



## Legislative Bulletin.....May 22, 2002

### Contents:

1. **H.R. 3129**—Customs Border Security Act

---

### **H.R. 3129—Customs Border Security Act (Crane)**

**Order of Business:** The bill may be considered on Wednesday, May 22, 2002, under a structured rule with 2 amendments and a motion to recommit with or without instructions. Makes 2 amendments in order: a Thomas Manager's Substitute Amendment and a Rangel Substitute. (The amendment texts can be found on the Rules Committee website: <http://www.house.gov/rules/107rule3129.htm>).

**Previous House Consideration:** H.R. 3129 was originally considered on the House floor on December 6, 2001, under suspension of the rules. The bill failed to get the required two-thirds vote needed for passage (256-168; Roll no. 478; <http://clerkweb.house.gov/cgi-bin/vote.exe?year=2001&rollnumber=478>). The Democrats mostly objected to the Customs 'opening of international mail originating in the U.S. without a search warrant (a provision which is still included) and a provision removing liability from Customs agents who act in good faith while doing searches (a provision which is still included).

**NOTE: The effects of the Thomas Substitute are noted below in brackets and bolded in red text.**

### Summary:

H.R. 3129 as reported would authorize more than **\$2.9 billion** in appropriations for FY2002 and FY2003 for the U.S. Customs Service, the Office of the U.S. Trade Representative, and the International Trade Commission. **[The Thomas Substitute would increase the underlying authorization by an additional \$2.36 Billion and extend the authorization through FY2004]** Because an appropriation for FY2002 for the Customs Service has already been enacted, most of the authorizations in this bill would be for FY2003. The bill would increase current-law authorizations of appropriations for FY2002 by a total of \$107 million. The major provisions of the bill are as follows:

### Authorizations of Appropriations

#### U.S. Customs Service

- Noncommercial operations  
FY2002 revised: \$886.5 million **[Substitute increases to \$899.121 million (+\$12.6 million)]**  
FY2003: \$909.5 million **[Substitute increases to \$1.365 billion (+\$456 million)]**

**[FY2004: Substitute adds an additional year at \$1.4 billion (+\$1.4 billion)]**

- Commercial operations  
FY2002 revised: \$1.6 billion **[Substitute decreases by \$414,000 (-\$414,000)]**  
FY2003: \$1.65 billion **[Substitute decreases to \$1.64 billion (-\$2.4 million)]**  
**[FY2004: Substitute adds an additional year at \$1.7 billion (+\$1.7 billion)]**
- Air and marine interdiction  
FY2002 revised: \$181.9 million **[Substitute decreases to \$177.9 (-4 million)]**  
FY2003: \$186.6 million **[Substitute decreases to \$170.8 (-15.7 million)]**  
**[FY2004: Substitute adds an additional year at \$175 million (+\$175 million)]**
- Program for the prevention of child pornography and child sexual exploitation  
FY2002: \$10.0 million
- Reestablishment of Customs Service operations in Manhattan (including textile enforcement operations and operations related to the Special Agent-in-Charge for New York, the Port Director of New York City, and the New York Customs Management Center)  
FY2002: “such sums as may be necessary”
- Transshipment enforcement operations (see definition in the “studies and reports” section below)  
FY2002: \$9.5 million

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

- General appropriations  
FY2002 revised: \$30.0 million  
FY2003: \$31.0 million **[Substitute increases to \$32.3 (+1.3 million)]**  
**[FY2004: Substitute adds an additional year at \$33.1 million (+\$33.1 million)]**
- Hiring of two additional congressional affairs specialists  
FY2002: “such sums as may be necessary”

#### U.S. International Trade Commission

- General appropriations  
FY2002 revised: \$51.4 million  
FY2003: \$53.4 million **[Substitute increases to \$54 million (+600,000)]**  
**[FY2004: Substitute adds an additional year at \$57.2 million (+\$57.2 million)]**

#### Earmarks

- Earmarks \$90.2 million in FY2002 funds for the procurement of antiterrorist and illegal drugs detection equipment for the U.S.-Mexico border, the U.S.-Canada border, and

Florida and Gulf-Coast seaports. (Specific earmarks within each category are detailed in the bill.) Earmarks \$9.0 million in FY2003 for the maintenance and support of such equipment.

- Caps aggregate annual overtime pay for customs officers at \$30,000, subject to certain exceptions. Clarifies what constitutes overtime and premium pay. **[Substitute strikes entire Personnel Provisions section dealing with overtime and premium pay.]**
- Earmarks \$25 million to hire 285 additional Customs Service officers for the U.S.-Canada border **[Substitute increases US-Canada provision to \$28.3 million (+3.3 million)]**
- Earmarks 3.75% of the authorization for the Customs Service's child pornography prevention program for the National Center for Missing and Exploited Children's cyber tip-line
- Earmarks funds for various components of authorization for transshipment enforcement (including the hiring of permanent trade officers positioned in certain countries)
- Earmarks \$1.3 million of the Customs Service's commercial operations authorization for technical assistance for sub-Saharan countries to develop and implement visa and anti-transshipment systems (as required by Public Law 106-200, the African Growth and Opportunity Act)

