

[Scanned, original pagination and style preserved]

[Accompanying a letter from Samuel H. Banks, Acting Commissioner of Customs, to Jim Kolbe, Chairman, Subcommittee on Treasury, Postal Service, and General Government, Committee on Appropriations, U.S. House of Representatives, July 13, 1998]

A Review of
U.S. Customs Treatment:

International Express Mail
&
Express Consignment
Shipments

Table of Contents

Preface	3
United States Postal Service	4
Express Consignments	5
I. MANIFEST REQUIREMENTS	7
II. ADMINISTRATIVE CONTROLS	9
III. BONDS	10
IV. PRESENTATION	11
V. OUTBOUND/EXPORT SHIPMENTS	12
VI. IN-TRANSIT	12
VII. RECORDKEEPING REQUIREMENTS	13
VIII. DUTY PAYMENT	14
IX. REIMBURSABLE COSTS	15
X. AUTOMATION	16
XI. SECURITY	17
XII. TRAINED WORKFORCE	18
XIII. RISKS	18
XIV. PENALTIES	20

Preface

The Treasury-Postal Appropriation Conference Report for Fiscal Year 1998 directed the U.S. Customs Service (Customs) to prepare a comparative review of customs processing requirements and practices relating to shipments conveyed by the U.S. Postal Service (USPS) and the Express Consignment (EC) industry. The central focus of the Conference's assignment is to identify differences and disparities in Customs treatment of international mail and express consignment shipments. A separate report was prepared for the committee on whether disparate treatment exists toward small and large businesses and individuals.

The Customs Regulations provide for mail importations/exportations under 19 CFR Part 145, and for EC shipments under 19 CFR Part 128. In addition to these two parts of the Customs Regulations, shipments entered into the U.S. via the USPS or ECs are also subjected to additional sections within the Customs regulations and statutes, particularly Titles 18 and 19 of the U.S. code.

A brief description of the USPS and the EC industry is provided to give the Conference a clear picture as to the underlying differences between these two entities. In addition, we have provided a breakout of the areas in which an express shipment is treated identically when imported into the U.S. via the USPS or an EC operation.

USPS

The USPS was established by Congress as an independent establishment of the executive branch of the U.S. Government. Its mission is to provide universal mail service at uniform rates.

In addition to its statutory responsibilities under Title 39 of the United States Code, the USPS is subject to obligations of the U.S. under international law and protocols. The U.S. is a member of the Universal Postal Union (UPU) , an agency of the United Nations charged with governing the exchange of mail among all countries in the world. The Acts of the UPU are postal treaties authorized by 39 U.S.C. 407, and are approved by the President of the United States. As such, the USPS is subject to the dictates of international law governing how international mail is to be handled.

In an effort to provide expedited services demanded by their customers and offered by their competitors, the USPS developed two new programs - Express Mail (EM) and Global Package Link (GPL). The USPS guarantees next day delivery for all shipments mailed via EM; inbound mail shipments are guaranteed delivery the day after arrival into the U.S. GPL is a service that is primarily used by mail order companies for exports to one of 11 countries that have agreed to participate in this service.

The USPS has developed in their Customs Preadvisory System (CPAS) software programs that were designed to provide the following crucial export data:

- ◇ exporter's name and address
- ◇ recipient's name and address
- ◇ country of origin
- ◇ value of the shipment
- ◇ harmonized tariff schedule number(s)
- ◇ duties and taxes

This information can be transmitted to the foreign postal and customs administrations upon departure from the U.S. As a result, the foreign customs administrations may be able to perform advance reviews of GPL shipments.

EC

The Express Consignment (EC) industry began importing shipments into the U.S. in the late 1960's and early 1970's as a small industry responding to the geographic disbursement of industries and organizations. Initially, the industry provided timely door-to-door reliable service for transporting documents. Cargo shipments were not part of express consignment shipments during the early years because regulatory barriers prevented rapid effective movement of packages.

During the early 1970's, courier-type movements primarily consisted of documents or emergency equipment parts transported in an accompanied fashion by use of "on board couriers." The success of the air couriers for transporting documents was an indication to the industry that a demand for a system to deliver time-sensitive cargo existed.

During the latter 1970's, EC operators began the practice of entering courier parcels into the U.S. via commercial airliners. Initially, Customs did not recognize this industry as a separate entity and treated courier shipments as passenger baggage or normal air cargo, depending on baggage tags or bills of lading. To meet the time-sensitive nature of their business, the couriers would route their traffic to Customs locations with extended service hours. As the industry continued to grow, the EC operators repeatedly requested Customs to provide dedicated service for processing express shipments.

