

CONTENTS

- I. Introduction
 - A. Purpose and Summary
 - B. Background
 - C. Legislative History
- II. Explanation of the Resolution
- III. Votes of the Committee
- IV. Budget Effect
 - A. Committee Estimate of Budgetary Effects
 - B. Statement Regarding New Budget Authority and Tax Expenditures
 - C. Cost Estimate Prepared by the Congressional Budget Office
- V. Other Matters to be Discussed Under the Rules of the House
 - A. Committee Oversight Findings and Recommendations
 - B. Summary of Findings and Recommendations of the Committee on Government
Reform and Oversight
 - C. Constitutional Authority Statement
- VI. Changes in Existing Law Made by the Bill, as Reported
- VII. Dissenting Views

I. INTRODUCTION

A. PURPOSE AND SUMMARY

H.R. 3129, as amended, would authorize appropriations for fiscal year FY 2002 and FY 2003 for the U.S. Customs Service, including specific authorization for anti-terrorism, drug interdiction and the prevention of child pornography. The bill would also provide more funding to textile transshipment efforts and assistance to African countries for implementation of the African Growth and Opportunities Act. The bill would further dedicate resources to reestablish the New York Customs offices formerly at the World Trade Center, which were destroyed in the terrorist attack of September 11th, and it would provide more resources to the Northern Border. H.R. 3129 would also authorize full funding for the Customs Automated Commercial Environment. H.R. 3129 would also authorize appropriations for the Office of the United States Trade Representative (USTR) and the International Trade Commission (ITC).

H.R. 3129, as amended, would make corrections to the overtime and premium pay for Customs inspectors and increase the premium pay for inspectors working night-time hours. It would also relax the manner in which the fiscal-year \$30,000 cap for overtime pay is calculated by removing premium pay from the cap. The bill would alter the hours in which night-time premium pay would be available while using the savings to increase night-time premium pay for inspectors actually working at night.

H.R. 3129, as amended, would also give the U.S. Customs Service authority to fight against terrorism and drug smugglers through several new tools. Customs inspectors would be immune from civil suits as a result of personal searches at the border if they act in good faith. Customs Service would have the authority to search outbound mail so long as privacy and Fourth Amendment protections are observed. The Treasury Department would also be required to build a system through the regulatory process to handle the collection of advanced information for inbound cargo, as well as inbound and outbound passengers, from carriers for the purpose of targeting both terrorist activity and smuggling.

H.R. 3129, as amended, would also authorize several studies and reports on Customs' operations including a report on the personnel practices of the Customs Service, on the accounting and auditing procedures of Customs, on the monitoring and enforcement of textile transshipment, on Customs' anticipated improvements to stop delays in issuing prospective rulings, and on determining the proper level of fees charged by Customs on importers. The first two reports would be issued by Customs, and the last three would be issued by the General Accounting Office. The bill would also change Customs' audit process by requiring that overpayments found during an audit be used as offsets for any underpayments also found, permit emergency adjustments to Customs offices and staff during emergencies, and permanently raise the duty exemption on U.S. residents returning from abroad from the current \$400 to \$800.

B. BACKGROUND

1. Authorization of Appropriations

The Committee on Ways and Means has adopted a two-year authorization process to provide Customs, USTR, and the ITC with guidance as they plan their budgets, as well as guidance from the Committee for the appropriations process. In preparing H.R. 3129, the Committee considered the President's budget for FY 2002. Although each agency submitted its FY 2002 budget request, the Committee has relied upon anticipated cost inflation from the Congressional Budget Office as a guide for FY 2003. The statutory basis for the authorizations of appropriations is as follows: for Customs, section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)); for USTR, section 141(g)(1) of the Trade Act of 1974 (19 U.S.C. 2171(g)(1)); and for the ITC, section 330(e)(2)(A) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(2)(A)).

2. Customs Cyber-smuggling Center

Customs enforces laws against international trafficking of child pornography the laws at its Cyber-smuggling Center. This legislation is needed for additional funding for Customs to expand its efforts in preventing on-line child pornography.

3. Customs Automation

Customs' current automation system, the Automated Commercial System (ACS), is an aging 17-year-old system which has experienced several "brownouts." In addition, under the Customs Modernization Act (Mod Act) that was part of the North American Free Trade Agreements Act (title VI), Customs is required to provide increased electronic processing for entries, informed compliance, and record keeping, but ACS does not have the capacity to meet these modernization requirements. Customs plans to replace ACS with the Automated Commercial Environment (ACE).

4. Customs Personnel Issues

The Act of February 13, 1911, as amended, known as the "1911 Act," created the original overtime pay system for Customs inspectors. The Act authorized Customs to compensate officers at a rate of two days of basic hourly pay for Sundays, and a rate of two days of basic hourly pay plus the basic hourly rate for holidays. Minimum compensation for nighttime pay--5 p.m to 8 a.m.--was 4 to 12 hours of pay. Section 13811 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1993, known as the Customs Officer Pay Reform Amendments (COPRA), amended the 1911 Act with regard to the overtime and premium pay system for Customs inspectors and canine enforcement officers, effective January 1, 1994. Only inspectors and canine officers are covered by the reforms, and only when performing inspections. Clerical and support staff are no longer eligible for double time and are covered--as are most other Federal employees--under the Federal Employees Pay Act (FEPA), at 1 ½ regular pay. The COBRA of 1993 also amended overtime compensation paid to Customs officers as part of the basic pay for the Civil Service Retirement System. Compensation may not exceed 50 percent of the statutory maximum in overtime pay for Customs officers (i.e., \$15,000, that is, 50 percent of \$30,000). Due to a number of arbitration rulings, Customs has been required to pay both overtime and premium pay to Customs officers for work not performed. Further, the changes Congress made to the night pay system for Customs in 1993 have resulted in an unforeseen circumstance where

Customs officers can receive night pay for working at 12:00 noon in certain instances. The Treasury Inspector General has called for a legislative change to correct the night pay system.

Customs was subject to a partnership agreements with its union that prevent it from permanently reassigning Customs officers without the affected employees' consent. Customs' ability to temporarily reassign officers without officers' consent was also limited under the partnership agreement with the union. Concerns were raised that the requirement that Customs officers and inspectors agree to such rotations may affect Customs drug interdiction efforts and the integrity of the border workforce. In addition, there have been a number of incidents in which implementation of certain inspection procedures were delayed because of union objections to the procedures. While these particular incidents have been resolved, there have been questions raised as to whether drug interdiction efforts were compromised.

C. LEGISLATIVE HISTORY

The Subcommittee on Trade of the Committee on Ways and Means held a public hearing on July 17, 2001, on Customs, USTR, and the ITC budget authorizations for FY 2002 and 2003 as well as other Customs issues, including compensation for Customs officers, funding for Customs Automated Commercial Environment (ACE) and the International Trade Data System (ITDS), and labor/management issues. Acting Customs Commissioner Winwood, Mr. Dennis Schindel of the Treasury Inspector General's office, Ms. Laurie Ekstrand of the U.S. General Accounting Office (GAO), and representatives of the various sectors of the trade industry testified. Acting Commissioner Winwood stressed the need for ACE and detailed steps Customs has taken to improve ACE project management.

Ms. Ekstrand acknowledged that Customs has begun to implement the recommendations made in the GAO report. Representatives of the trade industry were unified in their opinion that ACE is desperately needed and that Customs could effectively manage a project the size of ACE. On Customs labor issues, testimony was received from Mr. Dennis S. Schindel, Deputy Inspector General for Audit, Office of the Inspector General, and from Ms. Colleen Kelley, President of the National Treasury Employees Union (NTEU). In his testimony, Mr. Schindel stated that although the Customs Officers Pay Reform Act (COPRA) was intended to reduce Customs overtime costs for inspectional services, COPRA instead has resulted in an increase in Customs premium pay costs. Ms. Ekstrand also commented on a recent GAO study indicating that Customs took far too long in issuing prospective rulings.¹

On October 16, 2001, Mr. Crane introduced H.R. 3129, and the Committee held a mark-up of the bill on October 31, 2001. Four amendments were offered at the mark-up: Mr. Stark on behalf of Mr. Rangel offered an amendment to strike sections 123 and 124 of H.R. 3129, the effect of which would maintain the current night differential pay rate schedule for Customs officers. Mr. Stark's amendment was defeated by a recorded vote of 13 ayes to 20 nays. Mr. Becerra offered and withdrew a non-germane amendment to give Customs inspectors law

¹Prospective rulings are issued by Customs at the request of importers seeking guidance on various matters such as the classification or the valuation of certain goods.

enforcement status. Mr. McDermott offered an amendment to strike section 141, the effect of which would be to deny the provision's civil lawsuit immunity to Customs inspectors. Mr. McDermott's amendment was defeated by voice vote. Chairman Thomas offered an amendment in the nature of a substitute that passed the Committee by 20 ayes to 14 nays. The Committee then ordered the bill favorably reported, as amended, by voice vote. The Committee then moved that the Chairman have the authority to offer such motions as may be necessary to go to conference, and the motion passed by roll call vote 2 present, 19 ayes, and 1 nay. Eight Members passed on this vote.

