

Importers.....

The M.E. Dey staff has prepared this review of some of the more common practices and problems Importers come into contact with.

We hope this review will be of interest and assistance to you. It is, of course, general and can in no way be considered the final word on importing matters.

Specific questions you may have on import problems will be answered by our staff . We encourage you to call us for guidance to your responsibilities as a successful Importer.

IMPORT OVERVIEW:

Why do I have to get Customs involved with my imported articles?

All articles imported into the United States must be declared and entered to United States Customs. Only a few items such as Electricity or articles returning from space need not be declared. Imported articles not intended for personal use are considered commercial imports and must generally have a 'Formal Entry' packet filed with Customs. This packet must contain certain documents that will describe the shipment in ways important to Customs.

What documents are needed to secure United States Customs release of a commercial shipment?

Basic documentation required of ALL Commercial imports are:

1. A copy of the Foreign Sellers invoice for the articles imported. This invoice must set forth the name of the seller and the buyer, the unit values of the articles, total value of the articles, the terms of sale, a clear description of the articles and other important information.
2. A packing list providing the weights and measure of each carton and a description of what is contained in each carton.
3. A Customs bond or evidence of a bond.
4. Evidence that the importer claiming the shipment is actually authorized to receive it.
5. An Entry .

Are these all of the documents that are required?

No. Customs requires other documents to be presented to them when you Import certain articles. For Example:

- * Quota declaration required on wearing apparel imported from Quota countries.
- * Footwear invoice for imports of footwear.
- * FCC declaration required on all imports of articles subject to FCC regulation.
- * Fish and Wildlife declaration required for virtually all imports of Furs, Skins or other animal parts.
- * FDA declaration for an article of Food, a Medical device, eating or cooking utensils, etc.
- * Textile declaration required of imports of wearing apparel and fabric.
- * VISA for certain imports of Textile articles.
- * Certificate of Origin for duty preference claims.
- * TSCA Statement for the importation of Toxic substances.
- * FAA declaration for Civil Aircraft parts.
- * Mill Test Certificate for Steel.
- * Shippers Affidavit for goods assembled abroad.

Don't I need an Original Bill of Lading?

With these documents, presuming that the shipment is a legal importation, Customs will be able to examine and release your shipment. Note, we have specifically not mentioned that a Bill of Lading will be required (Ocean Shipment). A bill of lading is not a strict requirement of Customs. When your Broker asks you for an Original Bill of Lading, he or she is doing so not because of Customs requirements, but because Customs release is only one of number of 'Releases' that might have to be obtained. An Original Bill of Lading conveys ownership of the imported articles. A Steamship line will require that the holder of the Original Bill of Lading endorse the Bill of Lading and surrender it to the Steamship line. The Steamship line then will release the imported articles from their control. Other 'releases' may also be required. FDA, FCC, Fish and Wildlife are only a few of the releases that may have to be secured for your import shipment.

Once the Entry package is surrendered to Customs and I get my shipment, is Customs satisfied with the documents I gave to them?

The above documents secure release of the shipment but do not necessarily complete the documentary requirements of Customs. In addition to the above, any of the following documents may also be required, for filing with Customs after release of the shipment:

- * Certificate of use - for agricultural implements
- * Certificate of origin
- * Department of agricultural declaration
- * Other statements, affidavits and or declarations as required by various governmental agencies
- * An Entry Summary

Is this it?

Customs primary and most important responsibility to our Nation is to protect the revenue of the United States government. Customs is very keen on having correct duty and required user fees paid with the Entry summary. Other documents or substantiation may be required by Customs at any time until the Importer transaction is liquidated. Liquidation is discussed later.

What is entered value?

Entered value is that value that is determined to be the dutiable value of a shipment. In usual circumstance, the Entered value is what is called the transaction value of the shipment. Transaction value is the cost of the goods plus (if not already included) packing costs, selling commission, assists, royalties and any other proceeds accruing to the seller; LESS, (if not already deducted or not included) transportation costs, insurance, customs duties, excise taxes, costs of constructing, erecting, assembling or providing technical assistance with respect to the articles after importation into the United States.

