

TRADE AGENCY AUTHORIZATIONS, DRUG FREE BORDERS,  
AND PREVENTION OF ON-LINE CHILD PORNOGRAPHY  
ACT OF 1999

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MAY 24, 1999.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 1833]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 1833) to authorize appropriations for fiscal years 2000 and 2001 for the United States Customs Service for drug interdiction and other operations, for the Office of the United States Trade Representative, for the United States International Trade Commission, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Trade Agency Authorizations, Drug Free Borders, and Prevention of On-Line Child Pornography Act of 1999”.

**SEC. 2. TABLE OF CONTENTS.**

The table of contents for this Act is as follows:

Sec. 1. Short title.  
Sec. 2. Table of contents.

## TITLE I—UNITED STATES CUSTOMS SERVICE

## Subtitle A—Drug Enforcement and Other Noncommercial and Commercial Operations

- Sec. 101. Authorization of appropriations for noncommercial operations, commercial operations, and air and marine interdiction.  
 Sec. 102. Illicit narcotics detection equipment for the United States-Mexico border, United States-Canada border, and Florida and the Gulf Coast seaports.  
 Sec. 103. Peak hours and investigative resource enhancement for the United States-Mexico and United States-Canada borders.  
 Sec. 104. Compliance with performance plan requirements.

## Subtitle B—Child Cyber-Smuggling Center of the Customs Service

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

## Subtitle C—Personnel Provisions

## CHAPTER 1—OVERTIME AND PREMIUM PAY OF OFFICERS OF THE CUSTOMS SERVICE

- Sec. 121. Correction relating to fiscal year cap.  
 Sec. 122. Correction relating to overtime pay.  
 Sec. 123. Correction relating to premium pay.  
 Sec. 124. Use of savings from payment of overtime and premium pay for additional overtime enforcement activities of the Customs Service.  
 Sec. 125. Effective date.

## CHAPTER 2—MISCELLANEOUS PROVISIONS

- Sec. 131. Study and report relating to personnel practices of the Customs Service.  
 Sec. 132. Pay of Commissioner of Customs.

## TITLE II—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

- Sec. 201. Authorization of appropriations.

## TITLE III—UNITED STATES INTERNATIONAL TRADE COMMISSION

- Sec. 301. Authorization of appropriations.

**TITLE I—UNITED STATES CUSTOMS SERVICE****Subtitle A—Drug Enforcement and Other  
Noncommercial and Commercial Operations****SEC. 101. AUTHORIZATION OF APPROPRIATIONS FOR NONCOMMERCIAL OPERATIONS, COMMERCIAL OPERATIONS, AND AIR AND MARINE INTERDICTION.**

(a) NONCOMMERCIAL OPERATIONS.—Section 301(b)(1) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)) is amended—

- (1) in subparagraph (A) to read as follows:  
“(A) \$999,563,000 for fiscal year 2000.”; and
- (2) in subparagraph (B) to read as follows:  
“(B) \$996,464,000 for fiscal year 2001.”

(b) COMMERCIAL OPERATIONS.—

(1) IN GENERAL.—Section 301(b)(2)(A) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(2)(A)) is amended—

- (A) in clause (i) to read as follows:  
“(i) \$1,154,359,000 for fiscal year 2000.”; and
- (B) in clause (ii) to read as follows:  
“(ii) \$1,194,534,000 for fiscal year 2001.”

(2) REPORTS.—Not later than 90 days after the date of the enactment of this Act, and not later than each subsequent 90-day period, the Commissioner of Customs shall prepare and submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report demonstrating that the development and establishment of the automated commercial environment computer system is being carried out in a cost-effective manner and meets the modernization requirements of title VI of the North American Free Trade Agreements Implementation Act.

(c) AIR AND MARINE INTERDICTION.—Section 301(b)(3) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(3)) is amended—

- (1) in subparagraph (A) to read as follows:  
“(A) \$109,413,000 for fiscal year 2000.”; and
- (2) in subparagraph (B) to read as follows:  
“(B) \$113,789,000 for fiscal year 2001.”

(d) SUBMISSION OF OUT-YEAR BUDGET PROJECTIONS.—Section 301(a) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(a)) is amended by adding at the end the following:

“(3) By no later than the date on which the President submits to the Congress the budget of the United States Government for a fiscal year, the Commissioner of Customs shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the operations of the Customs Service as provided for in subsection (b).”.

**SEC. 102. ILLICIT NARCOTICS DETECTION EQUIPMENT FOR THE UNITED STATES-MEXICO BORDER, UNITED STATES-CANADA BORDER, AND FLORIDA AND THE GULF COAST SEAPORTS.**

(a) FISCAL YEAR 2000.—Of the amounts made available for fiscal year 2000 under section 301(b)(1)(A) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)(A)), as amended by section 101(a) of this Act, \$90,244,000 shall be available until expended for acquisition and other expenses associated with implementation and deployment of illicit narcotics detection equipment along the United States-Mexico border, the United States-Canada border, and Florida and the Gulf Coast seaports, as follows:

(1) UNITED STATES-MEXICO BORDER.—For the United States-Mexico border, the following:

- (A) \$6,000,000 for 8 Vehicle and Container Inspection Systems (VACIS).
- (B) \$11,200,000 for 5 mobile truck x-rays with transmission and backscatter imaging.
- (C) \$13,000,000 for the upgrade of 8 fixed-site truck x-rays from the present energy level of 450,000 electron volts to 1,000,000 electron volts (1-MeV).
- (D) \$7,200,000 for 8 1-MeV pallet x-rays.
- (E) \$1,000,000 for 200 portable contraband detectors (busters) to be distributed among ports where the current allocations are inadequate.
- (F) \$600,000 for 50 contraband detection kits to be distributed among all southwest border ports based on traffic volume.
- (G) \$500,000 for 25 ultrasonic container inspection units to be distributed among all ports receiving liquid-filled cargo and to ports with a hazardous material inspection facility.
- (H) \$2,450,000 for 7 automated targeting systems.
- (I) \$360,000 for 30 rapid tire deflator systems to be distributed to those ports where port runners are a threat.
- (J) \$480,000 for 20 portable Treasury Enforcement Communications Systems (TECS) terminals to be moved among ports as needed.
- (K) \$1,000,000 for 20 remote watch surveillance camera systems at ports where there are suspicious activities at loading docks, vehicle queues, secondary inspection lanes, or areas where visual surveillance or observation is obscured.
- (L) \$1,254,000 for 57 weigh-in-motion sensors to be distributed among the ports with the greatest volume of outbound traffic.
- (M) \$180,000 for 36 AM traffic information radio stations, with 1 station to be located at each border crossing.
- (N) \$1,040,000 for 260 inbound vehicle counters to be installed at every inbound vehicle lane.
- (O) \$950,000 for 38 spotter camera systems to counter the surveillance of customs inspection activities by persons outside the boundaries of ports where such surveillance activities are occurring.
- (P) \$390,000 for 60 inbound commercial truck transponders to be distributed to all ports of entry.
- (Q) \$1,600,000 for 40 narcotics vapor and particle detectors to be distributed to each border crossing.
- (R) \$400,000 for license plate reader automatic targeting software to be installed at each port to target inbound vehicles.

(2) UNITED STATES-CANADA BORDER.—For the United States-Canada border, the following:

- (A) \$3,000,000 for 4 Vehicle and Container Inspection Systems (VACIS).
- (B) \$8,800,000 for 4 mobile truck x-rays with transmission and backscatter imaging.
- (C) \$3,600,000 for 4 1-MeV pallet x-rays.
- (D) \$250,000 for 50 portable contraband detectors (busters) to be distributed among ports where the current allocations are inadequate.
- (E) \$300,000 for 25 contraband detection kits to be distributed among ports based on traffic volume.

(F) \$240,000 for 10 portable Treasury Enforcement Communications Systems (TECS) terminals to be moved among ports as needed.

(G) \$400,000 for 10 narcotics vapor and particle detectors to be distributed to each border crossing based on traffic volume.

(3) FLORIDA AND GULF COAST SEAPORTS.—For Florida and the Gulf Coast seaports, the following:

(A) \$4,500,000 for 6 Vehicle and Container Inspection Systems (VACIS).

(B) \$11,800,000 for 5 mobile truck x-rays with transmission and backscatter imaging.

(C) \$7,200,000 for 8 1–MeV pallet x-rays.

(D) \$250,000 for 50 portable contraband detectors (busters) to be distributed among ports where the current allocations are inadequate.

(E) \$300,000 for 25 contraband detection kits to be distributed among ports based on traffic volume.

(b) FISCAL YEAR 2001.—Of the amounts made available for fiscal year 2001 under section 301(b)(1)(B) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)(B)), as amended by section 101(a) of this Act, \$8,924,500 shall be available until expended for the maintenance and support of the equipment and training of personnel to maintain and support the equipment described in subsection (a).

(c) ACQUISITION OF TECHNOLOGICALLY SUPERIOR EQUIPMENT; TRANSFER OF FUNDS.—

(1) IN GENERAL.—The Commissioner of Customs may use amounts made available for fiscal year 2000 under section 301(b)(1)(A) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)(A)), as amended by section 101(a) of this Act, for the acquisition of equipment other than the equipment described in subsection (a) if such other equipment—

(A)(i) is technologically superior to the equipment described in subsection (a); and

(ii) will achieve at least the same results at a cost that is the same or less than the equipment described in subsection (a); or

(B) can be obtained at a lower cost than the equipment described in subsection (a).

(2) TRANSFER OF FUNDS.—Notwithstanding any other provision of this section, the Commissioner of Customs may reallocate an amount not to exceed 10 percent of—

(A) the amount specified in any of subparagraphs (A) through (R) of subsection (a)(1) for equipment specified in any other of such subparagraphs (A) through (R);

(B) the amount specified in any of subparagraphs (A) through (G) of subsection (a)(2) for equipment specified in any other of such subparagraphs (A) through (G); and

(C) the amount specified in any of subparagraphs (A) through (E) of subsection (a)(3) for equipment specified in any other of such subparagraphs (A) through (E).

**SEC. 103. PEAK HOURS AND INVESTIGATIVE RESOURCE ENHANCEMENT FOR THE UNITED STATES-MEXICO AND UNITED STATES-CANADA BORDERS.**

Of the amounts made available for fiscal years 2000 and 2001 under subparagraphs (A) and (B) of section 301(b)(1) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)(1)(A) and (B)), as amended by section 101(a) of this Act, \$127,644,584 for fiscal year 2000 and \$184,110,928 for fiscal year 2001 shall be available for the following:

(1) A net increase of 535 inspectors, 120 special agents, and 10 intelligence analysts for the United States-Mexico border and 375 inspectors for the United States-Canada border, in order to open all primary lanes on such borders during peak hours and enhance investigative resources.

