

IMPORTER'S GUIDE TO U.S. CUSTOMS CLEARANCE OF IMPORTED GOODS

DANIEL MARK OGDEN
Attorney & Counselor at Law
Licensed Customs Broker
International Trade Consultant
1925 E. Belt Line Rd., Suite 516
Carrollton, Texas 75006
(972) 417-1916 (voice)
(775) 535-1548 (fax)
www.internationaltradeattorney.com
daniel.ogden@internationaltradeattorney.com

© Daniel Mark Ogden, 1993-2008. All Rights Reserved.

The United States Customs Service (part of the Bureau of Customs and Border Protection) is charged by law to regulate the importation or entry of goods into the Customs territory of the United States. U.S. Customs territory includes all 50 states, D.C., and Puerto Rico. The two most important issues for importers to understand regarding the clearance of imports through U.S. Customs are the *entry process* for imported goods, and the *duty determination process* by which the amount of the import duty (or tariff) is determined. Additionally, the *relief* available for importers in response to U.S. Customs actions and rulings is also an important issue of which importers should be aware.

A. Entry Process

All goods which are imported into U.S. Customs territory must undergo a legal process called *entry* in order to be clear Customs and legally be imported into the U.S. Entry of imported goods into U.S. Customs territory does not legally occur until the import has arrived at the U.S. port of entry, Customs has authorized the entry of the goods, and any estimated duties owed on the goods have been paid. Imported goods are said to have cleared Customs when the goods have been successfully undergone entry.

When imported goods physically arrive within U.S. Customs territory, entry documents must be filed with U.S. Customs before Customs will release the goods. Once the goods arrive and are presented for entry, and the goods are either examined by Customs or examination is waived, Customs will release the goods upon either the filing of certain required entry documents or the filing of an entry summary, provided that no legal violations pertaining to the imported goods have occurred. If release is sought on the basis of the filing of the entry documents only and not the entry summary (which includes a deposit of estimated duties), then Customs will not release the goods unless a bond sufficient to cover any estimated duties has been posted by the person making the entry. Note that even after the release of the imported goods by Customs, however, Customs still has jurisdiction over the goods until the entry of the goods has been liquidated by Customs.

1. Right to Make An Entry

Imported goods may only be entered by persons who have the legal authority to enter such goods. There are three types of such persons.

a. *Importer of record*

The person who has documentary legal title to the goods when they physically arrive in

U.S. Customs territory. A person has documentary title when they are the person listed on the bill of lading or the waybill as the consignee. This person could be the U.S. buyer (usually), the U.S. buyer's agent, the foreign seller, or the foreign seller's agent. A foreign seller is classified as the importer of record when title to the imported goods does not actually pass from the foreign seller to a U.S. buyer until after the goods have already arrived within U.S. Customs territory. In all instances, the importer of record is always liable for the payments of any duties owed on the imported goods.

b. *Ultimate Purchaser*

The person who is the ultimate purchaser of the goods after they arrive within U.S. Customs territory, even if such person is not the importer of record. Usually a person is the ultimate purchaser but not the importer of record when that person imports goods through an import agent whose name is listed on the bill of lading as the consignee.

c. *Licensed Customs Brokers*

Persons who are licensed by the U.S. Customs Service to serve as agents for importers of record or purchasers by entering and clearing goods through U.S. Customs. While customs brokers are not legally required to be used in order to enter goods through U.S. Customs, nevertheless because of their specialized expertise it is desirable in most circumstances to employ their use. If a customs broker is used to enter imported goods, the importer must provide the broker with a power of attorney authorizing the broker to engage in such activity.

2. Forms of Entry

There are several different forms of entry categorized by the intended purpose of the entry, each having their own requirements.

a. *Consumption Entry*

The most common form of entry, consumption entries are used whenever imported goods are to be "consumed" or used by the ultimate purchaser within U.S. Customs territory

b. *Transportation Entry*

This entry is used when imported goods are transported within the U.S. to another U.S. port of entry where they will then undergo a consumption entry, or when imported goods are transported through the U.S. from one country to another (e.g. Canada to Mexico). Although the goods are physically within U.S. Customs territory, they are not legally entered into U.S. Customs territory and therefore may not be "consumed" without undergoing a consumption entry. The goods must be sealed in the transportation carrier by Customs and may not be unsealed before undergoing a consumption entry.

