

1 Title: To amend the Tariff Act of 1930 to strengthen the authorities of U.S. Customs and Border  
2 Protection to enforce the customs and trade laws of the United States, and for other purposes.  
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5 Be it enacted by the Senate and House of Representatives of the United States of America in  
6 Congress assembled,

## 7 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

8 (a) Short Title.—This Act may be cited as the “Customs Modernization Act of 2021”.

9 (b) Table of Contents.—The table of contents for this Act is as follows:

10 Sec.1.Short title; table of contents.

## 11 TITLE I—IMPROVED COLLECTION AND USE OF 12 INFORMATION

13 Sec.101.Collection and use of data relating to eligibility for administrative exemption to duties.

14 Sec.102.Modification of requirements for filing of entry documentation.

15 Sec.103.Use of mandatory advance electronic information for cargo.

16 Sec.104.Modification of requirements for submission of information under National Customs  
17 Automation Program.

18 Sec.105.Expansion of recordkeeping requirements relating to importation.

19 Sec.106.Expansion of authority of U.S. Customs and Border Protection to obtain information  
20 relating to importation and trade enforcement.

21 Sec.107.Examination and testing of merchandise that infringes intellectual property rights.

## 22 TITLE II—STRENGTHENING ENFORCEMENT 23 AUTHORITIES

24 Sec.201.Treatment of importations involving suspended or debarred persons.

25 Sec.202.Seizure and forfeiture and disposition of, and expanded liability for, merchandise  
26 bearing a counterfeit mark or infringing a copyright.

27 Sec.203.Streamlined disposition of merchandise subject to administrative exemptions.

28 Sec.204.Summary forfeiture of certain merchandise.

29 Sec.205.Protests against decisions of U.S. Customs and Border Protection.

30 Sec.206.Modification of standards and penalties for fraud and negligence.

31 Sec.207.Expansion of liability for certain violations of customs laws.

32 Sec.208.Procedures for investigating claims of evasion of antidumping and countervailing duty  
33 orders.

34 Sec.209.Obstruction of investigations.

1 TITLE I—IMPROVED COLLECTION AND USE OF  
2 INFORMATION

3 SEC. 101. COLLECTION AND USE OF DATA RELATING  
4 TO ELIGIBILITY FOR ADMINISTRATIVE EXEMPTION  
5 TO DUTIES.

6 Section 321 of the Tariff Act of 1930 (19 U.S.C. 1321) is amended by adding at the end the  
7 following:

8 “(c) Submission of Documentation and Information.—

9 “(1) IN GENERAL.—The Secretary may prescribe regulations for the provision to U.S.  
10 Customs and Border Protection of such documentation or information as the Secretary  
11 determines to be reasonably necessary for U.S. Customs and Border Protection to determine  
12 the eligibility of an article for an administrative exemption under subsection (a)(2).

13 “(2) TYPE OF DOCUMENTATION OR INFORMATION AND USAGE.—Documentation or  
14 information with respect to an article provided to U.S. Customs and Border Protection  
15 pursuant to regulations prescribed by the Secretary under paragraph (1) may—

16 “(A) include documentation or information—

17 “(i) related to an offer for sale or purchase or subsequent sale, purchase,  
18 transportation, importation, or warehousing of the article, including  
19 documentation or information related to the offering of the article for sale or  
20 purchase within the United States through a commercial or marketing platform  
21 (including an electronic commerce platform or marketplace); or

22 “(ii) otherwise reasonably necessary to determine whether the article is  
23 admissible and eligible for an administrative exemption under subsection (a)(2);  
24 and

25 “(B) be used by U.S. Customs and Border Protection for any lawful purpose.

26 “(3) ACCURACY OF DOCUMENTATION AND INFORMATION.—

27 “(A) IN GENERAL.—A party providing documentation or information under  
28 paragraph (1) shall ensure that the documentation or information is true and correct to  
29 the best of the knowledge and belief of the party.

30 “(B) EXCEPTION.—The Secretary shall, in the regulations prescribed under  
31 paragraph (1), permit a party to provide to U.S. Customs and Border Protection  
32 documentation or information under paragraph (1) on the basis of the reasonable belief  
33 of the party that the documentation or information is true and correct if the party is not  
34 reasonably able to verify the documentation or information.

35 “(4) CIVIL PENALTY.—

36 “(A) IN GENERAL.—Any person who violates the regulations prescribed under  
37 paragraph (1) is liable for a civil penalty in an amount not to exceed—

1 “(i) \$5,000 for the first violation; and

2 “(ii) \$10,000 for each subsequent violation.

3 “(B) ADDITIONAL PENALTIES.—A penalty imposed under this subsection may be in  
4 addition to any other penalty provided by law.

5 “(5) DEFINITION.—In this subsection, the terms ‘provide’, ‘providing’, and ‘provision’,  
6 with respect to documentation or information provided to U.S. Customs and Border  
7 Protection, include—

8 “(A) the submission or transmission of the information or documentation; and

9 “(B) any other method by which the information or documentation is made available  
10 or visible to U.S. Customs and Border Protection.”.

