

**OCEAN WORKGROUP RECOMMENDATIONS
TO THE COAC ADVANCE CARGO INFORMATION SUBCOMMITTEE**

March 14, 2003

INBOUND

The 24-hour rule (“Rule”) implemented a requirement for advance cargo information for ocean shipments into the United States. The Rule addressed some of the requirements of the Trade Act of 2002 in that automated cargo information is required in advance of the cargo’s arrival in the US.

The Rule was published in the Federal Register on October 31, 2002, with implementation 60 days after publication, and initial enforcement starting 60 days after implementation. In accordance with the Federal Register notice, COAC formed a special subcommittee, obtained input from technical advisors reflecting a broad spectrum of trade interests, and provided implementation recommendations to Customs. These recommendations were formally provided to Customs at the January 24, 2003 public COAC meeting.

Implementation of the Rule has not gone smoothly. There continue to be a wide variety of unresolved issues. In connection with its review and development of recommendations under the Trade Act of 2002, the “OCEAN” workgroup of the COAC subcommittee continued to identify and address issues involving implementation of the Rule. Expanding our scope to include automated information submission under the Trade Act, the subcommittee offers the following recommendations.

(a) Collecting data from importers. Cargo manifest information provided exclusively by carriers and NVOCCs may not be the only source of information to address the government’s security concerns, or in some cases the *best* source. The Trade Act specifically provides:

- The requirement to provide particular information shall be imposed on the party most likely to have direct knowledge of that information.
- The regulations shall take into account the extent to which the technology necessary for parties to transmit and the Customs Service to receive and analyze data in a timely fashion is available.
- The regulations must balance likely impact on flow of commerce with impact on cargo safety and security.

Overall, the COAC subcommittee believes that importers may be a better source for some commodity and vendor information, and Customs should consider options that would allow importers to provide information directly to Customs. As required under the Trade

Act, we encourage consideration of a system that would provide the flexibility to allow the parties controlling or originating the information to file the information directly (or through their authorized agents, including third party service providers) with Customs.

The COAC subcommittee recommends that Customs explore the development of a system similar to the vessel Automated Export System (AES) through which detailed inbound cargo information could be collected. For example, vessel AES is divided into two distinct modules, transportation and commodity. The transportation module provides carriers with a means of transmitting information related to the transportation of the cargo (bills of lading, vessel name, contract of carriage information). The commodity module requires exporters to transmit detailed commodity information via a Shipper's Export Declaration (SED).

Under a "reverse AES" model, ocean carriers, which by definition are only involved in the transportation process, could provide transportation level information to Customs (presumably via AMS) and importers could provide commodity level information to Customs. Commodity level information could include data elements that are best known to the importer, such as precise description of the goods, identification of the factory or vendor, and identification of the consignee.

Currently, Customs has systems to collect this kind of data within the Automated Commercial System (ACS). For example, the government regularly collects commodity and factory information from some importers as part of the FAST program on the Northern border. Customs should consider extending the FAST program or a FAST-like program to the ocean mode of transport. Another possible approach currently being developed might involve use of the ACE web-based account portal which would allow importers to submit information directly. Whatever method is used to collect this data, it must be consistent with normal business practices (i.e., when complete and accurate data is normally available), be based on account management principles, and not require the repeated transmission of the same information.

The information collected should be limited to what the importer can provide best and which is needed for security purposes -- principally commodity and vendor information. The ACS system is admittedly not perfect. Neither, however is AMS for detailed commodity and vendor information. Unfortunately, it may require the use of multiple systems to obtain all of the required information.

The COAC subcommittee does not recommend that Customs require the early provision of full entry data or the early payment of duties. We are not recommending changes to the current entry process or timing of filing entry documents, i.e., Forms 3461 and 7501. In this regard, we highlight one of the parameters of the Trade Act:

“The information collected should be used exclusively for ensuring cargo safety and security and preventing smuggling and shall not be used for determining merchandise entry or for any other commercial enforcement purposes.”

The COAC subcommittee is not suggesting the elimination of manifest requirements. Indeed, the manifest is best suited to provide transportation data and Customs should be looking at systems that will connect the commodity and manifest in a way similar to the Automated Export System

It should be noted that this recommendation is made as the lesser of multiple evils. We acknowledge the government's legitimate interest in obtaining commodity and vendor information. There is no easy comprehensive solution for providing this data. Some large importers may be well prepared and already leveraging systems to report this information to Customs. However, many other importers – both large and small - will face enormous challenges. Both the implementation costs and the cycle time reductions must be carefully considered in developing any such data submission system. Using two or more systems and two or more reporting sources (e.g., carriers/NVOCCs and importers) and requiring a marrying of information to achieve compliance with the new rule could be complex and cumbersome. We therefore recommend phased implementation and enforcement, with liberal time periods for developing an appropriate process, implementing the necessary system changes (by all parties, including the government), and changing business processes.

