

## Global Trade Advisor — Summer 2009

### More rules, steeper penalties require focus on customs and trade compliance

Companies engaged in international commerce need to take customs and trade compliance more seriously in this post-9/11 era of increasing regulations, stepped-up enforcement and steeper penalties, cautions one industry expert.

Recent trade regulation developments are sending a couple of clear signals, says Robert Stein, director of customs and trade compliance for Mohawk Global Logistics, a full-service international and domestic logistics provider. "One is that companies are expected to know their supply chains," Stein says. "The other is that companies should focus less on the cost of compliance and more on the cost of *non*compliance."

Below are some recent regulatory developments that illustrate the importance of these messages.

#### Importer Security Filing program

The Importer Security Filing (ISF) program, also known as "10 + 2," is designed to help U.S. Customs and Border Protection ("Customs") capture detailed information about shipments before they are loaded on vessels bound for the United States. The program has been in place since January 26, 2009, but enforcement won't begin until January 26, 2010.

Under the ISF program, at least 24 hours prior to vessel loading, U.S. importers must transmit detailed information to Customs about any shipment bound for them.

Filings must be timely. Beginning next January 26, Customs won't allow ships to load unless the ISF filing beats the 24-hour deadline.

In addition, information in the filing — such as the goods' Customs classification, country of origin, manufacturer, etc. — must be accurate. Inaccurate filings will subject importers to a \$5,000 penalty per violation. "However, Customs has said it will base penalties on how hard it perceives an importer has worked to be compliant," Stein notes. "Having a good track record might mitigate the penalty."

Customs has been issuing progress reports to importers that have initiated 10 + 2 filings. "These reports can help importers work with their export partners to improve filing timeliness and accuracy, as well as provide a record to show Customs they have been making a good faith compliance effort," Stein says.

As a result, importers are wise to begin ISF filings as soon as possible this year, he says.

### **Lacey Act amendments**

With the enactment of the 2008 Farm Bill, the Lacey Act was amended to require an import declaration for certain plants and plant products. Importers of these products must file a declaration that contains information such as the plant's scientific name, the value of the importation, its quantity and the name of the country from which the plant was taken.

The declaration requirements are being phased in. The current second phase, which runs through September 30, 2009, adds certain wood products (e.g., sheets for veneering, tools and tool handles) to the list of products that importers must declare.

Phase 3 beginning in October 2009 will require declarations for certain wood pulp products, and phase 4 beginning in April 2010 will require declarations for various paper products and furniture.

Importers must research the required information, complete a paper declaration form they can access at the [Animal and Plant Health Inspection Service \(APHIS\)](#) Web site, and then submit the form to their customs broker, who files the declaration electronically.

Amendment violators are subject to commercial civil penalties of \$10,000 per violation and individual civil fines of \$250. Criminal penalties are much more severe, with misdemeanors triggering penalties for individuals of \$100,000 and up to a year in prison, and \$200,000 for organizations. Meanwhile, felony convictions incur penalties for individuals of \$250,000 and up to five years in prison, and \$500,000 for organizations.

### **Increased penalties for export violations**

Exporters too must focus on compliance. One reason is that recent federal legislation has increased penalties for violations of U.S. sanctions and dual-use export control regulations. The latter were designed to control the export of goods that can be used for secondary purposes such as weapons production.

In October 2008, civil penalties rose to \$250,000 per violation (or twice the value of the transaction) from \$50,000. Criminal penalties increased to \$1 million per transaction and up to 20 years in prison for a "knowing and willing violation."

### **Improve your compliance efforts**

Not only are regulations multiplying and penalties escalating, but the government is using technology as a tool to enforce the rules more aggressively, Stein says.

So how should companies that source and/or sell products overseas respond? Stein, a licensed customs broker and certified customs specialist, offers this advice:

- *Don't procrastinate.* For example, take advantage of grace periods such as the one Customs is offering for ISF filing and prepare early for Lacey Act amendment declaration requirements.
- *Engage experts to conduct spot compliance audits.* There are consultants, customs brokers and attorneys that can help companies gauge their level of compliance. Often, companies fall short in such routine matters as record-keeping, valuations, NAFTA violations, misclassification of goods and improper declaration of country of origin.
- *Invest in in-house programs and expertise.* Now that all import and export filings must be done electronically, the federal government's ability to mine and monitor data has improved dramatically.
- *Utilize online resources.* The Bureau of Industry and Security (BIS) offers an [Export Management & Compliance Program Self-Assessment Tool](#). The [Customs and Border Protection](#) Web site is a great source for compliance information and provides a model internal control manual. You can also visit the sites of customs brokers and attorneys.
- *Look to a trade services bank like RBS* for compliance counsel and references to industry professionals who may be able to help.