## 11 SEC. 102. MODIFICATION OF REQUIREMENTS FOR 12 FILING OF ENTRY DOCUMENTATION.

13 (a) Electronic Filing.—Section 484(a) of the Tariff Act of 1930 (19 U.S.C. 1484(a)) is  
14 amended—

15 (1) in paragraph (1)—

16 (A) in the matter preceding subparagraph (A)—

17 (i) by inserting “with respect to merchandise” after “paragraph (2)(B)”; and

18 (ii) by inserting after “reasonable care” the following: “make entry therefor by  
19 filing with U.S. Customs and Border Protection, pursuant to an authorized  
20 electronic data interchange system”;

21 (B) in subparagraph (A)—

22 (i) by striking “make entry” and all that follows through “interchange system,  
23 such” and inserting “such documentation or”; and

24 (ii) by striking the semicolon and inserting “; and”; and

25 (C) in subparagraph (B)—

26 (i) by striking “complete the entry” and all that follows through “with the  
27 Customs Service”; and

28 (ii) by striking “, pursuant to an electronic data interchange system, such  
29 other”;

30 (2) in paragraph (2)—

31 (A) in subparagraph (A)—

32 (i) in the second sentence, by striking “regulations shall provide” and inserting  
33 “regulations may provide”; and

34 (ii) in the third sentence, by striking “paragraph (1)(A)” and inserting  
35 “paragraph (1)”; and

36 (B) in subparagraph (B), in the first sentence, by striking “filed or electronically

1 transmitted” and inserting “electronically filed”; and

2 (3) by adding at the end the following:

3 “(3) EXCEPTIONS TO ELECTRONIC FILING REQUIREMENT.—The Secretary may, in the  
4 discretion of the Secretary, make exceptions, including temporary exceptions, to the  
5 requirement under paragraph (1) with respect to the filing of documentation or information  
6 through an authorized electronic data interchange system.”.

7 (b) Provision of Advance Information.—Section 484(a)(2) of the Tariff Act of 1930, as  
8 amended by subsection (a)(2), is further amended by adding at the end the following:

9 “(D) PROVISION OF ADVANCE INFORMATION.—

10 “(i) IN GENERAL.—Upon request by a party that would qualify as an importer of  
11 record or an agent of that party and under such regulations as the Secretary may  
12 prescribe, U.S. Customs and Border Protection may—

13 “(I) permit the party or agent, or a party other than the party or agent, to  
14 provide to U.S. Customs and Border Protection documentation or information  
15 with respect to merchandise in advance of entry of the merchandise; and

16 “(II) permit the importer of record or an agent of the importer of record to,  
17 using reasonable care, convert that documentation or information into a filing  
18 under subparagraph (B), subject to the certification requirement under subsection  
19 (d).

20 “(ii) TYPE OF DOCUMENTATION OR INFORMATION AND USAGE.—Documentation or  
21 information with respect to merchandise provided to U.S. Customs and Border  
22 Protection pursuant to regulations prescribed by the Secretary under clause (i) may be  
23 used by U.S. Customs and Border Protection for any lawful purpose.

24 “(iii) ACCURACY OF DOCUMENTATION AND INFORMATION.—

25 “(I) IN GENERAL.—A party providing documentation or information under  
26 clause (i)(I) shall ensure that the documentation or information is true and correct  
27 to the best of the knowledge and belief of the party, subject to any penalties  
28 authorized by law.

29 “(II) EXCEPTION.—The Secretary shall, in the regulations prescribed under  
30 clause (i), permit a party to provide to U.S. Customs and Border Protection  
31 documentation or information under clause (i)(I) on the basis of the reasonable  
32 belief of the party that the documentation or information is true and correct if the  
33 party is not reasonably able to verify the documentation or information.

34 “(iv) DEFINITION.—In this subparagraph, the terms ‘provide’, ‘providing’, and  
35 ‘provision’, with respect to documentation or information provided to U.S. Customs  
36 and Border Protection, include—

37 “(I) the submission or transmission of the information or documentation; and

38 “(II) any other method by which the information or documentation is made  
39 available or visible to U.S. Customs and Border Protection.”.

40 (c) Certification of Entry Filings.—Section 484(d) of the Tariff Act of 1930 is amended—

1 (1) in the subsection heading, by striking “Signing” and inserting “Certification”; and

2 (2) in paragraph (1)—

3 (A) by striking “Entries shall be” and all that follows through “transmission of data”  
4 and inserting “Each filing under subsection (a)(2)(B)”;

5 (B) by striking “his agent” and inserting “an agent of the importer of record”;

6 (C) by striking “his knowledge and belief” and inserting “the knowledge and belief  
7 of the importer of record or agent”; and

8 (D) by striking “The entry shall” and inserting “If exempt from electronic filing, the  
9 entry shall be signed by the importer of record or agent. The entry shall”.

10 (d) Technical Amendments.—Section 484 of the Tariff Act of 1930, as amended by this  
11 section, is further amended—

12 (1) in subsection (c)—

13 (A) in the first sentence, by striking “The Customs Service” and inserting “U.S.  
14 Customs and Border Protection”; and

15 (B) in the second sentence, by striking “officer of the Customs Service” and  
16 inserting “employee of U.S. Customs and Border Protection”;

17 (2) by striking “Bureau of Customs and Border Protection” each place it appears and  
18 inserting “U.S. Customs and Border Protection”; and

19 (3) by striking “the Customs Service” each place it appears and inserting “U.S. Customs  
20 and Border Protection”.

## 21 SEC. 103. USE OF MANDATORY ADVANCE 22 ELECTRONIC INFORMATION FOR CARGO.

23 Section 343 of the Customs Border Security Act of 2002 (19 U.S.C. 1415) is amended—

24 (1) in subsection (a)(3)(F), in the first sentence, by striking “shall be used exclusively”  
25 and all that follows through “entry” and inserting “may be used for any lawful purpose, as  
26 determined by the Secretary”; and

27 (2) by striking “the Customs Service” each place it appears and inserting “U.S. Customs  
28 and Border Protection”.

