

ENVIRONMENTAL PROTECTION THROUGH BORDER PROTECTION

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SUMMARY

The U.S. Environmental Protection Agency's (EPA) mission is to protect human health and the environment; this includes responsibilities for the safety of imported commodities. EPA regulates products ranging from pesticides to vehicles, and takes action when imports are not in compliance with environmental laws. In addition, EPA collaborates with other agencies and stakeholders to identify and prevent noncompliance in imported merchandise. This paper discusses the role of EPA's enforcement program with regard to illegal imports, and presents as a case study EPA's coordination with U.S. Customs and Border Protection Patrol (Customs) to identify more effectively imports that violate U.S. Clean Air Act standards; one example of this collaboration is in the importation of uncertified vehicles and engines into the United States.

1 INTRODUCTION AND BACKGROUND

EPA statutes such as the Clean Air Act the Federal Insecticide, Fungicide, and Rodenticide Act, the Resource Conservation and Recovery Act, and the Toxic Substances Control Act all contain restrictions on imports and exports. These statutes cover some of the most hazardous commodities imported into the United States. EPA applies its regulatory authorities to evaluate and control the potential risks of new products before they are manufactured or imported and takes enforcement actions when these commodities are in violation of environmental regulations.

Events in 2007, such as the lead-contaminated toy recalls that occurred over the winter holidays and the recall of more than 5,300 melamine-laced pet food products, have resulted in heightened interest in what the U.S. government is doing to safeguard the health of its citizens with regard to imported consumer

products.¹ This concern over import safety has been the subject of numerous articles in the press, as well as Congressional inquiries, and has led some to reflect on how government resources can be used most effectively in this area.

In July of 2007, President Bush signed Executive Order 13439 establishing an Interagency Working Group on Import Safety. This Working Group consists of over ten government agencies including EPA and the Departments of Health and Human Services, Homeland Security, State, Treasury, Justice, Agriculture, and Transportation. The wide range of agencies involved in this Working Group illustrates the breadth of import issues and the depth of expertise and experience necessary to address them. The establishment of this Working Group also emphasizes the need for interagency collaboration to effectively regulate imports, a strategy already in use by EPA's Office of Enforcement and Compliance Assurance (OECA).

This paper will describe the many ways in which EPA has adapted its traditional enforcement activities to address the challenges of monitoring, assessing, and enforcing violations as they occur in the importation of products into the United States. EPA has progressed, in recent years, from a rote case-by-case enforcement approach to a multifaceted strategy for environmental protection based on compliance assistance, outreach, targeted inspections, self-disclosures, and cooperative efforts with other U.S. regulatory agencies and foreign governments.

2 COLLABORATION AS PART OF EPA'S ENFORCEMENT AND COMPLIANCE ACTIVITY RELATED TO ILLEGAL IMPORTS

EPA's enforcement program is addressing the problem of illegal imports on two fronts: enforcement and outreach. EPA takes enforcement actions, often in cooperation with Customs, against importers of goods that do not comply with environmental laws. With respect to outreach, EPA is working with importers and manufacturers, other U.S. agencies, foreign governments, and other stakeholders to stem the importation of unsafe products upon entry into the United States. EPA and the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (AQSIQ) signed a Memorandum of Understanding in fall of 2007 to facilitate cooperation on environmental compliance. EPA's enforcement program also works with environmental and enforcement agencies in Canada and Mexico to determine how information about noncompliant or suspect imports can be shared appropriately between countries.

This collaborative approach is critical to addressing the challenges of import safety and, at the same time, protecting the environment. For example, some of EPA's challenges in enforcing the Clean Air Act with regard to consumer products originate from the fact that EPA's regulations limit liability to the importer of the illegal goods, not the foreign manufacturer of the product or the retailer selling the illegal product. Another complicating factor is the prevalence of small business importers, who are often unaware of the environmental regulations that apply to

their goods. Lastly, the volume of imported goods has increased steadily over time, leading to more opportunities for noncompliant imports.

3 RECENT SURGE IN CLEAN AIR ACT VIOLATIONS IN IMPORTED PRODUCTS

The most numerous Clean Air Act violations caused by imported goods involve mobile sources or devices containing ozone-depleting substances, usually chlorofluorocarbons (CFCs). EPA has pursued dozens of actions over the past few years to address these violations and to control the air pollution caused from the violations. Consistent with the Clean Air Act and U.S. obligations under the Montreal Protocol on Ozone-Depleting Substances, EPA takes action against release of substances that harm human health and the environment by depleting ozone in the upper atmosphere. This includes enforcement against persons who continue to sell and distribute banned ozone-depleting substances, such as CFCs, formerly used as refrigerants.

