



A GUIDE FOR
COMMERCIAL IMPORTERS

importing into the united states

greenworldwide
SHIPPING

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preface

On March 1, 2003, U.S. Customs and Border Protection, or CBP, was born as an agency of the Department of Homeland Security, merging functions of the former Customs Service, Immigration and Naturalization Service, Border Patrol, and Animal and Plant Health Inspection Service.

Many changes took place in preparation for this merger and many have occurred since in order to safeguard U.S. borders against high-risk cargo, contraband, and unsafe imports. We encourage you to visit the website, www.cbp.gov, for the latest information on specific laws, regulations or procedures that may affect your import transactions.

This edition of *Importing Into the United States* contains material pursuant to the Trade Act of 2002 and the Customs Modernization Act (Title VI of the North American Free Trade Agreement Implementation Act), commonly referred to as the Mod Act.

The Customs Modernization Act (Title VI of the North American Free Trade Agreement Implementation Act [P.L. 103-182, 107 Stat. 2057]) became effective December 8, 1993. Its provisions have fundamentally altered the relationship between importers and CBP by shifting to the importer, the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

A prominent feature of the Mod Act is a relationship between CBP and importers that is characterized by informed compliance. A key component of informed compliance is the shared responsibility between CBP and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided with accurate and timely data pertaining to his or her importations.

Importing Into the United States provides wide-ranging information about the importing process and import requirements. We have made every effort to include essential requirements, but it is not possible for a book this size to cover all import laws and regulations. Also, this publication does not supersede or modify any provision of those laws and regulations. Legislative and administrative changes are always

under consideration and can occur at any time. Quota limitations on commodities are also subject to change. Therefore, reliance solely on the information in this book may not meet the “reasonable care” standard required of importers.

We urge interested parties to contact their nearest Green Worldwide branch for information on specific issues or questions.

U.S. customs & border protection

Mission

Before September 11, 2001, the major responsibility of the former U.S. Customs Service was to administer the Tariff Act of 1930, as amended. When Customs subsequently merged with other border enforcement agencies to become U.S. Customs and Border Protection, CBP's priority mission became homeland security: detecting, deterring and preventing terrorists and their weapons from entering the United States.

This mission fits ideally with CBP's long-established responsibilities for protecting and facilitating international trade. CBP retains its traditional enterprise of protecting the nation's revenue by assessing and collecting duties, taxes and fees incident to international traffic and trade. Further, by providing procedural guidance to the import community, CBP enhances and increases compliance with domestic and international customs laws and regulations. CBP thus helps importers assure that their shipments are free from terrorist or other malicious interference, tampering, or corruption of containers or commodities.

Today, CBP is the nation's premiere border enforcement agency, and it accomplishes this new mandate in part by executing the responsibilities for which it has always been known: controlling, regulating, and facilitating the movement of carriers, people, and commodities between the United States and other nations; protecting the American consumer and the environment against the introduction of hazardous, toxic or noxious products into the United States; protecting domestic industry and labor against unfair foreign competition; and detecting, interdicting, and investigating smuggling and other illegal practices aimed at illegally entering narcotics, drugs, contraband or other prohibited articles into the United States.

CBP is also responsible for detecting, interdicting, and investigating fraudulent activities intended to avoid the payment of duties, taxes and fees, or activities meant to evade the legal requirements of international traffic and trade; and for detecting, interdicting, and investigating illegal international trafficking in arms, munitions, currency, and acts of terrorism at U.S. ports of entry.

Field Operations Offices

Customs Border Patrol operates through a field-office structure that consists of 20 Field Operations offices around the United States. These field offices provide managerial oversight and operational assistance to 324 ports of entry around the nation and 14 preclearance offices in Canada and the Caribbean.

Established according to geographic region, Field Operations offices are the means by which CBP Headquarters distributes key policies and procedures to CBP officers and importing staff around the country. Each field office supervises a certain number of service or area ports, which are larger, full-service ports with staff subdivisions designated to handle commercial transactions, as well as smaller ports of entry that handle less traffic.

Field Operations offices provide guidance to the ports under their geographic jurisdiction to ensure the dissemination and implementation of CBP guidelines, policies and procedures. Import transactions are conducted at service ports, area ports, and ports of entry, so these locations will be of primary interest to the trade community. CBP is also responsible for administering the customs laws of the United States Virgin Islands.

Ports of Entry

Ports of entry conduct the daily, port-specific operations like clearing cargo, collecting duties and other monies associated with imports, and processing passengers arriving from abroad. Port personnel are the face at the border for nearly all cargo carriers

and people entering the United States. Ports of entry are the level at which CBP enforces import and export laws and regulations and implements immigration policies and programs. Port officers also perform agricultural inspections to protect the USA from potential carriers of animal and plant pests or diseases that could cause serious damage to America's crops, livestock, pets, and the environment.

For a detailed listing of ports of entry, please refer to: <http://www.cbp.gov/xp/cgov/toolbox/ports/>.

suggestions to exporters for faster clearance of merchandise

Tips

1. Include all information required on your customs invoices.
2. Prepare your invoices carefully. Type them clearly. Allow sufficient space between lines. Keep the data within each column.
3. Make sure that your invoices contain the information that would be shown on a well-prepared packing list.
4. Mark and number each package so it can be identified with the corresponding marks and numbers appearing on your invoice.
5. Show a detailed description on your invoice of each item of merchandise contained in each individual package.
6. Mark your goods legibly and conspicuously with the country of origin unless they are specifically exempted from country-of-origin marking requirements, and with such other marking as is required by the marking laws of the United States.
7. Comply with the provisions of any special laws of the United States that may apply to your goods, such as laws relating to food, drugs, cosmetics, alcoholic beverages, radioactive materials, and others.

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8. Observe the instructions closely with respect to invoicing, packaging, marking, labeling, etc., sent to you by your customer in the United States. He or she has probably made a careful check of the requirements that will have to be met when your merchandise arrives.
9. Work with CBP to develop packing standards for your commodities.

entry of goods

Entry Process

When a shipment reaches the United States, the importer of record (i.e., the owner, purchaser, or licensed customs broker designated by the owner, purchaser, or consignee) will file entry documents for the goods with the port director at the goods' port of entry. Imported goods are not legally entered until after the shipment has arrived within the port of entry, delivery of the merchandise has been authorized by CBP, and estimated duties have been paid. It is the importer of record's responsibility to arrange for examination and release of the goods.

Goods may be entered for consumption, entered for warehouse at the port of arrival, or they may be transported in-bond to another port of entry and entered there under the same conditions as at the port of arrival. Arrangements for transporting the merchandise in-bond to an in-land port may be made by the consignee or by a customs broker or by any other person with an interest in the goods for that purpose. Unless your merchandise arrives directly at the port where you wish to enter it, you may be charged additional fees by the carrier for transportation to that port unless other arrangements have been made. Under some circumstances, your goods may be released through your local port of entry, even if they arrive at a different U.S. port from a foreign country. Prior to the goods' arrival, arrangements for entry must be made at the CBP port of entry where you intend to file your duties and documentation.

Evidence Of Right To Make Entry

Goods may only be entered by their owner, purchaser, or a licensed customs broker. When the goods are consigned “to order,” the bill of lading, properly endorsed by the consignor, may serve as evidence of the right to make entry. An air waybill may be used for merchandise arriving by air.

In most instances, entry is made by a person or firm certified by the carrier bringing the goods to the port of entry. This entity (i.e., the person or firm certified) is considered the “owner” of the goods for customs purposes.

The document issued by the carrier for this purpose is known as a “Carrier’s Certificate.” In certain circumstances, entry may be made by means of a duplicate bill of lading or a shipping receipt. When the goods are not imported by a common carrier, possession of the goods by the importer at the time of arrival shall be deemed sufficient evidence of the right to make entry.

Entry For Consumption

Entering merchandise is a two-part process consisting of: (1) filing the documents necessary to determine whether merchandise may be released from CBP custody, and (2) filing the documents that contain information for duty assessment and statistical purposes. Both of these processes can be accomplished electronically via the Automated Broker Interface (ABI) program of the Automated Commercial System (ACS).

Entry Documents

Within 15 calendar days of the date that a shipment arrives at a U.S. port of entry, entry documents must be filed at a location specified by the port director. These documents are:

- Entry Manifest or Application and Special Permit for Immediate Delivery or other form of merchandise release required by the port director,
- Evidence of right to make entry,

- Commercial invoice or a pro forma invoice when the commercial invoice cannot be produced,
- Packing lists, if appropriate,
- Other documents necessary to determine merchandise admissibility.
- If the goods are to be released from CBP custody at the time of entry, an entry summary for consumption must be filed and estimated duties deposited at the port of entry within 10 working days of the goods’ entry.

Surety

The entry must be accompanied by evidence that a bond has been posted with CBP to cover any potential duties, taxes, and charges that may accrue. Bonds may be secured through a resident U.S. surety company, but may be posted in the form of United States currency or certain United States government obligations. In the event that a customs broker is employed for the purpose of making entry, the broker may permit the use of his bond to provide the required coverage.

Entry Summary Documentation

Following presentation of the entry, the shipment may be examined, or examination may be waived. The shipment is then released if no legal or regulatory violations have occurred. Entry summary documentation is filed and estimated duties are deposited within 10 working days of the entry of the merchandise at a designated customhouse. Entry summary documentation consists of:

- Return of the entry package to the importer, broker, or his authorized agent after merchandise is permitted release,
- Entry summary,
- Other invoices and documents necessary to assess duties, collect statistics, or determine that all import requirements have been satisfied. This paper documentation can be reduced or eliminated by using features of the ABI.

Unentered Goods

If no entry has been filed for the goods at the port of entry, or at the port of destination for in-bond shipments, within 15 calendar days after their arrival, the goods may be placed in a general-order warehouse at the importer's risk and expense. If the goods are not entered within six months from the date of importation, they can be sold at public auction or destroyed. Perishable goods, however, and goods subject to depreciation and explosive substances may be sold sooner.

Storage charges, expenses of sales, internal revenue or other taxes, duties, fees, and amounts for the satisfaction of liens must be taken out of the money obtained from the sale of the unentered goods. Claims for the surplus proceeds of sale may be filed with the port director at whose instruction the merchandise was sent to sale. Any claim for such proceeds must be filed within 10 days of sale and supported with an original bill of lading. A photostatic copy or certified copy of the bill of lading may be used if only part of a shipment is involved in the sale. Carriers, not port directors, are required to notify a bonded warehouse of unentered merchandise. Once notified, the bonded warehouse operator/manager shall arrange for the unentered merchandise to be transported to his or her premises for storage at the consignee's risk and expense. If the goods are subject to internal revenue taxes, but will not bring enough to pay the taxes if sold at public auction, they are subject to destruction.

Transportation Of Merchandise In Bond

Not all merchandise imported into the United States and intended for domestic commerce is entered at the port where it arrives. The importer may prefer to enter the goods at a different location in the United States, in which case the merchandise will have to be further transported to that location. In order to protect United States revenue in these cases, the merchandise must travel in a bonded status from the port of arrival to the intended port of entry. This process is referred to as traveling under Immediate Transportation procedures and is accomplished by the execution of CBP Form

7512. The merchandise is then placed with a carrier who accepts it under its bond for transportation to the intended destination, where the normal merchandise entry process will occur.