## 29 SEC. 104. MODIFICATION OF REQUIREMENTS FOR 30 SUBMISSION OF INFORMATION UNDER NATIONAL 31 CUSTOMS AUTOMATION PROGRAM.

32 Section 411 of the Tariff Act of 1930 (19 U.S.C. 1411) is amended—

33 (1) in subsection (b), in the second sentence, by striking “submission” and inserting  
34 “submission, transmission, or otherwise making available or visible”; and

35 (2) by striking “the Customs Service” each place it appears and inserting “U.S. Customs  
36 and Border Protection”.

## SEC. 105. EXPANSION OF RECORDKEEPING REQUIREMENTS RELATING TO IMPORTATION.

Section 508(a) of the Tariff Act of 1930 (19 U.S.C. 1508(a)) is amended—

(1) in paragraph (1)(B), by inserting “, directs, or facilitates” after “causes”;

(2) in paragraph (2), by striking “; or” and inserting a semicolon;

(3) in paragraph (3)—

(A) by striking “person whose” and inserting the following: “person—

“(A) whose”;

(B) by striking the semicolon and inserting “; or”; and

(C) by adding at the end the following:

“(B) that submits, transmits, or otherwise makes available or visible to U.S. Customs and Border Protection documentation or information under the customs and trade laws of the United States (as defined in section 2 of the Trade Facilitation and Trade Enforcement Act of 2015 (19 U.S.C. 4301)); or”;

(4) by inserting after paragraph (3) the following:

“(4) person that owns or operates a commercial or marketing platform or marketplace, through which merchandise imported into the United States is offered for sale or purchase in the United States;”; and

(5) in the flush text following paragraph (4), as so inserted, in subparagraph (A), by striking “this Act” and inserting “the customs and trade laws of the United States”.

## SEC. 106. EXPANSION OF AUTHORITY OF U.S. CUSTOMS AND BORDER PROTECTION TO OBTAIN INFORMATION RELATING TO IMPORTATION AND TRADE ENFORCEMENT.

(a) In General.—Section 509(a) of the Tariff Act of 1930 (19 U.S.C. 1509(a)) is amended—

(1) in the matter preceding paragraph (1), by striking “the laws” and all that follows through “charge)” and inserting the following: “the customs and trade laws of the United States (as defined in section 2 of the Trade Facilitation and Trade Enforcement Act of 2015 (19 U.S.C. 4301)) administered by U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement, the Secretary”;

(2) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking “except that” and inserting “and”;

(B) in subparagraph (A), by striking “by law” and all that follows through “Customs Service within” and inserting the following: “to be kept under section 508, the record shall be provided to the agency demanding the record within”; and



1 (C) in subparagraph (B), by striking “the demand” and all that follows and inserting  
2 the following: “the demand to the best of the person’s ability—

3 “(i) the person may be subject to penalty under subsection (g); and

4 “(ii) U.S. Customs and Border Protection may use an inference that is adverse  
5 to the interests of the person in—

6 “(I) ascertaining the correctness of any entry;

7 “(II) determining the liability of any person for—

8 “(aa) fines and penalties; and

9 “(bb) duty, fees, and taxes that may be due to the United States; and

10 “(III) promoting compliance with the laws of the United States;” and

11 (3) in paragraph (2)(A)—

12 (A) by redesignating clauses (ii), (iii), and (iv) as clauses (iii), (iv), and (v),  
13 respectively, and by moving such clauses, as so redesignated, 2 ems to the left;

14 (B) by striking “(A) the person who—” and all that follows through “Act),” and  
15 inserting the following:

16 “(A)(i) a person that imported, or knowingly caused to be imported, merchandise  
17 into the customs territory of the United States, or participated in, facilitated, or was  
18 otherwise connected or related to the importation of merchandise,

19 “(ii) a vehicle producer whose good is subject to a claim of preferential tariff  
20 treatment under the USMCA (as defined in section 3 of the United States-Mexico-  
21 Canada Agreement Implementation Act (19 U.S.C. 4502)),”;

22 (C) in clause (iii), as redesignated by subparagraph (A), by inserting “a person that”  
23 before “exported merchandise”;

24 (D) in clause (iv), as so redesignated—

25 (i) by inserting “a person that” before “transported”; and

26 (ii) by striking “storage, or” and inserting “storage;”;

27 (E) in clause (v), as so redesignated—

28 (i) by inserting “a person that” before “filed”; and

29 (ii) by striking “the Customs Service;” and inserting the following: “U.S.  
30 Customs and Border Protection, or submitted, transmitted, or otherwise made  
31 available or visible to U.S. Customs and Border Protection documentation or  
32 information under the customs and trade laws of the United States (as defined in  
33 section 2 of the Trade Facilitation and Trade Enforcement Act of 2015 (19 U.S.C.  
34 4301)) administered by U.S. Customs and Border Protection or U.S. Immigration  
35 and Customs Enforcement, or”; and

36 (F) by adding at the end the following:

37 “(v) a person that owns or operates a commercial or marketing platform or

1 marketplace through which merchandise imported into the United States is offered for  
2 sale or purchase in the United States;”.

3 (b) Definition of Records.—Section 509(d)(1)(A) of the Tariff Act of 1930 (19 U.S.C.  
4 1509(d)(1)(A)) is amended—

5 (1) in clause (i), by striking “; or” and inserting a semicolon;

6 (2) in clause (ii), by striking the period at the end and inserting “; or”; and

7 (3) by adding at the end the following:

8 “(iii) that pertain to nonpayment of all or a portion of any lawful duties, taxes,  
9 or fees that may be due to the United States.”.

