

*What Every Member of the
Trade Community Should Know About:*

Entry



AN INFORMED COMPLIANCE PUBLICATION

MARCH 2004

U.S. CUSTOMS and BORDER PROTECTION

NOTICE:

This publication is intended to provide guidance and information to the trade community. It reflects the position on or interpretation of the applicable laws or regulations by U.S. Customs and Border Protection (CBP) as of the date of publication, which is shown on the front cover. It does not in any way replace or supersede those laws or regulations. Only the latest official version of the laws or regulations is authoritative.

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PREFACE

On December 8, 1993, Title VI of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), also known as the Customs Modernization or “Mod” Act, became effective. These provisions amended many sections of the Tariff Act of 1930 and related laws.

Two new concepts that emerge from the Mod Act are “***informed compliance***” and “***shared responsibility***,” which are premised on the idea that in order to maximize voluntary compliance with laws and regulations of U.S. Customs and Border Protection, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the Mod Act imposes a greater obligation on CBP to provide the public with improved information concerning the trade community’s rights and responsibilities under customs regulations and related laws. In addition, both the trade and U.S. Customs and Border Protection share responsibility for carrying out these requirements. For example, under Section 484 of the Tariff Act, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and determine the value of imported merchandise and to provide any other information necessary to enable U.S. Customs and Border Protection to properly assess duties, collect accurate statistics, and determine whether other applicable legal requirements, if any, have been met. CBP is then responsible for fixing the final classification and value of the merchandise. An importer of record’s failure to exercise reasonable care could delay release of the merchandise and, in some cases, could result in the imposition of penalties.

The Office of Regulations and Rulings (ORR) has been given a major role in meeting the informed compliance responsibilities of U.S. Customs and Border Protection. In order to provide information to the public, CBP has issued a series of informed compliance publications, and videos, on new or revised requirements, regulations or procedures, and a variety of classification and valuation issues.

This publication, prepared by the International Trade Compliance Division, ORR, is a review of the requirements that attach to the “entry” of imported merchandise. We sincerely hope that this material, together with seminars and increased access to rulings of U.S. Customs and Border Protection, will help the trade community to improve voluntary compliance with customs laws and to understand the relevant administrative processes.

The material in this publication is provided for general information purposes only. Because many complicated factors can be involved in customs issues, an importer may wish to obtain a ruling under Regulations of U.S. Customs and Border Protection, 19 C.F.R. Part 177, or to obtain advice from an expert who specializes in customs matters, for example, a licensed customs broker, attorney or consultant. Reliance solely upon general information in this publication may not be sufficient to show the exercise of reasonable care in specific transactions.

Comments and suggestions are welcomed and should be addressed to the Assistant Commissioner at the Office of Regulations and Rulings, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

Sandra L Bell
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INTRODUCTION

The act of entering merchandise consists of the filing of paper or electronic documents with the United States Customs and Border Protection (CBP) containing sufficient information to enable CBP to determine whether imported merchandise may be released from CBP custody. It also includes the filing with CBP of the declared value, classification and rate of duty applicable to the merchandise, and such other information as is necessary to enable CBP to properly assess duties, collect accurate statistics, and determine whether other applicable requirements of law have been met. All such filings must be done using “reasonable care.”

ENTRY REQUIRED

General Rule

As a general rule, all merchandise imported into the United States is required to be entered, unless specifically excepted. Importation occurs when a vessel or aircraft laden with goods arrives within a port of entry with the intent to discharge its cargo, or upon arrival within the Customs territory of the United States if by vehicle or train. The “Customs territory of the United States” includes only the States, the District of Columbia, and Puerto Rico. The types of imported merchandise for which no entry is required are described below.

Exceptions to Entry Requirement

Specific exemptions from entry apply to merchandise described in General Note 3(e) of the Harmonized Tariff Schedule of the United States (HTSUS), to certain vessels, to instruments of international traffic, and to certain railway locomotives and cars from Canada and Mexico. The General Note 3(e) exemptions include corpses and accompanying coffins and flowers; telecommunications transmissions; business records and data; articles returned from space; undeliverable articles returned within 45 days and which have remained in the custody of the carrier or foreign customs service; and aircraft parts or equipment removed from U.S. registered aircraft in international traffic because of accident, breakdown or emergency and returned within 45 days of removal.