What are the duties and user fees that are assessed?

Imported goods are classified for duty purposes. This classification system is called the Harmonized Tariff of the United States. There are more than 10,000 classifications for imported cargo. Each classification has a duty rate assigned to it. Almost all of the duties are ad valorem that is based on the value of the imported cargo. The duty may be as low as zero or as high as 100% of the value.

Merchandise processing fees are assessed on most goods imported into the United States. It is the same ad valorem rate for all products with a maximum of \$485. Currently the Merchandise processing user fee is 0.217%. Harbor Maintenance user fees are assessed on imported cargo.

This fee is assessed only on cargo imported through a United States port. This offers a particular marginal advantage to Midwestern importers whose suppliers are in Europe. This fee, which is 0.125% of the value, is not assessed on cargo imported by vessel to Montreal and railed or trucked into the United States! If you use the International mail system to import your articles, there is a five-dollar mail-processing fee assessed on your imported articles.

There are other excise taxes and fees assessed on various specific types of articles such as tobacco products, alcoholic beverages, certain sporting goods, many articles containing cotton, certain perfumes, tea, beef, pork, honey, and sugar.

Is this it?

There are special duties that may be assessed from time to time on your imported articles. Chief amongst these are Countervailing duties and Antidumping duties. These duties may be any amount. Currently, the highest special duty we have seen is 212%!

Antidumping duties (ADD) are assessed on imported articles that are sold to purchasers in the USA at a price less than the fair market value. Fair market value of articles is the price that would normally be used/sold on the home market. Countervailing duties (CVD) are assessed to counter subsidies provided by foreign governments on articles that are exported to the USA. These subsidies cause the price of these articles to be artificially low to USA importers and their customers.

I understand that I must present the same invoice to Customs that I used to pay the supplier. Are there other charges that I need to be aware of?

Yes. There are two common charges that are frequently missed. One charge is Assist. The other is Commission.

ASSIST: An Assist is an item of value provided to the foreign seller, directly or indirectly, by the U.S. buyer or importer without cost or at reduced value and used to produce IMPORTED articles. Assists are a dutiable addition to the value of the imported articles. Assists are defined as any of the following:

1. Materials or components that are incorporated into the imported articles.
2. Tools, molds, or machinery used to produce the imported articles.
3. Material and articles consumed during production of the imported article.
4. Most engineering, development, artwork, design work, plans and sketches that are undertaken outside of the United States.

COMMISSION: Commission may play a large role in determining the dutiable value that Customs will assess on your merchandise and thereby affect the amount of duty you must pay on an import. Customs views the fees paid to a Buying agent as not dutiable whereas fees paid to a Selling agent are dutiable. The Buying agent represents the importer who could deal directly with the manufacturer if he or she wished. On the other hand, the manufacturer normally employs a selling agent and you are generally unable to buy directly from the manufacturer without going through his agent.

Aren't there differences in document requirements for airfreight shipments versus ocean or surface shipments?

No, however, airfreight shipments will have an airway bill rather than an original Bill of Lading. The essential difference between these two modes of transportation is the time involved. Airfreight can arrive virtually overnight while transit time for ocean freight shipments could be as long as eight weeks (typically ocean shipment from Europe arrive in 17 days, Far East in about 24 days). Because of this difference, the documents for airfreight shipments are treated differently than the documents for a surface shipment. Complete sets of documents are affixed

to the Airway Bill. To send the documents by mail, or even courier, could risk having the shipment arrive at a destination and having to sit idly while the documents eventually made their way to your Broker.

What is Customs looking for on the Shipper's Invoice?

Basic to the entire Customs clearance system is the invoice issued by the foreign seller for the articles imported. There are definite regulations as to the content of such an invoice, but these are not widely known. An invoice that does not reflect basic information required by Customs can delay release of the shipment, cause errors in the assessment of duty and, in some cases, result in the assessment of liquidated damages and or penalties.