In 1987, after repeated requests by the EC operators to be treated as a separate and special industry, Customs recognized the need to address the growing EC industry and established a task force to make a comprehensive study of the express industry and its impact on Customs resources and operations. One product produced by this group was a proposed new chapter of the Customs Regulations governing the EC industry. On May 9, 1989, Part 128 of the Customs Regulations was published in the Federal Register recognizing the special needs of the industry. Part 128 provided definitions and guidelines addressing express procedures. These procedures included:

- ✓ application procedures

- ✓ full reimbursement for services provided by Customs for expedited clearances
- ✓ requirements by EC operators to provide advance manifest information
- ✓ requirements for the EC operators to be highly automated

The EC industry continues to experience rapid growth in the volume of shipments entering and exiting the United States. The projected growth rate in import activity has been reported to be at least 23 percent annually for the next 10 years for the EC industry. Customs is currently providing dedicated positions to 32 express locations throughout the U.S.

The EC industry has voiced their concerns to Customs regarding its perceived inequities with regard to the standards with which Customs affords all international mail shipments entered via the USPS.

I. MANIFEST REQUIREMENTS

USPS

Manifest information is not required on international mail shipments, per mutual agreement by the Universal Postal Union (UPU) and World Customs Organization (WCO). The sender is required to prepare a Customs declaration on the mail shipment entering the U.S. It is the responsibility of the sender to ensure that the information on the declaration includes an accurate description and value of the shipment. Customs must rely on the accuracy of the information provided on the Customs declaration completed by the sender.

The USPS provides some detailed information via the USPS Military International and Dispatch and Accountability System (MIDAS) for approximately 5 percent of the volume of international mail. MIDAS is currently available in 5 of the 14 International Mail Branches (IMBs) within the U.S.

EC's

Documentation requirements for EC operators and carriers, provided for in 19 CFR 128.21, states that they "shall provide manifest information in advance of the arrival of all cargo." The Customs Modernization Act (Mod Act) provides for the filing of summary manifests. Customs has notified EC operators that should they elect to file summary manifests, an increase in the number of examinations may occur as a result of our inability to perform advanced reviews on these shipments.

Specifically, EC operators are required to provide the following information to Customs relating to the shipment, which includes letter class mail and flats:

- Country of origin
- Shipper name, address, and country
- Ultimate consignee name and address

- Detailed description of the shipment, including the Harmonized Tariff Schedule of the United States (HTSUS) number as provided for in 19 CFR 128.21(a)(4)
- Quantity
- Shipping weight
- Value

Customs has the ability to perform advance targeting of EC shipments using the Customs Automated Commercial Systems (ACS) or the SC operators' proprietary systems.

The ACS Air Automated manifest System (AMS) was designed to read/receive syntax message transmissions from airlines on the bills of lading for shipments brought into the U.S.

The EC operators have invested in software systems to provide detailed manifest information giving Customs the ability to perform advanced reviews of individual EC shipments. These shipments are presented in the system in the following order:

Value over \$1,250, requiring a formal Customs entry¹
Value under \$1,250, requiring an informal Customs entry²
Intangibles or Administrative Exemptions³

¹19 CFR 145.12

²19 CFR 143.21 allows for "shipments of merchandise not exceeding \$1,250 in value" to be entered under informal entry procedures.

³19 U.S.C. 1321(a)(2)(A),(B) and (C) - administrative exemptions which authorizes the waiver of duties "that would otherwise be collected" if "an amount ... less than \$20, between the ... total duties, fees, and taxes tentatively assessed, with respect to any entry of merchandise and the total amount of duties, fees, and taxes actually accruing thereon"; value under \$200, and bona-fide gifts under \$100 (\$200 for Virgin Islands, Guam and American Samoa) and \$200 for accompanying household articles. Inconsistencies in these provisions often confuse importers and travelers. One provision provides for duty free treatment if valued less than \$100 and is a bona fide gift the other if valued at less than \$200 if accompanying a traveler.

During customs review, we have the ability to "flag" specific shipments for examination. Upon arrival of the imported shipments to the EC operator's facility, scanning of unique identifier labels is performed. At this time, all shipments that have been "flagged" are identified by the EC operator's receiving system, segregated, and presented to Customs for review. Shipments not "flagged" are deemed released by Customs.

EC operators who do not have their own stand-alone systems must use the Customs ACS Air Automated Manifest System (AMS), which provides manifest information to Customs prior to arrival of EC shipments. Customs receives this information directly from the airlines and has the ability to perform advance targeting, selecting specific shipments for review. Shipments not selected are conditionally released.

