

Customs Trends: More Audits, More Security, More Enforcement



Importers can expect US Customs and Border Protection (CBP) to maintain – and in many cases, increase – its focus on audits, security, and enforcement activities in 2010. Arent Fox’s customs team has identified some hot customs issues importers should keep an eye on for the coming year.

With respect to focused assessments, CBP has proposed new rules that would allow importers to (1) offset overpayments against duty loss identified during a focused assessment and (2) review fewer entries through statistical sampling in determining those duty losses. Even though these rules are not final, some ports have allowed offsets and permitted the use of statistical sampling for years. The formalization of these practices will ensure that all importers will be able to receive the benefits from these changes from ports that have not adopted these practices in the past.

However, the good news comes with some caveats. Importers should be aware that the offset provision is specific to audits and does not apply outside a focused assessment. Also, CBP maintains its authority to determine on a case-by-case basis whether to allow statistical sampling or to require a full entry-by-entry review.

Therefore, it is more important than ever for importers to advocate effectively and know their rights during a focused assessment if the CBP auditors initially decide to disallow either of these practices or any other benefits that are not specifically set forth in the CBP Regulations.

Importers also need to prepare for full enforcement of the 10+2 rules. CBP’s interim final rule requiring importers and carriers to tender Importer Security Filings (ISFs) for ocean vessel cargo 24 hours before it is loaded in the foreign port will be fully enforced as of January 26, 2010. CBP officials have given importers conflicting information about the approach the agency intends to take with respect to enforcement of 10+2; generally, CBP will continue its flexible enforcement approach through mid-2010 and intends to issue warning letters in lieu of penalties during this time.

While CBP officials stated on January 14 that they would take a “measured approach” to enforcement that would lead to more immediate penalties for noncompliance, on January 19 CBP issued a statement describing its 10+2 enforcement plan as taking a “graduated escalation” approach that will mirror the “informed compliance” approach to enforcement, gradually leading to the issuance of liquidated damage penalties beginning in the second quarter of this year.

CBP’s January 19 statement described its 10+2 enforcement plan going into effect from January 26 as follows:

- CBP will not use data collected during the delayed enforcement period, but data collected after January 26 will be used for enforcement.
- CBP will not issue any liquidated damage penalties during the first quarter of 2010, but will issue warning letters and will seek to work with filers to bring them into compliance.



- Beginning in the second quarter of 2010, CBP will put shipments on hold and issue liquidated damages/penalties.
- CBP will take a “more enforcement-minded approach” in the third and fourth quarters of 2010. This would include more liquidated damage penalties and the increased use of holds, inspections, and requests for information.
- Bonds will be required for ISF purposes beginning January 26.
- CBP will target importers that did not file ISFs during 2009’s delayed enforcement period.
- All penalties will be reviewed and approved by CBP headquarters.

Last, CBP has also announced the possibility of amendments to the 10+2 requirements, including eliminating the flexibility in providing certain data elements after the prescribed 24-hour period. Therefore, it will be important for importers to stay tuned to CBP pronouncements during 2010 on these issues.

Beyond the two areas discussed above, we expect that CBP will continue its efforts to ensure increased enforcement across all its areas of responsibilities during 2010. For example, we anticipate the increased use of CF-28s to request information beyond a single entry, leading to what importers should consider “mini-audits.” CBP will also be focusing its attention on targeting counterfeit drugs (including through detention and seizures). Last, we believe that CBP will apply its mitigation guidelines more stringently for certain categories of violations, particularly those relating to circumvention of antidumping and countervailing duties and intellectual property rights violations. Taken together, importers have a lot to be alert for during 2010.

Should you have any questions, please contact the Arent Fox attorney with whom you work or a member of Arent Fox’s International Trade Practice Group.