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BY THE COMPTROLLER GENERAL

# Report To The Congress

OF THE UNITED STATES

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## Enforcement Of U.S. Import Admissibility Requirements: Better Management Could Save Work, Reduce Delays, And Improve Service And Importers' Compliance

Custom's assistance is essential in determining whether imported food, vehicles, and other products are admissible under laws and regulations otherwise administered by other Federal agencies. This assistance is usually limited to Customs' inspection and control functions at the ports of entry, but when imports do not meet the admissibility requirements, Customs becomes the middleman in the enforcement proceedings between the importers and the other agencies. Streamlining Customs' role would reduce the excessive work, delays, and duplication of effort now being experienced.

Customs, with the advice of the Departments of Transportation, Agriculture, and Health and Human Services, and the Environmental Protection Agency, routinely reduces monetary penalties to the point that they usually are not effective in encouraging importers to fully and promptly comply with import admissibility requirements. Thus, contaminated foods, nonconforming vehicles, and other substandard goods are getting into commerce. The agencies need to ensure that penalties are large enough to encourage importers' full and prompt compliance.



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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON D.C. 20548

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To the President of the Senate and the  
Speaker of the House of Representatives

This report describes the enforcement and administrative problems associated with the admissibility requirements for imported food, vehicles, and other products, and discusses alternatives to the present procedures. The review was made to evaluate the Federal agencies' effectiveness for obtaining compliance with import admissibility requirements.

We are sending copies of this report to the Director, Office of Management and Budget; the Secretaries of Treasury, Transportation, Agriculture, and Health and Human Services; the Administrator of the Environmental Protection Agency; the Commissioner, U.S. Customs Service; and cognizant congressional committees.

*Charles A. Bowsher*

Comptroller General  
of the United States



D I G E S T

The U.S. Customs Service, an agency of the Department of the Treasury, enforces import admissibility requirements otherwise administered by over 40 other Federal agencies. Most often this work is accomplished routinely through Customs' inspection and control functions. For 40-plus agencies to conduct separate import inspections at the ports would be expensive and wasteful.

But when imports do not meet the admissibility requirements there are two major problems:

--First, Customs functions as a middle-man in the administration of penalty proceedings between the importers and the other agencies. Current procedures result in inefficiency, delays, and confusion in seeking compliance with the import admissibility requirements.

--Second, the almost routine reduction of penalties weakens the effectiveness of this enforcement tool. Such reductions provide little or no incentive for importers to comply with admissibility requirements.

WHY THE REVIEW WAS MADE

GAO conducted this review to evaluate Customs' role in enforcing import admissibility requirements otherwise administered by over 40 other Federal agencies. Specifically, GAO was concerned with the effectiveness of Customs' and the other agencies' procedures for obtaining compliance with admissibility requirements.

BETTER MANAGEMENT OF  
ADMISSIBILITY REQUIREMENTS  
WOULD LESSEN BURDEN AND  
IMPROVE SERVICE

Using a random sample of 410 cases taken from 1,067 cases where penalties were imposed on importers at

five Customs' districts, GAO reviewed the enforcement of admissibility requirements of the Department of Transportation (DOT), Environmental Protection Agency (EPA), Department of Agriculture (USDA), and the Food and Drug Administration (FDA) of the Department of Health and Human Services (HHS). Customs believes these five districts are representative of its nationwide operations. GAO's work showed that enforcement practices are resulting in lengthy delays, excessive paper transactions, duplicative work, and confusion.

For example, a case involving a nonconforming foreign vehicle required 31 pieces of correspondence between the importer, Customs, and DOT over 2-1/2 years before final settlement. Significant time was lost by delays in Customs' forwarding information to DOT and vice versa. With some refinements to current procedures, the time needed to settle cases can be shortened substantially. (See pps. 7, 8, and 9.)

Dealing with several Federal agencies can be confusing to importers. For example, both FDA and Customs, in separate notices, told the same importers to destroy or export the goods as of a certain date. Not only is this duplicative but in 58 of the 178 sample cases the specified dates differed on the two notices. (See pps. 10 and 11.)

In the past, Customs has used its own resources for administering other agencies' admissibility requirements. But because of staffing cuts, Customs, as of late 1980, no longer takes on new requirements of other agencies unless additional staffing and funding (reimbursement) are provided.

EFFECTIVE USE OF PENALTIES  
NEEDED TO ASSURE COMPLIANCE  
WITH IMPORT ADMISSIBILITY  
REQUIREMENTS

The Federal agencies do not effectively use monetary penalties to encourage importers to fully and promptly comply with the admissibility laws and regulations. The almost routine reduction of penalties--to about 6 percent of the initial amount assessed--weakens the effectiveness of this enforcement tool and does not deter

importers from releasing contaminated foods and other nonconforming products into commerce.

By posting a performance bond with Customs, importers can bring products into the U.S. before all admissibility requirements have been fully met. The bond guarantees that the products will either be brought into compliance within a specified time, destroyed, exported, or re-delivered to Customs. If the importer violates such provisions, Customs is authorized to assess a penalty up to the value of the product plus duties, if any.

In about 44 percent of the 410 cases GAO analyzed, importers failed to bring into conformity, return, export, or destroy all products ordered redelivered. Customs, on the advice of the other agencies, substantially reduced penalties on these cases despite the fact that some involved the release of contaminated food and nonconforming vehicles into commerce.

GAO believes that, before import admissibility requirements can effectively protect consumers and domestic commerce, the agencies need to require payment of a substantially larger percentage of the initial assessed penalty when such requirements are not met. Failure to do so will continue to provide little or no incentive for these importers to comply with the requirements.

#### RECOMMENDATIONS

GAO recommends that the Secretary of the Treasury reach agreement with the Secretaries of USDA, DOT, and HHS; and the Administrator of EPA on ways to expedite proceedings against importers who violate the conditions of their performance bonds and reduce the paperwork associated with Customs' middleman role in such proceedings.

Regarding Customs' mitigation authority, GAO also recommends that the Secretaries of USDA, DOT, and HHS; and the Administrator of EPA take the actions necessary to ensure that penalties, even though mitigated, are large enough to be an effective enforcement tool.

## AGENCY COMMENTS AND GAO'S EVALUATION

HHS, USDA, DOT, Treasury, and EPA agreed with the thrust of GAO's recommendations concerning the need to streamline the administrative and enforcement proceedings among importers, Customs, and other agencies. Treasury agreed that Customs should work with all other agencies in an attempt to reduce the role of Customs in administering other agencies' requirements.

However, the agencies raised three issues that merit discussion:

- First, Treasury, HHS, USDA, and DOT question how much of Customs' enforcement authority can be delegated to the other agencies without statutory changes.
- Second, HHS and USDA question whether staff resources will be available to do the additional work if Customs' involvement is minimized.
- Third, HHS, DOT, and EPA believe that penalties are now being effectively used to encourage importers to comply with their import admissibility laws and regulations. (See appendixes.)

GAO is not recommending that Customs' authority to require or enforce a performance bond be delegated or reassigned. Should the agencies and Customs perceive a need for such, the many statutes involved should be cooperatively reviewed, and any necessary legislation should be sought. However, GAO is recommending that the agencies take steps to reduce the paperwork and delays that currently attend an importer's failure to perform under a Custom's bond.

Where permissible under the applicable statutes, one refinement to current procedures would be for the other agencies to prepare and transmit the required forms and notices upon Treasury's concurrence when importers fail to meet the conditions of their performance bonds. One

variant of this procedure already exists. Under an agreement with Treasury, FDA issues a Notice of Refusal of Admission in Customs' name. Customs, EPA, and FDA are developing additional procedures along these and other lines. GAO believes that Treasury should continue efforts to work out agreements with other agencies that would expedite the administrative process whenever practicable.

USDA stated that, if Customs' involvement is reduced, staff years and funds associated with the middleman role should be redistributed to other agencies. HHS noted that present resource constraints will preclude acquiring additional responsibilities. GAO does not believe that streamlining Customs' role will result in additional work for any Federal agency. On the contrary, Customs' work would be reduced significantly while the other agencies' work should remain about the same.

