



**DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE**

PORT OF CHICAGO PIPELINE

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TO : Customhouse Brokers, Importers and Others Concerned

SUBJECT: Customs Informed Compliance Strategy

The attached document, Customs Informed Compliance Strategy, was developed as a joint effort by the Office of Investigations, the Office of Information and Technology, the Office of Regulations and Rulings, the Office of Strategic Trade, and the Office of Field Operations.

The purpose of the paper is, as stated in the first paragraph, "To communicate to Customs officers and the trade, the strategy and processes involved in maximizing trade compliance through an informed compliance program that supports and promotes the use of reasonable care by all who do business with Customs."

This document is intended to provide you with guidance and information and to delineate the roles and interactions of Customs and the trade community.

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Port Director

I. Purpose

To communicate to Customs officers and the trade, the strategy and processes involved in maximizing trade compliance through an informed compliance program that supports and promotes the use of reasonable care by all who do business with Customs.

II. Definition of Informed Compliance

A shared responsibility wherein the Customs Service effectively communicates its requirements to the trade, and the people and businesses subject to those requirements conduct their regulated activities in conformance with U.S. laws and regulations.

III. Environment

The Customs strategy for maximizing informed compliance must be understood and developed from the perspective of the wide spectrum of factors that effectively establish "the environment." These include:

A. Trade Complexity: The North American Free Trade Agreement (NAFTA) and the Uruguay Round of General Agreement on Tariff and Trade (GATT) are examples of recent treaties designed to promote international trade. Each has introduced change to international trade practices and complexity to the lives of traders who must learn and abide by the terms governing the reduced duty conditions of the agreements. Certainly, similar, and equally complex, international agreements will follow.

B. Workload Challenge: Customs expects to have to continue its reliance on a static work-force for handling an increasing workload in the foreseeable future. From the period 1993 to the 1999, it is projected that the duty collected by Customs will increase from \$18 billion to \$31 billion, the volume of imports into the United States will increase from \$575 billion to \$1.4 trillion, and the number of entries will increase similarly. Despite these workload factors, Customs resource levels are expected to remain static, at best.

C. Modernization Act: The Customs Modernization Act (Mod Act) provisions of the NAFTA Implementation Act of 1993, assign Customs the responsibility for clearly defining and communicating the responsibilities of the trade community. It also requires that the trade community act with reasonable care in meeting those responsibilities. New systems, programs, procedures, processes and regulations made possible by the Mod Act will continue to evolve and change the way Customs business is conducted.

D. Customs Organizational Structure: Customs reorganization has created an environment that is designed to promote trade compliance. Customs new structure streamlines communication between headquarters and the field, provides a mechanism to prioritize trade issues, creates a direct line of authority for addressing trade matters that are national in scope, and promotes the initiative and empowerment of field managers on trade compliance concerns directly related to a local environment.

E. Composition of Trade Community: During 1994, the Customs Service cleared shipments for more than 318,000 commercial importers, 350 of whom accounted for more than half of all import value. Equally significant is the fact that 61 percent of all import value was attributable to the top 1,000 importers. Since most import activity is clearly attributable to a relatively small group of importers, a strategic approach to informed compliance that takes that demographic into account should produce the greatest benefits for the Customs Service and those it serves.

F. Current Compliance: Based on the results of Customs Fiscal Year (FY) 1995 baseline compliance measurement, 81 percent of all import transactions are currently in compliance with U.S. trade laws. Customs is committed to using compliance measurement data as the foundation upon which operational programs will be built to maximize trade compliance, particularly in areas that are of a strategic concern. While Customs is dedicated to raising the overall trade compliance rate, the FY-95 measurement indicates that some of the most critical trade issues are currently highly compliant. For example, only a trace of imports suspected of being manufactured by forced prison labor exists, and while there was some detection of intellectual property rights violations, the occurrences were not widespread. Likewise, there were instances of importations of restricted merchandise and imports with health and safety concerns, but statistically, they are occurring in a minuscule percentage of importations. Similarly, the FY-95 measurement shows that more than 99% of all revenue due the government is being collected.

