Answers to Frequently Asked Import Questions

Q: What can my company do to minimize the impact of increased border security measures on its ability to source materials from abroad in a timely and efficient manner?

A: Following the events of September 11th, the Customs Service has refocused its priorities and is now devoting considerable resources to increasing border security with respect to goods and persons entering the United States from abroad. Two of the principal programs developed by the Customs Service to accomplish the increased security objectives with cooperation from the private sector are the Customs-Trade Partnership Against Terrorism

("C-TPAT") and the Importer Self-Assessment ("ISA"). As discussed further below, these programs offer a significant range of benefits, including removal from Customs' audit pool for Focused Assessments and increased prior disclosure benefits. When these benefits are considered in combination with special benefits available to C-TPAT and ISA participants, participation in these programs is worthy of serious consideration.

C-TPAT

C-TPAT is a public-private initiative designed to reduce opportunities for terrorists to exploit the international movement of goods in accomplishing their objectives, by building cooperative relationships that strengthen overall supply chain and border security. Through C-TPAT, Customs is seeking assistance from businesses to ensure that security practices within their supply chain are appropriate and are communicated both within the company and with its business partners.

Following its launch in April 2002, Customs initially accepted applications to participate in the C-TPAT program only from companies that imported goods into the United States. Since that time, Customs has expanded eligibility to air, rail, and sea carriers, and most recently began accepting applications from licensed brokers, air freight consolidators, ocean transportation intermediaries, non-vessel operating common carriers, and U.S. marine port authority/terminal operators. Participation in C-TPAT will eventually be made available to warehouse operators and manufacturers.

To become eligible for the benefits of participating in C-TPAT, interested businesses must submit an application to the Customs Service. In particular, an applicant must commit to:

- conducting a comprehensive self-assessment of supply chain security using C-TPAT security guidelines;
- submitting a response to Customs' supply chain security questionnaire;
- developing and implementing a program to increase security throughout its supply chain, consistent with C-TPAT guidelines; and
- communicating C-TPAT guidelines to other companies in its supply chain

and working with those companies to implement the guidelines.

Once a company has signed an agreement committing itself to such actions, Customs may complete a company-specific risk assessment, which involves an evaluation of both security and trade compliance. Some highly-compliant importers for which Customs has previously conducted a risk assessment will be approved for C-TPAT membership merely by signing a C-TPAT agreement.

Following Customs' completion of its risk assessment, participating companies will be eligible to receive the benefits of C-TPAT, which include:

- commercial lanes dedicated to C-TPAT members at ports of entry (where infrastructure permits);
- company-specific Customs contacts (account managers);
- eligibility for account-based processes (bi-monthly/monthly payments); and
- reduced inspections.

ISA

Participation in C-TPAT is also relevant as a requirement for participation in the ISA program, which was launched by Customs on June 17, 2002. The ISA program provides benefits to C-TPAT participants that engage in an ongoing program to assess their compliance with Customs laws and regulations.

An importer may become a member of the ISA program by signing a memorandum of understanding ("MOU") and completing an ISA questionnaire. Once Customs receives these documents, it will conduct an assessment of the applicant's capabilities to assume the requirements and responsibilities associated with the ISA program. Those responsibilities and requirements for membership include:

- membership in C-TPAT;
- Being a resident importer in the United States with at least two years' importing experience;
- agreeing to comply with all applicable customs laws and regulations;
- having and maintaining a system of business records that demonstrates the accuracy of customs transactions;
- having the ability to connect to the Internet; and
- completing an ISA questionnaire and signing an ISA MOU, which commits the importer to:

  1. establish, document, and implement internal controls;

  2. perform periodic testing of an internal control system based on risk;

  3. make appropriate adjustments to internal controls;

  4. inform Customs through appropriate disclosures of material errors identified through company reviews;

  5. maintain an audit trail from financial records to customs declarations;

  6.maintain results of testing for five years and make test information available to Customs upon request;

  7. submit an annual written notification to Customs to confirm the identity of the company's ISA contact, and confirm that the importer continues to meet the requirements of the ISA program and the MOU.

Once Customs receives an application from an importer wishing to participate in the ISA program, it will conduct a risk assessment of the applicant to determine the company's readiness to assume the responsibilities of self-assessment. This review may include a visit from a Customs multi-disciplinary team that will consult with the applicant and review its internal controls. If Customs believes the applicant is not ready to begin the responsibilities of self-assessment it will continue to work with the company to improve its internal controls. If Customs determines the applicant meets the various membership criteria, it will sign the MOU. In reviewing an ISA application, Customs may take into account an applicant's prior designation as a low-risk importer, whether the applicant previously applied to participate in the Importer Compliance Monitoring Program, and whether the applicant was engaged in management processes involving a full-time account manager from Customs.

