



Customs: Roadmap for the Unwary Importer

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All merchandise imported into the United States is required to be cleared through U.S. Customs & Border Protection (CBP). Clearance is obtained by filing an “entry” with CBP. In 2021 the United States imported \$2.8 trillion dollars’ worth of goods. The bulk of that cargo arrived on vessels, loaded into 32,970,647 ocean shipping containers. So, there is a reasonably good chance that you have clients who have or may have contact with CBP in regard to the importation of merchandise.

The entry process is heavily regulated and loaded with many pitfalls for the unwary importer. Since passage of the Customs Modernization Act (Mod Act), the watchwords for importer compliance have been “informed compliance” and “reasonable care.” CBP is responsible for providing the trade community with all the information it needs to comply with its legal obligations. The trade community has an obligation to incorporate the compliance information provided by CBP and then to use reasonable care in its dealings with CBP.

There are three primary areas that an importer must focus on when formally entering goods into the United States. An importer must: 1) properly classify the goods imported in accordance with the Harmonized Tariff Schedule of the United States (HTSUS); 2) provide CBP with a proper valuation of the merchandise, specifically the fair market value; and 3) identify and mark the goods with the country of origin of the merchandise.

These three obligations, if handled properly and with reasonable care will likely result in smooth sailing for an importer. Each obligation has a symbiotic relationship with the others. The HTSUS has 99 chapters containing approximately 21,000 items.

Each item indicates the rate of duty associated with that item. The value of the goods combined with the rate of duty allows an importer to calculate the duty owed on a specific shipment. The country of origin also has an impact on the rate of duty. If the item is manufactured in a country with which the United States has a free trade agreement the duty will likely be 0%. If the origin is a country with which the United States is engaged in a “trade war” the duty is likely to be greater than that listed in the HTSUS.

Importers do have tools to help them on the road to “reasonable care”.

1. Virtually all importers rely on the services of federally licensed Customs House Brokers to assist in customs clearance and in determining the proper classification, origin, and valuation of merchandise. CBP takes the position that reliance on a Customs House Broker for advice and guidance is evidence of reasonable care.

2. CBP provides that whenever an importer is uncertain as to the proper classification, etc. of its goods, it may file a request for a formal ruling with CBP. A ruling request provides an importer with finality and confidence with regard to its import processes. Further, as with reliance on Customs House Brokers, a ruling request is evidence of the exercise of reasonable care. All CBP rulings are public. CBP maintains a searchable database of rulings, the Customs Rulings Online Search System (CROSS) which often has prior rulings that obviate the need for a new ruling request.

In the event that CBP determines that an importer’s classification, valuation, or origin determination is incorrect it may assess additional duty on a given

shipment or set of shipments. At that time, an importer may seek relief by filing a "Protest" with CBP, contesting CBP's action. If a Protest is denied it is considered a final administrative action and the importer may file a complaint at the Court of International Trade (CIT), formerly the Customs Court.

Last, as one may expect, CBP has the authority to issue fines and penalties for non-compliance with CBP regulations. If an importer error results in a potential loss of duty to CBP, CBP will seek reimbursement for that lost revenue and impose additional penalties. CBP penalty guidelines provide that CBP may seek penalties in an amount up to 2x, 4x, or 8x the lost revenue if the importer is found to be culpable of negligence, gross negligence, or fraud, respectively. So, a \$1,000 duty shortfall can cost an importer and additional \$2 - \$8,000 dollars in penalties.

Hopefully, the above primer provides the non-customs attorney with enough basic information to provide an import client with some guidance with regard to its customs processes and procedures.

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