

10 of the Most Common Mistakes Made by US Importers (... and How to Avoid Them!)

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As more and more U.S. businesses become integral players in the global economy, they are discovering that the importation of merchandise is a critical aspect of their day-to-day operations. Many such businesses are import “savvy” and some seek to take advantage of duty-free or duty preference trade programs such as the North American Free Trade Agreement (“NAFTA”), but when Customs compliance problems arise, the unprepared importer can be faced with unexpected, costly and unfortunate results.

The consequences of U.S. import non-compliance can be severe - in terms of both fines paid to the Customs Service as well as lost business revenue. In some cases, non-compliant importers can end up paying sizeable penalties to the U.S. Government. For example, Pentax (the camera company) recently paid the government \$20 million dollars to settle a penalty case involving imported cameras that allegedly were marked with the incorrect country of origin. Some of the other tools that U.S. Customs uses to address non-compliant imported articles include detention or even seizure of the goods. In both of these instances, the delay and expense associated with finally clearing the articles can be considerable. For example, think of what these delays can mean to an importer of fresh produce or seasonal goods, such as Halloween costumes. Obviously, a detention or seizure not only can damage business relationships with buyers, but also result in devastating financial consequences.

Under the Customs laws, U.S. importers are re-

quired to exercise “reasonable care” when classifying, valuing, and entering imported merchandise into the United States. These laws and regulations can be quite complex and the “smart” importer will do his or her level-best to ensure that they know the rules and have a well developed compliance “game plan” program that is suited to their business and aims to ensure Customs Compliance.

The negative consequences of non-compliance can usually be avoided if the “global trader” engages in advance planning and learns the “rules of the road.” Compliance conscious importers recognize that it pays to be pro-active in this regard.

Based on our 25 years of combined experience¹ as Customs lawyers we’d like to share with you our “top ten” list of common mistakes made by U.S. importers – plus our suggestions on how such mistakes can be avoided or remedied. Note that some of these “mistakes” really are more aptly described as “misconceptions,” or “gee - why didn’t I think of that?” – but in any case, an awareness and understanding of these 10 problems and an adoption of a program to address the issues will put you on the road to becoming a “Customs - compliant” business.

1. Importer of record primarily responsible
(CF 7501 - line 11)

¹Up until January of 2000, Mr. Pisani spent 21 years working for U.S. Customs actually developing and deciding penalty cases against non-compliant importers.

2. Misdescription of goods
3. Incorrect entered value and/or quantity discrepancies
4. Country of origin
5. “But I used a _____ (insert one or more: broker, lawyer, accountant, consultant)”²
6. Failure to provide required documentation (for regular entries and entries involving duty preference programs (*e.g.*, NAFTA, CBI, IFT, 9801, 9802, etc.))
7. Failure to maintain required records (19 U.S.C. §1508 *et seq.*)
8. “Duty free” is not synonymous with “No Consequences for Non-Compliance”
9. Failure to develop internal controls
10. Lack of training and continuous education.

In order to overcome these common mistakes and misconceptions, importers need to understand that they are ultimately responsible for all the information submitted to Customs concerning imported merchandise. One importer has articulated its compliance responsibilities with a list of “commandments:”³

- It is my responsibility, as the Importer, to pay

²This mistake is the Customs compliance equivalent of “But my dog ate my homework.”

³The authors acknowledge the contribution of Jo Douglas of Quoizel, Inc. who created this list of commandments. This list originally appeared as part of an article published by the Hauppauge Industrial Association in 1995. The author has granted us permission to include the list in this article.

the duty.

- It is my responsibility that the goods are marked with country of origin.
 - It is my responsibility that the custom entry is accurate.
 - It is my responsibility that commercial invoice and packing lists are accurate, clear and written in English.
 - It is my responsibility that what is in the container conforms to the documentation.
 - It is my responsibility to make sure that all necessary documentation is provided to Customs.
 - It is my responsibility to maintain accurate records of imports and make them available to Customs.
 - It is my responsibility to provide Customs with any and all information that they may require.
 - It is my responsibility to make sure the freight is paid and a freight release is obtained and that the bill of lading is accurate.
- BECAUSE I AM THE IMPORTER OF RECORD!!
- An Importer must understand exactly what is expected of them and conform to it consistently.

Importing is indeed a privilege, not a right.

Once a company understands its obligations as

an importer of record, we suggest that it incorporate the following “best practices” into corporate import compliance procedures:

- Know the type and description of the goods you are importing. When importing either components or finished articles, obtain product literature for all imported items.
- Know what federal agencies regulate your imported goods. The U.S. Customs Service regulates all imported goods and enforces the regulations of 17 other federal agencies. Importers are obligated to check the requirements applicable to specific types of merchandise. Importers should obtain all import permits or government forms required for restricted merchandise prior to importation.
- Ensure that all claims for duty-free or duty reduced entry of merchandise are supported ~~by the required certification~~ *e.g.*, NAFTA Certificate of Origin) or declaration (*e.g.*, GSP Declaration). These documents must be retained for five years under Customs’ recordkeeping requirements. See 19 U.S.C. § 1508 *et seq.* and 19 C.F.R. Part 163. Failure to retain required records can result in imposition of monetary penalties.

- Consult with an experienced Customs professional, such as a Customs attorney or Customs broker, concerning tariff classification, value, country of origin, or other Customs issues prior to the importation of merchandise. The rules governing importation can be complex and seeking expert advice may save you considerable time and money in the long run.
- Hire and train knowledgeable in-house personnel to review the company's import documents to ensure that the company's Customs broker has entered the merchandise correctly and that the entry documents are accurate and complete.
- Incorporate Customs compliance issues and awareness in other departments of the company, such as purchasing, finance, legal, etc.
- Implement an internal review program or audit to test the effectiveness of the company's import compliance procedures. Evaluation of your import data, which you can obtain from U.S. Customs, usually provides a surprising snapshot of your import activities and areas that need improvement. A good Customs attorney or Customs broker may be able to help you interpret this data.

As you can tell by now, in order to avoid Customs problems, it is important that importers be pro-active if they import into the United States. A corporate import compliance program and training in-house employees on import procedures are the importer's best tools to achieve "reasonable care" and avoid common mistakes that many importers make.

Analyzing Cultural Sensitivity of Websites

A Normative Framework

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