

## **TRACK C: TRANSBOUNDARY COMPLIANCE AND ENFORCEMENT**

### **COMBATING TRANSBOUNDARY ENVIRONMENTAL CRIME WITH THE HELP OF CUSTOMS' SINGLE WINDOW: EXPERIENCE OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY AS THE U.S. GOVERNMENT DEVELOPS A SINGLE WINDOW FOR TRADE**

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#### **SUMMARY**

The ability of importers to file electronically the information required by Customs and relevant federal agencies through what is called a “single window” offers multiple benefits both to trade and to the agencies. By eliminating the need to provide duplicate information to multiple parties and eliminating paper filing, it simplifies and streamlines the filing process for trade, resulting in lower costs. It speeds the flow of imported goods, improving the profit margin and enhancing just-in-time deliveries. It allows Customs to do more work with fewer resources, supporting an efficient government. Importantly, it allows participating federal agencies to target for, identify and ultimately stop unsafe and illegal imports, resulting in protecting the public and providing a level playing field for compliant importers.

The experiences of the U.S. Environmental Protection Agency (EPA) in working with U.S. Customs and Border Protection and other U.S. Government federal agencies in the development of a single window for trade offer opportunities for sharing and comparing with others the challenges we have encountered, the early successes we have realized, and the expectations we have for the future. The single window application is expected to be adopted by many countries in the years to come.

This article describes the impetus for our participation, the approaches we have taken, and the enforcement outcomes we are already receiving from our work. And while this is a work in progress, as the U.S. Government Automated Commercial Environment system is still being developed, I will share lessons

learned along the way, some of which may be useful to paper-based single window systems as well.

## 1 INTRODUCTION

EPA's statutory authorities cover some of the most hazardous and potentially dangerous commodities manufactured and imported into the U.S, including pesticides and pesticide devices, chemical substances and mixtures, hazardous wastes, and ozone depleting substances.<sup>1</sup> EPA also regulates imports of motor vehicle and non-road engines and equipment and the fuels used to power combustion equipment, as well as regulating the amount of lead in drinking water faucets and pesticide residues on food. EPA's responsibilities for imports are spread across multiple program offices and the enforcement office. Information technology support, particularly as it relates to the integration with Customs' single window Automated Commercial Environment system, is provided by our Office of Environmental Information. With one exception, the program offices are "owners" of the six data systems where reference data is collected and maintained for domestic and imported commodities. The enforcement office relies on this data to support compliance determinations.

Here's an example: EPA's Office of Pesticide Programs collects and maintains data on registered pesticides and registered pesticide producing establishments, consistent with our regulatory authority. Of approximately 13,000 registered establishments, 1,300 are located outside of the U.S. The enforcement office (Office of Enforcement and Compliance Assurance), through our 10 regional offices, processes some 20,000 - 30,000 notices from foreign manufacturers of their intent to ship pesticides into the U.S., shipments worth more than \$1 billion dollars annually. These "notices of arrival" are, with few exceptions, paper.

Each of our 10 regional offices is staffed to process these documents, which requires, among other things, going into the program office database to ensure that both the pesticide and the producer are registered. A signed "notice of arrival" is required to accompany the shipment into the country. Customs and Border Protection responsibilities include representing EPA at the border for pesticides and other commodities for which EPA has statutory authority under joint regulatory authority. Without the paper, Customs and Border Protection cannot allow the pesticides shipment to enter the U.S. A large pesticide producer may be importing pesticides at multiple ports around the U.S. Each shipment may go to a different regional office for processing, depending on location of the port of entry.

## 2 OBSERVATIONS ON OPERATING IN OUR "AS IS" ENVIRONMENT

While the process described in the above example may be cumbersome, it does carry certain benefits. For example, EPA individuals responsible for processing the "notices of arrival" are well trained, able to spot deficiencies in notices and provide personal service to importers and to Customs to address those deficiencies. Staff

recognize when labels are not appropriate to the product being shipped, and are also able to identify for Customs and Border Protection shipments that should be subject to greater scrutiny. At any point in the review process, they can request additional information from the importer to support the “notice of arrival”. Unfortunately, once a “notice of arrival” is processed the copy goes into a file drawer or relies on creation of a separate electronic record by the regional office. Absent a single system, EPA is not able to identify import activity trends involving certain chemicals or importers, share information between regions and with other law enforcement agencies, or even provide basic summaries of activities. Nor is there a reliable system of “closing the loop” between shipments EPA has approved and actual arrivals.