### **Key Legislative Language**

- Increases (90 days after this bill's enactment) the aggregate value of articles exempted from duty that are acquired abroad by U.S. residents from \$400 to \$800
- Mandates advance electronic transmission (by the operator of every land, air, or vessel seeking entry to the U.S., subject to certain exceptions) of *all* cargo information (including detailed identification information for every person departing through or arriving into a Customs facility) **[The substitute adds an additional provision here and to the passenger and crew information section as well, that the Secretary shall cooperate with other federal agencies regarding cargo manifest passenger and crew information.]**
- Authorizes a Customs officer to “stop and search at the border, without a search warrant,” domestic mail addressed for export and foreign mail transiting the U.S. addressed for import or export, subject to certain provisions
- Grants immunity from civil liability to “any officer or employee of the United States” who conducts a search of a passenger in good faith. Within 30 days of this bill's enactment, at all Customs facilities a summary of the policy and procedures for searching passengers (including a statement relating to the prohibition of profiling based on “gender, race, color, religion, or ethnic background”) would have to be posted.
- Authorizes the Secretary of the Treasury to take (and notify Congress of) emergency actions related to Customs offices, points of entry, or staffing during national emergencies
- Requires the Commissioner of Customs to establish and implement (not later than the end of FY2003) a cost accounting system for expenses incurred in commercial and noncommercial operations of the Customs Service
- Requires that the Commissioner of Customs, the U.S. Trade Representative, and the U.S. International Trade Commission submit to Congress (not later than the date on which the President submits the federal budget for a fiscal year) the projected amount of funds that the Customs Service, the Office of the U.S. Trade Representative, and the U.S. International Trade Commission, respectively, will need for the subsequent fiscal year

- **[The substitute adds a new provision related to user fees (Sec. 127) for customs inspections at express courier facilities at 66 cents per individual airway bill or bill of lading for express consignment carrier facility or centralized hub facility. In FY04, the Secretary of the Treasury may adjust these fees to not less than 35 cents but not more than \$1 per individual airway bill or bill of lading. This appears to apply to couriers like Fed Ex and UPS. 50 percent of these fees will go to the Treasury.]**

NOTE: According to the bill sponsor's office, this provision is a compromise between Customs and the couriers like UPS and Fed Ex. Currently couriers reimburse Customs for the cost of inspections at their particular worksite. This change will effectively say to UPS, for example, you shipped 3,000 packages so you owe the federal government 3,000 multiplied by 66 cents. Evidently, this flat rate makes it easier for couriers to estimate the cost of doing business through customs and reflect these costs in fees charged to their customers.

- **[The substitute also adds a new provision (Sec. 128) dealing with national customs automation. The section strikes the provision in current law that makes participation voluntary and adds that the Secretary may, by regulation, require the electronic submission of information to the Customs Service.]**

### **Studies and Reports**

- Directs the Commissioner of Customs to study and report within 120 days on the personnel practices of the Customs Service (including a review of performance standards, collective bargaining practices, and duty-rotation policies)
- Directs the Commissioner of Customs to study and report within 6 months on the accounting and auditing procedures of the Customs Service
- Directs the GAO to study and report on (within one year) the extent to which the Customs Service has taken steps to decrease the amount of time to issue prospective rulings (i.e. rulings regarding classification, valuation, or marking of goods that an importer wants to bring into the U.S.)
- Directs the GAO to study and report on (within 120 days) the extent to which customs fees are commensurate with the related customs services for which the fees are assessed
- Directs the GAO to audit and report on (within 9 months) the Customs Service's system for monitoring textile transshipment (i.e. claiming preferential trade treatment based on false information about a product's country of origin, manufacture, processing, or assembly).

**Cost to Taxpayers**: CBO estimates that enactment of H.R. 3129 would authorize appropriations of **\$107 million** in FY2002 (\$2.767 billion already authorized for FY2002 under current law) and **\$2.825 billion** in FY2003 and reduce duty revenues by \$4 million per year (by increasing the personal-duty exemption from \$400 to \$800 for people entering the U.S.). The Ways & Means Committee (in House Report 107-320) believes that the reduction in duty revenues would be \$6 million per year. CBO estimates that the net effect of H.R. 3129 on direct spending for overtime and premium pay for Customs officers would be less than \$500,000 per year. **[The Thomas Substitute would increase the underlying authorization by an additional \$2.36 Billion and**

**extend the authorization through FY2004]**

**Does the Bill Create New Federal Programs or Rules?:** Essentially, the bill would authorize appropriations for offices and programs in current law and otherwise modify current law. However, certain earmarks would authorize new staffing, and the bill would mandate many new reports (though most of these reports are related to financial and procedural oversight).

**Constitutional Authority:** The Ways & Means Committee (in House Report 107-320) cites constitutional authority in Article I, Section 8, Clause 1 (the power to lay and collect taxes, duties, imposts and excises...)

**Staff Contact:** Sheila Moloney, (202) 226-9719 and Paul Teller, [paul.teller@mail.house.gov](mailto:paul.teller@mail.house.gov), (202) 226-9718.