EPA, DOT, and HHS believe their penalty policies are adequate to effectively encourage importers' compliance with admissibility laws and regulations. GAO is not questioning their policies but rather the impact of the penalties as an enforcement tool. Although GAO did not evaluate the penalty policies, its specific concern is that the implementation of the policies has provided little or no incentive for importers to comply with the import admissibility requirements.



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ABBREVIATIONS

DOT      Department of Transportation  
EPA      Environmental Protection Agency  
FDA      Food and Drug Administration  
GAO      General Accounting Office  
HHS      Health and Human Services  
ILP      Import Compliance and Interagency Liaison Program  
USDA     Department of Agriculture

## CHAPTER 1

### INTRODUCTION

A major responsibility of the U.S. Customs Service (Customs), an agency of the Department of the Treasury, is to enforce the Tariff Act of 1930 as amended. Customs' responsibilities include

- assessing and collecting customs duties and excise taxes on imported merchandise and verifying import statistics;
- interdicting and seizing contraband being imported into the United States; and
- assessing, mitigating, and collecting penalties for failure to meet the conditions of any bonds posted by importers and individuals with Customs.

Customs also enforces laws and regulations governing the admissibility of imports for over 40 other Federal agencies. These admissibility requirements apply to about 36 percent of the imports that are inspected and processed by Customs. Requiring importers to post performance bonds is Customs' principal method of assuring compliance with admissibility requirements.

During fiscal year 1980, Customs inspected merchandise valued at \$211.5 billion and collected \$8.2 billion in duties, taxes, and fees. In doing this, Customs processed 4.4 million separate commercial cargo entries, inspected 90.4 million vehicles, ships, and aircraft; and processed and inspected 299.1 million persons.

#### WHY IS CUSTOMS INVOLVED IN ENFORCING OTHER FEDERAL AGENCIES' IMPORT ADMISSIBILITY REQUIREMENTS?

Customs' participation is essential in enforcing other Federal agencies' admissibility requirements for imports of food, vehicles, consumer goods, and other products. As the principal border enforcement agency, Customs has personnel at over 300 ports of entry who are involved in inspecting and processing the movement of people and goods in and out of the country. For 40-plus agencies to conduct separate import inspections at the ports would clearly be expensive and wasteful.

#### Requirements of other Federal agencies

In general, every law or regulation affecting domestic

products also applies to imports. However, the enabling legislation for other agencies' admissibility requirements often specifies that the Secretary of the Treasury (Customs) shall assist in the enforcement of the statute. Generally, these laws permit Customs to release goods to importers under performance bonds before all admissibility requirements have been met. In the event importers fail to meet the conditions of their bonds, the matter is resolved according to Customs' penalty regulations. The following are a few examples of the admissibility requirements that Customs helps enforce for other Federal agencies:

| <u>Agency</u>   | <u>Requirement</u>  |
|---|---|
| Animal and Plant Health<br>Inspection Service<br>Department of Agriculture (USDA)       | All animals and animal products are subject to USDA's Animal and Plant Health Inspection Service regulations and require an import certificate and/or request for inspection. |
| Patent and Trademark Office<br>Department of Commerce                                   | Importations of trademarked, trade-named, and patented items are restricted to the holders or licensees of the trademarks, etc.   |
| Food and Drug Administration (FDA)<br>Department of Health and Human<br>Services (HHS)  | All imported food, beverages, drugs, therapeutic devices, biologicals, radiation emitting products, and cosmetics must meet FDA standards and be labeled properly.            |
| National Highway Traffic<br>Safety Administration<br>Department of Transportation (DOT) | All motor vehicles and equipment not meeting DOT vehicle safety requirements are prohibited from importation except under certain conditions.                                 |
| Internal Revenue Service<br>Department of the Treasury                                  | Internal revenue taxes must be collected on oleomargarine, alcohol and tobacco products, firearms, adulterated butter, and filled cheese.                                     |
| Environmental Protection<br>Agency (EPA)  | Motor vehicles and motor vehicle engines must meet EPA antipollution standards and be labeled.  |

CUSTOMS' ROLE IN ENFORCING  
OTHER AGENCIES' REQUIREMENTS

Customs' work for other Federal agencies is in part accomplished through its regular inspection and control functions. This enforcement effort generally consists of enforcing compliance with the admissibility requirements by

- inspecting imported products for proper labels and/or certification tags;
- checking entry documents to see that the other agencies' certification forms are completed; and
- forwarding forms to the appropriate agency.

For example, when an automobile is imported, Customs checks the import documentation and/or certification to determine whether it meets safety and emission standards. If certified, Customs collects the duty, if any, and forwards the required forms to DOT and EPA.

However, Customs' role becomes more involved when products are not in compliance with the admissibility requirements or if the products are released under bond to the importer prior to the other agency's final approval. Under these circumstances, Customs becomes involved in an administrative process which takes considerable time, particularly if the importer violates the conditions of a performance bond.

Customs generally may release imported products to an importer before all admissibility requirements have been fully met. However, an importer must post a performance bond which guarantees that if the requirements are not met within a stated time, the importer will either redeliver, destroy, or export the products or forfeit the bond.

Under a performance bond, Customs can also release products to an importer pending another agency's decision on the admissibility of the product. This is often done pending laboratory analysis by USDA or the FDA of samples of food imports. However, the importer may not enter the products into commerce until the other agency has given its permission.

If an importer fails to meet conditions of the performance bond, Customs can order redelivery of the products or have the importer provide evidence that the products were destroyed or

exported. Failing this, the importer will be assessed a monetary penalty 1/ by Customs based on the value of the imported products plus duties, if any.

After a penalty is assessed, the penalized party may submit a petition for cancellation or mitigation (reduction) 2/ of the penalty. The petition should contain the facts and circumstances the penalized party relied on to justify the action taken. Although the Secretary of the Treasury is authorized to cancel or mitigate a penalty (19 U.S.C. §1618, and 1623(c)), it is Customs' policy to seek and follow the other agencies' recommendations regarding mitigation of penalties. In the case of FDA, Customs and the FDA district director must concur on any mitigation action taken.

#### OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives were to assess Customs' effectiveness in

--enforcing the import admissibility laws and regulations administered by other Federal agencies;

--coordinating the development of laws and regulations of other agencies which require the involvement of Customs; and

--administering its procedures for obtaining importers' compliance with other agencies' requirements.

To do this, we concentrated on Customs' enforcement of the import admissibility laws and regulations administered by DOT, EPA, FDA, and USDA. These four agencies were selected because Customs officials told us that their experience in enforcing the requirements of these agencies would provide insight into the problems Customs generally encounters in enforcing other agencies' requirements.

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1/Under Customs' regulations, when there is a failure to meet the conditions of any bond posted with Customs, the principal is to be notified in writing of any liability for liquidated damages and a demand is made for any payment due.

2/For simplicity, "reduction" will be used to refer to the mitigation of penalties.

To get a good cross section of Customs' involvement with other agencies' admissibility requirements, we selected and visited the following five Customs districts which varied in size and activities: Houston, Texas; Laredo, Texas; Los Angeles, California; New York, New York; and San Diego, California. Since Customs-wide data on imports that must meet admissibility requirements is not readily available, Customs officials told us that these districts would provide an accurate picture of their enforcement role for other agencies' requirements.

We also talked with Customs officials at headquarters and three regional offices, and with DOT, EPA, FDA, and USDA headquarters officials.

The review was performed in accordance with GAO's current "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions."

#### Case analysis

We analyzed a random sample of 410 cases taken from 1,067 cases involving penalties at the five Customs districts to determine the total extent of Customs' involvement in enforcing other agencies' import admissibility requirements. The cases sampled were all closed in fiscal years 1977 through 1979. Data for fiscal year 1980 was not available at the time of our fieldwork.

Throughout this report, the results presented are the estimates made from our sample results projected to our universe of 1,067 cases unless otherwise specified. Each sample case was weighted to reflect its proportional representation in the universe (five Customs districts) from which it was drawn.

