(2) Paragraph (1) does not apply to a vessel or aircraft operated as a common carrier.

(f) "Merchandise" defined

As used in this section, the term ''merchandise'' means only merchandise the importation of which into the United States is prohibited or restricted.

(g) Intent of transfer of merchandise

For purposes of imposing civil penalties under this section, any of the following acts, when performed within 250 miles of the territorial sea of the United States, shall be prima facie evidence that the transportation or possession of merchandise was unlawful and shall be presumed to constitute circumstances indicating that the purpose of the transfer is to make it possible for such merchandise, or any part thereof, to be introduced into the United States unlawfully, and for purposes of subsection (e) of this section or section 1595a of this title, shall be prima facie evidence that an aircraft or vessel was used in connection with, or to aid or facilitate, a violation of this section:

(1) The operation of an aircraft or a vessel without lights during such times as lights are required to be displayed under applicable law.

(2) The presence on an aircraft of an auxiliary fuel tank which is not installed in accordance with applicable law.

(3) The failure to identify correctly—

(A) the vessel by name or country of registration, or

(B) the aircraft by registration number and country of registration,

when requested to do so by a customs officer or other government authority.

(4) The external display of false registration numbers, false country of registration, or, in the case of a vessel, false vessel name.

(5) The presence on board of unmanifested merchandise, the importation of which is prohibited or restricted.

(6) The presence on board of controlled substances which are not manifested or which are not accompanied by the permits or licenses required under Single Convention on Narcotic Drugs or other international treaty.

(7) The presence of any compartment or equipment which is built or fitted out for smuggling.

(8) The failure of a vessel to stop when hailed by a customs officer or other government authority.

(June 17, 1930, ch. 497, title IV, § 590, as added Pub. L. 99–570, title III, § 3120, Oct. 27, 1986, 100 Stat. 3207–84.)

REFERENCES IN TEXT

The customs laws, referred to in subsec. (e)(1), are classified generally to this title.

PRIOR PROVISIONS

A prior section 1590, act June 17, 1930, ch. 497, title IV, § 590, 46 Stat. 750, related to false drawback claims, prior to repeal by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948. See section 550 of Title 18, Crimes and Criminal Procedure.

TERRITORIAL SEA OF UNITED STATES

For extension of territorial sea of United States, see Proc. No. 5928, set out as a note under section 1331 of Title 43, Public Lands.

§ 1591. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948

Section, acts June 17, 1930, ch. 497, title IV, § 591, 46 Stat. 750; Aug. 5, 1935, ch. 438, title III, § 304(a), 49 Stat. 527, related to fraud and personal penalties. See section 542 of Title 18, Crimes and Criminal Procedure.

§ 1592. 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, tax, or fee 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 Customs Service has reasonable cause to believe that there has been a violation of subsection (a) of this section and determines that further proceedings are warranted, it shall issue to the person concerned a written notice of its intention to issue a claim for a monetary penalty. Such notice shall—

(i) describe the merchandise;

(ii) set forth the details of the entry or introduction, the attempted entry or introduction, or the aiding or procuring of the entry or introduction;

(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, gross negligence, or negligence;

(vi) state the estimated loss of lawful duties, taxes, and fees, if any, 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 preceding subparagraph shall not apply if—

(i) the importation with respect to which the violation of subsection (a) of this section occurs is noncommercial in nature, or

(ii) the amount of the penalty in the penalty claim issued under paragraph (2) is $1,000 or less.

(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) of this section, as alleged in the notice, has occurred. If the Customs Service determines that there was no violation, it 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, 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 1618 of this title to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any proceeding under such section 1618, 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 the domestic value of the merchandise.

(2) Gross negligence

A grossly negligent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the domestic value of the merchandise, or

(ii) four times the lawful duties, taxes, and fees of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 40 percent of the dutiable value of the merchandise.

(3) Negligence

A negligent violation of subsection (a) of this section is punishable by a civil penalty in an amount not to exceed—

(A) the lesser of—

(i) the domestic value of the merchandise, or

(ii) two times the lawful duties, taxes, and fees of which the United States is or may be deprived, or

(B) if the violation did not affect the assessment of duties, 20 percent of the dutiable value of the merchandise.

