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CUSTOMS SERVICE

Acceptance of Centralized Cargo Examinations Varies





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The Honorable Dennis DeConcini
Chairman, Subcommittee on Treasury,
Postal Service, and General Government
Committee on Appropriations
United States Senate

The Honorable J.J. Pickle
Chairman, Subcommittee on Oversight
Committee on Ways and Means
House of Representatives

This report responds to your request that we review selected aspects of the Customs Service's Centralized Examination Stations program. We present the views of importing community representatives and Customs officials on how well the program is operating after several years of existence. We also discuss the cost of the program to the importing community as well as certain actions Customs should take to improve its management of the program.

Copies of this report are being sent to the Secretary of the Treasury, the Commissioner of Customs, and other interested parties. We will make copies available to others upon request.

Please contact me at 275-8389 if you have any questions concerning the report. Other contributors to this report are listed in appendix V.

A handwritten signature in cursive script that reads 'Lowell Dodge'.

Lowell Dodge
Director, Administration
of Justice Issues

Executive Summary

Purpose

Historically, the U.S. Customs Service examined imported goods by sending its inspectors to the sites where the goods were located. In 1987, Customs changed its procedures by implementing the Centralized Examination Stations program, whereby importers must take their goods to central locations for Customs examination. Customs' primary objective was to consolidate examinations, thereby reducing inspector travel and making operations more efficient. However, members of the importing community (importers, customs brokers, container freight station operators, and industry associations) have complained that the benefits have resulted in additional burdens on the importing community.

Given these concerns, the Omnibus Budget Reconciliation Act of 1987 required GAO to study the program's impact on the importing community and on Customs. GAO's report covered centralized examination stations at airports. This report, done at the request of the chairmen of the Subcommittee on Treasury, Postal Service, and General Government, Senate Committee on Appropriations, and the Subcommittee on Oversight, House Committee on Ways and Means, covers the program at land ports, border ports, and seaports. As agreed with the subcommittees, GAO reviewed the degree to which the importing community has accepted the program, the program's impact on segments of the importing community, and Customs' and the importing community's views on program costs and benefits. GAO was also requested to respond to legal questions about the program's implementation.

Background

In 1984, Customs began to reduce the locations where containerized goods could be examined, thereby reducing the amount of time inspectors spent traveling among examination sites. In 1987, Customs issued national guidelines for the program to further reduce the number of locations at which cargo could be examined.

Centralized examination stations are generally privately operated facilities that provide space for Customs inspectors to examine and release merchandise before it enters commerce. Importers or their brokers pay the operator for his services, which may include transportation and unloading, unpacking, and reloading merchandise after Customs examinations. Customs district directors decide whether the program is suitable for their ports' operations and are responsible for designating centralized examination stations in consultation with the importing community. The most recent data available indicate that Customs had 112 centralized examination stations at 55 of its approximately 300 ports of entry as of August 8, 1988. (See p. 13.)

Results in Brief

According to Customs officials, the program has been accomplishing its objectives and is advantageous to Customs. They said that the program reduces inspector travel time and related costs, improves supervision, permits more goods to be examined without adding inspectors, and hastens the release time for cargo.

Among importing community members that GAO contacted in 26 ports, the degree of program acceptance varied with more favoring the program than not. This level of acceptance has developed over time. Initially, the importing community charged that Customs did not follow federal law, such as the Administrative Procedure Act, in implementing the program. Presently, the most prevalent concern raised by the importing community has been the perceived increased costs, although the community could not provide cost data to support this perception. Data on the cost impact on the total community or on an individual basis were not provided.

In looking into these concerns, GAO found that Customs did not violate applicable federal law; however, Customs has not (1) routinely examined the fees charged by centralized examination station operators to ensure that those fees are reasonable; (2) required the operators to enter into written agreements with Customs; or (3) maintained data to evaluate the program's effectiveness or support decision-making on program expansion.

Principal Findings

The Program Benefits Customs but Importing Community Says Costs Have Increased

Because of the program, Customs said that it has been able to reduce the amount of time inspectors spend traveling between examination sites. For example, in one port GAO visited, Customs inspectors who previously traveled to 75 locations now service two centralized examination stations.

While Customs has few statistics on the effect of the program, Customs officials said that the reduced travel time has provided more direct supervision of inspectors, more efficient use of personnel, and more thorough cargo examinations. Importing community representatives said, however, that Customs increased its efficiency at their expense, in the form of higher charges for transporting and presenting goods for examination.

Customs agrees that under the program the cost of transporting goods for a Customs examination has increased. Customs does not agree, however, that the costs of presenting the goods for examination (opening, unpacking, and reloading) have increased. Neither Customs nor the importing community could provide annual data on a port-by-port or individual importer basis to support their positions on presentation costs. (See p. 25.)

Examining Operators' Fees

Customs, for the most part, does not determine the reasonableness of the fees operators charge importers. Customs' centralized examination station directive, as amended in August 1988, suggests that an operator's fee structure be examined when establishing a centralized examination station and that its performance be monitored. At 16 of the 26 ports GAO contacted, Customs officials said that they did not monitor operators' fees. Instead, they rely on complaints from the importing community to stay informed of operators' fees. (See p. 26.)

Program Acceptance by Importing Community

The degree to which the program was accepted varied among the ports GAO contacted. Importing community representatives were positive toward the program in 15 of the 26 ports, negative in 6 ports, and neither positive nor negative in 5 ports. Although group discussions surfaced frustration about program costs, importing community representatives in 6 of 10 ports where such discussions were held said that they would keep the program. This level of acceptance developed over time. (See pp. 17 to 20.)

Customs Not Quantifying Program Performance

While Customs is satisfied that the program is working, it has not collected data to evaluate how well the program is working or to support ongoing decision-making on program expansion. Customs decentralized that decision-making authority to the district level, where the directors have the discretion to establish centralized examination stations where they make the most sense. Since the program's inception, 55 of the approximately 300 ports of entry have opened centralized examination stations. Customs' headquarters program office is beginning to collect some basic data on the program. It is too early to tell whether the data can be used to evaluate program effectiveness. (See p. 16.)

Customs Does Not Require Written Agreements

Although Customs recommends that districts formulate written agreements with centralized examination station operators, Customs does not require these agreements. Only 4 of 26 ports GAO contacted had written agreements. Without such agreements, the responsibilities and liabilities of the parties are not clearly spelled out. According to Customs headquarters officials, the agency is considering making written agreements a requirement. (See p. 28.)

Program Directive Promulgated According to Law

The importing community charged that Customs should have solicited comments from the community and determined the potential cost to the community before implementing the program. The Administrative Procedure Act requires that all proposed rulemaking be presented for public comment before issuance in final form, subject to certain exceptions. In GAO's opinion, the directive was a statement of policy that is exempted from the requirements of notice and comment rulemaking under the act. Customs did not violate Executive Order 12291, which provides that a regulatory impact analysis be done for major rules, because the directive was issued under existing regulations and notice and comment rulemaking was not required. (See pp. 20 to 22.)

Recommendations

To improve the program, GAO recommends that the Secretary of the Treasury direct the Commissioner of the Customs Service to (1) systematically measure how well the program is working; (2) establish a policy on when and how to ensure that program-related fees are reasonable; and (3) require written agreements with operators that specify the responsibilities and liabilities of Customs and the operators. (See pp. 23 and 29.)

Agency Comments

GAO obtained written comments on a draft of this report from the Customs Service. Customs officials concurred with the report's conclusions and recommendations. (See app. IV.) They plan to modify the directive implementing the centralized examination stations program to require district review of proposed fees and written agreements between Customs and operators. (See p. 29.) Customs officials also proposed steps to evaluate the effectiveness of the program on an annual basis by using a cross-section of ports. (See p. 23.)

