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U.S. CUSTOMS SERVICE

Oversight Issues

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U.S. Customs Service: Oversight Issues

One of the oldest federal agencies, the U.S. Customs Service collects revenues in excess of $23 billion annually while processing an estimated 14 million import entries and 450 million people through 301 ports of entry into the U.S. In recent years, GAO has reported to the Subcommittee on three issues that are the subject of today's oversight hearings: drug interdiction, labor-management relations, and overtime pay.

GAO's September 1996 report on Customs' drug interdiction efforts identified and described the key elements, resources, costs, and performance measures of Customs' national drug interdiction program as well as those of its investigative offices and selected ports in the Miami and San Diego areas. It noted that Customs' challenges included how to (1) effectively interdict drugs and enforce trade laws while facilitating border crossings and (2) develop performance measures that gauge the effectiveness of its drug interdiction activities.

GAO's March 1997 testimony discussed labor-management activities within Customs. In June 1994, Customs and the National Treasury Employees Union (NTEU) entered into a partnership agreement that established 19 goals, set up a National Partnership Council, and stated that NTEU will participate in agency meetings that affect the workforce. GAO's limited work revealed that most of the Customs managers and NTEU chapter presidents GAO interviewed characterized their relationship as better while first-line supervisors' views were more evenly distributed from "much better" to "much worse." Customs did not have any plans for an evaluation of the impact of the partnership approach on its mission and GAO concluded that since the partnership was almost 3 years old, it was not too soon for Customs to develop a formal plan for evaluating it.

In 1991, GAO reported that overtime pay to Customs inspectors had increased from about $57 million in fiscal year 1985 to about $103 million in fiscal year 1990. GAO concluded that an important cause was Customs' focus on ensuring that inspectors did not exceed the $25,000 cap instituted by Congress in 1983 and its disregard of the individual overtime assignments that build to the cap. GAO also concluded that original overtime provisions hindered efficient management and that the special payments were premised on conditions that no longer existed. GAO recommended that (1) overtime pay be more directly linked to actual hours worked and (2) overtime be used more efficiently. The 1993 Customs Officers Pay Reform Amendments (COPRA) were intended to more closely match earnings to hours worked. However, the Treasury Inspector General (IG) reported in September 1996 that although COPRA reduced

direct spending associated with overtime pay, it caused a significant increase in the costs associated with night differential pay in fiscal years 1995 and 1996. In addition, the IG pointed out that annually inspectors file and win grievances if they are not allowed to work because they are close to the $25,000 cap.

Statement

U.S. Customs Service: Oversight Issues

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today at this Customs oversight hearing to discuss work we have done for this Subcommittee addressing Customs' drug interdiction efforts, labor-management partnership concept, and issues related to inspectional overtime. Our testimony is based primarily on products we have issued on each of these subjects since 1991.

Created in 1789, the U.S. Customs Service is one of the federal government's oldest agencies. Although its original mission was to collect revenue, Customs' mission has expanded to include ensuring that all goods and persons entering and exiting the United States do so in accordance with all U.S. laws and regulations. Moreover, a major goal of Customs is to prevent the smuggling of drugs into the country by creating an effective drug interdiction, intelligence, and investigation capability that disrupts and dismantles smuggling organizations.

As of January 1997, Customs performed its mission with a workforce of about 19,500 personnel at its headquarters, 20 Customs Management Centers, 20 Special Agent-in-Charge (SAC) offices, and 301 ports of entry around the country. Customs collects revenues in excess of $23 billion annually while processing the estimated 14 million import entries and 450 million people who enter the country each year.

Drug Interdiction

In September 1996, we issued a report to this Subcommittee on the drug interdiction efforts of the Customs Service.[1] As one of the more than 50 federal agencies involved in the War on Drugs, Customs is responsible for stopping the flow of illegal drugs across the nation's borders. In addition to routine inspections to search passengers, cargo, and conveyances for illegal drugs moving through U.S. ports, Customs' drug interdiction program includes investigations and other activities unique to specific ports.

Our report identified and described the key elements, resources, costs, and performance measures of Customs' national drug interdiction program, as well as those of its investigative offices and selected ports in the Miami and San Diego areas.

