

# Trade Compliance Year End Housekeeping Checklist

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While we watch the final days of the calendar slide past, we thought it worthwhile to provide some trade compliance housekeeping suggestions that may mitigate the fire drills and inevitable surprises coming in the New Year. As with all lists around this time of year, you should check it twice.

## 1. Reconciliation Flagging Instructions.

If you participate in United States Customs and Border Protection's (CBP) Reconciliation Prototype Program you should ensure that all of your customs brokers have been advised how to flag your entries. With the change to ACE, CBP will no longer apply a blanket flag beginning January 14, 2017, so you should resend those written instructions to your customs brokers to (a) request a blanket flag be established as a default in their system (where appropriate), (b) reiterate your Reconciliation flagging instructions, and (c) implement a monitoring program to ensure broker compliance. Reconciliation is the preferred mechanism to report required post-importation value additions and adjustments such as royalties, retroactive transfer price adjustments, assists, and other value elements that are unknown or unknowable at the time of entry.

## 2. Custom Broker Instructions.

It is a good time to resend your customs broker instructions, including an updated version of your tariff classification database, related party listings, FTA or duty preference program instructions, and primary and back-up contact information to resolve any entry issues that arise.

## 3. ITRAC Data Request.

Now is also a good time to request (or ask Drinker Biddle to do so on your behalf) an Importer Trade Activity (ITRAC) Report from CBP to obtain all import data for the last five years and through the end of calendar year 2016. As CBP makes its full transition to ACE in 2017, ITRAC data will eventually be discontinued and importers will need to rely on ACE reports for entry information.

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#### **4. Census Data Request.**

Similarly, it is a good idea to request your export data from the Census Bureau. Drinker Biddle cannot make this request for you, but we are happy to provide you with a template letter to do so. You are entitled to 12 months worth of data once a year and reviewing this data can be an excellent way to look for red flags. Some export data is also now available via ACE.

#### **5. ACE Portal.**

Along these lines, have you signed up for ACE? For those who have been procrastinating, it is time. The price is right and the entry data can be essential to managing trade compliance and implementing effective post-entry audit and monitoring programs.

#### **6. Custom Broker Powers of Attorney.**

Year end is also a good time to review any Customs Powers of Attorney (POAs) and revoke those POAs that are no longer active. By reviewing your ACE or ITRAC data, you can easily identify those customs brokers who are making entry on your behalf by reviewing the filer codes on your entries (first three digits to the entry number). You may find some customs brokers who are acting as your agent without your knowledge or control. It is time to formerly revoke those POAs. It is also a good time to revisit existing POAs for authorized customs brokers. We recommend that all POAs include an expiration period requiring parties to revisit the POA. We also recommend that importers restrict certain rights ordinarily included in the standard customs broker POA, including deleting the customs broker's right to appoint sub-agents, endorse and collect checks payable to the importer, or file post-entry corrections or protests without the importer's express written authority.

#### **7. Antidumping and Countervailing Duties Product Review.**

The collection antidumping duties (ADD) and countervailing duties (CVD), along with the prevention of circumvention, is a trade priority for CBP. Recent trade legislation upped the ante on the issue of circumvention and in February 2016, the President signed into law the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA), part of which established a new directorate in CBP tasked with investigating the circumvention of ADD/CVD duties. CBP's Centers of Excellence (CEEs) are becoming more aggressive with investigating ADD/CVD compliance. If your company is importing goods subject to ADD/CVD, it is especially important that you update your customs broker instructions to make sure that the ADD/CVD rates are accurate. Now is a good time to schedule a review to determine whether your imports are subject to ADD/CVD duties. Given anticipated increased enforcement in 2017, if you are unsure whether a product is covered by the scope of an ADD/CVD order, Drinker Biddle can assist with the review or determine whether a scope ruling is appropriate.

#### **8. Bond Sufficiency.**

CBP periodically monitors the sufficiency of continuous entry bonds to determine if the bond amount is sufficient based on the principal's import activity. When CBP determines that the bond amount is insufficient, they will provide an insufficiency notice to the principal and surety requiring an increase in the bond amount, often allowing only 15 days for the principal to comply. Failure to comply can result in the bond being deemed insufficient and unusable, effectively halting imports until resolved or forcing the use of single entry bonds. To avoid

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hiccups in 2017, now is a good time to review your bond sufficiency with your surety.