II. EXPLANATION OF THE BILL

TITLE I--UNITED STATES CUSTOMS SERVICE

Subtitle A-- Drug Enforcement and Other Noncommercial and Commercial Operations

Sec. 101. Authorization of appropriations for noncommercial operations, commercial operations, and air and marine interdiction.

Present law

The statutory basis for authorization of appropriations for Customs is section 301(b)(1) of the Customs Procedural and Simplification Act of 1978 (19 U.S.C. 2075(b)). That law, as amended by section 8102 of the Omnibus Budget Reconciliation Act of 1986 [P.L. 99-509], first outlined separate amounts for non-commercial and commercial operations for the salaries and expenses portion of the Customs authorization. Under 19 U.S.C. 2075, Congress has adopted a two-year authorization process to provide Customs with guidance as it plans its budget, as well as guidance from the Committee for the appropriation process.

The most recent authorization of appropriations for Customs (under section 101 of the Customs and Trade Act of 1990 [P.L. 101 382]) provided \$118,238,000 for salaries and expenses and \$143,047,000 for air and marine interdiction program for FY 1991, and \$1,247,884,000 for salaries and expenses and \$150,199,000 for air and marine interdiction program in FY 1992.

Explanation of the Provision

This provision authorizes \$1,006,501,000 for FY 2002 and \$1,032,567,000 for FY 2003 for noncommercial operations of the Customs Service. It also authorizes \$1,378,725,000 for FY 2002 and \$1,414,432,000 for FY 2003 for commercial operations of the Customs Service. Of the amounts authorized for commercial operations, \$308,000,000 is authorized for the automated commercial environment computer system for each fiscal year. The provisions require that the Customs Service provide the Committee on Ways and Means and the Committee on Finance of the Senate with a report demonstrating that the computer system is being built in a cost-effective manner. In addition, the provisions authorizes \$183,853,000 for FY 2002 and \$188,615,000 for FY 2003 for air and marine interdiction operations of the Customs Service. The provision requires submission of out-of-year budget projections to the Ways and Means and Finance Committees.

Reason for change

The Committee notes that this non-commercial versus commercial split supplied by Customs does not provide meaningful information. The information is not the result of the collection of cost data on a continual basis. Rather Customs apportions its budget through this artificial division based upon an ad hoc survey performed years ago and that is no longer available. The survey estimated that a certain percentage of Customs' activities were commercial-related, and the rest non-commercial, and based upon that conclusion, Customs merely takes its overall budget and multiplies it by that static percentage to arrive at its estimation from year to year. Obviously, this methodology is woefully inadequate since actual costs for various functions change from year to year. The methodology, if it was ever accurate, is now at best a rule of thumb. For this reason, the Committee has addressed this problem in Sections 134 and 136 of the bill.

Regarding noncommercial spending, the Committee is committed to giving Customs the resources needed to increase the overall level of Customs officers and Special Agents dedicated to countering terrorism, narcotics, and money laundering activities. Accordingly, the authorization for non-commercial operations for both fiscal years 2002 and 2003 is substantially larger than the President's request, providing Customs with the resources to stop terrorists and drugs from entering this country while at the same time expediting the entry of legitimate persons and cargo. The Committee notes that during this time of emergency, a reevaluation of Customs needs by the Administration, along with the needs of all anti-terrorist agencies, has only just begun. The Committee looks forward to the Administration's stock-taking and commits to review any updated requests from the Administration.

Regarding commercial spending, the Committee recognizes Customs' efforts to modernize its operations to meet both its enforcement and trade facilitation missions. Customs plans to spend over \$1 billion over the next few years to modernize its automation systems. The current Customs import processing system, the Automated Commercial System (ACS), is 17 years old. Over time, ACS became unable to handle the increased computing requirements brought on by trade growth and started to experience service failures called brownouts. These brownouts caused import delays and increased manual processing. Recent ACS funding has enabled Customs to fix critical links and grow the system to keep up with the workload, thereby eliminating brownouts for now. With continued funding, Customs expects ACS to remain functional until the maximum capabilities of the system and application software are reached. However, of continued concern is the explosive growth in trade volume and its impact on ACS. In the last decade, trade has grown 132 percent, and by 2004, Customs will be processing more than 30 million commercial entries a year. This is up from 12.3 million in 1994 - more than double the level of ten years earlier.

Many observers, including Customs, have said that ACS is headed for a major system crash which will certainly have an adverse impact on trade. They also believe that any serious failure of ACS could have widespread economic effect on U.S. businesses all along the supply chain including manufacturers, suppliers, brokers, and retailers. Between August 1998, and March 2001, ACS experienced a number of significant slow downs in processing ``brownouts,’’

which in turn adversely affected the ability of the trade community to process entries quickly and efficiently. Although Customs continues to make costly investments to ACS to alleviate this problem on a short-term basis, Customs and the trade community expect a recurrence of these problems, including possible shutdowns of ACS.

Customs plans to replace ACS with the Automated Commercial Environment (ACE) and has spent approximately \$65 million on ACE development to date. Some of the main differences between ACS and ACE are that ACE reportedly will use a single integrated system, modern standards, processes, techniques and language, and will be compatible with commercial software. By contrast, ACS does not have an integrated system, uses outdated techniques and languages, and cannot use commercially compatible software. The Committee agrees with Customs and the trade community that ACE is needed to cope with the increased growth of trade, and equally importantly, to meet the legislative requirements for Customs automation modernization mandated under the Customs Modernization Act. Therefore, in its authorization for commercial operations for both FY 2002 and FY 2003, the Committee has included funding to provide the Customs Service with the crucial resources it needs to continue developing ACE. However, the Committee underscores the need to ensure that Customs manage and develop ACE cost effectively, while meeting the legislative automation modernization mandate of the Mod Act.

The Miscellaneous Trade and Technical Corrections Act of 1999, P.L. 106-36, Section 2405 mandated that “not later than January 1, 2000, the Secretary shall provide for the inclusion of commercial importation data from foreign-trade zones under the National Customs Automation Program.” The deadline has now passed and the Committee is concerned that the Customs Service has made no progress on this FTZ automation plan. In light of the current development of the Automated Commercial Environment (ACE) by the Customs Service, the Committee directs the Customs Service to incorporate the Foreign-Trade Zone automation process in the first phase of ACE.

Sec. 102. Antiterrorist and illicit narcotics detection equipment for the United States-Mexico border, United States-Canada border, and Florida and the Gulf Coast seaports.

Present law

No applicable section.

Explanation of the provision

This provision would require that \$90,244,000 of the FY 2002 appropriations be available until expended for acquisition and other expenses associated with implementation and deployment of terrorist and narcotics detection equipment along the United States-Mexico border, the United States-Canada border, and Florida and the Gulf seaports. The equipment would include vehicle and inspection systems. The provision would require that \$9,000,000 of the FY 2003 appropriations be used for maintenance of equipment described above. This section would also provide the Commissioner of Customs with flexibility in using these funds and would allow for the

acquisition of new updated technology not anticipated when this bill was drafted. Nothing in the language of the bill is intended to prevent the Commissioner of Customs from dedicating resources to specific ports not identified in the bill.

The equipment would include vehicle and container inspection systems, mobile truck x-rays, upgrades to fixed-site truck x-rays, pallet x-rays, busters, contraband detection kits, ultrasonic container inspection units, automated targeting systems, rapid tire deflator systems, portable Treasury Enforcement Communications Systems terminals, remote surveillance camera systems, weigh-in-motion sensors, vehicle counters, spotter camera systems, inbound commercial truck transponders, narcotics vapor and particle detectors, and license plate reader automatic targeting software.

Reason for change

The Committee recognizes the needs of the Customs Service to effectively interdict terrorists and drugs entering the United States. The Committee is concerned that Customs currently lacks sufficient equipment along the Canada, Mexico, and Gulf borders to effectively carry out this mission while at the same time ensuring that trade flows in a timely manner. The list of equipment is based on the needs Customs has articulated to the Committee both before and after the September 11th terrorist attacks. The Committee expects that Customs will continue to allocate resources to additional ports as it deems appropriate.

Sec. 103. Compliance with performance plan requirements.

Present law

No applicable section.

Explanation of the provision

This provision would require Customs to measure specifically the effectiveness of the resources dedicated in sections 102 and 103 as part of its annual performance plan.

Reason for change

The Committee believes Customs must be accountable to the taxpayer in assessing and measuring the effectiveness of its limited resources. This provision ensures that Customs evaluates how it used these additional resources to achieve the goals of Congress.

Subtitle B– Child Cyber-Smuggling Center of the Customs Service

Sec. 111. Authorization of appropriations for program to prevent child pornography/child sexual exploitation.

Present law

Customs enforcement responsibilities include enforcement of U.S. laws to prevent border trafficking relating to child pornography, intellectual property rights violations, money laundering, and illegal arms. Funding for these activities has been included in the Customs general account.

