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Customs Compliance: Challenges in the New Tariff Environment

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Customs Compliance in the New Tariff Regime

Trump Tariffs: How Do They Impact Customs Compliance?

How Trump Tariffs Raise Stakes for Import Compliance

- Higher Tariffs = Rapidly Increasing Underpayments from Mistakes
- Higher Tariffs = Higher Potential Penalties
- Complications of Overlapping Tariffs = Multiplying Complications
- Directives to CBP to Focus on New Tariff Collection and to Assess Penalties Without Regard to Mitigating Measures = Higher Risk
- Increasing Risk of False Claims Act Actions = Multiplying Risks

Complicating Factors

- New sectoral tariffs require precise classification determinations.
- Many ambiguities remain on basic implementation:
  - How to calculate steel and aluminum content.
  - How automotive parts and components will be implemented/newly announced rebate program.
  - How de minimis levies will operate and whether they will slow down Customs, as they cover 92% of all packages handled by Customs.
- How Customs will crack down on tariff evasion.

How Trump Tariffs Raise Stakes for Import Compliance

- Importers of record are 100% responsible for all underpayments – not customs brokers.
- Customs has unprecedented insight into electronic import records and can run algorithms to look for anomalies.
- Thus, the final equation is:
  - Heightened risk + heightened penalties + heightened chance of discovery = better get compliance in order

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Trump Tariffs: How Can Importers Cope?

Twelve Steps to Managing Tariff and International Trade Uncertainty

- **Step 1: Risk Identification – Understanding Your Company's Importing Patterns and How They Impact Your Company's Importing Risk Profile.**
  - Pull ACE data on full imports and identify full range of imported products.
  - Gather full information on historic and planned import patterns to understand the full scope of potential supply chain disruptions and higher tariffs on importing costs.

Twelve Steps to Managing Tariff and International Trade Uncertainty

- **Step 2: Risk Planning – Understanding How To Add Flexibility To Your Supply Chain To Address Your Company's Import-Related Risk.**
  - Setting up alternative and secondary suppliers.
  - Dealing with qualification issues and concerns.

Twelve Steps to Managing Tariff and International Trade Uncertainty

- **Step 3: Contractual Risk Management – Identifying Ways to Increase Your Company's Contractual Ability to Adapt to Unexpected Changes in the Importing Environment.**
  - Gather all buy- and sell-side contracts to determine where tariff vulnerabilities exist.
  - Force majeure and commercial impracticability are not meaningful protections.
  - Look for ways to gain tariff-related flexibility to share risk for tariffs.
    - New contracts & contracts up for renewals.
    - Use commercial expansions as carrot for contract revisions.

Twelve Steps to Managing Tariff and International Trade Uncertainty

- **Step 4: Risk Minimization – Ensuring Your Company's Customs Compliance Is in Order.**
  - In a high-tariff environment, underpayments mount much more quickly, as do penalties.
  - Review Customs compliance to your company is not underpaying Customs tariffs.
    - Country of origin/Chinese parts and components
    - USMCA/FTA compliance
    - Antidumping/Countervailing Duty Order Review
    - Classification
    - Assists
    - Valuation
    - Post-entry checks
  - Consider conducting an internal Customs audit on a judgmental sample.

Twelve Steps to Managing Tariff and International Trade Uncertainty

- **Step 5: Opportunity Identification – Ensuring Your Company Is Maximizing Tariff Savings.**
  - Tariff savings become more valuable in a high-tariff environment.
  - Duty Drawback, FTZs, use of Customs Bonded Warehouses.
  - Risk model strategies if USMCA preferences disappear.

Twelve Steps to Managing Tariff and International Trade Uncertainty

- **Step 6: Prioritize Understanding How the New Tariffs Impact Your Imported Goods.**
  - Understand the derivative aluminum and steel rules.
  - Understand upcoming US-origin calculations (coming) for auto parts.
  - Follow CSMS messages as CBP works through issues.
  - Ensure country-of-origin declarations are accurate for country-specific tariffs.