Equally important, the subcommittee believes that Customs must move rapidly to develop ACE account-based management to support systems that will make cargo more secure. We recognize that this is a long-range solution, but we believe the Trade Act requires Customs to identify system needs and move rapidly to develop them. We would urge Customs to provide a detailed plan to Congress on how the ACE system will be modified to accommodate increased cargo security needs and to facilitate and speed cargo for C-TPAT participants through the early submission of commodity and factory information. In the meantime, we believe some elements of ACS can be used as a transition mechanism.


(b) NVOCC and Carrier Interface. Since publication of the Rule last October, there have been some serious unintended consequences. When Customs imposed the requirement for cargo information in advance of loading at the foreign port, it was appropriate to expand the automated filing opportunities to NVOCC's. Thus, either the NVOCC or the carrier may file the required information directly with Customs.

Unfortunately, Customs' AMS was not designed for this functionality. Recent modifications to the system to accommodate NVOCC filing have been subject to many limitations of the current system. This has created frustrations and severe hardship to NVOCC's, even those who have automated, obtained Type 2 custodial bonds, accepted contractual indemnification provisions, and done everything in their power to comply with the Rule. While the AMS was modified to accommodate NVOCC filing before lading at the foreign port, the system lacks necessary flexibility to handle cargo shipments upon arrival in the US.

In those situations where the NVOCC's are submitting cargo manifest information directly to Customs, once the cargo manifest information has been screened and accepted, the carriers should be able to continue with their usual business processing of the inbound cargo. Further delays in addressing this could exacerbate the congestion in the ports and destabilize the businesses of countless NVOCC's.

It has not been easy to explain these problems to Customs. The trade has demonstrated persistence in offering detailed explanations, and Customs has been willing to listen. Unfortunately, however, the AMS system has not yet been modified to address these issues.

Some of the specific problems that we have identified with these processes are:

- Vessel arrivals – Since NVOCC's are not the owner/operator of the vessel, timely information regarding vessel arrivals is not readily available. The vessel operator is obviously the best to know their own arrival information, and this is the party that should continue to transmit the arrival status for their own vessels.
-  Paperless MIB – Since the owner/operator is responsible for moving the cargo to an inland point, we question why the NVOCC is now responsible for issuing the paperless 7512. The system should be changed to allow the owner/operator to continue handling this as in the past, without incurring additional legal liability for data errors made by another party. Substantial difficulties have arisen in efficiently handling automated NVOCCs' in-bond cargo, and we recommend that Customs give priority attention to helping devise a resolution that meets the needs and interests of NVOCCs, ocean carriers and Customs.
- MIB Arrival at Destination – Although vessel operators are in control of the cargo at the point of destination, the NVOCC's are now responsible under their own bond to control the disposition of the cargo (i.e.: Customs release). However, since contract of carriage is still under the control of the vessel operator and their intermodal partners, the NVOCC's are at risk because they cannot prevent a misdelivery.
- Lack of uniformity – It is apparent that neither Customs, the NVOCC's, nor the vessel operators were prepared for this change and they are all approaching the various issues individually, each implementing their policies and procedures independent of each other. This is creating confusion, delays, and frustrations, not to mention a growing gridlock with many carriers.
- Co-loaded cargo problems at origin ports - Foreign co-loaders are concerned that any error with any of the agents in a consolidated container could delay the entire container. Thus, they are refusing to accept cargo from an automated NVOCC unless they are allowed to file the AMS entry. This results in duplicate filings. Additionally, other foreign parties, often agents of US NVOCC's, are aware of the widespread delays attributable to this problem and are refusing to work with NVOCC's that are AMS certified. This certainly doesn't support Customs' efforts towards more complete automation.

It should be noted that the Trade Act of 2002 specifically provides: “The Secretary shall take into account the existence of competitive relationships among the parties on which requirements to provide particular information are imposed.” The NVOCC’s and carriers have engaged in ongoing dialogue with constant communication back and forth in an effort to resolve outstanding issues and develop realistic recommendations. The statute requires that their competitive relationships be accommodated as all parties strive for solutions. The COAC subcommittee recommends that Customs take immediate action to aggressively identify and implement system fixes to allow the parties, after providing the required advance cargo information, to continue with their business processes intact as before the Rule.

(c) Confidentiality. The confidentiality issues raised in COAC’s January 24, 2003 report remain outstanding. As Customs proceeds with subsequent phases of enforcement, including enforcing more specific data requirements in the “shipper” and “consignee” fields, the problem will intensify.

