A BILL FOR AN ACT

To further amend chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, Public Law No. 13-60, Public Law No. 15-58, by amending section 211, by adding new definitions under section 212, by repealing sections 213, 221, 222, 223, 224, 225, 226, 227, 266, 267, 268, 269 and 270, and enacting new sections 221, 222, 223, 224, 225, 226 and 227, and amending sections 241 to 265 of subchapter III of chapter 2, for the purpose of establishing a National Value Added Tax Act of 2010, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

Section 1. Chapter 2 of title 54 of the Code of the Federated States of Micronesia is hereby further amended to be cited as “National Value Added Tax Act of 2010”.

Section 2. Section 211 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

"Section 211. Short Title. This chapter may be cited as the “National Value Added Tax Act of 2010”.

Section 3. Section 212 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

"Section 212. Definitions. In this chapter, except where otherwise specified, the following terms have the meaning stated below:

(1) ‘Ad valorem’ (Latin for “according to the value”) means a tax imposed at a rate equal to a percentage of value.

(2) ‘Aircraft’ includes airplanes, seaplanes,
airships, balloons or any other means of aerial locomotion.

(3) ‘Airport’ means an official port of entry for aircraft as identified in or pursuant to Title 18 of this code and amendments thereto.

(4) “Approved form” means a form approved by the Secretary of Finance.

(5) “Arrival” means the first time goods or passengers become subject to Customs control within the FSM or any subsequent time before reaching their final destination.

(6) “Cannabis” means a cannabis plant, whether living or dead, which includes, in any form, any flowering or fruiting tops, leaves, seeds, stalks or any other part of a cannabis plant and any mixture of parts of a cannabis plant.

(7) “CIF” means “costs, insurance, and freight” incurred for imported goods, and includes all costs and charges associated with the goods up through the time they are delivered to and unloaded at an FSM port of entry or post office. “Cannabis” means a cannabis plant, whether living or dead, which includes, in any form, any flowering or fruiting tops, leaves, seeds, stalks or any other part of a cannabis plant and any
mixture of parts of a cannabis plant.

(8) [“Commissioner” means the Commissioner of Customs.] “CEO” means the Chief Executive Officer appointed under section 731 of this Title.

(8) [“Congress” means the Congress of the FSM.] (9) “CIF” means “costs, insurance, and freight” incurred for imported goods, and includes all costs and charges associated with the goods up through the time they are delivered to and unloaded at an FSM port of entry or post office.

(10) [“Container” means an article of transport equipment:]

   (a) of a permanent character and accordingly strong enough to be suitable for repeated use;

   (b) specially designed to facilitate the transport of goods, by one or more modes of transport, without intermediate reloading; and

   (c) designed to be secured and/or readily handled, having corner fittings for these purposes.

   (d) in addition, the following shipping term used with containers has the following meaning:

   (i) “CY-CY” means all the goods packed in the container are for the one consignee and the container is consigned from container yard to another container yard and will not normally be unpacked at the
“Congress” means the Congress of the FSM.

(11) [“Controlled substance” means those described in sections 1119, 1121, 1123, 1125, and 1127 of title 11 of this code or successor provision of law.] “Container” means an article of transport equipment:

(a) of a permanent character and accordingly strong enough to be suitable for repeated use;

(b) specially designed to facilitate the transport of goods, by one or more modes of transport, without intermediate reloading; and

(c) designed to be secured and/or readily handled, having corner fittings for these purposes.

(d) in addition, the following shipping term used with containers has the following meaning:

(i) “CY-CY” means all the goods packed in the container are for the one consignee and the container is consigned from container yard to another container yard and will not normally be unpacked at the wharf.

(11) [“Customs” means the FSM Department of Finance, Division of Customs.] (12) “Controlled substance” means those described in sections 1119, 1121, 1123, 1125, and 1127 of title 11 of this code or successor provision of law.
"Customs officer" means a [person:]

(a) employed by the FSM Department of Finance, Division of Customs;

(b) authorized in writing by the Secretary under this chapter to perform all of the functions of a Customs officer; or

(c) deputized in accordance with the provisions of section 268 of this chapter.

revenue officer appointed under section 732 authorized in writing by the CEO under this chapter to perform all of the functions of a Customs officer, [and includes a person] deputized in accordance with the provisions of section 263 of this chapter.

"Duty" means any tax payable on the importation of goods, and "dutiable goods" means those goods subject to tax on their importation.

"Exempt import" has the meaning in section 222.

"FOB" ("free on board") means the value of goods when shipped for export, and includes all costs and charges up to the time of delivery of the goods on board the exporting vessel or aircraft.

"Forfeiture" means the surrender of ownership of property to the FSM government following a breach of certain provisions of this chapter; it is independent of and in addition to any penalty imposed by this chapter.
“FSM” means the Federated States of Micronesia.

“Importer” means any person by or for whom any goods are imported, and includes the consignee and any other person who is beneficially interested in the goods. “Goods” means any type of merchandise, product, commodity, vehicle, moveable personal property, or commercial wares.

“Master” means:

(a) In relation to a vessel the person in charge or command of the vessel;

(b) In relation to an installation the person in charge of the installation.

“Import value”, in relation to imported goods, means the import value of the goods as determined under section 224.”

“Narcotic drug” means those described in subsection (15) of section 1112 of title 11 of this code or successor provision of law. “Importer”, in relation to goods, means the owner of the goods, any person by or for whom any goods are imported, and includes the consignee and any other person who is beneficially interested in the goods.

“On or about the body” means on or within the body, clothing, footwear, purse, handbag, or similar article. “Master” means:
(a) In relation to a vessel the person in charge or command of the vessel;

(b) In relation to an installation the person in charge of the installation.

(23) ["Owner" means:

(a) In respect to goods, any person being or holding himself or herself out to be the owner, importer, exporter, consignee, agent or person possessed of, or having control of, or power of disposition over the goods;

(b) In respect of a vessel or aircraft, the owner of record, or a person acting as agent on behalf of the owner of record.] "Narcotic drug" means those described in subsection (15) of section 1112 of title 11 of this code or successor provision of law.

(24) ["Package" includes every means by which goods for transportation may be cased, covered, enclosed, contained, or packed.] "National VAT" means value added tax imposed under section 221.

(25) ["Person" means any individual, company, corporation, partnership, unincorporated association, or other business entity.] "On or about the body" means on or within the body, clothing, footwear, purse, handbag, or similar article.

(26) ["Pilot" means the person in charge or in command
of an aircraft.] “Owner” means:

(a) In respect to goods, any person being or holding himself or herself out to be the owner, importer, exporter, consignee, agent or person possessed of, or having control of, or power of disposition over the goods;

(b) In respect of a vessel or aircraft, the owner of record, or a person acting as agent on behalf of the owner of record.

(27) [“Place” means any location, building or site, and includes moveable locations such as a vessel or aircraft.] “Package” includes every means by which goods for transportation may be cased, covered, enclosed, contained, or packed.

(28) [“Port” or “Port of entry” means an official port of entry identified in or pursuant to title 18 of this code and amendments thereto.] “Person” means any individual, company, corporation, partnership, unincorporated association, or other business entity.

(29) [“President” means the President of the FSM.] “Pilot” means the person in charge or in command of an aircraft.

(30) [“Prohibited goods” means any goods the importation or exportation of which is prohibited under FSM law.] “Place” means any location, building or site,
and includes moveable locations such as a vessel or aircraft.

(31) [“Regulations” means any regulations promulgated pursuant to this chapter.] “Port” or “Port of entry” means an official port of entry identified in or pursuant to title 18 of this code and amendments thereto.

(32) [“Secretary” means the Secretary of the FSM Department of Finance.] “President” means the President of the FSM.

(30) (33) [“Smuggling” means any importation or exportation, attempted importation or exportation, with the intent to defraud the FSM.] “Prohibited goods” means any goods the importation or exportation of which is prohibited under FSM law.

