

CUSTOMS BORDER SECURITY ACT OF 2001

DECEMBER 5, 2001.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. THOMAS, from the Committee on Ways and Means,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3129]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 3129) to authorize appropriations for fiscal years 2002 and 2003 for the United States Customs Service for antiterrorism, drug interdiction, and other operations, for the Office of the United States Trade Representative, for the United States International Trade Commission, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Customs Border Security Act of 2001”.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.

TITLE I—UNITED STATES CUSTOMS SERVICE

Subtitle A—Drug Enforcement and Other Noncommercial and Commercial Operations

- Sec. 101. Authorization of appropriations for noncommercial operations, commercial operations, and air and marine interdiction.
- Sec. 102. Antiterrorist and illicit narcotics detection equipment for the United States-Mexico border, United States-Canada border, and Florida and the Gulf Coast seaports.
- Sec. 103. Compliance with performance plan requirements.

Subtitle B—Child Cyber-Smuggling Center of the Customs Service

- Sec. 111. Authorization of appropriations for program to prevent child pornography/child sexual exploitation.

Subtitle C—Personnel Provisions

CHAPTER 1—OVERTIME AND PREMIUM PAY OF OFFICERS OF THE CUSTOMS SERVICE

- Sec. 121. Correction relating to fiscal year cap.
- Sec. 122. Correction relating to overtime pay.
- Sec. 123. Correction relating to premium pay.
- Sec. 124. Use of savings from payment of premium pay.
- Sec. 125. Effective date.

CHAPTER 2—MISCELLANEOUS PROVISIONS

- Sec. 131. Additional Customs Service officers for United States–Canada border.
- Sec. 132. Study and report relating to personnel practices of the Customs Service.
- Sec. 133. Study and report relating to accounting and auditing procedures of the Customs Service.
- Sec. 134. Establishment and implementation of cost accounting system; reports.
- Sec. 135. Study and report relating to timeliness of prospective rulings.
- Sec. 136. Study and report relating to Customs user fees.

Subtitle D—Antiterrorism Provisions

- Sec. 141. Immunity for United States officials that act in good faith.
- Sec. 142. Emergency adjustments to offices, ports of entry, or staffing of the Customs Service.
- Sec. 143. Mandatory advanced electronic information for cargo and passengers.
- Sec. 144. Border search authority for certain contraband in outbound mail.
- Sec. 145. Authorization of appropriations for reestablishment of Customs operations in New York City.

Subtitle E—Textile Transshipment Provisions

- Sec. 151. GAO audit of textile transshipment monitoring by Customs Service.
- Sec. 152. Authorization of appropriations for textile transshipment enforcement operations.
- Sec. 153. Implementation of the African Growth and Opportunity Act.

TITLE II—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

- Sec. 201. Authorization of appropriations.

TITLE III—UNITED STATES INTERNATIONAL TRADE COMMISSION

- Sec. 301. Authorization of appropriations.

TITLE IV—OTHER TRADE PROVISIONS

- Sec. 401. Increase in aggregate value of articles exempt from duty acquired abroad by United States residents.
- Sec. 402. Regulatory audit procedures.

TITLE I—UNITED STATES CUSTOMS SERVICE

Subtitle A—Drug Enforcement and Other Noncommercial and Commercial Operations

SEC. 101. AUTHORIZATION OF APPROPRIATIONS FOR NONCOMMERCIAL OPERATIONS, COMMERCIAL OPERATIONS, AND AIR AND MARINE INTERDICTION.

(a) NONCOMMERCIAL OPERATIONS.—Section 301(b)(1) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)) is amended—

(1) in subparagraph (A) to read as follows:

“(A) \$886,513,000 for fiscal year 2002.”; and

(2) in subparagraph (B) to read as follows:

“(B) \$909,471,000 for fiscal year 2003.”.

(b) COMMERCIAL OPERATIONS.—

(1) IN GENERAL.—Section 301(b)(2)(A) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(2)(A)) is amended—

(A) in clause (i) to read as follows:

“(i) \$1,603,482,000 for fiscal year 2002.”; and

(B) in clause (ii) to read as follows:

“(ii) \$1,645,009,000 for fiscal year 2003.”.

(2) AUTOMATED COMMERCIAL ENVIRONMENT COMPUTER SYSTEM.—Of the amount made available for each of fiscal years 2002 and 2003 under section 301(b)(2)(A) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(2)(A)), as amended by paragraph (1), \$308,000,000 shall be available until expended for each such fiscal year for the development, establishment, and implementation of the Automated Commercial Environment computer system.

(3) REPORTS.—Not later than 90 days after the date of the enactment of this Act, and not later than each subsequent 90-day period, the Commissioner of Customs shall prepare and submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report demonstrating that the development and establishment of the Automated Commercial Environment computer system is being carried out in a cost-effective manner and meets the modernization requirements of title VI of the North American Free Trade Agreements Implementation Act.

(c) AIR AND MARINE INTERDICTION.—Section 301(b)(3) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(3)) is amended—

(1) in subparagraph (A) to read as follows:

“(A) \$181,860,000 for fiscal year 2002.”; and

(2) in subparagraph (B) to read as follows:

“(B) \$186,570,000 for fiscal year 2003.”.

(d) SUBMISSION OF OUT-YEAR BUDGET PROJECTIONS.—Section 301(a) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(a)) is amended by adding at the end the following:

“(3) By not later than the date on which the President submits to Congress the budget of the United States Government for a fiscal year, the Commissioner of Customs shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the operations of the Customs Service as provided for in subsection (b).”.

SEC. 102. ANTITERRORIST AND ILLICIT NARCOTICS DETECTION EQUIPMENT FOR THE UNITED STATES-MEXICO BORDER, UNITED STATES-CANADA BORDER, AND FLORIDA AND THE GULF COAST SEAPORTS.

(a) FISCAL YEAR 2002.—Of the amounts made available for fiscal year 2002 under section 301(b)(1)(A) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)(A)), as amended by section 101(a) of this Act, \$90,244,000 shall be available until expended for acquisition and other expenses associated with implementation and deployment of antiterrorist and illicit narcotics detection equipment along the United States-Mexico border, the United States-Canada border, and Florida and the Gulf Coast seaports, as follows:

(1) UNITED STATES-MEXICO BORDER.—For the United States-Mexico border, the following:

(A) \$6,000,000 for 8 Vehicle and Container Inspection Systems (VACIS).

(B) \$11,200,000 for 5 mobile truck x-rays with transmission and backscatter imaging.

(C) \$13,000,000 for the upgrade of 8 fixed-site truck x-rays from the present energy level of 450,000 electron volts to 1,000,000 electron volts (1-MeV).

(D) \$7,200,000 for 8 1-MeV pallet x-rays.

(E) \$1,000,000 for 200 portable contraband detectors (busters) to be distributed among ports where the current allocations are inadequate.

(F) \$600,000 for 50 contraband detection kits to be distributed among all southwest border ports based on traffic volume.

(G) \$500,000 for 25 ultrasonic container inspection units to be distributed among all ports receiving liquid-filled cargo and to ports with a hazardous material inspection facility.

(H) \$2,450,000 for 7 automated targeting systems.

(I) \$360,000 for 30 rapid tire deflator systems to be distributed to those ports where port runners are a threat.

(J) \$480,000 for 20 portable Treasury Enforcement Communications Systems (TECS) terminals to be moved among ports as needed.

(K) \$1,000,000 for 20 remote watch surveillance camera systems at ports where there are suspicious activities at loading docks, vehicle queues, secondary inspection lanes, or areas where visual surveillance or observation is obscured.

(L) \$1,254,000 for 57 weigh-in-motion sensors to be distributed among the ports with the greatest volume of outbound traffic.

(M) \$180,000 for 36 AM traffic information radio stations, with 1 station to be located at each border crossing.

(N) \$1,040,000 for 260 inbound vehicle counters to be installed at every inbound vehicle lane.

(O) \$950,000 for 38 spotter camera systems to counter the surveillance of customs inspection activities by persons outside the boundaries of ports where such surveillance activities are occurring.

(P) \$390,000 for 60 inbound commercial truck transponders to be distributed to all ports of entry.

(Q) \$1,600,000 for 40 narcotics vapor and particle detectors to be distributed to each border crossing.

(R) \$400,000 for license plate reader automatic targeting software to be installed at each port to target inbound vehicles.

(2) UNITED STATES-CANADA BORDER.—For the United States-Canada border, the following:

(A) \$3,000,000 for 4 Vehicle and Container Inspection Systems (VACIS).

(B) \$8,800,000 for 4 mobile truck x-rays with transmission and backscatter imaging.

(C) \$3,600,000 for 4 1–MeV pallet x-rays.

(D) \$250,000 for 50 portable contraband detectors (busters) to be distributed among ports where the current allocations are inadequate.

(E) \$300,000 for 25 contraband detection kits to be distributed among ports based on traffic volume.

(F) \$240,000 for 10 portable Treasury Enforcement Communications Systems (TECS) terminals to be moved among ports as needed.

(G) \$400,000 for 10 narcotics vapor and particle detectors to be distributed to each border crossing based on traffic volume.

(3) FLORIDA AND GULF COAST SEAPORTS.—For Florida and the Gulf Coast seaports, the following:

(A) \$4,500,000 for 6 Vehicle and Container Inspection Systems (VACIS).

(B) \$11,800,000 for 5 mobile truck x-rays with transmission and backscatter imaging.

(C) \$7,200,000 for 8 1–MeV pallet x-rays.

(D) \$250,000 for 50 portable contraband detectors (busters) to be distributed among ports where the current allocations are inadequate.

(E) \$300,000 for 25 contraband detection kits to be distributed among ports based on traffic volume.

(b) FISCAL YEAR 2003.—Of the amounts made available for fiscal year 2003 under section 301(b)(1)(B) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)(B)), as amended by section 101(a) of this Act, \$9,000,000 shall be available until expended for the maintenance and support of the equipment and training of personnel to maintain and support the equipment described in subsection (a).

(c) ACQUISITION OF TECHNOLOGICALLY SUPERIOR EQUIPMENT; TRANSFER OF FUNDS.—

(1) IN GENERAL.—The Commissioner of Customs may use amounts made available for fiscal year 2002 under section 301(b)(1)(A) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)(A)), as amended by section 101(a) of this Act, for the acquisition of equipment other than the equipment described in subsection (a) if such other equipment—

(A)(i) is technologically superior to the equipment described in subsection (a); and

(ii) will achieve at least the same results at a cost that is the same or less than the equipment described in subsection (a); or

(B) can be obtained at a lower cost than the equipment described in subsection (a).

(2) TRANSFER OF FUNDS.—Notwithstanding any other provision of this section, the Commissioner of Customs may reallocate an amount not to exceed 10 percent of—

(A) the amount specified in any of subparagraphs (A) through (R) of subsection (a)(1) for equipment specified in any other of such subparagraphs (A) through (R);

(B) the amount specified in any of subparagraphs (A) through (G) of subsection (a)(2) for equipment specified in any other of such subparagraphs (A) through (G); and

(C) the amount specified in any of subparagraphs (A) through (E) of subsection (a)(3) for equipment specified in any other of such subparagraphs (A) through (E).

SEC. 103. COMPLIANCE WITH PERFORMANCE PLAN REQUIREMENTS.

As part of the annual performance plan for each of the fiscal years 2002 and 2003 covering each program activity set forth in the budget of the United States Customs Service, as required under section 1115 of title 31, United States Code, the Commissioner of Customs shall establish performance goals, performance indicators, and comply with all other requirements contained in paragraphs (1) through (6) of subsection (a) of such section with respect to each of the activities to be carried out pursuant to sections 111 and 112 of this Act.

Subtitle B—Child Cyber-Smuggling Center of the Customs Service

SEC. 111. AUTHORIZATION OF APPROPRIATIONS FOR PROGRAM TO PREVENT CHILD PORNOGRAPHY/CHILD SEXUAL EXPLOITATION.

(a) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Customs Service \$10,000,000 for fiscal year 2002 to carry out the program to prevent child pornography/child sexual exploitation established by the Child Cyber-Smuggling Center of the Customs Service.

(b) **USE OF AMOUNTS FOR CHILD PORNOGRAPHY CYBER TIPLINE.**—Of the amount appropriated under subsection (a), the Customs Service shall provide 3.75 percent of such amount to the National Center for Missing and Exploited Children for the operation of the child pornography cyber tipline of the Center and for increased public awareness of the tipline.

Subtitle C—Personnel Provisions

CHAPTER 1—OVERTIME AND PREMIUM PAY OF OFFICERS OF THE CUSTOMS SERVICE

SEC. 121. CORRECTION RELATING TO FISCAL YEAR CAP.

Section 5(c)(1) of the Act of February 13, 1911 (19 U.S.C. 267(c)(1)) is amended to read as follows:

“(1) **FISCAL YEAR CAP.**—The aggregate of overtime pay under subsection (a) (including commuting compensation under subsection (a)(2)(B)) that a customs officer may be paid in any fiscal year may not exceed \$30,000, except that—

“(A) the Commissioner of Customs or his or her designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Customs Service; and

“(B) upon certification by the Commissioner of Customs to the Chairmen of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that the Customs Service has in operation a system that provides accurate and reliable data on a daily basis on overtime and premium pay that is being paid to customs officers, the Commissioner is authorized to pay any customs officer for one work assignment that would result in the overtime pay of that officer exceeding the \$30,000 limitation imposed by this paragraph, in addition to any overtime pay that may be received pursuant to a waiver under subparagraph (A).”.

SEC. 122. CORRECTION RELATING TO OVERTIME PAY.

Section 5(a)(1) of the Act of February 13, 1911 (19 U.S.C. 267(a)(1)), is amended by inserting after the first sentence the following new sentences: “Overtime pay provided under this subsection shall not be paid to any customs officer unless such officer actually performed work during the time corresponding to such overtime pay. The preceding sentence shall not apply with respect to the payment of an award or settlement to a customs officer who was unable to perform overtime work as a result of a personnel action in violation of section 5596 of title 5, United States

Code, section 6(d) of the Fair Labor Standards Act of 1938, or title VII of the Civil Rights Act of 1964.”

SEC. 123. CORRECTION RELATING TO PREMIUM PAY.

(a) **IN GENERAL.**—Section 5(b)(4) of the Act of February 13, 1911 (19 U.S.C. 267(b)(4)), is amended by adding at the end the following new sentences: “Premium pay provided under this subsection shall not be paid to any customs officer unless such officer actually performed work during the time corresponding to such premium pay. The preceding sentence shall not apply with respect to the payment of an award or settlement to a customs officer who was unable to perform work during the time described in the preceding sentence as a result of a personnel action in violation of section 5596 of title 5, United States Code, section 6(d) of the Fair Labor Standards Act of 1938, or title VII of the Civil Rights Act of 1964.”

(b) **CORRECTIONS RELATING TO NIGHT WORK DIFFERENTIAL PAY.**—Section 5(b)(1) of such Act (19 U.S.C. 267(b)(1)) is amended to read as follows:

“(1) **NIGHT WORK DIFFERENTIAL.**—

“(A) **5 P.M. TO MIDNIGHT.**—(i) If any hours of regularly scheduled work of a customs officer occur during the hours of 5 p.m. and 12 a.m., the officer is entitled to pay for such hours of work (except for work to which paragraph (2) or (3) applies) at the officer’s hourly rate of basic pay plus premium pay amounting to not less than 18 percent of that basic rate.

“(ii) If the regularly scheduled work of a customs officer is 4 p.m. to 12:00 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer’s hourly rate of basic pay plus premium pay amounting to not less than 18 percent of that basic rate.

“(B) **MIDNIGHT TO 6 A.M.**—(i) If any hours of regularly scheduled work of a customs officer occur during the hours of 12 a.m. and 6 a.m., the officer is entitled to pay for such hours of work (except for work to which paragraph (2) or (3) applies) at the officer’s hourly rate of basic pay plus premium pay amounting to 25 percent of that basic rate.

“(ii) If the regularly scheduled work of a customs officer is 12 a.m. to 8:00 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer’s hourly rate of basic pay plus premium pay amounting to 25 percent of that basic rate.”

SEC. 124. USE OF SAVINGS FROM PAYMENT OF PREMIUM PAY.

Section 5 of the Act of February 13, 1911 (19 U.S.C. 267), is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following:

“(e) **USE OF SAVINGS FROM PAYMENT OF PREMIUM PAY.**—

“(1) **USE OF AMOUNTS.**—For fiscal year 2002, the Secretary of the Treasury—

“(A) shall determine under paragraph (2) the amount of savings from the payment of premium pay to customs officers; and

“(B) shall use an amount from the Customs User Fee Account equal to such amount determined under paragraph (2) for additional premium pay described in clauses (i) and (ii) of subsection (b)(1)(A).

“(2) **DETERMINATION OF SAVINGS AMOUNT.**—The Secretary shall calculate an amount equal to the difference between—

“(A) the estimated cost for premium pay that would have been incurred during fiscal year 2002 if this section, as in effect on the day before the date of the enactment of section 123 of the Customs Border Security Act of 2001, had governed such costs; and

“(B) the actual cost for premium pay that is incurred during fiscal year 2002 under this section, as amended by section 123 of the Customs Border Security Act of 2001.”