10 (c) Identification of Records and Information.—Section 509(e) of the Tariff Act of 1930 (19  
11 U.S.C. 1509(e)) is amended to read as follows:

12 “(e) Identification of Records and Information.—The Commissioner of U.S. Customs and  
13 Border Protection shall prescribe regulations identifying the records and information required to  
14 be maintained and produced under subsection (a)(1)(A).”.

15 (d) Definition of Information.—Section 509(g)(1) of the Tariff Act of 1930 (19 U.S.C.  
16 1509(g)(1)) is amended by striking “subsection (a)(1)(A)” and inserting “section 508”.

17 (e) Technical Amendments.—Section 509 of the Tariff Act of 1930, as amended by this  
18 section, is further amended by striking “the Customs Service” each place it appears and inserting  
19 “U.S. Customs and Border Protection”.

## 20 SEC. 107. EXAMINATION AND TESTING OF 21 MERCHANDISE THAT INFRINGES INTELLECTUAL 22 PROPERTY RIGHTS.

23 (a) Expansion of Information That May Be Provided.—Section 628A of the Tariff Act of 1930  
24 (19 U.S.C. 1628a(a)) is amended—

25 (1) in the section heading, by striking “exchange of information related to trade  
26 enforcement” and inserting “examination and testing of merchandise that infringes  
27 intellectual property rights”;

28 (2) in the matter preceding paragraph (1), by inserting after “and testing” the following: “,  
29 may provide to the person”;

30 (3) in paragraph (1)—

31 (A) by striking “shall provide to the person”; and

32 (B) by striking “; and” and inserting a semicolon;

33 (4) in paragraph (2)—

34 (A) by striking “may” and all that follows through “the person” and inserting  
35 “subject to any applicable bonding requirements,”; and

36 (B) by striking the period at the end and inserting “; and”; and



(5) by adding at the end the following:

“(3) nonpublic information that has been provided to, or shared with, U.S. Customs and Border Protection about the merchandise generated by an online marketplace or other similar market platform, an express consignment operator, a freight forwarder, or any other entity that plays a role in the sale or importation, or facilitation of the sale or importation, of merchandise into the United States.”.

(b) Sharing of Importation Data Related to Trade Enforcement.—The Tariff Act of 1930 (19 U.S.C. 1304 et seq.) is amended by inserting after section 628A the following:

## “SEC. 628B. EXCHANGE OF SHIPMENT INFORMATION RELATED TO TRADE ENFORCEMENT.

“(a) In General.—Subject to subsection (c), and pursuant to regulations prescribed by the Secretary of the Treasury, the Commissioner of U.S. Customs and Border Protection may provide information about a shipment to a person described in subsection (b) if the Commissioner determines that—

“(1) the shipment is being imported into the United States in violation of section 526(e) of this Act or section 602, 1201(a)(2), or 1201(b)(1) of title 17, United States Code; or

“(2) sharing of information with respect to the shipment with a person described in subsection (b) would ensure that there is compliance with the customs and trade laws of the United States (as defined in section 2 of the Trade Facilitation and Trade Enforcement Act of 2015 (19 U.S.C. 4301)).

“(b) Person Described.—A person described in this subsection, with respect to a shipment described in subsection (a), is—

“(1) a person described in section 628A(b);

“(2) an online marketplace or other platform that facilitates the importation of merchandise into the United States or the sale of imported merchandise in the United States;

“(3) an express consignment operator;

“(4) a freight forwarder; or

“(5) any other entity that plays a role in the sale or importation, or facilitation of the sale or importation, of merchandise into the United States.

“(c) Exception.—The Commissioner may not provide information under subsection (a) to a person if providing that information would compromise an ongoing law enforcement investigation or national security.”.

## TITLE II—STRENGTHENING ENFORCEMENT AUTHORITIES

### SEC. 201. TREATMENT OF IMPORTATIONS INVOLVING SUSPENDED OR DEBARRED PERSONS.

(a) Importer of Record Program.—Section 114(b) of the Trade Facilitation and Trade

1 Enforcement Act of 2015 (19 U.S.C. 4320(b)) is amended—

2 (1) in paragraph (4), by striking “; and” and inserting a semicolon;

3 (2) in paragraph (5), by striking the period at the end and inserting “; and”; and

4 (3) by adding at the end the following:

5 “(6) takes measures to exclude persons that are suspended or debarred from doing  
6 business with the Federal Government and on the System for Award Management  
7 exclusions list described in section 9.404(b) of title 48, Code of Federal Regulations, and  
8 subpart E of part 180 of title 2, Code of Federal Regulations, or any successor to that list,  
9 from participating in the importer of record program for the duration of their suspension or  
10 debarment and inclusion on that list.”

11 (b) Administrative Exception for Importation Involving Suspended or Debarred Persons.—  
12 Section 321 of the Tariff Act of 1930 (19 U.S.C. 1321), as amended by section 101, is further  
13 amended by adding at the end the following:

14 “(d) Importations Involving Suspended or Debarred Persons.—The Secretary of the Treasury  
15 is authorized to prescribe regulations to make exceptions to any exemption provided for under  
16 subsection (a) for any merchandise the importation of which is caused or facilitated by a person  
17 suspended or debarred from doing business with the Federal Government and on the System for  
18 Award Management exclusions list described in section 9.404(b) of title 48, Code of Federal  
19 Regulations, and subpart E of part 180 of title 2, Code of Federal Regulations, or any successor  
20 to that list.”

