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Lessons Learned Since the Mod Act

by Jim Dickeson

Recent years have seen reductions in, even eliminations of, Customs duties, particularly in the high tech industries. Many companies see this as reason to disregard import compliance, its significance apparently measured in duty dollars. But this may be a serious mistake.

Part of the 1993 ratification of NAFTA was the Customs Modernization Act (Mod Act). Before then, responsibility for insuring compliance with U.S. import regulations fell to the Customs Service. But the Mod Act shifted that compliance burden to the importer, and Customs is making sure that importers are holding up their end of the bargain.

Customs drew up a list of primary focus industries where they figured they could get the most bang for their buck.

They audited firms in those industries, examining their overseas transactions. They found problems, collected owed duties, and issued penalties. Poor performers now face fewer electronic releases and more cargo exams, meaning delays at the border. The automotive industry was in the first wave of compliance assessments, and today they are practically religious in their approach to compliance. Who's next? Many high tech companies are now under the gun. What lessons did those first importers learn?

Customs brokers cannot be expected to do it all or to just fix any problem. The importer is responsible for correct tariff classification, valuation and country of origin. The importer is also accountable for the broker's errors; that

power of attorney pretty much washes the broker's hands. This is not unlike the accountant that does your taxes; his mistakes are your mistakes.

One cannot just accept whatever value the seller puts on the invoice. Pre-payments, post shipment adjustments, royalties, etc. are to be reported. So are tooling and components supplied by the importer (these are known as assists). Sometimes overseas sellers intentionally undervalue an invoice, either cheating their own governments or thinking they are helping you cheat yours. Amounts just for "repairs" are not valid. Full transaction value must be reported.

The case is not closed when Customs releases their shipment. The statute of limitations is five years from the date

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The Cost of Non-Compliance

The U. S. Departments of Commerce, State, and Treasury all have significant authority to prosecute non-compliance violations and levy penalties on offenders. With the tightening of America's security, all three departments are pushing for stricter standards and tougher penalties for offenders

The U.S. Dept. of Commerce's Census Bureau currently issues civil penalties for violating reporting provisions of \$1,000 per violation. Penalties would increase to \$10,000 under the new proposal.

Commerce's Bureau of Export Administration levies civil penalties for EAR violations typically from \$10,000 up to \$100,000 per violation. The new proposal pushes the maximum to \$1,000,000 per violation. The criminal violation penalty also dramatically escalates fines and pushes prison terms to 10 years.

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Export and Import Compliance: a Global Effort

Notes from the Executive Director, Dr. Donald Burton

At first glance it might seem that this issue of GlobalWatch focuses on U.S. issues and topics. However, export and import compliance is important to every country. The articles in this issue serve to highlight the problems facing all countries in this post-September 11th world.

In many instances other countries look to the U.S. government's various agencies for ideas and then design their compliance using whatever they find relevant in the U.S. policies. As the world gets smaller it makes sense that standardized approaches [not necessarily U.S. originated] to these global problems cross national boundaries. In truth, this has been the case for hundreds of years, but now it is much more serious with the heightened global focus on countering terrorism and having a safer world.

Notice, if you will, that even though technology is becoming a more integral part of international trade, it is still the aware single individual at the point of contact that makes the difference when it comes to import or export compliance. Every country is reliant upon this individual to have the skills, knowledge and interest to perform the impor-

tant task of keeping borders safe, collecting the correct duties and tariffs, and protecting national interests. It is a huge responsibility. What makes it manageable is that individuals now have access to the knowledge (via the Internet and published sources) to help them do a better job. The challenge is in helping these key individuals obtain the useful information and tools they need quickly.

IIEI recently launched a new web site www.usexportcompliance.com to make this critical information available in one location. Over time, we expect to replicate this site for other countries' compliance information needs. In future issues we will ask for your help in gathering this information.

As you read this issue, ask yourself how these topics apply to you and your country. Chances are you will see that all of the topics discussed are truly global.

In future issues of *GlobalWatch*, we would like to publish articles about other countries' import or export compliance efforts. Please send your submissions to:

Diana.larowe@expandglobal.com.

