

Importing Food: Brokers Point of View



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A Word About Brokers



Merchandise arriving in the United States by commercial carrier must be entered by the owner, purchaser, consignee his or her authorized regular employee, or by a licensed customs broker designated by the owner, purchaser, or consignee.

*US Customs brokers are the only persons who are authorized by the tariff laws of the United States to act as **agents** for importers in the transaction of their customs business. Customs brokers are private individuals or firms licensed by CBP to prepare and file the necessary customs entries, arrange for the payment of duties found due, take steps to effect the release of the goods in CBP custody, and otherwise represent their principals in customs matters.*

Before a customs broker may make entry for their customer, a CBP power of attorney must be completed by the person or firm for whom the customs broker is acting as agent.

In addition to filing import documentation with CBP in proper form, many brokers actively participate trade organizations such as the NCBFAA or joint cooperative government councils such as COAC.

Right to Make Entry



Peace Bridge – Ft Erie/Buffalo

Section 484 (Tariff Act of 1930) provides that only the “importer of record” has the right to make entry.

“Importer of Record” is defined as the owner, purchaser, or consignee of the goods, or when designated by the owner, purchaser, or consignee, a licensed Customs broker.

Importer obligations



Must use “reasonable care”
in conducting Customs
business

Must check the work of their
agents

Ultimately responsible for
the acts of employees and
agents

ACE vs: ACS

ACS (Automated Commercial System):

The Automated Commercial System (ACS) has been in operation for over 25 years and was the comprehensive system used by U.S. Customs and Border Protection to track, control, and process all commercial goods imported into the United States. While it was an advancement over the previous method, it was still very much a paper based and manual document submission system.

ACE (Automated Commercial Environment):

Through ACE using a “Single Window”, manual processes will be streamlined and automated, paper will be eliminated, and the international trade community will be able to more easily and efficiently comply with U.S. laws and regulations.

ACE vs: ACS

What does this transition mean for importers?

- Paper is being phased out and electronic transmission of information for import purposes is becoming mandatory
- Goal is to have a “single window” for “most” government agencies
- Government “contact” will also be electronic only so access to ACE portal very important***
- Unless all information has been electronically submitted in a timely fashion, goods will not be released, and/or entry may be rejected

*** This could mean broker is cut out of after entry communications so importer may lose that “interface”.

What do I need to start the import process?

Questions to be answered:

- Am I the producer or grower?
- What kind of product do I want to import?
- What is the FDA product code?
- Does my product require registration?
- Do I or any parties to the proposed transaction need to register?
- Does my product have special documentary requirements?
- Is my product subject to any special review?
- Am I or is the manufacturer of my product under special review?



What do I need to start the import process?

Facility Registration Requirements:

- Domestic and foreign facilities that manufacture, process, pack, or hold foods for human or animal consumption in the US must register unless:
 - Nonprofit facilities
 - Retailers
 - Farms
 - Restaurants
 - Fishing vessels
 - Facilities under the exclusive jurisdiction of the Dept of Agriculture (for example meat, poultry, eggs)



Minimum Steps to take in the import process?

- 1) Choose a qualified broker early on
- 2) Be prepared to discuss the “facts”
- 3) Broker will need a power of attorney
- 4) Importer will need an import bond
- 5) Importer will likely be vetted financially by broker before an account is set up
- 6) Importers, manufacturers, processors, packers must register with FDA
- 7) Goods to be imported should be classified prior to shipping
- 8) Product codes must be determined
- 9) Labeling should be verified as being acceptable
- 10) Prior notice of arrival is mandated



Minimum Steps to take in the import process?

What is prior notice?

The following information must be electronically sent to the FDA prior to arrival of the goods

Country of origin

Country of export

US port of arrival

CBP entry type and date

All carriers

Firm name and address

Email address along with telephone and fax

Registration number

Carrier abbreviation code



Minimum Steps to take in the import process?

