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AUTHORIZATION OF APPROPRIATIONS TO THE U.S. INTERNATIONAL TRADE COMMISSION, THE U.S. CUSTOMS SERVICE, AND THE OFFICE OF THE U.S. TRADE REPRESENTATIVE

MARCH 25 (legislative day, MARCH 24), 1987.—Ordered to be printed

Mr. BENTSEN, from the Committee on Finance, submitted the following

REPORT

[To accompany S. 829]

The Committee on Finance reports an original bill (S. 829), to authorize appropriations for fiscal year (FY) 1988 to the U.S. International Trade Commission, the U.S. Customs Service, the Office of the U.S. Trade Representative, and for other purposes, and recommends that the bill do pass.

I. SUMMARY

The Committee bill would authorize FY 1988 appropriations of $35,386,000 to the U.S. International Trade Commission, $1,035,211,000 to the U.S. Customs Service, and $15,248,000 to the Office of the U.S. Trade Representative.

In addition, the bill would require notification of the Congress 180 days prior to the Customs Service taking certain specified actions; establish a customs private sector advisory committee; add clarifying language regarding the customs user fee account; and direct the Secretary of the Treasury to prohibit certain imports from the Soviet Union that are produced by forced labor.

II. GENERAL EXPLANATION

The Committee on Finance reports a bill to authorize FY 1988 appropriations to the U.S. International Trade Commission (ITC), the U.S. Customs Service, and the Office of the U.S. Trade Representative (USTR).

91-010

AUTHORIZATION OF APPROPRIATIONS TO THE ITC (SECTION 1 OF THE BILL)

Present law.—Section 330(e)(1) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(1)) requires annual enactment of an authorization of appropriations for the ITC. Section 175 of the Trade Act of 1974 (19 U.S.C. 2232) requires that the estimated expenditures and proposed appropriations of the agency be included in the President's budget without revision. The ITC's appropriation for FY 1987 was $33,900,000.

Committee bill.—Section 1 of the bill would authorize appropriations of $35,386,000 for FY 1988, as requested by the ITC. This represents an increase of $1,486 million over the FY 1987 appropriation. The increase is entirely attributable to non-discretionary cost increases (increased rental costs associated with the ITC's September 1987 move to a new building, the three percent January 1987 pay raise, and the implementation of the Federal Employee Retirement System).

Reasons for the Committee bill.—The ITC's workload, which has grown for the last several years, essentially leveled off in FY 1986, but remains high. The Committee expects that the continuing demand on the agency to conduct trade investigations and to provide technical advice, information, and assistance to the Congress and the Executive (particularly as the General Agreement on Tariffs and Trade (GATT) Uruguay Round negotiations get underway) justifies a budget sufficient to maintain current operating levels.

AUTHORIZATION OF APPROPRIATIONS TO THE U.S. CUSTOMS SERVICE (SECTION 2 OF THE BILL)

Present law.—Section 301 of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075) requires annual enactment of an authorization of appropriations to the U.S. Customs Service. The Budget Reconciliation Act of 1986 (P.L. 99-509) amended section 301 to require that, for all years after FY 1987, the authorization of appropriations to the Customs Service shall separately specify the amount authorized for salaries and expenses for commercial operations and the amount authorized for salaries and expenses for all other purposes. The reason for this amendment was to identify those operations to be funded out of the customs user fee account, which is dedicated to salaries and expenses for commercial operations. The Customs Service's appropriation for FY 1987 is $1,019,435,000.

Committee bill.—The Committee bill would authorize an appropriation of $1,035,211,000 for FY 1988. The bill also:

(1) Requires notification of the Congress by the Customs Service prior to its taking certain specified actions, including a significant reduction in force and closing of any Customs office or port of entry; and

(2) Establishes a customs private sector advisory committee to advise the Secretary of the Treasury on matters relating to the commercial operations of the Customs Service.

