therefrom, showing the actual prices paid or to be paid for such merchandise. The consular officer to whom the invoice is so produced for certification may require that any such original bill or invoice be certified by the consular officer for the district in which the merchandise was purchased.]

(c) *IMPORTER PROVISION OF INFORMATION.*—Any information required to be set forth on an invoice may alternatively be provided by any of the parties qualifying as an “importer of record” under section 484(a)(2)(B) by such means, in such form or manner, and within such time as the Secretary shall by regulation prescribe.

(d) *EXCEPTIONS BY REGULATIONS.*—The Secretary of the Treasury may by regulations provide for such exceptions from the requirements of this section as he deems advisable and may allow for the submission or electronic transmission of partial invoices, electronic equivalents of invoices, bills, or other documents or parts thereof, required under this section.

[SEC. 482. CERTIFIED INVOICE.

[(a) *CERTIFICATION IN GENERAL.*—Every invoice required pursuant to section 484(b) of this Act to be certified shall, at or before the time of the shipment of the merchandise, or as soon thereafter as the conditions will permit, be produced for certification to the consular officer of the United States—

[(1) For the consular district in which the merchandise was manufactured, or purchased, or from which it was to be delivered pursuant to contract;

[(2) For the consular district in which the merchandise is assembled and repacked for shipment to the United States, if it has been purchased in different consular districts.

[(b) *DECLARATION.*—Such invoices shall have indorsed thereon, when so produced, a verified declaration, in a form prescribed by the Secretary of the Treasury, stating whether the merchandise is sold or agreed to be sold, or whether it is shipped otherwise than in pursuance of a purchase or an agreement to purchase, that there is no other invoice differing from the invoice so produced, and that

all the statements contained in such invoice and in such declaration are true and correct.

[(c) **MAKING AND SIGNING.**—Every certified invoice shall be made out in triplicate, or, for merchandise intended for immediate transportation under the provisions of section 552 of this Act, in quadruplicate, if desired by the shipper, and shall be signed by the seller or shipper, or the agent of either; but a person who has no interest in the merchandise except as broker or forwarder shall not be competent to sign any such invoice. Where any such invoice is signed by an agent, he shall state thereon the name of his principal.

[(d) **CERTIFIED UNDER EXISTING LAW.**—Such invoices shall be certified in accordance with the provisions of existing law.

[(e) **DISPOSITION.**—The original of the invoice and, if made, the quadruplicate shall be delivered to the exporter, to be forwarded to the consignee for use in making entry of the merchandise, and the triplicate shall be promptly transmitted by the consular officer to the appropriate customs officer at the port of entry named in the invoice. The duplicate shall be filed in the office of the consular officer by whom the invoice was certified, to be there kept until no longer needed in conducting the current business of the consular office, at which time it may be disposed of as provided by law.

[(f) **CERTIFICATION BY OTHERS THAN AMERICAN CONSUL.**—When merchandise is to be shipped from a place so remote from an American consulate as to render impracticable certification of the invoice by an American consular officer, such invoice may be certified by a consular officer of a nation at the time in amity with the United States, or if there be no such consular officer available such invoice shall be executed before a notary public or other officer having authority to administer oaths and having an official seal: *Provided*, That invoices for merchandise shipped to the United States from the Philippine Islands, the Virgin Islands, American Samoa, the island of Guam, or the Canal Zone may be certified by the appropriate customs officer.

[(g) **EFFECTIVE DATE.**—This section shall take effect sixty days after the date of enactment of this Act.

[SEC. 484. ENTRY OF MERCHANDISE.

[(a) **REQUIREMENT AND TIME.**—(1) Except as provided in sections 490, 498, 552, 553, and 336(j) of this Act and in subsections (h) and (i) of this section, one of the parties qualifying as 'importer of record' under paragraph (2)(C) of this subsection, either in person or by an agent authorized by him in writing—

[(A) shall make entry therefor by filing with the appropriate customs officer such documentation as is necessary to enable such officer to determine whether the merchandise may be released from customs custody; and

[(B) shall file (at the time required under paragraph (2)(B) of this subsection) with the appropriate customs officer such other documentation as is necessary to enable such officer to assess properly the duties on the merchandise, collect accurate statistics with respect to the merchandise, and determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

[(2)(A) The documentation required under paragraph (1) of this subsection with respect to any imported merchandise shall be filed at such place within the customs-collection district where the merchandise will be released from customs custody as the Secretary shall by regulation prescribe.

[(B) The documentation required under paragraph (1)(B) of this subsection with respect to any imported merchandise shall be filed with the appropriate customs officer when entry of the merchandise is made or at such time within the ten-day period (exclusive of Saturdays, Sundays, and holidays) immediately following the date of entry as the Secretary shall by regulation prescribe.

[(C) When an entry of merchandise is made under this section, the required documentation shall be filed either by the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under section 641 of this Act. When a consignee declares on entry that he is the owner or purchaser of merchandise, the appropriate customs officer may, without liability, accept the declaration. For the purposes of this title, the importer of record must be one of the parties who is eligible to file the documentation required by this section.

[(D) The Secretary, in prescribing regulations to carry out this subsection, shall establish procedures which insure the accuracy and timeliness of import statistics, particularly statistics relevant to the classification and valuation of imports. Corrections of errors in such statistical data discovered after the release of merchandise shall be transmitted immediately to the Director of the Bureau of the Census, who shall make corrections in the statistics maintained by the Bureau. The Secretary shall also provide, to the maximum extent practicable, for the protection of the revenue, the facilitation of the commerce of the United States, and the equal treatment of all importers of record of imported merchandise.

[(b) PRODUCTION OF CERTIFIED INVOICE.—The Secretary of the Treasury shall provide by regulation for the production of a certified invoice with respect to such merchandise as he deems advisable and for the terms and conditions under which such merchandise may be permitted entry under the provisions of this section without the production of a certified invoice.

The Secretary of the Treasury may by regulations provide for such exceptions from the requirements of this subdivision as he deems advisable.

[(c) PRODUCTION OF BILL OF LADING.—The importers of record shall produce the bill of lading at the time of making entry, except that—

[(1) If the appropriate customs officer is satisfied that no bill of lading has been issued, the shipping receipt or other evidence satisfactory to such customs officer may be accepted in lieu thereof;

[(2) The appropriate customs officer is authorized to permit entry and to release merchandise from customs custody without the production of the bill of lading if the person making such entry gives a bond satisfactory to such customs officer in a sum equal to not less than one and one-half times the invoice value of the merchandise, to produce such bill of lading, to re-

lieve such customs officer of all liability, to indemnify the collector against loss, to defend every action brought upon a claim for loss or damage, by reason of such release from customs custody or a failure to produce such bill of lading and to entitle any person injured by reason of such release from customs custody to sue on such bond in his own name, without making such customs officer a party thereto. Any person so injured by such release may sue on such bond to recover any damages so sustained by him; and

[(3) The provisions of this subdivision shall not apply in the case of an entry under subdivision (b) or (i) of this section (relating to entry on carrier's certificate and on duplicate bill of lading, respectively).

[(d) SIGNING AND CONTENTS.—Such entry shall be signed by the importer of record, or his agent, and shall set forth such facts in regard to the importation as the Secretary of the Treasury may require for the purpose of assessing duties and to secure a proper examination, inspection, appraisal, and liquidation, and shall be accompanied by such invoices, bills of lading, certificates, and documents as are required by law and regulations promulgated thereunder.

[(e) STATISTICAL ENUMERATION.—The Secretary of the Treasury, the Secretary of Commerce, and the United States International Trade Commission are authorized and directed to establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.

[(f) PACKAGES INCLUDED.—If any of the certificates or documents necessary to make entry of any part of merchandise arriving on one vessel or vehicle and consigned to one consignee have not arrived, such part may be entered subsequently, and notation of the packages or cases to be omitted from the original entry shall be made thereon. One or more packages arriving on one vessel or vehicle addressed for delivery to one person and imported in another package containing packages addressed for delivery to other persons may be separately entered, under such rules and regulations as the Secretary of the Treasury may prescribe. All other merchandise arriving on one vessel or vehicle and consigned to one consignee shall be included in one entry, unless the Secretary of the Treasury shall authorize the inclusion of portions of such merchandise in separate entries under such rules and regulations as he may prescribe; except that, in the case of articles not subject to a quantitative or tariff-rate quota, entry for the entire quantity covered by an entry for immediate transportation made under section 552 of this Act may be accepted at the port of entry designated by the

consignee, or his agent, in such entry after the arrival of any part of such quantity at such designated port or at such other place of deposit as may be authorized in accordance with regulations prescribed by the Secretary of the Treasury.

[(g) STATEMENT OF COST PRODUCTION.—Under such regulations as the Secretary of the Treasury may prescribe, the appropriate customs officer may require a verified statement from the manufacturer or producer showing the cost of production of the imported merchandise, when necessary to the appraisement of such merchandise.

[(h) The carrier bringing the merchandise into the port at which entry is to be made may certify any person to be the owner, purchaser, or consignee of the merchandise, and that person may be accepted as such by the appropriate customs officer. A carrier shall not certify a person pursuant to this subsection unless it has actual knowledge of or reason to believe in the accuracy of such certification.

[(i) For the purposes of this section, the appropriate customs officer may accept a duplicate bill of lading signed or certified to be genuine by the carrier bringing the merchandise to the port at which entry is to be made.

[(j) RELEASE OF MERCHANDISE.—Merchandise shall be released from customs custody only to or upon the order of the carrier by whom the merchandise is brought to the port at which entry is made, except that merchandise in a bonded warehouse shall be released from customs custody only to or upon the order of the proprietor of the warehouse. The appropriate customs officer shall return to the person making entry the bill of lading (if any is produced) with a notation thereon to the effect that entry for such merchandise has been made. The customs officer shall not be liable to any person in respect of the delivery of merchandise released from customs custody in accordance with the provisions of this section. Where a recovery is had in any suit or proceeding against a customs officer on account of the release of merchandise from customs custody, in the performance of his official duty, and the court certifies that there was probable cause for such release by such customs officer, or that he acted under the directions of the Secretary of the Treasury, or other proper officer of the Government, no execution shall issue against such customs officer, but the amount so recovered shall, upon final judgment, be paid out of moneys appropriated from the Treasury for that purpose.]

SEC. 484. ENTRY OF MERCHANDISE.

(a) REQUIREMENT AND TIME.—

(1) *Except as provided in sections 490, 498, 552, 553, and 336(j), one of the parties qualifying as "importer of record" under paragraph (2)(B), either in person or by an agent authorized by the party in writing, shall, using reasonable care—*

(A) *make entry therefore by filing with Customs Service—*

(i) *such documentation or, pursuant to an electronic data interchange system, such information as is necessary to enable the Customs Service to determine whether the merchandise may be released from customs custody, and*

(ii) notification whether an import activity summary statement will be filed; and

(B) complete the entry by filing with the Customs Service the declared value, classification and rate of duty applicable to the merchandise, and such other documentation or, pursuant to an electronic data interchange system, such other information as is necessary to enable the Customs Service to—

(i) properly assess duties on the merchandise,

(ii) collect accurate statistics with respect to the merchandise, and

(iii) determine whether any other applicable requirement of law (other than a requirement relating to release from customs custody) is met.

(2)(A) The documentation or information required under paragraph (1) with respect to any imported merchandise shall be filed or transmitted in such manner and within such time periods as the Secretary shall by regulation prescribe. Such regulations shall provide for the filing of import activity summary statements, covering entries made during a calendar month, within such time period as is prescribed in regulations but not to exceed the 20th day following such calendar month.

(B) When an entry of merchandise is made under this section, the required documentation or information shall be filed or electronically transmitted either by the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a person holding a valid license under section 641. When a consignee declares on entry that he is the owner or purchaser of merchandise the Customs Service may, without liability, accept the declaration. For the purposes of this Act, the importer of record must be one of the parties who is eligible to file the documentation or information required by this section.

(C) The Secretary, in prescribing regulations to carry out this subsection, shall establish procedures which insure the accuracy and timeliness of import statistics, particularly statistics relevant to the classification and valuation of imports. Corrections of errors in such statistical data shall be transmitted immediately to the Director of the Bureau of the Census, who shall make corrections in the statistics maintained by the Bureau. The Secretary shall also provide, to the maximum extent practicable, for the protection of the revenue, the enforcement of laws governing the importation and exportation of merchandise, the facilitation of the commerce of the United States, and the equal treatment of all importers of record of imported merchandise.

(b) RECONCILIATION.—A party that electronically transmits an entry summary or import activity summary statement may at the time of filing such summary or statement notify the Customs Service of his intention to file a reconciliation pursuant to such regulations as the Secretary may prescribe. Such reconciliation must be filed by the importer of record within such time period as is prescribed by regulation but no later than 15 months following the filing of the entry summary or import activity summary statement. Before filing a reconciliation, an importer of record shall post bond

or other security pursuant to such regulation as the Secretary may prescribe.

(c) **RELEASE OF MERCHANDISE.**—The Customs Service may permit the entry and release of merchandise from customs custody in accordance with such regulations as the Secretary may prescribe. No officer of the Customs Service shall be liable to any person with respect to the delivery of merchandise released from customs custody in accordance with such regulations.

(d) **SIGNING AND CONTENTS.**—Entries shall be signed by the importer of record, or his agent, unless filed pursuant to an electronic data interchange system, if electronically filed, each transmission of data shall be certified by an importer of record or his agent, one of whom shall be resident in the United States for purposes of receiving service of process, as being true and correct to the best of his knowledge and belief, and such transmission shall be binding in the same manner and to the same extent as a signed document. The entry shall set forth such facts in regard to the importation as the Secretary may require and shall be accompanied by such invoices, bills of lading, certificates, and documents, or their electronically submitted equivalents, as are required by regulation.

(e) **PRODUCTION OF INVOICE.**—The Secretary may provide by regulation for the production of an invoice, parts thereof, or the electronic equivalents thereof, in such manner and form, and under such terms and conditions, as the Secretary considers necessary.

(f) **STATISTICAL ENUMERATION.**—The Secretary, the Secretary of Commerce, and the United States International Trade Commission shall establish from time to time for statistical purposes an enumeration of articles in such detail as in their judgment may be necessary, comprehending all merchandise imported into the United States and exported from the United States, and shall seek, in conjunction with statistical programs for domestic production and programs for achieving international harmonization of trade statistics, to establish the comparability thereof with such enumeration of articles. All import entries and export declarations shall include or have attached thereto an accurate statement specifying, in terms of such detailed enumeration, the kinds and quantities of all merchandise imported and exported and the value of the total quantity of each kind of article.

(g) **STATEMENT OF COST OF PRODUCTION.**—Under such regulations as the Secretary may prescribe, the Customs Service may require a verified statement from the manufacturer or producer showing the cost of producing the imported merchandise, if the Customs Service considers such verification necessary for the appraisement of such merchandise.

(h) **ADMISSIBILITY OF DATA ELECTRONICALLY TRANSMITTED.**—Any entry or other information transmitted by means of an authorized electronic data interchange system shall be admissible in any and all administrative and judicial proceedings as evidence of such entry or information.

* * * * *

SEC. 485. DECLARATION.

(a) **REQUIREMENT—FORM AND CONTENTS.**—Every importer of record making an entry under the provisions of section 484 of this

Act shall make and file or transmit electronically therewith, in a form and manner to be prescribed by the Secretary of the Treasury, a declaration under oath, stating—

(1) * * *

* * * * *

(d) **[A]** An importer of record shall not be liable for any additional or increased duties if (1) he declares at the time of entry that he is not the actual owner of the merchandise, (2) he furnishes the name and address of such owner, and (3) within ninety days from the date of entry he produces a declaration of such owner conditioned that he will pay all additional and increased duties, under such regulations as the Secretary of the Treasury may prescribe. Such owner shall possess all the rights of **[a]** an importer of record.

* * * * *

(g) **EXPORTED MERCHANDISE RETURNED AS UNDELIVERABLE.**—With respect to any importation of merchandise to which General Headnote 4(e) of the Harmonized Tariff Schedule of the United States applies, any person who gained any benefit from, or met any obligation to, the United States as a result of the prior exportation of such merchandise shall, in accordance with regulations prescribed by the Secretary, within a reasonable time inform the Customs Service of the return of the merchandise.

* * * * *

SEC. 490. GENERAL ORDERS.

[(a) INCOMPLETE ENTRY.—Whenever entry of any imported merchandise is not made within the time provided by law or the regulations prescribed by the Secretary of the Treasury, or whenever entry of such merchandise is incomplete because of failure to pay the estimated duties, or whenever, in the opinion of the appropriate customs officer, entry of such merchandise can not be made for want of proper documents or other cause, or whenever the appropriate customs officer believes that any merchandise is not correctly and legally invoiced, he shall take the merchandise into his custody and send it to a bonded warehouse or public store, to be held at the risk and expense of the consignee until entry is made or completed and the proper documents are produced, or a bond given for their production.]

(a) **INCOMPLETE ENTRY.**—

(1) *Whenever—*

(A) *the entry of any imported merchandise is not made within the time provided by law or by regulation prescribed by the Secretary;*

(B) *the entry of imported merchandise is incomplete because of failure to pay the estimated duties, fees, or interest;*

(C) *in the opinion of the Customs Service, the entry of imported merchandise can not be made for want of proper documents or other cause; or*

(D) *the Customs Service believes that any merchandise is not correctly and legally invoiced;*

the carrier (unless subject to subsection (c)) shall notify the bonded warehouse of such unentered merchandise.

(2) After notification under paragraph (1), the bonded warehouse shall arrange for the transportation and storage of the merchandise at the risk and expense of the consignee. The merchandise shall remain in the bonded warehouse until—

(A) entry is made or completed and the proper documents are produced;

(B) the information and data necessary for entry are transmitted to the Customs Service pursuant to an authorized electronic data interchange system; or

(C) a bond is given for the production of documents or the transmittal of data.

(b) **[AT REQUEST OF CONSIGNEE.—] REQUEST FOR POSSESSION BY CUSTOMS.**—At the request of the consignee of any merchandise, or of the owner or master of the vessel or the person in charge of the vehicle in which the same is imported, any merchandise may be taken possession of by the [appropriate customs officer] Customs Service after the expiration of one day after the entry of the vessel or report of the vehicle and may be unladen and held at the risk and expense of the consignee until entry thereof is made.

(c) **GOVERNMENT MERCHANDISE.**—Any imported merchandise that—

(1) is described in any of paragraphs (1) through (4) of subsection (a); and

(2) is consigned to, or owned by, the United States Government;

shall be stored and disposed of in accordance with such rules and procedures as the Secretary shall by regulation prescribe.

SEC. 491. UNCLAIMED MERCHANDISE; DISPOSITION OF FORFEITED DISTILLED SPIRITS, WINES AND MALT LIQUOR.

