S. HRG. 99-800

FISCAL YEAR 1986 BUDGET FOR CUSTOMS SERVICE, INTERNATIONAL TRADE COMMISSION, AND U.S. TRADE REPRESENTATIVE

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

OF THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

MAY 12, 1986

Printed for the use of the Committee on Finance

U.S. GOVERNMENT PRINTING OFFICE

62-305 O WASHINGTON : 1986

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

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MONDAY, MAY 12, 1986

U.S. SENATE,
SUBCOMMITTEE ON INTERNATIONAL TRADE,
COMMITTEE ON FINANCE,
Washington, DC.

The committee met, pursuant to notice, at 1:53 p.m., in room SD-215, Dirksen Senate Office Building, Hon. John C. Danforth (chairman) presiding.

Present: Senators Danforth, Chafee, Grassley, Long, Bentsen, and Baucus.

[The press release announcing the hearing and the prepared statement of Senator Pete Wilson follow:]

[Press release No. 86-043, May 7, 1986]

FINANCE COMMITTEE CHANGES TIME OF HEARING ON BUDGETS OF CUSTOMS SERVICE, INTERNATIONAL TRADE COMMISSION, AND THE OFFICE OF THE U.S. TRADE REPRESENTATIVE

Senator Bob Packwood (R-Oregon), Chairman of the Committee on Finance, announced today that the time of the hearing of the subcommittee on International Trade on the requests for authorizations of appropriations for Fiscal Year 1987 by the U.S. International Trade Commission, the U.S. Customs Service and the Office of the United States Trade Representatives has been changed. The new time for the hearing is 1:45 p.m., Monday, May 12, 1986, in Room SD-215 of the Dirksen Senate Office Building. Senator John C. Danforth (R-Missouri), Chairman of the Subcommittee on International Trade, will preside.

PETE WILSON
CALIFORNIA

COMMITTEES
ARMED SERVICES
AGRICULTURE, NUTRITION AND FORESTRY
SPECIAL COMMITTEE ON AGING
JOINT ECONOMIC COMMITTEE

United States Senate
WASHINGTON, DC 20510

May 12, 1986

The Honorable John C. Danforth
Chairman
Subcommittee on International Trade
Committee on Finance
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I am writing to express my strong support for adequate funding for the Office of the United States Trade Representative. Because of prior commitments, I am not able to appear at your hearing. However, I would appreciate your making this brief letter a part of the official record.

You are personally well aware, as is the Committee, that the demands placed on the USTR and his staff are significant. Indeed, in keeping with a more aggressive stance against unfair foreign trade practices -- to a great degree at the urgings of the Congress -- the heavy workload is increasing.

The actions filed under section 301 of the Trade Act of 1974, particularly as it was amended in 1984 by your legislation, self-initiated cases under the same law, preparations for a new round of multilateral trade negotiations, and the negotiations for a comprehensive free trade agreement with Canada all must be addressed -- and that requires adequate staffing and allowance for necessary expenses.

From last year's budget to this year's budget request, the funding level for USTR has been reduced by $1 million. This approach simply will not work. And, matters will deteriorate further if we pass trade legislation along the lines of S. 1860, the omnibus trade bill, which I support.

Clearly, we must decide if we really want the Administration to take a harder line on trade. If we do, we must be willing to pay for it.

Fortunately, with your support, by a vote of 95-2 the Senate adopted my amendment to the budget resolution that included a $1 million increase for USTR. This represents an increase of 8 percent over the amount requested, but simply holds the level that we set last year -- without an increase for inflation. Perhaps we should do more, but we certainly should do no less.

Thank you for your consideration.

Sincerely,

PETE WILSON

Senator DANFORTH. Mr. Von Raab, would you like to begin? I understand you have another hearing which you are due to attend. What is your deadline?

Mr. VON RAAB. I think if I could be out of here by 2:15, 2:30, it would be helpful. But it is another Senate committee. I am sure they would understand.

Senator DANFORTH. All right. Why don't you proceed, then?

STATEMENT OF HON. WILLIAM VON RAAB, COMMISSIONER OF CUSTOMS, CUSTOMS SERVICE

Commissioner VON RAAB. As is usually the case, I have several statements, one longer than the other. I would like to submit the longer statement for the record.

Senator DANFORTH. Automatically done.

Commissioner VON RAAB. Thank you very much.

I will read from the shorter statement, but only include those matters that I think might be of particular interest to this committee.

First off, let me thank you and all the members of the committee for this opportunity to appear before you today to present our 1987 authorization request of $693 million and 12,494 direct average positions for salaries and expenses, and $54,700,000 for operations and maintenance of the air program.

Customs is also requesting an authorization of $8 million for the forfeiture fund and $365,000 to recover anticipated reimbursements for services of small airports.

The Customs salaries and expenses in fiscal year 1987 authorization request represents a net increase of $6,831,000 from Customs fiscal year 1986 budget. Included in the 1987 salaries and expenses authorization request are $11 million for ongoing automation and enforcement communication programs; $24,792,000 for increases necessary to maintain current operating levels; management savings and nonrecurring expenses of $15,127,000; and savings of $9,665,000 achieved by implementation of a selective hiring policy.

This budget request also includes adjustments to the fiscal year 1986 continuing resolution level approved by Congress. The salaries and expenses appropriation includes a reduction of $30,831,000 and 777 average positions as required by Gramm-Rudman-Hollings legislation. The Air Program operation and maintenance fiscal year 1986 appropriation includes a reduction of $3,225,000 pursuant to Gramm-Rudman-Hollings.

At the outset, I wish to allay the concerns many of us have and have expressed on the impact of Gramm-Rudman and other reductions proposed for Customs in 1986 and 1987.

Frankly, the budget levels for salaries and expenses and the Air Program operation and maintenance do not permit us to do everything we might wish to do during these years. Our situation, however, is similar to many other agencies. The current budget deficit means that each of us must do our share, and we are willing to do ours.

You will note that the 1986 level and the 1987 proposed budget level require some hard choices. However, in implementing the necessary actions, Customs policy is to minimize any impact on the

operational and enforcement capabilities of Customs field units. Wherever possible, the cutbacks are being imposed so that revenue collections, passenger, vehicle and cargo processing are not significantly impacted.

On the enforcement side, Customs air, marine and investigative programs are to remain fully staffed and investigative casework will be funded at its previous level.

On the whole, we believe these goals are being achieved. Of course, in 1987, Customs will continue to expedite development and implementation of what we call our automated commercial system. This is a very, very important initiative that Customs has been undertaking now for several years. And when finally completed, it should raise productivity and continue to provide efficient service even as workloads increase.

We are requesting $3 million for this enhancement which will ultimately pay for itself in cost savings for Customs in the importing community. Customs law enforcement programs, we believe, will be maintained through both the 1986 and 1987 budget levels. Of particular importance are some of the improvements that we expect to make to the Customs, Treasury enforcement communications system.

In this sense, there is an $8 million request for an enhancement to expand and integrate the existing automated enforcement efforts.

Of particular interest to this Trade Committee are Customs emphasis in its fraud efforts against unauthorized steel, textile, wearing apparel, imports, drawback and trademark and copyright violations. In fiscal year 1986, our task force operations will continue to direct efforts against illegal merchandise before it enters the U.S. commerce. The task force will focus on high-risk importations at major ports.

Customs Service goals also, of course, include continued efficient cargo and passenger processing. Since the vast majority of Customs transactions involve law-abiding persons and firms, Customs offices are directing their primary attention to high-risk passengers and cargo.

It is clear to me that effective enforcement and efficient facilitation can go hand in hand without contradiction or without diminishing our law enforcement.

As I have stated in previous appearances before this committee, I believe an important part of my mandate is to implement efficient and effective operations in management at the lowest possible cost. At this time when the entire Federal budget must be closely monitored to eliminate excessive and duplicative costs and significant budgetary reductions are required, this goal becomes a priority for all agency managers. I believe Customs is no exception and must shoulder its full share of the cutbacks.

In 1987, we are proposing to incorporate in our budget management initiatives that will produce $21,131,000 in savings. In addition to a selective hiring policy which limits hiring to priority enforcement and revenue protection programs, the Customs Service will implement significant productivity savings derived from automation and streamline port and district operations.

The Customs Service is again proposing to consolidate appraisement centers and redesignate districts. Customs processing and enforcement programs will be structured around the concept of a fully operational redesignated district staffed by a full complement of inspectors and import specialists. Entries would be continued to be filed as previously, but the actual processing will be at the appropriate district office.

Although our budget initiative does include single shifts at airports as part of the management savings in 1986 and 1987, Customs has reconsidered this proposal, as I know you are well aware, since we have discussed the matter. In light of the recently enacted consolidated omnibus Budget Reconciliation Act which authorized a reimbursement to Customs appropriations for inspectional overtime costs, we have decided that it is not feasible or warranted to implement this proposal in 1986.

Since the budget numbers for 1987 have not been established between the administration and the legislative branch, we must continue to consider single shifts as a possibility for 1987, but it will depend on Customs overall budget situation.

Of course, a major concern of the Customs Service remains its air program. But even though some of the moneys proposed for the air program would be reduced, we believe that the budget, as proposed, would maintain a reasonable level of service and interdiction capability in this area.

This concludes my introductory statement. We are available to discuss the details of the request and answer your or any other member's questions.

Thank you very much.

Senator DANFORTH. Thank you, Commissioner.

[The prepared written statement of Commissioner Von Raab follows:]

STATEMENT OF WILLIAM VON RAAB

COMMISSIONER OF CUSTOMS

FOR PRESENTATION BEFORE THE SENATE FINANCE COMMITTEE

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, WE APPRECIATE THIS OPPORTUNITY TO APPEAR BEFORE YOU TODAY TO PRESENT THE U.S. CUSTOMS SERVICE FY 1987 AUTHORIZATION REQUEST OF $693,000,000 AND 12,494 DIRECT AVERAGE POSITIONS FOR SALARIES AND EXPENSES AND $54,700,000 FOR OPERATIONS AND MAINTENANCE OF THE AIR PROGRAM. CUSTOMS ALSO IS REQUESTING AN AUTHORIZATION OF $8,000,000 FOR THE FORFEITURE FUND AND $365,000 TO RECOVER ANTICIPATED REIMBURSEMENTS FOR SERVICES AT SMALL AIRPORTS.

CUSTOMS SALARIES AND EXPENSES FY 1987 AUTHORIZATION REQUEST REPRESENTS A NET INCREASE OF $6,831,000 FROM CUSTOMS FY 1986 BUDGET. INCLUDED IN THE FY 1987 S&E AUTHORIZATION REQUEST ARE $11,000,000 FOR ONGOING AUTOMATION AND ENFORCEMENT COMMUNICATION PROGRAMS; $24,792,000 FOR INCREASES NECESSARY TO MAINTAIN CURRENT OPERATING LEVELS; MANAGEMENT SAVINGS AND NON-RECURRING EXPENSES OF $15,127,000; AND SAVINGS OF $9,665,000 ACHIEVED BY IMPLEMENTATION OF A SELECTIVE HIRING POLICY.

THIS BUDGET REQUEST ALSO INCLUDES PROPOSED ADJUSTMENTS TO THE FY 1986 CONTINUING RESOLUTION LEVEL APPROVED BY CONGRESS. THE SALARIES AND EXPENSES APPROPRIATION INCLUDES A REDUCTION OF $30,831,000 AND 777 AVERAGE POSITIONS AS REQUIRED BY GRAMM-RUDMAN-HOLLINGS LEGISLATION. THE AIR PROGRAM OPERATION AND MAINTENANCE FY 1986 APPROPRIATION INCLUDES A REDUCTION OF $3,225,000 PURSUANT TO GRAMM-RUDMAN-HOLLINGS.

CUSTOMS POLICY IN IMPLEMENTING THESE REDUCTIONS IS TO MINIMIZE ANY IMPACT UPON THE OPERATIONAL AND ENFORCEMENT CAPABILITIES OF CUSTOMS FIELD UNITS. WHEREVER POSSIBLE, THE CUTBACKS ARE BEING IMPOSED SO THAT REVENUE COLLECTIONS, PASSENGER, VEHICLE, AND CARGO PROCESSING ARE NOT SIGNIFICANTLY AFFECTED. ON THE ENFORCEMENT SIDE, CUSTOMS AIR, MARINE, AND INVESTIGATIVE PROGRAMS ARE TO REMAIN FULLY STAFFED AND INVESTIGATIVE CASEWORK WILL BE FUNDED AT ITS PREVIOUS LEVELS. ON THE WHOLE, WE BELIEVE THESE GOALS ARE BEING ACHIEVED.

AT THE OUTSET, I WISH TO ALLAY THE CONCERNS MANY OF YOU HAVE EXPRESSED ON THE IMPACT OF GRAMM-RUDMAN. FRANKLY, THE BUDGET LEVELS FOR S&E AND THE AIR PROGRAM DO NOT PERMIT US TO DO EVERYTHING WE MIGHT WISH TO DO DURING THESE YEARS. OUR

SITUATION, HOWEVER, IS SIMILAR TO MANY OTHER AGENCIES. THE CURRENT BUDGET DEFICIT MEANS THAT EACH OF US MUST DO OUR SHARE AND WE ARE WILLING TO DO OURS.

THEREFORE, YOU WILL NOTE THAT OUR FY 1986 LEVEL AND OUR FY 1987 PROPOSED BUDGET LEVEL REQUIRED SOME "HARD" CHOICES. IN THESE, AS WELL AS FUTURE YEARS, THERE WILL NOT BE SUFFICIENT FUNDS TO ACHIEVE ALL OF THE GOALS RELATED TO CONTROLLING DRUG SMUGGLING OR PROCESSING OF CARGO, PERSONS, AND VEHICLES. UNDER THESE CIRCUMSTANCES, IT IS IMPERATIVE THAT CUSTOMS BEGIN TAILORING ITS OPERATIONAL RESPONSIBILITIES TO ITS PROJECTED RESOURCES. DURING THIS TRANSITION PERIOD, THERE MAY BE SOME DISLOCATION, BUT WE FIRMLY BELIEVE THAT OUR PROPOSALS WILL NOT PRODUCE ANY SERIOUS INCONVENIENCE FOR IMPORTERS OR TRAVELERS AND WILL PERMIT US TO RETAIN A STRONG INTERDICTION EFFORT AT OUR LAND, SEA, AND AIR BORDERS.

MAJOR ACCOMPLISHMENTS

THE CUSTOMS SERVICE, ONCE THE MAIN SOURCE OF FEDERAL MONIES, STILL CONTINUES TODAY TO COLLECT SIGNIFICANT REVENUES AS WELL AS

TO ASSUME THE RESPONSIBILITY FOR INTERDICTING DRUGS AND OTHER CONTRABAND ATTEMPTING TO ILLEGALLY ENTER THE COUNTRY. ALTHOUGH THE PRIMARY OBJECTIVE OF THE TARIFF ACT IS THE PROTECTION OF AMERICAN INDUSTRY, REVENUE COLLECTIONS FROM ITS ENFORCEMENT PRODUCED $13.2 BILLION IN FY 1985, AND ARE PROJECTED TO REACH $15.1 BILLION IN FY 1987.

AS USUAL, CUSTOMS ALSO HAD A BUSY YEAR PROCESSING A HEAVY VOLUME OF TRAFFIC AND TRADE GENERATED BY A GROWING INTERNATIONAL ECONONY. THE CUSTOMS WORKFORCE CLEARED SOME 290 MILLION PERSONS, 6.9 MILLION MERCHANDISE ENTRIES AND MORE THAN $335 BILLION IN CARGO ENTERING THE COUNTRY. IN ADDITION, ABOUT 90 MILLION VEHICLES, VESSELS, AND AIRCRAFT WERE PROCESSED. PROJECTIONS FOR FY 1987 INDICATE CONTINUED GROWTH AND A HEAVY WORKLOAD IN THE FUTURE.

MANAGEMENT EFFICIENCIES CUSTOMS IMPLEMENTED IN PREVIOUS YEARS INCLUDE IMPROVED ADMINISTRATIVE, COMMERCIAL AND ENFORCEMENT ACTIVITIES. THESE PROGRAMS HAVE ENHANCED PRODUCTIVITY, STREAMLINED PROGRAM OPERATIONS, AND INTRODUCED SIGNIFICANT ORGANIZATIONAL AND FUNCTIONAL EFFICIENCIES. MANY OF

THE EFFICIENCIES RESULT FROM CONVERTING LABOR INTENSIVE FUNCTIONS TO MORE AUTOMATED PROCESSING.

AS I STATED ON PREVIOUS OCCASIONS, CUSTOMS WILL ADHERE TO PRESIDENT REAGAN'S PRECEPTS OF STRENGTHENED LAW ENFORCEMENT AND BETTER MANAGEMENT OF GOVERNMENT RESOURCES. OUR FY 1987 OBJECTIVES WILL BE DIRECTED TO ACHIEVING THE FOLLOWING:

- IMPROVE ENFORCEMENT AGAINST THOSE ILLEGAL ACTIVITIES THAT FALL WITHIN CUSTOMS JURISDICTION BY THE INTRODUCTION OF THE MOST EFFECTIVE TECHNIQUES;

- INCREASE STAFF PRODUCTIVITY BY DEVELOPING AND IMPLEMENTING AUTOMATED SYSTEMS, WHEREVER POSSIBLE, IN ALL MERCHANDISE, REVENUE COLLECTION, AND ENFORCEMENT PROCESSING; AND,

- UPGRADE OPERATIONS BY CONSOLIDATING FUNCTIONS, ELIMINATING DUPLICATIVE ACTIVITIES, UNNEEDED PAPERWORK AND FORMS, AND SIMPLIFYING PROCESSING PROCEDURES.

CUSTOMS EFFORTS DIRECTED TOWARD STRENGTHENING LAW ENFORCEMENT PROGRAMS PRODUCED SIGNIFICANT RESULTS IN FY 1985. HOWEVER, SMUGGLING CONTINUES AS A SIGNIFICANT NATIONAL PROBLEM. WE ARE STILL CONFRONTED WITH AN ILLEGAL INDUSTRY OF BILLIONS OF DOLLARS AND CONTINUAL SMUGGLING ALONG ALL OUR BORDERS.

BUT I DO HAVE GOOD NEWS TO REPORT. CUSTOMS HEROIN AND COCAINE INTERCEPTIONS HAVE SET NEW RECORDS. HEROIN SEIZURES IN FY 1985 REACHED 785 POUNDS, UP 18 PERCENT FROM THE PREVIOUS YEAR. THE RESULTS LARGELY REFLECT INTENSIFIED INSPECTIONS AT AIRPORTS, ESPECIALLY CARGO, AND THE USE OF IMPROVED INSPECTIONAL TECHNIQUES.

WITH REGARD TO COCAINE, I MUST COMMEND CUSTOMS ENFORCEMENT GROUPS FOR THE OUTSTANDING RESULTS PRODUCED DURING THE PAST FIVE YEARS. IN FY 1981, WE SEIZED 3,741 POUNDS OF COCAINE. IN FY 1985, SEIZURES WERE SIGNIFICANTLY HIGHER, REACHING 50,506 POUNDS, FOR AN INCREASE OF 83.5 PERCENT ABOVE THE PREVIOUS YEAR AND A 13 FOLD INCREASE ABOVE FY 1981. IN TERMS OF DISRUPTION OF ORGANIZED SMUGGLING GROUPS, IN FY 1985 ABOUT $13.8 BILLION IN COCAINE SALES WERE TAKEN OFF THE STREETS AND THESE CRIMINALS WERE PREVENTED FROM POCKETING THE PROFITS.

THESE RESULTS, OF COURSE, LARGELY REFLECT THE HIGH PRIORITY OF CUSTOMS LAW ENFORCEMENT. THE NATION FACES TWO MAJOR PROBLEMS AT ITS BORDERS. THE FIRST IS MASSIVE DRUG SMUGGLING, WHICH HAS BEEN WITH US FOR AT LEAST A GENERATION AND IS NOW ONE OF OUR MAJOR INDUSTRIES. CUSTOMS HAS RESPONDED BY CONTINUING ITS SUCCESSFUL ENFORCEMENT EFFORTS IN SOUTH FLORIDA, ALONG THE SOUTHWEST BORDER, AND AT MAJOR AIRPORTS, WHERE THE MAJORITY OF ILLEGAL NARCOTICS ACTIVITY IS CENTERED. IN SOUTH FLORIDA, LARGE SUMS OF DRUG-RELATED CURRENCY ENTER AND LEAVE THE COUNTRY DAILY TO FINANCE THIS DEADLY INTERNATIONAL TRAFFIC.

ANOTHER ENFORCEMENT PROBLEM IS CRITICAL TECHNOLOGY ILLEGALLY LEAVING THE COUNTRY. IN LINE WITH PRESIDENT REAGAN'S CALL TO BLOCK THE ILLEGAL TRANSFER OF HIGH-TECHNOLOGY TO EASTERN-BLOC COUNTRIES, CUSTOMS IS CONTINUING OPERATION EXODUS. FURTHERMORE, WE HAVE IMPLEMENTED MORE EFFECTIVE DETECTION AND INVESTIGATIVE EFFORTS AT MAJOR PORTS THROUGHOUT THE COUNTRY. TO ACHIEVE THIS GOAL, CUSTOMS HAS DEVELOPED NEW APPROACHES FOR SURVEILLANCES; IMPROVED CARGO INSPECTIONS DIRECTED AT UNCOVERING THESE ILLEGAL EQUIPMENT SHIPMENTS; AND, IMPROVED INTELLIGENCE AND INVESTIGATIVE EFFORTS RELATED TO SHIPMENTS AND POTENTIAL VIOLATORS.

WHILE THE ENFORCEMENT EFFORT IS NOW WELL ON ITS WAY TO ACHIEVING ITS OBJECTIVES, CUSTOMS SERVICE GOALS ALSO INCLUDE EFFICIENT CARGO AND PASSENGER PROCESSING. UNDER OUR CURRENT PROCESSING APPROACH, WE DO NOT BELIEVE THAT EVERY PASSENGER, VEHICLE, PIECE OF BAGGAGE, OR CARGO SHIPMENT MUST BE SEARCHED. SINCE THE VAST MAJORITY OF CUSTOMS TRANSACTIONS INVOLVE LAW-ABIDING PERSONS AND FIRMS, CUSTOMS OFFICERS ARE DIRECTING THEIR PRIMARY ATTENTION TO "HIGH-RISK" PASSENGERS AND CARGO. IT IS CLEAR TO ME THAT EFFECTIVE ENFORCEMENT AND EFFICIENT FACILITATION CAN GO HAND-IN-HAND, WITHOUT CONTRADICTION OR WITHOUT DIMINISHING OUR LAW ENFORCEMENT.

CUSTOMS ALSO IS CONTINUING ITS PRIORITY PROGRAM TO REFORM COMMERCIAL PRACTICES --IN ESSENCE, HOW WE IMPLEMENT THE TARIFF LAWS AND HOW WE PROCESS THE VAST QUANTITY OF IMPORTED MERCHANDISE. IN MEETING OUR GOALS IN COMMERCIAL PROCESSING, WE ARE PUSHING FORWARD WITH CONSOLIDATION, AUTOMATION AND STREAMLINING OF ALL APPLICABLE OPERATIONS.

AT THE HEART OF THIS EFFORT IS THE AUTOMATED COMMERCIAL SYSTEM (ACS). TODAY, AT NUMEROUS PORTS, WE HAVE ON-LINE A COMPREHENSIVE DATA BASE WITH ALL THE FUNCTIONS REQUIRED FOR PROCESSING ELECTRONICALLY TRANSMITTED OR MANUALLY PREPARED ENTRIES. THEREFORE, THE SYSTEM CAN EFFICIENTLY PROCESS ANY AND

ALL ENTRIES PREPARED BY BROKERS. ALL REVENUE COLLECTED BY CUSTOMS IS PROCESSED THROUGH ACS, AS IS THE PREPARATION OF A DAILY BROKER STATEMENT. THE SYSTEM IS ALSO BEING INTEGRATED INTO THE OPERATIONS OF LOCAL PORT AUTHORITIES AND MAJOR IMPORTERS. THE IMPORTING COMMUNITY IS COOPERATING IN ITS IMPLEMENTATION. ACS COMPRISES FIFTEEN PRIMARY SUBSYSTEMS SPECIFICALLY DIRECTED TO EACH OF THE MAJOR ACTIVITIES UNDER THE COMMERCIAL SYSTEM. MANY OF THESE MODULES ARE ALREADY IN FULL OPERATION. WHEN FULLY DEVELOPED AND IMPLEMENTED THE SYSTEM WILL PROVIDE IMPROVED MANAGEMENT INFORMATION, MORE EFFICIENT RESOURCE USE, AND INCREASED RESPONSIVENESS TO THE BUSINESS COMMUNITY.

FY 1987 PLANS

IN FY 1987, CUSTOMS IS PLANNING TO EXPAND AND FULLY DEVELOP ACS AS WELL AS DEVELOP AN UP-TO-DATE TREASURY ENFORCEMENT COMMUNICATIONS SYSTEM (TECS), APPLICABLE FOR TODAY'S ENFORCEMENT ENVIRONMENT.

AUTOMATED COMMERCIAL SYSTEM

THE $3.0 MILLION TO BE SPENT IN FY 1987 WILL ALLOW CUSTOMS TO CONTINUE EXPEDITED DEVELOPMENT AND IMPLEMENTATION OF THE FULL SYSTEM NEEDED TO RAISE PRODUCTIVITY AND CONTINUE EFFICIENT

SERVICE AS THE WORKLOAD GROWS. WHEN COMPLETED, ACS WILL SUPPORT FULL SELECTIVITY, DETERMINING WHICH IMPORTS SHOULD BE INTENSIVELY EXAMINED AND THOSE ENTRIES WITH POTENTIAL CLASSIFICATION CHANGES AND INCREASED REVENUE. THIS ENHANCEMENT WILL PAY FOR ITSELF IN COST SAVINGS FOR CUSTOMS AND THE IMPORTING COMMUNITY. IN FY 1987, SYSTEM DEVELOPMENT AND HARDWARE EXPANSION FOR THE FOLLOWING MODULES WILL BE IMPLEMENTED: ANTIDUMPING/COUNTERVAILING DUTY, ENTRY SUMMARY SELECTIVITY, AIR MANIFEST, HARMONIZED SYSTEM AND THE CUSTOMS INFORMATION EXCHANGE.

TREASURY ENFORCEMENT COMMUNCIATION SYSTEM (TECS) II DEVELOPMENT

THE THRUST OF THE DESIGN AND DEVELOPMENT IS TO BUILD A COMPREHENSIVE ENFORCEMENT DATA BASE SYSTEM WHOSE UNDERPINNINGS ARE STATE-OF-THE-ART HARDWARE, SOFTWARE AND DATA BASE MANAGEMENT SYSTEMS. ALL CURRENT TECS USERS WILL CONTRIBUTE THEIR FIRST HAND EXPERIENCE TO INSURE THAT THE CURRENT DEVELOPMENT MEETS ALL AGENCY REQUIREMENTS. THIS SYSTEM WILL PROVIDE FOR THE EXPANSION AND INTEGRATION OF THE EXISTING AUTOMATED ENFORCEMENT EFFORTS

SUCH AS OPERATION EXODUS, THE TREASURY FINANCIAL LAW ENFORCEMENT SYSTEMS AND COMMERCIAL FRAUD, AS WELL AS OTHER ENFORCEMENT EFFORTS. THIS INITIATIVE WILL AFFORD CUSTOMS THE FLEXIBILITY TO MEET THE NUMEROUS INFORMATION REQUIREMENTS OF TODAY'S CUSTOMS ENFORCEMENT PROGRAM. THE $8.0 MILLION INVESTMENT WILL PROVIDE UPGRADED ASSISTANCE AND SUPPORT TO THE TEN ENFORCEMENT AGENCIES IN AND OUTSIDE TREASURY USING THE SYSTEM.

PROPOSED MANAGEMENT EFFICIENCIES

AS STATED IN MY PREVIOUS APPEARANCES BEFORE THIS SUBCOMMITTEE, OTHER CONGRESSIONAL GROUPS, AND BUSINESS AND INDUSTRY GROUPS, I BELIEVE AN IMPORTANT PART OF MY MANDATE AS COMMISSIONER OF CUSTOMS IS TO BRING TO CUSTOMS THE MOST EFFICIENT AND EFFECTIVE OPERATIONS AND MANAGEMENT POSSIBLE AT THE LOWEST POSSIBLE COST. AT THIS TIME, WHEN THE ENTIRE FEDERAL BUDGET MUST BE CLOSELY MONITORED TO ELIMINATE EXCESSIVE AND DUPLICATIVE COSTS; AND SIGNIFICANT BUDGETARY REDUCTIONS ARE REQUIRED, AS THIS SUBCOMMITTEE IS WELL AWARE, THIS GOAL BECOMES THE HIGHEST PRIORITY FOR ALL AGENCY MANAGERS. CUSTOMS IS NO EXCEPTION AND MUST SHOULDER ITS FULL SHARE OF THE CUTBACKS.

THEREFORE, IN FY 1987, WE ARE PROPOSING TO INCORPORATE IN OUR BUDGET, MANAGEMENT INITIATIVES THAT WILL PRODUCE $21,131,000 IN SAVINGS. IN ADDITION TO A SELECTIVE HIRING POLICY, WHICH LIMITS HIRING TO PRIORITY ENFORCEMENT AND REVENUE PROTECTION PROGRAMS, THE CUSTOMS SERVICE WILL IMPLEMENT SPECIFIC PRODUCTIVITY SAVINGS DERIVED FROM STREAMLINED PORT AND DISTRICT OPERATIONS. CUSTOMS IS PROPOSING TO CONSOLIDATE APPRAISEMENT CENTERS AND REDESIGNATE DISTRICTS. CUSTOMS PROCESSING AND ENFORCEMENT PROGRAMS WILL BE STRUCTURED AROUND THE CONCEPT OF A FULLY OPERATIONAL REDESIGNATED DISTRICT, STAFFED BY A FULL COMPLEMENT OF INSPECTORS AND IMPORT SPECIALISTS.

ALTHOUGH OUR BUDGET SUBMISSION DOES INCLUDE SINGLE SHIFTS AT AIRPORTS AS PART OF THE MANAGEMENT SAVINGS IN FY 1986 AND FY 1987, CUSTOMS HAS RECONSIDERED THIS PROPOSAL IN LIGHT OF THE RECENTLY ENACTED CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT, WHICH AUTHORIZED A REIMBURSEMENT TO CUSTOMS APPROPRIATION FOR INSPECTIONAL OVERTIME COSTS. UNDER THE CIRCUMSTANCES, IT IS NOT

FEASIBLE TO IMPLEMENT THIS PROPOSAL IN FY 1986, BUT IT IS STILL BEING CONSIDERED FOR FY 1987, DEPENDING UPON CUSTOMS OVERALL BUDGET SITUATION.

INSPECTION AND CONTROL

CUSTOMS EFFORTS TO IMPROVE ENFORCEMENT OF PERTINENT LAWS AND REGULATIONS AND EXPEDITE PROCESSING OF PERSONS AND GOODS WILL CONTINUE IN FY 1987. OUR OBJECTIVE, DESPITE RESOURCE CONSTRAINTS, IS TO ACHIEVE A BALANCE OF ECONOMICAL PROCESSING WHILE STILL MAINTAINING FULL SERVICE.

CUSTOMS WILL CONTINUE TO MEET THE CHALLENGE OF A GROWING WORKLOAD WHILE IMPROVING OVERALL EFFECTIVENESS THROUGH THE EXPANDED UTILIZATION OF AUTOMATED SYSTEMS, SELECTIVITY SYSTEMS AND OTHER INNOVATIVE TECHNIQUES. INCREASINGLY SELECTIVE AND AUTOMATED INSPECTIONAL TECHNIQUES WILL ENABLE CUSTOMS INSPECTORS TO CONCENTRATE THEIR EFFORTS ON THE "HIGH-RISK" PASSENGERS AND CARGO WHILE ALLOWING THE PREDOMINANTLY LAW-ABIDING TRANSACTIONS TO RECEIVE MINIMAL ATTENTION. WE WILL CONTINUE TO STREAMLINE CARGO PROCESSING THROUGH THE USE OF AUTOMATED TECHNOLOGY THAT

WILL IMPROVE OUR ABILITY TO FACILITATE THE ENTRY OF MERCHANDISE WITHOUT WEAKENING OUR ENFORCEMENT POSTURE. OUR ENFORCEMENT EFFORTS WILL BE ENHANCED THROUGH THE USE OF FULLY IMPLEMENTED SELECTIVITY SYSTEMS. OUR SPECIAL TEAMS OF INSPECTORS, EQUIPPED WITH DETECTOR DOGS AND THE BEST POSSIBLE INTELLIGENCE WE CAN PROVIDE, WILL CONTINUE TO CONCENTRATE ON HIGH-RISK CARGO. THESE TEAMS HAVE ALREADY ESTABLISHED SIGNIFICANT COST-BENEFIT RATIOS WITH NOTEWORTHY NARCOTICS SEIZURES FROM CARGO AND BAGGAGE.

PASSENGER PROCESSING

AS IN PREVIOUS YEARS, CUSTOMS PROCESSED APPROXIMATELY 290 MILLION PERSONS ENTERING THE UNITED STATES, OF WHICH ALMOST 32 MILLION WERE AIR PASSENGERS. ALTHOUGH AIR PASSENGERS CONSTITUTE APPROXIMATELY 11 PERCENT OF THE TOTAL NUMBER OF PERSONS ENTERING THE COUNTRY, THEY REQUIRE A DISPROPORTIONATE SHARE OF CUSTOMS RESOURCES DUE TO THE LIMITED FACILITIES AVAILABLE, AIRLINE PRESSURE FOR CUSTOMS PROCESSING AT SPECIFIC TERMINALS, AND THE SUBSTANTIAL CROWDING DURING PROCESSING. THE PROBLEM IS INTENSIFIED BECAUSE FLIGHT ARRIVALS AT AIRPORTS ARE

CONCENTRATED WITHIN CERTAIN TIME PERIODS AND THE EXPANSION OF FACILITIES TO MEET WORKLOAD DEMANDS IS MINIMAL. HOWEVER, CUSTOMS HAS DEVELOPED AND IMPLEMENTED NEW HIGHER SPEED PROCESSING SYSTEMS TAILORED TO ACCOMMODATE THE PHYSICAL CONFIGURATION AND THREAT LEVEL OF EACH AIRPORT. THESE PROCESSING SYSTEMS ALLOW THE RAPID PROCESSING OF LAW-ABIDING TRAVELERS AND THE MORE EFFICIENT DETECTION OF SUSPECTED VIOLATORS.

ONE OF OUR MAJOR INITIATIVES FOR FY 1987 WILL BE REGULATORY CHANGES TO PRIVATE AIRCRAFT REPORTING PROCEDURES. UNDER THE PROPOSED RULEMAKING, REPORTING REQUIREMENTS FOR PRIVATE AIRCRAFT CONSIDERED A HIGH-RISK WILL BE MADE MORE STRINGENT, AND DETAILED JUSTIFICATIONS WILL BE REQUIRED FOR OVERFLIGHT EXEMPTIONS. IN ADDITION, MORE STRINGENT REPORTING REQUIREMENTS ARE BEING CONSIDERED FOR SMALL BOATS.

CARGO PROCESSING

CUSTOMS IS CONTINUING TO STREAMLINE ITS EFFORTS IN THE CARGO PROCESSING AREA. THESE EFFORTS ARE AIMED AT FACILITATING THE FLOW OF LEGITIMATE CARGO THROUGH OUR AIR AND SEA PORTS WHILE FOCUSING EMPHASIS ON SUSPECT SHIPMENTS. IN ORDER TO SPEED THE

FLOW OF MERCHANDISE, WE ARE EXPANDING EXISTING CARGO SELECTIVITY AND ENHANCING OUR AUTOMATED CARGO PROCESSING SYSTEMS. THE MOST SIGNIFICANT INNOVATION HAS BEEN THE IMPLEMENTATION OF ACS CARGO SELECTIVITY. IT IS NOW IN OPERATION AT 45 MAJOR PORTS, AND ADDITIONAL SITES ~~WILL BE~~ IMPLEMENTED IN FY 1987. THE ENTIRE PROCESSING AND INSPECTION OPERATION IS DIRECTED BY A CENTRAL-SITE COMPUTER.

CONTRABAND ENFORCEMENT TEAMS

CONTRABAND ENFORCEMENT TEAMS (CET) ARE REINFORCING TRADITIONAL INSPECTIONAL OPERATIONS. THESE TEAMS GATHER AND DISSEMINATE INTELLIGENCE, PERFORM INPUT DOCUMENT REVIEW, AND ANALYZE AND SEARCH SUSPECT CARGO. WHENEVER VIOLATIONS ARE DETECTED, THE MERCHANDISE, DRUGS, CONTRABAND, AND ITEMS IN VIOLATION OF CURRENCY REPORTING AND EXPORT LAWS ARE SEIZED. CET CAPABILITIES HAVE BEEN BOLSTERED BY COMBINING THEIR SEARCH EFFORTS FOR DRUGS IN CARGO WITH THOSE OF THE CANINE TEAMS. AS A RESULT OF IMPROVED INTELLIGENCE GATHERING AND DISSEMINATION, CET TEAMS ARE NOW CAPABLE OF MORE SPECIFIC TARGETING OF POTENTIAL

ILLEGAL ACTIVITIES, WHICH WE BELIEVE WILL RESULT IN MORE SIGNIFICANT SEIZURES. IN FY 1985, CET TEAMS SEIZED OVER 11,000 POUNDS OF COCAINE.

TARIFF AND TRADE PROGRAM

THE TARIFF AND TRADE PROGRAM IS RESPONSIBLE FOR APPRAISEMENT, CLASSIFICATION, DUTY ASSESSMENT AND COLLECTION ON ENTRIES OF IMPORTED MERCHANDISE, AS MANDATED IN THE TARIFF ACT OF 1930. RELATED AND EQUALLY IMPORTANT FUNCTIONS INCLUDE VERIFICATION OF IMPORT STATISTICS; ADMINISTERING NATIONAL TRADE POLICY BY MONITORING QUOTAS, STEEL IMPORT RESTRICTIONS, AND VARIOUS TRADE AGREEMENTS; AND, ENFORCEMENT OF LAWS AND REGULATIONS FOR OVER 40 OTHER FEDERAL AGENCIES.

IMPROVEMENTS IN THE COMPLETE RANGE OF TARIFF AND TRADE OPERATIONS ARE CONTINUING AND AN INDEPTH REVIEW OF THE MERCHANDISE PROCESSING SYSTEM IS UNDERWAY. OUR GOAL IS TO REDUCE THE BURDEN ON THE IMPORTER, ESPECIALLY THE COSTS OF DOING BUSINESS WITH CUSTOMS, WHILE INSURING THAT CUSTOMS MAINTAINS REQUIRED SERVICES EVEN WITH INCREASED MERCHANDISE IMPORTS. I AM

PLEASED TO REPORT THAT OUR DEVELOPMENT PROJECTS ARE NOW OPERATIONAL. A BRIEF DESCRIPTION OF THESE INNOVATIONS IS INCLUDED TO PROVIDE YOU WITH SOME INSIGHT INTO THE NEW BUSINESS METHODS CUSTOMS HAS IMPLEMENTED.

AUTOMATED COMMERCIAL SYSTEM

ACS IS NOW PROCESSING MERCHANDISE ENTRIES, REVENUE COLLECTIONS, ENTRY LIQUIDATIONS, AND AN INCREASING NUMBER OF BROKER TRANSACTIONS. ON THE COMMERCIAL SIDE, ACS IS SELECTIVELY DIRECTING INSPECTORS TO MERCHANDISE REQUIRING EXAMINATION AND IMPORT SPECIALISTS TO CLASSIFICATION OR VALUE CHANGES. AS FOREIGN TRADE RISES, PROPER INSPECTION, EXAMINATION, VALUATION, AND CLASSIFICATION ARE NEEDED TO ENSURE THAT ALL DUTIES ARE COLLECTED.

AUTOMATED INTERFACE WITH BROKER, IMPORTER AND PORT AUTHORITY COMPUTERS IS A KEY FEATURE OF THE SYSTEM. CURRENTLY, TWENTY PERCENT OF THE ENTRY SUMMARIES PRESENTED TO CUSTOMS ARE PREPARED VIA THIS INTERFACE AND THAT NUMBER IS EXPECTED TO GROW BY 1987. CUSTOMS VIEWS THIS AS A UNIQUE OPPORTUNITY FOR BOTH THE TRADE COMMUNITY AND CUSTOMS TO WORK TOGETHER.

SELECTIVITY CRITERIA, WHICH ALSO IS IMPORTANT FOR BOTH CARGO EXAMINATION AND IMPORT SPECIALIST REVIEW, WILL BE MAINTAINED IN A UNIFIED DATA BASE. THE SYSTEM WILL BE CAPABLE OF IDENTIFYING THE TYPES OF REVIEW REQUIRED BY THE IMPORT SPECIALIST. AS IS COMMON IN THIS TYPE OF PROCESSING, RANDOM SAMPLING WILL MAINTAIN SYSTEM INTEGRITY.

TARIFF AND TRADE PROGRAM PARTICIPATION IN CUSTOMS OVERALL ENFORCEMENT EFFORT INCLUDES THE EXPANSION OF IMPORT SPECIALISTS' ROLE IN FRAUD TEAMS, SPECIAL ANALYTICAL TEAMS, TARGETING SPECIFIC COMMODITIES AND VIOLATORS, AND IN ASSESSMENT OF PENALTY CASES.

AIR PROGRAM

A PRIMARY CONCERN OF THE CUSTOMS SERVICE AND THE TREASURY DEPARTMENT HAS BEEN THE EFFECTIVENESS OF THE AIR INTERDICTION PROGRAM AS A DETERRENT AGAINST THE SMUGGLING OF NARCOTICS AND CONTRABAND BY PRIVATE AIRCRAFT, A THREAT THAT HAS DRAMATICALLY INCREASED OVER THE PAST SEVERAL YEARS. IN FY 1985, THE CUSTOMS AIR PROGRAM SEIZED 15,539 POUNDS OF COCAINE, A 64 PERCENT INCREASE OVER FY 1984. THE AMOUNT OF COCAINE SEIZED BY CUSTOMS

THAT WAS SMUGGLED INTO THE COUNTRY BY PRIVATE AIRCRAFT INCREASED FROM 20 PERCENT IN FY 1984 TO 31 PERCENT IN FY 1985.

IN AN EFFORT TO MORE EFFECTIVELY RESPOND TO THIS SERIOUS PROBLEM, CUSTOMS AIR OPERATIONS HAS ADOPTED A STRATEGY OF CONCENTRATING AIR PERSONNEL AND EQUIPMENT IN HIGH-THREAT AREAS AND USING THEM IN CONFORMANCE WITH THE DETECTION, INTERCEPTION AND TRACKING METHODS DEVELOPED SPECIFICALLY FOR THE INTERDICTION OPERATIONS CONFRONTING CUSTOMS AIR UNITS. DETECTION SYSTEMS IDENTIFY SUSPECT AIRCRAFT AND DIRECT APPREHENSION HELICOPTERS AND GROUND SUPPORT UNITS TO THE PRECISE LOCATION TO CAPTURE THE SMUGGLERS.

IN FY 1986, CUSTOMS BUDGET IS $71,775,000 FOR AIR PROGRAM OPERATIONS AND MAINTENANCE, WHICH INCLUDES THE GRAMM-RUDMAN REDUCTIONS. THE FY 1987 BUDGET TOTAL OF $54,700,000 INCLUDES ONLY SUFFICIENT ADDITIONAL FUNDS FOR PROJECTED COST INCREASES. IN BOTH YEARS THE PROPOSED BUDGET LEVELS WILL SUPPORT CONTINUED FULL OPERATIONS OF ALL CUSTOMS AIR UNITS CURRENTLY AVAILABLE.

IN CONTRAST TO FY 1985, FOUR P-3A DETECTION AIRCRAFT WILL BE OPERATIONAL THIS YEAR; THEY ARE SCHEDULED TO OPERATE AN AVERAGE OF 100 HOURS PER MONTH. IN SUPPORT OF THE ANTICIPATED INCREASE IN DETECTED SMUGGLER AIRCRAFT, THE PROGRAM WILL BE OPERATING EIGHT NEW HIGH ENDURANCE TRACKER AIRCRAFT. THE FIRST OF THESE AIRCRAFT IS EXPECTED IN JULY, 1986.

SUFFICIENT FUNDS ALSO ARE AVAILABLE DURING THESE YEARS FOR TWO SIGNIFICANT PROGRAM ENHANCEMENTS: FOR THE PREPARATIONS NECESSARY TO BEGIN THE ESTABLISHMENT OF TWO COMMAND, CONTROL, COMMUNICATIONS, AND INTELLIGENCE CENTERS (C-3I) INCLUDING FACILITIES DESIGN, SITE SELECTION, AND PURCHASE OF CORE EQUIPMENT; AND, THE MODIFICATION OF C-12 MARINE SUPPORT AIRCRAFTS. CURRENTLY, WE ARE PROPOSING SOUTHERN CALIFORNIA AND FLORIDA AS THE TWO LOCATIONS FOR THESE CENTERS. ONCE IN FULL OPERATION, THESE CENTERS WILL, FOR THE FIRST TIME, PERMIT CUSTOMS TO PLACE RADAR SIGHTINGS, AND INTERCEPTIONS UNDER A SINGLE INTEGRATED COMMAND SYSTEM. WE BELIEVE THAT THIS MAJOR ENHANCEMENT WILL IMPROVE OUR OVERALL INTERCEPTION RATE. FINALLY, C-12'S MODIFIED WITH AN ADVANCED DOWN LOOKING RADAR, SPECIALLY DESIGNED FOR OVER WATER DETECTION, WILL FILL A CRITICAL GAP IN MARINE SURVEILLANCE OPERATIONS.

MARINE PROGRAM

IN CONJUNCTION WITH THE AIR PROGRAM, CUSTOMS MARINE PROGRAM PROTECTS THE SEA APPROACHES TO THE NATION'S BORDERS. CONFRONTED WITH SIMILAR GROWTH IN ITS SMUGGLING PROBLEM, BY THE END OF FY 1986, THE PROGRAM WILL HAVE 217 VESSELS, RANGING IN SIZE FROM 15 TO 55 FEET, STATIONED AT 54 LOCATIONS. ALSO, CUSTOMS NEWLY

DEVELOPED OPERATIONAL APPROACH INCLUDES MARINE MODULES AND A SPECIAL BLUE LIGHTNING STRIKE FORCE, ALL OF WHICH WILL BE OPERATING DURING FY 1986. THESE VESSELS ARE USED FOR SURVEILLANCES, WATERSIDE RAIDS, INTELLIGENCE GATHERING, AND INTERDICTION. TODAY'S INTERDICTION UNITS CONFRONT LARGE-SCALE SMUGGLERS USING "MOTHERSHIPS", STASHES ON OFF-SHORE ISLANDS AND "AIR DROPS". RECENT SEIZURES INDICATE THAT MAJOR SMUGGLING BY VESSEL IS STILL ACTIVE IN THE SOUTHEAST, PARTICULARLY FROM THE BAHAMAS IN FAST BOATS, THE GULF COAST AND IS INCREASING ALONG THE PACIFIC, MID-ATLANTIC AND NEW ENGLAND COASTAL AREAS.

TO COUNTER THE THREAT OF SMUGGLING BY PRIVATE AND FISHING VESSELS, CUSTOMS HAS ESTABLISHED THE BLUE LIGHTNING STRIKE FORCE. THE CONCEPT OF SUCH A FORCE WAS DEVELOPED FROM OPERATION BLUE LIGHTNING, INAUGURATED IN APRIL, 1985, AS PART OF AN NNBIS COORDINATED MULTIAGENCY FORCE FOR DISRUPTING THE FLOW OF DRUGS FROM THE BAHAMAS. BY PRESSURING THE SMUGGLERS TO DRASTICALLY CHANGE THEIR NORMAL TRAFFICKING PATTERNS, SIGNIFICANT AMOUNTS OF DRUGS WERE SEIZED. AS A RESULT OF OPERATION BLUE LIGHTNING, 36,000 POUNDS OF MARIJUANA, 5,500 POUNDS OF COCAINE, AND 26 VESSELS WERE SEIZED DURING A TWO WEEK OPERATION.

IN CONVERTING THE CONCEPT TO A PERMANENT OPERATIONAL APPROACH, CUSTOMS AND OTHER PARTICIPATING AGENCIES COORDINATE ACTIVITIES ON A 24-HOUR BASIS ALONG THE FLORIDA COAST. DURING THE FIRST 90-DAYS OF THE OPERATION THERE WERE 82 ARRESTS, AND THE SEIZURE OF 103,755 POUNDS OF MARIJUANA, 6,710 POUNDS OF COCAINE, 5 AIRCRAFT, AND 32 VESSELS. SINCE ITS ESTABLISHMENT AS A PERMANENT FORCE, CUSTOMS IS STRENGTHENING ITS CAPABILITIES BY IMPLEMENTING AN OPERATIONS CENTER, THE JOINT MARINE INTERDICTION COMMAND CENTER (J-MICC), WHICH WILL INTEGRATE DETECTIONS AND OPERATIONAL UNITS. THE CENTER WILL FUNCTION UNDER MULTIAGENCY COMMAND AND CONTROL AND WILL COORDINATE OTHER FEDERAL AND PARTICIPATING STATE AND LOCAL MARINE UNITS ALONG THE FLORIDA COAST AS FAR NORTH AS FORT PIERCE ON THE EAST COAST.

INVESTIGATIONS

CUSTOMS INVESTIGATIVE PROGRAM IS RESPONSIBLE FOR VIOLATIONS OF CUSTOMS AND RELATED LAWS, WHICH INCLUDES A BROAD MANDATE TO CONDUCT CURRENCY, FRAUD, EXPORT AND INTERNATIONAL ENFORCEMENT CASES. IN EACH PROGRAM, TARGETING DEPENDS HEAVILY UPON THE DEVELOPMENT AND COLLECTION OF INTELLIGENCE. THE MAIN PROGRAMS ARE DESCRIBED BELOW.

ORGANIZED CRIME DRUG ENFORCEMENT (OCDE)

CUSTOMS PARTICIPATES WITH OTHER FEDERAL LAW ENFORCEMENT AGENCIES IN 13 CITY TASK FORCES. THE FINANCIAL INVESTIGATIONS FOCUS ON SMUGGLING GROUPS RESPONSIBLE FOR THE LAUNDERING OF LARGE SUMS OF MONEY. WE BELIEVE THIS PROGRAM IS A MAJOR STEP IN ASSURING THE SUCCESS OF THE PRESIDENT'S GOAL OF DISRUPTING ORGANIZED CRIME THROUGHOUT THE COUNTRY.

IN FY 1987, CUSTOMS PLANS TO CONTINUE WITH CURRENT COMMITMENTS OF RESOURCES TO THE PRESIDENTIAL ORGANIZED CRIME DRUG ENFORCEMENT TASK FORCES. THESE SPECIALIZED INVESTIGATIVE TASK FORCES FOCUS ON LARGE-SCALE DRUG SMUGGLING ORGANIZATIONS, APPROACH EACH TARGET AND SIMULTANEOUSLY EXPLOIT THE FINANCIAL, INTERNAL CONSPIRACY AND INTERDICTION/SMUGGLING ELEMENTS OF EACH CRIMINAL ORGANIZATION. TO DATE THEY HAVE ACHIEVED EXCELLENT RESULTS. IN FY 1985, CASES INVOLVING CUSTOMS PARTICIPATION RESULTED IN 909 INDICTMENTS, 547 ARRESTS; 405 CONVICTIONS; $34 MILLION IN U.S. CURRENCY AND PROPERTY SEIZURES; SEIZURES OF 218 POUNDS OF COCAINE AND 53 POUNDS OF HEROIN; AND $8 MILLION IN FINES COLLECTED

FRAUD PROGRAM

FOR SEVERAL YEARS, CUSTOMS HAS EMPHASIZED ITS FRAUD EFFORTS AGAINST ILLEGAL UNAUTHORIZED STEEL, TEXTILE, AND WEARING APPAREL IMPORTS, AS WELL AS DRAWBACK AND TRADEMARK AND COPYRIGHT VIOLATIONS. THESE EFFORTS HAVE PRODUCED GOOD RESULTS IN TERMS OF PENALTY RECOVERIES AND PROSECUTIONS OF CRIMINALS. ALSO, DOMESTIC INDUSTRY AND JOBS WERE PROTECTED FROM UNFAIR AND ILLEGAL INTERNATIONAL TRADE PRACTICES. OPERATION TRIPWIRE, WHICH IS THE DESIGNATION OF OUR SPECIAL EMPHASIS AGAINST FRAUDULENT IMPORTS, ACCOUNTED FOR 54 ARRESTS, 230 INDICTMENTS, AND SEIZURES WITH A TOTAL VALUE OF OVER $67 MILLION IN FY 1985.

AS REPORTED FOR THE PAST SEVERAL YEARS, CUSTOMS IS LOOKING VERY CAREFULLY AT ALL STEEL AND TEXTILE IMPORTS. TASK FORCE OPERATIONS IN FY 1986 WILL CONTINUE TO DIRECT THEIR EFFORTS AGAINST ILLEGAL MERCHANDISE BEFORE IT ENTERS UNITED STATES COMMERCE AND TO INVESTIGATE CASES RESULTING FROM INTENSIFIED INSPECTIONS. THE TASK FORCES WILL FOCUS ON HIGH-RISK IMPORTATIONS AT MAJOR PORTS TO ASSURE CONTINUED HIGH QUALITY ARRESTS, MAJOR REVENUE RECOVERIES AND TO PRESENT A VISIBLE DETERRENT.

A SIGNIFICANT IMPROVEMENT IN CUSTOMS EFFECTIVENESS WILL OCCUR WHEN THE EXPANDED CAPABILITY TO TARGET VIOLATORS, BY CORRELATING COMMERCIAL, FINANCIAL AND ECONOMIC DATA USING ADP SYSTEMS, WITHIN SELECTED "HIGH-RISK" AREAS, IS FULLY IMPLEMENTED. TO THIS END, WE ARE USING INTEGRATED FUNCTIONAL TEAMS, IN HIGH-ACTIVITY AREAS, TO OBTAIN INTELLIGENCE AND ENFORCEMENT EFFECTIVENESS.

FINANCIAL LAW ENFORCEMENT PROGRAM

OUR INVESTIGATIVE ATTACK ON CRIMINAL ORGANIZATIONS UNDER PROVISIONS OF THE BANK SECRECY ACT AND THROUGH THEIR FINANCIAL TRANSACTIONS HAS PAID EXCELLENT DIVIDENDS IN TERMS OF ITS IMPACT ON THE LARGEST SMUGGLING GROUPS OPERATING IN THIS COUNTRY. MULTIAGENCY INVESTIGATIVE AND PROSECUTORIAL TEAMS, OPERATING UNDER THE LEADERSHIP OF THE LOCAL U.S. ATTORNEY, ARE CURRENTLY ACTIVE IN CITIES WITH LARGE-SCALE CURRENCY MOVEMENTS AND THOSE CITIES IN THE FOREFRONT OF TOP-LEVEL DRUG TRAFFICKING AND MONEY LAUNDERING.

OUR FINANCIAL ANALYSIS DIVISION (FAD) IS THE CLEARING HOUSE FOR ALL FINANCIAL DATA. THE CENTER ANALYZES THE FINANCIAL CHARACTERISTICS OF CRIMINAL MARKETS AND ASSISTS IN DEVELOPING USEABLE STRATEGIES FOR EXPLOITING CRIMINAL FINANCIAL BUSINESS PRACTICES. NEEDLESS TO SAY, THE CENTER IS ALSO THE SOURCE OF INTELLIGENCE, BOTH DOMESTIC AND FOREIGN, DEVELOPED AND ADAPTED FOR THE INVESTIGATIVE FIELD UNITS. DURING FY 1985, FAD IDENTIFIED INDIVIDUALS AND COMPANIES SUSPECTED OF LAUNDERING OVER A BILLION DOLLARS.

OPERATION EXODUS

OPERATION EXODUS COMBATS ILLEGAL EXPORTS OF EQUIPMENT, COMPUTER PARTS, CLASSIFIED DEFENSE ITEMS, AND LASERS. IN ADDITION, AND EQUALLY SERIOUS, IS THE ILLEGAL TRANSFER OF TECHNICAL DATA ON RESEARCH, DEVELOPMENT, AND MANUFACTURING. OUR JOB IS NOT ONLY TO DETECT THESE SHIPMENTS, BUT ALSO TO PUNISH THE INDIVIDUAL VIOLATORS. ULTIMATELY, IF WE ARE TO BE SUCCESSFUL, WE MUST DISCOURAGE THE ACTIVITIES OF THE MANUFACTURERS, OVERSEAS INTERMEDIARIES, AND FOREIGN OPERATIVES. I AM PLEASED TO REPORT THAT WE ARE RECEIVING THE STRONG SUPPORT OF AMERICAN INDUSTRY IN THIS EFFORT.

CUSTOMS ACTIVITIES IN THIS PROGRAM IN FY 1987, WILL FOCUS ON TARGETING ILLEGAL EXPORTS WHILE MINIMIZING THE IMPACT ON LEGITIMATE TRADE. EXPANDED USE OF SPECIFICALLY TARGETED ENFORCEMENT OPERATIONS CONCENTRATING ON HIGHLY SELECTIVE CRITICAL EXPORTS, INCREASED FOREIGN INFORMATION, AND ADP GENERATED ANALYTICAL INTELLIGENCE ARE CRITICAL ELEMENTS FOR IMPROVING OVERALL EFFECTIVENESS. IN FY 1987, A WIDE RANGE OF ENFORCEMENT INITIATIVES WILL BE IMPLEMENTED: ADDITIONAL UNDERCOVER OPERATIONS; AN EXPANDED MUNITIONS CONTROL PROGRAM; ENHANCED LIAISON WITH THE INTELLIGENCE COMMUNITY; INCREASED FOREIGN COOPERATION; AND, SUPPORT AND ASSISTANCE TO FOREIGN GOVERNMENTS IN THEIR OWN CONDUCT OF OPERATIONS DIRECTED AGAINST EXODUS VIOLATIONS.

PORNOGRAPHY

THE PAST DECADE HAS SEEN SUBSTANTIAL GROWTH IN PORNOGRAPHY TRAFFICKING. IT IS A PROBLEM OF PRIME CONCERN AND CUSTOMS HAS STEPPED UP THE LEVEL OF ENFORCEMENT IN THIS AREA. WE ARE AGGRESSIVELY INVESTIGATING PORNOGRAPHY CASES, ESPECIALLY WHERE LARGE VOLUME DEALERS, ORGANIZED CRIME, OR CHILD PORNOGRAPHY ARE INVOLVED. SINCE PORNOGRAPHY IS SMUGGLED INTO THE UNITED STATES

CHIEFLY THROUGH THE MAILS, WE HAVE A VITAL ROLE IN CURBING THE IMPORTATION OF PORNOGRAPHIC MATERIALS AND SEEKING PROSECUTION OF VIOLATORS OF CUSTOMS AND RELATED LAWS. TO ACCOMPLISH THIS, CUSTOMS, TOGETHER WITH OTHER FEDERAL, STATE, LOCAL AND FOREIGN AUTHORITIES, IS WORKING TO STEM THE FLOW OF IMPORTATION AT THE SOURCE COUNTRIES. AS A RESULT OF CUSTOMS' INVESTIGATIVE EFFORTS SEVERAL CHILD PORNOGRAPHERS HAVE BEEN IDENTIFIED AND ARRESTED.

CONCLUSION

IN CLOSING, WE WISH TO REITERATE THAT OUR BASIC MISSION IS THE COLLECTION OF REVENUE AND ENFORCEMENT OF CUSTOMS AND RELATED LAWS. OUR MISSION IS IMPORTANT AND OPERATES IN A DYNAMIC ENVIRONMENT, SIGNIFICANT ELEMENTS OF WHICH INCLUDE THE TRAVELING PUBLIC, THE TRADE COMMUNITY, AMERICAN BUSINESS AND THE GENERAL PUBLIC. CUSTOMS, IN FULFILLING ITS RESPONSIBILITIES, MUST INCREASINGLY EMPLOY SOPHISTICATED OPERATIONAL AND ENFORCEMENT TECHNIQUES AND A WIDE VARIETY OF SKILLS AND DISCIPLINES.