Reasons for the Committee Bill.—The Committee bill authorizes appropriations for the Customs Service in FY 1988 of $1,035,211,000. This increases by about $145,911,000 the $889,300,000 requested in the President's budget. As required by section 301 of the Customs Procedural Reform and Simplification Act of 1978, as amended by the 1986 Omnibus Budget Reconciliation Act, the Committee bill provides separate authorization of salaries and expenses for commercial operations ($559 million) and for all other purposes ($358 million). The remainder of the total authorized amount ($118 million) is for operations and maintenance of the air interdiction program.

As was the case in previous years, the Administration proposed significant cuts in Customs' manpower in FY 1988. The proposed appropriation level in the President's budget would allow 13,039 staff positions, or nearly 2,000 fewer than that provided for by the FY 1987 authorization and appropriation. The elimination of positions would, according to Customs, be done across the board, except that positions for intelligence employees and employees in the air interdiction program would not be cut. Thus, the cuts would fall disproportionately on other enforcement positions and on positions in commercial operations.

In testimony before the Committee, the Customs Service sought, as it has in previous years, to justify these personnel cuts on the basis of management improvement measures it has taken, particularly in the area of improved automation of commercial operations. These measures are said to have improved productivity to the extent that the personnel positions sought to be cut are not needed.

The Committee agrees that the Customs Service cannot adequately handle its present and anticipated workload without the modernization and streamlining of procedures afforded by automation. According to the Customs Service, it cleared 301.5 million persons entering this country and processed 7.32 million merchandise entries in FY 1986, an increase of 7.3 percent over FY 1985. As recently as FY 1980, the merchandise entry workload was only 4.37 million. In addition, the Service in FY 1986 collected revenues of $14.7 billion, an amount projected to rise to $15.3 billion in FY 1987. On the drug interdiction front, Customs in FY 1986 seized 52,521 pounds of cocaine, 692 pounds of heroin, and 2,211,068 pounds of marijuana. In addition to these growing responsibilities, the Service must enforce some 400 different regulatory statutes on behalf of roughly 40 other Federal agencies. Clearly, Customs has a massive set of tasks to perform, and, to ease this burden, the Committee fully supports all meaningful efforts to make processing of persons and merchandise more speedy and more efficient.

These efficiencies cannot take place overnight, however, and automation is no panacea. The Committee notes that the Customs Service's automated commercial system is still in the implementation phase. It is yet to be introduced at many ports of entry, and many of its projected functions are only partly operational, if at all (for example, the system's automated broker interface function, according to Customs' own testimony, processes only 30 percent of all entries at present, with a goal of 50 percent by calendar year 1988). Moreover, many crucial functions of the Service simply cannot be handled by computers. They cannot inspect cargo, they cannot classify imports for duty purposes, and they cannot fly an airplane for purposes of drug interdiction. To date, there is simply no hard evidence—and the Administration has offered none—that the Customs Service can lose the numbers of personnel the Administration seeks to eliminate and still adequately perform the jobs the Congress has given it.

Testimony before the Committee provides numerous examples of how the Administration's haste to eliminate Customs personnel positions has resulted in diminution of service to the public. Witnesses noted that, because of cuts in the numbers of import specialists, it has become very difficult to obtain line review of an entry by an import specialist in order to obtain assistance on questions of classification and valuation. One witness, a customs broker in Brownsville, Texas, testified that he frequently must travel to Laredo—a distance of 200 miles—just to obtain an interview with an import specialist, because staff reductions in Brownsville had resulted in no one being available at that port of entry.

Still other witnesses complained of excessive delays in Customs' entry review, inspection, and clearance procedures. At hearings in Texas, witnesses particularly noted delays that caused daily backups of traffic on international bridges spanning the U.S.-Mexico border.