Twelve Steps to Managing Tariff and International Trade Uncertainty

- **Step 7: Protect Against Higher Penalties By Establishing Post-Entry Checks and Filing Post-Summary Corrections.**
  - Always a recommended step, but more critical than ever in a high-tariff, high-penalty environment.
  - Customs expects results of any Form 29s or other determinations will be uniformly applied to all PSC entries.

Twelve Steps to Managing Tariff and International Trade Uncertainty

- **Step 8: Prepare For Potential Penalty Claims By Preparing Reasonable Care Memoranda.**
  - Most frequent request we are getting in the new tariff world.
  - Most common requests:
    - Classification
    - Derivative product status USMCA status

Twelve Steps to Managing Tariff and International Trade Uncertainty

- **Step 9: Protect Against Penalties By Filing Prior Disclosures.**
  - Customs has unprecedented visibility into import data through ACE.
  - Tariff proclamations direct Customs to prioritize new tariff enforcement.
  - Penalties to be imposed without taking into account mitigating factors.
  - Voluntary self-disclosures are only way to lock in no penalty.

Twelve Steps to Managing Tariff and International Trade Uncertainty

- **Step 10: Survey Your Supply Chain to Determine Exposure to Higher Tariffs.**
  - Already seeing this at numerous clients – both incoming and outgoing surveys.
  - Intent is to identify indirect tariff risks.
    - When not the importer of record.
    - When sourcing domestically from U.S. companies that use imported parts and components.
    - Determine downstream pricing scenarios.

Twelve Steps to Managing Tariff and International Trade Uncertainty

- **Step 11: Monitor and Educate Your Company's Import Stakeholders Regarding New Tariff and International Trade Developments.**
  - Anyone in import-related functions
  - Procurement and purchasing
  - Product development
  - C-Suite

Twelve Steps to Managing Tariff and International Trade Uncertainty

- **Step 12: Minimizing Supply Chain Integrity Risks – Understanding Your Supply Chain and Mitigating Supply Chain Integrity Risk, Right Down to the Last Sub-Supplier.**
  - Issue both for existing and especially new suppliers.
  - 1000x increase in detentions relating to supply chain integrity, especially UFLPA.
  - Vetting of new and secondary suppliers needs to take supply chain integrity concerns into account.
  - Supply chain mapping, sub-supplier identification, flow-down conditions, focus on Chinese parts and components/UFLPA – all are related issues that can't be ignored while focusing on tariffs.

Typical Items for Importers to Consider

- Tariff risk management strategies
- Changes to supply chain
- Customs and Import Compliance
  - Work through new tariff rules.
  - Establish and regularly update a Customs Classification Index.
  - Consider Putting in Place Reasonable Care Memos.
  - Customs Compliance: Customs Manual, Broker Oversight.
  - Consider Internal Customs Audits.
  - Request Manifest Confidentiality.
  - Supply Chain Integrity Reviews.
- Contractual review – tariff surcharges, tariff sharing

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MARY CAGLE

Best Practices for Minimizing Customs Penalties

The Importance of Managing Import Risk in the New Tariff Environment

- Impossible to overstate just how much visibility Customs has into the entries of each importers.
  - ACE has full information on all elements relating to assessment of tariffs.
  - Automation through ACE leads to increasing CBP mining of import data.
  - We already are seeing sharply increased use of Form 28 Requests for Information and Form 29 Notices of Action.
  - We already are seeing the increased use of spot audits and Risk Analysis and Survey Assessments (RASAs).
- The new tariffs will turbocharge these developments.
  - Customs is bringing all its enforcement to bear on the new tariffs.
  - New tariffs direct Customs to impose maximum penalties for underpayments of the new tariffs.
  - New tariffs are complicated and increase the potential for errors.
- In the current high-tariff, high-penalty environment, Customs compliance is more important than ever.