This does not mean that violations in these highly compliant areas do not pose enforcement concerns. Any import violation is of concern, particularly if it involves key industries or the health and safety of the American public. The high compliance rates that have been established in certain areas does indicate, however, that Customs has been successful in controlling the borders in some of the most significant areas entrusted to our agency. Customs will continue to devote the resources required to inform the trade of its regulatory responsibilities and to ensure compliance, particularly in critical trade areas.

IV. Goals

Given the environmental factors noted above, it is the goal of the Customs Service to use all tools and resources available to accomplish the following by 1999:

- o attain a 90% overall trade compliance rate, by developing plans to establish immediate, consistent, and sustainable improvement annually;
- o attain a 95% compliance rate for each industry identified as "primary focus", achieving immediate, consistent, and sustainable improvement annually; and
- o maintain a collection rate of at least 99% of the revenue that is due the government.

V. Strategies

A. Trade Compliance Process Redesign

Recognizing the impact of a rapidly changing environment on its ability to successfully

perform its mission of achieving maximum compliance with U.S. trade laws, Customs has begun a major redesign of its Trade Compliance process. As one of Customs three "core processes" (along with Outbound Compliance and Passenger Clearance), the Trade Compliance process is being redesigned using established business process re-engineering tools and methodologies focussing on effectiveness, efficiency and customer service.

Within its Trade Compliance redesign, Customs has developed two complementary means for ensuring that importers, Customs brokers, carriers, and other members of the international trade community comply with U.S. trade laws:

- o informed, voluntary compliance; and
- o enforced compliance.

Informed, voluntary compliance, as envisioned by the Mod Act, is the preferable approach to trade compliance. When voluntary compliance is not achieved, however, enforced compliance actions will be taken by Customs against those members of the trade who have not exercised reasonable care.

To facilitate its informed compliance efforts, Customs is shifting its focus from a transaction-based operation to account-based processing. Accounts are defined as every person or firm with whom Customs does business, or in whom Customs has an interest related to trade compliance. This includes all relevant business entities such as importers, carriers, brokers, manufacturers, warehouse proprietors, and sureties.

In support of this change in focus, National Import Specialists, while continuing to issue transaction-based rulings, will develop general informed compliance information for distribution in a variety of media. Field Import Specialists and Entry Specialists, under the direction of Customs new port-based Trade Compliance Process Owners will offer educational training to accounts through informed compliance activities such as pre-importation reviews, importer premises visits, local seminars, and other informational initiatives. Customs attorneys will work with all Customs account servicing personnel to address uniformity issues and to identify when rulings (including internal advice rulings) are needed to promote the informed compliance process. Finally, but very significantly, to effectively coordinate its informed compliance energies with selected accounts, the Customs Service has created the new position of "account manager". Customs national account managers will be assigned by Customs Headquarters to work with certain "high volume" accounts and with other Customs disciplines to identify areas of non-compliance within a company's operation, and to develop mutually beneficial strategies to establish and maintain high levels of trade compliance by the account. Port Trade Compliance Process Owners will utilize local commodity specialist teams for informed compliance techniques that will maximize trade compliance among designated accounts.

Whether assigned an account manager or not, however, an importer's activities will be consistently analyzed at industry, account, and transaction levels to identify trends, patterns, and anomalies which represent potential problems. While suspected areas of non-compliance will be targeted for compliance reviews, standardized verification procedures will promote the uniform

and expeditious treatment of cargo, with minimal intrusion by Customs to validate compliance, detect trade violations, and interdict contraband.

The nature, scope, and impact of non-compliance will be evaluated in the context of the involved account's overall compliance history. Non-enforcement actions, such as increased outreach, education, and counseling of the account will be employed by Customs to address instances of non-compliance when an account has not demonstrated a failure to apply reasonable care. Enforcement actions, such as seizure, investigation, and penalties will be reserved for those instances when an account has failed to live up to its obligation of using reasonable care or where necessary to prevent or penalize the introduction of restricted or prohibited goods into commerce. Both non-enforcement and enforcement responses to non-compliance will be designed to remedy past violations and promote future compliance.

