



customs update: import safety

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On July 18 of this year, by Executive Order 13439, President Bush established the Interagency Working Group on Import Safety. While there is no question this action was in response to the recent well-publicized problems with imported pet food, toys, tires and other products, the Working Group exists and the issue for traders is, what does it mean to my bottom line? How will its findings and recommendations change my operations?

The Mission of the Working Group is "to identify actions and appropriate steps that can be pursued, within existing resources, to promote the safety of imported products, including the following:

(a) Reviewing or assessing current procedures and methods aimed at ensuring the safety of products exported to the United States, including reviewing existing cooperation with foreign governments, foreign manufacturers, and others in the exporting country's private sector regarding their inspection and certification of exported goods and factories producing exported goods and considering whether additional initiatives should be undertaken with respect to exporting countries or companies;

(b) Identifying potential means to promote all appropriate steps by U.S. importers to enhance the safety of imported products, including identifying best practices by U.S. importers in [the] selection of foreign manufacturers, inspecting manufacturing facilities, inspecting goods produced on their behalf either before export or before distribution in the United States, identifying [the] origin of products, and safeguarding the supply chain; and

(c) Surveying [the] authorities and practices of federal, state and local government agencies regarding the safety of imports to identify best practices and enhance coordination among agencies."

An initial report was issued by the Working Group on Sept. 11 and forms the basis for this column. The Working Group's Action Plan is due in mid-November.

practice areas

international trade

regulatory



There are some broad principles contained in the September Report to the President and accompanying letter. To its credit, the Working Group acknowledges that the government cannot accomplish the ultimate goal on its own. A partnership with the trade community, along with other stakeholders, is seen as necessary and desirable. In its cover letter, the Working Group specifically states: "[W]e recommend working with the importing community to develop approaches that consider risks over the life cycle of an imported product, and that focus actions and resources to minimize the likelihood of unsafe products reaching U.S. consumers."

Recognizing that working shipment-to-shipment is no longer viable, and that risk management requires a broader view of companies and their products, the Working Group laid out six "building blocks":

1. Advance a common vision,
2. Increase accountability, enforcement and deterrence,
3. Focus on risks over the life cycle of an imported product,
4. Build interoperable systems,
5. Foster a culture of collaboration,
6. Promote technological innovation and new science.

Before any final recommendations are made, the Working Group is seeking further public input. The strategy is to consider "risks at the points they are most likely to occur," and then target "the application of controls to those critical points to minimize the likelihood of unsafe products reaching U.S. consumers."

The initial report makes clear that more than half of all U.S. imports come from one of five countries: Canada, China, Mexico, Japan or Germany. In a database of approximately 825,000 importers, Customs found that 45 percent were one-time importers, another 35 percent import two to 10 times a year, and the other 20 percent are frequent importers.

Just as Customs quickly recognized after 9/11, the Working Group echoes the sentiment that the government can no longer simply rely primarily on inspections, examinations, and other border interactions and enforcement against violators. Instead, it talks in terms of comprehensive consideration of risk, i.e., risk-based preventive approaches, including verification. There is also an acknowledgment of the overlap between efforts made to combat security and those which deal with safety risks, plus the need for additional authorities.

The report reinforces the known fact that there is insufficient data currently available to government regulators. Like Customs, the Working Group found that tariff numbers alone are not enough and so there is a call for better advance data. How will this interface with the 10 2 security data initiative?

The concern about circumvention remains and there is also a mention about siloed systems, meaning the computer systems between agencies at all levels are incapable of integrating with each other. In fact, in some of the agencies, notably the Food and Drug Administration, the databases are unable to talk with each other inside



the agency, never mind across agencies.

Against this backdrop, the Working Group articulated three organizing principles:

1. Prevent -- prevent harm in the first place;
2. Intervention -- intervene when risks are identified;
3. Response -- respond rapidly after harm has occurred.

Within this context, the Working Group calls for joint efforts to adopt an approach of building safety into manufacturing and distribution processes. These efforts are expected to involve producers, importers, manufacturers, retailers, distributors, regulators, testing entities, third party verifiers, and scientists, among others. The clear inference is that pre-entry documentation and certification requirements are likely to change. The focus is now going to be on prevention mechanisms. Additionally, swift action is advocated once problems arise. The cautionary tale is that criminal and civil enforcement will continue. The report is also replete with references to supply chain management, especially in the context of focusing on risk over the life cycle of a product. One of the preliminary recommendations calls for the government to move to a risk-based cost-effective approach to identify and mitigate risks posed by imported products. Sounds good, but how will it be implemented? How much influence will the private sector really have?

On a positive note, traders will be glad to hear the Working Group endorsed efforts to get the International Trade Data System (ITDS) up and running as quickly as possible, at the same time calling strongly for more collaboration between and among the regulatory agencies and greater harmonization of international product safety standards. Not surprisingly, this also involves the smart use of technology.

One thing which has most everyone scratching their heads is the recommendation that whatever is implemented be done with existing resources. Given how overtaxed and understaffed both Customs and FDA clearly are, how is this even a consideration, much less a possibility?

In its recommendations for Immediate Action, the Working Group calls for improved collaboration, including with private sector advisory groups; acceleration of interoperability, including mandating that the Office of Management and Budget take assertive action over the partner government agencies so that within 60 days each agency establishes or redefines its Implementation Plan, Memorandum of Agreement regarding ITDS, and its technical and business requirements for any program or system modifications which might be needed. OMB is also directed to give import safety agencies special priority for their ITDS efforts in the budget process. Similarly, Customs is directed to make changes to the Automated Commercial Environment to include importer and carrier data; advise other agencies how to best take full advantage of the current ITDS capabilities, and implement World Customs Organization Data Model messages. Finally, the partner agencies are also directed in their 2009 budgets to identify the resources they need to support ACE/ITDS interface and within 60 days to designate a senior executive responsible for implementing ITDS.



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Bearing in mind that one of the issues which creates the most headaches for traders is lack of uniformity from one country's requirements to those of the next country, the Working Group called for increased international cooperation and collaboration. State has been put in charge of surveying how different countries handle import safety issues. At the same time, the various agencies are mandated to increase interagency awareness of ongoing and planned discussions with foreign governments regarding import safety agreements. To that end, agencies were encouraged to catalog ongoing and planned discussions with the Commerce Department and directed to hold regular advisory meetings.

A number of trade associations have already testified before the Working Group at its outreach meetings. The expectation is that whatever criteria are recommended by the Working Group, the recommendations in the Action Plan may well have impact across all products and all global trading regions. Make sure your voice is heard. Send the Working Group your comments and recommendations.

The Working Group is headed by Michael O. Leavitt, Secretary, Health and Human Services, Chair, Interagency Working Group on Import Safety, U.S. Department of Health & Human Services, 200 Independence Avenue SW, Washington, D.C., 20201. The more constructive comments and ideas the Working Group receives, the better!