Contents

Executive Summary		2
Chapter 1		8
Introduction	Background	8
	Objectives, Scope, and Methodology	11
Chapter 2		15
CES Program Benefits and Acceptance	CES Program Beneficial to Customs	15
	Customs Not Quantifying CES Program Performance	16
	Importing Community's Acceptance of CES Program Varies	17
	Legal Issues Concerning CES Program	20
	Conclusions	22
	Recommendation	23
	Agency Comments	23
Chapter 3		24
CES Program Improvements Needed	Impact and Reasonableness of Costs	24
	Written Agreements Needed	28
	Conclusions	28
	Recommendations	29
	Agency Comments	29
Appendixes	Appendix I: Cities With Customs Ports GAO Contacted	30
	Appendix II: Inspector Staffing and Entry Figures	31
	Appendix III: CES Operators' Fees for Customs Examinations	32
	Appendix IV: Comments From the U.S. Customs Service	41
	Appendix V: Major Contributors to This Report	44
Glossary		45
Tables	Table II.1: Entries for Fiscal Years 1983 to 1988	31
	Table II.2: Inspector Staffing Levels, Fiscal Years 1983 to 1988	31

Abbreviations

ACS	Automated Commercial System
APA	Administrative Procedure Act
CES	Centralized Examination Station
CFS	Container Freight Station
MPF	Merchandise Processing Fee
NTEU	National Treasury Employees Union

Introduction

The U.S. Customs Service, a component of the Department of the Treasury, is responsible for enforcing U.S. import laws and for collecting duties. In fulfilling its responsibilities, Customs initiated a controversial program for examining merchandise at centralized locations. Because of this controversy, the Omnibus Budget Reconciliation Act of 1987 and Senate Report No. 160, 100th Cong., 1st Sess. 33-34 (1987) (Senate Report 100-160), directed us to report on Customs' Centralized Examination Stations (CES) program and its implementation. Our report covered CES at selected airports.¹ After issuance of that report, the chairmen of the Subcommittee on Treasury, Postal Service, and General Government, Senate Committee on Appropriations, and the Subcommittee on Oversight, House Committee on Ways and Means, requested this report on the CES program at land ports, border ports, and seaports.

Background

The U.S. Customs Service's overall mission is to collect revenue on imports and to prevent improper entry of goods. As part of this mission, Customs is to

- assess, collect, and protect revenue accruing to the United States from import duties, taxes, and fees;
- control, regulate, and facilitate carriers, persons, and articles entering or departing the United States to ensure compliance with laws and regulations; and
- enforce all statutes, regulations, and rulings governing the admission of articles into the United States.

As a principal border enforcement agency, Customs' mission has been extended over the years to assist in the administration and enforcement of some 400 legal provisions. In addition to administering the Tariff Act of 1930, as amended, Customs is responsible for enforcing various provisions of laws aimed at protecting American agriculture, business, and public health. These include statutes relating to motor vehicle safety and emission control standards, radiation and radioactive material standards, illegal narcotics and pornography, animal and plant quarantine requirements, and food and hazardous substance prohibitions.

Customs is a decentralized agency with field operations in 7 regions, 45 districts and areas, and about 300 ports of entry. All cargo imported into the United States must enter through a Customs port. When a ship,

¹Air Cargo Imports: Customs Needs to Overcome Concerns to Benefit From Centralizing Examinations (GAO/GGD-88-64, March 31, 1988).

plane, train, or truck carrying cargo arrives within the limits of the country, its arrival must be reported to Customs.

From 1842 to the early 1980s, Customs' policy for enforcing import laws was to examine a portion of every importer's shipment. In 1978, we examined the inspection process and reported that Customs' cargo inspections did not ensure compliance with the laws and regulations governing imports because the inspections were usually cursory.² We recommended that fewer but more intensive examinations be done. In 1981, the Department of the Treasury amended Customs' regulations relating to the examination of imported merchandise. The amended regulations allow Customs to establish systems whereby only high-risk shipments are physically examined by inspectors.

In 1986, we recommended that Customs establish policies and procedures for Customs inspectors to follow. These policies and procedures would provide criteria for basing examination intensity on the potential risk of the shipment and the purpose of the examination.³ This step was needed to improve the quality of examinations and to better ensure importer compliance with importation laws and regulations.

In July 1986, Customs issued a directive to establish uniform servicewide procedures for the examination of cargo. Customs' intent was to emphasize the quality rather than the quantity of cargo examinations. In November 1987, the directive was further clarified in view of new systems and procedures in use. One system, the Automated Commercial System (ACS), assists Customs employees with merchandise processing and release, cargo selectivity and examination, duty collection, and the final computation of duties owed. Through a number of integrated functions, this system is intended to provide information on bonds, quotas, fines, penalties, forfeitures, calculation of interest on bills, and statistical data for use by Customs and other agencies such as Census.

The CES Concept

Historically, Customs inspectors examined goods by traveling to the premises where the goods were located. As import trade expanded—coupled with an increased use of containerized shipments and other

²Customs Cargo Processing—Fewer But More Intensive Inspections Are in Order (GAO/GGD-78-79, Sept. 7, 1978).

³Cargo Imports: Customs Needs to Better Assure Compliance With Trade Laws and Regulations (GAO/GGD-86-136, Sept. 8, 1986).

innovations in transportation—Customs began to explore methods to improve the efficiency of its examination process. One of these methods was the centralization of examinations.

The centralization of examinations evolved over the last 5 years through its implementation in two nationwide Customs programs. In December 1984, Customs issued Directive 3270-01, which reduced the number of Customs examinations at importers' premises by establishing centralized locations for examining containerized cargo. According to Customs, this initiative resulted from many operational problems, including (1) examinations not being cost effective, (2) extensive inspector travel time and associated costs, (3) inadequate facilities for doing examinations, and (4) noncooperative laborers at the importers' premises.

In January 1987, Customs Directive 3270-03 was issued to provide national guidelines for the establishment and operation of CESS. Customs' goal for the CES program was to go one step beyond centralizing the examination of containerized cargo by centralizing all cargo examinations previously done at scattered facilities throughout the ports. Through the CES program, Customs hoped to greatly reduce nonproductive inspector travel time while improving service to the importing community.

CESS are privately operated facilities. Customs can designate any organization as a CES if it meets the requirements set out in the Customs directive. CESS are primarily intended to be used for imported merchandise handled by container freight stations (CFSS); bonded warehouses; truck, rail, and air terminals; and other facilities receiving transferred bonded merchandise. CES operators charge a fee for their services. These fees can include fees for unloading cargo from containers for Customs' examination, reloading containers for shipment, and transportation to and from the CESS. CESS also provide working space for Customs inspectors who examine and release merchandise brought to them. The cost of providing this space is not charged to Customs.

According to the January 1987 directive, all regional and district managers were to coordinate the selection of CESS with as wide a cross-section of the importing community as possible. The final designation of the CES, however, was to be the responsibility of the district director. An August 1988 revision of the directive outlined criteria for selecting CES operators and required that district managers document the selection process. One of the stated criteria for selecting a CES is the firm's fee structure.

This criterion is to ensure that the fee structure is in line with those of other firms. The directive does not provide specific guidance on how Customs districts should monitor the reasonableness of fees charged once a CES has been established.

Congressional and Importing Community Concerns About the CES Program

Some members of Congress and the importing community (importers, customs brokers, container freight station operators, and industry associations) have expressed concerns that merchandise designated for examination may not be processed as quickly and efficiently as before the CES program and that additional costs resulting from the program may be unreasonable. They said that these costs were particularly onerous in view of the merchandise processing fee (MPF) also paid by the importing community. (See page 27.) Among other things, the importing community was concerned with the method Customs uses to select CES operators; the CES operators' liability for lost, stolen, or damaged merchandise; and CES operators' access to client information.

GAO Report on Airport CESS

Because of the concerns expressed by members of the importing community about Customs' implementation of the CES program, the Omnibus Budget Reconciliation Act of 1987 and Senate Report 100-160 directed GAO to evaluate the CES program. The mandated March 30, 1988, reporting date in the Omnibus Budget Reconciliation Act necessitated limiting the GAO report to airport CESS. As discussed in our report, Customs district officials did not resolve many of the concerns raised by the importing community at the ports we visited before allowing CESS to begin operations. However, the importing community in these ports came to accept the CES program after operations began, primarily because Customs' service to the importing community had been enhanced by quicker examination and release of merchandise. As of March 1989, there were CESS at nine airports.

Objectives, Scope, and Methodology

The chairmen of the Subcommittee on Treasury, Postal Service, and General Government, Senate Committee on Appropriations, and the Subcommittee on Oversight, House Committee on Ways and Means, asked us to follow up our airport CES report with a report on CESS at land ports, border ports, and seaports.

The objectives of our review were to determine

- the perceived costs and benefits of the CES program from the importing community's and Customs' viewpoints;
- the degree to which the importing community has accepted the CES program;
- the impact of the CES program on segments of the importing community; and
- the answers to legal questions about the program's implementation involving adherence to the requirements of the Administrative Procedure Act (APA) and Executive Order 12291, and the permissible use of funds from the MPF.