Of particular concern to the Committee is Customs' growing failure to seriously review and inspect entries of goods. The Committee recognizes that review and inspection of all, or nearly all, entries is impractical and would lead to unacceptable delays in processing of entries. At present, however, roughly 65 percent of all merchandise entries come into this country without any review of the importer's documentation. Moreover, only two percent of merchandise entries receive even the most cursory physical inspection (a recent General Accounting Office study found that most Customs inspections were rudimentary). In this regard, it is worthwhile to note that the decision whether to conduct an inspection is a function controlled by the automated processing system, and, according to testimony by the Customs Service, a decision by a customs inspector to override the system's instructions requires the approval of a supervisor. This process serves only to deter qualified, experienced personnel from opting to conduct an inspection when their best judgment calls for it. Clearly, without a greater effort to review and inspect entries Customs is not ensuring that importer fraud is not taking place.

An additional problem arising from the failure to inspect adequately is highlighted by the Customs Service's own testimony. Customs stated that, as its tactical drug interdiction capabilities increase, drug smugglers are likely to attempt to enter more of their contraband through established ports of entry. Customs then states that, in order to meet this threat, it has developed automated systems and new ways of processing passengers and cargo. This claim does not match reality, however. The automated system does not inspect people and cargo for drugs. If drug smugglers are in fact turning increasingly to established ports of entry, then inspection of only two percent of entries helps guarantee that they will be successful in their attempts.

Finally, although witnesses stated that in dealing with the Customs Service they have been uniformly impressed by the dedication and professionalism of Customs' employees, as a result of the Administration's cutbacks there has been a definite change in the quality of the personnel. Morale is low, and the core group of experienced, knowledgeable mid-career employees has declined significantly. Witnesses noted that, increasingly, the personnel they deal with are inexperienced or are working outside their areas of expertise.

For these reasons, the Committee concluded that the decreases in spending and personnel for the Customs Service in FY 1988 sought by the Administration are not justified. The Committee bill instead authorizes appropriations at a level sufficient to continue customs services at a level commensurate with that authorized for FY 1987. Last year, the Congress significantly augmented the budget for the Customs Service, in large part to accomplish the purposes of the Drug Interdiction Enforcement Act (P.L. 99-570). Customs has been slow to accomplish the large expansion in hiring required by last year's legislation, and it is difficult as yet to evaluate the performance level that will be achieved by the Customs Service at that funding level. The Committee believes that a year of stability at the FY 1987 level will enable the sort of evaluation needed.

In order to achieve that stability, the Committee expresses its strong encouragement of the Administration to cooperate in providing the Customs Service with the support it requires to carry out its responsibilities. In particular, the Committee is very concerned that the Administration desist from again attempting, as it has with regard to FY 1987 appropriations, to cut the budget of the Customs Service through unilateral deferrals and rescissions of appropriations that run counter to the expressed will of the Congress. The Committee fully shares the aim of reducing the Federal budget deficit, but wholesale cuts in the budget of the Customs Service are penny wise and pound foolish. For every dollar spent on the Customs Service, a revenue-producing agency, it returns far more in revenue.

The Committee notes that, because the 1986 Budget Reconciliation Act, which created the customs merchandise user fee, and the Appropriations Act for FY 1987 proceeded through the Congress at the same time, no appropriation was passed for FY 1987 from the customs user fee account for salaries and expenses related to Customs' commercial operations. The Senate Committee on Appropriations is considering a supplemental appropriation for this purpose. The Committee on Finance strongly recommends that a supplemental appropriation for FY 1987 be passed so as to carry out the intended purpose of the user fee account.

Section 2(b) of the bill is intended to ensure that the Customs Service makes no major management initiatives involving cutbacks in personnel, closing of facilities, or diminution of services without sufficient notice to the Congress. It requires the Commissioner of Customs to notify the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives at least 180 days in advance of taking any action which would result in a significant reduction in force of employees other than by attrition; result in any significant reduction in hours of operation or services rendered at any office of the Customs Service or any port of entry; eliminate or relocate any office of the Customs Service; eliminate any port of entry; or significantly reduce the number of employees assigned to any office of the Customs Service or any port of entry.

