

**Mr. Thomas, from the Committee on Ways and Means, submitted the following**

**REPORT**

**[To accompany H.R. 4418]**

**[Including cost estimate of the Congressional Budget Office]**

**The Committee on Ways and Means, to which was referred the bill (H.R. 4418) to authorize appropriations for fiscal years 2005 and 2006 for U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, the Office of the United States Trade Representative, the United States International Trade Commission, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.**

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## **I. INTRODUCTION**

### **A. PURPOSE AND SUMMARY**

H.R. 4418 would authorize funding for U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), the Office of the United States Trade Representative (USTR), and the United States International Trade Commission (ITC).

### **B. BACKGROUND**

#### **1. AUTHORIZATION OF APPROPRIATIONS**

The Committee on Ways and Means has adopted a two-year authorization process to provide CBP, ICE, USTR, and the ITC with guidance as they plan their budgets and to provide Committee guidance in the appropriations process. In preparing H.R. 4418, the Committee considered the President's budget for FY 2005 and relied upon estimates of increases consistent with past practice as a guide for FY 2006. Funding for the former U.S. Customs Service, USTR, and the ITC was authorized through FY 2004 in the Trade Act of 2002 (P.L. 107-210).

#### **2. REORGANIZATION OF THE U.S. CUSTOMS SERVICE IN THE DEPARTMENT OF HOMELAND SECURITY**

On November 25, 2002, the President signed into law legislation (P.L. 107-296) creating a new Department of Homeland Security (DHS). This law transferred the U.S. Customs Service to the Department of Homeland Security under the authority of the Under Secretary for Border and Transportation Security. Authority for customs revenue functions is retained by the Secretary of the Treasury, administered by the Commissioner of U.S. Customs and Border Protection under the terms of a delegation of authority order.

On March 1, 2003, the former U.S. Customs Service was divided into two new agencies within DHS. Customs inspectors, canine enforcement officers, and import specialists were merged with immigration inspectors, border patrol agents, and agriculture inspectors to create CBP. Customs investigators and personnel in the air and marine operations were merged with immigration investigators, Federal air marshals, and members of the Federal protective service to create ICE.

The legislation transferring the U.S. Customs Service to DHS prohibits DHS from taking actions to "consolidate, discontinue, or diminish" customs revenue functions,

“reduce the staffing level, or reduce the resources attributable to such functions.” In the July 12, 2002 letter from the Committee on Ways and Means transmitting the views and recommendations of the Committee on the legislation establishing the new Department, the Committee noted, “It is also important to ensure that revenue continues to be collected and that goods keep moving across the border with little delay in order to maintain delicately balanced commercial schedules and operations.”

### 3. CUSTOMS MODERNIZATION

The current customs automation system, the Automated Commercial System (ACS), is an aging system that has experienced several “brownouts.” In August 2001, the systems integration contractor began work on the Automated Commercial Environment (ACE), a single integrated system that will replace ACS. Unlike ACS, ACE will use modern standards, processes, techniques, and language, and will be compatible with commercial software.

The first ACE participants were 41 initial importer accounts representing 17% of the total value of imports. CBP predicts that by the end of 2004, the number of ACE users will reach 20,000 and the number of ACE accounts will reach 1,100. While ACE is designed to be rolled out in eight phases over a period ending in September 2007, the program has faced both schedule and cost challenges.

In addition, CBP is in the process of integrating the International Trade Data System (ITDS) with ACE. ITDS was chartered in 1995 to facilitate information processing for businesses by accommodating the many federal agencies that need access to international trade data. Currently, traders are required to provide this information to each individual agency using a variety of different automated systems, a multitude of paper forms, or a combination of systems and forms. With ITDS, traders will submit standard electronic data for imports or exports only once to ITDS. ITDS will distribute this standard data to the pertinent Federal agencies that have an interest in the transaction for their selectivity and risk assessment. ITDS will provide only that data necessary to an agency’s mission. Agency participation in ITDS is voluntary, and many agencies have not yet chosen to participate, including the U.S. Coast Guard, the Transportation Security Administration, and the Office of Foreign Assets Control.

### 4. CUSTOMS USER FEES AND COST ACCOUNTING SYSTEMS

The Trade Act of 2002 requires the U.S. Customs Service to develop a cost accounting system to explain its expenditures effectively. Such a system would put customs operations in compliance with the core financial system requirements of the Joint Financial Management Improvement Program (JFMIP), 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 to improve financial management practices in government. Prior to the imposition of this requirement, the Committee noted in its report to accompany H.R. 3129, the Customs Border Security Act of 2001, that “the Customs Service is currently unable to answer fundamental questions about how it spends money.”

