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CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985

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SEC. 13031. FEES FOR CERTAIN CUSTOMS SERVICES.

(a) SCHEDULE OF FEES.—In addition to any other fee authorized by law, the Secretary of the Treasury shall charge and collect the following fees (subject to adjustment under subsection (l)) for the provision of customs services in connection with the following:

(1) For the arrival of a commercial vessel of 100 net tons or more, $397.

(2) For the arrival of a commercial truck, $5.

(3) For the arrival of each railroad car carrying passengers or commercial freight, $7.50.

(4) For all arrivals made during a calendar year by a private vessel or private aircraft, $25.

(5)(A) Subject to subparagraph (B), for the arrival of each passenger aboard a commercial vessel or commercial aircraft from a place outside the United States (other than a place referred to in subsection (b)(1)(A)(i) of this section), $5.

(B) For the arrival of each passenger aboard a commercial vessel from a place referred to in subsection (b)(1)(A)(i) of this section, $1.75.

(6) For each item of dutiable mail for which a document is prepared by a customs officer *(other than an item subject to a fee under subsection (b)(9)(D))*, $5.

(7) For each customs broker permit held by an individual, partnership, association, or corporate customs broker, $125 per year.

(8) For the arrival of a barge or other bulk carrier from Canada or Mexico, $100.

(9)(A) For the processing of merchandise that is formally entered or released during any fiscal year, a fee in an amount equal to 0.21 percent ad valorem, unless adjusted under subparagraph (B).

(B)(i) The Secretary of the Treasury may adjust the ad valorem rate specified in subparagraph (A) to an ad valorem rate (but not to a rate of more than 0.21 percent nor less than 0.15 percent) and the amounts specified in subsection (b)(8)(A)(i) (but not to more than $485 nor less than $21) to rates and amounts which would, if charged, offset the salaries and expenses that will likely be incurred by the Customs Service in the processing of such entries and releases during the fiscal year in which such costs are incurred.

(ii) In determining the amount of any adjustment under clause (i), the Secretary of the Treasury shall take into account whether there is a surplus or deficit in the fund established under subsection (f) with respect to the provision of customs services for the processing of formal entries and releases of merchandise.

(iii) An adjustment may not be made under clause (i) with respect to the fee charged during any fiscal year unless the Secretary of the Treasury—

(I) not later than 45 days after the date of the enactment of the Act providing full-year appropriations for the Customs Service for that fiscal year, publishes in the Federal Register a notice of intent to adjust the fee under this paragraph and the amount of such adjustment;

(II) provides a period of not less than 30 days following publication of the notice described in subclause (I) for public comment and consultation with the Committee on Fi-

nance of the Senate and the Committee on Ways and Means of the House of Representatives regarding the proposed adjustment and the methodology used to determine such adjustment;

(III) upon the expiration of the period provided under subclause (II), notifies such committees in writing regarding the final determination to adjust the fee, the amount of such adjustment, and the methodology used to determine such adjustment; and

(IV) upon the expiration of the 15-day period following the written notification described in subclause (III), submits for publication in the Federal Register notice of the final determination regarding the adjustment of the fee.

(iv) The 15-day period referred to in clause (iii)(IV) shall be computed by excluding—

(I) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain or an adjournment of the Congress sine die; and

(II) any Saturday and Sunday, not excluded under subclause (I), when either House is not in session.

(v) An adjustment made under this subparagraph shall become effective with respect to formal entries and releases made on or after the 15th calendar day after the date of publication of the notice described in clause (iii)(IV) and shall remain in effect until adjusted under this subparagraph.

(C) Any fee charged under this paragraph, whether or not adjusted under subparagraph (B), is subject to the limitations in subsection (b)(8)(A).

(10) For the processing of merchandise that is informally entered or released, other than at—

(A) a centralized hub facility,

(B) an express consignment carrier facility, or

(C) a small airport or other facility to which section 236 of the Trade and Tariff Act of 1984 applies, if more than 25,000 informal entries were cleared through such airport or facility during the fiscal year preceding such entry or release *(other than Inbound EMS items described in subsection (b)(9)(D))*,

a fee of—

(i) $2 if the entry or release is automated and not prepared by customs personnel;

(ii) $6 if the entry or release is manual and not prepared by customs personnel; or

(iii) $9 if the entry or release, whether automated or manual, is prepared by customs personnel.

For provisions relating to the informal entry or release of merchandise at facilities referred to in subparagraphs (A), (B), and (C), *or of Inbound EMS items described in subsection (b)(9)(D),* see subsection (b)(9).

(b) LIMITATIONS ON FEES.—(1)(A) Except as provided in subsection (a)(5)(B) of this section, no fee may be charged under subsection (a) of this section for customs services provided in connection with—

(i) the arrival of any passenger whose journey—

(I) originated in a territory or possession of the United States; or

(II) originated in the United States and was limited to territories and possessions of the United States;

(ii) the arrival of any railroad car the journey of which originates and terminates in the same country, but only if no passengers board or disembark from the train and no cargo is loaded or unloaded from such car while the car is within any country other than the country in which such car originates and terminates;

(iii) the arrival of a ferry, except for a ferry whose operations begin on or after August 1, 1999, and that operates south of 27 degrees latitude and east of 89 degrees longitude; or

(iv) the arrival of any passenger on board a commercial vessel traveling only between ports which are within the customs territory of the United States.

(B) The exemption provided for in subparagraph (A) shall not apply in the case of the arrival of any passenger on board a commercial vessel whose journey originates and terminates at the same place in the United States if there are no intervening stops.

(C) The exemption provided for in subparagraph (A)(i) shall not apply to fiscal years 1994, 1995, 1996, and 1997.

(2) No fee may be charged under subsection (a)(2) for the arrival of a commercial truck during any calendar year after a total of $100 in fees (subject to adjustment under subsection (l)) has been

paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such commercial truck during such calendar year.

(3) No fee may be charged under subsection (a)(3) for the arrival of a railroad car whether passenger or freight during any calendar year after a total of $100 in fees (subject to adjustment under subsection (l)) has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such passenger or freight rail car during such calendar year.

(4)(A) No fee may be charged under subsection (a)(5) with respect to the arrival of any passenger—

(i) who is in transit to a destination outside the customs territory of the United States, and

(ii) for whom customs inspectional services are not provided.

(B) In the case of a commercial vessel making a single voyage involving 2 or more United States ports with respect to which the passengers would otherwise be charged a fee pursuant to subsection (a)(5), such fee shall be charged only 1 time for each passenger.

