Best Practices in Import Compliance Management

Webinar
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Topics

- tips, tricks, insights and examples of best practices
  - Tariff Classification
  - Valuation, including assists and other additions to value
  - Recordkeeping
  - Free Trade Agreements
  - Antidumping and Countervailing duty watch
  - PGA Data requirements
  - Risk Reviews and Quarterly Audits
  - Broker Management Controls
Why Adopt “Best Practices”? 

- Why adopt best practices for import compliance?
  - Failure to exercise reasonable care in an import transaction or maintain and produce records when required can result in--
    - MONETARY PENALTIES
    - LIQUIDATED DAMAGES
    - INCREASED CUSTOMS DUTIES/ OVER-PAYMENT OF DUTIES
    - DELAY IN RELEASE OF CARGO DUE TO INCREASED COMPLIANCE INSPECTIONS or OGA/ PGA CLEARANCE/RELEASE
    - Fewer CF-28 (request for information) and/or CF-29 (Notice of Action)
Why Adopt “Best Practices”?

- Passage of NAFTA implementation Act in 1993
  - Changed how Customs does it job
  - Less emphasis on “entry by entry review”
  - More emphasis on “Account based reviews”

- Customs Creation of **Centers of Excellence and Expertise**
  - 10 Centers based on Industries
  - Centers now process all import transactions for Industry Importers
  - focus on Account Based Reviews of importer activity

- The Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA)
Centers of Excellence and Expertise Directory

Below are the numbers to reach our Centers of Excellence and Expertise (Centers) organized by their trade focus. Please use this as a reference as it has the most up-to-date listing available.

The Centers have a sequence of team codes. In order to achieve a level of uniformity among all ten Centers and to provide for transparency, all Centers utilize the team codes in a similar manner. This provides consistency for the trade, the Centers, and the Ports.

Centers of Excellence and Expertise (CEE) transform the way CBP approaches trade operations and works with the international trade community. The Centers represent CBP’s expanded focus on “Trade in the 21st Century” by aligning with modern business practices, focusing on industry-specific issues, and by providing tailored support to unique trading environments. The Centers were established to increase uniformity of practices across ports of entry, facilitate the timely resolution of trade compliance issues nationwide, and further strengthen critical agency knowledge on key industry practices.

- Delegation Order Guidance for the Trade Community (NEW!)
- Centers Trade Process Document

Federal Register Notices
- Centers of Excellence and Expertise Test; Modifications
- Modification and Expansion of CBP Centers of Excellence and Expertise Test to
### Centers of Excellence and Expertise

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<td>Los Angeles</td>
<td><a href="mailto:cynthia.glenn@cbp.dhs.gov">cynthia.glenn@cbp.dhs.gov</a></td>
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Centers are responsible for decisions and determinations in the following areas:

- Entry/Entry Summary processing including warehouse entries and withdrawals, FTZ entry summaries and other special entry procedures.
- Decisions and activities regarding country of origin marking, rules of origin, trademarks, copyrights, bonds, classification, appraisement (Valuation),
- Processing of liquidations, protests, petitions, recordkeeping, and financial and accounting matters.
CBP and the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA)

TFTEA requires CBP to adopt a renewed approach to trade facilitation and enforcement, focusing on key areas, such as:

- Trade Enforcement
- Automated Commercial Environment (ACE)
- Antidumping and Countervailing Duties (AD/CVD)
- Centers of Excellence and Expertise (Centers)
- Enforce and Protect Act of 2015 (EAPA)
- Forced Labor
- Intellectual Property Rights (IPR)

https://www.cbp.gov/trade/trade-enforcement/tftea
Why Adopt “Best Practices”?

Helping American workers and American businesses compete fairly with the rest of the world.

The Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) was signed into law P.L. 114-125 on February 24, 2016. It is the first comprehensive authorization of U.S. Customs and Border Protection (CBP) since the Department of Homeland Security was created in 2003, with the overall objective to ensure a fair and competitive trade environment.

TFTEA supports CBP efforts to meet the demands and complexities of a rapidly evolving global supply chain.

**PROTECT**
Proted U.S. Economic Security through Trade Enforcement

**COLLABORATE**
Collaborate with the Private Sector through Direct Engagement

**STREAMLINE & MODERNIZE**
Streamline and Modernize through Business Transformation

TFTEA’s Impact on CBP and the Trade Community

Learn more about the key objectives of TFTEA and how the legislation authorizes and enables CBP’s enhanced trade facilitation and trade enforcement efforts

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Trade Enforcement

CBP has emphasized the proactive and strict enforcement of U.S. trade laws to protect national economic security, facilitate fair trade, support the health and safety of the American people, and ensure a level playing field for U.S. industry.

- **CBP Trade Enforcement Operational Approach** - Learn more about CBP’s trade enforcement operational approach detailing how the organization DETECTS, DETERS, and DISRUPTS fraudulent behavior as a means of protecting America’s economic security.
- **CBP Trade Enforcement Bulletin** - The Quarterly CBP Trade Enforcement Bulletin (FY 2016, Quarter 3) highlights specific instances in which CBP enforces U.S. trade laws at and beyond our nation’s borders through interagency partnership and collaboration.
- **Press Release: CBP Creates Trade Enforcement Task Force** - The Trade Enforcement Task Force was created to focus its efforts on issues related to Forced Labor, AD/CVD laws, and the interdiction of illicitly imported goods.
Why Adopt “Best Practices”?

- Priority Trade Issues (PTIs) represent high-risk areas that can cause significant revenue loss, harm the U.S. economy, or threaten the health and safety of the American people.

- CBP uses PTIs to drive risk-informed investment of CBP resources and enforcement and facilitation efforts, including the selection of audit candidates, special enforcement operations, outreach, and regulatory initiatives.

- Current Priority Trade Initiatives:
  - Antidumping and Countervailing Duty (AD/CVD)
  - Import Safety (Consumer Product Safety/ FDA / EPA/ DOT, etc.)
  - Intellectual Property Rights (IPR)
  - Revenue (Duties and Fees)
  - Textiles/Wearing Apparel
  - Trade Agreements
Why Adopt “Best Practices”?  

