

**GENERAL AGREEMENT ON
TARIFFS AND TRADE**

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NOTIFICATION IN PURSUANCE OF PARAGRAPH 3 OF THE UNDERSTANDING
REGARDING NOTIFICATION, CONSULTATION, DISPUTE SETTLEMENT
AND SURVEILLANCE

Communication from the United States

The following communication, dated 19 December 1986, has been received from the United States Trade Representative's office in Geneva.

The attached text of the Consolidated Omnibus Budget Reconciliation Act of 1985, relating to fees for certain customs services in the United States, has been made available for the information of contracting parties.

Consolidated Omnibus Budget Reconciliation Act of 1985

as amended by the Tax Reform Act of 1986
and the Omnibus Reconciliation Act of 1986

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 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) 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)), \$5.

(6) For each item of dutiable mail for which a document is prepared by a customs officer, \$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) For the processing of any merchandise (other than an article that is—

"(A) provided for in schedule 8 of the Tariff Schedules of the United States,

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

"(C) a product of any county listed in General Headnote 3(e)(vi) or (vii) of such Schedules)

that is formally entered, or withdrawn from warehouse for consumption—

"(i) after November 30, 1986, and

"(ii) before October 1, 1987;

a fee in an amount equal to 0.22 percent ad valorem.

"(10) For the processing of any merchandise (other than an article described in subparagraph (A), (B), or (C) of paragraph (9)) that is formally entered, or withdrawn from warehouse for consumption, during any fiscal year occurring after September 30, 1987; a fee in an amount equal to the lesser of—

"(A) 0.17 percent ad valorem, or
"(B) an ad valorem rate which the Secretary of the Treasury estimates will provide a total amount of revenue during the fiscal year equal to—

"(i) the total amount authorized to be appropriated for such fiscal year to the United States Customs Service for salaries and expenses incurred in conducting commercial operations during such fiscal year, reduced by

"(ii) the excess, if any, of—

"(I) the total amount authorized to be appropriated for such salaries and expenses for such fiscal year, over

"(II) the total amount actually appropriated for such salaries and expenses for such fiscal year; except that if appropriations are not authorized for a fiscal year, the fee imposed under this paragraph with respect to that year shall be in an amount equal to 0.17 percent ad valorem."

(b) LIMITATIONS ON FEES.—(1) No fee may be charged under subsection (a) for customs services provided in connection with—

"(A) the arrival of any passenger whose journey—

"(i) originated in—

"(I) Canada,

"(II) Mexico,

"(III) a territory or possession of the United States, or

"(IV) any adjacent island (within the meaning of section 101(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1101(b)(5)), or

"(ii) originated in the United States and was limited to—

"(I) Canada,

"(II) Mexico,

"(III) territories and possessions of the United States, and

"(IV) such adjacent islands;"

(B) the arrival of any railroad car that is part of a train which originates and terminates in the same country, but only if—

(i) such car is part of such train when such train departs from the United States, and

(ii) no passengers board or disembark from such train, and no cargo is loaded or unloaded from such train, while such train is within any country other than the country in which such train originates and terminates, or

"(C) the arrival of any ferry."

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

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

"(B) for whom customs inspectional services are not provided.

"(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 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 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 paragraphs (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) 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; and

"(ii) be based on the value of the merchandise as determined under section 402 of the Tariff Act of 1930.

"(B)(i) By no later than the date that is 5 days after the date on which any funds are appropriated to the United States Customs Service for salaries or expenses incurred in conducting commercial operations, the Secretary of the Treasury shall determine the ad valorem rate of the fee charged under subsection (a)(10) and shall publish the determination in the Federal Register. Such ad valorem rate shall apply with respect to services provided for the processing of entries, and withdrawals from warehouse, for consumption made after the date that is 60 days after the date of such determination.

"(ii) No determination is required under clause (i) with respect to an appropriation to the United States Customs Service if the funds appropriated are available for less than 60 days.

