

BUILDING A STRONG IMPORT COMPLIANCE PROGRAM

through Reasonable Care

INTRODUCTION

Exercising reasonable care is critical to the development of a robust compliance program.

Reasonable care is a legal term defined as “such degree of care, precaution or diligence as may be fairly and properly expected or required having regard to the circumstances surrounding the transaction.” The lack of reasonable care is negligence, which can cause delays in cargo release and costly penalties.

Under the law, the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met.

The following information can help you determine whether you are exercising reasonable care through your compliance program.

Your Overall Import Program

- *Do you have a “designated owner” of your import compliance program? If not, who is responsible to receive and respond to correspondence from Customs?*
- *How many shipments do you import per year? From how many suppliers? From how many countries? Do you also receive express courier shipments?*
- *What ports of entry are used?*
- *How many Customs brokers do you have? Can you produce all powers of attorney?*
- *Who writes your Customs bond? Can you produce your bond copy?*

Classification

- *Are you providing a complete and accurate description of your imported merchandise on the commercial invoice? Is there enough information on the invoice to determine the correct classification? Proper classification will prevent errors in duty payments and result in fewer clearance delays.*
- *Do you have the resources available and the controls in place to ensure classification accuracy? Maintaining a parts database with the tariff number is crucial.*
- *If you import merchandise duty-free or at a reduced rate under a special program (NAFTA, GSP, etc.), how do you verify that the merchandise actually qualifies? Make sure you have all the necessary documentation to support a free trade agreement claim.*
- *Do you have binding rulings for your merchandise? Rulings are very helpful if the classification is in question.*

Country of Origin

- *Have you taken the proper measures to ascertain the correct country of origin for your imported product? As the importer, you are responsible for knowing where your goods are made.*

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- Do you know how your goods are made, and by whom? This is critical if you are claiming a free trade agreement.
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- Have you established reliable procedures to ensure that your imported merchandise is properly marked with the country of origin? Every article of foreign origin entering the United States must be legibly, permanently and conspicuously marked with the English name of its country of origin. Have you communicated marking requirements to your suppliers?
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Quantity

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- Does your receiving facility communicate piece count discrepancies to you?
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- Are overages and shortages reported to Customs?
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Valuation

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- Have you established reliable procedures to provide Customs with the correct declared value?
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- Have you established procedures to ensure that all required costs or payments have been reported to Customs (packing costs, commissions, assists, indirect payments, royalties, currency adjustments, etc.)?
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- If you purchase from a “related” seller, have you established procedures to ensure that this fact is declared at time of entry and that the declared value meets one of the “related party tests?” The relationship between the buyer and seller must not influence the price.
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- Do you know the terms of sale? The Incoterms used could have a bearing on the entered value declared to Customs and the duties paid.
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Antidumping/Countervailing Duties

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- Do you know if your goods are subject to antidumping or countervailing duties?
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- If so, are you reporting the correct case number and paying the appropriate ADD/CVD rate? The Federal Register is the gold standard for case scopes and information.
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Other Government Agencies

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- Have you taken measures or developed reliable procedures to ensure that your merchandise complies with other agency requirements (FDA, CPSC, USDA, DOT, EPA, ATF, etc.) prior to or upon entry, including the procurement of any necessary licenses or permits?
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Intellectual Property Rights

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- Have you established a reliable procedure to determine whether your merchandise or its packaging bears any trademarks or copyrighted matter, or is patented?
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- If so, do you have a legal right to import those items into the United States?
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Recordkeeping

- *Have you tasked responsible individuals with oversight of recordkeeping?*
- *How does your internal recordkeeping link to the Customs entry number?*
- *Are you maintaining the required records? Importers are required to maintain and produce records required at time of entry. You must also have accounting and financial records that support the value, quantities, classification, and other information shown on Customs entry documents.*
- *Are you maintaining records for the proper period of time? Records should be maintained for five years from the date of entry. For warehouse entries, records must be held for five years from the date of final withdrawal.*
- *Are you maintaining records in a Customs approved medium and location?*
- *Do you have a document destruction policy?*

Post Entry Processes

- *Do you audit Customs entries?*
- *Are entries audited in a timely manner in case a correction is needed?*
- *Who is responsible for responding to Customs inquiries?*
- *Do you analyze CBP Form 28 Requests for Information?*
- *Do you monitor liquidation for shipments when a CBP Form 29 Notice of Action is received?*
- *How do you track liquidations?*
- *Do you know the procedures and timeframes for filing a post summary correction/post entry amendment, protest, or prior disclosure?*
- *When an error is found, are you putting procedures in place to prevent future occurrences?*

These are the primary details to check for when auditing:

▪ **CBP Form 7501 Entry Summary**

- » *Master bill of lading number(s) should match documentation.*
- » *Classification should match internal assigned classification for the part or item.*
- » *Reportable quantity amount should match documentation.*
- » *Valuation should match documentation.*
- » *Country of origin should match documentation.*
- » *Country of export should match documentation.*
- » *The correct party relationship should be reported.*

▪ **Commercial Documentation**

- » *Piece count should match receiving records.*
- » *Piece count should match Purchase Order.*
- » *Declared value should match Purchase Order.*
- » *Declared value should match payment records.*

Conclusion:

We strongly recommend that you exercise reasonable care by developing a reliable and documented compliance program. Designate an “owner” of your program. Train your employees in Customs requirements and audit your Customs entries. Have a good communications system in place to ensure Customs information is readily available. Establish recordkeeping procedures. Be thoroughly familiar with the terms of your transaction – admissibility, description, origin, use, and value.

Above all, seek the advice of an expert, such as a licensed Customs broker, if you need assistance.

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