

OSE) that the House suspend the rules and agree to the resolution, H. Res. 424, on which the yeas and nays are ordered.

This is a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 416, nays 0, not voting 18, as follows:

[Roll No. 191]

YEAS—416

Abercrombie	Davis, Jo Ann	Horn
Ackerman	Davis, Tom	Hostettler
Aderholt	Deal	Houghton
Akin	DeFazio	Hoyer
Allen	DeGette	Hulshof
Andrews	Delahunt	Hunter
Arney	DeLauro	Hyde
Baca	DeLay	Inslee
Bachus	DeMint	Isakson
Baird	Diaz-Balart	Israel
Baker	Dicks	Issa
Baldacci	Dingell	Istook
Baldwin	Doggett	Jackson (IL)
Ballenger	Dooley	Jackson-Lee
Barcia	Doolittle	(TX)
Barr	Doyle	Jefferson
Barrett	Dreier	Jenkins
Bartlett	Duncan	John
Barton	Dunn	Johnson (IL)
Bass	Edwards	Johnson, E. B.
Becerra	Ehlers	Johnson, Sam
Bentsen	Ehrlich	Jones (NC)
Bereuter	Engel	Jones (OH)
Berkley	English	Kanjorski
Berman	Eshoo	Kaptur
Berry	Etheridge	Keller
Biggart	Evans	Kelly
Bilirakis	Everett	Kennedy (MN)
Bishop	Farr	Kennedy (RI)
Blagojevich	Fattah	Kerns
Blunt	Ferguson	Kildee
Boehlert	Filner	Kind (WI)
Boehner	Flake	King (NY)
Bonilla	Fletcher	Kingston
Bonior	Foley	Kirk
Bono	Forbes	Klecza
Boozman	Ford	Knollenberg
Borski	Fossella	Kolbe
Boswell	Frank	Kucinich
Boucher	Frelinghuysen	LaFalce
Boyd	Frost	LaHood
Brady (PA)	Galleghy	Lampson
Brady (TX)	Ganske	Langevin
Brown (FL)	Gekas	Lantos
Brown (OH)	Gephardt	Larsen (WA)
Brown (SC)	Gibbons	Larsen (CT)
Bryant	Gilchrest	Latham
Burr	Gillmor	LaTourette
Buyer	Gilman	Leach
Callahan	Gonzalez	Lee
Calvert	Goode	Levin
Camp	Goodlatte	Lewis (CA)
Cannon	Gordon	Lewis (GA)
Cantor	Goss	Lewis (KY)
Capito	Graham	Linder
Capps	Granger	Lipinski
Capuano	Graves	LoBiondo
Cardin	Green (TX)	Loftgren
Carson (IN)	Green (WI)	Lowe
Carson (OK)	Greenwood	Lucas (KY)
Castle	Grucci	Lucas (OK)
Chabot	Gutierrez	Luther
Chambliss	Gutknecht	Lynch
Clay	Hall (OH)	Maloney (CT)
Clayton	Hall (TX)	Maloney (NY)
Clement	Hansen	Manzullo
Clyburn	Harman	Markley
Coble	Hart	Matheson
Collins	Hastings (FL)	Matsui
Combest	Hastings (WA)	McCarthy (MO)
Condit	Hayes	McCarthy (NY)
Conyers	Hayworth	McCollum
Cooksey	Hefley	McCrery
Cox	Herger	McDermott
Coyne	Hill	McGovern
Cramer	Hilleary	McHugh
Crane	Hilliard	McInnis
Crenshaw	Hinchey	McIntyre
Crowley	Hinojosa	McKeon
Cubin	Hobson	McKinney
Culberson	Hoeffel	McNulty
Cummings	Hoekstra	Meehan
Cunningham	Holden	Meek (FL)
Davis (CA)	Holt	Meeks (NY)
Davis (FL)	Honda	Menendez
Davis (IL)	Hooley	Mica

Millender-McDonald	Reyes
Miller, Dan	Reynolds
Miller, Gary	Rivers
Miller, Jeff	Rodriguez
Mink	Roemer
Mollohan	Rogers (KY)
Moore	Rogers (MI)
Moran (KS)	Rohrabacher
Moran (VA)	Ros-Lehtinen
Morella	Ross
Murtha	Rothman
Nadler	Roukema
Napolitano	Royce
Neal	Rush
Nethercutt	Ryan (WI)
Ney	Ryun (KS)
Northup	Sabo
Norwood	Sanchez
Nussle	Sanders
Oberstar	Sandlin
Obey	Sawyer
Oliver	Saxton
Ortiz	Schaffer
Osborne	Schakowsky
Ose	Schiff
Otter	Schrock
Owens	Scott
Oxley	Sensenbrenner
Pallone	Serrano
Pascarell	Sessions
Pastor	Shadegg
Paul	Shaw
Payne	Shays
Pelosi	Sherman
Pence	Sherwood
Peterson (MN)	Shimkus
Peterson (PA)	Shows
Petri	Shuster
Pickering	Simmmons
Pitts	Simpson
Pombo	Skeen
Pomeroy	Skeltton
Portman	Slaughter
Price (NC)	Smith (MI)
Pryce (OH)	Smith (NJ)
Putnam	Smith (TX)
Quinn	Smith (WA)
Radanovich	Snyder
Rahall	Solis
Ramstad	Souder
Rangel	Spratt
Regula	Stark
Rehberg	Stearns
	Stenholm

NOT VOTING—18

Blumenauer	Kilpatrick	Riley
Burton	Mascara	Roybal-Allard
Costello	Miller, George	Traficant
Deutsch	Myrick	Watts (OK)
Emerson	Phelps	Woolsey
Johnson (CT)	Platts	Wynn

□ 1354

So (two-thirds having voted in favor thereof) the rules were suspended and the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

#### ANNOUNCEMENT OF INTENTION TO APPOINT CONFEREES ON H.R. 4, ENERGY POLICY ACT OF 2002

(Mr. TAUZIN asked and was given permission to address the House for 1 minute.)

Mr. TAUZIN. Mr. Speaker, the Speaker's office has authorized me to announce that it is the Speaker's intention to appoint House conferees to the conference of the disagreement between the House and the Senate on H.R. 4, the House energy bill, and the former S. 517, the Senate version of the same bill. Upon our return from the Memorial Day recess those conferees will be appointed.

Work in preparation for the conference is proceeding at a steady pace,

and the House will be prepared to meet the Senate in the conference upon our return from the Memorial Day recess.

#### REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1577

Mr. SANDLIN. Mr. Speaker, I ask unanimous consent to have my name removed as a cosponsor of H.R. 1577.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

#### CUSTOMS BORDER SECURITY ACT OF 2001

The SPEAKER pro tempore (Mr. THORNBERRY). Pursuant to House Resolution 426 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 3129.

The Chair designates the gentleman from New York (Mr. SWEENEY) as chairman of the Committee of the Whole, and requests the gentleman from Illinois (Mr. LAHOOD) to assume the chair temporarily.

□ 1355

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of 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, with Mr. LAHOOD (Chairman pro tempore) in the chair.

The Clerk read the title of the bill.

The CHAIRMAN pro tempore (Mr. LAHOOD). Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from California (Mr. THOMAS) and the gentleman from New York (Mr. RANGEL) each will control 30 minutes.

The Chair recognizes the gentleman from California (Mr. THOMAS).

Mr. THOMAS. Mr. Chairman, I yield myself such time as I may consume.

This piece of legislation which was up before us some time ago on the suspension calendar is modest but extremely important. Obviously following September 11, and the creation of the homeland security structure, more and more people in positions of responsibility have begun to realize that one of the ways we can assure the security of Americans is to provide a more seamless control of our borders.

Historically, Customs officials have had an important, significant role to play normally in the area of commercial intercourse or commerce.

To the degree that they are going to be asked to integrate with other border

enforcement structures such as security and the like, this bill becomes one of the assisting tools in making that happen. There are other uses looking at antidrug smuggling, antiterrorist, antichild pornography provisions, and in preparing this bill to come to the floor under a rule, since it did not get the two-thirds required on suspension, notwithstanding the fact it got a significant majority vote, the members of the majority looked at the bill and said are there any areas of this bill that we would still like to retain but that probably are far less essential today than they were when the committee moved on this bill some months ago?

Clearly, one of the obvious areas is an attempt to adjust what has been described as an inappropriate or unfair compensation structure for Customs officials at particular locales. Notwithstanding the fact that we believe those adjustments are overdue and need to be made, we offered to the Committee on Rules, and the Committee on Rules accepted, the willingness to delete those provisions which appeared to be controversial.

The labor union that represents Customs workers is not opposed to the bill in its current form, as they said in their letter, as long as this provision does not come back in.

□ 1400

I can assure anyone that if we make a change, our goal is not to change it today and then rechange it tomorrow. The commitment is to make the change now, because the other items in the bill are far more important to move forward and make into law than a debate that has been going on for some time, and I am quite sure will go on for an additional time.

Therefore, this bill is before us today in a form that should not illicit significant opposition, but that we would be very desirous of a significant bipartisan vote to let the American people know that in making sure that our borders are safe and protected, that the Customs Service is in the forefront of moving to the new structure to secure homeland security. This particular bill goes a long way toward assisting in that effort.

Mr. Chairman, I reserve the balance of my time.

Mr. RANGEL. Mr. Chairman, I yield myself such time as I may consume.

Let me join with the chairman in support of those parts of the bill that he spoke about and to indicate that our substitute merely tries to perfect two provisions.

The first provision deals with the question of immunity. I want to say that our customs officials and agencies and employees are our first line of defense against terrorism. They do a fantastic job. But under this particular bill they are granted immunity for their conduct when they perform searches, and personal searches, if indeed the search was made in good faith.

Now, under the Constitution, the standard for liability is not really

whether or not there has been good faith but whether or not it has been reasonable, and that is the proper test that we have to use. This is the constitutional test we have to use. And there is no evidence that blanket immunity by the Federal Government and by the customs agency, even though the search may have been performed in good faith, should leave our American citizens without any recourse.

In our fight against terrorism, we must make certain that we do not do damage to the principles of civil rights and certainly not do damage to the constitutional rights of American citizens. So in the substitute, we maintain the aura of immunity for the particular customs officer, but we do allow for the aggrieved party. If indeed they are found to have been subject to an unreasonable search, they may sue the Federal Government, so that there would be some relief, and some incentives for the customs agencies not just to respond as to what they think is in good faith but what is reasonable under the Constitution.

It just seems to us that we would weaken the protections against racial profiling and other illegal and unconstitutional searches by the customs department if we left our citizens, having been treated in an unconstitutional manner, without any redress at all. It is in times of crisis, such as those we are going through, that truly tests a democracy. And I am certain that in voting for the substitute my colleagues will get the benefits of the bill but also this deficiency will be corrected.

The second thing that is provided here is that under current law the Customs Service is empowered to search without a warrant for inbound mail handled by the United States Post Office. And, of course, this border exception to the fourth amendment is derived from the traditional authority of a sovereign to protect its border against inbound contraband and to collect duties on inbound freight.

But the rationale of the border exception does not allow customs searches of outgoing mail without a warrant. Section 144 would allow customs officials to open mail with reasonable cause, which is a much lower standard than probable cause and would eliminate the need for judicial review. The United States Post Office believes that this is an unreasonable provision. They have written in support of the provision which I have mentioned would be in the substitute where we just strike the provision that gives the Customs Service the power to open mail just because they think it is reasonable but they do not have probable cause to do it.

Mr. Chairman, I ask unanimous consent to yield the balance of my time to the gentleman from Georgia (Mr. LEWIS), a distinguished member of the Committee on Ways and Means, and ask that he be allowed to allocate time based on the requests made of him.

The CHAIRMAN pro tempore (Mr. LAHOOD). Is there objection to the re-

quest of the gentleman from New York?

There was no objection.

Mr. THOMAS. Mr. Chairman, I yield myself such time as I may consume. Let me respond briefly to the two provisions that my colleague from New York referred to.

That same letter that indicated that the union would not oppose if we move the labor provisions is in strong support of the immunity provision for customs inspectors. Rarely do you have a job which basically says you will examine people as they come across the border. There are clearly provisions, customs guidelines, that determine racial, religious, ethnic and gender profiling that prohibit that but do allow some protections for the customs officer.

If anyone would listen to the case histories of some of these cases that are in the courts, for example notwithstanding the fact that someone was searched and contraband was found, they nevertheless wanted to sue because they did not believe the customs officials had a right to search them. And that was notwithstanding the fact that the obvious evidence of the contraband on them was more than enough reason for the customs official to search them.

Mr. Chairman, I believe the substitute is a good-faith effort, but they are trying to walk a fine line; and it is the majority's opinion that there is no fine line that you can walk. Because if you provide inspectors immunity, and the Federal Government supports that immunity under a very clear guideline that would not violate any racial, religious, ethnic or gender profiling approach, then they are saying the Federal Government should waive its sovereign immunity notwithstanding. That then creates a new unprecedented class of Federal torts and we are right back in the courtroom with years and years of lives of people who were simply carrying out their job under a very narrow proscribed set of rules. Because even if they do that, there is no protection against this new form of Federal torts if the Federal Government waves its sovereign immunity.

It seems to me in this particular era, we either back up these people or we do not. If they are following the rules, we should protect them. If they are not, there are clear procedures to make sure they are treated in a manner they should be treated in if they violate administrative policy in carrying out their jobs.

So in looking at the bill itself, I do hope Members appreciate the broad support that the underlying bill has, and that although the substitute focuses on a couple of areas that will be addressed beyond the immunity question, if we are going to allow a true examination of the ways in which we can protect this country, under a search warrant, it seems entirely appropriate that based upon sufficient suspicion you ought to be able to read a piece of outbound mail. Under the courts of

this country, you would only be allowed to then take a look at what the content of the mail was. But it seems to me if you can have the ability to deal with it with inbound mail, you certainly ought to, with full court protection, have the ability to look at it in terms of outbound mail as well.

As we are now becoming more and more aware through the news media of the ability of various terrorist groups to communicate using the modern technology which allows for rapid communication, and certainly would not ignore the good old-fashioned postage stamp on an envelope, if it was given unusual constitutional protection and they knew that no official of the government could, even with a court order, take a look at what was in a particular envelope that appeared very, very suspicious.

We believe it is an essential part of the bill; and we would like to retain it in the bill. Therefore, my colleagues should vote for the bill and against the substitute.

Mr. Chairman, I ask unanimous consent that the remainder of my time be controlled by the gentleman from Illinois (Mr. CRANE), the chairman of the Subcommittee on Trade, and that he be allowed to disperse the time in such manner as he sees fit.

The CHAIRMAN pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. LEWIS of Georgia. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. HINOJOSA).

Mr. HINOJOSA. Mr. Chairman, I thank the gentleman from Georgia (Mr. LEWIS) for yielding me this time.

I rise in support of H.R. 3129, the Customs Border Security Act of 2001. As a Member representing a border community, I am pleased that Congress is taking action to improve the security of our borders. The customs officials and inspectors who work along the U.S.-Mexico border are hardworking, dedicated people, who do an outstanding job with very limited resources. For too many years they have been short staffed and have worked long hours of overtime to keep our ports open. I want to thank the members of the Committee on Ways and Means for recognizing this problem.

This bill will authorize funding to hire additional personnel and to upgrade detection and inspection equipment. This new equipment and personnel will make it easier for customs officials to stop illegal drug trafficking and improve our anti-terrorism capabilities. At the same time, it will help keep trade, the lifeblood of border communities, moving efficiently through our ports.

