S. HRG. 101-36

CUSTOMS SERVICE BUDGET AUTHORIZATION FOR FISCAL YEAR 1990

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

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CUSTOMS SERVICE BUDGET AUTHORIZATION FOR FISCAL YEAR 1990

TUESDAY, MARCH 7, 1989

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, DC.

The hearing was convened, pursuant to notice, at 10 a.m. in room SD-215, Dirksen Senate Office Building, Hon. Lloyd Bentsen (chairman) presiding.

Present: Senators Bentsen, Moynihan, Baucus, Bradley, Packwood and Danforth.

[The press release announcing the hearing follows:]

[Press Release No. H-4, January 11, 1989]

SENATOR BENTSEN ANNOUNCES BUDGET AUTHORIZATION HEARINGS

WASHINGTON, DC—Senator Lloyd Bentsen (D., Texas), Chairman, announced today that the Committee on Finance will hold hearings on budget authorizations for the Customs Service, United States Trade Representative and International Trade Commission.

The hearings are scheduled for *Tuesday, March 7, and Wednesday, March 8, 1989 at 10:00 a.m.* in room SD-215 of the Dirksen Senate Office Building.

Bentsen said, "As a result of the Omnibus Trade and Competitiveness Act of 1988 and the U.S.-Canada Free Trade Agreement, the international trade agencies have acquired a wide range of new responsibilities. Effective implementation of the new Trade Act and the U.S.-Canada Agreement depend on these agencies having the necessary resources to meet their new responsibilities. As part of its program of oversight of the trade laws, the Committee will want to take a good look at the budget proposals for each agency with a view toward writing legislation this year that authorizes these agencies the funds they need to perform their jobs effectively and efficiently."

OPENING STATEMENT OF HON. LLOYD BENTSEN, A U.S. SENATOR FROM TEXAS, CHAIRMAN, SENATE FINANCE COMMITTEE

The CHAIRMAN. This hearing will come to order.

Commissioner, if you would come forward and take a seat, please.

Commissioner VON RAAB. May I have others come up?

The CHAIRMAN. Oh, yes. Of course. If you would like some reinforcements. I don't want the whole audience to move up here, Mr. Commissioner. But how many do you need?

Commissioner VON RAAB. There are four more than me.

The CHAIRMAN. Well normally they don't need that many, but we will not object to that. We want the answers to be as definitive as they can be.

These hearings this morning, of course, are to look at the 1990 budget for Customs. And I think it brings up the question we have

had for the last few years: Is the administration asking for a sufficient amount of money for Customs to do its job and to do it well?

In the opinion of the chairman, for the last few years the answer has been negative so far as that is concerned.

Last year alone, the Congress added funding for an additional 640 Customs personnel, all of those in the commercial operation. We recognize the vital role that Customs fills in facilitating trade and enforcing the import laws and stemming the influx of illegal drugs and other kinds of contraband.

Importantly also, of course, Customs is a collection agency, collecting over $17.5 billion in import duties and fees in the fiscal year 1988. For every dollar that is appropriated by the Congress, Customs collects approximately $18.

So funding that enhances Customs' capabilities in the commercial area not only pays for itself, it is a significant revenue raiser for the Treasury.

This year, although the administration is talking about cutting $12.4 million from Customs, it is basically I would think, a standstill budget that we are talking about. But transfers of program authority required by law accounts for most of that decrease. The budget then calls for increased funding and 396 new positions for an expanded drug enforcement capability. And I understand, that is particularly related to commercial cargo containers.

That proposed expansion is balanced by a proposal to cut 396 positions, the same number from commercial operations. And the justification for that includes increased efficiency as a result of automation and contracting out to the private sector part of that.

My concern, of course, is that as I recall, in about 1987, Treasury made a study of what was being done on automation at that point, and felt because of the increased burden and workload on Customs, that you were not at a point where you had gains in efficiency through automation to justify that kind of a cut.

I am a strong supporter of Customs' efforts to increase its efficiency by automation, but at the same time I know that you need a strong base of trained personnel, experienced personnel, despite the so-called enhanced efficiencies from automation. So I want to be sure that those people are doing that job well.

And, of course, I am thinking, as you know, Commissioner, of my own situation alone that Mexican border. I want to be sure that the delays are minimized and the operation runs efficiently. And that is one of the things that we will be addressing.

I think the two of us and this committee share the same kinds of concerns. What we want to ensure is a strong and efficient and capable Customs Service. So we are going to look forward to hearing from you insofar as this budget authorization.

I would like to now defer to the ranking Republican member on the committee for any comments he might have.

Senator PACKWOOD. Thank you, Mr. Chairman. I have no opening statement.

The CHAIRMAN. Senator Moynihan.

OPENING STATEMENT OF HON. DANIEL PATRICK MOYNIHAN, A U.S. SENATOR FROM NEW YORK

Senator MOYNIHAN. Yes, Mr. Chairman.

I would make just a point that the last Congress when we were king on the drug legislation, we made a very strong point, that part of our trade deficit increasingly is the drug paraphernalia brought into this country from other countries.

Here are crack vials, Mr. Chairman [indicating]. Don't let them be seen on the streets with you because they are drug paraphernalia and they will get you 30 days. They are made in Taiwan. And why should we let them bring crack vials into this country?

And, sir, there is a firm in New York and Texas. Is it Seguin, Texas?

The CHAIRMAN. Seguin it is pronounced.

Senator MOYNIHAN. Sequin, called Minigrip, and they make a sealed plastic envelope. And their trademark and patent have been infringed over and over again by Taiwan. Customs doesn't do anything. They let the Taiwanese send in the small version, which is the one used for drugs, which Minigrip will not manufacture because the only use for it is drugs and they will not produce it. So it all comes in from Taiwan in violation of a patent.

So I just hope we can hear from Mr. von Raab about what he plans to do about things like that. I mean, my God, it is bad enough to have this, crack vials.

I hasten to say I got this, sir, from the property clerk of the New York City Police Department. [Laughter.]

Commissioner VON RAAB. Mr. Chairman.

The CHAIRMAN. Commissioner.

Commissioner VON RAAB. It might be useful for me to answer that directly at this point, or I would be happy to pick that up later in my testimony.

The CHAIRMAN. Why don't I call on Senator Baucus for any comments and then we will do that.

Senator BAUCUS. No statement, Mr. Chairman. Thank you.

The CHAIRMAN. Go ahead, Mr. Commissioner.

Commissioner VON RAAB. The problem of drug paraphernalia is, as senator Moynihan pointed out, not only a serious problem with respect to the growing drug surge in this country but it does also have a drain on our balance of payments.

Customs has taken a very active role in the prohibition of importation of drug paraphernalia into the United States, and I think that you will see within the next 2 or 3 days it just so happens that there will be a major announcement made by the Customs Service with respect to some enforcement actions on illegally smuggled drag paraphernalia. I cannot go into that any further because it is a matter before a U.S. attorney, but I believe it will be disclosed very shortly.

With respect to Minigrip, we have been working with them, and we have detained a number of shipments. I believe the Senator was helpful in bringing that to our attention. And there have been discussions with the International Trade Commission, and we are working with them on this in order to try to prevent the sort of thing that the Senator was describing. So I fully support his con-

cern and want to ensure this committee that we are very much aware of not only the general problem with drug paraphernalia but also the problems of Minigrip.

The CHAIRMAN. All right. Commissioner, if you have a statement, if you will give it at this time.

STATEMENT OF WILLIAM von RAAB, COMMISSIONER, U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

Commissioner VON RAAB. I would ask the committee to accept a long-form statement for the record and I will present a shorter version.

The CHAIRMAN. Without objection, that will be done.

[The prepared statement of Commissioner von Raab appears in the appendix.]

Commissioner VON RAAB. I am pleased, Mr. Chairman, and members of the committee, to come before you to discuss our fiscal year 1990 Customs budget request.

As you are aware, the budget proposes freezing at fiscal year 1989 levels the aggregate spending of domestic programs not directly associated with one of President Bush's five broad initiatives. Although most of our programs are included in this category, the President has emphasized that the freeze is flexible, allowing some programs to increase while other are reduced.

During fiscal year 1988, Customs collected $17.5 billion in revenue, cleared nearly 350 million persons and processed nearly 9 million formal merchandise entries. The latter constituted a 10.7 percent increase over the past year.

In the drug enforcement area, we seized 140,000 pounds of cocaine, a 60-percent increase over the prior year. We also seized 1,350 pounds of heroin, nearly 1 million pounds of marijuana, and almost 100,000 pounds of hashish.

Each year that passes finds Customs with increasingly complex multi-mission responsibilities.

As you are well aware, as the primary border interdiction agency and enforcement agency, we are charged with enforcing 400 laws. Customs also administers the Nation's trade programs, to include quotas on textiles, steel, meats, dairy products, and we collect trade statistics, and dumping and countervailing duties.

Mr. Chairman, this committee has increasingly expressed its interest with respect to Customs' commercial operations and cargo facilitation efforts. With that in mind, I would like to briefly touch on a few cargo facilitation initiatives in commercial operations in which you have expressed interest.

Last year, we briefly discussed the major challenge for Customs' commercial side: Facilitation of cargo, while maintaining high degrees of compliance levels and an increasingly complex, busy and trading environment, We are continuing to meet this challenge through modernization and the increased use of selectivity supported by our computerized automated commercial system. This system and its components are designed to improve the quality and uniformity in the processing of imported merchandise.

By automating our entry processing systems through this system, we are now more efficiently processing entry-associated paperwork.

As we advance the system, we are looking to eliminate as many paper forms and requirements as possible.

The Customs Service computer system is now capable of communicating directly with private industry and receiving entry documents electronically. In fact, at this time, nearly 70 percent of entry documents are filed electronically.

Our computer advancements have also moved us closer to completion of an automated clearinghouse system where Customs' duties can be payed electronically.

As we join these different advancements, we move closer to our goal of a paperless and less intrusive and less burdensome Customs system in the future.

It is important to say here that the automation strides we have made have moved us to a leadership role in the international community in the development and testing of electronic data interchange. One day, this will result in the total transmission of invoice and other entry-related data by electronic communications between nations.

This year, we will see dramatic increases in changes in Customs' commercial activities. The Canadian Free Trade Agreement and the harmonized tariff system have now been implemented, along with a number of innovative Customs programs such as our new bindings rulings program, a program in which I believe Senator Packwood has a considerable interest.

While we have done much to prepare for these changes, expect the early months of 1989 to be a learning process for the trade community and government alike as we adjust to the new developments.

A particular concern to many in Congress is the implementation of the Canadian Free Trade Agreement. This agreement is a far reaching trade agreement which breaks new ground in removing barriers to trade in such areas as tariffs, investment services, and a host of others.

Under this agreement, tariffs on goods originating in the United States and/or Canada will have been systematically eliminated by 1998. In order for goods to qualify under this agreement they will have to meet criteria spelled out in a set of rules of origin which will preclude third countries from obtaining the benefits of the agreement simply by passing their goods through the United States or Canada.

In November and December 1988, in preparation for its implementation, Customs conducted training for its field personnel, and the Canadian and American trading communities.

Another area of concern to Congress is the replacement of the tariff schedules of the United States called TSUS, with the harmonized tariff schedule of the United States. implementation of this change has been a major priority for Customs. The harmonized system provides the United States and other trading nations with a greater uniformity in the classification of goods.

The preparatory effort toward implementation included nationwide training for all Customs personnel, as well as for other government agencies, the importing public and various trade associations.

Moving on to another Customs effort of interest to the committee, you will recall that the fiscal year 1989 Customs authorization bill contains a requirement to implement a ruling uniformity program. In response, Customs developed and implemented a classification rulings program on January 1 of this year. Under this program, for most requests we will issue a binding ruling within 30 days. The issued classification will be binding.

Finally, on the commercial side, I would like to inform the committee of a Customs test initiative called triangular processing, which began in October of last year. Basically, this program allows for entries and entry summaries to be filed electronically at locations different from where the merchandise arrives. This test, which began with the concurrence of the brokerage community, involves one large automated New York area broker representing six of that broker's national accounts at 11 Customs ports.

To date, the results have been very encouraging. In fact, many members of the trade community would like to participate in a slightly expanded version of the original triangle test, which Customs is now considering.

In a few words, Mr. Chairman, this program would remove a very, very difficult and often dysfunctional Customs presence which has affected transportation patterns around the country.

At this point, Mr. Chairman, a word is in order regarding funding for Customs' commercial operations.

As you know, Congress funded our commercial operations from the user fee account in fiscal year 1989. This year the administration will send to the Hill legislation to correct the Customs user fees incompatibility with GATT. Basically, the legislative proposal will seek a transaction based fee to replace the current ad valorem fee.

You will recall that the administration sent forward such a bill in May 1988, but Congress did not consider it.

On the enforcement side, the most visible mission element and a major priority of this administration continues to be narcotics enforcement. As you know, this is a tremendous responsibility, requiring staggering resources, patience, and careful judgment as to how these resources are to be used.

As Customs has become more successful in the air-marine interdiction program, based on resources we have received over the last few years, we are seeing, as expected, an increase in narcotics moving to our shores in containers in cargo vessels. This being the case, container enforcement strategies must command a heightened attention operationally. In turn, more resources are required.

With this requirement in mind, the new administration in its 1990 request has included $28 million for a new containerized cargo initiative. These funds would allow for an additional 550 full-time equivalent positions and a significantly increased level of intensive examinations of cargo containers for illegal drugs. This effort will take place, in part, with additional inspectors and canine teams.

To the extent this initiative calls for 550 inspectors to be added to our cargo enforcement effort, we see these resources as also providing better service to the importing public. I say this because these inspectors' efforts will permit Customs to further expedite the release of the low-risk shipments and more quickly accomplish

the examination and release of all shipments thought to be high risk.

Another enforcement tool is the financial law enforcement program which focuses on the illegal money flow of proceeds of criminal enterprises. The idea here is to interrupt the flow of illegal proceeds, seize the assets, and prosecute those who control the organization.

During fiscal year 1988, Customs' financial enforcement efforts produced a significant seizure increase over the previous year, up 61 percent, from $102 million, to nearly $165 million. The new budget request adds $3 million for money laundering investigations. The Bush budget for Customs' request totals $442 million for drug enforcement.

Mr. Chairman, I would like to remind the committee that the Customs Service began celebrating its bicentennial this past summer. The original Customs' districts and ports of entry were established by the fifth act of Congress on July 31, 1789 in response to the urgent need for revenue collection under the Tariff Act of the 4th of July, 1789. Even though Customs' basic mission has remained the same over the past 200 years, changes in the size and makeup of the international trade community have resulted in a significant expansion of the U.S. Customs Service and its responsibilities.

All in all, Mr. Chairman, Customs has enjoyed considerable progress and support over the past year in the enforcement and commercial arenas. At this point, we hope to capitalize on this progress we have made in both areas, and where it is feasible, improve our efforts. With a little patience and applied judgment, we can continue to accomplish results. I want to thank this committee for its support over the a we cherish our good relationship with it.

This concludes my statement. I would be happy to answer your questions.

The CHAIRMAN. Thank you, Commissioner.

We will take the early bird arrival schedule and a 5-minute limitation on questions, and take a second round if that is necessary.

Mr. Commissioner, a couple of years ago as we were supporting Mexico coming into the GATT, I was also talking with some of your officials at that time concerning trying to get uniformity in the way of application of the rules, not just on our side but on the Mexican side too, and trying to work with them. I talked to some of the Mexican officials who said that they would welcome some kind of joint cooperation in that regard.

Can you tell me what has been done as far as trying to accomplish that?

Commissioner VON RAAB. Yes. I can begin to tell you.

Through an initiative that Senator Gramm began, there is an informal organization called "The Border Trade Alliance," in which the U.S. Customs Service--both a few officials from headquarters, but largely officials in the region—members of chambers of commerce, and members of business along both sides of the border, as well as officials of Mexican Customs, have been meeting I would say for about 2 years. These meetings have been remarkably productive in terms of breaking down some of the unintended, if you

will, non-tariff barriers that have existed between Mexico and the United States.

They have come up with a whole series of improvements, including regularizing hours at border crossings so that the Mexican hours are the same as the U.S. Customs' hours, because as you are well aware, in the past, in some cases, you could leave Mexico but not enter the United States, or vice versa. In the case of the Maquiladora plants, we are actually working a system in which we are allowing trucks to leave the Maquiladora plants and be expedited through U.S. Customs because of information that they have provided Customs in advance of the arrival of those trucks.

So there is a range from the simple improvement of hours all the way through more sophisticated cooperative programs.

The CHAIRMAN. Commissioner, I pushed on this over 2 years ago, and that is why I want a reporting back and that is why I am asking for it because I have not had enough of the feedback and I wanted that kind of information provided for me. I asked for this in the hearings then. All right.

Commissioner VON RAAB. Mr. Banks, do you want to go into some more detail?

Mr. BANKS. Yes, sir.

We have had this initiative underway for the last 2 years, obviously under the direction of a number of members of Congress and with the Border Trade Alliance and in meetings with Mexican Customs. We have achieved a great deal in terms of just trying to streamline the basic process of moving cargo from Mexico into the United States. For example, we have installed automation all the way across our southern border.

The CHAIRMAN. I understand that. I am particularly concerned and interested in what has been done on the Mexican side in getting that message across. And when I met with del Madrid I talked to him about that. I talked to you all about that over 2 years ago, and I have not had enough feedback from your office.

Mr. BANKS. We have dealt quite a bit with the last administration in Mexico, and they did institute a number of practices. They did expand their hours of service. They did eliminate overtime charges in a number of locations. They have gone together with us in this Maquiladora initiative, whereby the trucks are sealed before they come into the United States. And the Mexicans allow those trucks to go to the head of the line with no export check prior to entrance into the United States. They have adjusted their staffing. They have staged trucks so that the trucks have the proper documentation when they enter the United States.

The Mexicans have initiated a project to try to bring certain compatibility between their commercial documentation requirements and ours. So they are, in essence, trying to adopt our forms so that it simplifies the process for the trade community.

The CHAIRMAN. All right. Let me ask you about another because of the limits of time.

Commissioner VON RAAB. May I make just one more point which I think would be useful.

The CHAIRMAN. All right.

Commissioner VON RAAB. We have offered them our automated commercial system lock, stock and barrel, and have offered to

assist them in implementing it. Now, admittedly, it is a very, very difficult effort, but we are working towards using exactly compatible systems, including not only the paperwork but the automation as well.

The CHAIRMAN. All right.

I want a further explanation on that one, but let me get to something else with the limitation of time.

Your reference to an FTE shortfall. Your budget proposes to cut 127 positions because of an expected full-time equivalent shortfall. Would you explain that?

Commissioner VON RAAB. It is a bit difficult to explain.

The CHAIRMAN. I found it so and that is why I am asking for further amplification today. Frankly, after studying it, I still didn't know.

Commissioner VON RAAB. OMB has determined that in fiscal year 1989, because of a shortfall of funds, Customs will be unable to reach its FTE levels. Therefore, OMB, saying that Customs will not be able to reach its FTE levels, has reduced the funds in fiscal year 1990 for the FTE's they do not expect Customs to hire in fiscal year 1989 because we didn't have enough funds in the previous year.

For people that are interested in the study of logic, it doesn't really work out.

The CHAIRMAN. It really doesn't.

Commissioner VON RAAB. No.

The CHAIRMAN. Do you want to try it some more?

Commissioner VON RAAB. That is my best explanation of it. I think if you looked into it more carefully it would fall apart as an analytical exercise.

The CHAIRMAN. Well that's candor. And I appreciate that. But I must say, as I studied it, I was frustrated. I couldn't understand the logic of it. All right.

Senator Packwood, do you have any questions?

Senator PACKWOOD. Mr. Commissioner, as you recall, as required by the drug bill, the Customs Service has recently proposed regulations that create an appeal process, whereby an importer, Custom broker, port authority or other interested party can petition the Customs Service to resolve inconsistent Customs' decisions within 30 days. But the regulations do not provide a remedy if Customs doesn't resolve the inconsistency within 30 days. Can you tell me what is going to happen if you get to the 30 days and you have not resolved an inconsistency?

Commissioner VON RAAB. If a request is made of the Customs Service to make a decision on a binding basis within 30 days, we have a built-in scheme within Customs, and that is the decision makers are required to get back to the district director within 30 days. If they fail to do that, then the district director has the authority to make that decision himself, and that will be binding upon the Customs Service. So the pressure then can be brought directly on the district director, and he has no way to escape making that ruling.

Senator PACKWOOD. So what happens if he simply delays or doesn't make it?

Commissioner VON RAAB. He will have to deal with me personally. I mean he is required to do that. And that is well known within Customs that that must happen.

Senator PACKWOOD. Do you know how soon he is required to make it?

Commissioner VON RAAB. He is required to make it within 30 days. Can you elaborate on that, Ms. Gordon?

Ms. GORDON. We get reports on every one of these that are filed. And in Headquarters we keep track of precisely where they stand in the process. If there are any that haven't been responded to within 30 days, we would know it immediately, and we would immediately do something about it. We have been tracking these very closely, Senator.

Senator PACKWOOD. I understand to do something, but explain to me how it works. You have got 30 days to make a decision, reconcile any inconsistency. As I understand what the Commissioner is saying, he is saying at the end of the 30 days,if you haven't resolved it at your level, you send it back to the district director?

Commissioner VON RAAB. Senator, first of all, I apologize. I have been discourteous both to the committee and my staff here.

On my right is Lynn Gordon, who is our Assistant Commissioner for Commercial Operations; on my left is Sam Banks, in charge of Inspection and Control; Bill Riley, our Comptroller; and Bill Rosenblatt, who is our Assistant Commissioner for Enforcement.

Ms. GORDON. I'm sorry. What was the question again, sir?

Commissioner VON RAAB. If someone applies and 30 days pass, how does he get a decision?

Senator PACKWOOD. Because the 30 days comes up to you. You have got 30 days to resolve one inconsistency. But there is nothing in the regulations that says what happens at the end of the 30 days if you haven't resolve one inconsistency. I thought the Commissioner said it went back to a district director, but if you have got an inconsistency, I am not sure which district director it goes to. So if you could just run the process by me.

Ms. GORDON. We do keep track of these things and we are aware of them. Essentially what would happen is it is assigned to the National Import Specialists in New York, first of all, to carefully track each of these and make sure that they are issued.

Senator PACKWOOD. So each of these meaning a claim that there is an inconsistency an your classification.

Ms. GORDON. Each request for a decision. Yes.

Senator PACKWOOD. All right.

Ms. GORDON. Each request is carefully tracked. Then the district director where the request was filed is essentially an evaluator. He sits in a position of making sure that any request that was filed with him is responded to. And if the National Import Specialists in New York have not met the 30-day requirement, then the district director where the original request was filed does have the option of issuing the ruling himself.

And once again, in Washington, we also carefully track these. So we have two sets of tracking on each and every one of these rulings.

Commissioner VON RAAB. But to answer your question, Senator, I think you are probably accurate. There is no mechanism, apart

from the fact that Headquarters monitors these. You are right. If an individual did not get his decision within 30 days, there is no triggering mechanism that would kick that off. Our Headquarters tracking system is designed then to force the distract director to take action, and therefore, it would be a management responsibility for me or for Miss Gordon to speak to the district director and order him to issue that decision.

Senator PACKWOOD. So if on the 31st day no order has been issued by you unifying the inconsistency—let's say this complaint has been filed in the Customs district in Portland—at that stage, the complainant goes to the district director and says I haven't got a decision in 30 days, and it is now up to you to make the decision.

Commissioner VON RAAB. That's right.

Senator PACKWOOD. In how long a time?

Commissioner VON RAAB. As long as it takes that district director to have the decision thought out and typed and signed.

Senator PACKWOOD. And that becomes binding then on you?

Commissioner VON RAAB. That's correct.

Senator PACKWOOD. An interesting process.

So that the district director can make a decision that would be binding on the entire Customs Service nationwide.

Commissioner VON RAAB. That's correct. That is designed to ensure that this happens and to put the pressure where it belongs, on the district director, who is the local contact.

Senator PACKWOOD. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Moynihan?

Senator MOYNIHAN. Thank you, Mr. Chairman.

Commissioner, on page 2 of your testimony, the first paragraph begins, "For the drug enforcement program, a Bush priority," and the next paragraph begins, "The drug enforcement request is slightly lower than fiscal year 1989." Now if it is a priority of the new administration, why have you cut the funds for it?

Commissioner VON RAAB. The level of activity has not been reduced. The reduction in funds has to do with transfers and nonrecurring expenses.

Senator MOYNIHAN. Would you explain that?

Commissioner VON RAAB. Well in some cases is a capital expenditure that would have been made in the prior year. In the budget year, the equipment would be in place, and, therefore, the amount wouldn't necessarily have to be replicated.

And, further, my staff reminded me that there is a transfer of organized crime drug enforcement task force resources to the Justice Department, which will remain in the drug battle, but will now be administered by the Justice Department.

Senator MOYNIHAN. Commissioner, I am prepared to accept that for now, but don't come before this committee and say we have a great priority for which we are reducing our budget without going on to say you expect us to be able to read also, All right?

Commissioner VON RAAB. I guess I should have stated that the administration's drug budget has increased. In our case, some of the funds were transferred to Justice.

Senator MOYNIHAN. All right. Can we get an explanation in writing?

Commissioner VON RAAB. Yes. Certainly.

[The following was subsequently received for the record:]

DRUG ENFORCEMENT BUDGET

Senator MOYNIHAN. Please explain why the FY 1990 drug enforcement request is slightly lower than in FY 1989.

Commissioner VON RAAB. One reason that the net request is lower is the transfer of Organized Crime Drug Enforcement Task Force (OCDETF) resources to the Department of Justice, required by law. This accounts for a reduction of $14.5 million and 226 FTE from Customs direct FY 1990 request. However, it will be paid for out of the Department of Justice's direct appropriation and reimbursed to Customs. An additional $15.5 million is nonrecurred in the FY 1990 request as a result of one-time, FY 1989 expenses funded by the Drug Bill. Other nonrecurring costs in the Operations and Maintenance appropriation total $33 million. A reduction of $10.4 million is due to the transfer of E-2Cs to the Coast Guard. Smaller reductions include partial absorptions to offset the January 1989 pay raise and transfer of the Internal Audit function to the Statutory Inspector General.

Senator MOYNIHAN. And it says here you are transferring your E-2C's to the Coast Guard.

Commissioner VON RAAB. That's correct.

Senator MOYNIHAN. Would you help me with that? You have an air force?

Commissioner VON RAAB. Yes, Senator, we have an air force of approximately 90 aircraft, most of which are specially designed and include radar to deal with air smuggling.

Senator MOYNIHAN. With air smuggling of what?

Commissioner VON RAAB. Of dope into the United States.

Senator MOYNIHAN. Of dope.

Where is your headquarters? Do you have a base somewhere in Oklahoma?

Commissioner VON RAAB. The central air program management office is being built in Oklahoma City. That's correct.

Senator MOYNIHAN. Why Oklahoma City?

Commissioner von Raab. There are several reasons for that. One is that FAA has a big center there. Second, the SAC, Strategic Air Command, operates out of there. We work very closely with both of them.

Senator MOYNIHAN. I see.

And you stop the smuggling of dope, do you?

Commissioner VON RAAB. We do our best to stop the smuggling of dope.

Senator MOYNIHAN. What is dope?

Commissioner VON RAAB. Illegal narcotics.

Senator MOYNIHAN. I see.

Let me ask you, do you think you are having any success? You told us that your seizures of cocaine and heroin have increased. Do you take that to be a measure that the smuggling has been increased or otherwise?

Commissioner VON RAAB. The efforts of the interdiction agencies—I will include Coast Guard and Customs because we really have a compatible and joint effort underway—in interdiction, have been absolutely superb,

Senator MOYNIHAN. "Absolutely superb." That is good to know.

Commissioner VON RAAB. However, the problem has increased.

Senator MOYNIHAN. You have been superb, but the problem has been increased. Largely the priority, but the budget has been cut.

Commissioner VON RAAB. Largely because of the increased production abroad.

We have actually eliminated most air smuggling in the Southeastern United States, around the tip and east coast of Florida. We have driven the smugglers deep into the Bahamas. We have forced them to change their methods. They are using much higher risk and more costly methods today. That is the good news. The bad news is that foreign production has increased so incredibly that the amount of drugs that we face at the borders, even with our improved and superb performance, has resulted in more drugs coming into the United States.

Senator MOYNIHAN. I thought that was so. And I mean, if you want to use the term "superb," fine. How did you get an air force? I mean, isn't the Coast Guard the logical locus of that kind of activity?

Commissioner VON RAAB. Well the Customs Service has always had some number of aircraft. I can only speak from 1980 on. It became clear that we had a serious air smuggling problem. The Customs Service began to respond to that by taking some of the aircraft that it seized and using them to patrol our borders. Following that, and working with the Congress, the administration and Congress basically lodged the responsibility for air interdiction in the Customs Service. At the time, under two different Commandants of the Coast Guard, Hayes and Grassey, there was no interest in participating in the air smuggling effort, and, therefore, it was agreed between Congress and the administration that these responsibilities would be picked up by the U.S. Customs Service, as a result of which enormous resources and assets were given to Customs.

More recently, Admiral Yost, who has shown a greater enthusiasm and interest in this problem, has joined us in the air war, and we have now actually split the responsibility between Customs and Coast Guard so the Coast Guard is responsible for detection and the Customs Service is responsible for all other aspects of air smuggling, that is, tracking and apprehension.

Senator MOYNIHAN. Thank you, Commissioner.

The CHAIRMAN. Thank you, Senator Moynihan. Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman.

Commissioner, this committee, as you know, took justifiable pride in implementing the Canadian Free Trade Agreement. Certainly the chairman, Senator Bentsen, Senator Packwood, Senator Moynihan, myself, all of us, took great interest in and great pride in implementing that agreement once we got some of the deficiencies and some of the difficulties worked out.