RIGHT TO MAKE ENTRY

Persons Who Can Enter Merchandise

Only certain persons may enter goods. The term “person” in this context means businesses as well as individuals. The entry law, codified at 19 U.S.C. § 1484, limits the right to make entry to the “owner or purchaser” of imported merchandise, or to a licensed “customs broker” who has been appointed by the owner, purchaser, or consignee of the merchandise. Licensed customs brokers are easy to identify, because they are individuals or businesses that have been issued a customs brokers license by

CBP. It is frequently more difficult to determine who qualifies as an owner or purchaser of imported merchandise for “right to make entry” purposes. As a general rule, an owner or purchaser is someone with a financial interest in the transaction.

“Financial Interest” in Imported Merchandise

Examples of persons with a financial interest in imported merchandise include:

- ❑ The actual owner or purchaser of the goods;
- ❑ A buying or selling agent;
- ❑ A person who imports on consignment;
- ❑ A person who imports under loan or lease;
- ❑ A person who imports for exhibition at a trade fair;
- ❑ A person who imports goods for repair or alteration or further fabrication.

Persons who have no other right, title, or interest in the goods except as possessed under a bill of lading, air waybill, or other shipping document do not have a sufficient financial interest to make entry. Such persons, known as “nominal consignees”, typically include freight forwarders, freight consolidators, and express consignment operators. Although nominal consignees may not make entry, their status as consignees confers on them the right to appoint brokers to serve in that capacity.

Self-Filing vs. Hiring a Broker

Owners and purchasers of imported merchandise may file the entry documents themselves, or engage licensed customs brokers to do so on their behalf. Importers frequently elect to use a broker because the entry process itself can be quite complex. When an owner or purchaser files its own entries, it will appear as the “importer of record” on the entry documentation. The importer of record is the party to an entry transaction who is responsible for the payment of all duties and taxes due on the transaction. An owner or purchaser can also hire a broker to file entries on its behalf, in which case the owner or purchaser may still appear on the entry documentation as the importer of record, or alternatively, the owner or purchaser may ask the broker to assume that role. Whenever a nominal consignee appoints a broker to make entry, the broker is required to be the importer of record. This is because in that situation of the two parties involved only the broker has the right to make entry.

TYPES OF ENTRY

Different Entry Types

There are different types of entry, each with their own distinct documentation requirements. Depending on the circumstances, imported merchandise may be entered for consumption, entered for warehouse, admitted into a foreign trade zone, or transported in bond to another port of entry or country. The focus of this publication is on the type of entry required for merchandise entered for consumption.

Consumption Entries – Formal and Informal

Consumption entries are filed when the intent is to introduce the goods into the stream of U.S. commerce. A consumption entry will be categorized as either “formal” or “informal.” As a general rule, formal entries are required for all shipments valued over \$2000. A lower threshold value of \$250 applies to certain trade-sensitive articles, such as textiles. Less complex informal entries usually may be filed for shipments valued at \$2000 or less (or at \$250 or less for shipments containing the aforementioned trade sensitive articles). A subcategory of informal entry, known as a “Section 321” entry, would allow the duty-free entry of a shipment valued at \$200 or less that is imported by one person on one day, with minimal attendant documentation requirements. The term “Section 321” is derived from this provision’s statutory source, 19 U.S.C. § 1321(a)(2)(C).

ENTRY PROCESS

Two-Step Process

The formal entry process usually involves two steps. The first is the filing of an entry on Customs Form (CF) 3461, as well as a commercial invoice (or a pro forma invoice when the commercial invoice cannot be produced), packing lists, if appropriate, and such other documentation as is necessary to determine merchandise admissibility. This must be done within 15 calendar days after landing from a vessel, aircraft or vehicle, after receipt under a permit to transfer, or after arrival at the port of destination in the case of merchandise transported in-bond. The information contained in these documents enables CBP to determine whether the merchandise covered by the entry requires examination or may be released. A follow-up entry summary on CF 7501, with estimated duties attached, must be filed within 10 working days after the time of entry.

Both the CF 3461 and the CF 7501 are available in paper as well as electronic formats. When providing entry information via an electronic data interchange system, the duties may also be scheduled for electronic payment.

Exception to Two-Step Process: “Live Entry”

There is an exception to the general rule that making entry is a two-step process. This exception is known as “live entry.” A live entry occurs when a CF 7501 entry summary, with estimated duties attached, is filed prior to the release of merchandise. The CF 7501 in this case serves as both the entry and the entry summary. The practical effect of a live entry is to deprive the importer of the “float” accorded other importers who, by using the two-step process, may delay the deposit of estimated duties by up to ten working days. The importer also must produce the more detailed summary information up front.