I want to commend the ranking member, the gentleman from New York (Mr. RANGEL), for his work in crafting an amendment that improves the underlying bill by addressing several concerns expressed by groups like the National Council of La Raza and the

American Civil Liberties Union. The Rangel amendment protects customs officials from personal liability for monetary damages in civil suits while at the same time providing recourse to individuals whose civil rights are violated.

Our Nation's security depends on the security of our borders and ports. I urge my colleagues to support the Rangel amendment and the underlying bill.

Mr. CRANE. Mr. Chairman, I yield 4 minutes to the gentleman from Alabama (Mr. BACHUS).

Mr. BACHUS. Mr. Chairman, I thank the gentleman for yielding me this time.

Mr. Chairman, the approach taken in this legislation to outbound mail only makes common sense. There ought to be parity between outbound mail and inbound mail. Presently, there is absolutely no dispute that customs can search all inbound mail. And they do that. However, despite a number of court decisions, despite the Federal regulations, despite code provisions, postal regulations do not allow the post office to search outbound mail. It makes no sense.

If you ship something by FedEx or UPS, if you put it in a car, put it on a ship, fly it in an airplane, even put it in your own pocket and you leave the country, you are liable to search. The only search that is not allowed is if you put it in an envelope and mail it out.

Now, this disparity has been addressed, and I will name those decisions. There have been two Supreme Court decisions, *Shultz*, the *Ramsey* case. The Ninth Circuit has considered this; the Fifth Circuit has considered this. They have all said that customs has the right to do it. But what happens when they try to do it? Well, the postal service does not allow them to do it.

Now, as a result, when the postal service has stopped this, there have been several protests lodged. In fact, the first was that we had testimony in this Congress in 2000 and 2001 that drug dealers were using outbound mail to ship the proceeds of drug sales. And, in fact, I introduced at a committee hearing a drug dealer's Web site where they say this. Here is what they say, and I am going to submit this for the RECORD.

□ 1415

"Do not use UPS, Federal Express, or any other overnight express service, as customs may look at it. Regular mail is anonymous and safe."

That is actually on a drug dealer's Web site. But it was not just the drug dealers who knew this. President Clinton commissioned the International Crime Control Strategy Committee, a bipartisan committee. They looked at that. Among their findings was this:

"Customs has identified various methods of currency smuggling that remain a challenge. Notable among these methods is the exploitation of

the U.S. mail. Hundreds of thousands of dollars can be smuggled out of the United States, at only the cost of postage, in letters and packages."

But scariest of all is testimony that we heard prior to September 11 that terrorists were using the U.S. mail, that they were exploiting the U.S. mail. We heard testimony, the committees of this Congress, that we were creating one of the greatest enforcement stumbling blocks United States agencies had in fighting terrorists and money laundering. Despite that, the post office continued not to cooperate with the Treasury, the FBI and the customs. Therefore, we had this headline which we could have avoided or possibly avoided by adopting this language prior to September 11: Attacks Show a Lack of Cooperation Between Agencies.

Has September 11 not taught us one thing? Has it not taught us that the post office ought to be a partner in our fight against terrorism? This language should have been adopted before September 11. Let us adopt it now. Let us slam the door on money launderers, terrorists and drug dealers and let us do it today.

The U.S. Customs Service should be able to inspect merchandise that is exiting the United States through the U.S. Postal Service—just like it can inspect all merchandise that enters the United States through the Postal Service.

Existing law enables the U.S. Customs Service to inspect merchandise exiting the United States via any mode of transportation—including truck, ship, car, airplane, private express carrier, or person.

The Postal Service claims that it is exempt from these laws—making it the only mode of export for which Customs cannot inspect outbound merchandise.

Customs' inspection of outbound and inbound merchandise is Constitutional.

Under the Constitution, the Customs Service has outbound and inbound border search authority for all merchandise, including that carried on or in an airplane, vessel, vehicle, person, package, or envelope departing or entering the United States. Neither the Fourth Amendment nor any statute prohibits Customs from inspecting outbound merchandise.

Courts have upheld Customs' general border search authority, and in particular over inbound mail and outbound shipments. These decisions support Congress acting to affirm Customs' authority. See *United States v. Ramsey*, 431 U.S. 606 (1977); *United States v. Berisha*, 925 F.2d 791 (5th Cir. 1991); *United States v. Ezeiruaku*, 936 F.2d 136 (3d Cir. 1991); *United States v. Cardona*, 769 F.2d 625 (9th Cir. 1985); *United States v. Udofo*, 711 F.2d 831 (8th Cir. 1983).

Some enterprising sellers of illegal drugs have even boldly stated on their internet site that mail-order customers should use the mails to avoid inspections:

"Do not use UPS, Federal Express, or any other overnight express service, as customs may look at it. Regular mail (registered, if you like), is anonymous and safe."

Recent congressional testimony of Customs pointed to the lack of export examination requirements as to USPS shipments as the

"greatest enforcement stumbling blocks," creating "a money launderer's dream-come-true." Testimony, U.S. Customs Service, House of Representatives Committee on Government Reform, Criminal Justice, Drug Policy and Human Resources Subcommittee Hearing, May 26, 2000.

Customs testimony at this hearing pointed out that not just money laundering is involved, that this "loophole literally creates a haven for smugglers of all kinds. A flawed system such as this can facilitate many other illegal exports and intransit shipments such as child pornography, items or materials to be used in terrorist attacks, weapons, sensitive military or high tech products not licensed for exportation . . ."

The Postal Service's position is clearly anti-law enforcement and allows the US Postal Service to be the outbound smuggling method of choice for drug cartels and other criminal entities. No public policy is served by exempting outbound Postal Service shipments of merchandise from Customs' inspection.

PROTECT THE U.S. BORDER WHILE MAINTAINING PRIVACY—PRIVACY OF THE U.S. MAIL IS NOT AT RISK

PARITY BETWEEN OUTBOUND AND INBOUND MAIL SHIPMENTS

The U.S. Customs Service should be able to inspect merchandise that is exiting the United States through the U.S. Postal Service—just like it can inspect all merchandise that enters the United States through the Postal Service. [19 U.S.C. §482; 19 U.S.C. §1581; 19 U.S.C. §1582; 19 C.F.R., Part 145; 19 C.F.R., Part 162]

#### PARITY BETWEEN MODES OF EXPORT

Existing law enables the U.S. Customs Service to inspect merchandise exiting the United States via any mode of transportation—including truck, ship, car, airplane, private express carrier, or person. [22 U.S.C. §401; 22 U.S.C. §2778; 31 U.S.C. §5317; 50 U.S.C. App. §2411]

The Postal Service claims that it is exempt from these laws—making it the only mode of export for which Customs cannot inspect outbound merchandise.

#### CONSTITUTIONAL BASIS

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Under the Constitution, the Customs Service has outbound and inbound border search authority for all merchandise, including that carried on or in an airplane, vessel, vehicle, person, package, or envelope departing or entering the United States. Neither the Fourth Amendment nor any statute prohibits Customs from inspecting outbound merchandise. [See, e.g., *California Bankers Assn. v. Shultz*, 416 U.S. 21 (1973). *United States v. Ramsey*, 431 U.S. 606 (1977). *United States v. Cardona*, 769 F.2d 625 (9th Cir. 1985). *United States v. Whiting*, 781 F.2d 692 (9th Cir. 1986). *United States v. Berisha*, 925 F.2d 791 (5th Cir. 1991).]

#### LETTER PRIVACY

Allowing Customs to inspect outbound merchandise sent via the Postal Service does not change the law that Customs Officers may not open sealed letter class mail that only contains correspondence without a warrant or consent. [19 C.F.R. §145.3]

For inbound Postal Service shipments, the Customs regulations prohibit Customs officers from opening letter class mail that contains only correspondence except when either a warrant or the consent of the sender/addressee is obtained. The Postal Service has endorsed these regulations for inbound shipments and they could easily be applied to outbound Postal Service shipments.

Mr. LEWIS of Georgia. Mr. Chairman, I yield 4 minutes to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT. I thank the gentleman for yielding time.

Mr. Chairman, I rise in opposition to H.R. 3129, the Customs Border Security Act, in its present form and urge my colleagues to support the substitute offered by the gentleman from New York (Mr. RANGEL).

Section 141 of H.R. 3129 is problematic because it offers full immunity from civil damages if a customs officer performed the search in so-called good faith. Since the bill does not define what constitutes good faith, it effectively expands the current immunity standard to the point of making it nearly impossible for a person to seek redress against a customs officer for an unconstitutional search.

Under current law, government officers performing their specified functions are afforded qualified immunity from civil damages as long as the officer's actions do not violate clearly established statutory or constitutional rights which a reasonable person would have known. The Fourth Circuit Court of Appeals said in 1992 that officers "are not liable for bad guesses in gray areas, they are liable for transgressing bright lines." That is the current law.

The availability of qualified immunity is determined against a standard of objective reasonableness. Whether an officer may be held personally liable turns on the objective legal reasonableness of the action assessed in light of the legal rules that were clearly established at the time the action was taken. As the Supreme Court said in 1986, the present qualified immunity protects "all but the plainly incompetent and those who knowingly violate the law."

But this bill seeks to go further and extends the immunity to situations where customs officers allege that they were acting in good faith, regardless of whether they were transgressing a bright line in the law or not, and regardless of whether they should have known that their actions violated the law. Under this bill, a customs officer could engage in blatantly discriminatory conduct; but if he believed it was in good faith, then he could not be held liable.

Let us remember what we are talking about here. Unconstitutional, unreasonable searches by government officials, searches which could include strip searches and so-called cavity searches. Mr. Chairman, many of these searches have been found to have been conducted pursuant to policies of racial profiling. A March 2000 General Accounting Office report found that while African Americans were nine times more likely to be searched than white Americans, they were no more likely to be found to be carrying contraband. The only way to give victims an effective means to stop these practices is through lawsuits. And here we have a bill that will throw some of these peo-

ple out of court, deny them compensation for violations of their constitutional rights, and make it even less likely that these illegal searches will be stopped.

The substitute offered by the gentleman from New York (Mr. RANGEL) offers a more balanced approach. Those aggrieved will still have their day in court, because although customs officers will still be immune from liability under the substitute, the Federal Government will ultimately be liable for violations. In cases like these, the government, rather than the individual officer, usually ends up paying the judgment anyway, so this should not be a significant burden. And this is a fairer alternative since the immunity is preserved but the person who is victimized can still be made whole, and the Federal Government will be encouraged to correct the practices of its employees.

I urge my colleagues to vote in favor of the Democratic substitute and, if it fails, to vote against H.R. 3129.

Mr. CRANE. Mr. Chairman, I yield 4 minutes to the distinguished gentleman from California (Mr. CUNNINGHAM).

Mr. CUNNINGHAM. Mr. Chairman, we pass a lot of legislation on the floor, and I hold very seriously what we are doing today. A lot of people do not understand, I think, those that listen to us, miss the significance of what we are doing. I support first amendment rights. There are certain limitations in which I think we all agree. I just sat through a Permanent Select Committee on Intelligence hearing, which I am very limited in what I can say about the memo that was written by Mr. Williams, and the reasons why that much of the information was not passed forth is because of the politically correct environment, the liability environment, the civil liberties union going after our agents for things in doing their job in which their hands are tied.

I think all of us after September 11 are living in a different world. Do we want people violated? No. But I will tell you, if an agent, whether it is DEA, whether it is customs or whether it is INS, feels that I am suspect due to my activities, due to suspicions or I am reacting a certain way, then I have no ill feelings to those individuals that search me. Every time I go through the airport now, and I do not think I look like a terrorist, although the gentlewoman from California (Ms. WATERS) says, yes, I do. I disagree with the gentlewoman from California. But every day that I go through the airport, I had a knee replacement and I have got a steel knee. I have to stand and spread eagle, they go through my bags, I have to take off my shoes and put those through the machine. Does that violate my civil liberties? Yes. But in the name of protection of this country, I feel it is very, very important. There are some inconveniences.

Do you realize that today we have many of the people that we suspect as

being terrorists that produce pro al Qaeda and pro bin Laden information in Arizona that are still in those flight schools? And our agents cannot deport them because under the first amendment they have got all the rights that they can. They are recruiting individuals to go fight in Afghanistan to defeat the Western world. One of the things we need to do is these individuals before a visa is ever granted, to do a better background research before we ever let them in. Because once they get in here, we sure as heck cannot get rid of them because of our politically correct laws which I feel personally endanger us in this country.

We had two individuals in 1999 on an airline, known al Qaeda supporters. One looked suspicious. The other actually went up and rattled the airline door, and they stopped. These individuals were arrested when they landed. They are now suing the airline for racial profiling. I guarantee you, there is some liberal judge out there that is going to grant them the case. My point is that if a customs agent feels with their professional training that there is a problem, a risk to American citizens, they be given the right to protect us, whether it is an Irish guy like myself or anyone else.

The gentleman from New York (Mr. RANGEL) is one of my heroes. He is a Korean war veteran, fought for us, and we are good friends. But I think in this fine line of defense I would disagree with my friend from New York.

Mr. LEWIS of Georgia. Mr. Chairman, I yield 4 minutes to the gentleman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. I thank the distinguished gentleman from Georgia (Mr. LEWIS) for yielding me this time.

Mr. Chairman, with great respect to the previous speaker and certainly his service to this country, I do believe that there is value in the balance between civil liberties, the Bill of Rights, and the Constitution. I might say as well that the headline read by one of the speakers, "Agencies Don't Communicate," goes far deeper than violating the civil liberties and civil rights of Americans who travel throughout this Nation. Let me say for once what we should be focusing on is very much what is transpiring in the Permanent Select Committee on Intelligence, but it should be going on in the Committee on Armed Services, it should be going on in Judiciary, Committee on International Relations, and a number of other committees and a select committee to investigate what happened in light of the July 6 memo and the August memo. The question is not so much as to agencies communicating; it is whether or not internally the memo went where it was supposed to go and it was acted upon, whether or not the FBI and the CIA communicates. This legislation does not speak to that issue.

And so I rise to oppose this bill today in its present form, and I rise to support the substitute by the gentleman from New York (Mr. RANGEL). It is clear that the customs agents are to be respected and the work that they do is to be respected; but a violation and an undercutting and an undermining of civil liberties is not the solution to fighting terrorism. This bill would weaken protection against racial profiling and other illegal searches and undermine the right to privacy in personal correspondence.

Mr. Chairman, I would like to tell the story of Yvette Bradley, a 33-year-old advertising executive and her sister who arrived at Newark airport from a vacation in Jamaica. She is an African American woman. Upon encountering customs agents, Ms. Bradley recalls that she along with most of the other black women on the flight were singled out for searches and interrogation where she experienced one of the most humiliating moments of her life.

Ms. Bradley was searched throughout her body, including her private parts. And, of course, Mr. Chairman, no drugs or contraband was found. The gentleman from Georgia (Mr. LEWIS), of course, is well aware of these cases, as being a strong advocate on diminishing racial profiling by the U.S. customs department. I too happen to be a strong supporter of the customs department and its agents and the responsibilities they have. As we have said repeatedly on this floor, there is not a thin line of difference between Democrats and Republicans and others on fighting terrorism. Interestingly enough, however, they have all of the provisions that they need to ensure the safety of the Nation. That is, the customs department and the agents. The PATRIOT Act gave a number of new restrictions that would assist in fighting terrorism. There is no need in this bill to give a pass on the Bill of Rights and the Constitution, the understanding of unreasonable searches and seizures. It is unfair. The ability to search mail more than they have now is unfair, and it is not a solution to terrorism.