As shown by the table below, our sample included 193 cases involving DOT and/or EPA; 173 involving FDA; and 39 involving USDA. It should be noted that our universe of 1,067 was reduced from 1,131 by excluding those 64 cases in which it was impossible to make any determination because of the data in the file. These included 17 cases in Houston and 13 cases in New York from DOT/EPA; 10 cases in Los Angeles from USDA; and 24 cases in Los Angeles from FDA.

CASES INVOLVING  
PENALTIES

| <u>Location</u>  | <u>DOT/EPA</u>         |               | <u>FDA</u>      |               | <u>USDA</u>     |               | <u>Total</u>    |               |
|------------------|------------------------|---------------|-----------------|---------------|-----------------|---------------|-----------------|---------------|
|                  | <u>Number of Cases</u> |               |                 |               |                 |               |                 |               |
|                  | <u>Universe</u>        | <u>Sample</u> | <u>Universe</u> | <u>Sample</u> | <u>Universe</u> | <u>Sample</u> | <u>Universe</u> | <u>Sample</u> |
| Houston          | 27                     | 27            | 7               | 7             | 2               | 2             | 36              | 36            |
| Laredo           | 0                      | 0             | 19              | 19            | 3               | 3             | 22              | 22            |
| Los Angeles      | 390                    | 100           | 46              | 46            | 6               | 6             | 442             | 152           |
| New York         | 31                     | 31            | 330             | 73            | 137             | 27            | 498             | 131           |
| San Diego        | 35                     | 35            | 33              | 33            | 1               | 1             | 69              | 69            |
| Totals by agency | <u>483</u>             | <u>193</u>    | <u>435</u>      | <u>173</u>    | <u>149</u>      | <u>39</u>     | <u>1,067</u>    | <u>410</u>    |

CHAPTER 2  
ENFORCEMENT OF ADMISSIBILITY REQUIREMENTS:  
BETTER MANAGEMENT WOULD LESSEN  
BURDEN AND IMPROVE SERVICE

The procedures under which Customs enforces other agencies' import admissibility requirements cause inefficiency, delays, and confusion. Thorough analysis of these practices by Customs and the other agencies would help management to identify and eliminate unessential steps.

OTHER AGENCIES' IMPORT  
ADMISSIBILITY REQUIREMENTS:  
CUSTOMS' ROLE COULD BE STREAMLINED

The administrative process for enforcement of DOT, EPA, and USDA admissibility requirements results in lengthy delays in the compliance process, excessive paper transactions, duplicative work, and confusion. These problems could be minimized by reducing the considerable exchange of paperwork currently associated with actions against importers who violate conditions of their performance bonds. Where permissible under the applicable statutes it would be much simpler and less time consuming if, where practicable, the other agencies would correspond directly with the importer once Customs and the agency involved made the necessary determinations on the action to be taken concerning the bond. Where this is feasible, Customs' primary and direct involvement with the importer in the ordinary case would be accomplished through its regular inspection and control functions. Customs and the agencies involved have already implemented several procedures along these lines and are considering others.

DOT/EPA requirements

Importers may bring in vehicles which do not meet DOT safety or EPA emission requirements if they post a performance bond with Customs. If the importer fails to bring the vehicle into conformity, DOT and/or EPA will request Customs to order the vehicle redelivered. The following sequence of events often occurs in this administrative process:

| <u>DOT</u> | <u>Customs</u>                                | <u>Importer</u> |
|------------|---|-----------------|
| (1)        | Requests Customs to order vehicle redelivered |                 |

| DOT  | Customs  | Importer  |
|--|--|---|
|  | (2) Issues Notice of Redelivery to importers                       | (3) Fails to redeliver                                      |
|  | (4) Issues Notice of Penalty for failure to redeliver              | (5) Petitions Customs for more time or reduction of penalty |
| (7) Sends comments to Customs                        | (6) Refers importer's petition to DOT for comment                  |   |
|  | (8) Responds to importer, incorporating DOT's comments             | (9) Sends rebuttal to Customs                               |
| (11) Send comments on importer's rebuttal to Customs | (10) Sends importers' rebuttal to DOT for comment                  |   |
|  | (12) Responds to importer's rebuttal, incorporating DOT's comments | (13) Either redelivers vehicle or pays a penalty            |
|  | (14) Closes case.  |   |

Not reflected above are numerous other pieces of interagency correspondence that may be exchanged before decisions are reached. For example, in one case 31 pieces of correspondence were exchanged over a period of over 2-1/2 years before the case was closed after the importer paid a \$250 penalty.

On the average, the cases in our sample involving vehicles took just over 2 years to settle. A large portion of this time was spent waiting for EPA or DOT to respond to Customs and then for Customs to respond to the importer. For example, in one district it took an average of 226 days for EPA or DOT to respond to Customs' request for decisions on importers' petitions. After receiving the decision, Customs took an average of 109 days to inform the importers of the decisions.

As shown above, after Customs issues a penalty notice, there is a considerable exchange of correspondence among the other agency, Customs, and the importer. The substance of the paperwork originating with the Federal Government is prepared by agencies other than Customs, but it is currently sent to Customs, retyped, incorporated in a Customs document, and finally mailed by Customs to the importer. Where permissible under the applicable statutes, it would be simpler and less time consuming if, whenever practicable, the other agencies would correspond with the importers once Customs and the other agency involved, make any necessary determinations on the action to be taken on the bond. This should streamline the transmittal of the Notices of Redelivery and the Notices of Penalty, reduce delays associated with the administrative process that follow failure to redeliver, and promote better coordination among the agencies. Customs would, of course, continue to be directly and primarily involved with the importer during its inspection and control functions.

The above procedures would be much easier for all parties. Presumably, the situation that we found in one Customs district would be avoided. In this situation 15 importers were assessed penalties by Customs, although the vehicles previously had been brought into conformity. Also, complaint letters from importers to Customs might be prevented such as the following:

"I received your letter dated July 27th. Unfortunately, the matter is not in my hands. The only agency who is holding this, is the Environmental Protection Agency. Everytime I mailed information, letters, documents, etc., it was months before I received an answer. I have done everything possible according to their demands. I recently received a letter from the E.P.A. and they stated they are waiting for documents, which I had mailed two months ago. The only explanation is, it could be misfiled or lost in the mail. I was thoroughly convinced at this point that everything was proceeding correctly. I am attaching copies of documents and information from them. Also, a copy of your letter to me. I am sending new copy's [sic] to the E.P.A. and I am waiting for an answer.

We have been struggling with this problem for a long time and we are very anxious to get this cleared up. As soon as we get information from the E.P.A., we will contact your office."

FDA/USDA requirements

Customs' role in dealing with imports regulated by FDA and USDA is also overburdened with excessive paperwork and delays--much of which could be avoided. The following events often occur after Customs admits the imports under a performance bond, pending determination of whether the imports meet applicable admissibility requirements, and FDA/USDA subsequently determine that the products must be redelivered.

| FDA   | Customs  | Importer  |
|---|--|---|
| (1) Issues Notice of Refusal of Admission to the importer | (2) Issues Notice of Redelivery to importer            | (3) Fails to redeliver                                      |
|   | (4) Issues Notice of Penalty for failure to redeliver  | (5) Petitions Customs for more time or reduction of penalty |
|   | (6) Refers importer's petition to FDA for comment      |   |
|   | (7) Sends decision on importer's petition to Customs   |   |
|   | (8) Responds to importer, incorporating FDA'S comments | (9) Sends rebuttal to Customs                               |
|   | (10) Sends importer's rebuttal to FDA for comment      |   |

- |   |  |   |
|---|--|---|
| (11) Sends comments on importer's rebuttal to Customs | (12) Responds to importer's rebuttal, incorporating FDA's comments | (13) Either redelivers product or pays penalty. |
| (14) Closes case.                                     |  |   |

We estimate that Customs' involvement in the FDA/USDA cases extended settlement of the cases by an average of 244 days for FDA and 200 days for USDA due to correspondence between Customs and FDA or USDA, and between Customs and the importer. Both the Notice of Refusal of Admission and Notice of Redelivery require importers to destroy or export goods by a certain date. <sup>1/</sup> Not only is this duplicative, but it can also be confusing if the dates do not agree: in 53 of the 173 sample cases, we noted that the dates specified to the importer by FDA and Customs differed.

