A BILL FOR AN ACT

To further amend title 54 of the Code of the Federated States of Micronesia, as amended, by adding a new chapter 3 to clarify, coalesce, and strengthen the powers of the National Government regarding the importation and exportation of goods and the payment and collection of customs tariffs on such goods; to provide for Customs control over goods, vessels and aircraft, as well as for providing for offenses, penalties and enforcement provisions to further emphasize the true nature of Customs work and responsibilities; and for other purposes.

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

Section 1. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 301 of chapter 3 to read as follows:

"Section 301. Short title. This act may be cited as the Customs Act of 1994."

Section 2. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 302 of chapter 3 to read as follows:

"Section 302. Definitions. In this chapter, except where otherwise specified, the following terms shall have the meanings stated below:

1. 'Ad valorem' (Latin for "according to the value") means a tax imposed at a rate percent of value.
2. 'Aircraft' includes airplanes, seaplanes, airships, balloons or any other means of aerial locomotion.
3. 'Airport' means an official port of entry as listed in section 304 of this chapter 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 Federated States of Micronesia or any subsequent time before reaching their final destination.
(6) 'Authorized officer' means a Customs officer authorized in writing by the Secretary to exercise the powers or perform the functions authorized by this chapter.

(7) '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) 'Chief inspector' means the principal officer at a port of entry, and includes:

(a) the Commissioner;

(b) a principal officer of Customs performing a duty at the time and place in relation to which the expression is used;

(c) any officer performing a duty in the matter in relation to which the expression is used.

(9) 'Commissioner' means the Commissioner of Customs.

(10) 'Congress' means the Congress of the Federated States of Micronesia.

(11) '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;

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

(12) 'Controlled substance' means those described in sections 1119, 1121, 1123, 1125, and 1127 of title 11 of the Code of the Federated States of Micronesia.

(13) 'Customs' means the Department of Finance, Division of Customs of the Federated States of Micronesia.

(14) '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 354 of this chapter.

(15) 'Duty' means any tax payable on the importation or exportation of goods, and 'Dutiable goods' means those goods subject to tax on their importation or exportation.

(16) '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.

(17) 'FSM' means the Federated States of Micronesia.

(18) 'Goods' means any type of merchandise, product, commodity, moveable personal property, or commercial wares.

(19) '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.

(20) '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.

(21) 'Narcotic drug' means those described in subsection (15) of section 1112 title 11 of the Code of the Federated States of Micronesia.

(22) 'On or about the body' means on or within the body, clothing, footwear, purse, handbag or similar article.

(23) 'Owner' means:

(a) In respect of 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.

(24) 'Package' includes every means by which goods for transportation may be cased, covered, enclosed, contained, or packed.

(25) 'Person' means any individual, company, corporation, partnership, unincorporated association, or other business entity.

(26) 'Pilot' means the person in charge or in command of an aircraft.

(27) 'Place' means any location, building or site, and includes moveable locations such as a vessel or aircraft.

(28) 'Port' or 'Port of entry' means an official port of entry as listed in section 304 of this chapter and amendments thereto.

(29) 'President' means the President of the Federated States of Micronesia.

(30) 'Prohibited goods' means any goods which the importation or exportation thereof is prohibited under the FSM Code.
(31) 'Regulations' means any regulations promulgated pursuant to this law.

(32) 'Secretary' means the Secretary of the Department of Finance of the Federated States of Micronesia.

(33) 'Smuggling' means any importation or exportation, attempted importation or exportation, with the intent to defraud the Federated States of Micronesia, or which the importation or exportation is prohibited or restricted by any other law under this Code.

(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.

(35) 'Unlawfully imported' means any goods imported in breach of the provisions of this Act, or any other Act in the Code of the Federated States of Micronesia, or whose sale, possession or use is prohibited or restricted by the State into which the importation took place.

(36) 'Vehicle' means every description of carriage or other contrivance used or capable of being used as a means of transport on land.
(37) 'Vessel' means every description of watercraft or other contrivance used or capable of being used as a means of transportation of goods or people, in water.

(38) 'Wine gallon' means 128 fluid ounces or 3.785 litres."

