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AUTHORIZING APPROPRIATIONS FOR FISCAL YEAR 1990 TO THE OFFICE OF U.S. TRADE REPRESENTATIVE, THE U.S. INTERNATIONAL TRADE COMMISSION, AND THE U.S. CUSTOMS SERVICE

JUNE 13 (legislative day, JANUARY 3), 1989.—Ordered to be printed

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

REPORT

[To accompany S. 1164]

The Committee on Finance reports an original bill (S. 1164) to authorize appropriations for fiscal year (FY) 1990 to the Office of the U.S. Trade Representative, the U.S. International Trade Commission, and the U.S. Customs Service, and for other purposes, and recommends that the bill do pass.

I. SUMMARY

The Committee bill would authorize FY 1990 appropriations of $19,651,000 to the Office of the U.S. Trade Representative, $39,943,000 to the U.S. International Trade Commission, and $1,203,418,000 to the U.S. Customs Service. The Committee bill would also authorize $1,492,000 to the Office of the U.S. Trade Representative for the U.S. share of the expenses of certain dispute settlement panels convened under the U.S.-Canada Free-Trade Agreement. In addition, the bill would provide for Presidential appointment, subject to advice and consent of the Senate, of the Commissioner of Customs; clarify that the Customs Service may be reimbursed for customs services provided at a foreign trade zone located at a user fee airport; and require Customs to provide the facilities, equipment and employees at the customs port of entry located at Chateaugay, New York, necessary to make that port a commercial center under the Northern Border Enhancement Program administered by the Customs Service.

II. GENERAL EXPLANATION

The Committee on Finance reports a bill to authorize FY 1990 appropriations to the Office of the U.S. Trade Representative (USTR), the U.S. International Trade Commission (ITC), and the U.S. Customs Service. The Committee held hearings on authoriza-

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tion of appropriations for, and oversight of, these three agencies on March 7, and 8, 1989.

AUTHORIZATION OF APPROPRIATIONS TO THE OFFICE OF THE USTR (SECTION 1 OF THE BILL)

Authorization for the functions of the USTR.—Section 141(g) of the Trade Act of 1974, as amended (19 U.S.C. 2171(g)), authorizes appropriations for the purposes of carrying out the functions of the Office of the USTR. Congress last acted to authorize such appropriations in the Omnibus Budget Reconciliation Act of 1987 when it authorized an appropriation of $15,172,000 to USTR for FY 1988 (including $69,000 for entertainment and representation expenses and $1,000,000 to remain available until expended). The Committee on Finance reported, and the Senate subsequently passed, a bill (S. 2595) in 1988 to authorize an FY 1989 appropriation to USTR of $15,393,000. The House of Representatives did not act on an FY 1989 authorization for USTR. Public Law 100–459 provided an FY 1989 appropriation of $15,229,000 to USTR (including $69,000 for official reception and representation expenses and $1,000,000 to remain available until expended).

Section 1(a) of the Committee bill amends section 141(g) of the Trade Act of 1974 to authorize appropriations of $19,651,000 for FY 1990 to the Office of the USTR. Section 1(a) further provides, as requested in the President's budget, that an amount not to exceed $89,000 may be used for entertainment and representation expenses, and that $1,000,000 to remain available until expended.

The funding level authorized by the Committee bill includes increases of $2,362,000 to support the Uruguay Round negotiations, $838,000 to implement the Omnibus Trade and Competitiveness Act of 1988, and $128,000 to monitor, and conduct further negotiations under, the U.S.-Canada Free-Trade Agreement. It provides for an increase from the current level of 146 full-time equivalent (FTE) staff positions to 164 positions.

The USTR funding level authorized by the Committee represents an increase of $2,821,000 over the amount requested in the President's budget submission to the Congress for FY 1990. The President's budget submission requests a small increase in the appropriation to the USTR, primarily to provide additional resources to support the second half of the Uruguay Round negotiations. The President's budget proposes no increased funding for implementation of the Omnibus Trade Competitiveness Act of 1988 (Public Law 100–418) or the U.S.-Canada Free-Trade Agreement.

