

# Fundamentals of Importing

## Role of the Customhouse Broker (CHB)

Much like CPA's prepare tax forms and guide their clients through the maze of tax regulations, CHB's prepare Customs forms and guide their clients through the maze of Customs regulations and procedures. These are dramatically increasing in complexity, and compliance is increasingly difficult. Failure to comply can bring stiff penalties. U.S. importers have been fined millions of dollars because their records were ruled by Customs as being insufficient to document their claims as well as for wrong-doing. The primary role of the CHB is three-fold:

1. To relate Customs regulations and procedures to the importer,
2. To obtain information from the importer and transmit it to Customs in prescribed forms and formats, and
3. To act as fiduciary of the United States.

This last role is primarily why we are licensed by the Department of Treasury - because we collect Customs duty. Every broker firm must be licensed, and every CHB must stand an intensive examination and extensive background investigation.

Obtaining information from the importer and transmitting it to Customs in prescribed forms and format is the traditional and most visible broker role. Much of this is automated, and the new Customs computer system, the Automated Commercial Environment, or "ACE", **has greatly enhance broker capabilities. Full deployment of most major components of ACE was completed in July, 2015, but drawback, electronic FTZ entries, and several other programs will be rolled out through February 24, 2018.** While brokers have long had access to the Customs computer through the Automated Broker Interface, the new ACE system allows importers to have access to their account through a web portal.

Returning to the first role of the broker, importers need to be aware of the legislation that governs our importing environment, primarily the Customs Modernization and Informed Compliance Act of 1993. This act established two important concepts: informed compliance; and reasonable care.

## **Informed Compliance and Reasonable Care**

The Customs Modernization and Informed Compliance Act changed the fundamental relationship between Customs and importers. Curiously, prior to the "Mod Act", as it is known, Customs was responsible for establishing classification and valuation. Under the Mod Act, however, importers are responsible for determining and reporting accurate classification and valuation information to Customs. This change had vast implications to importers, and failure to comply in the current environment can disrupt or even stop your shipments. Further, the monetary penalties allowed under the Mod Act can be as much as \$100,000 per occurrence! Codified in the Mod Act are two important concepts that importers must understand and embrace: informed compliance, and reasonable care.

### Informed Compliance

The concept of "informed compliance" is that importers must be informed of their responsibilities, and they must also comply with Customs requirements. Customs has an aggressive inspection and review program that identifies importers that are not compliant. Once identified, Customs seeks maximum penalties. For decades, Customs has put violations in three categories: simple negligence; gross negligence; and fraud. Penalties increase exponentially as the violation moves from simple negligence to fraud. Customs special agents have zealously sought fraud and gross negligence penalties where, until several years ago, most penalties were of the more benign simple negligence category. A major factor in determining if a violation is simple negligence or otherwise is whether the importer exercised reasonable care.

### Reasonable Care

An integral part of informed compliance is the exercise of "reasonable care." The Mod Act specifically requires that the importer of record "... shall, using reasonable care,... complete the entry by filing the declared value, classification and rate of duty...". Customs published the "Reasonable Care Checklist" to help importers become both informed and compliant. While not exhaustive or "foolproof," this checklist is a fairly comprehensive aid for importers in exercising reasonable care. It should be incorporated into every import program, or the importer will be unnecessarily exposed to gross negligence or fraud penalties by Customs.

The checklist includes general questions, basic questions, and questions regarding intellectual property rights, textiles, and apparel. The following seven excerpts are the general essence of the checklist:

1. Have you established reliable procedures to ensure you provide a correct description of your merchandise to Customs?
2. Have you established reliable procedures to ensure you provide a correct tariff classification of your merchandise to Customs?
3. Have you established reliable procedures to ensure you provide a correct valuation

of your merchandise to Customs?

4. Have you consulted a Customs "expert" (eg., customs broker, lawyer, or accountant) to assist in description, classification, and valuation? If so, have you given them full, complete, and accurate information on all the facts and circumstances surrounding the import?

5. Have you or your agent consulted the Harmonized Tariff Schedule, the Explanatory Notes, Customs publications, court cases, and Customs rulings to assist in description, classification, and valuation?

6. Have you obtained a Customs ruling on your merchandise, and, if so, have you established reliable procedures to ensure you have followed that ruling?

7. Have you established reliable procedures to ensure that errors are found, corrected, and Customs is apprised in a timely manner?

The entire checklist should be carefully reviewed by every importer, noting the following central implications:

1. Customs clearly holds the importer responsible for the accuracy and completeness of the information relevant to the import. While using a customs broker is one aspect of reasonable care, the importer must give the broker "full, complete, and accurate information"; otherwise, it is not reasonable care.

