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## **Guam Customs Study: Finding the Gaps and Closing the Breaches**

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## Executive Summary

While the concern for the Guam Customs and Quarantine Agency is significant, research in this area is minimal and lacks supportive data. This study provides tools that will improve and further support existing data by identifying significant gaps within the Guam Customs and Quarantine Agency. The research will highlight the following areas: Management Information System, Manifest, Harmonized System, Administrative Process for Asset Forfeitures, Bonds, Penalties, as well as Customs Valuation. The justifications for implementation for each aspect are supported by laws, relevant news, interviews and surveys, and scholarly resources. The research will also compare Guam Customs and Quarantine to other islands, territories, and reference the United States. The findings will shed light on the lack of funds, equipment, and personnel that the agency continues to struggle with, in hopes for legislation to better support the agency.

*Keywords:* Guam Customs and Quarantine Agency, US Customs and Border Protection, Customs reform, Pacific Islands, Public Safety

## **Customs Study: Finding the Gaps and Closing the Breaches**

This study begins by establishing a foundational understanding of Customs authority in Guam. The following section will discuss findings and recommendations on the major gaps of authority between federal and local customs agencies. The study will then discuss other factors to be considered in the implementation of recommendations made. Next, there will be a brief look at the funding mechanism that is intended to support the local customs agency. Finally, the last subsection will examine cases of successful reform to draw key factors in successful implementation of Guam Customs and Quarantine Agency's modernization.

### **Background**

The federal government established Guam and all US territories, excluding Puerto Rico, as outside of U.S.' jurisdiction ( 19 C.F.R. §7.2, 1997). As a result, Guam, like the other territories, is responsible for its customs. In 1994, Public Law 22-112 separated the Customs and Quarantine Division from the Guam Department of Commerce and created a new line agency, the Guam Customs and Quarantine Agency (CQA). Since its creation, CQA sources most of its funding from the air and maritime cargo inspection fees established by Public Law 23-45 (P.L. 23-45 IV:18). This has allowed the Director of CQA to further promulgate rules and regulations necessary to carry out provisions in relation to the Air and Maritime Cargo and Passenger Inspections fees (5 G.C.A. §73151). Because of CQA's fee structure, the agency is insulated from the political process of legislative appropriation and instead relies on a fixed flow of funding based on the amount of incoming cargo and passengers. This, in theory, paves the path for the agency to move from a line agency to a semi-autonomous or autonomous agency and therefore increase CQA's role on customs enforcement.

The combination of an independent funding mechanism and CQA's removal from the oversight of a parent entity is an unprecedented and progressive move for customs enforcement, even in the US today. Again, Guam made this innovative move in 1994. However, since its inception, CQA has remained stagnant in the realm of customs enforcement with its last modernization in enabling legislation also in 1994 during the agency's creation (Customs & Quarantine Agency [CQA], 2017). CQA's federal counterpart, formerly known as the U.S. Customs Service has evolved significantly and, in many ways, superseded the progressive idea that initially jumpstarted CQA.

Following the events surrounding September 11th, 2001, the U.S. Customs Service was consolidated in one of the largest governmental reorganizations in US history (Light, 2002). Most of U.S. Customs Service was consolidated into the U.S. Customs and Border Protection (CBP), the largest federal law enforcement agency and second largest overall agency in terms of revenue collection (Department of Homeland Security: U.S. Customs and Border Protection [CBP], 2017). The investigative arm of U.S. Customs Service was integrated into the U.S. Immigration and Customs Enforcement (ICE) as the primary and largest investigative arm of Department of Homeland Security (Department of Homeland Security: U.S. Immigration and Customs Enforcement [ICE], 2017).

ICE's presence in Guam, the Commonwealth of the Northern Mariana Islands (CNMI), and Micronesia is critical, as the only enforcement agency with an Assistant Special Agent-in-Charge (ASAC) based locally (Flores, 2018). Both CBP, ICE, and similar customs enforcement agencies have advanced their enforcement practices through means such as technology. Conversely, CQA is still lagging in the technological arena. CQA has yet to utilize technological efficiencies such as automation, digital databases, a harmonized system, or a management

information system (Customs & Quarantine Agency, 2017). While CBP has grown to become the largest federal law enforcement agency, CQA's uniformed workforce has shrunk to less than half its size from 1998 to 2018 (Perez, 2018). This trend in CQA's declining performance and obsolete customs enforcement practices are a recurring theme and provide the inspiration and foundational basis of this work.

### **The Gaps Identified**

Given the time allowed for completion of this study, the researchers made a strategic and focused effort to examine significant policy gaps that will help CQA become a more effective Customs agency. The following areas were identified: automation, advanced manifest, fines and penalties, asset forfeitures, customs appraisal, harmonized system, and finally, customs bonds. Emphasis on customs automation, as it will provide the platforms for the implementation of advanced manifests, harmonized system, as well as provide data management support for the other areas, was also prioritized.

### **Customs Automation**

A critical requirement for customs modernization is customs automation. Customs automation is the replacement of manual procedures with automated processes using information and computer technology (ICT) (United Nations Conference on Trade and Development, 2011). Such automation allows customs agencies to simplify customs procedures, to accurately assess and collect revenues, collect data, and enhance risk management capabilities. Automation enables customs agencies to improve operational efficiency by replacing manual inspections and processing and optimizes integrity and accountability (ASYCUDA, n.d.).

Customs automation is now a standard around the world. ASYCUDA (short for Automation System for Customs Data), developed by the United Nations Conference on Trade

and Development (UNCTAD) as a computerized customs management system is one of the customs automation platforms widely used around the world. The ASYCUDA website states that there are currently over 90 countries and territories around the world that use ASYCUDA systems (ASYCUDA, n.d.). Some countries have developed their own automation systems. CBP developed the Automated Commercial Environment (ACE) as their management system. It was described as a “commercial trade processing system designed to automate border processing, enhance border security, and foster U.S. economic security through lawful international trade and travel” (Federal Register: The Daily Journal of the United States Government, n.d.). Other countries have chosen other platforms that provide automation. In the Pacific, out of the twenty-three (23) members of the Oceania Customs Organization (OCO), seventeen entities or about 74% have automation (Oceania Customs Organisation, 2016).

Table 1. *Automated Customs Administrations in the Pacific*

| OCO MEMBER       | AUTOMATION | RISK MANAGEMENT |
|------------------|------------|-----------------|
| American Samoa   |            |                 |
| Australia        | X          | X               |
| CNMI             |            |                 |
| Cook Island      | X          | X               |
| Fiji             | X          | X               |
| French Polynesia |            |                 |
| FSM              | X          |                 |
| Guam             |            |                 |
| Kiribati         | X          | X               |
| Nauru            | X          |                 |
| New Caledonia    | X          |                 |
| New Zealand      | X          | X               |
| Niue             | X          |                 |
| Palau            | X          | X               |
| PNG              | X          | X               |
| RMI              |            |                 |
| Samoa            | X          |                 |
| Solomon Islands  | X          | X               |
| Timor Leste      | X          |                 |
| Tonga            | X          | X               |
| Tuvalu           | X          | X               |
| Vanuatu          | X          | X               |
| Wallis & Futuna  |            |                 |

Source: *Oceania Customs Organization Strategic Plan (2017-2022)*.

In Table 1 above - Among the OCO members, those that were categorized as having “Risk Management” had automation. No member listed by OCO had Risk Management without Automation.

A trend with customs automation, provided by modern Information and Computer Technology (ICT) systems, is the “Single Window” concept (Oceania Customs Organisation, 2016). This automation can be valuable to capability building for CQA and Guam. The Single Window concept is a platform where multiple users can enter and retrieve information into one management database. Customs, importers and other agencies can either access data, as well as enter information as appropriate to their security and permissions level. Once a customs officer inputs information for incoming cargo or passenger that information can be instantly available to another government agency for immediate use. Again, for protocol, security, and privacy reasons, access and privilege to data will depend on a myriad of factors that will be determined by the agency.

**CQA: Challenges faced by a paper-based customs agency.** CQA currently does not have any form of customs automation and is heavily reliant on paper documents (Perez, Tajeron, 2018). With the number of passengers and cargo inspected daily the lack of an automation system give way to cumbersome, tedious, and voluminous of paperwork; prone to error and wasted effort. Similarly, the sheer volume of documents, coupled with the lack of an information management system, customs data collected at the ports of entry have been underutilized.

CQA is responsible for ensuring that all importers and passengers comply with a multitude of federal and local laws ranging from controlled substances to Environmental Protection Agency (EPA) regulations to laws and regulations on motor vehicles. Not only are they enforcing relevant Federal and local laws, they are also monitoring foreign laws. In 5

G.C.A. §73106 (a), importation of certain wild mammal or bird is prohibited if the laws of the country of origin prohibit the exportation of such article to the United States (5 G.C.A. §73016 (a)). Additionally, CQA evaluates the value of imports to properly assess the use tax. When asked how CQA officers maintain the library of information needed the response was that officers usually “flip through binders” to look up references (Perez, 2018).

In Report 15-01, the Office of Public Accountability (OPA) indicated that CQA accumulated a total of 28 boxes of documents per month for incoming cargo documentation. This equated to over 300 boxes of documents per year that had to be kept during the required retention period of three or five years (2015). Documents that CQA receives include airway bills of lading, bills of lading, cargo manifests, supplier or commercial invoices, and other cargo documents (OPA, 2015). The volume of paper makes it laborious to manage customs data. OPA noted that the voluminous data collected by CQA could be very valuable if properly managed. Data contained in the cargo documents can be used by government agencies for economic, financial, and trade policy analysis (Report 15-01, 2015).

The OPA also found, in Report No. 18-04, that CQA does not maintain comprehensive data on imported tobacco products (2018). CQA entered into a Memorandum of Understanding (MOU) with the Department of Revenue and Taxation (DRT) and the Office of the Attorney General (OAG) in 2002 to minimize unreported and untaxed tobacco products entering Guam. Under the MOU, CQA was delegated the responsibility to collect tobacco taxes before releasing the shipment to the wholesaler. The report concluded that the lack of comprehensive data on CQA’s part as well as the lack of internal policies and procedures between CQA and DRT provided many opportunities for the underreporting of tobacco. (Office of Public Accountability, 2018) Ultimately, inadequate data management can cost the island its tax revenues.

Similarly, a performance audit on Use Tax found that many taxable imports were ruled “exempted” based on the professional opinions of CQA officers at the border. These exemptions, however, were not documented (OPA, 2015). OPA found that of a sample of 448 invoices, 10 invoices did not have use tax assessments resulting in a \$3,102 of uncollected use tax. Also, in 297 days, out of a 418-day sample size (27%), there were no evidence of any assessments of Use Tax. It is important to note, however, that the use tax discrepancies cited in OPA’s findings are also results of interpretative differences between CQA and DRT of use tax exemptions as well the lack of internal control and policies (Office of Public Accountability Guam, 2015)

Risk management could be enhanced by automation. Chief Perez describes having risk management as being able to quickly assess passengers and cargo and assign risk levels that would then determine the kind of inspection needed (Perez, 2018). Risk-level assignments are heavily dependent on historical data. OPA described that documents collected by CQA are classified and filed into boxes labeled High Risk and Low Risk (Office of Public Accountability Guam, 2014). While it may be a part of risk management, these documents are not readily available to be used as reference for risk management at the border.

CQA’s current staffing level at only one hundred and three customs officers makes it even more challenging to operate without automation (Perez, 2018; Taijeron, 2018). Having a customs automation system would be an effective force-multiplier and would have immediate positive impacts on border inspections. The implications to greater boarder security is impactful.

**The on-going pursuit of CQA automation.** CQA has attempted to modernize with automation, but with no success. CQA’s Citizen Centric Reports from the years 2012 to 2017 state that the agency has been planning to purchase an automated system. Guam Customs and

Quarantine Agency had looked into acquiring ASYCUDA. At other times, there had been plans to build a custom system specifically tailored to CQA. Despite the awarding of some federal grants, funding along with the lack of dedicated personnel, have been the two biggest obstacles in the on-going pursuit of automation. However, it is apparent that the request for automation has always been second to the issue of personnel shortage. (Budget Hearing, 2018; Informational Hearing 2017).

