



Testimony

Before the Subcommittee on Trade, Committee on Ways
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U.S. CUSTOMS SERVICE

Office of Regulations and Rulings Has Yet to Establish Performance Measures

Statement of JayEtta Z. Hecker, Associate Director,
International Relations and Trade Issues, National
Security and International Affairs Division



Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss several key issues regarding the management of the U.S. Customs Service's Office of Regulations and Rulings (ORR). Specifically, I will address (1) what this office does, (2) how it measures its performance, (3) the extent to which it is meeting its internal timeliness goals, and (4) industry views regarding its performance. Our observations are based on (1) work at Customs offices in Washington, D.C., and New York; (2) visits to the ports of Los Angeles and Baltimore; (3) discussions with a limited selection of representatives of the international trade community, including importers, brokers, and attorneys; and (4) analysis of the timeliness of key ORR rulings using Customs' automated system and case files. Before I get into our specific observations, let me provide a brief summary.

Summary

ORR facilitates the entry of goods into the United States, valued at over \$800 billion in 1996, by (1) drafting regulations implementing U.S. trade laws; (2) issuing rulings on the proper classification, valuation, country of origin and marking of imported goods; and (3) providing guidance to the trade community and other Customs' units on their compliance responsibilities under Customs' regulations and related laws.

While ORR's legal and technical analysis and advice are critical to the furtherance of Customs' trade administration mission, Customs has not included ORR in its annual plans identifying goals and performance measures. As a result, unlike other Customs' units, ORR has not prioritized its work, set officewide objectives, or established how to measure its overall performance as envisioned in the 1993 Government Performance and Results Act (GPRA) (P.L. 103-62). ORR's only performance-related measure is set forth in a 1989 directive issued by the Commissioner of Customs, which covers a limited but important segment of ORR's work. The directive requires that certain legal decisions, or rulings, that deal with the classification of merchandise be issued within 120 days of receipt by the Customs Service. In addition, ORR recently set a goal of 30 days for a limited number of rulings dealing with the country of origin of textile and apparel imports.

We found ORR has made no effort to determine whether it was meeting the timeliness requirements established in the 1989 directive regarding classification rulings. Based on our analysis, we learned that ORR did not meet the requirement to issue rulings within 120 days for 53 percent of the

classification cases closed in 1996 that we reviewed. Further, ORR did not meet its internal 30-day target to issue rulings on country of origin cases for 59 percent of the cases we reviewed. By not tracking whether it is meeting its timeliness targets and by having performance measures on only a limited segment of its work, ORR is not able to measure its overall effectiveness. If Customs were to include ORR in the annual planning process, ORR would assess its overall workload and priorities, and then be able to determine whether its current timeliness goals for classification rulings are appropriate or whether changes are needed in its processes and de facto priorities.

Overall, representatives from the trade community we interviewed, including importers and trade attorneys, were generally pleased with the quality of ORR's services. They indicated that, by and large, ORR rulings provided important analyses and information about the duties they should expect to pay on the goods they import; they noted that the rulings were crucial to their ability to make effective business decisions and comply with Customs' regulations. The only concern they cited was the timeliness of ORR's decisions.

Background

The U.S. Customs Service is a key agency for enforcing the nation's trade laws and policies. In addition to preventing imports of goods that threaten our health and safety, it prevents the illegal export of protected technologies, stolen merchandise, currency, and other contraband. In the course of enforcing U.S. trade laws, Customs collects duties on imported merchandise. ORR plays an important role in carrying out Customs' trade mission by providing legal and technical support regarding payment of duties to Customs' officers at the ports and at headquarters and guidance to the trade community on Customs' regulations and related laws.

ORR is headed by an Assistant Commissioner and has offices in Washington and New York. Its staff of 248 consists mainly of attorneys and specialists in commodity classification. For fiscal year 1997, out of Customs' total budget of \$1.6 billion, ORR's budget is \$16.38 million, of which \$15.2 million is for salaries.

