
AUTHORIZATION OF APPROPRIATIONS TO THE U.S. INTERNATIONAL TRADE COMMISSION, THE U.S. CUSTOMS SERVICE, AND THE U.S. TRADE REPRESENTATIVE

MAY 15 (legislative day, APRIL 15), 1985.—Ordered to be printed

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

REPORT

[To accompany S. 1146]

The Committee on Finance reports an original bill (S. 1146) to authorize appropriations for fiscal year 1986 to the U.S. International Trade Commission, the U.S. Trade Representative, and the U.S. Customs Service, and for other purposes, and recommends that the bill do pass.

I. SUMMARY

The committee bill would authorize fiscal year 1986 appropriations of \$28,901,000 to the U.S. International Trade Commission, \$754,242,000 to the U.S. Customs Service, and \$13,582,000 to the Office of the U.S. Trade Representative.

In addition, the bill would amend the statute of limitations applicable to the filing of Customs Service civil lawsuits that seek to recover penalties where negligence or gross negligence in importations is alleged.

II. GENERAL EXPLANATION

In order to meet the requirements of section 402(a) of the Congressional Budget Act of 1974 (31 U.S.C. 1352), the Committee on Finance reports a bill to authorize fiscal year 1986 appropriations to the U.S. International Trade Commission (ITC), to the U.S. Customs Service, and to the Office of the U.S. Trade Representative (USTR).

AUTHORIZATION OF APPROPRIATIONS TO THE ITC (SECTION 1 OF THE BILL)

CURRENT LAW

Section 330(e)(1) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(1)) 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. The ITC appropriation for fiscal year 1985 was \$25,379,000 (assuming enactment of a supplemental appropriation).

COMMITTEE BILL

Section 1 of the bill would authorize appropriations of \$28,901,000 for fiscal year 1986, as requested by the ITC. This represents an increase of \$3.522 million over the fiscal year 1985 appropriation. The increase is entirely attributable to built-in cost increases and inflation.

REASONS FOR COMMITTEE BILL

For fiscal year 1985, the committee authorized an increase of 44 positions for the ITC. These positions have not all been filled; part of the increase approved for fiscal year 1986 reflects increased costs associated with these positions when the Commission becomes fully staffed.

The workload of the Commission remains at its previously high level, and continues to increase. Therefore, the committee believes that a budget increase sufficient to maintain current operating levels is justified.

AUTHORIZATION OF APPROPRIATIONS TO THE U.S. CUSTOMS SERVICE (SECTION 2 OF THE BILL)

CURRENT LAW

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. The Customs Service's appropriation for fiscal year 1985 (assuming enactment of a supplemental appropriation) is \$701,155,000.

Under current law, different statutes of limitations are established for actions by the Customs Service to recover pecuniary penalties or forfeitures depending on whether the actions are based on fraud, negligence, or gross negligence associated with an importation. The statute of limitations for fraudulent importations is five years from the date of discovery of the violation; actions based on negligence or gross negligence must be commenced within five years of the date of the violation. (19 U.S.C. 1621)

COMMITTEE BILL

The committee bill would authorize an appropriation of \$754,242,000 for fiscal year 1986. The committee bill also—

(a) renews with an amendment a requirement in current law that the Service report any major internal reorganization to the committee at least 90 days before it is to take effect;

(b) amends current limitations on the establishment of users fees at small airports—

(1) to authorize the Service to operate reimbursable facilities at an additional 15 small airports that would otherwise be deprived of customs' services, in addition to the five for which such service is already authorized under current law; and

(2) to eliminate the requirement of an annual appropriation for these facilities;

(c) requires the Service to reprogram positions saved through more efficient management techniques; and

(d) amends the statute of limitations for actions based on negligence or gross negligence in importation to require a suit to be brought within five years of the date of discovery of the violation, instead of five years from the date of the violation itself.

REASONS FOR COMMITTEE BILL

The \$754,242,000 authorized by the committee bill for fiscal year 1986 is an increase of approximately \$53.087 million over the \$701,155,000 appropriated for fiscal year 1985 and \$46.640 million more than the administration requested for fiscal year 1986. The authorization includes the full \$60.425 million requested for Customs' air interdiction program.

As was the case last year, the Administration proposed several significant changes in Customs Service operations that formed the basis of the proposed budget. In particular, the Administration proposed to eliminate 887 positions and to implement a pay cut of five percent for the remaining employees. In testimony to the committee, the Customs Service justified the substantial personnel reductions on the basis of measures the Service would implement to increase productivity, to streamline operations, and to eliminate duplicative or related functions. The bulk of the proposed reduction-in-force would be born by inspection, appraisal, and classification personnel; however, the Service also contemplated a reduction of nearly 100 positions assigned to tactical interdiction and investigation units, which seek to stem the flow of drugs, contraband, and other illegally traded goods.