B. Trade Enforcement Plan

Annually, Customs issues a Trade Enforcement Plan (TEP), developed by the Office of Strategic Trade, in concert with the Offices of Field Operations and Investigations. The plan assesses the principal threats to compliance with U.S. trade laws, develops a coordinated Customs approach to confront those high impact national threats, and defines intra-agency responsibilities and time lines for accomplishing Customs goals.

The five components of Customs annual TEP are described below.

Compliance Measurement

The statistically valid Compliance Measurement (CM) system was brought to full utilization in FY-95 and produced a full one-year baseline compliance level for each of the 1,249 4-digit Harmonized Tariff numbers. The data derived from this CM application is proving essential in developing sophisticated trade compliance approaches, including the stratification of commodities for informed compliance purposes (see Section VI-D).

Compliance Assessments

A compliance assessment is the first phase of a Customs audit. During this initial phase, Customs officers, including auditors and import specialists, review, examine, and test samples of an account's documentation, internal controls, operations, and procedures to determine whether information submitted or required is accurate, complete, and in accordance with laws and regulations administered by the Customs Service. Whether or not Customs decides to expand a compliance assessment into a complete audit, compliance assessments are useful trade compliance tools in that they may identify for Customs and the trade specific areas requiring improvement by companies who have demonstrated either clear instances of non-compliance, or inadequate internal controls.

Trade Interventions

The Office of Strategic Trade, in concert with the Offices of Field Operations and

Investigations, develops, executes, and evaluates what have been termed "trade interventions". The

intervention or "problem solving" process applies targeting and analysis methodologies to emerging trade issues. This process is primarily designed to raise the level of compliance within the "Primary Focus" industries (see Section VI-D). Further, trade interventions involve analyzing and evaluating compliance measurement and compliance assessment results to remeasure identified areas of non-compliance to ensure that an account's performance has improved.

Sustained Customer Interactions

Customs plans to improve trade compliance by assuring that all significant information sources are effectively available to its "customers" in the trade. By working more closely with members of the trade to establish a better exchange of information, Customs hopes to maximize trade compliance and to effectually establish this informed compliance component of its annual enforcement plan.

Investigations

Defining the scope of the Investigations portion of its annual plan presents some difficulties for Customs, inasmuch as the investigative function generally begins subsequent to the detection or suspicion of a violation. Therefore, a normal lag-time exists between the actions of other Customs functions such as examinations, interventions, or audits, and the beginning of an investigation. Nonetheless, as part of every annual TEP, Customs plans on dedicating investigative resources to critical areas of concern, as determined by the findings of earlier trade compliance initiatives.

The TEP is designed to use enforcement activities to address suspected major violations of U.S. trade laws, and to inform the international trade community of its responsibilities in complying with key trade laws, particularly those that impact "primary focus" industries. As such, the plan helps Customs to focus its informed compliance priorities. The outcomes of TEP activities provide valuable information to Customs Headquarters management, to account managers, and to port Trade Compliance Process Owners for use in assessing importer performance to determine the degree to which future informed or enforced compliance activities are in order.

VI. Methodology

A. A Top-Down/Bottom-Up Approach

Customs reorganization promotes both a "top down" (headquarters communicating to the field) and a "bottom up" (field offices to headquarters) approach to informed compliance. This new organizational structure is designed to streamline communication between headquarters and the field, provide a mechanism to prioritize trade issues, create a direct line of authority for addressing trade concerns that are national in scope, and promote the initiative and empowerment of field managers on trade compliance matters directly related to a local environment.

With respect to conducting an effective informed compliance program, Customs Headquarters will:

- o establish and communicate Customs overall informed compliance policy, strategic priorities and national goals;
- o develop a national program to attain those goals;
- o provide the field with key compliance data such as the results of compliance measurement and the tools and training necessary to access, manipulate, and evaluate data related to both local and national informed compliance initiatives;
- o ensure effective coordination among field offices in promoting and implementing a uniform and productive informed compliance program; and
- o act as a clearinghouse for the results of local activities by evaluating, coordinating and disseminating information nationwide.