Unfortunately, the Customs Service has not, however, allowed the people of Montana to reap the full benefit of that Free Trade Agreement. I am referring particularly to the border stations along the Canadian border, and even more particularly, the Roosville station on Highway 93 north of Eureke, MT.

For the last 17 years, the Canadians and the American Customs Services have kept open that station from 8 o'clock in the morning until midnight. Beginning July of last year, however, the Canadians, because of the anticipation of increased traffic between the two countries, moved to a 24- hour basis. That was last July. In

fact, in July, I think over 16,000 automobiles passed through that station into the United States.

Unfortunately, the U.S. Customs Service has not seen fit to follow suit, despite many a treaties on behalf of very many people in the State of Montana, which has caused great dislocation and great confusion. In fact, the need is so great, and the increased traffic has increased so much—a 30 percent increase in traffic since 1986—that the Montana State Legislature very recently passed a resolution asking the Customs Service to move to a 24-hour basis.

Highway 93 is the main artery for north and south traffic in Montana, up into Canada and back down again. It is the major highway. In fact, it should be an interstate highway. If you know something about Montana, if you look at traffic flows you would see that Highway 93 should be on the interstate system instead of some other highways,

I am asking you to follow up those requests and open up that station on a 24 hour basis. It is needed. I have countless letters from people in that area while, Mr. Chairman, I would like to include in the record—from businessmen, tour directors, bus tourists from Calgary and Edmonton to the United States which cannot proceed because the station is closed in the middle of the night.

The CHAIRMAN. Without objection, that will be done.

[The letters appear in the appendix.]

Senator BAUCUS. You talk about drug interdiction. And it seems to me that we had better have a Customs station manned in the middle of the night if we are going to stop the drug flow coming down from Canada.

So I am asking you, can you assure this committee that we will have 24-hour service at Roosville, MT?

Commissioner VON RAAB. I certainly will assure this committee that we will take a very good look at it, and require the regional and district offices to explain to us why we do not have 24-hour service. And if they are unable to make a good case, we will open it up for 24 hours.

Senator BAUCUS. I want to tell you too that this is not an academic matter because the nearest next station is over 200 miles away. I mean it is not an easy trip to make. And beyond that, I am told by some Customs Service personnel that they don't want to assign two additional people. And as you know, this committee has assigned—I have forgotten the number—but it is in the hundred of additional commercial Customs Service personnel, and it seems to me that at least two of them could go to Montana. In fact, the local people in the area are willing to—and they have talked to two part-time Customs persons there—combine two half-time personnel into one, which means we only need one other person.

It just seems to me, with a little imagination and a little creativity, we could figure out a way to keep that open on a 24 hour basis.

Commissioner VON RAAB. We will take a very good look at it. I assure you that we will take your concerns into account.

Senator BAUCUS. When can you get back to me with your answer? How quickly? What is a reasonable time period within which you can personally tell me?

Commissioner VON RAAB. Two weeks.

Senator BAUCUS. Two weeks. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Commissioner, I have been advised that you started recently requiring international express couriers to produce detailed manifests of business documents prior to Customs' clearances. Tell me why that is necessary. And do you also do that for the U.S. Postal Service?

Commissioner VON RAAB. We have been working with the courier industry now for some years in order to allow them to move their goods through Customs more quickly to meet their own requirements so that they can make their overnight deliveries. And we actually passed a set of regulations designed to allow them to do that, the net result of which is that our couriers are able to meet their windows, as they call them, to keep up their deliveries. You wouldn't find this in any other country in the world. As a matter of fact, we have tried to push other countries to approach the same scheme that we have.

In order to do this, however, and meet our own requirements, we need certain information from them about the packages that are coming in so that we can meet our own requirements and collect the proper duty.

The CHAIRMAN. But educate me here. And we are talking about business documents. Why do you need a detailed manifest ahead of time if you are talking about business documents? And it would seem to me that that may expedite it at your point, but it certainly ought to slow it down on the other side.

Let's say I have a bunch of business papers. Why is it that you need a detailed manifest on those ahead of time?

Mr. BANKS. Mr. Chairman, the primary reason that that requirement is being made is there is a requirement on all air carriers that they provide a listing of what they are carrying and a manifest of what they are carrying. And this is an equivalent requirement on the couriers as it is on any other air carrier.

The CHAIRMAN. No, no, no. I don't care what it says. I want to know why it says it. Let's talk about a number of sheets of paper. Why is it that Customs needs a detailed manifest on sheets of paper on a business deal? I don't understand that.

Mr. BANKS. Mr. Chairman, the difficulty is what is in a package.

The CHAIRMAN. I understand. Now wait a minute. Let's just suppose, or say okay, what we have in the package is a number of sheets of paper on a business deal.

Commissioner VON RAAB. I agree with you, Mr. Chairman. If that is the case, if it is just business documents, irrespective of what Customs' practice is today, all it should say is "business documents."

The CHAIRMAN. Sure.

Commissioner VON RAAB. If we have rules that are different from that we will change them.

Mr. BANKS. The couriers are trying for a weight limit on those packages, as much as 5 pounds of material. Our problem, in essence, is not knowing for sure that all of those are documents.

The CHAIRMAN. Well, if they certify to that, and then that is not the case as you examine the package. They are in real trouble, aren't they?

Commissioner VON RAAB. Mr. Chairman, I agree with you. We will straighten this out. I think you pointed out a problem with our practices, and I appreciate it and we will correct it.

The CHAIRMAN. Well good for you. It was just the comment made to me, and I could not understand the logic of it. So good. Fine.

Do you have other questions, Senator Packwood?

Senator PACKWOOD. Well I am hoping the Commissioner can get back to me in 2 weeks, as he did with Senator Baucus.

You will recall we had an exchange of correspondence, Mr. Commissioner, about four new agents in Grant Pass in Medford last year after the passage of the drug bill. You indicated—and this was in response to the western regional office, saying they wanted four personnel there—you indicated when the drug bill passed, if there is a sufficient appropriation you would put the people there. There was not a sufficient appropriation.

I am hoping, however, that there will be a sufficient appropriation this time. And could you advise me if there is a sufficient appropriation whether or not you will be able to fulfill that request from the western regional office to put the four people there?

Commissioner VON RAAB. We have an instruction from OMB that the drug bill funds are to be used for non-recurring costs and not to fund positions.

Senator PACKWOOD. That I understand. But you are going to be here for a general appropriation now, and I want to know if you get a sufficient general appropriation whether or not you are going to attempt to continue to honor that request from your western regional office, and in your letter to me of last year, with adequate funds you would put the four people there.

Commissioner VON RAAB. I would like to clear up one thing, that the enthusiasm of the western regional office is not shared to the degree that they are willing to provide the resources out of their existing funds. So it is a western regional office determination that the present allocation of positions is appropriate for the risk out there. In spite of that, I assure you that we will take a very good look at the appropriation that comes out of the 1990 budget and ensure that, if possible, we will support that Medford office.

Senator PACKWOOD. Thank you, Mr. Commissioner. That is all I have, Mr. Chairman.

The CHAIRMAN. Senator Moynihan, do you have further questions?

Senator MOYNIHAN. I do, Mr. Chairman, and I thank you for your indulgence.

What I want to say to the Commissioner is on this whole issue of drugs, which is a devastating issue in this country just now and in our Capitol. What we in the Congress, or some of us, are looking for is a sense from the Executive of the complexity of it all, and feeling that there are people who are thinking, not just announcing that the program is superb and the problem has gotten worse, or it is a top priority and we are cutting the budget.

Let me just put you a plain question. This is an economic activity, as well as it happens to be a criminal one, but it is done for the purpose of making money. In what way would you say does the drug interdiction program of Customs has lead to a decline in drug use? Would you say it does or it does not? And could I ask you, if

you had your choice would you want to see the price of cocaine, for example, go up or go down?

Commissioner VON RAAB. The drug interdiction program serves three purposes. One, it is a moral obligation on the part of the U.S. Government to do all they can to prevent these substances from entering the United States. Two is, it limits the supply, thereby making it easier.

Senator MOYNIHAN. It limits supply?

Commissioner VON RAAB. It does limit the supply, yes.

Senator MOYNIHAN. You know that?

Commissioner VON RAAB. Yes, I know that there are 140,000 pounds of cocaine that were not on the streets last year because we seized them. Therefore, that limited the supply by at least 140,000 pounds of cocaine.

Senator MOYNIHAN. I think of a remark that was once made by Melbourne, that he wished he was as sure of anything that McCauley was of everything. You know you have limited supply?

Commissioner VON RAAB. I know that we had 140,000——

Senator MOYNIHAN. Well, sir, you know something the Congress doesn't know.

Commissioner VON RAAB. I am a little confused. I said that the Customs Service physically took into possession 140,000 pounds of cocaine that otherwise would have been on the streets.

Senator MOYNIHAN. And from that it follows that the supply is less?

Commissioner VON RAAB. The supply, whatever it is, X, is less by 140,000 pounds.

Senator MOYNIHAN. But supposing X is twice what it was the year before?

Commissioner VON RAAB. Well now we are into a relative comparison. I am saying in absolute terms we limited the supply by 140,000 pounds. If you are asking me did the supply go up over the year, yes, it did. But it was 140,000 pounds short of what it would have been.

Senator, I am in no way suggesting that the supply of drugs has decreased compared to last year.

Senator MOYNIHAN. Don't you have the capacity to make a simple proposition that there is a demand, and that demand will be filled regardless of the amount of interdiction?

Commissioner VON RAAB. I would go further and make the proposition that there is an untapped demand that will also be filled because of the availability of drugs on the street. I believe right now the availability of drugs is driving the demand up. Not that the existing demand does not also draw drugs in.

Senator MOYNIHAN. That is a perfectly fair proposition, but what is your evidence?

Commissioner VON RAAB. My evidence is any number of discussions, studies, what have you. I mean, there are stacks of evidence to support this.

Senator MOYNIHAN. Oh, there are stacks of evidence?

Commissioner VON RAAB. Yes, there are.

Senator MOYNIHAN. Would you send us some of those stacks?

Commissioner VON RAAB. Yes, I certainly will.

Senator MOYNIHAN. I mean, I am serious. I mean, you can't just stand here and say you cut your budget. Your program is superb. The supply of drugs has increased, and you have stacks of evidence saying even so, something else has happened.

Commissioner VON RAAB. Well I missed the last part, that even so something else has happened. I don't know what that means.

Senator MOYNIHAN. Something better. We are better off than we would otherwise be.

Commissioner VON RAAB. I did not say we were better off. I said 140,000 pounds of cocaine were saved from going onto the streets of this country. We are worse off today than we were yesterday. We are worse off than we were last year. We are in a terrible situation.

Senator MOYNIHAN. Well now that is refreshing; to say we are worse off. And a little bit less celebration and a little more cerebration might be helpful.

I have one other question, Mr. Chairman. We are very curious about this. And we have been very unimpressed by the announcements about seizures and so forth. It is elemental, the economics of this traffic, that if you have a certain amount of demand the supply will be provided. And the measures of success are not the measures of——

Commissioner VON RAAB. I have never suggested that the amount of seizures was the measure of success.

Senator MOYNIHAN. Well it would be helpful if in your written testimony you tell us this before you tell us how much has been seized.

One last question, Mr. Chairman, and not to prolong this. As with Senator Baucus, we have a border crossing with Canada called Trout River, and it is ON the south bank of the St. Lawrence, and it is the only entry from Quebec into the western parts of that section of the State. You have closed it down from a commercial port to a permit port. And we think that is uncalled for, particularly as the trade expands and with the new trade agreement.

And I wondered if I could ask you to look at that, and in two weeks time tell me that you are going to reconsider.

Commissioner VON RAAB. We did not close the port down. We merely did not give it the additional support that our commercial centers have received across the border. We did not believe the amount of traffic across that supported its receiving additional support necessary to make it a larger service port. And there is no facility there.

Senator MOYNIHAN. I would appreciate your rethinking that and seeing if you can give us a case, from you directly, about why you feel you can't.

Commissioner VON RAAB. We will get back to you in 2 weeks.

Senator MOYNIHAN. I would appreciate that.

[The information appears in the appendix.]

Commissioner VON RAAB. I would, by the way, be happy either formally or informally to discuss the issue of measurements of success and solutions, or at least attempted solutions, to the drug problem at any time you would like. It is something I have spent enormous amounts of energy on. And I think you will find that I have

lots of ideas. If anything, this administration thinks I have too many ideas in this area.

Senator MOYNIHAN. Well we are not afraid of ideas, We just didn't see them in your testimony.

Commissioner VON RAAB. Testimony has a way of becoming sort of sterilized if you will.

Senator MOYNIHAN. Well we have encountered that too. Thank you, Commissioner.

The CHAIRMAN. Commissioner, on the user fee, your comments on that insofar as the adverse GATT ruling, and on the administration's work on coming into conformance. How soon would you anticipate that we would be able to see these?

Commissioner VON RAAB. We will have what we believe would be conforming regulations for the Treasury Department within the next 2 weeks. Then Treasury would typically review them any time from 1 month to 3 months, at which point they would be shipped over to OMB.

The CHAIRMAN. Commissioner, let me caution you on that. As you recall previously, this committee felt that it gave too much discretion to Treasury at one point insofar as the setting of the fee. And so I would urge you very strongly, in order that we don't run into that kind of a roadblock, that you keep that in mind.

Commissioner VON RAAB. We will keep that in mind, sir.

The CHAIRMAN. Thank you very much and thank you for your attendance.

Commissioner VON RAAB. Thank you, Mr. Chairman.

The CHAIRMAN. We now have a panel and I would ask its membership to come forward. Mr. J.H. Kent, Washington representative, National Customs Brokers and Forwarders Association of America; Mr. James R. Williams, president, National Retail Merchants Association; Mr. David Rose, manager for import/export affairs, Intel Corp., testifying on behalf of the Joint Industry Group; and Mr. Bruce Schulman, Partner, Stein, Shostak, Shostak & O'Hara, testifying on behalf of American Association of Exporters and Importers.

I would ask each of you to limit your testimony to 5 minutes. We will place your entire statement in the record, but we want time left for questions. So if you will proceed, Mr. Kent.

STATEMENT OF J.H. KENT, WASHINGTON REPRESENTATIVE, NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICA, INC., WASHINGTON, DC

Mr. KENT. Thank you, Mr. Chairman. I will excerpt portions of my testimony.

The National Customs Brokers and Forwarders Association of America, NCBFAA, is pleased to appear before you today to comment on the fiscal year 1990 Customs Service authorization.

NCBFAA is the national organization for America's custom brokers and freight forwarders. Composed of nearly 1,400 member companies, the association consists of primarily small businesses run by professionals with the task of expediting trade.

Forwarders deal with exports, while brokers deal with imports, and most often, these people are one and the same. Important to

the committee though is the unique relationship brokers and forwarders have with the U.S. Customs Service. It is one of mutual dependency.

The Customs Service fiscal year 1990 budget proposal focuses largely on drug law enforcement. It is difficult to disagree with the Congress' and the administration's sense of urgency about drugs, and we do not. Customs, however, has more than one function and we have assumed the often difficult role of reminding the public that U.S. Customs must facilitate the flow of commercial cargo and ensure the collection of revenues that are a consequence of import trade. In a period when fiscal responsibility and budget deficits preoccupy our public policy, that role is highly important also.

NCBFAA strongly believes that resources must be adequately allocated to commercial operations. More than enough funding has been guaranteed for these operations ever since the passage of the Customs user fee several years ago.

It is also acknowledged that each dollar dedicated to commercial operations is worth $19 in new revenues.

Mr. Chairman, your committee has long subscribed to the cost effectiveness of these expenditures and, last year, for the first time in 8 years, the Customs Service acknowledged this also. We are concerned, however, that once past this agreement, when we arrive at the point of practical application—applying resources to operations—Customs' commitment fades. Last year, we told you how difficult it was to reach an import specialist to clarify questions about the correct duty and classification, or application of the relevant U.S. statute, or other such key questions. That situation has not improved.

And the Office of Regulations and Rulings, where brokers go to ensure observance of customs' law, continues to be hamstrung by inadequate resourcing. We are finding that the lines of demarcation between commercial and enforcement staff are being continually blurred and resources shafted to meet every sort of ad hoc enforcement need within the agency.

The creation of the position of "trade inspector" is a case in point. This is a commercial position that should require commercial experience.

Our point, however, is more than one of semantics: we urge clearer lines of distinction between commercial and enforcement staff; we urge that commercial personnel be committed to function as commercial personnel; and we urge that adequate resources be applied to ensure that these operations are properly conducted.

NCBFAA also urges the committee to consider making the position of Commissioner of Customs subject to confirmation by the Senate. Presently, the Commissioner is a Senior Executive Service, SES, position that is appointed by the Secretary of the Treasury without congressional review. While history is always colored by the personalities involved, recent years have witnessed the succession of high-profile Commissioners whose selection has been no less political than those subject to confirmation. The process is identical as we see now: a transition team reviews the political and professional credentials of proposed candidates, influence is brought to bear through endorsements and objections, and a "short list" is submitted to the Secretary of the Treasury. The Commissioner of

the Internal Revenue Service, a comparable position in many ways, will appear before this committee for its recommendation to the Senate and the Customs Commissioner will not.

But why is it important? For the private sector, Senate review will provide a means for enhanced accountability, accountability to a broad base of individual Senators and to their constituents, the public. The process will permit a newly proposed Commissioner's credentials to be fully reviewed in a public environment and provide a forum for his views to be discussed, rather than surface over time while he is in office.

Mr. Chairman, this committee initiated the Treasury Department's Committee on Customs Operations, which during its short history has successfully provided a forum for public discussion and another vehicle for bringing the Service into account. You recognize, we believe, that too much independence can foster mischief. Senate confirmation is another such tool to provide a public sector influence as a balance within the agency.

Mr. Chairman, NCBFAA is always grateful for your interest and that of the committee. Like you, we want the Customs Service to function with efficiency and fairness and we hope that you will find our suggestions to be constructive.

[The prepared statement of Mr. Kent appears in the appendix.]

The CHAIRMAN. We will hold questions until the end. And I have another obligation, so I am going to have to go. Mr. Kent, I must say I am deeply interested in the confirmation proposal. And I am going to ask Senator Moynihan chair the hearing.

Senator BRADLEY. Mr. Chairman, is it your intent that we go through all of the witnesses and then ask questions?

Senator MOYNIHAN. If that is agreeable with you.

Senator BRADLEY. Sure.

Senator MOYNIHAN. If not, we can go individually.

Senator BRADLEY. No. That is fine.

Senator MOYNIHAN. May I just add to Senator Bentsen's statement, Mr. Kent, that that was a very thoughtful presentation.

Miss O'Dell, I take it that you are representing Mr. Williams of the National Retail Merchants Association?

Ms. O'DELL. That is correct, sir.

STATEMENT OF JANE O'DELL, SENIOR MANAGER, PEAT, MARWICK, MAIN, WASHINGTON, DC

Ms. O'DELL. My name is Jane O'Dell. I am a senior manager with the International Trade and Customs Service Practice with Peat, Marwick, Main, and I am here today on behalf of the National Retail Merchants Association.

The National Retail Merchants Association is a nonprofit voluntary trade association whose approximately 3,700 members operate more than 40,000 department, chain, and specialty stores throughout the United States. The NRMA's members sell a wide variety of imported merchandise and so have an immediate and strong interest in the operations of the Customs Service.

That interest is more than academic. In today's competitive retailing environment, imports play an important and often strategic role for many of NRMA's members.

Many in the business community, including our members, have experienced unnecessary and often costly delays in moving shipments through Customs. Despite the parochial concerns such delays create, we do not believe that the issue of Customs Commercial Operations should be framed as a choice between moving commerce and enforcing the law. Instead, we believe Congress must exercise leadership to seek out ways to encourage compliance with the law, and to provide additional resources, if necessary, to improve the compliance related activities of the Customs Service.

Many times we have heard lately that the way to enhance compliance is to increase the level of penalties available to the Customs Service to levy against people violating their regulations. We do not believe that additional penalties are the appropriate path.

Section 592 of the Tariff Act of 1930 established civil penalties for the entry of merchandise, and Customs has also claimed authority under section 595(a) of the Tariff Act, a provision added by the Anti-Drug Act of 1986, to seize commercial goods imported contrary to law. These penalties are fully described in our written statement, however, to put them in perspective, we have experimented with applying them to the taxation area.

If Customs' penalties were to be applied to the taxpayers, violation involving tax fraud would be punishable by a maximum penalty not to exceed a taxpayer's entire annual income, or equal to eight times any additional taxes owed. If the same hypothetical taxpayer filed a return with an error that was so serious that reasonable prudence should have prevented it, the penalty could not exceed four times the taxes owed or 40 percent of his annual income.

Perhaps the most telling comparison is for the taxpayer who makes a clerical error. Simple negligence. Such an individual would be liable for double a penalty equal to double the taxes owed or 20 percent of his annual income if it did not result in a loss of revenue to the Government.

For the unhappy taxpayer who, for some reason, was subjected to a seizure, the IRS would be able to appropriate all the taxpayer's paychecks up until the time that they determined whether or not there was actually a violation. The taxpayer might be obliged to wait 2 or 3 weeks just to learn the nature of the suspected violation, and before they could protest the seizure in court, they would have to pay any associated penalties and request a return.

Of course, no one is suggesting that these penalties make sense in the tax area. This illustration is simply to illustrate the serious nature of the penalties that apply to importers, and to give you an idea of one reason why retail companies want to know and to comply with Customs' rules and regulations.

Unfortunately, many companies are finding it difficult to do that. Customs does not communicate its rules clearly, the ports do not enforce the laws consistently, and the Service is frequently unable to provide advice to importers who genuinely wish to abide by law.

To return to our tax analogy one final time, imagine what it would be like for the average taxpayer to prepare an annual return without an instruction booklet. Imagine how that taxpayer might then feel if he contacted his local IRS office and was told that all

the information that he needed to prepare his return was available to him by reading the tax code. Suppose the hypothetical taxpayer continued to seek information and actually got someone to give him some advice and the advice turned out to be incorrect. If the rules that apply in the Customs area applied to taxpayers, that individual would still be subject to any of the penalties described to you earlier in our presentation, although the advice was provided by a Government agency.

We have provided some real life examples of how this has happened in our written statement. We didn't want to take the time to go into them here.

We feel that something is amiss within the Customs Service Compliance Programs that are supposed to be designed to help importers meet the rules and regulations prior to the time that merchandise is entered. The NRMA recognizes that part of the problem is one of resources, not necessarily additional resources, but the allocation of resources within Customs.

In recent years, the notion appears to have gained credibility that additional enforcement in the commercial area is all that is needed to solve the compliance problem. But additional inspectors and ISET teams and enforcement personnel beg the real question. We are for enforcement. We support the interdiction of drugs. But at the same time we believe that leadership is needed to redirect resources to the Customs Service activities designed to encourage corporate "good guys" to fully comply with the law and to fully cooperate with the Customs Service. We believe that the expense of additional dollars on helping legitimate businesses comply will also benefit the enforcement activities of the Customs Service.

We make a number of specific recommendations about compliance activities within Customs in our written statement.

Thank you.

[The prepared statement of Ms. O'Dell appears in the appendix.]

Senator MOYNIHAN. Thank you. You finished that just within the clock.

May I ask, is there a representative from the Customs Service in the room?

Mr. PARKINSON. Yes, sir.

Senator MOYNIHAN. Could you give us your name, sir?

Mr. PARKINSON. I am Charles Parkinson, associate commissioner, office of congressional and public affairs office.

Senator MOYNIHAN. I am pleased you stayed and I hope you are listening.

Mr. PARKINSON. Yes, sir.

Senator MOYNIHAN. Thank you.

Mr. Rose.

STATEMENT OF DAVID ROSE, MANAGER FOR IMPORT/EXPORT AFFAIRS, INTEL CORP., TESTIFYING ON BEHALF OF THE JOINT INDUSTRY GROUP, WASHINGTON, DC

Mr. ROSE. Mr. Chairman, my name is David Rose and I am manager for import/export affairs for Intel Corp. I appear today on behalf of the Joint Industry Group, a business coalition of 100 trade associations, business firms and professional firms involved

in Customs matters. We appreciate this opportunity to present our views on oversight concerns of this committee as it develops legislation to authorize appropriations needed to assure that the U.S. Customs can carry out its responsibilities effectively and efficiently.

A well administered Customs Service is essential to the facilitation of the U.S. commerce, not only because of the real growth and the interdependence of national economies, but also because of the need to keep pace with advancing technologies related to the efficient processing of shipments for Customs, trade statistics, transportation, et cetera.

In the area of funding, the Joint Industry Group urges the committee to closely examine staffing levels of the Service, both in the districts and at headquarters. There has been a significant change in the workload and responsibilities brought about in tariff classification and other entry issues as a result of the implementation of the Harmonized system and the implementation of the United States-Canada Free Trade Agreement. It is important that the possibility of increased staff demands be considered with regard to the need for rulings generated by the new tariff classification system as well as the requirements of the Free Trade Agreement. Additional staffing should also be considered in terms of the inadequate levels of import specialists throughout the ports.

In the area of user fees, the Joint Industry Group strongly recommends that the committee request the General Accounting Office to conduct a study to identify Customs Services for which user fees can be considered an appropriate cost of clearing commercial shipments through Customs.

The study also should examine the cost of providing those services and the magnitude of user fees in relation to the individual services performed. Development of this type of cost benefit information is essential if the fee is to be GATT consistent and merit extension in any form beyond its scheduled termination in fiscal year 1990. Failing this, the group believes that Customs user fees should be allowed to terminate, as scheduled.

With regard to enforcement and compliance, we believe that effective and uniform enforcement of Customs law and regulations is necessary. We feel that can be best accomplished through adequate resources and informed compliance by the trade community. One of the means by which the trade community keeps informed is to request rulings on particular Customs' issues. Such rulings, however, are not being published by Customs with regularity, even though many have a substantial effect on issues of compliance. This problem is aggravated by the fact that ruling requests are backlogged at Customs, frequently resulting in delays of many months in the issuance of rulings.

Adequate staffing and funding are essential if the ruling process is to serve as a meaningful adjunct to the compliance process.

Moving to private right of action. The Joint Industry Group has been consistently opposed to the provisions of Senator Spector's private right of action bill in connection with Customs violations. The bill, which has been reintroduced as S. 170 in this Congress, would permit domestic businesses to file suit in Federal court and seek injunction against, and damages for, alleged violations of Customs' law. Basically, it is our view that the legislation not only would

subject reputable U.S. companies to harassment in the form of nuisance suits, it would interfere and, therefore, hinder Customs Service enforcement.

Despite our problems with some aspects of Customs administration, the Joint Industry Group applauds the U.S. Customs Service in its efforts to automate Customs' procedures. Such automation promises many benefits for Government and the private sector alike, including paperwork elimination, speedier Customs clearances and reduction in administrative costs.

To be viable, however, Customs automation program should meet at least a couple requisites. First, they should be as non-intrusive as possible with regard to the normal flow of business operations and the privacy of corporate data banks. Second, there must be considerable emphasis on training Customs' field personnel and the business community to assure that information and guidelines regarding automation techniques are mutually understood. Customs' procedures which provide businesses with necessary training before the fact rather than penalizing businesses after the fact constitute sound management, and are wholly consistent with an automated Customs entry system.

With the above thoughts in mind, the Joint Industry Group has begun to develop legislative proposals that will address the concerns and risks that many businesses have encountered with regard to compliance with the many requirements governing the U.S. import process.

We look forward to discussing these proposals with the committee at the appropriate time.

Mr. Chairman, thank you very much for the opportunity to appear before the Finance Committee on issues that are very important to the day to day operations of the business community.

Senator MOYNIHAN. Thank you, Mr. Rose. And now Mr. Schulman, who represents the American Association of Exporters and Importers.

[The prepared statement of Mr. Rose appears in the appendix.]

STATEMENT OF BRUCE SHULMAN, STEIN, SHOSTAK, SHOSTAK & O'HARA, TESTIFYING ON BEHALF OF AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS, WASHINGTON, DC

Mr. SHULMAN. Mr. Chairman, I am Bruce Shulman, a customs attorney with the firm of Stein, Shostak, Shostak & O'Hara, in Washington, DC. Prior to becoming associated with the firm, I worked as a senior attorney in the Office of Regulations and Rulings at Customs Service headquarters for 12 years, during which my responsibilities included the classification and valuation of merchandise and the issuance of penalty determinations.

It is a privilege to be here this morning to testify on behalf of the American Association of Exporters and Importers. AAEI is a national organization of approximately 1,200 U.S. firms involved in every facet of international trade. As a close observer of the Customs Service, its policies and practices imports nationwide, AAEI is exposed to the best and worst of the Service's commercial operations.

The successful programs the Customs has developed and implemented should set the standard for all their programs, Trade facilitation at minimal cost to the importer or exporter, and the respect for the legal rights of U.S. Persons should be the rule, not the exception, of Customs' commercial operations.

Customs is a surplus-producing agency. In fiscal year 1988, over $16 billion was collected by Customs for the general Treasury. That figure is expected to be exceeded in fiscal year 1989 and 1990. Over $15.5 billion was due to commercial operations and close to $643 million of that amount was raised by the merchandise processing fee. In other words, Customs collected $25.00 for every $1.00 it spent on commercial operations.

The Service has not yet reached the point of diminishing returns. Despite the increasing revenue generated by commercial operations, Customs continues to pay more attention to its drug enforcement responsibilities at the expense of its trade facilitation responsibilities.

Other major concerns of AAEI members include, first, inadequate staffing, despite recent relative increases, has caused major backlogs in processing goods and paper. A compounding factor is Customs' recruitment problem, low salaries in high-cost areas.

Second, commercial seizures under section 1595(A)(c) of the Tariff Act of 1930 are depriving honest United States businesses of procedural safeguards. Customs continues to misuse seizure authority contrary to the intent of Congress.

