Risk of Loss in Soft Capital

- Corporate governance & leadership
- Financial performance & long term investment value
- Regulatory compliance
- Meeting customer expectations & needs
- Workplace talent & culture
- Corporate social responsibility
- Communications & crisis management
Fines & Penalties
Penalties

Import

19 CFR 171 Section 592

**Negligence**
- Lesser of:
  - Domestic value of the merchandise, or
  - Two times (2X) total duties, taxes and fees due, or
  - 20% of value for non-revenue violations

**Gross Negligence**
- Lesser of:
  - Domestic value of the merchandise, or
  - Four times (4X) total duties, taxes and fees due, or
  - 40% of value for non-revenue violations

**Fraud**
- Not to exceed:
  - The domestic value of the merchandise

Export

Export Administration Act of 1979

**Criminal Penalties**
- Up to $1 million per violation
- Up to 20 years imprisonment

**Administrative Penalties**
- Up to $11,000 per violations
- Up to $120,000 per violations in export control cases

**Denial of Export Privileges**
Informed Compliance
U.S. Customs Modernization Act (Mod Act)

• Became effective December 1993
• Under this legislation two new concepts emerged:
  • *Informed compliance (Customs)*
  • *Shared responsibility (Customs and importers)*
• U.S. Customs and Border Protection (CBP) needs to clearly and completely inform the trade community of the laws and regulations.
• Greater obligation placed on CBP to give the public information concerning responsibilities and rights under customs laws and regulations.
Informed Compliance Publications

- Available on CBP’s website (www.cbp.gov) in the “Informed Compliance Publications”

- These publications have no legal binding nor precedential effect. They are CBP’s attempt to educate the trade community.

- Reasonable Care – a checklist for compliance
  - Not able to catch all. Imports vary.
  - There are four general questions for all imports:
1st

• Has your organization employed an expert to verify you are in compliance with Customs requirements?
• Do staff have access to current copies of:
  • Customs Regulations: Title 19 Code of Federal Regulations
  • Harmonized Tariff Schedule of the U.S.
  • Customs Bulletin & Decisions

2nd

• Has a knowledgeable & responsible individual reviewed Customs documentation prepared by internal staff or an external expert to verify it is full, complete and accurate?
• If documents are prepared externally is there a system in place so your organization receives copies?
3rd
• If you use an expert to assist with complying with Customs requirements, have you discussed imports in advance?
• Have you provided this individual with full, complete and accurate information about the imports?

4th
• Are identical transactions or merchandise handled differently at different ports or U.S. Customs and Border Protection offices within the same port?
• If so, have you brought this to the attention of the appropriate U.S. Customs and Border Protection officials?
Reasonable Care Checklist

• Description of merchandise imported
• Tariff Classification
• Valuation of merchandise
• Country of Origin
• Marking/Quota
• Intellectual Property rights
U.S. Customs – Priority Trade Initiatives

1. Antidumping & Countervailing Duty
2. Import Safety
3. Intellectual Property Rights
4. Revenue
5. Textile/Wearing Apparel
6. Trade Agreements
Records of Transactions

Import Recordkeeping

• Retention period for general import records must be kept for 5 years from the date of entry (which includes a reconciliation),
• Or 5 years from the date of the activity which required creation of the record
• Defined in 19 CFR 163

Export Recordkeeping

• Retention period of records is 5 years from the date of the export, re-export,
• Or any other termination of the transaction
• Defined in Section 762.6 of the Export Administration Regulations (EAR)
### Import

- The Mod Act required CBP to compile a list of all the records required by law or regulation for the entry of merchandise and publish it.
- If a record is on the “(a)(1)(A) list,” it is required to be maintained, and produced upon demand.
- Note there are exceptions to the list for additional items required based on the item being imported.

### Export

- Bills of Lading, Express Bills of Lading, Way Bills or Airway bills
- Pro forma Invoices (if applicable)
- Commercial Invoice(s)
- Purchase Order(s)
- Packing Lists & Packing Declarations
- Fumigation Certificates
- Supplier’s affidavits or Certificates of Origin
- Company issued U.S. Certificates of Origin (CO)
- Company issued NAFTA Certificates of Origin (NAFTA CO)
- Supplier issued NAFTA or other Certificates of Origin
- AES filing
- Shipper’s Letter of Instructions (SLI)
- Past bills of materials or cost value statements showing historic changes on products and parts
- Declaration of export destinations
- Applications for a permanent export or an in-transit license and supporting documents
- Applicable export license documentation. End-user statements.
Import Metrics Best Practices

• Metrics should be developed to monitor and manage both operations and compliance. Managers should have visibility to import volumes and trends.

