B-112264

BY THE COMPTROLLER GENERAL

Report To The House Committee On Ways And Means And The Senate Committee On Finance OF THE UNITED STATES

RELEASED

RESTRICTED — Not to be released outside the General Accounting Office except on the basis of specific approval by the Office of Congressional Relations.

Ship Manifest Laws Need To Be Administered In A More Consistent, Less Burdensome Manner

The Senate Committee on Finance and the House Committee on Ways and Means asked GAO to analyze the Customs Service's use of a ship's manifest. GAO found that the manifest is a useful document for controlling imports; however, Customs needs to administer manifest-related penalities in a more consistent, less burdensome manner. Carriers should be provided with more incentive to report manifest discrepancies.

This report proposes a new approach for administering manifest penalties, which should provide incentive to carriers to submit accurate manifests and report discrepancies.

112264

509642

GGD-80-22
APRIL 10, 1980

COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-196963

The Honorable Russell B. Long
Chairman, Committee on Finance
United States Senate

The Honorable Al Ullman
Chairman, Committee on Ways
and Means
House of Representatives

This report, as requested in your September 20, 1978, letter, discusses the Customs Service's use of a ship's cargo manifest and recommends steps for improving the administration of penalties for discrepancies in the manifest.

As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of the report. At that time, we will send copies to interested parties and make copies available to others upon request.

Comptroller General
of the United States

COMPTROLLER GENERAL'S REPORT
TO THE HOUSE COMMITTEE ON
WAYS AND MEANS AND THE
SENATE COMMITTEE ON FINANCE

SHIP MANIFEST LAWS NEED TO BE ADMINISTERED IN A MORE CONSISTENT, LESS BURDENSOME MANNER

D I G E S T

Concerned about problems in cargo handling confronting the Customs Service and importing community, the Senate Committee on Finance and the House Committee on Ways and Means asked GAO to analyze the Customs Service's use of a ship's cargo manifest and administration of penalties for discrepancies in the manifest.

The cargo manifest should be retained. However, Customs needs a system whereby manifest-related penalties can be administered in a more consistent, less burdensome manner; carriers should also be provided more incentive to report manifest discrepancies. Some changes can be made through administrative action, others will require legislative action.

CUSTOMS NEEDS AND HAS LONG USED CARGO MANIFESTS

The cargo manifest, which lists the quantity, description, and destination of all cargo on board ships entering the United States, has been and continues to be a useful document for controlling imports. Customs uses the manifest, as it has for almost 200 years, primarily as a means of accounting for all merchandise entering the country so that import duties and taxes are collected.

The merchandise quantity and description as shown on the manifest is compared to that shown on importers' merchandise entry documents, Customs' basis for the collection of duties and taxes. Since the manifest is prepared by the carrier and entry documents

GGD-80-22

are prepared by the importer the comparison provides some control that the quantity and type of merchandise entered by the importer is correct. This is the first step leading to the eventual collection of duties and taxes owed, if any, on imported merchandise.

PENALTIES CAN BE LEVIED MORE CONSISTENTLY BY USING A NEW SYSTEM

Customs encourages cargo manifest accuracy through a system of penalties. However, a new system is needed to improve the administration of penalties for manifest violations.

Customs has difficulty determining whether penalties for manifest discrepancies should be levied. The law provides that carriers will not incur penalties if Customs believes that the manifest is incorrect by reason of "clerical error or other mistake." Clerical errors are defined as "nonnegligent, inadvertent, or typographical mistakes in the preparation, assembly, or submission of the manifest." However, it is difficult to determine precisely what types of errors constitute negligence.

An indication that negligence may not be determined consistently is the variance in the number of penalties issued. Over 20,000 manifest corrections were made during fiscal year 1978 at the four Customs ports GAO visited. Each correction required a Customs decision as to whether the discrepancy was caused by negligence. Customs chose to levy a penalty in only 253 cases. However,

one port accounting for about 2,500 (12 percent) of the discrepancies levied 116 penalties--46 percent of the total penalties.

The penalties for manifest discrepancies are generally mitigated--settled for less than the amount originally levied--because Customs considers the penalties to be too high. The practice of issuing large penalties, which Customs is required to do by law, and later mitigating them is an unnecessary administrative burden.

Customs needs a manifest penalty system which sets an initial penalty that will generally not have to be mitigated and can be administered uniformly. To do that, Customs will have to stop determining whether negligence was involved for each discrepancy.

This could be done by using a system which automatically determines the amount of the penalty based on the number of discrepancies in the manifest. Each manifest would be considered individually and a penalty levied against the carrier on a graduated penalty scale. The more errors in the manifest, the larger the penalty.

CARRIERS NEED MORE INCENTIVE TO REPORT MANIFEST DISCREPANCIES

Carriers are in a position to identify manifest discrepancies and should be provided more of an incentive to do so. Section 440 of the Tariff Act provides some incentive for carriers to report manifest errors through a $500 penalty for failure to report overages. This incentive is negated somewhat by

--the possibility that the carrier will be held responsible for a manifest violation even though the carrier reports the discrepancy and

--Customs' practice of informally notifying carriers of discrepancies found by Customs personnel.