Once its application is approved by Customs, a participant in the ISA program is eligible for the following benefits:

- ability to receive entry summary trade data, including analysis support, from Customs;
- consultation, guidance, and training from Customs relating to topics such as compliance assistance, risk assessment, internal controls, and Customs audit trails;
- ability to apply for coverage of multiple business units;
- exemption from comprehensive compliance audits (although accounts may be subject to on-site examinations for specific reasons);
- hotline access to key Regulatory Audit Division officials;
- enhanced prior disclosure procedures;
- consideration of ISA participation as mitigating factor in the event civil penalties or liquidated damages are assessed against an importer; and
- access to a Customs team including an account manager, auditor, and trade analyst.

Q: My company has been targeted for a focused assessment. What does that mean and how should I prepare?

A: A focused assessment (FA) is Customs' most recent method to audit importers. The FA adopts a risk-based approach to auditing importers, limiting the areas of review to possible errors that affect the revenue generated from, or admissibility of, imported merchandise. This approach is unlike the prior Compliance assessmentprogram, which examined all areas of trade, and thus the FA should result in more efficient audits for both importers and Customs. The bad news for importers is that Customs has targeted a much larger group of importers for FAs. If your company imports more that $10 million per year, it is a top 9,000 importer and could be selected for an FA.

If you have been selected for an FA, Customs has already done research on your company's importing practices e.g., The Customs FA team will be comprised of auditors, systems specialists, and import specialists. The first phase of the FA is the "advanced conference," during which Customs will call and send a questionnaire to the importer that examines the importer's internal controls. Next, Customs will confirm the date for the "entrance conference" through a formal let-

ter and request "walk through" transactions that allow Customs to trace your company's import procedures from purchase to receipt and payment. The next phase of the FA is the "PAS," which involves assessing the areas of potential risk. During the PAS, Customs will examine and test internal controls, perform macro tests on classification, value, and other areas, and selectively review and test sample transactions. Customs then will hold an exit conference, receive comments, and issue a report of the PAS findings. If the importer and Customs agree on the PAS findings and there is non-compliance, then the importer may undertake a compliance improvement plan (CIP) to ensure similar errors to not occur in the future.

If Customs finds non-compliance and there is no agreement on the PAS findings, Customs proceeds to the "ACT" phase. During the ACT phase, Customs quantifies the revenue loss and other violations and may refer the matter to the Fines. Penalties and Forfeitures Office, which may impose penalties. Customs will hold an exit conference, and issue a report in the ACT phase that includes the corrective action needed to be taken by the importer (e.g., CIP).

It is critical that your companies adequately prepare for an FA. At the very least they should be able to describe their import operations to Customs from purchase order to receipt and payment, and be able to provide Customs the documents that are generated through this process. They should know their internal controls and processes. If these controls and processes are not written, they should be. They should analyze areas of risk and potential exposure related to errors in import transactions.

Completing the questionnaire provides the best opportunity for a company to determine potential areas of risk and non-compliance. If a company discovers areas of noncompliance, then it should consider whether to file a prior disclosure. By filing a prior disclosure, it can reduce its company's exposure to substantial penalties related to Customs violations. The prior disclosure must be filed before customs discovers the errors themselves, however the internal control questionnaire response must be complete, accurate, and timely. In its response, the company should demonstrate to Customs that it knows what it is doing. In the FA it is also important that the company pass the PAS, and not proceed to the ACT phase of the FA. Filing timely responses to Customs requests, obtaining the necessary support within the company, and working on a reasonable CIP for areas of non-compliance will help a company in completing the FA.

Q: How can my company lower its duty liability on imported products?

A: The amount of duty assessed on imported merchandise is a function of three elements: (1) classification, (2) valuation, and (3) country of origin.

Classification

All imported products are classified under an international nomenclature system -- the Harmonized System (HS). The United States has adopted the HS, and classifies goods based on a 10-digit number. The rate or amount of duty assessed on imports is based on the 10-digit HS classification. Thus, you may be able to reduce duty liability by confirming that your imports are properly classified in an HS provision that applies a lower duty rate.

Valuation

Most imports are classified under HS provi-

sions that assess duties based on a percentage of the value of the imported product (ad valorem). Thus, by lowering the value of imported products you can lower your company's duty liability. For example, if you have a three-tiered transaction (foreign manufacturer to middleman to U.S. importer), to you may able to structure the transaction so that the price paid to the manufacturer, rather than the price paid to the middleman, is used as the dutiable value of the imports. In addition, you may be able to establish bona fide buying agency relationships to ensure that commissions paid related to imports are not included in the dutiable value. You also may be able to reduce the dutiable value by properly excluding and segregating certain costs related to international freight, insurance, and postimportation expenses.