(a) Any entered or unentered merchandise (except merchandise entered under section 557 of this Act, but including merchandise entered for transportation in bond or for exportation) which shall remain [in customs custody for one year] in a bonded warehouse pursuant to section 490 for 6 months from the date of importation thereof, without all estimated duties [and storage], taxes, fees, interest, storage, or other charges thereon having been paid, shall be considered unclaimed and abandoned to the Government and shall be appraised and sold by the appropriate customs officer at public auction under such regulations as the Secretary of the Treasury shall prescribe. All gunpowder and other explosive substances and merchandise liable to depreciation in value by damage, leakage, or other cause to such extent that the proceeds of sale thereof may be insufficient to pay the duties, taxes, fees, interest, storage, and other charges, if permitted to remain in [public store or bonded warehouse for a period of one year] pursuant to section 490 in a bonded warehouse for 6 months, may be sold forthwith, under such regulations as the Secretary of the Treasury may prescribe. Merchandise subject to sale hereunder or under section 559 of this Act may be entered or withdrawn for consumption at any time prior to such sale upon payment of all duties, taxes, fees, interest, storage, and other charges, and expenses that may have accrued thereon,

but such merchandise after becoming subject to sale may not be exported prior to sale without the payment of such duties, taxes, fees, interest, charges, and expenses nor may it be entered for warehouse. The computation of duties, taxes, interest, and fees for the purposes of this section and sections 493 and 559 of this act shall be at the rate of rates applicable at the time the merchandise becomes subject to sale.

(b) *NOTICE OF TITLE VESTING IN THE UNITED STATES.*—At the end of the 6-month period referred to in subsection (a), the Customs Service may, in lieu of sale of the merchandise, provide notice to all known interested parties that the title to such merchandise shall be considered to vest in the United States free and clear of any liens or encumbrances, on the 30th day after the date of the notice unless, before such 30th day—

(1) the subject merchandise is entered or withdrawn for consumption; and

(2) payment is made of all duties, taxes, fees, transfer and storage charges, and other expenses that may have accrued thereon.

(c) *RETENTION, TRANSFER, DESTRUCTION, OR OTHER DISPOSITION.*—If title to any merchandise vests in the United States by operation of subsection (b), such merchandise may be retained by the Customs Service for official use, transferred to any other Federal agency or to any State or local agency, destroyed, or otherwise disposed of in accordance with such regulations as the Secretary shall prescribe. All transfer and storage charges or expenses accruing on transferred merchandise shall be paid by the receiving agency, otherwise the charges and expenses on such merchandise shall be paid out of the Customs Forfeiture Fund.

(d) *PETITION.*—Whenever any party, having lost a substantial interest in merchandise by virtue of title vesting in the United States under subsection (b), can establish such title or interest to the satisfaction of the Secretary within 30 days after the day on which title vests in the United States under subsection (b), or can establish to the satisfaction of the Secretary that the party did not receive notice under subsection (b), the Secretary may, upon receipt of a timely and proper petition and upon finding that the facts and circumstances warrant, pay such party out of the Customs Forfeiture Fund the amount the Secretary believes the party would have received under section 493 had the merchandise been sold and a proper claim filed. The decision of the Secretary with respect to any such petition is final conclusive on all parties.

[(b)] (e) All distilled spirits, wines, and malt liquor forfeited to the Government summarily or by order of court, under any provision of law administered by the United States Customs Service, shall be appraised and disposed of by—

(1) * * *

* * * * *

(3) sale by [appropriate custom officer] Customs Service at public auction under such regulations as the Secretary shall prescribe, except that before making any such sale the Secretary shall determine that no Government agency or eleemosy-

nary institution has established a need for such spirits, wines, and malt liquor under paragraph (1) or (2); or

* * * * *

SEC. 492. DESTRUCTION OF ABANDONED OR FORFEITED MERCHANDISE.

Except as provided in section 3369 of the Revised Statutes, as amended (relating to tobacco and snuff), and in section 901 of the Revenue Act of 1926 (relating to distilled spirits), any merchandise abandoned or forfeited to the Government under the preceding or any other provision of the customs laws, which is subject to internal revenue tax and which the [appropriate customs officer] *Customs Service* shall be satisfied will not sell for a sufficient amount to pay such taxes, shall be forthwith destroyed, *retained for official use, or otherwise disposed of* under regulations to be prescribed by the Secretary of the Treasury, instead of being sold at auction.

SEC. 493. PROCEEDS OF SALE.

The surplus of the proceeds of sales under section 491 of this Act, after the payment of storage charges, expenses, duties, *taxes, and fees*, and the satisfaction of any lien for freight, charges, or contribution in general average, shall be deposited [by the appropriate customs officer in the Treasury of the United States] *in the Customs Forfeiture Fund*, if claim therefor shall not be filed with [such customs officer] *the Customs Service* within ten days from the date of sale, and the sale of such merchandise shall exonerate the master of any vessel in which the merchandise was imported from all claims of the owner thereof, who shall, nevertheless, on due proof of his interest, be entitled to receive from the Treasury the amount of any surplus of the proceeds of sale.

* * * * *

SEC. 497. PENALTIES FOR FAILURE TO DECLARE.

(a) **IN GENERAL.**—(1) Any article which—

(A) is not included in the declaration and entry as made or transmitted; and

* * * * *

(2) The amount of the penalty imposed under paragraph (1) with respect to any article is equal to—

[(A) if the article is a controlled substance, 1,000 percent of the value of the article; and]

(A) if the article is a controlled substance, either \$500 or an amount equal to 1,000 percent of the value of the article, whichever amount is greater; and

* * * * *

SEC. 498. ENTRY UNDER REGULATIONS.

(a) **AUTHORIZED FOR CERTAIN MERCHANDISE.**—The Secretary of the Treasury is authorized to prescribe rules and regulations for the declaration and entry of—

[(1) Merchandise, imported in the mails or otherwise, when the aggregate value of the shipment does not exceed such amount, not greater than \$1,250, as the Secretary of the Treasury shall specify in the regulations, and the specified amount may vary for different classes or kinds of merchandise or dif-

ferent classes of transactions, except that this paragraph does not apply to articles valued in excess of \$250 classified in—

- [(A) chapters 50 through 63;
- [(B) chapters 39 through 43, 61 through 65, 67 and 95;
- and
- [(C) subchapters III and IV of chapter 99; of the Harmonized Tariff Schedule of the United States, or to any other article for which formal entry is required without regard to value;]

(1) *Merchandise, when—*

(A) *the aggregate value of the shipment does not exceed an amount specified by the Secretary by regulation, but not more than \$2,500; or*

(B) *different commercial facilitation and risk considerations that may vary for different classes or kinds of merchandise or different classes of transactions may dictate;*

(2) *Products of the United States, when the aggregate value of the shipment does not exceed [\$10,000] such amounts as the Secretary may prescribe and the products are imported—*

(A) * * *

* * * * *

[SEC. 499. EXAMINATION OF MERCHANDISE.

[Imported merchandise, required by law or regulations made in pursuance thereof to be inspected, examined, or appraised, shall not be delivered from customs custody, except under such bond or other security as may be prescribed by the Secretary of the Treasury to assure compliance with all applicable laws, regulations, and instructions which the Secretary of the Treasury or the Customs Service is authorized to enforce; until it has been inspected, examined, or appraised and is reported by the appropriate customs officer to have been truly and correctly invoiced and found to comply with the requirements of the laws of the United States. Such officer shall designate the packages or quantities covered by any invoice or entry which are to be opened and examined for the purpose of appraisal or otherwise and shall order such packages or quantities to be sent to the public stores or other places for such purpose. Not less than one package of every invoice and not less than one package of every ten packages of merchandise, shall be so designated unless the Secretary of the Treasury, from the character and description of the merchandise, is of the opinion that the examination of a less proportion of packages will amply protect the revenue and by special regulation or instruction, the application of which may be restricted to one or more individual ports or to one or more importations or one or more classes of merchandise, permit a less number of packages to be examined. All such special regulations or instructions shall be published in the weekly Treasury Decisions within fifteen days after issuance and before the liquidation of any entries affected thereby. Such officer may require such additional packages or quantities as he may deem necessary. If any package contains any article not specified in the invoice and, in the opinion of the appropriate customs officer, such article was omitted from the invoice with fraudulent intent on the part of the seller, shipper, owner, or agent, the contents of the entire package

in which such article is found shall be subject to seizure, but if no such fraudulent intent is apparent, then the value of said article shall be added to the entry and the duties thereon paid accordingly. If a deficiency is found in quantity, weight, or measure in the examination of any package, report thereof shall be made to the appropriate customs officers, who shall make allowance therefor in the liquidation of duties.

【No appraisement made after the effective date of the Customs Administrative Act of 1938 shall be held invalid on the ground that the required number of packages or the required quantity of the merchandise was not designated for examination or, if designated, was not actually examined, unless the party claiming such invalidity shall establish that merchandise in the packages or quantities not designated for examination, or not actually examined, was different from that actually examined and that the difference was such as to establish the incorrectness of the appraisement; and then only as to the merchandise for which the appraisement is shown to be incorrect.】

SEC. 499. EXAMINATION OF MERCHANDISE.

(a) ENTRY EXAMINATION.—

(1) *IN GENERAL.*—Imported merchandise that is required by law or regulation to be inspected, examined, or appraised shall not be delivered from customs custody (except under such bond or other security as may be prescribed by the Secretary to assure compliance with all applicable laws, regulations, and instructions which the Secretary or the Customs Service is authorized to enforce) until the merchandise has been inspected, appraised, or examined and is reported by the Customs Service to have been truly and correctly invoiced and found to comply with the requirements of the laws of the United States.

(2) *EXAMINATION.*—The Customs Service—

(A) shall designate the packages or quantities of merchandise covered by any invoice or entry which are to be opened and examined for the purpose of appraisement or otherwise;

(B) shall order such packages or quantities to be sent to such place as is designated by the Secretary by regulation for such purpose;

(C) may require such additional packages or quantities as the Secretary considers necessary for such purpose; and

(D) shall inspect a sufficient number of shipments, and shall examine a sufficient number of entries, to ensure compliance with the laws enforced by the Customs Service.

(3) *UNSPECIFIED ARTICLES.*—If any package contains any article not specified in the invoice or entry and, in the opinion of the Customs Service, the article was omitted from the invoice or entry—

(A) with fraudulent intent on the part of the seller, shipper, owner, agent, importer of record or entry filer, the contents of the entire package in which such article is found shall be subject to seizure; or

(B) without fraudulent intent, the value of the article shall be added to the entry and the duties, fees and taxes thereon paid accordingly.

(4) DEFICIENCY.—If a deficiency is found in quantity, weight, or measure in the examination of any package, the person finding the deficiency shall make a report thereof to the Customs Service. The Customs Service shall make allowance for the deficiency in the liquidation of duties.

(b) TESTING LABORATORIES.—

(1) ACCREDITATION OF PRIVATE TESTING LABORATORIES.—The Customs Service shall establish and implement a procedure, under regulations promulgated by the Secretary, for accrediting private laboratories within the United States which may be used to perform tests (that would otherwise be performed by Customs Service laboratories) to establish the characteristics, quantities, or composition of imported merchandise. Such regulations—

(A) shall establish the conditions required for the laboratories to receive and maintain accreditation for purposes of this subsection;

(B) shall establish the conditions regarding the suspension and revocation of accreditation, which may include the imposition of a monetary penalty not to exceed \$100,000 and such penalty is in addition to the recovery, from a gauger or laboratory accredited under paragraph (1), of any loss of revenue that may have occurred, but the Customs Service—

(i) may seek to recover lost revenue only in cases where the gauger or laboratory intentionally falsified the analysis or gauging report in collusion with the importer; and

(ii) shall neither assess penalties nor seek to recover lost revenue because of a good faith difference of professional opinion; and

(C) may provide for the imposition of a charge for accreditation and periodic reaccreditation.

The collection of any charge for accreditation and reaccreditation under this section is not prohibited by section 13031(d)(6) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(d)(6)).

(2) APPEAL OF ADVERSE ACCREDITATION DECISIONS.—A laboratory applying for accreditation, or that is accredited under this section may contest any decision or order of the Customs Service denying, suspending, or revoking accreditation, or imposing a monetary penalty, by commencing an action in accordance with chapter 169 of title 28, United States Code, in the Court of International Trade within 60 days after issuance of the decision or order.

(3) TESTING BY ACCREDITED LABORATORIES.—When requested by an importer of record of merchandise, the Customs Service shall authorize the release to the importer of a representative sample of the merchandise for testing, at the expense of the importer, by a laboratory accredited under paragraph (1). The testing results from a laboratory accredited under paragraph (1)

that are submitted by an importer of record with respect to merchandise in an entry shall, in the absence of testing results obtained from a Customs Service laboratory, be accredited by the Customs Service if the importer of record certifies that the sample tested was taken from the merchandise in the entry. Nothing in this subsection shall be construed to in any way limit or preclude the authority of the Customs Service to test or analyze any sample or merchandise independently.

(4) **AVAILABILITY OF TESTING PROCEDURE, METHODOLOGIES, AND INFORMATION.**—Testing procedures and methodologies used by the Customs Service, and information resulting from any testing conducted by the Customs Service, shall be made available as follows:

(A) Testing procedures and methodologies shall be made available upon request to any person unless the procedures or methodologies are—

(i) proprietary to the holder of a copyright or patent related to such procedures or methodologies, or

(ii) developed by the Customs Service for enforcement purposes.

(B) Information resulting from testing shall be made available upon request to the importer of record and any agent thereof unless the information—

(i) is proprietary to the holder of a copyright or patent related to such procedures or methodologies, or

(ii) reveals information developed by the Customs Service for enforcement purposes.

(5) **MISCELLANEOUS PROVISIONS.**—For purposes of this subsection—

(A) any reference to a private laboratory includes a reference to private gauger; and

(B) accreditation of private laboratories extends only to the performance of functions by such laboratories that are within the scope of those responsibilities for determinations of the elements relating to admissibility, quantity, composition, or characteristics of imported merchandise that are vested in, or delegated to, the Customs Service.

(c) **DETENTIONS.**—Except in the case of merchandise with respect to which the determination of admissibility is vested in an agency other than the Customs Service, the following apply:

(1) **IN GENERAL.**—Within the 5-day period (excluding weekends and holidays) following the date on which merchandise is presented for customs examination, the Customs Service shall decide whether to release or detain the merchandise. Merchandise which is not released within such 5-day period shall be considered to be detained merchandise.

(2) **NOTICE OF DETENTION.**—The Customs Service shall issue a notice to the importer or other party having an interest in detained merchandise no later than 5 days, excluding weekends and holidays, after the decision to detain the merchandise is made. The notice shall advise the importer or other interested party of—

(A) the initiation of the detention;

(B) the specific reason for the detention;

- (C) *the anticipated length of the detention;*
 (D) *the nature of the tests or inquiries to be conducted;*
 and
 (E) *the nature of any information which, if supplied to the Customs Service, may accelerate the disposition of the detention.*

(3) **TESTING RESULTS.**—*Upon request by the importer or other party having an interest in detained merchandise, the Customs Service shall provide the party with copies of the results of any testing conducted by the Customs Service on the merchandise and a description of the testing procedures and methodologies (unless such procedures or methodologies are proprietary to the holder of a copyright or patent or were developed by the Customs Service for enforcement purposes). The results and test description shall be in sufficient detail to permit the duplication and analysis of the testing and the results.*

(4) **SEIZURE AND FORFEITURE.**—*If otherwise provided by law, detained merchandise may be seized and forfeited.*

(5) **EFFECT OF FAILURE TO MAKE DETERMINATION.**—

(A) *The failure by the Customs Service to make a final determination with respect to the admissibility of detained merchandise within 30 days after the merchandise has been presented for customs examination, or such longer period if specifically authorized by law, shall be treated as a decision of the Customs Service to exclude the merchandise for purposes of section 514(a)(4).*

(B) *For purposes of section 1581 of title 28, United States Code, a protest against the decision to exclude the merchandise which has not been allowed or denied in whole or in part before the 30th day after the day on which the protest was filed shall be treated as having been denied on such 30th day.*

(C) *Notwithstanding section 2639 of title 28, United States Code, once an action respecting a detention is commenced, unless the Customs Service establishes by a preponderance of the evidence that an admissibility decision has not been reached for good cause, the court shall grant the appropriate relief which may include, but is not limited to, an order to cancel the detention and release the merchandise.*

SEC. 500. APPRAISEMENT, CLASSIFICATION, AND LIQUIDATION PROCEDURES.

[The appropriate customs officer] *The Customs Service shall, under rules and regulations prescribed by the Secretary—*

(a) **[appraise]** *fix the final appraisement of merchandise by ascertaining or estimating the value thereof, under section 402, by all reasonable ways and means in his power, and statement of cost or costs of production in any invoice, affidavit, declaration, other document to the contrary notwithstanding;*

(b) **[ascertain the]** *fix the final classification and rate of duty applicable to such merchandise;*

(c) fix the *final* amount of duty to be paid on such merchandise and determine any increased or additional duties, *taxes, and fees* due or any excess of duties, *taxes, and fees* deposited;

[(d) liquidate the entry of such merchandise; and

[(e) give notice of such liquidation to the importer, his consignee, or agent in such form and manner as the Secretary shall prescribe in such regulations.]

(d) *liquidate the entry and reconciliation, if any, of such merchandise; and*

(e) *give or transmit, pursuant to an electronic data interchange system, notice of such liquidation to the importer, his consignee, or agent in such form and manner as the Secretary shall by regulation prescribe.*

SEC. 501. [VOLUNTARY RELIQUIDATIONS] VOLUNTARY RELIQUIDATIONS BY THE CUSTOMS SERVICE.

A liquidation made in accordance with section 500 or any reliquidation thereof made in accordance with this section may be reliquidated in any respect by [the appropriate customs officer on his own initiative] *the Customs Service*, notwithstanding the filing of a protest, within ninety days from the date on which notice of the original liquidation is given or *transmitted* to the importer, his consignee or agent. Notice of such reliquidation shall be given or *transmitted* in the manner prescribed with respect to original liquidations under section 500(e).

SEC. 502. REGULATIONS FOR APPRAISEMENT AND CLASSIFICATION.

(a) **POWERS OF SECRETARY OF THE TREASURY.**—The Secretary of the Treasury shall establish and promulgate such rules and regulations not inconsistent with the law (*including regulations establishing procedures for the issuance of binding rulings prior to the entry of the merchandise concerned*), and may disseminate such information as may be necessary to secure a just, impartial, and uniform appraisement of imported merchandise and the classification and assessment of duties thereon at the various ports of entry[, and]. *The Secretary* may direct any customs officer to go from one port of entry to another for the purpose of appraising or *classifying* or assisting in appraising or *classifying* merchandise imported at [such port] *any port, and may direct any customs officer at any port to review entries of merchandise filed at any other port.*

[(b) **REVERSAL OF SECRETARY'S RULINGS.**—No ruling or decision once made by the Secretary of the Treasury, giving construction to any law imposing customs duties, shall be reversed or modified adversely to the United States, by the same or a succeeding Secretary, except in concurrence with an opinion of the Attorney General recommending the same, a final decision of the United States Court of International Trade, or a final decision of a binational panel pursuant to article 1904 of the United States-Canada Free-Trade Agreement.]