In section 2(c) the Committee approved the establishment of a 20-member customs private sector advisory committee. The Committee would advise the Secretary of the Treasury on matters relating to the commercial operations of the Customs Service. It is the view of the Committee that, on the management level, the Customs Service has become increasingly out of touch with those business communities it is meant to serve. The private sector could be a rich source of expertise and knowledgeable suggestions on commercial operations. Institution of an advisory committee would be a structured way of ensuring that interested persons have a way to make their views known. It would provide the Secretary with the information he needs to assure that the Commissioner is providing the high quality of service the Committee intended.

The Secretary would be required to choose the members of the committee from among representatives of those businesses and organizations concerned about commercial operations, and not more than half may be from one political party. The committee would be required to make an annual report to the Committee on Finance and to the Committee on Ways and Means of the House of Representatives. To increase the likelihood that the committee will actually function so as to give meaningful access by the private sector to policymakers in the Department of the Treasury and the Customs Service, the bill provides for a yearly report to the oversight Committees to enable them to review the committee's activities.

AUTHORIZATION OF APPROPRIATIONS TO THE OFFICE OF THE USTR (SECTION 3 OF THE BILL)

Present law.—Section 141(f) of the Trade Act of 1974 authorized appropriations to the Office of the USTR in such amounts as may be necessary for the purpose of carrying out its functions for FY 1976 through FY 1980. Last year, the Congress amended this section to authorize an appropriation for FY 1987 of $13,300,000.

Committee bill.—Section 3 of the Committee bill amends section 141(f) of the Trade Act of 1974 to authorize appropriations to the Office of the USTR of $15,248,000 for FY 1988. The bill provides that $1 million is to remain available until expended.

Reasons for the Committee bill.—The Committee has approved the budget requested for the USTR. The $15,248,000 requested by the Administration for the USTR for FY 1988 is an increase of approximately $1,948,000 over the $13,300,000 authorized for FY 1987. The increase reflects both non-discretionary cost increases (rent increases and increased personnel costs associated with the January 1987 three percent pay raise and the implementation of the Federal Employee Retirement Plan) and increases for the Uruguay Round GATT multilateral trade negotiations. The increases related to the Uruguay Round include the addition of five new personnel positions, a one-time expenditure for upgrading USTR's computer capacity, and an addition to USTR's representation funding. The agency will be undertaking a complex, sensitive task in the new round of negotiations, and the Committee believes it is important to provide USTR with resources which are reasonably necessary to carry on the preliminary stages of the negotiations, and to prepare the way for full scale negotiations in the event Congress eventually decides to proceed with the negotiation. The Committee's concern that the budget request might not be adequate to handle the magnitude of the work facing the agency in the upcoming fiscal year was addressed by the Administration's explanation that, in order to provide backup to the USTR for the Uruguay Round, it has also requested approximately $4 million for 72 additional personnel positions in the International Trade Administration of the Department of Commerce for FY 1988.

Of the total authorization, $1 million is authorized as no-year funding. The purpose of allowing a portion of the authorized appropriation to remain available until expended relates to expenditures for USTR's Geneva, Switzerland facilities. Because of fluctuations in the value of the dollar compared to the Swiss franc, USTR cannot safely predict the amount of funding needed for its Geneva operations, and either a shortfall or a surplus may result. The no-year funding will enable USTR to retain surplus funds from a period in which the dollar strengthens in value against the franc, and expend them in a later year in which a shortfall would otherwise result because of a decline in the dollar's value. In earlier testimony before the House and Senate Committees on Appropriations, USTR stated that a $1 million limitation on no-year funding would be sufficient for this purpose.

MISCELLANEOUS PROVISIONS (SECTIONS 4 AND 5 OF THE BILL)

Section 4 adds clarifying language regarding the customs user fees. In the Budget Reconciliation Act of 1986, Congress required that the fees were to be placed in a dedicated account for expenditures for commercial operations of the Customs Service. The new language specifies that the fees are to be treated as receipts offsetting expenditures for salaries and expenses for commercial operations. The purpose is to make clear that it is inappropriate to treat the fees as revenues, as the Administration has done. In addition, the section clarifies that the user fees on passengers and conveyances are to be deposited in the same dedicated account as the ad valorem fees and, to the extent they are not needed to reimburse the Customs Service for expenses incurred in providing overtime inspectional services, they are to be used as receipts offsetting commercial operations expenditures.