Third, increased costs for less service have resulted from recent Customs' programs, such as centralized examination stations, despite the user fees paid by importers.

Fourth, Customs' uniformity is being addressed by Customs. The Service's efforts in this area should be adequately funded. AAEI requests that Congress remind Customs that it has a responsibility to facilitate trade. Enforcement at all costs encumbers real enforcement and diminishes cooperation between the trade community and Customs. AAEI urges the Customs' fiscal year 1990 budget mandate continued attention to resources for and oversight of Customs trade facilitation responsibilities.

The membership of AAEI stands ready to work with this committee and the U.S. Customs Service to improve Customs' commercial operations and the relationship between Customs and the community it serves.

Thank you, Mr. Chairman.

[The prepared statement of Mr. John B. Pellegrini appears in the appendix.]

Senator MOYNIHAN. Mr. Shulman, you have just broken a record. You finished ahead of time. Thank you.

I am sorry that a lot of other things are going on this morning that have kept the members from being here to listen to you, but I am confident that our very able staff behind me are listening with great intent. And I have heard some very powerful, interesting things.

Mr. Kent's proposition, perhaps we should look upon this as a position that needs Senate confirmation. It tends to concentrate the minds a bit and focus attention up here, and focus attention on groups such as yourself.

I think, Miss O'Dell, your remarks about the levels of penalties, I am a little surprised at that. And, Mr. Rose, your concerns about the facilitation of commercial aspects of Customs as against the law enforcement aspects, it is clearly necessary.

Mr. Shulman's remarks, what was that, the Tariff Act of 1930? That is Smoot-Hawley.

Mr. SHULMAN. Yes, sir. Of course, it has been amended over and over and it is still referred to as such.

Senator MOYNIHAN. Yes.

You know, we have never, since Smoot-Hawley, have never once let a tariff bill go to the floor in the Congress. Sixty years and we learned our lesson.

Now let me ask you a couple of things here. First of all, at the level just of law enforcement of the revenue and trade protection aspects of Customs, how much smuggling is there? Is there any significant amount of smuggling of just commercial products across the borders which could be legally imported, but smuggling to avoid tariffs? What do you think? Does anybody know? Does anybody want to take a guess?

Ms. O'DELL. Many years ago I had a client who had two cases of frozen banana leaves in a container. It is the only case that I have experienced personally in about 17 years.

Senator MOYNIHAN. Two cases of frozen——

Ms. O'DELL. Frozen banana leaves.

Senator MOYNIHAN. Frozen banana leaves. What is the market for frozen banana leaves?

Ms. O'DELL. Billed from a grocery store.

Senator MOYNIHAN. I see, What do you think? Tell us the best you know.

Mr. SHULMAN. Senator Moynihan, from my experience, having worked in the penalties branch at Customs headquarters, it is my experience that there is very little in the way of outright smuggling. I would say there is a greater degree of law being violated with regard to, say, the undervaluation or misclassification of goods. However—and I think this is a very big caveat—in my experience, the majority of those mistakes are, at best, categorized as honest mistakes or negligence, rather than gross negligence or outright fraud.

Senator MOYNIHAN. And so Miss O'Dell's point about the degree to which the severity was perhaps inappropriate to the intent or the nature of the crime.

Mr. KENT. Mr. Chairman, I think a lot of the incidents that you hear of are anecdotal. We find that when there is a massive Customs' effort to investigate smuggling, such as existed in the Port of Houston, where they took containers, uniformly inspected 100 percent of them and drilled holes in the posts, there was a very, very low yield. We are unaware of anything coming of that particular effort.

Senator MOYNIHAN. There is no money to be made in smuggling. There was. There are places, I have been with a prime minister of a country recently talking about these things, and it has pathetic qualities sometimes.

Mr. KENT. There is no percentage in it for bonafide brokers, forwarders and importers to sully their reputation with that sort of thing.

Senator MOYNIHAN. Of course, there is not.

We do have a problem with—this is something you might have heard me talk earlier about, a firm in the United States that had a patent on a product, these plastic, ziplock bags. They are wonderful things. And the foreign infringement, this whole question of intellectual properties is a real one, and I think we have a legitimate concern. It is hard to get the Customs to do it. But, say, you know, you are infringing on somebody else's patent here, we shouldn't have it. I mean, you know, fair is fair and that is not.

Now there is a lot of that, isn't there? Or tell me otherwise, Mr. Shulman.

Mr. SHULMAN. Well in my experience, Senator, there is a great number. And I think if you read the papers like everyone else—and I know you do—that you will see that there have been a fair number of seizures by Customs of fake expensive watches with very famous names on them, and counterfeit luggage and counterfeit textiles and apparel. No one denies that those things occur, and certainly we encourage Customs to enforce the law in those areas. It must, however, be enforced fairly and with due process, giving all parties an equal chance to present their case to Customs before decisions are made.

Senator MOYNIHAN. Yes. I, as just a personal preference, would be a little bit inclined towards caveat emptor. You know, if you cannot tell a Rollex from a 40-cent equivalent, well maybe you ought to find it out the hard way, as it were, But do you find that thinks are getting harder for the importer and the exporter?

I am buried with some dismay by Mr. Shulman's forecast of increasing revenues which can only mean an increase in the trade deficit. Well not necessarily.

Mr. SCHULMAN. Well in my experience—and I think you will be happy to know this, Senator—in the export area, I think that the Commerce Department has—even though this is not a subject of this hearing—I think the Commerce Department has done a wondrous job in facilitating people obtaining export licenses, And it is relatively easy for people generally to do that these days.

In the import area, I must say that there are a number of areas and a number of measures which have been undertaken by Customs, most of which have been mentioned here today, seizures under 1595(A)(c), wholesale regulations in the textile area, country of origin determinations, both with regard to textiles as well as other commodities, such as steel, which do have an effect of impeding the importation of products.

Senator MOYNIHAN. But we don't want to let procedure be a form of protection. Miss O'Dell?

Ms. O'DELL. Mr. Chairman, if I might also comment on that.

The other concerns that our members have, and the reason that they wanted to stress the level of penalties in our presentation today, is that over the last several years, it has become increasingly difficult to have access to Customs' personnel who can answer questions prior to the time that merchandise is imported.

Senator MOYNIHAN. That was your point about trying to make out your income tax returns with no guide from the IRS.

Ms. O'DELL. That is exactly correct.

The NRMA members have to make arrangements to purchase merchandise about six months before it arrives in the United States. The people available to answer questions for you at that point would be import specialists, the people at the Office of Regulations and Rulings, the national import specialists. And we are very appreciative of the efforts of the Congress in encouraging the 30-day finding ruling program. And such programs as that are very helpful, but it is still very difficult to obtain accurate information from Customs personnel at the District level at the time that you need it.

Senator MOYNIHAN. I took your point about the problem of getting sufficiently qualified persons in the Port of New York, for example, I mean, where you have the largest movement of merchandise. You are going to likely have the highest cost of living. When I get that border station established up at Trout River, I might retire and apply for the job myself because there is some great fishing up there and a good life can be lived in Franklin County on the civil service pay, but not in Brooklyn. The FBI has the same problem; the IRS has the same problem. I don't know if we are ever going to get regional adjustments. It is another question, but a real one.

We are not all that heavily engaged with legislation at this point, and if you have as representatives of a broad range of exports and imports, if you have some thoughts about what we ought to do—and you do have—would you let us have them in terms of bills you might like to see introduced, or statutory provisions you would like to see changed, added, taken away, and procedural matters within the Customs Service?

We are conscious that we have had a somewhat attenuated relationship here. And again, that point about confirmation is a real one.

We are going to report out an authorization for the Service, and we are more than open to any thoughts about what we ought to say, ought to provide, and what we ought to require. And if beyond that there is some statute this year in this Congress—sure, that is what we do, we make laws. And I hope we don't make too many. But we are in a world economy in a way we have not ever, ever been, and it all passes through this particular filter and it ought to be as efficient as can be done.

Mr. Kent.

Mr. KENT. Mr. Chairman, I don't want to take the last word, sir, but I did want to take this opportunity——

Senator MOYNIHAN. Well somebody is going to have the last word.

Mr. KENT. I want to take this opportunity to thank you, sir, for the splendid work you did on behalf of the JFK brokers with CES stations.

Senator MOYNIHAN. Oh, yes, we did get that straightened out, didn't we?

Mr. KENT. Yes. And we appreciate that, sir.

Senator MOYNIHAN. Well, my God, that is a record. We have had two records.

96-702 O - 89 - 2

We thank our panel. And we do hope you take very seriously this invitation. I know the Chairman is very much of this view. I know that Senator Packwood is very much of this view, and so we look forward to hearing from you.

Mr. KENT. Thank you.

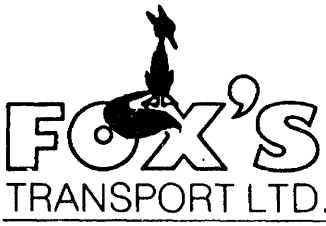
Ms. O'DELL. Thank you.

Senator MOYNIHAN. And I think that concludes the hearing at this time.

[Whereupon, at 11:35 a.m., the hearing was concluded.]

APPENDIX

ALPHABETICAL LIST AND MATERIAL SUBMITTED



P.O. BOX 488 1510-A 2ND STREET NORTH CRANBROOK, B.C. V1C 4J1 TELEPHONE 489-5341

October 18, 1988

To Whom It May Concern:

RE: Rooseville Border Crossing - 24 hour opening.

Having this border open longer hours will definitely increase our business and save the company money. We could guarantee faster service, moving loads in less time.

For just one customer, we move approximately 45 truck loads a week, year long through the Rooseville border. These loads can be loaded at 6 a.m. daily, with an half hour trip to the border, time is lost waiting for the border to open. We could increase the amount of loads moved and make a happy customer.

Trucks loading in Canada or U.S. are held waiting over night for the border. Whereas they could be at their destinations during the night.

We are all for having the hours lengthened.

Sincerely,

Herman Thurston
Fox's Transport Ltd.

GWYNN LUMBER & RELOAD COMPANY

Post Office Box 911 Eureka, Montana 59917 (406) 296-2341

Oct. 25, 1988

To Whom it may concern:

Re: The 24 hour opening of the Border Crossing Station at Roosville MT.

The proposed opening of the border to 24 hour per day traffic would greatly benifit our business operations.

Our operation consist of trucking lumber from points in Canada to Eureka Montana. With the opening of the US Port to 24 hour traffic it would allow us to start earlier and spread out the flow of the trucks through the border. With the border being a 16 hour port we have a build up of traffic waiting when it opens at 8:00 am. The opening will help to eliminate some of the congestion at the border and at our facility. The waiting is an inconvenience due to the fact we have rail cars that are ready for the lumber that is being held up at the border.

We have approximately 60 truck loads per day coming into our facilities and anytime you can spread this out it would be beneficial to our operation.

I hope that this will help you in your decision to keep the Port open 24 hours per day.

Mike Gwynn

Mike Gwynn

Wood By-products Transportation

MISSOULA CARTAGE CO. INC.

9300 Cartage Rd. • Missoula, MT 59802

October 27, 1988

Bob Clark
Rt 1 Box 87A
Eureka, Mt 59917

Dear Bob,

We are in the process of transporting approximately 1000 loads of wood chips from Gallaway Sawmill, near Jafray B.C., to the Stone Container Paper Mill in Frenchtown, Mt.

As these loads of chips are to be transported by truck, it would definitely be to our advantage to have the U.S. border crossing open 24 hours per day, as our opperation is set up on a 24 hr basis.

It is my feeling, also, that if the crossing was opperated on a 24 hour basis, traffic thru this area would increase greatly, as there are many trucking companys in Montana, such as ours, that could use this crossing.

I hope the U.S. customs will strongly consider opperating the Rooseville crossing on a 24 hour basis.

Thank you,

Bob Zachariasen

Bob Zachariasen

LAW OFFICES OF
MARSHALL M. MYERS
HWY. 93 NORTH
P.O. BOX 1287
EUREKA, MONTANA 59917
(406) 296-2526

February 24, 1989

Senator Max Baucus
SH-706 Hart Senate Office Building
Washington, D.C 20510

Re: Roosville U.S./Canada border opening 24 hours

Dear Senator Baucus:

While the town of Eureka may be small and insignificant to some, this is our home and we struggle to do our best in our attempt to continue living here.

At the present time the U.S. side of the Roosville Border is only open from 8 a.m. to midnight, while the Canadian side is open 24 hours per day. It has caused the citizens of Eureka a great deal of concern and anguish that our Government chooses not to assist its citizens where the concern could be that of future employment and income to the entire populous.

The opening of the U.S. side of the Roosville Border on a 24 hour a day basis would tend to expand commercial traffic through northwestern Montana rather than the present situation whereby truckers utilize the east central border crossing due to a fear of not be able to get to the Roosville Border crossing on time. This lack of a 24 hour border opening has cost us dearly in the past and could possibly be the placing of one more nail to the coffin in the final demise of the Town of Eureka.

As you are aware, Eureka is primarily a logging community and with the future outlook of the logging industry tending on the bleak side, any opportunity that the town can gain from a 24 hour a day border crossing would be greatly appreciated. May we please have your assistance and that of your colleagues in support of your constituents and get the Roosville Border open 24 hours a day.

Law Offices of Marshall M. Myers

Marshall M. Myers

MMM/ljm

NATIONAL
Motor Coach Systems Ltd.
(Management & Consulting Corp.)
BC ALTA SASK ALASKA YUKON N.W.T.

Bob
Billy Cagan

December 12, 1988

Ron Marlenee
Montana
2465 Rayburn House Office Building
Washington, D.C.
20515

Dear Ron:

As a bus company and a tour operator, I am very pleased to see the Canadian border crossing open 24 hours at Rooseville Port. It would be of great advantage for the U.S. side to also be open 24 hours.

At present, any charters we transport north of Olds, Alberta, cannot comfortably arrive at the U.S. port of Rooseville prior to the midnight closing time when departing after their working day. Consequently, these groups choose other destinations such as Cranbrook, BC; Trail, BC; and Spokane, Washington. I know the majority would prefer to ski and golf in the Flathead Valley because of the facilities and hospitality.

I have heard that the District Director feels buses would not travel the road during the dark and especially during the winter. About 95% of all our trips depart Calgary at approximately 6:00 P.M., crossing at Rooseville at 10:30 P.M. So, the majority of our trips are, in fact, in the dark. Presently, we have 70 bus charter trips scheduled for January, February and March, to Whitefish and 86 bus charter trips to other locations, some of which may be transferred to the Flathead Valley if the U.S. border was open 24 hours.

Therefore, I feel that the opening of this border crossing at Rooseville would be very beneficial to the tourism of Montana as well as to charter companies such as myself.

If you have any questions, please do not hesitate to call me.

Yours truly,

Steve Bacovsky
National Motor Coach Systems Ltd.

BOX 3220 STN "B", CALGARY, ALBERTA T2M 4L7 (403) 240-1992

SKI & FUN TRAVEL
THE FUN COMPANY (403) 256 7642 (403) 266 7300

Dear Bob:

Thank you for including our office in your proposal for a 24 hour port at Roosville.

We send approximately 5-10 buses from Calgary to Whitefish every weekend and we feel that by keeping the border open for 24 hours, we would be able to increase our volume into the Whitefish/Kalispell area. This is mainly due to the fact that unless our buses depart prior to 6:00pm, they will not make the crossing time. This restricts many groups who are unable to make this departure.

Furthermore, if one of our passengers encounters difficulty crossing the border, we must take the bus back to the closest town where transportation is available for that person, and still get the bus through the port at Roosville before closing. Very often, this is a difficult, if not impossible task with the existing closing policy.

Along with our Calgary groups, we now have several buses departing from Edmonton. These people cannot even consider leaving after work on Friday because there is no way they will make the border by midnight. As it is already, we are pressed for time with all our groups, especially when road conditions are not at their best.

We fully support the issue of a 24 hour border crossing at Roosville. For the above mentioned reasons, we feel it would benefit us, as well as businesses in the Whitefish area due to an increased traffic flow.

We look forward to the response you receive, and wish you the best of luck. If there is anything else we can do, please do not hesitate to ask.

Sincerely,

Murray Lee, Manager
Ski and Fun Travel

#210 617 - 11 AVENUE S.E. CALGARY ALBERTA T2R0E1 ● TELEPHONE (403)266 7300

Tobacco Valley Board of Commerce
PH: (406) 296-2842
P.O. Box 186
Eureka, Montana 59917

February 23, 1989

Mr. Mark Smith
32 North Last Chance Gulch
Helena, MT 59601

Dear Mr. Smith:

Thank you for the phone call in regards to opening the Roosville border crossing 24 hours. The economy of northwest Montana has relied almost entirely on the wood products industry for years.

The U. S. Forest Service is reducing the allowable cut plus timber sale appeals have greatly reduced the amount of timber harvested. These facts plus the continued stress on agricultural products has combined to create an economic hardship on the entire area.

We realize that with dwindling timber supplies and agricultural resources we have to look elsewhere for economic support. Tourism is beginning to be a viable alternative. Maintaining a 24 hour border crossing at Roosville would provide a direct link to the Tobacco Valley and the Flathead Valley from Canada. Canada is the major source of tourists for our area. We feel with a 24 hour border crossing we would get an increase of Canadian traffic, especially trucks and tour busses.

As you are probably aware, the Montana legislature has recently passed a resolution approving and supporting a 24 hour border crossing at Roosville.

I'm enclosing some information that may be helpful to you. Any support you can give us will be greatly appreciated.

Sincerely,

HOWARD O. SMITH
President

HOS/vs
Enclosure

Town of Eureka

EUREKA, MONTANA 59917

1988 DEC 19 P1 2:55

December 8, 1988

Donald W. Whyra
District Director U.S. Custom Service
Department of Treasury
P.O. Box 791
Great Falls, Montana 59403

Dear Mr. Whyra:

I am taking this opportunity to express the views of the Councilmembers and myself as Mayor of the Town of Eureka regarding the opening of the United States side of the Port of Roosville for twenty four hours a day.

There are some items we would like to have considered when another review of this matter is made. As the Canadian side is open allowing traffic to go north and the United States side is closed from midnight until eight in the morning to traffic going south there is a problem with law enforcement. If the port was open all night there would not be the problem with run throughs there is now.

This is the only crossing from Montana into British Columbia and is a trade route with a large number of trucks, tour buses, and tourists using it now and with the new free trade between the two countries developing it would mean even greater usage if the port were to be open all the time.

Also, having the port open twenty four hours a day could have a beneficial impact on the economy of the local area and all of western Montana, especially if it were established as a commercial port, which we hope you will take into consideration. Any revenue generated would be welcome as this is a somewhat depressed area with low to moderate income and a high unemployment rate. Therefore, anything that could bring in new jobs would be beneficial.

We sincerely hope you will take these points into consideration when again considering the opening of the port.

Sincerely yours,
Dale D. Holder, Mayor

DDH/jh
Copies: Max Baucus
Pat Williams
Conrad Burns
Ron Marlenee
Tobacco Valley News
Daily Interlake
Missoulian

Question of Roosville hours up again

By RICK HULL
The Daily Inter Lake

EUREKA — Bob Clarke has resumed his uphill campaign to turn the U.S. port of entry at Roosville into a 24-hour-a-day operation.

"I've been working on it for 11 years; I usually get talking about it every two or three years," said Clarke, who owns The First and Last Chance Bar at Roosville. "Someone has to push it."

This time he has some additional ammunition, since the Canadian side of the border has been open around the clock since July 1. In October, the Canadians checked 533 northbound vehicles, including 155 commercial vehicles, through the entrance station between midnight and 8 a.m.

But U.S. Customs officials insist that traffic through the port doesn't justify similar hours for southbound vehicles. Vehicles may leave the United States but may not enter when the border station is closed.

"I have looked at it, and from the standpoint of the number of people coming through and the time frame, frankly, I can't recommend it," said Don Myhra, district director for the U.S. Customs Service in Great Falls.

Clarke prepared a packet of information and sent it to Montana's congressional delegation. Ron Marlenee, the Eastern District congressman, has been the only one to write back so far. The matter was referred to the Customs Service, Marlenee wrote.

The Customs Service always pleads lack of traffic, especially on winter roads at night, Clarke said.

"They just keep giving us the run-around," said Clarke. But he hopes public pressure might change the agency's mind.

Clarke has some particularly potent letters in his packet. Three ski-tour bus companies in Calgary and Edmonton, Alberta, said they have trouble reaching the border before midnight.

The weekend ski buses have to leave Calgary at 5:30 p.m., which is a rush for people who get off work at 5 p.m. Friday. Edmonton buses must leave by 2:30 p.m. and hope for no weather or vehicle delays on the way.

Ski n Sun Tours reported its Calgary office takes 75 busloads and the Edmonton branch transports 50 busloads of skiers across the border each winter. Ski & Fun Travel of Calgary runs 5-10 buses to Whitefish every weekend during ski season.

Other letters are from Gwynn Lumber and Reload Co. of Eureka and Fox's Transport of Cranbrook. With the border open all night, Fox could start its trucks rolling at 6 p.m., said the company.

"I work with all these tour companies, the truckers; they park in my lot," said Clarke.

John Livingston, U.S. Customs Service manager at Roosville, said it would take a minimum of two and possibly three more employees to go to 24-hour operation.

The station presently uses four full-time and two part-time employees in its 8-a.m.-to-midnight operation.

The Sweetgrass border crossing, directly below Edmonton and Calgary, is a 24-hour port, Livingston noted. But much of the bus traffic prefers the Roosville crossing.

"I think it's just easier, the road's just a little better," he said. "Then, of course, it's a straight shot to Big Mountain and Whitefish.

"It isn't unusual to get 25 ski buses on a Friday night," Livingston added.

Myhra said federal budget problems make it nearly impossible to expand service.

"The bottom line is, I certainly can't go ahead and recommend moving a couple of people from, say, Sweet Grass," he said.

Extending the hours just Friday nights would not be as simple as it seems, Myhra said. The station could easily require two extra people for two extra hours.

And keeping the border open late on certain nights or times of the year only confuses people. "When you start changing the hours, it's a tougher situation for the public," he said.

Tobacco Valley News (Eureka, Montana) copy for March 9, 1989 weekly publication by Editor Mark A. Svoboda, 406-296-2514. Note: Daily Interlake (Kallspell, Montana) plans story and photo for Monday, March 6, 1989 afternoon publication.

Buses stack up at Roosville to make midnight deadline

Thirty-eight buses carrying Canadian passengers en route to weekend ski vacations in northwest Montana crossed the international border on U.S. Highway 93 north of Eureka from 4 p.m. to midnight Friday.

The caravan of buses faced a midnight deadline to cross as the U.S. Port of Entry at Roosville is closed from midnight to 8 a.m. each day. The Canadian Port of Entry allowing northbound traffic to cross has been open 24 hours a day since July 1, 1988.

The bulk of the buses started to stack up at the border shortly before 10 p.m., when a about dozen buses waited on the Canadian side while up to four were checked at the U.S. port. Meanwhile, approximately 10 buses were making a stop at the First and Last Chance Bar just south of the border.

Sen. Max Baucus, D-Mont., planned to introduce an amendment to open the U.S. port 24 hours a day when the Senate Finance Committee met Tuesday and Wednesday. Baucus made a preliminary statement to the committee Tuesday concerning the port.

Those who support the 24-hour operation of the port include businessman Bob Clarke of Eureka, owner of the First and Last Chance Bar.

"Customs already turned back a bus," Clarke said about 8 p.m. Friday, after one of its passengers was not allowed entry. U.S. Customs Service official Dave Rankosky confirmed the bus had dropped off its passengers at the bar and transported the disallowed person back to a point of public transportation. The bus returned, picked up its remaining passengers waiting at the bar and continued its trip, he said.

The closest location providing public transportation is Elko, British Columbia, 23 miles north of the border, said Val Maskerine, superintendent of the Canadian port at Roosville.

Because of the time required to travel to Elko and back to the border to resume the trip, the chances of a bus crossing the border by midnight are jeopardized if it initially arrives at the U.S. port after 11 p.m., Clarke said.

Clarke and other supporters of 24-hour operation say the U.S. port closure inconveniences Canadian visitors to the United States and therefore impedes tourism and commerce.

U.S. Customs Service area officer John Livingston and Maskerine agreed that both ports should be open for the same amount of time, whether it be 16 or 24 hours. Maskerine cited security for Canadian Customs personnel working the midnight to 8 a.m. shift as her primary reason for wanting identical hours of operation.

Canada opened its side of the Roosville port because of "considerable pressure" from skiers traveling north into Canada, commercial truckers and Indians seeking access to tribal land, said Blake Delgaty, manager of the British Columbia and Yukon divisions of the Customs Service. The government waited until traffic counts justified 24-hour operation, Delgaty said.

The Canadian Customs Service plans to build a new building at the Roosville port, Delgaty said, with construction hoped to begin this spring. The new construction is not related to the port's 24-hour operation, he said.

Livingston said it would require three additional Customs Service employees to operate the U.S. port 24 hours a day. Salaries for each of the employees would range from $16,000 to $30,000 a year depending on seniority, he said.

Two other U.S. ports, one at Sweetgrass on Interstate 15 north of Shelby and one north of Raymond on Montana Highway 16 in the extreme northeast corner of the state, are currently open 24 hours a day, Livingston said. The Sweetgrass port handles about five times the traffic of Roosville, while Roosville handles three to four times the traffic as Raymond, both Livingston and Rankosky said.

The U.S. port at Roosville checked 38 buses, 264 passenger vehicles and 52 commercial vehicles from 8 a.m. to midnight Friday.

END.

Statement by

J. H. Kent
Washington Representative

of the

National Customs Brokers and Forwarders Association of America

Mr. Chairman: The National Customs Brokers and Forwarders Association of America (NCBFAA) is pleased to appear before you today to comment on the FY1990 Customs Service Authorization.

NCBFAA is the national organization for America's customs brokers and freight forwarders. Composed of nearly two thousand member companies, the association consists of primarily small businesses run by professionals in the task of expediting trade. Forwarders deal with exports, while brokers deal with imports -- and most often, these people are one-and-the-same. Important to the Committee, though, is the unique relationship brokers and forwarders have with the United States Customs Service. It is one of mutual dependency. Rather than seeing thousands upon thousands of importers file an estimated 5.8 million formal entries per year, involving a myriad of regulations, classifications and procedures, Customs is delivered from chaos by the professional customs broker. Ninety-five per cent of all entries are filed by a broker and, of this, 90% will be filed electronically via the Automated Broker Interface (ABI). The broker works with the importer to ensure that all U.S. laws and regulations are observed, that all duties are promptly and correctly paid, and that the American public has access to products as expeditiously as the law permits. In establishing order to the mass of documents that must, of necessity, flow between the importer and his government, the American customs

broker works usually shoulder-to-shoulder, and, yes, sometimes at odds, with the Customs Service. We both have a mutual responsibility that we take very seriously.

The Customs Service's, FY1990 budget proposals focus largely on drug law enforcement. It is difficult to disagree with the Congress' and Administration's sense of urgency about drugs -- and we do not. Customs however has more than one function and we have assumed the often-difficult role of reminding the public that U.S. Customs must facilitate the flow of commercial cargo and ensure the collection of revenues that are a consequence of import trade. In a period when fiscal responsibility and budget deficits preoccupy our public policy, that role is highly important also.

NCBFAA strongly believes that resources must be adequately allocated to commercial operations. More than enough funding has been guaranteed these operations ever since the passage of the customs user fee several years ago. User fee collections exceed the cost of commercial operations, a fact which had some influence on the GATT decision in 1986. It is also acknowledged that each dollar dedicated to commercial operations is worth $19 in new revenues. Mr. Chairman, your committee has long subscribed to the cost effectiveness of these expenditures and, last year, for the first time in eight years, the Customs Service acknowledged this also. We are concerned however that, once past this agreement, when we arrive at the point of practical application -- applying resources to operations -- Customs' commitment fades. Last year we told you how difficult it was to reach an import specialist to clarify questions about the correct duty and classification, or application of the relevant U.S. statute, or other such key questions. That situation has not improved. And, the Office of Regulations and Rulings -- where brokers go to ensure observance of customs' law -- continues to be hamstrung by inadequate resourcing. We are finding that the lines of demarcation between commercial and enforcement staff are being continually blurred and resources shifted to meet every

sort of ad hoc enforcement need within the agency. The creation of the position of "trade inspector" is a case in point. This is a commercial position that should require commercial experience. The role should be less than that of a cop-on-the-beat as the name implies, and more a "trade specialist" or "trade officer".

Our point however is more than one of semantics: we urge clearer lines of distinction between commercial and enforcement staff; we urge that commercial personnel be committed to function as commercial personnel; and, we urge that adequate resources be applied to ensure that these operations are properly conducted.

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Much attention has properly been directed to the fine progress that Customs and customs brokers have made to a fully-automated, paper-free environment. The Service has our great admiration for the leadership that it has shown. NCBFAA joins the U.S. Customs Service in this vision for the future.

We continue to caution the Customs Service however against over-reaching, over-extending, and over-committing. As NCBFAA President Paul F. Wegener has said, brokers are practical people. They want more than a vision, they want essential details: how will it work? how much will it cost? can we do it? The costs are highly significant, by some estimates 25% of funds expended. Please consider the magnitude of costs to the customs broker. We're matching them: each time a new dollar is spent on a new system or a new piece of hardware, 1400 broker firms are faced with the cost of comparable acquisitions. We are finding that sometimes the changes are coming faster than our ability to absorb them. Costs can easily outstrip our profits if we let them -- and the pressure is intense from Customs to do so. Think then, if you will, Mr. Chairman, of the resources that Customs must go through as they launch into the automated manifest systems, automated passenger systems, customs information exchange, and others.