(4) Prior disclosure

If the person concerned discloses the circumstances of a violation of subsection (a) of this section 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) of this section shall not exceed—

(A) if the violation resulted from fraud—

(i) an amount equal to 100 percent of the lawful duties, taxes, and fees of which the United States is or may be deprived, so long as such person tenders the unpaid amount of the lawful duties, taxes, and fees 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 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 title 26) on the amount of lawful duties, taxes, and fees of which the United States is or may be deprived so long as such person tenders the unpaid amount of the lawful duties, taxes, and fees 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 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) of this section existed.

(5) Prior disclosure regarding NAFTA claims

An importer shall not be subject to penalties under subsection (a) of this section for making an incorrect claim for preferential tariff treatment under section 3332 of this title if the importer—

(A) has reason to believe that the NAFTA Certificate of Origin (as defined in section 1508(b)(1) of this title) on which the claim was based contains incorrect information; and

(B) in accordance with regulations issued by the Secretary, voluntarily and promptly makes a corrected declaration and pays any duties owing.

(6) Prior disclosure regarding claims under the United States-Chile Free Trade Agreement

An importer shall not be subject to penalties under subsection (a) of this section for making an incorrect claim that a good qualifies as an originating good under section 202 of the United States-Chile Free Trade Agreement Implementation Act if the importer, in ac-

cordance with regulations issued by the Secretary of the Treasury, voluntarily makes a corrected declaration and pays any duties owing.

(7) Prior disclosure regarding claims under the United States-Singapore Free Trade Agreement

(A) An importer shall not be subject to penalties under subsection (a) of this section for making an incorrect claim that a good qualifies as an originating good under section 202 of the United States-Singapore Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, voluntarily and promptly makes a corrected declaration and pays any duties owing.

(B) In the regulations referred to in subparagraph (A), the Secretary of the Treasury is authorized to prescribe time periods for making a corrected declaration and paying duties owing under subparagraph (A), if such periods are not shorter than 1 year following the date on which the importer makes the incorrect claim that a good qualifies as an originating good.

(8) Prior disclosure regarding claims under the United States-Australia free trade agreement

(A) In general

An importer shall not be subject to penalties under subsection (a) of this section for making an incorrect claim that a good qualifies as an originating good under section 203 of the United States-Australia Free Trade Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, voluntarily and promptly makes a corrected declaration and pays any duties owing.

(B) Time periods for making corrections

In the regulations referred to in subparagraph (A), the Secretary of the Treasury is authorized to prescribe time periods for making a corrected declaration and paying duties owing under subparagraph (A), if such periods are not shorter than 1 year following the date on which the importer makes the incorrect claim.

(9) Prior disclosure regarding claims under the Dominican Republic-Central America-United States Free Trade Agreement

An importer shall not be subject to penalties under subsection (a) of this section for making an incorrect claim that a good qualifies as an originating good under section 4033 of this title if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing.

(10) Seizure

If the Secretary has reasonable cause to believe that a person has violated the provisions of subsection (a) of this section and that such person is insolvent or beyond the jurisdiction of the United States or that seizure is otherwise essential to protect the revenue of the United States or to prevent the introduction of prohibited or restricted merchandise into the customs territory of the United States, then such merchandise may be seized and, upon assessment of a monetary penalty, forfeited unless the monetary penalty is paid within the time specified by law. Within a reasonable time after any such seizure is made, the Secretary shall issue to the person concerned a written statement containing the reasons for the seizure. After seizure of merchandise under this subsection, the Secretary may, in the case of restricted merchandise, and shall, in the case of any other merchandise (other than prohibited merchandise), return such merchandise upon the deposit of security not to exceed the maximum monetary penalty which may be assessed under subsection (c) of this section.

(d) Deprivation of lawful duties, taxes, or fees

Notwithstanding section 1514 of this title, if the United States has been deprived of lawful duties, taxes, or fees as a result of a violation of subsection (a) of this section, the Customs Service shall require that such lawful duties, taxes, and fees be restored, whether or not a monetary penalty is assessed.

(e) 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 gross negligence, the United States shall have the burden of proof to establish all the elements of the alleged violation; and

(4) 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 proof that the act or omission did not occur as a result of negligence.

(f) False certifications regarding exports to NAFTA countries

(1) In general

Subject to paragraph (3), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a NAFTA Certificate of Origin (as defined in section 1508(b)(1) of this title) that a good to be exported to a NAFTA country (as defined in section 3301(4) of this title) qualifies under the rules of origin set out in section 3332 of this title.

