

## PISANI & ROLL LLP

Robert J. Pisani\*  
Michael E. Roll \*\*  
Brett Harris\*\*\*  
\*Admitted in DC  
\*\*Admitted in CA  
\*\*\*Admitted in DC & NY

*Attorneys at Law*  
1629 K Street NW, Suite 300  
Washington, DC 20006  
202.466.0960 (t)  
877.674.5789 (f)  
[www.worldtradelawyers.com](http://www.worldtradelawyers.com)

1875 Century Park East, Suite 600  
Los Angeles, CA 90067  
310.826.4410 (t)  
877.674.5789 (f)

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### **Top 10 Pro-active Customs Import Compliance & Audit Tips**

- 1. Consider conducting an annual internal review of your import program. This is particularly important if you are notified of a Customs audit or receive a Customs “Informed Compliance Letter.” If the latter, you may wish to tailor the review to cover the area or areas covered in the CBP letter (e.g., Valuation or significant use of NAFTA) - and it is recommended that you use Customs sampling methodologies to cover large entry volumes. Sampling is an efficient and Customs approved method to check for compliance issues, and the results should lead you to the appropriate corrective action(s) - including potential submission of a prior disclosure. If you seek outside assistance attempt to have internal review reports covered by attorney-client privilege – remember that in a Focused Assessment (“FA”), CBP auditors request copies of such reports in the FA questionnaire.**
- 2. Get your ACE entry data periodically (preferably quarterly, but at least annually). Your entry data is what Customs uses when they conduct an audit or compliance review.**
- 3. If you haven’t already done so, establish an import compliance program with a dedicated import compliance manager. Customs expects that an import compliance program include a comprehensive stand-alone customs compliance manual as well as written standard operating procedures. The manual and procedures should be tailored to *your* company and *not* simply purchased “off the shelf.” Without a compliance program and manual with SOP’s, you are increasing your compliance risk level that often manifests itself in a lack of communication between departments, inadequate entry documentation, reliance on brokers and 3<sup>rd</sup> parties - and lack of training related to customs compliance.**
- 4. Establish a tariff classification database of your imported products. The database can help you avoid errors in classification (for new and existing imported products) and serve as a safeguard against incomplete or incorrect invoice descriptions.**

- 5. As part of your SOP's, establish customs broker management guidelines to help ensure that your brokers are filing your entries correctly and are acting in accordance with your instructions – remember that your broker is your agent and that you, as Importer of Record (“IOR”), are ultimately responsible for the truth and accuracy of the information you provide to CBP.**
- 6. Another recommended SOP is a pre-entry checklist so that all required entry documentation is provided to CBP. Your checklist should cover the major items related to Customs compliance including: Invoice description, classification, value, origin - and any special duty program requirements. Consider obtaining an opinion letter from a Customs expert if questions arise. Such letters may insulate you from severe potential penalties should Customs disagree with the expert opinion. With respect to Customs rulings, you are not legally required to obtain a ruling- however, if you elect to obtain a ruling, remember that failure to follow the binding ruling and bring that ruling to CBP's attention on each entry is an invitation to a Customs penalty.**
- 7. In addition to the pre-entry checklist, you should develop post-entry audit procedures and maintain files of your post-entry audit results – part of this entails checking the work done by your broker(s) – a “cradle to grave” review should be performed – from purchase order to proof of payment. In the audit context, Customs expects importers to regularly conduct these post-entry audit reviews. Such reviews frequently uncover discrepancies or non-compliance – and you may discover that submitting a prior disclosure is appropriate.**
- 8. Conduct a periodic check (at least annually) of your general ledger and chart of accounts – CBP auditors will review the chart of accounts during an audit and may request and review this information in informed compliance proceedings. The chart of accounts is frequently where, for example, additional payments or undeclared assists or undeclared dutiable royalties may be found by CBP.**
- 9. Don't buy into the myth “If our goods are duty free, what difference does compliance make.” The CBP penalty statute, 19 USC § 1592 provides for substantial non-revenue loss penalties for non-compliant duty-free transactions in cases where trade statistics are affected by non-compliant information provided to CBP.**

10. **Stay informed about Customs compliance – periodically visit the Customs website ([www.cbp.gov](http://www.cbp.gov)). It is well established in Customs audit proceedings that the agency expects importers to conduct regular Customs compliance training for those individuals within your organization that are involved in international transactions – and written procedures and attendance logs relating to such training.**

### **A Few Extras - Some Miscellaneous Things to Consider in the Import Compliance Arena:**

1. **If you discover non-compliance before CBP does, consider making a prior disclosure – if duty is due Customs, it’s recommended that YOU (rather than CBP) calculate the prior disclosure interest penalty and include it with your duty tender.**
2. **Never leave a CBP Form 28 Request for Information unanswered – failure to respond may lead to a penalty. Frequently, the CBP Form 28 may be your indication that a prior disclosure is appropriate.**
3. **Remember that a settlement offer (aka “Offer in Compromise – 19 USC § 1617) can be submitted to Customs at any time – even before CBP initiates a penalty case or issues a prepenalty notice under 19 USC §1592.**
4. **If you decide to submit a petition in response to an enforcement action, in addition to concisely challenging Customs allegations, don’t forget to raise any mitigating factors that are present in the case.**
5. **If a question arises and you seek an outside expert’s opinion in order to demonstrate reasonable care, choose your “expert” carefully, and put your request in writing and be as thorough and specific in your request regarding the matter at issue. In turn, the response from the expert should be in writing and clearly address the question or questions you raised in your request. Reliance on the advice of an expert, if documented properly, may serve to ensure that you are not subject to penalty in the event CBP disagrees with the expert opinion.**

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***Pisani & Roll LLP can assist you in establishing a robust Customs Compliance Program, and respond to any Customs audit inquiries - including Customs audits and/or any of the recommendations or topics discussed above.***

*For more information, please contact:*

<i>I Robert J. Pisani</i>	<i>I 202.466.0960</i>	<i>I <a href="mailto:rpisani@worldtradelawyers.com">rpisani@worldtradelawyers.com</a></i>
<i>I Michael E. Roll</i>	<i>I 310.826.4410</i>	<i>I <a href="mailto:mroll@worldtradelawyers.com">mroll@worldtradelawyers.com</a></i>
<i>I Brett I. Harris</i>	<i>I 845.255.1850</i>	<i>I <a href="mailto:bharris@worldtradelawyers.com">bharris@worldtradelawyers.com</a></i>