NCBFAA then urges the Committee to insist on caution and care on the part of the Service. We advise a period of consolidation and self-assessment. We urge not that change be questioned, only that the rate of change be realistic, measured and cost-effective....for Customs and for us. Finally, we believe that ABI -- Automated Broker Interface -- is the cornerstone to Customs' automation and we urge that it receive the priority that it needs.

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Mr. Chairman, we earlier alluded to the customs user fee. Last year, OMB and the Customs Service cooperated on proposed legislation to revise the application of that user fee in response to an adverse ruling by the GATT. That legislation perished stillborn for good reason -- it provided carte blanche authority to the Customs Service to establish a schedule of transaction fees, a clear revenue-raising function of the Congress and this Committee. When asked to provide a proposed schedule of fees and an assessment of the actual costs to Customs of these transactions, Customs claimed that it was under preparation. To this day, that analysis has not surfaced -- even though it is fundamental to the legislation Customs seeks to promote.

NCBFAA urges the Committee to join their counterpart committee in the House in commissioning a General Accounting Office analysis of Customs commercial operations and the costs, by transaction, attendant thereto.

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NCBFAA also urges the Committee to consider making the position of Commissioner of Customs subject to confirmation by the Senate.

Presently the Commissioner is a Senior Executive Service (SES) position that is appointed by the Secretary of the Treasury, without Congressional review. While history is always colored by the personalities involved, recent years have

witnessed a succession of high-profile commissioners whose selection has been no less political than that of those subject to confirmation. The process is identical as we see now: a transition team reviews the political and professional credentials of proposed candidates, influence is brought to bear through endorsements and objections, and a "short list" is submitted to the Secretary of the Treasury. The Commissioner of the Internal Revenue Service -- a comparable position in many ways -- will appear before this Committee for its recommendation to the Senate, and the Customs Commissioner will not.

But why is it important? For the private sector, Senate review will provide a means for enhanced accountability, accountability to a broad base of individual Senators and to their constituents, the public. The process will permit a newly proposed Commissioner's credentials to be fully reviewed in a public environment and provide a forum for his views to be discussed, rather than surface over time, while he is in office. Mr. Chairman, this committee initiated the Treasury Department's Committee on Customs Operations, which during its short history has successfully provided a forum for public discussion and another vehicle for bringing the Service into account. You recognized, we believe, that too much independence can foster mischief. Senate confirmation is another such tool to provide a public sector influence as a balance within the agency.

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Finally, NCBFAA has taken note of legislation re-introduced this year by Senator Arlen Spector of Pennsylvania to provide a private right of action for relief against customs fraud and a variety of other trade violations. S. 179 is broader than the legislation that this committee has rejected in the past and, for that reason, far more troublesome to our industry.

The bill amounts to vigilante justice encouraging the private sector to seek the bounty promised by monetary damages and to apply laws that have traditionally been enforced by the government. The prospects of a myriad of lawsuits, brought without concern for our government's foreign policy or trade efforts, promises to bring Customs to a standstill. Of necessity the Service would have to be involved in every customs law suit simply to protect the government's interests. And, a lawsuit free-for-all would hold reputable U.S. companies hostage to the threat of harassment or nuisance suits.

Mr. Chairman, we urge the committee to take the same path as it has in years past and reject legislation of this type.

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Mr. Chairman, NCBFAA is always grateful for your interest and that of the Committee. Like you, we want the Customs Service to function with efficiency and fairness and hope that you find our suggestions to be constructive.

STATEMENT OF JANE O'DELL, ON BEHALF OF THE NATIONAL RETAIL MERCHANTS ASSOCIATION

MARCH 1989

Introduction

NRMA is a non-profit voluntary trade association whose approximately 3,700 corporate members operate more than 40,000 department, chain, and specialty stores throughout the United States. NRMA's members sell a wide variety of imported merchandise and so have an immediate and strong interest in the fair and efficient processing of their entries by the U.S. Customs Service.

That interest is more than academic. In today's competitive retailing environment, imports play an important and often strategic role for many of NRMA's members. Retailers integrate imports with U.S. purchases to create a merchandising strategy and plan which rests on the strength of its many parts. Delays in obtaining one element of a merchandise assortment can wreak havoc on carefully planned sales projections and pricing strategies that harm not only retailers, but domestic manufacturers as well.

Many in the business community including NRMA's members have experienced unnecessary and often costly delays in moving shipments through Customs. Despite the parochial concerns such delays create, NRMA does not believe that the issue of Customs Commercial Operations should be framed as a choice between moving commerce and enforcing the law. Instead, we believe Congress must exercise leadership to seek out ways to encourage compliance with the law. That does not require new, improved penalties. It does require penalties that are consistently applied, and regulations that are clearly communicated and consistently interpreted.

NRMA feels that a commitment of Customs' resources to compliance efforts will achieve the twin goals of moving commerce efficiently while at the same time punishing those who willfully circumvent the law.

I. Current Penalty Regulations

NRMA recognizes that the Customs Service has a legitimate and important role in enforcing the nation's trade laws, and has at its disposal many penalties to encourage compliance with these laws.

Section 592 of the Tariff Act of 1930 establishes civil penalties for the entry of merchandise by means of false and material documents, statements, or acts or material omission[1], with different maximum penalties depending upon the degree of culpability involved.

1) A violation involving "fraud"[2] is punishable by a civil penalty not to exceed the domestic value of the merchandise; and may be mitigated to 5 to 8 times loss of revenue. Violations that do not result in a loss of revenue are punishable by a penalty limited to 50 to 80 percent of the merchandise's dutiable value,

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1. Material is defined as "having the potential to alter the classification, appraisement, admissibility of merchandise, the liability for duty or otherwise affect enforcement of statutes administered by Customs.

2. Fraud is defined as "acts deliberately done with intent to defraud the revenue or to otherwise violate the laws of the United States, as established by clear and convincing evidence."

2) A violation involving "gross negligence"[3] is punishable by a civil penalty not to exceed the lesser of the domestic value of the merchandise or four times the lawful duties of which the U.S. is or may be deprived. Violations that do not result in a loss of revenue, are punishable by a penalty limited to 40 percent of the merchandise's dutiable value, and

3) A violation involving "negligence"[4] is punishable by a civil penalty not to exceed the lesser of the domestic value of the merchandise or double the lawful duties of which the U.S. is or may be deprived. Violations that do not result in a loss of revenue are punishable by a civil penalty limited to 20 percent of the merchandise's dutiable value.

In addition, Customs has claimed authority under Section 595a of the Tariff Act -- a provision added by the Anti-Drug Act of 1986 -- to seize commercial goods imported "contrary to law." Commercial shipments have been seized under this authority for relatively minor infractions; including unintentional marking errors and minor discrepancies in weight -- situations that could have been resolved under other administrative provisions. Moreover, after merchandise

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3. Gross Negligence is defined as "acts done with actual knowledge of or wanton disregard for the relevant facts and with indifference or disregard for the offender's obligations."

4. Negligence is defined as "acts done through either the failure to exercise the degree of reasonable care and competence expected from a person in the same circumstances in ascertaining the facts or in drawing inferences therefrom."

is seized, importers are required to pay penalties up to the domestic value of the goods before their protests will even be considered. Even when the importer brings seized goods into compliance, Customs may not release them for many weeks.

To put these penalties in perspective, imagine them applying in the taxation area. If the customs penalties were to apply to taxpayers, a violation involving tax fraud -- i.e. a false statement on a tax return whether or not revenue was lost -- would be punishable by a maximum penalty not to exceed a taxpayer's entire annual income or equal to eight times any additional taxes owed. If this same hypothetical taxpayer filed a return with an error that was so serious that reasonable prudence should have prevented it (gross negligence), the penalty could not exceed four times the taxes owed, or in cases where no taxes were owed 40 percent of the taxpayer's annual income. Perhaps the most telling comparison is for the individual who makes a simple clerical error on his or her return (negligence). That individual would be subject to a penalty equal to two times the taxes owed, or in cases where no taxes were owed 20 percent of his or her annual salary. For the unhappy taxpayer caught in a seizure, the IRS would appropriate all the taxpayer's paychecks when they are issued by his employer. The taxpayer might be obliged to wait two or three weeks just to learn the nature of the suspected violation, and before the taxpayer could protest in court he would have to pay penalties.

Of course no one is suggesting that these penalties make sense in the tax area. This illustration is simply to emphasize the serious nature of the penalties that apply to importers. In addition to those enumerated above, the Customs Service may also impose penalties for failure to mark goods properly, or failure to redeliver goods if they are released and then found non-complying. Redelivery is often precipitated by a discrepancy between fiber testing lab

results obtained in the Customs lab and those independently obtained by the importer. Frequently Customs requires redelivery of goods that have already been sold at retail.

In addition to civil penalties owed the government, the importer also incurs substantial costs for storage, transportation and special handling. These additional expenses can increase the costs of transporting goods to a store by 30 to 40 percent. Finally, a penalty will affect an importer's reputation with Customs -- a loss that will inevitably result in the Customs Service giving greater scrutiny to future importations.

It bears repeating that there are commercial implications for failing to comply with the importing rules. Delays in getting merchandise to the selling floor result in lost sales. And for members of NRMA who are well recognized retailers, failure to comply with Customs regulations can result in the loss of commercial reputation -- an intangible that is practically sacred in the retailing business. No retailer who depends upon the public's goodwill to make sales will want to be branded as a Customs law violator.

These are the existing penalties, however many still believe that the answer to improving Customs commercial compliance is imposing new penalties including a private right of action for customs violations as proposed in S. 179 introduced by Senator Arlen Specter. NRMA opposes this proposal.

To return to our earlier analogy, imagine what would happen if any taxpayer could be sued by another private individual on suspicion of filing an incorrect tax return. That is precisely what S. 179 would do in the Customs area.

II. The Response to Penalties: Reallocating Resources

It should come as no surprise, given the serious nature of the penalties, that retailers and other legitimate importers make a significant effort to comply with the law.

Retail companies in the business of buying merchandise and reselling it to return a profit to owners and stockholders have a direct interest in minimizing risks. Retailers want to know and comply with Customs' rules and regulations -- it is in their self-interest to do so.

Unfortunately, Customs does not communicate its rules clearly; the ports do not enforce the laws consistently, and the Service is frequently unable to provide advice to importers who genuinely wish to abide by law. The situation has become emotionally charged on both sides, and NRMA sincerely hopes that this hearing and the Committee's committment to examine Customs Service commercial operations will result in efforts to improve compliance activities within the Service.

To return to our tax analogy one final time, imagine what it would be like for the average taxpayer to prepare an annual return without an instruction booklet. Imagine what a taxpayer might feel if he contacted his local IRS office and was told that all the information needed to fill out a return could be obtained by consulting the tax code. Suppose this hypothetical taxpayer pushed the issue and found someone at the local IRS office willing to give advice which ultimately proved incorrect. If the rules that apply in the Customs area applied for taxpayers, this individual would still be subject to all the penalties described earlier even though he may have relied on advice from the IRS.

A few real-life examples illustrate the current difficulty faced by importers caught between serious penalties that are out of proportion to violations, and a Customs service that is in need of additional compliance resources.

Enforcement Priorities within Customs

In recent years, the Customs Service has placed its priorities on the interdiction of drugs and the discovery and

prosecution of those who commit commercial fraud. NRMA understands and agrees with these priorities. We also recognize the occasional effort to provide information, such as the hot-lines and the new binding ruling program.

These new programs aside, in the process of vigorously pursuing drugs and commercial fraud the Customs Service has changed the priorities and focus of the people and programs traditionally responsible for helping businesses comply. Customs has, in recent years, taken Import Specialists off Commodity Teams and placed them on Import Specialist Enforcement Teams or ISETs, whose focus is not helping importers comply with the law, but catching those who do not. The new programs at the national level, while helpful, cannot fill the role of import specialists with practical knowledge about commodities, located in the individual Customs districts.

What has been the result of this shift in agency resources? From our perspective Customs is losing the ability to distinguish between the individuals who set out, willfully, to defraud the government of revenue or to circumvent quotas or marking rules, and those importers who get caught in the enforcement net because Customs does not apply the rules uniformly, or is not available to give classification advice, or because importing rules and enforcement procedures are announced or changed without adequate notice or comment.

An example illustrates how an innocent importer can get caught without any intent to commit fraud. In this example, a retailer's shipment of merchandise was seized and the retailer assessed penalties as a result of a disagreement over polyester "jewelry bags and rolls" from China.

The retailer had classified the merchandise as "flat-goods," which are defined as "small (emphasis added) flat-wares designed to be carried on the person," such as "bank

note cases, bill cases, billfolds, and ...vanity cases." This classification was based on two facts. First, the retailer knew that the Customs Service had issued a ruling in 1986 classifying similar merchandise as flatgoods. Second, the Chinese government would only issue export visas for the product as "flatgoods," and those visas are needed to satisfy U.S. import quota regulations.

Upon importation, Customs seized the shipment on the grounds that the retailer should have classified the merchandise as luggage which is defined as "travel goods, such as trunks, hand trunks, lockers, valises, satchels, suitcases," and other larger types of bags. This was very surprising to the importer because it indicated a change of thinking within Customs that had not been communicated to the importing public. Moreover, a review of the item convinced our member that it was not like the luggage examples, because it was a small item without handles designed to be carried on the person.

It took nine months for the importer to obtain release of these goods, and only after paying the penalty, submitting a new visa obtained from the Peoples Republic of China and incurring substantial expenses for legal fees, storage and transportation.

The point of this example is that even a prudent retailer, basing importing decisions on past rulings of the Customs Service, is not immune from difficulties when Customs decides to change the rules without informing the public. Did this importer commit fraud because he based an importing decision on prior Customs rulings? Did he willfully set out to defraud the government and circumvent textile quotas? From our perspective, the answer is a resounding no.

Limiting Prior Disclosure

Another indication of the difficulties facing importers in complying with Customs regulations are continuing efforts

to administratively increase customs penalties and limit the ability of importers to use so-called "prior disclosure."

Under Section 592, Congress directed the Customs Service to provide for the consideration of "mitigating circumstances" in imposing penalties. One important mitigating circumstance is an importer's decision to voluntarily disclose discrepancies and errors and work with Customs to bring merchandise into compliance.

Last fall, the Customs Service initiated a nationwide investigation in which it attempted to deny any and all parties any prior disclosure rights, first by issuing a letter to 1360 importers and then later by publishing a notice in the Federal Register announcing a nationwide investigation of importers who allegedly overstate the deductions from "transaction value" for prepaid ocean freight and insurance in CIF transactions, or whose foreign shippers receive rebates from the freight or insurance companies.

The dragnet for this investigation became the entire importing community, the majority of which had no knowledge or control of the fraudulent activities. Customs threatened importers, and then invited them to step forward in order to be penalized, albeit with some undefined "mitigating factor" serving as encouragement.

NRMA believes such encouragement is meaningless because it flies in the face of the compliance incentives created as part of the prior disclosure process.

In a similar incident, in December 1986, Customs proposed to amend its enforcement guidelines under Section 592 of the Tariff Act of 1930, to remove the requirement that a "fraudulent" violation of Section 592 be deliberately done with "intent" to commit a violation. As a result, even unintentional errors could be considered fraud by the Customs Service. Moreover, this expanded and unprecedented concept of "fraud" would eliminate by administrative action the

careful distinction between "fraud" and the lesser degree of culpability of "gross negligence" established by Congress in its 1978 revamping of Section 592. Customs justified this proposed action on the grounds that it was too difficult to prove intent. While Customs has not yet adopted this proposal, it remains a threat to legitimate and law-abiding retailers, so long as the current statute does not adequately define the term fraud.

Finally, as pointed out above, Customs has claimed authority under Section 595a of the Tariff Act -- a provision added by the Anti-Drug Act of 1986 -- to seize importations of certain commercial goods. The legislative history of this provision seems to indicate that Congress intended this provision to apply to the importation of merchandise that is expressly prohibited by statute, such as drugs and certain other commercial products. Nonetheless, Customs has applied this provision to importations of restricted merchandise such as wearing apparel subject to quota controls that is not prohibited by statute. In NRMA's view, Customs has exceeded it authority in seizing quota-class wearing apparel under cover of Section 595a.

Classification Guidelines

Finally, the Customs Service has deemphasized the importance of the Office of Rulings and Regulations -- a critical element of Customs compliance programs. This office and the National Import Specialists are responsible for helping importers determine the classification of their merchandise to make certain that importers are applying the correct duty, or in the case of quota merchandise, the right quota.

Classifying merchandise -- identifying its nature and its component parts -- is a critical and essential responsibility of the Customs Service that is designed to help

importers comply with the law. Retailers are concerned about classification because it has a profound effect on the cost and delivery of merchandise. The duty rate on a particular item is an important component of that item's cost and must be considered when a retailer opts to purchase abroad. Equally important, a retailer needs to know how a particular item is classified in order to determine which quota governs its importation.

Two years ago, importers of textiles and apparel, including NRMA, requested that the Customs Service provide updated classification guidelines for textiles and apparel that would provide advice and guidance to importers in complying with the new Harmonized Tariff Schedule, originally scheduled to go into effect in January 1988, and delayed until January 1989. Because of the delay in the effective date for the HTS, Customs had ample time to publish this guideline. Nonetheless, the textile guidelines were not released to the public until mid-December 1988 -- only two weeks before the HTS was scheduled to go into effect.

No importer -- who as a matter of commercial reality places orders for merchandise nine months to a year prior to the selling season -- could possibly have complied with that guideline. To make matters worse, on December 23, 1988, Customs published a change in the commercial invoicing requirements for textile products -- only eight days before the HTS became effective.

That invoicing requirement has resulted in the rejection of many entries, even when the descriptions Customs has required do not affect the duty rate or the quota category of merchandise. The Customs Service did not adequately advise importers of the rules, and changed them without adequate notice.

Despite an extra year to prepare for the HTS, there are still a number of issues which remain unresolved. For exam-

ple, despite court decisions establishing the distinguishing characteristics of nightwear versus daywear, Customs has yet to issue a definitive statement on this issue. As a result, importers who have followed court cases continue to have merchandise seized as non-complying. Similarly, on such simple questions as how to treat belts or suspenders imported on garments, Customs has yet to issue definitive guidelines, and the HTS has been in effect for more than two months.

IV. Recommendations

Something is amiss within the Customs Service compliance programs designed to help legitimate importers meet the rules and regulations prior to the time merchandise is presented for entry. The failure to adequately carry out these essential responsibilities has resulted in a vicious cycle within the Customs Service. Reputable importers and retailers are being regularly penalized for minor infractions. Every time a reputable importer is caught committing "fraud" of this nature, it bolsters Customs' apparent view that all U.S. retailers who import merchandise are probably criminals.

That view is patently absurd. NRMA's member companies are willing to follow the rules when they know them; too often they are severely penalized for operating in a vacuum, or for basing an importing decision on common sense and commercial reality.

NRMA recognizes that part of the problem is one of resources -- not necessarily additional resources, but the allocation of resources within Customs. In recent years the notion appears to have gained credibility that additional enforcement in the commercial area is all that is needed to solve the Customs Service's problem.

But additional inspectors and ISET teams beg the real question for legitimate businesses. We are for enforcement. We support the interdiction of drugs. But at the same time we believe that leadership is needed to redirect resources to

the Customs Service activities designed to encourage the corporate "good guys" to fully comply with the law, and cooperate with the Customs Service. NRMA believes that additional dollars spent on helping the legitimate businesses comply with the rules will also benefit the enforcement activities of the Customs Service.

The individuals interested in defrauding the government and the people of the United States are not interested in complying with the law. If Customs can focus its attention on the criminals instead of spending countless hours and dollars in pursuing legitimate businesses who will willingly tender unpaid duties but are caught up in the enforcement net because of a failure to communicate, everyone's interests would be better served.

The following recommendations are designed to help improve the compliance programs of the Customs Service. Specifically:

(1) Because textile and apparel quota categories are based on fiber content -- there are separate quotas for cotton and other vegetable fibers, man-made fiber, and wool -- knowing the fiber content of an item is of critical importance. Fiber testing often leads to classification disputes, delays, and redelivery notices with which importers frequently cannot comply. For these reasons, NRMA urges Congress to expand the certification of public gaugers under section 151.13 of the Customs Regulations to encompass textile fiber and feather-and-down content analyses performed by independent laboratories certified by Customs, so that retailers and importers can have the opportunity to know the classification of an item prior to entering it. Expanded certification for quality and fiber testing has the added benefit of allowing importers to help foot the bill for reasonable and timely product classification;

(2) NRMA applauds the action of the Congress in requiring Customs to issue binding rulings within 30 days of a request. NRMA urges Congress to expand this to require Customs to accept the importer's claimed classification as binding if no ruling is issued within 30 days;

(3) NRMA urges Congress to require Customs to adequately notify importers of changes in binding rulings. In our view this would require written notice to the importer 180 days prior to the date upon which the changes will become effective. We also suggest that Customs publish changes in binding rulings in the Federal Register 180 days prior to their effective date. Prior notice is essential, given the long lead times that importers experience;

(4) NRMA urges Congress to make it clear that importers who rely upon advisory rulings from Customs officers shall not be subject to penalties if Customs determines that the advice is incorrect;

(5) NRMA urges Congress to reaffirm its view of Customs penalties adopted in 1978 by defining "fraud" to make it clear that a finding of fraud must be dependent on the intent of the importer to violate U.S. laws; and

(6) NRMA urges Congress to amend Section 595 of the Tariff Act of 1930 by adding at the end of subsection (c) the following new sentence:

> For purposes of this subsection, the term 'any merchandise that is introduced or attempted to be introduced into the United States contrary to law' shall mean merchandise the importation or introduction of which is expressly declared by statute to be prohibited or unlawful.

In NRMA's view this change would make it clear that importations of textiles and apparel are not covered under the seizure provisions of section 595a.

THE COMMISSIONER OF CUSTOMS

WASHINGTON, D.C.
MAN-9-IC:W PFM

March 17, 1989

Dear Senator Moynihan:

This is in response to your request at the Senate Appropriations Hearings on Tuesday, March 7, 1989, regarding the lack of a Commercial Center in the Franklin County, New York area.

As pointed out to you in a letter from my Assistant Commissioner, Office of Inspection and Control, on February 15, 1989, the Port of Trout River is presently adequately staffed to accommodate the existing workload. There is no facility in the Trout River area for the inspection of commercial cargo, other than the ability for a cursory examination. There are no plans at present for the construction of a warehouse for the examination of commercial cargo, and there are no plans for increasing the staff as we do not anticipate an increased workload in Franklin County.

It should also be noted that the local Customs brokers were contacted concerning this problem, and they stated that they are content with the current situation. At present, they do not have a physical presence in Trout River. If Franklin County were to become a Commercial Center, the brokers would have to establish offices in the Trout River area.

It is my position that we will do whatever is necessary to accomplish Customs mission. We do not intend to take any business out of Franklin County. We will continue to maintain an open line of communication with the Franklin County Legislature. If this line of communication and any further increase in the workload eventually lead to the need of establishing a Commercial Center in Franklin County, then, it is my opinion, we would realistically consider this alternative.

I appreciate your interest in this matter. I trust that the above information will be of some assistance to you. For further information, I have also enclosed a copy of a report from Mr. William Dietzel, District Director, in Ogdensburg, New York, regarding a meeting which was held with the Franklin County Development Agency on Tuesday, January 10, 1989. This report sums up the present situation in the Franklin County area.

Yours faithfully,

Acting Commissioner of Customs

Enclosure

96-702 O - 89 - 3

UNITED STATES GOVERNMENT
Memorandum

DEPARTMENT OF THE TREASURY
UNITED STATES CUSTOMS SERVICE

DATE: January 13, 1989

FILE: MAN-2

TO: Albert Tennant, Office of Cargo Enforcement and Facilitation
ATTN: Robert Montagne

FROM: District Director
Ogdensburg, NY

SUBJECT: Meeting with Franklin County Development Agency

On Tuesday, January 10, 1989, members of the District Staff met with members of the Franklin County Development Agency chaired by Mr. Stephen Dutton.

In attendance were Messrs.

William Dietzel - District Director
Jeffrey Walgreen - Assistant District Director, I/C
Rodney Ralston - Assistant District Director, CO
Casimir Krul - Port Director, Trout River

The basic issue discussed was the lack of a Commercial Center in Franklin County. Mr. Stephen Dutton of the Industrial Development Agency made a cogent argument that the lack of a Customs Commercial Center in Franklin County was a negative factor in his attempts to encourage Canadian business interests to locate around Malone, New York.

We told Mr. Dutton that we would contact our Regional and Headquarters Program Managers and convey his concerns to them.

Mr. Dutton is absolutely convinced that Franklin County is psychologically and practically disadvantaged in that they lack a Commercial Center. We empathized with his position. We pointed out that there would have to be a need, based on workload and the nature of importations, before Customs could entertain any idea of enhancing facilities or staffing. We discussed local initiatives to provide facilities - a one bay truck warehouse- but pointed out that this would have to be negotiated with both Customs and GSA.

We also stated that achieving status as a Commercial Center and having an examination facility would not, in an of itself, require any staffing alterations. The amount and nature of importations would continue to influence all staffing decisions.

We assured Mr. Dutton that he should not view Customs as an impediment as we were fully aware of his dilemma. Mr. Dutton and his staff stated that their Congressional delegation would be informed of our position and that further contacts could be

expected. We will continue to work closely with Mr. Dutton and will track the workload at Trout River for any notable changes in importation patterns.

We also believe that Franklin County will continue to pursue this matter with zeal. They believe that the Canadian Free Trade Agreement presents them with an opportunity to improve their economic position. We are informed that Franklin County is the poorest in New York State. There is, therefore, an incentive to keep this issue moving forward.

Please contact us if we can be of any further assistance.

William D. Dietzel

STATEMENT OF DAVID ROSE ON BEHALF OF THE JOINT INDUSTRY GROUP
BEFORE THE COMMITTEE ON FINANCE, AT THE HEARING ON AUTHORIZATION
OF APPROPRIATIONS FOR THE U.S. CUSTOMS SERVICE
MARCH 7, 1989

Mr. Chairman, my name is David Rose, Manager for Import/Export Affairs for the Intel Corporation. I appear here today on behalf of the Joint Industry Group, a business coalition of one hundred trade associations, business firms and professional firms involved in international trade with an interest in customs matters. The trade associations which support the views expressed in this statement are listed in an Attachment I.

We appreciate this opportunity to present our views on oversight concerns of this Committee as it develops legislation to authorize appropriations needed to assure that the U.S. Customs Service can carry out its responsibilities effectively and efficiently. An adequately funded and well-administered Customs Service is essential to the business community in facilitating the flow of commerce of the United States. Such a Customs Service is needed to meet the challenge of the growth in the interdependence of national economies. Just as important, maintaining the competitiveness of the United States demands a Customs Service that keeps pace with the advancing technologies for examining, identifying, documenting and efficiently processing international commerce for customs and tariff, trade statistics, transportation and other purposes.

FUNDING

The Joint Industry Group, as a business coalition, is very much aware of the continuing need for budgetary restraint concerning government expenditures. We recognize that for a number of years the requests in the President's budgetary proposals for funding commercial operations of the Customs Service have been viewed as inadequate. Fortunately, this has resulted in approval of additional funding by the Congress.

As an informal coalition, the Joint Industry Group does not attempt to recommend specific funding levels for the U.S. Customs Service. We urge the Committee to examine closely the requested staffing levels, both in the Districts and at Headquarters. There has been a substantial increase in the workload and responsibilities brought about in tariff classification and other entry issues as a result of the implementation of the Harmonized Tariff Schedule and of the United States-Canada Free Trade Agreement. Many seasoned observers of customs matters have been pleasantly surprised at the relatively smooth transition that is being made with respect to both the Harmonized Tariff Schedule and, generally speaking, the new conditions of entry afforded by the Free Trade Agreement. However, many high technology firms are finding that the documentation requirements of Customs Form 353, which must be used to establish FTA eligibility, are so onerous that they are unable to claim the intended benefits of the FTA.

The Customs Service deserves to be congratulated for the efforts it has made to acquaint its own personnel, and for its cooperation with the private sector, in training provided for the Harmonized Tariff System. However, it is still too early to conclude that the number of rulings generated by the new tariff classification system, and by the country of origin requirements of the Free Trade Agreement will not require additional staffing. We strongly recommend that the possibility of increased staff demands be taken into account, particularly with respect to reducing the backlog of pending rulings, in the Committee's recommendation on authorization levels for the Customs Service.

ENFORCEMENT/COMPLIANCE

The Joint Industry Group has supported adequate funding of commercial operations of the Customs Service and has expressed concern that enforcement activities were being-funded to the detriment of maintaining commercial operations at levels which would meet the needs of the business community. However, we have stressed the need for effective enforcement of customs statutes and regulations, whether it is a question of drug interdiction or commercial violations of customs law. There is no question that substantial resources of the Customs Services and other agencies must be devoted to stanching the flow of drugs into this country. But effective enforcement in commercial operations, as well, must be based on adequate resources. Effective enforcement of customs law is in the interest of the trade community, but such enforcement can best be achieved through adequate resources and informed compliance by the trade community.

One means by which the trade community attempts to be kept informed is to request rulings with respect to classification of imports for duty purposes and other questions affecting conditions of entry. The business community is very much dependent on the issuance of legal rulings. 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. The Customs Procedural Reform Act of 1978 required that all precedential decisions including ruling letters, internal advice memoranda and protest review decisions be published or otherwise made available to the public. Although a procedure exists for the publication of precedential rulings, that procedure is applied on an ad hoc basis. As a result 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 issues.

Enforcement statistics of the Customs Service on a variety of alleged violations of customs law are misleading if the business community is not being informed of the Customs Service's interpretations and application of their own regulations and rulings. One of the results, however, is the widespread, and erroneous perception that a substantial volume of imports are entered into the United States is violation of U.S. customs law. As a result, we have encountered such proposals such as Senator Spector's bill (S. 179 as recently reintroduced in this Congress) which would permit domestic businesses to file suit in Federal court and seek injunction against, and appropriate damages for alleged violation of customs law.