Being Pro-Active Is Key

- Most commonly seen problems even at experienced importers.
- Proactive identification is key. Once Customs has flagged a problem, can be too late to claim self-disclosure credit.
- Combination of strong Customs compliance, post-entry checks, and compliance audits best way to address issues before they multiply.

Seven Common Errors

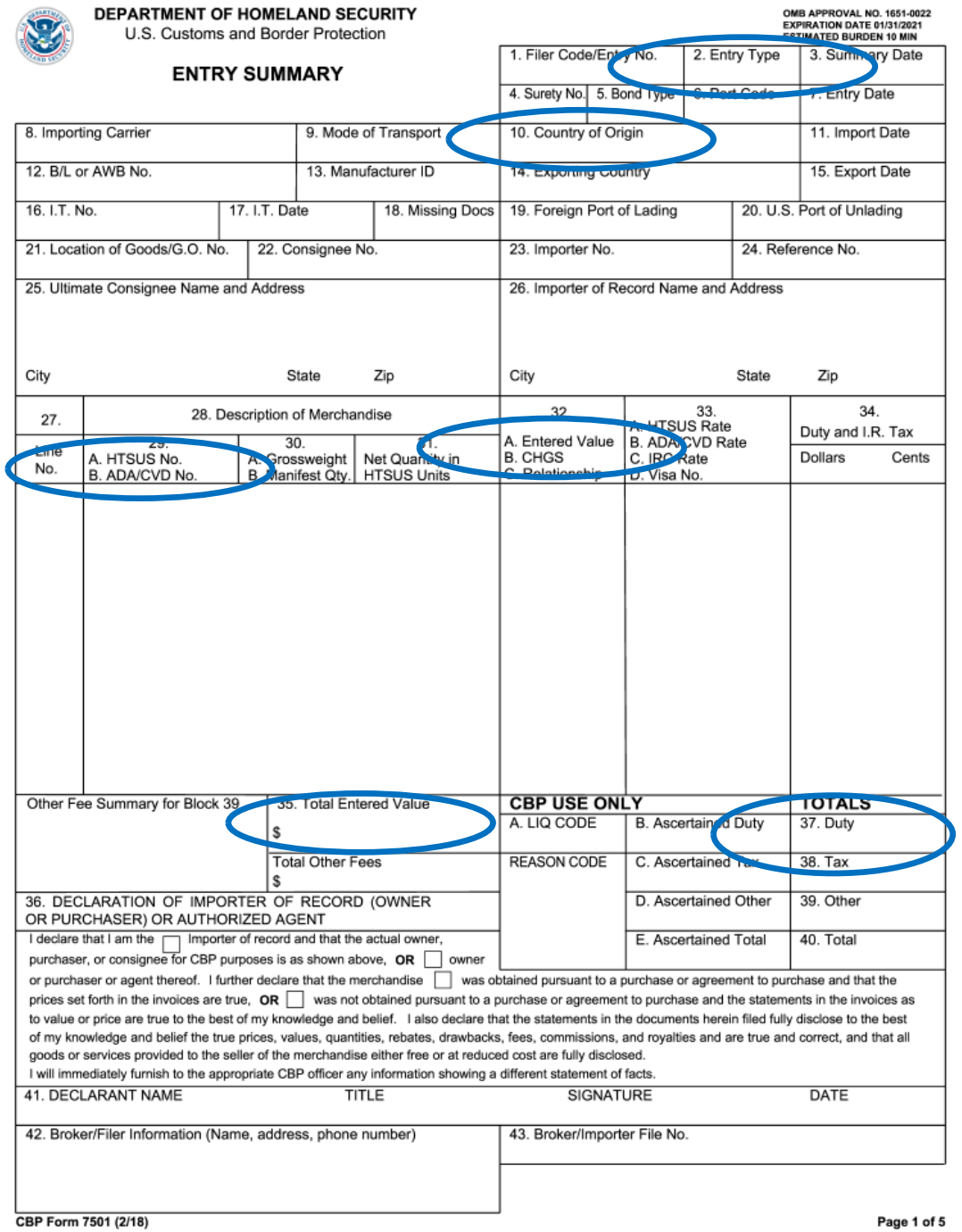
1. Over-reliance on Customs brokers	→	Compliance, post-entry checks, and audits
2. Failure to have a Customs Manual	→	Tailored Customs Manual
3. Failure to have a Customs Classification Index	→	Systemize classification and memorialize, including backup for classification decisions
4. Failure to Meet USMCA or other FTA Requirements	→	Update NAFTA rules, check country of origin, and ensure certificates of origin are in order
5. Failure to Track Assists Properly	→	Set up system for tracking production aids
6. Failure to implement transfer pricing requirements	→	Commission transfer pricing study that meets Customs (not IRS) requirements
7. Failure to Maintain Required Customs Records	→	Systemize recordkeeping, integrate into RIM program, and tie records to individual entries