(Lessons con't.)

of release. During this time, Customs can reopen any case. In a pattern of bad behavior, they can reopen every case.

What is the potential financial exposure? After all, the significance is measured in dollars. Liability for most commodities is value plus duty. A \$10,000 duty-free import has a penalty potential of \$10,000. Total those for the last five years. Thankfully, only cases of outright fraud get hit so severely. For gross negligence, where you knew better but were just careless, penalties are often mitigated from 20% to 40% for the case(s) under investigation. For simple negligence, where you really didn't know what you were doing, it is more like 5% to 20%.

Importers should take these matters very seriously. How seriously? At a number of those automakers, the person responsible for import compliance answers directly to the CFO.

Jim Dickeson is an Import/Export Compliance Specialist and a Licensed US Customs Broker working in the Boston area high tech industry. He can be reached at dickeson@ma.ultranet.com or www.ultranet.com/~dickeson.

Shielding America

U.S. technology and munitions are considered among the highest quality in the world, making them coveted items for many other nations and individuals who are considered 'unfriendly' to U.S. interests. According to a September 2001 report by the Defense Security Service, individuals linked to no fewer than 63 nations were involved in "suspicious" efforts to obtain U.S. technology with military applications during 2000.

While some of these materials may seem relatively innocuous and have relatively little monetary value, they can have an enormous strategic value in the hands of America's adversaries. These "minor" technological goods could become the necessary component for major weapons development.

Consider the case of one California manufacturer of 'krytons' - a high-speed timing device. These devices have broad civilian applications in photocopiers and lasers, but are also ideal for use in triggering nuclear warheads. In this particular case, Customs inter-



cepted 40 krytons destined for an Iraqi military establishment.

The U.S. Customs Service, in its ongoing efforts to prevent the illegal export of licensable technology, weapons, and components of weapons of mass destruction, has launched a program called "Operation Shield America". The program has two components. First, Customs is seeking the assistance of U.S. manufacturers and distributors of these sensitive items and then will use its considerable authority to investigate and halt the acquisition and illegal export to questionable outside parties.

Having compiled a list of key technologies and weapons, Customs has shared this list with the intelligence community and the Departments of State, Commerce, Defense, Energy, Treasury and Justice. Customs field offices are identifying U.S. firms in their areas that manufacture or distribute materials on this list. Assistance from U.S. manufacturers and distributors will be crucial in this effort.

Case Studies

from the U.S. Customs Service

San Diego - Two operatives of the London-based firm, Multicore Ltd, were sentenced for their roles to purchase HAWK missile components, fighter jet parts and other military goods from several U.S. companies for export to Iran via Singapore.

Boston - Two people arrested for

attempting to export to China U.S. manufactured fiber optic gyroscopes used in the guidance and navigational systems for ballistic missiles and "smart" bombs.

Maryland - Thiodiglycol, used in the production of dyes and ink, and a precursor for mustard gas, is intercepted before leaving the country. The 430 drums are substituted with water and monitored as it transited Singapore and Pakistan before arriving in Iran.

Do I Need Compliance Assistance?

Knowing the answers to these questions can determine your need for import-export compliance assistance.

1. What laws and regulations should I be aware of when exporting merchandise?
2. What is a Shipper's Export Declaration (SED) and do I need to submit one?
3. Where, when and to whom do I file export documentation?
4. Who must be listed as the U.S. Principal Party in Interest (USPPI)?
5. What are a standard export transaction and a routed export transaction?
6. How do I know if an item that I am exporting requires an export license?
7. What is the Commerce Control List?
8. Are there any countries or persons to which I cannot export?
9. Who is responsible if a violation of an export law occurs?
10. What could happen to my business or myself if I violate export control laws?

For more information about Export Compliance, visit IIEI's Export Compliance Resource Page: www.usexportcompliance.com

Focus On: North America

NAFTA and Mexico's Trucking Industry

Short In-Roads

On January 1, 1994, a freshly signed NAFTA required that the U.S. allow Mexican carriers to operate in the four U.S. border states beginning in December 1995, and in all U.S. states beginning in January 2000. Eight years later, with U.S.-Mexico trade increasing 100% to over \$200 billion, cargo transportation still remains an issue. Currently, Mexican trucks are able to operate in the U.S., but only within commercial zones that extend up to

20 miles north of the U.S. border.