Under section 307 of the Tariff Act of 1930 (19 U.S.C. 1307), goods produced abroad by convict labor, forced labor, or indentured labor under penal sanctions are not entitled to entry at any port of the United States. Section 5 makes a finding that articles under seven tariff schedule items imported from the Soviet Union are being made, wholly or in part, by convict, forced, or indentured labor, and directs the Secretary of the Treasury to prohibit their importation. An exception would permit importation if the President clarifies either that a product or products are not being made with forced labor, or that prohibiting importation of the product or products directly affects the national security interests of the United States.

The Commissioner of Customs has twice (in September 1983 and March 1984) made the determination that articles from the Soviet Union made by forced labor are now, or are likely to be, imported into the United States. In both instances the Department of the Treasury ordered Customs not to implement the determination. In hearings before this Committee on July 9, 1985, November 22, 1985, and December 4, 1985, witnesses confirmed that forced labor is used in the Soviet Union to produce manufactured articles.

The Committee bill includes in its specification of articles to be prohibited from entry the items specified in a memorandum from the Commissioner of Customs to the Secretary of the Treasury on March 15, 1984. Nothing in the bill is intended in any way to imply a limitation on the Commissioner of Customs in making determinations prohibiting the importation of other products that he has reason to believe should be barred from entry under current law and regulations.

III. Vote of the Committee in Reporting the Bill

In compliance with section 133 of the Legislative Reorganization Act of 1946, the Committee states that the bill was ordered favorably reported without objection.

IV. Budgetary Impact of the Bill

In compliance with sections 308 and 403 of the Congressional Budget Act of 1974 and paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following statement is made relative to the cost and budgetary impact of the bill. The bill would authorize the enactment of new budget authority for FY 1988 for the U.S. International Trade Commission in the amount of $35,386,000; $1,035,211,000 for the U.S. Customs Service; and $15,248,000 for the Office of the U.S. Trade Representative. The Committee has not received a report of the Congressional Budget Office under section 403 of the Congressional Budget Act regarding this bill, and therefore states that it is impracticable to comply fully with the requirements of rule 11(a). This report, however, will be submitted to the Senate as soon as it is received.

V. Regulatory Impact of the Bill

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee states that the Committee bill will not regulate any individuals or businesses, will not impact on the personal privacy of individuals, and will result in no additional paperwork. The bill authorizes continued funding of three Government agencies without substantially modifying the law governing their operations.

VI. Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TARIFF ACT OF 1930, AS AMENDED BY P.L. 99-272

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PART II—UNITED STATES INTERNATIONAL TRADE COMMISSION

SEC. 330. ORGANIZATION OF COMMISSION.

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(e) AUTHORIZATION OF APPROPRIATIONS.—
There are authorized to be appropriated to the Commission for necessary expenses (including the rental of conference rooms in the District of Columbia and elsewhere) for fiscal year [1986] *1988* not to exceed [$28,901,000;] *$35,386,000,* of which not to exceed $2,500 may be used, subject to approval by the Chairman of the Commission, for reception and entertainment expenses.

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CUSTOMS PROCEDURAL REFORM AND SIMPLIFICATION ACT OF 1978

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SEC. 301. APPROPRIATIONS AUTHORIZATION.

(a) * * *

[(b)(1) There are authorized to be appropriated to the Department of the Treasury not to exceed $1,001,180,000 for the salaries and expenses of the United States Customs Service for fiscal year 1987; of which—

[(A) $749,131,000 is for salaries and expenses to maintain current operating levels, and includes such sums as may be necessary to complete the testing of the prototype of the automatic license plate reader program and to implement that program;

[(B) $80,999,000 is for the salaries and expenses of additional personnel to be used in carrying out drug enforcement activities; and

[(C) $171,050,000 is for the operation and maintenance of the air interdiction program of the Service, of which—

[(i) $93,500,000 is for additional aircraft, communications enhancements, and command, control, communications, and intelligence centers, and

[(ii) $350,000 is for a feasibility and application study for a low-level radar, detection system in collaboration with the Los Alamos National Laboratory.

