



How a healthy business model can help you avoid penalties

By Marian Ladner

The most effective form of medical care is prevention. It may cost time and money, but making sure you stay healthy, eat right and routinely get checkups can avoid limitless future medical bills. Preventive care in the world of importing and exporting is much the same: Internal controls and processes associated with ensuring compliance with the legal and regulatory mandates ensure a healthy business. The legal and financial penalties associated with negligence can be devastating: sickness and death for a company that hasn't prepared for potential illness.

Just like the basics in health care are weight, temperature, blood pressure and any known aches or pains, the basics of import compliance are establishing classification determinations, transfer-pricing valuation, keeping tabs on the country of origin and minimizing costs associated with your supply chain.

Classification

The proper classification of imported goods is tremendously important to manufacturers who want to avoid civil and criminal penalties. Careful attention to detail may be the best way to keep all activity above board and compliant. The law can be complicated and confusing, but compliance is essential. Proper classification can also result in lower import duties.

Classification can be especially challenging for those dealing with high-end products: Cutting-edge technologies are difficult to classify within the Harmonized Tariff Schedule of the United States. This document lists the duty rate for thousands of goods that enter and leave the country. It also shows which goods are duty-free.

The duty — or tax rate — of an imported product is usually established by the "essential character and use" provisions within the Harmonized Tariff Schedule, and if a product is not specifically listed or

does not fall under a specific precedential ruling, as is often the case with technology, there may be conflicts between manufacturers and government experts regarding the duty to be applied. This difference in interpretation can cost companies hundreds of thousands of dollars.

Exporters should pay special attention to the proper classification of their products. Errors can lead to substantial penalties, civil and criminal. Attention must also be paid to the end-user, the end use and the destination of these items to ensure that they are not violating any of the export control laws of the United States. Remember: The law follows the goods!

Another very important consideration is that of "deemed exports." When a company is dealing with foreign nationals, it must be very careful about exposing them to certain kinds of U.S. technology. If a company brings foreign nationals to its facilities, whether in the U.S. or abroad, and exposes them to U.S. technology that would have required an export license if the item was exported to that foreign national's country, it has violated the law. A license is required prior to sharing such information or technology with that foreign national. Otherwise, a company could be in serious legal and economic trouble.

Because the stakes are so high, it is wise to err on the side of caution and to consult with legal experts before making a permanent and costly mistake. The government will have full-time experts working to get the most out of businesses, which means that companies should have equally qualified experts working to understand, and when necessary, to negotiate an acceptable resolution.

Transfer pricing

To avoid or minimize taxation, some companies participate in transfer pricing

arrangements, moving goods inside a company from country to country to get the best tax deals. However, the government is making increased use of assessments and audits to ferret out cases of illegal, incorrect and noncompliant transfer pricing.

Companies that do intensive analyses of their procedures and internal controls, and that take corrective action when needed, can ensure that transfer-pricing reviews and audits by the government run smoothly. Penalties can be as high as the domestic resale value of your imported products, and internal documentation must be produced within 30 days of an audit. A company that is unprepared — or underprepared — for what is becoming a veritable eventuality may find itself in an exceedingly unpleasant situation. Therefore, record keeping and record retrieval are a critical part of corporate import and export compliance.

Country of origin

It is the responsibility of an importer to use "reasonable care" when declaring the correct country of origin for imported goods. Customs officials are responsible for verifying the accuracy of these declarations, and regular internal compliance checks help to ensure a sound monitoring policy, and to expose illegal transshipping or valuation schemes. Negligent or fraudulent country of origin information can lead directly to monetary penalties or criminal sanctions.

According to U.S. Customs and Border Protection, an article is considered a product of a country or instrumentality if it is wholly the growth, product, or manufacture of that country or if that country has transformed the product into an entirely new article of commerce with

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a new name, character or use. Other country-of-origin requirements apply for textiles and goods composed of materials from more than one country. Still, other origin rules are articulated within each of our newly negotiated free-trade agreements.

A company should run internal diagnostics regularly to ensure that its policies are up to date, and that they are not unknowingly violating U.S. law. Keeping abreast of changes in customs laws and regulations — and making the necessary adjustments to manuals, procedures, and internal employee training and education — serves as good preventive medicine. A healthy company will not be afraid to “eat right and exercise,” because a hemorrhage or “heart attack” at the wrong time can be fatal. 🌟

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