(5) No fee may be charged under subsection (a)(1) for the arrival of—

(A) a vessel during a calendar year after a total of $5,955 in fees (subject to adjustment under subsection (l)) charged under paragraph (1) or (8) of subsection (a) has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such vessel during such calendar year,

(B) any vessel which, at the time of the arrival, is being used solely as a tugboat, or

(C) any barge or other bulk carrier from Canada or Mexico.

(6) No fee may be charged under subsection (a)(8) for the arrival of a barge or other bulk carrier during a calendar year after a total of $1,500 in fees (subject to adjustment under subsection (l)) charged under paragraph (1) or (8) of subsection (a) has been paid to the Secretary of the Treasury for the provision of customs services for all arrivals of such barge or other bulk carrier during such calendar year.

(7) No fee may be charged under paragraph (2), (3), or (4) of subsection (a) for the arrival of any—

(A) commercial truck,

(B) railroad car, or

(C) private vessel,

that is being transported, at the time of the arrival, by any vessel that is not a ferry.

(8)(A)(i) Subject to clause (ii), the fee charged under subsection (a)(9) for the formal entry or release of merchandise may not exceed $485 or be less than $25, unless adjusted pursuant to subsection (a)(9)(B) or (l).

(ii) A surcharge of $3 (subject to adjustment under subsection (l)) shall be added to the fee determined after application of clause (i) for any manual entry or release of merchandise.

(B) No fee may be charged under subsection (a) (9) or (10) for the processing of any article that is—

(i) provided for under any item in chapter 98 of the Harmonized Tariff Schedule of the United States, except subheading 9802.00.60 or 9802.00.80,

(ii) a product of an insular possession of the United States, or

(iii) a product of any country listed in subdivision (c)(ii)(B) or (c)(v) of general note 3 to such Schedule.

(C) For purposes of applying subsection (a) (9) or (10)—

(i) expenses incurred by the Secretary of the Treasury in the processing of merchandise do not include costs incurred in—

(I) air passenger processing,

(II) export control, or

(III) international affairs, and

(ii) any reference to a manual formal or informal entry or release includes any entry or release filed by a broker or importer that requires the inputting of cargo selectivity data into the Automated Commercial System by customs personnel, except when—

(I) the broker or importer is certified as an ABI cargo release filer under the Automated Commercial System at any port within the United States, or

(II) the entry or release is filed at ports prior to the full implementation of the cargo selectivity data system by the Customs Service at such ports.

(D) The fee charged under subsection (a)(9) or (10) with respect to the processing of merchandise shall—

(i) be paid by the importer of record of the merchandise;

(ii) except as otherwise provided in this paragraph, be based on the value of the merchandise as determined under section 402 of the Tariff Act of 1930;

(iii) in the case of merchandise classified under subheading 9802.00.60 of the Harmonized Tariff Schedule of the United States, be applied to the value of the foreign repairs or alterations to the merchandise;

(iv) in the case of merchandise classified under heading 9802.00.80 of such Schedule, be applied to the full value of the merchandise, less the cost or value of the component United States products;

(v) in the case of agricultural products of the United States that are processed and packed in a foreign trade zone, be applied only to the value of material used to make the container for such merchandise, if such merchandise is subject to entry and the container is of a kind normally used for packing such merchandise; and

(vi) in the case of merchandise entered from a foreign trade zone (other than merchandise to which clause (v) applies), be applied only to the value of the privileged or nonprivileged foreign status merchandise under section 3 of the Act of June 18, 1934 (commonly known as the Foreign Trade Zones Act, 19 U.S.C. 81c).

With respect to merchandise that is classified under subheading 9802.00.60 or heading 9802.00.80 of such Schedule and is duty-free, the Secretary may collect the fee charged on the processing of the merchandise under subsection (a) (9) or (10) on the basis of aggregate data derived from financial and manufacturing reports used by the importer in the normal course of business, rather than on the basis of entry-by-entry accounting.

(E) For purposes of subsection (a) (9) and (10), merchandise is entered or released, as the case may be, if the merchandise is—

(i) permitted or released under section 448(b) of the Tariff Act of 1930,

(ii) entered or released from customs custody under section 484(a)(1)(A) of the Tariff Act of 1930, or

(iii) withdrawn from warehouse for consumption.

(9)(A) With respect to the processing of letters, documents, records, shipments, merchandise, or any other item that is valued at an amount that is $2,000 or less (or such higher amount as the Secretary of the Treasury may set by regulation pursuant to section 498 of the Tariff Act of 1930 and subject to adjustment under subsection (l)), except such items entered for transportation and exportation or immediate exportation at a centralized hub facility, an express consignment carrier facility, or a small airport or other facility, the following reimbursements and payments are required:

(i) In the case of a small airport or other facility—

(I) the reimbursement which such facility is required to make during the fiscal year under section 9701 of title 31, United States Code or section 236 of the Trade and Tariff Act of 1984; and

(II) an annual payment by the facility to the Secretary of the Treasury, which is in lieu of the payment of fees under subsection (a)(10) for such fiscal year, in an amount equal to the reimbursement under subclause (I).

(ii) Notwithstanding subsection (e)(6) and subject to the provisions of subparagraph (B), in the case of an express consignment carrier facility or centralized hub facility—

(I) $.66 per individual airway bill or bill of lading (subject to adjustment under subsection (l)); and

(II) if the merchandise is formally entered, the fee provided for in subsection (a)(9), if applicable.

(B)(i) Beginning in fiscal year 2004, the Secretary of the Treasury may adjust (not more than once per fiscal year) the amount described in subparagraph (A)(ii) to an amount that is not less than $.35 and not more than $1.00 per individual airway bill or bill of lading (subject to adjustment under subsection (l)). The Secretary shall provide notice in the Federal Register of a proposed adjustment under the preceding sentence and the reasons therefor and shall allow for public comment on the proposed adjustment.

(ii) Notwithstanding section 451 of the Tariff Act of 1930, the payment required by subparagraph (A)(ii) (I) or (II) shall be the only payment required for reimbursement of the Customs Service in connection with the processing of an individual airway bill or bill of lading in accordance with such subparagraph and for providing services at express consignment carrier facilities or centralized hub facilities, except that the Customs Service

may require such facilities to cover expenses of the Customs Service for adequate office space, equipment, furnishings, supplies, and security.

(iii)(I) The payment required by subparagraph (A)(ii) and clause (ii) of this subparagraph shall be paid on a quarterly basis by the carrier using the facility to the Customs Service in accordance with regulations prescribed by the Secretary of the Treasury.

(II) 50 percent of the amount of payments received under subparagraph (A)(ii) and clause (ii) of this subparagraph shall, in accordance with section 524 of the Tariff Act of 1930, be deposited in the Customs User Fee Account and shall be used to directly reimburse each appropriation for the amount paid out of that appropriation for the costs incurred in providing services to express consignment carrier facilities or centralized hub facilities. Amounts deposited in accordance with the preceding sentence shall be available until expended for the provision of customs services to express consignment carrier facilities or centralized hub facilities.