Explanation of provision

Section 111 of H.R. 3129, as amended, would authorize \$10 million for Customs to carry out its program to combat on-line child sex predators. Of that amount, \$375,000 would be dedicated to the National Center for Missing Children for the operation of its child pornography cyber tipline.

Reason for change

With about 12 million children using the Internet unsupervised by their parents, the Internet has provided fertile ground for sexual predators to lure children into exploitive and abusive relationships and to trade in child pornography. This legislation would provide Customs with resources for the tools, technology, and manpower it needs in its efforts to prevent child pornography and sexual exploitation. The Committee expects that these efforts will include out-reach programs to educate parents, children, and teachers. The Committee applauds Customs for establishing the Cyber-smuggling Center and fully supports Customs in its efforts to protect children from on-line predators.

Subtitle C– Personnel Provisions

Chapter 1– Overtime And Premium Pay of Officers of the Customs Service

Sec. 121. Correction relating to fiscal year cap.

Present law

Section 5(c)(1) of the Act of February 13, 1911 (19 U.S.C. 267(c)(1)) states that the aggregate amount of a Customs officer's overtime pay, including commuting compensation and premium pay, is \$30,000.² A Customs officer who receives overtime or premium pay (holidays and night work) for time worked is prohibited from receiving compensation for that work under any other provision of law. The Commissioner may grant waivers to prevent excessive costs or to meet emergency requirements of the Customs Service. Section 5(a)(1) of the Act of February 13, 1911 (19 U.S.C. 267(a)(1)) outlines the general overtime pay system for Customs officers. Basic overtime compensation for work not regularly scheduled is provided as follows: a. Work in excess of 8 hours per day or 40 hours per week at twice the basic hourly rate of basic pay; b. "Callback" pay at twice the basic hourly rate. An officer will receive at least two hours of callback pay for any call back of two hours of work or less, if the work begins at least one hour after the end of any previously scheduled work and ends at least one hour before the beginning of

²The fiscal year cap has been increased annually since October 1, 1997, from \$25,000 to \$30,000 (most recently by the FY 01 Treasury Appropriations Act) over the objections of the Committee on Ways and Means because it did not address overtime and premium pay reforms.

regularly scheduled work; and c. Compensation for the commute, in addition to callback time, at three times the basic hourly rate; compensation for the commute is not payable if the work does not begin within 16 hours of the Customs officer's last regularly scheduled work assignment, or if the work begins within two hours of the officers's next regularly scheduled work assignment.

Explanation of provision

Section 121 of H.R. 3129, as amended, would amend section 5(c)(1) of the Act of February 13, 1911 (19 U.S.C. 267(c)(1)) to remove premium pay from the calculation of the \$30,000 fiscal-year cap, thus increasing the amount of overtime pay a Customs officer may receive, with no annual limit on the amount of premium pay. The provision would also allow the Commissioner the authority to waive the \$30,000 fiscal-year cap to prevent excessive costs or to meet emergencies, and to pay a Customs officer for one work assignment that would result in the overtime pay of that officer exceeding the \$30,000 fiscal-year cap. This authority would be granted only upon certification to the Chairmen of the House Committee on Ways and Means, and the Senate Committee on Finance that Customs has in operation a system that provides accurate and reliable data on a daily basis on overtime and premium pay being paid to Customs officers.

Reason for change

Administration of the fiscal-year cap has posed a considerable challenge for Customs. Eliminating premium pay from the calculation of the fiscal-year cap will facilitate Customs administration, as fewer Customs officers will approach the level of the cap by working overtime alone. Moreover, allowing each officer an unrestricted amount of premium pay and applying the cap only to overtime pay will increase the earnings of Customs inspectors. If an officer reaches the fiscal-year cap, the provision would allow the Commissioner to pay that officer for one additional work assignment that would result in the overtime pay of the officer exceeding the cap. Thereafter, no additional overtime would be assigned to that officer, except to meet emergency requirements of the Customs Service. Under the National Inspectional Assignment Policy (NIAP) and contracts negotiated with the National Treasury Employees Union (NTEU), Customs has agreed to assign overtime to Customs officers based on daily tracking of each officer's overtime- and premium-pay earnings. Section 121 also requires that authority to exceed the cap by one assignment will be granted to the Commissioner only upon certification to the Chairmen of the House Committee on Ways and Means and the Senate Committee on Finance that Customs has in operation a system that provides accurate and reliable data on a daily basis on overtime and premium pay that is being paid to each Customs officer.

Customs' officials estimate that based upon pre-emergency staffing requirements, there have been several hundred inspectors who reached the cap and who would thus benefit from an increase in the cap. Based upon post-emergency staffing requirements from the heightened alert, that estimate is now conservatively over 1000 inspectors who would benefit from raising the cap. Taking premium pay out of the cap would allow some inspectors to earn as much as \$5000 more than currently allowed.

Sec. 122. Correction relating to overtime pay.

Present law

On October 30, 1997, an arbitration ruling required the Customs Service to pay overtime to a Customs officer for work not performed if that officer was not permitted to work that time due to an administrative error. An earlier arbitration ruling required Customs to pay overtime to a Customs officer for work not performed if Customs had prevented that officer from working right up to the fiscal year salary cap, a practice Customs has in place to prevent an Anti-Deficiency Act violation.

Explanation of provision

Section 122 of H.R. 1833, as amended, would prevent Customs from paying overtime pay to Customs officers for work not actually performed. However, this provision would not apply to payment of an award or settlement under section 5596 of title 5, United States Code, section 6(d) of the Fair Labor Standards Act, or title VII of the Civil Rights Act of 1964.

Reason for change

The Committee is concerned that three arbitral decisions require Customs to pay overtime for work not performed. Specifically, as a result of a decision by a labor arbitrator in August 1982, Customs is required to pay overtime plus interest for hours not actually worked to officers denied overtime assignments because they have reached the level set by the port directors. The amount paid by Customs pursuant to the arbitral decision equals the difference between the fiscal-year cap and the level which the officer had reached at the time the port director stopped assigning additional overtime to that officer. As a result of a decision by a labor arbitrator in November 1993, Customs is required to pay for overtime not actually worked to officers whose overtime is inappropriately assigned to part-time employees. In yet another decision by a labor arbitrator in October 1997, Customs is now required to pay overtime to Customs officers for work not performed when the officer was not assigned an overtime assignment due to an inadvertent administrative error.

The current practice of paying overtime for work not performed replaces the practice of providing the next comparable overtime assignment to the officer who was inadvertently skipped over. In addition, in testimony before the Subcommittee on Trade in May 1998, the General Accounting Office (GAO) stated: ``Although we believed that inspectors should be paid extra for working overtime, we recommend that (1) the 1911 Act be amended so that inspector overtime would be more directly linked to actual hours worked, and (2) Customs management focus on achieving a more efficient use of overtime." U.S. Customs Service: Oversight Issues, GAO/T GGD 97 107 (May 15, 1997). The provision would clarify Congressional intent with regard to overtime for Customs officers by preventing Customs from paying overtime to officers for hours not actually worked. Customs would achieve savings by prohibiting these payments which it has been required to make since the 1982 arbitral decision.

It is the view of the Committee that Customs would achieve considerable savings in prohibiting these payments, and these resources would be better utilized by Customs in other areas. More importantly, the change in law will correct an inequitable and unintended consequence of the present law as interpreted by arbitration panels. The Committee does not expect that this requirement will have a significant impact on Customs' management of overtime or on Customs officers' ability to earn overtime pay.

Customs has taken steps to alleviate this problem by recently implementing the Customs Overtime and Scheduling System (COSS), which currently tracks and monitors all scheduling, assignment of regular hours, overtime, and premium hours for Customs officers. Under this tracking system, Customs will be better able to monitor overtime and premium hours to prevent situations that gave rise to officers receiving overtime and premium pay for no work. However, the Committee believes that this legislation is necessary to clarify that the appropriate policy is to provide an additional assignment instead of overtime. Finally, this reform is not intended to prevent awards or settlements under the provisions of laws cited in this section.

Sec. 123. Correction relating to premium pay.

Present law

Section 123(a). An arbitration ruling requires Customs to pay officers for regularly scheduled premium pay hours even if the officer subsequently takes sick or annual leave and does not actually work those hours. The Omnibus Consolidated and Emergency Supplemental Appropriations for FY 1999 (P.L. 105-277), permanently restricts Customs from paying premium pay on Sundays to an employee if the employee has not actually performed work on a Sunday.

Sec. 123(b). Section 5(b)(1) of the Act of February 13, 1911 (19 U.S.C. 267(b)(1)) provides that if an officer works: (1) the majority of his or her hours between 3 p.m. and midnight, compensation equals the basic hourly rate plus 15 percent of the basic hourly rate for the entire eight-hour shift; (2) the majority of his or her hours between 11 p.m. and 8 a.m., compensation equals the basic hourly rate plus 20 percent for the entire eight hour shift; and (3) if the officer's regularly scheduled work assignment falls between 7:30 p.m. and 3:30 a.m., compensation equals the basic hourly rate plus 15 percent for the period from 7:30 p.m. to 11:30 p.m., and the basic hourly rate plus 20 percent for the period from 11:30 p.m. to 3:30 a.m.