The committee fully shares the Administration's general objectives of enhancing enforcement activities directed at unlawful importations and exportations, and strongly encourages efforts to make Customs' operations more efficient. Nevertheless, the committee does not agree that a substantial reduction-in-force and a pay cut are well-calculated to achieve these goals. Thus, while approving program increases the Service requested to purchase advanced technological equipment and to speed automation of documents processing, the committee restored funds sufficient to maintain the current work force at existing pay levels.

In the committee's view, the current number of inspectors, import specialists, patrol officers, and other "line" personnel is the

minimum needed to cope with the mounting burden of Customs' legal responsibilities. Merchandise entries are at record levels: over 30 million were processed in 1984, a 20 percent increase in four years. Over \$12.5 billion in tariffs were collected in 1984, up from \$8.2 billion in 1980. The Service seized 65,709 illegally imported non-narcotic articles in 1984, nearly 50 percent more than in 1980. The seizures in 1984 were valued at \$579 million—compared to \$186 million in 1980. The value of narcotic seizures also increased substantially in that period. Yet the Commissioner himself provided information to the Committee that the Customs Service intercepts less than 5 percent of the marijuana illicitly threatening the United States, and similarly low percentages of other dangerous and illegal narcotics. These data barely reveal the increasing daily burden faced by the Service's dedicated line personnel as they attempt to administer and to enforce approximately 400 provisions of law on behalf of more than 40 government agencies. A reduction-in-force of nearly 900 persons would cripple the agency's ability to accomplish its assigned tasks.

Automation, agency reorganization, and other management improvements are certainly required to meet the challenge of Customs' increasing responsibilities. The committee supports these goals, and seeks to work closely with the agency as it formulates plans to implement them. For this reason, the committee determined to renew a provision in the fiscal year 1985 authorization bill that requires 90 days notice to the committee before the Service implements any major, permanent change in its structure, including the designation of small airports at which customs services will be provided on a reimbursable basis. The committee further approved an additional requirement that the notice provide detailed information supporting the proposed action, including an analysis the action will have on the commerce and communities served by the affected offices.

Further, in section 2(b) the committee approved a provision designed to encourage use of personnel in the critical field positions. The section directs the Commissioner to increase the number of inspectors, import specialists, patrol officers, and other line positions by the use of savings he achieves on salaries and expenses that result from any consolidation of administrative functions. An opportunity for such reprogramming should occur in the near future. The Service has begun centralizing many of its administrative functions into a single location. This consolidation is expected to eliminate the need for 280 administrative positions nationwide; these 280 jobs are among the 887 the Administration proposed for permanent elimination. Instead, the committee provided sufficient funding to maintain the positions, and pursuant to section 2(b) expects the Commissioner to reprogram the savings from these positions, once available, to fund line positions.

In this regard the committee notes the urgent need for more inspectors and import specialists at West Coast ports. The rapid increase of imports and exports from these ports have not been matched by a concomitant increase in Customs' support. The committee expects the Commissioner to give priority attention to the critical shortage of line personnel at these facilities. Further, the committee is concerned at the apparent lack of enforcement re-

sources being devoted to the inspection of cargo containers. Such containers are now the dominant form of international cargo transfer, and they represent a challenge to the enforcement of this nation's laws since within any given container may reside illicit articles in addition to those listed on the papers accompanying the container. The committee intends that substantial resources be devoted to vigorous enforcement of our laws with regard to these containers.

The committee also approved two amendments to authority enacted in the 1984 Trade and Tariff Act that allows Customs, under certain conditions, to offer services at up to five small airports on a reimbursable basis (19 U.S.C. 586; Pub. L. No. 98-573, sec. 236). The committee intended that authority to be used for initiating or "maintaining customs services in small communities for which such services are important and worth expenditures by the users to keep them available." See Sen. Rep. No. 98-470, 98th Cong., 2d sess. 6-7 (1984). The committee noted further that "the provision should not be construed to encourage arbitrary conversion of existing ports-of-entry into user's fee facilities."

The availability of services on a reimbursable basis has sparked widespread interest among small communities. The committee thus agreed to increase to 20 the number of facilities that can be made reimbursable. Further, the committee amended the 1984 law to delete the requirement for an annual appropriation to Customs of the fees collected before such funds are available for use by the Service. There currently is no such appropriation, and the Service therefore has not designated any airports under the authority, because any fees generated would not in fact be available to reimburse the Service for its costs. Because lack of an appropriation in any year would defeat the purpose of the provision, the committee agreed to delete this requirement.