IN FY 1986, DESPITE THE IDENTIFIED REDUCTIONS, CUSTOMS WILL CONTINUE IMPROVING COMMERCIAL MERCHANDISE PROCESSING AS WELL AS UPGRADING ITS VITAL TECS SYSTEM. WHEREVER POSSIBLE, SELECTIVE APPROACHES SUPPORTED BY AUTOMATION AND REDUCED PROCEDURAL REQUIREMENTS WILL BE IMPLEMENTED. IN EACH CASE, WE ARE ATTEMPTING TO SPEED UP THE PROCESSING TIMES. AS DESCRIBED EARLIER, WE WILL BE WORKING CLOSELY WITH THE IMPORTING COMMUNITY TO INSURE THAT THE PLANNED OPERATING SYSTEM MEETS THEIR NEEDS AS WELL AS OUR OWN.

TODAY, I HAVE OUTLINED A BLUEPRINT OF FUTURE DIRECTIONS AND OF IMPROVEMENTS RECENTLY IMPLEMENTED. IN FY 1987, WE SHOULD BEGIN TO SEE THE RESULTS OF THESE EFFORTS AS MANY OF THE INNOVATIONS BECOME FULLY OPERATIONAL.

THIS CONCLUDES MY INTRODUCTORY STATEMENT. WE ARE AVAILABLE TO DISCUSS THE DETAILS OF THE REQUEST AND ANSWER YOUR QUESTIONS AND THOSE OF THE SUBCOMMITTEE MEMBERS.

Senator DANFORTH. As I understand your testimony, while you at least for now have ruled out the single shift idea, you are leaving that option open in the future?

Commissioner VON RAAB. We have ruled it out for 1986 because of the Consolidated Omnibus Budget Reconciliation Act. We no longer need to do that in order to effect the savings that would have been necessary. So it is out for 1986.

We continue to maintain it as a possibility for 1987 until we know our budget numbers exactly, because at certain levels that approach would be required.

Senator DANFORTH. I would certainly hope not. You and I have discussed this before, but I would hope that that would not be a tactic that would be pursued.

Commissioner VON RAAB. I am well aware of your concern, and I assure you that it would be the least likely budget reduction to be implemented. However, at certain levels, certain actions are necessary, and I don't feel it is fair to say it has been ruled out completely.

Senator DANFORTH. Commissioner, it would seem that the duties of the Customs Service would be expanding rather than contracting with the trade deficit being high and problems with terrorism and import fraud. Yet on the heels of a reduction of, what, 700 or so employees this year, you are asking for an additional how many for next year? Seven hundred plus?

Commissioner VON RAAB. Seven hundred seventy.

Senator DANFORTH. Seven seventy for next year. Are you confident that you can do the job with a reduction over 2 years of 1,500, particularly could you do the job on the commercial side? Do you feel that you have placed enough emphasis and will be able to put enough resources into the commercial side of Customs work?

Commissioner VON RAAB. Well, as I indicated, we are putting additional resources into our automated commercial system. It is our long-term plan, as well as our short-term expectation, that the additional resources we are pouring into the automation of Customs activities will enable us to continue to shoulder the increased workload.

The 770 reduction for the most part would represent a slightly different organizational structure. That is some centralization, some reorganization of Customs districts. Only a small part reflects an across-the-board reduction. As I also indicated, part of that may or may not be necessary, depending on the moneys available to Customs from the Reconciliation Act in fiscal year 1987.

Senator DANFORTH. The consolidation of districts includes—one I capture that I notice is St. Louis; Providence, RI; Portland, ME; St. Albans, ME; Savannah, GA; Wilmington, NC; Washington, DC; Mobile, AL; Houston, TX; Port Arthur, TX; Portland, OR. The chairman of this committee would be interested in that one. And then Anchorage, AK; Duluth, MN; Milwaukee, WI.

Commissioner VON RAAB. Mr. Chairman, I have not approved any particular locations for centralization. We are aware that it is a possibility, but there has been no list submitted to me for approval. I am not saying that those types of proposals might not be the kind that you would see, but nothing has been approved. I have

done that consciously because until we get to the point where there is more certainty of our 1987 budget, I cannot make a decision.

Senator DANFORTH. Those communities would notice the reduction in service, wouldn't they?

Commissioner VON RAAB. They might perceive a reduction in service, but it is our opinion that service remains unchanged. I am well aware of the importance to many local communities of a Customs designation. But it is our genuine belief that the change in designation should not be accompanied by a change in service. I can tell you sincerely and confidently that there would be no drop in service. I cannot tell you that the communities themselves would not perceive it differently.

Senator DANFORTH. Well, I would just state that I question that reductions in the Customs Service manpower and a closing of Customs Service districts is really an efficient use of resources. The Customs Service produces revenue, does it not?

Commissioner VON RAAB. Oh, yes, without question we produce billions of dollars of revenue.

Senator DANFORTH. The Customs Service is essential in enforcing trade laws. If we want to enforce our trade laws, the Customs Service is necessary. I appreciate your desire to automate and to use the most advanced equipment in doing the work of the Customs Service, but I would question whether reduction of some 1,500 commercial positions over a 2-year period of time and the closing of district offices would achieve the goal of an effective Customs Service.

Commissioner VON RAAB. I can understand your concern. I would point out that a large number of the 777 positions that we discussed for 1986 are positions that were never filled. They were vacancies which occurred because of the periodic hiring freezes Customs has had to impose over the years. There were no individuals put on the street. As a matter of fact, Customs in 1986 will not be RIFing anyone.

As I indicated, because of some of the flexibility resulting from the Reconciliation Act, we are actually not going to see that 777 FTE reduction. It will probably be something less than that. Maybe around 700 FTE. Virtually all of those positions were authorized at some point, under the continuing resolution, but they were never filled. So they are sort of, I guess, expectations unrealized rather than positions cut.

Senator DANFORTH. Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

Mr. Commissioner, I didn't quite understand why, as our country begins to become more and more involved in trade—that you think this kind of cutback in personnel, roughly 1,500 in 2 years, is going to enable you to do your job. I didn't quite understand how those two were put together.

Commissioner VON RAAB. Well, I didn't attempt to draw a causal connection between reduced manpower and increased ability. What I was saying is that the Customs Service has been able to handle the increased workload because of internal changes, changes in its practices, many of which are 200 years old, and the use of automated data processing. What I was trying to explain was that our regearing, in order to handle the increased trade which is coming on, has been directed more toward improving systems and putting

more of our work into an automated environment than it has been to increasing people.

Senator BAUCUS. Could you give me some examples of what that would be; how that would work?

Commissioner VON RAAB. Sure.

Senator BAUCUS. Those are some fancy sounding terms—automation and so forth. But could you give me some concrete, specific examples?

Commissioner VON RAAB. A concrete example would be Customs Service processing of approximately 7 million formal entries in a particular year. There is a package of documents that is submitted to the Customs Service on the basis of which we make a decision to admit, not to admit, to charge certain duty or to make other decisions with respect to admissibility of the goods.

Two years ago, none of the documents were submitted to Customs other than as a package of papers stapled together. At this point, 25 percent of those documents are submitted through a computer to computer exchange; therefore the people who do the processing no longer have to handle the clerical aspects and now can give their attention to other jobs in the Customs Service.

We anticipate that by the end of this year 50 percent of those documents will be submitted in an electronic or automated data environment. That is the kind of improvement that we are talking about.

Senator BAUCUS. Physically, where are these entries made? I mean, does an importer, for example, submit the data in some computerized tape form of some kind, somewhere? How does that work?

Commissioner VON RAAB. Mr. De Angelus would like to respond to that question, if it is all right with you, Senator. He is the Deputy Commissioner of Customs.

Deputy Commissioner DE ANGELUS. Senator, the entries are submitted generally through Customs brokers who are licensed by the Customs and acts as agents for the importers. They generally operate at approximately 72 major ports of entry of the Customs total of 317 ports of entry around the United States. They submit the paperwork in the current mode directly to Customs. But as the Commissioner mentioned, we are moving toward electronic submission so that theoretically——

Senator BAUCUS. Where is that electronic submission made?

Deputy Commissioner DE ANGELUS. Well, in Sweetgrass, MT, it is made from the broker right there in Sweetgrass, and then over telephone lines to our computer here in Springfield, VA.

Senator BAUCUS. You have a terminal in Sweetgrass?

Deputy Commissioner DE ANGELUS. They are getting one in Sweetgrass, yes, sir. Sweetgrass is a major border crossing.

Senator BAUCUS. I am glad you are alert to that. [Laughter.]

We have made progress in the last several years.

Deputy Commissioner DE ANGELUS. Thank you.

Senator BAUCUS. As you face budget constraints, Commissioner, in Gramm-Rudman and so forth, what did you request of OMB compared with what you are asking for here today? You can provide that for the record.

Commissioner VON RAAB. We will be happy to provide that for the record.

[The information from Commissioner Von Raab follows:]

Customs original budget request to OMB was $753,466,000 and 13,835 FTE for the FY 1987 Salaries and Expenses appropriation and $71,434,000 for the FY 1987 Air Operations and Maintenance appropriation.

Senator BAUCUS. Could you also tell me roughly what your various options were for making your budget agree with these budget constraints? What different options did you have as to where you cut?

Commissioner VON RAAB. You mean what flexibility were we given by the Department?

Senator BAUCUS. That is correct.

Commissioner VON RAAB. Our budget basically includes a salaries and expenses and an air program operations and maintenance account; the air program is the smaller amount. Within the air program, or as we call it, the operations and maintenance account, we made some submissions. And within the salaries and expenses account the only number to which we were restricted was the overall budget figure. Within each section of the budget, the Customs Service was free to allocate these expenses or, if you would, take reductions as it saw fit.

Senator BAUCUS. What I am getting at is: Other than the 770 FTE cut, what other way could you achieve the same savings without laying those people off or letting those people go or not fill those slots as people naturally leave?

Commissioner VON RAAB. In 1986, we made a substantial number of reductions that were not in the personnel area. We reduced some of our contract support. We reduced our travel budget. We reduced any number of accounts not related to personnel.

For 1987, it is much more difficult. Since Customs is a personnel intensive organization, we had to take reductions in the personnel area.

Senator BAUCUS. Let me ask you this: Do you think this budget request you are making today is enough for you to do a very, very good job?

Commissioner VON RAAB. Well, first——

Senator BAUCUS. Your personal view. I don't care about what the administration has told you to say or not to say. I just want to know what you personally, you the Commissioner think.

Commissioner VON RAAB. I care about what the administration has told me to say. [Laughter.]

Senator BAUCUS. We care too, but not in this context.

Commissioner VON RAAB. This has to be viewed within the background of significant Gramm-Rudman cuts. The budget reductions that we have made are part of a larger program of reducing expenses across the entire spectrum of Government.

Senator BAUCUS. Commissioner, you are the Commissioner. You have a unique perspective. Putting Gramm-Rudman aside, putting the administration aside, just you as the person in charge of the U.S. Customs Service, is this enough for you to do a very good job or is it not? What do you personally think? What is your personal advice?

Commissioner VON RAAB. In this formal environment, testifying before you, I am presenting the President's budget. I do not want to become some sort of independent source of opinion. Within the environment of the across-the-board reductions that are necessary, I believe the Customs Service has adequate resources to do a good job.

Senator BAUCUS. Well, that is not the question I asked.

Commissioner VON RAAB. Well, that is the best answer that I can give you.

Senator BAUCUS. On the list of district offices that the Senator from Missouri read, he did not include Great Falls, MT. Would you bring me up to speed on whether Great Falls is or is not on any of your lists? And if so, what do we do to get it off?

Commissioner VON RAAB. As I indicated to the chairman, I don't have a list. I also would tell you that we give great weight to the presence of Senators from the States on our various committees.

Senator BAUCUS. This is important for another reason. Montana is, I think, one of the most economically depressed States at this time because of agriculture and the gas decline and so forth. Some communities like Great Falls are looking to establishing free trade zones. I think it is particularly important that Montana, therefore, have personnel in the event——

Commissioner VON RAAB. Senator, I understand. I am acutely aware of the economic and political sensitivity of the reorganization of any of the offices of the Customs Service, and I can assure you that any action would be taken only after extensive consultation with you for your constituency or those members of your staff. A similar procedure is in place for all of our committees.

Senator BAUCUS. Would you be willing to give this committee 60 days' notice before any closing is put into effect?

Commissioner VON RAAB. With only one reservation. If we could have 60 days' notice of what our budget would be for 1987, we would be happy to give you 60 days' notice as to what we would do in 1987. I realize that that is not necessarily within your control. But that is where we have a problem.

Senator BAUCUS. But the other is within your control.

Commissioner VON RAAB. That is true.

Senator BAUCUS. So I will make you a deal. You submit your half and we will see what we can do on ours.

Commissioner VON RAAB. That is agreed.

Senator BAUCUS. Thank you.

Senator DANFORTH. Senator Grassley.

Senator GRASSLEY. I see there are 50 positions being eliminated in tactical interdiction. How many of those 50 positions are presently filled?

Commissioner VON RAAB. As we are almost to the point of not being able to change our practices for 1986, I can only tell you that the positions that are described as being in the tactical enforcement area are actually at this time being filled by the Customs Service because of the beneficial impact upon our budget of the Reconciliation Act which freed up some moneys.

I would say that the money is probably being used to staff that area now. It would only be in 1987 that we would have to review the need for a freeze in that area.

Senator GRASSLEY. Well then, are you saying to me that there are no positions there now? That there are 50 new positions being filled? And then in this budget you are giving us, it says it plans to eliminate those 50 positions. That you are going to fill them and then eliminate them in the 1987 budget?

Commissioner VON RAAB. I am saying this was the budget that was presented back in January. An intervening event has taken place since then.

Senator GRASSLEY. Well, then, is the answer to the question then that these 50 positions may not be eliminated in 1987?

Commissioner VON RAAB. That is possibly the case.

Senator GRASSLEY. So there are 50 new positions. So, in other words, there will only be 50 positions in the area categorized as tactical interdiction?

Commissioner VON RAAB. I wouldn't characterize them as necessarily new positions. I don't mean to quibble, but the Customs Service has typically operated with more authorized positions than it has been able to fill because it didn't have moneys with which to fill them. In many cases when you see positions "being eliminated," what you are really talking about is an inability of Customs to pay for the personnel in those positions; not a prescription on the Customs Service to hire.

So in many cases where you see reductions—for example, the 777 for this year—those are not necessarily new positions, but those are positions that may have been technically considered vacant, but we just didn't have the money. And that is the case as well prospectively.

Senator GRASSLEY. If these 50 positions are going to be filled and not eliminated, then is that at a level that the Customs will be able to carry out its part of getting illicit drug trafficking somewhat under control?

Commissioner VON RAAB. I am quite comfortable with the level at which the Customs Service is operating right now in terms of personnel devoted to drug interdiction.

Senator GRASSLEY. Really what I was leading to, because I read your document that 50 positions might be eliminated and then I think in terms of the budget just adopted by the Senate 2 weeks ago in which there was an increase by our committee for the regular police work in drug trafficking, was whether or not there was an inconsistency between the elimination of your positions and what we might be thinking the administration should be doing in other areas, like the Drug Enforcement Agency, or whether or not—No. 1, an inconsistency; No. 2, then that maybe this budget would reflect on your not having to carry out the elimination of these positions.

Can you comment on where we might be on that?

Commissioner VON RAAB. The 50 positions that were scheduled for not filling or in some case reduced are on the basis of our existing 1987 budget proposal. The problem is the continuing impact of the Senate Reconciliation Act, or the so-called Budget Reconciliation Act, on the 1987 budget.

Senator GRASSLEY. And that is beneficial for——

Commissioner VON RAAB. That has been beneficial for us. That would provide us with some relief.

Senator GRASSLEY. Then our budget that was just adopted may carry on that same additional help into the 1987 year?

Commissioner VON RAAB. Yes; my guess is that the budget that you proposed, assuming that there are no changes in the way that the reconciliation bill would affect 1987—in other words, it would apply the same way as 1986—would provide us with even more positions than that 50.

Senator DANFORTH. Senator Long.

Senator LONG. I am very much concerned about what is happening in this country with illegal drugs. Now I have heard various figures given, but the estimates I have had is that this merchandising of illegal drugs in this country is an $80 billion business. Does that meet with your estimates or is that off from what you have?

Commissioner VON RAAB. I believe that is pretty close to what the President's Commission on Organized Crime estimated.

Senator LONG. I have heard higher figures, but I am willing to settle for that. Now how much are we spending in this budget to try to control the movement of illegal drugs into this country?

Commissioner VON RAAB. Senator, I would be happy to give you these figures specifically, but I believe for OMB purposes we have approved the use of a figure of approximately $310 million of the Customs Service budget that is applied toward fighting the drug war.

Senator LONG. All right. So that is an $80 billion business, and we are spending $310 million to fight it.

Commissioner VON RAAB. In the Customs Service. There are other activities. I believe it is a billion six, but I would like to reserve my right to correct that. But I am pretty sure it is a billion six across the administration that is being used in the drug war.

Senator LONG. Well, where is the $1.8 billion?

Commission VON RAAB. That would be in DEA, in the Coast Guard, in the Customs Service, in the budget of the State Department for INM; a whole series of activities.

Senator LONG. All right. If we are spending $1.8 billion we would be spending then would be a little over 2 percent of what they are making out of that business.

Now I have read stories about the way drugs are coming in across the Mexican border and into Texas and into Arizona, California, and New Mexico. And, frankly, I am very dismayed about that. It seems to me that we ought to be doing a great deal more. In fact, I gain the impression that it is just hopeless. I read stories that report that some areas have only one person for every 100 miles of border, which to me is pretty ridiculous.

Do you have any estimates of what it would cost to close that Mexican border to anything that isn't legally coming across it?

Commissioner VON RAAB. Well, I have a number of times testified on the Mexican border. As a matter of fact, that is what I am doing after this hearing. I have said that the first thing that has to be done with respect to the Mexican border is to clear up the corruption that we are faced with in Mexico. Because we could put men and women locking arms every 3 feet, and as long as the drug smugglers have the capability of stepping 2 feet over what is sort of a modern equivalent of the Yalu River, I mean they just can go right back into Mexico and there is nothing we can do about them.

Senator LONG. I think what you are saying is ridiculous. You are saying that we can't defend our own boundaries. We have the authority to put as many people out there as it takes to stop it.

Commissioner VON RAAB. I am not saying we don't have that authority. I am saying as long as people can step back into Mexico and escape from us and there is no prosecution of them in Mexico, there is a safe haven for them in Mexico. As far as resources on the Mexican border are concerned, we are increasing our resources, and have in the past put additional inspectors on that border.

We are also going to be putting more resources into the Louisiana area. We will be putting additional boats down there and trying to beef up our efforts there as well.

We are increasing our resources, in my opinion, as quickly as we can and yet manage them so that they are efficiently and effectively used.

Senator LONG. Well, the Commissioner of Education tells me that the studies he has indicate that 20 percent of these young people in school are hooked on drugs right now. Furthermore, my information is that once they are hooked you practically can never get them off. It is 10 times as easy to break an alcoholic of being an alcoholic as it is to break a person of the habit of using hard drugs. Is that your information? I see you are nodding your head.

Commissioner VON RAAB. Cocaine is probably the most addictive of all the drugs. You are absolutely right. I mean it appears that once you are hooked on it, you really never recover from it. You are always going to be susceptible. If you were to imagine that everyone in the United States were an alcoholic, that's the problem. I mean cocaine basically is to most of the people in this country what alcohol is to people that are chronic alcoholics. That is a terrible situation. I agree with you 100 percent.

Senator LONG. May I go just about 2 minutes longer, Mr. Chairman?

Senator DANFORTH. Certainly.

Senator LONG. You say nothing can be done unless Mexico cleans up their government. I gain the impression that it is our fault. We have the power right here to stop them. We could arrest them right there at the border. Now when you are only putting one agent per 100 miles, they could march an army across it, and you wouldn't know it.

So it seems to me that the first thing you ought to do is to have enough enforcement across that border so that——

Commissioner VON RAAB. Well, the border is 1,800 miles long. One agent per 100 miles would only be 18 agents. We have a lot more than 18 agents on that border. I would be happy to get you those numbers, but they are in the hundreds as opposed to 18.

Senator LONG. Well, now, on the average day, on an 8-hour shift, how many agents do you have guarding the average stretch along that border?

Commissioner VON RAAB. We have approximately 900 inspectors on that border and approximately 300 agents.

Senator LONG. You say 900 inspectors and 300 agents?

Commissioner VON RAAB. That is right.

Senator LONG. So that gives you about a total of 1,200. Now what kind of shifts do you work them on?

Commissioner VON RAAB. All of the ports along there are 24-hour ports.

Senator LONG. Now does that mean you are working them on 8-hour shifts?

Commissioner VON RAAB. Basically, on average, they are 8-hour shifts, although there is a lot of overtime put in by our officers on that border.

Senator LONG. Well, 8-hour shifts, you have to have some annual leave and weekend leave and things like that, don't you?

Commissioner VON RAAB. That is correct.

Senator LONG. So by your testimony you get—if you put the whole bunch of them guarding the border, you would have a total of 1,200. Now you divide that through by three to say you have got them around the clock, that would give you 400 people to guard the border, and that is assuming they are all guarding the border, that you have got them strung out. But I would assume that about half of them are inside those offices, aren't they, places like Laredo, El Paso, Juarez, places like that?

Commissioner VON RAAB. Well, in the past, they have spent a lot of time inside the offices. I think if you will go to the border over the past year or so, you will find that many more of them are actually on the line and inspecting as opposed to doing paperwork.

Senator LONG. Well, I read a story that said that you had them as far as 100 miles apart. However, even if on the average you have more people than 100 along the border, those people are not stretched out along a fence. That is what I had in mind.

Commissioner VON RAAB. That is true.

Senator LONG. About half of them are working from an office somewhere. So you have got an average of about 1 every 6 miles.

And that is night and day. Now during the night time it is a lot easier for a person to sneak across than in the daytime. Now I don't know whether it was you or someone else in the Treasury Department who was up here a while back to discuss this, but I indicated my information and how bad the situation was, and he said, "No, it wasn't that way." However, by the time they got through providing the information for the record, it was about as bad as I thought.

Commissioner VON RAAB. Senator, I am not in any way talking about lack of a problem on that border. I, more than anybody in the administration, have pointed out the seriousness of border problems. But what I am saying is that there are a number of issues that have to be faced. It involves not only the right numbers but also the right types of personnel. We are trying to correct the situation. With our discretionary resources, we are hiring more men and women to go work on the border. We also have to improve our intelligence.

But I don't in any way want to forget or look over the problem of corruption across the border because that exacerbates the problem.

Senator LONG. Well, all I am saying is, if you put enough men amd women out there to guard the border, then you ought to be able to guard that border and keep them from coming across. Furthermore, you are just beginning to acquire the capacity of doing something about low-flying planes.

Commissioner VON RAAB. Right.

Senator LONG. You are just now beginning to get the capacity. Even now, nobody is shooting down those airplanes, are they?

Commissioner VON RAAB. No. Unfortunately, the decisions that the U.S. courts have made would make it extremely dangerous for our officials to be shooting down planes. They would probably spend the rest of their lives defending themselves against court suits.

Senator LONG. All right. Now why don't you bring us a proposal, an Act of Congress, that we can pass to help with this situation? They are flying all this stuff across; they are destroying lives as fast as they can do it. Why aren't you up here with a proposed change of the law so we can give you the authority to shoot them down? They ought to be shot down.

Commissioner VON RAAB. I promise you I will return to you with the strongest piece of legislation we can come up with. If we can get around the constitutional problems of due process, then we are off. But it really is a very difficult issue.

I agree with you that, something like that would be a good idea.

Senator LONG. Did it over occur to you that we could even pass a constitutional amendment, if need be, to meet this problem? I think the people would vote for it. As a matter of fact, I think any State legislature would be glad to confirm a constitutional amendment if we have got to contend with the Supreme Court.

But the President might get an appointment on that court one of these days—you might get a judge up there to go along with the Chief Justice that would let you enforce the law against some of this mischief.

Commissioner VON RAAB. Senator, your comments are the most hopeful I've heard, and I am with you 100 percent. And I promise to work with you on tightening up on our authorities to deal effectively with smugglers coming across the border. But it is a very complicated issue.

Senator LONG. But, first, we need some witnesses up here to testify how we can do some of this because, goodness knows, I am for doing whatever it takes. All these lives of young people are being destroyed. In terms of our national welfare problem, what we have got now is nothing compared to what the next generation is going to have with 20 percent of the young people in school right now hooked on drugs. I see you nodding that you know it is a problem. And I am saying we need for you to testify on what can be done. Give us a chance to vote for it.

Senator DANFORTH. Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman.

Mr. De Angelus, what is the status of the Providence Customs office now? What is the official designation of that office?

Deputy Commissioner DE ANGELUS. Senator, the official designation for the Providence office is as a district.

Senator CHAFEE. Now what is the next step below a district? If you are not a district, what are you?

Deputy Commissioner DE ANGELUS. In Customs, you may be one of three things—a station, a district, or a port of entry. A port of entry permits all Customs functions to be performed at that place. A district is the location where the management for a geographic area is located and maybe one or more ports.

Senator CHAFEE. Well, now, rumor has it, it is being brooded about, that the Providence office is going to be consolidated in Boston. And you and I have been through this before. If that were so, what would Providence become? A port of entry?

Deputy Commissioner DE ANGELUS. Providence would become solely a port of entry. It is now both a port of entry and a district headquarters.

However, Senator, if I might add, since 1971, Bridgeport, which was designated as a district headquarters as well as a port of entry, has not had a district director. Providence, since 1976, until 2 years ago, was a port of entry and a district headquarters and did not have a district director.

Bridgeport in November 1985 was officially undesignated, if that is the correct word, as a district headquarters—it is a port of entry—and it has operated for 15 years under the Massachusetts Customs district. Providence remains to this day designated a district headquarters; however, it continues to operate as a full port of entry, as does Bridgeport. We don't believe that is to the detriment of the import or export community.

Senator CHAFEE. Well, my worry list does not extend to Bridgeport. So what happens there is——

Deputy Commissioner DE ANGELUS. I understand that, Senator.

Senator CHAFEE [continuing]. Somebody else's worry.

Let me ask you about the user fees. I apologize, Mr. Chairman. I was a little late. Did you get into user fees for foreign trade zones? Has that been touched on?

Deputy Commissioner DE ANGELUS. No; we did not.

Commissioner VON RAAB. We did not.

Senator CHAFEE. It is my understanding you have got a user fee for foreign trade zones that goes into sort of a three-tier step; is that right?

Commissioner VON RAAB. That is right.

Senator CHAFEE. And the minimum is fairly substantial. I was concerned about that. I don't mind user fees, and I don't mind them for foreign trade zones. But it is my understanding that your minimum, that is, for the smaller foreign trade zones, was fairly substantial. And I thought it might be a detriment to the formation of foreign trade zones that are just commencing.

Commissioner VON RAAB. Senator, I have met with the Foreign Trade Zone Association on this matter, and I don't know to what degree they represent all of the foreign trade zones; however, they are the officially accepted recognized group. They endorsed our proposal with the exception of the midlevel fees of three tiers. They oppose the cutoff of 300 to less than 300 admissions or transfers.

Senator CHAFEE. Let us see——

Commissioner VON RAAB. 3,000 or more.

Senator CHAFEE. What is the smallest one?

Commissioner VON RAAB. $1,400.

Senator CHAFEE. $1,400.

Commissioner VON RAAB. The middle ground is $15,500, and the top level is $33,800. Their objection has to do with the cutoff. They feel that a number of the small zones cannot afford the $15,500, but had over 300 admissions. I have agreed to look into it.

Senator CHAFEE. All right.

Commissioner VON RAAB. They have their own proposal which is very similar to ours with the exception of this midlevel group. My understanding is they have made the proposal to us and we are now costing it out to see whether it does what it is supposed to do. Basically, we must recoup Customs costs of administering these trade zones.

Senator CHAFEE. But the trouble with that recouping of the Customs costs—I am all for that. But it is my understanding that all of these fees go into the General Treasury, don't they? They don't go to the Customs Service, do they?

Commissioner VON RAAB. These come directly to Customs.

Senator CHAFEE. Oh, is that right?

Commissioner VON RAAB. Yes; these do. There is a mixed bag as far as fees are concerned. Some of them are directly reimbursable, some of them come to our appropriations, other——

Senator CHAFEE. But I was talking about——

Commissioner VON RAAB. But this particular group come to Customs.

Senator CHAFEE. So they are user fees.

Commissioner VON RAAB. So they are a real user fee in that sense.

Senator CHAFEE. Let me ask you briefly about gray market goods, so-called parallel market.

Commissioner VON RAAB. Right.

Senator CHAFEE. This committee, at least, we wrote you last year urging you to not change your regulations and not interfere with—at that time, those regulations, I think, did not interfere with the so-called gray market, did they?

Commissioner VON RAAB. No; they did not. We have not taken any action within the Customs Service to change our regulations or procedures with respect to gray market. There are a number of suits that have taken place, one of which might be of particular interest to you. It is called the *Copiat* case. If you would like, Mr. Schmitz, our chief counsel, is here——

Senator CHAFEE. Well, I just know that that one just came out.

Commissioner VON RAAB. That is right.

Senator CHAFEE. It was a different result from the other cases.

Commissioner VON RAAB. That is correct. And we are still reviewing the results of that case to see what we should do in response.

Senator CHAFEE. Well, since it represents a deviation from the approach that has been taken in other circuits, I would hope that you would appeal it rather than changing your regs based on that.

Commissioner VON RAAB. I understand, Senator. And we will certainly let you know what we are doing. I would mention, however, that the gray market issue is a departmental issue at this point. Any policy changes would be made at the departmental level. Athough we would certainly keep you advised, I would not expect to see anything come out of Customs. So perhaps Assistant Secretary Keating could give you a more current review of departmental thinking on this right now.

Senator CHAFEE. All right. Thank you.

Thank you, Mr. Chairman.

Senator DANFORTH. Senator Bentsen.

Senator BENTSEN. Thank you very much, Mr. Chairman.

I guess this is the sixth straight year the administration has asked for a cut in the number of Customs people. And this is the sixth straight year I an going to oppose it.

Last time we called for 623 new positions. Then because of Gramm-Rudman, we had to cut 777 positions. Now you are asking for elimination of an additional 770 positions. If Congress agreed to those cuts, we would reduce positions by 1,547 positions. I don't know when they are going to figure out that Customs officials actually earn dollars for the Treasury. They learned that with the IRS and finally reversed their position there and added some.

I am particularly concerned about the drug problem. Senator Long and others have addressed it. I am looking at some of the things that have happened in the last year. My understanding is that marijuana passing from Mexico into the United States has doubled. The estimates are that it will double in 1986 over 1985.

Last year, the customs officials got 23 metric tons of cocaine intercepted, almost double the amount the year earlier. And you and I know that an awful lot, great majority of it, must have gone by without interception.

I recently joined other Senators from the Southwest in a letter to the President asking him to create a Southwest Border Drug Enforcement Task Force. Mexico is now the No. 1 source of marijuana coming into this country; the No. 1 source of heroin entering the United States. And all the corruption isn't on that side.

I can take you to one county where I know the economy is terrible and show you some new ranch houses and some new pickups, and most of them are involved in drugs. And not too many of them have been caught.

The Customs Service, I understand—one-third of the cocaine that enters this country comes through Mexico. Now what we have seen in the way of tightening up on drugs coming into Florida has resulted in them coming through Mexico now. And they use Mexico just like it was a trampoline. They bounce it into Mexico and then move it on into Texas.

I was born and reared on that border, Mr. Von Raab. I know the problems of trying to control that border traffic. But far more can be done than is being done now. And what I am asking you in particular is what do you plan to do in the way of adding to the forces this year on drug interdiction along the United States-Mexican border. How many people? And when?

Commissioner VON RAAB. I know you are concerned about the entire Southwest border. I can tell you that as far as the Southwest is concerned, we are planning to add about 125 additional customs investigators——

Senator BENTSEN. Good. When?

Commissioner VON RAAB. Over the next few months.

Senator BENTSEN. That is good. I am glad to hear that.

Commissioner Von Raab. That is what we feel—I am not saying that is enough, but——

Senator BENTSEN. It isn't enough.

Commissioner VON RAAB [continuing]. But it is as much as we feel we can train and equip responsibly. In other words, you can't just add thousands of people and have them operate.

Senator BENTSEN. That is a net plus.

Commissioner VON RAAB. That is a net plus.

Senator BENTSEN. 125.

Commissioner VON RAAB. And I can tell you later, if you want, how many there are on the Texas border. But that is just in Texas.

Senator BENTSEN. Yes.

Commissioner VON RAAB. And we would be adding additional individuals in New Mexico and Arizona and on the California borders as well.

Senator BENTSEN. That will be done within the next few months?

Commissioner VON RAAB. That is right. I have already authorized the spending to hire those men and women.

Senator BENTSEN. I have never seen it as bad as I have seen it over the last couple of years.

Commissioner VON RAAB. There is no question but that the——

Senator BENTSEN. An incredible increase taking place.

Commissioner VON RAAB. The success we have had in the Southeast has moved the drugs west.

Senator BENTSEN. Absolutely.

Commissioner VON RAAB. I don't mean to raise the issue again, but there is a safe haven being provided in Mexico, which makes the Southwest border more attractive to drug smugglers. You are right we are addressing it. The Department has underway a generalized review of law enforcement on the Southwest border. I am certain that representatives of the Department would be happy to give you their thinking, but from a Customs perspective, we are putting additional resources into that area.

Senator BENTSEN. Well, that is encouraging.

The other recommendation that you have made is for a dollar user fee for private vehicles coming across the bridges. A $3 fee for trucks. You anticipate collecting $5,600,000, I am told.

I opposed the dollar head tax for individuals crossing that border, and we were successful in defeating that. Anytime you do something to further impede trade—and I think adding that kind of a fee does that—you add to the unemployment, I believe, on both sides. And you are looking at the highest unemployment area in the United States today along that Mexican border.

The Mission-McAllen-Edinburg area alone has a 22.7-percent unemployment. Up in Starr County, I am sure the figure must be close to 40 percent. Eagle Pass, Laredo, Del Rio, that entire border area, has far higher unemployment that any place in the United States.

I strongly disagree with the idea that you put on a user fee that I think will impede that traffic going back and forth. I understand your problem of revenue. But $5,600,000 is not a big number for Customs. Frankly, I would rather face up to it in the appropriation area. Would you want to comment on that? Maybe you can't.

Commissioner VON RAAB. The purpose of all user fees is to get Customs resources in line with their costs. I understand your personal reservation of that head tax, but I don't know what you want me to say about it. I can understand your concern, but viewed from our perspective, we believe that if we tied the resources to the fees and the needs, it would make for a more manageable operation.

Senator BENTSEN. Well, I am pleased to see you are responding to the request of myself and others along that border who have been insisting that we have more people on there for Customs to further interdict that drug traffic coming across.

Senator DANFORTH. Senator Long.

Senator LONG. I am told, Mr. Von Raab, that the street price for drugs is down. Is that right or not?

Commissioner VON RAAB. I am not trying to duck your question, but it is always very difficult to define the street price for drugs. I would be happy to provide a response for the record, if you would tell me the part of the country you are discussing and the type of drugs, since price is also a function of purity, time of year as well as other things.

Senator LONG. Why don't you just provide me what you have? If you have got it by categories, provide that.

Commissioner VON RAAB. We will be happy to do that.

Senator LONG. And I would like it broken down for heroin, marijuana, and cocaine, so we can see the price for each. Is the product called "crack" brought in in that State or do they make it into crack after they get it here?

Commissioner VON RAAB. That usually comes in that way, as crack.

It is not that difficult to do it.

Senator LONG. If you have it broken down by product, I would like to see what that is.

[The information from Commissioner Von Raab follows:]

MARIJUANA
GEOGRAPHIC DISTRIBUTION OF THREAT
CY 1986

REGION	PRIVATE AIR POUNDS	PRIVATE AIR PERCENT	NON-COMM. MARINE POUNDS	NON-COMM. MARINE PERCENT	LAND BORDER POUNDS	LAND BORDER PERCENT	CARGO OR PASSENGER POUNDS	CARGO OR PASSENGER PERCENT	MAIL POUNDS	MAIL PERCENT	TOTAL POUNDS	TOTAL PERCENT
NORTHEAST	13,638	0.1%	691,703	3.1%	2,706	0.0%	194,455	0.9%	0	0.0%	902,000	4.1%
NEW YORK	4,435	0.0%	193,565	0.9%	0	0.0%	320,000	1.5%	0	0.0%	518,000	2.4%
SOUTHEAST	855,254	3.9%	8,571,963	39.0%	0	0.0%	582,783	2.6%	0	0.0%	10,010,000	45.5%
SOUTH CENTRAL	628,531	2.9%	1,154,762	5.2%	0	0.0%	262,707	1.2%	0	0.0%	2,046,000	9.3%
SOUTHWEST	1,461,121	6.6%	912,787	4.1%	2,981,880	13.6%	166,212	0.8%	0	0.0%	5,522,000	25.1%
PACIFIC	480,141	2.2%	864,600	3.9%	951,060	4.3%	586,199	2.7%	0	0.0%	2,882,000	13.1%
NORTH CENTRAL	97,119	0.4%	0	0.0%	990	0.0%	11,891	0.1%	0	0.0%	110,000	0.5%
TOTAL	3,540,239	16.1%	12,388,880	56.3%	3,936,636	17.9%	2,124,245	9.7%	0	0.0%	22,000,000	100.0%
SW BORDER	1,941,262	8.8%	1,777,387	8.1%	3,933,940	17.9%	752,411	3.4%	0	0.0%	8,404,000	38.2%

NOTE: A. CARGO OR PASSENGER INCLUDES BOTH COMMERCIAL AIR AND MARINE CONVEYANCES.
B. LAND BORDER INCLUDES COMMERCIAL AND PRIVATE CROSSINGS AT AND BETWEEN PORTS OF ENTRY.
C. SW BORDER INCLUDES THE SOUTHWEST REGION AND PERTINENT THREAT FACTORS FOR THE CALIFORNIA/MEXICO BORDER.

HEROIN
GEOGRAPHIC DISTRIBUTION OF THREAT
CY 1986

REGION	PRIVATE AIR		NON-COMM. MARINE		LAND BORDER		CARGO OR PASSENGER		MAIL		TOTAL	
	POUNDS	PERCENT	POUNDS	PERCENT	POUNDS	PERCENT	POUNDS	PERCENT	POUNDS	PERCENT	POUNDS	PERCENT
NORTHEAST	0	0.0%	0	0.0%	26	0.2%	224	1.7%	10	9.1%	260	2.0%
NEW YORK	0	0.0%	0	0.0%	0	0.0%	5,645	43.4%	205	1.6%	5,850	45.0%
SOUTHEAST	0	0.0%	3	0.0%	0	0.0%	123	0.9%	4	3.6%	130	1.0%
SOUTH CENTRAL	0	0.0%	0	0.0%	0	0.0%	129	1.0%	1	0.9%	130	1.0%
SOUTHWEST	13	0.1%	4	0.0%	1,521	11.7%	147	1.1%	5	4.5%	1,690	13.0%
PACIFIC	71	0.5%	11	0.1%	2,574	19.8%	1,549	11.9%	85	7.7%	4,290	33.0%
NORTH CENTRAL	0	0.0%	0	0.0%	161	1.2%	465	3.6%	22	20.0%	650	5.0%
TOTAL	84	0.6%	18	0.1%	4,284	33.0%	8,282	63.7%	332	2.6%	13,000	100.0%
SW BORDER	84	0.6%	15	0.1%	4,095	31.5%	574	4.6%	32	0.2%	4,799	36.9%

NOTE: A. CARGO OR PASSENGER INCLUDES BOTH COMMERCIAL AIR AND MARINE CONVEYANCES.
B. LAND BORDER INCLUDES COMMERCIAL AND PRIVATE CROSSINGS AT AND BETWEEN PORTS OF ENTRY.
C. SW BORDER INCLUDES THE SOUTHWEST REGION AND PERTINENT THREAT FACTORS FOR THE CALIFORNIA/MEXICO BORDER.

COCAINE
GEOGRAPHIC DISTRIBUTION OF THREAT
FY 1986

REGION	PRIVATE AIR		NON COMM. MARINE		LAND BORDER		CARGO OR PASSENGER		MAIL		TOTAL	
	POUNDS	PERCENT	POUNDS	PERCENT	POUNDS	PERCENT	POUNDS	PERCENT	POUNDS	PERCENT	POUNDS	PERCENT
NORTHEAST	0	0.0%	317	0.1%	91	0.0%	417	0.2%	0	0.0%	825	0.3%
NEW YORK	800	0.3%	561	0.2%	0	0.0%	9,581	3.5%	55	0.0%	11,000	4.0%
SOUTHEAST	22,404	8.1%	90,936	33.1%	0	0.0%	87,009	31.6%	101	0.1%	200,450	73.0%
SOUTH CENTRAL	7,467	2.7%	474	0.2%	0	0.0%	3,334	1.2%	0	0.0%	11,275	4.1%
SOUTHWEST	15,518	5.6%	267	0.1%	10,395	3.8%	3,520	1.3%	0	0.0%	29,700	10.8%
PACIFIC	5,569	2.0%	495	0.2%	6,188	2.3%	8,167	3.0%	206	0.1%	20,625	7.5%
NORTH CENTRAL	669	0.2%	0	0.0%	87	0.0%	79	0.0%	0	0.0%	825	0.3%
TOTAL	52,427	19.1%	93,050	33.8%	16,754	6.1%	112,105	40.8%	362	0.2%	275,000	100.0%
SW BORDER	21,087	7.7%	762	0.3%	16,583	6.0%	11,687	4.3%	206	0.1%	50,325	18.3%

NOTE: A. CARGO OR PASSENGER INCLUDES BOTH COMMERCIAL AIR AND MARINE CONVEYANCES.
B. LAND BORDER INCLUDES COMMERCIAL AND PRIVATE CROSSINGS AT AND BETWEEN PORTS OF ENTRY.
C. SW BORDER INCLUDES THE SOUTHWEST REGION AND PERTINENT THREAT FACTORS FOR THE CALIFORNIA/MEXICO BORDER.

Senator LONG. Now my impression is that about 75 percent of the marijuana is getting through and about over 90 percent of the hard drugs; that is, cocaine and heroin. Is that about right?

Commissioner VON RAAB. No. I wouldn't use those figures. My estimate is that we are stopping about 35 percent of the cocaine. I think 95 percent is probably a reasonable figure as far as heroin is concerned. The marijuana figures are even harder to determine because of the production of domestic marijuana.

Senator LONG. Would you mind giving me again what percent you think you are intercepting?

Commissioner VON RAAB. I would say that we are intercepting between 5 and 10 percent of the heroin and approximately 35 percent of the cocaine. I do not recall the figure for marijuana.

Senator LONG. The last time, it was 25 percent. Do you think that——

Commissioner VON RAAB. I think it is probably a little better than that because the Coast Guard is having extremely successful interdiction efforts. They have seized many so-called mother ships on the high seas. I think they have done a very good job. One of the major defenses we have against the importation of marijuana is the activity of the Coast Guard on the high seas identifying and seizing mother ships.

Senator LONG. Some of us have been asking that they use the Navy to help with that matter. Is the Navy being used to intercept those ships or just to provide——

Commissioner VON RAAB. The Navy is being used to provide information and, in some cases, logistical support. There are Coast Guard officers, occasionally, on Navy ships. The Navy, I think, is being used extensively in the high seas battle against drug smuggling.

Senator LONG. Apparently, there are some people that feel the Navy ships can't be used because—I'm not familiar with this posse comitatus law—but is it correct, that the Navy cannot participate in such activities.

Commissioner VON RAAB. Well, the posse comitatus law has an interesting history. The posse comitatus law was passed as a sort of outpouring of guilt by the Federal Government for activities conducted during Reconstruction days in the South.

As a result, there were restrictions placed upon the use of Armed Forces in civilian law enforcement. Although the posse comitatus act did not apply directly to the Navy, it only applied to the Army, the Navy adopted it. The result is that since about 1880, none of the Armed Forces have been used in civilian law enforcement. In 1982, the posse comitatus law was changed to allow the Armed Forces to assist civilian law enforcement agencies. But they were not in any way to become involved, for example, in the arrest or in any actual on-the-ground activities. So it has changed quite a bit.

Senator LONG. Well, that seems pretty ridiculous to me now. You have the Navy, which is supposed to be defending our borders, but they can't do anything about the war that is going on. My thought is that if we can't do any better, why don't we just assign some of those ships to the Coast Guard? We would say, "You are now working for the Coast Guard or under the command of the Coast Guard."

Commissioner VON RAAB. Well, I will tell you of an interesting offbeat idea that someone relayed to me. Your staff might want to look into it. Since Congress does have the right to issue letters of mark, you could issue them and outfit privateers who then could seize drug smugglers.

Senator LONG. Yes, but some of them might sell out rather than exercise the letter. [Laughter.]

How about just requiring the Navy to do it? We are here to make laws anyway. Why can't we amend that posse comitatus law? The Reconstruction days are all over. At least I think they are. I like to think they are over.

Commissioner VON RAAB. Maybe we won't let them go in certain places.

I don't know. You know, it has been changed considerably. I guess it is just a matter of time and the degree to which the Congress is comfortable with allowing the Armed Forces to be involved. That is really the major issue. It is a big change, and I guess it comes slowly.

But I agree with you. They can play a very valuable role.

Senator LONG. Thank you.

Senator DANFORTH. Senator Bentsen.

Senator BENTSEN. Mr. Von Raab, educate me on the difference between the apprehension or the interdiction of heroin and cocaine. Is it the matter 5 to 10 percent on heroin and 35 percent on cocaine—is it sources and means of transport?

Commissioner VON RAAB. It is almost the way in which it is trafficked. The heroin business is very closely held by a number of small organizations who have been in business for a long time. They are very effective. They are the typical picture of organized crime as you and I think of them from television.

The distribution network is closely held and the amounts are much smaller. Therefore, it is much more difficult to identify. Whereas, in the cocaine area, there are newer organizations, the volume is greater and it is only coming primarily through the southeast. It starts in Columbia and then moves up through the Caribbean or across Mexico.

It is just easier, really, to interdict cocaine. It is a lot more difficult to interdict heroin because of the way the business is managed.

Senator DANFORTH. Thank you very much, Commissioner.

Mr. Ambassador, please proceed.

STATEMENT OF HON. ALAN WOODS, DEPUTY U.S. TRADE REPRESENTATIVE

Ambassador WOODS. Thank you, Mr. Chairman, members of the International Trade Subcommittee. I am Alan Woods, Deputy U.S. Trade Representative. I am pleased to appear before you today to present the fiscal year 1987 budget authorization request for the office of the U.S. Trade Representative.

Our authorization request reflects our commitment to the deficit reduction measures intended by the Gramm-Rudman-Hollings legislation. During 1986, we are reducing our expenditures 4.3 percent below our authorized budget level. For fiscal year 1987, the Presi-

dent's budget and our authorization request is for $12,216,000. It reflects further deficit reduction steps.

The savings this request reflects has been achieved through efforts we have made to increase the efficiency of our operations, and we intend to continue cost-saving measures during the next fiscal year. The work of the Office of the U.S. Trade Representative has become more complex over the years as U.S. involvement in international trade has expanded.

Since 1962 when the Congress first called for a special trade representative, total U.S. trade has risen from $37 billion to nearly $575 billion. The basic operations in which we will be involved during 1987 will be at least as demanding as the work we carried out in fiscal year 1986. As a result of economies we have realized this year, we believe we will be able to carry out our basic work in fiscal year 1987 within the budget authorization level we have requested.

In addition to our basic work, we expect to be involved in a special effort in 1987—the initiation of a new round of GATT negotiations. The President's fiscal 1987 budget indicated that the resource needs for a new GATT round would be reviewed as the schedule and content of the negotiation became more apparent.

While our information on the scope of the new round is not complete, we are beginning to estimate its financial implications and the degree to which it will strain our resources. We will be firming up our assessment of the new round's requirements during the summer. Ambassador Yeutter and our staff are firmly committed to reducing our national budget deficit. We, perhaps more than others, realize that this deficit must be reduced if we are to improve our international trade position. We will do our share.

Mr. Chairman, I will stop and take whatever questions you have.

[The prepared written statement of Ambassador Woods follows:]

TESTIMONY OF

AMBASSADOR ALAN WOODS

DEPUTY UNITED STATES TRADE REPRESENTATIVE

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL TRADE

SENATE COMMITTEE ON FINANCE

MAY 12, 1986

Mr. Chairman, I am Alan Woods, Deputy United States Trade Representative. I am pleased to appear before you to present the fiscal year 1987 budget authorization request of the Office of the United States Trade Representative.

The Office of the U.S. Trade Representative is firmly committed to the implementation of the deficit reduction measures intended by the Gramm-Rudman-Hollings legislation. For the current year, FY86, we have imposed a 4.3% reduction from our authorized budget level of $13,158,000. Our budget for this year is thus $12,592,000. For FY87, the President's Budget and the authorization request we have submitted to you for $12,216,000 reflects further deficit reduction steps.

We are achieving these savings through measures we have taken to increase the efficiency of our operations. Last September, we took a first step toward a realignment of our internal organization to enhance both our efficiency and our effectiveness. This first step has allowed us to realize significant economies in FY86, without having to undertake a reduction in force or institute furloughs of personnel to date.

Cost reduction measures are also helping us to achieve our spending targets. As we approach the new fiscal year we will be taking a careful look at opportunities for further enhancing the efficiency of our basic operations.

The programmatic responsibilities of the Office of the U.S. Trade Representative are, by nature, complex. We are involved, on an almost daily basis, in trade policy development, consultations and negotiations that affect this country and the over 175 nations with which we trade.

In the years since 1962, when Congress passed legislation calling for a Special Trade Representative, total U.S. trade has risen from a level of $37 billion to nearly $575 billion. This phenomenal fifteen fold expansion of our involvement in world trade has geometrically increased the number and the kinds of trade matters we must examine and address.

FY86 has been an extremely busy year for the Office of the U.S. Trade Representative and it has been a very productive year, thus far. FY87 will be at least as busy a year for us and we hope that it will be even more productive.

On September 23, 1985, President Reagan, in a comprehensive trade policy address, reaffirmed this nation's commitment to free and fair trade, and called for an adjustment of the value of the U.S. dollar in relation to the currencies of our major trading partners.

This Presidential address set the direction for our work in FY86. We fully expect that the pace and quality of our work during FY87 will mirror our FY86 performance -- for the challenge of fully implementing the President's action-oriented trade program remains before us.

Improving the Macroeconomic Climate for Trade

While currency adjustments are not a direct responsibility of the Office of the U.S. Trade Representative, they are a critical element of the Administration's response to our trade deficit. Market-opening results achieved by the Office of the U.S. Trade Representative cannot realistically be separated from the results of Administration efforts to bring the dollar into a better balance with the currencies of our major trading partners.

Improved market access abroad would not take our businessmen very far were they not more price competitive today than they have been over the past few years.

During the last year, the trade weighted value of the dollar has declined by roughly 30% against the currencies of our major trading partners. We are competitive today in markets where we could not make sales last year. On the import side, prices are rising.

Steps we are taking to reduce the U.S. budget deficit complement the progress that has been made in rationalizing the value of the dollar in international markets. Reductions in our budget deficit reduce the strains on the U.S. credit system that block our businesses from making new investments and undertaking the modernization efforts they must make to increase the global competitiveness of their products.

Within the framework of these macroeconomic changes, actions taken by the Office of the U.S. Trade Representative to open foreign markets for U.S. goods and services and to eliminate unfair trade practices are making an important difference in the U.S. trade outlook.

Opening Markets for U.S. Exports

Barriers to U.S. exports in foreign markets are a significant impediment to the overseas sales efforts of U.S. businesses.

The first Annual National Trade Estimates Report, prepared at the end of FY85, provided the Congress with descriptions of the kinds of barriers we face in 33 of the larger countries to

which we export, as well as the European Community. This first report on trade barriers provided us with an overview of the impediments we face overseas.

The barriers U.S. exporters face are varied -- with no single type of barrier dominating the trade horizon. Tariff barriers, restrictive standards, barriers to services trade and the absence of intellectual property protection are clearly major impediments.

Close behind these leading barriers to U.S. exports lie quantitative restrictions, import licensing restrictions, investment barriers, export subsidies, government procurement practices, countertrade practices, customs barriers and a variety of other barriers which were unique to the countries in which they were found.

The second annual report on barriers to U.S. trade, which we are working on now, should improve our understanding of the nature and extent of the trade barriers we face.

The work we have already done in this area has shown that some of the trade barriers we face are "illegal" under GATT agreements; others are not. In addition, it is important to remember that while some 90 nations are now signatories to the GATT agreements, some of our major trading partners -- Mexico for example -- are not.

There is no single way in which the United States can address all of the different barriers to our exports that exist in the world today. A combination of multilateral and bilateral negotiations will continue to be required if we are to open the many markets for U.S. products which we cannot freely enter today.

During FY86, the Office of the U.S. Trade Representative has made important progress on both of these fronts.

Multilateral Trade Agreements

The U.S. is committed to the maintenance of a strong and open multilateral trading system. To date, there have been seven major rounds of GATT negotiations. The first GATT negotiating rounds focused almost exclusively on tariff barriers to trade. The most recent round began to address the kinds of non-tariff barriers which are of growing concern to U.S. industries -- export subsidies, restrictive standards, import licensing arrangements and other governmental barriers to U.S. exports.

Today we are preparing for the beginning of a new round of GATT negotiations -- a round which Ambassador Clayton Yeutter, the U.S. Trade Representative, will be describing more fully to this Subcommittee in two days time.

Since January, a preparatory committee of the GATT has been engaged in developing an agenda upon which all of the GATT contracting parties can agree. The work of this committee is scheduled to be completed in September, when the contracting parties will meet in Uruguay to initiate the new round.

Suffice it to say that it is our intention to use this round of GATT negotiations to:

- Reduce barriers to U.S. trade, particularly of the non-tariff variety;

- Improve existing trade rules in such areas as subsidies, safeguards, and agriculture;

- o Extend trade rules to emerging areas of international trade, including services, intellectual property rights and investment; and

- o Improve the enforcement of trade rules by strengthening the GATT dispute settlement, surveillance and decision making procedures.

Throughout these negotiations, we will be working closely with the Members of the Senate Finance Committee. In addition, we will continue to solicit advice from the U.S. business community, to ensure that our objectives and our negotiating positions broadly reflect their views. We believe that the upcoming round of GATT talks could be the most important multilateral trade negotiations undertaken since the creation of the GATT system. We fully understand that working closely together, here at home, is a key to our international success.

The new round of GATT negotiations will be a complex, multi-year undertaking. The financial implications of a new round for USTR, and for other agencies of the U.S. Government, are not yet completely clear, since the final agenda for the round is not yet before us.

We are beginning to estimate the financial implications of the new round, based on assumptions about its starting date and its agenda. We are monitoring the work of the preparatory committee carefully, recognizing that our financial estimates must be derived from the agenda for the round.

Any round of GATT negotiations necessarily forces a reallocation of resources within USTR. Today, in contrast to the years in which the U.S. entered earlier GATT rounds, we have many

other complex international trade negotiations underway -- negotiations which we cannot simply stop when the new round begins.

The President's FY87 Budget indicated that resource needs for the new GATT round would be reviewed as the schedule and content of the negotiations became more apparent. While we have not yet developed firm estimates of the level of effort that will be required for the new round in FY87, or for the out-years during which it will continue, it is entirely possible -- even probable -- that we will find that the new round will strain our resources. That is not a final judgement. I have no back-of-the-envelope estimate of supplementary needs for the new round in my pocket. Yet to say that they may not arise would be imprudent.

Even while we are beginning work on a new round of GATT negotiations, we are continuing to fulfill obligations which stem from earlier GATT rounds. We are monitoring our own implementation of GATT codes as well as the implementation steps taken by other GATT contracting parties. We are actively participating in discussions concerning the accession of Mexico and the resumed participation of China in the GATT. We are also engaged in the work that is required to complete the development of an internationally acceptable harmonized product coding and description system.

Mexico's interest in joining the GATT has created an opportunity for the U.S. to improve its trading relationship with this important trading partner. Over the past several months, we have been holding informal discussions concerning Mexico's accession. Two weeks ago the first meeting of the GATT working party on Mexican accession was held, formally initiating these negotiations. Later this month we will be meeting with the

Mexicans to discuss the terms of their accession and to negotiate tariff concessions. If China pursues its interest in resuming participation in the GATT, we will enter negotiations similar to those we are now carrying out with Mexico.

With respect to the harmonized system, the original target date for the completion of negotiations and the implementation of the system was January 1, 1987. We were prepared to meet that date. However, a number of our trading partners found that they required additional time. Thus, the schedule for implementation has been adjusted and the new target date is January 1, 1988.

Because of this delay, we are only now entering the truly detailed phase of these negotiations. The harmonized system work is, from a budgetary perspective, integrated into our current operational cost expectations.

Bilateral Trade Agreements

Bilateral trade negotiations are another essential component of an effective trade policy. Through bilateral trade agreements we can, at times, address trade problems which:

- Are not yet covered by GATT agreements;
- Are covered by GATT but are not receiving satisfactory multilateral attention;
- Are not appropriate for multilateral negotiation;
- Affect our trade with countries that are not GATT signatories.

Our bilateral investment treaty program is one example of this point. There are no comprehensive disciplines in the area of foreign direct investment. Development of such disciplines is a high priority of the U.S. for the new round of GATT negotiations. The U.S. has, in addition, been prepared to negotiate bilateral investment treaties (BITs) since 1981, to provide a more stable investment climate for U.S. investors.

Since 1981, we have concluded a total of 10 BITs, six of which are now before the Senate for ratification. These, and any other BITs we may conclude, will protect U.S. interests as we pursue our multilateral initiatives.

The Market Oriented Sector Selective (MOSS) talks between the U.S. and Japan, which are being led by the Department of Commerce, are representative of our broad-ranging bilateral trade negotiations. Our market access problems in Japan are difficult ones. For years our exports have been impeded by a combination of government policies and business and cultural differences that favor domestic suppliers and established business relationships. In the past these barriers had been approached issue by issue.

The MOSS talks, which began last winter have provided us with a vehicle for addressing the trade barriers that are affecting U.S. product exports -- one sector at a time rather than product by product. These talks have yielded significant, if not completely satisfactory, results:

- In the telecommunications area, the Japanese market was opened substantially to American terminal equipment and network services last April. This fiscal year, MOSS telecommunications talks led to the opening of Japan's market for U.S. radio equipment and services.

- o MOSS talks on medical equipment and pharmaceuticals led this fiscal year to the reduction of import barriers affecting such products. These barriers were reduced through simplifications the Japanese made in their regulatory requirements by streamlining administrative processes and by making their processes for formulating rules and regulations more transparent.

- o In the electronics area, MOSS talks have led this fiscal year to the elimination of tariffs on computer parts and to improvements in patent procedures protecting these products.

- o Finally, MOSS forest products talks led this fiscal year to tariff reductions affecting certain paper and wood products, as well as to changes in what had been regulatory barriers.

MOSS talks are expected to be initiated in the near future for the transportation equipment sector, including automobile parts, as was announced after the Tokyo Summit. In addition to negotiating market access through the MOSS talks, the U.S. Government will be monitoring the implementation of all MOSS agreements.

Working parallel to the MOSS structure, we have also made progress in opening the Japanese market for U.S. services. We were successful in our efforts to have the Japanese propose legislative changes which would allow U.S. lawyers to practice foreign law in Japan. The resulting legislation has passed the lower house of the Diet and is now before the upper house. It could well pass in the upper house sometime this month.

The most ambitious and far reaching bilateral trade negotiations in which we have become engaged are, of course, those leading to free trade area agreements.

With Israel we signed a free trade agreement during FY85 that will make all products traded between the two countries duty free by January, 1995. In addition to addressing tariffs on trade in goods, this agreement eliminates many non-tariff barriers to trade, addresses important intellectual property and investment issues, and includes a framework for the liberalization of trade in services.