A live entry is filed either at the option of the importer or if required by CBP. CBP requires live entries in any one of the following circumstances: 1) the importer fails

repeatedly to file timely entry summaries without justification; 2) the importer has not taken prompt action to settle a claim for liquidated damages; 3) the importer has repeatedly delivered entry summary documentation which is incomplete or which contains erroneous information; 4) the importer is substantially or habitually delinquent in the payment of CBP bills; or 5) the merchandise is of a special class, for example, quota.

A broker may not apply for release of merchandise in the broker's name and under the broker's bond on behalf of a client who is required to file live entries.

CONSEQUENCES OF LATE FILING OF ENTRY DOCUMENTS

“General Order”

The failure to file a CF 3461 entry (or a CF 7501 entry/entry summary if a live entry) within 15 calendar days of landing, receipt under a permit to transfer, or delivery at the port of destination if transported in-bond, may result in the merchandise being sent to “general order.” This means that the goods will go to a bonded warehouse that is eligible to receive and store general order merchandise. Merchandise may remain in general order for up to six months before being sold at public auction.

Demand for Liquidated Damages

The failure to file a CF 7501 entry summary within 10 working days after the time of entry will result in a demand being made for liquidated damages against the importer of record's basic importation bond.

TIME OF ENTRY

Recognized Times of Entry

There are various recognized times of entry. The times of entry are as follows:

- When entry documentation (CF 3461) is filed in proper form without an entry summary, the time of entry is:
 - The time of release; or
 - The time the CF 3461 is filed, if requested by the importer on the CF 3461 at the time of filing, and the merchandise has already arrived within the port limits; or
 - The time the merchandise arrives within the port limits, if the entry documentation is submitted before arrival, and if requested by the importer on the entry documentation at the time of submission.

- When the entry summary serves as the entry and the entry summary, the time of entry is the time the entry summary is filed in proper form with estimated duties attached.

- The time of entry of merchandise released under the immediate delivery procedure is the time the entry summary is filed in proper form with estimated duties attached.
- The time of entry for quota class merchandise is the time of presentation of the entry summary or withdrawal for consumption in proper form with estimated duties attached, or without estimated duties attached if the entry/entry summary information and a valid scheduled statement date have been successfully received by CBP via ABI.
- The time of entry of merchandise withdrawn from warehouse for consumption is when the CF 7501 is filed with estimated duties attached.

Significance of Time of Entry

The time of entry is important for two distinct reasons: 1) except in the case of a live entry, the entry summary must be filed within 10 working days after the time of entry; and 2) the rates of duty applicable to merchandise are the rates in effect at the time of entry, with three exceptions. The three exceptions pertain to merchandise entered for warehouse, to merchandise entered for immediate transportation, and to merchandise entered for consumption but removed from customs custody before release and then returned within 90 days (“overcarried merchandise”). Warehoused merchandise is dutiable at the rates in effect at the time of withdrawal from warehouse for consumption. Merchandise entered for immediate transportation is subject to the rates in effect when the immediate transportation entry was accepted at the port of original importation. Finally, overcarried merchandise is subject to the rates in effect at the time of the original entry.

Therefore, importers through their selection of entry filings may effect a time of entry that results in the most favorable rate of duty.

BOND REQUIREMENTS

Bond Required to Obtain Release

Merchandise shall not be released from customs custody at the time CBP receives the entry documentation unless a single entry or continuous bond on a CF 301 has been filed. A single entry bond covers one entry transaction, whereas a continuous bond covers entry transactions that take place over a one-year period. A basic importation bond is a contract whereby a guarantor (the surety) has an obligation to pay a second party (CBP) upon default by a third party (the importer of record/bond principal) in the performance that the third party owes to the second party. Basic importation bonds may be secured through approved surety companies, or may be posted in the form of U.S. currency or certain U.S. government obligations. In the event that a customs broker is employed for the purpose of making entry, the broker may permit the use of his bond to provide the required coverage.

Basic Importation Bond Conditions

As principal on a basic importation bond, the importer of record agrees to comply with the bond conditions specified in Part 113 of the CBP Regulations (19 CFR Part 113), which currently include:

- ❑ Agreement to pay duties, taxes and charges.
- ❑ Agreement to make or complete entry.
- ❑ Agreement to produce documents or evidence.
- ❑ Agreement to redeliver merchandise.
- ❑ Agreement to rectify any non-compliance with provisions of admission.
- ❑ Agreement to hold merchandise for examination.
- ❑ Agreement to reimburse or exonerate the United States.
- ❑ Agreement to use and handle duty-free merchandise in accordance with the law.
- ❑ Agreement to comply with CBP Regulations applicable to CBP security areas at airports.
- ❑ Agreement to comply with electronic entry and/or advance cargo information filing requirements.
- ❑ Agreement to ensure and establish the issuance of softwood lumber export permit and collection of export fees.