(31) (34) [“Stamp” means device or instrument used by a Customs officer to make a distinctive impression or imprint, to identify and evidence the clearance of imported or exported goods and the clearance of vessels or aircraft.] “Regulations” means any regulations promulgated pursuant to this chapter.

(32) (35) [“Unlawfully imported, exported, or carried goods” means any smuggled goods and any goods imported, exported, or carried in breach of the provisions of this chapter, or any other law of the FSM, or whose sale,
possession or use is prohibited or contrary to restrictions imposed by the State into which the importation took place. The above defined phrase carries a like meaning wherever similarly stated in this chapter."

"Secretary" means the Secretary of the FSM Department of Finance.

(33) (36) "Vehicle" means every description of motorized carriage or other contrivance used or capable of being used as a means of transport on land. "Smuggling" means any importation or exportation, attempted importation or exportation, with the intent to defraud the FSM.

(34) (37) "Stamp" means device or instrument used by a Customs officer to make a distinctive impression or imprint, to identify and evidence the clearance of imported or exported goods and the clearance of vessels or aircraft.

(35) (38) "Taxable Amount" has the meaning as defined in section 225.

(39) "Taxable import" means an import of goods other than a VAT-exempt import.

(40) "Unlawfully imported, exported, or carried goods" means any smuggled goods and any goods imported, exported, or carried in breach of the provisions of this chapter, or any other law of the FSM, or whose sale, possession or use is prohibited or contrary to
restrictions imposed by the State into which the
importation took place. The above defined phrase
carries a like meaning wherever similarly stated in this
chapter.

(36) (41) "VAT-exempt import" means -
(a) an exempt import; and
(b) an import of goods that, if supplied in the
State into which the goods have been imported, the
supply would be an exempt or VAT-free under the Value
Added Tax Act of the State.

(42) "Vehicle" means every description of motorized
carriage or other contrivance used or capable of being
used as a means of transport on land.”

Section 4. Section 213 of chapter 2 of Title 54 of the Code
of the Federated States of Micronesia, as amended by Public Law
No. 9-139 is hereby repealed in its entirety.

Section 5. Sections 221, 222, 223, 224, 225, 226 and 227 of
chapter 2 of title 54 of the Code of the Federated States of
Micronesia are hereby repealed in their entirety.

Section 6. Title 54 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new Section 221 of
chapter 2 entitled “Imposition of National VAT” as follows:

“Section 221. Imposition of National VAT.

(1) Value added tax (referred to as “National VAT”)
(2) The National VAT payable on a taxable import is [10\%] of the taxable amount.

(3) Subject to this Chapter, the National VAT on a taxable import is payable by the importer at the time of import.

(4) An import of goods occurs –

(a) if the goods come under Customs control under section 234, on the date on which they first come under Customs control; or

(b) in any other case, on the date the goods are brought into the FSM.”

Section 7. Title 54 of the Code of the Federated States of Micronesia is hereby amended by enacting a new Section 222 of chapter 2 entitled “Exempt Import” as follows:

“Section 222. Exempt Import.

(1) The following imports are exempt imports –

(a) an import of goods for transshipment through FSM, if the goods are –

(i) not to be used in FSM;

(ii) securely stored while in FSM; and

(iii) exported from FSM within a reasonable time of import into FSM as determined under regulations;

(b) subject to subsection (4), an import of goods accompanying a person arriving by sea or air into FSM if the goods are for the person’s own personal use or
consumption subject to the following limitations—

(i) up to 200 cigarettes;

(ii) up to one pound of tobacco or twenty cigars;

(iii) up to 52 fluid ounces or 1500 milliliters of distilled alcoholic beverages; and

(iv) up to two hundred dollars ($200) worth of goods, other than goods covered by paragraphs (i)–(iii)

(c) an import of goods as bona fide personal effects by a visitor to FSM if the goods are for the visitor’s own personal use and are to be removed from FSM with the visitor when he or she leaves FSM;

(d) an import of goods if the import is not permitted to be subject to tax in FSM under an international agreement but only to the extent provided for in the agreement, provided that if and when such goods are subsequently sold in the FSM, National VAT shall be due based on the sale amount;

(e) an import of a fishing vessel the subject of a valid permit or license issued pursuant to Title 24 of this Code, and replacement parts and equipment for such vessel;

(f) an import of goods by mail if the value of the import does not exceed the amount
specified in paragraph (b)(iv); and

(g) an import of goods by a diplomatic or consular mission, or by a diplomat or member of the diplomat’s family forming part of the diplomat’s household in the FSM if the import is not permitted to be subject to tax in FSM under the provisions of FSMC Title 10, Chapter 2 International Organization Immunities but only to the extent provide for in that Title.

(h) an import of health, education and welfare related goods donated for humanitarian use. Upon application to and approval by the CEO, the National VAT on goods related to health, education or welfare donated without cost for humanitarian purposes, and not for resale, shall be waived or refunded; provided, however, that if and when any of such goods are subsequently sold in the FSM, National VAT shall be due based on the sale amount.

(2) An import of goods that would be an exempt import under subsection (1)(a) except that they were not exported within a reasonable time as determined under regulations is still treated as exempt import but the importer is subject to a penalty equal to one-quarter of the National VAT that would have been paid if the goods were to be used in FSM.
(3) Goods that are imported for transshipment through FSM but which are removed from the secure storage facility or otherwise used in FSM are subject to National VAT under section 221.

(4) Subsection (1)(b)(i)-(iii) does not apply to a person who is not permitted under applicable State law to possess, use, and consume the goods listed in those sub-paragraphs.”

Section 8. Title 54 of the Code of the Federated States of Micronesia is hereby amended by enacting a new Section 223 of chapter 2 entitled “Temporarily Imported Goods” as follows:

“Section 223. Temporarily Imported Goods.

(1) Upon application to, and approval by the Secretary, the National VAT paid on temporarily imported goods is refunded to the importer.

(2) Temporarily imported goods are eligible for a refund of National VAT when the finished goods that the imported goods were processed into have been loaded on an aircraft or vessel for direct removal from FSM and the aircraft or vessel has departed FSM.

(3) If temporarily imported goods have been loaded on an aircraft or ship for removal from FSM but are subsequently unloaded or used in FSM, the goods are liable for National VAT.

(4) If an importer is engaged in the business of
importing temporarily imported goods, an import of
temporarily imported goods is, upon application to, and
approval by the Secretary, treated as an exempt import.

(5) The burden of proving that goods imported are for
subsequent export is on the importer/ exporter as
specified in regulations.”

Section 9. Title 54 of the Code of the Federated States of
Micronesia is hereby amended by enacting a new Section 224 of
chapter 2 entitled “Import Value” as follows:

“Section 224. Import Value.

(1) Subject to this section, the “import value” of
goods imported into FSM is the CIF price of the goods.

(2) If the CEO cannot reasonably determine the CIF
price of imported goods, the import value shall be
determined by the first of the following methods which
is reasonably available to the CEO:

   (a) FOB price plus actual insurance, freight, and
   other charges from the FOB location to the CIF location;

   (b) The value of identical goods at the CIF
   location; or

   (c) The value of identical goods at an earlier
   point plus actual insurance, freight, and other charges
   from that point to the CIF location.

(3) If the CEO cannot determine the CIF price or its
equivalent through one of the foregoing methods, the
import value shall be determined by the appraisement, the cost of which shall be borne by the owner.

(4) No deduction of any kind shall be allowed from the CIF price because of any special or sample discount, or on account of any other consideration by which a special reduction in price has been or might be obtained.

(5) Where there is a relationship between the buyer and seller of imported goods the consignee may be required to provide reasonable proof that the relationship did not influence the price paid or payable for the goods.