21 (c) Entry Under Regulations.—Section 498(a)(1) of the Tariff Act of 1930 (19U.S.C.  
22 1498(a)(1)) is amended—

23 (1) in subparagraph (A), by striking “, but not more than \$2,500; or” and inserting a  
24 semicolon;

25 (2) in subparagraph (B), by striking the semicolon and inserting “; or”; and

26 (3) by adding at the end the following:

27 “(C) the importation is caused or facilitated by a person suspended or debarred from  
28 doing business with the Federal Government and on the System for Award  
29 Management exclusions list described in section 9.404(b) of title 48, Code of Federal  
30 Regulations, and subpart E of part 180 of title 2, Code of Federal Regulations, or any  
31 successor to that list;”

32 **SEC. 202. SEIZURE AND FORFEITURE AND**  
33 **DISPOSITION OF, AND EXPANDED LIABILITY FOR,**  
34 **MERCHANDISE BEARING A COUNTERFEIT MARK OR**  
35 **INFRINGING A COPYRIGHT.**

36 (a) Seizure and Forfeiture and Disposition.—Section 526(e) of the Tariff Act of 1930 (19  
37 U.S.C. 1526(e)) is amended to read as follows:

38 “(e) Seizure and Forfeiture and Disposition of Merchandise Bearing a Counterfeit Mark or

1 Infringing a Copyright.—

2 “(1) IMPORTED MERCHANDISE.—In the case of merchandise described in paragraph (2)—

3 “(A) such merchandise shall be seized or otherwise interdicted pursuant to such  
4 regulations as the Secretary shall prescribe; and

5 “(B) in the absence of the written consent of the owner of the mark or copyright  
6 being infringed—

7 “(i) such merchandise shall be summarily forfeited for violations of the  
8 customs laws; and

9 “(ii) title to such merchandise shall vest immediately in the United States.

10 “(2) MERCHANDISE DESCRIBED.—Merchandise described in this paragraph is—

11 “(A) merchandise bearing a counterfeit mark that is—

12 “(i) imported into the United States in violation of the provisions of section 42  
13 of the Lanham Act (15 U.S.C. 1124); or

14 “(ii) exported or sent from the United States or attempted to be exported or sent  
15 from the United States; or

16 “(B) merchandise that is imported into or exported from the United States in  
17 violation of section 602 of title 17, United States Code.

18 “(3) NOTICE OF INTERDICTION.—Upon interdiction of merchandise under paragraph (1),  
19 the Secretary shall, subject to such regulations as the Secretary shall prescribe, provide  
20 notice to the owner of the mark or copyright being infringed and to such other persons as  
21 the Secretary considers appropriate.

22 “(4) DISPOSITION OF MERCHANDISE.—After forfeiture of merchandise under paragraph  
23 (1)—

24 “(A) the Secretary shall destroy the merchandise; or

25 “(B) if the merchandise is not unsafe or a hazard to health, and the Secretary has the  
26 consent of the trademark owner, the Secretary may obliterate the mark where feasible  
27 and dispose of the merchandise—

28 “(i) by delivery to such Federal, State, and local government agencies as in the  
29 opinion of the Secretary have a need for such merchandise;

30 “(ii) by gift to such eleemosynary institutions as in the opinion of the Secretary  
31 have a need for such merchandise; or

32 “(iii) more than 90 days after the date of forfeiture, by sale by U.S. Customs  
33 and Border Protection at public auction under such regulations as the Secretary  
34 prescribes, except that before making any such sale the Secretary shall determine  
35 that no Federal, State, or local government agency or eleemosynary institution has  
36 established a need for such merchandise under clause (i) or (ii).

37 “(5) DEFINITION.—In this subsection:

38 “(A) COUNTERFEIT MARK.—The term ‘counterfeit mark’ means a mark that is

1 counterfeit within the meaning of section 45 of the Lanham Act (15 U.S.C. 1127).

2 “(B) LANHAM ACT.—The term ‘Lanham Act’ means the Act entitled ‘An Act to  
3 provide for the registration and protection of trademarks used in commerce, to carry  
4 out the provisions of certain international conventions, and for other purposes’,  
5 approved July 5, 1946 (commonly known as the ‘Trademark Act of 1946’ or the  
6 ‘Lanham Act’) (15 U.S.C. 1051 et seq.).

7 “(C) MARK.—The term ‘mark’ has the meaning given that term in section 45 of the  
8 Lanham Act (15 U.S.C. 1127).”.

9 (b) Expansion of Liability for Importing Merchandise Bearing a Counterfeit Mark or  
10 Infringing a Copyright.—Section 526(f) of the Tariff Act of 1930 (19 U.S.C. 1526(f)) is  
11 amended—

12 (1) in paragraph (1), by striking “aids or abets” and all that follows through “subsection  
13 (e)” and inserting “is in any way concerned in any unlawful activity described in subsection  
14 (e)”;

15 (2) in paragraph (2), by striking “such seizure” and inserting “seizure or interdiction  
16 under subsection (e)”;

17 (3) in paragraph (3), by striking “second seizure” and inserting “second seizure or  
18 interdiction under subsection (e),”; and

19 (4) in paragraph (4), by striking “the Customs Service” and inserting “U.S. Customs and  
20 Border Protection”.

## 21 SEC. 203. STREAMLINED DISPOSITION OF 22 MERCHANDISE SUBJECT TO ADMINISTRATIVE 23 EXEMPTIONS.

24 (a) In General.—Section 499 of the Tariff Act of 1930 (19 U.S.C. 1499) is amended by adding  
25 at the end the following:

26 “(d) Special Rules for Merchandise Subject to Administrative Exemptions.—

27 “(1) IN GENERAL.—In the case of detained merchandise subject to an administrative  
28 exemption under section 321(a)(2)(C), the following shall apply:

29 “(A) U.S. Customs and Border Protection shall provide notice under subsection  
30 (c)(2) to each party that appears to have an interest in the merchandise, based on  
31 information reasonably available to U.S. Customs and Border Protection, in such form  
32 and manner as the Secretary shall by regulation prescribe.