[(c) (b) **DUTIES OF CUSTOMS OFFICERS.**—It shall be the duty of all officers of the customs to execute and carry into effect all instructions of the Secretary of the Treasury relative to the execution of the revenue laws; and in case any difficulty arises as to the true construction or meaning of any part of the revenue laws, the

decision of the Secretary shall be binding upon all officers of the customs.

* * * * *

SEC. 504. LIMITATION ON LIQUIDATION.

(a) **LIQUIDATION.**—**[Except as provided in subsection (b),]** *Unless an entry is extended under subsection (b) or suspended as required by statute or court order, an entry of merchandise not liquidated within one year from:*

- (1) the date of entry of such merchandise;
- (2) the date of the final withdrawal of all such merchandise covered by a warehouse entry; **[or]**
- (3) the date of the withdrawal from warehouse of such merchandise for consumption where, pursuant to regulations issued under section 505(a) of this Act, duties may be deposited after the filing of an entry or withdrawal from warehouse; or
- (4) *if a reconciliation is filed, or should have been filed, the date of the filing under section 484 or the date the reconciliation should have been filed;*

shall be deemed liquidated at the rate of duty, value, quantity, and amount of duties asserted at the time of entry by the importer of record. Notwithstanding section 500(e) of this Act, notice of liquidation need not be given of an entry deemed liquidated.

[(b) EXTENSION.]—The Secretary may extend the period in which to liquidate an entry by giving notice of such extension to the importer of record in such form and manner as the Secretary shall prescribe in regulations, if—

[(1)] information needed for the proper appraisalment or classification of the merchandise is not available to the appropriate customs officer;

[(2)] liquidation is suspended as required by statute or court order; or

[(3)] the importer of record requests such extension and shows good cause therefor.

[(c) NOTICE OF SUSPENSION.]—If the liquidation of any entry is suspended, the Secretary shall, by regulation, require that notice of such suspension be provided to the importer of record concerned and to any authorized agent and surety of such importer of record.

[(d) LIMITATION.]—Any entry of merchandise not liquidated at the expiration of four years from the applicable date specified in subsection (a) of this section, shall be deemed liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record unless liquidation continues to be suspended as required by statute or court order. When such a suspension of liquidation is removed, the entry shall be liquidated within 90 days therefrom.]

(b) **EXTENSION.**—*The Secretary may extend the period in which to liquidate an entry if—*

- (1) *the information needed for the proper appraisalment or classification of the merchandise, or for insuring compliance with applicable law, is not available to the Customs Service; or*
- (2) *the importer of record requests such extension and shows good cause therefor.*

The Secretary shall give notice of an extension under this subsection to the importer of record and the surety of such importer of record. Notice shall be in such form and manner (which may include electronic transmittal) as the Secretary shall by regulation prescribe. Any entry the liquidation of which is extended under this subsection shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record at the expiration of 4 years from the applicable date specified in subsection (a).

(c) NOTICE OF SUSPENSION.—If the liquidation of any entry is suspended, the Secretary shall by regulation require that notice of the suspension be provided, in such manner as the Secretary considers appropriate, to the importer of record and to any authorized agent and surety of such importer of record.

(d) REMOVAL OF SUSPENSION.—When a suspension required by statute or court order is removed, the Customs Service shall liquidate the entry within 6 months after receiving notice of the removal from the Department of Commerce, other agency, or a court with jurisdiction over the entry. Any entry not liquidated by the Customs Service within 6 months after receiving such notice shall be treated as having been liquidated at the rate of duty, value, quantity, and amount of duty asserted at the time of entry by the importer of record.

[SEC. 505. PAYMENT OF DUTIES.

[(a) DEPOSIT OF ESTIMATED DUTIES.—Unless merchandise is entered for warehouse or transportation, or under bond, the importer of record shall deposit with the appropriate customs officer at the time of making entry, or at such later time as the Secretary may prescribe by regulation (but not to exceed thirty days after the date of entry), the amount of duties estimated by such customs officer to be payable thereon.

[(b) COLLECTION OR REFUND.—The appropriate customs officer shall collect any increased or additional duties due or refund any excess of duties deposited as determined on a liquidation or reliquidation.

[(c) Duties determined to be due upon liquidation or reliquidation shall be due 15 days after the date of that liquidation or reliquidation, and unless payment of the duties is received by the appropriate customs officer within 30 days after that date, shall be considered delinquent and bear interest from the 15th day after the date of liquidation or reliquidation at a rate determined by the Secretary of the Treasury.]

SEC. 505. PAYMENT OF DUTIES AND FEES.

(a) DEPOSIT OF ESTIMATED DUTIES, FEES, AND INTEREST.—Unless merchandise is entered for warehouse or transportation, or under bond, the importer of record shall deposit with the Customs Service at the time of making entry, or at such later time as the Secretary may prescribe by regulation, the amount of duties and fees estimated to be payable thereon. Such regulations may provide that estimated duties and fees shall be deposited before or at the time an import activity summary statement is filed. If an import activity summary statement is filed, the estimated duties and fees shall be deposited together with interest, at a rate determined by the Secre-

tary, accruing from the first date of the month the statement is required to be filed until the date such statement is actually filed.

(b) **COLLECTION OR REFUND OF DUTIES, FEES, AND INTEREST DUE UPON LIQUIDATION OR RELIQUIDATION.**—*The Customs Service shall collect any increased or additional duties and fees due, together with interest thereon, or refund any excess moneys deposited together with interest thereon, as determined on a liquidation or reliquidation. Duties, fees, and interest determined to be due upon liquidation or reliquidation are due 30 days after issuance of the bill for such payment. Refunds of excess moneys deposited, together with interest thereon, shall be paid within 30 days of liquidation or reliquidation.*

(c) **INTEREST.**—*Interest assessed due to an underpayment of duties, fees, or interest shall accrue, at a rate determined by the Secretary, from the date the importer of record is required to deposit estimated duties, fees, and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation. Interest on excess moneys deposited shall accrue, at a rate determined by the Secretary, from the date the importer of record deposits estimated duties, fees, and interest to the date of liquidation or reliquidation of the applicable entry or reconciliation.*

(d) **DELINQUENCY.**—*If duties, fees, and interest determined to be due or refunded are not paid in full within the 30-day period specified in subsection (b), any unpaid balance shall be considered delinquent and bear interest by 30-day periods, at a rate determined by the Secretary, from the date of liquidation or reliquidation until the full balance is paid. No interest shall accrue during the 30-day period in which payment is actually made.*

SEC. 506. ALLOWANCE FOR ABANDONMENT AND DAMAGE.

Allowance shall be made in the estimation and liquidation of duties under regulations prescribed by the Secretary of the Treasury in the following cases:

(1) **ABANDONMENT WITHIN THIRTY DAYS.**—Where the importer abandons to the United States, within thirty days after entry in the case of merchandise [not sent to the appraiser's stores for] *released without an examination*, or within thirty days after the release [of the examination packages or quantities of merchandise] in the case of merchandise sent to [the appraiser's stores] *the Customs Service* for examination, any imported merchandise representing 5 per centum or more of the total value of all the merchandise of the same class or kind entered in the invoice or entry in which the item appears, and delivers, within the applicable thirty-day period, the portion so abandoned to such place as the collector directs unless [the appropriate customs officer] *the Customs Service* is satisfied that the merchandise is so far destroyed as to be nondeliverable;

(2) **PERISHABLE MERCHANDISE, CONDEMNED.**—Where fruit or other perishable merchandise has been condemned at the port of entry, within ten days after landing, by the health officers or other legally constituted authorities, and the consignee, within five days after such condemnation, files, *electronically or otherwise*, with [such customs officer] *the Customs Service* [written] notice thereof, an invoiced description and the loca-

tion thereof, and the name of the vessel or vehicle in which imported.

* * * * *

SEC. 508. RECORDKEEPING.

[(a) **REQUIREMENTS.**—Any owner, importer, consignee, or agent thereof who imports, or who knowingly causes to be imported, any merchandise into the customs territory of the United States shall make, keep, and render for examination and inspection such records (including statements, declarations, and other documents) which—

[(1) pertain to any such importation, or to the information contained in the documents required by this Act in connection with the entry of merchandise; and

[(2) are normally kept in the ordinary course of business.]

(a) **REQUIREMENT.**—Any—

(1) *owner, importer, consignee, importer of record, entry filer, or other party who—*

(A) *imports, files a drawback claim, or transports or stores merchandise carried or held under bond, or*

(B) *knowingly causes the importation or transportation or storage of merchandise carried or held under bond into or from the customs territory of the United States;*

(2) *agent of any party described in paragraph (1); or*

(3) *person whose activities require the filing of a declaration or entry, or both;*

shall make, keep, and render for examination and inspection such records (including, but not limited to, statements, declarations, documents and electronically generated or machine readable data which—

(A) *pertain to any such activity, or to the information contained in the documents, records or electronically generated or machine readable data required by this Act in connection with such activity; and*

(B) *are normally kept in the ordinary course of business.*

* * * * *

[(c) **PERIOD OF TIME.**—The records required by subsection (a) and (b) of this section shall be kept for such periods of time, not to exceed 5 years from the date of entry, as the Secretary shall prescribe.]

(c) **PERIOD OF TIME.**—*The records required by subsections (a) and (b) shall be kept for such period of time, not to exceed 5 years from the date of entry or exportation, as appropriate, as the Secretary shall prescribe; except that records for any drawback claim shall be kept until the 3rd anniversary of the date of payment of the claim.*

* * * * *

SEC. 509. EXAMINATION OF BOOKS AND WITNESSES.

(a) **AUTHORITY.**—In any investigation or inquiry conducted for the purpose of ascertaining the correctness of any entry, for determining the liability of any person for duty, fees and taxes due or duties, fees and taxes which may be due the United States for determining liability for fines and penalties, or for insuring compli-

ance with the laws of the United States administered by the United States Customs Service, the Secretary (but no delegate of the Secretary below the rank of district director or special agent in charge) may—

(1) examine, or cause to be examined, upon reasonable notice, any record, statement, declaration or other document, or *electronically generated or machine readable data*, described in the notice with reasonable specificity, which may be relevant to such investigation or inquiry [.;], *except that—*

(A) *if such record, statement, declaration, document, or electronically stored or transmitted information or data is required by law or regulation for the entry of the merchandise (whether or not the Customs Service required its presentation at the time of entry) it shall be provided to the Customs Service within a reasonable time after demand for its production is made, taking into consideration the number type, and age of the item demanded; and*

(B) *if a person of whom demand is made under subparagraph (A) fails to comply with the demand, the person may be subject to penalty under subsection (g);*

[(2) summon, upon reasonable notice—

[(A) the person who imported, or knowingly caused to be imported, merchandise into the customs territory of the United States,

[(B) any officer, employee, or agent of such person,

[(C) any person having possession, custody, or care of records relating to such importation, or]

(2) *summon, upon reasonable notice—*

(A) *the person who—*

(i) *imported, or knowingly caused to be imported, merchandise into the customs territory of the United States,*

(ii) *exported merchandise, or knowingly caused merchandise to be exported, to Canada,*

(iii) *transported or stored merchandise that was or is carried or held under customs bond, or knowingly caused such transportation or storage, or*

(iv) *filed a declaration, entry, or drawback claim with the Customs Service;*

(B) *any officer, employee, or agent of any person described in subparagraph (A);*

(C) *any person having possession, custody of care of records (including electronically generated or machine readable data) related to the importation or other activity described in subparagraph (A); or*

* * * * *

(D) any other person he may deem proper [.;];
to appear before the appropriate customs officer at the time and place within the customs territory of the United States specified in the summons (except that no witness may be required to appear at any place more than one hundred miles distant from the place where he was served with the summons), to produce records, as defined in subsection (c)(I)(A) and

to give such testimony, under oath, as may be relevant to such investigation or inquiry; and

(b) REGULATORY AUDIT PROCEDURES.—

(1) *In conducting a regulatory audit under this section (which does not include a quantity verification for a customs bonded warehouse or general purpose foreign trade zone), the Customs Service auditor shall provide the person being audited, in advance of the audit, with a reasonable estimate of the time to be required for the audit. If in the course of an audit it becomes apparent that additional time will be required, the Customs Service auditor shall immediately provide a further estimate of such additional time.*

(2) *Before commencing an audit, the Customs Service auditor shall inform the party to be audited of his right to an entry conference at which time the purpose will be explained and an estimated termination date set. Upon completion of on-site audit activities, the Customs Service auditor shall schedule a closing conference to explain the preliminary results of the audit.*

(3) *Except as provided in paragraph (5), if the estimated or actual termination date for an audit passes without the Customs Service auditor providing a closing conference to explain the results of the audit, the person being audited may petition in writing for such a conference to the appropriate regional commissioner, who, upon receipt of such a request, shall provide for such a conference to be held within 15 days after the date of receipt.*

(4) *Except as provided in paragraph (5), the Customs Service auditor shall complete the formal written audit report within 90 days following the closing conference unless the appropriate regional commissioner provides written notice to the person being audited of the reason for any delay and the anticipated completion date. After application of any exemption contained in section 552 of title 5, United States Code, a copy of the formal written audit report shall be sent to the person audited no later than 30 days following completion of the report.*

(5) *Paragraphs (3) and (4) shall not apply after the Customs Service commences a formal investigation with respect to the issue involved.*

[(b)] (c) SERVICE OF SUMMONS.—A summons issued pursuant to this section may be served by any person designated in the summons to serve it. Service upon a natural person may be made by personal delivery of the summons to him. Service may be made upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering the summons to an officer, or managing or general agent, or to any other agent authorized by appointment or by law to receive service of process. The certificate of service signed by the person serving the summons is prima facie evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of records, such records shall be described in the summons with reasonable specificity.

[(c)] (d) SPECIAL PROCEDURES FOR THIRD-PARTY SUMMONSES.—(1)
For purposes of this subsection—

(A) The term “records” includes statements, declarations, **[or documents]** *documents, or electronically generated or machine readable data—*

* * * * *

(C) The term “third-day recordkeeper” means—

(i) any customhouse broker, *unless such customhouse is the importer of record on an entry;*

* * * * *

(2) If—

(A) any summons is served on any person who is a third-party recordkeeper; and

(B) the summons requires the production of, or the giving of testimony relating to, any portion of records made or kept of the **[import]** transactions *described in section 508* of any person (other than the person summoned) who is identified in the description of the records contained in such summons;

then notice of such summons shall be given to any persons so identified within a reasonable time before the day fixed in the summons as the day upon which such records are to be examined or testimony given. Such notice shall be accompanied by a copy of the summons which has been served and shall contain directions for staying compliance with the summons under paragraph (5)(B) of this subsection.

* * * * *

(4) Paragraph (2) of this subsection shall not apply to any summons—

(A) served on the person with respect to whose liability for duties, *fees*, or taxes the summons is issued, or any officer or employee of such person; or

(B) to determine whether or not records of the **[import]** transactions *described in section 508* of an identified person have been made or kept.

* * * * *

(e) LIST OF RECORDS AND INFORMATION.—The Customs Service shall identify and publish a list of the records or entry information that is required to be maintained and produced under subsection (a)(1)(A).

(f) RECORDKEEPING COMPLIANCE PROGRAM.—

(1) IN GENERAL.—After consultation with the importing community, the Customs Service shall by regulation establish a recordkeeping compliance program which the parties listed in section 508(a) may participate in after being certified by the Customs Service under paragraph (2). Participation in the recordkeeping compliance program by recordkeepers is voluntary.

(2) CERTIFICATION.—A recordkeeper may be certified as a participant in the recordkeeping compliance program after meeting the general recordkeeping requirements established under the program of after negotiating an alternative program suited to the needs of the recordkeeper and the Customs Service. Certifi-

cation requirements shall take into account the size and nature of the importing business and the volume of imports. In order to be certified, the recordkeeper must be able to demonstrate that it—

(A) understands the legal requirements for recordkeeping including the nature of the records required to be maintained and produced and the time periods involved;

(B) has in place procedures to explain the recordkeeping requirements to those employees who are involved in the preparation, maintenance, and production of required records;

(C) has in place procedures regarding the preparation and maintenance of required records, and the production of such records to the Customs Service;

(D) has designated a dependable individual or individuals to be responsible for recordkeeping compliance under the program and whose duties include maintaining familiarity with the recordkeeping requirements of the Customs Service;

(E) has a record maintenance procedure, approved by the Customs Service for original records, or, if approved by the Customs Service, for alternative records or recordkeeping formats other than the original records; and

(F) has procedures for notifying the Customs Service of occurrences of variances to, and violations of, the requirements of the recordkeeping compliance program or the negotiated alternative programs, and for taking corrective action when notified by the Customs Service of violations or problems regarding such program.

(g) **PENALTIES.**—

(1) **DEFINITION.**—For purposes of this subsection, the term “information” means any record, statement, declaration, document, or electronically stored or transmitted information or data referred to in subsection (a)(1)(A).

(2) **EFFECTS OF FAILURE TO COMPLY WITH DEMAND.**—Except as provided in paragraph (4), if a person fails to comply with a lawful demand for information under subsection (a)(1)(A) the following provisions apply:

(A) If the failure to comply is a result of the willful failure of the person to maintain, store, or retrieve the demanded information such person shall be subject to a penalty, for each release of merchandise not to exceed \$100,000, or an amount equal to 75 percent of the appraised value of the merchandise, whichever amount is less.

(B) If the failure to comply is a result of the negligence of the person in maintaining, storing, or retrieving the demanded information, such person shall be subject to a penalty, for each release of merchandise, not to exceed \$10,000, or an amount equal to 40 percent of the appraised value of the merchandise, whichever amount is less.

(C) In addition to any penalty imposed under subparagraph (A) and (B) regarding demanded information, if such information related to the eligibility of merchandise for a

column 1 special rate of duty under title I, the entry of such merchandise—

(i) if unliquidated, shall be liquidated at the applicable column 1 general rate of duty; or

(ii) if liquidated within the 2-year period preceding the date of the demand, shall be reliquidated, notwithstanding the time limitation in section 514 or 520, at the applicable column 1 general rate of duty;

except that any liquidation or reliquidation under clause (i) or (ii) shall be at the applicable column 2 rate of duty if the Customs Service demonstrates that the merchandise should be dutiable at such rate.