An effective cost accounting system is important to ensure that fees collected under the authority of paragraphs (1) through (8) of the Consolidated Omnibus Budget Reconciliation Act of 1985 are used only for their intended purpose. Section 413 of the legislation establishing DHS prohibits the use of these funds by any other agency or office of the Department. These fees are paid by commercial interests in return for specific commercial services. In the letter from the Committee on Ways and Means transmitting the views and recommendations of the Committee on the legislation establishing the new Department, the Committee noted, “It would be inappropriate and potentially inconsistent with the United States trade obligation for importers to pay fees that subsidize non-commercial functions of the new Department of Homeland Security. For these reasons, the Committee believes that fees should continue to be spent only on activities already defined in 19 U.S.C. 58c.”

## 5. REQUIREMENTS TO POST BOND FOR IMPORTERS SUBJECT TO ANTIDUMPING DUTIES

Recently CBP indicated that it had been unable to collect over \$100 million in antidumping duties owed on imports. Members of the Committee on Ways and Means expressed concerns about this inability to collect duties at the hearing, the mark up of the Subcommittee on Trade, and the Committee mark up.

CBP has recently provided the Committee with detailed information on the reforms that CBP will undertake to ensure that it will be able to collect duties owed in the future. First, CBP will rigorously enforce the requirement to post single entry bonds for each entry of goods subject to antidumping duties. Second, CBP will enhance monitoring by requiring all bonds to be filed at one central location, which will improve the ability of CBP to ensure that importers are complying with their obligations to pay. Third, CBP will amend its guidelines to raise the level of coverage of continuous bonds for importers of agriculture and aquaculture products subject to antidumping or countervailing duty cases so that exposure is minimized.

CBP also notes that the Commerce Department is increasingly requiring new shippers to post bonds at the higher “all others” rate faced by most importers rather than a zero rate. Finally, CBP notes that approximately half of the \$100 million shortfall is due to the bankruptcy of a single large surety – representing an anomaly, not a systemic problem.

The Committee believes these steps are positive and, if implemented as promised, should enhance protection of the revenue. The Committee will continue to monitor this issue closely and actively.

### C. LEGISLATIVE HISTORY

On May 20, 2004, Congressman Philip M. Crane, (R-IL), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, introduced H.R. 4418, the “Customs Border Security Act of 2004,” a bill to authorize appropriations for fiscal years 2005 and 2006 for CBP, ICE, USTR, and the ITC, and for other purposes. Congressmen Rangel (D-NY), Shaw (R-FL), Levin (D-MI), and Ramstad (R-MN) cosponsored the legislation. On June 17, 2004, the Subcommittee on Trade held a public hearing on Customs budget authorizations and other customs issues. On June 22, 2004, Chairman Crane sent a letter to Commissioner of U.S. Customs and Border Protection Robert Bonner submitting questions for response and inclusion in the Subcommittee record, requesting responses by July 6, 2004. The Subcommittee has not received responses to these questions. On June 24, 2004, the Subcommittee on Trade held a formal mark up session and ordered favorably reported to the full committee H.R. 4418, the “Customs Border Security and Trade Agencies Authorization Act of 2004,” as amended, by voice vote. On July 8, 2004, the Committee on Ways and Means held a formal mark up session on H.R. 4418, as amended by the Subcommittee. Chairman Thomas offered an amendment in the nature of a substitute, which was agreed to by voice vote. The Committee then ordered favorably reported H.R. 4418, as amended, by a roll call vote of 33 ayes to 0 nays.

## II. SECTION-BY-SECTION SUMMARY

### **Sec. 1. Short title**

#### *Current Law:*

No provision.

#### *Explanation of Provision:*

Section 1 provides that the act may be cited as the “Customs Border Security and Trade Agencies Authorization Act of 2004.”

#### *Reason for Change:*

The section identifies the short title for the bill.

TITLE I--BUREAU OF CUSTOMS AND BORDER PROTECTION AND BUREAU  
OF IMMIGRATION AND CUSTOMS ENFORCEMENT

Subtitle A--Authorization of Appropriations; Related Provisions

**Sec. 101. Authorization of appropriations.**

*Current Law:*

Section 301(b)(1) of the Customs Procedural and Simplification Act of 1978 (19 U.S.C. 2075(b)) provides the statutory basis for authorization of appropriations of the former U.S. Customs Service. The most recent authorization of appropriations for the U.S. Customs Service (under section 311 of the Trade Act of 2002) provided \$1,365,456,000 for noncommercial operations, \$1,642,602,000 for commercial operations, and \$170,829,000 for air and marine interdiction for FY 2003, and \$1,399,592,400 for noncommercial operations, \$1,683,667,050 for commercial operations, and \$175,099,725 for air and marine interdiction for FY 2004.

*Explanation of Provision:*

Section 101(a) would amend section 301 of the Customs Procedural Reform and Simplification Act of 1978 to make technical and conforming changes reflecting the division of the former U.S. Customs Service into CBP and ICE and its incorporation into DHS.