Entry By Importer

Merchandise arriving in the United States by commercial carrier must be entered by the owner, purchaser, his or her authorized regular employee, or by the licensed customs broker designated by the owner, purchaser, or consignee. U.S. CBP officers and employees are not authorized to act as agents for importers or forwarders of imported merchandise, although they may give all reasonable advice and assistance to inexperienced importers.

Customs brokers are the only persons who are authorized by the tariff laws of the United States to act as agents for importers in the transaction of their customs business. Customs brokers are private individuals or firms licensed by CBP to prepare and file the necessary customs entries, arrange for the payment of duties found due, take steps to effect the release of the goods in CBP custody, and otherwise represent their principals in customs matters. The fees charged for these services may vary according to the customs broker and the extent of services performed.

Every entry must be supported by one of the forms of evidence of the right to make entry. When a customs broker makes entry, a CBP power of attorney is made in the name of the customs broker. This power of attorney is given by the person or firm for whom the customs broker is acting as agent. Ordinarily, the authority of an employee to make entry for his or her employer is established most satisfactorily by a CBP power of attorney.

Entries Made By Others

Entry of goods may be made by a nonresident individual or partnership, or by a foreign corporation through a U.S. agent or representative of the exporter, a member of the partnership, or an officer of the corporation.

The surety on any CBP bond required from a nonresident individual or organization must be incorporated in the United States. In addition, a foreign corporation in whose name merchandise is entered must have a resident agent in the state where the port of entry is located who is authorized to accept service of process on the foreign corporation's behalf.

A licensed customs broker named in a CBP power of attorney may make entry on behalf of the exporter or his representative. The owner's declaration made by a nonresident individual or organization which the customs broker may request must be supported by a surety bond providing for the payment of increased or additional duties found due. An owner's declaration executed in a foreign country is acceptable, but it must be executed before a notary public and bear the notary's seal. Notaries public will be found in all American embassies around the world and in most of the larger consulates.

Power Of Attorney

A nonresident individual, partnership, or foreign corporation may issue a power of attorney to a regular employee, customs broker, partner, or corporation officer to act in the United States for the nonresident employer. Any person named in a power of attorney must be a resident of the United States who has been authorized to accept service of process on behalf of the person or organization issuing the power of attorney. The power of attorney to accept service of process becomes irrevocable with respect to customs transactions duly undertaken. Either the applicable CBP form or a document using the same language as the form is acceptable. References to acts that the issuer has not authorized the agent to perform may be deleted from the form or omitted from the document. A power of attorney from a foreign corporation must be supported by the following documents or their equivalent when foreign law or practice differs from that in the United States:

- A certificate from the proper public officer of the country showing the legal existence of the corporation, unless the fact of incorporation is so generally known as to be a matter of common knowledge.
- A copy of that part of the charter or articles of incorporation which shows the scope of the corporation's business and its governing body.
- A copy of the document or part thereof by which the person signing the power of attorney derives his authority, such as a provision of the charter or articles of incorporation, a copy of the resolution, minutes of the board of directors' meeting, or other document by which the governing body conferred this authority. In this case, a copy is required of the bylaws or other document giving the governing board the authority to designate others to appoint agents or attorney.

A nonresident individual or partnership or a foreign corporation may issue a power of attorney to authorize the persons or firms named in the power of attorney to issue like powers of attorney to other qualified residents of the United States and to empower the residents to whom such powers of attorney are issued to accept service of process on behalf of the nonresident individual or organizations. A power of attorney issued by a partnership must be limited to a period not to exceed two years from the date of execution and shall state the names of all members of the partnership. One member of a partnership may execute a power of attorney for the transaction of customs business of the partnership. When a new firm is formed by a change of membership, the prior firm's power of attorney is no longer effective for any customs purpose. The new firm will be required to issue a new power of attorney for the transaction of its customs business. All other powers of attorney may be granted for an unlimited period.

Examination Of Goods And Entry Documents

Examination of goods and documents is necessary to determine, among other things:

- The value of the goods for customs purposes and their dutiable status,
- Whether the goods must be marked with their country of origin or require special marking or labeling. If so, whether they are marked in the manner required,
- Whether the shipment contains prohibited articles,
- Whether the goods are correctly invoiced,
- Whether the goods are in excess of the invoiced quantities or a shortage exists,
- Whether the shipment contains illegal narcotics.

Prior to the goods' release, the port director will designate representative quantities for examination by CBP officers under conditions that will safeguard the goods. Some kinds of goods must be examined to determine whether they meet special requirements of the law. For example, food and beverages unfit for human consumption would not meet the requirements of the Food and Drug Administration.

One of the primary methods of smuggling narcotics into the United States is in cargo shipments. Drug smugglers will place narcotics inside a legitimate cargo shipment or container to be retrieved upon arrival in the United States. Because smugglers use any means possible to hide narcotics, all aspects of the shipment are examined, including container, pallets, boxes, and product. Only through intensive inspection can narcotics be discovered.

Textiles and textile products are considered trade-sensitive and as such may be subject to a higher percentage of examinations than other commodities. CBP officers will ascertain the quantity of goods imported, making allowances for shortages under specified conditions and assessing duty on any excess. The invoice may state the quantities in the weights and measures of the country from which the goods are shipped or in the weights and measures of the United

States, but the entry must state the quantities in metric terms.

Excess Goods And Shortages

In order to facilitate duty allowances for goods that do not arrive and to determine whether excess goods are contained in the shipment, the importer (or foreign exporter) is advised to pack the goods in an orderly fashion; properly mark and number the packages in which the goods are contained; list each package's contents on the invoice; and place marks and numbers on the invoices that correspond to those packages.

If the CBP officer finds any package that contains an article not specified on the invoice, and there is reason to believe the article was omitted from the invoice by fraud, gross negligence, negligence on the part of the seller, shipper, owner, or agent, a monetary penalty may be imposed, or in some cases, the merchandise may be seized or forfeited.

If, during the examination of any package that has been designated for examination, the CBP officer finds a deficiency in quantity, weight or measure, he or she will make a duty allowance for the deficiency. An allowance in duty may be made for those packages not designated as long as the importer notifies the port director of the shortage before liquidation of the entry becomes final and establishes to the port director's satisfaction that the missing goods were not delivered.

Damage Or Deterioration

Goods that the CBP officer finds to be entirely without commercial value at the time of arrival in the United States because of damage or deterioration are treated as a "nonimportation." No duties are assessed on these goods. When damage or deterioration is present with respect to part of the shipment only, allowance in duties is not made unless the importer segregates, under CBP supervision, the damaged or deteriorated part from the remainder of the shipment. When the shipment consists of fruits, vegetables, or

other perishable merchandise, allowance in duties cannot be made unless the importer, within 96 hours of unloading the merchandise and before it has been removed from the pier, files an application for an allowance with the port director. Allowance or reduction of duty for partial damage or loss as a result of rust or discoloration is precluded by law on shipments consisting of any article partially or wholly manufactured of iron or steel, or any manufacture of iron or steel.

informed compliance

Definition

Informed compliance is a shared responsibility between CBP and the import community wherein CBP effectively communicates its requirements to the trade, and the people and businesses subject to those requirements conduct their regulated activities in accordance with U.S. laws and regulations. A key component of informed compliance is that the importer is expected to exercise reasonable care in his or her importing operations.

Informed compliance benefits both parties: When voluntary compliance is achieved, CBP resources need not be expended on redundant examinations or entry reviews for the importer's cargo found to be dependably compliant. From the trade perspective, when voluntary compliance is attained, compliant importers are less likely to have their shipments examined or their entries reviewed.

Reasonable Care Checklists

Reasonable care is an explicit responsibility on the part of the importer. Despite its seemingly simple connotation, the term reasonable care defies easy explanation because the facts and circumstances surrounding every import transaction differ, from the experience of the importer to the nature of the imported articles. Consequently, neither CBP nor the importing community can develop a reasonable care checklist capable of covering every import transaction.

CBP recommends that the import community examine the list of questions below. These questions may suggest methods that importers may find useful in avoiding compliance problems and in meeting the responsibilities of reasonable care.

These questions are intended to promote compliance with CBP laws and regulations, but be aware that the list is advisory, not exhaustive. The checklist is intended as a guide and has no legal, binding or precedential effect on CBP or the importing community.

The questions apply whether the importer of record conducts the transactions(s) him- or herself, or whether the importer hires others to do it.

General Questions for All Transactions:

1. If you have not retained an expert (e.g., lawyer, customs broker, accountant, or customs consultant) to assist you in complying with CBP requirements, do you have access to the CBP Regulations (Title 19 of the Code of Federal Regulations), the Harmonized Tariff Schedule of the United States (generally referred to as the Harmonized Tariff Schedule), and CBP Bulletin and Decisions? (All three are available from the Superintendent of Documents, Tel. 202.512.1800.) Do you have access to the CBP Website at www.cbp.gov, or other research service that provides the information to help you establish reliable procedures and facilitate compliance with CBP law and regulations?
2. Has a responsible, knowledgeable individual within your organization reviewed your CBP documentation to assure that it is full, complete and accurate? If the documentation was prepared outside your organization, do you have a reliable method to assure that you receive copies of the information submitted to CBP, that it is reviewed for accuracy, and that CBP is apprised of needed corrections in a timely fashion?

3. If you use an expert to help you comply with CBP requirements, have you discussed your importations in advance with that person, and have you provided him or her with complete, accurate information about the import transaction(s)?
4. Are identical transactions or merchandise handled differently at different ports or CBP offices within the same port? If so, have you brought this fact to CBP officials' attention?

Questions by Topic: Merchandise Description & Tariff Classification

Basic Question: *Do you know what you ordered, where it was made, and what it is made of?*

1. Have you provided a complete, accurate description of your merchandise to CBP in accordance with 19 U.S.C. 1481?
2. Have you provided CBP with the correct tariff classification of your merchandise in accordance with 19 U.S.C. 1484?
3. Have you obtained a CBP ruling regarding the description of your merchandise or its tariff classification? If so, have you followed the ruling and apprised appropriate CBP officials of those facts (i.e., of the ruling and your compliance with it)?
4. Where merchandise description or tariff classification information is not immediately available, have you established a reliable procedure for obtaining it and providing it to CBP?
5. Have you participated in a CBP classification of your merchandise in order to get it properly described and classified?
6. Have you consulted the tariff schedules, CBP informed compliance publications, court cases or CBP rulings to help you properly describe and classify the merchandise?
7. Have you consulted with an expert (e.g., lawyer, customs broker, accountant, customs consultant) to assist in the description and/or classification of the merchandise?
8. If you are claiming a conditionally free or special tariff classification or provision for your merchandise

- (e.g., GSP, HTS Item 9802, NAFTA), how have you verified that the merchandise qualifies for such status? Do you have the documentation necessary to support the claim? If making a NAFTA preference claim, do you have a NAFTA certificate of origin in your possession?
9. Is the nature of your merchandise such that a laboratory analysis or other specialized procedure is advised for proper description and classification?