- Customs Audits and 19 USC 1509
  - Focused Assessments (FAs)
    - Large /medium volume importers
    - Importers of Trade Priority goods
  - Single issue or Quick Review Audits (QRAs)
    - Referrals-- Account Managers / Import Specialists
    - National Targeting and Analysis Groups (NTAGs)
  - Audit Surveys (Something new)
    - Targets companies by industry or Trade Priority Area
    - Short – One or Two days focusing on single topic/ questionnaire issued
In 2014, CBP conducted **78 audits** of importers of AD/CVD commodities

identified ADD/CVD discrepancies with a value of $14.5 million, plus $10.1 million in disclosures, penalties and interest.

**FY 2015 First Quarter – AD/CVD Audits**

- **115 AD/CVD audits in process**
- **Unreported Discrepant Value = $21,968,843**

- Increase resulted primarily from audits of importers of ADD/CVD commodities and CBP’s **enhanced targeting program.**
The Audit Survey Program

- Allows CBP to quickly and efficiently **obtain onsite information** about import activities relative to a **specific trade area** or issue without committing substantial time and resources required by a full audit.

- Though similar to audit risk assessment procedures, surveys do not constitute an “audit” in accordance with **Government Auditing Standards**.

- Allows RA to assign resources to only **risk based** companies for audit, increasing efficiencies for both CBP and the trade community in facilitating legitimate trade.

- **Lack of preparation** can result in a full-blown audit or other enforcement action.
Why Adopt “Best Practices”?

- Statutory obligation (19 USC 1484) for importers to use “reasonable care” when importing and declaring goods
- Importer’s declaration (19 USC 1485)
  - Prices set forth in the invoice are true
  - All other statements in the invoice or other documents filed with the entry, or in the entry itself, are true and correct;
- Civil penalties for false statements and omissions (19 USC 1592)
- Liquidated Damages (1X to 3x value) for breach of import bond conditions
- Detention and seizure for imports made “contrary to law.”
- Large penalties for failure to produce required entry records, declarations, certifications and supporting documents
Why Adopt “Best Practices”? 

- Over 1,500 FA Audits Performed
  - $90 Million in Loss of Revenue (excludes PDs & Penalties)
  - 57% of FA Concluded Unacceptable Compliance/ Practices
  - RA completed 1,053 audits from 2008 to 2010.
  - RA recommended collection of approximately $154.2 million in additional revenue to CBP.
  - Average Revenue collected per audit $158,000

- OIG-12-117, September 2012

- Top Areas with Unacceptable Compliance
  - Antidumping/Countervailing Duty reporting
  - Valuation
  - Duty Free Provisions (Preference Programs/ FTAs/ 9801-9802)
  - Classification
Why Adopt “Best Practices”? 

- Common Importer Errors Found By Customs
  - Failure to report manufacturing assists
  - Failure to report supplemental payments
  - Failure to justify deduction of non-dutiable costs (CIF costs)
  - Errors in tariff classification
  - Lack of documentation to support 9801 claims for U.S. Goods Returned
  - Lack of documentation to support claim of 9802 U.S. Goods Returned
  - Lack of support for transaction value in related party transactions
  - Failure to report or support claim for non-dutiable buying commissions
  - Recordkeeping errors
What are “Best Practices”?

10 Steps to better trade compliance

1. **Have management’s commitment.** — *(Control Environment)*
   Demonstrate management’s commitment to compliance.
   - Establish a statement of corporate policy that addresses Customs and Border Protection (CBP) matters.
   - Solicit a statement from the Board of Directors that assigns authority and responsibility to the customs group.

2. **State compliance and cost-goals.** — *(Risk Assessment)*
   Identify and analyze relevant risk and develop internal goals to manage the risk.
   - Conduct post-entry reviews and compare these against established goals.
   - Determine how risk areas should be managed.
   - Resolve control weaknesses in a timely manner.

3. **Develop formal policies.** — *(Control Activities)*
   Develop, implement and/or modify formal policies and procedures to ensure that management’s goals and objectives are met.
   - Verify the accuracy of the Internal Control Manual to ensure processes and procedures achieve prescribed goals and objectives.
   - Modify controls that are ineffective or inefficient and report to management.
   - Define accountability and controls in job descriptions.
4. Establish training programs. — *(Information & Communication)*
   Ensure that employees receive appropriate training and guidance to effectively discharge their responsibilities.

   • Convey pertinent information to the right people at the appropriate time.
   • Disseminate CBP information via company’s communication system (i.e., intranet, bulletin board, mail).

5. Conduct internal control reviews. — *(Monitoring)*
   Conduct periodic process reviews to assess the performance quality of the internal controls.

   • Use external or internal audit to periodically review each business unit to confirm that corporate policies are implemented and mandate corrective action when necessary.
   • Adjust testing in response to changing risk.
6. **Create compliance group.** *(Information & Communication)*
   Establish a customs group.

   • Foster open communication channels between all departments that may be involved in the CBP processes.
   • Establish control activities and self-testing processes to verify the accuracy of the company’s internal control system since the quality of the information generated affects the ability of management to make decisions.

7. **Access executives for needed resources.** *(Control Environment)*
   Raises the importance of the Customs group and provides adequate authority for the group to interact with other departments as needed.

   • Organize the customs group so that it is visible to top-level management. (e.g., attaching to tax or legal department/division)
   • Provide an awareness of supply chain structure. Many executives know their sales figures but do they know their key import statistics and suppliers?
8. **Develop compliance requirements for suppliers.** (Control Activities)
   Develop contract language on purchase agreements.

   • Develop and implement controls to help ensure that CBP transactions are valid, properly authorized, and accurately processed.
   • Request suppliers provide regulatory reporting information when applicable (NAFTA, GSP, etc.).
   • Exercise reasonable care over operations performed by service providers.