(3) **AVOIDANCE OF PENALTY.**—No penalty may be assessed under this subsection if the person can show—

(A) that the loss of the demanded information was the result of an act of God or other natural casualty or disaster beyond the fault of such person or an agent of the person;

(B) on the basis of other evidence satisfactory to the Customs Service, that the demand was substantially complied with; or

(C) the information demanded was presented to and retained by the Customs Service at the time of entry or submitted in response to an earlier demand.

(4) **PENALTIES NOT EXCLUSIVE.**—Any penalty imposed under this subsection shall be in addition to any other penalty provided by law except for—

(A) a penalty imposed under section 592 for a material omission of the demanded information, or

(B) disciplinary action taken under section 641.

(5) **REMISSION OR MITIGATION.**—A penalty imposed under this section may be remitted or mitigated under section 618.

(6) **CUSTOMS SUMMONS.**—Nothing in this subsection shall limit or preclude the Customs Service from issuing, or seeking the enforcement of, a customs summons.

(7) **ALTERNATIVES TO PENALTIES.**—

(A) **IN GENERAL.**—When a recordkeeper that—

(i) has been certified as a participant in the record-keeping compliance program under subsection (f); and

(ii) is generally in compliance with the appropriate procedures and requirements of the program;

does not produce a demanded record or information for a specific release or provide the information by acceptable alternative means, the Customs Service, in the absence of willfulness or repeated violations, shall issue a written notice of the violation to the recordkeeper in lieu of a monetary penalty. Repeated violations by the recordkeeper may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken.

(B) **CONTENTS OF NOTICE.**—A notice of violation issued under subparagraph (A) shall—

(i) state that the recordkeeper has violated the recordkeeping requirements;

(ii) indicate the record of information which was demanded; and

(iii) warn the recordkeeper that future failures to produce demanded records or information may result in the imposition of monetary penalties.

(C) **RESPONSE TO NOTICE.**—Within a reasonable time after receiving written notice under subparagraph (A), the recordkeeper shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation.

(D) **REGULATIONS.**—The Secretary shall promulgate regulations to implement this paragraph. Such regulations may specify the time periods for compliance with a demand for information and provide guidelines which define repeated violations for purposes of this paragraph. Any penalty issued for a recordkeeping violation shall take into account the degree of compliance compared to the total number of importations, the nature of the demanded records and the recordkeeper's cooperation.

SEC. 510. JUDICIAL ENFORCEMENT.

(a) **ORDER OF COURT.**—If any person summoned under section 509 of this Act does not comply with the summons, the district court of the United States for any district in which such person is found or resides or is doing business, upon application and after notice to any such person and hearing, shall have jurisdiction to issue an order requiring such person to comply with the summons. Failure to obey such order of the court may be punished by such court as a contempt thereof and such court may assess a monetary penalty.

* * * * *

[SEC. 513. CUSTOMS OFFICER'S IMMUNITY.

[No customs officer shall be in any way liable to any owner, importer, consignee, or agent or any other person for or on account of any rulings or decisions as to the appraisement or the classification of any imported merchandise or the duties charged thereon, or the collection of any dues, charges, or duties on or on account of said merchandise, or any other matter or things as to which said owner, importer, consignee, or agent might under this Act be entitled to protest or appeal from the decision of such officer.]

SEC. 513. CUSTOMS OFFICER'S IMMUNITY.

No customs officer shall be liable in any way to any person for or on account of—

(1) any ruling or decision regarding the appraisement or the classification of any imported merchandise or regarding the duties, fees, and taxes charged thereon;

(2) the collection of any dues, charges, duties, fees, and taxes on or on account of any imported merchandise, or

(3) any other matter of thing as to which any person might under this Act be entitled to protest or appeal from the decision of such officer.

[SEC. 514. FINALITY OF DECISIONS; PROTESTS.] SEC. 514. PROTEST AGAINST DECISIONS OF THE CUSTOMS SERVICE.

(a) **FINALITY OF DECISIONS.**—Except as provided in subsection (b) of this section, section 501 (relating to voluntary reliquidations),

section 516 (relating to petitions by domestic interested parties), section 520 (relating to refunds and errors), and section 521 (relating to reliquidations on account of fraud) of this Act, decisions of the [appropriate customs officer,] *Customs Service*, including the legality of all orders and findings entering into the same, as to—
 (1) * * *

* * * * *
 (5) the liquidation or reliquidation of an entry, or *reconciliation as to the issues contained therein*, or any modification thereof;

(6) the refusal to pay a claim for drawback; [and] or

(7) the refusal to reliquidate an entry under section 520(c) of this act [,];

shall be final and conclusive upon all persons (including the United States and any officer thereof) unless a protest is filed in accordance with this section, or unless a civil action contesting the denial of a protest, in whole or in part, is commenced in the United States Court of International Trade in accordance with chapter 169 of title 28 of the United States Code within the time prescribed by section 2636 of that title. When a judgment or order of the United States Court of International Trade has become final, the papers transmitted shall be returned, together with a copy of the judgment or order to the [appropriate customs officer, who] *Customs Service*, which shall take action accordingly.

(b) With respect to determinations made under section 303 of this Act of title VII of this Act which are reviewable under section 516A of this title, determinations of the [appropriate customs officer] *Customs Service* are final and conclusive upon all persons (including the United States and any officer thereof) unless a civil action contesting a determination listed in section 516A of this title is commenced in the United States Court of International Trade, or review by a binational panel of determination to which section 516A(g)(2) applies is commenced pursuant to section 516A(g) and article 1904 of the United States-Canada Free-Trade Agreement.

(c) PROTESTS.—

(1) IN GENERAL.—[A protest of a decisions under subsection (a) shall be filed in writing with the appropriate customs officer designated in regulations prescribed by the Secretary, setting forth distinctly and specifically each decision described in subsection (a) as to which protest is made; each category of merchandise affected by each such decision as to which protest is made; and the nature of each objection and reasons therefor.] *A protest of a decision made under subsection (a) shall be filed in writing, or transmitted electronically pursuant to an electronic data interchange system, in accordance with regulations prescribed by the Secretary. A protest must set forth distinctly and specifically—*

(A) each decision described in subsection (a) as to which protest is made;

(B) each category of merchandise affected by each decision set forth under paragraph (1);

(C) the nature of each objection and the reasons therefor; and

(D) any other matter required by the Secretary by regulation.

Only one protest may be filed for each entry of merchandise, except that where the entry covers merchandise of different categories, a separate protest may be filed for each category. In addition, separate protests may be filed for each category. In addition, separate protests filed by different authorized persons with respect to any one category of merchandise that is the subject of a protest are deemed to be part of a single protest. A protest may be amended, under regulations prescribed by the Secretary, to set forth objections as to a decision or decisions described in subsection (a) which were not the subject of the original protest, in the form and manner prescribed for a protest, any time prior to the expiration of the time in which such protest could have been filed under this section. New grounds in support of objections raised by a valid protest or amendment thereto may be presented for consideration in connection with the review of such protest pursuant to section 515 of this Act at any time prior to the disposition of the protest in accordance with that section.

(2) Except as provided in sections 485(d) and 557(b) of this Act, protests may be filed with respect to merchandise which is the subject of a decision specified in subsection (a) of this section by—

(A) the importers or consignees shown on the entry papers, or their sureties;

(B) any person paying any charge or exaction;

(C) any person seeking entry or delivery;

(D) any person filing a claim for drawback; or

(E) any authorized agent of any of the persons described in clauses (A) through (D).

[(2)] (3) TIME FOR FILING.—A protest of a decision, order, or finding described in subsection (a) shall be filed with [such customs officer] *Customs Service* within ninety days after but not before—

(A) notice of liquidation or reliquidation, or

(B) in circumstances where subparagraph (A) is inapplicable, the date of the decision as to which protest is made.

(d) LIMITATION ON PROTEST OF RELIQUIDATION.—The reliquidation of an entry shall not open such entry so that a protest may be filed against the decision of the [customs officer] *Customs Service* upon any question not involved in such reliquidation. A protest by a surety which has an unsatisfied legal claim under its bond may be filed within 90 days from the date of mailing of notice of demand for payment against its bond. If another party has not filed a timely protest, the surety's protest shall certify that it is not being filed collusively to extend another authorized person's time to protest as specified in this subsection.

SEC. 515. REVIEW OF PROTESTS.

(a) * * *

* * * * *

(c) If a protesting party believes that an application for further review was erroneously or improperly denied or was denied without authority for such action, it may file with the Commissioner of Cus-

toms a written request that the denial of the application for further review be set aside. Such request must be filed within 90 days after the date of the notice of the denial. The Commissioner of Customs may review such request and, based solely on the information before the Customs Service at the time the application for further review was denied, may set aside the denial of the application for further review and void the denial of protest, if appropriate. If the Commissioner of Customs fails to act within 30 days after the date of the request, the request shall be considered denied. All denials of protests are effective from the date of original denial for purposes of section 2636 of title 28, United States Code. If an action is commenced in the Court of International Trade that arises out of a protest or an application for further review, all administrative action pertaining to such protest or application shall terminate and any administrative action taken subsequent to the commencement of the action is null and void.

(d) If a protest is timely and properly filed, but is denied contrary to proper instructions, the Customs Service may on its own initiative, or pursuant to a written request by the protesting party filed with the appropriate district director within 90 days after the date of the protest denial, void the denial of the protest.

* * * * *

SEC. 520. REFUNDS AND ERRORS.

(a) The Secretary of the Treasury is hereby authorized to refund duties or other receipts in the following cases:

(1) **EXCESS DEPOSITS.**—Whenever it is ascertained on liquidation or reliquidation of an entry or reconciliation that more money has been deposited or paid as duties than was required by law to be so deposited or paid;

* * * * *

(4) **PRIOR TO LIQUIDATION.**—Prior to the liquidation of an entry or reconciliation, whenever it is ascertained that excess duties, fees, charges, or exactions have been deposited or paid by reason of clerical error.

* * * * *

(c) Notwithstanding a valid protest was not filed, the [appropriate customs officer] Customs Service may, in accordance with regulations prescribed by the Secretary, reliquidate an entry or reconciliation to correct—

(1) a clerical error, mistake of fact, or other inadvertence, whether or not resulting from or contained in electronic transmission, not amounting to an error in the construction of a law, adverse to the importer and manifest from the record or established by documentary evidence, in any entry, liquidation, or other customs transaction, when the error, mistake, or inadvertence is brought to the attention of the [appropriate customs officer] Customs Service within one year after the date of liquidation or exaction; or

(2) any assessment of duty on household or personal effects in respect of which an application for refund has been filed,

with such employee as the Secretary of the Treasury shall designate, within one year after the date of entry.

[(d) If a determination is made to reliquidate an entry as a result of a protest filed under section 514 of this Act or an application for relief made under subsection (c)(1) of this section, or if reliquidation is ordered by an appropriate court, interest shall be allowed on any amount paid as increased or additional duties under section 505(c) of this Act at the annual rate established pursuant to that section and determined as of the 15th day after the date of liquidation or reliquidation. The interest shall be calculated from the date of payment to the date of (1) the refund, or (2) the filing of a summons under section 2632 of title 28, United States Code, whichever occurs first.]

[SEC. 521. RELIQUIDATION ON ACCOUNT OF FRAUD.]

[If the appropriate customs officer finds probable cause to believe there is fraud in the case, he may reliquidate an entry within two years (exclusive of the time during which a protest is pending) after the date of liquidation or last reliquidation.]

* * * * *

SEC. 526. MERCHANDISE BEARING AMERICAN TRADE-MARK.

(a) * * *

* * * * *

(e) Any such merchandise bearing a counterfeit mark (within the meaning of section 45 of the Act of July 5, 1946 (commonly referred to as the Lanham Act, 60 Stat. 427; 15 U.S.C. 1127)) imported into the United States in violation of the provisions of section 42 of the Act of July 5, 1946 (60 Stat. 440; 15 U.S.C. 1124), shall be seized and, in the absence of the written consent of the trademark owner, forfeited for violations of the customs laws. Upon seizure of such merchandise, the Secretary shall notify the owner of the trademark, and shall, after forfeiture, obliterate the trademark where feasible and dispose of the goods seized—

(1) * * *

* * * * *

(3) more than [1 year] 90 days after the date of forfeiture, by sale by [appropriate customs officers] *the Customs Service* at public auction under such regulations as the Secretary prescribes, except that before making any such sale the Secretary shall determine that no Federal, State, or local government agency or eleemosynary institution has established a need for such merchandise under paragraph (1) or (2), or

* * * * *

SEC. 529. COLLECTION OF FEES ON BEHALF OF OTHER AGENCIES.

The Customs Service shall be reimbursed from the fees collected for the cost and expense, administrative and otherwise, incurred in collecting any fees on behalf of any government agency for any reason.

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PART V—ENFORCEMENT PROVISIONS

* * * * *

[SEC. 583. CERTIFICATION OF MANIFEST.]

【The master of every vessel and the person in charge of every vehicle bound to a port or place in the United States shall deliver to the officer of the customs or Coast Guard who shall first demand it of him, the original and one copy of the manifest of such vessel or vehicle, and such officer shall certify on the original manifest to the inspection thereof and return the same to the master or other person in charge.】

SEC. 584. FALSITY OR LACK OF MANIFEST—PENALTIES.

(a) **GENERAL RULE.**—(1) Any master of any vessel and any person in charge of any vehicle bound to the United States who does not produce the manifest to the 【officer demanding the same】 *officer (whether of the Customs Service or the Coast Guard) demanding the same* shall be liable to a penalty of \$1,000, and if any merchandise, including sea stores, is found on board of or after having been unladen from such vessel or vehicle which is not included or described in said manifest or does not agree therewith, the master of such vessel or the person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest” immediately after “or the owner of such vessel or vehicle shall be liable to a penalty equal to the lesser of \$10,000 or the domestic value of the merchandise so found or unladen, and any such merchandise belonging or consigned to the master or other officer or to any of the crew of such vessel, or the owner or person in charge of such vehicle, shall be subject to forfeiture, and if any merchandise described in such manifest is not found on board the vessel or vehicle the master or other person in charge or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest” immediately after “or the owner of such vessel or vehicle shall be subject to a penalty of \$1,000: *Provided*, That if the 【appropriate customs officer】 *Customs Service* shall be satisfied that the manifest was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason or clerical error or other mistake and that no part of the merchandise not found on board was unshipped or discharged except as specified in the report of the master, said penalties shall not be incurred. For purposes of this subsection, the term “clerical error” means a nonnegligent, inadvertent, or typographical mistake in the preparation; assembly, or submission (*electronically or otherwise*) of the manifest.

(2) If any of such merchandise so found consists of heroin, morphine, or cocaine, isonipecaine, or opiate, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for heroin, morphine, cocaine, isonipecaine, or opiate being in such merchandise shall be liable to a penalty of \$1,000 for each ounce thereof so found. If any of such merchandise so found consists of smoking opium, opium prepared for smoking, or marihuana, the master of such vessel or person in charge of such vehicle or the owner of

such vessel or vehicle or any person directly or indirectly responsible for smoking opium, opium prepared for smoking, or marihuana being in such merchandise shall be liable to a penalty of \$500 for each ounce thereof so found. If any of such merchandise so found consists of crude opium, the master of such vessel or person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for crude opium being in such merchandise shall be liable to a penalty of \$200 for each ounce thereof so found. Such penalties shall, notwithstanding the proviso in section 594 of this Act (relating to the immunity of vessels or vehicles used as common carriers), constitute a lien upon such vessel which may be enforced by a libel in rem; except that the master or owner of a vessel used by any person as a common carrier in the transaction of business as such common carrier shall not be liable to such penalties and the vessel shall not be held subject to the lien, if it appears to the satisfaction of the court that neither the master nor any of the officers (including licensed and unlicensed officers and petty officers) nor the owner of the vessel knew, and could not, by the exercise of the highest degree of care and diligence, have known, that such narcotic drugs were on board. Clearance of any such vessel may be withheld until such penalties are paid or until a bond, satisfactory to the [appropriate customs officer] *Customs Service*, is given for the payment thereof. The provisions of this paragraph shall not prevent the forfeiture of any such vessel or vehicle under any other provision of law. As used in this paragraph, the terms "opiate" and "marihuana" shall have the same meaning given those terms by sections 102(17) and 102(15), respectively, of the Controlled Substances Act.

(3) If any of such merchandise (sea stores excepted), the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors for the importation of which into the United States a certificate is required under section 7 of the Anti-Smuggling Act and the required certificate be not shown, be so found upon any vessel not exceeding five hundred net tons, the vessel shall, in addition to any other penalties herein or by law provided, be seized and forfeited, and, if any manifested merchandise (sea stores excepted) consisting of any such spirits, wines, or other alcoholic liquors be found upon any such vessel and the required certificate be not shown, the master of the vessel shall be liable to the penalty herein provided in the case of merchandise not duly manifested: *Provided*, That if the [appropriate customs officer] *Customs Service* shall be satisfied that the certificate required for the importation of any spirits, wines, or other alcoholic liquors was issued and was lost or mislaid without intentional fraud, or was defaced by accident, or is incorrect by reason of clerical error or other mistake, said penalties shall not be incurred.

(b) PROCEDURES.—(1) If [the appropriate customs officer] *the Customs Service* has reasonable cause to believe that there has been a violation of subsection (a)(1) and determines that further proceedings are warranted, [he] *the Customs Service* shall issue or *electronically transmit* to the person concerned a [written] notice of [his intention] *intent to issue or electronically transmit* a claim for a monetary penalty. Such notice shall—

(A) * * *

* * * * *

(F) inform such person that he will have a reasonable opportunity to make representations, both oral and written, as to why such penalty claim should not be issued.

No notice is required under this subsection for any violation of subsection (a)(1) for which the proposed penalty is \$1,000 or less.

(2) After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), [the appropriate customs officer] *the Customs Service* shall determine whether any violations of subsection (a)(1), as alleged in the notice, has occurred. If [such officer] *the Customs Service* determines that there was no violation, [he] *the Customs Service* shall promptly issue or electronically transmit a [written] statement of the determination to the person to whom the notice was sent. If [such officer] *the Customs Service* determines that there was a violation, [he] *the Customs Service* shall issue or electronically transmit a [written] penalty claim to such person. The [written] penalty claim shall specify all changes in the information provided under subparagraphs (A) through (E) of paragraph (1).

[SEC. 585. DEPARTURE BEFORE REPORT OR ENTRY.

[If any vessel or vehicle from a foreign port of place arrives within the limits of any collection district and departs or attempts to depart, except from stress of weather or other necessity, without making a report or entry under the provisions of this Act, or if any merchandise is unladen therefrom before such report or entry, the master of such vessel shall be liable to a penalty of \$5,000, and the person in charge of such vehicle shall be liable to a penalty of \$500, and any such vessel or vehicle shall be forfeited, and any officer of the customs may cause such vessel or vehicle to be arrested and brought back to the most convenient port of the United States.]

