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customs update: h.r. 1 and more data requirements

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LOS ANGELES -- Bill H.R. 1 has passed the House of Representatives, and with it many provisions having to do security recommendations of the 9/11 Commission.

The one causing potential indigestion for traders is the requirement for 100-percent scanning of all containers entering the U.S. Section 501(1)(A) of the bill calls for radiation and density scanning. Will it stop there or will we see more unrealistic demands for physical examination of all containerized goods prior to loading? Equally worrisome is the requirement in Section 501(2)(b) for container seals which can detect breaches. This bill will now make its way to the Senate for consideration and then possibly to the White House for President Bush's signature.

While everyone agrees these are good ideas in principal, one has to question whether the technology exists to accomplish these goals in a meaningful and cost-efficient fashion, or whether we are once again seeing Congress pass bills for the sake of looking like it is doing something positive.

At the same time, the trading community is grappling with what is "affectionately" known as 10+2. Section 203(b) of the Safe Port Act requires "the Secretary [of Homeland Security], acting through the Commissioner [of Customs and Border Protection], shall require the electronic transmission to [DHS] of additional data elements for improved high-risk targeting, including appropriate elements of entry data...to be provided as advanced information with respect to cargo destined for importation into the United States prior to loading of such cargo on vessels at foreign ports."

So, why is everyone so jittery? The concept behind 10+2 is to allow traders to provide the required addition data elements 24 hours prior to loading in order to allow Customs to conduct better targeting. While we all agree that is an admirable goal, again, is it doable, and at what cost?

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The additional data elements are:

1. Manufacturer name and address.
2. Seller name and address.
3. Container stuffing location.
4. Consolidator name and address.
5. Buyer name and address.
6. Ship to name and address.
7. Importer of Record number.
8. Consignee number.
9. Country of origin of the goods, and
10. Six-digit Commodity Harmonized Tariff Schedule number.

These data elements are to be provided by the importer. The other two data elements are vessel stow plan and container status messages. These last two data elements will clearly come from the carrier, so the focus is on the other 10 data elements. But who will provide them? How will they be provided? What happens if all this data is not available at the appointed time, 24 hours before loading?

Customs has made it clear it is up to the importer to pick his agent. It could be his U.S. customs broker. It could be his foreign freight forwarder. Customs has left that to the importer, but it begs the question -- how will this be accomplished? Customs has said that filing will occur either through AMS, the manifest system, or ABI, the customs broker interface. The likelihood of the American customs broker being in a position to transmit the data is small, if for no other reason that the time difference to other parts of the world. That means realistically that foreign entities will do the filings. So, first, how is business proprietary information protected? Next, what about all the American importers, large and small, who do not control their shipping? How can they make sure the data being submitted is correct? It is reasonable to expect that Customs will validate the data it is being given, especially since the screening is for national security reasons. What happens if it turns out to be wrong? At what point will amendments to these transmission be required and on what time frame?

To its credit, Customs has again set the standard for how government agencies should interact with their constituencies. Customs is working closely with the Departmental Advisory Committee on Commercial Operations of Customs and Border Protection (COAC) and other private sector advisory groups trying to figure out how to make this work in a manner that minimizes interruptions to the flow of legitimate trade but maximizes getting the data in a timely fashion.

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Customs has put implementation of this provision on a relatively fast track, an understandable decision given the constant criticism it receives from all quarters that not enough cargo is being examined. COAC has formed a sub-committee to work on this issue with Customs. Its report is due to be discussed at COAC meeting in mid-February. Customs has also extended the deadline for comments from the trade from Feb. 5 to Feb. 14.

American importers are cautioned to start thinking about how they will implement this requirement into their trading practices. [American exporters are cautioned to think about how they will start providing these types of details and other criteria as other countries enact their own versions of this requirement.] It is reasonable to expect that at some point in the near future -- perhaps no more than a year down the road -- there could be a serious interruption in the flow of your imported goods if your suppliers are unable or unwilling to provide the needed data elements. What are you going to do?

For more information, check out Customs' Web site for links to the agency's position paper and the announcement inviting comments from the trade no later than Feb. 14. Customs wants to know what the trade thinks about:

1. The data elements.
2. The parties most likely to have directly knowledge of each element.
3. The technology necessary for parties to transmit the data in a timely fashion.
4. The impact on the flow of commerce, including explanations of the existing commercial practices of affected parties and the changes to those practices that would be necessary in order to comply with the requirements proposed.
5. The necessity for transition periods between promulgation of the regulations and the effective date of the regulations.