

# Focused Assessment Program Overview and Updates

*Office of International Trade  
Regulatory Audit  
October 2, 2014*



U.S. Customs and  
Border Protection

# Who is Regulatory Audit?

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Regulatory Audit's (RA's) mission is to conduct post-entry audits of importers and other private parties that interact with CBP and provide other professional services in order to:

- Ensure compliance with laws and regulations
- Protect government revenue
- Support enforcement cases and court actions
- Protect domestic industries from unfair trade practices related to intellectual property rights and anti-dumping and countervailing duties (AD/CVD)
- Protect U.S. consumers from unsafe goods
- Facilitate legitimate trade through partnerships and informed compliance activities



# Types of Engagements

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- RA engagements are generally categorized into four types:
  - Focused Assessment Audits
  - Referral and Enforcement Audits and Other Professional Services (formerly Quick Response Audits)
  - User Fee Audits
  - Importer Self-Assessment Evaluations



# Legal and Regulatory Authority

- 19 U.S.C. § 1508 – Recordkeeping
- 19 U.S.C. § 1509 – Examination of Books and Witnesses
- 19 C.F.R. Part 163 – Recordkeeping



# FA Overview



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# FA Candidate Selection

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Risk based approach considering:

- Company size and complexity
- Nature and volume of import activity with regards to sensitive areas and Priority Trade Issues (PTIs)
  - Antidumping and Countervailing Duties
  - Intellectual Property Rights
  - Textiles and Wearing Apparel
  - Free Trade Agreements
- Nature and volume of import activity with regards to known risks (e.g., countries of origin, manufacturers, tariff classifications)



# Focused Assessment Program

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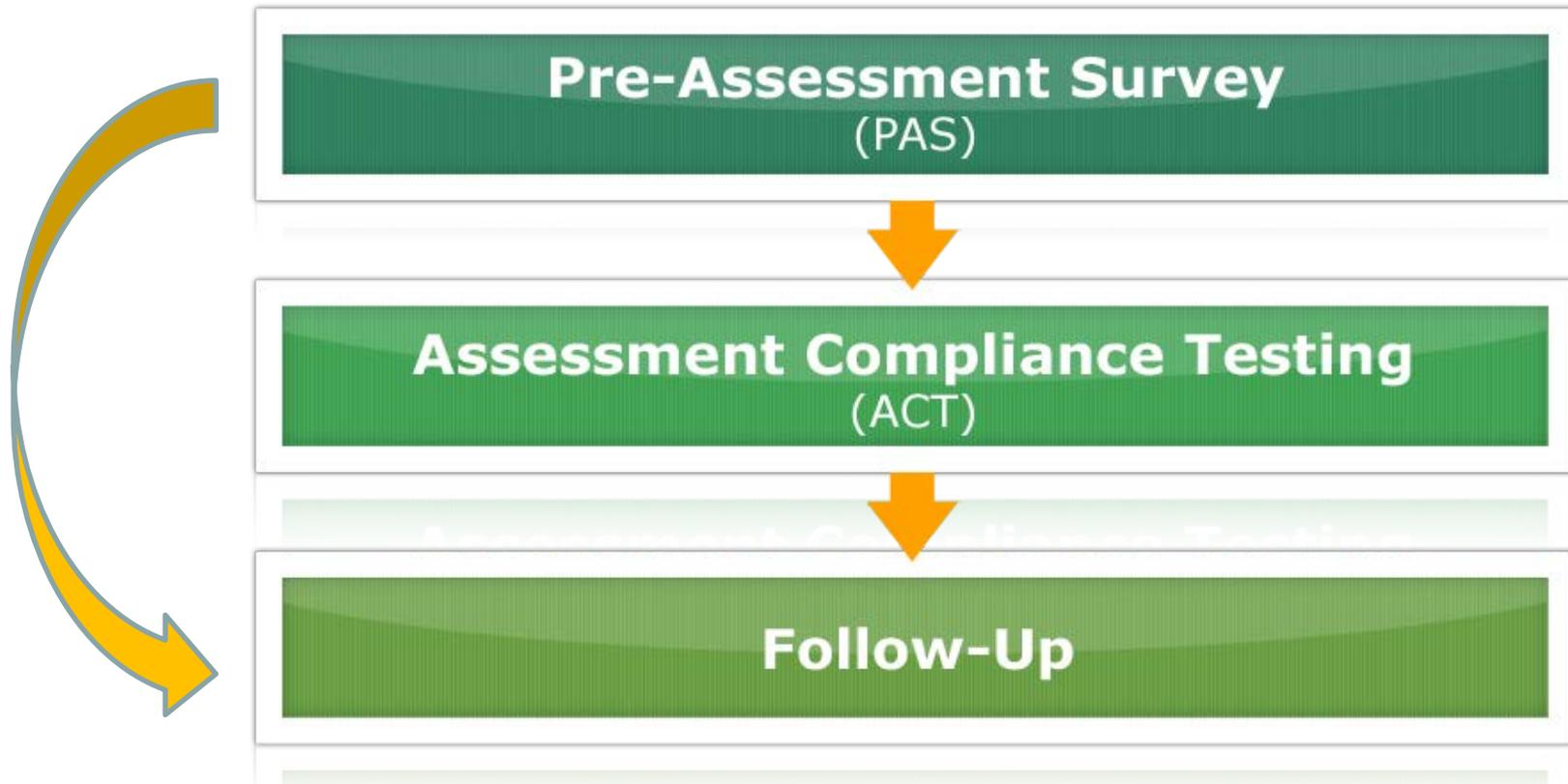
Comprehensive audits of importers that involve an assessment of internal control over import activities to determine if the importer poses an acceptable risk for complying with CBP laws and regulations comprising three possible phases