(III) Notwithstanding section 524 of the Tariff Act of 1930, the remaining 50 percent of the amount of payments received under subparagraph (A)(ii) and clause (ii) of this subparagraph shall be paid to the Secretary of the Treasury, which is in lieu of the payment of fees under subsection (a)(10) of this section.

(C) For purposes of this paragraph:

(i) The terms "centralized hub facility" and "express consignment carrier facility" have the respective meanings that are applied to such terms in part 128 of chapter I of title 19, Code of Federal Regulations. Nothing in this paragraph shall be construed as prohibiting the Secretary of the Treasury from processing merchandise that is informally entered or released at any centralized hub facility or express consignment carrier facility during the normal operating hours of the Customs Service, subject to reimbursement and payment under subparagraph (A).

(ii) The term "small airport or other facility" means any airport or facility to which section 236 of the Trade and Tariff Act of 1984 applies, if more than 25,000 informal entries were cleared through such airport or facility during the preceding fiscal year.

(D)(i) With respect to the processing of items that are sent to the United States through the international postal network by "Inbound Express Mail service" or "Inbound EMS" (as that service is described in the mail classification schedule referred to in section 3631 of title 39, United States Code), the following payments are required:

(I) $1 per Inbound EMS item.

(II) If an Inbound EMS item is formally entered, the fee provided for under subsection (a)(9), if applicable.

(ii) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451), the payments required by clause (i), as allocated pursuant to clause (iii)(I), shall be the only payments required for reimbursement of U.S. Customs and Border Protection for customs services provided in connection with the processing of an Inbound EMS item.

(iii)(I) The payments required by clause (i)(I) shall be allocated as follows:

(aa) 50 percent of the amount of the payments shall be paid on a quarterly basis by the United States Postal Service to the Commissioner of U.S. Customs and Border Protection in accordance with regulations prescribed by the Secretary of the Treasury to reimburse U.S. Customs and Border Protection for customs services provided in connection with the processing of Inbound EMS items.

(bb) 50 percent of the amount of the payments shall be retained by the Postal Service to reimburse the Postal Service for services provided in connection with the customs processing of Inbound EMS items.

(II) Payments received by U.S. Customs and Border Protection under subclause (I)(aa) shall, in accordance with section 524 of the Tariff Act of 1930 (19 U.S.C. 1524), be deposited in the Customs User Fee Account and used to directly reimburse each appropriation for the amount paid out of that appropriation for the costs incurred in providing services to international mail facilities. Amounts deposited in accordance with the preceding sentence shall be available until expended for the provision of such services.

(III) Payments retained by the Postal Service under subclause (I)(bb) shall be used to directly reimburse the Postal Service for the costs incurred in providing services in connection with the customs processing of Inbound EMS items.

(iv) Beginning in fiscal year 2021, the Secretary, in consultation with the Postmaster General, may adjust, not more frequently than once each fiscal year, the amount described in clause (i)(I) to an amount commensurate with the costs of services provided in connection with the cus-

toms processing of Inbound EMS items, consistent with the obligations of the United States under international agreements.

(10)(A) The fee charged under subsection (a) (9) or (10) with respect to goods of Canadian origin (as determined under section 202 of the United States-Canada Free-Trade Agreement Implementation Act of 1988) when the United States-Canada Free-Trade Agreement is in force shall be in accordance with article 403 of that Agreement.

(B) For goods qualifying under the rules of origin set out in section 202 of the North American Free Trade Agreement Implementation Act, the fee under subsection (a) (9) or (10)—

(i) may not be charged with respect to goods that qualify to be marked as goods of Canada pursuant to Annex 311 of the North American Free Trade Agreement, for such time as Canada is a NAFTA country, as defined in section 2(4) of such Implementation Act; and

(ii) may not be increased after December 31, 1993, and may not be charged after June 29, 1999, with respect to goods that qualify to be marked as goods of Mexico pursuant to such Annex 311, for such time as Mexico is a NAFTA country.

Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

(11) No fee may be charged under subsection (a) (9) or (10) with respect to products of Israel if an exemption with respect to the fee is implemented under section 112 of the Customs and Trade Act of 1990.

(12) No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 202 of the United States-Chile Free Trade Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

(13) No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 202 of the United States-Singapore Free Trade Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

(14) No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 203 of the United States-Australia Free Trade Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

(15) No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 203 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

(16) No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 202 of the United States-Bahrain Free Trade Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

(17) No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 202 of the United States-Oman Free Trade Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

(18) No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 203 of the United States-Peru Trade Promotion Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

(19) No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 202 of the United States–Korea Free Trade Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

(20) No fee may be charged under subsection (a) (9) or (10) with respect to goods that qualify as originating goods under section 203 of the United States–Colombia Trade Promotion Agreement Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

(21) No fee may be charged under subsection (a)(9) or (10) with respect to goods that qualify as originating goods under section 203 of the United States–Panama Trade Promotion Agreement

Implementation Act. Any service for which an exemption from such fee is provided by reason of this paragraph may not be funded with money contained in the Customs User Fee Account.

(c) DEFINITIONS.—For purposes of this section—

(1) The term "ferry" means any vessel which is being used—

(A) to provide transportation only between places that are no more than 300 miles apart, and

(B) to transport only—

(i) passengers, or

(ii) vehicles, or railroad cars, which are being used, or have been used, in transporting passengers or goods.

(2) The term "arrival" means arrival at a port of entry in the customs territory of the United States.

(3) The term "customs territory of the United States" has the meaning given to such term by general note 2 of the Harmonized Tariff Schedule of the United States.

(4) The term "customs broker permit" means a permit issued under section 641(c) of the Tariff Act of 1930 (19 U.S.C. 1641(c)).

(5) The term "barge or other bulk carrier" means any vessel which—

(A) is not self-propelled, or

(B) transports fungible goods that are not packaged in any form.

(d) COLLECTION.—(1) Each person that issues a document or ticket to an individual for transportation by a commercial vessel or commercial aircraft into the customs territory of the United States shall—

(A) collect from that individual the fee charged under subsection (a)(5) at the time the document or ticket is issued; and

(B) separately identify on that document or ticket the fee charged under subsection (a)(5) as a Federal inspection fee.

(2) If—

(A) a document or ticket for transportation of a passenger into the customs territory of the United States is issued in a foreign country; and

(B) the fee charged under subsection (a)(5) is not collected at the time such document or ticket is issued;

the person providing transportation to such passenger shall collect such fee at the time such passenger departs from the customs territory of the United States and shall provide such passenger a receipt for the payment of such fee.