In the last few years, EPA has noticed a surge in the number of illegal motor vehicles, motor vehicle engines, and nonroad equipment, such as tractors, lawn mowers, generators, and other small engines imported into the United States. EPA requires the certification and testing of these products. Certified engines and vehicles must also bear permanent emission labels that identify these products as certified.

A large portion of the imported engines that have been inspected by Customs are not certified to meet EPA air pollution standards under the Clean Air Act. Uncertified engines can emit air pollutants at levels as much as 30 percent above EPA standards. This is of concern because roughly half the air pollution in the United States is caused by on-road and off-road mobile sources, thereby increasing the risk of respiratory illness and other adverse health effects.

4 OUTREACH ON VEHICLES AND ENGINES

Outreach is an essential component of EPA's air enforcement strategy for illegal vehicle and engine imports. EPA publishes "Enforcement Alert" newsletters to inform the public and those regulated by environmental laws about important environmental enforcement issues, recent trends, and significant enforcement actions. The information in these newsletters should help the regulated community comply with environmental laws and applicable regulations. Each issue also provides readers with links to relevant EPA websites and other resources to learn more about the laws and regulations and how to comply with them. EPA's September 2006 Enforcement Alert described standards for nonroad engines.²

There are other sources of information for importers. For example, EPA supports an imports hotline, which provides telephone assistance on how to legally import goods into the United States. EPA also encourages companies to self-disclose

violations. In cases where a company discovers a violation, promptly discloses the violation to EPA, and expeditiously corrects the violation, the company may be eligible for penalty mitigation under EPA's "Audit Policy."

In 1996, EPA and Customs signed a Memorandum of Understanding to formalize cooperative nonroad engine and motor vehicle enforcement activities. Customs also adopted regulations corresponding to EPA's at Title 19 Code of Federal Regulations (C.F.R.) Parts 12.73 and 12.74. In addition, a Protocol signed by the two agencies in 2000 establishes specific procedures for examining and processing nonroad engines, and specifies the information that Customs may share with EPA on these cases.

Given the fact that the commodities being imported are often not obviously non-compliant, EPA routinely conducts several inspector training sessions for various Customs ports each year. In the last two years, EPA has held ten training sessions on different kinds of vehicle and engine violations for both Customs employees and import brokers, in locations ranging between Orlando, Florida, and Oakland, California. EPA also plans to expand the available training opportunities for Customs staff and import brokers by developing online modules that provide information on regulated equipment, specifically mobile source case development and enforcement.

In addition to working with Customs, EPA maintains a tips database and tip hotline, where anyone can report an environmental violation. This service is often used by competitors who are marketing similar products and have inside information about violations that might not be readily apparent at the border.³

Once their products are seized at one port, importers often change the port of entry for subsequent shipments. To catch any subsequent violations, communication between ports, as well as between EPA and Customs, needs to be operating at a high level of efficiency. EPA has access to Customs' Automated Commercial Environment (ACE) database, and frequently works with Customs headquarters to enter "criteria" into their system in order to target specific importers or specific types of goods for inspection.

The cases this year have reflected the continued increase in imports from China which began in fall 2004. Initially the majority of import violations concerned engines that had not been certified. Recently, many more manufacturers have obtained certification. EPA's mobile air enforcement program interprets this trend as a sign that its efforts in the enforcement arena are beginning to take effect. However, now the nature of the violations has shifted to engines that are missing the required emissions controls, do not bear the proper emissions labels, and/or do not meet emission standards over the full regulatory life of the equipment. Although manufacturers cannot be directly held accountable by EPA, EPA's outreach to agencies such as the AQSIQ of the People's Republic of China and the Memorandum of Understanding signed in fall of 2007 specifically address

prevention of the manufacture and importation of noncompliant gasoline and diesel engines through a variety of information exchange programs.

5 ENFORCEMENT ON VEHICLES AND ENGINES

Over the past 18 months, EPA has administratively settled 58 cases concerning approximately 48,000 illegal importations of motorcycles, automobiles, generators, tractors, and construction equipment. The sum of the penalties paid to settle these administrative cases has totaled nearly \$2.4 million. This number does not include the U.S. Customs civil penalties, the storage fees, the cost of exporting the illegal equipment or correcting the violations, and the cost of implementing a compliance plan. The majority of the violators are small businesses. Due to the fact that these violations are usually their first, they are given a reduced penalty.