As with DOT and EPA, an analysis of the administrative process currently followed would show a need for streamlining the process and reducing the paperwork associated with Customs' middleman function.

ADVANCE PLANNING AND COORDINATION  
WOULD IMPROVE ENFORCEMENT OF  
ADMISSIBILITY REQUIREMENTS

The inefficient practices have occurred partly because Customs and the other Federal agencies did not establish efficient enforcement procedures when the import admissibility requirements took effect. Compounding the problem in many instances has been Customs' lack of participation in the development of new import admissibility laws and regulations. As a result, Customs was unaware of the potential impact of the proposed requirements. Thus, Customs was not in a position to provide input to the agency or congressional committee drafting the new requirements.

<sup>1/</sup>The Notice of Redelivery gives the importers an additional option--to redeliver the goods to Customs.

In 1974, Customs established the Import Compliance and Inter-agency Liaison Program (ILP) to deal with the problems of working out efficient enforcement and administrative procedures and commenting on proposed import admissibility requirements. The ILP has attempted to provide input into legislation affecting Customs so as to monitor rulemaking by other agencies that affect Customs and to work out problems in enforcing other agencies' requirements.

However, the ILP has been chronically understaffed since its inception. The ILP director told us that as a result:

--Customs and other Federal agencies are generally not reaching agreements as to their individual enforcement roles and responsibilities.

--Customs is being left out or has little input into proposed legislation and regulations which affect Customs but are otherwise administered by other agencies.

For example, by reviewing the Federal Register, Customs learned of a change in the law involving the Wool Products Labeling Act. The change was published in the Federal Register, on July 1, 1980, and was to become effective July 4, 1980. Although responsible for enforcing the act's admissibility requirements, Customs was not consulted regarding the amended law or the revised regulations.

In the past, Customs has provided the resources for determining whether the other Federal agencies' requirements were being met. However, staffing cuts necessitated Customs taking a stronger stance and changing its policy in late 1980 concerning new requirements of other agencies to be enforced by Customs. Customs officials advised us that they will not undertake any new requirement or program involving another agency unless Customs is provided both the staffing and funding (reimbursement) to do the job. In a recent case involving EPA and the Toxic Substance Control Act, Customs officials said that Office of Management and Budget officials agreed with their policy position at a meeting between the respective agencies. Subsequently, EPA's originally proposed extensive import declaration forms and reporting requirements for toxic substances have, as of April 1981, been tentatively reduced to a certification on the entry documentation.

#### CONCLUSIONS

Both Customs' and the other agencies' administration of the admissibility requirements have resulted in practices which

are time consuming, duplicative, and confusing to importers. These problems could be alleviated by streamlining the administrative process and reducing the paperwork associated with Customs' middleman role. The direct involvement of the other agencies with importers who violate the conditions of their performance bonds would help accomplish this and improve service to the public. Thus, it is important that the Federal agencies involved develop efficient management procedures for effective administrative proceedings to handle problems when there is a breach of the bonding requirements.

The administration and enforcement of new admissibility requirements would be enhanced by better planning and coordination among the Federal agencies. Thus, when new requirements become known, both Customs and the other agencies would be able to clarify their respective roles. While the ILP was established for this purpose, Customs officials have questioned whether it has been staffed adequately to accomplish this objective.

#### RECOMMENDATION

We recommend that the Secretary of the Treasury reach agreement with the Secretaries of Agriculture, Transportation, Health and Human Services, and the Administrator of the Environmental Protection Agency on ways to expedite proceedings against importers who violate the conditions of their performance bonds and reduce the paperwork associated with Customs' middleman role in such proceedings.

#### AGENCY COMMENTS AND OUR EVALUATION

HHS, DOT, EPA, USDA, and Treasury agreed with the thrust of our recommendations that the administrative and enforcement proceedings among importers, Customs, and other agencies need to be streamlined. Specifically, Treasury agreed that Customs should work with all other agencies in an attempt to reduce the role of Customs in administering other agencies' requirements.

DOT, EPA, and Treasury stated that they have taken some actions and are considering others to reduce paperwork and delays. HHS said it would be pleased to cooperate with Treasury in exploring the feasibility of minimizing Customs' role in the administrative process. But Treasury, HHS, USDA, and DOT expressed concern that many of the applicable statutes seem to vest enforcement authority with Treasury for breach of bond conditions. It is their view that legislation may be necessary if this authority is

to be delegated or reassigned. We are not, however, recommending that Treasury delegate or reassign its enforcement authority, and have clarified the relevant sections of the report to eliminate any confusion on this point. Should the agencies and Customs perceive a need for a delegation or reassignment of Customs' enforcement authority, the many statutes involved should be cooperatively reviewed, and any necessary authorizing legislation should be sought.

However, measures can be taken within the framework of existing law to streamline the administrative process and to reduce the considerable exchange of paperwork that currently attends an importer's failure to perform under a Customs bond. Where permissible under the applicable statutes, the process would operate more expeditiously if the other agencies corresponded with the importer when administrative action, such as the preparation and transmittal of Notices of Redelivery and Penalty, is determined by Customs and the other agency involved to be appropriate. Customs and the other agencies have already taken some steps in this regard and are considering others. One example is the agreement Customs already has with the FDA whereby FDA takes products and samples, and issues a Notice of Refusal of Admission in Customs' name.

If these procedures were followed when applicable, the lengthy administrative process would be streamlined. Cases involving disagreement between Customs and other agencies are extremely rare and are not a factor in these delays. The primary reason for this is because it is the other agency, not Customs, that makes the final determination whether goods or products subject to the bond have been brought into conformity with agency regulations. We believe Treasury should continue to streamline the enforcement process and work out agreements with other agencies that would allow them to follow procedures to expedite the administrative process whenever practicable.

USDA stated that, if Customs' present involvement is curtailed, staff years and funds associated with the middleman role should be redistributed to other agencies. HHS noted that present resource constraints will preclude FDA's acquiring additional responsibilities that impose added expenditures of staff years or resources. We do not believe that streamlining the administrative proceedings for enforcement of import admissibility requirements will result in additional work for any Federal agency. As pointed out on pages 9 and 11, Customs would save significant time while the other agencies' work would remain about the same. Also, the importer would be saved the inconvenience and confusion resulting from dealing with multiple agencies.

EPA said it is proposing to reduce interaction between importers, EPA, and Customs by allowing individuals to import on

a one-time basis an uncertified vehicle for personal use without bringing it into conformity with Federal emission requirements. Subsequent importations of uncertified vehicles by individual or commercial importers would be prohibited. While we express no view on the policy ramifications of the proposal, particularly as they pertain to the implementation of the Clean Air Act, the proposal clearly would require a complex and expensive nationwide control mechanism to ensure that individuals do not bring in more than one uncertified vehicle.

Customs has not always known of or commented on impending legislation/regulations affecting its operations. Customs officials attribute the cause of this situation in part to an understaffed Interagency Liaison Program. In the draft report that the agency commented on, we proposed that the Secretary of the Treasury provide the resources necessary to enhance Customs' ability to provide Treasury/Customs policy views on proposed laws and regulations that will have an impact on Customs. Treasury stated that the program is well staffed and has not only made Customs' views known but is implementing a positive management initiative which Treasury hopes will result in less work for other agencies by Customs. We agree that the new initiatives are a step in the right direction and have revised our report accordingly.

In commenting on the report, HHS made several suggestions to clarify the report. We modified the report to reflect its comments. HHS also stated that Customs does not issue the Notice of Redelivery until 90 days after the Refusal of Admissions period expires. However, we found that Customs generally issued this notice upon receipt of the Notice of Refusal of Admission from FDA.

CHAPTER 3  
EFFECTIVE USE OF PENALTIES IS NEEDED  
TO ASSURE COMPLIANCE WITH IMPORT  
ADMISSIBILITY REQUIREMENTS

The Federal agencies could use monetary penalties more effectively to encourage importers to fully and promptly comply with the admissibility laws and regulations. The almost routine reduction of penalties weakens the effectiveness of this enforcement tool. If the penalties were not routinely reduced, the importers would have more of an incentive to comply with the requirements.

