Calendar No. 496

102D CONGRESS
2d Session

SENATE

REPORT
102-302

AUTHORIZING APPROPRIATIONS FOR FISCAL YEARS 1993 AND 1994 TO THE UNITED STATES INTERNATIONAL TRADE COMMISSION, THE UNITED STATES CUSTOMS SERVICE, AND THE OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

JUNE 23 (legislative day, JUNE 16), 1992.—Ordered to be printed

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

REPORT

[To accompany S. 2880]

The Committee on Finance, having considered an original bill (S. 2880) to authorize appropriations for fiscal years 1993 and 1994 to the United States International Trade Commission, the United States Customs Service, and the Office of the United States Trade Representative, reports favorably thereon and recommends that the bill do pass.

I. SUMMARY

The Committee bill authorizes fiscal year (FY) 1993 appropriations of $45,152,000 to the U.S. International Trade Commission (ITC), $1,474,035,000 to the U.S. Customs Service (Customs Service), and $21,697,000 to the Office of the U.S. Trade Representative (USTR). The Committee bill authorizes FY 1994 appropriations of $48,042,000 to the ITC, $1,532,995,000 to the Customs Service, and $22,435,000 to the USTR. The bill also makes available to the Customs Service $15,000,000 for FY 1993 and $15,600,000 for FY 1994 for the discretionary purposes of the Customs Forfeiture Fund. In addition, the bill requires the Secretary of the Treasury to submit to the Committee reports on several Customs issues.

II. GENERAL EXPLANATION

The Committee on Finance reports an original bill to authorize FY 1993 and FY 1994 appropriations to the ITC, the Customs Service, and the USTR. The Committee's International Trade Subcommittee held a hearing on authorization of appropriations to, and oversight of, the ITC and the USTR on April 6, 1992, and the Com-

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mittee held a hearing on authorization of appropriations to, and oversight of, the Customs Service on April 8, 1992.

As was the case in 1990, the Committee bill provides each trade agency with a two-year authorization to give them a longer period for planning and to continue to mitigate the persistent problems faced by the Customs Service prior to 1990 due to differences in philosophy about its budget and its mission. Should, however, circumstances change in a manner that alters the revenue needs of any of the three trade agencies, the Committee retains the authority to revisit the authorizations made for FY 1994, and to make appropriate adjustments.

SECTION 1. AUTHORIZATION OF APPROPRIATIONS TO THE USTR, CUSTOMS SERVICE, AND ITC

Subsection 1(a) Authorization of appropriations to the Office of the USTR.—Section 141(g) of the Trade Act of 1974, as amended (19 U.S.C. 2171(g)), authorizes the appropriations for the purposes of carrying out the functions of the Office of the USTR.

Subsection 1(a) of the Committee bill amends section 141(g) of the Trade Act of 1974 to authorize appropriations to USTR for FY 1993 and FY 1994. For FY 1993, the bill authorizes an appropriation of $21,697,000. For FY 1994, the bill authorizes an appropriation of $22,435,000. These authorization levels represent the full amount requested for USTR. The Committee bill further provides that, in each fiscal year, an amount not to exceed $98,000 may be used for entertainment and representation expenses, and an amount of $2,500,000 shall remain available until expended.

The largest increases in the USTR funding requests are for personnel: $459,000 more for FY 1993, and $476,000 more for FY 1994. These increases relate in part to the establishment of two new full-time equivalent (FTE) positions: a senior-level Director of Investment, responsible for the integration of all trade and investment issues, and a Deputy Assistant USTR for Environment, the first USTR official whose exclusive responsibility will be the relationship between trade and environmental issues. Other increases cover higher costs for rental of space in Washington and Geneva, additional data processing and other services costs and $100,000 more (for a total authorization of $600,000 in FY 1993) for U.S. dispute settlement panel expenses under Chapter 19 of the U.S.-Canada FTA.