In 2015, the Guam State Clearinghouse reported that it was able to “acquire grant funding for an automated system from Guam Customs...” (Quintanilla, 2015). The CQA Citizen Centric Report of 2015 indicates that the agency was awarded \$625,000. The grant was to “develop a Customs Management Information System which will move processes from a manual based operation into a digital one and allow the Agency to focus resources on safety and security at the borders” (CQA, 2016 p. 8). However, the effort to develop an automation system did not yield success. When asked about the federal grant, CQA noted that the funds had been returned to the federal government due to the planned objectives not being met (Perez, 2018).

The shortage of manpower paired with priority conflicts exacerbated the situation. The personnel assigned to manage the project, funded by the grant, was a Customs officer. That officer also had duties that prioritized the border. With the shortage of manpower, the customs officer was not able to focus on the task and was often left having to cover work at the border. As a result, CQA could not meet the timeline of the grant. In a committee budget hearing at the legislature, acting Director Eric Palacios expressed the need for administrative personnel to focus on grants management. Palacios also indicated another effort to seek grant funding. It is unknown if another grant is being sought for customs automation.

Since federal funds for the automation system was granted for the Guam Customs and Quarantine Agency, more than one appointee has served in the capacity of the Director of the Guam Customs and Quarantine Agency. To date, an automated system has not achieved by any administration (Taijeron, 2018).

**CBP: A comparison.** CBP is at a pivotal point where it continues to strive to progress at the rate of the advancement of technology. With an Automated Commercial Environment (ACE), participants can utilize an electronic platform to communicate and relay data ahead of time. ACE is described as a “commercial trade processing system designed to automate border processing, enhance border security, and foster U.S. economic security through lawful international trade and travel” (Federal Register: The Daily Journal of the United States Government, n.d.). The ACE system also allows partnered government agencies to access a single point and electronically submit data related to international trade like the Single Window concept (Office of Regulatory Affairs, n.d.). Appendix A lists federal agencies that connect with CBP through a single centralized point:

Aside from ACE, CBP has also implemented other electronic-based programs such as the Automated Passport Control and Trusted Traveler Programs. The Automated Passport Control (APC) is designed to expedite entry processes for eligible international travelers through self-serving kiosks ("Automated Passport Control (APC)", 2018). The Trusted Traveler Programs allows eligible individuals to participate in different programs, depending on the traveler's needs. One example under the Trusted Traveler Programs is the Global Entry, where an eligible individual may present his or her machine-readable passport or lawful resident card and clear through immigration, customs and agricultural processing without having to fill out any form of paper (U.S. Department of Homeland Security, 2018).

The U.S. Virgin Islands (USVI), another territory of the United States had the U.S. Secretary administering its customs laws (19 C.F.R. §7.2). The “U.S. Virgin Islands (USVI) Services and Memorandum of Agreement” indicated that although CBP performs a number of law enforcement functions in the U.S. Virgin Islands, CBP’s trade-related automation application cannot be utilized in the U.S. Virgin Islands. This was due to the territory’s legal status (“USVI Services and Memorandum of Agreement”, 2015). Title 19 CFR 7.2 (c) elaborated that the importation of goods and the tariff classification and rates of imported goods are to be established by the U.S. Virgin Islands, allowing the territory with more autonomy in determining their legal framework (19 C.F.R. §7.2).

In 2016, the U.S. Virgin Islands reported moving towards to full automation through the implementation of its “Customs Automated Processing System” when efforts were initiated in between the years 2007 and 2008 (Duncan, 2016). According to the press release, Commissioner of Customs, Wade Smith, expressed that their organization could not have utilized the equipment until the enactment of the Customs Management and Duties Act No. 6 of 2010 (Duncan, 2016).

Puerto Rico had already established an electronic transmission system called SISCON, which is the Spanish acronym for ‘Tax Systems of the Department of Treasury’ (Garcia, 2008). SISCON allowed licensed carriers and customs brokers to transmit their data and payment electronically. Transitioning to the use of ASYCUDA, Customs at Puerto Rico no longer accepted manifests on paper or through SISCON and has allowed carriers to transmit their data electronically. Further, their customs had also encouraged licensed carriers to maintain their manual documents for at least six years (Garcia, 2008). According to an ASYCUDA Newsletter, Puerto Rico has made progress over the years and has fully implemented the system by

outsourcing other hosting services and quantifying thousands of manifests and import and export declarations, yet further development is being considered (Division on Technology and Logistics UNCTAD, 2017).

Without the implementation of a management information system, the Guam Customs and Quarantine continues to face internal and external risks by placing a manual burden on its customs officers when they could be focusing on inspection of passengers, vessels or cargos and enforcement. Historically, the agency reported two fire incidences in the year 2015 (Matanane, 2015). Such external occurrences could pose possible loss and damage to the agency's property and documents. The agency continues to face challenges when the current number of customs officers are thinly spread to carry out operations and enforcement without sufficient tools or instruments that could assist in providing effective and efficient processes and enforcement. Consequently, this allowed the local agency to fall behind custom trends that were occurring rapidly regionally and globally.

**National customs automation program and congressional controls.** The North American Free Trade Agreement Implementation Act (Public Law 103-182, 103d Congress, 1993) mandated the National Customs Automation Program (NCAP) in 1993. The NCAP was to be a system that included the electronic entry of merchandise, the electronic summary of required information, the electronic transmission of invoice information, the transmission of manifest information, the electronic payments of duties, fees, and taxes and much more, to include the electronic filing of bonds, the electronic penalty process and the electronic selection of high-risk entries for examination. The goals of NCAP, as stated in the public law, was to ensure that Customs Services administers all regulations and rulings in a uniform and consistent manner, in a manner that is minimally intrusive to the flow of trade, and in a manner that

improves compliance. The NCAP was also mandated because Customs Service, while having an operational system, the antiquated hardware and software had limited capabilities and was expensive to operate. Customs Service still relied heavily on paper documents. (National Customs Automation Program, 1993).

Not only did the NCAP mandate the transition to an electronic system, it also set a timeline for the implementation. For example, it required that by the 180<sup>th</sup> day after the legislation, the Secretary (Treasury) would submit an overall plan for the Program as well as a description of the ultimate configuration of the system. An important note from how the US has reformed CBP's Information and Computer Technology (ICT) systems to implement automation is that Congress continually held CBP to timelines and conditions throughout the years. The acquisition of CBP's Information and Computer Technologies (ICT) systems was funded through general appropriation but through planned financing directed by the Congress (United States Government Accountability Office, 2006). For example, the US Congress placed conditions for CBP in order to use Automated Commercial Environment (ACE) appropriated funds and these included meeting the Office of Management and Budget's (OMB) capital planning and investment control review requirements; having the CBP's expenditure plan comply with Department of Homeland Security's (DHS) enterprise architecture; or having DHS Chief Information Officer certify that there was a contract with an independent verification and validation agent executed. Congressional acts continue to mandate reporting on the progress of ACE. For Example, the Trade Facilitation and Trade Enforcement Act, Section 906 (q) stipulated that within two years of the Act's enactment, the Secretary of Treasury shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives a report on the date which ACE will be ready to process drawback claims and

the date which the Automated Export System will be ready to accept proof of exportation (Trade Facilitation and Trade Enforcement Act, 2017).

**Recommendation for Guam’s customs automation: planning, financing and sustained collaborative efforts.** Almost all conducted interviews prioritized customs automation as a critical part of CQA’s modernization. Further, there is a long-standing desire to acquire an automation system as evidenced in budget requests and annual plans. The lack of funding and lack of personnel are identified as the two biggest obstacles preventing CQA from realizing automation capabilities. (Perez, 2018; Taijeron, 2018)

While pursuing federal grants may be a very attractive option to fund the acquisition of an automation system, there is a need to look at a long-term financial plan for continued maintenance and implementation. A federal grant award of \$600,000 alone might not suffice for the complete implementation of an automation reform. An automation plan would be expensive as it would include not only computer hardware and software, but it would also include staff training, additional personnel to maintain the Information and Computer Technology (ICT), as well as communications infrastructure (De Wolf, 2005, p. 19; CBP Organizational structure).

Other than restrictions to classified information, one of the reasons behind CQA’s inability to receive computer systems from CBP was the lack of secured areas that meet federal security standards (Pablo, 2018). This means that along with purchasing computer systems, CQA must also invest in improving infrastructures that can securely house computer systems. De Wolf & Sokol (2005) described an ideal financial plan for acquiring automation as heavy upfront followed by a continuous budget to maintain systems. Moreover, a number of countries that have been successful in automation reforms partner with international institutions and access foreign financing to help finance the large up-front costs while making sure that adequate budget

is available in the long-term to support IT maintenance. The latter is becoming even more important especially due to IT equipment cycles becoming shorter requiring constant upgrades and maintenance.

Lessons can be drawn from existing grant-funded assets that CQA has struggled to maintain. The Port Authority of Guam (PAG) purchased an x-ray van for CQA through federal grants awarded by the U.S. Department of Homeland Security and Federal Emergency Management Agency in 2015 (Port Authority of Guam, 2016). With the purchase, PAG and CQA entered into a Memorandum of Understanding that stipulated that the responsibilities of the van's maintenance and upkeep be transferred to CQA for a period of three years (Brown, 2018). Shortly after the transfer, the van ceased operations due to mechanical problems and had not been repaired for a year due to a lack of funding (Brown, 2018).

In a budget hearing at the legislature, CQA explained that a big percentage of the agency's fleet of vehicles were purchased through grants and various programs outside of CQA's primary source of funding (34th Guam Legislature, 2018). CQA indicated that 9 out of the agency's 46 vehicles were inoperable, the rest exceeded 5 years of use which implied the need for replacement. Initiatives to allow fleet upgrades were part of the \$34 million budget request that was ultimately cut down to \$14 million based on the FY2019 Appropriations Act (Public Law 34-115, 2018).

Should CQA choose an automation system to use; federal or international grants should be pursued to help finance the initial costs. There should also be a long-term budgeting plan to maintain automation to include maintaining IT systems, personnel, and facilities. An automation program that is mandated and directed by legislation similar to the NCAP in the US can help CQA realize a successful implementation and sustenance of customs automation. With CQA's

constant change of leadership at the will of any incumbent administration and the possible shifts of priorities due to changing leadership and membership of the Guam legislature every two years, a policy-driven automation program at the statutory level may ensure sustained commitment and support of all stakeholders needed to bring CQA to automation as demonstrated by the NCAP. After customs automation is implemented, the requirement of advanced manifest and other policy reforms like valuation, bonds, penalties process can come easily come into play.

### **Advance Manifest**

Following 9/11, the US went through a dramatic reform of trade security policy and the international community followed (Widdowson, et al., 2014). An important part of the policy reform was the requirement of advanced cargo information or advance manifest. A manifest contains a compilation of information about the goods carried on a means of transport, to include the information about the methods of transportation, such as the identification, characteristics, and route. The U.S. Trade Act of 2002 significantly changed customs processes to include enhanced risk assessments and security features for the detection of terrorists, and illicit narcotics. (Jones & Seghetti, 2015). Included in the Trade Act was the requirement that importers and exporters submit cargo information prior to arriving at a U.S. Port of Entry. The World Customs Organization (WCO) adopted the SAFE Framework of Standards to Secure and Facilitate Global Trade that included a core element of advance electronic cargo information requirement on imports and exports. In the US, CBP requires manifests to be submitted 24 hours prior to loading of cargo at a foreign port (De Wolf & Sokol, 2005). With the SAFE Framework, many countries including China, Japan, and the European Union have adopted the 24-hour rule.

Advance manifests give customs officers ample time to perform risk assessments and prepare for incoming cargo (Perez, 2018). Advance manifests can provide more efficient use of

limited resources by allowing time to review cargo and passenger information, assess high-risk targets and prepare inspection strategies. Mandating advanced cargo information means having the equipment and the means to receive it.