Following upon complaints and arbitration, the U.S. Congress finally approved a plan last December which sets forth inspection and other requirements that the Federal Motor Carrier Safety Administration must implement before Mexican trucks can operate in the U.S. There has been much cross-border cooperation in improving truck safety and helping Mexican carriers better understand U.S. safety standards, but the

inadequate infrastructure and limited personnel at the border will hinder implementation.

Meanwhile, 14,000 Mexican trucks continue to stop at the border each day to transfer their cargo to American trucks, a time-consuming and costly process for not only each country's trucking industries, but for all businesses involved in U.S.-Mexico trade.

Research compiled by Maryellen Authier, IIEI Intern

Smart Border for the 21st Century

The U.S.-Canada land border is the busiest in the world and by far the most important economically. Canada's Customs and Revenue Agency reported 111 million entries at all Canadian ports last year, 87 million of them at land ports along the U.S.-Canada border.

That national economies can be severely affected by border security failures was made apparent in the wake of Sept. 11th. A severe drop in U.S.-Canada trade pointed out that public security and economic security are mutually reinforcing and that ports-of-entry and border crossings play a critical role in both.

Both countries are cooperating in the creation of a "smart border"; an open and efficient border that facilitates the free flow of people and commerce efficiently, effectively and securely under all circumstances.

A U.S.-Canada agreement signed on Dec. 12 expands existing programs in which pre-approved frequent travelers such as truck drivers and business people can cross more easily. On the commercial side, a dramatic new reform called Customs Self Assessment moves the processing of commercial shipments away from the border.

Did You Know?

Canada and the United States share a unique relationship. Each is the other's largest trading partner with 25% of all U.S. exports going north, while 87% of Canada's exports come south, averaging over 2 billion dollars in trade every day. On a daily basis, an average of 300,000 people and 40,000 commercial shipments enter Canada from the U.S. with about 7,000 trucks crossing the border at the Ambassador Bridge in Detroit, Michigan alone.

The Culture Corner

Defining America's Culture

Is there a mainstream American culture or is the world's 'melting pot' simply a hodge-podge of microcultures? Understanding a larger, 'macro' American culture could certainly help others in conducting better business negotiations with Americans, or in better understanding the American market. Looking at a few elements of American life, we can start to see the larger cultural values at work.

Pace of Life:

Asians, Latin Americans and Africans are amazed and often distressed at the rapid pace of America

life and the accompanying emphasis on punctuality and efficiency.

Relationships:

Generally gregarious on first meetings, visitors often mistake this strong American "come-on" for the beginning of a deep reciprocal friendship and are dismayed when the American fails to follow up with the implicitly promised friendship.

Service:

A strong sense of egalitarianism is evident in American service providers from taxi drivers to waiters which encourages them to perform their services in a brusque, businesslike manner, often without the cordial (or fawning as Americans would view) manner many visitors are accus-

tomed to at home.

Emotional Expressiveness:

Americans seem to stand at the center of an emotional spectrum that extends out to embrace the effervescent Latins at one end and the coolly subdued Southeast Asians at the other. While Americans appear unemotional and cold to the Latins, they may appear hyperbolic and impulsive to the Asians.

Self-reliance & the Nuclear Family:

Mixed reviews are often given about the self-reliant American nuclear family. Some are impressed by the males' handling of domestic chores and children's independent assertiveness, while others see this pattern as abrasive, somewhat chaotic, and lacking the strong extended family supports.

Informality and Morality:

Often shocked by what they view as Americans' casual way of dressing, this informality is often equated with immorality as displayed through provocative clothing and public displays of affection.

Individualism, Freedom and Privacy:

While some are deeply impressed by Americans' individual freedoms, particularly in the political arena, others are appalled by what they term "too much freedom" in terms of excessive individualism (think gun control policy).