(d) Data Elements. The subcommittee reviewed the 14 data elements required under the current Rule and discussed with Customs possible clarifications and redefining under consideration for the future. The subcommittee offers the following recommendations:

“Shipper” – We reviewed several current definitions of this term, including definitions by the United Nations Commission on International Trade Law (UNCITRAL), the World Customs Organization (WCO) and the Federal Maritime Commission (FMC). There is not a single standard definition, and each of these organizations uses slightly different language. They are, however, very consistent in meaning, all relating to the party entering into a contract for carriage. As long as Customs is using a cargo manifest transportation document as the source of information, the definition must be tied to the transportation aspect of the transaction. The term must be used consistently with its standard commercial use in the shipping industry.

The ocean bill of lading and the corresponding manifest reflect only the contract of carriage. The manifest should not and cannot be used to acquire information beyond the transportation contract. In connection with implementation of any advance cargo manifest requirements, we recommend the term “shipper” be limited to “the party that enters into a contract of carriage with a carrier.” **If Customs is seeking information about a different party in the transaction, it should be obtained from another source, not the transportation documents of carriage.** It makes no commercial sense and is of questionable legality for Customs to define the term “shipper” otherwise in connection with a transportation manifest. As noted above, we recommend that Customs look to the importer (or the importer’s agent) to provide information relating to the vendor or manufacturer.

“Consignee” – Again, there is no single definition. Looking at the UNCITRAL and WCO definitions, we recommend this term, as used on a commercial cargo manifest, be defined as a party “entitled to take delivery of goods under a contract of carriage or a transport paper or electronic record.”

“Address” – During initial implementation of the Rule, Customs has insisted that a complete street address is required for the shipper and consignee. In many remote locations, street addresses are nonexistent. Customs must recognize this reality. Furthermore, the address of a party may reflect a home office or a payment location, and have little or no connection with the location of the actual goods.

Further discussion of these terms is included in the matrix included as Enclosure “OCEAN A.”

(e) Amendments. Whenever any data is submitted, regardless of the source or time of submission, there will be changes and corrections. Cargo manifest information submitted 24 hours before lading in the foreign port will be subject to a broad range of changes and corrections. There are a variety of reasons for such changes. We recognize that some changes are significant from a security screening perspective, while many changes are not. The subcommittee prepared a matrix identifying which changes should, from a security perspective, “restart” the 24-hour clock, i.e., a change in these data fields would trigger the start of a new 24-hour period before lading. The matrix also identifies which changes, from a trade perspective, should not trigger a new 24-hour waiting period. These kinds of routine changes should be reported to Customs, but the time when Customs received the initial submission should continue to control measurement of the 24-hour period. This matrix is Enclosure “OCEAN A.”

(f) Perishables. Customs has not yet resolved the issue raised in COAC’s January 24, 2003 report (Issue #18). Customs has agreed to allow a 3% discrepancy in quantity and weight, but no discrepancy in containers. (Frequently Asked Questions #23 posted on the Customs website.) The subcommittee believes that the perishable commodity trade cannot adjust their business processes to comply with the current Rule. We again recommend that additional flexibility be provided for this portion of the trade. We recommend the following for perishable merchandise:

- A discrepancy tolerance of plus or minus 10% for quantities and weight.
- A discrepancy tolerance of overstatements of no more than 5% for containers. All containers actually included in the shipment would be included in the advance cargo manifest data and subject to security screening. There could, however, be containers listed on the advance cargo manifest information that do not actually make the final shipment to the United States.

OUTBOUND

The Trade Act of 2002 requires regulations providing for the transmission to the Customs Service of information pertaining to cargo to be brought into the United States or **to be sent from the United States**, prior to the arrival or departure of the cargo. As noted earlier, the Act also requires that “the requirement to provide particular information shall be imposed on the party most likely to have direct knowledge of that information.”

The subcommittee believes that the existing Automated Export System (AES) is the appropriate vehicle for Customs collection of this data. The existing AES requires exporters to transmit this information via a Shipper's Export Declaration (SED), which includes detailed commodity information on the goods being exported.

The subcommittee recommends that the current exemptions for SED submission continue. I.e., shipments to Canada and shipments valued at less than \$2,500 would not require advance filing. We also recommend that Option 4 allowing post-departure filing be continued. If necessary, from a security perspective, Customs could institute a procedure for requalifying parties for Option 4.

The subcommittee recommends that the filing deadline for export cargo information be 24 hours prior to vessel departure. The subcommittee is also aware that today Customs collects booking data from carriers (72 hours in advance of departure) and manifest information (post departure) from each carrier via AES. We do not see a good rationale for requiring both data requirements to be filed before vessel departure for outbound cargo, especially given that SED information is also provided to Customs. We recommend that carriers not be required to file export manifests before vessel departure if booking data and SEDs provide adequate information for security screening.

CONCLUSION

The difficulties imposed on the trade community by the use and shortcomings of AMS are serious. Failure on the part of Customs to properly address them, including possible reliance on other alternative automated systems and sources of information, could result in a failure going forward to meet the parameters of the Trade Act and to meet our country's security goals.