Preparing For Customs Audits
&
Post-Entry Audit Programs

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About your Speakers

Cindy Deleon

Before forming Deleon Trade in 2007, Cindy served for 12 years as a Senior Auditor and Assistant Field Director of U.S. Customs and Border Protection's Regulatory Audit Division in Chicago.

While working at U.S. Customs she conducted and supervised multiple focused assessment audits, quick response audits, fraud investigations, free trade agreement reviews, drawback audits, NAFTA audits, and prior disclosure reviews.

In addition, she designed and led the mentoring and recruiting programs for the Chicago field office and conducted advanced training sessions on technical audit issues and special trade program audits.

Additional information about Ms. Deleon and Deleon Trade is located at http://www.deleon-trade.com/

George Tuttle

George Tuttle is an attorney with the San Francisco Bay Area law firm of George R Tuttle Law Offices.

He has been in practice for over 30 years. His practice emphasis is on Customs, international trade regulation, and export compliance and related matters.

He assists companies with compliance audits and to develop effective compliance programs; determine correct customs duties, values, product classifications, and duty preference eligibility; obtain rulings, file protests; and resolve penalty, seizure and enforcement cases. He also litigate trade cases before the United States Court of International Trade and the CAFC.

Mr. Tuttle has written and contributed to several articles and books published by the American Bar Association's International Law Section, including Chapter 9 of the recently revised "Customs Law Handbook" pertaining to Customs Audits.

Additional information about Mr. Tuttle and the firm can be found at www.tuttlelaw.com .

Who is Subject to CBP Audits?

- Everyone transacting business with Customs !
  - Many large importers have already been audited!
  - Small and medium sized importers can likely expect audits.
  - Many large importers are in ISA and generally exempt from FAs (but not QRAs)
  - Large importers go back into the audit pool after a few years.
- Brokers
- Foreign Trade Zones
- Drawback Claimants
- Others

Types of CBP Audits and Reviews

- Focused Assessments
- Quick Response Audits *(risk or referral based)*
  - ADD / CVD
  - IPR (trademarks and copyright)
  - Value (related party), Classification (single issue)
  - NAFTA, GSP, SFTA, Chapter 98
  - Commercial Fraud
- Audit Surveys
- RA completed 1,053 audits from 2008 to 2010.
- RA recommended collection of approximately $154.2 million in additional revenue to CBP.
- OIG-12-117, September 2012

Audit Survey (Primary Focus Areas)

Priority Trade Issues

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. They 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.

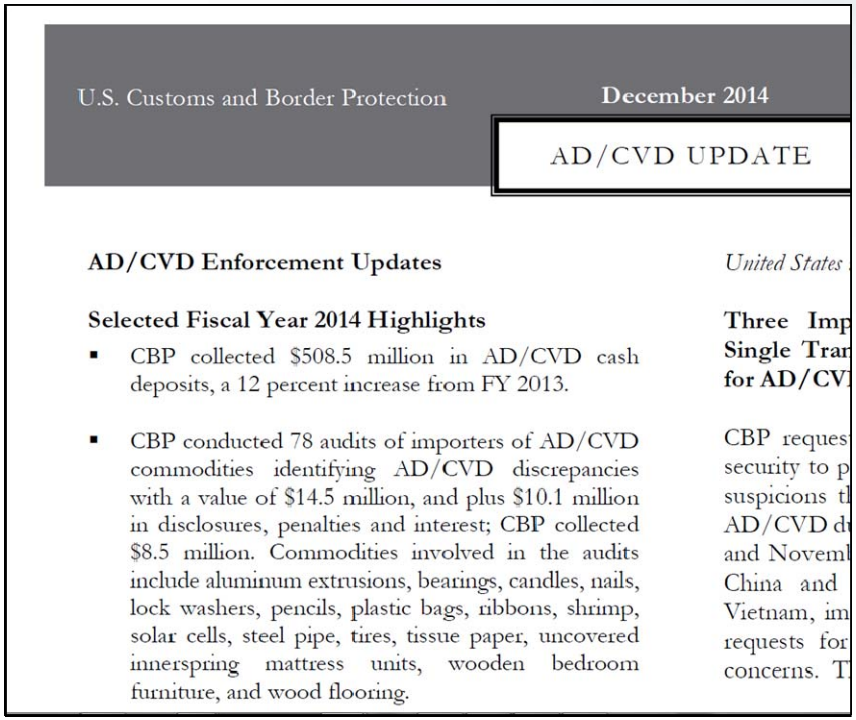
Current Priority Trade Initiatives:

- **Antidumping and Countervailing Duty** (AD/CVD)
- **Import Safety**
- **Intellectual Property Rights**
- **Textiles/Wearing Apparel**
- **Trade Agreements**

U.S. Customs and Border Protection

Comprehensive trade enforcement efforts in these areas continue to protect the U.S. from risk of significant revenue loss, economic risk to U.S. industry, and health and safety concerns.