(2) Applicable provisions

The procedures and penalties of this section that apply to a violation of subsection (a) of this section also apply to a violation of paragraph (1), except that—

(A) subsection (d) of this section does not apply, and

(B) subsection (c)(5) of this section applies only if the person voluntarily and promptly provides, to all persons to whom the person provided the NAFTA Certificate of Origin, written notice of the falsity of the Certificate.

(3) Exception

A person may not be considered to have violated paragraph (1) if—

(A) the information was correct at the time it was provided in a NAFTA Certificate of Origin but was later rendered incorrect due to a change in circumstances; and

(B) the person voluntarily and promptly provides written notice of the change to all persons to whom the person provided the Certificate of Origin.

(g) False certifications of origin under the United States-Chile Free Trade Agreement

(1) In general

Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a Chile FTA Certificate of Origin (as defined in section 1508(f)(1)(B) of this title[1] that a good exported from the United States qualifies as an originating good under the rules of origin set out in section 202 of the United States-Chile Free Trade Agreement Implementation Act. The procedures and penalties of this section that apply to a violation of subsection (a) of this section also apply to a violation of this subsection.

(2) Immediate and voluntary disclosure of incorrect information

No penalty shall be imposed under this subsection if, immediately after an exporter or producer that issued a Chile FTA Certificate of Origin has reason to believe that such certificate contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certificate was issued.

(3) Exception

A person may not be considered to have violated paragraph (1) if—

(A) the information was correct at the time it was provided in a Chile FTA Certificate of Origin but was later rendered incorrect due to a change in circumstances; and

(B) the person immediately and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certificate.

(h) False certifications of origin under the Dominican Republic-Central America-United States Free Trade Agreement

(1) In general

Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a CAFTA–DR certification of origin (as defined in section 1508(g)(1)(B) of this title) that a good exported from the United States qualifies as an originating good under the rules of origin set out in section 4033 of this title. The procedures and penalties of this section that apply to a violation of subsection (a) of this section also apply to a violation of this subsection.

(2) Prompt and voluntary disclosure of incorrect information

No penalty shall be imposed under this subsection if, promptly after an exporter or producer that issued a CAFTA–DR certification of origin has reason to believe that such certification contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certification was issued.

(3) Exception

A person may not be considered to have violated paragraph (1) if—

(A) the information was correct at the time it was provided in a CAFTA–DR certification of origin but was later rendered incorrect due to a change in circumstances; and

(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.

(June 17, 1930, ch. 497, title IV, § 592, 46 Stat. 750; Aug. 5, 1935, ch. 438, title III, § 304(b), 49 Stat. 527; Pub. L. 95–410, title I, § 110(a), Oct. 3, 1978, 92 Stat. 893; Pub. L. 96–417, title VI, § 609, Oct. 10, 1980, 94 Stat. 1746; Pub. L. 99–514, § 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 103–182, title II, § 205(c), title VI, § 621, Dec. 8, 1993, 107 Stat. 2095, 2180; Pub. L. 104–295, §§ 3(a)(4), (5), 21(e)(12), (13), Oct. 11, 1996, 110 Stat. 3515, 3531; Pub. L. 106–36, title I, § 1001(b)(8), June 25, 1999, 113 Stat. 132; Pub. L. 108–77, title II, § 205(a), Sept. 3, 2003, 117 Stat. 930; Pub. L. 108–78, title II, § 204, Sept. 3, 2003, 117 Stat. 961; Pub. L. 108–286, title II, § 205, Aug. 3, 2004, 118 Stat. 939; Pub. L. 109–53, title II, § 206(a), Aug. 2, 2005, 119 Stat. 484; Pub. L. 110–138, title II, § 205(a), Dec. 14, 2007, 121 Stat. 1475.)

AMENDMENT OF SUBSECTIONS (c) AND (i)

Pub. L. 110–138, title I, § 107(a), title II, § 205(a), Dec. 14, 2007, 121 Stat. 1459, 1475, provided that, effective on the date on which the United States-Peru Trade Promotion Agreement enters into force, this section is amended—

(1) in subsection (c), by redesignating paragraph (10) as paragraph (11) and by inserting after paragraph (9) the following new paragraph:

''(10) Prior disclosure regarding claims under the United States-Peru Trade Promotion Agreement

''An importer shall not be subject to penalties under subsection (a) for making an incorrect claim that a good qualifies as an originating good under section 203 of the United States-Peru Trade Promotion Agreement Implementation Act if the importer, in accordance with regulations issued by the Secretary of the Treasury, promptly and voluntarily makes a corrected declaration and pays any duties owing with respect to that good.''; and

[1] So in original. Probably should be followed by a closing parenthesis.