Section 3. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 303 of chapter 3 to read as follows:

"Section 303: Administration of Customs.

(1) The Secretary of Finance shall appoint 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 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 section shall be subject to a fine not exceeding $1,000 or imprisonment of not more than 1 year.

(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 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 section shall be subject to a fine not exceeding $1,000 or imprisonment of not more than 1 year.

(6) Working days and hours. The working days and hours of the Division of Customs are Monday through Friday, 8 a.m. through 5 p.m., except for National holidays or as prescribed by Public Service System Regulations.

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

(b) Any person may request that the Commissioner 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 Division of Customs such fee as set by the
Secretary, reflecting the cost of making officers
available.

(7) Insurance. The Commissioner is authorized to
arrange insurance coverage for Customs officers who
undertake hazardous duties.

(8) Annual report. Within 60 days of the end of
each fiscal year the Division of Customs will provide
for Congress an annual report on its activities setting
out the following details:

(a) overview;

(b) revenue:

(i) revenue collected,

(ii) cost of collection,

(iii) costs recovered,

(iv) entries passed;

(c) enforcement:

(i) invoices appraised,

(ii) vessels and aircraft searched,

(iii) goods seized,

(iv) prosecutions and convictions;

(d) licensing:

(i) business licenses to import;

(ii) business licenses to export;

(e) Staff;
(f) Plan for the next year."

Section 4. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 304 of chapter 3 to read as follows:

"Section 304. Ports of entry. Official ports of entry for the boarding of vessels and aircraft for the purpose of entry and clearance by Customs officers, unless amended pursuant to title 18, are:

(1) Yap:
   (a) Yap:
      (i) 'Tomil Harbor; and
      (ii) Yap International Airport.
   (b) Ulithi:
      (i) Ulithi Anchorage; and
      (ii) Ulithi Airstrip.
   (c) Noleai Anchorage.

(2) Chuuk:
   (a) Weno:
      (i) Weno Anchorage; and
      (ii) Chuuk International Airport.
   (b) Satawan Anchorage.

(3) Pohnpei:
   (a) Kolonia Harbor; and
   (b) Pohnpei International Airport.

(4) Kosrae:
(a) Lelu Harbor;
(b) Okat Harbor; and
(c) Kosrae Airstrip."

Section 5. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 305 of chapter 3 to read as follows:

"Section 305. 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 Secretary the following:

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

(b) suitable transit buildings as the Secretary 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 Comissioner or other proper officer of Customs may direct.

(3) Any controlling authority who fails to comply with any provision of this section commits 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 1 year."

Section 6. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 306 of chapter 3 to read as follows:

"Section 306. Cooperation with other National and State authorities. The Secretary is authorized to enter into Memorandums of Understanding with other National and State authorities where the Division of Customs can provide assistance in the enforcement of any National or State law.

(1) Taxation. The Division of Customs is authorized to exchange information, subject to the disclosure of information provisions in section 351 of this chapter, with other National or State authorities to ensure the proper and correct collection of taxes.

(2) Statistics.

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

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

(3) Quarantine. The Secretary may accept an appointment made by the Secretary of the Department of Resources and Development, Federated States of Micronesia, regarding the empowering of Customs Officers to perform agriculture quarantine inspections, pursuant to section 407 of title 22 of the Code of the Federated States of Micronesia.

(4) Immigration. The Secretary may accept an appointment made by the Office of the Attorney General, Federated States of Micronesia, regarding the empowering of Customs officers to perform immigration inspections pursuant to section 108 of title 50 of the Code of the Federated States of Micronesia.

(5) Community, social, environmental and antiquities protection. The Division of Customs 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 7. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 307 of chapter 3 to read as follows:

"Section 307. Customs control of goods."
(1) Goods subject to Customs control:

(a) Imported goods, from the time of their importation until the duties applicable 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 when the same are brought to any port, airport or place for export until their exportation to any country outside of the FSM.

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

(2) Non-routine examinations. Where for the purposes of section 308 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 Division of Customs 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 shipments 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 5 years."

Section 8. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 308 of chapter 3 to read as follows:

"Section 308. 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 shipments have 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 examination, shall be borne by the owner.