QRA for ADD/CVD



U.S. Customs and Border Protection

December 2014

AD/CVD UPDATE

AD/CVD Enforcement Updates

United States

Selected Fiscal Year 2014 Highlights

- CBP collected $508.5 million in AD/CVD cash deposits, a 12 percent increase from FY 2013.
- CBP conducted 78 audits of importers of AD/CVD commodities identifying AD/CVD discrepancies with a value of $14.5 million, and plus $10.1 million in disclosures, penalties and interest; CBP collected $8.5 million. Commodities involved in the audits include aluminum extrusions, bearings, candles, nails, lock washers, pencils, plastic bags, ribbons, shrimp, solar cells, steel pipe, tires, tissue paper, uncovered innerspring mattress units, wooden bedroom furniture, and wood flooring.

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- 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
  - CBP has 108 AD/CVD audits in progress
  - Unreported Discrepant Value = $21,968,843
- Increase resulted primarily from audits of importers of ADD/CVD commodities and CBP's enhanced targeting program.

QRA for AD & CVD

- FY 2015 First Quarter – AD/CVD Audits
  - CBP has 108 AD/CVD audits in progress
  - Number of Audits Completed …… 14
  - Discrepancy Value Identified…….$21,968,843
  - Revenue Collected To Date ……..$177,517

QRA for AD & CVD

U.S. Customs and Border Protection

AD/C

FY 2015 First Quarter – AD/CVD Audits

Number of Audits Completed **14**
Discrepancy Value Identified.....**$21,968,843**
Revenue Collected To Date **$177,517**

CBP has 108 AD/CVD audits in progress.

Illegally Imported Honey Seized

U.S. Customs and Border Protection

Antidumping

cbp_official_ logo_transparent.png

AD/CVD Enforcement: 19 U.S.C. § 1592 Penalties

In Fiscal Year 2015, CBP issued 11 penalties under 19 USC 1592 for Antidumping and Countervailing Duty (AD/CVD) violations for $3,221,913. The following commodities were affected: Bedroom furniture; electro hydraulic units; citric acid and sodium citrate (2 cases); seamless carbon and alloy Steel; mattress spring coils; aluminum profiles; tires (2 cases); and, carbon corrosion resistant steel.

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.

Focused Assessment Program

Focused Assessment Objective

- Determine if an importer's import activities represent an "acceptable risk" to CBP through an assessment of its internal controls over compliance with applicable CBP laws and regulations.
- The audit can be expanded to include a review of any disclosures submitted by the importer or
- to reflect the calculation of a loss of revenue or compliance rates as appropriate given the facts and circumstances of the audit.

Why are companies selected for audit?

- A risk based approach is used in selecting candidates for Focused Assessments & Single Issue Audits
  - 15 – 20 risk factors
    - Size & import activity (value/volume)
    - Complexity in import activity (HTS4 variety)
    - High Risk Trade Areas (SPI, CH98)
    - Priority Trade Issues (ADD/CVD, IPR)
    - Referrals from various government agencies
- Audit Plan is developed for each new fiscal year beginning 10/1
- Potential audit candidates are usually contacted by late-summer and throughout the fiscal year

FA PAS Timeline

- Importer may be notified that they have been preliminarily selected for audit
- Regulatory Audit officially announces audit (follow up with engagement letter)
- Internal Control Questionnaire (30 days to respond)
- Entrance Conference (usually within 6 weeks of audit announcement)
  - Explanation of FA process
  - Walkthroughs of procedures for each review area
  - Internal Control Interviews
  - Sampling of Transactions & Controls
  - This is the last chance to apply for ISA!

Focused Assessment Timeline

- Internal Control/Compliance Testing
  - Documentation will be requested with timelines between 1 week and 30 days
- All findings are presented to the company prior to drafting the audit report
- Audit report is drafted and provided to the company for comment
- Final Audit Report is issued (usually within 6 to 9 months of entrance conference)

Focused Assessment Overview

Pre-Assessment Survey (PAS)

In the PAS, Customs determines company internal control are implemented and effective by:

- Reviewing policies and procedures.
- Interviewing company personnel.
- Determining if control implementation is documented.
- Testing the implementation and effectiveness of control using non-statistical sampling.