(2) A net increase of 285 inspectors and canine enforcement officers to be distributed at large cargo facilities as needed to process and screen cargo (including rail cargo) and reduce commercial waiting times on the United States-Mexico border.

(3) A net increase of 40 inspectors at sea ports in southeast Florida to process and screen cargo.

(4) A net increase of 300 special agents, 30 intelligence analysts, and additional resources to be distributed among offices that have jurisdiction over major metropolitan drug or narcotics distribution and transportation centers for intensification of efforts against drug smuggling and money-laundering organizations.

(5) A net increase of 50 positions and additional resources to the Office of Internal Affairs to enhance investigative resources for anticorruption efforts.

(6) The costs incurred as a result of the increase in personnel hired pursuant to this section.

**SEC. 104. COMPLIANCE WITH PERFORMANCE PLAN REQUIREMENTS.**

As part of the annual performance plan for each of the fiscal years 2000 and 2001 covering each program activity set forth in the budget of the United States Customs Service, as required under section 1115 of title 31, United States Code, the Commissioner of the Customs Service shall establish performance goals, performance indicators, and comply with all other requirements contained in paragraphs (1) through (6) of subsection (a) of such section with respect to each of the activities to be carried out pursuant to sections 111 and 112 of this Act.

## **Subtitle B—Child Cyber-Smuggling Center of the Customs Service**

**SEC. 111. AUTHORIZATION OF APPROPRIATIONS FOR PROGRAM TO PREVENT CHILD PORNOGRAPHY/CHILD SEXUAL EXPLOITATION.**

(a) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Customs Service \$10,000,000 for fiscal year 2000 to carry out the program to prevent child pornography/child sexual exploitation established by the Child Cyber-Smuggling Center of the Customs Service.

(b) **USE OF AMOUNTS FOR CHILD PORNOGRAPHY CYBER TIPLINE.**—Of the amount appropriated under subsection (a), the Customs Service shall provide 3.75 percent of such amount to the National Center for Missing and Exploited Children for the operation of the child pornography cyber tipline of the Center and for increased public awareness of the tipline.

## **Subtitle C—Personnel Provisions**

### **CHAPTER 1—OVERTIME AND PREMIUM PAY OF OFFICERS OF THE CUSTOMS SERVICE**

**SEC. 121. CORRECTION RELATING TO FISCAL YEAR CAP.**

Section 5(c)(1) of the Act of February 13, 1911 (19 U.S.C. 267(c)(1)) is amended to read as follows:

“(1) **FISCAL YEAR CAP.**—The aggregate of overtime pay under subsection (a) (including commuting compensation under subsection (a)(2)(B)) that a customs officer may be paid in any fiscal year may not exceed \$30,000, except that—

“(A) the Commissioner of Customs or his or her designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Customs Service; and

“(B) upon certification by the Commissioner of Customs to the Chairmen of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate that the Customs Service has in operation a system that provides accurate and reliable data on a daily basis on overtime and premium pay that is being paid to customs officers, the Commissioner is authorized to pay any customs officer for one work assignment that would result in the overtime pay of that officer exceeding the \$30,000 limitation imposed by this paragraph, in addition to any overtime pay that may be received pursuant to a waiver under subparagraph (A).”.

**SEC. 122. CORRECTION RELATING TO OVERTIME PAY.**

Section 5(a)(1) of the Act of February 13, 1911 (19 U.S.C. 267(a)(1)), is amended by inserting after the first sentence the following new sentences: “Overtime pay provided under this subsection shall not be paid to any customs officer unless such officer actually performed work during the time corresponding to such overtime pay. The preceding sentence shall not apply with respect to the payment of an award or settlement to a customs officer who was unable to perform overtime work as a result of a personnel action in violation of section 5596 of title 5, United States Code, section 6(d) of the Fair Labor Standards Act of 1938, or title VII of the Civil Rights Act of 1964.”.

**SEC. 123. CORRECTION RELATING TO PREMIUM PAY.**

(a) **IN GENERAL.**—Section 5(b)(4) of the Act of February 13, 1911 (19 U.S.C. 267(b)(4)), is amended by adding after the first sentence the following new sentences: “Premium pay provided under this subsection shall not be paid to any customs officer unless such officer actually performed work during the time corresponding to such premium pay. The preceding sentence shall not apply with respect to the payment of an award or settlement to a customs officer who was unable to perform work during the time described in the preceding sentence as a result of a personnel action in violation of section 5596 of title 5, United States Code, section 6(d) of the Fair Labor Standards Act of 1938, or title VII of the Civil Rights Act of 1964.”

(b) **CORRECTIONS RELATING TO NIGHT WORK DIFFERENTIAL PAY.**—Section 5(b)(1) of such Act (19 U.S.C. 267(b)(1)) is amended to read as follows:

**“(1) NIGHT WORK DIFFERENTIAL.—**

**“(A) 6 P.M. TO MIDNIGHT.**—If any hours of regularly scheduled work of a customs officer occur during the hours of 6 p.m. and 12 a.m., the officer is entitled to pay for such hours of work (except for work to which paragraph (2) or (3) applies) at the officer’s hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate.

**“(B) MIDNIGHT TO 6 A.M.**—If any hours of regularly scheduled work of a customs officer occur during the hours of 12 a.m. and 6 a.m., the officer is entitled to pay for such hours of work (except for work to which paragraph (2) or (3) applies) at the officer’s hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate.

**“(C) MIDNIGHT TO 8 A.M.**—If the regularly scheduled work of a customs officer is 12 a.m. to 8:00 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer’s hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate.”

**SEC. 124. USE OF SAVINGS FROM PAYMENT OF OVERTIME AND PREMIUM PAY FOR ADDITIONAL OVERTIME ENFORCEMENT ACTIVITIES OF THE CUSTOMS SERVICE.**

Section 5 of the Act of February 13, 1911 (19 U.S.C. 267), is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following:

**“(e) USE OF SAVINGS FROM PAYMENT OF OVERTIME AND PREMIUM PAY FOR ADDITIONAL OVERTIME ENFORCEMENT ACTIVITIES.—**

**“(1) USE OF AMOUNTS.**—For fiscal year 1999 and each subsequent fiscal year, the Secretary of the Treasury—

**“(A) shall determine under paragraph (2) the amount of savings from the payment of overtime and premium pay to customs officers; and**

**“(B) shall use an amount from the Customs User Fee Account equal to such amount determined under paragraph (2) for additional overtime enforcement activities of the Customs Service.**

**“(2) DETERMINATION OF SAVINGS AMOUNT.**—For each fiscal year, the Secretary shall calculate an amount equal to the difference between—

**“(A) the estimated cost for overtime and premium pay that would have been incurred during that fiscal year if this section, as in effect on the day before the date of the enactment of sections 122 and 123 of the Trade Agency Authorization, Drug Free Borders, and Prevention of On-Line Child Pornography Act of 1999, had governed such costs; and**

**“(B) the actual cost for overtime and premium pay that is incurred during that fiscal year under this section, as amended by sections 122 and 123 of the Trade Agency Authorization, Drug Free Borders, and Prevention of On-Line Child Pornography Act of 1999.”**

**SEC. 125. EFFECTIVE DATE.**

This chapter, and the amendments made by this chapter, shall apply with respect to pay periods beginning on or after 15 days after the date of the enactment of this Act.

**CHAPTER 2—MISCELLANEOUS PROVISIONS****SEC. 131. STUDY AND REPORT RELATING TO PERSONNEL PRACTICES OF THE CUSTOMS SERVICE.**

(a) **STUDY.**—The Commissioner of Customs shall conduct a study of current personnel practices of the Customs Service, including an overview of performance standards and the effect and impact of the collective bargaining process on drug interdiction efforts of the Customs Service and a comparison of duty rotation policies

of the Customs Service and other Federal agencies that employ similarly-situated personnel.

(b) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Commissioner of Customs shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report containing the results of the study conducted under subsection (a).

**SEC. 132. PAY OF COMMISSIONER OF CUSTOMS.**

Subchapter II of chapter 53 of subpart D of part III of title 5, United States Code, is amended—

- (1) in section 5315, by striking the following:  
“Commissioner of Customs, Department of the Treasury.”; and
- (2) in section 5314, by inserting at the end the following:  
“Commissioner of Customs, Department of the Treasury.”.

## **TITLE II—OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE**

**SEC. 201. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—Section 141(g)(1) of the Trade Act of 1974 (19 U.S.C. 2171(g)(1)) is amended—

- (1) in subparagraph (A)—
  - (A) in the matter preceding clause (i), by striking “not to exceed the following” and inserting “as follows”;
  - (B) in clause (i) to read as follows:  
“(i) \$26,501,000 for fiscal year 2000.”; and
  - (C) in clause (ii) to read as follows:  
“(ii) \$26,501,000 for fiscal year 2001.”; and
- (2) in subparagraph (B)—
  - (A) in clause (i), by adding “and” at the end;
  - (B) by striking clause (ii); and
  - (C) by redesignating clause (iii) as clause (ii).

(b) SUBMISSION OF OUT-YEAR BUDGET PROJECTIONS.—Section 141(g) of the Trade Act of 1974 (19 U.S.C. 2171(g)) is amended by adding at the end the following:

“(3) By no later than the date on which the President submits to the Congress the budget of the United States Government for a fiscal year, the United States Trade Representative shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the Office to carry out its functions.”.

## **TITLE III—UNITED STATES INTERNATIONAL TRADE COMMISSION**

**SEC. 301. AUTHORIZATION OF APPROPRIATIONS.**

(a) IN GENERAL.—Section 330(e)(2)(A) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(2)) is amended—

- (1) in clause (i) to read as follows:  
“(i) \$47,200,000 for fiscal year 2000.”; and
- (2) in clause (ii) to read as follows:  
“(ii) \$49,750,000 for fiscal year 2001.”.

(b) SUBMISSION OF OUT-YEAR BUDGET PROJECTIONS.—Section 330(e) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(2)) is amended by adding at the end the following:

“(4) By no later than the date on which the President submits to the Congress the budget of the United States Government for a fiscal year, the Commission shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the Commission to carry out its functions.”.

## I. INTRODUCTION

### A. PURPOSE AND SUMMARY

H.R. 1833, as amended, would authorize appropriations for fiscal year FY 2000 and FY 2001 for the U.S. Customs Service, including specific authorization for drug interdiction and the prevention of child pornography beyond the President's budget request. H.R. 1833 would also authorize funding for the Customs Automated Commercial Environment, also beyond the President's request. Finally, H.R. 1833 would authorize appropriations for the Office of the United States Trade Representative (USTR) and the International Trade Commission (ITC), as requested by the President.