(3) The person who collects fees under paragraph (1) or (2) shall remit those fees to the Secretary of the Treasury at any time before the date that is 31 days after the close of the calendar quarter in which the fees are collected.

(4)(A) Notice of the date on which payment of the fee imposed by subsection (a)(7) is due shall be published by the Secretary of the Treasury in the Federal Register by no later than the date that is 60 days before such due date.

(B) A customs broker permit may be revoked or suspended for nonpayment of the fee imposed by subsection (a)(7) only if notice of the date on which payment of such fee is due was published in the Federal Register at least 60 days before such due date.

(C) The customs broker's license issued under section 641(b) of the Tariff Act of 1930 (19 U.S.C. 1641(b)) may not be revoked or suspended merely by reason of nonpayment of the fee imposed under subsection (a)(7).

(e) PROVISION OF CUSTOMS SERVICES.—

(1)(A) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law (other than subparagraph (B) and paragraph (2)), the customs services required to be provided to passengers upon arrival in the United States shall be adequately provided in connection with scheduled airline flights at customs serviced airports when needed and at no cost (other than the fees imposed under subsection (a)) to airlines and airline passengers.

(B)(i) An appropriate officer of U.S. Customs and Border Protection may assign a sufficient number of employees of U.S. Customs and Border Protection (if available) to perform services described in clause (ii) for a charter air carrier (as defined in section 40102 of title 49, United States Code) for a charter flight arriving after normal operating hours at an airport that is an established port of entry serviced by U.S. Customs and Border Protection, notwithstanding that overtime funds for those services are not available, if the charter air carrier—

(I) not later than 4 hours before the flight arrives, specifically requests that such services be provided; and

(II) pays any overtime fees incurred in connection with such services.

(ii) Services described in this clause are customs services for passengers and their baggage or any other similar service that could lawfully be performed during regular hours of operation.

(2)(A) This subsection shall not apply with respect to any airport to which section 236 of the Trade and Tariff Act of 1984 (19 U.S.C. 58b) applies.

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

(3) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law—

(A) the customs services required to be provided to passengers upon arrival in the United States shall be adequately provided in connection with scheduled airline flights when needed at places located outside the customs territory of the United States at which a customs officer is stationed for the purpose of providing such customs services, and

(B) other than the fees imposed under subsection (a), the airlines and airline passengers shall not be required to reimburse the Secretary of the Treasury for the costs of providing overtime customs inspectional services at such places.

(4) Notwithstanding any other provision of law, all customs services (including, but not limited to, normal and overtime clearance and preclearance services) shall be adequately provided, when requested, for—

(A) the clearance of any commercial vessel, vehicle, or aircraft or its passengers, crew, stores, material, or cargo arriving, departing, or transiting the United States;

(B) the preclearance at any customs facility outside the United States of any commercial vessel, vehicle or aircraft or its passengers, crew, stores, material, or cargo; and

(C) the inspection or release of commercial cargo or other commercial shipments being entered into, or withdrawn from, the customs territory of the United States.

(5) For purposes of this subsection, customs services shall be treated as being "adequately provided" if such of those services that are necessary to meet the needs of parties subject to customs inspection are provided in a timely manner taking into account factors such as—

(A) the unavoidability of weather, mechanical, and other delays;

(B) the necessity for prompt and efficient passenger and baggage clearance;

(C) the perishability of cargo;

(D) the desirability or unavoidability of late night and early morning arrivals from various time zones;

(E) the availability (in accordance with regulations prescribed under subsection (g)(2)) of customs personnel and resources; and

(F) the need for specific enforcement checks.

(6) Notwithstanding any other provision of law except paragraph (2), during any period when fees are authorized under subsection (a), no charges, other than such fees, may be collected—

(A) for any—

(i) cargo inspection, clearance, or other customs activity, expense, or service performed (regardless whether performed outside of normal business hours on an overtime basis), or

(ii) customs personnel provided,

in connection with the arrival or departure of any commercial vessel, vehicle, or aircraft, or its passengers, crew, stores, material, or cargo, in the United States;

(B) for any preclearance or other customs activity, expense, or service performed, and any customs personnel provided, outside the United States in connection with the departure of any commercial vessel, vehicle, or aircraft, or its passengers, crew, stores, material, or cargo, for the United States; or

(C) in connection with—

(i) the activation or operation (including Customs Service supervision) of any foreign trade zone or subzone established under the Act of June 18, 1934 (commonly known as the Foreign Trade Zones Act, 19 U.S.C. 81a et seq.), or

(ii) the designation or operation (including Customs Service supervision) of any bonded warehouse under section 555 of the Tariff Act of 1930 (19 U.S.C. 1555).

(f) DISPOSITION OF FEES.—(1) There is established in the general fund of the Treasury a separate account which shall be known as the "Customs User Fee Account". Notwithstanding section

524 of the Tariff Act of 1930 (19 U.S.C. 1524), there shall be deposited as offsetting receipts into the Customs User Fee Account all fees collected under subsection (a) except—

(A) the portion of such fees that is required under paragraph (3) for the direct reimbursement of appropriations, and

(B) amounts deposited into the Customs Commercial and Homeland Security Automation Account under paragraph (4).

(2) Except as otherwise provided in this subsection, all funds in the Customs User Fee Account shall be available, to the extent provided for in appropriations Acts, to pay the costs (other than costs for which direct reimbursement under paragraph (3) is required) incurred by the United States Customs Service in conducting customs revenue functions as defined in section 415 of the Homeland Security Act of 2002 (other than functions performed by the Office of International Affairs referred to in section 415(8) of that Act), and for automation (including the Automation Commercial Environment computer system), and for no other purpose. To the extent that funds in the Customs User Fee Account are insufficient to pay the costs of such customs revenue functions, customs duties in an amount equal to the amount of such insufficiency shall be available, to the extent provided for in appropriations Acts, to pay the costs of such customs revenue functions in the amount of such insufficiency, and shall be available for no other purpose. The provisions of the first and second sentences of this paragraph specifying the purposes for which amounts in the Customs User Fee Account may be made available shall not be superseded except by a provision of law which specifically modifies or supersedes such provisions. So long as there is a surplus of funds in the Customs User Fee Account, the Secretary of the Treasury may not reduce personnel staffing levels for providing commercial clearance and preclearance services.