[(2) No part of any sum that is appropriated under the authority of paragraph (1) may be used to close any port of entry at which, during fiscal year 1986—

[(A) not less than 2,500 merchandise entries (including informal entries) were made; and

[(B) not less than $1,500,000 in customs revenues were assessed.]

(b)(1) There are authorized to be appropriated for fiscal year 1986, $476,211,000 for the salaries and expenses of the United States Cus-

toms Service that are incurred in noncommercial operations, of which—

(A) $118,020,000 is for the operation and maintenance of the air interdiction program of the United States Customs Service,

(B) $150,000 is for rents incurred in connection with the provision of customs services at places located outside the customs territory of the United States,

(C) $1,000,000 is for research and is authorized to be appropriated without fiscal year limitation so that the sum remains available until expended, and

(D) $10,000 is for official reception and representation expenses.

(2) There is authorized to be provided in any law making appropriations for fiscal year 1988, a limitation on the total amount of payments which may be made during such fiscal year under section 13031(f)(2)(A) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (other than payments described in section 13031(f)(2)(C) of such Act) that shall not exceed $559,000,000.

(3) During fiscal year 1988, the Commissioner of Customs is authorized to—

(A) purchase not more than 500 motor vehicles for replacement of motor vehicles used by the United States Customs Service (including not more than 490 motor vehicles adapted for police activities) without regard to any general purchase price limitation imposed by any law other than this section,

(B) rent passenger motor vehicles, and

(C) purchase uniforms for the United States Customs Service without regard to any general purchase price limitation imposed by any law other than this section.

* * * * * * *

(d) No part of any sum that is appropriated under subsection (b) for fiscal years after September 30, 1984, *and no funds in the Customs User Fee Account,* may be used for administrative expenses to pay any employee of the United States Customs Service overtime pay in an amount exceeding $25,000; except that the Commissioner of Customs or his designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Service.

* * * * * * *

(f) [USE OF SAVINGS RESULTING FROM ADMINISTRATIVE CONSOLIDATIONS.—] If savings in salaries and expenses result from the consolidation of administrative functions within the Customs Service, the Commissioner of Customs shall apply those savings, to the extent they are not needed to meet emergency requirements of the Service, to strengthening the commercial operations of the Service by increasing the number of inspector, import specialist, patrol officer, and other line operational positions.

(g) [ALLOCATION OF RESOURCES.—] *(1)* The Commissioner of Customs shall ensure that existing levels of commercial services, including inspection and control, classification, and value, shall continue to be provided by Customs personnel assigned to the headquarters office of any customs district designated by statute before the date of enactment of this subsection. The number of such personnel assigned to any such district headquarters shall not be reduced through attrition or otherwise, and such personnel shall be afforded the opportunity to maintain their proficiency through training and workshops to the same extent provided to Customs personnel in any other district. Automation and other modernization equipment shall be made available, as needed on a timely basis, to such headquarters to the same extent as such equipment is made available to any other district headquarters.

(2) The Commissioner of Customs shall notify the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives at least 180 days prior to taking any action which would—

(A) result in any significant reduction in force of employees other than by means of attrition,

(B) result in any significant reduction in hours of operation or services rendered at any office of the United States Customs Service or any port of entry,

(C) eliminate or relocate any office of the United States Customs Service,

(D) eliminate any port of entry, or

(E) significantly reduce the number of employees assigned to any office of the United States Customs Service or any port of entry.