Section 101(b) would amend section 301 of the Customs Procedural Reform and Simplification Act of 1978 to authorize appropriations for salaries and expenses of CBP for fiscal year 2005 of \$6,203,000,000 and for fiscal year 2006 of \$6,469,729,000. It would require funds authorized for CBP with respect to customs revenue functions to be appropriated from the Customs User Fee Account. It would further authorize appropriations for salaries and expenses of ICE for fiscal year 2005 of \$4,011,000,000 and for fiscal year 2006 of \$4,335,891,000.

*Reason for Change:*

The incorporation of the former U.S. Customs Service into DHS and the subsequent division of the former U.S. Customs Service into CBP and ICE necessitated changes to the underlying statutory framework to reflect the new structure. The Committee notes that the information regarding the split between noncommercial and commercial operations provided in the past by the former U.S. Customs Service was not meaningful. The information was not the result of the collection of cost data on a continual basis. Rather, the Customs Service apportioned its budget through this artificial

division based upon an outdated ad hoc survey performed years ago. The survey estimated a certain percentage of the Customs Service's activities that were commercial-related. Based upon that conclusion, the Customs Service merely multiplied its overall budget by that static percentage to arrive at its estimation from year to year. The Committee believes that this methodology is woefully inadequate because actual costs for various functions change from year to year. For this reason, the Committee required the Customs Service to develop an adequate cost accounting system in section 334 of the Trade Act of 2002 (P.L. 107-210). However, the Committee has received conflicting and inadequate information on whether the successor agencies, CBP and ICE, have implemented such a cost accounting system. Accordingly, the Committee has addressed this issue again in section 102 of the legislation.

Funding authorized by this section is equal to the President's budget request for FY 2005 and provides an increase for FY 2006 that is equal to the percentage increase requested in FY 2005. These funding levels would provide adequate and appropriate resources for CBP and ICE to play their important security roles while still maintaining sufficient resources to support their critical trade facilitation functions.

#### **Sec. 102. Establishment and implementation of cost accounting system; reports.**

##### *Current Law:*

Section 334 of the Trade Act of 2002 required the former U.S. Customs Service to establish and implement a cost accounting system for expenses incurred in both commercial and noncommercial operations of the Customs Service, including an identification of expenses based on the type of operation, the port at which the operation took place, the amount of time spent on the operation by personnel of the Customs Service, and any other appropriate classification necessary to provide for an accurate and complete accounting of the expenses by September 30, 2003.

##### *Explanation of Provision:*

Section 102 would amend the requirement in section 334 of the Trade Act of 2002 to require CBP and ICE to establish by September 30, 2005, cost accounting systems that can distinguish between commercial and noncommercial operations, and expenses incurred in administering and enforcing the customs laws of the United States and the federal immigration laws. The section would further require the accounting systems to identify expenses based on the type of operation and the amount of time spent on the operation by personnel of the relevant agency. The section would also require reports: (1) by the Commissioner of Customs and the Assistant Secretary for United States Immigration and Customs Enforcement on a quarterly basis on the progress of implementing the cost accounting systems and on an annual basis itemizing the expenses

once the accounting systems are in place; and (2) by the Inspector General of DHS not later than March 31, 2006, on the level of compliance with this section.

*Reason for Change:*

As discussed above, the previous methodology used by the Customs Service to estimate costs for commercial versus noncommercial operation has been unsatisfactory and inadequate. While current law required the Customs Service to establish and implement an adequate cost accounting system, the Committee is disappointed that it has received conflicting and inadequate information on whether CBP and ICE have in place a functioning cost accounting system that can provide the information required by law. Section 102 would reiterate the requirement originally imposed in the Trade Act of 2002, clarify that this requirement applies to both CBP and ICE, and require reports by the Inspector General to monitor compliance by these agencies with the requirements of this section. The Committee intends to monitor progress closely.

**Sec. 103. Study and report relating to customs user fees.**

*Current Law:*

No provision.

*Explanation of Provision:*

Section 103(a) would require the Comptroller General to conduct a study on the extent to which the amount of the customs user fees approximates the cost of services provided, beginning 180 days after the date on which the cost accounting systems described in Section 102 are fully implemented.

Section 103(b) would require the Comptroller General to report to the Committee on Ways and Means and the Committee on Finance within one year of the implementation of the cost accounting systems described in Section 102 on the results of the study required in Section 103(a) and any recommendations for the appropriate amount of customs user fees.

*Reason for Change:*

Section 336 of the Trade Act of 2002 required the Comptroller General to conduct a study on the extent to which the amount of the customs user fees approximates the cost of services provided. The Comptroller General released the required report in which he concluded that it was impossible to determine whether the amount of the fees approximated the costs of services provided because the Customs Service did not have an

adequate cost accounting system in place to determine the costs of services provided. As noted above, the Committee is very concerned about the lack of such an accounting system. This section would require a follow-up report by the Comptroller General once the cost accounting system required by Section 102 is implemented.

#### **Sec. 104 Report Relating to One Face at the Border Initiative**

*Current Law:*

No provision.