### 3 EPA’S INTRODUCTION TO AND ENTRY INTO “SINGLE WINDOW”

After September 11, 2001, EPA recognized that it needed to strengthen its relationship with Customs and Border Protection. By early 2003, EPA had formed the EPA/Customs Initiative, designed to improve communication and collaboration between our two agencies, and signed a Memorandum of Understanding with Customs and Border Protection to share information. And while the Memorandum of Understanding provided assurances that EPA would be able to receive data from Customs and Border Protection, EPA soon learned that obtaining that data from Customs and Border Protection’s legacy systems required significant extraction and report preparation that Customs and Border Protection did not have the resources to provide. By 2004, EPA began working with Customs and Border Protection and eight other federal agencies to modernize Customs’ legacy data systems into the Automated Commercial Environment.

EPA was also invited to join the Board of Directors of the International Trade Data System. International Trade Data System is not a separate data system; rather, it is the name given to the collection of U.S. Government agencies that are engaged in development of this now government-wide, single window data system.<sup>2</sup> Trade participates with the International Trade Data System group through the Trade Support Network, providing a transparent and vital exchange of information.

Initially, participation in the International Trade Data System was voluntary. Between 2004 and 2006, the number of participating government agencies grew from eight to twenty four. However, with passage of the Safe Port Act in October 2006,<sup>3</sup> every federal agency with import/export responsibilities was required to participate, and International Trade Data System now includes all of the U.S. Government agencies with import or export responsibilities.

In order to build Automated Commercial Environment, Customs and Border Protection was authorized \$3.3 million/year for 10 years, and International Trade Data System was budgeted to receive approximately \$1.7 million/year. The money is used to fund hardware and software purchases, design and build the system, and provide contractor support to assist the federal agencies through the design

phase. Each agency is expected to design and fund its integration with the central government system. Early EPA estimates for integrating all six of our commodity flows with Automated Commercial Environment range as high as \$15 million, which includes upgrading existing systems.

Moving from the early desire to participate in Automated Commercial Environment to where EPA is today has required a large investment of time and effort. From 2004 to 2007 the effort was led by EPA's enforcement program, recognizing that they have the most to gain from a successful integration with Automated Commercial Environment. Until passage of the Safe Port Act in late 2006, and a following Presidential Executive Order<sup>4</sup> in July 2007 mandating that each agency demonstrate that its Chief Information Officer support Automated Commercial Environment integration, the enforcement program faced an uphill battle: it lacked ownership of the data systems that needed to be integrated, it lacked the resources to fund the integration, and it lacked the technical expertise to fully manage the project. The Safe Port Act and the Executive Order provided Office of Environmental Information with the direction it required to take ownership of the integration project and to bring a proven Information technology solution for integrating EPA's data systems with Automated Commercial Environment. It also ensured that the program offices would work together with Office of Enforcement and Compliance Assurance to address a shared mission.

When Office of Environmental Information took over the integration phase, a foundation was in place from which to work. EPA staff had examined every paper form required to import a commodity, and each form's data elements had been built into a Standard Data Set designed by Customs and Border Protection. One activity, which played out over a year's time and consumed enormous staff resources, required EPA to sit around a table with Customs and Border Protection and other federal agencies to hammer out the harmonization of data elements. For example, one agency form might call for "Port of Arrival;" another, "Port Where Shipment Arrives;" yet another, "Arrival Port." All parties then had to agree on a common definition for each accepted data element. Only through this somewhat arduous exercise was Customs and Border Protection able to develop a manageable set of data elements it could then map back to each federal agency requiring that data set.