"(9) The Secretary may reduce by an amount he considers equitable the fees charged under subsection (a) for the processing of merchandise entries at facilities at which users reimburse the United States Customs Service, pursuant to section 9701 of title 31, United States Code, or section 236 of the Trade and Tariff Act of 1984 (19 U.S.C. 55b), for the services that it provides at the facilities."

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

"(1) The term 'jerry' 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 headnote 2 of the General Headnotes and Rules of Interpretation of the Tariff Schedules 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) Notwithstanding section 451 of the Tariff Act of 1930 (19 U.S.C. 1451) or any other provision of law (other than 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."

(2) 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. 53b) 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, during any period when fees are authorized under subsection (a), no charges, other than such fees, may be collected for—

"(A) any cargo inspection, clearance, or other customs service performed (regardless whether performed outside of normal business hours on an overtime basis); or

"(B) any customs personnel provided; in connection with the arrival or departure of any commercial vessel, vehicle or aircraft, or its passengers, crew, and cargo, in the United States."

(f) DISPOSITION OF FEES.—(1) Notwithstanding section 524 of the Tariff Act of 1930 (19 U.S.C. 1524), all of the fees collected under subsection (a) shall be deposited in a separate account within the general fund of the Treasury of the United States. Such account shall be known as the "Customs User Fee Account".

(2)(A) The Secretary of the Treasury shall refund out of the Customs User Fee Account to any appropriation the amount paid out of such appropriation for expenses incurred by the Secretary of the Treasury in providing overtime customs inspectional services for which the recipient of such services is not required to reimburse the Secretary of the Treasury.

(B) The amounts which are required to be refunded under subparagraph (A) shall be refunded at least quarterly on the basis of estimates made by the Secretary of the Treasury of the expenses referred to in subparagraph (A). Proper adjustments shall be made in the amounts subsequently refunded under subparagraph (A) to the extent prior estimates were in excess of, or less than, the amounts required to be refunded under subparagraph (A).

"(3) Except as provided in paragraph (2), all funds in the Customs User Fee Account shall only be available, to the extent provided for in appropriation Acts, for the salaries and expenses of the United States Customs Service incurred in conducting commercial operations.

"(4) At the close of fiscal year 1988 and each even-numbered fiscal year occurring thereafter, the Secretary of the Treasury shall submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate regarding how the fees imposed under subsection (a) should be adjusted in order that the balance of the Customs User Fee Account approximates a zero balance. Before making recommendations regarding any such adjustments, the Secretary of the Treasury shall provide adequate opportunity for public comment. The recommendations shall, as precisely as possible, propose fees which reflect the actual costs to the United States Government for the commercial services provided by the United States Customs Service."

(g) REGULATIONS.—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."*

(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) Fees may not be charged under subsection (a) after September 30, 1989."

Omnibus Reconciliation Act of 1986

**SEC. 8102. AUTHORIZATION OF APPROPRIATIONS FOR FISCAL YEAR 1987
FOR THE UNITED STATES CUSTOMS SERVICE.**

Section 301 of the Customs Procedural Reform and Simplification Act of 1978 (19 U.S.C. 2075) is amended as follows:

(1) Subsection (a) is amended—

(A) by inserting "(1)" after "(a)"; and

(B) by adding at the end thereof the following new paragraph:

"(2) The authorization of the appropriations for the United States Customs Service for each fiscal year after fiscal year 1987 shall specify—

"(A) the amount authorized for the fiscal year for the salaries and expenses of the Service in conducting commercial operations; and

"(B) the amount authorized for the fiscal year for the salaries and expenses of the Service for other than commercial operations."; and

(2) Subsection (b) is amended to read as follows:

"(b)(1) There are authorized to be appropriated to the Department of the Treasury not to exceed \$1,001,180,000 for the salaries and expenses of the United States Customs Service for fiscal year 1987; of which—

"(A) \$749,131,000 is for salaries and expenses to maintain current operating levels, and includes such sums as may be necessary to complete the testing of the prototype of the automatic license plate reader program and to implement that program;

"(B) \$80,999,000 is for the salaries and expenses of additional personnel to be used in carrying out drug enforcement activities; and

"(C) \$171,050,000 is for the operation and maintenance of the air interdiction program of the Service, of which—

"(i) \$93,500,000 is for additional aircraft, communications enhancements, and command, control, communications, and intelligence centers, and

"(ii) \$350,000 is for a feasibility and application study for a low-level radar detection system in collaboration with the Los Alamos National Laboratory.