To meet their informed compliance responsibilities, field offices will:

- o execute the national program;
- o develop and implement a local informed compliance program, the design of which may include multi-discipline port compliance teams. In those cases, team members, based on their own unique knowledge of the local trade environment, will work together and with their associates at "sister" ports to:
 - o conduct analyses and evaluations of localized trade conditions by industry, commodity, and importer; and
 - o target and resolve localized problem areas by:
 - o conducting remedial programs with the trade, as appropriate,
 - o monitoring and evaluating the results of remediation, and
 - o initiating appropriate enforcement actions if non-compliance persists.

Finally, field offices will

- o furnish Headquarters with the results of local activities to determine national applicability, and the possible modification of national plans.

B. Information Programs

To meet its informed compliance responsibilities, Customs is committed to ensuring that

all parties involved in importing have timely access to needed tools and reliable advice. To meet that commitment, Customs intends to enhance its existing information programs and to develop a new "Targeted Information Program."

Basic Information Program

Customs' "Basic Information Program" is intended for all parties involved in importing. Using this program, Customs will:

- o continue to issue binding rulings within 30 days of request (120 days if the issue must be referred to a Customs attorney);
- o develop "draft" regulatory documents and give the trade an opportunity to comment by posting these documents on Customs Electronic Bulletin Board;
- o establish an extensive outreach program to educate the trade in Mod Act responsibilities;
- o establish a Customs Web Server for disseminating Customs information via the Internet; and
- o conduct internal seminars designed to increase internal Customs knowledge and promote uniformity.

In addition, Customs is pursuing the possibility of making CD-ROM disks available to the public, at a nominal fee. Among the types of information being considered for distribution via CD-ROM are:

- o Customs Bulletins;
- o Customs rulings and decisions;
- o Customs information notices, directives and delegation orders;
- o Customs Intellectual Property Rights issuances and recordation;
- o Customs Valuation Encyclopedia;
- o Chapter 19 of the Code of Federal Regulations;
- o the Harmonized Tariff Schedules;
- o federal laws relating to international trade compliance (including GATT and NAFTA); and
- o other informed compliance publications.

Targeted Information Program

Customs Targeted Information Program is intended to provide information and assistance over and above that which will be supplied in the Basic Information Program. On an as needed basis, the targeted program will address industries and trade segments (including importers and/or foreign suppliers) which may require special efforts to close compliance gaps or to correct patterns of non-compliance. The targeted information program may also be used by Customs

when new operational procedures, or procedural changes, have a potentially negative impact on compliance, by engendering complex regulations for the trade.

Customs targeted information program will utilize a variety of tools, such as:

- o Industry and/or commodity specific publications;
- o Video conferences;
- o Satellite broadcasts;
- o Video tapes;
- o Seminars;
- o Industry association sponsored meetings;
- o Importer visits; and
- o Pre-importation reviews (which are being reassessed in light of compliance assessments and the Trade Compliance redesign).

C. Stratification by Account

Stratification by account recognizes the environmental composition of the trade community wherein importers (accounts) generally can be categorized into three levels of import activity:

- o high volume accounts;
- o medium volume accounts; and
- o low volume accounts.

This natural stratification promotes Customs prioritization of work, and its allocation of scarce resources, by providing the opportunity to apply alternative approaches to informed compliance according to an importer's impact on the national trade compliance rate.

High Volume Accounts

As noted earlier in this document, relatively few importers account for a majority of all import transactions. In recognition of their profound influence on the success of its Trade Compliance program, Customs plans on devoting a significant portion of its informed compliance resources to work with these "high volume" accounts.

As part of this account-based approach, Customs may incrementally assign national account managers to work with those importers who are in the top tier of companies, by import value. Among these high volume companies, Customs will allocate account managers, on a priority basis, to those that are heavily involved in what the Service has designated as "primary focus" industries. For FY-96, the Customs Trade Enforcement Plan has denoted eight industries as "primary focus", and they are listed in Section VI-D of this document.