**CQA manifest requirements.** Section 73110 of Title 5 Guam Code Annotated requires that “the master of every vessel arriving in Guam shall have on board his vessel a manifest of cargo” that includes information on the vessel, detailed accounts of all merchandise on board the vessel, names of all the persons receiving the merchandise, and the names of all passengers along with the count and description of their baggage. In 1976, the 13<sup>th</sup> Guam Legislature added a requirement that manifests be required to be delivered to a Customs Officer within four (4) hours after arrival (P.L. 13-187). This law has remained unchanged.

The current manifest process for CQA is a manual process that can only happen after the arrival of vessels. At a round table discussion at the Guam Legislature (November 5, 2018), CQA chief described that at the airport and the port, customs officers would wait until after vessels have arrived to receive “stacks of paper” to go over piece by piece. (Guam Legislature, 2018). CQA can only begin to do risk assessment after passengers and cargo have arrived.

**The United States and U.S. Territories.** Under the authority of the Trade Act of 2002, CBP Agency is regulated to require all carriers of cargo, inbound to the United States transmit electronically to CBP Vessel AMS specific detailed information about the cargo. Electronic arrival manifest requirement requires each commercial vessel arriving into the United States from any place outside of the United States must transmit to Customs and Border Protection (CBP) an electronic passenger arrival manifest and an electronic crew member arrival manifest. U.S. Territories such as Puerto Rico and the U.S. Virgin Islands are within the U.S. customs territories. Therefore, they are regulated and required to participate in the electronic manifest

rule. By law failure to electronically file the manifest shall result in many penalties or sanctions. Under Title 19 U.S.C 1436, any party who fails to provide manifest information required by the new regulations that is forged, altered, or false may be liable for civil penalties (19 U.S.C. §1436).

### **Fines and Penalties**

Fines and penalties play a vital role in law enforcement. The focus here is primarily on civil monetary penalties as found in other jurisdictions. While criminal penalties are necessary for CQA's enforcement against illegal activities, they should be addressed in Guam's penal code (Title 9 GCA) and requires a further study into criminal implications that involve the justice system. However, as will be discussed, civil penalties and criminal liabilities are not mutually exclusive. Civil monetary penalties, properly setup with sound administrative procedures, can help deter illicit trade while possibly serve as revenue stream.

U.S. Government Accountability Office (GAO) found that the "authority of federal agencies to assess and collect civil monetary penalties is a powerful method for enforcing regulatory policies and deterring violations. (GAO-18-519: Civil Penalties: Certain Federal Agencies Need to Improve Inflation Reporting, 2018, p. 1). Lee (2006) notes that civil penalties can be useful because they are a regulatory response to non-criminal acts (p. 6). Ayres and Braithwaite (1992) explained that while agencies need to have a wide range of enforcement tools to persuade behavior or corporate actors, such persuasion is not effective without punishment. The authors posited further that a "Tit-for-Tat" (TFT) policy stance is an effective regulatory framework allowing agencies to penalize actors according to the degree and frequency of non-compliance. Moreover, it allows for punishment that is responsive to different motives. The authors, thus argue that TFT is effective because "firms and decision makers within them are

actuated by different motives” and that “sound public policy must and can speak to the diverse motivations of the regulated public” (p. 20).

Imposing administrative or civil penalties should include guaranteeing due process. Section One of the Fourteenth Amendment of the U.S. Constitution provides that “no state shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law.” Imposing monetary penalties and possible forfeitures due to violations can directly deprive people of liberty (the freedom to enter Guam or the freedom to import) and property (the seizure of property). Gellhorn (1970) concluded that “notice and hearing should typically precede administrative penalizing, lest the existence of the power be denied because of the impropriety of the procedure employed” (p. 285).

**Penalties in CQA.** CQA’s current authority includes some statutorily defined penalties. Some include specific monetary fines. Removing or tampering with the Customs seal before release by CQA is punishable by not less than Twenty-Five Thousand Dollars (\$25,000) and will also result in the confiscation of cargo and the suspension of the business license(s) of all businesses involved in the violation Title 5 GCA §73134 imposed a fine of twenty-five dollars (\$25) for every ounce of opium or opium prepared for smoking on a master of a vessel in which such items are found (Title 5 GCA §73143).

Other penalties, as directed by law, are determined by the value of the merchandise. Title 5 GCA § 73127 holds that any article found in an entry, which was not declared, will result in a penalty “equal to the value of such article”. In Title 5 GCA § 73130, false swearing on an examination before the Collector of Customs shall be guilty of a misdemeanor and if the person is the owner, importer or consignee, “the merchandise shall be forfeited or the value thereof may

be recovered from such person”. Also, in Title 5 GCA § 73133, when a merchandise is unladen and was not included in a manifest, the master of the vessel is charged a penalty “equal to the value of the merchandise so found or unladen” Title 5 GCA §73117 also has a similar penalty for unloading merchandise prior to Customs clearance (5 G.C.A. §73117).

There are instances in CQA’s enabling statutes where a violation is defined with no attached penalty. By Title 5 GCA § 73135, when a vessel departs or attempts to depart, except stress of weather or other necessity, without a proper report of entry, the master of the vessel “shall be guilty of a violation”. There is no indicated punishment for such violation (5 G.C.A. §73135). As in the cases of other violations, such as failure to provide a manifest or failure to report articles in a manifest, mentions of penalties occur at other sections of the chapter with no cross-reference. As such, the class predicts that there is a lot of room for interpretation and in the event of adjudication, arguing for CQA would be challenging.

With the existing penalties, there is no penalty process established. As discussed below, this lack of process has been brought up in legislative discussions but no attempts, if any, have been successful (Guam Legislature Committee on Guam U.S. Military Relocation, Veterans' Affairs, Homeland Security and Judiciary, 2014).

**CQA’s unsuccessful attempts to impose penalties.** CQA and policymakers have recognized the need to update enabling statutes to include schedules of penalties. In 2011, CQA communicated to Governor Eddie B. Calvo the need to update policy, including a proposal to introduce a schedule of fines and fees to offset costs of operation (CQA-DIR-234-11 Memorandum, 2011). It was projected that the proposed penalty schedule and a more aggressive Use Tax collection would yield about \$3 million additional funds to the General Funds (2011, p. 11). Table 2 shows the proposed fines:

Table 2. *Proposed Schedule of Fines by Guam CQA presented to Governor Calvo through CQA-DIR-234-11 (2011)*

|                                      | 1 <sup>st</sup> Offense | 2 <sup>nd</sup> Offense | 3 <sup>rd</sup> Offense |                 |
|--------------------------------------|-------------------------|-------------------------|-------------------------|-----------------|
| Violation                            | Penalty                 | Penalty                 | Penalty                 |                 |
| Items not manifested                 | \$200.00                | \$500.00                | \$1,000.00/item         | \$2,000.00/item |
| Persons not manifested               | \$200.00                | \$500.00                | \$1,000.00              | \$2,000.00      |
| Items not invoiced                   | \$200.00                | \$500.00                | \$1,000.00              | \$2,000.00      |
| Failure to Report prior to departure | \$1,000.00              | \$5,000.00              | \$10,000.00             | \$2,000.00      |
| Prohibited Agricultural              | \$50.00                 | \$100.00                | \$200.00                | \$20,000.00     |

In 2014, attempts to add penalties to customs law reached legislative process in the form of Bill 302-32: “An Act to repeal and reenact §73130 of Chapter 73, Title 5 Guam Code Annotated relative to establishing fines and penalties for individuals who make false statements to a Guam Customs Officer” (Guam Legislature Committee on Guam U.S. Military Relocation, Veterans' Affairs, Homeland Security and Judiciary, 2014). The bill intended to “make it a violation to make a false, written or verbal, statement or knowingly omit a statement of truth upon questioning and examination by a Guam Customs officer”; and set graduated fines for such acts (2014, p. 2). Bill 302-32 was never voted on by the legislative body even though six out of nine committee members voted to pass the bill out of committee. Table 3 shows the proposed set of fines for the bill.

Table 3. *Proposed Penalty through Bill 302-32, as amended by Committee on Guam U.S. Military Relocation, Veterans' Affairs, Homeland Security and Judiciary (2014)*

| Violation  | 1 <sup>st</sup> Offense | 2 <sup>nd</sup> Offense | 3rd +              |
|--|-------------------------|-------------------------|--------------------|
| False Statements or knowingly omitting a statement of truth. | \$100 - \$500           | \$500-\$1,000           | \$1,000 - \$10,000 |

Bill 302-32 had a potential revenue projection at \$1,794,000 based on a 0.25% first-offense violation rate of the average monthly visitor numbers (from the Fiscal Note attached to Bill 302-32 committee report from Bureau of Budget & Management Research, 2014). Based on the same calculation, with the new calculated monthly average of visitor arrivals at 111,627 (see Appendix B), passing this legislation today would potentially bring \$1,674,405 in revenues.

The public hearing on Bill 302-32 yielded a number of support but indicated some concerns specific to the bill. The committee report for the bill (2014) details the discussion that transpired in the public hearing. Mr. Ray Benavente, in his testimony shared private businesses' concerns of the possible "hold-ups" of cargo due to imposed penalties. Specifically, he asked if customs will hold cargo until penalties were paid (Guam Legislature Committee on Guam U.S. Military Relocation, Veterans' Affairs, Homeland Security and Judiciary, 2014).

Another concern was an "appeals process". Senator Frank Aguon Jr. expressed that an appeals process has to be identified if there is going to be an increase in fines because "every individual rightfully should have an appeals process" (2014, p. 7). Further, he emphasized the small businesses can be hurt without having a proper process with all due considerations from CQA. Major Paul Toves indicated that CQA was planning on using a "citation format" to impose the penalties. This means that CQA would cite a passenger or importer which would include a date to appear and appeals will be taken. Toves indicated that this would not be a

lengthy process (in response to Aguon's concern of an expeditious appeals process) and that the Director would have the final say, meaning that final disposition would rest within CQA (Guam Legislature Committee on Guam U.S. Military Relocation, Veterans' Affairs, Homeland Security and Judiciary, 2014)). There was no indication of any rulemaking process that resulted from this public hearing.

**U.S. Customs and Border Protection penalties.** The federal customs agency has established a wide range of monetary penalties for a variety of violations. These include penalties for commercial fraud and negligence (Title 19 USC 1592), drawbacks (Title 19 USC 1592), customs broker penalties (Title 19 USC 1641), recordkeeping penalties (Title 19 USC 1584(a)(1)), falsity or lack of manifest (Title 19 USC 1584), and equipment and vessel repairs (Title 19 USC 1466). Penalties of violations involving the entry of merchandise usually have penalties that are determined by the value of the merchandise. For example, Title 19 USC 1592 penalizes gross negligence by imposing the “lesser of the domestic value of the merchandise or four times the lawful duties, taxes and fees of which the United States is or may be deprived of”. Other violations are penalized by specific dollar amounts. Failing to provide a manifest or results in a penalty of \$1,000 and any merchandise found that is not included in the manifest subjects to the master of the vessel a penalty of \$10,000. (Title 19 USC 1584)

CBP also imposes civil penalties on violations that have criminal liabilities. In Title 19 USC 1584, civil penalties are imposed on masters of vessels when merchandise found in vessels consist of heroin, morphine, cocaine, opiate (\$1,000 per ounce), opium for smoking or marijuana (\$500 per ounce). This section puts the liability of the violation upon the master of the vessel regardless of who was directly responsible for the importation of such items. CBP reports that when a violation is discovered “in addition to, or in lieu of, seizure and/or referral for criminal

prosecution, Customs usually has the option of assessing a personal penalty against the alleged violator(s)” (What Every Member..., 2004).

**US customs administrative enforcement process.** CBP has a process to follow when violations are discovered. A periodical publication explains processes for penalties, both seizures and monetary penalties (What Every Member..., 2004). The process ideally begins with Notice of Penalty. Depending on the relative statute, some violations require that CBP send out Pre-Penalty Notices in which alleged violators have thirty (30) days to respond before the Notice of Penalty is delivered. During this time, violators have the chance to file Petition for Relief for mitigation and Supplemental Petition for Relief thereafter. When decided, customs will bill the violator for payment. Payment will close the case. If payment is not made in the time allowed, then matter would be forwarded to the appropriate court for adjudication. Appendix C illustrates the penalty procedure.