[1] Customs Service: Drug Interdiction Efforts (GAO/GGD-96-189BR, Sept. 26, 1996). The data in this section were current as of September 1996, unless otherwise indicated.

Customs has two key organizational elements in its drug interdiction program. First, the Office of Field Operations has over 6,600 inspectors and 527 canine enforcement officers who perform inspections at the 301 air, land, and sea ports around the country. Inspectors use an array of technology in their search for drugs, such as an X-ray system for trucks and trailers, X-ray machines for containerized cargo, and fiber-optic scopes to examine gas tanks and other enclosed spaces. Inspectors also target persons, cargo, and conveyances for examination using manifest reviews and databases such as the Treasury Enforcement Communications System, which contains information on suspected smugglers.

Second, the Office of Investigations has about 2,500 special agents, about half of whom are authorized to react to and investigate drug seizures at ports and develop cases that implicate drug smuggling operations. Investigations also is responsible for about 1,100 personnel in aviation, marine, and intelligence units, which support the drug interdiction mission. The aviation unit supports foreign interdiction operations, interdicts and apprehends air smugglers, and supports other Customs and federal, state, and local law enforcement efforts. Marine units interdict, investigate, and apprehend violators that smuggle drugs into the United States via commercial and pleasure vessels. To assist in performing these missions, the aviation and marine units have 78 vessels, 77 airplanes, and 39 helicopters. The intelligence unit supports Customs' management and all field elements; this involves developing assessments of drug smuggling threats for various parts of the country. For example, threat assessments of the Southwest border led, in part, to the Customs Commissioner's support for creating a major national initiative, Operation Hard Line,[2] for the Southwest border.

Customs reported to the Office of National Drug Control Policy that its combined budget for drug interdiction and investigations averaged about $575 million for fiscal years 1990 to 1996. In fiscal year 1995, its drug interdiction budget was about 38 percent and its drug investigations budget was about 3 percent of the federal drug control budget.

Customs has traditionally measured the output from its drug interdiction effort by the resulting number of seizures, arrests, indictments, and convictions. For example, in fiscal year 1995, Customs reported about

[2]First implemented on the Southwest border, Operation Hard Line emphasizes intensified inspections, improved facilities, and the use of technology to detect drug smuggling. It has been expanded beyond the Southwest border to the southern tier of the United States, including the Caribbean and Puerto Rico, with enhanced air and marine enforcement.

2,200 cocaine seizures, about 900 heroin seizures, and about 10,000 marijuana seizures—these seizures accounted for over 50 percent of all drugs seized by federal agencies. It also reported participating in the seizure of an additional 13 percent of the total drugs seized.

These traditional measures, however, track activity, not outcome or effectiveness. Customs has sought to develop nontraditional measures for use in assessing the effectiveness of its drug strategy initiative. For example, Customs is testing a program designed to estimate the number of drug smugglers entering the ports, thus providing it with a baseline from which to measure how effective its inspectors have been at targeting drug smugglers at the ports. At the time of our report, the program was implemented at major air and land border ports.

Our September 1996 report also described drug interdiction activities at major ports in the Miami and San Diego areas. It provided information on the ports, estimates of the resources Customs had invested in drug interdiction and investigation activities there, and traditional measures of its success. In addition, we described a special cargo entry program at the Otay Mesa, California cargo port. The program, called Line Release, was designed to expedite the release and tracking of low-risk, high-volume shipments. Under the Line Release program, Customs is to prescreen manufacturers, importers, brokers, and shippers in an attempt to ensure they are low risk for drug smuggling; Line Release participants are required to pass five intensive examinations and meet a minimum requirement of 50 shipments per year. Although the program has been criticized for allowing trucks to enter the United States from Mexico without inspection, our work showed that vehicles participating in the Line Release program were subject to the same special enforcement operations as non-Line Release vehicles, and were inspected more frequently through these operations than were non-Line Release vehicles.

Finally, our report discussed the challenges Customs was facing in its drug interdiction mission. First, we pointed out that Customs' major challenge was to effectively carry out its drug interdiction and trade enforcement missions while facilitating the flow of persons and cargo across the borders. Customs has to perform these missions despite continuous and extensive threats from drug smugglers along the border.

