

MINE

1 EXECUTIVE SESSION  
2 TUESDAY, MAY 7, 1985  
3 U.S. Senate  
4 Committee on Finance  
5 Washington, D.C.

6 The committee met, pursuant to notice, at 10:04 a.m.  
7 in room SD-215, Dirksen Senate Office Building, the  
8 Honorable Bob Packwood (chairman) presiding.

9 Present: Senators Packwood, Danforth, Chafee, Heinz,  
10 Wallop, Armstrong, Symms, Grassley, Long, Bentsen, Moynihan,  
11 Baucus, Bradley, and Mitchell.

12 Also present: Mr. John Colvin, Majority Chief Counsel;  
13 Mr. Ted Kassinger, Majority Trade Counsel; Mr. Michael Stern,  
14 Minority Staff Director; Mr. William Lang, Minority Trade  
15 Counsel.

16 Also present: Mr. Robert P. Schaffer, Assistant  
17 Commissioner (Commercial Operations, U.S. Customs Service);  
18 Mr. Richard Miller, Associate Commissioner (Congressional  
19 and Public Information), U.S. Customs Service; Mr. C. Wayne  
20 Hamilton, Director, Office of Financial Management and  
21 Program Analysis, U.S. Customs Service; Mr. Steven L. Basha,  
22 Esquire, and Mr. Arthur Rettinger, Esquire, Attorneys,  
23 Office of the Chief Counsel, U.S. Customs Service.

24 (The press release announcing the hearing follows:)

25

1           The Chairman.       The committee will come to order,  
2 please. We do not have a quorum, but I expect we will have  
3 one before the morning is out. We can start our discussions  
4 now.

5           Let me start with Items 3, 4, and 5 -- the nominations  
6 of Margaret Tutwiler, John Rogers, and Samuel Sterrett -- the  
7 latter to be reappointed to the Tax Court, and the other two  
8 to be appointed to positions in the Treasury Department.

9           Is there any objection from anyone on the committee to  
10 reporting those three nominations? We had hearings this  
11 morning at 9:30. I think most of you know Margaret Tutwiler  
12 and may have had some occasion to know Mr. Rogers. Samuel  
13 Sterrett has been on the Tax Court since 1968 and reappointed  
14 once for a 15-year term and is being reappointed again.

15           (No response)

16           The Chairman. If there is no objection, the reporting  
17 of them out will be held until we have a quorum and report  
18 them out at that time.

19           Let's move on for just a moment to the U.S.-Israel Free  
20 Trade Agreement.

21           As the committee is aware, that is a situation where we  
22 have the bill before us. The Administration has adopted many  
23 of the recommendations we made. It is not subject to  
24 amendment.

25           We can choose to report it out or not report it out as

1 we want. If we don't report it out we are discharged -- Ted,  
2 after how many days?

3 Mr. Kassinger. Forty-five days, Mr. Chairman.

4 The Chairman. When it would be discharged from this  
5 committee automatically and goes to the floor of the Senate,  
6 and there the Senate has a certain number of days to act on  
7 it or not act on it, but it is discharged from this committee,  
8 whether we act on it or not, and it is not subject to  
9 amendments.

10 Assuming that somebody was opposed to it, about the only  
11 advantage to objecting would be that you would shorten the  
12 time you would have for it on the Senator floor.

13 Does anybody object to reporting it out?

14 Senator Chafee. Mr. Chairman, seemingly, we have done  
15 this before. I thought we approved it before.

16 The Chairman. What we approved before was implementing  
17 legislation, suggesting some changes to the Administration,  
18 most of which have been adopted, and they sent the bill back  
19 to us.

20 You will recall we had some debates about the bromines  
21 with Senator Pryor, and other people had some suggestions.

22 Senator Chafee. Yes.

23 The Chairman. Some of those have been adopted. Some  
24 were not, but many were. We had some debate about the most  
25 sensitive items and whether the tariffs would go off in 1991

1 or not at the latest until 1995.

2 I think most of the serious, strenuous objections we  
3 had that the Administration has accommodated.

4 Ways and Means has reported it out. They were to  
5 consider it on the consent calendar yesterday. I don't know  
6 if they did or not.

7 Mr. Kassinger. They did not, Mr. Chairman.

8 The Chairman. They did not?

9 Mr. Kassinger. But they will take it up today.

10 The Chairman. All right. Is there any objection to  
11 reporting out the U.S.-Israeli Free Trade Agreement?

12 Senator Heinz. Mr. Chairman, I don't think anything  
13 would be furthered by delay.

14 The Chairman. I agree.

15 Senator Heinz. I would like to see it reported out.

16 Senator Bentsen. I understand that there are no  
17 amendments on it, but in the report language I want to be  
18 sure that this is not looked on as any recommendation of  
19 authority on the trade round, Mr. Chairman.

20 The Chairman. I share your views, and Senator Baucus  
21 wants to make sure that this is not necessarily a precedent  
22 for a Canadian-United States Free Trade Agreement, and I  
23 assume you might have similar views about Mexico.

24 Senator Bentsen. Yes.

25 The Chairman. So, I share the same views, and the report

1 language will be circulated before we put it out. Are there  
2 any other comments?

3 (No response)

4 The Chairman. Let's move on then to the authorizations  
5 for the U.S. Trade Representative, the International Trade  
6 Commission, and the United States Customs Service.

7 And we can take the Customs Service first, I think, and  
8 John, I believe you may have some amendments on that.

9 I would suggest a budget level of \$754,242,000.00 for  
10 the Customs Service and would offer that as a starting point  
11 for discussion.

12 Senator Heinz. Mr. Chairman, let me commend you for  
13 taking what I think is basically a current services proposal.

14 The Chairman. That is correct.

15 Senator Heinz. As I understand what you have proposed,  
16 it would add that roughly -- correct me if I am wrong --  
17 around 800 or so jobs that would otherwise have been cut  
18 from the Customs Service.

19 I have been contemplating offering a somewhat higher  
20 amount -- about \$28 million -- which would add, relative to  
21 your amendment, about 600 positions.

22 The principal reason for my concern is the amount of  
23 inspection, the line positions. There is a variety of numbers  
24 floating around. I have a table that I would like to place  
25 in the record, if I may, Mr. Chairman, but basically the

1 table purports to demonstrate that if you added roughly 600  
2 Customs inspectors, 150 import specialists, and 50 special  
3 agents -- a total of 800 -- that you would be able to process  
4 650,000 more merchandise entries, that there would be from  
5 that an additional revenue yield of \$780 million.

6 If you took the cost of the 800 people -- roughly \$28  
7 million from that \$780 million -- you would get a net revenue  
8 yield of \$748 million.

9 Now, I am not saying that any of us can predict with  
10 certainty that you are going to get that kind of nearly 15 or  
11 so to 1 return, but even if you cut that in half, you are  
12 going to be well ahead if you increase the number of Customs  
13 inspectors and import specialists.

14 (THE PREPARED TABLE FOLLOWS:)

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1           Senator Heinz. I am not going to press my amendment.  
2 I am going to support yours, Mr. Chairman, but I do want to  
3 understand one other part of your amendment.

4           As I understand it, and maybe you or the staff could  
5 clarify this, there is going to be a consolidation in  
6 Indianapolis.

7           The Chairman. Of 280 positions.

8           Senator Heinz. Of 280 positions. If I understand the  
9 thrust of your amendment, you would shift those nonlinear  
10 positions into Customs Inspection.

11           I would strongly support that, but I want to make sure  
12 that we really lock that in. OMB is going to be making their  
13 best efforts, no matter what we do, to see that their position  
14 prevails, and I am wondering if there isn't some way that  
15 we could put that into the statute.

16           The Chairman. I would be happy to put it into the  
17 statute. Ways and Means is going to go way beyond us on  
18 that. I am glad to see Ways and Means and Finance taking  
19 back some authority in this area.

20           We have deferred to Appropriations quite a bit. Let  
21 them, by and large, run the Customs Service, and I am  
22 perfectly happy to put back the \$280 that are administrative  
23 positions. They are not line positions now, and they are  
24 going to save them by consolidation, and put them on the  
25 line.

1 All you have to do is look at the entries and the  
2 Customs obligations in most of our ports -- and of course,  
3 I am doubly familiar with the West Coast ports with the  
4 growth in the Pacific rim trade -- but we are literally not  
5 keeping up. We are falling behind.

6 The Customs Service reminds me a great deal of the Coast  
7 Guard. We impose additional duties on it all the time and  
8 expect them to stretch and stretch and stretch and stretch,  
9 with relatively little increase in personnel or budget.

10 Senator Heinz. And we keep passing laws that put  
11 additional duties upon them, too.

12 The Chairman. Oh, yes.

13 Senator Heinz. Mr. Chairman, with that, I would urge  
14 the committee to support your level.

15 I do have two related subjects. They don't relate  
16 specifically to the authorization of it, but they relate to  
17 report language. Would you like me to bring them up now?

18 The Chairman. Yes, I would.

19 Senator Heinz. I am somewhat concerned about the  
20 Customs Service reorganization plan that takes the number  
21 of laboratories that they now have for analyzing merchandise  
22 -- not just steel but a variety of other products that are  
23 imported -- and reduces the number of those laboratories to  
24 two, one on the West Coast and one on the East Coast.

25 I don't know how many laboratories there are now. Does



1 anybody know?

2 Mr. Kassinger. Six.

3 Senator Heinz. There is a total of six?

4 The Chairman. Now, what do these labs do?

5 Senator Heinz. They do the analytical backup work on  
6 Customs entries. If you want to find out what the molecular  
7 composition of steel is so that you can tell whether it is  
8 coming in from Japan or South Korea or a country that is  
9 subsidizing or dumping, or a country that is trying to get  
10 around the voluntary restraint agreement, you often need to  
11 do analysis of it. Some of it comes in mismarked.

12 You know, a 2 or 3 percentage point reduction in duty  
13 is a lot of money on a 5 million ton shipment, but someone  
14 puts \$150,000.00 in their pocket if they can just be clever  
15 enough to get around that.

16 So, there is an enormous incentive here for people to  
17 falsify documents, mislabel steel, and so forth.

18 So, I am concerned about that. Maybe the best way to  
19 get at it, since I don't consider myself a sufficient expert  
20 here, is to have the GAO do an analysis of whether Customs  
21 reorganization plan is in fact going to achieve the goals  
22 that Customs sets out for itself.

23 The goals all sound very reasonable, but I wonder if  
24 their plan is really going to achieve those goals. So, what  
25 I would like to propose, Mr. Chairman, is that we --

1           The Chairman. I would be happy to cosign a letter with  
2 you to the GAO to find out.

3           Senator Heinz. All right. Very well. Thank you, Mr.  
4 Chairman.

5           The Chairman. Are there other amendments on the Customs  
6 Service?

7           Senator Long. Mr. Chairman, The hearings really gave me  
8 great concern about the fact that there are so many harmful  
9 drugs that come into the country.

10           For example, the testimony was that this is the estimate  
11 now. The witness that appeared was more optimistic than  
12 people in the field have told me, but he estimated that they  
13 are only intercepting 5 percent of the heroin coming into  
14 the United States.

15           So, the other 95 percent is going right on through and  
16 doing its destructive work destroying lives in this country.  
17 He estimated they are managing to intercept 25 percent of  
18 the cocaine coming into the country. That would mean that  
19 the other 75 percent is coming right on through.

20           And he estimated that they are intercepting 30 percent  
21 of the marijuana, so that 70 percent is coming on through.

22           Now, I would think that, just looking at their own  
23 figures, you would have to assume that about 80 percent of  
24 all that stuff is coming through, and that is estimated to  
25 be \$80 billion at street value a year in drugs that they

1 destroying lives out here in this country.

2 Now, if you assume that just half of that money is being  
3 paid to pushers on the street, I think that would be a  
4 reasonably good guess -- it could be more or less -- but if  
5 anything it would be more, I would think -- that would mean  
6 1 million jobs at \$40,000.00 a year, or 2 million jobs, you  
7 might say, at \$20,000.00 a year.

8 So, you have got a large army out there -- about as big  
9 as our Air Force, you might think -- out there putting these  
10 illegal drugs in people's hands and destroying lives in the  
11 country.

12 It just seems to me that we ought to be doing more in  
13 the area, and I personally would like to see us do more.

14 The Chairman. My recommendation, Russell, is  
15 significantly higher than this year's appropriation or the  
16 request. The appropriation for 1985 is about \$701 million.  
17 The Administration asked \$707, and I am suggesting \$754.  
18 So, it is a fair increase.

19 Senator Long. How much would you hope to go into the  
20 fight against drugs?

21 The Chairman. I don't know. I can't quantify that.

22 Senator Long. You know, they don't break it down too  
23 accurately for you to tell you just how much is being used  
24 against drugs, but my guess is they are spending about \$330  
25 million against drugs. I would like to see us do

1 substantially more in that area.

2 I think it is fine to have the First Lady seek to bring  
3 moral pressure on people to do what they can about this drug  
4 situation, but I think we ought to put some money into it.

5 I would assume that, based upon the figures we see on  
6 what we are spending in this area, about \$1.00 is keeping  
7 about \$70.00 worth of drugs out of people's hands.

8 I would just like to know if there is any support here  
9 in this committee for increasing that figure.

10 Senator Heinz. I am supportive of it, but I think the  
11 Chairman's proposal is fine.

12 The Chairman. I haven't got any actual basis to go  
13 higher. I don't know anybody who doesn't sympathize with  
14 what you are saying, but we are going about 8 or 9 percent  
15 above what they are requesting now and above what they had  
16 this year.

17 Senator Long. People I have talked to the field seem  
18 to think that the people who are running the program tend to  
19 look at that more like bankers more than people who are  
20 concerned about what it is doing to the individuals out  
21 there because, in situations where Congress had appropriated  
22 more money, they said they haven't spent it.

23 I really feel that we ought to be doing more about the  
24 drugs. I am not going to push it unless I get the sense  
25 that we all want to do something about it, but I feel that we

1 ought to be doing more.

2 The Chairman. Ways and Means has already recommended  
3 about \$27.9 million for an additional 800 line positions,  
4 and we will have that when we go into conference. We are  
5 up significantly over last year, and they are up over us.  
6 So, we are surely going to come in with a higher figure.

7 Senator Long. I won't push it any further at this  
8 point then, Mr. Chairman. I would like to see us do more  
9 about drugs.

10 Senator Bentsen. Mr. Chairman?

11 The Chairman. Senator Bentsen?

12 Senator Bentsen. Mr. Chairman, I am very supportive of  
13 your budget, with the understanding that what you are doing  
14 is at least maintaining current levels of service. That is  
15 what I am told. Is that correct?

16 The Chairman. At least, and we are going to go way  
17 above that.

18 Senator Bentsen. All right. If this committee and the  
19 Service can arrive at an agreement at the cut in the  
20 administrative level, then I would hope that whatever  
21 savings we get there, it would be redirected to the front  
22 line in the way of inspectors and import specialists because  
23 that is where the problems really are, and this problem that  
24 the Senator from Louisiana is talking about on the  
25 interdiction of drugs certainly ought to be helped out.

1           The Chairman. We specifically directed them. There are  
2 280 nonline positions that they are consolidating and  
3 eliminating by consolidating forces in Indianapolis, and by  
4 specific amendment we are directing that those 280 positions  
5 be transferred then to line positions.

