

Customs Risk Management Program Responds to Security Needs*

Steven W. Baker**

I. Introduction

The U.S. Customs Service, since its inception in 1789, has been charged not only with protection (and collection) of the revenue, but also with enforcement of a broad and ever widening range of federal requirements. These include core Customs issues such as classification, valuation, and marking of imported merchandise; law enforcement actions such as narcotics interdiction, money laundering, export control, and intellectual property infringement; and regulatory activities such as product labeling (e.g., textiles and drugs). Customs also has responsibility for enforcement of quarantines and restrictions (endangered species, agricultural pests); collection of taxes and fees for other agencies (agricultural product promotion programs, harbor maintenance fees); trade restraints including dumping, countervailing duties, and tariff rate quotas; and evaluation and qualification of trade information (both for trade enforcement and the collection of import and export trade statistics for the Census Bureau). The most recent addition to this list of duties is responsibility for cargo security as part of the nation's antiterrorist activities.

From 1789 until the mid-1960's, the primary method used to implement these responsibilities was actual inspection of 10 percent or more of every shipment. Supplemented with documentary review and interaction with importers and/or their Customs brokers, this procedure ensured that Customs had a "hands-on" knowledge of all shipments. During this time period, Customs had the necessary resources in personnel and facilities to perform this task.

The explosion of international trade beginning in the 1960s, and its exponential expansion for the rest of the twentieth century, has made this time honored process impossible to perform, due both to the sheer volume involved, and the impracticability of funding and building a Service of sufficient size. For the last twenty years, Customs has had essentially static resources, both in money and number of personnel.

This situation means that most importations of merchandise will never be examined, not only physically, but also even through document review. Yet, Customs is still responsible for that broad range of enforcement, compliance, and security activities described above. Customs is implementing procedures to increase productivity, dramatically embracing automation, and making modernizing changes in procedures. Custom's recognition that it cannot actually review all shipments, however, has caused it to develop programs to evaluate and "manage" the risk to any noncompliance with laws and regulations "which could result in loss or injury to trade, industry, or the public."

II. Risk Management

Beginning in the mid-1990s, with continual revision, modification, updating, and expansion, Customs has had a formal trade compliance risk management process. The process, as it existed in 1999, is discussed in detail in the publication "Trade Compliance Risk Management Process," a sixty-page booklet available from Customs headquarters, and published on the Customs Website./1/

Several of the components of this risk management process have been discussed in previous articles in this series./2/

Customs has divided the process into four primary steps. The first, collection of data and information, includes several of the programs discussed in those previous articles (Compliance Measurement, Compliance Assessment, and Account Management), together with establishing measurement criteria and examination parameters. The remaining steps are to analyze and assess the risk based on that information, prescribe action (informed and enforced compliance, compliance improvement plans, enforcement evaluation teams), and to track and report. The track and report function includes follow-up verification of previous measurements, assessments, and examinations; monitoring of accounts; continuing to refine and expand the trade compliance enforcement plan; and preparation of required reports to Congress.

In conducting this process, Customs defines risk as “the degree of exposure to the chance of noncompliance which would result in loss or injury to trade, to industry, or the public.” Risk management is defined as “a proactive management technique that identifies processes for controlling risk in trade compliance.”

Customs’s focus “is on what presents the greatest risk of loss to the government and public. Customs has accepted the fact that many importers have a record of complying with import laws and do not present a risk that justifies a significant allocation of resources. This logic leads to performing a risk analysis or risk assessment to determine who and what merits attention.”/3/

The latest addition to the risk assessment project is Customs’s responsibility “to detect and reduce the risk that terrorists or the implements of terrorists will be introduced into the United States,” and “to do this without choking off the flow of trade, so important to the U.S. and the world economy.” Speaking at the November 27, 2001, Customs Trade Symposium, Commissioner of Customs, Robert C. Bonner, stated, “while our overall strategy of risk management has not changed in the wake of September 11, what has changed dramatically is our definition of risk. Before the attacks that day, our main focus was on trade compliance. Since September 11, our overriding priority is trade security.”/4/

III. Focused Assessment

The trade compliance process has always been designed to encourage, reward, and assist importers to develop, implement, and continue to verify procedures and controls over their Customs functions sufficient to ensure high degrees of compliance in the Customs area. To the extent that Customs can verify compliance programs, particularly for large volume and trade sensitive product importers, it can divert scarce enforcement resources from those importers to areas of significant noncompliance. The most recent addition at the collect data and information, step one level, is the implementation of the Focused Assessment Program, which replaced Compliance Assessment on October 1, 2001.