(2) Search of residences, buildings and premises. Any officer, subject to an authorised search warrant, may enter any residence, building or premises to search for and seize smuggled or unlawfully imported goods.

(3) Search of persons.

(a) Where a Customs officer on reasonable grounds believes a person who has just landed from a vessel or aircraft has dutiable or prohibited goods on or about their 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 will normally be undertaken by an officer or person of the same gender unless there are grounds for believing the person being searched may resist the search.
(d) Body cavity searches shall be carried out by a qualified medical officer."

Section 9. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 309 of chapter 3 to read as follows:

"Section 309. 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 use for the purposes of examination or searching, any dog, or any mechanical, electrical, or electronic device."

Section 10. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 310 of chapter 3 to read as follows:

"Section 310. Compensation for loss. The Government of the Federated States of Micronesia is not liable for any loss or damage occasioned to any goods subject to the control of the Customs except by the negligent or willful act of an officer."

Section 11. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 311 of chapter 3 to read as follows:

"Section 311. Owners having possession of dutiable goods. An owner shall be liable for any duty payable where having possession or custody of dutiable go
still subject to the control of Customs, if that person fails to:

(1) keep them safely, or

(2) satisfactorily account for them to an

officer of customs."

Section 12. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 312 of chapter 3 to read as follows:

"Section 312. Importation of goods.

(1) Business license to import:

(a) No person shall import goods for resale into the Federated States of Micronesia unless they hold a current business license to import issued pursuant to title 32 of the Code of the Federated States of Micronesia.

(b) The issuance of such a license by the Secretary of Resources and Development will act as authority for the person to carry on the business of importing in any State within the Federated States of Micronesia.

(c) Customs will provide details, and other information as required, of persons licensed to engage in the business of importing to the appropriate State authorities.

(d) The application for a business license to
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 a Customs
officer, 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 form shall set forth
such facts in regard to the importation as the Secretary
may require for the inspection, appraisement, payment of
duties, and for the collection of statistics.

(6) Releasing of goods. Customs personnel shall,
on examination of the above documents, and payment of
the correct duty, stamp and release the imported goods.

(7) Personal Baggage. Goods that are the personal
baggage of passengers in a vessel or aircraft and are
not dutiable goods may be released without entry.

(8) Importation defined:

(a) Goods shall, except where otherwise
expressly provided, he deemed to be imported into the
Federated States of Micronesia as soon as and in any
manner, whether lawfully or unlawfully, they are brought
or come within the territorial limits of the Federated
States of Micronesia from any country outside those
limits.

(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.

(9) Duty rate. The rate of duty applicable to
goods destined for resale in the Federated States of
Micronesia applies from the date of arrival of the
vessel or aircraft at a designated port of entry.

(10) 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 Customs to examine those
goods on arrival.

(11) Exempt goods. All tax exempt goods are to be
cleared on the official clearance form.

(12) Abandoned goods:
(a) Goods remaining unentered 3 months after
the departure of the importing vessel or aircraft will
be treated as goods abandoned to the National Government
and will be sold by auction.

(b) The surplus of proceeds of such sale after
the payment of storage charges, expenses and duties, and
the satisfaction of any lien for freight charges must be
deposited in the Treasury of the Federated States of
Micronesia, if a claim therefore is not filed with the
Division of Customs within 10 days of the date of sale.

(c) The sale of such goods exonerates the
master of any vessel or the pilot of any aircraft in
which it was imported from all claims by the owner.

(d) The owner is nevertheless, on due proof of
his or her interest, entitled to receive from the
Treasury the amount of any surplus of the proceeds of
sale."

Section 13. Title 54 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 313
of chapter 3 to read as follows:

"Section 313. Value for import duty:

(1) The value for the import duty on goods shall be
calculated as the free on board amount, which is 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.

(2) If the Customs officer can reasonably determine
the free on board amount of imported goods, then import
duty shall be payable on the free on board amount.

(3) If the Customs officer cannot determine the
free on board amount of imported goods, but can
determine their identical goods value, then import duty
shall be payable on the identical goods value.