The difference between the two systems Customs uses to perform advance reviews of EC shipments are: EC operators who opt to use the Customs Air AMS receive an electronic message from customs that release of their shipments are granted; EC operators who prefer to use their own stand-alone systems operate under the assumption that if Customs has not "flagged" a specific shipment for review, then the shipment is released.

II. ADMINISTRATIVE CONTROLS

USPS

The USPS notifies foreign postal administrations of cities in the U.S. which can accept mail. Foreign postal administrations select the carriers used to dispatch mail to the U.S. and control what is sent from their countries. Until the mail bags are present in their facility, the USPS is not liable or accountable for the shipment. The foreign postal administration is responsible for ensuring that the exporter of the mail shipment complete the Customs declaration, and that the air carriers it contracts with to transport mail shipments into the U.S. deliver the mail shipments to a designated USPS facility.

EC's

All EC operators are required to maintain "closely integrated administrative control" for their shipments. To comply with this section of the Customs Regulations, EC operators provide "door-to-door" service and are designated by the shipper as the nominal consignee. The exporter of an express shipment goes into a facility that offers EC services, fills out necessary documents, and appoints the EC operator to act as the nominal consignee. In the role of nominal consignee, the EC operator is granted the authority to designate a Customs broker to make entry.

In this capacity, the broker designated by the EC operator ensures that customs procedures are adhered to, which include presentation of entry documents and timely payment of duties, taxes, and fees. In exercising reasonable care, EC operators provide training to their employees on Customs laws, regulations, policies, and procedures. In addition, many SC operators establish a subsidiary of licensed Customs brokers to prepare the entry documentation required for release of their clients, shipments.

III. BONDS**USPS**

The USPS, or recipients of mail importations are not required to obtain a Customs bond, as provided for in section 113 of the Customs Regulations, for mail shipments valued under \$1,250. As a result, Customs has no remedial authority to assess liquidated damages on mail importations.

EC's

EC operators must file bonds to ensure compliance with Customs requirements relating to the importations and entry of merchandise as well as the carriage and custody of

merchandise under Customs control. The following bonds must be on file with Customs:

- Basic importation and entry bond⁴ - The principal agrees to pay all duties, taxes, and fees associated with imported merchandise released for consumption into the domestic stream.
- Basic custodial bond⁵ - The principal agrees to "comply with all regulations regarding the receipt, carriage, safekeeping, and disposition of such merchandise."
- International carrier bond⁶ - The principal agrees to pay penalties, duties, taxes, or other charge incurred by a "vessel, vehicle, or aircraft; or any master, owner, person in charge of a vessel, vehicle or aircraft...upon demand by Customs."

These bonds provide the necessary guarantees to Customs that RC operators will comply with Customs regulations and requirements, which include the payment of duties, taxes, fees, and/or liquidated damages and penalties associated with specific entered shipments.

IV. PRESENTATION

USPS

The USPS is required to present all inbound mail shipments to Customs for enforcement review and duty and admissibility determination. Since Customs is unable to do advance reviews/targeting, and due to lack of detailed information pertaining to individual mail shipments, it must require a 100% review.

⁴19 CFR 113.62

⁵19 CFR 113.63

⁶19 CFR 113.64

Customs is unable to determine the amount of mail entering the country due to the lack of documentation on mail shipments entering the U.S.

EC's

Customs has the ability to select specific EC shipments for enforcement reviews as a result of the manifesting requirements all EC operators are required to meet. This eliminates Customs requirements to perform a 100 percent review of shipments. Upon notification from Customs of our desire to examine a shipment, EC operators present the shipment, provide EC staff to assist in expediting examination of the shipment, and seal all items opened for verification upon Customs completion.

V. OUTBOUND/EXPORT SHIPMENTS

USPS

Currently, Customs must obtain warrants to search sealed outbound mail shipments. However, the Administration's International Crime Control Act, which was transmitted to the Congress this spring, would give Customs the authority to search outbound mail without a warrant.

EC's

Export shipments are made available to Customs for inspection without restrictions. As a result, Customs has been very successful in intercepting large amounts of undeclared currency/cash, other monetary instruments and licensable commodities being sent to prohibited countries.

VI. IN-TRANSIT

USPS

A provision in the UPU Constitution and Convention requires "all member countries" to provide freedom of transit to international mail, and forward such mail by the fastest routes they use for domestic origin mail. International transit mail is classified as mail which passes through the U.S. but is not to be delivered within the U.S. Part 145.2 of the Customs Regulations was changed to conform to the

Convention. This section of the Customs Regulations states that mail must be destined for delivery in the Customs territory of the U.S. or in the U.S. Virgin Islands to be subject to customs examination. As a result of this provision, customs is unable to open, search, or seize any in-transit shipments, regardless of its contents.