Focused Assessment Overview

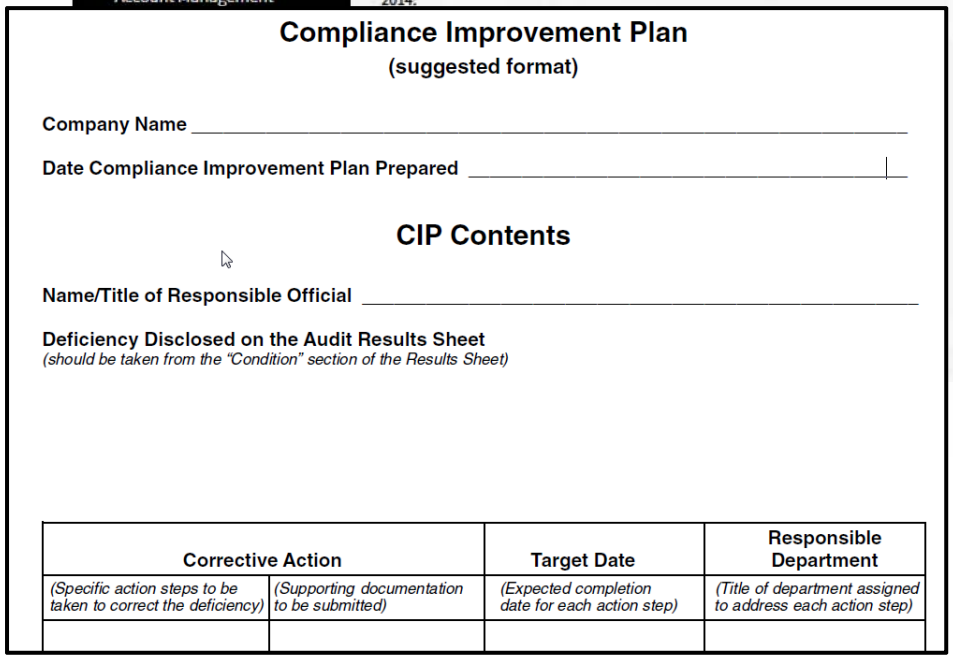
Assessment Compliance Testing (ACT)

If the company is found to be an unacceptable risk to CBP, the audit team will proceed to either a Follow-up audit or the intensive Assessment Compliance Testing (ACT) phase of a FA.

Focused Assessment Overview

Compliance Improvement Plan (CIP)

- Prepared by the company to address internal control weaknesses and compliance issues found during the PAS or ACT.
- A CIP includes:
  - ✓ Action(s) to be taken
  - ✓ Responsible organization/ individual
  - ✓ Timetable for implementation
- The FA Kit on CBP web page – Exhibit 4E



Compliance Improvement Plan
(suggested format)

Company Name _____

Date Compliance Improvement Plan Prepared _____

CIP Contents

Name/Title of Responsible Official _____

Deficiency Disclosed on the Audit Results Sheet
(should be taken from the "Condition" section of the Results Sheet)

Corrective Action		Target Date	Responsible Department
(Specific action steps to be taken to correct the deficiency)	*(Supporting documentation to be submitted)*	*(Expected completion date for each action step)*	*(Title of department assigned to address each action step)*

Importer LOR Self- Quantification

- Agree to quantify the loss of revenue (usually going back 5 years)
- Agree to implement a Compliance Improvement Plan (CIP)
- Waive Statute of Limitations for a 5 year period for 2 years
- Importer may use Statistical Sampling to project LOR. See

  § 163.11(c)(4) Compliance assessment and other audit procedures.

> (4) Statistical sampling by audited persons under CBP supervision. CBP may authorize a person being audited to conduct, under CBP supervision, self-testing of its own transactions within the time period and scope of the audit as originally set or later modified by CBP at its discretion. Audited persons permitted in advance by CBP to conduct self-testing of certain transactions under CBP supervision within the time period and scope of a CBP audit may use statistical sampling methods, provided that the criteria contained in paragraph (c)(3) of this section are satisfied. CBP will determine the time period and scope of the CBP-approved and supervised self-testing and will explain any sampling plan to be employed in accordance with paragraph (c)(1) of this section. The execution and results of the self-testing and the sampling plan are subject to CBP approval, and the audited person is subject to the waiver of paragraph (c)(1) of this section.