SEC. 125. EFFECTIVE DATE.

This chapter, and the amendments made by this chapter, shall apply with respect to pay periods beginning on or after 15 days after the date of the enactment of this Act.

CHAPTER 2—MISCELLANEOUS PROVISIONS

SEC. 131. ADDITIONAL CUSTOMS SERVICE OFFICERS FOR UNITED STATES-CANADA BORDER.

Of the amount made available for fiscal year 2002 under paragraphs (1) and (2)(A) of section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)), as amended by section 101 of this Act, \$25,000,000 shall be available until expended for the Customs Service to hire approximately 285 addi-

tional Customs Service officers to address the needs of the offices and ports along the United States–Canada border.

SEC. 132. STUDY AND REPORT RELATING TO PERSONNEL PRACTICES OF THE CUSTOMS SERVICE.

(a) **STUDY.**—The Commissioner of Customs shall conduct a study of current personnel practices of the Customs Service, including an overview of performance standards and the effect and impact of the collective bargaining process on drug interdiction efforts of the Customs Service and a comparison of duty rotation policies of the Customs Service and other Federal agencies that employ similarly-situated personnel.

(b) **REPORT.**—Not later than 120 days after the date of the enactment of this Act, the Commissioner of Customs shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report containing the results of the study conducted under subsection (a).

SEC. 133. STUDY AND REPORT RELATING TO ACCOUNTING AND AUDITING PROCEDURES OF THE CUSTOMS SERVICE.

(a) **STUDY.**—(1) The Commissioner of Customs shall conduct a study of actions by the Customs Service to ensure that appropriate training is being provided to Customs Service personnel who are responsible for financial auditing of importers.

(2) In conducting the study, the Commissioner—

(A) shall specifically identify those actions taken to comply with provisions of law that protect the privacy and trade secrets of importers, such as section 552(b) of title 5, United States Code, and section 1905 of title 18, United States Code; and

(B) shall provide for public notice and comment relating to verification of the actions described in subparagraph (A).

(b) **REPORT.**—Not later than 6 months after the date of the enactment of this Act, the Commissioner of Customs shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report containing the results of the study conducted under subsection (a).

SEC. 134. ESTABLISHMENT AND IMPLEMENTATION OF COST ACCOUNTING SYSTEM; REPORTS.

(a) **ESTABLISHMENT AND IMPLEMENTATION.**—

(1) **IN GENERAL.**—Not later than September 30, 2003, the Commissioner of Customs shall, in accordance with the audit of the Customs Service’s fiscal years 2000 and 1999 financial statements (as contained in the report of the Office of the Inspector General of the Department of the Treasury issued on February 23, 2001), establish and implement a cost accounting system for expenses incurred in both commercial and noncommercial operations of the Customs Service.

(2) **ADDITIONAL REQUIREMENT.**—The cost accounting system described in paragraph (1) shall provide for an identification of expenses based on the type of operation, the port at which the operation took place, the amount of time spent on the operation by personnel of the Customs Service, and an identification of expenses based on any other appropriate classification necessary to provide for an accurate and complete accounting of the expenses.

(b) **REPORTS.**—Beginning on the date of the enactment of this Act and ending on the date on which the cost accounting system described in subsection (a) is fully implemented, the Commissioner of Customs shall prepare and submit to Congress on a quarterly basis a report on the progress of implementing the cost accounting system pursuant to subsection (a).

SEC. 135. STUDY AND REPORT RELATING TO TIMELINESS OF PROSPECTIVE RULINGS.

(a) **STUDY.**—The Comptroller General shall conduct a study on the extent to which the Office of Regulations and Rulings of the Customs Service has made improvements to decrease the amount of time to issue prospective rulings from the date on which a request for the ruling is received by the Customs Service.

(b) **REPORT.**—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report containing the results of the study conducted under subsection (a).

(c) **DEFINITION.**—In this section, the term “prospective ruling” means a ruling that is requested by an importer on goods that are proposed to be imported into the United States and that relates to the proper classification, valuation, or marking of such goods.

SEC. 136. STUDY AND REPORT RELATING TO CUSTOMS USER FEES.

(a) **STUDY.**—The Comptroller General shall conduct a study on the extent to which the amount of each customs user fee imposed under section 13031(a) of the Consoli-

dated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)) is commensurate with the level of services provided by the Customs Service relating to the fee so imposed.

(b) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report in classified form containing—

- (1) the results of the study conducted under subsection (a); and
- (2) recommendations for the appropriate amount of the customs user fees if such results indicate that the fees are not commensurate with the level of services provided by the Customs Service.

Subtitle D—Antiterrorism Provisions

SEC. 141. IMMUNITY FOR UNITED STATES OFFICIALS THAT ACT IN GOOD FAITH.

(a) IMMUNITY.—Section 3061 of the Revised Statutes of the United States (19 U.S.C. 482) is amended—

- (1) by striking “Any of the officers” and inserting “(a) Any of the officers”; and
- (2) by adding at the end the following:

“(b) Any officer or employee of the United States conducting a search of a person pursuant to subsection (a) shall not be held liable for any civil damages as a result of such search if the officer or employee performed the search in good faith.”

(b) REQUIREMENT TO POST POLICY AND PROCEDURES FOR SEARCHES OF PASSENGERS.—Not later than 30 days after the date of the enactment of this Act, the Commissioner of the Customs Service shall ensure that at each Customs border facility appropriate notice is posted that provides a summary of the policy and procedures of the Customs Service for searching passengers, including a statement of the policy relating to the prohibition on the conduct of profiling of passengers based on gender, race, color, religion, or ethnic background.

SEC. 142. EMERGENCY ADJUSTMENTS TO OFFICES, PORTS OF ENTRY, OR STAFFING OF THE CUSTOMS SERVICE.

Section 318 of the Tariff Act of 1930 (19 U.S.C. 1318) is amended—

- (1) by striking “Whenever the President” and inserting “(a) Whenever the President”; and
- (2) by adding at the end the following:

“(b)(1) Notwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 et seq.) or to a specific threat to human life or national interests, is authorized to take the following actions on a temporary basis:

- “(A) Eliminate, consolidate, or relocate any office or port of entry of the Customs Service.
- “(B) Modify hours of service, alter services rendered at any location, or reduce the number of employees at any location.
- “(C) Take any other action that may be necessary to directly respond to the national emergency or specific threat.

“(2) Notwithstanding any other provision of law, the Commissioner of Customs, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.

“(3) The Secretary of the Treasury or the Commissioner of Customs, as the case may be, shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than 72 hours after taking any action under paragraph (1) or (2).”

SEC. 143. MANDATORY ADVANCED ELECTRONIC INFORMATION FOR CARGO AND PASSENGERS.

(a) CARGO INFORMATION.—

- (1) IN GENERAL.—Section 431(b) of the Tariff Act of 1930 (19 U.S.C. 1431(b)) is amended—

- (A) in the first sentence, by striking “Any manifest” and inserting “(1) Any manifest”; and
- (B) by adding at the end the following:

“(2) In addition to any other requirement under this section, for each land, air, or vessel carrier required to make entry or obtain clearance under the customs laws of the United States, the pilot, the master, operator, or owner of such carrier (or the authorized agent of such operator or owner) shall provide by electronic transmission cargo manifest information in advance of such entry or clearance in such manner, time, and form as prescribed under regulations by the Secretary. The Sec-

retary may exclude any class of land, air, or vessel carrier for which the Secretary concludes the requirements of this subparagraph are not necessary.”.

(2) CONFORMING AMENDMENTS.—Subparagraphs (A) and (C) of section 431(d)(1) of such Act are each amended by inserting before the semicolon “or subsection (b)(2)”.

(b) PASSENGER INFORMATION.—Part II of title IV of the Tariff Act of 1930 (19 U.S.C. 1431 et seq.) is amended by inserting after section 431 the following:

“SEC. 432. PASSENGER AND CREW MANIFEST INFORMATION REQUIRED FOR LAND, AIR, OR VESSEL CARRIERS.

“(a) IN GENERAL.—For every person arriving or departing on a land, air, or vessel carrier required to make entry or obtain clearance under the customs laws of the United States, the pilot, the master, operator, or owner of such carrier (or the authorized agent of such operator or owner) shall provide by electronic transmission manifest information described in subsection (b) in advance of such entry or clearance in such manner, time, and form as prescribed under regulations by the Secretary.

“(b) INFORMATION DESCRIBED.—The information described in this subsection shall include for each person described in subsection (a), the person’s—

- “(1) full name;
- “(2) date of birth and citizenship;
- “(3) gender;
- “(4) passport number and country of issuance;
- “(5) United States visa number or resident alien card number, as applicable;
- “(6) passenger name record; and
- “(7) such additional information that the Secretary, by regulation, determines is reasonably necessary to ensure aviation and maritime safety pursuant to the laws enforced or administered by the Customs Service.”.

(c) DEFINITION.—Section 401 of the Tariff Act of 1930 (19 U.S.C. 1401) is amended by adding at the end the following:

“(t) The term ‘land, air, or vessel carrier’ means a land, air, or vessel carrier, as the case may be, that transports goods or passengers for payment or other consideration, including money or services rendered.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect beginning 45 days after the date of the enactment of this Act.

SEC. 144. BORDER SEARCH AUTHORITY FOR CERTAIN CONTRABAND IN OUTBOUND MAIL.

The Tariff Act of 1930 is amended by inserting after section 582 the following:

“SEC. 583. EXAMINATION OF OUTBOUND MAIL.

“(a) EXAMINATION.—

“(1) IN GENERAL.—For purposes of ensuring compliance with the Customs laws of the United States and other laws enforced by the Customs Service, including the provisions of law described in paragraph (2), a Customs officer may, subject to the provisions of this section, stop and search at the border, without a search warrant, mail of domestic origin transmitted for export by the United States Postal Service and foreign mail transiting the United States that is being imported or exported by the United States Postal Service.

“(2) PROVISIONS OF LAW DESCRIBED.—The provisions of law described in this paragraph are the following:

“(A) Section 5316 of title 31, United States Code (relating to reports on exporting and importing monetary instruments).

“(B) Sections 1461, 1463, 1465, and 1466 and chapter 110 of title 18, United States Code (relating to obscenity and child pornography).

“(C) Section 1003 of the Controlled Substances Import and Export Act (21 U.S.C. 953; relating to exportation of controlled substances).

“(D) The Export Administration Act of 1979 (50 U.S.C. app. 2401 et seq.).

“(E) Section 38 of the Arms Export Control Act (22 U.S.C. 2778).

“(F) The International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

“(b) SEARCH OF MAIL NOT SEALED AGAINST INSPECTION AND OTHER MAIL.—Mail not sealed against inspection under the postal laws and regulations of the United States, mail which bears a customs declaration, and mail with respect to which the sender or addressee has consented in writing to search, may be searched by a Customs officer.

“(c) SEARCH OF MAIL SEALED AGAINST INSPECTION.—(1) Mail sealed against inspection under the postal laws and regulations of the United States may be searched by a Customs officer, subject to paragraph (2), upon reasonable cause to suspect that such mail contains one or more of the following:

“(A) Monetary instruments, as defined in section 1956 of title 18, United States Code.

“(B) A weapon of mass destruction, as defined in section 2332a(b) of title 18, United States Code.

“(C) A drug or other substance listed in schedule I, II, III, or IV in section 202 of the Controlled Substances Act (21 U.S.C. 812).

“(D) National defense and related information transmitted in violation of any of sections 793 through 798 of title 18, United States Code.

“(E) Merchandise mailed in violation of section 1715 or 1716 of title 18, United States Code.

“(F) Merchandise mailed in violation of any provision of chapter 71 (relating to obscenity) or chapter 110 (relating to sexual exploitation and other abuse of children) of title 18, United States Code.

“(G) Merchandise mailed in violation of the Export Administration Act of 1979 (50 U.S.C. app. 2401 et seq.).

“(H) Merchandise mailed in violation of section 38 of the Arms Export Control Act (22 U.S.C. 2778).

“(I) Merchandise mailed in violation of the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

“(J) Merchandise mailed in violation of the Trading with the Enemy Act (50 U.S.C. app. 1 et seq.).

“(K) Merchandise subject to any other law enforced by the Customs Service.

“(2) No person acting under authority of paragraph (1) shall read, or authorize any other person to read, any correspondence contained in mail sealed against inspection unless prior to so reading—

“(A) a search warrant has been issued pursuant to Rule 41, Federal Rules of Criminal Procedure; or

“(B) the sender or addressee has given written authorization for such reading.”.

SEC. 145. AUTHORIZATION OF APPROPRIATIONS FOR REESTABLISHMENT OF CUSTOMS OPERATIONS IN NEW YORK CITY.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated for the reestablishment of operations of the Customs Service in New York, New York, such sums as may be necessary for fiscal year 2002.

(2) OPERATIONS DESCRIBED.—The operations referred to in paragraph (1) include, but are not limited to, the following:

(A) Operations relating to the Port Director of New York City, the New York Customs Management Center (including the Director of Field Operations), and the Special Agent-In-Charge for New York.

(B) Commercial operations, including textile enforcement operations and salaries and expenses of—

(i) trade specialists who determine the origin and value of merchandise;

(ii) analysts who monitor the entry data into the United States of textiles and textile products; and

(iii) Customs officials who work with foreign governments to examine textile makers and verify entry information.

(b) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under subsection (a) are authorized to remain available until expended.

Subtitle E—Textile Transshipment Provisions

SEC. 151. GAO AUDIT OF TEXTILE TRANSSHIPMENT MONITORING BY CUSTOMS SERVICE.

(a) GAO AUDIT.—The Comptroller General of the United States shall conduct an audit of the system established and carried out by the Customs Service to monitor textile transshipment.

(b) REPORT.—Not later than 9 months after the date of enactment of this Act, the Comptroller General shall submit to the Committee on Ways and Means of the House of Representatives and Committee on Finance of the Senate a report that contains the results of the study conducted under subsection (a), including recommendations for improvements to the transshipment monitoring system if applicable.

(c) TRANSSHIPMENT DESCRIBED.—Transshipment within the meaning of this section has occurred when preferential treatment under any provision of law has been claimed for a textile or apparel article on the basis of material false information concerning the country of origin, manufacture, processing, or assembly of the article or

any of its components. For purposes of the preceding sentence, false information is material if disclosure of the true information would mean or would have meant that the article is or was ineligible for preferential treatment under the provision of law in question.

SEC. 152. AUTHORIZATION OF APPROPRIATIONS FOR TEXTILE TRANSSHIPMENT ENFORCEMENT OPERATIONS.

(a) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated for textile transshipment enforcement operations of the Customs Service \$9,500,000 for fiscal year 2002.

(2) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under paragraph (1) are authorized to remain available until expended.

(b) USE OF FUNDS.—Of the amount appropriated pursuant to the authorization of appropriations under subsection (a), the following amounts are authorized to be made available for the following purposes:

(1) IMPORT SPECIALISTS.—\$1,463,000 for 21 Customs import specialists to be assigned to selected ports for documentation review to support detentions and exclusions and 1 additional Customs import specialist assigned to the Customs headquarters textile program to administer the program and provide oversight.

(2) INSPECTORS.—\$652,080 for 10 Customs inspectors to be assigned to selected ports to examine targeted high-risk shipments.

(3) INVESTIGATORS.—(A) \$1,165,380 for 10 investigators to be assigned to selected ports to investigate instances of smuggling, quota and trade agreement circumvention, and use of counterfeit visas to enter inadmissible goods.

(B) \$149,603 for 1 investigator to be assigned to Customs headquarters textile program to coordinate and ensure implementation of textile production verification team results from an investigation perspective.

(4) INTERNATIONAL TRADE SPECIALISTS.—\$226,500 for 3 international trade specialists to be assigned to Customs headquarters to be dedicated to illegal textile transshipment policy issues and other free trade agreement enforcement issues.

(5) PERMANENT IMPORT SPECIALISTS FOR HONG KONG.—\$500,000 for 2 permanent import specialist positions and \$500,000 for 2 investigators to be assigned to Hong Kong to work with Hong Kong and other government authorities in Southeast Asia to assist such authorities pursue proactive enforcement of bilateral trade agreements.

(6) VARIOUS PERMANENT TRADE POSITIONS.—\$3,500,000 for the following:

(A) 2 permanent positions to be assigned to the Customs attaché office in Central America to address trade enforcement issues for that region.

(B) 2 permanent positions to be assigned to the Customs attaché office in South Africa to address trade enforcement issues pursuant to the African Growth and Opportunity Act (title I of Public Law 106–200).

(C) 4 permanent positions to be assigned to the Customs attaché office in Mexico to address the threat of illegal textile transshipment through Mexico and other related issues under the North American Free Trade Agreement Act.

(D) 2 permanent positions to be assigned to the Customs attaché office in Seoul, South Korea, to address the trade issues in the geographic region.