33 “(B) The notice required under subsection (c)(2) shall include, in addition to the  
34 information required by subparagraphs (A) through (E) of that subsection, notice that  
35 the party may voluntarily abandon the merchandise.

36 “(C) If U.S. Customs and Border Protection does not receive a response to the notice  
37 under subsection (c)(2) from a party by the date that is 15 days after the date of the  
38 notice—

1 “(i) the merchandise shall be deemed abandoned;

2 “(ii) title to the merchandise shall be vested in the United States; and

3 “(iii) the merchandise shall be disposed of in accordance with law.

4 “(2) NONAPPLICABILITY OF PROVISION RELATING TO FAILURE TO MAKE DETERMINATION.—  
5 Subsection (c)(5) does not apply with respect to detained merchandise subject to an  
6 administrative exemption under section 321(a)(2)(C).”.

7 (b) Technical Amendments.—Section 499 of the Tariff Act of 1930 (19 U.S.C. 1499) is  
8 amended—

9 (1) in subsection (b)—

10 (A) in paragraph (1), by striking “Customs Service laboratories” and inserting  
11 “laboratories of U.S. Customs and Border Protection”

12 (B) in paragraph (3), by striking “a Customs Service laboratory” and inserting “a  
13 laboratory of U.S. Customs and Border Protection”;

14 (2) by striking “The Customs Service” each place it appears and inserting “U.S. Customs  
15 and Border Protection”;

16 (3) by striking “the Customs Service” each place it appears and inserting “U.S. Customs  
17 and Border Protection”; and

## 18 SEC. 204. SUMMARY FORFEITURE OF CERTAIN 19 MERCHANDISE.

20 (a) Merchandise Imported or Exported Contrary to Law.—Section 596 of the Tariff Act of  
21 1930 (19 U.S.C. 1595a) is amended by adding at the end the following:

22 “(e) Summary Forfeiture.—The following merchandise may be summarily forfeited to the  
23 United States, subject to such regulations as the Secretary may prescribe:

24 “(1) Any merchandise—

25 “(A) that is—

26 “(i) subject to any restriction or prohibition on its importation under section 536  
27 or 801 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360mm and 381);  
28 and

29 “(ii) is not in compliance, as applicable, with the Federal Food and Drug  
30 Cosmetic Act (21 U.S.C. 301 et seq.) or section 351 or 361 of the Public Health  
31 Service Act (42 U.S.C. 262 and 264); and

32 “(B) seized under subsection (c)(2)(A).

33 “(2) Merchandise seized under subsection (c)(2)(C).”.

34 (b) Vessels, Vehicles, and Aircraft Used to Transport Merchandise Illegally.—Section 607 of  
35 the Tariff Act of 1930 (19 U.S.C. 1607) is amended—

36 (1) in subsection (a), in the flush text following paragraph (4), by inserting “subject to  
37 subsection (d),” before “the appropriate customs officer”; and

(2) by adding at the end the following:

“(d) Summary Forfeiture.—In the case of merchandise seized under section 526(e) or 596(e)—

“(1) the provisions of subsection (a) shall not apply; and

“(2) the merchandise may be summarily forfeited and title shall vest immediately in the United States pursuant to such regulations as the Secretary shall prescribe.”.

## SEC. 205. PROTESTS AGAINST DECISIONS OF U.S. CUSTOMS AND BORDER PROTECTION.

(a) Certain Determinations of U.S. Customs and Border Protection Not Subject to Administrative Protest.—

(1) IN GENERAL.—Section 514 of the Tariff Act of 1930 (19 U.S.C. 1514) is amended—

(A) in subsection (a)(4), by striking “a determination appealable” and inserting “any exclusion of merchandise from entry or delivery or a demand for redelivery on the basis of an order of the United States International Trade Commission issued”;

(B) by amending subsection (b) to read as follows:

“(b) Finality Unless Appealed to Court of International Trade.—With respect to determinations made under section 303 or title VII that are reviewable under section 516A, or determinations made under section 517 that are reviewable under section 517(g), determinations of U.S. Customs and Border Protection 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(a) or made under section 517 is commenced in the United States Court of International Trade, or review by a binational panel of a determination to which section 516A(g)(2) applies is commenced pursuant to section 516A(g).”; and

(C) by striking “the Customs Service” each place it appears and inserting “U.S. Customs and Border Protection”.

(2) CONFORMING AMENDMENT.—Section 517(h) of the Tariff Act of 1930 (19 U.S.C. 1517(h)) is amended—

(A) by striking “No determination” and inserting the following:

“(1) IN GENERAL.—Except as provided in paragraph (2), no determination”; and

(B) by adding at the end the following:

“(2) EXCEPTION.—Any liquidation or reliquidation of an entry in accordance with a determination under subsection (c) or review under subsection (f), if applicable, is not subject to protest under section 514.”.

(b) Electronic Notification.—Section 514(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1514(c)(3)) is amended, in the flush text following subparagraph (B), by inserting “or electronic transmission” after “mailing”.

