



# Audit Report



OIG-05-006

**REVENUE COLLECTION: Formalizing the Review Process Could Better Ensure Continued Treasury Oversight of Customs Revenue Activity**

November 8, 2004

Office of  
Inspector General

Department of the Treasury



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## Abbreviations

CBP	U.S. Customs and Border Protection
Customs	U.S. Customs Service
DAS	Deputy Assistant Secretary
DHS	Department of Homeland Security
FY	Fiscal Year
HSA	Homeland Security Act
TD	Treasury Directive
Treasury	Department of the Treasury
TO	Treasury Order

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*The Department of the Treasury  
Office of Inspector General*

November 8, 2004

Mr. Gregory F. Jenner  
Acting Assistant Secretary (Tax Policy)

With the March 2003 transfer of the U.S. Customs Service to the Department of Homeland Security (DHS), the Department of the Treasury (Treasury) delegated to DHS authority to prescribe all Customs regulations related to customs revenue. Treasury, however, retained authority to review and approve regulations related to such matters as import quotas, user fees, marking, labeling, classification of goods and merchandise, and associated tariff rates. This report discusses how Treasury has carried out its retained authority over the customs revenue function.

Although Treasury did not have documentation to demonstrate the effectiveness of its retained authority over customs revenue, Treasury reviewed most customs revenue function-related regulations as required. However, we found that DHS issued two such regulations without the required Treasury review and approval. An apparent cause was Treasury's reliance on DHS to forward regulations to Treasury and the lack of procedures and controls within Treasury about how the review and approval process was to be implemented. In addition, we were told that few of the rulings forwarded by DHS were actually reviewed in detail. Moreover, we observed that within the Office of Tax Policy, the review and/or approval of customs revenue function-related regulations and rulings was relegated to a single individual.<sup>1</sup> These factors increase the risk that Treasury's policy objectives with respect to its authority over customs revenue may not be achieved.

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<sup>1</sup> The Treasury General Counsel's office also reviews and approves regulations, including those that are customs revenue-related.

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We are recommending that Treasury: (1) ensure all customs revenue function-related regulations are forwarded to Treasury for review and approval; and (2) establish written procedures regarding the Office of Tax Policy's responsibility to monitor DHS's compliance with this requirement.

In your September 29, 2004, written response to this report, you indicated actions were taken to implement both recommendations. You advised us that Treasury and DHS documented processes through an exchange of letters to prevent the publication of retained customs-revenue function regulations without Treasury approval. Treasury has also established written procedures to ensure that regulations and rulings subject to Treasury review and/or approval are transmitted to Treasury. The full text of the response is provided as Appendix 3.

A description of our objectives, scope, and methodology is included in Appendix 1.

## **Background**

Each year, the United States collects tens of billions of dollars in revenues from duties, taxes, and fees that are paid by importers who bring goods and merchandise into the country through the ports of entry. Prior to the creation of DHS, these revenues were collected by the Department of the Treasury's U.S. Customs Service. Pursuant to the Homeland Security Act (HSA) of 2002, when Customs transferred to DHS in March 2003, the revenue collection responsibility was transferred to DHS with Customs. Therefore, these revenues are now collected by the U.S. Customs and Border Protection (CBP).

Although CBP is responsible for revenue collection, the HSA provided that Treasury retain authority to review certain revenue functions. In accordance with provisions of the HSA, however, the Secretary of the Treasury delegated much of that authority to the Secretary of DHS. While CBP handles the day-to-day collection of revenue from duties, taxes, and fees collected on imported goods

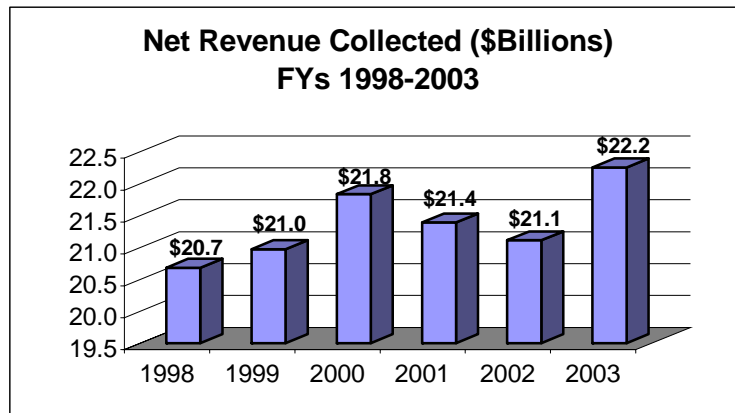
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and merchandise, Treasury reviews certain revenue function regulations and rulings to ensure they are implemented in accordance with national tax, trade, and tariff policies. In addition, DHS may not consolidate, alter, discontinue, or otherwise diminish those customs revenue functions.