(E) 2 permanent positions to be assigned to the proposed Customs attaché office in New Delhi, India, to address the threat of illegal textile transshipment and other trade enforcement issues.

(F) 2 permanent positions to be assigned to the Customs attaché office in Rome, Italy, to address trade enforcement issues in the geographic region, including issues under free trade agreements with Jordan and Israel.

(7) ATTORNEYS.—\$179,886 for 2 attorneys for the Office of the Chief Counsel of the Customs Service to pursue cases regarding illegal textile transshipment.

(8) AUDITORS.—\$510,000 for 6 Customs auditors to perform internal control reviews and document and record reviews of suspect importers.

(9) ADDITIONAL TRAVEL FUNDS.—\$250,000 for deployment of additional textile production verification teams to sub-Saharan Africa.

(10) TRAINING.—(A) \$75,000 for training of Customs personnel.

(B) \$200,000 for training for foreign counterparts in risk management analytical techniques and for teaching factory inspection techniques, model law Development, and enforcement techniques.

(11) OUTREACH.—\$60,000 for outreach efforts to United States importers.

SEC. 153. IMPLEMENTATION OF THE AFRICAN GROWTH AND OPPORTUNITY ACT.

Of the amount made available for fiscal year 2002 under section 301(b)(2)(A) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(2)(A)), as amended by section 101(b)(1) of this Act, \$1,317,000 shall be available until expended for the Customs Service to provide technical assistance to help sub-Saharan Africa countries develop and implement effective visa and anti-transshipment systems as required by the African Growth and Opportunity Act (title I of Public Law 106–200), as follows:

(1) TRAVEL FUNDS.—\$600,000 for import specialists, special agents, and other qualified Customs personnel to travel to sub-Saharan Africa countries to provide technical assistance in developing and implementing effective visa and anti-transshipment systems.

(2) IMPORT SPECIALISTS.—\$266,000 for 4 import specialists to be assigned to Customs headquarters to be dedicated to providing technical assistance to sub-Saharan African countries for developing and implementing effective visa and anti-transshipment systems.

(3) DATA RECONCILIATION ANALYSTS.—\$151,000 for 2 data reconciliation analysts to review apparel shipments.

(4) SPECIAL AGENTS.—\$300,000 for 2 special agents to be assigned to Customs headquarters to be available to provide technical assistance to Sub-Saharan African countries in the performance of investigations and other enforcement initiatives.

TITLE II—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

SEC. 201. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 141(g)(1) of the Trade Act of 1974 (19 U.S.C. 2171(g)(1)) is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by striking “not to exceed”;

(B) in clause (i) to read as follows:

“(i) \$30,000,000 for fiscal year 2002.”; and

(C) in clause (ii) to read as follows:

“(ii) \$31,000,000 for fiscal year 2003.”; and

(2) in subparagraph (B)—

(A) in clause (i), by adding “and” at the end;

(B) by striking clause (ii); and

(C) by redesignating clause (iii) as clause (ii).

(b) SUBMISSION OF OUT-YEAR BUDGET PROJECTIONS.—Section 141(g) of the Trade Act of 1974 (19 U.S.C. 2171(g)) is amended by adding at the end the following:

“(3) By not later than the date on which the President submits to Congress the budget of the United States Government for a fiscal year, the United States Trade Representative shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the Office to carry out its functions.”.

(c) ADDITIONAL STAFF FOR OFFICE OF ASSISTANT U.S. TRADE REPRESENTATIVE FOR CONGRESSIONAL AFFAIRS.—

(1) IN GENERAL.—There is authorized to be appropriated such sums as may be necessary for fiscal year 2002 for the salaries and expenses of two additional legislative specialist employee positions within the Office of the Assistant United States Trade Representative for Congressional Affairs.

(2) AVAILABILITY.—Amounts appropriated pursuant to the authorization of appropriations under paragraph (1) are authorized to remain available until expended.

TITLE III—UNITED STATES INTERNATIONAL TRADE COMMISSION

SEC. 301. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Section 330(e)(2)(A) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(2)) is amended—

(1) in clause (i) to read as follows:

“(i) \$51,400,000 for fiscal year 2002.”; and

(2) in clause (ii) to read as follows:

“(ii) \$53,400,000 for fiscal year 2003.”.

(b) SUBMISSION OF OUT-YEAR BUDGET PROJECTIONS.—Section 330(e) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(2)) is amended by adding at the end the following:

“(4) By not later than the date on which the President submits to Congress the budget of the United States Government for a fiscal year, the Commission shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the Commission to carry out its functions.”.

TITLE IV—OTHER TRADE PROVISIONS

SEC. 401. INCREASE IN AGGREGATE VALUE OF ARTICLES EXEMPT FROM DUTY ACQUIRED ABROAD BY UNITED STATES RESIDENTS.

(a) IN GENERAL.—Subheading 9804.00.65 of the Harmonized Tariff Schedule of the United States is amended in the article description column by striking “\$400” and inserting “\$800”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 90 days after the date of the enactment of this Act.

SEC. 402. REGULATORY AUDIT PROCEDURES.

Section 509(b) of the Tariff Act of 1930 (19 U.S.C. 1509(b)) is amended by adding at the end the following:

“(6)(A) If during the course of any audit concluded under this subsection, the Customs Service identifies overpayments of duties or fees or over-declarations of quantities or values that are within the time period and scope of the audit that the Customs Service has defined, then in calculating the loss of revenue or monetary penalties under section 592, the Customs Service shall treat the overpayments or over-declarations on finally liquidated entries as an offset to any underpayments or underdeclarations also identified on finally liquidated entries if such overpayments or over-declarations were not made by the person being audited for the purpose of violating any provision of law.

“(B) Nothing in this paragraph shall be construed to authorize a refund not otherwise authorized under section 520.”.

I. INTRODUCTION

A. PURPOSE AND SUMMARY

H.R. 3129, as amended, would authorize appropriations for fiscal year FY 2002 and FY 2003 for the U.S. Customs Service, including specific authorization for anti-terrorism, drug interdiction and the prevention of child pornography. The bill would also provide more funding to textile transshipment efforts and assistance to African countries for implementation of the African Growth and Opportunities Act. The bill would further dedicate resources to reestablish the New York Customs offices formerly at the World Trade Center, which were destroyed in the terrorist attack of September 11th, and it would provide more resources to the Northern Border. H.R. 3129 would also authorize full funding for the Customs Automated Commercial Environment. H.R. 3129 would also authorize appropriations for the Office of the United States Trade Representative (USTR) and the International Trade Commission (ITC).

H.R. 3129, as amended, would make corrections to the overtime and premium pay for Customs inspectors and increase the premium pay for inspectors working night-time hours. It would also relax the manner in which the fiscal-year \$30,000 cap for overtime pay is calculated by removing premium pay from the cap. The bill would alter the hours in which night-time premium pay would be available while using the savings to increase night-time premium pay for inspectors actually working at night.

H.R. 3129, as amended, would also give the U.S. Customs Service authority to fight against terrorism and drug smugglers through several new tools. Customs inspectors would be immune from civil suits as a result of personal searches at the border if they act in good faith. Customs Service would have the authority to search outbound mail so long as privacy and Fourth Amendment protections are observed. The Treasury Department would also be required to build a system through the regulatory process to handle the collection of advanced information for inbound cargo, as well as inbound and outbound passengers, from carriers for the purpose of targeting both terrorist activity and smuggling.

H.R. 3129, as amended, would also authorize several studies and reports on Customs' operations including a report on the personnel practices of the Customs Service, on the accounting and auditing procedures of Customs, on the monitoring and enforcement of textile transshipment, on Customs' anticipated improvements to stop delays in issuing prospective rulings, and on determining the proper level of fees charged by Customs on importers. The first two reports would be issued by Customs, and the last three would be issued by the General Accounting Office. The bill would also change Customs' audit process by requiring that overpayments found during an audit be used as offsets for any underpayments also found, permit emergency adjustments to Customs offices and staff during emergencies, and permanently raise the duty exemption on U.S. residents returning from abroad from the current \$400 to \$800.

B. BACKGROUND

1. AUTHORIZATION OF APPROPRIATIONS

The Committee on Ways and Means has adopted a two-year authorization process to provide Customs, USTR, and the ITC with guidance as they plan their budgets, as well as guidance from the Committee for the appropriations process. In preparing H.R. 3129, the Committee considered the President's budget for FY 2002. Although each agency submitted its FY 2002 budget request, the Committee has relied upon anticipated cost inflation from the Congressional Budget Office as a guide for FY 2003. The statutory basis for the authorizations of appropriations is as follows: for Customs, section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)); for USTR, section 141(g)(1) of the Trade Act of 1974 (19 U.S.C. 2171(g)(1)); and for the ITC, section 330(e)(2)(A) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(2)(A)).

2. CUSTOMS CYBER-SMUGGLING CENTER

Customs enforces laws against international trafficking of child pornography the laws at its Cyber-smuggling Center. This legislation is needed for additional funding for Customs to expand its efforts in preventing on-line child pornography.

3. CUSTOMS AUTOMATION

Customs' current automation system, the Automated Commercial System (ACS), is an aging 17-year-old system which has experienced several "brownouts." In addition, under the Customs Mod-

ernization Act (Mod Act) that was part of the North American Free Trade Agreements Act (title VI), Customs is required to provide increased electronic processing for entries, informed compliance, and record keeping, but ACS does not have the capacity to meet these modernization requirements. Customs plans to replace ACS with the Automated Commercial Environment (ACE).

4. CUSTOMS PERSONNEL ISSUES

The Act of February 13, 1911, as amended, known as the “1911 Act,” created the original overtime pay system for Customs inspectors. The Act authorized Customs to compensate officers at a rate of two days of basic hourly pay for Sundays, and a rate of two days of basic hourly pay plus the basic hourly rate for holidays. Minimum compensation for nighttime pay—5 p.m to 8 a.m.—was 4 to 12 hours of pay. Section 13811 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1993, known as the Customs Officer Pay Reform Amendments (COPRA), amended the 1911 Act with regard to the overtime and premium pay system for Customs inspectors and canine enforcement officers, effective January 1, 1994. Only inspectors and canine officers are covered by the reforms, and only when performing inspections. Clerical and support staff are no longer eligible for double time and are covered—as are most other Federal employees—under the Federal Employees Pay Act (FEPA), at 1½ regular pay. The COBRA of 1993 also amended overtime compensation paid to Customs officers as part of the basic pay for the Civil Service Retirement System. Compensation may not exceed 50 percent of the statutory maximum in overtime pay for Customs officers (i.e., \$15,000, that is, 50 percent of \$30,000). Due to a number of arbitration rulings, Customs has been required to pay both overtime and premium pay to Customs officers for work not performed. Further, the changes Congress made to the night pay system for Customs in 1993 have resulted in an unforeseen circumstance where Customs officers can receive night pay for working at 12:00 noon in certain instances. The Treasury Inspector General has called for a legislative change to correct the night pay system.

Customs was subject to a partnership agreements with its union that prevent it from permanently reassigning Customs officers without the affected employees’ consent. Customs’ ability to temporarily reassign officers without officers’ consent was also limited under the partnership agreement with the union. Concerns were raised that the requirement that Customs officers and inspectors agree to such rotations may affect Customs drug interdiction efforts and the integrity of the border workforce. In addition, there have been a number of incidents in which implementation of certain inspection procedures were delayed because of union objections to the procedures. While these particular incidents have been resolved, there have been questions raised as to whether drug interdiction efforts were compromised.

C. LEGISLATIVE HISTORY

The Subcommittee on Trade of the Committee on Ways and Means held a public hearing on July 17, 2001, on Customs, USTR, and the ITC budget authorizations for FY 2002 and 2003 as well

as other Customs issues, including compensation for Customs officers, funding for Customs Automated Commercial Environment (ACE) and the International Trade Data System (ITDS), and labor/management issues. Acting Customs Commissioner Winwood, Mr. Dennis Schindel of the Treasury Inspector General's office, Ms. Laurie Ekstrand of the U.S. General Accounting Office (GAO), and representatives of the various sectors of the trade industry testified. Acting Commissioner Winwood stressed the need for ACE and detailed steps Customs has taken to improve ACE project management.

Ms. Ekstrand acknowledged that Customs has begun to implement the recommendations made in the GAO report. Representatives of the trade industry were unified in their opinion that ACE is desperately needed and that Customs could effectively manage a project the size of ACE. On Customs labor issues, testimony was received from Mr. Dennis S. Schindel, Deputy Inspector General for Audit, Office of the Inspector General, and from Ms. Colleen Kelley, President of the National Treasury Employees Union (NTEU). In his testimony, Mr. Schindel stated that although the Customs Officers Pay Reform Act (COPRA) was intended to reduce Customs overtime costs for inspectional services, COPRA instead has resulted in an increase in Customs premium pay costs. Ms. Ekstrand also commented on a recent GAO study indicating that Customs took far too long in issuing prospective rulings.¹

On October 16, 2001, Mr. Crane introduced H.R. 3129, and the Committee held a markup of the bill on October 31, 2001. Four amendments were offered at the markup: Mr. Stark on behalf of Mr. Rangel offered an amendment to strike sections 123 and 124 of H.R. 3129, the effect of which would maintain the current night differential pay rate schedule for Customs officers. Mr. Stark's amendment was defeated by a recorded vote of 13 ayes to 20 nays. Mr. Becerra offered and withdrew a non-germane amendment to give Customs inspectors law enforcement status. Mr. McDermott offered an amendment to strike section 141, the effect of which would be to deny the provision's civil lawsuit immunity to Customs inspectors. Mr. McDermott's amendment was defeated by voice vote. Chairman Thomas offered an amendment in the nature of a substitute that passed the Committee by 20 ayes to 14 nays. The Committee then ordered the bill favorably reported, as amended, by voice vote. The Committee then moved that the Chairman have the authority to offer such motions as may be necessary to go to conference, and the motion passed by roll call vote 2 present, 19 ayes, and 1 nay. Eight Members passed on this vote.

¹Prospective rulings are issued by Customs at the request of importers seeking guidance on various matters such as the classification or the valuation of certain goods.

II. EXPLANATION OF THE BILL

TITLE I—UNITED STATES CUSTOMS SERVICE

Subtitle A—Drug Enforcement and Other Noncommercial and Commercial Operations

Sec. 101. Authorization of appropriations for noncommercial operations, commercial operations, and air and marine interdiction

Present law

The statutory basis for authorization of appropriations for Customs is section 301(b)(1) of the Customs Procedural and Simplification Act of 1978 (19 U.S.C. 2075(b)). That law, as amended by section 8102 of the Omnibus Budget Reconciliation Act of 1986 [P.L. 99–509], first outlined separate amounts for non-commercial and commercial operations for the salaries and expenses portion of the Customs authorization. Under 19 U.S.C. 2075, Congress has adopted a two-year authorization process to provide Customs with guidance as it plans its budget, as well as guidance from the Committee for the appropriation process.

The most recent authorization of appropriations for Customs (under section 101 of the Customs and Trade Act of 1990 [P.L. 101–382]) provided \$118,238,000 for salaries and expenses and \$143,047,000 for air and marine interdiction program for FY 1991, and \$1,247,884,000 for salaries and expenses and \$150,199,000 for air and marine interdiction program in FY 1992.

Explanation of the provision

This provision authorizes \$1,006,501,000 for FY 2002 and \$1,032,567,000 for FY 2003 for noncommercial operations of the Customs Service. It also authorizes \$1,378,725,000 for FY 2002 and \$1,414,432,000 for FY 2003 for commercial operations of the Customs Service. Of the amounts authorized for commercial operations, \$308,000,000 is authorized for the automated commercial environment computer system for each fiscal year. The provisions require that the Customs Service provide the Committee on Ways and Means and the Committee on Finance of the Senate with a report demonstrating that the computer system is being built in a cost-effective manner. In addition, the provisions authorize \$183,853,000 for FY 2002 and \$188,615,000 for FY 2003 for air and marine interdiction operations of the Customs Service. The provision requires submission of out-of-year budget projections to the Ways and Means and Finance Committees.

Reason for change

The Committee notes that this non-commercial versus commercial split supplied by Customs does not provide meaningful information. The information is not the result of the collection of cost data on a continual basis. Rather Customs apportions its budget through this artificial division based upon an ad hoc survey performed years ago and that is no longer available. The survey estimated that a certain percentage of Customs' activities were commercial-related, and the rest non-commercial, and based upon that conclusion, Customs merely takes its overall budget and multiplies it by that static percentage to arrive at its estimation from year to

year. Obviously, this methodology is woefully inadequate since actual costs for various functions change from year to year. The methodology, if it was ever accurate, is now at best a rule of thumb. For this reason, the Committee has addressed this problem in Sections 134 and 136 of the bill.

Regarding noncommercial spending, the Committee is committed to giving Customs the resources needed to increase the overall level of Customs officers and Special Agents dedicated to countering terrorism, narcotics, and money laundering activities. Accordingly, the authorization for non-commercial operations for both fiscal years 2002 and 2003 is substantially larger than the President's request, providing Customs with the resources to stop terrorists and drugs from entering this country while at the same time expediting the entry of legitimate persons and cargo. The Committee notes that during this time of emergency, a reevaluation of Customs needs by the Administration, along with the needs of all anti-terrorist agencies, has only just begun. The Committee looks forward to the Administration's stock-taking and commits to review any updated requests from the Administration.