(4) Where the Customs officer cannot determine the
free on board amount or the identical goods value, the
value for the payment of import duty shall be determined
by appraisement, the cost of which shall be borne by the
owner.

(5) No deduction of any kind shall be allowed from
the free on board amount 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.

(6) Where there is a relationship between the buyer
and seller of imported goods the consignee will be
required to show 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 Customs 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 Federated States of Micronesia.

(b) Where it is decided that the relationship has influenced the price paid or payable the free on board amount shall be determined by appraisement.

(7) Where the Commissioner can establish that the invoice value for the imported goods is undervalued, the value for the payment of import duty shall be the identical goods value plus 10 percent.

(8) If the value of imported goods is stated in a currency other than United States of America dollars then the basis of the import duty of such goods shall be calculated according to the ruling rate of exchange at the date of export of the goods."

Section 14. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 314 of chapter 3 to read as follows:

"Section 314. Entry and valuation conditions applying to specific goods.

(1) Pre-sold goods."
(a) Where any person arranges the importation of goods into the Federated States of Micronesia but has them shipped to individual consignees the goods shall be treated as goods for resale upon importation and subject to import duty.

(b) The value for the payment of import duty shall be determined in accordance with the provisions of section 313 of this chapter.

(2) Samples and gifts.

(a) Where any person engaged in the business of importing receives samples or gifts they are to be treated as goods for resale upon importation and subject to import duty.

(b) The value for import duty shall be determined in accordance with the provisions of section 313 of this chapter.

(3) Goods for resale.

(a) Goods imported for commercial use or for incorporation into a final product, service, meal or other commercial enterprise are considered to be goods for resale and subject to duty upon importation.

(b) Goods which are imported as duty-free goods or personal possessions, but which are actually within six months resold or incorporated into a final product, service, meal or other commercial enterprise, are
subject to duty immediately upon resale or commercial use.

(c) Failure to pay duty upon goods imported as being for personal use, but actually resold or otherwise converted to mercantile use, will after ten days of the date of resale subject the goods to forfeiture and the importer to the penalties set forth in section 343.

(d) Products imported into the FSM by a person or entity licensed to import or carry on business in the FSM or any political subdivision thereof shall be presumed to be imported for resale in the FSM, and import duty shall be levied thereon.

(e) The presumption of importation for resale may be rebutted by presentation to and acceptance by the Secretary of Finance or his designee of evidence reasonably satisfactory and sufficient to prove that such products are not imported for resale in the FSM."

Section 15. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 315 of chapter 3 to read as follows:

"Section 315. Prohibited and restricted imports. It shall not be lawful to import into the Federated States of Micronesia any goods whose use, sale or possession is prohibited or restricted by the FSM or the State into which the goods are imported, unless the importer has
lawfully obtained or holds a valid permit or license to
possess the goods.

Section 16. Title 54 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 316
of chapter 3 to read as follows:

"Section 316. Import duties - Levy and rates. The
following import duties are hereby levied on all
products specified herein which are imported into the
Federated States of Micronesia for resale except the
duties levied under subsections (1), (2), (5), (6), and
(7) of this section shall apply to products which are
imported into the Federated States of Micronesia for
personal use and consumption as well as for resale:

(1) cigarettes, at the rate of twenty-five percent
ad valorem, except that any person may bring into any
State of the Federated States of Micronesia up to one
carton or two hundred cigarettes per trip duty-free, if
such cigarettes are for that person's own use and
consumption and not for resale;

(2) tobacco, other than cigarettes, at the rate of
fifty percent ad valorem, except that any person may
bring into any State of the Federated States of
Micronesia up to one pound of tobacco or twenty cigars
per trip duty-free, if such tobacco products are for
that person's own use and consumption and not for
(4) soft drinks, drink mixes, drink preparations, coffee, tea, and nonalcoholic beverages, at the rate of twenty-five percent ad valorem;

(5) beer and malt beverages, at the rate of twenty-five percent ad valorem;

(6) distilled alcoholic beverages, at the rate of ten dollars per wine gallon, except that any person permitted by applicable State law to possess, consume, and use distilled alcoholic beverages, may bring into such State of the Federated States duty free, an amount of liquor not to exceed 52 fluid ounces or 1500 milliliters per trip, if such liquor is for his personal use and consumption and not for resale;