(3)(A) The Secretary of the Treasury, in accordance with section 524 of the Tariff Act of 1930 and subject to subparagraph (B), shall directly reimburse, from the fees collected under subsection (a) (other than the fees under subsection (a) (9) and (10) and the excess fees determined by the Secretary under paragraph (4)), each appropriation for the amount paid out of that appropriation for the costs incurred by the Secretary—

(i) in—

(I) paying overtime compensation under section 5(a) of the Act of February 13, 1911,

(II) paying premium pay under section 5(b) of the Act of February 13, 1911, but the amount for which reimbursement may be made under this subclause may not, for any fiscal year, exceed the difference between the total cost of all the premium pay for such year calculated under section 5(b) and the cost of the night and holiday premium pay that the Customs Service would have incurred for the same inspectional work on the day before the effective date of section 13813 of the Omnibus Budget Reconciliation Act of 1993,

(III) paying agency contributions to the Civil Service Retirement and Disability Fund to match deductions from the overtime compensation paid under subclause (I),

(IV) providing all preclearance services for which the recipients of such services are not required to reimburse the Secretary of the Treasury, and

(V) paying foreign language proficiency awards under section 13812(b) of the Omnibus Budget Reconciliation Act of 1993,

(ii) to the extent funds remain available after making reimbursements under clause (i), in providing salaries for full-time and part-time inspectional personnel and equipment that enhance customs services for those persons or entities that are required to pay fees under paragraphs (1) through (8) of subsection (a) (distributed on a basis proportionate to the fees collected under paragraphs (1) through (8) of subsection (a), and

(iii) to the extent funds remain available after making reimbursements under clause (ii), in providing salaries for up to 50 full-time equivalent inspectional positions to provide preclearance services.

The transfer of funds required under subparagraph (C)(iii) has priority over reimbursements under this subparagraph to carry out subclauses (II), (III), (IV), and (V) of clause (i). Funds described in clause (ii) shall only be available to reimburse costs in excess of the highest amount appropriated for such costs during the period beginning with fiscal year 1990 and ending with the current fiscal year.

(B) Reimbursement of appropriations under this paragraph—

(i) shall be subject to apportionment or similar administrative practices;

(ii) shall be made at least quarterly; and

(iii) to the extent necessary, may be made on the basis of estimates made by the Secretary of the Treasury and adjustments shall be made in subsequent reimbursements to the extent that the estimates were in excess of, or less than, the amounts required to be reimbursed.

(C)(i) For fiscal year 1991 and subsequent fiscal years, the amount required to reimburse costs described in subparagraph (A)(i) shall be projected from actual requirements, and only the excess of collections over such projected costs for such fiscal year shall be used as provided in subparagraph (A)(ii).

(ii) The excess of collections over inspectional overtime and preclearance costs (under subparagraph (A)(i)) reimbursed for fiscal years 1989 and 1990 shall be available in fiscal year 1991 and subsequent fiscal years for the purposes described in subparagraph (A)(ii), except that $30,000,000 of such excess shall remain without fiscal year limitation in a contingency fund and, in any fiscal year in which receipts are insufficient to cover the costs described in subparagraph (A) (i) and (ii), shall be used for—

(I) the costs of providing the services described in subparagraph (A)(i), and

(II) after the costs described in subclause (I) are paid, the costs of providing the personnel and equipment described in subparagraph (A)(ii) at the preceding fiscal year level.

(iii) For each fiscal year, the Secretary of the Treasury shall calculate the difference between—

(I) the estimated cost for overtime compensation that would have been incurred during that fiscal year for inspectional services if section 5 of the Act of February 13, 1911 (19 U.S.C. 261 and 267), as in effect before the enactment of section 13811 of the Omnibus Budget Reconciliation Act of 1993, had governed such costs, and

(II) the actual cost for overtime compensation, premium pay, and agency retirement contributions that is incurred during that fiscal year in regard to inspectional services under section 5 of the Act of February 13, 1911, as amended by section 13811 of the Omnibus Budget Reconciliation Act of 1993, and under section 8331(3) of title 5, United States Code, as amended by section 13812(a)(1) of such Act of 1993, plus the actual cost that is incurred during that fiscal year for foreign language proficiency awards under section 13812(b) of such Act of 1993, and shall transfer from the Customs User Fee Account to the General Fund of the Treasury an amount equal to the difference calculated under this clause, or $18,000,000, whichever amount is less. Transfers shall be made under this clause at least quarterly and on the basis of estimates to the same extent as are reimbursements under subparagraph (B)(iii).

(D) Nothing in this paragraph shall be construed to preclude the use of appropriated funds, from sources other than the fees collected under subsection (a), to pay the costs set forth in clauses (i), (ii), and (iii) of subparagraph (A).

(4)(A) There is created within the general fund of the Treasury a separate account that shall be known as the "Customs Commercial and Homeland Security Automation Account". In each of fiscal years 2003, 2004, and 2005 there shall be deposited into the Account from fees collected under subsection (a)(9)(A), $350,000,000.

(B) There is authorized to be appropriated from the Account in fiscal years 2016 through 2018not less than $153,736,000to complete the development and implementation, establishment, and implementation of the Automated Commercial Environment computer system for the processing of merchandise that is entered or released and for other purposes related to the functions of the Department of Homeland Security. Amounts appropriated pursuant to this subparagraph are authorized to remain available until expended.

(C) In adjusting the fee imposed by subsection (a)(9)(A) for fiscal year 2006, the Secretary of the Treasury shall reduce the amount estimated to be collected in fiscal year 2006 by the amount by which total fees deposited to the Account during fiscal years 2003, 2004, and 2005 exceed total appropriations from that Account.

(5) Of the amounts collected in fiscal year 1999 under paragraphs (9) and (10) of subsection (a), $50,000,000 shall be available to the Customs Service, subject to appropriations Acts, for automated commercial systems. Amounts made available under this paragraph shall remain available until expended.

(g) REGULATIONS AND ENFORCEMENT.—(1) The Secretary of the Treasury may prescribe such rules and regulations as may be necessary to carry out the provisions of this section. Regulations issued by the Secretary of the Treasury under this subsection with respect to the collection of the fees charged under subsection (a)(5) and the remittance of such fees to the Treasury of the United States shall be consistent with the regulations issued by the Secretary of the Treasury for the collection and remittance of the taxes imposed by subchapter C of chapter 33 of the Internal Revenue

Code of 1954, but only to the extent the regulations issued with respect to such taxes do not conflict with the provisions of this section.

(2) Except to the extent otherwise provided in regulations, all administrative and enforcement provisions of customs laws and regulations, other than those laws and regulations relating to drawback, shall apply with respect to any fee prescribed under subsection (a) of this section, and with respect to persons liable therefor, as if such fee is a customs duty. For purposes of the preceding sentence, any penalty expressed in terms of a relationship to the amount of the duty shall be treated as not less than the amount which bears a similar relationship to the amount of the fee assessed. For purposes of determining the jurisdiction of any court of the United States or any agency of the United States, any fee prescribed under subsection (a) of this section shall be treated as if such fee is a customs duty.