Account managers appointed to high volume companies will receive the full spectrum of basic and targeted information tools to work with their accounts to achieve the highest possible level of compliance. Compliance assessments, focused compliance measurements, and analyses

of the account's import trends, will all be factors in determining the approach that an account manager

will take with a company.

The primary responsibility of the account manager will be to ensure that the assigned account is fully aware of its reasonable care responsibilities, and to the extent possible, to work with the account to ensure maximum compliance in a cost effective manner. Account managers will utilize the talents of Customs subject matter experts to help resolve operational problems and to promote compliance in all trade activities involving their accounts.

From a practical standpoint, however, not all high volume accounts will receive the immediate assignment of a Customs account manager. Nonetheless, by virtue of their considerable involvement in the import process, all high volume accounts are expected to develop the capabilities needed to adhere to the legal and regulatory requirements of importing.

Mid-Level Accounts

Companies designated as "mid-level" will also be part of Customs account-based approach to informed compliance. Due to their significant impact on Customs workload, on the national compliance rate, and on the effectiveness of critical trade programs, mid-level accounts are expected to demonstrate a high level of performance in complying with our nation's trade laws. Whenever necessary, mid-level accounts will be targeted by Trade Compliance Process Owners at the port level to ensure trade compliance.

Although this port-level approach to informed compliance will be carried out by Customs field officers who will retain many of their current responsibilities, the effort will be coordinated by Customs headquarters to ensure an integrated, national approach to the compliance issues involving mid-level companies.

In a manner similar to that used with national account managers and their high volume accounts, the Offices of Strategic Trade and Field Operations will provide local field personnel with the information and tools necessary to address informed compliance issues associated with each "mid-level" account. As part of that effort, port process owners will receive automated data reports that will enable them to coordinate their informed compliance efforts with other key ports through which each "mid-level" account imports.

Additionally, port process owners will rely on their own staff of operational analysis specialists, commodity and entry specialist teams, and inspection personnel to conduct informed compliance initiatives with mid-level accounts, focussing on trade compliance matters unique to their port.

Low Volume Accounts

For the purposes of this document, "low volume" accounts are those companies who import infrequently. Because they account for such a small percentage of all imports, Customs will interact with these accounts primarily on a transaction by transaction basis, relying on its Basic Information Program and technical assistance, when necessary, to ensure a high level of

compliance.

D. Stratification by Commodity

Trade compliance is Customs goal regardless of commodity, but not all imported merchandise is equally significant at any given time. There are three key factors that contribute to a commodity's prominence in Customs' trade enforcement plan. They are:

- o the commodity's strategic impact on the nation's security or economic well-being;
- o its current compliance rate; and
- o its import volume.

As part of its FY-96 Trade Enforcement Plan, Customs identified eight "primary focus" industries. These industries, and the tariff numbers associated with them, are of strategic importance to Customs, due to their considerable influence on national affairs. Those primary focus industries are:

- o Steel
- o Automobiles and Auto Parts
- o Textiles/Footwear
- o Advanced Displays (e.g. cathode ray tubes, flat panels)
- o Critical Components (e.g fasteners, bearings)
- o Telecommunications
- o Machine Tools
- o Agriculture

To ensure trade compliance within these key industries, Customs will dedicate a large portion of its informed compliance resources to work with those companies that import commodities related to these industries.

In more general terms, the Customs Service will also focus a proportionate amount of its informed compliance energies on all commodities, according to their import volume and current level of compliance. Baseline compliance rate data developed in FY-95 for all 4-digit Harmonized Tariff Schedule numbers will be used to focus national and local information programs on improving compliance and eliminating or reducing revenue gaps.

E. Partnership

In its report supporting the Mod Act, the Committee on Ways and Means states:

...for "informed compliance" to work, it is essential that the importing community and the Customs Service share responsibility in seeing that, at a minimum, "reasonable care" is used in discharging those activities for which the importer has responsibility.

Whenever it becomes clear that there is widespread confusion about a law, regulation, ruling, or procedure, Customs will consult with its trade partners regarding both the source of the

confusion and the best methods for eliminating it. Solutions will vary. They may range from modification of an existing Basic Information Program tool to the implementation of one or more aspects of Customs Targeted Information Program.

