

Crime and Punishment: The Top 10 Things Importers Should Absolutely Not Do

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**YORMICK
ASSOCIATES**
CO., L.P.A.

Disclaimer



The information provided is believed to be accurate as of the date of the presentation, but is subject to change without notice.

This presentation is designed for informational purposes only and is not intended to be, nor should be, deemed specific legal advice. If such advice is required, please consult with an attorney.

The Legal Landscape: Customs Law 101



Customs Modernization Act – 1993 NAFTA implementing legislation

“The Mod Act”

Customs Law 101 (cont'd)



“Reasonable care” requirement –
19 U.S.C. §1484

“Informed compliance” standard

http://cbp.gov/xp/cgov/toolbox/legal/informed_compliance_pubs/informed_compliance_pubs.xml

“Informed compliance” (cont’d)



- “What Every Member of the Trade Community Should Know About: ...”
- Textiles, General Classification, Special Classification, Value, Int’l Agreements, Penalties, Entry, Duty and Refund Determination

“Reasonable Care”



- Statutory duty, but no precise definition
- Must exercise “reasonable care” in preparing and submitting entry information/documentation

Ruling Letters



Rulings Letters – binding decisions from
Customs regarding imports

<http://cbp.gov/xp/cgov/toolbox/legal/Rulings/>

Classification, country of origin marking,
valuation

Rulings Letters (cont'd)



Confidentiality

Information submitted is confidential

Posted on Customs website (www.cbp.gov)

Click on “Legal”



CROSS – “Customs Rulings Online Search”

Ruling Letters (cont'd)



Rulings apply prospectively

Issued in days/weeks not months –
120 day rule

Can be modified or revoked – generally
apply prospectively only

Top 10 Problems Importers Face



**“How to prevent or minimize
delays in getting your goods
to market”**

10 Failure to Claim ADD



Most frequent problem encountered on CST 335 -
importers not claiming ADD

With certain exceptions, candles from China are
subject to antidumping duties - 108.30%

The importers/brokers not paying dumping duties, but also
not specifying why candles would be exempt

Applies to other commodities

9 Omitting RLF entries



RLF (remote location filer) entries - filed by "out-of-town" brokers → omit I.T. number and do not include the port of unloading because unsure of the final destination

Result: entry “sits” because incomplete. Broker must mail a correction, causing further delay

Inspection required – MORE DELAY

8 Samples HAVE Value



"SAMPLES" with no commercial value - no such thing. If had no commercial value, would never be sent.

Damaged or used samples - Tariff Act of 1930 says actual value of merchandise to be declared as if it were in good condition - use 9811.00.60

7 Don't include Gifts

Gifts added by the consignor
“without” consignee's knowledge



Importer is responsible for ALL items that enter

If any gifts there **MUST** be a separate HB/L

6 Clear placement of \$\$



Checks should be placed on top of all documentation

Many times checks in the middle of documents - not found for weeks.

There are also a plethora of insufficient bonds



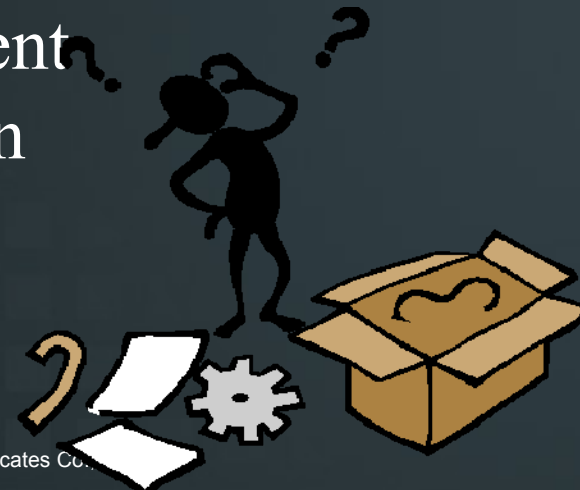
5 Not including instructions



Neglecting to provide instructions to vendor including invoice contents

Standard invoice information and additional requirements specific to products

NAFTA compliance documentation or inaccurate Trade Agreement compliance documentation