Regarding commercial spending, the Committee recognizes Customs' efforts to modernize its operations to meet both its enforcement and trade facilitation missions. Customs plans to spend over \$1 billion over the next few years to modernize its automation systems. The current Customs import processing system, the Automated Commercial System (ACS), is 17 years old. Over time, ACS became unable to handle the increased computing requirements brought on by trade growth and started to experience service failures called brownouts. These brownouts caused import delays and increased manual processing. Recent ACS funding has enabled Customs to fix critical links and grow the system to keep up with the workload, thereby eliminating brownouts for now. With continued funding, Customs expects ACS to remain functional until the maximum capabilities of the system and application software are reached. However, of continued concern is the explosive growth in trade volume and its impact on ACS. In the last decade, trade has grown 132 percent, and by 2004, Customs will be processing more than 30 million commercial entries a year. This is up from 12.3 million in 1994—more than double the level of ten years earlier.

Many observers, including Customs, have said that ACS is headed for a major system crash which will certainly have an adverse impact on trade. They also believe that any serious failure of ACS could have widespread economic effect on U.S. businesses all along the supply chain including manufacturers, suppliers, brokers, and retailers. Between August 1998, and March 2001, ACS experienced a number of significant slow downs in processing "brownouts," which in turn adversely affected the ability of the trade community to process entries quickly and efficiently. Although Customs continues to make costly investments to ACS to alleviate this problem on a short-term basis, Customs and the trade community expect a recurrence of these problems, including possible shutdowns of ACS.

Customs plans to replace ACS with the Automated Commercial Environment (ACE) and has spent approximately \$65 million on ACE development to date. Some of the main differences between ACS and ACE are that ACE reportedly will use a single integrated system, modern standards, processes, techniques and language,

and will be compatible with commercial software. By contrast, ACS does not have an integrated system, uses outdated techniques and languages, and cannot use commercially compatible software. The Committee agrees with Customs and the trade community that ACE is needed to cope with the increased growth of trade, and equally importantly, to meet the legislative requirements for Customs automation modernization mandated under the Customs Modernization Act. Therefore, in its authorization for commercial operations for both FY 2002 and FY 2003, the Committee has included funding to provide the Customs Service with the crucial resources it needs to continue developing ACE. However, the Committee underscores the need to ensure that Customs manage and develop ACE cost effectively, while meeting the legislative automation modernization mandate of the Mod Act.

The Miscellaneous Trade and Technical Corrections Act of 1999, P.L. 106–36, Section 2405 mandated that “not later than January 1, 2000, the Secretary shall provide for the inclusion of commercial importation data from foreign-trade zones under the National Customs Automation Program.” The deadline has now passed and the Committee is concerned that the Customs Service has made no progress on this FTZ automation plan. In light of the current development of the Automated Commercial Environment (ACE) by the Customs Service, the Committee directs the Customs Service to incorporate the Foreign-Trade Zone automation process in the first phase of ACE.

Sec. 102. Antiterrorist and illicit narcotics detection equipment for the United States-Mexico border, United States-Canada border, and Florida and the Gulf Coast seaports

Present law

No applicable section.

Explanation of the provision

This provision would require that \$90,244,000 of the FY 2002 appropriations be available until expended for acquisition and other expenses associated with implementation and deployment of terrorist and narcotics detection equipment along the United States-Mexico border, the United States-Canada border, and Florida and the Gulf seaports. The equipment would include vehicle and inspection systems. The provision would require that \$9,000,000 of the FY 2003 appropriations be used for maintenance of equipment described above. This section would also provide the Commissioner of Customs with flexibility in using these funds and would allow for the acquisition of new updated technology not anticipated when this bill was drafted. Nothing in the language of the bill is intended to prevent the Commissioner of Customs from dedicating resources to specific ports not identified in the bill.

The equipment would include vehicle and container inspection systems, mobile truck x-rays, upgrades to fixed-site truck x-rays, pallet x-rays, busters, contraband detection kits, ultrasonic container inspection units, automated targeting systems, rapid tire deflator systems, portable Treasury Enforcement Communications Systems terminals, remote surveillance camera systems, weigh-in-motion sensors, vehicle counters, spotter camera systems, inbound

commercial truck transponders, narcotics vapor and particle detectors, and license plate reader automatic targeting software.

Reason for change

The Committee recognizes the needs of the Customs Service to effectively interdict terrorists and drugs entering the United States. The Committee is concerned that Customs currently lacks sufficient equipment along the Canada, Mexico, and Gulf borders to effectively carry out this mission while at the same time ensuring that trade flows in a timely manner. The list of equipment is based on the needs Customs has articulated to the Committee both before and after the September 11th terrorist attacks. The Committee expects that Customs will continue to allocate resources to additional ports as it deems appropriate.

Sec. 103. Compliance with performance plan requirements

Present law

No applicable section.

Explanation of the provision

This provision would require Customs to measure specifically the effectiveness of the resources dedicated in sections 102 and 103 as part of its annual performance plan.

Reason for change

The Committee believes Customs must be accountable to the taxpayer in assessing and measuring the effectiveness of its limited resources. This provision ensures that Customs evaluates how it used these additional resources to achieve the goals of Congress.

Subtitle B—Child Cyber-Smuggling Center of the Customs Service

Sec. 111. Authorization of appropriations for program to prevent child pornography/child sexual exploitation

Present law

Customs enforcement responsibilities include enforcement of U.S. laws to prevent border trafficking relating to child pornography, intellectual property rights violations, money laundering, and illegal arms. Funding for these activities has been included in the Customs general account.

Explanation of provision

Section 111 of H.R. 3129, as amended, would authorize \$10 million for Customs to carry out its program to combat on-line child sex predators. Of that amount, \$375,000 would be dedicated to the National Center for Missing Children for the operation of its child pornography cyber tipline.

Reason for change

With about 12 million children using the Internet unsupervised by their parents, the Internet has provided fertile ground for sexual predators to lure children into exploitive and abusive relationships and to trade in child pornography. This legislation would provide Customs with resources for the tools, technology, and manpower it

needs in its efforts to prevent child pornography and sexual exploitation. The Committee expects that these efforts will include outreach programs to educate parents, children, and teachers. The Committee applauds Customs for establishing the Cyber-smuggling Center and fully supports Customs in its efforts to protect children from on-line predators.

Subtitle C—Personnel Provisions

CHAPTER 1—OVERTIME AND PREMIUM PAY OF OFFICERS OF THE CUSTOMS SERVICE

Sec. 121. Correction relating to fiscal year cap

Present law

Section 5(c)(1) of the Act of February 13, 1911 (19 U.S.C. 267(c)(1)) states that the aggregate amount of a Customs officer's overtime pay, including commuting compensation and premium pay, is \$30,000.² A Customs officer who receives overtime or premium pay (holidays and night work) for time worked is prohibited from receiving compensation for that work under any other provision of law. The Commissioner may grant waivers to prevent excessive costs or to meet emergency requirements of the Customs Service. Section 5(a)(1) of the Act of February 13, 1911 (19 U.S.C. 267(a)(1)) outlines the general overtime pay system for Customs officers. Basic overtime compensation for work not regularly scheduled is provided as follows: (a) Work in excess of 8 hours per day or 40 hours per week at twice the basic hourly rate of basic pay; (b) "Callback" pay at twice the basic hourly rate. An officer will receive at least two hours of callback pay for any call back of two hours of work or less, if the work begins at least one hour after the end of any previously scheduled work and ends at least one hour before the beginning of regularly scheduled work; and (c) Compensation for the commute, in addition to callback time, at three times the basic hourly rate; compensation for the commute is not payable if the work does not begin within 16 hours of the Customs officer's last regularly scheduled work assignment, or if the work begins within two hours of the officer's next regularly scheduled work assignment.

Explanation of provision

Section 121 of H.R. 3129, as amended, would amend section 5(c)(1) of the Act of February 13, 1911 (19 U.S.C. 267(c)(1)) to remove premium pay from the calculation of the \$30,000 fiscal-year cap, thus increasing the amount of overtime pay a Customs officer may receive, with no annual limit on the amount of premium pay. The provision would also allow the Commissioner the authority to waive the \$30,000 fiscal-year cap to prevent excessive costs or to meet emergencies, and to pay a Customs officer for one work assignment that would result in the overtime pay of that officer exceeding the \$30,000 fiscal-year cap. This authority would be granted only upon certification to the Chairmen of the House Committee on Ways and Means, and the Senate Committee on Finance that

²The fiscal year cap has been increased annually since October 1, 1997, from \$25,000 to \$30,000 (most recently by the FY 01 Treasury Appropriations Act) over the objections of the Committee on Ways and Means because it did not address overtime and premium pay reforms.

Customs has in operation a system that provides accurate and reliable data on a daily basis on overtime and premium pay being paid to Customs officers.

Reason for change

Administration of the fiscal-year cap has posed a considerable challenge for Customs. Eliminating premium pay from the calculation of the fiscal-year cap will facilitate Customs administration, as fewer Customs officers will approach the level of the cap by working overtime alone. Moreover, allowing each officer an unrestricted amount of premium pay and applying the cap only to overtime pay will increase the earnings of Customs inspectors. If an officer reaches the fiscal-year cap, the provision would allow the Commissioner to pay that officer for one additional work assignment that would result in the overtime pay of the officer exceeding the cap. Thereafter, no additional overtime would be assigned to that officer, except to meet emergency requirements of the Customs Service. Under the National Inspectional Assignment Policy (NIAP) and contracts negotiated with the National Treasury Employees Union (NTEU), Customs has agreed to assign overtime to Customs officers based on daily tracking of each officer's overtime- and premium-pay earnings. Section 121 also requires that authority to exceed the cap by one assignment will be granted to the Commissioner only upon certification to the Chairmen of the House Committee on Ways and Means and the Senate Committee on Finance that Customs has in operation a system that provides accurate and reliable data on a daily basis on overtime and premium pay that is being paid to each Customs officer.

Customs' officials estimate that based upon pre-emergency staffing requirements, there have been several hundred inspectors who reached the cap and who would thus benefit from an increase in the cap. Based upon post-emergency staffing requirements from the heightened alert, that estimate is now conservatively over 1,000 inspectors who would benefit from raising the cap. Taking premium pay out of the cap would allow some inspectors to earn as much as \$5,000 more than currently allowed.

Sec. 122. Correction relating to overtime pay

Present law

On October 30, 1997, an arbitration ruling required the Customs Service to pay overtime to a Customs officer for work not performed if that officer was not permitted to work that time due to an administrative error. An earlier arbitration ruling required Customs to pay overtime to a Customs officer for work not performed if Customs had prevented that officer from working right up to the fiscal year salary cap, a practice Customs has in place to prevent an Anti-Deficiency Act violation.

Explanation of provision

Section 122 of H.R. 1833, as amended, would prevent Customs from paying overtime pay to Customs officers for work not actually performed. However, this provision would not apply to payment of an award or settlement under section 5596 of title 5, United States

Code, section 6(d) of the Fair Labor Standards Act, or title VII of the Civil Rights Act of 1964.

Reason for change

The Committee is concerned that three arbitral decisions require Customs to pay overtime for work not performed. Specifically, as a result of a decision by a labor arbitrator in August 1982, Customs is required to pay overtime plus interest for hours not actually worked to officers denied overtime assignments because they have reached the level set by the port directors. The amount paid by Customs pursuant to the arbitral decision equals the difference between the fiscal-year cap and the level which the officer had reached at the time the port director stopped assigning additional overtime to that officer. As a result of a decision by a labor arbitrator in November 1993, Customs is required to pay for overtime not actually worked to officers whose overtime is inappropriately assigned to part-time employees. In yet another decision by a labor arbitrator in October 1997, Customs is now required to pay overtime to Customs officers for work not performed when the officer was not assigned an overtime assignment due to an inadvertent administrative error.

The current practice of paying overtime for work not performed replaces the practice of providing the next comparable overtime assignment to the officer who was inadvertently skipped over. In addition, in testimony before the Subcommittee on Trade in May 1998, the General Accounting Office (GAO) stated: "Although we believed that inspectors should be paid extra for working overtime, we recommend that (1) the 1911 Act be amended so that inspector overtime would be more directly linked to actual hours worked, and (2) Customs management focus on achieving a more efficient use of overtime." U.S. Customs Service: Oversight Issues, GAO/T GGD 97 107 (May 15, 1997). The provision would clarify Congressional intent with regard to overtime for Customs officers by preventing Customs from paying overtime to officers for hours not actually worked. Customs would achieve savings by prohibiting these payments which it has been required to make since the 1982 arbitral decision.

It is the view of the Committee that Customs would achieve considerable savings in prohibiting these payments, and these resources would be better utilized by Customs in other areas. More importantly, the change in law will correct an inequitable and unintended consequence of the present law as interpreted by arbitration panels. The Committee does not expect that this requirement will have a significant impact on Customs' management of overtime or on Customs officers' ability to earn overtime pay.

Customs has taken steps to alleviate this problem by recently implementing the Customs Overtime and Scheduling System (COSS), which currently tracks and monitors all scheduling, assignment of regular hours, overtime, and premium hours for Customs officers. Under this tracking system, Customs will be better able to monitor overtime and premium hours to prevent situations that gave rise to officers receiving overtime and premium pay for no work. However, the Committee believes that this legislation is necessary to clarify that the appropriate policy is to provide an additional assignment instead of overtime. Finally, this reform is not intended

to prevent awards or settlements under the provisions of laws cited in this section.

Sec. 123. Correction relating to premium pay

Present law

Section 123(a). An arbitration ruling requires Customs to pay officers for regularly scheduled premium pay hours even if the officer subsequently takes sick or annual leave and does not actually work those hours. The Omnibus Consolidated and Emergency Supplemental Appropriations for FY 1999 (P.L. 105-277), permanently restricts Customs from paying premium pay on Sundays to an employee if the employee has not actually performed work on a Sunday.

Sec. 123(b). Section 5(b)(1) of the Act of February 13, 1911 (19 U.S.C. 267(b)(1)) provides that if an officer works: (1) the majority of his or her hours between 3 p.m. and midnight, compensation equals the basic hourly rate plus 15 percent of the basic hourly rate for the entire eight-hour shift; (2) the majority of his or her hours between 11 p.m. and 8 a.m., compensation equals the basic hourly rate plus 20 percent for the entire eight hour shift; and (3) if the officer's regularly scheduled work assignment falls between 7:30 p.m. and 3:30 a.m., compensation equals the basic hourly rate plus 15 percent for the period from 7:30 p.m. to 11:30 p.m., and the basic hourly rate plus 20 percent for the period from 11:30 p.m. to 3:30 a.m.

For example, if a Customs officer is scheduled to work a shift that starts at 12:00 noon and ends at 8 p.m., five of the eight hours of that shift, or the majority of hours, occur during the 3 p.m. to 11 p.m. night premium pay hours. Thus, the Customs officer is paid night pay (an additional 15 percent) for all eight hours of the shift that starts at noon.

Explanation of the provision

Sec. 123(a). This provision would prohibit Customs from paying premium holiday pay to an employee if the employee has not actually performed work during the time corresponding to such premium pay by amending section 5(b)(4) of the Act of February 13, 1911 (19 U.S.C. 267(b)(4)). However, this provision would not apply to payment of an award or settlement under section 5596 of title 5, United States Code, section 6(d) of the Fair Labor Standards Act, or title VII of the Civil rights Act of 1964. As with the restriction on payment of overtime pay outlined in section 122, this provision would clarify Congressional intent with regard to premium pay for Customs officers by preventing Customs from paying premium pay to officers for hours not actually worked.

Sec. 123(b). This provision would amend section 5(b)(1) of the Act of February 13, 1911 (19 U.S.C. 267(b)(1)) to provide that a Customs officer is paid premium night shift ("shift differential") pay only for shift differential hours worked. This provision also changes the actual hours eligible for night time pay to between 5 p.m. and 6 a.m., except that for a regularly scheduled shift between 4 p.m. and midnight or midnight and 8 a.m., the entire shift would be eligible for night pay shift differential.

Under this legislation, if any hour of an officer's regularly scheduled work hours occur between 5 p.m. and midnight, compensation would equal the basic hourly rate plus at least 18 percent for those hours only. If any work hours occur between midnight and 6 a.m., compensation would equal the basic hourly rate plus 25 percent for those hours only. The bill also would allow for a Customs officer regularly scheduled to work the shift from 4 p.m. and midnight to be paid at a premium rate of at least 18 percent over his or her base salary for the entire shift. The bill also would allow for a Customs officer regularly scheduled to work the shift from midnight to 8 a.m. to be paid at a premium rate of 25 percent over his or her base salary for the entire shift. For example, a Customs officer working from noon to 8 p.m. would earn night differential pay only between the hours of 5 p.m. and 8 p.m, but would receive at least an 18 percent differential instead of the current 15 percent.