The Committee is authorizing a higher level of funding for the USTR than requested by the President in order to enable the USTR to meet the combined demands of implementating the new trade law and the U.S.-Canada Free-Trade Agreement at a time when the Uruguay Round of multilateral trade negotiations is entering a phase of intensive negotiations. Furthermore, the Omnibus Trade and Competitiveness Act of 1988 significantly expanded the functions of USTR. As a result, the Committee believes that the funding levels for USTR requested in the President's budget are not adequate to assure that the USTR can meet its new and continuing responsibilities.

The Office of the USTR faces many pressing tasks that are crucial to the economic future of the United States. In addition to vigorously pursuing the Uruguay Round and its other responsibilities set out in the Omnibus Trade and Competitiveness Act of 1988, the Committee encourages USTR to assign additional personnel to bilateral trade negotiations with Japan and to the task of monitoring and promoting U.S. interests in the European Community's (EC) single market program.

Authorization for binational panels under United States-Canada Free-Trade Agreement.—Section 406(b) of the U.S.-Canada Free-Trade Agreement Implementation Act of 1988 (Public Law 100–449) authorized to be appropriated to the Office of the USTR and FY 1989 such sums as necessary to pay during FY 1989 for the U.S. share of the expenses of binational panels and extraordinary challenge committees convened pursuant to chapter 19 of the U.S.-Canada Free-Trade Agreement. Chapter 19 pertains to binational dispute settlement in antidumping and countervailing duty cases.

Section 1(b) of the Committee bill amends section 406(b) of the U.S.-Canada Free-Trade Agreement Implementation Act of 1988 to authorize appropriations of $1,492,000 for FY 1990 to the Office of the USTR to pay during FY 1990 for the U.S. share of the expenses of binational panels and extraordinary challenge committees convened pursuant to chapter 19 of the U.S.-Canada Free-Trade Agreement.

The purpose of requiring an annual authorization of funds to USTR for this purpose is to assure that USTR fully consults with the appropriate Congressional Committees on the choice of U.S. individuals eligible to serve as panelists and committee members. Because panel review of U.S. decisions in antidumping and countervailing duty cases replaces judicial review in U.S. courts, the Committee considers such consultations essential.

Contrary to Congressional intent, the President's budget proposal for FY 1990 calls for an appropriation of funds to the International Trade Administration of the Department of Commerce, rather than USTR, for the U.S. share of expenses of bilateral panels and extraordinary challenge committees convened pursuant to Chapter 19 of the FTA. The Committee continues to believe strongly that the appropriation should be to the Office of the USTR because the USTR is responsible, under the terms of the law implementing the U.S.-Canada Free-Trade Agreement, for appointing panelists and committee members and, therefore, is responsible for consulting with Congress on the appointments. Therefore, the Committee has authorized such funds to be appropriated to the Office of the USTR.

AUTHORIZATION OF APPROPRIATIONS TO THE ITC (SECTION 2 OF THE BILL)

Section 330(e)(2) of the Tariff Act of 1930, as amended (19 U.S.C. 1330(e)(2)) requires annual enactment of an authorization of appropriations for the ITC. Section 175 of the Trade Act of 1974 (19 U.S.C. 2232) requires that the estimated expenditures and proposed appropriations of the agency be included in the President's budget without revision.

Congress last acted to authorize an appropriation for the ITC in the Omnibus Budget Reconciliation Act of 1987 when it authorized an appropriation of $35,386,000 to the ITC for FY 1988 (including $2,500 for official reception and representation expenses. The Committee on Finance reported, and the Senate subsequently passed, a bill (S. 2595) in 1988 to authorize an FY 1989 appropriation to ITC of $37,069,000. The House of Representatives did not act on an FY 1989 authorization for ITC. Public Law 100-459 provided an FY 1989 appropriation of $35,958,000 to ITC.

