

“An ounce of prevention is worth a pound of cure.”
The Benefits of Securing a U.S. Customs Binding Ruling

June 4, 2010

by Don M. Obert, Esq.
Customs, International Cargo and Regulatory Compliance Group

Benjamin Franklin's words ring especially true with regard to the importation of merchandise into the United States. Each year thousands of importers receive unwelcome notice from U.S. Customs & Border Protection (“Customs”) that their imported goods are subject to the assessment of supplementary duties, re-marking, redelivery, detention and/or seizure. Under certain circumstances, the importer may become the subject of a monetary penalty and/or liquidated damage claim. An importer will likely expend substantial time and money in addressing and rectifying these matters. In many instances, these problems could have been easily avoided.

Under the Customs Modernization Act, the importer of record is responsible for exercising “reasonable care” in entering its merchandise into the United States. The importer must use its best efforts to reach a correct analysis supported by the law and regulations, past Customs cases, and the specific facts. In certain situations—where a specific product or situation has been previously addressed by Customs—the importer can readily find the answer to its question. In other instances, the correct answer may remain unclear.

Since 1989, Customs has promoted its binding advanced ruling program, with the intention of providing interested parties (i.e., exporters, importers and others with a demonstrable interest in the goods) with a formal process for avoiding such uncertainty, and insuring that prospective entries of imported merchandise will be processed and released by Customs without delay. A binding ruling letter (“ruling letter”) issued by Customs represents the official position of Customs with respect to the particular transaction or issue described in it and are binding at all ports of entry unless revoked by the Customs Headquarters’ Office of Regulations and Rulings.

Ruling letters may be secured with respect to a number of relevant topics, including tariff classification, country of origin determination and marking, valuation, admissibility and duty-preference issues. Requests for ruling letters must be submitted in writing and may cover a maximum of five items of the same class or kind. The information and documentation submitted as part of a request is dependant upon the commodity, transaction or specific issue to be reviewed. Submitted information and documentation must give Customs the ability to understand and

address the issues presented, and support the requestor's position. Because ruling letters are accessible by the general public, a requesting party may ask Customs to redact certain confidential information from all published versions of such letters.

Customs strives to issue ruling letters within 30 days of the receipt of a written request. Once issued, the importer should attach a copy of the ruling letter to all future entries of covered merchandise.

While interested parties may seek ruling letters without the aid of a trade professional, one should be aware of the potential pitfalls of improperly prepared requests. First, a request that is deficient with regard to the basic regulatory requirements for rulings will be rejected outright. While a corrected request may be re-filed, in the case of rapidly approaching importations, critical time will be lost. (Remember, Customs can only issue a ruling letter for prospective transactions.) Second, preparing a valid request requires the interpretation of both law and fact. The various

sections of the Harmonized Tariff Schedule and related Customs' laws and regulations have, and continue to be, the focus of legal debate as to their scope and applicability to varied fact patterns. A requesting party's failure to properly substantiate his/her position under law may result in an unfavorable decision. Once a ruling letter has been issued, it is binding upon the importer until such time as the letter has been either revoked by Customs or overturned by the courts. This can be a lengthy and costly process. It is therefore imperative that a requestor take great care in presenting its position to Customs.

In conclusion, a binding ruling from Customs is a formidable tool for the importer. When successfully sought, secured and applied, there is no better or more cost effective method for evidencing import compliance and guarantying certainty with respect to Customs' treatment of imported merchandise.

Should your company wish to discuss the potential benefits of this program, please contact Don M. Obert (212) 790-9245 (dmo@cfl.com).

DISCLAIMER: This Alert is not, nor intended to be, legal advice. Because the materials included are general, the user should not act or rely upon this information or resources without first seeking professional legal advice. Should you require, Cowan, Liebowitz & Latman, P.C., can provide legal advice on a case-by-case basis.