



# Decision

**Matter of:** Reimbursement from Customs User Fee Collections  
for Inspectional Overtime Services in the Virgin  
Islands and Puerto Rico

**File:** B-253292

**Date:** December 30, 1994

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## DIGEST

User fees are not available under 19 U.S.C. § 58c(f)(3)(A)(i) to finance the costs of inspectional overtime services in the U.S. Virgin Islands. Because the Virgin Islands are not included in the customs territory of the United States, the fees are not assessed in the Virgin Islands. Consequently, the cost of inspectional overtime services in the Virgin Islands should be deducted from customs duties collected for the Virgin Islands. User fees are available under 19 U.S.C. § 58c(f)(3)(A)(i) to defray the costs of inspectional overtime services in the Commonwealth of Puerto Rico. Section 58c fees are assessed in Puerto Rico, a part of the U.S. customs territory.

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## DECISION

The Commissioner of the U.S. Customs Service has requested our opinion on whether user fees are the proper source of funds to finance inspectional overtime services in the Virgin Islands and Puerto Rico. If the user fees are not available, Customs would deduct the cost of overtime services from customs duties collected in the Virgin Islands and Puerto Rico. While the applicable statutes are not entirely clear, we believe that user fees are not available to reimburse such costs in the Virgin Islands but are available for that purpose in Puerto Rico.

The Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. No. 99-272, authorized Customs to collect user fees for various services, such as processing merchandise for entry into the country. Customs deposits all user fees it collects into a user fee fund, except those used to directly reimburse Customs appropriations for overtime inspectional and preclearance services. The Omnibus Budget

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<sup>1</sup>In certain locations Customs permits travelers to pay U.S. customs duties before leaving a foreign port to enter the United States. Because they have been precleared, when

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Reconciliation Act of 1987 provided that the Secretary of the Treasury "shall directly reimburse, from the fees collected, . . . each appropriation for the amount paid out of that appropriation for the costs incurred by the Secretary in providing (I) inspectional overtime services, and (II) all preclearance services for which the recipients of such services are not required to reimburse the Secretary of the Treasury . . ." Pub. L. No. 100-203, § 9501(a) (3), codified as amended at 19 U.S.C. § 58c (f) (3) (A) (i). It provided, further, that the reimbursements should be made at least quarterly, and could be made on the basis of estimates, with subsequent adjustments as necessary. 19 U.S.C. § 58c(f) (3) (B) (ii), (iii).

The Commissioner's question arises because of the laws governing the administration of customs laws in the Virgin Islands and Puerto Rico. Customs is responsible for the administration of customs laws in both locations. 48 U.S.C. §§ 1395, 1406i (the Virgin Islands); § 740 (Puerto Rico). (The U.S. Virgin Islands are an unincorporated territory of the United States and its residents are U.S. citizens. Puerto Rico is a commonwealth of the United States; its residents are also U.S. citizens.) Section 1406h provides that "the proceeds of customs duties, less the cost of collection, . . . shall be covered into the treasury of the Virgin Islands and held in account for the respective municipalities, and shall be expended for the benefit and government of said municipalities . . ." Section 740, provides "The duties and taxes collected in Puerto Rico, . . . less the cost of collecting the same, . . . shall be paid into the treasury of Puerto Rico . . ."

Customs determined in 1987 that inspectional overtime for Customs employees in the Virgin Islands could be paid with the user fees collected under section 58c. The determination was made retroactive to November 1986. According to Customs, it also determined that inspectional

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<sup>1</sup> (. . . continued)

these passengers arrive in the United States they are not subjected to another Customs inspection. Customs' question to us here concerns only payment for inspectional overtime, not preclearance, other than that portion of preclearance costs comprising overtime.

<sup>2</sup> 48 U.S.C. § 1642a provides similarly: "Notwithstanding any other provision of law, the proceeds of customs duties collected in the Virgin Islands less the cost of collecting all said duties shall, effective for fiscal years beginning after September 30, 1979, be covered into the Treasury of the Virgin Islands, and shall be available for expenditure as the Legislator of the Virgin Islands may provide."

overtime costs for Customs employees in Puerto Rico could be paid with the fees. Customs is currently using the fees to fund inspectional overtime services in both the Virgin Islands and Puerto Rico.

Customs now questions whether this determination was correct. Customs suggests that inspectional overtime services in both locations should be considered "costs of collection" under sections 1406h and 740, to be subtracted from the duties paid into the treasuries of the Virgin Islands and Puerto Rico. In support of this interpretation, Customs cites a November 12, 1992, memorandum from the Customs Chief Counsel to the Customs Comptroller, noting that nothing in section 58c (authorizing use of the user fees) supersedes the provisions of section 1406h. Our analysis of the purpose of section 58c, however, and how it fits into the overall scheme of duties and fees imposed by the tariff laws of the United States leads us to conclude that the section 58c user fees are available to reimburse Customs costs incurred in providing overtime services in Puerto Rico, but not in the Virgin Islands.