(7) wine at the rate of twenty-five percent ad valorem except that the duty shall not apply to any religious organization which is importing or receiving into the Federated States sacramental wine for use in
the religious rites of such organization;

(8) foodstuffs for human consumption, at the rate
of three percent ad valorem; provided, however, that
fresh citrus fruit shall be at the rate of twenty-five
percent ad valorem:

(9) gasoline and diesel fuel, at the rate of five
cents per gallon;

(10) laundry bar soap, at the rate of one hundred
percent ad valorem; and

(11) all other imported products, except those
specified above, at the rate of four percent ad
valorem."

Section 17. Title 54 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 317
of chapter 3 to read as follows:

"Section 317. Duty exemption for goods.

(1) Damaged, pillaged and faulty goods. Upon
receipt of a written request within 28 days of the
goods' release from Customs control, the Secretary may
authorise a refund of the whole or part of the duty
paid, where any of the following conditions exist:

(a) Goods have been damaged or pillaged during
the voyage;

(b) Goods have, while subject to the control of
Customs, been damaged, pillaged, lost or destroyed; or
(c) The Commissioner is satisfied that, owing to a fault or defect in any goods, the importer has received a reduction or a refund, in whole or part, of the price paid or to be paid for the goods.

(2) Imported goods subsequently exported. Any person who imports commodities into the Federated States of Micronesia, and then exports them to a buyer who is outside the territorial limits of the Federated States of Micronesia, is entitled to a refund of any import duty actually paid on such commodities, upon application to and approval by the Secretary.

(3) Cigarettes, cigars, tobacco, and distilled alcoholic beverages. Any person may import into the Federated States of Micronesia duty free, the quantities specified below, provided such goods are for that person’s own personal use and consumption and not for resale. In respect of distilled alcoholic beverages the person must also be permitted by applicable State law to possess, consume, and use such goods:

   (a) up to 200 cigarettes per trip;

   (b) up to one pound of tobacco or twenty cigars per trip; and

   (c) up to 52 fluid ounces or 1500 milliliters of distilled alcoholic beverages per trip.

(4) Personal and household effects.
(a) Residents. A returning resident of the FSM or a person intending to reside in the FSM may import their bona fide personal and household effects duty free, provided the goods are for their own personal use and not for resale or exchange; and

(b) Visitors. A visitor may import bona fide personal effects into the FSM duty free, provided the goods are for their own personal use and will be taken with the when they leave the country."

Section 18. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 318 of chapter 3 to read as follows:

"Section 318. Duty liens. Any duties imposed or authorized under this chapter upon property shall be a lien upon the property and may be collected by levy upon it in the same manner as the levy of an excise;"

Section 19. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 319 of chapter 3 to read as follows:

"Section 319. Civil action of enforcement. Any duties, license fees or levies imposed or authorized under this chapter may also be collected by a civil suit brought in the name of the Commissioner of Customs. In such civil suit a signed written statement of the Commissioner of Customs as to the amount of duty due, the fact it in:
unpaid, and who is authorized to collect to it, shall be sufficient evidence of these matters unless the contrary is expressly shown."

Section 20. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 320 of chapter 3 to read as follows:

Section 320. Transactions to be recorded.

(1) Every person, firm, corporation, or association engaging in any transaction subject to a duty, fee, or levy imposed under this chapter shall keep a full and accurate record of each transaction engaged in by him and such record shall be available for examination by the Secretary of Finance or his authorized representative for at least three years after the date of such transaction.

(2) Any person, firm, corporation, or association willfully failing to keep or make available for examination such records is guilty of a National offense.

(3) Penalty. A person convicted under this section shall be subject to a fine not exceeding not $5,000 or imprisonment of not more than 5 years. In addition thereto, shall be subject to the immediate revocation of any existing license to do business in the Federated States of Micronesia.
Section 21. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 321 of chapter 3 to read as follows:

"Section 321. Production of documents.

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

(2) Summons.