We have recently initiated free trade area talks with Canada -- our largest trading partner. We have much to gain from these talks, as Ambassador Yeutter reported to the full Senate Finance Committee on April 11th. We have high hopes for the U.S.-Canada free trade area negotiations. Both within the free trade talks and parallel to them we hope to be able to resolve many issues which concern U.S. businessmen.

In addition to these broad bilateral efforts to open markets for U.S. products, the Administration is engaged in an effort to improve the international protection of our "intellectual property" -- patents, copyrights and trademarks that protect the products of our creativity. Over the past two years we have had an ever increasing number of complaints from U.S. industries about trade-related problems associated with inadequate intellectual property protection. Although this is a relatively new issue for the U.S. Trade Representative's Office, it has quickly become one of the most important.

The Reagan Administration is taking a number of initiatives to address concerns about the protection of our intellectual property. On a multilateral basis, we have placed a high priority on having this subject included in the new round of GATT negotiations. In this context, one of our priorities is to complete work on the GATT anti-counterfeiting code. Such a code would supplement existing international conventions as well as the efforts of the World Intellectual Property Organization, in part by developing dispute settlement and enforcement mechanisms.

If the GATT contracting parties could agreed to sign and implement an anti-counterfeiting code, the impact on one of our major problems in this area would be significant. Much of that impact would be felt in this country, since the majority of counterfeit products are sold in the U.S. market.

Complementing our efforts to create multilateral rules that protect U.S. intellectual property is our visible program of bilateral consultations and negotiations with some of the nations with which we have the greatest problems on these matters. Over the past months we have held talks in Taiwan, Singapore, Korea and Mexico. During FY87 we will be continuing our bilateral as well as our multilateral efforts to address problems stemming from inadequate intellectual property protection.

A review of the work completed by the Office of the United States Trade Representative during FY86, and an overview of the work we expect to complete in FY87 would not be complete if it ignored those sectoral negotiations we are conducting or the negotiations we carry out with developing countries.

During FY86, we completed major negotiations pursuant to the implementation of the President's steel program. Our work on behalf of U.S. steel manufacturers does not, however, end with the completion of these basic negotiations.

Negotiations on agreements with three to five additional countries are possible in FY87 and proper implementation of the eighteen bilateral agreements negotiated to date will require constant attention. For example, on Janua.y 1, 1986, we found it necessary to impose a 600,000 ton limit on European semi-finished steel imports after determining that the EC was circumventing the steel agreement by over-shipping in that category. Thus, our level of activity in this area during FY87 will remain fairly high, even though fewer negotiations will be underway.

At present, the Chief Textile Negotiator and his staff are working extremely hard to complete the negotiations required for a new Multifiber Arrangement (MFA) by the end of July. The MFA talks have had a high priority in USTR for much of this fiscal year. As we indicated in the most recent MFA renewal talks in Geneva, we are hoping that through these negotiations we will be able to bring additional fibers under control, avoid destabilizing import surges and eliminate foreign barriers to U.S. textile exports.

Under the framework of the MFA, negotiations and consultations may be necessary with 30 or more countries, in any given year, for new and renewed bilateral agreements, and to set additional quotas and new quota levels on countries with which we may or may not have agreements. In developing such agreements, our textile negotiations staff must work extensively with industry, labor, the Congress, and other institutions and organizations concerned with textile and apparel matters.

The Office of the U.S. Trade Representative coordinates and negotiates U.S. positions on trade and investment affecting the developing countries. As the Chairman of the Caribbean Basin Initiative (CBI) Task Force, Ambassador Yeutter, in concert with the Department of Commerce and other U.S. Government agencies involved in the CBI program, has developed new initiatives to enhance the impact of this effort, some of which were announced during the President's trip to Grenada.

Our staff is also engaged in a full review of the Generalized System of Preferences (GSP) with the developing countries that benefit from this program. Consultations in Asia and Latin America have already been undertaken. We expect to complete all of the needed consultations before the end of this fiscal year. Our recommendations will be submitted to the President early in FY87, for his review. Final decisions will be made prior to January 4, 1987, as required by law.

In addition to these special activities, the Office of the U.S. Trade Representative has continuing responsibilities for our trade and investment related interactions with international organizations, such as UNCTAD, the OECD and the OAS. We also have the lead responsibility for the U.S. on international commodity agreements. The coffee agreement and the rubber agreement, in particular, require our attention as we are active members of these two arrangements, both of which contain economic measures that require negotiations.

Ensuring That Trade Is Fair

Last fall, the Office of the U.S. Trade Representative announced that, for the first time, the U.S. Government would "self-initiate" unfair trade practice cases under Section 301 of the Trade Act of 1974. These precedent setting cases covered:

- Japanese barriers against imports of tobacco products;
- Korean prohibitions against foreign firms writing life insurance and many types of fire insurance;
- Korean practices that do not adequately protect U.S. intellectual property rights, such as patents and copyrights; and
- Restrictive Brazilian policies in the informatics sector that negatively affect U.S. economic interests.

In addition to these "self-initiated" cases, the President has recently invoked the Section 301 authority to address new trade problems we are facing as a result of the recent accession of Spain and Portugal into the European Economic Community:

- In connection with the accession, the Community has imposed import and consumption quotas in Portugal on oilseeds and oilseed products, and is requiring Portugal to buy at least 15.5% of its grain from the EC.
- In Spain, a variable levy on corn and sorghum, currently equal to a tariff of over 100%, has replaced tariffs that were bound at 20%.

The actions related to Portugal are illegal under the terms of our GATT agreements. Compensation is due us for the action in Spain. Unless the EC agrees not to implement the measures affecting our trade with Portugal, we will impose reciprocal restraints on EC exports to the U.S. In response to the Spanish action we are prepared to withdraw tariff bindings on EC products of comparable value and increase our tariffs if appropriate compensation is not obtained.

In addition to initiating new unfair trade practice cases under Section 301, we have accelerated our work on outstanding Section 301 cases. We brought two important cases to conclusion before the end of 1985:

- On December 1, 1985, the EC, after long negotiations, agreed to eliminate its GATT-illegal canned fruit subsidies, giving U.S. fruit exporters a chance to compete on a more level "playing field".

- On December 21, 1985, Japan agreed to grant the U.S. compensation valued at $236 million for continued restrictions on its leather and leather footwear markets. Through the negotiated compensation package, Japan will grant the U.S. additional access to its market for U.S. leather products, reduce or eliminate tariffs on 137 non-leather items, make permanent 242 earlier tariff reductions, and reduce tariffs on five aluminum products. In addition, the U.S. imposed higher duties on Japanese leather imports into the U.S.

Our aggressive actions on new and outstanding Section 301 cases have also produced some positive side effects. Several potential Section 301 cases have been resolved, partly, it appears, in anticipation of our willingness to move forcefully against unfair trade practices:

- We expect that a long-standing disagreement with Taiwan over limitations on imports of cigarettes, wine and beer will be resolved shortly. An agreement in principle has been reached that will improve our access to Taiwan's market; negotiations concerning the implementation of this agreement are now underway.

- Another potential Section 301 case was avoided when Korea agreed, on December 23, 1985, to reduce its barriers on the importation and distribution of U.S. motion pictures.

Section 301 has proven to be a strong tool for fighting unfair trade practices, but it is not the only tool we have available. During the fiscal year we have complemented our work on Section 301 cases with other actions that focus on the trade barriers we have encountered.

The other actions we have taken this fiscal year to foster fair trade include:

- Our initiation, on October 16, 1985, of proceedings under the GATT against wheat export subsidies offered by the European Community;

- President Reagan's retaliation against European pasta exports to the U.S. on November 1, 1985, following the European Community's failure to accept a GATT panel report calling upon the EC to end a 16 year dispute involving access for U.S. citrus products in EC markets; and

- The initiation, by the "Strike Force" led by the Department of Commerce, of an anti-dumping case against Japan for its practices involving exports of 256K and above DRAM semiconductors.

In addition, for the first time we are acting on our own initiative under Section 305 of the Trade Act of 1974 and Section 307 to the Trade and Tariff Act of 1984 to pursue unfair trade practices:

- Under our Section 305 authority, we are initiating an examination of the trade ramifications of the EC's proposed Third Country Meat Directive, which would ban imports of meat not produced in conformity with strict new EC inspection rules.

- Under our Section 307 authority, we are initiating an investigation of Taiwan's export performance requirements in the automotive sector. We are concerned about the adverse affects of such practices on our domestic automobile industry.

Conclusion

To summarize, Mr. Chairman, the work of the Office of the U.S. Trade Representative is multi-faceted. Our work has become more complex over the years, as U.S. involvement in international trade has expanded. In order to preserve and advance U.S. interests in international trade, we are continuously engaged in both the preparations for and conduct of multilateral and bilateral trade negotiations.

The basic operations in which we will be involved in FY87 will be at least as demanding as the work we carried out in FY86. At the same time, we have realized some economies through efforts to streamline our internal operations and to institute cost savings programs affecting direct expenditures. Thus, we believe that our request for a budget authorization at the level of $12,216,000 will be adequate to carry out our basic work.

In addition to our basic work, we will be involved in a special effort during FY87: the initiation of a new round of GATT negotiations. We are currently examining the degree to which this efforts will strain our resources. The information we

require to complete that analysis is not fully available to us today, as the new round is still in a preparatory stage. We will be firming up our assessment of requirements in this area during the summer.

Ideally, we will find that we can stretch our requested authorization level to address both our basic work and the initiation of the new round. We will make a serious effort to do so. Ambassador Yeutter and our staff are firmly committed to sharing the burden of reducing our national budget deficit. We, perhaps more than others, realize that this deficit must be reduced if we are to improve our international trade position.

Senator DANFORTH. Mr. Ambassador, you are telling us that this budget does not include additional resources for a possible new round of negotiations. What would you propose to do then?

Ambassador WOODS. Well, we are going to assess the circumstances with regard to a new round of trade negotiations over the summer. When we submit our fiscal 1988 budget request, we will indicate to the Office of Management and Budget as to whether we would require supplemental for the new round of trade negotiations.

I believe that was indicated in the President's budget submission in January.

Senator DANFORTH. All right.

As you know, there is some question as to whether Congress would agree to new round authority. You may remember the reaction on this committee to the Canadian negotiating authority.

Ambassador WOODS. All too well, Senator.

Senator DANFORTH. I would think that there is a fair question as to whether the Congress would be receptive to new round authority.

Ambassador WOODS. I understand that. That, and our own questions about whether a new round would, in fact, be initiated, were the reasons why we did not put funding for the new round in our budget request that came forward to the Congress in January.

Senator DANFORTH. Now last fall the President announced a new initiative with respect to 301 cases. Does this budget contemplate more spending requirements with respect to prosecuting 301 cases?

Ambassador WOODS. To date, the 301 cases which we have initiated have been prosecuted with the staff level we have had in 1985 and continue to have in 1986. We would envision that continuing to prosecute 301 cases effectively in 1987 with the same level of staff.

Senator DANFORTH. You think that will be effective or is this a signal to us that the announcements with respect to 301 cases were little more than announcements, good press, but nothing much is going to come of it?

Ambassador WOODS. No; there is no question but that 301 cases use up staff resources. However, the staff resources that are used up in prosecuting a 301 case are not just USTR staff resources. We get data from the Department of Commerce, from the Department of Agriculture, as well as the ITC and other places in the U.S. Government. So the tip of the iceberg, in a sense, is in USTR, but there are substantial resources that get devoted to those issues in other agencies.

Senator DANFORTH. Well, should those of us who believe that we should be very aggressive in prosecuting 301 cases, be concerned that this budget is not sufficient? Or could you——

Ambassador WOODS. I don't believe——

Senator DANFORTH [continuing]. Assure us that the USTR is going to be very aggressive in 301 cases and that this is a sufficent budget for an aggressive 301 strategy?

Ambassador WOODS. Absolutely. This is a sufficient budget for an aggressive 301 strategy.

Senator DANFORTH. Do you think that there is enough in this budget for travel for USTR?

Ambassador WOODS. Well, our travel budget——

Senator DANFORTH. I am told that you all are flying around on People's Express, which is fine, but I mean are you cutting it a little too thin, do you think?

Ambassador WOODS. We are trying to find every possible way we can to stretch our travel budget, and we will continue to do that next year. One of the advantages of airline deregulation has been reduced cost of getting across the Atlantic. I had one of the financial people in the Executive Office of the President mention to me just the other day about how proud they were of one of our assistant U.S. Trade Representatives who had managed to get from the United States to Brussels for $280. We are doing everything we can to stretch our travel budget by taking low-cost transport.

Senator DANFORTH. Well, that is commendable. We do want to create the impression throughout the world that we are serious about international trade. If other delegations are showing up with a number of people in the delegation, and they are arriving in government planes and so on, and People's Express taxis up to the ramp and some guy from the USTR piles out with a cardboard suitcase. [Laughter.]

Senator DANFORTH. I'm sure that that is the image we want. Is there a problem there?

Ambassador WOODS. Well, first of all, Senator, I can guarantee you there is no money in our budget for cardboard suitcases, but in addition to that, we don't think so. We think the substance of what—the message our people are bringing is more important than their mode of transportation.

Senator DANFORTH. All right. So we should feel very confident that with this budget you can get around and do your job and that we are going to have a very aggressive job on 301 cases, and that USTR is in good shape.

Ambassador WOODS. I believe so, Senator. Yes, sir.

Senator DANFORTH. All right.

Senator Long.

Senator LONG. No questions.

Senator DANFORTH. Thank you, Mr. Ambassador.

Next we have Hon. Paula Stern who is the Chairman of the ITC.

STATEMENT OF HON. PAULA STERN, CHAIRWOMAN, INTERNATIONAL TRADE COMMISSION, ACCOMPANIED BY COMMISSIONER DAVID ROHR, COMMISSIONER ALFRED ECKES; COMMISSIONER SEELEY LODWICK; COMMISSIONER ANNE BRUNSDALE; AND RICHARD ARNOLD, DIRECTOR, OFFICE OF FINANCE AND BUDGET

Chairwoman STERN. Good afternoon, Senator Danforth.

Senator DANFORTH. Madam Chairwoman, please proceed.

Chairwoman STERN. Good afternoon, Senator Long.

I would like to introduce those who are accompanying me this afternoon. To my left is Rick Arnold who is in charge of our finance and budget. Accompanying me also in the back are Commissioner Eckes, Lodwick, Rohr, and Brunsdale.

I appreciate this opportunity to discuss with you the Commission's budget request for fiscal year 1987. As you know, in 1985, the United States chalked up a trade deficit of $148.5 billion, the larg-

est in history. When I appeared before you last year, the deficit was $123 billion, this being the fourth consecutive year in which a trade deficit had set a record. In recent months, the deficit has continued to climb and so, too, has our workload.

The request approved by the Commission to send to you here today for fiscal year 1987 totals $33,700,000. It includes an operating budget of $29,700,000 and 482 full-time, permanent positions. Also included is a relocation budget figure of $4 million.

The operating budget, in effect, represents an increase of $1.1 million or 3.8 percent over our fiscal year 1986 appropriation before the Gramm-Rudman-Hollings reduction.

This is a request to fund operations at the same level as authorized for fiscal year 1986. It does not include any program increases. No additional staff is being requested.

Mr. Chairman, I believe this amount represents the bare minimum necessary to meet our obligations for what we will expect to be an extremely busy year.

I should stress that most of our workload, the number of investigations and studies, is beyond our control. We are usually responding to statutory requirements. Furthermore, much of our workload is subject to tight statutory deadlines.

I personally feel that this budget request is not only the bare minimum necessary, but may even fall below our needs in terms of manpower. You know better than any other group that trade continues as a priority item for both Congress and also the administration.

The Department of Commerce has proposed a fiscal year 1987 increase of 55 positions and $2.4 million for its trade complaint operations.

Since the ITC's workload parallels that of Commerce, we, too, must be prepared for a substantial increase in the demand on our resources. But unlike the International Trade Administration of the Department of Commerce, we are not part of a large agency which can fund priority programs by moving resources from discretionary activities. Unlike the Office of the U.S. Trade Representative, we are not part of the highest levels of the executive branch and able to call on many agencies for staff support and assistance.

In fact, I am currently negotiating on three separate requests from the USTR for details of Commission personnel. I would add, having heard your dialog a minute ago, if Congress does not want to go along with moving ahead on GATT next year, then I think you had better watch even more what happens to USTR's request for details from the U.S. ITC of our personnel. The USTR can't provide these positions so the ITC is being called upon to fill the gap. This never happens in the reverse.

The Commission's central activity to perform its statutorily required trade-related investigations and research studies continues to grow as a result of the continuing increase in case filings that began back in fiscal year 1982.

Our fiscal year 1987 investigative efforts, which we project at 324 cases, are projected to be 5.2 percent greater than in fiscal year 1985, the busiest year that the Commission has ever had in its history. We see little prospect that the forces that are producing so many requests for import relief will be reversed any time in the

near future. The dollar has declined relative to many major currencies, but the beneficial effect of recent declines is yet to reach beleaguered industries, as you very well know.

We also have an important fact-finding responsibility in doing reports for the Finance Committee and Ways and Means Committee, as well as for the President. We have now just undertaken a request from your Committee under Section 332 to look at the international competitiveness of five major U.S. industries. We are planning up to seven studies, all of which are to be completed within the fiscal year 1986 and 1987 time frame.

Although we face a very heavy workload in 1987, I am pleased to say we will be operating in a much improved physical environment. The GSA has recently signed a lease with School Street Associates/Boston Properties for space to house the Commission. And I want to take this opportunity to thank you. I believe that without your support, both overt as well as implied, we would not have landed a new building incorporating the amount of space that we will have in a single Washington location. I hope that all of you might join us in our groundbreaking ceremonies.

I would like to conclude, Mr. Chairman, on a personal note. Having been Commissioner for nearly eight years and Chairwoman for two, I have personally witnessed many changes, both domestic and international, that have led to great shifts in our trade and their impact on the U.S. economy. I would just like to salute the Commission staff for maintaining the high standards of quality and objectivity that Congress expects us to meet. And I want to thank you for your support that you have shown to us over the years.

You have provided us this opportunity to serve the nation with quality, meaningful products which are the outcome of the Commission's work.

In submitting our budget request for 1987, I firmly believe that this is the minimum necessary in order to meet the growing demands for our services and meet our objectives as defined by Congress. And in spite of the enormous workload facing the Commission, I think we are presenting a very parsimonious, bare-bones budget in not asking for any increase in any authorized personnel strength.

I will be very happy to respond to any questions that I may have stimulated or any others that you may have prepared for me.

Senator DANFORTH. Madam Chairwoman, thank you very much.

[The prepared statement of Chairwoman Stern follows:]

CHAIRWOMAN

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

**STATEMENT OF PAULA STERN, CHAIRWOMAN
UNITED STATES INTERNATIONAL TRADE COMMISSION
BEFORE THE SUBCOMMITTEE ON INTERNATIONAL TRADE,
COMMITTEE ON FINANCE
U.S. SENATE, MAY 12, 1986**

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to present the Commission's budget request for FY 1987. \ccompanying me today are Commissioners Eckes, Lodwick, Rohr and Brunsdale, and Rick Arnold, Director of Finance and Budget.

In 1985, the U.S. chalked up a trade deficit of $148.5 billion, the largest in history. When I appeared before you last year the deficit was $123 billion. This was the fourth consecutive year in which a record trade deficit was set. In recent months, the deficit has continued to climb. In the first quarter of 1986, the trade deficit was $43.5 billion a 39 percent increase over the deficit in the comparable period of 1985. As the deficit grew so did our workload.

The request approved by the Commission for FY 1987 totals $33,700,000 and includes an operating budget of $29,700,000 and 482 full-time permanent positions and a relocation budget of $4,000,000.

The operating budget represents an increase of $1,100,000 (or 3.8%) over our FY 1986 appropriation before the Gramm-Rudman-Hollings reduction. This is a request to fund operations at the same level as authorized for FY 1986, and does not include any program increases. No additional staff is being requested. In the non-personnel area we are asking for an increase of less than one percent to meet operating costs and just over one percent for GSA space rate adjustments on space at our current locations.

Let me first briefly explain the reason for the increase in the Commission's operating budget over FY 1986. Some forty-one percent of the increase, or $452,000, is devoted to increased salary costs. Some thirty-nine percent of the increase, or $431,000, is devoted to increases in space rental costs (not associated with our future relocation). The remaining twenty percent, or $217,000, pays for various non-personnel costs, such as equipment rental, printing and other services, and supplies and materials.

Mr. Chairman, I believe this amount represents the bare minimum necessary to meet our obligations for what we expect will be an extremely busy year. I should stress that most of our workload - the number of investigations and studies - is beyond our control; we are usually responding to statutory requirements. Furthermore, much of our workload is subject to tight statutory deadlines.

I personally feel that this budget request is not only the bare minimum necessary but may even fall below our needs in terms of manpower.

Trade continues as a priority item for both Congress and the Administration. The Department of Commerce has proposed a FY 1987 increase of 55 positions and $2.4 million for its trade-complaint operations. Since the ITC's workload parallels that of Commerce, we too, must be prepared for a substantial increase in the demand for our resources. Unlike the International Trade Administration, we are not part of a large agency like the Department of Commerce which can fund priority programs by moving resources from discretionary activities.

Unlike the Office of the U.S. Trade Representative, we are not part of the highest levels of the Executive Branch and able to call on many agencies for staff support and assistance. In fact, I am currently reviewing three separate requests from USTR for details of Commission personnel. The USTR can't provide these positions so the ITC is being called upon to fill the gap. This <u>never</u> happens in the reverse.

Various members of Congress repeatedly express their dissatisfaction at the Administration's handling of trade policy. Because of this lack of confidence, I anticipate that the Commission will be turned to with increasing frequency for its advice in trade matters. However, we are a small independent agency for whom underfunding is quickly reflected in the quality and timeliness of our performance. I appreciate the fact that your subcommittee has understood our situation and regularly supported the Commission's important work. It shows your concern for our industries and those in government who are trying to assist them.

The Balanced Budget and Emergency Deficit Control Act of 1985, or Gramm-Rudman-Hollings, has resulted in a $1,230,000 reduction in the Commission's FY 1986 appropriation, reducing us from the $28,600,000 that Congress appropriated to $27,370,000. During the first quarter of FY 1986 the Commission operated under Continuing Resolutions and below full staffing levels. Commissioner Brunsdale and her staff had not yet arrived and several other offices had unfilled positions. In order to conserve funds during this period, travel, training, and other activities were severely curtailed. As a result, the Commission realized savings which will aid us in absorbing the impact of the Gramm-Rudman-Hollings reduction for the rest of the fiscal year. We plan to continue limiting support costs while maintaining the Commission's productive capacity, its permanent staff, at authorized levels.

I have directed reductions in support services such as postage, communications, rentals, printing, other services, and supplies. This approach, however, defers current needs rather than eliminating them, in order to support our most valuable asset, highly knowledgeable trade experts who are skilled in reviewing, analyzing and reporting on trade-related issues. If these cutbacks were to continue at this level, the Commission would have to consider staff reductions. Less staff participation in investigations or other mandated work would put the Commission in the position of: (1) not being able to handle the anticipated caseload; (2) not being able to fulfill its full statutory quasi-judicial responsibilities; and, (3)

not being able to fulfill its other mandated work, such as providing trade-related assistance to the Congress and the President.

The Commission's central activity, the performance of statutorily required trade-related investigations and research studies, continues to grow as the result of a continuing increase in case filings that began in FY 1982. We expect to work on 324 cases in FY 1987 compared to 314 in FY 1986. In FY 1985, although 338 cases were worked on, 35 carbon steel cases were received and consolidated into 5 investigations, for an actual "investigative effort" of 308 cases. Therefore our FY 1987 investigative effort is projected to be some 5.2 percent greater than FY 1985, the busiest year in the Commission's history. Through the first seven months of FY 1986, 125 new cases have been initiated.

Our caseload continues to grow not just in size, but also in the diversity and complexity of the cases brought before us. The antidumping and countervailing duty statutes continue to be our most active areas. During FY 1985 the Commission had 217 active cases in this area. Although steel and other manufactured products are the most frequent subjects of these investigations, cases involving other industries, such as agriculture, chemicals and high tech products reflect the increased import sensitivity of the U.S. economy across-the-board. For example, we are conducting final antidumping investigations on 64K dynamic random access memory semiconductors (DRAM's), 256K and above DRAM's, and erasable programmable read only memories (EPROM's).

Many of our most celebrated cases are filed under section 201, also known as the "escape clause". In 1985 we completed two escape clause cases, footwear and potassium permanganate. Although conventional wisdom holds that these cases are reserved for presidential election years, we already had five section 201 cases before us this year, including wood shakes and shingles, electric shavers, certain metal castings, apple juice and steel fork arms, and expect a total of eight such cases this year. We expect a continued high level of interest in section 201 in FY 1987.

We see little prospect that the forces that are producing so many requests for import relief will be reversed any time in the near future. Part of the continuing surge in our caseload can be traced to the strong dollar. Even though the dollar has declined relative to many major currencies, the beneficial effect of recent declines has yet to reach beleaguered U.S. producers. The prices of foreign goods are just now beginning to reflect the impact of the dollar's devaluation. Any decline in the volume of imports and significant increase in U.S. exports is much further down the road. Moreover, the high dollar has masked fundamental shifts in the competitive position of many U.S. manufacturers in an increasingly global marketplace. Both newly industrialized countries and traditional business rivals are posing new challenges to many established industries in the U.S.

The Trade and Tariff Act of 1984 requires the President to conduct an extensive review of the Generalized System of Preferences (GSP) by January 1987. As part of this review the Commission recently completed an investigation with respect to all articles covered by the GSP. This was the largest and most detailed "probable economic effects" type of investigation the Commission has conducted since 1975 when such advice was prepared for the Multilateral Trade Negotiations. It required 25 percent of the staff time of our Office of Industries (our largest single component) to prepare the documentation for this review. Significant effort also will be required to study the economic impact of the conversion of GSP eligible items from the TSUS to the Harmonized System. Further GSP activities are anticipated in FY 1986 and 1987. Also, assistance in providing advice in negotiations will increase significantly when the major trading nations embark on the new round of trade negotiations called for by the President.

Another important responsibility we have is to prepare fact-finding reports and analyses for use by Congress and the President in the development of U.S. trade policy. Much of this work is conducted under section 332 of the Tariff Act of 1930. Studies under section 332 are usually requested by our oversight committees or by the President. In addition we try to anticipate the needs of trade policymakers by self-initiating 332 studies; for example, we self-initiated the report on U.S. Trade Related Employment which we are told has been repeatedly used outside the Commission as well as inside in helping identify the impact of trade flows on jobs.

We also released a report reviewing the operation of the Multifiber Arrangement during 1980-84 and an update of our 1982 report on Emerging Textile-Exporting Countries.

We are increasingly involved in preparing background studies on sensitive and controversial issues. Congress recognizes that the competitiveness and viability of U.S. industries must be gauged in terms of their performance in the global marketplace. As you know, the Finance Committee has requested that the Commission conduct factfinding investigations under section 332 of the Tariff Act of 1930 on the international competitiveness of five major U.S. industries. The Committee envisages up to seven studies, all of which are to be completed within FY 1986 and FY 1987. It is our intention to initiate the first five studies this fiscal year, with the majority of staff research to be done in FY 1987.

At the request of your Committee we recently completed a study of the effects of proposed tax reforms on the international competitiveness of U.S. industries. We have also conducted studies on issues such as the importation of softwood lumber, the effectiveness of trade dispute settlement under the GATT, and of U.S. and EC pork in the U.S. and third country markets. We currently are studying the impact of U.S.-Mexican trade on Southwest border development, and anticipate beginning studies on a U.S.-Canada free-trade agreement and U.S.-Canada services trade which we estimate will require an even higher percentage of the Office of Industries time than our large GSP study.

During FY 1985 the Commission had 52 active Section 332 studies. Of the 37 studies now underway or anticipated during the remainder of FY 1986, 35 are direct requests of the Congress or the President.

To round out a description of the full range of the ITC's activities requires mentioning the continuing role the Commission is playing in the conversion to the Harmonized System, and the listing of periodic reports on several commodities, including automobiles, heavyweight motorcycles, motor vehicles and parts, footwear, steel, rum, mushrooms, and the performance of the steel industry. In addition, we provide our oversight committees numerous reports on proposed legislation to be used as background material for committee consideration of these bills. During FY 1985 we provided assistance on 133 pieces of legislation. Our independence, analytical expertise, and data-gathering ability will continue to attract requests for timely reports on current trade issues. This creates a continuing need to create and maintain expertise in new areas in order to keep up with developments in international trade.

In recent years, a major litigation workload has developed at the Commission, resulting from appeals to the courts of the Commission's decisions. There has been a steady increase since the early 1980's, with recent workload increases of almost 75 percent since January 1984 when the Commission had 39 active cases, and May 1986 at which time we have 68 active appeals. In recent months we have had as many as 75 active appeals. Unlike some other agencies, the Commission's legal staff is

responsible for arguing these appeals, rather than the Department of Justice. These cases are increasingly more complicated, both because of procedural requirements of the courts and of more technical subject matter arising generally in our cases. The level of litigation shows no signs of abating in the near future, and now must be recognized as an on-going workload category as are the Commission's statutory investigations.

Since 1921, the ITC and its predecessor agency the U.S. Tariff Commission has been headquartered in the third-oldest Federal building in continuous use. Originally Washington's general post office, it became known as the Tariff Commission Building in 1937. The building was listed on the National Register of Historic Places in 1969. The Trade Act of 1974 changed the name of the Commission and its building to the ITC. Our move was forced by Public Law 98-523 (October 19, 1984) which authorized the General Services Administration to transfer the building to the Smithsonian Institution.

The GSA has recently signed a lease with School Street Associates/Boston Properties for space to house the Commission. Our new headquarters will be at 500 E Street S.W., where we will occupy the first seven floors of a 9-story building. All of the Commission's operations, currently located in three locations, will be accommodated by the new building which is expected to be ready for occupancy by September 1987.

This request provides $4,000,000 to remain available until expended, for expenses related to relocation. The nature and

timing of the required relocation costs necessitate their inclusion in our FY 87 budget. The GSA will absorb some of the relocation costs and we are negotiating with them what the amount will be. However, due to the Commission's special space requirements, such as large hearing rooms, libraries, computer facilities, and printing facilities, we anticipate that we will have to assume a large share of the relocation costs. If the funds for an orderly relocation are not available in a timely manner, the Commission could be put into a position of not being able to relocate when the new building is available.

I would like to conclude on a personal note. I have been a Commissioner for seven and a half years, and Chairwoman for nearly two. I have personally witnessed many changes, both domestic and international, that have led to great shifts in trade and their impact on the U.S. economy. The Commission has been asked to do more and more to help industry, the Congress and the President deal with those changes. I have observed first-hand the internationalization of the U.S. economy and appreciate the heightened importance of our work. I credit the Commission's staff for maintaining the high standards of quality and objectivity that Congress expects us to meet. Since this is my last appearance before you as Chairwoman, I want to thank you for the support you have shown us over the years. You have provided to us the opportunity to serve this nation, the Congress and the President with high quality, meaningful products.

Few agencies are experiencing such disproportionate growth in responsibilities relative to their size. Our work increases

when American industry is feeling injured. We are often perceived of as the last hope for U.S. industries as they grapple with the realities of the global marketplace. The current trade problems are exerting tremendous pressure on all of us, but we are confident that, with the continued support of Congress, the Commission can meet the challenge.

In submitting the Commission's budget request for fiscal year 1987, I firmly believe that this is the minimum necessary if we are to meet the growing demand for our services and meet our objectives as defined by Congress. In spite of the enormous workload facing the Commission, we are presenting a parsimonious, bare bones, budget and are not asking for an increase in our authorized personnel strength.

Mr. Arnold and I will be pleased to answer any questions you may have. Thank you.

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Senator DANFORTH. Thank you for your service as the Chairwoman of the ITC. Your term expires next month.

Chairwoman STERN. Yes, as Chairwoman.

Senator DANFORTH. That is right. And I think all of us appreciate the work you have done.

I think that there would be some people on this committee who might dispute your assertion that trade is a priority with the Administration—not necessarily myself but some might. But the fact of the matter is that the ITC does perform an important role, crucial role, and that trade is an increasingly challenging area, and that your workload is increasingly difficult and challenging. And you are an independent agency.

This is the Administration's budget, isn't it? And we would expect you to tell us what you need. And if this is an inadequate amount, we would expect you to tell us what is required to do the job.

So I would just encourage you to be absolutely forthright in telling us what the needs of the ITC are.

Chairwoman STERN. Mr. Chairman, this is the budget of the Commission. We send our budget, in effect, directly to you all. It does not go through the OMB. I mean the OMB looks at it, but passes it through. This represents the majority view of the Commission. The decision was taken back in October. It does not represent the budget that I personally proposed to the majority of the Commission. I felt at the time that with the same amount of money we could have tried to oome to you and get authority to recruit so that we would have 10 more positions filled in the coming fiscal 1987 year. But that was not the view of the majority of the Commission.

Senator DANFORTH. All right.

Chairwoman STERN. What I am presenting to you, these figures, is the Commission's views, unexpurgated by OMB.

Senator DANFORTH. I hope the Commission has always found this Committee to be supportive. This is your request for this authorization. But in the future, I would hope that the Commission wouldn't pull its punches and would let us know very directly what it thinks is important.

There are those who feel that recently the Commission has departed somewhat from its mission of applying the law as enacted by Congress, and has adopted some theories which are more imaginative perhaps than we had in mind. Our hope would be that the Commission would be attentive to its basic mission in applying the laws enacted by Congress.

Chairwoman STERN. Yes. We have been asked by Chairman Gibbons to respond to allegations that were made at a hearings. And if you do not have the individual responses of each of the Commissioners who, indeed, did respond, we would be very happy to provide that for you for the record.

CHAIRWOMAN

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON D C 20436

April 18, 1986

Honorable Sam Gibbons
Chairman, Trade Subcommittee
House Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I am responding to your letter of April 14, 1986, in which you cite several allegations that surfaced during a hearing before your Trade Subcommittee. Specifically, you expressed a concern that certain Commissioners are ignoring criteria of injury enumerated in the trade laws and instead are relying on "proxy" criteria.

I appreciate your turning to me and the Commission for assistance in dealing with these issues. Congress must have confidence in the Commission if the trade policy process is to function properly. Such confidence is even more important as Congress considers giving the Commission new and expanded responsibilities in the trade remedy area. Thus I intend to respond to your request as fully as possible, and I have urged my fellow Commissioners to accept your offer to comment on the issues raised at your hearing.

As a preface to my comments, I should note that, as Chairwoman, I am charged with certain administrative responsibilities. But I have no special authority or responsibility in regard to the outcome of import relief cases that come before the Commission. Each Commissioner has an equal vote in these cases. Therefore, I will offer my comments as an individual Commissioner.

At my swearing in as Commissioner in 1978, I commented on the ITC's mission. My outlook remains unchanged. The business world is unpredictable. We at the Commission have a duty to avoid adding any unnecessary instability to the business environment. This objective can be met by always striving to clarify the legal and economic principles underpinning our decisions, and then applying them consistently. To do this, we must follow past precedent and practice, based on the law. Novelty for novelty's sake is not a value in the administration of the law.

My philosophy in applying the trade laws is that the law comes first. It establishes the framework, the criteria, the priorities of analysis. Within the strict bounds of the trade law fashioned by Congress, I seek to make the reasoning behind my conclusions as transparent as possible. To that end, I employ economic methodology to the extent it is reasonable and useful in carrying out the legislative intent. But as important as good economic agrument may be, the foundation of my decisions remains the law, the details of the investigative record, logic, and a dose of common sense.

It is a matter of record in the more than 1000 determinations I have made at the Commission that I always consider all the injury criteria enumerated in the law and legislative history. I do not employ the proxy criteria referred to in your letter or any others in place of the factors enumerated in the statute. To the extent that I employ any additional indicators, it is because they add to my understanding of the circumstances of the individual industry under investigation. On occasion, reliable information may not be available on some of the legally mandated criteria. In such cases, I follow the law by using the best available information.

I was mentioned once in the hearing in connection with my advice to exercise caution when examining evidence of underselling. The Commission makes enormous efforts in every investigation to collect accurate pricing information on the domestic and imported products. But in most situations, there are many different domestic products and many different imported ones. Furthermore, aside from the variations in product lines, there are myriad differences in quality, supply conditions, service, design, etc. Our staff makes every effort to assess these factors and arrive at accurate price series for comparable domestic and imported products. In order to complete our work within the strict time frames dictated by statute and in order to minimize the burden on respondents, the Commission must rely on price samples.

Underselling calculations, the price differential between the imported and domestic products, are even more tenuous. They require taking the difference between two price series over a long period of time. The result is that any inaccuracies in both price series are multiplied when they are subtracted from one another to determine underselling. I always consider underselling--as the law directs--but with a caution dictated by my experience with the many factors which complicate the interpretation of the price information we gather.

I hope this answers your concerns as they relate to my analysis in Title VII investigations. My own record at the Commission, which covers eight years, has withstood not only review by the courts but also scrutiny from the Congress. I believe this is a record of impartial implementation of the law.

I am enclosing a memorandum from the Commission's General Counsel that was prepared in response to your request.

Please continue to call on us if we can be of assistance.

Sincerely yours,

Paula Stern

Paula Stern
Chairwoman

April 18, 1986

MEMORANDUM

TO THE CHAIRWOMAN

FROM The General Counsel

SUBJECT Reply to Representative Gibbons' letter of April 14, 1986

Attached is an excerpt from an outline which I prepared in late 1985. It may be of use in responding to the request of Rep Gibbons concerning injury analyses conducted by the Commission

As you know, the advice which I give in individual antidumping or countervailing duty investigations is case specific and not every legal issue addressed by the statute is raised in each case Therefore, individual case memoranda prepared by this Office do not usually contain comprehensive discussions of the law Moreover, many of memoranda relate to cases which are now subject to appeal before the United States Court of International Trade or the United States Circuit Court of Appeals for the Federal Circuit

The attached outline summarizes the relevant advice which the Office of the General Counsel has given to the Commission on injury analysis under Title VII (pages 15-20). It was prepared for the Practicing Law Institute and circulated at the time I gave a speech on the subject in December 1985.

The Commission must make material injury determinations under the antidumping and countervailing duty laws in accordance with the intent of Congress, as embodied in the factors set forth in the statute, as clarified by the legislative history Congress has granted the Commission a certain amount of flexibility to use its expertise to evaluate, on a case-by-case basis, the

impact of unfair imports on domestic industries 1/ and encouraged the Commission to consider all relevant factors to assist in application of the specific injury criteria in the statute 2/ This discretion granted by Congress is not so broad as to permit the Commission to substitute any additional factors in lieu of the statutory criteria, rather it permits the Commission to consider factors not specifically articulated and use methods of analysis as tools for addressing the statutory criteria

1/ "In examining the impact on the affected industry, the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry ... " 19 U S C § 1677(7)(C)(iii)

2/ "In determining whether material injury exists, the ITC will consider the factors set forth in section 771(7)(B) (C) and (D), together with any other information it deems relevant " H Rep No 317, 96th Cong 1st Sess 46 (1979)

f) Commission has also considered evidence of highly integrated relationship and commonality of economic interest between growers and producers Frozen Concentrated Orange Juice from Brazil, Inv No 701-TA-184 (Preliminary) (1982), Lamb Meat from New Zealand, Inv No 701-TA-80 (Preliminary) (1981) But see Live Swine and Pork from Canada, Inv No 701-TA-224 (Final) (1985)

D. **INJURY.**

1. **Material Injury.**

a "Harm which is not inconsequential, immaterial, or unimportant " 19 U.S.C. § 1677(7)(A).

b In evaluating condition of the domestic industry, and whether it is materially injured, Commission must consider all relevant economic factors, including.

1) Production;

2) Shipments;

3) Capacity and capacity utilization,

4) Inventories;

5) Employment and wages;

6) Profitability;

7) Return on investments;

8) Cash flow;

9) Growth,

10) Ability to raise capital;

11) Investment. 19 U S C. § 1677(7)(C).

2 "Threat" of Material Injury

a Not defined by statute, characterized in 19 U S C § 1677(7)(F)(ii)

1) Threat must be real and actual injury imminent

2) Determination of threat of material injury may not be made on the basis of mere conjecture or supposition

b The Commission must consider, among other relevant economic factors

1) In a countervailing duty cases, nature of the subsidy

2) Increase in exporters' production capacity,

3) Increase in U S market penetration by imports,

4) The probability that imports will suppress or depress domestic prices,

5) Growing U S inventories,

6) Under-utilized exporting capacity,

7) Other demonstrable adverse trends, and

8) The potential that production facilities owned or controlled by exporters can be used to produce products subject to investigation were also used to make products subject to other unfair trade investigations or subject to outstanding antidumping or countervailing duty orders 19 U.S C. § 1677(7)(F)

3. Establishment of an Industry Has Been Materially Retarded.

a Issue rarely arises

b No statutory definition

c Legislative history limited to amendment of prior law, without comment

1) Antidumping Act of 1921 provided for affirmative determination if an industry in the United States was "prevented from being established " Antidumping Act of 1921, § 201(a)

2) Trade Agreements Act of 1979 changed "prevention" to "material retardation".

c Commission considers whether "embryonic" industry which has not yet commenced production has made a substantial commitment to production Thin Sheet Glass from Switzerland, Belgium, and the Federal Republic of Germany, Inv Nos 731-TA-127-129 (Preliminary) (1983), Salmon Gill Netting of Manmade Fibers from Japan, Inv. No 751-TA-5 (1983)

d Commission considers "nascent" industry which has started production but not stabilized.

a) Is industry's performance worse than could reasonably be expected; and

b) Is industry viable Certain Dried Salted Codfish from Canada, Inv No. 731-TA-199 (Final) (1985).

4. Commission Injury Determinations Are Fact-Specific; Assessment of Injury Tailored to the Nature and Peculiarities of Production and Marketing Activities and Life Cycle of the Specific Industry.

a Congress has approved case-by-case, industry-specific approach.

1) Statute provides for full factual inquiry by Commission

a) Commission considers statutory factors only "among other factors" 19 U S C § 1677(7)(B)

b) Presence or absence of any particular factor is not dispositive of injury 19 U S C § 1677(7)(E)(ii)

2) Senate and House reports on Trade Agreement Act of 1979 state that weight to be given any particular factor depends upon facts of the individual case in the judgment of the Commission S Rep No 249, 96th Cong 1st Sess 88 (1979) H Rep No 317, 96th Cong 1st Sess 46 (1979)

b Example of industry-specific injury analysis is investigations of emerging high-technology industries

1) Factors of injury analysis are same as in all investigations but period of time covered and varying importance of factors weighted appropriately

2) Commission has evaluated

a) Importance of continuing profitability to fund research and development Erasable Programmable Read Only Memories from Japan, Inv No 731-TA-288 (1985), Certain Radio Paging and Alerting Receiving Devices from Japan, Inv No 731-TA-102 (Final)(1983)

b) Marketing opportunities may open only briefly Erasable Programmable Read Only Memories from Japan, Inv No 731-TA-288 (Preliminary)(1985)

19

c) New industry may demonstrate many indicators of health such as increased production sales capacity, but still be injured 64K Dynamic Random Access Memory Components from Japan Inv No 731-TA 270 (Preliminary)(1985) Cellular Mobile Telephones and Subassemblies Thereof, Inv No 731-TA 207 (Preliminary)(1985)

E CAUSAL RELATION, OR NEXUS, BETWEEN UNFAIRLY TRADED IMPORTS AND INJURY

1 Injury to Domestic Industry Must Be "By Reason of" Unfairly Traded Imports 19 U S C §§ 1671b(a), 1671d(b), 1673b(a), 1673d(b)

a Causal link not defined but described in legislative history

1) Commission must find 'in light of all the information presented there is a sufficient causal link between the [unfair] imports and the requisite injury " S Rep No 249, 96th Cong 1st Sess 75 (1979)

2) Commission investigates causal link in terms of trade and competition, general condition and structure of the industry Id at 74

3) Imports need not be "the principal, a substantial, or a significant cause of material injury " Id at 74 See Pasco Terminals v United States, 477 F Supp 201 (Cust Ct 1979), aff'd, 634 F 2d 610 (C C P A 1980) (interpreting Antidumping Act of 1921)

4) Commission is not to weigh relative causes of injury S Rep No 249, 96th Cong , 1st Sess 74 (1979)

b In assessing causal relation, Commission must consider affects of imports on price, including

1) Price undercutting,

2) Significant price depression, i e , whether imports have forced domestic prices down,

3) Significant price suppression, i e , whether imports have prevented domestic price increases 19 U S C § 1677(7)(C)(ii)

2 **Causation Issues.**

a. **Cumulation.**

1) Section 612(A)(2) of Trade and Tariff Act of 1984 amended Title VII to require Commission to cumulatively assesses the volume and effect of imports from two or more countries if:

a) Imports are subject to investigation,

b) Imports compete with each other and imports compete with like products of the domestic industry,

c) Marketing of cumulated imports is reasonably coincident 19 U.S.C. § 1677(7)(C)(iv); H. Rep. No. 98-1156, 98th Cong., 2d Sess. 173 (1984).

2) Congress did not adopt provision of Senate Bill which would have required consideration of whether imports from a particular country contributed to overall material injury. H. Rep. 1156, 98th Cong., 2d Sess. 173 (1984).

VICE CHAIRMAN

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

April 18, 1986

The Honorable Sam Gibbons
Chairman
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for the copy of your April 14, 1986 letter to Chairwoman Stern concerning recent testimony about my analysis of injury and causation in countervailing duty and subsidy cases. Given your deep interest in trade matters and close attention to trade legislation, I readily understand that it is your responsibility to inquire into testimony suggesting that philosophical tenets and unconventional methodologies cloud my ability to administer the trade laws impartially.

I assure you, Mr. Chairman, that as an attorney and a former professor of law, I have the highest respect for the law. I took an oath of office and I faithfully obey that oath and my legal obligation to make injury and causation determinations in accordance with the statutory criteria set forth by Congress in our trade laws.

My fellow commissioners also view their responsibilities under the trade laws and their oaths of office seriously. I am unaware of any partiality that would hamper my colleagues' abilities to make decisions under the dumping and countervailing duty laws, although I may differ with their analyses of the data in a particular case.

The Commission is a collegial body and individual commissioners are expected to disagree at times. We were

each appointed by the President, and confirmed by the Senate, to use our best judgment in analyzing the data and information in the investigative records in accordance with the statutory criteria.

Parties always present their own suggestions for analyzing the data before the Commission in particular cases. Each commissioner in turn adopts an interpretation or mode of analysis. Just because there are differences does not mean that one methodology is in accord with the law and the others are not.

Of course, differences in analysis and reasoning among the six commissioners can be tested in the courts. Indeed, Commission decisions have been challenged in the courts by the losing party for many years. They can be reviewed in the Court of International Trade, the Court of Appeals for the Federal Circuit, and ultimately by the United States Supreme Court. If any of them are held to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law, the appellate courts are empowered to instruct the Commission on the appropriate interpretation. In addition, Congress can amend the Commission's governing statute to reverse or change Commission practice.

Recognizing your long support for an independent and bipartisan Commission, I hope you will agree that differences in analyses and judgments among the Commissioners are best resolved in the courts, or by statutory change. I would, of course, adhere to any appellate court decision or statutory change.

It is unfortunate that erroneous factual statements and mischaracterizations of my analysis may have caused some people to raise questions about my integrity and ability to carry out my duties as a commissioner.

I appreciate the opportunity to comment on these matters and trust my response will be of assistance to you.

Sincerely,

Susan Liebeler
Vice Chairman

cc: The Commission
Members of the Subcommittee on Trade

COMMISSIONER

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

April 18, 1986

The Honorable Sam Gibbons
Chairman
Subcommittee on Trade
House Ways and Means Committee
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

In your recent letter to Chairwoman Paula Stern you expressed the Subcommittee's concern about the International Trade Commission's administration of trade remedy laws. You also requested comments from the Chairwoman and other Commissioners about the validity of certain allegations made in recent Subcommittee hearings.

A thorough discussion of my own concerns appears in Certain Ethyl Alcohol from Brazil, Inv. No. 701-TA-239 (Final)(USITC Pub. 1818), especially pp. 40-53. From the transcript of your hearing on Friday, April 11, it is my understanding that the Subcommittee is familiar with these views.

Thank you very much for this opportunity to comment further. I appreciate your continued interest in the activities of this independent, quasi-judicial agency.

Sincerely yours,

Alfred E. Eckes

COMMISSIONER

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

April 18, 1986

Hon. Sam M. Gibbons, Chairman
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

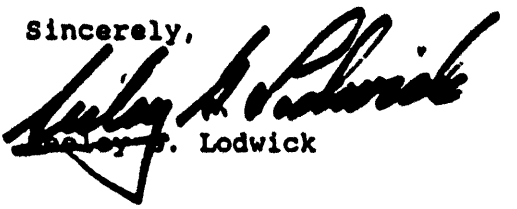
This letter is in response to your letter addressed to Chairwoman Paula Stern dated April 14, 1986, in which you invited response from the Chairwoman and from other Commissioners as to standards applied in investigations.

Your letter to the Chairwoman appears to stem from a hearing before the Committee on Ways and Means on April 11, 1986 which considered certain views expressed in the Commission's majority and dissenting opinions in Certain Ethyl Alcohol from Brazil, Investigations Nos. 701-TA-239 and 731-TA-248. On recommendation of the Commission Ethics Official I recused myself from those investigations in order to avoid any appearance of conflict of interest.

On a more broad basis, let me add that on June 14, 1983, at the hearing where the Committee on Finance of the United States Senate considered my nomination to the Commission, I testified that, if confirmed, "...that as far as guidelines go, Senator, that there are three to which I would look. One would be the law; another would be the legislative history; and certainly the last one would be the history of ITC cases". I have not knowingly departed from the views as testified to there.

Thank you for this opportunity to share these views and I will readily assist in your efforts as you may require.

Sincerely,



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COMMISSIONER

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

April 18, 1986

The Honorable Sam M. Gibbons
Chairman,
Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C.

Dear Congressman Gibbons:

Thank you for the opportunity to comment on the questions raised before your Subcommittee last Friday regarding the administration of the countervailing and antidumping duty laws by the International Trade Commission. I share your concern that the U.S. trade laws be administered fairly, impartially, and in accordance with the intent of Congress. In responding to your questions, I must emphasize that I can speak only for myself.

The fundamental concern about the Commission expressed at last week's hearings was that Commissioners are not applying the statutory tests for determining causation. Let me assure you that I have always analyzed the issue of causation strictly in accordance with Section 771(7) of the the Tariff Act of 1930. As an economist by training and through my years of experience with trade legislation, I am aware of both the attraction and the pitfalls of the use of proxies and abstract theories to substitute for statutorily mandated tests. As a Commissioner, I know that we never have as much information or time as we would like to decide the matters before us. In such cases, the temptation to shortcut the detailed and time-consuming factual analysis required by the statute by using theoretical economic models is considerable.

However, I also recall the great care that went into the formulation of the statutory tests and the listing of the

The Honorable Sam M. Gibbons
Page Two

factors the Commission is directed to consider. I know that the precise language of the statutory tests for causation are the law as Congress intended it. I recognize that Congress provided the Commission with the discretion to apply these tests flexibly. The unique features of each case do, of course, affect the relative importance of particular factors. However, it is clear to me that this flexibility does not extend to the substitution of tests not provided for in the law for the consideration of those factors which the law does require. I wish to emphasize that I do not substitute proxies for the statutorily required factors in my analyses. I believe them to be contrary to how Congress intended the statute to be administered.

I recently expressed my views on this subject in the related context of Commission consideration of causation in section 201 investigations in my Additional Views in Electric Shavers and Parts Thereof, Inv. No. TA-201-57. I have enclosed a copy of these additional views with this letter.

I hope that my answers have been responsive to your concerns and that they, and the responses of my fellow Commissioners, will serve your needs. I remain, as always, willing to provide any assistance that I can to the Subcommittee.

Sincerely,

David. B Rohr
Commissioner,
United States International
Trade Commission

Enclosure

COMMISSIONER

UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, D.C. 20436

April 18, 1986

The Honorable Sam Gibbons
Chairman, Subcommittee on Trade
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

I appreciate the invitation to respond to your April 14 letter regarding allegations that "unconventional methodologies" prevent me from discharging my duties in an "impartial manner." I am happy to comment.

As you know, the International Trade Commission is an independent regulatory agency whose members are appointed by the President for fixed terms and confirmed by the Senate. As an ITC commissioner, it is my lawful duty to render my determinations completely free of any external influence. I make this observation lest anyone interpret your inquiry and my response as compromising the independence of the Commission. They do not. Rather, I view this exchange as an opportunity to make a general comment on these allegations.

The trade laws that the Commission administers set forth clearly the factors we are to consider in deciding the important matters that come before us. Although I have been at the Commission only a few short months, I am not only respectful of these laws but also very aware of what they require. I can assure you that I have approached each investigation with impartiality and great care, and I am confident that my reasoning in each case has been fully consistent with my statutory responsibilities.

Thank you for the opportunity to clarify the record in this matter.

Very truly yours,

Anne E. Brunsdale

Anne E. Brunsdale
Commissioner

cc: The Commission
Members of the Subcommittee on Trade

If you have questions you would wish to follow up on, most of the Commissioners are here.

Senator DANFORTH. All right. Thank you very much.

Senator Long.

Senator LONG. Let me ask you. Your term as Chairwoman expires next month, but will your term as Commissioner also expire at that time?

Chairwoman STERN. No, sir; my term as Chairwoman expires the middle of June of this year. My 9-year term as a Commissioner expires next June.

Senator LONG. I think you are doing a good job over there, Ms. Chairwoman, and I commend you for that. I have enjoyed visiting with you and the other Commissioners.

Maybe you ought to invite us back to visit you, and invite us to pick up the tab as well. I would be glad to help pay the expenses in the event that it creates a problem in your budget for you to have somebody over there at the Commission. But I thought that was a very good meeting for all concerned when you invited the members of the committee to come have lunch over there at the Commission and see what the operation is.

Chairwoman STERN. Well, we would love to do it. I assure you that we will get right back to you on that invitation, and we will try to set a date.

Senator LONG. Let us pay for it this time.

Chairwoman STERN. All right. That is fine.

Senator LONG. We can afford it. I mean that is——

Chairwoman STERN. We will pay for it but as long as you bring gumbo or something like that.

Senator LONG. All right.

Chairwoman STERN. But we do also invite you all heartily to join with us in the groundbreaking ceremonies that will be coming up on June 5.

Senator LONG. The seventeenth?

Chairwoman STERN. The third of June. The third of June we are going to have groundbreaking ceremonies.

Senator LONG. That is groundbreaking. How long do you expect it to take to get the newbuilding up?

Chairwoman STERN. Well, according to the developers, the building will be available in September 1987. So it is a year and a quarter.

Senator LONG. Well, I hope you invite me to come. I won't be in the Senate at that time, but I hope you invite me to come and see the new building.

Chairwoman STERN. Well, we will both be in that status, Mr. Senator.

Senator LONG. Do you understand what Congressman Gibbons had in mind when he refers to the use of proxy criteria instead of using the factors enumerated in the statute, which raises serious question? Do you understand what he is talking about?

Chairwoman STERN. I didn't understand your question.

Senator LONG. In Congressman Gibbon's statement to you, he said, "The use of proxy criteria instead of the factors enumerated

in the statute raises serious questions as to whether injury decisions are being made in accordance with the law."

Chairwoman STERN. I believe that term "proxy" came from an opinion of Commissioner Eckes who is here, and I would ask Commissioner Eckes to tell us what he meant by that term, if I may. I think that is where it was first introduced into the public discussion.

Senator LONG. I would like to know what it means, what he is talking about.

Chairwoman STERN. You have got the opinion right there.

Commissioner ECKES. Thank you, Senator Long. If I may differ with our chairwoman, I believe I did make reference to the word "proxy," but I did not use it originally. I believe one of my colleagues was using that phrase with reference to some of the criteria that were being applied in title 7 investigations.

I think I discussed this issue rather thoroughly in the ethanol opinion. As I interpret the word "proxy," it is a substitute for the law. I do not believe that it is appropriate for commissioners to apply proxies for the statute. But I certainly don't want to say that the law is only to be interpreted one way. I was simply raising the issue as to whether some on the Commission were properly applying the law.

Senator LONG. Well, we on this committee, or the majority of us, have worked hard, and we have worked on a bipartisan basis, to try to assure the independence of this Commission. I believe that the two of you are familiar with that, are you not?

Chairwoman STERN. Yes.

Senator LONG. So it has been our view that the appointments ought to rotate and it ought to be just as bipartisan as we can make it in the hopes that the Commission will work together. I have personally been concerned. I hope others have been. They ought to be.

Everytime we turn around, the State Department seems to want to dictate the decision of that Commission, and their way to do it is to go through the White House to try to get somebody at the White House to tell the Commissioners what they ought to decide.

You are sending up an independent budget without OMB recommending for the same reason. We don't want the Commission or White House to dictate that Commission's decision. We think the Commission should make an independent decision. We hope the independence and intellectual honesty of that Commission is affected by each one of its decisions. I assume that you are satisfied that that is what is happening.

Chairwoman STERN. I think that the safeguards which you were so instrumental in getting into the law to assure the independence of the Commission are absolutely critically important. I think it is also critically important that they be administered; that those safeguards be carefully watched; that they are not bleached. I think that your role is just critically important in making sure that those laws do get followed through.

We are now up to a full complement at the Commission. There are six members. It is not bipartisan. It is tripartisan in a sense. We have Democrats, we have Republicans, and we have an independent. That is the way, I guess, it will be for a while. There will

be vacancies eventually, and I assume that the Congress will have the opportunity when vacancies occur to make sure that to the extent possible we do stay independent.

It has just been a watchword for me. It has been easy for me, in a sense, being a Democrat to make sure that it is independent. No one has been leaning on me as Chairwoman of the agency from the executive branch, because I think they appreciate the value of the independence of the Commission—when it comes to the integrity of our decisions as seen by the outside world, both domestic industries and foreign producers, and I would hope that in the future people who sit as Chairwoman or Chairman will be able to stand up for that independence as well.

Senator LONG. Commissioner, do you feel the same way about that?

Commissioner ECKES. Yes; I feel very strongly about the same principle, Senator Long. As you know, I was Chairman of the agency before Chairwoman Stern, and during that period of time certainly no one called me from any of the executive agencies to try to influence my own vote. And I believe the same is true today.

Senator LONG. Some years ago, I was urging that a Commissioner be reappointed because I felt that the Commissioner was doing a good job. And one person down at the White House was trying to help with the matter, and he said, "Well, you know, the problem is that that Commissioner doesn't vote with us, he doesn't vote with us nearly enough; and he had to vote with us more."

Apparently the person that told me that didn't understand. I thought the prime qualification was that the Commissioner not vote for somebody, but that he vote his own conscience. I would hope that that is how every Commissioner would perform down there. I think everyone now expects that of Commissioners. If anybody has reason to think Commissioners are not voting that way, I wish they would inform some of us up here because we are supposed to have oversight on that.

If that Commission is to do its job, it ought to honestly look at these cases and give us an intellectually honest judgment on it. Otherwise, I think the citizens of this country are not getting what they are paying for because they are supposed to get an impartial, honest finding of fact out of the Commission. It is not supposed to be a political decision. It is not supposed to be something that helps one party or another. It is not supposed to be something that helps the White House, the State Department, or someone else.

If we ever allow the State Department to call the turns, then you are going to have the State Department trying to dictate those decisions for political reasons; to get somebody to vote with us in the United Nations or whatever.

There are a thousand different reasons that those decisions could go contrary to the law once you let the State Department decide it for you rather than deciding it based on what you find before you.

Chairwoman STERN. Senator Long, I think that you should be very assured that this is not happening, and that the safeguards that you have put in have been very helpful in keeping such a situation from occurring.

I think the question about the proxies is another issue. I mean I think it is a separable issue, and that goes to the question of how the statute is being administered.

Senator LONG. Yes.

Chairwoman STERN. I believe that there is no question that there is a sense of insulation from pressures from outside.

