CUSTOMS AND TRADE

Customs Blueprint update

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At the end of November 1999, the Canada Customs and Revenue Agency (CCRA) conducted two seminars that provided more details on two topics relating to its Blueprint launched a year earlier. In particular, the Customs Self Assessment process was analyzed and the Customs-Wide Sanctions study results were presented.

Customs Self Assessment (CSA)

CSA features an audit and profile-based approach that would offer streamlined release, extended accounting time limits, and the use of company systems to report trade data. However, the CCRA is planning to make this option available only to those importers and carriers that satisfy the following strict conditions, namely:

- be a known business to Customs (i.e., have a two-year history as a business entity);
- be without contraband, major commercial infractions, or risk;
- provide a description and management representation of commercial business processes and Customs' reporting interfaces to ensure that the books and records provide appropriate audit trails and linkages;
- be a resident importer (initial implementation);
- must recognize and support the right of the CCRA to perform audits;
- must be willing to enter into a partnership with Customs that maximizes compliance; and
- must sign a compliance agreement, sustainable in law, that lays out the rules and penalties for non-compliance.

Provision will be made for a streamlined application process for companies that have successfully completed a periodic verification.

In order to benefit from this program, an importer needs to have a low-risk profile. Therefore, more attention should be paid to creating such a profile before the program is introduced.

The CSA application process will require detailed and specific documentation related to the linkages, triggers and auditability to books and records as well as business systems. To prepare for these requirements the use of a professional (i.e., a Customs expert or a certified accountant) is recommended by the CCRA. The initial application form may also include information regarding the steps that the participant will take to minimize risk.

After the First Level Application form and all required documents are submitted, Customs will perform a risk assessment based on the information provided. If an importer or a carrier meets the requirements, it will be advised to proceed with the process. At the Second Level, applicants will need to provide detailed descriptions and documentation relating to existing systems and business flows and proposed changes to systems and flows to support CSA implementation and program compliance review. Finally, a Compliance Agreement is signed by both parties (i.e., the CCRA and importer/carrier). Finally, in order to use the CSA Shipment Release Option at the border, the shipment should have a CSA approved importer, a CSA approved carrier, a CANPASS registered driver, and be a low-risk US shipment.

Regardless of whether the CSA Release Option is used, the CSA accounting and payment processes can always be used. Extended accounting timeframes would give importers an opportunity to provide correct data and reduce the number of adjustments. Although it is planned that reporting will be on a monthly basis, it is presently allowed on a maximum weekly basis. Payments will have to be made on the last day of each month.

Customs-Wide Sanctions Study

The importance of compliance with the laws governing importation and exportation was stressed during the presentation on sanctions. The major consequences of non-compliance include financial exposure resulting from reassessment and/or penalties on goods already sold and exposure to foreign audits and lawsuits by foreign clients for non-qualifying goods imported under NAFTA and other trade agreements. Errors made over a long period of time could accumulate a significant duty liability. For example, if an importer has claimed

preferential tariff treatment for certain goods that do not qualify, the importer will be liable for the duty owed over the entire period that it was importing these goods. Most importantly, Customs facilitation will be increasingly linked to a client's compliance record. This means that Customs and trade compliance must become a priority to benefit from the Customs' programs that streamline release and post-release processes.

The CCRA will strengthen the current sanctions regime with an Administrative Monetary Penalty System (AMPS), which will provide a graduated range of 100 civil penalties that will increase with the frequency and gravity of the infraction. AMPS will include a comprehensive list of fines and penalties to address a wider range of program needs, including sanctions for non-revenue compliance issues. Penalties will range from warnings and fines to more severe consequences such as loss of licences and they will be proportional to the compliance history of importers, exporters, and service providers.

Conclusion

It may look like Customs' standards are softening. Be careful, this is an illusion and does not mean that importers' and exporters' lives are getting easier. On the contrary, since it will be up to companies to establish their "own" standards, businesses need to ensure that the CCRA agrees to those chosen standards. Businesses have to not only be more responsible, but also be more prepared for audits, an area in which the CCRA is as active as ever.

Duty refunds available in the U.S. and Canada on a first come, first served basis

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North American exports of non-NAFTA apparel and textile goods may qualify for reduced or free rates of duty under the Tariff Preference Level (TPL) mechanism. Textile and apparel goods that were imported from NAFTA countries that were not certified under the NAFTA in 1999 and 2000 may apply for TPLs retroactively.

TPLs are subject to quantitative restrictions. To qualify for TPLs, the goods must be cut or knit to shape, and sewn or otherwise assembled in one or more NAFTA countries. Permits may be issued in the country of export, which would extend NAFTA rates of duty to the qualified goods.

A significant amount of TPLs for goods exported to the USA from Canada is available in 1999 and 2000. An even larger amount of TPLs is available for goods exported to Canada from the USA. These TPLs essentially represent a refund of duty on a first come, first served basis, since there is a finite amount of relief available.

What does this mean?

Importers of apparel and textile goods in the USA and Canada may apply for TPLs retroactively. This would allow an importer to recover any duties that were paid in Canada and the USA.

The low utilization rate in the USA may also be due to goods being certified under the NAFTA, resulting in the duty-free importation in the USA and Canada.

The TPLs are in place to allow apparel and textile goods to be imported from other NAFTA countries if they are subject to significant processing. This provision is in the NAFTA, as it recognized that many articles of apparel and textile goods would not meet the "yarn forward" test that is required to qualify goods under the NAFTA. This condition requires that the yarn must originate in North America for the finished goods to qualify as originating goods under the NAFTA.

Exporters in the USA that are certifying goods under the NAFTA may want to review their NAFTA certificates for accuracy and, when errors are identified, request TPLs retroactively. By doing so, assessments may be avoided in both the USA and Canada.

Non-apparel articles that may qualify for TPLs include blankets, bedding, sails for boats, curtains, and tents. Importers of such goods should act quickly before the TPL quotas are met.