(a) For the purpose described under sections 312, 313, and 314 of this chapter, the Secretary shall be authorized to summon the person or persons liable for tax under this title to appear before the Secretary or his or her 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 section shall also apply to any officer, employee or agent of the person(s) described in paragraph (a) of this section, or any third party having possession, custody, or care of the documents relating to the goods in question."

Section 22. Title 54 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 322 of chapter 3 to read as follows:

"Section 322. Distribution of revenues.

(1) The Treasurer of the Federated States of Micronesia shall pay eighty percent of the net duties collected pursuant to section 316 (9) of this chapter, and fifty percent of all other net duties collected pursuant to section 316, into the treasury of the State government to which the duties are attributable for appropriation by the state legislature.

(2) 'Net duties' as used in subsection (1) of this section means gross collections of duties, penalties, or other related charges less refunds and less the cost of administration.

(3) 'Cost of administration' as used in subsection (2) of this section means the cost determined to be allocatable to each State by the Congress of the Federated States of Micronesia when making appropriations for the operating expenses of the Customs Division.

(4) The revenue office in each State may administer the taxes of the State in which located, but these functions shall not interfere with the administration of duties imposed by the laws of the Federated States of Micronesia."
Section 23. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 323 of chapter 3 to read as follows:


(1) Business license to export:

(a) No person shall export goods for sale outside of the Federated States of Micronesia unless they hold a current business license to export issued pursuant to title 32 of the Code of the Federated States of Micronesia.

(b) The issue of such a license by the Secretary of Resources and Development will act as authority for the person to carry on the business of exporting in any State within the Federated States of Micronesia.

(c) Customs will provide details, and other information as required, of persons licensed to engage in the business of exporting to the appropriate State authorities.

(d) The application for a business license to export and payment of the relevant fee will be made at the National Customs office in each State.

(2) Procedures for the export of goods:

(a) No goods subject to the control of Customs shall be placed on board any vessel, loaded into any aircraft or packed into any bulk container to be shipped..."
for export until entry in the approved form has been made and passed by Customs.

(b) Entry shall be verified by the presentation to Customs of a completed and signed entry form by the consignor, or authorized agent of the consignor, together with a non-negotiable bill of lading or an air waybill and the shipper's invoice for the goods to be exported.

(c) The consignor shall answer any questions relating to the goods and upon request of a Customs officer, furnish any other documentation deemed necessary for:

(i) a determination of whether all legal requirements have been met; and

(ii) the proper collection of accurate statistics with respect to the merchandise being exported.

(d) The approved entry form shall set forth such facts in regard to the exportation as the Secretary may require for verification that all legal requirements have been met and for the collection of statistics.

(e) Customs personnel shall, on examination of the above documents, stamp and release the goods for export.

(f) Goods that are the personal baggage of
passengers in a vessel or aircraft and goods that are
not being exported for sale may be exported without
entry.

(3) Goods to be exported. No goods shipped for
export shall be unshipped or landed within the FSM
without the permission of the Commissioner or some other
proper officer of Customs.

(4) National offense. Where any goods are
unshipped or landed in breach of this subsection, the
master and owner of the vessel, or the pilot in command
and owner of the aircraft, as the case may be, and every
person knowingly concerned with such unshipment or
landing shall each be guilty of a National offense.

(d) Penalty. A person convicted under this
section shall be subject to a fine not exceeding $1,000
or imprisoned of not more than 1 year. In addition
thereto, the goods shall be forfeited.

(5) Time of exportation. The time of exportation
of goods shall be the time at which the exporting vessel
departs from her last port of call in the FSM or at
which the exporting aircraft departs from the last
airport in the FSM immediately before proceeding to a
country outside of the FSM."

Section 24. Title 54 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 324
of chapter 3 to read as follows:

"Section 324. Prohibited and restricted exports. It shall not be lawful to export from the Federated States of Micronesia any goods whose use, sale or possession is prohibited or restricted by the FSM or the State from which they are being exported, unless the exporter has lawfully obtained or holds a valid permit or license to export the goods."

Section 25. Title 54 of the Code of the Federated States of Micronesia is hereby further amended be adding a new section 325 of chapter 3 to read as follows:

"Section 325. Boarding and searching vessels and aircraft on arrival in the Federated States of Micronesia.