GAO proposes that carriers be given an incentive to report discrepancies they become aware of by

--not penalizing them if discrepancies are reported within certain time frames and

--not notifying them of errors found by Customs until after expiration of the reporting periods.

RECOMMENDATIONS

The Congress should amend the Tariff Act of 1930 to provide the Secretary of the Treasury with the authority to establish manifest penalties based on the number of discrepancies in the manifest. Appendix III contains suggested wording for amending the law.

GAO also recommends actions the Secretary of the Treasury should take to improve the administration of penalties for manifest violations. (See p. 11.)

AGENCY COMMENTS

The Department of the Treasury agrees that there is a lack of consistency in the assessment and mitigation of manifest penalties. However, it does not agree with GAO's recommended system for correcting these problems. (See app. I.) Treasury proposes to remedy the problems by fine tuning the present system. That may help, but GAO believes it will not be sufficient. Treasury's specific reasons for not agreeing and GAO's evaluation of those reasons are on pps. 11 to 14.

Contents

CHAPTER 1

CARGO MANIFEST--A NEEDED AND LONG USED CUSTOMS DOCUMENT

Concerned about problems in cargo handling confronting the Customs Service and importing community, the Senate Committee on Finance and the House Committee on Ways and Means asked us to analyze the Customs Service's use of a ship's cargo manifest and administration of penalties for discrepancies in the manifest.

CUSTOMS NEEDS THE MANIFEST

The cargo manifest, which lists the quantity, description, and destination of all cargo on board ships entering the United States, has been and continues to be a useful document for controlling imports.

Customs has used manifests for about 200 years, primarily as a means to insure duty collection and to account for imported merchandise. The Constitution vested the Congress with the power to "* * * lay and collect taxes, duties * * *; but all duties, imports, and excises shall be uniform throughout the United States." In 1789, the Congress passed two tariff acts: one levies a duty on goods, wares, and merchandise imported into the United States; the other establishes Customs' districts and ports of entry, Customs officers, and the method of collecting duties. Most of the requirements of these two acts were later included in the Customs Act of 1799, the first act to contain a complete code of Customs organization and procedures.

To insure duty collection, the latter act required a ship's master to have a "manifest" and an "unloading permit" before unloading cargo; it also provided penalties for failure to comply. The ship's master was required to submit a manifest to Customs upon entering a U.S. seaport, or be subject to a $500 penalty. If the merchandise on board was found to differ from that stated on the manifest, the ship's master was subject to a penalty of $500 if merchandise listed on the manifest was not found (shortage) and a penalty equal to the value of the goods if merchandise was found but not manifested (overage). These penalties remained essentially the same until the passage of the Customs Procedural Reform and Simplification Act of 1978. This act changed the penalty for manifest overages to either the value of the merchandise or $10,000, whichever was less.

The 1799 act also prohibited the ship's master from unloading merchandise prior to obtaining an unloading permit from Customs. Failure to obtain the permit resulted in a penalty of $400. The penalty amount was subsequently increased to the value of the merchandise unloaded.

While the laws have changed relatively little since the late 1700s, international trade has changed drastically. The volume of goods flowing from abroad has increased tremendously. For example, since fiscal year 1950 the number of entries of merchandise has increased over 530 percent, from 748,000 entries per year to 4 million per year in fiscal year 1978.

Also, the increasing use of containers for shipping cargo, most of which are packed by foreign exporters, conceals the merchandise from easy inspection by both the carrier and Customs. These changes have resulted in larger and more complex manifests which are primarily prepared by carriers from documents supplied by the foreign exporter rather than physical inspection of the cargo.

Customs' use of the manifest

Customs, as it has for almost 200 years, uses the manifest primarily as a means of accounting for all merchandise entering the country so that import duties and taxes are collected.

The merchandise quantity and description as shown on the manifest is compared to that shown on importers' merchandise entry documents, Customs' basis for the collection of duties and taxes. Since the carrier prepares the manifest and the importer prepares entry documents for merchandise, the comparison provides some control that the quantity and type of merchandise entered by the importer is correct. This is the first step leading to the eventual collection of duties and taxes owed, if any, on the imported merchandise. Additionally, the merchandise entry document identification number is noted on the manifest along side the merchandise. This serves as the beginning of an audit trail if any questions should later arise concerning that particular merchandise.

The manifest is also used by Customs to determine which merchandise has not been claimed within a reasonable time frame--usually 5 days--and should be forwarded to a secure storage area. This is done by screening the manifest at the end of the 5-day period for any merchandise which does not have an entry identification number and thus has not been claimed. This serves to safeguard the merchandise until it is either claimed by the importer or disposed of by Customs. Customs estimates that about 3 percent of all imports are sent to storage areas for safekeeping. The manifest is the only document available which allows Customs to make this determination.

While cargo accountability is the basic use of the manifest, it is also used by Customs inspectors and special enforcement teams for indications of attempts to import prohibited or restricted cargo. For example, one drug seizure was made when an inspector noticed on the manifest that a shipment was consigned to an importer who had gone out of business. In another instance, the manifest description of cargo put an inspector on notice about a possible U.S. copyright law violation. Examination of the cargo revealed the material was in violation of the law.