**Analysis and recommendation.** Penalties can help CQA deter violations against the laws it enforces. Having civil penalties in place affords CQA the flexibility to deter actions that are not necessarily criminal as well as those that are criminal. Finally, having monetary penalties can supplement revenues.

Further analysis to include a study of importers and average passengers, benchmarking penalty schedules across the region are required to determine adequate penalty levels. This would also mean updating existing monetary penalties in statute. At the price and volume of meth and other drugs, a twenty-five thousand dollar (\$25,000) penalty for breaking a Customs seals might not be enough to deter drug trafficking (Perez, 2018). Also, a penalty of twenty-five dollar (\$25) per ounce of opium does not compare to a five-hundred dollar (\$500) penalty on the

federal customs agency. For the other penalties, a Customs valuation system needs to be in place to provide a consistent and fair calculation of penalties that are based on merchandise value.

Before fines and penalties are established in the statutes, CQA must, through regulation establish a penalty process that includes 1) Notice and opportunity for Hearing 2) An appeals process or a Petition for Relief mechanism and 3) Mitigation and disposition procedures. Establishing the process also must include identifying personnel to handle it. Currently, CQA has a Fines, Fees & Forfeitures unit under the Logistics and Support Division. While they should be the appropriate unit to be in charge of penalties and penalties processes, the personnel under this Division are now being used to perform inspections at the ports of entry due to the shortage of manpower.

### **Administrative Process for Asset Forfeitures**

In the United States, asset forfeiture laws allow uniformed officers and prosecutors to establish private assets forfeited to a government agency. The administrative process for asset forfeiture has grown quickly in the United States over the years, with about \$4.7 billion in deposits to federal forfeiture funds in 2012 as well as amounts likely in excess of a billion dollars directly seized by state and local governments annually (Kelly & Kole, 2015). In addition to generating revenues for the government, asset forfeiture has played a role in deteriorating criminal activities by crippling the primary incentive, money, and material proceeds. Given that Guam's Customs and Quarantine Agency continues to lack the financial support needed for the organization, they can develop its asset forfeiture laws.

**Laws.** CQA have voiced concerns about outdated Guam laws and how the laws have made it difficult for officers to work effectively (Eugenio, 2017). By amending and enforcing laws and fines, the agency can generate new funds to support the hiring of new personnel,

training, equipment, and other necessities for the organization. They can better assess laws by referencing US statutes, observing neighboring territories such as the CNMI or mirroring other regulatory and enforcement organizations within Guam.

**Guam.** The CQA has benefited from asset forfeiture by cooperating with the federal task forces. In the cases that CQA has received equitable sharing from forfeitures, it has proven that similar procedures can be promulgated locally to enforce asset forfeiture for cases under the direct jurisdiction of the agency. Flores (2018) explained that “CQA can develop its own asset forfeiture laws...There is nothing preventing the CQA in using asset forfeiture in supplementing its operations.” (Flores, 2018)

Currently, seizure language identified in Title 5 GCA Chapter 73 can be found in §§ 73106(b), 731117, 73127, 73130, 73133, 73136, which state how the CQA is dependent on seizure for fraud and negligence such as false swearing and improper declaration, rather than as an instrument to disrupt and forfeit proceeds of criminal activity. Furthermore, Title 5 GCA § 73102(4) allows the CQA “to make seizures of any forged or counterfeit goods imported into Guam in violation of Chapter 47 of Title 9 GCA.” However, CQA’s authority is limited to seizure and does not extend to asset forfeiture. Language in Title 9 GCA § 47.60(b) Enforcement, enables the Courts of Guam, but not CQA to directly enforce asset forfeiture on property related to the “commission of the crime counterfeiting, trafficking in counterfeit goods, or any other violation of this Chapter.” (9 G.C.A. §47.60 (b)). Similarly, Title 5 GCA § 73102(2) allows the CQA to “make seizures of any controlled substance imported into Guam in violation of Article 6 of Title 9 GCA Chapter 67.” (5 G.C.A. §73102(2)). While forfeiture language is found in Title 9 GCA § 67.502.1, this only grants asset forfeiture authority to the Guam Police Department (GPD) and, to a more limited extent, the Guam Public Health and

Social Services. Again, the CQA was not delegated asset forfeiture authority to enforce Title 9 GCA Chapter 67 despite being the lead agency on importation enforcement (9 G.C.A. Ch. 67).

The CQA also lacks a dedicated revolving fund account for deposits from asset share forfeitures from Federal Task Forces but rather relies on a niche forfeiture fund account for violations on tobacco imports in accordance with Title 11 GCA § 6604. Guam Customs and Quarantine can mirror existing statutes to expand the authority of its asset forfeiture account found in Title 10 GCA Chapter 79, which establishes the Special Assets Forfeiture Fund for the Guam Police Department. The CQA’s FY2016-17 Citizen Centric Reports lists a section in the budget labeled “Other Payments” provided in Table 3, that is collected and generated by the agency (CQA, 2016; CQA 2017).

Table 4. *CQA Other Payments*

| Fiscal Year | Amount      |
|-------------|-------------|
| 2014        | \$35,366.80 |
| 2015        | \$20,407.62 |
| 2016        | \$1,898.70  |
| 2017        | \$21,451.30 |

The concern with the “Other Payment” is that the agency does not specify the source of funds and how much is generated from federally shared asset forfeitures from equitable sharing.

Conversely, the Guam Police Department (GPD) in their past Citizen Centric Reports has listed revenue generated from asset forfeiture as an itemized source found in Table 4 (GPD, 2013; GPD, 2015).

Table 5. *Guam Police Department Asset Forfeiture Fund*

| Fiscal Year | Amount      |
|-------------|-------------|
| 2011        | \$963.18    |
| 2012        | \$10,871.00 |
| 2013        | \$44,113.00 |
| 2014        | \$65,000.00 |

Proposed draft legislation to grant CQA asset forfeiture authority can be found in Appendix D. This draft legislation consolidates Title 10 GCA Chapter 79 and Title 9 GCA § 67.502.1, but also amends existing provisions to better reflect CQA.

**CNMI.** Title 6 CMC §§ 2301, 2303, and 2150, granted the Division of Customs asset forfeiture authority with the creation of Title 1 CMC § 2541 Law Enforcement Assistance Funds for deposit of assets subject to Title 1 of CMC § 2542 Audit. Portions of Title 6 CMC § 2150 share identical language found in Title 11 GCA § 6604. Unlike Guam, the key difference is that the CNMI provision grants authority to their Division of Customs Service. The asset forfeiture results demonstrated revenues of \$73,261 for 2016 and \$75,320 for 2017 according to the CNMI's Fiscal Year 2018 budget proposal (CNMI, 2018), with the latest report in June 2018 being \$180K seized in the last eighteen months (Encinares, 2018).

#### **Benefit: Additional Revenue Stream**

Asset forfeiture has demonstrated its effectiveness to disrupt criminal activity in cases such as drug crime. In the process of seizing assets, the government can use these funds to increase revenue for the Customs and Quarantine Agency. These asset forfeiture funds can be used to purchase equipment, fund training, and provide any other financial support to the organization. Given that the Guam Customs and Quarantine continues to struggle with their allocated budget, any additional funding can greatly impact the organization.

**Guam: Federal and Local.** Asset forfeiture has practical advantages over prison sentences. Although one of the most obvious benefits is that asset forfeiture raises money for the government, rather than costing it money, it can also incapacitate criminals, even after they leave prison. The incapacitation of prison sentences heavily relies on just keeping criminals off the streets. Imitating a business, even an illegal one, requires capital and a source of revenue (McCaw, 2011).

In the case of U.S. v. Ernesto Verdera, Ernesto Veredra and Mark Bartolome were discovered during a departure screening by the Transportation Securing Administration to be carrying around \$800,00 for a flight from Guam to Manila. The duo was turned over to the CQA and Immigration and Customs Enforcement—Homeland Security Investigation (ICE—HSI) for further investigation. The cash was seized and later forfeited. This resulted in Guam Customs and Quarantine and Guam Behavioral Health receiving 80%, approximately \$647,000, in asset sharing (Delgado, 2012). Although this case was relative to money and financial crime on an outbound passenger and not local customs enforcement, the Guam Customs & Quarantine Agency and HSI in a joint effort pursued a case that allowed CQA and Guam Behavioral Health to receive a sizable portion of asset forfeiture through equitable sharing. “Judging with medium plus confidence, the federal government will continue to use asset forfeiture and money laundering statutes as part of its tools to combat, dismantle and disrupt these criminal enterprises” (D. Flores, personal communication, September 25, 2018).

**Benefit: Enhance Law Enforcement/ Disrupt Criminal Activity**

“Criminal enterprises will target jurisdictions that have limited to nil authorities to prosecute beyond just specific criminal statutes. Guam is in the realm of nil asset forfeiture laws” (D. Flores, personal communication, September 25, 2018). With the influx of imported

drugs into the island, one way of tackling the issue is to address asset forfeitures as an instrument to enhance law enforcement and further dismantle criminal activity. Asset forfeiture has been suggested to deter crime by making it less profitable. Generally, drug distributors and schemers commit crimes for material advancement. For many, the idea of being sentenced to prison may not be deterring enough and may consider prison time to be worth the risk. By enforcing asset forfeiture, criminals will be less engaged to commit crimes knowing that the stakes are higher of losing out on their financial gains.

**Guam: Federal and Local.** According to the Theory of Property and Personhood, people have a special attachment to tangible property as opposed to tangible assets (McCaw, 2011). Essentially, the theory suggests that individuals feel a greater loss when their home is forfeited compared to losing the monetary value of the house since people have more of a personal connection to their homes. For instance, while the case was relative to immigration and not customs, the property was also seized in *U.S. v. Joyluck Club*. However, the CQA participated in a Federal Task Force in conjunction with HSI (Aguon, 2018). D. Flores (personal communication, September 25, 2018) states, “The defendant employed pre-travel arranged tourists under Guam’s visa waiver program...to seek employment to work in the defendant’s establishment.... a clear violation of federal law.” Hence, HSI permitted CQA to receive a portion of asset forfeiture through equitable sharing. Asset forfeiture frequently deprives criminals of property to which they have a personal connection, such as real estate in *U.S. v. Joyluck Club*, rather than merely cash and bank accounts.

### **Customs Appraisal**

An essential function of Customs enforcement is to accurately assess defining characteristics on merchandise such as value. While the concept of value is variable and fluid, an

appraisal system can be extended to additional factors that are more static such as quantity, weight, and origin. The current lack of an appraisal system can be recognized as a two-faceted problem, and without a system to assess factors such as value, quantity, weight, and origin (VQWO) then it becomes difficult to establish the necessary taxes and penalties against the required VQWO. Similarly, if there is no established system in place to collect, then any taxes and penalties against determined VQWO is lost.

**CNMI and American Samoa.** Guam is struggling to address either of these issues, however this situation is not confined to Guam but rather extends to our territorial counterparts. Guam's immediate neighbor, the CNMI, has implemented provisions to better arm the CNMI Division of Customs in revenue collections. For example, Title 6 CMC § 2304(a)(1) authorizes the CMMI Division of Customs to inspect mail at the post office and levy the necessary taxes (6 C.M.C. § 2304(a)(1)). However, collecting the necessary taxes on properly assessed value is still a pressing issue that CNMI Customs continues to address. Given that CNMI Customs is a division under the CNMI Department of Finance, accurate appraisal and revenue collection is necessary in supporting the missions of both units. CNMI Finance Secretary Larrisa Larson further emphasized the need for accurate appraisal to ensure "the items in cargoes that enter the CNMI's ports are properly valued so they could also collect the right excise taxes" (as cited in Perez, 2017).

The issue of customs appraisal for American Samoa is similar. American Samoa heavily relies on the Customs Division of the Department of Finance to properly assess and collect excise taxes on imports. However, a report on American Samoa Customs by the United States Government Accountability Office (2010) highlights, "the potential for lost revenues for the

government if proper excise taxes are not collected on goods imported in each imported cargo container” (p. 25).

