

REGULATORY FOCUS

By Rob Pisani and Cindy de Leon

ASSESSING THE CUSTOMS AUDIT

It's Customs Audit Plan time again. Did you get the call?

EACH SUMMER, U.S. Customs and Border Protection's Office of Regulatory Audit contacts importers with a series of questions as they identify the next slate of lucky audit... er, rather... "focused assessment" candidates or "FAs," in Customs-speak.

What does this mean for your company? If you receive the call, congratulations, it means you are a likely FA candidate.

A focused assessment is the largest audit conducted by Customs and typically involves a team of auditors descending on a company's headquarters and reviewing internal controls and customs entries for areas of compliance risk such as value, HTS classification, NAFTA, GSP, reconciliation, HTS 9801 and 9802, anti-dumping, and any other free-trade agreements your company uses in any significant manner.

Although both of us worked for Customs in the past, and certainly would not tell any tales out of school, we can share our collective experience in working with companies who have undergone the rigors of an FA. Our hope is the information helps you prepare and plan for a government audit program that not only can disrupt business but also prove very costly to the uninformed and ill-advised.

Just consider that FAs typically last six months to a year, with many requests for information and contacts with company personnel over that time.

Customs will expect an importer to have written internal control procedures over import operations, which will be the focus of the audit. Don't have them? Get going! Customs will also require the importer to demonstrate the internal control procedures are implemented and effective, not just collecting dust on a shelf.

An FA ordinarily entails interviews of company personnel by Customs officers, particularly those involved in the import process and finance. And an FA involves entry reviews of the "cradle to grave" variety.

FAs can and often do result in large revenue recoveries for Customs, not to mention penalties for past non-compliance. Million-dollar FA recoveries are not the norm, but they do occur.

Scary? Yes. But if you receive the audit

plan call, don't panic. The Customs officer typically asks for and expects you to provide information, such as the primary contact for a possible FA; location of records, such as customs entries, invoices, product specification sheets and accounting records; C-TPAT or Importer Self-Assessment participation status; Customs Account Management participation status; the most recent fiscal year report; Importer of Record numbers used and import activity under other business names (Tip: Always ask Customs which IOR number they are calling

FAs can and often do result in large revenue recoveries for Customs.

about; they may only be interested in a specific division). They will ask whether the company has a documented system of internal controls (your answer here is critical), and whether each division operates under the same documented internal controls.

If you have received the FA call, in our experience, here are some key issues you should address ASAP.

- Do you know which free-trade pacts and special tariff provisions are used by your company? Are these transactions compliant?

- Have you declared accurate values to Customs including all the, well, "CRAPP?" That is, the Commissions, Royalties, Assists, Packing and Proceeds.

- Do you know whether you have a system of internal controls that would pass muster with Customs? There are five components of internal control and Customs will expect that you have all five covered. They include control environment, risk assessment, control activities, information and communication and monitoring.

- Do you know if you have any potential customs issues that could expose your company to very severe monetary penalties?

The prepared and knowledgeable importer will have answers to these and other questions before Customs shows up at your doorstep to start the audit.

To get your FA assessment in gear, complete the Customs Focused Assessment Internal Control Questionnaire that can be found on the Customs Web site. This will give you a sense of how prepared you really are.

Also, conduct a review of your customs entry data by obtaining a copy of your ITRAC data, which is all your entry data available from Customs via a Freedom of Information Act Request.

Conduct a thorough internal review and risk analysis of your import activities. Also consider applying for ISA. Under certain circumstances, you may be able to avoid the FA by going the ISA route.

Finally, determine the status of your overall system of internal controls. Do you have a set of standard operating procedures governing your imports that work and can be tested? Visit Customs' Web site and read everything regarding FAs and internal control programs. There's a lot of material there, but you'll find answers to almost any question about the FA process.

And if you are not comfortable conducting any of the recommended tasks, consider assistance from the outside. Lawyers, customs brokers and consultants are some of your available resources. Regardless of whom you turn to for help, remember that not all law firms or service providers have extensive experience with focused assessment work or representation, so it's a good idea to make sure this is a strength of the provider you select.

A final recommendation: If you haven't received the FA call, don't wait until you do to get started with a Customs compliance review. An internal review may not only help you become or remain compliant, but may also help you discover new duty savings programs. **jc**

Rob Pisani, a partner with Pisani & Roll in Washington, may be contacted at rpisani@worldtradelawyers.com.

Cindy de Leon, a contract senior trade auditor with Pisani & Roll, may be contacted at cdeleon@worldtradelawyers.com.