### **Significant Revenue Collected**

Customs collections are a significant source of revenue for the U.S. Over the last 6 years, Customs net revenue collected has averaged over \$21 billion per year. While at Treasury, the legacy Customs Service reported the collection of \$21.1 billion in net revenue<sup>2</sup> in Fiscal Year (FY) 2002. In FYs 2001 and 2002 net revenue declined, but in FY 2003 trended upward. CBP reported net revenue of \$22.2 billion in FY 2003.

The chart that follows depicts revenue for FYs 1998 through 2003.



### **Regulations and Rulings Affect Revenue Collected**

Revenue collected is affected by regulations and rulings. CBP is responsible for prescribing regulations and issuing rulings and

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<sup>2</sup> Net revenue is total revenue less refunds, including drawback (refunds of duty paid on imported merchandise that is subsequently exported).

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determinations related to international trade.<sup>3</sup> Regulations implement U.S. trade laws while rulings and determinations are decisions made by CBP personnel regarding the proper classification and/or valuation of imported merchandise.

More specifically, the amount of revenue collected is dependent upon tariff rates contained in the *Harmonized Tariff Schedule*. A tariff rate is assigned to merchandise based upon the classification of the merchandise by specific ruling rendered by CBP. In addition, the amount of tariff imposed is often affected by the declared value of the merchandise and the country from which the merchandise originated. The amount of revenue that is collected is also impacted when importations are subject to provisions of preferential trade programs or quotas.

### **Treasury Internal Guidance**

Treasury issued two Orders and a Directive following the transfer of Customs to DHS related to authorities and responsibilities over customs revenue.

- Treasury Order (TO) 100-16, *Delegation from the Secretary of the Treasury to the Secretary of Homeland Security of general authority over customs revenue functions vested in the Secretary of the Treasury as set forth in the Homeland Security Act of 2002*, dated May 15, 2003, delegated to the Secretary of DHS the authority to prescribe all Customs regulations, except on those matters in which Treasury retains sole approval authority. The matters for which Treasury retains authority to approve regulations include requirements for import quotas or trade bans, user fees, marking, labeling, copyright and trademark enforcement, and the completion of entry summary documentation, including duty assessment and collection, classification, valuation, and eligibility or requirements for preferential trade programs.

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<sup>3</sup> The Department of Commerce and other agencies have similar responsibilities.



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- TO 111-02, *Oversight for the Alcohol and Tobacco Tax and Trade Bureau, and Customs Revenue Functions*, dated April 3, 2003, delegated all retained authorities, powers, duties, and responsibilities relating to customs revenue functions from the Secretary of the Treasury to the Assistant Secretary (Tax Policy).
  - Treasury Directive (TD) 18-03, *Delegation to the Deputy Assistant Secretary (Tax, Trade and Tariff Policy)*, dated April 11, 2003, delegated all retained authorities, powers, duties, and responsibilities relating to customs revenue functions to the Deputy Assistant Secretary (Tax, Trade and Tariff Policy) in Treasury's Office of Tax Policy.

The provisions of TO 100-16 also state that DHS shall periodically identify and describe for Treasury, in an appropriate and timely manner, all rulings constituting a change in practice or the result of a petition that are under consideration. DHS should consult with Treasury, as necessary, prior to the Secretary of DHS's exercise of such authority. The Secretary of the Treasury retains the authority to review, modify, or revoke any determination or ruling that falls within the areas that are retained under his or her authority. The Secretary of the Treasury must notify the Chairmen and Ranking Members of the House Committee on Ways and Means and the Senate Committee on Finance of any determination or ruling that is modified or revoked.

### **Treasury Oversight**

As specified in TO 100-16, DHS personnel are required to send to Treasury for review and approval only those regulations pertaining to customs revenue-related functions. Immediately after the institution of the delegation order, the procedure was that DHS personnel would inform Treasury when a particular regulation is a revenue function-related issue and may need to be referred. Following discussion between DHS and Treasury, the regulations needing referral are sent to the Deputy Assistant Secretary (DAS) for Tax, Trade, and Tariff Policy, who reports to the Assistant

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Secretary for Tax Policy.<sup>4</sup> According to the DAS in September 2004, CBP now informs Treasury of all regulations to be prescribed by CBP.

The DAS for Tax, Trade, and Tariff Policy position was created under the Treasury's 2003 reorganization plan, following passage of the HSA, and was assigned the responsibility for monitoring and assisting in the development of policies for regulations relating to tariff and trade laws. The HSA authorized Treasury to appoint up to 20 new personnel to work with DHS in performing customs revenue functions. At the time of our audit, Treasury had not appointed any additional personnel other than the DAS to customs revenue functions. This function is one of various duties he performs.