*Explanation of Provision:*

This section would require the Commissioner of Customs no later than September 30 of each of the calendar years 2005 and 2006 to submit a report to Congress analyzing the effectiveness of the One Face at the Border Initiative at enhancing security and facilitating trade, describing the training time provided to each employee under the Initiative, and outlining the steps taken by CBP to ensure that expertise is retained with respect to customs, immigration, and agriculture inspection functions.

*Reason for Change:*

Prior to the creation of CBP, customs, immigration, and agriculture inspections functions were performed by separate personnel from the U.S. Customs Service, the Immigration and Naturalization Service, and the U.S. Department of Agriculture. CBP has created a single officer, the CBP Officer, to perform all of these functions. The first new CBP Officers were hired in late 2003, and legacy customs, immigration, and agriculture inspections officers are being cross-trained and converted to new CBP Officer positions. This provision would provide the Committee with information to determine whether sufficient training is provided in all three aspects to ensure that CBP Officers have the necessary expertise.

Subtitle B--Technical amendments relating to entry and protest

#### **Sections 111-118**

*Current Law:*

In the past, importers paid duties on each entry as the entry was processed. Under the recently implemented periodic payment system, CBP allows participating importers to pay of duties on a monthly basis.

*Explanation of Provision:*

Sections 111 through 118 are technical amendments dealing with reconfigured entries. The reconfigured entry process would allow importers to separate individual shipments from a larger entry if there are disputes about the individual shipments.

*Reason for Change:*

Allowing individual shipments to be separated from a larger entry paid on a periodic basis would facilitate trade by allowing undisputed shipments to be processed expeditiously.

Subtitle C--Miscellaneous Provisions

**Sec. 121. Designation of San Antonio International Airport for Customs processing of certain private aircraft arriving in the United States.**

*Current Law:*

Section 1453(a) of the Tariff Suspension and Trade Act of 2000 required the Commissioner of the Customs Service to designate the San Antonio International Airport as an airport in which private aircraft can land for processing by the Customs Service for a period of two years beginning with the date of enactment of that Act (November 9, 2000).

*Explanation of Provision:*

Section 121 would extend the designation of San Antonio International Airport for customs processing of private aircraft arriving in the United States for four years effective November 9, 2002.

*Reason for Change:*

The designation of the San Antonio International Airport lapsed on November 9, 2002, and this provision would extend that designation through November 9, 2006.

**Sec. 122. Authority for the establishment of Integrated Border Inspection Areas at the United States-Canada border.**

*Current Law:*

Section 127 of the Treasury Department Appropriations Act of 2003 (P.L. 108-7) contains this provision.

*Explanation of Provision:*

Section 122 would require the Commissioner of Customs to seek to establish Integrated Border Inspection Areas on either side of the United States-Canada border in which U.S. Customs officers can inspect vehicles entering the United States from Canada before they enter the United States, or Canadian Customs officers can inspect vehicles entering Canada from the United States before they enter Canada.

*Reason for Change:*

The inclusion of this provision in the Treasury Appropriations Act of 2003 was a stopgap measure to authorize an important security program at a time when an appropriate authorizing bill was not available. This section would include this program in the appropriate authorizing legislation.

**Sec. 123. Designation of foreign law enforcement officers.**

*Current Law:*

Section 127 of the Treasury Department Appropriations Act of 2003 (P.L. 108-7) contains this provision.

*Explanation of Provision:*

Section 123 would amend Section 401(i) of the Tariff Act of 1930 to provide for inspections and preclearance in foreign countries and to authorize the Secretary of State to enter into agreements with foreign countries for the stationing of foreign customs and agriculture inspection officers in the United States.

*Reason for Change:*

The inclusion of this provision in the Treasury Appropriations Act of 2003 was a stopgap measure to authorize an important security program at a time when an appropriate authorizing bill was not available. This section includes this program in the appropriate authorizing legislation.

**Sec. 124. Customs services.**

*Current Law:*

No provision.

*Explanation of Provision:*

Section 124 amends section 13031(e)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985 to permit CBP to provide services for charter air carriers for flights arriving after normal operating hours upon their request and at their expense.

*Reason for Change:*

Under current law, CBP is not authorized to provide services for charter air carriers for flights arriving under normal operating hours. This provision would permit CBP at its discretion to provide these services if appropriate and charge the cost of the provision of the services to the charter air carriers.

**Sec. 125. Sense of Congress on interpretation of textile and apparel provisions.**

*Current Law:*

No provision.

*Explanation of Provision:*

Section 125 expresses the sense of Congress that CBP should interpret provisions of the African Growth and Opportunity Act (AGOA), the Andean Trade Preference Act (ATPA), and the Caribbean Basin Economic Recovery Act (CBERA) relating to preferential treatment of textile and apparel articles broadly in order to expand trade by maximizing opportunities for imports of such articles from eligible beneficiary countries.

