THE NEW CUSTOMS ENFORCEMENT ERA

Preparing for Increased CBP Scrutiny

August 27, 2026

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AGENDA

Overview of the Enforcement Changes

New Category of Importer

Consequence of Being a “Foreign IOR”

Changes for Every Importer

What Importers Should Expect

Actions to Take Now to Prepare

A Fundamental Shift in Customs Enforcement

No longer an administrative function that can delegated to customs brokers.

Anticipated changes for CBP enforcement:

- Greater scrutiny of importer structures and ownership;
- Increased use of CF-28 Requests for Information and CF-29 Notices of Action;
- More audits, investigations, and enforcement actions;
- Enhanced data analysis and technology-driven targeting; and
- Greater financial and operational consequences for compliance deficiencies

WHAT IS A FOREIGN IMPORTER OF RECORD

NOT A "US IMPORTER OF RECORD"

UNDER THE CBP ENFORCEMENT EXECUTIVE ORDER

Strengthening Enforcement of U.S. Customs Laws and Protecting American Industry

US IMPORTER OF RECORD

For an entity: organized under the laws of the U.S., located in the U.S., and has at all times controlling beneficial owner(s) who are U.S. citizens or lawful permanent residents;

OR owns a significant amount of real property in the U.S.

ORGANIZED UNDER U.S. LAW

The entity is organized under the laws of the United States.

CONTROLLING BENEFICIAL OWNERS

Located in the U.S. and has at all times controlling beneficial owner(s) who are U.S. citizens or lawful permanent residents.

OR

SIGNIFICANT U.S. REAL PROPERTY

Owns a significant amount of real property in the United States.

"LOCATED IN THE UNITED STATES" MEANS:

1. **ITS PRINCIPAL PLACE OF BUSINESS IN THE U.S.** — The entity's principal place of business is in the U.S.
2. **A PHYSICAL U.S. PRESENCE WHERE SIGNIFICANT BUSINESS ACTIVITY IS CONDUCTED** — The entity has a physical U.S. presence where significant business activity is conducted.
3. **SUFFICIENT TANGIBLE U.S. ASSETS** — The entity has sufficient tangible U.S. assets, taking into account the size and scale of the overall operations of the company (e.g., instrumentality of a foreign manufacturer without a substantial U.S. presence).

KEY TAKEAWAY

A Foreign Importer of Record is an importer that does **NOT** meet the definition of a US Importer of Record above.

This definition is critical for determining responsibilities under U.S. customs laws.

Consequence of Being a Foreign IOR

New category of foreign importers could face significant operational restrictions, including:

- Loss of eligibility for informal entry procedures;
- Restrictions on the use of continuous customs bonds (CTPAT exception);
- Heightened CBP scrutiny of ownership, operations, and import activity;
- Greater potential for supply-chain disruption and financial exposure

Changes for All Importers

- Evaluation of Bond Sufficiency
- Informal Entries Require Bonds
- Additional Reporting Requirements on the Importer
- Detailed Information About the Import’s Supply Chain and Production Method
- Foreign Export Documentation
- Minimum Penalty Mitigation Floor

Three Dates.
Six Moves.

Three questions worth asking / answering now:

1. Are you a U.S. or foreign importer of record?
2. Is your bond properly sized for the duties you are actually paying?
3. Do you know your Trade Compliance issues, gaps, blind spots? Can you measure what each one is worth?

The Clock is ***Already*** Ticking: 6 Moves to Assess and Manage Compliance Risk Before It’s Too Late

Task	Actions to Take	Level of Effort	Deadline	Level
1. Check your ACE account (5106 Data)	Ask your broker to email you your Form 5106 exactly as filed, and read it yourself.	~1 hour	Before Sep 18	■□□□
2. Pay any outstanding bills owed to CBP	Pull every open CBP bill across every company your parent owns, not just yours.	A few days	Now	■□□□
3. Evaluate your customs bond	Compare ten percent of last year’s duties, taxes and fees against your current bond.	About a week	Before Bond Renewal	■■□□
4. Assess foreign vs. U.S. importer status	Mitigate impact of foreign IOR status.	A few weeks	Before Nov 30	■■□□
5. Evaluate export documents	Test export documents against the matching CBP entry.	Months	Start now	■■■□
6. Deal with problems you already know	List the known issues, price each one, take the list to customs counsel.	Varies	With counsel	■■■■

QUESTIONS?

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