Suggested metrics:
• Monthly import volume by:
  • # custom entries
  • Value
  • Assists declared
  • Duty/fees paid
• Monthly compliance report
  • Open customs issues/status
  • New customs inquiries
  • Broker error report
## Import Volume Report 2016

<table>
<thead>
<tr>
<th></th>
<th>Total Entries Per Month</th>
<th>Total Entered Value Per Month</th>
</tr>
</thead>
<tbody>
<tr>
<td>January</td>
<td>11</td>
<td>$45,814.70</td>
</tr>
<tr>
<td>February</td>
<td>17</td>
<td>$126,813.13</td>
</tr>
<tr>
<td>March</td>
<td>21</td>
<td>$244,315.00</td>
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<tr>
<td>April</td>
<td>30</td>
<td>$242,709.41</td>
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<tr>
<td>May</td>
<td>23</td>
<td>$187,373.00</td>
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<tr>
<td>June</td>
<td>37</td>
<td>$319,303.00</td>
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<td>July</td>
<td>28</td>
<td>$261,009.16</td>
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<tr>
<td>August</td>
<td>44</td>
<td>$246,887.33</td>
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<tr>
<td>September</td>
<td>42</td>
<td>$321,835.25</td>
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<tr>
<td>October</td>
<td>29</td>
<td>$267,901.00</td>
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<tr>
<td>November</td>
<td>32</td>
<td>$200,953.50</td>
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<tr>
<td>December</td>
<td>48</td>
<td>$419,717.00</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>362</strong></td>
<td><strong>$2,884,631.48</strong></td>
</tr>
</tbody>
</table>

### Total Entries Per Month

![Bar chart showing total entries per month]

### Total Entered Value Per Month

![Bar chart showing total entered value per month]
Managing Customs Entries

• Assigned roles and responsibilities

• Review all customs entries for accuracy
  • Keep a record of error rates including statistical errors

• Assign approvals for customs broker’s invoices to import operations – NOT to accounts payable.
  • Invoices are paid after customs entry is verified and it is correct

• Verify all required import documents are attached
Managing Customs Entries

• Have a dedicated filing cabinet for customs entries (or scan)

• Indexes:
  • Entry Number
  • Entry Date
  • Customs Broker’s Name
  • Purchase Order Number
  • Commercial Invoice Number
  • Bill of Lading Number
  • Part Numbers?
Utilize ACE through CBP

Key ACE Reports

• Filer or Importer Quick Views
  • Number of Entries and Values
  • Top 5 HTS Numbers
  • Top 5 Ports
  • Top 5 Customers (IR Numbers)
• Entry Summary Aggregate and Detail Reports
• CBP Form 28, 29, 4647 Status Report
• Periodic Monthly Statement Reports
  • Sub-Ledger Report
  • Periodic Statement Quick View – Broker
  • Periodic Statement Quick View – Importer

2017 Van Andel Global Trade Center
Export Compliance
Export Compliance

- Exporters are responsible for:
  - All export declarations made on their behalf
  - Schedule B Classifications (or HTS)

- Obtain Export Licenses (as required)

- Follow Export Administration Regulations
General Export Controls

1. Export Licensing – Commerce Control List (CCL)
2. Export Licensing – U.S. Munitions List (USML)
3. Entity List
4. Denied Parties/Denied Persons List
5. Unverified List
6. Specially Designated Nationals List
7. Blocked Persons List
8. Anti-Boycott
9. Office of Foreign Asset Control (OFAC)
10. Foreign Corrupt Practices Act (FCPA)
11. Helms-Burton Law
12. Multi-lateral Export Controls
Red Flag Indicators

1. Cash payment when credit/financing would be more appropriate.
2. Little or no business background/finesse during transaction.
3. Customer unfamiliar with product(s), but insistent on purchase.
4. Routine sales service/visit declined/refused by customer.
5. Vague addressing (P.O. Box).
6. Freight forwarder is the consignee.
7. Shipping route abnormal for destination.
8. Request for a domestic shipment to be documented and packaged for air cargo or ocean cargo.
9. Buyer is vague/evasive, nervous, avoids answering questions, etc.

10. If anything seems strange, report it to Bureau of Industry Security for further investigation.
Best Practices for Import/Export Compliance

• Ensure executive management is on board! Regular monitoring. Assigned responsibility of oversight.

• Assign who is responsible for keeping the company out of issues with the U.S. government.

• Make sure everyone within the organization is aware of import/export operational requirements and internal communications.

• Plan in advance – provide written policies & procedures.

• Continually assess risks and regularly monitor import/export processes/procedures updating as necessary.
Best Practices for Import/Export Compliance

- Management directive with import/export policy statement
- Defined roles and responsibilities of import/export
- Travel restrictions on devices brought outside the U.S.
- Export screening
- Recordkeeping
- Ongoing training
- Periodic reviews/audits

- How do you handle corrective actions?
Thank you!

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