What ORR Does

ORR carries out its principal mission by (1) drafting regulations implementing U.S. trade laws; (2) issuing rulings on the proper classification, valuation, country of origin and marking of imported goods; and (3) providing guidance to the trade community and other Customs'

units on their compliance duties under Customs' regulations and related laws. ORR informs the trade community primarily through its rulings, which affect the duty an importer will pay. These rulings advise importers on how they can be in compliance with Customs' laws and help importers make marketing and pricing decisions by providing information on the cost of importing their goods. For example, ORR's prospective classification rulings give both the requesting importer and importers of similar goods vital information to help them determine the amount of duties and fees they will be charged when they eventually enter their merchandise at a port. Customs' officers, at any port, will accept the merchandise under the classification contained in the ruling. Importers can use duty information to help weigh whether to import a new line of merchandise.

ORR also handles importers' applications for further review protesting the duties they have paid. For example, an importer who believes he or she has been charged too much duty by a Customs' port official can protest the official's decision on the duty owed. If the protest cannot be resolved at the port, the importer can seek relief from ORR. Also, a Customs' port inspector deciding whether to seize a shipment for a Customs' law violation can call ORR for guidance on the law and policy regarding the classification, value, admissibility, entry, and detention or seizure of merchandise.

Under the Customs Modernization and Informed Compliance Act of 1993 (P.L. 103-182), responsibility was shifted from Customs to importers for assuring that shipments are in compliance with Customs' classification, duty, and reporting requirements.¹ Because of this additional responsibility, importers are relying more than ever on ORR's rulings and educational activities. Under the act, importers are expected to use reasonable care to enter, classify, and value imported merchandise and submit any information necessary for Customs to properly assess duties.

How ORR Measures Its Performance

As we noted in a 1996 report,² the Customs Service as an organization has been in the forefront, in some areas, of the effort to improve government performance. While Customs as a whole and other Customs' units have developed a strategic management framework that integrates planning,

¹Informed compliance attempts to maximize importers' voluntary compliance with Customs' laws and regulations by keeping them clearly and completely informed of their legal obligations.

²Executive Guide: Effectively Implementing the Government Performance and Results Act (GAO/GGD-96-118, June 1996.)

budgeting, and performance measurement, ORR does not have such a system in place. The Office has not established any overall goals, priorities, or specific performance measures in order to prepare to meet the implementation requirements of GPRA.³ Establishing a strategic management framework, as envisioned in GPRA, could help ORR assess its priorities and determine what goals are feasible and responsive to the business needs of the trade community.

ORR's only performance-related measure was set forth in a 1989 directive issued by the Commissioner of Customs. The directive specifies timeliness requirements for a limited segment of ORR's work; it requires that certain rulings that deal with the classification of merchandise (those done by about 30 of ORR's headquarters attorneys) be issued within 120 days of receipt by Customs of a request for such a ruling.⁴ ORR, however, does not consider the directive's requirements to be related to GPRA. In addition, the Assistant Commissioner informed us in writing that ORR has no specific performance measures in relation to the annual plan; rather, he said, ORR provides support and technical assistance to the strategies and processes outlined in the plan. Because ORR provides a direct service to the trade community by issuing rulings, it does appear that having performance objectives for issuing these rulings would be appropriate.

ORR's Timeliness on Classification Rulings

ORR was unaware of whether it was meeting its 1989 directive's timeliness goals for issuing classification rulings. The directive requires issuance of classification rulings referred to ORR headquarters within 120 days from the date of their receipt by the Customs Service. While Customs has an automated tracking system, called the Legal Case Inventory System (LCIS), to monitor rulings subject to the directive and is required to do so by the directive, we found that ORR makes little, if any, effective use of the system for that purpose. Finally, we found that ORR has not consistently met the

³GPRA requires all U.S. government agencies to set goals, measure performance, and report on their accomplishments. As a first step, the act states that agencies must develop strategic plans by the end of fiscal year 1997. In addition, the Office of Management and Budget required agencies to submit major parts of their strategic plans by June 1996.

⁴Classification rulings that involve interpretation of the Harmonized Tariff Schedule (HTS), but no legal analysis, are the responsibility of ORR's National Commodity Specialist Division located in New York City. The HTS is an extension of the 6-digit Harmonized Commodity and Coding System, the internationally recognized system for classifying commodities. The 1989 directive requires that the division issue classification rulings within 30 days. ORR told us that the New York division consistently met this target. However, we were unable to verify that this was the case. Although we requested information on this division's performance in a January 28th letter, ORR has not provided the data.

directive's timeliness requirements on its 1996 classification rulings.⁵ ORR told us that its ability to issue timely rulings was affected by uncontrollable events and by a heavier workload coupled with diminished staffing resources. We were not able to verify whether these factors contributed to delayed rulings.