There were many such exercises, including how our individual agency data standards harmonized with the standard data set, with The United Nations Centre for Trade Facilitation and Electronic Business and the World Customs Organization standards. Of particular concern was how our commodity product codes, or lack thereof, would work with Customs and Border Protection's Harmonized Tariff System to ensure commodity identification in Automated Commercial Environment. For example, a single harmonized tariff code might cover more than 100 chemicals on EPA's Toxic Substances Control Act chemical inventory. This could range from fairly innocuous chemicals to chemicals of real concern. Each of the chemicals regulated under the Toxic Substances Control

Act is identified by a unique Chemical Abstract Service number, and only those chemicals on the inventory are legal for import into the U.S. An appropriate approach to commodity codes is still being worked out.

#### **4 EPA'S VISION OF A "TO BE" ENVIRONMENT UNDER THE SINGLE WINDOW**

Since 2005, EPA staff has been creating a Concept of Operations document to help Customs understand what our business and Information technology operations are now and how Information technology operations will be used in a single window system. This "as is" and "to be" examination of import programs is the primary planning tool for Automated Commercial Environment integration. The format for the Concept of Operations is identical for every participating agency. Concept of Operations, in conjunction with a related Memorandum of Understanding, will provide the framework for EPA's future work. Both documents are subject to significant negotiation with Customs and Border Protection -- for Information technology, for business operations, and from a legal perspective.

An important function of the Concept of Operations is to identify areas where EPA may lack existing authorities to gather information and look for ways to maximize the information to which we are entitled through Automated Commercial Environment. In some cases, where new authorities may not be forthcoming, this may be addressed by creating Memorandums of Understanding with other agencies for sharing information. For example, it is possible that the U.S. Department of Transportation may receive information about hazardous waste shipments that could be shared with EPA, or vice versa.

Leveraging Automated Commercial Environment to the fullest extent is important, since Customs' vision is that Automated Commercial Environment will enable agencies to assume much of the burden that has historically fallen to Customs and Border Protection for identifying noncompliant imports. This shift in responsibilities can be significant and presents EPA with an unfunded mandate. It also requires of EPA a level of expertise and resource commitment currently lacking. Therefore, each step of the process has to be carefully considered.

EPA currently envisions a three-part plan for Automated Commercial Environment integration: (1) re-engineer our business processes and operations, where we work with Customs and Border Protection to identify opportunities to eliminate redundancies and accelerate our collective business process; (2) upgrade and modernize our existing EPA data systems that collect and exchange trade data so that they can support electronic forms, automated transactions, and provide EPA's data to Customs officials when and where they need it; and (3) leverage EPA's existing environmental data exchange infrastructure/technology. Step 3, utilizing EPA's Exchange Network and the Central Data Exchange, is the cornerstone of EPA's "to be" vision.

In production for more than four years, Central Data Exchange is the system that enables States to report water and air quality data and other information vital to EPA; it allows EPA to provide toxic release inventory data submissions and other data to States; it allows States to exchange data with one another, including homeland security and hazardous waste transporter data, among other functions. All 50 U.S. States and many tribes use Central Data Exchange to file their environmental reports. Importantly, as the central point through which environmental data enters EPA, it provides important functions that will serve EPA well with Automated Commercial Environment, including user registration, authentication, and enhanced security, translation, and data validation. It is through Automated Commercial Environment and the Exchange Network that Automated Commercial Environment will connect to EPA's backend, or reference systems. EPA will test two of its systems, for ozone depleting substances and for toxic chemicals in 2008, and anticipates data flows for these two commodity lines in early 2009.

At the same time the Information technology work is moving forward, EPA staff are going through each step of the operations for each commodity area, determining how operations can be refined to create clearer roles and responsibilities between EPA and Customs and how they can best take advantage of new technologies and infrastructure. We are working to balance the information we need to do our job with the information to which we are legally entitled. As powerful a tool as Automated Commercial Environment may be, it cannot provide us with data for which we lack regulatory authority. Automated Commercial Environment can decrement for us actual hazardous waste shipments against those we have agreed to accept, but we must establish a linkage for that to occur. New rulemaking for electronic filing must be written; staff must be trained. Importantly, we must prepare ourselves that we may soon experience something analogous to drinking from a fire hose. We began this endeavor in 2003 with almost no data from Customs and Border Protection; managing the future will require our best efforts to stay on top of voluminous data.