For example, if a Customs officer is scheduled to work a shift that starts at 12:00 noon and ends at 8 p.m., five of the eight hours of that shift, or the majority of hours, occur during the 3 p.m. to 11 p.m. night premium pay hours. Thus, the Customs officer is paid night pay (an additional 15 percent) for all eight hours of the shift that starts at noon.

Explanation of the provision

Sec. 123(a). This provision would prohibit Customs from paying premium holiday pay to an employee if the employee has not actually performed work during the time corresponding to such premium pay by amending section 5(b)(4) of the Act of February 13, 1911 (19 U.S.C.

267(b)(4)). However, this provision would not apply to payment of an award or settlement under section 5596 of title 5, United States Code, section 6(d) of the Fair Labor Standards Act, or title VII of the Civil rights Act of 1964. As with the restriction on payment of overtime pay outlined in section 122, this provision would clarify Congressional intent with regard to premium pay for Customs officers by preventing Customs from paying premium pay to officers for hours not actually worked.

Sec. 123(b). This provision would amend section 5(b)(1) of the Act of February 13, 1911 (19 U.S.C. 267(b)(1)) to provide that a Customs officer is paid premium night shift (“shift differential”) pay only for shift differential hours worked. This provision also changes the actual hours eligible for night time pay to between 5 p.m. and 6 a.m., except that for a regularly scheduled shift between 4 p.m. and midnight or midnight and 8 a.m., the entire shift would be eligible for night pay shift differential.

Under this legislation, if any hour of an officer’s regularly scheduled work hours occur between 5 p.m. and midnight, compensation would equal the basic hourly rate plus at least 18 percent for those hours only. If any work hours occur between midnight and 6 a.m., compensation would equal the basic hourly rate plus 25 percent for those hours only. The bill also would allow for a Customs officer regularly scheduled to work the shift from 4 p.m. and midnight to be paid at a premium rate of at least 18 percent over his or her base salary for the entire shift. The bill also would allow for a Customs officer regularly scheduled to work the shift from midnight to 8 a.m. to be paid at a premium rate of 25 percent over his or her base salary for the entire shift. For example, a Customs officer working from noon to 8 p.m. would earn night differential pay only between the hours of 5 p.m. and 8 p.m, but would receive at least an 18 percent differential instead of the current 15 percent.

Reason for change

Section 123(a). The Committee is greatly concerned that an arbitral decision requires Customs to pay premium pay for hours not actually worked. Specifically, due to the decision by a labor arbitrator in September 1996, Customs is required to pay premium pay to officers for regularly-scheduled premium pay hours even if the officer subsequently fails to work those hours due to annual leave, sick leave, or National Guard duty leave. Similar to the reform on payment of overtime pay outlined in section 122, this provision would clarify Congressional intent with regard to premium pay for Customs officers by preventing Customs from paying premium pay to officers for hours not actually worked. Finally, this reform is not intended to prevent awards or settlements under the provisions of laws cited in this section.

Section 123(b). The Customs Officer Pay Reform Amendments, which was part of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103 66), greatly increased the number of available hours in which a Customs Officer can earn premium pay for night work. COPRA also increased the 10 percent night differential compensation to 15 percent and 20 percent, depending on the time of day that the assignment is worked. Among Federal employees, only Customs officers are compensated at a premium pay rate of 15 percent or 20 percent of basic hourly pay for night work. In fact, COPRA allows Customs to pay night differential premium payments for

23 hours of the day (12 p.m. to 11 a.m.), rather than 12 hours of the day (6 p.m. to 6 a.m.) as was previously the case under FEPA. Premium pay for night work by most other Federal employees is provided at a rate of 10 percent for the hours from 6 p.m. to 6 a.m. and is available only for those hours worked during that period, not the entire shift.

At the Subcommittee's legislative hearing on April 13, 1999, Mr. Schindel testified that ``premium pay expenses for Customs, specifically the work differential, substantially increased under COPRA." In fact night shift differential increased from \$51,000 in FY 1993 to \$11.9 million in FY 1998. Mr. Schindel reached the same conclusion at the Subcommittee's legislative hearing on July 17, 2001. A major reason for this dramatic increase in premium pay for shift differential is that COPRA increased the number of available hours where a Customs officer could earn night differential. The Congressional intent of the COPRA was to ensure that Customs officers' schedules met customer demand. A Treasury Inspector General report concluded that Customs schedules do correspond to its workload and to its customers' needs. Customs Officer Pay Reform Amendments (COPRA), OIG 96 094 (September 13, 1996). However, the report concluded that COPRA had caused a significant increase in night differential spending, amounting to at least \$6 million per year.

The report recommended: The Assistant Secretary (Enforcement) should direct Customs to seek legislation that would lessen the number of hours available for Customs officers to earn night differential and reduce the night work differentials to a 10 percent premium on base pay. The change to the COPRA should create a night differential payment package that would more accurately reimburse Customs officers for hours actually worked at night, as was done previously under FEPA. The provision would clarify Congressional intent that night premiums be awarded only for night work, correcting the anomaly that an officer can receive a night premium for working at noon, namely the limitation that night-time pay be for actual night-time hours worked.

Rather than adopt the report's recommendations in toto, the Committee has chosen to address the inherent inequity of the current system which provides night-time premium pay to employees working during daytime hours. The bill would redistribute the savings generated by scaling back the hours that are eligible for night-time premium pay so as to make the legislation revenue neutral and overall inspector pay neutral. According to calculations from Customs, the savings from Section 123 will be sufficient to increase the night-time premium differential from 15% to at least 18% (for hours worked before midnight) and from 20% to 25% (for hours worked after midnight).

Customs officials testified at the markup on October 31, 2001, that there would be no impact on operations as a result of these changes and that all shifts would still be staffed. Also, given the current method of assigning shifts by having inspectors bid on them, inspectors will have the opportunity to seek different shifts depending upon their personal preferences. Thus, an inspector who has been receiving night-time premium pay for working a noon to 8:00 p.m. shift could seek a later shift in order to continue to receive night time premium pay. At the same time, inspectors working the most popular night shift (4:00 p.m. to midnight), which accounts for 48 percent of night shifts, would receive a raise from a current 15% premium for each hour to at least 18%. Committee Members believe this is a more equitable method for paying night-time

premium pay than the existing system.

Sec. 124. Use of savings from payment of premium pay.

Present law

No applicable section.

Explanation of the provision

This provision would require the Secretary of the Treasury to calculate any savings created as a result of sections 122 and 123. Customs would be required to use the savings to provide additional overtime for enforcement purposes. The change in Section 123 to increase the premium pay for customs officers for hours actually worked is intended to offset the decrease in hours that the premium pay is available.

Reason for change

The Committee wants to ensure that savings from sections 122 and 123 from this bill are used for paying higher premium pay to inspectors who actually work night-time shifts.

Sec. 125. Effective date.

Present law

No applicable section.

Explanation of the provision

The provision states that the section will be effective 15 days after enactment.

Reason for change

The Committee anticipates that the provision will take effect in the payment cycle after enactment.

Chapter 2– Miscellaneous Provisions

Sec. 131. Additional Customs Service Officers for U.S.-Canada Border

Present law

No applicable section.

Explanation of the provision

This provision earmarks \$25 million and 285 new staff hires for Customs to use at the U.S.-Canada border.

Reason for change

Additional earmark: Since the terrorist attack on the U.S. on September 11th, Customs has continued to work under the highest level of alert. Customs has apprehended terrorists in the past as they attempted to go through the Northern Border with weaponry. Early reports are that some of the September 11th terrorists also came through the Northern Border. Moreover, many U.S. industries rely upon immediate delivery of products from Canada in order to operate. Given also that Canada remains the largest trading partner for the United States, it is clear that new resources are needed to facilitate trade while protecting the border. The Committee notes that the Administration provided the Customs Service with no new hiring authority for staff from funds made available in the emergency supplemental appropriations bill in 2001. Nevertheless, Customs staff is continuing to work at the highest alert status during the current emergency, and Customs staff must work markedly increased overtime hours. New staff is needed particularly at the Northern Border to insure that border security is maintained while facilitating trade.

“Reverse Customs” procedures: The Committee wishes to address the inspection and control requirements of the border crossings along the Northern Border. The Committee encourages the Administration, and the Customs Service in particular, to explore an agreement with Canadian officials to increase cooperation at border crossings and to station customs officials from each government on the opposite side of the border for the purpose of inspecting and clearing vehicles before they cross the border – the so-called “reverse customs” process.

The Committee notes that Michigan/Canada border crossings at the Ambassador Bridge and the Detroit Windsor Tunnel would be a good location for a pilot project once an agreement between the United States and Canada is reached. According to data derived from the Bridge and Tunnel Operators Association, Michigan led the nation in U.S.-Canada border crossings with over 2.1 million trucks and 11.1 million cars crossing the border, with Ambassador Bridge and the Detroit-Windsor Tunnel showing the highest car, truck, and other vehicular traffic volumes through August 2001. It is estimated that over \$1 billion in trade crosses the Canada-U.S. border every day, with nearly half crossing either the Ambassador or Blue Water Bridges in Michigan.