The legislation did not go to the Committee on the Judiciary. This legislation came out of the Committee on Ways and Means on a party vote. It is simply ludicrous that we throw to the wind our Constitution when we are fighting terrorism around the world. This bill fails to address the very serious problems of racial profiling and the invasion of privacy by our customs agents. It throws to the wind the ability to secure relief from the government if you are unfairly racially profiled. Mr. Chairman, it is going on right now. In spite of the random selection, I believe it is going on right now as we speak in our airports of random or racially profiled selections of individuals.

In addition, with respect to the mail provision, I believe that the substitute provides us a much better offering of this legislation. I would ask my col-

leagues to support the substitute; and if that substitute should fail, I would ask my colleagues to oppose the bill in its present form, that is, H.R. 3129.

□ 1430

We must find a better way to fight terrorism. I think what we can begin by doing is communicating with the agencies and for the agencies to do their jobs.

As I have said in the past, I have great respect for the services of the men and women in the Customs service. This legislation, with the civil liberties protection, will further support their work.

Mr. Chairman, I rise to oppose this bill today in its present form and rise to support the substitute by Mr. RANGEL. The bill would weaken protections against racial profiling and other illegal searches and undermine the right to privacy in personal correspondence. Mr. Speaker, I would like to tell the story of Yvette Bradley. A 33-year-old advertising executive and her sister arrived at Newark Airport from a vacation in Jamaica, an African American woman.

Upon encountering Customs agents, Ms. Bradley recalls that she, along with most of the other black women on the flight, were singled out for searches and interrogation, where she experienced one of the most humiliating moments of her life. Ms. Bradley was searched throughout her body including her private parts. Mr. Chairman, no drugs or contraband was found.

I happen to be a strong supporter of our Customs agents and the responsibilities that they have. Interestingly enough, however, they have all of the provisions that they need to ensure the safety of this Nation. To take away, to give them a bye, a pass, on the Bill of Rights and the Constitution, the understanding of unreasonable search and seizures, is unfair. The ability to search mail, more than they have now, is unfair and it is not a solution to terrorism.

This legislation did not go to the Committee on the Judiciary. This legislation came out of the Committee on Ways and Means on a party vote. It seems simply ludicrous that we throw to the wind our Constitution when we are fighting terrorism around the world.

This bill fails to address the very serious problems of racial profiling and invasions of privacy by our Customs agents. The Customs Service has a poor record on racial profiling. A March 2000 General Accounting Office report found that while black female U.S. citizens were nine times more likely than white female U.S. citizens to be subjected to x-ray searches by the Customs Service, these black women were less than half as likely to be found carrying contraband as white females.

Mr. Chairman, the bill before us today, H.R. 3129, contains a number of problematic provisions that perpetuate these kinds of insidious acts. Most notably, two provisions raise significant constitutional and civil liberties concerns. First, the Good Faith Immunity provision of section 141 provides Customs inspectors immunity from lawsuits stemming from personal searches of people entering the country so long as the officers conduct the searches in "good faith." Importantly, this provision has nothing to do with preventing terrorists from boarding airplanes. Customs officers search passengers when they are exiting the plane,

not when they are boarding. Nothing in the provision limits it to terrorist investigations.

Section 141 of the bill provides immunity to a Customs officer conducting a search of a person or property provided he or she was acting in "good faith." The term "good faith" is not defined in the bill.

Customs Service agents should not be provided with additional immunity because the Customs Service has an uneven record on racial profiling, it routinely conducts particularly intrusive searches, and has broad authority to seize property. A March 2000 General Accounting Office report found that while African American men and women were nearly nine times more likely to be searched as white American men and women, they were no more likely to be found carrying contraband. I do support the Rangel substitute which balances protecting hard working customs agents against liability while still allowing the grieved citizen the right to sue for unjust acts against them.

Section 144, "Border search authority for certain contraband in outgoing mail," would allow the U.S. Customs Service to open outbound international mail without a warrant if they have reasonable cause to suspect the mail contains certain contraband. 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.

Section 144 would allow Customs officials to open sealed, outbound international mail without a warrant, without probable cause, and without any judicial review at all. 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. I support the substitute of Mr. RANGEL which upholds present law requiring a warrant before mail is searched.

Recently, the U.S. Postal Service wrote a letter to the Chairman of the Financial Services Committee on the issue of searching outbound mail without a warrant: "There is no evidence that eroding these long established privacy protections will bring any significant law enforcement improvements over what is achieved using existing, statutorily approved law enforcement techniques."

I urge my colleagues to vote "no" on H.R. 3129 because the bill would weaken protections against racial profiling and other illegal searches and undermines the right to privacy in personal correspondence.

Mr. CRANE. Mr. Chairman, I yield 4 minutes to the gentlewoman from Connecticut (Mrs. JOHNSON), our distinguished colleague on the Committee on Ways and Means.

Mrs. JOHNSON of Connecticut. Mr. Chairman, I thank the chairman for yielding me time and rise in strong support of this legislation.

Mr. Chairman, I want to remind the body that this bill will provide \$10 million for the Customs Cyber-Smuggling

Center. This center, along with FBI, does all that work that is so critical to protecting our children from people who lurk on the Internet in cyberspace with the explicit and sole goal of exploiting them for sexual purposes.

The Internet has become not only an opportunity for all of us and for America, but it has also become a new venue for crime. While most Members are not aware of it, most of the child pornography that flows into America from abroad now flows in through cyberspace. So the Customs officials are extremely involved in preventing cyber-smuggling of pornographic material and stopping the cyberspace attacks on our children.

The Customs officials are very skilled now at going into the chat rooms on our computers, following the conversations that go on there and spotting those individuals who are posing as young people but are actually adults out to lure children into meetings where they can be sexually exploited, or, in the tragic case of a young girl in Connecticut, murdered. That happened just this week.

So the computers, their chat rooms, cyberspace, represents a new and terrible danger for our children. These same people used to lurk around school yards. That did have at least the advantage of our being able to see them and adults being able to report them and the police being able to pick them up. Now they do not have to lurk around school yards. They do not have to be seen visibly. They can lurk in the chat rooms that our children frequent and they can play on their innocence and their trust to build up communication with them and to give them the confidence to meet them. Then, when they have the meeting, when they get the child in their literal physical grasp, that child then is helpless.

So the Customs Cyber-Smuggling Center has been on the front line of stemming this attack on our children, and this bill gives them \$10 million that is critical to their beefing up their staff, to their being more effective in intercepting conversations with children and preventing those critical meetings and thereby protecting our children. So I commend the chairman on this legislation, and particularly for being able to work with us and include this critical money in this bill.

But I also want to address the importance of voting for the bill and voting against the substitute. The protection that is given to the Customs officials in this bill is protection that was requested by the Customs Department, that is wanted by the Customs officers, that was supported by the Treasury last time around on this bill and responds very deeply to their need to be protected just for doing their job.

There are tragic stories of Customs officials carrying out their responsibilities, doing what they are required by law to do to protect us, and then being sued, left out there by the government to pay all their own costs of the litigation,

losing their homes. There are terrible stories, and only because they are doing their job.

But we encourage litigation in our society. We encourage settlement of suits where there has been no wrongdoing, and we leave our Customs officials exposed. They explicitly asked for this protection. We can do no less than provide it for them.

Mr. LEWIS of Georgia. Mr. Chairman, I yield 2 minutes to the gentlewoman from Florida (Mrs. MEEK).

Mrs. MEEK of Florida. Mr. Chairman, I think the Rangel substitute does a lot to help this bill. I am in support of the Rangel substitute and am opposed to the bill in its current form.

First of all, Customs officials do need protection. We do need the agents of the Customs department to receive protection. The government is the one who should feel the full brunt of this. So we want to be sure our Customs agents are protected.

I do not take a second seat to anyone and I yield to no one in my support of the war against terrorism, but I refuse to accept government agents engaging in misconduct as a good faith method, in that the standards many times are too subjective, and we have seen it in law enforcement all around. We make the standards so vague and subjective that, when people abuse them, we are not able to bring them to task. These things are not grounded in the law. So we have to be very careful, and that is what the Rangel substitute does.

Secondly, we do not need to expand the search that the Postal authorities are doing without probable cause. The Postal Service opposes this provision, with good reason.

Racial profiling is too rampant and too important now. I urge my colleagues that when there is any hint of anything that would lead to impropriety or abuse of the civil rights and human rights of any individual, we should oppose it. Therefore, I oppose this bill, and I support the Rangel substitute.

Mr. CRANE. Mr. Chairman, I reserve the balance of my time.

Mr. LEWIS of Georgia. Mr. Chairman, I yield 4 minutes to the gentleman from California (Mr. BECERRA).

Mr. BECERRA. Mr. Chairman, I thank the gentleman from Georgia for yielding me time.

Mr. Chairman, this is a bill which, compared to previous versions, certainly has done much better for our country and does much better for our Customs officers, our men and women in the Customs Service. This bill does not try to mistreat our employees, the men and women who place themselves in harm's way every day to defend this country against terrorism, who try to interdict the drugs that many would have come into our country, and it treats them the way they should be treated, with respect, when it comes to their employment status, their salary, their working conditions.

Those previous versions of the bill which would have harmed our Customs



men and women are not in this bill, and that is good. We also give Customs the tools it needs to be able to fight terrorism, to fight narcotics that would come into this country, and that is good as well.

But for some reason this bill continues to include 2 provisions which under our Constitution would harm Americans, and that is bad. There is no reason why we should tell an American citizen that he or she is suspect simply because they happen to reside in this country and wish to send a piece of mail abroad. There is no reason why we should treat American citizens in their regular activities of sending correspondence abroad the way we treat foreign correspondence and packages that would come into our country.

I can understand and most of us would understand why it is we would have concern in a package coming from some other country into our country, and perhaps, perhaps, containing a bomb, anthrax, who knows what else it might have. For that reason we provide that package with less of the type of constitutional protection that we provide all of us in America when it comes to our privacy.

But when Americans are shipping something abroad, is there any reason why we are telling them we are going to open up their mail that goes abroad, open up packages, unless we have some suspicion there is reason to go in that?

Right now we can open up a package that is going abroad, but we just have to prove there is a reason why we are going to go into the privacy of each and every American citizen to do so. This bill changes the privacy right we have had since the founding of this Nation. That is wrong.

The other provision here that I believe if most Americans knew about it would be offensive to them is that which would allow profiling. Most of our Customs officers do not do this, but we have seen on occasion how someone is picked out of the crowd, and our numbers, our studies by Customs itself, have shown that the people that most often get picked, unfortunately, are African American women, succumbing to things like strip searches.

Now our government on occasion has been subjected to lawsuits because of the violations of the Constitutional rights of these individuals. Why are we going to make that easier and why are we going to tell Customs officers we do not have enough faith in them and that we are going to go ahead and let them have an exception to the law? Why would we want to tell people in this country that we are going to lower the standard of protection for people when it comes to their civil rights, simply so that we can protect the bad apples?

Everybody has a bad apple. We have bad apples in this whole institution. But that is no reason to say that every single officer in Customs is bound to violate an American citizen's rights by subjecting them to an unconstitutional search and seizure.

I do not think our Customs officers have requested this. I never heard that in committee, that they requested this. There is no reason to go to the point of providing immunity to Customs officers who violate the Constitution. They already have a qualified immunity to those types of protections. Why are we going beyond what they have even asked for?

In committee, when we asked the general counsel for Customs, please explain why you are asking this particular immunity exception to be applied, we could not get a good answer from the general counsel of the Customs Service.

This is a good bill. Why tarnish it with something that is unnecessary? Of course, most people are going to vote for this because most people will look at the fact that we are providing additional resources to Customs and doing the right thing for most of our officers. This does not belong there. That is why you should vote for the substitute. A vote for the substitute gets rid of the bad and makes this a completely supportable bill.

Mr. CRANE. Mr. Chairman, I reserve the balance of my time.

Mr. LEWIS of Georgia. Mr. Chairman, I yield myself such time as I may consume to close.

Mr. Chairman, at the outset, Mr. Chairman, I would like to ask a question: Do we know what a terrorist looks like? Did we know on April 19, 1995, that a man would get in a Ryder truck and drive it into the Federal Building in Oklahoma? Did we know just a few short days ago that a young college student, the age of 21, would put pipe bombs in mailboxes in several Midwestern and Western States?

Mr. Chairman, I must tell you I rise in strong opposition to the Customs Border Security Act of 2001, H.R. 3129. This bill threatens to violate and weaken the civil rights of innocent passengers by granting Customs officers immunity from lawsuits involving personal searches.

H.R. 3129 would increase the chances of racial profiling and illegal searches. This bill will also violate personal privacy by expanding the power of the Customs Service to search mail leaving the United States without a warrant.

While I, like many, appreciate the attempts made by the Customs Service to address its poor record of racial profiling of passengers, now is not the time to grant Customs officers immunity from lawsuits. Civil lawsuits against government officials and agencies are an important deterrent to racial profiling and unconstitutional and unlawful searches. As public officials, Customs agents already have qualified immunity, which is more than adequate to protect them if acting within the scope of their official authority.

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.

Mr. Chairman, I urge my colleagues to protect the civil rights of innocent passengers and oppose this bill.

Mr. Chairman, I yield back the balance of my time.

Mr. CRANE. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, H.R. 3129, the Customs Border Security Act of 2001, is the authorization for the U.S. Customs Service, International Trade Commission and Office of the U.S. Trade Representative through 2004. We have included a number of critical tools for fighting terrorism, drugs and child pornography.

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The legislation will help customs close a gap in our border that lets illegal money be taken out of the country. This legislation will also significantly increase customs' ability to stop the flow of illegal drugs over our borders and into our children's hands. When this bill came to the floor last year, it was caught up in the general debate on trade and the subject of a lot of misinformation. I want to clear the record for Members' benefit.

The administration was intimately involved in drafting this bill and requested several measures that are here. There is a provision to require advanced electronic manifesting on passengers and cargo so that the Customs Service can have advanced notice of who is in planes and what is on ships about to land on American soil. This provision has attracted the most attention recently, as many agencies of the government, especially law enforcement and intelligence, currently obtain information through customs. It is clear that customs will be requiring more information in the future for antiterrorist efforts. It is equally clear that customs is the logical place to house the current and future data collection system that must interface with importers and carriers of all kinds. Through better and quicker information, the Federal Government can prevent crimes and keep our economy alive with the critical flow of trade.

Similarly, we seek to give our customs inspectors some protection, considering that now more than ever they will be scrutinizing and watching people who come into the country, knowing full well that the next terrorist may be stepping off the plane. For those who act in good faith, inspectors should not have to be afraid of frivolous lawsuits, so we are proposing that they have immunity against such lawsuits unless they wrongly use race, ethnicity, religion, or gender to profile passengers. At the committee markup, administration officials testified that they had drafted this provision and support it. The union representatives of the customs inspectors have specifically written in support of this provision. They make a strong case, and Congress should pass this provision.

The administration also requested that customs be able to search outgoing mail because the U.S. mail is often used to transmit laundered money out of the country. I want to assure members of the committee that we looked carefully at the privacy issues involved here and believe we adequately addressed them in this legislation. Our bill preserves our cherished fourth amendment rights against unwarranted search by requiring that no letter may be read by customs officers unless a valid warrant is obtained, just like current law with respect to inbound mail. Remember, money from illegal activities is what leads us to terrorists and drug smugglers.

