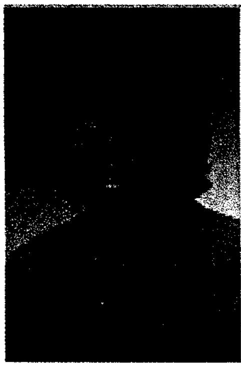

The trials and tribulations of transshipping

By Marian Ladner

Transshipping — moving goods into the U.S. through a country other than the one in which they were produced — can be completely safe, legal and economical. However, it can also be a way to subvert customs law and trade restrictions. When this happens, your merchandise and business are in peril.

Illegal transshipping can involve claiming a false country of origin to get around quotas or to avoid paying higher taxes. Sellers or importers have also changed their export patterns to achieve special benefits from trade programs such as the North American Free Trade Agreement. While it can be tempting to be "creative" in your production decisions, Customs and Border Protection, as well as Congress, cite illegal transshipping as a major trade threat, which has a number of big-picture side effects.

Although World Trade Organization commitments saw textile quotas eliminated this year, illegal transshipping is as great a threat as ever. Businesses may attempt to ship their goods from countries without heavy tariffs, bucking the system to get special NAFTA rates. More than ever, customs officials will be investigating companies that bring in goods pursuant to provisions within free-trade agreements.

Companies sourcing from China must pay particular attention in staying out of trouble. Until 2008, the U.S. may impose new quotas on Chinese textile products if they are seen as a threat to the U.S. economy, and Washington has already promised to do just that.

Illegal transshipping gives an unfair edge to whoever does it, hurting those who try to abide by the law, thereby hurting free trade all around. It can restrict trade from legitimate manufacturers by making a country that has unwillingly participated in a transshipping scheme paranoid. Illegal transshipping also breaches trade initiatives and agreements between countries, can contribute to geopolitical unrest and lowers consumer confidence by giving consumers a false country of origin on their products.

For these reasons, Customs enforces tight controls and documentation over the shipping process of transshipped goods, and it will not hesitate to detain, seize or forfeit goods if a company has certain red flags in its shipping practices. Don't forget, Customs can also mandate an audit of your past practices.

Some red flags to the government include a high turnover rate of people in key positions, a refusal to cooperate with Customs, unsigned textile declarations, the use of factories that have been cited for transshipment abuses in the past, the use of multiple subcontractors and a lack of company research into what foreign entities have been cited routinely for transshipping.

When Customs performs an investigation, it typically examines a company's internal policies and procedures. It will interview company employees to determine how well they are screening import documentation implemented, and ensure there is documentation to prevent illegal transshipment. The agency also looks at receiving and inventory records, correspondence, factory inspection reports, factory profiles, invoices, bills, sales confirmations and purchase orders. Customs also checks quota-visa transfer forms, payment records, charge statements and textile declarations for their legality.

If your company is going to take advantage of shipping efficiencies by legally transshipping your products, you must include the following within your transportation process:

- Have written internal controls within your transshipping procedures that include monitoring, feedback and management review of the effectiveness of those controls. Written policies and procedures serve as a mitigating factor in most instances of unwitting illegal transshipment. If you ensure that your procedures are above board, government inspectors are less likely to take an interest.
- Request a ruling from Customs relative to any possible violators. Your staff should be well-trained and informed about new policies. Your customs brokers and agents also should be able to demonstrate that they have received the proper training.
- Demand factory profiles that contain capacity levels to figure out whether there is a proper ratio between the workers and production.
- Create a "quality manual" for vendors stating your expectations and your policy against illegal transshipping. Require vendors to obtain your written permission prior to making any changes regarding manufacturing facilities.
- Have an internal inspection team that makes regular, unannounced visits to a plant to ensure that it exists and that the goods being shipped from there were actually produced there. All contracts or purchase orders should establish this as a requirement of doing business together.
- You should discontinue doing business with any manufacturers that break the rules — or deny inspection. This will avoid even a hint of impropriety or unlawfulness.

With these procedures in place, there's no reason transshipping can't continue to be a safe and effective part of supply-chain management.

Marian Ladner leads the International Trade Practice with Epstein Becker Green Wickliff & Hall P.C. She can be reached at MLadner@ebglaw.com, or at (713) 750-3173.