The DAS relies on DHS personnel for notification of when new or revised regulations or proposed rulings are being considered. In addition to a telephone call, the DAS receives notification formally by written correspondence or electronic mail. Initial notification is generally received before the proposed new or modified regulation or proposed ruling is received. According to the DAS, the proposed regulation or ruling is reviewed to ensure that its content and impact reflects and does not violate Treasury's numerous tax, trade, and tariff policies.

To ensure effective coordination on trade policy issues, Treasury's Assistant Secretary for International Affairs and the DHS Border and Transportation Security Directorate's Assistant Secretary for Policy and Planning were finalizing a memorandum of understanding at the time of our audit. The two Departments, Treasury and Homeland Security, have agreed to establish a joint

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<sup>4</sup> Prior to the passage of HSA, Customs sent proposed new or revised regulations for review and approval to the DAS for Tax, Trade, and Tariff Enforcement in the Office of Enforcement. There was no distinction made as to whether the issues were revenue-related, because all regulatory changes were subject to Treasury review and approval.

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working group to facilitate consultations on issues involving trade policy positions that impact customs revenue functions.

### **Review of TO 100-16**

TO 100-16 included a provision that the delegation of customs revenue functions be reviewed by May 14, 2004. In preparation for the review, the TO also prescribed that by March 15, 2004, the Secretaries of the Treasury and Homeland Security would consult with the Chairmen and Ranking Members of the Senate Committee on Finance and the House Committee on Ways and Means. According to a letter from the Secretary of the Treasury to the Secretary of Homeland Security dated June 10, 2004, senior staff from both departments consulted with senior staff from the Committees in March 2004. The letter stated the consultations included a complete briefing on how the TO was implemented over the past year and that the Congressional staff responded that the TO was functioning to their satisfaction. Treasury concluded in the letter that the delegation was functioning well and in no need of changes at the time.

## **Audit Results**

Treasury did not have specific documentation in place that would demonstrate its effectiveness in fulfilling its responsibilities related to customs revenue. However, by reviewing external sources, we found that Treasury reviewed most customs revenue function-related regulations as required. We found a number of regulations that CBP referred to Treasury that were reviewed and approved by Treasury in accordance with the requirements of the HSA and the related Treasury Orders and Directive. At the same time, though, two regulations were finalized by CBP without required Treasury review and approval. We also noted that DHS had forwarded numerous determinations and rulings to the Treasury for review. However, the DAS stated that he reviewed these issuances in detail on a selective basis.

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From a standpoint of internal control over this process, we noted certain weaknesses that warrant management's attention. Specifically, the Office of Tax Policy has not developed policies, procedures, and controls to ensure: (1) all matters related to customs revenue that require Treasury review are, in fact, submitted by DHS for Treasury review; and (2) the reviews and conclusions reached are documented in a consistent manner and subjected to supervisory review within the Office of Tax Policy so as to ensure Treasury's policy objectives are achieved. Notwithstanding the fact that Treasury's General Counsel's office reviews all regulations as a matter of policy, including customs revenue function-related regulations, the customs revenue function within the Office of Tax Policy is essentially the responsibility of a single individual, the DAS for Tax, Trade and Tariff Policy. Without complete documentation or supervisory review of Treasury's review and approval process for customs revenue matters, should that individual leave this position or Treasury, his extensive institutional knowledge and network of contacts with CBP would be lost.

Currently, Treasury relies on the provisions in TO 100-16 as the basis to determine which regulations the Department is required to review and approve. Treasury does not have a formal agreement with DHS that provides for timely coordination of efforts to ensure all required regulations and rulings are properly identified and forwarded to Treasury for review and/or approval, or that allows Treasury to have input in the process of deciding which matters to forward.

### **Customs Revenue Function-Related Regulations Were Not Always Reviewed by Treasury**

Using TO 100-16 as our criteria, we performed several tests to determine whether customs revenue function-related issuances<sup>5</sup>

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<sup>5</sup> Issuances include regulations, rulings, notices (scheduled hearings and meetings open to the public, grant applications, and administrative orders), requests for information, policy statements, petitions for rulemaking, and other officially published items. Treasury reviews Customs revenue-related regulations and specific rulings but is required to approve only the revenue-related regulations.

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were submitted for Office of Tax Policy review. Those issuances included regulations that had been forwarded and approved by Treasury as well as specific determinations and rulings that had been forwarded for review by Treasury. In this regard, we (1) identified all Customs issuances published in the *Federal Register* during the 12-month period before divestiture and the 12-month period after divestiture<sup>6</sup>; and (2) determined, based on data provided by CBP personnel, those regulations during the above periods that were forwarded to Treasury. For regulations that were published without Office of Tax Policy review, we looked for indicators that the regulations were customs revenue function-related and therefore may have bypassed Treasury review.