H.R. 1833, as amended, would make corrections to the overtime and premium pay system for Customs Officers and devote any savings to fund additional drug enforcement related overtime pay. It would also relax the manner in which the fiscal-year \$30,000 cap for overtime pay is calculated by removing premium pay from the cap.

H.R. 1833, as amended, would require Customs to conduct a study of current personnel practices including performance standards, the effect and impact of the collective bargaining process on Customs drug interdiction efforts, and a comparison of the duty rotation policies of Customs and other federal agencies employing similarly situated personnel. Customs would be required to submit a report of the study to the Committee on Ways and Means, and the Committee on Finance no later than 120 days after enactment of this Act.

H.R. 1833, as amended, would also change current law to give the Commissioner of Customs pay in parity with that of other Treasury agency heads.

### B. BACKGROUND AND NEED FOR LEGISLATION

#### 1. AUTHORIZATION OF APPROPRIATIONS

The Committee on Ways and Means has adopted a two-year authorization process to provide Customs, USTR, and the ITC with predictable guidance as they plan their budgets, as well as guidance from the Committee for the appropriations process. Although each agency submitted a projection for FY 2001 together with its FY 2000 budget request, the Committee has faced considerable difficulties in the past in obtaining projected budgets from these three agencies for the second year of the authorization. Accordingly, this legislation would provide that, no later than the date on which the President submits the budget to the Congress for a fiscal year, each of these agencies would be required to submit to the Committee on Ways and Means and the Committee on Finance of the Senate projected amounts of funds necessary for the succeeding fiscal year.

In preparing H.R. 1833, the Committee considered the President's budget for FY 2000 and requested projected budget summaries for FY 2001. Customs, USTR, and the ITC provided the Committee with unofficial projections for FY 2001.

The statutory basis for the authorizations of appropriations for Customs is as follows: section 301(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075(b)); for USTR,

section 141(g)(1) of the Trade Act of 1974 (19 U.S.C. 2171(g)(1)); and for the ITC, section 330(e)(2)(A) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(2)(A)). The most recent authorizations of appropriations for Customs, USTR, and the ITC that became law were included in the Customs and Trade Act of 1990 [P.L. 101-382]. These authorizations expired at the end of FY 1992. Legislation is necessary to authorize appropriations to fund the operations of these agencies for FY 2000 and FY 2001.

#### 2. CUSTOMS CYBER-SMUGGLING CENTER

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

#### 3. CUSTOMS AUTOMATION

Customs' current automation system, the Automated Commercial System (ACS), is an aging 16-year-old system which has experienced several "brownouts" since last fall. In addition, under the Customs Modernization Act (Mod Act) that was part of the North American Free Trade Agreements Act (title VI), Customs is required to provide increased electronic processing for entries, informed compliance, and record keeping. ACS does not have the capacity to meet these modernization requirements. Customs plans to replace ACS with the Automated Commercial Environment (ACE).

#### 4. CUSTOMS PERSONNEL ISSUES

The Act of February 13, 1911, as amended, known as the "1911 Act," created the original overtime pay system for Customs inspectors. The Act authorized Customs to compensate officers at a rate of two days of basic hourly pay for Sundays, and a rate of two days of basic hourly pay plus the basic hourly rate for holidays. Minimum compensation for nighttime pay—5 p.m to 8 a.m.—was 4 to 12 hours of pay.

Section 13811 of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1993, known as the Customs Officer Pay Reform Amendments (COPRA), amended the 1911 Act with regard to the overtime and premium pay system for Customs inspectors and canine enforcement officers, effective January 1, 1994. Only inspectors and canine officers are covered by the reforms, and only when performing inspections. Clerical and support staff are no longer eligible for double time and are covered—as are most other Federal employees—under the Federal Employees Pay Act (FEPA), at 1½ regular pay. The COBRA of 1993 also amended overtime compensation paid to Customs officers as part of the basic pay for the Civil Service Retirement System. Compensation may not exceed 50 percent of the statutory maximum in overtime pay for Customs officers (i.e., \$15,000, that is, 50 percent of \$30,000).

Due to a number of arbitration rulings, Customs has been required to pay both overtime and premium pay to Customs officers for work not performed. Further, the changes Congress made to the night pay system for Customs in 1993 has resulted in an unforeseen circumstance where Customs officers can receive night pay for

working at 12:00 noon in certain instances. These situations have cost Customs in excess of \$6 million annually. The Treasury Inspector General has called for a legislative change to correct the night pay system.

Customs has also entered into partnership agreements with its union that prevent it from permanently reassigning Customs officers without the affected employees' consent. Customs' ability to temporarily reassign officers without officers' consent is also limited under the partnership agreement with the union. Concern has been raised that the requirement that Customs officers and inspectors agree to such rotations may affect Customs drug interdiction efforts and the integrity of the border workforce.

In addition, there have been a number of incidents in which implementation of certain inspection procedures were delayed because of union objections to the procedures. While these particular incidents have been resolved, there have been questions raised as to whether drug interdiction efforts were compromised.

#### 5. SALARY OF THE COMMISSIONER OF CUSTOMS

The Commissioner's current salary is lower than that of other Treasury agency heads. Legislation is needed to put the Commissioner's salary in parity with that of other Treasury agency heads.

#### C. LEGISLATIVE HISTORY

The Committee on Trade of the Committee on Ways and Means held a public hearing on April 13, 1999, on Customs, USTR, and the ITC budget authorizations for FY 2000 and 2001 as well as other Customs issues, including compensation for Customs officers, funding for Customs Automated Commercial Environment (ACE) and the International Trade Data System (ITDS), Customs user fees under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), user fees for use in Customs automation, and labor/management issues.

Customs Commissioner Raymond Kelly, Mr. Randolph Hite of the U.S. General Accounting Office (GAO), and representatives of the various sectors of the trade industry testified on ACE. Commissioner Kelly stressed the need for ACE and detailed steps Customs has taken to improve ACE project management. Mr. Hite, who had recently authored a report that found serious management and technical weaknesses in Customs' development of ACE, acknowledged that Customs has begun to implement the recommendations made in the GAO report. Representatives of the trade industry were unified in their opinion that ACE is desperately needed and that Customs could effectively manage a project the size of ACE. However, representatives of both the trade and transportation industries flatly opposed the President's proposed user fees to fund both the base resources and ACE.

On Customs labor issues, testimony was received from Mr. Dennis S. Schindel, Assistant Inspector General for Audit, Office of the Inspector General, and from Mr. Robert Tobias, President of the National Treasury Employees Union (NTEU). In his testimony, Mr. Schindel stated that although the Customs Officers Pay Reform Act (COPRA) was intended to reduce Customs overtime costs for

inspectional services, COPRA instead has resulted in an increase in Customs premium pay costs.

*Subcommittee bill*

On May 18, 1998, Mr. Crane introduced H.R. 1833, and the Subcommittee held a mark-up of the bill on that same day. Three amendments were offered at the mark-up: Chairman Crane offered an amendment in the nature of a substitute that passed the Committee by a voice vote. Mr. Rangel offered an amendment to strike section 123(b) of H.R. 1833, the effect of which would maintain the current night differential pay rate schedule for Customs officers. Mr. Rangel's amendment was defeated by a recorded vote of 6 ayes to 9 nays. Mr. Shaw offered an amendment to bring the Commissioner's pay in parity with that of other heads of agencies of the Department of the Treasury. Mr. Shaw's amendment passed the Subcommittee by voice vote. The bill, as amended, then passed by a recorded vote of 9 ayes to 6 nays.

On May 20, 1999, the Committee met to consider H.R. 1883, as reported by the Subcommittee on Trade. Chairman Crane offered an amendment in the nature of a substitute to H.R. 1833. Chairman Crane's amendment was agreed to by voice vote. Mr. Rangel offered an amendment to strike section 123(b) from the bill. That amendment was defeated by a roll call vote of 12 ayes to 21 nays. The Committee then ordered the bill favorably reported, as amended, by a recorded vote of 36-0.

## II. EXPLANATION OF THE BILL

### A. TITLE I—AUTHORIZATION OF APPROPRIATIONS FOR U.S. CUSTOMS SERVICE

#### SUBTITLE A—DRUG ENFORCEMENT AND OTHER NONCOMMERCIAL AND COMMERCIAL OPERATIONS

##### *1. Sec. 101. Authorization of appropriations*

*Present law.*—The Customs Procedural Reform and Simplification Act of 1978 [P.L. 95-110] provides for a two-year authorization of appropriations for the U.S. Customs Service. That law, as amended by section 8102 of the Omnibus Budget Reconciliation Act of 1986 [P.L. 99-509], first outlined separate amounts for commercial and non-commercial operations for the salaries and expenses portion of the Customs authorizations.

Separate minimum and maximum amounts for commercial and non-commercial operations for the salaries and expenses portion of Customs authorization, and maximum amounts for the air and marine interdiction programs, are intended to provide guidance to Customs in the allocation of resources.

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

On May 7, 1998, the House passed H.R. 3809, providing for authorization of appropriations for FY 1999: \$964,857,584 for drug

enforcement and other noncommercial operations, \$970,838,000 for commercial operations, and \$98,488,000 for air interdiction; for FY 2000, \$1,072,928,328 for drug enforcement and other non-commercial operations, \$999,963,000 for commercial operations, and \$101,443,000 for air interdiction. Because the House and Senate could not reconcile their differences, this authorization did not become law.

Appropriations for Customs for FY 1999 were included in P.L. 105–277 and totaled \$1,642,565,000 for salaries and expenses. In addition, Customs was appropriated \$106,300,000 in Emergency Supplemental funding for salaries and expenses [P.L. 105–277].

*a. Section 101(a)—Authorization of appropriations: non-commercial operations*

*Present law.*—See Sec. 101 above.

*Explanation of provision.*—Section 101(a) of H.R. 1833, as amended, would authorize \$999,563,000 for non-commercial, drug and other enforcement activities, including a specific increase amount of \$227.1 million or 18.4 percent for drug interdiction resources over the President's request for FY 2000. For FY 2001, the bill would authorize \$996,464,000 for non-commercial, drug, and other enforcement activities, including a specific increase amount of \$193 million or 15.7 percent for drug interdiction resources over the President's request.

*Reason for change.*—The Committee is committed to giving Customs the resources needed to increase the overall level of Customs officers and Special Agents dedicated to counter-narcotics and anti-money laundering activities. Accordingly, the authorization for non-commercial operations for both fiscal years 2000 and 2001 is substantially larger than the President's request, providing Customs with the needed resources to stop drugs from entering this country while at the same time expediting the entry of legitimate persons and cargo.

Drug use among teenagers has been skyrocketing. According to official statistics, more children and teens are using marijuana, cocaine, and heroin. Statistics show that the use of drugs doubled among 10th graders between 1991 and 1997, increasing 80 percent among high school seniors since 1982. The purpose of this legislation is to fight the scourge of illegal drugs by preventing them from coming across the U.S. borders and keeping them out of children's hands.