Prior notice time limits

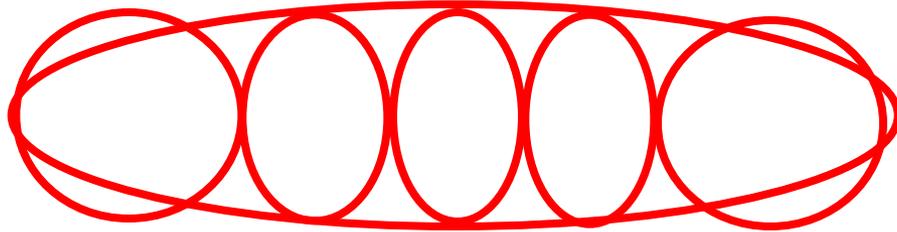
Truck shipment	2 hours prior to arrival
Air/Rail	4 hours prior to arrival
Vessel	8 hours prior to arrival



FDA Product Codes

03AGT12

White Bread/Plastic Bag



7 Characters

5 Distinct Elements

- Industry
- Class
- Subclass
- PIC (Process Indicator)
- Product



PREDICT



- Targeting software
- Smart programming
- Database mining
- Assigns risk



Food Safety Modernization Act of 2011



Major provisions

- Facility registration
- Hazard analysis
- Record keeping
- Foreign supplier verification
- Fees
- Certifications
- Inspections

Food Safety Modernization Act of 2011



Mandatory recall authority

- Voluntary procedures
- Order to cease distribution
- Informal hearing
- Recall order
- Failure to comply
- Recalled in error

Food Safety Modernization Act of 2011



Fees

- Re-inspection (facility)
- Re-inspection (port of entry)
- Recall

Foreign Supplier Verification Plan



Program for importers covered by plan responsible for:

- Determining known or foreseeable hazards
- Evaluate risk based on hazard analysis
- Verify foreign suppliers based on above
- Conduct supplier verifications
- Establish and follow written procedures to import food only from approved suppliers
- Develop, maintain, and follow program for each imported food
- Reevaluate at least every 3 years or more often when appropriate

What kind of Facility am I?



Standards for Produce Safety

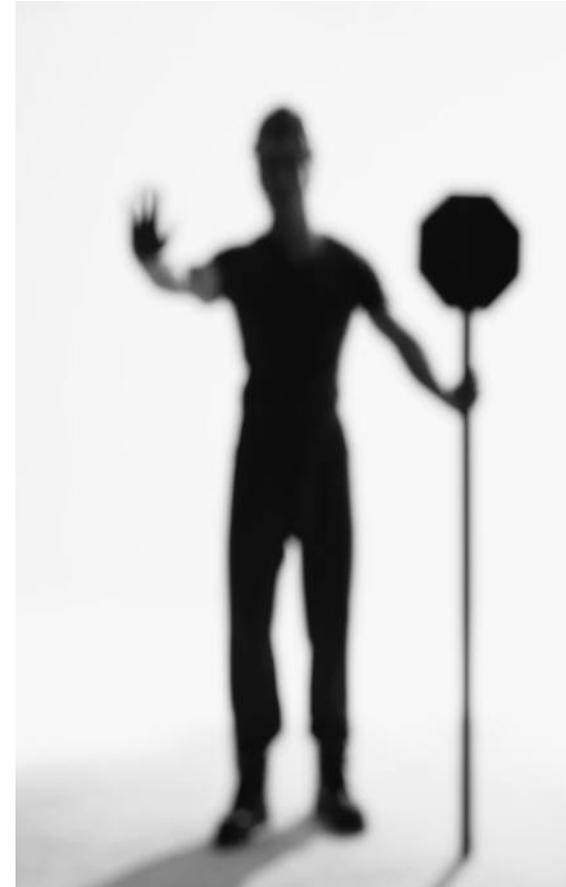


Hazard Analysis and Risk-Based
Preventive Controls

<http://www.fda.gov/Food/GuidanceRegulation/FSMA/default.htm>

My product is being held up by FDA

- Talk to your broker NOT normally the “brokers fault”
- PREDICT scores
 - History of parties to transaction
 - Accurate data
 - Risky products
 - Type of process
 - Type of packaging
 - Inherent risk
 - Origin of product
- Natural Disasters
- Import Alerts
- Targeted Commodities



Penalties/Investigations

In 2014 Sysco Corp. was fined \$19.4 million for storing perishable food in unrefrigerated outside storage units

In 2015 Chipotle Mexican Grill was placed under investigation for listeria contamination with more than 200 sickened

In 2015 Blue Bell Creameries was placed under investigation for listeria contamination with 3 deaths

In 2015 principals and a food broker of the Peanut Corp of America were convicted due to a 2009 outbreak of salmonella tainted peanuts that resulted in 9 deaths and 700 illnesses. Convictions resulted in sentences of between 3 and 28 year prison terms

Be prepared

Engage your service provider early on.

Do your homework before you ship.

Provide clear and accurate information.

Ensure all data needed to enter your goods is provided prior to arrival at the border and in accordance with prior notice time requirements.

Don't guess.

Choose your carrier wisely.

Remember the importer of record is legally liable for any and all problems and errors.

Penalties and liquidated damages may be very high.

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