

CUSTOMS-NOTES

Prepared by George R. Tuttle Law Offices for informational use by the trade and import community on selected topics of general interest concerning Customs and import related matters.

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Customs Announces "Enhancements" To Compliance Assessment Program

In a series of presentations around the country, the Regulatory Audit Division of the U.S. Customs Service is introducing to the importing public to a number of important changes to its Compliance Assessment program. The new policies and procedures were implemented and affective July 1, 1999.

The Compliance Assessment Program

Customs' Compliance Assessment (CA) program is an outgrowth of the Customs Modernization provisions of the NAFTA Implementation Act of 1993. The CA program is designed to assess the level of compliance with customs and import requirements of large importers. Using statistical sampling techniques, Customs is able to assess the level of compliance of the importer in various critical customs related areas, such as classification, value, quantity reporting, recordkeeping, and eligibility for special duty programs. Companies that are not found to be 95% compliant in each of these areas must agree to implement a compliance improvement plan. Additionally, imports from companies found to be non-compliant are subject to increased cargo exams. Currently, companies with a volume of over \$100 million in imports are candidates for the program.

According to Joseph Palmer, Midwest Regional Director of Regulatory Audit, changes in the Compliance Assessment (CA) program are intended to response to many of the concerns expressed by the importing community over the past few years about the CA process.

Customs To Reduce Cycle Time For CA's

A frequent criticism of Customs is that CA take to long. A review of CA cycle time indicates that most CA's take up to a year and a half to two years to complete. Customs agrees that this amount of time is unacceptable.

After conducting its own internal study, and after reviewing the findings of the General Accounting Office, Customs has determined that much of the delay in completing a CA's is a direct result of importers asking for repeated extensions to produce requested customs records and financial documents. As a result, Regulatory Audit has developed a nation wide policy on this issue. Under the new approach, if the importer can not produce the required documents or information within the initial allotted time (30 days), or within a reasonable time following a request for an extension for cause, the conclusion will be that the documents or information requested is unavailable. This can result in the denial of tariff benefits or recordkeeping penalties.

Audit Program Changes-- Common Checks

Customs is also changing the way it conducts its review. Customs performs its assessment by conducting a systematic check in the areas of classification, quantity, value, special duty provisions and recordkeeping. These checks are referred to as “common checks” because the checks are common to all companies undergoing a compliance assessment. The standard number of hours to perform these checks is 1200 hours. Separate checks would then be conducted if the importer utilized any special duty provisions (GSP, NAFTA), duty deferral programs, imported merchandise subject to antidumping duty orders, or imported merchandise that falls into one of the primary focus industries. Each of these areas could increase the length of the audit by about 100 hours for each category reviewed. Under the new procedures, these check will be merged into the common checks, and Customs will not request additional sampling records unless the importer meets a threshold amount of \$ 10 million in duty. It was noted, however, that if the importer fails to meet eligibility requirements or can not produce the necessary documentation to establish eligibility, the audit team has the option to expand the scope of the audit to cover the area of concern.

For the case of common checks for unreported value, Customs will not perform a separate review for unreported value loss unless there is a deviation of more than 0.5% of the entered value when compared to the adjusted book value of the goods, up to \$500,000. Deviations from the entered value compared to the book value of the merchandise exceeding 0.5% or \$500,000 will trigger a separate value review.

Sampling Plan Changes

Contrary to the “judgment” sampling method employed by Customs Auditors in the past, Customs now uses statistical sampling methods to select entries and line items for review. There are two basic types of sampling methodologies employed by Customs. One is attribute sampling and the other is discovery sampling.

There are two major changes to Custom’s sampling methodology. First, the sampling plan will change from accuracy rate of 95%, with a confidence factor of +/- 3%, to an accuracy rate of 95%, with a confidence factor of +/- 5%. According to Palmer, this will represent a reduction of the sample size from 220 sample records to 100 sample records. This result is a “good news/ bad news” scenario for importers. The goods news is that the number of records that must be collected and provided to Customs is significantly reduced. The bad news is that there is a corresponding change in the number of errors that an importer may have before it is found to be non-compliant. With a change in the confidence factor from 3 to 5 percent, the number of allowable errors will drop from 5 to 2 before the company is found to be non-compliant.

Previously, auditors used discovery sampling to determine the level of compliance for checks involving non-common areas. However, because of the small size of the discovery sample, it does not allow for the projection of a statistically valid rate of compliance. This, if an error was discovered in the discovery sample, the review had to be expanded to encompass more entries. Now, to save time, Customs will use attribute sampling with the precision level of +/- 5%. This will allow Customs to determine a compliance rate for the area during the initial review.

NAFTA Reviews

In the area of conditional checks, Customs will be looking for the importer to have NAFTA certificates, and will verify whether the classification on the certificate matches the classification declared on the import entry documents, or is otherwise the correct classification for the product. If the product is miss-classified on the NAFTA certificate, new correct classification could result in a change in the eligibility of the product. Auditors, may not, however, ask for information to verify the eligibility of the product. (This requires a separate procedure and notification of the governments of the NAFTA countries from which the exports occurred. However, the importer should expect that a verification audit may be requested of it appears that problems in eligibility may be present.) If the importer does not have the appropriate NAFTA certificate properly completed the NAFTA claim may be rejected.

Other Audit Program Changes-- Enforcement Evaluation Teams

Customs is also using this opportunity to introduce a change in its policy regarding referrals of violations to its Enforcement Evaluation Teams (EET). Under this new policy, any loss of revenue discovered by the audit team greater than \$25,000 is to be reported to an EET for an early determination of the nature, extent and impact of the instance of non-compliance. If the violation is non-revenue in nature and involves a PFI category, the referral threshold is \$50,000. If the violation is non-revenue and non- PFI in nature, the referral threshold is \$200,000. The EET will select the Customs response best suited to remedy the problem, including further investigative action.

“Controlled Assessment Methodology”

Customs’ new enhanced Compliance Assessment program will now offer importers an option to participate in the new “controlled assessment methodology” (“CAM”). Under this approach, the CA is conducted by the importer under the guidance of the auditor. The CAM allows the importer greater autonomy during the review, and protect its right to prior disclosure if errors are discovered during the assessment process. Under 19 U.S.C. 1592, an importer is barred from prior disclosure when the auditor has discovered facts or circumstances that give rise to the belief that a possible violation exists, records the information in writing, and the importer has knowledge of Customs’ belief that a violation exists. To participate in a CAM, the importer must be able to demonstrate that it has the resources and technical skills available to conduct in own review.

Customs has as announced that it has completely revised its CATKIT manual, and that the updated manual should be available on its web site soon.

Please contact us for additional information about Customs’ Compliance Assessment program and how these changes might affect your company.

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