

Overview and the New Rules of Imports & Customs Compliance

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- Part I: Overview of Import & Customs Compliance
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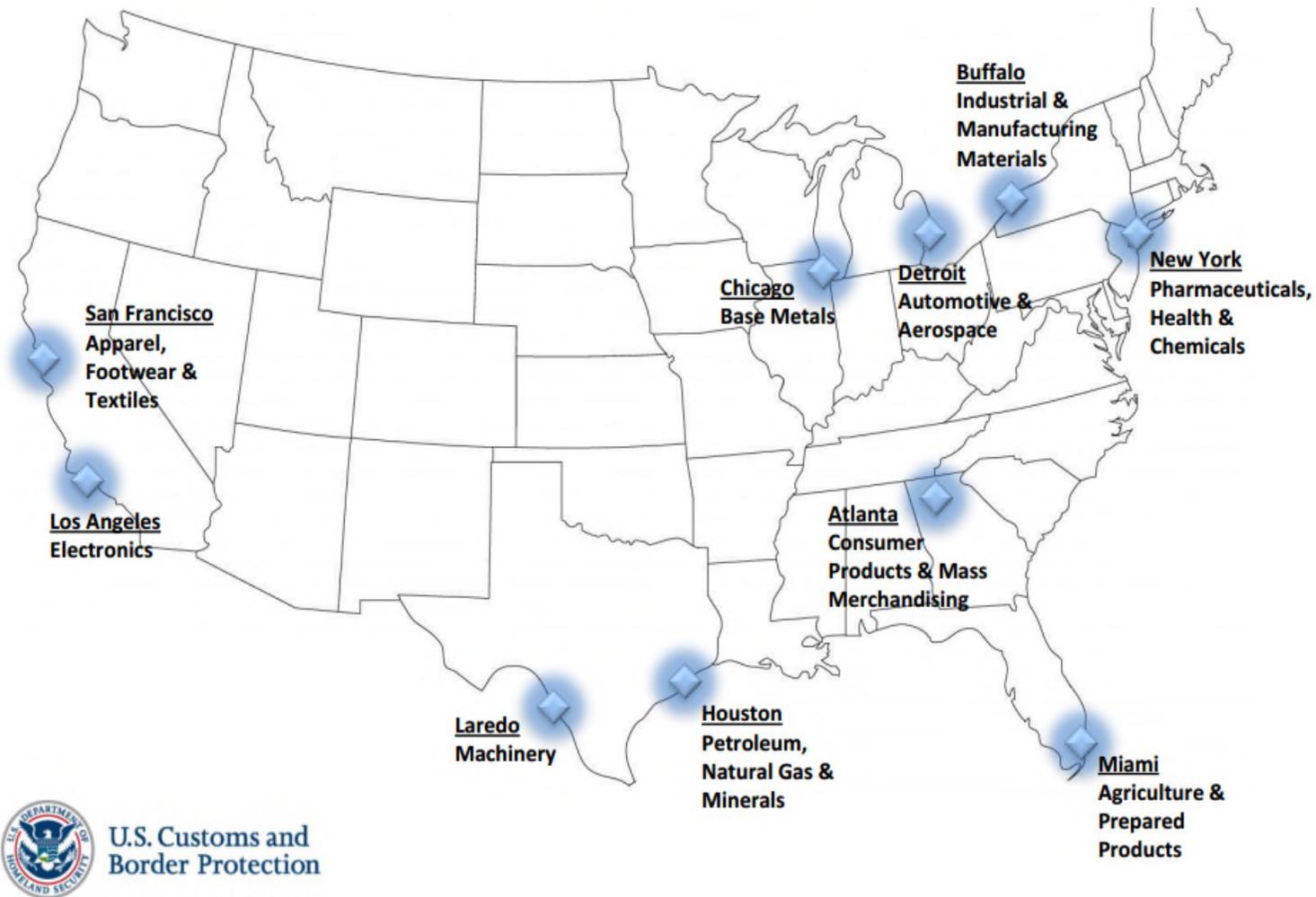
Part I: Overview of Import & Customs Compliance

U.S. Customs and Border Protection (CBP)

- Now within Dept. of Homeland Security:
- Formerly U.S. Customs Service – within the Treasury Department
- Created by the second act of Congress, 1789
- Dual roles: trade facilitation and enforcement