2. The importer should have formal, written procedures in place. We HIGHLY recommend every importer prepare an **import procedures manual**.

3. The importer should have reliable safeguards in place to ensure that the procedures reflect the current operating environment and are followed. We HIGHLY recommend **annual pre-audit reviews** for every importer to insure compliance.

The complete checklist is eighteen pages, and it is posted on their website at

<http://www.cbp.gov/document/publications/reasonable-care>

The importance of establishing reasonable care in your import program cannot be overemphasized. Our experience in this area is always available to help you prepare an import procedures manual, conduct pre-audit reviews, and train your staff to achieve both informed compliance and reasonable care.

In addition to the three primary roles, brokers can help in other aspects of importation, including transportation, marine insurance, and consulting.

### **Transportation of Your Merchandise To the U.S.**

There are 3 common ways for your commercial shipments to move to the U.S.: by air carrier, by ocean vessel, or by truck (from Canada or Mexico). Pure rail imports are rare in Atlanta, but over 500,000 ocean containers arrive by rail or truck after being unloaded from ocean vessels. The majority of ocean shipments are in containers. Also, many air shipments arrive at other U.S. ports and are trucked to Atlanta. Occasionally, very small commercial shipments come by mail. Combining modes of transportation is known as "intermodalism," and it has been commonplace for many years, especially

ocean/rail and ocean/truck. Intermodal shipments are known by various names such as “land bridge”, “door-to-door delivery”, “door move”, etc. Under the latter two delivery terms, the carrier has agreed to effect final delivery, and the customs broker is not responsible for any aspect of these shipments except customs release.

### **Importer Security Filing**

The Importer Security Filing (ISF), also known as “10 + 2” was required effective January 26, 2009, and applies to all merchandise arriving in the U.S. by ocean vessel. The ISF is required to be filed with Customs **at least** 24 hours before the goods are loaded on the vessel in the foreign port. Also, **ONLY** the party filing the ISF will have visibility into the actual ISF data transmission and can change it should that be necessary. Because the “ISF importer” (defined below) is responsible for the filing, and because the information on the ISF and the Customs entry should match, we recommend that you allow us, your customs broker, to file your ISF.

#### **Basic Data Elements**

For merchandise that is destined to arrive in the U.S. by ocean vessel for consumption entry, the following data elements are required:

1. Manufacturer (or supplier) name & address;
2. Seller name & address;
3. Buyer name & address;
4. Ship to name & address;
5. Container stuffing location;
6. Consolidator name & address;
7. Importer of record number;
8. Consignee number;
9. Country of origin of goods; and
10. HTS number (6 digit).

In addition to these 10 data elements, a bill of lading number at the lowest level (i.e., the regular/straight/simple bill of lading or the house bill of lading) must also be provided. The carrier must provide CBP with 2 elements: (1) a vessel stow plan; and (2) container status messages (hence “10+2”). **To date, Customs has assessed penalties only for flagrant and/or repeated violations of ISF requirements.** A bond is required for the ISF. If you have a continuous bond, this covers it; otherwise you will need a separate single transaction bond just for the ISF.

### **Documents Required for Commercial Shipments**

At a minimum, a bill of lading and an invoice are required, and a packing list is highly desirable. For truck shipments, and in cases where your shipment arrives in the U.S. at another port and is forwarded to Atlanta, an in-transit document known as an “I.T.” is required. I.T.’s are discussed below.

## Bills of Lading

The bill of lading (BOL) will be either an ocean bill of lading (OBL) or an airway bill (AWB). In the case of a pure truck shipment, an "in-transit" document known as an "I.T." serves as the BOL. An AWB will be either a master AWB (MAWB), indicating the shipment was made directly with the carrier, or a house AWB (HAWB) indicating the shipment was made by an airfreight consolidator, also known as an air freight forwarder. Sometimes, ocean shipments are consolidated by a non-vessel operating common carrier (NVOCC, usually shortened to "NVO"), and move on a type of OBL known as a forwarder's cargo receipt. In any case, the required document will be supplied by the carrier.

## Invoice Requirements

A. Invoices are furnished by the seller or manufacturer. Section 141.86, Customs Regulations include the following requirements for invoices:

- 1) Name & address of invoicing party  
(seller/manufacturer)
- 2) Name & address of purchaser
- 3) Detailed description of the merchandise:
  - a) Name by which each item is known
  - b) The grade or quality
  - c) The marks, numbers, and symbols under which it is sold and/or packaged
  - d) Quantities in appropriate weights and measures
  - e) Purchase price of each item in the currency of the transaction
  - f) All charges, assists, buying or selling commissions
  - g) All discounts
  - h) Country of origin

NOTE: A "detailed description" is one which enables an import specialist to properly classify imported merchandise in accordance with the HTSUS. The invoice must indicate any information which has a direct bearing on the proper classification and is not, in some instances, limited to the above list. It is the responsibility of the importer to comply with invoice sufficiency requirements.