We found that for the 12-month period ended March 1, 2003, which represents the year prior to the Customs Service divestiture to DHS, Customs presented a total of 48 regulations to the Treasury Office of Enforcement for review and approval (see Appendix 2). The subject matter for most of these regulations appeared to be clearly revenue-related based on key terms, such as *duties*, *tariff*, and *drawback*.

For the year following transfer of the Customs Service to DHS, CBP published 81 issuances in the *Federal Register* which included: (1) 10 regulations that CBP presented and obtained Treasury approval; and (b) 71 issuances consisting of regulations, notices, requests for information, or other matters, which were not forwarded to Treasury for review before published. The 10 Treasury-approved regulations were related to matters like civil fines for importation of merchandise bearing a counterfeit mark, refunds of duties paid on certain wool products, and preferential treatment of certain merchandise and are listed in the following table:

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<sup>6</sup> Regulations, proposed rules, and notices are published in the *Federal Register*. Rulings, notices, and other items are published in the *Customs Bulletin*, Web site, or elsewhere. Since 1989, Customs has issued over 90,000 individual rulings.

**Table 1: List of Customs Regulations Approved by Treasury  
During the Period March 2, 2003-March 1, 2004**

<b>Number</b>	<b>Subject</b>	<b>Date Published</b>
1	Technical Corrections: Rules of Origin of Imported Goods For Purposes of NAFTA	7/24/2003
2	User Fees	7/24/2003
3	Civil Fines for Importation of Merchandise Bearing A Counterfeit Mark	7/24/2003
4	Refund of Duties Paid on Certain Wool Products	7/24/2003
5	Manufacturing Substitution Drawback: Duty Apportionment	8/22/2003
6	Changes to Customs and Border Protection List of Designated Public International Organizations	8/22/2003
7	Anti-counterfeiting Consumer Protection Act: Entry Documentation	8/22/2003
8	Delegations of Authority: Signature of Customs and Border Protection Regulations	8/28/2003
9	Preferential Treatment of Brassieres Under the Caribbean Basin Economic Recovery Act	9/30/2003
10	Merchandise Processing Fees Eligible To Be Claimed as Certain Types of Drawback	10/2/2003
	Note: These regulations were all considered to be Customs revenue-related.	

Source: *Federal Register* (March 2003-February 2004)

We discussed the other 71 issuances which were not forwarded to Treasury before published with the DAS. The DAS advised that 2 of the 71 issuances involved import restrictions on ethnological material from Cambodia and from Cyprus. According to the DAS, DHS personnel had concluded the subject of these 2 regulations did not meet customs revenue function-related criteria listed in TO 100-16. However, Treasury determined that the import restrictions qualified as trade bans under TO 100-16 and should have been forwarded for Treasury review and approval. While the DAS stated Treasury would have approved the 2 regulations as published, these examples illustrate the difficulty and risks involved in determining whether certain issues or areas require Treasury review and approval.

We also reviewed regulations referred by CBP to Treasury for the period November 2003 through April 2004 and found only one customs revenue function-related regulation had been sent to Treasury for review and approval. According to the DAS, the

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decline in the number of revenue function-related regulations being promulgated is likely due to the high priority assigned to security-related issues.

### **Control Weaknesses in Treasury’s Customs Revenue Function**

We found that Treasury’s oversight of customs revenue function-related activities was not internally documented. We inquired about whether written criteria existed beyond that provided in TO 100-16 for the types of CBP regulations and rulings that must be submitted for Treasury review based on the requirements of the HSA. The DAS informed us that such criteria did not exist because it would not be possible to delineate matters more clearly than what was already contained in the TO.

In addition, we asked the DAS for a copy of any written procedures regarding the roles and methods used to exercise Treasury’s review and approval responsibilities. We found that there were no written procedures providing guidance on how the DAS was to implement his responsibilities under TO 100-16. The DAS acknowledged that at the time of Treasury’s reorganization in 2003, written procedures for this newly-created position were not developed.<sup>7</sup> The DAS advised that the process was informal; decisions to submit regulations to Treasury were primarily made on a case-by-case basis through discussions between the DAS and CBP personnel. CBP personnel alone decide what rulings qualify under provisions of TO 100-16 and forward them to the DAS for review.

CBP officials involved in sending matters to Treasury for review and approval similarly told us that the process was informal and handled on a case-by-case basis. They said they communicate on a regular basis with the DAS via electronic mail and telephone regarding customs revenue function-related matters that may involve Treasury review. However, CBP does send a formal *Notice of Planned Regulatory Action* that accompanies any proposed

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<sup>7</sup> At the exit conference, the DAS indicated he has begun to put together a list of procedures for his Customs revenue-related review activity.