Valuation

Basic Questions: *Do you know the "price actually paid or payable" for your merchandise? Do you know the terms of sale? Whether there will be rebates, tie-ins, indirect costs, additional payments? Whether "assists" were provided or commissions or royalties paid? Are amounts actual or estimated? Are you and the supplier "related parties"?*

1. Have you provided CBP with a proper declared value for your merchandise in accordance with 19 U.S.C. 1484 and 19 U.S.C. 1401a?
2. Have you obtained a CBP ruling regarding valuation of the merchandise (see 19 CFR Part 177)? Can you establish that you followed the ruling reliably? Have you brought those facts to the attention of CBP?
3. Have you consulted the CBP valuation laws and regulations, CBP Valuation Encyclopedia, CBP informed compliance publications, court cases and CBP rulings to assist you in valuing merchandise?
4. If you purchased the merchandise from a "related" seller, have you reported that fact upon entry? Have you assured that the value reported to CBP meets one of the "related party" tests?
5. Have you assured that all legally required costs or payments associated with the imported merchandise (assists, commissions, indirect payments or rebates, royalties, etc.) have been reported to CBP?
6. If you are declaring a value based upon a transaction in which you were/are not the buyer, have you substantiated that the transaction is a bona fide "sale at arm's length" and that the

- merchandise was clearly destined to the United States at the time of sale?
7. If you are claiming a conditionally free or special tariff classification or provision for your merchandise (GSP, HTS Item 9802, NAFTA), have you reported the required value information and obtained the documentation necessary to support the claim?
 8. Have you produced the required entry documentation and supporting information?

Country of Origin/Marking/Quota

Basic Question: *Have you ascertained the correct country of origin for the imported merchandise?*

1. Have you reported the correct country of origin on CBP entry documents?
2. Have you assured that the merchandise is properly marked upon entry with the correct country of origin (if required) in accordance with 19 U.S.C. 1304 and any other applicable special marking requirements (watches, gold, textile labeling, etc)?
3. Have you obtained a CBP ruling regarding the proper marking and country of origin of the merchandise? If so, have you followed the ruling and brought that fact to the attention of CBP?
4. Have you consulted with a customs expert regarding the correct country-of- origin/proper marking of your merchandise?
5. Have you apprised your foreign supplier of CBP country-of-origin marking requirements prior to importation of your merchandise?
6. If you are claiming a change in the origin of the merchandise or claiming that the goods are of U.S. origin, have you taken required measures to substantiate your claim (e.g., do you have U.S. milling certificates or manufacturers' affidavits attesting to production in the United States)?
7. If importing textiles or apparel, have you ascertained the correct country of origin in accordance with 19 U.S.C. 3592 (Section 334, P.L. 103-465) and assured yourself that no illegal transshipment or false or fraudulent practices were involved?
8. Do you know how your goods are made, from raw

- materials to finished goods, by whom and where?
9. Have you ensured that the quota category is correct?

Intellectual Property Rights

Basic Question: *Have you determined whether your merchandise or its packaging use any trademarks or copyrighted material or are patented? If so, can you establish that you have a legal right to import those items into and/or use them in the United States?*

1. If you are importing goods or packaging bearing a trademark registered in the United States, have you established that it is genuine and not restricted from importation under the "gray-market" or parallel-import requirements of United States law (see 198 CFR 133.21), or that you have permission from the trademark holder to import the merchandise?
2. If you are importing goods or packaging that contain registered copyrighted material, have you established that this material is authorized and genuine? If you are importing sound recordings of live performances, were the recordings authorized?
3. Is your merchandise subject to an International Trade Commission or court-ordered exclusion order?
4. Can you produce the required entry documentation and supporting information?

Miscellaneous

1. Have you assured that your merchandise complies with other agencies' requirements (e.g., FDA, EPA, DOT, CPSC, FTC, Agriculture, etc.) and obtained licenses or permits, if required, from them?
2. Are your goods subject to a Commerce Department dumping or countervailing-duty investigation or determination? If so, have you complied with CBP reporting requirements of this fact (e.g., 19 CFR 141.61)?
3. Is your merchandise subject to quota/visa requirements? If so, have you provided a correct

visa for the goods upon entry?

4. Have you assured that you have the right to make entry under the CBP Regulations?
5. Have you filed the correct type of CBP entry (e.g., TIB, T&E, consumption entry, mail entry)?

Compliance Assessment/Compliance Measurement

Of primary interest to the trade community is the compliance assessment, which is the systematic evaluation of an importer's systems supporting his or her CBP-related operations. The assessment includes testing import and financial transactions, reviewing the adequacy of the importer's internal controls, and determining the importer's compliance levels in key areas. Compliance assessments are conducted in accordance with 19 U.S.C. 1509.

The assessment is conducted by an interdisciplinary team composed of a CBP auditor, import specialist, account manager, industry expert, and possibly other CBP specialists (attorneys, inspectors, scientists). The compliance assessment utilizes professionally accepted statistical sampling and auditing techniques to review selected import transactions from the company's previous fiscal year.

Compliance assessments will evaluate the company's applicable customs operations such as:

- Record keeping,
- Merchandise classification/trade statistics,
- Merchandise quantities,
- Antidumping/countervailing duty operations,
- Quota conformity,
- Merchandise value,
- Warehouse or foreign trade zone operations,
- Merchandise transshipment,
- Special trade programs (GSP , CBI, others).

Companies found in compliance with CBP laws and regulations will get a report stating that fact. Companies whose systems are determined to be noncompliant will also get a report and will be asked

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to formulate, in cooperation with CBP advisors, a compliance improvement plan specifying corrective actions the company will take to increase compliance levels. Serious violations of law or regulation may result in CBP referring the company for a formal investigation or other enforcement actions.

By law, CBP is required to provide the importer with advance notice of an intended assessment and an estimate of its duration. Importers are entitled to an entry conference, during which the assessment's purpose will be explained and its duration provided. Using information from CBP databases about the company or the importer's industry, the compliance assessment team may have prepared questionnaires seeking specific information about the importer's internal procedures. These questionnaires will be distributed at the entry conference.

Upon completion of the assessment, CBP will schedule a closing conference, at which its preliminary findings will be explained. A closing conference may not be scheduled for companies found to have serious enforcement issues. If no enforcement action is taken, CBP will provide the company with a written report of the assessment's results.

The Importer Audit/Compliance Assessment Team Kit (also called the CAT Kit), which provides extensive details of the assessment procedure. Compliance Measurement is the primary tool CBP uses to assess the accuracy of port-of-entry transactions and to determine the compliance rate for all commercial importations. By using statistical sampling methods, a valid compliance level for all commercial importations can be obtained. One of CBP's goals is to assure that at least 99 percent of the import revenues legally owed the United States government are collected. Cargo is sampled for compliance with international trade laws at the port of entry, at the time of entry into the United States. Importers should be aware that misclassification of merchandise, among other violations, will be detected through the compliance measurement process.

invoices

Commercial Invoice

A commercial invoice, signed by the seller or shipper, or his agent, is acceptable for CBP purposes if it is prepared in accordance with Section 141.86 through 141.89 of the CBP Regulations, and in the manner customary for a commercial transaction involving goods of the kind covered by the invoice. Importers and brokers participating in the Automated Broker Interface may elect to transmit invoice data via the Automated Invoice Interface or EDIFACT and eliminate the paper document. The invoice must provide the following information, as required by the Tariff Act:

- The port of entry to which the merchandise is destined,
- If merchandise is sold or agreed to be sold, the time, place, and names of buyer and seller; if consigned, the time and origin of shipment, and names of shipper and receiver,
- A detailed description of the merchandise, including the name by which each item is known, the grade or quality, and the marks, numbers, and symbols under which it is sold by the seller or manufacturer to the trade in the country of exportation, together with the marks and numbers of the packages in which the merchandise is packed,
- The quantities in weights and measures,
- If sold or agreed to be sold, the purchase price of each item in the currency of the sale,
- If the merchandise is shipped for consignment, the value of each item in the currency in which the transactions are usually made, or, in the absence of such value, the price in such currency that the manufacturer, seller, shipper, or owner would have received, or was willing to receive, for such merchandise if sold in the ordinary course of trade and in the usual wholesale quantities in the country of exportation,
- The kind of currency,
- All charges upon the merchandise, itemized by name and amount including freight, insurance,

commission, cases, containers, coverings, and cost of packing; and, if not included above, all charges, costs, and expenses incurred in bringing the merchandise from alongside the carrier at the port of exportation in the country of exportation and placing it alongside the carrier at the first U.S. port of entry. The cost of packing, cases, containers, and inland freight to the port of exportation need not be itemized by amount if included in the invoice price and so identified. Where the required information does not appear on the invoice as originally prepared, it shall be shown on an attachment to the invoice,

- All rebates, drawbacks, and bounties, separately itemized, allowed upon the exportation of the merchandise,
- The country of origin,
- All goods or services furnished for the production of the merchandise not included in the invoice price.
- If the merchandise on the documents is sold while in transit, the original invoice reflecting this transaction and the resale invoice or a statement of sale showing the price paid for each item by the purchaser shall be filed as part of the entry, entry summary, or withdrawal documentation.

The invoice and all attachments must be in the English language, or shall be accompanied by an accurate English translation.

Each invoice shall state in adequate detail what merchandise is contained in each individual package.

If the invoice or entry does not disclose the weight, gauge, or measure of the merchandise necessary to ascertain duties, the importer of record shall pay expenses incurred to obtain this information prior to the release of the merchandise from CBP custody. Each invoice shall set forth in detail, for each class or kind of merchandise, every discount from the list or other base price that has been or may be allowed in fixing each purchase price or value.

When more than one invoice is included in the same entry, each invoice with its attachments shall be numbered consecutively by the importer on the bottom of the face of each page, beginning with number 1. If an invoice is more than two pages, begin with number 1 for the first page of the first invoice and continue in a single series of numbers through all the invoices and attachments included in one entry. If an entry covers one invoice of one page and a second invoice of two pages, the numbering at the bottom of the page shall be as follows: Inv. 1, p.1; Inv. 2, p.2; Inv. 2, p.3, etc.

Any information required on an invoice may be set forth either on the invoice or on the attachment.

Specific Requirements

- 1. Separate Invoice Required for Each Shipment.** Not more than one distinct shipment from one consignor to one consignee by one commercial carrier shall be included on the same invoice.
- 2. Assembled Shipments.** Merchandise assembled for shipment to the same consignee by one commercial carrier may be included in one invoice. The original bills or invoices covering the merchandise showing the actual price paid or agreed to be paid, should be attached to the invoice.
- 3. Installment Shipments.** Installments of a shipment covered by a single order or contract and shipped from one consignor to one consignee may be included in one invoice if the installments arrive at the port of entry by any means of transportation within a period not to exceed 10 consecutive days.

The invoice should be prepared in the same manner as invoices covering single shipments and should include any additional information that may be required for the particular class of goods concerned. If it is practical to do so, the invoice should show the quantities, values, and other invoice data with respect to each installment, and the identification of the importing conveyance in which each installment was shipped.

4. Production "Assist." The invoice should indicate whether the production of merchandise involved costs for "assists" (e.g., dies, molds, tooling, printing plates, artwork, engineering work, design and development, financial assistance, etc.) that are not included in the invoice price. If assists were involved, state their value, if known, and by whom supplied. Were they supplied without cost, or on a rental basis, or were they invoiced separately? If the latter, attach a copy of the invoice.

Whenever CBP requires information on the cost of production of goods for customs valuation, the importer will be notified by the port director. Thereafter, invoices covering shipments of such goods must contain a statement on the cost of production by the manufacturer or producer.