- Headquarters: Ronald Reagan Building
- New York: National Commodity Specialists
- Indianapolis: Finance
- Field Offices and Laboratories
- Ports
- Centers of Excellence and Expertise (CEEs)

Current Centers of Excellence and Expertise



Importing - Prerequisites

- Importer Number
- Customs Bond
- Customs Broker

- Knowledge
- Vigilance

- Bond secures the payment of Customs duties
- Can be continuous or single entry
- Customs bonds also contain contract provisions binding upon importer, *e.g.*, timely presentation of documents or return of merchandise upon request
- Bond issuer remains liable indefinitely for violations occurring under the bond
- Bond issuers hate to pay

- Represent importer under authority of a power of attorney
- Prepare and submit entry documents to Customs
- Typically not liable for errors (principal liable for acts of agent)
- Vary widely in quality
- Importers need to communicate and monitor!

- Classification
- Valuation
- Country of origin marking
- Duty to exercise “reasonable care”

- Harmonized Tariff Schedule of the United States (HTSUS)
- Available on the web site of the International Trade Commission (usitc.gov)
- Every imported product fits somewhere
- Classification determines duty rate (as well as quota, safeguard duties, etc.)

- Harmonized system maintained by the World Customs Organization (WCO) www.wcoomd.org
- WCO issues the “Explanatory Notes”
- Customs maintains a searchable database of letter rulings (CROSS)
- In cases of doubt, importers can apply for a letter ruling

- Most Customs duties are “ad valorem,” so value determines amount of duties
- “Transaction value:” the price actually paid or payable for the merchandise when sold for exportation to the United States . . .

Plus amounts equal to:

- A. The packing costs incurred by the buyer.
- B. Any selling commission incurred by the buyer.
- C. The value, apportioned as appropriate, of any assist.
- D. Any royalty or license fee that the buyer is required to pay, directly or indirectly, as a condition of the sale.
- E. The proceeds of any subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller.

- Transaction Value of Identical Merchandise
- Transaction Value of Similar Merchandise
- Deductive Value
- Computed Value
- Fallback Method

- Generally, every article of foreign origin entering the United States must be legibly marked with the English name of the country of origin to inform the ultimate purchaser in the United States of the country in which the imported article was made
- Manufacturers importing parts or semi-finished products they assemble or further manufacture in the US are considered the “ultimate purchaser,” so such products need not be individually marked

- Basic rule: the country where the product was last “substantially transformed”
- Under NAFTA and most FTA’s: “tariff shift” rules, sometimes with a “regional value” requirement

- Customs can assess penalties against the importer for importing goods that are not properly marked
- Pentax was fined \$20 million in 1999
- Importers need to inform their foreign vendors and require country of origin marking in their contracts

Customs also Enforces Other Agencies' Requirements

- USDA
- FDA
- CPSC
- FCC
- ATF
- EPA/NHTSA

Product Specific Requirements

- Clothing
- Food
- Drugs
- Cars and motorized vehicles
- Toys
- Plates

- Customs broker files an “entry,” typically accompanied by tender of duties
- Customs eventually “liquidates” the entry, usually after 9 months
- Entries automatically liquidate after one year – unless extended (deemed liquidation)
- Liquidation is final unless protested (reliquidation is possible for 90 days)

- Customs can:
 - Request information
 - Issue a Notice of Action (either proposed or taken)
 - Issue a notice to mark
 - Demand redelivery
 - Detain or seize merchandise

- Importers can:
 - Request letter rulings re. classification, valuation, marking, etc. for prospective transactions (or request “internal advice” for ongoing transactions)
 - “Protest” final decisions or actions
- U.S. manufacturers, wholesalers or unions can challenge Customs’ classification, valuation or assessment of duties on imported merchandise

- Must be filed within 180 days
- Are typically a prerequisite to any court challenge (exhaustion of remedies)
- Are sent to the relevant Customs port
- Importers can request “further review,” *i.e.*, decision at Customs headquarters
- Can request accelerated disposition

- 19 USC 1592 (Section 592)
 - no person, by fraud, gross negligence, or negligence may enter, introduce, or attempt to enter or introduce any merchandise into the commerce of the United States by means of any document or electronically transmitted data or information, written or oral statement, or act which is material and false, or any omission which is material