The Customs Service, under the tariff laws, collects duties imposed on imports into the "customs territory of the United States." See generally 19 U.S.C. § 1202. In addition, section 58c(a) provided for the collection of user fees<sup>3</sup> in

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<sup>3</sup>Section 58c(a) provides: "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) (A) For fiscal years 1994, 1995, 1996, and 1997, for the arrival of each passenger aboard a commercial vessel or commercial aircraft from outside the customs territory of the United States, \$6.50.
- (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)) of this section, \$5.
- (6) For each item of dutiable mail for which a document is prepared by a customs officer, \$5.

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connection with entry into the customs territory of the United States to cover certain costs incurred by Customs in the collection of duties, including overtime processing of merchandise. The legislative history of section 58c reveals the purpose of that section.

"Overtime inspectional and preclearance services are unique in requiring a high degree of responsiveness to the needs of carriers and others requesting such services. In the past, requestors reimbursed the Customs Service for such service, and the committee desires to maintain the same degree of responsiveness as existed when Customs was being directly reimbursed by private parties for such services. Accordingly, the committee has provided for direct reimbursement to the Customs appropriation of that portion of user fees required to cover the cost of providing inspectional overtime and preclearance services. It is the committee's intention that such costs be directly reimbursed out of user fees by the Secretary of the Treasury in the manner specified, and that such reimbursement not be subject to apportionment or other administrative limitation."

H. R. Rep. No. 391 (II), 100th Cong., 1st Sess. 973 (1987).

Section 58c generally prohibits charging any more than the statutorily-set fees for the services provided in order to protect entities that pay the fee from paying more than their share of the costs of processing.

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<sup>3</sup>(...continued)

- (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 merchandise that is formerly entered or released during any fiscal year, a fee in an amount equal to 0.17 percent ad valorem . . . ."

<sup>4</sup>Section 58c(e)(6)(A)(i)(ii) provides: "Notwithstanding any other provision of law . . . , during a period when fees are authorized under subsection (a) of this section, no charges, other than such fees, may be collected for any cargo inspection, clearance, or other customs activity, expense, or service performed (regardless whether performed outside of normal business hours on an overtime basis), or customs personnel provided, in connection with the arrival or departure of any commercial vessel, vehicle, or aircraft, or  
(continued...)"

The Virgin Islands is not included within the United States customs territory, and section 58c user fees, which are collected in connection with entry into the customs territory of the United States, therefore, are not collected in the Virgin Islands. Under federal law, "[T]he term 'customs territory of the United States', . . . includes only the States, the District of Columbia, and Puerto Rico." See 19 U.S.C. § 1202, general note 2. The duties and fees that are levied on entries into the territory are set by the Legislature of the Virgin Islands. 48 U.S.C. § 1574(f).<sup>5</sup> The Customs Service, in collecting duties in the Virgin Islands, is acting on behalf of the Virgin Islands government to enforce the customs laws of the Virgin Islands' Legislature, not the United States customs laws. Accordingly, for the future, we believe that it would be inappropriate to continue to use the section 58c user fees to fund inspectional overtime in the Virgin Islands; costs incurred by Customs in this regard should be deducted from the total duties collected in the Virgin Islands. To hold otherwise would force entities who pay section 58c user fees to subsidize the cost of overtime in the Virgin Islands for entities that do not pay the fees, contrary to the notion, as articulated in the House Committee report, underlying the section 58c user fees. Because this issue is before our Office for the first time and because of the longstanding uncertainty within the Customs Service, our conclusion should have prospective application only.

Unlike the Virgin Islands, Puerto Rico is included within the customs territory of the United States, and section 58c user fees are assessed. 19 U.S.C. § 1202, general note 2. In Puerto Rico, the Customs Service is enforcing the customs laws of the United States and the user fees collected are used to reimburse Customs for the costs of overtime. Accordingly, the "fee-for-service" logic underlying section 58c is applicable. Consequently, consistent with the

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<sup>4</sup>(...continued)  
its passengers, crew, stores, material, or cargo, in the United States."

<sup>5</sup>However, the Legislature of the Virgin Islands is limited to imposing rates that do not exceed 6 percent ad valorem. 48 U.S.C. § 1574 (f).

purposes of section 58c, we think that overtime costs in Puerto Rico should be funded with user fees.

/s/ James F. Hinchman  
for Comptroller General  
of the United States