Subsection 1(b)

Authorization of appropriations to the U.S. Customs Service.—Section 301 of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075) requires enactment of an authorization of appropriations to the Customs Service for each fiscal year. For FY 1993, subsection 1(b) of the Committee bill authorizes an appropriation of $1,474,035,000. Of this amount, $1,335,052,000 is allocated to salaries and expenses. This amount represents an increase of $10,982,000 above the amount requested in the President's budget for salaries and expenses. For FY 1994, the Committee bill authorizes a total appropriation of $1,532,995,000, of which $1,388,453,000 is allocated to 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 operations ($798,470,000 in FY 1993 and $830,408,000 in FY 1994) and to non-commercial operations ($536,582,000 in FY 1993 and $558,045,000 in FY 1994). 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 ($138,983,000 for FY 1993 and $144,542,000 in FY 1994) is for operation and maintenance of the air and marine drug interdiction programs. The FY 1993 authorization represents the amount requested in the President's budget for operation and maintenance of those programs.

The President's budget request for salaries and expenses for the Customs Service for FY 1993 calls for an authorized appropriation of $1,324,070,000 covering an authorized personnel level of 17,599 FTE positions. This request represents a net increase of $57.8 million and 188 FTE positions over FY 1992 levels. The Committee approves of the increases request, subject to the adjustments described below. The Committee remains committed to ensuring that the Service is funded at levels that are sufficient for the agency to perform its growing responsibilities for the enforcement of our Customs and trade laws, as well as our drug control laws.

At the same time, the Committee believes that several elements of the President's proposed budget require modification. Specifically, the Committee is concerned that a shortage of Customs inspectors at ports-of-entry throughout the United States will continue to impede the flow of commercial traffic and contribute to the growing congestion, particularly at the ports of entry along the U.S.-Mexico border. Therefore, the Committee has included in its authorization the sum of $8 million to fund new inspector positions throughout the United States. It is the Committee's intention that the Customs Service allocate these positions to ports of entry where the congestion or need for additional inspectors is most serious.

The Committee bill also makes three additional modifications to the President's budget request. First, the Committee has restored the $1.5 million the President proposes to transfer from the user fee account established by the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986 to fund certain costs of the Inspection and Control Program. It is the Committee's view that the user fee statute 19 U.S.C. 58c(f)) delineates the purposes for which funds from the user fee account may be used. These purposes do not include the costs the President proposes to offset with the $1.5 million from the user fee account. Therefore, the Committee has added $1.5 million to the authorization for salaries and expenses for FY 1993 to prevent what the Committee believes would be the unauthorized use of user fee funds. Attached is an opinion by the Chief Counsel of the Customs Service on this subject.

Second, the President's budget request incorporates a reduction of $3 million (and 52 FTE positions) reportedly arising from productivity savings in Business Service Centers, small recovery audits and the reorganization of the Enforcement Program. Because the Committee is not convinced that Customs will be able to realize these productivity savings by FY 1993, particularly since the Business Service Centers are not yet operational, the Committee has restored the $3 million to the requested authorization.

Third, the Committee has shifted resources and added an amount to the budget authorization in order to bring the projected increase in the commercial and non-commercial salaries and expenses accounts into greater parity. It is the Committee's view that both functions of the Customs Service are important and that the initiatives that the Service undertakes could reflect that relative quality of importance.

For operation and maintenance of the air and marine drug interdiction programs, the Committee has authorized $138,983,000, the amount requested by the President. That amount represents a net decrease of $37 million from the level appropriated for FY 1992. The net decrease is attributable to $47.5 million in nonrecurring expenses stemming from the purchase of additional aircraft and helicopters for which funds were appropriated in FY 1992, balanced against an increase of $10.5 million to maintain current services, annualize the costs of operating recently purchased support helicopters and replace certain aging vessels.

For FY 1944, the Committee authorizes the following amounts: $1,388,453,000 for salaries and expenses ($830,408,000 for commercial operations and $558,045,000 for non-commercial operations) and $144,542,000 for operation and maintenance of the air and marine interdiction programs. Based on consultations with analysts at the Congressional Budget Office and the Office of Management and Budget, the Committee assumed an annual rate of inflation of four percent in calculating the authorization levels for FY 1994. However, it is the Committee's intention to review the FY 1994 authorizations in calendar year 1993 to determine whether adjustments are necessary because of changed circumstances. Such changed circumstances might include changes in the assumed rate of inflation or the completion of a North American Free Trade Agreement that might necessitate additional Customs resources.