(1) Boarding, searching, and answering question. A Customs officer may:

(a) Board any vessel or aircraft on its arrival in the Federated States of Micronesia. 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 Federated States of Micronesia.

(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 Commissioner has reasonable cause
to believe any person(s) 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."

Section 26. Title 54 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 326
of chapter 3 to read as follows;

"Section 326. Patrolling of coasts and inspection of
airports and ports. 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

(b) 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 Act and for these purposes may make use of any examination or surveillance aids."

Section 27. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 327 of chapter 3 to read as follows:

"Section 327. Mooring vessels of Customs. 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 28. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 328 of chapter 3 to read as follows:

"Section 328. Immunity from civil suit. Any Customs officer acting within the provisions of this act shall be immune from civil suit."

Section 29. Title 54 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 329 of chapter 3 to read as follows:

"Section 329. Stopping of vehicles.

(1) A Customs officer or officer of the Federated States of Micronesia Office of the Attorney General, Division of Security & Investigation 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 signalled to do so.

(3) Any driver who fails to stop and permit such search, when signalled 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 5 years."

Section 30. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 330 of chapter 3 to read as follows:

"Section 330. Seizure of goods.

(1) A Customs officer or officer of the Federated States of Micronesia Office of the Attorney General, Division of Security and Investigation or Division of Marine Surveillance and Drug Enforcement 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) may, without limiting the power of that subsection, be exercised at sea or in any other waters.

(3) All seized goods are to 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."

Section 31. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 331 of chapter 3 to read as follows:

"Section 331. Notice of seizure.

(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 by delivering the notice:

(a) Personally; or

(b) By letter addressed to him or her and transmitted by post or delivered at his or her...
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.

Section 32. Title 54 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 332
of chapter 3 to read as follows:

"Section 332. Return of seized goods on security. 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."

Section 33. Title 54 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 333
of chapter 3 to read as follows:

"Section 333. Bringing to and landing.

(1) If the master of a vessel from a place outside
the Federated States of Micronesia bound to or calling
at a port in the Federated States of Micronesia fails to
bring the vessel for boarding at the boarding station
appointed for the port, the master is guilty of an
offense.

(2) If the pilot of an aircraft from a place
outside the Federated States of Micronesia bound to or
calling at any place within the Federated States of
Micronesia fails to bring the aircraft for boarding to,
the airport nearest to the place at which it enters the
country, the pilot is guilty of an offense.

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

Section 34. Title 54 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 334
of chapter 3 to read as follows:

"Section 334. Bringing to or landing on signal.

(1) If the master of a vessel within three nautical
miles of the coast fails to bring the vessel to for
boarding on being approached by, or hailed or signalled
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 Federated States of Micronesia Government, that has
hoisted the proper ensign and pendant or displays the
proper signal; the master is guilty of an offense.

(2) If the pilot of an aircraft within three
nautical miles of the coast fails to bring the aircraft
to the nearest airport for boarding on being approached
by, or hailed or signalled 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 Federated States of Micronesia Government that has hoisted the proper ensign and pendant or displays the proper signal; the pilot is guilty of an offense.

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

Section 35. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 335 of chapter 3 to read as follows:

"Section 335. Facilitation of boarding.

(1) Where for the purposes of sections 325 and 334 of this chapter, a master of a vessel or a pilot of an aircraft 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 5 years."

Section 36. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 336 of chapter 3 to read as follows:


(1) The master, owner or pilot of a vessel or aircraft arriving from a place outside the Federated
States of Micronesia is guilty of an offence if that person 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 5 years."

Section 37. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 337 of chapter 3 to read as follows:

"Section 337. Report of wrecked vessel or aircraft.

(1) When any vessel from outside the Federated States of Micronesia is lost or wrecked upon the coast, the master or owner shall without 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 Federated States of Micronesia is lost or wrecked at any
place within the Federated States of Micronesia, the
pilot or owner shall, without delay, make report of the
aircraft and cargo to the Customs office nearest to the
place where the aircraft was lost or 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 1 year."

Section 38, Title 54 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 338
of chapter 3 to read as follows:

"Section 338. Vessels and aircraft adapted for
smuggling.