SEC. 586. UNLAWFUL UNLADING OR TRANSSHIPMENT.

(a) The master of any vessel from a foreign port or place, or of a hovering vessel which has received or delivered merchandise while outside the territorial seas, who allows any merchandise (including sea stores) to be unladen from such vessel at any time after its arrival within the customs waters and before such vessel has come to the proper place for the discharge of such merchandise, and before he has received a permit to unlade, shall be liable to a penalty equal to twice the value of the merchandise but not less than \$10,000, and such vessel and its cargo and the merchandise so unladen shall be seized and forfeited.

(b) The master of any vessel from a foreign port or place, or of a hovering vessel which has received or delivered merchandise while outside the territorial sea, who allows any merchandise (including sea stores), to importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors, to be unladen from his vessel at any place upon the high seas adjacent to the customs waters of the United States to be transhipped to or placed in or received on any vessel of any description, with knowledge, or under circumstances indicating the purpose to render it possible, that such merchandise, or any part

thereof, may be introduced, or attempted to be introduced, into the United States in violation of law, shall be liable to a penalty equal to twice the value of the merchandise by not less than \$10,000, and the vessel from which the merchandise is so unladen, and its cargo and such merchandise, shall be seized and forfeited.

(c) The master of any vessel from a foreign port or place, or of a hovering vessel which has received or delivered merchandise while outside the territorial sea, who allows any merchandise (including sea stores) destined to the United States, the importation of which into the United States is prohibited, or which consists of any spirits, wines, or other alcoholic liquors, to be unladen without permit to unlade, at any place upon the high seas adjacent to the customs waters of the United States, to be transshipped to or placed in or received on any vessel of the United States or any other vessel which is owned by any person a citizen of, or domiciled in, the United States, or any corporation incorporated in the United States, shall be liable to a penalty equal to twice the value of the merchandise but not less than \$10,000, and the vessel from which the merchandise is so unladen, and its cargo and such merchandise, shall be seized and forfeited.

* * * * *

(f) Whenever any part of the cargo or stores of a vessel has been unladen or transshipped because of accident, stress of weather, or other necessity, the master of such vessel and the master of any vessel to which such cargo or stores has been transshipped shall, as soon as possible thereafter, notify [the appropriate customs officer of the] *the Customs Service at the district* within which such unloading or transshipment has occurred, or [the appropriate customs officer within the] *the Customs Service at the district* at which such vessel shall first arrive, thereafter, and shall furnish proof that such unloading or transshipment was made necessary by accident, stress of weather, or other unavoidable cause, and if [the appropriate customs officer is] *the Customs Service is* satisfied that the unloading or transshipment was in fact due to accident, stress of weather, or other necessity, the penalties described in this section shall not be incurred.

* * * * *

SEC. 592. PENALTIES FOR FRAUD, GROSS NEGLIGENCE, AND NEGLIGENCE.

(a) PROHIBITION.—

(1) GENERAL RULE.—Without regard to whether the United States is or may be deprived of all or a portion of any lawful duty thereby, no person, by fraud, gross negligence, or negligence—

(A) may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States by means of—

(i) any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or

(ii) any omission which is material, or

(B) may aid or abet any other person to violate subparagraph (A).

(2) **EXCEPTION.**—Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct. *The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.*

(b) **PROCEDURES.**—

(1) **PRE-PENALTY NOTICE.**—

(A) **IN GENERAL.**—If the [appropriate customs officer] *Customs Service* has reasonable cause to believe that there has been a violation of subsection (a) and determines that further proceedings are warranted, [he] *it* shall issue to the person concerned a written notice of [his] *its* intention to issue a claim for a monetary penalty. Such notice shall—

(i) describe the merchandise;

(ii) set forth the details of entry or introduction, the attempted entry or introduction, or the aiding or procuring of the entry or introduction;

* * * * *

(2) **PENALTY CLAIM.**—After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the [appropriate customs officer] *Customs Service* shall determine whether any violation of subsection (a), as alleged in the notice, has occurred. If [such officer] *the Customs Service* determines that there was no violation, [he] *it* shall promptly issue a written statement of the determination to the person to whom the notice was sent. If [such officer] *the Customs Service* determines that there was a violation, [he] *it* shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vi) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 618 of this Act to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under such section 618, the [appropriate customs officer] *Customs Service* shall provide to the person concerned a written statement which sets forth the final determination and the findings of fact and conclusions of law on which such determination is based.

(c) **MAXIMUM PENALTIES.**—

(1) * * *

* * * * *

(4) **PRIOR DISCLOSURE.**—If the person concerned discloses the circumstances of a violation of subsection (a) before, or without knowledge of, the commencement of a formal investigation of such violation, with respect to such violation, merchandise shall not be seized and any monetary penalty to be assessed under subsection (c) shall not exceed—

(A) if the violation resulted from fraud—

(i) an amount equal to 100 percent of the lawful duties of which the United States is or may be deprived, so long as such person tenders the unpaid amount of the lawful duties at the [time of disclosure or within thirty days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his] *time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its calculation of such unpaid amount,* or

(ii) if such violation did not affect the assessment of duties, 10 percent of the dutiable value; or

(B) if such violation resulted from negligence or gross negligence, the interest (computed from the date of liquidation at the prevailing rate of interest applied under section 6621 of the Internal Revenue Code of 1954) on the amount of lawful duties of which the United States is or may be deprived so long as such person tenders the unpaid amount of the lawful duties at the [time of disclosure or within 30 days, or such longer period as the appropriate customs officer may provide, after notice by the appropriate customs officer of his] *time of disclosure, or within 30 days (or such longer period as the Customs Service may provide) after notice by the Customs Service of its calculation of such unpaid amount.*

The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge. *For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) existed.*

* * * * *

(d) **DEPRIVATION OF LAWFUL DUTIES, TAXES OR FEES.**—Notwithstanding section 514 of this Act, if the United States has been deprived of lawful duties, *taxes, or fees* as a result of a violation of subsection (a), [the appropriate customs officer] *the Customs Service* shall require that such lawful duties, *taxes or fees* be restored, whether or not a monetary penalty is assessed.

* * * * *

SEC. 593A. PENALTIES FOR FALSE DRAWBACK CLAIMS.

(a) PROHIBITION.—

(1) **GENERAL RULE.**—*No person, by fraud, or negligence—*

(A) may seek, induce or affect, or attempt to seek, induce, or affect, the payment or credit to that person or others of any drawback claim by means of—

(i) any document, written or oral statement, or electronically transmitted data or information, or act which is material and false, or

(ii) any omission which is material; or

(B) may aid or abet any other person to violate subparagraph (A).

(2) **EXCEPTION.**—Clerical errors or mistakes of fact are not violations of paragraph (1) unless they are part of a pattern of negligent conduct. The mere nonintentional repetition by an electronic system of an initial clerical error does not constitute a pattern of negligent conduct.

(b) **PROCEDURES.**—

(1) **PREPENALTY NOTICE.**—

(A) **IN GENERAL.**—If the Customs Service has reasonable cause to believe that there has been a violation of subsection (a) and determines that further proceedings are warranted, the Customs Service shall issue to the person concerned a written notice of intent to issue a claim for a monetary penalty. Such notice shall—

(i) identify the drawback claim;

(ii) set forth the details relating to the seeking, inducing, or affecting, or the attempted seeking, inducing, or affecting, or the aiding or procuring of, the drawback claim;

(iii) specify all laws and regulations allegedly violated;

(iv) disclose all the material facts which establish the alleged violation;

(v) state whether the alleged violation occurred as a result of fraud or negligence;

(vi) state the estimated actual or potential loss of revenue due to the drawback claim, and, taking into account all circumstances, the amount of the proposed monetary penalty; and

(vii) inform such person that he shall have a reasonable opportunity to make representations, both oral and written, as to why a claim for a monetary penalty should not be issued in the amount stated.

(B) **EXCEPTIONS.**—The Customs Service may not issue a prepenalty notice if the amount of the penalty in the penalty claim issued under paragraph (2) is \$1,000 or less. In such cases, the Customs Service may proceed directly with a penalty claim.

(C) **PRIOR APPROVAL.**—No prepenalty notice in which the alleged violation occurred as a result of fraud shall be issued without the prior approval of Customs Headquarters.

(2) **PENALTY CLAIM.**—After considering representations, if any, made by the person concerned pursuant to the notice issued under paragraph (1), the Customs Service shall determine whether any violation of subsection (a), as alleged in the notice, has occurred. If the Customs Service determines that there was no violation, the Customs Service shall promptly issue a written statement of the determination to the person to whom the notice

was sent. If the Customs Service determines that there was a violation, Customs shall issue a written penalty claim to such person. The written penalty claim shall specify all changes in the information provided under clauses (i) through (vii) of paragraph (1)(A). Such person shall have a reasonable opportunity under section 618 to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under section 618, the Customs Service shall provide to the person concerned a written statement which sets forth the final determination, and the findings of fact and conclusions of law on which such determination is based.

(c) **MAXIMUM PENALTIES.**—

(1) **FRAUD.**—A fraudulent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed 3 times the actual or potential loss of revenue.

(2) **NEGLIGENCE.**—

(A) **IN GENERAL.**—A negligent violation of subsection (a) is punishable by a civil penalty in an amount not to exceed 20 percent of the actual or potential loss of revenue for the 1st violation.

(B) **REPETITIVE VIOLATIONS.**—If Customs Service determines that a repeat negligent violation occurs relating to the same issue, the penalty amount for the 2d violation shall be in amount not to exceed 50 percent of the total actual or potential loss of revenue. The penalty amount for each succeeding repetitive negligent violation shall be in an amount not to exceed the actual or potential loss of revenue. If the same party commits a nonrepetitive violation, that violation shall be subject to a penalty not to exceed 20 percent of the actual or potential loss of revenue.

(3) **PRIOR DISCLOSURE.**—

(A) **IN GENERAL.**—Subject to subparagraph (B), if the person concerned discloses the circumstances of a violation of subsection (a) before, or without knowledge of the commencement of, a formal investigation of such violation, the monetary penalty assessed under this subsection may not exceed—

(i) if the violation resulted from fraud, an amount equal to the actual or potential revenue of which the United States is or may be deprived as a result of overpayment of the claim; or

(ii) if the violation resulted from negligence, an amount equal to the interest computed on the basis of the prevailing rate of interest applied under section 6621 of the Internal Revenue Code of 1986 on the amount of actual revenue of which the United States is or may be deprived during the period that—

(I) begins on the date of the overpayment of the claim; and

(II) ends on the date on which the person concerned tenders the amount of the overpayment.

(B) **CONDITION AFFECTING PENALTY LIMITATIONS.**—The limitations in subparagraph (A) on the amount of the mon-

etary penalty to be assessed under subsection (c) apply only if the person concerned tenders the amount of the overpayment made on the claim at the time of disclosure, or within 30 days (or such longer period as the Customs Service may provide), after notice by the Customs Service of its calculation of the amount of the overpayment.

(C) **BURDEN OF PROOF.**—The person asserting lack of knowledge of the commencement of a formal investigation has the burden of proof in establishing such lack of knowledge.

(4) **COMMENCEMENT OF INVESTIGATION.**—For purposes of this section, a formal investigation of a violation is considered to be commenced with regard to the disclosing party and the disclosed information on the date recorded in writing by the Customs Service as the date on which facts and circumstances were discovered or information was received which caused the Customs Service to believe that a possibility of a violation of subsection (a) existed.

(5) **EXCLUSIVITY.**—Penalty claims under this section shall be the exclusive civil remedy for any drawback related violation of subsection (a).

(d) **DEPRIVATION OF LAWFUL REVENUE.**—Notwithstanding section 514, if the United States has been deprived of lawful duties and taxes resulting from a violation of subsection (a), the Customs Service shall require that such drawback claim be restored whether or not a monetary penalty is assessed.

(e) **DRAWBACK COMPLIANCE PROGRAM.**—

(1) **IN GENERAL.**—After consultation with the drawback trade community, the Customs Service shall establish a drawback compliance program in which claimants and other parties in interest may participate after being certified by the Customs Service under paragraph (2). Participation in the drawback compliance program is voluntary.

(2) **CERTIFICATION.**—A party may be certified as a participant in the drawback compliance program after meeting the general requirements established under the program or after negotiating an alternative program suited to the needs of the party and the Customs Service. Certification requirements shall take into account the size and nature of the party's drawback program and the volume of claims. In order to be certified, the participant must be able to demonstrate that it—

(A) understands the legal requirements for filing claims, including the nature of the records required to be maintained and produced and the time periods involved;

(B) has in place procedures to explain the Customs Service requirements to those employees that are involved in the preparation of claims, and the maintenance and production of required records;

(C) has in place procedures regarding the preparation of claims and maintenance of required records, and the production of such records to the Customs Service;

(D) has designated a dependable individual or individuals to be responsible for compliance under the program

and whose duties include maintaining familiarity with the drawback requirements of Customs Service;

(E) has a record maintenance procedure approved by the Customs Service for original records, or, if approved by the Customs Service, for alternate records or recordkeeping formats other than the original records; and

(F) has procedures for notifying the Customs Service of variances to, and violations of, the requirements of the drawback compliance program or any negotiated alternative programs, and for taking corrective action when notified by the Customs Service for violations or problems regarding such program.

(f) ALTERNATIVES TO PENALTIES.—

(1) IN GENERAL.—When a party that—

(A) has been certified as a participant in the drawback compliance program under subsection (e); and

(B) is generally in compliance with the appropriate procedures and requirements of the program;

commits a violation of subsection (a), the Customs Service shall, in the absence of fraud or repeated violations, and in lieu of a monetary penalty, issue a written notice of the violation to the party. Repeated violations by a party may result in the issuance of penalties and removal of certification under the program until corrective action, satisfactory to the Customs Service, is taken.

(2) CONTENTS OF NOTICE.—A notice of violation issued under paragraph (1) shall—

(A) state that the party has violated subsection (a);

(B) explain the nature of the violation; and

(C) warn the party that future violations of subsection (a) may result in the imposition of monetary penalties.

(3) RESPONSE TO NOTICE.—Within a reasonable time after receiving written notice under paragraph (1), the party shall notify the Customs Service of the steps it has taken to prevent a recurrence of the violation.

(g) REPETITIVE VIOLATIONS.—

(1) A party who has been issued a written notice under subsection (f)(1) and subsequently commits a repeat negligent violation involving the same issue is subject to the following monetary penalties:

(A) 2D VIOLATION.—An amount not to exceed 20 percent of the loss of revenue.

(B) 3D VIOLATION.—An amount not to exceed 50 percent of the loss of revenue.

(C) 4TH AND SUBSEQUENT VIOLATIONS.—An amount not to exceed 100 percent of the loss of revenue.

(2) If a party that has been certified as a participant in the drawback compliance program under subsection (e) commits an alleged violation which was not repetitive, the party shall be issued a “warning letter”, and, for any subsequent violation, shall be subject to the same maximum penalty amounts stated in paragraph (1).

(h) REGULATION.—The Secretary shall promulgate regulations and guidelines to implement this section. Such regulations shall specify

that for purposes of subsection (g), a repeat negligent violation involving the same issue shall be treated as a repetitive violation for a maximum period of 3 years.

(i) **COURT OF INTERNATIONAL TRADE PROCEEDINGS.**—Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade for the recovery of any monetary penalty claimed under this section—

(1) all issues, including the amount of the penalty, shall be tried *de novo*;

(2) if the monetary penalty is based on fraud, the United States shall have the burden of proof to establish the alleged violation by clear and convincing evidence;

(3) if the monetary penalty is based on negligence, the United States shall have the burden of proof to establish the act or omission constituting the violation, and the alleged violator shall have the burden of providing evidence that the act or omission did not occur as a result of negligence.

* * * * *

SEC. 596. AIDING UNLAWFUL IMPORTATION.

(a) * * *

* * * * *

[(c) Any merchandise that is introduced or attempted to be introduced into the United States contrary to law (other than in violation of section 592) may be seized and forfeited.]

(c) *Merchandise which is introduced or attempted to be introduced into the United States contrary to law shall be treated as follows:*

(1) *The merchandise shall be seized and forfeited if it—*

(A) *is stolen, smuggled, or clandestinely imported or introduced;*

(B) *is a controlled substance, as defined in the Controlled Substances Act (21 U.S.C. 801 et seq.), and is not imported in accordance with applicable law; or*

(C) *is a contraband article, as defined in section (1) of the Act of August 9, 1939 (49 U.S.C. App. 781).*

(2) *The merchandise may be seized and forfeited if—*

(A) *its importation or entry is subject to any restriction or prohibition which is imposed by law relating to health, safety, or conservation and the merchandise is not in compliance with the applicable rule, regulation, or statute;*

(B) *its importation or entry requires a license, permit or other authorization of an agency of the United States Government and the merchandise is not accompanied by such license, permit, or authorization;*

(C) *it is merchandise or packaging in which copyright, trademark, or trade name protection violations are involved (including, but not limited to, violations of section 42, 43, or 45 of the Act of July 5, 1946 (Public Law 95-410; 15 U.S.C. 1124, 1125, or 1127), section 506 or 509 of title 17, United States Code, or section 2318 or 2320 of title 18, United States Code);*

(D) it is trade dress merchandise involved in the violation of a court order citing section 43 of such Act of July 5, 1946 (15 U.S.C. 1125);

(E) it is merchandise which is marked intentionally in violation of section 304; or

(F) it is merchandise for which the importer has received written notices that previous importations of identical merchandise from the same supplier was found to have been marked in violation of section 304.

(3) If the importation or entry of the merchandise is subject to quantitative restrictions requiring a visa, permit, license or other similar document, or stamp from the United States Government or from a foreign government or issuing authority pursuant to a bilateral or multilateral agreement, the merchandise shall be subject to detention in accordance with section 499 unless the appropriate visa, license, permit, or similar document or stamp is presented to the Customs Service; but if the visa, permit, license or similar document or stamp which is presented in connection with the importation or entry of the merchandise is counterfeit, the merchandise may be seized and forfeited.

(4) If the merchandise is imported or introduced contrary to a provision of law which governs the classification of value of merchandise and there are no issues as to the admissibility of the merchandise into the United States, it shall not be seized except in accordance with section 592.

(5) In any case where the seizure and forfeiture of merchandise are required or authorized by this section, the Secretary may—

(A) remit the forfeiture under section 618, or

(B) permit the exportation of the merchandise, unless its release would adversely affect health, safety, or conservation or be in contravention of a bilateral or multilateral agreement or treaty.

* * * * *

SEC. 612. SEIZURE; SUMMARY SALE.