To accomplish our objectives, we visited 10 Customs ports throughout the United States; telephoned an additional 16 ports (see app. I); and met with Customs officials and reviewed Customs reports and documentation in Washington, D.C., and in the ports we visited. We selected the ten ports for site visits to obtain a diversity of ports based on port type (land, border or seaport), geographic location, number of annual entries, and annual value of duty collections. During the site visits, we interviewed Customs officials, including supervisors and inspectors, and union officials. We also spoke with representatives of the importing and trade community. We obtained the viewpoints of customs brokers, CFS operators, CES operators, steamship line representatives, local and state port authority representatives, and trucking officials at some ports. In addition, we spoke with representatives of industry associations, including the National Bonded Warehouse Association and the National Customs Brokers and Forwarders Association of America.

We held discussions with groups of customs brokers and CFS operators at the ports we visited. The focus of the discussions was the CES program's acceptance, opinions regarding the way the program is working, and opinions on whether the program should continue. We randomly selected 7 to 20 brokers from lists of brokers that had a large annual entry volume by port and invited them to participate in group discussions about the CES program. Thus, the brokers selected were more likely to be familiar with CES operations and related issues than others who had fewer annual entries. If there were fewer than 10 brokers in a port, we invited all of them. We randomly selected CFS operators, at ports that had such operators, from lists provided by Customs officials. If there were fewer than 10 such operators located at the port, we invited all of them to attend the group meeting. None of the brokers and CFS operators invited to the group discussions were also CES operators. We spoke with CES operators individually.

We visited selected CESS and interviewed, using a structured guide, from one to five CES operators in each port. At each CES visited, we also interviewed Customs inspectors and observed at least one Customs examination of imports.

To broaden the scope of information obtained in our port visits, we interviewed by telephone Customs officials and importing community representatives in 16 additional ports. In each port, we spoke with a Customs district or port director, one to three CES operators, and one customs broker. Where possible, we selected the customs broker who was also the representative of the local brokers association. In the absence of such an affiliation, we chose the largest broker in that port. As of August 8, 1988, Customs had designated 112 CESS at 55 ports—33 at land ports, 14 at border ports, 64 at seaports, and one at an airport. The 10 ports we visited and the 16 ports we contacted by telephone accounted for about 62 percent of all fiscal year 1988 formal entries at ports with CESS. The 26 ports contacted also accounted for about 72 percent of the fiscal year 1988 duty and tax collections for all CES ports.

In total, we held 18 group meetings attended by 141 individuals at 10 ports; also, we contacted 47 CES operators, 30 Customs district or port directors, 28 Customs inspectors, and 11 representatives of the National Treasury Employees Union. Group participants rated their level of acceptance and the way the program is working with a ranking of 1 to 7, with 7 being the highest rating. We categorized their acceptance levels as follows: from 1 to 3, negative acceptance; 4, neither positive nor negative; and from 5 to 7, positive acceptance. To cross check these responses, we asked whether they would keep or discard the program if given the option.

Telephone calls to brokers in 16 other ports were designed to corroborate results from our visits to 10 ports. We did not attempt to project the views obtained from the interviews and telephone calls to the entire importing community because this was not a scientific sample: each port is unique in size, volume of imports, and types of imports, and there are varying degrees of examination centralization at the ports with CESS.

At Customs headquarters, we obtained Customs documents relating to the implementation of the CES program, including directives, port statistics, and when available, studies or reports by Customs districts that justify establishing local CESS. We did not verify Customs' automated database or program figures given us by Customs officials. We obtained and evaluated Customs' position on legal issues raised in Senate Report

100-160. Our evaluation focused on ascertaining whether Customs' positions were consistent with the requirements of the APA, Executive Order 12291, and the Omnibus Budget Reconciliation Act of 1986 provisions establishing the MPF. Also, we discussed these matters with the appropriate headquarters officials, including the Director of the Office of Cargo Enforcement and Facilitation, the CES program manager, and representatives from the Office of Chief Counsel.

Neither Customs nor the importing community maintains a database on CES activities. Thus, we can make no overall projections and have few verified statistics. Where we use such statistics they are appropriately qualified to show limitations on the data.

We did our work from September 1988 to August 1989 and in accordance with generally accepted government auditing standards. Customs provided written comments on a draft of this report. These comments are presented in chapters 2 and 3 and are included in appendix IV.

CES Program Benefits and Acceptance

The importing community's acceptance of the CES program developed over time. Initially, there were many reservations about the program. At the majority of the ports we contacted, the importing community accepted the CES program because merchandise was examined and released by Customs generally faster than before and because release times were more predictable. Some importing community members said that Customs' inspector workforce had not kept pace with the growing volume of imports and, thus, they could have experienced longer examination and release times had Customs not begun centralizing examinations.

Customs officials and most members of the importing community we contacted agreed that centralizing examination locations enabled Customs to improve efficiency. The benefits of the program cannot be quantified, however, because Customs did not collect data to evaluate CES program results.

CES Program Beneficial to Customs

Customs officials said that CES program objectives have been realized. They point to the reduced amount of inspector travel and the fact that they have been able to handle a growing workload without a corresponding increase in staff. We attempted to obtain from Customs objective data or statistics to support these claims yet could not draw conclusions from what little data were available because Customs did not set specific measurable goals for the CES program and did not collect such data as is necessary to assess program results.

Resource Utilization

According to Customs officials, Customs' efficiency has improved because inspectors do not spend as much of their time traveling from one examination site to another. Customs was unable to provide statistics on the actual reduction in travel. Most officials at the ports we contacted, however, generally agreed that travel had been reduced. As evidence, they pointed to the smaller number of examination sites for which they are responsible under the CES program. On the basis of their estimates, about 575 examination sites have been eliminated as a direct result of the centralization process in 15 of the 26 ports we contacted. At the Denver port, for example, Customs officials said that prior to the CES program, they serviced 75 locations; now only two locations are serviced. The remaining nine ports we contacted did not provide data on examination sites eliminated.

Since an inspector spends less time traveling, more time can be devoted to cargo examinations, according to Customs officials. Centralization, they say, puts more inspectors in one location and allows Customs supervisors to be physically present for more examinations. The reduction in travel also allows Customs to use inspectors for other duties, such as document examination, document processing, or participation in special inspection teams. Also, because there is more time for examinations, Customs officials said that they are able to do more intensive examinations. By the term "intensive," Customs is referring to examinations involving the physical inspection of merchandise for compliance with importation laws. In contrast, general examinations involve a review of paperwork associated with the import. Because Customs cannot routinely generate data on CES examinations or their results in terms of seizures or other enforcement activities, we have no evidence to verify these claims.

Overall, the CES program, according to Customs officials, has contributed to the agency being able to manage an increasing workload without a corresponding increase in inspectors. A general indicator of a growing workload is the number of import entries in a year. From fiscal year 1983 to 1988, total entries increased 49.4 percent; however, the number of inspectors increased only 15.8 percent (see app. II). Assuming inspectors do proportionately the same number and kinds of examinations—which Customs officials say is the case—inspectors have been able to handle a greater workload nationwide. Most members of the importing community agreed that Customs, given its limited staffing, has made more efficient use of its resources through the CES program.

Customs Not Quantifying CES Program Performance

Although Customs has not evaluated overall program performance, Customs sent a memo to regional offices dated February 25, 1988, asking for feedback on how well the CES program was working in their ports. Customs regions and ports eventually provided reports from 37 of the 55 ports with CES. Customs officials said the responses indicated that the program was working as planned.

We reviewed the regional and port responses to determine if they indicated how well the CES program was working. Generally, we found that some regions did not respond to all questions, there was a lack of supporting documentation for some of the claims, and data provided were inconsistent from one question to another. However, the limited data in the reports identified some savings to Customs. The reports indicated that the CES program eliminated the need for 54 government vehicles at

34 ports. In addition, 29 of the 37 ports responding claimed savings through personnel reassignments. We noted that 76 inspectors at 29 ports had been reassigned to other duties at these ports, such as document examination, document processing, or special examination teams for drugs or textile import violations.

Because Customs district directors have the discretion to establish CESS, Customs headquarters generally does not become involved in district decision-making. We found that Customs headquarters does not maintain a listing of CESS and their locations. The most recent listing is dated August 8, 1988. Customs headquarters cannot measure CES performance until such basic information is routinely maintained. Program management officials are planning to collect certain CES data. However, the new database the CES program office is developing is still in the conceptual stage. Data elements being considered for collection are, for example, the number of examinations done by each CES, the intensity of the examinations, and the results in terms of enforcement actions taken. It is too early to tell whether the database will be sufficient to permit an overall evaluation of CES program effectiveness in enforcing import laws, comparing CES versus non-CES performance at various ports, or making program expansion decisions.