"(2) No part of any sum that is appropriated under the authority of paragraph (1) may be used to close any port of entry at which, during fiscal year 1986—

"(A) not less than 2,500 merchandise entries (including informal entries) were made; and

"(B) not less than \$1,500,000 in customs revenues were assessed."

Tax Reform Act of 1986

(portions of Section 1893)

(c) (2) Notwithstanding section 13031(a)(7) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(a)(7)), the fee imposed by section 13031(a) of such Act with respect to each customs broker permit held by an individual, partnership, association, or corporate customs broker for calendar year 1986 is \$62.50.

(3)(A) The Secretary of the Treasury shall reinstate any customs broker's license or customs broker permit issued under subsection (b) or (c) of section 641 of the Tariff Act of 1930 (19 U.S.C. 1541) that was suspended or revoked on or before the date of enactment of this Act solely by reason of nonpayment of the fee imposed by section 13031(a)(7) of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(B) Notwithstanding any other provision of law, the Secretary of the Treasury may not suspend or revoke any customs broker permit issued under section 641(c) of the Tariff Act of 1930 (19 U.S.C. 1541(c)) solely by reason of nonpayment of the fee imposed by section 13031(a)(7) of the Consolidated Omnibus Budget Reconciliation Act of 1985 before the date that is 60 days after the date of enactment of this Act.

(f) REINSTATING LIMIT ON CHARGES FOR OTHER INSPECTION SERVICES.—Section 53 of the Airport and Airway Development Act of 1970 (49 U.S.C. 1741), as amended by section 13031(h)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985, is further amended by adding at the end thereof the following new subsection:

"(e)(1) The cost of any inspection or quarantine service which is required to be performed by the Federal Government or any agency thereof at airports of entry or other places of inspection as a consequence of the operation of aircraft, and which is performed during regularly established hours of service on Sundays or holidays shall be reimbursed by the owners or operators of such aircraft only to the same extent as if such service had been performed during regularly established hours of service on weekdays. Notwithstanding any other provision of law, administrative overhead costs associated with any inspection or quarantine service required to be performed by the United States Government, or any agency thereof, at airports of entry as a result of the operation of aircraft, shall not be assessed against the owners or operators thereof.

"(2) Nothing in this subsection may be construed as requiring reimbursement for costs incurred by the Secretary of the Treasury in providing customs services described in section 13031(e)(1) of the Consolidated Omnibus Budget Reconciliation Act of 1985."

(e) EFFECTIVE DATE; REFUNDS.—

(1) The amendments made by this section shall apply with respect to services rendered after the date that is 15 days after the date of enactment of this Act.

(2) Upon written request filed by any person with the Secretary of the Treasury (hereafter in this subsection referred to as the "Secretary") before the date that is 90 days after the date of enactment of this Act which is accompanied by such documentation establishing proof of payment as the Secretary may require, the Secretary shall refund (out of funds in the Treasury of the United States not otherwise appropriated) to such person an amount equal to the excess of—

(A) the amount of fees imposed by section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 that were paid by such person to the Secretary with respect to customs services provided—

(i) after July 6, 1986, and

(ii) on or before the date that is 15 days after the date of enactment of this Act, over

(B) the amount of fees such person would have been required to pay to the Secretary by reason of such section with respect to such services if the amendments made by subsections (a)(1) and (b) applied with respect to such services.

(3) If the customs broker permit fee paid by any person for calendar year 1986 under section 13031(a)(7) of the Consolidated Omnibus Budget Reconciliation Act of 1985 exceeds \$62.50, the Secretary shall either—

(A) refund (out of funds in the Treasury of the United States not otherwise appropriated) to such person the amount of the excess, or

(B) if requested by such person, credit the amount of the excess to the fee due under such section 13031(a)(7) with respect to such permit for calendar year 1987.