(a) To demonstrate the acceptability of the price paid or payable for the goods, the consignee shall supply to the CEO details of:

(i) The way in which the buyer and seller organize their commercial relationship;

(ii) The way in which the price in question was arrived at; and

(iii) The price of identical merchandise, or similar merchandise, in sales to unrelated buyers in the FSM.

(b) Where the CEO determines that the relationship has influenced the price paid or payable, the CIF price shall be determined by appraisement, the cost of which shall be borne by the owner.
(6) If the CIF or FOB price of an import of goods is stated other than in United States dollars, the price must be translated to United States dollars at the ruling exchange rate at the time of import.

(7) If goods are re-imported after being exported for the purpose of undergoing repair, renovation, or improvement, and the form or character of the goods has not changed, the import value is the amount of the increase in value of the goods as a result of the repair, renovation, or improvement.”

Section 10. Title 54 of the Code of the Federated States of Micronesia is hereby amended by enacting a new Section 225 of chapter 2 entitled “Taxable Amount” as follows:

“Section 225. Taxable Amount. The Taxable amount of a taxable import for the purposes of section 221(2) is the sum of –

(a) the import value as defined in section 224;

(b) to the extent not included under paragraph (a), the cost of services that are ancillary or incidental to the import; and

(c) the amount of any import duty or other fiscal charge (other than National VAT) payable in respect of the import.”

Section 11. Title 54 of the Code of the Federated States of Micronesia is hereby amended by enacting a new Section 226 of
chapter 2 entitled "Lien on importer’s property" as follows:

"Section 226. Lien on importer’s property. The personal liability of an importer provided for in this chapter shall be secured by a lien on any personal property of that importer having priority over all other claims and liens, with the exception of liens imposed pursuant to subsection (2) of section 135 of this title, and may be collected by levy upon such property in the same manner as the levy of an execution. The amount that an importer is liable for under this section is treated as if it were tax payable by the importer for the purposes of Subchapters V and VI of Chapter 8, and section 891 of this Title."

Section 12. Title 54 of the Code of the Federated States of Micronesia is hereby amended by enacting a new Section 227 of chapter 2 entitled "Civil penalties and interest" as follows:

"Section 227. Civil penalties and interest. The following penalties and interest shall be separate from and in addition to the criminal penalties imposed elsewhere in this chapter. It is the duty of an importer to know and declare, fully and accurately, the types, quantities, and values of all dutiable goods which he or she imports, and civil penalties and interest may not be avoided through lack of knowledge, however innocent such lack of knowledge may be."
(1) **Understatement.** If the amount of duty and or National VAT due on goods is understated when reasonably calculated on the basis of the documentary and other information provided to Customs officers, there shall be added to the amount of the understatement a penalty equal to the following percentage of the amount of the understatement:

(a) 100% if the understatement is discovered by Customs officials before release of the goods;

(b) 100% if the understatement is discovered and reported to Customs by an importer or owner and the full and correct duty and or National VAT, including penalties and interest, is paid within 10 days after release of the goods; or

(c) 200% otherwise.

(2) **Late payment.** Unless goods are entered and the duty and or National VAT thereon is paid within the time limit for entry established in section 238 of this chapter, there shall be added to the amount of duty and or National VAT due five percent of the duty and or National VAT if the failure is for not more than one month, with an additional five percent for each additional month or fraction thereof during which such failure continues, not to exceed 100% in the aggregate.

(3) **Interest.** Any duty and or National VAT which is
not paid before the earlier of the time limit for entry
or release of the goods shall thereafter bear interest
at the rate of 18% per annum until paid.”

Section 13. Section 231 of chapter 2 of Title 54 of the Code
of the Federated States of Micronesia, as amended by Public Law
No. 9-139, is hereby further amended to read as follows:

“Section 231. Administration of Customs.

(1) The CEO may designate officers appointed under
section 732 as Customs officers.

(2) Customs locks and seals.

(a) Official locks and seals. All courts and all
persons shall take notice of any official lock or seal
used by an officer during the course of his/her duties
and shall presume, until shown otherwise, that the lock
or seal was fastened by the proper authority.

(b) National offense. Any person who willfully
disregards, alters, breaks, or interferes with a
lawfully affixed Customs lock or seal is guilty of a
National offense.

(c) Penalty. A person convicted under this
subsection shall be subject to a fine not exceeding
$1,000, or imprisonment of not more than one year, or
both.

(3) Customs stamps.

(a) Stamped impression. All courts and all
persons shall take notice of a stamped impression made by an officer during the course of his/her duties and shall presume, until shown otherwise, that the impression was made by the proper authority.

(b) National offense. Any person who willfully disregards, alters or attempts to alter, or unlawfully duplicates a Customs stamp is guilty of a National offense.

(c) Penalty. A person convicted under this subsection shall be subject to a fine not exceeding $1,000, or imprisonment of not more than one year, or both.

(4) Working days and hours. The working days and hours of the Authority are Monday through Friday, 8 a.m. through 5 p.m., except for National holidays.

(a) Except when the working of overtime is authorized in advance by the CEO, cargo should be cleared and passengers landed from vessel or aircraft only on working days and during working hours.

(b) Any person may request that the CEO arrange for an officer to be made available to perform a function at a place outside of the hours prescribed under paragraph (a) above. Such person shall pay to the FSM Government such fee as is set by the CEO, reflecting the cost of making officers available.
(5) **Insurance.** The CEO is authorized to provide insurance coverage for Customs officers who undertake hazardous duties.

(6) **Customs officers’ authority to arrest.**

(a) When authorized by the CEO, a Customs officer shall have the authority given to a police officer under section 211 of title 12, or successor provision of law, to make an arrest without warrant for an offense defined under this chapter.

(b) The CEO shall, on consultation with the Secretary of Justice, establish procedures for arrest and disposition of criminal suspects by Customs officers.”

Section 14. Section 232 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

“**Section 232. Duties of controlling authorities.**

(1) The controlling authority of every port, airport or transit building shall provide and maintain at the port, airport or transit building, to the satisfaction of the CEO the following:

(a) staff accommodation and facilities for the use of Customs officers, at such place or places as the CEO may direct; and

(b) suitable transit buildings as the CEO may
declare as necessary in respect to the port or airport, together with suitable weighing appliances for use by Customs officers.

(2) The controlling authority of every port, airport or transit building shall store goods subject to the control of Customs in such manner and place as the CEO may direct.”

Section 15. Section 233 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

“Section 233. Cooperation with other National and State authorities.

The CEO is authorized to enter into Memorandums of Understanding with other National and State authorities to allow the Authority to provide assistance in the enforcement of any National or State law.

(1) Statistics.

(a) The Authority is responsible for the collection of statistical data on the importation and exportation of goods and providing this information to the Division of Statistics.

(b) The CEO is authorized to introduce classification schedules and associated computer software to assist with this function.

(2) Quarantine. The CEO may accept an appointment
made by the Secretary of the FSM Department of Resources and Development, regarding the empowering of Customs officers to perform agriculture quarantine inspections, pursuant to section 407 of title 22 of this code or any successor provision.

(3) Food safety. The CEO may accept an appointment by the Secretary of the FSM Department of Health Services regarding the empowering of Customs officers to perform food safety inspections pursuant to 41 F.S.M.C. 1013 (National Food Safety Act) or any successor provision.

(4) Immigration. The CEO may accept an appointment made by the FSM Department of Justice regarding the empowering of Customs officers to perform immigration inspections pursuant to section 108 of title 50 of this code or any successor provision.

(5) Community, social, environmental and antiquities protection. The Authority will monitor imports and exports on behalf of other National and State agencies to ensure compliance with legislation and international agreements, ratified by the FSM, dealing with community, social, environmental and antiquities protection.”

Section 16. Section 234 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

“Section 234. Customs control of goods.
(1) **Goods subject to Customs control:**

   (a) Imported goods, from the time of their importation until applicable duty and National VAT are paid and the goods are released or until their exportation to any country outside of the FSM.