Senator LONG. Well, I am against life tenure just because I think everybody ought to have to answer for their conduct once in a while, including me. So I think it is good now and then to see how these things are going.

I have no complaint about the Commission. I just think that it is good for us to communicate. I think you are doing a good job, Madam Chairman, all members of the Commission, as far as I am concerned. I have no complaints.

Thank you.

Senator DANFORTH. Senator Bentsen.

Senator BENTSEN. Chairwoman Stern and members of the Commission, I want to thank you for the extensive hearings you held along the United States-Mexican border.

Chairwoman STERN. They were very helpful for us.

Senator BENTSEN. Had an incredible response to them, and it was requested by this committee. And there was no way they could take care of the number of witnesses that wanted to testify. And they could have held a hearing in every town along that border, I think.

And, hopefully, from that will come a study that will be helpful.

But one of the things that concerns me—and the statement made by the chairman—is whether or not it is a question—whether or not this administration makes trade its No. 1 issue. Well, certainly, I am one who doesn't think it does, and doesn't devote enough time to it.

And I can't help but think with the chairman of this subcommittee, as we have, and Senator Danforth, and Russell Long and Lloyd Bentsen and other members of this committee, we are going to be pushing harder and harder on these trade issues. And you are going to have more and more responsibility in your Commission.

And I didn't get to ask this of Ambassador Woods. I was interrupted for a moment here. But I understand on the new round of trade negotiations with Canada that they have 80 members on staff and we have two. That is what I am told thus far.

And I know then that they are going to be calling on you. I assume they are. Have they called on you yet, the ITC?

Chairwoman STERN. Well, under the statute, we are already in the middle of the largest study we have ever done.

Senator BENTSEN. On Canada?

Chairwoman STERN. On what the impact would be.

Senator BENTSEN. And Mexico?

Chairwoman STERN. No; this was in the original statute on the authorization to the President of the authority to negotiate that it would trigger a study on the United States-Canada situation. The Mexico study is not part of that measure.

Senator BENTSEN. Well, you have got a problem with Mexico, and they want to belong to GATT. And we have a chance to survey that, and work out some of our differences in the meantime. It

seems to me that there is another area of major responsibility for you that should be of great concern to us.

How can you do that with the same size staff?

Chairwoman STERN. I personally don't think we can. But I am here to deliver to you what the majority of the Commission's view was and also answer your questions, if you have them, about my personal viewpoint. The decision of the majority of the Commission was that we would come up to you with an operating budget, which would be approximately $29 million. And I felt that we could squeeze out of that the service of 10 additional men or women power years, but the majority of the Commission used the same amount of money and decided to allocate that same amount of money amongst the existing manpower, 482, from the existing 1986 level.

Senator BENTSEN. Well, there is no question in my mind but what this—the level of interest is going to be very high profile and intense during this year and next year. And with starting a new round of trade and negotiations with Canada and what we will have with Mexico, the level of work is going to be substantially increased in your office and for the Trade Commissioner.

Senator DANFORTH. Thank you very much.

Chairwoman STERN. Thank you.

Senator DANFORTH. The next panel is: Kenneth Kumm, 3M CO.; Arthur Fritz, National Customs Brokers and Forwarders Association; Thomas Travis, National Bonded Warehouse Association.

Mr. Kumm, please proceed.

STATEMENT OF KENNETH A. KUMM, CHAIRMAN, JOINT INDUSTRY GROUP; AND MANAGER, CUSTOMS AND TRADE AFFAIRS, THE 3M CO., ST. PAUL, MN

Mr. KUMM. Thank you, Mr. Chairman.

The Joint Industry Group is a coalition of 75 trade associations, businesses and law and professional firms intimately involved with the U.S. imports and exports. We are concerned with the actions by the U.S. Customs Service in administering the customs law and a myriad of trade statutes and regulations which impact upon our manufacturing and marketing operation.

The Joint Industry Group urges the committee to reexamine Customs resources in terms of the functions that Customs performs, who benefits, and, thus, who should pay. Drug interdiction and border control should not be funded by a fee for following Customs procedures and requirements for legal importation of merchandise. Customs also should be compensated by the 40-some agencies on whose behalf Customs enforces some 400 statutes.

We feel it is much more appropriate that $15 billion in duties collected on merchandise by Customs pay for the cost of collecting them.

We are concerned over the increasing tendency of the Customs headquarters to make policy decisions affecting commercial transactions without prior consultation with the public.

The cumulative effect of a number of these changes is tending toward the type of nontariff barrier that U.S. exporters are faced with and which needlessly hinder the free movement of goods.

The January 1986 Customs directive regarding formal live entries on all textile products, Customs' T.D. 86-56, regarding discrepancies in values stated on invoices and entry documents and the drastic changes in country rules of origin are all recent cases where prior consultation could have resulted in less disruption and uncertainty in business transactions and just as effective enforcement of questionable import practices.

We also have encountered problems arising out of the issuance of headquarter rulings on import transactions, both in the terms of delay and the issuing of these rulings and in the term of the manner in which they are available to industry.

The Joint Industry Group recommends that Customs be required to make greater effort to publish its rulings in a timely fashion for effective dissemination of policy positions prior to changes in policy, affording adequate time and opportunity for comment.

In this respect, the Office of Regulation and Ruling should be strengthened.

The Joint Industry Group is appreciative of the need and firmly supports strict and effective enforcement of U.S. Customs laws and regulations which evidently is the laudible intent of the Customs Service. However, it is just as evident to the Joint Industry Group that there must be concern in carrying out that intent for the legitimate interest and needs of the business community.

I would request, Mr. Chairman, that the Joint Industry Group's paper on country rules of origin prepared at the request of Deputy Treasury Secretary Darman be made part of the hearing record and be filed with the committee for its information and further consideration on the issue of rules of origin requirements.

Senator DANFORTH. Without objection.

Mr. KUMM. Thank you.

Senator DANFORTH. Thank you, Mr. Kumm.

[The prepared written statement and additional information from Mr. Kumm follow:]

STATEMENT OF KENNETH A. KUMM FOR THE JOINT INDUSTRY GROUP
before the SUBCOMMITTEE ON INTERNATIONAL TRADE OF THE
COMMITTEE ON FINANCE

May 12, 1986

Mr. Chairman, Members of the Committee, my name is Kenneth A. Kumm, Chairman of the Joint Industry Group.

The Joint Industry Group is a coalition of seventy five trade associations, businesses, and law firms and other professional firms actively involved in international trade with a operational interest in the the Customs Service. A description of the Joint Industry Group is attached, as is a list of our members.

We welcome this opportunity to comment on customs and trade issues which are relevant to the Finance Committee s consideration of the authorization of funds for the U.S. Customs Service, as well as to the Committee s oversight responsibility for customs matters.

While the Joint Industry Group is not taking a position with respect to the funding of specific Customs operations in FY 1987, we have been and we are concerned with the adequacy of funding and resources for the day to day customs functions of clearing merchandise. As representatives of business firms and members of trade associations intimately involved with the $380 billion in U.S. imports and with over $200 billion in U.S. exports, we are concerned with actions by the U.S. Customs Service in administering the customs law and the myriad of trade statutes and regulations. Such actions impact upon our manufacturing and marketing operations in the United States and abroad. Therefore, we would like to address two broad issues pertinent to the purposes of this hearing. The first issue relates to how the constitutent uses of Customs services

are viewed in the authorization and budgetary process and in the context of today s budgetary pressures. The second set of issues covers the area of Customs rulemaking, or as stated in the Committee s Press Release, the "procedural propriety of Customs rulemaking".

Customs Costs and Beneficiaries

The Joint Industry Group strongly supports sufficient resources for Customs' performance of its essential functions. However, we have consistently opposed the imposition of so-called "users' fees" for Customs activities. We feel that Customs work is not "services" for which there are identifiable "users," but rather formalities to which travellers and commerce are subjected. When the beneficiary is the general public, then general tax revenues should fund the activity. For this reason and a number of other reasons outlined in our testimony before this Subcommittee last year, we continue to feel users' fees are ill-advised. Gatt Article VIII prohibits the imposition of such fees for fiscal purposes. So long as the fees do not relate

to the cost of the service and are not earmarked for Customs' budget accounts, the fees cannot be defended in the GATT. We feel the fees already enacted and certainly the additional fees recently proposed by the Administration will invite retaliation. Even if trade "retaliation" does not result, per se, the enactment of customs users fees on commercial clearances will not be without costs in terms of market access for U.S. exports. However, the Administration has determined that such fees should be imposed, and the Congress has approved a portion of last year's Administration proposal regarding fees for processing passengers and conveyances, in the FY 86 budget reconciliation bill.

We do respectfully urge the Committee to re-examine Customs' human and financial resources in terms of the functions Customs performs, who benefits, and thus, who should pay. As we see it, Customs has three parts to its current mission; the largest part, narcotics interdiction, consumes, according to Customs, one-half of Customs resources. The second part involves the enforcement of more than 400 statutes, ranging from agricultural inspections to data collection. The third is the processing of ordinary commercial shipments.

A program to interdict narcotics is a very important and necessary function which protects all the residents of the United States. This function should be regarded as a law enforcement and crime prevention function, and we feel it should be funded by the general revenues from the taxpayers who are the beneficiaries of the program. Drug interdiction should not be funded by a fee for following Customs procedures and requirements for the legal importation of merchandise.

The Customs Service also undertakes the enforcement of approximately 400 statutes, for roughtly 40 different agencies ranging from Agriculture, to Census, to Commerce's ITA, to Immigration. These enforcement efforts consume a substantial portion of the other half of Customs' resources. We recognize the need for many of these activities, but we feel that Customs should be compensated by the customers within the Executive Branch for which it performs these services. In the case of the statistics on international trade that Customs collects for the Census Bureau, the timeliness and accuracy of these statistics best would be served, in an economic sense, if Customs charged the Bureau for the true cost of this activity. The parties who want and use the statistics should bear the costs of collecting them, and would have a stronger role, since they pay for them, in determining what is collected. Similar reimbursements should be made to Customs by all other agencies for which Customs facilitates their mission.

The third activity is really Customs' main job: routine commercial services involving sampling imports and collecting duties at the ports of entry. These services consume only a small percentage of Customs resources, but the duties collected are nearly 20 times Customs' entire budget for interdiction of drugs, assisting other agencies, and commercial services. We suspect that the fees already enacted generate sufficient revenue to cover these commercial service costs, but we think it much more appropriate that the duties collected on the merchandise by Customs pay for the costs of collecting them, as well as any manpower increases or automation improvements necessary now or in the future.

We hope the Congress accepts our analysis of the Customs' activities and the beneficiaries of those activities, and that the Congressional budget process would reflect the notion that Customs' funds should come from the people served.

Lack of Procedural Propriety in Customs Rulemaking

The Joint Industry Group has become concerned over the increasing tendency of Customs Headquarters to make policy decisions affecting commercial transactions without prior consultation with the private sector. In addition, problems have increasingly arisen in regard to the issuance of Headquarters rulings on import transactions, both in terms of the delay in issuing those rulings and in terms of the manner in which they are made available to the public. The following will illustrate the nature of the problem.

Directive Regarding Formal Live Entry on All Textile Shipments

On January 9, 1986, Customs Headquarters issues Directive 3500-06 to require the filing of a formal entry on all shipments of textiles regardless of value and to require careful review prior to release of textile shipments from countries which are subject to textile restraint levels. Prior to that Directive, textile shipments valued under $250 were allowed to be entered under an informal entry and released without prior review. The Directive was to take effect on February 1, 1986. No consultations with the private sector took place prior to issuance of the Directive.

On January 22, 1986, private sector representatives met with the Assistant Secretary of the Treasury for Enforcement and Operations to outline the problems which this Directive would create for importers and retailers. In addition to the broad problems occasioned by the very short lead time to implementation and the lack of advance formal notice, procedures which would have allowed proper private sector input, the following specific areas of concern were outlined at that meeting:

- the large number of entries involved;
- the delay which results from live formal entry procedures;
- the lack of sufficient personnel to handle the increased workload;
- the lack of adequate storage areas in the ports;
- the difficulties to be experienced by buyers returning the samples and by returning tourists;
- the problems to be experienced by catalog advertisers as a result of the anticipated delays; and
- the snowball effect which the anticipated delays would have on imports of all types of merchandise.

Following this meeting a decision was taken to delay implementation of the Directive to March 9, 1986, and private sector representatives met with the Commissioner of Customs on February 5, 1986,

to discuss the various problems posed by the Directive. On February 28, 1986, a revised Directive, No. 3500-07, was issued to address some of the concerns of the private sector. Further clarifying instructions were issued by Customs Headquarters by telex on April 16 and 24, 1986.

The involvement of members of the Joint Industry Group with customs operations provides a great awareness of the very difficult tasks facing the Customs Service. The Group has attempted to provide constructive support, particularly in Customs' effort to improve efficiency through data automation techniques and procedures. As an organization we have sought to discuss procedural problems with Customs officials. Based on this experience the Joint Industry Group is of the opinion that the disruption and uncertainty caused by the precipitous issuance of the initial Directive could have been avoided. If Customs had taken the time to consult with the private sector prior to its issuance, so that easily anticipated problems could have been worked out, effective action could still have been the result. However, Customs chose not to do this. The questionable nature of the procedure followed by Customs is demonstrated by the fact that Customs later found it necessary to issue a revised Directive as well as further clarifications in response to problems brought to its attention by the private sector.

T.D. 86-56 Regarding Discrepancies in Values Stated on Invoices and Entry Documents

On March 6, 1986, Customs Headquarters published in the Federal Register a notice of policy, T.D. 86-56, stating that effective May 5, 1986, Customs would no longer accept an invoice containing a visa stamp ("visaed invoice") from an exporting country if the value of the merchandise stated on the invoice differed from the value declared to Customs for import purposes; the entry documentation would not be accepted by Customs but rather would be returned to the importer for correction. Prior to this notice of policy, Customs had accepted the entry documentation so long as the value declared to Customs on the entry summary was correct. Again, Customs failed to consult with the private sector prior to issuance of this notice of policy.

The problems posed by this change in policy were immediately apparent to the private sector. Those problems include the fact that contracts for the purchase of merchandise are normally signed well in advance of delivery in order to accord with production schedules and seasonal marketing requirements; thus at the time of issuance of the new notice of policy binding contracts had already been entered into which would not be consummated by receipt of the goods by the buyer until after the new policy went into effect. Moreover, the notice of policy did not take into account the fact that there are many legitimate business reasons for discrepancies between the visaed invoice price and the proper value declared to Customs. In view of the approach taken in the notice of policy, importers would be faced with, at the least, a delay in receiving their goods (which could be disastrous in cases involving tight marketing schedules) or, at worst, the inability to receive the goods at all if the exporting country were unwilling to issue a new visaed invoice reflecting the proper Customs value of the merchandise.

In view of the very short lead time for implementation of the new policy, numerous private sector groups and individuals attempted to have Customs

delay the effective date. Customs has resolutely refused to do so, and thus, the new policy is now in effect.

In addition, numerous private sector parties have written to Customs Headquarterss for advice regarding the applicability of the new policy to specific factual patterns. In response to those request for clarification, Customs Headquarters on May 1, 1986, issued implementing instructions to its field offices stating that entries are to be accepted in cases where an importer can provide an acceptable explanation for differences in price or value information and setting forth two examples of such cases. However, for reasons that are not clear, Customs specifically decided not to include other examples which had been brought to its attention by the private sector as requiring clarification. Thus, except for cases covered by those two examples, importers must either depend on the interpretation applied by Customs at the port of entry (at which time it may be too late to make corrections) or await the issuance of a ruling from Customs Headquarters. A large number of requests for such rulings are now pending at Customs Headquarters and no action has yet been taken on those request.

The Joint Industry Group is appreciative of the need and firmly supports strict and effective enforcement of U.S. customs laws and regulations, which evidently is the intent of Customs Service. However, it is just as evident to the Joint Industry Group that there must be a concern, in carrying out that intent, for the legitimate interest and needs of the business community. The Joint Industry Group is of the opinion that had Customs discussed the matter in advance with the private sector, there would have been ample opportunity to outline the problems and any possible solutions so as to minimize the adverse effect on business operations. Failing that, Customs should have both delayed the effective date and issued more complete clarifying instructions in advance of implementation. As a result of Customs failure to take any of these actions, importers, are and will continue to be, faced with uncertainty and possible disruption of their commercial transactions.

Issuance of Rulings by Customs Headquarters

The importing community is very much dependent on the issuance of legal rulings from Customs Headquarters regarding prospective and current import transactions. It is not unusual for even the least complicated ruling to involve several months from date of receipt of the case at Headquarters to the date of issuance of the decision, and in many cases the delay is far longer.

These delays can be attributed in large part to the fact that staffing in the Office of Regulations and Rulings is at approximately half the level of sever or eight years ago. The Joint Industry Group believes that action should be taken to correct the chronic understaffing in that office so that Customs may more efficiently assist the private sector through the ruling issuance procedure.

Another related problem concerns the manner in which Headquarters rulings are made available to the public. Although a procedure exists for the publication of precedential rulings, that procedure is applied on an ad hoc basis with the result that some rulings are never published even though they represent the current thinking of Customs, and thus will be relied upon by Customs in subsequent transactions involving similar issued. Since these rulings will invariably affect the public, the Joint Industry Group recommends that Customs should be required to make a greater effort to publish its rulings on a broader scale either in full or in abstracted form so that the public may be better informed regarding the most current legal positions adopted by Customs.

Rules of Origin

Finally, the Joint Industry Group would like to reiterate its concern with the rulemaking activities of the U.S. Customs Service in the area of country rules of origin. We feel Customs actions have been both precipitous, and, possibly preemptive of the legislative process. The Joint Industry Group is just completing a paper on rules of origin at the request of Deputy Secretary of Treasury Darman. It is to be completed within the next two weeks. I would request, Mr. Chairman, that the Joint Industry Group's paper on rules of origin be made a part of this hearing record if we can supply it in a timely fashion, or filed with the Committee for its information and future consideration on the issue of rules of origin requirements.

Should the Members or the staffs have any questions or requests of the Joint Industry Group concerning our testimony we will be happy to respond. Thank you, on behalf of the Joint Industry Group, for this opporunity to appear before your Subcommittee on International Trade.

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THE JOINT INDUSTRY GROUP
WASHINGTON, D.C.

Chairman
Kenneth A. Kumm

Secretariat
Harry Lamar
1629 K Street, NW, Suite 600
Washington, DC 20006
Telephone (202) 466-6490

May 20, 1986

The Hon. Richard G. Darman
Deputy Secretary of the Treasury
Department of the Treasury
15th and Pennsylvania Ave., NW
Washington, DC 20220

Dear Mr. Secretary:

As requested at our meeting on July 3, 1985, the Joint Industry Group is submitting to you a paper on rules of origin as an attachment to this letter. We appreciate this opportunity because this area is of growing interest to the U.S. business community, as well as to the Customs Service.

The paper was prepared with the guidance and counsel of the attorney members on the attached list. It is submitted on behalf of the following member associations of the Joint Industry Group, who are broadly representative of U.S. businesses involved in international trade:

Aerospace Industries

Air Transport Association of America

American Association of Exporters and Importers

American Electronics Association

American Retail Federation

Computer and Business Equipment Manufacturers Association

Council of American-Flag Ship Operators

Electronic Industries Association

Foreign Trade Association of Southern California

National Customs Brokers and Forwarders Association of America

International Footwear Association

International Hardwood Products Association

Minnesota World Trade Association

Motor Vehicle Manufacturers Association

National Association of Foreign Trade Zones

National Association of Manufacturers

National Association of Photographic Manufacturers

National Bonded Warehouse Association

National Council on International Trade Documentation

National Industrial Transportation League

We are concerned about this issue because recent decisions made by the U.S. Customs Service significantly expand upon the judicial interpretations. Their new approach, developed for application under textile quota regulations, another area of law, is creating increasing problems for American business without adequate legal or policy basis. Previous determinations are being reversed at considerable cost to businesses and to consumers and are likely to have a negative effect on programs supported by the Administration for foreign policy and national security reasons, such as the Caribbean Basin Initiative and the U.S. -Israel Free Trade Agreement.

Our concerns are magnified by the likelihood that unilateral changes by the United States are likely to exacerbate the problem of negotiating an international agreement on rules of origin. As exporters, we believe such an agreement is highly desirable, since we are experiencing difficulties in foreign markets from the diverse and discriminatory practices used by other countries.

We have included an Executive Summary to facilitate understanding, and to make it possible for the paper itself to provide adequate depth for thorough review.

Thank you for your interest in the matter. We would be glad to provide any additional information required or to answer any questions that you may have. Once you have had an opportunity to review the matter, we would appreciate the opportunity to discuss this serious policy matter with you.

Sincerely,

Kenneth A. Kumm

Kenneth A. Kumm
Chairman

Attachments

List of Attorney Members of the Joint Industry Group

E. Garfinkel, Esq., Anderson Hibey Nauheim & Blair
W.D. Outman, Esq., Baker & McKenzie
L. Lehman, Esq., Barnes Richardson & Colburn
D. Busby, Esq., Busby Rehm and Leonard
B. Nemmers, Esq., Graham & James
F. Brennan, Esq., Hudge Rose Guthrie Alexander & Ferdon
M.J. Ambrose, Esq., O'Connor & Hannan
P. Samolis, Esq., Patton Boggs & Blow
S.E. Eizenstat, Esq., Powell Goldstein Frazer & Murphy
M.L. Shay, Esq., The Procter & Gamble Company
J. Rode, Esq., Rode & Qualey
J. Pellegrini, Esq., Ross & Hardies
S.E. Caramagno, Esq., Ross & Hardies
L. Sandler, Esq., Sandler & Travis
S. Sherman, Esq., Schnader, Harrison Segal & Lewis
R. Abbey., Esq., Serko, Simon & Abbey
P. Suchman, Esq., Sharretts Paley Carter & Blauvelt
H.A. Isaacs, Esq., Siegel Mandell & Davidson
M.M. Shostak, Esq., Stein Shostak Shostak & O'Hara
R. Cassidy, Esq., Wilmer Cutler & Pickering
W. Dickey, Esq., Windel Marx Davies & Ives
E. Czadowski., Esq., Winston & Strawn

EXECUTIVE SUMMARY - RULES OF ORIGIN

April 21, 1986

Numerous laws administered by the U.S. Customs Service under the Tariff Act of 1930, as amended, require a determination of the country in which goods are made. These include not only the basic separation between "most favored nation" and communist country duty rates, but also whether foreign origin marking is required, whether duties can be drawn back when articles manufactured or processed from imported materials are exported and whether a number of duty preferences and exemptions are applicable.[1] Recent and foreseeable growth in preferential and bilateral tariff arrangements mandate a thorough understanding of how the origin of a product is determined under relevant United States Customs laws.

Products entirely produced in a given country generally present few problems in determining origin. Difficulties arise when more than one country is involved, such as where raw materials are produced in one country and shipped into another for further processing. Statutory and regulatory guidance on the standards to be used is sparse. However, a comprehensive body of generally consistent judicial interpretation has evolved over the past century. Where legislated standards exist, such as the government procurement section of the Trade Act of 1979 and the U.S.-Israel Free Trade Agreement enacted in 1985, they are consistent with the judicial standard.

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1. In addition to determination of the country of origin, several of these duty preferences require that a second set of quantitative and qualitative requirements be met in standards of preference e.g. articles that result from simple mixing are unlikely to be eligible for the Carribean Basin Initiative, the Generalized System of Preferences or the U.S.-Israel Free Trade Agreement. Similarly, articles will not be eligible unless certain proportions of their values result from direct costs of manufacturing in the beneficiary countries.

A comprehensive overview of decisions by the Court of International Trade and the Court of Appeals for the Federal Circuit over the past 45 years reveals a consistent pattern. The key issue in determining origin is whether the processing or manufacturing done on an article in any given country changed it within the definition established by the Supreme Court in 1908 in the only relevant case to reach that court. This definition ascribes origin to the country in which the product was last made into "a new or different article of commerce with a distinctive name, character or use". The significance of the manufacturing or processing is measured by the change in the identity of the article, rather than by the complexity, cost or extent of the work involved. Simple purification has resulted in a change of origin when the name and use of the product is changed, but not where it failed to do so; a simple assembly where one item is assembled into another and lost its separate identity is sufficient, but not if the identity does not change.

One divergent area is country of origin marking, where recent cases have required that substantial transformation be obtained by a substantial manufacturing or processing operation. However, this supplemental criterion has not been applied to other laws requiring country of origin determination. The most recent marking case required determination of the specific intent of Congress behind each of these laws, and specifically contrasted marking laws and policy to the drawback and GSP laws.

The Customs Service recently announced a new general policy that there should be one rule of origin for all areas of Customs law. This conflicts with two subsequent decisions by the courts, including one at the appellate level, which require that the specific legislative intent of each of these statutes must be assessed.

There are reasonable concerns that preferential tariff arrangements for developing countries or others with whom we have a special relationship should not be accorded to products that appear to have merely "passed through" the beneficiary country. The Congress has met this concern in specific statutes by imposing limiting "standards of preference", as mentioned in the preceding footnote and discussed more fully in the text. To extend this concern to the basic question of where a product was made can lead to anomalous results. For example, two otherwise identical items of jewelry, one made from precious metals and the other from base materials, could be ascribed different origins merely due to the relative differential in the cost of the metals. Similarly varying wage costs between different countries could result in identical products having different origins, or differential rates of inflation or changes in foreign exchange values could see a product changing origin over a period of time. The problems that this kind of situation can create are self-evident. One reason why the United States expects to discard the "in chief value of" system of tariff classification is that similar problems have arisen in that related area of law.

In summary, the courts have developed a consistent rule of origin that has been adopted by the Congress in its recent enactments. Except where the courts have interpreted Congressional intent to be otherwise, such as marking, an article is the product of the country where it is wholly produced or that country in which it was last transformed into a new and different article of commerce with a distinctive name, character or use.

RULES OF ORIGIN

I. Background

Country of origin determination is fundamental to Customs law, pervading disparate areas such as marking, government procurement, quotas, exceptional rates of duty, etc. It is critically important for both tariff and labeling reasons. Appropriate country of origin marking is required on all imported products and/or their containers. Tariff Schedules of the United States (TSUS) duty rates are partially determined by whether the product is that of a most favored nation (MFN), column 2 (communist) country, or least developed developing country (LDDC). Further, in several special programs, products of specified nations are given favored tariff treatment, sometimes including duty free entry. The primary programs involved are the U.S.-Israel Free Trade Agreement, Caribbean Basin Initiative (CBI), Generalized System of Preferences (GSP), U.S.-Canadian Automotive Products Agreement and U.S. Insular Possession Exemption, "Headnote 3(a)."

The tariff schedules also contain statutory duty exemptions for American products exported and reimported. Item 800, TSUS allows for reentry of U.S. goods which have not been changed in condition or increased in value abroad. Item 807, TSUS allows duty reduction for U.S. components assembled abroad. Utilizing Item 807, duty applicable to U.S. components is subtracted from duties owed on the finished product upon reimportation.

The manufacturing drawback law (19 USC 1313(a)) requires determination whether a product is manufactured or produced in the United States also.

II. Rules of Origin and Standards of Preference

The determination of country of origin is mandated by statute. Numerous different specific provisions exist in the tariff schedules and other statutes affecting Customs. These basically may be separated into two broad classifications, rules of origin and standards of preference.

Rules of origin require determination of the country of origin of the product. (Table 1) A rule of origin may be facially neutral, e.g. the marking statute which requires all imported articles of foreign origin to contain a conspicuous marking of its country of origin but does not affect importation per se. Country of origin determination also may affect the importer's ability to import the item such as the various import quotas enacted and TSUS General Headnote 3(d) TSUS, as modified by Presidential Proclamation 3447 dated February 3, 1962, prohibiting importation into the United States of all goods of Cuban origin and all goods imported from or through Cuba.

In addition to rules of origin, the tariff schedule contains several standards of preference (Table 2) which in addition to requiring country of origin determination also require another step, frequently quantitative, before conferring a benefit upon any imported article meeting its requirements. The Caribbean Basin Initiative outlined in TSUS General Headnote 3(e)(vii) is such a standard of preference which

requires that both the country of origin be from a specified list of eligible countries and that a certain minimum percent of the product's appraised value be from such country before it is eligible for duty-free importation into the United States. All standards of preference have in common the fact that they require both an origin determination and an additional step, either qualitative or quantitative, before conferring a benefit upon the imported article which may either be duty reduction or elimination.

Few of the relevant statutes provide any real definition of country of origin. 19 USC §2518(4)(B), enacted in 1979, dealing with government procurement states "an article is a product of a country or instrumentality only if (i) it is wholly the growth product or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new or different article of commerce with a name, character or use distinct from that of the article or articles from which it was so transformed." Thus two alternatives are provided: either the product may be wholly produced or manufactured in a given country, or it may be substantially transformed in that country from materials produced elsewhere. Transformation sufficient to change country of origin for articles produced in, or from materials of, several countries is defined "as a new and different article of commerce with a name, character or use distinct from that of the article or articles from which it was so transformed." In addition, the U.S.-Israel Free Trade Agreement of 1985, Annex 3, states ". . . 'country of origin' requires that an article or

material . . . be substantially transformed into a new and different article of commerce, having a new name, character, or use, distinct from the article or material from which it was so transformed." These recent requirements follow the judicial definition of substantial transformation utilized in interpreting most Customs statutes.

As seen in tables 1-3, other statutes are imprecise in their requirements, mentioning that the article must be a "product of," or "the growth product or manufacture of" or "substantially transformed" without describing the terms. The specific regulations interpreting these statutes (Table 3) provide some guidance, however, they are also silent in important places.

The country of origin marking statute requires that an article ". . . imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such a manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article." 19 USC §1304(a). Country of origin is further defined in the regulations. 19 CFR §134.1(b).

> "Country of origin. 'Country of origin' means the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must affect a substantial transformation in order to render such country the country of origin within the meaning of this part.

The tariff provisions for articles exported and returned items 800 and 807 TSUS require that U.S. products be exported and then reimported into the United States without further manufacture or fabrication. Substantial transformation is not statutorily defined but is explained in the regulations implementing the country of origin marking statute. 19 CFR §134.35.

"An article used in the United States in manufacture which results in an article having a name, character, or use differing from that of the imported article, will be within the principle of the decision in the case of United States v. Gibson-Thomsen Co., Inc., 27 CCPA 267 (CAD 98). Under this principle, the manufacturer or processor in the United States who converts or combines the imported article into the different article will be considered the 'ultimate purchaser' of the imported article within the contemplation of section 304(a), Tariff Act of 1930 . . . ."

It is left to the regulations 19 CFR §10.12(e) to define product of the United States.

> "Product of the United States. A 'product of the United States' is an article manufactured within the Customs territory of the United States and may consist wholly of United States components or materials, of the United States in foreign components and materials, or wholly of foreign components or materials. If the article consists wholly or partially of foreign components or materials, the manufacturing process must be such that the foreign components or

material have been substantially transformed into a new and different article, or have been merged into a new and different article."

Thus, when regulations are taken together with the statutes they implement (Table 4), a common thread of country of origin determination appears. Articles must either be the growth, produce, or manufacture of the given country or substantially transformed in that country to claim that country as its origin.

Current interpretations of "product of," "manufacturing process," "substantial transformation," etc. have been judicially and administratively determined. There is abundant precedent in bound Customs rulings and court decisions determining for particular products and processes, whether or not sufficient transformation or manufacturing has occurred.

III. Case Law

Although statutes, in general, are not definitive, ample judicial precedent exists explaining determination of country of origin. Substantial transformation, as hereinafter shown, has consistently been defined in terms of the creation of a new and different article of commerce with a new or distinctive name, character or use. Recently, country of origin marking and textile quota decisions, while utilizing the general judicial interpretation of substantial transformation, have further restricted its use.

Substantial transformation is common to many country of origin determinations, allowing comparison of many country of origin cases, decided under various statutes. This approach was recently endorsed by the U.S. Court of Appeals for the Federal Circuit which stated:

> "We need not look only at GSP cases (which are scarce) to determine when a substantial transformation takes place. Whether a substantial transformation has occurred is of importance in many other areas of Customs law, and reference to cases from these other areas is often helpful unless the principles enunciated in those areas hinge specifically on the underlying statutes there at issue." The Torrington Company v. United States, slip opinion 85-670, p. 11 (June 14, 1985).

However, where Congressional purposes or statutory languages differ, differing interpretations may be necessary. "The policies underlying the different statutes [marking versus GSP, and drawback] are similar but not identical. Thus, although the language of the tests applied under the three statutes is similar, the results may differ where differences is statutory language and purpose are pertinent" National Juice Products Asso. v. United States, C.I.T. Slip. Op. 86-13 (Jan. 30, 1986).

The U.S. Supreme Court in Anheuser-Busch Brewing Association v. United States, 207 U.S. 556, 562 (1908) in determining whether corks were manufactured in the United States stated:

"Manufacture implies a change, but every change is not a manufacture, and yet every change in an article is the result of treatment, labor, and manipulation. But something more is necessary as set forth and illustrated in Hartranft v. Weidman, 121 U.S. 609 (1887). There must be a transformation, a new and different article must emerge having a distinctive name, character, or use."

The idea of transformation to a different or distinctive name, character or use has become a basic concept in modern case law.

United States v. Gibson-Thomsen Co., Inc., 27 CCPA 267, C.A.D. 98 (1940) confirmed that a manufacturer is the ultimate purchaser if he imports merchandise for use in the production of some new article in the United States. The manufacturer here imported wooden handles and blocks, properly marked upon importation. However, when the bristles were inserted to make wooden brushes and toothbrushes, the country of origin marking was obscured. The court ruled that additional country of origin marking was unnecessary. "It is clear from the record that the involved articles are so processed in the United States that each loses its identity in a tariff sense and becomes an integral part of a new article having a new name, character, and use. We are of the opinion, therefore, that, at the time of their importation, the involved articles were marked 'in such manner as to indicate to' the 'ultimate purchaser in the United States' -- the country of their origin -- Japan." Id. p. 273. The court noted "We find nothing in the statute nor in its legislative history to warrant a holding that Congress intended to require that an imported article, which is to be used in the United States as material in the

manufacture of a new article having a new name, character and use, and which, when so used becomes an integral part of the new article, be so marked as to indicate to the retail purchaser of the new article that such imported article or material was produced in a foreign country." Id. p. 273.

Chemo Pure Mfg. Corp. v. United States, 34 Cust. Ct. 8, C.D. 1668 (1954) involved importation of tannic acid produced in the United Kingdom from nutgalls grown in China. The Customs Court held "[t]he merchandise here in question, in its condition as imported, is tannic acid, not nutgalls. The identity of the nutgalls produced in China has been lost, and a new product with a new name, a new use, and a distinct tariff status has been produced in the United Kingdom" Id. p. 11, despite the fact that retaining China as the origin would have increased the duties collected on the importation.

The Customs court noted in Grafton Spools, Ltd. v. United States, 45 Cust. Ct. 16, 21, CD 2190 (1960) that the law "does not require . . . that such [ultimate] user is also the ultimate purchaser." The court held spools upon which business ribbons were wound need not be individually marked to give notice to the user since the ultimate purchaser was the ribbon manufacturer who received bulk country of origin labeling.

In another country of origin marking case, The Diamond Match Company v. United States, 49 CCPA 52, CAD 793 (1962), the Court of Customs and Patent Appeals held that inserting wooden spatulas into ice cream bars

created a new article with a new name, character and use. Therefore, the spatulas which were properly marked upon importation with bundle bands stating made in Japan did not have to be individually marked to give the retail consumer notice of their origin. The ice cream manufacturers were considered the ultimate purchasers and received appropriate notice from the bulk marking. "[T]he imported spatulas when used by ice-cream-on-a-stick producers, are used solely as component parts in the production of the confections. After such use, the spatulas clearly lose their identities, in a tariff sense, as independently usable spatulas." Id. p. 60. It approved the lower court ruling that the ice cream product was "a new product, having a new name, character, and use." Id. p. 60.

Changes which occur merely in form or shape are not sufficient to cause a substantial transformation. United States v. Samuel Dunkel & Co., Inc., 33 C.C.P.A. 60, C.A.D. 315 (1945). In this case which involved tinning butter from large bulk blocks, the Court of Customs and Patent Appeals ruled that both the imported and finished product were butter, hence the change did not meet the requirement under the drawback law for manufacturing. This case was distinguished in International Paint Co., Inc. v. United States, CD 1052 (1948) aff'd 35 CCPA 87, C.A.D. 376 (1948) which stated that manufacturing need be no more than "a processing operation, which, although it advances the material, the subject of the process, in condition or value, or both, still leaves it that material." Id. p. 108. In International Paint, impurities were removed from marine paint to create anti-fouling paint which the Customs court held changed both the form and commercial use of the paint. The court noticed that the impurities caused the paint to be unfit for a specific paint purpose

which the relatively simply removal process remedied. It is significant that although International Paint is concerned with the definition of manufacture contained in the drawback law, it uses the same critical terminology as that for substantial transformation. The Court of Appeals emphasized that the requirements of a change of name, character or use given in the definitions are stated in the disjunctive. A change in any one of the stated criteria is sufficient. "We do not think the fact that there has been no change of name is of material consequence here." Id. p. 93. International Paint, a drawback case, frequently has been cited with approval by courts.

Converting steel ingots into steel slabs was ruled to be a manufacture rather than an alteration. A. F. Burstom v. United States, 44 CCPA 27, C.A.D. 631 (1956). The manufacturer had attempted to pay duty only upon the value of the alteration abroad. However, Customs ruled that conversion of the ingots into slabs converts them into something new.

In a country of origin marking case, the Customs court ruled that fittings and flanges made from imported forgings constituted a manufacturing process with sufficient transformation occurring to the forgings to eliminate the need for country of origin marking. Midwood Industries, Inc. v. United States, 313 F. Supp. 951, 64 Cust. Court 499, CD 4026 (1970). "The end result of the manufacturing processes to which the imported articles are subjected . . . is the transformation of such imported articles into different articles having a new name, character and use." Id. p. 957. The court distinguished between producers' goods and consumers' goods. They held that the forgings are "producers' goods,

which are not in fact used by the consumer in such state of manufacture and are not capable of use by the consumer in that state." Id. p. 957. The flanges were considered consumers' goods or end use products having "a special value and appeal for industrial users and for distributors of industrial products." Id. p. 957. The court further held that "Consequently, the two classes of goods, namely the imported forgings, and the fittings and flanges made therefrom, the different articles of commerce in a tariff sense. [Sic]" Id. p. 957. The court further held that "the ultimate purchaser of the forgings at bar is not the retail or wholesale purchaser of the flanges and fittings made therefrom but is the manufacturer of the flanges and fittings." Id. p. 957.

Imported wooden chair parts did not require country of origin marking since the importer transformed them into domestic chairs by more than mere assembly. Carlson Furniture Industries v. United States, 65 Cust. Ct. 474, C.D. 4126 (1970). The court held more than assembly was involved. ". . . Carlson Furniture is the "ultimate purchaser" of the imported chair parts at bar . . . . The imported articles are not chairs in unassembled or knocked-down condition . . . "[T]he end result of the activities performed on the imported articles . . . is the transformation of parts into a functional whole-giving use to a new and different article within the principle of the Gibson-Thomsen case." Id. p. 482.

Texas Instruments 681 F.2d 778, 3 ITRD 1945 (CCPA 1982) overturned the Customs court ruling that an assembly process could not result in a substantial transformation. Before going on to hold that the photodiodes and ICs involved were subject to manufacturing operations in Taiwan which

converted them into new articles, the court ruled that substantial transformation could occur from a complicated assembly process.

The definition of substantial transformation for country of origin marking purposes recently has been further refined and distinguished beginning in United States v. John E. Murray, Jr., 621 F.2d 1163 (1980). Due to criminal conspiracy, fraud, and concealment charges, the case was heard by the First Circuit Court of Appeals, rather than the CIT, which recognized distinctive and determinative language in the definition of country of origin in 19 C.F.R. §134.1(b). ". . . the regulation has the obvious purpose of making applicable the second country's rate when and only when the contribution of the second country to the value of the imported article was of great significance compared to the contribution of the first country. We can discern no other possible rational purpose for the otherwise totally unnecessary sub-section." Id. p. 1168. The court held, for cases interpreting marking requirements only "when read in the light of the purpose of the closing clause of sub-section (b) of 19 C.F.R. §134.1, . . . 'substantial transformation' means a fundamental change in the form, appearance, nature, or character of an article which adds to the value of the article an amount or percentage which is significant in comparison with the value which the article had when exported from the country in which it was first manufactured, produced, or grown." Id. p. 1169.

Similarly, in Uniroyal, Inc. v. United States, 542 F. Supp. 1026 (CIT 1982), affirmed per curiam 702 F.2d 1022 (Fed. Cir. 1983), another country of origin marking case, the court ruled that assembling a rubber

outsole to a leather shoe did not create a new and different article of commerce. The ultimate consumer was ruled to be the retail purchaser and country of origin marking was required. The court noted that the combining process in the United States was merely a minor assembly operation requiring only a small fraction of the time and cost involved in producing the shoes. The court compared the time, effort, and cost involved in the various processes performed in the countries involved. Factors taken into consideration included number of skilled operators, cost of direct labor, time studies, cost of manufacturing, cost of the different sections of the shoe, i.e., imported upper versus non-imported out-sole. It should be noted, however, that the court looked at these criteria only after it determined that no new article of commerce had been created, the upper retained its identity as an upper.

The court's most recent pronouncement in the marking area National Juice Products Asso. v. United States, C.I.T. Slip. Op. 86-13 (Jan. 30, 1986) held "Plaintiffs must demonstrate that the processing done in the United States substantially increases the value of the product or transforms the import so that it is no longer the essence of the final product" p. 27-8. After reviewing the process by which imported concentrate becomes orange juice, the court held the processing "does not change the fundamental character of the product," rather the imported orange juice concentrate "imports the essential character to the juice and makes it orange juice" Id. p. 30. Therefore, marking was required. However, the court also noted "the policies underlying the different statutes [marking versus GSP and drawback] are similar but not identical . . . Thus, although the language of the tests applied under the three statutes is

similar the results may differ where differences in statutory language and purpose are pertinent" Id. p. 24-25. Thus, the court has interpreted substantial transformation more stringently for marking purposes.

In contrast, Data General Corporation v. United States, CIT slip. op. 82-93 (1982), considering item 807.00 and classification issues, looked beyond the issue of the amount of work done to transform the article itself, in this case programmable read only memories ("PROM"), and determined that the development of the program necessary to transform the chips should be considered. The court held that the essence of the PROM was the stored memory not physical condition. Since a significant amount of R&D work had gone into developing the program utilized, and the programming altered the character of the PROM and caused physical changes in the pattern of interconnections within it, the court held that a substantial transformation had occurred.

Recently, in determining applicable duty rates, the Court of Appeals for the Federal Circuit, in Belcrest Linens v. United States, 741 F.2d 1368 (Fed. Cir. 1984), stated "[t]his test, that an article is the 'growth, product, or manufacture' of an intermediary country if as a result of processes performed in that country a new article emerges with a new name, use or identity, is essentially the test used by the courts in determining whether an article is a manufacture of a given country under other areas of Customs law." Id. p. 1371. It reiterated "it is clear that a 'substantial transformation' occurs when as a result of a process an article emerges, having a distinctive name, character, or use . . . ." Id. p. 1372. The court distinguished and clarified

Uniroyal, "In the case at bar, as opposed to that of Uniroyal, the processes performed in Hong Kong were not minor assembly operations which left the identity of the merchandise imported from China intact . . . . [T]he identity of the merchandise changed as did its character and use . . . ." Id. p. 1374.

Belcrest Linens, supra, a textile case involving the manufacturing of pillowcases, was decided in 1984 after the interim country of origin regulations for textiles were promulgated, yet retains the previous judicial interpretation of substantial transformation, thus emphasizing its validity despite the new regulations.

In Amity Fabrics, Inc. v. United States, 43 Cust. Ct. 64, CD 2104 (1959) the court held redying of velveteen, to be an alteration "[T]he identity of the goods was not lost or destroyed by the dyeing process; no new article was created; there was the change in the character, quality, texture, or use of the merchandise" Id. p. 68. However, stretching, dyeing and sizing cotton drills was substantial transformation. C. J. Tower & Sons of Niagara, Inc. v. United States, 45 Cust. Ct. 111, C.D. 2208 (1960). ". . . [T]he returned merchandise is a new and different article, having materially different characteristics and a more limited and specialized use." Id. p. 115.

In rejecting application of item 806.20, TSUS, to reimported Canadian processed fabric previously exported as greige goods, the Customs Court utilized the rationale and definition of substantial transformation subsequently elaborated in Midwood. "[T]he greige and finished fabrics

are offered for sale and sold in different markets to different classes of buyers . . . . In sum, greige goods and finished fabric of polyester fiber are shown to differ in name, value, appearance, size, shape, and use . . . . Dolliff & Company, Inc. v. United States, 81 Cust. Ct. 1, 4, CD 4755 (1978). "[W]here, as here foreign processing of an export article, to whatever degree, produces such changes in the performance characteristics of the exported article as to alter its subsequent handling and uses over that which earlier prevailed, the result and product is of necessity a new and different article. Id. p. 5. The Court of Customs and Patent Appeals affirmed, ruling that changes in tariff classification did not control whether processing is considered a transformation or alteration. "[W]e find no merit in appellant's argument that because both the greige goods and finished fabrics are man-made fabrics of polyester fiber and would be classifiable under the same TSUS item, the Canadian processing merely comprised alterations." Dolliff & Company, Inc. v. United States, 66 CCPA 77, 599 F.2d 1015, 1020 (1979).

In The Upjohn Company v. United States, C.I.T. Slip Op. 85-123 (November 27, 1985), the court considered whether crude BLD, produced in the Netherlands by a separation/evaporation process from crude 390 HOP exported from the United States, was entitled to duty-free entry under item 800.00, TSUS. The court, noting that exported American products retain their identity as American products for purposes of item 800.00 if not transformed into new products while abroad, stated the operative rule as follows: "[t]he question whether the crude BLD is a product of the United States depends upon whether it underwent a process of manufacture

in the Netherlands which transformed the product into a new article of commerce." Id. p. 18, citing Anheuser-Busch. The court concluded Id. p. 22:

> "The crude BLD, like the extracted pure MDI, is an article of commerce different from crude 390 HOP. Since the character of the exported product was altered by the evaporation process, the crude BLD is not a product of the United States, but a manufacture of the Netherlands. Since the imported merchandise is not the same as that which was exported, it is not necessary for the Court to consider the value or condition of the merchandise . . . ."

Torrington, the most recent appellate decision, a GSP case, concerned the manufacture of industrial sewing machine needles imported from Portugal and made from wire manufactured in a non-beneficiary nation. First, the wire was processed into swages, and then the swages were manufactured into needles. The court ruled that two substantial transformations, as required by the GSP statute, had occurred. The swages were a new and different article of commerce from both the wire and the needle. "This new shape results in a product with a new use, a given name different from its component article, and with special characteristics. Torrington, p. 13. Despite the fact that swages and needles are classified under the same TSUS number, the court distinguished them as different articles. "The proper tariff classification is not dispositive of whether the manufacturing process necessary to complete an article constitutes a substantial transformation from the original material to the final product." Id. p. 17. The court cited Midwood approvingly

stating "[t]he production of needles from swages is a similar process" . . . . "like the forgings in Midwood, they [the swages] are producers' goods. The final needles are a consumers' goods." Id. p. 18. In both cases a new name, character or use occurred. The Court noted "In Texas Instruments, supra the Court of Customs and Patent Appeals adopted the rule, well-established in other areas of customs jurisprudence, that a substantial transformation occurs when an article emerges from a manufacturing process with a name, character, or use which differs from those of the original material subjected to the process." 681 F.2d 782, c.f. Anheuser-Busch Brewing Assn. v. United States, 207 U.S. 556 (1908) Torrington p. 10.

Exceptions to the accepted judicial interpretation of substantial transformation when they exist, are the result of specific statutory language or policy and primarily occur in standards of preference. When these occur, the above precedent is limited to the specific words of the applicable statute, as stated in Torrington. For example, CBI by statute eliminates certain operations from eligibility,". . . no article or material of a beneficiary country shall be eligible for such treatment by virtue of having merely undergone -- (1) simple combining or packaging operations, or (2) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article." TSUS General Headnote 3(e)(vii)(A)(2). Likewise Headnote 3(a) and GSP require that a given percent of the total value of the imported article come from the GSP or 3(a) eligible country. However, these requirements are in addition to the substantial transformation. The fact that substantial transformation occurred in the beneficiary country is

not in question, merely whether the extra criteria required by the standard of preference are met. Congress, in setting up these benefit programs, felt the necessity to establish additional limitations. However, these statutory safeguards are in addition to the general concept of substantial transformation into a new and different article of commerce and were promulgated for other purposes, in particular to ensure that real economic development would accrue to the appropriate beneficiary country.

Where no statutory policy or language requires otherwise, the courts have been consistent in their determination of substantial transformation for rules of origin. A substantial transformation occurs when a new and different article of commerce is created by the process in question and this new and different article of commerce has a new and different name, character, or use, or some combination thereof, from the original article from which it was transformed.

Congress has shown its approval of the above definition. As recently as the Trade Act of 1979, Congress recodified the existing judicial interpretation of substantial transformation for rules of origin in the government procurement provisions. Articles acquire country of origin when they are "substantially transformed into a new and different article of commerce with a name, character or use distinct from that of the article or articles from which it was so transformed." 19 USC §2518(4)(B)(ii).

IV. Recent Developments Regarding Textile Quotas

Customs recently promulgated country of origin regulations for textiles. In many ways these regulations more closely model standards of preference than rules of origin. These regulations contain a definition of country of origin and require that not only a substantial transformation occur but that it occur by "a substantial manufacturing or processing operation." 50 Federal Register 43, 8724 (March 5, 1985). This second condition, that not only a substantial transformation occur but that a substantial manufacturing process be involved, resembles the Caribbean Basin Initiative and other similar programs involving standards of preference which require not only a substantial transformation but a quantitative minimum value derived from the beneficiary country. CBI or Headnote 3(a), confer a benefit on the beneficiary country via duty reduction. Textile quota country of origin regulations, conversely involve a detriment, the country of origin's quota becomes filled. Quotas may be seen as the obverse of preferences in that they are set up to limit importation from specific countries rather than aiding their economies. In full the country of origin determination states:

> "Country of Origin. For the purpose of this section and except as provided in paragraph (c) a textile or textile product, subject to Section 204, Agricultural Act of 1956, as amended, imported into the customs territory of the United States, shall be a product of a particular foreign territory or country, or insular possession of the U.S., if it is wholly the growth, product, or manufacture of that foreign territory or country, or insular possession. However,

except as provided in paragraph (c), a textile or textile product, subject to Section 204, which consists of materials produced or derived from, or processed in, more than one foreign territory or country, or insular possession of the U.S., shall be a product of that foreign territory or country, or insular possession where it last underwent a substantial transformation. A textile or textile product will be considered to have undergone a substantial transformation if it has been transformed by means of substantial manufacturing or processing operations into a new and different article of commerce." 19 CFR §12.130(b) 50 FR 8724 (March 5, 1985).

The regulations proceed to give a non-exhaustive list of criteria to be used to determine country of origin under the above definition. These criteria are more restrictive than the judicial definition of substantial transformation:

"Criteria for determining country of origin. The criteria in paragraphs (d)(1) and (2) of this section shall be considered in determining the country of origin of imported merchandise. These criteria are not exhaustive. One or any combination of criteria may be determinative, and additional factors may be considered.

(1) A new and different article of commerce will usually result from a manufacturing or processing operation if there is a change in:

(i) Commercial designation or identity,

(ii) Fundamental character, or

(iii) Commercial use.

(2) In determining whether merchandise has been subjected to substantial manufacturing or processing operations, the following will be considered:

(i) The physical change in the material or article as a result of the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(ii) The time involved in the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(iii) The complexity of the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(iv) The level or degree of skill and/or technology required in the manufacturing or processing operations in each foreign territory or country, or insular possession of the U.S.

(v) The value added to the article or material in each foreign territory, or country, or insular possession of the U.S., compared to its value when imported into the U.S."

19 CFR §12.130(d), 50 FR 8724 (March 5, 1985)

This list of examples is followed by similar lists of specific processes which Customs has deemed either to always be substantial or always be insufficient to bring about a change in country of origin. 19 CFR §12.130(e), 50 FR 8724 (March 5, 1985). The comparison of value added closely resembles quantitative requirements contained in other standards of preference, e.g., CBI, Headnote 3(a).

Also it should be noted that these regulations are promulgated under authority of the Agricultural Act of 1956. The Tariff Schedules and most other customs statutes and regulations derive from the Tariff Act of 1930, and its successors.

V. Analysis of Customs' New Approach

During the past eighteen months, the Customs Service has developed and applied new rules of origin for textile quota purposes. Customs has stated that these rules result from their analysis of relevant judicial precedent, particularly Uniroyal, supra. Customs has utilized this new approach in its most recent origin determinations, including proposed changes of practice and its published decision on marking pistachio nuts

(T.D. 85-158, 10/18/85). However, it should be noted that the textile quota regulations were not issued under The Tariff Act of 1930, as amended, but under section 204 of the Agriculture Act of 1956. While the Courts have confirmed the President's right to issue the textile quota regulations under this authority, they have not addressed their relevance to other areas of law.

Customs' new approach is a deviation from the the well-established requirement that for a product to change origin it must have undergone a "substantial transformation into a new or different article of commerce with a distinct name, character or use". This new deviation requires that the change be achieved by a "substantial manufacturing or processing operation". The recent decision on the marking of Pistachio nuts (T.D. 85-158, 10/2/85, page 8) restated the measurement criteria:

> "In determining whether an imported article has been subjected to substantial manufacturing or processing operations in the U.S. which transforms it into a new and different article of commerce, or only to insignificant processing which leaves the identity of the article intact, Customs will consider the following factors:
>
> (1) The physical change in the article as a result of the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.
>
> (2) The time involved in the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(3) The complexity of the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(4) The level or degree of skill and/or technology required in the manufacturing or processing operations in each foreign country or U.S. insular possession, and in the U.S.

(5) The value added to the article in each foreign country or U.S. insular possession, compared to the value added in the U.S.

"These criteria are not exhaustive, and one or more criteria may be determinative."

In addition, the new interpretation redefines the required changes, i.e. "name" becomes "commercial designation", "character" becomes "fundamental character" and "use" becomes "commercial use." Similar language has recently been used by the court, but limited to country of origin marking only. due to the courts recent interpretation of the specific language of the marking regulations National Juice, supra. The courts have not applied the new stricter interpretation to other areas of Customs law. The impact of indiscriminately tightening the recognized judicial standard is necessarily speculative, but it is expected to be measurable.

Reliance upon Uniroyal alone for interpretation beyond marking issues is misplaced, as has been shown by subsequent decisions. While the C.I.T. decision has been interpreted by Customs as requiring that a substantial transformation be achieved by a substantial operation, it can be read as

a case in which the C.I.T., having failed to find a change in essential identity, then sought to determine if a substantial transformation could be found from the amount of processing. The Federal Circuit confirmed that the critical issue was the lack of change of identity, not the extent of the processing, in its opinion in Belcrest, supra. p. 43:

> "In the case at bar, as opposed to that of Uniroyal, the processes performed in Hong Kong were not minor assembly operations which left the identity of the merchandise imported from China intact."

The court has limited extension of processing analyses to the marking arena by making it clear that different statutory policy or language may require application of different interpretations. This principle was enunciated in Torrington, supra, p. 10; and affirmed in National Juice, supra:

> "In Texas Instruments, supra, the Court of Customs and Patent Appeals adopted the rule, well-established in other areas of customs jurisprudence, that a substantial transformation occurs when an article emerges from a manufacturing process with a name, character, or use which differs from those of the original material subjected to the process, 681 F 2d at 782; cf. Anheuser-Busch Brewing Assn v. United States, 207 U.S. 556 (1908).

Customs has stated that important motivation for its new approach is to firmly establish a uniform rule of origin for all Customs law. This policy has been repeated frequently, e.g., proposed changes of practice

for certain textile products (F.R. Aug. 2, 1985), textile quota regulations (T.D. 85-38, March, 1985) and the Commissioner's letter to Congressman Frenzel of August 13, 1985 (CO:R JPS). Customs has stated that their position is based upon:

1. Customs' interpretation of case law;

2. Customs' reading of new legislation as appropriate guides to interpret earlier enactments. For example, the Frenzel letter noted Customs' belief that the use of "products of" in both the Generalized System of Preferences and the more recent Caribbean Basin Initiative legislation requires exclusion of products that "have merely undergone...mere dilution..." from both programs although that specific exclusion is only in the latter not the former; and

3. The administrative and logical difficulties encountered when, for example, one country is the origin for duty purposes and another for marking.

Such broad use of the new approach is unwarranted when in conflict with ample judicial precedent. The Court in Torrington, supra, p. 11, footnote 6 affirmed the broad applicability of the longstanding definition of substantial transformation contained in prior precedent for those cases where the statutory principles and policies coincide:

"We need not only look at GSP cases (which are scarce) to determine when a substantial transformation takes place. When a substantial transformation has occurred is of importance in many other areas of customs law, and reference to cases from these other areas is often helpful unless the principles enunciated in those cases hinge specifically on the underlying statutes there at issue. See Belcrest Linens v. United States, 741 F. 2d/. 1368, 1372 (Fed. Cir. 1984)."

However, while substantial transformation is a common thread, the specific language and legislative intent behind each statute must be considered where appropriate. National Juice, supra. reaffirmed that country of origin marking is different from GSP and drawback law due to differing Congressional policy motivation. Murray, supra. noted the potential redundancy in the marking statute if this difference is ignored which required the Court to use a stricter interpretation of substantial transformation for marking purposes. However, the Court of International Trade declined to apply the Uniroyal standard in Upjohn supra, decided after Uniroyal and only two months prior to National Juice, demonstrating that Uniroyal's criteria are inapplicable outside the marking area.

Customs did not exclude manufacturing drawback (19 USC 1313(a)4) from its new standard. However, the Court noted that drawback and marking require different interpretations National Juice, supra. In its first published ruling applying its new definitions (728557 of September 4, 1985 on frozen concentrated orange juice), Customs rejected drawback precedents

on the basis that "... we did not find them relevant since these decisions did not involve the issue of substantial transformation." This exclusion is contradictory to Customs' stated desire for uniformity. However, it well may be in conformity with the decisions of the courts. One uniform standard is not warranted. Exceptions must be made where statutory language or underlying policy differ.

Accepting Customs' position and extending a new definition of one phrase to all previous enactments containing that phrase appears to require similar treatment for all other common criteria, e.g. direct importation, Customs valuation requirements, etc.. This would require new interpretations to be applied to all earlier enactments. Congress had no such intention, since it could have amended the affected laws if it so desired. The duty exemption for U.S. insular possessions was changed by Congress to adjust the historic value-added percentages. Congress did not adopt the CBI's direct cost of manufacturing approach, neither did it add any limitations or exceptions for combining or dilution.

Many practical difficulties are created by the new approach taken by Customs. Excessive care and fact-finding will be needed to determine the facts of substantial transformation under the new proposed standard. The difficulty of avoiding apparent inconsistencies will be increased. Operational problems at the already overburdened ports of entry will be magnified. The practicality of an approach that reflects commercial realities will be lost, especially in complex or marginal cases, and be replaced by the new approach that creates new inconsistencies rather than uniformity.

Obvious problem areas exist where common raw materials, but different processes, are used to reach identical end products. One route could be considered substantial, and the other not. Similarly, confusion will likely be caused by comparable processes which do not always result in a substantial transformation due to different wage rates, exchange rates, etc. In fact, litigation already has been initiated in the Court of International Trade involving this very issue.

Where the substantiality of the process is measured by relative costs, absurdities and anomalies can easily result. Identical products resulting from physically identical operations may not be considered substantial consistently because of relative differences in wage and capital costs. Changes in origin of products may periodically occur because of different rates of inflation, changing rates of exchange, etc.

Determinations of relative costs will add to the administrative burdens on the Customs Service, which has reported difficulties in getting reliable cost data from foreign countries. Uncertainties at the port at time of entry will multiply, slowing importations and adding to the complexities already facing import specialists. Adding to the other existing requirements is this area can only increase the existing administrative burden for the Customs Service.