6           Senator Bentsen. Good.

7           The Chairman. They are, at the moment, administrative  
8 positions.

9           Senator Bentsen. I applaud the Chairman's efforts in  
10 that regard.

11          Senator Armstrong. Mr. Chairman?

12          The Chairman. Senator Armstrong?

13          Senator Armstrong. Mr. Chairman, I would like to take a  
14 moment of the committee's time to discuss a matter which I  
15 have mentioned to you and also to Senator Danforth, who is  
16 the subcommittee chairman, which relates to the importation  
17 of goods produced in the Soviet Union under conditions of  
18 forced labor.

19                 This problem came to my attention a couple of years ago,  
20 and my first concern was the natural one that there is a  
21 horrendous violation of human rights that is occurring in  
22 that country.

23                 And in a sense, when we import such goods, we become  
24 accomplices in the conditions under which they are forced.

25                 There is a second concern which is even more highly

1 focused, and that is that the importation of such goods  
2 violates the law. It violates the Tariff Act of 1930.

3 So, my impulse was to wade in and find out why we  
4 weren't doing something. And rather than being too  
5 precipitous, I asked first if the Senate would adopt a  
6 resolution simply asking the Administration to give us a  
7 report of whether or not the allegations were true, whether  
8 or not in fact such goods were coming into the United States,  
9 having been produced under labor conditions which are in  
10 violation of the Tariff Act of 1930.

11 The Senate did pass such a resolution, and in due course,  
12 the Administration did report that indeed this was the case.  
13 So, it was not plain to me, since there was a violation of  
14 law occurring and in addition a horrendous abuse of human  
15 rights, why the law was not being enforced.

16 And at my request, the Senate adopted a resolution  
17 calling upon, something short of directing, but certainly  
18 indicating our support for enforcement of the existing law.  
19 Nothing happened, and in fact, after maybe 50 or 60 contacts  
20 on this matter with various representatives of the  
21 Administration, it is very plain to me that nothing is ever  
22 going to happen.

23 So, Mr. Chairman, it would be my desire to amend some  
24 appropriate piece of legislation -- this authorization or  
25 some other bill as it goes through -- to create a mechanism

1 which will require enforcement.

2 What escapes me at the moment is exactly how to do that.  
3 I haven't been able to conceptualize how to write into the  
4 statute something that will actually require that the law  
5 be enforced.

6 Now, after this question came to light, a number of our  
7 colleagues in the House got sufficiently exercised about it  
8 that some 38 of them have filed a lawsuit. I don't know what  
9 the merits of that suit are, but my guess is that it will  
10 probably drag on forever and come to an inconclusive end.

11 My desire is not to have a lawsuit. My wish is to have  
12 the existing law enforced.

13 So, Mr. Chairman, I just wanted to mention this and also  
14 to explain to other members of the committee that I have asked  
15 Senator Danforth if he will hold a hearing on this matter so  
16 that we may get representatives of the Customs Service and  
17 others who are involved to come before us and explain exactly  
18 what their hangups are in getting this law enforced.

19 And then it would be my plan to offer an appropriate  
20 amendment, if we can figure out what that is, at the time  
21 when this bill is on the floor.

22 So, my request is twofold. First, that we do have a  
23 hearing at whatever is the earliest convenient date, and  
24 second, that we withhold floor action on this legislation  
25 until we have had a chance to do that and at least have an



1 opportunity to consider some appropriate amendment.

2 Finally, Mr. Chairman, let me say that I do not say this  
3 in any sense to be critical of the Customs Service. It is  
4 my impression that Customs has been trying to work something  
5 out and that other persons outside the Customs Service --  
6 elsewhere in the bureaucratic labyrinth -- have frustrated  
7 the efforts which they have put forth and which I have put  
8 forth to try to resolve this.

9 And again, my desire is not particularly to assess the  
10 blame although at some point I guess I will want to do that,  
11 if we can't get action, but to solve the problem, but I am  
12 not criticizing Customs at all.

13 They have tried to do it and specifically, as I  
14 understand it, Customs has sought to promulgate regulations  
15 under which this statute could be enforced and has not been  
16 permitted to do so by those persons in the Treasury Department  
17 who must approve promulgating such regulations.

18 So, I thank you for your attention, and those are my  
19 two requests -- first for a hearing on this matter and second  
20 that, when we have reported this legislation, that it be held  
21 for a few days while we have a chance to frame an appropriate  
22 amendment.

23 The Chairman. Senator Armstrong is very fair. He  
24 approached me, and I indicated that I want to get all of our  
25 authorizations out to meet the budget deadline by May 15.

1 and he said he was willing to accommodate that if it would  
2 be held on the floor, and I am sure the leader will hold it  
3 on the floor.

4 Senator Danforth, have you talked with Senator  
5 Armstrong about a hearing?

6 Senator Danforth. I did, Mr. Chairman, and of course,  
7 all the hearings are cleared with you and your staff, but  
8 it would be certainly fine with me to hold a hearing on the  
9 subject, either on this subject alone or on a broader  
10 question.

11 It seems to me -- and I think we should have it on this  
12 subject alone -- I think it is an interesting subject --  
13 sometime I think maybe we should have a hearing on the whole  
14 question of when and under what circumstances it is  
15 appropriate to use trade sanctions to accomplish various  
16 foreign policies or moral objectives of the United States.

17 The issue seems to come up on an almost occasional  
18 basis -- today with respect to slave labor in the Soviet  
19 Union, a week or so ago with respect to whether or not trade  
20 sanctions should be imposed on Nicaragua to accomplish some  
21 foreign policy objective.

22 Some people suggest sanctions against South Africa,  
23 sanctions against the Soviet Union are in place or have been  
24 put in place at various times, sanctions against Libya.

25 The Jackson-Banneck provision is a use of trade to

1 accomplish what we consider to be a very important moral  
2 objective.

3 I think maybe sometime it would be a good idea to take  
4 a broader look at the use of trade as a foreign policy tool.  
5 My guess is that none of us would take an absolutely pure  
6 position for or against using trade for objectives other than  
7 trade itself, but I think that we have not done a very good  
8 job of thinking out the use of trade for that purpose.

9 So, I would suggest that sometime we might take a look  
10 at that, either at the full committee level or at the  
11 subcommittee level. That is a little broader than the  
12 question that was asked of me by Senator Armstrong, namely  
13 the issue of whether to have a hearing on USSR slave labor  
14 and the enforcement of American law relating to that.

15 And my answer when he put the question to me was: Yes,  
16 that would be fine with me. And my answer today is: Yes,  
17 that would be fine with me.

18 Senator Armstrong. Mr. Chairman, I am grateful to you  
19 and to Senator Danforth. Basically, I agree with his desire  
20 for a broader inquiry.

21 I do want to distinguish, however, Senator, this  
22 particular provision from the other matters that you  
23 mentioned -- the Jackson-Banneck and trade sanctions against  
24 Nicaragua and whatnot -- in that it is quite a specific  
25 provision of an existing statute, and it doesn't call for a

1 general embargo of goods produced in an offending country.

2 It only calls for not bringing into this country for  
3 sale those goods which have been produced under conditions  
4 of forced labor.

5 And it seems to me also that we make a mockery of our  
6 own process when we won't even try to enforce such a statute,  
7 and it is not so much a question of, in my opinion, having  
8 a hearing on whether or not there are forced labor camps in  
9 the Soviet Union. I think that is pretty well known and  
10 really beyond the charter of this committee, anyway.

11 What I want to know is why isn't the law being enforced?  
12 We have made a serious, sustained, thoughtful, low-key effort  
13 to get it enforced, and frankly they are just thumbing their  
14 nose at us, and so I think we ought to do something.

15 The Chairman. I think your point is valid. Senator  
16 Danforth has indicated you can have a hearing on that subject.

17 For just a moment, while we have a quorum, I would like  
18 to report out the noncontroversial things on the agenda, in  
19 case we lose our quorum.

20 On Items 3, 4, and 5, the three nominations that are on  
21 your pink sheet, I know of no objection. Nobody has talked  
22 to me of any objection.

23 Is there any objection to reporting out the nominations  
24 of those three?

25 (No response)

1           The Chairman. All right. On the U.S.-Israel Free Trade  
2 Agreement, I know of no objection. Some people weren't here  
3 when I explained it, and I know Senator Baucus wasn't here  
4 when we talked about the precedent on this.

5           We cannot amend it. We can hold it here, and if we  
6 don't send it out eventually, we are discharged of it. So,  
7 our choice really is to possibly delay it and not send it  
8 out, but sooner or later it is going out of this committee  
9 whether we choose to send it out or not send it out.

10          So, I would like to report it out.

11          Senator Moynihan. Mr. Chairman, just as a matter of  
12 curiosity, is this a special procedure?

13          The Chairman. It is under the so-called "fast track  
14 legislation." It is a special procedure.

15          In response to a question of Senator Bentsen's, and my  
16 same feeling -- and Max, I indicated yours -- we will have  
17 in the report language that this is not a precedent for any  
18 other free trade agreements, whether it is Canada-U.S. or  
19 Mexico-U.S. and that we would circulate that report language  
20 before it goes in.

21          Senator Baucus. Mr. Chairman, I very much appreciate  
22 that. That was a further question that has been asked. It  
23 is important that we nail down the fact that it is not  
24 precedent.

25          The Chairman. Yes. That is correct. Many of us feel

1 that way, and I think Senator Mitchell indicated he felt  
2 that way also.

3 Senator Baucus. Mr. Chairman?

4 The Chairman. Yes?

5 Senator Baucus. One other matter. I would just like to  
6 echo the views of the Senator from Missouri. I think that  
7 a hearing on trade sanctions makes a lot of sense, and  
8 frankly, the reason is because some people come up suggesting  
9 trade sanctions to accomplish some fairly narrow political  
10 or nonpolitical goal, and we don't take consideration of  
11 what some of the counterreactions could be and what some of  
12 the tradeoffs are.

13 And I think it is a very good idea, and I strongly  
14 suggest that the subcommittee chairman and the full committee  
15 chairman pursue that and pursue it quickly.

16 The Chairman. Thank you. Yes?

17 Senator Moynihan. You know, we have a long history.  
18 If we had a hearing based on a background paper, it would be  
19 all right. I mean, a century ago trade sanctions were  
20 thought to be one of the great options that democratic  
21 countries had for maintaining peace in the world. And a  
22 great issue was would there be trade sanctions against Italy  
23 during the Ethiopian War.

24 It was once a very large peace-keeping idea. which I  
25 think has essentially evaporated, but I think it was much a

1 part of our history, and I think the chairman could get us  
2 a background paper that would give us a context of what we  
3 have come from, if not exactly where we are.

4 The Chairman. The point is well taken. Let me talk  
5 with Senator Danforth because I think the hearings are very  
6 worthwhile.

7 Senator Heinz. Mr. Chairman?

8 The Chairman. Yes?

9 Senator Heinz. I have two amendments to the Customs  
10 authorization dealing with enforcement that I would like to  
11 offer.

12 The Chairman. Go right ahead.

13 Senator Heinz. These are not unfamiliar I think to the  
14 members of the committee. Senator Mitchell and I had a  
15 discussion of one of the two last year.

16 The first one is an amendment -- actually it is two  
17 amendments -- they are in my old bill S. 49. They are both  
18 directed at improving the ability of the Customs Service to  
19 crack down on civil fraud.

20 The first amendment extends the statute of limitations  
21 for civil fraud cases to five years from the date of  
22 discovery, the same standard that currently applies to  
23 criminal cases.

24 The current civil standard right now is five years, but  
25 it is from the date at which the violation occurred, and you

1 can get a case that runs well past that date and still have  
2 the ironic result that there will be a criminal case where  
3 the civil authorities turn information over to the grand jury.

4 At that point, the civil case cannot be pursued. It  
5 has much more substantial monetary penalties. The criminal  
6 case goes forward. It may take a couple of years, and by  
7 the time the criminal case is resolved, the perpetrator is  
8 found guilty but it is too late to actually go out and seek  
9 civil damages as well.

10 So, the first part of my amendment is to conform the  
11 statute of limitations to the point of discovery, as opposed  
12 to the date the violation occurred.

13 The second amendment provides for very carefully  
14 circumscribed, we believe, limited sharing of grand jury  
15 information with Customs in order to allow it to pursue  
16 civil cases more aggressively.

17 And we do this by defining that the Customs prepenalty  
18 notice which, when they issue it they really mean it. It is  
19 not a casually administered penalty by any means, but that  
20 prepenalty notice will be considered as if it is preliminary  
21 to a judicial proceeding, which is one of the key tests  
22 -- the elements specified in the Sells and Baggett cases  
23 to be required prior to sharing such information.

24 Now, last year, Senator Mitchell had some reservations  
25 about that procedure, and I am wondering whether he feels



1 better about it. He said he had not had enough time to  
2 study it. Now, we are back here a year later, and I am sure  
3 he has something he would like to say about it.

4 The Chairman. Could I ask a question? Have we had any  
5 hearings this year or last year on either of those  
6 amendments? I don't recall any.

7 Senator Heinz. We did not have any hearings this year.

8 Mr. Kassinger. No, we didn't have any hearings here  
9 last year either, in this committee at least.

10 Senator Heinz. I think that is right. The legislation  
11 is supported by the Administration, and I don't know if any  
12 of the right people are here, but --

13 The Chairman. Is there anybody here to speak for the  
14 Administration on this?

15 Mr. Miller. We have a representative here from the  
16 Office of the Chief Counsel, Mr. Chairman.

17 The Chairman. All right.

18 Mr. Basha. My name is Steven Basha from the Office of  
19 the Chief Counsel of Customs. I am a working level person  
20 who is currently working on some very big fraud cases, and  
21 I can tell you both from the working level and from the  
22 Customs and the Administration's viewpoints, that the  
23 legislation would significantly enhance our enforcement  
24 program, especially in the large complex fraud cases.

25 The Chairman. Are you talking about both amendments or

1 the first amendment?

2 Mr. Basha. Both. The statute of limitations and the  
3 grand jury provision.

4 And if I could just point it out in the context of  
5 an ongoing case we have right now, there are certain things  
6 I can't say because of grand jury secrecy rules, but we have  
7 a large fraud case against Daylu Corporation, a Korean steel  
8 firm.

9 The criminal case, which was concluded back in January,  
10 resulted in felony convictions and some fairly heavy fines,  
11 but because of certain judicial rules that you cannot use  
12 your civil proceedings until criminal cases are over, we  
13 had to hold off on our civil case, meaning the statute of  
14 limitations was running.

15 The clock was ticking on any claims we had, and these  
16 are multimillion dollar claims. Already we have over \$25  
17 million in penalties issued against Daylu on a civil case.  
18 But at any rate, we were forced to wait until the criminal  
19 case was over until we could proceed with our civil case.

20 We are already losing certain civil claims because of  
21 the short statute of limitations, and it doesn't set that  
22 big of a precedent because the way the statute is written  
23 now -- that is Section 1621 -- there is five years from date  
24 of commission only for fraud violations of Section 1692 --  
25 excuse me, anything but nonfraud.

1 Fraud violations run from date of discovery. So, the  
2 bill would merely change everything to run from date of  
3 discovery.

4 And in these large fraud investigations, many times we  
5 don't even discover the violations until maybe two or three  
6 years after the acts are committed.

7 So, if the agent finds out there is a violation, we may  
8 have two years left to bring the civil case, while bringing  
9 the criminal case which usually occurs before that time,  
10 you are going to lose even more time.

11 That is why the statute of limitations is so critical  
12 to us.

13 The Chairman. Are there comments by other members?  
14 George?

15 Senator Mitchell. Mr. Chairman, I have reviewed this  
16 matter in the time that has elapsed since our last discussion  
17 of it, and I have no objection to the first amendment, which  
18 extends the statute of limitations.