- Pre-Assessment Survey (PAS)
- Assessment Compliance Testing (ACT)
- Follow-Up Audit



# FA Phases

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# Outcomes

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- PAS with Acceptable Risk = No significant internal control deficiencies/material noncompliances
  - No additional follow-up by RA
  - Opportunity to transition to the ISA Program
- PAS with Unacceptable Risk = Significant internal control deficiencies/material noncompliances
  - May permit auditee to develop a Compliance Improvement Plan and perform self-testing / Perform subsequent Follow-Up
  - May proceed to an ACT



# FA Update



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# Reasons for FA Program Updates

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- Adapt to changes in our environment that have occurred since the last major update impacting:
  - U.S. and world economies
  - CBP risk parameters and processes
  - Business practices
  - Company profiles
- Reflect the current (December 2011 ) Revision of the Government Auditing Standards
- Incorporate 2013 COSO Internal Control – Integrated Framework



# Impact

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Four general areas we anticipate will impact the importer:

- Increased emphasis on the consideration of significance/materiality in making audit decisions
- Expanded guidance on tailoring the audit approach to suit the specific circumstances of the importer
- Replaced sample size matrices with more general sample size ranges
- Incorporated changes in report language



# Effective Date

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- Update only addresses the PAS phase; updates to other phases will be implemented at a later date
- Updated program is effective for all new PAS engagements started on or after October 1, 2014



# FA PAS PROCESS



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# Pre-Assessment Survey (PAS)

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- Objective is to determine whether a importer's import activities represent an acceptable risk to CBP through an assessment of internal control over compliance with CBP laws and regulations
- Scope period typically includes the most recently completed fiscal year
- Subject matter scoped into “audit areas” (e.g., Value, Classification, FTAs, 9801, 9802, AD/CVD, etc.)



# PAS Process

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1. Obtain an understanding of you and your environment, including your internal control
  - Preliminary Assessment of Risk (PAR)
  - Questionnaire Responses
  - Entrance Conference
  - Walkthroughs and Interviews
  - Policies & Procedures and Accounting Records
2. Assess audit risk
  - Identify specific risks relative to your import activity
  - Assess the suitability of the design and implementation of controls – if any – that mitigate that risk
  - Assess the overall risk of noncompliance



# PAS Process (Con't)

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3. Conduct detailed testing
  - Tests of Controls
  - Compliance Testing
4. Evaluate the results of testing
  - Identify instances of material noncompliance
  - Identify significant internal control deficiencies
5. Make risk determination for each audit area (Acceptable or Unacceptable)
6. Draft the audit report and obtain responses
7. Conduct exit conference and issue the report