Other problems arise where the processes are relatively simple, but the identity of the components is clearly lost. Paint is distinguishable from its component pigments. Different floral extracts, aromatic chemicals and essential oils are not the same as perfume, yet both are

the result of arguably simple combining operations. Simpler yet is the transformation of a perfume concentrate into a cologne, toilet water or after shave, and yet they are distinct products. These processes would result in a substantial transformation using traditional definitions, but not under the new Customs approach.

Customs has expressed concern about abuse of various duty exemption programs from what it describes as "pass through operations." While such concern is not unreasonable, it has already been addressed by the Congress. Duty exemption laws, such as the Generalized System of Preferences and the Caribbean Basin Initiative enacted by the Congress, have statutorily prescribed when the benefits are and are not to be available. Congress has done this by specifying percentages of Customs value which must be direct costs of manufacture in a given country, certain allowances for inclusion of U.S.-produced materials, limitations on combining, packaging and dilution operations, specific product exclusions and so on. As previously noted, these specifications are best known as "standards of preference" and may vary from statute to statute. Administrative "enactments", such as by Customs' current manipulation of rules of origin, are unnecessary, unwarranted and inconsistent with Congressional intent.

VI. Conclusion

As can be seen from the ample above-referenced precedent, there is a long and well-established judicial interpretation by which to determine the country of origin of merchandise which has its antecedents in several

different foreign countries. The country of origin is the source of the raw materials unless a substantial transformation occurs elsewhere. A substantial transformation occurs if the end result is a new and different article of commerce with a new name, character, or use. It is immaterial if tariff classification is affected or by what means the transformation occurs. The test is keyed to the end result of the process, rather than the means employed, unless statutory language or policy requires another analysis. Recently, a more restrictive analysis has been utilized for country of origin marking, but the court has limited the interpretation to that arena due to the Language and policy of the statute.

The new textile quota country of origin regulations are inconsistent with the majority of court precedent for rules of origin. They may be harmonized only if interpreted in light of the policy of the Agricultural Act of 1956 and as a standard of preference, requiring both the traditional rule of origin plus additional requirements. Thus, to determine which quota to fulfill, one must first determine if a substantial transformation has occurred and then whether the transformation involved a substantial manufacturing or processing operation. Attempts to interpret the textile quota regulations, as a broad rule of origin, will conflict with extensive precedent which focuses on the articles before and after the transformation, rather than the procedure utilized, and may have serious unanticipated effects on U.S. commerce.

Rules of Origin

1. Country of origin marking. 19 USC §1304(a). "Marking of articles. Except as hereinafter provided, every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article."

2. Tariff provisions for articles exported and returned.

   a. Item 800, TSUS. "Products of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad . . . ."

   b. Item 807, TSUS. "Articles assembled abroad in whole or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting . . . ."

3. Drawback. 19 USC §1313(a). "Articles made from imported merchandise. Upon the exportation of articles manufactured or produced in the United States with the use of imported merchandise, the full amount of the duties paid upon the merchandise so used shall be refunded as drawback, less 1% of such duties . . . ."

4. Products of least developed countries. TSUS General Headnote 3(d) "Imported articles, the products of least developed developing countries . . . ."

5. Products of Canada. General Headnote 3(c) "Products of Canada imported into the Customs territory of the United States, whether imported directly or indirectly, are subject to the rates of duty set forth in column numbered 1 of the schedules . . . ."

6. Products of Communist Countries. General Headnote 3(d)" . . . the rates of Duty shown in column numbered 2 shall apply to products, whether imported directly or indirectly of the following countries or areas . . . ."

7. Products of all other countries. General Headnote 3(f) (Most Favored Nations) "Products of all other countries not previously mentioned in this Headnote imported into the customs territory of the United States are subject to the rates of duty set forth in column numbered 1 of the schedules."

8. Convict-made goods. 19 USC 1307. "All goods, wares, articles, and merchandise mined, produced or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited . . . ."

9. Government procurement. 19 USC 2518(4)(B):

> "Rule of Origin". An article is a product of a country or instrumentality only if (i) it is wholly the growth, product or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character or use distinct from that of the article or articles from which it was so transformed."

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TABLE 2
Standards of Preference

1. TSUS General Headnote 3(a). "Products of insular possessions (i) . . . articles imported from insular possessions of the United States which are outside the Customs territory of the United States are subject to the rates of duty set forth in column numbered 1 of the schedules, except that all such articles the growth or product of any such possession, or manufactured or produced in any such possession from materials the growth, product, or manufacture of any such possession or of the Customs territory of the United States or both which do not contain foreign materials to the value of more than 70 percent of their total value (or more than 50 percent of their total value with respect to articles described in . . . ."

2. Generalized System of Preferences.

   a. 19 USC §2461. "The President may provide duty free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this title . . . ."

   b. 19 USC §2463. "Eligible articles . . . (b) Eligible articles qualifying for duty free treatment. Duty free treatment provided under §501 [19 USC §2461] with respect to any eligible article shall apply only (1) to any article which is imported directly from a beneficiary developing country into the Customs territory of the United States; and (2) if the sum of (A) the cost or value of the materials produced in the beneficiary developing country or any two

or more countries which are members of the same association of countries which is treated as one country under §502(a)(3) [19 USC §2462(a)(3)], plus (B) the direct costs of processing operations performed in such beneficiary developing country or such member country or such member countries is not less than 35% of the appraised value of such article at the time of its entry into the Customs territory of the United States . . . ."

3. Caribbean Basin Initiative. 19 USC 2703. "Eligible articles.

(a) (1) unless otherwise excluded from eligibility by this title, the duty free treatment provided under this title shall apply to any article which is the growth, product, or manufacture of a beneficiary country if --

(A) that article is imported directly from the beneficiary country into the Customs territory of the United States; and

(B) the sum of (i) the cost or value of the materials produced in a beneficiary country or two or more beneficiary countries, plus (ii) the direct cost of processing operations performed in a beneficiary country or countries is not less than 35% of the appraised value of such article at the time it is entered.

For purposes of determining the percentage referred to in subparagraph (B), the term 'beneficiary country' includes the commonwealth of Puerto Rico and the United States Virgin Islands. If the cost or value of materials produced in the Customs territory of the United States, other than the commonwealth of Puerto Rico) is included with respect to an article to which this paragraph applies, an amount not to exceed 15% of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (B)."

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TABLE 3
Regulations Interpreting Country of Origin Statutes

1. Country of origin marking.

a. 19 CFR §134.1(b). "Country of origin. 'Country of origin' means the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must affect a substantial transformation in order to render such other country the 'country of origin' within the meaning of this part."

b. 19 CFR §134.1(d). "Ultimate purchaser . . .

(1) If an imported article will be used in manufacture, the manufacturer may be the 'ultimate purchaser.' If he subjects the imported article to a process which results in a substantial transformation of the article, even though the process may not result in a new or different article.

(2) If the manufacturing process is merely a minor one which leaves the identity of the imported article intact, the consumer or user of the article, who obtains the article after processing, will be regarded as the 'ultimate purchaser.'" . . . .

c. 19 CFR §134.35

"An article used in the United States in manufacture which results in an article having a name, character, or use

differing from that of the imported article, will be within the principle of the decision in the case of United States v. Gibson-Thomsen Co., Inc., 27 CCPA 267 (CAD 98). Under this principle, the manufacturer or processor in the United States who converts or combines the imported article into the different article will be considered the 'ultimate purchaser' of the imported article within the contemplation of section 304(a), Tariff Act of 1930 . . . ."

2. Tariff provisions for articles exported and returned.

d. 19 CFR §10.12(d). "Fabricated component. 'Fabricated component' means a manufactured article ready for assembly in the condition as exported except for operations incidental to the assembly."

e. 19 CFR §10.12(e). "Product of the United States. A 'product of the United States' is an article manufactured within the Customs territory of the United States and may consist wholly of United States components or materials, of United States and foreign components or materials, or wholly of foreign components or materials. If the article consists wholly or partially of foreign components or materials, the manufacturing process must be such that the foreign components or materials have been substantially transformed into a new and different article, or have been merged into a new and different article."

3. Drawback.

a. 19 CFR §191.2(g). "Drawback product. A 'drawback product' means a finished or partially finished product manufactured in the United States under a drawback contract. A drawback product may be exported with a claim for drawback, or it may be used in the further manufacture of other drawback products by manufacturers who have appropriate drawback contracts, in which case drawback is claimed upon the exportation of the ultimate product . . . ."

b. 19 CFR §191.4(a)(1). "Direct identification drawback. Drawback of duties is provided for . . . upon the exportation of articles manufactured or produced in the United States wholly or in part with the use of imported merchandise."

4. Headnote 3(a). None.

5. Generalized system of preferences. 19 CFR §10.176. "Country of origin criteria.

(a) Merchandise produced in a beneficiary developing country or any two or more countries which are members of the same association of countries. Merchandise which is (1) the growth, product, manufacture, or assembly of (i) a beneficiary developing country or (ii) any two or more countries which are members of the same association of countries and (2) imported directly from such beneficiary developing country or member countries, may qualify for

duty free entry under the generalized system of preferences ('GSP'). However duty free entry under GSP may be accorded only if: (i) The sum of the cost or value of the materials produced in the beneficiary developing country or any two or more countries which are members of the same association of countries which is treated as one country . . . plus (ii) the direct costs of processing operations performed in any such beneficiary developing country or member countries, is not less than 35% of the appraised value of the article at the time of its entry into the Customs territory of the United States.

(c) Merchandise grown, produced or manufactured in a beneficiary developing country. Merchandise which is wholly the growth, product, or manufacture of a beneficiary developing country, or an association of countries treated as one country . . . and manufactured products consisting of materials produced only in such country or countries shall normally be presumed to meet the requirements set forth in this section."

6. Caribbean Basin Initiative.

a. 19 CFR §10.195. "Country of origin criteria.

(a) Articles produced in a beneficiary country. Any article which is either (1) wholly the growth, product, or manufacture of the beneficiary country or (2) a new or different article of commerce which has been grown, produced, or manufactured in a

beneficiary country, may qualify for duty free entry under the CBI. However, no article or material shall be considered to have been grown, produced, or manufactured in a beneficiary country by virtue of having merely undergone (i) simple combining or packaging operations, or (ii) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. Moreover, duty free entry under the CBI may be accorded to an article only if the sum of the cost or value of the materials produced in a beneficiary country or countries, plus the direct cost of processing operations performed in the beneficiary country or countries, is not less than 35% of the appraised value of the article at the time it is entered.

(d) Articles wholly grown, produced, or manufactured in a beneficiary country. Any article which is wholly the growth, product, or manufacture of the beneficiary country, including articles produced or manufactured in a beneficiary country exclusively from materials which are wholly the growth, product, or manufacture of the beneficiary country or countries shall normally be presumed to meet the requirements set forth in paragraph (a) of the section."

b. 19 CFR §10.191(b). "Definitions --

(3) Wholly the growth, product, or manufacture of the beneficiary country . . . . The expression 'wholly the growth, product, or

manufacture of a beneficiary country' refers both to any article which has been entirely grown, produced, or manufactured in a beneficiary country or two or more beneficiary countries and to all materials incorporated in an article which have been entirely grown, produced, or manufactured in any beneficiary country or two or more beneficiary countries, as distinguished from articles or materials imported into a beneficiary country from a non-beneficiary country whether or not such articles or materials were substantially transformed into new or different articles of commerce after their importation into the beneficiary country."

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TABLE 4
Representative Country of Origin Statutes and Interpretive Regulations

Rules of Origin

1. Country of origin marking.

a. Statute: 19 USC §1304(a). "Marking of articles. Except as hereinafter provided, every article of foreign origin (or its container, as provided in subsection (b) hereof) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article."

b. Regulation: 19 CFR §134.1(b). "Country of origin. 'Country of origin' means the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must affect a substantial transformation in order to render such other country the 'country of origin' within the meaning of this part." (Substantial transformation is not defined in the regulations.)

c. Regulation: 19 CFR §134.1(d). "Ultimate purchaser . . .

(1) If an imported article will be used in manufacture, the manufacturer may be the 'ultimate purchaser.' If he subjects the imported article to a process which results in a substantial transformation of the article, even though the process may not result in a new or different article.

(2) If the manufacturing process is merely a minor one which leaves the identity of the imported article intact, the consumer or user of the article, who obtains the article after processing, will be regarded as the 'ultimate purchaser.'"

2. Tariff provisions for articles exported and returned.

a. Statute: Item 800, TSUS. "Products of the United States when returned after having been exported, without having been advanced in value or improved in condition by any process of manufacture or other means while abroad . . . ."

b. Statute: Item 807, TSUS. "Articles assembled abroad or in part of fabricated components, the product of the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape, or otherwise, and (c) have not been advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process such as cleaning, lubricating, and painting . . . ."

d. Regulation: 19 CFR §10.12(d). "Fabricated component. 'Fabricated component' means a manufactured article ready for assembly in the condition as exported except for operations incidental to the assembly."

e. Regulation: 19 CFR §10.12(e). "Product of the United States. A 'product of the United States' is an article manufactured within the Customs territory of the United States and may consist wholly of United States components or materials, of United States and foreign

components or materials, or wholly of foreign components or materials. If the article consists wholly or partially of foreign components or materials, the manufacturing process must be such that the foreign components or materials have been substantially transformed into a new and different article, or have been merged into a new and different article."

3. Drawback.

a. Statute 19 USC §1313(a). "Articles made from imported merchandise. Upon the exportation of articles manufactured or produced in the United States with the use of imported merchandise, the full amount of the duties paid upon the merchandise so used shall be refunded as drawback, less 1% of such duties . . . ."

b. Regulation: 19 CFR §191.2(g). "Drawback product. A 'drawback product' means a finished or partially finished product manufactured in the United States under a drawback contract. A drawback product may be exported with a claim for drawback, or it may be used in the further manufacture of other drawback products by manufacturers who have appropriate drawback contracts, in which case drawback is claimed upon the exportation of the ultimate product . . . ."

c. Regulation: 19 CFR §191.4(a)(1) "Direct identification drawback. Drawback of duties is provided for . . . upon the exportation of articles manufactured or produced in the United States wholly or in part with the use of imported merchandise."

Standards of Preference

1. Headnote 3(a).

a. Statute: TSUS General Headnote 3(a). "Product of insular possessions (i) . . . articles imported from insular possessions of the United States which are outside the Customs territory of the United States are subject to the rates of duty set forth in column numbered 1 of the schedules, except that all such articles the growth or product of any such possession, or manufactured or produced in any such possession from materials the growth, product, or manufacture of any such possession or of the Customs territory of the United States or both which do not contain foreign materials to the value of more than 70 percent of their total value (or more than 50 percent of their total value with respect to articles described in . . ."

b. Regulations: None.

2. Generalized System of Preferences.

a. Statute: 19 USC §2461. "The President may provide duty free treatment for any eligible article from any beneficiary developing country in accordance with the provisions of this title . . . ."

b. Statute: 19 USC §2463. "Eligible articles . . . (b) Eligible articles qualifying for duty free treatment. Duty free treatment provided under §501 [19 USC §2461] with respect to any eligible article shall apply only (1) to any article which is imported

directly from a beneficiary developing country into the Customs territory of the United States; and (2) if the sum of (A) the cost or value of the materials produced in the beneficiary developing country or any two or more countries which are members of the same association of countries which is treated as one country under §502(a)(3) [19 USC §2462(a)(3)], plus (B) the direct costs of processing operations performed in such beneficiary developing country or such member country or such member countries is not less than 35% of the appraised value of such article at the time of its entry into the Customs territory of the United States . . . ."

c. Regulation: 19 CFR §10.176. "Country of origin criteria.

(a) Merchandise produced in a beneficiary developing country or any two or more countries which are members of the same association of countries. Merchandise which is (1) the growth, product, manufacture, or assembly of (i) a beneficiary developing country or (ii) any two or more countries which are members of the same association of countries and (2) imported directly from such beneficiary developing country or member countries, may qualify for duty free entry under the generalized system of preferences ('GSP'). However duty free entry under GSP may be accorded only if: (i) The sum of the cost or value of the materials produced in the beneficiary developing country or any two or more countries which are members of the same association of countries which is treated as one country . . . plus (ii) the direct costs of processing operations performed in any such beneficiary developing country or member countries, is not less than 35% of the appraised value of the article at the time of its entry into the Customs territory of the United States.

(b) Merchandise grown, produced or manufactured in a beneficiary developing country. Merchandise which is wholly the growth, product, or manufacture of a beneficiary developing country, or an association of countries treated as one country . . . and manufactured products consisting of materials produced only in such country or countries shall normally be presumed to meet the requirements set forth in this section."

3. Caribbean Basin Initiative.

a. Statute: 19 USC 2703. "Eligible articles. (a)(1) unless otherwise excluded from eligibility by this title, the duty free treatment provided under this title shall apply to any article which is the growth, product, or manufacture of a beneficiary country if --

(A) that article is imported directly from the beneficiary country into the Customs territory of the United States; and

(B) the sum of (i) the cost or value of the materials produced in a beneficiary country or two or more beneficiary countries, plus (ii) the direct cost of processing operations performed in a beneficiary country or countries is not less than 35% of the appraised value of such article at the time it is entered.

For purposes of determining the percentage referred to in subparagraph (B), the term 'beneficiary country' includes the commonwealth of Puerto Rico and the United States Virgin Islands. If the cost or value of materials produced in the Customs territory of the United States, other than the commonwealth of Puerto Rico) is

included with respect to an article to which this paragraph applies, an amount not to exceed 15% of the appraised value of the article at the time it is entered that is attributed to such United States cost or value may be applied toward determining the percentage referred to in subparagraph (B)."

b. Regulation: 19 CFR §10.195. "Country of origin criteria.

(a) Articles produced in a beneficiary country. Any article which is either (1) wholly the growth, product, or manufacture of the beneficiary country or (2) a new or different article of commerce which has been grown, produced, or manufactured in a beneficiary country, may qualify for duty free entry under the CBI. However, no article or material shall be considered to have been grown, produced, or manufactured in a beneficiary country by virtue of having merely undergone (i) simple combining or packaging operations, or (ii) mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. Moreover, duty free entry under the CBI may be accorded to an article only if the sum of the cost or value of the materials produced in a beneficiary country or countries, plus the direct cost of processing operations performed in the beneficiary country or countries, is not less than 35% of the appraised value of the article at the time it is entered.

(d) Articles wholly grown, produced, or manufactured in a beneficiary country. Any article which is wholly the growth, product, or manufacture of the beneficiary country, including

articles produced or manufactured in a beneficiary country exclusively from materials which are wholly the growth, product, or manufacture of the beneficiary country or countries shall normally be presumed to meet the requirements set forth in paragraph (a) of the section."

c. Regulation: 19 CFR §10.191(b). "Definitions --

(3) Wholly the growth, product, or manufacture of the beneficiary country . . . . The expression 'wholly the growth, product, or manufacture of a beneficiary country' refers both to any article which has been entirely grown, produced, or manufactured in a beneficiary country or two or more beneficiary countries and to all materials incorporated in an article which have been entirely grown, produced, or manufactured in any beneficiary country or two or more beneficiary countries, as distinguished from articles or materials imported into a beneficiary country from a non-beneficiary country whether or not such articles or materials were substantially transformed into new or different articles of commerce after their importation into the beneficiary country."

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STATEMENT OF ARTHUR J. FRITZ, JR., PRESIDENT, NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA, INC.; AND PRESIDENT, FRITZ CO., INC., SAN FRANCISCO, CA

Senator DANFORTH. Mr. Fritz.

Mr. FRITZ. Mr. Chairman, I am Arthur J. Fritz, Jr., president of the National Association of Customs Brokers and Freight Forwarders.

We are concerned that the Customs Service makes policy determinations and implements them through its own procedural means, ignoring its own laws and regulations as well as congressional intent. Mismanagement by directive disregards the Administrative Procedure Act which provides the public the rights of adequate notice and ample opportunity to comment.

Numerous examples are cited in my written submission. I will comment on two of the most blatant.

The first involves the intention by Customs to eliminate the present inbond system created by Congress to promote and ensure the viability of inland ports, such as Chicago, Dallas, Denver, and St. Louis, and with deregulation extended to seaports, such as Portland, New Orleans, Houston, and Boston, where up to 80 percent of the cargo arrives in bond.

This intent is evident from Customs' 5-year plan which states all merchandise will be cleared at the first port of arrival regardless of where the entry is filed.

This clearly violates U.S. law and Customs regulations which require the entry to be filed in the same district in which the merchandise is released. It also violates laws requiring merchandise to be within the legal confines of a port before entry may be made.

Realizing such a program would be politically unpopular as well as illegal, Customs is avoiding the law by characterizing it as a test. This test began almost 2 years ago between Savannah and Atlanta. The most recent draft directive calls for implementation nationwide.

How long and extensive can a test be before results are evaluated and regulatory and legal requirements complied with?

Customs justifies many of its actions with the contention that automation requires change. While this sometimes is true, this does not justify a deviation from proper rulemaking procedures. Moreover, automation, while beneficial, is not the panacea Customs envisions, which brings me to the second example.

A major and essential element of Customs automation is the automated broker interface, wherein licensed brokers input data electronically to Customs. I emphasize the word "broker" because our industry in reliance on Customs promises has expended millions of dollars to prepare for automation. Customs still has not provided the anticipated benefits.

Nevertheless, it has opened its system to ports, carriers and other unregulated entities in contravention of the Customs Broker Act of 1984 that Customs helped enact to regulate our industry and ensure a high level of professional expertise.

Again, in the name of automation, law and congressional intent is summarily brushed aside.

In conclusion, Mr. Chairman, we believe in an efficient and effective Customs Service and strongly urge passage of a Customs authorization bill this year that will preserve the integrity of the Customs Service by ensuring compliance with the laws of the United States and the congressional intent implicit therein.

Thank you.

Senator DANFORTH. Thank you.

[The prepared written statement of Mr. Fritz follows:]

TESTIMONY OF ARTHUR J. FRITZ, JR., PRESIDENT, NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION, BEFORE THE SENATE FINANCE COMMITTEE HEARINGS ON CUSTOMS REAUTHORIZATION, MAY 12, 1986.

Mr. Chairman, I am Arthur J. Fritz, Jr., President of the National Customs Brokers and Forwarders Association and President of Fritz Companies, Inc., a nationwide company of customs brokers and freight forwarders providing an extensive range of services in international trade. As you know, customs brokers provide the private sector interface with the U.S. Customs Service and facilitate the documentation that is necessitated by the importation of a product, payment of duties and observance of the laws of the United States. We have been concerned in recent years about what we view to be a cavalier attitude within the Customs Service about observing both the letter and spirit of their own governing laws and regulations.

PROCEDURAL SHORT-CUTS

First, Customs appears to us to make policy determinations within its own organization and then take substantive steps through procedural means. Often this tactic has been employed by disregarding the Administrative Procedure Act (APA). As you are aware, Mr. Chairman, the APA provides the private sector the rights of adequate notice and ample opportunity for the public to comment on changes, whether adverse or favorable. Customs however has abbreviated and shortened comment periods in order to

effect implementation and limit the likelihood for opposition to develop. Customs has used "directives" to end-run APA procedures, to reduce the attention that can be given to Customs actions to avoid the application of the Regulatory Flexibility Act and other constraints on rulemaking, and to, in essence, promulgate regulations of questionable legality. Following are two recent examples that we consider illustrative of this attitude:

(1.) The first instance involves merchandise entered for "immediate transportation" (IT) at the port of arrival (port A) then shipped in bond to port B for entry, release and payment of duties. Under 19 USC 1315, the duty rates effective on the date the original IT entry was presented at port A would govern unless the goods were placed in bonded warehouse at port B, in which case the rate in effect at the time of withdrawal from warehouse for consumption would govern. Under a long-established administrative practice, Customs permitted a warehouse entry to be filed at port B and would accept withdrawal of the goods from the pier. Consequently, even though the goods never <u>physically entered</u> bonded warehouse, upon their release from Customs custody, they were treated as if they had actually been placed in bonded warehouse and then withdrawn for consumption. This practice was codified in the Customs Regulations of 1915, 1924, and 1931; in the modern era, T.D. 70-43(2) of February 2, 1970 ruled that merchandise arriving at port B after an IT entry at

port A could be released from the pier (without being physically sent to bonded warehouse) under a warehouse entry and immediate dock withdrawal and the rates in effect at that time would govern. Following publication of this ruling, the term "dock withdrawal" was actually incorporated into the regulations in 1975 [19 CFR 144.14(a)]. Yet, after all this history, Customs arbitrarily and without any warning whatsoever issued Headquarters Directive 3500-04 of June 4, 1985, stating that because dock-withdrawn merchandise never actually "goes into" a bonded warehouse, the IT date governed. Thus, to obtain the benefit of the rate in effect at the time the merchandise reaches port B, the importer was forced to physically enter the goods into a bonded warehouse and immediately withdraw them, requiring double handling of the goods, incurring extra costs and experiencing delays in delivery. The NCBFAA filed objections to the ruling on July 31, 1985 and we received assurances at our convention earlier this year that the ruling would be withdrawn and the former practice reinstated. However, we have seen nothing to date.

(2.) Another instance where Customs effected a substantial change in rules governing merchandise moved in-bond from one port to another, without benefit of public notice and opportunity to comment, may be found in the institution of the so-called "PAIRED" program (acronym for "Port of Arrival Immediate Release and Enforcement Determination"). Under 19 USC 1484(a)(2)(A) as

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implemented by 141.62(a) of the Customs Regulations, Customs had uniformly required that the entry be filed at a Customs office in the same district in which the merchandise was released. However, Customs instituted "test" procedures, "pairing" different ports regardless of whether the ports are in different districts, to allow for the filing of Customs entry and entry summary documentation at a port in a different district than the port of release. Even on this "test" basis, the new program was immensely disruptive of established transportation and clearance procedures and was from the beginning perceived as a threat to the trade and commerce of inland ports. Recent information indicates that Customs has expanded the "PAIRED" programs to ports within different Customs regions and contemplates implementing this "test" nationwide. We are also aware of some serious reservations within Customs as to the legality of the procedures in the absence of necessary statutory changes, which reservations seem to have been down-played or ignored by those in the Customs operational area. We feel strongly that considering the substantial and far-reaching changes in the entry and release system already effected or contemplated by the "PAIRED" concept, Customs should have set forth its new system in a notice of proposed rule-making, with opportunity for public comment rather than conducting what it terms a "test" for a year and one-half without inviting comment.

In many instances advance publication of a change in Customs

rules and procedures, and public comment may be dispensed with, without violating established principles of administrative due process. We think however that in too many instances, Customs has unjustifiably resorted to abrupt, arbitrary and short-cut methods to change its rules and procedures, without appropriate advance notice and opportunity to comment, to the detriment of customs brokers and the importing community at large. For example, on April 28, 1986 Customs published in the Federal Register, effective immediately and without warning, the reinstitution of the Temporary Importation Bond Form, a form which had not been required for over three years.

Finally, in these and other examples, the motivation by Customs appears to be oriented to its own operations. There are however numerous other instances where the agency has used procedural subterfuge to achieve another agenda -- non-tariff barriers to trade. Their treatment of textile imports is a case-in-point. By adding complexities, delays and uncountable occasions for harassment of the textile trade, Customs hierarchy hopes to reduce imports at the expense of importers, retailers and the consuming public. A recent example came in the so-called "860.30 rule". Previously, samples under $1 in value could be imported without quota constraints. To establish this value, the sample is "mutilated". Customs arbitrarily has reversed industry practice and now requires mutilation overseas, not in the United States, simply as a means for temporary disruption in the flow of

this trade. Customs has also failed to issue clear guidelines as to what constitutes mutilation, yet subjects importers to possible fraud action for failure to properly mutilate goods.

EROSION OF IN-BOND

Also of immediate concern to many members of this Committee and other Senators is the concerted attack by U.S. Customs on the in-bond transportation system. In-bond, as you know, Mr. Chairman, is a creation of Congress designed to promote and ensure the viability of many of our in-land ports, such as Dallas, Houston, Denver, Chicago and St. Louis. As in-bond has become increasingly commercially viable, a large number of other ports, such as Portland, Philadelphia, Boston and New Orleans, have reaped the benefit of cargo shipped "in-bond" for clearance at their port, to the point that a high percentage of international shipments arrive at these ports through in-bond movements. In fact, an entire international infrastructure has developed around in-bond and become essential elements of the economy of these and a multitude of other cities.

In its U.S. Customs Service, 5-year Plan, 1986-1990, the agency made the following determination:

"G. Cargo/In-bond System:

Customs will move to implement a new approach to Cargo Examination whereby all incoming merchandise will be cleared

at first port of entry. Under current procedures, the merchandise is often transported in-bond to inland ports and is then examined, cleared, and entered by Customs. With the implementation of the Automated Commercial System, we should have the capability of entering this merchandise at the first port of entry, thereby avoiding a wide spectrum of control problems associated with the current system."

Although realizing almost immediately that this plan would court political disaster if conducted openly and above board, the agency has moved quietly to disavow its own articulated intention. Customs has nonetheless methodically and with considerable deliberation issued numerous proposals, regulations and directives that, taken as a whole, are designed to accomplish this end: Customs has, over time, announced a series of consolidations and reorganizations whose net effect would serve to weaken the viability of the inland ports' Customs presence. Customs initiated a Customs sealing program that seeks to rectify certain specified and unsubstantiated "tampering" with in-bond cargo by requiring special time-consuming and more costly procedures for in-bond merchandise. Customs has imposed special information requirements for textiles, requirements that are imposed only on in-bond shipments. Customs has revised its rules on year-end entry, the net effect of which is to place substantial additional cost on in-bond movements. And, in the manner indicated earlier in my comments, Customs is now testing

the PAIRED program, the purpose of which is to generate the release of 80% of all shipments at the port of arrival and to minimize the flow of goods in-bond. PAIRED, in fact, skims the cream from the in-bond system by releasing routine shipments at the first port of arrival, leaving the more complex transactions and those requiring more intensive scrutiny for shipment in-bond. The logical next step, a mandatory PAIRED program requiring clearance of this remaining 20% at the first port-of-entry, will necessitate the employment of broker, financial and related services at that port and effectively eliminate the viability of similar international commercial services at the in-land ports. It will badly undercut commerce at such seaports as New Orleans, Houston and Portland, where significant cargos now arrive overland. We have figures that show at a port such as Boston that, during some months of the year, 80% of cargo arriving comes via other ports.

The path chosen by Customs has been one of erosion and attrition. Chipping away at in-bond through regulations framed in enforcement terms but aimed at undercutting its economic viability, Customs hopes to tip the balance towards PAIRED and eliminate in-bond altogether. It is important to stress that "in-bond" is prescribed by Congress and is now being eliminated by directive and administrative fiat. And, it is this casual approach to the constraints of law and Congressional intent that we find so alarming.

INADEQUATE MANPOWER

Customs has consistently come before this Committee and requested sharp reductions in its overall manpower. It does so despite extensive delays in clearing cargo, an inability to examine 98% of the cargo that does in fact clear our ports, and shortages that prevent Customs from implementing the systems that they claim will pave their way to the future. They do so despite their own testimony before Congress that every $1 spent on manpower will result in $13 in added revenues - whether through more efficient collection of duties or through better commercial enforcement of quotas and detection of contraband. [The figure is now estimated at $1 to achieve $21.]

What in fact have been the practical results of this policy of short-changing commercial operations through understaffing?

(1) It moves Customs' statutory responsibility to the public. Commercial practices - developed in the free and open marketplace - must now be transformed to meet Customs' operational requirements. [A clearcut example is their effort to eliminate in-bond in order to achieve manpower savings at our inland and ocean ports.]

(2) It changes commercial practices so that the

expense is transferred to the public. In many cases, costs that must be sustained to implement Customs' processes are increased because of the resulting inefficiencies. [An example of this has been Customs' new procedure of centralized inspection.]

(3) While automation has many benefits and potential savings, it is not the panacea Customs envisions. Certainly, it cannot be a justification for avoiding legal processes and statutory constraints.

UNACHIEVED AUTOMATION

While periodically searching for culprits to serve as scapegoats for a failure to fully implement the system, Customs has continuously made the argument to Congress that automation would cure many of the weaknesses in its operations.

In fact, Mr. Chairman, Customs is presently only part-way towards its goal and is in a stage of development somewhere between conception and implementation. It is this interim period that demands a methodical and organized approach, adequate application of resources and a clear sense of automation's goals in the context of its overall responsibilities.

NCBFAA has embraced the concept of automation willingly and both as an association and on an individual broker basis, have made an unprecedented commitment to automation in both time, equipment and expense. We have recently embarked on a series of nationwide conferences, conducted jointly with Customs, to educate our membership on the broker system - ABI - and to facilitate Customs' progress in establishing full automation.

Yet even with this support and progress, the agency seems to have lost confidence in its own plan and lost sight of higher institutional goals and thrown ABI open to a body of unlicensed interests in clear conflict with the 1984 Custom Brokers Act that the Service helped to enact. You will recall, Mr. Chairman, that the Act is designed to establish the ground rules whereby Customs could regulate our industry. It established a prerequisite of professional expertise and creates a licensing system to protect the importing and taxpaying public. NCBFAA supported this legislation because our collective reputations are undermined by colleagues who do not meet Customs' strict standards and do not approach our high levels of professional competency. Now, in contravention of an act less than two years old, Customs is attempting to induce ports, carriers and others to access the ABI system in a mad-rush to promote automation irrespective of the consequences. This is another example of how the agency brushes aside the rule of law as inexpedient.

CONCLUSION

Mr. Chairman, there is much that is right with the Customs Service and we who have spent our lives working with agency believe in a Customs that enforces the trade laws, collects revenues, and meets the tasks and responsibilities assigned to it by Congress. We have a tendency to become outraged when we see this mission thwarted by policies that are counterproductive to this end. NCBFAA strongly urges the committee to continue to exercise its oversight responsibilities and to pass a Customs authorization bill this year that will take the steps necessary to preserve the integrity of the Customs Service and ensure its compliance with the laws of the United States and Congressional intent.

STATEMENT OF THOMAS G. TRAVIS, PARTNER, SANDLER & TRAVIS, WASHINGTON, DC; ON BEHALF OF THE NATIONAL BONDED WAREHOUSE ASSOCIATION

Senator DANFORTH. Mr. Travis.

Mr. TRAVIS. Mr. Chairman, I am legal counsel to the National Bonded Warehouse Association. The association represents the interest of 1,500 bond proprietors throughout the United States.

The association and I are grateful for the opportunity to appear before your committee to suggest from our perspective areas where the relationship between Customs and the trade could be improved.

Before proceeding further, I would like to introduce two of the members of our association. First, Carlos Casteon of Laredo, TX, representing United Export Trading Association; and Frank McRoberts of Air Freight Warehouse Corp. in New York with offices in Miami, FL, Los Angeles, and New York.

What I would like to stress briefly in this oral testimony this afternoon is the depth of our feeling that the interaction, cooperation and continuing dialog between the Government and the trade community is not only desirable, but is essential if we are to have an efficient, well-run Customs Service. In the absence of such a dialog, the Government is forced to make decisions on the basis of an incomplete factual record and a lack of understanding of all the ramifications of a given course of action.

The net results of such an absence of dialog is an inefficient decisionmaking process characterized by confrontation and litigation instead of cooperation and progress.

Four years ago Customs altered the means by which they controlled our bonded warehouses and began to charge our members an annual fee for the cost of this new program. At that time, Customs committed to notice and comment—in other words, dialog with the trade community—prior to any significant change or increase in these fees. Customs renigged on that promise.

During the last 2 years, the fees paid by our members have increased from 150 to 770 percent, with no explanation, opportunity for review or comment. Frankly, these increases are simply indefensible, either procedurally or substantively. Only now after our association has formally challenged these assessments has the Customs Service started dialog with us.

A second example is the internal guidelines for the assessment and mitigation of liquidated damage claims against bonded warehouse proprietors. Again, issued by Customs without notice and comment. The predictable result—unnecessary cost and expense for both the Government and the trade community—as our members were forced to respond to penalties for things as absurd as having a broom in the warehouse for janitors' use.

This spring, many of our members heard rumors that Customs was about to take actions that would have placed the very existence of some of our members' businesses in jeopardy. A followup indicated that these rumors on general order merchandise were true, and that Customs planned steps to eliminate our businesses.

This action, in our view, was both illegal and represented poor policy.

While we have now submitted our own set of proposals, the issues today remain unresolved. The expense to both the Government and the trade community of this irregular process is great. More importantly, the rumor mill should not be the source of such vital information for bonded proprietors or any member of the trade community.

Our members are also concerned that these same types of difficulties will arise with Customs plans to centralize container station examinations. Customs headquarters has yet to issue guidelines on this question or seek input from the trade community.

Not only is it difficult to interact prior to a decision being made, it is now becoming hard to even be aware that a decision has been made. Customs has reduced by 80 percent the number of administrative rulings it publishes for the public's information and it has even appeared to stop publishing a list of unpublished rulings in the Customs bulletin.

Again, this only leads to more expense and inconvenience as Customs seeks to attain compliance with decisions and rulings that the trade community knows nothing about.

In short, we hope that by working together these problems can be resolved so that the entire system can function more efficiently for both the Government and the trade.

I thank you for the opportunity today, Mr. Chairman.

Senator DANFORTH. Gentlemen, I want to thank you all very much. You have performed a real service by being here. It would have been better had Commissioner Von Raab appeared after your testimony rather than before your testimony so that he would have had an opportunity to hear you and to respond to your comments.

Your comments are very similar. Your view is that the Customs Service is acting in a high-handed fashion; that it doesn't give adequate notice of its decisions; that it makes major changes in practice without letting you know in advance what it is doing; and that it doesn't communicate.

I take that to be a serious charge. And I want you to know that what I intend to do is transmit your testimony to the Commissioner and ask him to respond to the point that you all make for the record. I am sure that some other Senators will have questions to ask the Commissioner and other Government witnesses for the record, but I intend to ask the Commissioner for his response to the point that you were making.

Senator Baucus, do you have a question for this panel?

Senator BAUCUS. No.

Senator DANFORTH. Gentlemen, thank you very much for your testimony.

Mr. TRAVIS. Thank you, Mr. Chairman.

[The prepared written statement of Mr. Travis follows:]

TESTIMONY BEFORE THE
SUBCOMMITTEE ON INTERNATIONAL TRADE
COMMITTEE ON FINANCE
UNITED STATES SENATE
MAY 12, 1986

Presented by Thomas G. Travis
Partner, Sandler & Travis, P.A.
on behalf of the National Bonded Warehouse Association

Mr. Chairman and Members of the Subcommittee:

The National Bonded Warehouse Association (N.B.W.A.) would like to thank you for the opportunity you are giving us to testify. The N.B.W.A. promotes and protects one of the oldest and most commercially vital U.S. industries. Indeed, the concept of storing merchandise under bond dates back to the fourth act of the First Congress. A (Customs) bonded warehouse is a commercial structure at which imported articles are stored, manipulated (e.g. repackaged) or in some cases manufactured prior to being assessed Customs duties or other import charges levied on the warehoused articles.

A bonded warehouse proprietor is licensed by the United States Customs Service only after a thorough background investigation. The proprietor's warehousing procedures and practices are regulated and closely scrutinized by U.S. Customs Service agents. This oversight by U.S. Customs protects against abuse of

the privilege to handle imported merchandise which has not paid Customs duties. As further protection, the bonded warehouse proprietor must be insured against U.S. Government claims if articles held in the warehouse are entered into U.S. commerce without payment of duty.

Today, there are approximately 1,500 bonded warehouses operating throughout the United States. Concentrations of warehouses are found at major entry ports, such as Miami, New York, Los Angeles; and along our borders with Canada and Mexico.

Warehouse proprietors are subject to complicated Customs regulations, which can give rise to extraordinary operating costs. The N.B.W.A. seeks to minimize these costs to its members by assuring that the Customs Service has sufficient information about the day-to-day commercial realities of warehouse operations to make a reasoned and fair judgement concerning government rule-making. This involves an educational process involving both Customs agents (who are unaware of basic warehouse management problems) and warehouse proprietors, who need help in meeting Customs enforcement obligations in an economic manner.

Bonded warehouses reimburse the Customs Service fully for the administrative expenses attributable to implementation of the audit-inspection program. Despite the concerted efforts of

N.B.W.A. and its membership to streamline its own accounting and merchandise control mechanisms, the Customs Service has increased its user fee for bonded warehouses from the initial rate of $650 per year, to the current tiered system of fees ranging from $1,000 to $5,000.

To serve its membership, N.B.W.A. publishes a newsletter six times a year. The newsletter contains a reassuringly detailed explanation of Customs regulations and procedures for bonded warehouse operations. The newsletter, available to members on a subscription basis, saves Customs Service officials countless hours that would otherwise be used clarifying the meaning of new or amended regulations for bonded warehouse managers.

The importance of N.B.W.A.'s educational function became most apparent when the U.S. Customs Service withdrew its onsite Customs officers from bonded warehouses, and replaced the inspectors with an audit-inspection program. Regulations implementing the audit-inspection program were vague -- highlighting the fact that the Customs Service was for the first time using "spot checks" and audit procedures for the regulation of warehouses. Additionally, the Customs Service did not publish standard procedures for the Customs audits, leaving warehouse proprietors with no guidance on how to be prepared for audit and inspection.

N.B.W.A. opened a channel of communication with the Customs Service that helped its members adjust to the audit inspection program. By working together in an association, bonded warehouse proprietors were able to establish common operational procedures which saved both the proprietors and the U.S. Government countless hours of inspection time.

We want to stress our willingness to cooperate with Customs on a range of issues and not just those which effect the day-to-day operations of our members. For example, last year Commissioner von Raab wrote to us seeking assistance in promulgating a document prepared by Customs of actions they would like to see taken which would assist Customs in reducing the incidents of narcotics smuggling. In addition to including these materials in our newsletters, we stressed N.B.W.A.'s willingness to cooperate fully in all such proper regulating enforcement programs. To date we have not received a single complaint from Customs indicating that any of our members have been less than fully cooperative in this enterprise.

To be effective, however, cooperation must be a two-way street. As we reflect on our relationship with the Customs Service, we believe that the specific problems and procedural deficiencies we will discuss in a moment, are merely systematic

manifestations of the underlying attitudinal problem. The difficulty is an attitude which finds it neither necessary or desirable to consult or cooperate with the trade community prior to taking important actions.

In our view, such an approach is counterproductive. First, such an approach results in Customs making decisions based on less than a full understanding of the relevant facts and possible ramifications, in short, a policy designed to insure bad decisions. Second, when these poorly thought-out decisions are implemented without any advance notice, the result can be severe disruption to trade and/or significant economic costs to the effected group. Third, the result which frequently follows includes protests, litigation and in some instances political action to resolve the complex legal and policy issues. The net result is a costly and inefficient decision-making process. The following examples illustrate the nature and the extent of this problem from the perspective of warehouse proprietors.

As this Committee is probably aware, prior to 1982, bonded warehouses were supervised by a Customs warehouse officer who was stationed on the premises. The warehouse proprietors reimbursed the government for the compensation of these warehouse officers. In December of 1982, the system was changed to eliminate the

warehouse officer and Customs decided to exercise their control function through periodic spot checks and audits. Warehouse proprietors were then charged an annual fee of $650 per location to fund this program. These fees were based on an annual total cost for the program of $1 million. At the time, Customs noted that neither the program costs nor the method of calculating the fee were set in concrete. It is most important, however, to also note the commitment Customs made if these charges were to be increased. To avoid any misunderstanding I would like to quote directly from the published notice (T.D. 82-204) "Customs will be publishing a notice of proposed rulemaking and provide the public with an opportunity to comment with respect to these additional charges." (emp. added.)

While the fee remained stable for the first two years (1983 and 1984), in 1985 Customs more than doubled the program costs and increased the fees to $1,400 per location. Not only did Customs renege on its commitment to solicit public comments, it failed to even meaningfully explain the increase. In addition, it took Customs four months before it responded affirmatively to a Freedom of Information Act request filed by our Association for the necessary background information used to calculate the fees. That information was not received until approximately a month

after the 90-day period provided by law for filing a protest against the fees.

For the 1986 fee, Customs again with no explanation and no opportunity for comment, established a tiered fee structure ranging from $1,000 to $5,000 per location. At least this year Customs did make a timely response to our Freedom of Information Act request. After our lawyers reviewed the information, we concluded that the procedural and substantive deficiencies in how the fees were calculated warranted challenge, and many of our members have filed formal protests which could lead to eventual court review.

While we would be pleased to discuss the merits of this issue, either with Committee members or staff, the important point for this discussion is the lack of interaction with the trade community. To put this matter in perspective, our members are now asked to pay anywhere from 150 to 770 percent higher fees, with no explanation, and we thought this Administration had licked inflation.

This Association has had the same type of experience on a separate issue involving General Order merchandise. General Order is a term of art referring to imported merchandise for which proper entry documentation has not been filed, in laymen's

terms it is unclaimed freight. Since the proper duties have not been paid, and the other requirements for entry have not been met, the applicable statutes and regulations, (19 U.S.C. 1490 and 19 C.F.R. Part 127) require this merchandise to be stored in bonded warehouses pending proper clearance.

In January of this year, members of our Association began to hear through the grapevine that Customs was considering turning this merchandise over to a national contract which had been issued for seized property. To verify these rumors we scheduled a meeting with Customs Headquarters staff and submitted a Freedom of Information Act request. At the meeting representatives of our Association were informed that the rumors were accurate, that Customs was well along in the planning process of issuing a change order to the pre-existing contract and in the process would no longer require General Order merchandise to be stored in bonded facilities or transported by bonded carriers. Not only would such action be clearly contrary to both law and regulation, but given the nature of the warehousing industry reflects poor policy judgement.

The Association has now supplied to Customs its own set of proposals which will not only meet Customs objectives, but do so within the applicable statutory and regulatory framework. Again,

while we would be pleased to discuss the particulars of this issue with the Committee or its staff, the important point for this discussion is the lack of procedural due process. Customs never approached either this Association or its members to outline any perceived difficulties with the current system. Customs had no plans to even inform the affected industry that it was about to take action which would financially ruin countless small businesses built up in many instances over generations. The response to the Freedom of Information Act request speaks eloquently of the Customs Service view of proper notice and comment, "Upon execution of a contract modification to extend Northrop's management to handle all General Order goods, a copy will be furnished to you."

To be fair to Customs on this issue, they are now reviewing our proposals, the Commissioner has agreed to meet with our representatives and we fully hope and expect the issue to be resolved. However, a system which relies on following-up the proverbial rumor mill is not one designed to insure good government or well thought-out decision-making.

The Customs Service has also failed to seek input on many smaller issues which have a very real effect on the day-to-day

operations of our members. A few examples will illustrate the difficulty.

The Customs Service has the authority to issue liquidated damage claims under the warehouse bond for any failure of the warehouse proprietor to comply with all the various regulatory requirements. For claims involving merchandise, these claims can be as high as three times the value of the goods. For infractions not involving merchandise, the claim is $1,000 per violation. Without input from the trade community, Customs Headquarters issued internal guidelines for the assessment of these claims, the implementation of which lead to ludicrous results. Penalties were issued because a local inspector found the aisles to be an inch too narrow, and one proprietor was charged with commingling bonded and non-bonded merchandise in his bonded area -- the non-bonded merchandise was the broom used by the janitor to sweep the premises. After numerous complaints, Customs this spring issued new guidelines. While enough time has not yet elasped to assess the impact of these new guidelines -- we see no reason why Customs could not have published a draft of either set of guidelines for public comment before implementation.

A second example involves container freight stations. Customs has decided that in many districts where there are multiple container freight stations, to select a limited number where Customs will station inspectors. Thus, merchandise selected for examination which is being handled by a non-selected container station will need to be transported to a selected site. Although Customs has already began to implement this plan -- no criteria have been established for either the procedure to be followed or the tests to be applied in making the determination as to which sites will be selected. Obviously, these decisions will have great practical importance both to Customs and the trade community. With no standards or criteria, it is difficult to ascertain how a rational decision process can function. While Customs has indicated that it has begun to work on some guidelines, and while we plan to meet with Customs on this issue, there is no guarantee that input from the trade community will be solicited.

Finally, we are disheartened to note that even the administrative ruling process has suffered from this same type of problem. Many of our members, in addition to having a bonded warehouse, are also importers in their right. Even those members who only store a third parties' goods are interested in aiding

their respective clients. Thus, many of the thousands of administrative rulings issued annually by Customs are of interest to our members. Indeed, some of these rulings directly effect bonded operations. In the Customs Simplification Act of 1978, this Congress recognized the importance of these rulings and the need of the public to be aware of them, and thus enacted 19 U.S.C. 1625. While Customs initially published a large number of rulings pursuant to that provision, the number has declined dramatically in recent years. To make matters worse, in addition to the 80 percent deadline between 1980 to 1985 in the number of rulings published, Customs has also ceased publishing a list of unpublished rulings.

Obviously, this makes it far more difficult for our members to know exactly what is required in many situations. This in turn increases the workload burden on Customs when documents are incorrectly completed, entry is made under the wrong item number, and so forth. In our opinion, the greater the degree of information dissemination, the smoother the system will function for both the trade community and the government.

Again, I would like to thank this Committee for the opportunity to discuss some of our goals, objectives and concerns. I sincerely hope this testimony will be useful in your deliberations, and assure you that the N.B.W.A. is ready and willing to work with both Customs and this Committee on any and all issues.

If you have any questions either I or the members of our Association who are here today would be happy to address them.

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Senator DANFORTH. All right. Next we have a panel consisting of the Honorable Pat Davis, who is a member of the Port of Seattle Commission, appearing on behalf of the Western States Coalition for Effective Customs Service; Patrick Gill, on behalf of the Northwest Apparel & Textile Association; Robert Tobias, who is the National President of the National Treasury Employees Union.

And, Senator Gorton is here with Commissioner Davis. Senator Gorton, do you have a comment?

Senator GORTON. I do.

STATEMENT OF HON. SLADE GORTON, U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator GORTON. Thank you, Mr. Chairman and Senator Baucus. It is a real pleasure for me to introduce Commissioner Pat Davis. She is testifying on behalf of the Western States Coalition for Effective Customs Services. She was just elected to the Seattle Port Commission last November, but she is no stranger to the business of the Seattle waterfront or the complexities of the Seattle-Tacoma International Airport.

She spent the last 9 years scrutinizing projects, studying port budgets and operations and generally serving as the public's eye on the port before her election.

In this role, she became keenly aware of the critical relationship between the Customs Service and the ports that it serves, both at the waterfront and at the airport. Customs can make the difference between swift and efficient movement of cargo and passengers or bottlenecks which cause inconvenience, irritation, and ultimately a loss of business.

The depth of concern about this issue throughout the country is amply illustrated by the fact that all of the major ports on the West Coast, which are generally fiercely competitive, have banded together to try to find a common solution to their Customs problems.

I am sure that you will find Commissioner Davis' testimony enlightening and helpful.

I thank you for giving me this opportunity to introduce her, and even more importantly, for giving her the opportunity to share her views with you.

Senator DANFORTH. Senator Gorton, thank you very much.

Commissioner Davis, would you like to proceed?

STATEMENT OF HON. PAT DAVIS, MEMBER, PORT OF SEATTLE COMMISSION, SEATTLE, WA, ON BEHALF OF THE WESTERN STATES COALITION FOR EFFECTIVE CUSTOMS SERVICE

Commissioner DAVIS. Thank you, Mr. Chairman.

As an elected member of the Commission of the Port of Seattle I am pleased to have the opportunity to appear before you today on behalf of the port, which operates one of the world's premiere container ports and Seattle-Takoma International Airport.

For both cargos and passengers, Seattle is a major gateway to the Far East, and serves international trade and travelers from all around the world.

I am also here today, as Senator Gorton mentioned, on behalf of the Western States Coalition for Effective Customs Service. The coalition was formed just last year in response to a growing perception among the international trading community that more needs to be done to assure that effective Customs Service must be available at all west coast gateways, and that the adequacy of Customs Service's must not serve to the competitive advantage or disadvantage of any particular gateway or region.

The current membership of the coalition consists of the major west coast ports, steamship lines, airlines, customs housebrokers, airports, railroads, and freight forwarders. A statement of the coalition's goals and objectives is attached to my prepared statement, as is its current membership.

The message I bring to you today is simple and straightforward. The volume of trade via West Coast ports such as Seattle has skyrocketed during the last decade. This dramatic increase in cargo and passenger arrivals is reflected in the Port of Seattle figures for the years 1980 to 1984, a 24-percent increase in international air cargo, a 71-percent increase in containerized marine cargo, and a 107-percent increase in international air passengers.

Now Congress, as you know, has recognized the need for increased Customs resources to accommodate the growing Pacific trade. Both the Senate and the House have over the last several Congresses directed that additional Customs personnel be made available. Until recently, however, Customs has not provided the much-needed additional manpower. In some cases, there has been a decline. Using Seattle as an example again, the Seattle district in 1982 had 189 inspectors. In 1986, it has 164.

I would like to stress, however, that the West Coast Coalition of Ports and Industries is not just concerned about staffing levels. A key concern for us all and the impetus for forming the coalition and the primary thrust of what I am here to say today is to assure that the allocation of Customs resources does not have any competitive impact among ports or areas of the country.

Senator Gorton mentioned that we are a very competitive bunch. We compete aggressively. We compete on the basis of factors such as location, transportation services, speed, labor productivity, distribution systems, cost, and many other factors. We feel that it is fair that shippers make decisions based on those factors; not on the basis of which port has the least cargo inspected or the shortest Customs delays. The same is true for tourists. The Port of Seattle has had an aggressive program in Japan to lure tourists to the Northwest. But a tourist from Japan should not decide which gateway to enter or avoid based on delays in clearing Customs.

To restate, then, implementation of Customs regulations, levels of staffing and Customs services should be applied equitably at all ports of entry.

This is not an abstract concern. Shippers presently give considerable weight to differences when they are making routing decisions. The ease of movement allowed by intermodal transportation means that Washington State, Oregon, and California ports compete not only among themselves but also with ports from all over the country and in Canada. Much of the cargo moving across west coast docks is not local cargo. Its port of origin or destination is most

likely in a State such as Illinois, Michigan, or Missouri, and that cargo can probably be served by any one of a number of ports located on the west, east or gulf coasts. The smallest difference in Customs procedures or in processing time can shift traffic from one port to another.

Let me give you a graphic and a painful example. In March of this year, the Port of Seattle received a letter from one of its steamship tenants. It is attachment K to my testimony.

It clearly shows that this company lost an important customer because Customs policies were different in Los Angeles from Seattle. All west coast ports want to remedy this. Next time this situation could happen to any other port. No port should lose business and jobs because of Customs services and policies.

The fact that we have united to confront this real problem is evidence of its importance. The coalition has now engaged a nationally recognized consultant to prepare an indepth analysis of Customs services to identify problem areas and to suggest remedies. We would like to share the results of this study with you, Mr. Chairman, and your committee when it is complete.

In addition to the problems of staffing levels and Customs services acting as competitive factors among ports, the coalition is concerned about implementation of automation procedures and the timely notification by Customs of new or changed procedures. We endorse the views of the previous panel in this regard.

We believe that automation is and will be more and more important.

Senator DANFORTH. Commissioner Davis, I regret to say that you are well over your time. I want to assure you that your entire record will be included in the record, the entire statement will be included in the record as it will be read.

Commissioner DAVIS. Thank you very much, Senator.

Senator DANFORTH. Thank you.

[The prepared written statement of Commissioner Davis follows:]

TESTIMONY OF
THE HONORABLE PAT DAVIS, COMMISSIONER,
THE PORT OF SEATTLE
ON BEHALF OF
THE WESTERN STATES COALITION
FOR EFFECTIVE U.S. CUSTOMS SERVICE
AND
THE PORT OF SEATTLE

BEFORE THE INTERNATIONAL TRADE SUBCOMMITTEE
OF THE SENATE COMMITTEE ON FINANCE
ON THE BUDGET OF THE U.S. CUSTOMS SERVICE

MAY 12, 1986
WASHINGTON, D.C.

My name is Pat Davis. I am a member of the Commission of the Port of Seattle, having been elected to that position in 1985. The Port of Seattle operates one of the largest sea ports and the twelfth ranked airport in the country. In 1985, the Port of Seattle moved over $21 billion in foreign waterborne trade and 11.4 million passengers. My fellow Port Commissioners and I are vitally concerned with the efficient movement of cargo and any negative effects on water carriers, shippers, marine terminals, airlines, and other entities involved with international trade and tourism as a result of insufficient or ineffective Customs resources. I appreciate the opportunity to testify before this distinguished body this afternoon on the subject of the budget for the U.S. Customs Service. I am particularly pleased to have the opportunity to respond to the Chairman's request for information on the adequacy of inspections and other commercial entry services provided by Customs.

I am appearing before this committee on behalf of the Port of Seattle and the Western States Coalition for Effective U.S. Customs Service. The Western States Coalition will submit a more complete statement for the record within the next couple of weeks, but asked that I briefly discuss its objectives and activities this afternoon. This Coalition was established last year with the objectives of assuring adequate clearance and inspection services at Pacific Coast sea and airports and assuring that the allocation of facilitation resources does not

have any competitive impact as between ports or areas of the country. The current membership of the Coalition is set forth in Attachment A, and its objectives are more fully set forth in Attachment B.

In addition to the Port of Seattle, the Executive Committee of the Coalition includes the Ports of Los Angeles, Long Beach, Oakland, San Francisco, Portland, Tacoma, San Diego and Hueneme. Other West Coast ports, steamship operators, freight forwarders, custom house brokers and rail and aviation interests are also members of the Coalition.

The port members of the Coalition handle the vast majority of the nation's import and export cargoes to and from our major Pacific Rim trading partners. Coalition members also include the operators of the airports which serve as major U.S.-gateways and many others who interface with Customs or use Customs services.

The Coalition members have a very serious concern over the short and long term implications of inadequate facilitation of U.S. Customs services, cargo clearing, passenger processing and inspection services. The members are concerned that U.S. Customs' inspection capabilities have not kept pace with the level of activity through Pacific Coast gateways. To etter document and substantiate our claims and identify solutions, the Coalition has recently retained a nationally recognized consulting firm to prepare an in-depth analysis of Customs facilitation services and problems at West Coast ports in

relation to current demand for Customs services, operational efficiencies and coordination between ports, users and the Customs Service.

This independent study will quantitatively address a variety of issues, including: What are the appropriate staffing levels for Customs? Do Customs policies and procedures facilitate passengers and cargo to an acceptable degree? What is/will be the real effectiveness of automated programs? What are the real reasons for Customs delays, and will more inspectors solve them? Are Customs Procedures causing competitive advantages/disadvantages for some ports vis a vis other ports? Are Customs procedures causing undue economic burdens on U. S. traffic and trade interests?

As part of the study, we expect to document Customs effectiveness and identify problems and causes, determine the economic impact of Customs delays, and develop specific recommendations to resolve problems identified.

We expect this study to be completed within the next couple of months. We have every intention of sharing the results of the study with officials of the Treasury Department, Customs Service and members of the House and Senate. We hope to have an opportunity to present the results of this study directly to you, Mr. Chairman, and the members of the subcommittee as well.

From among the Coalition's comprehensive list of objectives, this newly formed organization's overall priority is to

strengthen and improve U.S. Customs Service cargo clearance services as well as other government inspection organizations.

To state our concern quite simply, trade through the West Coast Customs Districts has grown tremendously during the last decade. (See Attachments C, D, E, F, G, H and I). Indeed, trade growth via the West Coast has far exceeded other regions of the country. At the same time, the Federal inspection capability has not kept pace. This impedes international trade and tourism, and runs counter to Washington State's intensive efforts to enhance the sale of our goods overseas and to attract foreign visitors to our state. We are most concerned that the proposed budget for the Custom's Service will exacerbate the problem.

Inadequate Customs services limit our ability to grow, to expand our markets, to employ Washington, California and Oregon citizens, and to provide gateway service to businesses located throughout the United States.

Looking specifically at the Seattle Customs District, which includes much of Washington State, from 1980 through 1984, trade through the Port of Seattle expanded rapidly.

- Incoming international air cargo through Sea-Tac grew 24 percent;
- Containerized marine cargo from overseas grew 71 percent; and
- International air passenger arrivals were up 107 percent.