Source: Harris and Moran, 1990, *Managing Cultural Differences*, Gulf Publishing

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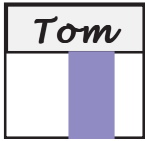
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Trade Talk with Tom

U.S. Small Business is Big Exporter

Dear Tom,
 I am the owner of a small company that manufactures metal composites. We've had some good growth over the last few years and have recently received some international inquiries. What are some steps we should take to consider exporting and what pitfalls might we run across?
 -John Gibbons

There are over 23 million small businesses in the U.S. that make up almost 97% of all U.S. exporters. Their exports account for 30% of total U.S. export value. The main export destination for U.S. small business exports is Canada with over \$32 billion. Other primary targets are Japan (18.5 billion), Mexico (\$16.7 billion), U.K. (\$8.5 billion) and South Korea (\$7.4 billion). The fastest-growing markets are Brazil, Malaysia, China and the Philippines.

Small Business exports has experienced sharp growth in the sectors of industrial machinery and computers; electric and electronic equipment; scientific and measuring instruments; chemical products; and rubber and plastic products.

Source: Small Business Administration and International Trade Administration

Good question!

When a company first considers the possibility of exporting, the most valuable tool they can have is information. Information about your product and its industrial purposes will drastically increase your chances of success.

It is also important to get assistance from someone who is experienced in exporting your kind of product and is familiar with any governmental regulations it falls under. The more product experience that person has, the easier and less time consuming it should be.

In addition, familiarize yourself with any export compliance regulations for your product. As the manufacturer, the responsibility of compliance falls on your shoulders. Learn about the penalties for infractions. Most companies find themselves in trouble because they failed to understand their exporting responsibilities until it was too late.

When your international sales begin to grow, make preparations to internalize your exporting functions and compliance procedures. Your employees have the best understanding of your product line and are naturally the best candidates to oversee the exporting responsibilities.

Finally, plan for the future. Make sure that your export people are trained on the regulations across the spectrum. Training them a little bit at a time will be more expensive than

all at once. This will also allow you to expand product lines more easily and export to additional countries without incurring new training costs or paying for unexpected violations. Good Luck!

Have a question for Tom? Send it to Tom Bruneau, IIEI Counselor
 E-mail: tom.bruneau@expandglobal.com

Or mail to: IIEI, P.O. Box 11378
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The *GlobalWatch*[®] would like to recognize the efforts of several IIEI Interns, whose tireless research, attention to details, and endless energy have contributed significantly to this publication.

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Phoenix Chapter Sponsors AESDirect Workshop

Thanks to the coordination and effort of Lisa Xinos, Phoenix Chapter President and Honeywell employee, two AESDirect certification workshops were sponsored by the IIEI Phoenix Chapter and hosted at Honeywell International on March 15.

Michael Rambo and Krystal Byrd of the Foreign Trade Division of the US Census Bureau in Washington D.C. conducted the two half day sessions, providing the guidance and expertise in certifying the participants in the use of the U.S. Government's on-line Automated Export System (AES).

George Rao, Honeywell's Director of Export Control and Compliance, was a driving force behind the success of the workshops. According to Xinos, "he encouraged attendance from all the Honeywell aerospace facilities in Arizona."

Also in attendance were representatives from STMicroelectronics and Martinez Gonzalez Y Cia., LLC., MD Helicopter, and Partida Brokerage.

Nigerian National Chapter Kicks-off to Full House

The first meeting of the Nigerian National IIEI Chapter welcomed about 30 people, some of whom had traveled over 600 kilometers from other states of the Federation to attend the inaugural event and listen to the expertise of Dr. Casmir Onukogu.

Attendance cut across professions, with a professor of medicine, members of the banking community, the shipping and freight forwarding industry, and the university. Dr. Onukogu, Managing Director of Magio Industries Limited, presented the topic, "Taking Advantage of the Global Village".

Sponsored by MultiMix Export Academy, the Nigerian National IIEI Chapter hopes to continue its dynamic start by hosting monthly meetings that will provide expert speakers on a variety of topics in international trade. For further information contact Chapter President, Obiora Madu at e-mail, exporttutor@37.com, or by visiting the Chapter's home page at www.expandglobal.com/Chapters/ChapNigeria.html.

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