Section 2 of the Committee bill authorizes appropriations of $39,943,000 for FY 1990 to the ITC, including $2,500 for official reception and representation expenses. This is the amount requested by the ITC and represents an increase of $3,985,000 over the FY 1989 appropriation for the agency. The increase is intended to cover nondiscretionary cost increases and to provide for a full complement of staff positions. The number of authorized positions would remain at the present level of 502.

The Committee is authorizing the ITC at the requested level in order to assure that the ITC has sufficient resources to meet the likely demands on the agency during FY 1990. The ITC was given new responsibilities as a result of the Omnibus Trade and Competitiveness Act of 1988 and the implementing legislation for the U.S.-Canada Free-Trade Agreement. In addition, the Committee foresees a likelihood of both the Congress and the Administration calling on the ITC for technical support during the next phase of Uruguay Round of multilateral trade negotiations. Therefore, the Committee believes the requested increase in the ITC's budget is justified.

AUTHORIZATION OF APPROPRIATIONS TO THE U.S. CUSTOMS SERVICE (SECTION 3 OF THE BILL)

FY 1990 budget authorization.—Section 301 of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075) requires annual enactment of an authorization of appropriations to the U.S. Customs Service. For FY 1990, section 3(a) of the Committee bill authorizes an appropriation of $1,203,418,000. Of this total, $1,075,290,000 is allocated to salaries and expenses. This is an increase of $53,800,000 above the amount requested in the President's budget for salaries and expenses.

As required by the Omnibus Budget Reconciliation Act of 1986, the Committee bill specifies the amounts for salaries and expenses dedicated to commercial ($656,468,000) and noncommercial ($418,822,000) operations. The purpose of this breakout is to establish the authorized amount to be funded for commercial operations out of the Customs User Fee Account. The remainder of the total authorized amount ($128,128,000) is for operations and maintenance of the air drug interdiction program, and represents the amount requested in the President's budget for that program.

The President's budget request for salaries and expenses for the Customs Service for FY 1990 calls for appropriation of $1,021,490,000, for an authorized personnel level of 16,422 full-time equivalent (FTE) positions. This request represents a decrease of $12.4 million from the level of $1,033,911,000 appropriated for this purpose last year. It also calls for a decrease of 317 personnel positions. The decreases are accounted for by transfers of program authority mandated by statute. Ninety-one FTE's are transferred to the Inspector General's Office in the Department of the Treasury, and 226 are transferred to the Department of Justice's Organized Crime Enforcement Task Force. When the statutory mandate to transfer these positions is taken into account, the President's budget request is essentially the amount required to maintain the level of services of FY 1989.

The President's budget also proposes to cut 396 positions from commercial operations through a series of projected savings (from greater productivity due to automation; contracting out to the private sector; and an "FTE shortfall"). The positions eliminated in the commercial sector would be used to staff a proposed cargo container enforcement initiative.

The amounts authorized for salaries and expenses in the Committee bill will maintain current services without the transfer of 396 positions from commercial to noncommercial operations. The levels of funding for commercial and noncommercial operations are allocated so as to reject the transfer. In addition, the authorization for salaries and expenses provides $25 million to cover the cost of the January 1989 pay raise, which the President's budget would have required Customs to absorb.

Finally, the authorization for salaries and expenses contains $28.8 million for drug enforcement programs previously authorized for FY 1989 in the Omnibus Anti-Drug Abuse Act of 1988, but for which no appropriation was approved. These programs are: (1) Customs' share of the Machine Readable Border Document program, $7 million (section 4604(c) of the Drug Act); (2) an additional 435 employees for contraband enforcement teams, $26.2 million; and (3) cargo container drug detection research and development, $4.1 million (section 7368). These three programs add up to a level of $37.3 million. The 1988 Drug Act contained a supplemental appropriation for Customs for FY 1989 of $8.5 million; this has been subtracted from the total to yield an authorization for FY 1990 of $28.8 million. If appropriated, it is expected that part of this allocation would be used to fund additional customs agents in southern Oregon for the purpose of drug interdiction.