The Seven Deadly Import Sins

- Many of the most common import errors we see are items where importers assume that the Customs broker or freight forwarder “will take care of it.”
- All of the most common errors are ones that:
  - Show up on the Form 7501.
  - Are items that should be caught by a well-functioning post-entry check system.
  - Are items that Customs generally can identify by data mining.

The Seven Deadly Import Sins

1. Failure to Provide All Required Form 7501 and Backup Information
2. Field 2 (Entry Type): Failure to Recognize Applicable AD/CVD Orders
3. Field 10 (Country of Origin): Failure to Properly Determine Country of Origin
4. Field 29 (Classification/HTSUS): Failure to Classify Goods Correctly
5. Field 32 & 36 (Entered Value): Failure to Declare Correct Entered Value Based on Relevant Incoterms/Terms of Sale
6. Field 32 & 36 (Entered Value): Failure to Include Off-Invoice Items, Such as Assists and Royalties
7. Field 37 (Duty): Failure to Follow USMCA/FTA Requirements When Claiming Preferential Treatment



DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection

OMB APPROVAL NO. 1651-0022
EXPIRATION DATE 01/31/2021
ESTIMATED BURDEN 10 MIN

ENTRY SUMMARY

1. Filer Code/Entry No. | 2. Entry Type | 3. Summary Date
4. Surety No. | 5. Bond Type | 6. Port Code | 7. Entry Date
8. Importing Carrier | 9. Mode of Transport | 10. Country of Origin | 11. Import Date
12. B/L or AWB No. | 13. Manufacturer ID | 14. Exporting Country | 15. Export Date
16. I.T. No. | 17. I.T. Date | 18. Missing Docs | 19. Foreign Port of Lading | 20. U.S. Port of Unlading
21. Location of Goods/G.O. No. | 22. Consignee No. | 23. Importer No. | 24. Reference No.
25. Ultimate Consignee Name and Address — City State Zip
26. Importer of Record Name and Address — City State Zip

27. Line No. | 28. Description of Merchandise | 29. A. HTSUS No. B. ADA/CVD No. | 30. A. Grossweight B. Manifest Qty. | 31. Net Quantity in HTSUS Units | 32. A. Entered Value B. CHGS C. Relationship | 33. A. HTSUS Rate B. ADA/CVD Rate C. IRC Rate D. Visa No. | 34. Duty and I.R. Tax Dollars Cents

Other Fee Summary for Block 39 | 35. Total Entered Value $ | Total Other Fees $

CBP USE ONLY: A. LIQ CODE | REASON CODE | B. Ascertained Duty | C. Ascertained Tax | D. Ascertained Other | E. Ascertained Total