(1) The master or owner in the case of a vessel, or
the owner in the case of an aircraft, shall be guilty of
a National offense if any vessel or aircraft comes or is
found within the territorial limits of the Federated
States of Micronesia 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 thr;
purpose of smuggling or unlawfully importing or
exporting goods.

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

Section 39. Title 54 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 339
of chapter 3 to read as follows:

"Section 339. Forfeited vessels and aircraft. The
following vessels and aircraft may be forfeited to the
Federated States of Micronesia Government:

(1) Any vessel or aircraft used in smuggling, or
knowingly used in the unlawful importation, exportation,
or conveyance of any prohibited imports or prohibited
exports;

(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 for
boarding after being properly requested to do so; and

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

Section 40. Title 54 of the Code of the Federated States of
Micronesia is hereby further amended by adding a new section 340
"Section 342. Conspiracy for unlawful purposes.

(1) If two or more persons 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 $5,000 or imprisonment of not more than 5 years."

Section 43. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 343 of chapter 3 to read as follows:

"Section 343. Smuggling and unlawful importing and exporting.

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

(a) smuggles any goods;"
(b) unlawfully imports any prohibited or restricted goods;
(c) unlawfully exports any prohibited or restricted goods; or
(d) unlawfully conveys or has in his or her possession any smuggled goods, prohibited or restricted imports or prohibited or restricted exports.

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

(a) in smuggling; or
(b) for the unlawful importation, exportation, or conveyance of any goods in contravention of this chapter.

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

Section 44. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 344 of chapter 3 to read as follows:

"Section 344. National offense.
Any person who attempts, solicits, or conspires to commit any National offense defined in this chapter shall be subject to the penalties provided in chapter 7."
of title 11 of this Code except where otherwise provided in this chapter.

Section 45. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 345 of chapter 3 to read as follows:

"Section 345. Bribery. For the purpose of section 531 of title 11 of the Code of the Federated States of Micronesia, regarding bribery, the following shall apply:

(1) 'Public servant' expressly includes a Customs officer.

(2) 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 maximum import or export tax, as provided by law."

Section 46. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 346 of chapter 3 to read as follows:

"Section 346. Offense by Customs officer. For the purpose of section 501 of title 11 of the Code of the Federated States of Micronesia, 'the administration of law or other lawful governmental function of the Federated States of Micronesia' shall specifically apply to a Customs officer in the execution of that officer's..."
known legal duty, and such offense shall be considered a National offense."

Section 47. Title 54 of the Code of the Federated States of Micronesia is hereby further amended by adding a new section 347 of chapter 3 to read as follows:

"Section 347. Offenses in relation to narcotic drugs.

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

(a) Without any reasonable excuse (proof whereof shall lie upon the person) has in his or her possession, on board any vessel or aircraft, any prohibited imports to which this section applies;

(b) Imports or attempts to import any prohibited import to which this section applies;

(c) Exports or attempts to export any prohibited export to which this section applies;

(d) Without reasonable excuse (proof whereof shall lie upon the person) has in his or her possession, or attempts to obtain possession of, any prohibited imports to which this section applies which have been imported into the Federated States of Micronesia in contravention of this chapter;

(e) Conspires with another person or other persons to import, bring, or cause to be brought into the Federated States of Micronesia any prohibited import to which this section applies or to export from the
(a) Each decision by a Custom officer as to which the protest is made;
(b) Each category of merchandise affected by each such decision as to which the protest is made;
(c) The nature of each objection and the reasons therefor;
(d) The correct amount of duty payable, if the protest were upheld.

(2) The protest shall be lodged with the Customs office where the decision under protest was made.
(3) The protest must be filed within 60 calendar days after of the decision which is protested.
(4) Failure to pay the duty in full will be a basis for denial of the protest. If the protest is upheld, any excessive levy of import duty will be returned to the importer.
(5) Procedures for administrative review of protests will be established by the Secretary of Finance, who is the final arbiter of protest claims."

Section 57. This act shall become law upon approval by the President of the Federated States of Micronesia or upon its becoming law without such approval.

Date: 5/25/95

Introduced by: [Signature]

Claude H. Philip