

CRIME AND PUNISHMENT IN APPAREL TRADE

ANYONE WHO IMPORTS textile or wearing apparel products knows achieving 100 percent regulatory compliance has been challenging for Customs and the trade community. In a recent presentation, Janet Labuda, Customs' director of textile enforcement, reminded her audience how daunting that challenge remains.

Textiles, including wearing apparel, account for about 40 percent of all duties collected and about 22 percent of all import entries filed. Customs' focus remains on preference claims, where a 45 percent rate of noncompliance isn't surprising. At the same time, Customs is examining short-supply fabric claims — including for such commonly available fabrics as cotton — that recently resulted in \$2 million in denied claims.

Customs also has been validating free trade agreement claims, another area it says massive non-compliance exists. For that reason, Customs is developing a training regimen to ensure its staff understand FTA claims.

Part of the agency's concern is the gross lack of knowledge about valid FTA claims, but Customs also has discovered yarn and fabric affidavits that were forged, altered or used multiple times to qualify goods that don't otherwise qualify.

Who prepares your certificates of origin? How often are they validated, and by what means? Although Customs has focused first on claims related to the Central America Free Trade Agreement, all FTA claims likely will come under suspicion and be subject to audit.

Looking at the numbers and other intelligence, Labuda and her team suspected entry declarations were wrong on a grand scale. To confirm that, Customs assembled a cross-functional team from various

locations to review textile and wearing apparel imports from China.

The team visited 60 companies in Los Angeles, 60 in New York and another 61 nationwide, and it found extensive noncompliance — from phony addresses for importers of record to unrecorded relocations. In some cases, the address and company were listed, but the person there was not the importer. In others, the declared value of the goods was vastly underreported.

While Customs' efforts may be focused on importers, it is clear the agency considers customs brokers the linchpin, with forwarders also involved. As such, Customs and the Federal Maritime Commission are cooperating as these investigations continue.

For Customs, the issue is simple: supply chain security. Who are the real parties to the transaction? Without knowing that, risk at all levels cannot be measured or addressed properly. From the trade community's perspective, many honest importers are stuck in the middle. They file an entry that's refused because of undervaluing, despite proof of payment. Customs then sets a significantly higher, arbitrary value. Should you challenge Customs or pay the duty, get your goods and argue about it later?

Not surprisingly, most choose to secure the goods and argue about valuation later. In essence, the industry as a whole is paying the price in heightened skepticism and close scrutiny because of the actions of some dishonest importers.

It's worth noting when Customs sets the value based on the transaction value of identical or similar merchandise, an importer is only able to learn the basis for that value through litigation, because Customs is relying on values validated from transactions by other importers.

In short, good luck challenging Customs' value determination.

One last word of warning: if you're purchasing branded merchandise on a delivery-duty-paid or landed-duty-paid basis, you may not be off the hook. Although many importers would question this conclusion based on a straightforward understanding of what DDP and LDP mean as terms of sale, from Customs' perspective, as the owner of the brand name, you have some liability if the seller does not make proper entry.

Does this mean that as the DDP or LDP buyer, you should demand to get a copy of the 7501 Form — the Entry Summary With Continuation Sheets — from your seller? Customs says yes, but is that realistic? Even if you elect to do so, does getting a copy of the 7501 mean the document is authentic? How can you determine that? Each company will have to answer these questions for itself. What do your standard operating procedures require?

Finally, keep in mind civil penalties may be the least of anyone's concerns.

Customs says it is facing millions of dollars in lost revenue, so it's not surprising that it's also considering criminal penalties. For these purposes, think in terms of money laundering, RICO and 18 U.S.C. 1001 (lying to a government official) and 18 U.S.C. 1002 (submitting a false, altered, forged or counterfeit writing or document in order to defraud the U.S.). Given the staggering numbers of dollars involved in these importing schemes, it isn't surprising Customs wants to see jail time for some people.

How are you vetting your business partners to ensure you don't get sucked into such a scheme? **joc**

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