19 I agree that it makes sense to change the statute to  
20 permit more effective prosecution of the civil cases.

21 I do continue, however, to oppose the second part of  
22 the provision, and I would like to speak just briefly to  
23 it.

24 First, I think all the committee members should  
25 understand what we are talking about here. The grand jury

1 power is an enormous power that the Government possesses.

2 It may compel persons to testify in secret under oath  
3 and may imprison anyone who refuses to testify. There is  
4 widespread controversy in our society over whether or not  
5 the grand jury should be permitted to continue in its present  
6 function, and there are other members of this committee  
7 familiar with law enforcement who are aware of that.

8 Many people feel that it is not an independent tribunal  
9 as it was intended in its early formative years to be, but  
10 has become a weapon of the Government, and there are charges  
11 that it is widely abused -- I think in some cases it clearly  
12 is. I personally favor the continuation of the grand jury.

13 But we do not permit the grand jury to be used for the  
14 development of civil cases. It is limited to criminal cases,  
15 and what we are talking about here is the extension of that  
16 authority to permit the use of a very powerful criminal  
17 process to be used for the development of civil cases.

18 I think we should be very, very careful about that.  
19 There hasn't been a hearing on it. We don't really fully  
20 comprehend the impact of what it would do.

21 I have no criticism of the Customs officials. They want  
22 naturally to enforce the law, and we applaud their vigor in  
23 that, but there are many other law enforcement agencies which  
24 have dual civil and criminal responsibilities.

25 Are we now proceeding in a way that is to extend the

1 grand jury power into an area where it has not previously  
2 existed?

3 Now, Senator Heinz says it is carefully circumscribed.  
4 What has to happen under this amendment is that the Customs  
5 issues a prepenalty notice. That is an administrative notice  
6 of information to an alleged violator, an action within the  
7 sole discretion of the Customs Service, and we do not have to  
8 impune the motives of anybody to understand what that would  
9 do.

10 It would create an enormous incentive to issue such  
11 notices to make available for the prosecution of civil fraud  
12 this tremendous power of grand juries, and it is a lot easier  
13 than going out and conducting an investigation.

14 You don't have to send investigators around to look into  
15 something. You can force people to come before you and force  
16 them to testify in secret under oath, and if they refuse to  
17 testify, you have enormous sanctions that can be imposed on  
18 them.

19 The Chairman. I sense you have misgivings about this  
20 amendment.

21 Senator Mitchell. Yes, I do. I think at the very least  
22 we ought to have a hearing on this to try to get a broader  
23 view of grand jury power, what this amendment would do with  
24 respect to that power, and whether or not it ought to be  
25 extended.

1           We are doing this without really thinking through the  
2 implications of our actions.

3           The Chairman. Senator Danforth and then Senator Heinz.

4           Senator Danforth. Let me ask in the tax fraud area.  
5 Is there a precedent for this? Can grand jury information  
6 be made available for civil tax fraud cases?

7           Mr. Basha. Senator, there was a Supreme Court case  
8 about two years ago, U.S. versus Baggett. It is clear that  
9 the agencies like IRS can obtain a grand jury disclosure  
10 order. It is provided in the Federal rules -- Criminal  
11 Procedure Rule 6.

12           The question is at what stage can you obtain that,  
13 assuming you show the need for it. So, the whole issue is  
14 when can you get it?

15           And Baggett, IRS obtained such an order after it had  
16 assessed a notice of a tax deficiency. The Supreme Court  
17 held that, since IRS had other means of satisfying that tax  
18 deficiency, they could out and levy on the violator's  
19 property, they were not preliminary to a judicial proceeding.

20           That is the standard. The time limit that an agency  
21 can obtain these orders is, one, if you are in connection  
22 with a judicial proceeding or, two, if you are preliminary  
23 to it.

24           So, we here are talking about "preliminary to." What  
25 is preliminary to a judicial proceeding? The Customs Service

1 position is that our procedures are totally different from  
2 those of IRS.

3 We have no levy authority to go out and grab somebody's  
4 property in a fraud case. We do in drug cases and those  
5 types of cases where we don't need the grand jury orders,  
6 but in a fraud case, once we issue our penalty or prepenalty  
7 notice, we either get payment if the violator voluntarily  
8 pays us, or we have to take it to court.

9 The Chairman. What difference does that make?

10 Mr. Basha. I am not sure if I understand your question.

11 Mr. Kassinger. Senator Heinz's bill would define the  
12 time under the Federal criminal rules of procedure when  
13 the Customs Service could obtain access to grand jury  
14 information by specifying in effect that preliminary to a  
15 judicial proceeding is the issuance of a prepenalty notice  
16 by the Customs Service.

17 Mr. Basha. So, it would statutorily define where the  
18 preliminary to is so we could get the order. By the way, we  
19 have received at least one order from the District Court in  
20 Connecticut in a fraud case against Timex, and that was after  
21 a prepenalty had been issued.

22 So, there is precedent for it. In Daylu we obtained an  
23 order and we got the materials after penalty notices.  
24 Penalty notices were issued and they argued against it in  
25 District Court, and we are waiting for a decision.

1           So, it is far from clear, at least judicially, under  
2 the present law. It is very ambiguous when, in the Customs  
3 setting, we are preliminary to a judicial proceeding to a  
4 civil case so as to be permitted these grand jury materials.

5           The Chairman. Senator Heinz and then Senator Chafee.

6           Senator Heinz. Mr. Chairman, maybe Mr. Basha could  
7 respond a little bit to Senator Mitchell's concern that a  
8 prepenalty notice could be abused, as an administrative  
9 of information that there are insufficient guidelines and  
10 standards for their issuance, and therefore there would not  
11 in fact be much guarantee against administrative abuse but  
12 would not satisfy the test of preliminary to a judicial  
13 inquiry.

14           Mr. Basha. My response would be, one, that by statute  
15 -- and that is in 1592 of Title XIX, which is the Civil  
16 Fraud Section of the Customs Laws -- the prepenalty notice  
17 cannot be issued until the appropriate Customs officer has  
18 made a determination that there are reasonable grounds to  
19 believe that a violation has occurred.

20           That is sort of akin to probable cause -- a probable  
21 cause determination -- which permits somebody to get a search  
22 warrant. We do have procedures, internal guidelines, and  
23 published regulations in the Code of Federal Regulations that  
24 set forth when the prepenalty notice can be issued.

25           So, I do not believe it would be up to the unfettered



1 discretion of the officer. Certainly, he would not under  
2 any judicial-type constraint. It would be his determination,  
3 but it is an objective standard that he must meet under the  
4 statute.

5 The Chairman. John, it would seem to me that it might  
6 be wise to hold up on this second amendment.

7 Senator Heinz. That may be. Let me just pose this  
8 dilemma to the committee, which is this. The way I  
9 understand Customs works is the Customs inspector finds a  
10 problem, he finds he has reasonable grounds to believe that  
11 there has been an infraction.

12 The Customs Service then begins to investigate, and they  
13 find, my goodness, there is evidence of fraud here. This is  
14 a criminal matter. They refer it to the criminal division.

15 The criminal division looks into it further and they  
16 decide, aha, this should go to the grand jury. Somebody has  
17 done something really bad here, at which point all the  
18 evidence that the Customs Service has gathered, which could  
19 be used for a civil proceeding, is as I understand it off  
20 limits.

21 It goes to the grand jury. It is secret. You can't use  
22 it, and you can't even pursue on a two-track system a civil  
23 investigation.

24 Mr. Basha. That is right.

25 Senator Heinz. Now, I understand George's problems,

1 but clearly we shouldn't be putting out law enforcement  
2 people in a position where, because somebody has done  
3 something even worse -- or there seem to be grounds for  
4 believing somebody has done something even worse -- than  
5 you thought they had done that pursuing civil remedies and  
6 penalties -- and that is the main incentive we have here  
7 for keeping people honest, unless they are caught being  
8 fraudulent -- but you have to put that on the back burner.

9 Now, perhaps it is such a thorny question that we do  
10 need a hearing, but I want the members to clearly understand  
11 before we get off this subject the fundamental Catch 22.

12 The Chairman. I think that raises a very valid point,  
13 and I think Senator Mitchell does also, but I am reluctant  
14 to move in haste when we can move.

15 Senator Heinz. I have heard the Chairman's quotation  
16 on that matter on a couple of occasions.

17 The Chairman. By and large it serves us well.

18 Senator Heinz. Yes. So, I would be amenable to  
19 setting aside the second part of the amendment, particularly  
20 if the chair thinks there is some way we can get some more  
21 informed testimony. Would it be the chair's intent to have  
22 a hearing?

23 The Chairman. It would be my hope we could have a  
24 subcommittee hearing on it.

25 Senator Heinz. Yes.

1           The Chairman.   Senator Baucus?

2           Senator Baucus.   I was just going to add to the chair's  
3 suggestion here.   It seems to me that the statute of  
4 limitations extension would help somewhat.

5           The other matter is much more serious, and I suggest  
6 we have a hearing.

7           The Chairman.   Is there objection to adoption of the  
8 first amendment?

9           (No response)

10          The Chairman.   Without objection it is adopted.   Are  
11 there further amendments?

12          Senator Chafee.   Mr. Chairman, what happened to me?

13          The Chairman.   I apologize, Senator Chafee.   I  
14 recognized him a long time ago.   Senator Chafee?

15          Senator Chafee.   I want to say that I agree with Senator  
16 Mitchell's points.   I thought they were well stated, and I  
17 think we ought to do just what we are doing.

18          We should accept the first and set the second aside and  
19 have a hearing.

20          The Chairman.   The first has been adopted.   Senator  
21 Bradley and then Senator Baucus.

22          Senator Bradley.   Mr. Chairman, I simply want to draw  
23 the committee's attention to what is a very serious problem,  
24 and that is the enforcement or lack thereof of our trade  
25 laws when it comes to containerized imports.

1           Seaborne shipments are about 58 percent of our imports,  
2           and of those seaborne shipments, 70 percent of them are  
3           containerized. There are only about 98,000 Customs personnel  
4           that deal with containerized enforcement, and it is really,  
5           I think, not adequate, but rather than try to address numbers  
6           in this legislation, what I would like to have, if the  
7           Chairman would be amenable and the committee, is simply  
8           strong report language that says it is the clear intent of  
9           the committee that the Customs Service should use all of its  
10          available resources to prevent import fraud in the  
11          containerization.

12          The Chairman. One of the reasons I recommended a rather  
13          significantly larger figure for the Customs Service and the  
14          Administration wants it, is exactly the kind of point you  
15          raised, which is valid.

16          We keep asking the Customs Service to do more and more.  
17          We stretch them and stretch them and legitimately ask them  
18          to do more, but we have been rather wary of giving them much  
19          more money or personnel.

20          So, we have about an 8 or 9 percent increase over last  
21          year's appropriation and over this year's request from the  
22          Administration so that they can perform a little bit more  
23          adequately -- and I don't mean that critically -- but just  
24          a little bit more adequately than they have.

25          Senator Bradley. So, you would be amenable to a very

1 clear statement of what we intend the money to be used for.

2 The Chairman. Yes, we would.

3 Senator Bradley. Thank you, Mr. Chairman.

4 The Chairman. Senator Baucus?

5 Senator Baucus. Mr. Chairman, I have a notification  
6 that is very similar to one that I offered in the past.

7 The Chairman. What is it?

8 Senator Baucus. A notification amendment.

9 The Chairman. Oh, yes, about their closing offices  
10 without 90 days notice.

11 Senator Baucus. Yes.

12 The Chairman. I think it is a good amendment.

13 Senator Baucus. Essentially, I am concerned with an  
14 amendment offered jointly with Senator Mitchell, which would  
15 require Customs to give notification to both the Finance  
16 Committee and the House Ways and Means Committee at least  
17 90 days prior to initiating any major field reorganization  
18 or taking any other action which would significantly reduce  
19 the labor force or eliminate or relocate districts, etc.

20 The amendment also requires Customs to state in a little  
21 more detail the reasons why Customs may or may not be taking  
22 any reorganization changes, and finally, the amendment  
23 provides that the 90 days will be computed under Section 102  
24 of the Trade Act, namely defining the days when both Houses  
25 are in session.

1 Senator Chafee. What was that last part, please?

2 Senator Baucus. The amendment further defines that  
3 days to be computed under Section 102 of the Trade Act,  
4 namely that a day is only a day for the 90 day requirement  
5 when both Houses are in session.

6 Senator Chafee. Now, wait a minute. You mean if we  
7 are out in August, that doesn't count?

8 Senator Baucus. That is correct. The worry is that  
9 sometimes this happened last year. You know, Congress  
10 adjourns and the Senate and House were not in session for  
11 over 90 days.

12 We are trying to find some way to prevent that  
13 occurrence from fording the attempt of this amendment.

14 Senator Chafee. Are we going to vote on Senator  
15 Baucus' amendment now?

16 The Chairman. We are on Senator Baucus' amendment.

17 Senator Chafee. Mr. Chairman, we all sit here and  
18 show deep concern over these deficits. There isn't one of  
19 us that hasn't given a stirring speech on the subject.

20 It is going to be the end of the country unless  
21 something happens, and yet we are getting into  
22 micromanagement of the Customs Service here.

23 We have now seen a situation, as far as the military  
24 bases go, that no military bases are closed because of  
25 the notices that have to be given.

1           The Chairman. How does this differ from the amendment  
2 last year?

3           Senator Chafee. It makes it a little tougher, doesn't  
4 it?

5           Mr. Kassinger. Mr. Chairman, I believe the principal  
6 differences are that it requires some detail about what  
7 constitutes notice.

8           Senator Chafee. How about the days?

9           Mr. Kassinger. And there was no definition of days,  
10 so that it was simply calendar days last year.

11          Senator Chafee. Now, I take it that this is just a  
12 notice. We don't have to approve it, do we?

13          The Chairman. No, no.

14          Senator Baucus. That is correct. This is only a  
15 notice.

16          The Chairman. Let's not get this confused with that  
17 Reader's Digest article on the defense bases.

18          This is a notice whereby we are given 90 days so that  
19 we can complain and jump up and down and pass legislation  
20 if we want, but short of that, they go through with their  
21 plans.

22          Senator Chafee. Mr. Chairman, I want to make it clear  
23 that I wasn't citing Reader's Digest as my authority for  
24 military bases.

25          Mr. Chairman, I think what we did last year is enough,

1 and we can write stern letters and hold press conferences,  
2 but it seems to me if we are trying to run a country here  
3 and live within our budget, which even this is a 9 percent  
4 increase, I think what we had last year was strong enough.

5 The Chairman. Would you be amenable to your language  
6 last year, Max?

7 Senator Baucus. I'm sorry?

8 The Chairman. Would you be amenable to the language  
9 you had last year?

10 Senator Baucus. Frankly, I don't understand what the  
11 Senator's objection is. Compared with last year, it is a  
12 little more detailed and changes the day requirement.

13 The definition day is the only change. I think those  
14 are minimal changes. This is, after all, only a notice  
15 requirement. It seems to me the Senator ought to vote  
16 against the authorization if he wants to cut the deficit,  
17 or offer an amendment cutting the authorization if he wants  
18 to cut the deficit.

19 This is only a notification amendment. I don't think,  
20 therefore, it should be --

21 Senator Chafee. What it means, Mr. Chairman, if they  
22 should decide in June that they wish to go forward with a  
23 closure in June in an even-numbered year when we usually go  
24 out in August and sometimes we don't come back until  
25 September, and even that is quite brief, you could have a



1 situation where they could decide in the middle of June and  
2 couldn't do anything until January. That is an awful long  
3 time to try and make --

4 The Chairman. The amendment is before us.

5 Senator Mitchell. Mr. Chairman?

6 The Chairman. Senator Mitchell?

7 Senator Mitchell. I would like to speak in behalf of  
8 the amendment, focusing on the days here, but the other part  
9 that requires some statement of explanation as to why they  
10 are acting.