*b. Sec. 101(b)—Authorization of appropriations: commercial operations*

*Present law.*—See Sec. 101 above.

*Explanation of provision.*—Section 101(b) of H.R. 1833, as amended, would authorize an additional amount of \$150 million for ACE development over the President's budget request of \$772,563,000 for commercial operations, for a total amount of \$1,154,359,000 for FY 2000. For FY 2001, the legislation would authorize an additional amount of \$150 million for ACE funding over the President's commercial operations budget request amount of \$1,194,534,000 for a total amount of \$953,464,000. Further, the provision would require that Customs demonstrate to the Commit-

tees on Ways and Means and Finance, report every 90 days, that the development and establishment of ACE is cost effective and meets the modernization requirements under the Customs Modernization Act under title VI of the North American Free Trade Agreements Act.

*Reason for change.*—The Committee recognizes Customs' efforts to modernize its operations to meet both its drug enforcement and trade facilitation missions. Customs collects revenues of approximately \$22 billion annually while processing about 19.7 million import entries and 450 million passengers. By 2005, import volume is expected to double, and it is critical that Customs' commercial operations deliver service that meets the demanding needs of increased trade volume.

Customs' current automation system, the Automated Commercial System (ACS), is an aging 16-year-old system which has experienced several "brownouts" since last fall. ACS is operating on the average at 90 percent to 95 percent of its capacity, which is above its design specifications. Many observers, including Customs, have said that ACS is headed for a major system crash which will likely have an adverse impact on trade. They also believe that any serious failure of ACS could have widespread economic effect on U.S. businesses all along the supply chain including manufacturers, suppliers, brokers, and retailers.

Between August 1998, and March 1999, ACS experienced a number of significant slow downs in processing ("brownouts", which in turn adversely affected the ability of the trade community to process entries quickly and efficiently. Although Customs continues to make costly investments to ACS to alleviate this problem on a short-term basis, Customs and the trade community expect a recurrence of these problems, including possible shutdowns of ACS.

Some of the main differences between ACS and the Automated Commercial Environment (ACE) are that ACE reportedly will use a single integrated system, modern standards, processes, techniques and language, and will be compatible with commercial software. By contrast, ACS does not have an integrated system, uses outdated techniques and languages, and cannot use commercially compatible software.

Customs plans to replace ACS with ACE and has spent approximately \$65 million on ACE development to date. The Committee agrees with Customs and the trade community that ACE is needed to cope with the increased growth of trade, and equally importantly, to meet the legislative requirements for Customs automation modernization mandated under the Mod Act. Therefore, in its authorization for commercial operations for both FY 2000 and FY 2001, the Committee has included funding to provide the Customs Service with the crucial resources it needs to continue developing ACE. However, the Committee underscores the need to assure that Customs manage and develop ACE cost effectively, while meeting the legislative automation modernization mandate of the Mod Act. Therefore, as a safeguard, the legislation would require Customs to demonstrate that it is meeting these requirements through extensive reporting and consultations with the Committees on Ways and Means and Finance before funding is released.

The Committee expresses its deep disappointment that the President's budget did not request any funding for ACE for FY 2000, but instead proposed an access fee, with the proceeds not to be available until FY 2001. The Committee strongly believes that the President's proposal is highly inadequate in this regard. The fee proposed by the President would amount to \$1.80 per 1,000 bytes of information processed by Customs for commercial users. Under the President's proposal, this fee would generate an estimated \$163 million in revenue per year, with \$150 million to be used as an offset for ACE and \$13 million as an offset for the International Trade Data System (ITDS). The Committee has not authorized this user fee because the Administration has been unable to justify the basis for the fee, how it would apply, and how Customs would retain discipline over the fee. Accordingly, the Committee has approved funding for both FY 2000 and 2001 without the fee.

The President's budget also requested in an increase of the COBRA passenger processing fee from \$5 to \$6.40 and removal of the existing exemption from passengers arriving from Canada, Mexico, and the Caribbean. The increased fee would generate \$312.4 million, which the President proposes be used to offset Customs base resources instead of being dedicated to the COBRA account for inspectional services. The Administration has been unable to justify the reasons for increasing the fee. Nor can it demonstrate a relationship between the fee and the cost of processing passengers, or that the fee will be used in any way to offset the cost for processing arriving passengers. The Committee believes that fees must bear such a relationship to the services provided to those paying the fee, and offsetting general expenditures is not sufficient justification. For this reason, the Committee has not authorized this fee increase and exemption removal, and has instead included the \$312.4 million in its budget authorization. In addition, the Committee has requested that the General Accounting Office conduct a study on Customs user fees, including the relationship between the fee and the actual cost of the service provided, to be completed by September 1999.

At the Subcommittee legislative hearing on April 13, 1999, representatives of both the trade and transportation industries flatly opposed the President's proposed user fees.

*c. Sec. 101(c)—Authorization of appropriations: air and marine interdiction*

*Present law.*—See Sec. 101 above.

*Explanation of provision.*—Section 101(c) of H.R. 1833, as amended, would authorize \$109,413,000 for air and marine interdiction for FY 2000, and \$113,789,000 in FY 2001.

*Reason for change.*—The legislation authorizes the full amount of the President's budget request for Air and Marine Interdiction for FY 2000 and FY 2001.

*d. Sec. 101(d)—Submission of out-year budget projections*

*Present law.*—No applicable section.

*Explanation of provision.*—Section 101(d) of H.R. 1833, as amended, would require out-year budget projections such that, no later than the date on which the President submits the budget to

the Congress for a fiscal year, Customs would be required to submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate projected amounts of funds necessary for the succeeding fiscal year. In addition, Customs would be required to provide projections for minimum amounts requested to be authorized for commercial operations under the salaries and expenses account; maximum amounts to be authorized for drug enforcement and other non-commercial operations under the salaries and expenses account; and maximum amounts to be appropriated for the operation of Customs air and marine interdiction programs.

*Reason for change.*—The Committee requires these estimates, including the breakdown for non-commercial, commercial, and air and marine interdiction, to provide guidance in making its authorization for the second year of the two-year authorization. The Committee also believes that such information is useful to the agency in its planning.

2. *Sec. 102—Narcotics detection equipment for the United States-Mexico border, United States-Canada border, and Florida and the Gulf coast seaports*

*Present law.*—No applicable section.

*Explanation of provision.*—Section 102 of H.R. 1833, as amended, would require that \$90,244,000 of the FY 2000 appropriations be available until expended for acquisition and other expenses associated with implementation and deployment of narcotics detection equipment along the United States-Mexico border, the United States-Canada border, and Florida and the Gulf seaports. The equipment would include vehicle and container inspection systems, mobile truck x-rays, upgrades to fixed-site truck x-rays, pallet x-rays, busters, contraband detection kits, ultrasonic container inspection units, automated targeting systems, rapid tire deflator systems, portable Treasury Enforcement Communications Systems terminals, remote surveillance camera systems, weigh-in-motion sensors, vehicle counters, spotter camera systems, inbound commercial truck transponders, narcotics vapor and particle detectors, and license plate reader automatic targeting software.

The provision would further require that \$8,924,500 of the FY 2001 appropriations be used for the maintenance of equipment described above. This section would also provide the Commissioner of Customs with some flexibility in using these funds and would allow for the acquisition of new, updated technology not anticipated when this bill was drafted.

*Reason for change.*—The Committee recognizes the needs of the Customs Service to effectively interdict drugs entering the United States. Customs currently lacks sufficient equipment along the Canada, Mexico, and Gulf borders to effectively interdict the drugs entering the United States while at the same time ensuring that trade flows in a timely manner. The Committee believes that the President's budget does not provide sufficient funding for this purpose. Accordingly, this section would provide the necessary equipment to improve the facilitation of trade and passengers entering the United States and to increase its narcotics interdiction efforts.

3. *Sec. 103—Peak hours and investigative resource enhancement for the United States-Mexico and United States-Canada borders*

*Present law.*—No applicable section.

*Explanation of provision.*—Section 103 of H.R. 1833, as amended, would require that \$127.1 million of funds authorized for FY 2000 and \$184 million for FY 2001 be made available for a net increase of 1,745 inspectors, canine enforcement officers, special agents, intelligence analysts, and internal affairs agents to increase inspectional and investigative resources and to improve inspection times and effectiveness during peak crossing hours.

*Reason for change.*—The Committee recognizes the need of the Customs Service to quickly facilitate the entry of persons and goods entering the United States while at the same time preventing contraband, including drugs, from entering. Customs currently lacks sufficient personnel along the U.S.-Canada and U.S.-Mexico borders, and at major narcotics distribution and money laundering centers around the country. This section provides the necessary personnel to improve the facilitation of cargo and persons entering this country and to increase Customs narcotics interdiction efforts.

4. *Sec. 104—Compliance with performance plan requirements*

*Present law.*—No applicable section.

*Explanation of provision.*—Section 104 of H.R. 1833 would require Customs to measure the effectiveness of the resources dedicated in sections 102 and 103 as part of its annual performance plan.

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

SUBTITLE B—CYBER-SMUGGLING CENTER OF THE U.S. CUSTOMS SERVICE

1. *Sec. 111—Authorization of appropriations for programs to protect children from on-line predators*

*Present law.*—Customs enforcement responsibilities include enforcement of U.S. laws to prevent border trafficking relating to child pornography, intellectual property rights violations, money laundering, and illegal arms. Funding for these activities has been included in the Customs general account. In 1998, Customs was appropriated \$2.4 million from this account to establish its Cyber-smuggling Center to combat these illegal activities.

*Explanation of provision.*—Section 111 of H.R. 1833, as amended, would authorize \$10 million for Customs to carry out its program to combat on-line child sex predators. Of that amount, \$375,000 would be dedicated to the National Center for Missing Children for the operation of its child pornography cyber tipline.

*Reason for change.*—With about 12 million children using the Internet unsupervised by their parents, the Internet has provided fertile ground for sexual predators to lure children into exploitive and abusive relationships and to trade in child pornography. This legislation would provide Customs with resources for the tools,

technology, and manpower it needs in its efforts to prevent child pornography and sexual exploitation. The Committee expects that these efforts will include out-reach programs to educate parents, children, and teachers.

The Committee applauds Customs for establishing the Cyber-smuggling Center and fully supports Customs in its efforts to protect children from on-line predators.

