

Streamlining federal security programs: How Customs bundles them together

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(This is the fourth of a four-part Legal Lookout series addressing federal security regulations and programs)

Now that you've had a three-month dose of security program substance, it's time to take a look at how the Bureau of Customs and Border Patrol (CBP or, here, Customs) plans to implement the CT-PAT program, the Container Security Initiative, the 24-Hour Advance Vessel Manifest Rule, and related concepts. Briefly, the feds will use hi-tech data exchange and storage systems implemented by newly formed Customs sub-departments, and reconstitute interrelated functions performed by Department of Homeland Security agencies to guide America's international trade industry into an era of security. Warning: this stuff isn't for the acronymphobe.

The first implementation measure is also the most complex, innovative, challenging (some would say "daunting") and, yes, expensive. Customs has developed a mandatory, computerized system which will be at the heart of an "Automated Commercial Environment" (ACE). Per Customs, ACE is designed to facilitate "interagency information sharing and real-time, cross-government access to more accurate trade information." In addition to easy fluidity in information exchange, ACE encompasses the Automated Targeting System (ATS), which is techno-babble for a computerized watchdog that barks when data indicates certain cargo might be suspect.

ACE was published on December 5, 2003 as part of the Trade Act of 2002, with different implementation dates for each mode of transportation. Water carriage procedures became automated on March 4, 2004. It is (or will be when the kinks are hammered out) a fully centralized program. Per ACE, data from shippers sent in compliance with the 24-Hour Rule (see March 2004 Legal Lookout article); from Customs personnel stationed in foreign ports pursuant to the Container Security Initiative (see February 2004 Legal Lookout article); from CT-PAT participants (see January 2004 Legal Lookout article); and from other sources will be compiled, processed and stored for immediate and/or future reference.

The concept is simple, but its details and execution are anything but. Data for ocean cargo must be transmitted 24 hours in advance of stowage (or at other advance times for other modes) by way of the Automated Manifest System (AMS). One must be blessed by Customs to become an AMS data transmitter. Customs brokerage information comes through the Automated Broker Interface (ABI) system, which again requires a Customs seal of approval. Rail, trucking and air transportation entities are subject to similar, but industry-specific, programs. Volumes could be (and have been – just check out Customs' website) written about how the automation programs work. Affected players should plan

accordingly. Notably, bonding is required and penalties will be assessed for noncompliance.

Software must be purchased, installed and learned for participation in these programs. As if international transportation administration weren't harried enough already, players must now ensure the particulars of their hauls are properly communicated to Customs, lest fines, delays, loss of good standing and other repercussions result. And let's not forget the source of much importer heartburn: confidentiality. It's going to be tough for Customs to assuage the concerns of many trading firms whose success hinges on secrecy, but federal law – if properly activated – provides for proprietary information secrecy. The commercial practice of determining an ultimate consignee after a vessel has sailed must be abandoned, or at least modified, so that advance consignee identification may be timely transmitted to the feds.

Another approach Customs has adopted toward easing the process is colloquially known as the “one face at the border” program. Now that numerous federal agencies have been combined and organized under the Department of Homeland Security, functions which previously required interaction with multiple uniforms bearing the Stars and Stripes soon will be tackled pretty much by one officer. In other words, Customs plans to be your one-stop shop for cargo transit.

The idea is to speed things along and avoid interagency line tangling by having immigration, agriculture and customs (i.e., security, trade compliance and duties) issues all handled by one person familiar with a transport's particulars. This should save time and resources for all concerned, given that Uncle Sam's enforcement agencies don't have to reinvent the wheel each time a given container calls for scrutiny.

The concept of “one face” isn't literal, there will be agricultural specialists stationed next to Customs officers should specialized expertise be needed. If an immigration problem materializes, the U.S. Citizenship and Immigration Services (USCIS, formerly INS) boys are waiting to spring from the back room.

Separate administrative branches will be established for passenger and freight processing. It will take a while for the new roles to be learned and put into practice, but Customs hopes the new approach will be fully up and running this year.

With the world (and international trade in particular) becoming more streamlined and mechanized, Customs' approach to security program implementation shouldn't be much harder for us to swallow than what we otherwise would expect. Sure, there are some specifics that might cost a few bucks and take some getting used to. However, the downsides of those implementation measures – and federal security programs in general – are well worth their cost if they avoid another terrorist tragedy.

Ref: the Customs & Border Protection agency's website at <http://www.customs.ustreas.gov/> and 19 CFR 4, 103, 113, 122, 123, 178 and 192.