



BDP International presents

imports [101] exports

Role of the Importer of Record

February 15, 2012

Agenda

- CBP overview/Reasonable Care
- What is required as Importer of Record (IOR)
- Risks/Liabilities as Importer of Record
 - Voluntary Compliance
 - Enforced Compliance
 - Participating Government Agencies
- Properly executed Power of Attorney (POA)
- Customs Bond
- Record keeping requirements of Import of Record

What CBP Regulates

Collection of duties, fees, and taxes.

Processing persons, baggage, cargo, and mail entering the U.S.

Enforcement of Import and Export controls.

Levying of fines and penalties related to non-compliance of Regulations.

Homeland Security responsibilities (i.e. detecting and apprehending persons or companies engaged in fraudulent or illegal trade practices).

Customs Modernization Legislation (MOD ACT-1993)

In furtherance of the principle of informed compliance, sections 637 and 638 of P.L. 103-182 have amended 19 USC 1484 and 1500 by **shifting from Customs to the importer of record, the legal responsibility for initially valuing, classifying and determining the rate of duty applicable to imported merchandise and by imposing on the importer of record a “reasonable care” standard in carrying out that responsibility.**

The Mod Act & Reasonable Care

- A doctrine established under the Mod Act which transferred legal responsibility for proper classification and valuation (among other things) from Customs to the importer of record.
- Everyone associated with the import transaction is responsible for using **Reasonable Care** to enter, classify, and value imported merchandise.
- The importer of record must additionally provide any other information to CBP in order to assess duties, collect accurate statistics, and determine whether legal requirements are met.

Reasonable Care

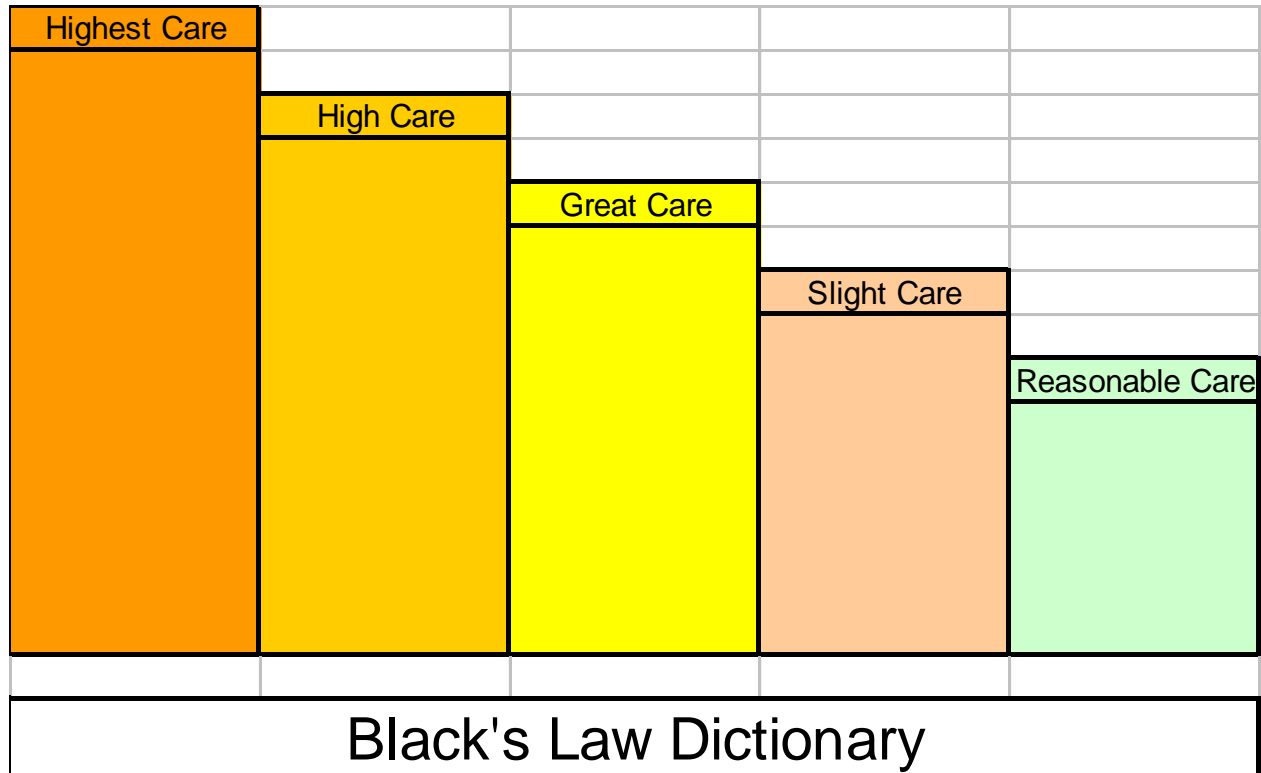
(Blacks Law Dictionary)