PRIVATE RIGHT OF ACTION

The Joint Industry has consistently opposed the provisions of S. 179 and similar proposals with respect to its provisions relating to alleged violations of customs law. It is our view that the legislation not only would subject reputable U.S. companies to harassment in the form of nuisance suits, it would cripple Customs Service enforcement. We reiterate that strong opposition and request the Committee to not consider the measure in the form of S. 179 or as an amendment to other legislation it is reporting to the Senate in the absence of full public hearings.

OPERATION RAP

Another recent enforcement effort became visible to the Joint Industry Group when the Customs Service sent form letters sent to 1,360 importers

informing them of a formal investigation directed toward, "but not limited to, transaction value and/or exclusions from transaction value (e.g., international freight and insurance), since January 1, 1983". These letters initiating what we understand is called "Operation RAP are of great concern in the trade community, but not because rebates of international freight charges were being investigated. Truly fraudulent business operations are as much a threat to legitimate business concerns which import as they are to purely domestic business firms. The greatest concern is that some of the language of the letters appears to foreclose the right of prior disclosure which is established in 19 U.S.C. 1592 (c) (4).

As suggested in our letter to the Deputy Commissioner of Customs on December 14, 1988, the Joint Industry Group feels that it would be very detrimental to both the Customs Service and the trade community if the investigatory approach which could be inferred from the original letter is pursued to the point where the "voluntary compliance which lies at the heart of effective Customs administration will become a thing of the past". Another concern is that this type of investigative approach inevitably leads to costly record searches which could be avoided if more specific information were made available in the notice of investigation. A member reported receiving a quite similar letter dated February 17th dealing with investigations just as broadly based, "directed toward but not limited to transactions values and components thereof (e.g., assists) declared to Customs since January 1, 1984." At this time the Joint Industry Group continues to follow the course of these investigations with concern, and would appreciate the opportunity to check back with the Committee on this matter when appropriate.

The Joint Industry Group correspondence with the U.S. Customs Service concerning "Operation Rap" is attached as a part of this statement for inclusion in the record or for the Committee files, as you see fit.

AUTOMATION

Despite our problems with some aspects of Customs administration, the Joint Industry Group commends the U.S. Customs Service's efforts in the area of automation of customs procedures. The leadership exhibited by the Commissioner of Customs in the development of internationally acceptable electronic data interchange standards should be recognized, as should his efforts to apply automated data techniques to the day to day procedures for clearing goods through Customs. Such programs carry the potential for streamlining the import process on a revolutionary scale for the government and private sector alike, thereby improving efficiency and reducing costs for both. To be viable, however, customs automation programs should meet at least two requisites: First, they should be as non-intrusive as possible with respect to the privacy of company data banks and the normal flow of business operations. Second, there must be considerable emphasis on training Customs field personnel and the business community to assure that information and guidelines regarding automation techniques are mutually understood. Enforcement procedures which provide importers with necessary training before the fact, rather penalizing importers after the fact constitute sound management. Moreover they are wholly consistent with an automated paperless entry system. Such procedures encourage compliance and improve the efficiency and effectiveness of Customs enforcement.

LEGISLATION

With these thoughts in mind as well as other concerns expressed above, the Joint Industry Group has begun to review the goals of the Customs Procedural Reform Act of 1978 and to develop legislative proposals that will address the increased business risks that many companies are experiencing in attempting to comply with the many rules and regulations governing entry of goods into the United States. The approach of the Group will be based on the twin assumptions that effective enforcement of customs law is in the trade community's best interest and that such enforcement can best be achieved through adequate Customs resources and informed compliance by the trade community. We look forward to discussing with the Committee possible legislative proposals growing out of these efforts of the Joint Industry Group at the appropriate time.

USER FEES

The Joint Industry Group continues to be opposed to the customs user fees on merchandise processing. We are concerned that the budgetary description of programs covering commercial operations as "commercial activities" to be funded from the Customs User fee Account include operations that are little related to the facilitation of commerce through the port areas and customs authority into the commerce of the United States. The funds assigned to commercial activities and therefore, the user fees collected on merchandise processing, considerably overstate the "user benefit", if any, extended to the business community.

In response to a finding of a GATT panel holding the United States customs user fee to be inconsistent with our international obligations

under the GATT, the current Administration is continuing efforts undertaken by the previous administration to develop a legislative proposal to amend the customs user fees in order to make the fees compatible with the international obligations of the United States.

The Joint Industry Group has requested the opportunity to analyze the kind of user fees on merchandise processing the Customs Service has in mind in order to assess the impact of possible fees on business operations before taking a position of the customs user fee proposal. No fee schedule has been released to the public, and it is expected that the Administration will continue to request that the Secretary of the Treasury be given broad authority to set customs user fees annually. The Joint Industry Group urges the Committee not to approve such an unprecedented grant of authority. What is needed is an analysis of the costs of various services which can be related to an acceptable user fee concept of fees paid by users for benefits bestowed by identifiable services of the Customs Service in entering goods into the United States.

The Joint Industry Group strongly recommends that the Committee request the General Accounting Office to conduct a study to identify customs services which bestow benefits and for which user fees can be considered an appropriate cost of clearing commercial shipments through Customs. Having identified those services for which user fees can be appropriately assessed, the study would further examine the costs of providing those services, and presumably the magnitude of user fees for the individual services performed. No such study has even been conducted by the Customs Service as far as the Joint Industry Group has been able to ascertain.

The Joint Industry Group believes that the development of this type of

cost/benefit information is essential if the fee is to be GATT consistent and merit extension in any form beyond it scheduled termination in FY1990. Failing this, the Group believes the customs user fee should be allowed to terminated as scheduled.

The Joint Industry Group is examining the proposals of the Customs Service with regard to the needed consistency of Customs rulings appearing in the Federal Register, February 27th (page 8208) pursuant to the requirements enacted in the Anti-Drug Abuse Amendments Act of 1988. We intend to share our views on this important issue with the Committee.

Mr. Chairman, thank you very much for the opportunity to appear before the Committee on Finance on issues that are very important to the day to day operations of the business community.

APPENDIX I.

TRADE ASSOCIATIONS OF THE JOINT SUPPORTING STATEMENT PRESENTED TO THE COMMITTEE ON FINANCE ON CUSTOMS AUTHORIZATION OF APPROPRIATIONS, MARCH 7, 1989

AIR TRANSPORT ASSOCIATION
AMERICAN ELECTRONICS ASSOCIATION
AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS
AMERICAN PAPER INSTITUTE
AMERICAN RETAIL FEDERATION
AMERICAN WATCH ASSOCIATION
AUTOMOBILE IMPORTERS OF AMERICA
CHEMICAL MANUFACTURERS ASSOCIATION
COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION
ELECTRONIC INDUSTRIES ASSOCIATION
FOREIGN TRADE ASSOCIATION OF SOUTHERN CALIFORNIA
INDA (ASSOCIATION OF THE NONWOVEN FABRICS INDUSTRY)
INTERNATIONAL FOOTWEAR ASSOCIATION
INTERNATIONAL HARDWOOD PRODUCTS ASSOCIATION
MIDWEST IMPORTERS TRADE ASSOCIATION
MOTOR VEHICLE MANUFACTURERS ASSOCIATION
NATIONAL ASSOCIATION OF FOREIGN TRADE ZONES
NATIONAL ASSOCIATION OF PHOTOGRAPHIC MANUFACTURERS
NATIONAL CUSTOMS BROKERS & FORWARDERS ASSOCIATION
INTERNATIONAL MASS RETAIL ASSOCIATION
NATIONAL RETAIL MERCHANTS ASSOCIATION
NORTHWEST APPAREL AND TEXTILE ASSOCIATION
SEMICONDUCTOR EQUIPMENT AND MATERIALS INTERNATIONAL
UNITED SHIPOWNERS OF AMERICA

96-702 O - 89 - 4

THE JOINT INDUSTRY GROUP
WASHINGTON, D.C.

STATEMENT BY THE JOINT INDUSTRY GROUP
APPENDIX II: Operation Rap
1. Letter to Deputy Commissioner Lane
2. Response by Deputy Commissioner Lane

Chairman
Kenneth A Kumm

Secretariat
Harry Lamar
818 Connecticut Avenue, 12th Floor
Washington, D.C. 20006
Telephone (202) 466-5490
Fax (202) 892-8696

December 14, 1988

Mr. Michael H. Lane
Deputy Commissioner of Customs
U.S. Customs Service
1301 Constitution Avenue, N.W.
Washington, D.C. 20229

Dear Deputy Commissioner Lane:

On behalf of the members of the Joint Industry Group* and further to our meeting on November 29, 1988, I would like to state for the record our opposition to the methods employed in instituting the investigation into certain maritime and insurance rebate activities by the Customs Service's Los Angeles Field Office, but with the concurrence, and indeed assistance, of the Headquarters Office in Washington. While you are no doubt familiar with the practice to which this letter is addressed, I am attaching an excised

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* The trade associations supporting the views expressed herein are listed on Attachment A.

copy of the one of the 1,500 letters (the "Letter") and the Federal Register Notice of December 6, 1988 (the Notice") which are the public manifestations of the Customs Service's efforts to uncover the facts. The Joint Industry Group believes the approach taken to be ill-conceived and, if pursued, will serve to deprive importers of due process rights presently embodied in the law. In this regard, several points bear mention. They are:

1. In the opening paragraph of the Letter, Special Agent Edgar A. Adamson's states that the Service has commenced a formal investigation of "import transactions" involving the named entity and all related parties. The second paragraph makes clear that the scope of this investigation is potentially boundless. These assertions can only be based on the loosest of factual and legal nexuses. Put to the test, we believe the Customs Service has absolutely no tangible or otherwise credible evidence of any wrongdoing or involvement on the part of any single recipient of the Letter. Rather, you have indicated the Letter was mailed to 1,500 importers in an effort to have what you assert are an estimated 200 violators, no one of which is known, come forward and disclose facts the Service cannot establish. Despite the lack of information linking any specific recipient of the Letter to the suspected rebate practices, the Letter

(and now the Notice) attempts to effect the wholesale disenfranchisement of rights provided under 19 C.F.R. § 162.74.

2. We take issue with the Customs Service's presumption that it can open a blanket investigation and thereby negate the "prior disclosure" provisions embodied both in law and the Customs Service's regulations. This attempt to deny the prior disclosure benefits (which should extend to a qualifying party even if the Service believes the underlying conduct to be fraudulent) will also be viewed with disfavor by both the courts and the Congress.

3. The firms selected for inclusion in this dragnet are numerable, in fact, too numerable. More to the point, the recipients should not be put through a meaningless due diligence exercise under threat of penalty simply because the Service believes there is a problem. This entire exercise has created needless cost without any demonstrable benefit.

4. The Letter by innuendo accuses its recipients of engaging in certain practices. In the same breath, it invites the party to step forward in order to be penalized, albeit with some ill-defined "extraordinary mitigating factor" serving as the encouragement to make duty tenders and to provide all pertinent information. This same offer is

extended in the Notice. It makes no sense, however, to consider such invitations seriously. To come forward and proclaim innocence is an invitation to investigation. To confess involvement in the targeted rebates gains one nothing because as you stated so clearly, "we don't believe those who have engaged in this practice should be given the benefits of prior disclosure."

5. We condemn this investigatory approach in the strongest of terms. If it is pursued, voluntary compliance which lies at the heart of effective Customs administration will become a thing of the past.

* * *

The Joint Industry Group and its members have long worked with the Customs Service in attempting to create an environment for more effective administration of the diverse laws and regulations with which the Customs Service must contend. If the Customs Service wishes to join other government agencies in an effort to stop unauthorized rebate practices, this should be pursued in the same fashion as any other civil enforcement mission. Regrettably, a different tack has been taken in this case, and we are concerned that, unchecked, it will become the modus operandi for the future. We wish to move forward on a basis that will maximize

both voluntary compliance with, and effective enforcement of, Customs law. Therefore, we strongly urge you to revisit the issue and see if there is an alternate means to enlist the cooperation of our members as well as the other interest groups all of which have noted their opposition to the Letter.

Respectfully submitted,

William D. Outman, II
Chairman, Committee on
Compliance and Enforcement

WDO:ban
Attachments

cc: Mr. Kenneth A. Kumm
Mr. Harry Lamar

DEPARTMENT OF THE TREASURY

U. S. CUSTOMS SERVICE

LOS ANGELES, CA

October 21, 1988

Refer to:
LA08PRSLA015

Dear Sir:

This is to advise you that the U.S. Customs Service, Office of Enforcement, has commenced a formal investigation, as defined in Title 19, Code of Federal Regulations, §162.74, of import transactions involving , and related parties.

The investigation is directed toward, but not limited to, transaction value and/or exclusions from transaction value (e.g., international freight and insurance), since January 1, 1983.

It has come to our attention that some companies are overstating freight and insurance charges on imported merchandise, inasmuch as the amounts shown on invoices do not reflect discounts, commissions, bonuses, or rebates received by the foreign manufacturer, exporter, and/or importer of record; from the freight and insurance companies. U.S. Customs has determined that discounts, commissions, bonuses or rebates, received through CIF and FOB prepaid transactions are part of transaction value and therefore dutiable at the same rate as the merchandise being imported.

Manufacturers, exporters and importers who have engaged in the aforementioned practices are encouraged to make duty tenders and provide all pertinent information to U.S. Customs on or before December 2, 1988. These actions may be considered an extraordinary mitigating factor in respect to any possible civil penalty action that might be commenced against the importer.

For further information contact:
Curley D. Moore
Senior Special Agent
Office of Enforcement
U.S. Customs Service
300 S. Ferry Street, Room 2037
Terminal Island, CA 90731
(213) 514-6247

Sincerely,

Edgar A. Adamson
Special Agent in Charge
Los Angeles, CA

A copy of the Notice will be published in a newspaper of general circulation in Dallas, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 29, 1988.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 88-27991 Filed 12-5-88; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

[Docket 45959]

United States-Mexico All-Cargo Service Proceeding; Prehearing Conference

The prehearing conference in this proceeding will be held on Thursday, January 5, 1989 at 10:00 a.m. in Room 5332, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, DC.

On or before December 28, 1988, the parties shall submit one copy to each other and four copies to the judge of (1) any proposals for changes in the evidence request contained in Appendix C to Order 88-11-37; (2) proposed procedural dates; (3) proposed stipulations; and (4) a statement of position.

Dated at Washington, DC, November 30, 1988.

Burton S. Kolko,

Administrative Law Judge.

[FR Doc. 88-28051 Filed 12-5-88; 8:45 am]

BILLING CODE 4910-62-M

[Docket No. 45959]

United States-Mexico All-Cargo Service Proceeding; Assignment of Proceeding

November 30, 1988.

This proceeding has been assigned to Administrative Law Judge Burton S. Kolko. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50, Room 9228, Department of Transportation, 400 Seventh Street, Washington 20590. Telephone: (202) 366-2142.

William A. Kane, Jr.,

Chief Administrative Law Judge

[FR Doc. 88-28052 Filed 12-5-88; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE TREASURY

Customs Service

Overstatement of Charges on Entry Documentation

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of Customs investigations of overstatement of charges on entry documentation.

SUMMARY: Entry documentation covering merchandise imported into the U.S. is required by law to set forth all charges upon merchandise. The actual amounts paid to freight and insurance companies, less any discounts, bonuses or rebates paid by the freight and insurance companies to the seller, must be reflected on the documents. It has come to the attention of Customs that many invoices set forth overstated freight and insurance charges as the invoices do not reflect the discounts, commissions, bonuses or rebates received by the shippers or manufacturers from the freight and insurance companies. This document notifies the public that Customs is currently investigating such practices.

EFFECTIVE DATE: December 6, 1988.

FOR FURTHER INFORMATION CONTACT: Robert Fischer, Office of Enforcement, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-8186).

SUPPLEMENTARY INFORMATION:

Background

All invoices for imported merchandise are required by 19 U.S.C. 1481(a)(6), and § 141.86(a)(6), Customs Regulations (19 CFR 141.86(a)(6)), to set forth all the charges upon the merchandise itemized by name and amount, including freight, insurance, commission, cases, containers, coverings, and cost of packing. Pursuant to 19 U.S.C. 1481(a)(9), and § 141.86(a)(9), Customs Regulations (19 CFR 141.86(a)(9)), invoices must also set forth all rebates allowed upon exportation of the merchandise.

The importer of record is required by 19 U.S.C. 1484(a)(1)(B) to file such documentation as is necessary to enable the appropriate Customs officer to assess the proper duties on merchandise, collect accurate statistics with respect to merchandise, and determine whether other applicable requirements of law are met. Such documents required by Customs include the entry summary, Customs Form 7501. Pursuant to § 141.61(e)(1), Customs Regulations (19 CFR 141.61(e)(1)), the applicable information required by the General Statistical Headnotes, Tariff Schedules of the U.S. (TSUS), shall be shown on the entry summary. General Statistical Headnote 1(a)(xiv) provides that when persons making customs entry of articles imported into the customs territory of the U.S. complete the entry summary, they shall include the aggregate cost, in U.S. dollars, of freight, insurance and all other charges, costs and expenses incurred in buying the merchandise from alongside the carrier at the port of exportation in the country of exportation and placing it alongside the carrier at the first U.S. port of entry.

It has come to the attention of Customs that some importers are overstating freight and insurance charges on entry documentation by not reflecting accurately discounts, commissions, bonuses or rebates received by the shippers or manufacturers from freight and insurance companies. This has resulted in undervaluation of imported merchandise as the value of the merchandise is determined pursuant to 19 U.S.C. 1401a as the total payment made by the buyer, exclusive of any costs, charges or expenses incurred for transportation, insurance, and related services incident to the international shipment of the merchandise. Customs has further learned that some shippers and manufacturers are receiving the excess monies and/or discounts in CIF and FOB prepaid transactions.

Pursuant to 19 U.S.C. 1485(a), every consignee making an entry is required to declare on the entry that the prices set forth in the invoice are true to the best of his knowledge and belief; that all other statements in the invoice or other documents filed with the entry, or in the entry itself, are true and correct; and that he will produce at once to the appropriate Customs officer any invoice, paper, letter, document or information received showing that any such prices or statements are not true or correct. Accordingly, overstating freight and insurance charges is a violation of 19 U.S.C. 1485(a). Violation of 19 U.S.C. 1485(a) could result in a penalty under 19 U.S.C. 1592.

The purpose of this notice is to notify the importing public that Customs is currently investigating the practice of overstating freight and insurance charges on import documents. Manufacturers, exporters, and importers who have engaged in the aforementioned practices are encouraged to make duly tenders and provide all pertinent information to U.S. Customs. These actions may be considered an extraordinary mitigating factors with respect to any possible civil

penalty action that might be commenced against the importer.

William von Raab,
Commissioner of Customs.

Approved: November 10, 1988.

John P. Simpson,
Acting Assistant Secretary of the Treasury.

[FR Doc. 88-27983 Filed 12-5-88; 8:45 am]
BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Youth Exchange Program

The Bureau of Educational and Cultural Affairs, Youth Exchange Staff of the U.S. Information Agency announces its intention to fund a series of educational and cultural projects during 1989 and seeks written expressions of interest and capability on the part of private sector organizations that wish to be considered for grants to conduct these projects. This is not a request for proposals. Interested, potentially qualified organizations will be sent letters inviting them to submit detailed proposals and guidelines for these submissions once the Agency has developed specific solicitations. In each instance at the time of solicitation a limited number of organizations will be competing with each other in bidding on a project design. The list of competing organizations will include, but not necessarily be limited to, those that respond to this invitation and will be developed based on professional staff assessment of relevant qualifications.

Unless otherwise indicated below, the typical project is a short-term (4–6 week) group activity for participants identified by USIS posts overseas to be conducted during the summer months of 1989. The components of the programs will vary, depending on the theme, age of participants, length of stay, and other specifications. These projects are also primarily designed for international youth, not Americans, unless otherwise indicated.

Programs are authorized under Pub. L. 87–256, the Mutual Educational and Cultural Exchange Act of 1961, whose "purpose is to increase mutual understanding between the people of the United States and the people of other countries." Programs under the authority of the Bureau must be balanced and representative of the diversity of American political, social, and cultural life.

Respondents are hereby notified that budgetary constraints may prevent some of these projects from being funded in the final analysis.

Eligibility

To be eligible for consideration organizations must be incorporated in the U.S., have not-for-profit status as determined by the IRS, and be able to demonstrate expertise in a field relevant to the nature of the project on which they are bidding. Organizations in existence less than four years will only be eligible for grants under $60,000. Experience programming international visitors is desirable.

Western Europe

Germany

A. Congressional interns—a program for 8 West German youth aged 20–25 to provide them with a two-month experience in national and regional legislative affairs in the U.S., including internships in congressional offices and exposure to various regions of the U.S.

B. Journalists—a 6-week program for 6 young West German journalists to experience living in the U.S. and serving as interns in media organizations.

France

A. A project in France on the theme of the Bicentennial of the French Revolution for a group of American high school youth. A reciprocal project for a group of French youth on the theme of liberty and equality will also be conducted. The French Government will share in the cost of the projects.

B. A project to send a delegation of politically active American youth aged 18–25 to Paris in the summer of 1989 for a youth conference entitled "Paris '89" organized by youth wings of international political movements.

Spain

A project for a group of university student leaders from Spain on the theme of the 500th anniversary of Columbus' first voyage to the New World. The project will focus on the creation of "the American" culture and the contributions of various ethnic groups to its development.

Portugal

A project for university student leaders on the theme of leadership development.

United Kingdom

A. A project for student union university leaders to learn about the structure of the U.S. Government, higher education, democracy in a pluralistic society, and the foreign policy process, with special emphasis on international security affairs.

B. As two-way exchange project for top U.S. and U.K. students of one or more leading university drama departments.

A regional European project on the theme of "Challenge of Federalism" for leaders of youth wings of political parties.

Africa (Sub-Saharan)

A. American Studies—A 2-way 4–6 week project for African students of American studies in universities that have links with American universities.

B. Constitutional Law—A 4-week project for students of law in anglophone countries focusing on the U.S. Constitution and the practice of law in the U.S.

C. Arts—A 4-week project for young performing and visual artists from francophone African countries to explore the arts in America. Program will be conducted in French.

D. Sciences—A 4-week project for gifted students in science and math (upper high school level), preferably to attend a summer enrichment activity focusing on science and math.

American Republics (Latin America/the Caribbean)

Mexico

A. Arts and Crafts—A 4-week project for young folk artists and craftsmen to learn about the U.S. crafts heritage and to demonstrate their skills.

B. Political Process—a 4-week project for university students and politically active youth leaders on U.S. political processes, with special reference to the transition from one administration to another; also U.S.-Mexican relations.

C. U.S.-Mexican Relations—A 3-week project to send a group of U.S. university students interested in U.S.-Mexican relations to Mexico to meet with Mexican university students. The USIA grant will be primarily for international travel and partial per diem, with modest additional funding for the organization's administrative expenses.

Uruguay

The Agency will sponsor a 6-week program for American students in community colleges to attend classes in Spanish, history and culture at the Binational Center (BNC) in Montevideo during summer 1989. The Agency grant will be primarily for international travel only for 20–25 students, with modest additional funding for the organization's administrative expenses. Hosting will be provided by the BNC.

Regional Projects

A. Young Diplomats—A 4-week project for students from Latin

Attachment A

Joint Industry Group Associations

Air Transportation Association Of America

American Electronics Association

American Association Of Exporters And Importers

American Retail Federation

Automobile Importers Of America

Chemical Manufacturers Association

Computer And Business Manufacturers Association

Electronic Industries Association

International Footwear Association

International Hardwood Products Association

International Mass Retail Association

Midwest Importers Trade Association

Minnesota World Trade Association

Motor Vehicle Manufacturers Association

National Association of Foreign Trade Zones

National Bonded Warehouse Association

National Customs Brokers & Forwarders Association

National Retail Merchants Association

Northwest Apparel And Textile Association

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C.

INV 8 E:EO:FI:O RF

January 24, 1989

Mr. William Outman III
Chairman
Committee on Compliance and
Enforcement
The Joint Industry Group
818 Connecticut Avenue, NW.
Washington, D.C. 20006

Dear Mr. Outman:

Thank you for your letter dated December 14, 1988, concerning the U.S. Customs Service's investigation of certain freight and insurance rebate activities as it relates to the computation of transaction value. You expressed the Joint Industry Group's opposition to the methods employed in instituting the investigation, and to the letter which was sent to certain importers by the Special Agent in Charge, Los Angeles. In particular, you expressed concern that the scope of the investigation is "potentially boundless" and that the "Customs Service has no tangible or otherwise credible evidence of any wrong-doing or involvement on the part of any single recipient of the letter."

The U.S. Customs Service has developed information that freight and/or insurance rebates are paid on virtually all large shipments from the Pacific rim countries, and these charges are then often overstated on CIF and FOB prepaid entries. In addition to general information, we have a large body of specific information relating to individual importers, sellers, shipping companies, and other involved parties. This information was obtained directly from the importing industry and from other government agencies. The letters you referred to were directed to 1,360 importers for which the U.S. Customs Service has initiated preliminary investigations concerning the narrow issue of freight and insurance on import transactions. This is a small fraction of the nation's 750,000 importers. While we may not

currently have specific evidence of the culpability of each of the 1,360 identified importers, we do have sufficient information linking each of these importers' transactions to the suspected rebating practices.

We encouraged parties that have engaged in this practice to make duty tenders and provide all pertinent information to the U.S. Customs Service. We asserted that such action may be considered an extraordinary mitigating factor in respect to any possible civil penalty action that may be commenced. This information was provided in the letters, and also in a Federal Register Notice which attempted to inform those innumerable parties that had not received a letter of the information concerning the U.S. Customs Service investigation. Concerning our encouragement to importers to provide all pertinent information to the U.S. Customs Service concerning this practice and our assertion that such action would be an extraordinary mitigating factor, you indicated that this "invites the party to step forward and be penalized." You further indicated that, "It makes no sense, however, to consider such invitations seriously. To come forward and proclaim innocence is an invitation to investigation."

I can assure you that our assertion concerning actions that may be considered extraordinary mitigating factors is a valid one and will be applied generously on a case-by-case basis. However, the failure to come forward will not stop the investigation. The investigations currently underway will be completed and all leads vigorously pursued. We are continuing to gather additional information on rebating practices and additional investigations may be initiated. For instance, based on information currently being developed, we expect to initiate investigations of certain European transactions affected by Atlantic maritime rebating practices.

You also expressed particular concern that the letter directed to importers, and the Federal Register Notice, was an attempt "to effect the wholesale disenfranchisement of rights provided under 19 CFR 162.74" (prior disclosure provisions). Whether or not a party has received one of the aforementioned letters, that party can still make a claim for a prior disclosure in accordance with the

procedures set forth in 19 CFR 162.74. I can assure you that each claim will be reviewed by a noninvestigatory office in Customs to determine if the claim is valid. This review will include a determination of whether or not the investigatory record indicates that the circumstances set forth under 19 CFR 162.74(d), for commencement of a formal investigation of a violation of Title 19, United States Code, Section 1592, exists with regard to the disclosing party and the information received. In any event, if a prior disclosure claim is made and the transactions involve totally unrelated parties, the U.S. Customs Service would not penalize the importer in the absence of evidence that the importer knew or should have known that rebates had been received in the transactions.

I appreciate receiving the Joint Industry Group's opinions and concerns in these matters and I hope this additional information has clarified our position.

Sincerely,

Michael H. Lane
Deputy Commissioner

Mr. Outman

As indicated in the attached letter to the Journal of Commerce "The Customs Service has no intention of penalizing importers who were not aware of the rebating scheme."

MHL

THE COMMISSIONER OF CUSTOMS

WASHINGTON, D.C.

January 10, 1989

Dear Mr. Levinson:

I want to clarify the issue of prior disclosure which Dick Abbey, former Customs Chief Counsel, raised in your newspaper on January 5. The case in point began last October, when the Customs Agent in Charge in Los Angeles sent letters to 1,360 importers across the country. These importers had been targeted in an investigation aimed at halting the practice of overstating freight and insurance charges.

A notice of this investigation, known as Operation Rap, appeared on December 6 in the Federal Register. The purpose of Operation Rap is to stop this practice, collect lost revenue, and prosecute civilly and criminally culpable importers.

The Customs Service has no intention of penalizing importers who were not aware of the rebating scheme. Importers who have exercised reasonable care and competence will not be charged with a penalty under 19 USC 1592 when they make a prior disclosure. Further, we will not find an importer culpable unless we find evidence that he knew or should have known that rebates were received and then not disclosed to Customs.

We have replied to the concerns of the American Association of Exporters and Importers in their letter of November 7. We will be happy to make a copy of this letter available on request.

Yours faithfully,

William von Raab

Mr. Marc Levinson
Editorial Director
The Journal of Commerce
110 Wall Street
New York, New York 10005

AMERICAN ASSOCIATION OF EXPORTERS AND IMPORTERS

by

John B. Pellegrini
Chairman, Customs Policy Committee

Good Morning, Chairman Bentsen, members of the committee. I am John Pellegrini a Director of the American Association of Exporters and Importers (AAEI), Chairman of its Customs Policy Committee and Partner in the firm of Ross & Hardies. AAEI is a national organization of approximately 1200 U.S. firms who are active in importing and exporting a broad range of products including chemicals, machinery, electronics, textiles and apparel, footwear and foodstuffs. AAEI members also include customs brokers, freight forwarders, banks, attorneys and insurance carriers. AAEI members are close observers of the top U.S. Customs Service, and its policies and practices at ports nationwide. Our members deal with U.S. Customs on a day-to-day basis.