9. **Establish a record-keeping program.** (Control Activities)
   Establish a record-keeping program.

   • Maintain a record keeping system that forms an audit trail from production control through payment to CBP entry.
   • Provide supporting documentation for CBP transactions in a timely manner.

10. **Partner with Customs & Border Protection.** (Information & Communication)
    Enhance partnership by:

    • Participate in voluntary CBP programs such as C-TPAT, CSI, ISA, FAST, ACE, etc.
The COSO Matrix

Monitoring
- Assessment of a control system’s performance over time.
- Combination of ongoing and separate evaluations.
- Management and supervisory activities.
- Internal audit activities.

Information and Communication
- Pertinent information identified, captured and communicated in a timely manner.
- Access to internal and externally generated information.
- Flow of information that allows for successful control actions from instructions on responsibilities to summary of findings for management action.

Control Environment
- Sets tone of organization-influencing control consciousness of its people.
- Factors include integrity, ethical values, competence, authority, responsibility.
- Foundation for all other components of control.

Risk Assessment
- Risk assessment is the identification and analysis of relevant risks to achieving the entity’s objectives-forming the basis for determining control activities.

Control Activities
- Policies/procedures that ensure management directives are carried out.
- Range of activities including approvals, authorizations, verifications, recommendations, performance reviews, asset security and segregation of duties.

Control activities
Best Practices of Customs Compliance: Where to Start

- Assessing your company’s risk profile – Key factors
  - What activities should your internal controls cover?
    - Classification
    - Valuation
    - Quantity
    - Special classifications and duty preferences
    - Country of Origin
    - Antidumping / countervailing duty Orders
    - Other Governmental Import requirements (i.e., FDA, FCC, EPA, CPSC, etc.)
    - Special Recordkeeping or invoice requirements
    - Broker management (Use of new, multiple, or sub-contracted brokers)
    - Supplier /vendor management
Where to Start?

Focused Assessment Program Table of Contents

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Why Have Internal Controls?

- Internal controls over customs transactions are not mandated by any customs law or regulation

- Internal controls over customs transactions are not mandated by Sarbanes-Oxley

- The presence of good internal controls are a strong indicator to Customs that an importer is acting responsibly and is exercising reasonable care
Why Have Internal Controls?

- Many companies still do not have internal controls over customs transactions

- For those that do, a significant percentage have controls that are inadequate to ensure compliance objective
Why Have Internal Controls?

- Internal Controls over customs transactions further the goal of any company.
  - Save time & money
    - duties & fees
    - Avoid penalties
    - faster release and clearance
    - Fewer request for documents
  - Help employees operate more efficiently
What is “Internal Control”?

Definition

A process:

- Directed by management and implemented by company personnel
- designed to provide **reasonable assurance** that any given import transaction fully complies with U.S. import requirements.
Scope of Internal Controls

What activities should customs internal controls cover?

- Classification
- Valuation
- Quantity
- Special Classifications and duty preferences
- Antidumping /Countervailing Duty Orders
- Country of Origin
- Entry Reconciliation
- OGA requirements?
What does Customs want to see?

- Management committed to compliance with customs requirements
- Written procedures or process with assigned responsibilities
- Distribution of important Customs related information to affected company employees and Customs brokers.
- Periodic checks to verify accuracy.
- Regular training for responsible employees.
ACTION STEPS TO DEVELOPING A CUSTOMS COMPLIANCE PROGRAM

- Identify Customs programs used by your company
- Identify persons knowledgeable about products and programs and assemble compliance working group;
- Review regulations and legal requirements
- Determine what records must be maintained and/or procedures that must be followed
- Flow-chart company import & payment process
Preparing your Internal Controls

- Keep it simple!
- Don’t reinvent the Wheel
- Say what you are going to do & Do what you say!
- Test and verify to make sure you have done what you said you were going to do!
Preparing Internal Controls

Controls should include

• Statement of purpose (why is control necessary)
• Identify parties responsible for carrying out internal controls
• Description of procedure(s) to be followed
• Explanation of verification process
• Process for reporting & correcting errors, as appropriate using PSC or Prior Disclosure program
• Additional references/ resources
Preparing Internal Controls

- Develop Standards for Suppliers & Service Providers
  - Include compliance requirements in contracts, purchase agreements, and service contracts
  - Develop SOP with suppliers to ensure that Invoices have accurate descriptions and values
  - Develop SOP with brokers to ensure that Customs transactions are accurately processed.
  - Require suppliers provide regulatory reporting information when applicable (NAFTA, GSP, etc.).
  - Send suppliers and brokers a monthly or quarterly score card
Common Internal Control Deficiencies

- No Internal Control Procedures (i.e. Classification database, post entry audits, broker guidelines, recordkeeping, etc.)
- Internal Control Procedures but not Documented
- Written IC Policies/Procedures are non-specific to company (Regulatory Requirements Only with no related desktop procedures)
- Not Documenting Instructions to and Communications with Broker
- No Post Entry Audit process to monitor/verify Broker’s Work
- Not Maintaining or Updating Classification Database
- Broker not using Importer’s Classification Database
Common Internal Control Deficiencies

- Other Departments Not Communicating Potential CBP Related Information to the Import Department
- No Accounting General Ledger review to identify valuation errors (commissions, royalties, assists, etc.)
- Not Tracking and/or Reporting Variances to CBP (Value, Quantity, etc.)
- Not Obtaining and Maintaining Proof of Eligibility for Special Trade Program Claims
- Lack of Knowledge or Specialized Training
- No CBP Reference Materials Available to Employees or Not Accessed/Used
- No Testing of Entries for Accuracy
- No Periodic Review and Adjustment of Internal Control Procedures
Preparing Internal Controls: Risk Assessment

❖ Conduct a Self-Assessment
  • Evaluate & test current processes
  • Select and test sample customs entries
    ▪ are they accurate?
    ▪ Make sure testing is broad enough to cover all types of import transactions
  • Sample accounts payable transactions for payments to suppliers of imported goods or for assists
  • Look at exports for any assists (parts, components or equipment)
Best Practices for Customs Compliance: The Risk Review

- Where to start – Gather Data and Information
Preparing Internal Controls: Risk Assessment

- Obtain copy of import activity report from Customs
  - “Mine” data for information on
    - Exporters/manufacturers,
    - values,
    - tariff classifications
    - Special duty /preferences
Best Practices of Customs Compliance: Core Elements

**Identify risks and compliance goals**

- Used structured sampling program for entry and financial transactions
- Identify errors and cause
- Share results with effected groups and
- Determine how errors can be eliminated
- Develop procedures that “reasonably ensure” compliance goals and objectives are met.
Planning, developing, implementing your risk-based analytics

Where to start? Taking a page from Customs’ book!