SUBTITLE C—PERSONNEL

CHAPTER 1: OVERTIME AND PREMIUM PAY OF OFFICERS OF THE CUSTOMS SERVICE

SUBTITLE A—OVERTIME PAY AND PREMIUM PAY OF OFFICERS OF THE UNITED STATES CUSTOMS SERVICE

1. *Sec. 121—Fiscal year cap*

*Current law*—Section 5(c)(1) of the Act of February 13, 1911 (19 U.S.C. 267(c)(1)) states that the aggregate amount of a Customs officer's overtime pay, including commuting compensation and premium pay, is \$30,000.<sup>1</sup> A Customs officer who receives overtime or premium pay (holidays and night work) for time worked is prohibited from receiving compensation for that work under any other provision of law. The Commissioner may grant waivers to prevent excessive costs or to meet emergency requirements of the Customs Service.

Section 5(a)(1) of the Act of February 13, 1911 (19 U.S.C. 267(a)(1)) outlines the general overtime pay system for Customs officers. Basic overtime compensation for work not regularly scheduled is provided as follows:

- a. Work in excess of 8 hours per day or 40 hours per week at twice the basic hourly rate of basic pay;
- b. "Callback" pay at twice the basic hourly rate. An officer will receive at least two hours of callback pay for any call back of two hours of work or less, if the work begins at least one hour after the end of any previously scheduled work and ends at least one hour before the beginning of regularly scheduled work.
- c. Compensation for the commute, in addition to callback time, at three times the basic hourly rate. Compensation for the commute is not payable if the work does not begin within 16 hours of the Customs officer's last regularly scheduled work assignment, or if the work begins within two hours of the officers's next regularly scheduled work assignment.

*Explanation of provision.*—Section 121 of H.R. 1833, as amended, would amend section 5(c)(1) of the Act of February 13, 1911 (19 U.S.C. 267(c)(1)) to remove premium pay from the calculation of the \$30,000 fiscal-year cap, thus increasing the amount of overtime pay a Customs officer may receive, with no annual limit on the amount of premium pay. The provision would also allow the Commissioner the authority to waive the \$30,000 fiscal-year cap to pre-

<sup>1</sup>The fiscal year cap was increased as of October 1, 1997, from \$25,000 to \$30,000 by P.L. 105-61 (the FY 98 Treasury Appropriations Act) over the objections of the Committee on Ways and Means because it did not address overtime and premium pay reforms included in H.R. 1833, as amended.

vent excessive costs or to meet emergencies, and to pay a Customs officer for one work assignment that would result in the overtime pay of that officer exceeding the \$30,000 fiscal-year cap. This authority would be granted only upon certification to the Chairmen of the House Committee on Ways and Means, and the Senate Committee on Finance that Customs has in operation a system that provides accurate and reliable data on a daily basis on overtime and premium pay being paid to Customs officers.

*Reason for change.*—Administration of the fiscal-year cap has posed a considerable challenge for Customs. Eliminating premium pay from the calculation of the fiscal-year cap will facilitate Customs administration, as fewer Customs officers will approach the level of the cap by working overtime alone.

If an officer reaches the fiscal-year cap, the provision would allow the Commissioner to pay that officer for one additional work assignment that would result in the overtime pay of the officer exceeding the cap. Thereafter, no additional overtime would be assigned to that officer, except to meet emergency requirements of the Customs Service. Under the National Inspectional Assignment Policy (NIAP), and contracts negotiated with the National Treasury Employees Union (NTEU), Customs has agreed to assign overtime to Customs officers based on daily tracking of each officers overtime- and premium-pay earnings. Section 121 also requires that authority to exceed the cap by one assignment will be granted to the Commissioner only upon certification to the Chairmen of the House Committee on Ways and Means and the Senate Committee on Finance that Customs has in operation a system that provides accurate and reliable data on a daily basis on overtime and premium pay that is being paid to each Customs officer.

*2. Sec. 122—Correction relating to payment of overtime pay to hours actually worked*

*Present law.*—No applicable statutory provision. On October 30, 1997, an arbitration ruling required the Customs Service to pay overtime to a Customs officer for work not performed if that officer was not permitted to work that time due to an administrative error. An earlier arbitration ruling required Customs to pay overtime to a Customs officer for work not performed if Customs had prevented that officer from working right up to the fiscal year salary cap, a practice Customs has in place to prevent an Anti-Deficiency Act violation.

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

*Reason for change.*—The Committee is greatly concerned that three arbitral decisions require Customs to pay overtime for work not performed. Specifically, as a result of a decision by a labor arbitrator in August 1982, Customs is required to pay overtime plus interest for hours not actually worked to officers denied overtime assignments because they have reached the level set by the port directors. The amount paid by Customs pursuant to the arbitral deci-

sion equals the difference between the fiscal-year cap and the level which the officer had reached at the time the port director stopped assigning additional overtime to that officer. As a result of a decision by a labor arbitrator in November 1993, Customs is required to pay for overtime not actually worked to officers whose overtime is inappropriately assigned to part-time employees. In yet another decision by a labor arbitrator in October 1997, Customs is now required to pay overtime to Customs officers for work not performed when the officer was not assigned an overtime assignment due to an inadvertent administrative error. The current practice of paying overtime for work not performed replaces the practice of providing the next comparable overtime assignment to the officer who was inadvertently skipped over.

In addition, in testimony before the Subcommittee on Trade in May 1998, the General Accounting Office (GAO) stated: "Although we believed that inspectors should be paid extra for working overtime, we recommend that (1) the 1911 Act be amended so that inspector overtime would be more directly linked to actual hours worked, and (2) Customs management focus on achieving a more efficient use of overtime." U.S. Customs Service: Oversight Issues, GAO/T-GGD-97-107 (May 15, 1997).

The provision would clarify Congressional intent with regard to overtime for Customs officers by preventing Customs from paying overtime to officers for hours not actually worked. Customs would achieve savings by prohibiting these payments which it has been required to make since the 1982 arbitral decisions. Between FY 1994 and FY 1996, Customs paid in excess of \$2.9 million pursuant to the requirements of the arbitral decisions relating to overtime and premium pay. It is the view of the Committee that Customs would achieve considerable savings in prohibiting these payments, and these resources would be better utilized by Customs in other areas.

The Committee does not expect that this requirement will have a significant impact on Customs' management of overtime or on Customs officers' ability to earn overtime pay. Customs has taken steps to alleviate this problem by recently implementing the Customs Overtime and Scheduling System (COSS), which currently tracks and monitors all scheduling, assignment of regular hours, overtime, and premium hours for Customs officers. Under this tracking system, Customs will be better able to monitor overtime and premium hours to prevent situations that gave rise to officers receiving overtime and premium pay for no work. However, the Committee believes that this legislation is necessary to clarify that the appropriate policy is to provide an additional assignment instead of overtime.

Finally, this reform is not intended to prevent awards or settlements under the provisions of laws cited in this section.

### *3. Section 123—Premium pay and night shift differential*

#### *a. Section 123(a)—Correction relating to payment of premium pay to hours actually worked*

*Current law.*—An arbitration ruling requires Customs to pay officers for regularly scheduled premium pay hours even if the officer

subsequently takes sick or annual leave and does not actually work those hours. P.L. 105–277, the Omnibus Consolidated and Emergency Supplemental Appropriations for FY 1999, permanently restricts Customs from paying premium pay on Sundays to an employee if the employee has not actually performed work on a Sunday.

*Explanation of provision.*—Section 123(a) of H.R. 1833, as amended, would amend section 5(b)(4) of the Act of February 13, 1911 (19 U.S.C. 267(b)(4)) to prohibit Customs from paying night and holiday premium pay to an employee if the employee has not actually performed work during the time corresponding to such premium pay. However, this provision would not apply to payment of an award or settlement under section 5596 of title 5, United States Code, section 6(d) of the Fair Labor Standards Act, or title VII of the Civil Rights Act of 1964.

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

Finally, this reform is not intended to prevent awards or settlements under the provisions of laws cited in this section.

*b. Section 123(b)—Correction relating to night work differential pay*

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

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

*Explanation of provision.*—Section 123(b) of H.R. 1833, as amended, would amend section 5(b)(1) of the Act of February 13, 1911 (19 U.S.C. 267(b)(1)) to provide that a Customs officer is paid differential shift pay only for differential hours worked.

Under this legislation, if any hour of an officer's regularly scheduled work hours occur between 6 p.m. and midnight, compensation would equal the basic hourly rate plus 15 percent for those hours only. If any work hours occur between midnight and 6 a.m., compensation would equal the basic hourly rate plus 20 percent for those hours only. The remaining hours would be compensated at regular pay. The bill also would allow for a Customs officer regularly scheduled to work the shift from 12:00 midnight to 8 a.m. to be paid at a premium rate of 20 percent over his or her base salary for the entire shift. For example, a Customs officer working noon to 8 p.m. would earn night differential pay only between the hours of 6 p.m. and 8 p.m.

*Reason for change.*—The Customs Officer Pay Reform Amendments (“COPRA”), which was part of the Omnibus Budget Reconciliation Act of 1993 (P.L. 103–66), greatly increased the number of available hours in which a Customs Officer can earn premium pay for night work. COPRA also increased the 10 percent night differential compensation to 15 percent and 20 percent, depending on the time of day that the assignment is worked. Among Federal employees, only Customs officers are compensated at a premium pay rate of 15 percent or 20 percent of basic hourly pay for night work. In fact, COPRA allows Customs to pay night differential premium payments for 23 hours of the day (12 p.m. to 11 a.m.), rather than 12 hours of the day (6 p.m. to 6 a.m.) as was previously the case under FEPA. Premium pay for night work by most other Federal employees is provided at a rate of 10 percent for the hours from 6 p.m. to 6 a.m. and is available only for those hours worked during that period, not the entire shift.

At the Subcommittee's legislative hearing on April 13, 1999, Mr. Schindel testified that “premium pay expenses for Customs, specifically the work differential, substantially increased under COPRA.” In fact night shift differential increased from \$51,000 in FY 1993 to \$11.9 million in FY 1998. A major reason for this dramatic increase in premium pay for shift differential is that COPRA increased the number of available hours where a Customs officer could earn night differential.

The Congressional intent of the COPRA was to ensure that Customs officers' schedules met customer demand. A Treasury Inspector General report concluded that Customs schedules do correspond to its workload and to its customers' needs. Customs Officer Pay Reform Amendments (COPRA), OIG–96–094 (September 13, 1996). However, the report concluded that COPRA had caused a significant increase in night differential spending, amounting to at least \$6 million per year. The report recommended:

The Assistant Secretary (Enforcement) should direct Customs to seek legislation that would lessen the number of hours available for Customs officers to earn night differential and reduce the night work differentials to a 10 percent premium on base pay. The change to the COPRA should create a night differential payment package that would more accurately reimburse Customs officers for hours actually worked at night, as was done previously under FEPA (p. 9).