4 Not Including Origin Marking and IP rights



Not providing U.S. country of origin marking requirements to foreign vendors and/or omit country of origin on invoice

IPR – Intellectual Property Rights is a big one

Importers contact manufacturers to produce items that have copyright or trademark protection without license approval or without obtaining from these goods from a licensed manufacturer

3 Improper Classification



Importers/brokers not taking time to research merchandise and use the tools Customs offers (CROSS) to determine proper classification

Leads to incorrect HTSUS numbers → No binding ruling and/or basis for HTSUS

2 Submitting improper/ incomplete invoices



Most common error and reason for delays is submission of improper and/or incomplete invoices.

Often missing trade terms on the invoice, indicating importer failed to check where merchandise was manufactured or was purchased from a shipper or distributor, not the manufacturer and lack of c/o marking.

Do Not use generic terms such as “fasteners”

Do Use the most accurate description

1



Not Being Properly Represented

Penalties



Penalties

Penalties



Criminal, civil, and administrative penalties apply

Main Penalty Statutes

- 19 U.S.C. §1592

- 19 U.S.C. §1509

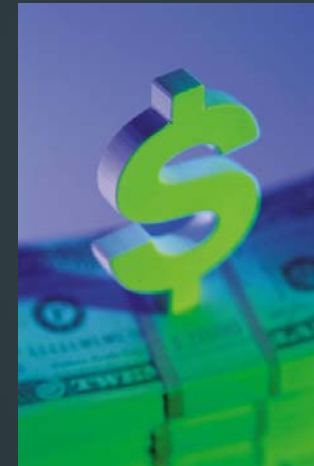


Penalties (cont'd)

- 19 U.S.C. §1592 – Penalties for fraud, gross negligence, and negligence

cannot enter or attempt to enter any goods into U.S. commerce

by fraud, gross negligence or negligence



Penalties (cont'd)



- By any document or electronic transmission of data, written or oral statement, or act that is
 - **Material and false**, or
 - Any **omission** that is material, or
 - Aids or abets another to violate the law

Penalties (cont'd)



Pre-penalty notice

Describe goods

Entry

Laws violated

Facts

Fraud, gross negligence or negligence

Proposed penalty amount

Penalties (cont'd)



- Maximum penalties

Fraud → not to exceed **domestic value**

Gross negligence → *lesser of*

domestic value, or

4 times lawful duties, taxes and fees U.S. was deprived of

Penalties (cont'd)



- **Negligence**

Lesser of –

domestic value, or

2 times lawful duties, taxes and fees U.S. was
deprived of

Penalties (cont'd)



19 U.S.C. §1509 – Examination of books and witnesses

– Can be triggered by CPB-28 (“Request for Information”)

- 30 days to respond

- **STOP → review, analyze, consult**

Penalties (cont'd)