11 Senator Chafee. I don't mind that.

12 Senator Mitchell. But I would like to make a point.  
13 At the hearing -- I think it was about a month ago -- I  
14 submitted questions in writing to the Commissioner regarding  
15 this past notification. I have not yet received any  
16 response, and I would like to illustrate the point of why  
17 it is necessary by just citing two of the questions. They  
18 are very brief.

19 The Customs Service intends to close 12 border stations  
20 in Maine. What factors were taken into account in the  
21 decision to close these ports? I have not received any  
22 answer to that.

23 One of the proposed stations to be closed is located  
24 at Colbingore, Maine. The nearest border station is 140  
25 miles away by road. What does the Customs Service expect the

1 citizens of the area when travelling over the border at that  
2 point?

3 The proposal would result in a stretch of between 200  
4 and 300 miles of the border of the western part of Maine  
5 and the eastern part of the United States with Canada without  
6 a Customs station.

7 What does this mean for the citizens of the area and  
8 for the businesses that operate on both sides of the border?

9 I think it is not unreasonable to simply ask that the  
10 decision be explained -- how it was arrived at, what the  
11 factors were -- so that we then, if we want, can try to  
12 take some action?

13 The Chairman. I don't think Senator Chafee is objecting  
14 to what you are asking. He is objecting to 90 days, which  
15 really can extend to six months or eight months, depending  
16 upon the year.

17 Senator Chafee. It could easily be eight months, Mr.  
18 Chairman, without even trying.

19 Senator Baucus. Mr. Chairman, I am willing to drop the  
20 definition of days, and if I do that, then this amendment I  
21 am offering is essentially the same amendment that has been  
22 in the law for years.

23 The Chairman. Is the amendment acceptable, John, with  
24 the dropping of the days?

25 Senator Chafee. Fine.

1           The Chairman. Without objection the amendment is  
2 adopted.

3           Senator ~~Mitchell~~. Mr. Chairman, could I ask the Customs  
4 people when I can expect an answer to my questions.

5           Mr. Miller. We will have an answer for you this  
6 afternoon, Senator. We apologize. It must have fallen  
7 through the cracks somehow.

8           The Chairman. Is there objection to reporting the  
9 Customs authorization?

10          Senator Moynihan. Mr. Chairman?

11          The Chairman. Yes?

12          Senator Moynihan. Mr. Chairman, I have no objection,  
13 but could I ask a question? On April 3, I submitted in  
14 writing some very specific questions to Mr. von Raab about  
15 drug interdiction and some other specific propositions that  
16 GAO had put forward about the general inefficacy of what we  
17 do and have they have fared with the proposal to cut the  
18 number of agents, which you have now restored.

19          I have not received an answer from Mr. von Raab. Would  
20 anybody know why?

21          The Chairman. Do you think we could get an answer this  
22 afternoon on that?

23          Mr. Miller. We will try to respond this week. Do  
24 you know where it is? We will have those to you shortly,  
25 Senator. We are aware of it, and we will answer very

1 quickly.

2 Senator Moynihan. Don't do us any favors and slap  
3 together something by 2:00 this afternoon. In good faith,  
4 I asked why you proposed to have less law enforcement in  
5 the face of the seeming greater problem, and I get no answer.  
6 You know, why?

7 Mr. Miller. Senator, I can only apologize to you and  
8 cannot offer an excuse.

9 Senator Moynihan. You must not find it very important  
10 or you would know about it. I mean, when this committee  
11 asks a question, we don't harass people. We try to support  
12 them.

13 If it is just considered that we ask questions and then  
14 that is the end of it, you are going to end up harassed.

15 Would you find out and let me know this afternoon? I  
16 need the answers to that.

17 Mr. Miller. Yes, sir. I will let you know this  
18 afternoon.

19 The Chairman. Other comments? Senator Heinz?

20 Senator Heinz. Mr. Chairman, I have two, I think  
21 noncontroversial, amendments regarding reimbursable Customs  
22 facilities at airports.

23 The Chairman. Let me ask Ted Kassinger on that. Has  
24 the Appropriations Committee raised an issue?

25 Mr. Kassinger. The Legislative Counsel's Office

1 actually raised an issue with me this morning, Senator, with  
2 regard to one part of your amendment, and that is the  
3 proposal that would remove the requirement of an annual  
4 appropriation of those fees.

5 Legislative Counsel suggested to us that the  
6 Appropriations Committee takes the position that the Budget  
7 Act requires an annual appropriation for such trust funds  
8 and that the only exception currently in law is the Social  
9 Security Trust Fund.

10 So, they just brought that to our attention.

11 Senator Heinz. Just so people will know what we are  
12 talking about, last year in the Tariff Act of 1984 in Section  
13 236, we allowed small airports which would not be able to  
14 justify the maintenance of a Customs inspector at taxpayers'  
15 expense to go to the Customs Service and say, here, we will  
16 pay all the costs of having that Customs inspector at our  
17 airport so that people can fly in goods and have them  
18 cleared.

19 And it was meant to aid very small airports, a very good  
20 idea. There is a kind of a Catch 22, however, which is the  
21 airport people can collect money but they can't pay them  
22 over to the Customs Service without -- to pay for that  
23 inspector -- a specific appropriation taking place beforehand  
24 under a particular construction of the Budget Act.

25 What it means is that Customs has to first come to us

1 for money before they get any money from the Elmira Airport,  
2 let's say, so we have to appropriate money.

3 At that point, there is no offsetting receipt. We  
4 eventually do get the money, but it is very complicated and  
5 it makes it difficult for these small airports and the  
6 Customs Service to get into business.

7 My understanding is that Customs supports this  
8 amendment, number one. Number two, the argument that Mr.  
9 Kassinger just mentioned is really one between this committee  
10 and the Appropriations Committee.

11 And I gather that Legislative Counsel, while they  
12 advised us of that conflict, thinks we are right.

13 Mr. Kassinger. That is correct.

14 Senator Heinz. My suggestion is that, unless there is  
15 a substantive objection to the amendment, we should adopt it  
16 and fight it with the Appropriations Committee, and we will  
17 find out who is right.

18 Senator Bradley. Would the Senator yield just for a  
19 clarification?

20 Senator Heinz. Yes.

21 Senator Bradley. What you are interested in is to allow  
22 Company X if it chooses to essentially pay for a Customs  
23 official to be at the facility when the goods land or enter.  
24 Right?

25 Senator Heinz. Yes.

1 Senator Bradley. As opposed to having them have to go  
2 through an official port. So, you essentially want a company  
3 to be able to pay for the Customs official to be there.

4 Senator Heinz. The company, the local government,  
5 the airport authority, whatever --

6 Senator Bradley. Your intention is not to exclude  
7 corporations being able to pay for this?

8 Senator Heinz. I honestly can't answer that question  
9 because I don't happen to have -- well, I do have the text  
10 of Section 236 -- but maybe staff could indicate what their  
11 requirements are for that.

12 Mr. Kassinger. For the airports?

13 Senator Heinz. Yes. Can any person make such an  
14 arrangement under Section 236?

15 Mr. Kassinger. The decision is in the hands of the  
16 Customs Service based on certain criteria that were put in  
17 the statute last year, one of which was that one of the  
18 five airports had to be Lebanon, New Hampshire, but the  
19 other four are chosen based on certain factors.

20 Senator Bradley. This year we won't say that? Is that  
21 the idea?

22 Senator Heinz. Bill, let me answer it this way. An  
23 airport can be designated under that Section if the governor  
24 of a State makes -- if there is first a designation by the  
25 governor and the Secretary of the Treasury. I think that is

1 the way it works. Is that not the case?

2 Mr. Kassinger. Yes.

3 Senator Heinz. So, there is some kind of a check here,  
4 but the amendment -- my amendment -- and the Section 236 is  
5 silent on who may request that.

6 So, I think the answer to your question is yes, a  
7 corporation could, almost anyone could request it, but they  
8 have to go through channels.

9 The Chairman. Are there any further comments on the  
10 amendment?

11 Senator Bradley. Could I hear from Mr. Rettinger, Mr.  
12 Chairman?

13 The Chairman. Yes.

14 Mr. Rettinger. As a practical matter, because we are  
15 limited to five airports under the statute, the Secretary of  
16 the Treasury would not only look at the certification by  
17 the governor of the individual State, having more than 50  
18 States, he would also have to look at the balance of what  
19 might be coming through that airport, whether it is to the  
20 benefit of one corporation or the benefit of a community.

21 And in particular, say, the benefit of a community might  
22 outweigh the benefits of a single corporation in a single  
23 area.

24 Senator Heinz. I think maybe Senator Bradley's question  
25 is particularly more relevant to my second amendment which



1 would increase the number of airports that would be eligible  
2 for this from five to twenty. It wouldn't remove the cap.  
3 I would just raise it substantially. That is the second  
4 amendment I would offer.

5 The Chairman. You raise the cap, but the Secretary of  
6 the Treasury can turn them all down if he chooses to?

7 Senator Heinz. He can.

8 Senator Chafee. Why have a cap?

9 Senator Bradley. Because -- I am just ruminating here,  
10 but my guess is that there would have to be at least 50 of  
11 these or at least 26 of these than if you didn't have a cap.  
12 Why the cap is 20 instead of 30 or 40 is probably a  
13 reasonable question, but I assume that there has got to be  
14 an absolute so that you don't have 100 different ports of  
15 entry.

16 Senator Heinz. I think also, to answer John Chafee's  
17 question, if you had no cap, Customs might decide that that  
18 was giving them the carte blanche to take any airport,  
19 whether it was one of the ones we intended to set up or an  
20 existing airport that operates by normal rules and convert  
21 it to a reimbursable airport.

22 Maybe that is a good idea, and maybe that is a bad idea,  
23 but I don't think we want to go that far. And so, I simply  
24 propose raising the number.

25 We can discuss whether 20, or 30 or 15 is a better

1 number. I am proposing 20. If someone wants to make it 30,  
2 I wouldn't object, but I think five is too few, Mr. Chairman.

3 The Chairman. Senator Baucus?

4 Senator Baucus. Mr. Chairman, I sincerely hope that we  
5 keep the number at 20. I agree with the Senator from  
6 Pennsylvania. I am very much concerned that if we have no  
7 cap it will in fact be giving Customs carte blanche, and the  
8 fact is there have been no hearings on this.

9 This is a major change if there is no cap, and I think  
10 we should have hearings.

11 The Chairman. I think at 20 we can handle it, but I  
12 can see Customs becoming a contract-out service and looking  
13 at a way to privatize this or shift it over to the local  
14 port authorities or something of that nature by simply  
15 withholding the expenditure of funds or asking for the local  
16 government to take it over.

17 I think we can live with 20, and it is not going to get  
18 out of hand at 20, and it is not a bad pilot program at that  
19 stage.

20 Senator Baucus. I agree.

21 The Chairman. Are there any objections to the adoption  
22 of the amendment?

23 Senator Heinz. There are two amendments.

24 The Chairman. Yes, there are two amendments. There was  
25 no objection to the first one, as I recall.

1 Without objection they are adopted. Are there other  
2 amendments?

3 (No response)

4 The Chairman. If not, is there objection to reporting  
5 out the authorization for the Customs Service at  
6 \$754,242,000.00?

7 Senator Long. Mr. Chairman, I want to reserve the  
8 right to offer an amendment to provide more money for drug  
9 enforcement.

10 The Chairman. Absolutely. Without objection it was  
11 reported out.

12 Senator Chafee. Could I ask a question, Mr. Chairman?

13 The Chairman. Yes.

14 Senator Chafee. In the discussion here earlier about  
15 the -- what do they call them, testing stations, that  
16 Senator Heinz was discussing?

17 The Chairman. Yes.

18 Senator Chafee. Have we directed Customs not to go to  
19 two, or where do we stand?

20 The Chairman. We asked for a GAO report.

21 Senator Chafee. Oh, You mean, before they can go to  
22 two?

23 Senator Heinz. No. We didn't qualify it.

24 Senator Chafee. We just asked for a GAO report.

25 The Chairman. Correct. Without objection it is

1 reported out.

2 Senator Chafee. Could I ask one other question, Mr.  
3 Chairman?

4 The Chairman. Yes.

5 Senator Chafee. On USTR, you give them exactly the same  
6 dollar --

7 The Chairman. We haven't gotten there yet.

8 Senator Chafee. All right. We are still on Customs.

9 The Chairman. We are still on Customs. Is there any  
10 objection on Customs? I ask that there be a poll of the  
11 absent members.

12 (No response)

13 The Chairman. Now, on USTR, I am recommending  
14 \$13,582,000.00, which is a freeze. It is about \$2 million  
15 higher than the Administration had asked.

16 The Administration had asked for the USTR \$11,431,000.00  
17 which is about a \$2 million cut from the appropriation for  
18 1985. Now, I am suggesting \$13,582,000.00 which is the  
19 1985 appropriation, but it is open for discussion.

20 Senator Moynihan. Mr. Chairman?

21 The Chairman. Senator Moynihan?

22 Senator Moynihan. Could I first of all agree with you,  
23 but second of all, shouldn't this committee ask itself what  
24 is going on in the Executive Branch?

25 We have a whole series of real problems in this

1 country. The problem of substance abuse in our high schools  
2 is getting to be epidemic in many places.

3 Just to cite a New York example, 30 percent of school  
4 children in the seventh grade in New York State have at one  
5 time or another used an illegal drug. And the response from  
6 the Administration is to cut the number of Customs  
7 officials.

8 And we are said to have a problem with deficits and  
9 taxes and responses, and their response is to cut the  
10 number of Internal Revenue Service agents.

11 You know, if you have a problem with taxes, your chances  
12 of getting picked up are not what they were. The Wall Street  
13 Journal had a long article on that.

14 And god knows we have problems with trade negotiations.  
15 Their response is to reduce the amount, and these are pretty  
16 much in the margins -- these aren't big sums.

17 The Chairman. You are talking about \$2 or \$3 million.

18 Senator Moynihan. Yes, not big sums. Does that mean  
19 that there can't be fiscal constraints? There must be  
20 something more, and I think, Mr. Chairman, you are right.

21 I think it is not just this item. I think it is a  
22 pattern there, and I think we ought to ask them about it.

23 The Chairman. Senator Bradley?

24 Senator Bradley. Mr. Chairman, I also noticed in the  
25 committee document -- and I don't know if this is now the

1 case, given your suggestion that we raise it to \$13 million  
2 -- but there was a 5 percent pay cut. Is that for everyone  
3 at the USTR? Was that the proposal?

4 The Chairman. My proposal does not presume that there  
5 is going to be a 5 percent pay cut.

6 Senator Bradley. I see.

7 The Chairman. Are there other comments?

8 (No response)

9 The Chairman. Is there objection to reporting out  
10 the USTR budget?

11 (No response)

12 The Chairman. Without objection. The clerk will poll  
13 the absent members.

14 Let's move on to the International Trade Commission.  
15 I recommend that we report it out at \$28,901,000.00. The  
16 figures on that were that the appropriations for 1985 were  
17 \$25,379,000.00.

18 The Administration has increased that approximately \$3.5  
19 million, asking \$28,901,000.00, and I recommend that number.