A default on any of these agreements may lead to the assessment of liquidated damages against the obligors (the principal and surety) for breach of the conditions of the bond.

Transfer of Liability by Means of Superseding Bond

An importer of record may transfer liability for additional or increased duties if he declares at the time of entry that he is not the actual owner of the merchandise. In addition, he must furnish the name and address of such owner, and file both a declaration and a superseding bond of the actual owner within 90 days from the time of entry.

SPECIAL PERMIT FOR IMMEDIATE DELIVERY

Entry vs. Special Permit

Under certain circumstances, importers may elect to file an application for a special permit for immediate delivery of their merchandise. In most respects, the procedures are similar to filing an entry, inasmuch as the same CF 3461 is used as the release document. However, the filer will designate the CF 3461 as a special permit instead of as an entry. A CF 7501 entry/entry summary, with estimated duties attached, must then be filed within 10 working days of release.

Qualifying Circumstances

By CBP regulations, use of the special permit procedures is allowed in the following circumstances:

- ❑ Land shipments from Canada and Mexico.
- ❑ Shipments of fresh fruits and vegetables from Canada and Mexico, which are transported to the importer's warehouse at the port of arrival for examination, resulting in entry being made only on those portions with commercial value.
- ❑ Shipments of certain quota class merchandise.
- ❑ Shipments of articles for a trade fair.
- ❑ U.S. government shipments.
- ❑ Split shipments for which an election for incremental release has been made.
- ❑ Other shipments when authorized by CBP Headquarters, such as those that occur at the end of the calendar year, when through use of special permit procedures importers may elect a time of entry in the following year when duty rates have decreased.

EXAMINATION, DETENTION AND RELEASE

CBP has broad authority to examine imported merchandise. After an entry is filed, CBP has 5 working days from the date of presentation for examination to decide whether to release, seize or detain merchandise. This rule applies only when no other agency determines admissibility. If CBP decides to release the merchandise, the port director will issue a permit to release. Merchandise not released within the 5-day period is considered detained.

CBP must issue a detention notice no later than 5 working days after a decision to detain is made, or after a failure to release within the 5-day period. Following notice, CBP has 30 days from the date of presentation for examination to decide whether to release, seize or deny entry of the goods. Goods denied entry may be exported. If no decision is made within 30 days, the merchandise is deemed excluded. The importer may protest the exclusion. A protest under these circumstances shall be deemed denied on the 30th day after it was filed with CBP if CBP has reached no decision. The importer may then appeal directly to the Court of International Trade.

RECALL OF MERCHANDISE RELEASED FROM CBP CUSTODY

CBP may release merchandise conditionally before all required evidence is produced, before its quantity and value are determined, or before its right of admission into the United States is determined. The importer of record, as a condition of the basic importation bond, agrees to redeliver merchandise to CBP in a timely manner upon demand by CBP, if it:

- ❑ Fails to comply with the laws or regulations governing admission into the United States;

- Must be examined, inspected, or appraised; or
- Must be marked with the country of origin as required by law or regulation.

A demand for redelivery will be made on CF 4647 no later than 30 days after the date that the merchandise was released or 30 days after the end of the conditional release period, whichever is later. A conditional release period is established in one of two ways:

1. By regulation, *e.g.*, 19 CFR 141.113(b) (180 days to determine country of origin of textiles); or
2. By notifying the importer of record of a conditional release period within 30 days after release, such as through issuance of a CF 28 "Request for Information" requesting a sample. The issuance of a notice establishes the beginning of the conditional release period; the period ends when CBP receives the sample.

A failure to comply with a request for redelivery will result in the issuance of a demand for liquidated damages.

ADDITIONAL INFORMATION

The Internet

The home page of U.S. Customs and Border Protection on the Internet's World Wide Web, provides the trade community with current, relevant information regarding CBP operations and items of special interest. The site posts information -- which includes proposed regulations, news releases, publications and notices, etc. -- that can be searched, read on-line, printed or downloaded to your personal computer. The web site was established as a trade-friendly mechanism to assist the importing and exporting community. The web site also links to the home pages of many other agencies whose importing or exporting regulations that U.S. Customs and Border Protection helps to enforce. The web site also contains a wealth of information of interest to a broader public than the trade community. For instance, on June 20, 2001, CBP launched the "Know Before You Go" publication and traveler awareness campaign designed to help educate international travelers.