U.S. DEPARTMENT OF HOMELAND SECURITY Bureau of Customs and Border Protection		OMB No. 1571-0023	
REQUEST FOR INFORMATION			
19 CFR 151.11			
3. Manufacturer/Seller/Shipper		4. Carrier	
5a. Invoice Description of Merchandise		5b. Invoice No.	5c. Entry No.
7. Country of Origin/Exportation		8. CBP Broker and Reference or File No.	
9. TO:		10. FROM:	
Production of Documents and/or Information Required by Law: If you have provided the information requested on this form to Bureau of Customs and Border Protection at other ports, please indicate the port of entry to which it was supplied, and furnish a copy of your reply to this office, if possible.		11a. Port	11b. Date Information Furnished
General Information and Instructions on Reverse			
12. Please Answer Indicated Question(s)		13. Please Furnish Indicated Item(s)	
<input type="checkbox"/> A. Are you related (see reverse) in any way to the seller of this merchandise? If you are related, please describe the relationship, and explain how this relationship affects the price paid or payable for the merchandise. <input type="checkbox"/> B. Identify and give details of any additional correspondence incurred in this transaction, such as: <input type="checkbox"/> (1) packing <input type="checkbox"/> (2) commissions <input type="checkbox"/> (3) proceeds that accrue to the seller <input type="checkbox"/> (4) assists <input type="checkbox"/> (5) royalties and/or license fees		<input type="checkbox"/> A. Copy of contract (or purchase order and seller's confirmation thereof) covering this transaction, and any revisions thereto. <input type="checkbox"/> B. Descriptive or illustrative literature or information explaining what the merchandise is, where and how it is used, and exactly how it operates. <input type="checkbox"/> C. Breakdown of components, materials, or ingredients by weight and the actual cost of the components at the time of assembly into the finished article. <input type="checkbox"/> D. Submit samples: Article number and description _____ from container _____ mark(s) and number _____ Samples contained in analysis, and other samples whose return is not specifically requested, will not normally be returned. <input type="checkbox"/> E. See item 14 below.	
14. CBP Officer Message			
15. Reply Message (Use additional sheets if more space is needed.)			
16. CERTIFICATION It is required that an appropriate corporate/company official execute this certificate and/or endorse all correspondence in response to the information requested. (NOTE: NOT REQUIRED IF FOREIGN FIRM COMPLETES THIS FORM.)			
I hereby certify that the information furnished herewith or upon this form is true and correct, and that any samples provided were taken from the shipment covered by this entry.		16a. Name and Title/Position of Signer (Owner, Importer, or Corporate/Company Official)	
		16b. Signature	16c. Date
		16d. Telephone No.	16e. Date
17. CBP Officer		18. Team Designation	19. Telephone No.

CBP Form 28 (02/02)



Penalties (cont'd)



- “(a)(1)(A) List” – Entry records
 - Right to make entry (e.g., airway bill/bill of lading or carrier certificate, etc.)
 - Certificate of Origin; entry summary
 - Power of attorney
 - Packing list

Penalties (cont'd)



- Failure to produce entry records
 - **Willful** failure to produce, maintain → up to \$100,000 for each release of merchandise;
 - Negligence → generally up to \$10,000

Prior Disclosure



- Exception to penalties

19 U.S.C. §1592(c)(4) allows for disclosure of violations under penalty statute

Benefits: No seizure

Reduced penalties

Prior Disclosure (cont'd)



- “Voluntarily”
 - Before a formal investigation – disclosing party has burden to show no knowledge of investigation
 - Accompanied by **complete** written statement

Must pay duties!

“What Every Member...Should Know About: The ABC’s of Prior Disclosure” (April 2004)

2005 Penalty Case



- *U.S. v. Jean Roberts of California, Inc.*
Slip Op. 05-41, March 30, 2005
U.S. Court of International Trade

19 U.S.C. §1952 civil penalty collection

Negligence case

2005 Penalty Case (cont'd)



- Imported blankets from Mexico
- Alleged 34 entries contained material false statements and/or omissions
 - Described blankets as “woven” instead of “knit” on entry documentation
 - This allowed for claim of NAFTA treatment

2005 Penalty Case (cont'd)



- Alleged revenue loss of

\$121,187.73

- Difference between general duty rate and NAFTA rate
- Gov't claimed 2 times alleged revenue loss

\$242,375.46

2005 Penalty Case (cont'd)



- Nov. 2000 - Pre-penalty notice issued
- Defendant did not respond
- Feb 2001 – Notice of Penalty and demand

\$121,508.52

- Mar 9, 2001 – demand upon surety

2005 Penalty Case (cont'd)



- May 2001 – responded through counsel
 - Requested complete cancellation
 - Claimed manufacturer was responsible for import documentation and
 - Incorrect information based on Customs ruling that blankets eligible for NAFTA treatment

2005 Penalty Case (cont'd)



- Gov't applied for default judgment
- Court granted “one final opportunity” to retain counsel and defend case
- Show cause by May 31, 2005 why default judgment should not be entered



Co., L.P.A.

Contacts



Jon P. Yormick, Esq.

Email: jon@yormicklaw.com

John M. Regan, International Trade Advisor

Email: jregan@yormicklaw.com

Yormick & Associates Co., L.P.A.

Key Tower – 52nd Floor

Cleveland, Ohio 44114 USA

T: 1.216.928.3474

F: 1.216.566.0857

<http://www.yormicklaw.com>