**Guam.** A common misconception regarding Guam customs enforcement is that CQA’s mission regarding imports is only to prohibit the importation of illegal items such as illicit narcotics or certain species of plant and animals. However, outside of criminal law enforcement, Customs and Quarantine play an important role in revenue collection and tax assessment that is calculated on factors such as value, quantity, weight, and origin. Similar to the above territories, Guam continues to struggle in the realm of revenue enforcement on imports, not just criminal enforcement. This is evident in Guam Office of Public Accountability’s [OPA] (2018) audit on excise taxes for tobacco: “We observed that CQA and DRT’s policies and procedures for assessing tobacco tax provide opportunities for underreporting and fall short of ensuring that all tobacco taxes are paid” (p. 6).

A distinguishing characteristic of CQA as an independent line agency is its separation from a parent agency unlike US Customs and Border Protection (CBP), CNMI Customs, and American Samoa Customs. In many ways, CQA benefits from autonomy, but in other areas such as the enforcement and collection of Use Tax in accordance with Title 11 GCA § 28105, CQA is hampered by lack of oversight. According to an audit conducted by OPA (2015), “CQA has been collecting Use Tax for taxable goods and exempting Use Tax for exemptible goods for over 18 years based on their professional judgment, interpretation of the Use Tax law, and other relevant information available” (p. 1). However, this report also mentions, “The Department of Revenue and Taxation (DRT) did not provide oversight for this function delegated to CQA” (OPA, 2015, p.1). CQA’s inconsistency due to lack of written and established procedures are further exaggerated by a constant cycling of personnel for dedicated roles (J. Brown, personal

communication, November 30, 2018). Since many of the Use Tax waivers awarded by CQA were influenced heavily by professional judgment and working knowledge, having an established appraisal system would shift reliance towards a more consistent and objective collection procedure.

By understanding the value, quantity, weight, and origin of goods and service groups Customs and Quarantine can better assess and generate revenue for the agency. Currently, the Guam Customs and Quarantine system for assessing values on goods is based on an honor system of self-declared value. The issue with this system is the concern for individuals to be subjective and variable in assessing goods and encourages underreporting or lack of declaration. P. Tajjeron further argues this stating, “Where issues of deception occur, knowing value ensures we know what fines, penalties, or forfeitures (FPF) CQA can apply or expect...merchandise we are concerned with and accurate and accepted trade values clearly define how much FPF can be applied” (Tajjeron, 2018). Current declared value also heavily relies on amount paid or payable without considering other factors that could alter that amount such as subsidies or assists.

**United States.** Customs appraisalment as outlined in federal statute is a meticulous procedure with technical terminology that has fostered established professions to navigate the process. While the goal of this section is not to educate the reader on how to appraise but rather the importance of appraisalment, a simplified overview is given to establish a baseline understanding. As a result, certain segments and terminology that are elaborated in length within federal statute will be consolidated to avoid superfluity.

CBP has an established appraisalment system that is used within US Customs territory. Title 19 USC § 1500 grants CBP the authority to fix final appraisalment of merchandise by ascertaining value or estimating the value thereof, in accordance with Title 19 USC § 1401a, and

fix final classification of duties, taxes, and fees applicable to such merchandise. In particular, Title 19 USC § 1401a(a) outlines the hierarchy of the appraisal system with precedence set in the following order: transactional value, transactional value of identical merchandise, transactional value of similar merchandise, deductive value, computed value, and values if other values cannot be determined. An exception to this order, as stated in Title 19 USC § 1401a(a)(2), is that computed value may be used over deductive value in certain circumstances. According to Title 19 USC § 1401a, transactional value is the primary method of appraisal and is based on price paid or payable for merchandise in addition to the following: packing costs, selling commissions, assists, royalties or license fees, and proceeds of subsequent resales by imported merchandise accrued by the seller. However, this does not include international freight, insurance, and other cost, insurance, and freight (CIF) charges. In some situations, as written in Title 19 USC § 1401a(b)(2), the use of transactional value as a basis of appraisal is limited, such as when restrictions on the disposition or use of the merchandise, conditions for which a value cannot be determined, when appropriate adjustments cannot be made to proceeds of subsequent resales by imported merchandise accrued by the seller, and related-party transactions where the transactional value is not acceptable (19 U.S.C. §1401a(b)(2)).

According to CBP (2006), “When the transaction value cannot be determined, then the customs value of the imported goods being appraised is the transaction value of identical merchandise” (p. 14); likewise, “[i]f merchandise identical to the imported goods cannot be found or an acceptable transaction value for such merchandise does not exist, then the customs value is the transaction value of similar merchandise” (p. 14). If there are restrictions on both the use of transactional value of identical merchandise and transactional value of similar merchandise, then either deductive value or, with exception, computed value is the next level of

appraisal. Deductive value is calculated on making additions or deductions to the resale price of imported merchandise; these deductions include commissions, customs duties and federal taxes, and value of further processing (CBP, 2006). If an exception or restriction on the use of deductive value occurs, computed value follows on the appraisal hierarchy. CBP (2006) states that computed value is the total of the following: materials/fabrication and other processing used in producing the imported merchandise, profit and general expenses, assists, and packing costs. For such case where neither computed nor deductive value is applicable, then “customs value must be based on a value derived from one of the five previous methods, reasonably adjusted as necessary” (CBP, 2006, p. 15).

### **Analysis and Recommendation**

Bonded agents such as customs brokers would allow importers to navigate the technicalities and intricacies of customs formalities and ensure that declaration of goods and merchandise is done accurately and properly (J. Santos, personal communication, November 30, 2018). Similarly, CQA can also employ appraisal officers and import specialists to enforce an appraisal system on incoming merchandise and that classification of taxes and fees applicable to such merchandise is done accurately and properly (F. Esteves, personal communication, November 13, 2018). This symbiotic relationship of these professions that currently exist within U.S. customs territory would benefit Guam and fall in line with CQA’s mission to facilitate trade and commerce.

In January 2005, the end of General Agreement on Tariffs and Trade for textile exports from foreign countries to the United States significantly dismantled the competitiveness of the Commonwealth of the Northern Mariana Islands garment industry by removing certain quotas on these competing nations (Eugenio, 2009). The former juxtaposition of the Commonwealth of the

Northern Mariana Islands Garment Industry is a necessary example of the need to establish a proper customs appraisal system. Otherwise, Guam's exports will continue to be properly assessed taxes, duties, quotas and penalties through a proper appraisal by outside entities whereas imports into Guam will be left unregulated. This will further undercut the island's ability to grow exports and Guam will continue to be dependent on insufficiently appraised imports. Dr. Robert Underwood concluded that, "Our biggest export in Guam is money. As soon as we generate the funds, we export it to purchase off-island for most of our island needs" (Renewable Energy, 2015). If Guam wishes to continue its goal in modernize customs enforcement, then establishing an appraisal system needs to be at the forefront of its Custom's agenda rather than its current state of nonexistence.

### **Harmonized Systems**

The Harmonized System includes a legal text and wide-ranging explanatory notes which ensure the utmost possible consistency in the interpretation of the definitions of goods and service groups; thus, creating a universal language appropriate for both commercial practice and in trade negotiations. According to Title 19 CFR § 7.2, Insular Possessions of the United States other than Puerto Rico, Guam has been excluded from United States Customs territory and by virtue, the federal regulations listed in earlier sections that source Title 19 USC §1202 Harmonized Tariff Schedule (cite source). Hence, despite Guam being recognized as United States territory, the island lacks a harmonized system which could conveniently provide a well-defined overview of trades with other countries. The island has yet to implement a paperless database to identify imports.

**United States.** The Harmonized System was developed by the World Customs Organization, which classifies the international trade data in all major trading countries including

the United States. The World Customs Organization assigns products into 99 broad two-digit categories, and then the chapters are further broken into six-digit Harmonized System codes for categories. Countries are permitted to further the classifications beyond the six-digit level. Pierce and Schott (2012) states, “The United States maintains separate Harmonized System classifications for imports and exports and classifies products at the ten-digit level. Import codes are provided in the Harmonized Tariff Schedule and maintained by the United States International Trade Commission” (p. 63). In addition, the United States utilizes the Standard Industrial Classification and North American Industrial Classification System for business activities that incorporate product characteristics as well as the type of economic activity. Standard Industrial Classification codes were used to classify U.S. economic activity until the Census Bureau’s 1997 economic census. Pierce and Schott (2012) explain, “Starting with the 1997 census, U.S. economic activity is classified according to the North American Industrial Classification System, which is standardized for the first five digits across the U.S., Canada and Mexico” (p. 63).

**U.S. Virgin Islands.** Similar to Guam, the U.S. Virgin Islands is an unincorporated territory of the United States. According to the U.S. Virgin Islands Organic Act, the U.S. Customs and Border Protection will collect customs duties on behalf of the U.S. Virgin Islands. In addition, the CBP (2015) affirms, “Section 36 of the 1936 Organic Act provides Customs and Border Protection the authority and broad discretion to administer the customs laws of the U.S. Virgin Islands” (p. 2). The U.S. Virgin Islands is excluded by statute from the customs territory of the United States; hence, allowing the U.S. Virgin Islands the authority to establish their own customs duties applicable to merchandise imported in the islands. CBP (2015) declares, “In Title 48 USC § 1406i and § 1469c expands Customs and Border Protection the authority to enforce

the U.S. Virgin Islands customs laws and to perform other activities to be funded by the Virgin Islands Deposit Fund” (p. 2). The U.S. Virgin Islands is unique given that it operates under the island’s legal status as outside of the customs territory of the United States, yet mandates the U.S. Customs & Border Protection, a federal agency, to enforce local, and not federal, customs laws. As stated in CBP (2015), “The customs laws of the United States, e.g., the Harmonized Tariff Schedule of the United States, do not apply to goods entering the U.S. Virgin Islands. As a result, the U.S. Virgin Islands customs duty is different from the one applicable in the continental United States” (p. 5).

**Guam.** Despite the lack of a harmonized system, Guam can reflect several models and adopt its own identification system similar to the United States and Puerto Rico. If CQA plans to establish a Management Information System in its pursuit of automation, then an implementation of a harmonized system is inevitable. Given that a Management Information System requires some form of a harmonized system to establish a uniform method of identification; this will arguably become a de facto system for CQA. For instance, if fines, fees, and forfeitures are based on a de facto harmonized system, the question becomes if those actions will be legitimate with the limited statutory authority currently in place.

### **Customs Bonds**

A Bond is a form of security that guarantees that payments will be made by a third party. The United Nations Conference on Trade and Development (UNCTAD) described the use and benefits of bonds in customs agencies around the world (2011). In some instances, bonds are used to guarantee payment of duties. UNCTAD pointed out the benefits of bonds to include the ability to simplify customs procedures, the securing of customs revenue due to the liability of payment backed by banks or financial institutions, and the benefit of relieving traders or

importers from the burden of immediate duties or fee payments (United Nations Conference on Trade and Development, 2011).

Bonds can provide a way for CQA to make sure revenues are collected. CQA is expected to rely fully on revenues from fees for operational funding. Thus, it is in the best interest of the agency to put forth efforts to secure the adequate collection of fees. CQA has had challenges in collecting revenues. The agency has had to reprogram its budget, moving funds between budget categories to avoid shortfalls because of revenue shortages and at some occasions, CQA has had to access funding from its Asset Forfeitures account to cover operational expenses (Perez, 2018).

Bonds can secure revenue in a way that's equitable with all stakeholders. CQA has pursued other channels to improve revenue collections but has been met with pushbacks from the community. In 2017, the agency attempted to secure revenues through a policy directive that would require immediate payment of all charges upon inspection. As stated in a news article, there were a number of importers who had unpaid balances of customs charges that exceeded the 30-day period allowed for companies to pay due charges (Pacific Daily News, 2017). The measure to require immediate payment was instantly met with opposition from the business community. Private businesses who had good standing with CQA felt that the policy was inequitable as such that they were being punished because of other businesses who didn't make due payments. The use of bonds can be an equitable alternative to the issue. Businesses who have done their part in making payments of fees in timely fashion would not be penalized by other businesses who have failed to do their part. On the other hand, revenue from businesses who fail to make payments are still collected.