The web address of U.S. Customs and Border Protection is <http://www.cbp.gov>

Customs Regulations

The current edition of *Customs Regulations of the United States* is a loose-leaf, subscription publication available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402; telephone (202) 512-1800. A bound, 2003 edition of Title 19, *Code of Federal Regulations*, which incorporates all changes to the Regulations as of April 1, 2003, is also available for sale from the same address. All proposed and final regulations are published in the *Federal Register*, which is published daily by the Office of the Federal Register, National Archives and Records Administration, and distributed by the Superintendent of Documents. Information about on-line access to the *Federal Register* may be obtained by calling (202) 512-1530 between 7 a.m. and 5 p.m. Eastern time. These notices are also published in the weekly *Customs Bulletin* described below.

Customs Bulletin

The *Customs Bulletin and Decisions* ("Customs Bulletin") is a weekly publication that contains decisions, rulings, regulatory proposals, notices and other information of interest to the trade community. It also contains decisions issued by the U.S. Court of International Trade, as well as customs-related decisions of the U.S. Court of Appeals for the Federal Circuit. Each year, the Government Printing Office publishes bound volumes of the *Customs Bulletin*. Subscriptions may be purchased from the Superintendent of Documents at the address and phone number listed above.

Importing Into the United States

This publication provides an overview of the importing process and contains general information about import requirements. The February 2002 edition of *Importing Into the United States* contains much new and revised material brought about pursuant to the Customs Modernization Act ("Mod Act"). The Mod Act has fundamentally altered the relationship between importers and U.S. Customs and Border Protection by shifting to the importer the legal responsibility for declaring the value, classification, and rate of duty applicable to entered merchandise.

The February 2002 edition contains a section entitled "Informed Compliance." A key component of informed compliance is the shared responsibility between U.S. Customs and Border Protection and the import community, wherein CBP communicates its requirements to the importer, and the importer, in turn, uses reasonable care to assure that CBP is provided accurate and timely data pertaining to his or her importation.

Single copies may be obtained from local offices of U.S. Customs and Border Protection, or from the Office of Public Affairs, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229. An on-line version is available at the CBP web site. *Importing Into the United States* is also available for sale, in single copies or bulk orders, from the Superintendent of Documents by calling (202) 512-1800, or by mail from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054.

Informed Compliance Publications

U.S. Customs and Border Protection has prepared a number of Informed Compliance publications in the "*What Every Member of the Trade Community Should Know About:...*" series. Check the Internet web site <http://www.cbp.gov> for current publications.

Value Publications

Customs Valuation under the Trade Agreements Act of 1979 is a 96-page book containing a detailed narrative description of the customs valuation system, the customs valuation title of the Trade Agreements Act (§402 of the Tariff Act of 1930, as amended by the Trade Agreements Act of 1979 (19 U.S.C. §1401a)), the Statement of Administrative Action which was sent to the U.S. Congress in conjunction with the TAA, regulations (19 C.F.R. §§152.000-152.108) implementing the valuation system (a few sections of the regulations have been amended subsequent to the publication of the book) and questions and answers concerning the valuation system. A copy may be obtained from U.S. Customs and Border Protection, Office of Regulations and Rulings, Value Branch, 1300 Pennsylvania Avenue, NW, (Mint Annex), Washington, D.C. 20229.

Customs Valuation Encyclopedia (with updates) is comprised of relevant statutory provisions, CBP Regulations implementing the statute, portions of the Customs Valuation Code, judicial precedent, and administrative rulings involving application of valuation law. A copy may be purchased for a nominal charge from the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7054. This publication is also available on the Internet web site of U.S. Customs and Border Protection.

The information provided in this publication is for general information purposes only. Recognizing that many complicated factors may be involved in customs issues, an importer may wish to obtain a ruling under CBP Regulations, 19 C.F.R. Part 177, or obtain advice from an expert (such as a licensed Customs Broker, attorney or consultant) who specializes in customs matters. Reliance solely on the general information in this pamphlet may not be considered reasonable care.

Additional information may also be obtained from U.S. Customs and Border Protection ports of entry. Please consult your telephone directory for an office near you. The listing will be found under U.S. Government, Department of Homeland Security.

“Your Comments are Important”

The Small Business and Regulatory Enforcement Ombudsman and 10 regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement activities and rate each agency’s responsiveness to small business. If you wish to comment on the enforcement actions of U.S. Customs and Border Protection, call 1-888-REG-FAIR (1-888-734-3247).

REPORT SMUGGLING 1-800-BE-ALERT OR 1-800-NO-DROGA



Visit our Internet web site: <http://www.cbp.gov>