



# **The U.S. Import Process and Reasonable Care**

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# Reasonable Care

- What is it?
- What does it mean to me?
- Dealings with your customs broker.
- Relationships with your suppliers and customers – contracts, training

# What Is It?

- Importer must exercise *reasonable care* to:
  - enter, classify and determine the value of imported merchandise
  - **and to provide any other information necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements have been met.**

# Short List (continued)

- **Country of Origin** – verification of place harvested, mined, or manufactured (not place of shipment) – admissibility (is the good and/ or country of origin subject to restrictions trade preferences and statistical reporting).
- **Conditional and Preferential Duty Regimes** – procedures to ensure all requirements are met for conditional tariff provisions, e.g., NAFTA, USGR and actual use tariff provisions.
- **Other Agency Requirements** – FDA, FCC, EPA, NHTSTA.
- **Record Keeping.**

**What Every Importer Should Know About: Reasonable Care (A Checklist for Compliance)**

[http://www.cbp.gov/linkhandler/cgov/trade/legal/informed\\_compliance\\_pubs/icp021.ctt/icp021.pdf](http://www.cbp.gov/linkhandler/cgov/trade/legal/informed_compliance_pubs/icp021.ctt/icp021.pdf)

# Short List Import Compliance & *Reasonable Care*

- **Documentation** – review by *Responsible* and *Knowledgeable* person to ensure accuracy and completeness.
- **Expertise** - use of “customs expert” – person knowledgeable of customs laws, i.e., customs broker, attorney or accountant.
- **Classification** - reliable procedure to ensure proper tariff classification.
- **Valuation** – reliable procedure to ensure correct valuation, generally complete price and any assists (costs not in the price but statutorily part of the value).

# What Does It Mean Me?

- What's the big deal? – my goods are duty free under NAFTA.
- Customs penalties for improper entry of duty free goods can be significantly higher than for dutiable goods.
- Responsible Employees – are they experts, properly trained?

# Relationships with Suppliers and Customers

# Suppliers and Customers

- Incoterms
- Purchase agreements, contracts and purchase orders – specialized customs clauses are helpful.
- Training and due diligence.

# Sample Purchase Agreement Clause

- Purpose of clause is to make seller's customs obligations clear, help insure accurate information is provided for customs purposes, documentation required for obtaining preferential duty treatment, and to define buyers rights, including rights to duty drawback.

### **Sample Customs Contract Clause**

Seller will provide to Buyer and the appropriate governmental agency the documentation necessary to determine the admissibility and the effect of entry of the goods into the country in which the goods are delivered to Buyer and all other information and documentation required by law or regulation or otherwise necessary to determine the proper duty to be paid upon the importation of the goods or to obtain any refunds or drawbacks of duties paid.

Seller will provide to Buyer all data and documentation required by law or regulation to establish the preferential origin of goods that qualify for preferential duty treatment in the country of destination.

Seller will promptly notify Buyer in writing of material or components used by Seller in filling this order, which Seller purchases in a country other than the country in which the goods are delivered to Buyer. Seller will furnish Buyer with any documentation and information necessary to establish the country of origin or to comply with the applicable country's rules of origin requirements.

# Role of the Customs Broker

- What is your role with the customs broker
- Import portal and data exchange. Intermediary?  
Customs expert
- Import compliance expectations
- Written procedures.
- Don't assume that the supplier will furnish the proper information/data.
- Don't assume the broker knows what you are importing and if the price is the proper customs value.
- Use a customs expert - engage the customs broker for its experience and expertise

# Other Concerns

Personal Liability – broad scope of customs penalty statute (19 USC 1592 (a)(1)(A)).

Trek Case (United States v. Trek Leather, Inc. – CBP successfully sought recovery of withheld duties and penalties from a party other than the importer, the president and owner of Trek.

# Formalizing Import Compliance

- Is there a detailed process in writing?
- Is there a process to determine proper tariff classifications, customs values, capturing of assists, and insuring entry data is correct – descriptions, quantities, values?
- Has senior management formally adopted it? Have a company policy and create customs procedures that are adopted as company procedures, such as ISO or equivalent standards.
- Is the policy and procedure communicated to those in the organization who need to be aware of it, and outside parties, e.g. suppliers, brokers and carriers.

# Formalizing Import Compliance

- Are the employees responsible for customs matters knowledgeable of the customs regulations? Do they receive recurring training?
- Are experts used to advise on tariff classification, customs values and other customs requirements.
- Is the process tested periodically?
- Are adjustments made to procedures based on testing results?
- Customs reporting, unlike tax reporting which is done on a periodic basis, is on a transaction by transaction basis. Customs expects each transaction be completed without error.

# Some Parting Thoughts

An import compliance program may help to :

- ensure that import, export and FDA compliance fit together for better overall informed compliance.
- minimize the occurrence of so called “random” intensive customs examinations designed to get the attention of careless importers.
- minimize the effects (time, resources, fines, professional fees) of government enforcement and penalty actions.
- provide a better basis for a working relationship with CBP, if a compliance issue (*government enforcement actions are adversarial by nature*). Companies with formal compliance policies and programs tend to be seen in a better light by government agencies than those that have no program or merely give lip service to compliance.

# Contact Information

Feel free to contact me if you have questions or wish additional information.

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