Customs also provides the Department of Agriculture's Animal and Plant Health Inspection Service inspectors a copy of the cargo manifest. The inspectors screen it for any cargo which may be contaminated with insects or diseases potentially harmful to U.S. agriculture.

CHAPTER 2

CUSTOMS SHOULD IMPROVE ITS ADMINISTRATION OF PENALTIES FOR MANIFEST VIOLATIONS

Cargo manifest accuracy is encouraged through a system of penalties administered by Customs. Changes are needed in the system so that

--Customs can administer penalties in a more consistent, less burdensome manner and

--carriers are given more incentive to report manifest errors.

MANIFEST PENALTIES NEED TO BE LEVIED MORE CONSISTENTLY

Customs has difficulty determining when penalties for manifest discrepancies should be levied. The law provides that carriers will not incur penalties if Customs believes the manifest is incorrect by reason of "clerical error or other mistake." Clerical errors are defined as "nonnegligent, inadvertent, or typographical mistakes in the preparation, assembly, or submission of the manifest." The major problem is determining whether negligence exists. This is difficult to do because for each error, an examination must be made of all the facts and circumstances surrounding the manifest discrepancy. Further, there are no guidelines as to precisely what types of errors constitute negligence. For these reasons, the determination of negligence is not being made consistently among the ports.

One indication of this inconsistency is the variance in the number of penalties issued by the four Customs ports we visited. Over 20,000 manifest corrections were made during fiscal year 1978 at these ports. Each correction required a Customs decision as to whether the discrepancy was caused by negligence. In only 253 cases did Customs choose to levy a penalty. However, one port accounting for only about 2,500 (12 percent) of the discrepancies levied 116 penalties--46 percent of the total penalties. The chart below shows the number of manifest corrections made and

penalty cases initiated during fiscal year 1978 at the four ports.

	Manifest corrections made and penalty cases initiated during fiscal year 1978			
	Manifest corrections	Percent	Manifest penalty cases	Percent
New York	11,619	57	89	35
New Orleans	1,310	7	17	7
Houston	2,483	12	116	46
Los Angeles	4,979	24	31	12
Total	20,391	100	253	100

Negligence determinations are not made uniformly within and among Customs ports. Some carriers have been penalized for certain types of errors, while others have not. In the Houston district, a carrier who omitted from the manifest three bills of lading for duty-free coffee was considered negligent and penalized. However, another carrier who omitted 13 bills of lading covering several hundred tons of dutiable steel was found not negligent. Also, the omission of multiple bills of lading by carriers in other districts, such as New York and Los Angeles, are generally not considered negligence.

Penalty mitigation--lengthy and inconsistent

Penalties for manifest discrepancies are generally mitigated--settled for less than the amount originally levied. The penalties which by law must be issued under section 584 of the Tariff Act of 1930 are $500 for manifest shortages and value of merchandise (limited by the Procedural Reform Act of 1978 to $10,000) for overages. Customs considers the penalties to be too high and usually mitigates them to a fraction of the amount levied. For example, the manifest penalties issued during fiscal year 1978 in the New Orleans District were mitigated to an average of 9.7 percent of the original penalty amount.

After receiving a penalty notice, the penalized party has 60 days in which to either pay the penalty or submit a

petition for cancellation or mitigation (reduction) of the penalty. The petition should contain the facts and circumstances the penalized party relied on to justify this action.

A petition for mitigation of a penalty is first processed by the District Fines, Penalties, and Forfeiture Office. If an investigation is deemed necessary then the case is sent to the Office of Investigations. After receiving the investigation report, the Fines, Penalties, and Forfeiture Office determines the degree of negligence and recommends a mitigated penalty amount to the district director.

If the case is within the district director's authority, the director mitigates the penalty and a mitigation notice is issued to the penalized party. If it is not within the director's authority, the director forwards the case with his/her recommendation to Customs headquarters. Once mitigation review is completed at headquarters, the decision is sent to the district. It then issues the mitigation notice. The penalized party has the opportunity for three additional reviews, two within Customs and a judicial review.

The time required to mitigate a case is lengthy, as shown below. The table represents only those fiscal year 1978 cases which had been mitigated and closed at the time of our review at the four ports. Additionally, almost all the cases were mitigated in the districts and did not require a headquarters review.

Port	Cases	Time required to mitigate manifest penalties (in months) Average	Range
Houston	44	5.1	2.0 to 12.7
New Orleans	13	5.0	1.6 to 11.1
New York	66	3.4	.7 to 14.0
Los Angeles	6	5.0	1.0 to 11.0
Total	129		

The practice of issuing large penalties, which Customs is required to do by law, and later mitigating them is an unnecessary administrative burden. Also, the prescribed penalty amounts seem inconsistent. A higher penalty for overages seems unwarranted if the error was unintentional. A typographical error for example is just as likely to result in an overage as a shortage, but the penalty for the overage can be considerably higher.

There is some inconsistency in the penalty amounts finally mitigated. For example, there are no guidelines for mitigating penalties for cargo shortages. As a result, some of the districts we visited either adopted guidelines used for other types of violations or used their own discretion in setting an appropriate penalty. As a result, similar violations resulted in penalties ranging from $100 to $250 in Houston; $25 to $100 in New Orleans; $100 to $500 in Los Angeles; and from $25 to $300 in New York.