(a) Whenever it appears to [the appropriate customs officer] the Customs Service that any vessel, vehicle, aircraft, merchandise, or baggage seized under the customs laws is liable to perish or to waste or to be greatly reduced in value by keeping, or that the expense of keeping the same is disproportionate to the value thereof, and such vessel, vehicle, aircraft, merchandise, or baggage is subject to section 607, and such vessel, vehicle, aircraft, merchandise, or baggage has not been delivered under bond, [such officer] the Customs Service shall proceed forthwith to advise and sell the same at auction under regulations to be prescribed by the Secretary of the Treasury. If such vessel, vehicle, aircraft, merchandise, or baggage is not subject to section 607, [such officer] the Customs Service shall forthwith transmit [the appraiser's return and his] its report of the seizure to the United States attorney, who shall petition the court to order an immediate sale of such vessel, vehicle, aircraft, merchandise, or baggage, and if the ends of justice require it the court shall order such immediate sale, the proceeds thereof to be deposited with the court to await the final determina-

tion of the condemnation proceedings. Whether such sale be made by [the customs officer] *the Customs Service* or by order of the court, the proceeds thereof shall be held subject to claims of parties in interest to the same extent as the vessel, vehicle, aircraft, merchandise, or baggage so sold would have been subject to such claim.

[(b) If the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, and such value is less than \$1,000, such officer may proceed forthwith to order destruction or other appropriate disposition of such property, under regulations prescribed by the Secretary of the Treasury.]

(b) If the Customs Service determines that the expense of keeping the vessel, vehicle, aircraft, merchandise, or baggage is disproportionate to the value thereof, the Customs Service may promptly order the destruction or other appropriate disposition of such property under regulations prescribed by the Secretary. No customs officer shall be liable for the destruction or other disposition of property made pursuant to this section.

* * * * *

SEC. 613A. CUSTOMS FORFEITURE FUND.

(a) IN GENERAL.—

(1) * * *

* * * * *

(3) In addition to the purposes described in paragraph (1), the Fund shall be available for—

(A) * * *

* * * * *

(E) the payment of transfer and storage charges and expenses under section 491(c);

(F) the payment of claims against employees of the Customs Service settled by the Secretary under section 630;

[(E)] *(G) equipment for any vessel, vehicle, or aircraft available for official use by a State or local law enforcement agency to enable the vessel, vehicle, or aircraft to assist in law enforcement functions if the conveyance will be used in joint law enforcement operations with the United States Customs Service; and*

[(F)] *(H) Payment of overtime salaries, travel, fuel, training, equipment, and other similar costs of State and local law enforcement officers that are incurred in joint law enforcement operations with the United States Customs Service.*

* * * * *

(d) INVESTMENT.—Amounts in the Fund which are not currently needed for the purposes of this section [shall] *may* be invested in obligations of, or guaranteed by, the United States.

* * * * *

SEC. 621. LIMITATION OF ACTIONS.

No suit or action to recover *any duty under section 592(d), 593A(d), or any pecuniary penalty or forfeiture of property accru-*

ing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was [discovered: *Provided*, That the time of the absence from the United States of the person subject to such penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within this period of limitation.] *discovered*; *except that*—

(1) *in the case of an alleged violation of section 592 or 593A, no suit or action (including a suit or action for restoration of lawful duties under subsection (d) of such sections) may be instituted unless commenced within 5 years after the date of the alleged violation or, if such violation arises out of fraud, within 5 years after the date of discovery of fraud, and*

(2) *the time of the absence from the United States of the person subject to the penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within the 5-year period of limitation.*

* * * * *

SEC. 623. BONDS AND OTHER SECURITY.

(a) * * *

(b) Whenever a bond is required or authorized by a law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce, the Secretary of the Treasury may—

(1) Except as otherwise specifically provided by law, prescribe the conditions and form of such bond *and the manner in which the bond may be filed with or, pursuant to an authorized electronic data interchange system, transmitted to the Customs Service*, and fix the amount of penalty thereof, whether for the payment of liquidated damages or of a penal sum: *Provided*, That in the case of an alleged violation of section 592 of this Act arising out of gross negligence or negligence, such suit or action shall not be instituted more than five years after the date the alleged violation was committed: *Provided further*, That when a consolidated bond authorized by paragraph 4 of this subsection is taken, the Secretary of the Treasury may fix the penalty of such bond without regard to any other provision of law, regulation, or instruction.

* * * * *

(d) No condition in any bond taken to assure compliance with any law, regulation, or instruction which the Secretary of the Treasury or the Customs Service is authorized to enforce shall be held invalid on the ground that such condition is not specified in the law, regulation, or instruction authorizing or requiring the taking of such bond. *Any bond transmitted to the Customs Service pursuant to an authorized electronic data interchange system shall have the same force and effect and be binding upon the parties thereto as if such bond were manually executed, signed, and filed.*

* * * * *

[SEC. 625. PUBLICATION OF DECISIONS.

[Within 120 days after issuing any precedential decision (including any ruling letter, internal advice memorandum, or protest review decision) under this Act with respect to any customs transaction, the Secretary shall have such decision published in the Customs Bulletin or shall otherwise make such decision available for public inspection.]

SEC. 625. INTERPRETIVE RULINGS AND DECISIONS; PUBLIC INFORMATION.

(a) PUBLICATION.—*Within 90 days after the date of issuance of any interpretive ruling (including any ruling letter, or internal advice memorandum) or protest review decision under this chapter with respect to any customs transaction, the Secretary shall have such ruling or decision published in the Customs Bulletin or shall otherwise make such ruling or decision available for public inspection.*

(b) APPEALS.—*A person may appeal an adverse interpretive ruling and any interpretation of any regulation prescribed to implement such ruling to a higher level of authority within the Customs Service for de novo review. Upon a reasonable showing of business necessity, any such appeal shall be considered and decided no later than 60 days following the date on which the appeal is filed. The Secretary shall issue regulations to implement this subsection.*

(c) MODIFICATION AND REVOCATION.—*A proposed interpretive ruling or decision which would—*

(1) modify (other than to correct a clerical error) or revoke a prior interpretive ruling or decision which has been in effect for at least 60 days; or

(2) have the effect of modifying the treatment previously accorded by the Customs Service to substantially identical transactions;

shall be published in the Customs Bulletin. The Secretary shall give interested parties an opportunity to submit, during not less than the 30-day period after the date of such publication, comments on the correctness of the proposed ruling or decision. After consideration of any comments received, the Secretary shall publish a final ruling or decision in the Customs Bulletin within 30 days after the closing of the comment period. The final ruling or decision shall become effective 60 days after the date of its publication.

(d) PUBLICATION OF CUSTOMS DECISIONS THAT LIMIT COURT DECISIONS.—*A decision that proposes to limit the application of a court decision shall be published in the Customs Bulletin together with notice of opportunity for public comment thereon prior to a final decision.*

(e) PUBLIC INFORMATION.—*The Secretary may make available in writing or through electronic media, in an efficient, comprehensive and timely manner, all information, including directives, memoranda, electronic messages and telexes which contain instructions, requirements, methods or advice necessary for importers and exporters to comply with the Customs laws and regulations. All information which may be made available pursuant to this subsection shall be subject to any exemption from disclosure provided by section 552 of title 5, United States Code.*

SEC. 630. AUTHORITY TO SETTLE CLAIMS.

(a) *IN GENERAL.*—Notwithstanding any other provision of law and subject to subsection (b), the Secretary may settle, for not more than \$50,000 in any one case, a claim for personal injury, death, or damage to, or loss of, privately owned property caused by an investigative or law enforcement officer (as defined in section 2680(h) of title 28, United States Code) who is employed by the Customs Service and acting within the scope of his or her employment. Such settlements shall be paid out of the Customs Forfeiture Fund.

(b) *LIMITATIONS.*—The Secretary may not pay a claim under subsection (a) that—

(1) concerns commercial property;

(2) is presented to the Secretary more than 1 year after it occurs; or

(3) is presented by an officer or employee of the United States Government and arose within the scope of employment.

(c) *FINAL SETTLEMENT.*—A claim may be paid under this section only if the claimant accepts the amount of settlement in complete satisfaction of the claim.

SEC. 631. USE OF PRIVATE COLLECTION AGENCIES.

(a) *IN GENERAL.*—Notwithstanding any other provision of law, the Secretary, under such terms and conditions as the Secretary considers appropriate, shall enter into contracts and incur obligations with one or more persons for collection services to recover indebtedness arising under the customs laws and owed the United States Government, but only after the Customs Service has exhausted all administrative efforts, including all claims against applicable surety bonds, to collect the indebtedness.

(b) *CONTRACT REQUIREMENTS.*—Any contract entered into under subsection (a) shall provide that—

(1) the Secretary retains the authority to resolve a dispute, compromise a claim, end collection action, and refer a matter to the Attorney General to bring a civil action; and

(2) the person is subject to—

(A) section 552a of title 5, United States Code, to the extent provided in subsection (m) of such section; and

(B) laws and regulations of the United States Government and State governments related to debt collection practices.

PART VI—MISCELLANEOUS PROVISIONS**SEC. 641. CUSTOMS BROKERS.**

(a) *DEFINITIONS.*—As used in this section:

(1) The term “customs broker” means any person granted a customs broker’s license by the Secretary under subsection (b).

(2) The term “customs business” means those activities involving transaction with the Customs Service concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by the Customs Service upon merchandise by reason of its importation, or the refund, rebate, or drawback thereof. It also includes the preparation of documents or forms in any format and the electronic transmission of documents, in-

voices, bills, or parts thereof, intended to be filed with the Customs Service in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs.

* * * * *

(c) **CUSTOMS BROKER'S PERMITS.—**

[(1) **IN GENERAL.**—Each person granted a customs broker's license under subsection (b) shall—

[(A) be issued a permit, in accordance with regulations prescribed under this section, for each customs district in which that person conducts customs business; and

[(B) except as provided in paragraph (2), regularly employ in each customs district for which a permit is so issued at least one individual who is licensed under subsection (b)(2) to exercise responsible supervision and control over the customs business conducted by that person in that district.]

(1) IN GENERAL.—Each person granted a customs broker's license under subsection (b) shall be issued, in accordance with such regulations as the Secretary shall prescribe, either or both of the following:

(A) A national permit for the conduct of such customs business as the Secretary prescribes by regulation.

(B) A permit for each customs district in which that person conducts customs business and, except as provided in paragraph (2), regularly employs at least 1 individual who is licensed under subsection (b)(2) to exercise responsible supervision and control over the customs business conducted by that person in that district.

* * * * *

(4) APPOINTMENT OF SUBAGENTS.—Notwithstanding subsection (c)(1), upon the implementation by the Secretary under section 413(b)(2) of the component of the National Customs Automation Program referred to in section 411(a)(2)(B), a licensed broker may appoint another licensed broker holding a permit in a customs district to act on its behalf as its subagent in that district if such activity relates to the filing of information that is permitted by law or regulation to be filed electronically. A licensed broker appointing a subagent pursuant to this paragraph shall remain liable for any and all obligations arising under bond and any and all duties, taxes, and fees, as well as any other liabilities imposed by law, and shall be precluded from delegating to a subagent such liability.

(d) **DISCIPLINARY PROCEEDINGS.—**

(1) * * *

(2) **PROCEDURES.—**

(A) * * *

(B) **REVOCATION OR SUSPENSION.**—The [appropriate customs officers] Customs Service may, for good and sufficient reason, serve notice in writing upon any customs broker to show cause why a license or permit issued under

this section should not be revoked or suspended. The notice shall be in the form of a statement specifically setting forth the grounds of the complaint, and shall allow the customs broker 30 days to respond. If no response is filed, or [the appropriate customs officer] *the Customs Service* determines that the renovation or suspension is still warranted, [he] *it* shall notify the customs broker in writing of a hearing to be held within [15] *30* days, or at a later date if the broker requests an extension and shows good cause therefor, before an administrative law judge appointed pursuant to section 3105 of title 5, United States Code, who shall serve as the hearing officer. If the customs broker waives the hearing, or the broker or his designated representative fails to appear at the appointed time and place, the hearing officer shall make findings and recommendations based on the record submitted by the parties. At the hearing, the customs broker may be represented by counsel, and all proceedings, including the proof of the charges and the response thereto shall be presented with testimony taken under oath and the right of cross-examination accorded to both parties. A transcript of the hearing shall be made and a copy will be provided to [the appropriate customs officer and the customs broker; they] *the Customs Service and the customs broker, which* shall thereafter be provided reasonable opportunity to file a post-hearing brief. Following the conclusion of the hearing, the hearing office shall transmit promptly the record of the hearing along with [his] *the* findings of fact and recommendations to the Secretary for decision. The Secretary will issue a written decision, based solely on the record, setting forth his findings of fact and the reasons [for his decision] *for the decision*. Such decision may provide for the sanction contained in the notice to show cause or any lesser sanction authorized by this subsection, including a monetary penalty not to exceed \$30,000, then was contained in the notice to show cause.

* * * * *

(f) REGULATIONS BY THE SECRETARY.—The Secretary may prescribe such rules and regulations relating to the customs business of customs brokers as the Secretary considers necessary to protect importers and the revenue of the United States, and to carry out the provisions of this section, including rules and regulations governing the licensing of or issuance of permits to customs brokers, the keeping of books, accounts, and records by customs brokers, and documents and correspondence, and the furnishing by customs brokers of any other information relating to their customs business to any duly accredited officer or employee of the [United States Customs Service.] *Customs Service. The Secretary may not prohibit customs brokers from limiting their liability to other persons in the conduct of customs business. For purposes of this subsection or any other provision of this Act pertaining to recordkeeping, all data required to be retained by a customs broker may be kept on microfilm, optical disc, magnetic tapes, disks or drums, video files or any other*

electrically generated medium. Pursuant to such regulations as the Secretary shall prescribe, the conversion of data to such storage medium may be accomplished at any time subsequent to the relevant customs transaction and the data may be retained in a centralized basis according to such broker's business system.

* * * * *

HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

* * * * *

General notes

* * * * *

4. *Exemptions.* For the purposes of general note 1—

(a) * * *

* * * * *

(c) records, diagrams and other data with regard to any business, engineering or exploration operation whether on paper, cards, photographs, blueprints, tapes or other media, [and]

(d) articles returned from space within the purview of section 484a of the Tariff Act of 1930, and

(e) *articles exported from the United States which are returned within 45 days after such exportation from the United States as undeliverable and which have not left the custody of the carrier or foreign customs service,*

are not goods subject to the provisions of the tariff schedule. *No exportation referred to in subdivision (e) may be treated as satisfying any requirement for exportation in order to receive a benefit from, or meet an obligation to, the United States as a result of such exportation.*

* * * * *

SECTION XVII—VEHICLES, AIRCRAFT, VESSELS AND ASSOCIATED TRANSPORT EQUIPMENT

* * * * *

CHAPTER 86—RAILWAY OR TRAMWAY LOCOMOTIVES, ROLLING STOCK AND PARTS THEREOF; RAILWAY OR TRAMWAY TRACK FIXTURES AND FITTINGS AND PARTS THEREOF; MECHANICAL (INCLUDING ELECTRO-MECHANICAL) TRAFFIC SIGNALING EQUIPMENT OF ALL KINDS

Notes

1. * * *

* * * * *

4. *Railway locomotives (provided for in headings 8601 and 8602) and railway freight car (provided for in heading 8606) on which no duty is owed are not subject to the entry or release requirements for imported merchandise set forth in sections 448 and 484 of the Tariff Act of 1930. The Secretary of the Treasury may by regulation estab-*

lish appropriate reporting requirements, including the requirement that a bond be posted to ensure compliance.

* * * * *

**SECTION XXII—SPECIAL CLASSIFICATION PROVISIONS;
TEMPORARY LEGISLATION; TEMPORARY MODIFICATIONS
ESTABLISHED PURSUANT TO TRADE LEGISLATION; ADDI-
TIONAL IMPORT RESTRICTIONS ESTABLISHED PURSUANT
TO SECTION 22 OF THE AGRICULTURAL ADJUSTMENT
ACT, AS AMENDED**

CHAPTER 98—SPECIAL CLASSIFICATION PROVISIONS

* * * * *

SUBCHAPTER III—SUBSTANTIAL CONTAINERS OR HOLDERS

U.S. Notes

1. * * *

* * * * *

4. Instruments of international traffic, such as containers, life vans, rail cars and locomotives, truck cabs and trailers, etc., are exempt from formal entry procedures but are required to be accounted for when imported and exported into and out of the United States, respectively through the manifesting procedure required for all international carriers by the United States Customs Service. Fees associated with the importation of such instruments of international traffic shall be reported and paid on a periodic basis as required by regulations issued by the Secretary of the Treasury and in accordance with 1956 Customs Convention on Containers (20 UST 30; TIAS 6634).

* * * * *

**SUBCHAPTER XIII—ARTICLES ADMITTED TEMPORARILY FREE OF DUTY
UNDER BOND**

U.S. Notes

1. (a) The articles described in the provisions of this subchapter, when not imported for sale or for sale on approval, may be admitted into the United States without the payment of duty, under bond for their exportation within 1 year from the date of importation, which period, in the discretion of the Secretary of the Treasury, may be extended, upon application, for one or more further periods which, when added to the initial 1 year, shall not exceed a total of 3 years, except that (1) articles imported under heading 9813.00.75 shall be admitted under bond for their exportation within 6 months from the date of importation and such a 6-month period shall not be extended, [and] (2) in the case of professional equipment and tools of trade admitted into the United States under heading 9813.00.50 which have been seized (other than by seizure made at the suit of private persons), the requirement of reexportation shall be suspended for the duration of the seizure[.], and (3) for articles imported under heading 9813.00.05, the

time for exportation may be extended for 1 or more further periods which, when added to the initial 1 year, shall not exceed a total of 5 years, but any application for an extension beyond the 3rd year must be accompanied by the importer's certification that the articles are dedicated for incorporation into a communications satellite. For purposes of this note, an aircraft engine or propeller, or any part or accessory of either, imported under heading 9813.00.05, which is removed physically from the United States as part of an aircraft departing from the United States in international traffic shall be treated as exported.

* * * * *

CHAPTER 99—TEMPORARY LEGISLATION; TEMPORARY MODIFICATIONS ESTABLISHED PURSUANT TO TRADE LEGISLATION; ADDITIONAL IMPORT RESTRICTIONS ESTABLISHED PURSUANT TO SECTION 22 OF THE AGRICULTURAL ADJUSTMENT ACT, AS AMENDED

* * * * *

SUBCHAPTER V—TEMPORARY MODIFICATIONS ESTABLISHED PURSUANT TO THE UNITED STATES-CANADA FREE TRADE AGREEMENT

U.S. Notes

1. * * *

* * * * *

9. Railway freight cars provided for in subheadings 9905.86.05 and 9905.86.10 are not subject to the entry or release requirements for imported merchandise set forth in sections 448 and 484 of the Tariff Act of 1930. The Secretary of the Treasury may by regulation establish appropriate reporting requirements, including the requirement that a bond be posted to ensure compliance.