In enlarging the number of facilities that can be operated on a reimbursable basis, the committee reiterates the limited purposes for which the authority was enacted. In particular, while pleased with the response to the authority, the committee expresses no opinion on legislation that may be proposed to authorize a more general reimbursable port scheme, or to impose user's fees for Customs' services.

Finally, section 2(e) of the committee bill would amend section 621 of the 1930 Tariff Act (19 U.S.C. 1621) to establish a single statute of limitations for actions brought by the Customs Service to recover any pecuniary penalty or forfeiture of property accruing under the customs laws. Under current law, cases based on negligence or gross negligence by an importer must be brought within five years of the negligent act giving rise to the action. Actions based on fraud have an extended period: the statute of limitations does not commence until the allegedly fraudulent act has been discovered.

In practice, these civil cases often arise from criminal investigations. The Customs Service will await the conclusion of the criminal proceedings before commencing a civil action. The lengthy process of a criminal investigation and trial, together with grand jury secrecy rules, often preclude possible civil actions because the statute of limitations expires before such actions can be brought.

The committee thus concluded that a uniform statute of limitations should be established for these actions, regardless of whether an action is based on fraud, negligence, or gross negligence. The standard would be that set for fraud cases—five years from the date of discovery of the alleged offense.

**AUTHORIZATION OF APPROPRIATIONS TO THE OFFICE OF THE U.S.
TRADE REPRESENTATIVE (SECTION 3 OF THE BILL)**

PRESENT LAW

Section 141(f) of the Trade Act of 1974 authorized appropriations to the Office of the U.S. Trade Representative in such amounts as may be necessary for the purpose of carrying out its functions for fiscal year 1976 through fiscal year 1980. Last year, the Congress amended this section to authorize appropriation for fiscal year 1985. The Congress appropriated \$13,582,000 to the office.

COMMITTEE BILL

Section 3 of the committee bill amends section 141(f)(1) of the Trade Act of 1974 to authorize appropriations to the Office of the U.S. Trade Representative of \$13,582,000 for fiscal year 1986.

REASONS FOR COMMITTEE BILL

The Administration requested \$11,431,000 for USTR for fiscal year 1986. This amount would have been nearly 16 percent less than appropriated for fiscal year 1985. The request contemplated a six percent pay cut for existing employees and substantial decreases in funds for administrative support. The request apparently failed to take into account funds needed for a rent increase and for ongoing negotiations under the General Agreement on Tariffs and Trade to reach agreement on a new international system of tariff nomenclature called the Harmonized System.

The committee agreed to freeze the fiscal year 1986 budget for USTR at the fiscal year 1985 level, by restoring \$2.141 million to the Administration's request. This additional amount will provide sufficient funds for existing pay levels, a rent increase, and the ongoing negotiations. Especially in light of the serious trade deficits of the United States, the need to enforce existing trade agreements against foreign practice inconsistent with those agreements, and the need to gain more equitable access to foreign markets for U.S. exports, the committee believed it would be imprudent to diminish substantially the capability of the President's negotiators.

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 section 252(a) of the Legislative Reorganization Act of 1970, sections 308 and 403 of the Congressional Budget Act of 1974, the paragraph 11(a) of the rule XXVI of the Standing

Rules of the Senate, the following statement is made relative to the cost and budgetary impact of the bill. The bill would authorize the enactment of new budget authority for fiscal year 1986 for the U.S. International Trade Commission in the amount of \$28,901,000; \$754,242,000 for the U.S. Customs Service; and \$13,582,000 for the Office of the U.S. Trade Representative. 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 Government agencies without substantially modifying the law governing their operations.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the changes in existing law made by the bill as reported are shown below (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):

TARIFF ACT OF 1930, AS AMENDED

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TITLE III—SPECIAL PROVISIONS

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PART II—UNITED STATES INTERNATIONAL TRADE COMMISSION

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Sec. 330. Organization of Commission.

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(e) **AUTHORIZATION OF APPROPRIATIONS.**—(1) For the fiscal year beginning October 1, 1976, and each fiscal year thereafter, there are authorized to be appropriated to the Commission only such sums as may hereafter be provided by law.

(2) There are authorized to be appropriated to the Committee for necessary expenses (including the rental of conference rooms in the District of Columbia and elsewhere) for fiscal year **[1985] 1986** not to exceed **[\$28,410,000;] \$28,901,000**, of which not to exceed \$2,500 may be used, subject to approval by the Chairman of the Commission, for reception and entertainment expenses.