Focused Assessment Overview

Follow-up Review

A follow-up review is required for unsuccessful PAS to:

- Verify that corrective actions specified in the CIP were implemented and effective in managing risk to CBP and correcting the deficiencies identified during the previously conducted PAS or ACT.
- Verify the accuracy of the loss of revenue calculations by the company.

General Audit Issues

- Issues arising **during** the course of an audit
  - FA Kit Exhibit 3H – Dealing with "gray areas" in classification
    - Should not to be counted as an error in Customs risk opinion
    - auditee may request a review to the appropriate national import specialist (NIS)
    - Difference in opinion may be "reasonable" depending on ambiguity and interpretation by the auditee
    - If a "gray area" revenue should be collected only if the relevant entries are unliquidated.
  - Other Subject Areas: Differences of opinion: Audit may still treat as errors
    - Timing problem associated with resolution of issue vs. completion of audit and reporting of errors
    - Internal Advice
    - Protest

General Audit Issues

- Prior Disclosure
  - FA Kit Exhibit 4C -- FA are not “formal investigations”
  - May disclose errors via PD up until notified by Auditor of error and “violation”
  - QRA/ Audit Survey . . . Will depends on specific circumstances and what is said in notice or meeting
  - FA team may validate PD during follow-up audit
  - Company may use statistical sampling: see 19 CFR 163.11(c)
  - See FA Kit Exhibit 6A – Audit Sampling Policy

Internal Controls

Are they really needed?

Why are Internal Controls Needed?

Monitoring

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

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.

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Customs Compliance Manuals

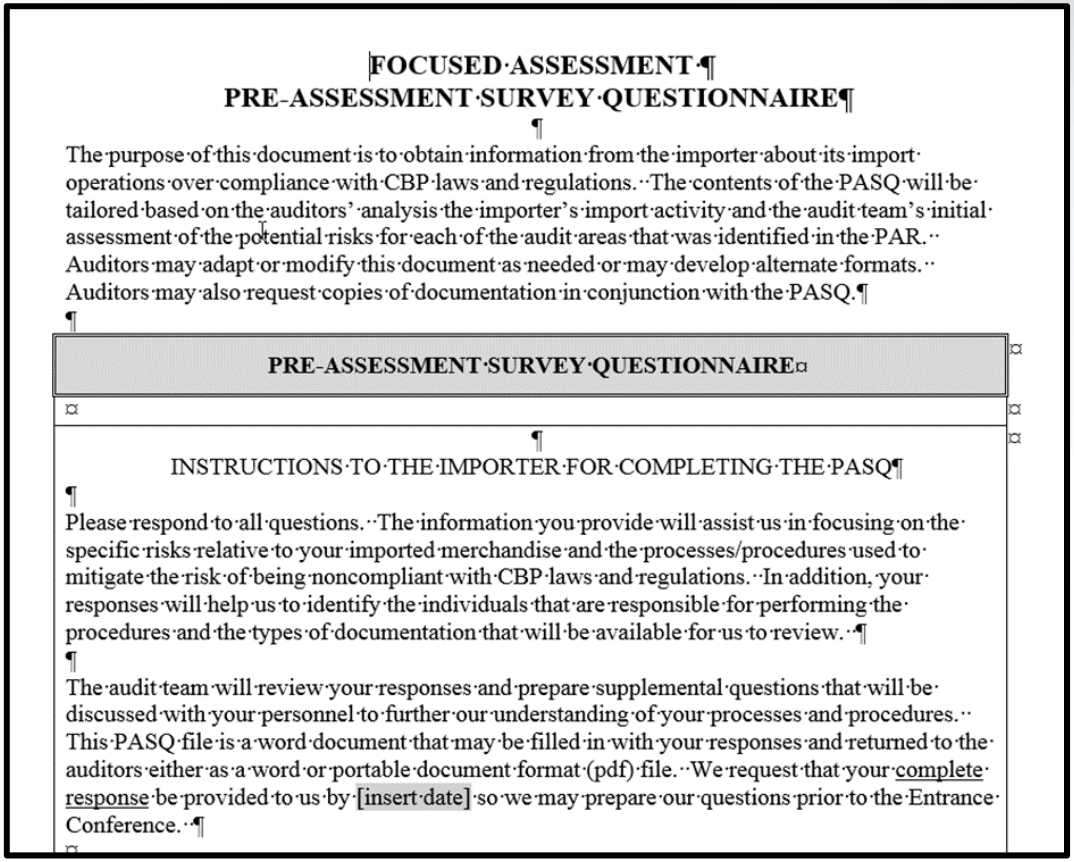
- Importers should IMPLEMENT an EFFECTIVE Customs Compliance manual (demonstrate reasonable care)
- Should consist of:
  - company-wide policies and procedures
  - a corporate compliance mandate
  - risk assessment and management procedures
  - detailed monitoring procedures (post-entry audit)
  - specific internal control procedures (SOP's)
  - reference materials or references
  - Require periodic updating

Are you ready for an audit?