• “Risk Assessment and Self-testing Plan” described in Appendix I to the 2011 ISA Handbook
  ▪ CBP allows flexibility and does not dictate specific testing requirements
  ▪ “[E]ach company must perform its own risk assessment, develop its own control procedures ... design its own self-testing program in order to monitor and mitigate risk and ensure that import transactions are accurate and compliant.”
Preparing Internal Controls

Each control should include

- A statement of purpose (why control is necessary)
- Define accountability and responsibility for reporting in internal control documents and job descriptions.
- Description of procedure(s) to be followed
- Explanation of verification process
- Process for reporting & correcting errors, as appropriate using PSC or similar program
Preparing your Internal Controls

❖ Each process should clearly explain . . .

• **Who** does what?
• **What** do they do?
• **When** do they do it?
• How do the do it?
• How do they document that they did it?
• **Who** checks that they did it?
Preparing Internal Controls

- Identify your objective/goal

- Study:
  - Customs FA Guidelines
  - CBP Best Practices
  - CBP Model Internal Controls Manual
  - Consult experts for ideas/ Have them review your process/ procedures
Best Practices of Customs Compliance: Core Elements

- Broker Data –
- Broker On-Line Reporting Tools
- Request Import Activity from Broker
- Merge invoice or PO line data with entry line report

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Best Practices of Customs Compliance: Core Elements

“HOW TO” DEVELOP A CUSTOMS COMPLIANCE PROGRAM

- Identify Customs programs use by your company
- Identify persons knowledgeable about products and programs and assemble compliance work group;
- Review regulations and legal requirements
- Determine what records must be maintained and/or procedures that must be followed
- Understand and flow-chart company import & payment process
Get Everyone Involved!

CUSTOMS COMPLIANCE IS A TEAM EFFORT

Accounts Payable

Procurement

Finance / Tax

Shipping / Receiving

Legal

Engineering / R & D

Manufacturing
Best Practices of Customs Compliance: Core Elements

- Develop standards for suppliers & Service Providers
  - Include compliance requirements in contracts, purchase agreements, and service contracts
  - Develop SOP with suppliers to ensure that Invoices have accurate descriptions and values
  - Develop SOP with brokers to ensure that Customs transactions are accurately processed.
  - Require suppliers provide regulatory reporting information when applicable (NAFTA, GSP, etc.).
  - Send suppliers and brokers a monthly or quarterly score card
Broker Controls

- SOPs or Business Rules direct the broker on how to act on your behalf
- These should be specific to the importer’s business operations
- A few topics the SOP should include:
  - Process for filing an entry
  - Process for communicating entry issues
  - Process for Customs and OGA inquiries
  - Recordkeeping process

- SOPs are in writing and sign by both parties
- Designate Single Contact Person at Broker and Importer for all entry and compliance related questions
- Brokers do not classify merchandise, disclaim AD/CVD hits, or claim FTA-duty free treatment w/notification and authorization of importer
- Brokers use only identified HTS information supplied by importer
- Review ACE reports for Broker Activities
- Monitor brokers and provide monthly or quarterly score card
Red Flags For Classification

The company has insufficiently documented, poorly defined, or no internal controls for accurately reporting classifications to Customs.

The company does not monitor or interact with the broker on classification issues.

The company relies on the broker to handle classification issues, and there are poor or no company checks or balances over broker.

Company import staff lacks knowledge of classification requirements for products imported.
Best Practices For Classification

- Internal controls over classification are in writing and assign classification duties and tasks to a specific position.
- The company has assigned technical specialists or purchasing specialists to assist with classification.
- Involves Purchasing/ buyers/ Engineers to determine classification for a new part before obtaining a purchase order.
- Classification process is documented with supporting information.
- The company maintains a database of classifications for its product line and requires the classification to be shown on invoices.
Best Practices for Classification

- Company maintains current classification data base
- Maintains process controls over who can change or update
- Record of who classifies product, date and any change record of classification
- Includes Part no. description, classification, rationale, rulings etc.

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<thead>
<tr>
<th>No</th>
<th>Product description</th>
<th>Classification</th>
<th>HS codes considered</th>
<th>Classification rationale</th>
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<td>16</td>
<td>Assembly designed to be mounted into a cellular (mobile) phone, consisting of a plastic frame incorporating the following components:</td>
<td>8517.70</td>
<td>85.17, 85.43 and 90.31</td>
<td>GIRs 1 (Note 2 (b) to Section XVI) and 6</td>
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</table>
Best Practices For Classification

- Company provides classification data base to brokers
- Company requires vendors to provide sufficient descriptions of merchandise on invoices.
- The company conducts and documents periodic reviews of entries of merchandise and uses the results to make corrections to entries and changes to its import operations as appropriate.
- The company requires periodic training for staff responsible for classifying merchandise.
- The company attends Customs informed compliance outreach and seminars or attends Customs-related seminars provided by private vendors.
Preparing Internal Controls CLASSIFICATION

- Prepare and maintain a schedule of imported products with HTS classification, duty rates and other key information.

- Develop procedures to identify and classify new products before they are imported.

- Assign technical specialists or purchasing specialists to be responsible for or to assist with classification.

- Provide Custom broker or filer with product/classification schedule and updates.