- 4) In English, or an accompanying translation to English
- 5) Packing list

B. Section 142.6, Customs Regulations, additionally requires:

- 1) Quantities in units as required by HTSUS
- 2) Value of merchandise in the currency of the transaction
- 3) The correct HTSUS classification

**Please note that this information MUST be furnished before release of merchandise will be authorized by Customs.**

C. Additional Requirements for Textile Articles

- 1) Fiber content
- 2) Construction of fabric (knit vs. not knit)  
Note: Knit construction consists of interlocking loops, and includes crocheted articles.
- 3) Complete description (eg. men's knitted sweater, 60% wool/40% acrylic; girls' woven blouse, 100 % cotton)
- 4) A manufacturer's declaration in accordance with Section 12.130(f), Custom Regulations, if the articles are subject to Section 204, Agriculture Act of 1956, as amended. This is required regardless of country of origin.

**Customs Entry Process**

The entry process involves classifying and valuing each item on the invoice and submitting appropriate forms to Customs.

**Classification/Harmonized Tariff Schedule (HTSUS)**

Each item on every invoice must be classified in accordance with the Harmonized Tariff Schedule of the United States. This schedule contains about 8,000 commodity descriptions, and classification is accomplished according to seven rules of interpretation. Classification, though usually simple, can frequently result in complex, detailed, and extensive analysis. An accurate classification is the first step in a smooth entry. Conversely, an inaccurate classification can result in frustration, costly delays, severe penalties, seizures, and even prosecution. If there is any question or controversy about the classification, we strongly recommend that we obtain a binding ruling from Customs.

Most entries are known as "consumption" entries. This is merchandise entered for use (consumption) rather than entered into a warehouse for storage. The basic consumption entry process involves two forms: Immediate Delivery Application (CF 3461), and Entry Summary (CF 7501):

**Immediate Delivery Application (CF 3461)**

Immediate delivery application, also known simply as "entry," contains the minimum information Customs needs to determine if they want to inspect your shipment. The form is electronically submitted to Customs for release. Customs can release the goods electronically (known as a "paperless" release), require submission of paper documents at the Customhouse for a review, or call the shipment for an inspection. A paperless

release takes a few minutes after submission to Customs, and a document review can take from 4 hours to 2 days. An inspection can take a week to 10 days even under normal circumstances. In exceptional cases, such as when merchandise must be sent to a laboratory for analysis, we have seen the release take over a month!

### Entry Summary (CF 7501)

Once the shipment is released, an entry summary must be submitted with payment for the amount of duties, taxes, and fees, either within 10 working days or, if an importer elects **and is qualified**, payment can be made monthly (see the section on Periodic Monthly Statement below). The entry summary requires very detailed information in a very specific format so that all Customs reporting requirements are met. Like the CF 3461, the CF 7501 is submitted electronically, but a paper summary is **sometimes** required.

### Duties, taxes, and fees

Most imported commodities are charged duty, though many are duty free, or they may be duty free if certain conditions are met. Duty is a function of classification, and is usually based on value, quantity, or sometimes both. Many commodities, such as tea, cotton, wool, beef, wine, beer, spirits and others have additional special fees and taxes. All imports are subject to a merchandise processing fee and ocean imports are subject to a harbor maintenance fee. The rates for duties, taxes, and fees change periodically. Please consult us to find out which are applicable to your imports.

## **Special Types of Entry**

Other special types of entry include: I.T.'s; unaccompanied baggage ; American goods returned (AGR); warehouse entry/withdrawal, foreign trade zone entry and remote location filing.

### In-Transit Document ("I.T.", "I.E", "T&E")

Merchandise frequently moves from the port of unloading to another port where consumption, foreign trade zone (FTZ), or warehouse entry is made. Additionally, the merchandise can move to a CFS in the same or another port, or the merchandise can be exported under Customs supervision. Since the merchandise is under Customs supervision during transit (*ie.*, duty has not been determined), the goods must move on a bonded carrier. The CF 7512 is the document the bonded carrier files with Customs so that Customs can track the shipment from port to port to insure that an entry is ultimately made and duty paid, or the merchandise is exported. There are a several types of in-transit documents, but the main three are:

- "I.T" Immediate transportation (to a CFS, bonded warehouse, or FTZ in any port)
- "I.E" Immediate **exportation** (to an exporting carrier in the same port)

“T&E” Transportation & exportation (to an exporting carrier in a different port)

During the bonded move, the carrier is responsible for the merchandise. Further, it is the carrier's responsibility to insure the CF 7512 is properly completed and filed at origin and closed out at destination. Doing otherwise creates an “irregular delivery”, which can result in a penalty to the carrier equal to the value of the merchandise.