- 5. Additional Information Required.** Special information may be required on certain goods or classes of goods in addition to the information normally required on the invoice. Although the United States importer usually advises the exporter of these special situations.
- 6. Rates of Exchange.** In general, no rate(s) of exchange may be used to convert foreign currency for customs purposes other than the rate(s) proclaimed or certified in 31 U.S.C. 5151. For merchandise imported from a country having a currency for which two or more rates of exchange have been certified by the Federal Reserve Bank of New York, the invoice will show the exchange rate or rates used in converting the United States dollars received for the merchandise into the foreign currency and the percentage of each rate if two or more rates are used. If a rate or combination of rates used to pay costs, charges, or expenses is different from those used to pay for the merchandise, state that rate or combination of rates separately. When dollars have not been converted at the time the invoice is prepared, state that fact on the invoice, in which case the invoice shall also state the rate or combination of rates at which the dollars will be converted, or that it is not

known what rate or rates will be used. Rates of exchange are not required for merchandise.

Other Invoices

Pro Forma Invoice

If the required commercial invoice is not filed at the time the merchandise is entered, a statement in the form of an invoice (a pro forma invoice) must be filed by the importer at the time of entry. A bond is given for production of the required invoice not later than 120 days from the date of the entry summary, or entry if there is no entry summary. If the invoice is needed for statistical purposes, it must generally be produced within 50 days from the date on which the entry summary is required to be filed.

The exporter should bear in mind that unless he or she forwards the required invoice in time, the American importer will incur a liability under his bond for failure to file the invoice with the port director of CBP before the 120-day period expires.

Although a pro forma invoice is not prepared by the exporter, it is of interest to exporters as it gives a general idea of the kind of information needed for entry purposes. A pro forma invoice indicates what the importer may find necessary to furnish CBP officers at the time a formal entry is filed for a commercial shipment, if a properly prepared CBP or commercial invoice is not available at the time the goods are entered. An acceptable format for a pro forma invoice is reproduced in the appendix.

Some of the additional information specified for the commodities under section 141.89 of the CBP Regulations may not be required when entry is made on a pro forma invoice. However, the pro forma invoice must contain sufficient data for examination, classification, and appraisal purposes.

Frequent Errors In Invoicing

Foreign sellers or shippers must exercise care in preparing invoices and other documents used to enter goods into the commerce of the United States

in order for their importers to avoid difficulties, delays, or possibly even penal sanctions. Each document must contain all information required by law or regulations, and every statement of fact contained in the documents must be true and accurate. Any inaccurate or misleading statement of fact in a document presented to a CBP officer in connection with an entry, or the omission from the document of required information, may result in delays in merchandise release, the detention of the goods, or a claim against the importer for domestic value. Even though the inaccuracy or omission was unintentional, the importer may be required to establish that he exercised due diligence and was not negligent.

It is particularly important that all statements relating to merchandise description, price or value, and amounts of discounts, charges, and commissions be truthfully and accurately set forth. It is also important that the invoices set forth the true name of the actual seller and purchaser of the goods, in the case of purchased goods, or the true name of the actual consignor and consignee when the goods are shipped otherwise than in pursuance of a purchase. It is important, too, that the invoice otherwise reflect the real nature of the transaction pursuant to which the goods were shipped to the United States. The fundamental rule is that both the shipper and importer must furnish CBP officers with all pertinent information with respect to each import transaction to assist CBP officers in determining the tariff status of the goods. Examples of omissions and inaccuracies to be avoided are:

- The shipper assumes that a commission, royalty, or other charge against the goods is a so-called "nondutiable" item and omits it from the invoice.
- A foreign shipper who purchases goods and sells them to a United States importer at a delivered price shows on the invoice the cost of the goods to him instead of the delivered price.
- A foreign shipper manufactures goods partly with the use of materials supplied by the United States importer, but invoices the goods at the actual cost to the manufacturer without including the

- value of the materials supplied by the importer.
- The foreign manufacturer ships replacement goods to his customer in the United States and invoices the goods at the net price without showing the full price less the allowance for defective goods previously shipped and returned.
 - A foreign shipper who sells goods at list price, less a discount, invoices them at the net price, and fails to show the discount.
 - A foreign shipper sells goods at a delivered price but invoices them at a price f.o.b. the place of shipment and omits the subsequent charges.
 - A foreign shipper indicates in the invoice that the importer is the purchaser, whereas he is in fact either an agent who is receiving a commission for selling the goods or a party who will receive part of the proceeds of the sale of the goods sold for the joint account of the shipper and consignee.
 - Invoice descriptions are vague, listing only parts of numbers, truncated or coded descriptions, or lumping various articles together as one when several distinct items are included.

assessment of duties

Dutiable Status Of Goods Rates Of Duty

All goods imported into the United States are subject to duty or duty-free entry in accordance with their classification under the applicable items in the Harmonized Tariff Schedule of the United States. An annotated loose-leaf edition of the tariff schedule may be purchased from the U.S. Government Printing Office, Washington, DC 20402.

When goods are dutiable, ad valorem, specific, or compound rates may be assessed. An ad valorem rate, is a percentage of the value of the merchandise, such as five percent ad valorem. A specific rate is a specified amount per unit of weight or other quantity, such as 5.9 cents per dozen. A compound rate is a combination of both an ad valorem rate and a specific rate, such as 0.7 cents per kilo plus 10 percent ad valorem.

Free of Duty or Dutiable

Rates of duty for imported merchandise may vary depending upon the country of origin. Most merchandise is dutiable under the most-favored-nation—now referred to as normal trade relations—rates in the General column under column 1 of the tariff schedule. Merchandise from countries to which these rates have not been extended is dutiable at the full or “statutory” rates in column 2 of the tariff schedule.

Free rates are provided for many subheadings in columns 1 and 2 of the tariff schedule. Duty-free status is also available under various conditional exemptions which are reflected in the Special column under column 1 of the tariff schedule. It is the importer’s burden to show eligibility for a conditional exemption from duty.

One of the more frequently applied exemptions from duty occurs under the Generalized System of Preferences (GSP). GSP-eligible merchandise qualifies for duty-free entry when it is from a beneficiary developing country and meets other requirements. Other exemptions are found under the subheadings in Chapter 98 of the tariff schedule. These subheadings include, among other provisions, certain personal exemptions, exemptions for articles for scientific or other institutional purposes, and exemptions for returned American goods.

Liability For Duties

There is no provision under which U.S. duties or taxes may be prepaid in a foreign country before exportation to the United States. This is true even for gifts sent by mail. In the usual case, liability for the payment of duty becomes fixed at the time an entry for consumption or for warehouse is filed with CBP. The obligation for payment is upon the person or firm in whose name the entry is filed. When goods have been entered for warehouse, liability for paying duties may be transferred to any person who purchases the goods and desires to withdraw them in his or her own name.

Paying a customs broker will not relieve the importer of his or her liability for customs charges (duties, taxes, and other debts owed CBP) should those charges not be paid by the broker. Therefore, if the importer pays the broker by check, he or she should give the broker a separate check, made payable to "U.S. Customs and Border Protection" for those customs charges, which the broker will then deliver to CBP.

If the entry is made in the name of a customs broker, the broker may obtain relief from statutory liability for the payment of increased or additional duties found due if (1) the actual owner of goods is named, and (2) the owner's declaration whereby the owner agrees to pay the additional duty and the owner's bond are both filed by the broker with the port director within 90 days of the date of entry.

Containers or Holders

CBP designates such items as lift vans, cargo vans, shipping tanks, pallets and certain articles used to ship goods internationally as instruments of international traffic. So long as this designation applies, these articles are not subject to entry or duty when they arrive, whether they are loaded or empty. Other classes of merchandise containers may also be designated as instruments of international traffic upon application to the Commissioner of CBP for such a designation. If any article so designated is diverted to domestic use, however, it must be entered and duty paid, if applicable.

Containers specially shaped or fitted to contain a specific article or set of articles, suitable for long term use and entered with the articles for which they are intended, are classifiable with the accompanying articles if they are of a kind normally sold therewith. Examples of such containers are: camera cases, musical instrument cases, gun cases, drawing instrument cases, and necklace cases. This rule does not apply to containers that give the importation as a whole its essential character.

Subject to the above rule, packing materials and packing containers entered with goods packed in them are classified with these goods if they are of a kind normally used for packing such goods. However, this does not apply to packing materials or containers that are clearly suitable for repetitive use.

Temporary Free Import

Temporary Importation Under Bond (TIB)

Goods of the types enumerated below, when not imported for sale or for sale on approval, may be admitted into the United States under bond, without the payment of duty, for exportation within one year from the date of importation. Generally, the amount of the bond is double the estimated duties. The one-year period for exportation may, upon application to the port director, be extended for one or more further periods which, when added to the initial one year, shall not exceed a total of three years. There is an exception in the case of articles covered in item 14: the period of the bond may not exceed six months and may not be extended.

Merchandise entered under TIB must be exported or destroyed before expiration of the bond period, or any extension, to avoid assessment of liquidated damages in the amount of the bond. All goods entered under TIB are subject to quota compliance.

Classes Of Goods

1. Merchandise to be repaired, altered, or processed (including processes which result in an article being manufactured or produced in the United States), provided that the following conditions are met:
 - Alcohol, distilled spirits, wine, beer, or any dilution or mixture of these, Perfume or other commodity containing ethyl alcohol, whether denatured or not,
 - A product of wheat.
 - If merchandise is processed and results in an
2. The merchandise will not be processed into an article manufactured or produced in the United States if the article is:
 - Alcohol, distilled spirits, wine, beer, or any dilution or mixture of these, Perfume or other commodity containing ethyl alcohol, whether denatured or not,
 - A product of wheat.
 - If merchandise is processed and results in an

- article being manufactured or produced in the United States other than those described above:
- A complete accounting will be made to CBP for all articles, wastes, and irrecoverable losses resulting from the processing, and
 - All articles will be exported or destroyed under CBP supervision within the bonded period. Valuable waste must also be exported or so destroyed unless duty, if applicable, is paid.
3. Models of women's wearing apparel imported by manufacturers for use solely as models in their own establishments; these articles require quota compliance.
 4. Articles imported by illustrators and photographers for use solely as models in their own establishments to illustrate catalogs, pamphlets, or advertising matter.
 5. Samples solely for use in taking orders for merchandise; these samples require quota compliance.
 6. Articles solely for examination with a view to reproduction or for examination and reproduction (except photoengraved printing plates for examination and reproduction); and motion-picture advertising films.
 7. Articles intended solely for testing, experimental, or review purposes, including plans, specifications, drawings, blueprints, photographs, and articles for use in connection with experiments or for study. If articles under this category are destroyed in connection with the experiment or study, proof of such destruction must be presented to satisfy the obligation under the bond to export the articles.
 8. Automobiles, motorcycles, bicycles, airplanes, airships, balloons, boats, racing shells, and similar vehicles and craft, and the usual equipment of the foregoing, if brought temporarily into the United States by nonresidents for the purpose of taking part in races or other specific contests. Port directors may defer the exaction of a bond for a period not to exceed 90 days after the date of importation for vehicles and craft to take part in races or other specific contests for other than money purposes. If the vehicle or craft is not exported or the bond is

- not given within the period of such deferment, the vehicle or craft shall be subject to forfeiture.
9. Locomotives and other railroad equipment brought temporarily into the United States for use in clearing obstructions, fighting fires, or making emergency repairs on railroads within the United States or for use in transportation otherwise than in international traffic when the Secretary of the Treasury finds that the temporary use of foreign railroad equipment is necessary to meet an emergency. Importers can expedite approval of a request for temporary importation to meet an emergency by including evidence of the existence of the emergency, such as news reports.
 10. Containers for compressed gases, filled or empty, and containers or other articles used for covering or holding merchandise (including personal or household effects) during transportation and suitable for reuse for that purpose.
 11. Professional equipment, tools of trade, repair components for equipment or tools admitted under this item, and camping equipment imported by or for nonresidents for the nonresident's use while sojourning temporarily in the United States.
 12. Articles of special design for temporary use exclusively in connection with the manufacture or production of articles for export.
 13. Animals and poultry brought into the United States for the purpose of breeding, exhibition, or competition for prizes, and the usual equipment therefor.
 14. Works of free fine arts, drawings, engravings, photographic pictures, and philosophical and scientific apparatus brought into the United States by professional artists, lecturers, or scientists arriving from abroad for use by them for exhibition and in illustration, promotion, and encouragement of art, science or industry in the United States.
 15. Automobiles, automobile chassis, automobile bodies, cutaway portions of any of the foregoing, and parts for any of the foregoing, finished, unfinished, or cutaway, when intended solely for show purposes. These articles may be admitted only on condition that the Secretary of the Treasury

has found that the foreign country from which the articles were imported allows or will allow substantially reciprocal privileges with respect to similar exports to that country from the United States. If the Secretary finds that a foreign country has discontinued or will discontinue the allowance of such privileges, the privileges under this item shall not apply thereafter to imports from that country.