Such a pilot project could address increased security and safety concerns in the aftermath of the terrorist attacks in the United States on September 11, 2001, and ensure that potentially dangerous vehicles would be stopped prior to embarking upon the Ambassador Bridge and Detroit Windsor Tunnel structures. The Committee expects that U.S. Customs, in consulting and coordinating with Canadian Customs, would give great weight and sensitivity to sovereignty issues, laws, and customs, while at the same time achieving a workable and effective mechanism allowing Customs personnel to carry out their duties.

In addition, the Committee recommends continuation of the use of automated, computerized inspection and commercial transaction systems by Customs at border crossings and particularly at the Michigan ports of entry, including but not limited to ACE, NCAP, NEXUS,

and Port Pass. The Committee believes that these systems can and should be fully utilized even during this period of heightened security on all U.S. bridges, tunnels, and other border crossings in the aftermath of the September 11th terrorist attack on the United States. However, in order to ensure that the need for enhanced security at the ports of entry is maintained, the Committee has authorized additional funding for new technologies and systems to improve the ability of U.S. Customs to interdict dangerous vehicles and terrorist threats to our bridges, ports, and personnel at ports of entry.

The Commissioner of Customs should report to the Committee regarding its implementation of the technology and pilot program initiatives set forth in this report, with particular emphasis on its efforts to coordinate the pilot program with Canadian Customs.

Sec. 132. Study and report relating to personnel practices of the Customs Service.

Present law

No applicable section.

Explanation of provision

Section 132 of H.R. 3129, as amended, requires Customs to conduct a study of current personnel practices including: performance standards; the effect and impact of the collective bargaining process on Customs drug interdiction efforts; and a comparison of duty rotations policies of Customs and other federal agencies employing similarly situated personnel.

Reason for change

Under the collective bargaining agreement between Customs and the National Treasury Employees' Union (NTEU), Customs cannot rotate a Customs officer permanently or for temporary duty unless the officer agrees to the change. In addition, the agreement specifies that the union may bring to grievance any issue relating to the impact and management of any management changes, including a management change relating to drug enforcement, and any issues not included in the collective bargaining agreement.

The Committee has been concerned that the union is able to effectively thwart Customs drug interdiction efforts through bargaining or the unwillingness to bargain. There have been a number of examples in which the NTEU was able to delay negotiations on work conditions, to the detriment of the ability to interdict contraband, including narcotics. These examples included: (1) negotiations between the National Treasury Employees Union (NTEU) and Customs since early 1995 in El Paso, Texas, over work conditions at the three bridges between Mexico and El Paso relating to the use of a very successful drug interdiction approach called pre-primary roving for Canine Enforcement Officers and Inspectors; (2) implementing certain shift work in Miami; and (3) the percent of officers regularly scheduled to work weekend shifts at the John F. Kennedy airport (JFK).

Shortly after the Subcommittee and Committee discussed these issues at the 1998 mark-ups, Customs and the Union settled their differences on the weekend shifts issues at JFK and El Paso. In addition, the Impasse Panel issued a decision on the shift issue in Miami. As a result of these developments, the Committee believes that many of the issues that have adversely impacted Customs drug interdiction efforts have been favorably resolved. However, the Committee believes that a study of the effect and impact of the collective bargaining process on Customs drug interdiction efforts is necessary to keep a watchful eye on this issue. In addition, the Committee is concerned that Customs' lack of authority in the past to rotate and temporarily assign officers may have adversely impacted its drug interdiction efforts. Therefore, the Committee is requiring that Customs conduct a comparison study of rotation policies with similarly situated federal personnel which would enable both the Committee and Customs to assess Customs rotation practices.

Sec. 133. Study and report relating to accounting and auditing procedures of the Customs Service.

Present law

No applicable section.

Explanation of the provision

This provision would require Customs to conduct a study to ensure that appropriate training is being provided to personnel who are responsible for financial auditing of importers. Customs would specifically report on how its audit personnel protect the privacy and trade secrets of importers.

Reason for change

The Committee has received many complaints from U.S. importers about the specialized skill and knowledge base of auditors from the Customs Service. As with all government enforcement, the skill of enforcement officials is important in order to ensure that violations of law are not overlooked but also to ensure that legitimate acts are not mistakenly labeled illegal. Especially troubling are complaints that proprietary business information is not being given the proper level of confidentiality from disclosure. The Committee does not have sufficient data to confirm or deny these complaints definitively and has rather chosen to direct Customs to study and report on the procedures in place to ensure that auditors are properly trained.

Sec. 134. Establishment and implementation of cost accounting system; reports.

Present law

No applicable section.

Explanation of the provision

Section 134 would mandate the imposition of a cost accounting system in order for Customs to effectively explain its expenditures. Such a system would provide compliance with the core financial system requirements of the Joint Financial Management Improvement Program (JFMIP), which is a joint and cooperative undertaking of the U.S. Department of the Treasury, the General Accounting Office, the Office of Management and Budget, and the Office of Personnel Management working in cooperation with each other and other agencies to improve financial management practices in government. That Program has statutory authorization in the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 65).

Reason for change

The Customs Service is currently unable to answer fundamental questions about how it spends money. This fact was mentioned above in the discussion of present law for Section 101. For example, Customs states that it spends a certain amount of money on commercial operations. The figure is not based upon the continual adding of various commercial costs from all operations within Customs, such as the number of people who actually processed entries of merchandise at specific ports during a set period. Instead, the figure is based upon Customs officials' belief that a set percentage of its work is always related to commercial activities. That static percentage is based upon a no longer available, ad hoc survey conducted by Customs several years ago. A modern cost accounting system would allow Customs to accurately identify the amount of money spent at specific locations, for specific functions such as textile transshipment monitoring, searching for contraband, or processing entries of merchandise.

Sec. 135. Study and report relating to timeliness of prospective rulings.

Present law

No applicable section.

Explanation of the provision

This provision would require the Comptroller General to prepare an report to determine whether Customs has improved its timeliness in providing prospective rulings.

Reason for change

In light of oversight reports from the General Accounting Office and complaints from the business community, the General Accounting Office is directed to monitor and provide an update to its recent report in one year on the progress of Customs in substantially decreasing the time it takes to issue prospective rulings. The Committee had originally proposed a strict deadline of 90-days for Customs to issue prospective rulings. Because of the emergency currently facing Customs, the draw upon its resources, and assurance from officials from the new Administration to act on GAO's comments, a mandatory deadline was dropped but will be revisited depending upon the results of GAO's review.

Sec. 136. Study and report relating to Customs user fees.

Present law

No applicable section.

Explanation of the provision

This provision would require the Comptroller General to prepare a confidential report to determine whether current user fees are appropriately set at a level commensurate with the service provided for the fee. The Comptroller General is authorized to recommend the appropriate level for customs user fees.

Reason for change

The Committee has already noted in the discussion at sections 101 and 134 the problem of a lack of reliable cost data from Customs. One consequence of having inadequate data is that importer user fees may not reflect the level of services provided for by the fee. Moreover, Customs officials admit that there is no cost accounting system in place for them to accurately track costs of providing services. For this reason, this section should be read in conjunction with Section 134 requiring Customs to implement a cost accounting system.

If the government buys a good or service at a price that purports to be based upon the cost of that good or service, then the government would expect a seller to provide adequate documentation to support that cost basis. The government therefore should provide similar justification of its costs especially when it requires importers to pay fees ostensibly to cover services rendered. The inability of government to justify the costs of its services to importers, while simultaneously urging increases in fees, has reasonably led to concerns among importers that the fee levels are no longer appropriate, may be inflated, and could be raised without adequate justification. So long as reliable data is not available, it will be difficult, if not impossible, to justify the current level of fees, much less extensions or changes.

SUBTITLE D—TOOLS FOR FIGHTING TERRORISM

Sec. 141 Immunity for Customs officers that act in good faith.

Present law

Currently, Customs officers are entitled to qualified immunity in civil suits brought by persons, who were searched upon arrival in the United States. Qualified immunity protects officers from liability if they can establish that their actions did not violate any clearly established constitutional or statutory rights.

Explanation of the provision

This section would protect Customs officers by providing them immunity from lawsuits stemming from personal searches of people entering the country so long as the officers conduct the searches in good faith. The “good faith” standard has been used in other contexts similar to this, as in 19 U.S.C. § 507, for searches conducted by other individuals at the direction of Customs officers. Under this amendment, if Customs certifies in a lawsuit that the officer followed policy in conducting the allegedly improper search, the court would then make a finding of good faith immunity and would dismiss the suit against the officer.

Reason for change

Customs officers have the important responsibility to search persons arriving in the United States to prevent the introduction of contraband, including dangerous items. Often, a personal search is the only way to determine if a person is concealing contraband on or within their body. There has been a large increase in the number of private lawsuits against Customs officers by persons that have undergone personal searches. Despite the large increase in suits against Customs officers, almost every one of them are ultimately resolved in favor of the officers (i.e., there is a finding of qualified immunity).