Importing Community's Acceptance of CES Program Varies

We found the degree to which the CES program was accepted varied among the ports contacted, but more importing community representatives favored it than not. Faster and more predictable merchandise release times were the primary factors that contributed to acceptance across most of the ports we visited and telephoned. Other factors unique to each port also contributed to acceptance of the CES concept (these are discussed below). Importing community representatives at 15 of the 26 ports we contacted gave positive comments and acceptance ratings of the program. At the 10 ports we visited, importing community representatives were positive towards the CES program in 5 ports, negative in 4 ports, and neither positive nor negative in 1 port. Among the 16 ports we telephoned, the acceptance level at 10 of the ports was positive towards the program. At two of the ports the acceptance was negative, and the remaining four ports were neither positive nor negative.

The level of acceptance was further demonstrated in the ports we visited and the group discussions we held. Many members of the importing community related examples of situations where someone was inconvenienced, overcharged, or financially injured by the CES program. However, when asked if they would keep or discard the program, in 6 of the

10 ports where we held group discussions, the consensus response was that they would keep it.

Factors Relating to Positive Acceptance

Some importing community representatives we contacted said that the CES concept is a logical way of handling the large and growing volume of imports, particularly in an environment of static Customs inspector staffing levels. Three large ports (Atlanta, Charleston, and Los Angeles) gave the CES program high marks. At these ports, import volume has increased substantially over the last 4 or 5 years. Importing community representatives said that there is no alternative to the CES program for handling the volume of imports and maintaining acceptable merchandise examination and release levels.

Atlanta is unique among the ports we visited in that it had centralized cargo examinations in the Customhouse since the early 1980s. Customs personnel operate the CES in the Customhouse and the local brokers association contracts for the labor needed to present goods for examination. Atlanta brokers said that for the first couple of years of operation they did experience problems coordinating freight movement from railroads to the Customhouse.

The Charleston port centralized cargo examinations about 5 years ago. None of the Charleston brokers we talked with could remember start-up problems. They believe that the CES program works well, and they want to keep it. They also consider the CES fees to be reasonable for the services provided.

Los Angeles importing community members were favorable toward the CES program because it ended the chaos experienced on the docks. Before the program, there was insufficient dock space for handling the heavy volume of imports. Brokers said that they are experiencing faster release times overall, but Customs' special examinations and Customs' practice of directing some special examinations to one CES are slowing down release times.

Factors Relating to Non-Acceptance

According to the importing community, major factors contributing to dissatisfaction with the CES program included the following: (1) CES-related costs were much higher than anticipated; (2) Customs had not been ensuring that CES-related costs were reasonable; and (3) some CES operators who were CFSS or import brokers appeared to be misusing client data from import paperwork to draw business from other members

of the importing community. In chapter 3, we address the issues of CES-related costs and Customs' monitoring of these costs because these concerns were expressed by most of the importing representatives we contacted. Four of the ports we visited and two that we telephoned did not like the CES program. Importing community representatives in Blaine, Washington; El Paso, Texas; New Orleans, Louisiana; and Newark, New Jersey, said that they would prefer to discard the CES program and go back to the old system.

In Blaine, Washington, and El Paso, Texas, importing community representatives said that the program was not suitable for their ports primarily because all the CES facilities were not at the border crossings. In Blaine, one CES is 12 blocks away. In El Paso, one CES is 5 miles away and the other one is 1-1/2 miles away. Importing community members objected to the CES program when it was first announced. They attempted to delay the program's implementation through threatened legal action until it could better meet their needs. Customs reconsidered sending most merchandise to the CESS for examination and agreed that most examinations could be done at the border crossings. The CESS in El Paso are used when dock space at the crossings is filled. Less than 1 percent of the entries in Blaine were sent to the CESS.

As indicated in our March 1988 report, importing community representatives in Newark were very much in favor of the airport CESS. However, Newark seaport representatives we contacted were opposed to the CES program. They viewed the Newark seaport as a unique situation because of its high volume, great distances to transport goods to a CES, traffic congestion, and high labor costs. Importing community representatives also said that CESS delay release times and increase both transportation and presentation costs. They would like to return to the decentralized method whereby Customs inspectors traveled to their facilities because they believed it was cheaper to send inspectors to merchandise rather than merchandise to the inspectors in the Newark area.

New Orleans representatives were negative about the CES program primarily because of their dissatisfaction with the CES facility. Customs has since selected a different CES operator in another location in response to their concerns.

Concerns about the potential misuse of client data available to CES operators surfaced in several ports. The importing community members we contacted said that CES operators have the opportunity to lure business

from other members, especially when CFSS are designated as CESS. Specifically, they said that these operators have used their access to Customs documents, which indicate fees and clients for the various services provided, to draw business from other CFSS. Although no one could clearly substantiate that this was happening, the concern was raised at several ports.

Some brokers expressed concern that CESS in their ports were being operated by fellow brokers. They said that this situation presents the potential for a competitive advantage for brokers operating the CESS because they have access to other brokers' fees and client information. We were unable to document cases in which this situation had resulted in an injurious effect.

Other Views

The CES program is now accepted by national organizations representing the importing community and Customs. The President of the National Customs Brokers and Forwarders Association of America said that the CES program is an acceptable alternative given the lack of a sufficient number of inspectors to do decentralized examinations. The National Treasury Employees Union (NTEU)—which represents Customs inspectors—has accepted the CES program with the caveat that Customs must maintain inspectors at dockside to deter illegal activities. Most local NTEU representatives gave responses consistent with national NTEU views.

Legal Issues Concerning CES Program

The importing community charged at the CES program's inception that Customs did not follow the APA, 5 U.S.C. § 551 *et seq.*, and Executive Order 12291 in the way it established the CES program. Specifically, they said that Customs was legally required by the APA to solicit the importing community's comments before implementing the program, and was required by the executive order to determine the economic impact on the community.

Legal Requirements

Customs' position with regard to the applicability of the APA is that the CES program, as established in Customs Directive No. 3270-03, was not a "rule" as defined for the purposes of the APA in 5 U.S.C. § 551 because it did not involve a change to the regulations. Rather, it was a program developed and authorized under existing regulations. Customs states that 19 U.S.C. § 1499 authorizes Customs to order merchandise "to be

sent to the public stores or other places” for examination. Customs regulations, at 19 C.F.R. § 151.6, interpreting the authority in 19 U.S.C. § 1499, provide that “[a]ll merchandise will be examined at the place of arrival, unless examination at another place is required by the district director.” 19 C.F.R. § 151.7 states that “[t]he district director may authorize examination at a place other than the place of arrival or the public stores.”

Although Customs was acting under existing regulations, within its statutory authority, the question still remains whether Customs violated the APA, specifically 5 U.S.C. § 553. This provision requires that all proposed rulemaking be published in the Federal Register and that interested parties have an opportunity to comment on the proposed rule, unless the rule meets one of several exceptions specified in section 553. “Rule” is defined broadly in 5 U.S.C. § 551 as “the whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency . . .” The CES directive would be covered under this expansive definition of a rule, in that it lays out Customs’ policy in implementing the cargo examination regulations.

Under 5 U.S.C. § 553, however, there is an exception from the notice and comment requirements for “interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice.” Court cases interpreting the scope of this exception have stated two basic elements of an exempt policy statement. First, a policy statement is one that does not have a present-day binding effect; that is, it does not impose any rights and obligations nor does it substantially affect the rights of persons subject to agency regulations. Second, a statement of policy leaves the agency and its decisionmakers free to exercise discretion to follow or not to follow the general policy in an individual case.⁴ In contrast, an agency rule is considered substantive if it is of present binding force, imposes rights and obligations, and narrowly limits administrative discretion. Such substantive rules do not fall under the exception in 5 U.S.C. § 553.

The CES directive at issue does appear to be covered within the § 553 exception for “statements of policy,” and therefore did not have to be promulgated through notice and comment rulemaking. The directive

⁴See Community Nutrition Institute v. Young, 818 F.2d 943 (D.C. Cir. 1987); Nguyen v. United States, 824 F.2d 697 (9th Cir. 1987); and Ryder Truck Lines v. United States, 716 F.2d 1369 (11th Cir. 1983).

does not have any present binding effect upon the rights and obligations of the regulated industry, and administrative discretion is not narrowly limited. The CES directive outlines procedures under which Customs districts are to establish centralized inspection facilities prospectively, and it contains a general policy objective that the sites should be limited to the smallest number possible. The directive does not set out any specific time deadlines for implementation of the program, and there was no immediate impact from the directive. District directors retain the discretion to decide the number of and location for these inspection sites. The directive states that in isolated instances, the establishment of a CES within certain ports may not be feasible or in the best interests of Customs.