The North American Free Trade Agreement (NAFTA)

The provisions of the North American Free Trade Agreement (NAFTA) were adopted by the United States with enactment of the North American Free Trade Agreement Implementation Act of 1993 (107 Stat. 2057, P.L. 103-182). Nineteen Code of Federal Regulation (19 CFR) Parts 10, 12, 123, 134, 162, 174, 177, and 178 were amended, and new parts 102 and 181 of the CBP Regulations were developed to implement NAFTA's duty provisions.

NAFTA phased out tariffs on almost all "originating" goods traded between Canada and the United States by January 1, 2003, and provides for an additional 5-year phase-out period on certain sensitive commodities traded between Mexico and the United States.

Article 401 of NAFTA eliminates both tariffs and the merchandise processing fees for goods that "originate." Transshipping goods through Mexico or Canada that were made in another country, or performing only minor processing or packaging operations on them in North America, will not invoke preferential NAFTA duty rates.

The term "originate" means those goods that meet the requirements of NAFTA Article 401. Article 401 defines "originate" in four ways:

1. Goods wholly obtained or produced entirely in the NAFTA region (these contain no foreign inputs);
2. Goods produced entirely in the NAFTA region exclusively from originating materials (these

contain foreign materials that have been previously manufactured into originating materials);

3. Goods meeting an Annex 401 specific rule of origin such as a prescribed change in tariff classification, regional value content requirement; and in extremely limited instances,
4. Unassembled goods and goods classified with their parts, which do not meet the tariff-shift rule but contain 60 percent regional value content using the transaction-value method, or 50 percent using the net-cost method.

Antidumping And Countervailing Duties

Antidumping (AD) and countervailing (CVD) duties are additional duties that may be assessed on imported goods intended for sale in the United States at abnormally low prices. These low prices are the result of unfair foreign trade practices that give some imports an unearned advantage over competing U.S. goods.

Dumping is the practice of trying to sell products in the United States at lower prices than those same products would bring in the producer's home market. Dumping also includes trying to sell a product in the United States at a price lower than it cost to manufacture that item. Subsidizing is the practice by some governments of providing financial assistance to reduce manufacturers' costs in producing, manufacturing or exporting particular commodities. Countervailing duties may be assessed to "level the playing field" between domestic and subsidized imported goods. However, to meet the criteria for assessing antidumping or countervailing duties, the imported merchandise must, in addition to being subsidized or sold at less than fair value, also injure a U.S. industry.

The Department of Commerce, the International Trade Commission (ITC), and U.S. Customs and Border Protection each have a role in administering and enforcing antidumping and countervailing duty laws. The Commerce Department is responsible for the general administration of these laws. Commerce

determines whether the merchandise is being sold at less than fair value, whether it has been subsidized, and what percentage rate of duty will be assessed. The ITC determines whether the product poses an injury³ to a particular U.S. industry. CBP assesses the actual duties--the amount--based upon the rate set by the Commerce Department once the ITC has determined that the import injures a particular industry.

Drawback—Refunds Of Duties

Drawback is a refund of monies--customs duties, certain internal revenue taxes and other fees--that were lawfully collected at the time of importation. The Continental Congress established drawback in 1789 to create jobs in the new United States and to encourage manufacturing and exporting.

For drawback to be paid, the imported merchandise must be exported or destroyed under CBP supervision after importation.

Types Of Drawback

Although Section 1313, Title 19, of the United States Code provides for several types of drawback, there are three primary types of drawback of interest to most importers:

- Manufacturing drawback,
- Unused-merchandise drawback, or
- Rejected-merchandise drawback.

Manufacturing drawback is a refund of duties paid on imported merchandise specifically designated for use in manufacturing articles that are subsequently exported or destroyed. For example: two-inch speakers are imported and are incorporated into a certain model clock radio. The speakers themselves are not altered, just used in the production of a new and different article.

Manufacturing operations to produce the new and different article must take place within three years receipt by the manufacturer or producer of the merchandise. The drawback product must be exported or destroyed within five years from the date of importation. Drawback can be paid on

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merchandise used to manufacture or produce a different article if it was not the merchandise imported but is commercially interchangeable, i.e., of the same kind and quality, or if it falls under the same eight-digit Harmonized Tariff Schedule number as the merchandise to which it is compared, and the party claiming drawback has had possession of it for three years. This is called "substitution."

Unused-merchandise drawback is a refund of any duty, tax, or eligible fees paid on imported merchandise that is exported or destroyed without undergoing any manufacturing operations and that is never used in the United States. The imported merchandise must be exported within three years of the date it was imported.

Rejected-merchandise drawback is refund of duties on imported merchandise that is exported or destroyed because it:

- Did not conform to sample or specifications,
- Was shipped without the consignee's consent, or
- Was defective at time of importation.

classification & value

Classification—Liquidation Classification

Classification, and, when ad valorem rates of duty are applicable, appraisement, are the two most important factors affecting dutiable status. Classification and valuation, whether or not they are pertinent because an ad valorem rate of duty applies, must be provided by commercial importers when an entry is filed. In addition, classifications under the statistical suffixes of the tariff schedules must also be furnished even though this information is not pertinent to dutiable status.

Accordingly, classification is initially the responsibility of an importer, customs broker or other person preparing the entry papers. Section 637 of the Customs Modernization Act imposes the requirement that importers exercise reasonable care when classifying and appraising merchandise.

Familiarity with the organization of the Harmonized Tariff Schedule of the United States facilitates the classification process. The tariff schedule is divided into various sections and chapters dealing separately with merchandise in broad product categories. These categories cover animal products, vegetable products, products of various basic materials such as wood, textiles, plastics, rubber, and steel and other metal products in various stages of manufacture, for example. Other sections encompass chemicals, machinery and electrical equipment, and other specified or non-enumerated products. The last section, Section XXII, covers certain exceptions from duty and special statutory provisions.

In Sections I through XXI, products are classifiable (1) under items or descriptions which name them, known as an *eo nomine* provision; (2) under provisions of general description; (3) under provisions which identify them by component material; or (4) under provisions which encompass merchandise in accordance with its actual or principal use. When two or more provisions seem to cover the same merchandise, the prevailing provision is determined in accordance with the legal notes and the General Rules of Interpretation for the tariff schedule. Also applicable are tariff classification principles contained in administrative precedents or in the case law of the U.S. Court of International Trade (formerly the U.S. Customs Court) or the U.S. Court of Appeals for the Federal Circuit (formerly the U.S. Court of Customs and Patent Appeals).

Liquidation

CBP officers at the port of entry or other officials acting on behalf of the port director review selected classifications and valuations, as well as other required import information, for correctness or as a proper basis for appraisal, as well as for agreement of the submitted data with the merchandise actually imported. The entry summary and documentation may be accepted as submitted without any changes. In this situation, the entry is liquidated as entered. Liquidation is the point at

which CBP's ascertainment of the rate and amount of duty becomes final for most purposes. Liquidation is accomplished by posting a notice on a public bulletin board at the customhouse. However, an importer may receive an advance notice on CBP Form 4333A "Courtesy Notice" stating when and in what amount duty will be liquidated. This form is not the liquidation, and protest rights do not accrue until the notice is posted. Time limits for protesting do not start until the date of posting, and a protest cannot be filed before liquidation is posted.

CBP may determine that an entry cannot be liquidated as entered for one reason or another. For example, the tariff classification may not be correct or may not be acceptable because it is not consistent with established and uniform classification practice. If the change required by this determination results in a rate of duty more favorable to an importer, the entry is liquidated accordingly and a refund is authorized for the applicable amount of the deposited estimated duties. On the other hand, a change may be necessary which imposes a higher rate of duty. For example, a claim for an exemption from duty under a free-rate provision or under a conditional exemption may be found to be insufficient for lack of the required supporting documentation. In this situation, the importer will be given an advance notice of the proposed duty rate increase and an opportunity to validate the claim for a free rate or more favorable rate of duty.

If the importer does not respond to the notice, or if the response is found to be without merit, entry is liquidated in accordance with the entry as corrected, and the importer is billed for the additional duty. The port may find that the importer's response raises issues of such complexity that resolution is warranted by a CBP Headquarters decision through the internal advice procedure. Internal advice from CBP Headquarters may be requested by local CBP officers on their own initiative or in response to a request by the importer.

Protests

After liquidation, an importer may still pursue, on CBP Form 19 (19 CFR 174), any claims for an adjustment or refund, for entries filed before 12-18-06, by filing a protest within 90 days after liquidation. The protest period has been extended to 180 days for entries filed on or after 12-18-06. In order to apply for a Headquarters ruling, a request for further review must be filed with the protest. The same Form 19 can be used for this purpose. If filed separately, application for further review must still be filed within 90 days of liquidation. However, if a ruling on the question has previously been issued in response to a request for a decision on a prospective transaction or a request for internal advice, further review will ordinarily be denied. If a protest is denied, an importer has the right to litigate the matter by filing a summons with the U.S. Court of International Trade within 180 days after denial of the protest. The rules of the court and other applicable statutes and precedents determine the course of customs litigation.

While CBP's ascertainment of dutiable status is final for most purposes at the time of liquidation, a liquidation is not final until any protest which has been filed against it has been decided. Similarly, the administrative decision issued on a protest is not final until any litigation filed against it has become final.

Entries must be liquidated within one year of the date of entry unless the liquidation needs to be extended for another one-year period not to exceed a total of four years from the date of entry. CBP will suspend liquidation of an entry when required by statute or court order. A suspension will remain in effect until the issue is resolved. Notifications of extensions and suspensions are given to importers, surety companies, and customs brokers who are parties to the transaction.

Conversion of Currency

The conversion of foreign currency for customs purposes must be made in accordance with the provisions of 31 U.S.C. 5151. This section states that CBP

is to use rates of exchange determined and certified by the Federal Reserve Bank of New York. These certified rates are based on the New York market buying rates for the foreign currencies involved.

The rates certified on the first business day of each calendar quarter are used throughout the quarter except on days when fluctuations of five percent or more occur, in which case the actual certified rates for those days are used. For infrequently used currencies, the Federal Reserve Bank of New York certifies rates of exchanges upon request by CBP. The rates certified are only for the currencies and dates requested.