   (b) All goods for export, from the time such goods are brought to any port, airport or other place for export until their exportation to any country outside of the FSM.

   (c) Goods imported or exported through the Post Office are subject to the control of the Customs in the same manner as goods otherwise imported or exported.

(2) **Non-routine examinations.** Where, for the purposes of section 235 of this chapter, examination at the dock or airport is impracticable, shipments may, subject to approval by a customs officer of a written undertaking in the approved form, be removed to the owner’s premises for examination.

(3) **CY-CY Containers.**

   (a) CY-CY container shipments or similar shipments may be delivered to a final destination other than the dock, upon the approval of a Customs officer.

   (b) The consignee shall notify the Authority of the delivery of the shipment and shall not open the
container without the approval of a Customs officer.

(c) Customs officers shall be given access to any CY-CY container or similar shipment at the owner’s premises for the purposes of any section of this chapter.

(4) Removal of goods. Goods removed from the dock or airport pursuant to subsections (2) and (3) of this section remain subject to Customs control until the examination has been undertaken and a Customs officer has authorized their release.

(5) National offense. Any person who, otherwise than by authority and in accordance with this chapter, moves, alters or interferes with goods subject to the control of Customs, is guilty of a National offense.

(6) Penalty. A person convicted under this section shall be subject to a fine not exceeding $5,000, or imprisonment of not more than five years, or both.”

Section 17. Section 235 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

“Section 235. Right of examination. A Customs officer shall have the right to examine all goods subject to Customs control.

(1) Examination of goods. In carrying out the examination of goods:
(a) Any Customs officer may open packages and examine, weigh, mark and seal any goods.

(b) Where, shipment has been removed to the owner’s premises for examination, Customs officers shall be granted access to the shipment for the purposes of this section. The expenses of the examination, including the cost of removal to the place of the examination, shall be borne by the owner.

(2) Search of residences, building and premises.

Any officer, with legally sufficient grounds to believe goods that may be forfeited pursuant to section 252 of this chapter are present and, pursuant to a search warrant required by law, may enter any residence, building or premise to search for and seize such goods.

(3) Search of persons.

(a) Where a Customs officer on reasonable grounds believes a person who has just landed from or is about to board a vessel or aircraft has dutiable or prohibited goods on or about his or her person, the officer may, subject to the following conditions, search and detain that person and may use reasonable force to carry out the search.

(b) No search shall be undertaken unless another officer or person is present as a witness.

(c) Searches shall be undertaken by an officer or
person of the same gender unless there are reasonable
grounds for believing the person being searched may
resist the search or, despite diligent efforts to
procure an officer or person of the same gender, no such
person is available to undertake the search.

(d) Body cavity searches shall be carried out by
a qualified medical officer.

(4) The powers in this section are in addition to the
powers in subchapter VII of Chapter 8 of this title.”

Section 18. Section 236 of chapter 2 of Title 54 of the Code
of the Federated States of Micronesia, as amended by Public Law
No. 9-139, is hereby further amended to read as follows:

“Section 236. Use of aids by Customs officers.
In exercising any power of examination or search under
this chapter, any officer of Customs or any member of
the Police assisting him may have with him and
reasonably use for the purposes of examination or
searching, any trained animal, or any mechanical,
electrical, or electronic device generally accepted for
use in such activities.”

Section 19. Section 237 of chapter 2 of Title 54 of the Code
of the Federated States of Micronesia, as amended by Public Law
No. 9-139, is hereby further amended to read as follows:

“Section 237. Owners having possession of goods subject
to National VAT. An owner shall be personally liable
Section 20. Section 238 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

"Section 238. Importation of goods.

(1) Arrival procedures. On arrival of a vessel or an aircraft at any port in the FSM the master or pilot of such vessel or aircraft shall deliver to the CEO:

(a) Copies of the manifest; and

(b) All bills of lading and air waybills for cargo to be discharged at that particular port.

(2) Time limit for entry.

Each consignee of imported goods shall make entry of those goods at the local Customs office within 15 days after departure of the importing vessel or aircraft, exclusive of Sundays and FSM national holidays. To enter goods means to notify CEO of the arrival of those goods and to comply with all Customs requirements in connection therewith.

(3) Verification of entry.
(a) Entry shall be verified by the presentation to the Authority by the consignee, or authorized agent of the consignee, of a completed and signed entry form together with a non-negotiable bill of lading or an air waybill and vendor’s invoices for the imported goods.

(b) The consignee shall answer any questions relating to the goods and, upon request of the CEO, furnish any other documentation deemed necessary for:

(i) a proper assessment of the duties on the merchandise;

(ii) the proper collection of accurate statistics with respect to the merchandise being imported; and

(iii) a determination of whether any other applicable legal requirements have been met.

(c) The approved entry from shall set forth such facts in regard to the importation as the Secretary may require for the inspection, appraisement, payment of import taxes and for the collection of statistics.

(4) Releasing of goods.

The CEO shall, on satisfactory examination of the above documents, and payment of the correct duty and or National VAT, stamp and release the imported goods.

(5) Personal Baggage.

Goods that are the personal baggage of passengers in a
vessel or aircraft and are not taxable goods may be released without entry.

(6) **Importation defined:**

(a) Goods shall, except where otherwise expressly provided, be deemed to be imported into the FSM as soon as and in any manner, whether lawfully or unlawfully, they are brought or come within the territorial limits of the FSM from any country outside those limits. For purposes of this chapter, the territorial limits of the FSM include the territorial sea, as defined in chapter 1 of title 18 of this code.

(b) Goods whose destination is outside the territorial limits of the FSM, including ship’s stores and aircraft stores, shall not be deemed to be imported unless, while they are within those limits, they are removed from the vessel or aircraft in which they arrived there.

(c) Imported goods intended for use, sale, or other disposition within the territorial sea or internal waters of the FSM must first be brought to a port of call and cleared through Customs.

(d) **Vessels or aircraft entering into the territorial limits of the FSM solely in transit or**

**loading, unloading, transshipping,** **provisioning,** **refueling,** **other resupply,** **equipping,** **maintenance,**
repair, overhaul, and other like purposes shall not be
deemed to be goods imported into the FSM unless such
vessels or aircraft thereafter become based in the FSM.

(7) **Clearing goods prior to arrival.** Each consignee
of imported goods, may, provided he or she has the
required documentation, clear those goods prior to
arrival of the vessel or aircraft. This does not waive
or limit the authority of the Authority or the CEO to
examine those goods on arrival.

(8) **Exempt imports.** All exempt imports and VAT-exempt
imports shall be identified and cleared on the official
clearance form.

(9) **Abandoned goods:**

(a) **Goods remaining unentered three months after**
the departure of the importing vessel or aircraft shall
be treated as goods abandoned to the National Government
and may be sold by public auction, destroyed, or
otherwise disposed of as the CEO may direct.

(b) **Proceeds of such sale shall be used first to**
pay expenses of sale, duties, storage charges, and any
lien for freight changes, in said order. Surplus
proceeds may be paid to the owner upon proof of his or
her interest therein.”

Section 21. Section 239 of chapter 2 of Title 54 of the Code
of the Federated States of Micronesia, as amended by Public Law
No. 9-139, is hereby further amended to read as follows:

“Section 239. Prohibited and restricted imports.

It shall be unlawful to import into the FSM any goods whose use, sale, possession or import is prohibited or contrary to restrictions imposed by the FSM or the State into which the goods are imported, unless the importer has a valid permit or license to import such goods.”

Section 240 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

“Section 240. Prohibited and restricted exports.

It shall be unlawful to export from the FSM any goods whose use, sale, possession or export is prohibited or contrary to restrictions imposed by the FSM or the State from which they are being exported, unless the exporter has a valid permit or license to export such goods.”

Section 241 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

“Section 241. [Production of Documents] Boarding and searching vessels and aircraft on arrival.