Subsection 1(c)

Authorization of appropriations to the ITC.—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 to 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.

Section 1(c) of the Committee bill amends section 330(e) of the Tariff Act of 1930 to authorize appropriations to the ITC of $45,152,000 for FY 1993 and $48,042,000 for FY 1994. Of the amounts authorized, no more than $2,500 may be used in each fiscal year for reception and entertainment expenses.

The Committee bill authorizes the full amount requested by the ITC for FY 1993. For FY 1994, the amount authorized by the Committee bill is $1,631,000 less than that requested by the ITC. Of this reduction, $1,522,000 represents the amount of a "locality pay adjustment" sought by the ITC. This pay adjustment is authorized under the Federal Employees Pay Comparability Act of 1990 (5 U.S.C. 5301 note). However, its application to Washington, D.C., where all ITC employees are based, is still uncertain. Therefore, the Committee bill does not include the pay adjustment in the ITC's FY 1994 budget authorization. An additional reduction of $109,000 in the Committee bill from the amount requested by the ITC brings the authorized amount to $48,042,000. This represents the same 6.4 percent increase as was provided in the FY 1993 authorized amount over the FY 1992 appropriation level. Nearly all of the increases cover higher non-discretionary expenses, enabling the ITC to have the resources sufficient to accomplish its expanding responsibilities. The number of authorized permanent positions will remain at the present level of 502.

SECTION 2. CUSTOMS FORFEITURE FUND

The President's budget proposes an appropriation of $15 million for the discretionary purposes of the Customs Forfeiture Fund. The Committee bill authorizes the requested amount for FY 1993, and authorizes an appropriation of $15,600,000 for FY 1994.

SECTION 3. REPORTS ON CUSTOMS ISSUES

Section 3 of the Committee bill requires the Secretary of the Treasury to submit reports to the Senate Committee on Finance and House Committee on Ways and Means on several issues of particular concern to Committee Members. First, the Committee is concerned about the high rates of attrition of Customs employees assigned to the Southwest region, and particularly those employees assigned to southern border ports of entry. Accordingly the Committee requests that the Secretary submit to it by February 1, 1993, a report analyzing the causes of the high attrition rates and setting forth recommendations for reducing the high attrition rate.

Second, the Committee continues to be concerned that the Customs Service is not allocating adequate resources to staff those ports of entry along the U.S.-Mexico border that have been or will be constructed, expanded, modernized or otherwise improved with the funds provided under the Southwest Border Capital Improvements Program. It is the Committee's view that the Congress, through its appropriation of funds for the specific projects along the southwest border identified in the Capital Improvements Program, has made clear its interest in assuring that these ports of entry are able to accommodate the increasing levels of trade between the United States and Mexico. Accordingly, the Committee requests the Secretary to report by November 1, 1992, on the deployment or planned deployment of staff, on a port-of-entry by port-of-entry basis, for each of the ports-of-entry affected by the Capital Improvements Program. It is the Committee's intention that the ports covered by the Capital Improvements Program be staffed at a level that will ensure the smooth flow of traffic throughout the year, taking into account seasonal and other variations in traffic flows.

Finally, the Committee requests that the Secretary submit a report on two issues affecting Customs Service operations in Oregon. First, the Committee requests that the Secretary submit a report analyzing the feasibility of moving the Customs office from downtown Portland, Oregon, to the vicinity of the Portland airport. The Committee expects that the Customs Service will take into account the views of the Portland trade community, among others, in analyzing this issue. Second, the Committee requests that the Secretary report on the feasibility of assigning drug enforcement agents to the Medford/Grants Pass area in Oregon. These reports are due three months after date of enactment.

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 by voice vote.

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 letter has been received from the Congressional Budget Office regarding the budgetary impact of the bill:

U.S. Congress,
Congressional Budget Office,
Washington, DC, June 19, 1992.