# Preliminary Assessment of Risk (PAR)

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- Perform an initial assessment of the volume of activity and revenue implications based on tariff number, entry type, special indicators, etc.
- Compare past import activity (e.g. three year trend analysis) to current import activity to identify significant changes, trends, or anomalies
- Evaluate the significance of any import activity relating to CBP's Priority Trade Issues
- Evaluate current import activity for areas in which the auditee may have a history of noncompliance (i.e., prior disclosure, previous audit findings, penalty case, IS reviews, cargo exams, seizures, etc.) to assess the potential for continued noncompliance
- Evaluate the data for tariff numbers, MIDs, country of origin, etc. to identify potential risks



# Notify the Importer

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- Contact the company
- Request information that may be readily available such as:
  - Flowcharts/Description of import activities
  - Written policies and procedures
  - Working trial balance or other financial information
- Send confirmation letter with questionnaire, identified walkthrough entries, and documentation requests
- Schedule and conduct the entrance conference



# Conduct Walkthroughs and Interviews

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- Determine processes for:
  - Purchase and receipt of foreign merchandise
  - Recording in inventory
  - Payments to foreign vendor
  - Declaring merchandise to CBP
- Be prepared to show:
  - Where procedures are documented
  - How control implementation is documented
  - What control procedures are used to assure accurate reporting to CBP
  - Who is responsible for accurate reporting
  - What information, records and electronic data are maintained



# Internal Control Assessment

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- Assess whether internal control is properly designed and implemented to provide reasonable assurance of compliance
  - Documented, logical, reasonably complete, and likely to prevent or detect noncompliance
  - Been placed into operation
- Develop an expectation about the operating effectiveness of internal control
  - Operating consistently and effectively preventing or detecting noncompliance
- Assess control risk accordingly



# COSO's Internal Control – Integrated Framework

## Control Environment

- Demonstrates commitment to integrity and ethical values
- Exercises oversight responsibility
- Establishes structure, authority and responsibility
- Demonstrates commitment to competence
- Enforces accountability

## Risk Assessment

- Specifies suitable objectives
- Identifies and analyzes risk
- Assesses fraud risk
- Identifies and analyzes significant change

## Control Activities

- Selects and develops control activities
- Selects and develops general controls over technology
- Deploys through policies and procedures

## Information Communication

- Uses relevant information
- Communicates internally
- Communicates externally

## Monitoring

- Conducts ongoing and/or separate evaluations
- Evaluates and communicates deficiencies



# Factors to Consider...

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- Is there adequate interdepartmental communication?
- Are there procedures to ensure pro forma invoices are reconciled to actual invoices and corrections are reported to CBP?
- Are there procedures to link specific purchase orders, invoices, and payment records to CBP entry numbers?



# Factors to Consider...

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- Are there procedures to ensure that additions to price actually paid or payable are included for packing, assists, proceeds, royalties, and selling commissions?
- Are there procedures to ensure that price actually paid or payable is accurately reported, including:
  - Indirect payments?
  - Quota/visa?
  - Price adjustments?
  - Transportation costs?
  - Currency exchange adjustments?
  - All payments to seller?



# Examine Accounting Records

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- Examine the importer's accounting records to identify potential cost elements affecting value by obtaining an understanding of:
  - Nature of transactions with foreign vendors and the prices paid for items imported from them
  - Whether there are price adjustments or any other payments that impact CBP value and the circumstances under which they are made
  - How payments and other activities are accounted for and which accounts are used to record transactions that are relevant to CBP value
  - Whether/how transactions can be traced to entry level detail



# Select Accounts of Interest

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- Accounts typically selected for:
  - Additional payments, whether direct or indirect, made to the seller not reflected on the invoice for the imported goods
  - Payments relating to the statutory additions to the price paid or payable (e.g., packing costs, selling commissions, royalty or license fees, proceed of subsequent resale, assists)
  - Rebates, allowances, and other credits relating to purchases of imported goods
- Transactions will be selected from these accounts for detailed testing



# Testing Methodologies

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- Separate tests of controls for controls that don't occur at the "transaction level" and/or are periodic/sporadic
- Judgmental sampling from the company's books and records for compliance and controls that occur at the transaction level
- Judgmental sampling of entries or entry lines for compliance and controls that occur at the transaction level
- Documents: Proof of payment, declaration documents, freight invoice/bill of lading, accounting books and records, commercial invoice, purchase order