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regulation requiring Treasury review and approval. CBP officials send copies of the pertinent rulings under consideration directly to the DAS via electronic mail.

We asked the DAS for (1) documentation related to the review of customs revenue function-related regulations and rulings reached for the period following the transfer of the legacy Customs Service to DHS; (2) matters that CBP had submitted for review, items reviewed and approved, items rejected (if any), and similar tracking data; and (3) if there was any related documentation in place to summarize Treasury's customs revenue function activity.

The DAS told us that these types of summary documents were not available. The DAS further stated that he reviews in detail only those rulings that he believes may warrant his attention, which were only a few.

There are also no procedures in place that require the DAS to maintain documentation regarding the tracking and review of the rulings that are forwarded to him. For example, there is no procedure in place providing for verification that CBP personnel are sending all pending determinations and rulings that meet the specific criteria listed in TO 100-16. In addition, there are no procedures that ensure the DAS's responsibilities for monitoring and reviewing rulings and determinations are subject to supervisory review. As a result, the Office of Tax Policy lacks sufficient documentary evidence to show compliance with the intent of TO 100-16.

A major component of effective program management is internal control. According to the U.S. Government Accountability Office's (GAO) *Standards for Internal Control in the Federal Government*, internal control comprises the plans, methods, and procedures used to meet missions, goals, and objectives of a program. Control activities include approvals, authorizations, verifications, and the creation and maintenance of related records, which provide evidence of execution of these activities.



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Treasury does not have formal written procedures or adequate separation of duties to ensure the customs revenue review and approval process is standardized, consistently managed, and documented. Treasury's review and approval is based almost entirely on the experience of the DAS. While we found the DAS to have a good understanding of his responsibilities, managing the process in this manner carries certain risk, including the risk associated with insufficient separation of duties. Treasury needs to take steps to mitigate those risks. This includes developing written procedures that provide guidance on how the DAS's review and approval functions should be implemented. At a future date, another individual could assume the position of DAS, and he or she may have difficulty in determining the Treasury role as it relates to customs revenue without this additional internal guidance.

## Conclusions

The decision process used to determine whether or not Treasury should be notified regarding a regulatory issue needs to be formalized. Formalizing expectations would help ensure Treasury's legally delegated responsibilities with respect to customs revenue are achieved. In addition, for the various formal and informal notifications that Treasury currently receives, Treasury needs to ensure they are more standardized, and actions taken related to these notifications documented.

Treasury needs to develop written procedures for the review and approval process to mitigate risks associated with managing this process in an informal manner. The procedures would also help reduce the risk associated with managing this process through a single individual within the Office of Tax Policy.

## Recommendations

The Assistant Secretary for Tax Policy should:

1. Ensure all customs revenue function-related matters requiring Treasury approval or review are provided by DHS in accordance

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with TO 100-16. One means to accomplish this is to formalize the responsibilities and mechanics for submitting and reviewing these matters through a memorandum of understanding with DHS.

Management Response To implement this recommendation, the Acting Assistant Secretary stated that Treasury has documented, through an exchange of letters between Treasury and DHS, the processes developed to prevent the publication of retained customs revenue-function regulations by DHS without Treasury approval. CBP will inform Treasury of all regulations promulgated through a consultation process that occurs during the preparation of the semi-annual regulatory agenda, through supplemental monthly reports, and by providing copies of all Notices of Proposed Regulatory Action.

OIG Comment Management's response, including the correspondence between DHS and CBP provided with the response, satisfies the intent of our recommendation.

2. Establish written procedures regarding the Office of Tax Policy's responsibility for monitoring DHS compliance with TO 100-16. The procedures should provide that documentation be retained to show that Treasury is receiving and reviewing all pertinent regulatory matters and rulings subject to Treasury review and/or approval. The procedures should also require an annual review be conducted to evaluate the performance and effectiveness of the Office of Tax Policy in ensuring compliance with delegated responsibilities under TO 100-16.

Management Response The Acting Assistant Secretary stated that this recommendation has been implemented. In addition to the exchange of letters noted in response to the first recommendation, Treasury established written procedures to ensure that regulations and rulings subject to Treasury review and/or approval are transmitted to Treasury.

Management also commented that all DHS regulations not subject to Treasury review are reviewed by OMB. Additionally,

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while our report notes that no summary documents are prepared with regard to Treasury action on retained customs revenue function regulations, complete files recording all Treasury changes in published regulations and related memoranda are maintained by both the Office of Tax Policy and the Executive Secretariat. As another comment addressing a statement in our report that not all rulings subject to TO 100-16 are reviewed in detail, management stated that such rulings are carefully read at Treasury but only those few that involve legal or factual issues that implicate important policy considerations are subjected to more extensive scrutiny, independent legal research, and additional consultation. According to management, subjecting all rulings subject to TO 100-16 to such examination would be an unnecessary expenditure of resources.