(1) Where a Customs officer is not satisfied with the facts as presented in documents relating to a particular shipment or arrival or departure of a vessel or an aircraft, the officer may require the owner to produce
(2) Summons.

(a) For the purpose of enforcing this chapter and determining the amount of duty due, the Secretary shall be authorized to summon the importer or owner of imported goods to appear before the Secretary or his designee and at such appearance to produce such documents as specified in the summons and to answer any questions relating to said documents.

(b) The provisions of paragraph (a) of this subsection shall also apply to any officer, employee or agent of the person(s) described in paragraph (a) of this subsection, or any third party having possession, custody, or care of the documents relating to the goods in question.

(1) Boarding, searching, and answering questions. The CEO may:

(a) Board any vessel or aircraft on its arrival in the FSM. The hoisting or displaying of a foreign flag will be taken as consent to board;

(b) Search any vessel or aircraft on arrival in the FSM;

(c) Require all persons found on the vessel or aircraft to answer questions, and produce documents in
relation to:

(i) the vessel or aircraft, its voyage or flight, and its cargo, stores, crew and passengers; or

(ii) the presence of those persons on the vessel or aircraft.

(2) **Arming of officers.**

(a) Where the CEO has reasonable cause to believe any person on board any vessel or aircraft bears firearms, the CEO is authorized to direct that the officers boarding the vessel or aircraft be armed.

(b) All occasions when Customs officers are armed while boarding shall be reported to the FSM Department of Justice.”

Section 24. Section 242 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

“Section 242. (1) [Boarding and searching vessels and aircraft on arrival] Patrolling of coasts and inspections of airports and ports.

[A Customs officer may:

(a) Board any vessel or aircraft on its arrival in the FSM. The hoisting or displaying of a foreign flag will be taken as consent to board;

(b) Search any vessel or aircraft on arrival in the FSM;]
(e) Require all persons found on the vessel or aircraft to answer questions, and produce documents in relation to:

(i) the vessel or aircraft, its voyage or flight, and its cargo, stores, crew and passengers; or

(ii) the presence of those persons on the vessel or aircraft.

(2) Arming of officers.

(a) Where the Commissioner has reasonable cause to believe any person on board any vessel or aircraft bears firearms, the Commissioner is authorized to direct that the officers boarding the vessel or aircraft be armed.

(b) All occasions when Customs officers are armed while boarding shall be reported to the FSM Office of the Attorney General.

Any Customs officer and any person acting in his aid may, at any time and using such means of transport as the officer, or person, considers appropriate:

(1) patrol upon and pass freely along and over any part of the seashore or on the shores, banks or beaches of any port, bay or harbor, or over any part of the land immediately adjoining the seashore, shores, or banks, and on any structures extending from the seashore, shores, or banks; and
(2) Enter and inspect any airport or port, their facilities and goods therein; and may remain in any such area to carry out investigations and to exercise surveillance for the detection of offenses against this chapter and for these purposes may make use of any examination or surveillance aids.”

Section 25. Section 243 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

“Section 243. [Patrolling of coasts and inspection of airports and ports.]

Mooring vessels of Customs. [Any Customs officer and any person acting in his aid may, at any time and using such means of transport as the officer, or person, considers appropriate:

(1) patrol upon and pass freely along and over any part of the seashore or on the shores, banks or beaches of any port, bay or harbor, or over any part of the land immediately adjoining the seashore, shores, or banks, and on any structures extending from the seashore, shores, or banks; and

(2) Enter and inspect any airport or port, their facilities and goods therein; and may remain in any such area to carry out investigations and to exercise surveillance for the detection of offenses against this chapter and for these purposes may make use of any

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The officer in charge of any vessel employed in the service of Customs may haul the vessel upon any part of the seashore or of the shores or banks of any port, bay, or harbor, or upon any part of the land immediately adjoining the seashore, shores or banks, and moor the vessel there.”

Section 26. Section 244 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

“Section 244. [Mooring vessels of Customs] Stopping of vehicles.

[The officer in charge of any vessel employed in the service of Customs may haul the vessel upon any part of the seashore or of the shores or banks of any port, bay, or harbor, or upon any part of the land immediately adjoining the seashore, shores or banks, and moor the vessel there.]

(1) A Customs officer or officer of the FSM National Police may, on reasonable suspicion, stop and search any vehicle for the purpose of ascertaining whether any dutiable or prohibited goods are contained therein.

(2) The driver shall stop and permit such search when signaled to do so.

(3) Any driver who willfully fails to stop and permit
such search, when signaled to do so, is guilty of a National offense.

(4) Penalty. A person convicted under this section shall be subject to a fine not exceeding $5,000, or imprisonment of not more than five years, or both.”

Section 27. Section 245 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

“Section 245. [Stopping of Vehicles]

Bringing to or landing other than at official port of entry.

(1) A Customs officer or officer of the FSM National Police may, on reasonable suspicion, stop and search any vehicle for the purpose of ascertaining whether any dutiable or prohibited goods are contained therein.

(2) The driver shall stop and permit such search when signaled to do so.

(3) Any driver who willfully fails to stop and permit such search, when signaled to do so, is guilty of a National offense.

(4) Penalty. A person convicted under this section shall be subject to a fine not exceeding $5,000, or imprisonment of not more than five years, or both.)

(1) The master of a vessel or pilot of an aircraft who willfully fails to comply with section 201 of title 18
of this Code is guilty of a National offense.

(2) **Penalty.** A person convicted under this section shall be subject to a fine not exceeding $5,000, or imprisonment of not more than five years, or both."

Section 28. Section 246 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

"Section 246. [Bring to or landing other than at official port of entry] **Bringing to or Landing on Signal**

[(1) The master of a vessel or pilot of an aircraft who willfully fails to comply with section 201 of title 18 of this code is guilty of a National offense.]

(2) **Penalty.** A person convicted under this section shall be subject to a fine not exceeding $5,000, or imprisonment of not more than five years, or both.]

(1) If the master of a vessel within the territorial limits of the FSM willfully fails to bring the vessel for boarding on being approached by, or hailed or signaled from:

(a) A vessel or aircraft in the service of Customs, that has hoisted the Customs flag; or

(b) A vessel or aircraft in the service of the FSM Government, that has hoisted the proper ensign and pendant or displays the proper signal; the master is guilty of a National offense."
(2) If the pilot of an aircraft within the territorial limits of the FSM willfully fails to bring the aircraft to the nearest airport for boarding on being approached by, or hailed or signaled from:

(a) A vessel or aircraft in the service of Customs, that has hoisted the Customs flag; or

(b) A vessel or aircraft in the service of the FSM Government that has hoisted the proper ensign and pendant or displays the proper signal; the pilot is guilty of a National offense.

(3) Penalty. A person convicted under this section shall be subject to fine not exceeding $5,000, or imprisonment of not more than five years, or both.”

Section 29. Section 247 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

“Section 247. [Bringing to or landing on signal] Facilitation of Boarding

(1) If the master of a vessel within the territorial limits of the FSM willfully fails to bring the vessel to for boarding on being approached by, or hailed or signaled from:

(a) A vessel or aircraft in the service of Customs, that has hoisted the Customs flag; or

(b) A vessel or aircraft in the service of the
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FSM Government, that has hoisted the proper ensign and
pendant or displays the proper signal; the master is
guilty of a National offense.

(2) If the pilot of an aircraft within the territorial
limits of the FSM willfully fails to bring the aircraft
to the nearest airport for boarding on being approached
by, or hailed or signaled from:

(a) A vessel or aircraft in the service of
Customs, that has hoisted the Customs flag; or

(b) A vessel or aircraft in the service of the
FSM Government that has hoisted the proper ensign and
pendant or displays the proper signal; the pilot is
guilty of a National offense.

(3) Penalty. A person convicted under this section
shall be subject to fine not exceeding $5,000, or
imprisonment of not more than five years, or both.