20 Senator Heinz. Mr. Chairman, I have an amendment.

21 The Chairman. Senator Heinz?

22 Senator Heinz. The amendment is rather simple. It  
23 requires that in the future the chairman of the commission  
24 be subject to Senate confirmation.

25 Unlike a number of commissions, such as the Consumer

1 Products Safety Commission, the Commodity Futures Trading  
2 Commission, the National Transportation Safety Board, and  
3 so forth, the chairman of this commission is not subject  
4 to Senate confirmation at the present time.

5 By the way, I don't offer this because of any  
6 dissatisfaction with the current chairman, Paula Stern.  
7 I think she is an excellent chairman, but I do think that  
8 this committee would be well advised to have the authority  
9 to confirm any appointee to that commission.

10 We don't see those commissioners for often years at a  
11 time. The decisions they make are very far-reaching, very  
12 important, and I think this simply ties us in and will  
13 require us to do a better job of oversight.

14 The Chairman. It is interesting that when I knew this  
15 amendment was coming up, I had CRS check, and of the 31  
16 agencies and commissions that they reviewed, 20 including  
17 the ITC, have chairmen appointed without our confirmation,  
18 seven are appointed with our confirmation, and four are  
19 elected from among the commissioners.

20 I think that Senator Danforth and Senator Long and I,  
21 at least on the Commerce Committee, are quite used to  
22 dealing with the system you are talking about because almost  
23 all of the commissions you have jurisdiction over the  
24 chairman is confirmed by the standing committee.

25 Senator Long. Mr. Chairman, let's just look at the

1 problem that poses.

2 The last time that we had a chairman, which was Paula  
3 Stern, unless the Administration was going to play some  
4 games which would be contrary to the intent when we started  
5 this system under law, Paula Stern would have been the only  
6 one they could have appointed.

7 Now, if someone had wanted to oppose Paula Stern, where  
8 would we be? I mean, under the law you could not appoint  
9 two of the last, so that the bottom two would have been  
10 ineligible. You couldn't appoint someone of the opposing  
11 party, and assuming you had three Republicans there, you  
12 couldn't appoint one of those.

13 So, none of them under the law could have served. Now,  
14 with this round, as of this moment, only Mr. Eckes -- a  
15 Republican -- and is that Mr. Lodwick, a Republican?

16 Mr. Kassinger. That is correct.

17 Senator Long. At this moment, only those two would be  
18 eligible because there is a vacancy and Mr. Rohr, a  
19 Democrat, and Ms. Lebra, an Independent, were the last two  
20 appointed.

21 So, all the President really has the option to choose  
22 among at this moment would be two Republicans, and for us  
23 to turn one down is just to dictate to him that he has got  
24 to appoint the other one.

25 And I am inclined to think that if the President's own



1 party did that to him, I am inclined to think if I were him,  
2 I wouldn't appoint anybody.

3 There just wouldn't be any chairman because the  
4 appointing authority under the Constitution can only be in  
5 the President, and so by turning down the one he wants, we  
6 would have dictated that he name the other one.

7 And that wasn't intended to be the case either -- that  
8 we dictate or nominate for the President the person that  
9 he has got to take.

10 The Chairman. I was going to suggest that, if the  
11 committee is interested in this amendment and I think it  
12 has some merit, that we would want to change the law that  
13 says that you cannot be one of the two most recently  
14 appointed commissioners and some of the restrictions that  
15 are in the law now to make it more typical of other  
16 commissions where the chair is confirmed.

17 Senator Heinz. I think that is a good modification,  
18 and it would solve, I think, Senator Long's objection.

19 Senator Long. If you are going to do that, then we  
20 ought to get into something else because there is something  
21 else we ought to get into.

22 As I stands right now, there is a vacancy, and the  
23 President, if he wants to, could name either a Democrat or  
24 a Republican to that vacancy.

25 If you regard Ms. Lebra as available for the Republican

1 appointment or a Democratic appointment, he can name either  
2 a Democrat or a Republican.

3 A Democrat would give you three Democrats. Therefore,  
4 she would have to become eligible when the Republicans have  
5 their turn.

6 If he names a Republican, then she would have to take  
7 her shot when the Democrats ordinarily have their turn at  
8 bat.

9 But in any event, Ms. Lebra would be eligible to be  
10 appointed if he named-- Mr. Lang, could he make her  
11 eligible by making her a Democrat or a Republican?

12 Mr. Lang. Yes, sir, because the only rules that would  
13 apply to her are, first, she would not be among the two most  
14 recently appointed commissioners, because she would have  
15 been bumped up one notch, and second, she would not be of  
16 the same political party as the preceding chairperson, who  
17 is Paula Stern, a Democrat.

18 Since Mrs. Lebra is an Independent, she would qualify.

19 The Chairman. Those are the two that I would get rid  
20 of and simply follow the rule on this commission that you  
21 do on others -- that you have to divide the appointees among  
22 the parties, and the President can appoint who he chooses to  
23 appoint, and we confirm.

24 But you would get rid of these restrictions about if you  
25 have a Democrat chairman this time, it has to be a Republican

1 chairman next time, and we get rid of you can't be the two  
2 most recent appointees.

3 Senator Long. Now, it seems to me that down through  
4 the years, there was a lot of good logic in putting it the  
5 way we have it. The purpose was to keep the commission out  
6 of politics.

7 So, the intent was to have three Democrats and three  
8 Republicans. That is why I am inclined to think that if  
9 the President wants to appoint an Independent, it should be  
10 decided when he makes the appointment.

11 Is that Independent to be regarded as eligible when the  
12 Democrats would have that turn or when the Republicans would  
13 have their turn?

14 For example, when Ms. Lebra went on there, my  
15 information was that the White House liked Ms. Lebra,  
16 thought well of her, and they had in mind filling the vacancy  
17 after she was appointed so that she would be eligible to be  
18 the next chairman.

19 I had no objection to that, but I just thought that it  
20 should not be maneuvered so that it would deny Ms. Stern,  
21 who was eligible, her opportunity. It was her turn at bat.  
22 No one else was eligible at that point, and it was the  
23 Democrat's turn.

24 So, I think that we ought to try to get that cleared up,  
25 but we had a good purpose in mind when we said that you can't

1 name one of the last two to go on there.

2 The idea there was that the President just can't go out  
3 and pick whoever he wants -- his person -- and make his  
4 person chairman of the commission immediately thereafter.

5 So, that person has to go on the commission and serve  
6 for a while on the commission before the person is eligible  
7 to be chairman of the commission.

8 My thought is that when we have got the appointment that  
9 much limited, he is going to have to appoint this next time  
10 either a Republican or he has got to fill that vacancy,  
11 which he then could appoint Ms. Lebra.

12 I have no objection to appointing Ms. Lebra, if he wants  
13 to do that, but in any event, it seems to me that what little  
14 discretion he has ought to be left.

15 The Chairman. I wonder if we might do this. Clearly  
16 we have a difference of opinion on this committee as to  
17 whether or not the chairman should be appointed at all, and  
18 what I would like to suggest -- if Senator Heinz doesn't  
19 mind -- is that we send out the authorization -- or we can  
20 wait until next week -- and send it out and bring it up on  
21 the floor.

22 I think you have much merit on your chairman's idea,  
23 but clearly the committee is divided. We have a vote -- a  
24 motion to table the Habner Amendment.

25 We can either send it out with the authorization now,

1 but I am reluctant to adopt the change in the selection of  
2 the chairman, and we can offer it on the floor, or we can  
3 hold it until next week and debate this amendment and the  
4 authorization.

5 Senator Bradley. Mr. Chairman, I think we ought to  
6 move the authorization out, and let this amendment float  
7 out there in never-never land, as far as I am concerned,  
8 and maybe come back to the floor or back to the committee  
9 at another time.

10 The Chairman. I would like to say to Senator Heinz that  
11 I am interested in working with you on this.

12 Senator Long. Here we have got a bipartisan commission.  
13 Now, let me say this. By the time the President is going to  
14 send those two names up, we got into this rhubarb where we  
15 felt it was violating the spirit of the law.

16 The way it worked out in the end, we thought it was  
17 completely within the spirit of the law. And I would support  
18 Ms. Lebra based on my understanding that she is the one they  
19 want the most.

20 Incidentally, this other lady they sent up had been  
21 named by Paula Stern to be the counsel for the Commission,  
22 hadn't she?

23 Mr. Lang. Yes.

24 Senator Long. So, she is very much a part of the whole  
25 setup, and if they want to send her back up now, I guess that

1 is perfectly all right. She could have the job.

2 But keep in mind now, this has been an area where the  
3 State Department has for years wanted to go through that  
4 White House to dictate what that Commission was going to do.

5 And they have been successful in earlier years, and  
6 that is why I wanted to be sure they would remain  
7 independent.

8 And I think the big thing is to insist that they go  
9 strictly by the spirit and the letter of that law to  
10 achieve what you are trying to do.

11 Senator Heinz. Russell, as I understand what you are  
12 saying, you don't necessarily object to having the chairman  
13 confirmed by the committee. What you want to be sure of is  
14 that if there is going to be a rotation, that it be a real  
15 rotation and that a person when appointed is appointed to  
16 either a Republican or Democratic slot and counted as one  
17 or the other, even if they are nominally an Independent.

18 That is what I think you are really insisting on.

19 Senator Long. So far, we have been successful, John,  
20 in achieving what we started to do before you ever came on  
21 the committee.

22 Senator Heinz. Mr. Chairman, you have been successful  
23 for so much time before I came on this Committee -- I hope  
24 I haven't been a burden to you.

25 (Laughter)

1           Senator Long. What I mean is the leverage to confirm  
2 or not confirm these vacancies. We haven't been able to  
3 prevail upon any Administration --

4           Senator Heinz. Let me take Senator Packwood's offer.  
5 Let's report the bill and see if we can't work out an  
6 amendment that would be agreeable.

7           The Chairman. Without objection, the authorization  
8 will be reported out. The clerk will poll the absent  
9 members.

10           We are adjourned.

11           (Whereupon, at 11:25 a.m., the Executive Session was  
12 adjourned.)

C E R T I F I C A T E

This is to certify that the foregoing proceedings of an Executive Session of the Committee on Finance, held on May 7, 1985, were held as herein appears and that this is the original transcript thereof.

*William J. Moffitt*

WILLIAM J. MOFFITT  
Official Reporter

My Commission expires April 15, 1989.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



BOB PACKWOOD, OREGON, CHAIRMAN

BOB DOLE, KANSAS  
WILLIAM V. ROTH, JR., DELAWARE  
JOHN C. DANFORTH, MISSOURI  
JOHN H. CHAFEE, RHODE ISLAND  
JOHN HEINZ, PENNSYLVANIA  
MALCOLM WALLOP, WYOMING  
DAVID DURENBERGER, MINNESOTA  
WILLIAM L. ARMSTRONG, COLORADO  
STEVEN D. SYMMS, IDAHO  
CHARLES E. GRASSLEY, IOWA

RUSSELL B. LONG, LOUISIANA  
LLOYD BENTSEN, TEXAS  
SPARK M. MATSUNAGA, HAWAII  
DANIEL PATRICK MOYNIHAN, NEW YORK  
MAX BAUCUS, MONTANA  
DAVID L. BOREN, OKLAHOMA  
BILL BRADLEY, NEW JERSEY  
GEORGE J. MITCHELL, MAINE  
DAVID PRYOR, ARKANSAS

# United States Senate

COMMITTEE ON FINANCE  
WASHINGTON, DC 20510

WILLIAM DIFENDERFER, CHIEF OF STAFF  
MICHAEL STERN, MINORITY STAFF DIRECTOR

MAY 3, 1985

## MEMO

TO: MEMBERS, COMMITTEE ON FINANCE

FROM: FINANCE COMMITTEE STAFF (TED KASSINGER x4-5472)

SUBJECT: MARKUP ON MAY 7, 1985, REGARDING BUDGET AUTHORIZATIONS FOR THE OFFICE OF THE U.S. TRADE REPRESENTATIVE, THE INTERNATIONAL TRADE COMMISSION, AND THE U.S. CUSTOMS SERVICE

On Tuesday, May 7, the Committee will markup the requests for three agencies for authorizations of appropriations for fiscal year 1986 (FY86). The agencies are the Office of the U.S. Trade Representative, the U.S. International Trade Commission (ITC), and the U.S. Customs Service.

### 1. USTR

Section 141 of the 1974 Trade Act establishes the Office of the U.S. Trade Representative and its responsibilities, which include representing the United States in trade negotiations and administering the trade agreements program; advising the President and the Congress on trade matters, including commodity and investment-related trade issues; and chairing the Cabinet-level Trade Policy Committee. The

Congress last year authorized \$14,179,000 for FY85; only \$13,582,000 was appropriated.

For fiscal year 1986, USTR requests an authorization of \$11,431,000, a decrease of \$2,151,00 (16%) from the 1985 appropriated amount. According to the agency budget submission, this reduction results from these Administration-wide budget initiatives:

- (a) A 1-year freeze in program costs;
- (b) a 10 percent cut in administrative expenses; and
- (c) a 5 percent cut in pay.

## 2. U.S. International Trade Commission

Section 330(e) of the Tariff Act of 1930 requires an authorization of appropriations for the ITC to be enacted for each fiscal year. Appropriations requested by the ITC must be included in the President's budget without revision.

The USITC is an independent fact-finding agency charged with performing important functions in the administration of U.S. trade laws and in the conduct of U.S. trade policy. The

Commission holds administrative hearings, and carries out economic investigations at the request of Congress, the President, or on its own initiative. Its findings are reported to the Congress and to the Executive Branch as either technical advice or as specific, quasi-judicial determinations in cases brought under the trade laws.

Some of the laws that the Commission administers include:

- (a) The import relief provisions of the Trade Act of 1974. The Commission determines whether fairly traded imports are injuring a domestic industry and recommends to the President relief for injured industries.
- (b) The antidumping laws and countervailing duty laws. While the Commerce Department determines whether imports are dumped or subsidized, the Commission determines whether or not the allegedly dumped or subsidized imports are injuring a domestic industry.
- (c) Other unfair import practice laws, involving mostly cases of alleged patent or copyright violations.

Last year, the Congress approved an authorization of \$28,410,000, and an appropriation of \$24,830,000. A pay supplemental, if approved, would bring this total to \$25,379,000. For fiscal year 1986, the ITC seeks an authorization of \$28,901,000. This amount entirely reflects built-in increases; the Commission is not seeking a program increase of any sort.

3. United States Customs Service

Section 301 of the Customs Procedural Reform and Simplification Act of 1978 requires an annual authorization of appropriations for the U.S. Customs Service. The Customs Service is primarily responsible for the collection of customs duties. It also has responsibility for administering over 400 laws and regulations relating to the importation and the exportation of products. These laws range from agricultural inspection, copyright, and patent laws to certain aspects of the Internal Revenue Code.

For FY85, the Congress approved an authorization of \$686,399,000 for Customs, and an appropriation of \$643,465,000. The Service has requested a supplemental appropriation of \$8,446,000, and a budget rescission of

\$1,223,000. If both are approved, the fiscal year 1985 operating level would be \$650,686,000.

For fiscal year 1986, the Service requests an authorization of \$639,102,000. Besides sums necessary to maintain current operating levels, this amount includes new program increases of \$19,429,000, and program reductions of \$31,015,000. The latter are largely attributable to a proposed reduction in personnel of 887 positions.

