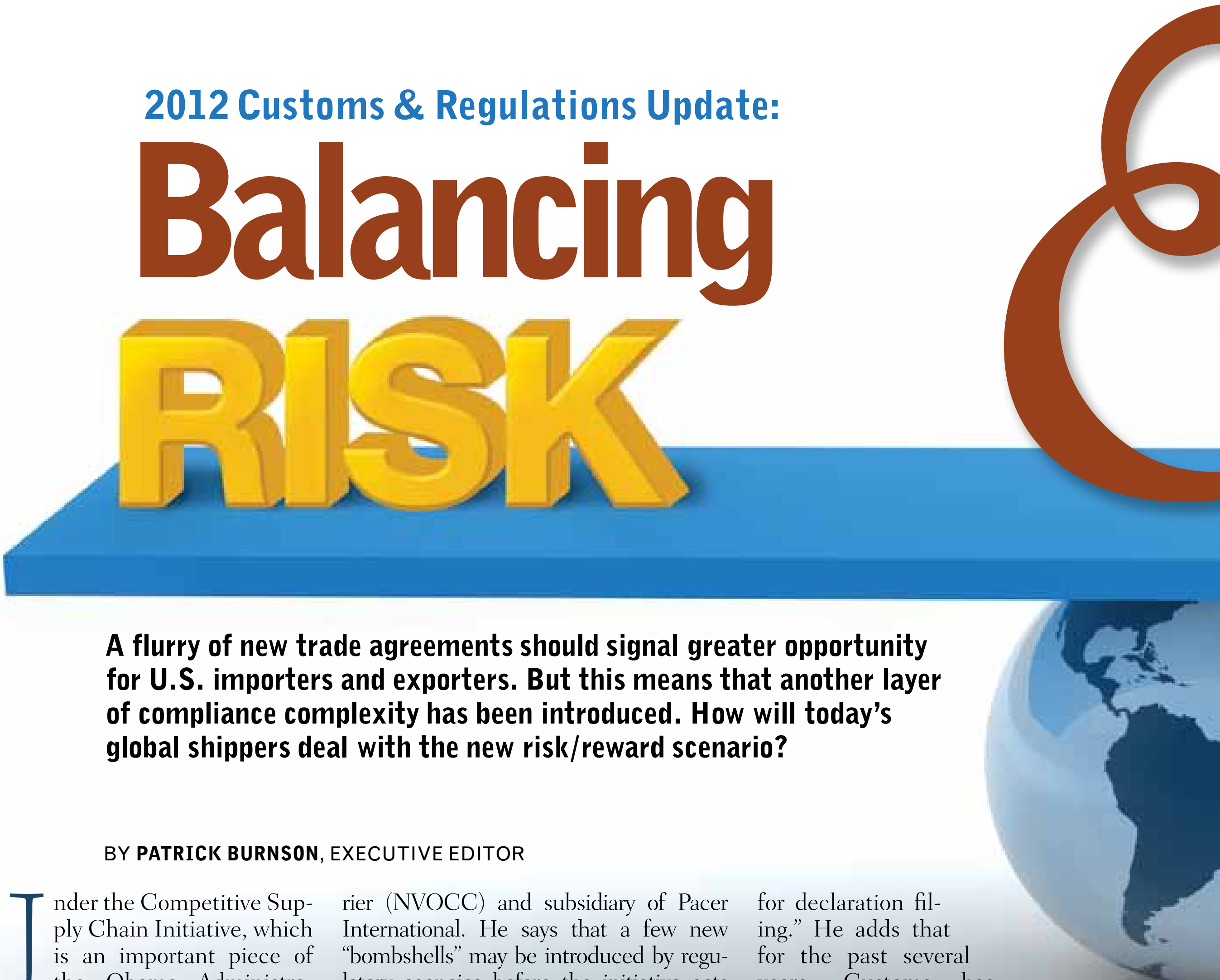
2012 Customs & Regulations Update:

Balancing RISK



A flurry of new trade agreements should signal greater opportunity for U.S. importers and exporters. But this means that another layer of compliance complexity has been introduced. How will today's global shippers deal with the new risk/reward scenario?

BY **PATRICK BURNSON**, EXECUTIVE EDITOR

Under the Competitive Supply Chain Initiative, which is an important piece of the Obama Administration's National Export Initiative (NEI), the Departments of Commerce and Transportation are working with freight system users and stakeholders to identify the critical elements of a comprehensive, holistic U.S. freight policy. This initiative's goal in developing such a policy is to achieve the seamless and facilitated goods movement across all transportation modes throughout the nation, which is needed to boost U.S. export sales and U.S. national competitiveness.

Although most U.S. exporters may not need specific licenses to take part in the NEI, determining if that is the case can be very expensive. "But it's worth the diligence if you are not certain," says Dan Gardner, chief executive officer of Ocean World Lines (OWL), a global, single-source non-vessel operating common carrier (NVOCC) and subsidiary of Pacer International. He says that a few new "bombshells" may be introduced by regulatory agencies before the initiative gets fully underway.

"This is a particular concern for shippers of 'dual use' products," says Gardner. "A technical piece of equipment might have both an industrial and military application. If that's the case, it's important that the shipper knows how to properly apply for a license."

Martin Zima, vice president of customs for global logistics provider Kintetsu World Express (USA) Inc., says that this concern is shared by importers as well, especially those doing business with the so-called "emerging markets." One of the greatest challenges for his company is when sudden and unexpected changes in the rules come along.

"Supply chain transparency is still not universal," Zima says, "and the strategic solution for creating this visibility is to enact a single standard for declaration filing." He adds that for the past several years, Customs has pledged that all transactions will be done electronically using the ACE system. But for a variety of reasons, they keep pushing that back. "Meanwhile, penalties for misfiling remain pretty severe," says Zima.