Another objection the importing community had to the promulgation of the CES directive was that Executive Order 12291 (Feb. 17, 1981), which sets out certain requirements for the promulgation of federal regulations, was not followed. The definition of "regulation" or "rule" under the executive order is broadly worded to include "an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy . . ." However, the specific dictates of the order appear to be applicable to rules that are subject to notice and comment rulemaking under 5 U.S.C. § 553. Furthermore, an agency is only required to prepare regulatory impact analyses for a major rule as defined in the order. As discussed above, Customs established the CES program under existing regulations, and notice and comment rulemaking was not required. Therefore, Customs did not violate the terms of Executive Order 12291.

Conclusions

After initial reservations, the majority of the importing community members we contacted accepted the CES program. Their acceptance developed over time. We found that their concern over the applicability of the APA and Executive Order 12291 to the program's implementation was unfounded. Neither the APA nor Executive Order 12291 was violated by Customs in establishing the CES program.

The CES program seems to save Customs money. Until Customs begins gathering program data systematically to measure program output, however, it will not have a good basis for assessing how well the CES program is working, for comparing CES ports versus non-CES ports, and for making program expansion decisions.

Recommendation

To provide a basis for assessing program performance and to support decision-making, we recommend that the Secretary of the Treasury require the Commissioner of the Customs Service to systematically evaluate CES program effectiveness.

Agency Comments

Conceptually, Customs officials agreed with this recommendation and proposed several steps to obtain data for evaluating the CES program. (See app. IV.) They proposed to make an annual 2 week assessment of the program using a computerized survey at a broad cross-section of ports. Customs believes such a survey would be sufficient to permit an overall evaluation of the CES program's effectiveness.

Program Improvements Needed

Importing community representatives expressed dissatisfaction with aspects of the CES program. The most prevalent concerns were the additional costs imposed for transporting and presenting merchandise for examination and Customs' apparent lack of involvement in monitoring the reasonableness of CES-related costs. The CES program changed the procedures for merchandise examination and added new costs for the importing community. Some importing community representatives proposed that receipts from the MPF be used to pay some or all of these costs. However, current law will not allow funds derived from the MPF to pay for CES examination expenses.

Impact and Reasonableness of Costs

Some importing community representatives said that Customs implemented the CES program to increase its efficiency and did not fully consider the additional cost burden on them. Under the old decentralized system, Customs inspectors came to their facilities. The CES program consolidated examination locations and introduced a third party, the CES operator, who may charge a fee for transporting merchandise to and from CESS and for unloading and reloading merchandise examined by Customs at a CES.

Each CES operator offers various services to the importing community. According to the CES operators, the fee they charge reflects several cost items, including labor; vehicles; special equipment, such as forklifts; storage; utilities; dock space; telephones; space and equipment for Customs' inspector staff; and a profit margin. Some CES operators charge a flat fee to cover their costs and the profit margin while others allocate their costs by the services provided. A listing of services provided and their related fees are in appendix III.

Transportation Costs

Customs acknowledges that the CES program increases the cost of transporting merchandise for Customs examination. Customs estimated that the range in transportation costs should be between 0 and \$175 for each examination. Importing community representatives in 20 of 26 ports we contacted confirmed that their transportation costs had increased under the CES program. Prior to the CES program, some transportation costs were associated with presenting merchandise for examination, but the costs were not always itemized as such. Neither Customs nor the importing community provided data to estimate annual transportation costs on a port-by-port or individual basis.

Presentation Costs

The importer has always been responsible for presentation costs, which cover unloading, opening, and reloading examined containers. Customs officials said that the CES program changed the location of the cargo examination but did not increase the actual presentation costs. Brokers at 21 ports we contacted said that the CES program increased presentation costs; however, data giving a range of such fees or overall port estimates were not provided. According to Customs, recent cost increases are attributable to more intensive examinations at all Customs ports. Most importing community representatives agreed that Customs is doing more intensive examinations; however, they said that, after allowing for the increase in these examinations, they were experiencing cost increases above what they paid before the CES program. We were told that importers faced new fees for services such as paperwork review, docking, and handling, that had not been charged before the CES program. Our schedule of CES operators' fees (see app. III) shows that some CES operators did charge for these services. Some CES operators said, however, that many of these fees predate the CES program but may not have been itemized as such.

Some CES operators described how presentation costs could increase. For example, storage fees charged importers can increase because several movements of merchandise can cause delays and, thus, incur storage charges. They said that in some cases, importers are paying for double devannings (unloading containers). For example, if a container is taken to a CES from a CFS, the importer may pay to have the container devanned at the CES for Customs' examination and again at the CFS so that the cargo can be transported to its final destination. No one we contacted could provide estimates as to how often this occurs, but some brokers commented that each movement incurs some type of handling charge that was not paid before the CES program. Some CES operators said that they offer their customers special rates for Customs examinations to reduce some costs associated with the examinations. We could not determine how prevalent this practice is.

Coordination Costs

Most importing community representatives said that the CES program necessitates additional work to coordinate the movement of merchandise destined for Customs examination. This represents a change from the decentralized system in which Customs came to the docks or other facilities and did the examination on the spot.

Brokers said that they must arrange for transportation to and from a CES, unless the CES also provides a transportation service. They must

also be aware of CES fees and varying operating procedures such as hours of operation. Some brokers indicated that explaining the new charges to clients also required more time. Although dollar figures on the time required for coordination were not provided, some brokers said that the amount could be substantial and that they were charging for the service. One Seattle broker said that he charged the importer from \$50 to \$100 to coordinate a CES examination.

No Guidance for Ensuring CES Fees Are Reasonable

Customs' involvement in ensuring that CES-related fees were reasonable varied from port to port. Customs officials said they did not monitor CES-related fees in 16 of the ports we contacted. They said that they relied on the importing community's complaints about the fees to stay informed of fees in their ports. Numerous members of the importing community also expressed their concerns about some Customs districts not monitoring CES-related fees.

Customs' directive establishing the CES program, as revised in August 1988, outlines procedures through which CESs are selected, including advertisement of the need for a facility and the bidding by interested firms. The directive suggests that district officials review the list of bidding firms whose proposed facilities meet mandatory specifications and evaluate the bids using five steps, the first step being to review "[e]ach firm's fee structure (for providing the services related to operating a CES) to ensure that they are in line with other firms' fee structures in the participating open market."

The directive also states that local officials "should monitor and evaluate their existing CES's to ensure that they are providing the services that were requested." However, the directive states that "Any issue regarding labor unions, transfer costs, etc. will be addressed by the trade, not Customs." In our opinion, the directive does not provide sufficient guidance on the extent to which district officials are to determine the reasonableness of CES-related fees both in selecting a new CES and in monitoring existing CES facilities. Customs officials said that the directive also requires Customs districts to consult with the trade community in all phases of selecting and establishing a CES. They said that if proposed fees were out of line, the trade community would complain. According to some importing community members, however, Customs officials told them to complain directly to CES operators, not to Customs. Customs needs to clarify the apparent ambiguity in its directive.

One way to evaluate CES-related fees is to require each CES bidder to complete and submit to Customs districts a standardized Customs-designed document showing proposed fees by specified service. This step would facilitate Customs districts' evaluation of CES proposals but would still allow for competitive fees and the unique characteristics of each CES location. Once the CES is established, Customs could require that proposed fee changes be submitted to district officials for approval. Customs officials said that they are considering requiring that all proposed fee changes be provided to district officials 30 days in advance.

Importing Community Wants MPF to Cover Some CES Costs

One solution offered by the importing community to CES-related costs is to have the MPF pay the costs of presenting goods for examination. Because of widespread support, Senate Report 100-160 directed us to evaluate this proposal.

The MPF, a fee on imports based on the value of the merchandise (ad valorem), was established by the Omnibus Budget Reconciliation Act of 1986. The fees for processing commercial merchandise entering the United States were set initially at 0.22 percent ad valorem and, subsequently, were lowered for fiscal years 1988 through 1990 to 0.17 percent ad valorem, or a lower rate, as set by the Secretary of the Treasury according to statutory formula. Revenue is placed in a special Customs Service User Fee Account and made available only through appropriation acts to pay the costs incurred by Customs in its commercial operations.