The Service states that the personnel reductions will be achieved because of "productivity, streamlined operations, and the elimination of duplicative or related functions." The following describes the reductions by functions.

a. Inspection and Control

In its "inspection and control" function Customs is charged with enforcing laws relating to carriers, cargo, and persons entering or departing the country through ports of entry. These responsibilities include duty collection, enforcement of quotas and other trade restraint agreements, and interception of contraband, including drugs. The Service proposes to reduce current staffing levels by 351 positions for this function,

representing a savings of \$3,099,000. The Service argues that these reductions are possible through greater use of automated processing systems and inspection selectivity techniques.

b. Tariff and Trade

Under its "Tariff and Trade" function the Service includes its responsibilities for appraising, classifying, and collecting normal duties on imported merchandise and monitoring trade flows. The Service proposes to reduce this function by 437 positions, again through greater automation, centralization of services, and selectivity. This reduction in personnel would mean a savings of \$20,220,000.

c. Tactical Interdiction

The third Customs function is "tactical interdiction." Programs under this function are aimed principally at countering narcotics and contraband smuggling. The Service plans to eliminate 60 positions relating to this function, for a savings of \$680,000.

d. Investigations

The last Customs function is "investigations". Under this program Customs investigates violations of laws relating to import fraud, cargo theft, smuggling, and illegal exports of critical technology. The Service proposes to cut 39 positions in this function, at a savings of \$7,016,000.

The following charts outline the proposed Customs Service authorization.

February 4, 1985

**United States Customs Service**  
**Recap of Budget Authority/Estimates**  
**(Dollars in Thousands)**

|  | <u>Proposed Level for FY 1985</u> |                  |                  | <u>Proposed Level for FY 1986</u> |                  |                |
|--|-----------------------------------|------------------|------------------|-----------------------------------|------------------|----------------|
|  | <u>Perm. Pos.</u>                 | <u>Avg. Pos.</u> | <u>Amount</u>    | <u>Perm. Pos.</u>                 | <u>Avg. Pos.</u> | <u>Amount</u>  |
| <b>Salaries and Expenses</b>               | <b>13,500</b>                     | <b>13,418</b>    | <b>\$650,688</b> | <b>12,614</b>                     | <b>12,531</b>    | <b>639,102</b> |
| <b>Operations and Maintenance</b>          | --                                | --               | <b>44,425</b>    | --                                | --               | <b>60,425</b>  |
| <b>Forfeiture Fund</b>                     | --                                | --               | <b>6,000</b>     | --                                | --               | <b>8,000</b>   |
| <b>User Fees at Certain Small Airports</b> | --                                | <b>1</b>         | <b>42</b>        | --                                | <b>1</b>         | <b>75</b>      |



Operation and Maintenance, United States Customs Services

ANALYSIS OF AUTHORIZED LEVEL FOR FISCAL YEAR 1985  
(Dollars in Thousands)

|   | <u>Perm. Pos.</u> | <u>Avg. Pos.</u> | <u>Amount</u> |
|---|-------------------|------------------|---------------|
| 1985 Appropriation Enacted by Congress..... | —                 | —                | 44,425        |
| Estimate, 1986.....                         | —                 | —                | 60,425        |

DIGEST OF BUDGET ESTIMATES BY ACTIVITIES FISCAL YEAR 1986

|  | Appropriation |        | Authorized Level |        | Budget Estimate |        | Increase or Decrease (-) for FY 1986 |        |                 |        |               |        |
|--|---------------|--------|------------------|--------|-----------------|--------|--------------------------------------|--------|-----------------|--------|---------------|--------|
|  | FY 1984       |        | FY 1985          |        | FY 1986         |        | Total Changes                        |        | Program Changes |        | Other Changes |        |
|  | Av. Pos.      | Amount | Av. Pos.         | Amount | Av. Pos.        | Amount | Av. Pos.                             | Amount | Av. Pos.        | Amount | Av. Pos.      | Amount |
| 1. Air Operations and Maintenance                              | —             | 34,252 | —                | 44,425 | —               | 60,425 | —                                    | 16,000 | —               | 16,000 | —             | —      |
| Unobligated Balance  |               | 21,740 |                  |        |                 |        |                                      |        |                 |        |               |        |
| Total appropriation, and authorized level, and budget estimate | —             | 56,000 | —                | 44,425 | —               | 60,425 | —                                    | 16,000 | —               | 16,000 | —             | —      |
| Permanent positions established                                | —             |        | —                |        | —               |        | —                                    |        | —               |        | —             |        |

1. Unobligated balance includes \$21,204,000 in no-year funding.

Salaries and Expenses, United States Customs Service

ANALYSIS OF AUTHORIZED LEVEL FOR FISCAL YEAR 1985  
(Dollars in Thousands)

|  | Perm. Pos. | Avg. Pos. | Amount  |
|--|------------|-----------|---------|
| 1985 Appropriation Enacted by Congress.....  | 13,470     | 13,392    | 643,465 |
| Adjustments:                                 |            |           |         |
| 1) Proposed Pay Raise Supplemental.....      | —          | —         | 6,246   |
| 2) Proposed Program Supplemental (OCDE)..... | 30         | 26        | 2,200   |
| 3) Proposed Recession.....                   | —          | —         | -1,223  |
| Proposed Authorized level for 1985.....      | 13,500     | 13,418    | 650,688 |
| Estimate, 1986.....                          | 12,614     | 12,531    | 639,102 |

DIGEST OF BUDGET ESTIMATES BY ACTIVITIES FISCAL YEAR 1986

|  | Appropriation |         | Authorized Level |         | Budget Estimate |         | Increase or Decrease (-) for FY 1986 |         |                 |        |               |         |
|--|---------------|---------|------------------|---------|-----------------|---------|--------------------------------------|---------|-----------------|--------|---------------|---------|
|  | FY 1984       |         | FY 1985          |         | FY 1986         |         | Total Changes                        |         | Program Changes |        | Other Changes |         |
|  | Av. Pos.      | Amount  | Av. Pos.         | Amount  | Av. Pos.        | Amount  | Av. Pos.                             | Amount  | Av. Pos.        | Amount | Av. Pos.      | Amount  |
| 1. Inspection and Control                                      | 6,532         | 286,982 | 6,576            | 294,922 | 6,225           | 298,305 | -351                                 | 3,383   | —               | 6,482  | -351          | -3,099  |
| 2. Tariff and Trade  | 3,541         | 149,418 | 3,522            | 158,736 | 3,085           | 147,370 | -437                                 | -11,366 | —               | 8,854  | -437          | -20,220 |
| 3. Tactical Interdiction                                       | 1,844         | 75,754  | 1,866            | 100,340 | 1,806           | 101,547 | -60                                  | 1,207   | —               | 1,887  | -60           | -680    |
| 4. Investigations  | 1,402         | 83,888  | 1,454            | 96,690  | 1,415           | 91,880  | -39                                  | -4,810  | —               | 2,206  | -39           | -7,016  |
| Unobligated Balance  |               | 3,439   |                  |         |                 |         |                                      |         |                 |        |               |         |
| Total appropriation, and authorized level, and budget estimate | 13,319        | 599,481 | 13,418           | 650,688 | 12,531          | 639,102 | -887                                 | -11,586 | —               | 19,429 | -887          | -31,015 |
| Permanent positions established                                | 13,370        |         | 13,500           |         | 12,614          |         | -886                                 |         | —               |        | -886          |         |

1. Unobligated balance includes \$3,385,000 in no-year funding.

Salaries and Expenses, United States Customs Service

SUMMARY EXPLANATION OF CHANGES REQUESTED FOR FISCAL YEAR 1966  
(Dollars in Thousands)

|  | Inspection and Control |                | Tariff and Trade |                | Tactical Interdiction |                | Investigations |                | Total |                |
|--|------------------------|----------------|------------------|----------------|-----------------------|----------------|----------------|----------------|-------|----------------|
|  | Pos.                   | Ave. Pos. Amt. | Pos.             | Ave. Pos. Amt. | Pos.                  | Ave. Pos. Amt. | Pos.           | Ave. Pos. Amt. | Pos.  | Ave. Pos. Amt. |
| <b>Program Changes:</b>                          |                        |                |                  |                |                       |                |                |                |       |                |
| A. Implementation of Management Savings          | —                      | 2,762          | —                | 1,054          | —                     | 787            | —              | 626            | —     | 5,229          |
| B. Management Initiatives:                       |                        |                |                  |                |                       |                |                |                |       |                |
| 1. Fiber Optics                                  | —                      | 300            | —                | —              | —                     | —              | —              | —              | —     | 300            |
| 2. Integrated Data Telecommunications Network    | —                      | 700            | —                | 700            | —                     | 700            | —              | 700            | —     | 2,800          |
| 3. Automated Commercial System                   | —                      | —              | —                | 6,600          | —                     | —              | —              | —              | —     | 6,600          |
| 4. Treasury Enforcement Communications System II | —                      | 2,720          | —                | 500            | —                     | 400            | —              | 880            | —     | 4,000          |
| 5. Wind Tunnel                                   | —                      | —              | —                | —              | —                     | —              | —              | —              | —     | 500            |
| <b>Total, Program Changes</b>                    | —                      | 6,482          | —                | 8,654          | —                     | 1,887          | —              | 2,206          | —     | 19,429         |



4. Customs Reorganization

For the past several years the Service has sought to reorganize by reducing or eliminating personnel engaged in commercial processing services at many ports and by consolidating various administrative activities. Concern over reorganization plans induced the Committee last year to require the Service to notify the Committee 90 days in advance of any significant reorganization move.

The proposed FY86 budget again contemplates significant reorganization moves that are intended to eliminate 887 positions. 645 of these saved positions will result from consolidation and centralization of various administrative functions. In December, the Service notified the Committee of its intention to implement the first part of these plans, and it has now begun to do so.

These are the elements of the consolidation program:

- a. Centralize administrative functions.--The Service will place most financial, management, and data processing support facilities in Indianapolis. This move is expected to be completed by October 1,

1985. 280 positions will be eliminated from various district and regional offices.

- b. Regional consolidation.--Customs proposes to eliminate two of the seven present regional offices. The Service estimates that 93 positions will be saved by this consolidation.
  
- c. Laboratory consolidation.--Customs seeks to consolidate its present 6 laboratories into 2, leaving one on each coast. 50 positions would be eliminated as a result.
  
- d. Redesignate districts.--Currently there are 45 Customs districts and 57 merchandise appraisement centers. The Service proposes to consolidate and to redesignate these into 29 combined districts and centers. 304 positions would be saved.
  
- e. Centralize drawback activities.--When an article is reexported after import duties have been paid, the importer may be able to claim a refund. This refund is called a "drawback". Customs proposes to consolidate its nine administrative drawback

operations into a single location, for a savings of 16 positions.

- f. Reimbursable ports initiative.--In addition to the 280 positions that the above consolidations would eliminate, Customs may propose legislation to achieve further savings by authorizing the Service to operate small offices on a reimbursable basis. About 200 ports of entry are estimated to fall within Customs' proposal; if legislation were enacted and the services were not reimbursed, the Customs offices would be closed. Assuming that legislation is timely enacted, Customs estimates that 111 positions would be saved in FY86.

5. Customs Users Fees

The Budget Committee, in its instructions to the Finance Committee, assumed the Committee would raise \$493 million in customs users fees. This would require the enactment of legislation. The Service has not yet proposed any specific schedule of fees.

Baucus-Mitchell Amendment

(a) The Commissioner of Customs shall notify the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives at least 90 days prior to initiating any major field reorganization or consolidation or taking any other action which would--

(1) result in a significant reduction in force of employees other than by means of attrition;

(2) eliminate or relocate any district, regional, or border office of the United States Customs Service; or

(3) significantly reduce the number of employees assigned to any district, regional, or border office of the United States Customs Service.

(b) Such notice shall include a statement setting forth in detail the factors taken into account in Customs' decision to take the action described in subsection (a) and an analysis of the impact such action will have on the community and commerce served by the affected office.



PACKWOOD AUTHORIZATIONS PROPOSAL

The following chart summarizes Senator Packwood's proposal for authorizations for the U.S. Trade Representative's Office, the International Trade Commission, and the Customs Service.

|                       | <u>USTR</u>  | <u>ITC</u>   | <u>CUSTOMS SERVICE</u> |
|-----------------------|--------------|--------------|------------------------|
| <u>FY85</u>           |              |              |                        |
| <u>Appropriation:</u> | \$13,582,000 | \$25,379,000 | \$701,155,000          |
| <u>FY86 Request:</u>  | \$11,431,000 | \$28,901,000 | \$707,602,000          |
| <u>Packwood:</u>      | \$13,582,000 | \$28,901,000 | \$754,242,000          |

The Customs Service proposal would be sufficient to fund the 887 positions the Service proposes to cut, and to restore funds sought to be saved through a five percent salary cut.

In addition, Senator Packwood will propose to direct the Service to convert, where possible, positions saved through management efficiencies to line positions, such as inspectors and import specialists.

MAY 2, 1985

MEMO

FROM: FINANCE COMMITTEE STAFF  
TED KASSINGER (o-4-5472)

TO: MEMBERS, COMMITTEE ON FINANCE

SUBJECT: MARKUP OF U.S.-ISRAEL FREE-TRADE AREA AUTHORITY

On Tuesday, May 7, the Committee will markup the President's bill to implement the U.S.-Israel Free-Trade Agreement. The bill was submitted Monday, April 29.

The implementing bill is unamendable. It is based on the draft bill approved by the Committee on March 27, and subsequently agreed to by the Ways and Means Committee.

Attached are copies of the bill and a statement of actions the Administration intends to take in order to implement the Agreement. In substance, the bill would--

- (1) approve the Agreement and statement of administrative action;

- (2) authorize the President to proclaim any tariff reductions or modifications necessary to implement the Agreement or to maintain its balance of concessions.
- (3) pursuant to your compromise proposal last March, prohibit reductions in duties on the most import-sensitive articles before January 1, 1995, unless the Congress approves new legislative authority to do so (such authority would be considered on a "fast track");
- (4) preserve the primacy of U.S. laws in conflict with the Agreement and preclude the creation of private rights of action based upon it;
- (5) authorize the President to promulgate any regulations necessary to implement the Agreement, and statement of administrative action;
- (6) provide for termination of the Agreement only in accord with its terms--other

provisions of U.S. law authorizing  
termination would not be applicable;

(7) authorize the President to modify certain  
buy-American procurement restrictions for  
Israeli suppliers;

(8) amend current law to allow the President  
to submit for "fast-track" consideration  
any future legislation necessary to  
implement the Agreement (such as the  
tariff elimination on sensitive  
products);

(9) modify the fast-track, perishable  
products import relief provision enacted  
as part of the authorization legislation  
in the 1984 Act; and

(10) make technical corrections in the 1984  
Trade and Tariff Act provisions that  
authorized the Agreement.

A BILL

To approve and implement the free trade area agreement between the United States and Israel.

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

SEC. 1. SHORT TITLE.

This Act may be cited as the "United States-Israel Free Trade Area Implementation Act of 1985".

SEC. 2. PURPOSES.

The purposes of this Act are--

(1) to approve and implement the agreement on the establishment of a free trade area between the United States and Israel negotiated under the authority of section 102 of the Trade Act of 1974;

(2) to strengthen and develop the economic relations between the United States and Israel for their mutual benefit; and

(3) to establish free trade between the two nations through the removal of trade barriers.

SEC. 3. APPROVAL OF A FREE TRADE AREA AGREEMENT.

Pursuant to sections 102 and 151 of the Trade Act of 1974 (19 U.S.C. 2112; 2191), the Congress approves--

(1) the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (hereinafter in this Act referred to as "the Agreement") entered into on April 22, 1985, and submitted to the Congress on \_\_\_\_\_, 1985, and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on \_\_\_\_\_

SEC. 4. PROCLAMATION AUTHORITY.