These trends are not unique to Seattle, but rather have been experienced up and down the entire Pacific coast. In fact, the Port of Tacoma, also a member of the Seattle Customs District, has experienced considerable growth in the last few years, further straining Customs services in the Seattle District.

At the same time, Customs staffing in the Seattle District has decreased. According to Customs' figures, the Seattle District had 189 inspectors in 1982, 170 in 1983, 164 in 1984, 162 in 1985, and 164 as of March 1986.

I am happy to note that this rapid growth has not been ignored by the Congress. The Senate and the House have repeatedly, in regular Appropriations Bills, supplemental appropriations measures and continuing resolutions, directed the Customs Service to assign additional manpower to West Coast districts. Most recently, in connection with the FY 86 Appropriation, the Senate adopted an amendment offered by Senator Gorton to designate an additional 40 full time permanent positions for the Seattle District.

Despite efforts by Congress in the past, Customs was never able to provide the much needed additional personnel to Seattle. Recently, however, I am pleased to report, Customs acknowledged the staffing problem in Seattle and provided the Seattle District with 18 additional inspectors. (See Attachment J). The Port of Seattle very much appreciates this action by Customs and hopes

that these additional personnel will improve facilitation on our docks and at our airport.

Let me reemphasize why Customs is so important to West Coast ports. The 1980's have been termed the "Decade of the Pacific" in acknowledgement of the emerging importance of the Far East as a trading partner. Every indication is that American commerce with the Orient will continue to grow significantly during the coming years.

To meet that expected growth, the Port of Seattle had made a tremendous investment in upgrading its facilities. At Sea-Tac Airport, we have spent more than $10 million in the last four years just to expand and improve the Customs and Immigration inspection areas. Additionally, the Port of Seattle recently approved a $300 million master update plan to build for expected growth at Sea-Tac. At the marine port, we are developing a new computer system which will let us transfer manifest information to Customs electronically, cutting the time that cargo spends on our docks. Other West Coast sea and airports are similarly expending vast sums to provide Customs with facilities and equipment. We are eager to work with Customs to facilitate the flow of trade and cargo, yet maintain a strong enforcement system; we are also prepared to spend what is needed to provide the facilities Customs needs.

One of Seattle's recent marketing campaigns focuses on the theme "The Seattle Shortcut", emphasizing that Seattle is days closer to the Orient than any other West Coast port. If cargo

sits in Seattle's terminals awaiting Customs inspection, this advantage is lost. Since nearly 80 percent of Seattle's cargo is ultimately headed for some other destination, a timely decision by Customs to release that cargo is particularly important. If Customs is understaffed or mismanaged, cargo is delayed. It's that simple. And, it works the same for passengers. The Transpacific market is becoming far more competitive, and travelers can choose from among many different gateways. If a particular airport develops a reputation for Customs delays, passengers will avoid that airport.

And, unfortunately, the delays and problems associated with inadequate Custom's resources are not just felt at the seaport. Just as St. Louis once served as the gateway to the American West, Pacific Coast ports today serve as our country's gateways to and from the Pacific Rim. In fact, many of the Port of Seattle's most important customers are importers and exporters located in midwest states like Missouri. In 1984, well over 300,000 metric tons of cargo were imported through Pacific Coast ports destined for Missouri, and almost 500,000 tons of cargo were exported. Companies such as Tab Merchandise and House of Lloyd, located in St Louis and Grandview import large volumes of cargo through Seattle and other West Coast ports. So, too, do Midland International and AOC International of Kansas City. And, Monsanto, headquartered in Missouri, is one of the largest users of West Coast port facilities. And when their cargo is delayed, they bear the expense.

All Pacific coast ports find themselves in a similar situation. Because of budgetary restrictions, the U.S. Customs Service has cut its staff, and is using selectivity techniques to determine what to inspect. It is also trying to reduce its administrative overhead wherever possible. We support Congress' and the President's effort to reduce the federal deficit, but not blindly at the expense of vital federal services, especially a service that raises considerable sums of revenue and directly impacts a major segment of our national economy.

According to Commissioner Van Raab, the proposed budget for Fiscal Year 1987 recommends cutting about 770 positions from Customs staff. Reductions of this magnitude could significantly impede American trade. This comes on top of savings effectuated in the 1986 budget by not hiring 777 new personnel who could have been hired, and in fact were authorized by the Congress.

Cutting Customs inspection staff is penny wise and pound foolish. Customs is one of the few federal agencies which actually earn revenue for the treasury. It costs about $700 million a year to operate the Customs Service. Yet the agency generates almost $12 billion a year in revenue. The Seattle District brought in almost $500 million last year in collections, and the Pacific Region earned nearly $3 billion. Official published data of the U.S. Customs Service states that for every dollar appropriated on Customs service activities, there is a return of $25.00 in Customs revenue. These figures quoted above

are the national average. For the Los Angeles and San Francisco Customs District, the relation to appropriation and return is much higher - Los Angeles is estimated to be $100.00 and San Francisco is $55.00.

THE NEED FOR ADDITIONAL CUSTOMS INSPECTION PERSONNEL

To repeat, our basic concern is that U.S. Customs Service inspection capabilities have not kept pace with the level of cargo activity through Pacific Coast ports. Information and statistics available on U.S. Customs Service staffing shows that the level of personnel available for inspection services has stayed the same or has actually declined during the same time frame that imports have increased dramatically through the Pacific Coast ports.

Because of the shortage of Customs service inspection personnel, there have been many serious and continuing delays in Customs clearance of cargo at U.S. Pacific Coast ports that has negatively and seriously affected many importers. These delays in Customs clearance of import cargo has cost shippers thousands of dollars in unnecessary demurrage fees, disruption to the normal and necessary flow of their commerce and loss of sales revenue because merchandise was not available at point of purchase.

In addition, the desired flexibility of import cargo clearance procedures and activities from the view point of commercial service and competitive considerations of water carriers, port and marine terminal operators, freight transfer station operators, rail and truck transportation companies, customs brokers and shippers have been severely restricted in the face of the continued cutback in the number of Customs inspectors available.

The Coalition recognizes that the mission of the U.S. Customs Service includes many important responsibilities in addition to the "Inspection and Control" functions. The Coalition specifically recognizes and supports the mission of the U.S. Customs Service in regard to "Enforcement" and the members will cooperate with the U.S. Customs Service in this significant responsibility. However, enforcement should not be at the expense of facilitation. Customs needs the resources to carry out both of these vital functions.

COALITION VIEWPOINT ON AUTOMATION

The Coalition also supports Customs efforts to automate its processes and procedures. We view automation of clearance procedures as a desirable and necessary development. Efforts to improve inspection services through automation and decrease inspection costs in every practical way (including a reduction in

the number of personnel required) are all desirable fundamental aspects of the competitive environment we as a nation face.

The Coalition strongly asserts that automation be recognized as a necessary adjunct to, but not a replacement for, adequate staffing of Customs activities. There is a need for a declared policy of an orderly implementation of automation procedures with a minimum disruption of import cargo clearance and other U.S. Customs Service activities. Automation should enchance efficiency and decrease delays and costs. However, it will take time. We have problems now.

COALITION CONCERN OF CUSTOMS PROCEDURES

Another serious concern is the need for better communication with Customs to avoid implementation of procedures without adequate notice and the need for better coordination with water carriers, ports, marine terminal operators, transportation companies, customs brokers and shippers. The maritime and port industries wants to work with and cooperate with Customs, but we are not always provided with the opportunity to do so. A specific example was the U.S. Customs Service plan to require inspection of all import containers of textiles at port of arrival regardless of the negative economic impact on the international business community and disruption to the intermodal

transportation system. This plan announced on July 13, 1984 without any pre-warning and to be implemented by September 7, 1984 threw the West Coast ports and transportation companies serving them, into a state of turmoil. Textiles are a principal import commodity through West Coast ports. Only after a major concentrated effort by these interests was the planned program substantively modified.

This example is cited only to demonstrate that advance communication between U.S. Customs and the affected shipping lines, including the major American flag carriers in the Pacific, might well have resulted in accomplishing the goal in a much more orderly and less disruptive fashion.

A similar problem arose in connection with the red-ball seal program. This program was also announced with little warning, was costly and very disruptive. Again, Customs responded to industry complaints and appropriately modified the program. But it would have been much better if we could have talked and worked with Customs on this major change in procedure prior to its announcement and enactment.

On the aviation side, two major U. S. flag-carriers operating out of Sea-Tac were notified, without any advance warning, that there landing schedules, which were routinely approved in the past, would be rejected by the Customs service unless certain changes in scheduled arrival times were made. The changes required by the Customs Service would have required

changes in departure times from Tokyo -- and approval for these changes had to be secured many months in advance from the Japanese government. The Customs Service appropriately modified its position after meeting with the interested parties, but this was again after the fact.

In each of these cases, Customs responsibly and reasonably responded to input from the private sector and modified its policy accordingly. We encourage Customs to continue to talk with us. The industry wants to cooperate and comply, but it needs notice and an opportunity for meaningful input, whenever possible, before policies are changed.

We are concerned about Customs staffing levels at West Coast ports, but I do not want to leave you with the impression that staffing is our only concern. It is not. The primary reason the major West Coast ports began working together on Customs issues is that we simply cannot afford for Customs to be a competitive factor between us. Intermodal transportation means that ports such as Seattle, Tacoma and Los Angeles not only compete with each other, but with New York, Baltimore and Savannah as well. We compete aggressively. We market our location, inland transportation services, speed, cost, distribution systems and many other factors. We want shippers to make decisions on those factors, not on the basis of which port has the least cargo inspected or the shortest Customs delays.

This is not an abstract concern. Shippers presently give considerable weight to differences in Customs policies, procedures and manpower at West Coast ports when making shipping decisions. Let me present you with a graphic and painful example from the Port of Seattle's perspective.

On March 26, the Port of Seattle received a letter (Attachment K) from one of its steamship tenants. The name of the companies involved have been deleted because of the sensitive nature of the situation. This letter clearly states that this company lost an important customer because of Customs policies and procedures in Seattle. This shipper had a choice, and because Customs policies were different in Los Angeles, it chose to ship through Los Angeles rather than Seattle. Customs was the only reason for this change of ports. That is not right, and all West Coast ports want to remedy it. In this case, Seattle lost business and jobs. Next time it could happen to Los Angeles, Long Beach, San Francisco, Oakland or other ports. That is why we got together. It is a real problem. We appreciate your assistance in providing for and maintaining strong, effective and uniform Customs on the West Coast.

The Coalition and the Port of Seattle appreciate this opportunity to present our serious concerns regarding Customs facilitation of cargo.

SUMMARY AND CONCLUSION

We wish to emphasize in conclusion several points:

1. The Coalition is a united endeavor of Pacific Coast seaports, international airports and our customers and users to unify our efforts for the mutual benefit of all Pacific Coast seaports and international airports with the goal to have effective Customs Service.
2. The Coalition's declared policy is to eliminate differences in facilitation levels as a competitive factor among West Coast seaports and international airports.
3. International Commerce flowing through the Pacific Coast seaports and international airports is growing significantly and all research studies clearly confirm this reality.
4. The Coalition seeks to ensure adequate Customs staffing at all Pacific Coast seaports and international airports.
5. The Coalition desires to cooperate with the U.S. Customs Service in the implementation of automated inspection systems.
6. The Coalition desires to achieve its objective through a constructive dialogue with the U.S. Customs Service at the local, regional and national level.

The importance of this subject to the West Coast ports should be evident from the fact that we have united to confront it together. We on the West Coast are a very competitive bunch. We compete strongly against each other and in fact with all ports around the country. The one thing we all agree on, however, is that Customs' services must not be a factor in that competition.

ATTACHMENT A

MEMBERSHIP ROSTER

WESTERN STATES COALITION FOR EFFECTIVE U.S. CUSTOMS SERVICE

PORT OF HUENEME
P.O. Box 608
Port Heuneme, CA 93041

PORT OF LONG BEACH
P.O. Box 570
Long Beach, CA 90801

PORT OF LOS ANGELES
425 South Palos Verdes Street
P.O. Box 151
San Pedro, CA 90733

PORT OF OAKLAND
66 Jack London Square
P.O. Box 2064
Oakland, CA 94607

PORT OF PORTLAND
700 N.E. Multnomah Street
P.O. Box 3529
Portland, OR 97208

PORT OF SAN DIEGO
3165 Pacific Highway
P.O. Box 488
San Diego, CA 92112

PORT OF SAN FRANCISCO
Ferry Building
San Francisco, CA 94111

PORT OF SEATTLE
P.O. Box 1209
Seattle, WA 98111

PORT OF TACOMA
One Sitcum Plaza
P.O. Box 1837
Tacoma, WA 98401

ENCINAL TERMINALS
P.O. Box 2453
1521 Buena Vista Avenue
Alameda, CA 94501

PORT OF REDWOOD CITY
475 Seaport Blvd.
Redwood City, CA 94063

PORT OF RICHMOND
City Hall
P.O. Box 4046
Richmond, CA 94804

PORT OF BELLINGHAM
625 Cornwall Avenue
Bellingham, WA 98225

PORT LONGVIEW
P.O. Box 1258
Longview, WA 98632

PACIFIC MERCHANT SHIPPING ASSN.
635 Sacramento, Room 300
P.O. Box 7861
Rincon Annex, CA 94120

AIR TRANSPORT ASSOCIATION
OF AMERICA
1709 New York Avenue, NW
Washington, DC 20006

S.F. CUSTOMS BROKERS & FREIGHT
FORWARDERS ASSOCIATION
303 World Trade Center
San Francisco, CA 94111

NATIONAL DEFENSE TRANSPORTATION
ASSOCIATION
Delta Airlines
1100 Grunday Lane, Suite 310
San Bruno, CA 94066

INTERNATIONAL FOOTWEAR
ASSOCIATION
47 W. 34th Street, Suite 804
New York, NY 10001

SAN FRANCISCO INTERNATIONAL
AIRPORT
San Francisco, CA 94128

LOS ANGELES INTERNATIONAL AIRPORT
One World Way
Los Angeles, CA 90045

SAN DIEGO CUSTOMHOUSE BROKERS
P.O. Box 2511
National City, CA 92050

FMC CORPORATION
200 E. Randolph Drive
Chicago, IL 60601

NATIONAL INDUSTRIAL TRAFFIC LEAGUE
1090 Vermont Avenue, NW - Suite 410
Washington, DC 20005-4905

WESTWOOD SHIPPING LINES
P.O. Box 1645
Tacoma, WA 98401

MITSUI O.S.K. LINES, LTD.
100 Oceangate Plaza, Suite 10
Long Beach, CA 90802

SANTA FE RAILWAY COMPANY
80 East Jackson Boulevard
Chicago, IL 60604

UNION PACIFIC RAILROAD
COMPANY
1416 Dodge Street
Omaha, NB 48179

PASHA MARITIME SERVICES, INC.
5725 Paradise Drive, Suite 600
Corte Madera, CA 94925

THE DENVER AND RIO GRANDE
WESTERN RAILROAD
50 Fremont Street, Suite 3350
San Francisco, CA 94105

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
Airports Division
Honolulu International Airport
Honolulu, HI 96819

R.S. EXPRESS
805 Grandview Drive
So. San Francisco, CA 94080

HARPER ROBINSON & COMPANY
260 Townsend Street
San Francisco, CA 94107

ATTACHMENT B - P. 1

WESTERN STATES COALITION FOR EFFECTIVE U.S. CUSTOMS SERVICE

Policy Statement

The members of the Coalition believe that differences in Customs facilitation capabilities (and other inspection services) among ports should not become a competitive issue among the U.S. West Coast ports. Each member of the Coalition supports the concept of the necessity for a satisfactory level of Customs facilitation at all West Coast ports. A less than satisfactory level of facilitation at any West Coast port is unacceptable to the members of the Coalition.

While each member of the Coalition appropriately reserves the right to carry forward its own program to ensure adequate facilitation services in its own local area, such programs will be designed and implemented in a manner which will not be detrimental to the interests of any other West Coast port.

While the Executive Committee of the Coalition consists solely of West Coast public port authorities, the members recognize the desirability of having the broadest membership base possible of public and private sector interests and welcomes participation of all interested parties including but not limited to shipping lines, airlines, terminal operators, inland transportation companies, customs brokers, importers, and exporters.

The Coalition desires to achieve its objectives through a constructive dialogue with the U.S. Customs Service at the local, regional and national level and believes the interests of the membership and the U.S. Customs Service can best mutually be served through open communication and cooperation.

7-85

WESTERN STATES COALITION FOR EFFECTIVE U.S. CUSTOMS SERVICE

Statement of Goals

1. To secure and maintain a level of Customs facilitation (and other inspection services) adequate to support the needs of all West Coast ports.

2. To eliminate differences in facilitation levels as a potential competitive factor among West Coast ports.

3. To ensure increased Customs staffing provided for one West Coast District is not provided at the expense of another West Coast District.

4. To ensure that present and future staffing of inspectors and support personnel at all West Coast ports is reflective of the significant role that the West Coast plays in United States foreign trade and its growing role relative to other coastal ranges.

5. To achieve a level of automation of inspection services capable of handling current and future trade volumes implemented in an orderly manner and designed to facilitate efficient cargo flows.

6 To cooperate with the U.S. Customs Service in the implementation of automated inspection systems through a program of coastwide involvement and communication to avoid cargo dislocations among ports caused by facilitation variances.

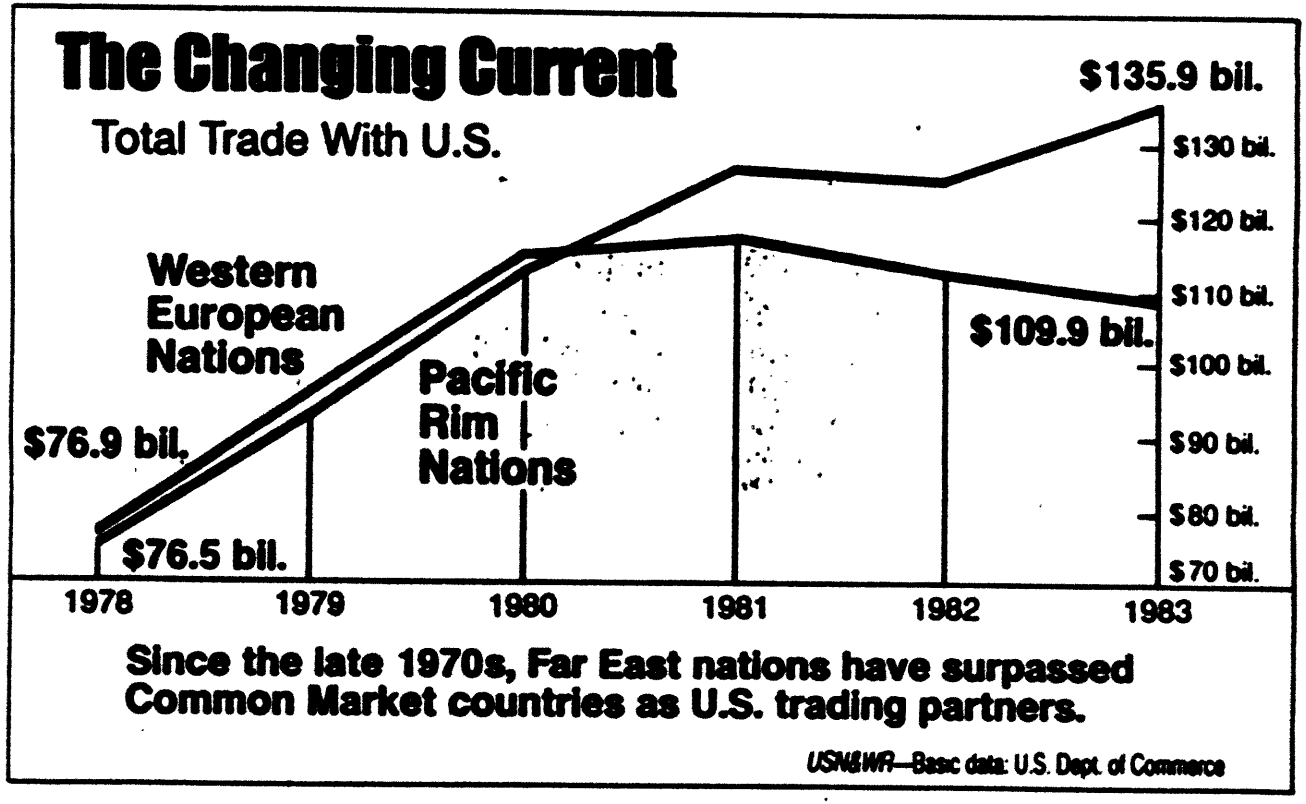
7. To cooperate with the customs broker community to carry forward cooperative facilitation programs.

8. To generate the broadest possible base of support among all interested parties to ensure an adequate level of Customs facilitation for the present and future at all West Coast ports.

9. To work toward procedures which will facilitate the needs of the rapidly changing intermodal transportation system while recognizing the enforcement responsibilities of the U.S. Customs Service.

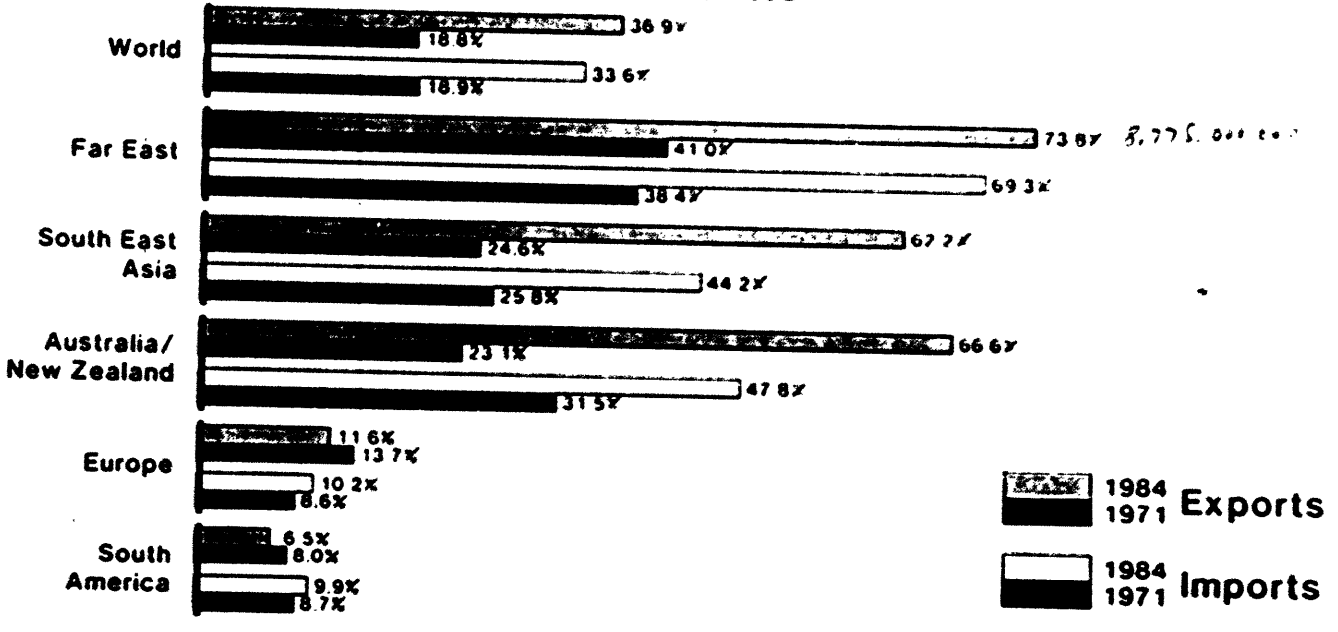
10. To ensure that West Coast ports have meaningful input to the U.S. Customs Service decision making process concerning staffing and administering U.S. Customs Service enforcement and trade facilitation responsibilities.

11. To ensure to the greatest extent possible uniform application of U.S. Customs Service procedures at all West Coast ports through a regional organizational structure overseeing the activities of the West Coast Customs Districts.


The Changing Current
Total Trade With U.S.
$135.9 bil.
$130 bil.
$120 bil.
$110 bil.
$100 bil.
$90 bil.
$80 bil.
$70 bil.
Western European Nations
$76.9 bil.
$76.5 bil.
Pacific Rim Nations
$109.9 bil.
1978
1979
1980
1981
1982
1983
Since the late 1970s, Far East nations have surpassed Common Market countries as U.S. trading partners.
USN&WR—Basic data: U.S. Dept. of Commerce

WEST COAST SHARE OF U.S. LINER FOREIGN TRADE

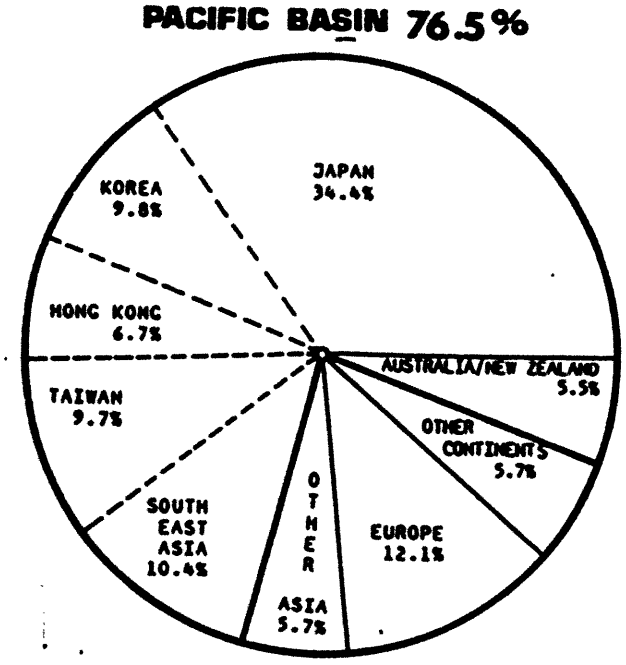
SHORT TONS



Source: US Department of Commerce (Foreign Trade Statistics)

ATTACHMENT E

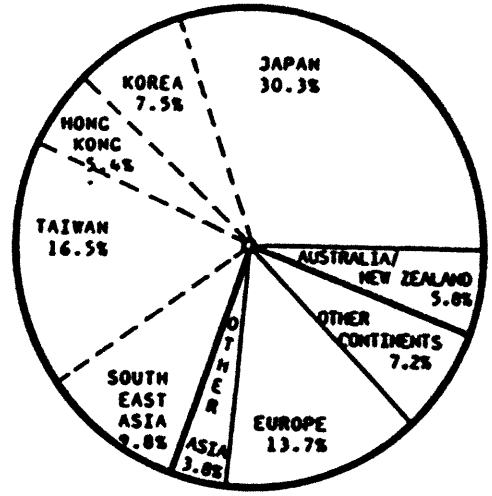
TRADING PARTNERS - SHORT TONS
U.S. WEST COAST LINER TRADE
1980



13.0 Million Short Tons

EXPORTS

FROM U.S. WEST COAST



8.1 Million Short Tons

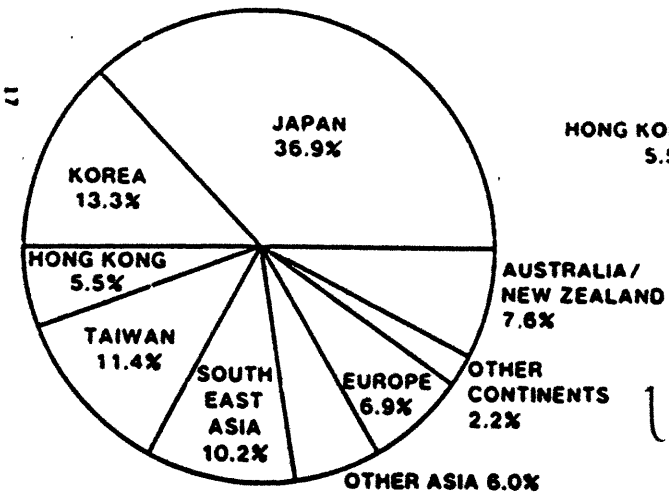
IMPORTS

TO U.S. WEST COAST

TRADING PARTNERS - SHORT TONS
U.S. WEST COAST LINER TRADE

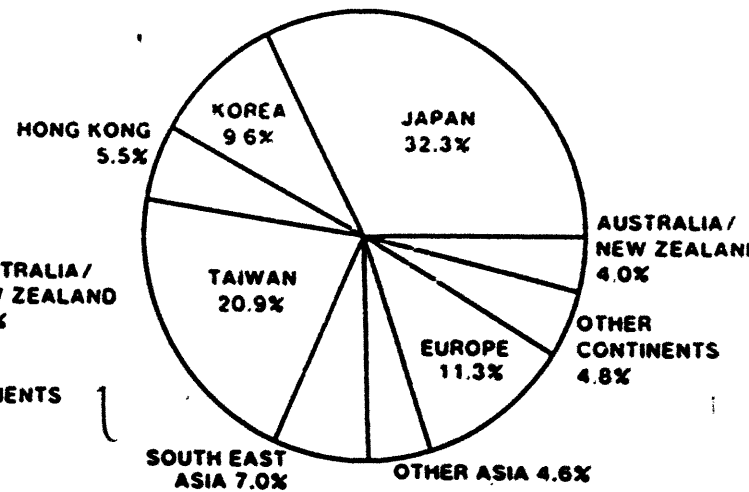
1984

PACIFIC BASIN 84.9%



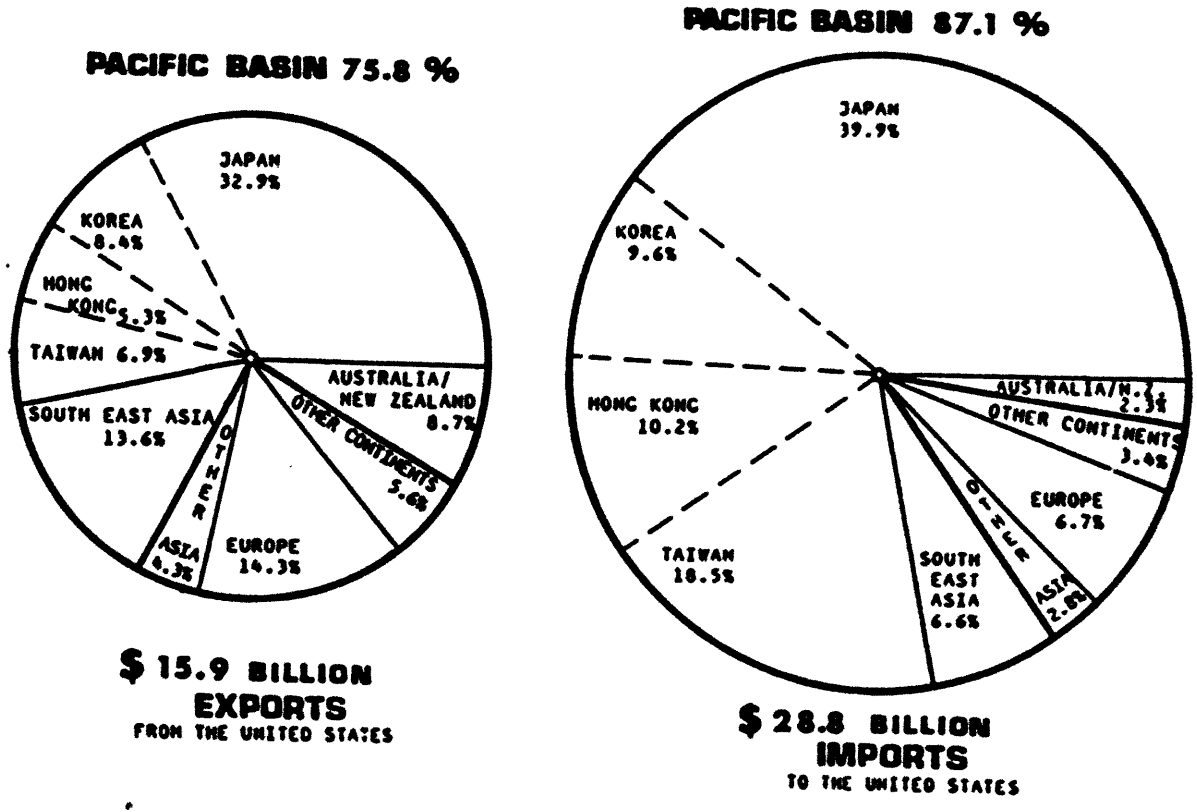
13.1 MILLION SHORT TONS
EXPORTS
FROM U.S. WEST COAST

PACIFIC BASIN 79.3%



12.4 MILLION SHORT TONS
IMPORTS
TO U.S. WEST COAST

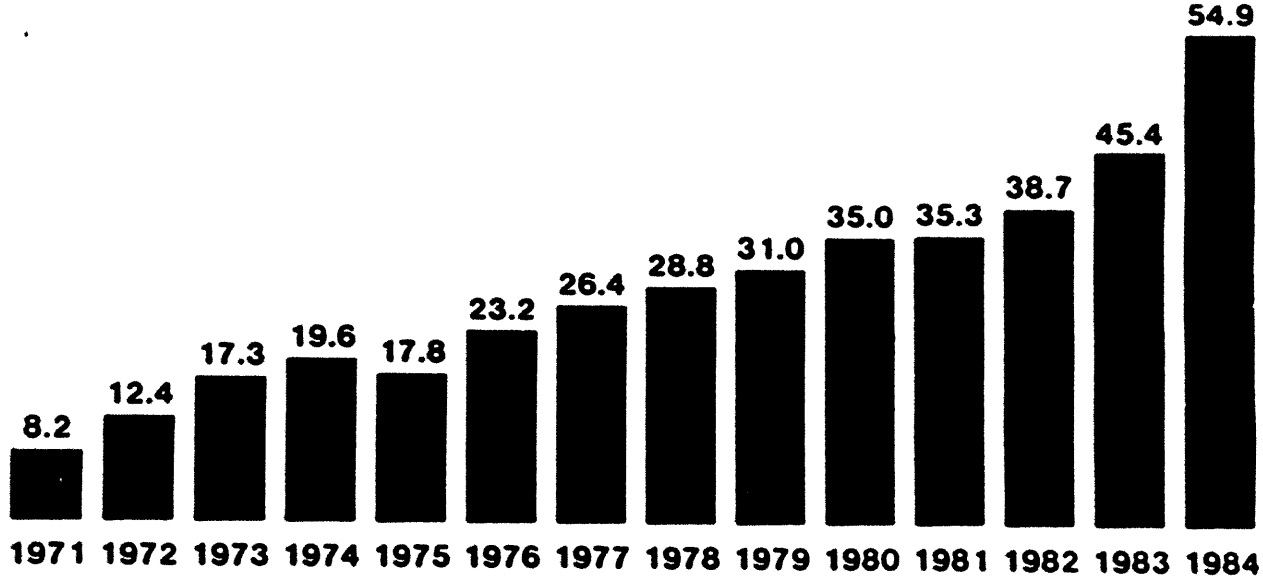
TRADING PARTNERS - DOLLAR VALUE
U.S. WEST COAST LINER TRADE
1980



ATTACHMENT H

WEST COAST CONTAINER TONNAGE

(1971-1984) MILLION REVENUE TONS

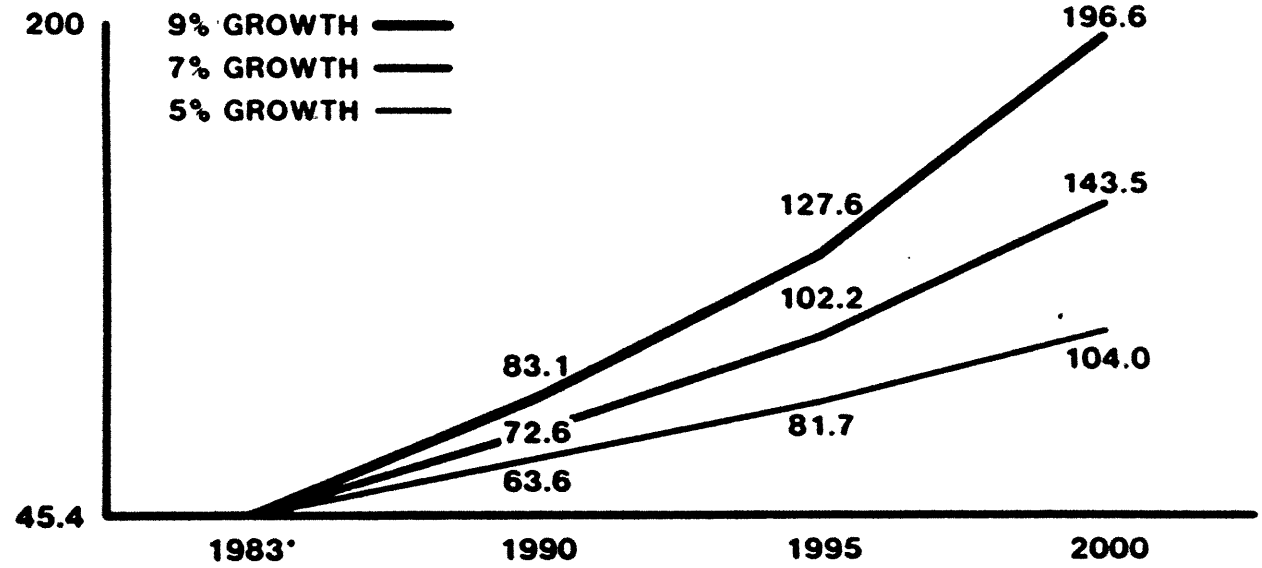


SOURCE: PACIFIC MARITIME ASSOCIATION

PORT OF OAKLAND

PROJECTED WEST COAST CONTAINER TONNAGE

MILLION REVENUE TONS



*SOURCE: PACIFIC MARITIME ASSOC.

UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: 2/28/86

FILE: PER-12-IC:PE RWW

TO : Assistant Commissioner
Office of Inspection and Control

FROM : Director, Office of Passenger
Enforcement and Facilitation

SUBJECT: Position Allocation and Methods of Filling Vacancies (20 Positions Allocated by Congressional Requirement June 1985) - Partial Trip Report - Seattle Staffing Survey February 3 through February 13, 1986

In conjunction with a staffing survey conducted in the Seattle District by headquarters, it was directed that in addition a study be done concerning the allocation and filling of 20 additional inspector positions allocated to Pacific Region for Seattle in June of 1985.

The staffing survey was done by Larry Shirk, Chicago Director Inspection and Control and Bob Williams, Office of Passenger Enforcement, Headquarters, Inspection and Control. The staffing survey report will be prepared separate of this report.

We find that of the 20 inspector positions allocated to Seattle, 15 were filled, 14 of those 15 by November 1985.

Of those 20, 5 were converted to 3 import specialist and 2 CEO positions. The reason for this is not clear at this point. It appears to have been the result of a resource decision dated July 24, 1985, from headquarters. Mike Weissman, Executive Management Staff, Pacific Region, verbally said that they did not know at first if the 15 positions were to fill existing vacancies plus new positions or intended as new positions. Later, it was confirmed by headquarters memorandum that creating new vacancies was not intended. Seattle District basically hired from within to fill their inspector allocations. The evidence, although conflicting, indicates sufficient SF-52's in headquarters and/or submitted to Pacific Region by the Seattle District to backfill the existing vacancies that were created by promoting within. Seattle District was not able to use the category "B" list because the list appeared to have too many unqualified persons. The Inspection and Control T.O. had been increased by 15 and the FTE by 12. The FTE is now 171 and T.O. 182. Records indicate that Seattle District is 18 short of their T.O. (per reg. staffing advice 1/27/86 - FTE 171 O/B 164 T.O. 182).

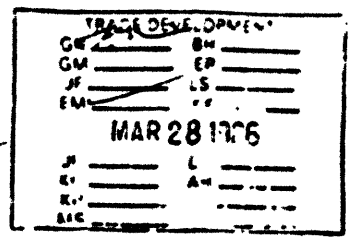
When the the FTE was raised to its current level a delay in responding to the increased staffing may have occurred in either District or Region that accounts for Seattle being consistently lower than their T.O. However, other documentation supports that the SF-52's were submitted to headquarters timely. Also a delay occurred in October 1985, due to an error made on the strength report showing Seattle with FTE 171 and O/B 171. The O/B was actually 166. Other delays may be due to the centralization process. From September 1985 to December 1985, no action was made by headquarters to fill positions. The inspector staffing in the Seattle District has not been appreciably increased since June 1985. The actual on board has only increased from 159 to present 164 although the 20 positions (15 inspector) were filled by November.

An announcement is currently in region that closed on December 24, 1985, for 65 positions in the Pacific Region. This should take care of existing vacancies and bring Seattle to its current T.O.

We recommend that the 18 positions be filled immediately. The Pacific Region has already begun hiring for the Seattle District.

Robert A. Bartol

March 26, 1986



Mr. Gordon Neumiller
Director of Sales
Port of Seattle
P.O. Box 1209
Seattle, WA 98136

RE: U.S. Customs MRU Holds

Dear Gordon:

Gordon, we are becoming increasingly concerned over the effects U.S. Customs' practices in Seattle are having on the competitiveness of the Port of Seattle.

We have had several of our customers advise us they will never again ship over Seattle in favor of Canadian and California ports because of Seattle Customs cargo holds and exams. Customers became very irate when cargo they have been shipping for years over Canadian and/or California ports without any U.S. Customs' holds, are delayed whenever they move through Seattle. Needless to say, this doesn't happen to a customer too many times before they refuse to ship over Seattle.

We had an incident last week where a customer's cargo was held as a result of a problem with the cargo description on the manifest. The vessel arrived on March 15th, a Saturday. On Monday, March 17th, we resolved the cargo description problem with the Manifest Review Unit and were advised by the Inspector he would send a release to the dock. As of March 24th, SS of A has no record of receiving the release and the Inspector has no copy of what he sent, but insists he did send a release.

In every local meeting the carriers have had with U.S. Customs on the subject of Customs holds and exams, there have been several complaints voiced regarding the lack of documentation, communication and coordination on Customs holds. These complaints have not resulted in any improvement in the procedures and as a result, there

continues to be confusion and unnecessary delays in delivery of cargo. In this case, the cargo was delayed for 7 days and as a result we lost this customer's business. He informed us he would never move cargo through the Port of Seattle again. He informed us he does not have this problem in Los Angeles.

Unfortunately for Seattle, this is true. Los Angeles and Long Beach traditionally do not hold cargo for manifest discrepancies. In Seattle, we are required to turn in a preliminary manifest 5 days prior to vessel arrival in order to qualify for the accept program. Customs in Seattle then previews the manifest and makes up a list of "holds". In Los Angeles and Long Beach, Customs will not accept a preliminary manifest. Hence, no reviews, no hold list and no cargo delays. The differences in Customs practices at the two ports creates a very discriminatory situation for the Port of Seattle. Seattle Customs has a very negative reputation among West Coast shippers, and consequently, customers are moving cargo over other ports simply to avoid the Customs problems they experience here.

Through various industry organizations and local politicians, we are attempting to bring some pressure on Customs to adopt more uniform policies and procedures on the West Coast. We bring this to your attention because it effects The Port of Seattle the same way if effects We are both losing customers and cargo. Something needs to be done to eliminate the discriminatory effects Customs practices in Seattle are having on our Port. Any influence or pressure you can use to help resolve this problem will be appreciated.

Sincerely,

STATEMENT OF PATRICK D. GILL, PARTNER, RODE & QUALEY, NEW YORK; ON BEHALF OF THE NORTHWEST APPAREL AND TEXTILE ASSOCIATION

Senator DANFORTH. Mr. Gill.

Mr. GILL. Thank you, Mr. Chairman. My name is Patrick Gill. I am appearing today on behalf of the Northwest Apparel and Textile Association, a group of major manufacturers and importers located in the Pacific Northwest, particularly the Seattle area. They supply imports of textiles and wearing apparel throughout the United States.

Our firm, Rode & Qualey, is a firm engaged exclusively in the practice of Customs law with emphasis on Customs and international trade matters.

I wish to join in the remarks of Commissioner Davis indicating our concern and, indeed, displeasure with the severe cutbacks which have occurred at the Port of Seattle and throughout the United States. Our prepared remarks, which I know are part of the record, have much greater detail on the problem created by these cutbacks, coupled with increased responsibilities in the enforcement area detracting from the service that must be performed by the Customs Service in meeting its obligations to both the government and the importing public.

The fact of the matter is we are getting less with less, and it is a lot of nonsense to suggest to this committee that the Customs Service can continue to perform its vital functions with respect to inspection, control and classification of imported merchandise with the kind of cutbacks that have occurred over the past several years.

There is not a single importer that I know—and I represent importers located throughout the United States—who has not become extremely exasperated by the lack of service, by the delays and by the over emphasis on enforcement at the expense of the front-line needs of the Customs Service.

The fact of the matter is that import specialists—the primary line of Customs Service operations is in a state of total demoralization. These are the people who in a quiet and efficient way are responsible for administering the Customs laws and clearing merchandise. The cutbacks have been extensive, and the results are quite evident to all who have any dealings with Customs and who are at all knowledgeable on importing merchandise into the United States.

The fact of the matter is there is a lot of paper pushing going on, but real examination and clearance of merchandise is not occurring.

Second, Customs has uniformly disregarded the Regulatory Flexibility Act and Executive Order 12291 in implementing one change after another without any opportunity for comment or public notice even in the Federal Register. Major rule changes involving billions of dollars worth of merchandise and hundreds and millions of dollars in expenses in connection with the clearance of merchandise are being implemented without so much as even publication of notice in the Federal Register.

Internal telexes to the field implementing changes that are as far reaching as any since the implementation of the quota system in the early sixties have been put in effect in 60 days with absolutely no opportunity for comment afforded to the public.

We ask that the committee in reviewing these authorizations look very carefully at what the Customs Service is doing. I am not one witness here. Every witness today has spoken to this problem before this committee and other committees. The Customs Service right now is operating on its own without any regard for very fundamental due process rights for importers and others concerned with international trade. The loser in all of this is not only the importing public and those servicing the importing public but the government itself. Who is kidding who? You cannot do the kind of job that is necessary and implementing the trade laws of the United States with the kind of cutbacks that have occurred and at the same time increase that workload in the enforcement area.

I thank the committee for the opportunity to testify today. I welcome any questions which you may have.

Senator DANFORTH. Thank you, Mr. Gill.

[The prepared written statement of Mr. Gill follows:]

RODE & QUALEY

ATTORNEYS AT LAW

JOHN S. RODE
MICHAEL S. O'ROURKE
PATRICK D. GALE

295 MADISON AVENUE
NEW YORK, NY 10017
(212) 685-6417

WASHINGTON, D.C.
2021 K STREET N.W. 20006
(202) 214-0951

R. BRIAN BURKE
WILLIAM J. MALONEY

OF COUNSEL
ELLSWORTH C. QUALEY

STATEMENT ON BEHALF OF THE NORTHWEST APPAREL AND TEXTILE ASSOCIATION IN CONNECTION WITH HEARING ON AUTHORIZATIONS FOR THE UNITED STATES CUSTOMS SERVICE

This written statement is submitted to the Subcommittee on International Trade of the Senate Finance Committee by Rode & Qualey on behalf of the Northwest Apparel and Textile Association (hereinafter: NATA). NATA consists of a group of companies located in the Pacific Northwest who are major manufacturers and importers of textiles and wearing apparel. Their products are marketed and sold under well known brand names throughout the United States.

Our firm, Rode & Qualey, in turn, is and has been throughout its entire existence devoted exclusively to the practice of Customs and international trade law. In addition to NATA, we represent hundreds of manufacturers, importers, and exporters located throughout the United States. We practice extensively before local and regional Customs field offices in virtually every significant port of entry in the United States as well as before Customs Service Headquarters in Washington, the United States Court of International Trade, the appellate courts, and other agencies of the United States concerned with international trade including the Department of Commerce, the International Trade Commission, and the United States Trade Representative.

NATA is vitally concerned with the adverse effects that cutbacks in Customs staffing and the reallocation of Customs resources have had upon its members. For this reason, NATA has requested us to appear on its behalf on May 12, 1986, before the Subcommittee on International Trade at the hearings concerning Customs authorizations. This written submission is filed in connection

therewith. NATA's comments are prompted in response to the overall negative effects resulting from Customs cutbacks with respect to the classification, valuation, inspection, and clearance of merchandise and the general deterioration in the operations of the Customs Service resulting from these cutbacks and changes. In short, the public and the government are getting less with less, and the situation is becoming worse.

The problem with respect to inspection and clearance of merchandise is essentially created by two factors: (1) a massive and substantial cutback in Customs personnel charged with overall responsibility for clearing and assessing duty on merchandise, and (2) a sharp increase in the workload and responsibilities of clearance personnel resulting from a number of major changes in connection with entry requirements which, for the most part, have been issued without notice and opportunity for comment or public hearings, as required by law.

This statement will highlight some of the more serious areas of deterioration in Customs administration and point to ways in which realistic authorization levels coupled with appropriate allocation of funds and manpower could lead to significant Customs improvements and a reversal of the current trends.

1. **Manpower cuts.** In order to fulfill its statutory responsibilities, the Customs Service must perform certain basic operations in processing imported merchandise. These basic operations include inspection of and control over the merchandise, the classification and valuation of merchandise and reviewing entries to ensure regulatory and statutory compliance. These basic, nuts and bolts operations are primarily handled by two separate functions in the Customs Service; inspection and control (I&C) and classification and value (C&V). Cutbacks in the manpower devoted to performing both of these basic functions have been extensive and pervasive at all ports of entry. Nowhere have these cutbacks been felt more seriously than at the C&V level in local Customs field offices located throughout the United States.

The principal C&V official at the port of entry is the Import Specialist. In addition, National Import Specialists are located at the port of New York to whom local Import Specialists at other ports look for advice and guidance. National Import Specialists have the power to issue binding rulings on behalf of the Customs Service in limited situations. Adequate staffing at the Import Specialist level as well as the National Import Specialist level is absolutely essential to the efficient administration of the Customs Service. Any deficiency in this area will ultimately result in serious errors adverse to both the government and the importing public in the areas of duty collection, quota administration and other regulatory responsibilities entrusted to the Customs Service.

The cutbacks at the Import Specialist level are a matter of public record. Not only have positions been combined and eliminated, but Import Specialists have been detailed from their normal assignments to assist other Customs enforcement efforts on a regular basis. This has resulted in continually growing backlogs in the clearance of merchandise. Import Specialists located throughout the United States will privately acknowledge that which is obvious to anyone having day-to-day dealings with Customs; namely, they are unable to adequately perform their assigned tasks because of the cutbacks. Entries are receiving perfunctory review or no review at all. As a result, those most knowledgable in the area of Customs laws and regulations with respect to the admissibility and dutiability of imported merchandise are unable to review import entries in a way that is likely to guarantee that imported merchandise will receive the correct tariff treatment under law, something to which both the government and the importer are entitled. We suspect that the government is as much the loser as the importer. Enforcement also suffers as a result of this state of affairs because errors adverse to the government are detected on only a hit and miss basis.

Import Specialist morale is, as a general proposition, at an all-time low. Long-time Customs personnel with considerable expertise and experience are, whenever possible, seeking early retirement. Upon resignation these positions often

remain unfilled for long periods of time or permanently. In understaffed Customs field offices, if an employee is sick, merchandise is either cleared by personnel not sufficiently expert in the commodity line, or delays are encountered by importers in the clearance of merchandise.

The ultimate outcome of all of this is, of necessity, arbitrary and inconsistent application of the law and regulations not only in ports throughout the United States, but within single ports. Importers are often placed in a position of not knowing which Customs determination is correct and how merchandise should ultimately be entered. To be sure, if the importers err by taking a position contrary to an ultimate, after-the-fact Customs determination, they are subject to severe penalties and/or delays in the clearance of merchandise. We know of no importer of textiles and wearing apparel, for instance, who would not heartily welcome a so-called line review or pre-importation review by knowledgeable Customs Import Specialists prior to the importation of merchandise. Such reviews were a common practice in the past, but now virtually never occur prior to importation. When such a line reviewed occurred, an importer by and large could rely on a responsible Customs determination as to the correct classification of imported merchandise and, if any doubtful questions existed, they could be presented to a higher Customs level for ultimate determination and the issuance of a binding ruling. In theory and by regulation an importer can still obtain such review and, if necessary, binding rulings prior to importation. In practice, however, this opportunity is non-existent. The commercial reality is that an importer, especially a textile or apparel importer, will not know exactly what merchandise it will be importing more than six months before importation occurs. Because of manpower shortages, however, Customs, if it does not refuse to do a line review outright, cannot schedule one for at least six to nine months after the request is made. The same problem exists with respect to binding rulings from Customs. By the time a binding ruling is issued, an importer's merchandise either has already been imported or its cost has been fixed through a binding price commitment.

The problem with the C&V area extends also to the I&C area. There have been cutbacks in the inspector force which have greatly impaired the ability of the Customs Service to perform the inspection function. The Government bears one expense in the sense that merchandise subject to inspection is now by-passed in favor of intense scrutiny of pet projects which have been singled out for enforcement without adequate basis to support the need. In addition, Customs is attempting to compensate for manpower cuts by imposing huge costs and delays on the importing public. For instance, at the port of Seattle, Customs is now proposing to centralize two inspection points for Seattle and one for Tacoma. The costs associated with the centralized inspection function will be borne completely by the importer, and it is anticipated that the centralized inspection function will result in delays of at least three to four days over and above the current delays which are already becoming significant.

Many of our clients have reported that as a result of cutbacks beginning in this decade they generally experience delays of from one to two days at all major ports in the United States. They further report that these delays are steadily growing. If the types of inspection programs now contemplated at Seattle and other ports calling for centralized inspection are implemented, it is almost a certainty that delays in the Customs clearance of textile and apparel products will go well beyond the one week period. It is also expected that the delays will be even greater in peak shipping seasons such as those approaching in June and July. In a sense, the jury is not yet in with respect to the further delays which are likely to occur in the coming months. It is totally unjust for an importer to bear the expense of air freighting goods to the United States in order to avoid the cancellation of his orders only to have his goods sit in Customs for over a week waiting for someone to inspect and clear the merchandise.

Furthermore, textile and apparel shipments are being subjected to 100% inspection of all shipments. Many of the importers in NATA have a long-term excellent record with U. S. Customs and in many cases have never had a single

seizure of imported merchandise. Why such importers with unblemished records should be required to have 100% of their shipments inspected, defies rational analysis and certainly is devoid of any cost effectiveness. In any event, 100% inspection programs should not be implemented when there is a lack of manpower to support implementation. The delays that are likely to be encountered are unconscionable and inexcusable. It represents a totally callous disregard of the importing public and the commercial needs of a fast-pace business to impose such requirements without any concern as to the consequences. Either substantial additional funding should be given to this program or it should be scrapped immediately.

2. Increased workload without public comment, adequate consideration of manpower, funding or cost effectiveness.

Greatly compounding the problems inherent with the personnel cutbacks relating to the C&V and I&C functions of Customs is the fact that Customs has simultaneously embarked on a stepped up enforcement program with respect to textiles and apparel. This enforcement program has overwhelmingly increased the workload of the I&C and C&V functions without any commensurate increase in manpower or funding to enable inspectors and Import Specialists to continue to perform their primary duties. Most importantly, many of the directives and regulations implementing this enforcement program have been contrary to law in that they have been implemented without adequate, or in many cases without any, notice or opportunity for the public to comment. As a classic illustration of this, we call the attention of the Subcommittee to Customs Directive 3500-6 of January 9, 1986, and a superseding directive relating thereto, Directive No. 3500-07 dated February 28, 1986. Both of these directives resulted in some of the most far-reaching changes in the requirements for the clearance of textiles and apparel since the initiation of the quota system in the early 1960's. Neither directive was ever published in the Federal Register nor generally disseminated to the public for comment. Rather, the directives were internal Customs instructions, the initial

one in telex form, which reached the public only indirectly. Despite their far-reaching changes affecting billions of dollars worth of textiles and apparel imported into the United States annually, the changes were implemented within 60 days of the issuance of the original directive. The final directive indicates that its purpose was "to establish revised entry procedures for commercial shipments of textiles and textile products" and was purportedly issued to cover alleged "abuses and circumventions of visa requirements by improper use of 'exempt certifications' for textile shipments valued under $250. . . ." As a result of the directive's attempt to correct a perceived abuse on a relatively minor portion of the value and volume of shipments into the United States, those under $250 in value, the entire entry system for all textile and apparel shipments was turned upside down. Had the original directive been promulgated as proposed, it is generally acknowledged that there would have been a total breakdown in the clearance of textile and apparel and indeed all merchandise imported into the United States.

We believe that the issuance of the directive and its widespread applicability was a gross case of overkill on the part of the Customs Service to correct a problem that, if it truly existed on a widespread basis, could have been cured in a far less draconian fashion. Most importantly, the issuance of the directive without notice and opportunity for public comment was completely contrary to the dictates of Executive Order 12291 and its implementing legislation, the Regulatory Flexibility Act.

Executive Order 12291 of February 17, 1981, 46 F.R. 13913 [reprinted in 5 USCS 601 note], which was promulgated pursuant to the Regulatory Flexibility Act, P.L. 96-354 [5 USCS 601 et. seq.], has been blatantly ignored by the Customs Service in issuing recent directives such as 3500-6 and 3500-7 which have had enormous impact upon the importing community. The Executive Order requires an agency to conduct an analysis of any regulation or rule it proposes to issue in order to determine whether or not that action is, in fact, a "major rule" within the meaning of the Executive Order. A major rule is defined as follows:

> Any regulation that is likely to result in: (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; or (3) significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Customs Directive changing the way in which entries of textile merchandise are processed, for example, meets all of this definition's requirements as a "major rule"; nevertheless, Customs never analyzed the directive in terms of the Executive Order. Moreover, Customs has not prepared any "regulatory impact analyses" concerning its actions for transmittal to the Director of the Office of Management and Budget. Without these analyses, there has been no examination of the potential benefits to be derived from the proposed Customs actions as weighed against the potential costs and adverse effects of the actions. There also has been no examination of alternative approaches to those proposed which might achieve the same regulatory goals at a substantially lower cost.

Section 4 of the Executive Order also requires that before approving any major rule, an agency must make a determination that the regulation is clearly within the authority delegated by law and consistent with Congressional intent. It must include in the Federal Register at the time of promulgation a memorandum of law supporting that determination. These requirements have also been ignored by the Customs administrators, resulting in actions which do not take the intent of Congress into consideration, which do not provide an adequate record upon which to base the agency determinations and which do not allow for public comments on the proposed action, particularly by persons most directly affected by the Customs actions. Customs has been acting without consideration of the additional costs placed upon the importing community. Particularly, they have been acting without taking into consideration the effect of their directives upon the competitiveness of United States-based enterprises with foreign-based

enterprises. Most importantly, Customs has been acting with absolutely no analysis of alternative methods of achieving the common goal of proper enforcement of the Customs laws which would be more effective and more efficient than those it has proposed.

The fact of the matter is that this directive cost importers of textile and apparel hundreds of millions of dollars in attempting, on short notice, to comply with its radical changes as to the types of shipments which would now require formal, rather than informal entry. In addition, the increased workload for Import Specialists is staggering. Once again, Import Specialists in private will acknowledge that the increased workload caused by the need to fully examine relatively unimportant sample shipments has greatly impeded their ability to examine important major shipments where hundreds of thousands of dollars in value may be involved. The same amount of time is necessary to examine a shipment of five samples, now imported on a formal entry and worth perhaps $50, that is required to examine a shipment of five styles of the actual production of those samples which might well be valued at $200,000.

Likewise, the I&C function is now bogged down in intensive examination of minor shipments valued at less than even $50 in order to ensure compliance with the new directive. In one truly absurd situation that was called to our attention, a $5 sample was pulled by a Customs inspector and washed to see if the indelible marking required by the new directive washed out. This is a bizarre waste of manpower and Customs resources and, unfortunately, it is all too indicative of current practices required by this directive.

Most importantly, these assaults on the importing community are not likely to lead to the real implementation of valid policy objectives in legitimate enforcement areas. Rather, these requirements detract from those efforts and only add to the cost and delay of shipments by legitimate importers.