For operation and maintenance of the air drug interdiction program, the Committee bill authorizes $128,128,000, the amount requested by the Administration. This is a decrease of $21,134,000 from the level appropriated for FY 1989. The decrease is accounted for by increases necessary to maintain current services and additional funding for replacement aircraft equipment, balanced against $51 million in non-recurring expenditures from FY 1989.

Presidential appointment of the Commissioner of Customs.—Section 3(b) of the Committee bill amends section 2071 of Title 19 to provide for Presidential appointment of the Commissioner of Customs, subject to confirmation by the U.S. Senate. Currently, the Commissioner is appointed by the Secretary of the Treasury without the advice and consent of the Senate. Provisions are added to ensure that the requirement of confirmation applies to the incumbent Commissioner as of the date of enactment of this bill.

The reasons for requiring Senate confirmation are to increase the accountability of the Commissioner to the Congress and to enhance the ability to oversee the activities of the Customs Service. The duties of the Commissioner have grown steadily larger over the years, and now encompass a broad responsibility for trade facilitation and enforcement, as well as drug interdiction and border enforcement of other national laws. The Customs Service is also a revenue collection agency, accounting for over $17 billion in duties, taxes, and fees in FY 1988.

The range and significance of these duties fully justify making the Commissioner more responsible to the Congress for his actions. Moreover, by requiring nomination and confirmation, it is intended to place greater attention on the choice of a Commissioner, both by the Executive Branch and the public. A hearing before the Committee will serve to give better notice of the views and policy intentions of a nominee.

In addition, this change will make the process for appointing a Commissioner consistent with that of comparable Federal officials. The Commissioner of Internal Revenue Service, who holds a similar post within the organizational structure of the Department of the Treasury, has long been subject to Presidential appointment and Senate confirmation. Similarly, other heads of agencies responsible for international trade functions are Presidential nominees—the USTR and three Deputy USTR's and the Commisioners of the ITC.

No term of office is specified. It is intended that the Commissioner shall serve at the pleasure of the President.

Concern has been expressed to the Committee that changing from appointment by the Secretary of the Treasury to appointment by the President will yield a loss of control by the Secretary over his subordinate, the Commissioner. The Committee intends that the existing relationship between the Secretary and the Commissioner be maintained, and that the supervisory powers of the Department of the Treasury over the Customs Service shall be undiminished. For this reason, the Committee bill includes a provision specifying that the Commissioner is to have such duties and powers as may be delegated to the Commissioner by the Secretary of the Treasury, and that he will report to the Secretary through such other officials as the Secretary prescribes.

Clarification regarding user fee airports.—Section 3(c) of the Committee bill clarifies that the Customs Service may be reimbursed for customs services provided in connection with foreign trade zones located at small "user fee" airports. The Trade and Tariff Act of 1984 provided that the Secretary of the Treasury may designate up to 20 small airports to receive customs services on a reimbursable basis. A requirement of designation is that the volume or value of business cleared through such an airport be insufficient to justify the availability of customs services. Under this provision, an airport can obtain customs services by paying a user fee representing the entire cost to the Customs Service of providing those services.

Certain of these user fee airports have since filed applications to operate foreign trade zones at or adjacent to the airports. Under a provision enacted in the Omnibus Budget Reconciliation Act of 1987, Customs is prohibited from charging a user fee in connection with "the activation or operation (including Customs Service supervision) of any foreign trade zone or subzone." The Department of the Treasury interprets this provision to forbid Customs from being reimbursed for services rendered in the airport-based foreign trade zones on the same basis that it is reimbursed for other services provided at the airports; instead, Customs must pay for any services provided in the zone out of appropriated funds. As a result, the zone applications are endangered.