Penalties for unloading permit violations used unnecessarily

The Tariff Act of 1930 retained the requirement that carriers obtain a permit before unloading merchandise and the penalties for failure to comply. The permit serves a useful control purpose; yet, Customs' use of the permit penalty provision duplicates the manifest penalty and seems more of an administrative burden than a means of exercising control over imported cargo.

The permit is part of a form which lists, among other things, the vessel's pier location, date of arrival, bond coverage amount and surety company. This information is useful to Customs in the control of vessel movement and activity. However, the permit is only valid for manifested merchandise. The unloading of unmanifested merchandise is therefore considered to have been done without a valid permit and subjects the vessel master to a penalty equal to the value of the unmanifested cargo unloaded. As with manifest penalties, this amount is almost always mitigated.

In one port, the penalty provision was used 63 times in fiscal year 1978 when the cargo unloaded was not in

agreement with the amount manifested. In each case, penalties were also issued for a manifest discrepancy. (The other three ports only issued the manifest penalty.) Customs officials said that use of the permit penalty provision in this manner serves as an incentive to carriers to provide accurate manifests. However, the tariff law provides penalties for incorrect manifests, and levying penalties under two sections of the law for the same manifest discrepancy is unnecessary. This is particularly true since Customs mitigates the penalties to a level deemed appropriate for the offense. Customs could ease its administrative workload by issuing penalties for unloading without a permit only in those cases where a permit has not been obtained.

NEW PENALTY SYSTEM NEEDED

Customs needs a manifest penalty system which sets an initial penalty that will generally not have to be mitigated and can be administered uniformly. To do that, the system should not determine for each manifest discrepancy whether negligence was involved.

This could be done by using a system which automatically determines the amount of the penalty based on the number of discrepancies in the manifest. Each manifest would be considered individually; a penalty would be levied against the carrier on a graduated penalty scale based on the number of discrepancies regardless of whether the discrepancy was an overage or shortage. The more errors in the manifest, the larger the penalty.

Mitigation should rarely be needed under this system. Penalties for fraudulent manifest would continue to be levied in an amount equal to the value of the merchandise or $10,000, whichever was less as provided for in the Customs Procedural Reform and Simplification Act of 1978.

The suggested change in levying penalties should be applied to carriers only. The Procedural Reform Act of 1978 gave Customs, for the first time, the authority to penalize someone other than the carrier for manifest discrepancies. Now, for example, a terminal operator may be penalized if responsible for manifest discrepancies because of the unloading of merchandise not manifested for that port. However, until more experience is obtained by Customs under

this section of the act, it is uncertain whether our proposed changes should be applied to other than carriers. For example, data is needed on the type and extent of violations committed by other parties and whether a penalty scale as envisioned for carriers can be utilized.

Carriers need more of an incentive to report manifest discrepancies

Carriers are in a position to identify manifest discrepancies and should be provided more of an incentive to do so. According to Customs officials, about 75 percent of nonbulk cargo imported into the U.S. is shipped in containers. For about 45 percent of the containers the carrier has some chance to verify the container contents. Also, carriers can determine the number of containers by observing the loading and unloading of the ship or by comparing stevedores' reports with the manifest.

Some incentive for carriers to report manifest errors is provided by section 440 of the Tariff Act which provides a $500 penalty for failure to report overages. This incentive is negated somewhat by (1) the possibility that the carrier will be held responsible for a manifest violation even though the carrier reports the discrepancy and (2) Customs' practice of notifying carriers of discrepancies found by Customs.

While carriers can report a manifest discrepancy and be relieved of a section 440 violation, they remain liable for a possible section 584 violation because the manifest as originally provided to Customs was incorrect. This provision of the Tariff Act would seem to work contrary to the objective of obtaining an accurate manifest. In fiscal year 1978, for example, 24 percent of the penalties for manifest discrepancies levied in the New York Seaport were initiated based on information supplied by carriers.

Customs' notification procedure shifts responsibility for identifying manifest discrepancies from the carrier to Customs. Carriers are assured they will not be penalized for a manifest discrepancy unless notified in advance by

Customs. Carriers can safely assume, therefore, that Customs is unaware of errors if no notification is received. Thus, there is little incentive for carriers to search for or report manifest discrepancies. One carrier official stated that manifests are not checked for discrepancies for that reason. This position seems contrary to the fact that records show that many manifest corrections are submitted by carriers. However, Customs officials told us that they informally notify carriers of discrepancies. Carriers then formally submit a manifest correction to Customs. Therefore, while the manifest correction will be made by the carrier indicating that carriers are discovering discrepancies, this is not necessarily the case.

An incentive for carriers to correct discrepancies in the number of containers manifested could be provided by not levying a penalty for having an incorrect manifest if discrepancies were reported within a short period after unloading. The same conditions would apply to reporting container content discrepancies except the time frame would be somewhat longer. This would allow carriers time to check the manifest against other documentation such as packing and unpacking lists.