### Unaccompanied Baggage

Travelers frequently will ship excess baggage back via a plane or vessel other than the one on which they arrive. The rules are the same as for accompanied baggage, and entry is made on a special form. Free entry is accorded items carried abroad; items purchased abroad are duty-free only if purchased AND used abroad for over one year. Other items are dutiable, subject to the current personal exemptions. Items for commercial use require normal entry.

### American Goods Returned

Many times, goods exported will be returned for repair, replacement, or refund. Normal entry rules apply, and entry is generally made on a CF3461/7501 even though no duty or fees are due. The importer should make **absolutely** certain the goods are of U.S. origin before signing an affidavit attesting to this.

### Warehouse Entry/Withdrawal

Many times circumstances require or encourage that a shipment be placed in a Customs bonded warehouse. A Customs bonded warehouse is legally "outside" of the Customs Territory of the U.S., and merchandise can be stored without paying duty or being charged against a quota. Other circumstances include merchandise to be exported and merchandise to be repackaged.

### Foreign Trade Zones (FTZ's)

The Foreign Trade Zone Board, a U.S. government agency in Washington, DC, can authorize and designate a warehouse or factory as an FTZ. It is much like a bonded warehouse, but many more operations can be performed, including manufacturing. A good example of an FTZ is Yamaha's plant in Newnan, GA - the entire plant is an FTZ. Many of the components shipped from foreign suppliers have duty rates in excess of 7 percent or more. The components, some of which are even domestic, are assembled in the FTZ/plant. When they are brought out of the plant, they are entered into the U.S. as personal watercraft, dutiable only at 1.5 percent and ONLY for the value of the imported components. This saves Yamaha millions of dollars each year in duties and fees, and the FTZ gives dozens of Americans (tens of thousands nationwide) jobs they would not otherwise have. Other operations ideally suited for an FTZ are marking, export distribution, and component assembly or disassembly.

### ATA Carnet

Carnets allow for the temporary entry of professional equipment, trade show items, and similar merchandise carried by or with the importer for the purposes of maintaining equipment or promoting the importer's commercial interests. Professional tools, most commercial goods, demonstration samples, and exhibition booths are commonly covered under a carnet. Over 85 countries recognize carnets, and they are VERY useful in transporting applicable merchandise through those countries that accept them. This merchandise MUST leave the country with the importer upon departure other than, of course, the home country where the carnet is registered. Disposable, consumable, or personal items are NOT covered. Please contact our office to find out if your merchandise qualifies.

### Temporary Importation Bond (TIB)

A TIB allows for the temporary importation for up to one year of certain merchandise without paying duty. The merchandise MUST be exported under Customs supervision within one year of importation or the importer will be fined twice the value of the merchandise. A good example of a TIB would be when a foreign resident brings an EPA/DOT non-complying vehicle into the U.S. for personal use for a six month stay. Another example could be an attendee at a trade show bringing in samples to collect orders. Because a large percentage of TIB's historically have not been exported under Customs supervision and consequently were assessed the fine, it is difficult to find a surety that will place the bond without at least full collateral for twice the value of the merchandise. For this reason, most trade show merchandise is better suited for the ATA Carnet if at all possible. Please contact our office for further details.

### Remote Location Filing (RLF)

Remote Location Filing is a program that allows customs brokers with a national permit to file most consumption and informal entries in all US ports. Most other entry types **became** eligible in July, 2015. Entries are filed electronically from our office in Atlanta and are transmitted via EDI to Customs. We are then notified electronically once Customs has reviewed the entry "on-screen" and released the merchandise. This program ensures that we have a direct link with Customs' inspectors at the port of entry and direct control over your shipments. As a nationally permitted Customs broker, we are delighted to handle your Customs entries nationwide. You must have a continuous bond for RLF eligibility, and we recommended that you become an ACH participant.

## **Additional Customs Requirements**

### Power of Attorney

Customs regulations require a **signed** Customs Power of Attorney (POA) **prior** to a broker transacting any Customs business. This is usually accomplished by the importer signing a pre-printed form furnished by the broker. For corporations, including LLC's, the person signing the POA **must** be authorized to do so by the board of directors of the importer. Only officers of the corporation are presumed to be authorized without a

written letter signed by the corporate secretary. For partnerships, including LLP's, a general partner must sign the Power of Attorney form. You can access our POA form at

[http://www.lhcb.com/index\\_files/Page385.htm](http://www.lhcb.com/index_files/Page385.htm)

Then click on the "Resident" or "Non-resident" tab, as appropriate.