We have increased funding to reestablish the New York Customs offices and an additional increase in funding to upgrade our textile transshipment monitoring and enforcement operations. We add \$10 million for the Customs Cyber-smuggling Center. This legislation also contains authorization for funding for customs' new automation, the Automated Commercial Environment.

Mr. Chairman, I urge all of my colleagues who are serious about stopping terrorism, drugs, and online child pornography, while keeping our trade flowing, to support this bill. I urge my colleagues to support it.

Mr. SERRANO. Mr. Chairman, on behalf of the Latino community I urge my colleagues to oppose H.R. 3129, the Customs Border Security Act, and to strongly support the Rangel substitute. H.R. 3129 will expand Federal authority for U.S. Customs officers by granting them expanded "good faith" immunity. Expanding Customs officers' immunity would only undermine the civil rights of many individuals who would be left without recourse to remedy unconstitutional and discriminatory searches, particularly when this agency has a history of targeting minorities. The Rangel substitute correctly addresses the racial profiling concerns while ensuring that customs inspectors are not liable for monetary damages in civil suits involving personal searches. The U.S. government would consent to be sued and to be held liable for civil damages for suits brought in connection with a wrongful personal search.

According to a Customs Service study conducted in fiscal year 1998, almost half of the people searched by customs were Latino or African-American, although the contraband produced by the searches was lower for minorities than for whites. Another study by the GAO in March 2000 revealed that black female U.S. citizens were nine times more likely to be subjected to X-ray searches by U.S. Customs officials than their white counterparts, although black women were less than half as likely to be found carrying contraband as white women.

There is also no reason why Customs needs expanded authority to search outgoing international mail without a warrant. We inspect mail that comes into the country because we do not know what it might contain. But the interests in outgoing mail are not the same and do not warrant invading our privacy. The Postal Service opposes this provision. Customs has every right to inspect mail by

getting a search warrant. There is no need to change current law. The Rangel substitute also addresses the inspection of outbound mail.

I urge my colleagues to support the Rangel substitute and, if it fails, to vote no on H.R. 3129 because it will weaken protections against racial profiling, thus undermining the civil rights of many people and support the Rangel substitute.

Mr. BACHUS. Mr. Chairman, Customs currently can do border searches of everything that enters or leaves the United States—with one exception: outbound mail shipped by the U.S. Postal Service.

The U.S. Customs Service should be able to inspect merchandise that is exiting the United States through the U.S. Postal Service—just like it can inspect all merchandise that enters the United States through the Postal Service. [19 U.S.C. Section 482; 19 U.S.C. Section 1581; 19 U.S.C. Section 1582; 19 C.F.R., Part 145; 19 C.F.R., Part 162]

Existing law enables the U.S. Customs Service to inspect merchandise exiting the United States via any mode of transportation—including truck, ship, car, airplane, private express carrier, or person. [22 U.S.C. Section 401; 22 U.S.C. Section 2778; 31 U.S.C. Section 5317; 50 U.S.C. App. Section 2411]

The Postal Service claims that it is exempt from these laws—making it the only mode of export for which Customs cannot inspect outbound merchandise. In fact, the Postal Authority not only refuses to cooperate with the Customs Service, but they openly resist their efforts to carry out their statutory obligations.

Customs' inspection of outbound and inbound merchandise is Constitutional. Under the Constitution, the Customs Service has outbound and inbound border search authority for all merchandise, including that carrier on or in any airplane, vessel, vehicle, person, package, or envelope departing or entering the United States. Neither the Fourth Amendment nor any statute prohibits Customs from inspecting outbound merchandise. [See, e.g. *California Bankers Assn. v. Schultz*, 416 U.S. 21 (1973). *United States v. Ramsey*, 431 U.S. 606 (1977). *United States v. Cardona*, 769 F.2d 625 (9th Cir. 1985). *United States v. Whiting*, 781 F.2d 692 (9th Cir. 1986). *United States v. Berisha*, 925 F.2d 791 (5th Cir. 1991).]

Furthermore, courts have upheld Customs' general border search authority and, in particular, over inbound mail and outbound shipments. These decisions support Congress acting to affirm Customs' authority. [See *United States v. Ramsey*; *United States v. Berisha*; *United States v. Ezeiruaku*, 936 F.2d 136 (3d Cir. 1991); *United States v. Cardona*; *United States v. Udofot*, 711 F.2d 831 (8th Cir. 1983)]

The general public may not know about the inability of Customs to effectively search outbound merchandise, but others do. Some enterprising sellers of illegal drugs have even boldly stated on their internet site that mail-order customers should use the mails to avoid inspections.

Do not use UPS, Federal Express, or any other overnight express service, as customs may look at it. Regular mail (registered, if you like) is anonymous and safe.

Recent Congressional testimony of Customs pointed to the lack of export examination requirements as to USPS shipments as the "greatest enforcement stumbling blocks," cre-

ating "a money launderer's dream-come-true." [Testimony, U.S. Customs Service, House of Representatives Committee on Government Reform, Criminal Justice, Drug Policy and Human Resources Subcommittee Hearing, May 26, 2000.]

Customs testimony at this hearing pointed out that not just money laundering is involved, that this "loophole literally creates a haven for smugglers of all kinds. A flawed system such as this can facilitate many other illegal exports and in-transit shipments such as child pornography, items or materials to be used in terrorist attacks, weapons, sensitive military or high tech products not licensed for exportation . . ."

The Postal Service's position is clearly anti-law enforcement and allows the U.S. Postal Service to be the outbound smuggling method of choice for drug cartels and other criminal entities. No public policy is served by exempting outbound Postal Service shipments of merchandise from Customs' inspection. I urge the membership to give this legislation the strongest vote of confidence.

Ms. DUNN. Mr. Chairman, I rise in support of H.R. 3129, the Customs Border Security Act. I want to thank Chairman THOMAS and CRANE for working with me to address my concerns for improving staffing and equipment on the Northern Border.

Almost two years ago, Customs personnel were able to apprehend a terrorist at Blaine, Washington. This action helped prevent a terrorist act against our nation. Today, we face greater threats of terrorism and we need to better protect our borders, especially our Northern Border.

For this reason, I am pleased that this bill authorizes more funding to hire approximately 285 additional Customs Service officers to protect the borders and ports along the U.S.-Canadian border. This legislation also increases equipment for the Customs Service to expedite the movement of goods and passengers on our Northern Border.

Over the past few years, Washington State has seen an increase in trade and passenger traffic on the U.S.-Canadian Border. In 1999, trade between Washington State and Canada has grown approximately \$19 billion. Furthermore, we have seen a growth in the cruise industry in Seattle. Unfortunately, we had to deny ships from visiting Seattle because of insufficient Customs officers to inspect them.

The increases in staff and equipment in this bill are positive steps towards a comprehensive and sustained effort to better protect the Northern Border from potential terrorist activities, and improve the flow of goods and traffic between the U.S. and Canada. I ask my colleagues to support this bill.

Ms. KILPATRICK. Mr. Chairman, I rise to announce my opposition to the underlying bill that we consider today. It is a near certainty that the substitute amendment offered by my colleague from California (Ms. WATERS) will not be approved, and without the improvements contained in her amendment, there is little choice for me but to vote against this bill.

Last December, I voted against this bill's passage when it was considered under suspension of rules. I did so because I objected to a provision in that bill that would have provided immunity to customs officers for personal searches at border locations, as long as the officers follow agency guidelines. That was too broad an exemption.



I share the view of many in this chamber that the men and women who make up the U.S. Customs Service are good and hard working people, dedicated to performing their jobs and committed to protecting the safety of this country's borders. Nowhere is the dedication of U.S. Customs Service personnel exemplified more than at Detroit's ports of entry.

Unfortunately, inspection abuses have occurred and civil rights have been violated. The grant of immunity provided in the earlier bill asked that the constitutional rights of Americans be surrendered at the border. I opposed passage of H.R. 3129 last December, and I oppose its passage today for the very same reasons.

I have dedicated my entire life to the advancement of civil rights under civil law. To vote for this bill as it is presently configured would require me to suppress a deep-seated core value that I hold dear. There are times when many in this chamber put aside their personal values in order to advance causes and issues that provide for the greater good. This is not one of those times.

This bill has the potential of short circuiting the civil liberties of Americans and international visitors who step on to U.S. soil from international ports. By doing so, we are compromising on the values that make up part of the American character and surrendering the protections guaranteed to us under the constitution. I cannot in good conscience surrender my convictions to protect the civil liberties of all Americans and those that come to this country. For that reason I oppose the passage of this bill.

Mr. CRANE. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore (Mr. LAHOOD). All time for general debate has expired.

Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill shall be considered as the original bill for the purpose of amendment under the 5-minute rule and shall be considered read.

The text of the committee amendment in the nature of a substitute is as follows:

H.R. 3129

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### **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.

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##### **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.

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##### **Subtitle D—Antiterrorism Provisions**

Sec. 141. Immunity for United States officials that act in good faith.

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##### **Subtitle E—Textile Transshipment Provisions**

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

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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 (bustlers) 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 (bustlers) 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 additional 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 non-commercial 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 Consolidated 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 Secretary 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 Representa-

tives 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.”.

The CHAIRMAN pro tempore. No amendment to that amendment is in order except those printed in House Report 107-482. Each amendment may be offered only in the order printed in the report by a Member designated in the report, shall be considered read, shall

be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

It is now in order to consider amendment No. 1 printed in House Report 107-482.

Will the gentleman from Illinois (Mr. CRANE) continue to be the designee of the gentleman from California (Mr. THOMAS)?

Mr. CRANE. Yes, Mr. Chairman.

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
OFFERED BY MR. CRANE

Mr. CRANE. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN pro tempore. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Mr. CRANE:

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 2002”.

#### 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—Miscellaneous Provisions

Sec. 121. Additional Customs Service officers for United States-Canada border.

Sec. 122. Study and report relating to personnel practices of the Customs Service.

Sec. 123. Study and report relating to accounting and auditing procedures of the Customs Service.

Sec. 124. Establishment and implementation of cost accounting system; reports.

Sec. 125. Study and report relating to timeliness of prospective rulings.

Sec. 126. Study and report relating to Customs user fees.

Sec. 127. Fees for Customs inspections at express courier facilities.

Sec. 128. National Customs Automation Program.

#### 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) \$899,121,000 for fiscal year 2002.”;
- (2) in subparagraph (B) to read as follows: “(B) \$1,365,456,000 for fiscal year 2003.”; and
- (3) by adding at the end the following: “(C) \$1,399,592,400 for fiscal year 2004.”.

(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) \$1,606,068,000 for fiscal year 2002.”;
- (B) in clause (ii) to read as follows: “(ii) \$1,642,602,000 for fiscal year 2003.”; and
- (C) by adding at the end the following: “(iii) \$1,683,667,050 for fiscal year 2004.”.

(2) AUTOMATED COMMERCIAL ENVIRONMENT COMPUTER SYSTEM.—Of the amount made available for each of fiscal years 2002 through 2004 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 Agreement 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) \$177,860,000 for fiscal year 2002.”;
- (2) in subparagraph (B) to read as follows: “(B) \$170,829,000 for fiscal year 2003.”; and
- (3) by adding at the end the following: “(C) \$175,099,725 for fiscal year 2004.”.

(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 section 102.

#### **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—Miscellaneous Provisions**

#### **SEC. 121. 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, \$28,300,000 shall be available until expended for the Customs Service to hire approximately 285 additional Customs Service officers to address the needs of the offices and ports along the United States-Canada border.

#### **SEC. 122. 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. 123. 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. 124. 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. 125. 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. 126. 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 Consolidated 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.

#### **SEC. 127. FEES FOR CUSTOMS INSPECTIONS AT EXPRESS COURIER FACILITIES.**

(a) IN GENERAL.—Section 13031(b)(9) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)) is amended as follows:

(1) In subparagraph (A)—

(A) in the matter preceding clause (i), by striking “the processing of merchandise that is informally entered or released” and inserting “the processing of letters, documents, records, shipments, merchandise, or any other item that is valued at an amount under \$2,000 (or such higher amount as the Secretary may set by regulation pursuant to section 498 of the Tariff Act of 1930), whether or not such items are informally entered or released (except items entered or released for immediate exportation).”; and

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

“(ii) In the case of an express consignment carrier facility or centralized hub facility, \$.66 per individual airway bill or bill of lading.”

(2) By redesignating subparagraph (B) as subparagraph (C) and inserting after subparagraph (A) the following:

“(B)(i) For fiscal year 2004 and subsequent fiscal years, the Secretary of the Treasury may adjust (not more than once per fiscal year) the amount described in subparagraph (A)(ii) to not less than \$.35 but not more than \$1.00 per individual airway bill or bill of lading. The Secretary shall provide notice in the Federal Register of a proposed adjustment under the preceding sentence and the reasons therefor and shall allow for public comment on the proposed adjustment.

“(ii) The payment required by subparagraph (A)(ii) shall be the only payment required for reimbursement of the Customs Service in connection with the processing of an individual airway bill or bill of lading in accordance with such subparagraph, except that the Customs Service may charge a fee to cover expenses of the Customs Service for adequate office space, equipment, furnishings, supplies, and security.

“(iii)(I) The payment required by subparagraph (A)(ii) and clause (ii) shall be paid on a quarterly basis to the Customs Service in accordance with regulations prescribed by the Secretary of the Treasury.

“(II) 50 percent of the amount of payments received under subparagraph (A)(ii) and clause (ii) shall, in accordance with section 524 of the Tariff Act of 1930, be deposited as a refund to the appropriation for the amount paid out of that appropriation for the costs incurred in providing services to express consignment carrier facilities or centralized hub facilities. Amounts deposited in accordance

with the preceding sentence shall be available until expended for the provision of customs services to express consignment carrier facilities or centralized hub facilities.

“(III) Notwithstanding section 524 of the Tariff Act of 1930, the remaining 50 percent of the amount of payments received under subparagraph (A)(ii) and clause (ii) shall be paid to the Secretary of the Treasury, which is in lieu of the payment of fees under subsection (a)(10) of this section.”

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on October 1, 2002.

#### SEC. 128. NATIONAL CUSTOMS AUTOMATION PROGRAM.

Section 411(b) of the Tariff Act of 1930 (19 U.S.C. 1411(b)) is amended by striking the second sentence and inserting the following: “The Secretary may, by regulation, require the electronic submission of information described in subsection (a) or any other information required to be submitted to the Customs Service separately pursuant to this subpart.”

#### Subtitle D—Antiterrorism Provisions

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

(a) IMMUNITY.—Section 3061 of the Revised Statutes (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)(A) In addition to any other requirement under this section, for each land, air, or vessel carrier required to make entry 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 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.

“(B) The Secretary shall cooperate with other appropriate Federal departments and agencies for the purpose of providing to such departments and agencies as soon as practicable cargo manifest information obtained pursuant to subparagraph (A). In carrying out the preceding sentence, the Secretary, to the maximum extent practicable, shall protect the privacy and property rights with respect to the cargo involved.”

(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 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 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), if applicable, 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;

“(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) SHARING OF INFORMATION.—The Secretary shall cooperate with other appropriate Federal departments and agencies for the purpose of providing to such departments and agencies as soon as practicable electronic transmission information obtained pursuant to subsection (a). In carrying out

the preceding sentence, the Secretary, to the maximum extent practicable, shall protect the privacy rights of the person with respect to which the information relates.”