Customs recognizes that its Basic or Targeted Information Programs will not always be sufficient for the individual needs of all parties involved in importing. Therefore, the trade is primarily responsible for developing its own systems, training, and quality control to effect compliance.

In addition, there are bound to be instances where the trade uncovers gaps in Customs Trade Compliance programs or where there are legal, regulatory or procedural issues affecting trade compliance that need to be addressed. As equal partners in informed compliance, individual firms, industry groups, and trade associations are expected to bring such gaps and questions to the attention of the Customs Service for resolution.

F. Informed Compliance Cycle

The key to a successful informed compliance program is the timely integration of all of the elements mentioned above. Toward that end, the following "activity cycle" is presented as the framework through which an orderly and effective approach to informed compliance can be accomplished.

Step 1: Set Strategic Priorities for Compliance Via the Annual Trade Enforcement Plan.

The most important step in developing an informed trade compliance plan is to focus on those issues that are most important to the plan. Since Customs cannot equally ensure compliance in all industry areas or among all importers, it is essential that Customs establish priorities for carrying out its informed compliance initiatives. Annually, the Service does so through the interdisciplinary development of its Trade Enforcement Plan.

Step 2: Conduct Baseline Measurements.

Until very recently, Customs had little or no reliable data against which to assess its trade vulnerabilities. To address that situation, the Service undertook a comprehensive compliance measurement initiative throughout FY-95. That measurement program provided a baseline evaluation of compliance by 4-digit tariff number, and by other strategic parameters. With baseline measures now in hand, Customs is in a position to confront established areas of non-compliance and to assess the effectiveness of its corrective actions, by comparing future compliance rates against established baseline standards.

Step 3: Determine Targeted Compliance Levels.

Taking into account the annual Trade Enforcement Plan and its current baseline measures, Customs will establish goals for targeted levels of compliance for the year. The acceptability of compliance rates may vary according to industry group, commodity range, or importer activity.

Step 4: Determine Appropriate Remedial Action for Those Below the Targeted Level

Established areas of non-compliance will be addressed by Customs via informed or enforced compliance initiatives. The manner in which Customs confronts trade violations will vary based on a number of factors:

- o the strategic nature of the non-compliance;
- o its existence on a national level;
- o the complexity of the rules and regulations governing the merchandise's importation; and o the demonstration of reasonable care on the part of the importer.

Customs will work in an enforced compliance mode where reasonable care has not been exercised. For situations where Customs determines that informed compliance is appropriate, however, the cycle continues below.

Step 5: Work with the Trade to Develop and Implement Informed Compliance Programs.

Pursuance of an informed compliance approach by Customs implies that there may be a level of clarity that is lacking in an existing trade program, or that there is a Customs expectation of the trade that has not been fully conveyed. If that is the case, it is important that Customs work in partnership with the trade in a manner that most effectively communicates their reasonable care obligations with regard to specific trade programs. A cooperative effort in this area will enhance the performance of both basic and targeted information programs.

Step 6: Conduct Targeted Compliance Measurements to Gauge Changes in Compliance Rates.

Once Customs and the trade have worked together to uncover and correct areas of non-compliance, Customs will conduct compliance measurements of targeted areas to determine the success of the informed compliance initiatives. These newly determined compliance rates will represent new baseline measurements and the findings of the compliance initiatives will be taken into account during the following year's trade enforcement planning. (See Steps 1 and 2, above.)

VII. Roles and Responsibilities

A. Customs Service

Office of Field Operations

Based on a comprehensive analysis of the current trade environment by the Office of Strategic Trade (OST), and in accordance with the strategic intent of the Commissioner and the Executive Improvement Team, the Office of Field Operations (OFO) works with OST and the Office of Investigations in preparing Customs annual Trade Enforcement Plan. As the Customs office responsible for overseeing trade operations in the field, OFO communicates the Plan to the trade and to Customs port managers to ensure the integration and oversight of all of the Plan's

