

U.S. Customs Commercial Compliance Measurement Program and Its Effects on Cargo
Inspections*
Steven W. Baker**

The United States Customs Service has developed a Commercial Compliance Measurement Program to provide comprehensive, statistically significant data concerning the degree of compliance with the U.S. laws and regulations administered by Customs by commercial cargo imported into the United States. The Customs Service was criticized for many years for its inability to provide anything more than anecdotal evidence concerning compliance levels; a compliance measurement report to Congress is required by the Customs Modernization Act, and the first full report on FY-95 was completed in February 1996.

The FY-95 report covers compliance of imports, carrier cargo manifest compliance, and compliance by express couriers. This article will focus on compliance of imports, and the implications of the findings with regard to Customs cargo inspections of imported merchandise.

Trade Compliance Measurement Program

The Trade Compliance Measurement Program was originally intended to assist in revising the Selectivity System, the program which "determines which cargo shipments will be physically inspected and which Entry Summaries will undergo review." The overall program has now established a "baseline" data set for U.S. Customs, which will be used for a number of commercial priorities in addition to cargo inspection. While Customs will use the data to focus on problem areas, industries, and importers, the use of cargo inspections will remain a primary tool to induce future compliance.

The data is collected for the measurement program by "stratified sampling", designed to produce estimates of compliance rates at the 95% confidence level, with a maximum error of 3%. Data is collected on an entry line item basis, with information on the existence or non-existence of discrepancies noted both at physical cargo inspection and documentary review of Entry Summaries.

Customs found an overall compliance level for FY-95 of just over 80%. Compliance was very high in critical areas, such as revenue collection and intellectual property rights. Classification errors (often not involving duty consequences) were the largest problem area. Marking questions and quantity discrepancies were also found at significant levels. Other types of discrepancies noted include quota, health and safety, and dumping issues.

Data was collected at the four digit tariff item level, and compiled into reports indicating compliance at the four digit classifications. This allows Customs to focus on individual product lines and industries where significant problems exist. Because the data is also compiled (confidentially within the Customs Service) on Port of Entry and importer bases, Customs has numerous tools to customize its examination process. The goal is "to minimize...examination of compliant entities...[and] reward highly compliant firms and industries with minimal Customs examinations."

Compliant parties will not escape examination altogether, but so long as compliance rates remain high, should undergo fewer examinations than products, industries, and importers with relatively low compliance levels.

Focus Industries and Trade Priorities

Customs has established an overall goal of 90% compliance, with specific 95% compliance level goals for particular "focus" industries. Primary focus industries were selected on the basis of trade sensitivity, demonstrated compliance levels, duty and NAFTA concerns, health and safety issues, quotas, intellectual property, and economic significance. The FY-96 primary focus industries are automobiles and automobile parts, advanced displays, agriculture, critical components (fasteners, bearings, etc.), production equipment (machine tools), telecommunications, steel, and textiles/footwear.

In addition to the focus industries, Customs has identified a number of important trade issues which cut across industry lines. Eleven trade priority areas have been established, which will be looked at both within and outside of the focus industries. These priority issues are: NAFTA and other preferential trade agreements; valuation; intellectual property rights; antidumping and countervailing duties; quota evasion; transshipment; classification; international trade statistics; embargos and sanctions; health and safety issues; and Country of Origin marking.

Examination Issues

Customs Office of Strategic Trade, which is responsible for analysis of the information, has pointed out several problem areas in addition to those specific tariff line items and industries identified in the statistical listings. One problem, encountered to a large extent on line release entries at land borders, but also seen at some seaports, has been called "convenience classification" by at least one Customs office. These are situations where goods undergo a quick clearance procedure based on documents which have not received a full classification review and are perhaps not as detailed or carefully completed as they should have been. (A related issue is the tendency to pro-rate freight and insurance charges on multi-product invoices on the basis of factors that do not reflect the actual charges.) Many of these discrepancies found at the release stage are actually corrected before the Entry Summary documentation is filed (usually by a Customs broker) with the Customs Service. Customs believes that, at least in some instances, Importers of Record are not aware that they have significant discrepancy rates because the only documents they receive from the broker are the Entry Summary documents. The Office of Strategic Trade suggests that importers carefully review with their brokers the extent to which these discrepancies may occur.