OIG Comment The corrective action to establish written procedures is generally responsive to the intent of our recommendation. While the response did not specifically address that an annual review process was incorporated in these procedures, management in earlier oral comments stated that a review of work is provided for in the preparation of the semi-annual regulatory agenda. However, beyond that, it would not be possible to measure performance of the Office of Tax Policy relative to review and/or approval of customs revenue function-related regulations according to management. We believe periodic assessments are still a useful tool to ensure that Treasury's policy objectives with respect to customs revenue-related functions are being achieved.

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We would like to extend our appreciation to the DAS for Tax, Trade and Tariff Policy for the cooperation and courtesies extended to our staff during the reviews. If you have any questions, please contact me at (202) 927-5400 or Donald Benson, Director, Eastern Field Audit Office, at (617) 223-8640. The major contributors to this report were Mr. Benson, Director; Robert Mello, Audit Manager; and Thomas Mason, Auditor-in-Charge.

Marla A. Freedman  
Assistant Inspector General for Audit

Our objective was to identify the specific functions the Secretary of the Treasury retained under the Homeland Security Act of 2002 and assess Treasury's performance in meeting its responsibilities.

We reviewed the pertinent provisions of the Homeland Security Act of 2002, TO 100-16, TO 111-02, and TD 18-03. We interviewed the DAS for Tax, Trade and Tariff Policy and staff from the Customs and Border Protection's Office of Regulations and Rulings.

We held discussions concerning the procedures used by both Departments that related to the issuance and review of regulations and rulings. We reviewed drafts of a proposed agreement between Treasury and Homeland Security regarding coordination of efforts involving trade policy matters. We reviewed the *Federal Register* to identify entries relating to customs revenue functions and determined whether the entries were subject to Treasury review and approval.

We conducted our audit between December 2003 and April 2004 in accordance with generally accepted government auditing standards.

Appendix 2  
List Of Customs Issuances Approved By Treasury  
During The Period March 2, 2002-March 1, 2003

Number	Subject	Date
1	Prototypes Used Solely for Product Development	3/8/2002
2	User Fees	3/18/2002
3	Payment of Duties on Certain Steel Products	3/20/2002
4	North American Free Trade Agreement	4/2/2002
5	Drawback Conforming Amendments	4/8/2002
6	Single Entry for Unassembled/Disassembled Entities	4/8/2002
7	Amended Procedure For Refund of HMF on Exports	5/13/2002
8	Duty Free Treatment For Volvo Ocean Race Event	5/14/2002
9	User Fee Airport	5/21/2002
10	Technical Amendment Reusable Shipping Devices	5/23/2002
11	Petition Classification of Textile Slippers	5/23/2002
12	Import Restrictions Archaeological Material Peru	6/6/2002
13	Duty Free Entry of Civil Aircraft Merchandise	6/7/2002
14	Conditional Release/Importers of Food, Drugs, Devices	6/7/2002
15	Civil Fines For Importation of Counterfeit Merchandise	6/7/2002
16	Elimination of Tariff Rate Quotas On Imported Lamb Meat	7/16/2002
17	Import Restrictions Archaeological Material Cyprus	7/19/2002
18	Manufacturing Substitution Drawback	7/24/2002
19	Merchandise Processing Fee Eligible For Drawback	7/25/2002
20	Expanded Weekly Entry Procedure FTZ	7/25/2002
21	Presenting Cargo Declarations at Foreign Ports	8/8/2002
22	Technical Corrections Rules of Origin Textiles/Apparel	8/9/2002
23	Entry of Certain Steel Products	8/9/2002
24	Administrative Rulings	8/16/2002
25	Consolidation of Customs Drawback Centers	8/21/2002
26	Re-Use of Air Waybill - Air Cargo Manifest	8/30/2002
27	Licenses Certain Worsted Wool Fabrics Subject to Quota	8/30/2002
28	Petition Tariff Classification of Dairy Protein Blends	9/18/2002
29	Extension of Import Restrictions Archaeological - Mali	9/20/2002
30	Import Restrictions Archaeological Material Guatemala	9/30/2002
31	Duty Free Treatment of Beverages With Caribbean Rum	10/9/2002
32	Reimbursable Customs Services	10/9/2002
33	Performance of Customs Business Parent/Subsidiaries	10/15/2002
34	Presenting Cargo Declarations at Foreign Ports	10/31/2002
35	General Order Warehouses	11/8/2002
36	Private Aircraft Programs Establishment of GATE	12/2/2002
37	Customs Service Field Organization Fargo North Dakota	12/2/2002
38	Confidentiality Protection of Vessel Cargo Information	1/9/2003
39	Expansion of Port of Portland, Maine	1/9/2003