AAEI thanks the Committee for the opportunity to relate our members' concerns about Customs funding and to suggest improvements. AAEI recognizes the increasing budgetary pressures on all government agencies but believes wise choices can be made, which will improve Customs commercial operations and increase its revenue.

AAEI believes that this Committee and you, Mr. Chairman, deserve the lion's share of credit for Customs' increased funding and attention to its commercial operations in FY1989. More personnel and more funds generally has improved the Customs Service over the past year, but it is AAEI's opinion that Customs still requires this Committee's firm guidance to continue the improvements, especially when Customs is asked to do more and more.

Last year, AAEI appeared before this committee and highlighted major problems with Customs' Commercial Operations. Some have been satisfactorily resolved, others have not. Today, the Association asks that not only funding but guidance, oversight and, when necessary, discipline be enhanced in FY1990.

In Fiscal Year 1988, Customs collected over $16 billion dollars in revenue for the General Treasury and is expected to exceed that in FY1989 and 1990. Over $15.5 billion, or 97%, was due to commercial operations. In other words, Customs collected approximately $25 for every $1 it spent on commercial operations. $656,249,000 of this amount was due to the merchandise processing fee, although the money was not released to Customs. The U.S. Customs Service generate a substantial revenue surplus and realizes a return of over 2500% that has not yet reached the point of diminishing returns. AAEI asks this Committee to ensure that the trade community receives adequate service for which it pays so dearly.

AAEI's members are constantly exposed to the best and worst aspects of Customs commercial operations. However, it is not a question of balance. The successful pro-

grams that Customs has developed and implemented should set the standard for all their programs. Efficient and quick commercial trade processing, minimal cost to the exporter or importer and a respect for the legal rights of U.S. persons should be the rule -- not the exception -- of Customs commercial operations. The budget authorization for FY1990 must ensure that Customs not only have the resources necessary to improve commercial operations but also mandate that improvements in the following areas.

First, Customs suffers from inadequate staffing. In the past Customs has spent and continues to spend a large part of its budget on existing automated programs and on the development of new electronic programs. AAEI agrees with Customs that automation can result in efficiencies and better use of human resources. However, given the Automated Commercial Systems current and projected capabilities, it cannot replace qualified import specialists or inspectors. A computer program cannot examine goods, classify merchandise or issue rulings. Customs must recognize that machines can only assist human functions such as inspection and analysis, not replace the humans who perform those functions.

Second, we are concerned about the increased hostility between Customs and the import community. Drug enforcement is a major part of Customs' mandate but trade facilitation is also the Service's responsibility. Members of AAEI have as much a stake in drug enforcement as anyone else. Likewise, AAEI members have a great stake in effective commercial enforcement, as dishonest importers cause their law-abiding competitors as many problems as they cause Customs.

Unfortunately, despite improvements in Customs relationship with the trade community, the prevalent attitude of the U.S. Customs Service, from Headquarters to the field, is to assume importers are "the enemy", who do not deserve due process. Customs routinely treats honest U.S. businessmen, who sometimes make honest mistakes, the same as drug smugglers. This attitude has lead to an unhealthy fear of Customs by legitimate businesses. This fear can best be highlighted by our members' hesitancy to complain publicly about Customs or to complain directly to the Service, for fear of retaliation by Customs in the form of increased, unwarranted inspections resulting in delays and greatly increased costs. While Congressional oversight has caused Customs to increase its cooperation with the trade community, AAEI fears the resentment against this pressure may pervade the Service and cause subtle retaliation against U.S. businesses that import.

AAEI would like to highlight the several areas of concern pertaining to and praise for U.S. Customs commercial operations in FY1989:

USER FEES

Particularly troubling is the fact that importers are forced to continue to fund Customs' overemphasis on enforcement. The Merchandise Processing Fee (MPF) was intended to cover the cost and raise the level of service, of commercial operations -- that has not happened. Although the appropriation for commercial operations finally has been increased, as a result of the MPF funds, the money collected through the MPF sits in the general treasury and has not been used as intended. Customs has increased commercial operations personnel, but also has used the additional funds to increase commercial enforcement, not trade facilitation.

In congressional testimony before and after the imposition of the Merchandise Processing Fee (MPF), AAEI urged that the U.S. honor its international obligations, especially those under the GATT. AAEI applauds the Administration's current intention to bring the MPF into conformity with the GATT and looks forward to reviewing the new proposed fee schedule. However, without dwelling on the technical arguments, the Association believes that any MPF cannot be made consistent with U.S. GATT or other international obligations, even if the fee is transaction-based, rather that ad valorem. Congress should use this opportunity to recognize Customs' revenue-raising capability and allow the unnecessary and burdensome user fee (MPF) to expire at the end of FY 1990.

AAEI agrees with the finding of the GATT Panel that the MPF, whatever the form, is nothing more than a "tax" for government mandated-services that do not "endow goods with safety or quality characteristics deemed necessary for commerce", "nor do they add value to the goods in any commercial sense". (See GATT Panel Ruling at 39). Further, as shown in the Budget Analysis for FY1990 (p. I-S17), the MPF has brought in far more in revenue than the cost of Customs commercial operations. While our trading partners may allow the U.S. the fiction of using the MPF to "offset" the cost of Customs commercial operations, they and the GATT certainly will not allow the MPF to be used to raise an additional $56 million in revenue for the U.S. general treasury.

Should Congress ignore this inherent problem with the MPF and allow it to continue, AAEI urges the following:

1) The MPF not be extended to 1994 - Former President Reagan's proposed FY1990 Budget deliberately extends this tax on imports for 5 years past its scheduled expiration date of 9/30/90, ignoring Congress' pledge to make this a temporary tax and the GATT's prohibition on taxes on imports for general revenue purposes.

2) The MPF be used to increase and improve commercial operations - Although the MPF is unnecessary since increased resources and staffing will increase the funds returned to the general treasury (at a ratio of 25-1), the full amount of the funds generated by the MPF should be used on Customs commercial operations.

3) The MPF funds must cover the cost of all Customs-mandated operations - Despite the extra funds generated by the MPF, Customs continues to automate and initiates new programs which mandate increased costs to the trade community. When Customs contracts with a third-party and requires and importer to use that third-party's services, Customs must bear the cost of the those services.

INADEQUATE STAFFING

Despite the personnel and budget increase mandated by Congress last year, AAEI members from across the country consistently complain about the inadequate numbers of Customs personnel to do the job with which they are charged. The shortfall in Customs staffing while slowly improving, remains evident in the field and Customs Headquarters and pertains not only to management level but also to support and clerical staff.

Across the country, Customs does not have enough staff to answer the phones, or do the necessary typing/word processing. Although customs is shoring up staff in particular areas and paying greater attention to certain programs such as implementation of the (HS) Harmonized System and U.S.-Canada F.T.A., the increased staffing for special programs is resulting from a shift in resources and projected resource's savings from Customs automation programs. AAEI is pleased that the Administration has accepted Congress' mandate in the FY1989 Budget that any hirings above 16,099 full-time equivalent employees must be assigned to commercial operations. However, AAEi believes that Customs should be asked to why the Administration estimates that the level of customs personnel will decrease in FY1990 to 17,179 from 17,496 in FY1989 (See Executive Budget Analysis for FY1990 at I-S17). We believe that a revenue-producing agency Customs can still benefit from additional staffing in most areas of operations at all levels.

One area in particular needs special attention. Customs needs more personnel in its classification and value division including the Headquarters Office of Rulings and Regulation and the offices of the National Import Specialists. The advent of the HS, a new system of classifying merchandise, is resulting in U.S. businesses seeking more advice and time from Customs in order to continue trade with minimal disruption. Customs is attempting to meet this challenge through a Binding Rulings program, which

much to Customs' credit, appears to be functioning well. However, once importers begin filing protests on HS classifications, the NIS's and Office of Regulations and Rulings are likely to be overwhelmed with work and unable to respond in timely fashion.

The solution to the staffing problem is relatively simple -- Hire more people for commercial operations and allow them to gain experience in their jobs before they are moved. Customs has informed AAEI, however, that their recruitment efforts and suffering because of the low salaries, particularly in high-cost areas (i.e., most metropolitan areas) where the need for increased staff is most pressing. AAEI sympathizes with Customs and asks that this specific recruiting problem be reviewed, so that the Service can attract and retain quality employees.

INCREASED COSTS

An importer is not given a choice of whether to comply with Customs' rules and regulations. AAEI members have no complaints about the regular costs of Customs clearance. However in the past few years, Customs at times has initiated new programs, usually without advance input from the trade community, which initially unwarranted caused significant delays in clearing goods and additional unwarranted costs. An illustrative example is the Centralized Examination Station program.

Customs has mandated that in each port, importers whose goods have been selected for inspection must move those goods to one of a few inspection sites. Customs has engaged independent contractors to operate the examination stations. When the CES first opened importers suffered delays of one to two weeks and incurred thousands of dollars in demurrage and devanning charges. The inordinate delays have been eased in most locations, but undue costs still persist since the importer must pay to transport his merchandise to and from the CES facility and pay a charge to the CES operator for th "privilege" of using the facilities. AAEI members have asked why the cost of the Customs-mandated service should not be paid by Customs out of the merchandise processing fee collected to fund commercial operations. Customs illogical answer is that although it mandated the CES program and contracted for the operator, it is not the operator of the CES and it does not control the costs.

Another Customs initiative which has imposed extraordinary costs on importers is Customs' increased drug enforcement. To be clear, AAEI members have not and will not complain about legitimate drug enforcement activities. At times, however, Customs personnel will become overzealous repeatedly inspecting an importer's merchandise even though nothing is found, or damaging legitimate goods in the search for illicit ones. We want you to recognize that Customs enforcement impacts direct costs on legitimate importers. We would like to request that importers be reimbursed for the damages.

Customs is making a good faith effort to deal with these problems but Customs does not have the authority of who bears the costs of repeated inspections or damaged goods. Importers currently are paying hundreds and in some cases thousands of dollars, in addition to duty, CES charges, and user fees, for the "privilege" of engaging in international trade.

CUSTOMS UNIFORMITY

AAEI long has discussed the need to improve uniformity with the Customs Service. Customs has made a good faith effort to improve uniformity and should be encouraged to continue its current efforts. In particular, Customs new Binding Rulings Program appears to be a worthwhile expenditure of resources. Customs already has received 1500 binding ruling requests and is averaging a 2-3 week turnaround time. AAEI believe that Customs FY1990 Budget authorization should include adequate funds to retain and enhance this program.

AAEI, however, has some concerns with the uniformity provision found in FY1989 Customs' Authorization (Sec. 7361(c), P.L.100-690 11/18/88). First, the regulations are to become effective April 1, 1989 but a proposed draft was not published until February 27, 1989 . Second, section (c)(1)(B) allows parties other than the owner of the merchandise to petition for a uniform classification or valuation decision. AAEI believes that allowing a third-party to become involved will result in an unnecessary burden on Customs resources, unnecessary costs to the importer, and may have serious legal implications.

CUSTOMS SEIZURES UNDER 19 USC 1595(a)(c)

AAEI continues to be concerned with the improper use of the seizure authority enacted in the Anti-Drug Abuse Act of 1986, which was intended to allow Customs to seize drugs in commercial shipments. Although the climate has improved, it remains that since 1987 only a handful of drug seizures have been made under this section. Congress did not intend that this law should circumvent the procedural safeguards of §1592 or §1304. AAEI urges that no funds be authorized for the seizure of commercial shipments under §1595a(c) in FY1990.

CONCLUSION

Mr. Chairman, members of the committee, the members of AAEI urge you to exercise your authority to ensure Customs' response to the legitimate concerns and needs of the importers and exporters. Although new initiatives may improve Customs efficiency, Congressional oversight of these initiative must be maintained to insure Customs funding is put to the best use.

AAEI members uniformly believe that Customs' overemphasis on enforcement has negatively affected its commercial operations and honest U.S. business. As the problems detailed earlier evidence, the trade community has been paying more for less -- less information, less staffing and less service. AAEI importers pay the lion's share, through duties and user fees, of the expense of the operations both as importers and taxpayers -- they are entitled to a major improvement in service. AAEI requests that Congress exercise its oversight and budgetary control so that Customs continues to facilitate trade. Focused enforcement efforts benefit everyone, especially AAEI members -- honest U.S. importers and exporters. "Enforcement at all costs", especially where legitimate importers bear those costs, encumbers real enforcement and vitiates cooperation between the trade community and Customs, most likely resulting in a loss of revenue.

The membership of AAEI stands ready to work with this committee, to ensure that budget funds are used for commercial operations, not just enforcement and to continue to restore the relationship between Customs and the community it serves.

PREPARED STATEMENT OF WILLIAM VON RAAB

COMMISSIONER, U.S. CUSTOMS SERVICE

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE, I AM PLEASED TO COME BEFORE YOU TODAY TO DISCUSS THE FY 1990 CUSTOMS BUDGET REQUEST AND HOW CUSTOMS INTENDS TO MAKE USE OF ITS RESOURCES.

AS YOU ARE AWARE, THE PRESIDENT'S FY 1990 BUDGET PROPOSES FREEZING, AT FY 1989 LEVELS, THE AGGREGATE SPENDING OF DOMESTIC PROGRAMS NOT DIRECTLY ASSOCIATED WITH ONE OF HIS FIVE BROAD INITIATIVES. ALTHOUGH MOST OF OUR PROGRAMS ARE INCLUDED IN THIS CATEGORY, THE PRESIDENT HAS EMPHASIZED THAT THE FREEZE IS FLEXIBLE, ALLOWING SOME PROGRAMS TO INCREASE WHILE OTHERS ARE REDUCED.

DURING FY 1988, CUSTOMS COLLECTED $17.5 BILLION IN REVENUE, CLEARED 348.4 MILLION PERSONS AND PROCESSED NEARLY 8.9 MILLION FORMAL MERCHANDISE ENTRIES, THE LATTER CONSTITUTING A 10.7% INCREASE OVER THE PAST YEAR.

IN THE DRUG ENFORCEMENT ARENA, WE SEIZED 140,000 POUNDS OF COCAINE, A QUANTITY 59% ABOVE THE PRIOR YEAR. WE ALSO SEIZED 1,352 POUNDS OF HEROIN, NEARLY ONE MILLION POUNDS OF MARIJUANA AND 94,700 POUNDS OF HASHISH.

EACH YEAR THAT PASSES FINDS THE CUSTOMS SERVICE WITH INCREASINGLY COMPLEX, MULTIMISSION RESPONSIBILITIES. AS THE PRIMARY BORDER ENFORCEMENT AGENCY, CUSTOMS IS CHARGED WITH ENFORCING OVER 400 LAWS. THESE LAWS ENCOMPASS SUCH AREAS AS PROTECTION OF AMERICAN BUSINESS, AGRICULTURE AND PUBLIC HEALTH IN DIVERSE AND RARELY TALKED-ABOUT AREAS SUCH AS MOTOR VEHICLE SAFETY AND EMISSION STANDARDS ON IMPORTED VEHICLES.

CUSTOMS ALSO ADMINISTERS THE NATION'S TRADE PROGRAMS TO INCLUDE QUOTAS ON TEXTILES, STEEL, MEATS AND DAIRY PRODUCTS, AND WE COLLECT TRADE STATISTICS AND DUMPING AND COUNTER-VAILING DUTIES.

MR. CHAIRMAN, THIS COMMITTEE HAS INCREASINGLY EXPRESSED ITS INTERESTS WITH RESPECT TO CUSTOMS COMMERCIAL OPERATIONS AND CARGO FACILITATION EFFORTS. WITH THAT IN MIND, I WOULD LIKE TO BRIEFLY TOUCH ON A FEW COMMERCIAL OPERATIONS AND CARGO FACILITATION INITIATIVES IN WHICH YOU HAVE EXPRESSED INTEREST.

LAST YEAR, WE BRIEFLY DISCUSSED THE MAJOR CHALLENGE TO THE CUSTOMS COMMERCIAL SIDE--FACILITATION OF CARGO WHILE MAINTAINING HIGH DEGREES OF COMPLIANCE LEVELS IN AN INCREASINGLY COMPLEX, BUSY AND CHANGING TRADING ENVIRONMENT. WE ARE CONTINUING TO MEET THIS CHALLENGE THROUGH MODERNIZATION AND THE INCREASED USE OF SELECTIVITY, SUPPORTED BY THE AUTOMATED COMMERCIAL SYSTEM (ACS).

THE ACS SYSTEM AND ITS COMPONENT MODULES ARE DESIGNED TO IMPROVE THE QUALITY AND UNIFORMITY IN THE PROCESSING OF IMPORTED MERCHANDISE. BY AUTOMATING OUR ENTRY PROCESSING SYSTEMS THROUGH ACS, WE ARE NOW MORE EFFICIENTLY PROCESSING ENTRY-ASSOCIATED PAPERWORK. AS WE ADVANCE THE SYSTEM, WE ARE LOOKING TO ELIMINATE AS MANY PAPER FORMS AND REQUIREMENTS AS POSSIBLE.

THE CUSTOMS SERVICE COMPUTER SYSTEM IS NOW CAPABLE OF COMMUNICATING DIRECTLY WITH PRIVATE INDUSTRY, AND RECEIVING ENTRY

DOCUMENTS ELECTRONICALLY. IN FACT, AT THIS JUNCTURE, NEARLY 70% OF ENTRY DOCUMENTS ARE FILED ELECTRONICALLY.

OUR COMPUTER ADVANCEMENTS HAVE ALSO MOVED US CLOSER TO COMPLETION OF AN AUTOMATED CLEARINGHOUSE SYSTEM WHERE CUSTOMS DUTIES CAN BE PAID ELECTRONICALLY. AS WE DOVETAIL THESE DIFFERENT ADVANCEMENTS, WE MOVE CLOSER TO OUR GOAL OF A PAPERLESS CUSTOMS ENTRY SYSTEM IN THE FUTURE.

IT IS IMPORTANT TO SAY HERE THAT THE AUTOMATION STRIDES WE HAVE MADE HAVE MOVED US TO A LEADERSHIP ROLE IN THE INTERNATIONAL COMMUNITY IN THE DEVELOPMENT AND TESTING OF ELECTRONIC DATA INTERCHANGE. ONE DAY, THIS WILL RESULT IN THE TOTAL TRANSMISSION OF INVOICE AND OTHER ENTRY-RELATED DATA BY ELECTRONIC COMMUNICATION BETWEEN NATIONS.

THIS YEAR WILL SEE DRAMATIC CHANGES IN CUSTOMS COMMERCIAL ACTIVITIES. THE CANADIAN FREE TRADE AGREEMENT AND THE HARMONIZED TARIFF SYSTEM HAVE NOW BEEN IMPLEMENTED, ALONG WITH A NUMBER OF INNOVATIVE CUSTOMS PROGRAMS, SUCH AS OUR NEW BINDING RULINGS PROGRAM. WHILE WE HAVE DONE MUCH TO PREPARE FOR THESE CHANGES, WE EXPECT THE EARLY MONTHS OF 1989 TO BE A LEARNING PROCESS FOR THE TRADE COMMUNITY AND GOVERNMENT ALIKE AS WE ADJUST TO THESE NEW DEVELOPMENTS.

OF PARTICULAR CONCERN TO MANY IN CONGRESS IS THE IMPLEMENTATION OF THE CANADIAN-FREE TRADE AGREEMENT (FTA). THIS AGREEMENT, IMPLEMENTED ON JANUARY 2, 1989, IS A FAR-REACHING TRADE AGREEMENT WHICH BREAKS NEW GROUND IN REMOVING BARRIERS TO TRADE IN SUCH AREAS AS TARIFFS, INVESTMENTS, SERVICES AND A HOST OF OTHERS.

UNDER THE FTA, TARIFFS ON GOODS ORIGINATING IN THE U.S. AND/OR CANADA WILL HAVE BEEN SYSTEMATICALLY ELIMINATED BY 1998.

IN ORDER FOR GOODS TO QUALIFY UNDER THIS AGREEMENT, THEY WILL HAVE TO MEET CRITERIA SPELLED OUT IN A SET OF "RULES OF ORIGIN" WHICH WILL PRECLUDE THIRD COUNTRIES FROM OBTAINING THE BENEFITS OF THE AGREEMENT SIMPLY BY PASSING THEIR GOODS THROUGH THE U.S. OR CANADA.

IN NOVEMBER AND DECEMBER OF 1988, IN PREPARATION FOR FTA IMPLEMENTATION, CUSTOMS CONDUCTED TRAINING FOR ITS FIELD PERSONNEL AND THE CANADIAN AND AMERICAN TRADE COMMUNITIES.

ANOTHER AREA OF CONCERN TO THE CONGRESS IS THE REPLACEMENT OF THE TARIFF SCHEDULES OF THE UNITED STATES (TSUS) WITH THE HARMONIZED TARIFF SCHEDULE (HTS) OF THE UNITED STATES. IMPLEMENTATION OF THIS CHANGE HAS BEEN A MAJOR PRIORITY FOR CUSTOMS.

THE HTS PROVIDES THE U.S. AND OTHER TRADING NATIONS WITH A GREATER UNIFORMITY IN THE CLASSIFICATION OF GOODS. THE PREPARATORY EFFORTS TOWARD IMPLEMENTATION INCLUDED NATIONWIDE TRAINING FOR ALL CUSTOMS PERSONNEL, AS WELL AS FOR OTHER GOVERNMENT AGENCIES, THE IMPORTING PUBLIC, AND VARIOUS TRADE ASSOCIATIONS.

MOVING ON TO ANOTHER CUSTOMS EFFORT OF INTEREST TO THE COMMITTEE, YOU WILL RECALL THAT THE FY 1989 CUSTOMS AUTHORIZATION BILL CONTAINS A REQUIREMENT TO IMPLEMENT A RULINGS UNIFORMITY PROGRAM. IN RESPONSE, CUSTOMS DEVELOPED AND IMPLEMENTED A CLASSIFICATION RULINGS PROGRAM ON JANUARY 1, 1989. UNDER THIS PROGRAM, FOR MOST REQUESTS, WE WILL ISSUE A BINDING RULING WITHIN THIRTY DAYS. THE ISSUED CLASSIFICATION WILL BE BINDING.

FINALLY ON THE COMMERCIAL SIDE, I WOULD LIKE TO INFORM THE COMMITTEE OF A CUSTOMS TEST INITIATIVE CALLED TRIANGLE PROCESSING, WHICH BEGAN IN OCTOBER OF 1988. BASICALLY, THIS

PROGRAM ALLOWS FOR ENTRIES AND ENTRY SUMMARIES TO BE ELECTRONICALLY FILED AT LOCATIONS DIFFERENT FROM WHERE THE MERCHANDISE ARRIVES.

THIS TEST, WHICH BEGAN WITH THE CONCURRENCE OF THE BROKERAGE COMMUNITY, INVOLVES ONE LARGE, AUTOMATED NEW YORK AREA BROKER, REPRESENTING SIX OF THAT BROKER'S NATIONAL ACCOUNTS AT ELEVEN CUSTOMS PORTS. TO DATE, THE RESULTS HAVE BEEN VERY ENCOURAGING. IN FACT, MANY MEMBERS OF THE TRADE COMMUNITY WOULD LIKE TO PARTICIPATE IN A SLIGHTLY EXPANDED VERSION OF THE ORIGINAL TRIANGLE TEST, A WISH WHICH CUSTOMS IS NOW CONSIDERING.

AT THIS POINT, MR. CHAIRMAN, A WORD IS IN ORDER REGARDING FUNDING FOR CUSTOMS COMMERCIAL OPERATIONS. AS YOU KNOW, CONGRESS FUNDED OUR COMMERCIAL OPERATIONS FROM THE USER FEE ACCOUNT IN FY 1989. THIS YEAR, AS LAST, THE ADMINISTRATION WILL SEND TO THE HILL, LEGISLATION TO CORRECT THE CUSTOMS USER FEE'S INCOMPATIBILITY WITH GATT. BASICALLY, THE LEGISLATIVE PROPOSAL WILL SEEK A TRANSACTION-BASED FEE TO REPLACE THE CURRENT AD VALOREM FEE. YOU WILL RECALL THAT THE ADMINISTRATION SENT FORWARD SUCH A BILL IN MAY OF 1988, BUT CONGRESS DID NOT CONSIDER IT.

ON THE ENFORCEMENT SIDE, THE MOST VISIBLE MISSION ELEMENT, AND A MAJOR PRIORITY OF THIS ADMINISTRATION, CONTINUES TO BE NARCOTICS ENFORCEMENT. AS YOU KNOW, THIS IS A TREMENDOUS RESPONSIBILITY, REQUIRING STAGGERING RESOURCES, AND PATIENT AND CAREFUL JUDGEMENT AS TO HOW THOSE RESOURCES ARE USED.

AS CUSTOMS HAS BECOME MORE SUCCESSFUL IN THE AIR AND MARINE INTERDICTION PROGRAMS, BASED ON RESOURCES WE HAVE RECEIVED OVER THE LAST FEW YEARS, WE ARE SEEING AN INCREASE IN NARCOTICS MOVING TO OUR SHORES VIA CONTAINERS IN CARGO VESSELS. THIS BEING THE CASE, CONTAINER ENFORCEMENT STRATEGIES MUST COMMAND A HEIGHTENED ATTENTION OPERATIONALLY--IN TURN, MORE RESOURCES ARE REQUIRED.

WITH THIS REQUIREMENT IN MIND, THE NEW ADMINISTRATION, IN ITS FY 1990 REQUEST, HAS INCLUDED $28 MILLION FOR A NEW CONTAINERIZED CARGO INITIATIVE. THESE FUNDS WILL ALLOW FOR 550 FTE AND A SIGNIFICANTLY INCREASED LEVEL OF INTENSIVE EXAMINATIONS OF CARGO CONTAINERS FOR ILLEGAL DRUGS. THIS EFFORT WILL TAKE PLACE, IN PART, WITH ADDITIONAL INSPECTORS AND CANINE TEAMS.

TO THE EXTENT THIS INITIATIVE CALLS FOR 550 INSPECTORS TO BE ADDED TO OUR CARGO ENFORCEMENT EFFORTS, WE SEE THESE RESOURCES AS ALSO PROVIDING BETTER SERVICE TO THE IMPORTING PUBLIC. I SAY THIS BECAUSE THESE INSPECTORS' EFFORTS WILL PERMIT CUSTOMS TO FURTHER EXPEDITE THE RELEASE OF LOW RISK SHIPMENTS, AND MORE QUICKLY ACCOMPLISH THE EXAMINATION AND RELEASE OF ALL SHIPMENTS THOUGHT TO BE HIGH RISK.

ANOTHER ENFORCEMENT TOOL IS THE FINANCIAL LAW ENFORCEMENT PROGRAM WHICH FOCUSES ON THE ILLEGAL MONEY FLOW OF PROCEEDS OF CRIMINAL ENTERPRISES. THE IDEA HERE IS TO INTERRUPT THE FLOW OF ILLEGAL PROCEEDS, SEIZE THE ASSETS AND PROSECUTE THOSE WHO CONTROL THE ORGANIZATION.

DURING FY 1988, CUSTOMS FINANCIAL ENFORCEMENT EFFORTS PRODUCED A SIGNIFICANT SEIZURE INCREASE OVER FY 1987, UP 61% FROM $102.4 MILLION TO NEARLY $165 MILLION. THE NEW BUDGET REQUEST ADDS $3 MILLION FOR MONEY LAUNDERING INVESTIGATIONS. ALL TOTALED, THE BUSH BUDGET FOR CUSTOMS REQUESTS $442 MILLION FOR DRUG ENFORCEMENT.

MR. CHAIRMAN, I WOULD LIKE TO REMIND THE COMMITTEE THAT THE CUSTOMS SERVICE BEGAN CELEBRATING ITS BICENTENNIAL THIS PAST SUMMER. THE ORIGINAL CUSTOMS DISTRICTS AND PORTS OF ENTRY WERE ESTABLISHED BY THE FIFTH ACT OF CONGRESS ON JULY 31, 1789, IN RESPONSE TO THE URGENT NEED FOR REVENUE COLLECTION UNDER THE TARIFF ACT OF JULY 4, 1789.

EVEN THOUGH CUSTOMS BASIC MISSION HAS REMAINED THE SAME OVER THE PAST 200 YEARS, CHANGES IN THE SIZE AND MAKEUP OF THE INTERNATIONAL TRADE COMMUNITY HAVE RESULTED IN A SIGNIFICANT EXPANSION OF THE U.S. CUSTOMS SERVICE AND ITS RESPONSIBILITIES.

MR. CHAIRMAN, ALL IN ALL, CUSTOMS HAS ENJOYED CONSIDERABLE PROGRESS AND SUPPORT OVER THE PAST YEAR IN BOTH THE ENFORCEMENT AND COMMERCIAL ARENAS. AT THIS POINT, WE HOPE TO CAPITALIZE ON THE PROGRESS WE HAVE MADE IN BOTH AREAS, AND WHERE IT IS FEASIBLE, ENHANCE OUR EFFORTS. WITH A LITTLE PATIENCE AND APPLIED JUDGEMENT, WE CAN CONTINUE TO ACCOMPLISH RESULTS. THIS CONCLUDES MY STATEMENT. I WILL BE HAPPY TO ANSWER YOUR QUESTIONS.

RESPONSES TO QUESTIONS SUBMITTED BY SENATOR MATSUNAGA

HONOLULU INSPECTOR STAFFING

Senator Matsunaga: Mr. Commissioner, I am very disturbed with reports coming from the state of Hawaii regarding the continued undermanning of the passenger processing effort at Honolulu International Airport. This is a long-standing issue in Hawaii and one on which our Governor and the state Administration have tried to work cooperatively with the Customs Service.

In February, the average clearance time for passengers arriving from Japan was 1 1/2 hours with many passengers taking up to 3 hours from the time their plane arrives until the time they leave the airport. I have received reports from my constituents returning to the island that passengers deplane at the airport into an anteroom. U.S. passengers are generally given expedited processing while foreigners are told that they will have to wait from 1 to 2 hours, just to enter the line to be processed. This kind of delay is completely unacceptable to me.