*Reason for Change:*

The Committee has noted the frequent frustration of Congressional intent by CBP decisions implementing AGOA, ATPA, and CBERA. Congress has been forced to revisit many issues in the original AGOA legislation and reverse decisions by the Executive Branch that have denied benefits to imports that Congress fully intended to cover. This provision admonishes CBP to recognize the importance of interpreting the AGOA, ATPA, and CBERA laws in a trade-liberalizing manner.

**Sec. 126. Technical amendments.**

*Current Law:*

Section 505(a) of the Tariff Act of 1930 requires importers to deposit estimated duties and fees on entries of merchandise within 10 working days of entry or release. Section 13031(b)(9)(A) of the Consolidated Budget Omnibus Reconciliation Act of 1985 restricts the ability to collect fees under the section to imports valued at “less than \$2000.” Section 13031(b)(9)(A)(ii) requires an express consignment carrier facility or centralized hub facility to reimburse the Customs Service for the cost of services provided by the Customs Service for the facility during the fiscal year.

*Explanation of Provision:*

Section 126(a) would amend section 505(a) of the Tariff Act of 1930 to increase the time period for importers to make periodic payments from 10 working days to 12 working days and would permit participating importers to deposit estimated duties and fees for entries of merchandise no later than 15 working days following the month in which the merchandise is entered or released, whichever comes first.

Section 126(b) would amend section 13031(b)(9)(A) of the Consolidated Omnibus Budget Reconciliation Act of 1985 to change the threshold for the merchandise processing fee from "less than \$2,000" to "\$2,000 or less" and to create a user fee for express courier facilities.

*Reason for Change:*

Both importers and CBP have requested the change from 10 working days to 12 working days as necessary for administrability of the periodic payment system. The change from “less than \$2000” to “\$2000 or less” is at the request of CBP to facilitate the administrability of the fee. The creation of the user fee for entries at express courier facilities makes the treatment of entries at those facilities more consistent with the treatment at other ports of entry.

TITLE II--OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

**Sec. 201. Authorization of appropriations.**

*Current Law:*

The statutory authority for budget authorization for USTR 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 361 of the Trade Act of 2002 (P.L. 107-210). Under 19 U.S.C. 2171, Congress has adopted a two-year authorization process to provide

USTR with guidance as it plans its budget and to provide Committee guidance in the appropriation process.

*Explanation of Provision:*

This section would authorize appropriations for fiscal years 2005 and 2006 for the Office of the United States Trade Representative (USTR) of \$39,552,000 per year. It would authorize an additional \$2 million per year for the appointment of additional staff in the Office of the General Counsel and the Office of Monitoring and Enforcement of USTR.

*Reason for Change:*

The legislation would authorize the full amount of the President's budget request for USTR. It would further authorize an earmark of \$2 million per year for the specific purpose of additional staff for the Office of General Counsel and the Office of Monitoring and Enforcement of USTR in light of the vital functions performed by these offices and their corresponding need for additional staff. The Committee believes that this earmark would provide sufficient funding for USTR to address a variety of needs that will best enable U.S. companies, farmers, and workers to benefit from the trade agreements to which the United States is party.

TITLE III--UNITED STATES INTERNATIONAL TRADE COMMISSION

**Sec. 301. Authorization of appropriations.**

*Current Law:*

The statutory authority for budget authorization for the ITC 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 371 of the Trade Act of 2002 (P.L. 107-210). 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 and to provide Committee guidance in the appropriation process.

*Explanation of Provision:*

The provision would authorize appropriations for the ITC of \$61,700,000 for fiscal year 2005 and \$65,278,000 for fiscal year 2006.

*Reason for Change:*

The legislation authorizes the full amount of the ITC's budget request for fiscal year 2005. The Committee notes in particular that the ITC provides valuable advice as to the probable economic effects of U.S. trade agreements and miscellaneous tariff legislation considered by Congress.

### 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. 4418.

#### A. MOTION TO REPORT THE BILL

The bill, H.R. 4418, as amended, was ordered favorably reported by a roll call vote of 33 yeas to 0 nays (with a quorum being present). The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas.....	√			Mr. Rangel.....	√		
Mr. Crane.....	√			Mr. Stark.....			
Mr. Shaw.....	√			Mr. Matsui.....			
Mrs. Johnson.....	√			Mr. Levin.....	√		
Mr. Houghton.....	√			Mr. Cardin.....	√		
Mr. Herger.....	√			Mr. McDermott.....			
Mr. McCrery.....	√			Mr. Kleczka.....			
Mr. Camp.....	√			Mr. Lewis (GA).....	√		
Mr. Ramstad.....	√			Mr. Neal.....	√		
Mr. Nussle.....	√			Mr. McNulty.....			
Mr. Johnson.....	√			Mr. Jefferson.....	√		
Ms. Dunn.....	√			Mr. Tanner.....	√		
Mr. Collins.....				Mr. Becerra.....	√		
Mr. Portman.....	√			Mr. Doggett.....			
Mr. English.....	√			Mr. Pomeroy.....	√		
Mr. Hayworth.....	√			Mr. Sandlin.....	√		
Mr. Weller.....	√			Ms. Tubbs Jones....	√		
Mr. Hulshof.....							
Mr. McInnis.....	√						
Mr. Lewis (KY).....	√						