- Do you have a system of internal controls that would pass muster with Customs?
- Do you know if you have any potential issues which could expose your company to duty liability or severe Customs penalties?
- Have you conducted an internal review lately or have you had an outside firm assess your compliance with Customs laws and regulations?
- Do you know which free trade agreements and special tariff provisions are used by your company? Are they compliant? ITRAC Analysis?
- Have you declared accurate values to Customs including all the CRAPP (Commissions, Royalties, Assists, Packing, and Proceeds)
- Have you reviewed your General Ledger lately?

Are you ready for an audit?
(Getting Started…)

- Complete the FA Internal Control Questionnaire found on the CBP website. This will give you a sense of how prepared you really are.



FOCUSED ASSESSMENT
PRE-ASSESSMENT SURVEY QUESTIONNAIRE

The purpose of this document is to obtain information from the importer about its import operations over compliance with CBP laws and regulations. The contents of the PASQ will be tailored based on the auditors' analysis the importer's import activity and the audit team's initial assessment of the potential risks for each of the audit areas that was identified in the PAR. Auditors may adapt or modify this document as needed or may develop alternate formats. Auditors may also request copies of documentation in conjunction with the PASQ.

PRE-ASSESSMENT SURVEY QUESTIONNAIRE

INSTRUCTIONS TO THE IMPORTER FOR COMPLETING THE PASQ

Please respond to all questions. The information you provide will assist us in focusing on the specific risks relative to your imported merchandise and the processes/procedures used to mitigate the risk of being noncompliant with CBP laws and regulations. In addition, your responses will help us to identify the individuals that are responsible for performing the procedures and the types of documentation that will be available for us to review.

The audit team will review your responses and prepare supplemental questions that will be discussed with your personnel to further our understanding of your processes and procedures. This PASQ file is a word document that may be filled in with your responses and returned to the auditors either as a word or portable document format (pdf) file. We request that your complete response be provided to us by [insert date] so we may prepare our questions prior to the Entrance Conference.

Are you ready for an audit?
(Getting Started…)

- ❖ Conduct a review of your Customs ITRAC or ACE entry data
  (ITRAC is your entry data available from Customs via a FOIA Request).
  ACE Reports: http://www.cbp.gov/trade/automated

- ❖ Conduct an internal review and risk analysis of your import activities.
  - Identify risk areas
  - Conduct limited testing
  - Assess internal controls for each risk area
  - Consider a Prior Disclosure if you discover issues to reduce or eliminate potential penalty exposure.

- internal review can help you:
  - ✓ become or remain "Customs Compliant," and
  - ✓ discover new duty savings programs for your business.

Are you ready for an audit?
(Getting Started…)

- Determine the status of your overall system of internal controls
- Visit CBP's website and read EVERYTHING regarding FA's and internal control programs http://www.cbp.gov/xp/cgov/trade/trade_programs/audits/focused_assessment/
- If you are not completely comfortable conducting any of the recommended tasks above, consider getting external or outside assistance
- If you're notified of an FA, keep the news of your selection internally to a "need to know basis"
- Time is of the essence!!!

Are you ready for an audit?
(Getting Started…)

Self-Testing. Should Confirm:

- What you declared to Customs was accurate
  - tariff classification
  - duty–preference program
  - value (method and seller/buyer relationship)
  - origin
  - quantity
  - non-dutiable charges
- What you declared to Customs was complete
  - invoice requirements
  - statutory additions to transaction value
  - additional payments outside commercial invoice
  - documentation requirements

Are you ready for an audit?
(Getting Started…)

Self-Testing Should Be:

- Conducted by qualified "independent" internal or external expert
- Comprised of representative sample of imports
  - random and statistically valid sample (number may vary)
  - judgment sample (number may vary)
- Structured to capture "cradle to grave" information
  - Purchasing, contracts, manufacturing, product specs, bill of materials
  - engineering/R&D, accounting records, transportation, receiving/inventory
- Performed at least annually

Are you ready for an audit?
(Getting Started…)

Check for Undeclared Items

- Chart of accounts/ledgers
  - "Follow the money"
  - What accounts might cover dutiable payments?
    - For example:
      - Accounts payable trade
      - Royalties
      - Miscellaneous
- Contracts/Written Agreements
  - May call for separate payments for engineering, R&D, other assists, royalties, etc.