* * * * *

SECTION 9505 OF THE INTERNAL REVENUE CODE OF 1986

SEC. 9505. HARBOR MAINTENANCE TRUST FUND.

(a) * * *

* * * * *

[(c) EXPENDITURES FROM HARBOR MAINTENANCE TRUST FUND.—Amounts in the Harbor Maintenance Trust Fund shall be available, as provided by appropriation Acts, for making expenditures—

[(1) to carry out section 210(a) of the Water Resources Development Act of 1986 (as in effect on the date of enactment of this section),

[(2) for payments of rebates of tolls or charges pursuant to section 13(b) of the Act of May 13, 1954 (as in effect on April 1, 1987), and

[(3) for the payment of all expenses of administration incurred—

[(A) by the Department of The Treasury in administering subchapter A of chapter 36 (relating to harbor

maintenance tax), but not in excess of \$5,000,000 for any fiscal year, and

[(B) for periods during which no fee applies under paragraph (9) or (10) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985.]

(c) EXPENDITURES FROM THE HARBOR MAINTENANCE TRUST FUND.—

(1) Amounts in the Harbor Maintenance Trust Fund shall be available as provided by appropriations Acts, for making expenditures—

(A) to carry out section 210(a) of the Water Resources Development Act of 1986 (as amended by the Water Resources Development Act of 1990),

(B) for payments of rebates of tolls or charges pursuant to section 13(b) of the Act of May 13, 1954 (as in effect on April 1, 1987), and

(C) for the payments of all administrative expenses incurred by the Department of the Army, the Department of the Treasury and the Department of Commerce in administering the tax imposed by section 4461.

(2) There are authorized to be appropriated to the Department of the Army, out of the Harbor Maintenance Trust Fund established by subsection (a), for each fiscal year up to \$5,000,000 to be used by the Department of the Army to provide payment of all administrative expenses incurred by the Department of the Army, the Department of the Treasury, and the Department of Commerce in administering the tax imposed by section 4461.

TITLE 28, UNITED STATES CODE

* * * * *

PART IV—JURISDICTION AND VENUE

* * * * *

CHAPTER 95—COURT OF INTERNATIONAL TRADE

* * * * *

§ 1581. Civil actions against the United States and agencies and officers thereof

(a) * * *

* * * * *

(g) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review—

(1) any decision of the Secretary of the Treasury to deny a customs broker's license under section 641(b) (2) or (3) of the Tariff Act of 1930, or to deny a customs broker's permit under section 641(c)(1) of such Act, or to revoke a license or permit under section 641 (b)(5) or (c)(2) of such Act; [and]

(2) any decision of the Secretary of the Treasury to revoke or suspend a customs broker's license or permit, or impose a monetary penalty in lieu thereof, under section 641(d)(2)(B) of the Tariff Act of 1930 [.]]; and

(3) any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the Tariff Act of 1930.

* * * * *

§ 1582. Civil actions commenced by the United States

The Court of International Trade shall have exclusive jurisdiction of any civil action which arises out of an import transaction and which is commenced by the United States—

(1) to recover a civil penalty under section 592, 593A, 641(b)(6), 641(d)(2)(A), 704(i)(2), or 734(i)(2) of the Tariff Act of 1930;

* * * * *

PART VI—PARTICULAR PROCEEDINGS

* * * * *

**CHAPTER 169—COURT OF INTERNATIONAL TRADE
PROCEDURE**

* * * * *

§ 2631. Persons entitled to commence a civil action

(a) * * *

* * * * *

(g)(1) * * *

* * * * *

(3) *A civil action to review any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the Tariff Act of 1930 may be commenced in the Court of International Trade by the person whose accreditation was denied, suspended, or revoked.*

* * * * *

§ 2635. Filing of official documents

[(a)(1) Upon service of the summons on the Secretary of the Treasury in any civil action contesting the denial of a protest under section 515 of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the appropriate customs officer shall forthwith transmit to the clerk of the Court of International Trade, as prescribed by its rules, and as a part of the official record—

[(A) the consumption or other entry and the entry summary;

[(B) the commercial invoice;

[(C) the special customs invoice;

- [(D) a copy of the protest or petition;
- [(E) a copy of the denial, in whole or in part, of the protest or petition;
- [(F) the importer's exhibits;
- [(G) the official and other representative samples;
- [(H) any official laboratory reports; and
- [(I) a copy of any board relating to the entry.

[(2) If any of the items listed in paragraph (1) of this subsection do not exist in a particular civil action, an affirmative statement to that effect shall be transmitted to the clerk of the court.]

(a) In any action commenced in the Court of International Trade contesting the denial of a protest under section 515 of the Tariff Act of 1930 or the denial of a petition under section 516 of such Act, the Customs Service, as prescribed by the rules of the court, shall file with the clerk of the court, as part of the official record, any document, paper, information or data relating to the entry of merchandise and the administrative determination that is the subject of the protest or petition.

* * * * *

§ 2636. Time for commencement of action

(a) * * *

(h) A civil action contesting the denial, suspension, or revocation by the Customs Service of a private laboratory's accreditation under section 499(b) of the Tariff Act of 1930 is barred unless commenced in accordance with the rules of the Court of International Trade within 60 days after the date of the decision or order of the Customs Service.

[(h)] *(i) A civil action of which the Court of International Trade has jurisdiction under section 1581 of this title, other than an action specified in subsection (a)–(h) of this section, is barred unless commenced in accordance with the rules of the court within two years after the cause of action first accrues.*

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§ 2640. Scope and standard of review

(a) * * *

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(d) In any civil action commenced to review any order or decision of the Customs Service under section 499(b) of the Tariff Act of 1930, the court shall review the action on the basis of the record before the Customs Service at the time of issuing such decision or order.

[(d)] *(e) In any civil action not specified in the section, the Court of International Trade shall review the matter as provided in section 706 of title 5.*

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§ 2642. Analysis of imported merchandise

The Court of International Trade may order an analysis of imported merchandise and reports thereon by laboratories or agencies

of the United States or laboratories accredited by the Customs Services under section 499(b) of the Tariff Act of 1930.

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REVISED STATUTES OF THE UNITED STATES

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**TITLE XXXIV—COLLECTION OF DUTIES
UPON IMPORTS**

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CHAPTER FOUR—ENTRY OF MERCHANDISE

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【SEC. 2792. Vessels used exclusively as ferry-boats carrying passengers, baggage, and merchandise, shall not be required to enter and clear, nor shall the masters of such vessels be required to present manifests, or to pay entrance or clearance fees, or fees for receiving or certifying manifests, but they shall, upon arrival in the United States, be required to report such baggage and merchandise to the proper officer of the customs according to law.

【Any passenger vessel engaged triweekly or oftener in trade between ports of the United States and foreign ports shall be exempt from entrance and clearance fees and tonnage taxes while such service triweekly or oftener is maintained.】

SEC. 2793. Enrolled or licensed vessels engaged in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, departing from or arriving at a port in one district to or from a port in another district, and also touching at intermediate foreign ports, shall not thereby become liable to the payment of entry and clearance fees or tonnage tax, as if from or to foreign ports【; but such vessel shall, notwithstanding, be required to enter and clear; except that when such vessels are on such voyages on the Great Lakes and touch at foreign ports for the purpose of taking on bunker fuel only, they may be exempted from entering and clearing under such rules and regulations as the Secretary of Commerce may prescribe, notwithstanding any other provisions of law: *Provided*, That this exception shall not apply to such vessels if, while at such foreign port, they land or take on board any passengers, or any merchandise other than bunker fuel, receive orders, discharge any seamen by mutual consent, or engage any seamen to replace those discharged by mutual consent, or transact any other business save that of taking on bunker fuel】.

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**CHAPTER ELEVEN—PROVISIONS APPLYING TO
COMMERCE WITH CONTIGUOUS COUNTRIES**

* * * * *

[SEC. 3111. If any vessel enrolled or licensed to engage in the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States shall touch at any port in the adjacent British provinces, and the master of such vessel shall purchase any merchandise for the use of the vessel, the master of the vessel shall report the same, with cost and quantity thereof, to an officer of the customs at the first port in the United States at which he shall next arrive, designating them as "sea-stores"; and in the oath to be taken by such master of such vessel, on making such report, he shall declare that the articles so specified or designated "sea-stores" are truly intended for the use exclusively of the vessel, and are not intended for sale, transfer, or private use. If any greater quantity of dutiable articles shall be found on board such vessel than are specified in such report or entry of such articles, or any part thereof shall be landed without a permit from an officer of the customs, such articles, together with the vessel, her apparel, tackle, and furniture, shall be forfeited.]

* * * * *

[SEC. 3118. The master of any vessel so enrolled or licensed shall, before departing from a port in one collection-district to a place in another collection-district, where there is no custom-house, file his manifest, and obtain a clearance in the same manner, and make oath to the manifest, which manifest and clearance shall be delivered to the proper officer of customs at the port at which the vessel next arrives after leaving the place of destination specified in the clearance.

[SEC. 3119. Nothing contained in the three preceding sections shall exempt masters of vessels from reporting, as now required by law, any merchandise destined for any foreign port. No permit shall be required for the unloading of cargo brought from an American port.]

* * * * *

[SEC. 3122. The master of any vessel so enrolled or licensed, destined with a cargo from a place in the United States, at which there may be no custom-house, to a port where there may be a custom-house, hall, within twenty-four hours after arrival at the port of destination, deliver to the proper officer of the customs a manifest, subscribed by him, setting forth the cargo laden at the place of departure, or laden or unladen at any intermediate port, or place, to the truth or which manifest he shall make oath before such officer. If the vessel, however, have no cargo, the master shall not be required to deliver such manifest.]

* * * * *

[SEC. 3124. The manifests, certificates of clearance, and oaths, provided for by the eight preceding sections, shall be in such form, and prepared, filled up, and executed in such manner as the Secretary of the Treasury may from time to time prescribe.

[SEC. 3125. If the master of any enrolled or licensed vessel shall neglect or fail to comply with any of the provisions or requirements of the nine preceding sections, such master shall forfeit and pay to the United States the sum of twenty dollars for each and every failure or neglect, and for which sum the vessel shall be liable, and

may be summarily proceeded against, by way of libel, in any district court of the United States.】

* * * * *

SEC. 3126. [Any vessel, on being duly registered in pursuance of the laws of the United States,] *Any United States documented vessel with a registry and coastwise endorsements* may engage in trade between one port in the United States and one or more ports within the same, with the privilege of touching at one or more foreign ports during the voyage, and land and take in thereat merchandise, passengers and their baggage, and letters, and mails. [All such vessels shall be furnished by the *appropriate customs officers* of the ports at which they shall in their cargoes in the United States, with certified manifests, setting forth the particulars of the cargoes, the marks, number of packages; by whom shipped, to whom consigned, at what port to be delivered; designating such merchandise as is entitled to drawback, or to the privilege of being placed in warehouse; and the masters of all such vessels shall, on their arrival at any port of the United States from any foreign port at which such vessel may have touched, as herein provided, conform to the laws providing for the delivery of manifests of cargo and passengers taken on board at such foreign port, and all other laws regulating the report and entry of vessels from foreign ports, and be subject to all the penalties therein prescribed.】

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TITLE XLVIII—REGULATION OF COMMERCE AND NAVIGATION

CHAPTER TWO—CLEARANCE AND ENTRY

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[SEC. 4197. The master or person having the charge or command of any vessel bound to a foreign port shall deliver to the collector of the district from which such vessel is about to depart a manifest of all the cargo on board the same, and the value thereof, by him subscribed, and shall swear to the truth thereof; whereupon the collector shall grant a clearance for such vessel and her cargo, but without specifying the particulars thereof in the clearance, unless required by the master or other person having the charge or command of such vessel so to do. In any vessel bound to a foreign port (other than a licensed yacht or an undocumented American pleasure vessel not engaged in any trade nor in any way violating the customs or navigation laws of the United States) departs from any port or place in the United States without a clearance, or if the master delivers a false manifest, or does not answer truly the questions demanded of him, or, having received a clearance adds to the cargo of such vessel without having mentioned in the report outwards the intention to do so, or if the departure of the vessel is delayed beyond the second day after obtaining clearance without reporting the delay to the collector, the master or other person

having the charge or command of such vessel shall be liable to a penalty of not more than \$1,000 nor less than \$500, or if the cargo consists in any part of narcotic drugs, or any spirits, wines, or other alcoholic liquors (sea stores excepted), a penalty of not more than \$5,000 nor less than \$1,000 for each offense, and the vessel shall be detained in any port of the United States until the said penalty is paid or secured: *Provided*, That in order that the commerce of the United States may move with expedition and without undue delay, the Secretary of Commerce is hereby authorized to make regulations permitting the master of any vessel taking on cargo for a foreign port or for a port in noncontiguous territory belonging to the United States to file a manifest as hereinbefore provided, and if the manifest be not a complete manifest and it so appears upon such manifest, the collector of customs may grant clearance to the vessel in case of any incomplete manifest, taking from the owner of the vessel, who may act in the premises by a duly authorized attorney in fact, a bond with security approved by the collector of customs in the penal sum of \$1,000, conditioned that the master or someone for him will file a completed outward manifest not later than the fourth business day after the clearance of the vessel. In the event that the said complete outward manifest be not filed as required by the provisions of this section and the regulations made by the Secretary of Commerce in pursuance hereof, then a penalty of \$50 for each day's delinquency beyond the allowed period of four days for filing the completed manifest shall be exacted, and if the completed manifest be not filed within the three days following the four-day period, then for each succeeding day of delinquency a penalty of \$100 shall be exacted. Suit may be instituted in the name of the United States against the principal and surety on the bond for the recovery of any penalties that may accrue and be exacted in accordance with the terms of the bond.】

SEC. 4197. CLEARANCE; VESSELS.

(a) *WHEN REQUIRED; VESSELS OF THE UNITED STATES.*—*Except as otherwise provided by law, any vessel of the United States shall obtain clearance from the Customs Service before proceeding from a port or place in the United States—*

(1) *for a foreign port or place;*

(2) *for another port or place in the United States if the vessel has on board bonded merchandise or foreign merchandise for which entry has not been made; or*

(3) *outside the territorial sea to visit a hovering vessel or to receive merchandise while outside the territorial sea.*

(b) *WHEN REQUIRED; OTHER VESSELS.*—*Except as otherwise provided by law, any vessel that is not a vessel of the United States shall obtain clearance from the Customs Service before proceeding from a port or place in the United States—*

(1) *for a foreign port or place;*

(2) *for another port or place in the United States; or*

(3) *outside the territorial sea to visit a hovering vessel or to receive or deliver merchandise while outside the territorial sea.*

(c) *REGULATIONS.*—*The Secretary of the Treasury may by regula-*

(1) prescribe the manner in which clearance under this section is to be obtained, including the documents, data or information which shall be submitted or transmitted, pursuant to an authorized data interchange system, to obtain the clearance;

(2) permit the Customs Service to grant clearance for a vessel under this section before all requirements for clearance are complied with, but only if the owner or operator of the vessel files a bond in an amount set by the Secretary of the Treasury conditioned upon the compliance by the owner or operator with all specified requirements for clearance within a time period (not exceeding 4 business days) established by the Secretary of the Treasury; and

(3) authorize the Customs Service to permit clearance of any vessel to be obtained at a place other than a designated port of entry, under such conditions as he may prescribe.

[Sec. 4198. The oath to be taken by the master or commander of the vessel shall be as follows:

[District of

[I, (insert the name), master or commander of the (insert the denomination and name of the vessel), bound from the port of (insert the name of the port or place sailing from) to (insert the name of the port or place bound to), do solemnly, sincerely, and truly swear (or affirm, as the case may be) that the manifest of the cargo on board the said (insert denomination and name of the vessel), now delivered by me to the collector of this district, and subscribed with my name, contains, according to the best of my knowledge and belief, a full, just, and true account of all the goods, wares, and merchandise now actually laden on board the said vessel, and of the value thereof; and if any other goods, wares, or merchandise shall be laden or put on board the said (insert denomination and name of vessel) previous to her sailing from this port, I will immediately report the same to the said collector. I do also swear (or affirm) that I verily believe that duties on all the foreign merchandise therein specified have been paid or secured, according to law, and that no part thereof is intended to be reloaded within the United States, and that if by distress or other unavoidable accident it shall become necessary to reland the same, I will forthwith make a just and true report thereof to the collector of the customs of the district wherein such distress or accident may happen. So help me God.

[Sec. 4199. (a) Copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest required under this chapter shall be attached to such manifest and delivered to the appropriate officer of the United States Customs Service at the time such manifest is delivered.

[(b) The following information shall be included on such manifest, or on attached copies of bills of lading or equivalent commercial documents:

[(1) Name and address of shipper.

[(2) Description of the cargo.

[(3) Number of packages and gross weight.

[(4) Name of vessel or carrier.

[(5) Port of exit.

[(6) Port of destination.

[(c) Except as provided in subsection (d), the following information contained on such manifest, or on attached copies of bills of lading or equivalent commercial documents, shall be available for public disclosure:

[(1) Name and address of shipper, unless the shipper has made a biennial certification claiming confidential treatment pursuant to procedures adopted by the Secretary of the Treasury.

[(2) General character of the cargo.

[(3) Number of packages and gross weight.

[(4) Name of vessel or carrier.

[(5) Port of exit.

[(6) Port of destination.

[(7) Country of destination.

[(d) The information listed in subsection (c) shall not be available for public disclosure if—

[(1) the Secretary of the Treasury makes an affirmative finding on a shipment-by-shipment basis that disclosure is likely to pose a threat of personal injury or property damage; or

[(2) the information is exempt under the provisions of section 552(b)(1) of title 5 of the United States Code.

[(e) The Secretary of the Treasury, in order to allow for the timely dissemination and publication of the information listed in subsection (c) above, is authorized to establish procedures to provide access to manifests, or attached bills of lading or equivalent commercial documents which shall include provisions for adequate protection against the public disclosure of information not available for public disclosure from such manifests or attached bills of lading, or equivalent commercial documents.]

* * * * *

[SEC. 4201. The form of a clearance, to be granted to a ship or vessel on her departure to a foreign port or place, shall be as follows: District of _____, ss, _____

[Port of _____: _____

[These are to certify all whom it doth concern, that _____, master or commander of the _____, burden _____ tons, or thereabouts, mounted with _____ guns, navigated with _____ men, _____ built, and bound for _____, having on board _____, hath here entered and cleared his said vessel according to law. Given under our hands and seals, at the custom-house of _____, this _____ day of _____, one thousand _____, and in the _____ year of the Independence of the United States of America.]