(a) Tariff Modifications.--Except as provided in subsection (c), the President may proclaim--

(1) such modifications or continuance of any existing duty,

(2) such continuance of existing duty-free or excise treatment, or

(3) such additional duties,

as the President determines to be required or appropriate to carry out the schedule of duty reductions with respect to Israel set forth in Annex 1 of the Agreement.

(b) Additional Tariff Modification Authority.--Except as provided in subsection (c), whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the Agreement, the President may proclaim--

(1) such withdrawal, suspension, modification, or continuance of any duty,

(2) such continuance of existing duty-free or excise treatment, or

(3) such additional duties,

as the President determines to be required or appropriate to carry out the Agreement.

(c) Exception to Authority.--No modification of any duty imposed on any article provided for in paragraph (4) of Annex 1 of the Agreement that may be proclaimed under subsection (a) or (b) shall take effect prior to January 1, 1995.

SEC. 5. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES LAW.

(a) United States Statutes to Prevail in Conflict.--No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is in conflict with--

(1) title IV of the Trade and Tariff Act of 1984, or

(2) any other statute of the United States,

shall be given effect under the laws of the United States.

(b) Implementing Regulations.-- Regulations that are necessary or appropriate to carry out actions proposed in any statement of proposed administrative action submitted to the Congress under section 102 of the Trade Act of 1974 (19 U.S.C. 2112) in order to implement the Agreement shall be prescribed. Initial regulations to carry out such action shall be issued within one year after the date of the entry into force of the Agreement.

(c) Changes in Statutes to Implement a Requirement, Amendment, or Recommendation.--

(1) Except as otherwise provided in paragraph (2), the provisions of section 3(c) of the Trade Agreements Act of



1979 (19 U.S.C. 2504(c)) shall apply with respect to the Agreement and--

(A) no requirement of, amendment to, or recommendation under the Agreement shall be implemented under United States law, and

(B) no amendment, repeal, or enactment of a statute of the United States to implement any such requirement, amendment, or recommendation shall enter into force with respect to the United States,

unless there has been compliance with the provisions of section 3(c) of the Trade Agreements Act of 1979.

(2) The provisions of section 3(c)(4) of the Trade Agreements Act of 1979 (19 U.S.C. 2504(c)(4)) shall apply to any bill implementing any requirement of, amendment to, or recommendation made under, the Agreement that reduces or eliminates any duty imposed on any article provided for in paragraph (4) of Annex 1 of the Agreement only if--

(A) any reduction of such duty provided in such bill--

(i) takes effect after December 31, 1989, and

(ii) takes effect gradually over the period that begins on January 1, 1990, and ends on December 31, 1994,

(B) any elimination of such duty provided in such bill does not take effect prior to January 1, 1995, and

(C) the consultations required under section 3(c)(1) of such Act occur at least 90 days prior to the date on which such bill is submitted to the Congress under section 3(c) of such Act.

(d) Private Remedies Not Created.--Neither the entry into force of the Agreement with respect to the United States, nor the enactment of this Act, shall be construed as creating any private right of action or remedy for which provision is not explicitly made under this Act or under the laws of the United States.

#### SEC. 6 TERMINATION.

The provisions of section 125(a) of the Trade Act of 1974 (19 U.S.C. 2135(a)) shall not apply to the Agreement.

#### SEC. 7. LOWERED THRESHOLD FOR GOVERNMENT PROCUREMENT UNDER TRADE AGREEMENTS ACT OF 1979 IN THE CASE OF CERTAIN ISRAELI PRODUCTS.

Paragraph (4) of section 308 of the Trade Agreements Act of

1979 (19 U.S.C. 2518(4)) is amended by inserting after subparagraph (B) the following new subparagraph:

"(C) Lowered threshold for certain products as a consequence of United States-Israel free trade area provisions.--The term 'eligible product' includes a product or service of Israel having a contract value of \$50,000 or more which would be covered for procurement by the United States under the Agreement on Government Procurement as in effect on the date on which the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel enters into force, but for the SDR 150,000 threshold provided for in Article I(1)(b) of the Agreement on Government Procurement."

#### SEC. 8. TECHNICAL AMENDMENTS.

(a) Amendments to the Trade and Tariff Act of 1984.--

(1) Subsection (a) of section 402 of the Trade and Tariff Act of 1984 (19 U.S.C. 2112, note) is amended--

(A) by striking out that portion of paragraph (1) that precedes subparagraph (A) and inserting in lieu thereof: "The reduction or elimination of any duty imposed on any article by

the United States provided for in a trade agreement entered into with Israel under section 102(b)(1) of the Trade Act of 1974 shall apply only if--"; and

(B) by striking out "be an eligible Israeli article" in paragraph (2) and inserting in lieu thereof "meet the requirements of paragraph (1)(A)".

(2) Subsection (e) of section 404 of the Trade and Tariff Act of 1984 is amended--

(A) by striking out "vegetable provided for in" in paragraph (2) and inserting in lieu thereof "fresh or chilled vegetables provided for in items 135.03 through 138.46 of".

(B) by striking out "edible nut or fruit provided for in schedule 1, part 9," in paragraph (4) and inserting in lieu thereof "fresh fruit provided for in items 146.10, 146.20, 146.30, 146.50 through 146.62, 146.90, 146.91, 147.03 through 147.44, 147.50 through 149.21, and 149.50", and

(C) by inserting "juice" after "citrus fruit" in paragraph (6).

(3) Section 406 of the Trade and Tariff Act of 1984 is redesignated as section 405.

(b) Amendments to the Trade Act of 1974.--

(1) Paragraph (3) of section 102(b) of the Trade Act of 1974 (19 U.S.C. 2112(b)(3)) is amended by inserting "that provides for the elimination or reduction of any duty imposed by the United States" after "such other country".

(2) Title V of the Trade Act of 1974 (19 U.S.C. 2461, et seq.) is amended by inserting "or Presidential proclamation" after "Executive order" each place it appears therein.

The United States - Israel Free Trade  
Area Implementation Act

Statement of Administrative Action

The implementing bill for the U.S. - Israel Free Trade Area Agreement approves and implements the free trade agreement negotiated by the United States and Israel under the authority of section 102 of the Trade Act of 1974, as amended by Title IV of the Trade and Tariff Act of 1984.

The implementing bill proposes certain changes to United States trade law which are necessary or appropriate to implement the U.S.-Israel Free Trade Area Agreement. This statement of administrative action, required under the provisions of section 102 of the Trade Act of 1974, summarizes such changes and describes the manner in which the proposed legislation is to be administered.

Implementing Bill

Section 1 -- Short Title

Section 2 -- Purposes of Act

The purposes of the implementing bill includes strengthening of U.S.-Israeli economic relations, the removal of trade barriers between the two nations and Congressional approval of the Agreement negotiated with Israel by the United States.

Section 3 -- Approval of Israel Free Trade Agreement

This section of the legislation provides for approval of the U.S.-Israel Free Trade Area Agreement submitted to Congress under the procedures of section 102 of the Trade Act of 1974, and section 151 of the Trade Act of 1974; and this statement of administrative action.

Section 4 -- Proclamation Authority

Subsection (a) provides the President with the authority to proclaim the changes in the Tariff Schedules of the United States to carry out the schedule of duty reductions set out in Annex 1 of the Agreement. Subsection (c) of this section provides an exception to the exercise of this authority with respect to articles set out in paragraph 4 of Annex 1 of the Agreement. These articles are those which were designated to be "import sensitive" in the report of the United States International Trade Commission to the President on the Probable Economic Effect of Providing Duty Free Treatment on Imports from Israel (Investigation 332-180). At the time of entry into force of the Agreement, the President shall proclaim duty free treatment for all articles provided for in Annex 1 by January 1, 1995. However, by the terms of this Act, the duty reductions for the articles in paragraph 4 of Annex 1 shall not take effect until January 1, 1995. Earlier inclusion of these articles into the Agreement may only occur if Congress passes new legislation.

Subsection (b) provides the President with proclamation authority sufficient to enable the United States to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel as the Agreement evolves and to compensate or retaliate in the event of a trade dispute with Israel. In addition, this section provides sufficient authority for the President to make the necessary changes to the Tariff Schedules of the United States if the United States adopts the Harmonized Commodities Code.

Section 5. -- Relationship of Agreement to United States Law

The implementing bill approves and implements the U.S.- Israel Free Trade Area Agreement negotiated under the authority of section 102 of the Trade Act of 1974. The Agreement is not self-executing and accordingly does not have independent effect under U.S. law. However, the Agreement was negotiated to be fully consistent with Title IV of the Trade and Tariff Act of 1984, and the implementing bill and this statement regarding the administration of U.S. law have been developed to be fully consistent with the Agreement. When this implementing bill becomes effective, it will permit the United States to carry out all of its obligations under the Agreement.

Proposed regulations for the purpose of implementing the Agreement under U.S. law will be published in proposed form for public comment before being put into effect. Initial regulations to implement the Agreement with respect to rules of origin and the fast track procedures for perishable articles shall be prom-



ulgated within six months. Regulations with respect to government procurement shall be promulgated within one year. If, in order to conform U.S. law to a change in the Agreement, an existing statute must be modified or new statutory authority must be granted, the President will be authorized to submit a proposed bill to the Congress under the procedures of section 3(c) of the Trade Agreements Act of 1979.

Any legislation to provide for the duty reductions in the import sensitive articles provided for in paragraph 4 of Annex 1 may be introduced following the expedited procedures under section 151 of the Trade Act of 1974 only if such reductions take effect after December 31, 1985, occur gradually over the period of January 1, 1990 to January 1, 1995, the duty elimination does not occur prior to January 1, 1995, and the Administration consults with Congress at least ninety days before such an implementing bill is submitted. Before the submission of any legislation affecting import sensitive articles, it is the Administration's intention to seek the advice of the United States International Trade Commission on these articles.

No private remedy is created by the entry into force of this Agreement.

Section 6. -- Termination

This provision waives the requirements of section 125(a) of the Trade Act of 1974 which provides a limitation of three years on any agreement entered into under authority of that Act and a six month notice for termination and withdrawal. The Agreement will remain in force unless it is terminated by either the United States or Israel after notification and the expiration of twelve months.

Section 7. -- Lowered Threshold for Government Procurement Under Trade Agreements Act of 1979 in the Case of Certain Israeli Products

A. Summary

Both Israel and the United States are parties to the international Government Procurement Code which was approved by Congress in the Trade Agreements Act of 1979. The Code provides for the waiver of "buy national" restrictions on a reciprocal basis for a broad range of U.S. and Israeli purchases.

Under Article 15 of the Free Trade Area Agreement, the United States and Israel have agreed to a further elimination of government procurement related trade restrictions by lowering, on a bilateral basis, the threshold for application of the Code from 150,000 SDRs (about \$156,000) to \$50,000. Also, Israel will

eliminate buy national restrictions in regard to purchases of non-military products by its Ministry of Defense. It should be noted that unlike the United States, non-military purchases by Israel's Ministry of Defense are not presently covered by the Government Procurement Code.

As part of these actions to remove barriers related to Government Procurement, Israel has also agreed to relax offset requirements in regard to purchases by its civilian agencies. There will be four elements to Israel's implementation of this provision:

1. Offsets will no longer be required in respect of purchases valued at less than \$500,000.
2. Israel will decrease the volume of civilian government procurement from U.S. firms subject to offset requirements from its current level of approximately 40 percent, in terms of value of annual procurement, to a level not to exceed 20 percent.
3. In regard to remaining offset requirements by civilian agencies, Israel will not require warranties or impose penalties to compel U.S. firms to implement offsets.
4. Israel will not use offset requirements to require U.S. firms to purchase goods that are not offered on competitive

terms or to take any other action which is not justified from a commercial standpoint.

The Agreement only applies to purchases by the United States that would be subject to the Code, but for the Code's 150,000 SDR threshold. It will not affect U.S. purchases that are exempt from the Government Procurement Code for other reasons such as purchases subject to the Berry Amendment, federal funding programs, and set-asides for small and minority businesses. Further, the Agreement will not affect labor surplus set-asides. Other areas of procurement not subject to the Agreement include:

1. construction contracts;
2. service contracts (the Agreement does apply to services incidental to the purchase of goods where the value of such services does not exceed the value of the goods);
3. purchases by U.S. agencies which are not subject to the Government Procurement Code (e.g. the Departments of Transportation and Energy, the Bureau of Reclamation, the Corps of Engineers, and the Tennessee Valley Authority);
4. purchases by the Department of Agriculture for farm support and human feeding programs; and

5. purchases by state and local governments.

The Agreement does not apply to purchases that are exempt from Code coverage at the time the Agreement enters into force for reasons other than application of the Code's 150,000 SDR threshold. Therefore, should the coverage of the Government Procurement Code be broadened through renegotiation, the coverage of the Free Trade Agreement will not be affected. However, should the number of U.S. or Israeli agencies subject to the Code be broadened through renegotiation, the Agreement provides that priority consideration will be given to similarly amending the Agreement.

The procurement provisions of the Free Trade Agreement will not take effect for purchases by civilian agencies, or in regard to offset requirements, until one year after the Agreement enters into force. This one year delay was provided to allow both the United States and Israel sufficient time to modify their procurement practices and familiarize procurement officials with these new practices. The Agreement's provisions regarding procurement by our Defense Department and Israel's Ministry of Defense will not take effect until one year after entry into force of the Agreement or one year after completion of Israel's list of national security exceptions, whichever is later. This approach was taken to ensure that there will be sufficient time for Israel to prepare its list of national security exceptions which we can agree is comparable in character and extent to the

U.S. list of national security exceptions.

B. Administrative Action

Section 7 of the proposed bill would authorize the President to waive procurement restrictions in respect of Israel for all purchases subject to the U.S.-Israel Free Trade Area Agreement, (i.e. products or services of Israel of a contract value of at least \$50,000 currently covered by the Government Procurement Code but for the SDR 150,000 threshold). This waiver authority is strictly limited to such purchases covered by the Agreement. Therefore, it could not be used to waive restrictions which are not subject to the Agreement such as the Berry Amendment, funding restrictions on federal grant aid, or set-asides for small, minority or labor surplus concerns.

Using the authority provided under this provision, the President will waive laws, regulations and practices as necessary to comply with the Agreement. These waivers will not take effect until the procurement provisions of the Agreement come into effect. Agencies will be instructed to modify their regulations accordingly. Section 25 of the Federal Acquisition Regulations will thereby be amended to provide for waiver of the Buy American Act and Balance of Payments Program for purchases subject to the Agreement.

The Administration will make a concerted effort to assist U.S. firms to take full advantage of the opportunities created by the Agreement. These actions will include providing information to U.S. firms on the Israeli procurement market and upcoming

purchases as well as closely monitoring implementation of the Agreement.

C. Effects on U.S. Law

1. Existing Legislation Which Will Be Affected by the Agreement

Buy American Act (41 U.S.C. 10, and E.O. 10582 of December 17, 1954) -- Buy American preference margins in favor of domestic firms will be waived in respect of purchases subject to the Agreement.