(3) There are authorized to be appropriated to the Commission for each fiscal year after September 30, 1977, in addition to any

other amount authorized to be appropriated for such fiscal year, such sums as may be necessary for increases authorized by law in salary, pay, retirement, and other employee benefits.

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CUSTOMS PROCEDURAL REFORM AND SIMPLIFICATION ACT OF 1930

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Sec. 301. Customs Service appropriations authorization.

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[(b) There are authorized to be appropriated to the Department of the Treasury not to exceed \$686,399,000 for the salaries and expenses of the United States Customs Service for fiscal year 1985; of which (A) \$28,070,000 is for the operation and maintenance of the air interdiction program of the Service, and (B) not to exceed \$15,000,000 is for the implementation of the "Operation EXODUS" program and any related program designed to enforce or monitor export controls under the Export Administration Act of 1979.]

(b) There are authorized to be appropriated to the Department of the Treasury not to exceed \$754,242,000 for the salaries and expenses of the United States Customs Service for fiscal year 1986.

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Sec. 1621. Limitation of actions.

No suit or action to recover any pecuniary penalty or forfeiture of property accruing under the customs laws shall be instituted unless such suit or action is commenced within five years after the time when the alleged offense was discovered: **[Provided,** That in the case of an alleged violation of section 1592 of this title arising out of gross negligence or negligence, such suit or action shall not be instituted more than five years after the date the alleged violation was committed:] **Provided [further],** That the time of the absence from the United States of the person subject to such penalty or forfeiture, or of any concealment or absence of the property, shall not be reckoned within this period of limitation.

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TRADE AND TARIFF ACT OF 1930

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SEC. 236. USER FEE FOR CUSTOMS SERVICES AT CERTAIN SMALL AIRPORTS.

(a) The Secretary of the Treasury shall make customs services available and charge a fee for the use of such customs services at—

(1) the airport located at Lebanon, New Hampshire, and

(2) any other airport designated by the Secretary of the Treasury under subsection (c).

(b) The fee which is charged under subsection (a) shall be paid by each person using the customs services at the airport and shall be in an amount equal to the expenses incurred by the Secretary of the Treasury in providing the customs services which are rendered to such person at such airport (including the salary and expenses of

individuals employed by the Secretary of the Treasury to provide such customs services).

c) The Secretary of the Treasury may designate [4] 20 airports under this subsection. An airport may be designated under this section only if—

(1) the Secretary of the Treasury has made a determination that the volume or value of business cleared through such airport is insufficient to justify the availability of customs services as such airport, and

(2) the governor of the State in which such airport is located approves such designation.

d) Any person who, after notice and demand for payment of any fee charged under subsection (a), fails to pay such fee shall be guilty of a misdemeanor and if convicted thereof shall pay a fine which does not exceed an amount equal to 200 percent of such fee.

e) Fees collected by the Secretary of the Treasury under subsection (a) with respect to the provision of services at an airport shall be deposited in an account within the Treasury of the United States that is specially designated for such airport. [The funds in such account shall only be available, as provided by appropriation Acts, for expenditures relating to the provision of customs services at such airport (including expenditures for the salaries and expenses of individuals employed to provide such services).] *The Secretary of the Treasury is authorized and directed to pay out of any funds available in such account any expenses incurred by the Federal Government in providing customs services at such airport (including expenses incurred for the salaries and expenses of individuals employed to provide such services). None of the funds deposited into such account shall be available for any purpose other than making payments authorized under the preceding sentence.*

237. NOTIFICATION OF CERTAIN ACTIONS BY THE UNITED STATES CUSTOMS SERVICE.

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

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

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

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

[(b)] (c) The provisions of this section shall not apply after September 30, [1985] 1986.

[(c) The amendment made by subsection (a) shall take effect after the effective date of any provision of law enacted by the 98th Congress that would, but for this section, limit the authority of the Commissioner of Customs to reorganize or consolidate any district, regional, or border office of the Service.]

b) The notice required under subsection (a) shall include—

(1) a statement which sets forth in detail the factors taken into account in making the decision to take the action described in subsection (a) and the reasons for such action, and

(2) an analysis of the impact such action will have on the commerce and community served by each office affected by such action.

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TRADE ACT OF 1974, AS AMENDED

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TITLE I—NEGOTIATING AND OTHER AUTHORITY

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**CHAPTER 4—OFFICE OF THE UNITED STATES
TRADE REPRESENTATIVE**

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Sec. 141. Office of the Special Representative for Trade Negotiations.

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(f)(1) There are authorized to be appropriated to the Office for the purpose of carrying out its functions **【\$14,179,000 for fiscal year 1985;】** *\$13,582,000 for fiscal year 1986*, of which not to exceed \$65,000 may be used for entertainment and representation expenses.