Second, because its financial information systems are not designed to account for costs by mission component, Customs has to estimate the amount it is spending for drug interdiction overall. This reduces Customs' ability to determine whether allocation of additional resources at specific ports or in a specific region has produced commensurate benefits. Customs officials told us that they were developing mission- and performance-based budgets, in accordance with Department of the Treasury directives, that would enable them to determine with greater reliability the costs of drug interdiction activities throughout Customs.

Third, Customs—like other law enforcement agencies engaged in the fight against drug smuggling—has attempted to develop performance measures. Traditional output measures do not allow officials to gauge the effectiveness of drug interdiction activities. Even the new, nontraditional measures being developed may not allow Customs to assess, over time, whether increased efforts are producing better outcomes.

Labor-Management Partnership Concept

In March 1997, I testified before this Subcommittee on labor-management activities within Customs.[3] The Subcommittee had asked us to review, among other topics, the history of union activity at Customs and the effect that the partnership agreement between Customs and the National Treasury Employees Union (NTEU), the exclusive representative of Customs' bargaining unit employees,[4] had on Customs' ability to establish and achieve its mission-related goals. At the time of that hearing, we had performed preliminary work at Customs headquarters, 5 Customs Management Centers, 11 ports of entry around the country, the NTEU national office, and 7 local NTEU chapters.[5]

Executive Order 12871, October 1, 1993, required the head of each federal agency to create labor-management councils to help involve employees and their unions as full partners. These partnership councils are to identify problems and craft solutions to better serve the agency's customers and accomplish its mission. In June 1994, the Customs Service and NTEU entered into a partnership agreement that established 19 goals, set up a National Partnership Council, and stated that NTEU will participate in agency operational meetings that affect the workforce. In February 1997, Customs and NTEU implemented a new national contract.

[3]U.S. Customs Service: Varied Reaction to the Labor-Management Partnership Concept (GAO/T-GGD-97-54, Mar. 11, 1997).

[4]As of January 1997, approximately 11,200 of the 19,500 Customs personnel were eligible to join NTEU, and about 7,200 had done so.

[5]Because the testimony satisfied the Subcommittee's interests at that time, we have not conducted further work on this issue.

Our limited work revealed a variety of opinions regarding Customs-NTEU relations since the implementation of the executive order. Most of the Customs managers we interviewed characterized their relationship with NTEU chapters as better. Most of the NTEU chapter presidents we spoke with also said the relationship was better. The views of the Customs first-line supervisors we interviewed were more evenly distributed from “much better” to “much worse.”

Customs managers and supervisors and NTEU representatives provided similar comments about the advantages of the partnership concept, citing faster problem resolution, improved communications, and mutual involvement in decisions. However, comments on disadvantages revealed no clearly shared views. For example, managers and supervisors generally stated that all issues must be bargained with the union before any action can be taken, while NTEU officials generally indicated that managers want to choose when they include NTEU in making decisions and when they do not.

Customs’ partnership agreement with NTEU and Executive Order 12871 call for evaluating the progress of and improvements in the agency’s performance resulting from the partnership concept. To a limited extent, Customs had begun that effort. However, at the time of our testimony, these efforts had not set the groundwork for the kind of comprehensive evaluation envisioned by the Executive Order and partnership agreement. In our work at Customs’ headquarters and several field locations, we did not see any plans for an evaluation of the impact of the partnership approach on Customs’ mission.

We pointed out in our testimony that cultural changes such as those promised by the partnership concept do not occur quickly. The Commissioner of Customs told us that he expected it to take at least 5 years for the new relationship to become Customs’ normal operating environment. Nevertheless, given that Customs and NTEU had been in this new relationship for almost 3 years, we concluded that it was not too soon for Customs to develop a formal plan for the evaluation of progress and improvements in organizational performance resulting from this labor-management partnership.