Under these proposed procedures, Customs should not issue any notice to carriers of manifest errors found by Customs until after expiration of the "grace" periods. Notifications issued during this period might lessen the incentive for carriers to submit correct manifests initially. At the end of the period, all errors the carrier had not corrected would be reported to the carrier by Customs as part of its prepenalty notification. Carriers would then be required to respond (as they are now) to questions aimed at determining (1) the validity of the error and (2) the party responsible. Based on the carriers responses, Customs should issue the appropriate penalty to the responsible party.

CONCLUSIONS

The cargo manifest has been and continues to be a useful document for controlling imports. The more accurate the manifest, the better it serves this function. To insure accuracy, various penalties have been provided in the law

for discrepancies in the manifest. Changes are needed to insure that the penalties do not work contrary to their intent and do not create an unnecessary administrative burden for Customs.

RECOMMENDATION TO THE CONGRESS

We recommend that Congress amend the Tariff Act of 1930 to provide the Secretary of the Treasury with the authority to establish manifest penalties based on the number of discrepancies in the manifest. Appendix III contains suggested wording for amending the law.

RECOMMENDATIONS TO THE SECRETARY OF THE TREASURY

We recommend that the Secretary of the Treasury establish a system whereby

--parties responsible for manifest discrepancies are not penalized if the discrepancies are reported within certain time frames;

--Customs does not notify carriers of manifest discrepancies it discovers until the carriers' reporting time frames have lapsed; and

--a penalty scale is established for carrier manifest discrepancies based on the number of discrepancies per manifest.

We also recommend that the unloading permit penalty not be used to penalize carriers who have inaccurate manifests.

AGENCY COMMENTS AND OUR EVALUATION

The Department of the Treasury commented on this report by letter dated March 11, 1980. Treasury agrees that there is a lack of consistency in the assessment and mitigation of manifest penalties. However, it does not agree with our recommended system for correcting these problems. (See app. I.) Treasury's specific comments are discussed below with out evaluation.

Both GAO and Treasury agree that the manifest is needed. Treasury characterizes the manifest as essential, not just useful, for controlling imported merchandise. It emphasizes that the manifest is needed to control all merchandise, not just that which is dutiable.

Treasury is not receptive to our proposed manifest penalty system for correcting the problems discussed in our report. It contends, among other matters, that our system would lead to an increase in the number of errors in a ship's manifest, thus increasing Customs' administrative cost. It prefers the retention of the present manifest penalty system but with improved guidelines for assessing and mitigating penalties. A Customs task force is presently engaged in developing these guidelines.

Existing guidelines can be improved, but that does not seem to be the answer. Unless a new system replaces the present system

--Customs will still have the administrative burden of analyzing each discrepancy to determine if it is the result of negligence, which very few are, or the result of clerical error;

--Customs will still be required to issue a penalty in an amount which bears no relation to the offense and then, as a routine matter, mitigate the penalty to a minor amount, thus incurring unnecessary administrative cost for itself as well as carriers; and

--carriers will still have little incentive to report manifest discrepancies.

Our proposed system would not only eliminate the administrative burdens mentioned above, but would encourage accurate reporting by carriers. We discuss Treasury's specific comments in more detail below.

Granting carriers grace periods to correct manifest discrepancies

Treasury objects to our proposal that parties responsible for manifest discrepancies not be penalized if, within certain time frames, the errors are reported to Customs. Treasury fears that carriers would pay less attention than they now do to submitting a correct manifest resulting in increased administrative burden for Customs.

We believe carriers would be more apt to submit a correct manifest under our proposal. The granting of grace periods must be considered in conjunction with the other proposal that Customs not notify carriers of manifest errors

found by Customs until after the grace period. Thus the onus is on the carrier to find and report discrepancies in order to avoid a penalty. The more errors in the manifest, the more effort carriers would have to make to find the errors. The larger the number of unreported discrepancies the larger the penalty.

Carriers not to be notified during grace periods of errors found by Customs

Treasury maintains that not notifying carriers of manifest discrepancies discovered by Customs until after prescribed time periods will result in a flood of carrier complaints to the Congress as happened in a Customs test conducted in 1972. We do not concur because conditions used in the test conducted by Customs and those of our proposed system are not comparable. In 1972, Customs required that a penalty in an amount equal to the value of the merchandise be automatically issued to a carrier for unreported manifest errors regardless of who was responsible for the errors.

Our system, on the other hand, would result in an appropriate penalty being issued to the responsible party. The system provides for the issuance of a prepenalty notice (see p. 10) after receipt of which, the carrier would respond to questions aimed at determining (1) the validity of the error and (2) the party responsible. Based on this response, Customs would issue the appropriate penalty.

Establishing a penalty scale

Treasury does not favor our proposed penalty system. It believes penalties should not be based on the number of errors in a manifest because the size of manifests differ; that the value of the merchandise involved in reporting errors should be considered in setting penalties; and that mitigation should be part of each penalty.

The essence of our proposed system is that the amount of the penalty be in relation to the discrepancies in the manifest and that the penalty be levied against the responsible party. Accordingly, the system allows the penalty/error relationship to be established according to what percent of the manifest is in error and not based simply on the number of errors. Under the system, there would be little, if any, need for mitigation. There simply would be little to mitigate if the original penalty was a fixed, reasonable amount and the validity of the errors and the responsible party were determined before issuing the penalty.