(2) by adding at the end the following new subsection:

''(i) False certifications of origin under the United States-Peru Trade Promotion Agreement

''(1) In general

''Subject to paragraph (2), it is unlawful for any person to certify falsely, by fraud, gross negligence, or negligence, in a PTPA certification of origin (as defined in section 1508(h)(1)(B) of this title) that a good exported from the United States qualifies as an originating good under the rules of origin provided for in section 203 of the United States-Peru Trade Promotion Agreement Implementation Act. The procedures and penalties of this section that apply to a violation of subsection (a) also apply to a violation of this subsection.

''(2) Prompt and voluntary disclosure of incorrect information

''No penalty shall be imposed under this subsection if, promptly after an exporter or producer that issued a PTPA certification of origin has reason to believe that such certification contains or is based on incorrect information, the exporter or producer voluntarily provides written notice of such incorrect information to every person to whom the certification was issued.

''(3) Exception

''A person shall not be considered to have violated paragraph (1) if—

''(A) the information was correct at the time it was provided in a PTPA certification of origin but was later rendered incorrect due to a change in circumstances; and

''(B) the person promptly and voluntarily provides written notice of the change in circumstances to all persons to whom the person provided the certification.''

AMENDMENT OF SECTION

For termination of amendment by section 107(c) of Pub. L. 110–138, see Effective and Termination Dates of 2007 Amendment note below.

For termination of amendment by section 107(d) of Pub. L. 109–53, see Effective and Termination Dates of 2005 Amendment note below.

For termination of amendment by section 106(c) of Pub. L. 108–286, see Effective and Termination Dates of 2004 Amendment note below.

For termination of amendment by section 107(c) of Pub. L. 108–78, see Effective and Termination Dates of 2003 Amendments note below.

For termination of amendment by section 107(c) of Pub. L. 108–77, see Effective and Termination Dates of 2003 Amendments note below.

REFERENCES IN TEXT

Section 202 of the United States-Chile Free Trade Agreement Implementation Act, referred to in subsecs. (c)(6) and (g)(1), is section 202 of Pub. L. 108–77, which is set out in a note under section 3805 of this title.

Section 202 of the United States-Singapore Free Trade Agreement Implementation Act, referred to in subsec. (c)(7)(A), is section 202 of Pub. L. 108–78, which is set out in a note under section 3805 of this title.

Section 203 of the United States-Australia Free Trade Agreement Implementation Act, referred to in subsec. (c)(8)(A), is section 203 of Pub. L. 108–286, which is set out in a note under section 3805 of this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in act Oct. 3, 1913, ch. 16, § III, H, 38 Stat. 183, which was superseded by act Sept. 21, 1922, ch. 356, title IV, § 592, 42 Stat. 982, and was repealed by section 643 thereof. Section 592 of the 1922 act was superseded by section 592 of act June 17, 1930, comprising this section, and repealed by section 651(a)(1) of the 1930 act.

The provisions of section III, H, of the 1913 act were substituted for provisions of the same nature made by the Customs Administrative Act of June 10, 1890, ch. 407, §§ 6, 9, 26 Stat. 134, 135, amended and reenacted by Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 95, 97.

Those provisions superseded similar provisions made by R.S. § 2864, as amended by act Feb. 18, 1875, ch. 80, 18 Stat. 319, prior to repeal by act Sept. 21, 1922, ch. 356, title IV, § 642, 42 Stat. 989.

R.S. § 2839 provided for forfeiture of merchandise entered, but not invoiced according to the actual cost at the place of exportation, with the design to evade payment of duty. It was repealed by the Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141, and provisions of a similar nature were made by section 9 of that act, amended by the Payne-Aldrich Tariff Act of Aug. 5, 1909, ch. 6, § 28, 36 Stat. 97, and further amended by the Underwood Tariff Act of Oct. 3, 1913, ch. 16, § III, H, 38 Stat. 183.

Act June 22, 1874, ch. 391, § 16, 18 Stat. 189, required special findings as to fraud in actions, etc., to enforce forfeitures, etc., prior to repeal by Customs Administrative Act of June 10, 1890, ch. 407, § 29, 26 Stat. 141.