Unfortunately, this provision directly contradicts the fundamental mission of the Customs Service interdiction of narcotics and contraband. U.S. Customs personnel have consulted with foreign customs administrations regarding the direction from the UPU. Each customs administration contacted has verified that they exercise their border search authority and seize narcotics and contraband in international transit mail as a normal course of business.

EC's

Upon Customs request, EC operators present in-transit shipments for examination. Customs exercises our border search authority, as provided for in the law, to search, open, or seize violative shipments. There is never a question as to the authority, or the need, for Customs to perform examinations on shipments exiting the U.S. Typically, EC operators are cooperative in providing the necessary staffing to facilitate this process.

VII. RECORDKEEPING REQUIREMENTS

USPS

The USPS is not subjected to Customs recordkeeping requirements, as provided for in the Customs regulations. In addition, it is not required to provide documentation to Customs to correlate arrivals, presentation to Customs, and subsequent releases by Customs for international mail shipments.

EC's

As required by law, all EC operators are required to maintain documentation in accordance with the Recordkeeping provision in Title VI of the customs modernization provisions of the North American Free Trade Agreement Implementation Act. This statutory requirement directs EC

operators to maintain and make available upon request by Customs documents relating to specific shipments. By law, EC operators are required to maintain all import information for a period of 5 years from date of entry.

VIII. DUTY PAYMENT

USPS

Customs IMB personnel attach duty bills on parcels which are determined by Customs to be dutiable, based on the shippers, declaration and/or physical inspections. Copies of all duty bills issued are maintained by Customs for recordkeeping and accounting purposes. Customs releases dutiable mail shipments to the USPS for delivery and collection of Customs duties and fees from the recipient (importer) of the parcel. Upon collection of the duties and fees, postal carriers and local receiving post offices are required to forward the funds through the USPS financial management system to Customs. The USPS is required to remit payment of the duties and fees received for these dutiable parcels to Customs within 90 days of collection.

When payments for these bills are not received by Customs within the required go days, a remedial duty bill is sent to the importer. Upon receiving proof of payment to the USPS, Customs cancels the importer's duty bill and advises the local originating post office of the non-remittance.

Currently, the USPS has failed to remit duties and fees collected on dutiable parcels to Customs for fiscal years 1992 through March 1997, amounting to an estimated \$1.0 million. This amount does not include interest, as Government agencies are exempt from paying interest.

EC's

EC operators ensure that required entry documents are filed and applicable duties, taxes, and fees are being paid to Customs for EC shipments as provided for in the customs Regulations. In the event an importer refuses to remit duty payments in a timely manner, Customs will assess liquidated

damages and charge interest on the shipment. If the importer fails to comply with Customs demands, customs then demands payment from the principal on the Customs entry bond.

Importers who repeatedly fail to file timely entry documentation and are habitually delinquent in the payment of Customs duties may be required to file entry documentation and duties, taxes, and fees prior to the release of their shipments, as provided for in section 142.13 in the Customs Regulations.

IX. REIMBURSABLE COSTS

USPS

The USPS is not required to reimburse Customs for services provided in processing of international mail shipments. Customs remits monthly rental payments to the General Services Administration for office space at the 14 IMB locations; upgrades to equipment, furnishings, supplies and secured cages are funded by Customs.

Customs assess a \$5 processing fee on all dutiable mail shipments to offset costs associated with processing these shipments. This fee is refundable to importers upon Customs approval of their protest against duties assessed. These importers are also required to pay the USPS a non-refundable \$3.75 handling fee on their mail shipments.

EC's

Upon being approved as an EC operator, the company must adhere to section 128.11, which states that the company must:

- ◆ provide to the Government, without cost, "adequate office space, equipment, furnishings, supplies and security" as required by Customs standards (in one instance, EC operators were required to provide x-ray equipment to assist Customs in the examination of high risk shipments).

◆ "timely pay all reimbursable costs, as directed by the port director".

◆ agree to fund all relocation, training and "other exceptional costs and expenses incurred by Customs" as a direct result of Customs staff relocating to the company's hub location.

X. AUTOMATION

USPS

The USPS is not required to participate in any Customs automated programs. Generally, development of automation will depend upon the technological abilities of the countries involved. At Customs' request, the USPS developed a program within the MIDAS system to monitor express shipments while in Customs control and to provide information useful to Customs. The USPS Currently supplies five Customs IMB locations with their automated MIDAS tracking system. The MIDAS system allows Customs field personnel at the 5 IMBs to select mail shipments for enforcement or revenue review. The MIDAS tracking system is currently the only one that provides Customs with information similar to a manifest.