We see no relation between a non-fraudulent manifest discrepancy and the value or type of merchandise involved. A non-fraudulent discrepancy is just as likely to be made for merchandise worth $100,000 or $1, duty-free or dutiable. We believe that all non-fraudulent discrepancies should be treated equally. For fraudulent discrepancies our proposed system does not exclude Customs from penalizing the responsible party. Under our proposal all non-fraudulent discrepancies would be levied using the penalty scale. For fraudulent discrepancies, however, Customs would, as it presently does, issue a penalty in an amount equal to the value of the merchandise or $10,000, whichever is less.

Assuring carriers report discrepancies

Because the law requires carriers to report discrepancies, Treasury takes issue with our statement that carriers are assured they will not be penalized for a manifest discrepancy unless notified in advance by Customs. Our point is that while carriers are required to report discrepancies, there is little incentive to do so because reporting may result in a manifest penalty. The carrier is therefore placed in the position of determining whether the risk of not reporting is less than the risk of being penalized for a manifest discrepancy. Also, when Customs discovers a discrepancy it notifies the carrier seeking an explanation. Therefore, carriers can assume Customs is unaware of the discrepancy if no notification is received. Thus, little incentive is provided carriers to report discrepancies.

Permit to unload

Treasury does not agree with our proposal that Customs not use the unloading permit penalty to penalize carriers who have inaccurate manifests. However, Treasury gives no reasons for its position. As we state on page 8, the tariff law provides a penalty for having an incorrect manifest, and levying penalties under two sections of the law for the same manifest discrepancy is unnecessary.

CHAPTER 3

SCOPE OF REVIEW

Based on discussions with the staffs of the Senate Committee on Finance and the House Committee on Ways and Means, we concentrated our review on the various laws and regulations governing marine carriers; these carriers handle considerably more imports by both volume and value than air and surface (trucks and trains) carriers. Therefore, conclusions and recommendations contained in this report are not necessarily applicable to air and overland carriers.

Our review was conducted at Customs Headquarters in Washington, D.C., three Customs districts--Houston, Los Angeles, New Orleans--and the New York Seaport.

At these locations, we

--reviewed laws, policies, and procedures relating to manifest and unloading permits;

--examined available records relating to manifest and unloading penalties issued during fiscal year 1978;

--interviewed officials from Customs' manifest clearance and penalty units; and

--interviewed officials representing ocean carriers and terminal operators.

Sections of the Tariff Act of 1930 included in our review are in appendix IV.

APPENDIX I

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

MAR 11 1980

Dear Mr. Voss:

In your letter of December 13, 1979, you requested comments on the draft GAO report on penalties incurred under 19 U.S.C. 1453 (unlading without a permit) and 1584 (false manifest).

This report (page 11) would recommend to the Congress that 19 U.S.C. 1584 be amended to revise the present $500 penalty incurred for a shortage (merchandise manifested but not found) and the present penalty equal to the lesser of $10,000 or the domestic value of the merchandise incurred for an overage (merchandise found but not manifested). GAO would recommend a penalty "not to exceed $10,000" for a shortage or an overage. GAO believes that after the statute was amended, Customs could establish a penalty scale for manifest discrepancies based on the number of discrepancies per manifest.

It would recommend (page 11) to the Department of the Treasury that (a) parties responsible for manifest discrepancies should not be penalized under 19 U.S.C. 1584 if they report the discrepancy to Customs within a certain period of time, (b) that Customs should not notify carriers of manifest discrepancies until the time for the carrier to report the discrepancy passes, (c) that the penalty scale for manifest discrepancies mentioned in the preceding paragraph should be established, and (d) that penalties should only be assessed under 19 U.S.C. 1453 when a permit to unlade was not obtained.

The GAO report notes three problem areas in Customs handling of manifest discrepancies:

1. Inconsistencies in the process of determining whether clerical error is involved;

2. A lack of uniformity in the processing of penalties for manifest violations; and,

3. Delays in processing these penalty cases.

Customs agrees with these GAO findings. Customs had recognized these problems and is taking steps to remedy them. A task force is engaged in developing detailed guidelines to be used by all field offices for assessing and processing manifest penalties. It is also looking into the question of determining when no penalty is to be assessed by reason of clerical error. Efforts towards streamlining the actual processing of penalty cases are also being considered.

On the four above-mentioned proposed recommendations to Treasury covered by the GAO report, our comments are as follows:

(a) Under section 4.12(a)(5), Customs Regulations, parties filing a timely explanation of a manifest discrepancy are not subject to penalties under section 1584 if the district director is satisfied that the discrepancy resulted from clerical error or other mistake as defined in section 4.12(a)(5). This is often the case and explains why there are few penalties assessed in relation to the number of manifest discrepancy explanations filed at the four ports visited by GAO officials. However, we believe the authority to assess a penalty should be retained in those cases when the explanation indicates the discrepancy resulted from intent or negligence. We believe that if penalties are not assessed in those cases, carriers will pay far less attention to the correctness of a manifest presented to Customs since they will be able to report discrepancies to Customs later and avoid penalties. We believe negligence in the preparation of manifests will increase and result in an administrative burden for Customs. However, we will have Customs review the guidelines on whether a type of manifest discrepancy may be considered the result of clerical error or other mistake and as necessary issue guidelines aimed at uniformity in this area.