AMENDMENTS

2005—Subsec. (c)(9), (10). Pub. L. 109–53, §§ 107(d), 206(a)(1), temporarily added par. (9) and redesignated former par. (9) as (10). See Effective and Termination Dates of 2005 Amendment note below.

Subsec. (h). Pub. L. 109–53, §§ 107(d), 206(a)(2), temporarily added subsec. (h). See Effective and Termination Dates of 2005 Amendment note below.

2004—Subsec. (c)(8), (9). Pub. L. 108–286, §§ 106(c), 205, temporarily added par. (8) and redesignated former par. (8) as (9). See Effective and Termination Dates of 2004 Amendment note below.

2003—Subsec. (c)(6). Pub. L. 108–77, §§ 107(c), 205(a)(1)(B), temporarily added par. (6). Former par. (6) redesignated (7). See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (c)(7). Pub. L. 108–78, §§ 107(c), 204(2), temporarily added par. (7). Former par. (7) redesignated (8). See Effective and Termination Dates of 2003 Amendments note below.

Pub. L. 108–77, §§ 107(c), 205(a)(1)(A), temporarily redesignated par. (6) as (7). See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (c)(8). Pub. L. 108–78, §§ 107(c), 204(1), temporarily redesignated par. (7) as (8). See Effective and Termination Dates of 2003 Amendments note below.

Subsec. (g). Pub. L. 108–77, §§ 107(c), 205(a)(2), temporarily added subsec. (g). See Effective and Termination Dates of 2003 Amendments note below.

1999—Subsec. (c)(4)(A)(i), (B). Pub. L. 106–36 amended Pub. L. 103–182, § 621(4)(A). See 1993 Amendment notes below.

1996—Subsec. (a)(1). Pub. L. 104–295, § 3(a)(4)(A), substituted ''lawful duty, tax, or fee'' for ''lawful duty''.

Subsecs. (b)(1)(A)(vi), (c)(2)(A)(ii), (3)(A)(ii). Pub. L. 104–295, § 3(a)(4)(B), substituted ''lawful duties, taxes, and fees'' for ''lawful duties''.

Subsec. (c)(4)(A)(i), (B). Pub. L. 104–295, § 21(e)(12), amended Pub. L. 103–182, § 621(4)(A). See 1993 Amendment notes below.

Pub. L. 104–295, § 3(a)(4)(B), substituted ''lawful duties, taxes, and fees'' for ''lawful duties'' in two places.

Subsec. (d). Pub. L. 104–295, § 21(e)(13), inserted comma after ''taxes'' in heading.

Pub. L. 104–295, § 3(a)(5), substituted ''and fees be restored'' for ''or fees be restored''.

1993—Subsec. (a)(1)(A)(i). Pub. L. 103–182, § 621(1), inserted ''or electronically transmitted data or information'' after ''document''.

Subsec. (a)(2). Pub. L. 103–182, § 621(2), inserted at end ''The mere nonintentional repetition by an electronic

system of an initial clerical error does not constitute a pattern of negligent conduct.''

Subsec. (b)(1)(A). Pub. L. 103–182, § 621(3)(A), substituted ''the Customs Service'' for ''the appropriate customs officer'', ''it shall issue'' for ''he shall issue'' and ''its intention'' for ''his intention'' in introductory provisions.

Subsec. (b)(2). Pub. L. 103–182, § 621(3)(B), substituted ''the Customs Service shall determine'' for ''the appropriate customs officer shall determine'', ''the Customs Service determines'' for ''such officer determines'' in two places, ''it shall'' for ''he shall'' in two places, and ''the Customs Service shall provide'' for ''the appropriate customs officer shall provide''.

Subsec. (c)(4). Pub. L. 103–182, § 621(4)(B), inserted at end ''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) of this section existed.''

Subsec. (c)(4)(A)(i). Pub. L. 103–182, § 621(4)(A), as amended by Pub. L. 104–295, § 21(e)(12); Pub. L. 106–36, § 1001(b)(8), substituted ''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'' for ''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''.

Subsec. (c)(4)(B). Pub. L. 103–182, § 621(4)(A), as amended by Pub. L. 104–295, § 21(e)(12); Pub. L. 106–36, § 1001(b)(8), which directed the substitution of ''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'' for ''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'', was executed by making the substitution for text which began ''time of disclosure or within 30 days'', to reflect the probable intent of Congress.