Remember, an invoice in one form or another is required of every commercial shipment, whether the imported article is sold on consignment or loan, is a gift or is a return of the importer's own product. Basic invoice contents are:

- * Name and address of the seller and importer
- * Terms of the sale, ex discounts, payment terms, currency used, commission costs included in the value of the invoice, such as Ocean freight, marine insurance, packing, inland freight
- * Date invoice was issued
- * A clear description of the articles shipped.
- * The unit value of each articles shipped and the extended values.

There is clear requirement that an invoice be prepared in the English language. From a practical standpoint, Customs must be able to understand an invoice than has been presented to them for release of cargo. Customs cannot be expected to be versed in all languages. If a foreign language invoice is issued, a translation will have to be provided to Customs.

Articles should be described in a manner that allows a layman to understand exactly what the articles are. The material of which the articles are made should be indicated on the invoice. There are numerous tariff classifications in the Harmonized System (HS) that differentiates articles by their material makeup. An example: tableware that can be made of glass, earthenware, porcelain etc. The description of such tableware on an invoice should include the material makeup of the article. This is especially important given that the duty rates on tableware are based substantially on the material makeup. Duty rates range from 5.1% to 35%. If part numbers are the only description noted, a supplemental description will have to be added to fully describe the items on the invoice.

What is an Entry or Entry Summary and how are they used?

These terms can sometimes be confused or used incorrectly. The information provided below should help give you direction for understanding the system and the terms used.

THE ENTRY This is the document used, together with the invoice and related documents, to secure prompt Customs release of imported cargo. This is a voluntary use form, often called an ID, Immediate release, CF3461 or simply, 3461.

THE ENTRY SUMMARY This document package consists of the prepared consumption warehouse or other type of entry summary documents, along with the duty payment and other required documents, including the entry package noted above. The entry summary must be filed in an acceptable form within ten days of the release of the shipment by means of the Entry. This form is most often referred to as the Custom form 7501 or just 7501.

If the entry is voluntary, why use it?

This document is used because it allows the Importer to by-pass the relatively slow documentation processing of any Customs house. It allows documents to be presented directly to the Customs inspector, without having the document reviewed. In short, it allows Customs to release the shipment immediately as opposed to the 24 hours to several days it may take if duty must be calculated and submitted along with documents for approval. This document is used by the Broker to the maximum extent possible. However, there are now many articles imported that cannot be released from Customs custody through the use of this entry. Customs will demand that an entry summary be filed so that they may review the documents before granting release of the shipment.

Why is the entry voluntary?

The form is voluntary because it need not be used. An importer may elect to allow his cargo to remain at the terminal until all of the documents have been processed. The entry is voluntary because it carries with it greater potential for assessment of liquidated damages. When the form is used, the entry summary must be filed in acceptable form within 10 days of Customs release. Failure to do so will result in liquidated damages being assessed by the Director of Customs in an amount equal to the value of the shipment. Sometimes, the ten-day 'clock' may not be enough time to settle valuation or duty questions. If a disagreement develops between the importer and Customs as to the rate of duty, the value or any other matter concerning the entry, the clock keeps running and until the disagreement is settled and the entry summary is not considered to have been filed.

As a matter of practice, the risk notwithstanding, the entry system is used on virtually all imports. To do otherwise would quickly congest surface and air terminals to the point where the movement of all cargo would come to a halt. This would be particularly true at such major centers as JFK or O'Hare airports.

What is a Customs Bond?

Importers, who import shipments valued at more than \$2000 (or a lesser amount for certain type of imported articles), are required to provide Customs with a surety bond equal to the dutiable value of the cargo plus the duty. Cargo valued at less than \$2000, or personal imports of any value, do not require such a bond. However, there are numerous exceptions, beware! Many importers are not aware that they can reduce their bond premium costs by filing with Customs a blanket bond called a Continuous bond. Following are the two bonds that are used most.