“Such degree of care, precaution or diligence as may be fairly and properly expected or required having regard to the circumstances surrounding the transaction.”

(CBP Definition)

“How a prudent, professional, and knowledgeable business person would act in the same circumstances.”

Reasonable Care



Shared Responsibility

Under the Mod Act, importers are expected to be compliant with Customs regulations by seeking guidance through various channels both before and after entry of goods.

Voluntary Compliance

Compliance Tools including compliance manuals

Compliance Program

Self-Audit

Training (ongoing)

Recognition and support from senior executives

How you identify and correct deficiencies

How you verify the corrective action

Communication

ISA-Importer Self Assessment Program

CBP resources are at issue....

Enforced Compliance

Inspections / Examinations

Audits

Monetary Penalties

Investigations

Civil Penalties - 19 U.S.C. 1592

Entry of goods by means of false statement or omission of material fact

Fraud, gross negligence or negligence

Failure to exercise Reasonable Care

Criminal Penalties - 18 U.S.C. 1542

Entry of goods by false or fraudulent statement or practice

Requires intent

Participating Government Agencies (PGA's)

- Other agencies have first right of refusal on any entry:
 - Food and Drug Administration (FDA)
 - Environmental Protection Agency (EPA)
 - Consumer Product Safety Commission (CPSC)
- Should any agency refuse entry of a particular shipment for their own reasons, CBP's ONLY responsibility is to watch the goods be exported or destroyed.
- There is no mechanism for CBP to override any decision by any other agency to disallow entry.

The Power of Attorney (POA)

- A power of attorney (“POA”) is a legal instrument used to delegate authority to another party. This grant of authority is extended from a principal to an agent (grantee) to perform certain activities, often of a financial and/or legal nature, on the principal’s behalf. The authority with which the agent may act can be broad or limited, depending upon the agreement between the parties. The specifics of the agent’s authority are generally outlined in a formal Power of Attorney document.
- Within the context of BDP’s trade-related transactions, the principal is the importer, and BDP acts as the agent, or attorney-in-fact. CBP regulations specifically require that a POA be conferred to the agent (broker) to conduct “customs business” for the principal (importer). The form required is CBP 5291, a general POA with unlimited authority, or a limited POA as explicit in its terms and executed in the same manner as a CBP 5291. *(19CFR141.32)*

The Power of Attorney (POA)

A power of attorney can be issued to BDP by:

- Individual
- Sole Proprietor
- (General) Partnership
- Limited Partnership (LP)
- Limited Liability Partnership (LLP)
- Limited Liability Company (LLC)
- Corporation
- Non-resident business

“Customs business” defined

. . . [T]hose activities involving transactions with the Customs Service concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by the Customs Service upon merchandise by reason of its importation, or the refund, rebate or drawback thereof. It also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills or parts thereof, intended to be filed with the Customs Service in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, *but does not include the mere electronic transmission of data received for transmission to Customs.*

19 U.S.C. 1641(a)(2)

The Power of Attorney (POA)

- The Power of Attorney must be “properly executed” by an individual who has been delegated the authority to legally bind the company.
- CBP regulations are fairly specific about the documentation required to prove the authority of the signer to act on behalf of a non-resident corporation but not for other business entities.
- That can be:
CFO, CEO, Owner, President, General Counsel, Director or Logistics/Transportation, Customs Compliance Officer, etc.

POA “Validity” & Retention

- CBP’s position is that a customhouse broker is obligated to demonstrate reasonable care in verifying the principle’s identity and legal authority to enter into the POA.
- POA’s are effective until revoked (*19CFR 141.34*)
There is no standard format for revocation; generally, the principle revokes the POA through a letter on the principle’s letterhead.
- The POA is specifically listed on CBP’s (a)(1)(A) list as a record required to be maintained and produced by the importer and its agent.