(h) CONFORMING AMENDMENTS.—(1) Subsection (i) of section 305 of the Rail Passenger Service Act (45 U.S.C. 545(i)) is amended by striking out the last sentence thereof.

(2) Subsection (e) of section 53 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1741(e)) is repealed.

(i) EFFECT ON OTHER AUTHORITY.—Except with respect to customs services for which fees are imposed under subsection (a), nothing in this section shall be construed as affecting the authority of the Secretary of the Treasury to charge fees under section 214(b) of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 58a).

(j) EFFECTIVE DATES.—(1) Except as otherwise provided in this subsection, the provisions of this section, and the amendments and repeals made by this section, shall apply with respect to customs services rendered after the date that is 90 days after the date of enactment of this Act.

(2) Fees may be charged under subsection (a)(5) only with respect to customs services rendered in regard to arriving passengers using transportation for which documents or tickets were issued after the date that is 90 days after such date of enactment.

(3)(A) Fees may not be charged under paragraphs (9) and (10) of subsection (a) after July 21, 2027.

(B)(i) Subject to clause (ii), Fees may not be charged under paragraphs (1) through (8) of subsection (a) after September 30, 2027.

(ii) In fiscal year 2006 and in each succeeding fiscal year for which fees under paragraphs (1) through (8) of subsection (a) are authorized—

(I) the Secretary of the Treasury shall charge fees under each such paragraph in amounts that are reasonably related to the costs of providing customs services in connection with the activity or item for which the fee is charged under such paragraph, except that in no case may the fee charged under any such paragraph exceed by more than 10 percent the amount otherwise prescribed by such paragraph;

(II) the amount of fees collected under such paragraphs may not exceed, in the aggregate, the amounts paid in that fiscal year for the costs described in subsection (f)(3)(A) incurred in providing customs services in connection with the activity or item for which the fees are charged under such paragraphs;

(III) a fee may not be collected under any such paragraph except to the extent such fee will be expended to pay the costs described in subsection (f)(3)(A) incurred in providing customs services in connection with the activity or item for which the fee is charged under such paragraph; and

(IV) any fee collected under any such paragraph shall be available for expenditure only to pay the costs described in subsection (f)(3)(A) incurred in providing customs services in connection with the activity or item for which the fee is charged under such paragraph.

(k) ADVISORY COMMITTEE.—The Commissioner of Customs shall establish an advisory committee whose membership shall consist of representatives from the airline, cruise ship, and other transportation industries who may be subject to fees under subsection (a). The advisory committee shall not be subject to termination under section 14 of the Federal Advisory Committee Act. The advisory committee shall meet on a periodic basis and shall advise the Commissioner on issues related to the performance of the inspectional services of the United States Customs Service. Such advice shall include, but not be limited to, such issues as the time periods during which such services should be performed, the proper number and deployment of inspection officers, the level of fees, and the appropriateness of any proposed fee. The Commissioner shall give consideration to the views of the advisory committee in the exercise of his or her duties.

(l) ADJUSTMENT OF FEES FOR INFLATION.—

(1) IN GENERAL.—The Secretary of the Treasury shall adjust the fees established under subsection (a), and the limitations on such fees under paragraphs (2), (3), (5), (6), (8), and (9) of subsection (b), on April 1, 2016, and at the beginning of each fiscal year thereafter, to reflect the percentage (if any) of the increase in the average of the Consumer Price Index for the preceding 12-month period compared to the Consumer Price Index for fiscal year 2014.

(2) SPECIAL RULES FOR CALCULATION OF ADJUSTMENT.—In adjusting under paragraph (1) the amount of the fees established under subsection (a), and the limitations on such fees under paragraphs (2), (3), (5), (6), (8), and (9) of subsection (b), the Secretary—

(A) shall round the amount of any increase in the Consumer Price Index to the nearest dollar; and

(B) may ignore any such increase of less than 1 percent.

(3) CONSUMER PRICE INDEX DEFINED.—For purposes of this subsection, the term "Consumer Price Index" means the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

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TRADE ACT OF 2002

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DIVISION A—TRADE ADJUSTMENT ASSISTANCE

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TITLE III—CUSTOMS REAUTHORIZATION

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Subtitle A—United States Customs Service

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CHAPTER 4—ANTITERRORISM PROVISIONS

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SEC. 343. MANDATORY [ADVANCED] *ADVANCE* ELECTRONIC INFORMATION FOR CARGO AND OTHER IMPROVED CUSTOMS REPORTING PROCEDURES

(a) CARGO INFORMATION.—

(1) IN GENERAL.—(A) Subject to paragraphs (2) and (3),the Secretary is authorized to promulgate regulations providingfor the transmission to the Customs Service, through an electronicdata interchange system, of information pertaining tocargo to be brought into the United States or to be sent fromthe United States, prior to the arrival or departure of thecargo.

(B) The Secretary shall endeavor to promulgate an initial set of regulations under subparagraph (A) not later than October 1, 2003.

(2) INFORMATION REQUIRED.—The cargo informationrequired by the regulations promulgated pursuant to paragraph(1) under the parameters set forth in paragraph (3) shall besuch information on cargo as the Secretary determines to bereasonably necessary to ensure cargo safety and security pursuantto those laws enforced and administered by the CustomsService. The Secretary shall provide to appropriate Federaldepartments and agencies cargo information obtained pursuantto paragraph (1).

(3) PARAMETERS.—In developing regulations pursuant to paragraph (1), the Secretary shall adhere to the following parameters:

(A) The Secretary shall solicit comments from and consult with a broad range of parties likely to be affected by the regulations, including importers, exporters, carriers, customs brokers, and freight forwarders, among other interested parties.

(B) In general, the requirement to provide particular information shall be imposed on the party most likely to have direct knowledge of that information. Where requiring information from the party with direct knowledge of that information is not practicable, the regulations shall take into account how, under ordinary commercial practices, information is acquired by the party on which the requirement is imposed, and whether and how such party is able to verify the information. Where information is not reasonably verifiable by the party on which a requirement is imposed, the regulations shall permit that party to transmit information on the basis of what it reasonably believes to be true.

(C) The Secretary shall take into account the existence of competitive relationships among the parties on which requirements to provide particular information are imposed.

(D) Where the regulations impose requirements on carriers of cargo, they shall take into account differences among different modes of transportation, including differences in commercial practices, operational characteristics, and technological capacity to collect and transmit information electronically.