- Fraud: value of the merchandise
- Gross negligence: lesser of value of merchandise or 4 times loss of duties (or 40% of value if no duties lost)
- Negligence: lesser of value of merchandise or 2 times loss of duties (or 20% of value if no duties lost)

- Certain importer obligations are imposed under the terms of the Customs bond (timely filing, timely payment, return of merchandise, etc.).
- When importers breach these obligations, Customs issues a Notice of Liquidated Damages
- May adopt the “parking ticket” approach

- Regardless of substantive violation or type of administrative proceeding, importer can petition for relief (mitigation or rescission of penalties, release of seized goods, etc.).
- Published penalty guidelines describe mitigating/aggravating factors and corresponding fine levels

- Importer can typically file a supplemental petition – gets reviewed at a higher level
- Can also offer to compromise or settle claims under 19 USC § 1617

- A properly prepared and filed “prior disclosure” can radically reduce an importer’s potential liability for the violations disclosed
- Not available for every type of violation – primarily Section 592

- If accepted by Customs as a “valid” prior disclosure, maximum penalties are reduced as follows:
 - Fraud: loss of duties (or 10% of value if no loss of duties)
 - Gross negligence and negligence: interest on lost duties

- To be “valid” a prior disclosure must:
 - Be submitted without knowledge that Customs has already begun an investigation
 - Identify the merchandise, ports, importations (entries), specific violations and the correct information that should have been supplied
 - Include a tender of any underpaid duties

- After exhausting administrative remedies, Customs' actions can be challenged before the Court of International Trade (CIT) in NY
- An importer need not pay contested duties before filing a protest, but must pay contested duties before filing suit at the CIT

Part II: Trade Facilitation and Trade Enforcement Act of 2015

- Trade Facilitation and Trade Enforcement Act of 2015
 - Signed into law on February 24, 2016
 - Formally funds U.S. Customs and Border Protection with DHS
 - Enhances trade facilitation and strengthens trade enforcement in key areas
 - Makes miscellaneous changes to Customs' current practices
 - Codifies various existing Customs initiatives

- Agricultural programs
- Antidumping and countervailing duties
- Import safety
- Intellectual property rights
- Revenue
- Textiles and wearing apparel
- Trade agreements and preference programs
- Other new priority issues, with Congressional notification

- **Creation of the Trade Remedy Enforcement Division within DHS**
 - Division will develop policies to combat evasion of trade remedy laws and AD/CVD orders
 - Issue alerts to ports of entry to direct examination and testing of imported merchandise to ensure compliance
- **Streamline and shorten duration of investigations of claims of AD/CVD evasion**
 - Investigations to be initiated within 15 days of report
 - Determinations to be issued within 300 days of investigation
- **Expands range of penalties for offenders**
 - Additional duties
 - Suspension of liquidation of entries
 - Referrals to ICE for civil and criminal investigation

- Strengthens enforcement of copyrights, trademarks, and other IP at the border
- ICE to create National Intellectual Property Rights Coordination Center
 - Investigate IPR violations and responsible parties
 - Coordinate enforcement with other agencies and foreign government agencies
- Authorizes CBP to notify and share information with IP rights holders of suspected infringement to help identify counterfeit and infringing merchandise

- Codifies CEEs program
- Raises the *de minimis* value for duty-free entry of merchandise entered by one person on one day from \$200 to \$800.
- Broadens scope (and reduces recordkeeping) for imports of items exported from the US without improvement while abroad under Heading 9801, HTSUS
- Simplifies and expands duty drawback provisions
- Extends trade preferences for Nepal

- 19 USC § 1607 prohibits the importation of products manufactured overseas, wholly or in part, with “forced labor,” (convicts, indentured labor, forced child labor, etc.)
- Previously, exclusion was allowed only if the subject merchandise was being produced in the US in sufficient quantity to meet “consumptive demand.”
- The Trade Facilitation and Trade Enforcement Act of 2015 repealed the “consumptive demand” exception.
- CBP invites the submission of allegations, including anonymously.
- CBP can exclude merchandise if it has “reason to believe” it has been manufactured with forced labor.
- Importers are then placed in the position of proving a negative.
- How much due diligence is enough?

Questions?



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