In summary of this point, any authorization for the United States Customs Service should require the agency to take those steps, detailed in Executive Order 12291, in order to assure that changes in Customs procedure which directly affect the importing community will be done in the most effective and efficient method possible.

3. **Need for effective and meaningful allocation of limited Customs resources.**

The current emphasis on intense enforcement without adequate funding has created one of the most difficult and hostile environments in memory for importers of textiles and apparel. It is not our purpose to minimize the need for legitimate enforcement efforts by Customs. Rather, we question both the method in which the current enforcement program in the area of textiles and apparel is being administered and its effectiveness. To be sure, every effort has been made to seek headlines and dramatize sensational cases of so-called "textile fraud." However, any program primarily devoted and funded to overload the enforcement aspects of quantitative or duty restrictions is ultimately doomed to failure. The history of this country with respect to revenue and duty collection has always relied most heavily on voluntary compliance and cooperation. By creating the hostile environment in which importers must now operate, Customs is turning the system into one of confrontation rather than one of cooperation and compliance.

The members of NATA and the vast majority of all importers are run by honest and decent businessmen and women anxious to fully fulfill their obligations and responsibilities to Customs and the Government. They ask, however, that there be recognition of the fact that it is businesses that they are trying to run in an orderly and organized fashion. The cutbacks and types of programs being implemented by Customs most recently are, unfortunately, disruptive and undertaken without consideration of the legitimate needs of the importing public or Customs' own manpower limitations. In the long run, adequate funding and management of

RODE & QUALEY

the I&C and C&V functions of Customs are far more likely to lead to the realization of stated Customs objectives and at the same time ensure the orderly and efficient entry and clearance of merchandise into the United States.

We hope that this Committee will consider most carefully the issues which we have raised herein and tie any Customs authorizations to implementation of programs that will guarantee that sufficient resources are allocated to I&C and C&V functions which are of paramount importance to the efficient operation of the Customs Service. On behalf of NATA, we express our appreciation to the Subcommittee for the opportunity to appear at these hearings.

NORTHWEST APPAREL AND
TEXTILE ASSOCIATION

Rode & Qualey

By: _____
Patrick D. Gill

STATEMENT OF ROBERT M. TOBIAS, NATIONAL PRESIDENT, THE NATIONAL TREASURY EMPLOYEES UNION, WASHINGTON, DC

Senator DANFORTH. Mr. Tobias.

Mr. TOBIAS. Thank you very much, Mr. Chairman. I am very pleased to appear today to discuss the U.S. Customs Service authorization for fiscal year 1987.

The over-extended condition of the Customs Service has now reached a critical stage. We have appeared before this subcommittee for the past 6 years and described a worsening situation. The subcommittee has responded. Last year, it authorized 800 additional positions for Customs and 623 positions were appropriated in the continuing resolution. Unfortunately, these positions were wiped out by a Gramm-Rudman cut of $31 million. Recently, in the debate on the fiscal year 1987 budget resolution, the Senate approved an additional $150 million for Customs to restore 1,547 positions lost through Gramm-Rudman and other cuts proposed by the administration, plus an additional 850 positions to strengthen enforcement.

We wish to express our appreciation very much so to the members of this subcommittee and to the Senate for your consistent support of an effective Customs Service.

Let me summarize for you the dimensions of the enforcement crisis facing the U.S. Customs Service. Nearly $40 billion annually in illegal imports are now entering the country, and it is growing.

Second, foreign exporters and domestic importers are virtually on an honor system. Seventy percent of entry documents filed with Customs are being accepted as filed, no questions asked. Ninety-eight percent of 4 million containerized shipments annually enter the country without inspection.

Third, illegal imports are costing the Nation an estimated half million jobs and $8 to $12 billion in lost GNP each year. Of the jobs lost, 144,000 are in textiles and apparel, 51,000 are in leather goods, 76,000 in electronics, and 42,000 are in motor vehicles and auto parts.

Fourth, Customs would be collecting billions more in revenue if import specialists and inspectors were able to verify the accuracy of more entries.

Fifth, from Miami in the East to San Ysidro in the West, our country has lost control of its borders to drug traffickers. Today, Mexico has emerged along side Florida and the gulf coast as a major corridor of entry and our Southwest is awash in drugs. About 2,500 flights a year are being made to transport dangerous drugs into the country. Only 2 percent are being intercepted. Interdiction is the job of the Customs Service and the Coast Guard with support from some Defense Department assets. But the paltry resources made available are not commensurate with the threat.

In fiscal year 1987 budget an increase of only $34 million for interdiction is provided for the Coast Guard. And this amount is exactly offset by reductions in the proposal for the U.S. Customs Service.

The Customs workload has increased dramatically in recent years. Between 1980 and 1985, imports increased 44 percent and

dutiable entries more than doubled. However, resources have remained static.

NTEU strongly supports automation and modernization of the Customs Service. We believe the computer can be used as a tool to enable the inspector import specialist team, the backbone of the enforcement, to apply it skills effectively. The essence of trade law enforcement is verification of data contained in entries. Verification requires fiscal inspection and review of backup documents to determine classification, value and admissibility. The new systems Customs is introducing do not provide for verification. They undermine the inspector import specialist team, and they amount to a policy of nonenforcement.

We strongly renew our call for a thorough congressional investigation of Customs commercial enforcement systems with a view to ensuring that the trade laws of our country are properly enforced.

In conclusion, Mr. Chairman, I would like to note that this year Congress will conduct a major review of the Nation's trade laws. We hope enforcement will be an important part of this review. Our trade laws are not self-enforcing. They have to be policed in order to be effective. The crisis in Customs enforcement is costing the Nation dearly.

We stand ready to work with this subcommittee to find urgently needed solutions.

Thank you very much, Mr. Chairman.

Senator DANFORTH. Thank you all.

[The prepared written statement of Mr. Tobias follows:]

STATEMENT

OF

ROBERT M. TOBIAS
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION

TO THE
SUBCOMMITTEE ON INTERNATIONAL TRADE
COMMITTEE ON FINANCE
HONORABLE JOHN C. DANFORTH, CHAIRMAN

AUTHORIZATIONS FOR THE U.S. CUSTOMS SERVICE FISCAL YEAR 1987

UNITED STATES SENATE
WASHINGTON, DC

May 12, 1986

1730 K Street, N.W. • Suite 1101 • Washington, D.C. 20006 • (202) 785-4411

Mr. Chairman And Members of the Subcommittee:

I am Robert M. Tobias, National President of the National Treasury Employees Union. NTEU is the exclusive representative of over 120,000 Federal workers, including virtually all employees of the U.S. Customs Service worldwide. With me are Patrick Smith, NTEU Director of Legislation, and Paul Suplizio, Legislative Consultant.

On behalf of the thousands of dedicated men and women who enforce the trade laws of our country and collect essential revenue for the Federal government, I am pleased to appear before you to testify on the FY 1987 appropriation for the U.S. Customs Service.

Customs Funding Should Be Increased

In the FY 1986 Continuing Resolution, Congress approved 623 new positions for Customs and directed that staffing be maintained at the 14,041 level. The 623 positions were wiped out by Gramm-Rudman cuts of $31 million and 777 positions for salaries and expenses, and $4 million for the narcotics air interdiction program. NTEU supports the FY 1986 Urgent Supplemental Appropriation as approved by the House Appropriations Committee, which restores the Gramm-Rudman cut of $35 million. This will result in additional budget receipts from improved compliance with the Customs laws of $1.3 billion during FY 1986-1990, according to CBO data presented to the Budget Committee last year.

The President's budget request would result in a reduction in force (RIF) of 770 Customs officers in FY 1987, including 400 Inspectors and Import Specialists, despite the fact that commercial fraud and narcotics traffic are at all-time high levels, and that Customs is a revenue-producing agency which returns $20 for every dollar appropriated. Counting the Gramm-Rudman cut, the Administration's request is $56 million and 1,547 positions below the level that Congress deemed essential in the FY 1986 Continuing Resolution.

For FY 1987, NTEU recommends that $56 million and 1,547 positions be added to the Administration's request to maintain the level of the FY 1986 Continuing Resolution, and that an additional $21 million and 600 positions be provided to adequately enforce the

nation's drug and trade laws. Of the 600 new positions, 134 are required to collect billions of dollars in new export and import fees earmarked for the harbor maintenance trust fund established by the Port And Waterways bills (H.R.6 and S.1567) that have passed both bodies. The remaining positions would be applied to commercial cargo enforcement, where Customs is woefully understaffed, and would yield additional revenue of $735 million during FY 1987-1989. NTEU's budget recommendations are summarized in Table 1.

Gramm-Rudman entails Large Costs

The adverse impact of across-the-board budget cuts on revenue-producing agencies such as Customs is illustrated by the Gramm-Rudman cut of $35 million imposed for FY 1986. Last year, the Congressional Budget Office estimated that 800 additional positions applied to improve compliance in entry processing, duty collection, and cargo inspection would yield additional budget receipts of $1.315 billion over three years. Since this year's Gramm-Rudman cut is approximately the same size (777 positions) as the CBO estimate, a revenue loss of $1.3 billion will be incurred in FY 1986-1988 as a direct result of this $35 million cut.

It is not anticipated that Customs would have no further requirement for these positions after FY 1988. Rather, since workload is increasing, they would undoubtedly continue to be required through 1991 and beyond. According to CBO, these 800 positions would continue to generate revenue at the rate of $615 million annually. The total revenue forgeone during the six-year time span of Gramm-Rudman, FY 1986-1991, would thus be $3 billion as a result of a single $35 million cut in FY 1986. (Table 13).

Moreover, additional costs are incurred by society from an increased volume of illegal imports when Customs staff is cut. Illegal imports result in lower output by U.S. firms and lower employment by import-competing industries. This loss of job and output translate into reduced tax receipts for the Federal government.

NTEU has made estimates, presented in Tables 2 and 3, of the output and employment losses associated with illegal imports. Based on these estimates, we have

calculated that a $35 million across-the-board cut of U.S. Customs extending over the next six years would result in --

- o Illegal imports of $6.5 billion
- o 50,000-75,000 jobs lost
- o $1.3-$2.0 billion loss in GNP
- o $237-$364 million loss in Federal tax receipts
- o Lower narcotics seizures.

This is in addition to the $3.0 billion loss in Customs collections already mentioned.

Across-the-board cuts of the U.S. Customs Service entail costs of such severity to society that they should be decisively rejected by Congress.

Customs Continues to Centralize

Customs continues to plan to consolidate ports, districts, and duty assessment locations despite repeated injunctions from Congress not to do so. Banned from taking direct action, Customs is seeking to attain centralization through attrition and selective hiring policies. By not replacing import specialists lost through attrition, hiring replacements only in certain favored ports, shifting the entry workload to those ports, and retaining a single import specialist or entry clerk at less-favored ports to placate their business communities and representatives in Congress, Customs continues to move toward centralization. By banning use of funds for any administrative expenses associated with planning or executing such activities, Congress should reaffirm its clear intention that Customs provide a full staff complement at all existing ports, including increasing staff as required to process growing workload.

Trade Policy Requires Enforcement Resources

This year, Congress will conduct a major review of the nation's trade laws. Enforcement should be an important part of this review. Our trade laws are not

self-enforcing; they must be policed in order to be effective.

As Congress considers changes in trade policy, it should ask itself the question, 'What is the ability of the Customs Service to enforce new requirements?' Congress should direct Customs to prepare enforcement impact statements, together with additional resource needs, for any major changes in trade policy.

Under the Multifiber Arrangement, Customs keeps track of over 600 different quotas on textiles and apparel from 34 different countries. Voluntary Restraint Agreements are in effect with 24 countries under the President's Steel Program. Under the Generalized System of Preferences, more than 3,000 products from 103 developing countries are eligible to enter the U.S at lower rates of duty. The Caribbean Basin Initiative authorizes duty-free treatment for a variety of products from the 21 nations and territories of that region. Anti-dumping and countervailing duty orders are on the upswing; these must be enforced by Customs. Virtually all of the statistical data on which trade policy is based is obtained by Customs.

In the past, Congress and the Executive Branch have not paid sufficient attention to enforceability as they have written trade legislation and negotiated trade agreements. For example, every one of the 55 bilateral and visa agreements under the Multi-Fiber Arrangement is different, making proper classification of imports a matter of considerable complexity. Many of our bilateral agreements contain exemptions for folklore and handicraft products that are difficult to enforce.

Section 807 imports from Carribean countries of garments manufactured from cloth prepared in the U.S. require detailed records examinations to properly determine admissibility. Due to insufficient staff, Import Specialists are not allowed to conduct these exams before admitting such products into our markets. The American Textile Manufacturers Institute has presented evidence to Customs showing that far more Section 807 imports are being returned to this country than the quantity of cloth exported would allow. Customs says that its audits are not uncovering any understatement of quantity. A few cases only have been found of Section 807 imports made from cloth of Asian origin. Obviously, once the goods enter the stream of

commerce, they commingle with other apparel and can no longer be identified.

It is Congress' duty to ensure that there are sufficent number of textile Import Specialists, armed with access to records, to make a valid admissibility determination prior to entry of merchandise. There should also be sufficient Inspectors to physically inspect an adequate number of shipments. Today, 98 percent of containerized shipments enter the country without inspection. If we are going to have an 807 program, let's provide the resources to make sure it isn't abused.

Similarly, when Congress enacted authority in the Tariff and Trade Act of 1984 to bar European Community steel pipe and tube imports until a voluntary restraint agreement was negotiated, the resources to monitor and inspect these imports should have been provided.

Trade policy requires enforcement resources. As Congress fashions new trade legislation, it should keep in mind the enforceability of its provisions. Customs should be required to provide Congress regularly with "enforcement impact statements", showing the funds and staff-years required to enforce new provisions of the trade laws.

Voluntary Compliance with Customs Laws is Low

Today, the enforcement climate in the trade community is not good. The majority of exporters, importers, and brokers are honest and reputable. Nevertheless, there seems to be an attitude on the part of many foreign exporters, and of some importers and brokers, to 'take all you can get away with.'

Deteriorating compliance has fostered growing contempt and abuse of the Customs laws. Customs bonds, posted to ensure compliance, are forfeited routinely as a cost of doing business. Some importers play a game of cat and mouse, port shopping or submitting erroneous entries on the chance they won't be caught. When discovered, the most frequent penalty they incur is detention of their shipment until the error is corrected or a correct visa or export certificate is obtained.

The economic reward for cheating is huge. The

chance of getting caught is slight. The penalties, once caught, are also slight. The idea that 'everyone's doing it' is a handy rationale. Consequently, the incentive for commercial fraud is very large.

The incentive is big enough to cause some firms and individuals to commit criminal acts and submit fraudulent documents to Customs. Names like Mitsui, Daewoo, Thyssen are among those who have been apprehended. The Dingell Committee described a meeting between Hitachi officials and an FBI undercover agent:

> "As recorded on tape, the FBI undercover agent asked senior Hitachi engineers how they planned to get past Customs what they believed to be stolen IBM component parts, which were the size of a pool table. Amidst laughter, the Hitachi officials stated that U.S. Customs is no problem".

Steel fraud is pervasive. The Chairman of the Steel Caucus, Senator John Heinz, told the Dingell Committee that there are currently 40 active cases of steel import fraud under investigation. Describing the lack of physical facilities at U.S. ports for detecting fraud, and lax enforcement resulting in only minor slaps on the wrist, Senator Heinz concluded that:

> "Investigations proceed at snail pace, fines are inconsequential, convictions rare, resources shrinking and the deterrent nill. Our government has unwittingly issued an invitation to 'fraud without fear'".

The Reagan Administration bears the entire responsibility for this sorry state of affairs. Each of its budgets in the last six years have recommended cuts in the Customs Service. The most Congress has been able to do is keep resources from falling. As a result, Customs resources have remained static during the largest growth of imports in recent history. In some ports which have experience enormous growth, such as Los Angeles, Portland, and Seattle on the West Coast, and Houston on the Gulf, resources have actually declined.

The Administration has talked enforcement but practiced facilitation. Its policy is to accept 85 to 98 percent of the shipments without inspection. It requires Import Specialists to 'bypass', i.e., not

reveiw, 70 percent of all entries. By these policies, it has dismantled the barriers that deter evasion and created the conditions for rampant commercial fraud. It has deprived American citizens of the protection of their laws.

Not until the sanctions for evading the Customs laws are greater than the incentives to cheat will commercial fraud be reduced. The odds of getting caught must be raised significantly by increasing the number of Inspectors, Import Specialists, and Special Agents. The penalties, once caught, must be more severe. Examples must be made of those who practice customs fraud. Attempts at 'avoidance', as contrasted to evasion, (for example, by wrongly classifying an item in a lower duty category), that Customs has allowed to pass as long as the error is corrected, should incur a penalty. Criminal sanctions and forfeitures of goods, rather than mere detention, should be imposed where the responsible party should have known better.

Voluntary compliance with the Customs laws is at a low level. Two years of hearings by the Dingell Committee confirm the widespread extent of commercial fraud. The Committee found billions of dollars in counterfeits that made their way past Customs into U.S. markets. It unearthed extensive abuses in bonded shipments and foreign trade zones, where lax accountability as well as virtually non-existent Customs inspection permitted goods to illegally enter U.S. commerce.

After the Mitusi case, which was only discovered through an informer, Customs was astonished at the amount of steel fraud that was occuring. A story by Steve Goldberg of Media General News Service quoted a U.S. trade official as saying that Customs could assess fines against "one Japanese trading company a week if they had resources."

Two years ago, the New York Region reported that textile fraud had reached 'epidemic proportions'. The Barnard Committee investigation last year confirmed this situation. Its report, "Federal Enforcement of Textile and Apparel Import Quotas," is a classic description of the widespread quota fraud that exists today.

Last year, Customs discovered a fraudulent

drawback scheme that allowed 506 million pounds of sugar to enter the U.S. market illegally. This single scheme involved evasion of duties estimated at $50 million.

None of this detracts from the outstanding performance of the individual men and women of the U.S. Customs Service. The Dingell and Barnard Committees, and testimony by the private sector, have commented repeatedly on the competence and dedication of these splendid men and women. As the Dingell Committee concluded, "There are just not enough of them."

Customs has pointed to increased seizures as evidence of enforcement effectiveness. But increased seizures mean better enforcement only if illegal supply is reduced by virtue of a smaller amount of illegal imports getting by Customs. The evidence developed by the Dingell and Barnard Committees is to the contrary. The affected industries have also blown the whistle on Customs, sending their own investigators to find warehouses full of counterfeit and fraudulently imported products.

Only by tightening enforcement, punishing wrongdoers, and deterring others by raising the odds of getting caught and raising the costs of evasion, can voluntary compliance be restored to a high level. Congress should see to it that Customs is given the resources it needs to do the job.

Commercial Fraud Is Widespread

Last year, in response to an inquiry by the House Ways and Means Committee, Customs provided an estimate of total commercial fraud for the period 1985-1990. At the same time, NTEU obtained a Customs staff estimate of goods imported but not reported, and undiscovered due to the low rate of inspection. This data is presented in Table 2, which shows the total commercial fraud threat for 1985-1990.

The data show that commercial fraud will rise from $36.875 billion in FY 1985 to $38.719 billion in FY 1990. We believe this to be a conservative estimate. We project no increase in the volume of unreported goods. We accept Customs estimate of $12 billion for counterfeit imports even though the International Anti-Counterfeiting Coalition estimates

$20 billion annually. Customs estimates for steel fraud (about a million tons a year out of 15.4 million imported) and textile and apparel fraud (about 300 million square yards equivalent out of 10.845 billion imported) for 1985 are surely conservative.

At the Barnard Committee hearings, then Assistant Commissioner for Commercial Operations, Donald Schaeffer, stated that a total universe of commercial fraud of about $40 billion or about 10 percent of U.S. imports seemed to be a reasonable estimate.

The Customs Quality Assurance Program is a system of measuring, by sampling, the errors in formal entries. GAO reviewed this program last year and found serious deficiencies (U.S. Customs Service: Import Specialist's Duties and Reviews of Entry Documentation, GGD 85-45, March 29, 1985). Nevertheless, program data showing low error rates on entries are sometimes used by Customs to evidence a high degree of compliance.

This approach to measuring compliance is quite wrong. As the Dingell Committee noted, the entries submitted in the Mitsui case were perfect -- and totally false. Without verifying entry data through physical inspection and sampling of shipments, foreign exporters are essentially on an honor system. The paperwork may be in order, but the shipment may not correspond to the paperwork. Only through physical inspection in conjunction with review of entry documents is it possible to have a valid compliance measurement system. Customs has thus far been unwilling to implement such a system, even though it conducts sufficient inspections to make compliance estimates feasible.

As a result of commercial fraud, it is conservatively estimated that Customs loses $3 billion annually in uncollected duties (Table 2). Based upon the large number of entries (about 70 percent) bypassing Import Specialist review, and the small number of inspections (2-15 percent of shipments), NTEU believes voluntary compliance is no better than 50 percent at the present time. Since Customs collects about $15 billion annually, each percent change in voluntary compliance is equal to $150 million. If compliance is 50 percent instead of 90 percent as Customs avers, this implies a revenue loss of $6 billion annually. NTEU believes $3-$6 billion is a realistic estimate of revenue loss from non-compliance

with Customs laws.

Commercial Fraud Costs the Nation Dearly

In a working paper prepared in January 1986, Kan Young, Ann Lawson, and Jennifer Duncan of the Office of Business Analysis, Department of Commerce, used input-output tables to estimate the total effects of trade (exports as well as imports) on an industry's employment and output. NTEU has extended their analysis to estimate the economic impact of illegal imports on jobs in the economy. Our results are summarized in Table 3. We found that 438,000 to 688,000 jobs are lost from illegal imports. Conservatively, illegal imports are costing the economy nearly a half million jobs.

Of this loss, 144,000 jobs are in the textile and apparel industry, 51,000 in the leather goods industry, 32,000 in primary iron and steel, 76,000 in electrical and electronic equipment manufacturing, and 42,000 in motor vehicles and equipment.

It is estimated that the output loss equivalent to this job loss is $8-$12 billion in GNP. Between FY 1985 and FY 1987, the Budget of the U.S. Government projects GNP to increase from $3,992 to $4,629 billion, and Federal budget receipts to increase from $734 to $850 billion. Thus, each billion dollars change in GNP changes Federal receipts $.182 billion. The total loss of Federal revenue for an $8-$12 billion loss of GNP would be $1.46 to $2.18 billion annually for as long as illegal imports continue at current levels.

To summarize, we estimate that commercial fraud is costing the nation each year:

- $3 billion in lost Customs revenues
- $19 billion in lost sales
- $8-$12 billion in lost GNP
- 500,000 lost jobs
- $1.5-$2.2 billion in lost Federal taxes

Only a Small Part of Commercial Fraud is Caught

The recent Economic Policy Council Report (Baker Report) to the President on textile imports permits an estimate to be made of how much commercial fraud is being caught by Customs. The report states that Customs seized $31 million in illegal textile imports in FY 1984 and the same amount in FY 1985. The FY 1984 figure was a 300 percent increase over FY 1983.

There were 389 seizures in FY 1985, and the report estimates that detentions (not releasing a shipment until a correct visa is obtained) and redeliveries (returning a shipment to Customs control due to a violation discovered after release) were at least 30 times the number of seizures.

The report states that Customs currently has under investigation $242 million in textile trade for quota fraud. Some of these cases involve entries going back to 1981. However, we can assume most of the cases were opened after Operation Tripwire was established in FY 1984.

Thus, in the two years since Customs intensified its textile fraud efforts, it successfully removed $62 million in illegal textile and apparel imports from the market. An unknown amount was also removed through redeliveries, but according to the report, "these actions are not included in enforcement statistics." We believe this is the case because redelivery is a largely ineffective method of enforcement. Once goods have entered the stream of commerce, they are virtually impossible to retrieve.

According to Customs data in Table 2, the amount of textile fraud was estimated at $450 million in FY 1985, or $900 million over FY 1984-1985. Total seizures of $62 million represent 7 percent of the estimated fraud that was caught, in terms of illegal goods removed from the marketplace.

Using the $242 million in quota fraud under investigation (this figure would include the $62 million in seizures), Customs is catching 27 percent of estimated fraud in textiles and apparel.

Evasion Methods: Textiles and Apparel

By examining two trade-sensitive products, textiles and steel, a variety of schemes can be

detected by which the customs laws are fraudulently evaded. Patterns of evasion are naturally shifting in response to Customs enforcement efforts. But due to inadequate numbers of Inspectors and Import Specialists, all of these schemes are being practiced today.

In textile and apparel trade, garments are frequently misdescribed in import documents to qualify for a lower duty or a more available quota. Misdescription accounted for 60 percent of the volume of seizures for quota fraud in FY 1985. Men's garments may be described as women's or unisex when the men's category is filled, and vice-versa. All this requires is a one-word change in the invoice.

In some cases, garments are slightly modified to justify a false description. Flimsy liners are tacked into men's shorts which are then described as swimwear. Bibs are loosely stitched onto girls' jeans and described as overalls. Panels have been loosely stitched to shirts, which are then described as dresses. In these cases, a false value is sometimes declared to bring the invoice value in line with the description.

Understatement of quantities and weights accounted for 24 percent of quota fraud in 1985. This practice allows unreported goods to falsely enter the marketplace, minimizes collection of duty, and misrepresents the amount that should be charged to the quota. According to Customs, it is a common practice.

Transshipment of a product through another country that has no quota or has an available quota, after marking with false country of origin, is another common practice. Although seizures under this scheme represent only 8.8% of seizures made in 1985, Customs estimates that this is one of the most frequently used schemes in textile and apparel fraud. It is a difficult and time-consuming scheme to prove, involving investigations in several countries, some of which refuse to cooperate with Customs. Information on transshipment is often not available until after release of the goods. Congress should require, as a condition of access to our markets, that our trading partners cooperate fully and exchange information with Customs to detect violations of this sort.

Declaring false fiber content is another

fraudulent practice, accounting for 5.4 percent of textile fraud in 1985. Certain fibers, such as linen, silk, and ramie are not subject to quotas under the MFA. Laboratory analysis and extensive analysis of cost data are required to determine correct fiber content . Shipments are not detained until completion of the analysis because, according to Customs, they cannot be detained on mere suspicion. As a result, they are in distribution channels by the time a determination is made.

Prompt laboratory analysis is essential for proper classification of merchandise and enforcement of quota restraints. Yet Customs has been reducing laboratory staff and capability for a decade. In 1976, 190,000 samples were tested. By 1984, the number had fallen to 85,000 and the statistical series was terminated in the Customs budget. Without doubt, Customs laboratory capability needs expansion for effective enforcement of our trade laws. The present turnaround time of 45-90 days for sample analysis is too long to permit contemporaneous or near-contemporaneous admissibility determinations, which should be the goal.

Split shipments is another form of evading textile and apparel quota limits. Shipments valued at $250 or less and accompanied by visa exempt certificates may enter without being charged to quota. On one occasion, 40 different shipments consigned to the same importer arrived on the same day. Investigation of informal entries found widespread abuse of the exempt certification to split large commercial shipments and evade quota levels. Customs also found undervaluation and understatement of quantities on many of these entries.

Operation Split, which was conducted at six Customs International mail facilities in November, 1985 resulted in 600 detained parcels, 105 seizures, and 2 criminal cases accepted for prosecution. Stronger enforcement at mail facilities on a continuing basis is not possible due to insufficient staff. Customs examined 12.5 percent of all mail packages received in 1979. Today it examines 6.2 percent.

Customs conducted a survey of 43 ports last year to determine the extent of use of exempt certications. It found that 1,139 exempt certifications were cleared each day accounting for 2,173 dozen garments per day. This amounted to over 500,000 dozen garments entering each year with no charges being made to quota.

Customs recently promulgated a new regulation requiring all such textile and apparel shipments to be treated as formal entries. The regulation originally required "live entry" procedures to be followed, meaning that the shipment could not be released until the entry was presented to an Import Specialist for approval. Customs had to backtrack on this last requirement, however, becasue of insufficient staff.

Evasion Methods: Steel

As a result of the President's Steel Program, the European Community Steel Pipe and Tube Agreement, and voluntary restraint agreements (VRA's) concluded for specialty steels, virtually every finished or semi-finished steel product imported from another country must enter under a specific quota for that product and country. The President's Steel Program is scheduled to remain in effect until October 1, 1989.

There are four primary evasion methods in the steel trade:

(1) use of false exports cerficates or reuse of a properly issued certificate for more than one shipment (under the restraint agreements, a certificate issued by authorities in the exporting country must accompany each shipment);

(2) importing tonnage in excess of that described on export certificates and other import documents;

(3) falsely describing the product so it appears to be a product not covered by the VRA, or falls into a VRA product category that has a larger allocation than the true category;

(4) transshipping the product through a country not covered by a VRA and falsely declaring the country of origin.

Customs has responded to these schemes by developing a method of verifying export certificates, and spot-checking to determine overweight shipments. While hundreds of truckloads of steel were weighed in Operation Heavy Metal last November, only 4 seizures were made for overweight shipments. The American Iron and Steel Institute has recommended that weighing be regularly conducted at each major steel port. Customs

hs few scales at the present time.

Customs lacks the capability to deal effectively with evasion through product misdescription and transshipment. The variety and quality of steel are expanding as technology advances. There are now more than 450 different kinds of alloy steel, and none can be properly identified unless a mobile metal analyzer (MMA) is used. Three of these instruments are now based in Customs labs at Los Angeles, New Orleans, and Chicago. Houston, the largest steel port in the nation, does not have an MMA. One is required at Savannah to serve the southeast ports, and at New York to serve the northeast. A second MMA is also required on the West Coast. Congress should require Customs to purchase 4 additional MMA's (at $60,000 each) and deploy them with technicians as soon as possible.

Transshipment and false country of origin declaration is a growing problem. Many nations of the world have fully integrated steel production capacity (production of all forms of steel from semifinished blooms, billets and slabs to highly fabricated, finished products.) Almost every nation has some capability to frabricate basic products such as nails, sheet, strip, wire, rope, etc. Many of these basic products are covered by VRA's.

In 1985, of the 15.4 million tons of imported steel, 12 million tons came from countries which were covered by VRA's. The transshipment concern is with the other 3.4 million tons. Of this amount, 2 million tons comes from Canada. Other traditional suppliers (Sweden, Austria, Taiwan, Argentina, Norway, Yugoslavia) account for another 1 million tons. The final 300,000 tons includes some traditional and most of the new supplier nations.

Customs is concentrating its efforts against transshipment in two areas: Canada because of its proximity and large volume of steel trade, and Caribbean nations because of the added incentive of duty-free treatment under the Caribbean Basin Initiative. The U.S. and Canada have agreed to share information and assist each other in tracking transshippers. The problem is two-way, as some steel entering the U.S. is illegally exported to Canada in violation of that country's restraints on country of origin. U.S. and Canadian cooperation has led to several investigations underway. Some are beginning on

shipments through Caribbean countries.

Customs Resources are Insufficient for Commercial Fraud Enforcement

Voluminous testimony has been compiled by the committees of Congress, including Ways and Means, Finance, and Appropriations as to the general insufficiency of Customs resources to properly staff the ports of entry, process entries, and enforce the Customs laws. All objective observers agree on this point. The only party that seems to disagree is the Administration.

NTEU has for nearly a decade been calling attention to sharply deteriorating enforcement capability that is the consequence of fundamental imbalance between growing workload and static resources. We have pointed to the huge social costs of non-enforcement. We have stressed our belief that the proper question was not whether enforcement "costs too much", but whether the nation can afford the costs of non-enforcement.

In the analyses which have accompanied our testimony, we have demonstrated that significantly larger numbers of Inspectors, Import Specialists, Patrol Officers and other personnel are required. Of late, independent corroboration of this finding comes from other sources, such as the Port Authorities of Los Angeles, Houston, and Seattle, the Air Transport Association, the American Textile Manufacturers Institute, and the American Iron and Steel Institute.

In June and July, 1985 a task force of steel industry experts from the American Iron and Steel Institute visited the ports of Los Angeles, Houston, Hartford and Detroit to view steel operations. Their first-hand report demonstrates the insufficiency of Customs resources to administer the steel program. Excerpts from the report follow:

> "The lack of sufficient personnel in Operations in Los Angeles has resulted in a substantial backlog in processing and forwardng to the Census Bureau data for inclusion in Census' monthly import statistics. This backlog, in turn, has resulted in confusion over the accuracy of the Census import statistics and has engendered unnecessary

friction with the Administration on the efficacy of the President's steel program."

"The Task Force also observed in Los Angeles and Houston tht the Operations Departments did not have sufficient personnel to deposit duty checks the same day as they were received. It is estimated that delays in depositing checks at these two ports resulted in lost revenue to the US. Treasury of more than $7 1/2 million per year. Thus, the hiring of more personnel would immediately pay for itself many times over."

"Staffing of import specialist teams is at a critically low level at all of the ports the Task Force visited. The IS's were so overburdened as to be substantially less effective than their capabilities should permit."

"Of the four ports the Task Force visited, the Houston, Detroit, and Los Angeles steel IS teams did not have clerical support staff. As a result, IS's in these ports spend a considerable amount of time typing memo's, xeroxing, delivering and picking up documents, etc."

"A major shortcoming of all of the import specialist operations which we observed is the lack of time spent on the docks by the IS's. The principal reason why the IS's do not go to the docks more than once a quarter in Hartford, for example, or almost not at all in other ports is due to the shortage of IS's and clerical help noted above. We believe that increasing the IS staff and adding clerical help at major ports would free the IS's to assist the inspectors on difficult-to-classify or questionable importations."

"Further evidence of the value of having experts in steel identification on the docks with the inspectors comes from the Task Force's tours of dock operations. In each port we visited we randomly "inspected" imported steel shipments -- without looking at confidential documents -- and in each port of entry we found at least one shipment which was close enough to classification break points to justify sampling."

"The most important recommendation which the task

force makes regarding enforcement is that IS's work on the docks and assist the inspectors more frequently. IS's have extensive training on product identification -- some of which has been provided by the AISI -- and a closer working relationship between IS's and inspectors which would develop from such a system should improve enforcement of the President's Program immeasurably."

"Two of the four ports visited were in obvious need of more inspectors. In one port -- L.A. -- virtually no steel is inspected on a routine basis due to the shortage of personnel."

"The Task Force recommends that the C.S. hire additional inspectors for the ports of Los Angeles and Houston. An important additional recommendation is for the C.S. to ensure that there is sufficient clerical help at the inspectors' offices to free inspectors for their critical dock work. And it is especially important for there to be sufficient clerical help at ports where the ACCEPT System has been automated."

More Inspectors are Needed to Deal With Commercial Fraud

Since the insufficiency of Customs resources is generally recognized, the only question is the required level of resources for the immediate future and for the long term. To this end, NTEU has projected Inspector requirements for cargo processing to 1990 by using Customs historical data, projected entry workload, and 3 percent annual productivity growth. Since 1983 was a year of above-average productivity growth, measuring productivity from that base will yield a conservative estimate of the cargo processing staff in future years.

The analysis is presented in Table 8. It shows that a minimum of 600 more Inspectors are required for cargo processing in FY 1987 than in FY 1986, and 1100 more in FY 1990 than in FY 1986. It should be noted that these numbers are the minimum required to maintain the current rate of inspection, with a 3 percent improvement, due to the growing workload.

NTEU's recommendation of 400 additional Inspectors for FY 1987 should be considered as the first

installment of a long-range plan to raise the number of Inspectors by 2,000 by 1990. The remaining 900 Inspectors are required for passenger processing, narcotics interdiction, and to significantly increase the current cargo inspection rate.

A significant number of additional Inspectors should be used to double the containerized shipment inspection rate (shown in Table 9) from 2 % to 4%. It is important that this rate be raised to a minimum of 10 percent as soon as possible.

Merchandise inspections generally should also be increased. The total number of merchandise inspections stood at 11.3 million in FY 1979 compared to 10.9 million in the current fiscal year. But the number of entries has increased 61 percent, and inspections per entry have fallen nearly the same amount.

ACCEPT

ACCEPT stands for Automated Cargo Clearance and Enforcement Processing Technique. It is a computerized system tht is supposed to employ national and local criteria provided by Import Specialists and other sources to identify high-risk shipments for inspection, while low-risk shipments are released without inspection. ACCEPT is now in the process of being integrated into the Automated Commercial System which will track and control all Customs commercial operations.

NTEU continues to have serious reservations about ACCEPT. Our reservations are as follows:

1. ACCEPT's plain objective has been to reduce the number of shipments to be inspected to the capability of the available manpower. It has never determined more "high risk" shipments than the manpower available to perform inspections would permit. It has never identified, or verified, the true number of "high risk" shipments and used this figure to compute the number of Inspectors required. ACCEPT starts from the premise that 20 percent of shipments will be screened for possible inspection; the remaining 80 percent will be released without inspection. Of the 20 percent, many are designated for "general exam" because of shortage of available manpower. In practice, general exam means release without

inspection. The number of shipments designated for "intensive exams" is frequently less than 10 percent. For cargo containers, the figure is 2 percent. Under ACCEPT, shipments not designated for intensive exam are not "high risk" by definition. Many shipments that should have been inspected were released without inspection, because ACCEPT was a hastily improvised means of reducing workload at a time (1983-1985) when imports were rising sharply. As a result of this system of controlling inspections, commercial fraud grew rapidly. ACCEPT is a rationalization for non-enforcement, while commercial fraud mounts.

2. ACCEPT does not permit full exercise of the Inspectors's professional judgement. Someone else reviews the entry documents and determines what shipments to inspect. The shipments designated for inspection are indicated to the inspector on a computer terminal. Because he lacks the entry documents, cargo mainfests, waybills and other sources that formerly he would have available to judge if everything was in order about the shipment, he is limited in his ability to override the computer and in his ability to perform an adequate inspection. Since the documents are in someone else's possession, he must often make the inspection without the paperwork that might have indicated what to look for. Many products are produced in one country, sold by an exporter in another country, and can be loaded in a third country. Correlating information from the shipping documents can help the Inspector make an effective inspection. That is not possible under ACCEPT, because the computer is not used as a tool to assist the Inspector, but as a means of allocating workload. Bear in mind that 80 percent of shipments have already been cleared for no inspection. In principle, the Inspector can override the computer's decision and upgrade a general exam to intensive. In practice, the override is more frequently from intensive to general due to insufficient Inspectors. Customs is either unwilling or unable to provide data on the number of inspections, or on the number of overrides, despite NTEU's request.

3. The criteria to be input to the computer are not sufficiently developed or refined to

accurately identify "high risk" shipments. In our opinion, adequate criteria will not be available for another 5 years, if at all. It is not possible to set up a computerized system for fingering shipments to be checked without a great deal of data collection and construction of profiles of "high risk" shipments and "high risk" importers. Customs is far behind in collecting the data and constructing the profiles, let alone testing them. Customs is also finding that, frequently, suitable criteria are specific to the individual shipment. A soundly conceived system would allow full scope for Inspector's and Import Specialist's judgment, and this is especially important in view of the primitive character of existing criteria. Criteria are the heart of the system. If they aren't adequate, the result will be "garbage in, garbage out".

4. ACCEPT disrupts the Inspector/Import Specialist team, which is the backbone of Customs enforcement. The professional knowledge and judgment of its Inspectors and Import Specialists is the most valuable resource the Customs Service has. In the past, Import Specialists and Inspectors would communicate freely. Inspectors would give Import Specialists valuable information to assist in classifying and appraising the entry. Import Specialists would advise Inspectors what to look for in an inspection, or would join in the inspection. ACCEPT is breaking down this teamwork by reducing communication from Import Specialist to Inspector to stereotyped instructions concerning inspections. Communication from Inspector to Import Specialist consists of stereotyped feedback on inspection results.

5. ACCEPT is not designed as an interactive system that permits Inspectors and Import Specialists to use the computer as a tool to share information and make joint decisions. It is a command system that directs Inspectors to release 80 percent of shipments without inspections and gives them little say in which of the remaining 20 percent should be intensively inspected. If the computer were used as a tool, enabling Inspectors and Import Specialists to share the same data base, see the same documents, and interact in making the decision to inspect or release, enforcement would be more effective. ACCEPT is

not designed this way.

6. ACCEPT cannot correlate intelligence and detect discrepancies in shipping documents to identify new patterns of custom law evasion. Only experienced Inspectors and Import Specialists can do so. The designers of ACCEPT have not addressed this problem.

We submit that ACCEPT should be redesigned from the ground up, with major input from Customs employees. Pending this, Congress should conduct a full investigation of the implementation of ACCEPT and its effectiveness in enforcing the customs laws. Congress should direct Customs to ensure that the Inspector/Import Specialist team is strengthened and not undermined by the introduction of computers.

Customs Inspectors are not opposed to automation. They want the ability to use the computer as a tool to do a better job.

More Import Specialists Are Needed To Deal With Commercial Fraud

With merchandise entries soaring as the nation recorded the largest trade deficit in its history, Customs elected to by-pass 70 percent of the entries, meaning entry documents were not subject to Import Specialist review to ensure proper tariff classification, valuation, and compliance with trade law requirements. In conjunction with minimal inspection, this sharply reduced enforcement placed importers on a virtual honor system and is one of the principal causes of the trade compliance gap.

Customs management has made entry bypass, together with post-audit review of entry documents (meaning audit of a sample of entries months or even years after the goods have entered the marketplace) the basic principle of its commercial operations. Instead of requesting a sufficient number of Import Specialists to properly process the entry workload, Customs has artificially reduced the workload and sought to reduce the corps of Import Specialists. Management has even assigned Import Specialists to a variety of other duties inconsistent with their maintenance of commodity expertise, without which Customs would not be on a par with brokers and others in the trade.

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It is safe to say that Customs lacks a clear concept for use of Import Specialists today. As a result, the corps of Import Specialists is demoralized. Our view is that, while a certain number of entries may be bypassed, this applies to no more than 20 percent of entries at the present time (Table 11). Import Specialists are needed to properly review the bulk of the entries, thereby deterring commercial fraud and protecting the revenue.

Import Specialists are technical and commodity experts who are the backbone of Customs' trade operations. Import Specialists review entry summaries, ensure proper classification of merchandise in accordance with the Tariff Schedules, ensure that shipments are valued properly, scrutinize importations of sensitive commodities to enforce applicable quota or anti-dumping and countervailing duty requirements, make determinations that products are admissible under U.S. law, and enforce the requirements of many other agencies, such as the Agriculture Department and Food and Drug Administration, to ensure that imports are safe for consumption.

Import Specialists ensure that duties are correctly calculated and timely deposited with the Treasury. They are responsible for collecting over $15 billion in annual revenue. It is well recognized by Customs that the more Import Specialists there are assigned, the greater the revenue collection will be.

Import Specialists are in daily contact with the business communities they serve. They hold office conferences with manufacturers and importers to explain U.S. trade laws and apply their intimate knowledge of legal precedents and ruling to complicated questions relating to proposed importations. They make over 8,000 visits a year to the premises of importers to view product samples, verify invoices, inspect product markings, and explain Customs requirements. These contacts with the business community are an invaluable contribution to the economic health of the region they serve. Moreover, they benefit Customs by assuring fewer errors in entry documents and serving as a deterrent to commercial fraud. Import Specialists are the largest single source of commercial fraud referrals.

NTEU has studied the adequacy of the number of Import Specialists to process the growing entry

workload and deter commercial fraud. Our results are presented in Table 10. It shows that while the number of entries will more than double from three million to seven million between 1975 and 1986, the number of Import Specialists is projected to decrease from 1,262 to 966. Assuming an annual average rate of productivity growth of 4.3 percent a year, the number of entries each Import Specialist would be capable of processing in 1986 would be 3,961 entries. Dividing this into the entry workload yields 1,787 Import Specialists as the minimum adequate staff this year. A minimum of 1,836 Import Specialists will be required by 1990.

NTEU recommends that the number of Import Specialists be increased by 300 positions immediately -- 100 additional in FY 1986 by restoring the Gramm-Rudman cut, and 200 additional in FY 1987. Further, Import Specialists should be increased by another 600 positions or 200 a year, over the period FY 1988-90. Only by rebuilding the corps of Import Specialists to a proper level will Customs ever be able to control commercial fraud and properly enforce the nation's trade laws.

In commenting on steel fraud, Senator Heinz has stated:

> "Customs has compounded the problem by proposing a program to drastically reduce the manpower levels of Import Specialists at the same time it has proclaimed import fraud as an area of renewed emphasis. Import Specialists are essential to fraud detection and they need additional support, not lip service. And they certainly do not need cutbacks."

Current Bypass Rates are Highly Excessive

Last year, Customs admitted to bypassing 60 percent of all entries, even though 70 percent of entries were dutiable and a great deal of revenue was undoubtedly overlooked. This year, Customs is attempting to bypass 70% of all entries, even though the number of dutiable entries has risen to 98 percent of entries. (The apparent increase in the number of dutiable entries results from the definition of formal entry being changed in 1985 from a valuation of $250 or more to a valuation of $1,000 or more. Apparently,

there were also more small importers who imported dutiable merchandise.)

The present bypass rate is excessive relative to the number of dutiable entries. Customs is failing in its duty to protect the revenue.

Customs says that Import Specialists are required to review all trade program entries, thereby enforcing trade law requirements. NTEU has examined Customs statistics on the number of trade programs in FY 1983 and FY 1985, and has projected the number of such entries for FY 1986. Our results are shown in Table 11.

In addition to trade program entries, Table 11 shows the number of "other agency" entries in which Customs enforces requirements on behalf of the Department of Agriculture, Energy, and Interior; Environmental Protection Agency; Food and Drug Administration; and 35 other agencies. These entries invariably require permits, licenses, and certificates which must be reviewed to verify authenticity. They also are important to the national health and safety. For example, botulism contaminated foodstuffs and unsafe medicines have been kept out of our markets through Customs enforcing FDA requirements. Without doubt, these entry documents must be reviewed by an Import Specialist.

Together, trade program and "other agency" entries will comprise 61 percent of all entries this year. This means that Customs cannot safely afford to bypass more than 39 percent of entries. Yet it is bypassing 70 percent today. This policy has gravely compromised Customs enforcement and torn down the barriers to commercial fraud.

This view was echoed by the Dingell Committee which said:

> "When faced with the problem of unfair trade practices which result in a substantial loss of revenue to the government, the agency has apparently chosen to reduce entry document scrutiny rather than increase personnel.....Part of this system is the 'bypass' program, under which the entry documents are not reviewed at all. There is great pressure on district directors to increase the number of entries on 'bypass'.

'Bypass' guidelines are built into the performance evaluation requirements for Import Specialists in some ports. Even where they are not, the 'bypass' goals often exceed 70 percent of all entries of non-restricted merchandise. To me, this would apear to be a license to steal."

By its excessive bypass rate, Customs has in effect placed many importers on the honor system. Seventy percent of entries are being accepted as submitted by brokers, with audits used later to verify compliance.

We believe this is giving away the store. Customs has documented a long history of significant broker errors: undervaluations and misclassifications that reduce duty and circumvent quota restrictions. This is not surprising because importers, by tradition and instinct, wish to keep duties as low as possible and there has long been a game of cat and mouse between Customs and brokers. With over 10,000 tariff code classifications, and the possibility of classifying a product in more than one way, the opportunity for self-serving judgements -- unrestrained by any Customs review except post-audit -- would not adequately protect the revenue. Moreover, many tariff classifications can only be properly determined by laboratory analysis, and this cannot be accomplished with integrity after a shipment has entered the stream of commerce.

If a shipment is classified to get around a quota, the damage to the domestic market will have occurred by the time an after-the-fact audit takes place. Import Specialists need to make admissibility determinations and sample the shipment before goods enter the stream of commerce. They can detect quota errors and keep out harmful products. The idea of allowing the importer to be the judge of admissibility is an abdication of responsibility by Customs.

It should be clear from the experience with bypass to date that an honor system won't work. Since bypass was instituted in FY 1983 the country has been deluged with unreported goods and counterfeits. The signal that something was wrong came from the affected industry, which had to hire its own investigators to convince Customs that it was losing business and jobs. A post-audit system can't undo the damage from allowing illegal goods to enter the marketplace.

Centralizing Appraisement Locations Would be Injurious to Trade

It goes without saying that the presence of one or more Import Specialists at a port of entry is of inestimable value to the business community, serves as a stimulus to foreign trade, and may even cause importers, brokers, distributors and warehouses to locate in the vicinity. The closure of Import Specialist offices would constitute a visible downgrading of the stature of the community as a port of entry, and raise justifiable fear of the loss of business to other regions.

We believe that loss of service to the business community is the paramount reason why the Subcommittee should reject Customs' plan to close down full-service entry processing offices at many locations. Customs has not taken adequately into consideration the effect upon the economic health of these communities, nor has it provided the economic impact statement required by executive order.

There are several other cogent reasons why centralization of entry processing is a bad idea. We would like to briefly touch on the most important of these.

First, Import Specialists' physical presence at ports is essential to ensuring that correct data is submitted on entries. One of the most important services of the Import Specialist is pre-acceptance review of entry documents. During these reviews, numerous errors are corrected that increase the number of "no change" liquidations and result in the collection of $53 million a year in added revenue -- more than the cost of the entire Import Specialist work force.

A Customs survey of rejected entries conducted in May 1980 found that 16 percent of all entries reviewed by Import Specialists were rejected due to errors. Classification and valuation errors are the most numerous, and 549 entries of quota merchandise were erroneously presented as not subject to quota. In commenting on this last finding, the director of Customs' Office of Trade Operations stated:

> "The unlawful entry of 549 shipments of quota merchandise would have had catastrophic

repercussions."

Second, one of the most important functions of Import Specialists is to make on-the-spot determinations of admissibility. Under normal procedures, most imported goods can be released upon inspection by a Customs Inspector. However, there is a wide range of products for which immediate delivery cannot be allowed because of possible danger to the public health and safety, or economic loss, if the goods enter the stream of commerce. Such goods are quota-class merchandise, manufactures that might infringe on U.S. patents or copyrights, medicines and chemicals that require proper marking, foodstuffs that require Agriculture or FDA certifications to protect consumers, importations that might be in violation of endangered species laws, products that require a license from a U.S. government agency, and shipments that require a country-of-origin determination before entry can be permitted. The presence of Import Specialists at the port, where they can physically inspect shipments and take samples for laboratory testing if required, is essential for proper admissibility determinations. This function cannot be delegated to Inspectors because technical knowledge of commodities, and of applicable Customs rulings and legal precedents, is required.

Third, Import Specialists' personal knowledge of the importer and broker community, together with their ability to verify invoices by visiting premises to inspect purchase orders, vouchers, and records of payment, are important for the detection of commercial fraud and effective enforcement of our trade laws. If Import Specialists are moved hundreds of miles away from the importing community at a port, trade law enforcement is bound to suffer and instances of undetected commercial fraud will multiply.

Fourth, relocation of Import Specialists would break up the Import Specialist-Inspector team that is vital to the smooth operation of our ports of entry. The range of commodities that an Inspector must examine is too great to permit him the expertise needed for a proper inspection and determination of admissibility. Consequently, the Inspector depends upon the Import Specialist to provide him with expert information, and the Import Specialist may often join in the inspection. Such teamwork is the bedrock of the entire system. By

removing the Import Specialist from close contact with Inspectors, there is a greater likelihood of a shipment being released before its admissibility is determined. Import Specialists can best perform their duties on the line -- close to the trade community and the Inspectors -- and not at some location far removed from the ports of entry.

Fifth, Customs experimented with a similar system of centralized entry processing several years ago. Under this system, Import Specialists at different ports were assigned commodities for which they would have responsibility for classification and appraisement. Merchandise imported at one port might have its entry processed at another port. This experiment proved a complete failure. Not only did it take longer to process the entry, but it became virtually impossible to contact the Import Specialist who was actually responsible for reviewing it.

We believe Customs is now heading in the direction of repeating this unfortunate failure. Under its Automated Commercial System (ACS) it plans to allow entries at one port for shipments arriving at a different port.

Customs asserts that its plan will achieve budgetary savings through reduced overhead, and facilitate automation by permitting larger numbers of entries to be processed at one central location. But automation will be of little benefit to Customs if the entry is not correct. It is the presence of Import Specialists in the trade community that permits a relatively high percentage of correct entries. Moreover, Customs has failed to adequately consider the substantial economic impact on the communities that would lose Import Specialists, and the impact on industry of a reduced capability to detect commercial fraud.

We therefore call upon the Subcommittee to insist that Customs cease at once all current and planned relocations of Import Specialists, to lift the hiring freeze on Import Specialists in districts where such a freeze exists, and to promptly fill vacant Import Specialist positions at ports where such positons are authorized. In its bill, the Subcommittee should direct Customs not to implement any plan for the centralization of entry processing locations.

Automated Broker Interface

The automated broker interface (ABI), when fully implemented, will allow Customs house brokers, representing importers, to electronically transmit data to Customs. The system is being tested now in Los Angeles and Houston. Customs anticipates that, as more brokers automate, more entry data can be transmitted directly from brokers' computers to the Customs computer.

Concerning ABI, this year's Customs budget states (p.22):

> "Since current procedures require extensive back-up documentation for each entry in order to determine proper classification, the elimination of this requirement for all but the entries selected for intensive review will reduce the amount of paperwork both for Customs and importers and speed up processing."

This statement makes crystal clear that Customs intends to move to a post-audit system for all but trade program entries. Bypass will be accomplished by the computer, and Import Specialists will no longer have access to entry documents which are the very basis of enforcement.

If Customs is permitted to implement this policy, the consequences can only be continued decline in compliance, loss of Federal revenue, increasing illegal imports, and more loss of American jobs.

Import Specialists are not opposed to automation. They recognize the need for a computerized system of reviewing entries. They could assist in designing a much more effective system than Customs has produced to date.

Their reservations concerning ABI are:

(1) There is no substitute for pre-entry review to corrrect broker errors. Customs insists errors will be detected by tolerances and edits in the computer. This is misleading. The fact is that the largest errors -- incorrect tariff classification and incorrect valuation -- cannot be

detected. If a broker's clerk makes an error and invoices scissors as tools, the computer will accept the entry and the lower rate of duty. If sugar is invoiced as cookies (as it once was), the entry for cookies will be bypassed, but sugar is under quota.

(2) The importer should not be the judge of admissibility. An Import Specialist should make this determination. Under the bypass system, the importer's determination of admissibility is accepted by Customs, subject only to post-audit. Customs is abdicating one of its paramount responsibilities in foreign trade.

(3) Elimination of the requirement for documentation on entries made through ABI opens up enormous opportunities for fraud and evasion.

(4) Import Specialists should be able to use the computer as a tool to screen all entries, determine those appropriate for bypass, direct the taking of samples, and review all documents in order to verify classification and value, and determine admissibility. In this process, they should retain the authority to call for copies of invoices, purchase orders, waybills and any other documents that may shed light on the entry.

ABI is the clearest evidence to date that Customs has taken the wrong course. Congress should bar the use of appropriated funds for further implementation of ABI until it conducts a full investigation of this system and its impact upon enforcement.

Narcotics Interdiction

Illicit drug traffic, like commercial fraud, has momentous consequences for our society. The drug threat has increased dramatically. A large amount of narcotics has been successfully interdicted, but more is getting through and the supply remains plentiful (Table 4).

Last year, Customs intercepted 23 metric tons of cocaine, almost twice the amount of a year earlier. About 16 percent of cocaine supply was removed from the market. This achievement reflects great credit upon the men and women of the Customs Service, DEA, Coast

Guard, FBI, and local law enforcement agencies.

But larger seizures are also indicators of greater trafficker activity, which means that deterrence is not working. Cocaine supply doubled between 1982 and 1984, and is still increasing. Heroin supply will double this year, according to the Select Committee on Narcotics Abuse and Control. Marijuana supply, almost 90 percent of it from abroad, is the highest on record.

Availability indicators published in the Narcotics Intelligence Estimate confirm that 1984 was a bad year for Federal narcotics efforts (Table 6). Cocaine price fell and purity rose, while hospital emergencies and deaths related to cocaine were twice the number than in 1981. Heroin purity rose while street price remained the same. The number of heroin abusers increased as evidenced by hospital emergencies and deaths. However, both Colombian and Jamaican marijuana prices rose, reflecting successful Customs and Coast Guard interdiction efforts.

There is abundant evidence of the social costs of this traffic in the crime rate, in the job market, in schools and treatment facilities. Here at home, we learn that Montgomery county high school seniors have a rate of cocaine abuse twice the national average. City Councilman John Ray recently pleaded with D.C. residents to eliminate drug abuse which is, in his words, "a form of genocide in the black community." Last year, the U.S. Supreme Court (in New Jersey v. T.L.O.) gave school officials broad power to search students because, said the Court, drug use and violence in the schools are major social problems.

Drug traffickers, and the international terrorists who are frequently their allies, require constant vigilance by Customs.

An idea of the dimensions of the drug threat is provided by the Mexican government's raid on a Chihuahua province marijuana depot two years ago. It resulted in seizure of 9,000 tons of marijuana -- an amount equal to the annual output of Colombia, the world's largest producer. Police confiscated dozens of truck trailers and freight containers and arrested more than 11,000 marijuana pickers, packers, and warehouse workers.

A casualty of the resurgent drug trade has been

the National Narcotics Border Interdiction System, headed by Vice President Bush. The system consists of coordinating groups set up in six major cities to better direct the Federal interdiction effort. The difficutly is, as the General Accounting Office has pointed out, a coordinating agency is useless without sufficient assets. The resources of NNBIS are in no way adequate to the task it faces.

Customs Inspectors and Patrol Officers continue to account for a large percentage of total drug interdiction. According to the Select Committee on Narcotics Abuse and Control, Customs Inspectors are responsible for making 57 percent of heroin seizures, 59 percent of cocaine seizures, 70 percent of hashish seizures, and 80 percent of marijuana seizures. Air and Marine Patrols account for large cocaine and marijuana seizures.

Customs still lacks operational capability to detect, intercept, and seize drug intruder aircraft to a degree commensurate with the threat. Table 5 shows Customs data on the narcotics air threat and air interdiction results for 1984. Only about 2 percent of an estimated 2,500 drug flights a year are successfully intercepted. About 11 percent of the cocaine and 2 percent of the marijuana coming by air is being interdicted.

In the face of this crisis, the Administration has requested a reduction of 454 positions in Customs drug interdiction functions for FY 1987. Of these, 420 are Inspector positions. This is the sixth consecutive year in which Congress has had to deal with a totally unrealistic budget request from this Administration. Customs drug interdiction resources have remained static since 1975, and what is needed is a significant increase to deal with the threat as it exists today.

If we are to make headway against traffickers who have demonstrated enormous versatility in shifting their operations from point to point along our 26,000 mile frontier, there is a critical need for additional Inspectors to deter traffickers from smuggling drugs by means of couriers and cargo shipments. This would leave direct air and sea movement as the sole means of border penetration, and traffickers would be vulnerable to our defenses in these areas provided we ensure adequate interdiction capability. At present, trafficking is so extensive and we are so lacking in

Inspectors, and in air and marine capability, that the five Gulf Coast governors have called for turning the drug interdiction mission over to the Department of Defense.

The number of Customs narcotics seizures fell from 19,067 in FY 1984 to 15,280 in FY 1985. However, the amount seized was significantly higher. This means that Customs is either using better strategies to cope with trafficker activity, or shipments are coming in larger loads due to increased world supply. In either case, if the number of Inspectors and Patrol Officers were increased, we could expect larger interdiction results.

Restoration of the Gramm-Rudman cut would provide 259 additional Inspectors and 253 additional Patrol Officers for FY 1986. In addition, NTEU recommends 400 additional Inspectors for FY 1987. The same Inspector resources which are used for commercial fraud compliance also serve to interdict narcotics, as cargo inspections are made for both purposes at the same time.

We believe these resources are urgently required in view of the increasing drug threat and the fact that resources have thus far proven inadequate to keep the supply from rising. The cost of additional resources, measured against the costs to society of drug abuse, is small.

Inspectional Overtime

Inspectional overtime has become a critical resource for meeting Custom's growing demands for clearance of passengers and cargo. For nearly a decade, a virtually static inspectional force has had to process a growing number of air travelers and cargo shipments. With its workforce limited by OMB personnel ceilings, Customs inspectional overtime expanded to fill the gap between workload and resources.