Subsec. (c)(5), (6). Pub. L. 103–182, § 205(c)(1), added par. (5) and redesignated former par. (5) as (6).

Subsec. (d). Pub. L. 103–182, § 621(5), inserted '', taxes or fees'' after ''duties'' in heading and in text substituted ''duties, taxes, or fees'' for ''duties'' in two places and ''the Customs Service'' for ''the appropriate customs officer''.

Subsec. (f). Pub. L. 103–182, § 205(c)(2), added subsec. (f).

1986—Subsec. (c)(4)(B). Pub. L. 99–514 substituted ''Internal Revenue Code of 1986'' for ''Internal Revenue Code of 1954'', which for purposes of codification was translated as ''title 26'' thus requiring no change in text.

1980—Subsec. (e). Pub. L. 96–417 substituted in heading ''Court of International Trade'' for ''District court'' and in text ''proceeding commenced by the United States in the Court of International Trade'' for ''proceeding in a United States district court commenced by the United States pursuant to section 1604 of this title''.

1978—Pub. L. 95–410 substituted subsecs. (a) to (e) relating to penalties for fraud, gross negligence, and negligence for prior provisions which: provided for forfeiture of merchandise, or recovery of value thereof, where entry or attempted entry of the merchandise was made using fraudulent or false invoice, declaration, affidavit, letter, paper, or false statement, written or verbal, false or fraudulent practice or appliance, or false statement in a declaration on entry without reasonable cause to believe the truth of the statement or aided or procured the making any such false statement as to any material matter without reasonable cause to believe the truth of the statement, regardless of deprivation of lawful duties, or guilty of any willful act or omission when there was a deprivation of such duties; made the forfeiture applicable to the whole of the merchandise or the value thereof where package contained the particular articles to which the fraud or false paper or statement related; and defined attempt to enter the merchandise without an actual entry having been made or offered.

1935—Act Aug. 5, 1935, inserted ''whether or not the United States shall or may be deprived of the lawful duties, or any portion thereof, accruing upon the merchandise, or any portion thereof, embraced or referred to in such invoice, declaration, affidavit, letter, paper, or statement;''.

EFFECTIVE AND TERMINATION DATES OF 2007 AMENDMENT

Amendment by Pub. L. 110–138 effective on the date the United States-Peru Trade Promotion Agreement enters into force and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 110–138, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2005 AMENDMENT

Amendment by Pub. L. 109–53 effective on the date the Dominican Republic-Central America-United States Free Trade Agreement enters into force (Mar. 1, 2006) and to cease to have effect on date Agreement ceases to be in force with respect to the United States, and, during any period in which a country ceases to be a CAFTA–DR country, to cease to have effect with respect to such country, see section 107 of Pub. L. 109–53, set out as an Effective and Termination Dates note under section 4001 of this title.

EFFECTIVE AND TERMINATION DATES OF 2004 AMENDMENT

Amendment by Pub. L. 108–286 effective on the date on which the United States-Australia Free Trade Agreement enters into force (Jan. 1, 2005) and to cease to be effective on the date on which the Agreement terminates, see section 106(a), (c) of Pub. L. 108–286, set out in a note under section 3805 of this title.

EFFECTIVE AND TERMINATION DATES OF 2003 AMENDMENTS

Amendment by Pub. L. 108–78 effective on the date the United States-Singapore Free Trade Agreement enters into force (Jan. 1, 2004), and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 108–78, set out in a note under section 3805 of this title.

Amendment by Pub. L. 108–77 effective on the date the United States-Chile Free Trade Agreement enters into force (Jan. 1, 2004), and to cease to be effective on the date the Agreement ceases to be in force, see section 107(a), (c) of Pub. L. 108–77, set out in a note under section 3805 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 3(a)(4), (5) of Pub. L. 104–295 applicable as of Dec. 8, 1993, see section 3(b) of Pub. L. 104–295, set out as a note under section 1321 of this title.