Reason for change

Section 123(a). The Committee is greatly concerned that an arbitral decision requires Customs to pay premium pay for hours not actually worked. Specifically, due to the decision by a labor arbitrator in September 1996, Customs is required to pay premium pay to officers for regularly-scheduled premium pay hours even if the officer subsequently fails to work those hours due to annual leave, sick leave, or National Guard duty leave. Similar to the reform on payment of overtime pay outlined in section 122, this provision would clarify Congressional intent with regard to premium pay for Customs officers by preventing Customs from paying premium pay to officers for hours not actually worked. Finally, this reform is not intended to prevent awards or settlements under the provisions of laws cited in this section.

Section 123(b). The Customs Officer Pay Reform Amendments, which was part of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103-66), greatly increased the number of available hours in which a Customs Officer can earn premium pay for night work. COPRA also increased the 10 percent night differential compensation to 15 percent and 20 percent, depending on the time of day that the assignment is worked. Among Federal employees, only Customs officers are compensated at a premium pay rate of 15 percent or 20 percent of basic hourly pay for night work. In fact, COPRA allows Customs to pay night differential premium payments for 23 hours of the day (12 p.m. to 11 a.m.), rather than 12 hours of the day (6 p.m. to 6 a.m.) as was previously the case under FEPA. Premium pay for night work by most other Federal employees is provided at a rate of 10 percent for the hours from 6 p.m. to 6 a.m. and is available only for those hours worked during that period, not the entire shift.

At the Subcommittee's legislative hearing on April 13, 1999, Mr. Schindel testified that "premium pay expenses for Customs, specifically the work differential, substantially increased under COPRA." In fact night shift differential increased from \$51,000 in FY 1993 to \$11.9 million in FY 1998. Mr. Schindel reached the same conclusion at the Subcommittee's legislative hearing on July 17, 2001. A major reason for this dramatic increase in premium pay for shift differential is that COPRA increased the number of available hours where a Customs officer could earn night differential. The Congress-

sional intent of the COPRA was to ensure that Customs officers' schedules met customer demand. A Treasury Inspector General report concluded that Customs schedules do correspond to its workload and to its customers' needs. Customs Officer Pay Reform Amendments (COPRA), OIG 96 094 (September 13, 1996). However, the report concluded that COPRA had caused a significant increase in night differential spending, amounting to at least \$6 million per year.

The report recommended: The Assistant Secretary (Enforcement) should direct Customs to seek legislation that would lessen the number of hours available for Customs officers to earn night differential and reduce the night work differentials to a 10 percent premium on base pay. The change to the COPRA should create a night differential payment package that would more accurately reimburse Customs officers for hours actually worked at night, as was done previously under FEPA. The provision would clarify Congressional intent that night premiums be awarded only for night work, correcting the anomaly that an officer can receive a night premium for working at noon, namely the limitation that night-time pay be for actual night-time hours worked.

Rather than adopt the report's recommendations in toto, the Committee has chosen to address the inherent inequity of the current system which provides night-time premium pay to employees working during daytime hours. The bill would redistribute the savings generated by scaling back the hours that are eligible for night-time premium pay so as to make the legislation revenue neutral and overall inspector pay neutral. According to calculations from Customs, the savings from Section 123 will be sufficient to increase the night-time premium differential from 15% to at least 18% (for hours worked before midnight) and from 20% to 25% (for hours worked after midnight).

Customs officials testified at the markup on October 31, 2001, that there would be no impact on operations as a result of these changes and that all shifts would still be staffed. Also, given the current method of assigning shifts by having inspectors bid on them, inspectors will have the opportunity to seek different shifts depending upon their personal preferences. Thus, an inspector who has been receiving night-time premium pay for working a noon to 8:00 p.m. shift could seek a later shift in order to continue to receive night time premium pay. At the same time, inspectors working the most popular night shift (4:00 p.m. to midnight), which accounts for 48 percent of night shifts, would receive a raise from a current 15% premium for each hour to at least 18%. Committee Members believe this is a more equitable method for paying night-time premium pay than the existing system.

Sec. 124. Use of savings from payment of premium pay

Present law

No applicable section.

Explanation of the provision

This provision would require the Secretary of the Treasury to calculate any savings created as a result of sections 122 and 123. Customs would be required to use the savings to provide additional

overtime for enforcement purposes. The change in Section 123 to increase the premium pay for customs officers for hours actually worked is intended to offset the decrease in hours that the premium pay is available.

Reason for change

The Committee wants to ensure that savings from sections 122 and 123 from this bill are used for paying higher premium pay to inspectors who actually work night-time shifts.

Sec. 125. Effective date

Present law

No applicable section.

Explanation of the provision

The provision states that the section will be effective 15 days after enactment.

Reason for change

The Committee anticipates that the provision will take effect in the payment cycle after enactment.

CHAPTER 2—MISCELLANEOUS PROVISIONS

Sec. 131. Additional Customs Service officers for U.S.-Canada border

Present law

No applicable section.

Explanation of the provision

This provision earmarks \$25 million and 285 new staff hires for Customs to use at the U.S.-Canada border.

Reason for change

Additional earmark: Since the terrorist attack on the U.S. on September 11th, Customs has continued to work under the highest level of alert. Customs has apprehended terrorists in the past as they attempted to go through the Northern Border with weaponry. Early reports are that some of the September 11th terrorists also came through the Northern Border. Moreover, many U.S. industries rely upon immediate delivery of products from Canada in order to operate. Given also that Canada remains the largest trading partner for the United States, it is clear that new resources are needed to facilitate trade while protecting the border. The Committee notes that the Administration provided the Customs Service with no new hiring authority for staff from funds made available in the emergency supplemental appropriations bill in 2001. Nevertheless, Customs staff is continuing to work at the highest alert status during the current emergency, and Customs staff must work markedly increased overtime hours. New staff is needed particularly at the Northern Border to insure that border security is maintained while facilitating trade.

“Reverse Customs” procedures: The Committee wishes to address the inspection and control requirements of the border crossings

along the Northern Border. The Committee encourages the Administration, and the Customs Service in particular, to explore an agreement with Canadian officials to increase cooperation at border crossings and to station customs officials from each government on the opposite side of the border for the purpose of inspecting and clearing vehicles before they cross the border—the so-called “reverse customs” process.

The Committee notes that Michigan/Canada border crossings at the Ambassador Bridge and the Detroit Windsor Tunnel would be a good location for a pilot project once an agreement between the United States and Canada is reached. According to data derived from the Bridge and Tunnel Operators Association, Michigan led the nation in U.S.-Canada border crossings with over 2.1 million trucks and 11.1 million cars crossing the border, with Ambassador Bridge and the Detroit-Windsor Tunnel showing the highest car, truck, and other vehicular traffic volumes through August 2001. It is estimated that over \$1 billion in trade crosses the Canada-U.S. border every day, with nearly half crossing either the Ambassador or Blue Water Bridges in Michigan.

Such a pilot project could address increased security and safety concerns in the aftermath of the terrorist attacks in the United States on September 11, 2001, and ensure that potentially dangerous vehicles would be stopped prior to embarking upon the Ambassador Bridge and Detroit Windsor Tunnel structures. The Committee expects that U.S. Customs, in consulting and coordinating with Canadian Customs, would give great weight and sensitivity to sovereignty issues, laws, and customs, while at the same time achieving a workable and effective mechanism allowing Customs personnel to carry out their duties.

In addition, the Committee recommends continuation of the use of automated, computerized inspection and commercial transaction systems by Customs at border crossings and particularly at the Michigan ports of entry, including but not limited to ACE, NCAP, NEXUS, and Port Pass. The Committee believes that these systems can and should be fully utilized even during this period of heightened security on all U.S. bridges, tunnels, and other border crossings in the aftermath of the September 11th terrorist attack on the United States. However, in order to ensure that the need for enhanced security at the ports of entry is maintained, the Committee has authorized additional funding for new technologies and systems to improve the ability of U.S. Customs to interdict dangerous vehicles and terrorist threats to our bridges, ports, and personnel at ports of entry.

The Commissioner of Customs should report to the Committee regarding its implementation of the technology and pilot program initiatives set forth in this report, with particular emphasis on its efforts to coordinate the pilot program with Canadian Customs.

Sec. 132. Study and report relating to personnel practices of the Customs Service

Present law

No applicable section.

Explanation of provision

Section 132 of H.R. 3129, as amended, requires Customs to conduct a study of current personnel practices including: performance standards; the effect and impact of the collective bargaining process on Customs drug interdiction efforts; and a comparison of duty rotations policies of Customs and other federal agencies employing similarly situated personnel.

Reason for change

Under the collective bargaining agreement between Customs and the National Treasury Employees' Union (NTEU), Customs cannot rotate a Customs officer permanently or for temporary duty unless the officer agrees to the change. In addition, the agreement specifies that the union may bring to grievance any issue relating to the impact and management of any management changes, including a management change relating to drug enforcement, and any issues not included in the collective bargaining agreement.

The Committee has been concerned that the union is able to effectively thwart Customs drug interdiction efforts through bargaining or the unwillingness to bargain. There have been a number of examples in which the NTEU was able to delay negotiations on work conditions, to the detriment of the ability to interdict contraband, including narcotics. These examples included: (1) negotiations between the National Treasury Employees Union (NTEU) and Customs since early 1995 in El Paso, Texas, over work conditions at the three bridges between Mexico and El Paso relating to the use of a very successful drug interdiction approach called pre-primary roving for Canine Enforcement Officers and Inspectors; (2) implementing certain shift work in Miami; and (3) the percent of officers regularly scheduled to work weekend shifts at the John F. Kennedy airport (JFK).

Shortly after the Subcommittee and Committee discussed these issues at the 1998 mark-ups, Customs and the Union settled their differences on the weekend shifts issues at JFK and El Paso. In addition, the Impasse Panel issued a decision on the shift issue in Miami. As a result of these developments, the Committee believes that many of the issues that have adversely impacted Customs drug interdiction efforts have been favorably resolved. However, the Committee believes that a study of the effect and impact of the collective bargaining process on Customs drug interdiction efforts is necessary to keep a watchful eye on this issue. In addition, the Committee is concerned that Customs' lack of authority in the past to rotate and temporarily assign officers may have adversely impacted its drug interdiction efforts. Therefore, the Committee is requiring that Customs conduct a comparison study of rotation policies with similarly situated federal personnel which would enable both the Committee and Customs to assess Customs rotation practices.

*Sec. 133. Study and report relating to accounting and auditing procedures of the Customs Service**Present law*

No applicable section.

Explanation of the provision

This provision would require Customs to conduct a study to ensure that appropriate training is being provided to personnel who are responsible for financial auditing of importers. Customs would specifically report on how its audit personnel protect the privacy and trade secrets of importers.

Reason for change

The Committee has received many complaints from U.S. importers about the specialized skill and knowledge base of auditors from the Customs Service. As with all government enforcement, the skill of enforcement officials is important in order to ensure that violations of law are not overlooked but also to ensure that legitimate acts are not mistakenly labeled illegal. Especially troubling are complaints that proprietary business information is not being given the proper level of confidentiality from disclosure. The Committee does not have sufficient data to confirm or deny these complaints definitively and has rather chosen to direct Customs to study and report on the procedures in place to ensure that auditors are properly trained.

*Sec. 134. Establishment and implementation of cost accounting system; reports**Present law*

No applicable section.

Explanation of the provision

Section 134 would mandate the imposition of a cost accounting system in order for Customs to effectively explain its expenditures. Such a system would provide compliance with the core financial system requirements of the Joint Financial Management Improvement Program (JFMIP), which is a joint and cooperative undertaking of the U.S. Department of the Treasury, the General Accounting Office, the Office of Management and Budget, and the Office of Personnel Management working in cooperation with each other and other agencies to improve financial management practices in government. That Program has statutory authorization in the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 65).

Reason for change

The Customs Service is currently unable to answer fundamental questions about how it spends money. This fact was mentioned above in the discussion of present law for Section 101. For example, Customs states that it spends a certain amount of money on commercial operations. The figure is not based upon the continual adding of various commercial costs from all operations within Customs, such as the number of people who actually processed entries of merchandise at specific ports during a set period. Instead, the figure is based upon Customs officials' belief that a set percentage of its work is always related to commercial activities. That static percentage is based upon a no longer available, ad hoc survey conducted by Customs several years ago. A modern cost accounting system would allow Customs to accurately identify the amount of money spent at specific locations, for specific functions such as tex-

tile transshipment monitoring, searching for contraband, or processing entries of merchandise.

Sec. 135. Study and report relating to timeliness of prospective rulings

Present law

No applicable section.

Explanation of the provision

This provision would require the Comptroller General to prepare a report to determine whether Customs has improved its timeliness in providing prospective rulings.

Reason for change

In light of oversight reports from the General Accounting Office and complaints from the business community, the General Accounting Office is directed to monitor and provide an update to its recent report in one year on the progress of Customs in substantially decreasing the time it takes to issue prospective rulings. The Committee had originally proposed a strict deadline of 90-days for Customs to issue prospective rulings. Because of the emergency currently facing Customs, the draw upon its resources, and assurance from officials from the new Administration to act on GAO's comments, a mandatory deadline was dropped but will be revisited depending upon the results of GAO's review.

Sec. 136. Study and report relating to Customs user fees

Present law

No applicable section.

Explanation of the provision

This provision would require the Comptroller General to prepare a confidential report to determine whether current user fees are appropriately set at a level commensurate with the service provided for the fee. The Comptroller General is authorized to recommend the appropriate level for customs user fees.

Reason for change

The Committee has already noted in the discussion at sections 101 and 134 the problem of a lack of reliable cost data from Customs. One consequence of having inadequate data is that importer user fees may not reflect the level of services provided for by the fee. Moreover, Customs officials admit that there is no cost accounting system in place for them to accurately track costs of providing services. For this reason, this section should be read in conjunction with Section 134 requiring Customs to implement a cost accounting system.

If the government buys a good or service at a price that purports to be based upon the cost of that good or service, then the government would expect a seller to provide adequate documentation to support that cost basis. The government therefore should provide similar justification of its costs especially when it requires importers to pay fees ostensibly to cover services rendered. The inability of government to justify the costs of its services to importers, while

simultaneously urging increases in fees, has reasonably led to concerns among importers that the fee levels are no longer appropriate, may be inflated, and could be raised without adequate justification. So long as reliable data is not available, it will be difficult, if not impossible, to justify the current level of fees, much less extensions or changes.

Subtitle D—Tools for Fighting Terrorism

Sec. 141. Immunity for Customs officers that act in good faith

Present law

Currently, Customs officers are entitled to qualified immunity in civil suits brought by persons, who were searched upon arrival in the United States. Qualified immunity protects officers from liability if they can establish that their actions did not violate any clearly established constitutional or statutory rights.

Explanation of the provision

This section would protect Customs officers by providing them immunity from lawsuits stemming from personal searches of people entering the country so long as the officers conduct the searches in good faith. The “good faith” standard has been used in other contexts similar to this, as in 19 U.S.C. §507, for searches conducted by other individuals at the direction of Customs officers. Under this amendment, if Customs certifies in a lawsuit that the officer followed policy in conducting the allegedly improper search, the court would then make a finding of good faith immunity and would dismiss the suit against the officer.

Reason for change

Customs officers have the important responsibility to search persons arriving in the United States to prevent the introduction of contraband, including dangerous items. Often, a personal search is the only way to determine if a person is concealing contraband on or within their body. There has been a large increase in the number of private lawsuits against Customs officers by persons that have undergone personal searches. Despite the large increase in suits against Customs officers, almost every one of them are ultimately resolved in favor of the officers (i.e., there is a finding of qualified immunity).

Customs officers have been subject to an increasing number of lawsuits by those searched at the border. In all but fewer than five of these dozens of cases in the last several years, the courts have found in the favor of the Customs officers. Nonetheless, each case tends to hinge on a lengthy, fact-specific trial, potentially distracting the officers from their duties and creating a chilling effect among other officers. Though Customs officers are winning these cases, they must undergo discovery, depositions, and trial, even when those searches have uncovered drugs and other smuggled items on or inside the plaintiff. These officers may face financial burdens as well, as personal property such as cars and real estate may be covered by liens while the litigation is pending. Customs’ experience is that it takes years to get decisions on qualified immunity for its officers, even in cases where the officer followed personal search policy and did nothing wrong.

As Customs searches greater numbers of passengers to detect terrorists, there is a potential for Customs officers to become subject to an increasing number of lawsuits alleging ethnic or religious profiling. While officers are not permitted to discriminate on the basis of unconstitutional criteria, this amendment provides an avenue for frivolous and questionable suits to be resolved at an early stage. Accordingly, the amendment would have the effect of streamlining the existing process for judicial determinations on whether Customs officers are entitled to immunity from lawsuits.

