

panying the merchandise, the failure to exercise reasonable care described in subparagraph (A) shall be considered when the Customs Service determines whether the importer of record is in violation of section 1484(a) of this title.

**(3) “Country” defined**

For purposes of this subsection, the term “country” means a foreign country or territory, including any overseas dependent territory or possession of a foreign country.

(June 17, 1930, ch. 497, title IV, § 592A, as added Pub. L. 103-465, title III, § 333, Dec. 8, 1994, 108 Stat. 4947; amended Pub. L. 104-295, § 20(c)(3), Oct. 11, 1996, 110 Stat. 3528.)

AMENDMENTS

1996—Subsec. (a)(3). Pub. L. 104-295 substituted “list under paragraph (1)” for “list under paragraph (2)”.

EFFECTIVE DATE

Section effective on the date on which the WTO Agreement enters into force with respect to the United States (Jan. 1, 1995), see section 335 of Pub. L. 103-465, set out as a note under section 3591 of this title.

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(l), 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. For establishment of U.S. Customs and Border Protection in the Department of Homeland Security, treated as if included in Pub. L. 107-296 as of Nov. 25, 2002, see section 211 of Title 6, as amended generally by Pub. L. 114-125, and section 802(b) of Pub. L. 114-125, set out as a note under section 211 of Title 6.

**§ 1593. Repealed. June 25, 1948, ch. 645, § 21, 62 Stat. 862, eff. Sept. 1, 1948**

Section, act June 17, 1930, ch. 497, title IV, § 593, 46 Stat. 751, related to smuggling and clandestine importations. See section 545 of Title 18, Crimes and Criminal Procedure.

**§ 1593a. 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 sys-

tem 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 1618 of this title to make representations, both oral and written, seeking remission or mitigation of the monetary penalty. At the conclusion of any pro-