SINGLE ENTRY BOND As its name implies, this bond is used for each import transaction. A single entry bond must be written each time a shipment arrives. A single entry bond is written for the value of the shipment plus the estimated duties. Certain commodities require a bond for 3 times the value. The premium for the bond is paid on that dollar amount. This is a relatively high cost bond for the importer to use. If you expect more than five or six shipments during the course of a year, or import high value cargo, a Continuous bond may be more appropriate.

CONTINUOUS BOND A Continuous bond can be written to cover a 12 month period and will cover all imports made during that time through any port in the Customs territory of the United States. This bond is filed with any District Director of Customs and becomes effective approximately two weeks after filing. The bond is written in an amount equal to 10% of the estimated duties that may be paid during the life of the bond. However, there is a minimum face value of \$50,000. In order that the surety grants this bond it may be necessary for the importer to supply acceptable financial data to the surety.

Lets examine the differences between a Continuous bond and an Individual bond done for each

shipment. A comparison of premium differences helps illustrate how your decision will affect gross margin. If you import six shipments during a twelve-month period, each with a value (entered value plus duty) of \$15,000, a single bond may cost \$5.00 per \$1000 of value (with a minimum of \$50.00). The cost of each bond then is \$50.00, or a total of \$300.00 for the six shipments. A continuous bond may cost \$400 or more. In this example, it is clear that single bonds are the less expensive alternative. However, if you imported twelve shipments, only one per month, your single bond cost would rise to \$600. Clearly, it would then be less expensive to purchase a Continuous bond for \$400.

What is ABI?

ABI is an acronym for Automated Broker Interface. This is the computer-to-computer link between the Broker and Custom's computer. This allows information on entry, entry summary liquidation, Customs examination results, bond queries, currency queries, gold price queries, and administrative messages that Customs deems important to get out to Brokers immediately for quick action. Through ABI the Broker transmits information on the entry to Customs. The Customs computer will then decide whether to examine the cargo at the time of arrival within the port limits. The computer will give two conditions: General Document review or paperless release. A Paperless release from Custom's computer may advise the Broker that the shipment is released on arrival, without tendering any documents to Customs. Indeed, roughly 20% of computerized entries are Paperless release. Of course an entry summary must still be filed, but the importer benefits because delivery delays, due to Customs procedures, are eliminated.

An ABI Broker is allowed to get a release on an incoming shipment up to five days prior to arrival of the freight. This rewards the Importer who can arrange for quick delivery of documents to his or her Broker. Even if there is a delay in getting the documents to the Broker, the shipment may still move inland from the coast ports without delay. At the very least, if the documents were tendered early to the Broker, he would be able to advise that the delivery of the freight to your door, once it arrives at the terminal, will be delayed because he has received notification that the cargo is due for an intensive examination.

What are some problems with Marking?

Articles imported into the United States must be clearly marked with the name of their Country of Origin. This particular requirement accounts for a large number of liquidated damages. Additional duties and delays in delivery occur frequently as many imported articles are not properly marked.

You should memorize the following three rules for marking:

- ✓ THE GOODS MUST BE MARKED IN A LEGIBLE MANNER.
- ✓ THE GOODS MUST BE MARKED IN A PERMANENT MANNER.
- ✓ THE GOODS MUST BE MARKED IN A CONSPICUOUS MANNER.

There are exceptions to the law. Articles that are incapable of being marked (for example, Barley imported in rail cars) do not require marking. Articles for the personal use of the importer or articles that will be subject to further processing which will obliterate or conceal any markings are also exempt.

Marking, continued...