Compliance Assessments, which were conducted for a period of some five-and-one-half years, were primarily conducted through the use of extensive transaction testing; selecting Customs

import lines from individual entries; and verifying classification, value, marking, quantity, and fee payment issues. This was supplemented with transaction testing of accounts payable and related financial files. Companies undergoing Compliance Assessments were asked to provide copies of their written procedures and internal controls, but the application of those procedures and controls in daily activities was not always carefully followed up. In addition, many companies lacking formal written policies and procedures began to implement them as part of Compliance Improvement Plans following the completion of transaction testing.

The Focused Assessment process is based on observations taken from the Compliance Assessments. In Compliance Assessments, it was found that those companies that had written policies, procedures, and internal controls, and applied them on a regular basis to their operations, had much higher levels of compliance with Customs requirements than those that did not. In the Focused Assessment, therefore, the initial emphasis will be on a review of not only the existence but also the operation of policies, procedures, and operational directives, as well as the internal controls a company has to ensure compliance. If those materials are found to be in existence and actual use, there may not be a need for any transaction testing at all. Only where there are problems found in either the existence or the implementation of formal procedures will Customs return to specific transaction testing as part of its evaluation of the risk process./5/

IV. Cargo Security

Security issues are being developed through the new Trade Partnership against Terrorism (TPAT), a cooperative relationship with Customs and the trade community. Customs has indicated its intention to work with foreign manufacturers, exporters to the United States, carriers, importers, and other industry sectors emphasizing a seamless security conscious environment throughout the entire commercial process./6/

At the 2001 Trade Symposium, Commissioner Bonner stated this “means we will be more focused on where your product originated; the physical security and integrity of your plants or those of your suppliers; the background of personnel; the means by which you transport goods; who you have chosen to bring those goods into the country; those companies’ overall security; and routes your shipments travel.” Essentially this requires that business community members review their entire logistics chain, and incorporate sound security principles throughout.

Continuing employment of its “carrot and stick” approach, Customs has indicated that importers, after having Customs verify compliance with the required standards, will secure benefits, such as expedited processing, priority levels of service, Customs notification of compliance and/or enforcement exams, dedicated commercial lanes for approved and active participants at border ports, a Customs point of contact designed specifically for TPAT partners, and the availability of Customs expertise in securing cargo and conveyances against the threat of terrorism. Conversely, those who fail to satisfy Customs, either by not providing information, or providing information showing serious concerns, will be subject to higher scrutiny of cargo and conveyances, increased reviews and audits, added examinations, additional requests for information, and no guarantee of processing times.

The specifics of the TPAT procedures, and the addition of cargo security review to Focused Assessments, are in rapid development by the Customs Service. Some preliminary materials, such as questionnaires for carriers and cargo facilities, have been posted at the Customs Web site.⁷ Additional information is expected to be posted on a regular basis and incorporated as part of the Focused Assessment materials.

V. Conclusion

Security issues have become Customs's primary cargo processing concern, and multiple programs with heavy industry participation are being developed to respond to the new challenges. At the same time, traditional trade compliance and enforcement is being addressed in the new Focused Assessment Program. Importers and exporters must become even more involved in understanding, monitoring, and controlling their entire logistics chain, or face increased Customs cargo exams, reviews, audits, and delays in clearance of their shipments.

Endnotes

/1/ www.customs.gov < The Risk Management brochure can be accessed by clicking on “Importing and Exporting.”

/2/ “Compliance Assessments and Customs Audits,” *Corporate Couns. Int’l Adviser*, No. 140 (Jan. 1997); “U.S. Customs Commercial Compliance Measurement Program and It’s Effect on Cargo Inspections,” No. 144 (May 1999); “Customs Compliance in the Corporate Environment,” No. 149 (Oct. 1997); and “Expansion of the Account Manager Program Emphasizes Customs Account Processing Approach,” No. 161 (Oct. 1998).

/3/ Quotations are taken from the Trade Compliance Risk Management Process brochure, note 1 above.

/4/ Statement by Commissioner Bonner at the 2001 Customs Trade Symposium, published on the Customs Web site at “Importing and Exporting”; “What’s New”; “Trade Symposium 2001”; “Opening Remarks.”

/5/ Handbook on Focused Assessment is available on the Customs Web site at “Importing and Exporting”; “Regulatory Audit Program Information”; “Focused Assessment Program.”

/6/ A document describing the TPAT program is on Customs Web site at “Importing and Exporting”; “What’s New”; “Customs Trade Partnership against Terrorism.”

/7/ The security questionnaires are on the Customs Web site at “Importing and Exporting”; “What’s New”; “Industry Partnership Programs”; “Carrier Security Survey Form and Security and Compliance.”

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**Mr. Baker is the principal of the San Francisco law firm Steven W. Baker and Associates. He has specialized in the practice of Customs and International Trade Law for over 25 years. He is currently the Chair of the Customs Committee, Section of International Law and Practice, American Bar Association.