(E) The regulations shall take into account the extent to which the technology necessary for parties to transmit and the Customs Service to receive and analyze data in a timely fashion is available. To the extent that the Secretary determines that the necessary technology will not be widely available to particular modes of transportation or other affected parties until after promulgation of the regulations, the regulations shall provide interim requirements appropriate for the technology that is available at the time of promulgation.

(F) The information collected pursuant to the regulations shall be used exclusively for ensuring cargo safety and security, preventing smuggling, and commercial risk assessment targeting, and shall not be used for any commercial enforcement purposes, including for determining merchandise entry. Notwithstanding the preceding sentence, nothing in this section shall be treated as amending, repealing, or otherwise modifying title IV of the Tariff Act of 1930 or regulations promulgated thereunder.

(G) The regulations shall protect the privacy of business proprietary and any other confidential cargo information provided to the Customs Service pursuant to such regulations, exceptfor the manifest information collected pursuantto section 431 of the Tariff Act of 1930 and requiredto be available for public disclosure pursuant tosection 431(c) of such Act..

(H) In determining the timing for transmittal of any information, the Secretary shall balance likely impact on flow of commerce with impact on cargo safety and security. With respect to requirements that may be imposed on carriers of cargo, the timing for transmittal of information shall take into account differences among different modes of transportation, as described in subparagraph (D).

(I) Where practicable, the regulations shall avoid imposing requirements that are redundant with one another or that are redundant with requirements in other provisions of law.

(J) The Secretary shall determine whether it is appropriate to provide transition periods between promulgation of the regulations and the effective date of the regulations and shall prescribe such transition periods in the regulations, as appropriate. The Secretary may determine that different transition periods are appropriate for different classes of affected parties.

[(K) With respect to requirements imposed on carriers, the Secretary, in consultation with the Postmaster General, shall determine whether it is appropriate to impose the same or similar requirements on shipments by the United States Postal Service. If the Secretary determines that such requirements are appropriate, then they shall be set forth in the regulations.**]**

(K)(i) The Secretary shall prescribe regulations requiring the United States Postal Service to transmit the information described in paragraphs (1) and (2) to the Commissioner of U.S. Customs and Border Protection for international mail shipments by the Postal Service (including shipments to the Postal Service from foreign postal operators that are transported by private carrier) consistent with the requirements of this subparagraph.

(ii) In prescribing regulations under clause (i), the Secretary shall impose requirements for the transmission to the Commissioner of information described in paragraphs (1) and (2) for mail shipments described in clause (i) that are comparable to the requirements for

the transmission of such information imposed on similar non-mail shipments of cargo, taking into account the parameters set forth in subparagraphs (A) through (J).

(iii) The regulations prescribed under clause (i) shall require the transmission of the information described in paragraphs (1) and (2) with respect to a shipment as soon as practicable in relation to the transportation of the shipment, consistent with subparagraph (H).

(iv) Regulations prescribed under clause (i) shall allow for the requirements for the transmission to the Commissioner of information described in paragraphs (1) and (2) for mail shipments described in clause (i) to be implemented in phases, as appropriate, by—

(I) setting incremental targets for increasing the percentage of such shipments for which information is required to be transmitted to the Commissioner; and

(II) taking into consideration—

(aa) the risk posed by such shipments;

(bb) the volume of mail shipped to the United States by or through a particular country; and

(cc) the capacities of foreign postal operators to provide that information to the Postal Service.

(v)(I) Notwithstanding clause (iv), the Postal Service shall, not later than December 31, 2018, arrange for the transmission to the Commissioner of the information described in paragraphs (1) and (2) for not less than 70 percent of the aggregate number of mail shipments, including 100 percent of mail shipments from the People's Republic of China, described in clause (i).

(II) If the requirements of subclause (I) are not met, the Comptroller General of the United States shall submit to the appropriate congressional committees, not later than June 30, 2019, a report—

(aa) assessing the reasons for the failure to meet those requirements; and

(bb) identifying recommendations to improve the collection by the Postal Service of the information described in paragraphs (1) and (2).

(vi)(I) Notwithstanding clause (iv), the Postal Service shall, not later than December 31, 2020, arrange for the transmission to the Commissioner of the information described in paragraphs (1) and (2) for 100 percent of the aggregate number of mail shipments described in clause (i).

(II) The Commissioner, in consultation with the Postmaster General, may determine to exclude a country from the requirement described in subclause (I) to transmit information for mail shipments described in clause (i) from the country if the Commissioner determines that the country—

(aa) does not have the capacity to collect and transmit such information;

(bb) represents a low risk for mail shipments that violate relevant United States laws and regulations; and

(cc) accounts for low volumes of mail shipments that can be effectively screened for compliance with relevant United States laws and regulations through an alternate means.

(III) The Commissioner shall, at a minimum on an annual basis, re-evaluate any determination made under subclause (II) to exclude a country from the requirement described in subclause (I). If, at any time, the Commissioner determines that a country no longer meets the requirements under subclause (II), the Commissioner may not further exclude the country from the requirement described in subclause (I).

(IV) The Commissioner shall, on an annual basis, submit to the appropriate congressional committees—

(aa) a list of countries with respect to which the Commissioner has made a determination under subclause (II) to exclude the countries from the requirement described in subclause (I); and

(bb) information used to support such determination with respect to such countries.

(vii)(I) The Postmaster General shall, in consultation with the Commissioner, refuse any shipments received after December 31, 2020, for which the information described in paragraphs (1) and (2) is not transmitted as required under this subparagraph, except as provided in subclause (II).

(II) If remedial action is warranted in lieu of refusal of shipments pursuant to subclause (I), the Postmaster General and the Commissioner shall take remedial action with respect to the shipments, including destruction, seizure, controlled delivery or other law en-

forcement initiatives, or correction of the failure to provide the information described in paragraphs (1) and (2) with respect to the shipments.

(viii) Nothing in this subparagraph shall be construed to limit the authority of the Secretary to obtain information relating to international mail shipments from private carriers or other appropriate parties.

(ix) In this subparagraph, the term "appropriate congressional committees" means—

(I) the Committee on Finance and the Committee on Homeland Security and Governmental Affairs of the Senate; and

(II) the Committee on Ways and Means, the Committee on Oversight and Government Reform, and the Committee on Homeland Security of the House of Representatives.

(L) Not later than 15 days prior to publication of a final rule pursuantto this section, the Secretary shall transmit to the Committees on Finance and Commerce, Science, and Transportation of the Senate and the Committees on Ways and Means and Transportation and Infrastructure of the House of Representatives a report setting forth—

(i) the proposed regulations;

(ii) an explanation of how particular requirements in the proposed regulations meet the needs of cargo safety and security;

(iii) an explanation of how the Secretary expects the proposed regulations to affect the commercial practices of affected parties;

(iv) an explanation of how the proposed regulations address particular comments received from interested parties; and

(v) if the Secretary determines to amend the proposedregulations after they have been transmittedto the Committees pursuant to this subparagraph, theSecretary shall transmit the amended regulations tosuch Committees no later than 5 days prior to thepublication of the final rule.