Are you ready for an audit?
(Getting Started…)

Import Compliance Manual Development

•Identify qualified individual(s) responsible for Customs compliance.

•Draft Customs Compliance Manual including specific Standard Operating Procedures for each risk area.

•A defined implementation period for the manual should be identified.

•Conduct Final revision to Customs Compliance Manual and SOP's after implementation period (make necessary changes to make the program manageable).

•Senior Management should review and approve the final version of the Customs Compliance Manual. If Senior Management approves the manual they are effectively requiring the entire organization to comply with its requirements.

•Conduct a Post-Entry Review of the each risk area to ensure that the implemented controls are working as designed and are effective. Minimal errors should be found during this review if controls are working effectively.

Common Internal Control and Compliance Errors

Common Internal Control Deficiencies

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 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

Common Compliance Errors

- Not Reporting Full or Proper Value
  - Related Party issues – unsubstantiated TP or Profit of parent
  - Milestone or Deposit Payments
  - Post Entry Adjustments or Additional Payments
  - Manufacturing Assists (Tools, Machinery, Molds)
  - Royalties, Commissions, Management Service Fees (these are analyzed to determine dutiability)
  - Unsupported Marine Freight & Insurance Deductions
  - Unreconciled or Incorrectly Reconciled Entries
- Misclassified Merchandise

Common Compliance Errors

- Free Trade Agreement or Special Duty Provisions Claims are Ineligible or Unsupported
  - –9801, 9802, 9808, 9813
  - –GSP, CAFTA, AUSTRAILIA, etc.
  - –NAFTA
- Anti-Dumping/Counterveiling Duties Not Declared or Inaccurate
  - –Wrong Orders
  - –Wrong Classification

POST-ENTRY AUDIT PROCESS EXAMPLE

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 performed by someone other than the person responsible for entries
- Samples should be selected based on targeted risk identified during the risk assessment
- Samples should also be selected randomly
- The sample should be sent out on a regular basis. For example, approximately 30 days after the end of the calendar month

Post-Entry Audit Best Practices

- The Compliance Manager or Designee for each business unit conducts the post-entry audit for each of the sample entry lines and has approximately 30 days to complete the audit
- The audit consists of 12 questions that evaluate various compliance areas
- The results of all audits are recorded in a post-entry audit database with reporting capabilities
  - ✓ Hard copy checklists are no longer sufficient or ideal
  - ✓ Reporting and trend analysis is critical in identifying causes for errors and necessary internal control improvements
  - ✓ Executive Management reports should be generated to track metrics and ensure head-count is optimal

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

Post Entry Audit Review Areas

1. IMPORTER / CONSIGNEE / MANUFACTURER ID NUMBERS
2. COUNTRY OF EXPORT
3. COUNTRY OF ORIGIN
4. TARIFF CLASSIFICATION
5. RELATIONSHIP
6. VALUATION
7. CURRENCY CONVERSION
8. NON DUTIABLE CHARGE DEDUCTIONS
9. SPECIAL TRADE PROGRAMS & SPECIAL DUTY PROVISIONS
10. ANTI-DUMPING DUTIES
11. OTHER GOVERNMENT AGENCY DOCUMENTATION
12. RECORDKEEPING

POST-ENTRY AUDIT REPORTS

Compliance Rate Reports (EXAMPLES)

1. COMPLIANCE RATES BY BUSINESS UNIT
2. COMPLIANCE RATES BY IMPORTER OF RECORD NUMBER (FACILITY)
3. COMPLIANCE RATES BY AUDIT AREA (e.g. value, HTS, FTA)
4. COMPLIANCE RATES BY BROKER
5. COMPLIANCE RATES BY VENDOR (e.g. MID Code)
6. COMPLIANCE RATES BY HTS
7. COMPLIANCE RATES BY FTA
8. COMPLIANCE RATES BY COUNTRY OF ORIGIN
9. COMPLIANCE RATES BY COUNTRY OF EXPORT
10. GRAPHS TO SHOW TREND FOR ANY OF THE ABOVE

THANK YOU!

Questions?

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