## **5 MEASURING OUR SUCCESS, LEARNING TO MANAGE THE FUTURE**

Over the past few years, EPA has seen a surge in the number of motor vehicles, motor vehicle engines, and non-road equipment, such as tractors, lawn mowers, generators and other small engines imported into the United States. Many of these products are not certified to meet EPA's air pollution standards under the Clean Air Act. EPA has also identified noncompliant imports of highly toxic pesticides, registered for agricultural use only, that have been used in homes, including naphthalene mothballs, insecticidal chalk, roach killers, mosquito coils, and rat poisons. Managing this increasing threat from illegal and unsafe imports is one of our enforcement priorities.

In 2005, Customs and Border Protection migrated data it was collecting on entered imports onto the early Automated Commercial Environment platform,

and allowed access to participating government agencies, providing individuals held appropriate security clearances and observed strict precautions. Accessing Customs data was an important step for EPA, allowing for an opportunity to work with Customs data for the first time. Six individuals underwent full field background investigations and training, and have steadily enhanced EPA's ability to use the data for identifying noncompliant shipments. In some cases, EPA has determined that importers have reported information on ozone depleting substance imports to Customs different from what they are reporting to EPA; that Toxic Substances Control Act certifications being submitted to Customs by some importers or Customs brokers, working in conjunction with or under contract with the Importer of Record, lack factual verification as to Toxic Substances Control Act compliance, as well as identifying other areas of noncompliance. In addition to the enforcement actions EPA is taking, these early successes are helping us refine our targeting efforts and our outreach to importers and Customs brokers.

## 6 CONCLUSION

Participating in a single window system promises significant benefits for agencies, as well as for trade. Costs will vary depending on design and other choices made during the process, and a carefully-crafted plan of operations, while critical, is not enough. The program must be affordable, able to be implemented and measured, and have the support of agency managers. Further, it is clear to EPA, based on experience to date, that all parties will benefit from coming to the multi-agency table early and advocating for our specific interests throughout the design and build process.

EPA has learned that the integration process is complicated by the range of regulatory authorities and EPA's "stove-piped" organizational structure. EPA has also learned that absent a mandatory requirement for government-wide participation, a fully successful outcome is far more difficult to achieve.

EPA's earlier efforts to partner with Customs are paying off in developing operational plans related to Automated Commercial Environment integration, as each agency better understands how we can build and then implement a system that supports our shared and critical mission of protecting the people of the United States from unsafe and illegal imports.

Ultimately, as governments adopt the single window application around the world, we will need to establish standards that enable multiple single window systems to communicate data with each other in a secure manner.

## 7 REFERENCES

<sup>1</sup> Toxic Substances Control Act; 40 CFR Subchapter R, and part 707.20 and 19 CFR Sections 12.118-12.127 and 127.28(i); Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); Federal Food, Drug and Cosmetic Act (FFDCA), 40 CFR

Subchapter E, and 19 CFR sections 12.1 and 12.110 – 12.117; Resource Conservation and Recovery Act (RCRA) Subtitle C, 40 CFR sections 262-265; Clean Air Act (CAA) section 203, 4- CFR parts 85-94 and 1039 – 1068; CAA section 211, 40 CFR part 79-80; CAA, Title VI, 40 CFR part 82. Available at <http://www.epa.gov> and <http://www.cbp.gov>.

<sup>2</sup> International Trade Data System Report to Congress, November 2007. Available at <http://www.itds.gov>.

<sup>3</sup> Security and Accountability for Every (SAFE) Port Act of 2006, (P.L. 109-347), section 405.

<sup>4</sup> Executive Order 13439, Establishing an Interagency Working Group on Import Safety, July 18, 2007. Available at <http://www.importsafety.gov>.

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