ROUTINE REDUCTION OF  
PENALTIES DOES LITTLE TO  
ENCOURAGE IMPORTERS' COMPLIANCE

Despite the performance bonding procedures as well as other enforcement efforts, contaminated foods, nonconforming vehicles, and products refused entry for other reasons are entering commerce. In about 44 percent of the 410 cases we analyzed, importers failed to bring into conformity, return, export, or destroy all the foreign products ordered redelivered. Furthermore, the subsequent routine reduction of penalties has done little to encourage these importers to fully comply with the requirements.

The imported products released into commerce have included such things as:

- 5,000 cases of decomposed mackerel;
- 200 bags of beans contaminated with a pesticide;
- 8,439 pounds of gram flour contaminated with live insects;
- 1,800 cartons of tomatoes contaminated with mold; and
- 80 vehicles not meeting U.S. safety and/or emission standards.

The table on the following page--projected to our universe--shows that many penalties were substantially reduced even though the importers did not bring into conformity or redeliver, destroy, or export the goods as they were required to do.

|                           | Projected number of cases where all products were not brought into conformity, redelivered, destroyed, or exported |                          |                             |                           | Projected percentage of reduced penalty to original penalty |                            |                            |                              |
|---------------------------|--|--------------------------|-----------------------------|---------------------------|---|----------------------------|----------------------------|------------------------------|
|                           | FDA  | USDA                     | DOT/EPA                     | Total                     | FDA   | USDA                       | DOT/EPA                    | Total                        |
| Penalty cancelled         | 18<br><u>a/(8)</u>   | 0<br><u>(0)</u>          | 15<br><u>(9)</u>            | 33<br><u>(12)</u>         | 0.0<br><u>a/(0.0)</u>                                       | 0.0<br><u>(0.0)</u>        | 0.0<br><u>(0.0)</u>        | 0.0<br><u>(0.0)</u>          |
| Penalty reduced           | 137<br><u>(32)</u>   | 81<br><u>(22)</u>        | 73<br><u>(23)</u>           | 291<br><u>(46)</u>        | 12.2<br><u>(4.9)</u>  | 1.3<br><u>(0.8)</u>        | 8.3<br><u>(4.0)</u>        | 5.6<br><u>(1.9)</u>          |
| Penalty collected in full | 90<br><u>(28)</u>  | 6<br><u>(9)</u>          | 6<br><u>(0)</u>             | 102<br><u>(29)</u>        | 100.0<br><u>(0.0)</u>                                       | 100.0<br><u>(0.0)</u>      | 100.0<br><u>(0.0)</u>      | 100.0<br><u>(0.0)</u>        |
| Total                     | <u>245</u><br><u>(33)</u>  | <u>87</u><br><u>(22)</u> | <u>b/ 94</u><br><u>(24)</u> | <u>426</u><br><u>(46)</u> | <u>28.0</u><br><u>(10.6)</u>                                | <u>1.5</u><br><u>(1.0)</u> | <u>8.7</u><br><u>(3.7)</u> | <u>12.5</u><br><u>(12.5)</u> |

a/The figures in ( ) are the sampling error rate based on a 95-percent confidence level.

b/There were 25 other vehicle cases in our sample which were not brought into conformity. However, the penalties were not yet settled on these cases; therefore they were not included in this table.

Of the 245 FDA cases, an estimated 118 involved contaminated goods and 30 involved goods released into commerce without FDA's inspection (these goods may have been contaminated). The penalties were reduced for about 63 percent of the contaminated goods cases and 71 percent of the uninspected goods cases. FDA, however generally reduced penalties substantially less--percentage-wise--than the other agencies.

The following examples illustrate cases in which penalties were substantially reduced even though the importers did not comply with the admissibility requirements.

- During a 2-month period, an importer brought in five shipments of sesame seeds. Although the seeds were to be held by the importer for FDA inspection, the seeds were released into commerce before FDA had inspected them. At FDA's request, Customs ordered the 3,750 sacks of seeds redelivered and, when the importer could not comply, issued penalty notices that totaled \$82,500. The importer's request for a reduced penalty was granted by Customs with the advice of FDA. Customs closed the case upon payment of \$500 by the importer.
- Customs released, pending FDA's decision on the product's admissibility, 200 bags of beans which were later found to be contaminated with a pesticide. After attempting to clean the beans, the importer released them into commerce. Customs ordered the beans redelivered, and when the importer did not comply, issued a penalty notice for \$7,400. The importer informed Customs that the beans were mistakenly released and offered to settle the matter for \$200. Customs, with the advice of FDA, accepted the \$200 and closed the case.
- An importer was given 90 days by Customs to bring a nonconforming vehicle into compliance. After several extensions were granted, Customs issued a penalty notice for \$1,567. Later the vehicle was brought in conformity with DOT safety standards but not with the EPA emission standards. However, EPA recommended dropping the penalty because the importer had put forth good faith in attempting to bring the vehicle into conformity. Customs reduced the penalty to \$50 and upon payment closed the case.

In cases in which the importer initially does not comply with the terms of the performance bond but subsequently--after the penalty has been assessed--the products are brought into conformity, redelivered, destroyed, or exported, a reduction in the

penalty appears reasonable. However, to cancel the penalty, or reduce it to a minimal amount, does not encourage these importers to comply with the import admissibility requirements. Thus, if the importers had complied promptly with the redelivery notices, neither Customs nor the other Federal agencies would have been involved with the penalty notices and resulting petitions for reduction of initial penalties.

The following examples illustrate the additional workload of the Federal agencies in cases in which products were brought into conformity, redelivered, destroyed, or exported after the penalties had been assessed.

--FDA ordered an importer to export or destroy 100 bags of contaminated beans by July 20, 1977. After several delays, the date was extended until May 15, 1978. Because action was not taken by this date, Customs issued a penalty notice for \$2,901. After the penalty was assessed, 18 more pieces of correspondence were needed to resolve the case. The penalty was cancelled by Customs upon the recommendation of FDA in March 1979 after destruction of the beans, and the case was closed. If the importer had promptly complied with the order, Customs could have avoided the cost, time, and effort of preparing 10 pieces of correspondence.

--On February 12, 1977, an importer was given until May 24, 1977, to bring a nonconforming vehicle into conformity with safety and emission standards. On October 19, 1977, Customs issued a penalty notice for \$3,605 because the vehicle had not yet been brought into conformity with emission standards. When the vehicle was brought into conformity in February 1978, the penalty was cancelled by Customs upon the recommendation of EPA despite the fact that the importer was at least 7 months late in taking corrective action and the tardiness had caused the Government to prepare at least seven additional pieces of correspondence.

Although penalties were assessed after the importers' failure to comply with the admissibility requirements or initially comply with Customs' redelivery notices, Customs, upon the recommendation of the other agencies, still approved the cancellation of penalties in about 45 percent of the 410 cases we analyzed and a reduction in 40 percent. Penalties were collected in full in only 11 percent of these cases and collection efforts are still being made in 4 percent of the cases. Overall, penalties were reduced to about 6 percent of the amount initially assessed.

## CONCLUSIONS

Notwithstanding the performance bond provisions, importers are often failing to bring nonconforming foreign products into compliance with import admissibility requirements. Although the penalty provisions of the performance bonds could be an effective enforcement tool for obtaining compliance with these requirements, the almost routine reduction of the penalties weakens their credibility as an enforcement tool. Thus, contaminated foods, nonconforming foreign vehicles, and other imports which do not meet the admissibility requirements enter the commerce of the United States.

If the import admissibility requirements are intended to effectively protect consumers and the domestic commerce, the agencies need to require payment of a substantially larger percentage of the initial assessed penalty when such requirements are not met. Failure to do so will continue to provide little or no incentive for importers to comply with the import admissibility requirements.

## RECOMMENDATIONS

In using Customs' mitigation authority, the Secretaries of Agriculture, Transportation, Health and Human Services, and the Administrator of the Environmental Protection Agency should take the actions necessary to ensure that penalties, even if mitigated, are large enough to be an effective enforcement tool.