informed compliance components at both the national and local levels. Nationally, OFO supports the Office of Regulations and Rulings in all aspects of Customs Basic and Targeted Information Programs (see Section VI-B, above), and assigns national account managers. These managers work directly with accounts to improve trade compliance, to make judgements regarding account performance, and to help develop appropriate informed or enforced compliance actions by Customs. OFO also assists the OST in performing compliance assessments to gauge the existing competencies of selected accounts in meeting their reasonable care obligations. At the port level, OFO works with OST to provide port Trade Compliance Process Owners with the data and tools necessary for them to creatively address localized

compliance issues. In the spirit of the Mod Act, each port's Trade Compliance Process Owner, its import specialists, entry specialists, inspectors, operational analysis specialists and other Customs port personnel will coordinate their activities to target patterns or instances of non-compliance, and then, effectively apply informed compliance techniques to ensure that corrective action is taken.

Office of Information and Technology

The Office of Information and Technology (OIT) provides technical support for Customs informed compliance initiative. OIT develops and enhances Customs automated database and applications software for the compliance measurement program that provides compliance rates by account, port, and critical industry group. This information bolsters Customs informed compliance efforts by equipping national and local managers and analysts with the data necessary to target areas of non-compliance. Finally, OIT promotes an informed compliance approach through its mapping of the redesigned Trade Compliance process in Customs new Automated Commercial Environment (ACE).

Office of Investigations

The Office of Investigations (OI) is charged with the responsibility for planning and conducting (alone or together with other investigators) difficult and complex investigations in connection with the enforcement of the Tariff Act and related laws. Working with OFO and OST, OI assists in preparing the Annual Trade Enforcement Plan. OI continues to serve as the Customs enforcement element conducting investigations involving evidence of intentional violations of Customs laws and regulations. Investigations occur when informed compliance fails and enforced compliance must be implemented. As outlined in the Trade Compliance process redesign, the Trade Enforcement Coordinator at the OI field office will work with the Service Area/Port coordinator and the national account manager in determining an appropriate response on matters related to importer non-compliance. In regard to all national accounts, problem resolution will be the responsibility of OI's Fraud Investigations Branch, Headquarters.

Office of Regulations and Rulings

The Office of Regulations and Rulings (OR&R) continues to serve as Customs principal provider of technical information. Distribution of such information, intended to assist the trade in exercising reasonable care, will be made through numerous channels and in a variety of media. National Import Specialists, responsible for issuance of Customs rulings upon which importers can rely, will screen all Field National Import Specialists rulings for accuracy and produce informed

compliance publications and videos. In addition, they will participate in and sometimes sponsor seminars or meetings designed to convey Customs expectations and concerns relative to a particular practice, regulation, commodity, firm or industry. When disputes arise between National Import Specialists and trade interests relative to a technical decision or ruling rendered by a National Import Specialist or Field National Import Specialist, attorneys in OR&R will act as arbitrators. OR&R attorneys having a particular expertise will, from time to time, attend meetings, conferences and seminars for the purpose of sharing that expertise with interested representatives of the importing community.

To fulfill their roles and responsibilities as Customs changes from a transaction-based to an

account-based operation, National Import Specialists and attorneys may have to acquire or at least refine certain skills. It is expected that National Import Specialists and attorneys will have to rely increasingly on their abilities to communicate, solve problems, work on teams, and view problems from the perspective of others.

Office of Strategic Trade

The new Office of Strategic Trade (OST) has been established to provide clear strategic direction and an integrated Customs approach to confront predatory trade practices that affect the American economy and the health and safety of its citizens. OST serves as the lead, along with the Offices of Field Operations and Investigations, in developing the Annual Trade Enforcement Plan. The Plan is designed to identify and confront major trade issues facing the United States by innovative research and analysis and by an array of interventions designed to address problems of non-compliance. The Plan identifies eight Primary Focus Industries, 11 Priority Trade Areas, three Watch List Areas, and includes initiatives within Compliance Measurement, Audit, Interventions, Investigations, and Sustained Customer Interaction. The Plan is designed to bring to bear all of Customs' tools and disciplines to raise the level of compliance or to more quickly identify egregious noncompliance and respond in a more effective and efficient manner.