The amendment introduces a single standard—good faith—for courts to rely on to speedily dispose of unmeritorious lawsuits at an early stage. The Committee believes that the best (though not exclusive) measure of whether a Customs officer conducts a personal search in good faith is whether the officer follows established Customs policy. It is important to note that even with this amendment, truly aggrieved plaintiffs would continue to have appropriate remedies to obtain redress for any improper searches as they could obtain money damages under the Federal Tort Claims Act (FTCA) against the government for tortious searches; obtain injunctive relief for unconstitutional policies; or if the officer acted in bad faith and in violation of clearly established constitutional or statutory rights, recover against the officer personally (because the officer would not be immune from personal liability).

Sec. 142. Emergency adjustments to offices, ports of entry, or staffing of the Customs Service

Present law

Present law places numerous restrictions on and, in some instances, precludes the Secretary of the Treasury or Customs from making any adjustments to ports and staff. 19 U.S.C. 1318 requires a Presidential proclamation of an emergency and authorization to the Secretary of the Treasury only to extend the time for performance of legally required acts during an emergency. No other emergency powers statute for Customs exists.

Explanation of the provision

This provision would permit the Secretary of the Treasury, if the President declares a national emergency or if necessary to address specific threats to human life or national interests, to eliminate, consolidate, or relocate Customs ports and offices and to alter staffing levels, services rendered and hours of operations at those locations. In addition, the amendment would permit the Commissioner of Customs, when necessary to address threats to human life or national interests, to close temporarily any Customs office or port or take any other lesser action necessary to respond to the specific threat. The Secretary or the Commissioner would be required to notify Congress of any action taken under this proposal within 72 hours.

Reason for change

This provision would loosen restrictions on Customs' ability to alter the location, hours of operation and staffing at ports in response to terrorist threats. Such restrictions unduly limit Customs' ability to move personnel to locations where they can most effec-

tively be used to reduce or respond to terrorist threats. They also force Customs to maintain offices and personnel in locations that have very little international traffic and where they cannot be used effectively to address threats of terrorism. The terrorist attack on the United States on September 11th resulted in the need for changes in border staffing and security. The Administration requested these changes to law in order to give officials flexibility in providing for border security during the current and future emergencies.

Sec. 143. Mandatory advanced electronic information for cargo and passengers

Present law

Currently, commercial carriers bringing passengers or cargo into or out of the country have no obligation to provide Customs with such information in advance.

Explanation of the provision

This provision would require every air, land, or water-based commercial carrier to file an electronic manifest describing all passengers with Customs before entering or leaving the country. There is a similar requirement for cargo entering the country. Specific information required in the advanced manifest system would be developed by Treasury in regulations.

Reason for change

Advanced electronic manifests will significantly enhance Customs' ability to identify high-risk passengers and cargo and will ensure that suspected terrorists or those on law enforcement or terrorist watch lists are identified before entering or leaving the United States. The passenger identification requirement will provide Customs with, among other things, the name and passport number of every passenger in advance of a carrier's attempt to enter or leave the United States. Similarly, the cargo manifest requirement provides Customs with a wide range of important information about all cargo, including those involved in its shipment. This proposal builds upon a successful voluntary program that Customs has already with the airlines. While all commercial carriers must provide this information to Customs at some point, this proposal would require it prior to entry or departure and electronically for passenger carriers. The amendment makes a similar requirement for cargo entering the country.

The Committee received many questions from carriers as to its concerns that Customs does not currently have the infrastructure or procedures to implement in all cases advanced electronic manifesting. The Committee is aware of the current state of the system and expects the Secretary of the Treasury to construct both infrastructure and procedures to implement these requirements by means of regulations. The current Customs computer system would be unable to handle the increased electronic information contemplated by these new provisions. In this regard, the full funding of the ACE computer system is all the more important to allow Treasury and Customs to proceed quickly.

The Committee intends the Treasury Department to promulgate regulations implementing the advance reporting requirements of this section after consulting with various component members of the transportation industry. This should occur in conjunction with the design and development of the ACE computer system, which is intended to accommodate the new advanced reporting information. Further, the Committee expects the Treasury Department to engage in a regulation making process that will take into account, and accommodate to the extent reasonable, standard commercial practices. Such regulations should appropriately reflect the distinct differences among trucking, rail, vessel, air and other transportation entities while advancing the government's need to obtain the manifest information in a timely manner.

Sec. 144. Border search authority for certain contraband in outbound mail

Present law

Although Customs currently searches all inbound mail, and although it searches outbound mail sent via private carriers, outbound mail carried by the Postal Service is not subject to search.

Explanation of the provision

This proposal would enable Customs officers to search outbound U.S. mail for unreported monetary instruments, weapons of mass destruction, firearms, and other contraband used by terrorists. Because Customs does not inspect outbound mail carried by the Postal Service, millions of packages mailed out of the United States, some weighing many pounds and capable of containing dangerous items such as high explosives, illegally obtained cash, or biological agents, are free from any Customs inspection.

This new section would provide Customs with the same authority that it has to search incoming mail. Specifically, the bill would authorize searches of outbound non-letter class packages. Letter-class outbound mail could be searched upon reasonable suspicion that it contained firearms, monetary instruments (checks or cash), or several other categories of dangerous materials and other merchandise subject to the laws enforced by Customs. However, reading of mail would not be authorized absent Customs officers obtaining a search warrant or consent.

Reason for change

Often the smuggling of weapons, drugs, or other contraband is only half of an illegal operation. The other half consists of the outbound smuggling of unreported money that helps finance the illegal activity. The current government investigation into the activities of the terrorists responsible for the attack of September 11th is heavily reliant upon the tracing of money that helped finance the attack. Long before September 11th, government investigators have known that drug money frequently leaves the country and helps foreign drug sellers continue their operations. Tracing the money helps bring illegal operators to justice. It is therefore critical that Customs have the authority to search outbound mail.

The Committee notes that Customs currently searches outbound envelopes and cargo shipped via private express companies, but

there have been doubts by some that Customs has the authority to search outbound mail sent via the U.S. Postal Service. It is the intention of the Committee to make an unambiguous declaration and clarification of the present law to the effect that the U.S. Customs Service has and must have access to search all outbound mail. Due regard for privacy rights of individuals is addressed through the requirement of probable cause and a search warrant or consent in the event that letter class mail needs to be read.

Sec. 145. Authorization of appropriations for reestablishment of Customs operations in New York City

Present law

No applicable section.

Explanation of the provision

On September 11, 2001, destruction of the World Trade Center complex destroyed substantial operations of the U.S. Customs Service. This provision authorizes funds to reestablish those operations.

Reason for change

Textile transshipment operations are specifically mentioned as needing reestablishment given the importance of that work to the import sensitive textile and apparel manufacturers in the United States.

Subtitle E—Textile Transshipment Provisions

Sec. 151. GAO Audit of textile transshipment monitoring by Customs Service

Present law

No applicable section.

Explanation of the provision

This provision would direct the Comptroller General to conduct an audit of the systems at the Customs Service to monitor and enforce textile transshipment. The Comptroller General would report on recommendations for improvements.

Reason for change

The Committee continues to hear complaints about textile goods entering the country that have been transshipped, meaning that an importer has entered the goods with an incorrect declaration for the purpose of obtaining entry or a lower duty. The Committee is aware that Customs has ongoing operations to monitor and enforce textile transshipment, and many allegations may already be under investigation. A report from the Comptroller will assist the Committee in evaluating Customs' enforcement.

Sec. 152. Authorization of appropriations for textile transshipment enforcement operations

Present law

No applicable section.

Explanation of the provision

This provision would authorize \$9,500,000 for FY 2002 to the Customs Service for the purpose of enhancing its textile transshipment enforcement operations. This amount would be in addition to Customs' base authorization and the authorization to reestablish the destroyed textile monitoring and enforcement operations at the World Trade Center.

Reason for change

The Committee wishes to increase the level of funding for monitoring and enforcement of textile transshipment to ensure every effort is made to control imports according to present law.

*Sec. 153. Implementation of the African Growth and Opportunity Act**Present law*

No applicable section.

Explanation of the provision

The provision would earmark approximately \$1.3 million within Customs' budget for selected activities related to providing technical assistance to help sub-Saharan African countries develop and implement effective visa and anti-transshipment systems as required by the African Growth and Opportunity Act (title I of Public Law 106–200).

Reason for change

Congress intended for sub-Saharan countries to receive benefits in the African Growth and Opportunity Act which passed in the 106th Congress. Due to the lack of experience and infrastructure in many African countries, however, these countries are experiencing difficulty in taking advantage of the Act and its benefits. The Committee, therefore, wishes Customs to provide technical assistance to these countries.

TITLE II—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

*Sec. 201. Authorization of appropriations**Present law*

The statutory authority for budget authorization for the Office of the United States Trade Representative is section 141(g)(1) of the Trade Act of 1974 (19 U.S.C. 2171(g)(1)). The most recent authorization of appropriations for USTR was under section 101 of the Customs and Trade Act of 1990 [P.L. 101–382]. Under 19 U.S.C. 2171, Congress has adopted a two-year authorization process to provide USTR with guidance as it plans its budget as well as guidance from the Committee for the appropriation process.

Explanation of the provision

This provision authorizes \$30,000,000 for FY 2002 and \$31,000,000 for FY 2003. The provision requires submission of out-of-year budget projections to the Ways and Means and Finance Committees. In light of the substantial increase in trade negotiation work to be conducted by USTR and the associated need for

consultations with Congress, this provision would authorize the addition of two individuals to assist the office of Congressional Affairs.

Reason for change

The Committee recognizes that USTR needs increased budget authorization to meet its expenses and hire new employees. The legislation authorizes the full amount of the President's budget request for USTR. The Committee wants to be sure USTR has enough resources so that the World Trade Organization (WTO) negotiations will successfully open trade in favor of the interests of the United States.

TITLE III—UNITED STATES INTERNATIONAL TRADE COMMISSION

Sec. 301. Authorization of appropriations

Present law

The statutory authority for budget authorization for the International Trade Commission is section 330(e)(2)(A) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(2)(A)). The most recent authorization of appropriations for the ITC was under section 101 of the Customs and Trade Act of 1990 [P.L. 101–382]. Under 19 U.S.C. 1330, Congress has adopted a two-year authorization process to provide the ITC with guidance as it plans its budget as well as guidance from the Committees for the appropriation process.

Explanation of the provision

This provision authorizes \$51,400,000 for FY 2002 and \$53,400,000 for FY 2003. The provision requires submission of out-of-year budget projections to the Ways and Means and Finance Committees.

Reason for change

The Committee recognizes that the ITC needs increased budget authorization to meet the increased workload. The legislation authorizes the full amount of the President's budget request for the ITC.

TITLE IV—OTHER TRADE PROVISIONS

Sec. 401. Increase in aggregate value of articles exempt from duty acquired abroad by United States residents

Present law

The Harmonized Tariff Schedule at subheading 9804.00.65 currently provides a \$400 duty exemption for travelers returning from abroad.

Explanation of the provision

The provision would increase the current \$400 duty exemption to \$800.

Reason for change

The current duty exemption of \$400 has been in place since 1983 and after inflation no longer reflects the same level of buying power. An increase is therefore in order.

*Sec. 402. Regulatory audit procedures**Present law*

Section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) provides the authority for Customs to audit persons making entry of merchandise into the U.S. In the course of such audit, Customs auditors may identify discrepancies, including underpayments of duties. However, if there also are overpayments, there is no requirement that such overpayments be offset against the underpayments if the underlying entry has been liquidated.

Explanation of the provision

This provision would require that when conducting an audit, Customs must recognize and offset overpayments and overdeclarations of duties, quantities and values against underpayments and underdeclarations. As an example, if during an audit Customs finds that an importer has underpaid duties associated with one entry of merchandise by \$100 but has also overpaid duties from another entry of merchandise by \$25, then any assessment by Customs must be the difference of \$75.

Reason for change

A government audit should be an even-handed and neutral evaluation of a person's compliance with the law. The government should treat overpayments/overdeclarations and underpayments/underdeclarations equally, and if both are found during an audit, they should be used to offset each other. The Committee redrafted this provision on the basis of concerns from Customs. It is the Committee's intention that this provision shall not affect in any way Customs' current authority to define an audit's scope, time period, and methodology.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee on Ways and Means in its consideration of the bill, H.R. 3129.

MOTION TO REPORT THE BILL

The bill, H.R. 3129, as amended, was ordered favorably reported by voice vote (with a quorum being present).

VOTES ON AMENDMENTS

The Chairman's amendment in the nature of a substitute was agreed to by a rollcall vote of 20 yeas to 14 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas	X			Mr. Rangel			
Mr. Crane	X			Mr. Stark		X	
Mr. Shaw	X			Mr. Matsui		X	
Mrs. Johnson	X			Mr. Coyne			
Mr. Houghton				Mr. Levin		X	
Mr. Herger	X			Mr. Cardin		X	
Mr. McCreery				Mr. McDermott		X	
Mr. Camp	X			Mr. Kleczka		X	
Mr. Ramstad	X			Mr. Lewis (GA)		X	
Mr. Nussle	X			Mr. Neal		X	
Mr. Johnson	X			Mr. McNulty			
Ms. Dunn				Mr. Jefferson		X	
Mr. Collins	X			Mr. Tanner		X	
Mr. Portman	X			Mr. Becerra		X	
Mr. English	X			Mrs. Thurman		X	
Mr. Watkins	X			Mr. Doggett		X	
Mr. Hayworth	X			Mr. Pomeroy		X	
Mr. Weller	X						
Mr. Hulshof	X						
Mr. McClinnis							
Mr. Lewis (KY)	X						
Mr. Foley	X						
Mr. Brady	X						
Mr. Ryan	X						

A rollcall vote was conducted on the following amendment to the Chairman's amendment in the nature of a substitute:

An amendment by Mr. Stark on behalf of himself and Mr. Rangel, which would strike sections 122 and 123, correcting overtime and premium pay, was defeated by a rollcall vote of 13 yeas to 20 nays. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas		X		Mr. Rangel			
Mr. Crane		X		Mr. Stark	X		
Mr. Shaw		X		Mr. Matsui	X		
Mrs. Johnson		X		Mr. Coyne			
Mr. Houghton				Mr. Levin	X		
Mr. Herger		X		Mr. Cardin	X		
Mr. McCreery				Mr. McDermott	X		
Mr. Camp		X		Mr. Kleczka			
Mr. Ramstad		X		Mr. Lewis (GA)	X		
Mr. Nussle		X		Mr. Neal	X		
Mr. Johnson		X		Mr. McNulty			
Ms. Dunn				Mr. Jefferson	X		
Mr. Collins		X		Mr. Tanner	X		
Mr. Portman		X		Mr. Becerra	X		
Mr. English		X		Mrs. Thurman	X		
Mr. Watkins		X		Mr. Doggett	X		
Mr. Hayworth		X		Mr. Pomeroy	X		
Mr. Weller		X					
Mr. Hulshof		X					
Mr. McClinnis							
Mr. Lewis (KY)		X					
Mr. Foley		X					
Mr. Brady		X					
Mr. Ryan		X					

PROCEDURAL MOTIONS

A rollcall vote was conducted on a motion by Mr. Crane pursuant to clause 1 of rule 22 of the Rules of the House that the Committee authorize the Chairman to offer such motions as may be necessary in the House to go to conference with the Senate on the bill H.R.

3129 or a similar Senate bill. The motion was agreed to by a vote of 19 yeas to 1 nay, and 2 voting present. The vote was as follows:

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas	X			Mr. Rangel			
Mr. Crane	X			Mr. Stark			
Mr. Shaw	X			Mr. Matsui			
Mrs. Johnson	X			Mr. Coyne			
Mr. Houghton				Mr. Levin			
Mr. Herger	X			Mr. Cardin			X
Mr. McCrery				Mr. McDermott			
Mr. Camp	X			Mr. Kleczka		X	
Mr. Ramstad	X			Mr. Lewis (GA)			
Mr. Nussle	X			Mr. Neal			
Mr. Johnson	X			Mr. McNulty			
Ms. Dunn				Mr. Jefferson			
Mr. Collins	X			Mr. Tanner			
Mr. Portman	X			Mr. Becerra			X
Mr. English	X			Mrs. Thurman			
Mr. Watkins	X			Mr. Doggett			
Mr. Hayworth	X			Mr. Pomeroy			
Mr. Weller	X						
Mr. Hulshof	X						
Mr. McClinnis							
Mr. Lewis (KY)	X						
Mr. Foley							
Mr. Brady	X						
Mr. Ryan	X						

IV. BUDGET EFFECTS

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of H.R. 3129, as reported: The Committee agrees with the estimate prepared by CBO which is included below.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that enactment of H.R. 3129 would diminish duty revenues by \$6 million per year as a result of the increase in the duty exemption for travelers from abroad from \$400 to \$800.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office, the following report prepared by CBO is provided.

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
 Washington, DC, November 20, 2001.

Hon. WILLIAM "BILL" M. THOMAS,
 Chairman, Committee on Ways and Means,
 House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3129, the Customs Border Security Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

STEVEN LIEBERMAN
 (For Dan L. Crippen, Director).

Enclosure.

