

**US Treasury Advisory Committee on Commercial Operations of the US
Customs Service (COAC)**

Report and Recommendations on Enforcement

On October 31, 2002, Customs published a final rule on "Presentation of Vessel Cargo Declaration to Customs Before Cargo Is Laden Aboard Vessel at Foreign Port for Transport to the United States." (Tab 1) While the rule has an effective date of December 2, 2002, Customs acknowledged industry concerns and "determined to delay full enforcement for a period of 60 days following the effective date of the new requirements. This, when taken together with the 30-day post publication period generally provided, will allow a total of 90 days from publication date to full enforcement." Although February 2, 2003 is actually 62 days following the December 2 effective date, this has generally been understood to be the date when full enforcement will begin.

COAC is extremely concerned that adequate lead time be provided. Industry recognizes the very real security concerns and is, for the most part, working diligently to implement the rule. Nonetheless, it is likely that many responsible parties will not be prepared to completely comply with all requirements by February 2. Moreover, after a series of face-to-face meetings with Customs officials tasked with responsibility for implementing the rule, COAC does not believe that Customs will be adequately prepared by that date.

There are a number of important implementation issues which remain unresolved. Listed below are a few of the most significant:

- Customs has not committed to implement a system for automated "Hold" messages by February 2. For a variety of reasons, a system based on telephone calls will be unworkable. The logistics of communicating all necessary information without error to all necessary parties is simply not feasible until Customs can communicate "Holds" more effectively.
- Shippers of perishable commodities cannot consistently present all cargo manifest information to Customs in accordance with the rule. Given the time-sensitive operations of producing and transporting perishable products, the quantities and identification of containers and seals can only be estimated 24 hours before loading. Several possible options for resolving this have been shared with Customs, yet no resolution has been communicated to the trade.
- Precise product descriptions are required, but very little guidance from Customs has been made available. It is impossible for parties to revise their business processes and systems to accommodate this requirement without additional information. Except for the areas where specific

guidance has been provided, enforcement of this requirement should be delayed until both parties have a clearer understanding.

- The rule does not distinguish between manifest discrepancies that could present serious security risks and manifest amendments that occur routinely as a matter of course. For example, a seal number discrepancy or a change in quantity could present a security issue, while many other amendments might be meaningless from a security perspective. Without making any such distinctions, the volume of discrepancy reports could completely overwhelm both industry and Customs. The situation is even more difficult since AMS filers must report manifest changes at the bill of lading level. Without any process for accommodating changes at the carrier level, the burden on trade and Customs could be extreme.
- The rule requires AMS filers to provide the vessel arrival date. While the rule requires NVOCC's to file manifest information, the NVOCC is not the appropriate party to file information about the vessel arrival date.
- The rule requires high security seals, yet this term is not yet defined.
- There are a myriad of instances in which Customs will likely be unable to design and implement by February 2, 2003, the software changes necessary to manage the data required by the rule. In many cases, Customs appears sympathetic to the trade's concerns and agrees that the systems should be changed, but they also concede that all such modifications will not be in place by February 2.
- There are open issues regarding public disclosure of cargo manifest information. These issues are discussed at Tab 5.

More examples could be provided, but these should be adequate to illustrate the point. Both the trade and Customs need more time to address open issues.

Customs has informally indicated that enforcement will be gradual, starting with only those areas that were relatively clear at the time of the October 31 publication of the rule. For example, the trade understands that FAK ("Freight of All Kinds") is an inadequate cargo description. According to Customs, other areas that require additional clarification will not be enforced immediately. Notwithstanding good intentions, we are skeptical about any effort to micromanage this process at the Headquarters level. Clear written guidance to ports and field staff is necessary to support uniformity and consistency in the enforcement activity.

While the trade shares Customs' goal of strengthening supply chain security as promptly as possible, rushed implementation and enforcement will create

confusion and disruption that could serve to increase opportunities for terrorist infiltration of cargo. Informed compliance and basic fairness require adequate notice as to the requirements and a reasonable opportunity to comply. Similarly, enforcement activity should not commence until Customs automated systems are designed and implemented to accommodate the data flows under the rule. We recommend that Customs limit enforcement activity until all parties have had an adequate opportunity to accommodate the rule's requirements.

Since the October 31 publication of the advance manifest rule, industry has expended a tremendous amount of effort in moving towards compliance. Business processes are being significantly adjusted to accommodate the new requirements. There is no reason to believe that this process will not continue. COAC believes that additional time for implementation of those areas requiring clarification and/or automation will allow for an orderly process that can be respected and followed by the trade. This will result in stronger security, our common goal.