B. Trade

The Customs Modernization Act is based on two basic tenets, shared responsibility and informed compliance. Shared responsibility means that importers and Customs have a mutual responsibility to ensure compliance with trade and Customs laws. At a minimum, Customs believes this will require the trade to obtain and apply to its import transactions the information Customs makes available through its Basic Information Program. In addition, the trade will be expected to:

- o apply information that Customs makes available under its "Targeted Information Program" to address specific industry and trade segment issues;
- o establish internal controls over its Customs operations;
- o ensure personnel involved in Customs activities are properly trained;
- o work in partnership with Customs to develop informed compliance programs; and

- o seek clarification when Customs requirements are not understood.

Finally, when it is discovered that importers have compliance problems, they will be expected to respond to Customs consultation, develop performance improvement plans and implement them.

In response to import community requests for guidance with respect to the importer's obligation to use reasonable care, Customs has developed and is soliciting informal public comment on "draft" regulations, position statements, examples and checklists. Based on comments received from the trade and within the government, Customs may elect to modify and adopt all or any combination of its "draft" regulations, position statements, examples and checklists. If the trade and Customs conclude that checklists would be useful, a checklist of questions intended to promote enhanced compliance with

Customs laws and regulations relating to Intellectual Property Rights will be developed and published in the Customs Bulletin.

As envisioned, the checklists could assist in ensuring that the trade community understands the types of actions Customs could consider in determining whether reasonable care was exercised in a particular case. Customs proposed checklists, appearing as Attachment "A" to this document, may provide importers with a tool to assist them in the development of reasonable care programs designed to avoid compliance problems. Similarly, these checklists could serve as an additional Customs tool in arriving at the appropriate course of informed compliance or enforcement action.

VIII. Action

In consonance with the roles and responsibilities defined above, Customs offices will proceed to initiate plans and actions required to implement this strategy.

Attachment "A"

Draft Reasonable Care Checklists:

Merchandise Description & Tariff Classification

1. Did you properly describe your merchandise to Customs in accordance with 19 U.S.C. 1481?
2. Did you properly classify your merchandise in accordance with 19 U.S.C. 1484?
3. Has Customs issued a "ruling" regarding the description of the merchandise or its tariff classification, and if so, has the ruling been followed?
4. Have you consulted the tariff schedules, court cases and Customs rulings to assist you in describing and classifying the merchandise?
5. Have you consulted with a Customs "expert" to assist in the description and/or classification of the merchandise?
6. Is the nature of your merchandise such that a laboratory analysis is suggested to assist in proper description and classification?

Valuation

1. Did you provide Customs with a proper declared value for your merchandise in accordance with 19 U.S.C. 1484 and 19 U.S.C. 1401a?
2. Has Customs issued a "ruling" regarding the valuation of the merchandise, and if so, has the ruling been followed?
3. Have you consulted the Customs valuation laws, Customs Valuation Encyclopedia, court cases and Customs rulings to assist you in valuing merchandise?
4. Have you consulted with a Customs "expert" to assist in the valuation of the merchandise?
5. If you purchased the merchandise from a "related" seller, have you reported that fact upon entry and taken measures to ensure that value reported to Customs is a correct "related party" value for the goods?
6. Have you taken measures to ensure that all of the legally required costs or payments associated with the imported merchandise have been reported to Customs (e.g., assists, commissions, indirect payments or rebates, royalties, etc.)?

Some Major Reasonable Care Questions

1. Have you taken measures to ensure that the merchandise complies with other agency requirements prior to or upon entry (e.g., FDA, EPA/DOT, CPSC, FTC, Agriculture, etc.)?
2. Is the merchandise subject to an antidumping or countervailing duty order, and if so, have you complied with Customs reporting requirements upon entry?
3. Have you taken measures to verify the country of origin of the imported merchandise?
4. Have you taken measures to ensure that the merchandise is properly marked upon entry with the correct country of origin (if required) in accordance with 19 U.S.C. 1304?
5. Is the merchandise subject to quota/visa requirements, and if so, have you provided a correct visa for the goods upon entry?