

Don't Overlook Reasonable Care

One common misconception among U.S. importers is that they don't have to worry about what's on their commercial invoice and other import documentation. These importers will often neglect to provide their Customs broker with a truly complete product description or accurate country of origin because they don't think they have to sweat the details. What they may not realize is that these types of requirements fall under the umbrella of what U.S. Customs & Border Protection (CBP) refers to as "reasonable care." Importers who do not attend to these crucial requirements risk delays in release of their goods, audits, and penalties.

Defining reasonable care

CBP expects all importers to exercise some form of caution (i.e. reasonable care) when dealing with [1]

- import documentation
- country of origin verification, marking, and labeling
- tariff classification, valuation, and duty rates
- quantity
- free trade agreements
- other government agencies
- recordkeeping

Although this is by no means an exhaustive list, importers must be careful with all details relating to these areas, as well as have written procedures to document their approach. In other words, as an importer, you should be able to prove to Customs that you provided and obtained the right information to meet these regulatory standards.

Is there a right way to manage my reasonable care?

CBP allows you flexibility in how you manage your reasonable care responsibilities. You can manage them yourself, use an expert (a licensed Customs broker,

attorney, or accountant), or a combination of the two.

If you decide to use an expert, it is important to choose wisely. CBP expects you to qualify your expert by asking if their firm is a licensed Customs broker or, in the case of an attorney or accountant, if they have specialized knowledge or expertise in CBP matters. When in doubt, avoid taking advice from unregulated or unlicensed “experts,” as it will not serve in your defense during a CBP audit.

Once you’ve qualified your expert, it is crucial to provide him or her with complete and accurate information about the import transaction. Falling short of this requirement will lead CBP to view your company as lacking reasonable care.

What steps can I take?

Prior to import

- Familiarize yourself with U.S. import requirements by reading informed compliance publications like, *What Every Member of the Trade Community Should Know About: Reasonable Care* [2].
- Determine if there are any other government requirements for your imported products, such as an FDA Prior Notice for food products or additional labeling requirements for wearing apparel.
- Bookmark the link to the online Harmonized Tariff Schedule for quick classification reference [3].
- Consult with a licensed or certified expert, such as a Customs broker, attorney, or accountant.
- Search CROSS, CBP’s online ruling database, to see if Customs has previously ruled on a product similar to yours [4]. Use this ruling as a guide for classifying, valuing, and marking your goods.
- If after consulting with an expert and reviewing CROSS you are still in doubt of your product’s correct classification, origin, value, etc., seek a binding ruling from CBP. The beauty of a binding ruling is that it provides CBP and the importer with a definitive answer on these aspects of the product.
- Document your processes for classification, origin verification, valuation, marking, etc. and provide employees with step-by-step instructions to achieve compliance. Keep procedures simple and easy to follow and them with your vendor and Customs broker.
- Create a tariff database and share it with your broker to cut down on entry errors. Periodically review the database and provide your broker with any updates.
- Issue purchase order instructions to your vendor that match your invoice requirements.

After import

- Attend trade seminars and read newsletters to stay informed of changing requirements.

- Review your commercial invoice or proforma invoice to make sure all requirements are met [5].
- Verify that entries prepared by your broker are correct. If you find an error during a post entry review, correct it and work with your vendor and broker to prevent it from happening again.
- Establish a recordkeeping program. Verify which documents should be kept, how long they should be retained, and how they should be stored.

Keeping up with your reasonable care responsibilities is not easy but with continued effort you will be able to show CBP that you've done your homework.

Footnotes

[1] per U.S. Code Title 19, Section 1484(a)(1).

[2] See the list of Informed Compliance Publications, including Reasonable Care (A Checklist for Compliance), on U.S. Customs & Border Protection's website, www.cbp.gov.

[3] View the Harmonized Tariff Schedule at www.usitc.gov/tata/hts/.

[4] See rulings.cbp.gov.

[5] For a complete list of requirements see 19 CFR 141.86-141.89 and 142.6.

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MOHAWK GLOBAL TRADE ADVISORS helps companies understand and implement policies and procedures for reasonable care requirements through on-site staff training, import audits, and compliance program development.

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