H.R. 3129—Customs Border Security Act of 2001

Summary: H.R. 3129 would authorize appropriations for 2002 and 2003 for the U.S. Customs Service, the Office of the U.S. Trade Representative, and the International Trade Commission. The authorizations for the Customs Service would include funds for salaries and expenses, its Automated Commercial Environment (ACE) computer system, air and marine interdiction, reestablishment of Customs operations in New York City, and a program to prevent child pornography. This legislation would increase the personal duty exemption for travelers entering the United States. The bill also would make several changes to the current laws relating to overtime and premium pay for Customs officers. Finally, H.R. 3129 would direct the General Accounting Office (GAO) to prepare three reports on various Customs issues.

Because an appropriation for fiscal year 2002 for the Customs Service has already been enacted, H.R. 3129 would have a relatively small effect on spending in that year. CBO estimates that implementing H.R. 3129 would cost about \$2.9 billion over the 2002–2006 period, assuming appropriation of the authorized and estimated amounts. (About \$2.8 billion of this total would be spending for the Customs Service.) We estimate that enacting H.R. 3129 also would decrease revenues by about \$4 million annually because of the increased personal duty exemption. Finally, the bill could have a negligible net impact on direct spending for overtime and premium pay for Customs officers. Because the bill would affect revenues and direct spending, pay-as-you-go procedures would apply.

H.R. 3129 would impose private-sector mandates, as defined by the Unfunded Mandates Reform Act (UMRA), on certain land, air, and vessel carriers. CBO estimates that the total direct cost of those mandates would fall below the annual threshold established by UMRA for private-sector mandates (\$113 million in 2001, adjusted annually for inflation). The bill contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3129 is shown the following table. The costs of this legislation fall within budget functions 150 (international af-

fairs), 750 (administration of justice), and 800 (general government).

	By fiscal year, in millions of dollars—				
	2002	2003	2004	2005	2006
SPENDING SUBJECT TO APPROPRIATION					
Spending under current law:					
Budget authority	2,767	0	0	0	0
Estimated outlays	2,649	515	160	0	0
Proposed changes:					
Estimated authorization level	107	2,825	0	0	0
Estimated outlays	56	2,332	401	143	0
Spending under H.R. 3129:					
Estimated authorization level	2,874	2,825	0	0	0
Estimated outlays	2,705	2,847	561	143	0
CHANGES IN REVENUES					
Increased personal duty exemption: Estimated revenues	-4	-4	-4	-4	-4

Notes: 1. The 2002 level is the amount appropriated for that year for the Customs Service, the Office of the United States Trade Representative, and the International Trade Commission. 2. For fiscal year 2002, most of the increased funding provided by H.R. 3129 would be for reestablishment of customs operations in New York City. 3. H.R. 3129 could also affect direct spending, but CBO estimates that any such effects would be less than \$500,000 annually.

Basis of estimate

Assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would cost about \$2.9 billion over the 2002–2006 period. (About \$2.8 billion of this total would be for spending by the Customs Service.) We estimate that enacting H.R. 3129 also would decrease revenues by about \$4 million annually because of the increased personal duty exemption for travelers entering the United States. Enacting the bill could affect direct spending, but we estimate that any effects would be less than \$500,000 annually.

Spending subject to appropriation

For this estimate, CBO assumes that the amounts authorized by the bill will be appropriated near the start of each fiscal year and that outlays generally will follow historical spending rates for the authorized activities or for similar programs.

Based on information from the Customs Service, CBO estimates that it would cost roughly \$100 million over the 2002–2004 period to reestablish its operations in New York City. The agency's main facility in lower Manhattan, which housed 800 employees and contained several laboratories, was destroyed by the terrorist attacks on September 11, 2001. Funds would be used mostly to equip new office space for Customs employees and to replace the materials testing and crime investigation laboratories that were destroyed. Based on information from GAO, we estimate that the three reports required by the bill would cost about \$1 million in 2002.

Revenues

H.R. 3129 would increase the personal-duty exemption for persons entering the United States from \$400 to \$800. This provision would increase the amount of goods that travelers from abroad could bring in free of duty. Based on information from the Customs Service, CBO estimates that this provision would decrease revenues by about \$4 million each year.

Direct spending

The provisions of H.R. 3129 that modify overtime and premium pay for Customs officers could affect direct spending since such costs are paid from funds not subject to annual appropriation. Some of the bill's provisions could increase these personnel costs, while other provisions would probably yield savings. CBO estimates that the net effect of H.R. 3129 on direct spending for overtime and premium pay would be less than \$500,000 a year.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The changes in outlays and revenues that would be subject to pay-as-you-go procedures are shown in the following table. For the purposes of pay-as-you-go procedures, only the effects in the budget year and the succeeding four years are counted.

	By fiscal year in millions of dollars—									
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Changes in outlays	0	0	0	0	0	0	0	0	0	0
Changes in receipts	-4	-4	-4	-4	-4	-4	-4	-4	-4	-4

Estimated impact on State, local, and tribal governments: H.R. 3129 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimated impact on the private sector: H.R. 3129 would impose private-sector mandates, as defined by UMRA, on certain land, air, and vessel carriers seeking approval from the U.S. Customs Service for entry into the United States or for clearance to proceed from a port or place in the United States. The bill would require each land, air, or vessel carrier to provide by electronic transmission cargo manifest information in advance of such entry or clearance. The bill also would require such carriers with passengers arriving or departing the United States to provide by electronic transmission certain passenger and crew member manifest information in advance of such entry or clearance. According to the U.S. Customs Service, all U.S. air carriers and many cargo vessels currently provide such information on a voluntary basis. Based on information from representatives of the transportation industry, CBO estimates that the total direct cost to comply with mandates in the bill would fall below the annual threshold established by UMRA for private-sector mandates (\$113 million in 2001, adjusted annually for inflation).

Estimate prepared by: Federal spending: Mark Grabowicz; Federal revenues: Erin Whitaker; impact on State, local, and tribal governments: Victoria Heid Hall; impact on the private sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis; G. Thomas Woodward, Assistant Director for Tax Analysis.

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee, based on public hearing testimony and information from the Administration, concluded that it is appropriate and timely to consider the resolution as reported.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the Administration has in place program goals and objectives, which have been reviewed by the Committee. H.R. 3129 addresses several items by way of studies and reports for the purpose of evaluating whether Customs is meeting its goals and objectives.

C. CONSTITUTIONAL AUTHORITY STATEMENT

With respect to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, relating to Constitutional Authority, the Committee states that the Committee's action in reporting the bill is derived from Article 1 of the Constitution, Section 8 ("The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and to provide for * * * the general Welfare of the United States.")

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 301 OF THE CUSTOMS PROCEDURAL REFORM AND SIMPLIFICATION ACT OF 1978

SEC. 301. (a)(1) * * *

* * * * *

(3) By not later than the date on which the President submits to Congress the budget of the United States Government for a fiscal year, the Commissioner of Customs shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the operations of the Customs Service as provided for in subsection (b).

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) FOR NONCOMMERCIAL OPERATIONS.—There are authorized to be appropriated for the salaries and expenses of the Customs Service that are incurred in noncommercial operations not to exceed the following:

【(A) \$516,217,000 for fiscal year 1991.

- [(B) \$542,091,000 for fiscal year 1992.]
- (A) \$886,513,000 for fiscal year 2002.
- (B) \$909,471,000 for fiscal year 2003.

(2) FOR COMMERCIAL OPERATIONS.—(A) There are authorized to be appropriated for the salaries and expenses of the Customs Service that are incurred in commercial operations not less than the following:

- [(i) \$672,021,000 for fiscal year 1991.
- [(ii) \$705,793,000 for fiscal year 1992.]
- (i) \$1,603,482,000 for fiscal year 2002.
- (ii) \$1,645,009,000 for fiscal year 2003.

* * * * *

(3) FOR AIR INTERDICTION.—There are authorized to be appropriated for the operation (including salaries and expenses) and maintenance of the air interdiction program of the Customs Service not to exceed the following:

- [(A) \$143,047,000 for fiscal year 1991.
- [(B) \$150,199,000 for fiscal year 1992.]
- (A) \$181,860,000 for fiscal year 2002.
- (B) \$186,570,000 for fiscal year 2003.

SECTION 5 OF THE ACT OF FEBRUARY 13, 1911

AN ACT To diminish the expense of proceedings on appeal and writ of error or of certiorari

SEC. 5. OVERTIME AND PREMIUM PAY FOR CUSTOMS OFFICERS.

(a) OVERTIME PAY.—

(1) IN GENERAL.—Subject to paragraph (2) and subsection (c), a customs officer who is officially assigned to perform work in excess of 40 hours in the administrative workweek of the officer or in excess of 8 hours in a day shall be compensated for that work at an hourly rate of pay that is equal to 2 times the hourly rate of the basic pay of the officer. *Overtime pay provided under this subsection shall not be paid to any customs officer unless such officer actually performed work during the time corresponding to such overtime pay. The preceding sentence shall not apply with respect to the payment of an award or settlement to a customs officer who was unable to perform overtime work as a result of a personnel action in violation of section 5596 of title 5, United States Code, section 6(d) of the Fair Labor Standards Act of 1938, or title VII of the Civil Rights Act of 1964.* For purposes of this paragraph, the hourly rate of basic pay for a customs officer does not include any premium pay provided for under subsection (b).

* * * * *

(b) PREMIUM PAY FOR CUSTOMS OFFICERS.—

[(1) NIGHT WORK DIFFERENTIAL.—

[(A) 3 P.M. TO MIDNIGHT SHIFTWORK.—If the majority of the hours of regularly scheduled work of a customs officer occurs during the period beginning at 3 p.m. and ending at 12 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer’s hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate.

【(B) 11 P.M. TO 8 A.M. SHIFTWORK.—If the majority of the hours of regularly scheduled work of a customs officer occurs during the period beginning at 11 p.m. and ending at 8 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate.

【(C) 7:30 P.M. TO 3:30 A.M. SHIFTWORK.—If the regularly scheduled work assignment of a customs officer is 7:30 p.m. to 3:30 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate for the period from 7:30 p.m. to 11:30 p.m. and at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate for the period from 11:30 p.m. to 3:30 a.m.】

(1) NIGHT WORK DIFFERENTIAL.—

(A) 5 P.M. TO MIDNIGHT.—(i) *If any hours of regularly scheduled work of a customs officer occur during the hours of 5 p.m. and 12 a.m., the officer is entitled to pay for such hours of work (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to not less than 18 percent of that basic rate.*

(ii) *If the regularly scheduled work of a customs officer is 4 p.m. to 12:00 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to not less than 18 percent of that basic rate.*

(B) MIDNIGHT TO 6 A.M.—(i) *If any hours of regularly scheduled work of a customs officer occur during the hours of 12 a.m. and 6 a.m., the officer is entitled to pay for such hours of work (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 25 percent of that basic rate.*

(ii) *If the regularly scheduled work of a customs officer is 12 a.m. to 8:00 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 25 percent of that basic rate.*

* * * * *

(4) TREATMENT OF PREMIUM PAY.—Premium pay provided for under this subsection may not be treated as being overtime pay or compensation for any purpose. *Premium pay provided under this subsection shall not be paid to any customs officer unless such officer actually performed work during the time corresponding to such premium pay. The preceding sentence shall not apply with respect to the payment of an award or settlement to a customs officer who was unable to perform work during the time described in the preceding sentence as a result of a personnel action in violation of section 5596 of title 5, United*

States Code, section 6(d) of the Fair Labor Standards Act of 1938, or title VII of the Civil Rights Act of 1964.

(c) LIMITATIONS.—

[(1) FISCAL YEAR CAP.—The aggregate of overtime pay under subsection (a) (including commuting compensation under subsection (a)(2)(B)) and premium pay under subsection (b) that a customs officer may be paid in any fiscal year may not exceed \$25,000; except that the Commissioner of Customs or his designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Customs Service.]

(1) FISCAL YEAR CAP.—The aggregate of overtime pay under subsection (a) (including commuting compensation under subsection (a)(2)(B)) that a customs officer may be paid in any fiscal year may not exceed \$30,000, except that—

(A) the Commissioner of Customs or his or her designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Customs Service; and

(B) upon certification by the Commissioner of Customs to the Chairmen of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that the Customs Service has in operation a system that provides accurate and reliable data on a daily basis on overtime and premium pay that is being paid to customs officers, the Commissioner is authorized to pay any customs officer for one work assignment that would result in the overtime pay of that officer exceeding the \$30,000 limitation imposed by this paragraph, in addition to any overtime pay that may be received pursuant to a waiver under subparagraph (A).

* * * * *

(e) USE OF SAVINGS FROM PAYMENT OF PREMIUM PAY.—

(1) USE OF AMOUNTS.—For fiscal year 2002, the Secretary of the Treasury—

(A) shall determine under paragraph (2) the amount of savings from the payment of premium pay to customs officers; and

(B) shall use an amount from the Customs User Fee Account equal to such amount determined under paragraph (2) for additional premium pay described in clauses (i) and (ii) of subsection (b)(1)(A).

(2) DETERMINATION OF SAVINGS AMOUNT.—The Secretary shall calculate an amount equal to the difference between—

(A) the estimated cost for premium pay that would have been incurred during fiscal year 2002 if this section, as in effect on the day before the date of the enactment of section 123 of the Customs Border Security Act of 2001, had governed such costs; and

(B) the actual cost for premium pay that is incurred during fiscal year 2002 under this section, as amended by section 123 of the Customs Border Security Act of 2001.

[(e)] (f) DEFINITIONS.—As used in this section:

(1) * * *

* * * * *

SECTION 3061 OF THE REVISED STATUTES OF THE UNITED STATES

SEC. 3061. (a) Any of the officers or persons authorized to board or search vessels may stop, search, and examine, as well without as within their respective districts, any vehicle, beast, or person, on which or whom he or they shall suspect there is merchandise which is subject to duty, or shall have been introduced into the United States in any manner contrary to law, whether by the person in possession or charge, or by, in, or upon such vehicle or beast, or otherwise, and to search any trunk or envelope, wherever found, in which he may have a reasonable cause to suspect there is merchandise which was imported contrary to law; and if any such officer or other person so authorized shall find any merchandise on or about any such vehicle, beast, or person, or in any such trunk or envelope, which he shall have reasonable cause to believe is subject to duty, or to have been unlawfully introduced into the United States, whether by the person in possession or charge, or by, in, or upon such vehicle, beast, or otherwise, he shall seize and secure the same for trial.

(b) *Any officer or employee of the United States conducting a search of a person pursuant to subsection (a) shall not be held liable for any civil damages as a result of such search if the officer or employee performed the search in good faith.*

TARIFF ACT OF 1930

* * * * *

TITLE III—SPECIAL PROVISIONS

* * * * *

Part II—United States Tariff Commission

* * * * *

SEC. 318. EMERGENCIES.

(a) Whenever the President shall by proclamation declare an emergency to exist by reason of a state of war, or otherwise, he may authorize the Secretary of the Treasury to extend during the continuance of such emergency the time herein prescribed for the performance of any act, and may authorize the Secretary of the Treasury to permit, under such regulations as the Secretary of the Treasury may prescribe, the importation free of duty of food, clothing, and medical, surgical, and other supplies for use in emergency relief work. The Secretary of the Treasury shall report to the Congress any action taken under the provisions of this section.

(b)(1) *Notwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 et*

seq.) or to a specific threat to human life or national interests, is authorized to take the following actions on a temporary basis:

(A) Eliminate, consolidate, or relocate any office or port of entry of the Customs Service.

(B) Modify hours of service, alter services rendered at any location, or reduce the number of employees at any location.

(C) Take any other action that may be necessary to directly respond to the national emergency or specific threat.

(2) Notwithstanding any other provision of law, the Commissioner of Customs, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.

(3) The Secretary of the Treasury or the Commissioner of Customs, as the case may be, shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate not later than 72 hours after taking any action under paragraph (1) or (2).

* * * * *

SEC. 330. ORGANIZATION OF THE COMMISSION.

(a) * * *

* * * * *

(e) AUTHORIZATION OF APPROPRIATIONS.—(1) * * *

(2)(A) There are authorized to be appropriated to the Commission for necessary expenses (including the rental of conference rooms in the District of Columbia and elsewhere) not to exceed the following:

[(i) \$41,170,000 for fiscal year 1991.

[(ii) \$44,052,000 for fiscal year 1992.]

(i) \$51,400,000 for fiscal year 2002.

(ii) \$53,400,000 for fiscal year 2003.

* * * * *

(4) By not later than the date on which the President submits to Congress the budget of the United States Government for a fiscal year, the Commission shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the Commission to carry out its functions.

* * * * *

TITLE IV—ADMINISTRATIVE PROVISIONS

**PART I—DEFINITIONS AND NATIONAL CUSTOMS
AUTOMATION PROGRAM**

Subpart A—Definitions

* * * * *

SEC. 401. MISCELLANEOUS.

