

# TradeMatters

A Newsletter on Customs & International Trade

No. 9 April 2004

## Compliance, AMPS and Reason to Believe

### A few statements to catch your attention

- As an importer of record, you are liable and responsible for the accuracy of information provided to Canada Customs regardless of whether it is provided directly or through a Customs Broker
- Customs Brokers present information on your behalf in a time sensitive manner often based on information provided by third parties such as carriers and suppliers
- An invoice and entry from your Customs Broker, generally only reflects a deemed determination by Customs. You are responsible to ensure that the information is correct.
- Acts or omissions by third parties can be your legal responsibility and liability
- As importer of record you are obligated to make adjustments within 90 days for differences in values for duty, origin, and classification when you have 'reason to believe' an error has occurred
- The definition for 'Reason to Believe' is contained in D-memo D11-6-6. Importers are encouraged to read the this D-memo at: <http://www.cbsa-asfc.gc.ca/E/pub/cm/d11-6-6/README.html>
- If an importer does not make the required correction when Customs determines that the importer had 'reason to believe' the importer can be subject to significant duties, GST, interest and penalties on import transactions going back 4 years. In addition to monetary penalties, this will also have a negative impact on performance records, possibly resulting in the withdrawal of special service option privileges and increased targeting for examinations and audits.
- An importer's obligations and exposure are similar regardless of the dutiable status of their goods. In other words, you need to take similar care even if your goods are duty free.

Since the introduction of the Administrative Monetary Penalty System, Customs has been given a very big stick to encourage compliance, and an incentive to perform audits. And we have been assured that audits will increase. Increased resources have been allocated and many more auditors have been hired.

There certainly are many grey areas in the legislation especially in regards to what exactly constitutes reason to believe. Again, importer's must be encouraged to read and understand D11-6-6. On the other hand, the 'reason to believe' definition is often difficult to measure against real life scenarios. Another large unsettled issue is materiality. What does Customs consider worthy of correction? This information is not publicly available.

Example, does an importer need to file an adjustment for value if the difference is say \$30.00? The regulations do not make exemptions but for most importers and for Customs, filing all adjustments would be unmanageable.

Probably the biggest area of concern is valuation. Often the value declared for Customs is different than the price actually paid for the goods and many of these documents (ie: actual commercial invoice) could be considered 'reason to believe'. Values declared to Customs must be compared to prices actually paid. It does not matter that your goods are 'duty free'. As well, differences for GST must be accounted for.

### Here's a sample of some of the things you can do to increase your level of compliance:

- Designate one knowledgeable and responsible individual in your organization to review the documentation prepared by your Customs Broker
- Apply for advanced rulings
- Clarify the rights and responsibilities in your importer/broker relationship
- Do occasional audits. This can be done using a representative sampling. Often this is enough to point out any problems. Ensure that what you received and paid for = what was declared to Customs.
- Include a properly drafted phrase on your purchase orders stressing your suppliers responsibility to provide accurate Customs documentation especially in regards to NAFTA Certificates of Origin.
- focus the most resources to those areas that have the maximum potential for additional duties and penalties for non-compliance.
- Closer consultation with your Customs Broker

And now for some good news. Having a compliance strategy and showing due diligence will go a long way. It will reduce your exposure considerably even in the case of an error. It will improve your relationship with Customs and your Customs Broker ensuring speedy clearance and improved service options.

We at Courtney Agencies Ltd., take this very seriously. We strive for the highest level of accuracy but we need your help and your feedback through your own compliance strategy. We also have additional tools to help you in this area, please contact us for more information.

## Mandatory HS does to the next level

Effective May 3, 2004, where five HS codes or less are applicable, all HS codes must be provided before the release of commercial shipments. The Customs notice is available at: <http://www.cbsa-asfc.gc.ca/E/pub/cm/cn553/README.html>. This will have a significant impact on the amount of information that will be mandatory at time of release for most of those shipments that have more than one harmonized code.

## Importing products containing meat

Importing products that contain meat into Canada require a high degree of care, attention and accuracy on documentation and labeling. The best web link is at: <http://www.inspection.gc.ca/english/anima/meavia/mmopmmhv/table10e.shtml>  
Extra care must also be taken when importing SAMPLES of products containing meat. The documentation must indicate: a realistic commercial value for customs purposes only (0.00 value or \$1.00 is not acceptable); the importer of record; a sample meat certificate (this form does not seem to be readily available but can be obtained from the import service center pacific region Ph: (604) 666-9240 or through our office); as well as the normal Customs information required. Care must also be taken with shipping samples. Your samples will need expedited clearance but often it can be delayed through CFIA and Customs procedures. Proper documentation will go a long way to minimize delays.

## Customs Border Services Agency

Just when you got used to referring to Customs as the CCRA, re-organization happens again. The Canada Border Services Agency (CBSA) was created on December 12, 2003 and now encompasses the previous Customs component of the CCRA.

Please do not hesitate to contact us for more information on any of these programs.

## New Wood Packing Regulations

Effective January 2nd, 2004, new wood packing regulations came into effect. This will affect you if you import from countries other than the USA and your goods are packed in, on or with non-manufactured wood packing. The USA has also implemented these similar regulations effective January 2nd. Essentially:

- The wood packaging must be either heat treated to a temperature of 56 degrees C at the core of the wood for at least 30 minutes or fumigated using methyl bromide at specific rates, temperatures and time combinations.
- The treatment process must be approved by the National Plant Protection Organization from which the wood packaging originates, and
- The wood packaging must be marked with an internationally recognized mark.
- Please read the following link: <http://www.inspection.gc.ca/english/plaveg/protect/dir/d-98-08e.shtml>

## ACI and the 24 hour rule

Effective April 19, 2004, in line with the US Customs and Border Protection Agency and world wide security demands, all carriers with containerized cargo destined for Canada (except from the US) will have to notify Canada Customs electronically 24 hours prior to loading at the foreign port. For more information on this, please see the following link: <http://www.cbsa-asfc.gc.ca/import/advance/menu-e.html>

As agents for carriers and as freight forwarders, we at Courtney Agencies Ltd., are currently working with our private sector partners to develop the systems to ensure our clients comply.

# Whats happening @ Courtney

## Our email list

Paul Courtney – *Customs, consultant*

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## Freight services

We have recently expanded our freight department. Please do not hesitate to contact us regarding your shipping and logistical requirements.

## After Hours contact

Our regular office hours are: Monday to Friday 7:30 am to 5:00 pm. Outside these hours, please call the following numbers:

Customs Brokerage: (604) 787-0619

Ship's Agency: (604) 787-0620

Freight Forwarding: (604) 787-0369

If any of these are unavailable, please contact the other numbers. If it is not urgent and we can contact you during regular business hours, please leave a message at (604) 684-7505.

*While we have made every effort to ensure accuracy, the materials contained in "Trade Matters" are necessarily brief and general in nature and should not be construed as legal opinion or advice. For further information, please contact our trade specialists. We publish trade Matters on an occasional basis as a service to our customers. Editor and writer: Paul Courtney; Contributors: Don Courtney, Gordon King, Bernie Lahmann, Serrena Chan, Sanja Tang.*

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