Some importing community representatives argue that these fees should cover the cost of presenting goods for Customs examination, thus spreading the costs of doing business with Customs equally among members of the importing community. Others suggested a flat fee on all import entries, similar to what some airport CESS charge, as a way of spreading import examination costs.

Customs' position is that MPF funds cannot be used to pay the costs associated with presenting cargo for examination and that such costs must be borne by the importing community. Customs cites 19 C.F.R. 151.6 and 151.7(b), which state that any expense involved in preparing the merchandise for Customs examination and in the closing of packages shall be borne by the importer. The statutory provision that created the MPF, 19 U.S.C. 58c, provides that the MPF is to pay the costs incurred by Customs in its commercial operations, including but not limited to, all costs associated with commercial passenger, vessel, vehicle, aircraft, and

cargo processing. Since importers' costs of presentation, including fees paid to CES operators, are not costs "incurred" by Customs for the above purpose, the funds derived from the MPF cannot be used to pay CES fees or other presentation costs, according to Customs. We concur that funds derived from the MPF cannot be used under current law to pay CES-related fees.

Written Agreements Needed

The Customs directive establishing the CES program, as revised in 1988, recommends written agreements between Customs and CES operators but does not make the agreements a mandatory requirement or specify the content of such agreements. Only 4 of the 26 ports we contacted had written agreements between Customs and the CES operators. These agreements were not standardized.

In its August 10, 1987, report, Customs' Office of Internal Affairs recommended that written agreements be required with CES operators. The report also recommended that the districts be required to obtain regional counsel concurrence before implementing the agreements. According to the Internal Affairs report:

"... Customs may be liable to future legal action under an implied contract with the CES operators. In the absence of signed agreements, Customs may be subject to any legal action brought about due to any defaults, irregularities, or negligence on the part of the CES operators."

Some CES operators we contacted also recommended that Customs use written agreements for the CES program. They said that becoming a CES operator sometimes necessitates investing in additional equipment to meet Customs' requirements and that Customs could switch to another CES operator at any time in the absence of such agreements. Customs officials said that making standard written agreements a requirement is under consideration.

Conclusions

The CES program, a significant change from the way Customs used to examine merchandise, introduced new costs and concerns to the importing community. Customs could enhance the program's acceptance by making procedural changes that would help determine if CES-related fees are reasonable before establishing CESS and ensure that fees remain reasonable after operations begin. The use of the MPF to offset CES costs, however, is not an option under current law. Also, because of the reasons mentioned in Customs' Internal Affairs report, we believe that the

relationship between Customs and CES operators should be formalized in written agreements.

Recommendations

We recommend that the Secretary of the Treasury direct the Commissioner of the Customs Service to

- ensure that fees are reasonable at CESS by amending Customs Directive 3270-03 to provide guidance as to how and when districts should evaluate CES-related fees and
- amend Customs Directive 3270-03 to require uniform written agreements between Customs and CES operators that specify mutual responsibilities and liabilities of the parties.

Agency Comments

Customs officials agreed with both recommendations and said they would amend Customs Directive 3270-03 accordingly to make the requirements mandatory. (See app. IV.)

Cities With Customs Ports GAO Contacted

By Visits	By Telephone
Atlanta, GA	Baltimore, MD
Blaine, WA	Boston, MA
Charleston, SC	Dallas, TX
Columbus, OH	Erie, PA
Denver, CO	Houston, TX
El Paso, TX	International Falls, MN
Los Angeles, CA	Louisville, KY
Newark, NJ	Minneapolis-St. Paul, MN
New Orleans, LA	Nogales, AZ
Seattle, WA	Pembina, ND
	Phoenix, AZ
	Salt Lake City, UT
	San Antonio, TX
	Sault Sainte Marie, MI
	Tampa, FL
	Wilmington, NC

Inspector Staffing and Entry Figures

Table II.1: Entries for Fiscal Years 1983 to 1988

Fiscal Year	Entries ^a	Percent Increase Over 1983
1983	27,030,763	—
1984	30,302,541	12.1
1985	32,296,164	19.5
1986	33,375,075	23.5
1987	33,897,096	25.4
1988	40,391,027	49.4

Table II.2: Inspector Staffing Levels, Fiscal Years 1983 to 1988

Fiscal Year	Inspector Staffing Level	Percent Increase Over 1983
1983	4,456	—
1984	4,507	01.1
1985	4,540	01.9
1986	4,780	07.3
1987	4,949	11.1
1988	5,161	15.8

^aIncludes all merchandise entries, except Puerto Rico and U.S. Virgin Islands

CES Operators' Fees for Customs Examinations

PORTS/CESs	Tail gate(s)	Container devanning (pallets)				Additional Services	Listed fee	Minimum charges
		20 foot		40 foot				
		Min.	Max.	Min.	Max.			
Los Angeles CES-1	\$40	\$60	\$125	\$70	\$250	Storing		
						Out of container (per cubic foot, per 30 calendar days after 5 days)	\$.10	\$25.00
						In container (per day after 1 day)	10.00	
						Handling in and out (per cu. ft.)	.20	25.00
						Overtime at Customs request (150% of the regular cost to devan)		
CES-2	40	55	165	65	240	Devanning for Customs and other federal agencies		
						20 foot container (full container)	105.00	
						40 foot container (full container)	180.00	
						Devanning loose cargo		
						20 foot container	135.00	
						40 foot container	220.00	
						Storing charge (per cu. ft. after 3rd day)	12.00	30.00
						Overtime at Customs request (150% of normal rate)		
CES-3	50	60	175	70	250	Devanning loose cargo		
						20 foot container	220.00	
						40 foot container	325.00	
						Handling garments on hangers (per unit over minimum)	.16	50.00
						Storing		
						Containers (per day after 1 day)	10.00	
						Loose cargo (per cubic foot per month after 5 days)	.10	25.00
						Handling fee (per cubic foot or 50 lbs., whichever is greater)	.20	14.85
						Customs examinations (per entry)	20.00	
						Trucking		
						500 lbs. and under (flat fee based on number of stops and number of bills of lading)	40.00 to 65.00	
						Over 500 lbs. (prevailing less than container load class rate)		
						No charge for transferring cargo from container to rail or over-road trailer if done in conjunction with a 100% devanning.		
						Overtime (150% of scheduled rate)		

(continued)

**Appendix III
CES Operators' Fees for
Customs Examinations**

PORTS/CESs	Tail gate(s)	Container devanning (pallets)				Additional Services	Listed fee	Minimum charges
		20 foot		40 foot				
		Min.	Max.	Min.	Max.			
CES-4	\$50	\$50	\$175	\$50	\$250	Lifting heavy cargo	(b)	
						Special reduced rate for customers with frequent examinations	(b)	
CES-5	50	50	175	65	250	Rail car unloading is based on commodity.	(b)	
Seattle								
CES-1	95	95	200	95	285	Trucking from Seattle port to CES	(c)	
						Trucking from Tacoma port to CES (plus devanning fee)	\$30.00	
						Picking up cargo from two or more locations on the dock (each additional pick-up)	22.50	
						Uncrating boxes (per quarter hour after the first 15 min.)	6.50	
						Returning container (flat fees established for each of the various locations)	65.00 to 380.00	
						Storing container (per day after the first 2 days)	20.00	
						Using bay door for examination (per entry)	12.50	\$50.00
						Preparing inbond movement documents (each)	12.50	
						Special rate for frequent users of the CES	(b)	
CES-2	50	140	195	200	365	Trucking from Seattle waterfront to CES	85.00	
						Preparing documents	(b)	
						Sorting cargo	(b)	
						Handling loose cargo	(b)	
						Placing cargo back on pallets	(b)	
						Stenciling and labeling	(b)	
CES-3	50	150	(d)	150	(d)	Trucking from Seattle port facility (one way)	50.00	
						Trucking from Tacoma port facility (one way)	85.00	
						Preparing inbond movement documents	25.00	
						Preparing immediate transportation documents	20.00	
						Sorting (per carton)	.25	
						Labeling, customer supplies labels (per carton)	.10	
						Storing container (per day after 1 day)	25.00	
						Storing cargo (per cubic meter per day)	1.00	
						Transferring container between CES operator and carrier	6.50	
						Lifting container on/off chassis (per chassis)	12.00	
						Transferring container between two separate carriers	25.00	

(continued)