The provision would clarify Congressional intent that night premiums be awarded only for night work, correcting the anomaly that an officer can receive a night premium for working at noon. However, the Committee believes that the Inspector General's recommendation that the night differential premium be reduced to 10 percent of basic hourly pay does not provide sufficient compensation for these officers. Instead, the Committee believes that the current 15 percent or 20 percent premiums, depending on the actual hours worked, should be continued but that they be limited to the hours worked during the premium period.

4. *Sec. 124—Use of amounts for additional overtime enforcement activities of the customs service resulting from savings from payment of overtime and premium pay*

*Present law.*—No applicable section.

*Explanation of provision.*—Section 124 of H.R. 1833, as amended, would require the Secretary of the Treasury to calculate any savings created as a result of sections 122 and 123 of this bill. Customs would be required to use the savings to provide additional overtime for enforcement purposes.

*Reason for change.*—The Committee wants to ensure that savings from sections 122 and 123 from this bill are used for additional overtime enforcement activities at the ports where the savings occurred.

5. *Sec. 125—Effective date*

*Present law.*—Effective the first pay period after enactment.

*Explanation of provision.*—Section 125 of H.R. 1833, as amended, provides that the effective date of subtitle C would be the first pay period after enactment.

## CHAPTER 2—MISCELLANEOUS PROVISIONS

1. *Sec. 131—Study and report relating to personnel practices of the Customs Service*

*Present law.*—No applicable section.

*Explanation of provision.*—Section 131 of H.R. 1833, as amended, requires Customs to conduct a study of current personnel practices including: performance standards; the effect and impact of the collective bargaining process on Customs drug interdiction efforts; and a comparison of duty rotations policies of Customs and other federal agencies employing similarly situated personnel.

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

The Committee has been concerned that the union is able to effectively thwart Customs drug interdiction efforts through bargaining, or the unwillingness to bargain. There have been a num-

ber of examples in which the NTEU was able to delay negotiations on work conditions, to the detriment of the interdiction of contraband, including narcotics. These examples included: (1) negotiations between the National Treasury Employees Union (NTEU) and Customs since early 1995 in El Paso, Texas, over work conditions at the three bridges between Mexico and El Paso relating to the use of a very successful drug interdiction approach called pre-primary roving for Canine Enforcement Officers (CEO) and Inspectors; (2) implementing certain shift work in Miami; and (3) the percent of officers regularly scheduled to work weekend shifts at the John F. Kennedy airport (JFK).

Shortly after the Subcommittee and Committee discussed these issues at the 1998 mark-ups, Customs and the Union settled their differences on the weekend shifts issues at JFK and El Paso. In addition, the Impasse Panel issued a decision on the shift issue in Miami. As a result of these developments, the Committee believes that many of the issues that have adversely impacted Customs drug interdiction efforts have been favorably resolved. However, the Committee believes that a study of the effect and impact of the collective bargaining process on Customs drug interdiction efforts is necessary to keep a watchful eye on this issue.

In addition, the Committee is concerned that Customs' lack of authority to rotate and temporarily assign officers may adversely impact its drug interdiction efforts. Therefore, the Committee is requiring that Customs conduct a comparison study of rotation policies with similarly situated federal personnel which would enable both the Committee and Customs to assess Customs rotation practices.

## *2. Sec. 132—Pay of Commissioner of Customs*

*Present law.*—The law applicable to the Commissioner's salary is title 5, section 5315, of the United States Code, which provides salaries for "Positions at Level IV."

*Explanation of provision.*—This provision would amend title 5, section 5314 of the United States Code to include the Commissioner of Customs under "Positions at Level III."

*Reason for change.*—The Commissioner's current salary is \$7,500 less than other Department of the Treasury ("Treasury") agency heads. This change would bring the Commissioner's salary in parity with other agency heads at Treasury. Other than the Internal Revenue Service, the Commissioner's responsibilities include managing a larger budget and more employees than all other agency heads of Treasury. The Commissioner is also responsible for the efficient enforcement of over 600 laws for 60 different federal agencies. These laws include interdicting drugs, enforcing U.S. trade laws, protecting children from cyber crime, and collecting tariffs. Considering all the responsibilities the Commissioner has, the Committee believes that the Commissioner should have pay parity with other Treasury agency heads.

B. TITLE II—OFFICE OF THE UNITED STATES TRADE  
REPRESENTATIVE

*1. Sec. 201(a)—Authorization of appropriations*

*Present law.*—The statutory authority for budget authorization for the Office of the United States Trade Representative, 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 (under section 101 of the Customs and Trade Act of 1990 [P.L. 101-382]) provided \$20,000,000 for FY91, and \$20,400,000 for FY92. Appropriations for USTR for FY 1999 were included in P.L. 205-277 in the amount of \$24,698,000.

*Explanation of provision.*—This provision authorizes \$26,501,000 for FY 2000 and \$26,501,000 for FY 2001.

*Reason for change.*—The Committee recognizes that USTR needs increased budget authorization to meet its expenses and hire new employees. The legislation authorizes the full amount of the President's budget request for USTR. The Committee wants to be sure that the World Trade Organization (WTO) Seattle Ministerial is adequately funded. USTR has assured the Committee that it requires no additional funding, and that it will use funds appropriated to the Department of State for this meeting.

*2. Sec. 202(b)—Out-year budget projections*

*Present law.*—The Committee on Ways and Means has adopted a two-year authorization process to provide USTR with predictable guidance as it plans its budget as well as guidance from the Committees for the appropriation process.

*Explanation of provision.*—H.R. 1833, as amended, would require the USTR to submit to Congress its budget to the Committee on Ways and Means and Committee on Finance the projected amount of funds for the succeeding fiscal year that will be necessary for the Office to carry out its function.

*Reason for change.*—The Committee requires these estimates to provide guidance in making its authorization for the second year of the two-year authorization. The Committee also believes that such information is useful to the agency in its planning.

C. TITLE III—THE UNITED STATES INTERNATIONAL TRADE  
COMMISSION

*1. Sec. 301(a)—Authorization of appropriations*

*Present law.*—The statutory authority for budget authorization for the International Trade Commission is section 330(e)(2)(A) of the Tariff Act of 1930 (19 U.S.C. 1330(e)(2)(A)). The most recent authorization of appropriations for ITC (under section 101 of the Customs and Trade Act of 1990 [P.L. 101-382]) provided \$41,170,000 for FY91, and \$44,052,000 for FY92. Appropriations for ITC for FY 1999 were included in P.L. 105-277 in the amount of \$44,495,000.

*Explanation of provision.*—H.R. 1833, as amended, would authorize \$47,200,000 for FY 2000 and \$47,750,000 for FY 2001.

*Reason for change.*—The Committee recognizes that the ITC needs increased budget authorization to meet the increased work-

load. The legislation authorizes the full amount of the President's budget request for the ITC.

2. *Sec. 301(b)—Out-year budget projections*

*Present law.*—The Committee on Ways and Means has adopted a two-year authorization process to provide the ITC with predictable guidance as it plans its budget as well as guidance from the Committees for the appropriation process.

*Explanation of provision.*—H.R. 1833, as amended, requires the ITC to submit to Congress its budget to the Committee on Ways and Means and Committee on Finance the projected amount of funds for the succeeding fiscal year that will be necessary for the Office to carry out its function.

*Reason for change.*—The Committee requires these estimates to provide guidance in making its authorization for the second year of the two-year authorization. The Committee also believes that such information is useful to the agency in its planning.

**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. 1833, as amended.

MOTION TO REPORT THE BILL

The bill, H.R. 1833, as amended, was ordered favorably reported by a rollcall vote of 36 yeas to 0 nays (with a quorum being present). The vote was as follows:

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

VOTES ON AMENDMENTS

A rollcall vote was conducted on the following amendment to Mr. Crane's amendment in the nature of a substitute.

An amendment by Mr. Rangel that would strike section 123(b) was defeated by a rollcall vote of 12 yeas to 21 nays. The vote was as follows:

Representatives	Yea	Nay	Present	Representatives	Yea	Nay	Present
Mr. Archer .....		X	.....	Mr. Rangel .....	X	.....	.....
Mr. Crane .....		X	.....	Mr. Stark .....	.....	.....	.....
Mr. Thomas .....		X	.....	Mr. Matsui .....	X	.....	.....
Mr. Shaw .....		X	.....	Mr. Coyne .....	X	.....	.....
Mrs. Johnson .....		X	.....	Mr. Levin .....	X	.....	.....
Mr. Houghton .....		X	.....	Mr. Cardin .....	X	.....	.....
Mr. Herger .....		X	.....	Mr. McDermott .....	X	.....	.....
Mr. McCreery .....		X	.....	Mr. Kleczka .....	X	.....	.....
Mr. Camp .....		X	.....	Mr. Lewis (GA) .....	.....	.....	.....
Mr. Ramstad .....		X	.....	Mr. Neal .....	X	.....	.....
Mr. Nussle .....		X	.....	Mr. McNulty .....	.....	.....	.....
Mr. Johnson .....		X	.....	Mr. Jefferson .....	X	.....	.....
Ms. Dunn .....		.....	.....	Mr. Tanner .....	X	.....	.....
Mr. Collins .....		X	.....	Mr. Becerra .....	X	.....	.....
Mr. Portman .....		X	.....	Mrs. Thurman .....	X	.....	.....
Mr. English .....		X	.....	Mr. Doggett .....	.....	.....	.....
Mr. Watkins .....		X	.....	.....	.....	.....	.....
Mr. Hayworth .....		X	.....	.....	.....	.....	.....
Mr. Weller .....		X	.....	.....	.....	.....	.....
Mr. Hulshof .....		X	.....	.....	.....	.....	.....
Mr. McClinnis .....		X	.....	.....	.....	.....	.....
Mr. Lewis (KY) .....		X	.....	.....	.....	.....	.....
Mr. Foley .....		.....	.....	.....	.....	.....	.....

**IV. BUDGET EFFECTS OF THE BILL**

**A. COMMITTEE ESTIMATES OF BUDGETARY EFFECT**

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 the bill H.R. 1833, as reported: The Committee agrees with the cost estimate furnished by the Congressional Budget Office set forth below.

**B. 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 the bill would affect direct spending by less than \$500,000 per year, and contains no new tax expenditures, or change in revenues.

**C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE**

Pursuant to 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 (CBO), the following report prepared by CBO is provided:

U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
 Washington, DC, May 24, 1999.

Hon. BILL ARCHER,  
 Chairman, Committee on Ways and Means,  
 House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1833, the Trade Agency Authorizations, Drug Free Borders, and Prevention of On-Line Pornography Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

BARRY B. ANDERSON  
 (For Dan L. Crippen, Director).

Enclosure.