### Customs Bond Requirements

With few exceptions, Customs Regulations require all shipments to be bonded. A single transaction bond (STB) on CF 301 can be submitted with each entry to satisfy this requirement for a smaller or infrequent importer. A separate ISF bond must also be submitted. For many importers, especially frequent importers, a continuous bond is preferable and less expensive, and it also covers the ISF as well as the entry. If you have a continuous bond, Customs aggressively checks for sufficiency, and if insufficient, you have only 30 days to get a new bond in place. **We will gladly assist you in obtaining a Customs bond.**

### Customs Examinations

First time importers stand a 95+ percent probability of their shipment being examined by Customs inspectors. Charges range from \$25.00 for a cursory exam to over \$1500.00 for a complete strip and are for the account of the importer. On average, a 20 foot container exam will run \$300-400, and a 40 foot container exam will run from \$500-700. Overall, Customs physically examines less than 8 percent of all cargo. Non-intrusive technology (X-ray) allows Customs to examine many more containers. The charge for these is usually under \$125.

### Transaction Value and Currency Exchange

Transaction value is the value used to determine duty, and is usually the "price paid or payable" on the FOB invoice value of the merchandise at the foreign port of exportation. If the transaction is in a foreign currency, the broker must use the official exchange rate, published by the New York Federal Reserve Bank, for the date of export, to compute transaction value. Under some circumstances, alternative valuation techniques must be used to determine transaction value.

### Additional Costs Included In Transaction Value

Five additions, or "uplifts," should be made to determine the price paid or payable and are included in transaction value:

1. Packing costs
2. Selling commissions
3. Assists
4. Royalties and license fees
5. Additional payments to the seller of any kind

**Assists** include any material, molds, components, tools, dies, engineering, or artwork furnished by the buyer, directly or indirectly. **Selling commissions** are uplifts whether paid by the seller or buyer. In a few rare instances, a buyer's agent commission can be excluded from transaction value. The requirements for this exception require a written agreement that must meet specific guidelines. Please contact us for further details.

### Compliance With Other Federal Agencies

Customs enforces other U.S. agency import requirements at the time of entry. Agencies which most commonly have an interest in imported products are:

- A. Department of Agriculture
- B. Food & Drug Administration
- C. Federal Communications Commission
- D. Federal Trade Commission
- E. Consumer Products Safety Commission
- F. Fish & Wildlife Service
- G. Department of Transportation
- H. Environmental Protection Agency (federal and state)
- I. Bureau of Alcohol, Tobacco, and Firearms (Federal and state)
- J. Federal Aviation Administration

Some agencies require additional forms, and even special permits and/or licenses. We are pleased to assist you in determining which agencies are involved in your imports.

### Quota/"Safeguard" Merchandise

Some products are subject to quota or other quantity restrictions known as "safeguards" if they originate in certain countries. Agricultural products, chocolates, and pasta are examples of some of the products under these restrictions. Please inquire if your commodity is subject to quota or restrictions because a **visa** may be required **prior to exportation** from the origin country.

### Anti-dumping Duty (ADD)/Countervailing Duty (CVD)

"Dumping is when a foreign manufacturer "dumps" their products in the US at below fair market value. When a US company complains to the Commerce Department, they initiate an investigation. If they find dumping, they will impose an anti-dumping duty to bring the price up to fair market value. If a foreign government is involved, say with subsidies, the duty imposed to bring the price to fair market value is called countervailing duty. Some products from certain countries, such as bearings from Japan or Europe, and wooden bedroom furniture and extruded aluminum from China, are subject to anti-dumping and/or countervailing duties. We have seen a proliferation of ADD/CVD cases from non-market economies such as China and Vietnam in recent years. Please inquire well in advance of placing your purchase order if your commodity/country is subject to ADD/CVD. Also, please note that sureties require at

least 100 percent collateral or standby letter of credit to bond an ADD/CVD entry.

### Intellectual Property Rights

Articles bearing counterfeit trademarks, and articles imported without the written permission of the owner of a valid trademark, trade name, or copyright are prohibited from entry under U.S. law. Any article found in violation is subject to seizure and forfeiture by Customs, as well as stiff penalties and even jail if egregious. **If you as the US importer of record have trademarks or patents, we will be glad to show you how to notify Customs so they can help protect your merchandise from counterfeiters.**

### Related Party Transactions

Any ownership, direct or indirect, between the importer and the seller, **must be reported to CBP**. Kindly advise us of such a relationship so we can report this to Customs as required. There are IRS ramifications for establishing COGS for related party transactions, as well, particularly under Section 1059A.

### General Order (G.O.)

Customs requires entry to be made on goods within 15 calendar days of arrival in port. Failure to make timely entry can result in your goods being placed in a public warehouse designated for G.O., under lien. This causes much delay and added expense. Please notify us of pending shipments so we can help you avoid this situation.