ORR Unaware of Whether It Is Meeting Timeliness Goals

We found that ORR did not know whether it was meeting the timeliness goals set forth in its 1989 directive. ORR lacks crucial information to make this determination because it is not effectively using LCIS to monitor these rulings, as required under the directive. The directive states that LCIS "will be the backbone for controlling the timeliness of rulings." However, ORR's Assistant Commissioner told us that "to use the LCIS to determine that the self-imposed time frames are met is an improper use of the system. Rather, LCIS 'red flags' a matter for the OR&R first line managers to review the file and discuss it with the case handler."

We found that, although ORR enters case information into LCIS, it is not excluding the rulings subject to the directive. ORR informed us that its regular reports do not include this information. Thus, ORR could not readily provide the necessary information for us to do an analysis of its performance regarding timeliness. Ultimately, ORR had to request special programming from Customs' Office of Information Technology to provide us with the data we needed to conduct this analysis.

ORR's Inconsistent Application of Directive Renders LCIS Data for Measuring Performance Inaccurate

ORR is not consistently calculating the 120-day processing period according to its directive. As a result, key LCIS data elements ORR uses to calculate the 120-day period are inaccurate.

ORR told us it calculates what it calls the "days in process" from the LCIS "assigned date"—the date the case was assigned to a case handler—to the LCIS "closed date"—the date the ruling is issued. The Assistant Commissioner of ORR wrote us that "the date received in the first Customs office and the 'assignment date' data element were originally intended to be the same. . . . The foregoing is how it should be, but, clearly with

⁵We reviewed 55 percent, rather than our intended 100 percent, of the cases closed in 1996. We requested from ORR case files for all classification and country of origin cases closed in 1996 and subject to the directive. ORR provided us with 83 classification cases and 108 country of origin cases it identified as the complete set. We eliminated two classification files due to incomplete information. Therefore, we reviewed a total of 189 files. In verifying the automated data ORR provided us, we discovered that ORR should have included an additional 154 cases. ORR could not adequately explain this discrepancy.

automated systems the data is only as good as what is entered and there will be cases where the above was not adhered to.”

ORR also told us that it factors into its calculation of the number of days in process certain events beyond its control that could delay its issuance of the ruling. The directive states that a ruling may be delayed only for required laboratory analysis or when other agency consultation is needed. In calculating the 120-day processing days,⁶ ORR’s policy is to adjust the assignment date when the case is considered to be in process to the date when any delay has been removed.⁷

Of the 189 rulings we examined subject to the directive and closed in 1996, ORR had not consistently adjusted the assignment date according to our review of LCIS data relative to data in the actual paper case files. We found that 53 percent of the “assigned” dates on LCIS were incorrect,⁸ with 25 percent of those off by 3 months or more. The “closed” date, on the other hand, had an error rate of 3 percent for the same set of cases.