For CBP purposes, the date of exportation of the goods is the date used to determine the applicable certified rate of exchange. This remains true even though a different rate may have been used in payment of the goods. Information as to the applicable rate of exchange in converting currency for customs purposes in the case of a given shipment may be obtained from a CBP port director.

Entry Filer

The entry filer is responsible for using reasonable care to value imported merchandise and provide any other information necessary to enable the CBP officer to properly assess the duty and determine whether any other applicable legal requirement is met. The CBP officer is then responsible for fixing the value of the imported merchandise. The valuation provisions of the Tariff Act of 1930 are found in section 402, as amended by the Trade Agreements Act of 1979. Pertinent portions are reproduced in the appendix.

Generally, the customs value of all merchandise exported to the United States will be the transaction value for the goods. If the transaction value cannot be used, then certain secondary bases are considered. The secondary bases of value, listed in order of precedence for use, are:

- Transaction value of identical merchandise,
- Transaction value of similar merchandise,
- Deductive value,

- Computed value.

The order of precedence of the last two values can be reversed if the importer so requests in writing at the time of filing the entry.

Transaction Value

The transaction value of imported merchandise is the price actually paid or payable for the merchandise when sold for exportation to the United States, plus amounts for the following items if they are not included in the price:

- The packing costs incurred by the buyer,
- Any selling commission incurred by the buyer,
- The value of any assist,
- Any royalty or license fee that the buyer is required to pay as a condition of the sale,
- The proceeds, accruing to the seller, of any subsequent resale, disposal, or use of the imported merchandise.

The amounts for the above items are added only to the extent that each is not included in the price actually paid or payable and information is available to establish the accuracy of the amount. If sufficient information is not available, then the transaction value cannot be determined and the next basis of value, in order of precedence, must be considered for appraisal. A discussion of these added items follows:

- Packing costs consist of the cost incurred by the buyer for all containers and coverings of whatever nature and for the labor and materials used in packing the imported merchandise so that it is ready for export.

Any selling commission incurred by the buyer with respect to the imported merchandise constitutes part of the transaction value. Buying commissions do not.

A selling commission means any commission paid to the seller's agent, who is related to or controlled by, or works for or on behalf of, the manufacturer or the seller.

The apportioned value of any assist constitutes part of the transaction value of the imported merchandise. First the value of the assist is determined; then the value is prorated to the imported merchandise.

An assist is any of the items listed below that the buyer of imported merchandise provides directly or indirectly, free of charge or at a reduced cost, for use in the production or sale of merchandise for export to the United States.

- Materials, components, parts, and similar items incorporated in the imported merchandise,
- Tools, dies, molds, and similar items used in producing the imported merchandise,
- Merchandise consumed in producing the imported merchandise,
- Engineering, development, artwork, design work, and plans and sketches that are undertaken outside the United States. "Engineering..." will not be treated as an assist if the service or work is:
 - Performed by a person domiciled within the United States,
 - Performed while that person is acting as an employee or agent of the buyer of the imported merchandise, and
 - Incidental to other engineering, development, artwork, design work, or plans or sketches undertaken within the United States. In determining the value of an assist, the following rules apply:
 - The value is either: (a) the cost of acquiring the assist, if acquired by the importer from an unrelated seller, or (b) the cost of the assist, if produced by the importer or a person related to the importer.
 - The value includes the cost of transporting the assist to the place of production.
 - The value of assists used in producing the imported merchandise is adjusted to reflect use, repairs, modifications, or other factors affecting the value of the assists. Assists of this type include such items as tools, dies, and molds. For example, if the importer previously used the assist, regardless

of whether he acquired or produced it, the original cost of acquisition or of production must be decreased to reflect the use. Alternatively, repairs and modifications may result in the value of the assist having to be adjusted upward.

- In case of engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the United States, the value is:
 1. The cost of obtaining copies of the assist, if the assist is available in the public domain,
 2. The cost of the purchase or lease, if the assist was bought or leased by the buyer from an unrelated person,
 3. The value added outside the United States, if the assist was reproduced in the United States and one or more foreign countries.

So far as possible, the buyer's commercial record system will be used to determine the value of an assist, especially such assists as engineering, development, artwork, design work, and plans and sketches undertaken elsewhere than in the United States.

Having determined the value of an assist, the next step is to prorate that value to the imported merchandise. The apportionment is done in a reasonable manner appropriate to the circumstances and in accordance with generally accepted accounting principles. By the latter is meant any generally recognized consensus or substantial authoritative support regarding the recording and measuring of assets and liabilities and changes, the disclosing of information, and the preparing of financial statements.

Royalty or license fees that a buyer must pay directly or indirectly as a condition of the sale of the imported merchandise for exportation to the United States will be included in the transaction value. Ultimately, whether a royalty or license fee is dutiable will depend on whether the buyer had to pay it as a condition of the sale and to whom and under what circumstances it was paid. The dutiable status will have to be decided on a case-by-case basis.

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Charges for the right to reproduce the imported goods in the United States are not dutiable. This right applies only to the following types of merchandise:

- Originals or copies of artistic or scientific works,
- Originals or copies of models and industrial drawings,
- Model machines and prototypes,
- Plant and animal species.

Any proceeds resulting from the subsequent resale, disposal, or use of the imported merchandise that accrue, directly or indirectly, to the seller are dutiable. These proceeds are added to the price actually paid or payable if not otherwise included.

The price actually paid or payable for the imported merchandise is the total payment, excluding international freight, insurance, and other c.i.f. charges, that the buyer makes to the seller. This payment may be direct or indirect. Some examples of an indirect payment are when the buyer settles all or part of a debt owed by the seller, or when the seller reduces the price on a current importation to settle a debt he owes the buyer. Such indirect payments are part of the transaction value.

However, if a buyer performs an activity on his own account, other than those that may be included in the transaction value, then the activity is not considered an indirect payment to the seller and is not part of the transaction value. This applies even though the buyer's activity might be regarded as benefiting the seller; for example, advertising.

Exclusions

The amounts to be excluded from transaction value are as follows:

- The cost, charges, or expenses incurred for transportation, insurance, and related services incident to the international shipment of the goods from the country of exportation to the place of importation in the United States.
- Any reasonable cost or charges incurred for:
 1. Constructing, erecting, assembling, maintaining, or providing technical assistance with respect to the

goods after importation into the United States, or;
2. Transporting the goods after importation.

- The customs duties and other federal taxes, including any federal excise tax, for which sellers in the United States are ordinarily liable.

NOTE: Foreign inland freight and related charges in bullet, as well as bullets 2 and 3 above, must be identified separately.

Limitations

The transaction value of imported merchandise is the appraised value of that merchandise, provided certain limitations do not exist. If any of these limitations are present, then transaction value cannot be used as the appraised value, and the next basis of value will be considered. The limitations can be divided into four groups:

- Restrictions on the disposition or use of the merchandise,
- Conditions for which a value cannot be determined,
- Proceeds of any subsequent resale, disposal or use of the merchandise, accruing to the seller, for which an appropriate adjustment to transaction value cannot be made,
- Related-party transactions where the transaction value is not acceptable. The term “acceptable” means that the relationship between the buyer and seller did not influence the price actually paid or payable. Examining the circumstances of the sale will help make this determination.

Alternatively, “acceptable” can also mean that the transaction value of the imported merchandise closely approximates one of the following test values, provided these values relate to merchandise exported to the United States at or about the same time as the imported merchandise:

- The transaction value of identical merchandise or of similar merchandise in sales to unrelated buyers in the United States,
- The deductive value or computed value for identical merchandise or similar merchandise. The test values are used for comparison only,

they do not form a substitute basis of valuation. In determining whether the transaction value is close to one of the foregoing test values, an adjustment is made if the sales involved differ in:

- Commercial levels,
- Quantity levels,
- The costs, commission, values, fees, and proceeds added to the transaction value (price paid) if not included in the price,
- The costs incurred by the seller in sales in which he and the buyer are not related that are not incurred by the seller in sales in which he and the buyer are related.

As stated, the test values are alternatives to an examination of the circumstances of the sale. If one of the test values is met, it is not necessary to examine the circumstances of the sale to determine if the relationship influenced the price.

Transaction Value Of Identical Or Similar Merchandise

When the transaction value cannot be determined, then an attempt will be made to appraise the imported goods under the transaction value of identical merchandise method. If merchandise identical to the imported goods cannot be found or an acceptable transaction value for such merchandise does not exist, then the next appraisement method is the transaction value of similar merchandise. In either case the value used would be a previously accepted customs value.

The identical or similar merchandise must have been exported to the United States at or about the same time that the merchandise being appraised is exported to the United States.

The transaction value of identical or similar merchandise must be based on sales of identical or similar merchandise, as applicable, at the same commercial level and in substantially the same quantity as the sale of the merchandise being appraised. If no such sale exists, then sales at either a different commercial level or in different quantities,

or both, can be used but must be adjusted to take account of any such difference. Any adjustment must be based on sufficient information, that is, information establishing the reasonableness and accuracy of the adjustment.

The term “identical merchandise” means merchandise that is:

- Identical in all respects to the merchandise being appraised,
- Produced in the same country as the merchandise being appraised,
- Produced by the same person as the merchandise being appraised.

If merchandise meeting all three criteria cannot be found, then identical merchandise is merchandise satisfying the first two criteria but produced by a different person than the producer of merchandise being appraised.

NOTE: Merchandise can be identical to the merchandise being appraised and still show minor differences in appearance.

- Exclusion: Identical merchandise does not include merchandise that incorporates or reflects engineering, development, art work, design work, or plans and sketches provided free or at reduced cost by the buyer and undertaken in the United States. The term “similar merchandise” means merchandise that is:
 - Produced in the same country and by the same person as the merchandise being appraised,
 - Like the merchandise being appraised in characteristics and component materials, Commercially interchangeable with the merchandise being appraised. If merchandise meeting the foregoing criteria cannot be found, then similar merchandise is merchandise having the same country of production, like characteristics and component materials, and commercial interchangeability but produced by a different person.
 - In determining whether goods are similar, some of the factors to be considered are the quality of

the goods, their reputation, and existence of a trademark.

- Exclusion: Similar merchandise does not include merchandise that incorporates or reflects engineering, development, art work, design work, and plans and sketches provided free or at reduced cost to the buyer and undertaken in the United States.

It is possible that two or more transaction values for identical or similar merchandise, as applicable, will be determined. In such a case the lowest value will be used as the appraised value of the imported merchandise.

Other Bases: Deductive And Computed Value Deductive Value

If the transaction value of imported merchandise, of identical merchandise, or of similar merchandise cannot be determined, then deductive value is the next basis of appraisement. This method is used unless the importer designates computed value as the preferred appraisement method. If computed value was chosen and subsequently determined not to exist for customs valuation purposes, then the basis of appraisement reverts to deductive value.

Basically, deductive value is the resale price in the United States after importation of the goods, with deductions for certain items. In discussing deductive value, the term “merchandise concerned” is used. The term means the merchandise being appraised, identical merchandise, or similar merchandise. Generally, the deductive value is calculated by starting with a unit price and making certain additions to and deductions from that price.

Unit Price. One of three prices constitutes the unit price in deductive value. The price used depends on when and in what condition the merchandise concerned is sold in the United States.

