PROTECTION THROUGH PARTNERSHIP

With the trade community struggling to see a strong ROI on facilitation, Customs goes to even greater lengths to strike a better balance

By Beth C. Ring

WITH THE RE-ELECTION of President Obama, one can reasonably expect a continuation of the trade policies of the last four years: an emphasis on economic growth through exports, consummation of pending free trade agreements such as the Trans-Pacific Partnership, negotiation of a European Union-U.S. Free Trade Agreement, strong enforcement of our trade remedy laws, enforcement of intellectual property rights, consumer product and food safety, and opening of trade with new countries such as Russia and Myanmar.

The question is how these trade policies will play out at the border when importers and exporters attempt to ship goods into and out of the United States. Will trade facilitation be a policy with visible benefits only for proven multinational "trusted traders," or will small and medium-sized companies also be assured of smooth movement of their goods without having to participate in the proliferating and potentially costly "voluntary partnership" programs U.S. Customs and Border Protection is implementing?

With budget deficits ballooning and clarion calls for reduced government spending, Customs must find ways to fulfill its mission of facilitating trade while protecting revenue and the borders. Basically, the agency must do more with less, thus the concept of partnership programs with the trade that shift some of the compliance and enforcement burden onto the private sector. Both themes — "partnership" and "protection" — were prominent at Customs' annual East Coast Trade Symposium in November.

This trend started after the September 11 terrorist attacks when the agency introduced the Customs-Trade Partnership Against Terrorism program. Customs enlisted the help of the trade community to ensure the security of cargo bound for the U.S. with documented procedures for plant access, container access and personnel screening followed by the requirement of advanced data transmission prior to shipment loading though the "10+2" manifest screening process. Customs assured C-TPAT members of faster entry processing, fewer inspections, and reduced shipment delays. Since inception, however, C-TPAT membership has only accounted for approximately 25 percent of all entries and approximately one-third of import value, according to Customs' 2012 midyear report on import trade trends.

Importers aren't seeing real benefits relative to the increased costs of implementing and maintaining C-TPAT procedures. So Customs has begun discussions with the industry to attempt to increase C-TPAT membership by requesting input on possible concrete benefits that could be offered for participation.

Customs also has embarked on a C-TPAT program for exports. Of course, the destination country for U.S. exports is the party directly interested in supply chain security for goods headed for its borders. So far, only Japan has signed a mutual-recognition agreement with the U.S. to recognize U.S. C-TPAT export members as "trusted shippers." The U.S. also has mutual-recognition agreements covering U.S. imports with Taiwan, New Zealand, Jordan, Canada, South Korea and the EU. Whether C-TPAT for exports will help or impede President Obama's policy to promote export growth remains to be seen.

Another major partnership initiative is the Importer Self-Assessment program. Billed as the best way to keep Customs auditors out of your office, many large importers readily signed onto this program. The importer was required to sign a memorandum of understanding with Customs that required documented internal controls and procedures to be tested and reported to Customs auditors annually. It's worth noting that the Customs Modernization Act, passed in 1993, already requires importers to exercise "reasonable care" in their import operations, which has meant documented and implemented internal controls and procedures to ensure customs compliance and reduced "risk."

The ISA program also assured importers that they would be assigned a Customs "account manager," a Customs official supposedly familiar with the importer's operations and able to facilitate interaction between the importer and Customs at multiple ports. The "account manager," whose role has evolved significantly over the years, has either been extremely helpful to importer "accounts" — allowing requests for the same information from multiple ports to be submitted once, for example — or just the opposite, reporting their "accounts" to Fines, Penalties & Forfeitures offices to investigate alleged classification or valuation violations.

ISA participants are supposed to be granted additional mitigation consideration in penalty and liquidated damage cases. ISA status, however, does not affect consideration of whether a "prior disclosure" of a violation (or an unintentional error) is indeed "prior" (thereby affording the importer reduced or no penalties).

Although most importers who reach a minimum of $10 million in entered value at some point will be subject to Customs' regular audits, called "Focused Assessments," the tradeoff for the benefit of keeping the Customs auditors at bay through ISA participation is mandatory internal compliance reviews and reporting to Customs on its timetable every year. It's not surprising, then, that the ISA participation rate amounts to only 11 percent of total entries, representing 24 percent of import value, according to the agency's midyear 2012 report.

A further inducement for importers to participate in the ISA program is the opportunity to participate in the latest version of Customs reorganization known as Centers of Excellence and Expertise. Every 25 years or so, we see cycles of Customs either centralizing or decentralizing import operations. With the Customs Modernization Act in 1993, Customs "regions" and "areas" around the country were eliminated so that operations and decision-making were delegated to the 300-plus ports, with oversight by Customs headquarters.

National import specialists with expertise in specific product lines issued classification decisions binding on individual importers, but not necessarily on other importers of similar merchandise. Customs headquarters issued policy mandates directly to the ports regarding trade program implementation and enforcement initiatives. The ports were supposed to implement such policies uniformly, but importers often saw conflicting treatment of similar entries at different ports.

With no operational "line authority" over the ports, however, Customs officials often were unable to resolve discrepant treatment between ports with respect to detention or seizure of certain kinds of imports, documentation requirements to support claims for duty-free treatment under free trade agreements or trade preference programs, and implementation of anti-dumping and countervailing duty decisions by the Department of Commerce.

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The new CEEs now are the primary point of processing for participating importers within a specific industry. Although they are virtual in the sense that they are populated by Customs "experts" anywhere in the country, they are the central processing point for those industries regardless of the specific port where entry is made — hence a return to a more centralized decision-making and operational profile for the agency.

Volunteers, who must be ISA participants, are supposed to benefit by having more efficient trade facilitation through the use of specialized experts in their industries with one point of contact to handle their entries, enabling them to expand their partnership with Customs to achieve the holy grail of "trusted trader" status. Presumably, there will be fewer shipment delays and Customs will issue fewer CF 28 requests for information.

Customs' announcement that it will open six new CEEs brings to 10 the number of CEEs that will exist around the country. By this time next year, the agency and the trade community will have had some experience in evaluating this initiative and its prospects for long-term success.

The continuation of Customs' modernization through the seemingly glacial implementation of the Automated Commercial Environment made enormous progress in 2012 with pilot programs on simplified entry and "M1," a new software application enabling rail and sea carriers to transmit their manifest or shipment information prior to arrival in the U.S.

One of the benefits of this is that it enables the trade community to communicate with other government agencies that have regulatory authority over imported merchandise, including the Food and Drug Administration, the Consumer Product Safety Commission, the Animal and Plant Health Inspection Service and the Department of Agriculture.

The previous costly, paper-intensive export manifest procedure also has been automated and incorporated into ACE using a document-imaging system that is estimated to save ocean carriers approximately $50,000 a year. The continued streamlining of the import-export process through ACE implementation should reap tangible benefits to traders and shippers this year.

Finally, Customs is "partnering" with domestic industry to collect trade intelligence on potential instances of fraud that Customs would not otherwise have the resources to address, or could only handle on a piecemeal port-by-port or headquarters level in the past. This is an area of potential concern to legitimate importers with robust trade compliance operations who may find themselves the target of possibly unfounded rumors reported to Customs that lead to investigations and penalty claims. JOC

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