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Foley.....	√						
Mr. Brady.....	√						
Mr. Ryan.....	√						
Mr. Cantor.....	√						

## B. VOTES ON AMENDMENTS

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. Levin, which would have provided that the responsibilities of the additional USTR staff appointed in the Chairman's amendment in the nature of a substitute shall include investigating, prosecuting, and defending cases before the World Trade Organization and trade agreements, administering U.S. trade laws, and monitoring compliance with the Uruguay Round Agreements and other trade agreements, particularly by China, was defeated by a roll call vote of 11 yeas to 21 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Thomas.....		√		Mr. Rangel.....	√		
Mr. Crane.....		√		Mr. Stark.....			
Mr. Shaw.....		√		Mr. Matsui.....			
Mrs. Johnson.....		√		Mr. Levin.....	√		
Mr. Houghton.....		√		Mr. Cardin.....	√		
Mr. Herger.....		√		Mr. McDermott.....			
Mr. McCrery.....		√		Mr. Kleczka.....			
Mr. Camp.....		√		Mr. Lewis (GA).....	√		
Mr. Ramstad.....		√		Mr. Neal.....	√		
Mr. Nussle.....		√		Mr. McNulty.....			
Mr. Johnson.....		√		Mr. Jefferson.....	√		
Ms. Dunn.....		√		Mr. Tanner.....	√		
Mr. Collins.....				Mr. Becerra.....	√		
Mr. Portman.....		√		Mr. Doggett.....			
Mr. English.....		√		Mr. Pomeroy.....	√		
Mr. Hayworth.....		√		Mr. Sandlin.....	√		
Mr. Weller.....		√		Ms. Tubbs Jones....	√		
Mr. Hulshof.....							

Representatives	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. McInnis.....		√					
Mr. Lewis (KY).....		√					
Mr. Foley.....		√					
Mr. Brady.....		√					
Mr. Ryan.....		√					
Mr. Cantor.....							

#### **IV. BUDGET EFFECTS OF THE BILL**

##### **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 this bill, H.R. 4418 as amended and reported: The Committee agrees with the estimate prepared by the Congressional Budget Office (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 H.R. 4418 does not include any new budget authority or tax expenditures.

##### **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 by CBO is provided.

[to be provided by CBO]

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

##### **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



CONGRESSIONAL BUDGET OFFICE  
U.S. Congress  
Washington, DC 20515

*Douglas Holtz-Eakin, Director*

July 12, 2004

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. 4418, the Customs Border Security and Trade Agencies Authorization Act of 2004.

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,

A handwritten signature in black ink, appearing to read "Doug Holtz-Eakin".

Douglas Holtz-Eakin

Enclosure

cc: Honorable Charles B. Rangel  
Ranking Member



**CONGRESSIONAL BUDGET OFFICE  
COST ESTIMATE**

July 12, 2004

**H.R. 4418**

**Customs Border Security and Trade Agencies Authorization Act of 2004**

*As ordered reported by the House Committee on Ways and Means on July 8, 2004*

**SUMMARY**

H.R. 4418 would authorize appropriations for 2005 and 2006 for the Bureau of Customs and Border Protection (CBP), the Bureau of Immigration and Customs Enforcement (ICE), the Office of the U.S. Trade Representative, and the International Trade Commission. The bill also would make many minor changes to the current laws relating to the entry of persons and goods into the United States.

CBO estimates that implementing H.R. 4418 would cost about \$21 billion over the 2005-2009 period, assuming appropriation of the authorized amounts. All but \$200 million of this total would be spending for CBP and ICE. Enacting the bill would have a very small effect on direct spending.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

**ESTIMATED COST TO THE FEDERAL GOVERNMENT**

The estimated budgetary impact of H.R. 4418 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). For this estimate, CBO assumes that the amounts authorized by the bill will be appropriated by the start of each fiscal year. We expect that CBP and ICE would spend those funds somewhat more slowly than the historical rates for these agencies because the bill would authorize substantial increases in funding over the amounts appropriated for 2004.

	By Fiscal Year, in Millions of Dollars					
	2004	2005	2006	2007	2008	2009
<b>SPENDING SUBJECT TO APPROPRIATION</b>						
Spending Under Current Law						
Budget Authority <sup>a</sup>	7,360	0	0	0	0	0
Estimated Outlays	6,786	1,387	698	16	0	0
Proposed Changes						
Authorization Level	0	10,317	10,912	0	0	0
Estimated Outlays	0	7,244	9,712	3,191	1,081	0
Spending Under H.R. 4418						
Authorization Level	7,360	10,317	10,912	0	0	0
Estimated Outlays	6,786	8,631	10,410	3,207	1,081	0

a. The 2004 level is the amount appropriated for that year for CBP, ICE, the Office of the United States Trade Representative, and the International Trade Commission.