1. **Time and Condition:** The merchandise is sold in the condition as imported at or about the date of importation of the merchandise being appraised.

Price: The price used is the unit price at which the greatest aggregate quantity of the merchandise concerned is sold at or about the date of importation.

2. **Time and Condition:** The merchandise concerned is sold in the condition as imported but not sold at or about the date of importation of the merchandise being appraised.

Price: The price used is the unit price at which the greatest aggregate quantity of the merchandise concerned is sold after the date of importation of the merchandise being appraised but before the close of the 90th day after the date of importation.

3. **Time and Condition:** The merchandise concerned is not sold in the condition as imported and not sold before the close of the 90th day after the date of importation of the merchandise being appraised.

Price: The price used is the unit price at which the greatest aggregate quantity of the merchandise being appraised, after further processing, is sold before the 180th day after the date of importation.

This third price is also known as the “further processing price” or “superdeductive.”

The importer has the option to ask that deductive value be based on the further processing price.

Under the superdeductive method the merchandise concerned is not sold in the condition as imported and not sold before the close of the 90th day after the date of importation, but is sold before the 180th day after the date of importation.

Under this method, an amount equal to the value of the further processing must be deducted from the unit price in determining deductive value. The amount so deducted must be based on objective and quantifiable data concerning the cost of such work as well as any spoilage, waste or scrap derived from that work. Items such as accepted industry formulas, methods of construction, and industry practices could be used as a basis for calculating the amount to be deducted.

Generally, the superdeductive method cannot be used if the further processing destroys the identity of the goods. Such situations will be decided on a case-by-case basis for the following reasons:

- Sometimes, even though the identity of the goods is lost, the value added by the processing can be determined accurately without unreasonable difficulty for importers or for CBP.
- In some cases, the imported goods still keep their identity after processing but form only a minor part of the goods sold in the United States. In such cases, using the superdeductive method to value the imported goods will not be justified.

The superdeductive method cannot be used if the merchandise concerned is sold in the condition as imported before the close of the 90th day after the date of importation of the merchandise being appraised.

Additions. Packing costs for the merchandise concerned are added to the price used for deductive value, provided these costs have not otherwise been included. These costs are added regardless of whether the importer or the buyer incurs the cost. “Packing costs” means the cost of:

- All containers and coverings of whatever nature, and
- Packing, whether for labor or materials, used in placing the merchandise in condition, packed ready for shipment to the United States.

Deductions. Certain items are not part of deductive value and must be deducted from the unit price. These items are as follows:

- Commissions or profit and general expenses. Any commission usually paid or agreed to be paid, or the addition usually made for profit and general expenses, applicable to sales in the United States of imported merchandise that is of the same class or kind as the merchandise concerned, regardless of the country of exportation.
- Transportation/insurance costs.

(a) The actual and associated costs of transportation and insurance incurred with respect to international shipments concerned from the country of exportation to the United States, and

(b) The usual and associated costs of transportation and insurance incurred with respect to shipments of such merchandise from the place of importation to the place of delivery in the United States, provided these costs are not included as a general expense under the preceding item 1.

- Customs duties/federal taxes. The customs duties and other federal taxes payable on the merchandise concerned because of its importation plus any federal excise tax on, or measured by the value of, such merchandise for which sellers in the United States are ordinarily liable.
- Value of further processing. The value added by processing the merchandise after importation, provided that sufficient information exists concerning the cost of processing. The price determined for deductive value is reduced by the value of further processing only if the third unit price (the superdeductive) is used as deductive value.

For purposes of determining the deductive value of imported merchandise, any sale to a person who supplies any assist for use in connection with the production or sale for export of the merchandise shall be disregarded.

Computed Value

The next basis of appraisement is computed value. If customs valuation cannot be based on any of the values previously discussed, then computed value is considered.

This value is also the one the importer can select to precede deductive value as a basis of appraisement.

Computed value consists of the sum of the following items:

- The cost or value of the materials, fabrication, and other processing used in producing the imported merchandise,

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- Profit and general expenses,
- Any assist, if not included in bullets 1 and 2,
- Packing costs.

Materials, Fabrication, and Other Processing.

The cost or value of the materials, fabrication, and other processing of any kind used in producing the imported merchandise is based on (a) information provided by or on behalf of the producer, and (b) the commercial accounts of the producer if the accounts are consistent with generally accepted accounting principles applied in the country of production of the goods.

NOTE: If the country of exportation imposes an internal tax on the materials or their disposition and refunds the tax when merchandise produced from the materials is exported, then the amount of the internal tax is not included as part of the cost or value of the materials.

Profit and General Expenses

- The amount is determined by information supplied by the producer and is based on his or her commercial accounts, provided such accounts are consistent with generally accepted accounting principles in the country of production.
- The producer's profit and general expenses must be consistent with those usually reflected in sales of goods of the same class or kind as the imported merchandise that are made by producers in the country of exportation for export to the United States. If they are not consistent, then the amount for profit and general expenses is based on the usual profit and general expenses of such producers.
- The amount for profit and general expenses is taken as a whole.

Basically, a producer's profit could be low and his or her general expenses high, so that the total amount is consistent with that usually reflected in sales of goods of the same class or kind. In such a situation, a producer's actual profit figures, even if low, will be used provided he or she has valid commercial reasons to justify them and the pricing policy reflects usual pricing

policies in the industry concerned.

Under computed value, “merchandise of the same class and kind” must be imported from the same country as the merchandise being appraised and must be within a group or range of goods produced by a particular industry or industry sector. Whether certain merchandise is of the same class or kind as other merchandise will be determined on a case-by-case basis.

In determining usual profit and general expenses, sales for export to the United States of the narrowest group or range of merchandise that includes the merchandise being appraised will be examined, providing the necessary information can be obtained.

If the value of an assist used in producing the merchandise is not included as part of the producer's materials, fabrication, other processing, or general expenses, then the prorated value of the assist will be included in computed value. It is important that the value of the assist not be included elsewhere because no component of computed value should be counted more than once in determining computed value.

NOTE: The value of any engineering, development, artwork, design work, and plans and sketches undertaken in the United States is included in computed value only to the extent that such value has been charged to the producer.

The cost of all containers and coverings of whatever nature, and of packing, whether for labor or material, used in placing merchandise in condition and packed ready for shipment to the United States is included in computed value.

Value If Other Values Cannot Be Determined

If none of the previous five values can be used to appraise the imported merchandise, then the

customs value must be based on a value derived from one of the five previous methods, reasonably adjusted as necessary. The value so determined should be based, to the greatest extent possible, on previously determined values. Some examples of how the other methods can be reasonably adjusted are:

Identical Merchandise (or Similar Merchandise):

1. The requirement that the identical merchandise (or similar merchandise) should be exported at or about the same time as the merchandise being appraised could be flexibly interpreted.
2. Identical imported merchandise (or similar imported merchandise) produced in a country other than the country of exportation of the merchandise being appraised could be the basis for customs valuation.
3. Customs values of identical imported merchandise (or similar imported merchandise) already determined on the basis of deductive value and computed value could be used.

Deductive Method: The 90-day requirement may be administered flexibly (19 CFR 152.107(c)).

Rules of Origin

The *origin* of merchandise that is imported into the customs territory of the United States can affect the rate of duty, entitlement for special programs, admissibility, quota, anti-dumping or countervailing duties, procurement by government agencies and marking requirements. In order to determine a product's country of origin, the importer should consult the applicable rules of origin.

There are two basic types of rules of origin: non-preferential and preferential. Non-preferential rules generally apply in the absence of bilateral or multilateral trade agreements. Preferential rules are applied to merchandise to determine its eligibility for special treatment under various trade agreements or special legislation such as the Generalized System of Preferences (GSP), the North American Free Trade Agreement, or the African Growth and Opportunity Act. There are also rules of origin for textile and apparel articles; these are provided for by statute.

marking

Country-Of-Origin Marking

U.S. customs laws require that each article produced abroad and imported into the United States be marked with the English name of the country of origin to indicate to the ultimate purchaser in the United States what country the article was manufactured or produced in. These laws also require that marking be located in a conspicuous place as legibly, indelibly and permanently as the nature of the article permits. Articles that are otherwise specifically exempted from individual marking are also an exception to this rule. These exceptions are discussed below.

Marking Required

If the article--or its container, when the container and not the article must be marked--is not properly marked at the time of importation, a marking duty equal to 10 percent of the article's customs value will be assessed unless the article is exported, destroyed or properly marked under CBP supervision before the entry is liquidated.

Although it may not be possible to identify the ultimate purchaser in every transaction, broadly stated, the "ultimate purchaser" may be defined as the last person in the United States who will receive the article in the form in which it was imported. Generally speaking, when an article is imported into and used in the United States to manufacture another article with a different name, character or usage than the imported article, the manufacturer is the ultimate purchaser. If an article is to be sold at retail in its imported form, the retail customer is the ultimate purchaser. A person who subjects an imported article to a process that results in the article's substantial transformation is the ultimate purchaser, but if that process is only minor and leaves the identity of the imported article intact, the processor of the article will not be regarded as the ultimate purchaser.

When an article or its container is required to be marked with the country of origin, the marking is considered sufficiently permanent if it will remain on the article or container until it reaches the ultimate purchaser.

When an imported article is normally combined with another article after importation but before delivery to the ultimate purchaser, and the imported article's country of origin is located so that it is visible after combining, the marking must include, in addition to the country of origin, words or symbols clearly showing that the origin indicated is that of the imported article, and not of any other article with which it has been combined. For example, if marked bottles, drums, or other containers are imported empty to be filled in the United States, they shall be marked with such words as "Bottle (or drum or container) made in (name of country)." Labels and similar articles marked so that the name of the article's country of origin is visible after it is affixed to another article in this country shall be marked with additional descriptive words such as "label made (or printed) in (name of country)" or words of equivalent meaning.

In cases where the words "United States" or "American" or the letters "U.S.A." or any variation of such words or letters, or the name of any city or locality in the United States, or the name of any foreign country or locality in which the article was not manufactured or produced, appear on an imported article or container, and those words, letters, or names may mislead or deceive the ultimate purchaser about the article's actual country of the origin, there shall also appear, legibly, permanently and in close proximity to such words, letters or name, the name of the country of origin preceded by "made in," "product of," or other words of similar meaning.

If marked articles are to be repacked in the United States after release from CBP custody, importers must certify on entry that they will not obscure the marking on properly marked articles if the article is repacked, or that they will mark the repacked container. If an importer does not repack, but resells to a repacker,

the importer must notify the repacker about marking requirements. Failure to comply with these certification requirements may subject importers to penalties and/or additional duties.

Marking Not Required

The following articles and classes or kinds of articles are not required to be marked to indicate country of origin, i.e., the country in which they were grown, manufactured, or produced. However, the outermost containers in which these articles ordinarily reach the ultimate purchaser in the United States must be marked to indicate the English name of the country of origin of the articles.

Unless an article being shipped to the United States is specifically named in the foregoing list, it would be advisable for an exporter to obtain advice from CBP before concluding that it is exempted from marking. If articles on the foregoing list are repacked in the United States, the new packages must be labeled to indicate the country of origin of the articles they contain. Importers must certify on entry that if they repackage, they will properly mark the repackaged containers. If they do not package, but resell to repackagers, they must notify repackagers about these marking requirements. Failure to comply with these certification requirements may subject importers to penalties and marking duties.

Other Exceptions

The following classes of articles are also exempt from country-of-origin marking. (The usual container in which one of these articles is imported will also be exempt from marking.)