## AGENCY COMMENTS AND OUR EVALUATION

EPA, DOT, and HHS believe their penalty policies are adequate to effectively encourage importers' compliance with admissibility laws and regulations. It was not our intent to question their policies but rather the impact of the penalty reductions.

Although we did not evaluate the penalty policies, our specific concern is that the implementation of the policies has provided little or no incentive for those importers covered by our review to comply with the import admissibility requirements. As we pointed out, penalties were substantially reduced in about 44 percent of the 410 cases even though the importers did not bring into conformity or redeliver, destroy, or export the goods. Even when an importer subsequently complies with the admissibility requirements--after the penalty has been assessed--the minimal or no penalty does little to encourage initial compliance with the terms of the performance bond. As a first step to ensure that the penalties are adequate, these agencies should make certain that their policies are being carried out.

HHS was also concerned that the report did not adequately reflect its penalty proceedings, particularly since FDA revised its penalty policy December 5, 1977. HHS stated that the example on page 18 of the report regarding 200 bags of beans did not reflect FDA's revised policy. Our review disclosed that the decision to reduce the penalty in this case is inconsistent with the revised policy and was made in February 1978--3 months after FDA revised its penalty policy. We have revised the report to recognize that FDA has reduced penalties significantly less than EPA, DOT, and USDA. However, the case sample we selected for review was taken from fiscal years 1977 through 1979. Since the vast majority of cases we reviewed were closed after December 1977, the sample results show that FDA's revised penalty policies have not been implemented.



DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D. C. 20250

1 OCT 1981

**SUBJECT:** GAO Draft Report Entitled "Enforcement of U.S. Import Admissibility Requirements: Better Management Could Save Work, Reduce Delays, and Improve Service and Importers' Compliance"

**TO:** Henry Eschwege  
Director, Community and Economic  
Development Division  
U.S. General Accounting Office

We appreciate the opportunity to comment on the subject draft report. In general, we agree with the GAO recommendations. Streamlining enforcement procedures and increasing penalties will improve the effectiveness of the agricultural quarantine inspection program and reduce the risk of pest introduction.

The following are our specific comments on the report:

1. If the present Customs' involvement is curtailed, staff years and funds associated with the "middleman" role should be redistributed to other agencies.
2. There are specific Customs authorities which allow them to take actions related to law enforcement. Should these functions be transferred to other agencies, they must be given the same authorities.
3. Customs should be informed of revisions in the Animal and Plant Health Inspection Service (APHIS) import regulations; the problems with the present situation must be resolved. However, we must recognize that there will continue to be some basic disagreements between the two agencies because of conflicting objectives. For example, Customs' objective of expediting passenger clearance diverges from the APHIS policy of 100 percent hand-baggage inspection, which is essential to guarantee protection of American agriculture from the introduction of potentially devastating foreign plant pests and animal diseases.

A handwritten signature in cursive script, appearing to read "C. W. McMillan".

C. W. McMillan  
Assistant Secretary  
Marketing and Inspection Services



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OCT 2 1981

Mr. Henry Eschwege  
Director  
Community and Economic Development Division  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Eschwege:

The Environmental Protection Agency (EPA) has reviewed the General Accounting Office (GAO) draft report, "Enforcement of U.S. Import Admissibility Requirements: Better Management Could Save Work, Reduce Delays, and Improve Service and Importers' Compliance." Public Law 96-223 requires the Agency to submit comments on the draft report which are presented below.

Importation of motor vehicles is controlled by joint EPA and U.S. Customs Service (Customs) regulations, promulgated in 1972. In general, EPA regulates import requirements and Customs provides the necessary administrative procedures for this program. Under this program, our policy is to deal directly with importers in all cases where possible.

We are simplifying the program to reduce interaction between the importer and both Customs and EPA. We have proposed revisions to the joint EPA-Customs regulations which decrease, and frequently eliminate, the importer's need to contact either agency. The proposal would allow individuals to import an uncertified vehicle for personal use without bringing it into conformity with Federal emission requirements. All other importations by "second-time" individual importers or commercial importers of uncertified vehicles would be prohibited. We estimate that for at least half of the vehicles imported by individuals, except for an initial entry through Customs, there would be no interaction between importers and Customs.

On September 25, 1981, EPA staff met with Customs to discuss alternative modifications that would streamline the administrative process and eliminate much of the paperwork required at the present time. If agreement is reached concerning these modifications, interaction between Customs and EPA would be substantially reduced. A simplified administrative proceeding would involve direct contact between one agency and the importer. This change would significantly reduce the Customs' "middleman" function and the burden placed on individual importers and EPA.

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We are very concerned about the administrative burden the joint EPA-Customs importation regulations impose, particularly on individuals who are not fully aware of Federal import requirements. In addition to the proposed revisions mentioned above, the Agency is taking short-term actions to simplify current importation procedures. These actions include:

- describing to prospective importers who contact EPA the financial and technical difficulties they may experience;
- explaining the mitigation process to importers immediately after they have imported vehicles, so that multiple correspondence among Customs, EPA, manufacturers and importers may be avoided or significantly reduced; and
- simplifying mitigation procedure coordination between Customs and EPA, so that cases may be handled more quickly.

Customs has been an active participant in the development of EPA importation regulations and policies. On July 21, 1980, proposed revisions to the EPA and Customs regulations were published, after a joint development process between the two agencies. Customs also participated in a public hearing on the proposed revisions. The Agency is reviewing the comments received in response to this proposal and the final rule will be promulgated only after careful coordination with Customs. Since this proposal, several meetings and discussions have been held between EPA and Customs personnel to discuss how to improve current procedures and how best to respond to issues raised by commenters.

In cases where an importer is unable to conform to regulations within a specified time period, Customs levies administrative penalties equal to some portion of the initial amount assessed on the motor vehicle. A statement in the GAO report that the average penalty assessed was about six percent of the bond is misleading. EPA's policy is not to recommend mitigation of an assessed penalty, except in cases when an individual, for the first time, imports an uncertified vehicle for personal use. For all other importers, for example, commercial importers and "second-time" individuals, EPA recommends a penalty equal to the full value of the bond. Of 1100 nonconforming vehicles imported in 1979, approximately one-half fell into the latter category. Even in cases where mitigation is recommended, EPA usually recommends a penalty equal to one-fourth of the value of the bond and one-half of the value of the bond in the case of "exotic" vehicles. In many cases, it is technically or financially impossible for an individual to bring an imported vehicle into conformity. It is also costly for most individual importers to post a bond.

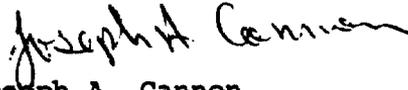
-3-

We believe that the experiences of individual importers who are not fully aware of the importation requirements, plus the imposition of a sizeable penalty, while not resulting in the conformity of the imported vehicle, serve as a substantial deterrent to discourage the importation of additional uncertified vehicles. The small number of nonconforming vehicles imported annually, compared to the approximately 2.6 million conforming vehicles imported each year, is evidence of the deterrent effect of the current importation requirements and policies.

We believe that these actions, coupled with amendments to the regulations, will achieve the goals expressed in the GAO draft report. We will also investigate further revisions to the importation regulations and policies to incorporate the administrative changes recommended in the draft report.

We appreciate the opportunity to comment on the draft report prior to its submission to Congress.

Sincerely yours,



Joseph A. Cannon  
Acting Associate Administrator  
for Policy and Resource Management



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of Inspector General

Washington, D.C. 20201

OCT - 1 1981

Mr. Gregory J. Ahart  
Director, Human Resources  
Division  
United States General  
Accounting Office  
Washington, D.C. 20548

Dear Mr. Ahart:

The Secretary asked that I respond to your request for our comments on your draft report entitled, "Enforcement of U.S. Import Admissibility Requirements: Better Management Could Save Work, Reduce Delays, and Improve Service and Importers' Compliance." The enclosed comments represent the tentative position of the Department and are subject to reevaluation when the final version of this report is received.

We appreciate the opportunity to comment on this draft report before its publication.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "R. Kusserow".