c. *Temporary Importation Under Bond Entry (TIB)*

This form of entry is used when goods are imported temporarily into the U.S. under bond. Only certain goods are eligible for this entry. TIB entries are valid for one year after which the goods must undergo a consumption entry, be re-exported from U.S. Customs territory, or be destroyed. A failure to perform one of the foregoing will result in forfeiture of the bond (which generally is around twice the estimated dutiable value of the goods).

d. *Warehouse Entry*

This form of entry is used when goods are imported into a Customs approved bonded warehouse. The goods may reside in the bonded warehouse for up to five years after which the goods must undergo a consumption entry, be re-exported from U.S. Customs territory, or be destroyed. If the goods physically leave the bonded warehouse before this five year period expires, they must then undergo a consumption entry, a transportation entry, or be re-exported from U.S. Customs territory.

e. *Foreign Trade Zone Entry (FTZ)*

This form of entry is used when goods are imported into a foreign trade zone. The goods may reside in the FTZ indefinitely. If the goods leave the FTZ, however, they must undergo a consumption entry, a transportation entry, a warehouse entry, or be re-exported from U.S. Customs territory.

f. *Drawback Entry*

This form of entry is used when a duty drawback is claimed on goods that are imported into U.S. Customs territory and then are re-exported from U.S. Customs territory. A drawback entry must be filed within three years of the date of exportation.

g. *Appraisement Entry*

This form of entry is used for certain specialized categories of goods that are imported into U.S. Customs territory.

h. *Mail Entry*

This form of entry is used when items such as parcels, letters, packages, boxes, or similar articles are imported into U.S. Customs territory through U.S. mail. These entries may either be formal or informal entries.

i. *Informal Entry*

This last form of entry has less stringent requirements than formal entries (which include all of the above forms of entry). Imported goods may be entered informally when (1) they have a dutiable value of less than \$2500, (2) they are of a certain class of goods which are entitled to entry free of duty, (3) they are certain other classes of goods, or (4) they are goods of U.S. origin that were originally exported from U.S. Customs territory and are being re-imported back into U.S. Customs territory solely for the purposes of repair or alteration prior to a re-exportation.

3. Documents Required to be Filed For Entry

The process of entry requires that certain documents be filed with U.S. Customs. Some of the most important of these documents include the following:

a. *Evidence of Right to Make Entry*

One of the two following documents must be filed with U.S. Customs evidencing that the person making the entry has a legal right to make such an entry—

- 1) a bill of lading showing the importer of record as the consignee; or
- 2) a carrier's certificate that is used when the bill of lading is not used or available and is a certification by the carrier that the person making the entry has documentary title to the goods or is authorized by such person as an agent to make the entry.

This document must be filed with U.S. Customs within five days of date of arrival of the imported goods into U.S. Customs territory.

b. Invoice

U.S. Customs uses invoices primarily to determine the duty to be assessed on the imported goods. One of two types of invoices must be filed—

- 1) a *commercial invoice*, which has specific requirements as to certain information which must be included such as the port of entry, the names and addresses of seller and buyer, a detailed description of the imported goods, the country of origin, the charges for the goods, the currency of sale, and other pertinent information; or
- 2) a *proforma invoice*, which may be used only when a commercial invoice can not be produced at time of entry. If a proforma invoice is filed, then a commercial invoice must be filed not later than 120 days from the date of entry.

This document must also be filed with U.S. Customs within five days of date of arrival of the imported goods into U.S. Customs territory.

c. Entry Summary

This document, *Customs Form 7501*, must be filed within ten days of Customs' release of the imported goods, along with a deposit of the estimated duties on the goods. Other documents required to be filed at the same time as the entry summary are the entry package returned by U.S. Customs to the person making the entry after Customs releases the goods, and any other documentation necessary to prove that any Customs requirements have been satisfied.

d. Immediate Delivery

In certain unique circumstances, the usual entry process may be circumvented by filing Customs Form 3461, which is a Special Permit for Immediate Delivery. This document should be filed *prior* to the arrival of the goods into U.S. Customs territory. If Customs approves the filing, then the imported goods are released shortly after their arrival. Note, however, that the entry summary along with a deposit of the estimated duties owed must still be filed within ten days of release.