H.R. 4418 would renew the designation of San Antonio International Airport as a site for customs processing of private aircraft. That provision could have a very small effect on collections of customs fees.

**INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT**

H.R. 4418 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

**ESTIMATE PREPARED BY:**

Federal Spending: Mark Grabowicz (226-2860)  
 Impact on State, Local, and Tribal Governments: Melissa Merrell (225-3220)  
 Impact on the Private Sector: Paige Piper/Bach (226-2940)

**ESTIMATE APPROVED BY:**

Robert A. Sunshine  
 Assistant Director for Budget Analysis

information from the Administration, conclude that it is appropriate and timely to consider the bill as reported.

## **B. STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES**

With respect 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. 4418 addresses several items by way of studies and reports for the purposes of evaluating with CBP and ICE are meeting their 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 I 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.')

## **D. INFORMATION RELATING TO UNFUNDED MANDATES**

This information is provided in accordance with Section 423 of the Unfunded Mandates Reform Act of 1995 (P.L. 104-4).

The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments. The Committee has determined that the bill does not contain Federal mandates on the private sector.

## **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):

[to be provided by the Office of Legislative Counsel]

## **VII. COMMITTEE CORRESPONDENCE**

[to be supplied]

## **VIII. VIEWS**

[to be supplied]

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ONE HUNDRED EIGHTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON THE JUDICIARY

2138 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6216

(202) 225-3951

<http://www.house.gov/judiciary>

July 13, 2004

The Honorable Bill Thomas  
Chairman  
Committee on Ways and Means  
United States House of Representatives  
Washington, D.C. 20515

Dear Chairman Thomas:

In recognition of the desire to expedite floor consideration of H.R. 4418, the "Customs Border Security Act of 2004," the Committee on the Judiciary hereby waives consideration of the bill.

Certain sections of H.R. 4418 contain matters within the Committee on the Judiciary's Rule X jurisdiction: Section 101 (insofar as it authorizes funding for immigration matters); Section 102 (insofar as it requires cost accounting systems for immigration matters); and Section 122 (insofar as the Integrated Border Inspection Areas include immigration matters). Because of the need to expedite this legislation, I will not seek to mark up the bill under the Committee on the Judiciary's secondary referral.

The Committee on the Judiciary takes this action with the understanding that the Committee's jurisdiction over these provisions is in no way diminished or altered. I would appreciate your including this letter in your Committee's report on H.R. 4418 and the *Congressional Record* during consideration of the legislation on the House floor.

Sincerely,



F. JAMES SENSENBRENNER, JR.  
Chairman

cc: The Honorable J. Dennis Hastert  
The Honorable John Conyers, Jr.  
The Honorable Charles Rangel  
The Honorable John Sullivan, Parliamentarian

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# Congress of the United States

## U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS

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Washington, DC 20515-6348

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JANICE MAYS,  
MINORITY CHIEF COUNSEL

July 13, 2004

The Honorable F. James Sensenbrenner, Jr.  
Chairman  
Committee on the Judiciary  
2138 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Sensenbrenner:

Thank you for your letter regarding H.R. 4418, the "Customs Border Security and Trade Agencies Authorization Act of 2004." The Committee on Ways and Means ordered favorably reported, as amended, H.R. 4418 on Thursday, July 8, 2004 by a 33-0 vote. I appreciate your agreement to expedite the passage of this legislation although it contains several immigration provisions that are within your Committee's jurisdiction. I acknowledge your decision to forego further action on the bill is based on the understanding that it will not prejudice the Committee on the Judiciary with respect to its jurisdictional prerogatives on this or similar legislation.

Our committees have long collaborated on these important initiatives, and I am very pleased we are continuing that cooperation. Your leadership on immigration issues is critical to the success of this bill. I appreciate your helping us to move this legislation quickly to the floor.

Finally, I will include in both the Committee report and the *Congressional Record* a copy of our exchange of letters on this matter. Thank you for your assistance and cooperation. I look forward to working with you in the future.

Best regards,



Bill Thomas  
Chairman

cc: The Honorable J. Dennis Hastert  
The Honorable Tom DeLay  
The Honorable Roy Blunt  
The Honorable Nancy Pelosi  
The Honorable Steny Hoyer  
The Honorable John Conyers, Jr.  
The Honorable Charles B. Rangel  
Mr. John Sullivan, Parliamentarian

## **Additional Views - H.R. 4418**

Earlier this year, the Customs and Border Protection Agency admitted that it had failed to collect more than \$130 million in duties owed on imports, largely from China. An investigation showed that one reason for this \$130 million problem was a loophole applicable to so-called “New Shippers” of goods subject to antidumping (AD) and countervailing (CVD) duties. There are variations on this loophole, but basically, one version of the loophole allows these “New Shippers” to post bonds for the unfair trade duties they owe, rather than paying the estimated amount owed. Established importers do not enjoy this benefit of being able to post bonds for pennies on the dollar, but must pay the estimated duties.