2. Related Legislation Which Will Not be Affected by the Agreement

a) Small Business, Labor Surplus Area, and Minority Business Programs -- Set-asides, that is, purchases reserved for small, labor surplus area and minority businesses are excluded from the Agreement's coverage.

b) "Berry Amendment" Types of Restrictions on the Department of Defense -- (Department of Defense Appropriations Act, P.L. 95-457) The Berry Amendment and similar restrictions will continue to apply, requiring DoD to purchase, solely from U.S. sources, its needs for textiles, clothing, shoes, food, stainless steel flatware, certain specialty metals, buses (P.L. 90-500, Sec. 404)

ships, and components thereof (Byrnes-Tollefson Amendment to DoD Appropriations Act).

c) Hand Tools (GSA Appropriations Act) -- Fifty percent differential in favor of domestic suppliers for all procurements of hand tools will not be affected because purchasing entities are not covered.

d) Prison-and Blind-Made Goods -- (18 U.S.C. 4124 and 41 U.S.C. 48) are an exception to the Agreement's coverage.

e) Cargo Transportation Preferences -- (10 U.S.C. 2631, 46 U.S.C. 1241 (B) (1), International Air Transportation Fair Competitive Practices Act of 1974, P.L. 92-623) are specifically not covered by the U.S. as a service "incidental" to a procurement.

#### Section 8. -- Technical Amendments

Subsection (a) (1) provides for a technical change to section 403 of the Trade and Tariff Act of 1984 in order that the rules of origin requirements set out for an agreement with Israel shall be made part of U.S. domestic law.

Subsection (a) (2) brings the provision of section 404 of the Trade and Tariff Act concerning emergency relief for agricultural perishables into conformity with the product coverage under section 213(f) of the Caribbean Basin Recovery Act.

Subsection (a) (3) redesignates a misnumbered section in the



Trade and Tariff Act of 1984.

Subsection (b) (1) amends section 102 of the Trade Act of 1974, as amended by the Trade and Tariff Act of 1984, to clarify the intention of the Congress that no trade benefit resulting from a trade agreement providing for reductions in duty shall be extended to any country by reason of the extension of any trade benefit to another country.

Subsection (b) (2) amends the Trade Act of 1974 to enable the President to make the necessary changes in the Tariff Schedules of the United States to reflect the tariff changes for this Agreement.

Plan for Implementation

I. Changes Necessary in Tariff Schedules of the United States.

Proposed Use of Section 5 Proclamation Authority

As the first step in implementing U.S. duty reductions with respect to products of Israel provided for in Annex 1 of the Agreement, the President, under the authority granted in Section 5 of the implementing legislation, will proclaim the modifications in the Tariff Schedules of the United States (TSUS) necessary to carry out the Agreement. The proclamation will provide immediate duty-free treatment for some products of Israel on the date the Agreement enters into effect. For some products, it will provide reduced duties on the effective date of the Agree-

ment, a second duty reduction January 1, 1987, and duty-free treatment on January 1, 1989. For a third group of products, the proclamation will remove duties in eight staged reductions, with the final stage of duty-free treatment to become effective January 1, 1995. The proclamation will provide duty free treatment on a small group of products specified in paragraph 4 of Annex 1 of the Agreement effective January 1, 1995.

The Free Trade Area Agreement with Israel becomes the fifth special tariff regime providing preferential tariff treatment for products of certain countries to be incorporated into the present tariff schedules since they became effective in 1963. As these past special regimes were developed, a different method was used to reflect each of these in the TSUS, each adding its own complexity to an already difficult and complicated document. To simplify the manner in which these special regimes are reflected in the TSUS, the Administration has decided to make a substantial change in the format of the TSUS at the time the special tariff treatment for products of Israel is implemented.

The TSUS presently contains three rate columns (Column 1, LLDC, and Column 2). Preferential duty-free status for certain products from certain countries under the Generalized System of Preferences (GSP) is indicated by annotations (A or A\*) in a GSP column preceding the item number. Preferential duty-free treatment for imports, with certain exceptions, from certain countries under the Caribbean Basin Economic Recovery Act is provided in a headnote. The exceptions also are flagged by underlining the statistical suffix to the TSUS item.

In the proposed new format of the TSUS, the "LDDC" rate column will be deleted and replaced by a column entitled "Special". This "Special" column will be used to reflect for each TSUS item the preferential tariff treatment, if any, associated with that item under all present and future special tariff programs, except the duty-free treatment accorded Canadian automotive products under the Automotive Products Trade Act of 1965. The GSP column on each page will be deleted.

Programs under which preferential tariff treatment may be provided at the time the new format goes into effect, and the corresponding symbols for such programs as they will be indicated in the "Special" column, are as follows:

|   |         |
|---|---------|
| Generalized System of Preferences (GSP)       | A or A* |
| Least Developed Developing Countries (LDDC)   | D       |
| Caribbean Basin Economic Recovery Act (CBERA) | E or E* |
| Products of Israel I                          |         |

Following is a hypothetical example of the new format --

| <u>Item</u> | <u>Articles</u> | <u>Rates of duty</u> |                  |                 |
|-------------|-----------------|----------------------|------------------|-----------------|
|             |                 | <u>Column 1</u>      | <u>Special</u>   | <u>Column 2</u> |
| 791.35      | Leather welting | 4% ad val.           | 3.7% ad val. (D) | 12.5% ad. val.  |
|             |                 |                      | Free (A, E, I)   |                 |

In this example, leather welting imports will be dutiable--

- a) at a rate of 4% ad valorem if the product of countries entitled to MFN treatment (but not entitled to "special" tariff treatment);
- b) at a rate of 12.5% ad valorem if the product of countries subject to column 2 treatment;
- c) at a rate of 3.7% ad valorem if the product of countries entitled to LDDC treatment; or
- d) at a rate of free if the product of Israel or of countries entitled to treatment under the GSP or CBERA programs.

In addition to this change in format, TSUS general headnote 3 will be modified to add a new subdivision reflecting the preferential tariff treatment for products of Israel. The headnote also will be modified to make conforming changes to the language of the subdivisions relating to the GSP, LDDC and CBERA programs. Certain TSUS product descriptions will be modified to create new subcategories in existing TSUS items in order to reflect the differences in tariff treatment which products in these items will receive under the U.S.-Israel Free Trade Area Agreement. Most of these new TSUS items are expected to be created in schedule 3.

## II. Fast Track Procedures for Perishable Articles

Section 404 of the Trade and Tariff Act of 1984 provides for the procedure by which an entity representative of a U.S. industry producing perishable agricultural products can submit a request to the U.S. Department of Agriculture for emergency relief from increased, injurious imports of like products from Israel.

Upon passage of the U.S.-Israel Free Trade Area Implementation Act, the Administration intends to publish in the Federal Register a proposed rule for public comment to establish the necessary regulations to implement section 404.

The following shall be the text of the proposed rule:

List of Subjects in 7 CFR Part 1540

International agricultural trade, Israel, Perishable products

Part 1540--[AMENDED]

In accordance with the above, it is proposed to amend 7 CFR Part 1540 by adding the following new Subpart B -- Emergency Relief from Certain Perishable Products Imported from Israel:

SUBPART B--EMERGENCY RELIEF FROM CERTAIN PERISHABLE PRODUCTS  
IMPORTED FROM ISRAEL

Sec.

1540.20 Applicability of Subpart.

1540.21 Definitions.

1540.22 Who May File Request.

1540.23 Contents of Request.

1540.24 Determination of the Secretary of Agriculture.

1540.25 Information.

Authority: Sec. 404, P.L. 98-573; 5 U.S.C. 301.

Cross Reference: For U.S. International Trade Commission regulations concerning investigations of import injury and the rules pertaining to the filing of a Section 201 petition, see 19 CFR Part 206.

1540.20 Applicability of Subpart.

This subpart applies to requests filed with the Department of Agriculture under section 404 of the Trade and Tariff Act of 1984, P.L. 98-573, (the "Act"), for emergency relief from imports of certain perishable products from Israel entering the United

States at a reduced rate of duty or duty-free pursuant to a trade agreement between the United States and Israel entered into under Section 102(b)(1) of the Trade Act of 1974, as amended.

1540.21 Definition.

"Perishable product" means:

(1) live plants provided for in subpart A of part 6 of schedule 1 of the TSUS;

(2) fresh or chilled vegetables provided for in items 135.03 through 138.46 of the TSUS;

(3) fresh mushrooms provided for in item 144.10 of the TSUS;

(4) fresh fruit provided for in items 146.10, 146.20, 146.30, 146.50 through 146.62, 146.90, 146.91, 147.03 through 147.33, 147.50 through 149.21 and 149.50 of the TSUS.

(5) fresh cut flowers provided for in items 192.17, 192.18 and 192.21 of the TSUS; and

(6) concentrated citrus fruit juice provided for in items 165.25 and 165.35 of the TSUS.

1540.22 Who May File Request.

A request under this subpart may be filed by an entity, including a firm, or a group of workers, trade association, or certified or recognized union which is representative of a domes-

tic industry producing a perishable product like or directly competitive with a perishable product that such entity claims is being imported from Israel into the United States at a reduced duty or duty-free under the provisions of a trade agreement between the United States and Israel entered into under Section 102(b)(1) of the Trade Act of 1974, as amended, in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to such domestic industry.

1540.23 Contents of Request.

A request for emergency action under Section 404 of the Act shall be submitted in duplicate to the Administrator, Foreign Agricultural Service, United States Department of Agriculture, Washington, D.C. 20259. Such request shall be supported by appropriate information and data and shall include to the extent possible: (1) a description of the imported perishable product(s) allegedly causing, or threatening to cause, serious injury; (2) data showing that the perishable product allegedly causing, or threatening to cause, serious injury is being imported from Israel during a previous representative period of time (including a statement of why the period selected by the petitioner should be considered to be representative); (3) evidence of serious injury or threat thereof to the domestic industry substantially caused by the increased quantities of imports of the product from Israel; and (4) a statement indicating why emergency action would be warranted under Section 404 of the Act



(including all available evidence that the injury caused by the increased quantities of imports from Israel would be relieved by the withdrawal of the reduction of the duty or elimination of the duty-free treatment provided to the product under the trade agreement). A copy of the petition and the supporting evidence filed with the United States International Trade Commission under Section 201 of the Trade Act of 1974, as amended, must be provided with the request for emergency action.

1540.24 Determination of the Secretary of Agriculture.

If the Secretary of Agriculture has reason to believe that the perishable product(s) which is the subject of a petition under this subpart is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing a perishable product like or directly competitive with the imported perishable product and that emergency action is warranted, the Secretary, within 14 days after the filing of the petition under section 1540.23 shall recommend to the President that the President take emergency action. If the Secretary determines not to recommend the imposition of emergency action, the Secretary, within 14 days after the filing of the petition, will publish a notice of such determination and will so advise the petitioner.

1540.25 Information

Persons desiring information from the Department of Agriculture regarding the Department's implementation of Section 404 of Foreign Agricultural Service, United States Department of Agriculture, Washington, D.C. 20250.

III. Rules of Origin Applicable to Israel

A. Summary

The Free Trade Area Agreement incorporates country of origin rules that impose a two part origin requirement for determining the eligibility of articles entered into the United States under the provisions of the Agreement:

1. An article must be a product of Israel;
2. At least 35% of the appraised value of the article at the time of entry must be attributed to the cost or value of materials which are products of Israel and the direct costs of processing performed in Israel.

In addition to these origin requirements, articles entered under the Agreement must be imported directly from Israel to the United States.

The Agreement also requires that a certificate of origin be submitted for all articles entered under the Agreement. A declaration, under certain circumstances, may be required in addition to the certificate of origin.

**B. Administrative Action to Implement Annex 3 of the Agreement**

Customs Service regulations will be amended to reflect the entry requirements for articles to be entered under the Agreement. The Customs Service regulations will reflect the language and purpose of the Agreement in order to facilitate its effective implementation and enforcement. No significant problems are anticipated.

The country of origin requirements are intended to be like those currently applied by the United States under the Caribbean Basin Initiative. That is, an article must not only be a product of Israel, but it must also satisfy the 35% content requirement. In order to be a "product of Israel" an article must either be wholly the growth, product, or manufacture of Israel as defined in Section 3, or it must be the product which, as a result of substantial processing performed in Israel, is a new and different article of commerce distinct from the materials or articles from which it is produced. This change is a substantial transformation.

The concept of substantial transformation is a concept which is intended to avoid excessive rigidity in determining origin. It is not a mere valued-added test. It requires, in the minimum,

that a substantial processing operation be performed which results in a commercially significant change in the nature or essence of the article or material being processed. The article must be the result of a processing operation that is substantial or significant. For example, simple combining or packaging, or mere dilution are processing operations that do not result in a substantial transformation. This concept is the same as that which is applied by the U.S. Customs Service pursuant to existing regulations, administrative decisions and judicial opinions.

Questions concerning whether or not processing results in a substantial transformation will be treated on a case by case basis. The existing Customs Regulations provide an adequate procedure by which an interested party may obtain a ruling on any question concerning what constitutes a substantial transformation in a particular case. Final administrative determinations as to whether an article imported into the United States has been substantially transformed will be made by the U.S. Customs Service. Section 11 of Annex 3 of the Agreement provides for consultation and proposal of amendments in the event that the Government of Israel believes that a determination by the Customs Service has negated the benefits intended under this Agreement.

Sections 6 and 7 of Annex 3 provide guidance on what are includable costs for purposes of determining the cost or value of materials produced in Israel and the direct costs of processing in Israel.

Section 8 of Annex 3 defines the term "imported directly" which is a requirement for treatment under the provisions of the Agreement. Section 8(c) provides for a complicated but commercially realistic and enforceable application of the direct shipment requirement to articles that do not meet the conditions of Section 8(b). It applies to articles shipped from Israel to an intermediate country and which 1) remain under the customs control of that intermediate country, 2) are not entered into the commerce of that country for consumption, 3) are not subjected to processing operations, and, 4) if sold while under customs control in the intermediate country, are sold only once and at a sale other than retail by the person who exported the articles from Israel (or his sales agent) to the person who subsequently imports the articles into the United States. Furthermore, a certificate of origin will still be required.

Articles imported directly from Israel within the meaning of Section 8(c) will have to be identified as being the articles exported from Israel. In this regard, sufficient documentation shall be presented or may be requested by the Customs authorities so that the articles imported into the United States can be traced and so identified. This may involve, in addition to the certificate of origin, submission of copies of the invoices, original bills of lading, and subsequent shipping documents which identify the articles by quantity, number, marks, and other descriptions. Other reasonable evidence may be requested to verify that the articles are imported directly within the meaning of Section 8(c).

Article 9 of Annex 3 provides for a certificate of origin to be presented by the exporter that is to be submitted for articles entered under the Agreement. The information on the certificate is essentially the same as that which is currently required on the Form A used for the Generalized System of Preferences. The certificate of origin is a requirement. Waiver of this form, however, may be obtained at the discretion of the responsible Customs officer having jurisdiction over the entry of the articles. Usually submission of other satisfactory evidence of origin will be required.

A certificate of origin will not be required, however, for articles imported from Israel and entered under an informal entry procedure. The types of entries in this case will be entries of articles on a traveller's baggage declaration and entries of unaccompanied merchandise or commercial purchases which are valued at under \$1,000, whether shipped by mail or otherwise. In order to preclude fraud or circumvention of the country of origin requirements, the Customs officer may request documentation or other evidence as to origin in order to show that commercial shipments have not been split so as to avoid formal entry requirements. The purpose of this exception is to eliminate an excessive burden on a person who usually purchases at retail from a party who is not qualified to issue a certificate of origin. Furthermore, entries of articles in these cases should not present a significant threat to the purposes and enforcement of the Agreement.

Under circumstances in which the accuracy of the statements is questionable or there is suspicion of fraud, a detailed supporting declaration may be requested from the person who prepared the certificate or origin. The content of the declaration is described in Section 9. It is also anticipated that random verification of certificates of origin will also require requests from this declaration.