#### **9. Listing Multiple Principals on the Same Bond.**

In addition to determining the appropriate bond amount, it is worth revisiting the pros and cons of listing multiple entities on the same bond. While CBP allows certain entities to be listed as co-principals on a continuous entry bond, it may not always be a best practice. The main advantage to listing multiple entities on the same bond is the premium savings. However, when listing multiple entities on the same bond, each entity is jointly and severally liable for the other and if CBP issues a demand against the bond, it could compel all parties on the bond to pay the claim irrespective of which principal caused the claim. Further, any principal on the bond can terminate the bond at any time, thereby potentially causing unintended consequences for the co-principals. For example if one entity is spun off or sold and terminates the initial bond without informing its prior co-principals, the former co-principals may find themselves without a continuous entry bond and paying for single entry bonds until a new continuous bond is in place. Make sure you are following the best practice for your importing entities.

#### **10. Export Classification.**

With Export Control Reform largely wrapping up the classification rewrites, it is a good idea to check your export classification databases to make sure that everything has been updated, reviewed, and communicated to appropriate stakeholders - internal and external.

#### **11. Destination Control Statement (DCS).**

Do not forget to check and make sure that you have modified the Destination Control Statement (DCS) that appears on your documentation. You may need to update language (or may want to reconsider if you were applying a blanket DCS for all exports – even for EAR99 products).

#### **12. Updated Certificates of Origin.**

Before the year ends, make sure you have obtained from your foreign suppliers all required 2017 blanket Certificates of Origin (COO) for anticipated duty preference claims under the North American Free Trade Agreement (NAFTA) and other Free Trade Agreement (FTA). If your suppliers are delinquent in getting you what you need, do not make any 2017 FTA claims without updated COOs. You may want to consider using Reconciliation as the mechanism to flag for the FTA program and revisit the duty savings opportunity once your suppliers have sent you what you need. Make sure to communicate with your customs broker which FTA claims to green light and which are flashing red, as well as provide clear instructions on any Reconciliation FTA flags to apply.

#### **13. Update FTA Instructions.**

When you finally receive valid 2017 COO in support of your anticipated 2017 FTA claims, make sure to update your tariff classification database and customs broker instructions so they know how to make entry, and ensure that a copy of the COO is available in your records and theirs.

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#### **14. U.S. Manufacturer Affidavits.**

In this same vein, have you obtained all 2017 Manufacturer Affidavits or other origin supporting records needed to issue any FTA COOs to your customers? Or to otherwise support your “Made in USA” marking claims or U.S. Goods Returned program under Heading 9801? Although Heading 9801 has been expanded to allow for the return of non-U.S. materials, proof of U.S. origin, where relevant, may be a faster way to support compliance than tracking to past export records.

#### **15. Update Names and Addresses on File with CBP.**

In addition to communicating via the ACE portal, CBP utilizes name and contact information provided on CBP Form (CF) 5106 to communicate with importers, such as when issuing Requests for Information (CF 28), Notices of Action (CF 29), Notices to Mark/Notice to Redeliver (CF 4647), and notices of liquidated damages or penalties. Now is a good time to revisit the information on file with CBP and make any necessary amendments to the CF 5106 to update your mailing address or provide a functional area description in the address to direct CBP correspondence and ensure the mail is properly routed internally.

#### **16. Trademark and Trade Name Protections.**

The New Year will be a good time to revisit whether all of your trademarks and trade names are protected and recorded with CBP. It is an essential step in getting CBP to help you fight against infringing or counterfeit products.

#### **17. Manifest Confidential Treatment.**

Have you filed your request with CBP for confidential treatment of inward and outward manifest information? If you have already done this, be reminded of mandatory biannual renewal requirements, and take the time to review company and affiliate names currently protected, submitting updates or amendments as needed to obtain the broadest protection.

#### **18. Denied Parties Screening.**

It is also a good idea to check the status of your denied parties screening process to make sure it is appropriate to your business, addresses your risks, and that the process is being followed and is functioning properly. Issues to check would include who you’re screening (make sure you are checking not only customers, but distributors, vendors, other business partners, etc.) and if you do periodic batch screening, determine if it is time for a new batch run.

#### **19. Training.**

Training stakeholders is one of the most cost-effective steps you can take to stay in compliance (and to mitigate any negative outcomes if mistakes are made). This is a good time to review your internal training topics and schedule to make sure all stakeholders are up to date, particularly new employees.

#### **20. Plan for 2017.**

Plan your 2017 audit schedule to “kick the tires” at selected businesses or functional areas, supply chains, or identified risk areas, and start getting on people’s calendars before they fill up!

You may have already crossed some or all of these off your “to do” list. If so, do not forget to add it to your list of accomplishments for the year! We are always available to help answer any questions you may have or provide additional support to help make 2017 a happy, healthy, and compliant new year.

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