Customs Bond

- A Customs bond is a contract given to insure the performance of an obligation or obligations imposed by law or regulation.
- It is like an insurance policy that is paid to CBP if a required act is not performed.
- The most common bonds allow importers to take possession of their goods before all Customs formalities are completed.

Customs Bond

There are three parties to a Customs bond:

- **Principle**
Importer, broker, carrier, bonded warehouse proprietor, FTZ operator
- **Surety**
The insurance company that has been authorized by the U.S. Treasury to write Customs Bonds
- **Beneficiary**
Customs and Border Protection

Bond Amount

- Continuous Bond for general merchandise
 - Equivalent to 10% of duties, fees and taxes paid during the last calendar year, rounded to the next \$10,000*
 - Minimum bond amount: \$50,000*
- Single Entry Bond (a.k.a. Single Transaction Bond) for general merchandise
 - Equal to the total entered value of the merchandise plus all duties, fees and taxes*
 - If other agencies are involved, the bond amount is three times the total entered value.*

Bond Amount

Bond amount calculations exist for special types of shipments such as:

- *TIB's*
- *Anti-dumping & Countervailing*
- *Reconciliation*
- *Drawback*
- *Instruments of International Traffic*
- *Custodial Bond*
- *International Carrier Bond*

Bond Amount

- The specified sum of money that is set forth in the bond constitutes the damages suffered by CBP as a result of the principle's failure to perform the required obligation.
- That sum is known as *liquidated damages*.
- Customs bonds are intended to reflect the obligations associated with the type of Customs transaction engaged in by the bond principal:
 - Importer
 - Carrier
 - Warehouse

Record Keeping

Importer responsibilities

Owner, importers, consignee, importer of record, entry filer

Broker Responsibilities

Other Party Responsibilities

Any person who exports goods to Canada or Mexico for which a Certificate of Origin was completed under NAFTA

What are records?

(a)(1)(A) List– In general, records required by law for the entry of merchandise, maintained and produced upon reasonable request from CBP, *even if not required at time of entry.*

What are records?

- Customs Regulations define “records” as any information, made or normally kept in the ordinary course of business, which pertains to the following activities, and includes any information required for the entry of merchandise [the (a) (1) (A) list]:
 - any importation, declaration or entry;
 - the transportation or storage of merchandise carried or held under bond into or from the customs territory of the US;
 - the filing of a drawback claim;
 - the completion and signature of a NAFTA export Certificate of Origin (Part 181);
 - the collection and payment of duties, fees and taxes to CBP; and
 - any other activity required to be undertaken pursuant to laws or regulations administered by CBP.

Examples of Records*

- Entry Summary
 - Purchase Order and Commercial Invoice (should detail classification, terms of sale, prices etc.)
 - Bills of Lading/AWB
 - Any necessary certificates (GSP, NAFTA etc. & back-up)
 - Inventory logs and records of receipt at receiving facilities/warehouses
 - Proof of Payment (available from accounts payable)
 - Agency Agreement (if any)
 - Royalty or License Agreements
 - Product specifications/designs
 - Accounts payable/receivable documents evidencing transportation costs
 - Visas, quota charge statements
 - AD non-reimbursement certificates
 - Documents evidencing any transfer pricing between parties
 - (Notices of Liquidation)
 - Any other (a)(1)(A) records
- * NOT ALL INCLUSIVE

Summary

- As importer of record, you are mandated to exercise reasonable care with your import transactions
- Voluntary compliance is preferred over enforced compliance
- Participating government agencies other than CBP have a large role in your import transactions
- You must execute a valid POA to any service provider who handles your import (and export) transactions

Summary

- You must have a valid Customs bond place as an importer; either a continuous bond or a single transaction bond
- You must maintain records for a period of 5 years from the date of entry for most transaction. These documents can reside in many different areas or departments within your organization

Thank you!!

Import 101 and Export 101 continues for 2012!

We are in process of finalizing our import and export topics through December 2012.

A message about topics, registration, dates, and times will be sent to clients on our mailing list shortly.

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natalie.mortelmans@bdpinternational.com

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Contact Information

Adrienne Graddy

Corporate Director, Compliance Solutions

875 Devon Avenue

Elk Grove Village, IL 60007

Direct: 847-350-2156

Email: adrienne.graddy@bdpinternational.com

www.bdpinternational.com