*H.R. 1833—Trade Agency Authorizations, Drug Free Borders, and Prevention of On-Line Child Pornography Act of 1999*

Summary: H.R. 1833 would authorize appropriations for 2000 and 2001 for the U.S. Customs Service, the Office of the United States Trade Representative, and the International Trade Commission. The authorizations for the Customs Service would include funds for salaries and expenses, acquisitions, air and marine interdiction, and a program to prevent child pornography. In addition, the bill would make several changes to the current laws relating to overtime and premium pay for Customs officers.

CBO estimates that appropriation of the authorized amounts would result in additional discretionary spending of about \$4.7 billion over the 2000–2004 period. (About \$4.6 billion of this total would be outlays of the Customs Service.) H.R. 1833 could affect direct spending; therefore, pay-as-you-go procedures would apply. However, we estimate that any increases in direct spending would be less than \$500,000 a year. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would have no impact on the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: For the purposes of this estimate, CBO assumes that the amounts authorized by the bill will be appropriated by the start of each fiscal year and that outlays generally will follow historical spending rates for the authorized activities or for similar programs. We expect that funds for Customs Service salaries and expenses will be spent more slowly than the historical rates because the bill would provide substantial increases in authorizations relative to the funding levels for 1999. The estimated budgetary impact of H.R. 1833 is shown in the following table. The costs of this legislation fall within budget functions 150 (international affairs), 750 (administration of justice), and 800 (general government).

	By fiscal years in millions of dollars—					
	1999	2000	2001	2002	2003	2004
SPENDING SUBJECT TO APPROPRIATIONS						
Spending Under Current Law:						
Budget Authority <sup>1</sup> .....	2,186	0	0	0	0	0
Estimated Outlays .....	2,043	290	0	0	0	0
Proposed Changes:						
Authorization Level .....	0	2,347	2,381	0	0	0
Estimated Outlays .....	0	1,943	2,289	385	110	0
Spending Under H.R. 1833:						
Authorization Level <sup>1</sup> .....	2,186	2,347	2,381	0	0	0
Estimated Outlays .....	2,043	2,233	2,289	385	110	0

<sup>1</sup> The 1999 level is the amount appropriated for that year for the salaries and expenses account and the interdiction program of the U.S. Customs Service, the Office of the United States Trade Representative, and the International Trade Commission.

The provisions of H.R. 1833 that modify overtime and premium pay for Customs officers could effect direct spending since such costs are paid out of a direct spending account (that is, from funds not subject to annual appropriation). Some of the bill's provisions could increase these personnel costs, while other provisions would probably yield small savings. CBO estimates that the net effect of H.R. 1833 on direct spending would be less than \$500,000 a year.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Enacting H.R. 1833 could affect direct spending, but CBO estimates that the net changes would be less than \$500,000 a year.

Intergovernmental and private-sector impact: H.R. 1833 contains no intergovernmental or private-sector mandates as defined in UMRA and would have no impact on the budgets of state, local, or tribal governments.

Estimate prepared by: Mark Grabowicz.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

## 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 concludes that the actions taken in this legislation are appropriate given its oversight of the U.S. Customs Service.

### B. SUMMARY OF FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

With respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives (relating to oversight findings), the Committee advises that no oversight findings or recommendations have been submitted to this Committee by the Committee on Government Reform and Oversight with respect to the provisions contained in H.R. 1833, as amended.

C. CONSTITUTIONAL AUTHORITY STATEMENT

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

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

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

**SECTION 301 OF THE CUSTOMS PROCEDURAL REFORM AND SIMPLIFICATION ACT OF 1978**

\* \* \* \* \*  
 SEC. 301. (a)(1) \* \* \*  
 \* \* \* \* \*

(3) *By no later than the date on which the President submits to the Congress the budget of the United States Government for a fiscal year, the Commissioner of Customs shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the operations of the Customs Service as provided for in subsection (b).*

(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 for fiscal year 1991.
- [(B) \$542,091,000 for fiscal year 1992.]
- (A) \$999,563,000 for fiscal year 2000.
- (B) \$996,464,000 for fiscal year 2001.

(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 for fiscal year 1991.
- [(ii) \$705,793,000 for fiscal year 1992.]
- (i) \$1,154,359,000 for fiscal year 2000.
- (ii) \$1,194,534,000 for fiscal year 2001.

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

- [(A) \$143,047,000 for fiscal year 1991.

[(B) \$150,199,000 for fiscal year 1992.]  
(A) \$109,413,000 for fiscal year 2000.  
(B) \$113,789,000 for fiscal year 2001.

**ACT OF FEBRUARY 13, 1911**

AN ACT To diminish the expense of proceedings on appeal and writ of error or of certiorari.

\* \* \* \* \*

**SEC. 5. OVERTIME AND PREMIUM PAY FOR CUSTOMS OFFICERS.**

(a) OVERTIME PAY.—

(1) IN GENERAL.—Subject to paragraph (2) and subsection (c), a customs officer who is officially assigned to perform work in excess of 40 hours in the administrative workweek of the officer or in excess of 8 hours in a day shall be compensated for that work at an hourly rate of pay that is equal to 2 times the hourly rate of the basic pay of the officer. *Overtime pay provided under this subsection shall not be paid to any customs officer unless such officer actually performed work during the time corresponding to such overtime pay. The preceding sentence shall not apply with respect to the payment of an award or settlement to a customs officer who was unable to perform overtime work as a result of a personnel action in violation of section 5596 of title 5, United States Code, section 6(d) of the Fair Labor Standards Act of 1938, or title VII of the Civil Rights Act of 1964.* For purposes of this paragraph, the hourly rate of basic pay for a customs officer does not include any premium pay provided for under subsection (b).

\* \* \* \* \*

(b) PREMIUM PAY FOR CUSTOMS OFFICERS.—

[(1) NIGHT WORK DIFFERENTIAL.—

[(A) 3 P.M. TO MIDNIGHT SHIFTWORK.—If the majority of the hours of regularly scheduled work of a customs officer occurs during the period beginning at 3 p.m. and ending at 12 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate.

[(B) 11 P.M. TO 8 A.M. SHIFTWORK.—If the majority of the hours of regularly scheduled work of a customs officer occurs during the period beginning at 11 p.m. and ending at 8 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate.

[(C) 7:30 P.M. TO 3:30 A.M. SHIFTWORK.—If the regularly scheduled work assignment of a customs officer is 7:30 p.m. to 3:30 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate for the period from 7:30 p.m. to 11:30 p.m. and at the officer's hourly rate of basic pay plus premium pay amounting

to 20 percent of that basic rate for the period from 11:30 p.m. to 3:30 a.m.】

(1) NIGHT WORK DIFFERENTIAL.—

(A) 6 P.M. TO MIDNIGHT.—If any hours of regularly scheduled work of a customs officer occur during the hours of 6 p.m. and 12 a.m., the officer is entitled to pay for such hours of work (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 15 percent of that basic rate.

(B) MIDNIGHT TO 6 A.M.—If any hours of regularly scheduled work of a customs officer occur during the hours of 12 a.m. and 6 a.m., the officer is entitled to pay for such hours of work (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate.

(C) MIDNIGHT TO 8 A.M.—If the regularly scheduled work of a customs officer is 12 a.m. to 8:00 a.m., the officer is entitled to pay for work during such period (except for work to which paragraph (2) or (3) applies) at the officer's hourly rate of basic pay plus premium pay amounting to 20 percent of that basic rate.

\* \* \* \* \*

(4) TREATMENT OF PREMIUM PAY.—Premium pay provided for under this subsection may not be treated as being overtime pay or compensation for any purpose. Premium pay provided under this subsection shall not be paid to any customs officer unless such officer actually performed work during the time corresponding to such premium pay. The preceding sentence shall not apply with respect to the payment of an award or settlement to a customs officer who was unable to perform work during the time described in the preceding sentence as a result of a personnel action in violation of section 5596 of title 5, United States Code, section 6(d) of the Fair Labor Standards Act of 1938, or title VII of the Civil Rights Act of 1964.

(c) LIMITATIONS.—

【(1) FISCAL YEAR CAP.—The aggregate of overtime pay under subsection (a) (including commuting compensation under subsection (a)(2)(B)) and premium pay under subsection (b) that a customs officer may be paid in any fiscal year may not exceed \$25,000; except that the Commissioner of Customs or his designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Customs Service.】

(1) FISCAL YEAR CAP.—The aggregate of overtime pay under subsection (a) (including commuting compensation under subsection (a)(2)(B)) that a customs officer may be paid in any fiscal year may not exceed \$30,000, except that—

(A) the Commissioner of Customs or his or her designee may waive this limitation in individual cases in order to prevent excessive costs or to meet emergency requirements of the Customs Service; and

(B) upon certification by the Commissioner of Customs to the Chairmen of the Committee on Ways and Means of the House of Representatives and the Committee on Finance of

*the Senate that the Customs Service has in operation a system that provides accurate and reliable data on a daily basis on overtime and premium pay that is being paid to customs officers, the Commissioner is authorized to pay any customs officer for one work assignment that would result in the overtime pay of that officer exceeding the \$30,000 limitation imposed by this paragraph, in addition to any overtime pay that may be received pursuant to a waiver under subparagraph (A).*

\* \* \* \* \*

*(e) USE OF SAVINGS FROM PAYMENT OF OVERTIME AND PREMIUM PAY FOR ADDITIONAL OVERTIME ENFORCEMENT ACTIVITIES.—*

*(1) USE OF AMOUNTS.—For fiscal year 1999 and each subsequent fiscal year, the Secretary of the Treasury—*

*(A) shall determine under paragraph (2) the amount of savings from the payment of overtime and premium pay to customs officers; and*

*(B) shall use an amount from the Customs User Fee Account equal to such amount determined under paragraph (2) for additional overtime enforcement activities of the Customs Service.*

*(2) DETERMINATION OF SAVINGS AMOUNT.—For each fiscal year, the Secretary shall calculate an amount equal to the difference between—*

*(A) the estimated cost for overtime and premium pay that would have been incurred during that fiscal year if this section, as in effect on the day before the date of the enactment of sections 122 and 123 of the Trade Agency Authorization, Drug Free Borders, and Prevention of On-Line Child Pornography Act of 1999, had governed such costs; and*

*(B) the actual cost for overtime and premium pay that is incurred during that fiscal year under this section, as amended by sections 122 and 123 of the Trade Agency Authorization, Drug Free Borders, and Prevention of On-Line Child Pornography Act of 1999.*

**[(e)] (f) DEFINITIONS.—As used in this section:**

**(1) \* \* \***

\* \* \* \* \*

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**CHAPTER 53 OF TITLE 5, UNITED STATES CODE**

**CHAPTER 53—PAY RATES AND SYSTEMS**

\* \* \* \* \*

**SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES**

\* \* \* \* \*

**§ 5314. Positions at level III**

Level III of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Solicitor General of the United States.