TRADE ACT OF 1974, AS AMENDED

TITLE I—NEGOTIATING AND OTHER AUTHORITY

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CHAPTER 4—OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

SEC. 141. OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

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(f) AUTHORIZATION OF APPROPRIATIONS.—(1) There are authorized to be appropriated to the Office for the purpose of carrying out its functions [$13,582,000 for fiscal year 1986; of which not to exceed $80,000] *$15,248,000 for fiscal year 1988, of which not to exceed $69,000* may be used for entertainment and representation expenses. *Of the amounts appropriated under the authority of this paragraph for fiscal year 1988, $1,000,000 shall remain available until expended.*

(2) For the fiscal year beginning October 1, 1982, and for each fiscal year thereafter, there are authorized to be appropriated to the Office for the salaries of its officers and employees such additional sums as may be provided by law to reflect pay rate changes

made in accordance with the Federal Pay Comparability Act of 1970.

CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

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TITLE XIII—REVENUES, TRADE, AND RELATED PROGRAMS

Subtitle A—Trade and Customs Provisions

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PART 3—CUSTOMS FEES

SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) SCHEDULE OF FEES.—In addition to any other fee authorized by law, the Secretary of the Treasury shall charge and collect the following fees for the provision of customs services in connection with the following:

* * * * * * *

[(10) For the processing of any merchandise (other than an article described in subparagraph (A), (B), or (C) of paragraph (9)) that is formally entered, or withdrawn from warehouse for consumption, during any fiscal year occurring after September 30, 1987; a fee in an amount equal to the lesser of—

[(A) 0.17 percent ad valorem, or

[(B) an ad valorem rate which the Secretary of the Treasury estimates will provide a total amount of revenue during the fiscal year equal to—

[(i) the total amount authorized to be appropriated for such fiscal year to the United States Customs Service for salaries and expenses incurred in conducting commerical operations during such fiscal year, reduced by

[(ii) the excess, if any, of—

[(I) the total amount authorized to be appropriated for such salaries and expenses for such fiscal year, over

[(II) the total amount actually appropriated for such salaries and expenses for such fiscal year;

except that if appropriations are not authorized for a fiscal year, the fee imposed under this paragraph with respect to that year shall be in an amount equal to 0.17 percent ad valorem.]

(10) For the processing of any merchandise (other than an article described in subparagraph (A), (B), or (C) of paragraph (9)) that is formally entered, or withdrawn from warehouse, for consumption during any fiscal year beginning after September 30, 1987, a fee at a rate equal to the lesser of—

(A) 0.17 percent ad valorem, or

(B) an ad valorem rate which the Secretary of the Treasury estimates will provide a total amount of receipts during the fiscal year equal to the amount of the dollar limitation authorized under section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 on the total amount of payments that may be made under subsection (f)(2)(A) of this section during the fiscal year (other than payments described in subsection (f)(2)(C) of this section), reduced by the sum of—

(i) the excess, if any, of—

(I) the amount of such limitation for the fiscal year, over

(II) the amount of the dollar limitation imposed by any law making appropriations for the fiscal year on the total amount of payments which may be made under subsection (f)(2)(A) during the fiscal year (other than payments described in subsection (f)(2)(C) of this section), plus

(ii) the amount of an estimate made by the Secretary of the Treasury of the amount of funds that—

(I) will be in the Customs User Fee Account at the beginning of the fiscal year, and

(II) will not be used to make payments described in subsection (f)(2)(C) of this section, plus

(iii) the amount of an estimate made by the Secretary of the Treasury of the amount of receipts from fees imposed by any paragraph of this subsection other than this paragraph that—

(I) will be deposited in to the Customs User Fee Account during the fiscal year, and

(II) will not be used to make payments described in subsection (f)(2)(C) of this section.

If no authorization is provided under section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 for the amount of the dollar limitation that may be imposed on the total amount of payments under subsection (f)(2)(A) of this section during the fiscal year (other than payments described in subsection (f)(2)(C) of this section), the rate of the fee imposed under this paragraph for the fiscal year shall be 0.17 percent ad valorem.