# Sample Sizes

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- Eliminating sample size matrices (1-20) and replacing with more general **guidelines**
- Population  $\geq 250$  = Test 25-40
  - Smaller sample sizes may be warranted (e.g., where risks are confined to specific circumstances)
  - Larger sample sizes may be warranted (e.g., high degree of complexity or variability)
  - Stop-and-Go statistical sampling may be used
- Population  $< 250$  = Test about 10%
- Smaller populations (e.g., controls performed on a weekly, monthly, or quarterly basis) = 2 to 10 occurrences



# Risk Determination

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- Acceptable Risk
  - Material noncompliances were not identified
  - Identified noncompliances were not systemic or material in nature
  - Significant internal control deficiencies were not identified
- Unacceptable Risk
  - Material noncompliances or repetitive immaterial noncompliances were detected
  - Significant internal control deficiencies were identified



# Unacceptable Risk – CIP

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- Request that the importer prepare a CIP
- Clearly convey to the importer their expectations regarding the CIP content and implementation to avoid misunderstandings
- Work with the importer to establish reasonable timeframes for developing and implementing the CIP



# Unacceptable Risk – More Testing

- Consider the potential risk for material errors both in the scope period of the PAS and other time periods
- Plan to conduct further compliance testing to quantify loss of revenue
  - Permit the importer to perform self-testing under CBP supervision
  - Close the PAS and perform an ACT



# Finalizing the Audit and Reporting

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- Draft the report, including finding sheets (condition, criteria, cause, and effect)
- Provide draft Finding Sheets to importer and obtain formal written response which will be attached to the audit report
- Hold the exit conference
- Issue final audit report



# FA to ISA Transition Program

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- Importers with an acceptable risk conclusion will be given the opportunity to transition into the Importer Self-Assessment Program
- Apply within 12 months of FA report date
- Must be a U.S. or Canadian resident importer
- Must be C-TPAT member
- Develop a written risk-based self-testing plan
- Complete the ISA Memorandum of Understanding
- Qualified companies will not need to undergo the Application Review Meeting (ARM)



# QUESTIONS?



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# SUMMARY OF UPDATES



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# Summary of FA Updates

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- Engaging the importer earlier in the audit process to obtain certain information in to better tailor our preliminary assessment of risk and questionnaire
- Eliminating the concept of a formal Advance Conference
- Renaming the “Internal Control Questionnaire (ICQ)” to the “Pre-Assessment Survey Questionnaire (PASQ)” and expanding the standard questions
- Aligning our risk assessments with the audit risk model (Audit Risk = Inherent Risk x Control Risk x Detection Risk)



# Summary of FA Updates (cont.)

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- No longer will assess a level of risk (high, medium, low) at the PAR phase
- Increased emphasis on significance / materiality in determining audit areas to include (or exclude) from the scope
- Increased emphasis on the notion that audit areas included in the scope at the PAR phase may be subsequently eliminated
- Value and classification could potentially be eliminated as audit areas



# Summary of FA Updates (cont.)

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- Selecting additional entry line items for walkthroughs to understand variations in procedures used
- Emphasizing that lack of formally documented internal control and written policies and procedures alone is not an automatic indication that risk is unacceptable
- Emphasizing the consideration of the size and complexity of the importer
- Eliminating the Worksheets for Evaluating Internal Control (WEICs)



# Summary of FA Updates (cont.)

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- Replacing sample size matrices (1-20) with more general **guidelines** (applies only to judgmental sampling)
  - Population  $\geq 250$  = Test 25-40
  - Population  $< 250$  = Test about 10%
  - Smaller populations (e.g., controls performed on a weekly, monthly, or quarterly basis) = 2 to 10 occurrences
- For compliance testing, Stop-and-Go statistical sampling may be used



# Summary of FA Updates (cont.)

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- May report acceptable risk when noncompliances or internal control deficiencies are deemed not significant enough to be reported as a finding
- May report acceptable risk with a scope limitation when implementation of internal control cannot be verified by auditors but no material noncompliances are detected
- May report acceptable risk where there are unresolved matters that do not involve an internal control deficiency (e.g., difference in opinion awaiting results of internal advice or ruling)



# Summary of FA Updates (cont.)

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- Limiting conclusion to the scope period of the audit
- Including language expressing inherent limitations of internal control and cautioning projection of results to future periods
- When applicable, the report will explain the limited nature of audit procedures performed for IPR, FTZ, and NAFTA