In what appeared to be a pattern, importers failed to pay the full amount of duties, leaving CBP with recourse to the bonds. To the extent that the bonds were collectible, they were insufficient to cover the full amount of the duties owed. In other cases, CBP was unable to collect on the bonds. This problem contributed to CBP’s failure to collect more than \$130 million worth of duties owed; America’s fair trade laws were flouted and the U.S. Treasury was deprived of a substantial amount of revenues that it was due. A large number of the importers taking advantage of the loophole were importing products from China; in some cases, it appears that Chinese firms subject to AD/CVD duties set up shell companies to take advantage of the “New Shipper” process. In a related problem, it appears that CBP has been unable in a number of cases to collect the full amount of a duty owed, even when “New Shippers” were not involved and cash deposits were paid.

These failures reflect poorly on CBP. It has repeatedly, and in a variety of contexts and circumstances, failed to ensure that U.S. trade laws are enforced as provided by law. These serious and repeated failures have denied American workers, farmers and businesses benefits to which they are entitled under U.S. law. These lapses involve failure to follow procedures established under U.S. law and failure to utilize due diligence in enforcing U.S. law.

In response to Congressional inquiries and criticisms, CBP recently proposed a series of reforms to address aspects of these problems. We have serious concerns not only about CBP’s ability to implement the proposed reforms, but also with whether the reforms would in fact eliminate the problems. We believe that a more comprehensive approach involving changes to current U.S. law is necessary. Steps that we recommend taking include ending the special treatment allowed for “New Shippers.” In particular, “New Shippers” should be treated like other importers – they would have to pay estimated duties with each entry, and would not be allowed to post bonds.

This step would be fully consistent with our international obligations, which authorize the United States to “request guarantees to ensure that ... duties can be levied retroactively to the date of the initiation of the review.” Clearly, the “guarantees” in the form of bonds have not ensured that the duties could be levied as provided in Article 9.5 of the Antidumping Agreement of the World Trade Organization. To do so requires collecting cash deposits. We would be prepared to consider other alternatives, including a more reliable bonding requirement, at some future date, were it to be proposed by CBP, and were it to ensure the ability of the United States to levy duties retroactively to the date of the initiation of the review.

In addition, we believe that the requirement that importers of goods subject to antidumping or countervailing duty actions post continuous bonds with a higher level of coverage should be statutorily mandated – and not left to CBP’s discretion. CBP’s record in implementing laws that allow for discretion has not always been consistent with Congress’ expectations in the past, underscoring the need for Congress to provide exact and specific direction.

We will continue to raise this issue as the legislation moves forward. We are supportive of the authorizations for these agencies, and of other provisions in the legislation. That said, the failure to enforce U.S. trade laws is a serious one, and one that deserves action from this House.

### **Office of the U.S. Trade Representative**

Section 201 of the H.R. 4418 authorizes appropriations for USTR for FY2005 and FY2006 at \$41.5 million per year. This amount is \$2 million over the Administration’s budget request.

We believe that additional direction should have been included to ensure that some portion of this additional \$2 million is used to ensure our trading partners are living up to their international trade obligations. The current legislation does not require this outcome. Instead, as this bill is currently drafted, the additional \$2 million can be used entirely for free trade agreement negotiations, administering U.S. trade preference programs (like AGOA, CBI and ATPA), and coordinating inter-agency trade policy.

During the Full Committee markup, Congressman Levin offered an amendment that directed USTR to use some part of the additional \$2 million for staff to, among other activities, investigate, prosecute, and defend cases before the World Trade Organization and under trade agreements to which the United States is a party, and to address foreign government barriers to United States goods and services, particularly with respect to the People’s Republic of China. The amendment was rejected on a straight party line vote.

The decision by the Republican Members of the Committee to reject the amendment is unfortunate. In 2003, the goods trade deficit set a record high of \$549.4 billion. We are losing ground even areas, like advanced technology products, where the United States has dominated. In 2003, our deficit in advanced technology products climbed 65 percent, and total goods exports were down \$58 million from 2000. Unfortunately, the trade deficit is on track once again this year to set a new record.

We will continue to work for inclusion of specific direction to USTR on this issue, so that USTR starts producing results for American workers, farmers and businesses.

### **Compilation of Additional Views**

Democratic Members of the Committee were provided only a half working day to respond to the Committee views, which, without prior notice, contained comments on a number of tangential points. Further, the Majority provided the Democratic Members of the Committee

with notice at approximately 6:45 in the evening that this legislation would come to the Floor the next day under the Suspensions Calendar. As a consequence, many of the Democratic Members of the Committee have been deprived of the opportunity to review, consider and sign these Additional Views. We hope that in the future more adequate notice can be provided so that the Majority and Minority can work more collaboratively whenever possible.

Additional Views on H.R. 4418

Charles Langel

Jim McQuinn

Alphonse P. P. Jones

Robert Z. Matsui

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Sander Swani

Yvonne Swani

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