**CBP Customs Bonds Laws.** Federal Law established the following relative to the use of customs bonds for CBP (Title 19 § 1623):

1. Authorizes the Secretary of Treasury (Secretary) to define when bonds are required within customs enforcement.
2. Specifically authorizes the promulgation of conditions of such bonds.
3. Authorizes the Secretary to cancel any bond or charges against the bonds under conditions defined by regulation.
4. Ensures validity of any bond formed to assure compliance of customs law.
5. Authorizes the Secretary to accept money as security.

**Guam Customs Bonds.** Section 73125, Title 5 of the Guam Code Annotated provides establishment of the use of bonds for customs. However, the language only establishes the fourth principle discussed above in that it holds valid any bond that is made to comply with law or regulation: “When any bond is required by law or regulation to be executed by any partnership for any purpose connected with the transaction of business at any customs house, the execution of such bond by any member of such partnership shall bind the other partners in like manner and to the same extent as if such other partners had personally joined the execution, and an action or suit may be instituted on such bond against all partners as if all had executed the same According to Title 5 GCA § 73125, “When any bond is required by law or regulation to be executed by any partnership for any purpose connected with the transaction of business at any customs house, the execution of such bond by any member of such partnership shall bind the other partners in like manner and to the same extent as if such other partners had personally joined the execution, and an action or suit may be instituted on such bond against all partners as if all had executed the same.” While the local law includes bonds “required by law or regulation”, it does not specify

authority to define when bonds are required or the conditions through which are required specifically for laws enforced by CQA (5 G.C.A. §73215).

**CNMI.** CNMI provides a comparative case. For CNMI Customs, the use of customs bonds was defined in Regulations. In this case, Section 1623 is adopted almost in its original form under the CNMI Customs regulations (Bonds and Other Security, CNMI Administrative Code Title 70 §§70-10.1-1024, 1026, and 1028). The first section gives the Director of Customs and or the Secretary of Finance the authority to require bonds that may be deemed necessary “for the protection of the revenue or to assure compliance with any provision of law which the Secretary or the Department may be authorized to enforce (§70-10.1-1024). The following sections include “Conditions and Form of Bond” in which required conditions of bonds are established, and the authority of the Secretary of Finance to cancel any bond in the event of a breach of any conditions of the bonds. The ability to accept any cash in lieu of bond is put as a subsection of the “Conditions and Form of Bond” (CNMI Administrative Code Title 70 §70-10.1).

**Australia.** Australian law also established the use of Customs bonds. Customs Act of 1901 provides for the requirement of bonds. Section 42 of the Act authorizes Australian Customs and Border Protection to “require and take securities for compliance” with the customs laws under the Act. Further, Section 44 specifically points the Chief Executive Officer as a point of authority to determine acceptability of bonds and to accept bonds. Section 45 lays out the authority to cancel any bonds and the conditions upon which bonds may be cancelled (Customs Act of 1901, 2005).

**Analysis and Recommendations.** The expectation of CQA to fund its own operations through fees requires that collection of revenues at the ports of entry are effective. Further, the overall requirement for Government of Guam to secure revenues especially with the current state

of Fiscal instability relies on CQA to collect Use Taxes. (Office of Public Accountability Guam, 2014) Bonds provide a way to protect revenues as well as allow expeditious processing at the border (Taijeron, 2018). Thus, establishing clear authority for CQA to require and accept bonds and the regulatory foundations for the conditions of such bonds is a necessary step for CQA.

***Legal Framework.*** *There needs to be a statutory framework in Guam's laws that establish:*

1. A clear authority on the determination of bond requirement for the purposes of enforcing Guam custom laws
2. Authority and mechanism that allows CQA to set conditions of acceptable bonds
3. Authority for CQA to revoke or cancel bonds on reasonable grounds determined by CQA
4. Authority to accept other forms of security such as cash in lieu of bonds

Section 73125 of Chapter 73 Title 5 GCA already established that bonds that are to be held valid and binding in any Customs house (5 G.C.A. §73125). The next step should be to introduce legislation to establish the aforementioned tenets. Analysis of the comparative cases showed different ways of doing this. CNMI establishes these foundations under regulations while Australia, like the US, does so through statutes.

The rules that establish the requirement and conditions for surety bonds and performance bonds for government procurement in Guam are found at the regulatory level (Title 2 GARR Chapter 5 §§5103-5105). On that rationality, the reasonable approach to the establishment of bonds should be done through regulation for CQA. However, there has been no regulation passed or any attempts made known to the group to modify regulation to establish legal framework for customs bonds. Further, based on CQA's current low staffing levels and

demanding responsibilities, the legislature should take the lead and pass legislation to establish necessary foundations for Customs bonds.

Guam can apply the same as CNMI in adopting similar language from Title 19 USC § 1623. The major concern, however, would be to determine where specific authority is given. CNMI gives authority to the Director of Customs as well as the Secretary of Finance. Section 1623 gave authority to the U.S. Secretary of Treasury which was transferred to the U.S. Secretary of Homeland Security (19 U.S.C. §1623). Based on the US and the CNMI arrangement, the authorities for bonds were given to the oversight of the Customs administrators. In Guam's case, the Director is already at the cabinet level, serving under the Governor. Giving the Governor the responsibility to be accountable for bonds would be unreasonable. This would place administrative burden to the office of the Governor. Bonds and securities for procurement stop at the Chief Procurement Officer or heads of agencies (Guam Procurement, Title 2 GARR Ch. 5). It would be reasonable to appoint the Director of Customs as the point of authority, similar to the CEO of Australia's customs agency.

***Cost of Legislation.*** Legislation may only potentially cost private businesses. However, private businesses benefit from expeditious clearance from the ports of entry. For CQA and the Government of Guam, bonds provide security. Since executed bonds are binding and are showed through a document, the hiring of specialized personnel may not be required for daily operations.

***Legislative Recommendation.*** See Appendix E for draft legislation.

## Successful Reform

The findings and recommendations that have been discussed in this paper so far are important tools for CQA to successfully meet its mission in the long term. However, successful reform and modernization require attention first to immediate issues that are faced by the agency. In this section, we discuss the agency's operational stability and sustainability through its funding. We also take lessons from literature on successful reform cases.

### **Self-Sustenance: Expectation v. Reality**

The most obvious and immediate issue during the course of the research was funding for the agency. News reported the need for funding for CQA due to the shortage of manpower. Informational briefings and oversight hearings held discussions of CQA's urgent need for more uniformed customs officers to cover the porous borders.

Without much knowledge of statutory authority with regards to CQA's funding, one would quickly assume that CQA is one of many agencies in line to the legislature to plea for more appropriations. As described herein this report, CQA is unique and likewise is its funding. The agency was designed by law to be a self-sustaining agency that is autonomous from the General Fund and immune to the fiscal climate of the rest of the government. It was not only given the power to generate its own funding, it was given the responsibility to adjust its revenue streams to continue to meet operational costs throughout time. However, as evident in the continued public discussions of manpower and funding shortage, CQA does not live up to the expectation of being self-sustaining.

Public Law 22-112 was passed in 1994 as an act to separate CQA from the Department of Commerce as a line-agency of the Government of Guam with the intent of being able to address the agency's needs more directly. The reorganization effort stemmed from longstanding

operational deficiencies caused by inadequate funding and lack of proper management (22nd Guam Legislature Committee on Economic-Agricultural Development and Insurance, 1994).

**Customs and Quarantine Inspection Services Charge (CAQISC).** Initially established by Public Law 23-45 and finalized with Public Law 23-96, the CAQISC is the source of funding for CQA (23rd Guam Legislature , 1996). The CAQISC was established as a user fee to be collected at the airport and at the commercial port respectively to recover costs of operations for CQA and to allow the agency to be “autonomous of the General Fund and better strengthen drug enforcement and other customs services” (Siquenza, 1996). The cost recovery program, ever since, has been the primary way for CQA to fund its operations. The language of the law (5GCA §§73145, 73151) requires that CQA, through regulation, periodically reviews and adjusts the rates to capture the cost of operation. Additionally, fees collected for services are supposed to recover costs of operations that are related to such services. In other words, the Air Passenger Inspection fee collected from air carriers for passenger inspection services is supposed to only cover the costs of services related to the inspection of passengers at the airport. The same applies for Air Cargo fees, Maritime Passenger inspection fee, and Maritime Cargo fees (cite source – GCA).

A 2001 study on CQA’s fee structure found that while the passenger fee at the airport was able to recover costs of operations specific to passenger inspections, 70% of Air Cargo costs weren’t recovered and 47% of Maritime operational costs weren’t collected by Maritime inspection fees. The study also found that some services did not have corresponding fees. This included the inspection and clearance of government mail, and vessel inspections (KPMG Consulting/Guam Systems Consulting, 2001). What this means is that while the agency should

not be able to justify paying for personnel time used to inspect vessels with Air Cargo proceeds, they do not have a specific fee to recover the cost of vessel inspections.

Further, on several fiscal years, General Funds have subsidized CQA's expenditures because revenues were not adequate. The table below shows General Fund subsidy payments in Fiscal Years 2009, 2010, and 2011. Strongly emphasized, the legislature found "any General Fund subsidy to Customs and Quarantine unacceptable given the scarce General Tax Revenue resources available..." (P.L. 31-233)

Table 6: *General Fund Subsidy Payments for Fiscal Years 2009, 2010, and 2011*

| Fiscal Year  | Revenues             | Expenditures         | General Fund Subsidy Payments |
|--------------|----------------------|----------------------|-------------------------------|
| 2009         |                      |                      | 2,257,142.00                  |
| 2010         | 8,235,976.32         | 10,437,266.00        | 2,195,448.00                  |
| 2011         | 8,692,867.12         | 11,825,979.00        | 3,264,296.00                  |
| <b>Total</b> | <b>16,928,843.44</b> | <b>22,263,245.00</b> | <b>7,716,886.00</b>           |

Source: Guam Public Law 31-233

The CAQISC was last increased in 2013 from \$6.36 to \$8.29 (Perez, 2018). The fee had increased once in 2013, 16 years after its inception. Based on the CAQISC mechanism, this would mean that wages, visitor arrivals, cargo imports have been stagnant most of the time. As indicated by CQA in legislative briefings and roundtable discussions, this is not the case. In fact, CQA had indicated that the demand for service has increased while the agency continues to see a decrease in manpower (from 232 in 1998 to 103 in October 2018) (Guam Legislative Media, 2018). During the budget calls for FY2019, CQA put forth a \$34-million budget request that included sustaining robust operations as well as modernization initiatives. The 34<sup>th</sup> legislature

only authorized \$14 million in FY2019 (Guam Legislative Media, 2018; also, Taijeron, 2018 and Perez, 2018). A status-quo budget has limited CQA from hiring additional personnel.

### **Need for Continuous Support from All Stakeholders**

Many of the issues discussed here are not discoveries. They are problems that have been identified since the inception of CQA in 1994. During the public hearing of Public Law 22-112, Darlene Merfarlen, then Customs Officer II, expressed that the “existing policies and procedures were vague and confusing and that their implementation and applications lacked consistency. Regulations enforced by Guam Customs needed to be amended (22nd Guam Legislature Committee on Economic-Agricultural Development and Insurance, 1994). In an informational hearing at the Guam legislature, Col. Phil Taijeron explained that laws were copied and pasted from 19 U.S.C back in 1989 and that the need for policy update requires a collaborative effort. (Guam Legislative media, 2017)

The various proposals from CQA as well as the bills passed that are relative to CQA further show that issues like the ones discussed in this paper are well-known and that attempts have been made to address them. Bill 302-32 received popular support in the committee but was never heard of again.

Col. Taijeron has emphasized that successful changes are results of collaborative efforts. “Whenever such attempts are unsuccessful, it is mostly due to the changing leadership within CQA, as well as change in the leadership of the island” (2018). The issues of CQA are multi-layered and complex as they range from trade and economics to law enforcement. It is reasonable to assume that whenever a new leadership takes over, ample time is required to gain insights of the subject to a level that is sufficient to base sound decisions on.

**Successful Reform: Lessons learned.** Hors (2001) reviewed cases of customs reforms and identified contributing factors to success as well as factors of failure. In the study, Hors closely studied the reform experiences of three developing countries: Pakistan, Bolivia, and the Philippines. Among the three, Pakistan and Bolivia's experiences were unsuccessful while Philippines was successful (Hors, 2001).