Customs officers have been subject to an increasing number of lawsuits by those searched at the border. In all but fewer than five of these dozens of cases in the last several years, the courts have found in the favor of the Customs officers. Nonetheless, each case tends to hinge on a lengthy, fact-specific trial, potentially distracting the officers from their duties and creating a chilling effect among other officers. Though Customs officers are winning these cases, they must undergo discovery, depositions, and trial, even when those searches have uncovered drugs and other smuggled items on or inside the plaintiff. These officers may face financial burdens as well, as personal property such as cars and real estate may be covered by liens while the litigation is pending. Customs’ experience is that it takes years to get decisions on qualified immunity for its officers, even in cases where the officer followed personal search policy and did nothing wrong.

As Customs searches greater numbers of passengers to detect terrorists, there is a potential for Customs officers to become subject to an increasing number of lawsuits alleging ethnic or religious profiling. While officers are not permitted to discriminate on the basis of unconstitutional criteria, this amendment provides an avenue for frivolous and questionable suits to be resolved at an early stage. Accordingly, the amendment would have the effect of streamlining the existing process for judicial determinations on whether Customs officers are entitled to immunity from lawsuits.

The amendment introduces a single standard - good faith - for courts to rely on to speedily dispose of unmeritorious lawsuits at an early stage. The Committee believes that the best (though not exclusive) measure of whether a Customs officer conducts a personal search in good faith is whether the officer follows established Customs policy. It is important to note that even with this amendment, truly aggrieved plaintiffs would continue to have appropriate remedies to obtain redress for any improper searches as they could obtain money damages under the Federal Tort Claims Act (FTCA) against the government for tortious searches; obtain injunctive relief for unconstitutional policies; or if the officer acted in bad faith *and* in violation of clearly established constitutional or statutory rights, recover against the officer personally (because the officer would

not be immune from personal liability).

Sec. 142 Emergency adjustments to offices, ports of entry, or staffing of the Customs Service.

Present law

Present law places numerous restrictions on and, in some instances, precludes the Secretary of the Treasury or Customs from making any adjustments to ports and staff. 19 U.S.C. 1318 requires a Presidential proclamation of an emergency and authorization to the Secretary of the Treasury only to extend the time for performance of legally required acts during an emergency. No other emergency powers statute for Customs exists.

Explanation of the provision

This provision would permit the Secretary of the Treasury, if the President declares a national emergency or if necessary to address specific threats to human life or national interests, to eliminate, consolidate, or relocate Customs ports and offices and to alter staffing levels, services rendered and hours of operations at those locations. In addition, the amendment would permit the Commissioner of Customs, when necessary to address threats to human life or national interests, to close temporarily any Customs office or port or take any other lesser action necessary to respond to the specific threat. The Secretary or the Commissioner would be required to notify Congress of any action taken under this proposal within 72 hours.

Reason for change

This provision would loosen restrictions on Customs' ability to alter the location, hours of operation and staffing at ports in response to terrorist threats. Such restrictions unduly limit Customs' ability to move personnel to locations where they can most effectively be used to reduce or respond to terrorist threats. They also force Customs to maintain offices and personnel in locations that have very little international traffic and where they cannot be used effectively to address threats of terrorism. The terrorist attack on the United States on September 11th resulted in the need for changes in border staffing and security. The Administration requested these changes to law in order to give officials flexibility in providing for border security during the current and future emergencies.

Sec. 143 Mandatory advanced electronic information for cargo and passengers.

Present law

Currently, commercial carriers bringing passengers or cargo into or out of the country have no obligation to provide Customs with such information in advance.

Explanation of the provision

This provision would require every air, land, or water-based commercial carrier to file an electronic manifest describing all passengers with Customs before entering or

leaving the country. There is a similar requirement for cargo entering the country. Specific information required in the advanced manifest system would be developed by Treasury in regulations.

Reason for change

Advanced electronic manifests will significantly enhance Customs' ability to identify high-risk passengers and cargo and will ensure that suspected terrorists or those on law enforcement or terrorist watch lists are identified before entering or leaving the United States. The passenger identification requirement will provide Customs with, among other things, the name and passport number of every passenger in advance of a carrier's attempt to enter or leave the United States. Similarly, the cargo manifest requirement provides Customs with a wide range of important information about all cargo, including those involved in its shipment. This proposal builds upon a successful voluntary program that Customs has already with the airlines. While all commercial carriers must provide this information to Customs at some point, this proposal would require it prior to entry or departure and electronically for passenger carriers. The amendment makes a similar requirement for cargo entering the country.

The Committee received many questions from carriers as to its concerns that Customs does not currently have the infrastructure or procedures to implement in all cases advanced electronic manifesting. The Committee is aware of the current state of the system and expects the Secretary of the Treasury to construct both infrastructure and procedures to implement these requirements by means of regulations. The current Customs computer system would be unable to handle the increased electronic information contemplated by these new provisions. In this regard, the full funding of the ACE computer system is all the more important to allow Treasury and Customs to proceed quickly.

The Committee intends the Treasury Department to promulgate regulations implementing the advance reporting requirements of this section after consulting with various component members of the transportation industry. This should occur in conjunction with the design and development of the ACE computer system, which is intended to accommodate the new advanced reporting information. Further, the Committee expects the Treasury Department to engage in a regulation making process that will take into account, and accommodate to the extent reasonable, standard commercial practices. Such regulations should appropriately reflect the distinct differences among trucking, rail, vessel, air and other transportation entities while advancing the government's need to obtain the manifest information in a timely manner.

Sec. 144 Border search authority for certain contraband in outbound mail.

Present law

Although Customs currently searches all inbound mail, and although it searches outbound mail sent via private carriers, outbound mail carried by the Postal Service is not subject to search.

Explanation of the provision

This proposal would enable Customs officers to search outbound U.S. mail for unreported

monetary instruments, weapons of mass destruction, firearms, and other contraband used by terrorists. Because Customs does not inspect outbound mail carried by the Postal Service, millions of packages mailed out of the United States, some weighing many pounds and capable of containing dangerous items such as high explosives, illegally obtained cash, or biological agents, are free from any Customs inspection.

This new section would provide Customs with the same authority that it has to search incoming mail. Specifically, the bill would authorize searches of outbound non-letter class packages. Letter-class outbound mail could be searched upon reasonable suspicion that it contained firearms, monetary instruments (checks or cash), or several other categories of dangerous materials and other merchandise subject to the laws enforced by Customs. However, reading of mail would not be authorized absent Customs officers obtaining a search warrant or consent.

Reason for change

Often the smuggling of weapons, drugs, or other contraband is only half of an illegal operation. The other half consists of the outbound smuggling of unreported money that helps finance the illegal activity. The current government investigation into the activities of the terrorists responsible for the attack of September 11th is heavily reliant upon the tracing of money that helped finance the attack. Long before September 11th, government investigators have known that drug money frequently leaves the country and helps foreign drug sellers continue their operations. Tracing the money helps bring illegal operators to justice. It is therefore critical that Customs have the authority to search outbound mail.

The Committee notes that Customs currently searches outbound envelopes and cargo shipped via private express companies, but there have been doubts by some that Customs has the authority to search outbound mail sent via the U.S. Postal Service. It is the intention of the Committee to make an unambiguous declaration and clarification of the present law to the effect that the U.S. Customs Service has and must have access to search all outbound mail. Due regard for privacy rights of individuals is addressed through the requirement of probable cause and a search warrant or consent in the event that letter class mail needs to be read.

Sec. 145 Authorization of appropriations for reestablishment of Customs operations in New York City.

Present law

No applicable section.

Explanation of the provision

On September 11, 2001, destruction of the World Trade Center complex destroyed substantial operations of the U.S. Customs Service. This provision authorizes funds to reestablish those operations.

Reason for change

Textile transshipment operations are specifically mentioned as needing reestablishment given the importance of that work to the import sensitive textile and apparel manufacturers in the United States.

SUBTITLE E– TEXTILE TRANSSHIPMENT PROVISIONS.

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

Present law

No applicable section.

Explanation of the provision

This provision would direct the Comptroller General to conduct an audit of the systems at the Customs Service to monitor and enforce textile transshipment. The Comptroller General would report on recommendations for improvements.

Reason for change

The Committee continues to hear complaints about textile good entering the country that have been transshipped, meaning that an importer has entered the goods with an incorrect declaration for the purpose of obtaining entry or a lower duty. The Committee is aware that Customs has ongoing operations to monitor and enforce textile transshipment, and many allegations may already be under investigation. A report from the Comptroller will assist the Committee in evaluating Customs' enforcement.

Sec. 152. Authorization of appropriations for textile transshipment enforcement operations.

Present law

No applicable section.

Explanation of the provision

This provision would authorize \$9,500,000 for FY 2002 to the Customs Service for the purpose of enhancing its textile transshipment enforcement operations. This amount would be in addition to Customs' base authorization and the authorization to reestablish the destroyed textile monitoring and enforcement operations at the World Trade Center.