(1) Where for the purposes of sections 241 and 246 of
this chapter, a master of a vessel or a pilot of an
aircraft willfully fails to facilitate by all reasonable
means boarding by a person authorized under this
chapter, such master or pilot is guilty of a National
offense.

(2) Penalty. A person convicted under this section
shall be subject to a fine not exceeding $5,000, or
imprisonment of not more than five years, or both.”
Section 30. Section 248 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

"Section 248. [Facilitation of boarding] Report of Cargo

[(1) Where for the purposes of sections 242 and 247 of this chapter, a master of a vessel or a pilot of an aircraft willfully fails to facilitate by all reasonable means boarding by a person authorized under this chapter, such master or pilot is guilty of a National offense.

(2) Penalty. A person convicted under this section shall be subject to a fine not exceeding $5,000, or imprisonment of not more than five years, or both.]

(1) The master, owner or pilot of a vessel or aircraft arriving from a place outside the FSM is guilty of a National offense if that person willfully fails:

(a) To report, within one day after the arrival at a port or airport, the vessel or aircraft and her cargo by delivering to the Authority an inward manifest, in duplicate, of goods for the port or airport;

(b) To answer questions relating to the vessel or aircraft and her cargo, crew, passengers, stores and voyage; or

(c) To produce documents relating to the vessel
or aircraft and her cargo.

(2) Penalty. A person convicted under this section shall be subject to a fine not exceeding $5,000, or imprisonment of not more than five years, or both."

Section 31. Section 249 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

"Section 249. [Report of Cargo] Report of wrecked vessel or aircraft

(1) The master, owner or pilot of a vessel or aircraft arriving from a place outside the FSM is guilty of a National offense if that person willfully fails:

(a) To report, within one day after the arrival at a port or airport, the vessel or aircraft and her cargo by delivering to Customs an inward manifest, in duplicate, of goods for the port or airport;

(b) To answer questions relating to the vessel or aircraft and her cargo, crew, passengers, stores and voyage; or

(c) To produce documents relating to the vessel or aircraft and her cargo.

(2) Penalty. A person convicted under this section shall be subject to a fine not exceeding $5,000, or imprisonment of not more than five years, or both.]

(1) When any vessel from outside the FSM is lost or
wrecked upon the coast, the master or owner shall
without unreasonable delay make report of the vessel and
her cargo to the Customs office nearest to the place
where the vessel was lost or wrecked.

(2) When any aircraft arriving from outside the FSM is
lost or wrecked at any place within the FSM, the pilot
or owner shall, without unreasonable delay, make report
of the aircraft and cargo to the Customs office nearest
to the place where the aircraft was lost and wrecked.

(3) Any master or owner of a vessel lost or wrecked,
or pilot or owner of an aircraft lost or wrecked, who
fails to report such loss or wreck as required by this
section is guilty of a National offense.

(4) Penalty. A person convicted under this section
shall be subject to a fine not exceeding $1,000, or
imprisonment of not more than one year, or both.”

Section 32. Section 250 of chapter 2 of Title 54 of the Code
of the Federated States of Micronesia, as amended by Public Law
No. 9-139, is hereby further amended to read as follows:

“Section 250. [Report of Wrecked vessel or aircraft]
Vessel and Aircraft Adapted for Smuggling

(1) When any vessel from outside the FSM is lost or
wrecked upon the coast, the master or owner shall
without unreasonable delay make report of the vessel and
her cargo to the Customs office nearest to the place
where the vessel was lost or wrecked.

(2) When any aircraft arriving from outside the FSM is lost or wrecked at any place within the FSM, the pilot or owner shall, without unreasonable delay, make report of the aircraft and cargo to the Customs office nearest to the place where the aircraft was lost and wrecked.

(3) Any master or owner of a vessel lost or wrecked, or pilot or owner of an aircraft lost or wrecked, who fails to report such loss or wreck to Customs is guilty of a National offense.

(4) Penalty. A person convicted under this section shall be subject to a fine not exceeding $1,000, or imprisonment of not more than one year, or both. }

(1) The master or owner of a vessel or the pilot or owner of an aircraft shall be guilty of a National offense if the vessel or aircraft comes or is found within the territorial limits of the FSM having;

(a) False bulkheads, bows, sides, or bottoms, or any other secret or disguised place adapted for the purpose of concealing goods; or

(b) Any hole, pipe, or device adapted for the purpose of unlawfully importing or exporting goods.

(2) Penalty. A person convicted under this section shall subject to a fine not exceeding $5,000, or
imprisonment of not more than five years, or both.”

Section 33. Section 251 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

“Section 251. [Vessel and aircraft adapted for smuggling]  Forfeited Vessels and Aircraft

[(1) The master or owner of a vessel or the pilot or owner of an aircraft shall be guilty of a National offense if the vessel or aircraft comes or is found within the territorial limits of the FSM having;

(a) False bulkheads, bows, sides, or bottoms, or any other secret or disguised place adapted for the purpose of concealing goods; or

(b) Any hole, pipe, or device adapted for the purpose of unlawfully importing or exporting goods.

(2) Penalty. A person convicted under this section shall subject to a fine not exceeding $5,000, or imprisonment of not more than five years, or both.]

The following vessels and aircraft may be forfeited to the FSM Government:

(1) Any vessel or aircraft used to unlawfully import, export, or carry any goods, where an owner or master knew or, but for the intentional disregard of objective facts, should have known, that such vessel was so used;

(2) Any vessel the master of which has refused to
permit such vessel to be boarded following a lawfully made request to do so;

(3) Any aircraft failing to land at an airport, or the master of which has refused to permit such aircraft to be boarded, after being properly requested to do so; and

(4) Any vessel or aircraft from which goods are thrown overboard, staved or destroyed to prevent seizure by Customs.”

Section 34. Section 252 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

“Section 252. [Forfeited vessels and aircraft]

Forfeited Goods

[The following vessels and aircraft may be forfeited to the FSM Government:]

(1) Any vessel or aircraft used to unlawfully import, export, or carry any goods, where an owner or master knew or, but for the intentional disregard of objective facts, should have known, that such vessel was so used;

(2) Any vessel the master of which has refused to permit such vessel to be boarded following a lawfully made request to do so;

(3) Any aircraft failing to land at an airport, or the master of which has refused to permit such aircraft to be boarded, after being properly requested to do so; and
(4) Any vessel or aircraft from which goods are thrown overboard, staved or destroyed to prevent seizure by Customs.

The following goods may be forfeited to the FSM Government:

(1) All goods which are unlawfully imported, exported, or carried;

(2) All goods found on any vessel or aircraft after arrival in any port or airport which are not specified or referred to in the inward manifest and are not baggage belonging to crew or passengers and have not been satisfactorily accounted for;

(3) All goods subject to the control of Customs that are moved, altered or interfered with in violation of the provisions of this chapter;

(4) All goods which are, as specified by statute or as directed by a Customs officer, to be moved or dealt with in any way and which are not moved or dealt with in any way and which are not moved or dealt with accordingly;

(5) Any vehicle or animal used in smuggling or in the unlawful importation, exportation, or conveyance of any goods;

(6) All goods, except a passenger’s baggage, found on any vessel or aircraft after clearance and not specified or referred to in the outward manifested and not
accounted for to the satisfaction of the CEO;

(7) All goods subject to duty or National VAT concealed in any manner;

(8) Any package in which there are concealed goods:
    (a) Not included in the clearance documents; or
    (b) So packed as to deceive the officer.

(9) All goods subject to duty or National VAT found in the possessions or in the baggage of any person who has got out of, landed from or gone on board any vessel or aircraft and who has denied that he or she has any dutiable goods in his or her possession, or who when questioned by a Customs officer has not fully disclosed that such goods are in his or her possession or baggage;

(10) Any stolen or counterfeit goods.”