Richard P. Kusserow  
Inspector General

Enclosure

COMMENTS OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES ON THE  
GENERAL ACCOUNTING OFFICE'S DRAFT REPORT "ENFORCEMENT OF U.S.  
IMPORT ADMISSIBILITY REQUIREMENTS: BETTER MANAGEMENT COULD  
SAVE WORK, REDUCE DELAYS, AND IMPROVE SERVICE AND IMPORTERS'  
COMPLIANCE," DATED SEPTEMBER 1, 1981

General Comments

We have reviewed the General Accounting Office's (GAO) draft report and offer the following comments for your consideration.

- The data shown on page 15<sup>1/</sup> of the draft report indicate that there is a wide difference among the agencies in mitigating penalties, yet the report has aggregated the data in stating that only six percent of the initial amount assessed is collected. We believe the statistics for the Food and Drug Administration (FDA) are considerably better than this, particularly since December 1977, and suggest that the report be modified to show the record of each agency individually.

GAO Recommendation

We recommend that the Secretary of the Treasury

- Reach agreement with the Secretaries of Agriculture, Transportation, Health and Human Services, and the Administrator of the Environmental Protection Agency to minimize Customs' role in the administrative proceedings against importers who violate the conditions of their performance bonds.

Department Comment

The Department will be pleased to cooperate with the Department of the Treasury in exploring the feasibility of minimizing Customs' role in administrative proceedings. We believe, however, that the statute relevant to assessing penalties in most import/bond matters appears to vest the authority with Customs. Therefore, congressional action may be necessary to reassign this authority. Also, the Office of Management and Budget should be consulted before the agencies involved undertake any action relative to this recommendation. It should be noted that present resource constraints will preclude FDA's acquiring additional responsibilities that impose added expenditures of staff years or resources.

GAO Recommendation

- In using Customs' mitigation authority, the Secretaries of Agriculture, Transportation, Health and Human Services, and the Administrator of the Environmental Protection Agency should take the actions necessary to ensure that penalties, even though mitigated, are large enough to be an effective enforcement tool.

<sup>1/</sup>Now page 17.

Page 2

Department Comment

FDA has understood that Customs has the authority to assess and collect penalties. FDA's role is limited to requesting, not requiring, that bonds be forfeited. Accordingly, on December 5, 1977, FDA issued a policy requesting that Customs seek 100 percent forfeiture of bonds posted by importers who fail to redeliver, destroy, or export regulated products that are found to be violative under this policy. There are only two situations that would justify a reduced penalty: (1) the goods were removed from the control of the importer due to factors beyond his control (theft, for example), and (2) the entry in question was the first time the importer had imported an FDA-regulated product. The sample selected for review in the report was taken from Fiscal Years 1977-1979 which partially predate the change in policy articulated in the December 5, 1977 document. Therefore, we believe FDA has already acted to eliminate this problem and that the report should acknowledge this policy change on the part of FDA.

Technical Comments

--Page i, last paragraph, "The second problem is . . . ." Change to show the percentage of mitigation for each agency involved. The six percent figure cited is an average of all agencies involved in this audit and, therefore, misleading.

Also, some of the FDA cases included in this audit occurred before the December 5, 1977 issuance of FDA's bond action procedures.

--Page ii, paragraph 3, should be modified to include that FDA issues one notice, but it is in the name of the Customs' service (pursuant to Section 801(a) of the FD&C Act) and Customs issues another notice. The Notice of Refusal of Admission, which FDA issues in the name of Customs, does not require redelivery; it states, "this merchandise must be exported or destroyed under Customs' supervision within 90 days from the day of [the] notice." The Notice of Redelivery, also a Customs' action sent directly by Customs, is not issued until after the 90-day Refusal of Admission period has expired.

--Page 2, under Agency Requirement, add biologicals and radiation emitting products to the FDA list of products.

--Page 4, paragraph 2, clarify to show that the Secretary of the Treasury <sup>1/</sup> may cancel or mitigate a penalty, he/she is not required to do so. Further, the collector of Customs cannot cancel or mitigate the penalty to a lesser amount unless the FDA district director is in full agreement with the action (21 CFR 1.97(b)).

Page 3

- Page 10, FDA/USDA Requirements, change event number 1 to read "Issues to the Importer, a Notice of Refusal of Admission, requiring 90 days to export or destroy." Add a new event number 2, "Fails to export or destroy in 90 days" and renumber other events accordingly.
- Page 16, second example, "Customs released . . . 200 bags of beans." 1/ This is factually correct, but the case occurred prior to the national import bond action procedures which provide for 100 percent bond penalties.



**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

Assistant Secretary  
for Administration

400 Seventh Street, S.W.  
Washington, D.C. 20590

October 6, 1981

**Mr. Henry Eschwege**  
Director, Community and Economic  
Development Division  
U.S. General Accounting Office  
Washington, D.C. 20548

Dear Mr. Eschwege:

We have enclosed two copies of the Department of Transportation's (DOT) reply to the General Accounting Office (GAO) draft report, "Enforcement of U.S. Import Admissibility Requirements: Better Management Could Save Work, Reduce Delays, and Improve Service and Importers' Compliance," dated September 1, 1981.

When imports do not meet the admissibility requirements, the U.S. Customs Service becomes the middleman in the enforcement proceedings between the importers and other agencies. GAO concludes that minimizing Customs' role would reduce the excessible work, delays, and duplication of effort now being experienced. Customs, with the advice of other Federal agencies, routinely reduces monetary penalties to the point that they are not effective in encouraging importers to comply with import admissibility requirements. GAO recommends that the agencies take the actions necessary to ensure that penalties are large enough to be an effective enforcement tool.

We support the recommendation that Customs' role be minimized in administrative proceedings regarding violation of the National Highway Traffic Safety Administration's (NHTSA) laws and regulations. However, given each agency's present boundaries of authority, it does not appear that the role of Customs can be minimized to the extent GAO believes. Nor are we sure that Customs' authority could be delegated by an interagency agreement.

The general criticism, that penalties are not large enough to be an enforcement tool, indicates a misunderstanding of the penalty process as NHTSA has experienced it. The initial penalty for failing to conform is a bond in the amount of the value of the vehicle and is not reduced until mitigating circumstances are shown. Penalties under the National Traffic and Motor Vehicle Safety Act range up to 1,000 dollars. The amount

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imposed depends on the mitigating circumstances of each case. However, in conspicuously bad cases, NHTSA recommends that Customs assess the entire amount of the bond where the value of the vehicle exceeds 1,000 dollars. In summary, the NHTSA importation procedures appear to be sufficient.

If we can further assist you, please let us know.

Sincerely,



Robert L. Fairman

Enclosures

DEPARTMENT OF TRANSPORTATION REPLYTOGAO DRAFT REPORT OF SEPTEMBER 1, 1981ONENFORCEMENT OF U.S. IMPORT ADMISSIBILITY REQUIREMENTS:  
BETTER MANAGEMENT COULD SAVE WORK, REDUCE DELAYS, AND  
IMPROVE SERVICE AND IMPORTERS' COMPLIANCE (Code 263800)SUMMARY OF GAO FINDINGS AND RECOMMENDATIONS

Representatives from the General Accounting Office (GAO) reviewed a sampling of Customs cases closed during the fiscal years 1977 through 1979. The review deals primarily with the flow of enforcement action as it pertains to laws administered by the Department of Transportation (DOT), Environmental Protection Agency (EPA), Department of Agriculture (USDA), and the Food and Drug Administration (FDA). GAO's work showed that compliance enforcement practices are resulting in lengthy delays, excessive paper transactions, duplicative work, and confusion.

The GAO recommends that the Secretary of the Treasury:

1. "--Reach agreement with the Secretaries of Agriculture, Transportation, Health and Human Services, and the Administrator of the Environmental Protection Agency to minimize Customs' role in the Administrative proceedings against importers who violate conditions of their performance bonds."
2. "--Provide the resources necessary to enhance Customs' ability to provide Treasury/Customs policy views on proposed laws and regulations that will have an impact on Customs."

Regarding Customs' mitigation authority, GAO also recommends:

3. "--That the Secretaries of Agriculture, Transportation, Health and Human Services, and the Administrator of the Environmental Protection Agency take the actions necessary to ensure that penalties, even though mitigated, are large enough to be an effective enforcement tool."