(b) Section 4.12(a)(4), Customs Regulations, requires district directors to immediately notify carriers of discrepancies not reported by the carrier. When the Quantity Control Manual was first issued by Customs in 1972, the possibility of not notifying carriers of manifest discrepancies was tested on the West Coast. Customs officers waited for 30 days for the carrier to report the discrepancy. If it was not reported by the carrier, Customs issued the appropriate penalty notice. The result was a flood of complaints by the carriers to Congress, Treasury, and Customs Headquarters. It was determined that the best interests of the Customs Service and carriers were served by having Customs notify carriers of discrepancies and requiring an explanation within a certain time period (section 4.12(a)(4), Customs Regulations). The Quantity Control Manual was revised in 1974 to make this clear. We believe the present procedure should be retained.

(c) We do not believe the assessment of penalties under section 1584 based on the number of discrepancies per manifest can be justified. For example, a bulk carrier may have only one bill of lading for all the merchandise and a single manifest discrepancy would apply to a large quantity of merchandise, whereas another carrier may have hundreds of bills of lading relating to its cargo and five manifest discrepancies may apply to just a very small quantity of cargo. Further, should one manifest discrepancy relating to a bill of lading for $500,000 worth of merchandise always be considered less important than five discrepancies relating to five bills of lading for $500 worth of merchandise each? Or should five manifest discrepancies relating to unrestricted duty-free merchandise be considered more serious than one manifest discrepancy

relating to restricted merchandise? We believe that when penalties are assessed and petitions for relief are received, Customs has a responsibility under 19 U.S.C. 1618 to consider the specific facts in each case and determine whether relief is warranted. Of course, guidelines for mitigation of penalties assessed under section 1584 have been issued as part of the Fines, Penalties and Forfeitures Handbook. Customs will review those guidelines to see if clarification is necessary.

(d) Penalties are now assessed under 19 U.S.C. 1453 only when merchandise not covered by a permit to unlade (section 4.30, Customs Regulations) is unladen. If a vessel obtains a permit to unlade X and in fact unlades X, Y and Z, penalties are incurred. Further, if a permit to unlade manifested merchandise is obtained and it is discovered that unmanifested merchandise was also unladen, penalties are incurred. There would be two different penalties for two different violations, one under section 1584 for the failure to manifest and another under section 1453 for unlading without a permit. Customs Headquarters has informed its field officers that there would be no section 1453 or 1584 penalty under such circumstances if the manifest discrepancy was the result of clerical error or other mistake.

Other comments on statements in the GAO report are as follows:

1. GAO describes the manifest as a "useful" document (page 1). This implies that there may be alternatives. We consider the manifest an essential and not just a useful document in Customs control of imported merchandise. As the Supreme Court stated in U.S. v. Sischo, 262 U.S. 165, "The purpose of requesting a ship's manifest is not merely the collection of duties but also to inform the government whether forbidden things are being imported."

2. GAO states that Customs uses the manifest primarily with regard to the collection of duty and taxes (page 2). This is not correct. The manifest is a document used primarily to let Customs know what merchandise is being imported and it is very important to Customs that the manifest covers free and restricted merchandise as well as dutiable merchandise.

3. The GAO report states "Customs needs a manifest penalty system which sets an initial penalty that will generally not have to be mitigated" (page 8). It is believed that such a system would result in effect as a system whereby carriers could pay a fee to violate manifest requirements. Further, there can be little doubt that such a system would result in complaints from carriers that their right to obtain relief under 19 U.S.C. 1618 has been taken away.

APPENDIX I

4. The GAO report states that the time for action on a penalty assessed under 19 U.S.C. 1584 is too lengthy in part because at times cases have to be forwarded to Customs Headquarters for action (page 6). As amended by P.L. 95-410, the largest penalty that can be assessed under section 1584 for a manifest discrepancy is $10,000. Under section 171.21, Customs Regulations, district directors have been delegated authority to act on penalty cases up to $25,000. Under section 171.33(b)(1), Customs Regulations, appeals from decisions of district directors are to regional commissioners. Thus, section 1584 penalty cases are not sent to Customs Headquarters for action.

5. The GAO report states that penalties for false manifests could be assessed under 19 U.S.C. 1436 and 1586 instead of section 1584 (page 8). Section 1436 covers penalties for failure to report or enter a vessel. Section 1586 covers penalties for unlawful unlading or transshipment. Neither covers penalties for manifest discrepancies. (See GAO note.)

6. The GAO report states that carriers are assured they will not be penalized for a manifest discrepancy unless notified in advance by Customs (page 9). This is not the policy of the Customs Service. Section 4.12, Customs Regulations, requires carriers to notify Customs of manifest discrepancies and provides that penalties will be assessed unless the discrepancies resulted from clerical error or other mistake.