To avoid problems, it is best to instruct foreign sellers to mark the items they are shipping. An article can be marked, but still may not be in compliance with the law. For example: an article that was manufactured in Switzerland would be legally marked if the marking read "Made in Switzerland", but "Swiss Made" would not be acceptable. The letters used in the Marking must be at least as large as other information appearing on the article. A rule of thumb is that the marking should be obvious to the casual observer. If locating the marking requires considerable examination of the article, it may very well be considered not legally marked. Articles that are

imported as gifts, premiums or awards are not excused from marking requirements.

Articles made in the United States need not be marked. However, lack of marking on such articles will make a claim of duty free treatment as returned goods considerably more difficult to sustain.

Articles that are not marked, or that the Customs Inspector feels may not be marked in an acceptable manner, may be detained until arrangements for lawful marking are made. Failure to mark articles found to be not legally marked will result in marking duties of an additional 10% assessed and may result in Customs ordering redelivery of the entire shipment.

What is Liquidation and how does it operate?

Most importers are aware that eventually an entry will be liquidated. But many importers are not certain what this means and when it will be accomplished. The word 'audit' could be substituted for liquidation but this would be only a close description for the liquidation process. After a shipment has been released, upon payment of any duties estimated to be due, and after all required documents have been filed, highly trained Customs employees called Import Specialists will carefully review the entire transaction.

In doing the review, these Specialists have the entire U.S. Customs system at their disposal to verify value, rates of duty, description of articles and previous Customs experience with the Importer. The specialist may require samples to be submitted for further examination. In some cases, advice of Embassy personnel located in the area of the foreign seller may be requested. All of this effort is to insure that the correct duty has been paid on the correct value, and to insure that all importers buying the same items are charged equal and fair duties.

All of this effort is to insure that the Importer has paid correct duty, has paid on the correct value and to also insure that all importers buying the same item are charged duty on the same basis. Customs has the duty of insuring that the Importer has properly classified and valued his imported articles. When all necessary information has been assembled, the entry will be liquidated; the file will be closed. If too much duty has been paid a refund will be issued. If additional duty is due, Customs will bill the Importer for the amount due.

Under present law, liquidation must be completed within one year of the date of the entry unless the importer or U.S. Customs requests additional time. If an importer disagrees with the liquidation or if Customs themselves disagree with their own liquidation, there is a period of ninety days following liquidation during which either side may file a protest against the liquidation. If no protest is filed within the 90-day period, an Importer has a final remedy to correct a clerical error or mistake-in-fact that is found. The Importer may file a petition under Section 520 of the Tariff Act within one year of liquidation.

What are liquidated damages and how do such damages come about?

Customs is charged with enforcing the numerous laws and regulations that govern imports. Certain violations of these laws or regulations harm the United States and as a result, monetary damages are due the United States. Hence the term liquidated damages.

If you are a frequent or even occasional importer, you will eventually receive a notice from United States Customs showing that liquidated damages have been assessed against you for a violation of law or regulation. The damages assessed will refer to a specific shipment amount of the total customs value of the imported cargo. Further, the internal revenue service does not allow a tax deduction for the payment of liquidated damages.

Liquidated damages can be assessed for many reasons:

- * failure to provide all documents required by law within the time allowed by regulation

- * failure to file an acceptable entry summary within 10 days of release of the shipment
- * failure to redeliver articles that have been customs released but subsequently found to be in violation of law or regulation

There are many other situations that could give rise to liquidated damages. Some are serious; others are simply a clerical error that can be easily remedied by you or your Broker. Notwithstanding the seriousness of the matter, the initial demand for the full Customs value of the shipment Need Not Be paid immediately! This demand will invite you to write to the Customs service and explain any extenuating circumstances that would allow relief of payment of the amount demanded. This is called Petition for Relief. You have a period of 60 days to do this. In damage issues of a clerical nature, an honest explanation of the circumstance will result in the mitigation of the penalty to a nominal sum - usually one hundred dollars.

In all cases, contact your Customs broker immediately. Most often, he or she will handle the petition for relief for you. If your broker feels that the matter is very serious, he will suggest that you contact an attorney-at-law familiar with Customs matters.