### Notice of Liquidation

Customs is required to notify the importer and the broker when an entry liquidates. "Liquidation" means that Customs is completely satisfied with the particular entry and is closing their file. Although there are many exceptions, most entries liquidate after 314 days. Liquidations are no longer mailed to the importer, but they are available through the importer's web portal on ACE. Please contact us if you want an ACE portal.

### Recordkeeping Requirements for Customs

Customs requires importers to keep detailed records of all imports, and they are subject to audit. Below is a suggested, but not all-inclusive list of records to be kept. The general rule is five years from entry or final warehouse withdrawal. If you have special circumstances such as alcoholic beverages, related party transactions, drawback, copyrighted or patented merchandise, ADD/CVD, munitions, etc., please contact us for specific requirements.

#### General:

1. Articles of Incorporation authorizing importation, if applicable
2. Power of attorney for the broker signed by an officer
3. Continuous bond, if applicable

4. A spreadsheet cross-referencing Customs entry number (from the CF 7501), bill of lading number, purchase order number, invoice number, & your internal tracking number (Customs makes inquiries and conducts audits based on the entry number on the CF 7501).
5. Import procedures manual identifying each import step, the responsible person, and where records are kept
6. Special permits and approvals, such as ATF, alcohol label approval, munitions, and implements of war.
7. Other documents justifying classification or compliance, such as Lacey Act or CSPC information, that pertain to a number of entries.

For each entry:

1. Purchase order
2. Commercial invoice
3. Packing list
4. Bill of lading
5. Customs entry form (CF 7501)
6. Single transaction bond (if applicable)
7. Quota charge statement (if applicable)
8. Inventory records showing receipt of imported merchandise
9. Payment records showing ALL payments to vendors
10. Other documents justifying classification or compliance, such as Lacey Act or CSPC information, that pertain to a specific entry.

#### Fines, Penalties, and Forfeitures (FP&F)

Customs is required to issue fines and/or penalties for certain violations. We strive mightily to keep our customers out of this arena. Occasionally, though, an entry will be the subject of an FP&F action. At the first indication of an FP&F action, you should notify us immediately. In many cases, we have found FP&F entirely erroneous in their claim. In other cases, we can frequently help mitigate any fine or penalty, sometimes even to zero, especially if we can prove “reasonable care”! In the case of a seizure, however, we would give immediate consideration to consulting a customs attorney.

### **Special Programs and Procedures**

#### Custom-Trade Partnership Against Terrorism (C-TPAT)

Customs – Trade Partnership Against Terrorism (C-TPAT) is a joint Government-business initiative designed to build cooperative relationships and strengthen supply chains so that weapons of mass destruction or other terrorism efforts do not enter the USA. Customs and Border Protection is asking businesses to ensure the integrity of their supply chain security practices and communicate their security requirements to all partners in their supply chains. Accordingly, Customs is asking all parties engaged in international trade, including importers, manufacturers, customs brokers, freight forwarders, etc. to participate in this program. The reasons importers should apply for

this program include expedited processing through Customs, reduced inspections, and an improved supply chain. Recent statistics show 1 in only 360 C-TPAT shipments were examined while 1 in 47 of non-C-TPAT shipments were examined. C-TPAT shipments were 7.5 times LESS likely to be examined, and this will only improve! Most of the C-TPAT requirements for importers are recognized security standards already in existence such as credibility and credit checks on vendors, high security seals on containers, and restricted access to container yards, loading docks, IT systems, etc. We have found that most well-run companies already have 80-90 percent or more of C-TPAT security requirements in place, so compliance is not usually a problem. Application is online, but you must provide your security profile (eg., your security procedures and processes in a special format) when applying. Your security profile should which encompass procedural security, physical security, personnel security, education and awareness training, access control, manifest procedures, and conveyance security issues We will gladly provide you a Power Point presentation we have prepared on C-TPAT and furnish you with a copy of our security profile. Our website has a link to C-TPAT information on Customs' website.