ORR Did Not Meet Timeliness Goals in Directive

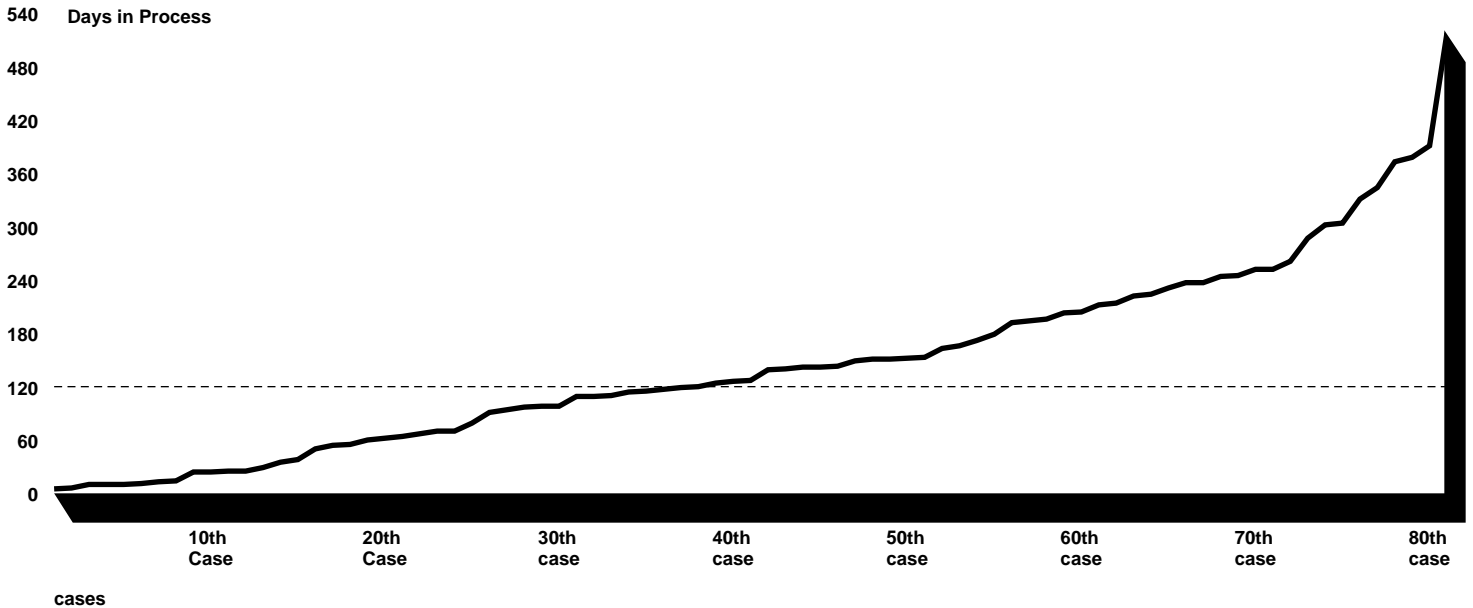
We corrected the relevant LCIS data and found that ORR did not consistently meet the 1989 directive’s timeliness goals. Specifically, ORR achieved the directive’s 120-day goal in 47 percent of the 81 cases that involved providing a ruling on classification of merchandise under chapters 1-97 of the HTS. The average number of days for classification cases in process was 147. Figure 1 shows the extent to which classification cases fell below or above the 120-day goal. In about 25 percent of the cases, the days in process ranged from about 200 to over 500 days.

⁶ORR also considers delaying events to include meetings initiated by a ruling requester, new information affecting the case, other ruling cases pending, proposed changes in rulings, pending court cases, and requests for confidentiality.

⁷For example, if the delay were due to the need for a laboratory analysis, the new assignment date would be the date that ORR received the laboratory results. For cases with multiple delaying events, the new assignment date would be the date when the last source of delay was eliminated.

⁸We defined an “incorrect” assignment date as follows: (1) a case with no delays outside ORR’s control—the assignment date was not the date the ruling request was received in the first Customs office or (2) a case with such delays—the assignment date was not adjusted according to ORR procedures.

Figure 1: Number of Days in Process for ORR Classification Cases Closed in 1996 and Subject to the Directive