When used in this title or in Part I of Title III—

(a) * * *

* * * * *

(t) *The term "land, air, or vessel carrier" means a land, air, or vessel carrier, as the case may be, that transports goods or passengers for payment or other consideration, including money or services rendered.*

* * * * *

Part II—Report, Entry, and Unlading of Vessels and Vehicles

SEC. 431. MANIFEST—REQUIREMENT, FORM, AND CONTENTS.

(a) * * *

(b) PRODUCTION OF MANIFEST.—(1) Any manifest required by the Customs Service shall be signed, produced, delivered or electronically transmitted by the master or person in charge of the vessel, aircraft, or vehicle, or by any other authorized agent of the owner or operator of the vessel, aircraft, or vehicle in accordance with the requirements prescribed under subsection (d). A manifest may be supplemented by bill of lading data supplied by the issuer of such bill. If any irregularity of omission or commission occurs in any way in respect to any manifest or bill of lading data, the owner or operator of the vessel, aircraft or vehicle, or any party responsible for such irregularity, shall be liable for any fine or penalty prescribed by law with respect to such irregularity. The Customs Service may take appropriate action against any of the parties.

(2) *In addition to any other requirement under this section, for each land, air, or vessel carrier required to make entry or obtain clearance under the customs laws of the United States, the pilot, the master, operator, or owner of such carrier (or the authorized agent of such operator or owner) shall provide by electronic transmission cargo manifest information in advance of such entry or clearance in such manner, time, and form as prescribed under regulations by the Secretary. The Secretary may exclude any class of land, air, or vessel carrier for which the Secretary concludes the requirements of this subparagraph are not necessary.*

* * * * *

(d) REGULATIONS.—

(1) IN GENERAL.—The Secretary shall by regulation—

(A) specify the form for, and the information and data that must be contained in, the manifest required by subsection (a) or subsection (b)(2);

* * * * *

(C) prescribe the manner of production for, and the delivery or electronic transmittal of the manifest required by subsection (a) or subsection (b)(2); and

* * * * *

SEC. 432. PASSENGER AND CREW MANIFEST INFORMATION REQUIRED FOR LAND, AIR, OR VESSEL CARRIERS.

(a) IN GENERAL.—*For every person arriving or departing on a land, air, or vessel carrier required to make entry or obtain clearance under the customs laws of the United States, the pilot, the master, operator, or owner of such carrier (or the authorized agent of such operator or owner) shall provide by electronic transmission manifest information described in subsection (b) in advance of such*

entry or clearance in such manner, time, and form as prescribed under regulations by the Secretary.

(b) *INFORMATION DESCRIBED.*—The information described in this subsection shall include for each person described in subsection (a), the person's—

- (1) full name;
- (2) date of birth and citizenship;
- (3) gender;
- (4) passport number and country of issuance;
- (5) United States visa number or resident alien card number, as applicable;
- (6) passenger name record; and
- (7) such additional information that the Secretary, by regulation, determines is reasonably necessary to ensure aviation and maritime safety pursuant to the laws enforced or administered by the Customs Service.

* * * * *

SEC. 509. EXAMINATION OF BOOKS AND WITNESSES.

- (a) * * *
- (b) **REGULATORY AUDIT PROCEDURES.**—

(1) * * *

* * * * *

(6)(A) *If during the course of any audit concluded under this subsection, the Customs Service identifies overpayments of duties or fees or over-declarations of quantities or values that are within the time period and scope of the audit that the Customs Service has defined, then in calculating the loss of revenue or monetary penalties under section 592, the Customs Service shall treat the overpayments or over-declarations on finally liquidated entries as an offset to any underpayments or underdeclarations also identified on finally liquidated entries if such overpayments or over-declarations were not made by the person being audited for the purpose of violating any provision of law.*

(B) *Nothing in this paragraph shall be construed to authorize a refund not otherwise authorized under section 520.*

* * * * *

SEC. 583. EXAMINATION OF OUTBOUND MAIL.

(a) **EXAMINATION.**—

(1) **IN GENERAL.**—*For purposes of ensuring compliance with the Customs laws of the United States and other laws enforced by the Customs Service, including the provisions of law described in paragraph (2), a Customs officer may, subject to the provisions of this section, stop and search at the border, without a search warrant, mail of domestic origin transmitted for export by the United States Postal Service and foreign mail transiting the United States that is being imported or exported by the United States Postal Service.*

(2) **PROVISIONS OF LAW DESCRIBED.**—*The provisions of law described in this paragraph are the following:*

(A) *Section 5316 of title 31, United States Code (relating to reports on exporting and importing monetary instruments).*

(B) Sections 1461, 1463, 1465, and 1466 and chapter 110 of title 18, United States Code (relating to obscenity and child pornography).

(C) Section 1003 of the Controlled Substances Import and Export Act (21 U.S.C. 953; relating to exportation of controlled substances).

(D) The Export Administration Act of 1979 (50 U.S.C. app. 2401 et seq.).

(E) Section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(F) The International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

(b) *SEARCH OF MAIL NOT SEALED AGAINST INSPECTION AND OTHER MAIL.*—Mail not sealed against inspection under the postal laws and regulations of the United States, mail which bears a customs declaration, and mail with respect to which the sender or addressee has consented in writing to search, may be searched by a Customs officer.

(c) *SEARCH OF MAIL SEALED AGAINST INSPECTION.*—(1) Mail sealed against inspection under the postal laws and regulations of the United States may be searched by a Customs officer, subject to paragraph (2), upon reasonable cause to suspect that such mail contains one or more of the following:

(A) Monetary instruments, as defined in section 1956 of title 18, United States Code.

(B) A weapon of mass destruction, as defined in section 2332a(b) of title 18, United States Code.

(C) A drug or other substance listed in schedule I, II, III, or IV in section 202 of the Controlled Substances Act (21 U.S.C. 812).

(D) National defense and related information transmitted in violation of any of sections 793 through 798 of title 18, United States Code.

(E) Merchandise mailed in violation of section 1715 or 1716 of title 18, United States Code.

(F) Merchandise mailed in violation of any provision of chapter 71 (relating to obscenity) or chapter 110 (relating to sexual exploitation and other abuse of children) of title 18, United States Code.

(G) Merchandise mailed in violation of the Export Administration Act of 1979 (50 U.S.C. app. 2401 et seq.).

(H) Merchandise mailed in violation of section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(I) Merchandise mailed in violation of the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.).

(J) Merchandise mailed in violation of the Trading with the Enemy Act (50 U.S.C. app. 1 et seq.).

(K) Merchandise subject to any other law enforced by the Customs Service.

(2) No person acting under authority of paragraph (1) shall read, or authorize any other person to read, any correspondence contained in mail sealed against inspection unless prior to so reading—

(A) a search warrant has been issued pursuant to Rule 41, Federal Rules of Criminal Procedure; or

(B) the sender or addressee has given written authorization for such reading.

* * * * *

SECTION 141 OF THE TRADE ACT OF 1974

SEC. 141. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.

(a) * * *

* * * * *

(g)(1)(A) There are authorized to be appropriated to the Office for the purposes of carrying out its functions **[not to exceed]** the following:

- [(i) \$23,250,000 for fiscal year 1991.**
- [(ii) \$21,077,000 for fiscal year 1992.]**
- (i) \$30,000,000 for fiscal year 2002.*
- (ii) \$31,000,000 for fiscal year 2003.*

(B) Of the amounts authorized to be appropriated under subparagraph (A) for any fiscal year—

- (i) not to exceed \$98,000 may be used for entertainment and representation expenses of the Office; *and*
- [(ii) not to exceed \$2,050,000 may be used to pay the United States share of the expenses of binational panels and extraordinary challenge committees convened pursuant to chapter 19 of the United States-Canada Free-Trade Agreement; and]**
- [(iii)]** *(ii)* not to exceed \$1,000,000 shall remain available until expended.

* * * * *

(3) By not later than the date on which the President submits to Congress the budget of the United States Government for a fiscal year, the United States Trade Representative shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the Office to carry out its functions.

HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

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CHAPTER 98—SPECIAL CLASSIFICATION PROVISIONS

* * * * *

Subchapter IV—Personal Exemptions Extended to Residents and Nonresidents

* * * * *

Heading/ Subheading	Article Description	Rates of Duty		
		1		2
		General	Special	
9804.00.65	Articles, accompanying a person, not over [\$400] \$800 in aggregate fair retail value in the country of acquisition, including (but only in the case of an individual who has attained the age of 21) not more than 1 liter of alcoholic beverages and including not more than 200 cigarettes and 100 cigars	Free	Free

VII. DISSENTING VIEWS

We reluctantly express our opposition to H.R. 3129.

In the aftermath of September 11th, we had hoped that Democrats and Republicans could work together to produce a Customs authorization bill that provides Customs with the tools necessary to protect our borders, and that shows support for the men and women performing that function. Regrettably, Republicans on the Committee did not share this view. With respect to providing Customs with the appropriate tools, this bill is based on the Customs' budget request and House Appropriations bill, both of which predate September 11th. Moreover, the Majority includes in this bill the same authorization priorities included in the bill they drafted three years ago. Authorizations for equipment were not updated to reflect needs that have clearly presented themselves in recent weeks. In fact, rather than bolstering Customs' efforts to combat terrorism, one element of the bill will undermine it by penalizing one-third of the Customs inspector workforce.

Section 123 of this bill amends existing law governing the payment of night shift differential pay for Customs inspectors. According to Customs officials' testimony before the Committee, over 2,000 hardworking men and women will lose money under the Majority's proposal. The Majority does not offer any legitimate justification for making the proposed changes. They do not contend that Customs inspectors are overpaid. They do not contend that there is abuse in the existing system. The Majority, in fact, offers no explanation for the change other than they disagree with what hours qualify for premium pay. In a vacuum, that rationale might be sufficient. But in the real world, where a change such as the one the Majority is proposing will result in real people losing real money, that rationale is insufficient, particularly when the people affected are the very ones that serve as our front line of defense against terrorism.

The existing provision governing night shift differential pay takes a balanced approach toward compensating Customs officers for working odd hour shifts. The current law governing night shift differential pay was passed by Congress in 1993, as part of a comprehensive package of Customs compensation reforms, the Customs Officers' Pay Reform Amendments ("COPRA"), (P.L. 103-66, 107 Stat. 670). The purpose of the reforms was to rationalize the method of paying Customs officers for overtime, while also ensuring that Customs officers received pay commensurate with the important work they perform. To achieve this balance, Congress, on a bipartisan basis, altered Customs officers' entire compensation structure, including the amendment to the hours eligible for and the wage rate applied to night shift differential pay. By considering and amending compensation on an aggregate basis, Congress en-

sured that the correction of certain payment abuses did not result in Customs officers receiving an unwarranted cut in pay.

On night shift differential pay, the 1993 reforms provided that

—if a majority of hours worked by a Customs officer in a shift fell between 3 p.m. and midnight, all hours in the shift were paid at the hourly rate + 15%;

—if a majority of hours worked by a Customs officer in a shift fell between 11 p.m. and 8 a.m., all hours in the shift were paid at the hourly rate + 20%;

—however, if a majority of the hours worked by a Customs officer in a shift did not fall within the 3 p.m. to 8 a.m. period, the employee was paid at the hourly rate only.

The purpose of this premium is to compensate Customs officers for working shifts that begin or end outside a normal work day (i.e., 3 p.m. to 11 p.m., midnight to 8 a.m.). As stated in the 1993 Committee report, the Committee found that these odd hour shifts, which were assigned by management (and not the employee), had “an adverse impact on the quality of life of Customs officials who are required to work regularly scheduled shifts at night or on Sundays and holidays.” H. Rep. No. 103–11, at 573, 574 (May 25, 1993). Recognizing this problem, the Committee amended the hours eligible for and the wage rate applied to the night shift differential specifically to provide for “shift differential compensation at levels substantially greater than applied generally to other Federal employees for such regularly scheduled work.” H. Rep. No. 103–11, at 573, 574 (May 25, 1993).

Section 123 of the bill alters the balanced approach crafted in 1993 in two ways. First, the provision restricts the hours that qualify for the night shift differential to hours between 5 p.m. and 6 a.m. Second, the provision compensates Customs officers at the differential rate only for those hours that occur between 5 p.m. and 6 a.m. (with two limited exceptions), and not the entire shift. These changes will mean that a Grade 9 Customs officer who works a shift starting at 3 a.m. and ending at 11 a.m. will receive the shift differential for only 3 hours of that shift, resulting in a loss to that Customs officer of \$75 per week.

The shifts most adversely affected under the Majority’s proposal include four heavily worked shifts at major airports. At New York’s JFK airport, for example, there are 200 inspectors who work the 1 p.m.–9 p.m. shift. Sixty-six of those inspectors are grade 9 (earning a base pay of \$37,000–\$49,000), and would lose \$2,220 per year under the Majority’s proposal.

To offset some of the loss in pay likely to occur, section 121 of the bill adjusts the overtime cap that, under current law, restricts the amount of overtime pay a Customs officer may earn in one year. In effect, this adjustment would allow Customs officers to work more overtime to compensate for lost wages, or put another way, Customs officers will have to work more to get the same pay. Such a result is unfair. It is not even clear that it will be possible for the officers whose pay is reduced to work the additional hours to make up for the loss in pay. Moreover, only a small percentage of officers currently reach the overtime cap, and therefore would even benefit from the new provision.

We are not opposed to considering amendments to Customs officers pay, if a credible study evaluates and recommends that legislative changes be made. We have indicated that we would support a study, as the Majority has decided to do on two other Customs employee issues. However, we are opposed to cutting someone's wages because a few Members of this Committee are fixated on nomenclature ("night pay") rather than the practical realities of the total Customs pay package. The men and women of the U.S. Customs Service perform vital functions with respect to both law enforcement—serving as a primary defense against terrorism—and preserving the integrity of U.S. trade with foreign nations. Their current compensation structure was designed to take account of the unusual stresses of their job—both the on-the-job safety risks and the irregular hours. Those aspects of a Customs officer's job have only become more acute since September 11. Now is not the time to unilaterally cut these officers' pay, which is precisely what the Customs Service stated that H.R. 3129 will do to one third of these inspectors.

In addition, we have serious concerns about two other provisions in the bill. Section 141 would provide any officer conducting a personal search at a border immunity from civil damages if the officer performed the search in "good faith." Section 144 would allow the U.S. Customs Service to open outbound international mail without a warrant.

PERSONAL SEARCH

Section 141 is characterized as a "procedural" device to allow civil cases against individual customs agents to be dismissed in the early stages of litigation concerning their official duties. However, a plain reading of Section 141 evidences an intent to carve out a broader standard of immunity than that existing under current law. The existing doctrine of qualified immunity shields public officials performing discretionary functions from civil damages if their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person should have known. The Supreme Court has repeatedly held that the objective reasonableness of an officer's behavior, not a subjective "good faith" standard, is the proper test for liability. This provision could weaken protections against racial profiling and other illegal and unconstitutional searches by the Customs Service. Despite the Administration's stated intent, section 141 appears to be a substantive, and not a procedural change.

Civil lawsuits against government officials and agencies are an important deterrent to racial profiling and unconstitutional and unlawful searches. Without the possibility of a lawsuit, individuals who have been treated in an unconstitutional manner by a government agency would have no redress, and the government agents would have less incentive to comply with the Constitution. Providing Customs officers with expanded immunity is not likely to have any impact on decreasing terrorism, but it will increase the likelihood that innocent passengers will have their constitutional rights violated.

OUTBOUND MAIL

Under current law, the Customs Service is empowered to search, without a warrant, inbound mail handled by the United States Postal Service and packages and letters handled by private carriers such as Federal Express and the United Parcel Service. This "border exception" to the Fourth Amendment derives from the traditional authority of the sovereign to protect its borders against inbound contraband and to collect duties on inbound freight.

Section 144 would allow Customs officials to open "sealed" mail with "reasonable cause," a lower standard than probable cause, and would eliminate the need for judicial review. Moreover, section 144 would allow Customs officials to open "unsealed" mail, and any mail bearing a Customs declaration for no cause whatsoever. People in the United States have an expectation of privacy in the mail they send to friends, family, or business associates abroad. The Customs Service's interest in confiscating illegal weapons' shipments, drugs or other contraband is adequately protected by its ability to secure a search warrant when it has probable cause. Short of an emergency, postal officials can always hold a package while they wait for a court to issue a warrant.

We are not opposed per se to the policy underlying these amendments. For example, on the good faith immunity provision we did seek language prior to the mark-up that might clarify what was meant by "good faith." The change we sought would have made the provision procedural, rather than substantive. Our suggestion was not incorporated into the bill, however. We hope that the courts will incorporate the definition of "good faith" included in the Committee report, as the Administration has assured the Committee. Notwithstanding, we remain concerned, and absent clarification and more information as to why these provisions are necessary, we believe the current language is unnecessary and potentially damaging to constitutional rights.

CHARLES B. RANGEL.
XAVIER BECERRA.
JERRY KLECZKA.
PETE STARK.
LLOYD DOGGETT.
RICHARD E. NEAL.
SANDER LEVIN.
JIM McDERMOTT.
ROBERT T. MATSUI.
WILLIAM J. COYNE.
JOHN LEWIS.
EARL POMEROY.