**Appendix III
CES Operators' Fees for
Customs Examinations**

PORTS/CESs	Tail gate(a)	Container devanning (pallets)				Additional Services	Listed fee	Minimum charges
		20 foot		40 foot				
		Min.	Max.	Min.	Max.			
CES-4	(e)	\$50	\$450	\$50	\$450	Trucking to or from CES (within city limits)	\$35.50	
						Transferring container between CES operator and carrier	15.00	
						Preparing inbound movement documents (each)	12.50	
						Sorting cargo (per hour)	46.82	
						Storing container (per day after 1 day)	5.00	
						Storing chassis (per chassis)	20.00	
						Clearing loose freight with Customs (per entry)	12.50	
						Handling (one time charge per 40-ft. container)	25.00	
						Lifting container on/off chassis and chassis rental (per chassis)	30.00	
CES-5	50	100	175	100	300	Services requiring additional terminal labor will be charged extra.	(b)	
Newark CES-1	25	25	500	25	1000	Using the CES to obtain Customs releases (per truck)	25.00	
						Handling (per cubic weight ton)	2.50	
						Sorting (per carton)	.50	
						Liftvans of household goods (surcharge per liftvan)	75.00	
						Handling household goods		\$25.00
CES-2	20	40	(d)	40	(d)	Unloading and reloading loose cargo (per hundred weight)	2.12	
						Handling		
						Personal effects up to 5000 lbs.	25.00 to 200.00	
						Nonpalletized (per hundred weight)	4.00	40.00
						Palletized (per pallet)	14.00	
						Sorting (per man hour)	25.00	
						Placing cargo back on pallets (per pallet)	15.00	
						Using the CES to process Customs documents (per document)	20.00	
						Special rates for regular customers	(b)	
						CES examinations by appointment only		

(continued)

**Appendix III
CES Operators' Fees for
Customs Examinations**

PORTS/CESs	Tail gate(a)	Container devanning (pallets)				Additional Services	Listed fee	Minimum charges
		20 foot		40 foot				
		Min.	Max.	Min.	Max.			
CES-3	(e)	\$40	(d)	\$40	(d)	Cargo received from other container yards		
						Unloading and reloading container (per cubic meter)	\$8.00	
						Unloading and reloading truck (per cubic meter)	8.00	\$40.00
						Customs examination/clearance (each examination)	20.00	
						Cargo examined from within CES container yard		
						Transportation from container yard to CES	50.00	
						Loose freight (per examination)	20.00	
						Sorting (per hour)	27.50	
						Storing container (per day after close of business)	10.00	
						Opening and closing (each after the first)		
						Packages	20.00	
						Crates		
						(under 500 lbs.)	25.00	
						(over 500 lbs.)	50.00	
						Overtime (per man-hour)	40.00	40.00
						CES examinations by appointment only		
CES-4	51.50	51.50	(d)	51.50	(d)	Handling (up to 1,200 lbs.)		26.00
						Under 12,000 lbs. (per cubic weight ton)	2.20	
						Over 12,001 lbs. (per cubic weight ton)	2.10	
						Preparing cargo for Customs inspection		
						First piece	16.50	
						Each additional piece	8.25	
						Lift van (surcharge plus inspection preparation)		
						(Up to 3,000 lbs.)	95.00	
						(Up to 6,000 lbs.)	180.00	
						Using CES to process Customs documents	26.00	

(continued)

**Appendix III
CES Operators' Fees for
Customs Examinations**

PORTS/CESa	Toll gate(a)	Container devanning (pallets)				Additional Services	Listed fee	Minimum charges
		20 foot		40 foot				
		Min.	Max.	Min.	Max.			
CES-5	\$40	\$40	(d)	\$40	(d)	Cargo received from other container yards		
						Customs examination/clearance (each)	\$20.00	
						Opening and closing (each)		
						Packages (after 1st package)	20.00	
						Crates		
						Under 500 lbs.	25.00	
						Over 500 lbs.	50.00	
						Cargo examined from within CES container yard		
						Customs clearance		\$40.00
						Moving cargo from container yard to CES (per cubic meter)	7.00	40.00
						Handling loose freight (per examination)	20.00	
						Sorting		
						Cartons up to 50 lbs. (per carton)	.50	
						Cartons over 50 lbs. (per carton)	1.00	
						Cases up to 50 lbs. (per case)	1.00	
						Cases over 50 lbs. (per case)	1.50	
						Storing containers/trailers (per day after closing)	10.00	
						Overtime (per man-hour)	35.00	40.00
						Handling personal effects (flat fee based on weight groups)	25.00 to 270.00	
						Using CES to process Customs documents	35.00	
						Lifting heavy cargo charge	(b)	
						Refrigerating cargo (surcharge)		50.00
						Unstacking and restacking pallet (per pallet)	15.00	
						Recrating (per cube)	2.50	
						CES examinations by appointment only		

(continued)

**Appendix III
CES Operators' Fees for
Customs Examinations**

PORTS/CESs	Tail gate(a)	Container devanning (pallets)				Additional Services	Listed fee	Minimum charges
		20 foot		40 foot				
		Min.	Max.	Min.	Max.			
CES-6	\$20	\$40	\$600	\$40	\$900	Cargo received from other container yards		
						Customs clearance		
						Container	\$45.00	
						Truck	20.00	
						Handling charge		
						Loose cargo via truck (per cubic meter)	9.00	\$40.00
						Container (per cubic meter)	12.00	40.00
						Moving container within the terminal (per container)	50.00	
						Sorting (per man hour)	18.00	
						Cargo examined from within CES container yard		
						Customs clearance	20.00	
						Moving container from container yard into CES	40.00	
						Personal effects		
						20 foot container	600.00	
						40 foot container	800.00	
						Handling fee for loose cargo delivery via truck (per hundred weight)	4.00	50.00
						Opening cartons (per carton after one carton)	20.00	
						Opening crates (per crate)	25.00	
						Lift van (surcharge per lift van)	300.00	
						Refrigerating cargo (25% surcharge)		
						Using CES to process Customs documents	25.00	
						Lifting heavy cargo (from 3,001 to 6,000 lbs. per hundred weight)	3.00	
						Handling garments on hanger (weight/ozs. per garment)	.12 to .66	50.00
						General Order containers		
						20 foot container	500.00	
						40 foot container	900.00	
						Storing cargo (per day starting at close of business)	10.00	
						CES examinations by appointment only		
CES-7	20	75	(d)	75	(d)	Administration and handling (per bill of lading)	25.00	
						Unloading/reloading (per cubic meter)	7.50	
						Opening and closing (each)		
						Cartons	20.00	
						Crates	25.00	
						Storing cargo (fees assessed after 7 days)	(b)	
						No charge is assessed for loose freight inspections on terminal's own account		

(continued)

**Appendix III
CES Operators' Fees for
Customs Examinations**

PORTS/CESs	Tail gate(a)	Container devanning (pallets)				Additional Services	Listed fee	Minimum charges
		20 foot		40 foot				
		Min.	Max.	Min.	Max.			
Columbus								
CES-1	\$30	\$15	(d)	\$15	(d)	Trucking		
						Norfolk Southern to CES	\$30.00	
						Conrail to CES	70.00	
						Handling (per cubic meter)	6.00	\$15.00
						Storing		
						Loose freight (per cubic meter per day after 5th day)	1.50	
						Full container (per day after 5th day)	3.00	
Charleston								
CES-1	12	200	200	200	200	Trucking (each way)	20.00	
						Storing cargo (per ton per day after 10th day)	.45	
CES-2	(e)	200	200	200	200	Devanning and repacking nonpalletized	400.00	
						Trucking (each way)	40.00	
						Storing containers (per month)		
						20 foot container	125.00	
						40 foot container	150.00	
Atlanta								
CES-1	7.50	50	250	50	250	Special fee for cargo delivered to CES by a steamship line carrier	80.00	
						Trucking from rail spur to CES	75.00	
New Orleans								
CES-1	30	125	350	125	350	Trucking (each way)	45.00	

(continued)