A second area of concern which has been identified is reliance by the Importer of Record on the actions of its broker, without a comprehensive review by the Importer of Invoices, Customs entries, and determinations made by the broker at the time of entry. In many instances, the importer will know something about the product, its use, its production process, or some other matter which, if known by the broker, would have changed the entry documentation. Although many of these

changes may only apply to "statistical" suffixes and not affect duty, the development of accurate trade statistics is an important issue. Importers have a responsibility to provide full and complete information, and ensure that their brokers are acting on the basis of the latest available materials.

Individual importers can minimize their exposure to Customs inspections in several ways. The first and most obvious is to develop an exceptionally high compliance record with Customs. The Office of Strategic Trade has indicated that a reduction in examination levels will be automatic by Customs after sufficient examinations of a particular importer have taken place to allow for a meaningful determination; the importer's record shows high compliance levels; and, at least in some cases, the importer has completed a successful compliance assessment. No importer will be completely eliminated from the exam process; occasional inspections will continue to ensure that high compliance levels and statistical validity are maintained. This author has personal experience with two major importers with high compliance levels for FY-95, whose compliance examinations dropped by more than 50% in the first half of FY-96.

Compliance measurement includes not only physical evaluation of the goods (Country of Origin marking, quantity, conformity with invoice description, etc.) but also documentary review. Invoices which do not clearly describe merchandise, particularly with regard to line items on Customs entries, can result in examination delays. Clear and complete invoice and packing list descriptions, references to Customs binding rulings where applicable, and full disclosure of applicable value issues will reduce discrepancy findings and increase compliance ratios.

An additional method for reducing examinations requires some industry cooperation. Particularly for focus industries, the recognition of industry wide issues, which contribute to high discrepancy levels, can be addressed. Industry associations can work closely with the Customs Service to secure specific data relating to their products and problems, and provide information to individual importers on ways to improve compliance levels. Once an industry reaches the target compliance level by Customs, the examination level for all industry members should decline as Customs shifts its focus to other areas with more compliance problems.

Compliance Measurement in FY-96

The 1995 Compliance Measurement Report provides importers with clear information concerning the quantity and type of compliance measurement exams they can expect in FY-96. Importers whose products fall in tariff descriptions with low compliance rates, in "focus" industries, and/or which involve listed trade priorities will receive increased scrutiny. Customs has announced that there will be approximately 100,000 compliance measurement examinations conducted in FY-96. Slightly more than half of the examinations will take place in the areas with the highest risk scores, the primary focus industries, and "watch list" industries deemed of special importance.

Approximately one third of the examinations will involve trade priorities and related issues such as hazardous material transportation. Customs will conduct a small number of examinations on primary focus industries which were at or above the 90% compliance level, in order to assure

continued high compliance figures.

The remaining 10-15,000 examinations will be allocated in order to update and maintain the baseline data, so that valid information will be available on FY-96 on which to base priorities and focuses for 1997.

The range of available information allows importers to predict the impact of Customs cargo examinations on their particular products and industry. They can therefore review their actual experience with examinations in comparison to overall findings for their industry. Each importer also has the opportunity to reduce future examinations (and costs) by increasing compliance in all of the areas reviewed by the Customs Service.

* Originally published in Business Laws, Inc.'s Corporate Counsel's International Adviser, Issue Number 144, May 1, 1997. Copyright 1997, retained by Steven W. Baker. Reprinted with permission. All rights reserved.

** Mr. Baker is the principal of the San Francisco law firm of Steven W. Baker and Associates, specializing in Customs and International Trade Law.