In Hawaii, tourism is a multi-billion dollar industry which is essential to the state economy. The state is in a constant battle with other destinations in the Pacific, such as Australia, for the growing number of tourists from Japan and other countries. This kind of welcoming ceremony at the airport is not condusive to the state's efforts, is unnecessary from a policy standpoint, and has the potential of harming the state economy.

Mr. Commissioner, I'd like to hear your explanation on why your agency seems unable to develop an adequate system with a sufficient number of inspectors for processing passengers at Honolulu International Airport.

Commissioner von Raab: The problem in Honolulu stems from a very small departure window and curfew for flights leaving Tokyo's Narita airport for Honolulu. This results in 90 percent of the traffic at Honolulu coming in during only a 6-hour period. The facility is unable to handle a large number of 747s arriving simultaneously.

Customs continues to work towards more expeditious passenger processing. Last year, Customs increased part-time personnel at Honolulu from 51 to 69, a 35 percent increase. This is being continued again throughout this year in order to try to resolve some of the delays. In addition, Customs is looking at ways to introduce at least certain segments of the

Master Plan for Passenger Processing, which would allow some of the low-risk flights to proceed much more expeditiously. This plan makes greater use of selectivity techniques. It will also make use of advance passenger information, transmitted electronically from the flights' points of origin.

Senator Matsunaga: In Miami, where there is a serious recognized problem with drug smuggling into the country, 85 percent of the passengers are cleared through the airport in 30 minutes. In Hawaii, 55 percent of the flights take more than 90 minutes to clear the airport despite there being a low-risk drug importation situation with most of the flights. Why does this disparity between airports exist? When can we expect the Customs Service to be able to meet the Congressionally mandated goal of processing passengers in 45 minutes?

Commissioner von Raab: Again, the small period of time in which the largest volume flights arrive contributes heavily to the disparity. Although Miami International also has peaking problems, the window of arrival is greater than that of Honolulu's, therefore, processing times are less. In order to conform to the Congressionally mandated passenger processing time, facility constraints at Honolulu must be corrected. The facility was designed for a throughput maximum of 1,500 passengers per hour. During peak arrival periods the facility is forced to accommodate more than 2,000 passengers per hour. Present baggage carousels are inadequate to handle baggage from large aircraft, and Honolulu gets only DC-10 and 747 traffic. When the facility is saturated, INS puts a hold on aircraft, forcing the passengers to stay on board until space is available in the facility.

Senator Matsunaga: Please list the current staffing of the Customs Service at Honolulu International Airport. How many of these individuals are intermittent employees? How many of these individuals are devoted to facilitating the processing of passenger arrivals?

Commissioner von Raab: There are currently 82 inspectors at Honolulu International Airport, of which 32 are WAE's. Seventy-eight inspectors are dedicated to passenger processing.

Senator Matsunaga: What are the plans for the Customs Service to meet the state of Hawaii's request for increased staffing at Honolulu International Airport?

Commissioner von Raab: Customs will continue to monitor passenger processing in Honolulu. During FY 1988, the Customs Service provided $300,000 to hire additional part-time and temporary personnel to relieve congestion at Honolulu. The additional staffing was meant to enhance and not supplant the FY 1987 staffing. In FY 1989 the Customs Service will also provide additional funding to provide Honolulu with staffing for the relief of congestion at peak hours.

Senator Matsunaga: In the three most recent months, what is the average number of inspectors physically on the floor during peak arrival periods at Honolulu International Airport? During non-peak periods?

Commissioner von Raab: The average number of inspectors on the floor during peak periods at Honolulu International Airport is 37, and 6 to 10 inspectors during non-peak hours.

Senator Matsunaga: Mr. Commissioner, can I get a commitment from you that there will be adequate funds devoted to the Customs Service operations at Honolulu International Airport? Can I get you to designate someone on your staff to be the liaison with our state task force on this problem?

Commissioner von Raab: The Customs Service will continue to provide additional support to the Pacific Region for part-time and temporary inspectors at the Honolulu International Airport. The District Director of Honolulu has been chosen to be the liaison for the Customs Service to the Governor's task force.

HONOLULU INTERNATIONAL AIRPORT COMPLAINTS

Senator Matsunaga: I have received many complaints from constituents regarding the attitude of Customs inspectors at Honolulu International Airport. Many of these complaints allege that passengers encounter an insulting attitude, some alleging that they are treated like criminals. Given that Hawaii is a recreational/tourist destination for many of the arriving passengers at Honolulu International Airport, it is essential that airport inspectors be trained in the special spirit of Pacific Island greetings. Can I get your commitment to include such special training for inspectors assigned to Hawaii?

Commissioner von Raab: Within the past 2 years the Customs Service has developed and delivered to all inspectional personnel a training program on professionalism. The program addressed the need to be courteous and professional in all dealings with the public. We have experienced a reduction in passenger complaints received at Headquarters since this program was implemented.

We are prepared to provide followup training at any specific location which, on the basis of complaint analyses, seems to need it.

RESPONSE TO QUESTION SUBMITTED BY SENATOR PACKWOOD

On October 13, 1988, I joined a number of my congressional colleagues in sending a letter to the Customs Service concerning foreign-trade zones at user fee airports. In the letter, we requested that Customs review the statute which Customs had interpreted as prohibiting Customs from being reimbursed for services provided at foreign-trade zones at user fee airports.

In response to that letter, Salvatore M. Martoche of the U.S. Department of Treasury explained that after reviewing the statutes controlling reimbursement of the Customs Service, Treasury's position was that "... Customs cannot lawfully be reimbursed by the airports for services performed in foreign-trade zones." However, Mr. Martoche then said that Treasury was interested in finding a solution to the funding problem. He suggested that the Department would not object to legislation authorizing Customs to be reimbursed for services performed at foreign-trade zones.

The Klamath Falls airport in my home state of Oregon is interested in operating a foreign-trade zone at a user fee airport. Local officials believe that the foreign-trade zone and user fee airport will give the local economy a shot in the arm. For this reason, I am very interested in resolving the question of Customs funding.

Is it still Customs position to support legislation which would allow the Customs Service to be reimbursed for services performed at foreign-trade zones at user fee airports? If legislation is not passed within the necessary time frame, will operations at foreign-trade zones designated as user fee airports be stopped? If legislation is passed and operations at foreign-trade zones at user fee airports are continued, will applications for user fee airports have to be resubmitted to the foreign trade zone board?

Commissioner von Raab: The Customs Service is in favor of legislation which would allow us to provide service at foreign trade zones at user fee airports with the service being fully reimbursable. If legislation is not passed, we will have to carefully consider continuation of the pilot program in view of the statutory limitations on this activity. If legislation is passed and operations are continued, there would be no need for the applications of those zones or user fee airports to be resubmitted.

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COMMUNICATIONS

STATEMENT OF THE AMERICAN PETROLEUM INSTITUTE
BEFORE THE SENATE COMMITTEE ON FINANCE
FOR THE WRITTEN RECORD OF THE MARCH 7, 1989 HEARING
ON AUTHORIZATION OF APPROPRIATIONS
FOR THE U.S. CUSTOMS SERVICE

The American Petroleum Institute (API) is a trade association which represents over 200 companies involved in all aspects of the petroleum industry. Because petroleum imports make up the largest portion of U.S. imports, API and its members have extensive dealings with the U.S. Customs Service on which they rely heavily for information and guidance. Therefore, API has a direct interest in the commercial operations of the Customs Service.

The petroleum industry has encountered numerous problems associated with Customs' commercial operations division. API urges that Customs devote greater attention to familiarizing themselves with industry operations and to achieving greater consistency in Customs decisions. In recent years, the level of service from Customs and its understanding of the complexity of the petroleum industry has declined noticeably in certain areas. The duty drawback program is a good example of this.

The Customs duty drawback program enables exporters to receive a refund for a portion of the Customs duties paid on imported materials if a product manufactured from these raw materials is exported. This encourages exports and enables domestic manufacturers to be more competitive in foreign markets. In June 1988, Customs issued a ruling, C.S.D. 88-1, which greatly restricts the ability of the exporter to file for drawback refunds.

Petroleum products are manufactured in a continuous process where both duty paid and domestic raw materials may be consumed together in a single steady stream, continuously producing various products. The nature of storage and transportation facilities result in commingling of product from different suppliers. The drawback law as enacted in Section 313 of the Tariff Act of 1930, as amended, does not stipulate any particular method of identifying commingled materials. This issue is a matter of administrative discretion by Customs.

In issuing C.S.D. 88-1, Customs used its administrative discretion to retroactively "reinterpret" the procedures upon which industry had been basing its decisions in exporting products and filing drawback claims for commingled material. In fact prior to C.S.D. 88-1, drawback claims based on and supported by the industry's monthly accounting procedures had been accepted, audited and paid by Customs. The procedures outlined in C.S.D. 88-1 will reduce or eliminate the industry's ability to file drawback claims for products such as jet fuel commingled at common airport storage facilities.

Frequently at storage locations, including airport facilities, more than one company will have fungible (commercially interchangeable) products located in common storage. Most of these products will qualify for drawback because they were made from imported crude oil and will be exported on international flights.

At most airports, jet fuel is handled through common storage facilities, pipeline systems and fueling facilities. In most cases, the refueling is handled by fueling service companies. The service companies maintain inventory accounting records, for each supplier or airline owning jet fuel, on a monthly and total airport facility basis. It is not feasible for refiners to maintain separate inventory accounting records for drawback-eligible product on a tank by tank basis without substantial changes in operations of U.S. airport facilities and significant added costs. The added costs would outweigh the drawback refunds in most cases.

The requirements of C.S.D. 88-1 -- to account for inventory on a daily and tank by tank basis -- impose an excessive administrative burden, if not an impossible procedure. Exporters will not be able to file drawback claims for direct exports from commingled storage, including jet fuel and bunker fuel sold for use in aircraft and ships engaged in foreign commerce. Such a requirement could effectively eliminate the drawback option for jet fuel sold for use in international commerce at most major international airports nationwide.

Before C.S.D. 88-1 was issued, API and its members made numerous attempts to explain to Customs the effect this ruling would have on the petroleum industry's ability to file drawback claims. The ruling was issued nevertheless. API believes that this issuance should never have been made, and perhaps would not have been if Customs had fully understood the complexities of the petroleum industry.

Customs not only has had difficulties understanding the industry, but it has had difficulty seeing the larger picture where an increase in U.S. exports benefits the U.S. economy. Rulings that would encourage export sales would have a generally favorable impact on the foreign trade balance of payments. In recent years, sales of foreign refined bonded jet fuel (not subject to import duty) have increased dramatically. Available information indicates there are more than 1,000 daily foreign departures from the United States. Based on an average refueling of 18,000 gallons (about 430 barrels) before departure, these flights use jet fuel valued at approximately $8 million each day. Each barrel of exported domestically produced jet fuel that replaces a barrel of imported bonded jet fuel will help reduce the U.S. foreign trade deficit.

By issuing C.S.D. 88-1, Customs has 1) created an accounting nightmare for the petroleum industry, 2) reduced the ability of petroleum companies to claim drawback, 3) put itself at cross purposes with the intent of the drawback law, which is to encourage exports, and 4) bypassed an opportunity to reduce the trade deficit by encouraging exports of domestically refined petroleum products.

Customs Service Decision 88-1 is not the only example of the need to improve the expertise and efficiency of Customs' commercial operations division. Undue delays in Customs' processing of drawback claims have been experienced by numerous petroleum companies on a somewhat regular basis. For example:

* One company experienced a two year delay in Customs' approval of a Substitution Same Condition drawback claim due to both changes in Customs personnel and to the lack of any example developed by Customs of a contract format which would be acceptable.

* It took over one year to resolve a protest made by a petroleum company concerning a drawback refund.

* Drawback claims involving more than one port have taken as long as seven months to be paid because of the burdensome and complex documentation requirements at different ports.

Finally, Customs needs to establish greater uniformity between Customs regions. Petroleum companies experience different treatment in each Customs region, causing confusion and delays in their daily operations as well as cost increases due to varying procedures in the regions. For example, in some Customs regions, the Harbor Maintenance Tax and Merchandise Processing Fee must be paid based on the discharge value of the cargo. In other regions, they must be paid on the loaded value of the cargo.

For the preceding reasons, API believes that the level of expertise, consistency and efficiency of Customs' commercial operations division can and should be improved.

For additional information, please contact Ed Beck at 682-8418.

STATEMENT OF JOSEPH L. MAYER ON BEHALF OF

THE COPPER & BRASS FABRICATORS COUNCIL, INC.

This statement is submitted on behalf of the Copper & Brass Fabricators Council, Inc. ("Council"), and its 17 member companies (see Appendix A for a list of the Council's members). The Council is a trade association which represents the principal copper and brass mills in the United States. These mills together account for the fabrication of more than 80 percent of all copper and brass mill products produced in the United States, including sheet, strip, plate, foil, bar, rod, and both plumbing and commercial tube. These products are used in a wide variety of applications, chiefly in the automotive, construction, and electrical/electronic industries.

During the budget authorization process, one factor which the Council urges the Committee to keep in mind is that of the enforcement of this nation's unfair trade laws, particularly the assessment and collection of antidumping and countervailing duties. Since early 1985, the Council and its member companies have brought a series of antidumping and countervailing duty cases before the Department of Commerce and International Trade Commission. These proceedings have thus far resulted in the issuance of eleven antidumping duty orders and three countervailing duty orders against imports of brass sheet and strip and of low-fuming brazing rod from a total of eleven countries.

In taking these measures, the Council was reacting to a steady influx of dumped and subsidized imports that began in the late 1970's and carried forward into the 1980's. The United States is the most attractive market in the world for copper and brass mill products, and foreign firms have aggressively set their sights on penetrating it. Unfair, injurious pricing by overseas mills and their establishment of subsidiary facilities and related sales arms in the United States have been two primary means to this end. Confronted by unfair competition from abroad, the Council has come to recognize that the continued existence of the United States copper and brass mill industry depends not only upon maintaining the high quality of its products but also upon protecting itself from foreign unfair trade practices.

The Council's reliance upon the United States' unfair trade laws is consequently of vital importance to this industry. More precisely, the effective enforcement of the antidumping and countervailing duty orders won by the Council is a matter to which the United States copper and brass mills assign a top priority. In this

respect, this industry is basically no different from other United States domestic industries that have successfully prosecuted antidumping and countervailing duty proceedings. The cost of these cases is high, and petitioners understandably expect that the unfair trade orders which they have fought so hard to obtain will be enforced.

Unfortunately, as the Council has discovered in its cases, enforcement of unfair trade orders is seriously deficient in two major respects. First, there is no effective mechanism in place by which the Customs Service and Department of Commerce can accurately record what antidumping and countervailing duties have been assessed and collected on legally entered imports in a given proceeding or over-all. This remarkable state of affairs must be corrected. Over the last several years, the Council has repeatedly asked for a documented and detailed accounting of the aggregated duties brought in under its orders. These efforts have produced limited and often inconsistent data only after considerable checking and special compilation by the agencies.

While the Council has always been received courteously by the Customs Service and Department of Commerce, it has become painfully evident that no one truly knows what antidumping and countervailing duties are being paid. These data are simply not being maintained on a regular basis in a manner that enables the agencies to say with any assurance that the unfair trade orders are being enforced. Everyone assumes that the duties are being collected, but there is no trustworthy evidence to substantiate this claim or to ascertain the amounts of the duties.

The agencies seem to agree that a reliable system is lacking and needs to be developed. This goal, however, is proving to be elusive and taking far longer to achieve than is appropriate. For at least the last year, the Customs Service has been in the process of creating what it calls an antidumping/countervailing duty module for its Automated Commercial System ("ACS"). This computer-based program is meant to replace the "blue-line" program, which the agencies have acknowledged has been insufficient. This name derives from the practice by import specialists at the ports of underlining in blue pencil certain data on customs entry papers for later key-punching by someone else into computers. In contrast, the module calls for the relevant data to be inputed in the computer's memory at the ports in a single step from the customs entry papers.

It remains to be seen when the module will be fully operational. At the moment, the Customs Service is aiming for later this year. Even more importantly, once the module is running it will be necessary to analyze how successful the new arrangement

will be. Employment of the computers will assist in the handling of the large volumes of data involved, but is no guarantee that the data will be properly stored in the computer in the first place. It is reasonable to anticipate that constant supervision of the module will be required to ensure that all data are correctly recorded in the computer's memory.

The second principal shortcoming in the enforcement of unfair trade orders is the agencies' lack of meaningful standard procedures and oversight to detect fraudulent attempts by foreign exporters and their importers in the United States to circumvent antidumping and countervailing duty orders. There are myriad ways for parties to undermine antidumping and countervailing duty orders fraudulently. There is also the strong temptation to do so, if, as the Council believes to be the case, there is among importers a perception of lax enforcement. A significant and complicating factor in this area is the increasingly large number of U.S. importers who are related to their foreign suppliers of dumped and subsidized goods. The corporate ties facilitate the opportunity for fraud and lessen the chances of discovery.

What has most struck the Council in regard to enforcement is the virtual absence of measures by the agencies to guard against fraudulent circumvention and to ensure that all duties owed are, in fact, forthcoming. Once again, there seems to be an assumption by the agencies that the duties are being collected and that everything is running smoothly, but this attitude does not appear to be realistic. Unlawful transshipment, misclassification, and reimbursement of antidumping duties are all prime means to evade the impact of unfair trade orders.

In the Council's cases, there is reason to suspect that all of these evasive techniques have variously been resorted to by different respondents, and the Council has persistently brought what evidence it has had to the agencies' attention. The agencies have usually been receptive and cooperative, but the Council has met with uneven success in securing a commitment of the agencies' resources.

A further crucial point is the apparent incapacity of the Customs Service to initiate a more rigorous enforcement program (regime) for imports subject to unfair trade orders than is imposed on imports subject only to regular duties. The Customs Service should be required to establish, and vigorously pursue, a special inspection and enforcement program for those imports subject to unfair trade orders or other special quantity or added duty restrictions. The Council urges that this special inspection and enforcement program be mandated in the legislative budget authorization for the

operations of the Customs Service. This program would entail not only responsibilities for Customs Service personnel in the United States but also for Customs Service personnel abroad in the countries exporting dumped and subsidized merchandise to the United States.

Two examples of the need for such a special program may be helpful. In the brass sheet and strip cases the opportunity for deliberate misclassification to avoid the antidumping and countervailing duties is considerable. Brass sheet and strip are a fungible commodity that can readily be declared for customs purposes as some other copper-based alloy or designated as plate or foil without detection. Similarly, the Council suspects that the presence in the United States of subsidiaries of the companies that have been dumping brass sheet and strip in the United States has been facilitating improper reimbursement of antidumping duties. This latter problem is particularly frustrating, because United States unrelated buyers can in this manner be insulated from paying the antidumping duties. It is clear that any activity of this sort significantly erodes the remedial influence of an unfair trade order. It is equally clear that fraudulent circumvention of this nature can take place very easily and will only be revealed through diligent enforcement. Nevertheless, the agencies for the most part have not been able to police these unfair trade orders in a manner that assures prevention of illegal circumvention.

Enforcement of unfair trade orders is something that has been sadly neglected by the agencies that are charged with administering these laws. This omission is extraordinary considering the length of time that the antidumping and countervailing duty laws have been in force. In the last four legislative amendments to these statutes in 1974, 1979, 1984, and 1988 tremendous attention has been paid to tightening up these laws to counteract injurious, unfair pricing by imports, and the complexity of these laws and the need for vigilant enforcement have grown accordingly. Yet, the agencies responsible for implementing the antidumping and countervailing duty statutes cannot say what duties are being paid and do not actively seek to root out fraudulent circumvention of unfair trade orders to insure its prevention.

It is the hope of the Council that this Committee will focus upon the enforcement of antidumping and countervailing duty orders during these budget authorization deliberations. It makes little sense for the Department of Commerce to devote extensive resources to the detailed calculation of dumping margins and subsidy

amounts and then, through poor enforcement, for the antidumping and countervailing duties designed to offset the unfair pricing not to be assessed and collected from the United States buyers of the dumped and subsidized merchandise. The credibility of this nation's trade laws suffers, the protection these laws are designed to afford United States domestic industries is diminished, and the Treasury Department is denied its revenue.

An obvious aspect to the question of enforcement is the funding entailed for the agencies' programs. As far as the Council is concerned, whatever support can be given to the Customs Service, and the Department of Commerce as well, in this regard will be justified. On a number of occasions the Council has been led to understand by these agencies that enforcement of antidumping and countervailing duty orders must compete with other, more pressing tasks for their scarce resources. Undeniably there are other responsibilities to which these agencies must attend, but fundamental enforcement of unfair trade orders should not suffer as a result. If nothing else, from a purely budgetary standpoint energetic enforcement of these laws will very likely result in additional revenue for the federal government that is beyond the incremental budgetary outlay for the agencies concerned.

In summary, the Customs Service and Department of Commerce should know exactly what antidumping and countervailing duties are being assessed and collected on a case-by-case, company-by-company basis. These agencies should also be assertively on guard against fraudulent circumvention of unfair trade orders. If this Committee concludes that additional funds will assist in the enforcement of these basic activities, then the budget should be increased accordingly.

APPENDIX 1

COPPER & BRASS FABRICATORS COUNCIL, INC.

MEMBERSHIP

AMERICAN BRASS
70 Sayre St., P.O. Box 981
Buffalo, NY 14240
716/879-6700

CERRO COPPER PRODUCTS COMPANY
P.O. Box 681
East St. Louis, IL 62202
618/337-6000

CERRO METAL PRODUCTS
P.O. Box 388
Bellefonte, PA 16823
814/355-6200

CHASE BRASS & COPPER COMPANY
P.O. Box 39548
Solon, OH 44139
216/349-0200

CHICAGO EXTRUDED METALS CO.
1601 So. 54th Ave.
Cicero, IL 60650
312/656-7900

EXTRUDED METALS
302 Ashfield St.
Belding, MI 48809
616/794-1200

HALSTEAD METAL PRODUCTS INC.
100 So. Elm St., Suite 400
Greensboro, NC 27401
919/272-1966

HEYCO METALS INC.
Stinson Dr., RD 9160
Reading, PA 19605
215/926-4134

HUSSEY COPPER LTD.
Leetsdale, PA 15056
412/857-4200

THE MILLER COMPANY
99 Center St.
Meriden, CT 06450
203/235-4474

MUELLER BRASS COMPANY
1925 Lapeer Ave.
Port Huron, MI 48060
313/987-4000

NEW ENGLAND BRASS COMPANY
16 Park Street
Taunton, MA 02780
508/824-5821

OLIN CORPORATION-BRASS GROUP
East Alton, IL 62024
618/258-2000

PLUME & ATWOOD
235 E. Main St.
Thomaston, CT 06787
203/283-4331

REVERE COPPER PRODUCTS, INC.
P.O. Box 300
Rome, NY 13440
315/338-2022

ULLRICH COPPER, INC.
2 Mark Rd.
Kenilworth, NJ 07033
201/688-9260

WATERBURY ROLLING MILLS, INC.
P.O. Box 550
Waterbury, CT 06720
203/754-0151

STATEMENT OF
ROBERT M. TOBIAS
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION

Mr. Chairman:

I am Robert M. Tobias, National President of the National Treasury Employees Union. NTEU is the exclusive representative of over 144,000 Federal workers, including all employees of the U.S. Customs Service worldwide. I am accompanied by Patrick Smith, NTEU Director of Legislation, and Paul Suplizio, legislative consultant. I appreciate the opportunity to present our Union's views on the U.S. Customs Service authorization for FY 1990.

In four short years, America's debt to foreign countries will be more than a trillion dollars if we continue to run a massive trade deficit. Illegal imports are adding $40 billion a year to our trade bill. Another $25 billion is being lost through piracy of our intellectual property. This drain on our balance of payments will only stop when Customs is strong enough to bring this enormous fraud under control.

Our standard of living and control of our economic destiny are at peril unless we can demonstrate that our trade laws will be enforced. The new U.S.-Canada free trade agreement is an open invitation to third countries to gain access to our markets, because the FTA rules of origin are virtually unenforceable without adequate Inspectors. Import Specialists and regulatory auditors are inherently limited to paper checks, so what comes in has got to be looked at by Inspectors. Existing staff on the northern border are so overworked that it's a delusion to think that the FTA rule of origin can be enforced without significantly increased personnel. Unless Congress acts, Canada will become a way-station for transshipment of third-country products into the U.S. market.

Though enforcement is critical, Customs will never succeed if it envisions itself solely as a policeman. Through a spirit of service, being accessible to the importing community and answering their questions, Customs should promote a high degree of voluntary compliance with our trade laws. This will not happen until there are sufficient numbers of Inspectors and Import Specialists to serve the trade. We again urge this Subcommittee to establish in law a minimum standard of service that will require Customs to come to Congress for additional personnel to strengthen assistance to importers, which today is highly limited. Last year's amendment requiring timeliness and uniformity in issuance of binding rulings is an example of what can be accomplished when Congress acts.

Rising imports, new transportation technologies, global manufacturing, and just-in-time delivery schedules are enlarging the enormous gap between workload and available resources. As we meet, an undermanned Import Specialist team in Los Angeles is backlogged with six stacks

of entries, each three feet high. Nearly 4 million containers are entering the country, 97 percent of them without inspection. Formal entries have more than doubled in the past nine years, while commercial operations staff increased only 13 percent. While Customs drug interdiction resources have been strenthened recently, they are still not on a par with the scope of the threat. No more than 50 percent of the heroin, 10 percent of the marijuana, and 20 percent of the cocaine destined for these shores is seized. Congress must bring Customs workload and resources into better balance by authorizing additional positions for commercial operations and giving the agency the tools needed to attract and retain a young, vigorous, and highly skilled work force. We agree with the Administration's proposal for 396 additional Inspectors to examine containerized shipments; this will strengthen both commercial and narcotics enforcement. However, we disagree that these positions should be funded by cuts in commercial operations. NTEU's alternative budget restores $30.7 million of imprudent cuts made by OMB from the baseline needed to maintain current services (Table 1).

NTEU would go further to add 1,000 commercial operations positions, at a cost of $53 million, for a Customs Revenue Initiative that will return $900 million annually to the Treasury, or $2.7 billion over three years. The basis for this estimate was presented in last year's testimony, and will be furnished separately to the Sub-Committee. We recommend establishing a floor for Customs strength at 17,818 average positions to maintain the revenue initiative during FY 1990-1992. Needless to say, if Customs is held to last year's level under the Administration's flexible freeze, it would lose $37.9 million and 1,000 FTE, and the Treasury would lose more than $700 million from reduced compliance. Customs commercial operations are funded from user fees, so there is no justification for a freeze in this area; rather, user fees should be tapped to process Customs' growing workload. We repeat our longstanding recommendation that user fees be treated as a reimbursement to Customs' appropriation under 19 U.S.C. 1524. Such funds would thus be available, without necessity of further appropriation, to meet the legal mandate that Customs' services be "adequately provided" to the public.

NTEU's revenue initiative is based on the fact that an estimated 70 percent of all formal entries filed with Customs, including a majority of dutiable entries and entries under sensitive trade programs that require special attention, are being bypassed under Customs' "entry summary selectivity" processing system. When it introduced the system last year, Customs established a criterion of $1,000,000 for bypassing entries, a sum which greatly exceeded thresholds of $20,000-$70,000 established by experienced Import Specialists when they were permitted to set bypass criteria locally. Customs employees take strong issue with the million dollar criterion, which they see as an arbitrary means of increasing bypass, with potential loss of millions in Federal revenue. We strongly urge the Subcommittee to ask GAO to investigate the soundness of this criterion and its impact on the level of bypass and Federal revenue.

The professional expertise of its people is Customs' greatest asset. In recent years, that asset has badly eroded due to uncompetitive pay, an obsolete grade structure, and limited opportunities for training and career advancement. Attrition within Customs has increased 25 percent, from losses of 80 a month to 100 a month, and the Service is losing not only experienced hands but some of its best new recruits. Hiring and retraining replacements is costly and turnover corrodes the expertise needed to do an increasingly technical job. Occupations requiring youth and stamina -- Inspectors and Canine Enforcement Officers -- are not being rejuvenated by attracting and retaining enough top-flight young people.

Congress should take steps now to assure that Customs develops the highly skilled work force needed to enforce a body of increasingly complex trade laws in an increasingly technical environment. This Subcommittee should assist Customs in obtaining direct hire and special pay authority to enable it to compete with the private sector for high-quality recruits. We urge you to work with the other Committees of Congress to achieve independent personnel authority for Customs as soon as possible, so the Service will be directly responsible for setting the pay for and managing its human resources.

We urge the Subcommittee to provide an additional $25 million for training and require Customs to develop a training plan that encompasses technical training and advanced schooling as recognized components of career ladders within the Service. We envision this not only as a means of developing the skills the Service needs, but as a means of making careers attractive by creating opportunities for employees to grow in their jobs. According to the Hudson Institute's Civil Service 2000 report, the skills required for government jobs are advancing and competition for the limited supply of qualified people will intensify in the decade ahead; therefore, the government must invest in training to create the skills it requires. We urge Congress to begin now to improve the funding and emphasis on training in the Service.

Customs Inspectors, Patrol Officers, and Import Specialists are saddled with obsolete grade classifications that fail to recognize the increased technical complexity of Customs work and are contributing to high turnover and declining skill levels in these jobs. Congress should act promptly to raise the journeyman grade for Inspectors and Patrol Officers from GS-9 to GS-11, with appropriate higher grades for positions in these career fields with higher skills and responsibilities. Likewise, the journeyman level for Import Specialists should be upgraded from GS-11 to GS-12 and the grade for team leaders advanced from GS-12 to GS-13. The world has changed from the steamship era when only a few commodities moved in trade. Goods today are highly diverse, entry and release are automated to permit the orderly transit of large volumes of merchandise, and Customs employees must apply sophisticated techniques to discover contraband and identify non-compliant importers. The complexity of customs laws and regulations continues to grow. The reality is Customs presently cannot compete with the private sector for people with the requisite skills, and there is little hope for recruiting and retaining a

competent corps of professionals in these occupations unless they are upgraded. We urge the Subcommittee to act in this matter as soon as possible.