The Philippines Customs Bureau was very conducive to fraud and corruption. Import and exemption laws as well as procedures were unclear and there were significant deficiencies. The bureau was also underfunded and had insufficient revenue collection. The primary objective of the reform program was to make tax collections more efficient as well as getting rid of the corruption (Hors, 2001, p. 50).

Hors identified four key factors that led to reform success in the Philippines. First, the content of the reform program, the phased approach of the implementation of the reform, a "strong commitment and support of the highest political level" and the facilitating environment (Hors, 2001, p. 45). In her recommendations for managing reform, Hors explained that first there needs to be a transparent design and implementation process. Second, the close involvement and support of private businesses in the design and the implementation phases is required as well as strong and continuous support from political leaders. Then, progressive steps should be taken instead of complete restructuring. Finally, securing computer systems was a significant factor in managing reforms (Hors, 2001, pp. 51-52)

## Conclusion

CQA needs modernization to effectively meet its mission of protecting Guam's borders as well as ensuring the smooth flow of trade and commerce. It also needs the proper tools to efficiently use its limited resources.

By acquiring an automation system, CQA can have a force multiplier that allows better data collection, risk analysis, and effective tax collection. With automation, CQA can require advance manifests to allow the agency to better plan for the effective use of manpower and other limited resources. Updated penalties with a penalty process in place allow CQA to deter illicit trade while providing additional revenue. Penalties must also be accompanied by the establishment of an appraisal system to have consistent and fair values to base fines schedule. The establishment of values will also help with the assessment of taxes.

Giving CQA the authority to perform asset forfeiture empowers CQA to stop the import of drugs and sever the operations behind drug trades. On the other hand, establishing clear bonds policies, CQA will protect its revenues while fostering smoother flows of cargo through the borders.

While modernization is vital to the effective administration of CQA, immediate issues need to be addressed. First, there needs to be a review of the current cost-recovery program, and necessary changes need to be made so that CQA can truly meet the intent of being self-sufficient. With all the information available, a strategic reform plan needs to take place. In taking lessons from the Philippines Customs bureau case, CQA needs a transparent strategic plan that lays out issues to be addressed as well as a clear implementation plan. Further, CQA needs to plan gradual implementation rather than a holistic approach. Finally, successful reform requires

strong and continuous support from political leaders as well as a strong involvement from private stakeholders.

## Appendix A

## CBP Partner Agencies using ACE

|   |  |
|---|--|
| <p><b>DEPARTMENT OF AGRICULTURE</b></p> <p>AMS   Agricultural Marketing Service<br/> APHIS   Animal and Plant Health Inspection Service<br/> FAS   Foreign Agricultural Service<br/> FSIS   Food Safety and Inspection Service<br/> GIPSA   Grain Inspection, Packers &amp; Stockyards Administration</p> | <p><b>DEPARTMENT OF JUSTICE</b></p> <p>ATF   Bureau of Alcohol, Tobacco, Firearms and Explosives<br/> DEA   Drug Enforcement Administration</p>  |
| <p><b>DEPARTMENT OF COMMERCE</b></p> <p>BIS   Bureau of Industry and Security<br/> U.S. Census Bureau<br/> FTZB   Foreign Trade Zones Board<br/> E&amp;C   Enforcement and Compliance<br/> OTEXA   Office of Textiles and Apparel<br/> NMFS   National Marine Fisheries Service</p>                       | <p><b>DEPARTMENT OF LABOR</b></p> <p>BLS   Bureau of Labor Statistics</p>  |
| <p><b>DEPARTMENT OF DEFENSE</b></p> <p>USACE   Army Corps of Engineers<br/> DCMA   Defense Contracts Management Agency</p>  | <p><b>DEPARTMENT OF STATE</b></p> <p>A/LM   Bureau of Administration, Office of Logistics Management<br/> DDTC   Directorate of Defense Trade Controls<br/> OES   Bureau of Ocean and International Scientific Affairs<br/> OFM   Office of Foreign Missions</p>   |
| <p><b>DEPARTMENT OF ENERGY</b></p> <p>OFE   Office of Fossil Energy<br/> EIA   Energy Information Administration<br/> OGC   Office of General Counsel</p>   | <p><b>DEPARTMENT OF TRANSPORTATION</b></p> <p>BTS   Bureau of Transportation Statistics<br/> FAA   Federal Aviation Administration<br/> FHA   Federal Highway Administration<br/> FMCSA   Federal Motor Carrier Safety Administration<br/> FRA   Federal Railroad Administration<br/> MARAD   Maritime Administration<br/> NHTSA   National Highway Traffic Safety Administration<br/> PHMSA   Pipeline Hazardous Materials Safety Administration</p>    |
| <p><b>DEPARTMENT OF HEALTH AND HUMAN SERVICES</b></p> <p>CDC   Centers for Disease Control and Prevention<br/> FDA   Food and Drug Administration</p>   | <p><b>DEPARTMENT OF TREASURY</b></p> <p>IRS   Internal Revenue Service<br/> OFAC   Office of Foreign Assets Control<br/> TTB   Alcohol and Tobacco Tax and Trade Bureau<br/> FinCEN   Financial Crimes Enforcement Network</p>   |
| <p><b>DEPARTMENT OF HOMELAND SECURITY</b></p> <p>USCG   United States Coast Guard<br/> CBP   Customs and Border Protection<br/> TSA   Transportation Security Administration</p>  | <p><b>INDEPENDENT AGENCIES</b></p> <p>CPSC   Consumer Product Safety Commission<br/> EPA   Environmental Protection Agency<br/> EXIM   Export Import Bank<br/> FCC   Federal Communications Commission<br/> FMC   Federal Maritime Commission<br/> ITC   International Trade Commission<br/> NRC   Nuclear Regulatory Commission<br/> USAID   U.S. Agency for International Development<br/> USTR   Office of the United States Trade Representative</p> |
| <p><b>DEPARTMENT OF THE INTERIOR</b></p> <p>FWS   Fish and Wildlife Service</p>   |  |

Source: www.cbp.gov

## Appendix B

*Visitor Arrival Data from Guam Visitors Bureau by month, 2013-2017*

| Month     | Visitor Arrivals |           |           |           |           |
|-----------|------------------|-----------|-----------|-----------|-----------|
|           | 2013             | 2014      | 2015      | 2016      | 2017      |
| January   | 116,558          | 116,588   | 116,558   | 117,076   | 118,501   |
| February  | 122,072          | 112,129   | 122,072   | 117,032   | 126,080   |
| March     | 136,728          | 126,376   | 136,728   | 131,253   | 132,334   |
| April     | 91,499           | 87,806    | 91,499    | 98,822    | 96,241    |
| May       | 86,170           | 82,697    | 86,170    | 90,651    | 96,873    |
| June      | 99,150           | 94,948    | 99,150    | 102,793   | 101,047   |
| July      | 111,307          | 111,970   | 111,307   | 109,752   | 115,091   |
| August    | 134,355          | 131,988   | 134,355   | 133,237   | 135,498   |
| September | 108,635          | 112,342   | 108,635   | 112,531   | 120,922   |
| October   | 104,334          | 90,276    | 104,334   | 103,961   | 112,292   |
| November  | 109,133          | 99,345    | 109,133   | 106,130   | 121,752   |
| December  | 117,724          | 103,696   | 117,724   | 119,841   | 132,419   |
| Total     | 1,337,665        | 1,270,161 | 1,337,665 | 1,343,079 | 1,409,050 |

*Note:* Data collected from Guam Visitors Bureau website (retrieved from <https://www.guamvisitorsbureau.com/research-and-reports/research/visitor-arrival-statistics>)

Average monthly arrival of 111,627 is calculated from 2013 to 2017 numbers.

Appendix C

CBP Penalties Process

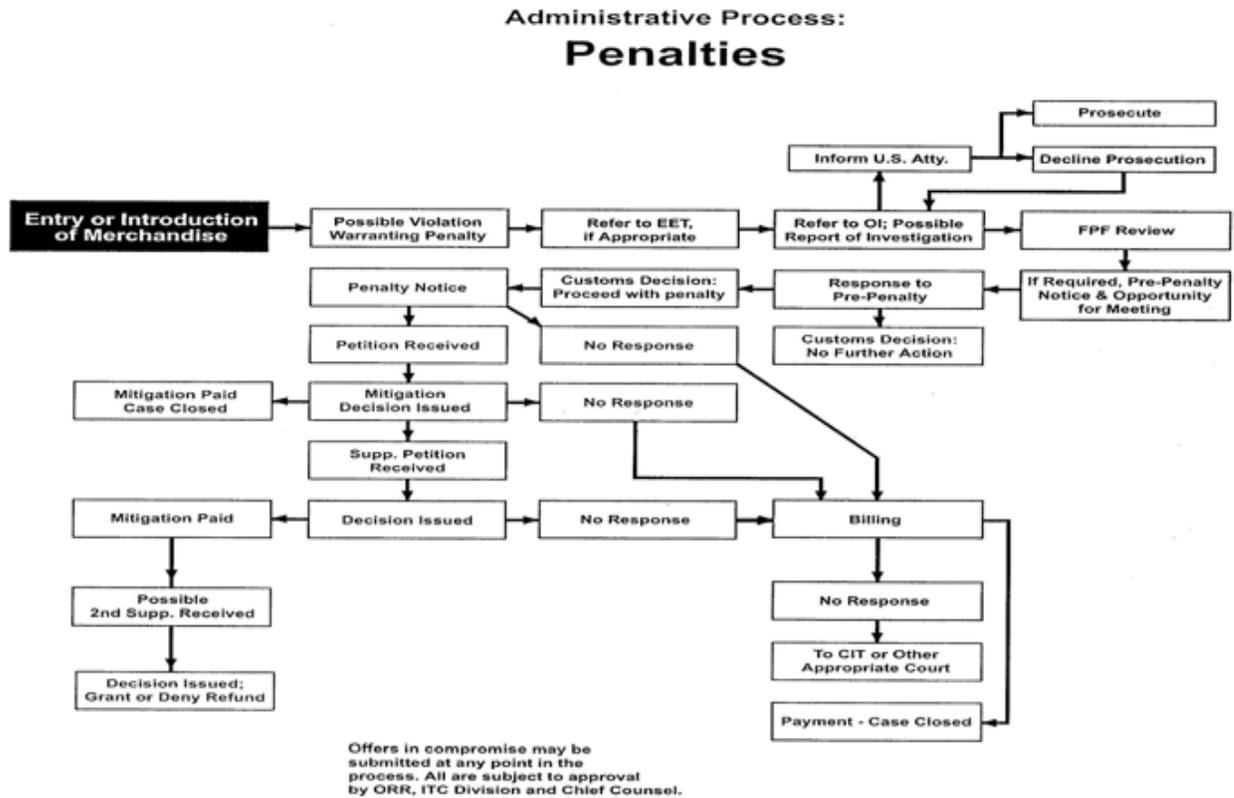


Figure 1. U.S. Customs and Border Protection Administrative Process for Penalties (from US Customs and Border Protection, 2004, p.39)

## Appendix D

## Asset Forfeiture Recommended Legislation

**AN ACT TO ADD CHAPTER 74 TO PART 2, DIVISION 7 OF TITLE 5, TO REPEAL § 6604 OF TITLE 11, AND TO AMMEND § 6603(c), ALL OF THE GUAM CODE ANNOTATED, RELATIVE TO CREATING THE GUAM CUSTOMS FORFEITURE FUND AND ASSET FORFEITURE, AND FOR OTHER RELATED PURPOSES.**

**BE IT ENACTED BY THE PEOPLE OF GUAM:**

**Section 1. Legislative Findings and Intent.**

*I Liheslaturan Guåhan* finds the need to enable the Guam Customs and Quarantine Agency the authority to conduct asset forfeiture operations to disrupt and stem the increase of criminal activity in Guam. This would grant the Guam Customs and Quarantine Agency similar authority already given to law enforcement bodies such as the Guam Police Department, the US Immigration & Customs Enforcement, and the CNMI Division of Customs Service.