- Maintain records on products with technical information or description, HTS provisions, and rulings reviewed that support classification.
Best Practices For Classification

- To determine correct tariff classification review all relevant:
  - Headings
  - Section and Chapter Notes
  - GRI’s

- Consult
  - Customs informed compliance publications
  - Explanatory Notes
  - Customs rulings and court cases

- If you still don’t know the correct classification
  - Consult with a “Customs” expert
  - Obtain a Customs ruling
Core Risk Areas

- **Valuation**
  - Payment records don’t match invoices
  - Supplemental payments or year end adjustments (Standard cost issues) are unreported
  - Assists are unreported
  - Royalty payments to third parties are unreported
  - Interest payments are non-qualifying
  - Commissions are unreported
  - CIF costs undocumented
  - Non-transaction value goods (samples, repairs and returns)
Valuation Checklist

- Price Actually Paid or Payable
- Packing
- Selling Commissions
- Assists (e.g., Materials/Component Parts, Tools, Dies, Molds, Merchandise Consumed, Engineering, Development, Art Work, Design Work, Plans)
- Royalties and License Fees
- Proceeds of Subsequent Resale
- Transportation Costs (e.g., International Freight, Foreign inland Freight)
- Transportation Rebates, Insurance
- Price Adjustments (Periodic and year end transfer price adjustments)
Valuation Checklist

- Price Increases
- Supplier Rebates and Allowances
- Indirect Payments to 3rd Parties that benefit seller
- Payment of Seller’s Debt by Buyer (e.g., quota or materials)
- Price Reductions to Buyer to Settle debts (e.g., Reductions for Defective Merchandise)
- Purchases on Consignment
- Quota/Visa
- Currency Exchange Adjustments
Preparing Internal Controls: Valuation

- Develop system to link payments to invoices and invoices to entries
  - Supplemental Payments
  - Additions to price--
    - Assists (parts, components, tools, etc.)
    - Royalty & License fees
    - Packing costs
    - Commissions
Internal Controls: Valuation

- Learn how and where Vendor payments are recorded to G/L;
- Require A/P, finance, responsible for reporting to Customs Department
  - Key & or new suppliers/ vendors
  - monthly or quarterly vendor payment reports
  - Check payments against Customs invoices
  - Resolve discrepancies
Internal Controls: Assists & Supplemental Payments

- Be a part of approval process to review Purchase Orders for assist-type products or new suppliers

- Require that Shipping / Export departments be responsible for reporting shipments to assemblers or manufacturers

- Train Purchasing, Engineering, etc., as to what assists are, and require that they be responsible for reporting on shipments or purchases
Current Hot Topics in Customs Valuation

 ➢ Key Resources

 ◦ Customs Valuation Law 19 USC 1401a
   ◦ http://www.law.cornell.edu/uscode/text/19/1401a

 ◦ Customs Regulations 19 CFR 152
   ◦ http://www.law.cornell.edu/cfr/text/19/part-152
   ◦ http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=%2Findex.tpl

 ◦ Customs Rulings
   ◦ http://rulings.cbp.gov/
Where to Begin Your Valuation Risk Assessment?

- Important Resources: Customs Publications
  - Customs Valuation Encyclopedia of Rulings and Decisions
  - Informed Compliance Publications
    - Bona Fide Sales & Sales for Exportation to the United States
    - Buying & Selling Commissions
    - Customs Value
    - Determining the Acceptability of Transaction Value for Related Party Transactions
  - Importation of Commercial Samples
  - Proper Deductions for Freight & Other Costs
    - Exhibit 5B - Transaction Value - Technical Information for Pre-Assessment Survey (TIPS)
    - Exhibit 5T - Reconciliation - Technical Information for Pre-Assessment Survey (TIPS)
CBP’s Technical Guide for AD and CVD

Focused Assessment Program Table of Contents

Exhibit | Subject
--- | ---
5I | HTSUS 9802.00.90 – U.S. Formed and Cut Fabric Assembled in Mexico – Technical Information for Pre-Assessment Survey
5J | Antidumping Duties and Countervailing Duties – Technical Information for Pre-Assessment Survey
5K-1 | Foreign Trade Zones – Manufacturing – Technical Information for Pre-Assessment Survey
5K-2 | Foreign Trade Zones – Petroleum – Technical Information for Pre-Assessment Survey
5L | Transshipment – Technical Information for Pre-Assessment Survey
5M | Generalized System of Preferences – Technical Information for Pre-Assessment Survey

ADD/CVD orders are issued for specific commodities by manufacturer and country of origin. A list of open orders can be obtained from the ITC web site at www.usitc.gov.

2.1 EXAMPLES OF RED FLAGS

The following examples are conditions that may indicate a potential problem in ADD/CVD.

- Company has insufficiently documented, poorly defined, or no internal controls for accurately declaring ADD/CVD. Examples:
  - Company does not monitor or interact with the broker on ADD/CVD issues.
  - Company relies on one employee to handle ADD/CVD issues, and there are poor or no management checks or balances over this employee.
  - Company’s Customs staff lacks knowledge of ADD/CVD issues.
  - Company offers unreasonable explanations to Customs.
ANTIDUMPING/COUNTERVAILING DUTIES – Internal Controls

- Broker Instructions
- Add / CVD Procedure
- New Order Research
- Add/CVD Review via Post Entry Audits
ANTIDUMPING/COUNTERVAILING DUTIES

Example Broker Instructions

Brokers are required to enter merchandise in accordance with the Classification and ADD/CVD Database or as directed by Importer.

Brokers will inform Importer of any Automated Broker Interface (ABI) alerts with respect to ADD/CVD so that the Importer can determine if the product is subject to ADD/CVD orders.

If the broker’s system indicates a product may potentially fall under the scope of an ADD or CVD case, the broker will review the information received in the ADD/CVD database provided by the Importer to determine whether the item is subject to ADD/CVD.