DEPARTMENT OF TRANSPORTATION POSITION STATEMENT

The Department of Transportation concurs in the importance and desirability of certain issues highlighted in the GAO report but we believe it is essential to clarify some of the comments presented therein.

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1. The sequence of events following an importer's failure to conform, on pages 7 and 8 of the draft report, is generally accurate, and we are sympathetic with the report's recommendation that the 14 steps shown should be reduced. However, GAO would eliminate all steps involving Customs (2, 4, 6, 8, 10, 12, and 14). We believe that steps 6, 8, 10, and 12 could be eliminated, as Customs' role appears to be only that of a conduit. But issuance of a Notice of Redelivery (step 2), issuance of a Notice of Penalty (step 4), and case closure (step 14) are predicated upon failure to perform under a Customs Bond and appear to be performable only by Customs. DOT has no bonding provisions of its own. The report makes no effort to examine the legality of what it recommends, or to inform the Congress of the laws that must be changed to achieve the recommended ends. We support the recommendation that Customs' role be minimized in administrative proceedings regarding violation of NHTSA's laws and regulations, but given each agency's present boundaries of authority, it does not appear that the role of Customs can be minimized to the extent GAO believes. Nor are we sure that Customs' authority could be delegated by an interagency agreement.
2. With regard to response time, the draft report stated, on page 9, "...in one district it took an average of 226 days for EPA or DOT to respond to Customs' request for decisions on importers' petitions." Due to our own streamlining activity, our current typical response time is less than 30 days.
3. With regard to advance planning and coordination on page 12 <sup>1/</sup> of the draft report, we would expect only minimal resources would have to be allocated for the activity necessary to review DOT proposed laws and regulations that would have an impact on Customs. Suffice to say that Customs Regulation 19 CFR 12.80 was jointly issued by the Secretary of the Treasury and the Secretary of Transportation, after close and careful coordination, to provide procedural guidance and regulation for the importation of motor vehicles and motor vehicle equipment. Unlike the problems alluded to in the report, with other agencies, where Customs finds out about new regulations by reading the Federal Register, we make the first contact and strive to inform Customs headquarters and its districts of new or changed requirements and coordinate such changes immediately.

Quarterly meetings, in addition to the routine telephone contacts, are held with Customs headquarters personnel to discuss current and pending matters of significance to both agencies, thus assuring the degree of advance planning necessary for informed decisions.

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<sup>1/</sup>Now pages 11 to 13.

4. In Chapter 3, GAO's point about penalties appears to be that they are not large enough to be an effective enforcement tool. The general criticism appears to be that if penalties were higher, a greater degree of conformance might result, and that "The almost routine reduction of penalties...weakens the effectiveness of this enforcement tool."

This general criticism indicates a misunderstanding of the penalty process as NHTSA has experienced it. The initial penalty for failing to conform is a bond in the amount of the value of the vehicle and is not reduced until mitigating circumstances are shown (i.e., efforts toward compliance). The "stick" is the possibility of forfeiture of the bond, or loss of vehicle. The "carrot" is the lessened monetary sum that will be assessed through acceptable performance. An importer of a nonconforming car has no idea what his penalty may be for failure to conform but, because the entry bond must be for the value of the car, he knows the maximum amount for which he may be liable. Thus, his incentive to conform is to reduce the amount for which he will be liable under the bond, and he may infer that the greater his effort, the greater that reduction would be. NHTSA does not publish a list of penalties, but to schedule a high penalty that would not take into account good faith conformance efforts would tend to be counterproductive and little effort might be made. With first-time offenders who make reasonable efforts to comply, the penalty for failure to conform is no more than \$250, which is 25% of the maximum permissible civil penalty under the National Traffic and Motor Vehicle Safety Act for importing a single nonconforming vehicle. For second-time offenders, the maximum is \$500 representing 50% of the maximum penalty. An importer who ignores his responsibilities completely is subject to the maximum, \$1,000. On a percentage basis, such penalties far exceed those incurred by manufacturers who have mass-produced nonconforming vehicle and equipment items. In especially egregious cases, we recommend that Customs assess the entire amount of the bond where the vehicle's value exceeds \$1,000. This represents a higher penalty than the civil penalty that can be imposed under the Act. In summary, the current NHTSA importations procedures appear to be sufficient to deter importation of more than a single vehicle by a single importer.



ASSISTANT SECRETARY

## DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

OCT -9 1981

Dear Mr. Anderson:

The General Accounting Office draft report entitled "Enforcement of U.S. Import Admissibility Requirements: Better Management Could Save Work, Reduce Delays, and Improve Service and Importers' Compliance" has been reviewed by officials of the U.S. Customs Service and pertinent comments are presented below.

In general, we agree with the thrust of the recommendation of a reduced role for Customs in the administration of penalty proceedings between importers and other agencies. However, it is important to note that when a violation occurs, it is generally a liquidated damage (not penalty assessed), against a Customs bond.

The U.S. Customs Service, which is the principal border enforcement agency, must play a part in the enforcement and control of other agency requirements at the port of entry, specifically, the identification of instances of noncompliance. Once the Customs Service has made such an identification and informed the other agency of the noncompliance situation, the Customs Service would prefer to have no other role.

However, while it seems desirable to eliminate the function of Customs as "middleman," this may not be easy to achieve because of specific requirements in certain laws. For example, in the area of food and drugs, the law (21 U.S.C. 381) provides that the Secretary of the Treasury shall cause the destruction of any article refused admission (by FDA), under regulations prescribed by the Secretary of the Treasury. Furthermore, pending decision as to the admission of an article being offered for import, the Secretary of the Treasury may authorize delivery of such article upon the execution of a good and sufficient bond providing for the payment of such liquidated damages in the event of default, as may be required pursuant to regulations issued by the Secretary of the Treasury.

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Other examples of a middleman bond enforcement function being imposed on Customs are found in the Clean Air Act (42 U.S.C. 1857f-1(b)) and the National Highway and Traffic Safety Act (15 U.S.C. 1397(b)) both of which provide that the Secretary of the Treasury and the head of the other agency may, by joint regulation, provide for deferring final determination as to admission of a motor vehicle upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that it will be brought into conformity with standards, requirements, limitations, etc. The Secretary of the Treasury shall, if the motor vehicle is finally refused admission, cause the disposition thereof in accordance with the Customs Laws unless exported under regulations prescribed by the Secretary.

Thus, to lessen the role of Customs might well require statutory changes. In the absence of such legislation, the Customs Service has initiated several actions which are designed not only to speed up the process, but also to reduce the role of the Customs Service as a middleman for other agencies. For example, Customs is in the process of revising Customs bonds. The revised bonds and attendant procedures should result in a significant reduction in the turn-around time on many of these cases. Customs is currently working with other agencies as they develop new requirements to reduce the burden not only on Customs, but on the importing public as well. It should also be noted that penalties, although a deterrent, are not the only means to encourage compliance. Identification of repeat violators, violative products, establishment of profiles by the responsible agencies and withholding of release of such shipments is the most effective means of prohibiting importations and safeguarding the American public.

With respect to Customs resources needed to provide Treasury/Customs policy views on proposed laws and regulations that will impact on Customs, we do not require any additional resources. The program is well staffed and has not only made Customs views known, but is implementing a positive management initiative which we hope will result in less work for other agencies by Customs.<sup>1/</sup>

In summary, we agree that Customs should work with all other agencies in an attempt to reduce the role of Customs in the administering of other agency requirements.

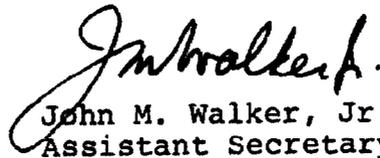
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<sup>1/</sup>GAO's proposal that the Secretary provide additional resources has been dropped.

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We appreciate the opportunity to comment on the draft report and will continue to cooperate with the General Accounting Office in future efforts to improve our operations.

Sincerely,



John M. Walker, Jr.  
Assistant Secretary  
(Enforcement and Operations)

Mr. William J. Anderson  
Director, General Government  
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