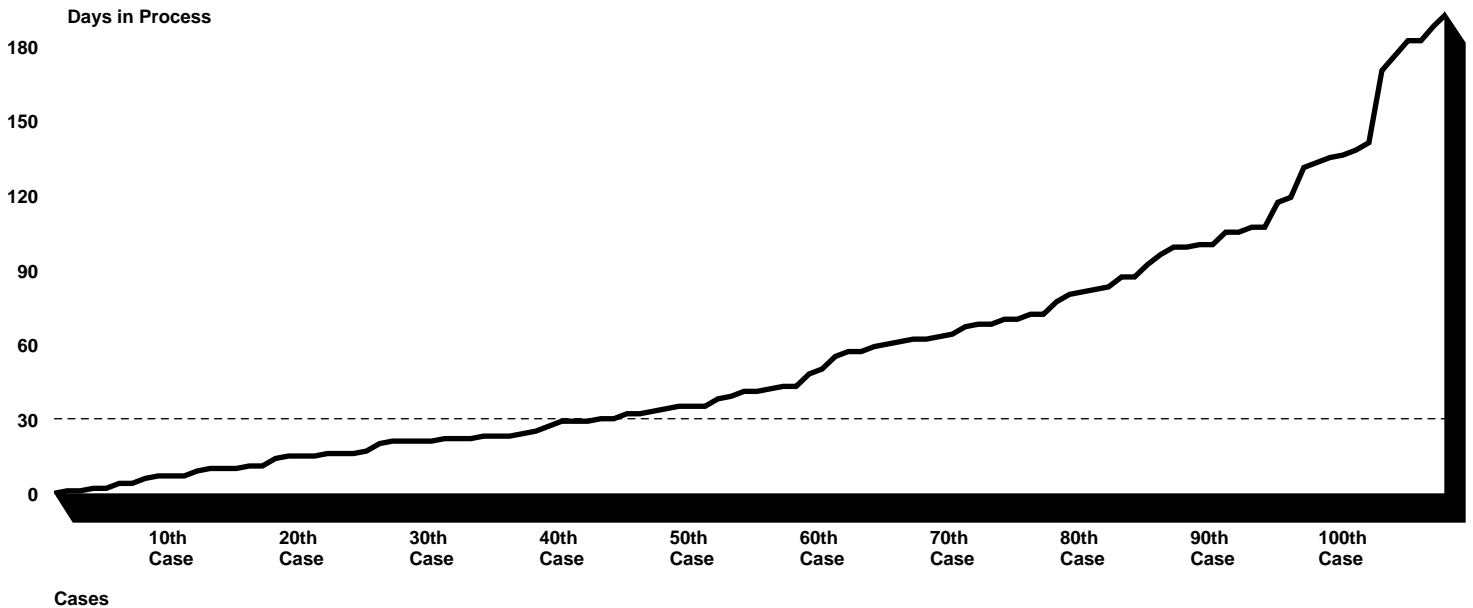


Source: Customs' LCIS.

Regarding textile country of origin cases, ORR told us it had set a special goal of 30 days or less to issue these rulings.⁹ Figure 2 shows the distribution of country of origin cases below and above 30 days. For over half of the country of origin cases, the days in process ranged from about 40 to about 190 days.

⁹ORR set this goal because of the effect on its workload of new rules of origin for textile and apparel products effective July 1, 1996. ORR textile country of origin rulings had been delayed due to the need to research and analyze the new rules. Thus, ORR made these rulings a top priority. ORR told us that its 30-day goal for textile country of origin rulings "was not in effect until February or March of 1996." We based our analysis on the cases ORR provided us, namely—108 textile country of origin rulings closed throughout the entire 1996 calendar year. Only 8 of the 108 cases we reviewed were closed prior to April 1996.

Figure 2: Number of Days in Process for ORR Textile Country of Origin Cases Closed in 1996 and Subject to the Directive



Source: Customs' LCIS.

Industry Views Regarding ORR's Performance

Overall, industry representatives we interviewed, including importers, brokers, and trade attorneys, were generally pleased with the quality of ORR's services. They indicated, that while they did not always agree with ORR rulings and decisions, these rulings and decisions generally provided important analyses and information about the duties they should expect to pay on the merchandise they import. They said that ORR's services were critical to their ability to make effective business decisions and comply with Customs' regulations.

The key concern industry representatives cited regarding ORR's performance related to the timeliness of its decisions, including rulings and decisions regarding protests and penalties. They indicated that delays in ORR decisions could sometimes adversely affect their ability to make plans to import and price their products. For example, a toy company representative told us that a 1-year delay in an ORR classification ruling hampered his company's ability to import and sell a particular product. Specifically, the ruling was to determine whether a toy set including a

miniature piece of luggage should be classified as a toy or a luggage item; the ruling was significant as toys have no duty while luggage has relatively high duties. Due to the potential effect on the item's price of no duty versus a substantial duty, the company had to withhold its importation of the item until it received the ORR ruling.

ORR's Assistant Commissioner acknowledged that delayed rulings can negatively affect importers, particularly those importing seasonal goods, holiday items, or items subject to fashion trends.

Mr. Chairman and Members of the Subcommittee, this concludes my prepared remarks. I will be glad to answer any further questions you may have.

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