EC's

As part of the requirements for approval to participate as an EC operator, the company must ensure that all shipments are processed in the various automated Customs systems, Automated Commercial System, to include the "Automated Broker Interface (ABI), Automated Manifest System (AMS), Cargo Selectivity and Statement processing." As a result of having access to automated advance information, Customs is able to perform enforcement queries to identify specific shipments for inspectional review. Because Customs has the ability to perform this task in advance, this has proven to be a valuable tool for targeting shipments.

XI. SECURITY

USPS

International mail volumes arrive at airports and are unladen by the carriers' contract ground services staff. Off-ladened mail remains on the ramp until picked up by the contract ground crew for delivery to the USPS local facility. Title 18 U.S.C. 1698, states that presentation of mail to the local USPS facility must be made within 3 hours of arrival at the final destination.

The burden is on Customs IMB personnel to ensure that international mail shipments are presented to the IMB within the prescribed time frame, and "to issue appropriate penalties to the carriers for failure to adhere to 18 U.S.C. 1698.

Although the USPS does not have the authority or means to correct problems related to delays, delivery difficulties are reported to the airlines for corrective action. The air carriers are contracted by the foreign postal administration, and therefore, are not under the control of the USPS.

EC's

Shipments imported by EC operators are picked up upon unloading on the ramp, generally by EC staff, shortly after conveyance arrival and are presented to the local HUB or EC facility. The speed and uniformity of delivery reflect the time-sensitive nature of the EC industry and industry operational practices to meet those needs.

EC shipments are accounted for because of information sources available to Customs via automated systems. As a result, Customs is able to select a particular shipment for inspection, and is assured that the shipment is what was selected for review because the data provided corresponds to the shipment.

XII. TRAINED WORKFORCE

USPS

The USPS and Customs prepared a training video for distribution to all postal facilities, providing information on dutiable inbound mail shipments, and the proper method in which to collect these duties from the recipients of the mail.

EC's

Most EC companies provide some degree of training to their staff on customs laws, regulations, and policies. There are EC operators who establish a subsidiary of licensed Customs brokers, highly-trained import professionals. Customs brokers are empowered by importers or consignees to assist in clearing shipments through Customs. As a result, the Customs brokers must possess a thorough knowledge of the Customs Regulations, the Harmonized Tariff Schedule of the United States, and applicable rulings that affect the shipment of merchandise into the U.S.

XIII. RISKS

The seizures affected by Customs for USPS shipments consist of inbound mail. Customs does not examine in-transit shipments or outbound shipments, which accounts for the differences in the seizure quantities in comparison to the EC shipments.

in the event that a Customs narcotics dog alerts on an in-transit shipment, the foreign Customs Service is notified immediately and detailed intelligence is provided. Unfortunately, we have not been successful in gaining the support of several large foreign Customs Services. As a result, because the UPU specifically states that Customs does not have the right to seize in-transit mail shipments, narcotics and contraband are entering the domestic stream in foreign countries. The possibility exists that these shipments are then repackaged and mailed to the U.S.

The following is a breakout of seizures effected by Customs:

FY 1994					
	Narcotics†	Other Drugs†	Currency*	IPR	Other
USPS	6,448	1,252	\$841,490	\$631,845	\$973,275
EC	1,597	17	\$10,939,881	\$333,916	\$2,407,847

FY 1995					
	Narcotics†	Other Drugs†	Currency*	IPR	Other
USPS	5,758	1,789	\$1,020,926	\$559,151	\$430,380
EC	8,849	31	\$2,729,881	\$975,616	\$3,745,555

FY 1996					
	Narcotics†	Other Drugs†	Currency*	IPR	Other
USPS	11,268	1,367	\$1,142,313	\$684,971	\$650,546
EC	13,674	49	\$3,718,559	\$1,421,049	\$1,033,208

FY 1997					
	Narcotics†	Other Drugs†	Currency*	IPR	Other
USPS	6,031	2,214	\$1,489,800	\$5,007,593	\$784,793
EC	7,313	62	\$8,959,527	\$1,220,428	\$1,845,699

† Quantity in pounds.

*Counterfeit currency included, which has no "true value."

~"Other Drugs" include steroids, prescription drugs, etc.

XIV. PENALTIES

USPS

Consistent with other Government agencies, the USPS is exempt from fines, liquidated damages, and penalties for violations committed pertaining to international mail shipments.

EC's

EC operators are subject to fines, liquidated damages, and/or penalties for noncompliance with federal and state regulations and statutes, as enforced by Customs.