4. Entry Liquidation

Entries of imported goods into U.S. Customs territory are liquidated when Customs has issued final approval of the entry documentation, the classification of the imported merchandise, the duty rate on the imported merchandise and the amount of duty actually paid. Quite often, liquidation occurs upon the filing of the entry summary and all required documentation. Notice of liquidated entries is provided by the posting by Customs of a public

notice at the local Customs' office. If Customs does not approve of the filed entry summary, however, due to such matters as an incorrect classification or an insufficient incorrect deposit of duties, then the importer of record will receive a notice from Customs detailing the problem. If this notice is not responded to by the importer, then the entry is liquidated and the importer billed for any extra duty owed. Following the liquidation of an entry, if the importer of record is dissatisfied with some aspect of the liquidation, the importer has ninety days to file a protest with either the local Customs port director or the local Customs district director, or to request an administrative ruling by Customs headquarters in Washington, D.C. Once the time for any protest or administrative ruling request has expired, or if a timely filed protest or administrative ruling request has been finally denied, liquidation is final. Customs must liquidate entries within one year of the date of entry unless Customs extends the period, which can not be more than four years from the entry date.

B. Duty Determination Process

All imported goods that are entered into U.S. Customs territory must undergo a process of duty determination, even if ultimately no duty is imposed. Duty determination in all cases is a two step process– the *classification* of the imported goods to determine the duty rate of the goods, and the *appraisal* of the goods to determine their monetary value. Once the goods are classified and appraised, then the duty that is owed by the importer is calculated by multiplying the duty rate times the appraised value. While the importer has the obligation to make the proper duty determination and disclose that determination in the *entry summary*, the Customs Service has the final say as to the duty owed, unless the importer is able to reverse a Customs' duty ruling through a protest.

1. Classification of Imported Goods

The process of classification of imported goods is used to determine the good's duty rate. This duty rate is ascertained by classifying the goods as to their country of origin, and then, based upon that country of origin classification as well as the essential character of the goods, selecting the proper category under the *Harmonized Tariff Schedules of the United States* (HTSUS).

a. General Country of Origin Rule

In most instances, an imported good's country of origin is that country in which the good last underwent a “significant transformation” of the good's “essential character.” Nearly all imported goods are required to be marked as to their country of origin. A failure to properly mark such goods can lead to their seizure by Customs. Those goods that are exempt from marking are specified in what is called the J List.

b. NAFTA Country of Origin Rules

There are special Rules of Origin to determine whether or not an imported good is entitled to NAFTA treatment.

c. HTSUS

The Harmonized Tariff Schedule (HTS) is the result of an attempt to internationally harmonize the tariff (or duty) structure and classification of imported goods. The HTSUS, enacted in 1989, is the U.S. implementation of the HTS. All goods are classified in the HTSUS by a eight digit number (for example, leather cross-country ski gloves are classified as 4203.21.55). Goods are generally classified by their essential character; however, certain

goods are classified by their use.

d. *HTSUS Duty-Rate Categories*

The HTSUS has two main duty-rate categories—

- 1) Most-Favored Nation (MFN) Status— is given to imports from countries who have been granted MFN status pursuant to their membership in the GATT. This rate is used for imports from most countries who are not communist or otherwise embargoed. It is a greatly reduced rate from the statutory rate of the Tariff Act of 1930 (the infamous *Smoot-Hawley* tariff).
- 2) Smoot-Hawley Tariff— the duty rate that, in essence, is the default rate if the import is from a country that has not been granted MFN status or does not otherwise qualify for any special duty-rate categories.

e. *Special Duty-Rate Classifications*

In addition to the above two categories, some imported goods receive special duty-rates when they fall under one of the following categories. Note that country of origin rules vary from category to category and therefore are very critical in determining whether an imported good is eligible for a particular special duty-rate classification.

- 1) Generalized System of Preferences (GSP)—applies to imports from countries who have been granted GSP status by UNCTAD and grants free duty on imports from GSP countries except for certain specified goods.
- 2) Caribbean Basin Initiative (CBI)—applies to imports from countries who are CBI members and grants free duty on imports from CBI members except for certain specified goods.
- 3) U.S.-Israel Free Trade Area Agreement—applies to imports of Israeli origin.
- 4) NAFTA—applies to imports of Canadian and Mexican origin.

g. *Special Duty Assessments*

- 1) Antidumping duties— is an extra duty assessed after the U.S. determines that a foreign-produced product is being “dumped” in the U.S. market.
- 2) Countervailing duties— is an extra duty assessed after the U.S. determines that a foreign-produced product imported into the U.S. is being produced with subsidies from the producer's government.