(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.”;

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

“(ii) \$32,300,000 for fiscal year 2003.”; and

(D) by adding at the end the following:

“(iii) \$33,108,000 for fiscal year 2004.”; 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) \$51,440,000 for fiscal year 2002.”;

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

“(ii) \$54,000,000 for fiscal year 2003.”; and

(3) by adding at the end the following:

“(iii) \$57,240,000 for fiscal year 2004.”.

(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.”.

The CHAIRMAN pro tempore. Pursuant to House Resolution 426, the gentleman from Illinois (Mr. CRANE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Illinois (Mr. CRANE).

Mr. CRANE. Mr. Chairman, I yield myself such time as I may consume.

The substitute increases authorization funding levels at section 101, including earmark for resources at northern border at section 131, new section 121. It extends authorization through 2004. It deletes sections 121 through 125 concerning customs officer pay changes, and renumbers. It adds new section 127 to change customs' fees for couriers to a fixed fee structure. It clarifies in section 143 that advanced electronic manifest requirements applies only to inbound cargo, as provisions to require sharing of information collected by customs to other government agencies.

It clarifies in section 143 that advanced information for passengers and crew is not intended to create new immigration requirements. Specifically, the Secretary can demand passport and visa information only if such a requirement to have a passport or visa already applies to the passenger or crew.

Mr. Chairman, these provisions are designed to make the bill stronger. I urge a “yes” vote on the Thomas substitute.

Mr. Chairman, I reserve the balance of my time.

Mr. LEVIN. Mr. Chairman, I claim the time in opposition to the amendment, and I reserve the balance of my time.

Mr. CRANE. Mr. Chairman, I yield 2 minutes to the gentleman from North Carolina (Mr. HAYES), our distinguished colleague.

Mr. HAYES. Mr. Chairman, I rise in strong support of this bill today, the manager's amendment, the substitute by the gentleman from California (Mr. THOMAS). H.R. 3129 will provide customs with better tools to protect America's borders during this time of war. But specifically, I would like to highlight some of the provisions for the textile industry.

Illegal transshipments are some of the most critical issues facing our domestic textile industry, and it is one of the issues that I said should be a part of any debate on trade. I want to thank the chairman and the gentleman from Illinois (Mr. CRANE) for their willingness to work with me and other Members and with the textile industry to address this growing problem of illegal textile transshipments.

Without question, one of the greatest threats to our domestic textile industry is the illegal shipment of textile and apparel goods from ports around the world. Our domestic industry can compete on a level playing field, but they cannot compete against a flood of illegal imports. This bill will go far in helping to address the problem. It adds \$9.5 million to fight textile trans-

shipment through added staff dedicated to specific geographic areas such as Hong Kong, India, Korea, Mexico, and the Middle East. It includes an additional 50 new staff, including investigators and inspectors.

By no means will this solve every problem, but it will be very helpful in fighting the problems of illegal transshipments; and I urge my colleagues' support.

Mr. LEVIN. Mr. Chairman, I yield myself 1 minute.

Mr. Chairman, I am glad that this bill has within it the language regarding transshipment that has been mentioned by the distinguished gentleman who spoke before me. I do want to point out, however, that this bill is strictly an authorization; and unless there is an appropriation to carry it out, the language would not be meaningful.

Mr. Chairman, I reserve the balance of my time.

Mr. CRANE. Mr. Chairman, I would urge our colleagues on a good, strong, bipartisan basis to support this substitute.

Mr. Chairman, I have no further requests for time, and I yield back the balance of my time.

Mr. LEVIN. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN pro tempore. The question is on the amendment in the nature of a substitute offered by the gentleman from Illinois (Mr. CRANE).

The amendment in the nature of a substitute was agreed to.

The CHAIRMAN pro tempore. It is now in order to consider amendment No. 2 printed in House Report 107-482.

#### AMENDMENT IN THE NATURE OF A SUBSTITUTE OFFERED BY MS. WATERS

Ms. WATERS. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN pro tempore. Is the gentlewoman from California (Ms. WATERS) the designee of the gentleman from New York (Mr. RANGEL)?

Ms. WATERS. Yes, I am.

The CHAIRMAN pro tempore. The Clerk will designate the amendment in the nature of a substitute.

The text of the amendment in the nature of a substitute is as follows:

Amendment in the nature of a substitute offered by Ms. WATERS:

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 2002”.

#### 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—Miscellaneous Provisions

Sec. 121. Additional Customs Service officers for United States-Canada border.

Sec. 122. Study and report relating to personnel practices of the Customs Service.

Sec. 123. Study and report relating to accounting and auditing procedures of the Customs Service.

Sec. 124. Establishment and implementation of cost accounting system; reports.

Sec. 125. Study and report relating to timeliness of prospective rulings.

Sec. 126. Study and report relating to Customs user fees.

Sec. 127. Fees for Customs inspections at express courier facilities.

Sec. 128. National Customs Automation Program.

Subtitle D—Antiterrorism Provisions

Sec. 141. Exclusive remedy for personal search claims.

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

Subtitle E—Textile Transshipment Provisions

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TITLE II—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Sec. 201. Authorization of appropriations.

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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) \$899,121,000 for fiscal year 2002.”;

(2) in subparagraph (B) to read as follows: “(B) \$1,365,456,000 for fiscal year 2003.”; and

(3) by adding at the end the following: “(C) \$1,399,592,400 for fiscal year 2004.”.

(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) \$1,606,068,000 for fiscal year 2002.”;

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

“(ii) \$1,642,602,000 for fiscal year 2003.”; and

(C) by adding at the end the following:

“(iii) \$1,683,667,050 for fiscal year 2004.”.

(2) AUTOMATED COMMERCIAL ENVIRONMENT COMPUTER SYSTEM.—Of the amount made available for each of fiscal years 2002 through 2004 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 Agreement 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) \$177,860,000 for fiscal year 2002.”;

(2) in subparagraph (B) to read as follows: “(B) \$170,829,000 for fiscal year 2003.”; and

(3) by adding at the end the following:

“(C) \$175,099,725 for fiscal year 2004.”.

(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 section 102.

#### 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—Miscellaneous Provisions

#### SEC. 121. 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, \$28,300,000 shall be available until expended for the Customs Service to hire approximately 285 additional Customs Service officers to address the needs of the offices and ports along the United States-Canada border.

#### SEC. 122. 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. 123. STUDY AND REPORT RELATING TO COUNTING 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. 124. 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 pro-

vide 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. 125. 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. 126. 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 Consolidated 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.

#### SEC. 127. FEES FOR CUSTOMS INSPECTIONS AT EXPRESS COURIER FACILITIES.

(a) IN GENERAL.—Section 13031(b)(9) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(9)) is amended as follows:

(1) In subparagraph (A)—

(A) in the matter preceding clause (i), by striking "the processing of merchandise that is informally entered or released" and inserting "the processing of letters, documents, records, shipments, merchandise, or any other item that is valued at an amount under \$2,000 (or such higher amount as the Secretary may set by regulation pursuant to section 498 of the Tariff Act of 1930), whether or not such items are informally entered or released (except items entered or released for immediate exportation);"; and

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

"(ii) In the case of an express consignment carrier facility or centralized hub facility, \$.66 per individual airway bill or bill of lading."

(2) By redesignating subparagraph (B) as subparagraph (C) and inserting after subparagraph (A) the following:



“(B)(i) For fiscal year 2004 and subsequent fiscal years, the Secretary of the Treasury may adjust (not more than once per fiscal year) the amount described in subparagraph (A)(ii) to not less than \$.35 but not more than \$1.00 per individual airway bill or bill of lading. The Secretary shall provide notice in the Federal Register of a proposed adjustment under the preceding sentence and the reasons therefor and shall allow for public comment on the proposed adjustment.

“(ii) The payment required by subparagraph (A)(ii) shall be the only payment required for reimbursement of the Customs Service in connection with the processing of an individual airway bill or bill of lading in accordance with such subparagraph, except that the Customs Service may charge a fee to cover expenses of the Customs Service for adequate office space, equipment, furnishings, supplies, and security.

“(iii)(I) The payment required by subparagraph (A)(ii) and clause (ii) shall be paid on a quarterly basis to the Customs Service in accordance with regulations prescribed by the Secretary of the Treasury.

“(II) 50 percent of the amount of payments received under subparagraph (A)(ii) and clause (ii) shall, in accordance with section 524 of the Tariff Act of 1930, be deposited as a refund to the appropriation for the amount paid out of that appropriation for the costs incurred in providing services to express consignment carrier facilities or centralized hub facilities. Amounts deposited in accordance with the preceding sentence shall be available until expended for the provision of customs services to express consignment carrier facilities or centralized hub facilities.

“(III) Notwithstanding section 524 of the Tariff Act of 1930, the remaining 50 percent of the amount of payments received under subparagraph (A)(ii) and clause (ii) shall be paid to the Secretary of the Treasury, which is in lieu of the payment of fees under subsection (a)(10) of this section.”

(b) **EFFECTIVE DATE.**—The amendments made by subsection (a) take effect on October 1, 2002.

#### **SEC. 128. NATIONAL CUSTOMS AUTOMATION PROGRAM.**

Section 411(b) of the Tariff Act of 1930 (19 U.S.C. 1411(b)) is amended by striking the second sentence and inserting the following: “The Secretary may, by regulation, require the electronic submission of information described in subsection (a) or any other information required to be submitted to the Customs Service separately pursuant to this subpart.”

#### **Subtitle D—Antiterrorism Provisions**

#### **SEC. 141. EXCLUSIVE REMEDY FOR PERSONAL SEARCH CLAIMS.**

(a) **EXCLUSIVE REMEDY.**—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) The remedy against the United States for claims arising from the search of a person made pursuant to subsection (a) by any officer or employee of the Federal government while acting within the scope of his office or employment is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee. The United States shall be liable for any such claim, and any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded without regard to when the act or omission occurred.”

(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)(A) In addition to any other requirement under this section, for each land, air, or vessel carrier required to make entry 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 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.

“(B) The Secretary shall cooperate with other appropriate Federal departments and agencies for the purpose of providing to such departments and agencies as soon as practicable cargo manifest information obtained pursuant to subparagraph (A). In carrying out the preceding sentence, the Secretary, to the maximum extent practicable, shall protect the privacy and property rights with respect to the cargo involved.”

(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 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 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), if applicable, 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;

“(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) **SHARING OF INFORMATION.**—The Secretary shall cooperate with other appropriate Federal departments and agencies for the purpose of providing to such departments and agencies as soon as practicable electronic transmission information obtained pursuant to subsection (a). In carrying out the preceding sentence, the Secretary, to the maximum extent practicable, shall protect the privacy rights of the person with respect to which the information relates.”

(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. 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.”;

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

“(ii) \$32,300,000 for fiscal year 2003.”; and

(D) by adding at the end the following:

“(iii) \$33,108,000 for fiscal year 2004.”; 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) \$51,440,000 for fiscal year 2002.”;

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

“(ii) \$54,000,000 for fiscal year 2003.”; and

(3) by adding at the end the following:

“(iii) \$57,240,000 for fiscal year 2004.”.

(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 under-declarations 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."

The CHAIRMAN pro tempore. Pursuant to House Resolution 426, the gentleman from California (Ms. WATERS) and a Member opposed each will control 30 minutes.

The Chair recognizes the gentleman from California (Ms. WATERS).

Ms. WATERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I rise to offer this substitute because the legislation, H.R. 3129, as introduced, needlessly expands the scope of Federal authority and threatens the protection of civil rights by granting broad search immunity to customs agents and by allowing warrantless searches of outgoing international U.S. mail.

We have said over and over again that we support efforts to give protection to customs agents; and when they talk to the Members of Congress about their need for protection, they were not in any way saying that they did not have some immunity. What they were saying is they wanted to get through the courts faster.

This bill goes far too far, and it is unfortunate that the majority has not been able to discuss or compromise on the critical issues of racial profiling and privacy that are raised in this legislation.

This substitute does address those civil liberties questions and retains the portion of the bill that fairly addresses issues of border security.

It has been consistently stated by the gentleman from New York (Mr. RANGEL) and others that the existing doctrine of qualified immunity shields public officials performing discretionary functions from civil damages if their conduct does not violate any clearly established statutory or constitutional rights which a reasonable person should have known. The Supreme Court has repeatedly held that the reasonableness of an officer's behavior, not the subjective good-faith standard used in this legislation, is the proper test for liability.

What the Customs Service has complained about is the pace of trial through the Federal courts. Bluntly stated, they want the cases against their agents disposed of faster, like every other civil litigant in the country. This bill's response in section 141 is the creation of a broad category of immunity, unavailable to any other law enforcement officer.

That provision is both unnecessary and dangerous to the rights of the public who deserve their day in court to protect against racial profiling and other illegal and unconstitutional searches by the Customs Service that have been highlighted in recent GAO studies.

It is important to note that the Customs Service has argued that section 141 of this legislation would apply retroactively and result in the dismissal of a host of lawsuits, many of which were brought by African American women, who are contesting the legality of disparate, intrusive searches documented by the GAO. When viewed in that light, this provision looks less like a tool to address terrorism than a broom to sweep away troublesome cases that raise issues of questionable conduct and policy.

The substitute replaces section 141's grant of immunity with an exclusive remedy against the government for the actions of customs agents who act within the scope of their authority. This compromise fairly balances the interest of customs agents who follow policy with the interests of those aggrieved persons who have been the victim of questionable searches.

With respect to privacy interests, the authors of this bill have completely failed to make a case for weakening the legal standard for the search of U.S. 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 United Parcel Service.

□ 1500

The Customs Service's interest in confiscating illegal weapons, shipments, drugs, or other contraband inbound or outbound 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 the package while they wait for the court to issue a warrant.

The U.S. Postal Service has even taken the position that there is no evidence that eroding these long-established privacy protections will bring any significant law enforcement improvements over what is achieved using existing statutorily approved law enforcement techniques.

In short, experts from the postal service have determined that this provision is unnecessary. As we search for increased security, we must remain mindful of the fact that our civil lib-

erties are a precious resource, and ensure that freedom is not a casualty.

We believe the Rangel substitute strikes the appropriate balance between civil liberties and security by correcting deficiencies in H.R. 3129 as introduced, because increased security should not come at the cost of our constitutional rights.

Of course, I would urge all of my colleagues to join me in supporting the Rangel substitute.

Mr. Chairman, I reserve the balance of my time.

The CHAIRMAN pro tempore (Mr. LAHOOD). Is the gentleman from Illinois (Mr. CRANE) opposed to the amendment?

Mr. CRANE. I rise in opposition to the amendment, Mr. Chairman.

The CHAIRMAN pro tempore. The gentleman is recognized.

Mr. CRANE. Mr. Chairman, I yield 4 minutes to the gentleman from Florida (Mr. FOLEY), our distinguished colleague from the Committee on Ways and Means.

Mr. FOLEY. Mr. Chairman, I thank the gentleman for his hard work on this bill. I strongly oppose the substitute and strongly support the base bill.

Are we giving up freedoms and liberties in this bill? Absolutely not. But when we have looked at what has happened in this country since September 11, I think it is incumbent upon us to strengthen the laws of this country and strengthen the rights of our agents to inspect packages that come. We lost a constituent in Palm Beach County through anthrax. We have lost a lot of relatives and family in the World Trade Center, and in the plane that went down in Pennsylvania.

Every time we start looking at tightening our borders and strengthening our integrity and our system, we hear these charges of civil rights abuse and civil rights violations. What about 2,800-and-some Americans who died in New York? What about their civil rights?

We have to protect our borders. This bill does that. I do not mean to be outraged, but I am at times, because I cannot understand, when we are protecting our own borders, when people are coming into this country as our guests, that we do not have the right to search them thoroughly, whether they are U.S. citizens or guests from other nations.