It is strongly in the national interest that occupations within Customs that are physically demanding and hazardous should be staffed with a young and vigorous workforce. The job of controlling the nation's borders requires individuals with stamina who are armed and trained to encounter escaped felons, drug smugglers, and terrorists in performing their duties. Customs Inspectors and Canine Enforcement Officers have been stabbed, shot at, run over, and killed in line of duty. They carry weapons for self-protection in making arrests and physically subduing those who resist. They are assigned to isolated locations and must operate alone on night shifts. Experience has shown that the best way to make such careers attractive while rejuvenating the work force is to provide for retirement at age 50 with twenty years of service. NTEU supports legislation introduced by Congressman Al Swift (H.R.1083) and Senator Barbara Mikulski (S.513) to provide 20-year retirement for Customs Inspectors and Canine Enforcement Officers, and we urge the Subcommittee to support this legislation. Our inspector force is greying and only a small percentage of younger inspectors are staying after five years. If we do nothing, the corps of Customs Inspectors will be comprised of young, inexperienced recruits and Inspectors without the requisite stamina for the job. The only solution to maintaining an adequate number of experienced officers and a vigorous work force in these critical occupations is an up-and-out policy after twenty years.

In sum, Congress should pay urgent attention to the ability of Customs to compete for qualified people and sustain a highly skilled work force for the coming decade. The measures we recommend--independent personnel authority, higher entry-level pay, greatly augmented training, up-grading Inspector and Import Specialist positions, and 20-year retirement for Inspectors and Canine Enforcement Officers, are a dramatic departure from the past and will be difficult to achieve. But we believe these steps are essential if the billion dollars we spend on Customs each year is to be effective. We are re-learning every day the truth of the old adage, "you get what you pay for." A competent work force will not just happen. There must be better pay, training, and career opportunities; and we need to get on with the job.

Customs has notified NTEU of its intention to drastically reduce the number of inspectors assigned to passenger preclearance in Canada. Under this plan, staff will be reduced by 55 positions by October 1st, 1989 and by another 59 positions by October 1st, 1990. Since the current staffing level is 147 positions, only 36 inspectors would remain at the six Canadian preclearance sites on October 1st, 1990. The rationale we were given for the proposal was the need to strengthen the Southwest border. NTEU opposes this plan as being contrary to congressional policy and the mandate in Customs User Fee legislation that sevices be adequately provided to the airlines. As is well known, preclearance is funded by user fees, and has a record of contributing efficiently to air travel between our two countries. We have also objected that a long-term commitment was made to inspectors and their families to

relocate themselves to a foreign country in furtherance of the Customs mission. The proposed reassignments will work severe hardship on these families. We strongly urge the Subcommittee to direct Customs to rescind actions already taken in furtherance of this plan, such as prohibiting tour extensions and issuing transfer orders to some inspectors, and to cease implementation at once. We request that the U.S. Customs authorization bill contain specific language to this effect.

Customs operations on the Southwest border need strengthening in both narcotics and commercial operations. Mexico is now a principal conduit for heroin, cocaine, and marijuana. The establishment by many U.S. and some foreign firms of "twin-plants" or maquiladoras in Mexico has vastly increased the scale of commercial truck traffic carrying the products of these plants to the U.S. There are now over 1,300 of these plants which make a valuable contribution to both the U.S. and Mexican economies. Many of the maquiladoras have tight shipping schedules to meet "just-in-time" inventory requirements in the states. They are eager for expedited entry and a smooth flow of traffic through the Customs cargo processing operation. There is no assurance, however, that such shipments are completely free of customs or narcotics violations. Consequently, the maquiladoras' commercial traffic will require enforcement checks and Customs has indicated that it will make such inspections. NTEU strongly opposes the pilot project under which cargo sealed in trucks at Mexican maquiladora plants are allowed to enter this country without inspection. Such a policy is insufficiently protective of U.S. narcotics control and commercial interests. NTEU intends to closely monitor this situation to ensure adequate enforcement as well as expeditious cargo movement for reputable importers.

Controlling our country's borders is an enormous challenge, but for decades this task has been shared by two agencies, Customs and the Immigration and Naturalization Service. The Departments of Agriculture and Health and Human Services also have roles in border inspections, and while the agencies have generally established good working relationships, the system is obviously not as efficient as it could be if a single agency were assigned full responsibility for our borders. Recently, the General Accounting Office reiterated its view that responsibility for conducting primary inspections at our ports of entry be placed in a single agency. We agree, and we support the assignment of this mission to Customs because it is the agency best able to assume this important function and will not disrupt Customs ability to deal with the extensive commercial fraud and narcotics threats.

Moreover, INS is a beleaguered agency which has its hands full controlling the immigrant population within the U.S. A recent management review ordered by the Attorney General uncovered serious backlogs of case adjudications; granting citizenship without required background and fingerprint checks; ineffective safeguards for information, personnel and assets; inaccurate and unreliable data at all organizational levels on immigration reform applicants and fees collected; and granting waivers to hire into INS persons with pending trials for felonies, serious drug use allegations, multiple identities, multiple firearms violations, and employment histories in which they had been fired for incompetence and banned from Federal service.

These considerations add weight to the proposition that the best solution to single-agency border management is to assign this role to the U.S. Customs Service.

Customs continues to contract out essential government functions under the A-76 program. Contract personnel are now serving as data entry clerks at several ports. We support saving the taxpayer's money but we are skeptical of the claimed savings when activities are contracted out. GAO's work in this area bears us out. Much of the savings are due to lower wages and benefits paid by contractors, but the savings evaporate when contractors insist on more money for tasks the government neglected to include in the scope of work. With respect to data entry clerks at ports such as J.F.K., there is no way of assuring the confidentiality of the information processed, or that an individual is not working for a dishonest broker. Our union cannot provide normal assistance to leased employees, nor protect them from verbal abuse or sexual harassment at the job site. The FY 1990 budget requires Customs to achieve savings of 129 staff-years and $1.1 million through contracting out, but we are skeptical of Customs' ability to do so. We urge this Subcommittee to include a provision in the FY 1990 authorization bill requiring Customs to make its A-76 studies and supporting documents available for public review a minimum of 90 days before requesting proposals to contract out an activity. We believe the public should be allowed to see these studies and judge for itself whether the proposed contract is beneficial or not.

Inspection and Control

NTEU continues to be concerned about the adequacy of the audit/inspection approach to enforcement in bonded warehouses and Foreign Trade Zones. When Customs changed from having on-site Inspectors to primary reliance on audits and spot-check inspections, it greatly reduced the number of staff-years for enforcement at these entities. NTEU remains convinced this was a mistake and an invitation to abuse. According to GAO, a Customs official responsible for in-bond operations estimates that about 40 percent of all imported cargo is shipped in-bond (IMTEC 89-4BR). A large quantity of imports destined for the U.S. market likewise passes through Foreign Trade Zones. The Unfair Trade Practices hearings held in 1986 uncovered evidence of abuse. The audit/inspection approach has been in place for five years, and its effectiveness should be evaluated without further delay. We urge the Subcommittee to assign this task to GAO.

At major international airports, Customs introduced four years ago a passenger clearance system known as Red/Green. The theory behind this system, which Customs seems to be touting as the wave of the future, is that by giving passengers the opportunity to self-select either the green lane (no Customs items to declare) or the red lane, passenger facilitation is improved without reducing enforcement. The system is augmented by roving Inspectors who monitor passengers both in primary lanes and baggage areas, and who may designate individuals for immediate clearance or for detailed secondary inspection. For the

Red/Green system to work, there must be adequately staffed primary lanes and an adequately staffed secondary. There must be sufficient numbers of Inspectors in both red and green lanes, and an adequate number of roving inspectors.

To operate such a system with an insufficient number of Inspectors, an inadequate secondary, a few rovers, and a handful of green lanes where passengers are whisked through with only cursory examination, is simply ineffective enforcement. Customs management is putting passengers on the honor system by inadequate primary and secondary inspection because it is the answer to clearing the terminal before the next wide-body jet comes in. The only solution to adequate facilitation and enforcement is to provide sufficient staff, and utilize an effective inspectional system. The Red/Green system has been tested for five years, and Inspectors are convinced it is not as effective as the citizen bypass, one-stop, or even the two-stop system formerly used. This is because putting all available resources into an adequately staffed primary and secondary to properly screen passengers and identify those for intensive examination, is the right way to do the job.

NTEU has frequently called attention to the deplorable working conditions of Inspectors on the Southwest border. Inspectors must work in primitive facilities enveloped with noxious fumes, and try to accomodate staggering workloads in congested space. NTEU has strongly urged Congress to remedy this situation, and in the FY 1988 Continuing Resolution Congress appropriated to the General Services Administration building fund $28.6 million for capital improvements of U.S./Mexico border facilities. Table 6 provides a list of these projects. Customs and GSA are moving ahead with construction preparations and NTEU intends to monitor events closely to assure that these urgently needed projects are completed without delay.

Inspectional overtime is a critical resource for meeting Customs' 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 has expanded to fill the gap between workload and resources. The amount of inspectional overtime is driven by the carriers' demand for inspectional services outside the normal duty hours of the port. Customs is reimbursed for the cost of such services from the Customs User Fee Account. Since overtime costs are now borne by all carriers rather than the individual carrier requesting service, we anticipate that demand for overtime services will rise as individual carriers request services that they are no longer billed for.

An Inspector with overtime earnings 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. For Inspectors to make themselves

available such long hours, particularly on Sundays and holidays when other citizens are taking the day off, adequate monetary incentive must be provided. The most recent data collected by Customs shows that Inspectors are earning, on 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. Customs' study attributes the 2.4 rate of pay to the call-back of Inspectors who have left the worksite. Call-backs frequently occur at night and at irregular hours. The Customs study also showed 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, and the physically demanding nature of inspectional duties justifies the present rate of 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 typical practice is triple time for Sunday overtime and double time and one-half for holiday work. These factors were established in the OPM Premium Pay Study conducted in 1983.

From FY 1977 to FY 1987 the number of air passenger arrivals increased 80 percent while the number of Customs Inspectors increased 29 percent. In the Northeast Region the number of air passenger arrivals increased 50 percent, while the number of Customs Inspectors declined by 28 percent. The current $25,000 cap on overtime earnings has not been changed for five years and many Inspectors at larger airports and the Southwest border are beginning to "cap out" in the fourth quarter of the year. A total of 961 Inspectors were near to exceeding the cap in 1988, compared to 266 in 1985. Because higher-graded, more experienced employees cap out earlier in the year, the Inspectors working overtime are less experienced and less able to handle unusual occurences. For example, on Sunday, September 25, 1988 the Miami inspector staff working overtime included 27 temporaries and 8 trainees out of 53 assigned. This compares to only two such lower-graded personnel assigned on a typical Sunday four months earlier. Many Southwest border ports, such as Port Arthur, El Paso, Houston, Freeport and Corpus Christi are having a difficult time due to the number of Inspectors capping out.

Uniform costs have risen sharply for uniformed Customs officers since 1984, while the uniform allowance has remained unchanged. Some examples from the male uniform price list are:

	Price 1984	Price 1989	% Change
Dress Shirt	12.00	17.30	+44%
Utility Jacket	26.50	37.55	+42%
Utility Trousers	17.50	24.50	+40%
Shirt, Long Sleeve	12.00	17.55	+46%
Mobile Jacket	93.00	134.70	+42%

Uniformed Customs employees are bearing the financial cost of rising clothing prices, and an immediate increase in the uniform allowance is called for. We request the Subcommittee's assistance in remedying this situation as soon as possible.

Because of the rise in violent incidents committed against Customs Inspectors, these officers are now armed for self-protection and expected to maintain weapons qualification. Inspectors are required to carry the standard issue CS-1 Smith & Wesson .357 Magnum at all times,and the option to carry a personal sidearm has been taken away. Customs continues to raise the standard for qualification and has recently raised the qualifying score from 240 to 250--one of the highest, if not the highest--weapons qualification standards in the Federal service. Inspectors must qualify annually, and failure to qualify will result in assignment to non-inspectional duties, which can severely retard an officer's career. Formerly, Inspectors were allowed three practice sessions a year on a firing range rented at Customs' expense. However, recently Customs announced a change in policy and will no longer assume the cost of practice. Instead, Inspectors are to be issued practice rounds and are required to arrange for practice at their own expense. NTEU believes requiring Inspectors to arrange their own practice and bear the expense is unfair, especially in view of the rigorous qualifying standard. The requirement to use the CS-1 instead of a personal sidearm is also unfair, as some Inspectors have been using such personal weapons for years, and particularly, those over age 55 are better able to protect themselves with weapons they are accustomed to. Accordingly, we strongly urge Congress to require Customs to bear the expense of three practice sessions a year to maintain weapons qualification, and to restore the option of allowing Inspectors to qualify with and use a personal sidearm of choice in lieu of the CS-1.

Commercial Operations

The commercial fraud threat projected by Customs for FY 1989 is $14 billion, of which $12 billion consists of illegal entry of counterfeit goods and the remainder consists of goods entering in violation of steel, textile and other trade program requirements. Customs has not officially estimated the volume of illegal merchandise entering undetected due to inadequate inspection, but an internal document estimates such goods amount to $25 billion annually. GAO and our own investigations support the conclusion that much illegal merchandise is getting past Customs. GAO report 86-136, which examined the adequacy of commercial cargo inspections, found that Inspectors generally were not counting quantity or verifying weight when they check shipments, and that most container inspections consisted of cursory tail-gate examinations. The huge workload puts extreme pressure on Inspectors to move shipments expeditiously.

Another GAO report, NSIAD 86-96, found protection of U.S. intellectual property rights through enforcement of trademark and copyright recordations and Section 337 exclusion orders to be inadequate. Nearly 80 percent of the firms who recorded their trademarks and copyrights with Customs, and over 65 percent of the firms who had obtained ITC exclusion orders, said that counterfeit and infringing goods continued to enter the marketplace despite these safeguards. GAO attributed this in part to the fact that only two percent of the shipments entering the country are being physically examined. Enforcement is further exacerbated by inadequate numbers of Import Specialists andthe high rate of entry bypass. According to a recent International Trade Commission study, violations of U.S. intellectual property rights are costing U.S. firms more than $40 billion in lost exports, domestic sales, and royalties. Customs admits that $12 billion in counterfeit imports are entering the U.S. market annually. At present, the burden of intellectual property protection has fallen largely on the private sector. Customs can do a better job because it controls the ports of entry through which counterfeit imports flow. However, Customs has not to our knowledge evaluated the effectiveness of its methods, nor determined the staff required to do an effective job in enforcing the intellectual property protections provided by law. We strongly urge this Subcommittee to require Customs to prepare a 5-year plan to establish an effective level of enforcement, together with the resource requirements needed to implement such plan, and require GAO to evaluate such plan prior to its submission to Congress.

Trade-sensitive entries requiring greater attention by Import Specialists (such as those involving quantitative restraints, collection of dumping duties, or enforcement of other agency requirements, rules of origin, or intellectual property rights) have more than doubled in recent years, and are becoming an increasing proportion of total entries. Between 1982 and 1989, formal entries increased 96 percent, while trade program entries increased 158 percent. Trade program entries today comprise 56 percent of total entries (Table 5). About half of these entries are reviewed at the present time, the remainder being bypassed. Since trade program entries involve sensitive national interests, NTEU believes that Import Specialists should review 100 percent of these entries. We urge the Subcommittee to require Customs, in conjunction with GAO, to prepare a plan to achieve this goal. The plan should include a statement of resource needs and the beneficial results anticipated from strengthened enforcement of sensitive trade programs.

In its budget submission, Customs attributes its increasingly complex workload to a long list of trade agreements, including--"the International Coffee Agreement, EC Pasta Agreement, Tungsten Agreement, Softwood Lumber Agreement with Canada; Voluntary Restraint Agreements with 29 countries for steel and two countries for machine tools; textile visa agreements with 34 countries; import restraint levels on textiles from 43 countries; import restraint levels on various dairy products, steel, chocolate, meat, fish, broomcorn, pasta, and peanuts; trade sanctions on Brazil, EC, and Japan, as well as individual companies like

Toshiba of Japan; and monitoring programs on semiconductors from Japan."

A competent corps of commodity specialists must be highly skilled. Implementation of the Harmonized System, last year's new trade legislation, and the U.S.-Canada Free Trade Area will impose new burdens on Import Specialists. In earlier times, most entry processing could follow a standard format. Today, Import Specialists are confronted with a broad array of rulings, special duties, exclusion orders, restraint agreements, and other agency requirements.Increasingly, rules of origin are expressed in terms of processing costs or value-added, requiring familiarity with cost accounting, translation of exchange rates, and complex numerical computations. Processing GSP, CBI, and Item 807 entries now requires such skills, and the need will increase as global manufacturing and bilateral trade arrangements become more common. Instead of allowing Import Specialist skills to be diluted by working multiple product lines, Customs should promote commodity expertise in a single line and actively support the professional development of its Import Specialists.

Customs has automated entry acceptance through the Automated Broker Interface (ABI). However, once entries are designated for review through the entry summary selectivity module, Import Specialists must work with hard copy in a manual environment. Hence they remain mired in paperwork. Automating simple tasks such as ready access to current and past exchange rates, cost and price information, and past entry summary data would reduce processing times and yield better-informed decisions. If Import Specialists had the ability to review entry data on computer terminals, they could dispense with hard copy except where necessary to verify the authenticity of a certificate, license, visa, or similar document required by regulations. Electronically accessible data on customs regulations and rulings would speed up review and stimulate greater uniformity of decisions. Improved communications between Import Specialists and Inspectors would make examinations more productive and yield better-informed classification and admissibility decisions. Customs needs to place a higher priority on giving Import Specialists the modern tools they need to do their job.

As a result of our proliferating trade laws and the myriads of new products in international trade, Customs is beseiged by requests for advice and assistance from importers. Through visits to importers' premises, line review of entries prior to filing, and answering questions concerning application of trade laws and regulations, Import Specialists can help sustain a high degree of voluntary compliance with the customs laws. But today they remain largely inaccessible, available on the phone or by appointment during restricted hours and after lengthy delays due to their small numbers and large workload. To our knowledge, Customs has never taken stock of the staff-years required to meet the demand for importer assistance. We believe the Subcommittee should direct Customs, in conjunction with GAO, to measure this demand and determine the Import Specialist staff requirement to meet it. In the

meantime, the Subcommittee should direct Customs to employ a reasonable amount--say, 20 percent--of Import Specialist staff years to provide importer assistance.

As a result of the Packwood Amendment enacted last year to assure greater uniformity and speed in issuing binding rulings, Customs has instituted a new program that will improve responsiveness to importers' requests. Customs has also launched a pre-clearance program, a form of line review that has been sorely lacking and will increase assistance to importers. These programs will not succeed unless they are adequately supported with staff resources. Under the binding ruling program, senior import specialists in the field are designated, on a voluntary basis, as Deputy National Import Specialists (DNIS). In this capacity, they prepare binding rulings under the supervision of a National Import Specialist in New York. DNIS are supposed to use 25 percent of their time in this role, but as one put it, "I still have 100 percent of my job to do." These new programs are a step in the right direction, made possible by 640 new positions provided by Congress last year. But Customs still needs more Import Specialists to reduce the rate of bypass and increase their accessibility and assistance to importers.

We request the Subcommittee to initiate a review of Customs' Project 6000, which according to GAO is aimed at collecting about 15,000 unpaid fines and penalties totaling over $500 million (GGD 88-74). If this amount is truly backlogged in the Fines, Penalties, and Forfeitures offices throughout Customs, prompt action should be taken to step up collections. If additional staff are required, they should be provided, for speeding up collections is an additional avenue to obtaining needed revenue to reduce the Federal deficit.

Automated Commercial System

NTEU has from the outset strongly supported automation leading to a more efficient and effective Customs Service. Customs employees must be given modern tools needed to do their jobs. The result will be greater efficiency and a more humane work place. Customs has spent $170 million on a major automation effort, the Automated Commercial System (ACS) since 1983, and plans to spend an additional $150 million on the system over the next five years. What can Customs show for this effort? We believe management made plenty of mistakes, most of which could have been avoided if they had consulted with employees and the trade community.

A fundamental error that Customs management stubbornly persists in is using ACS to scale the workload to the size of the staff. Customs' philosophy is that since there aren't sufficient resources to handle the workload, they'll cut the workload down to size. Scaling back the workload was disguised in jargon like "automation" and "selectivity". But in reality Customs programmed its computers to limit the number of shipments to be inspected and the number of entries to be reviewed to the staff

available, the remainder being bypassed. Customs could and should have adopted a contrary philosophy. It could have determined the minimum number of checks needed to maintain enforcement. And it could have asked Congress for the staff required to do the job.

Because management was determined to use the computer as a tool to facilitate bypass of workload it couldn't handle, thereby avoiding bottlenecks on the docks andscreams from importers, Customs arranged ACS so the computer's decisions would not, for the most part, be overridden. The computer, making its decisions on imperfect or non-existent criteria, drove the work force instead of being a tool for the work force to use. In cargo selectivity, Inspectors were required to perform certain exams of first-time importers and enter the results in the computer. Unable to keep up with the inspections required, many Inspectors falsely reported that they had conducted the exams and found no discrepancies. These points were confirmed by GAO (IMTEC 89-4BR). Likewise, in entry summary selectivity, districts are forbidden to override for more than sixty days the national criterion that bypasses entries valued under $1 million, even if they think there are problems with entries of lesser value.

The rule "garbage-in, garbage-out", applies to these efforts. Customs is a long way from gathering the data needed to formulate adequate selection criteria in either the cargo processing or entry summary areas. GAO has pointed out in two studies (GGD 86-136 and IMTEC 89-4BR) that Customs has retrieved virtually no useful data from inspections it performs that would enable it to profile high-risk shipments. In fact, examination history files now in the computer contain false and inaccurate data.

The Automated Broker Interface (ABI) module is now processing 65 percent of all entries. ABI could have tremendous potential if it were designed to give Import Specialists a tool to review entries and develop bypass criteria. The promulgation of national criteria under entry summary selectivity has nipped in the bud countless promising efforts to develop sound bypass criteria locally. Under ABI Import Specialists have little say in which entries will be reviewed. The bypassed entries, of course, are accepted as entered, which means the classification of the article, its valuation, and determination of its admissibility are on the honor system. The foreign trade statistics of our country are hostage to this honor system because the designers of ACS have not built in adequate checks by Import Specialists.

Mr. Chairman, this completes my testimony. I shall be happy to answer any questions.

TABLE 1

U.S. CUSTOMS SERVICE FY 1990 BUDGET REQUEST AND NTEU RECOMMENDATION
SALARIES AND EXPENSES

(Amounts in Thousands of Dollars)

	FY 90 BUDGET REQUEST		NTEU RECOMMENDED ADDITION		NTEU RECOMMENDED AUTHORIZATION	
	Amount	Average Positions	Amount	Average Positions	Amount	Average Positions
Inspection and Control	118,826	2,115	+650(a)	--	119,476	2,115
Tactical Interdiction	128,640	2,631	+996(a)	--	129,636	2,631
Investigations	147,900	1,687	+724(a)	--	148,624	1,687
Commercial Operations	626,124	9,989	+30,697(a) +53,030(b)	+ 396(a) +1,000(b)	709,851	11,385
Total	1,021,490	16,422	+86,097	+1,396	1,107,587	17,818

(a) These amounts are required to maintain current service levels while adding 396 positions for the containerized cargo enforcement initiative proposed in the Administration's budget. The amounts are determined from p.5 of the congressional budget submission by restoring cuts for automated commercial system, productivity savings, A-76 savings, FTE shortfall, and absorption to offset January 1989 pay raise.

(b) $53 million and 1,000 positions are recommended by NTEU for a Customs revenue initiative commencing in FY 1990 that will return $900 million annually in additional revenue to the Treasury, or $2.7 billion over the next 3 years.

TABLE 2

U.S. CUSTOMS SERVICE
Average Positions
by Category
FY 1978 - 1990

Fiscal Year	Inspectors	Import Specialists	Patrol Officers	Special Agents	Total Customs
1978	4,077	1,207	1,251	600	13,854
1979	4,174	1,236	1,211	577	14,061
1980	4,165	1,219	1,231	604	13,820
1981	4,379	1,165	1,332	597	13,316
1982	3,987	1,081			12,924
1983	4,122	1,027	1,134	701	12,898
1984	4,289	1,042	1,246	932	13,319
1985	4,262	974	1,236	925	13,042
1986	4,305	927	1,072	982	13,059
1987	4,386	966	923	1,166	13,971
1988	4,609	1,000	1,026	1,512	15,294
1989 (AUTH)	5,280	1,185	1,147	1,592	16,739
1990 (ADMIN)	5,618	1,185	1,147	1,428	16,422*

Source: U.S. Customs Service Budgets

*317 positions transferred to Justice and Treasury in a reorganization of Drug and Internal Security Functions

TABLE 3

INSPECTIONS OF CONTAINERIZED SHIPMENTS

FY 1980-FY 1986

	Containerized Shipments (000)	Container Inspections[1]	% Inspected	Fully Unstuffed and Stripped Inspections	%
1980	2,800	192,734	6.8	81,234	2.9
1981	3,100	215,805	7.0		
1982	2,738	186,800	6.8		
1983	2,949	112,843	3.8	21,000	0.9
1984	3,570	93,047	2.6		
1985	3,356	95,000	2.8		
1986	3,482	98,000	2.8		
1987	3,631				

[1]Mainly Tailgate Exams

Source: U.S. Customs Service

TABLE 4

MERCHANDISE ENTRIES AND COMMERCIAL OPERATIONS POSITIONS

FY 1980-1989

Commercial Operations Positions (FTE)

Fiscal Year	Formal Entries (000)	Cargo Inspection Positions	Commercial Investigations & Classification & Value Positions	Total
1980	4,374	5,108	4,082	9,190
1981	4,588	5,102	3,837	8,939
1982	4,703	4,693	3,748	8,441
1983	5,314	4,830	3,595	8,425
1984	6,421	4,842	3,541	8,383
1985	6,823	4,853	3,197	8,050
1986	7,251	5,087	3,678	8,765
1987	8,023	5,290	3,710	9,000
1988	8,878	5,802	3,725	9,527
1989	9,325	6,551	3,892	10,443

NOTES:

1. Between FY 1980 & 1989, formal entries increased 113%; total commercial operations staff increased 13%.

SOURCE: U.S. CUSTOMS SERVICE data.

TABLE 5

TRADE PROGRAM AND DUTIABLE ENTRIES COMPARED TO ENTRIES REVIEWED BY IMPORT SPECIALISTS

FY 1982-1989

FISCAL YEAR	TOTAL FORMAL ENTRIES (000)	DUTIABLE ENTRIES (000)	TRADE PROGRAM ENTRIES (000)[1]	BY-PASS RATE[2]	ENTRIES REVIEWED (NOT BY-PASSED) (000)
1982	4,753	3,148	2,025	35	3,089
1983	5,314	3,565	2,185	50	2,657
1984	6,421	4,402	3,624	60	2,568
1985	6,823	4,743	3,697	62	2,593
1986	7,251	5,076	4,045	65	2,538
1987	8,023	5,445	4,460	70 (est.)	2,407
1988	8,878	6,215 (est.)	4,972 (est.)	70 (est.)	2,479
1989	9,325	6,528 (est.)	5,222 (est.)	70 (est.)	2,798

1. Trade program entries include quota and monitored, GSP, antidumping, countervailing duty, steel program, and other agency entries.

2. This is the percentage of entries not designated for Import Specialist review. By-pass procedures were established by Customs because entry growth exceeded staff capability.

Table 6

Capital Improvements of United States-Mexico Border Facilities: FY 1988 Appropriation

Nogales, AZ	
Mariposa	$174,330
Grand Ave.	$375,310
Morley Gate	$64,000
Calexico,CA	
New Station	$1,000,000
New Dock/Office	$411,320
R&A	$274,430
El Paso, TX	
Ysleta	$2,651,320
Bridge ofthe Americas	$442,200
Paso del Norte	$2,850,000
Laredo, TX	
Juarez-Lincoln Bridge	$5,745,000
Replace RR Bldg.	$118,000
Convent Street	$151,710
Brownsville, TX	
Security	$14,661
Expand Lanes	$46,135
R&A	$67,204
B&M Bridge	$1,173,000
Los Indios Bridge	$510,000

Table 6 continued

San Ysidro/Otay Mesa, CA

Virginia Street	$75,000
Safety Work	$1,601,000
R&A	$612,000
Improve Commercial Lot	$456,950
Firearms Range	$350,000
Reconfigure Lanes	$310,000
Signs/Security	$517,000
Andrade, CA	$143,000
Antelope Wells, NM	$14,000
Columbus, NM	$100,000
Fabens, TX	$100,000
Fort Hancock, TX	$100,000
Lukeville, AZ	$148,000
Marathon, TX	$50,000
Naco, AZ	$65,000
Presidio, TX	$100,000
Progresso, TX	$100,000
Roma, TX	$100,000
San Luis, AZ	$79,000

Del Rio, TX

Expand Lanes	$270,000
Security	$250,000
Replace Stations	$3,640,000
Los Ebanos, TX	$520,000
Douglas, AZ	$228,000
Eagle Pass, TX	$480,000
Rio Grande City, TX	$510,000
Tecate, CA	$338,000
Hildago, TX	$289,510
Falcon Dam, TX	$400,000
Santa Teresa, NM	$663,000
TOTAL	$28,678,080

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