* * * * * * *

(b) LIMITATIONS ON FEES.—* * *

(8)(A) The fee charged under subsection (a)(9) or (10) with respect to the processing of merchandise shall—

(i) be paid by the importer of record of the merchandise; and

(ii) be based on the value of the merchandise as determined under section 402 of the Tariff Act of 1930.

(B)(i) By no later than the date that is 5 days after the date [on which any funds are appropriated to the United States Customs Service for salaries or expenses incurred in conducting commercial operations] *of enactment of any law making* *appropriations for a fiscal year that provides a dollar limitation on the total amount of payments that may be made under subsection (f)(2)(A) during the fiscal year (other than payments described in subsection (f)(2)(C))* the Secretary of the Treasury shall determine the ad valorem rate of the fee charged under subsection (a)(10) and shall publish the determination in the Federal Register. Such ad valorem rate shall apply with respect to services provided for the processing of entries, and withdrawals from warehouse, for consumption made after the date that is 60 days after the date of such determination.

(ii) No determination is required under clause (i) with respect to [an appropriation to the United States Customs Service if the funds appropriated] *a law described in clause (i) if the funds appropriated by such laws* are available for less than 60 days.

* * * * * * *

(f) DISPOSITION OF FEES.—(1) Notwithstanding section 524 of the Tariff Act of 1930 (19 U.S.C. 1524), all of the fees collected under subsection (a) shall be deposited *as offsetting receipts,* in a separate account within the general fund of the Treasury of the United States. Such account shall be known as the "Customs User Fee Account".

[(2)(A) The Secretary of the Treasury shall refund out of the Customs User Fee Account to any appropriation the amount paid out of such appropriation for expenses incurred by the Secretary of the Treasury in providing overtime customs inspectional services for which the recipient of such services is not required to reimburse the Secretary of the Treasury.

[(B) The amounts which are required to be refunded under subparagraph (A) shall be refunded at least quarterly on the basis of estimates made by the Secretary of the Treasury of the expenses referred to in subparagraph (A). Proper adjustments shall be made in the amounts subsequently refunded under subparagraph (A) to the extent prior estimates were in excess of, or less than, the amounts required to be refunded under subparagraph (A).

[(3) Except as provided in paragraph (2), all funds in the Customs User Fee Account shall only be available, to the extent provided for in appropriation Acts, for the salaries and expenses of the United States Customs Service incurred in conducting commercial operations.]

(2)(A) The Secretary of the Treasury is authorized and directed to pay out of the Customs User Fee Account all salaries and expenses of the United States Customs Service that are incurred in conducting commercial operations.

(B) The authority to make payments under subparagraph (A) during any fiscal year (other than payments described in subparagraph (C)) shall be subject to such dollar limitations as are provided in any law making appropriations for such fiscal year. Payments may be made under subparagraph (A) during a fiscal year only if a dollar limitation on the total amount of payments that may be made under subparagraph (A) during such fiscal year (other than payments described in subparagraph (C)) is provided by a law making appropriations for such fiscal year.

(C) Any dollar limitation described in subparagraph (B) shall not apply to any payments made out of the Customs User Fee Account for expenses incurred by the Secretary of the Treasury in providing overtime customs inspectional services for which the recipient of such services is not required to reimburse the Secretary of the Treasury, and such payments shall not be taken into account in applying such a limitation.

(D) All funds in the Customs User Fee Account shall only be available for the salaries and expenses of the United States Customs Service incurred in conducting commercial operations.

[(4)**]** *(3)* At the close of fiscal year 1988 and each even-numbered fiscal year occurring thereafter, the Secretary of the Treasury shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding how the fees imposed under subsection (a) should be adjusted in order that the balance of the Customs User Fee Account approximates a zero balance. Before making recommendations regarding any such adjustments, the Secretary of the Treasury shall provide adequate opportunity for public comment. The recommendations shall, as precisely as possible, propose fees which reflect the actual costs to the United States Government for the commercial services provided by the United States Customs Service.

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