EPA's penalty is an important deterrent, because noncompliant imports can often be cheaper than legal alternatives. According to Clean Air Act Section 205, EPA is required to take into account the gravity of the violation, the economic benefit or savings, the size of the violator's business, the violator's history of compliance, any action taken to remedy the violation, and the violator's ability to pay when determining the amount of civil penalty. The statutory maximum penalty for illegally importing an engine or vehicle is currently \$32,500 per engine.

In addition to the cases led by EPA, Customs has initiated about 68 separate actions against importers of nonroad engines and vehicles with assistance from EPA in the past 18 months. Every settlement agreement signed by EPA in recent years is available on EPA's website; public access to this information also serves as a deterrent.

To supplement information received from Customs, EPA's mobile source air enforcement program may invoke its Clean Air Act Section 208 information request authority to inquire about importers' past activities. In this way, EPA can resolve current and past environmental infractions at the same time.

In order to address the difficulties of enforcing against companies who have no U.S. presence, EPA has explored several ways of working outside the U.S. to stop the flow of illegal imports. Some EPA permits and licenses (such as EPA certificates of conformity) can be withdrawn when the foreign factory refuses entry to an EPA inspector. Withdrawal of the license effectively stops the foreign company's ability to export to the U.S. In addition, the country in which the company is located may have its own laws against criminal or otherwise illegal actions committed by the company. A domestic enforcement action may curtail the company's business activities, thus illustrating the necessity of coordination between EPA and the environmental regulatory agency in the foreign country.

The focus of this paper has been EPA's efforts with regard to illegal imports; however one country's imports are another country's exports. All U.S. environmental statutes contain bans on U.S. exports that do not comply with

international laws or the laws of other sovereign nations. For instance, U.S. nonroad engine exports must meet the emission standards of the country to which they are being exported. Another example is the prohibition on the exportation of hazardous waste in violation of foreign laws.

6 MOVING THE PROGRAM FORWARD

This year EPA intends to focus on emissions compliance testing over paper-based compliance evaluations in its mobile source enforcement program. This is in response to the observed shift in violation type from uncertified engines to engines that do not conform to certified specifications.

EPA will continue to explore new enforcement strategies to leverage scarce resources while striving to ensure safe imports of products from the U.S. U.S. Customs is redesigning its data systems and EPA is involved step-by-step to ensure EPA enforcement needs are met. EPA enforcement is involved in all aspects of rule-making to enhance enforcement where permitted by law, and with efforts to change the law where necessary to fill enforcement loopholes.

EPA would like to eventually move toward the development of clean air regulations that place responsibility on retailers of noncompliant commodities, in addition to importers of these goods. In addition, future rulemaking could include broadly interpreting the causation of prohibited acts and requiring bonding to cover post-certification responsibilities such as recall and warranty.

7 CONCLUSION

EPA enforcement against illegal imports relies on traditional approaches such as inspection and legal action, as well as more innovative approaches such as interagency cooperation, outreach to stakeholders, and foreign cooperative agreements. This multifaceted approach has been applied to the case study of the illegal importation of motor vehicles and engines.

EPA management and staff continue to learn about new ways to improve outreach and enforcement. While EPA has benefited from working with many partners on monitoring, assessing, preventing, and enforcing violations at the U.S. border, EPA's partners have also benefited from working with EPA. EPA is committed to working to ensure that U.S. exports are compliant with international environmental laws. This type of mutually beneficial arrangement is of key importance to the success and sustainability of interagency partnerships.

This paper has described how EPA fulfills its mission to protect human health and the environment by promoting the safety of imported products. As demonstrated by its accomplishments, EPA's multi-faceted, multi-partner approach is versatile enough to address the myriad types of environmental noncompliance found at the ports of the country that is the world's largest importer.

8 REFERENCES

¹ See U.S. Consumer Product Safety Commission, *December 2007 Recalls and Product Safety News*, <http://www.cpsc.gov/cpscpub/prerel/prereldec07.html>.

² See *EPA Enforcing Stringent Standards for All Nonroad Engines*, EPA Enforcement Alert (Sept. 2006), <http://www.epa.gov/compliance/resources/newsletters/civil/enfalert/nonroadengines-0609.pdf>.

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