To correct this situation, section 3(b) amends 19 U.S.C. 58c(e)(2) to create an exception from the general rule of that provision against the collection of user fees at foreign trade zones for zones located at or in the vicinity of a user fee airport. It further amends section 236 of the Trade and Tariff Act of 1984 (19 U.S.C. 58b) to provide that customs services provided in connection with any foreign trade zone that is located at or in the vicinity of any user fee airport shall be considered to be services provided at the airport, thus making them reimbursable on the same basis as other fees. The Committee emphasizes that, with the exception of zones connected with user fee airports, no change is intended with regard to the existing statutory prohibition on charging customs user fees for services relating to foreign trade zones.

Customs port of entry at Chateaugay, New York.—Section 3(c) of the Committee bill requires the Commissioner of Customs to provide the facilities, equipment and staff at the customs port of entry at Chateaugay, New York, that are necessary to make that port a commerical center under the Northern Border Enhancement Program administered by Customs. The Customs Service began the program known as the Northern Border Enhancement Program in September 1988. One administrative change resulting from the program was the designation of "commercial centers" and "permit ports." The former are Canadian border ports of entry that, in Customs' opinion, have the amount of traffic, as well as the equipment and facilities, to justify the provision of full customs processing services. The latter ports have less extensive facilities, and commerical cargo traffic may enter at those ports only if the entries are precleared on a permit basis.

Franklin County, New York, in which the port of Chateaugay is located, has four customs ports of entry, all designated as permit ports. No other county between Maine and Michigan that rests on the Canadian border lacks a designated commercial center. The nearest commercial centers are located at opposite ends of New York's border with Quebec, and each lies nearly 40 miles from Chateaugay. Under these circumstances, it is believed that the failure to designate a Franklin County port as a commercial center will have the effect of inhibiting commercial traffic over the border in Franklin County and provide a hardship to local business.

III. Vote of the Committee in Reporting the Bill

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

IV. Budgetary Impact of the Bill

In compliance with sections 308 and 403 of the Congressional Budget Act of 1974 and paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the following statement it made relative to the cost and budgetary impact of the bill. The bill would authorize the enactment of new budget authority for FY 1990 for the ITC is the amount of $39,943,000; $1,203,418,000 for the U.S. Customs Service; and a total of $21,143,000 for the Office of the USTR. The Committee has not received a report of the Congressional Budget Office under section 403 of the Congressional Budget Act regarding this bill, and therefore states that it is impracticable to comply fully with the requirements of rule 11(a). This report, however, will be submitted to the Senate as soon as it is received.

V. Regulatory Impact of the Bill

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

VI. Changes in Existing Law

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

UNITED STATES CODE ANNOTATED

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TITLE 19—CUSTOMS DUTIES

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CHAPTER 1—COLLECTION DISTRICTS, PORTS, AND OFFICERS

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§ 58b. User fee for customs services at certain small airports

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(f) For purposes of this section, customs services provided in connection with, or with respect to, any foreign trade zone or subzone that is located at, or in the vicinity of, any airport described in subsecton (a) or designated under subsection (c) shall be considered to be customs services provided at such airport.

§58c. Fees for certain customs services

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(e) PROVISIONS OF CUSTOMS SERVICES.—

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(2) [This subsection] *(A) This subsection* shall not apply to any airport to which section 58b of this title applies.

(B) Subparagraph (C) of paragraph (6) shall not apply with respect to any foreign trade zone or subzone that is located at, or in the vicinity of, an airport to which section 236 of the Trade and Tariff Act of 1984 applies.

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CHAPTER 4—TARIFF ACT OF 1930

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PART II—UNITED STATES INTERNATIONAL TRADE COMMISSION

§1330. Organization of Commission

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(e) AUTHORIZATION OF APPROPRIATIONS.—

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(2) There are authorized to be appropriated to the Commission for necessary expenses (including the rental of conference rooms in the District of Columbia and elsewhere) for fiscal year [1988] *1990* not to exceed [$35,386,000] *$39,943,000*; of which not to exceed $2,500 may be used, subject to approval by the Chairman of the Commission, for reception and entertainment expenses. No part of any sum that is appropriated under the authority of this paragraph may be used by the Commission for the making of any special study, investigation, or report that is requested by any agency of the executive branch unless that agency reimburses the Commission for the cost thereof.