- If ADD/CVD is applicable, the broker will enter the importation under the appropriate ADD/CVD case numbers on entry.
- If ADD/CVD is not applicable, the broker will proceed to file the entry without applying ADD/CVD.
- If the broker is not clear as to the applicability of ADD/CVD, the broker will submit a written request to the company to verify whether the items fall within the scope of the order. In the communication, the broker should include the potential case information which explains what is covered under the scope and the company will review and confirm the applicability of ADD/CVD.
EXAMPLE ADD/CVD PROCEDURE

TRADE COMPLIANCE MANAGER DUTIES:

• Developing a program for effectively identifying merchandise actually or potentially subject to ADD/CVD,
• Managing customs brokers selected by the company,
• Ensuring the knowledge base is maintained and kept current in regards to ADD/CVD orders.
• Ensuring the knowledge base and related information is reflected in information provided to business entities.
• Reviewing all internal control documentation on an annual basis to ensure documented internal controls are being followed.
• Ensuring the procedures and policies documented for the Trade Compliance Department are adhered to.
• Ensuring all members of the team have adequate knowledge in order to carry out specific tasks assigned to them regarding ADD/CVD review, etc.
• Developing and maintaining records to substantiate all case numbers assigned to imports.
• Facilitating interdepartmental communication.
• Records -- Maintaining current non-reimbursement statements for all products subject to anti-dumping.
• Performing quarterly audits of entries to ensure internal controls with respect to ADD/CVD are being followed.
• Developing and maintaining records to substantiate all case numbers assigned to imports.
ANTIDUMPING/COUNTERVAILING DUTIES – POST ENTRY AUDITS & RISK ASSESSMENT

- Verify whether the goods are subject and that the ADD/CVD case numbers reported match the case numbers recorded in the company’s database.
- Ensure the correct ADD/CVD deposit rates were identified on the entry.
- Verify that there is a valid non-reimbursement statement on file for ADD/CVD for that port/vendor/case combination (per 19 CFR § 351.402(f)(2)).
- Verify that the correct ADD/CVD case numbers are assigned based on the producer identified in the entry package.
Effective Post Entry Audit Programs

- Must be documented and clearly define the scope, sample selection process, audit frequency, etc.
- Should contain a Documented Risk Assessment component
- Should ensure audits are performed monthly or quarterly at a minimum (annually is not sufficient!)
- Should ensure all entries are included in the universe from which samples are selected
- Sample sizes should be based on identified risks and other factors
- Require that results be documented, analyzed, and the appropriate corrective action taken for errors
Post entry review procedures

Post entry reviews may be used to evaluate, for example, whether the broker complied with the importer’s instructions for complying with CBP requirements; whether the quality of information supplied to the broker was correct; and/or whether the information reported to CBP on the entries were accurate and complete. Typically, post entry reviews are performed on a periodic basis (i.e., quarterly, semiannually) and before entries liquidate to proactively monitor compliance and timely report an adjustment to CBP (e.g., file PEA or prior disclosure). The number of entries or entry lines reviewed depends on factors such as the volume and complexity of the importer’s import activity; however, 100 percent review is typically not feasible and some form of sampling would be used.
When evaluating post entry review procedures, auditors consider:

(1) How much is being examined (and how often) in relation to the volume imported?

The importer may perform post entry review procedures on a periodic basis (e.g., quarterly or monthly) by selecting entries or entry line items filed during that period. Although these reviews may be performed quarterly or monthly, the population to which the procedures are applied is greater. In contemplating whether to test this control (e.g., reviewing all of the entries from two quarterly post entry reviews), auditors consider if the post entry review procedures were used on a sufficient number of entries or line items in order for the control to be responsive to the relevant risks. For example, if an importer files 500 entry line items per month, 10 percent of the total entry line items filed during a quarterly period would be considered a sufficient number, while 10 entry line items per quarter would not.
Quarterly Post-Entry Audit Samples

- Review a **minimum** of 25 entry lines per quarter for each IOR
- Review only **1-5 invoice lines** if there is explosion (RANDOMLY)
  - 15 of these sample entry lines are targeted based on risk
  - 10 of these sample entry lines are randomly generated
- Results recorded in the post-entry audit database
- Report findings to Sr. Management
- Need **follow-up** to identified errors
  - Cause and effect analysis
  - Expand review to broader universe
  - Implement corrective action (modify procedures)
  - Report to CBP, as needed (Prior Disclosure/ PEA/PSC)
Sampling Entries

- selection of both random and judgmental (targeted) samples to determine level of risk for each area
  - 1-20 Samples per category of review
    - Entry line items
      - Classification, Value, quantity
    - General ledger accounts (specific journal entries)
    - Accounts payable for foreign Vendors
    - Special duty or preference classifications (9801/ 9802, GSP, etc.)
  - Errors or evidence of non-compliance should result in expansion of sample and ultimately PSC or Prior Disclosure
Effective Post Entry Audit Programs

- Must be documented and clearly define the scope, sample selection process, audit frequency, etc.
- Should contain a Risk Assessment component
- Should ensure audits are performed monthly or quarterly at a minimum (annually is not sufficient!)
- Should ensure all entries are included in the universe from which samples are selected
- Sample sizes should be based on identified risks and other factors
- Require that results be documented, analyzed, and the appropriate corrective action taken for errors
Post-Entry Audit Samples

- Samples should be extracted from ACE or ITRAC data
- Samples should be reviewed by someone other than the person responsible for entries
- Samples should be selected based on targeted risk identified during the risk assessment
- The sample should be sent out on a regular basis. For example, approximately 30 days after the end of the calendar month
Quarterly Post-Entry Audit Samples

• Review a minimum of **25 entry lines** per quarter for each IOR
• Review only 1-5 invoice lines if there is explosion (RANDOMLY)
• 15 of these sample entry lines are targeted based on risk
• 10 of these sample entry lines are selected randomly
• Audit consists of 12 questions that evaluate various compliance areas
• The results of all audits are recorded in the post-entry audit database
• Record all needed details regarding errors
  ✓ COMMENTS
  ✓ ACTION
  ✓ RESOLUTION
  ✓ DATE RESOLVED
Judgmental Sample Review

- Entry line review
  - Classification
    - Data sheets or specifications
    - Importer analysis of classification
  - Value
    - Invoice
    - P.O.
    - Check or other payment record
  - Quantity
    - Receiving report
    - Inventory record
Do you have the records?