## SEC. 206. MODIFICATION OF STANDARDS AND



## PENALTIES FOR FRAUD AND NEGLIGENCE.

(a) Standards for Fraud and Negligence.—Section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) is amended—

(1) in the section heading, by striking “, gross negligence,”; and

(2) in subsection (a)—

(A) in paragraph (1)—

(i) in the matter preceding subparagraph (A), by striking “, gross negligence,”;

(ii) in subparagraph (A)(ii), by striking “, or” and inserting a semicolon;

(iii) in subparagraph (B), by striking the period at the end and inserting “; or”;  
and

(iv) by adding at the end the following:

“(C) may direct or facilitate the entry or introduction of merchandise in violation of subparagraph (A).”;

(B) by adding at the end the following:

“(3) STANDARDS FOR FRAUD AND NEGLIGENCE.—

“(A) FRAUD.—A violation of paragraph (1) is by fraud if the violation results from an act (including the transmission of a statement or document to U.S. Customs and Border Protection) or omission, done knowingly or with deliberate ignorance or reckless disregard of the offender’s obligations to act in accordance with applicable provisions of law.

“(B) NEGLIGENCE.—A violation of paragraph (1) is by negligence if the violation results from an act (including the transmission of a statement or document to U.S. Customs and Border Protection) or omission done through the failure to exercise the degree of reasonable care—

“(i) to ensure that statements made and information provided in connection with the importation of merchandise are complete and accurate; or

“(ii) to perform any material act required by the customs and trade laws of the United States (as defined in section 2 of the Trade Facilitation and Trade Enforcement Act of 2015 (19 U.S.C. 4301)) or any regulation prescribed pursuant to such laws.”;

(3) in subsection (c)—

(A) by striking paragraph (2); and

(B) in paragraph (4)(B), by striking “or gross negligence”; and

(4) in subsection (e)—

(A) in the matter preceding paragraph (1), by inserting after “this section” the following: “, without regard to whether U.S. Customs and Border Protection asserts that the violation to which the penalty relates was done by fraud or negligence”;

1 (B) by striking paragraph (3); and

2 (C) by redesignating paragraph (4) as paragraph (3).

3 (b) Penalty Procedures.—Section 592(b) of the Tariff Act of 1930 (19 U.S.C. 1592(b)) is  
4 amended—

5 (1) in paragraph (1)—

6 (A) in subparagraph (A)—

7 (i) in clause (ii)—

8 (I) by striking “, or” and inserting a comma; and

9 (II) by inserting before the semicolon the following: “, or the direction or  
10 facilitation of the entry or introduction”;

11 (ii) in clause (v), by striking “, gross negligence,”; and

12 (B) by amending subparagraph (B) to read as follows:

13 “(B) EXCEPTIONS.—

14 “(i) IN GENERAL.—U.S. Customs and Border Protection is not required to issue  
15 a notice under subparagraph (A) if—

16 “(I) the importation with respect to which the violation of subsection (a)  
17 occurs is noncommercial in nature, or

18 “(II) the amount of the penalty in the penalty claim issued under paragraph  
19 (2) is less than the amount specified in clause (ii).

20 “(ii) AMOUNT SPECIFIED.—The amount specified in this clause is—

21 “(I) \$500,000; or

22 “(II) such higher amount as is established by the Secretary by regulation.”;

23 (2) by amending paragraph (2) to read as follows:

24 “(2) PENALTY CLAIM.—

25 “(A) DETERMINATION OF VIOLATIONS.—After considering representations, if any,  
26 made by a person U.S. Customs and Border Protection has reasonable cause to believe  
27 has violated subsection (a), U.S. Customs and Border Protection shall determine  
28 whether any violation of subsection (a) has occurred.

29 “(B) EFFECT OF NEGATIVE DETERMINATION.—If U.S. Customs and Border Protection  
30 determines under subparagraph (A) that a person described in that subparagraph did  
31 not violate subsection (a), U.S. Customs and Border Protection shall promptly issue a  
32 written statement of the determination to that person.

33 “(C) EFFECT OF AFFIRMATIVE DETERMINATION.—

34 “(i) ISSUANCE OF PENALTY CLAIM.—If U.S. Customs and Border Protection  
35 determines under subparagraph (A) that a person described in that subparagraph  
36 violated subsection (a), U.S. Customs and Border Protection shall issue a written  
37 penalty claim to that person.

1                   “(ii) CONTENTS.—A written penalty claim issued under clause (i) with respect  
2                   to a violation of subsection (a) shall specify—

3                   “(I) the information described in clauses (i) through (vi) of paragraph  
4                   (1)(A); and

5                   “(II) if a notice was issued under paragraph (1)(A) with respect to the  
6                   violation, any changes to the information described in clauses (i) through (vi)  
7                   of that paragraph.

8                   “(D) OPPORTUNITY TO MAKE REPRESENTATIONS.—

9                   “(i) IN GENERAL.—Except as provided by clause (iii), a person to which U.S.  
10                  Customs and Border Protection issues a penalty claim under subparagraph (C)  
11                  shall have a reasonable opportunity under section 618 to make representations,  
12                  both oral and written, seeking remission or mitigation of the monetary penalty.

13                  “(ii) FINAL DETERMINATION.—At the conclusion of any proceeding under  
14                  section 618 described in clause (i), U.S. Customs and Border Protection shall  
15                  provide to the person to which U.S. Customs and Border Protection issued a  
16                  penalty claim a written statement (which may be issued electronically) that sets  
17                  forth the final determination and the findings of fact and conclusions of law on  
18                  which that determination is based.

19                  “(iii) VIOLATIONS BY FRAUD.—A penalty for a violation of subsection (a) by  
20                  fraud may be enforced in the United States Court of International Trade without  
21                  the issuance of a notice under paragraph (1)(A) or an administrative proceeding  
22                  under section 618.”.