Appendix 2  
List Of Customs Issuances Approved By Treasury  
During The Period March 2, 2002-March 1, 2003

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<b>Number</b>	<b>Subject</b>	<b>Date</b>
40	Consolidation of Customs Drawback Centers	1/24/2003
41	Single Entry For Split Shipments	2/25/2003
42	Rules of Origin Textile and Apparel Products	2/25/2003
43	Tariff Treatment Disassembly Operations NAFTA	+ 3/13/2003
44	Compliance With Inflation Adjustment Act	+ 3/21/2003
45	Entry of Certain Steel Products	+ 3/21/2003
46	Benefits Under Caribbean Basin Economic Recovery Act	+ 3/21/2003
47	Benefits Under African Growth and Opportunity Act	+ 3/21/2003
48	Implementation of Andean Trade Promotion and Drug Act	+ 3/25/2003

+ Issuances approved by the DAS before March 2, 2003.



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

SEP 29 2004

Ms. Marla A. Freedman  
Assistant Inspector General for Audit  
740 15<sup>th</sup> Street, NW, Suite 600  
Washington, DC 20220

Dear Ms. Freedman:

I write in reply to your draft audit report on Treasury's customs revenue functions.

In order to implement the report's first specific recommendation: "Ensure all customs revenue function related matters requiring Treasury approval or review are provided by DHS in accordance with Treasury Order 100-16," we have memorialized, through an exchange of letters, the processes we developed to prevent the publication of a retained customs-revenue function regulations by DHS without Treasury approval. This includes Customs and Border Protection informing Treasury of all regulations they promulgate through a consultation process built around preparation of the semi-annual regulatory agenda, through supplemental monthly reports, and with by providing copies of all Notices of Proposed Regulatory Action for regulations prepared by that Bureau. Copies of the letters exchanged are attached.

We have implemented the second specific recommendation: "Establish written procedures regarding the Office of Tax Policy's responsibility for monitoring DHS compliance with Treasury Order 100-16," by, in addition to the exchanges of letters noted above, establishing written procedures to ensure that regulations and rulings subject to Treasury review and /or approval are transmitted to Treasury.

In addition, with regard to DHS compliance with Treasury Order 100-16, I would like to point out that all DHS regulations that are not subject to Treasury review are reviewed by OMB. Moreover, while the report notes that no summary documents are prepared with regard to Treasury action on retained customs revenue function regulations, the Department maintains complete files, recording all Treasury changes in published proposed or final regulations, and memoranda pertaining thereto. Such files are maintained by both the Office of Tax Policy and the Executive Secretariat.

Finally, the report notes that not all rulings subject to Treasury Order 100-16 are reviewed in detail. In order to prevent readers from drawing the wrong conclusion I would like to make clear that while all such rulings are carefully read at Treasury, only those few that involve legal or factual issues that implicate important policy considerations are the subject of more extensive scrutiny, independent legal research, and additional consultation. Subjecting all rulings subject to Treasury Order 100-16 to such examination would be an unnecessary expenditure of resources.

Sincerely yours,

Gregory F. Jenner  
Acting Assistant Secretary (Tax Policy)



U.S. Department of Homeland Security  
Washington, DC 20528



August 26, 2004

Mr. Timothy E. Skud  
Deputy Assistant Secretary of the Treasury  
for Tax, Trade, and Tariff Policy  
U. S. Department of the Treasury  
15th and Pennsylvania Avenue, NW  
Washington, D.C. 20220

Dear Mr. Skud:

This will confirm the understanding between our respective Departments relating to the development and issuance of certain regulations involving the "customs revenue functions" identified in the Homeland Security Act of 2002.

By Treasury Order 100-16, the Secretary of the Treasury delegated to the Secretary of Homeland Security various customs revenue functions. Among those delegated functions is the prescribing of certain customs revenue function regulations subject to the sole approval authority of the Secretary of the Treasury.

For those regulations requiring the approval of the Secretary of the Treasury, we have agreed to formalize the consultations that currently occur between our respective Departments. Accordingly, in conjunction with the preparation of the semi-annual regulatory agenda required by Executive Order 12866 and the Regulatory Flexibility Act, representatives of our respective Departments will consult concerning customs revenue function regulations requiring approval of the Secretary of the Treasury, including the substance of, and the anticipated publication schedule for, those regulations. The results of these consultations will be reflected in the semi-annual regulatory agenda. If circumstances require the issuance of a regulation that is not reflected in the agenda, or a revision to the substance or anticipated publication schedule of a regulation appearing in the agenda, our respective Departments will discuss such matters as soon as those circumstances become apparent.

