

REASONABLE CARE:

TIPS FOR SETTING UP A COMPLIANCE PROGRAM

1) Get upper management committed to the idea of Customs compliance. Compare the cost of compliance with the cost of non-compliance to sell the idea. Consider the following:

- duty increases after sale of goods
- penalties
- reconstruction of records
- lost sales due to detained shipments or late delivery
- may lead to the recovery of overpaid duties
- Upper management should issue a written policy statement about Customs compliance.

2) Decide where in the company to place responsibility for the compliance program.

Compliance is a multi-disciplinary effort. All parts of the company should be involved, including:

- information systems
- finance
- accounting
- purchasing
- **transportation**
- logistics
- project management
- production management
- engineering
- sales
- legal
- administration

To insure success, the compliance program requires adequate staffing. Consider the following:

- level of staff competence
- extent of experience
- professional development
- incentives

Establish the program so that it will interface at all levels of the company. Make sure that staff members have adequate access to managers who can and will insure Customs compliance.

- 3) Develop, implement and monitor formal **written** procedures considering:
- do not confuse procedures needed for Customs with those needed for ISO
 - involve all departments affected when developing the procedures
 - give copies of the procedures to those involved in their implementation as well as those responsible for management of them
 - classification
 - value
 - admissibility
 - duty preference programs (e.g. NAFTA, CBI, GSP)
 - record keeping
 - in house vs. outside experts
 - Tie in upper management, perhaps through the budget.
- 4) Develop standard contract language (e.g. purchase order, letter of credit) to avoid problems. Take into consideration:
- purchasing; complete descriptions lead to accurate classification and value
 - suppliers; provide full details regarding products and value
 - formalize what documents are needed and under which circumstances
 - directives
 - written policies
 - uniformity of shipping papers
 - Key in likely problem areas such as assists, currency adjustments and intellectual property rights.
- 5) Training. The key to success is training all concerned when the program is implemented and consistently thereafter:
- keep records of all who are trained and the topics (records help prove reasonable care)
 - bring in all personnel involved, including management
 - develop incentives
 - utilize in house as well as outside experts
 - cover established procedures
- 6) Conduct internal reviews on a regular basis to insure that policy is followed:
- Failure by the company to discover non-compliance with written policies could be seen as a lack of reasonable care.
 - promptly correct any failures to follow policies
 - employee counseling
 - personnel action
 - communicate regularly within the company
 - Communicate regularly with Customs? (always a tricky situation)

7) Benchmark against other companies and organizations. How is your company doing when compared to others in your industry?

- high risk goods
- specific industries
- attend seminars
- attend trade association meetings to get the latest information
- use internal and external resources regularly

8) Is the established record keeping program adequate when the company performs internal audits? Consider:

- ease of retrieval
- central repository
- automation
- accuracy of information recorded
- keep old computer programs in order to be able to retrieve information kept with older software programs

9) Work with Customs?

- rulings
- Pre-Importation Review Program
- contacts with local Import Specialist, Field National Import Specialist or National Import Specialist
- Automated Invoice Interface
- ABI customs broker
- automation of exports
- review of product line by Customs

While the above listing is only intended to provide tips, importers should also consider that Customs is changing its approach to focus on post-entry audits. Here are some factors to consider in this context:

1) A determination of informed compliance is different for each company. The key is: How does the company get information to the department handling its Customs transactions? Those subject to audit include:

- Importers
- importers' agents (brokers)
- user fee payers
- claims for duty preference
- exporters (because of NAFTA)

In addition, the following questions should be considered:

- Can the company produce the records for a particular entry on demand?
- Is the amount shown as the cost of goods on the company's financial statements the same as the entered value of its merchandise?

2) Enforcement will be primarily post-entry once goods are released. The goal is verification - inspections, data reviews and audits.

- Office of Field Operations - selectivity
- Office of Strategic Trade - domestically focused
- Customs Assessment Team (CAT) Review.

3) The purpose of audits will no longer be to generate revenue but rather to measure compliance and help importers be compliant!

- 318,000 importers were audited in 1994
- 1,000 importers accounted for 61% of the value of all imports in 1994
- audits will focus on critical industries
- Customs will:
 - ✓ check internal controls
 - ✓ assess record keeping
 - ✓ test automated systems
- The focus will be trade priority areas:
 - ✓ duty reduction/preferential programs
 - ✓ dumping duty
 - ✓ countervailing duty
 - ✓ trade statistics - Census data
 - ✓ origin determinations
 - ✓ classification
 - ✓ value
 - ✓ admissibility
 - ✓ harbor maintenance fees (depending on court results)
- Be audit ready in advance. The following are potential problem areas if books are not properly set up and the record keeping program is inadequate:
 - ✓ great inconvenience, difficulty and cost is incurred if a company has to prepare under the gun
 - ✓ assists
 - ✓ royalties
 - ✓ currency adjustments
 - ✓ post-entry adjustments

4) Full audits vs. mini-audits:

- CAT reviews
- Performance Improvement Plan (PIP)
- will identify problem areas and make recommendations
- importer needs to make corrections
- return visits by Customs to confirm corrections are in place and being implemented
- key gaps - audits
- historically for every \$1 spent conducting an audit, Customs has collected \$7 through prior disclosures, underpaid duties, liquidated damages and penalties [criminal and civil actions]
- GAO and acceptable random sampling procedures

5) Benefits:

- Demonstrates reasonable care
- Cost reductions for the company
- Reduced penalties for the importer if he is part of the Customs record keeping program
- Improves efficiency and communications within the company
- Hastens verification for Customs and other purposes upon demand by the agency

In deciding whether or not to set up a compliance program, bear in mind that Customs will soon be publishing a list of the documents an importer will be required to have available in his records on demand (referred to as the a1a list). Publication of this list is in accord with another provision of the Mod Act. The penalty for failure to have the required documents is, in many ways, worse than if there is a substantive violation. If a failure to produce the required records is based upon negligence, the penalty is \$10,000 or 40% of the value for each release of goods. In the case of willful failure to produce records, the amounts rise to \$100,000 or 75% of the value. In addition, if entries are unliquidated and a special rate of duty (e.g. free) was claimed, the entries will be liquidated at the column 1 (or most favored nation) rates of duty. If the entries were liquidated within two previous years, they can be reliquidated at the column 2 rates!

Assessment of a record keeping penalty is in addition to all other forms of penalty, except those under 19 U.S.C. '1592, the fraud statute. There is a violation of '1592 if the importer (or exporter in a NAFTA context) makes a material omission or a material false statement in the course of importing or attempting to import (or export) goods.

Given that Customs has changed its focus by placing the obligation on the importer to insure that classification, appraisement and admissibility determinations are properly made prior to entry of goods, it is good business and makes common sense to insure that you have all the facts you need before you make a declaration to Customs. The stories are legend about companies that thought they were doing things correctly, only to find out an outlying sales office had arranged credits and debits with a supplier but the department handling Customs transactions knew nothing about it. American business now generally takes the approach of operating with as lean a staff as possible. The theory is that it makes for efficiency and lowers the cost of goods. With profit margins constantly under attack, it makes good sense to take steps to avoid costly surprises. A Customs compliance program is one large step in that direction