Typical records for review:

- Entry Summary
- Commercial invoice
- Purchase order/contract
- Airway bill/bill of lading
- Packing list
- Receiving report
- Inventory record showing merchandise entering inventory

- Accounts payable and disbursement record for entry
- Parts catalog containing description of part, specifications
- Documentation to support transaction value (for related party transactions)
- Records of payments associated with import
- Documents to support special entry (i.e., 9802, 9801, GSP)
Financial Records Sample Review

- General ledger accounts (specific journal entries)
  - Need explanation/understanding of G/L accounting practice
  - Select specific accounts to look at
  - Within selected account, pick journal transactions:
    - Invoice
    - Payment
    - Explanation
Financial Records Sample Review

- Accounts Payable Records For Foreign Vendors
  - Vendor Payments
    - What is a foreign vendor?
    - Sorting vendors by status
    - Do vendor payments = +/- entered values?
  - Sample Selection
    - Tie to import entry?
    - Invoice
    - Payment record
    - Explanation for transaction
    - Is it an assist or supplemental payment, etc.,?
Special Classification Sample Review

- Special duty or preference classifications (9801/9802, GSP, etc)
  - Major problems with supporting documentation
    - No shipper or assembler declarations
    - No U.S. Manufacturer declarations
    - No U.S. export document records
    - No independent contemporaneous value analysis
Recordkeeping Requirements

19 U.S.C. 1508 and 19 U.S.C. 1509

Two classes of records that must be kept:

- (a)(1)(A) list records
- “Other” records kept in the normal course of business.

Customs Has Published Recordkeeping Compliance Manual (See Customs Web site Informed compliance publication)

19 U.S.C. 1509 gave CBP expanded audit authority
Recordkeeping penalties

Penalties for failure to produce (a)(1)(A) list documents

- Negligence: $10,000 or 40% value of merchandise + loss of privileges
- Intentional: $100,000 or 75% of value of merchandise + loss of privileges
What Are (a)(1)(A) List Records?

Documents (including electronically generated documents) what are required by law or regulation for the entry of merchandise, such as:

- Bill of Lading / Air waybill;
- Broker’s power of atty;
- CF 3461 (or its electronic equivalent) information;
- CF 7501 (or its electronic equivalent) information;
- Invoice and invoice information (19 C.F.R. 141.83

Packing List (90 days)
Binding Ruling Identification Number
Declarations of Persons performing alterations or repairs (9802)
Declaration of foreign processing
Declaration of foreign assembler
Endorsement by importer
Declarations for articles exported and returned
Declarations of actual use
GSP Declarations and supporting documentation
NAFTA certificates of origin
Certificate of marking and notice to repacker
Informal entry: commercial invoice plus declaration
“Other” non-(a)(1)(A) list Records

- Chart of Accounts
- General Ledger and trial balance
- Disbursement records such as journals, bank statements, letters of credit, wire transfer records
- Accounts payable records
- Contracts
- Purchase orders
- Receiving documents (warehouse & inventory receipts)
- Catalogs with descriptions for imported merchandise
- Contracts for services (R & D, tooling, Royalties, Commissions, Assists, transportation)
- Correspondence
Reconciliation Procedures

EXAMPLES OF RED FLAGS
• No Recon Internal Controls
• Importer lacks knowledge of Recon Prototype requirements.

EXAMPLES OF BEST PRACTICES
• Reconciliation Internal controls are written, accurate and complete
• Importer attends Recon seminars
• Importer maintains software application that tracks underlying entry information and ensures all underlying entry adjustments are supported.

• MANY OTHERS! READ FOCUSED ASSESSMENT KIT – EXHIBIT 5T
### Section 1 – Internal Control Questions

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<th>No</th>
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<th>IC Manual Page Number</th>
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<td>1.</td>
<td>Are internal controls for Reconciliation procedures formally documented?</td>
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<td>2.</td>
<td>Are written policies and procedures approved by management?</td>
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<td>3.</td>
<td>Are written policies and procedures reviewed and updated periodically?</td>
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<td>4.</td>
<td>Is one manager responsible for control of the import department, including Reconciliation?</td>
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<td>5.</td>
<td>Does that manager have knowledge of Customs matters and the authority to ensure internal control procedures for imports are established and followed by all company departments?</td>
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Exhibit 5T - Reconciliation - Technical Information for Pre-Assessment Survey (TIPS)

Reviews red flags and best practices
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<th>Internal Control (IC)</th>
<th>Yes</th>
<th>No</th>
<th>Work Paper Refer</th>
<th>IC Manual Page Number</th>
<th>Is Implemented by Documentation and/or Internal Controls</th>
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<td>Broker Review</td>
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<td>19.</td>
<td>Does the company monitor the Reconciliation entries that the broker submits to Customs?</td>
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<td>20.</td>
<td>Do procedures ensure that the broker has all information required for the post-entry adjustments listed on the Reconciliation entries?</td>
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<td>21.</td>
<td>Does the company have adequate broker oversight?</td>
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<tr>
<td>22.</td>
<td>Does the company identify, analyze, and manage risks related to reconciliation?</td>
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<td>23.</td>
<td>Has the company identified any risks related to reconciliation and implemented control mechanisms?</td>
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<td>24.</td>
<td>Does the company have adequate internal control to address specific issues identified in the profile?</td>
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Reconciliation Procedures (Best Practices)

What Customs looks for when auditing your reconciliation program

Section 1 – Procedures for Identifying Annual Value Adjustments (G/L review)
Section 2 – Procedures for Ensuring all Entry Line Items Flagged are Reconciled using ITRAC/ACE data
Section 3– Procedures for Verifying that all Entries Were Flagged (flagging error identification)
Section 4 – Procedures for Creating the Association File
Section 5 – Procedures for Creating the Summarized Line Data Spreadsheet (SLDS)
Section 6 – Procedures for Creating the Header File
Section 7 – Review and Monitoring Procedures for Value Reconciliation
FDA, FCC, FTC and other alphabet soup agencies
ACE Mandatory Use Dates

What are the ACE Mandatory Use dates?