**Appendix III
CES Operators' Fees for
Customs Examinations**

PORTS/CESs	Tail gate(a)	Container devanning (pallets)				Additional Services	Listed fee	Minimum charges
		20 foot		40 foot				
		Min.	Max.	Min.	Max.			
Denver								
CES-1	\$25	\$30	\$125	\$30	\$200	Storing container (per month)		
						Per carton	\$ 80	\$25.00
						Per pallet	8.00	
						Oversize pieces (per sq. ft.)	.57	
						Customs annual fee (unexplained fee charged by the CES operator per entry)	25.00	
						Handling charge in and out	25.00	
						Floor stacked freight		
						20 foot container	180.00	
						40 foot container	300.00	
						Using terminal dock (per cubic weight ton)	2.00	7.50
						Opening and closing boxes and cartons		5.00
						Overtime (per hour)	75.00	
						General Order rates		
						Storage (per cubic weight ton)		12.00
						Up to 100 lbs.		12.00
						Over 100 lbs.	2.50	
						Customs charge (unexplained fee charged by the CES operator)	10.00	
						Pick-up charge (per cubic weight ton)		
						Under 100 lbs.	10.00	
						101 lbs. and over	3.40	
						Trucking per pound	.02	25.00
CES-2	35	35	175	35	325	Handling truck freight (per pound)	.01	15.00
El Paso								
CES-1	(c)	100	250	100	250	Opening and closing	(c)	
						Repacking boxes	(c)	
						Refrigeration	(b)	
						Handling		
						Nonpalletized (per hour per man)	25.00	350.00
						Special rate for frequent users of the CES (Various flat fees depending on user)	125.00 to 150.00	
CES-2	(c)	25	350	25	350	Handling		
						Pallet (per pallet, if double stacked billed as one pallet)	7.50	
						Nonpalletized (per man hour)	25.00	25.00
						Retaping and regrading (per man hour plus labor)		25.00

(continued)

**Appendix III
CES Operators' Fees for
Customs Examinations**

PORTS/CES ^a	Tail gate ^(a)	Container devanning (pallets)				Additional Services	Listed fee	Minimum charges
		20 foot		40 foot				
		Min.	Max.	Min.	Max.			
Blaine								
CES-1	(e)	\$50	(d)	\$50	(d)	Calling in a crew to work overtime	\$50.00	
						Overtime rate (per hour)	90.00	
CES-2	(e)	50	(d)	50	(d)	Labor		
						First half hour	50.00	
						After first hour (per half hour)	35.00	

Note: Fees were taken from CES operators' price lists in use at the time of our visit.

^aA Customs examination in which merchandise that is closest to the rear doors of a container is examined.

^bPrice list shows service but does not provide fee.

^cCharges are included in devanning (unloading containers) rate.

^dPrice list does not show a maximum devanning fee.

^ePrice list does not show a fee for tailgate inspections.

Comments From the U.S. Customs Service



DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE
WASHINGTON, D.C.

OCT 12 1989

INS-1-IC:C FMW

Mr. Richard L. Fogel
Assistant Comptroller General
United States
General Accounting Office
Washington, D.C. 20548

Dear Mr. Fogel:

This is in response to your letter of September 13, 1989, requesting our review and comments on the GAO's draft report on Customs Centralized Examination Stations (CES) program entitled Customs Service: Acceptance of Centralized Cargo Examinations Varies.

The Office of Inspection and Control is in basic agreement with the report's findings which state that among the importing community members contacted, the degree of program acceptance varied with more favoring acceptance than not. Faster and more predictable merchandise release times were the primary factors which contributed to acceptance within most of the 26 ports contacted nationwide. Further, it was generally agreed upon by the majority of the importing community that the CES concept was the logical way for Customs to handle the large and growing volume of imports, particularly in light of the current static Customs inspector staffing levels.

The report states that the current level of acceptance by the importing community has developed over time. This has been our belief since the program's inception, that in time, the CES program would prove itself to be a very efficient means for Customs to utilize its limited physical and staffing resources and ensure expeditious service to the importing community. We feel the program's objectives have been achieved and that the report supports this position.

However, the following three recommendations were made for improving the program: (1) develop a system by which data is collected and analyzed to determine the program's effectiveness; (2) ensure that fees are reasonable at CES's by amending Customs Directive 3270-03 to provide guidance as to how and when districts should evaluate CES related fees; and (3) require uniform written agreements between Customs and the CES operators that specify mutual responsibilities and liabilities of the parties. Our response to these recommendations is outlined in the following paragraphs.

- 2 -

1. The report states that while Customs is satisfied the program is working, it has not collected data to evaluate just how well it is working or to support ongoing decision-making on its expansion.

It is true that at the national headquarters level, Customs has not collected data on a regular basis or maintained specific statistics which reflect the overall success of the CES program. This is not to say, however, that we are not constantly monitoring the program; we are, but more so at the regional and district levels.

Within a region, no two districts are exactly alike; each port within a district is different from the next; and every CES within a port is definitely unique unto itself. The very nature of the CES program makes the implementation of a nationally generated data collection system too onerous. We are not convinced that such a system would be feasible or productive and we feel that, if implemented, it would be difficult to draw many conclusions from data obtained because of the uniqueness of the entities involved; regions, districts, ports, and CES facilities.

Reference was made within the report, to the Customs headquarters memorandum sent to all regional offices on February 25, 1988, requesting feedback on the program's status in their districts and ports. Customs review of the responses submitted indicated the program was working as planned. Although recognizing that some savings to Customs could be identified, GAO found these responses to be inconsistent, lacking in supporting documentation and generally inconclusive.

We propose the following: (1) to modify and redesign the survey in a computer software format; (2) to more closely monitor it throughout its duration; (3) to conduct it within a broad cross section of CES and non-CES ports; and (4) to conduct it on a yearly basis, running over the course of two consecutive weeks. If accepted and conducted as proposed, we feel that this survey would produce data, generated at the port and district levels, which would be sufficient to permit an overall evaluation of the CES program's effectiveness in enforcing import laws, comparing CES versus non-CES performance at various ports.

2. The report states that Customs could enhance the program's acceptance by making procedural changes that would help determine if CES related fees are reasonable before establishment and that fees remain reasonable after

- 3 -

operations begin. It is recommended that Customs Directive 3270-03 be amended to provide guidance as to how and when districts should evaluate CES related fees.

We agree that Customs Directive 3270-03 does not provide sufficient guidance on the extent to which district officials are to determine the reasonableness of fees both in selecting a new CES and in monitoring existing facilities. Following your recommendation, we propose to amend the directive making it mandatory that each CES bidder complete and submit to Customs districts a standardized Customs-designed document listing proposed fees by specified service. We agree that this would facilitate Customs districts' evaluation of CES bids and still allow for competitive fees and the unique characteristics of each proposed CES. It would also be mandatory that any proposed fee changes be submitted to district officials at least 30 days in advance. If the proposed fee changes were deemed unreasonable, the district director would have the option of revoking a facility's CES designation and seeking a replacement.

3. As in the previous GAO report on the CES program entitled Air Cargo Imports: Customs Needs to Overcome Concerns to Benefit From Centralizing Examinations, the GAO concurred with a Customs Office of Internal Affairs audit report which recommended that written agreements or memoranda of understanding be signed between Customs and CES operators.

In response, on August 12, 1988, Customs issued Change No. 1 to Customs Directive 3270-03 which encouraged district officials to sign such agreements delineating the responsibilities of both parties and disclaiming any responsibility by Customs for the operators' actions which are not in accordance with applicable laws and regulations. However, Change No. 1 did not make the signing of written agreements mandatory. This has contributed to the fact that to date, only 55 of the 130 CES's operating nationwide have such agreements in effect. And those agreements are not standardized.

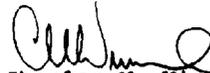
We agree with your recommendation that written agreements be required with CES operators. Therefore, an amendment to the directive will be made making it mandatory that standardized

- 4 -

Customs-designed agreements be signed by both Customs and
CES operators.

Thank you for this opportunity to respond to your report.

Sincerely,



Charles W. Winwood
Acting Assistant Commissioner
Office of Inspection and Control

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Glossary

Centralized Examination Stations (CES)

Privately operated facilities designated by Customs to receive cargo for examination that was traditionally examined in geographically separated locations.

Container Freight Station (CFS) Operator

A person engaged in the business of receiving containerized cargo; unloading it from container; and, after proper Customs release occurs, delivering it to consignees.

Customs Broker

Person or firm licensed by Customs to transact business with Customs on behalf of importers.

Entry

A document filed with Customs as a record of importation, description, value, and disposition of a given lot of imported merchandise by an importer, broker, or bonded carrier.

Inspector

A Customs employee who scrutinizes baggage, effects, and cargo at the time of entry into the United States to determine the presence of dutiable merchandise and compliance with U.S. trade laws and regulations.

Release of Merchandise

The transfer, with Customs' permission, of merchandise from carrier or warehouse proprietor to importer.