2. Appraisal of Imported Goods

The following methods are to be used, in descending order, to determine the value of and imported good. Only if one method can not produce a value under that method is the next method to be used.

a. *Transaction value of actual imported goods*

This method of valuation seeks to determine the actual price paid or payable for the

imported goods. If certain items such as importer packing costs or selling commissions or seller assists or not reflected in the price shown on the commercial invoice, then such items must be added to that price to determine transaction value.

b. Transaction value of similar goods

If the transaction value of the actual imported goods can not be determined, then the proper valuation method is to determine the transaction value of goods similar to those actually imported. Factors that are used in determining this value include the actual exportation date of the goods and the quantity of the goods sold.

c. Deductive value

If the transaction value of the actual imported goods or goods similar to those actually imported can not be determined, then the deductive value of the imported goods must be determined unless the person making the entry has designated the *computed value* as the preferred valuation method. Deductive value is the resale price in the U.S. of the imported goods, minus certain deductions.

d. Computed value

The computed valuation method is used if valuation of the imported goods can not be determined by either transaction valuation method or the deductive valuation method, or if the person making the entry has elected to choose this method. Computed value consists of the sum of the materials and processing costs of the imported goods, the general expenses and profit on the goods, the value of any seller assists for the goods, and the packing costs of goods.

C. Importer Relief

The failure by an importer to properly follow the above procedures for clearance of imported goods by U.S. Customs can result in a denial of entry, seizure and/or forfeiture of the imported goods, and other various penalties and fines. Additionally, an importer, while fully complying with required Customs procedures, nevertheless may also be damaged by what it considers to be an incorrect Custom ruling on such matters as classification, appraisement and the like.

Fortunately, there are several different avenues of relief that are available to importers who believe that they have been damaged by a Customs Service action or ruling or would like to request a Customs ruling on a particular matter. It is important to note that each one of these forms of relief is uniquely related to a particular kind of Customs ruling. Quite often these forms of relief are confused with one another. Choosing an improper form of relief can result in an importer being denied the opportunity to challenge a particular Customs ruling. Therefore, it is vital that the proper type of relief be chosen in order for the party requesting the relief to preserve its right to challenge a particular ruling.

1. Petitions for Relief

Petitions for Relief are used by importers to request relief when Customs has engaged in a punitive action such as seizing imported goods or imposing a penalty against an importer. Petitions for Relief must be filed with the District Director for the Customs District where the seizure occurred or where the penalty was imposed within 30 days of the mailing of the notice of the seizure or penalty to the importer.

2. Protests

Protests are used by an importer to protest Customs rulings regarding classification, appraisement, exclusion, liquidation of duties and drawback refusals. Protests may be filed by an importer, an importer's surety or any other party who has paid any duties on the particular imported goods. Protests must be filed within 90 days following the issuance or notice of such ruling with the District Director for the District in which the ruling is made or with the Port Director if entry is made at a port other than the District headquarters port.

3. Administrative Rulings Requests

Requests for Administrative Rulings are used by importers to request that Customs issue a ruling in regard to Customs laws and regulations as applied to a specific import transaction over which Customs has jurisdiction. Administrative Rulings can be requested in relation to specific prospective transactions, current transactions, or completed transactions. Administrative Rulings Requests are filed either with the appropriate Customs office having jurisdiction over the particular issue being raised, or with Customs headquarters in Washington.

4. Administrative Review

Administrative Review is used by an importer to request a review of Customs rulings regarding reliquidations of duties, mistakes of fact or clerical errors. Requests for Administrative Review must be filed with the District Director for the District in which the ruling was made within one year of the issuance of the ruling.

5. Domestic Interested Party Petitions

Domestic Interested Party Petitions are used by importers as well as others such as producers, manufacturers or associations to request a Customs ruling as to classification or appraisement of certain types of imported goods. These Petitions must be submitted to the Commissioner of Customs for review.

6. U.S. Court of International Trade

The U.S. Court of International Trade (CIT) has jurisdiction over all appeals of U.S. Customs rulings and decisions that are eligible for review by law. In certain cases, a Customs ruling or decision must first be appealed to the Secretary of the Treasury and then ruled upon before the Court of International Trade will review it.

7. U.S. International Trade Commission

The U.S. International Trade Commission has jurisdiction over the final assessment of antidumping and countervailing duties, and makes rulings on other unfair import trade practices.