Overtime Issues

In the Act of February 13, 1911, Congress enacted overtime pay provisions for Customs inspectors. Sunday work was to be compensated at the rate of 2 days’ regular pay; on holidays, the rate was to be the total of 2 days’ pay plus the hourly rate for the period of time worked on the holiday. No minimum period of work was required to qualify for the premium—overtime—pay. Thus, inspectors could have worked as little as 1 minute and received 2 days' pay for Sunday work. For overtime work at other times during a week, the minimum compensation was 4 to 12 hours' pay, depending on whether the inspector worked late, came in early, or was called back to work. In 1983, Congress set a cap of $25,000 on the amount of individual overtime earnings. With the enactment of the Consolidated Omnibus Budget Reconciliation Act of 1985, Customs began charging user fees for processing passengers and cargo; the revenue from these fees paid for Customs' overtime and premium pay.

In 1991,[6] we reported to this Subcommittee that overtime pay to Customs inspectors had increased from about $57 million in fiscal year 1985 to about $103 million in fiscal year 1990. We concluded that an important contributing cause of this growth was Customs' focus on ensuring that inspectors did not exceed the $25,000 cap and its disregard of the individual overtime assignments that build to the cap. We found internal control weaknesses that resulted in errors in preparing overtime documentation, certifying payments, and entering data in the overtime system. We also concluded that the 1911 Act provisions hindered the efficient management of overtime and that the special payments were premised on conditions that no longer existed. Although we believed that inspectors should be paid extra for working overtime, we recommended that (1) the 1911 Act be amended so that inspector overtime pay would be more directly linked to actual hours worked and (2) Customs management focus on achieving a more efficient use of overtime.

Based in part on our findings, the Customs Officers Pay Reform Amendments (COPRA), Section 13811 of the Omnibus Budget Reconciliation Act of 1993, established the overtime and premium pay system for Customs officers performing inspectional services. The intent behind changing the 1911 Act was to more closely match earnings to hours worked, thereby reducing overtime costs. It was expected that the changes made by COPRA would result in overtime savings of $12 million in both fiscal years 1994 and 1995, and a total of $52 million for the 5-year period ending with fiscal year 1998.[7] However, in September 1996 the Treasury Inspector General (IG) reported that although COPRA reduced direct spending associated with Customs officers' overtime pay, it caused a

[6] Customs Service: 1911 Act Governing Overtime Is Outdated (GAO/GGD-91-96, June 14, 1991).

[7] See House Report 103-111, May 25, 1993.

significant increase in the costs associated with night differential pay.[8] The IG reported a net increase in overtime pay of $8.9 million in fiscal year 1995.[9]

Further, the IG pointed out that future night differential pay to Custom officers will be even higher. On December 9, 1995, an arbitrator ruled favorably on a grievance filed by NTEU that protested Customs' refusal to pay night differential to Customs officers who were on sick or annual leave for 8 hours or longer. The ruling required Customs to pay employees who would ordinarily receive COPRA night differential when at work but who did not receive it when on leave since January 1, 1994. Customs estimated that it paid over $1 million in premium pay for work not performed as a result of that ruling. Customs' appropriation act for fiscal year 1997 prohibits this practice for that fiscal year, but this prohibition expires at the end of fiscal year 1997.

The IG report also pointed out that the pay cap has caused additional increases in administrative costs for Customs. Annually, inspectors (and canine enforcement officers) file grievances because they are not allowed to work overtime assignments if they are close to the $25,000 cap. According to a Customs official, most port management stop those Customs officers who are approaching the cap (usually those who had earned about $24,500) from working any more overtime. This work was performed by other Customs officers who were not at the cap. The IG reported that in fiscal year 1994 over $100,000 in settlements were paid as a result of these overtime cap grievances.

Mr. Chairman, this completes my statement. I would be pleased to answer any questions.

[8]Night differential pay depends on the regularly scheduled hours of the Customs officer. If the majority of the officer's hours are between 3 p.m. and midnight, compensation equals the basic hourly rate plus premium pay of 15 percent of the hourly rate. If the majority of the hours are between 11 p.m. and 8 a.m., compensation equals the basic hourly rate plus premium pay of 20 percent of the hourly rate.

[9]Customs Officer Pay Reform Amendments (COPRA), Office of Inspector General, Department of the Treasury, OIG-96-094 (Sept. 13, 1996). Customs reported that this amount increased to $9.5 million in fiscal year 1996.

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