Hon. Lloyd Bentsen,
Chairman, Committee on Finance,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached estimate for an original bill to authorize appropriations for fiscal years 1993 and 1994 for the customs and trade agencies, as ordered reported by the Senate Committee on Finance on June 11, 1992.

Enactment of the bill would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: Not yet assigned.
2. Bill title: A bill to authorize appropriations for fiscal years 1993 and 1994 for the customs and trade agencies.
3. Bill status: As ordered reported by the Senate Committee on Finance on June 11, 1992.
4. Bill purpose: The bill would authorize appropriations for 1993 and 1994 for the U.S. Customs Service, the International Trade Commission (ITC), and the Office of the U.S. Trade Representative (OUSTR). For the Customs Service, the amounts authorized for 1993 and 1994, respectively, would be $1.34 billion and $1.39 billion for salaries and expenses, $139 million and $145 million for operations and maintenance, and $15 million and $16 million for the forfeiture fund. The bill also would authorize $45 million and $48 million for the ITC for fiscal years 1993 and 1994, respectively, and about $22 million for the OUSTR for each of fiscal years 1993 and 1994.

The bill also would require the Secretary of the Treasury to prepare reports on the following issues: (1) the high employee attrition rates experienced by the Customs Service in its Southwest region, (2) the plans to staff any facility newly built or improved under the Southwest Border Capital Improvements Program, (3) the feasibility of relocating the Customs Service office in Portland, Oregon, and (4) the feasibility of placing drug enforcement agents in the Medford/Grants Pass area in Oregon.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1993	1994	1995	1996	1997
Authorization level:					
ITC (Function 150)	45	48			
Customs Service (Function 750)	1489	1549			
OUSTR (Function 800)	22	22			
Total	1556	1619			
Estimated outlays:					
ITC (Function 150)	41	47	5	1	
Customs Service (Function 750)	1268	1473	227	69	
OUSTR (Function 800)	20	22	2		
Total	1329	1542	234	70	

Including outlays from prior year appropriations, total outlays would be $45 millions in 1993 and $47 million in 1994 for the ITC, $1,537 million in 1993 and $1,560 million in 1994 for the Customs Service, and $22 million in each of 1993 and 1994 for the OUSTR.

Basis of estimate: This estimate assumes that the Congress will appropriate the full amounts authorized for each fiscal year. The authorization provided for the customs forfeiture fund is an earmarking of an existing authorization. The estimated outlays are based on historical spending patterns.

6. Pay-as-you-go considerations: The Budget Enforcement Act of 1990 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1995. CBO estimates that enactment of the bill would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply.

7. Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Mark Grabowicz and Michael Buhl, and Kent Christensen.

11. Estimate approved by: C.G. Nuckols, Jr., Assistant Director for Budget Analysis.

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 bill will not significantly regulate any individuals or businesses, will not impact on the personal privacy of individuals, and will result in no significant additional paperwork.

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 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)(A) 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) not to exceed the following:

(i) [$41,170,000] *$45,152,000* for fiscal year [1991.] *1993.*

(ii) [$44,052,000] *$48,042,000* for fiscal year [1992.] *1994.*

(B) Not to exceed $2,500 of the amount authorized to be appropriated for any fiscal year under subparagraph (A) may be used, subject to the approval of the Chairman of the Commission, for reception and entertainment expenses.

(C) No part of any sum that is appropriated under the authority of subparagraph (A) may be used by the Commission in 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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PART V—ENFORCEMENT PROVISIONS

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§ 1613b. Customs Forfeiture Fund

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(f) Authorization of appropriations

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(2)(A) * * *

(B) Of the amount authorized to be appropriated under subparagraph (A), not to exceed the following, shall be available to carry out the purposes set forth in subsection (a)(3):

(i) [$14,855,000] *$15,000,000* for fiscal year [1991.] *1993.*

(ii) [$15,598,000] *$15,600,000* for fiscal year [1992.] *1994.*

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CHAPTER 10—CUSTOMS SERVICE

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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 the salaries and expenses of the Customs Service that are incurred in noncommercial operations not to exceed the following:

