



Legal Alert

Canada-US Cross Border Business Affairs

Division Co-Leaders

Birgit Matthiesen

*Director of Canada-US Cross
Border Business Affairs*

Washington, DC
202.350.3620

birgit.matthiesen@arentfox.com

David R. Hamill

Partner

Washington, DC
202.857.8940

david.hamill@arentfox.com

CBP Announces Changes to Customs Audit Rules

After 11 years, US Customs and Border Protection (CBP) is revising and updating its Focused Assessment (FA) customs audit process. The good news is that they are focusing more on what matters. The bad news it will mean more work for importers selected for a customs audit. While CBP will be more targeted in its approach to assessing risk at a particular company, they will be asking more questions and requiring more sample entries to review.

If your company is a US importer of record even though domiciled in Canada, your company is subject to these changes. Perhaps of most significant impact on the resources of companies that will be audited going forward, the changes also explicitly allow for auditors to sample a greater number of transactions in key areas at an initial judgmental stage to determine if further auditing is necessary.

FA customs audits are comprehensive, risk-based audits of importers involving an assessment of internal control over import activities to determine whether the importer poses an acceptable risk for complying with CBP laws and regulations. The FA Program – which was last updated in October 2003 – promotes maximizing voluntary compliance while working cooperatively with the importer to address issues.

While in the past, auditors have tailored audit assessments to fit the needs of particular importers on an ad hoc basis, the recent changes provide more context and parameters for allowing such changes on a nationwide basis. The changes also update CBP auditing techniques with other agency auditing practices.

How Can Importers Prepare?

While the changes have yet to be put into practice, companies can take steps now to lower their risk and pass a customs audit with flying colors. These steps include: creating an import manual, tasking import compliance personnel, creating internal control procedures for imports, and periodic self-audits or assessments. Auditors will review not only that proper internal controls are in place, but that they operate effectively and have been tested periodically. Evidence of these controls – now more than ever – will lower an importer's risk profile and improve a company's competitive edge in the US marketplace.

Preliminary Assessment of Risk (PAR)

First, CBP conducts a PAR (Preliminary Assessment of Risk). The PAR serves as the baseline for the initial scope of work to identify risk areas for audit. The PAR is based on information that the auditor gathers on the company from internal and external sources (such as a company's entry data), including the response to importer supplied questionnaires. Past evidence of noncompliance will also be considered (i.e., prior disclosure, previous audit findings, penalty case, import specialist reviews, cargo exams, seizures, etc.) to assess the potential for continued noncompliance. CBP will also evaluate the entry data for tariff codes, manufacturers and country of origin to identify potential risks. From this information, the auditor will develop an initial risk analysis and audit plan to execute based on risk.



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Changes to the Questionnaire

A key component of an FA is the importer questionnaire. CBP is revising its questionnaire and renaming it the "Pre-Assessment Survey Questionnaire" (PASQ). The questionnaire has been expanded to obtain additional information regarding business practices and import activities to aid CBP in better refining its risk assessment. The questions are more open-ended, requiring companies to provide details about not only their operations, but also their accounting systems (charts of accounts, trial balances, etc). A copy of the new questionnaire is provided on the website: <http://www.cbp.gov/trade/audits/focused-assessment>.

Changes to Sampling Transaction Review

Historically, CBP auditors selected one to four "walk-through" entries to review depending on the complexity of the importer's activity and associated risks. CBP has indicated that it will be selecting additional entries for the "walk-throughs" in the future to help identify or understand variations in types of transactions and procedures. CBP states that it believes that increased sampling will lead to greater certainty with regard to a determination of risk for the area. Companies that have no internal controls or weak internal controls over their import transactions will have higher risk, and therefore, possibly larger sample sizes.

PAS Risk Assessments

Following the completion of the on-site review and analysis of the samples, the auditors prepare a PAS Audit Report that identifies areas of risk deficiencies and materiality of errors. If there are areas of risk or deficiencies, CBP will request the importer to implement a Compliance Improvement Program (CIP) and allow them to assess the loss of revenue (to be subsequently verified by the auditor). Companies that choose not to implement a CIP or to assess the loss or revenue may be subject to a full compliance assessment by the CBP Audit Team (based on some form of statistical sampling).

Arent Fox recognizes that companies today must focus on containing costs but we strongly recommend now more than ever that if your company is importing merchandise into the US that you take stock of your current import processes and procedures with the objective of ensuring that your company has adequate internal controls in place regarding your customs and import operations. Based on a recent milestone court case, CBP has more incentive than ever to focus on priority trade issues with a particular agency attention being given to companies that import those products.

The team at Arent Fox has helped guide companies through focused assessments and issue audits for years. We have helped small, medium and large importers, including Canadian importers of record, put internal controls in place. We would be glad to provide an initial assessment of the likelihood of your company being selected for a US customs audit and your most significant risks if your company were selected. The US marketplace is in flux and now, more than ever, companies will want to be best prepared for the challenges ahead.

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