EFFECTIVE DATE OF 1993 AMENDMENT

Amendment by section 205(c) of Pub. L. 103–182 effective on the date the North American Free Trade Agreement enters into force with respect to the United States [Jan. 1, 1994], see section 213(b) of Pub. L. 103–182, set out as an Effective Date note under section 3331 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96–417 applicable with respect to civil actions commenced on or after 90th day after Nov. 1, 1980, see section 701(c)(2) of Pub. L. 96–417, set out as a note under section 251 of Title 28, Judiciary and Judicial Procedure.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 110(f) of Pub. L. 95–410 provided that:

''(1)(A) Except as provided in subparagraphs (B) and (C), subsections (a), (b), and (c) (other than new subsection (e) of section 592 of the Tariff Act of 1930 as added by subsection (a)) [subsec. (a), (b), and (c), not including (e) of this section] shall be effective with respect to proceedings commenced after the 89th day after the date of enactment of this Act [Oct. 3, 1978].

''(B) Except as provided in subparagraph (C), section 592 of the Tariff Act of 1930 [this section] (as such section existed on the day before the date of enactment of this Act) [Oct. 3, 1978] shall apply to any alleged intentional violation thereof involving television receivers that are the product of Japan and that were or are the subject of antidumping proceedings if the alleged intentional violation—

''(i) occurred before the date of enactment of this Act, and

''(ii) was the subject of an investigation by the Customs Service which was begun before the date of enactment of this Act.

''(C) Except as provided in the next sentence, subsection (e) of section 592 of the Tariff Act of 1930 (as added by subsection (a)) [subsec. (e) of this section] shall be effective on the date of enactment of this Act [Oct. 3, 1978]. Notwithstanding any provision of law, in any proceeding in a United States district court commenced by the United States pursuant to section 604 of the Tariff Act of 1930 [section 1604 of this title] for the recovery of any monetary penalty claimed under section 592 of such Act [this section] for an alleged intentional violation described in subparagraph (B)—

''(i) all issues, including the amount of the penalty, shall be tried de novo; and

''(ii) the United States shall have the burden of proof to establish such violation by a preponderance of the evidence.

''(2)(A) The amendment made by subsection (e) [to section 1621 of this title] shall apply with respect to alleged violations of section 592 of the Tariff Act of 1930 [this section] resulting from gross negligence or negligence which are committed on or after the date of the enactment of this Act [Oct. 3, 1978].

''(B) In the case of any alleged violation of such section 592 [this section] resulting from gross negligence or negligence which was committed before the date of the enactment of this Act [Oct. 3, 1978] and for which no suit or action for recovery was commenced before such date of enactment, no suit or action for recovery with respect to such alleged violation shall be instituted after—

''(i) the closing date of the 5-year period beginning on the date on which the alleged violation was committed, or

''(ii) the closing date of the 2-year period beginning on such date of enactment,

whichever date later occurs, except that no such suit or action may be instituted after the date on which such suit or action would have been barred under section 621 of the Tariff Act of 1930 [section 1621 of this title] (as in effect on the day before such date of enactment).''

TRANSFER OF FUNCTIONS

For transfer of functions, personnel, assets, and liabilities of the United States Customs Service of the Department of the Treasury, including functions of the Secretary of the Treasury relating thereto, to the Secretary of Homeland Security, and for treatment of related references, see sections 203(1), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 1592a. Special provisions regarding certain violations

(a) Publication of names of certain violators

(1) Publication

The Secretary of the Treasury is authorized to publish in the Federal Register a list of the name of any producer, manufacturer, supplier, seller, exporter, or other person located outside the customs territory of the United States—

(A) against whom the Customs Service has issued a penalty claim under section 1592 of this title, and

(B) if a petition with respect to that claim has been filed under section 1618 of this title, against whom a final decision has been issued under such section after exhaustion of administrative remedies,

citing any of the violations of the customs laws referred to in paragraph (2). Such list shall be published not later than March 31 and September 30 of each year.

(2) Violations

The violations of the customs laws referred to in paragraph (1) are the following:

(A) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products.

(B) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the customs territory of the United States of textile or apparel products.

(C) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labelled as to country of origin or source.

(D) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

(3) Removal from list

Any person whose name has been included in a list published under paragraph (1) may petition the Secretary to be removed from such list. If the Secretary finds that such person has not committed any violations described in paragraph (2) for a period of not less than 3 years after the date on which the person's name was so published, the Secretary shall remove such person from the list as of the next publication of the list under paragraph (1).

(4) Reasonable care required for subsequent imports

(A) Responsibility of importers and others

After the name of a person has been published under paragraph (1), the Secretary of