23                  (c) Technical Amendment.—Section 592 of the Tariff Act of 1930 (19 U.S.C. 1592), as  
24                  amended by this subsection, is further amended by striking “the Customs Service” each place it  
25                  appears and inserting “U.S. Customs and Border Protection”.

## 26                  SEC. 207. EXPANSION OF LIABILITY FOR CERTAIN 27                  VIOLATIONS OF CUSTOMS LAWS.

28                  (a) Arrival, Reporting, Entry, and Clearance Requirements.—Section 436 of the Tariff Act of  
29                  1930 (19 U.S.C. 1436) is amended—

30                         (1) in subsection (b), by inserting after “subsection (a)” the following: “, or any person  
31                         who is directly or is in any way concerned in any unlawful act listed in subsection (a),”;

32                         (2) in subsection (d)—

33                                 (A) in the first sentence, by inserting after “aircraft pilot” the following: “, or any  
34                                 person who is directly or is in any way concerned in the improper reporting or entry,”;  
35                                 and

36                                 (B) in the second sentence, by inserting after “pilot” the following: “, or any person  
37                                 directly or indirectly responsible for the controlled substance being in the  
38                                 merchandise,”.

39                  (b) Aiding Unlawful Importation and Exportation.—Section 596 of the Tariff Act of 1930 (19

1 U.S.C. 1595a) is amended—

2 (1) by amending subsection (b) to read as follows:

3 “(b) Penalty.—

4 “(1) IN GENERAL.—A person is liable for a penalty equal to the value of an article or  
5 articles introduced or attempted to be introduced into the United States contrary to law if the  
6 person directs, assists financially or otherwise, or is in any way concerned in—

7 “(A) the importation, introduction, bringing in, unlading, landing, removal,  
8 concealing, harboring, or subsequent transportation of the article or articles; or

9 “(B) the attempted importation, introduction, bringing in, unlading, landing,  
10 removal, concealing, harboring, or subsequent transportation of the article or articles.

11 “(2) SEIZURE NOT REQUIRED.—The penalty specified in paragraph (1) applies with respect  
12 to a person described in that paragraph without regard to whether the article or articles  
13 described in that paragraph were seized.”; and

14 (2) in subsection (d)—

15 (A) by striking “Merchandise exported” and inserting the following: Merchandise  
16 Exported Contrary to Law.—

17 “(1) IN GENERAL.—Merchandise exported”;

18 (B) by striking “shall” and inserting “may”; and

19 (C) by adding at the end the following:

20 “(2) PENALTY.—

21 “(A) IN GENERAL.—A person that directs, assists financially or otherwise, or is in  
22 any way concerned in, the exportation or sending from the United States or the  
23 attempted exportation or sending from the United States of merchandise contrary to  
24 law is liable for a penalty equal to the domestic value of the merchandise.

25 “(B) SEIZURE NOT REQUIRED.—The penalty specified in subparagraph (A) applies  
26 with respect to a person described in that subparagraph without regard to whether the  
27 merchandise exported or sent or attempted to be exported or sent from the United  
28 States contrary to law was seized.”.

29 **SEC. 208. PROCEDURES FOR INVESTIGATING CLAIMS**  
30 **OF EVASION OF ANTIDUMPING AND**  
31 **COUNTERVAILING DUTY ORDERS.**

32 Section 517(b) of the Tariff Act of 1930 (19 U.S.C. 1517(b)) is amended—

33 (1) in paragraph (2), in the matter preceding subparagraph (A), by striking “a person has  
34 entered covered merchandise” and inserting “covered merchandise has been entered”; and

35 (2) by adding at the end the following:

36 “(8) IDENTIFICATION OF IMPORTER.—If the Commissioner determines under subsection  
37 (e) that there is a reasonable suspicion that covered merchandise was entered into the

1 customs territory of the United States through evasion, the identity of the importer of the  
2 covered merchandise shall not be considered confidential information that is protected from  
3 public disclosure, regardless of whether the allegation described in paragraph (2) identifies  
4 the importer.”.

## 5 SEC. 209. OBSTRUCTION OF INVESTIGATIONS.

6 Section 592 of the Tariff Act of 1930 (19 U.S.C. 1592) is amended by adding at the end the  
7 following:

8 “(m) Obstruction of Investigations.—

9 “(1) IN GENERAL.—No person, with the intent of avoiding payment of a duty, tax, fee, or  
10 penalty owed or obstructing or influencing the investigation or proper administration of any  
11 investigation by U.S. Customs and Border Protection into the payment of a duty, tax, fee, or  
12 penalty owed, may alter, destroy, mutilate, conceal, cover up, falsify, or make a false entry  
13 in any record, document, or tangible object, or transfer, or otherwise conceal or disguise  
14 funds or assets.

15 “(2) PENALTY.—

16 “(A) IN GENERAL.—A person that violates paragraph (1) is liable for a civil penalty  
17 in an amount not to exceed the greater of—

18 “(i) the value of any concealed funds or altered assets; or

19 “(ii) an amount that is 3 times the amount of the duty, tax, fee, or penalty  
20 described in paragraph (1).

21 “(B) ADVERSE INFERENCE.—The Commissioner of U.S. Customs and Border  
22 Protection may make an inference that is adverse to the interests of a person that  
23 violates paragraph (1) in any investigation into the payment of a duty, tax, fee, or  
24 penalty described in that paragraph.

25 “(3) STANDARD OF PROOF AT COURT OF INTERNATIONAL TRADE.—In any action at the  
26 United States Court of International Trade relating to a violation of paragraph (1), the  
27 United States shall have the burden of proof to establish the act or omission constituting the  
28 violation by clear and convincing evidence.”.