

Reasonable Care

May 12, 2020

All attendees are muted

We will begin shortly

Reasonable Care

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Trade & Compliance

Consulting, Advice, Training & Services

- In & Outsourced Trade Operations
- Import & Export Policies & Procedures
- Audit & Disclosure
- HTS, Origin, Value, FTA, CTPAT, ECCN, ITAR, Sections 232 & 301, AD/CVD, and more
- Broker/Forwarder Management & Oversight
- Training in all areas

Agenda

- ▀ History & Definitions
- ▀ Failure to Show Reasonable Care
- ▀ General Questions
- ▀ Specific Topics
 - ▀ Classification
 - ▀ Valuation
 - ▀ Origin and Marking
 - ▀ IPR
 - ▀ Forced Labor
- ▀ Helpful Resources

History & Definitions



History



- 1993 Customs Modernization Act
- Explicit responsibility
- Easy to say, hard to define

▀ 19 CFR 111.1

Corporate compliance activity. “Corporate compliance activity” means activity performed by a business entity to ensure that documents for a related business entity or entities are prepared and filed with CBP using “reasonable care”, but such activity does not extend to the actual preparation or filing of the documents or their electronic equivalents. For purposes of this definition, a “business entity” is an entity that is registered or otherwise on record with an appropriate governmental authority for business licensing, taxation, or other legal purposes, and the term “related business entity or entities” encompasses a business entity that has more than a 50 percent ownership interest in another business entity, a business entity in which another business entity has more than a 50 percent ownership interest, and two or more business entities in which the same business entity has more than a 50 percent ownership interest.

Show Caution When Approaching

- ▀ Import Documentation
- ▀ Origin
- ▀ HTS Classification
- ▀ Value
- ▀ Amounts
- ▀ Preferential Duty Programs
- ▀ Other Government Agencies
- ▀ Recordkeeping
- ▀ Compliance & Control Activities

Failure of Reasonable Care

Levels of Failure & Penalties

- ▀ Negligence
- ▀ Gross Negligence
- ▀ Fraud



Evidence

- ▀ Seeking guidance from CBP
- ▀ Consult with experts
- ▀ In-house employees as experts
- ▀ Corporate networking – finance and controllers

General Questions

Basic Foundation

- Do you have access to resources?
- Do you have a responsible and knowledgeable individual at the organization?
- If you're using an expert, do you keep them updated?
- Do you have a compliance program?
- Do you see consistency from CBP in the way they approach entries?

Framework and Best Practices

- ▀ Internal Control Components
- ▀ Prepare for Audits
- ▀ Review CBP Manuals
- ▀ CBP Focused Assessment Questionnaire
- ▀ Remedial Measures
- ▀ Review Prior Disclosures

Topic-Specific



Classification

- What did you order? Where was it made? How was it made? What is it made of?
- Description
- Tariff Classification
- Customs rulings or internal advice
- Process for hard to get HTS
- Customs expert
- Obtain preferential duty proof
- Do you need lab analysis?

Valuation

- What's your price paid? What are the terms of sale? Rebates? Indirect costs? Assists? Commissions? Royalties? Related to the seller?
- Valued per 19 CFR 152
- Customs ruling
- Resources
- Customs expert
- Complete set of documents
- What to do if no sale
- Sample values

Origin & Marking

- ▀ Obtain country of origin
- ▀ Report origin
- ▀ Marking of items
- ▀ Customs ruling
- ▀ Customs expert
- ▀ Documentation to back claim
- ▀ TEXTILES
- ▀ How are your goods made?
- ▀ Check quota, visas, and licenses

Intellectual Property Rights

- Does it match trademarks or copyrights?
- Do you have a legal right to import?
- What is the process to prevent fraud?
- If remanufactured, how do you verify?
- Subject to exclusion orders?

Forced Labor

- ▀ Convict labor, forced labor, indentured labor, child labor.
- ▀ What's your process?
- ▀ How, where, by whom, and what conditions
- ▀ CBP Forced Labor website
- ▀ Supply chain audits
- ▀ Vet suppliers
- ▀ Social Compliance System

Other Questions

- ▀ Other Government Agencies
- ▀ AD/CVD
- ▀ Correct entry type
- ▀ Right to make entry

Helpful Resources

- [Informed Compliance Publications](#)
- [HTSUS](#)
- [19 CFR](#)
- [Customs Rulings Online Search System](#)
- [CBP Forced Labor website](#)
- [Automated Commercial Environment](#)

THANK YOU



NCBFAA CCS/CES credit available. Please send requests to train@starusa.org.