

## Keeping Abreast of Customs Rules

By Felix Pekar, QuestaWeb

MARCH 30, 2004 Falling tariff rates, proposed elimination of quotas and vanishing trade barriers may create an illusion that customs compliance becomes simpler for apparel businesses. In reality, cross-border compliance is becoming more complex and costlier because of variable customs procedures, innumerable conditions set by free trade agreements and stringent security regulations. Growing e-commerce, stricter enforcement and greater emphasis on audits and periodic verifications also are complicating compliance matters.

U.S. Customs expects importers to keep current and to comply with federal regulations. The agency has been working closely with importers to help educate them about regulations in a process known as "informed compliance." Customs now assumes importers have had sufficient time to become informed and is entering a chapter of "enforced compliance."

Until a few years ago, U.S. Customs targeted the top 1,000 importers for compliance audits. On Nov. 1, 2001, Customs began focusing on the top 9,000 importers using a process that assesses the compliance risk of individual importers. Also, because of recent terrorist events and threats, U.S. Customs has added stringent security regulations to the list of compliance concerns.

With this increased focus on customs compliance, it is more important than ever to master the basics of compliance rules that have been in place for years but are coming under more scrutiny, as well as to pass muster on the wave of new requirements. Following is a review of the most important compliance issues.

### **Beefing up homeland security**

The volume of trade that flows in and out of the United States requires U.S. Customs and Border Protection (CBP) to use the principles of risk management to align finite resources and personnel with the cargo that is determined to pose the greatest risk. Given that trade volume will only continue to increase, and that much of the information needed to perform comprehensive risk management is stored in CBP and other government databases, it is not only essential that the information pertaining to cargo be electronic, but also crucial that CBP receive this information in advance of shipment arrival and departure.

To provide safeguard conditions at U.S. borders, CBP recommends that importers participate in the U.S. Customs-Trade Partnership against Terrorism (C-TPAT) program. C-TPAT contains a list of suggestions for establishing, improving or amending security procedures along the entire supply chain. The Customs Service has developed a validation process to ensure that C-TPAT participants have implemented the security measures outlined in their security profile and in any supplemental information provided to customs.

The implementation by U.S. Customs of the 24-hour rule (effective December 2002), which requires that customs be notified of shipment contents 24 hours before cargo is loaded, has already imposed substantial new costs for imports by ocean. It will add additional cost to air

shipments, mandating electronic data entry at a level of detail not currently required prior to arrival and causing operational changes to meet the filing requirements for short-haul flights into the United States.

As for trucking, the Free and Secure Trade (FAST) program, which was launched in response to the need for greater protection against terrorism, aims to ensure and expedite the legitimate flow of goods and people across the Canadian and Mexican borders, enhancing security while facilitating trade. Participants qualify by enhancing the security of their manufacturing plants, warehouses and shipping systems under the auspices of C-TPAT.

While implementing improved security measures can be expensive, the costs are offset by savings that come from faster border clearance, which leads to faster delivery to the consumer, which ultimately means faster-moving inventory.

Additionally, importers should develop systems and procedures to protect against “un manifested” material. Security controls should include the proper marking, weighing, counting and documenting of cargo/cargo equipment verified against manifest documents and the detecting/reporting of shortages/overages. The movement of incoming/outgoing goods should be monitored. Importers also should ensure that documentation is complete, legible, and accurate and submitted in a timely manner to customs.

### **CBP enforcing compliance**

As a high priority, CBP has been diligently attempting to identify illegal transshipment of textiles and textile products. In cooperation with the U.S. government, several countries have intensified efforts in identifying and prosecuting companies that illegally transship textiles and textile products to the United States. From judicial records in Hong Kong, CBP has identified companies in Hong Kong that have been convicted for claiming falsely that Hong Kong was the country of origin for textile products shipped to the United States. The same has happened with companies' making false claims of Macao and Taiwan origin. In addition, the Committee for the Implementation of Textile Agreements (CITA) has been excluding certain factories from exporting to the United States because of transshipment concerns.

To help prevent transshipment and other charges, an important CBP requirement is record keeping. The Customs Modernization Act (Mod Act), part of NAFTA, amended sections of the Tariff Act of 1930 dealing with record-keeping requirements for importers, brokers and others.

Rules require owners, importers, consignees, importers of record, declaration filers, entry filers or other parties (or their agents) to maintain records if they import merchandise into the customs territory of the United States. These parties also must maintain records if they: file a drawback claim; transport or store merchandise carried or held under bond; or knowingly cause the import, transport or storage of merchandise carried or held under bond into or from the customs territory of the United States.

Businesses must prepare and keep records (referred to as the “(a)(1)(A) list”) for the entry of merchandise. This list is required in Treasury Directive 96-1. Others required are those business, financial and accounting records ordinarily maintained for normal business transactions.

Any business in the United States that sells imported products, utilizes non-U.S. materials or components and/or sells products for export faces customs classification issues. Any business outside the United States that has affiliates, sells products and/or procures materials in the United States must also deal with customs classification issues. A failure to comply intelligently with classification issues can result in excess duty payments, monetary penalties for non-compliance and supply and delivery delays and disruptions.

The origin of an imported article dictates the duty rate, the applicability of quotas, special tariffs and other restrictions on imports and country-of-origin marking requirements. Compliance with marking requirements, which are enforced with considerable discretion by U.S. Customs, can

have material cost and marketing impacts.

In recent years, the customs landscape has become more complex because of the addition of a multitude of special multinational and other tariff and trade arrangements, such as NAFTA, the African Growth and Opportunity Act (AGOA) and the Caribbean Basin Initiative. These arrangements present both cost reduction opportunities and compliance challenges for importers.

Importers are required to exercise reasonable care in complying with complex customs valuation rules when declaring the value of imported goods. Merely declaring the commercial invoice price can result in monetary penalties for misstating too low a value, or the payment of excess duties resulting from an inflated value. Importers are facing great challenges in evaluating issues relating to assists, indirect payments, royalties, freight and shipping costs and other valuation considerations to ensure that values declared are both accurate and verifiable.

Seeking regular counsel from trade law firms and customs brokers familiar with the nuances of the apparel business is one way to help ensure compliance.

Apparel firms also can streamline and automate many of their customs compliance processes, and thus reduce the risk of non-compliance charges and delays, through the use of software specifically developed for this purpose. It is important to selection a solution that can:

- \*Automate all manual import and export functions;
- \*Create and make use of a completely pre-classified product catalog;
- \*Make intelligent sourcing decisions;
- \*Properly report and pay duties;
- \*Take advantage of preferential duty programs;
- \*Improve cash flow with ACH payments;
- \*Control and verify brokerage and freight-forwarding functions;
- \*Screen for denied parties, convicted factories and embargoed countries;
- \*Monitor quotas;
- \*Report data to other government agencies such as the U.S. Food and Drug Administration, Fish and Wildlife Service (e.g., for buttons made of mother of pearls);
- \*Verify timely availability of required supporting documents;
- \*Perform proper record keeping; and
- \*Produce multiple audit and management reports and queries.

Finally, it is important to note that companies that are successful in implementing such solutions and addressing customs and compliance issues have done so by addressing their business problems holistically, and realizing that success lies not just in an implementation of software functionality, but also in implementing true business capabilities, which require equal emphasis on people, process, and technology.

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