Thank you again for working on this matter with the Department of Homeland Security to promote our mutual goals of developing and timely issuing those customs revenue function regulations

[www.dhs.gov](http://www.dhs.gov)

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look forward to working with you on this and other matters to keep trade both free and secure in the days ahead.

Sincerely,



C. Stewart Verdery, Jr.  
Assistant Secretary for Policy and Planning  
Border and Transportation Security Directorate



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220  
23 September 2004

The Honorable C. Stewart Verdery  
Assistant Secretary for Policy and Planning  
Border and Transportation Security Directorate  
Department of Homeland Security  
3801 Nebraska Avenue, N.W.  
Washington, D.C. 20528

Dear Assistant Secretary Verdery:

*Stewart*

Thank you for your letter of August 26, 2004, confirming the understanding between our Departments on formalizing the consultations on our semiannual regulatory agenda involving the "customs revenue functions" identified in the Homeland Security Act of 2002.

I want to let you know that we had a productive meeting with senior members of your staff and of U.S. Customs and Border Protection.

We agreed to meet every six months, in accordance with the schedule for the semi-annual regulatory agenda, agreed to develop at those meetings or sooner if circumstances so require, "top ten" lists of customs revenue function regulatory projects Treasury must ultimately approve

In addition, we agreed to discuss projects on the regulatory horizon, but which have not been developed or drafted sufficiently to make their way on to these lists. Related to that, CBP staff will also informally notify me on an ad hoc basis whenever decisions have been made to proceed with regulatory projects ultimately requiring Treasury approval so that these projects can be informally discussed between our Departments at the appropriate time. Finally, CBP has offered to provide Treasury with the "90-day lists" they compile monthly used to help prepare the official semi-annual regulatory agenda for both Departments.

While much of this type of consultation occurs already, informally, I expect that regularizing the process and formalizing it by this exchange of letters will speed the promulgation of regulations and ensure that policy issues are appropriately addressed early in the process.

For your convenience, I have attached the "top ten" list arrived at the inaugural meeting. I wish to underscore that we believe it important that the Chile, Singapore, Disassembly, and Uniform Rules of Origin regulatory packages be ready for final approval within this calendar year. I am also pleased to report that the Copyright Recordation NPRM has been approved by Treasury and returned to Customs and Border protection for publication.

I look forward to continuing to work together.

Sincerely,

*Timothy E. Skud*

Timothy E. Skud  
Deputy Assistant Secretary  
Tax, Trade, and Tariff Policy

Attachment A

"Top Ten" List of Customs Regulatory Projects Treasury Must Approve

1. Chile Free Trade Agreement Implementing Regulations
2. Singapore Free Trade Agreement Implementing Regulations
3. Caribbean Basin Trade Promotion Act Special Rules for Tariff Preference, Brassieres
4. Caribbean Basin Trade Promotion Act Implementing Regulations
5. African Growth and Opportunity Act Implementing Regulations
6. Andean Trade Promotion and Drug Eradication Act Implementing Regulations
7. Uniform Rules of Origin
8. Disassembly Rules (NAFTA)
9. Remote Location Filing for Customs Entry
10. Entry of Split Shipments



DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

27 September 2004

Mr. Harold Singer  
Chief  
Regulations Branch  
Office of Regulations and Rulings  
Customs and Border Protection

Dear Mr. ~~Singer~~ *Harold*:

I am writing to confirm our understanding, with regard to the implementation of Treasury Order 100-16, that you will continue to forward to Treasury, all Notices of Proposed Regulatory Action for regulations promulgated by Customs and Border Protection, to assist in our determination of which regulations require treasury approval.

Sincerely,

A handwritten signature in black ink that reads "Timothy E. Skud".

Timothy E. Skud  
Deputy Assistant Secretary  
Tax, Trade, and Tariff Policy

U.S. Department of Homeland Security  
Washington, DC 20229



U.S. Customs and  
Border Protection

September 27, 2004

Timothy E. Skud  
Deputy Assistant Secretary  
Tax, Trade, and Tariff Policy  
Department of the Treasury

Dear Mr. Skud:

In response to your letter of September 27, 2004, I confirm that CBP will forward Notices of Planned Regulatory Action to Treasury for all CBP regulations.

Sincerely,

A handwritten signature in black ink, appearing to read "Harold Singer".

Harold Singer  
Chief  
Regulations Branch  
Office of Regulations and Rulings  
Customs and Border Protection

**Department of the Treasury**

Acting Assistant Secretary (Trade Policy)  
Deputy Assistant Secretary (Tax, Trade and Tariff Policy)  
Office of Strategic Planning and Performance Management  
Office of Accounting and Internal Control

**Office of Management and Budget**

OIG Budget Examiner