\* \* \* \* \*

Deputy Director for State and Local Affairs, Office of National Drug Control Policy.

*Commissioner of Customs, Department of the Treasury.*

**§ 5315. Positions at level IV**

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

Deputy Administrator of General Services.

\* \* \* \* \*

**Commissioner of Customs, Department of the Treasury.**  
**Director of the Office of Educational Technology.**

\* \* \* \* \*

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**SECTION 141 OF THE TRADE ACT OF 1974**

**SEC. 141. OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.**

(a) \* \* \*

\* \* \* \* \*

(g)(1)(A) There are authorized to be appropriated to the Office for the purposes of carrying out its functions **[not to exceed the following] as follows:**

- [(i) \$23,250,000 for fiscal year 1991.**
- [(ii) \$21,077,000 for fiscal year 1992.]**
- (i) \$26,501,000 for fiscal year 2000.*
- (ii) \$26,501,000 for fiscal year 2001.*

(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) (i) not to exceed \$1,000,000 shall remain available until expended.**

\* \* \* \* \*

(3) *By no later than the date on which the President submits to the Congress the budget of the United States Government for a fiscal year, the United States Trade Representative shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of*

*funds for the succeeding fiscal year that will be necessary for the Office to carry out its functions.*

\* \* \* \* \*

**SECTION 330 OF THE TARIFF ACT OF 1930**

**SEC. 330. ORGANIZATION OF THE COMMISSION.**

(a) \* \* \*

\* \* \* \* \*

(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)(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 for fiscal year 1991.

    【(ii) \$44,052,000 for fiscal year 1992.】

    (i) \$47,200,000 for fiscal year 2000.

    (ii) \$49,750,000 for fiscal year 2001.

\* \* \* \* \*

(4) *By no later than the date on which the President submits to the Congress the budget of the United States Government for a fiscal year, the Commission shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate the projected amount of funds for the succeeding fiscal year that will be necessary for the Commission to carry out its functions.*

## VII. ADDITIONAL VIEWS

We strongly support the authorizations of appropriations in H.R. 1833 to provide additional resources needed by the U.S. Customs Service to combat illegal drug traffic across our borders. The interdiction efforts of the Customs Service represent an integral component of U.S. efforts to stop the flow of illegal drugs into this country. Additional equipment, the latest technology, and increased numbers of inspectors and other personnel are essential for more effective anti-drug enforcement, as well as to facilitate the entry of legitimate cargo. We also strongly support the authorization of additional funding for the Child Cyber-smuggling Center to assist in the effort to prevent child pornography and child sexual exploitation. These issues—drug interdiction and the prevention of child pornography—are issues of national importance with strong bipartisan support.

We are, however, very concerned about a provision in the bill relating to the pay of Customs officers and inspectors, and are disappointed that the provision, section 123(b), has been included in the bill reported out of Committee. Section 123(b) amends existing law governing the payment of night shift differential pay by greatly restricting the hours eligible for such pay. That provision (as well as the other labor provisions in the bill) is opposed by the Administration.

We join the Administration in their opposition. First, the existing provision governing night shift differential pay takes a balanced approach toward compensating Customs officers for working odd hour shifts. Under existing law, Customs officers are compensated at a night shift differential rate only if a majority of their shift falls within the qualifying hours. Customs officers do not receive premium night shift differential pay wages for any portion of a shift if less than a majority of the shift falls outside the prescribed hours. This compensation system was developed in 1993 as a part of comprehensive package of Customs pay reforms, and was designed specifically to ensure that Customs officers receive additional pay for working odd hour shifts. Second, the Majority does not offer any legitimate justification for making the proposed changes. The 1996 Office of Inspector General report on which proponents of the measure rely is narrowly focused, and incomplete in its analysis. We would propose that prior to making this change, a more complete analysis be undertaken, as is being done on two other Customs employee issues. Third, Customs officers and inspectors often perform law enforcement-type activities, but do not receive the base pay or pension benefits that other federal law enforcement officers receive. Accordingly, the current compensation structure was designed to provide Customs inspectors with other wage benefits to ensure adequate remuneration for the risks they

are exposed to and the unpredictable hours they must work. These reasons form the basis of our opposition to this provision.

The current law governing night shift differential pay was passed by Congress in 1993, as part of a comprehensive package of Customs compensation reforms, the Customs Officers' Pay Reform Amendments ("COPRA"), (P.L. 103-66, 107 Stat. 670). The purpose of the reforms was to rationalize the method of paying Customs officers for overtime, while also ensuring that Customs officers received pay commensurate with the important work they perform. To achieve this balance, Congress, on a bipartisan basis, altered Customs officers' entire compensation structure, including the amendment to the hours eligible for and the wage rate applied to night shift differential pay. By considering and amending compensation on aggregate basis, Congress ensured that the correction of certain payment abuses did not result in Customs officers receiving an unwarranted cut in pay.

On night shift differential pay, the 1993 reforms provided that

- if a majority of hours worked by a Customs officer in a shift fell between 3 p.m., and midnight, all hours in the shift were paid at the hourly rate + 15%;
- if a majority of hours worked by a Customs officer in a shift fell between 11 p.m. and 8 a.m., all hours in the shift were paid at the hourly rate + 20%; and
- however, if a majority of the hours worked by a Customs officer in a shift did not fall within the 3 p.m. to 8 a.m. period, the employee was paid at the hourly rate only.

The purpose of this premium is to compensate Customs officers for working shifts that begin or end outside a normal work day (i.e., 3 p.m. to 11 p.m., midnight to 8 a.m.). As stated in the 1993 Committee report, the Committee found that these odd hour shifts, which were assigned by management (and not the employee), had "an adverse impact on the quality of life of Customs officials who are required to work regularly scheduled shifts at night or on Sundays and holidays." H. Rep. No. 103-11, at 573, 574 (May 25, 1993). Recognizing this problem, the Committee amended the hours eligible for and the wage rate applied to the night shift differential specifically to provide for "shift differential compensation at levels substantially greater than applied generally to other Federal employees for such regularly scheduled work." H. Rep. No. 103-11, at 573, 574 (May 25, 1993).

Section 123(b) of the bill alters the balanced approach crafted in 1993 in two ways. First, the provision restricts the hours that qualify for the night shift differential to hours between 6 p.m. and 6 a.m. Second, the provision compensates Customs officers at the differential rate only for those hours that occur between 6 p.m. and 6 a.m. (with one limited exception), and not the entire shift. Effectively, these changes will mean that a Customs officer who works a shift starting at 3 a.m. and ending at 11 a.m. will receive the shift differential for only 3 hours of that shift.

To offset some of the loss in pay likely to occur, section 121 of the bill adjusts the overtime cap that, under current law, restricts the amount of overtime pay a Customs officer may earn in one year. In effect, this adjustment would allow Customs officers to work more overtime to compensate for lost wages, or put another

way, Customs officers will have to work more to get the same pay. Such a result is unfair. It is not even clear that the officers whose pay is reduced will be able to work the additional hours to make up for the loss in pay. Moreover, only a small percentage of officers currently reach the overtime cap, and therefore would even benefit from the new provision.

A single report, done in 1996 by the Office of Inspector General (OIG), has been offered to support this change to night shift differential pay. That report purportedly reviews the operation of the night pay differential and the overtime cap since COPRA. The report, which concludes that the COPRA resulted in an increase in overall premium night shift differential payments, is, however, seriously flawed and certainly incomplete.

First, the OIG report merely calculated the absolute increase in night differential pay over a three year period. The report did not investigate the cause of the increase. The OIG's report did not investigate whether the increase was due to an overall increase in the number of hours being worked, whether there was an increase in the number of late shifts being worked due to increased trade, or whether the increase in cost was attributable to an increase in base wages. Rather, the OIG report merely concludes that the increase was due to COPRA without investigating, entertaining or otherwise considering any other possible reasons for the increase.

Second, the OIG report did not assess the impact of any change in the law on Customs employees' salaries. As discussed above, the 1993 changes to the method of calculating premium night shift differential payments were part of a comprehensive package of reforms intended to ensure that Customs officers would receive adequate compensation for the hard, and often dangerous, work they perform. Altering the carefully crafted package Congress created in 1993 without assessing the impact on Customs officers' overall pay is irresponsible, and could result in an unwarranted pay cut for many of these officers. Third, OIG did not find any evidence of abuse in this system. In fact, to the contrary, the OIG report specifically states that Customs management did not change work schedules to allow employees to earn more shift differential pay. Rather, Customs management continued to schedule shifts to fit customers' demand.

We are not opposed to considering amendments to Customs officers pay, if a credible study evaluates and recommends that legislative changes be made. We have indicated that we would support a study, as the Majority has decided to do on two other Customs employee issues. However, we are opposed to cutting someone's wages based on a report that shows nothing. The men and women of the U.S. Customs Service perform vital functions with respect to both law enforcement—keeping drugs and other contraband from crossing our borders—and preserving the integrity of U.S. trade with foreign nations. Their current compensation structure was designed to take account of the unusual stresses of their job—both the on-the-job safety risks and the irregular hours. We do not believe that

there is clear evidence that those aspects of a Customs officer's job have changed in a way that would justify reducing their pay, which is precisely what H.R. 1833 will do.

SANDY LEVIN.  
JOHN LEWIS.  
WILLIAM J. COYNE.  
RICHARD E. NEAL.  
XAVIER BECERRA  
MICHAEL R. McNULTY.  
ROBERT T. MATSUI.  
C.B. RANGEL.  
PETE STARK.  
WM. J. JEFFERSON.  
BEN CARDIN.  
JOHN TANNER.  
JERRY KLECZKA.  
KAREN L. THURMAN.  
JIM McDERMOTT.  
LLOYD DOGGETT.

ADDITIONAL VIEWS OF REPRESENTATIVE MICHAEL R.  
McNULTY

I feel that the following three items warrant action by the Office of the United Trade Representative (USTR).

The USTR would investigate the differences in plastic packaging pricing in the European Union and the United States and possible violations of the GATT trade agreement resulting from such pricing differences. The USTR should also pursue remedies for any violations of the GATT agreement to ensure the continuation of free and fair trade.

The USTR should also examine unfair subsidies by the Canadian government to Canadian steel and aluminum above-ground pool manufacturers. Canadian manufacturers of above-ground pools have doubled their U.S. market in the last three years and are currently selling their product at 25 percent below cost compared to American manufacturers. The USTR should investigate and pursue remedies if necessary.

Local and provincial Canadian law and statute mandate the use of Canadian Standards Association (CSA) standards for electrical components, which differ from the United States' Underwriters Laboratory (UL) standards. This situation creates an obstacle to free and fair trade between Canada and the United States in all facets of the electrical components industry. I encourage the USTR to pursue harmonization of electrical industry standards between all NAFTA nations.

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