*I Liheslaturan Guåhan* finds that asset forfeiture is necessary to enforce Customs law for violations that target our borders and ports of entry and prevent further criminal activity that occur within our borders. By denying a person's right to property gotten by ill-gotten gains, criminals are less engaged to commit crimes knowing that the stakes are higher of losing out on their financial gains. Asset forfeiture is critical to target material instruments earned from violations of Customs law and to further dismantle criminal enterprises that thrive from these activities.

*I Liheslaturan Guåhan* finds the need to provide additional resources for the *exclusive* use of the Guam Customs and Quarantine Agency for, including, but not limited to, personnel; facilities; and equipment. This lack of funding for such inhibits the customs officers from effectively performing their jobs, and compromises community safety.

Therefore, it is the intent of *I Liheslaturan Guåhan* to ensure that the officers from the

Guam Customs and Quarantine Agency are granted the necessary authority for asset forfeiture and are able to properly perform their duties and responsibilities to the Public, by providing them ways to set aside funds for future hires of personnel, training, enhancement of facilities, and purchasing of equipment posture.

*I Liheslaturan Guåhan* intends to create a fund, which would set aside proceeds from the following, but not limited to: the sale of vessels, material instruments, as well as tainted cash, to be utilized for future hires of personnel, training, enhancement of facilities, and purchasing of equipment posture, as well as other needs of the Agency.

**Section 2.** Chapter 74 is hereby *added* to Part 2, Division 7 of Title 5 of the Guam Code Annotated to read as follows:

#### **CHAPTER 74.**

##### **Customs Forfeiture Fund and Asset Forfeiture.**

|                       |   |
|-----------------------|---|
| <b>Section 74100.</b> | <b>Creation of Fund.</b>                          |
| <b>Section 74101</b>  | <b>Items Subject to Forfeiture.</b>               |
| <b>Section 74102.</b> | <b>Procedure.</b>                                 |
| <b>Section 74103.</b> | <b>Custody.</b>                                   |
| <b>Section 74104.</b> | <b>Assets Forfeited.</b>                          |
| <b>Section 74105.</b> | <b>Deposit.</b>                                   |
| <b>Section 74100.</b> | <b>Creation of Fund.</b> There is hereby created, |

separate and apart from other funds of the government of Guam, a fund to be known as the '*Customs Forfeiture Fund*' ('Fund'), which shall be divided into two (2) accounts; one account to be known as the '*Customs Local Forfeiture Account*' ('CLFA'), and the other account to be known as the '*Customs Federal Shared Assets Forfeiture Account*' ('CFSafa').

The Fund shall *not* be commingled with the General Fund and shall be kept in a separate bank account, administered by the Director of Guam Customs and Quarantine Agency ('Director'). Expenditure from the Fund shall be authorized by legislative appropriation *exclusively* for the purposes pursuant to §§ 74103(a) and (b) of this Act.

**Section 74101. Items Subject to Forfeiture.** Any property subject to forfeiture under this Act may be seized by CQA upon process issued by the Superior Court, except that seizure without such process may be made when:

- (a) all controlled substances which have been or are intended to be manufactured, distributed, dispensed, acquired or held in violation of the provisions of this Act;
- (b) all raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing or exporting in violation of the provisions of this Act;
- (c) all property which is used, or intended for use, as a container for property described in subsection (a) and (b);
- (d) All conveyances, including aircraft, vehicles, or vessels, which are used, or are intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of property described in subsections (a) or (b) of this section, except that:

- (1) no conveyance used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this Act, unless it shall appear that the owner or other person in charge of such conveyance was a consenting party or privy to a violation of this Act; and

(2) no conveyance shall be forfeited under the provisions of this Section by reason of any act or omission established by the owner thereof to have been committed or omitted without his knowledge or consent;

(3) a forfeiture of a conveyance encumbered by a bona fide security interest of the secured party if he neither had knowledge of nor consented to the act or omission.

(e) all books, records and research, including formulas, microfilm, tapes and data which are used, or intended for use, in violation of this Act;

(f) all moneys, negotiable instruments, securities or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this Act, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, securities used or intended to be used to facilitate any violation of this Act, shall be forfeited to the criminal justice agency making the seizure; and

(g) all firearms which are visible, carried during or used in furtherance of a violation of this Act.

**Section 74102. Procedure.** Any property subject to forfeiture under this Act may be seized by Guam Customs and Quarantine Agency upon process issued by the Superior Court, except that seizure without such process may be made when:

(a) the seizure is incident to an arrest or a search during a border crossing or port of entry;

(b) the seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(c) the property subject to seizure has been the subject of a prior judgment in a

criminal injunction or forfeiture proceeding based upon this Act;

(d) Guam Customs and Quarantine Agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(e) Guam Customs and Quarantine Agency has probable cause to believe that the property has been used or intended to be used in violation of this Act.

(f) In the event of seizure pursuant to this Subsection, proceedings under Section 74103 shall be instituted promptly.

**Section 74103. Custody.** Property taken or detained under this Section shall not be repleviable; but shall be deemed to be in the custody of the Guam Customs and Quarantine Agency only to the orders and decrees of the Court. Whenever property is seized under the provisions of this Act, Guam Customs and Quarantine Agency may:

- (a) place the property under seal; or
- (b) remove the property to a place designated by him.

**Section 74104. Assets Forfeited.** Whenever property is forfeited under this Act, the Guam Customs and Quarantine Agency may:

- (a) retain the property for official use;
- (b) subject to any other applicable laws, sell any forfeited property which is *not* required to be destroyed by law and which is *not* harmful to the public; *or*
- (c) require the property to be taken into custody and removed for disposition in accordance with law.
- (d) forward it to any local or federal agency for disposition; (including delivery for medical or scientific use to any local agency under regulations of the Guam Attorney General or any federal agency under regulations of the Attorney General of the United States).

**Section 74105. Deposit.**

(a) There shall be deposited into the CLFA all proceeds from the sale of property forfeited under any local law enforced or administered by the Guam Customs and Quarantine Agency, including, but *not* limited to, 5 G.C.A. Chapter 73; 9 G.C.A. §§ 67.401.9, 67.601-2, 67.6014; 9 G.C.A. §§ 47.20-40; 11 G.C.A. § 6602-3.

(b) All proceeds from the sale of forfeited property received by the Guam Customs and Quarantine Agency from any cooperative agreement or memorandum of understanding between the Guam Customs and Quarantine Agency and any other government of Guam entity shall also be deposited into the CLFA.

(c) All proceeds from the sale of forfeited property received by the Guam Customs and Quarantine Agency from any cooperative agreement or memorandum of understanding between the Guam Customs and Quarantine Agency and the Federal government shall be deposited into the CFSAFA.

**Section 74106. Expenditure.**

(a) The CLFA, as appropriated by *I Liheslaturan Guåhan*, shall be *exclusively* used for the following purposes:

- (1) the payment, upon the approval of the Director, of any expenses necessary to seize, detain, inventory, safeguard, maintain, advertise, sell or dispose of property under seizure, detention or forfeited pursuant to law enforced or administered by the Guam Customs and Quarantine Agency, or of any other necessary expense incident to the seizure, detention, forfeiture or disposal of such property
- (2) for the training and professional development of personnel;
- (3) to develop and maintain facilities utilized by the Guam Customs &

Quarantine,

(4) for the purchase of equipment for the Guam Customs & Quarantine Agency; or as deemed necessary by the Director; *or*

(b) The CFSAFA shall be expended as authorized by the Federal government guidelines that govern the acquisition, use and reporting of forfeited assets.

**Section 79107. Report.** The Director shall transmit to *I Maga'lagen Guåhan* and to *I Liheslaturan Guåhan*, no later than thirty (30) days after the end of each fiscal year, a detailed report of each account of the Fund as follows:

(a) the estimated total value of property forfeited under any law enforced or administered by the Guam Customs & Quarantine Agency with respect to which funds were *not* deposited into the Fund;

(b) each account's beginning balance on October 1 of each year;

(c) sources of receipts (seized cash, conveyances and others);

(d) the net amount realized from the year's operations, amount of seized cash being held as evidence, and the amount of money legally allowed to be carried over the following year;

(e) year-end of each account balance;

(f) a report for such fiscal year, containing financial statements, reviewed by the Public Auditor, and an audited report every three (3) years, including profit and loss information with respect to forfeited property (by category), and financial information on forfeited property transactions; *and*

(g) any other pertinent information.

**Section 3.** Section § 6603(c). Penalty of Article 6, Chapter 6 of Title 11 of the Guam Code

Annotated is hereby amended to read as follows:

Any individual who imports tobacco products outside the exemptions identified in this Article shall be imposed a fine of three (3) times the value of the commodity, which shall be determined by the Officer of the Customs and Quarantine Agency at the port of entry. The commodity shall be seized, and the violator of this Section shall be fined an additional three (3) times the value of the current value of the commodity for the cost of storage, destruction, and administrative fees for tobacco exceeding the exemption pursuant to § 47.70 of Chapter 47 of Title 9, Guam Code Annotated. This fee shall be deposited into the '*Customs Local Forfeiture Account*' ('CLFA').

**Section 4. Severability.** *If any provision of this Law or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provisions or applications of this Law which can be given effect without the invalid provisions or application, and to this end the provisions of this Law are severable.*

## Appendix E

**AN ACT TO REPEAL §73125, AND ADD §§XXXXX OF CHAPTER 73, TITLE 5 OF THE GUAM CODE ANNOTATED, RELATIVE TO ESTABLISHING BONDS FOR GUAM CUSTOMS AND QUARANTINE**

**BE IT ENACTED BY THE PEOPLE OF GUAM:**

**Section 1.** §73125 is hereby repealed:

~~When any bond is required by law or regulation to be executed by any partnership for any purpose connected with the transaction of business at any customs house, the execution of such bond by any member of such partnership shall bind the other partners in like manner and to the same extent as if such other partners had personally joined in the execution, and an action or suit may be instituted on such bond against all partners as if all had executed the same.~~

**Section 3.** §XXXXX is hereby added to read:

**§XXXXX Bonds and other Security**

(a) Requirement of bond. In any case in which bond or other security is not specifically required by law, the Director may be authorized to require, such bonds or other security as he may deem necessary for the protection of the revenue or to assure compliance with any provision of law, regulation, or instruction which Customs and Quarantine is authorized to enforce.

(b) Conditions and form of bond Whenever a bond is required under the regulations in this chapter, the Director may require:

(1) Except as otherwise specifically provided by law, prescribe the conditions and form of such bond and the manner in which the bond may be filed with or, pursuant to an authorized electronic data interchange system, transmitted to the Customs and Quarantine, and fix the amount of penalty thereof, whether for the payment of liquidated damages or of a penal sum;

(2) Provide for the approval of the sureties on such bond, without regard to any general provision of law.

(3) Authorize the execution of a term bond the conditions of which shall extend to and cover similar cases of importations over such period of time, not to exceed one year, or such longer period as he may fix when in his opinion special circumstances existing in a particular instance require such longer period.

(4) Authorize, to the extent that he may deem necessary, the taking of a consolidated bond (single entry or term), in lieu of separate bonds to assure compliance with two or more provisions of law, regulations, or instructions which the Director or the Customs and Quarantine is authorized to enforce. A consolidated bond taken pursuant to the authority contained in this subsection shall have the same force and effect in respect of every provision of law, regulation, or instruction for the purposes for which it is required as though separate bonds had been taken to assure compliance with each such provision.

(c) Cancellation of bond. The Director may authorize the cancellation of any bond provided for in this section, or of any charge that may have been made against such bond, in the event of a breach of any condition of the bond, upon the payment of such lesser amount or penalty or upon such other terms and conditions as he may deem sufficient. In order to assure uniform, reasonable, and equitable decisions, the Director shall publish guidelines establishing standards for setting the terms and conditions for cancellation of bonds or charges thereunder.

(d) Deposit of money or obligation of United States in lieu of bond. The Director is authorized to permit the deposit of money or obligations of the United States, in such amount and upon such conditions as he may by regulation prescribe, in lieu of sureties on any bond required or authorized by a law, regulation, or instruction which the Director or the Customs and

Quarantine is authorized to enforce.

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