An Inspector with overtime earning of $15,000-$20,000 a year works an average of 62 hours a week, 52 weeks a year. A 1981 Customs study of overtime showed that, in addition to a normal 40-hour week, the average Inspector is required to work three of every four Sundays, one Saturday per month, and seven week-day overtime assignments per month. The

requirement for this overtime is driven by the demand of carriers for Customs inspectional services during other than normal duty hours of the port. Because of the growing workload and limited staff, it is evident that an extensive commitment to inspectional overtime is essential if Customs is to accomplish its mission.

For Inspectors to make themselves available such long hours, particularly on Sundays and holidays when other citizens are vacationing, adequate monetary incentive must be provided. The most recent data collected by Customs shows that Inspectors are earning, on the average, 2.1 times the regular rate of pay on Sundays and 2.4 times the regular rate on the other days of the week. The Customs' study attributes the 2.4 rate of pay to the call-back of Inspectors who have left the worksite. Such call-backs frequently occur at night and at irregular hours, taking a physical toll on the Inspector. The study also confirms that the average Inspector works 7 hours on each Sunday assignment, and an average of 8 hours if holidays are included in this figure.

We are convinced that the frequent call-backs, the late-night hours spent away from home, and the physically demanding nature of inspectional duties justifies the present rate of overtime pay. Moreover, these rates of pay conform with the prevailing overtime rates in the private sector which normally establishes double time premiums for call-back and night work, and where the typical practice is triple time for Sunday overtime and double time and one-half for holiday work.

We urge the Subcommittee to remove the $25,000 cap on Customs Inspector overtime earnings. The overtime cap has long outlived its usefulness.

Proponents of the cap claim to be acting in the employee's interest by limiting the amount of overtime Inspectors could be compelled to work. However, the overtime cap had exactly the opposite effect and completely eliminated the voluntary aspect of overtime. This is because Inspectors are required to rotate overtime assignments so that the earnings of all can be equalized.

Customs itself has urged Congress to remove the overtime cap. Treasury Department officials have testified that, in addition to costing $1 million a year to administer, the cap is preventing Customs from

properly allocating its limited resources among ports experiencing different rates of growth.

Delegation of authority to waive the cap has been granted to Customs by Congress. We submit that the time has come to remove the cap completely, in favor of Customs internal controls. We strongly urge the Subcommittee to adopt this course of action.

Summary of Recommendations

In conclusion, NTEU recommends that Congress:

- Require Customs to provide "enforcement impact statements" containing funds and positions required to enforce new provisions of the trade laws;
- Require our trading partners to cooperate fully with Customs in investigating trade law violations;
- Provide an additional $77 million and 2,147 average positions for Customs over the Administration's FY 1987 budget request (Table 1);
- Restore the Gramm-Rudman cut by appropriating $35 million and 777 average positions for Customs for FY 1986 (Table 1);
- Bar the use of appropriated funds for any administrative expenses associated with planning or executing centralization of appraisement staff or consolidation of ports, regions, or districts;
- Require Customs to provide a full staff complement at all existing ports, including increased staff as required to process growing workload;
- Conduct a full investigation into Customs major policy directions, such as bypassing 70 percent of all entries and relying upon post-audit reviews for enforcement; admitting more than 80 percent of shipments without inspection; centralizing functions such as appraisement; reducing the number of Import

Specialists; ACCEPT; ABI; and the audit/inspection system for in-bound shipments, bonded warehouses, and foreign trade zones.

- Increase penalties for non-compliance with the customs laws in order to significantly raise the cost of evasion and deter commercial fraud;

- Increase Customs laboratory staff and capability in order to provide a 30-day response time to requests;

- Procure 4 additional mobile metal analyzers for use in ensuring proper classification of steel imports;

- Strengthen Customs enforcement at international mail facilities to deter textile quota evasion through split shipments;

- Authorize an increase in the number of Import Specialists from the current 900 positions to 1,800 positions by 1990;

- Require in legislation that Import Specialists review a minimum of 70 percent of all entries, and that no more than 30 percent of entries by bypassed;

- Bar the use of appropriated funds for administrative expenses associated with planning or executing elimination of the requirement for brokers to submit, and Import Specialists to review, backup entry documents for entries processed electronically under ABI;

- Bar the use of appropriated funds for further implementation of Automated Broker Interface (ABI) pending completion of a full congressional investigation of this system and its impact on enforcement;

- Strengthen Customs narcotics enforcement by significantly increasing Inspection and Tactical Interdiction resources; and

- Remove the present overtime cap from legislation.

Mr. Chairman, this concludes my statement. Are there any questions?

TABLE 1

U.S. CUSTOMS SERVICE FY 87 BUDGET REQUEST AND NTEU RECOMMENDATION

(Amounts in Thousands of Dollars)

	FY 87 BUDGET REQUEST		ADD-ON REQUIRED FOR RESTORATION TO FY86 CR LEVEL		RECOMMENDED BASE-LINE FOR FY 87 APPROPRIATIONS		NTEU RECOMMENDED ADDITION		NTEU RECOMMENDED APPROPRIATION	
	Amount	Average Positions	Amount	Average Positions	Amount	Average Positions	Amount	Average Positions	Amount	Average Position
Inspection and Control	307,475	6,176	+25,614	+757	333,089	6,933	+14,000	+400	347,089	7,33
Tariff and Trade	174,847	2,890	+9,264	+322	184,111	3,212	+7,000	+200	191.111	3,41
Tactical Interdiction	104,311	1,701	+11,294	+303	115,605	2,004			115,605	2,00
Investigations	106,367	1,727	+5,790	+165	112,157	1,892			112,157	1,89
SUB-TOTAL	693,000	12,494	+56,131[a]	+1,547	749,131[a]	14,041	+21,000	+600	770,131[a]	14,64
Operation & Maintenance, Air Interdiction Program	54,700				77,200[b]				77,200[b]	
TOTAL	747,700	12,494	+56,131	+1,547	826,331	14,041	+21,000	+600	847,331	14,64

[a] Includes restoration of FY 86 rescission of $4,169,000

[b] Includes restoration of FY 86 rescission of $19,275,000 and GRH cut of $3,225,000

TABLE 2

COMMERCIAL FRAUD THREAT TO THE U.S., FY 85-90

(In Billions of Dollars)

	1985	1986	1987	1988	1989	1990
Goods Imported but Unreported (est.)	25	25	25	25	25	25
Counterfeit Goods[1]	10.5	11	12	12.5	12	12
Goods Imported in Violation of Trade Agreements[1]						
Steel	.550	.525	.500	.575	.600	.625
Textiles	.450	.473	.495	.518	.540	.563
Other[2]	.425	.446	.468	.488	.510	.531
Sub-Total	1.375	1.444	1.513	1.581	1.650	1.719
Grand Total	36.875	37.444	38.513	39.081	38.650	38.719
Estimated Revenue Loss[3]	3.0	3.0	3.0	3.0	3.0	3.0
Est. Sales Loss to U.S. Firms[4]	19	19	19	19	19	19
Est. GNP Loss[5]	8-12	8-12	8-12	8-12	8-12	8-12

TABLE 2 Cont'd.

1 U.S. Customs Data

2 Includes Electronics

3 The average rate of duty on dutiable imports is 8%. Applying this rate to $38.6 billion yields a conservative estimate of the revenue loss, as fines, penalties and forfeitures, in addition to duties, would be involved in actual cases.

4 ITC estimate for conterfeit goods alone in $6 billion. To this is added one-half of unreported goods and goods imported in violation of trade agreements.

5 Manufactured imports were $300 billion in 1984, and illegal imports of $40 billion would raise this amount by 13.3%. A Department of Commerce analysis found a loss of from $60 to $90 billion in GNP as a result of the trade deficit (exports minus imports) in 1984. Assuming these losses would increase in the same proportion as the increase due to illegal imports, there would be an additional loss of $8-$12 billion in GNP.

TABLE 3

JOBS LOST FROM ILLEGAL IMPORTS IN SELECTED MANUFACTURING SECTORS, 1984

	LEGAL IMPORTS (Billions)	TOTAL EMPLOYMENT (000)	EST. ILLEGAL IMPORTS (BILLIONS)	NET JOBS LOST FROM LEGAL TRADE[1]	ESTIMATED JOBS LOST FROM ILLEGAL IMPORTS[2]
Textiles & Apparel	23.640	1915	5.04	674,000	144,000
Rubber & Misc. Plastics	6.653	763	1.40	89,000	18,700
Leather	8.819	176	1.88	238,000	50,700
Primary Iron & Steel	12.022	512	2.56	148,000	31,500
Primary Nonferrous Metals	11.341	299	2.40	95,000	20,100
Fabricated Metal Products	7.130	1377	1.52	87,000	18,500
Electrical & Electronic Equip.	48.103	2078	10.28	356,000	76,000
Motor Vehicles & Equipment	51.496	882	11.0	196,000	42,000
Instruments	8.596	524	1.84	34,000	7,300
Misc. Manufactures	9.700	395	2.08	135,000	29,000
TOTAL	187.5	8921	39	2,052,000	437,800

[1] Derived from data on 1984 imports and net employment changes from trade contained in Kan Young, Ann Lawson, and Jennifer Duncan, Trade Ripples Across U.S. Industries, U.S. Department of Commerce Working Paper, January 1986. Net jobs lost from legal trade are jobs gained from exports minus jobs lost from legal imports. Illegal imports of $39 billion are assumed to be an addition to legal imports, and are distributed in same proportion as industry's share of legal imports.

[2] Based on proportion of illegal imports to legal imports, e.g., for textiles and apparel, (5.04 ÷ 23.64) x 674,000 = 144,000.

TABLE 4

ILLICIT DRUG THREAT TO THE UNITED STATES

SUPPLY (Metric Tons)

	1978	1979	1980	1981	1982	1983	1984	EST. 1985	EST. 1986
Heroin	3.7-4.5	3.4-4.0	3.6-4.3	3.9	5.5	6.0	6.0	10.0	12.0
Cocaine	19-25	25-31	40-48	40-60	50-75	75-92	110-176	143	150
Marijuana	8,800-11,900	10,000-13,600	10,200-15,000	9,600-13,900	12,300-14,100	13,100-15,500	11,400-16,000	30,000	30,000

REMOVALS (Quantity Seized in Metric Tons)

Heroin	.35	.19	.23	.15	.27	.31	.35	.45	(4.5% of Supply)
Cocaine	.64	.65	2.2	1.7	5.1	8.9	12.5	22.9	(18% of Supply)
Marijuana	2094	1625	1071	2317	1795	1239	1485	1084	(4% of Supply)

Sources: Narcotics Intelligence Estimates for Supply, 1978-1984; Select Committee on Narcotics for 1985-6; DEA for Heroin Removal; Customs for Cocaine and Marijuana Removal.

TABLE 5

NARCOTICS AIR THREAT AND AIR INTERDICTION RESULTS

1984

	Quantity (Lbs)[1]			Aircraft		
	Threat[2]	Seizures	%	Threat[3]	Seizures[1]	%
Marijuana	1,416,585	21,757	1.5%	2361		
Cocaine	46,703	5,083	10.9%	156		
TOTAL	1,463,288	26,840	1.8%	2517	47	1.9%

NOTES:
1. U.S. Customs Data Submitted to Congress in FEB, 1985.
2. Customs Estimate of Total Quantity Entering Continental U.S. by Air.
3. Estimated From U.S. Customs Data on 47 Aircraft Seizures in 1984, and Threat (Quantity) Data in Column 1.

TABLE 6

DRUG AVAILABILITY INDICATORS

	1981	1984
Cocaine		
Retail price per gram	$100-$150	$100-$120
Retail purity	25-30%	35%
Hospital emergencies	3,251	8,510
Deaths	334	617
Heroin		
Retail price per 1.5 grams	$50-$60	$45-$65
Retail purity	3.9%	4.7%
Hospital emergencies	7,037	10,901
Deaths	930	1,046
Marijuana		
Retail price per oz. (Columbian)	$35-$60	$55-$75
Retail price per oz. (Jamaican)	$45-$65	$50-$75
Hospital emergencies	3,031	3,397

TABLE 7

U.S. CUSTOMS SERVICE
Average Positions
by Category
FY 1972 - 1987

Fiscal Year	Inspectors	Import Specialists	Patrol Officers	Special Agents	Total Customs
1972	3,184	1,312	485	853	11,116
1973	3,472	1,304	736	956	11,772
1974	3,693	1,208	971	532	11,878
1975	3,803	1,262	1,152	582	13,076
1976	3,873	1,256	1,191	614	13,380
1977	3,943	1,204	1,365	603	13,228
1978	4,077	1,207	1,251	600	13,954
1979	4,174	1,236	1,211	577	14,061
1980	4,165	1,219	1,231	604	13,920
1981	4,379	1,165	1,332	597	13,316
1982	3,987	1,091			12,924
1983	4,122	1,027	1,134	701	12,998
1984	4,289	1,042	1,246	932	13,319
1985	4,262	974	1,236	925	13,042
1986 (C.R.)	4,558	1,014	1,464	949	14,041
1986 (GRH)	4,290	966	1,447	924	13,264
1987 (ADMIN)	3,978	817	1,443	924	12,494
1987 (NTEU)	4,059	1,214	1,464	948	14,641

Source: U.S. Customs Service Budgets

TABLE 8

CARGO PROCESSING WORKLOAD AND STAFF REQUIREMENT

FY 1978-1990

	CARGO PROCESSING STAFF				WORKLOAD				
Fiscal Year	Formal Entries (000)	Cargo Insp.[1] (av. pan.)	Tariff & Trade[2] (av. pan.)	Total Staff (av. pan.)	Entries Per Av. Pan.	Percent Changes (Annual)	Productivity:[3] Entries Processed Per Av. Pan.	Total Cargo Processing Staff Required[4]	Cargo Inspectors Required[5]
1978	4017	4294	4152	8446	476	--			
1979	4384	4398	4170	8568	512	7.6%			
1980	4374	4342	4082	8424	519	1.4%			
1981	4588	4315	3837	8152	563	8.5%			
1982	4703	4002	3748	7750	607	7.8%			
1983	5314	4168	3595	7763	685	12.8%	685	7763	4168
1984	6421	4106	3572	7678	836	22.0%	706	9095	4638
1985	6823	4108	3572	7680	888	5.9%	727	9385	4786
1986	7079	4300	3131	7431	953	7.3%	749	9451	4820
1987	7433						771	9641	4917
1988	7805						794	9830	5013
1989	8195						818	10,018	5109
1990	8605						818	10,220	5365

1. Inspector Positions

2. Import Specialists and Tariff and Trade Support Positions

3. Assumed to Increase 3% From 1983 to 1989.

4. Number of Formal Entries Divided By Entries Capable of Being Processed Per Average Position (Productivity Column).

5. Computed From 1978-1981 Ratio of .51 Inspectors to 1 Cargo Processing Staff.

TABLE 9

INSPECTIONS OF CONTAINERIZED SHIPMENTS

FY 1980-FY 1986

	Containerized Shipments (Millions)	Container Inspections[1]	% Inspected	Fully Unstuffed and Stripped Inspections	%
1980	2.8	192,734	6.8	81,234	2.9
1981	3.1	215,805	7.0		
1982	2.2	186,800	8.5		
1983	2.9	112,843	3.9	21,000	0.9
1984	3.3	93,047	2.8		
1985	4.0	95,000	2.4		
1986	4.8	98,000	2.0		

[1] Mainly Tailgate Exams

Source: U.S. Customs Service

TABLE 10

U.S. CUSTOMS SERVICE FORMAL ENTRIES OF MERCHANDISE AND IMPORT

SPECIALIST REQUIREMENT, FISCAL YEARS 1974-1990

Fiscal Year	Number of Formal Entries of Merchandise (000)	Number of Import Specialists	Workload Entries Per Import Specialist	Average Annual Workload Growth[1]	Productivity Per Import Specialist[2]	Required Number of Import Specialists
1974	3,206	1,208	2,650		2,650	1,208
1975	3,015	1,262	2,389	1956-1974		
1976	3,264	1,256	2,600	4.3%		
1977	3,690	1,204	3,065	1974-1986	2,712	1,361
1978	4,017	1,207	3,328	14.7%	2,828	1,420
1979	4,384	1,236	3,547		2,950	1,486
1980	4,374	1,219	3,588		3,077	1,422
1981	4,588	1,165	3,938		3,209	1,430
1982	4,703	1,081	4,397		3,347	1,405
1983	5,314	1,027	5,174*		3,491	1,522
1984	6,421	1,042	6,162*		3,641	1,764
1985	6,823	974	7,005*		3,798	1,796
1986	7,079	966	7,328*		3,961	1,787
1987	7,433	817	9,098*		4,131	1,800
1988	7,805				4,309	1,811
1989	8,195				4,494	1,824
1990	8,605				4,688	1,836

1. Subcommittee on Trade, Committee on Way and Means, Background Materials on H.R. 9220, July 14, 1976, p. 39, gives Import Specialists workload in FY 1974 and average annual growth of workload, 1956-1974. Workload is measured in number of entries per Import Specialist.

* Bypass instituted by Customs, meaning 55-65 percent of entries are not reviewed by Import Specialists but are processed by clerical personnel.

2. Number of entries each Import Specialist is, on average, capable of processing, assuming 4.3% per annum productivity growth since 1976. The rate of productivity growth is believed to be consistent with recent automation efforts.

3. Number of entries are divided by productivity to obtain required number of Import Specialists.

TABLE 11

FORMAL ENTRIES BY TYPE AND NUMBER REQUIRING IMPORT SPECIALIST REVIEW, FY 1983 AND FY 1986

(In Thousands)

	1983	Percent[1]	EST. 1986	Percent[1]
Total Formal Entries	5314	100	7079	100
Trade Program Entries:				
Quota and Monitored	519.0		1210*	
Licensing Requirements			163*	
GSP	372.4		535*	
Antidumping	24.5		35*	
Countervailing Duty	60.4		99*	
Steel Program	108.8		205*	
Sub-Total	1085	20	2247*	32
Other Agency Entries[2]	1100	20	2056	29
Dutiable Entries[3]	3565	67	6371	90
Estimated Entries Requiring Import Specialist Review[4]	3700	70	5600	79

1 Components do not add to 100% due to overlap between dutiable entries and other entries.

2 Entries where Customs enforces requirements of other agencies, e.g., Agriculture, FDA, EPA, etc. Source: U.S. Customs Service.

3 Dutiable entries were 98 % of total formal entries in FY 85 compared to 67% in FY 80-84. Formal entry definition was changed in FY 85 to exclude entries under $1,000 instead of $250 formerly.

4 Consists of all trade program and other agency entries, and 20 percent of dutiable entries.

* U.S. Customs data for FY 1985 projected at FY 83-85 growth rate.

TABLE 12

U.S. CUSTOMS REVENUE COLLECTION PER ENTRY

FY 1979-1985

Fiscal Year	Total Revenue Collection ($000)	Revenue From Dutiable Entries[1] ($000)	Formal Merchandise Entries (000)	Formal Dutiable Entries (000)	Average Revenue Collection Per Formal Entry ($)	Average Revenue Per Dutiable Entry ($)
1979	8,460,479	7,585,467	4,384	2,927	1,930	2,592
1980	8,230,100	7,417,512	4,374	2,883	1,882	2,573
1981	9,197,222	8,438,284	4,588	3,014	2,005	2,800
1982	9,981,343	9,189,730	4,703	3,148	2,100	2,919
1983	9,784,959	8,924,129	5,314	3,565	1,841	2,503
1984	12,541,400	11,653,060	6,421	4,042	2,024	2,883
1985	13,237,169	12,288,924	6,823	6,713	1,940	1,831

[1] Sum of Revenue From Consumption Entries and Warehouse Withdrawals.

TABLE 13

REVENUE LOSS FROM 4.3% GRAMM-RUDMAN CUT IN FY 86

Fiscal Year	Amount Of Cut (Millions)	Revenue Loss[1] (Millions)
1986	31	150
1987		450
1988		615
1989		615
1990		615
1991		615
Total Revenue Loss		3,060

Note: Additional cuts imposed in FY 87 or beyond would cause further revenue loss.

[1] From Congressional Budget Office data contained in Senate Budget Committee Report 99-146, October 2, 1985.

Senator DANFORTH. Mr. Gill, I will also forward your comments with respect to the changing of practices by the Customs Service without adequate notice, without publication and so on to the Commissioner for his comments.

Mr. GILL. Thank you very much, Mr. Chairman.

Senator DANFORTH. Well, we have heard today from the Commissioner who says that to follow on this year's cuts with an additional cutback of 770 employees will have no effect because they will be using better equipment, computers and so on. He also stated that the Customs Service intends to put more people on the border in Texas.

Do any of you have any doubts that the combination of cutting back personnel and the deployment of more personnel in enforcement, particularly on the border, will have an impact on the commercial operations of the Customs Service?

Commissioner DAVIS. Certainly, we have considerable doubt about that. And what has happened for ports, at least at our port, is that when we have asked for more help they have promoted internally, but what they are now saying is maybe we are a little bit short. And they are providiog a few more, and they are calling it backfill.

Well, those were the people they pulled off the data processing end of it to move up to inspection. So what would happen on the border is probably pulling more from cargo to enforcement without the backfill, as they call it, procedure. If they don't put more people on, there is no other way.

Senator DANFORTH. Mr. Gill.

Mr. GILL. Yes, Senator. It is very, very apparent to us. And I must say that while I speak on behalf of the Seattle-based Northwest Apparel and Textile Association, I represent importers located throughout the United States who import through all the major ports. And I have heard uniform complaints without exception that there have been delays during the past several months on top of normal delays that have extended basically 1 to 2 days. It is anticipated that if the programs implemented now on centralized inspection coupled with the cutbacks that are proposed, that these delays will now go up to as high as 5 days.

And in an area where speed in delivery is critical, this is going to hurt a lot of people. And it is going to ultimately cost the consumer huge sums of money. Because the bottom line is an importer spends excess money to airship merchandise into the United States only to have it sit in Customs for 5 or 6 through days, through a weekend, and have his goods come out—as one importer put it, it is like putting your merchandise into a big black hole. You just don't know when it is going to come back out.

But the cutbacks are being felt in a very real way. And there is no doubt that what we have right now is an effort, I think, on the part of Customs to compensate for these cutbacks by perhaps headline-seeking enforcement kills that are cosmetic; that is really closing the barn door after the horse has gone out.

Senator DANFORTH. Mr. Tobias.

Mr. TOBIAS. There is no question in my mind, Senator, that it has an adverse impact, as has been mentioned by the other two witnesses here, with respect to how fast material is released. But I

would also like to point out that if we had the same number of formal entries being examined as we did 5 years ago, we project—and certainly no one has disputed it—that we would be collecting $4.5 billion more in revenue. So it is not only easing of the problem of commerce into our country. The question is are we going to collect the revenue that is owed us.

Senator DANFORTH. Let me ask you one other question. The Commissioner is at least considering the possibility of closing or consolidating district offices. If a district office is closed, would the people of that community notice the difference?

Mr. GILL. I think they would, Senator.

Senator DANFORTH. If it became simply a port of entry, if the district office was closed, would that be noticeable as far as the service is concerned?

Mr. GILL. I think so because normally you will have the classification and value function, which is critical really to an importer, located at the main district office. And in terms of an importer's day-to-day dealings with Customs, it is that import specialist at the centralized district office who is going to be critical. So if you close the Providence office and have just a port set up there with just inspectors and your C&V people are located in Boston, it is going to be a problem for that local importer, that is for sure.

Senator DANFORTH. Senator Baucus.

Senator BAUCUS. I would like the panel to tell us what the Commissioner said that they agree with. That is, the Commissioner said that, yes; they can do an adequate job with the authorization request. You seem to have a different view. But is there anything that he said that you agree with in terms of the service that Customs is providing or seems to be providing for us?

Mr. TOBIAS. The only thing that I agreed with with what the Commissioner said is that if he testified as to what he really felt, he would lose his job.

Senator BAUCUS. Could you give us a little more evidence of delays and the problems that are building up? Do you have documentation of the delays?

Mr. GILL. Well, a number of groups are already pulling together information. Just dealing with the Customs directive 3500, which was implemented on March 9 of this year, reports are coming in now and being compiled by various groups, including our group and the American Association of Exporters and Importers. The general understanding that we are seeing just on early returns right now, as I say, as a result of that directive alone, an additional 2 days in entry clearance.

I had one importer in Detroit who has indicated to me that on a noncontroversial entry, it has been tied up in Los Angeles for 18 days. Now, grant you, that is an extreme, but without question it is anticipated certainly that most importers of wearing apparel expect that they are going to have by the end of the fall shipping season, which will be concluded in this summer, delays of up to 5 days on a uniform basis at all major ports in the United States, specifically, Seattle, Los Angeles, New York, and Baltimore.

And it is unlikely, frankly, Senator, that you could possibly have the kind of additional workload imposed on an already-overbur-

dened C&V or tariff and trade function in the Customs Service and not have these kinds of delays.

It is just not in the cards.

Senator BAUCUS. How do our delays compare with other countries? That is, other countries who are not using customs inspections as a tactic to frustrate trade. But putting that potential frustration of trade aside for a moment, Japan, any other country, Canada, that comes to mind—are our delays increasing proportionately to those of other countries or about the same? Are we doing a better job proportionately or are we doing a worse job as compared to other countries?

Mr. GILL. Well, I——

Commissioner DAVIS. I, personally, don't have those statistics in front of me, but I think to answer your former question and this one as well, the study that I mentioned that we are having done from all the west coast ports with all the members of the west coast coalition—I don't know if you were here when I mentioned that—should help address a lot of those questions. We hope to have supporting data that will show where the delays are, where the problems are, where the inequities are, which is the real problem. There are glitches in some places and not in others. And then we will help suggest some remedies.

Senator BAUCUS. What is your best guess, though, pending the outcome of that report?

Commissioner DAVIS. I really don't have evidence on that as a comparative——

Senator BAUCUS. When is that report going to be completed?

Commissioner DAVIS. Within the next 2 months. I hope that it will be very helpful to you.

Senator BAUCUS. Thank you.

Senator DANFORTH. Thank you very much for your testimony. That concludes the hearing.

[The prepared written statement of Mr. Parsons follows:]

TESTIMONY

of

the

AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

by

W. Henry Parsons
Director

before the

COMMITTEE ON FINANCE
SUBCOMMITTEE ON INTERNATIONAL TRADE

of the

UNITED STATES SENATE

May 12, 1986

American Association of
Exporters *and*
Importers *11 West 42nd Street, New York, N.Y. 10036 (212) 944-2230*

SUMMARY OF AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS
TESTIMONY ON U.S CUSTOMS BUDGET FOR 1987

The American Association of Exporters and Importers (AAEI) is comprised of over 1000 company-members engaged in all aspects of international trade. Importing and exporting members, shippers, customhouse brokers, freight forwarders, and other member service firms interact daily with the U.S. Customs Service, making AAEI one of the closest observers of its operations.

Budget cuts mandated by Gramm-Rudman will directly result in the reduction of 770 positions in the Customs Service, futher exacerbating the current personnel shortages and delays in processing entries. Less resources and the increasing emphasis on drug interdiction to the detriment of the commercial side are factors straining Customs ability to facilitate international trade to the limit.

The proposals in the President's 1987 Budget for imposition of user fees by Customs on a broad range of functions are not a solution to budget deficits and reduced staffing. To impose a "user fee" for the privilege of paying the customs duties required to be deposited as a condition of entry of imported merchandise is analagous to charging a taxpayer a fee for filing an income tax return and paying income taxes.

The functions of the Customs Service are required by law, carried out by the government agency for the general welfare. As such, the cost of this operation should be borne by the general revenue and not by the taxpayer. The acceptance of entries of goods by Customs is not a desired service, but a requirement from which the "taxpayer" (importer) receives no benefit. It is true that the trade community has consistently asked for increased appropriations and staffing for Customs, but "user fees" are inappropriate when Customs is the second largest revenue producing agency and collects over 20 times the cost of operations in duties.

For all the foregoing reasons, AAEI wishes to register the objection of its nationwide membership to the concept of imposing user fees on the functions of a revenue producing agency and urges that these proposals be rejected as a means of reducing the budget deficit.

May 12, 1986

American Association of
Exporters *and*
Importers *11 West 42nd Street, New York, N.Y. 10036 (212) 944-2230*

May 12, 1986

Good Morning, Chairman Danforth, members of the Subcommittee. My name is W. Henry Parsons and I am the corporate manager of customs at General Electric Company. I am also a Director of the American Association of Exporters and Importers. The Association is a national organization comprised of approximately 1100 U.S. firms involved in every facet of international trade. Our members are active in importing and exporting a broad range of products including chemicals, machinery, electronics, textiles and apparel, footwear, foodstuffs, automobiles, and wines. Association members are also involved in the service industries which serve the trade community such as customs brokers, freight forwarders, banks, attorneys and insurance carriers. AAEI is the closest observer of the U.S. Customs Service.

We are pleased to have this opportunity to address the U.S. Customs Service budget for Fiscal Year 1987. The funding for Customs' operations is of great concern to the Association, as our members deal with U.S. Customs on a day-to-day basis.

The Association and Customs have always dealt with each other in a direct, honest, usually harmonious, but always mutually respectful, manner. Due to this longstanding relationship, a relationship which is often of an adversarial nature, the Association does not hesitate to point out problems to or ask questions of Customs. We believe both sides, as well as the public, greatly benefit from this exchange and we are pleased to say that, through discussion, many problems are resolved. This is not to say that we always reach a mutually satisfactory resolution. Indeed on many occasions we do not. We do not know whether Customs is satisfied with its level of staffing. In our opinion, however, the Service's resources are strained to the limit.

The problems faced by our members will be exacerbated dramatically by the cuts in the Customs' Budget for 1987 mandated by Gramm-Rudman. There are already drastic shortages in manpower in Customs ports around the nation. This fact was recognized

last year by the Congress when it restored over 750 positions to the 1986 Customs Budget. Customs has said it will meet the requirements of Gramm-Rudman by again eliminating over 750 positions. Programs such as Customs Automation and development of a periodic entry system would help to make the Service more efficient but would only resolve part of the problem. AAEI believes that the Customs Service needs more trained personnel at appropriate levels of responsibility, and needs them now; mandated budget cuts would worsen the current shortages and delays caused by the lack of personnel. According to studies by the Congressional Budget Office (CBO) and the Office of Management and Budget (OMB) Customs' budget would be reduced $34.4 million over the remainder of fiscal year 1986 (to September 30, 1986) as a result of Gramm-Rudman. The Administration has resisted staffing increases in the past, but in fact, increase in Customs resources have actually led to increases in Customs revenue. Reduction in Customs resources will certainly result in delays in processing entries and paperwork with a corresponding decrease in the quality of the work performed. Customs collects over $20 for each dollar it spends, - a reduction in spending and manpower could well lead to a decrease in that revenue.

The shortage of manpower is complicated by another factor. The primary responsibility of the Customs Service has always been and should continue to be international trade. There is an unfortunate trend to view the Customs Service as a narcotic interdiction agency. While interdiction of narcotics is vitally important, it is not the most efficient or logical use of the Customs Service's human and other resources, especially when the resources devoted to commercial operations are strained to the limit. At present staffing and resource levels, Customs cannot be expected to continue as the major drug interdiction agency, the second leading revenue raiser, and at the same time to enforce the regulations of forty-odd other federal agencies. If the Service is expected to continue in each of these roles it must be given the resources to do those jobs. Also funding for Customs narcotics interdiction mission should be separate from funding for its other missions.

It is true that the trade community has consistently asked Congress for larger appropriations for Customs. Year after year the workload on Customs personnel increases and the service has supported budget proposals that provide them with fewer resources and personnel, especially in the commercial operations area. With such reductions in Customs resources it is easy to understand Customs increasing inability to meet the reasonable expectation of the trade community. Customs increasingly is changing rules and practices for importers through the issuance of internal directives and telexes, rather than public notice in Federal Register, thus depriving the public of a chance to comment. AAEI is concerned that this pattern by Customs is leading to a more adversarial and potentially harmful relationship between Customs and the international trade community.

Two recent instances, both related to textiles, serve as illustrative examples of how the U.S. Customs Service has changed long-established trade practices without taking proper procedural steps, indeed, giving little advance notice, formally or informally. These changes, without exception, resulted in increased delays in processing commercial entries and increased confusion among importers, customsbrokers and customs field personnel.

Specifically, those two instances were the introduction and implementation of new rules of origin for textiles and textile articles and the new requirements that samples of textiles and textile articles, covered under bilateral agreements, were subject to new formal entry requirements notwithstanding their value may have been less than $250. Treating as formal entries textiles and textile s article samples valued under $250 can only delay the processing of all other entries.

The Customs policy of promoting the imposition of user fees on commercial entries, passengers and conveyances, and now proposed by the Administration is not the solution to decreased funding of the U.S. Customs Service. The Admistration expects to raise $582.1 million through the collection of such fees.

The fees are intended to recover the cost of Customs Service operations. The U.S. Customs Service is a tax collection agency which also functions to regulate trade. In its collection capacity, its role is analagous to the role of the Internal Revenue Service in collecting income taxes. To impose a "user fee" for the privilege of paying the customs duties required to be deposited as a condition of entry of imported merchandise is the same as charging a taxpayer a fee for filing an income tax return and paying his or her income taxes. This is a concept which clearly would offend the tax paying public; it is no less offensive to the importing public.

The customs clearance of imported merchandise, inspection of goods, assessment of duty, and ensuring that the importation of goods is not prohibited by law or regulation, is not a "service" to the importer/taxpayer. It is an obligation of the Customs Service to the general public to carry out these functions and to insure that the correct amount of customs duty is deposited, and that no law is violated by importation. These functions are no more a "service" to the importer than is the processing of an income tax return and collection of the income tax payable. In each case, the function is a requirement of the law, carried out by a government agency for the general welfare. As such, the cost of this operation should be borne by the general revenue and not by the importer. In each case, it is not a desired service, but a requirement from which the importer receives no benefit. AAEI agrees with the General Accounting Office which concluded, "GAO does not believe there is merit in assessing user's fees for those formalities that are not voluntary, because these formalities protect the nation as whole." GAO Report OC-9-85-1.

An example of a valid user fee is the government's and NASA's requirement that a private U.S. concern pay a fee for the use of the space shuttle, to launch a satellite or in which to perform experiments. The service is optional, requested by the private concern and directly benefits and profits that party, not the U.S. public.

While the Customs Service has charged additional user fees for certain specified services such as changes for overtime services outside normal business hours, the broad concept of attempting to recover the primary cost of operation of a revenue producing agency is unnecessary, improper, and objectionable.

If the Customs Service were to implement a system of imposing fees for all or most of its functions, such fees would be perceived by our trading partners as an increase in duties, and a move toward greater protectionism. Our exporter members are concerned that other countries would be encouraged to impose similar fees on U.S. exports. It is also a matter of concern that the user fee charges for imports would be incompatible with the rules of the General Agreement on Tariffs and Trade, which requires that fees in connection with imports "shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes." The Administration's proposal to collect user fees is undeniably for fiscal purposes. In fact, no cost analysis by any government agency has been made public. The money collected from the user fees, whether earmarked for the general treasury or for a special "Customs fund", is unnecessary to defray the costs of the Customs Service. Regardless of the intended purposes, the imposition of user fees is simply bad economic and trade policy.

Further, the proposal to impose user fees on imports is not consistent with the objective of Article VIII(6) of the GATT, that the contracting parties

recognize the need for reducing the number and diversity of fees and charges. In addition, imposition of fees will add to the cost of imports, and would be inflationary. While the imposition of user fees may be thought to facilitate the reduction of taxes, in fact, those fees will be simply passed on to the consumer, consistent with the age old philosophy that there is no free lunch.

The imposition of such user fees was not recommended by the President's Private Sector Survey on Cost Control, in the Report of the Task Force on User Charges. The Grace Commission stated therein (at page 196), that Customs' passenger processing, and requirements for the formal and informal entry of merchandise, are for the benefit of society as a whole. Those functions protect the revenue, deter smuggling and the importation of contraband, and are necessary to enforce the laws. As further observed by the Grace Commission, the formal and informal entry of goods and entry by mail are services that support the general economy and for which a fee, the duty on goods or postage, has already been paid. These functions also serve as a protection for domestic industry.

In conclusion, the imposition of user fees on passengers, shippers and commercial entries is unfair, uneconomic, and violates existing international agreements. AAEI is convinced that their implementation will lead to constraint of trade, international retaliation and possible disruption of the normal flow of passengers and cargo. AAEI urges you to oppose the inclusion of user fees in the 1987 budget.

Custom's tendency to inform the trade community of changes in policy and practice after the fact, the budget reduction and corresponding staffing cuts mandated by Gramm-Rudman, and the possible imposition of user fees mandate close congressional scrutiny of all aspects of the Customs Service. AAEI again expreses its thanks to the members of the subcommittee for the opportunity to state its views.

Respectfully Submitted,
W. Henry Parsons
Director
American Association of Exporter & Importers
11 West 42nd Street, New York, NY 10036

[Whereupon, at 4:15 p.m., the hearing was concluded.]

[By direction of the chairman the following communications were made a part of the hearing record:]

TESTIMONY SUBMITTED BY
THE AMERICAN ASSOCIATION OF PORT AUTHORITIES

REGARDING
THE BUDGET OF THE U.S. CUSTOMS SERVICE

SUBMITTED TO
THE SUBCOMMITTEE ON INTERNATIONAL TRADE
COMMITTEE ON FINANCE
U.S. SENATE

May 27, 1986

Washington, D.C.

Introduction

The American Association of Port Authorities (AAPA), founded in 1912, represents essentially every major U.S. public port authority and public port agency. In each case, our members are public entities mandated by law to serve public purposes. AAPA, representing its member public port authorities, has a major interest in the ability of the U.S. Customs Service to provide timely cargo clearance, passenger processing and general inspection services.

International waterborne trade through U.S. ports has grown tremendously during the last decade. Recent figures demonstrate that over 95% of the nation's international overseas commerce, measured by tonnage, now passes through U.S. ports. As a result, the U.S. port industry now contributes over $60 billion annually in direct and indirect benefits to the U.S. economy, and over $30 billion to our gross national product.

Customs Service Staffing Levels

Based on the experiences of our member public port authorities over the past several years, we do not believe that the U.S. Customs Service's ability to perform its critical commercial operations functions has kept pace with the nation's growth of waterborne commerce. For example, Customs staffing in the Baltimore District has decreased from 78 inspectors in 1982, to 64 inspectors as of June, 1986. In the Seattle District, Customs staffing has decreased from

189 inspectors in 1982, to 164 as of March, 1986. Such declines in Customs staffing, combined with an increase in waterborne cargoes, has resulted in serious delays in cargo and passenger clearances in many of our nation's ports. Clearly, delays in cargo and passenger clearances can negatively affect international trade and tourism. Certainly such delays impede efforts to enhance the sale of our goods overseas and to attract foreign visitors to our nation. Ultimately, it may hinder the ability of public port authorities to supply much needed employment to their surrounding communities.

Inadequate Customs services have done far more than to limit the ability of our members to grow and expand their markets. Delays in the clearance of import cargoes have cost shippers thousands of dollars in unnecessary demurrage (storage) fees, disrupted the normal flow of commerce, and potentially resulted in the loss of sales revenue because merchandise was not available at the point of purchase.

In addition, due to the advent of intermodalism, the hinterlands of ports now often span across the entire United States. As a result, delays in cargo clearance at ports are reflected in increased costs for many mid-western industries. The AAPA and our members believe that the Customs Service's fiscal 1987 authorization request, with its

proposed elimination of nearly 770 positions, will seriously exacerbate this problem. With over eight billion dollars in Customs receipts collected at our nation's ports in fiscal 1984, it seems that reductions in the level of Customs field positions comes close to being "penny wise and pound foolish."

Last year, Congress recognized the critical need for additional Customs inspectors. At that time, this Subcommittee authorized some 800 additional positions for the Customs Service. A total of 623 positions were finally funded in the fiscal 1986 Continuing Resolution. Unfortunately, many of these positions were eliminated as a result of the $31 million cut required by the Gramm-Rudman-Hollings Budget Reduction Act.

Recently, in its debate on the fiscal 1987 Budget Resolution, the Senate approved a transfer of $200 million to the Administration and Justice account. Floor statements delivered by Senators Abdnor, DeConcini, Leahy and Wilson recommended that $115 million of this $200 million be used for increased Customs staffing. AAPA strongly supports the appropriation of such funds to the U.S. Customs Service. Moreover, while we recognize that the enforcement responsibilities of the U.S. Customs Service must be adequately funded, we respectfully urge this subcommittee to provide the funding necessary for the

Customs Service to carry out its commercial operations that are so vital to the service of international commerce.

Additional Customs Issues

As critical as the need is for increased Customs staffing at our nation's ports, AAPA also believes there is a vital need for increased cooperation between the Customs Service and the transportation and importing communities. Over the past two years, the AAPA and our members have noticed, in some instances, an apparent decline in the willingness of the Customs Service to fully cooperate with the business sector. A number of cases stand out.

For example, early this year the Customs Service issued a directive that resulted in a drastic change in longstanding Customs procedures for the clearance of textile imports. This directive was issued with virtually no warning and, in fact, was never published in the Federal Register. The original directive could have cost law-abiding textile importers nearly $50 million annually in additional charges and expenses. After concerns were raised by a number of industry groups, including AAPA, Customs modified its directive.

Another example relates to the red-ball seal program. As with the textile directive, the red-ball seal program was announced with

little warning and resulted in processing delays and additional labor requirements for both the public port and steamship industries. Again, after an outcry from industry, Customs modified the program to accommodate legitimate concerns.

We appreciate the fact that the U.S. Customs Service did ultimately respond to industry concerns. However, we believe that increased cooperation and communication prior to the implementation of these directives could have avoided many of the disruptions. AAPA and the entire public port industry have and will continue to stand ready to work with Customs on any issue. We ask Customs, in turn, to provide the public port industry with adequate notification of policy changes, so that we have the opportunity for meaningful input before new policies are put in place.

STATEMENT OF AMERICAN IRON AND STEEL INSTITUTE

TO

THE SUBCOMMITTEE
ON
INTERNATIONAL TRADE, COMMITTEE ON FINANCE

HONORABLE JOHN C. DANFORTH, CHAIRMAN

AUTHORIZATIONS FOR THE U.S. CUSTOMS SERVICE FISCAL YEAR 1987
U.S. SENATE, WASHINGTON, D.C.

MAY 27, 1986

The American Iron and Steel Institute views with extreme concern the Customs Service's Fiscal Year 1987 budget request. If adopted, this request would result in substantial reductions in Customs staffing from the current post-FY 1986 Gramm-Rudman level.

Our principal concern regarding the proposed Customs budget is that any reduction in Customs funding and staffing is likely to have a negative impact on the ability of the Customs Service to enforce effectively the President's steel import program. This is because the proposed FY 1987 budget, if adopted, is expected to result in the elimination of inspector and import specialist positions, the key enforcement agents of the Customs Service with regard to the steel import program. Indeed, we understand that the majority of the layoffs proposed under this budget would be from the import specialist and inspector ranks.

During the last year the AISI -- at the invitation of the Customs Service -- has visited several major steel ports of entry to review staffing levels and procedures at major steel ports of entry. We have been impressed by the level of professionalism and efficiency of Customs officials enforcing the President's steel import program. However, during our visits we also found that additional import specialists and inspectors are clearly needed to ensure that the President's program is properly and effectively enforced. Any reduction in these positions -- as suggested in the Customs Service's proposed budget -- would serve only to jeopardize further the ability of Customs Service to carry out its critical enforcement duties.

We are also concerned that the proposed budget would result in reductions in staffs at Customs laboratories. Already, recent reductions at certain laboratories have strained the Customs Service's capabilities with regard to testing, sampling and analyzing the products subject to the President's steel program.

We therefore, strongly urge the Subcommittee to reject the Customs Service's budget request for FY 1987. In its place we recommend that the Senate Finance Committee authorize a Customs Service budget consistent with the Senate's Budget Resolution for the Customs Service. This calls for restoration of the Fiscal Year 1986 Gramm-Rudman reduction of 777 positions, plus restoration of the positions proposed to be eliminated in the Fiscal Year 1987 budget request and, in addition, authorization to increase Customs staff to the full level of the Senate Budget Resolution for Fiscal Year 1987. We believe that such an authorization would permit the Customs Service to enforce adequately the nation's trade laws which is, and should be, the key criterion for the level of funding proposed.

We also urge the Subcommittee to recommend that Customs use the replaced and additional positions to hire dockside inspectors, laboratory chemists, and import specialists in order to ensure the effective enforcement of the President's steel program. In addition, we believe that Customs should continue to automate its functions as rapidly as possible. The addition of computers to assist import specialists, for example, would greatly enhance Customs' enforcement capabilities.

Finally, we note that because the Customs Service returns $20 to the U.S. Treasury for every dollar appropriated, the Senate Budget Resolution funding level for the Customs Service would have a clearly favorable impact on Treasury's revenue collection.

We strongly urge the Subcommittee to adopt the course of action recommended in this submission and stand ready to provide whatever further information the Subcommittee may require on the issues raised.

0174I

Statement of The Air Transport
Association of America
To The Subcommittee on
International Trade
Committee on Finance
U.S.Senate on the FY 1987 Authorization
for the U.S. Customs Service
May 12, 1986

The Air Transport Association of America, which represents most of the scheduled airlines of the United States, appreciates this opportunity to make the following two observations with respect to the Fiscal Year 1987 appropriations for the U.S. Customs Service.

Single Customs Shift at Airports

The U.S. Customs Service has postponed, at least until October 1, 1986, its proposed reduction of tours of duty at U.S. airports to a single, standard shift from 8:00 a.m. to 5:00 p.m. If this proposal were to go forward on October 1, clearance of aircraft, inspection of crew and passengers and their baggage, and processing of cargo and courier shipments would be crowded into one 9 hour period of time at U.S. gateway airports. The United States, in effect, would be closed down by Customs outside of these hours unless its inspectors are paid overtime to reopen the country to accommodate the requirements of international commerce in today's jet age.

A standard single shift concept makes no sense operationally or economically, and would inevitably result in serious international problems for our government and our flag carriers, including, at a minimum, very damaging retaliatory measures by other nations. We therefore respectfully request the Subcommittee to direct the Customs Service to take no action to implement this proposal, or any other, which will

reduce the hours or levels of service currently provided by Customs at U.S. airports of entry.

In terms of its impact within this country, the Customs proposal should be permanently abandoned because:

* Long hours of inspector overtime will be required, reducing the efficiency and quality of the inspection process;

* Customs will require millions of dollars in additional appropriations to fund these overtime costs, and the $25,000 overtime cap on inspectors will have to be waived;

* Most peak 9 hour periods at major gateway airports do not coincide with the arbitrary 8:00 a.m. to 5:00 p.m. standard shift; and

* Crowding Customs inspectors at airports into a single arbitrary shift will result in a waste of manpower and in operating inefficiencies, even though some inspectors may be redeployed to other locations for other duties.

Revolving Fund for Customs User Fees

We understand that consideration is being given to an additional set of user fees which would raise over $300 million in revenues, covering commercial import transactions. As we have stated on many occasions in the past, we believe that such an imposition is inappropriate. However, should the Congress ultimately conclude that such fees are both necessary and consistent with GATT provisions (including all understandings that certain entries are to be free of such non-tariff barriers), we urge that provision be made for the addition of the fee to the Customs entry documents, on a per invoice basis, and not to the air waybill. Provision should be made for the

exemption of intangibles and other appropriate non-dutiable items from such fees.

In total, it is contemplated that cargo, passenger and sundry other fees would raise some $520 million in the first full year of implementation. Although the airlines have always opposed user fees on sound public policy grounds, we feel it is imperative that, if a schedule of fees is adopted, the revenues collected be expended for the purpose collected. This can be done by establishing a "revolving fund" to which fees would be remitted for expenditure by the Customs Service to augment its resources, and not to the general Treasury Fund. Moreover, in order to prevent the build-up of an unexpended, uncommitted surplus, such as the unconscionable status of the Aviation Trust Fund, provision should be made for a zero-balancing of the Customs fund every two or three years, entailing reduction or elimination of the fees until the surplus has been exhausted. To do otherwise is to make a mockery of the appelation "user fees".

Conclusion

The Chairman of the subcommittee directed Customs to withdraw its announced plan to reduce hours of service at U.S. gateway airports to a single shift, for which the airlines are most appreciative and take this opportunity to express our gratitude. We are also appreciative of similar actions taken by Senator Moynihan in this regard. We now urge that the

single shift proposal be scrapped permanently by the Customs Service at the direction of this Subcommittee.

We also solicit the support of the Subcommittee in establishing a zero-balancing revolving fund through which all user fees collected would be remitted directly to the Customs Service. Customs would in turn be obliged to provide adequate resources and staffing at airports, including at satellite airport terminals, to meet international traffic demands.

Continuing multi-shift schedules at airports and adoption of a revolving fund concept for any users fees which are imposed, plus streamlining and modernizing Customs formalities will help to posture Customs for its proper role in the closing years of the 20th Century, benefiting international air shippers and travelers alike. The alternative, as envisioned by the fortunately aborted single shift proposal, is a regression to the role contemplated for Customs by its now anachronistic 1911 statutory charter, adequate at best for an era of transportation by steamships.

* * *

STRASBURGER & PRICE

ATTORNEYS AND COUNSELORS

4300 INTERFIRST PLAZA
901 MAIN STREET LB 175
PO BOX 50100
DALLAS, TEXAS 75250
(214) 651-4300

TELEX 73-2217
TELECOPIER (214) 651-4330

LAS COLINAS OFFICE

May 12, 1986

STATEMENT OF WILLIAM M. METHENITIS
ATTORNEY, STRASBURGER & PRICE, DALLAS, TEXAS

on behalf of the

DFW INTERNATIONAL TRADE SERVICES TASK FORCE
CITY OF DALLAS
CITY OF FORT WORTH
DALLAS/FORT WORTH INTERNATIONAL AIRPORT BOARD
DALLAS MARKET CENTER
DALLAS CHAMBER OF COMMERCE
FORT WORTH CHAMBER OF COMMERCE
NORTH TEXAS COMMISSION
NORTH TEXAS CUSTOMS BROKERS AND FOREIGN
FREIGHT FORWARDERS ASSOCIATION
DFW AIR CARGO ASSOCIATION
DFW FOREIGN TRADE ZONE ADVISORY BOARD

on

FISCAL YEAR 1987 CUSTOMS SERVICE APPROPRIATIONS REQUEST
before the

SUBCOMMITTEE ON INTERNATIONAL TRADE
SENATE COMMITTEE ON FINANCE

Mr. Chairman, I appreciate the opportunity to provide this statement to the Subcommittee during its consideration of Fiscal Year 1987 appropriations for the Customs Service. Our community is strongly supportive of Customs' goal of increased efficiency through modernization and automation. At the same time, despite the joint efforts of Customs and the Dallas/Fort Worth trade community in making Customs as efficient as possible, the lack of Customs personnel in the Dallas/Fort Worth District is restricting the processing of passengers and cargo.

Personnel Shortage: There is a critical personnel shortage at Dallas/Fort Worth. Currently assigned to Dallas/Fort Worth are 41 inspectors and 3 aides in the Inspection and Control Division, and 10 import specialists and 5 entry personnel in the

Classification and Value Division of Customs. This year, it is anticipated that those personnel will be responsible for processing over 850,000 passengers and 81,000 formal entries. As a comparison, in 1981, 31 inspectors with 2 aides and 12 import specialists with 7 entry personnel were responsible for 406,247 passengers and 42,601 formal entries. During that same period of time, the number of clerical personnel has been reduced by approximately 9 people, so that some of the inspectors and import specialists are answering phones, doing filing, making computer entries, acting as cashiers, and collecting baggage tags from passengers. The net effect is that in a five year period Dallas/Fort Worth has experienced an increase of 109 percent in passenger clearance and 90 percent in cargo clearance handled by roughly the same number of Customs personnel.

Increased Automation. Dallas/Fort Worth has been among the national leaders in working with Customs to make Customs processing as efficient as possible. The Dallas/Fort Worth International Airport Board is in the process of implementing an automated cargo system dealing with all facets of international trade that will compliment the Customs ACS system. In addition, Dallas/Fort Worth and Customs are involved in joint projects concerning a Dallas/Fort Worth Customs Service Center, refinements to the PAIRED program, a drug interdiction task force, and programs for expediting passenger clearance.

Our community has invested a great amount of time and capital to increase the efficiency of cargo and passenger clearance. Yet, despite our cooperative efforts with Customs, the staggering increase in the volume of passengers and cargo entering at Dallas/Fort Worth has resulted in a situation that cannot be remedied through automation alone. Dallas/Fort Worth needs more Customs personnel.

Cargo Clearance. While the increase in cargo entries at Dallas/Fort Worth has by itself placed a great burden on inspectors, it has been the increase in passengers that has most affected cargo clearance. During most of 1985 and 1986, every afternoon between 2:00 and 3:00 p.m., the cargo office at Dallas/Fort Worth has been closed for the rest of the day because every inspector has been needed to process passengers. With the additional influx of international passengers expected during the summer, it is possible that cargo clearance at the world's fourth busiest airport will become a half day operation.

Import specialists have similarly been affected by the great increase in cargo coming through Dallas/Fort Worth. Moreover, because so much of the Dallas/Fort Worth cargo is textile related, the responsibilities of import specialists have increased even beyond the increase of entries. With the implementation of new textile regulations in March, textile clearance has been delayed on the average of an additional three days because of the over-

whelming workload of import specialists. Similarly, the textile regulations have placed an increased burden on mail clearance because of the volume of textile oriented parcels that are received in our area. The combination of textile regulations treating these parcels as formal entries, and the new Customs procedure of routing of these parcels through Oakland without clearance has resulted in a tremendous backlog of parcels, which are by their nature labor intensive to clear.

Drug Interdiction. The increase in passenger traffic has also increased the amount of drug trafficing through Dallas/Fort Worth. Although drug seizures have been made on flights originating from all parts of the world, the large number of Latin American flights to Dallas/Fort Worth has made Dallas/Fort Worth a part of the border drug problem. We believe the local Customs office has done an admirable job of drug interdiction, but the resources have simply not been available to significantly deter the increasing drug traffic.

Conclusion. Dallas/Fort Worth has enjoyed a good working relationship with Customs at the national, regional, and local levels. Our community wishes to continue working with Customs to develop and implement the most effective systems for clearing passengers and cargo. No amount of change in programs, however, can result in efficient clearance of passengers and cargo in a high growth area such as Dallas/Fort Worth unless personnel sufficient to operate those programs are available. We urge the Committee to review Customs budgeting in light of the critical need for additional personnel in high growth areas such as ours.

Statement of the

National Association of Stevedores

Presented to the

International Trade Subcommittee
of the Senate Committee on Finance

On the

Budget of the U.S. Customs Service

Submitted by

Thomas D. Wilcox
Executive Director and General Counsel

National Association of Stevedores
2011 Eye Street, NW
Suite 601
Washington, DC 20006

May 20, 1986

The National Association of Stevedores (NAS) is a membership trade organization representing the United States stevedore and marine terminal industry. NAS member companies employ tens of thousands of longshore labor to load and unload ships calling at this country's ports in both foreign and domestic commerce. NAS member companies do business on all of the nation's seacoasts, the states of Alaska and Hawaii, the Commonwealth of Puerto Rico, and various inland ports.

The NAS respectfully submits these comments for the record of the May 12, 1986 hearing held before the International Trade Subommittee of the Senate Committee on Finance on the Budget of the U.S. Customs Service.

OPPOSITION TO CUSTOMS USER FEE TAXES

Once again, the Administration has submitted a budget request calling for the imposition of over $500 million in Customs User Fees. Earlier this year, Congress approved $200 million in user fees in the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA). This $200 million was hard fought and resulted from a compromise by industry in which fees would be placed only on the processing of ships, trucks, rail cars or passengers - but not on imports and exports. Apparently, the Administration, buoyed by the

acceptance of the COBRA fees, believes that maritime commerce is an easy mark and is seeking the second wave of fees. Where does it end?

The purpose of the fees is simply to reduce the deficit. These fees are taxes. The Administration calls the processing of cargo a service. Processing of cargo to collect Customs duties is no more a service than the processing of a tax form by the IRS is a service to the individual taxpayer.

When user fees are proposed, the proposer usually neglects to consider the overall effect of all user fees on a given industry. Most of the government agencies involved with the stevedore and marine terminal industry also are considering such taxes. The Coast Guard wants to tax terminals for safety inspection. The Army Corps of Engineers wants to tax cargo to pay the costs of dredging harbors. Proposals have surfaced in Congress that would levy taxes on trade to fund Superfund and Trade Adjustment Assistance.

These proposed taxes total in the billions of dollars with no increase in "service" to stevedores, marine terminal operators, and maritime commerce in general. Taken to its "logical" conclusion NAS members could be subject to "user fee" taxes for OSHA, the Food and Drug Administration, the Environmental Protection Agency, local fire marshals, local police, port authorities, and every other public entity that deals with maritime commerce.

The Committee should look closely at the trade implica-

tions of the fee proposal. The fees would be incompatible with the rules of the General Agreement on Tariffs and Trade (GATT), which require that fees in connection with imports "shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes." Since the Administration has proposed the fees only to reduce the deficit (a fiscal purpose) they would violate GATT and lead to foreign retaliation.

Additionally, it makes little sense to charge a fee to fund the Customs Service when Customs already collects nearly $12 billion per year based on a $700 million budget. This is nearly twenty times the government expenditure.

CUSTOMS RULEMAKING PROCEDURES

The NAS is concerned with the Customs Service tendency to make unilateral decisions that affect the flow of cargo through marine terminals without first soliciting comment from the public as required by the Administrative Procedures Act (APA).

Customs' practice of issuing regulations in the form of instructions to its field offices without prior consultation with the industry has proved to be inefficient, costly and time consuming. After unilaterally issuing these regulations, Customs is frequently obliged to modify them because these regulations are unworkable. Meanwhile, this process has caused unnecessary cost and confusion, and at times

confrontation, between the Customs Service and the maritime community.

NUMBER AND DISTRIBUTION OF CUSTOMS INSPECTORS

The NAS is concerned with the proposed budget's cut of Customs Inspectors and with the fair allocation of the remaining inspectors to the docks.

One of Customs' current goals is to implement fully the Automated Cargo Clearance Early Processing Technique System (ACCEPT) throughout the nation. The NAS supports this goal. Unfortunately the inefficient method which Customs is using to implement the new system is costing NAS members considerable amounts of money.

Automating any process requires extra effort. The existing procedures must be utilized while the new procedures are implemented. Problems arise that create more work and must be overcome. This requires more people and greater expense.

But Customs is removing its personnel from terminals prior to implementing ACCEPT. This means fewer inspectors are available for the transition period rather than more. The result? Delays and mistakes that slow down the flow of trade. In one case, implementing ACCEPT, which is designed to reduce the percentage of containers that must be wharfed (set aside, opened and inspected) from 40% to 20%, temporarily increased the percentage to 60%. This created considerable delay and expense.

In addition to delays resulting from cutting back the number of inspectors during the transition to automation, the NAS also is concerned that the Customs Service may be shifting personnel away from marine terminals to enhance capabilities at the nation's airports. While there is a need for greater security at airports, marine terminals should not be required to absorb the cost caused by understaffing at maritime facilities.

Finally, the NAS opposes overall cutbacks in Customs inspectors because they create understaffing problems throughout the country. Trade has increased in the past several years, but Customs has failed to keep up. The situation is most acute on the Pacific Coast since Pacific Rim trade has increased substantially. The NAS believes that increased staffing in some ports will improve the flow of commerce and result in a net increase in revenue to the government. More Customs inspectors should mean better enforcement and more Customs receipts.

The Committee should remember that over 95% of all U.S. foreign trade is waterborne. "User fee" taxes and delays caused by misallocation of Customs personnel or poorly implemented regulations increases the cost of this trade, and this cost will be borne ultimately by the American consumer.

Specifically, the NAS requests that the Committee consider instructing the Administrator of the Customs Service to prohibit the reduction of Customs personnel assigned to marine terminals prior to and during implementation of

automated Customs systems and to prohibit reassignment or temporary transfer of Customs personnel from marine terminals to airports and other Customs stations if that transfer results in inadequate Customs staffing at the marine terminals.

Respectfully,

Thomas D. Wilcox
Executive Director and
General Counsel