Country of Origin

Imports are assessed duty, or subject to tariff rate quotas, based on their country of origin. The most favored nation (MFN) or normal trade relations (NTR) rate is applied to imports from all WTO signatories and is bound by the rates agreed to by the U.S. under the Uruguay Round Agreement. Imports from certain communist countries are subject to higher rates of duty, under column 2 of the HS. Importers may benefit from duty free or lower tariffs if they are determined to originate in certain countries. For example, the U.S. has trade agreements with Canada, Mexico, and Israel that provide for reduced or duty free treatment on qualifying imports from these countries. In addition, the U.S. has unilateral preferential trade programs that apply duty free treatment on certain products from beneficiary developing countries, insular possessions, and countries in specified regions. Reduced tariffs may also be obtained on U.S. goods exported and returned. Finally, products from different countries may be subject to different quotas or tariff rate quota levels. In short, the country of origin of your imported product may have a significant affect on lowering your duties.

If you cannot take advantage of any of the above duty saving options, then there are other programs that may allow you to defer duty payments, obtain duty refunds, or reduce duty liability. Some options include: temporary importation under bond, bonded warehouses, foreign trade zones, duty drawback, and miscellaneous tariff legislation. Itis important to remember that an importer must exercise reasonable care and ensure that it is in compliance with U.S. laws before importing products. Obtaining advice from experts or receiving a binding ruling from Customs are two methods importers may use to exercise reasonable care.

Q: What should I do if someone from Customs shows up at my company's door, or makes a written request for information?

A: Prepare for Customs' visits or contacts. Establish a contact person in your company who is familiar with Customs issues and aware of the different ways in which Customs might initiate contact with your company (such as through an audit letter, Customs Form 28, or on-site visit).

- Identify the Customs official(s). Ask for the person's name and position, and his/her office name and location. He/she should have an official business card to give you.
- Identify the purpose of the visit or contact. No Customs contact is completely innocuous. If you are unsure why Customs might be contacting you, ask someone who might know more before you prepare

any response. You may be able to identify the purpose of Customs' visit by identifying the Customs official's position. An import specialist and auditor usually have different objectives than a special agent from the Office of Enforcement. Contact legal counsel immediately if the official is from an enforcement office.

- Surprise visit. In this situation, express a willingness to cooperate but a need to understand fully the nature of the visit before such cooperation is forthcoming. Explain that it is a company policy not to release documents without first consulting with counsel.
- Subpoena or surprise visit with search warrant. Notify counsel immediately. Determine the extent to which you must supply documents under subpoena and seek to quash non-releasable information. For a visit with a warrant, instruct employees—other than those employees expressly authorized to deal with Customs—not to speak with Customs officials. Authorized employees should not discuss issues (or answer questions) that are unrelated to the investigation. Read the warrant carefully and limit the search to its terms.
- Contact your customs broker. Find out if Customs has been in contact with him/her or if he/she has any knowledge concerning Customs' inquiry.
- Draft a written response or prepare for Customs' audit. If a written response is required, make sure all questions are answered completely and accurately and that the response does not raise issues unrelated to the request. If an audit is scheduled, prepare detailed procedures on how the audit should be handled. If time permits, perform an internal audit first to determine the extent or need for voluntary prior disclosures.

Do's and Don'ts:

- DO NOT release information to which Customs is not entitled and DO NOT give responses if you are unsure of their factual correctness or legal implications.
- Keep a record of all conversations and correspondence that occurs between you and Customs officials. Keep a separate file of these records.
- Maintain contact with Customs officials. Determine if all information requested has been provided and if new information has been requested. Maintain a record of the status.
- Press Customs to complete its audit, inquiry, or investigation through prompt and complete responses and continuous contact with the proper Customs officials.
- Formalize the end of any audit, inquiry, or investigation in writing. Request any reports and other releasable information relating to Customs' actions or determinations (i.e., auditors' reports). Correct the record if necessary.

Q: Does my company have to worry about Customs problems as long as we use a customs broker to clear our goods into the United States?

A: Yes. By law, the "importer of record" is the entity that will be liable if U.S. Customs finds any problems with goods entering the United States, regardless of whether any third party may have been hired by the importer of record as its representative or agent. The kinds of problems that can arise include improper classification, valuation, and country-of-origin marking. Depending upon the severity of the

problem, you can be subjected to civil and/or criminal penalties. You may want to consult a legal advisor if you do not have a written agreement with your broker that provides for remedies in the event of the broker's negligence and resulting damages.

ABOUT THE INTERNATIONAL TRADE & CUSTOMS PRACTICE

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