### Trade Preference Agreements (TPA's)

The U.S. currently has 14 existing Free Trade Agreements (FTA's) and 3 special access programs:

#### FTA's

- Australia
- Bahrain
- Chile
- Columbia
- DR/CAFTA (To date, only DR, El Salvador, Guatemala, Honduras, and Nicaragua)
- Israel
- Jordan
- Korea
- Morocco
- NAFTA (Canada & Mexico)
- Oman
- Panama
- Peru
- Singapore

#### Special access programs

- Caribbean Basin Economic Recovery Act (CBERA)
- Caribbean Basin Trade Partnership Act (CBPTA)
- African Growth and Opportunity Act (AGOA)

Customs has published a side-by-side chart of requirements for non-textile imports under these at TPA's at

<http://www.cbp.gov/sites/default/files/documents/Side-by->

[side%2C%20Final%207%2716%2714.pdf](#)

These programs give favorable duty treatment to many goods from the areas and countries named. **The Trump Administration has withdrawn the US from the Trans Pacific Partnership (TPP). The Transatlantic Trade and Investment Partnership (TTIP) is still in negotiation, but finalization of any agreement is years away, if ever.**

Also, civil aircraft and parts, certain automotive products, pharmaceutical products, and chemicals for dyes may be eligible for reduced or duty-free treatment. Please contact us to verify the latest status on TPA's, documentation requirements, and duty rates.

### Generalized System of Preference (GSP)

GSP is a duty preference program that offers most lesser developed countries (LDC's) duty-free or reduced duty treatment on all or most of their merchandise imported into the U.S. **GSP expires on December 31, 2017.** Congress has historically always reinstated it retroactively, but in this political environment, we cannot predict. Please contact our office for any questions.

### Prior Disclosure

Even the most conscientious importers occasionally run afoul of the myriad Customs Regulations and procedures, or simply make a mistake. Where there is a lapse in the exercise of reasonable care, Customs provides for admitting the lapse without a fine or penalty. If, however, additional duties are involved, they must be submitted, either with the prior disclosure, or within 30 days of Customs' calculation of such amount. The procedure is called "prior disclosure," and it is a legal process that must be carefully followed to insure your rights are protected. In all but the most simple of cases, and always where there is high dollar value involved, a prior disclosure should be submitted by or under the guidance of a competent customs attorney. If you have, or think you have, made an error in your import program, please contact us immediately.

## **Common Import Problem Areas**

### Post-Panamax Vessels, Port Congestion, and Delivery Delays

In 2006, the major ocean carriers began deploying huge container vessels known as "post-Panamax", so named because they are too big to go through the old locks of Panama Canal. The new locks were completed in 2016 and will accommodate up to approximately 12,500 "twenty foot equivalent unit" (TEU) vessels. Some of these behemoths can carry as many as 21,000 TEU's, and when one calls a port, it can take 2-3 DAYS to discharge at that port! This number of containers hitting the port causes severe congestion not only at the port, but at rail yards and nearby highways as well. The severe congestion was so bad around the Los Angeles/ Long Beach ports that local governments imposed fees to move the containers off the ports from 6:00am to 7:00pm. Because of long train backlogs on the West Coast, many shippers near East Coast ports have begun using all water vessels to EC ports instead of landbridge from LA/LB,

and many are saving time! Miami and New York are similarly congested, and all US ports must deal with a growing volume. It can easily take 7 to 10 days to get a container off a congested port onto a train. This will **only** get worse as more large vessels are put in service – currently about 50 per year. Please allow for delays in your supply chain.

### Country of Origin Marking Requirements

Customs Regulations require "...every article of foreign origin (and its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article or container will permit, in such a manner as to indicate to an ultimate purchaser in the U.S. the English name of the country of origin of the article, at the time of importation into the Customs territory of the U.S." **Marking violations are the most common violation and cause importers the most trouble.** Please let us help you determine the marking requirements for your merchandise well in advance of importation. **Compliance after the fact is frequently expensive, and can cause delays in release and delivery.** Repeated failure to satisfactorily mark the merchandise may result in additional punitive duties.

### Samples

Under U.S. Customs Regulations, samples must usually be entered under the normal tariff classification, with a visa (if applicable), and duty paid on the fair market value. Only under VERY restricted conditions are goods accorded sample status, and these requirements **MUST** be met **PRIOR** to the goods being shipped or they will be refused entry. Please call us for these requirements.

### Demurrage

Steamship companies and airlines allow only a few days free time for shipments to clear Customs and be dispatched from their cargo facility. Past the allowed free time, which is **usually** 5 days for ocean shipments but can be as little as 2, a daily storage rate known as demurrage is charged. Normal free time for air shipments is 2 days. Demurrage charges can accrue rapidly. Please advise us of pending shipments so that we can help you avoid this situation.

### Marine Insurance

Ocean, air, and motor carriers have a very limited liability, which can be as little as \$50.00, and then **only** if you can prove that damage or loss is due to negligence of the carrier. Accordingly, we strongly recommend that all customers carry additional cargo insurance on all shipments. The cost of insurance is **usually** less than 0.5% of the total cost of most goods.