Section 35. Section 253 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

The following goods may be forfeited to the FSM Government:

(1) All goods which are unlawfully imported, exported, or carried;

(2) All goods found on any vessel or aircraft after arrival in any port or airport which are not specified or referred to in the inward manifest and are not
baggage belonging to crew or passengers and have not beensatisfactorily accounted for;

(3) All goods subject to the control of Customs that are moved, altered or interfered with in violation of the provisions of this chapter;

(4) All goods which are, as specified by statute or as directed by a Customs officer, to be moved or dealt with in any way and which are not moved or dealt with in any way and which are not moved or dealt with accordingly;

(5) Any vehicle or animal used in smuggling or in the unlawful importation, exportation, or conveyance of any goods;

(6) All goods, except a passenger’s baggage, found on any vessel or aircraft after clearance and not specified or referred to in the outward manifested and not accounted for to the satisfaction of the Commissioner;

(7) All dutiable goods concealed in any manner;

(8) Any package in which there are concealed goods:

(a) Not included in the clearance documents; or

(b) So packed as to deceive the officer.

(9) All dutiable goods found in the possessions or in the baggage of any person who has got out of, landed from or gone on board any vessel or aircraft and who has denied that he or she has any dutiable goods in his or her possession, or who when questioned by a Customs
officer has not fully disclosed that such goods are in
his or her possession or baggage;

(10) Any stolen or counterfeit goods.

(1) A Customs officer or officer of the FSM National
Police may seize any forfeited goods or any goods that
the officer believes on reasonable grounds are forfeited
goods.

(2) The power to seize goods under subsection (1) of
this section may, without limiting the power of that
subsection, be exercised at sea or in any other waters.

(3) All seized goods shall be taken to the nearest
National Government warehouse or to such other place of
security as the CEO directs.

(4) All seized goods must be endorsed on an
appropriate receipt.

(5) If the CEO determines that any goods are of a
perishable nature or are live animals, such goods may be
sold by the CEO without delay.”

Section 36. Section 254 of chapter 2 of Title 54 of the Code
of the Federated States of Micronesia, as amended by Public Law
No. 9-139, is hereby further amended to read as follows:

“Section 254. [Seizure of Goods] Notice of Seizure

(1) A Customs officer or officer of the FSM National
Police may seize any forfeited goods or any goods that
the officer believes on reasonable grounds are forfeited
(2) The power to seize goods under subsection (1) of this section may, without limiting the power of that subsection, be exercised at sea or in any other waters.

(3) All seized goods shall be taken to the nearest National Government warehouse or to such other place of security as the Commissioner directs.

(4) All seized goods must be endorsed on an appropriate receipt.

(5) If the Commissioner determines that any goods are of a perishable nature or are live animals, such goods may be sold by the Commissioner without delay.

(1) Where any vessel, aircraft or goods have been seized as forfeited, the seizing officer shall give written notice of the seizure and of the cause of it to the master, pilot or owner of the vessel, aircraft or goods delivering the notice:

(a) Personally; or

(b) By letter addressed to him or her and transmitted by post to or delivered at his or her last known place of abode or business.

(2) If the master, pilot or owner is present at the time of the seizure verbal notice is sufficient.”
No. 9-139, is hereby further amended to read as follows:


[(1) Where any vessel, aircraft or goods have been seized as forfeited, the seizing officer shall give written notice of the seizure and of the cause of it to the master, pilot or owner of the vessel, aircraft or goods delivering the notice:

(a) Personally; or

(b) By letter addressed to him or her and transmitted by post to or delivered at his or her last known place of abode or business.

(2) If the master, pilot or owner is present at the time of the seizure verbal notice is sufficient.]

The CEO may authorize any vessel, aircraft or goods seized, other than controlled substances or narcotic drugs, to be delivered to the owner or agent upon production of adequate security."

Section 38. Section 256 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

"Section 256. [Return of seized goods on security] Disposal of Forfeited Goods, Aircraft, and Vessels [The Secretary may authorize any vessel, aircraft or goods seized, other than controlled substances or
narcotic drugs, to be delivered to the owner or agent
upon production of adequate security.] All forfeited goods, aircraft, and vessels shall become
the property of the National Government and shall be
sold, destroyed, or otherwise disposed of as the CEO may
direct.”

Section 39. Section 257 of chapter 2 of Title 54 of the Code
of the Federated States of Micronesia, as amended by Public Law
No. 9-139, is hereby further amended to read as follows:

“Section 257. [Appeal procedures on the forfeiture of
goods] Conspiracy for Unlawful Purposes.

(1) Any person claiming an interest in goods, or
acting on behalf of a person claiming an interest in
goods, may appeal their forfeiture.

(2) Form and time of appeal:

(a) The Secretary or his designee may prescribe
the form of the notice of appeal and statement of claim.

(b) Notice of appeal, supported by a statement of
claim, shall be filed with the Secretary or his designee
within 30 days of the date of issuance of the notice of
seizure.

(c) With the permission of the Secretary or his
designee, the appellant may file supplementary documents
after the 30 day period lapses.

(d) Every statement of claim shall set out the
interest of the appellant in the goods and shall be accompanied by proof of the existence and nature of the interest. In addition to this the statement will set forth clear and specific reasons why forfeiture should not proceed.

(3) On any such appeal, the Secretary or his designee may waive the forfeiture either in whole or in part, and may impose conditions on the waiver of forfeiture.

(4) Any such waiver may require that there shall be paid to the National Government in respect of the goods, a sum equal to the whole or any part of any one or more of the following:

   (a) Any costs or expenses incurred by the Customs;

   (b) Any duty (including penalties and interest) not already paid;

   (c) Any duty (including penalties and interest) already refunded.

(5) Goods seized shall be deemed to be forfeited to the National Government, if no notice of appeal and statement of claim is filed with the Secretary or his designee within 30 days of the date of issuance of the seizure notice.

(6) Any decision of the Secretary or his designee in respect of forfeiture may be appealed to the Trial
Division of the Supreme Court within 60 days after the
decision is rendered.]  

(1) If two or more persons willfully conspire for the
purpose of:

(a) Importing prohibited or restricted imports;
(b) Exporting prohibited or restricted exports;
(c) Smuggling; or
(d) Preventing the seizure of any prohibited or
restricted imports, prohibited or restricted exports, or
smuggled goods, then each of them is guilty of a
National offense.

(2) So far as it relates to prohibited and/or
restricted imports and exports, this section also
applies to all controlled substances and narcotic drugs.

(3) Penalty. A person convicted under this section
shall be subject to a fine not exceeding $10,000, or
imprisonment of not more than five years, or both.”

Section 40. Section 258 of chapter 2 of Title 54 of the Code
of the Federated States of Micronesia, as amended by Public Law
No. 9-139, is hereby further amended to read as follows:

“Section 258. [Disposal of forfeited goods, aircraft
and vessels] Smuggling and Unlawful Importing and
Exporting

[All forfeited goods, aircraft, and vessels shall become
the property of the National Government and shall be
sold, destroyed, or otherwise disposed of as the Secretary or Commissioner may direct.)

(1) A person commits a National offense if that person willfully smuggles or otherwise unlawfully imports, exports or carries goods.

(2) A person commits a National offense if that person is the owner or master of a vessel or the owner or pilot of an aircraft who uses or willfully permits the vessel or aircraft to be used:

   (a) in smuggling; or

   (b) for the other unlawful importation, exportation, or carriage of any goods.

(3) Penalty. A person convicted under this section will be subject to a fine not exceeding $10,000, or imprisonment of not more than five years, or both.”

Section 41. Section 259 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

“Section 259. [Conspiracy for unlawful importing and exporting] Bribery

   (1) If two or more persons willfully conspire for the purpose of:

   (a) Importing prohibited or restricted imports;

   (b) Exporting prohibited or restricted exports;

   (c) Smuggling; or
(d) Preventing the seizure of any prohibited or restricted imports, prohibited or restricted exports, or smuggled goods, then each of them is guilty of a National offense.