Shippers initiating business with South Korea, Panama, and Columbia—all recently approved trading partners—could face even more regulatory scrutiny. And as a consequence, adds Zima, supply chains are being kept lean just when carrying more inventory could help get the global economy back in gear. It would be wrong, however, to blame Customs and Border Patrol (CBP) for it all, says Zima.

"CBP are doing all that they can within the existing political structure," says Zima. "They are going back to Congress every quarter to ask for more

funding, and until a longer-term solution comes around, we have an agency that must still operate on a tactical—and less efficient—manner."

ACE IS INEVITABLE

To that end, the National Customs Brokers and Forwarders Association of America (NCBFAA) is encouraging all its members to begin integrating the Automated Commercial Environment (ACE) into their business processes. The association says that this is especially important given that CBP will roll out new modules over the course of 2012.

ACE is the corresponding module in The Automated Commercial System (ACS)—a pilot project first put into place more than two decades ago—and will be de-commissioned as ACE becomes the only system available for that functionality. "The NCBFAA ACE Strategy Task Group believes that it's no longer a question of whether to migrate to the ACE, but when. We believe that the time is now," says Jeffrey Coppersmith, president of NCBFAA and president of Coppersmith Global Logistics in El Segundo, Calif.

Regardless of emotions concerning the pace of development, the implementation of ACE is a foregone conclusion and it will not be abandoned, says Coppersmith: "While much work remains to be done, CBP has recently started to show good progress and has adopted essentially all of the recommendations for functional development outlined in the NCBFAA White Papers. It's time for our industry to support that development."

Coppersmith adds that as more firms become involved in ACE processing they'll be able to enjoy more competitive advantages. "CBP has recently announced that the new 'simplified entry release' functionality will only be available to ACE filers," he says. "ACE also provides better data integrity for ACE reports for both customs brokers and their customers."

For this reason, Coppersmith believes that additional broker live-testing is critical to fully debug the ACE functionality that brokers will be using this year. Coppersmith is calling on NCBFAA members to start testing in ACE in order to be ready when multi-modal cargo release becomes functional this year. "Experiment by choosing a single client for filing entries in ACE," he says. "The resulting increase in utilization and experience will allow members to make meaningful suggestions for better ACE development."

BALANCED ADVICE

Suzanne Richer, president of Customs & Trade Solutions, Inc., a consulting firm specializing in international trade and cargo security, advises global shippers to get "their houses in order" by hiring and training the right people right off the bat. "With so many companies hoping to export their way to prosperity, it's vital that they find the staff capable of such ambition," she says. "Export laws are very complicated, and if laws are violated, the penalties can be severe."

She notes that the new trade agreements mean that a new level of expertise will be required to negotiate International Commercial Terms, or Incoterms. These are a series of international sales terms widely used throughout the world that define monetary transaction and role responsibilities for both sides of the international trading transaction.

The purpose of standardized Incoterms is to determine export and import clearance responsibilities, who owns the risk for the condition of the products at each stage in the transport process, and who is responsible for paying what. "But the trouble is that many shippers don't have the right person in place to deal with these details," says Richer. "Downsizing during the recession meant that workers had to share responsibilities; and, unfortunately, that put some unqualified people in compliance positions where they could create a lot of problems for the company."

Dan Herbert, vice president of Trade Tech, Inc., a cloud-based software provider for forwarders, agrees, noting that Customs procedures will become even more complicated for cross-border transactions in the future. "Canada will be creating an Importer Security Filing (ISF) equivalent in late 2012, mirroring what our government agencies are doing this year," he says.

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Herbert, a former executive with APL, says that the Federal Maritime Commission will be adding new wrinkles of its own when it comes to compliance procedures in the EU and Asia. "I sit on one of the FMC's regulatory boards, and can tell you that more rules are going to be enacted to provide supply chain transparency," he says. "Will this be a challenge for exporters lacking the internal expertise required for compliance? You bet it will."

Not surprisingly, Herbert believes that "cloud computing" and other web-based solutions will mitigate the learning curve and help shippers currently struggling with a reduced work force.

Kewill, a provider of high-tech compliance tools, works with shippers like Kintetsu's Zima to do more with less, as well. "And it's about time," Zima says. "For years we've been like the 'boy who cried wolf' regarding ACE and other regulations. Now the wolf is really at the door, and we've got to get up to speed as fast as we can." ☐

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South Korea, Columbia, and Panama: Trade treaty promise

According to the U.S. Chamber of Commerce, the primary shipper benefits related to recently inked trade treaties with South Korea, Columbia, and Panama include:

- The elimination or reduction of tariffs on U.S. exports;
- Creation of a "level playing field" for U.S. investors and businesses;
- Open service markets in areas like telecommunications and semiconductors;
- The protection of the environment, labor rights, and intellectual property rights.

But while the fundamental concepts are the same for each of the three nations, the specific economic and political situations vary substantially.

South Korea, the world's thirteenth largest economy, and seventh-largest U.S. trading partner, should significantly increase agricultural exports, which have been held back by high tariffs.

Colombia is second only to Brazil as a market for U.S. products in South America. Indeed, it purchased $12.1 billion in U.S. goods last year alone. With Columbia promising to reform harsh domestic labor practices, more U.S. shippers are likely to explore opportunities here.

Panama has a small economy with a trading relationship that already heavily favors the United States. In 2010, Panama bought $6 billion in U.S. products while exporting only $381 million. The agreement should increase U.S. trade with Panama and make it easier for American companies to compete for contracts on the $5.25 billion expansion of the Panama Canal.

—*Patrick Burnson, Executive Editor*