In order to protect domestic tranquility, we must work to focus our efforts to make certain that we do not hamstring our Customs agents, our mail inspectors, from being able to thoroughly search that evidence which may make its way into the country. Ships that come into the ports should be thoroughly screened.

We do this in this bill. We provide the mechanism and means, since we are asking for manifests before the flights and cargo arrive, so we can thoroughly screen it. We are giving \$24 million for Florida and other Gulf Coast seaports.

Florida has already been a leader in the Nation on this issue. This bill will provide technology to continue this work.

We also authorize a very important \$10 million for child cybersmuggling, which gives the money towards the National Center for Missing and Exploited Children for its operation at the child pornography tip line. We strengthen our borders in Mexico and we strengthen our borders in the north, in Canada. We are not targeting any group. We are not racially profiling. We are providing security and protection for the United States citizens of this country.

I suspect there will be acrimony on this debate. This is the first time since 1992 we have reauthorized the U.S. Customs Service, the oldest law enforcement agency in our country. I am certain there are a lot of people having vigorous debates on civil liberties and civil rights. I do not disagree that we have to be careful not to tread on the basic premises of our Constitution.

But we are at war. We have people who have threatened the integrity of this country. We have people who have destroyed the fabric of our communities through fear, intimidation, and through reckless disregard for human life. We have packages that could come in this country that could destroy our ports. So I think we have to be more proactive. I think we have to give them the tools. I think we have to provide for them some legal protection so they can make the appropriate search.

If we are to wait for a court to rule on every package that comes in this country through the U.S. mail service, or by virtue of a person carrying it across our borders, we will forever jeopardize the safety and integrity of this country. The courts do not move that fast, they do not operate that quickly. What we are trying to do is provide a level of protection for our citizens. I think it is high time we do.

I salute the committee for its hard work on this bill, and the chairman, and I salute the many Members that I believe will vote for this, because it provides, finally, the tools I think we need to not only protect our borders, but to protect our people.

Ms. WATERS. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. BECERRA).

Mr. BECERRA. Mr. Chairman, I thank the gentlewoman from California, my friend, for yielding time to me.

Mr. Chairman, the substitute is very simple, because for the most part, as I believe most of us have said earlier, this bill is actually a very good bill. It just has two provisions which are heinous, which go against our Constitution. If most Americans would have an opportunity to examine this, they would say that this does not belong here.

The first provision grants an exception to our privacy rights to allow Customs, without ever having to go after a search warrant, without ever having to

show probable cause, to open up American citizens' mail. This is a provision which they could not substantiate. They could not explain why it was so essential.

I think everyone understands why there is that exception for incoming foreign mail into this country. No one would argue that. But when it comes to Americans and the mail we send abroad, why is it so essential that Mrs. JONES' mail to her mother, who happens to live in the Netherlands, has to be opened without having to go through some scrutiny, legal scrutiny, to determine if it is fair or not for Mrs. JONES' mail to be opened without her consent?

We can do it if we just go through the regular course of getting a warrant, showing probable cause to open up Mrs. JONES' mail. But why all of a sudden do we want to be able to have exceptions?

Remember, just 6 months ago, we passed some laws that gave law enforcement much greater authority as a result of trying to deal with terrorism. But to just undo the mechanisms that we have in place to ensure that we are adequately protected from abusive officials does not seem to be right.

The second provision, which again would mostly target African American women, and that is not conjecture, that is a fact. The General Accounting Office in 2000 found that not only are African American women stopped and searched more often, but it is 9 times more often than their counterparts, Anglo or white women counterparts, 9 times more often. Guess what? It also happens to be the case that those African American women are half as likely to contain contraband as white women, American women.

So while the group that is most targeted is least likely to possess contraband, they are the ones who are most targeted. How does that make sense? When one has had their rights violated, rights under the Constitution, why should we not be able to go out there and seek justice, seek redress?

This substitute says you cannot go after monetary damage, but it also does not say forget about the constitutional rights, you also cannot go after that rogue official who went after you.

Most of our officials within Customs are excellent officers. Several have died in the line of duty. I know the person who stopped the suspected terrorist from coming down to Los Angeles and bombing, or rigging bombs at the Los Angeles International Airport, my airport, was a Customs officer in the State of Washington.

They do tremendous work. Why do we have to paint all of them with the broad brush and believe that they are all going to be bad apples or rogue officers and do these bad things? When there is one that does it, why deny us the chance to seek a constitutionally protected right?

Mr. Chairman, I would ask the chairman if he would engage with me in a brief colloquy. I have a concern that

has also been raised as to whether or not this provision, section 141 in the law, is actually retroactive, which would mean that previous bad acts by officials would also be exempted from action if this legislation were to become law.

I guess if we had to pass this, at least let us make it forward-looking, so officers are now on alert.

Mr. Chairman, I would ask the chairman if he would be willing to entertain a brief colloquy. I am concerned that this legislation, as I believe Customs is trying to profess, would be retroactive. But as I read section 141, there is nothing in the provision that says that this will apply to previous conduct of Customs officials. I would hope the chairman would clarify whether or not this law is indeed retroactive.

Mr. CRANE. Mr. Chairman, will the gentleman yield?

Mr. BECERRA. I yield to the gentleman from Illinois.

Mr. CRANE. Mr. Chairman, it is my understanding that it is absolutely not retroactive.

Mr. BECERRA. It is not retroactive. I thank the chairman for that answer, and I reclaim my time.

Mr. Chairman, we need to do everything we can to give our law enforcement men and women the tools they need. This bill does a lot to go that route of giving them the resources, the tools they need.

One of the tools they do not need is the ability to violate the Constitution. One of the tools they do not need is the ability to violate our privacy rights. I don't believe any officer from Customs would stand here and say that is what I want.

I can understand if they are saying we want to have any frivolous lawsuit against our conduct while engaging in the scope of our authority, that that should not be appropriate; that those lawsuits while they were acting in the scope of their authority should not be appropriate. Those frivolous lawsuits, absolutely.

In fact, this substitute has language which, as I said before, would not permit monetary damages against a law enforcement official acting within his scope of authority.

So I would hope that the Members of this body will recognize that this substitute is reasonable, it is sensibly based, and it tries to go after the problem that Customs tried to identify, which completely missed in providing some exceptions to constitutional law which have no place in this good legislation.

I would hope that my colleagues, as they come down, would recognize that. We want to do everything we can to elevate our good officers, but there is no reason to protect the bad apples. I would hope that Members would vote for the substitute.

Mr. CRANE. Mr. Chairman, I yield 7 minutes to our distinguished colleague, the gentleman from Indiana (Mr. SOUDER).

(Mr. SOUDER asked and was given permission to revise and extend his remarks.)

Mr. SOUDER. Mr. Chairman, first let me say that I believe that some of the statements that have been made in the course of this debate, while well-intentioned, have been bordering on outrageous. I would like to correct some of the record.

My particular involvement in this has been as chair of the Subcommittee on Criminal Justice, Drug Policy, and Human Resources in the Committee on Government Reform, where we have authorizing and oversight authority on the drug issues, which has led me into the border issues whenever we talk about drugs.

The reason our subcommittee also has jurisdiction over commerce is it leads us into trade. The reason we have jurisdiction over Justice is it leads us into immigration.

We have held 6 hearings since September 11, 3 on the north border, 3 on the south border, in addition to myself visiting many of these water crossings, as well as staff doing additional border crossings. So far, we have held hearings on the Vermont and upstate New York borders, we have held hearings in the Washington State corridor with Seattle, and in Los Angeles and Long Beach harbors, as well as in San Diego and as well as in Douglas, Arizona, on both borders.

I have also been to relatively obscure sights like Fortuna and Portal, North Dakota, where if you wanted to get a judge to clear something, you would have something in the vicinity of probably 120 miles to go with hardly a tree between there and the judge, where some of these counties only have 2 policemen in the whole county, and where our entire security perimeter is the Customs and the Border Patrol or INS agent at that little station. North Dakota ironically has more crossings with Canada than any other State.

We are totally dependent on our brave personnel at the border to make judgment decisions.

I want to cover a number of things in this, but first let me cover what I believe are some relatively outrageous statements made on the good faith searches.

First off, under this bill, they have to follow the Customs guidelines, which explicitly say never use a person's gender, race, color, religion, or ethnic background as a factor in determining any level of suspicion. That is in the report language. In the bill it says "good faith searches." This defines "good faith searches."

We have heard a lot of statements on the floor that are not accurate. In fact, when I met the officer, Diana Dean, at Port Angeles, who, because of her and 2 other Customs agents, they were able to intercept what was going to be a millenium bomber in Los Angeles, they themselves went outside of existing regulations in pursuit of the terrorist who had fled, because they had to

make a judgment that this person seemed nervous at the border. They decided that the risk was so high that they would risk a lawsuit in order to try to save people's lives in Los Angeles.

The thanks that they get is to imply that somehow they are not going to follow the Customs guidelines in gender-specific or race-specific searches because they saved people's lives. We should not have people on the border who are risking their careers or their livelihoods based on their right to protect us, and we need to work out these types of questions. They did not search somebody's mail, but, in fact, they went in hot pursuit, which was something that had they not done, the terrorist would have escaped. Had we not captured that terrorist, we would not have much of the information on al Qaeda networks that are in Montreal and other places. We would not have been able to put together the schemes.

Every day on every border every Customs agent has to ask himself or herself, what is their priority; is their priority the safety of the citizens they are hired to protect, whether it be the laws of the United States or, in fact, a terrorist?

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They have to make a decision, what is the priority. And at every border crossing, north and south, agents have told me that they are concerned about their flexibility and what their guidelines are and that they are inhibited in their ability not to racial profile, but how they are just extra cautious because they believe that without the ability to have good-faith searches and a little more clarity inside the Customs Department to change this. This is not a dramatic change, because, as I said, good faith says they cannot profile on the basis of gender, race, color, religion or ethnic background.

Now let me address another point. One of the big problems we have on the north border is that DC Bud and Quebec Gold are coming across from Canada. In the south border it is heroine and cocaine coming in. In the north border it is also precursor chemicals coming in for methamphetamines.

What goes back out from American citizens the other way or from illegals or citizens of other countries is the money. If we are going to track the money that goes to terrorists and drug cartels around the world, we have to have the ability to, when there is likely suspicion based on good-faith logical efforts, to be able to search in a timely fashion without hesitation because you are making judgment at the border. You have to establish it is a good-faith effort. You have to be able to track the money.

We have lost much of the terrorist networks around the world because we are losing track of the money. And much of that money is coming back from America going out. At the Canadian Parliamentary/U.S. Parliamen-

tary session that we had this past weekend, one of their concerns is that we are slowing at certain borders, and on our side of the border we have slowed down the borders because we are doing so much checking going out. That is because a lot of the problem is not Canadian and it is not Mexican or Central American, it is American citizens who are, in fact, bringing things in and then taking it back out and we have to have some ability to track that money.

Furthermore, one of the big concerns for all the communities, whether it be Southern California or Texas or Arizona or in the north States like Michigan and Indiana and Washington State, for example, a pickup that is made in Fort Wayne will have as many as a hundred border crossings put in the pickup because they basically have 40 percent Canadian parts and about 60 percent U.S.; and the same thing on the reverse of the border. When you have that happen, we cannot be random checking every single person that is going through. Clearly we have to have some form of better intelligence and better screening.

But we also have to have, because of the biggest busts in United States history, whether it be of drugs on the Vermont border, whether it be at Port Angeles where people save many of thousands of lives because they use their judgment as a customs agent, they have to feel that they are making the best judgment. What one of the people at the Vermont border saw was they thought there was something funny on the bottom of a truck because the bottom of the truck, one of the pieces of equipment did not look right. They decided to check this truck. It was the biggest drug haul they ever got at that border.

We depend on the discretion of these brave people on the border to do this. We need to give them some flexibility because they are trying to protect us. They still cannot harass. They still cannot single out based on that. They have to have a logical good-faith suspicion that is there.

I have a full statement I would like to put on the record on the need to reauthorize the Customs Service. I am disappointed that we did not address the overtime question. We are using these people in many cases for 60 hours a week. We are running out of the budget. We need to figure out how we will deal with this. It has been a great privilege and honor to meet so many of them. I think they should be upheld and praised and not criticized.

#### 1. NEED TO REAUTHORIZE AND IMPROVE CUSTOMS SERVICE

H.R. 3129 comes at an extremely critical time. In the wake of September 11, it is clear that we have to improve security at our nation's borders and ports of entry. Numerous threats face us at the borders: terrorism, narcotics smuggling, alien smuggling, weapons smuggling. The key agency in intercepting these threats is the U.S. Customs Service.

Customs has not been reauthorized for many years. While I am personally impressed with the job being done by the men and women at the Customs Service, it is clear that they will need more help. H.R. 3129 addresses many of the problems faced by the Customs Service, and will strengthen it as it meets the new challenges of the 21st century.

#### 2. MANIFEST AUTHORITY

Section 143 of this bill will require all carriers who are entering the U.S., whether on land, by sea, or by air, to provide the Customs Service with advance manifests of their cargo, crew and passengers.

This provision is absolutely critical in our ongoing fight against terrorism, narcotics smuggling, and other illegal contraband. The Customs Service needs to have this information before a truck, ship or airplane reaches our borders and shores. Advance information allows Customs to determine which shipments and which persons need extra scrutiny, based on the level of risk. Customs can't target the riskiest cargo, crew members and passengers if it doesn't know in advance what and who they supposedly are.

Currently, carriers are required to provide some information. The amount of information, however, varies widely depending on where trucks, ships and airplanes are arriving. In enacting this provision, I believe we will help Customs standardize and improve its targeting procedures, thus enhancing our security.

#### 3. ENHANCEMENTS IN STAFFING

Our Subcommittee has been conducting a comprehensive study of law enforcement and security at our nation's borders and ports of entry. We have been very impressed with the job being done by Customs employees at land crossings, sea ports and airports. But it is especially clear after September 11 that they need more help, particularly on the Northern border.

Section 131 of this bill authorized funds to hire 285 additional Customs inspectors for the Northern border. This is a good start in addressing the severe staffing problems faced at many of our ports of entry.

After September 11, Customs went to a heightened state of alert, meaning that Customs inspectors began conducting more inspections and working much longer hours. We have spoken to many Customs inspectors, and nearly all of them are putting in long hours of overtime. This will allow our inspectors to receive fair compensation when a national emergency forces them to put in the kind of hours they had to last fall.

#### 4. IMPROVEMENTS IN TECHNOLOGY

Section 102 of this bill provides for additional equipment and technology for Customs inspections on both the Southern and the Northern borders. At each of the ports of entry we have visited, it has been clear that the experience, dedication and judgment of indi-

vidual inspectors is the most important defense we have against those who would do us harm—like Ahmed Ressam, who was caught trying to smuggle bombs into this country in December 1999 by the alertness of Customs inspectors at Port Angeles, Washington.

However, our inspectors can't do their job if they don't have the right tools, and that means technology. Section 102 authorizes funds for additional equipment and technology at our borders and sea ports. This equipment, including VACIS scanning units, cargo container scanners, and other detection devices, allows Customs inspectors to examine far more trucks and cargo containers than they could manually.

#### 5. AUTOMATED COMMERCIAL ENVIRONMENT (ACE)

Section 101 authorizes funds to continue the development of Customs'; "next generation" computer system, the ACE system. Customs is currently using computer technology that dates back to the mid-1980's. The program is cumbersome, it frequently breaks down, and it simply isn't adaptable to current trade realities. The ACE system will fix these problems and provide the international trade community with a "single window" through which to provide information to all government agencies that regulate and inspect the goods entering the country.