- An article imported for use by the importer and not intended for sale in its imported or any other form.
- An article to be processed in the United States by the importer or for his account other than for the purpose of concealing the origin of the article and in such manner that any mark of origin would necessarily be obliterated, destroyed, or permanently concealed.

- An article that the ultimate purchaser in the United States, by reason of the article's character or the circumstances of its importation, must necessarily know the country of origin even though the article is not marked to indicate it. The clearest application of this exemption is when the contract between the ultimate purchaser in the United States and the supplier abroad insures that the order will be filled only with articles grown, manufactured, or produced in a named country. The following classes of articles are also exempt from marking to indicate country of origin:
 - Articles incapable of being marked,
 - Articles that cannot be marked prior to shipment to the United States without injury,
 - Articles that cannot be marked prior to shipment to the United States except at a cost economically prohibitive of their importation,
 - Articles for which marking of the containers will reasonably indicate their country of origin,
 - Crude substances,
 - Articles produced more than 20 years prior to their importation into the United States,
 - Articles entered or withdrawn from warehouse for immediate exportation or for transportation and exportation.
- Although the articles themselves are exempted from marking to indicate country of origin, the outermost containers in which they ordinarily reach the ultimate purchaser in the United States must be marked to show the articles' country of origin.

When marking an article's container will reasonably indicate its country of origin, the article itself may be exempt from such marking. This exemption applies only when the article reaches the ultimate purchaser in an unopened container. For example, articles that reach the retail purchaser in sealed containers marked clearly to indicate the country of origin fall within this exception. Materials to be used in building or manufacture by the builder or manufacturer who will receive the materials in unopened cases also fall within the exemption. The following articles, as well as their containers, are exempt from country-of-

origin marking:

- Products of American fisheries that are free of duty,
- Products of United States possessions,
- Products of the United States that are exported and returned,
- Articles valued at not more than \$200 (or \$100 for bona fide gifts) that are passed without entry.

User Fees

CBP user fees were established by the Consolidated Omnibus Budget Reconciliation Act of 1985. This legislation was expanded in 1986 to include a merchandise processing fee. Also in 1986, Congress enacted the Water Resources Development Act, which authorized the CBP Service to collect a harbor maintenance fee for the Army Corps of Engineers. Further legislation has extended the User Fee Program until 2003.

The merchandise processing fee (MPF) is 0.21 percent ad valorem on formally-entered imported merchandise (generally entries valued over \$2,000), subject to a minimum fee of \$25 per entry and a maximum fee of \$485 per entry.

Effective January 1, 1994, goods imported directly from Canada that qualify under NAFTA to be marked as goods originating in Canada are exempt from the MPF. This applies to all MPF fees: formal, informal, manually prepared, or automated. Goods that do not qualify under NAFTA are subject to all applicable MPFs."

Similarly, effective June 30, 1999, goods imported directly from Mexico are exempt from the MPF if the goods qualify under the NAFTA to be marked as goods originating in Mexico.

The harbor maintenance fee is an ad valorem fee assessed on port use associated with imports, admissions into foreign trade zones, domestic shipments, and passenger transportations. The fee is assessed only at ports that benefit from the expenditure of funds by the Army Corps of

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Engineers for maintaining and improving the port trade zones. The fee is 0.125 percent of the value of the cargo and is paid quarterly, except for imports, which are paid at the time of entry. CBP deposits the harbor maintenance fee collections into the Harbor Maintenance Trust Fund. The funds are made available, subject to appropriation, to the Army Corps of Engineers for the improvement and maintenance of United States ports and harbors.

special requirements

Prohibitions, Restrictions, Other Agency Requirements

The importation of certain classes of merchandise may be prohibited or restricted to protect the economy and security of the United States, to safeguard consumer health and well-being, and to preserve domestic plant and animal life. Some commodities are also subject to an import quota or a restraint under bilateral trade agreements and arrangements.

In addition to CBP requirements, many of these prohibitions and restrictions on importations are subject to the laws and regulations administered by other United States government agencies with which CBP cooperates in enforcement. These laws and regulations may, for example, prohibit entry; limit entry to certain ports; restrict routing, storage, or use; or require treatment, labeling, or processing as a condition of release. CBP clearance is given only if these various additional requirements are met. This applies to all types of importations, including those made by mail and those placed in foreign trade zones.

The foreign exporter should make certain that the United States importer has been provided with proper information so the importer can:

- Submit the necessary information concerning packing, labeling, etc., and
- Make necessary arrangements for entry of the merchandise into the United States.

It is impractical to list each specific article; however,

various classes of articles are discussed later in this section. Foreign exporters and U.S. importers should consult the agency mentioned for detailed information and guidance, as well as for any changes to the laws and regulations under which the commodities are controlled. Addresses, phone numbers, and Websites for these agencies are listed in the appendix.

Import Quotas

An import quota is a quantity control on imported merchandise for a certain period of time. Quotas are established by legislation, by directives, and by proclamations issued under the authority contained in specific legislation. The majority of import quotas are administered by CBP. The Commissioner of CBP controls the importation of quota merchandise but has no authority to change or modify any quota.

United States import quotas may be divided into two types: absolute and tariff-rate. Under the North American Free Trade Agreement (NAFTA), there are tariff-preference levels, which are administered like tariff-rate quotas.

Tariff-rate quotas provide for the entry of a specified quantity of the quota product at a reduced rate of duty during a given period. There is no limitation on the amount of the product that may be entered during the quota period, but quantities entered in excess of the quota for the period are subject to higher duty rates. In most cases, products of Communist-controlled areas are not entitled to the benefits of tariff-rate quotas.

Absolute quotas are quantitative, that is, no more than the amount specified may be permitted entry during a quota period. Some absolute quotas are global, while others are allocated to specified foreign countries.

Imports in excess of a specified quota may be held for the opening of the next quota period by

placing it in a foreign trade zone or by entering it for warehouse, or it may be exported or destroyed under CBP supervision.

The usual CBP procedures generally applicable to other imports apply with respect to commodities subject to quota limitations.

The quota status of a commodity subject to a tariff-rate quota cannot be determined in advance of its entry. The quota rates of duty are ordinarily assessed on such commodities entered from the beginning of the quota period until such time in the period as it is determined that imports are nearing the quota level. CBP port directors are then instructed to require the deposit of estimated duties at the over-quota duty rate and to report the time of official presentation of each entry. A final determination is then made of the date and time when a quota is filled, and all port directors are advised accordingly.

Some of the absolute quotas are invariably filled at or shortly after the opening of the quota period. Each of these quotas is therefore officially opened at noon Eastern Standard Time, or the equivalent in other time zones, on the designated effective date. When the total quantity for these entries filed at the opening of the quota period exceeds the quota, the merchandise is released on a pro rata basis, the pro rata being the ratio between the quota quantity and the total quantity offered for entry. This assures an equitable distribution of the quota.

Merchandise is not regarded as presented for purposes of determining quota priority until an entry summary or withdrawal from warehouse for consumption has been submitted in proper form and the merchandise is located within the port limits.

fraud

Civil and Criminal Enforcement Provisions

Section 592 of the Tariff Act of 1930, as amended (19 U.S.C. 1592), generally provides that persons shall be subject to a monetary penalty if they enter, introduce or attempt to enter or introduce merchandise into the commerce of the United States by fraud, gross negligence or negligence; by using material and false electronically transmitted data; written or oral statement; or by document, act, or material omission. In limited circumstances, the merchandise of such individuals may be seized to insure payment of the penalty and forfeited if the penalty is not paid.

CBP has applied the civil fraud statute in cases where individuals and companies in the United States and abroad have negligently, gross negligently, or intentionally provided false information concerning importations into the United States. Individuals presenting false information to CBP officers may also be liable for sanctions under a criminal fraud statute. Title 18, United States Code, Section 542, provides a maximum of two years' imprisonment, a fine, or both, for each violation involving a fraudulent importation or attempted importation. Although Congress initially enacted the civil and criminal fraud statutes to discourage individuals from evading payment of lawful duties owed to the United States, these laws apply today regardless of whether the United States is deprived of lawful duties.

Under Section 596 of the Tariff Act of 1930, as amended (19 U.S.C. 1595a(c)), CBP is required to seize and forfeit all merchandise that is stolen, smuggled, or clandestinely imported or introduced. CBP is also required to seize and forfeit controlled substances, certain contraband articles, and plastic explosives that do not contain a detection agent.

Merchandise may also be seized and forfeited if:

- Its importation is restricted or prohibited because of a law relating to health, safety or conservation;

- The merchandise is lacking a federal license required for the importation;
- The merchandise or packaging is in violation of copyright, trademark, trade name, or trade dress protections;
- The merchandise is intentionally or repetitively marked in violation of country of origin marking requirements; or
- The imported merchandise is subject to quantitative restrictions requiring a visa or similar document from a foreign government, and the document presented with the entry is counterfeit.

Federal laws relating to criminal activities commonly known as money laundering (e.g., 18 U.S.C. 1956) created criminal and civil provisions that, along with fines and imprisonment, enable the government to prosecute persons for, and seize and forfeit property involved in or traceable to, such violations. Criminal penalties include fines of not more than \$500,000 or twice the value of the property, funds, or monetary instruments involved in the violation, whichever is greater, or imprisonment for not more than twenty years, or both. There is also a civil penalty of not more than \$10,000 or the value of the property, funds or monetary instruments involved in the violation, whichever is greater.

Special agents from U.S. Immigration and Customs Enforcement, who operate throughout the United States and in the world's major trading centers, enforce the criminal fraud, civil fraud, and money laundering statutes. Suspected or known violations of any laws that involve importing merchandise into the United States can be reported toll-free and anonymously by calling 1-800-BE ALERT (1.800.232.5378). Rewards are applicable in many instances of reporting fraud.

foreign-trade zones

Foreign-Trade Zones

Foreign-trade zones are secure areas legally outside the customs territory of the United States. Their purpose is to attract and promote international trade and commerce. Subzones are special-purpose facilities for companies that cannot operate effectively at public zone sites.

Foreign-trade zones are usually located in or near CBP ports of entry, industrial parks or terminal warehouse facilities. These zones must be within 60 miles or 90 minutes' driving time from the port of entry limits, while subzones have no limit and are located in the zone user's private facility.

The Foreign-Trade Zones Board, which is under the Department of Commerce, authorizes operations within these zones based upon demonstrating that the intended operations are legal and not detrimental to the public interest. Created by the Foreign-Trade Zones Act of 1934, the Board reviews and approves applications to establish, operate and maintain foreign-trade zones.

CBP is responsible for activating foreign-trade zones, securing them, controlling dutiable merchandise moving in and out of them, protecting and collecting the revenue, assuring that there is no evasion or violation of U.S. laws and regulations governing imported and exported merchandise, and assuring that the zones program is free from terrorist activity. It is important to note that although foreign-trade zones are treated as being outside the customs territory of the United States for tariff and entry purposes, all other federal laws—the Federal Food, Drug, and Cosmetic Act, for example—are applicable to products and establishments within these zones.

Foreign exporters planning to open or expand new American outlets may forward their goods to a foreign-trade zone in the United States to be held

for an unlimited period while awaiting a favorable market in the United States or nearby countries. During this time, their goods will not be subject to CBP entry requirements, payment of duty, tax or bond.

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we speak freight.

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PRIVATELY-OWNED,
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