(4) TRANSMISSION OF DATA.—Pursuant to paragraph (2),not later than 1 year after the date of enactment of this paragraph,the Secretary of Homeland Security, after consultationwith the Secretary of the Treasury, shall establish an electronicdata interchange system through which the United States Customsand Border Protection shall transmit to the Internal RevenueService information pertaining to cargoes of any taxablefuel (as defined in section 4083 of the Internal Revenue Codeof 1986) that the United States Customs and Border Protectionhas obtained electronically under its regulations adopted inaccordance with paragraph (1). For this purpose, not laterthan 1 year after the date of enactment of this paragraph,all filers of required cargo information for such taxable fuels(as so defined) must provide such information to the UnitedStates Customs and Border Protection through such electronicdata interchange system.

(5) CAPACITY BUILDING.—

(A) IN GENERAL.—The Secretary, with the concurrence of the Secretary of State, and in coordination with the Postmaster General and the heads of other Federal agencies, as appropriate, may provide technical assistance, equipment, technology, and training to enhance the capacity of foreign postal operators—

(i) to gather and provide the information required by paragraph (3)(K); and

(ii) to otherwise gather and provide postal shipment information related to—

(I) terrorism;

(II) items the importation or introduction of which into the United States is prohibited or restricted, including controlled substances; and

(III) such other concerns as the Secretary determines appropriate.

(B) PROVISION OF EQUIPMENT AND TECHNOLOGY.—With respect to the provision of equipment and technology under subparagraph (A), the Secretary may lease, loan, provide, or otherwise assist in the deployment of such equipment and technology under such terms and conditions as the Secretary may prescribe, including nonreimbursable loans or the transfer of ownership of equipment and technology.

(b) DOCUMENTATION OF WATERBORNE CARGO.—Part II of title IV of the Tariff Act of 1930 is amended by inserting after section 431 the following new section:

[Ommitted amendatory text]

* * * * * * *".

(c) SECRETARY.—For purposes of this section, the term "Secretary" means the Secretary of the Treasury. If, at the time the regulations required by subsection (a)(1) are promulgated, the Customs Service is no longer located in the Department of the Treasury, then the Secretary of the Treasury shall exercise the authority under subsection (a) jointly with the Secretary of the Department in which the Customs Service is located.

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TARIFF ACT OF 1930

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TITLE IV—ADMINISTRATIVE PROVISIONS

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Part II—Report, Entry, and Unlading of Vessels and Vehicles

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SEC. 436. PENALTIES FOR VIOLATIONS OF THE ARRIVAL, REPORTING, ENTRY, AND CLEARANCE REQUIREMENTS.

(a) UNLAWFUL ACTS.—It is unlawful—

(1) to fail to comply with section 431, 433, or 434 of this Act or section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91);

(2) to present or transmit, electronically or otherwise, any forged, altered, or false document, paper, information, data or manifest to the Customs Service under section 431, 433(d), or 434 of this Act or section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91) without revealing the facts;

(3) to fail to make entry or to obtain clearance as required by section 434 or 644 of this Act, section 4197 of the Revised Statutes of the United States (46 U.S.C. App. 91), or section 1109 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1509); or

(4) to fail to comply with, or violate, any regulation prescribed under any section referred to in any of paragraphs (1) through (3).

(b) CIVIL PENALTY.—Any master, person in charge of a vehicle, or aircraft pilot who commits any violation listed in subsection (a) is liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation, and any conveyance used in connection with any such violation is subject to seizure and forfeiture.

(c) CRIMINAL PENALTY.—In addition to being liable for a civil penalty under subsection (b), any master, person in charge of a vehicle, or aircraft pilot who intentionally commits any violation listed in subsection (a) is, upon conviction, liable for a fine of not more than $2,000 or imprisonment for 1 year, or both; except that if the conveyance has, or is discovered to have had, on board any merchandise (other than sea stores or the equivalent for conveyances other than vessels) the importation of which into the United States is prohibited, such individual is liable for an additional fine of not more than $10,000 or imprisonment for not more than 5 years, or both.

(d) ADDITIONAL CIVIL PENALTY.—If any merchandise (other than sea stores or the equivalent for conveyances other than a vessel) is imported or brought into the United States in or aboard a conveyance which was not properly reported or entered, the master, person in charge of a vehicle, or aircraft pilot shall be liable for a civil penalty equal to the value of the merchandise and the merchandise may be seized and forfeited unless properly entered by the importer or consignee. If the merchandise consists of any controlled substance listed in section 584, the master, individual in charge of a vehicle, or pilot shall be liable to the penalties prescribed in that section.

(e) CIVIL PENALTIES FOR POSTAL SHIPMENTS.—

(1) CIVIL PENALTY.—A civil penalty shall be imposed against the United States Postal Service if the Postal Service accepts a shipment in violation of section 343(a)(3)(K)(vii)(I) of the Trade Act of 2002.

(2) MODIFICATION OF CIVIL PENALTY.—

(A) IN GENERAL.—U.S. Customs and Border Protection shall reduce or dismiss a civil penalty imposed pursuant to paragraph (1) if U.S. Customs and Border Protection determines that the United States Postal Service—

(i) has a low error rate in compliance with section 343(a)(3)(K) of the Trade Act of 2002;

(ii) is cooperating with U.S. Customs and Border Protection with respect to the violation of section 343(a)(3)(K)(vii)(I) of the Trade Act of 2002; or

(iii) has taken remedial action to prevent future violations of section 343(a)(3)(K)(vii)(I) of the Trade Act of 2002.

(B) WRITTEN NOTIFICATION.—U.S. Customs and Border Protection shall issue a written notification to the Postal Service with respect to each exercise of the authority of subparagraph (A) to reduce or dismiss a civil penalty imposed pursuant to paragraph (1).

(3) ONGOING LACK OF COMPLIANCE.—If U.S. Customs and Border Protection determines that the United States Postal Service—

(A) has repeatedly committed violations of section 343(a)(3)(K)(vii)(I) of the Trade Act of 2002,

(B) has failed to cooperate with U.S. Customs and Border Protection with respect to violations of section 343(a)(3)(K)(vii)(I) of the Trade Act of 2002, and

(C) has an increasing error rate in compliance with section 343(a)(3)(K) of the Trade Act of 2002,

civil penalties may be imposed against the United States Postal Service until corrective action, satisfactory to U.S. Customs and Border Protection, is taken.

* * * * * * *