Working in close coordination with the Department of Homeland Security, the Border Interagency Executive Council, and the White House, U.S. Customs and Border Protection (CBP) is Order 13659, Streamlining the Export/Import Process signed by President Obama on February 19, 2014. The Environment (ACE) is the system by which the govern Single Window. CBP and our stakeholders are near timeline established to meet Single Window complet trade processing in ACE.

All Federal Register Notices related to CBP’s transition to ACE Federal Register Notices page.

Mandatory Dates Overview

The mandatory dates are aligned to different filing fu partners. The dates can be categorized by manifest fi summary filings, Partner Government Agency (PGA) i electronic portions of the CBP cargo process. As outli Development and Deployment schedule, the deploy transition for reconciliation, liquidation, duty deferr statements is pending.

CBP is continuing to coordinate with the PGAs on the entry with PGA data, please reference our section on

https://www.cbp.gov/trade/automated/ace-mandatory-use-dates#PGA%20Dates
FDA, FCC, FTC and other alphabet soup agencies

- **APHIS- Animal and Plant Health Inspection Service**

- **FSIS- Food Safety and Inspection Service**

- **FWS-Fish and Wildlife Service**
  [https://www.fws.gov/permits/importexport/importexport.html](https://www.fws.gov/permits/importexport/importexport.html)

- **NHTSA- National Highway Traffic Safety Administration**

- **CPSC -Consumer Product Safety Commission**

- **EPA - Environmental Protection Agency**
  [https://www.epa.gov/importing-exporting](https://www.epa.gov/importing-exporting)

- **FDA- Food and Drug Administration**
  [http://www.fda.gov/ForIndustry/ImportProgram/](http://www.fda.gov/ForIndustry/ImportProgram/)

- **FCC- Federal Communications Commission**
FDA Import Primer

The following flagging codes are found in CBP's Automated System and indicate that products are, or may be, under FDA jurisdiction:

- **FD0** — The imported article is subject to FDA's laws and regulations, but acceptable for CBP release without prior notice or other entry information submitted to FDA.

- **FD1** — The imported article may be subject to FDA's jurisdiction, including FDA review of entry information. An importer may "disclaim" a product from FDA notification if the specific product is not subject to FDA jurisdiction.

- **FD2** — The imported article is subject to FDA's jurisdiction and review of entry information, but the article is not a "food" and thus Prior Notice is not required.

- **FD3** — The imported article may be subject to Prior Notice because it has both food and non-food uses.

- **FD4** — The imported article is "food" and Prior Notice is required.

Flagging codes are associated with the HTSUS tariff classification for the product.
## FDA Import Primer

### Required FDA Data

If a foreign product requires FDA approval, specific data elements must be submitted at the time of entry:

<table>
<thead>
<tr>
<th>PG-Record</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>OL</td>
<td>The commercial description of the shipment is provided.</td>
</tr>
<tr>
<td>PG01</td>
<td>The shipment is regulated by the FDA program office within FDA and the intended use is provided.</td>
</tr>
<tr>
<td>PG02</td>
<td>The item type and Product Code detail are provided.</td>
</tr>
<tr>
<td>PG04</td>
<td>Product Constituent Active Ingredient</td>
</tr>
<tr>
<td>PG05</td>
<td>Scientific Genus Names</td>
</tr>
<tr>
<td>PG06</td>
<td>Product Source Information is provided</td>
</tr>
<tr>
<td>PG07</td>
<td>Trade/Brand Name</td>
</tr>
<tr>
<td>PG10</td>
<td>Description of items in the lot number</td>
</tr>
<tr>
<td>PG11</td>
<td>Entity Role (manufacturer, consignee, shipper, etc.) Entity Identification, Entity Name, and Entity Address 1 are provided</td>
</tr>
<tr>
<td>PG19</td>
<td>Additional address data on the entity in PG19 is provided</td>
</tr>
<tr>
<td>PG20</td>
<td>The entity (manufacturer, consignee, shipper, etc.) of Record’s individual point of contact, phone number and email given</td>
</tr>
<tr>
<td>PG21</td>
<td>FDA affirmation of Compliance criteria is provided</td>
</tr>
<tr>
<td>PG22</td>
<td>Temperature qualifier, Lot#, Production dates, PGA Line Value and PGA Unit Value are provided</td>
</tr>
<tr>
<td>PG23</td>
<td>Packaging qualifier and quantity of the shipment are provided</td>
</tr>
<tr>
<td>PG24</td>
<td>Additional data on Container number</td>
</tr>
<tr>
<td>PG25</td>
<td>Weight of lot number</td>
</tr>
<tr>
<td>PG30</td>
<td>Inspection location, date and time</td>
</tr>
<tr>
<td>PG55</td>
<td>Additional roles performed by entity or individual</td>
</tr>
</tbody>
</table>
FDA Import Primer

- **New ACE FDA Intended Use Codes**

  - Customs brokers and importers have new reporting responsibilities under US Customs’ Automated Commercial Environment (ACE).
  
  - The new, FDA intended use codes designate both the general and specific use intended for an imported product.
  
  - The mandatory use of (a) intended use codes combined with (b) FDA product codes and (c) Affirmation of Compliance codes is designed to streamline FDA’s entry review process.
  
  - Brokers and importers are required to use the Customs and Trade Automated Interface Requirements (CATAIR) technical manual, Appendix R to determine the correct intended use code to report.
  
  - The Importer must specify whether the product is a drug, a chemical, or device and clearly describe its use (e.g., commercial use, clinical trial use, R&D, etc.)
FDA, FCC, FTC and other alphabet soup agencies

- Submission of OGA Documents using the DIS