Reason for change

The Committee wishes to increase the level of funding for monitoring and enforcement of textile transshipment to ensure every effort is made to control imports according to present law.

Sec. 153. Implementation of the African Growth and Opportunity Act.

Present law

No applicable section.

Explanation of the provision

The provision would earmark approximately \$1.3 million within Customs' budget for selected activities related to providing technical assistance to help sub-Saharan African countries develop and implement effective visa and anti-transshipment systems as required by the African Growth and Opportunity Act (title I of Public Law 106-200).

Reason for change

Congress intended for sub-Saharan countries to receive benefits in the African Growth and Opportunity Act which passed in the 106th Congress. Due to the lack of experience and infrastructure in many African countries, however, these countries are experiencing difficulty in taking advantage of the Act and its benefits. The Committee, therefore, wishes Customs to provide technical assistance to these countries.

TITLE II– OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Sec. 201. Authorization of appropriations.

Present law

The statutory authority for budget authorization for the Office of the United States Trade Representative is section 141(g)(1) of the Trade Act of 1974 (19 U.S.C. 2171(g)(1)). The most recent authorization of appropriations for USTR was under section 101 of the Customs and Trade Act of 1990 [P.L. 101-382]. Under 19 U.S.C. 2171, Congress has adopted a two- year authorization process to provide USTR with guidance as it plans its budget as well as guidance from the Committee for the appropriation process.

Explanation of the provision

This provision authorizes \$30,000,000 for FY 2002 and \$31,000,000 for FY 2003. The provision requires submission of out-of-year budget projections to the Ways and Means and Finance Committees. In light of the substantial increase in trade negotiation work to be conducted by USTR and the associated need for consultations with Congress, this provision would authorize the addition of two individuals to assist the office of Congressional Affairs.

Reason for change

The Committee recognizes that USTR needs increased budget authorization to meet its expenses and hire new employees. The legislation authorizes the full amount of the President's budget request for USTR. The Committee wants to be sure USTR has enough resources so that

the World Trade Organization (WTO) negotiations will successfully open trade in favor of the interests of the United States.

TITLE III– UNITED STATES INTERNATIONAL TRADE COMMISSION

Sec. 301. Authorization of appropriations.

Present law

The statutory authority for budget authorization for the International Trade Commission is section 330(e)(2)(A) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(2)(A)). The most recent authorization of appropriations for the ITC was under section 101 of the Customs and Trade Act of 1990 [P.L. 101-382]. Under 19 U.S.C. 1330, Congress has adopted a two-year authorization process to provide the ITC with guidance as it plans its budget as well as guidance from the Committees for the appropriation process.

Explanation of the provision

This provision authorizes \$51,400,000 for FY 2002 and \$53,400,000 for FY 2003. The provision requires submission of out-of-year budget projections to the Ways and Means and Finance Committees.

Reason for change

The Committee recognizes that the ITC needs increased budget authorization to meet the increased workload. The legislation authorizes the full amount of the President's budget request for the ITC.

TITLE IV– OTHER TRADE PROVISIONS

Sec. 401. Increase in aggregate value of articles exempt from duty acquired abroad by United States residents.

Present law

The Harmonized Tariff Schedule at subheading 9804.00.65 currently provides a \$400 duty exemption for travelers returning from abroad.

Explanation of the provision

The provision would increase the current \$400 duty exemption to \$800.

Reason for change

The current duty exemption of \$400 has been in place since 1983 and after inflation no longer reflects the same level of buying power. An increase is therefore in order.

Sec. 402. Regulatory audit procedures.

Present Law

Section 509 of the Tariff Act of 1930 (19 U.S.C. 1509) provides the authority for Customs to audit persons making entry of merchandise into the U.S. In the course of such audit, Customs auditors may identify discrepancies, including underpayments of duties. However, if there also are overpayments, there is no requirement that such overpayments be offset against the underpayments if the underlying entry has been liquidated.

Explanation of the Provision

This provision would require that when conducting an audit, Customs must recognize and offset overpayments and overdeclarations of duties, quantities and values against underpayments and underdeclarations. As an example, if during an audit Customs finds that an importer has underpaid duties associated with one entry of merchandise by \$100 but has also overpaid duties from another entry of merchandise by \$25, then any assessment by Customs must be the difference of \$75.

Reason for change

A government audit should be an even-handed and neutral evaluation of a person's compliance with the law. The government should treat overpayments/overdeclarations and underpayments/underdeclarations equally, and if both are found during an audit, they should be used to offset each other. The Committee redrafted this provision on the basis of concerns from Customs. It is the Committee's intention that this provision shall not affect in any way Customs' current authority to define an audit's scope, time period, and methodology.

III. VOTES OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the following statements are made concerning the votes of the Committee on Ways and Means in its consideration of the bill, H.R. 3129.

MOTION TO REPORT THE BILL

The bill, H.R. 3129, as amended, was ordered favorably reported by voice vote (with a quorum being present).

VOTES ON AMENDMENTS

The Chairman's amendment in the nature of a substitute was agreed to by a roll call vote of 20 yeas to 14 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
-----------------	-----	-----	---------	----------------	-----	-----	---------

Mr. Thomas.....	X	Mr. Rangel.....	
Mr. Crane.....	X	Mr. Stark.....	X
Mr. Shaw.....	X	Mr. Matsui.....	X
Mrs. Johnson.....	X	Mr. Coyne.....	
Mr. Houghton.....		Mr. Levin.....	X
Mr. Herger.....	X	Mr. Cardin.....	X
Mr. McCrery.....		Mr. McDermott.....	X
Mr. Camp.....	X	Mr. Kleczka.....	X
Mr. Ramstad.....	X	Mr. Lewis (GA).....	X
Mr. Nussle.....	X	Mr. Neal.....	X
Mr. Johnson.....	X	Mr. McNulty.....	
Ms. Dunn.....		Mr. Jefferson.....	X
Mr. Collins.....	X	Mr. Tanner.....	X
Mr. Portman.....	X	Mr. Becerra.....	X
Mr. English.....	X	Mrs. Thurman.....	X
Mr. Watkins.....	X	Mr. Doggett.....	X
Mr. Hayworth.....	X	Mr. Pomeroy.....	X
Mr. Weller.....	X		
Mr. Hulshof.....	X		
Mr. McInnis.....			
Mr. Lewis (KY).....	X		
Mr. Foley.....	X		
Mr. Brady.....	X		
Mr. Ryan.....	X		

A roll call vote was conducted on the following amendment to the Chairman's amendment in the nature of a substitute:

An amendment by Mr. Stark on behalf of himself and Mr. Rangel, which would strike sections 122 and 123, correcting overtime and premium pay, was defeated by a roll call vote of 13 yeas to 20 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas.....		X		Mr. Rangel.....			
Mr. Crane.....		X		Mr. Stark.....	X		
Mr. Shaw.....		X		Mr. Matsui.....	X		
Mrs. Johnson.....		X		Mr. Coyne.....			
Mr. Houghton.....				Mr. Levin.....	X		

Mr. Herger.....	X	Mr. Cardin.....	X
Mr. McCrery.....		Mr. McDermott.....	X
Mr. Camp.....	X	Mr. Kleczka.....	
Mr. Ramstad.....	X	Mr. Lewis (GA).....	X
Mr. Nussle.....	X	Mr. Neal.....	X
Mr. Johnson.....	X	Mr. McNulty.....	
Ms. Dunn.....		Mr. Jefferson.....	X
Mr. Collins.....	X	Mr. Tanner.....	X
Mr. Portman.....	X	Mr. Becerra.....	X
Mr. English.....	X	Mrs. Thurman.....	X
Mr. Watkins.....	X	Mr. Doggett.....	X
Mr. Hayworth.....	X	Mr. Pomeroy.....	X
Mr. Weller.....	X		
Mr. Hulshof.....	X		
Mr. McInnis.....			
Mr. Lewis (KY).....	X		
Mr. Foley.....	X		
Mr. Brady.....	X		
Mr. Ryan.....	X		

PROCEDURAL MOTIONS

A roll call vote was conducted on a motion by Mr. Crane pursuant to Clause 1 of Rule 22 of the Rules of the House that the Committee authorize the Chairman to offer such motions as may be necessary in the House to go to conference with the Senate on the bill H.R. 3129 or a similar Senate bill. The motion was agreed to by a vote of 19 yeas to 1 nay, and 2 voting present. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas.....	X			Mr. Rangel.....			
Mr. Crane.....	X			Mr. Stark.....			
Mr. Shaw.....	X			Mr. Matsui.....			
Mrs. Johnson.....	X			Mr. Coyne.....			
Mr. Houghton.....				Mr. Levin.....			
Mr. Herger.....	X			Mr. Cardin.....			X
Mr. McCrery.....				Mr. McDermott.....			
Mr. Camp.....	X			Mr. Kleczka.....		X	

Mr. Ramstad.....	X	Mr. Lewis (GA).....	
Mr. Nussle.....	X	Mr. Neal.....	
Mr. Johnson.....	X	Mr. McNulty.....	
Ms. Dunn.....		Mr. Jefferson.....	
Mr. Collins.....	X	Mr. Tanner.....	
Mr. Portman.....	X	Mr. Becerra.....	X
Mr. English.....	X	Mrs. Thurman.....	
Mr. Watkins.....	X	Mr. Doggett.....	
Mr. Hayworth.....	X	Mr. Pomeroy.....	
Mr. Weller.....	X		
Mr. Hulshof.....	X		
Mr. McInnis.....			
Mr. Lewis (KY).....	X		
Mr. Foley.....			
Mr. Brady.....	X		
Mr. Ryan.....	X		

IV. BUDGET EFFECTS

A. COMMITTEE ESTIMATE OF BUDGETARY EFFECTS

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the following statement is made concerning the effects on the budget of H.R. 3129, as reported: The Committee agrees with the estimate prepared by CBO which is included below.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee states that enactment of H.R. 3129 would diminish duty revenues by \$6 million per year as a result of the increase in the duty exemption for travelers from abroad from \$400 to \$800.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, requiring a cost estimate prepared by the Congressional Budget Office, the following report prepared by CBO is provided.