(2) So far as it relates to prohibited and/or restricted imports and exports, this section also applies to all controlled substances and narcotic drugs.

(3) Penalty. A person convicted under this section shall be subject to a fine not exceeding $10,000, or imprisonment of not more than five years, or both.

For the purpose of section 531 of title 11 of this code, regarding bribery, or its successor provision, each Customs officer has a “known legal duty” to enforce the law, including investigating each container, vessel or aircraft to the best of that officer’s ability and levying the correct amount of import duty and National VAT, as provided by law.”

Section 42. Section 260 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

“Section 260. [Smuggling and unlawful importing and exporting] Offenses in Relation to Drugs

(1) A person commits a National offense if that person willfully smuggles or otherwise unlawfully imports, exports or carries goods as defined in section 212 of
this chapter.

(2) A person commits a National offense if that person is the owner or master of a vessel or the owner or pilot of an aircraft who uses or willfully permits the vessel or aircraft to be used:

(a) in smuggling; or

(b) for the other unlawful importation, exportation, or carriage of any goods as defined by section 212 of this chapter.

(3) Penalty. A person convicted under this section will be subject to a fine not exceeding $10,000, or imprisonment of not more than five years, or both.

(1) A person is guilty of a National offense who:

(a) Without any reasonable excuse has in his or her possession, on board any vessel or aircraft, any controlled substances, cannabis, or narcotic drugs;

(b) Imports or attempts to import any controlled substances, cannabis, or narcotic drugs;

(c) Exports or attempts to export any controlled substances, cannabis, or narcotic drugs;

(d) Without reasonable excuse has in his or her possession, or attempts to obtain possession of, any controlled substances, cannabis, or narcotic drugs which have been imported into the FSM in contravention of this chapter;
(e) Conspires with another person or other persons to import, bring, or cause to be brought into the FSM any controlled substances, cannabis, or narcotic drugs;

(f) Knowingly aids, abets, counsels or procures, or is in any way concerned in, the importation or exportation into the FSM of any controlled substances, cannabis, or narcotic drugs;

(g) Fails to disclose to a Customs officer on demand any knowledge in that person’s possession or power concerning the importation or exportation, or intended importation or exportation, into the FSM of any controlled substances, cannabis, or narcotic drugs;

(2) Penalty. A person convicted under this section shall be subject to a fine not exceeding $5,000, or imprisonment of not more than five years, or both.”

Section 43. Section 261 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

“Section 261. [Attempts, solicitations, conspiracies]

Written Authority of Agents

[Any person who willfully attempts, solicits, or conspires to commit any National offense defined in this chapter shall be subject to the penalties provided in chapter 2 of title 11 of this code except where
Any Customs officer may require any person acting as or claiming to act as the agent of any person in any matter relating to this chapter to produce written authority from his principal, and if such authority is not produced the officer may refuse to recognize the agency.”

Section 44. Section 262 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

"Section 262. [Bribery] Regulations

[For the purpose of section 531 of title 11 of this code, regarding bribery, or its successor provision, each Customs officer has a “known legal duty” to enforce the law, including investigating each container, vessel or aircraft to the best of that officer’s ability and levying the correct duties, as provided by law.]

(1) The Secretary shall, subject to approval of the President, prescribe and have printed reasonable regulations for the enforcement of this Chapter and such regulations have force and effect of law if they are not in conflict with the express provisions of this Chapter or other laws of the FSM.

(2) The regulations shall also provide for matters prescribed under the Chapter to be made by regulation.
(3) Such regulations shall be promulgated in accordance with Chapter 1 of Title 17 of this code."

Section 45. Section 263 of chapter 2 of Title 54 of the Code of the Federated States of Micronesia, as amended by Public Law No. 9-139, is hereby further amended to read as follows:

"Section 263. [Offense in relation to drugs] Assistance From the Public

[(1)] A person is guilty of a National offense who:

(a) Without any reasonable excuse has in his or her possession, on board any vessel or aircraft, any controlled substances, cannabis, or narcotic drugs;

(b) Imports or attempts to import any controlled substances, cannabis, or narcotic drugs;

(c) Exports or attempts to export any controlled substances, cannabis, or narcotic drugs;

(d) Without reasonable excuse has in his or her possession, or attempts to obtain possession of, any controlled substances, cannabis, or narcotic drugs which have been imported into the FSM in contravention of this chapter;

(e) Conspires with another person or other persons to import, bring, or cause to be brought into the FSM any controlled substances, cannabis, or narcotic drugs;

(f) Knowingly aids, abets, counsels or procures,
or is in any way concerned in, the importation or
exportation into the FSM of any controlled substances,
cannabis, or narcotic drugs;

(g) Fails to disclose to a Customs officer on
demand any knowledge in that person’s possession or
power concerning the importation or exportation, or
intended importation or exportation, into the FSM of any
controlled substances, cannabis, or narcotic drugs;

(2) Penalty. A person convicted under this section
shall be subject to a fine not exceeding $5,000, or
imprisonment of not more than five years, or both.

(1) Where necessary, a Customs officer may call upon
and deputized any member of the public to assist in the
execution of that officer’s duty under this chapter.

(2) Any such member of the public, so deputized,
shall have the same powers and immunity as the officer
such person is assisting.”

Section 46. Section 264 of chapter 2 of Title 54 of the Code
of the Federated States of Micronesia, as amended by Public Law
No. 9-139, is hereby further amended to read as follows:

“Section 264. [Miscellaneous offenses] Implementation

(1) A person commits a National offense if that
person:

(a) Evades any duty that is payable;

(b) Willfully prepares, passes, alters or
presents a document purporting to be a genuine invoice that is not in fact a genuine invoice;

c. Willfully makes, in a declaration or document produced to a Customs officer, a statement that is untrue in any particular;

d. Willfully produces or delivers to a Customs officer a declaration or document containing a statement that is untrue in any particular;

e. Willfully misleads any Customs officer in any particular likely to affect the discharge of the officer’s duty; or

(f) Refuses or fails to answer questions to the best of that person’s knowledge and belief, or to produce all documents relating to the concerned subject.

(2) Penalty. A person convicted under this section shall be subject to a fine not exceeding $1,000, or imprisonment of not more than one year, or both.)

(1) To give effect to the provisions of this chapter the CEO is authorized to:

(a) Draw up and implement procedures and guidelines;

(b) Distribute such procedures and guidelines to interested parties;

(c) Appoint appraisers in each of the States to examine invoices presented to Customs.
(2) The Authority is authorized to become a member of
and to send representatives to meetings of;

(a) Organizations that foster cooperation between
Pacific Island Nations Customs Divisions;

(b) Organizations that will increase the
expertise and efficiency of the Authority in relation to
customs matters."

Section 47. Section 265 of chapter 2 of Title 54 of the Code
of the Federated States of Micronesia, as amended by Public Law
No. 9-139, is hereby further amended to read as follows:

“Section 265. [Liability of principal for acts of
agents]. Effective Date.

(1) Every act done by an agent in the course of his
agency in relation to the provisions of this chapter,
shall be deemed to have been made or done by his or her
principal also, and the principal shall be liable
accordingly for all civil penalties imposed by this
chapter.

(2) For the purpose of this section the knowledge and
intent of the agent within the course and scope of his
agency shall be attributed to the principal in addition
to his own.

This Act shall become law upon approval by the President
of the Federated States of Micronesia or upon its
becoming law without such approval, and this Act shall
take effect thirty (30) months after the effective date
of the FSM Unified Revenue Authority Act 2010.”

Section 48. Sections 266, 267, 268, 269 and 270 of chapter 2
of Title 54 of the Code of the Federated States of Micronesia, as
amended by Public Law No. 9-139, is hereby repealed in its
entirety.

Date: 3/26/10          Introduced by: /s/ Joe N. Suka
Joe N. Suka
(by request)