More importantly, under maritime law, if the vessel on which your goods are transported sinks or is damaged, **you are liable for a portion of the cost to replace or repair the vessel. This is in addition to the loss or damage to your shipment!** If "general average" is declared and you do not have marine insurance, **your cargo cannot be**

**released without a substantial cash deposit**, starting at several thousand dollars and conceivably going into six figures or more. Please be aware that some unscrupulous foreign insurance companies routinely deny claims knowing that the importer may not be able or willing to come to their country and sue in their courts to recover losses. Please also be aware, however, that “all risk” coverage does not cover some instances such as improper or insufficient packaging, manufacturing defects, **delays**, or nuclear detonation. Also, bottled or bagged merchandise usually has a deductible of 2-3 percent. We are pleased to offer an outstanding, low-cost policy with Lloyd’s of London.

### Traveling Abroad

The information listed in the Unaccompanied Baggage section also applies to accompanied baggage. Prior to traveling abroad, we recommend that you register imported cameras, watches, etc., with Customs. While Customs Form 4455 is obsolete, it is still a good way to register your imported items. We will be glad to arrange this.

### Articles Solely for Personal Use

While we are always delighted to act on your behalf with Customs, this is the one area where you can deal directly with Customs better than we can. Gifts, personal effects, and other items solely for your personal use can be cleared in person at the Customshouse. Customs provides this service free of charge, and collects the normal duty charges on the spot. We will be glad to arrange the necessary appointment.

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## **Optional Import Enhancements**

### Automated Clearinghouse Payments (ACH)

Customs allows you to pay your duties electronically through the ACH banking system. This is a wonderful option, especially for importers whose duties are large, and those importers involved with "live" entries (entry/entry summary required simultaneously). In the latter case, the importer is allowed an additional 10 days to pay duties. There is no charge for this service, you do not have to write a check, and there is a clear, indisputable audit trail that will appeal to your chief financial officer.

### Periodic Monthly Statement (PMS)

For importers already set up for ACH payment, they may also apply for Periodic Monthly Statement (PMS) and make just one payment for an entire month’s entries. Importantly for an importer’s cash flow, this payment is on the fifteenth day of the month following those entries. This obviously would have great appeal to your chief financial officer.

### Binding Rulings

Many commodities are not exactly provided for in the HTSUS, leaving room for interpretation. There are strict rules for interpretation, but many commodities may be interpreted differently by knowledgeable people. Unless your commodity is

clearly provided for in the HTSUS, we strongly recommend that we obtain for you a binding ruling from Customs. This ruling is binding on Customs nationwide so that they can not come back at a later time and assess additional duties based on a new interpretation of the HTSUS. In many cases, this will speed your entry releases.

### Duty Drawback

If you export products that have been imported, or if you export products made from imported merchandise, you may be eligible to reclaim 99 percent of duty paid on the imported merchandise. There are two types of drawback, unused and manufacturing. Unused drawback applies to merchandise that is exported in essentially the same condition as imported. Manufacturing drawback involves the imported merchandise being used in a manufacturing process and that end product is subsequently exported. Recordkeeping for both types of drawback is required, but the recordkeeping for manufacturing drawback is extensive and complex. We are aware of a company that was fined 20 million dollars for inadequate recordkeeping for a manufacturing drawback program. Because manufacturing drawback is so complex and specialized, we partner with a manufacturing drawback specialist to insure compliance. Please contact us if you think you may have exports eligible for either unused or manufacturing drawback.

### Advance Documents

In January 2002, Customs launched the Container Security Initiative (CSI) to prevent global containerized cargo from being exploited by terrorists. One of the main components of CSI is the 24-hour advance manifest rule that requires shippers to provide full manifest information to Customs at least 24 hours in advance of departure from the origin country (please see Importer Security Filing, above). With the advance manifest information on hand, Customs will determine whether or not they want to inspect goods prior to their lading on board the vessel. It is imperative that your shippers have paperwork completed and available in a timely fashion or your shipment may not be exported as quickly as you would like.

Additionally, if we can receive complete and legible documents in advance of the arrival of your shipment, we can frequently make entry prior to the arrival of the vessel or aircraft. For ocean shipments, we can make entry no more than 5 days prior to vessel arrival. For air shipments, we must confirm the shipment is on board and the aircraft has taken off ("wheels up"). Customs no longer requires original documents from your vendors so it is wise to always have your vendors email or fax us copies of documents. If you or your bank requires originals, or the occasional required original permit, license, or quota form required by participating government agencies (PGA's), ALWAYS have them couriered – NEVER send originals by regular post. We further suggest that you have your vendor list us as a "notify party" on the bill of lading or air waybill. These steps can reduce your entry release time possibly even to zero, and help avoid the costs of demurrage and G.O.

For additional information on commercial imports, we suggest you also refer to Customs website at <http://www.cbp.gov/trade/basic-import-export> or contact our office at 404-361-1114. We look forward to serving your import needs.