[INSERT CBO LETTER]

V. OTHER MATTERS TO BE DISCUSSED UNDER THE RULES OF THE HOUSE



CONGRESSIONAL BUDGET OFFICE
U.S. CONGRESS
WASHINGTON, DC 20515

Dan L. Crippen
Director

November 20, 2001

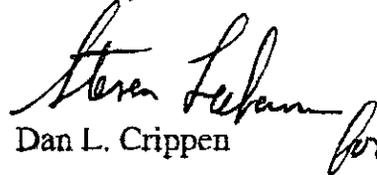
Honorable William "Bill" M. Thomas
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3129, the Customs Border Security Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226-2860.

Sincerely,


Dan L. Crippen

Enclosure

cc: Honorable Charles B. Rangel
Ranking Democrat



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

November 20, 2001

H.R. 3129 **Customs Border Security Act of 2001**

As ordered reported by the House Committee on Ways and Means on October 31, 2001

SUMMARY

H.R. 3129 would authorize appropriations for 2002 and 2003 for the U.S. Customs Service, the Office of the U.S. Trade Representative, and the International Trade Commission. The authorizations for the Customs Service would include funds for salaries and expenses, its Automated Commercial Environment (ACE) computer system, air and marine interdiction, reestablishment of Customs operations in New York City, and a program to prevent child pornography. This legislation would increase the personal duty exemption for travelers entering the United States. The bill also would make several changes to the current laws relating to overtime and premium pay for Customs officers. Finally, H.R. 3129 would direct the General Accounting Office (GAO) to prepare three reports on various Customs issues.

Because an appropriation for fiscal year 2002 for the Customs Service has already been enacted, H.R. 3129 would have a relatively small effect on spending in that year. CBO estimates that implementing H.R. 3129 would cost about \$2.9 billion over the 2002-2006 period, assuming appropriation of the authorized and estimated amounts. (About \$2.8 billion of this total would be spending for the Customs Service.) We estimate that enacting H.R. 3129 also would decrease revenues by about \$4 million annually because of the increased personal duty exemption. Finally, the bill could have a negligible net impact on direct spending for overtime and premium pay for Customs officers. Because the bill would affect revenues and direct spending, pay-as-you-go procedures would apply.

H.R. 3129 would impose private-sector mandates, as defined by the Unfunded Mandates Reform Act (UMRA), on certain land, air, and vessel carriers. CBO estimates that the total direct cost of those mandates would fall below the annual threshold established by UMRA for private-sector mandates (\$113 million in 2001, adjusted annually for inflation). The bill contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 3129 is shown in the following table. The costs of this legislation fall within budget functions 150 (international affairs), 750 (administration of justice), and 800 (general government).

	By Fiscal Year, in Millions of Dollars				
	2002	2003	2004	2005	2006
SPENDING SUBJECT TO APPROPRIATION					
Spending Under Current Law					
Budget Authority ^a	2,767	0	0	0	0
Estimated Outlays	2,649	515	160	0	0
Proposed Changes					
Estimated Authorization Level	107	2,825	0	0	0
Estimated Outlays	56	2,332	401	143	0
Spending Under H.R. 3129					
Estimated Authorization Level	2,874	2,825	0	0	0
Estimated Outlays	2,705	2,847	561	143	0
CHANGES IN REVENUES^b					
Increased personal duty exemption					
Estimated Revenues	-4	-4	-4	-4	-4
<p>a. The 2002 level is the amount appropriated for that year for the Customs Service, the Office of the United States Trade Representative, and the International Trade Commission.</p> <p>b. For fiscal year 2002, most of the increased funding provided by H.R. 3129 would be for reestablishment of customs operations in New York City.</p> <p>c. H.R. 3129 could also affect direct spending, but CBO estimates that any such effects would be less than \$500,000 annually.</p>					

BASIS OF ESTIMATE

Assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would cost about \$2.9 billion over the 2002-2006 period. (About \$2.8 billion of this total would be for spending by the Customs Service.) We estimate that enacting H.R. 3129 also would decrease revenues by about \$4 million annually because of the increased personal duty exemption for travelers entering the United States. Enacting the bill could affect direct spending, but we estimate that any effects would be less than \$500,000 annually.

Spending Subject to Appropriation

For this estimate, CBO assumes that the amounts authorized by the bill will be appropriated near the start of each fiscal year and that outlays generally will follow historical spending rates for the authorized activities or for similar programs.

Based on information from the Customs Service, CBO estimates that it would cost roughly \$100 million over the 2002-2004 period to reestablish its operations in New York City. The agency's main facility in lower Manhattan, which housed 800 employees and contained several laboratories, was destroyed by the terrorist attacks on September 11, 2001. Funds would be used mostly to equip new office space for Customs employees and to replace the materials testing and crime investigation laboratories that were destroyed. Based on information from GAO, we estimate that the three reports required by the bill would cost about \$1 million in 2002.

Revenues

H.R. 3129 would increase the personal-duty exemption for persons entering the United States from \$400 to \$800. This provision would increase the amount of goods that travelers from abroad could bring in free of duty. Based on information from the Customs Service, CBO estimates that this provision would decrease revenues by about \$4 million each year.

Direct Spending

The provisions of H.R. 3129 that modify overtime and premium pay for Customs officers could affect direct spending since such costs are paid from funds not subject to annual appropriation. Some of the bill's provisions could increase these personnel costs, while other provisions would probably yield savings. CBO estimates that the net effect of H.R. 3129 on direct spending for overtime and premium pay would be less than \$500,000 a year.

PAY-AS-YOU-GO CONSIDERATIONS

The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. The changes in outlays and revenues that would be subject to pay-as-you-go procedures are shown in the following table. For the purposes of pay-as-you-go procedures, only the effects in the budget year and the succeeding four years are counted.

	By Fiscal Year, in Millions of Dollars									
	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Changes in outlays	0	0	0	0	0	0	0	0	0	0
Changes in receipts	-4	-4	-4	-4	-4	-4	-4	-4	-4	-4

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

H.R. 3129 contains no intergovernmental mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

ESTIMATED IMPACT ON THE PRIVATE SECTOR

H.R. 3129 would impose private-sector mandates, as defined by UMRA, on certain land, air, and vessel carriers seeking approval from the U.S. Customs Service for entry into the United States or for clearance to proceed from a port or place in the United States. The bill would require each land, air, or vessel carrier to provide by electronic transmission cargo manifest information in advance of such entry or clearance. The bill also would require such carriers with passengers arriving or departing the United States to provide by electronic transmission certain passenger and crew member manifest information in advance of such entry or clearance. According to the U.S. Customs Service, all U.S. air carriers and many cargo vessels currently provide such information on a voluntary basis. Based on information from representatives of the transportation industry, CBO estimates that the total direct cost to comply with mandates in the bill would fall below the annual threshold established by UMRA for private-sector mandates (\$113 million in 2001, adjusted annually for inflation).

ESTIMATE PREPARED BY:

Federal Spending: Mark Grabowicz (226-2860)

Federal Revenues: Erin Whitaker (226-2720)

Impact on State, Local, and Tribal Governments: Victoria Heid Hall (225-3220)

Impact on the Private Sector: Paige Piper/Bach (226-2940)

ESTIMATE APPROVED BY:

Peter H. Fontaine

Deputy Assistant Director for Budget Analysis

G. Thomas Woodward

Assistant Director for Tax Analysis

A. COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee, based on public hearing testimony and information from the Administration, concluded that it is appropriate and timely to consider the resolution as reported.

B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee advises that the Administration has in place program goals and objectives, which have been reviewed by the Committee. H.R. 3129 addresses several items by way of studies and reports for the purpose of evaluating whether Customs is meeting its goals and objectives.

C. CONSTITUTIONAL AUTHORITY STATEMENT

With respect to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, relating to Constitutional Authority, the Committee states that the Committee's action in reporting the bill is derived from Article 1 of the Constitution, Section 8 ("The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and to provide for *** the general Welfare of the United States.")

VI. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):