#### 6. IMMUNITY FOR GOOD FAITH SEARCHES

Some people have criticized Section 141, which provides immunity from civil damages for U.S. officials conducting searches at our ports of entry. However, this provision is necessary if our Customs inspectors are going to be able to do the job we're asking them to do. We want our inspectors to be vigilant and thorough in protecting us from terrorists, drug smugglers and others who would do us harm. If so, then we need to give them the assurance that, if they are acting in good faith, they can't be hauled into court.

Ms. WATERS. Mr. Chairman, I yield 1½ minutes to the gentleman from California (Mr. BECERRA).

Mr. BECERRA. Mr. Chairman, I thank the gentlewoman for yielding me time.

Just to respond to my friend, the gentleman from Indiana (Mr. SOUDER), the activities that the gentleman described of customs officials trying to apprehend individuals who were suspects or there was probable cause to believe they were suspects, whether it was contraband or terrorist activities, all that is protected under current law because those officials would have been acting under the color of law and would have had under an objective standard the right to do that because it would have been perceived to be reasonable.

What this legislation does, it removes the objective person's standard of what is reasonable under the Constitution, and says what is subjectively reasonable. So that if the officer said, well, I believed I was reasonable in going after that African American woman and strip searching her because

I thought she might be carrying contraband, we under this legislation could not challenge that. Because so long as he believed he was acting in good faith, however that good faith is defined, because this bill does not define it, you could not go after that person.

This legislation would deny us any recourse, that African American woman, that individual who is innocent, recourse. What the substitute says, and I will yield with the time that I have, the substitute says, okay, let us protect the officers so they do not find themselves in court, but do not make the government free of liability for violations of the Constitution. Make the government clean up its act even if you do not cause individuals in the customs service to face lawsuits individually.

Mr. SOUDER. Mr. Chairman, will the gentleman yield?

Mr. BECERRA. I yield to the gentleman from Indiana.

Mr. SOUDER. Mr. Chairman, the gentleman made a misstatement of fact.

The CHAIRMAN pro tempore (Mr. NETHERCUTT). The time of the gentleman from California has expired.

Mr. CRANE. Mr. Chairman, I yield 1 minute to the gentleman from Indiana (Mr. SOUDER).

Mr. SOUDER. Mr. Chairman, the problem with this standard and, of course, somebody can take it to court if they do not think they filed in good faith, but the fact is that the burden of proof at the time of the actual what is going on at the border, the officer has to make a decision in his mind, not in an outside mind, as to whether it was in good faith. They did at Port Angeles which helped save people in Los Angeles. They made a good-faith effort in what they thought was a good-faith effort. But it intimidates a lot of officers who know if they may think it is a good-faith effort, but somebody outside does not, depending on what that group is and how, it is an inhibiting factor.

They can be sued or you can have a process if you feel it is not good faith in that officer's eyes and he would have to defend that position. It is a question of where the burden is, and you are implying that the customs officers on the border are not capable or we will have rogue officers. If they are rogue officers, they can be pursued. The question is what does the regular officer do and how is it intimidating in our border safety?

Ms. WATERS. Mr. Chairman, I yield myself 1 minute to continue to deal with the question that is before us.

I think the gentleman misunderstands. The fact of the matter is the gentleman from California (Mr. BECERRA) explained that we are not stripping away the protection. They will have immunity from liability. We are taking the liability and placing it in the hands of government rather than on the individual that would have made that decision who thought that it was a reasonable decision at that time.



Mr. Chairman, I yield to the gentleman from California (Mr. BECERRA).

Mr. BECERRA. Mr. Chairman, the further point where the gentleman from Indiana misstates what is current law and what I said, we base it because the Supreme Court has said, not on what the gentleman from Indiana (Mr. SOUDER) believes is reasonable or what I believe is reasonable. It is an objective standard, not a subjective standard.

This bill changes the Supreme Court's law that says you base reasonableness on an objective standard, and it says based reasonableness on what that officer believed was reasonable. And that is not fair because that subjective judgment could cause people's rights to be violated.

Mr. CRANE. Mr. Chairman, I reserve the balance of my time.

Ms. WATERS. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. FILNER).

Mr. FILNER. Mr. Chairman, I thank the gentlewoman for yielding me time. I want to thank the gentlewoman from California (Ms. WATERS) and the gentleman from California (Mr. BECERRA) for their strong defense of the liberties of our citizens no matter where they are. And I would say to the gentleman from Indiana (Mr. SOUDER) who has become so expert on what is going on at the border, I was at the border with him in San Diego and I was at those hearings and I did those tours. And there was nothing in those hearings that could lead me to the conclusion that he has stated here in favor of the basic bill.

I represent a border district. I represent the southernmost area of California that borders Mexico. After next year I will represent the whole California/Mexico border. In fact, I represent the border crossing in which there are the most people crossing of any place in the world; and I have represented this area for a decade and a half. So I think I know something about what is going on there and what we can achieve and what we can protect. I think we can do both. We can provide customs with the tools that they need to do their job, and we can protect the constitutional rights of my constituents and citizens from all over this country.

We had a very good bill, I am told, that would have received a large vote in support; but the bill that came to the floor sacrificed privacy under the guise of security, and so we have the Waters substitute, which I am speaking in favor of.

The immunity that is requested has not been really supported by customs. They have not made the case of why the current standard of qualified immunity is insufficient. Officers are already protected from the unwarranted claims as we have heard many times before.

As far as the mail goes, we inspect mail that comes into this country because we do not know what it might

contain. But with the mail going out, our privacy should not be unduly invaded. As we have heard several times, customs can search the mail already if they get a warrant. They can hold the mail if it is suspicious. But we should not authorize a wholesale opening of mail without a warrant.

Mr. Chairman, in these United States of America even in 2002, even after September 11, we should not try to guarantee the security of our Nation by crushing the civil rights of our people. This is not the way to go. Support the substitute. Vote down the basic bill.

Mr. CRANE. Mr. Chairman, I reserve the balance of my time.

Ms. WATERS. Mr. Chairman, how much time do I have remaining?

The CHAIRMAN pro tempore. The gentlewoman from California (Ms. WATERS) controls 14 minutes. The gentleman from Illinois (Mr. CRANE) controls 18 minutes.

Ms. WATERS. Mr. Chairman, I yield 4 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I was very pleased to hear the dialogue and debate with the gentleman from California (Mr. BECERRA) and the distinguished gentleman from Indiana (Mr. SOUDER), but I think the more we can clarify what this substitute does we might be able to get legislation that all of us could support. It is a simple process. Those of us who live every day as Americans but also have a history of discrimination by this Nation against us are very sensitive to laws that would undermine even more those basic rights. It is our cause, if you will, our particular duty to bring to this House our diverse perspective, and that is to understand what it means to racially profile young African American males, young African American women, young Hispanic men and women and others of diverse racial backgrounds.

What we say today is that this is not an indictment of customs agents. As all of us have, we have excellent and outstanding customs agents working throughout our Nation in every one of our districts. As I go through the Intercontinental Airport in Houston, Texas, every day, I see the fine work of men and women of the Customs Service. We promote and support them.

As a member of the Committee on the Judiciary, we are constantly looking for ways to enhance and provide them with the resources that they need. Let us divide ourselves with that kind of negative attack which is trying to be drawn to those of us who are now speaking about civil liberties.

It is clear and simple. The substitute is not a complicated initiative. It says this: "Remain in current law with respect to the search of mail; require a warrant, a simple probable cause." That is not a difficult proposition. Might I say that most of us are not get-

ting mail timely anyhow. This is not a comment on the U.S. Postal Service. It is not a comment on the U.S. Postal Service. It is a comment on the status of mail today because of necessary security precautions. We accept that. With that in mind, ample opportunity is given to those who believe there is need to search mail. I welcome them searching mail, but they can do it under current law and that is what the substitute provides.

□ 1530

Secondarily, with respect to the Customs agents, there is no chilling effect. Do the job. If someone determines suspiciousness, I give that person 100 percent latitude to do so. The question becomes those who willy-nilly want to seek persons who have no basis upon being sought, there is no suspiciousness, other than color of their skin, and what the substitute provides for us, which I cannot find a reason to divide on this, it protects the Customs agents 100 percent. It tells them to do their job.

If, however, an aggrieved citizen or person comes and says I know that I was targeted on the basis of not good faith, but on racial profiling, the government stands in the shoes of that agent, protects the agent, but then gives the opportunity of the aggrieved citizen to be able to seek address of their grievances.

That is the key to the substitute. Why this could not be supported by my colleagues on both sides of the aisle, to make this the kind of legislation that speaks to what we are trying to do, not a single divide on fighting terrorism but a recognition that the values of this Nation are different.

Let me finally say, Mr. Chairman, and I have said this before, we have a lot of work to do on fighting terrorism, and part of it is in the question of intelligence and sharing intelligence. It is a shame and a sham that there is a closed session dealing with this by 1 committee when other committees of jurisdiction, such as the Committee on Judiciary, have not yet held hearings regarding this important issue.

I believe if we spend our time trying to track why intelligence and memoranda is not shared up the track or up the line so that we can determine how to fix those problems, I think we can spend a lot of good energies doing that, and in this instance, I think we can spend good energies passing a good substitute to make this bill better so that we can fight terrorism in a unified voice but as well stand for the values that this Nation stands for.

Mr. Chairman, I support the substitute. I would ask my colleagues to do so, and I would ask my colleagues to join me in asking that we investigate fully why memos are not communicated that deal with protecting this Nation and providing good intelligence.

Mr. CRANE. Mr. Chairman, I yield myself such time as I may consume.

I would say to the gentlewoman on the other side of the aisle the fact that

none of our colleagues on the Committee on Ways and Means raised this issue during consideration of this bill in committee and the amendment, Rangel amendment.

Mr. Chairman, I reserve the balance of my time.

Ms. WATERS. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Chairman, I am here to urge support for the Rangel substitute which would strike, among other things, section 144 from the bill.

As the ranking member of the committee that has jurisdiction over the Postal Service, I am especially concerned about section 144. This section would allow Customs agents to inspect outbound mail without a search warrant.

Never in our Nation's history have we allowed law enforcement to inspect the outbound personal letters of our Nation's citizens without a search warrant. This is an intrusion on the privacy of the American citizens sending letters abroad, and it could have adverse effects on the delivery of letters by the Postal Service.

As many of my colleagues have heard, the American Civil Liberties Union opposes the measure, saying it violates people's expectation of privacy in the mail and that the Customs Service's interest in protecting our borders is adequately protected by its ability to secure a search warrant.

A leading association of business mailers is concerned about the provision as well, saying it would slow the pace of mail and add millions to the cost of shipping goods overseas.

The Postal Service is strongly opposed to the provision. They say it would have a detrimental impact on their ability to move mail and could jeopardize their international express mail service.

Not only is this provision troubling from a civil liberties standpoint and the standpoint of mail delivery, it may also violate our commitment under international mail treaties. In addition, it contradicts section 3623 of title XXXIX which prohibits inspection of certain classes of mail without a search warrant. The provision does not amend title XXXIX and instead would create a statutory conflict.

The Customs Service has full authority to search outbound mail now as long as it first obtains a search warrant. Customs argues that this requirement creates too much of a burden for them and that they need broader search authority. It may be that the Customs Service needs this authority, but the Committee on Ways and Means has never held a hearing on this issue to explore why this authority is needed or its impact on civil liberties, and the Committee on Government Reform, which has jurisdiction over the Postal Service, has not had an opportunity to examine this issue at all despite its impacts on the Postal Service.

These are serious concerns that need to be explored. We should not approve

this unprecedented authority until the Committee on Ways and Means and the Committee on Government Reform have had an opportunity to examine the issue very, very carefully. I urge my colleagues to vote for the Rangel substitute and give us an opportunity to explore these concerns.

Ms. JACKSON-LEE of Texas. Mr. Chairman, will the gentleman yield?

Mr. WAXMAN. I yield to the gentleman from Texas.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I thank the gentleman from California (Mr. WAXMAN) for bringing that to our attention, and I have just been informed that the Democratic members of the Committee on Ways and Means raised some of those concerns under the gentleman's jurisdiction in committee and even tried to offer amendments. So I thank the gentleman very much for bringing this to the floor at this time.

Mr. WAXMAN. Mr. Chairman, reclaiming my time, well, they might have raised concerns and offered amendments, but the committee that has jurisdiction over the Postal Service did not have a chance to examine it nor did the Committee on Ways and Means, as far as I know, hold hearings on the matter which would have brought in expert testimony.

Mr. CRANE. Mr. Chairman, I reserve the balance of my time.

Ms. WATERS. Mr. Chairman, I have no more speakers. I reserve the balance of my time.

The CHAIRMAN pro tempore (Mr. NETHERCUTT). The gentleman from Illinois (Mr. CRANE) has the right to close.

Ms. WATERS. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, I thought we had the right to close.

The Rangel amendment, the substitute states that Customs inspectors are not liable for civil damages for suits brought in connection with a personal search. However, the bill does state that the U.S. Government consents to be sued and to be held liable for civil damages for suits brought in connection with the wrongful personal search. I think it is necessary for me to say that because I think there is some confusion about what this amendment does.

Before I talk about this amendment any more, I think it is important for me to clarify that there are many good things in this bill. This bill includes good legislation, all of which we include in the substitute. This bill includes important authorization for appropriations such as providing Customs with funding above the administration's request and equals that provided in the appropriations process.

Most of the increased funding allows for an authorization of \$308 million for each fiscal year to ensure that the Customs automation system will be developed in a timely fashion, providing USTR with more than requested by the administration and providing the International Trade Commission with

its full fiscal year request. The bill also authorizes such sums as needed to reestablish New York Customs headquarters and operations.

Finally, the bill authorizes \$1.3 million for Customs to hire additional personnel to assist ATOA beneficiaries to comply with visa and textile transshipment requirements.

The bill also includes provisions that will help ensure the safety of our borders, including requiring all carriers to file an electronic manifest describing passengers and cargo before entering the country.

So I do not want anyone to get the idea that somehow because we have a substitute that we have ignored those parts of the bill that we think are good, but we think that it is very important for us not to jump on the bandwagon of undermining the civil liberties of American citizens in the name of fighting terrorism. We believe in fighting terrorism, but we do not believe that we undermine or waive the Constitution of the United States to do so.

Let me just say that our Customs agents have all of the authority that they need to do the searches that they want to do, that they are protected with qualified liability, and they do not need to have this bill which, in fact, goes far beyond anything that they have requested.

Let me remind the Members of this Congress that with this authority, with this protection, we do expect our agents to be careful and to be reasonable. They have the ability to strip-search. My colleagues heard the GAO study. We are not making this up. The GAO study talked about the fact that African American women are searched much more than other women. It talked about the fact that African American women have much less contraband, despite the fact they are searched more.

While there are those who are willing to throw out the Constitution, I suspect they are only willing to do it until their wife comes through, or their sister, or their neighbor or their friend, and is strip-searched in ways that they cannot believe is reasonable.

Let me just say that this bill will transfer the liability from the individual agents to the government where it belongs. There are many people who work for government and are agents of the government of the United States and they do not have to accept the liability, that it is on the shoulders of the government of the United States, and that is the way that it should be.