TOTALS: 37. Duty | 38. Tax | 39. Other | 40. Total

36. DECLARATION OF IMPORTER OF RECORD (OWNER OR PURCHASER) OR AUTHORIZED AGENT

I declare that I am the ☐ Importer of record and that the actual owner, purchaser, or consignee for CBP purposes is as shown above, **OR** ☐ owner or purchaser or agent thereof. I further declare that the merchandise ☐ was obtained pursuant to a purchase or agreement to purchase and that the prices set forth in the invoices are true, **OR** ☐ was not obtained pursuant to a purchase or agreement to purchase and the statements in the invoices as to value or price are true to the best of my knowledge and belief. I also declare that the statements in the documents herein filed fully disclose to the best of my knowledge and belief the true prices, values, quantities, rebates, drawbacks, fees, commissions, and royalties and are true and correct, and that all goods or services provided to the seller of the merchandise either free or at reduced cost are fully disclosed.
I will immediately furnish to the appropriate CBP officer any information showing a different statement of facts.

41. DECLARANT NAME | TITLE | SIGNATURE | DATE

42. Broker/Filer Information (Name, address, phone number) | 43. Broker/Importer File No.

CBP Form 7501 (2/18) | Page 1 of 5

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New Tariffs Mean New Compliance Challenges

1. Country of Origin Now Greatest Determinant of Amount of Tariff	Customs is closely scrutinizing for transshipment and failure to meet substantial transformation rules
2. Third-Party Use of Chinese Parts and Components	Carefully analyze all third-party manufacturing and document analysis in case of CBP inquiry
3. Misclassification to Claim Section 232 Tariff Treatment	Carefully analyze classification and application of new sectoral tariff requirements
4. False Claims of USMCA Compliant Status/exemptions from Canada-Mexico tariffs	Work through complicated USMCA originating status requirements, including product-specific requirements
5. Failure to Include Mandatory Additions to Entered Value	Review assists, royalties, freight costs and other mandatory additions to value, including in post-entry checks
6. Incorrect Offboarding of Portion of Entered Value	Avoid “strategies” like stripping royalties or side agreements to pay part of purchase price
7. Meeting all Required Elements for First Sale Rule	Understand full requirements for bona fide sale and restrictions on when narrow rule can be applied

Focus on Tariff-Saving Opportunities

- Strong Customs compliance includes both risk management and identification of savings opportunities.
- Significant way to mitigate risk of substantial penalties.
- Tariff savings are particularly important in the current, high-tariff environment: Section 232, Section 301, and record AD/CVD cases.
- One of the few compliance areas that can have a positive ROI! Most internal Customs audits reveal tariff-saving opportunities.

The Most Important Tariff-Saving Opportunities in the New Tariff Environment

1.	Classify Correctly for Sectoral Tariffs	→ Risk-Based Review of Classifications, with documented application of HTS analysis
2.	*Properly* Identify Tariff-Engineering Opportunities	→ Applying rules of origin to seek favorable tariff rates/move production steps
3.	Failure to Use Duty Drawback	→ Although certain new tariffs restrict use of duty drawback, still a useful tool for re-export situations
4.	Failure to use Temporary Import Bonds, Foreign Trade Zones, or Bonded Warehouses	→ Weigh the pros and cons of keeping goods from entering the US Customs territory or forestalling duty payments
5.	Failure to File PSCs or Protests Against Liquidation	→ Using post-entry checks to identify problems and claim favorable tariff treatment

Takeaways

- In a high-tariff, high-penalty environment, Customs compliance is more important than ever.
- Customs has more ways than ever to catch import errors through data mining of import data.
- Customs compliance doesn't happen by accident. It requires understanding the company's import patterns, establishing tailored compliance solutions, and constant oversight.

Takeaways

- The key compliance items that every frequent importer should have are:
  - a tailored Customs manual
  - a Classification Index
  - a system for tracking assists
  - for companies that rely on free trade preferences, procedures for FTA compliance
- Proper Customs compliance not only can minimize errors, it also can reveal tariff-saving opportunities.

Speaker

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