* * * * *

[SEC. 4207. Whenever any clearance is granted to any vessel of the United States, duly registered as such, and bound on any foreign voyage, the collector of the district shall annex thereto, in every case, a copy of the rates or tariffs of fees which diplomatic and consular officers are entitled, by the regulations prescribed by the President, to receive for their services.

[SEC. 4208. The master or person having charge or command of any steamboat on Lake Champlain, when going from the United States into the province of Quebec, may deliver a manifest of the cargo on board, and take a clearance from the collector of the district through which any such boat shall last pass, when leaving the United States, without regard to the place from which any such boat shall have commenced her voyage, or where her cargo shall have been taken on board.]

* * * * *

[SEC. 4213. It shall be the duty of all masters of vessels for whom any official services shall be performed by any consular officer, without the payment of a fee, to require a written statement of such services from such consular officer, and, after certifying as to whether such statement is correct, to furnish it to the collector of the district in which such vessels shall first arrive on their return to the United States; and if any such master of a vessel shall fail to furnish such statement, he shall be liable to a fine of not exceeding fifty dollars, unless such master shall state under oath that no such statement was furnished him by said consular officer. And it shall be the duty of every collector to forward to the Secretary of the Treasury all such statements as shall have been furnished to him, and also a statement of all certified invoices which shall have come to his office, giving the dates of the certificates, and the names of the persons for whom and of the consular officer by whom the same were certified.]

* * * * *

CHAPTER THREE—TONNAGE DUTIES

* * * * *

[SEC. 4221. In cases of vessels making regular daily trips between any port of the United States and any port in the Dominion of Canada, wholly upon interior waters not navigable to the ocean, no tonnage or clearance fees shall be charged against such vessel by the officers of the United States, except upon the first clearing of such vessel in each year.

[SEC. 4222. No consul or consular agent of the United States shall exact tonnage fees from any vessel of the United States, touching at or near ports in Canada, on her regular voyage from one port to another within the United States, unless such consul or consular agent shall perform some official services, required by law for such vessel, when she shall thus touch at a Canadian port.]

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TITLE L—REGULATION OF VESSELS IN DOMESTIC COMMERCE

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[SEC. 4332. Every surveyor who certifies a manifest, or grants any permit, or who receives any certified manifest, or any permit, as is provided for in this Title, shall make return thereof monthly,

or sooner, if it can conveniently be made, to the collector of the district where such surveyor resides.]

* * * * *

【SEC. 4348. The seacoasts and navigable rivers of the United States and Puerto Rico shall be divided into five great districts. The first to include all the collection districts on the seacoasts and navigable rivers between the northern boundary of the State of Maine and the southern boundary of the State of Texas; the second to consist of the island of Puerto Rico; the third to include the collection districts on the seacoasts and navigable rivers between the southern boundary of the State of California and the northern boundary of the State of Washington; the fourth to consist of the Territory of Alaska; the fifth to consist of the Territory of Hawaii.】

* * * * *

【SEC. 4358. The coasting trade between the territory ceded to the United States by the Emperor of Russia and any other portion of the United States shall be regulated in accordance with the provisions of law applicable to such trade between any two great districts.】

* * * * *

【SEC. 4361. Whenever any vessel of the United States, registered according to law, is employed in going from any one district in the United States to any other district, such vessel, and the master thereof, with the goods she may have on board previous to her departure from the district where she may be, and also upon her arrival in any other district, shall be subject, except as to the payment of fees, to the same regulations, provisions, penalties, and forfeitures, and the like duties are imposed on like officers, as are provided for vessels licensed for carrying on the coasting-trade. Nothing herein contained shall be construed to extend to registered vessels of the United States having on board merchandise of foreign growth or manufacture, brought into the United States, in such vessel, from a foreign port, and on which the duties have not been paid according to law.

【SEC. 4362. The collector of the district of Philadelphia may grant permits for the transportation of merchandise of foreign growth or manufacture across the State of New Jersey to the district of New York, or across the State of Delaware to any district in the State of Maryland or Virginia; and the collector of the district of New York may grant like permits for transportation across the State of New Jersey; and the collector of any district of Maryland or Virginia may grant like permits for transportation across the State of Delaware to the district of Philadelphia. Every such permit shall express the name of the owner, or person sending the merchandise, and of the person to whom the merchandise is consigned, with the marks, numbers, and description of the packages, whether bale, box chest, or otherwise, and the kind of goods contained therein, and the date when granted; and the owner, or person sending such goods, shall swear that they were legally imported, and the duties paid. Where the merchandise, to be so trans-

ported, shall be of less value than eight hundred dollars, the permit shall not be deemed necessary.

[SEC. 4363. The owner or consignee of all merchandise transported under the provisions of the preceding section and for the transportation whereof a permit is necessary, shall, within twenty-four hours after the arrival thereof at the place to which such merchandise was permitted to be transported, report the same to the collector of the district where it has arrived, and shall deliver up the permit accompanying the same; and if the owner or consignee shall neglect or refuse to make due entry of such merchandise within the time and in the manner directed, all such merchandise shall be subject to forfeiture; and if the permit granted shall not be given up within the time limited for making the report, the person to whom it was granted, neglecting or refusing to deliver it up, shall be liable to a penalty of fifty dollars for every twenty-four hours it shall be withheld afterward.

[SEC. 4364. Whenever any vessel, licensed for carrying on the fishery, is intended to touch and trade at any foreign port, it shall be the duty of the master or owner to obtain permission for that purpose from the collector of the district where such vessel may be, previous to her departure, and the master of every such vessel shall deliver like manifests, and make like entries, both of the vessel and of the merchandise on board, within the same time, and under the same penalty, as are by law provided for vessels of the United States arriving from a foreign port.

[SEC. 4365. Whenever a vessel licensed for carrying on the fisheries, is found within three leagues of the coast, with merchandise of foreign growth or manufacture, exceeding the value of five hundred dollars, without having such permission as is directed by the preceding section, such vessel, together with the merchandise of foreign growth or manufacture imported therein, shall be subject to seizure and forfeiture.

[SEC. 4366. The master of every vessel employed in the transportation of merchandise from district to district, that shall put into a port other than the one to which she was bound, shall, within twenty-four hours of his arrival, if there be an officer residing at such port, and she continue there so long, make report of his arrival to such officer, with the name of the place he came from, and to which he is bound, with an account of his lading; and every master who neglects or refuses so to do shall be liable to a penalty of twenty dollars.

[SEC. 4367. The master of every foreign vessel bound from a district in the United States to any other district within the same, shall, in all cases previous to her departure from such district, deliver to the collector of such district duplicate manifests of the lading on board such vessel, if there be any, or, if there be none, he shall declare that such is the case; and to the truth of such manifest or declaration he shall swear, and also obtain a permit from the collector, authorizing him to proceed to the place of his destination.

[SEC. 4368. The master of every foreign vessel, on his arrival within any district from any other district, shall, in all cases, within forty-eight hours after his arrival, and previous to the unloading of any goods from on board such vessel, deliver to the collec-

tor of the district where he may have arrived, a manifest of the goods laden on board such vessel, if any there be; or if in ballast only, he shall so declare; he shall swear to the truth of such manifest or declaration, and shall also swear that such manifest contains an account of all the merchandise which was on board such vessel at the time, or has been since her departure for the place from whence she shall be reported last to have sailed; and he shall also deliver to such collector the permit which was given him from the collector of the district from whence he sailed.

【SEC. 4369. Every master of any foreign vessel who neglects or refuses to comply with any of the requirements of the two preceding sections, shall be liable to a penalty of one hundred dollars. Nothing therein contained shall, however, be construed as affecting the payment of tonnage, or any other requirements to which such vessels are subject by law.】

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TITLE LIII—MERCHANT SEAMEN

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CHAPTER FIVE—PROTECTION AND RELIEF

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【SEC. 4573. Before a clearance is granted to any vessel bound on a foreign voyage or engaged in the whale-fishery, the master thereof shall deliver to the collector of the customs a list containing the names, places of birth and residence, and description of the persons who compose his ship's company; to which list the oath of the captain shall be annexed, that the list contains the names of his crew, together with the places of their birth and residence, as far as he can ascertain them; and the collector shall deliver him a certified copy thereof, for which the collector shall be entitled to receive the sum of twenty-five cents.

【SEC. 4574. In all cases of private vessels of the United States sailing from a port in the United States to a foreign port, the list of the crew shall be examined by the collector for the district from which the vessel shall clear, and, if approved of by him, shall be certified accordingly. No person shall be admitted or employed on board of any such vessel unless his name shall have been entered in the list of the crew, approved and certified by the collector for the district from which the vessel shall clear. The collector, before he delivers the list of the crew, approved and certified, to the master or proper officer of the vessel to which the same belongs, shall cause the same to be recorded in a book by him for that purpose to be provided, and the record shall be open for the inspection of all persons, and a certified copy thereof shall be admitted in evidence in any court in which any question may arise under any of the provisions of the Title.

【SEC. 4575. The following rules shall be observed with reference to vessels bound on any foreign voyage:

【First. The duplicate list of the ship's company, required to be made out by the master and delivered to the collector of the cus-

toms, under section forty-five hundred and seventy-three, shall be a fair copy in one uniform handwriting, without erasure or interlineation.

【Second. It shall be the duty of the owners of every such vessel to obtain from the collector of the customs of the district from which the clearance is made, a true and certified copy of the shipping-articles, containing the names of the crew, which shall be written in a uniform hand, without erasures of interlineations.

【Third. These documents, which shall be deemed to contain all the conditions of contract with the crew as to their service, pay, voyage, and all other things, shall be produced by the master, and laid before any consul, or other commercial agent of the United States, whenever he may deem their contents necessary to enable him to discharge the duties imposed upon him by law toward any mariner applying to him for his aid or assistance.

【Fourth. All interlineations, erasures, or writing in a hand different from that in which such duplicates were originally made, shall be deemed fraudulent alterations, working no change in such papers, unless satisfactorily explained in a manner consistent with innocent purposes and the provisions of law which guard the rights of mariners.

【Fifth. If any master of a vessel shall proceed on a foreign voyage without the documents herein required, or refuse to produce them when required, or to perform the duties imposed by this section, or shall violate the provisions thereof, he shall be liable to each and every individual injured thereby in damages, to be recovered in any court of the United States in the district where such delinquent may reside or be found, and in addition thereto be punishable by a fine of one hundred dollars for each offense.

【Sixth. It shall be the duty of the boarding-officer to report all violations of this section to the collector of the port where any vessel may arrive, and the collector shall report the same to the Secretary of the Treasury and to the United States attorney in his district.

【SEC. 4576. The master of every vessel bound on foreign voyage or engaged in the whale fishery shall exhibit the certified copy of the list of the crew to the first boarding officer at the first port in the United States at which he shall arrive on his return, and also produce the persons named therein to the boarding officer, whose duty it shall be to examine the men with such list and to report the same to the collector; and it shall be the duty of the collector at the port of arrival, where the same is different from the port from which the vessel originally sailed, to transmit a copy of the list so reported to him to the collector of the port from which such vessel originally sailed. For each failure to produce any person on the certified copy of the list of the crew the master and owner shall be severally liable to a penalty of four hundred dollars, to be sued for, prosecuted, and disposed of in such manner as penalties and forfeitures which may be incurred for offenses against the laws relating to the collection of duties; but such penalties shall not be incurred on account of the master not producing to the first boarding officer any of the persons contained in the list who may have been discharged in a foreign country with the consent of the counsel, vice-consul, commercial agent, or vice-commercial agent there re-

siding, certified in writing, under his hand and official seal, to be produced to the collector with the other persons composing the crew, nor on account of any such person dying or absconding or being forcibly impressed into other service of which satisfactory proof shall also be exhibited to the collector.】

* * * * *

ACT OF JUNE 16, 1937

【AN ACT To expedite the dispatch of vessels from certain ports of call

【*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in order to expedite the dispatch of vessels carrying passengers operating on regular schedules and arriving at night or on a Sunday or a holiday at a port in the United States at which such vessel is required by law to report arrival and make entry and from which it is required to obtain a clearance, the appropriate customs officer, if the vessel departs during the same night, Sunday, or holiday on which it arrives may, under such regulations as may be prescribed the Secretary of the Treasury, receive the report of arrival and entry of such vessel from and give clearance for such vessel to the master or other proper officer thereof on board such vessel: *Provided,* That bond, as prescribed in section 451 of the Tariff Act of 1930, is given to secure reimbursement to the Government for the compensation of, and expenses incurred by, such customs officers in performing such services, who shall be entitled to rates of compensation fixed on the same basis and payable in the same manner and upon the same terms and conditions as in the case of customs officers and employees assigned to lading or unloading at night or on Sunday or a holiday.】

SECTION 965 OF TITLE 18, UNITED STATES CODE

§ 965. Verified statements as prerequisite to vessel's departure

(a) During a war in which the United States is a neutral nation, every master or person having charge or command of any vessel, domestic or foreign, whether requiring clearance of not, before departure of such vessel from port shall, in addition to the facts required by [sections 91, 92, and 94 of Title 46] *section 431 of the Tariff Act of 1930 (19 U.S.C. 1431) and section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91),* to be set out in the masters' and shippers' manifests before clearance will be issued to vessels bound to foreign ports, deliver to the [collector of customs for the district wherein such vessel is then located] *Customs Service* a statement, duly verified by oath, that the cargo or any part of the cargo is or is not to be delivered to other vessels in port or to be transshipped on the high seas, and, if it is to be so delivered or transshipped, stating the kind and quantities and the value of the total quantity of each kind of article so to be delivered or transshipped, and the name of the person, corporation, vessel, or government to whom the delivery or transshipment is to be made; and the owners, shippers, or consignors of the cargo of such vessel

shall in the same manner and under the same conditions deliver to the [collector] *Customs Service* like statements under oath as to the cargo or the parts thereof laden or shipped by them, respectively.

* * * * *

SECTION 9 OF THE ACT TO PREVENT POLLUTION FROM SHIPS

SEC. 9. (a) * * *

* * * * *

(e) If any ship subject to the MARPOL Protocol or this Act, its owner, operator, or person in charge is liable for a fine or civil penalty under this section, or if reasonable cause exists to believe that the ship, its owner, operator, or person in charge may be subject to a fine or civil penalty under this section, the Secretary of the Treasury, upon the requests of the Secretary, [shall refuse or revoke—

[(1) the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91); or

[(2) a permit to proceed under section 4367 of the revised Statutes of the United States (46 U.S.C. 313) or section 443 of the Tariff Act 1930, as amended (19 U.S.C. 1443).

Clearance or a permit to proceed may be granted upon the filing of a bond or other surety satisfactory to the Secretary.] *shall refuse or revoke the clearance required by section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91). Clearance may be granted upon the filing of a bond or other surety satisfactory to the Secretary.*

* * * * *

ACT OF NOVEMBER 6, 1966

AN ACT To require evidence of adequate financial responsibility to pay judgments for personal injury or death, or to repay fares in the event of nonperformance of voyages, to establish minimum standards for passenger vessels and to require disclosure of construction details on passenger vessels, and for other purposes

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SEC. 2. (a) * * *

* * * * *

(e) [The collector of customs at] *At the port or place of departure from the United States of any vessel described in subsection (a) of this section, the Customs Service shall refuse the clearance required by section 4197 of the Revised Statutes (46 U.S.C. 91) to any such vessel which does not have evidence furnished by the Federal Maritime Commission that the provisions of this section have been complied with.*

SEC. 3. (a) * * *

* * * * *

(e) [The collector of customs at] *At the port or place of departure from the United States of any vessel described in subsection*

(a) of this section, *the Customs Service* shall refuse the clearance required by section 4197 of the Revised Statutes (46 U.S.C. 91) to any such vessel which does not have evidence furnished by the Federal Maritime Commission that the provisions of this section have been complied with.

* * * * *

ACT OF JULY 3, 1926

CHAP. 757.—An Act To create a sixth great district to include all the collection districts on the Great Lakes, their connecting and tributary waters, as far east as the Raquette River, New York

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That there is hereby created, in addition to the five great districts provided by section 4348 of the Revised Statutes as amended by the Act of May 12, 1906, a sixth great district to include all the collection districts on the Great Lakes, their connecting and tributary waters, as far east as the Raquette River, New York.]

* * * * *

ACT OF MAY 4, 1934

[AN ACT Authorizing pursers or licensed deck officers of vessels to perform the duties of the masters of such vessels in relation to entrance and clearance of same

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever, under any provision or provisions of any statute of the United States, it is made the duty of the masters of vessels to make entry and clearance of same, it shall be lawful for such duties to be performed by any licensed deck officer or purser of such vessel; and when such duties are performed by a licensed deck officer or pursuer of such vessel, such acts shall have the same force and effect as if performed by masters of such vessels: *Provided,* That nothing herein contained shall relieve the master of any penalty or liability provided by any statute relating to the entry or clearance of vessels.]

SECTION 1403 OF THE WATER RESOURCES DEVELOPMENT ACT OF 1986

SEC. 1403. CREATION OF HARBOR MAINTENANCE TRUST FUND.

(a) * * *

[(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Department of the Treasury (from the fees collected under paragraphs (9) and (10) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985) such sums as may be necessary to pay all expenses of administration incurred by such Department in administering subchapter A of chapter 36 of the Internal Revenue Code of 1954 for periods to which such fees apply.]

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SECTION 9501 OF THE OMNIBUS BUDGET RECONCILIATION ACT OF 1987

SEC. 9501. CUSTOMS USER FEES.

(a) * * *

* * * * *

(c) ANALYSIS REGARDING THE CES PROGRAM; EFFECT ON IMPLEMENTATION OF PROGRAM.—

(1) * * *

* * * * *

(3) The Commissioner of Customs is authorized to obtain from the operators of centralized cargo examination stations information regarding the fees paid to them for the provision of services at these stations.

* * * * *

SECTION 123 OF THE CUSTOMS AND TRADE ACT OF 1990

SEC. 123. ANNUAL NATIONAL TRADE AND CUSTOMS LAW VIOLATION ESTIMATES AND ENFORCEMENT STRATEGY.

(a) * * *

* * * * *

(d) COMPLIANCE PROGRAM.—The Commissioner of Customs shall—

(1) devise and implement a methodology for estimating the level of compliance with the laws administered by the Customs Service; and

(2) include as an additional part of the report required to be submitted under subsection (a) for each of fiscal years 1993, and 1994, and 1995, an evaluation of the extent to which such compliance was obtained during the 12-month period preceding the 60th day before each such fiscal year.

[(d)] (e) CONFIDENTIALITY.—The contents of any report submitted to the Committees under subsection (a) or (c)(2) are confidential and disclosure of all or part of the contents is restricted to—

(1) officers and employees of the United States designated by the Commissioner of Customs;

(2) the chairman of each of the Committees; and

(3) those members of each of the Committees and staff persons of each of the Committees who are authorized by the Chairman thereof to have access to the contents.

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