I think that the case has been made here today. I think that these issues were brought up in committee. We see the dissenting views of those who signed a letter indicating their dissenting views, and I would say that not only has the case been made but that the Members of the Congress of the United States should not go throw out the Constitution of the United States in an effort to deal with terrorism.

Mr. Chairman, I yield the balance of the time to the gentleman from Michigan (Mr. CONYERS), the ranking member of the Committee on the Judiciary.

Mr. CONYERS. Mr. Chairman, how much time remains?

The CHAIRMAN pro tempore. The gentleman from Michigan (Mr. CONYERS) is recognized for the last 2 minutes on the debate of the gentleman's time.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Chairman, I thank the gentlewoman from California (Ms. WATERS) for yielding me the time, and I compliment her on her statement.

When H.R. 3129 came to the floor on suspension last December and here again today, we argued that the legislation introduced needlessly expanded the scope of Federal authority and threatened the protection of civil rights by granting search immunity to Customs agents so broad and by allowing warrantless searches of outgoing international U.S. mail, that the measure was unacceptable.

In defeating the legislation, we reiterated our commitment to aggressively investigating and preventing future terrorist attacks and agreed to work with the majority to improve the legislation, but, unfortunately, the majority has not been open to discussion and compromise on the critical issues of racial profiling and privacy that are raised by this legislation. Why? Although the Rangel substitute addresses those civil liberty questions and retains the portion of the bill that reasonably and fairly addresses the issues of border security.

Meetings between staff and the Customs Service have clarified the Customs immunity question and proven that the section 141 immunity provision is unnecessary. Although Customs failed to document the specific cases, they disclosed, and we are unaware of any case where a Customs agent, acting within the scope of his authority, has been subject to prejudgment attachment of their personal assets in any kind of a trial that followed.

When H.R. 3129 came to the floor on suspension last December and again here today, we have argued that the legislation as introduced needlessly expanded the scope of federal authority and threatened the protection of civil rights by granting broad search immunity to customs agents and by allowing warrantless searches of outgoing international U.S. mail. In defeating the legislation, we reiterated our commitment aggressively investigating and preventing future terrorist attacks and agreed to work with the majority to improve the legislation.

It is truly unfortunate that the majority has not been open to discussion and compromise on the critical issues of racial profiling and privacy that are raised by this legislation. We believe that the Rangel substitute addresses those civil liberty questions and retains the portion of the bill that fairly addresses issues of border security.

Meetings between staff and the Customs Service have clarified the customs immunity question and proven the fact that the Section 141 immunity provision is unnecessary. Although Customs failed to document the specific cases, they disclosed and we are unaware of any case where a Customs agent, acting within the scope of their authority, has been subject to a pre-judgment attachment of their personal assets or judgement of any kind following a trial.

As we have consistently stated, 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 reasonableness of an officer's behavior, not the subjective "good faith" standard used in this legislation, is the proper test for liability.

What the Custom's Service has complained about is the pace of trial through the federal courts. Bluntly stated, they want the cases against their

AGENTS DISPOSED OF FASTER, LIKE EVERY OTHER CIVIL LITIGANT IN THE COUNTRY. THIS BILL'S RESPONSE IN SECTION 141 IS THE CREATION OF A BROAD CATEGORY OF IMMUNITY, UNAVAILABLE TO ANY OTHER LAW ENFORCEMENT OFFICER.

That provision is both unnecessary and dangerous to the rights of the public, who deserve their day in court to protect against racial profiling and other illegal and unconstitutional searches by the Customs Service that have been highlighted in recent GAO studies.

It is important to note that the Custom's Service has argued that Section 141 of this legislation would apply retroactively and result in the dismissal of a host of lawsuits, many of which were brought by African-American women who are contesting the legality of disparate intrusive searches documented by the GAO. When viewed in that light, this provision looks less like a tool to address terrorism than a broom to sweep away troublesome cases that raise issues of questionable conduct and policy.

The substitute replaces Section 141's grant of immunity with an exclusive remedy against the government for the actions of Customs agents who act within the scope of their authority. This compromise fairly balances the interests of Customs agents, who follow policy, with the interests of those aggrieved persons who have been the victim of questionable searches.

With respect to privacy interests, the authors of this bill have completely failed to make a case for weakening the legal standard for the search U.S. 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.

The Customs Service's interest in confiscating illegal weapons' shipments, drugs or other contraband inbound or outbound 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.

The U.S. Postal Service has even taken the position that "There is no evidence that erod-

ing these long established privacy protections will bring any significant law enforcement improvements over what is achieved using existing, statutorily approved law enforcement techniques." In short, experts from the Postal Service have determined that this provision is unnecessary.

As we search for increased national security, we must remain mindful of the fact that our civil liberties are a precious resource and ensure that freedom is not a casualty of vigilance. We believe that the Rangel substitute strikes the appropriate balance between civil liberties and security by correcting deficiencies in H.R. 3129 as introduced. Because increased security should not come at the cost of our constitutional rights, I urge you to join me in supporting the substitute.

Mr. CRANE. Mr. Chairman, I yield myself such time as I may consume.

My bill would provide Customs with new, necessary search tools in light of America's new security needs while balancing the need for privacy.

The Rangel substitute guts some key provisions. By striking the outbound mail provision, the Rangel substitute allows continued money-laundering to occur. The Rangel immunity provision leaves the Federal Government open to a new class of torts. My bill protects only those inspectors who act in good faith.

Under my bill the government can be sued under the Federal Torts Claims Act.

Mr. Chairman, I urge a no vote on the Rangel substitute and a yes vote on H.R. 3129.

Mr. Chairman, I yield back the balance of my time.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Chairman, I rise in support of the Rangel Amendment to H.R. 3129, the Customs Border Security Act of 2001.

As a Member of Congress, and as an African American, I cannot tolerate the practice of stopping and searching American citizens for no reason other than their race. As I studied H.R. 3129 that is what I feared would happen.

As I thought about this issue, I realized that the words that went to the core of this issue had been written over two centuries ago, and could be found within one of the documents sitting on my desk—The Constitution of the United States. For the Constitution's Preamble states: "We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

Let me repeat the key phrases that are critical to this issue: "We, the people of the United States . . . establish justice, insure domestic tranquility, do ordain and establish this Constitution."

The attitude demonstrated by too many law enforcement officers must change from inaccurately resuming the guilt of people of color. This is the least that our Constitution requires of them.

H.R. 3129 is bad for America's citizens. However, the Rangel Amendment addresses the core concern of Customs: that Customs inspectors are not personally liable for monetary

damages in civil suits involving personal searches; the amendment also ensures that there is recourse for potential abuses of civil rights by providing recourse against the U.S. government.

Section 141 of the bill provides immunity to a Customs officer conducting a search of a person or property provided he or she was acting in "good faith."

The term "good faith" is not defined in the bill. An officer could engage in blatantly discriminatory conduct, but if he in "good faith" believes that he was justified in doing so, he could not be held liable.

Customs officers are already entitled to qualified immunity that protects them from unwarranted claims related to illegal and unconstitutional searches.

This bill would expand immunity so as to make it nearly impossible for a person seeking redress for an unconstitutional search.

No law enforcement official is entitled to this broad grant of immunity and the Customs Office, which has a documented history of racial profiling, should not be an exception to the qualified immunity standard. Given that Congress has recently expanded the police powers of government officials, it should not at the same time cut back on the mechanisms in existing law that are designed to ensure police powers are not abused.

It is our duty to breathe life into the words that protect every American Citizen, no matter the color of their skin. We must remember Dr. Martin Luther King's words: "Injustice anywhere is a threat to justice everywhere."

I urge my colleagues to vote against H.R. 3129 and support the Rangel Amendment.

□ 1545

The CHAIRMAN pro tempore (Mr. NETHERCUTT). All time has expired.

The question is on the amendment in the nature of a substitute offered by the gentlewoman from California (Ms. WATERS).

The question was taken; and the Chairman pro tempore announced that the noes appeared to have it.

#### RECORDED VOTE

Ms. WATERS. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 197, noes 231, not voting 6, as follows:

[Roll No. 192]

AYES—197

Abercrombie	Capps	Dooley
Ackerman	Capuano	Doyle
Allen	Cardin	Edwards
Andrews	Carson (IN)	Engel
Baca	Clay	Eshoo
Baird	Clayton	Etheridge
Baldacci	Clement	Evans
Baldwin	Clyburn	Farr
Barrett	Condit	Fattah
Becerra	Conyers	Filner
Bentsen	Costello	Flake
Berkley	Coyne	Ford
Berman	Crowley	Frank
Berry	Cummings	Frost
Bishop	Davis (CA)	Gephardt
Blagojevich	Davis (FL)	Gonzalez
Blumenauer	Davis (IL)	Gordon
Bonior	DeFazio	Green (TX)
Borski	DeGette	Gutierrez
Boswell	Delahunt	Hall (OH)
Boucher	DeLauro	Harman
Brady (PA)	Dicks	Hastings (FL)
Brown (FL)	Dingell	Hill
Brown (OH)	Doggett	Hilliard

Hinchey	McDermott	Roybal-Allard
Hinojosa	McGovern	Rush
Hoefel	McIntyre	Sabo
Holt	McKinney	Sanchez
Honda	McNulty	Sanders
Hooley	Meehan	Sandlin
Hoyer	Meek (FL)	Sawyer
Inslee	Meeks (NY)	Schakowsky
Israel	Menendez	Schiff
Jackson (IL)	Millender-McDonald	Scott
Jackson-Lee (TX)	Miller, George	Serrano
Jefferson	Mink	Sherman
John	Mollohan	Skelton
Johnson, E. B.	Moore	Slaughter
Jones (OH)	Moran (VA)	Smith (WA)
Kanjorski	Morella	Snyder
Kaptur	Murtha	Solis
Kennedy (RI)	Nadler	Spratt
Kildee	Napolitano	Stark
Kilpatrick	Neal	Strickland
Kind (WI)	Oberstar	Stupak
Klecza	Obey	Tanner
Kucinich	Oliver	Tauscher
LaFalce	Ortiz	Thompson (CA)
Lampson	Owens	Thompson (MS)
Langevin	Pallone	Thurman
Lantos	Pascarell	Tierney
Larsen (WA)	Pastor	Towns
Larson (CT)	Paul	Udall (CO)
Lee	Payne	Udall (NM)
Levin	Pelosi	Velazquez
Lewis (GA)	Pomeroy	Visclosky
Lofgren	Price (NC)	Waters
Lowey	Rahall	Watson (CA)
Lynch	Rangel	Watt (NC)
Maloney (NY)	Reyes	Waxman
Markey	Rivers	Weiner
Matheson	Rodriguez	Wexler
Matsui	Rohrabacher	Woolsey
McCarthy (MO)	Ross	Wu
McCarthy (NY)	Rothman	Wynn
McCollum		

NOES—231

Aderholt	Dreier	Johnson, Sam
Akin	Duncan	Jones (NC)
Armey	Dunn	Keller
Bachus	Ehlers	Kelly
Baker	Ehrlich	Kennedy (MN)
Ballenger	English	Kerns
Barcia	Everett	King (NY)
Barr	Ferguson	Kingston
Bartlett	Fletcher	Kirk
Barton	Foley	Knollenberg
Bass	Forbes	Kolbe
Bereuter	Fossella	LaHood
Biggart	Frelinghuysen	Latham
Bilirakis	Gallely	LaTourette
Blunt	Ganske	Leach
Boehert	Gekas	Lewis (CA)
Boehner	Gibbons	Lewis (KY)
Bonilla	Gilchrest	Linder
Bono	Gillmor	Lipinski
Boozman	Gilman	LoBiondo
Boyd	Goode	Lucas (KY)
Brady (TX)	Goodlatte	Lucas (OK)
Brown (SC)	Goss	Luther
Bryant	Graham	Maloney (CT)
Burr	Granger	Manzullo
Buyer	Graves	McCrery
Callahan	Green (WI)	McHugh
Calvert	Greenwood	McInnis
Camp	Grucci	McKeon
Cannon	Gutknecht	Mica
Cantor	Hall (TX)	Miller, Dan
Capito	Hansen	Miller, Gary
Carson (OK)	Hart	Miller, Jeff
Castle	Hastings (WA)	Moran (KS)
Chabot	Hayes	Myrick
Chambliss	Hayworth	Nethercutt
Coble	Hefley	Ney
Collins	Herger	Northup
Combest	Hilleary	Norwood
Cooksey	Hobson	Nussle
Cox	Hoekstra	Osborne
Cramer	Holden	Ose
Crane	Horn	Oxley
Crenshaw	Hostettler	Pence
Cubin	Houghton	Peterson (MN)
Culberson	Hulshof	Peterson (PA)
Cunningham	Hunter	Petri
Davis, Jo Ann	Hyde	Phelps
Davis, Tom	Isakson	Pickering
Deal	Issa	Pitts
DeLay	Istook	Platts
DeMint	Jenkins	Pombo
Diaz-Balart	Johnson (CT)	Portman
Doolittle	Johnson (IL)	Pryce (OH)

Putnam	Shays	Thomas
Quinn	Sherwood	Thornberry
Radanovich	Shimkus	Thune
Ramstad	Shows	Tiahrt
Regula	Shuster	Tiberi
Rehberg	Simmons	Toomey
Reynolds	Simpson	Turner
Riley	Skeen	Upton
Roemer	Smith (MI)	Vitter
Rogers (KY)	Smith (NJ)	Walden
Rogers (MI)	Smith (TX)	Walsh
Ros-Lehtinen	Souder	Wamp
Roukema	Stearns	Watkins (OK)
Royce	Stenholm	Weldon (FL)
Ryan (WI)	Stump	Weldon (PA)
Ryun (KS)	Sullivan	Weller
Saxton	Sununu	Whitfield
Schaffer	Sweeney	Wicker
Schrock	Tancredo	Wilson (NM)
Sensenbrenner	Tauzin	Wilson (SC)
Sessions	Taylor (MS)	Wolf
Shadegg	Taylor (NC)	Young (AK)
Shaw	Terry	Young (FL)

NOT VOTING—6

Burton	Emerson	Trafficant
Deutsch	Mascara	Watts (OK)

□ 1609

Mrs. JOHNSON of Connecticut and Messrs. YOUNG of Alaska, SHERWOOD, SKEEN, WELLER, BACHUS, LUTHER, and GILMAN changed their vote from "aye" to "no."

Ms. MCCARTHY of Missouri, Ms. HOOLEY of Oregon and Mr. DAVIS of Florida changed their vote from "no" to "aye."

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

#### PERSONAL EXPLANATION

Mr. WATTS of Oklahoma. Mr. Speaker, I was unavoidably detained in my district and missed Recorded Votes on Wednesday, May 22, 2002. I would like the RECORD to reflect that, had I been present, I would have cast the following votes:

On agreeing to H. Res. 427, rollcall vote No. 186, I would have voted "yea;"

On approving the Journal, rollcall vote No. 187, I would have voted "yea;"

On agreeing to H. Res. 426, rollcall vote No. 188, I would have voted "yea;"

On agreeing to the Conference Report, rollcall vote No. 189, I would have voted "yea;"

On Passage of H.R. 3717, rollcall vote No. 190, I would have voted "yea;"

On Passage of H. Res. 424, rollcall vote No. 191, I would have voted "yea;"

On Agreeing to the Waters Amendment, rollcall vote No. 192, I would have voted "nay."

The CHAIRMAN pro tempore (Mr. NETHERCUTT). The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN pro tempore. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. LAHOOD) having assumed the chair, Mr. NETHERCUTT, Chairman pro tempore of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 3129) to authorize appropriations for fiscal years