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CHAPTER 10—CUSTOMS SERVICE

§2071. Establishment of Service; Commissioner; appointment

[There shall be in the Department of the Treasury a service to be known as the United States Customs Service, and a Commissioner of Customs. The Commissioner of Customs shall be at the head of the United States Customs Service, and the Commissioner of Customs shall be appointed by the Secretary of the Treasury.]

There shall be in the Department of the Treasury a service to be known as the "United States Customs Service" and a Commissioner of Customs. The Commissioner of Customs shall be appointed by the President by and with the advice and consent of the Senate. The Commissioner of Customs shall—

(1) have such duties and powers as may be delegated to the Commissioner of Customs by the Secretary of the Treasury, and

(2) report to the Secretary of the Treasury through such other officials as the Secretary of the Treasury may prescribe.

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§ 2075. Customs Service appropriations authorization

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(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) FOR NONCOMMERCIAL OPERATIONS.—There are authorized to be appropriated for fiscal year [1989] *1990* not to exceed [$440,504,000] *$418,822,000* for the salaries and expenses of the United States Customs Service that are incurred in noncommercial operations, of which at least $26,240,000 shall be used to increase the number of customs inspectors for contraband enforcement teams and other drug interdiction personnel of the United States Customs Service to a number which exceeds the total number of such inspectors and personnel employed by the United States Customs Service on September 30, 1988, by the equivalent of at least 435 full-time employees, and for related equipment.

(2) FOR COMMERCIAL OPERATIONS.—There are authorized to be appropriated for fiscal year [1989] *1990* not to exceed [$615,247,000] *$656,468,000* from the Customs User Fee Account for the salaries and expenses of the United States Customs Service that are incurred in commercial operations.

(3) FOR AIR INTERDICTION.—There are authorized to be appropriated for fiscal year [1989] *1990* not to exceed [$142,262,000] *$128,128,000* for the operation (including salaries and expenses) and maintenance of the air interdiction program of the United States Customs Service.

[(4) CUSTOMS COOPERATION COUNCIL.—There are authorized to be appropriated to the Secretary of the Treasury for fiscal year 1989, $1,600,000 for payment to the Customs Cooperation Council.]

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§ 2112. Nontariff barriers to and other distortions of trade

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United States-Canada Free-Trade Agreement Implementation Act of 1988. Pub. L 100–449, Sept. 28, 1988, 102 Stat. 1851, provided that:

TITLE IV—BINATIONAL PANEL DISPUTE SETTLEMENT IN ANTIDUMPING AND COUNTERVAILING DUTY CASES

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SEC. 406. Authorization of appropriations for the Secretariat, the panels, and the committees.

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(b) PANELS AND COMMITTEES.—

(1) There are authorized to be appropriated to the Office of the United States Trade Representative for fiscal year [1989 such sums as may be necessary] *1990, $1,492,000* to pay during such fiscal year the United States share of the expenses of binational panels and extraordinary challenge committees convened pursuant to chapter 19 of the Agreement.

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CHAPTER 12—TRADE ACT OF 1974

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PART 4—OFFICE OF UNITED STATES TRADE REPRESENTATIVE

§ 2171. Structure, functions, powers, and personnel

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(g) AUTHORIZATION OF APPROPRIATIONS.—

(1)(A) There are authorized to be appropriated for fiscal year [1988] *1990* to the Office for the purposes of carrying out its functions not to exceed [$15,172,000.] *$19,651,000.*

(B) Of the amounts authorized to be appropriated under subparagraph (A) for fiscal year [1988] *1990*—

(i) not to exceed [$69,000] *$89,000* may be used for entertainment and representation expenses of the Office; and

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