(A) [$516,217,000] *$536,582,000* for fiscal year [1991.] *1993.*

(B) [$542,091,000] *$558,045,000* for fiscal year [1992.] *1994.*

(2) FOR COMMERCIAL OPERATIONS.—(A) There are authorized to be appropriated for the salaries and expenses of the Customs Service that are incurred in commercial operations not less than the following:

(i) [$672,021,000] *$798,470,000* for fiscal year [1991.] *1993.*

(ii) [$705,793,000] *$830,408,000* for fiscal year [1992.] *1994.*

(B) The monies authorized to be appropriated under subparagraph (A) for any fiscal year, except for such sums as may be necessary for the salaries and expenses of the Customs Service that are incurred in connection with the processing of merchandise that is exempt from the fees imposed under section [58c(a)(9)] *13031(a)(9)* and (10) of [this title,] *the Consolidated Omnibus Budget Reconciliation Act of 1985,* shall be appropriated from the Customs User Fee Account.

(3) FOR AIR *AND MARINE* INTERDICTION.—There are authorized to be appropriated for the operation (including salaries and expenses) and maintenance of the air *and marine* interdiction program of the Customs Service not to exceed the following:

(A) [$143,047,000] *$138,983,000* for fiscal year [1991.] *1993.*

(B) [$150,199,000] *$144,542,000* for fiscal year [1992.] *1994.*

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CHAPTER 12—TRADE ACT OF 1974

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Subchapter I—Negotiating and Other Authority

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PART 4—OFFICE OF UNITED STATES TRADE REPRESENTATIVE

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§ 2171. Structure, functions, powers, and personnel

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(g) Authorization of appropriations

(1)(A) There are authorized to be appropriated to the Office for the purposes of carrying out its functions not to exceed the following:

(i) [$23,250,000] *$21,697,000* for fiscal year [1991.] *1993.*

(ii) [$21,077,000] *$22,435,000* for fiscal year [1992.] *1994.*

(B) Of the amounts authorized to be appropriated under subparagraph (A) for any fiscal year—

(i) not to exceed $98,000 may be used for entertainment and representation expenses of the Office; *and*

[(ii) not to exceed $2,050,000 may be used to pay the United States share of the expenses of binational panels and extraordinary challenge committees convened pursuant to chapter 19 of the United States-Canada Free-Trade Agreement; and]

[(iii)] *(ii)* not to exceed [$1,000,000] *$2,500,000* shall remain available until expended.

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APPENDIX

[U.S. Government Memorandum]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
February 19, 1992.

File: AD-92-0030.
To: Director, Budget Division.
From: Chief Counsel.
Subject: Use of COBRA Funds to Offset Customs Appropriation.

This is in response to your memorandum dated January 2, 1992, asking whether certain inspectional expenses that are funded from Customs Salaries and Expenses Appropriation may be reimbursed from user fees collected in the Customs User Fee Account.

In our opinion, Customs may use funds in the User Fee Account only for the purposes delineated in 19 USC 58c(f). In particular, as for direct reimbursement of inspectional costs, 19 USC 58c(f)(3) provides for reimbursement of costs incurred in providing inspectional overtime services, certain preclearance services, and, to the extent funds are available, salaries for full-time and part-time inspectional personnel and equipment that enhance customs services for those persons or entities that pay user fees. This statutory provision may be amended by another statutory provision such as Customs appropriation or authorization act, but may not be modified by administrative action. Also, in our view, the fact that Congress may have had this proposal before it in considering our 1992 budget should not affect the construction of statutory provisions clear on their face.

Thus, because reimbursement of pay and other general inspectional costs do not fall within the provisions of 19 USC 58c(f)(3) or other statutory provisions, we can find no legal authority for Customs to reimburse the inspectional costs you describe from the User Fee Account. OMB's proposal appears to extend beyond the statutory limitations. We suggest that Customs appeal OMB's decision on this basis.

If you have further questions on this matter, please call John Lehman of this office, at 566-6245.

MICHAEL T. SCHMITZ.