We do not favor the GAO legislative proposal. The GAO proposal would amend section 1584 to provide a penalty not to exceed $10,000 for a shortage as well as an overage. We prefer the present $500 penalty for a shortage. In the case of a shortage, the merchandise is covered by the manifest given to Customs so a shortage could not amount to attempted smuggling. An overage relates to merchandise not listed on the manifest and could well relate to attempted smuggling and warrants the larger penalty now provided by statute. Attempts to raise the penalty for a shortage from $500 to a possible $10,000 would further no purpose or goal of the Customs Service.

Customs fully recognizes the desirability of improving still further our penalty assessment procedures and is actively pursuing this goal.

Sincerely,

Richard J. Davis
Assistant Secretary
(Enforcement and Operations)

GAO note: The final report was changed to eliminate any mention that penalties for false manifest could be assessed under 19 U.S.C. 1436 and 1586.

APPENDIX II

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, D.C. 20510

September 20, 1978

The Honorable
Elmer B. Staats
Comptroller General of the
United States
U.S. General Accounting Office
441 "G" Street, N.W.
Washington, D. C. 20548

Dear Mr. Staats:

During their consideration of H.R. 8149, the Customs Procedural Reform and Simplification Act of 1978, the Committee on Finance and the Committee on Ways and Means revised the penalty for errors in a ship's manifest under section 584 of the Tariff Act of 1930 (19 U.S.C. 1584). As a result of their review of this subject, both Committees are concerned about the problems new technologies in cargo handling are causing the Customs Service and importing community.

On behalf of the Committee on Finance and the Committee on Ways and Means, we request the General Accounting Office to investigate the following issues:

--The use to which the Customs Service currently puts ship's manifests and the necessity for continuing the manifest requirement under section 431 of the Tariff Act (19 U.S.C. 1431).

--The administrative difficulties for the Customs Service and the effects on shippers and importers caused by the application of sections 431 and 584 to new cargo technologies, such as containerization.

We request you report your findings, together with recommendations for legislation, if any, to the Committees no later than October 1, 1979.

Sincerely,

Chairman
Committee on Ways and
Means

Chairman
Committee on Finance

APPENDIX III

SUGGESTED WORDING TO AMEND SECTION 584 OF THE TARIFF ACT OF 1930, AS AMENDED (SEE GAO NOTE.)

584 - Falsity or lack of manifest; penalties

(a) General rule - (1) Any master of any vessel and any person in charge of any vehicle bound to the United States who does not produce the manifest to the officer demanding the same shall be liable to a penalty of $500, and if any merchandise, including sea stores, is found on board of or after having been unladen from such vessel or vehicle which is not included or described in said manifest or does not agree therewith and if any merchandise described in such manifest is not found on board, the master of such vessel or the person in charge of such vehicle or the owner of such vessel or vehicle or any person directly or indirectly responsible for any discrepancy between the merchandise and said manifest shall be liable to a penalty not to exceed $10,000, and any such merchandise belonging or consigned to the master or other officer or to any of the crew of such vessel, or to the owner or person in charge of such vehicle, shall be subject to forfeiture.

GAO note: This suggested amendment to section 584 eliminates the language of the present law which [1] distinguishes between penalties for overages and shortages; [2] requires an administrative determination of clerical error, i.e., whether there has been negligence, in each case; and [3] with respect to overages, requires a penalty equal to the lesser of $10,000 or the value of the merchandise. In its stead, the proposed amendment would enable Customs to establish a penalty scale, with a maximum penalty of $10,000, based on the number of discrepancies in the manifest.

SECTIONS OF THE TARIFF ACT OF 1930, AS AMENDED, INCLUDED IN GAO'S REVIEW

Section and Title	
431 - Manifest - Requirement, Form and Content	Requires that the master of every vessel required to make entry shall have on board a manifest, its form and contents, and the required manifest signature. (For related penalties, see section 584.)
440 - Correction of Manifest	Requires the master to correct the manifest by post entry if the merchandise does not agree with the manifest or be subject to a $500 penalty.
448 - Unloading	Requires that no merchandise, passengers, or baggage shall be unloaded until vessel entry or report of arrival has been made and a permit for unlading issued by Customs has been obtained.
453 - Lading and Unlading of Merchandise or Baggage - Penalties	The penalty for unloading without a permit is equal to the value of the merchandise unloaded. The merchandise is subject to forfeiture and if the value is $500 or more the vessel is subject to seizure. The master and anyone involved with the violation is subject to the above mentioned penalty.
584 - Falsity or Lack of Manifest - Penalties	The penalty for failure to provide a manifest on demand makes the master liable for a $500 penalty.

Section and Title	
584 - Falsity or Lack of Manifest - Penalties (cont)	The master, owner, or person responsible for a manifest discrepancy is subject to a penalty equal to the value of the merchandise or $10,000, which ever is less, for merchandise found but not listed on the manifest (overage) or a penalty of $500 for merchandise listed on the manifest but not found on board (shortage).
618 - Remission or Mitigation of Penalties	Any person who is alleged to have incurred any fine or penalty may file a petition for the remission or mitigation of such fine or penalty.

(263740)

AN EQUAL OPPORTUNITY EMPLOYER

UNITED STATES
GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICIAL BUSINESS
PENALTY FOR PRIVATE USE,$300

POSTAGE AND FEES PAID
U. S. GENERAL ACCOUNTING OFFICE

THIRD CLASS